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**ПООЩЕНИЕ И ЗАЩИТА ВСЕХ ПРАВ ЧЕЛОВЕКА, ГРАЖДАНСКИХ,
ПОЛИТИЧЕСКИХ, ЭКОНОМИЧЕСКИХ, СОЦИАЛЬНЫХ И КУЛЬТУРНЫХ
ПРАВ, ВКЛЮЧАЯ ПРАВО НА РАЗВИТИЕ**

**Доклад Специального докладчика по вопросу о насилии в отношении женщин,
его причинах и последствиях Якины Эртюрк**

Добавление

МИССИЯ В АЛЖИР*

* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад содержится в приложении к резюме и распространяется только на языках представления - арабском и французском.

Резюме

В настоящем докладе содержатся сформулированные мною выводы по итогам официального визита в Алжир в период с 21 по 31 января 2007 года.

За время с момента обретения независимости женщины Алжира добились замечательного прогресса в области образования, хотя неравенство полов продолжает сохраняться на различных уровнях и применительно к некоторым профессиям, в том числе среди судей, преподавателей и врачей. В то же время существенное беспокойство по-прежнему вызывают проблемы маргинализации и распространенности бедности среди представительниц женского пола. Отторгаемые обществом женщины, включая разведенных, проживающих отдельно от супругов и брошенных женщин, матерей-одиночек и уличных женщин, находятся в особенно уязвимом положении и нуждаются в безотлагательной более широкой поддержке со стороны государства.

Хотя женщины формально и пользуются юридическим равенством в публичной сфере, они лишены равноправного доступа на рынок рабочей силы и руководящие должности, о чем свидетельствует их слабая представленность в этих областях. Кроме того, многие женщины все еще подвергаются угнетению и дискриминации в общинах и в домашнем кругу. В Семейный кодекс внесены значительные улучшения, однако в нем по-прежнему сохраняются положения, ставящие женщин в невыгодное положение, особенно в том, что касается прав наследования и материальных последствий развода.

По-прежнему широко распространено насилие в отношении женщин в частной сфере, хотя в основном оно и остается невидимым. Изгнание женщин и девушек на улицу является особенно вопиющей формой такого насилия. Все сильнее дает себя чувствовать проблема сексуальных домогательств и злоупотреблений в государственных учреждениях, что оборачивается различными негативными последствиями для женщин.

Национальному механизму, призванному действовать в интересах женщин, не хватает правовых и финансовых средств для того, чтобы эффективным образом вести борьбу с нарушениями прав человека женщин. Кроме того, если в целом женщин заставляют отказываться от обращения к властям по поводу насилия, государство оказывается неспособным должным образом защитить женщин, которые добиваются справедливости, и оказать им поддержку. Такая неспособность находит свое выражение в существующих пробелах в правовой базе, отсутствии специализированных кризисных центров для приема женщин, обусловленном фактором пола предубеждении, распространенном среди сотрудников полиции, лакистской практике назначения наказаний и несправедливом режиме владения супружеским имуществом.

Принятая в ходе референдума 2005 года Хартия за мир и национальное примирение не распространяет действие амнистии на лиц, признанных виновными в совершении изнасилований, тогда как субъекты систематического сексуального насилия в период "черного десятилетия" фактически пользуются безнаказанностью. Между тем у их жертв по-прежнему имеются существенные основания для жалоб, и им приходится сталкиваться со значительными трудностями.

Семьи пропавших без вести лиц, состоящие главным образом из женщин, по-прежнему лишены права на установление истины, что равносильно эмоциональному насилию. Нелегко им приходится добиваться и права на получение компенсации, обещанной по указанной выше Хартии.

Доклад завершается моими рекомендациями, связанными с дальнейшим проведением законодательных реформ, требованием снятия недопустимых оговорок к Конвенции о ликвидации всех форм дискриминации в отношении женщин, ратификации других соответствующих международных инструментов в области прав женщин и более широкого доступа в страну международных механизмов мониторинга.

Наряду с этим я рекомендую правительству страны усовершенствовать деятельность своих учреждений, занимающихся отстаиванием прав женщин, путем повышения потенциала национального механизма обеспечения прав женщин в консультации с организациями гражданского общества, разработки и осуществления в полной мере национальной стратегии по борьбе с насилием в отношении женщин, принятия мер по расширению социальных, экономических и политических возможностей женщин, в частности через введение квот, обеспечивающих более высокий уровень представительства женщин среди руководящих работников в государственном и частном секторе, вложения средств в создание кризисных центров для приема женщин, центров оказания помощи женщинам и просвещения в области прав женщин, реализации особых мер поддержки, в особенности представительниц уязвимых групп женщин, разработки стратегии нулевой терпимости в области проведения расследований и судебного преследования всех лиц, совершающих акты насилия в отношении женщин.

И наконец, я подчеркиваю необходимость обеспечения, чтобы семьи пропавших без вести лиц и всех жертв сексуального насилия, совершавшегося в течение "черного десятилетия", получили оперативную и надлежащую компенсацию и были защищены от преследования и угроз, необходимость проведения независимого расследования случаев сексуального насилия, имевших место в течение "черного десятилетия", необходимость довести до сведения семей пропавших без вести лиц всю имеющуюся информацию о судьбе и местонахождении таких лиц.

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST
WOMEN, ITS CAUSES AND CONSEQUENCES, YAKIN ERTÜRK
ON HER MISSION TO ALGERIA**

(21 to 31 January 2007)

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Introduction

1. At the invitation of the Government, I carried out an official visit to Algeria from 21 to 31 January 2007. I visited Algiers, Oran, Constantine, Bou Ismail, Blida and the Mitidja region.
2. During the course of my mission, I held consultations with the Delegate Minister for the Family and the Status of Women, the Minister of Foreign Affairs, the Minister of National Solidarity, the Minister of Culture, the Director-General of National Security and other senior officials. I also met with members of the Senate and the National People's Assembly, the President of the Consultative Commission for the Promotion and Protection of Human Rights, senior judges, academics, lawyers, businesswomen, trade unionists and representatives of non-governmental women's rights associations and other human rights groups. Finally, I had the opportunity to speak with women survivors of violence at the National Shelter for Girls and Women in Bou Ismail, the shelter of *SOS Femmes en Détresse* in Algiers and the *Diar Rahma* of Oran and Constantine. I also met families of the disappeared and victims of terrorist violence. I would like to thank everyone for their support and cooperation in the preparation and conduct of the mission.
3. This report provides an overview of the legal and institutional context and an analysis of the general status of women in Algeria, setting out the framework within which violence against women can be understood. The primary focus of the report is on violence against women in the family, which is the most pervasive and prevalent form of violence in Algeria. Additionally, the report looks at the situation of street women, sexual harassment and violence in the public sphere and violence against women in the context of Algeria's "black decade". The report ends with my conclusions and recommendations.
4. I look forward to a continued dialogue with the Government and other stakeholders on the implementation of these recommendations.

I. THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR WOMEN'S RIGHTS

A. The legal framework

5. The Algerian Constitution enshrines the principle of non-discrimination on the basis of sex and also mandates the State to take positive action to ensure equality of rights and duties of all citizens, men and women, by removing the obstacles which hinder the progress of human beings and impede the effective participation of all in political, economic, social and cultural life.
6. In 1996, Algeria ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and has since reported twice to the Committee that monitors the Convention. Algeria made extensive reservations to Articles 2 and 16, which would effectively establish the primacy of the Algerian Family Code over the provisions of CEDAW. These reservations are contrary to the object and purpose of CEDAW and therefore impermissible according to article 28, paragraph 2 of CEDAW.¹ In 2003, Algeria signed the Protocol to the

¹ See the Committee's concluding comments CEDAW/C/DZA/CC/2, para. 23.

African Charter on Human and Peoples' Rights on the Rights of Women in Africa and is currently considering its ratification.

7. The Family Code establishes the main legal parameters of male-female relations in Algeria. In response to the demands of the women's movement, it was reformed in February 2005, when the President took the initiative and issued two important decrees that were later confirmed by Parliament.

8. The first decree fundamentally reformed the Nationality Code allowing Algerian women with foreign husbands to transfer their nationality both to their children and to their husbands.²

9. The second decree made significant improvements to the Family Code.

10. The previous Family Code, enacted in 1984 despite the mass protests of women who decried its unconstitutionality, largely reflected reactionary interests.³ It stipulated that an adult woman could only get married through the offices of a male matrimonial guardian (*wali*); although the marriage had to occur with the woman's consent, her *wali* would conclude the marriage on her behalf. Article 39 legally obliged a married woman to obey and respect her husband as the head of the family. A husband was also legally entitled to seek divorce through repudiation of his wife, whereas women could only demand divorce on very narrow grounds and often had to make a payment (*khola*) to their husbands to obtain a divorce.

11. The Family Code of 2005 attempts partially to respond to women's demand for equality, abolishing humiliating provisions such as article 39. Some of the other criticized institutions are symbolically retained, but rendered legally irrelevant. The institution of the matrimonial guardian still exists, but an adult woman can now choose her *wali*.⁴ Moreover, the woman herself now concludes the marriage and her *wali* of choice only has to be present during the ceremony.

12. In principle, a man can still seek divorce through repudiation, but a court has to confirm the divorce after certifying that reconciliation attempts have failed. Moreover, women are now allowed to obtain a divorce on the basis of "persistent disagreement between the spouses".

² Algeria's reservation to article 9 has therefore become redundant, a fact that was also acknowledged by the then Minister of Foreign Affairs in our meeting.

³ See R. Mitchell, "Family law in Algeria before and after the 1404/1984 Family Code", *Islamic Law - Theory and Practice*, Gleave and Kermei, eds. (London, I.B. Tauris, 2001).

⁴ The official Arabic version of the law refers to a male *wali*, whereas the French version mentions persons. In this respect, the Government stated in its "Observations and comments of the Government of the Democratic and Popular Algerian Republic concerning the advanced draft of the report of the Special Rapporteur on violence against women on her visit to Algeria", 6 December 2007 (hereafter Observations and comments from the GOA), that the *wali* requirement is no longer a constitutive element in the Family Code.

13. Contrary to Algeria's obligations under article 5, paragraph (a) of CEDAW,⁵ the new Family Code has failed to outlaw polygamy (a practice that is said to be rare in Algeria). However, a man wishing to marry a second wife has to get prior court approval.⁶ For this purpose, he would have to positively prove that his first wife gave her consent to the second marriage, that he has a just motive to marry again and that he will treat both wives equally and provide both with the conditions necessary for married life. Algerian jurists and religious scholars with whom I spoke, expressed confidence that since these conditions would be impossible to meet, courts would not be inclined to approve polygamous marriages. So far there is no authoritative jurisprudence to confirm such claims.

14. The Family Code of 2005 continues to prohibit marriages of Muslim women (but not men) to non-Muslims. In practice, couples often circumvent this prohibition by marrying abroad, but experience tangible problems because their marriage is not recognized by Algerian law.

15. It also retains several very problematic provisions that have a direct and concrete impact on women's economic situation and social position in the family. The most relevant in this regard is the inheritance law which is based on the Maliki School of interpretation of the Koran.⁷ Accordingly, women still do not have equal access to inheritance. In most family constellations, daughters receive half the share of their brothers. Daughters who have no brothers have to share the inheritance with other male relatives in the paternal line. Since only one third of the estate can be distributed through a last will, middle-class parents, who wish to leave equal shares to their children, while excluding other male relatives from the inheritance, often resort to perfectly legal lifetime donations to circumvent the Code.

16. Problems also arise from inaccurate interpretations of the law. For instance, the Code of 2005 requires prospective spouses to present a medical certificate, so that each partner is aware of diseases the other may have at the time of marriage. Reportedly, in a number of cases, officials have interpreted this provision as requiring women to deliver a "virginity certificate" before contracting marriage. Following the public protests of women's associations the central Government issued instructions clarifying the law.

⁵ See the Committee's general recommendation No. 21 (1994) on equality in marriage and family relations, para. 14.

⁶ Observations and comments from the GOA: the Government clarified that a marriage will be cancelled, before it is consummated, if the husband does not obtain a judge's authorization (ordonnance no. 05-02 du 27 février 2005 modifiant et complétant la loi no. 84-11 du 9 juin 1984 portant code de la famille, art. 8 bis and 8 bis 1).

⁷ Algerian religious scholars, with whom I met, claimed that the Koran would under no reading permit equal access for women and men to inheritance. However, other prominent religious scholars such as the Indonesian Professor Hazairin have disputed this notion. It is also worth noting that, while the Somali Constitution at the time declared Islam the State religion, the Family Code of 1975 provided women and men with equal access to inheritance.

B. The institutional framework

17. The government institution for women's advancement is still weak. In 2003, the Prime Minister appointed a Delegate Minister for the Family and the Status of Women. Initially situated within the Prime Minister's Office, the Delegate Minister's Office has been relocated to the Ministry for Health, Population and Hospital Reform. The Delegate Minister's Office lacks the mandate, human resources and core budget necessary to effectively coordinate Government action to improve women's status, mobilize public support for relevant reform proposals and change mentalities on gender issues. These weaknesses in the women's national machinery have been partially compensated for by the strong political support of the current President of the Republic, who has taken a public stance in favour of women's rights and gender equality. In addition, a Council on Family and Women, as per Executive Order of 22 November 2006, was officially established on 7 March 2007, which is composed of representatives of public institutions and civil society. The main objectives of the Council are to contribute to programme development, conduct studies and provide advice on matters pertaining to the promotion of family and women's rights.⁸

18. The Government of Algeria also informed me in writing that it had embarked on the implementation of the second phase of the national strategy to fight violence against women (2007-2011). The 5-year plan of work aims to strengthen the technical and institutional capacity of national partners to ensure the prevention of violence against women, as well as better supporting women victims of violence.⁹

19. In 2001, the President also set up the Consultative Commission on the Promotion and Protection of Human Rights, which is composed of 43 representatives from civil society, public institutions and (non-voting) members of the Government, including the Delegate Minister for the Family and the Status of Women. While the International Coordinating Committee of National Human Rights Institutions certified that the Consultative Commission was in formal compliance with the Paris Principles relating to the status of national institutions, it is widely regarded as not fully independent and often unwilling to challenge the Government on politically sensitive issues. None of its annual reports have been published.¹⁰ Regrettably, the Consultative Commission does not have a programme to specifically promote and protect women's human rights.

20. On the other hand, the Algerian women's movement constitutes a significant political constituency and social force. Based on information received by several women's organizations I

⁸ Observations and comments from the GOA. As this Council was established after my visit to Algeria, I cannot assess its capacities and decision-making powers with respect to eliminating violence against women.

⁹ Ibid.

¹⁰ Ibid. The Government noted that the Commission has produced four reports since 2001, without specifying whether these were public or not: an audit report on the conformity of Algerian laws with international legal commitments, a national action plan on the promotion and protection of human rights in Algeria, a report on victims of enforced disappearances, and an activity report (2002-2004) on the human rights situation in Algeria.

met with during my mission, I consider that non-governmental women's associations are often still not sufficiently consulted in decision-making processes.¹¹ Individual activists often face opposition in the workplace, the media and even within their own families for taking a public stance on women's rights. Most associations also battle with serious resource constraints; not least since they require the Government's prior approval to receive funding from abroad. Therefore, their work often depends on the goodwill of the authorities. For instance, I had a meeting with women's associations in Oran in an office space, which had been leased by the *wilaya* (province) of Oran free of charge to the *Association Féminine pour l'Epanouissement de la Personne et l'Exercice de la Citoyenneté* (AFEPEC). Five days after my departure from Algeria, the *wilaya* ordered AFEPEC to vacate the premises. In response to my written enquiry about this decision, the Government informed me that the local authorities had to reclaim the property for other purposes and would make no effort to find an appropriate alternative for AFEPEC.¹²

II. THE STATUS OF WOMEN

A. Education and adult literacy

21. After independence in 1962, Algeria put great emphasis on education and equality in education to overcome the extremely high levels of illiteracy, especially among women, inherited from French colonial rule. As a result, much progress has been made in realizing equal access to education for women and girls.

22. Schooling for girls and boys is obligatory and free of charge between the ages of 6 and 16. Gender parity in primary education has almost been achieved. According to the National Multiple Indicators Survey on Children and Women (MICS3 Survey), conducted in 2006¹³ the schooling rate in primary education stood at 96.3 per cent for girls and 96.9 per cent for boys. The schooling rates are significantly lower in certain localities, not least due to the continued resistance in some communities to girls' education.¹⁴ Further, according to some of my interlocutors, the problems relating to the quality of school education undermine the overall value of free and equal access. Overcrowded classrooms, inadequate training of teachers and

¹¹ Ibid. According to the Government, non-governmental organizations, including those promoting women's issues, are a crucial social partner, and they can participate in consultative councils created to discuss societal issues.

¹² According to the Government, it invests over 600 million dinars annually to support non-governmental organizations. Organizations that promote women's rights also benefit from provision of office space.

¹³ "Situation des enfants et des femmes: enquête nationale à indicateurs multiples, rapport préliminaire", July 2007.

¹⁴ In the *wilayas* of Mila and Djelfa, for instance, the general schooling rate stood at only 60 per cent in 2004, *Système des Nations Unies en Algérie, Bilan commun de pays*, 2005, para. 9.

infrastructure gaps have been identified as areas of concern in national surveys.¹⁵ Moreover, despite the education reform of 2002, curricula and textbooks are said to contain biases with respect to gender issues and other universal human rights values. Nevertheless, the Government noted that these textbooks have been checked by the United Nations Educational, Scientific and Cultural Organization.

23. Many girls and young women actively pursue education opportunities beyond compulsory school. They have proven to be markedly more successful than their male counterparts. While, according to Government figures, 57 per cent of girls move on to high school (ages 16-19), only 43 per cent of boys do so. More women (25.4 per cent) than men (18.4 per cent) also pursue higher education.¹⁶ At the Emir Abdelkader University of Islamic Sciences, 70 per cent of students are women. Faculty members emphasized that the pursuit of education was an Islamic duty for both women and men.

24. Women's illiteracy, especially among rural, poor and older women, continues to be a serious concern. According to the MICS3 Survey, almost one third of Algerian women aged 10 years and older are illiterate (31.6 per cent, compared to 16.5 per cent for men). The female adult illiteracy rate reaches as high as 41.3 per cent in rural areas; 22.4 per cent of women (including 34 per cent of rural women) have never received any formal education. The Government has allocated 45 billion dinars to a national strategy on literacy, in order to eradicate illiteracy by 2015.¹⁷

B. Labour force participation

25. Women in Algeria are legally entitled to work in all professions, but despite their levels of education they are still highly underrepresented in the labour market. According to a 2006 National Survey on Women's Socio-Economic Integration, only 18.7 per cent of women are employed.¹⁸

26. Gender stereotyping assigns reproductive and domestic work exclusively to women and thereby constrains women's socio-economic and political empowerment. Married women in particular are generally expected to pursue only professions that do not interfere with "their" domestic responsibilities. Many married women drop out of the labour force altogether. The 2006 Survey revealed that almost half of all married women with employment in the private sector stopped working when they got married. The marriage-related dropout rate for the public sector was 16.3 per cent.

27. Mobbing and also sexual harassment (see below) by male colleagues and supervisors are also important factors discouraging women from pursuing a professional career.

¹⁵ Rapport national sur le développement humain, p. 27.

¹⁶ Ibid., pp. 26-27.

¹⁷ Observations and comments from the GOA.

¹⁸ Ministère délégué chargé de la Famille et de la Condition féminine, *Enquête nationale sur l'intégration socio-économique de la Femme* (2006).

28. Three out of every five employed women (60 per cent) work in the public sector.¹⁹ Educated middle-class women, for instance, are highly represented in the judicial, public health and education sectors. According to the 2006 National Human Development Report, women make up 50 per cent of teachers, 53 per cent of doctors and 34 per cent of magistrates. While paying lower salaries than the private sector, public employers are usually more willing to accommodate the social constraints with which professional women have to grapple. One local police commander, for instance, informed me that he allowed married female police officers to leave two hours early during Ramadan to prepare the evening meal - a concession that he justified as “a temporary special measure to accelerate gender equality under Article 4 of CEDAW”.

29. In the private sector, on the other hand, most women work in unregulated and low-paying informal sector jobs. Women in the formal private sector often hold precarious, short-term contracts.

30. A mere 4 per cent of all business owners are women.²⁰ Women make up only 17.5 per cent of the beneficiaries of the Government’s microenterprise support programme. They are more likely to benefit from a parallel programme providing much smaller microcredit loans (64.9 per cent female recipients).

C. Public decision-making

31. Algerian women actively participated in the struggle against colonial rule and many assumed public office upon independence. Although women continue to hold important public functions today (e.g. the Presidency of the Council of State, the highest administrative court), the overall representation of women among public decision makers has stagnated. At the time of my visit, only 3 out of 41 members of the Cabinet were women, including 2 Delegate Ministers without a ministry of their own. When this report was finalized, Algeria was ranked 110th out of 134 in the Inter-Parliamentary Union’s World Classification of Women in National Parliaments.²¹

32. Women seeking to enter public life often have to overcome resistance in their own family. Moreover, the gateways to public office, including political parties and labour unions, continue to be male-dominated as regards their membership, working methods and institutional character.²²

33. There is a lively debate in Algeria as to whether to introduce a 30 per cent quota for women in Parliament and other public functions, in order to stimulate women’s political activity and provide women with the critical mass needed to reshape the institutions of power.

¹⁹ Ibid.

²⁰ Ibid.

²¹ See <http://www.ipu.org/wmn-e/classif.htm>.

²² According to the 2006 National Survey on the Socio-economic Integration of Women, only 1.2 per cent of women are active in unions and a mere 0.38 per cent in political parties.

D. Demographic and family profiles

34. Socio-economic transformations have reshaped the make-up of Algerian households. Especially in urban areas, a nuclear family, consisting only of a husband and wife and their unmarried children, has largely replaced the extended household in which grandparents and other family members lived together.

35. Fertility rates have dropped from 7.8 children per woman in 1970 to 2.3 children in 2006, due mainly to social acceptance of contraceptive methods and a steady rise in the average age of marriage.²³ The average age of marriage now stands at 30 years for women and 33.7 years for men. While, this has often been attributed to the fact that women delay marriage to finish their education and pursue a career, high rates of youth unemployment and a serious shortage of affordable housing for young couples have been identified as additional factors.²⁴ Although it is not common, divorce is also an increasing reality. According to government figures, 31,133 cases of divorce were registered during the course of 2006. Repudiation by the husband resulted in 17,054 divorces; in 1,477 cases women were required to make a *khola* payment to obtain a divorce. The 2006 MICS3 Survey found that 1.3 per cent of women are divorced.

36. Maternal mortality rates are comparatively high. A survey from 1999 revealed maternal mortality of 117.4 deaths per 100,000 births.²⁵ In the provinces of the south, however, there were over 200 maternal deaths per 100,000 births. According to Ministry of Health estimates for 2005, the maternal mortality rate had dropped to about 96 per 100,000, but large regional disparities remain. While a health-care system with wide geographic coverage ensures that 95.2 per cent of all births are assisted (see 2006 MICS3 Survey), insufficient political attention is devoted to ensuring high-quality standards throughout the country. Officials of the Ministry of Health also highlighted the fact that too few mothers received post-natal follow-up (only 30.6 per cent according to the MICS3 Survey).

37. On the whole, gender relations in the family remain strongly patriarchal and ideologies of male superiority prevail. The family still seeks to exercise tight control over women and their bodies. An unmarried woman is expected to live in the family home, obey her father and conduct herself modestly. After marriage the subordination shifts to the authority of the husband and his family. Female virginity before marriage (or at least the public perception thereof) is considered essential to the maintenance of family honour.²⁶

²³ Ministère de la Santé, de la Population et de la Réforme Hospitalière, *Enquête algérienne sur la santé de la famille*, 2005, p. 50.

²⁴ Ibid., p. 170.

²⁵ Estimates advanced by the Ministry of Health indicate falling mortality rates since the survey was conducted. The results of a detailed UNICEF multicluster survey were not available when this report was published.

²⁶ Although honour-related crimes are fairly unusual in Algeria, article 279 of the Penal Code legally excuses a person for assault or even murder, if committed upon surprising his or her spouse in the act of adultery.

38. Women who choose to live on their own are often the subject of suspicion and sometimes outright hostility. The incident that took place in Hassi Messouad (Southern Algeria) on the night of 13 to 14 July 2001 is an extreme example. Several hundred men violently attacked a group of 39 women living on their own, after an imam at a local mosque reportedly denounced the women as prostitutes. The men physically and sexually abused almost all the women and ransacked their rooms. Several women were raped or gang raped.²⁷ Subsequently 30 alleged perpetrators were prosecuted in the tribunal of Ouargla, which eventually sentenced 20 men to prison terms of six months to three years. Not a single perpetrator was convicted of rape. The Supreme Court quashed the judgement and ordered a retrial. In 2005, the tribunal of Biskra condemned the majority of indicted perpetrators to long prison sentences and ordered them to pay compensation to the victims. At the time of my visit, judicial appeal proceedings were still ongoing.

E. Single mothers and their children

39. There are also a substantial number of unmarried single mothers, with around 3,000 children born outside marriage annually. A strong stigma is attached to these women and their offspring. Unmarried single mothers are often rejected by their own families and have to endure immense social pressure. In Constantine, for instance, I was informed of the case of Salima,²⁸ a young woman who committed suicide because her family had forbidden her marriage to a man she had a relationship with. The autopsy found that the woman was three months pregnant.

40. Children born outside marriage also face problems throughout their lifetime, especially since they are registered and identified as such in official documents. In such cases, girls are confronted with intersecting layers of discrimination based on their legal status and sex. Illustrative of this is the case of Fatima, a woman from the *wilaya* of Batna, who was born outside marriage. At birth, her mother gave her to a family under an Islamic care arrangement (*kafala*). Her foster brother regularly beat her until she was finally ejected from the house of her foster family at the age of 17. Living on the streets, she was abducted by a group of men and gang raped. She survived the ordeal and met a man who agreed to marry her, even though he knew that she was born outside marriage. A religious ceremony was conducted, but the man refused to officially register the marriage. He physically abused her on a regular basis and she eventually fled back to her foster family. Even though her foster brother started beating her again, she stayed for another two years until she was thrown out. When I met her, Fatima was living at a women's shelter and working as a cleaning lady.

41. In view of these prospects, women who are pregnant outside marriage will very often opt for an abortion. Since Algerian law only permits abortions under very narrow circumstances,

²⁷ These women had come to this oil-rich region to find work as cooks, secretaries, cleaners etc. Some worked during evening or night hours.

²⁸ The names of individual victims cited in this report have been changed to protect their privacy.

women have to risk dangerous clandestine abortions.²⁹ Estimates on the number of clandestine abortions vary widely, but the authorities acknowledge that several dozen deaths result from unsafe clandestine abortions every year.

42. Unmarried women who choose to deliver their babies will usually try to hide their condition. Hospitals make special arrangements allowing single mothers to check in from the seventh month and give birth anonymously. In the past, single mothers were usually encouraged to give up their children into *kafala* arrangements. Recently, the Ministry of National Solidarity took the decision to actively encourage single mothers to keep their children. While they receive some help, State support for single mothers is overall still insufficient. For instance, single mothers do not receive preferential access to subsidized State housing, even though they can often neither return to their families nor find private housing.

43. Whereas the 1984 Family Code did not have any provisions to force the father to acknowledge paternity, article 40 of the 2005 Family Code now specifically allows DNA testing to establish paternity. This is a positive step as it substantially improves the legal position of single mothers and their children.

III. VIOLENCE AGAINST WOMEN AND STATE RESPONSE

44. Violence against women, despite its prevalence, remains one of the most invisible human rights violations in Algeria, although State institutions have begun to acknowledge and address the issue. In this regard, the National Strategy to Combat Violence against Women, developed by the Delegate Minister for the Family and the Status of Women in consultation with other stakeholders, is a most promising initiative since it emphasizes a multi-pronged approach based on a human rights and empowerment perspective. At the time of my visit, the endorsement of the National Strategy by the Cabinet was still pending. The full implementation of the National Strategy, which will also imply serious resource commitments, will enable the Government to address many of the problems outlined in this report.

A. Violence in the family

1. Prevalence and forms of violence

45. In 2006, The Delegate Minister for the Family and the Status of Women commissioned a national survey on violence against women, based on interviews with a sample of 2,043 women aged 19-64 years. The survey found that women are most likely to be subjected to violence within the family and it revealed significant prevalence rates. One in 10 women living with their husband or partner reported to be subjected “often” or “daily” to physical violence such as beatings, locking in or ejecting into the street during the last 12 months prior to the survey. One in three women (31.4 per cent) reported to have been regularly subjected to threats of physical or emotional violence in the same period.

²⁹ Abortion remains a criminal offence in Algeria. An exception applies if the abortion is necessary to save the mother’s life or her physical or mental health is at stake, which includes cases where the mother would give birth to a child with severe disabilities. During the black decade women who became pregnant due to rape had the right to have an abortion. Authorities I spoke to were unable to confirm whether abortion after rape remains legal today or not.

46. Marital rape and other forms of intramarital sexual abuse were also found to be widespread. The general tendency among men is to assume that a man is entitled to sexual relations with his wife regardless of her consent. The survey revealed that 10.9 per cent of women with a husband or cohabitant partner had been subject to forced sexual relations on more than one occasion. Ambiguities in the penal law framework contribute to the problem of intramarital sexual violence. Article 336 of the Penal Code fails to define the crime of rape, including marital rape. During my mission, senior judges and justice officials whom I met could not tell me with certainty whether marital rape was a crime or not, arguing that there was no jurisprudence on this issue. According to written information submitted by the Government, tribunals would consider “any sexual penetration that is committed with moral or physical violence against a woman” as the elements of the crime of rape, and this judicial definition would not exclude marital rape. The definition of rape and sexual crimes, as well as the criminalization of abortion, are currently being discussed by a Commission in charge of revising the Penal Code.³⁰

47. Other family members, such as fathers, brothers or mothers-in-law are very often also found among the perpetrators of violence against women. Several medical practitioners and other expert interlocutors highlighted the fact that sexual violence committed by male relatives is a far larger problem than generally acknowledged. Since incest is a taboo issue, no reliable figures exist.

48. According to the survey, women who are divorced, widowed or separated from their husbands are particularly likely to become victims of violence at the hands of both in-laws and blood relations. Deprived of the husband’s support in the family structure, these women often find themselves in a particularly precarious situation.

49. The survey also showed that women with less education or poor women were more likely to suffer violence and thereby underscored the fact that women’s educational and socio-economic empowerment must form an integral part of any strategy to combat violence against women.

2. Constraints to reporting violence

50. Only a small proportion of all violence committed against women in the family is reported to the authorities. The prevalence rates found in the 2006 National Survey would indicate that there are about 500,000 women in Algeria who experience physical abuse on a regular or even daily basis.³¹ This figure sharply contrasts with the comparatively low number of cases registered by the judicial authorities. According to information received from the Government, 17,383 cases of physical abuse of women reached the authorities during the course of 2006.

³⁰ Observations and comments from the GOA.

³¹ Interestingly such prevalence rates are not reflected in police records, which show that 74 per cent of the aggressors are not known to the victim. This is consistent with the information I received from interlocutors that victims of domestic violence would go to the police only as a last resort.

(a) Sociocultural constraints

51. A number of my interlocutors, including Government officials, referred to family structure, culture and tradition as factors that discourage reporting. Women are seen as bringing dishonour to their family if they involve outsiders, including State authorities, in “family matters”. In many cases, family members actively pressure women to keep quiet about violence. Even in situations of serious violence, the family will very often still try to seek some form of conciliation within the family, rather than report the perpetrator.

52. The case of Fadila is a drastic, yet illustrative example. Fadila a mother of three children from the *wilaya* of Freneda was reportedly abused and beaten by her husband throughout eight years of marriage. Her parents did not accept that she leave her husband and return to the family home, let alone turn to the police, even though the husband allegedly almost killed her on at least one occasion. On 1 March 2006, her husband attacked Fadila with a knife. He then poured kerosene on her and set her on fire. Three months later, on 27 May 2006 she died at the age of 29. At the time of my mission, her husband was in pretrial detention, but had not yet been prosecuted.

(b) Law, policy and practice

(i) Advice and support at points of first contact

53. The police apply different standards to domestic violence cases, even though Algerian law foresees that all forms of violent crime have to be pursued, regardless of whether the victim herself files a criminal complaint or not. Unless domestic violence has led to serious physical injuries, police will very often attempt to “reconcile” perpetrator and victim on the spot, rather than institute criminal proceedings. This strategy is prone to cause re-victimization since it undermines the deterrent function of the law and entrenches the imbalance of power between perpetrator and victim. Lawyers and women’s organizations also reported numerous cases in which police had actively pressured women to withdraw criminal complaints against husbands or other family members.

54. The authorities have attempted to improve the situation by seeking to ensure that female police officers are available in all police stations to register crimes against women. Some police districts have also begun to systematically collaborate with non-governmental organizations that assist victims. These are positive steps, but they cannot replace sustained gender-sensitive training to transform the attitude of the police corps as a whole. Moreover, disciplinary measures need to be taken whenever public officials abide by social norms of non-interference in family matters, rather than their legal obligations.

55. If women seek State help in cases of domestic violence, they are far more likely to turn to medical authorities than to the law enforcement authorities,³² not only to receive treatment for their injuries, but to obtain a doctor’s statement certifying the abuse. Such a medical certificate increases a woman’s chance of obtaining a divorce with alimony benefits and can therefore be used as an instrument of pressure against the abusive husband.

³² See Institut national de Santé publique, *Violence à l’Encontre des Femmes, l’Enquête nationale*, 2005.

56. Non-governmental organizations and, to some extent, the Government have also created help centres, which provide invaluable advice and support to women facing violence or family exclusion. The Ministry of National Solidarity has set up a 24-hour telephone hotline for all persons requiring urgent support, including women in situations of distress.

(ii) *Shelters for women*

57. There is a serious lack of specialized shelters for women facing violence or oppression in the family. Although women's shelters do not offer a long-term solution, they provide an indispensable interim protection for women who need to escape violence and oppression at home, but have nowhere else to go.

58. At the time of my visit, the responsible Ministry of National Solidarity operated only one shelter exclusively for women victims of violence and oppression. The National Shelter in Bou Ismail (*wilaya* of Tipaza) was initially established for young women and girls exposed to violence during the black decade. With a mandate to accommodate women from all over Algeria, it has a capacity for only 24 women. During my visit, construction was ongoing to expand the shelter so that it would also be suited to accommodate women with children. In addition, the Ministry has plans to open a second women's shelter in Tlemcen.³³

59. The non-governmental organizations *S.O.S. Femmes en Détresse* and RACHDA, relying on international and private donations, also operate women's shelters in Algiers. At the time of my visit, other non-governmental organizations were in the process of gathering funds for additional shelters.

60. Due to the lack of an adequate number of women's shelters, women who seek State protection are often directed to institutions that do not have the expertise and specialization necessary to address the needs of women victims of violence. These include homes for the elderly and homeless, and *Diar Rahma* institutions. During the course of my mission, I visited the *Diar Rahma* in Constantine and Oran. Apart from women facing violence or family exclusion (including single mothers), both *Diar Rahma* accommodated a wide range of persons in need of State support, including mentally or physically disabled persons. Both institutions placed a heavy emphasis on reconciliation with the family or husband as a long-term solution for women who had experienced domestic violence. Conversely, the two specialized women's shelters visited had established vocational training programmes to provide women with alternatives to a return to the environment from which they had escaped.

61. At all protective institutions visited, I learned to my distress that men regularly approached these institutions in search of suitable wives. Staff allowed or even arranged match-making meetings with women in their care. While acknowledging the obvious risks associated with relationships formed under these circumstances, staff in charge explained that many of the women in their care actively sought marriage as a means to leave the shelter and avoid the difficulties experienced by women living on their own. Although I was assured that the institutions carefully vetted the male suitors before facilitating a marriage, it is questionable whether such efforts can successfully prevent re-victimization.

³³ In its Observations and comments, the Government has confirmed that as of 6 December 2007 there are two such women's shelters in the country.

(iii) Marital property regime

62. The Family Code recognizes a strict separation of the property of husbands and wives. This property regime may facilitate the economic autonomy of women with assets. However, it discourages women from escaping abusive relationships, because if they file for divorce and do not have an income of their own to cover their living costs and those of their children, they may encounter long-term destitution. In situations of divorce, each spouse retains his or her assets, even if these assets have been acquired during marriage when both partners contributed to a common life. Since the family's most valuable assets are typically legally registered in the husband's name, this often causes grave injustices to women.

63. Furthermore, under the 2005 Family Code, disputed household items for "exclusive male use" will be awarded to the husband, whereas the wife has the right to claim "female" household items. "Neutral" or "common" items are shared between the spouses according to article 73 (2) of the Family Code, which also stipulates that the spouses can decide upon the items acquired together and determine which would be allocated to which spouse. Lawyers explained that the courts typically interpret this provision in the husband's favour with the result that women often come out of a divorce with little more than their clothing and other personal belongings.

64. Under the 1984 Family Code, the husband also retained the marital home, even though the children typically stayed with the wife. In the context of Algeria's severe and long-standing housing crisis, this frequently meant that a divorced woman and the children under her care would have to live on the street, unless her parents would take her in. The new Family Code has abolished this legal monstrosity. In case of divorce, a woman who has guardianship over the children is now entitled either to retain the marital home, be provided by her husband with decent housing or receive the necessary funds from him to rent such housing.

65. While this provision is generally regarded as a step forward, I have received numerous reports about women with children, who still end up homeless, because they have not been made aware of their rights or courts fail to effectively enforce the housing entitlement.

66. Some men facing divorce also deliberately delay divorce proceedings through the abuse of judicial appeals. Since Algerian courts are usually reluctant to issue interim orders on housing before the divorce is pronounced, a woman seeking divorce may therefore have to wait for years before finally being awarded a divorce and the housing entitlement that goes along with it.

(iv) Lax sentencing

67. The conviction rate for physical abuse against women, as reported by the Government, appears to be very high: 14,016 out of 16,676 cases that reached the judicial authorities resulted in a conviction. However, many of my interlocutors have pointed out that lax sentencing in domestic violence cases discourages women from pursuing criminal complaints. The Penal Code foresees increased penalties for physical assault against parents or children. Yet, spousal abuse is only regarded as ordinary assault, even though these situations are also characterized by a close family relationship and unequal power between perpetrator and victim.

68. In judicial practice, perpetrators of spousal abuse are often only sentenced to suspended jail terms, monetary fines or only receive warnings. In the absence of mandatory offender treatment

programmes or other alternatives to traditional means of penal justice, this is bound to encourage perpetrators and exacerbate violence.

B. The situation of street women

69. The dire situation of street women and their children in Algeria is a matter of grave concern to my mandate. Their plight is strikingly visible in the big cities, especially at night. While some street women may be migrants from rural areas, women very often end up in the streets due to the violence and oppression they experience in the family. Their very living conditions on the streets must be seen as a form of violence.

70. While the 2005 Family Code grants women with children a right to housing, humanitarian organizations are still confronted with cases of divorced women with and without children who end up in the streets. *SOS Femmes en Détresse* has estimated that at least 540 more women ended up on the streets in 2006 alone.

71. These organizations also note an increasing number of girls and unmarried women, who were ejected or fled from their homes and now live on the street. The ejection may occur to punish women and girls who are perceived to have violated the family honour, including young women, who become pregnant outside marriage or engage in relationships that are not approved by the family. A rupture in the family structure (e.g. if one parent dies and the other remarries) can also trigger family conflicts that ultimately result in the ejection of the most vulnerable family member. Finally, there are many cases, where the ejection stands at the end of a long history of physical or sexual abuse in the family circle.

72. The ejection of women and girls into the streets must be seen as a particularly egregious form of violence against women in the Algerian context, because it usually has dire consequences for the victims, as it involves various forms of abuse and exploitation. In some cases ejection has also led women into prostitution.³⁴ The police and other authorities regularly pick up street women and girls and drop them off in temporary shelters, but the authorities largely fail to offer long-term programmes to support them financially, legally and socially, and reintegrate them.³⁵

73. Nadia, whose parents rejected her because they wanted a boy child, grew up in the care of her grandmother. Her parents divorced and her father remarried several times. When her grandmother became too ill to protect her, her stepmother encouraged her brother to physically abuse her on a regular basis. When she was finally ejected from the house, she had to live on the street. She explained to me that she continuously moved between locations to avoid depredation by street criminals and corrupt police. After three years on the street, a woman invited her to live in her house and introduced Nadia to her “stepbrother”. The man at first proposed to marry her. When she refused, he brutally raped her and subsequently threw her out of the house. Several days after the traumatic incident, she tried to report the crime to police, but was dismissed as an

³⁴ L’association AIDS Algérie, *Travail du Sexe et VIH/SIDA en Algérie*, 2007.

³⁵ Observations and comments from the GOA: according to the Government, 76 temporary shelters are available for homeless women, among other groups. In 2006, 6,086 persons, including 2,720 women, had benefited from these shelters.

“easy woman”. After another year on the street, she was abducted by a group of armed men. Fearing to be raped again, she claimed to be HIV-infected and the men released her. Today, Nadia lives in a women’s shelter and composes insightful poems to come to terms with her traumatic ordeal.

C. Sexual violence and harassment in formal institutions

74. Sexual violence and sexual harassment in the public sphere most commonly occur at work and in places of education and training. The National Survey on Violence against Women indicated that 7 per cent of all women have been sexually harassed in an educational or training institution and 1.9 per cent have even suffered sexual violence; 1.6 per cent of women reported sexual harassment at work and another 1 per cent was subjected to sexual violence. Sexual violence at work often takes the shape of sexual extortion by employers and supervisors, who take advantage of women in precarious job situations. Divorced women in particular are often regarded as easy prey for unwanted sexual advances, since the perpetrators consider that they lack male protection and have “nothing more to lose”.³⁶

75. In 2004, a new provision was introduced into the Penal Code to address sexual harassment and violence. Article 341 bis penalizes any person who abuses his authority deriving from his function or position, to order, threaten, coerce or pressure another person with the aim of obtaining sexual favours. Although the misdemeanour established by article 341 bis is referred to as sexual harassment, the norm unfortunately does not go beyond sexual extortion and fails to criminalize forms of sexual harassment not based on an abuse of authority. In 2006, the judicial authorities registered 325 cases of sexual harassment as defined in article 341 bis and 267 cases resulted in convictions.

76. Sexual harassment at work is also not adequately addressed by the Labour Code which guarantees workers’ rights to integrity and dignity, but fails to outline specific remedies and protection for victims and witnesses of sexual harassment and extortion. During my visit, I was informed that the Ministry of Labour was working on proposals to close existing protection gaps.

77. Women often keep silent about the sexual abuse they experience at formal institutions, because they fear reprisals or counter-accusations of having invited the perpetrator’s sexual advances. The National Commission on Women Workers has sought to help women by disseminating information and installing a telephone hotline that provides advice on sexual harassment. Among State authorities there are also some positive examples of measures taken to break the silence on harassment. The Director-General of National Security, for instance, commissioned a survey on sexual harassment in the police force and ordered local commanders to follow a zero tolerance policy.

D. The black decade and its consequences

78. The 1989 Constitution opened a new political space, allowing for political parties, elections and a free press. “Taking advantage of the political opening, Islamists organized a

³⁶ Data received from the National Commission of Women Workers indicates that 43 per cent of all women who reported sexual harassment to this organization were either divorced or in the process of obtaining a divorce.

campaign of threats and harassment against women whose lifestyles were considered inappropriate.”³⁷ Women became alarmed at the increasingly misogynous statements and coercive practices employed by the extremists, especially after the Islamic Salvation Front (FIS) won the municipal elections in 1990. FIS was dissolved after the cancellation of the first multiparty national elections in 1992. This was followed by a spiral of violence that resulted in an internal armed conflict for nearly a decade.

79. At least 150,000 people were killed or went missing in a period that Algerians often refer to as the black decade. In the course of the armed conflict, Islamist armed groups systematically attacked the civilian population using terrorist tactics, including abductions, targeted assassinations, massacres and bombings in public places. Towards the end of the 1990s, the Algerian army gradually gained the upper hand in the conflict. While the violence has since diminished, some armed groups still carry out terrorist attacks.

80. On 29 September 2005, the Algerian people approved by national referendum the Charter for Peace and National Reconciliation, which aims to bring closure to the conflict and initiate a national reconciliation process. Although the term is neither used in the Charter nor in its implementing legislation, it effectively offers an extensive criminal and civil amnesty to Islamists who renounce violence, members of the security forces and Government-allied militiamen.³⁸ The amnesty extends to grave human rights violations such as acts of torture and enforced disappearances. However, according to the terms of the Charter, persons who committed massacres, bombings in public places and rape are specifically excluded from the amnesty.

1. Sexual violence and exploitation

81. During the black decade, Islamist armed groups used sexual violence in a calculated manner to spread terror and demonstrate the inability of the State security forces to protect the civilian population. In view of their widespread and systematic nature, the atrocities perpetrated against women amounted to crimes against humanity.

82. It is estimated that several thousand women were raped by members of armed Islamist groups. Many women and girls were abducted from their home towns and villages, held in situations of sexual slavery and in some cases murdered, especially when they became pregnant.

³⁷ V. Moghadam, *Modernizing Women: Gender and Social Change in the Middle East* (London, Lynne Rienner Publishers, 2003), p. 169.

³⁸ Presidential Order No. 06-01 of 27 February 2006, which implements the Charter, foresees an “extinction of public action” against persons who committed terrorist acts or subversive acts, but voluntarily laid down their weapons and turned themselves in. Persons already convicted of such crimes benefit from a pardon. The Presidential Order further stipulates that no legal action may be pursued against members of the army and security forces for actions taken to protect persons and property, to protect the nation and preserve the institutions of the Democratic People’s Republic. Furthermore, the Presidential Order declares that citizens who contributed to save Algeria through their activism and determination committed acts of patriotism. This phrase is generally understood as extending the amnesty provisions to Government-allied militia.

Grossly abusing the precepts of Islam, perpetrators reportedly sometimes tried to depict their atrocities as “religious temporary marriages”.

83. The case of Saida and her sister-in-law Lila is illustrative of the sexual violence and diverse forms of abuse women encountered. In 1995, armed Islamists abducted the two women from their home in Blida. They were marched to a camp in the surrounding mountains, where they were gang-raped by a large number of men over the course of three days. In order to further humiliate them, the men cut off their hair. On their fourth day in captivity, one sympathetic man helped them escape. It took them two days to walk back to Blida. When they finally reported to the local gendarmerie station, they were reportedly insulted, arrested as potential terrorists and detained for 10 days before their family managed to obtain their release.

84. In Algerian society, rape is often considered a disgrace to the woman and her family, thus the blame is often placed on the victim. Although, in the face of the widespread sexual violence of the black decade such prejudices to a large extent softened, women who had endured sexual violence still faced rejection in their own communities and families. As a result, the majority of women suffered the consequences of violence in silence and avoided disclosing their ordeal to the authorities or other outsiders. A considerable number of women who became pregnant due to rape opted for abortion, which was allowed during the black decade, after Algeria’s Supreme Islamic Council issued a religious opinion (*fatwa*) declaring abortion under these circumstances to be compatible with Islamic principles. However, there were also many women who carried their pregnancy to term and are today confronted with the additional hardship of being single mothers with children born outside marriage.

85. I welcome the fact that the Charter on Peace and National Reconciliation specifically exempts persons who committed rape from the amnesty provided under the Charter. In practice, however, the perpetrators of rape seem to enjoy impunity, since investigation and prosecution of sexual violence committed during the black decade are not actively pursued. Despite making specific requests for information during and after my mission, the Government was unable to provide me with relevant statistics or references to individual cases of persons who were denied amnesty under the Charter because they committed rape.

86. The Charter and its implementing legislation do not make specific provision for compensating victims of sexual violence. However, victims are legally entitled to obtain compensation under an executive decree from 1999. In practice, victims report great difficulties in proving their claim, especially due to the fact that many victims chose not to report the crime at the time.

2. Suffering of families of the disappeared

87. In the course of the black decade, large numbers of persons, mainly men, were arrested or abducted because of their presumed affiliation with armed Islamist groups. Many victims disappeared and their fate or whereabouts remain unknown. An Ad hoc Inquiry Commission in Charge of the Question of Disappearances, created by the President in September 2003, counted 6,146 cases of persons who were arrested or abducted by State agents according to their

families and subsequently disappeared.³⁹ Non-governmental organizations have advanced higher numbers.

88. The disappeared left behind wives, mothers, sisters and daughters. These women have experienced emotional violence during years of uncertainty about the fate of their loved ones.⁴⁰ The faint hope that some of the disappeared may still be alive poses a psychological hurdle that prevents many families from accepting the situation and beginning a process of grieving and emotional healing.

89. During my mission, I met with families of the disappeared. Their first and foremost concern was to know what had happened to the disappeared and where their bodies could be found, in case they had been killed. The Government has so far systematically failed to provide information that would clarify the circumstances of individual cases, a policy that prolongs the emotional violence suffered by families of the disappeared.

90. Many families of the disappeared also find themselves in a very difficult socio-economic situation, since the disappeared person was often the main breadwinner. Since families are often unwilling to seek a legal declaration of death, they face problems in accessing pensions or inheritance. It is therefore positive that the Charter on Peace and National Reconciliation grants the families of the disappeared a right to compensation. However, the implementing legislation undermines this right by requiring that the disappeared person is legally declared dead before the relatives obtain a right to compensation.⁴¹ Relatives are thereby forced into a trade-off between their human right to truth and their human right to compensation: they must either accept legal closure of the disappearance case or forego compensation.

91. Families that apply for a declaration of death and then file a compensation claim are often confronted with bureaucratic hurdles and an extremely slow-moving process. Several families who sought to obtain a police statement, necessary to apply for a judicial declaration of death, also told me that the authorities had tried to force them to change the cause of disappearance in their statement so as not to implicate State agents.

3. Harassment of associations of victims of the black decade

92. Associations of families of the disappeared and associations comprised of victims of Islamist violence report that they suffer harassment and threats if they publicly present views on

³⁹ The President of the Ad hoc Inquiry Commission publicly announced this figure. The Commission's final report, which was submitted to the President on 31 March 2005, has never been published and I have not been able to get access to it.

⁴⁰ See also Human Rights Committee, concluding observations: Algeria CCPR/C/79/Add.95, para.10; Human Rights Committee, communication No. 1196/2003, *Boucherf v. Algeria*, para. 9.7; communication No. 992/2001, *Saker v. Algeria*, para. 9.8. (all holding that disappearances violated the right of relatives of the disappeared to freedom from torture and cruel, degrading or inhuman treatment or punishment under article 7 of the International Covenant on Civil and Political Rights).

⁴¹ Décret présidentiel No. 06-93 du 28 février 2006, art. 3.

national reconciliation, peace, truth and justice that diverge from the official perspective. For instance, associations from both sides bridged political divides and jointly organized a seminar on truth, peace and reconciliation, which was to take place on 7 February 2007 in the Mercure Hotel in Algiers. The organizers reportedly informed the authorities five weeks in advance about the event. On the day of the event, police prevented some participants from entering the hotel and cut the electricity supply to the conference room in order to force participants who were already inside to leave.⁴²

93. In view of the situation on the ground, I am particularly concerned about article 46 of the Presidential Order to implement the Charter on Peace and Reconciliation, which criminalizes the use or exploitation of “the wounds of the national tragedy” to harm the State, its institutions, agents or international image. Officials explained that no one had been charged under article 46 and that the norm was only directed against persons who deliberately sought to distort the historical record by trying to attribute to the Government atrocities clearly committed by armed Islamist groups. However, in view of its wide scope and ambiguous wording, the norm can also be used to silence voices expressing divergent views on the national reconciliation process, including those of women victims of violence.

IV. CONCLUSIONS AND RECOMMENDATIONS

94. **Women’s status in Algeria is characterized by contradictions. On the one hand, in the context of Algeria’s modernization project, many women have made remarkable advances in education and in certain professional fields. On the other hand, exclusion and poverty with a distinctly female face remain strikingly visible.**

95. **Women lack equal access to the labour market and decision-making positions. Moreover, many women are still subjected to oppression and discrimination in the family circle. The Family Code has been considerably improved, but retains provisions that disadvantage women, most significantly with regard to inheritance and the material consequences of divorce. Women who are socially stigmatized, including divorced and deserted women, single mothers and street women, are particularly vulnerable and urgently need more State support.**

96. **Violence against women in the private sphere by various family members is pervasive but insufficiently recognized and acknowledged in society at large. The ejection of women and girls into the street is a particularly egregious form of such violence. Sexual harassment and abuse at work and in places of education is another area of major concern.**

97. **Women face immense social pressures preventing them from reporting such crimes, while the State fails to encourage, protect and support those women that do want to report them. This failure manifests itself in gaps in the penal and labour law framework; an**

⁴² The next day, on 8 February 2007, the Government signed the International Convention for the Protection of All Persons from Enforced Disappearance. The Convention explicitly affirms the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to seek, receive and impart information to this end.

inequitable marital property regime; the lack of specialized women's shelters; and gender-biased police, as well as lax sentencing practices.

98. Contrary to the terms of the Charter on Peace and National Reconciliation, the perpetrators of sexual violence committed during the black decade effectively enjoy impunity, while their victims continue to experience considerable social problems. Families of the disappeared, consisting mainly of women, are still denied their right to truth and face difficulties in accessing the compensation promised under the Charter.

99. In the light of my findings and conclusions, I wish to make a number of recommendations to the Government and other relevant actors.

100. In terms of legislative reform, the Government should:

(a) Reform the Family Code to ensure that it fully respects the principle of non-discrimination on the basis of sex. As a minimum, this reform should:

- (i) Abolish all provisions that deny women equal access to inheritance;
- (ii) Outlaw polygamy;
- (iii) Abolish the legal requirement of the institution of the marital guardian (wali);
- (iv) Make the necessary legal changes to recognize the marriages of Muslim women to non-Muslims;
- (v) Reform the marital property regime to allow all assets attained during marriage to be shared equally between partners in the case of divorce. The distinction of property as "male" or "female" as a basis for the distribution of household goods after divorce should be abolished;

(b) Reform the Penal Code to ensure non-discrimination and enhance the protection of women against violence. As a minimum, the legislation should:

- (i) Explicitly criminalize marital rape;
- (ii) Classify physical assault committed by a spouse, former spouse, cohabitant partner or former cohabitant partner as aggravated assault and impose penalties comparable to assault against parents or children;
- (iii) Abolish article 279 of the Penal Code and any other provisions that can be used to avoid or mitigate punishment for crimes committed by family members;
- (iv) Reform article 269 to outlaw any corporal punishment of children;
- (v) Criminalize all forms of sexual harassment regardless of the relationship between perpetrator and victim;

- (vi) Redefine sexual crimes as crimes against physical integrity;**
- (vii) Explicitly decriminalize abortion in cases of pregnancy due to rape;**
- (c) Introduce judicial protection orders to enable the authorities to physically remove and ban perpetrators of domestic violence from their domicile for a specified period of time;**
- (d) Reform the Labour Code and give victims of mobbing, sexual harassment and sexual abuse at work or in the recruitment process effective remedies against their employers, including the right to compensation for material loss and emotional suffering where employers engage in or fail to adequately protect employees against such conduct. Adequate measures to protect victims and witnesses of such conduct from intimidation and reprisals should also be introduced by law.**

101. The Government should undertake the following international commitments:

- (a) Remove impermissible reservations to articles 2 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the redundant reservation to article 9;**
- (b) Consider ratifying the Optional Protocol to CEDAW, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the International Convention for the Protection of all Persons from Enforced Disappearance;**
- (c) Consider issuing a standing invitation to all mandate-holders of the Human Rights Council and monitoring mechanisms of the African Union;**
- (d) Invite the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and the Working Group on Enforced or Involuntary Disappearances to carry out official visits to Algeria. Schedule the agreed visit of the Special Rapporteur on the right to freedom of opinion and expression.**

102. To improve the institutional framework, the Government should:

- (a) Adopt the National Strategy to Combat Violence against Women and fully implement it in close cooperation with other stakeholders such as women's associations and the United Nations;**
- (b) Upgrade the office of the Delegate Minister for the Family and the Status of Women to a fully-fledged Ministry with the mandate to coordinate and monitor all Government action on gender equality and to initiate proposals to reform policies and laws, and provide adequate budget resources to the Ministry to carry out these functions;**
- (c) Create a programme within the Consultative Commission on the Protection and Promotion of Human Rights to address discrimination and violence against women, as well as harassment of women's rights defenders, and include these concerns in the annual reports to the President;**

(d) Publish and widely disseminate all reports issued by the Consultative Commission;

(e) Require the Minister Delegate for the Family and the Status of Women, the Minister of National Solidarity, the Director-General of National Security and other relevant authorities to hold periodic round-table meetings open to all women's rights organizations and other human rights groups to discuss any human rights challenges concerning women.

103. In order to provide protection and support for women facing violence, the Government and other relevant actors should:

(a) Carry out a needs assessment in cooperation with the United Nations and non-governmental women's rights associations and set up and run shelters for women facing violence, or provide non-governmental associations with the necessary funds to do so;

(b) Set up and support women's help centres and telephone hotlines for women and girls facing violence, harassment or family problems;

(c) Provide social reintegration training in women's shelters that gives women a real choice as to whether to seek reconciliation, remarry or establish a life of their own;

(d) Ensure that street women, divorced, separated, deserted or widowed women, single mothers and their children, benefit from special protective measures against all forms of discrimination, harassment and violence, including through financial assistance;

(e) Take all necessary measures to ensure that all families of the disappeared and all victims of sexual violence committed during the black decade receive prompt and adequate compensation. Presidential Decree No. 06-93 of 28 February 2006 should be amended so that a declaration of death for the disappeared is no longer a prerequisite for compensation;

(f) Respect the rights of women who suffered violence during or in relation to the black decade, as well as human rights defenders, journalists and others who support them, to publicly present views on national reconciliation, peace, truth and justice that diverge from official policy. They should be allowed to organize without bureaucratic impediments or legal obstacles and public officials at all levels of Government should receive written instructions to this effect. Officials who threaten or harass persons with such divergent views should be subject to disciplinary measures and, where appropriate, prosecution. Article 46 of Presidential Order No. 06-01 of 27 February 2006 (criminalizing the abusive use of "the wounds of the national tragedy") should be revised and its overly broad ambit curtailed.

104. Investigation and prosecution. In this regard, the Government should:

(a) Adopt a zero tolerance policy towards all forms of violence against women and girls and diligently record, investigate and prosecute all cases. Police and other officials who fail to register or process criminal complaints should be subject to disciplinary/prosecutorial measures;

(b) Appoint an independent commission to investigate sexual violence committed during the black decade. The final report of the commission should be published and widely disseminated. On the basis of the findings of this commission and all other information available to the Government, all identified perpetrators of sexual violence should be exempted from amnesty and brought to justice;

(c) Publish the final report of the Ad hoc Inquiry Commission in Charge of the Question of Disappearances. It should also systematically gather all available information on the fate and whereabouts of disappeared persons and provide the information to the families of the disappeared.⁴³

105. In regard to awareness raising the Government and other relevant actors should:

(a) Include specific modules on CEDAW, the United Nations Declaration on the Elimination of Violence against Women, and the interpretation of relevant domestic legislation, including the Family Code and the Penal Code, in the light of these international instruments, in the programmes of the Judicial Academy, the police academies and other public service training institutions;

(b) Promote, through media, school curricula and public campaigns, gender roles and relations that are compatible with human rights and equality norms, including masculine images that are de-linked from domination and violent expressions of power;

(c) Promote gender-sensitive media reporting to avoid stereotypes and discriminatory attitudes towards all women and to ensure respect for victims and their families when covering incidents of violence against women;

(d) Support researchers and statisticians in order to improve research and data collection on gender issues and violence against women and disaggregate all official statistics on the basis of sex.

⁴³ These recommendations seek to address the emotional violence suffered by female relatives of the disappeared resulting from the uncertainty as to the fate and whereabouts of the disappeared. Questions of accountability, justice and reconciliation that arise in relation to the enforced disappearances themselves are beyond the scope of my mandate as Special Rapporteur on violence against women, its causes and consequences. Such questions have been addressed, for instance, in the most recent report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/4/41, paras. 50-72. As of November 2006, the Working Group on Enforced or Involuntary Disappearances had registered and transmitted to the Government 1,622 cases of disappearance that remain to be clarified.

106. With regard to women's empowerment, the Government and other relevant actors should:

(a) Ensure that all girls and boys complete mandatory education and fund special programmes in areas with particularly low schooling rates. Establish, with the support of the United Nations, an indicator system to monitor educational quality and outcomes in all schools, with gender equality as a key indicator;

(b) Take measures to better meet women's housing and employment needs, particularly for victims of violence, single and other marginalized women;

(c) Create special programmes to protect women from harassment and abuse in the workplace, including the creation of free telephone hotlines. Employers should take measures to address obstacles hindering the participation of young and married women in the labour market. The rate of women beneficiaries in the microenterprise support programme should be increased to at least 30 per cent;

(d) Introduce a 30 per cent quota system for women in political parties, labour unions, national and local elected bodies and for senior positions in the public and private sector.
