

## Human Rights and Democracy Conceptualization and Application in the republic of Algeria

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### Introduction\*

Democracy and human rights are distinct yet interrelated concepts, with democracy referring to government by the people, and human rights referring to universal rights that apply to all individuals in all societies. The conceptualization of democracy in terms of mechanisms, institutions, and civil society and citizen rights is introduced firstly, then we discuss the conceptualization of human rights with specific focus on human security perspective. The human rights and democracy in Algeria are taken with regard to elections, political parties, and separation of powers, judiciary, reform, security, civil society and popular support for democracy. The development of human rights framework should be utilized to overcome some obstacles and inform the establishment in Algerian state based on the principles of a substantive liberal democracy.<sup>1</sup> The definitions of democracy have expanded from the traditional procedural democracy to encompass the ideals of a substantive, liberal

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\* - **ملخص المقال:** يرتبط مفهوم حقوق الإنسان عادة بمسألة البناء الديمقراطي للدول ومؤسساتها الدستورية، حيث تشير الديمقراطية إلى احترام الإرادة العامة للشعب، وأما حقوق الإنسان فإنها تشير إلى الحقوق الطبيعية التي تنطبق على جميع الأفراد في جميع المجتمعات. هذا المقال يهدف إلى بيان الترابط بين حقوق الإنسان والديمقراطية، مع التركيز بشكل خاص على تطبيق هذه المفاهيم في الجزائر. كما يتطرق إلى عملية التنمية السياسية لأجل تحقيق التعددية السياسية وتمكين الأحزاب السياسية من القيام بدورها بفعالية واستحقاق. كما يركز على احترام حقوق الإنسان كمؤشر على الديمقراطية وتعزيز دور المجتمع المدني، وشفافية الانتخابات كعملية سياسية، وفصل السلطات والإصلاح القضائي.

**Key Words:** Democracy, human rights, separation of powers, universal rights, political parties, establishment of Algerian state.

<sup>1</sup> - Megherbi Abdelghani, *Cultur and Algerian personality*, from Massinissa at our time, ENA, Algiers, 1986, p.55.

democracy. Likewise, the human rights framework has begun to further develop conceptions of social, economic, and cultural rights, in addition to civil and political rights, thus expanding the notion of human rights to include human security, and extending human rights to the collective as well as the individual level. These renewed definitions present opportunities for recognizing the convergence of the theories and fields related to human rights and democracy.

The necessity of acknowledging the interdependence of democracy and human rights is becoming especially important in emerging democracies such as in Algeria. In these cases, in which the development and reform of democratic institutions start to take place, it is imperative to ensure that such institutions are built on foundations of both human rights and democracy if they are to be sustainable. To be sure, previous attempts at democracy by the Algerian authority in the 1989s proved to be ephemeral, largely due to the absence of protection of human rights.<sup>1</sup>

The security perspective, which has enhanced the complementarity between human rights and democracy, is accepted in Algeria. The convergence for democracy and human rights field, in many theories, shows that the two concepts are not only complementary, but also interdependent. Freedom is the source from which the tree of life grows. A little sapling needs of light, water, air, a spacious field where its branches grow, extended, bloom, and yield fruit. The same thing for freedom; it needs the light and guidance of Islam to flourish. If the young tree is deprived of light and space, its growth will be distorted and stunted. So also will the oppression and servitude deprive man of his moral freedom. Oppression and servitude are like a horrible prison in

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<sup>1</sup> - Donnelly, Jack. "Human Rights, Democracy, and Development." Human Rights Quarterly editions, 1999, p99.

which terror and tyranny devour man's self-image, his will and his desire to grow spiritually. It deprives human life of all sense of a higher purpose, robs man of his free will and destroys all what is good in human nature. The irresponsible concept of freedom expounded by existentialism, democracy and modern theories of freedom of expression lead only to corruption and immorality since they are not tied to any concept higher moral values or self control. For Islam, freedom lies in commitment and responsibility. They form an integral part of each other and can be in no way separated. There is no freedom of choice without responsibility; no responsibility without freedom.

Another question underlies our contribution is: why it is so important to deal with such notions at present time and for what purpose? It is obvious to say that conflicts, tensions and wars in different parts of the world and of course what our country has faced during many years need to be treated according to these notions once again. There are therefore reasons for dealing with this issue and thinking over these notions from a philosophical viewpoint in the context of current problems. In many places around the world, the words "equality", "freedom" and "fraternity" are being uttered many people. However, everyone could use these notions in a given context these notions arbitrarily.

When all the events experienced are examined, it seems that there is no possibility of finding "a common ground" and agreeing on how these notions can be contented. The existence of tendencies and practices that are grounded on religion and nationalism may lead to separation, ignorance, intolerance and separation. In such a context, whether there is

a possibility of living together in partnership or not and whether we want that or not or, we can comprehend what are the problems that we face<sup>1</sup>.

The questions that stand clearly right in front of us and that need to be answered are as such: Can law guarantee equality and fraternity? What is the role of politics in this context? What kind of ethics can be in question when we refer to a given society and to a given group of individuals? What do we mean by political and politics? What is the relation between politics and ethics? Which of them is to be considered firstly? Can the existence of more freedom be mentioned when the sovereignty relations are in context? What kind of freedom, and for whom? Can art encourage a specific area of becoming free? Is that an artistic freedom or social one? What kind of guarantee do laws provide for living together? In the framework of today's discussions can nation-government be a guarantee for living together? How can do so with religious variation? Is it possible that we can live together on the ground of fraternity? Which fraternity, fraternity for whom? What does secularism mean and what kind of relation that can be exist between secularism and modernization? Can secularism be a guarantee for living together in this context? What kind of relation exists between legal arrangements and freedom? And what about the relation that exists between law and justice?<sup>2</sup>

**Algerian constitution.**

Preamble: The Algerian people are a free people .Its history is a long series of struggles, which always made Algeria a land of freedom and dignity. Being at the heart of great events witnessed by the Mediterranean area throughout history, Algeria has found in her sons, since the Numid

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<sup>1</sup> - Langlois, Anthony J., Human Rights without Democracy? A Critique of the Separationist Thesis." Human Rights Quarterly 25. 2003, p66.

<sup>2</sup> - Said, Abdul Aziz. "Let Us Be Democratic" Edition Dar el-maarif, Algiers, 2000, p55

era and the Islamic age and up to the wars of decolonization, the pioneers of freedom, unity and progress as well as builders of democratic and prosperous States during the periods of glory and peace.

The 1st of November 1954 was a turning point for its destiny and a crowning for the long resistance to aggressions carried out against its culture, values and the fundamental components of its identity, which are Islam, Arabic and Amazigh identities. Its current struggles are well rooted in the glorious past of the nation. Gathered in the national movement and later within the National Front of Liberation, the Algerian people have made great sacrifices in order to assume their collective destiny in the framework of recovered freedom and cultural identity and to build authentic people's democratic constitutional institutions.

The National Front of Liberation crowned the sacrifices of the best sons of Algeria during the war of liberation with independence and built a modern and full sovereign state.

The belief in the collective sacrifice allowed the people to achieve great successes, characterized by the recovery of the national resources and the building of a state exclusively for the benefit of the people and exercising freely its powers without any external pressures. Having fought and still fighting for freedom and democracy, the Algerian people, by this Constitution, decided to build constitutional institutions based on the participation of any citizen, in the management of public affairs; and on the ability to achieve social justice, equality and freedom for all.<sup>1</sup>

The Constitution is the concretization of the People's genius, the reflection of their aspirations, the fruit of their determination and the product of the deep social changes. Thus, in approving this Constitution, the People are

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<sup>1</sup> - Lakhal Mokhtar, science political Dictionnary, L'harmattan éditions, Paris, 2004.p44.

agreed, more than ever, to consider the law above everything. The Constitution is above all, it is the fundamental law, which guarantees the individual and collective rights and liberties, protects the principles of People and gives the legitimacy to the exercise of powers. It helps to ensure the legal protection and the control of the public authorities in a society in which lawfulness and man's progress prevail in all its dimensions.<sup>1</sup> Strong with their deeply rooted spiritual values and preserving their traditions of solidarity and justice, the people are confident in their ability to participate efficiently in the cultural, social and economic progress of the present and future world.

Part One: General Principles Governing the Algerian Society

Chapter I - Algeria

Article 1 Democracy, Republic.

Algeria is a People's Democratic Republic. A unity that cannot be divided.

Article 2 State Religion.

Islam is the religion of the State.

Article 3 (language)

1/Arabic is the national and official language.

2/Tamazight is the national and official language.

Chapter II - The People

Article 8 (Institutional Objectives)

The People set up institutions having as objectives:

- The safeguard and consolidation of the national independence.
- The safeguard and consolidation of the national identity and unity.
- The protection of fundamental liberties of the citizen and the social and cultural progress of the nation.
- The suppression of the exploitation of man by man.

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<sup>1</sup> - Algerian constitution, revised on march 2016.p 45-46

Article 22 (Expropriation).

- (1) Expropriation can be carried out only within the framework of the law.
- (2) It gives right to a prior, just and fair compensation.

Article 22 (Abuse of Power)

The law represses power abuse.

Article 24 (Security, Protection Abroad)

The state is responsible for the security of persons and properties. It ensures the protection of every citizen abroad.

Chapter IV - Rights and Liberties.

Article 32 (equality before the law, no discrimination)

All citizens are equal before the law. No discrimination shall prevail because of birth, race, sex, opinion or any other personal or social condition or circumstance.<sup>1</sup>

Article 30 (Citizenship)

- (1) The Algerian nationality is defined by the law.
- (2) Conditions for acquiring, keeping, losing or forfeiture of the Algerian nationality are defined by the law.

Article 31 (Equality)

The aim of the institutions is to ensure equality of rights and duties of all citizens, men and women, by removing the obstacles, which hinder the progress of human beings and impede the effective participation of all in the political, economic, social and cultural life.

Article 32 (Fundamental Rights and Liberties)

The fundamental human and citizen's rights and liberties are guaranteed. They are a common heritage of all Algerians, men and

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<sup>1</sup> - Ibid., p50.

women, whose duty is to transmit it from generation to another in order to preserve it and keep it inviolable.

Article 38 (Protection of Rights)

Individual or associative defense of the fundamental human rights and individual and collective liberties is guaranteed.

Article 34 (Personal Integrity, Human Dignity)

(1) The State guarantees the inviolability of the human entity.

(2) Any form of physical or moral violence or breach of dignity is forbidden.

Article 47 (Repression of Infringements)

Infringements committed against rights and liberties and violations of physical or moral integrity of a human being are repressed by the law.

Article 36 (Creed, Opinion)

Freedom of creed and opinion is inviolable.

Article 38 (Intellectual, Artistic, Scientific Innovation, Copyright)

(1) Freedom of intellectual, artistic and scientific innovation is guaranteed to the citizen.

Article 48 (Privacy, Secrecy of Communication)

(1) The private life and the honor of the citizen are inviolable and protected by the law.

(2) The secrecy of private correspondence and communication, in any form, is guaranteed.

Article 41 (Expression, Association, Meeting)

Freedom of expression, association and meeting are guaranteed to the citizen.

Article 52 (Political Parties, Restrictions)

The right to create political parties is recognized and guaranteed.

In respect to the provisions of the present Constitution, the

political parties cannot be founded on religious, linguistic, racial, sex, corporatist or regional basis. The political parties cannot resort to partisan propaganda on the elements mentioned in the previous paragraph.

Other obligations and duties are prescribed by the law.

Article 43 (Associations)

- (1) The right to create associations is guaranteed.
- (2) The State encourages the development of associative movement.
- (3) The law defines the conditions and clauses of the creation of associations.

(4) Article 47 (Rule of Law )

None can be pursued, arrested or detained unless within the cases defined by the law and in accordance with the forms prescribed.

Article 52 (Property)

- (1) Private property is guaranteed.
- (2) The right to inherit is guaranteed.
- (3) The "Wakf" properties and the foundations are recognized; their intended purpose is protected by the law.

Article 55 (Education)

- (1) The right for education is guaranteed. Education is free within the conditions defined by the law.
- (2) Fundamental education is compulsory.
- (3) The State organizes the educational system.
- (4) The State ensures the equal access to education and professional training.

Article 66(Healthcare)

- (1) All citizens have the right for the protection of their health.

- (2) The State ensures the prevention and the fight of endemics and epidemics.

Article 69 (Work)

- (1) All citizens have right for work.
- (2) The right for protection security and hygiene at work is guaranteed by the law.
- (3) The right to rest is guaranteed; the law defines the relevant clauses.

Article 74 (Duty to obey laws)

- (1) Ignorance of the law is no excuse.
- (2) Every person should abide by the Constitution and comply with the laws of the Republic.

Article 77 (Civil Duties)

- (1) Every citizen should, loyally, fulfill his obligations towards the national community.
- (2) The commitment of every citizen towards the Mother Country and the obligation to contribute to its defense are sacred and permanent duties.

Article 63 (Duty to Respect Rights)

All the individual liberties are carried out within the respect of the rights of others recognized by the Constitution, in particular, the respect of the right for honor, intimacy and the protection of the family, the youth and childhood.<sup>1</sup>

Algeria is a multiparty republic of approximately 42 millions inhabitants whose head of state (president) is elected by popular vote to a five-year term. The president has the constitutional authority to appoint and dismiss cabinet members and the prime minister, who serves as the head

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<sup>1</sup> - Ibid., p55.

of government. The president also serves as commander-in-chief of the armed forces. President Bouteflika was re-elected in 2004 after competing against five other candidates in a generally transparent election in which the military remained neutral. While civilian authorities generally maintained effective control of the security forces, there were a few instances in which elements of the security forces acted independently of government authority.

**A/ Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.**

Both the constitution and Legal Code prohibit torture and other cruel, inhuman, or degrading treatment or punishment; however, there were reports from Algeria Watch in March and Amnesty International (AI) in April that government officials employed such practices. According to the Algerian League for the Defense of Human Rights, security forces frequently used torture, including to obtain confessions.

The Penal Code criminalizes torture; government agents can face prison sentences for up to three years for committing such acts. However, impunity remained a problem. Human rights lawyers maintained that torture continued to occur in military prisons, more often against those arrested on "security grounds." However, they believed that the frequency and severity of torture declined during the year, due in part to better training of the security forces and alternative intelligence-gathering techniques. In July, AI published a report on torture by the secret military police, concluding that the security forces were still benefiting from impunity.

**B/ Arbitrary Arrest or Detention:**

The constitution prohibits arbitrary arrest and detention. As in previous years, the security forces arbitrarily arrested and detained citizens;

however, LADDH and the Algerian Human Rights League (LADH) reported that such abuses occurred with decreasing frequency. In 2005, the head of the National Consultative Commission for the Protection and Promotion of Human Rights (CNCPPDH) said that pretrial detention, although defined as an exceptional measure by Article 123 of the Penal Procedure Code, was overused.<sup>1</sup>

**Role of the Police and Security Apparatus:**

The General Directorate for National Security (DGSN), or the national police force, falls under the control of the Ministry of Interior and has national jurisdiction. The Gendarmerie, under the Ministry of Defense, also perform police-like functions outside urban areas. Police were generally effective at maintaining order throughout the country. Low levels of corruption existed, especially in the customs police.

Impunity remained a problem. The government did not provide disaggregated public information on the numbers, infractions, or punishments of police, military, or other security force personnel. According to human rights attorneys, police officials, and local NGOs, the most frequent abuse of police authority occurred because the officers do not follow the established guidelines for arrests. In January 2005, all security forces were provided a copy of a code of conduct establishing regulations for conduct and sanctions for abuses.

**C/ Arrest and Detention:**

Police must obtain a summon from the prosecutor's office to require a suspect to appear in a police station for preliminary questioning. Summonses are also used to notify and require the accused and/or the victim(s) to attend a court proceeding or hearing.

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<sup>1</sup> - Ibid., p57.

The government issues warrants under three different circumstances: to bring an individual from work or home to a court; to execute a prosecutor's approved request to place a person into custody pending trial; or to arrest a suspect considered a flight risk. Police may make arrests without a warrant if they witness an offense taking place. Lawyers reported that procedures for warrants and summonses were usually carried out properly.<sup>1</sup>

The constitution specifies that a suspect may be held in detention for up to 48 hours without charge. If more time is required for gathering additional evidence, the police may request that the prosecutor extend the suspect's detention to 72 hours. In practice, the security forces generally adhered to the 48-hour limit in non-terrorism cases. However, defense lawyers asserted that detainees in prolonged pretrial detention were sometimes not promptly charged.

Judges rarely refused prosecutor requests for extending preventive detention. Detention can be appealed to a higher court but is rarely overturned. If the detention is overturned, the defendant can request compensation. In December 2005, the minister of justice acknowledged publicly that prosecutors sometimes abused investigative detention. Detainees generally had prompt access to a lawyer of their choice and, if indigent, were provided a lawyer by the government.

Article 23 of the penal code requires detainees in pretrial detention to be immediately informed of their right to communicate with family members, receive visitors, and be examined by a doctor of their choice at the end of detention. In addition, any suspect can request a medical examination once on police premises or before facing the judge. In

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<sup>1</sup> - Bentefnouchet Mustapha, Culture in Algeria Myth and reality, SNED, Algiers 1982,p102.

practice, however, detainees were typically examined only at the end of their detention. There continued to be frequent reports during the year that these rights were not extended to detainees.

**D /Freedom of Speech and Press:**

The constitution provides for freedom of speech and press; however, the government restricted these rights in practice. Individuals generally were able to criticize the government privately without reprisal. However, citizens were less inclined to criticize the government in public. The government attempted to impede criticism by monitoring political meetings.

The law specifies that freedom of speech must respect "individual dignity, the imperatives of foreign policy, and the national defense." The state of emergency decree gives the government broad authority to restrict these freedoms and take legal action against what it considers to be threats to the state or public order. These regulations were heavily applied throughout the year, and in some instances, the government targeted specific media organizations and their staff.

Radio and television are government-owned, with coverage favorable to government policy. During the year, opposition spokesmen were generally denied access to the public radio or television. Television access continued to be severely limited for some opposition parties. These limitations were less evident for radio. Presidential candidates received equal amounts of time on the state-owned radio and television channels during the three-week official campaign season prior to the 2004 elections.<sup>1</sup>

The country's non-state-owned print media consisted of more than 43 daily, 60 weekly, and 17 monthly publications that supported or opposed

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<sup>1</sup> - Ibid., p106.

the government to varying degrees; only six newspapers' circulation exceeded 10,000 copies. The government owned two French-language and two Arabic-language newspapers. Many political parties, including legal Islamic parties, had access to the independent press and made use of it to express their views. Opposition parties also disseminated information via the Internet and in communiqués.

The law permits the government to levy fines and to imprison members of the press in a manner that restricts press freedom. The government censored directly and indirectly and intimidated the media into practicing self-censorship. The government used defamation laws to harass and arrest journalists, and the press faced government retaliation for criticizing government officials.

**E / Freedom of Assembly:**

Article 41 of the constitution provides for the right of assembly; however, the emergency decree and government practice continued to sharply curtail this right. A 2000 decree continued to ban demonstrations in Algiers. Citizens and organizations were required to obtain permits from the appointed local governor before holding public meetings. The government frequently granted licenses to political parties, NGOs, and other groups to hold indoor rallies, although licenses were often granted on the eve of the event, thereby impeding publicity and outreach. After repeated difficulties in 2005 in obtaining permission to hold outdoor meetings, LADDH decided to hold indoor meetings. Groups opposing the Charter on Peace and Reconciliation also had difficulty securing permission to hold public gatherings. In September 2005, a gathering of the families of the disappeared in Constantine was violently disbanded by the police. In Algiers the same month, families of the victims of terrorism

gathered in front of the prime minister's office for three consecutive weeks to protest.<sup>1</sup>

**F/ Freedom of Association:**

The constitution provides for the right of association; however, the emergency decree and government practice severely restricted this right. The MOI must approve all political parties before they may be legally established (see section 3). The government restricted the registration of certain NGOs, associations, and political parties on "security grounds," but declined to provide evidence or legal grounds for refusing to authorize other organizations that could not be disqualified on security grounds. The government frequently failed to grant official recognition to NGOs, associations, and political parties in an expeditious fashion. The MOI may deny a license to or dissolve any group regarded as a threat to the government's authority or to the security or public order.

The government issued licenses and subsidies to domestic associations, especially youth, medical, and neighborhood associations. The MOI regarded organizations unable to attain government licenses as illegal. Domestic NGOs encountered bureaucratic obstacles to receiving financial support from abroad. Although not illegal, financial support from abroad is conditioned on a series of authorizations from the ministries of Interior and National Solidarity. These authorizations are difficult to obtain.<sup>2</sup>

**G/ .Freedom of Religion:**

Article 2 of the constitution provides for freedom of religion, while declaring Islam the state religion. In practice, the government restricted religious freedom. On March 1, the parliament adopted Ordinance 06-03

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<sup>1</sup> - Boujnoun Messaoud, *Islam an 'occident*, Dar el baath.Constantine,1984. p78.

<sup>2</sup> - Mustapha Bakhouch, *Le déficit démocratique au Maghreb*, Maghreb éditions, 1998, Algiers, p 122.

dealing with the conditions and regulations of religions other than Islam. According to the Ministry of Religious Affairs, one objective of the ordinance is the maintenance of public order. The ordinance confines non-Muslim worship to specific buildings approved by the state, imposes penalties for proselytizing, and treats transgressions as criminal rather than civil offenses. There are restrictions on public assembly for purposes of practicing a faith other than Islam without a license, prohibitions on proselytizing of citizens by foreigners, and controls on the importation of religious materials. There were no reports that the ordinance was enforced during the year.

The government requires organized religions to obtain official recognition prior to conducting any religious activities. The Protestant, Roman Catholic, and Seventh - day Adventist churches are the only non-Islamic faiths authorized to operate in the country. Members of other denominations, particularly Methodists, were forced to operate without government permission or register as a part of the Protestant Church.

Article 36 of the constitution provides citizens the right to choose their own religion; however, the government's interpretation of Shari'a (Islamic law) does not recognize conversion from Islam to any other religion. There are no specific laws against Muslim citizens proselytizing non-Muslims; however, the government considers the proselytizing of Muslim citizens by non-Muslims to be a subversive activity. The government restricted the importation of religious literature, including Islamic literature, intended for widespread distribution, although it did not restrict such materials for personal use. In recent years, non-Islamic religious texts and music and video selections have become easier to locate for purchase. The

government prohibits the dissemination of any literature portraying violence as a legitimate precept of Islam.<sup>1</sup>

The education and religious affairs ministries strictly require, regulate, and fund the study of Islam in public schools. The government monitored activities in mosques for possible security-related offenses, barred their use as public meeting places outside of regular prayer hours, and convoked imams to the Ministry of Religious Affairs for "disciplinary action" when deemed appropriate. The Ministry of Religious Affairs provided financial support to mosques and paid the salaries of imams; the ministry also trained and regulated the appointment of imams, and the law allows it to pre-screen religious sermons before they are delivered publicly. However, officials from the ministry have stated that they rarely interfere with sermons beyond an advisory capacity. The government monitored all koranic schools to prevent extremist teachings. The Ministry of Religious Affairs controlled Islamic sermons during the violence between Islamists and the government during the 1990s, and those restrictions largely remained in place.

**H/ Political Women Role:**

Spousal abuse occurred, and in practice was prosecuted under Article 264 of the Penal Code, which states that a person must be incapacitated for 15 days or more and present a doctor's note certifying the injuries before filing charges for battery. Because of societal pressures, however, women frequently were reluctant to endure this process. According to a joint study in 2004 by the justice ministry, women's associations, and the National Institute of Public Health (INSP), 70 percent of abused women refused to lodge a complaint or follow through with the complaint.

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<sup>1</sup> - Ibid., p 125.

Spousal abuse was more frequent in rural areas and among less-educated persons. According to the government, from January to March there were 1,762 cases of violence against women. According to a March 2006 INSP study, 70 percent of abused women are jobless and 26 percent are illiterate. In 2005, according to the government there were 7,419 cases of violence against women, including 5,178 cases of physical violence, 277 cases of sexual violence, 1,753 cases of "ill treatment," 34 murders, and 176 cases of sexual harassment. According to a September 2006 National Research Center for Anthropology study, 52 percent of a sample of 13,000 women indicated that they had suffered from physical abuse on at least one occasion.

SOS Femmes and Wassila Network, another local NGO, provided judicial and psychological counseling to abused women. Women's rights groups faced many difficulties in drawing attention to spousal abuse as an important social problem, largely due to societal attitudes. Several rape crisis centers run by women's groups operated, but they had few resources. The Working Women section of the General Union of Algerian Workers (UGTA) established a counseling center with a toll free number for women suffering from sexual harassment in the workplace. The center receives a growing number of calls. During the year, the center received 1,524 calls, compared to 1,010 calls in 2005.

According to the Penal Code, prostitution is illegal; however, the INSP and female advocacy groups reported that prostitution was a growing problem. The National Gendarmerie recorded 330 prostitution-related arrests from January to October.

The punishment for sexual harassment is one to two years' imprisonment and a fine of \$685 to \$1,370 (50,000 to 100,000 dinars). The punishment is doubled for a second offense. In the capital, there were at least a dozen

cases reported in the press during the year. In 2005, several persons were convicted under the new law; no updated figures were available.<sup>1</sup>

Article 29 of the constitution provides for gender equality; however, some aspects of the law and many traditional social practices discriminated against women. The Family Code, adopted in 1984 and amended in February 2005 by presidential decree, is based in large part on Shari'a that prohibits Muslim women from marrying with non-Muslims. The Amendments in the nationality code allowed woman to marry a foreigner and transmit citizenship and nationality in her own right to both her children and spouse. The Family Code does not restrict Muslim men from marrying non-Muslim women. Under both Shari'a and civil law, children born to a Muslim father are Muslims, regardless of the mother's religion.

The family code also affirms the islamic practice of allowing a man to marry up to four wives. In practice, however, this rarely occurs (about 1 to 2 percent of marriages), and under the amended Family Code, restrictions on polygamy were tightened. Women can include a "no polygamy clause" in the prenuptial agreement, and the husband must obtain a court ruling, usually easy to secure, allowing him to take an additional wife. A wife may sue for divorce if her husband does not inform her of his intent to marry another woman prior to the marriage.

The amendments to the Family Code in practice vitiated the Shari'a requirement for a male sponsor's (Wali's) role and consent to the marriage of a woman, although the requirement has been formally retained. The Wali continues to contract the marriage, but the woman may choose any male that she wishes as the wali.

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<sup>1</sup> - Youssef dalanda, Algerian Family Code, El houda Edition, Algiers, 2000, p 45.

Women suffered from discrimination in inheritance claims. In accordance with Shari'a, women are entitled to a smaller portion of an estate than are male children or a deceased husband's brothers. According to Shari'a, such a distinction is justified because other provisions require that the husband's income and assets are to be used to support the family.

**Situation of human right in Algeria:**

The total number of people living in Algeria reached 41 million and 700 thousand people on July 1, 2017 (compared to 40 million and 400 thousand people on 1 January 2016) <sup>1</sup>The head of state is elected by popular vote to a five-year term. President Bouteflika was reelected in 2004 to a second five-year term in a relatively transparent, contested election. Multiparty parliamentary elections in May 2007 were conducted in a generally transparent manner, although not all political parties were allowed full access to the electoral process. Multiparty local elections were held in November 2007, but the electoral process was marred by irregularities and charges of fraud. A state of emergency imposed in 1992 remains in force. Since the 1990s the human rights situation has improved significantly, although major concerns remain, including restrictions on political parties in order to limit the right of citizens to change the government peacefully; restrictions on civil liberties, including freedom of speech, press, assembly, and association; limitations on religious freedom<sup>2</sup>.

In order to strengthen legislative institutions, algerian program provides the parliament's members and staff with training in the budgetary process, drafting legislation, information technology, and media relations. The program, which also sponsors seminars by expert guest speakers and

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<sup>1</sup> - According to a knowledge from the National Bureau of Statistics.

<sup>2</sup> - Massoud Daher, Culture et démocratie dans le monde arabe contemporain : problèmes et perspectives. Dar –elmaaryf édition, liban, 2001.p76.

study tours of algerians. Other programs promote reform and independence of the judiciary and help strengthen the overall legal environment through training for judges, lawyers, and magistrates and support for the establishment of a code of ethics for jurists.<sup>1</sup>

**Conclusions:**

1- Constitutional Law cannot be the only regulator of individual or collective behaviour if not reinforced by moral and principles like fraternity and social cooperation.

2- The society and the state cannot exist without moral principles; one of the necessary aspects of brotherhood is love. That is, a moral obligation.

3- Political pluralism is not sufficient if we do not organize our society on culture and values that assure the way to promote state and society towards new future era of development and progress. Upon all Muslims to love their brother. In fact, they should love them in a manner similar to the way they care for themselves. As the Prophet, may the mercy and blessings of God be upon him, said:

“None of you truly believes until he loves for his brother what he loves for himself.”<sup>2</sup>

4 \_The essential aspect of this brotherhood is mercy and tenderness between the believers. This goes beyond a simple love for one another but it means that each brother feels in his heart for what his brother is going through.

5- A final necessary component of our brotherhood is common acts of courtesy. True brotherhood has to be put into practice; it cannot simply be a statement of the tongue.

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<sup>1</sup> - Mustapha Bakhouch, *Le déficit démocratique au Maghreb et son impact sur le développement*. Edition Elbourhane ; Alger, 2003, p89.

<sup>2</sup> - Saheeh Al-Bukhari, Saheeh Muslim.

6 -The social cohesion among Muslims is definitely one of the most sought after goals in Islam. In addition, practical steps are laid down to ensure that this goal will be attained.

7- Principles and moral make the social and political justice based on rights and duties.

8 - The Society of Morality gives us the tools we need to take actions, which are not always in our own best interests. The moral restraint agency acts is reactive, suppresses, and censors "immoral" actions or thoughts.

9 - Values are the guiding principles or set of principles and standards for behaviour. They are decisive in day to day behaviours and in critical life situations.