

FOLLOW UP TO THE PREVIOUS REVIEW

1. Out of the 229 recommendations examined by the Algerian authorities during its last review in 2017, at least 59 have not yet been implemented and at least 44 were partly implemented.¹
2. Law No. 12.06 on Associations was not amended or repealed, and no progress was noticed on the adoption of a legislation protective of the rights of migrants, asylum seekers and refugees.
3. Articles 35 and 40 of the amended Constitution of December 2020 include progressive language on women's rights.²
4. In 2021, Algeria announced it has accepted the visit of the Special Rapporteur on the rights to freedom of peaceful assembly and of association from 12 to 22 September 2022.³
5. Algeria adopted a "Law on the prevention and fight against discrimination and hate speech", which prohibits racial discrimination (A/HRC/36/13, recommendation 129.58 [Uganda]).⁴

THE NATIONAL HUMAN RIGHTS FRAMEWORK

6. The amended Constitution of December 2020 contained positive steps to ensure more protection for human rights that has yet to be reflected in the national legal framework.
7. Article 52 on the right to peaceful assembly provides that it could be exercised on "simple notification" although it mentions that the Law would fix "conditions and procedures".
8. Article 53 provides that the right to form associations is guaranteed upon "simple declaration".
9. Article 54 guaranteeing freedom of the press is limited by vaguely worded conditions such as respecting "fundamental religious, cultural and moral values." The right to receive and impart information in Article 55, introduces the condition that the exercise of such right shall not infringe on "the private lives of others, on their rights, the legitimate interests of institutions, and the requirements of national security."
10. Article 40 introduces positive language on women's rights by providing that the State "protects women against all kinds of violence and in all spheres and under every circumstance in the public space, the professional sphere and the private sphere."
11. In April 2020, Algerian authorities adopted Law No. 20-05 to prevent and fight against discrimination and hate speech. Article 34 of the law punishes with up to ten years' imprisonment anyone creating, administering or supervising an electronic account" based on the vaguely worded "possibility to produce discrimination and hate speech".
12. That same month, Algerian authorities also adopted amendments to the Penal Code to further restrict freedom of expression and of association by punishing with prison sentences "endangering the lives of others" (Article 290 bis), propagating "fake news" (Article 196 bis) or the "reception of funding" that could be a threat to "national security or the normal functioning of institutions, or the national unity, or the territorial integrity or the fundamental interests of Algeria or security or public order" (Article 95 bis).

THE HUMAN RIGHTS SITUATION ON THE GROUND

Freedom of peaceful assembly and of association

13. In February 2019, an important protest movement known as the Hirak began, with millions in the streets calling for political change. After some time, Algerian authorities started their repression of the movement, which intensified following the election of president Abdelmadjid Tebboune in December 2019 and the halting of the Hirak in March

2020 due to the Covid-19 pandemic.

14. Throughout the three years of the Hirak, authorities arrested and prosecuted thousands of activists as well as journalists, political leaders and human rights defenders. The crackdown reached unprecedented levels in 2021 and beginning of 2022, with the dissolution of a prominent rights group and threats to dissolve opposition political parties as well as targeted and widespread arrests of Hirak figures.
15. As of March 2022, at least 300 activists, peaceful protesters and journalists remain detained.
16. During Hirak protests, Algerian authorities arbitrarily arrested, and unlawfully prosecuted and detained political and civil society activists and journalists based on vaguely worded Penal Code provisions such as Articles 79 and 100, which criminalize "harming the security of the state" and "armed and unarmed gathering", and which have both been misused against peaceful protesters.⁵ Other articles in the Penal Code such as Articles 97 and 98 also limit the right to peaceful assembly.⁶
17. In May 2021, authorities used Law No. 91-19 on Public meetings and Demonstrations to halt the Hirak protests by requesting prior declaration for every demonstration.⁷
18. In 2021, authorities used Law No.12-06 on Associations to dissolve the Youth Action Gathering association (RAJ).⁸ They also used Law No. 12-04 on Political Parties to suspend temporarily the Workers' Socialist Party (PST) and to threaten the Union for Progress and Change (UCP) with dissolution.⁹
19. Police used unlawful force against peaceful protesters. On 12 April 2019, police injured protester Ramzi Yettou, 22, who died from his injuries a week later in a hospital in Algiers, with authorities not publicizing any result from the investigation on the case.¹⁰
20. Between 2020 and 2021, judicial authorities ordered the pretrial detention of at least eight women who did nothing but express their views online or participate in the Hirak.

Freedom of expression

21. Algerian Courts prosecuted hundreds of activists as well as journalists for exercising their rights to freedom of expression online and offline using Penal Code provisions, including Articles 74, 75, 96, 144, 144 bis and 144 bis 2, 146, 196 and 290 bis.¹¹
22. On 3 March 2022, an appeal Court in Algiers sentenced journalist Khaled Drareni to a six-month suspended sentence and a fine for covering Hirak protests. He had previously been sentenced by a lower court to three years in prison in August 2020. He was detained for 11 months between March 2020 and February 2021.¹²
23. In October 2021, a Court in Tamanrasset in southern Algeria convicted journalist Rabah Karèche to a year in prison of which six months were suspended, for articles he published in the newspaper Liberté about protests in the south of Algeria against the new administrative division of the country.¹³
24. In April 2021, the Court of Algiers sentenced Islamic expert Said Djabelkheir to three years in prison for his online publications commenting on the Quran.¹⁴
25. Between June and August 2021 and based on Law on Audio-visual Activity, The Audiovisual Regulatory Authority (ARAV) decided to suspend two TV channels, to close two others and to withdraw or not respond to the requests of accreditations of foreign media and foreign journalists.¹⁵
26. According to Amnesty International's research on accessibility of news websites, between 30 November and 11 December 2020, Algerian authorities arbitrarily blocked access to at least 18 online news websites with independent editorial lines, including Maghreb Emergent and RadioMPost.

Counterterrorism and human rights

INDEX: MDE 28/5313/2022
MARCH 2022
LANGUAGE: ENGLISH

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27. In April 2021, Algerian courts started to prosecute dozens of activists, journalists and human rights defenders based on Article 87 bis of the Penal Code on terrorism. That article was further amended in June 2021 to include vaguely worded new provisions including the criminalization of anyone "attempting to seize power or change the system of governance by unconstitutional means."¹⁶
28. In May 2021, the High Council for National Security designated unregistered groups Rachad and the Movement for the self-determination of Kabylie (MAK) as terrorists, although both groups advocate peacefully for change in Algeria.
29. In October 2021, a Court in Adrar in southern Algeria convicted activist Mohad Gasmi to five years in prison for "glorification of terrorism" for a Facebook publication in which he blamed the Algerian authorities for the radicalization of a former workers-rights activist.¹⁷ His appeal trial is scheduled in October 2022.
30. In April 2021, a Court in Oran, west Algeria, prosecuted human rights defenders Kaddour Chouicha, Djamila Loukil and Said Boudour and 12 others accusing them of ties with unregistered political group Rachad.¹⁸

Torture and other ill-treatment

31. Amnesty International has documented the cases of at least nine activists who were subjected to torture and other ill treatment in custody between October 2018 and April 2021.
32. In April 2021, police in El Bayadh, a city in western Algeria arrested activist Ayoub Chahetou while he was taking part in a protest and sexually tortured him in custody.¹⁹

Prolonged pretrial detention

33. Both Algeria's Code of Penal Procedures as well as the Constitution provide that provisional detention should be exceptional. In practice, Algerian authorities are holding hundreds of activists in pretrial detention. On 31 March 2019, a Court in Ghardaia ordered the provisional detention of political activist and doctor Kamel Eddine Fekhar for his online publications criticizing the authorities. He died on 28 May after 50 days on hunger strike in protest at his arbitrary detention.²⁰

Freedom of religion

34. Between 2017 and 2022, Algerian authorities used the Penal Code and Decree Law No. 03-06 regulating the exercise of a religion other than Islam, to prosecute hundreds of non-Sunni believers and also closed several Protestant churches, undermining the right to freedom of religion.
35. Article 51 of the 2020 Constitution provides that freedom of opinion and the "freedom to practise acts of worship" are protected, whereas both freedom of opinion and of conscience were protected in the Constitution adopted in 2016.
36. In December 2021, a Court in Ain Defla, north of Algeria, convicted Christian convert Foudhil Bahloul to a six-months prison sentence and a fine for "illegally receiving a donation" based on Article 11 of Decree Law No. 03-06.²¹
37. Between January 2018 and July 2021, authorities forcibly closed at least 20 Protestant churches, sealing 16 of them.

Independence of the judiciary

38. The 2020 Constitution does not guarantee sufficient safeguards to ensure the independence of the judiciary and its impartiality, especially regarding the tenure of judges, their appointments and the independence of the High Judicial Council (HJC) from the executive branch of government.
39. In May 2021, the HJC dismissed judge Sadedin Merzoug after a disciplinary procedure was initiated against him about his online publications in support of Hirak protests and his advocacy for democratic change in Algeria.²²

Discrimination based on gender or sexual orientation

40. Despite some improvements with regards to women's rights in the 2020 amended Constitution, Algerian law continues to discriminate against women in matters of inheritance, marriage, divorce, child custody and guardianship.²³
41. Adultery is criminalized in Article 339 of the Penal Code and is punishable by one to two years in prison.
42. Despite a 2015 law criminalizing domestic violence, Algeria still lacks a comprehensive legislation for an effective and coordinated response to violence against women.²⁴ The Penal Code makes rape a crime, though it does not provide a definition of the crime of rape and a "forgiveness clause" allows rapists to avoid punishment if their victims pardon them.²⁵
43. In 2021, women's group *Femicides Algérie* recorded at least 55 cases of femicide committed in Algeria and claimed that the police and judicial authorities failed to adequately investigate or prosecute those responsible.
44. Same-sex sexual relations are criminalized in Article 338 of the Penal Code.²⁶ In 2020, a group of individuals were sentenced to a year in prison based on accusations as per this article.²⁷

Migrants' rights

45. Irregular migration is punishable by up to two years in prison. In 2021, Algeria's coastguard intercepted Hirak activist Brahim Laalami, who was subsequently sentenced to three months in prison for irregular exit.
46. Algeria still lacks a national asylum legislation and Algerian authorities do not recognize those determined as refugees by UNHCR under its mandate.²⁸
47. Authorities have arbitrarily expelled hundreds of thousands of migrants without due process.²⁹

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Algeria to:

Freedom of peaceful assembly and of association

48. Release activists, journalists and human rights defenders detained solely for exercising their rights to freedom of peaceful assembly.
49. Amend legislation that criminalizes peaceful assembly including Article 79, Article 97, Article 98 and Article 100 of the Penal Code.
50. Amend Articles 15, 17, 19 and 23 of Law No. 91-19 on Public meetings and Demonstrations so that it is in line with the Constitution.

51. Repeal Law No. 12-06 on Associations and elaborate a new law, as previously accepted by Algeria in the 3rd review.³⁰
52. Amend Article 95 Bis of the Penal Code criminalizing the "reception of funding" that could be a threat to "national security or the normal functioning of institutions, or the national unity, or the territorial integrity or the fundamental interests of Algeria or security or public order".

Freedom of expression

53. Release activists, journalists and human rights defenders detained solely for exercising their rights to freedom of expression.
54. Amend security-related charges in the Penal Code used to criminalize the right to freedom of expression including Articles 74, 75, 96, 144, 144 Bis, 146, 196 bis and 290 bis.
55. Review the Law on Audio-visual Activity to bring it into conformity with human rights standards.

Counterterrorism and human rights

56. Amend Article 87 bis of the Penal Code to define more precisely the crime of "terrorism" in line with international human rights law and standards so as not to unlawfully limit the rights to freedom of expression, peaceful assembly and association.

Torture and other ill-treatment

57. Open independent, impartial and effective investigations into allegations of torture and ill-treatment and make the results of those investigations public to enable anyone found to be responsible to be brought to justice and held criminally accountable, as previously accepted by Algeria in the 3rd review.³¹

Freedom of religion and belief

58. Protect the right of people to practise their religion freely.
59. Lift undue restrictions in Decree 03-06 on the practice of a religion other than Islam, including on the conditions to exercise worship, conditions on places of cult, knowledge about other religions and the authorization to collect money so to respect the country's obligations under international human rights law regarding the rights to freedom of expression, association and peaceful assembly.
60. Repeal Article 144 bis 2 on "offending" the Prophet and "denigrating the creed and precepts of Islam".

Independence of the judiciary

61. Ensure that any disciplinary procedure against a judge is only possible in case of gross misconduct, that discipline is conducted through a fair and impartial mechanism away from any government interference, and that guarantees of due process are respected.
62. Amend Law No. 04-12 of 6 September 2004 on the Supreme Judicial Council to lift the executive branch undue control over the judiciary.
63. Amend Law No. 04-11 of September 2004 regulating the statute of magistrates to avoid the influence of the executive branch on the appointment of judges.

Discrimination based on gender or sexual orientation

64. Amend all articles in the Penal Code and Family Code which discriminate on the basis of gender, namely Articles 326 (excuses rapists if they marry the victim) and 336 (does not provide a definition of rape) of the Penal Code, and Articles 11 (women must marry in the presence of a male relative), 53 and 54 (a husband doesn't need justification to divorce his wife, but a wife does), and 66 (a mother who remarries loses custody of her children) of the Family Code.
65. Decriminalize same-sex sexual relations by repealing Article 338 of the Penal Code that criminalizes "homosexual acts".
66. Adopt comprehensive legislation to prevent and combat violence against women in line with the new Constitution, as previously accepted by Algeria in its 3rd review.

Rights of migrants and refugees

67. Abolish or amend Article 175 bis of the Penal Code, which criminalizes "illicit" exit from Algeria, and ensure that any violations of migration legislation are treated as administrative, not criminal, offences.
68. Amend Law No. 08-11 to decriminalize irregular entry, stay, and exit and ensure they are treated as administrative offences rather than criminal offences.
69. Adopt national legislation implementing the 1951 Convention on the Status of Refugees and its 1967 Optional Protocol, as well as other international law and standards for the protection of people in need of international protection.
70. Grant protection to refugees recognized as such by UNHCR.
71. Stop the practice of arbitrary arrests and summary expulsions of foreign nationals without due process and respect the principle of non-refoulement.

Ratification of key international human rights treaties

72. Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
73. Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty and commute all death sentences.
74. Withdraw the reservations to the Convention on the Elimination of All Forms of Discrimination against Women.
75. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.
76. Ratify the Rome Statute of the International Criminal Court.

¹ UN Human Rights Council (UNHRC), *Report of the Human Rights Council on its 36th session*, 11-29 September 2017, UN Doc. A/HRC/36/2, para. 870.

² UNHRC, *Report of the Working Group on the Universal Periodic Review: Algeria*, 11-29 September 2017, UN Doc. A/HRC/36/13, recommendation 129.171 (Namibia).

³ UNHRC, *Report of the Working Group on the Universal Periodic Review: Algeria*, 11-29 September 2017, UN Doc. A/HRC/36/13, recommendation 129.29 (Norway).

⁴ Law 20-05 against discrimination and hate speech (in French), adopted on 28 April 2020.

⁵ Article 79 of the Penal Code of 1966, adopted on 8 June 1966, punishes with up to ten years in prison and a fine anyone "harming the integrity of the national territory" and Article 100 punishes with a prison sentence of two years and a fine "incitement to unarmed gathering", and with up to five years "incitement to an armed gathering".

⁶ Article 97 of the Penal Code of 1966, adopted on 8 June 1966, prohibits "armed and unarmed gathering" and Article 98 of the same law convicts to three years individuals taking part in gatherings.

⁷ Article 15 of Law 90-91 on Public meetings and Demonstrations of 1991, adopted on 21 August 2021, provides that "public gatherings need to be preapproved". Article 17 of Law 90-91 details the formalities for this preapproval. Article 19 of Law 90-91 considers illegal gathering a demonstration that was not authorized or banned. Article 23 of Law 90-91 punishes with a prison sentence and a fine anyone who would make a "false declaration" or who takes part in an "unauthorized gathering".

⁸ Amnesty International, *Algeria: Dissolution of leading rights group RAJ a blow for freedoms*, 13 October 2021.

⁹ Amnesty International, *Algeria: Authorities target political parties in their latest clampdown*, 9 February 2022.

¹⁰ Amnesty International, *Algeria: Authorities must ensure justice for protester beaten by police*, 28 May 2019.

¹¹ Article 74 of the Penal Code of 1966, adopted on 8 June 1966 punishes with five to ten years anyone in time of peace who "obstruct national defense, by impeding the circulation of military material or provoking, facilitating or organizing a violent act that would result in this obstruction". Article 75 of the Penal Code punishes with five to ten years anyone who in time of peace "undermine the morale of the army". Article 96 of the Penal Code punishes with up to three years in prison and a fine anyone who "harms the national interest through the distribution, selling, exposition to the public, or distribution" of publications. Article 144 of the Penal Code provides for up to three years in prison and a fine for "offending" public officials. Article 144 bis of the Penal Code provides for a fine for anyone "offending" the President of the Republic and Article bis 2 with up to five years imprisonment and a fine for "offending" Islam or the Prophet of Islam and "denigrating the creed and precepts of Islam". Article 146 of the Penal Code punishes "offending public bodies" with a fine. Article 196 bis of the Penal Code punishes with up to three years and a fine anyone "sharing false news". Article 290 bis of the Penal Code punishes with up to two years imprisonment anyone who "exposes the life of another human being or his physical integrity by not following a rule or a law. The sentence is up to five years if the events happen during sanitary lockdown, a catastrophe or another calamity".

¹² Amnesty International, *Algeria: Journalists sentenced to harsh prison terms amid growing crackdown*, 27 August 2020.

¹³ Journalist Rabah Karèche was prosecuted based on Articles 96 and 297 of the Penal Code as well as Article 34 of Law 20-05 of 2020 adopted on 28 April 2020. For more on his case, see Amnesty International, *Algeria – release journalist Rabah Karèche!*, 5 October 2021.

¹⁴ Amnesty International, *Algeria: Islamic scholar sentenced to three-year prison term for "offending Islam"*, 22 April 2021.

¹⁵ TV channels *El Hayat TV* and *El Bilad TV* were suspended in relation to programmes they broadcasted. TV channels *El Djazairia One* and *Lina TV* were closed down for not conforming to the Law on Audiovisual according to the Ministry of Communication. The foreign media channels whose accreditations were withdrawn are *Al Arabiya* and *France 24*. Also, there have been no directors of *Agence France Press (AFP)* in Algeria since 2019, when the Algerian authorities refused to grant AFP the necessary accreditation despite its repeated requests.

¹⁶ Article 87 bis of the Penal Code of 1966, adopted on 8 June 1966 includes 14 provisions for sentences ranging up to the death penalty for individuals who commit the crime of "terrorism". Anyone who creates or funds or organizes acts of "terrorism" could be punished with a life sentence. Anyone who participates in "terrorism" could be convicted to a prison sentence of up to 20 years. "Terrorism apology" is punishable by a five-to-ten-year prison sentence and a fine.

¹⁷ Amnesty International, *Urgent Action: Activist Convicted of Terrorism Glorification* (index: MDE 28/4941/2021).

¹⁸ Amnesty International, *Halt Criminalization of Peaceful Dissent in Algeria*, (Index: MDE 28/4264/2021), 24 June 2021.

¹⁹ Same as above.

²⁰ Amnesty International, *Algérie : La mort de Kameleddine Fekhar après 50 jours de grève de la faim est une honte pour le pays*, 29 May 2019.

²¹ Amnesty International, *Algeria: Quash conviction of Christian convert and overturn repressive law used to prosecute him*, 7 December 2021.

²² The judge was first notified by the Ministry of Justice about the disciplinary procedure initiated against him in May 2020 via a summons that he received at the house of one of his family members. The case was transferred to the High Council of Magistracy which initiated disciplinary procedures against him on several grounds, including "breaching the duty of discretion" and "incitement to strike" as provided in the law of the statutes of magistrates of 2004, adopted on 6 September 2004, on the magistrates' status. The evidence used in the case are online publications of Merzoug on Facebook in which he criticized the judicial system and made declarations to media about the Club of Algerian Magistrates' boycott of presidential elections on 4 July and 18 October 2019. The decision by the High Council of Magistracy to revoke him is the most serious disciplinary sanction for gross misconduct by a judge.

²³ Article 11 of the Algerian Family Code of 1984, adopted on 9 June 1984 provides that a woman of legal age should conclude her marriage contract in the presence of her wali, who can be her father or a male relative or any other person of her choice. According to Article 66 of the Family Code, a mother who remarries loses custody of her children. A husband can freely divorce his wife without justification, but a wife must meet specific conditions in order to initiate a divorce, as set out in articles 53 and 54 of the Family Code. Inheritance remains weighted in favour of sons compared to daughters. The law entrenches a simple mathematic formula with a severely discriminatory effect: one son is equal to two or more daughters.

²⁴ Law no. 15-19 makes assault against a spouse or ex-spouse punishable by up to 20 years in prison, depending on the victim's injuries, and by a life sentence if the attack results in death. It also expanded the scope of sexual harassment, strengthened penalties for it, and criminalized harassment in public spaces. Law No. 15-19, 30 December 2015, amending and supplementing Ordinance No. 66-156 of 8 June 1966 on the Penal Code.

²⁵ Article 326 of the Penal Code makes it an offence punishable by imprisonment for between one and five years if any person "abducts or corrupts" a child under 18 years without using violence, threats or deception, or attempts to do so. However, if the perpetrator marries the child, he is not liable to prosecution or conviction under Article 326 unless the marriage is annulled. In effect, this provision grants impunity to some rapists and may facilitate both rape and the forced marriage of girls. Article 336 of the Algerian Penal Code makes rape a crime

punishable by five to 10 years' imprisonment but does not provide a definition of the crime of rape. The Penal Code does not define other forms of sexual violence, such as sexual assault, aggravated sexual assault and inappropriate touching, but such acts may be prosecuted under Penal Code Articles 334 and 335 covering indecent assaults.

²⁶ Article 338 of the Penal Code of 1966, adopted on 8 June 1966 carries up to three years in prison and a fine for "homosexual acts". In June 2016, Algeria was one of 18 members of the UN Human Rights Council to vote against the appointment of an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

²⁷ Amnesty International, *Annual report 2020: Algeria*.

²⁸ The Algerian Office for Refugees and Stateless Persons established through Decree No. 63-274 of 25 July 1963 on the application of the 1951 Refugee Convention, has yet to develop into a functioning asylum structure.

²⁹ Amnesty International, *Algeria: Mass racial profiling used to deport more than 2,000 sub-Saharan migrants*, 23 October 2017.

³⁰ A/HRC/36/13, recommendation 129.114 [France]

³¹ A/HRC/36/13, recommendation 129.76 [Bosnia and Herzegovina]