

ALGERIA:

COMPREHENSIVE
REFORMS NEEDED TO END
SEXUAL AND GENDER-
BASED VIOLENCE AGAINST
WOMEN AND GIRLS

AMNESTY
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INTRODUCTION

In 2014, the Algerian authorities took long overdue steps to address sexual and gender-based violence. In February, they published a decree to provide financial compensation for women victims of sexual violence by armed groups during the 1990s internal conflict that engulfed the country. In June, they introduced draft laws which, if adopted, would make violence by a spouse, and sexual harassment in public spaces criminal offences.

Although these are positive steps, the authorities' approach to the issue of sexual and gender-based violence has been at best selective, if not tokenistic. The internal conflict and a spate of attacks against women in 2001 highlighted the reality of sexual violence in Algeria. Hundreds of women were abducted and raped by armed groups during the 1990s conflict but have not had access to judicial remedies and adequate reparations and have not benefited from support services facilitating their recovery from violence. In 2001, women living and working in the oil-rich city of Hassi Messaoud suffered a spate of attacks, including sexual assaults, by non-state actors; similar attacks occurred again in 2010. The perpetrators of the attacks have not been held to account.

The authorities' response to these two major outbreaks of sexual and gender-based violence has been belated and inadequate, and no concrete measures were taken in their aftermath to protect women survivors from such violence and ensure that their right to justice and adequate reparation, including rehabilitation, or measures to prevent the occurrence of sexual and gender-based violence. The authorities should not repeat such errors and instead adopt a comprehensive approach to ensure that women and girls are fully protected against sexual and gender-based violence in law and in practice, and that they have adequate access to services such as legal aid, health services and psycho-social support when such violence occurs.

SEXUAL AND GENDER-BASED VIOLENCE IN ALGERIA: FACTS AND FIGURES

There are no comprehensive statistics available on how widespread sexual and gender-based violence is in Algeria. Yet, according to a major study on violence against women in Algeria published in 2005 and conducted by the National Institute for Public Health (Institut National de Santé Publique, INSP), and published in 2005¹, 5,4% of the violence perpetrated against women was of a sexual nature.

Due to the stigma attached to rape and other sexual assaults, victims of sexual violence often do not report abuses and this estimate is therefore thought to be much higher. Recent statistics by the judicial police reported by the Algerian media, indicate that in the first nine months of 2013, 266 out of 7010 complaints related to sexual violence, including rape, sexual harassment and incest.² The director of the judicial police responsible for the protection of women and children victims of violence reportedly said that the real figure was probably higher, given the taboo surrounding this issue.

Sexual violence is often underreported, even more so in traditional and patriarchal societies which view women as the bearers of the family's honour and sexual assaults on women as shaming for the family's men. Balsam, a national network of listening centres supporting women experiencing violence, reported that in 2013, 4,116

out of 29,532 cases of violence against women reported to the network were for sexual violence - about 14%.³ Nada, a non-governmental organization focusing on children's rights, also reported an increase in sexual violence against children, including incest, of which both girls and boys are victims.⁴

On 1 February 2014, Algerian Prime Minister Abdelmalek Sellal signed Decree 14-26 into law. This law established that women who were raped by members of armed groups during the internal conflict that ravaged Algeria in the 1990s, are entitled to compensation, like other victims of terrorism.⁵ Widespread human rights abuses by both government forces and armed groups were a hallmark of this conflict. Armed groups were responsible for the deliberate killings of civilians, indiscriminate attacks, torture and other ill-treatment, abduction, rape and enslavement.⁶ Up to 200,000 people were killed in the context of the conflict, according to official estimates. Those who survived included many women and girls who were subjected to rape or other sexual violence and enslavement.

SEXUAL VIOLENCE DURING THE 1990S INTERNAL CONFLICT

Hundreds, if not thousands of women and girls were raped or subjected to other forms of sexual violence by members of armed groups during the internal conflict of the 1990s. Some were mutilated and killed; others were abducted, held against their will and forced to cook and clean for the armed group members responsible for their abduction. Some escaped; others were abandoned by the armed groups after their abduction and rape. Some became pregnant as a result of their rape and bore children; some contracted sexually-transmitted infections or developed gynaecological problems as a consequence of their abuse. Many suffered long-lasting physical and mental trauma which continues today.

While such trauma derives principally from the rape or other sexual abuse to which they were subjected to by the perpetrators, it was exacerbated by the social stigma that is commonly attached to women and girls who are victims of rape or other sexual violence in Algeria. Such stigmatization can lead to survivors of rape facing rejection by husbands, relatives or the community and thus subjecting them to multiple layers of discrimination. Such stigma deters many women and girls from disclosing a rape or other forms of sexual violence against them, let alone report it. Consequently, the number of women and girls affected by sexual violence during the 1990s conflict is not known.

This new decree amounts to crucial, albeit belated, official effective recognition that women who were raped by members of armed groups – defined as terrorist groups in the legislation – were and are victims. Amnesty International, as well as relevant UN human rights experts and bodies, echoing the demands of Algerian women's rights organizations,⁷ have long called for the Algerian authorities to provide full reparation – including, but not limited to, financial compensation - to all survivors of rape and other acts of sexual violence which occurred during the internal conflict of the 1990s.⁸

Decree 14-26 does not fully address the legacy of sexual violence committed during the conflict and it remains unclear as to how it will be implemented in practice. The adoption of the decree puts the spotlight on deficiencies in Algerian law that fail to protect women and girls survivors of sexual violence. Such shortcomings include an inadequate definition of rape and other forms of sexual violence, as well as legal provisions that prevent survivors of sexual violence from obtaining adequate remedies. For instance, a provision in the Penal Code allows rapists to escape prosecution by marrying their victim. Other provisions prohibit abortions.

At the end of June 2014, the Algerian authorities announced the introduction of new legislation to strengthen the protection of women against violence. A draft law proposes amendments to the Penal Code and another proposes the establishment of a state fund for divorced women with custody of their children, and whose ex-husbands refuse or are unable to provide alimony. According to the drafts that Amnesty International obtained, physical violence against a spouse would be explicitly criminalized, recognizing the prevalence of domestic violence, with prison terms ranging from one to five years depending on the severity of the injuries sustained by the survivor. The intended reforms would also explicitly recognize indecent assaults against women carried out in public, which would be punished by prison terms; such law, if passed, would complement notable sexual harassment provisions introduced in the penal code in 2004.⁹

However, even if these reforms are adopted, Algerian law still fails to adequately protect survivors of sexual violence. Algeria is still lacking a comprehensive law to end violence against women, of which sexual violence should be a substantial component. This briefing identifies some of these deficiencies and, in a series of recommendations addressed to the Algerian government, sets out key measures needed to address and remedy them.

DECREE 14-26 AND THE LEGACY OF THE INTERNAL CONFLICT OF THE 1990S

Although the crime of rape was excluded from the scope of various amnesty laws adopted by the Algerian authorities since 1999, survivors of sexual violence were not specifically included in measures taken in support of victims of abuses by armed groups, until this year. In one positive move, the state's High Islamic Council ruled in 1998 that women who had been raped during the internal armed conflict could obtain an abortion.

Decree 14-26 complements Decree 99-47, adopted on 13 February 1999, which established compensation for victims of acts of terrorism, defined as persons who have died or suffered bodily harm or material damage following acts of terrorism. Decree 14-26 provides that women subjected to rape by a terrorist or terrorist group are also considered to be victims. In order to obtain state compensation, Decree 14-26 requires that such victims only need to provide a statement made to the security forces and submit it as part of their claim to the wilaya (governorate) of their place of residence. The compensation is calculated on the basis of a rate of permanent disability fixed at 100%.

While the decree is limited in its scope, it is a welcome but long overdue step forward. Prior to the adoption of Decree 14-26, some Algerian officials sought to justify the government's failure to recognise women who were raped or otherwise sexually abused during the conflict as victims of human rights abuses who should receive reparation, including compensation, under the guise of preserving their "honour".¹⁰ This reflects the prevailing social attitude which see rape as an act that brings shame on the survivor and her family. The new decree does not, however, address the medical and psychosocial support that survivors of sexual violence need, their rehabilitation or their right to judicial remedies.

CONCERNS OVER THE LACK OF SUPPORT OF SURVIVORS OF SEXUAL VIOLENCE COMMITTED IN THE INTERNAL CONFLICT

The decree does not advance the right to justice of the women who were subjected to rape, which was previously undermined by other legislation and policies of the Algerian government.

Even in cases where official complaints of sexual violence were filed, the authorities appear to have made little effort to bring those responsible to justice. In response to the internal conflict, the government enacted controversial amnesty legislation. Two sets of measures were adopted, respectively in 1999-2000 and in 2005-2006, which in effect denied victims of human rights abuses by armed groups and victims of human rights violations by state

agents, their right to truth, justice and full and effective reparations. However, these amnesty measures provided for the financial compensation of victims of abuses by armed groups. Survivors of sexual violence were not even specifically included in these partial compensation measures.¹¹

The Algerian government did recognize that rape occurred during the conflict. They excluded rape from the scope of amnesty measures. They allowed members of armed groups who surrendered or were captured to apply for and receive immunity from prosecution for crimes committed during the conflict, except for those members of armed groups who had committed specific crimes, including rape. This welcome measure was however undermined in practice, as the authorities appear to have failed to conduct thorough investigations when considering requests for amnesty in order to identify those who should be denied amnesty and those who should face criminal prosecution for rapes committed during this time. The government never confirmed that individuals responsible for rape had actually been denied amnesty.

In 1998, the High Islamic Council, a state institution, ruled that women who had been raped during the internal armed conflict could obtain an abortion in extreme cases where it was medically established that their pregnancy posed a serious threat to their life. The Council's edict was significant in that it affirmed that women who had been raped had not been deprived of their "honour" and should not face blame or any form of punishment on account of this. However, Algerian women's rights groups have accused the authorities of failing to implement measures in practice in order to allow women survivors of rape during the internal conflict to secure abortions.

Following a visit to Algeria that she carried out in 2007, the United Nations (UN) Special Rapporteur on violence against women, its causes and consequences, Ms. Yakin Ertürk, expressed concern in her subsequent report, submitted to the UN Human Rights Council in 2008, at the Algerian authorities' failure to afford adequate redress to victims of sexual violence during the internal conflict of the 1990s. She recommended that the Algerian authorities establish an independent commission to investigate acts of sexual violence committed during the conflict, identify and bring perpetrators to justice and ensure that women victims of sexual violence received prompt and adequate compensation.¹² In 2007, the UN Human Rights Committee recommended that the Algerian authorities investigate rapes committed during the 1990s conflict, prosecute and hold to account perpetrators, ensuring that no pardon, commutation or remission of sentence or termination of public proceedings is granted. The United Nations Committee against Torture made similar recommendations when reporting on its consideration of Algeria's compliance with the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. However, the Algerian authorities have not complied with these recommendations.¹³

In a 2011 report on her visit to Algeria, the current Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, noted that although the Algerian authorities affirmed that surviving victims of sexual violence during the conflict had received justice, she had not been able to obtain any official statistics or other information from the Algerian government about individuals to whom they had denied amnesty because of accusations of rape. She recommended that the Algerian authorities open discussions with

civil society organizations with a view to creating a commission to investigate all forms of violence against women committed during the 1990s conflict; three years on, however, the Algerian authorities have yet to create such a commission.

Successive UN Special Rapporteurs have also relayed the concerns of Algerian women's rights organizations at the failure of the government to provide facilities and programmes to assist the rehabilitation of women who were raped or subjected to other sexual abuse by members of armed groups during the 1990s conflict, including medical, psychological and other post-traumatic counselling, or compensation similar to that afforded by the government to other victims of abuses by armed groups.¹⁴

It is unclear how the decree will be implemented in practice. Of particular concern is whether women who have not reported being subjected to sexual violence during the internal conflict will be able to obtain compensation if they now report it to the security forces. In addition, the decree does not make clear that women victims of forms of sexual violence other than rape have a right to be compensated. This failure mirrors the lack of definition of rape and other forms of sexual violence in Algerian law.

RAPE, OTHER SEXUAL VIOLENCE AND THE PENAL CODE

INADEQUATE PROVISIONS

RAPE

Article 336 of the Algerian Penal Code makes rape a crime punishable by 5 to 10 years' imprisonment but without providing a definition of the crime of rape. The same article provides for the sentence to be doubled – to between 10 and 20 years' imprisonment – in cases where the victim was under the age of 16 at the time of the rape. Article 337 further increases the penalty to life imprisonment if the perpetrators are ascendants of the victim, occupy a position of authority over the victim or are teachers, public officials or religious authorities or if they acted together with others in committing the rape.¹⁵

The Algerian authorities have assured the UN Committee on the Elimination of Discrimination against Women (CEDAW) that, despite the failure to define the crime of rape in the Penal Code, Algerian case law considers rape as a crime that involves physical or psychological violence against a woman.¹⁶

The rape provisions are contained in a section of the Penal Code that covers offences related to “morality” and “decency”. This fails to adequately reflect the true nature of the crime as a form of violence and a violation of an individual's physical and mental integrity. Framing the crime of rape as an issue primarily of morality and decency risks reinforcing discriminatory stereotypes according to which women's role in society is seen as one of upholding morals.

The provisions on rape should be amended to reflect international standards in relation to the definition of rape, which recognize the right to be free from coercion and violence and the right to physical and mental integrity. The definition of rape should also be gender neutral so that it protects all victims of rape. It should go beyond the penetration of a vagina by a penis to better reflect the reality that rape is committed in different ways, and describe different coercive circumstances that do not necessarily require physical violence. The definition provided in the “Elements of Crimes” of the Rome Statute of the International Criminal Court provides guidance for defining rape.¹⁷ It defines rape as follows: “the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body” and “the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.”¹⁸

WHAT ARE SEXUAL AND REPRODUCTIVE RIGHTS?

Everybody has sexual and reproductive rights. States have an obligation to ensure that everyone can freely, without fear, coercion or discrimination:

- Make decisions about her or his own health, body, sexual life and identity.
- Ask for and receive information about sex, contraception and related health services.
- Decide whether and when to have children.
- Choose whether or not to marry and what type of family to create.
- Have access to comprehensive and integrated sexual and reproductive health services. Nobody should be deprived of health care or information on the basis of who they are or what they can afford.
- Live free from rape and other violence, including forced pregnancy, abortion, sterilization or marriage, or female genital mutilation/cutting.¹⁹

OTHER FORMS OF SEXUAL VIOLENCE

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 (“attentat à la pudeur”).

The Penal Code punishes indecent assaults differently depending on the age of the victim and if violence is involved. While Algerian law, unlike Moroccan law,²⁰ does not punish differently the offender depending on whether the survivor was a virgin, in practice it appears that women and girls may have been subjected to forced virginity tests by the police, and that the sentence against the offender may be harsher if the victim was a virgin. The then Minister of Interior was reported as saying that virginity tests were illegal and unacceptable.²¹

Article 334 punishes indecent assaults attempted or committed without violence against children aged under 16, with 5 to 10 years’ imprisonment. It provides for the same punishment for indecent assaults attempted or committed without violence by an ascendant against a child aged above 16 and not married. The punishment prescribed by Article 335 for indecent assaults when committed with violence, including against adults, is 5 to 10 years’ imprisonment and increases to 10 to 20 years’ imprisonment if committed with violence against a child aged under 16 (Article 335). Article 337 also provides for these increased punishments if the perpetrator is an ascendant or has authority on the victim, is a public official or a religious authority or acts with others.

These provisions have a limited scope. While they importantly cover children, whether the acts are violent or not, they do not cover non-violent acts against adults nor against minors who because of their early marriage are treated as adults. These provisions do not

acknowledge the reality that sexual violence is not always committed by force, but also through coercion and that adult women also need to be protected by the law. The Penal Code should be amended to ensure that all forms of sexual violence are criminalized, including those committed through coercion or when the victim is not able to give genuine consent.

Sexual harassment within the workplace based on abuse of authority became a criminal offence under Article 341bis when the government amended the Penal Code in 2004. This important reform addresses the phenomenon of sexual harassment faced by women in the workplace.²² However, there have been few successful prosecutions, apart from the landmark sentencing of a public official in 2012.²³ According to women's rights groups and trades unions, many instances of sexual harassment are unreported because victims fear that disclosure will lead to their stigmatization, and both victims and witnesses fear that they would receive inadequate protection, particularly in criminal cases.

OMISSIONS

MARITAL RAPE AND OTHER VIOLENCE WITHIN THE FAMILY

Marital rape is not recognized as a crime under Algerian law although a national survey on violence against women that the authorities published in 2005 reported that 10.9 per cent of women interviewed said they had been subjected to forced sexual intercourse by their intimate partners.²⁴ More recent studies conducted by the Balsam network also show that marital rape is a significant issue, comprising 14 per cent of instances of sexual violence the network recorded in 2013.²⁵

Algerian law should recognize marital rape as a specific criminal offence, as recommended by UN experts and bodies. The punishment for marital rape should be the same as for rape.

The fact that marital rape is not explicitly recognized as an offence reflects the lack of specific laws on domestic violence in Algeria, although according to the Family Code, as amended in 2005, women can divorce their husband if they are violent towards them.

Violence within the family can be prosecuted under Articles 264 to 276 of the Penal Code, which prescribe penalties ranging from fines to imprisonment, according to the seriousness of the injuries caused to the survivor, for violent acts committed by one person against another. Article 264 prescribes a penalty of one to five years' imprisonment and a fine for violent acts that lead to illness of the victim or an incapacity to work for more than 15 days. A medical certificate by a medical doctor is needed to prove this in court, a requirement that creates another barrier for survivors of sexual and gender-based violence to access justice and for the prosecution of perpetrators of sexual violence in the domestic sphere. Violent acts that do not render the victim unable to work for more than 15 days are considered misdemeanours unless they were premeditated, as in an ambush, or when a weapon was used (Article 266).

The introduction of provisions to explicitly punish violence against a spouse, as announced by the authorities in June 2014, would be a step in the right direction. According to the draft laws seen by Amnesty International, a provision would be added to Article 266 of the Penal Code, explicitly criminalizing violence against a spouse.

These provisions, even if adopted, remain limited in scope and omit important aspects of the

nature of violence against women that need to be addressed in the law. For instance, they do not define the types of violence that can be committed within the family, mirroring gaps in existing provisions on rape and other forms of sexual violence. Victims would still, in practice, need to have physical injuries examined by a medical doctor in order for the perpetrator to be prosecuted, even though a proposed provision provides for a punishment of one to three years' imprisonment even when the physical assault did not result in an illness or inability to work for more than 15 days. This ignores international standards which recognize the reality that violence in the domestic sphere, particularly sexual violence, can be committed through coercion. The proposed amendments only consider the spouse as potential perpetrator, although violence in the family can be committed by other relatives. Finally, the amendments are problematic in that they provide that the spouse responsible for the violence can evade prosecution if the victim forgives him, ignoring unequal power relations between women and men, including economic power, and the dynamics of abusive relationships.

SEXUAL HARASSMENT

The important introduction of sexual harassment as a criminal offence in 2004 was limited to instances of sexual harassment when the perpetrator is abusing his position of authority in the workplace. The UN Special Rapporteur on violence against women, its causes and consequences recommended in 2011 that the Algerian authorities criminalize all forms of sexual harassment, regardless of abuse of authority.

Under proposed amendments announced in June 2014, the Algerian authorities now intend to criminalize, in the Penal Code, acts, gestures or words that harm a woman's "decency" in a public place. This proposed amendment is intended to complement existing provisions on sexual harassment and criminalize offences other than rape and indecent assaults.

OTHER OBSTACLES FACED BY SURVIVORS OF SEXUAL VIOLENCE

Algerian legislation contains other discriminatory provisions which can present further barriers to the effective protection of survivors of sexual violence, including their access to judicial remedies. Such provisions undermine the Algerian government's obligations to exercise due diligence and investigate sexual violence, prosecute and punish the perpetrators.

THE CRIMINALIZATION OF CONSENSUAL SEXUAL RELATIONS OUTSIDE MARRIAGE AND STEREOTYPES AS AN OBSTACLE TO REPORTING VIOLENCE

Certain aspects of consensual sexual relations between adults outside marriage are criminalized. Article 339 of the Penal Code criminalizes "adultery" prescribing a penalty of one to two years' imprisonment. Both the married person and the person with whom the adultery is committed can be prosecuted.²⁶ Article 338 of the Penal Code criminalizes acts of "homosexuality".²⁷

Criminalization of consensual sexual activity between adults, regardless of their marital status, is a violation of the right to privacy and to free expression and non-discrimination and should not be punishable under national laws.²⁸ Due to stigma around sexual violence that, for example, puts the blame on sexual violence survivors for the crime committed against them, such laws could deter survivors of sexual violence from making a complaint, for fear of finding themselves prosecuted under this provision.

While other aspects of consensual sexual relations between adults, such as consensual sexual relations between an unmarried man and an unmarried woman, are not criminalized in Algeria, there are deeply rooted social attitudes that are hostile to sexual relationships outside marriage. This leads to the stigmatization of single women, including unmarried women with children and women living on their own, making them more vulnerable to sexual violence.

In 2010, for example, there was a spate of attacks on women who lived on their own and worked in the oil-rich town of Hassi Messaoud. The attacks were carried out at night by groups of unidentified young men accusing them of being sex workers.²⁹ Some women were sexually abused and called “prostitutes,” or physically assaulted, threatened with knives, or robbed of their phones and jewellery. Hassi Messaoud had been the scene of similar attacks in 2001, in which women living alone were subjected to rape, stabbed and injured by being burnt. To date, the Algerian authorities have provided no information about whether any of the perpetrators of the 2010 attacks have faced prosecution. To the best knowledge of Amnesty International, only one man was convicted of rape, and subsequently sentenced to eight years, for the 2001 attacks. No other individual was prosecuted for sexual assault.

Such negative stereotypes and discriminatory attitudes towards woman can deter them from reporting sexual violence to law enforcement officials. The 2011 report of the UN Special Rapporteur on violence against women on her visit to Algeria, highlighted this issue and said that Algerian women’s rights organizations had expressed particular concern about the prevalence of such stereotypes within the police and other law enforcement bodies. The report noted that police subject women who complained of rape or other sexual violence to inappropriate scrutiny, with irrelevant questioning about their personal sexual history and, specifically, their virginity.³⁰ These discriminatory stereotypes are also evident in legal provisions that frame sexual violence as a “decency” issue rather than a crime against the physical and mental integrity of the victim.

EXCUSING RAPE

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.³¹ 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. In Morocco, a similar provision in the Penal Code became the focus of a public outcry after Amina Filali, a girl aged 16, committed suicide in 2012 after she was forced to marry the man she said had raped her. The Moroccan Parliament unanimously voted to abolish this provision in January 2012.³² In Tunisia, the authorities recently announced that similar provisions allowing rapists to evade prosecution by marrying their victim will be abrogated as part of a comprehensive law to combat violence against women.

Amnesty International urges the Algerian authorities to follow suit and repeal Article 326 of the Penal Code, which can currently serve to further penalize a survivor of sexual violence under the age of 18, by forcing her to marry the rapist, instead of providing protection to the survivor and bringing the perpetrator to justice. Such provision violates international human rights law and undermines the government’s duty to investigate sexual violence and

prosecute and punish perpetrators of sexual violence.

LACK OF DATA AND EVIDENTIARY OBSTACLES

There are no comprehensive statistics listing the number of prosecutions brought for sexual violence and the number of convictions obtained, although statistics on the number of complaints received by the judicial police in recent years have been relayed in the media. Consequently, it remains difficult to assess the extent to which the Algerian authorities comply with their obligations to investigate and punish crimes involving sexual violence. This lack of official data led the CEDAW Committee to recommend in 2012 that the Algerian authorities establish a database of information on domestic and sexual violence showing the number of complaints received, investigations undertaken, prosecutions mounted, convictions obtained and sentences imposed on perpetrators as a basis for the government's reporting to the Committee.³³

In addition, both Algerian women's rights organizations and the UN Special Rapporteur on violence against women have expressed concerns that a lack of protection of victims and witnesses deters women from seeking criminal prosecutions in cases of domestic violence and sexual harassment. For instance, no provisions exist to prevent a spouse who has committed sexual violence on his wife when she has lodged a complaint from approaching her. The Algerian authorities should put in place comprehensive measures to ensure the protection of survivors and witnesses from harassment and retaliation, so as to improve the prosecution of cases of sexual violence.

According to Algerian law and practice, medical evidence is crucial to prove rape in a court of law, and survivors of violence should be examined by a forensic doctor. In practice, according to the Algerian authorities, evidence given by general medical practitioners is also considered by the courts. According to the law, other evidence to support an accusation of sexual violence can be provided by witnesses, although this is unlikely to happen in most cases.

The Algerian authorities should ensure that there is a sufficient number of medical professionals trained in the World Health Organization (WHO) protocol on the collection of forensic evidence in cases of sexual and gender-based violence, in order to improve access to judicial remedies for survivors of sexual violence.³⁴

LACK OF ADEQUATE HEALTH AND SUPPORT SERVICES FOR SURVIVORS OF SEXUAL VIOLENCE

Survivors of sexual violence need to be able to access emergency contraception, in order to prevent pregnancy as a result of rape, as well as health care information and services for potential sexually-transmitted diseases. They also need to be able to access abortion services in cases of pregnancy due to rape or incest. They should have access to immediate and long-term psycho-social support. However, the reality for survivors of sexual violence in Algeria is that they do not have access to such services, while suffering from additional stigmatization, which also extends to children born out of rape.

RESTRICTIVE ABORTION LAWS

The criminalization of abortion breaches a wide range of human rights. The Human Rights Committee, as well as other United Nations Treaty Bodies and Special Procedures have called for the removal of punitive measures for abortion and for ensuring access to safe and legal abortion under certain circumstances, including in cases of rape and incest.³⁵

Algerian law permits abortion only if the life or health of the pregnant woman and when it is practiced by a medical doctor or surgeon who has given his or her medical opinion to the administrative authorities (Article 308 of the Penal Code).³⁶ It does not permit abortion on grounds of rape or incest. A woman seeking or carrying out an abortion faces six months to two years' imprisonment and a fine (Article 309 of the Penal Code).

Other Penal Code provisions (Article 304 to 313) criminalize the acts of seeking, undertaking and performing an abortion; both women seeking abortion and those performing abortions, including health care professionals, face sanctions under law.³⁷ Article 310 makes it a crime to advocate abortion or to "provoke" an abortion by speech, writing or advertisement, punishable by imprisonment for up to three years. Such a provision violates the right to freedom of expression and could deter legitimate advocacy of women's rights - for example, for changes in the law to enable all women and girls who become pregnant as a result of rape to obtain abortions.

Women and girls who become pregnant as a result of rape or incest are doubly penalized under these restrictive abortion laws. They often suffer stigmatization, as survivors of sexual violence, which remains a social taboo, and then for being pregnant outside wedlock.

Abortion is also permitted under Article 72 of the 1985 law on the promotion and protection of health if the pregnant woman's life is in danger, or in order to protect her physical and mental health. The abortion must be performed by a medical doctor in a specialized

structure, after a joint medical examination of the pregnant women with a specialized doctor.

As stated above, in 1998, the High Islamic Council ruled that women who had been raped during the internal armed conflict could obtain an abortion in extreme cases where it was medically established that their pregnancy posed a serious threat to their life. However, it is unclear whether this ruling was implemented in practice. The Ministry of Health reportedly issued instructions in 1998 to allow abortion for women pregnant as a result of rape by armed groups under certain conditions. Amnesty International has not been able to obtain a copy of these instructions.

In its report to the Committee on the Elimination of Discrimination against Women, Algeria stated that abortion for victims of rape and incest was not criminalized. Amnesty International calls on the Algerian authorities to implement the recommendations of the Committee on the Elimination of Discrimination against Women, to adopt laws and medical standards allowing for abortion on the grounds of rape and incest.³⁸

TRAINING LAW ENFORCEMENT AND ENSURING APPROPRIATE SERVICES FOR WOMEN

In order to improve the prevention of sexual and gender-based violence and ensure the protection of survivors of sexual violence in Algeria, there needs to be, in addition to legal reforms, effective programmes to raise awareness and train professionals who may come into contact with survivors of sexual violence. These include state officials, law enforcement agencies and judicial institutions, as well as the medical profession. In addition, comprehensive programmes to provide psychological help, social, medical and legal support to survivors of sexual violence need to be created. International human rights standards require states to implement programs to train police, prosecutors and the judiciary about gender-based violence, including sexual violence and develop policies and programmes that protect victims from further abuse, such as social, psychological and health services for victims.³⁹

Despite a significant proportion of women declaring that they were subjected to sexual violence in the home in a 2006 official study, the number of shelters established to provide accommodation and protection to women fleeing domestic violence, including sexual violence in the home, remains insufficient. There are three shelters managed by non-governmental organizations, such as SOS Femmes en Détresse in Algiers. Two government-run centres exist in Boui Ismail and Tlemcen but they have limited capacity; a number of women fleeing violence are also accommodated in Dair Rahma institutions for persons in need of state support, which do not have specific expertise to support survivors of sexual violence.

The Algerian authorities should provide the necessary resources to improve existing shelters supporting women survivors of violence and take measures to establish sufficient numbers of easily accessible shelters and to reach out proactively to survivors of sexual and gender-based violence and their children.

DISCRIMINATION UNDER THE FAMILY CODE

The general principle of non-discrimination is a cornerstone of international human rights law. It is enshrined in key human rights treaties to which Algeria is a state party, including

the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights. Algeria is also a state party to CEDAW. Algeria's reservations to CEDAW on the basis of national legislation, and in particular the Family Code, pose a serious obstacle to implementing its obligations under CEDAW. Women continue to face discrimination under the law, which continues to penalize women and girls survivors of sexual violence. In particular, despite some positive amendments in 2005, the Family Code continues to discriminate against women in matters of marriage, divorce, child custody and guardianship.

Discrimination under the law against women and girls in Algeria has condoned sexual violence, established and legitimized discrimination in practice and made it particularly difficult for women to deal with the consequences of human rights violations and abuses, including sexual violence. Discriminatory attitudes have also facilitated violence against women, and have worsened the impact of sexual violence on women survivors who suffer, in addition, shame and social exclusion.

The amendments to the Family Code gave women additional grounds to demand a divorce – for example, if their husband uses violence against them – and provided for mothers to retain custody of their children in the event of marriage breakdown. Moreover, these amendments placed the father under an obligation to provide his former wife and children with decent lodging. In the case of divorce, Article 72 of the Family Code provides that a wife who has been granted custody of her children is to be maintained in the marital home until the execution of any judicial decision dealing with housing. The Family Code disfavours women who demands a divorce and has no children from the marriage, as she does not have the right to the marital home. This is itself discriminatory as in practice, it may also deter women survivors of sexual or other violence by their spouse from demanding a divorce as doing so could result in their being made homeless. The lack of adequate number of shelters for women further exacerbates this problem.

Children of women who become pregnant as a result of rape or incest also face discrimination by virtue of the fact that they have been born outside of a legal marriage. According to Article 40 of the Family Code, paternity is established by a valid marriage, even if the marriage is subsequently annulled or ends after consummation, or by recognition of paternity by the father. The same article also empowers judges to apply scientific methods to determine paternity and opens ways to register children born out of a customary marriage, but it does not contain specific provisions to address the paternity of children born outside of marriage who are not recognised by their father; consequently, such children cannot then be registered under their father's name and bear the name of their mother rather than the two names given under paternal filiation. Such children often experience social stigmatization and discrimination associated with extra-marital sexual relations. The government has sought to address this problem by proposing that children born out of wedlock who are to be registered under their mother's name should also be given a male name. However, the UN Committee on the Rights of the Child expressed concern at the continuing discrimination suffered by children born out of wedlock in Algeria, and the refusal, in practice, by registration officers to register children born out of wedlock.⁴⁰

The social stigma attached to sexual relations outside marriage may lead some unmarried pregnant women to resort to illegal and unsafe abortions or to abandon their child. Adoption

is prohibited by law, but a procedure of legal fostering (*kafala*) exists whereby abandoned children may be placed in the care of and raised by foster families. Such children, if the identities of their father and mother are unknown, may then acquire the name of their male legal guardian if the guardian so wishes. However, children in *kafala* do not have the same rights as children born out of a legal marriage. According to the Family Code, in case of divorce, children in *kafala* should stay with the male guardian and have no right to live with the mother/ female guardian. In case the legal guardian dies, the child placed in *kafala* is considered part of the heritage, and it is up to the heirs of the legal guardian as to whether or not the child will stay in the family.

The Algerian authorities should amend legislation that continue to discriminate against women, and eliminate discrimination against children born out of wedlock, which should benefit from the same legal protection as other children.

RESTRICTIONS ON ADVOCACY AND FREEDOM OF EXPRESSION AND ASSOCIATION

Women's rights organizations in Algeria face additional obstacles to their formation, registration and funding under a new law on associations. In January 2012, the government introduced a new law on associations - Law 12-06, adopted on 12 January 2012 – that imposed additional requirements and restrictions on civil society groups, including human rights NGOs such as those advocating an end to sexual discrimination and greater rights for women. The law gave the state authorities greater control over civil society associations, including powers to deny them official registration, or withdraw such registration, if they are deemed to be acting in breach of the law or contrary to “national constants and values”, public order or “morality” – broadly framed terms that are not defined in Law 12-06. The authorities are also empowered to suspend or dissolve associations or organizations that they consider “interfere” in the internal affairs of Algeria or threaten “national sovereignty”. Members of unregistered associations or those that the authorities have suspended or dissolved are liable to imprisonment for up to six months and a fine. Law 12-06 also imposed tighter restrictions on the receipt of foreign funding – funding from sources outside the country, including from private foundations or foreign government aid agencies, by Algerian associations, which could have a severe impact on the ability of women's rights groups and organizations providing support for women and children victims of violence to operate. Amnesty International considers Law 12-06 to effectively criminalize the legitimate exercise of the right to freedom of association and has called for it to be abolished.⁴¹

ALGERIA'S CONSTITUTIONAL AND INTERNATIONAL LAW OBLIGATIONS

Sexual violence is a violation of human rights, including the right to bodily integrity, to privacy, to be free from coercion and violence and the right not to be tortured. Sexual violence is also a violation of sexual and reproductive rights which entitle everyone to make decisions about her or his own health, body, sexual life and identity and to live free from rape and other violence, including forced pregnancy, or marriage. Because sexual violence and laws that do not adequately address it, reinforce and perpetuate gender inequities, it is also a form of discrimination against women. Such rights are protected in numerous human rights treaties to which Algeria is a party, including the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child and the Covenant on Economic, Social and Cultural Rights.

Some of these human rights are also protected under Algeria's Constitution. For instance, Article 29 guarantees equality between men and women and prohibits discrimination, including on the basis of sex. In 2008, an amendment to the Constitution, Article 31 bis, affirmed the state's commitment to "promote the political rights of women by increasing their opportunities to access representation in elected bodies".

LACK OF IMPLEMENTATION OF UN RECOMMENDATIONS

UN bodies monitoring compliance with international treaties to which Algeria is a state party have made recommendations, which are binding on the Algerian authorities, to combat sexual and gender-based violence. Most of these recommendations have not been implemented by the Algerian authorities.

In 2007, the UN Human Rights Committee recommended that the Algerian authorities investigate rapes committed during the 1990s conflict, prosecute and hold to account perpetrators, ensuring that no pardon, commutation or remission of sentence or termination of public proceedings is granted. As regards violence against women, the Human Rights Committee called for Algerian law to be amended in order to define and criminalize domestic violence and marital rape, and to educate state officials, in particular the police, and the public about the need to combat violence against women.⁴²

In 2008, the UN Committee Against Torture urged the Algerian authorities to prosecute and punish perpetrators of sexual violence. It recommended the establishment of an independent commission to investigate acts of sexual violence committed during the internal conflict and make the results of the investigation public and that survivors of sexual violence committed during the conflict receive prompt and adequate compensation and medical, psychological and social rehabilitation.⁴³ It also called on the Algerian authorities to investigate cases of mob violence, such as the attacks and rapes against women in Hassi Messaoud, and bring the perpetrators to justice. In 2010, the UN Committee on Economic, Social and Cultural

Rights reiterated such recommendations. It called on the Algerian authorities to, in particular, eliminate all forms of discrimination against women and work towards ending stereotypical attitudes and traditional norms about the responsibilities and roles of women and men in the family and society; to prohibit and criminalize domestic violence, including marital rape, to recognize the status of victims of sexual violence and adopt urgent measures for their medical, psychological and social rehabilitation; and to give information in its next periodic report on policies and measures taken with regard to education in sexual and reproductive health.⁴⁴

In 2012, the UN Committee on the Rights of the Child urged Algeria to, in particular, repeal from the Family Code all provisions that discriminate against girls and women; to criminalize all forms of domestic violence, including marital rape; to define rape as sexual intercourse without consent; to revise Article 326 of the Penal Code, which allows rapists to evade prosecution by marrying their victims; to support women and girls pregnant out of wedlock and single mothers and their children and to raise awareness in order to end their social stigmatization; to provide clear instructions for children born out of wedlock to be registered under their mother's name when their mother requests it; to take measures to prevent cases of illegal adoption and placement in Kafala of children born out of wedlock; to implement policies for health, sexual and reproductive rights of adolescents.⁴⁵

In 2012, the Committee on the Elimination of Discrimination against Women urged the Algerian authorities to prioritise adopting legislation on violence against women, including domestic violence; to stipulate in the Penal Code the definition of rape including marital rape and other sex crimes, to be defined as sexual offences committed in the absence of one's consent; to compile reliable data on the prevalence of domestic and sexual violence against women, the investigations, prosecutions, convictions and sentences imposed on perpetrators, and on the remedies, including compensation, provided for victims; to assist women in reporting incidents of domestic and sexual violence to the police; to provide the victims with legal, medical and psychological assistance and rehabilitation, as well as access to quality shelters for all female victims of violence, without restrictions linked to age or marital status; and to provide training for the police, prosecutors and judges on effective investigation, prosecution and punishment of acts of violence against women, including domestic and sexual violence, and for health-care providers and social workers on the provision of adequate medical and psychosocial assistance, and to raise public awareness of the criminal nature of such acts. It also urged the Algerian authorities to adopt medical standards and provide for implementation mechanisms establishing that rape and incest constitute grounds for abortion; and to undertake comprehensive education on sexual and reproductive health and rights in schools.⁴⁶

Algeria became a state party to CEDAW on 21 June 1996 with reservations to several of its provisions on the ground that they conflicted with the Family Code. In July 2009, Algeria's reservation to Article 9 (2) was lifted, following amendments to the Nationality Code in 2005, which permitted Algerian women married to non-nationals to confer nationality on their children. According to the Committee overseeing the implementation of CEDAW, Algeria now considers that its reservation to Article 15 serves no valid purpose. It maintains its other reservations to Articles 2 concerning equality between men and women and the elimination of discrimination against women, 15 (4), with regards to equal rights of men and women relating to the movement of persons and freedom of choice of residence, and 16, which relates to discrimination against women in marriage and family relations, of CEDAW to this day. Algeria is not a state party to the Optional Protocol to the Convention on the Elimination of Discrimination against Women.

RECOMMENDATIONS

Comprehensive legal reforms are needed to prevent, prosecute and eliminate sexual and gender-based violence in Algeria. The Algerian authorities must build on the promising steps they have taken in 2014 to address sexual violence and undertake comprehensive reforms in this area. However, addressing violence against women and girls will require more than just the adoption of criminal laws prohibiting violence. The rights of the survivors of sexual and gender-based violence must be paramount and the underlying causes of sexual and gender-based violence, chiefly discrimination in law and practice, addressed in order to eradicate this abhorrent crime.

Amnesty International calls on the Algerian authorities to implement the following measures:

Provide full redress to survivors of sexual violence during the 1990s internal conflict by:

- Ensuring that Decree 14-26 applies to survivors of all forms of sexual violence, not only rape, during the internal conflict and that survivors are afforded medical, psychological, social and other support necessary to facilitate their recovery from violence;
- Establishing an independent and impartial commission to investigate crimes of sexual violence during the internal conflict, as recommended by the UN Special Rapporteur on violence against women, its causes and consequences;
- Ensuring that no one suspected of rape or other forms of sexual violence, benefits from pardon, amnesty or commutation of sentences before full, impartial and independent investigations are conducted and before being brought to justice in accordance with fair trial standards.

Ensure that Algerian laws, policies and practice adequately address all forms of sexual violence by:

- Adopting a comprehensive law to combat gender-based violence, of which sexual and domestic violence should be a substantial component. This should be done in full consultation with survivors and women's rights organizations in Algeria, who can bring invaluable experience and expertise in combating gender-based violence;
- Defining the crime of rape in the Penal Code in accordance with international standards. The definition of rape should be gender-neutral and describe coercive circumstances that do not necessarily require physical violence, according to the definition contained in the "Elements of Crimes" of the Rome Statute of the International Criminal Court;⁴⁷
- Criminalizing marital rape as a specific crime within the Penal Code, providing the same penalty as for non-marital rape;

- Ensuring that survivors of sexual violence have access to effective remedies;

Adopt measures to effectively prosecute rape and other sexual violence by:

- Repealing Article 326 of the Penal Code, which allows a perpetrator to evade prosecution by marrying the girl they raped, and places her at risk of forcible marriage;
- Repealing legal provisions that criminalize private consensual sexual relations between adults;
- As recommended by the UN Special Rapporteur on violence against women, ensuring that a sufficient number of medical professionals are trained in the WHO protocol on the collection of forensic evidence in cases of sexual and gender-based violence;
- Adopting measures to protect victims and witnesses of cases of sexual violence from harassment or retaliation.

Strengthen access to health and support services of survivors of sexual violence by:

- Amending the Penal Code and adopting medical standards to ensure access to safe abortion for all women and girls who become pregnant due to rape or incest;
- Ensuring that emergency contraception is part of the standard of care provided to survivors of rape;
- Providing resources to improve existing shelters supporting women victims of violence and create new centres so as to ensure that women survivors of sexual violence have access to accommodation and to support their specific needs;
- Continuing and extending training to all public agencies that come into contact with survivors of sexual and gender-based violence, and ensuring that policies and programmes are in place to provide victims with social, psychological and health services.
- Removing all discriminatory provisions from the Family Code, including those that negatively impact on women victims of sexual violence, children born out of wedlock and children placed in *kafala*.
- Instructing the Ministries of Interior and Justice to compile and publish at least annually full statistics on rape and other crimes of sexual violence, including the number of complaints submitted to the police or other law enforcement agencies, the number of criminal investigations initiated and their outcome, including the number of prosecutions instituted, the number of convictions obtained and the sentences imposed by the courts.
- Allocating adequate resources and provide training and instructions to the police, the state medical forensic services and the prosecuting authorities, in order to sensitize them to rape and other crimes of sexual violence, including the trauma suffered by victim of these crimes. Training should comprise evidence taking and other techniques to ensure their effective investigation and prosecution that give priority to the needs of and protect the

victims of these crimes rather than focusing on their “honour” or “morals”. Clear, enforceable codes of conduct should be put in place for police and other law enforcement agencies, medical professionals and judiciary officials who come into contact with victims of rape or other sexual violence, to ensure that discriminatory and unprofessional attitudes are prohibited, and to facilitate the reporting of these crimes. Those who do not follow these codes should be made to account.

- Creating comprehensive programmes to provide psychological help, social, medical and legal support to victims and survivors of rape and other crimes of sexual violence. International human rights standards require states to implement programs to train health care providers, police, prosecutors and the judiciary about gender-based violence, including sexual violence⁴⁸ and develop policies and programmes that protect victims from further abuse, such as social, psychological and health services for victims.⁴⁹
- Comply with Article 5 of the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), by taking the necessary measures to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”
- Withdraw Algeria’s remaining reservations to CEDAW and undertake further legal reforms as necessary to fully comply with Algeria’s obligations as a state party to CEDAW.

ENDNOTES

¹ The study, done in collaboration of health, justice, security and social professionals and intergovernmental and national non-governmental organizations working on violence against women is available at : http://www.ands.dz/insp/INSP_Rapport_Violence_Femmes.pdf

² See for instance the following media articles: http://www.djazairnews.info/pdf_fr/Fr-23-11-2013.pdf; <http://www.presse-dz.com/revue-de-presse/violence-et-mutisme-la-double-peine>;

³ Réseau national des centres d'écoute sur les violences contre les femmes Balsam, Les violences faites aux femmes en Algérie, Rapport 5, December 2013, <http://www.ciddef-dz.com/pdf/autres-publications/balsam2013.pdf>

⁴ See for instance interview of president of Nada, 4 March 2014, <http://www.algerienews.info/9-000-viols-denfants-annuellement/>

⁵ The decree is available at: <http://www.joradp.dz/FTP/JO-FRANCAIS/2014/F2014005.pdf>

⁶ Security forces and state-armed militias also committed serious human rights violations such as extrajudicial executions, enforced disappearances and torture and other forms of ill-treatment in the name of countering terrorism. For an overview of human rights abuses committed during the internal conflict, see Amnesty International reports:

Algeria: Fear and Silence: A Hidden Human Rights Crisis (MDE 28/011/1996), 19 November 1996, <http://www.amnesty.org/en/library/info/MDE28/011/1996> ;

Algeria: Civilian Population Caught in a Spiral of Violence (MDE 28/023/1997), 18 November 1997, <http://www.amnesty.org/en/library/info/MDE28/023/1997/en> ;

Algeria: Truth and Justice Obscured by the Shadow of Impunity (Index: MDE 28/011/2000), 8 November 2000, <http://www.amnesty.org/en/library/info/MDE28/011/2000> ;

Algeria: Steps Towards Change or Empty Promises? (Index: MDE 28/005/2003), 15 September 2003, <http://www.amnesty.org/en/library/info/MDE28/005/2003> ;

Algeria: Briefing to the Committee on the Elimination of Discrimination Against Women (Index: MDE 28/011/2004), 1 December 2004: <http://www.amnesty.org/en/library/info/MDE28/011/2004>

⁷ A few examples are Réseau Wassila, SOS Femmes en détresse, Djazairouna, Bnet Fatma Nsoumer

⁸ See for instance Amnesty International, Algeria: Briefing to the UN Human Rights Committee (Index: MDE 28/017/2007, October 2007) and, A legacy of impunity: a threat to Algeria's future (Index: MDE 28/001/2009, March 2009); UN Special Rapporteur on violence against women, its causes and consequences, Mission to Algeria (A/HRC/7/6/Add.2, February 2008), UN Special Rapporteur on violence against women, its causes and consequences, Mission to Algeria (A/HRC/17/26/Add.3, May 2011)

⁹ The proposed amendments also introduce punishments for abandoning a spouse and for using coercion or intimidation to obtain the financial resources of a spouse.

¹⁰ See for instance El Khabar, Ambiguïté sur le décret relatif aux femmes violées, 13 May 2007, available at: http://www.algeria-watch.org/fr/article/just/decret_femmes_violees.htm

¹¹ These two sets of amnesty measures prevented victims and their families from obtaining justice and closed the door to investigations into human rights violations committed by security forces and state-armed militias, denying victims and their families the right to obtain the truth in contravention to international human rights law. With regards to abuses committed by armed groups, the lack of transparency and public disclosure by the authorities on the investigations they had carried out and the basis on which amnesties were granted to members of armed groups who surrendered, also effectively resulted in a denial of truth to victims and their families. Even though thousands of people were tried and convicted of vaguely worded terrorism-related charges, often on the basis of confessions allegedly extracted under torture, these trials did little to uncover the truth about abuses or establish responsibility. For a comprehensive analysis of the amnesty measures adopted in Algeria, please see Amnesty International, Algeria: Briefing to the UN Human Rights Committee (AI index: MDE 28/017/2007, October 2007) and, A legacy of impunity: a threat to Algeria's future (AI index: MDE 28/001/2009, March 2009)

¹² UN Special Rapporteur on violence against women, its causes and consequences, Mission to Algeria (A/HRC/7/6/Add.2, February 2008)

¹³ UN Doc.: CAT/C/DZA/Q/3/ADD.1, 17 April 2008.

¹⁴ UN Special Rapporteur on violence against women, its causes and consequences, Mission to Algeria (A/HRC/17/26/Add.3), May 2011

¹⁵ Article 337 states (in French): "Si les coupables sont les ascendants de la personne sur laquelle a été commis l'attentat ou le viol, s'ils sont de la classe de ceux qui ont autorité sur elle, s'ils sont ses instituteurs ou ses serviteurs à gages, ou serviteurs à gages des personnes ci-dessus désignées, s'ils sont fonctionnaires ou ministres d'un culte, ou si le coupable, quel qu'il soit, a été aidé dans son crime par une ou plusieurs personnes, la peine est celle de la réclusion à temps, de dix (10) à vingt (20) ans, dans le cas prévu à l'alinéa premier de l'article 334, et de la réclusion perpétuelle, dans les cas prévus aux articles 335 et 336."

¹⁶ Concluding observations of the Committee on the Elimination of Discrimination against Women, 2012, para 29, CEDAW/C/DZA/CO/3-4, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/DZA/CO/3-4&Lang=En

¹⁷ Elements of Crimes (PCNICC/2000/1/Add.2), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/724/27/PDF/N0072427.pdf?OpenElement>

¹⁸ The "Elements of Crimes" add that "it is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity." See Amnesty International, "Rape and sexual violence: Human rights law and standards in the International Criminal Court", March 2011 (IOR 53/001/2011), <http://www.amnesty.org/en/library/info/IO53/001/2011/en>

¹⁹ See Amnesty International, Realizing sexual and reproductive rights: a human rights framework (ACT 35/006/2012), 2012, <https://www.amnesty.org/en/library/info/ACT35/006/2012/en>

²⁰ See Amnesty International, Morocco/ Western Sahara : Comprehensive reforms to end violence against women long overdue (MDE 29/001/2013), March 2013, <http://www.amnesty.org/en/library/asset/MDE29/001/2013/en/f868e056-17d7-421f-86fc-b27269d9681d/mde290012013en.pdf>

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- ²¹ See El Watan newspaper, *Quand la virginité devient une affaire de police*, May 2013, <http://www.courrierinternational.com/article/2013/05/20/quand-la-virginite-devient-une-affaire-de-la-police>
- ²² See for instance, media article, Algérie: une femme sur deux victime de harcèlement sexuel, 16 juin 2014, <http://www.afrik.com/algérie-une-femme-sur-deux-victime-de-harcèlement-sexuel>
- ²³ In October 2012, the director of a public TV channel received a six-months suspended sentence and a fine following a complaint of sexual harassment by three journalists. The verdict was upheld in January 2013.
- ²⁴ The Algerian Penal Code does not contain specific provisions on domestic violence, a long-standing demand of women's rights organizations.
- ²⁵ See Réseau national des centres d'écoute sur les violences contre les femmes - Balsam, Les violences faites aux femmes en Algérie, December 2013, available at <http://www.ciddef-dz.com/pdf/autres-publications/balsam2013.pdf>
- ²⁶ The relevant provisions of Article 339 read: «Est punie d'un emprisonnement d'un à deux ans toute femme mariée convaincue d'adultère. Quiconque consomme l'adultère avec une femme la sachant mariée est puni de la même peine. Est puni d'un emprisonnement d'un à deux ans, tout homme marié convaincu d'adultère; la femme coauteur est punie de la même peine, sans préjudice des dispositions de l'alinéa précédent.»
- ²⁷ Persons convicted under this article face a penalty of imprisonment ranging from two months to two years and a fine if the offence is committed between two adults and up to three years if the act of homosexuality is committed between an adult and a child aged under 18, the adult faces up to three years' imprisonment and a fine.
- ²⁸ *Toonen v. Australia* CCPR/C/50/D/488/1992, para. 8.2
- ²⁹ Sex work is a criminal offence under Algeria's Penal Code.
- ³⁰ UN Special Rapporteur on violence against women, its causes and consequences, Mission to Algeria (A/HRC/17/26/Add.3, May 2011)
- ³¹ The age of civil majority in Algeria is 19.
- ³² However, the amendment also added a new paragraph which relied on other problematic articles of the Penal Code, including a narrow definition of rape, and made the punishment for rape perpetrators dependent on whether the victim is a virgin or not.
- ³³ Concluding observations of the Committee on the Elimination of Discrimination against Women, 2012, para 22, CEDAW/C/DZA/CO/3-4, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/DZA/CO/3-4&Lang=En
- ³⁴ WHO, Guidelines for medico-legal care for victims of sexual violence, 2003, <http://whqlibdoc.who.int/publications/2004/924154628X.pdf>
- ³⁵ See Human Rights Committee, Concluding Observations on El Salvador, CCPR/C/SLV/CO/6, para. 10; Human Rights Committee, Concluding Observations on Costa Rica, CCPR/C/79/Add.107, para. 11; Committee on the Rights of the Child, Concluding Observations on Nicaragua, CRC/C/NIC/CO/4, para. 59

(b); CEDAW Committee, case of LC v Peru (2011)

³⁶ Article 308 reads (in French) : «L'avortement n'est pas puni lorsqu'il constitue une mesure indispensable pour sauver la vie de la mère en danger et qu'il est ouvertement pratiqué par un médecin ou chirurgien après avis donné par lui à l'autorité administrative. »

³⁷ While Amnesty International does not have details of cases of prosecution for abortion, the judicial police reported that arrests were made in 27 cases of abortion in 2012. See DGSN, La police a traité 27 affaires d'avortement en 2012, <http://www.dgsn.dz/?La-police-a-traite-27-affaires-d>

³⁸ See Committee on the Elimination of Discrimination against Women, Concluding observations on Algeria, CEDAW/C/DZA/CO/3-4, March 2012

³⁹ CEDAW, General Recommendation. no. 19 on Violence Against Women (1992); UN Special Rapporteur on violence against women, its causes and consequences, Mission to Algeria (A/HRC/17/26/Add.3, May 2011)

⁴⁰ Committee on the Rights of the Child, Concluding observations on Algeria, CRC/C/DZA/CO/3-4, July 2012, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/DZA/CO/3-4&Lang=En

⁴¹ See Amnesty International, Algeria: Associations law must be repealed before January deadline, 18 December 2013 (AI Index: MDE 28/003/2013), <http://www.amnesty.org/en/library/asset/MDE28/003/2013/en/1adb0a26-5b66-42d6-bcb7-e42639ff2213/mde280032013en.pdf>

⁴² Concluding observations of the Human Rights Committee, Algeria, December 2007 (CCPR/C/DZA/CO/3) http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/DZA/CO/3&Lang=En

⁴³ See Concluding observations of the Committee Against Torture, Algeria, May 2008, CAT/C/DZA/CO/3 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/DZA/CO/3&Lang=En

⁴⁴ Concluding observations of the Committee on Economic, Social and Cultural Rights, Algeria, May 2010, E/C.12/DZA/CO/4, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/DZA/CO/4&Lang=En

⁴⁵ Committee on the Rights of the Child, Concluding observations on Algeria, CRC/C/DZA/CO/3-4, July 2012

⁴⁶ Concluding observations of the Committee on the Elimination of Discrimination against Women, 2012, CEDAW/C/DZA/CO/3-4, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/DZA/CO/3-4&Lang=En

⁴⁷ Elements of Crimes (PCNICC/2000/1/Add.2), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/724/27/PDF/N0072427.pdf?OpenElement>

⁴⁸ CEDAW, General Recommendation. no. 19 on Violence Against Women (1992) ; CEDAW Concluding Observations to Peru, para. 19 (2007).

30 Algeria
Comprehensive reforms needed to end sexual and gender-based violence against women and girls

⁴⁹ CEDAW, General Recommendation. no. 19 on Violence Against Women (1992); Human Rights Committee Concluding Observation to Jamaica para. 19 (2011).

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