

# ALGERIA

CONSTITUTION NEEDS  
STRONGER HUMAN RIGHTS  
SAFEGUARDS

**AMNESTY**  
INTERNATIONAL



Amnesty International Publications  
First published in February 2016 by  
Amnesty International Publications  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

© Amnesty International Publications 2016

Index: MDE 29/3366/2016  
Original Language: English  
Printed by Amnesty International, International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for reuse in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable. To request permission, or for any other inquiries, please contact [copyright@amnesty.org](mailto:copyright@amnesty.org)

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

**AMNESTY**  
**INTERNATIONAL**



# CONTENTS

Introduction .....	5
Entrenching impunity.....	6
State of exception, emergency and siege.....	6
Freedoms of expression, association and assembly.....	8
Non-discrimination, Freedom of religion and cultural rights .....	9
The right to a fair trial and judicial independence.....	10
Freedom of movement and the right to privacy .....	12
Torture and other ill-treatment and the right to life .....	12
Asylum and non-refoulement .....	13
Economic, social and environmental rights.....	13
Implementing Algeria's human rights obligations.....	15

4 Algeria  
Constitution needs stronger human rights safeguards

## INTRODUCTION

Amnesty International calls on Algeria's lawmakers to seize the opportunity of constitutional reform to ensure that a comprehensive set of human rights guarantees are incorporated in the constitution, in line with the country's obligations under international human rights law, as they are poised to vote on amendments to the Constitution on 3 February 2016.

On 5 January 2016, the Algerian presidency unveiled draft constitutional amendments, which President Abdelaziz Bouteflika had pledged to deliver since the 2011 popular protests in the country. The draft amendments were approved by the Council of Ministers on 11 January, and validated by the Constitutional Council on 28 January. The Constitutional Council deemed that the proposal to amend the Constitution "in no way undermines the general principles that rule over Algerian society, the rights and freedoms of man and the citizen, nor affects in any way the fundamental balance of constitutional powers and institutions" in line with Article 176 of the current Constitution which allows for modifications without a popular referendum.<sup>1</sup> At least three quarters of each of Algeria's two houses of parliament – the National Popular Assembly (lower house) and the Council of the Nation (upper house) – must vote in favour of the is draft amendments to pass them.

Proposed constitutional revisions are a mixed bag for human rights, strengthening some human rights guarantees and introducing new ones while leaving some existing human rights gaps unaddressed and perpetuating the preponderance of the executive over other branches of government. Furthermore, the concrete implications of much new language on human rights in the draft remains opaque, due to provisions making rights conditional on national legislation instead of clear and unambiguous constitutional safeguards. In many cases, such national legislation is itself problematic for human rights.

---

<sup>1</sup> Endnote The Constitutional Council's full motivated decision has yet to be published in Algeria's official gazette. "[Projet de loi portant révision constitutionnelle: communiqué intégral du Conseil constitutionnel](#)", Algérie Presse Service, 28 January 2016

## ENTRENCHING IMPUNITY

Neither Algeria's current constitution, nor proposed amendments guarantee the right to an effective remedy for those whose human rights have been violated. This right is provided by Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Algeria in 1989.

Gross human rights abuses were committed on a mass scale by armed groups and state security forces during the 1990s internal conflict in Algeria, which claimed the lives of up to 200,000 people, according to official figures. Amnesty International considers that the unlawful killings, enforced disappearances, torture and rape to which civilians were subjected during the internal conflict amounted to crimes against humanity.<sup>2</sup> Instead of investigating these crimes and bringing those responsible to justice, the Algerian authorities adopted a series of legislative measures from 1999 onwards which entrenched impunity and denied victims, survivors and families access to truth, justice and reparation. Proposed amendments to the Preamble to the Constitution endorse the legacy of the "national peace and reconciliation" process by proclaiming its success and the "will of the Algerian people to preserve it". In doing so, the Algerian authorities are ignoring the plight of victims and their families, who opposed amnesty measures and are denied their right to truth, justice and reparation to this day, in breach of international human rights law.

Amnesty International believes that in order to achieve genuine peace and national reconciliation, the Algerian authorities must take effective measures to combat impunity and to ensure the non-repetition of serious human rights abuses. Amnesty International particularly calls on the authorities to repeal existing provisions in the legislation which grant immunity to security forces and state armed militias for serious human rights violations and criminalize public criticism of the conduct of the security forces; to conduct full, impartial and independent investigations into cases of enforced disappearances and unlawful killings; to clarify the fate of victims of enforced disappearances and to provide their families with an effective remedy. Amnesty International further calls on the Algerian authorities to ratify the International Convention for the Protection of All Persons from Enforced Disappearance without further delay. Signed by Algeria in 2007, the Convention has yet to be ratified.

## STATE OF EXCEPTION, EMERGENCY AND SIEGE

Draft amendments to the Constitution propose no change to current dispositions allowing the president to declare the state of emergency or siege (Article 91) without specifying its length or any non-derogable rights. The constitution refers to an organic law (Article 92), which was never adopted. This has left a dangerous legal vacuum the adverse effects of which could be seen during the state of emergency, which lasted 19 years from 1992 to 2011 – about twice as long as the internal conflict. Likewise, the vaguely-worded Article 93 still allows the president to declare a state of exception which allows him to take "exceptional measures" with no specific time limit nor non-derogable rights.

---

<sup>2</sup> Amnesty International, [A legacy of impunity: a threat to Algeria's future](#), March 2009, (Index: MDE MDE 28/001/2009)

The Human Rights Committee has stated that measures derogating from the provisions of the ICCPR pursuant to a state of emergency must be exceptional and temporary, while the state's predominant objective must be the restoration of the state of normalcy.<sup>3</sup> Article 4(2) of the ICCPR explicitly states that no derogation may be made from the right to life (Article 6); prohibition of torture or other cruel, inhuman or degrading punishment (Article 7); prohibition of slavery, slave-trade and servitude (Article 8), prohibition of imprisonment because of inability to fulfil a contractual obligation (Article 11); principle of legality in the field of criminal law, i.e. clear and precise provisions and no retrospective laws (Article 15); recognition before the law (Article 16); freedom of thought, conscience and religion (Article 18).

In addition to the non-derogable rights expressly stipulated in Article 4(2), the Human Rights Committee has identified elements of other rights and state obligations which cannot be made subject to lawful derogation.<sup>4</sup> These include the right to humane treatment (Article 10), which the Committee considers to be a norm of general international law not subject to derogation and is closely related to Article 7; the prohibitions against taking of hostages, abductions and unacknowledged detention which, as norms of general international law, are absolute; elements of protection of the rights of persons belonging to minorities (related to the prohibition of discrimination – see below); the prohibition of deportation or forcible transfer of population without grounds permitted under international law (even if other measures are taken derogating from Article 12); and the Article 20 prohibition on propaganda for war or advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence.

In addition, the state cannot derogate from the obligation to ensure the right to a remedy: even if, pursuant to a state of emergency, a state adjusts the practical functioning of procedures governing judicial or other remedies it must comply with its obligation under Article 2(3), which applies to the Covenant as a whole, to provide a remedy which is effective.<sup>5</sup> Moreover, the principle of legality and the rule of law mean that fundamental requirements of fair trial must be respected during a state of emergency, notably criminal trials only before a court (Article 14(1)), the presumption of innocence (Article 14(2)), and the right of habeas corpus (Article 9(4)).

And states of emergency cannot in any circumstances justify acting in violation of other peremptory norms of international law which prohibit taking hostages, imposing collective punishments, and arbitrary deprivation of liberty, or measures in violation of international humanitarian law.<sup>6</sup> Procedural safeguards may never be made subject to measures that would

---

<sup>3</sup> Human Rights Committee, General Comment 29, Article 4, UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), paras. 1, 2.

<sup>4</sup> Human Rights Committee, General Comment 29, Article 4, UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 13.

<sup>5</sup> Human Rights Committee, General Comment 29, Article 4, UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 14.

<sup>6</sup> Human Rights Committee, General Comment 29, Article 4, UN Doc. CCPR/C/21/Rev.1/Add.11 (2001),

circumvent the protection of non-derogable rights.<sup>7</sup> Finally, Article 4(1) explicitly states that measures derogating from provisions of the Covenant must not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin; this prohibition is absolute. Moreover, measures taken under a state of emergency must not involve direct or indirect discrimination on any other prohibited ground; any distinction on these grounds is permissible only if it demonstrably has a reasonable and objective justification.

Amnesty International calls on Algerian authorities and lawmakers to modify the draft amendment and introduce an organic law on the states of emergency and siege fully in line with the international standards explained above.

## FREEDOMS OF EXPRESSION, ASSOCIATION AND ASSEMBLY

Positive draft amendments include a recognition of the rights of academic freedom and freedom to engage in academic research (Article 38) as well as the addition of Article 41 ter guaranteeing media freedom without prior censorship and states that press offences cannot be punished by deprivation of liberty. However, the organization is concerned that this new article conditions media freedom to national legislation and the “respect of religious, moral and cultural values of the Nation”, and may still allow the Algerian authorities to resort to defamation, public insult and similar repressive laws to quell dissent.<sup>8</sup> Another concern is that the draft text appears to limit these guarantees to members of the media, which leaves open the possibility of censorship and imprisonment of ordinary members of the public for infractions related to expressing their opinions or disseminating information via the internet or other means. It is also of concern that the rights to freedom of expression, association and peaceful assembly are only guaranteed to citizens, contrary to the ICCPR.

Article 19 of the ICCPR protects the right of everyone to disseminate information and ideas, including those which may be considered offensive. Legislation such as blasphemy laws that criminalize criticism of, or insults to, religious beliefs violate freedom of expression. The state only has an obligation to prohibit such advocacy of hatred racial, religious or other such groups that is tantamount to incitement to discrimination, hostility or violence against individual members of these groups.

Amnesty International calls on the Algerian authorities to revise Article 41 ter so that it conforms to Algeria’s obligations under Articles 19 of the ICCPR. Any restrictions to the right to freedom of expression must be specified by law, for the purpose of protecting a legitimate aim and demonstrably necessary and proportionate to protect that aim.

Article 41 bis enshrines the right to peaceful assembly but only affords it to Algerian citizens and according to the procedures provided for by law, which criminalizes “unarmed gatherings

---

paras. 11, 16.

<sup>7</sup> Human Rights Committee, General Comment 29, Article 4, UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), paras. 15.

<sup>8</sup> Amnesty International, [“Algeria: end relentless targeting of government critics”](#), December 2015, (Index: MDE 28/2951/2015).



which might trouble public order”, a provision often used to repress peaceful dissent. Peaceful protesters and activists in Algeria continue to be arrested, prosecuted and even imprisoned solely for exercising their right to peaceful assembly.<sup>9</sup> Algerian law still requires prior authorization to hold public gatherings and assemblies while the Algerian authorities continue to enforce a ban on all demonstrations in Algiers.

Amnesty International calls on the Algerian authorities to ensure that Article 41 bis is aligned with Article 21 of the ICCPR, so that any restrictions to the right to freedom of assembly are strictly necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. In line with the recommendations of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Algeria should do away with requirement of authorisation and institute a system of reasonable prior notice for holding peaceful assemblies which includes exceptions for spontaneous assemblies.

Article 43 provides for the right to create associations, while referring to the procedures provided for by organic law. This suggests that a new organic law might replace the current Law 12-06 on associations. Promulgated in 2012, it imposes restrictions on associations and civil society groups’ activities, on their registration process and on their access to foreign funding. Under the law, the formation of an association requires prior approval by the authorities, which have the power to suspend activities of even dissolve groups “in case of interference in the country’s internal affairs or violation of national sovereignty”. Amnesty International calls on the Algerian authorities to repeal Law 12-06 and to elaborate the new organic law on associations in conformity with applicable international human rights standards.

## NON-DISCRIMINATION, FREEDOM OF RELIGION AND CULTURAL RIGHTS

The constitution currently prohibits the discrimination against Algerian citizens based on birth, race, sex, opinion or any other personal or social circumstance under Article 29. However, the draft amendments do not remedy its failure to protect non-citizens, in breach of Algeria’s obligations to protect the human rights of all persons within its territory and under its jurisdiction. Amnesty International calls on Algerian lawmakers to extend non-discrimination protects to all those under its jurisdiction.

The draft amendments introduce positive language in Article 31 ter to operationalize the prohibition on discrimination against women in the economy and public office through state support for equality between women and men in employment, including in public administration and in companies. Amnesty International calls on Algeria’s lawmakers to also explicitly prohibit discrimination based on gender and sexual orientation, and to include principle of equality between men and women beyond the sphere of employment. They should further specify that discriminatory laws or state policies, including provisions that discriminate on the basis of gender and sexual orientation, are unconstitutional.

---

<sup>9</sup> Amnesty International, [“Algeria: halt repression of fracking and unemployment protesters”](#), July 2015, (Index: MDE 28/2122/2015).

Islam remains the state religion (Article 2) and state institutions are prohibited from “practices contrary to Islamic morals” (Article 9). Article 73 continues to specify that only a Muslim can become president.

Nonetheless, a proposed amendment to Article 36 recognizes freedom of worship “within the boundaries of law”. Under Ordinance 06-03 regulating religious faiths other than Islam passed in 2006, Christians, including converts, have faced judicial proceedings for “practicing religious rites without authorization”.<sup>10</sup> Amnesty International urges the Algerian authorities to ensure the Constitution expressly guarantees the right to have or adopt a religion or belief of one’s choice, as well as the right not to profess or practice a religion and to repeal provisions in existing legislation which discriminate against non-Muslims or otherwise violate the right to freedom of religion.

With regards to cultural rights, proposed amendments to the Constitution focus on Tamazight, a family of indigenous North African languages and dialects, several variants of which are spoken in different parts of Algeria. The drafts proposes to make Tamazight, already recognized as a “national” language, an “official” language (Article 3 bis) and introduces an Algerian academy of Amazigh language to support the implementation this new status. However, it is unclear how this disposition will be implemented in practice, as there is no single “Tamazight” language in Algeria, but rather a plurality of languages spoken by different Amazigh communities across the country. In addition, it is unclear what provision will be made for those who need to access official information in Tamazight.

## THE RIGHT TO A FAIR TRIAL AND JUDICIAL INDEPENDENCE

The draft reinforces fair trial guarantees in the Constitution’s detailed provisions on rights in custody and criminal procedure. At the same time, it undermines these very safeguards by perpetuating the dominance of the executive branch of government, and particularly the presidency, over the judiciary.

The draft includes procedural safeguards recently incorporated within the Code of Criminal Procedure by decree in July 2015. Aside from reiterating fair trial rights (Article 45), the draft emphasizes the exceptional nature of police custody and pre-trial detention, and states that arbitrary arrest is punished by law (Article 47). It mentions a series of pre-trial rights including the right of suspects taken into custody to be notified of their right to contact a lawyer (Article 48), compulsory medical examinations for minors (Article 48) and means-tested access to legal aid (Article 45 bis). The draft also provides for the possibility to appeal decisions in criminal proceedings, while referring to national legislation to detail how this will be implemented (Article 142). It also includes a requirement for judicial decisions to be motivated (Article 144).

The draft also provides fair trial guarantees beyond the procedural safeguards introduced in July 2015 by guaranteeing lawyers’ right to work free from pressure, within the boundaries of the law (Article 151 bis).

---

<sup>10</sup> Amnesty International, [“Algeria: conviction for ‘offence to the Prophet’ and closure order of churches in Bejaia condemned”](#), June 2011, (Index: MDE 28/001/2011).

The new Constitution should specify further guarantees, including the right to be promptly brought before a court, and to trial within reasonable time or release; guarantees of access to effective means of challenging the lawfulness of detention before a court and being ordered released if the detention is found to be unlawful; the right to access to an independent lawyer immediately following any deprivation of liberty.

Judicial independence is another cornerstone of the right to a fair trial. In this respect, the draft incorporates aspects of national legislation, including organic laws on the statute of judges and the Higher Judicial Council. It strengthens language on the impartiality of judges (Article 148) and proposes measures strengthening the independence of the judiciary including a prohibition on interference in the course of justice.

The draft introduces an important new safeguard absent from current national legislation in guaranteeing security of tenure for judges while referring to the statute of judges (Article 148). This amendment suggests that authorities will have to draft new legislation in this regard, since the current organic law allows for dismissal, resignation, revocation or early retirement.

Regrettably, this important step towards judicial independence is risks being undermined by dispositions preserving the influence of the president over the judiciary by through the appointment of key members of the judiciary including judges (Articles 78, 78-3 bis, 78-7), while referring to an organic law regarding the detail of such appointments.

The draft also seeks to increase the independence of the Higher Judicial Council by constitutionalizing its financial autonomy, already provided by the current organic law on the Higher Judicial Council. The draft also confers its administrative autonomy, the details of which are to be set in the future organic law. According to the current organic law on the Higher Judicial Council, the president appoints six of the Council's 20 members.

Amnesty International is concerned that these attempts to increase the institution's independence are once again undermined by the draft's perpetuation of strong influence by the executive branch of government. The president continues to preside over the Higher Judicial Council (Article 154) which appoints, transfers and imposes disciplinary sanctions on judges, while the Minister of Justice is the body's vice-president.

The draft also makes changes to the Constitutional Council, a body with key powers including ensuring that laws are in conformity with the Constitution, announces the results of elections and adjudicates any challenges to electoral results, vets candidates for presidential elections and determines whether the president is incapacitated. Proposed amendments increase the size of the Constitutional Council (from nine to 12 members), introduces longer mandates (eight years instead of six) for its members as well as immunity from prosecution (Articles 164 and 164ter). It describes the body as an independent institution which enjoys administrative and financial autonomy to (Article 163). However, executive control over the institution remains, strong. The head of state continues to appoint the president of the Constitutional Council, and one third of its members (Article 164).

Amnesty International calls on lawmakers to strengthen the independence of the judiciary by unambiguously affirming security of tenure for judges in the Constitution, making their

removal only possible for serious misconduct following a disciplinary process with the necessary guarantees and when decided by the Higher Judicial Council. The future law on the statute of judges should incorporate international standards on the independence of the judiciary including the UN Basic Principles on the Independence of the Judiciary. Judges should be appointed based on ability, training and qualifications with no discrimination, and have aspects of their career including remuneration, disciplinary processes, pensions and age of retirement determined by a body independent of the executive. The organization also calls on the lawmakers to strengthen the independence of the Higher Judicial Council, including through its future new organic law.

## **FREEDOM OF MOVEMENT AND THE RIGHT TO PRIVACY**

Draft amendments to Article 44 specify that the right to freedom of movement can only be restricted for a specific period of time, by “a reasoned decision of a judicial authority.” However, it limits this right to citizens and falls short of international human rights law. According to Article 12(3) of the ICCPR, no restrictions on freedom of movement are permissible except those prescribed by law, and are necessary to protect national security, public order, public health or morals or the rights and freedoms of others. Any restrictions must not undermine the essence of the right to freedom of movement and they must be consistent with other human rights, particularly equality and non-discrimination, while those subjected to such restrictions must receive reasons for the restrictions and be able to challenge them.

Likewise, the draft strengthens the guarantee for the right to privacy in Article 39 by specifying that it can only be limited by judicial warrant. It also adds that protection of individuals’ personal data is a fundamental right protected by law. Amnesty International calls on lawmakers to strengthen this clause by ensuring that any interference with the right to privacy, such as communication surveillance, are strictly necessary and proportionate to a legitimate aim under international human rights law, and that adequate and effective guarantees against arbitrary use and abuse are in place.

## **TORTURE AND OTHER ILL-TREATMENT AND THE RIGHT TO LIFE**

Amnesty International welcomes the inclusion of the prohibition of “cruel, inhuman or degrading” treatment in the Constitution (Article 34) but regrets that proposed amendments fall short of explicitly prohibiting torture. Amnesty International therefore calls on the Algerian authorities to include an explicit prohibition of torture and cruel, inhuman or degrading treatment or punishment in the Constitution, specifying that the prohibition of torture is non-derogable under any circumstance, including war or states of emergency. Authorities must define torture in line with Article 1 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment (Convention against Torture), and specify that no order from superior officials or officers justify such acts, and that no information obtained forcibly including through torture or other ill-treatment may be used in proceedings, except as evidence against a person accused of torture or other ill-treatment that the statement was made. And it must make clear that there must be no immunities, statutes of limitations, amnesties and other similar measures provided to those responsible for torture.

Furthermore, the draft fails to address a gaping hole in the Algerian Constitution, namely its failure to enshrine the right to life, in accordance with its obligations under the ICCPR

(Article 6) and the African Charter on Human and Peoples' Rights (Article 4).

The African Commission on Human and Peoples' Rights has described the right to life as the fulcrum of all other rights. In its General Comment 3, the Commission notes: "The right not to be arbitrarily deprived of one's life is recognised as part of customary international law and the general principles of law, and is also recognised as a *jus cogens* norm, universally binding at all times. The right to life is contained in the constitutions and other legal provisions of the vast majority of African and other States."

Although the Algerian authorities have maintained a *de facto* moratorium on executions since 1993, Algerian law still allows for the death penalty. Amnesty International calls on the Algerian authorities to fully guarantee the right to life in the Constitution and to abolish the death penalty.

### ASYLUM AND NON-REFOULEMENT

While the constitution already prohibits the forcible return of political refugees (Article 69), it omits any mention of the right to seek asylum. Furthermore, the constitution makes no mention of refugees fleeing persecution on grounds other than political, whereas the 1951 Convention relating to the Status of Refugees enumerates five grounds: race, religion, nationality, and membership in a particular social group or political opinion. The constitution also omits the right to protection against removal to any country or territory where the person concerned would face a real risk of serious human rights violations or abuses, such as torture (*refoulement*); this right is owed to everyone subject to Algerian jurisdiction, and not merely refugees. The organization urges Algerian lawmakers to bring the constitution in line with Algeria's obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (UN Refugee Convention), the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention), the ICCPR, and the Convention against Torture.

### ECONOMIC, SOCIAL AND ENVIRONMENTAL RIGHTS

The draft makes multiple references to economic, social, and environmental rights, which are increasingly relevant in a context of rising prices, growing inequalities and environmental pollution associated with extractive industries in the country. It establishes several public bodies in order to support the realization of some of these rights. However, the language is often ambiguous and falls short of providing constitutional guarantees which adequately reflect Algeria's international obligations, particularly the International Covenant on Economic, Social and Cultural Rights (ICESCR). In some cases fundamental rights such as food and sanitation are not referenced at all whilst in other cases rights such as health, education and housing are not sufficiently recognised. In this respect, like other states parties, Algeria is required to give effect to all of the rights in the Covenant in its domestic law and the current draft of the Constitution fails to sufficiently do this.

In terms of social and economic rights, the draft states that state institutions aim to achieve social justice and tackle regional disparities in development (Article 8) but in the absence of further elaboration it is unclear what this means in practice. Article 54 mentions the state's role in enabling access to healthcare for those living in poverty but fall short of establishing a right to health for all, including access to adequate healthcare physically and economically accessible to all those within its territory and under its jurisdiction, without discrimination.

Similarly, Article 54 bis describes the state's role in facilitating access to housing for those in need, without clearly establishing a right to adequate housing for all as defined under international law, and without prohibiting forced evictions, which are illegal under international law. In the same vein, the draft only guarantees the right to social security for workers, leaving others who may be vulnerable and require support – the elderly, sick, disabled, and the unemployed – without protection (Article 55).

The amendments also introduce guarantees for child rights, which are multifaceted and touch on economic and social rights. The draft prohibits the employment of children younger than 16 (Article 55), but needs to provide a clearer definition of child labour in line with international law.<sup>11</sup> It institutes a responsibility for families, society and the state to protect child rights, take care of abandoned children and punish violence against children (Article 58). Amnesty International recommends that it further prohibits all forms of hazardous labour by children between 16 and 18 years of age, in line with its obligations under the International Labour Convention no. 138 and 182 and the UN Convention on the Rights of the Child (CRC).

The draft also fails to explicitly guarantee the right to education for all. It only includes vague references to mutual obligations within the family, including a parental obligation to ensure their children's education, and an obligation for children to assist their parents, and for families and the state to protect elderly persons (Article 58). However, this provision lacks any reference to the role of the state in ensuring that the elderly are protected and supported including through the provision of social security.

Amnesty International calls on lawmakers to ensure that the draft guarantees the right to education for all, including by instituting free and compulsory primary education for all children while ensuring that secondary education is accessible for all and to be progressively made free for all.

The organization also recommends that lawmakers introduce clearer guarantees for child rights including the notion that all decisions made on behalf of a child, whether by the state, by a parent or guardian, or by any other person, must be taken in the best interests of the child, in line with the CRC. In this respect, lawmakers should also recognize children's right to express opinions and have them taken into account, according to their developing capacities.

Several new articles focus on the use of natural resources and environmental rights, including Article 17 bis enshrining the state's rational use of natural resources (land, water and fossil fuels) in order to preserve them for future generations, as well as the state's "protection" of farm land and public water source. Article 54 ter enshrines citizens' right to a healthy environment, without making a specific mention of a right to water, including access to sustainable sources of safe water for domestic use and for farmers and those whose livelihoods depends on access to water. This issue is particularly relevant in the context of

---

<sup>11</sup> UN Convention on the Rights of the Child, Article 32. International Labour Organization Convention concerning Minimum Age for Admission to Employment (no. 138).

hydraulic fracturing to extract shale gas and associated concerns over the contamination of aquifers in the Sahara and its impact for the livelihoods and survival of populations in the area. The article also mentions the state's contribution to preserving the environment, while referring to legislation determining obligations of individuals and corporations to protect the environment.

The draft fails to mention at all a right to food, although it is a fundamental human right, as well as the right to sanitation, which is interrelated with the rights to water and health as well as being a distinct right in itself which has been recently recognised by the UN General Assembly.

Concerning economic and social rights generally, Amnesty International calls on lawmakers to explicitly define both the state's immediate obligations such as free and compulsory primary education for all and to progressively achieve the full realization of all of these rights to the maximum of the country's available resources in line with its international obligations.

### IMPLEMENTING ALGERIA'S HUMAN RIGHTS OBLIGATIONS

Articles 173-1 and 173-2 of the draft constitution establish a National Council for Human Rights to promote, monitor and protect human rights in the country. The body will replace the existing National Advisory Commission for the Promotion and Protection of Human Rights in place since 2001. Like its predecessor, it will be tasked with monitoring human rights and raising public awareness, investigating human rights violations brought to its attention as well as submitting opinions, recommendations, proposals and annual reports.

Amnesty International calls on the Algerian authorities to ensure that it complies with the principles relating to the status of national institutions, commonly known as the Paris Principles, which afford National Human Rights Institutions a broad mandate to protect and promote human rights and call for the pluralism of their membership and their independence.

Incorporating international human rights standards into national legislation remains one of the most effective means to guarantee human rights. The current constitution already features explicit guarantees for human rights in Articles 32, 33 and 35 while Article 132 provides that international treaties ratified by the president in line with the Constitution are superior to national legislation. However, it is noteworthy that neither the current text nor proposed amendments explicitly reference international human rights treaties. Amnesty International calls on lawmakers to add a clause to the Constitution stating that rights and freedoms included in the constitution are binding for all organs of the state; the organization also calls on Algerian authorities to ensure that rights set out in the revised Constitution are enforceable in national law.

**AMNESTY**  
**INTERNATIONAL**



[www.amnesty.org](http://www.amnesty.org)