

# The criminal justice system and stability in Algeria

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*10 June 2018*

## Question

*To what extent does the Algerian criminal justice system (including rehabilitation) support or undermine Algeria's stability? To what extent do perceptions of its transparency/corruption and professionalism (eg of the judiciary) impact on this?*

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## 1. Summary

This report focuses on the role that the criminal justice system in the country plays in supporting or undermining stability. The following components of the criminal justice system are considered:

- **Law enforcement:** Corruption and other abuses of power, arbitrary arrests and police dissatisfaction potentially undermine stability in Algeria.
- **Judiciary:** 2016 constitutional reforms include provisions for judicial reform. However, the extent to which these have been implemented is not yet clear, and the judiciary continues to lack independence.
- **Prisons and prisoner rehabilitation:** Significant reforms of the prison system have taken place. These include increased emphasis on prisoner rehabilitation and reintegration. However, an evaluation of the impact of these reforms was not found during the course of the research undertaken for this study.
- **Incomplete reconciliation:** Existing legislation grants immunity to security forces and state armed militias for serious human rights violations committed during the *decennie noire*. Human rights organisations have repeatedly called for this legislation to be repealed.
- **Women's access to justice:** The literature on women's access to justice focuses on issues related to gender based violence. Legal reforms in 2015 made domestic violence a criminal offence, and rape is punishable by a prison sentence. However, the domestic violence legislation has a number of shortcomings.

There is a limited body of literature on the Algerian criminal justice system and its impact on stability. For the purposes of this report literature in both English and French was reviewed. The literature consists largely of opinion pieces by think tanks. The literature search conducted for this report did not identify any rigorous evidence-based papers on this subject. Moreover, the connection between the criminal justice system and stability is implicit rather than explicit.

## 2. Law enforcement

Responsibility for law enforcement is shared between the National Gendarmerie, which performs police functions outside of urban areas and falls under the control of the Ministry of National Defence, and the DGSN or national police, which falls under the control of the Ministry of Interior and Local Government. There are three intelligence directorates, which report to a presidential national security counselor and work on internal, external, and technical security (US Department of State, 2017). Women are increasingly employed by the police force, and around 6 per cent of DGSN police officers are female (US Department of State, 2017, p. 33). The literature reviewed does not provide an in-depth assessment of the different branches of the police force.

### Factors potentially undermining stability

#### Management of abuses and corruption

According to NGOs and human rights activists, the police sometimes use excessive force against suspects, including protestors. However, the DGSN states that in 2017 it did not receive any reports of abuse or misconduct from the public (US Department of State, 2017, p. 2).

While the law makes provisions for the investigation of abuses and corruption by law enforcement personnel, the government does not always provide public information regarding disciplinary or legal action against members of the police. However, the DGSN has conducted regular training sessions on human rights for its members. Its new human rights office is responsible for organising this training (US Department of State, 2017).

### **Police dissatisfaction**

In October 2014, the country witnessed three days of police protests. In addition to demands for higher salaries and improved benefits, they also demanded the formation of a labour union and the removal of Director General of National Security, Abdelghani Hamel, a presidential appointee. The protests began in Ghardaia, but rapidly spread across the country. While demands for better working conditions were met, Hamel remained in office and a labour union was not created.<sup>1</sup>

### **Arbitrary arrests**

Arbitrary arrest and detention are prohibited under the law. However, according to the US Department of State, ‘authorities sometimes used vaguely worded provisions, such as “inciting an unarmed gathering” and “insulting a government body,” to arrest and detain individuals believed to be disturbing public order or criticising the government.’ The law banning unauthorised gatherings is a significant source of arbitrary arrests and aims to suppress political activism according to human rights organisations (2017). International and local observers allege that authorities sometimes use antiterrorism laws and restrictive laws on freedom of expression and public assembly to detain political activists and critics of the government (US Department of State, 2017, p. 8).

### **Exacerbating ethnic tension in the South**

Thousands of police, gendarmes and soldiers were deployed to Ghardaia in response to ethnic tensions between Mozabites and Arabs, which flared up in 2013. The violence peaked in 2015 with dozens killed, hundreds wounded and thousands of homes and businesses burned (International Crisis Group, 2016, pp. 8-10). However, the International Crisis Group describes the deployment of police, gendarmes and soldiers as a temporary solution at best, arguing that it risks creating more violence. They cite clashes between police and Arabs in Arab-majority neighbourhoods, and between gendarmes and Mozabites in mixed neighbourhoods like al-Qurthi as evidence of this (International Crisis Group, 2016, p. 10).

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<sup>1</sup> <https://www.cp24.com/news/protests-by-algerian-police-signal-divisions-at-the-top-levels-of-authority-1.2074605>

## 3. Judiciary

### Factors potentially supporting stability

#### Constitutional reforms

A new constitution was adopted on 7 February 2016, which included provisions for ‘the strengthening of the independence and autonomy of the Constitutional Council and the Supreme Council of Justice’ (OHCHR, 2017, p. 3). The new constitution also includes provisions for the establishment of a National Anti-Corruption Agency (OHCHR, 2017, p. 3). It is not clear whether or not this agency has now been established.

Specifically, in the field of criminal justice there have been:

- amendments to the Criminal Code and the Code of Criminal Procedure,
- simplification of procedures
- strengthening of the specialisation of courts and the implementation of their decisions
- the launch of a modernisation plan aimed at providing more humane conditions of detention, including in holding facilities, with regular inspections by the prosecution service
- human trafficking and the smuggling of migrants are now offences punishable under the Criminal Code (OHCHR, 2017, p. 3).

The new constitution also includes provisions for the right of appeal in criminal cases (OHCHR, 2017, p. 3). The literature search undertaken for this report did not find any information on the number of appeals that have been launched since the 2016 constitution was adopted.

The Higher Judicial Council consists of 20 members, six of which are appointed by the President. In addition to the reforms outlined above, the new constitution seeks to increase the independence of the council by constitutionalising its financial autonomy. It also gives the council administrative autonomy (Amnesty International, 2016).

However, it is not clear to what extent any of these constitutional reforms have been implemented to date. According to Biagi, the constitution has ‘great potential’ in the areas of protection of fundamental rights, the judiciary and constitutional justice, but the real impact of the reforms can only be assessed once the implementation process is concluded (Biagi, 2017, p. 14).

### Factors potentially undermining stability

While the literature does not explicitly link these factors to potential instability in Algeria, they are widely perceived to undermine stability.

#### Lack of independence of the judiciary

While the new constitution includes provisions for the independence of the judiciary, this has in fact been provided for in the constitution since 1996 and these provisions have not been fully respected (Bertelsmann Stiftung, 2016, p. 10). According to Freedom House, the judiciary is

susceptible to government pressure. Moreover, the new provisions in the constitution risk being undermined by the fact that it preserves the influence of the president over the judiciary through the appointment of key members of the judiciary including judges (Amnesty International, 2016, p. 11). According to Djabi, people do not believe that the constitutional amendments will lead to fundamental changes, such as a change in the balance of power between the legislative and judicial branches and the executive (2016, p. 8).

## **Corruption**

Transparency International ranks Algeria among the most corrupt countries in the region, citing 'weak institutional oversight, lack of transparency and widespread nepotism and distrust.' According to ACLED, 'popular discontent with the corruption of the elites is more likely to increase in times of crisis' (ACLED, 2015).

According to a report published by the Carnegie Middle East Center, Algeria's judicial system shows evidence of grand corruption. It cites a World Economic Forum survey on global competitiveness, which states that the judicial system is subject to interference and influence from members of the executive branch and powerful individuals and companies. The survey ranks Algeria 123 out of 144 countries on judicial independence (Achy, 2013, pp. 5-6).

A report published by Global Integrity is more nuanced stating that the highest courts in the country are able to make decisions freely. However, judges in lower courts face pressure from high-ranking officials, and on occasion, their independence is undermined by prosecutors' reluctance to hand over corruption cases to investigative judges (Global Integrity, 2016, p. 3).

## **4. Prisons and prisoner rehabilitation**

There are 128 prisons in Algeria housing almost 65,000 detainees. The prisons are divided into several categories:

1. Remand centres for remand prisoners, those serving custodial sentences of three months or less, those who still have three months or less to serve, and those subject to imprisonment in default (80)
2. Rehabilitation centres for persons whose custodial sentences are less than one year, those who still have one year or less to serve, and those subject to imprisonment in default (35)
3. Other prisons for persons serving prison sentences of one year or more, those sentenced to life imprisonment and habitual offenders irrespective of the length of their sentence (10)
4. Specialist reform institutions for dangerous convicts and those who need to be kept apart (1)
5. Specialist centres for minors (2) (Abdennouri, 2014, pp. 24-25).

According to Freedom House, prisons in Algeria are generally overcrowded and there is poor nutrition and hygiene (2016). However, according to Abdennouri, modernisation efforts have led to 'tangible results particularly with regard to alternative sentences, rehabilitation and post-release support' (2014, p. 25). The aim of the prison modernisation programme was reportedly to improve prisoners' living conditions and procedures for training and rehabilitating prisoners in order to increase reintegration and prevent repeat offending (Abdennouri, 2014, p. 25). The US

Department of State's 2017 Country Report on Human Rights Practices also refers to improvements in the system, stating that prison conditions have been improved to meet international standards. The report cites the Ministry of Justice's Directorate of Penal Affairs and Pardons on the following improvements:

- the government alleviated overcrowding by opening new detention centers during the year, including minimum-security centers that permitted prisoners to work.
- cell sizes exceed international standards set by the United Nations' Nelson Mandela Rules.
- the Direction Général de Surêté Nationale (DGSN) announced the creation of a new human rights office in July 2017. Among its functions, it will be responsible for ensuring the implementation of measures to improve detention conditions (US Department of State, 2017, p. 4).

Algeria has reportedly made significant progress towards the rehabilitation and reintegration into society of prisoners. A news article cites the Director of Prisons, Mokhtar Felioune, stating that 42,433 prisoners are pursuing their studies, of which 34,037 are engaged in distance learning courses, 1150 in secondary education, and 7246 in literacy classes. Moreover, 7504 former prisoners are involved in programmes run by employment agencies.<sup>2</sup>

Community service has been introduced as an alternative to imprisonment, and is increasingly being handed down by the courts: 57 decisions in 2009, 1,763 in 2010 and 2,807 in 2011. In addition, external social reintegration services have been established across the country to provide assistance and support to prisoners following their release (Abdenouri, 2014, p. 25).

Other steps to reduce criminality and to facilitate prisoners' reintegration into society include the introduction of electronic tags in November 2017.<sup>3</sup> The introduction of electronic tagging and of speedier trial processes is reportedly reducing the use of pre-trial detention (British Embassy to Algeria). However, despite these reforms, pre-trial detention continues to be overused and has resulted in continued overcrowding in pre-trial detention facilities (US Department of State, 2017, p. 3).

The research undertaken for this report has not uncovered any literature that makes a connection between prison conditions and prisoner rehabilitation programmes and stability.

## 5. Incomplete reconciliation

The 2006 Reconciliation Charter is widely viewed as having brought peace to Algeria. However, the amnesties given to state security forces and terrorists continue to be seen as being unjust, especially by the families of the 100,000 victims of the conflict and by those of the 8,000 "disappeared." Moreover, compensation has not led to genuine reconciliation as families of victims still want to know the truth about what happened to the victims (Bertelsmann Stiftung, 2018, p. 35).

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<sup>2</sup> <http://www.dknews-dz.com/article/78428-algerie-onu-resultats-positifs-realises-par-lalgerie-en-matiere-de-reinsertion-des-prisonniers-et-de-protection-des-droits-de-lhomme.html>

<sup>3</sup> <http://www.aps.dz/algerie/65690-lancement-officiel-de-la-technique-du-bracelet-electronique-pour-les-individus-poursuivis-en-justice>

Amnesty International states that in order for there to be genuine reconciliation, existing provisions in the legislation granting immunity to security forces and state armed militias for serious human rights violations and criminalising public criticism of the conduct of the security forces should be repealed. They also state the need for 'full, impartial and independent investigations' into cases of enforced disappearances and unlawful killings to be conducted, clarification of the fate of victims of enforced disappearances and the provision of an effective remedy to their families (2016, p. 6).

## 6. Women's access to justice

The literature on women's access to justice focuses largely on issues relating to gender based violence (GBV). In December 2015, the penal code was amended to criminalise some forms of domestic violence. These amendments make assault against a spouse or ex-spouse punishable by up to 20 years in prison, depending on the victim's injuries, and by a life sentence if the attack results in death. In addition, 'they expanded the scope of sexual harassment, strengthened penalties for it, and criminalised harassment in public spaces' (Human Rights Watch, 2017).

Despite these improvements, the following shortcomings in domestic violence legislation have been identified by Human Rights Watch:

- Marital rape is not explicitly mentioned in the domestic violence legislation
- Perpetrators who are not the victim's spouse or ex-spouse are not considered
- The law relies excessively on assessments of physical incapacitation to determine the level of sentencing. However, there are no guidelines for forensic doctors on how to determine incapacitation in domestic violence cases.
- There are no provisions for protective orders
- There are no guidelines on how law enforcement personnel should handle domestic violence, and police are often dismissive of victims of domestic abuse (2017).

While marital rape is not recognised, prison sentences for rape not perpetrated by a spouse range from five to 10 years. According to the US Department of State, the authorities generally enforce the law on this. However, the penal code includes a caveat that enables an adult accused of 'corruption of a minor' to avoid prosecution if he subsequently marries his victim, provided that the crime did not involve violence, threats, or fraud (2017, p. 26).

The research undertaken for this report has not found any evidence relating specifically to women's access to legal counsel or legal aid, or on how women's access to justice affects stability in Algeria.

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## Suggested citation

Strachan, A.L. (2018). *The criminal justice system and stability in Algeria*. K4D Helpdesk Report. Brighton, UK: Institute of Development Studies.

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