



**International Convention  
on the Protection of the  
Rights of All Migrant  
Workers and Members  
of Their Families**

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COMMITTEE ON THE PROTECTION OF THE  
RIGHTS OF ALL MIGRANT WORKERS AND  
MEMBERS OF THEIR FAMILIES

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 73 OF THE CONVENTION**

**Initial reports of States parties due in 2006**

**PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA\***

[3 June 2008]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## **Introduction**

1. Algeria ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (“the Convention”) by Presidential Decree No. 04-441 of 29 December 2004, published in issue No. 2 of the Official Gazette of the People’s Democratic Republic of Algeria.
2. The present initial report is submitted under article 73 of the Convention. It consists of two parts:
  - (a) Part one, entitled “Information of a general nature”, describes:
    - (i) The constitutional, legislative, judicial and administrative framework regulating the implementation of the Convention and, as appropriate, bilateral, regional or multilateral agreements on migration;
    - (ii) Quantitative and qualitative information on the characteristics and the nature of migratory flows (immigration, transit and emigration) involving our country;
    - (iii) The real situation with regard to the implementation of the Convention in our country and the circumstances affecting the fulfilment of Algeria’s obligations under the Convention;
    - (iv) Measures taken by Algeria to disseminate and promote the Convention and to cooperate with civil society in order to promote and ensure respect for the rights enshrined in the Convention;
  - (b) Part two, which contains information on the substantive provisions of the Convention.

## **I. INFORMATION OF A GENERAL NATURE**

### **A. Constitutional, legislative, judicial and administrative framework regulating the implementation of the Convention and, as appropriate, bilateral, regional or multilateral agreements on migration**

3. Algerian legislation encourages the entry and temporary residence of foreigners in Algeria. It was drafted on the basis of the need to build a new State following the restoration of independence.
4. In addition to ordinary law, Algeria has ratified the main international human rights treaties, including those that deal with migration, in particular the Convention on the Rights of Migrant Workers.
5. The process of adapting the Algerian legal framework to take account of these international treaties is well advanced. It should swiftly result in the incorporation of international norms in domestic legislation.

6. This is how matters stand with regard to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990, the ratification of which, in 2004, is expected to usher in major changes, particularly to the Labour Code and the law on the employment of foreigners in Algeria.

### **1. Algerian legal framework on migration**

7. Algerian Constitution: article 67, which guarantees protection to foreigners who are legally resident in Algeria, and article 132, which states that agreements and treaties ratified by Algeria take precedence over domestic law:

(a) Ordinance No. 66-211 of 21 July 1966 on the situation of foreigners in Algeria, and implementing texts, in particular Decree No. 66-212 of 21 July 1966;

(b) Ordinance No. 67-190 of 27 September 1967, amending and supplementing Ordinance No. 66-211 of 21 July 1966 on the situation of foreigners;

(c) Ordinance No. 71-60 of 5 August 1971 on employment conditions for foreigners;

(d) Act No. 78-12 of 5 August 1978 on the general status of workers (art. 24);

(e) Act No. 81-10 of 11 June 1981 on employment conditions for workers and implementing texts;

(f) Act No. 83-11 of 2 July 1983 on social insurance, in particular article 6;

(g) Act No. 83-13 of 2 July 1983 on work accidents and occupational diseases, in particular articles 51 and 57;

(h) Act No. 85-05 of 16 February 1985 on health promotion and protection;

(i) Decree No. 86-276 of 11 November 1986 on conditions of recruitment of foreign personnel in State services, local government and public institutions and bodies;

(j) Presidential Decree No. 03-251 of 19 July 2003, amending and supplementing Decree No. 66-212 of 21 July 1966, implementing Ordinance No. 66-211 of 21 July 1966 on the situation of foreigners;

(k) Ordinance No. 05-01 of 27 February 2005 amending and supplementing Ordinance No. 70-86 of 15 December 1970 on the Nationality Code;

(l) Ordinance No. 06-03 of 28 February 2006 on conditions governing the practice of faiths other than Islam and implementing decree;

(m) Labour Code, Civil Code, Criminal Code and Maritime Code;

(n) Executive Decree No. 06-454 of 11 December 2006 concerning business licences for foreigners engaging in commercial, industrial or artisanal activities or liberal professions in Algeria.

## **2. International treaties on migration ratified by Algeria**

### **(a) Multilateral instruments**

8. The international treaties on migration and migrant workers concluded under the auspices of the United Nations or the International Labour Organization (ILO) that have been ratified by Algeria are as follows.

#### **(i) United Nations instruments**

9. Algeria is a party to the principal international legal instruments relating to migration, including the 1963 Vienna Convention on Consular Relations, which imposes on the State of residence certain obligations when dealing with foreigners who have settled in its territory, in particular with regard to arrest, imprisonment, detention or any measure involving deprivation of liberty.

10. Algeria is also a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990, which has been ratified by 37 countries, including Algeria on 29 December 2004, and entered into force on 1 July 2003. The Convention imposes an obligation on States parties to comply with a number of international standards relating to the protection of migrant workers, irrespective of whether they are legally or illegally resident. In addition, it provides for measures to combat networks of traffickers and employers of illegal migrants.

11. Algeria has also acceded to the United Nations Convention against Transnational Organized Crime, adopted on 15 November 2000, which it ratified on 5 February 2002. It has been a party since 9 November 2003 to the two protocols to the Convention against the smuggling of migrants by land, sea and air and to prevent, suppress and punish trafficking in persons, especially women and children.

#### **(ii) International Labour Organization (ILO) instruments**

12. Algeria has ratified most of the international labour conventions, including the two “priority” conventions, namely:

##### **Convention concerning Migration for Employment (revised 1949) (No. 97)**

13. This Convention, which has been ratified by 43 countries and is already in force, concerns inter alia standards to be applied for the employment and working conditions of migrants.

##### **Convention concerning Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (No. 143)**

14. This convention, which was adopted on 23 June 1975 by the ILO General Conference, has been ratified by only 18 countries. It entered into force on 9 December 1978. It reaffirms the general obligation of Member States to respect the basic human rights of all migrant workers. It provides that migrant workers have the right not only to equality of treatment, but also as provided in Convention No. 97 of 1949, to equality of opportunity in respect of employment, of social security, of trade union and cultural rights and of individual and collective freedoms.

**(b) Regional instruments**

15. Algeria attaches great importance to regional cooperation on migration, especially on account of its strategic location at the crossroads of Africa, Europe and the Mediterranean.

**Strategic framework for migration in Africa**

16. Adopted at the Seventh Ordinary Session of the Assembly of the African Union Heads of State and Government, held in Banjul, in July 2006, the framework is intended to encourage member States to take account of matters relating to migration in their national and regional programmes by devising relevant national policies.

**Common African position on migration and development**

17. The position was adopted at the Seventh Ordinary Session of the Assembly of the African Union Heads of State and Government, in Banjul, in July 2006; it provides for a series of measures to implement a triple national, continental and international plan in the area of migration management.

**Treaty establishing the Arab Maghreb Union**

18. According to the treaty of 17 February 1989, the purpose of the Arab Maghreb Union is to attain progressively the free movement of people, services, goods and capital. Several trade, customs, social security and legal agreements have been signed. However, the absence of an agreement on migration is likely to hinder the free movement of people, services, goods and capital - the cornerstone of the Arab Maghreb Union.

**(c) Bilateral instruments**

19. As far as bilateral instruments are concerned, Algeria has made every effort to establish cooperation in respect of the free movement of people and the control of illegal immigration, especially with neighbouring States.

20. With the exception of some nationalities for which special arrangements have been made (France, the Maghreb States), the residence of nationals of other States is governed by the provisions of ordinary law. The free movement and residence of French nationals is governed by specific legislation, namely the decrees of 25 March 1976 and 9 February 1988.

21. Conditions relating to the free movement, employment and residence of Algerian nationals and their families in France are governed by the Franco-Algerian bilateral agreement of 27 December 1968 and the amendments thereto of 1985, 1994 and 2001.

22. In addition to the establishment conventions signed in the 1960s and 1970s with the Maghreb States, Algeria has binding cooperation agreements with its two main southern neighbours, Mali and Niger, signed in 1995 and 1997 respectively. These agreements provide for cooperation on illegal immigration control through the exchange of information and the break-up of smugglers' networks.

23. During the most recent meeting of the Algerian-Niger Frontier Committee, held in April 2006 in Algeria, the two countries agreed to step up their cooperation to combat illegal immigration and to ensure better control of illegal migration flows.

24. In March 2002, Algeria also concluded an arrangement with Nigeria, which provides for cooperation for the repatriation of illegal Nigerian immigrants. This commitment was reaffirmed by the two parties in Abuja, in October 2005. In addition, bilateral readmission agreements have been concluded with some European countries, namely:

- (a) France, on 28 September 1994;
- (b) Germany, on 14 February 1997;
- (c) Italy, on 24 February 2000;
- (d) Spain, on 31 July 2002;
- (e) Switzerland, on 3 June 2006;
- (f) United Kingdom of Great Britain and Northern Ireland, on 11 July 2006.

25. Those agreements were signed on the basis of the following principles: preliminary identification; proof of nationality; agreement to deport individuals in the event of mistaken nationality; and respect for the dignity of persons readmitted.

26. The implementation of the above-mentioned agreements is hampered by the excessive delays caused by deporting countries in accepting persons who are readmitted into Algeria but whose Algerian nationality has not been formally established following an examination of their situation. The following should also be noted:

- (a) The bilateral agreement on social security that Algeria signed with France was ratified by Presidential Decree No. 81-315 of 28 November 1981 ratifying the agreement on social security and an additional protocol followed by an amendment. The purpose of the agreement is to establish the principle of equality of treatment for nationals of both countries with regard to their respective social security laws, particularly the membership of voluntary insurance schemes with access to insurance benefits and family allowances;
- (b) Agreements with Belgium arising from the social security agreement of 1968 and the agreement on the employment and residence of Algerians in Belgium;
- (c) The agreement with the Libyan Arab Jamahiriya concerning cooperation on labour matters and the use of human resources, ratified by Presidential Decree No. 89-189 of 10 October 1989.

### **3. Legal regime governing foreign labour in Algeria**

27. Algerian legislation governing the use of foreign labour lays down conditions intended amongst others to protect the rights of migrant workers against exploitation and abuse.



28. In addition to the Algerian Constitution, the Labour Code enshrines the principle of equality of treatment and prohibits discrimination between nationals and foreigners.

29. Algeria is also a party to the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182). Under Algerian legislation, the minimum age of employment is over 16. An intersectoral commission on the elimination of child labour was established in 2003. It should be noted that Act No. 83-14 on social security prohibits informal or illegal employment.

30. Similarly, Algeria attaches great importance to respect for the dignity and rights of its nationals who have settled abroad. In this respect, it calls for the protection of its nationals against all forms of discrimination and racism through the adoption of appropriate measures by the authorities of the host country, in accordance with custom and applicable international law, and equality of treatment for legally resident migrants in terms of employment, education, housing and social services.

31. It should be noted that as part of its legislative reform, the Government has started work on three draft laws:

(a) The first draft law on the entry and residence of foreigners was adopted by the Council of Ministers on 16 September 2007 and is currently before Parliament. It provides for greater safeguards to protect the fundamental rights of the nationals of other States, including those who are in Algeria illegally;

(b) The second draft law amending the Criminal Code is intended to incorporate the relevant provisions of the above-mentioned international instruments, in particular the definition of smuggling contained in the Protocols to prevent, suppress and punish trafficking in persons, especially women and children and against the smuggling of migrants by land, sea and air supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocols), and to ensure the protection of victims and the punishment of perpetrators;

(c) The Labour Code is undergoing a thorough review to bring it up to date.

32. A new text establishing a framework law on child protection is currently being considered.

**B. Quantitative and qualitative information on the characteristics and nature of migration flows (immigration, transit and emigration) involving our country**

33. Like other countries, Algeria is experiencing an influx of migrants. This phenomenon, which is assuming growing proportions, is prompted by various factors and incentives. These include the political situation (governance), the economic situation, the search for a better standard of living, conflicts, natural disasters and gaps in levels of development. Globalization, the prodigious development of communication and transport and the role of transnational networks of smugglers have exacerbated the phenomenon.

## **1. Migration routes to Algeria**

34. The first population influxes from the neighbouring countries of Mali and Niger were recorded as early as the 1960s and 1970s. There was a second migration flow at the end of the 1980s owing to conflicts in the north of those two countries and the drought which ravaged the Sahel. Since then, irregular migration flows have continued, prompting the Algerian authorities to step up its control of land (7,000 km) and sea (1,200 km) borders, for which it has allocated considerable human and material resources.

35. Algeria has also borne the costs of repatriating hundreds of illegal African immigrants. The most recent repatriation operation took place in December 2005 and involved approximately 600 persons from sub-Saharan Africa (Mali, Guinea, Cameroon, Senegal, Ghana, Burkina Faso, Guinea-Bissau and Nigeria), who had been staying illegally in the frontier area of Maghnia (western Algeria), in the hope of reaching Europe via Morocco. Today, Algeria has three main migration routes to its territory.

### **Land routes**

36. Crossing Algeria's southern frontiers is the main route for illegal migrants from some 40 sub-Saharan countries, who arrive in the southern *wilayas* (departments), especially Tamanrasset and Ghardaia. Most of them end their journey in the northern coastal towns. In recent years illegal migrants from Asia have also started arriving in Algeria.

37. Some of the methods used by illegal migrants include falsifying travel documents by replacing photographs and using stolen passports. Smuggling rings take advantage of the extensive land frontiers and difficult terrain to bring their "clients" into Algerian territory by unofficial ways.

### **Air routes**

38. Air routes are used less because of tighter controls at airports, which make it extremely difficult or virtually impossible to cross into Algerian airspace.

### **Sea routes**

39. Tighter surveillance along the migration route through Ceuta and Melilla, which had long been used to reach Europe, has meant that illegal migrants have been forced to use alternative migration routes.

40. In addition, since cooperation on illegal immigration control between Morocco and Spain has been stepped up, illegal migrants have used other routes, in particular through the Canary Islands, where they arrive from Senegal and other West African countries.

41. The would-be migrants, most of whom are young people under 30, pay between 100,000 and 200,000 Algerian dinars (DA) to a smuggler, who in exchange has a makeshift boat built and finds a "navigator". Crossings generally take place at night with groups of 10 to 12 people. Depending on the weather conditions and fuel supplies, some boats reach the coasts of Sardinia, Lampedusa (Italy) or Spain, while others are intercepted near the coast by Italian or Spanish naval craft.

## **2. Migration flows in Algeria**

42. Algeria experiences both immigration and emigration, both of which are on the rise.

### **Illegal immigration to Algeria**

43. Algeria hosts a large number of foreign nationals who are legally resident in the country and work in different sectors. The improvement in the economic situation in recent years and the implementation of the economic growth support Programme have favoured an increase in both legal and illegal immigration.

44. According to available statistics, on average 7,000 illegal migrants are picked up each year on Algerian territory. Approximately 70,000 illegal migrants have been registered in the last decade. The number of people expelled has been estimated at around 20,000 between the year 2000 and the first half of 2007, while the number of foreigners refused entry at the frontier during the same period has been estimated at 42,284. In other words altogether 62,399 foreigners have been denied entry to Algerian territory.

45. These illegal migrants work in the informal sector in order to put some money aside with the aim of either emigrating to Europe or settling definitively in Algeria.

46. It should be noted that, in recent years, many economic migrants have tried to abuse the asylum application procedure in order to circumvent Algerian entry and residence regulations. This tendency to group together genuine asylum-seekers and illegal migrants is rejected by Algeria.

### **Illegal emigration of Algerians abroad**

47. Like in other Mediterranean countries, the illegal emigration phenomenon known as *harraga* has been on the rise in recent months. Two new migration routes have opened up. They have been identified by the competent Algerian services as the western part of the coast facing Spain and the eastern part of the coast facing Italy.

### **Causes of emigration**

48. The *harraga* phenomenon is fuelled by the following factors:

- (a) Algeria's geographical location on the southern shores of the Mediterranean;
- (b) The extent of Algeria's maritime borders;
- (c) The relative ease with which potential migrants can reach the coasts of Spain and Italy;
- (d) The impact of the images projected by European satellite television channels;
- (e) The distorted image returned by those who have successfully reached European coasts;

(f) The policy of regularizing the situation of persons without documents in recent years, especially in Spain and Italy;

(g) Differences in development levels;

(h) Labour demand and opportunities for illegal employment in Europe.

**C. The real situation concerning the practical implementation of the Convention in Algeria and circumstances influencing the fulfilment of Algeria's obligations under the instrument**

49. Although Algeria is confronted with an influx of illegal migrants from sub-Saharan Africa and the resulting criminality arising from breaches in residence and labour laws, it treats people trying to emigrate to Europe with dignity and humanity.

**D. Measures taken by Algeria to disseminate and promote the Convention and to cooperate with civil society in order to promote and ensure respect for the rights enshrined in the Convention**

50. Algeria has continued in various international forums to encourage other States, particularly western ones, to accede to the Convention. It sees the universal periodic review mechanism as an opportunity to invite States that have not yet become party to the Convention to do so.

**II. INFORMATION RELATING TO INDIVIDUAL ARTICLES OF THE CONVENTION**

**A. General principles**

**Articles 1 (para. 1) and 7. Non-discrimination**

51. Algerian legislation draws no distinction between migrant and national workers. This principle is scrupulously applied in labour matters, so long as the persons concerned are legally employed and can show evidence of their recruitment, according to the conditions laid down in Act. No. 81-10 of 11 July 1981.

52. Foreign workers legally recruited under the provisions of Act No. 81-10 of 11 July 1991 enjoy the same rights as national workers in terms of working conditions and remuneration. Those rights are laid down in Act No. 90-11 of 21 April 1990, as amended and supplemented, on working conditions, in particular articles 17 and 142.

53. The information concerning article 7 is based on the Constitution and various international instruments ratified by Algeria, which form part of the mandatory norms applicable in Algerian territory.

### **The 1996 Constitution**

54. Article 67 of the Constitution states that: “Any foreigner who is lawfully present in Algerian territory shall enjoy the protection of the law in respect of his or her person and property.” This is a general rule which ensures the protection of foreigners who are lawfully present in the territory of the Republic.
55. Foreigners who are legally in Algerian territory, irrespective of their status (whether migrant workers, tourists or residents), enjoy the protection of Algerian law, provided that their entry and residence are in conformity with the conditions required by current laws and regulations.
56. This protection includes equality before the law as enshrined in article 29 of the Constitution, which states that: “All citizens are equal before the law, without discrimination by reason of birth, race, sex, opinion or any other personal or social condition or circumstance.”
57. Equality is therefore a right guaranteed to all individuals subject to Algerian law, without any discrimination.

### **International instruments ratified by Algeria**

58. Algeria has ratified the main international human rights instruments prohibiting all forms of discrimination.
59. By virtue of article 67 of the Constitution, all the provisions of these international instruments also apply to foreigners, including migrant workers.
60. In addition, these provisions take precedence over domestic law by virtue of article 132 of the Constitution, which expressly provides that “treaties ratified by the President of the Republic under the conditions specified by the Constitution take precedence over domestic law”, and may be invoked before all national authorities, particularly the national courts.
61. Even when a treaty ratified under the conditions and in the form specified by the Constitution has not been incorporated into domestic legislation, any person, whether Algerian or foreign, may invoke it before the courts.
62. The instruments in question are as follows:
- (a) International Covenant on Economic, Social and Cultural Rights, ratified by Decree No. 89-67 of 16 May 1989, published in Official Gazette No. 20 of 17 May 1989;
  - (b) International Covenant on Civil and Political Rights, ratified by Decree No. 89-67 of 16 May 1989, published in Official Gazette No. 20 of 17 May 1989;
  - (c) International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Decree No. 66-848 of 15 December 1966, published in Official Gazette No. 110 of 30 December 1966;

(d) International Convention on the Suppression and Punishment of the Crime of Apartheid, ratified by Decree No. 82-01 of 2 January 1982, published in Official Gazette No. 01 of 5 January 1982;

(e) Convention on the Elimination of All Forms of Discrimination against Women, ratified by Decree No. 96-52 of 22 January 1996, published in Official Gazette No. 6 of 24 January 1996;

(f) Convention against Discrimination in Education, ratified by Decree No. 68-581 of 15 October 1968, published in Official Gazette No. 87 of 29 October 1968;

(g) ILO Convention concerning Discrimination in Respect of Employment and Occupation, 1958 (No. 111), ratified by Decree No. 69-21 of 22 May 1969, published in Official Gazette No. 49 of 6 June 1969;

(h) International Convention against Apartheid in Sports, ratified by Decree No. 88-89 of 3 May 1988, published in Official Gazette No. 18 of 4 May 1988.

### **Jurisprudence**

63. It should be noted that the principle whereby international legal instruments ratified by Algeria take precedence over domestic law was upheld by the Constitutional Council on 20 August 1989 in its Decision No. 1-DL-CC-89 relating to electoral matters, which reads: “Considering that once they are ratified and published, all treaties become part of national law and, pursuant to article 123 of the Constitution, acquire greater force than laws, thereby allowing all Algerian citizens to invoke their provisions before the courts ...”.

### **Article 83. Right to an effective remedy**

64. Having ratified the International Covenant on Civil and Political Rights and its first Optional Protocol as well as the African Charter on Human and Peoples’ Rights of 27 June 1981, Algeria offers all its citizens and all persons under its jurisdiction the possibility of exercising the right to an effective remedy, in accordance with the procedures in force.

65. Current Algerian legislation systematically provides for remedies whenever a restriction limits the exercise of any right. This rule applies not only to court rulings but also to decisions taken by administrative authorities (in particular with regard to administrative detention), whose validity is assessed ultimately by the Council of State (as the highest administrative court).

66. These are legal remedies that the courts and administration must uphold, failing which they are liable to penalties.

67. They are clearly effective remedies for migrant workers and members of their families and are such as to guarantee their rights, excluding arbitrary treatment.

## **Article 84. Duty to implement the Convention**

68. In ratifying the Convention, Algeria undertook to implement the provisions of that instrument. The measures that were adopted before and after its ratification reflect Algeria's commitment to give full effect to the Convention.

### **B. Part III of the Convention: Human rights of all migrant workers and members of their families**

#### **1. Article 8. Right to leave any country, including one's own, and to return**

69. The response to article 8 is partly based on article 44 of the Algerian Constitution, which establishes the principle, and partly on the Code of Criminal Procedure, which lists applicable restrictions.

### **The Constitution**

70. Article 44 of the Algerian Constitution provides that: "Any citizen in possession of his civil and political rights shall be entitled freely to choose his place of residence and to travel within the national territory. He shall be guaranteed the right to enter and leave the national territory."

71. Under articles 44 and 67 of the Constitution, foreigners residing in the national territory, including migrant workers and members of their families, may exercise "the right to enter and leave the national territory" and to remain in their State of origin at any time, provided that they comply with the legislation and regulations of the host country, in particular with regard to entry and residence visas for Algeria (Ordinance No. 66-221 of 21 July on the status of foreigners in Algeria).

72. The right of asylum is a constitutional right, and no political refugee enjoying this right may be surrendered or extradited under any circumstances (art. 69). Extradition may only be effected pursuant to and in implementation of an extradition law (art. 68).

### **Code of Criminal Procedure**

73. Restrictions on "the right to enter and leave the national territory" may only be imposed by order of the legally competent authorities or by an investigating or trial judge, in accordance with the conditions laid down in the Code of Criminal Procedure.

74. Foreigners, including migrant workers, who satisfy the legal and regulatory requirements are free to leave the host country, unless they are barred from doing so by a decision taken by a legally competent authority or an investigating or trial judge. These are restrictions regulated by law, which may be imposed by either:

(a) The legally competent authority, such as the judicial police, in the case of a preliminary investigation which is launched in the presence of compelling and corroborated evidence against the accused, who may be placed in police custody for 48 hours if the exigencies

of the investigation so require. This period may be extended for a further 48 hours by the State Prosecutor. Moreover, since police custody is a measure that affects personal freedom, it must be monitored by the State prosecution authorities;

(b) Or an investigating body (such as an investigating judge or indictment chamber), which may place the accused, whether national or foreign, in pretrial detention or under court supervision. These are measures which the courts may employ for the purposes of ascertaining the truth. In any event, the application of these measures is attended by guarantees and is subject to strict legal conditions, besides affording the accused the right to present his defence and to have recourse to legal remedies;

(c) Or a trial court, hearing lesser, major or serious offences, which may impose a custodial sentence that, by definition, restricts freedom of movement. Custodial sentences are always subject to the principle of legality embodied in the Constitution (art. 140) and the Criminal Code (art. 1), since they may be imposed in respect of lesser or major offences (imprisonment) or serious offences (extended imprisonment). The trial court may impose an additional penalty if it is provided for in the bill of indictment.

#### **Ordinance No. 66-211 of 21 July 1966 on the situation of foreigners in Algeria**

75. Algerian legislation does not impose any specific restrictions on the rights of migrant workers and members of their families to leave the country freely. Under the above-mentioned ordinance, foreigners enjoy freedom of movement subject only to the condition that they must show the necessary residence documents.

(a) Article 1 of the ordinance states that: “Without prejudice to international treaties or reciprocity agreements, the conditions for the entry, movement and stay of foreigners in Algeria and their departure are regulated by the present ordinance.”

(b) Article 3 of the same ordinance states that: “Foreigners, with regard to their entry, departure or stay in Algeria, must complete various procedures. When departing they must be in possession of a valid travel document and visas and, as appropriate, administrative authorizations.”

(c) Article 4 of the ordinance states that: “In order to be admitted to Algerian territory, all foreigners must be in possession of a valid national passport or travel document (in the case of refugees and stateless persons) stamped with a consular visa, as well as a health card.”

(d) Article 6 of the ordinance states that: “The Ministry of the Interior may always deny a foreigner access to the national territory for reasons of public order.”

(e) Article 11 of the ordinance states that: “All foreigners wishing to establish their residence or to extend their stay in Algeria beyond the date indicated in their visa with a view to making it their habitual place of residence must be in possession of a residence card.”

76. Articles 18 and 19 of the ordinance state that: “Without prejudice to the provisions in force, non-resident foreigners may leave the national territory under the same conditions as those that allowed them to enter Algeria.”



77. In addition to the conditions set out in article 18 above, a foreign resident wishing to leave the national territory must be in possession of an exit visa issued by the prefecture of his place of residence. This exit visa, which is not applied in practice, will be definitively abolished under the new draft law on the situation of foreigners in Algeria.

78. Article 23 of the ordinance stipulates that: "Foreigners who enter the national territory in breach of articles 4 and 6 are liable to a term of between two and six months' imprisonment and/or a fine."

## **2. Articles 9 and 10. Right to life; prohibition of torture; prohibition of inhuman or degrading treatment**

### **(a) The right to life**

79. The answer to the question of the right to life of migrant workers and members of their family lies partly in the Constitution, which prohibits all acts causing bodily harm, partly in the Criminal Code, which punishes such acts, and partly in the international instruments which Algeria has ratified.

80. The international instruments which Algeria has ratified in this respect include:

- (a) The Universal Declaration of Human Rights;
- (b) The International Covenant on Civil and Political Rights;
- (c) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the Decree of 17 May 1989;
- (d) The African Charter on Human and Peoples' Rights, ratified by Decree No. 87-37 of 3 February 1987;
- (e) The Arab Charter on Human Rights, ratified by Presidential Decree No. 06-62 of 11 February 2006.

### **The Constitution**

81. The Constitution expressly lays down the principle of the right to protection from bodily harm in several of its provisions.

- (a) *Article 67*: "[...] any foreigner who is lawfully present in the national territory shall enjoy the protection of the law with respect to his person and property."
- (b) *Article 34*: "The State guarantees the inviolability of the human person."
- (c) "All forms of physical or mental violence or affronts to human dignity are prohibited."
- (d) *Article 35*: "All violations of rights and freedoms and all physical or mental violations of human integrity are punishable by law."

**(b) The prohibition of torture and inhuman or degrading treatment**

**The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

82. Algeria ratified this Convention on 16 May 1989 (Ratification Decree published in Official Gazette No. 20 of 17 May 1989). In accordance with article 19 of the Convention, Algeria submits periodic reports to the Committee against Torture.

83. On 17 May 1989, pursuant to articles 21 and 22 of the Convention, Algeria made a declaration recognizing the competence of the Committee against Torture to receive and examine communications by one State party against another, as well as those submitted by or on behalf of individuals.

**The Criminal Code**

84. Title II of the Criminal Code, “Crimes and offences against private individuals”, defines and punishes the crimes of intentional homicide (murder), intentional homicide with premeditation and malice aforethought (assassination), infanticide, poisoning and crimes and offences involving intentional assault and battery.

85. The penalties for those offences include the death sentence, life imprisonment, fixed-term rigorous imprisonment, or plain imprisonment in the case of an ordinary offence.

86. These penalties, within the framework of the protection of victims living in the territory, apply without exception, reservation or distinction of any kind, such as sex, race, colour, language, religion, conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

87. Following its ratification in 1989, practical steps were gradually introduced to implement the Convention against Torture, culminating in the reform of the justice system initiated in 1999. Thus criminal provisions punishing torture and cruel, inhuman or degrading treatment have now been incorporated into the Criminal Code.

88. All persons living in the territory enjoy the right to the protection of the law, regardless of whether they are nationals or foreigners (such as migrant workers and members of their family), even if they are in an irregular situation. This is in conformity with article 5 of the Civil Code, which expressly stipulates that: “All law enforcement rules are binding on all persons who reside in the territory.”

89. Under Act No. 04-15 of 10 November 2004, three articles were added to the Criminal Code in order to enable implementation of the constitutional provisions contained in articles 34 and 35.

90. These three articles are 263 bis, 263 ter and 263 quater, which prescribe very severe penalties (5 to 10 years’ fixed-term rigorous imprisonment plus a fine) for perpetrators of acts of torture. These penalties are increased if the perpetrators are public officials (from 10 to 20 years’

fixed-term rigorous imprisonment and a fine) or if the acts of torture are preceded, accompanied or followed by a serious offence other than murder (from 10 to 20 years' fixed-term rigorous imprisonment and life imprisonment).

91. The Criminal Code (art. 263 quater, para. 3) goes so far as to define as a serious offence the failure of public officials to report acts of torture, which is punishable by a penalty of between 5 and 10 years' fixed-term rigorous imprisonment and a fine. Article 293 of Ordinance No. 66-156, amended by Act No. 06-22 of 20 December 2006, inflicts rigorous imprisonment for life on any person who subjects another person who has been abducted, arrested, detained or sequestered to physical torture.

92. As a preventive measure, new rules have been introduced in the Code of Criminal Procedure, referring specifically to preliminary investigations conducted by the judicial police, with the aim of providing mechanisms to ensure the humane treatment of persons held in police custody and to monitor the use of such procedures (through medical examinations of detainees by decision of the public prosecutor or at the request of their family or legal counsel, and monitoring of the manner in which the police custody is conducted).

93. A medical examination is mandatory at the conclusion of the period of police custody (articles 51 bis, paragraph 1, subparagraph 2, and 52, subparagraph 6, of the Code of Criminal Procedure).

### **3. Article 11. Prohibition of slavery and forced labour**

94. After being subjected for several decades to a policy of denial of rights, erosion of culture, expropriation and exploitation, the Algerian people have decided that the time has come to make a change.

95. The resolve to abolish those feudal practices is reflected in the Constitutions of 1963, 1976 and 1996.

96. The new commitment is expressed in the current Constitution, which lays down the principle of "ending exploitation of man by man" and prohibits "feudal, regionalist and nepotistic practices ..." (arts. 8 and 9).

97. This has led to the ratification by Algeria, as soon as it gained independence, of a number of international legal instruments. Such instruments include:

(a) ILO Convention concerning Forced or Compulsory Labour, 1930 (No. 29), ratified by Algeria on 19 October 1962;

(b) 1926 Slavery Convention, amended by the Protocol of 7 September 1953 and ratified by Decree No. 63-340 of 11 September 1963;

(c) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, ratified by Decree No. 63-340 of 11 September 1963;

(d) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, ratified by Decree No. 63-341 of 11 September 1963;

(e) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;

(f) ILO Convention concerning the Abolition of Forced Labour, 1957 (No. 105).

98. Responding to the needs of globalization, Algeria is currently undertaking a profound reform of its judicial system. The goal of this reform is primarily to align Algeria's legislation with the international legal instruments it has ratified, particularly through amendments to the Criminal Code. Such amendments are aimed at supplementing existing legal safeguards with provisions that are in line with the spirit of these new instruments.

#### **4. Articles 12, 13 and 26**

99. The rights referred to in articles 12, 13 and 26 of the Convention are laid down in the Constitution, the legislation and the international legal instruments ratified by Algeria.

##### **(a) Freedom of thought, conscience and religion**

###### **The Constitution**

100. The Constitution establishes the inviolability of freedom of conscience and that of freedom of opinion (art. 36).

###### **Conventions ratified by Algeria**

- International Covenant on Civil and Political Rights
- Convention on the Rights of the Child, in particular article 4

###### **Ordinance No. 06-03 of 28 February 2006 on conditions governing the practice of faiths other than Islam**

101. This legislative text, which reinforces the constitutional principle mentioned above, reflects the genuine will of the public authorities to recognize all revealed religions, thereby demonstrating tolerance and respect.

102. Thus the text guarantees "freedom of religious practice consistent with respect for the provisions of the Constitution, the present Ordinance, the laws and regulations currently in force, public order, good morals and the fundamental rights and freedoms of third parties" as well as "tolerance and respect between the different religions" and "State protection" for associations of religions other than Islam (arts. 2 and 3).

103. Furthermore, it "prohibits the use of religious affiliation as a justification for discrimination towards any individual or group of individuals" (art. 4).

104. The ordinance is equally applicable to nationals and foreigners - irrespective of their religion - who must comply with it or risk incurring the sanctions prescribed by law.

### **The Criminal Code**

105. The Criminal Code defines and punishes with imprisonment and a fine “any defamation of one or more members of an ethnic or philosophical group or specific religion which is aimed at stirring up hatred between citizens or inhabitants” (art. 298, para. 2).

106. It also describes and punishes with imprisonment and a fine “any insult levelled at one or more members of an ethnic or philosophical group or specific religion which is aimed at stirring up hatred between citizens or inhabitants” (art. 298 bis).

### **(b) Freedom of opinion and expression**

107. The right to freedom of opinion and expression is laid down in articles 32, 36 and 38 of the Constitution, based on the International Covenant on Civil and Political Rights, which has been ratified by Algeria.

### **The Constitution**

108. The Constitution guarantees the exercise of fundamental rights and freedoms of the human being and the citizen, the inviolability of the freedoms of conscience and opinion, as well as the freedom of intellectual, artistic and scientific creativity, and intellectual property rights.

(a) *Article 32*: “The fundamental rights and freedoms of the human being and the citizen are guaranteed. They represent the shared heritage of all Algerian men and women, whose duty it is to transmit them intact and inviolate from one generation to the next.”

(b) *Article 36*: “Freedom of conscience and freedom of opinion are inviolable.”

(c) *Article 38*: “All citizens are guaranteed freedom of artistic, scientific and intellectual creativity. Intellectual property rights are protected by law. The seizure of any publication, recording or any other means of communication and information must be subject to the issue of a court warrant.”

### **(c) The right to organize**

109. Act No. 90-14 of 2 June 1990, as amended and supplemented, on the exercise of the right to organize, covers all rights, protections and facilities allowed in that respect. For instance, article 6 of the Act includes Algerian nationality as one of the preconditions required of persons seeking to establish a trade union organization.

110. In the absence of any explicit provision concerning support for or participation in trade union activities, the provisions concerning the fundamental rights of workers (exercise of the right to organize) contained in article 5 of Act No. 90-11, as amended and supplemented on 21 April 1990, may be used as reference when deciding what facilities may be granted to foreign workers, within the framework of the future labour code.

111. In practice, there has been no known case of any involvement by a foreign worker in trade union activities in Algeria. This does not mean, however, that the rights of employed foreign workers are not protected and that they cannot call on union representatives to help them defend their rights against an employer.

**(d) Participation in meetings and activities of any other associations**

112. With regard to participation in meetings and activities of any other associations, according to article 43 of the Constitution of 28 November 1996: “The right to found associations is guaranteed. The State encourages the development of the associative movement” (article 26 of the Convention).

113. Act No. 90-31 of 4 December 1990 on associations sets out the conditions and formalities required for setting up associations in the following terms:

(a) *Article 40*: “Subject to the nationality condition, the rules governing the creation and operation of foreign associations shall be those set out in this Act. The creation of any foreign association shall be subject to the prior approval of the Ministry of the Interior.”

(b) *Article 42*: “Only persons in a regular situation with respect to current legislation on the residence of foreigners in Algeria may form or belong to an association.”

**5. Articles 14 and 15. Prohibition of arbitrary or unlawful interference with privacy, family, home, correspondence and other communications; prohibition of arbitrary deprivation of property**

114. According to articles 39 and 40 of the Algerian Constitution: “The home, private and family life, secrecy of correspondence and communication shall be inviolable, except under judicial supervision and within the limits established by law.”

**(a) Protection of privacy**

115. References to the protection of privacy may be found in the Constitution, the Criminal Code and the Code of Criminal Procedure.

**The Constitution**

116. The Constitution expressly guarantees the principle of the inviolability of “the private life and honour of the citizen”, “the secrecy of private correspondence and communication, in any form” and the “home” (arts. 39 and 40).

117. Article 39 further provides that: “The private life and honour of the citizen shall be inviolable and protected by law. The secrecy of private correspondence and communication, in any form, shall be guaranteed.”

118. According to article 40: “The State guarantees the inviolability of the home. No home searches may be allowed except by virtue of and in compliance with the law. Searches must be subject to a search warrant issued by the competent judicial authority.”

119. Lastly, article 63 states that: “All individual liberties are enjoyed subject to respect for the rights of others recognized by the Constitution, in particular, respect for the right to honour, privacy and the protection of the family, youth and childhood.”

### **The Criminal Code**

120. The principles enshrined in the Constitution and in the Covenant on Civil and Political Rights are reflected in the Criminal Code and the Code of Criminal Procedure.

121. Thus sections 4 and 5 of Title II entitled “Crimes and offences against private persons” deal respectively with violations of individual liberty, of the inviolability of the home, of honour and of consideration for others, as well as violations and infringements of various forms of secrecy (including professional secrecy and the secrecy of correspondence).

122. The Criminal Code imposes penalties of imprisonment and/or fines for:

- (a) Violations of privacy and honour by defamation, insult or malicious accusation (arts. 296, 299 and 300);
- (b) Violation of the home committed by law enforcement agents or officials (aggravated penalties) or by private individuals (arts. 135 and 295);
- (c) Violation of the secrecy of correspondence (arts. 303, 303 bis, 303 bis 1, 303 bis 2 and 137);
- (d) Violation of professional secrecy (art. 301).

### **Code of Criminal Procedure**

123. The inviolability of the home is also enforced through strict rules governing house searches; the Constitution stipulates that these are allowed only “by virtue of and in compliance with the law” and “subject to a search warrant issued by the competent judicial authority”.

124. The rules governing house searches and inspections are all contained in the Code of Criminal Procedure (arts. 44 to 47, 64 and 79 and following). House searches are governed by rules and formalities, the breach of which can give rise to penalties of imprisonment and fines, and even to fixed-term imprisonment (articles 107 and 135 of the Criminal Code).

### **(b) The right to property**

125. Article 52 of the Constitution states that “the right to property is guaranteed”, while article 20 adds that “expropriation is allowed only in the public interest against fair, prior compensation”.

### **The Constitution**

126. Article 52 of the Constitution provides that “private property is guaranteed”. In article 20 the Constitution insists that any expropriation must be lawful and must give rise to prior, just and equitable compensation.

127. These two principles are reflected in the terms of Act No. 91-11 of 27 April 1991, which lays down the rules for expropriation in the public interest.

**Act No. 91-11 of 27 April 1991 on rules of expropriation in the public interest**

128. This Act, which was published in Official Gazette No. 21 of 8 May 1991, lays down rules governing expropriation in the public interest and details the relevant procedures. According to the Act, expropriation in the public interest:

(a) Must constitute an exceptional means of acquiring goods or property rights;

(b) Is enforceable only if all other solutions have failed;

(c) Must follow a specific, formal procedure (with an official declaration that it is in the public interest, an evaluation of the goods and property to be expropriated, and an administrative deed of transferability, which must include an indication and prior deposit of the amount of the compensation). Failing a friendly agreement with the administration regarding the offer of compensation, the owner may bring the matter before a court.

129. According to the Act, any expropriation enforced outside the permitted cases and conditions will be held null and void and constitutes abuse, which, in addition to other penalties under the law, may give rise to a court order of compensation.

**The Criminal Code**

130. Article 386 of the Code imposes a penalty of imprisonment and a fine on “any person who dispossesses another of immovable property”.

131. This penalty is aggravated if the dispossession takes place either at night, or with threats and violence, or through climbing or breaking in, or is carried out by several persons, or if one or more of the perpetrators is carrying a visible or hidden weapon.

**6. Articles 16 (paras. 1 to 4), 17 and 24**

**(a) Right to liberty and security of person; safeguards against arbitrary arrest and detention**

132. The right to liberty and security where migrant workers are concerned is covered by the Constitution and the Criminal Code.

**The Constitution**

133. The rights attributed to migrant workers and members of their families are the same as those granted to Algerian citizens under the Constitution and protected by law.

134. Thus the rights to liberty, to personal safety, to the security of personal property, to protection against all arbitrary or illegal threats, arrest and detention are covered by the constitutional right to compensation and the right to a fair trial within a reasonable delay. The



Constitution also establishes the need to comply with the laws governing extradition and political asylum (articles 68 and 69 of the Constitution) and recognizes the principle of compensation in the event of a miscarriage of justice.

135. Arbitrary arrest and detention, which constitute violations of personal liberty punishable under the Criminal Code, entail very heavy penalties for the perpetrators.

### **The Criminal Code**

136. Algerian law provides mechanisms dealing with all infringements of the liberty and security of persons and property, without distinction.

137. The protection provided under the Criminal Code clearly extends to foreigners, including migrant workers and members of their families. This protection extends to violations of personal liberty (arts. 107 to 111), abuse of authority (arts. 135 to 140), crimes and offences against persons (arts. 254 to 303) and crimes and offences against property (arts. 350 to 417).

### **(b) Conditions of detention and imprisonment**

138. Foreigners lawfully imprisoned by virtue of a court order or decision handed by a tribunal are entitled to receive the visit of the consular representative of their State of origin (consular agent).

139. They are also allowed the right to correspond with the consular representatives of their countries.

140. Visiting and correspondence rights are allowed under articles 71 and 75 of the Code of the organization of prisons and the social reintegration of detainees.

### **The Code of the organization of prisons and the social reintegration of detainees**

141. According to the prison system of Algeria (as host or transit country), the treatment of persons deprived of their liberty follows the same rules whether they are nationals or foreigners, migrant workers or others. Thus “the treatment of detainees shall be such as to preserve their human dignity and to ensure the steady improvement of their intellectual and moral standards without distinction such as race, sex, language, religion or opinion”.

142. This general principle, which applies to all detainees, whether national or foreign, whether at the pretrial stage, that is, prior to judgement, or convicted and sentenced to deprivation of liberty, is enshrined in article 2 of Act No. 05-04 of 6 February 2005 governing the Code of the organization of prisons and the social reintegration of detainees.

143. It is worth drawing attention to the classification of detention establishments. Under the above-mentioned code, these establishments are divided into:

(a) Remand establishments (*établissements de prévention*) “intended either for persons on pretrial detention or for those convicted and sentenced to deprivation of liberty for two years or less or whose remaining period of detention is two years or less”;

(b) Re-education establishments (*établissements de rééducation*) “intended for persons on pretrial detention or for those convicted and sentenced to deprivation of liberty for five years or less or whose remaining period of detention is less than five years”;

(c) Readaptation establishments (*établissements de réadaptation*) “intended for persons convicted and sentenced to imprisonment for periods exceeding five years, those sentenced to rigorous imprisonment, dangerous recidivists regardless of the length of their sentence and those sentenced to death”;

(d) Specialized centres for women “intended for women on pretrial detention and for those convicted and sentenced to deprivation of liberty regardless of the length of their sentence”;

(e) Specialized centres for minors “intended for minors under the age of 18 on pretrial detention or convicted and sentenced to deprivation of liberty regardless of the length of their sentence”.

144. Remand and re-education establishments are equipped with separate quarters for minors and women on pretrial detention or convicted and sentenced to deprivation of liberty regardless of the length of their sentence. This classification of prison establishments and specialized centres reflects the intention in Algerian law to avoid promiscuity among different categories of detainees by setting apart pretrial detainees, detained minors and women, long-serving prisoners and dangerous detainees. These distinctions apply to national detainees and, if appropriate, to any migrant workers and members of their families residing within the host or transit country and held on pretrial detention or sentenced to imprisonment.

145. Visiting rights for migrant workers and members of their families are also covered by the Code of the organization of prisons and the social reintegration of detainees. Visiting permits are issued either by the prosecuting judge in the case of pretrial detainees, by the competent prosecution department in the case of detainees who have lodged an appeal or appeal for review, and by the competent services of the Ministry of Justice for those sentenced to imprisonment.

146. Migrant workers and members of their families, regardless of the reason for their conviction, are naturally entitled to receive visits from ascendants, descendants to the fourth degree, spouses and relatives in law to the third degree, as well as the visits of other persons (such as lawyers or guardians) and the representatives of humanitarian and charitable associations.

147. If the migrant worker has been deprived of liberty by a judicial authority, family members will receive full assistance from the competent magistrates, especially with regard to communication (such as visiting rooms in prisons and letters).

148. Detention costs for migrant workers, as for nationals deprived of liberty, are paid for by the Public Treasury. Such costs include expenses arising for the detainees’ food and health care. The rules applied to such detainees (whether pretrial, charged or convicted) are the same for nationals and for foreigners. There is no discrimination. Foreigners are entitled in addition to seek assistance from their diplomatic or consular representatives in Algeria.

**(c) Right to recognition as a person before the law**

149. Recognition as a person before the law is guaranteed by the Constitution and by the Civil Code.

**The Constitution**

150. Article 67 establishes that: “Any foreigner who is lawfully present in the national territory shall enjoy the protection of the law with respect to his person and property.” Pursuant to that article, any foreigner within the national territory, whether migrant worker or other, enjoys the same rights under domestic law as Algerian nationals.

**The Civil Code**

151. The Civil Code contains provisions concerning legal capacity and the human rights enjoyed by individuals from birth to death, such as the right to register births and deaths in the civil registries of the host country, the right to a patronymic, the right to a domicile, the right to nationality, etc.

152. For access to civil justice, foreigners, including migrant workers, used to have to pay a deposit, known as *judicatum solvi*, which was intended to cover the costs of legal proceedings and other related expenses incurred by the foreigners. The payment of this deposit has been abolished, however, in the amended codes of civil and administrative procedure.

153. The relevant provisions are contained in the Civil Code, the Code of Civil Procedure, the Civil Status Code and the Nationality Code.

**7. Articles 16 (paras. 5 to 9), 18 and 19. Right to procedural guarantees**

154. The provisions of article 16, paragraph 5, are reflected in the Code of Criminal Procedure, as follows:

(a) *Article 91*: “The investigating judge may be assisted by an interpreter, without his registrar or witnesses. Any interpreter who is not sworn in must take the following oath: ‘I hereby swear and promise to give a faithful rendering of whatever is said or exchanged by persons speaking in different languages or tongues.’”

(b) *Article 92*: “In the case of witnesses who are deaf and dumb, questions and replies shall be in writing. If they are unable to write, the investigating judge must automatically appoint an interpreter who is able to converse with them. The court minutes must mention the name, first name, age, profession, place of residence and oath of the interpreter, who must sign the minutes.”

**Police custody rules**

155. The rules in the Code of Criminal Procedure governing police custody (art. 16, para. 6) are strictly observed with regard to both nationals and foreigners. The following specific rules protect any person held in police custody:

(a) A limit on police custody of 48 hours, unless extended by written authorization of the territorially competent Public Prosecutor or for longer periods in certain cases; any judicial police officer violating the rules governing police custody incurs the same penalties as for arbitrary detention;

(b) The right to enter into contact with a family member and/or a diplomatic or consular representative in the case of foreigners, and the right to receive visits;

(c) The automatic right to be examined, at the person's request or that of his lawyer or family, by a doctor of his own choosing at the end of the period of police custody.

156. Act No. 01-08 of 26 June 2001 introduced new regulations concerning police custody by adding the notion of "human dignity". Thus according to article 52, paragraph 4: "Police custody must take place in premises consistent with human dignity and intended for that purpose."

157. Such premises must be open to inspection by the Public Prosecutor at any time.

### **The obligation to inform diplomatic or consular authorities without delay**

158. The provisions of article 16, paragraph 7, are based on the Vienna Convention on Consular Relations, which was ratified by Algeria in 1964.

### **Vienna Convention on Consular Relations**

159. This Convention, which was ratified by Algeria in Decree No. 64-85 of 4 March 1964, provides for mechanisms to facilitate communication between consular officers of the sending State and the competent local or central authorities of the receiving State, who must inform the consular authorities of the sending State if a national of that State is arrested or committed to prison or detained in any other manner (such as custody or detention pending trial) or sentenced to deprivation of liberty. Consular officers have the right to visit a national of their State wherever that person may be.

160. In the absence of any bilateral consular agreement, communication and contact with a national by the diplomatic representatives of his State of origin must take place through the Ministry of Foreign Affairs. The same rule applies to contacts with the central and local authorities of the receiving State.

### **The right to take proceedings before a court**

161. Migrant workers and members of their families who have been "arrested" or "detained" have the right to take proceedings before a court (art. 16, para. 8). At the time of the preliminary investigation, the prosecution judges must be informed of any arrest and must check all measures taken by judicial police officers conducting the investigation (such as searches, house visits, seizures or police custody).

162. If a case concerning migrant workers and members of their families leads to persons being detained on the basis of an arrest warrant or detention order, or if the persons are sentenced to

deprivation of liberty, they may lodge a request for provisional release with a competent judicial authority (such as the indictment chamber, the trial court concerned, or in some cases the Supreme Court).

163. The relevant rules of the Code of Criminal Procedure apply equally to nationals and to foreigners.

### **The right to compensation**

164. The right to compensation of migrant workers and members of their families who have been victims of unlawful arrest or detention (article 16, paragraph 9 of the Convention) is guaranteed under the Constitution and the Code of Criminal Procedure.

### **The Constitution**

165. Article 49 of the Constitution establishes that “miscarriage of justice shall lead to compensation by the State. The conditions and modes of compensation shall be determined by law”.

### **The Code of Criminal Procedure**

166. The amendments introduced in the Code of Criminal Procedure by Act No. 01-08 of 26 June 2001 establish a right to compensation in the event of unjustified pretrial detention leading to a dismissal of proceedings, discharge or final acquittal (arts. 137 bis to 137 bis 14), or in the event of the mistaken conviction of a person whose innocence is subsequently established (arts. 531 bis and 531 bis 1).

### **The right to non-discrimination in judicial proceedings**

167. Article 18 covers practically all the basic principles relating to courts and tribunals, particularly in criminal proceedings. These principles are reflected in the Constitution, the Covenant on Civil and Political Rights, to which Algeria has acceded, the Code of Criminal Procedure and the Criminal Code.

### **The Constitution**

168. The Constitution devotes two chapters to this matter, one entitled “Rights and Liberties” (arts. 29 to 59), and the other entitled “The Judiciary” (arts. 138 to 158).

169. The constitutional principles contained in these two chapters apply to all persons subject to the law, regardless of their nationality or origin and regardless of their status or activity on Algerian territory.

170. These principles include:

- (a) Equality before the law without discrimination;
- (b) The guarantee of human rights and fundamental liberties;

- (c) The right to be presumed innocent until proven guilty by a regularly constituted court with all the safeguards of due process;
- (d) The need for lawful offences and penalties, with no laws having retroactive effect, unless it be to the advantage of the accused person (softer law);
- (e) The need for lawful prosecutions, arrests and detentions;
- (f) Independence of the judiciary;
- (g) Protection of society and liberties and the defence of fundamental rights by the judiciary;
- (h) Judges subject only to the law;
- (i) Recognition of the right of defence guaranteed in criminal proceedings.

171. The right of defence of migrant workers and members of their families who are subject to prosecution is guaranteed and every person, whether national or migrant, who is guilty of an offence is entitled to be assisted by counsel. If necessary defence lawyers may be appointed ex officio by the court.

172. The cost of proceedings or having a lawyer appointed by the court is borne by the legal aid system.

### **The Criminal Code and the Code of Criminal Procedure**

173. The same principles are applied in detail in the Criminal Code and the Code of Criminal Procedure at all stages of the proceedings in the course of which a person is prosecuted for a breach in the criminal law (preliminary investigation, judicial inquiry, judgement, application to set aside a judgement, appeal and appeal in cassation, special procedure in the event of a judicial error, compensation in the event of pretrial detention leading to dismissal of the case, discharge or acquittal).

### **Non-retroactivity of criminal legislation**

174. The provisions of article 19 are reflected in articles 46 and 47 of the Constitution and in the Criminal Code.

### **The 1996 Constitution**

175. Articles 46 and 47 of the Constitution establish that: “No person shall be held guilty except on account of a law duly promulgated prior to the incriminated act.”

176. This principle is confirmed in articles 1, 2 and 53 of the Criminal Code.

### **The Criminal Code**

177. “Article 1: There can be no offence, penalty or protective measure outside the law.”

178. “Article 2: A criminal law shall not have retroactive effect, save where it prescribes a lighter penalty.”

179. These provisions apply to all persons prosecuted for offences committed within the territory of the Republic in the broadest sense (including ships under the Algerian flag, Algerian aircraft, etc.).

180. With regard to humanitarian considerations related to the status of a migrant worker referred to in article 19, paragraph 2, of the Convention, the Criminal Code (under article 53) allows the court passing judgement to pass a lighter sentence on migrant workers or members of their families for offences for which they are charged, particularly to take account of the fact that they are far removed from their normal environment (family atmosphere, traditions, etc.).

**8. Article 20. Prohibition of imprisonment, deprivation of authorization of residence and/or work permit and expulsion merely on the ground of failure to fulfil a contractual obligation**

181. There is no such penalty under Algerian law because the failure to fulfil a contractual obligation is dealt with according to the Algerian Civil Code and gives rise to the payment of compensation or damages.

182. This provision, which appears in the International Covenant on Civil and Political Rights, is covered in the Code of Civil and Administrative Procedure, as recently amended and supplemented.

**The Code of Civil Procedure**

183. The new Code of Civil and Administrative Procedure has abolished enforcement by committal in contractual obligations.

**Jurisprudence**

184. The Supreme Court has opted to abolish enforcement by committal in contractual obligations by founding its jurisprudence on article 11 of the Covenant on Civil and Political Rights.

185. Thus in a decision of 30 June 2004 (C.S. Ch. Civ. No. 326511), the Supreme Court considered abolishing enforcement by committal at a time when that penalty still applied in the Code of Civil Procedure (art. 407 and following) on the following grounds:

(a) “Considering that according to article 11 of the above-mentioned Covenant (the Covenant on Civil and Political Rights), published in Official Gazette No. 11 of 20 February 1997, no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation [...];

(b) That the penalty of enforcement by committal cannot be applied to ensure fulfilment of a contractual obligation;

(c) That it appears from the facts of the case, according to the case file, that the obligation to be fulfilled is a contract of credit;

(d) That the application of enforcement by committal in that case is considered as a wrong interpretation of article 11, which submits the decision to cassation.”

186. This is therefore a principle which must be strictly enforced by trial judges, especially since it has been confirmed by the Algerian legislator in the new Code of Civil and Administrative Procedure.

187. With regard to article 20, paragraph 2, the withdrawal of a work permit depends on the administration but may be applied only for reasons other than failure to fulfil a contractual obligation towards an employer.

188. Those reasons are given in article 14 of the above-mentioned Act No. 81-10 of 11 July 1981:

(a) Whenever the migrant worker produces incorrect information or documents;

(b) Whenever the migrant worker breaches the rules governing qualification, job vacancy or health requirements.

189. The work permit must be handed in, however, when the working contract is ended; this shows that it is an official document, which may be withdrawn only in the cases referred to in article 14 of the above-mentioned Act of 21 July 1981.

**9. Articles 21, 22 and 23. Protection from confiscation and/or destruction of identity and other documents; protection against collective expulsion; right to have recourse to consular or diplomatic protection**

190. Any foreigner entering Algeria legally enjoys protection as necessary provided that he has not breached the provisions of Ordinance No. 66-211 of 21 July 1966 on the conditions of entry, residence and establishment of foreigners in Algeria.

191. Any residential permit or entry visa obtained on the basis of false statements may be cancelled by the issuing authority.

**Protection from confiscation and/or destruction of identity and other documents**

192. Article 21 of the Convention deals with two different cases.

**(a) The confiscation of identity documents, documents authorizing entry to or stay, residence or establishment in the national territory, and work permits**

193. Under the rules of the Code of Criminal Procedure, the paper or document held by an accused person may be impounded by the court, that is, seized in accordance with the law, either by judicial police officers at the preliminary investigation stage, or by the investigating judge in



the case of a judicial inquiry. This may be either because the paper or document is flawed in some way, or because it provides a means of ensuring that the accused person concerned is represented in the course of legal proceedings.

194. Once the preliminary investigation or judicial inquiry have been completed, the confiscation of the paper or document becomes an additional penalty, which only competent criminal courts may order, if expressly authorized by law and in that case only, subsidiarily to a main sentence of imprisonment or severe imprisonment.

195. Reference may be made to the provisions of the Code of Criminal Procedure (for example, to articles 18 (2), 45 (4) and (5), 64 and 84) and the Criminal Code (arts. 4, 9, 15 and 16).

**(b) The destruction or attempted destruction of such documents, including travel documents**

196. Article 409 of the Criminal Code imposes a penalty of severe imprisonment of 5 to 10 years on any person who deliberately burns or destroys, in any manner whatsoever [...] original documents of the public authority.

197. The expression “original documents of the public authority” (national or foreign) covers all types of documents issued by the public authority (such as identity documents, documents authorizing entry to or stay, residence or establishment in the national territory, work permits and travel documents).

**Protection against collective expulsion: Ordinance No. 66-211 of 21 July 1966 on the situation of foreigners in Algeria**

198. According to article 20 of the ordinance, the expulsion of a foreigner from the national territory must be ordered by the Minister for the Interior. This may occur in the following cases:

(a) If the administrative authorities consider that the foreigner’s presence in Algeria constitutes a threat to public order;

(b) If he has received a final sentence that includes a penalty of imprisonment for an offence or misdemeanour;

(c) If he has not left the national territory within the prescribed time allowed under article 12, unless he can demonstrate that his delayed departure is due to a case of force majeure.

199. According to article 21 of the ordinance, the expulsion order must be notified to the person concerned. According to paragraph 2 of that article, the expelled foreigner, depending on the seriousness of his offence, is allowed between 48 hours and 15 days starting from the time he has been notified of the expulsion order to leave the national territory.

200. According to article 22 of the ordinance, a foreigner under expulsion order who can show that he is unable to leave the national territory may be assigned to a fixed residence, by order of the Minister for the Interior, until such time as he is able to comply with the order.

201. According to article 30 of the ordinance, any foreigner avoiding the implementation of an expulsion order or who, once expelled from the national territory, re-enters without authorization, is liable to a prison sentence of between six months and two years, unless he is able to show that he is unable to return to his country of origin or go to any other country.

202. It is worth noting, moreover, that in the drafting of the provisions of articles 20, 21, 22 and 30 of the above-mentioned ordinance, the Algerian legislator used the singular rather than the plural:

- (a) The expulsion of “a foreigner” from the national territory (art. 20);
- (b) The expulsion order must be notified to “the person concerned” (art. 21);
- (c) “A foreigner under expulsion order” (art. 22).

203. According to these provisions, a measure of expulsion cannot be collective.

### **Right to have recourse to consular or diplomatic protection**

204. The new draft law on foreigners guarantees the protection of foreigners’ rights, particularly some categories of foreigners (such as a foreigner who is the father or mother of an Algerian child residing in Algeria, a foreign minor, a pregnant woman, a foreigner who has been married for two years at least with an Algerian man or woman, a foreign orphan who is a minor, a foreigner holding a 10-year residence permit, a foreigner showing that he was habitually resident in Algeria and is living with his resident parents) against measures of expulsion or violations of their fundamental rights in accordance with the Vienna Convention on Consular Relations, to which Algeria is a party.

205. It is also stipulated that any foreigner who is subject to a deportation order may contact his or her diplomatic or consular representation and if necessary be assisted by a lawyer and/or an interpreter.

### **10. Articles 25, 27 and 28. Principle of equality of treatment in respect of remuneration and other conditions of work and employment; social security; and the right to receive urgent medical care**

206. Act No. 90-11, as amended and supplemented, of 21 April 1990, in conjunction with the laws on foreign wage-earners (Decree No. 86-276 of 11 November 1986 on the conditions of recruitment of foreign personnel in State services, public bodies, organizations and public enterprises), establishes the principle of equality of treatment, particularly as regards remuneration, conditions of access to employment and working conditions.

### **Rules regarding health care**

207. According to article 6 of the law on Social Security: “All persons, regardless of nationality, employed within the national territory, whether salaried or working, for whatever reason and in

whatever place, for one or more employers, regardless of the amount or nature of their remuneration, and the form, nature or validity of their employment contract or relation, must be affiliated to the social insurance schemes.”

208. This means that all socially insured persons regularly established in Algeria and fulfilling the current legal and regulatory conditions as regards social security must enjoy all benefits in cash or kind allowed under the social security scheme without any discrimination.

209. The law allows migrants deprived of the right to a given regulatory benefit to be refunded the amount of subscriptions paid for that benefit (Decree No. 86-276, art. 16, para. 2).

210. The national health system establishes equal rights to health and equal access for individuals and families, without distinction, to all health facilities in order to receive appropriate emergency treatment and essential preventive and curative care, as well as treatment for migrant workers and members of their families, regardless of their situation with respect to residence or employment, on an equal footing with Algerian nationals.

211. These measures are legally founded in general, consistent and unified terms on Act No. 85-05 of 16 February 1985 on health protection and promotion.

212. Occupational health protection for all workers is a right enshrined in the Constitution, which has gradually been incorporated within national public health policy under Act No. 85-05 of 16 February 1985 on health promotion and protection.

213. Act No. 88-07 of 26 January 1988 relating to occupational health, safety and medicine establishes that “occupational medicine is the responsibility of the employing organization” and sets out general rules relating to occupational health, safety and medicine, training and information, the organization of prevention and the monitoring of activities.

214. Occupational health activities mainly cover the maintenance and promotion of workers’ health and their aptitude for work, as well as the improvement of working conditions and a working environment such as to ensure health and safety in the workplace.

215. Thus the provisions regarding health protection contained in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in particular articles 28, 43, 45 and 70, are covered by current Algerian legislation and regulations.

## **11. Articles 29, 30 and 31**

### **(a) Right of a child of a migrant worker to a name, to registration of birth and to a nationality**

216. The right of a child of a migrant worker to a name, to registration of birth and to a nationality is guaranteed under the Civil Code.

## **The Civil Code**

217. The Civil Code contains provisions concerning the legal capacity and the human rights of the individual from birth to death, in particular the right to register a birth or a death in the civil registries of the host country, the right to a family name, the right to a residence, the right to a nationality, etc.

### **Ordinance No. 70-86 of 15 December 1970 on the Algerian nationality code, as amended and supplemented by Ordinance No. 05-01 of 27 February 2005**

218. *Article 9:* Any child born in Algeria of an Algerian mother and a foreign father born outside Algerian territory may acquire Algerian nationality, if, in the course of the 12 months preceding his coming of age, he states a wish to acquire that nationality and if, at the time of that statement, he is habitually and regularly resident in Algeria, unless there is opposition by the Minister of Justice.

#### **(b) Access to education on the basis of equality of treatment**

219. The children of migrant workers of school age may be admitted to our educational establishments on an equal footing with nationals provided that they are able to follow the lessons given there in the Arabic language (article 8 of Ordinance No. 76-35 of 16 April 1976 on the organization of education and training in Algeria, abrogated by Act No. 08-04 of 23 January 2008). They may also be admitted to private educational establishments.

#### **(c) Respect for the cultural identity of migrant workers and members of their families**

220. In principle, migrant workers are entitled to preserve their cultural identity and to maintain their cultural links with their country of origin, provided that they respect the public order of the host country.

221. In some cases Algerian law clarifies certain situations by “codifying” certain practices, such as religious practices, such “codification” being understood rather as an affirmation and recognition of the specific characteristics arising from cultural identity and the legal and free exercise of related rights. One such case is the Ordinance of April 2006 on non-Islamic religious practices.

222. Respect for cultural identity is ensured by bilateral cultural cooperation agreements, which include the holding of cultural weeks featuring exhibitions, talks or film shows and which help maintain cultural links with the countries of origin.

223. Algeria is particularly keen to maintain cultural links with Algerian nationals living abroad and its policy aims to conclude bilateral agreements with countries hosting Algerian communities.

224. The annual budget devoted to the dissemination of Algerian culture abroad has risen by more than 150 per cent in recent years, whence the increasing number of cultural programmes

laid on for the Algerian community abroad and the establishment of institutions in charge of implementing this policy, such as the Algerian Cultural Promotion Agency and the Algerian National Film Centre.

225. Thus Executive Decree No. 05-447 of 20 November 2005, in article 4, states that with regard to the implementation of the national policy to promote and disseminate the national culture, the Agency's mission, in coordination with approved institutions, is to plan and organize Algerian cultural activities abroad and to help promote Algerian culture through its opinions, recommendations and other means. In this respect, it is responsible for:

- (a) Supporting Algerian artistic and cultural creativity abroad by all possible means and using all available media, emphasizing in particular the non-material cultural heritage and traditional craftsmanship;
- (b) Monitoring the activities of Algerian cultural centres abroad in coordination with approved institutions;
- (c) Maintaining regular contacts with similar foreign cultural institutions through the approved institutions;
- (d) Exchanging cultural experiences and consolidating intercultural dialogue;
- (e) Organizing cultural events, especially international cultural festivals held in Algeria, and ensuring Algerian participation at international cultural forums;
- (f) Facilitating the movement of art works, artists and art professionals;
- (g) Encouraging joint cultural and artistic projects among Algerian artists living abroad and between Algerian artists and their foreign counterparts, and facilitating contacts and meetings between them;
- (h) Building up a data bank of Algerian artists residing abroad in order to include them in events taking place both in Algeria and abroad;
- (i) Gathering, producing and distributing information to facilitate cultural programming abroad;
- (j) Supporting the activities of cultural associations of the Algerian community established abroad;
- (k) Publicizing the artistic and intellectual work of the national community established abroad;
- (l) Helping to make Algerian experts and professionals working in the field of art, culture and the cultural heritage better known abroad;
- (m) Registering all cultural works concerning Algeria published or appearing abroad;

(n) Contributing to the success of cultural events launched by our diplomatic and consular representations abroad;

(o) Upon request by the approved institutions, supporting cooperation and the organization of cultural events by diplomatic and consular representations abroad.

226. Decree No. 04-236 of 23 August 2004 in article 4 aims to:

(a) “Show the Algerian flag at international cultural events and participate in the study of draft international coproduction agreements for submission to the Ministry in charge for decision” (para. (b));

(b) “Support national and international events such as film festivals and film weeks, particularly where Algerian films are being shown, and develop the promotion of national films and audio-visual products abroad” (para. (c)).

**12. Articles 32 and 33. Right of migrant workers to transfer to the State of origin their earnings, savings and personal belongings; right to be informed of the rights arising from the Convention and to dissemination of information**

227. Algerian legislation does not deal specifically with the questions raised in articles 32 and 33 of the Convention.

228. In practice, however, the rights mentioned in articles 32 and 33 are guaranteed for migrant workers and appear in their contracts signed at the time of their recruitment, or with the recruiting organization that brought them to Algeria, or with local authorities.

**(a) Right of migrant workers to transfer to the State of origin their earnings, savings and personal belongings**

229. Migrant workers enjoy exemption from import and export duties and taxes in respect of their personal and household effects.

**(b) Right to be informed of the rights arising from the Convention and to dissemination of information**

230. Public employment services will supply migrant workers with information regarding their rights, either at their request or at that of their employer, prior to taking up employment, either on a simple request or on application by the employer (Act No. 81-10 of 11 July 1981 on the conditions of employment of foreign workers, and Decree No. 82-510 of 25 December 1982 on the issuance formalities for work permits and temporary work authorizations, or ATTs).

231. All administrations, especially at the local level, are prepared to provide whatever information is required and to respond to all the questions and concerns of foreign nationals regarding their situation and their rights and obligations.

**C. Part IV of the Convention: Other rights of migrant workers and members of their families who are documented or in a regular situation**

**1. Article 37. Right to be informed before departure of the conditions of admission to the State of employment and of their remunerated activity**

232. Article 4 of Ordinance No. 66-211 of 21 July 1966 on conditions of admission to Algeria provides a clear framework for the provisions of article 37. Information must be supplied to migrant workers by the employer or by the placement agency regarding conditions of admission, stay and remunerated activity.

**2. Articles 38 and 39**

**(a) Right of migrant workers to be temporarily absent without effect upon authorization to stay or work**

233. The right to information is ensured by employment services in the course of formalities for obtaining the work permit. It is also the responsibility of the labour inspectorate, legally obliged to monitor compliance with the above-mentioned Act No. 81-10 of 11 July 1981. In addition, under the terms of Act No. 90-03 of 6 February 1990 on labour inspection, the inspectorate is responsible, inter alia, for:

(a) Providing information and advice to workers and employers regarding their rights and obligations and the most appropriate means of applying the terms of laws, regulations and agreements and arbitration awards;

(b) Informing workers and employers regarding labour laws and regulations.

234. With regard to absences, particularly those arising from public holidays and annual leave, there are no restrictions on migrant workers and members of their families, who are free to take advantage of them provided that they hold valid documents proving that they are bona fide foreign workers.

235. It may be pointed out, moreover, that foreign workers belonging to the Christian or Jewish faith enjoy paid leave on the occasion of their religious holidays (articles 3 and 4 of Act No. 63-278 of 26 July 1963, as amended and supplemented, establishing the list of public holidays).

**(b) Right of migrant workers to liberty of movement and to choose their residence in the territory of the State of employment**

236. According to article 13 of Ordinance No. 66-211 of 21 July 1966 on the situation of foreigners in Algeria, foreigners are free to move and choose residence within Algerian territory subject to the conditions contained in articles 14 and 15:

(a) Residence documents must be shown at the request of law enforcement officials;

(b) Any change of residence must be notified to the competent services if the change is definitive or is for a period longer than six months.

### **3. Articles 40, 41 and 42**

#### **(a) Right of migrant workers to form associations and trade unions**

237. The exercise of the right of salaried employees and employers in Algeria to form trade unions is governed by Act No. 90-14 of 2 June 1990, as amended and supplemented. The exercise of this right also depends on the statutes of trade union organizations (see articles 1, 2 and 3 of the Act).

238. The provisions of this law cannot, however, be fully applicable to foreign workers because of the clauses it contains. For example:

(a) Foreigners are excluded from the right to form trade unions since the first condition laid down in the law is Algerian nationality (article 6 of the Act);

(b) The right of foreign workers to be elected is in fact excluded, since their employment contracts are short term, generally lasting less than the term of office of a trade union official, and since certain forms of protection available by law to elected representatives extend for a year after the expiry of a trade union term of office (article 57 of the Act).

239. Nevertheless, a migrant worker may join a trade union in the same way as an Algerian worker and enjoy the same advantages in any collective bargaining conducted by the trade union.

#### **(b) Right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State**

240. Migrant workers who are legally established on the national territory may within the rules laid down by their State of origin participate in elections held in the latter State through its diplomatic and consular representations in the country of employment.

241. At the time of elections, the services of the Ministry of the Interior and local authorities and the Ministry of Foreign Affairs will provide the representations with the necessary facilities and means (such as premises) to enable migrant workers and other categories of legally resident foreigners to perform their electoral duty.

#### **(c) Procedures and institutions taking account of the needs of migrant workers and possible enjoyment of political rights in the State of employment**

242. The possibility for migrant workers to enjoy political rights in the State of employment is not recognized.

243. As everywhere else in the world, the exercise of political rights is closely linked to nationality. In Algeria, a founder member of a political party must fulfil the twin conditions of firstly having Algerian nationality and secondly not having any other nationality (article 13 of the Act No. 97-09 of 6 March 1997 on the organic law governing political parties).



#### **4. Articles 43, 54 and 55**

##### **(a) Principle of equality of treatment with nationals of the State of employment in relation to the issues indicated**

244. Migrant workers enjoy equal treatment with nationals of the State of employment with regard to access to vocational training and retraining institutions and access to social and health services, subject to the conditions needed for benefits.

245. Access to public ongoing vocational training is a right that is open to migrant workers and members of their families. Details regarding access to social and health services were given in the reply on article 28 (paras. 206 to 215 above).

246. As far as access to and participation in cultural life is concerned, migrants who are legally residing in Algeria may enjoy the same rights as nationals.

247. In the field of films and film production, Executive Decree No. 91-03 of 19 January 1991, establishing the operating rules of the fund for art development, film technique and the film industry and the terms of loans and subsidies granted by the fund, states in article 9, paragraph 5, that: "Foreign nationals who are qualified residents in Algeria and have been working in the film or television industries for more than five years may be treated like Algerian citizens for the purposes of this article, subject to their application being approved by the Audio-visual Council."

248. Activities related to cultural shows, on the other hand, are governed by Decree No. 06-218 of 18 June 2006, laying down conditions and rules for exercising the activity of cultural show promoter, which states in article 7 that: "All natural or legal persons constituted under foreign law [...] will be subject to working under a service contract with an Algerian show promoter."

249. With regard to access to housing, while foreign nationals do not have access to social housing schemes that are reserved for certain categories of citizens on low incomes, they are entitled to renting and leasing facilities, following amendments to the part of the Civil Code covering such matters (Act No. 05-10 of 20 June 2005 and Act No. 07-05 of 13 May 2007 amending and supplementing Ordinance No. 75-58 of 26 September 1975 on the Civil Code).

##### **(b) Protection against dismissal, right to unemployment benefits and access to alternative employment**

250. The principle of equal treatment (with regard to remuneration, conditions of access to employment and working conditions) is implemented under Algerian law in Act No. 90-11, as amended and supplemented, of 21 April 1990 and in other legislation applicable to foreign employees. Equal treatment also applies to protection against dismissal.

251. With regard to unemployment benefits and access to public schemes for combating unemployment, the relevant legislation applying to these areas does not include any provisions favouring migrant workers in particular.

252. With regard to access to alternative employment, the surrender of a work permit means that a foreign worker must cease all paid activity. If the worker is then recruited by another employer, this implies renewing his work permit, in accordance with the rules laid down in article 12 of Decree No. 82-510 of 25 December 1982 establishing conditions for the issuance of work permits or temporary work authorizations (ATTs).

**(c) Equality of treatment in the exercise of a remunerated activity**

253. Equality of treatment in this respect is explicitly established in article 16 of Act No. 81-10 of 11 July 1981, according to which “a foreign worker receives the salary related to the post which might otherwise be occupied by an Algerian worker with equivalent qualifications, plus an increment under certain conditions laid down by decree. Remuneration is payable within the national territory at the end of each period”.

254. According to the same article, “foreign workers may, under certain conditions laid down by decree, claim the reimbursement of travel expenses, for himself and the members of his family, from his habitual place of residence to his place of work”.

**5. Articles 44 and 50**

**(a) Protection of the family and family reunification of migrant workers**

255. Article 44 raises the issue of measures which may be taken by receiving States to facilitate “the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship which, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children”.

256. In other words, it deals with the issue of “family reunification”, which cannot be approached without a good definition of what the notion of “family” represents.

257. According to the combined versions of article 2 of the Family Code and articles 32 and 33 of the Civil Code, the family consists of the husband, the wife and their offspring (direct kinship with a common origin), and any ascendants dependent on the head of family, if any.

258. The principle of family reunification, under Act No. 81-10, benefits the male spouse, who may enjoy certain additional rights (such as a work permit). Thus article 44 of the Convention might apply to the male spouse, but not to other members of the migrant worker’s family.

259. Further provisions relating to family reunification will be introduced with the new draft law on the movement and establishment of foreigners in Algeria.

**(b) Consequences of death or dissolution of marriage**

260. Under Algerian law, the dissolution of marriage may result from the death of one of the spouses or from divorce.

261. Divorce is brought about either by the will of the male spouse, or by mutual consent, or at the request of the female spouse in certain circumstances (such as non-payment of alimony or disability impeding the accomplishment of the purpose of marriage). At all events, divorce will be pronounced by a judge in order to safeguard the rights of all the parties concerned, including husband, wife and children.

262. It may be noted, however, that the law that is applicable in cases of marriage and divorce is the domestic law of the male spouse, according to article 12 of the Civil Code, whereby “the dissolution of marriage and judicial separation are governed by the domestic law of the male spouse, at the time of the originating procedure”.

263. According to Algerian law, the death of a migrant worker leads to the annulment of his resident’s permit (article 16 of Decree No. 66-212 of 21 July 1966 on the application of Ordinance No. 66-211 of 21 July 1966).

**6. Articles 45 and 53. Equality of treatment for members of the families of migrant workers in the indicated aspects with nationals of the employing State and measures taken to guarantee the integration of children of migrant workers in the local school system; right freely to choose a remunerated activity for members of a migrant worker’s family**

264. Algerian legislation governing education and training, especially Act No. 08-04 of 23 January 2008 concerning the outline law on national education, does not in any way bar the admission of children of migrant workers in educational establishments.

265. According to statistics, on 30 October 2006, 2,024 foreign children of school age were registered with the public schooling system throughout the national territory under the same conditions as the children of nationals. Among the 2,024 foreign children, 882 were attending the first and second cycle and 1,142 children the third cycle.

266. In the employing State, the members of the families of migrant workers enjoy the same treatment as the nationals of that State as far as access to vocational guidance and training institutions and services is concerned, provided that requirements for participation are met.

267. The Minister in charge of vocational training shall establish the conditions and guidelines for the different vocational training options, according to the wishes of applicants and the capacities of training establishments. Migrant workers and members of their families are entitled to consult guidance services in accordance with regulations.

268. The integration of children of migrant workers in the local school system is immediately applicable. The only restriction concerns scholarships, which are granted only to the parents of Algerian children on low incomes.

269. Further details concerning the above articles are given in the response on article 43.

### **Teaching the children of migrant workers their mother tongue and their culture**

270. At present, the following educational establishments operate under regulations of bilateral cooperation agreements, in accordance with the provisions of article 24 of chapter VI on special rules applying to foreign educational establishments of Act No. 05-07 of 18 Rajab 1426, equivalent to 25 August 2005, establishing general rules governing education in private educational establishments:

(a) The French international lycée “Alexandre Dumas” of Algiers, which operates under the terms of an agreement signed on 21 October 2001 (Presidential Decree No. 2-101 of 6 March 2002), takes in the children of diplomats and of French and European nationals;

(b) The French primary school “Petit Hydra” takes in only the children of French nationals, in particular those of French investors and their staff. This school was opened in 2007 on the basis of a bilateral cooperation agreement signed by the representatives of the Ministries of Foreign Affairs of the two countries;

(c) The Libyan school, which has been operating since 1995, admits only Libyan children;

(d) The Saudi Arabian school, which was opened under the bilateral agreement of 6 April 2004, takes in the children of Saudi Arabian nationals and those of the Gulf States;

(e) The Egyptian school operates for the children of Arab nationals;

(f) The Italian school admits only the children of Italian nationals.

### **The right of members of a migrant worker’s family freely to choose a remunerated activity**

271. The members of a migrant worker’s family cannot freely choose a remunerated activity but they may seek employment within the terms of the law.

#### **7. Articles 46, 47 and 48. Exemption from import and export duties and taxes in respect of personal belongings; right to transfer earnings and savings from the State of employment to the State of origin or any other State; imposition of taxes and avoidance of double taxation principle**

272. Migrant workers enjoy exemption from import and export duties and taxes in respect of their personal and household effects as well as the equipment necessary to engage in the remunerated activity for which they were admitted to the State of employment.

273. Algeria has signed many double taxation agreements in order to avoid penalizing foreign enterprises and workers, irrespective of their status.

274. Moreover, Algerian tax law does not distinguish between nationals and foreign workers. The same taxation system applies to both.

## 8. Articles 51 and 52

**(a) Right to seek alternative employment in case of termination of the remunerated activity for migrant workers not authorized freely to choose their remunerated activity**

275. According to article 21 of Act No. 81-10 of 11 July 1981 on the conditions of employment of foreign workers, foreign workers must return their work permit or temporary work authorization (ATT) to their employing organizations within 48 hours of the termination of their contracts, and the employer must forward the permit to the employment office within not more than 15 days following the end of the working relationship.

276. After the expiry of a work contract, however, a foreign worker may exceptionally be authorized to offer his services to another employer (article 15 of Act No. 81-10).

**(b) Conditions and restrictions applying to migrant workers who can freely choose their remunerated activity**

277. According to article 2 of Act No. 81-10 of 11 July 1981 on the conditions of employment of foreign workers, “subject to any provisions to the contrary in a treaty or agreement signed by Algeria with a foreign State, all foreigners engaging in remunerated activity in Algeria must hold a work permit or a temporary work authorization issued by the competent authorities ...”.

278. No employing organization may employ foreign workers unless they have a level of qualification at least equivalent to technician, except in certain cases.

279. According to article 3 of Act No. 81-10: “No employing organization may employ foreign workers, even on a temporary basis, unless they have a level of qualification at least equivalent to technician [...]. Certain exceptions may be allowed by the Minister in charge of employment, in a case of force majeure, subject to a substantiated report by the employing organization.”

280. According to article 4 of same Act: “The work permit or temporary work authorization allows the holder to perform a specific paid activity for a specific period of time with a single employing organization.”

281. Article 5 states that: “Work permits and temporary work authorizations may be delivered to foreign workers only if:

(a) The work in question cannot at all be performed by an Algerian worker, either as a result of internal promotion or through external recruitment, including among emigrated Algerian workers;

(b) The person recruited meets the regulatory requirements of the health service.”

282. According to article 6: “An application for a work permit cannot be processed by the competent services of the Ministry of Labour unless it comes with the substantiated report of the employing organization.”

283. According to article 10: “The validity of work permits is limited to two years. They may be renewed subject to the same conditions as those specified in articles 5 and 6 above.”

## **9. Articles 49 and 56**

### **(a) Authorization of residence and authorization to engage in a remunerated activity**

284 Article 49, paragraph 1, is covered by national legislation since, according to article 10 of Act No. 81-10, the validity of work permits is limited to two years, like that of residence permits, save in certain cases.

285. Presidential Decree No. 03-251 of 19 July 2003, amending and supplementing Decree No. 66-212 implementing Ordinance No. 66-211 of 21 July 1966 on the situation of foreigners in Algeria, states that:

“Work visas will be issued to foreigners holding a work contract or a provisional work authorization, as a precondition for a work permit, delivered by the competent services in charge of employment. Temporary work visas may be delivered abroad to holders of work contracts whose validity does not exceed three months, and a provisional temporary work authorization, delivered by the competent services in charge of employment.

When a work contract has expired, a foreign worker may exceptionally offer his services to another employer.

If any foreigner engages in remunerated activity in Algeria without being subject to a work permit, the employing organization must notify the competent services of this fact.

Any natural or legal person employing a foreigner for any reason whatsoever must notify the competent services of the fact.”

Executive Decree No. 06/454 of 11 December 2006 gives a definition of “the conditions and formalities applying to the issuance of operating licences to legally resident foreigners on the national territory engaging in a commercial, industrial or artisanal activity or a liberal profession and to members of the boards of directors and managerial and administrative bodies for whose administration and management they are statutorily responsible”.

286. Foreigners engaging in a form of commercial activity receive a licence in accordance with a regulatory model.

### **(b) General prohibition and conditions of expulsion**

287. For replies concerning the provisions of article 56, reference may be made to the replies under article 22.

**D. Part V of the Convention: Provisions applicable to particular categories of migrant workers and members of their families**

288. Algerian law does not make provision for particular categories of migrant workers.

**E. Part VI of the Convention: Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families**

**1. Article 65. Creation of appropriate services to deal with matters concerning the international migration of workers and members of their families**

289. The National Employment Agency, the labour inspectorate and the *wilaya* employment offices deal mainly with the dissemination of labour legislation, in particular concerning the conditions of employment of foreign workers.

290. The task of informing applicants for migration to Algeria is the responsibility of Algerian diplomatic and consular representations abroad.

291. With regard to article 65, paragraph 2, Algeria allows States of origin with which it entertains diplomatic relations the right to open consulates or consular sections dealing with the protection of their nationals in accordance with the principle of reciprocity and according to the requirements expressed by the foreign communities concerned established in our country.

292. Thus all countries with large communities maintain consular services to assist their nationals and are provided with whatever support is necessary by the relevant Algerian institutions.

**2. Article 66. Authorized operations for the recruitment of workers for employment in another State**

293. Under Algerian regulations concerning the placement of workers and supervision of employment, this task is performed by the National Employment Agency (ANEM).

**3. Article 67. Measures regarding the orderly return of migrant workers and members of the families to the State of origin, their resettlement and their cultural reintegration**

294. Regular, close relations are maintained between the Algerian institutions concerned and foreign diplomatic and consular representations accredited in Algeria for the consular management of their nationals in general and the organization of their return to their countries of origin in particular.

295. Thus return operations are prepared and implemented in close coordination with the foreign diplomatic and consular representations concerned, who are asked to identify their nationals and to issue the necessary travel documents.

296. In addition, the Algerian authorities assume financial, material, medical and psychological responsibility for illegal immigrants needing to be repatriated to their country of origin, with full respect for their human dignity.

**4. Article 68. Measures to prevent and eliminate illegal or clandestine movements and employment of migrant workers in an irregular situation**

297. Any migrant worker who does not meet the requirements for entry, stay and employment will be penalized in accordance with the terms of Ordinance No. 66-211 of 21 July 1966 on the situation of foreigners in Algeria. Penalties are aggravated in cases where national employers engage in undeclared work.

**Ordinance No. 66-211 of 21 July 1966 on the situation of foreigners in Algeria**

298. *Article 16:* Any natural or legal person who employs a foreigner for whatever reason must notify the employment office or failing that the town hall of the place of recruitment within 30 days.

299. *Article 17:* Any landlord offering accommodation who lets to a foreigner must notify the police station or town hall of his place of residence within 24 hours.

300. *Article 24:* Any person who, directly or indirectly, has facilitated or attempted to facilitate the entry, movement or irregular stay of a foreigner, is liable to a penalty of imprisonment of between two months and one year and/or a fine of between 180 and 3,600 dinars.

301. *Article 25:* Any employer who fails to notify as required under article 16 above shall be liable to a fine of 10 to 360 dinars, without prejudice to whatever measures of expulsion may be taken against foreign employers or any other administrative measure.

302. *Article 26:* Any landlord offering accommodation who fails to notify as required under article 17 above shall be liable to a fine of 60 to 180 dinars, without prejudice to whatever measures of expulsion may be taken against foreign landlords or any other administrative measure.

303. *Article 29:* No foreigner may engage in a commercial, industrial or artisanal activity or liberal profession on the national territory without holding a professional licence or equivalent authorization.

**Decree No. 66-212 in application of Ordinance No. 66-211 of 21 July 1966**

304. *Article 18:* In order to engage in any paid professional activity in Algeria, foreigners must obtain a work contract or work permit beforehand. Any foreigner wishing to engage in a regulated professional activity must hold an authorization delivered by the competent services.



**Act No. 81-10 of 11 July 1981 on the conditions of employment of foreigners**

305. *Article 3:* All foreigners engaging in remunerated activity in Algeria without being subject to a permit must be reported to the competent services by the employing organization.

**5. Article 69. Measures taken to ensure that the irregular situation of migrant workers does not persist in the territory of the State party and circumstances that must be taken into account in regularization procedures**

**Decree No. 66-212 of 21 July 1966 in application of Ordinance No. 66-211 of 21 July 1966**

306. *Article 7:* Entry to the national territory may be denied to any foreigner attempting to cross a frontier without a consular visa. Exceptionally, a regularization visa valid for not more than three months may be issued to the person by the Air and Frontier Police services, or failing that, the prefecture or sub-prefecture of the place of arrival.

**6. Article 70. Measures taken to ensure that the living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety and health and principles of human dignity**

307. The conditions set out in article 70 of the Convention are those enjoyed by Algerian citizens, related to a harmonious lifestyle, access to a healthy environment and respect for human dignity, as enshrined in the Constitution.

308. Occupational health for all workers is a right enshrined in the Constitution and has gradually been incorporated into national public health policy under Act No. 85-05 of 16 February 1985 on the promotion and protection of health.

309. Act No. 88-07 of 26 January 1988 on occupational health, safety and medicine stipulates that occupational health constitutes an obligation for the employing organization and lays down general rules on occupational health, safety and medicine, training and information, organization of prevention and supervision of activities.

310. Activities concerned with occupational health include mainly the maintenance and promotion of workers' health and their aptitude for work, as well as the improvement of working conditions and the working environment for better health and safety at work.

311. Lastly, our country, a member of the World Health Organization and the International Labour Organization, is committed to guaranteeing the fundamental rights of individuals, especially the right to health, and to constantly improving health care while respecting the dignity and equality of individuals, with special attention for the needs of migrant workers and their families.

**7. Article 71. Repatriation of the bodies of deceased migrant workers or members of their families and compensation matters relating to death**

312. Article 3, paragraph 1, of Decree No. 75-152 of 15 December 1975 on health rules governing the burial, transport, exhumation and reburial of bodies stipulates that the transport of a person who died in Algeria for the purpose of burial in the country of origin is subject to the authorization of the Ministry of the Interior.

313. Several circulars describe the documents that must be submitted and the formalities relating to the issuance of authorizations for the transport of dead bodies. The services concerned in the Ministry of the Interior and the local authorities have made all the necessary arrangements to facilitate these procedures and to meet requests with as little delay as possible in view of the sensitive and humanitarian nature of the matter.

314. They are normally available to provide all the information required by applicants.

315. Applicants may submit their applications either at the central Ministry or at the territorially competent *wilayas*. The same decree (particularly articles 13 to 22) authorizes and establishes the formalities required for the exhumation of the mortal remains of foreign nationals for the purpose of reburial in their country of origin or another country.

316. In addition it is worth noting that there are many undertaking businesses and agencies specialized in that sort of operation. These work in coordination with the relevant administrative authorities and look after all the procedures involved in the transfer or exhumation of bodies, including the Ministry of the Interior's authorization for the transfer of the body.

317. Current legislation and regulations in this respect, however (such as articles 5 to 12 and 13 to 23 of Decree No. 75-152 of 15 December 1975), lay down a series of health rules that have to be strictly applied when conducting this type of operation.

318. With regard to compensation relating to death, such situations come under the rules regulating the national social insurance fund.

319. Foreign workers in a regular situation enjoy the same benefits as Algerian workers in accordance with the provisions of Acts No. 83-11 and No. 83-13 of 2 July 1983 concerning social insurance and occupational accidents and sicknesses.

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