THE CONSTITUTION OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA

By Professor Bousoltane Mohamed, University of Oran, Algeria

I. Origins and Historical Development of the Constitution

Immediately after its independence in 1962, Algeria opted for the establishment of a socialist state as a means of development. This one-party system was introduced to govern a people that were sociologically and culturally disintegrated due to French colonization, which had lasted for over a century. This choice was enshrined in the 1963 Constitution; it was then confirmed and consolidated in the 1976 Constitution. The National Charter, as well as the first Chapter of the 1976 Constitution, endorsed the basis of the newly independent state.[1] This was secured by Article 195 of the Constitution, which forbade, inter alia, any amendment to the socialist system and the one-party system, which were considered amongst others, as constants.

Algeria began political reforms even before the upheavals in the Arab region and Africa. Indeed, after the Berber Spring in 1985, Algerian youth rebelled on 5 October 1988 – well before the fall of the Berlin Wall during the night of 9 November 1989[2] – announcing the beginning of the collapse of the communist bloc, supported by socialist Algeria and its political system based on the sole party.

October 1988's events erupted into an environment of acute economic crisis: hence the pressure from the international monetary institutions for better governance. The pressure emanated from international organizations, such as financial institutions, that demanded respect for human rights and freedoms of citizens[3] and sought respect for the norms through conditionality[4] and the policy of promoting democracy in the region for better governance.[5] Domestic claims were focused essentially on the satisfaction of economic and social needs. The decrease in dollar 'cash flow' generated by hydrocarbons (the economy's single product) and the debt burden that resulted from the conditions of the International Monetary Fund

[1] Arts. 1, 2 and 6 of the 1976 Constitution.

[2] That is, one month and 4 days after the Algerian revolt.

[3] Linda Kirschke, 'Informal repression Zero-Sun Politics and late third wave transitions' (2000) 38/3 Journal of Modern African Studies 383-405.

[4] Said Hamdouni, 'Les conditionnalités de l'aide au respect des droits de l'homme', in (J.P. Théron ed.) *La politique étrangère de la France et les droits de l'homme* (Presses de l'Université des sciences sociales de Toulouse, 2002) 45-71.

[5] Sandra Lavenex and Frank Schimmelfenning, 'EU democracy promotion in neighborhood: from leverage to governance?' (2011) 18(4) Democratization 888.

(IMF) for rescheduling of debt had engendered discontent on university campuses, where this revolt of 1988 had been simmering. It must be pointed out that the political element was not totally absent from these events, since young people attacked symbols of power, the headquarters of the sole party, ministries, *wilayas* (provinces), and elected assemblies, and so on. Those events affected all the major institutions over three days, costing the lives of 500 Algerians.[6] It then became an opportunity to light up the horizon for the Algerian people with the promise to establish the first and authentic democratic experience in the Arab world. It has been considered to be the occasion for Algeria to successfully create a form of Islamized[7] democratic governance.

An 'instant' constitutional review was adopted on 3 November 1988.[8] This miniature constitutional revision created a democratic loophole and, most importantly, prepared the ground for far-reaching reform. In fact, this miniature constitutional revision helped to unlock the 1976 Constitution[9] and enabled the authorities to make a democratic fissure. In order to achieve these objectives, the paragraphs '[t]he President of the Republic may resort directly to the expression of the People's will' and '[h]e addresses the Nation directly' were added to Articles 5 and 104. Article 111 of the new text would allow, among other things, the President of the Republic to refer 'any matter of national importance' to the people by referendum.

The first matter of national importance submitted to the people was the referendum to adopt the 1989 Constitution. This new Constitution comported with liberal democracy standards, based on equality, justice, human rights, and fundamental freedoms, a multiparty system, separation of powers, and constitutionality control. The 1989 Constitution, which in its Part One stated that it was devoted to the 'general principles governing Algerian society', contained universal principles aimed at the protection of human rights and fundamental freedoms, which are *sine qua none* conditions for the establishment of the rule of law.

In addition to the progress already noted in the 1989 Constitution, the one-party system was substituted by a multiparty one. It should be noted here that to meet the reluctance inside the system, the Constitution guaranteed the right to create 'associations of a political nature' by avoiding the shorthand term 'political parties'.[10] Power alternation was not totally guaranteed, since presidential terms remained open.

Signs of a will towards an opening up of democracy were visible through a number of political laws.[11] In the same period, Algeria acceded to the principal international instruments related to the protection of human rights.[12]

---

[6] Larbi Sadiki, 'Popular uprisings and Arab democratization' (2000) 32 International Journal of Middle East Studies 71-95, at p. 84.

[7] Fréderic Volpi, *Islam and democracy, the failure of dialogue in Algeria* (ED Press, 2003) 11.

[8] Decree n° 88-225 of 5 November 1988, JORA n°45.

[9] According to Article 195 of the 1976 Constitution, 'no constitutional draft revision can affect: -the socialist option'.

[10] In Art. 40 of the 1989 Constitution, the right to create associations with political characteristics is recognized. However, this right cannot be used to violate fundamental freedoms, national unity, to the territorial integrity, the country's independence and to people sovereignty ».

[11] Law n° 89-11 of 5 July 1989 on associations of a political nature, as well as the Law on elections and the Law on the press and communication.

[12] See eg Decree N° 89-66 of 16 May 1989 relating to accession to the Convention on Torture.

The short life of this emerging democracy can be explained by the rushed implementation of the 1989 Constitution, the absence of safeguards, and the political adventurism of extremists. This led to the failure of the democratic process initiated by the first legislatures of 1991.

In order to control its political environment, the Islamic Salvation Front (ISF, now dissolved) used mosques as a political stage. This party controlled 853 municipalities out of the 1,541 municipalities in the country. The ISF was operating to delay the distribution of vote cards and the issuance of identity cards (a mandatory document for voting) in the regions deemed to be *Front de Libération Nationale* (FLN) or of the democratic movement. The pressure on the street, which was controlled by ISF militants, forced the appointment of a new government on the eve of election day. The ISF won the majority of the seats in the first round. Marred by widespread fraud on both sides, the electoral process was stopped to prevent the ISF from taking power. The most extremist militants of the ISF opted for armed rebellion. Violence reigned in the country and cost at least 100,000 lives[13] according to the most modest figures,[14] in addition to the destruction of private and public properties.

Islam, which is deeply rooted in Algerian society, became the 'joystick' of power and opposition to attract the sympathy of the people, and as such was politicized; the religion became a key issue[15] and 'unfair' competition for democratization by extremists.[16] This created many problems for the democratic transition, at least in practice, since it is theoretically conceded that there is no incompatibility between Islam and democracy.[17] The relationship between Islam and the State will be further discussed in the paragraphs below on the Constitution's foundations.

The failure of this abrupt transition resulted in the installation of a High Committee of State that ruled the country from January 1992 to January 1994.[18] This collegial body, composed of five persons, was mandated to oversee the continuity of the State and bring about the conditions required for the normal functioning of the institutions and the constitutional order.[19] An appointed President, who won the presidential election on 16 November 1995, replaced the High Committee of State.[20] After the return to constitutional order, the Constitution was amended by a referendum in 1996.

The constitutional review of 1996 was to introduce mainly normative and institutional arrangements to cope with the insecurity and instability that threatened the country. Indeed, the first concern of the framers of the 1996 Constitution could be summed up as the guarantee of stability. They planned to establish a basis to ensure the institutional continuity of the Algerian State. While it explicitly confirmed political pluralism, this latest Constitution

[13] M. Tessler, C. Konold and M. Reif, 'Political Generations in Developing Countries' 68(2) Public Opinion Quarterly 191.

[14] Other sources speak of 150,000, if not 200,000: Volpi, n.7, p. 10.

[15] André Cabanis et Michel Louis Martin, *Le constitutionalisme de la troisième vague en Afrique francophone* (A/B, P.U.R., 2010) 43 ff.

[16] Ayelet Shachar, 'The return of the repressed: constitutionalism, religion and political pluralism' (2010) 8(3) I.CON 666-668; Volpi, n.7, p.11.

[17] Yadh Ben Achour, 'L'Etat de droit dans le monde arabe', in *Mélanges offerts au Doyen François-Paul Blanc*, T1 (P.U. Perpignan, P.U. Toulouse, 2011), 127.

[18] Proclamation of 14 January 1992.

[19] Declaration of the Constitutional Council of 11 January 1992.

[20] Proclamation of 30 January 1994.

received a negative reaction from some political parties for its laying down of other conditions. For the government, all that was achieved was to secure the country's stability.

A. Guarantees of institutional continuity of the 1996 Constitution

Democratic transition was relegated to a backburner for obvious reasons: the main concern of the framers of the 1996 Constitution was to guarantee the stability and continuity of the Algerian State. This was a praiseworthy goal, with the intention to block extremists. The guarantees were constituted of constitutional hurdles that prevented contenders from gaining access to political decision-making positions. Those obstacles diluted the legislative power. With recourse to a bicameral system, and by rearranging the summit of the State's hierarchy, other institutions were seriously weakened. Power was concentrated with the Presidency.

The 1996 Constitution gave birth to a Parliament composed of two Chambers: the National People's Assembly (NPA) and the Council of the Nation (Senate),[21] a kind of formal bicameral system. The reasons advanced for the adoption of a bicameral system were many, but one important one was to avoid the constitutional vacuum that could result if the Head of State resigned after dissolution of the NPA.[22] In fact, there was a need to reinforce the executive power and the Presidency, in the face of any hint of an Assembly composed of an unpredictable majority and, thus, indomitable. In such an eventuality, the Senate would be the first circle of obstructionism, the second being the Constitutional Council.

The Council of the Nation follows the directions of the executive through its composition and *modus operandi*. Although two-thirds of the Council of the Nation are elected among members of the *wilaya* and communal assemblies, the administration has many tools to influence this indirect ballot. The President of the Republic[23] appoints the remaining third of the Council. Practice shows that the President of the Senate is always appointed from among the presidential third. The Council of the Nation can be controlled through its functioning. In fact, the Council adopts laws by a majority of three-quarters,[24] which is a kind of veto conferred to the presidential third, which allows it, when needed, to block laws proposed by the NPA or to draft laws amended by the latter.[25] The term of office of the Senate exceeds one year compared with the NPA;[26] this is quite a revealing factor of the role the Senate plays as guarantor of continuity. It is partly appointed, in contrast to the NPA, which is elected by universal ballot.

The longevity of the Senate's mandate is noticeable also when compared to that of the President of the Republic. This also reflects the new hierarchy of power at the summit of State. In the 1989 Constitution, the order of priority in the case of impeachment of the President of the Republic was the President of the NPA and then the President of the Constitutional Council.[27] By establishing the Senate to act as a bulwark, the constituency places its President forward to replace the President of the Republic in the case of vacancy;

[21] Art. 98 of the 1996 Constitution.
[22] For instance, the resignation of the President Chadli Ben Djedid in 1992 after the dissolution of the National Popular Assembly.
[23] Art. 101 of the 1996 Constitution.
[24] Art. 120 of the 1996 Constitution.
[25] The NPA has the possibility to propose laws: Article 119 of the 1996 Constitution.
[26] Art. 102 of the 1996 Constitution.
[27] Art. 84 of the 1989 Constitution.

the President of the Constitutional Council comes second.[28] In practice, this involves two personalities – one chosen, the other appointed – to replace the Head of State in case of impeachment, at the expense of the President of the NPA, elected by the people and chosen by his peers.

B. A strengthened semi-presidential regime

Algeria has opted for a semi-presidential regime with a 'restricted parliament'. The absence of organized political forces and the lack of peaceful political traditions of opposition contributed to the emergence of this situation. In these circumstances, a strengthened semi-presidential regime is the most appropriate one for moving toward a gradual democratic transition. The political basis of the regime is composed of a coalition of political parties that have in common a nationalist ideological grounding. The other political parties, with no real ambition or genuine popular anchorage, have been unable to chart the population. Their internal management suffers from a lack of transparency. They are very often subject to splits and divisions, which are symptoms of an obvious lack of internal democracy. People in power sometimes create 'remedies' within political parties.

Aspiring to the continuity and stability of the system, though the overload of presidentialism has led to a *status quo*,[29] the 1996 Constitution created a system that has much more in common with a strengthened semi-presidential regime. A hollow continuity led the country to a deadlock and a total blockage of the system, requiring yet another reform that, it is hoped, will create the conditions for a genuine democracy. The constitutional revisions of 2002 and 2008 aimed at reinforcing general freedom and equality, especially that of gender.

Under the semi-presidential system, the Algerian Parliament and the other institutions, which are supposed to be the result of a ballot, did not achieve a real transfer of power because it would be naïve to speak of equilibrium between political powers, which is a condition *sine qua non* to guarantee a real democracy.

This situation worsened after the reorganization of relations within the executive. Any illusion of double power has been extinguished.[30] This was how the former Head of Government lost his title to become Prime Minister. He has also lost the power to choose the members of his government. His mission is mainly to implement the program of the Head of State in the form of a road map.

It should be underlined that there is agreement between commentators that the democratic process is at the point of no return. Significant milestones in democratization have been achieved since the 1990s. Arab revolutions have contributed to this democratization process.

The political landscape is not completely dark. Arguably, Algeria has made progress towards liberalization with the establishment of a multiparty system and the holding of periodic pluralistic[31] elections. The print media enjoys enviable freedom. Human rights and fundamental freedoms have made significant progress. These inspiring breakthroughs show

[28] Art. 88 of the 1996 Constitution, particularly §2, 6, and 8.
[29] The President himself admitted the blockage of the system in his address to the Nation, on 15 April 2011, in which he announced necessary and deep reforms of the system.
[30] Art. 80 §3 of the 1996 Constitution.
[31] Youcef Bouhandel, 'The transition from authoritarianism: the case of Algeria' (2003) 41(1) Journal of Modern African Studies (Cambridge University Press) 20.

that democratization in Algeria is possible.[32] The big hurdle that has to be overcome is how to reconcile religion and the ancestral culture of the Algerian people with democracy. Any consensual constitutional reform must take into consideration some specifically Algerian features.

With the advent of the Arab Spring, internal and external pressures have multiplied, sending strong signals to the Algerian authorities to return to the democratization process. This return to the path of democratic reform can be illustrated by several revisions made to political laws, elaborated in the framework of the promises of the President to move towards more openness and participatory democracy. He announced in his address of April 2011[33] that 'necessary amendments to the 1996 Constitution' should be introduced, and a 'deep revision of the electoral code in order to allow Algerians to exercise their rights in the best conditions embedded with democracy and transparency'. He added that since Algerians live 'in a pluralistic society, it is only natural that currents are concerned with the winds of change that are blowing in the region … Democracy, freedom, justice and the rule of law are all legitimate claims that no one can ignore'. He affirmed that 'the people paid a very high price' for political pluralism, 'without any aid or assistance'. He continued that this pluralism is embodied by freedom of expression, 'a tangible reality' and 'a significant milestone for the rule of law', which 'reflects the diversity of the mass media and the audacity that has characterized it'. Accordingly, there is a need to press forward with 'the deepening of the democratic process, the strengthening of the basis of the rule of law, reducing inequalities and accelerating socio-economic development.'[34]

The objective is to reform the system that will endorse the mission of reforming the Constitution. The current approach to reform has started with the revision of the 'legislative arsenal', particularly the organic laws. This strategy aims to guarantee consensual revision and to give necessary legitimacy to the new Constitution.

1. Organic law n° 12-01 of 12 January 2012, relating to the electoral regime

To ensure transparency, this organic law meets the 'standards of the most modern representative democracies', as affirmed by the President. It gives importance to election control by creating two national follow-up and control commissions:

(a) a national commission for the supervision of elections, composed exclusively of judges[35] appointed by the President of the Republic; and
(b) a national monitoring election commission composed only of representatives of the political parties participating in elections and independent candidates' representatives.

The commissions are established on the occasion of each election[36] based on the above law. By its composition, the first commission is intended to be independent.[37] The second

[32] Ibid., p. 2.
[33] Address of the President to the Nation on 15 April 2011.
[34] Nasser-Eddine Ghozali, 'Le constitutionalisme à l'épreuve du principat algérien ou la loi désincarnée', in *Algérie cinquante ans après, la part du droit, ouvrage collectif sous la direction de Walid LAGGOUNE*, Tome II (AJED, Alger, 2013) 511-546, at 526.
[35] Art. 170 of the Organic law relating to the electoral system.
[36] Arts. 168 to 173 of the Organic law relating to the electoral system.
[37] Art. 172 of the Organic law relating to the electoral system.

commission has a political composition, representing political parties and national personalities.

2. Organic law n° 12-02 of 12 January 2012, fixing cases of incompatibility with the parliamentary mandate

There are incompatibilities between the elective mandate and some activities in order to preserve the independence of the elected person.[38]

3. Organic law n° 12-04 of 12 January 2012, relating to political parties

This law was revised for a 'more efficient contribution of those parties in the process of the renewal of the country'. The law on political parties foresees flexible procedures for the creation of political parties by texts of an auto-executive character, thereby reducing the grip of the administration and as a result, giving space for far more political competition. In brief this organic law laid down the rules and clarified the process of the creation of political parties, especially their registration and de-registration subject to judicial review.

4. Organic law n° 12-04 of 12 January 2012, relating to information

This reform affected the law on the press, particularly the opening up of audiovisual media to the private sector. Its main objectives were 'to strengthen the freedom of the press', to modernize media space, and to reinforce professionalism and ethics, which are essential for democracy.

5. Organic law n° 12-04 of 12 January 2012, relating to women's representation in the elected assemblies[39]

This text provided for the imposition of a 30 per cent quota for women on electoral lists. In the current NPA, 146 of the 462 deputies are women.

C. The 2016 constitutional revision crowned the reforms

The important advances recorded by the consensual[40] constitutional revision of 2016[41] relate to the principles governing the Algerian society, the fundamental principles concerning human rights protection and freedoms as well as the organization of powers. The latter aspect brought about important changes to the nature of the Algerian political system.

Indeed, the President of the Republic, before appointing the Government, should make a double consultation. He must initially consult the parliamentary majority before appointing

[38] Art. 3 of the Organic law fixing cases of incompatibility with the parliamentary mandate sets out situations of incompatibility with the elective mandate.

[39] The text foresees imposing a quota of 30% of women on electoral lists. In the actual NPA, there are 146 women of the 462 deputies.

[40] The revision had to be consensual in the sense that it has to answer a maximum of claims of the opposition and at the same time, it was necessary to exceed the internal reluctance of some of the majority coalition components. From this point of view the revision of the Constitution brought closer the different positions. The revised text was adopted by the two rooms of the Parliament and promulgated by the President of the Republic in accordance with Article 176 of the 1996 Constitution. Law n° 16-01 of 06 March 2016, JORA N°14, 2016.

[41] The revision has also renumbered the Articles of the Constitution. The new numbers are shown in brackets when necessary for the text of this report that was written before the 2016 constitutional revision.

the Prime Minister, and then he has to consult the latter (Prime Minster) before appointing the Members of Government.[42]

This shows that a step is taken forward towards a better balance between executive power and legislative power, since the Prime Minster is supposed to be selected from the parliamentary majority.

The independence of the judicial power has been strengthened, and the Constitutional Council has been reinforced in many ways and manners. The constitutionalized advisory institutions aim at improving the mode of governance.

Practice will inform us about the interest of this re-balancing, whose declared objective consists of re-dynamizing the political life in the country.

A few remarks can be made to summarize. First, it is worth mentioning that some Algerian specificities, particularly cultural ones, may help to understand the difficulties of the stumbling attempts at democratization, and then to see failure in a proper context. Second, the historical element must not be neglected. Colonization unstructured people sociologically and culturally.[43] This was followed by independence under an authoritarian regime that shaped and marked a generation incapable of looking beyond authoritarian socialism.[44] It is quite understandable that values and principles are necessarily imbued by these facts, among others. The legal instruments that underwent comprehensive revision, and which endorsed the switching from one constitutional order towards another, were also affected.

II. Fundamental Principles of the Constitution (general principles governing Algerian society)[45]

Algeria is one of those African countries that, following their independence, opted for social democracy as a foundation of their national state. This choice was enshrined in the drafting of the normative part of the 'program Constitution' of the State. The failure of socialism as a means of development is the root cause of the collapse of the single party system.

A general movement of reform of the governing systems in many African countries was undertaken in the majority of these countries in the 1990s.

It should be recalled that political reforms in Algeria started with the constitutional revision of 5 November 1988. This allows us to throw some light on two points: first, that the choice of a pluralistic democracy in Algeria outpaced the wave of political changes in both Eastern European and African countries; second, what may be deduced from the first point is that the democratic transition in Algeria was a purely sovereign decision. This applies without denying the ordinary effects that arose from the natural interconnectivity of events in a constantly changing international society. In Algeria, political pluralism has been chosen within the framework of guaranteeing human rights and the protection of fundamental freedoms, which are conditions *sine qua none* for human fulfillment and the emergence of the necessary personal initiatives for multiform development of the state and society.

[42] Arts. 77 §5 (91 §5) and 79 §1 (93 §1).
[43] Mark Tessler, Carrie Konold and Megan Reif, 'Political generations in developing countries: evidence and insights from Algeria' (2004) 68(2) Public Opinion Quarterly 189.
[44] Volpi, n.7, p. 10.
[45] This expression was used in the first title of the Constitution.

The constitutional revision of 1988 helped to break down the rigidity of Article 195 of the 1976 Constitution. Consequently, it contributed to create conditions conducive to the adoption of the Constitution of 23 February 1989.

In practice, the drafters of the 1989 Constitution used the 1976 Constitution as a basic working document. From a formal standpoint, it looks like a revision, but more emphasis should be given to those Articles of the 1976 Constitution that have remained unchanged; others have been reformulated. However, in substance the result is a new Constitution, oriented at the opposite side of the political spectrum from the socialist Constitution of 1976. The 1989 Constitution established a political system to respond to the norms of a modern and democratic state. It affirmed the universal constitutional principles and rules of state values, based on democratic representation, human rights, and fundamental freedoms.

The general principles governing Algerian society affirmed by the Constitution in its current form[46] are the republican system, popular sovereignty (thus, the people are the source of power), democratic representation, the political representation of women, popular participation, lawfulness, separation of powers, Islam as the state religion, and respect for citizens' rights and fundamental freedoms.

The preamble making it, from now on, an integral[47] part of the Constitution enriching the principles governing the Algerian society and strengthens the Algerian society foundations.

Beyond their undeniable weight during the interpretation of the fundamental text, the content of the preamble constitutes with no doubt the embryo of a "bloc de constitutionnalité".[48]

Recognizing that the will of the people is the source of all legitimacy, the democratic pluralistic system chosen by Algeria is based on political representation according to the rule of law. Thus the democratic organization of the State, social justice, and popular participation in the management of public affairs and the State's institutions are at the service of the people. In practice, this leads to a truly 'social state'.

A. Republican and democratic character of the State and popular sovereignty

This triptych of the Algerian State's characteristics is asserted in the first Article of the Constitution: 'Algeria is a People's Democratic Republic'. In fact, the three characteristics are complementary. The Republic is founded on the people's sovereignty and in principle, this cannot be achieved without democracy. Indeed, the text of the Constitution enshrines, unquestionably, the fundamental axis of representative democracy. It recognizes that people are the source of any power;[49] that 'the constituent power belongs to the people'[50] who 'choose freely their representatives';[51] and that 'the State takes its legitimacy and its "*raison d'être*" from the People's will'.[52]

[46] This country report was achieved and approved for edition before the 2016 constitutional revision. The reporter has completed it in the light of that revision.
[47] §22 of the Preamble.
[48] This expression covers the principles and norms accepted as having constitutional status and forming a corpus of constitutional law which is complementary to the normative part of the written constitution.
[49] Art. 6 of the 1996 Constitution.
[50] Art. 7 of the 1996 Constitution.
[51] Art. 10 of the 1996 Constitution.
[52] Art. 11 of the 1996 Constitution.

As for popular sovereignty, it should be stressed that the different Algerian Constitutions have incorporated the principle of national sovereignty belonging to the people. According to Article 6 of the 1996 Constitution, 'the Algerian people are the source of any power. The national sovereignty belongs to the people'.

The principle of legality is the binding element of the republican system. It is the central pillar of the rule of law, which is sought by the Algerian people. For the constituency, constitutionalism is compatible with Islam, the religion of the State. The question raised by the issue of constitutionalism and the precepts of Islam will be dealt with in Part II.D of this Note. For now, it should be noted that the people are the source of any power, and that the same people, with a majority approaching 100 per cent, have Muslim beliefs. Since the constituent power belongs to them, in this case the problem of incompatibility does not arise. The two new principles are: the democratic alternation and the politicy of peace and national reconciliation.
The principle of separation of powers, largely upheld in the jurisprudence of the Constitutional Council, has been constitutionalized.[53]

The constitutionnalisation of the national reconciliation devotes the principles of peace, of dialogue and of consultation and gives people constitutional mechanisms to guarantee the stability and the national unity.[54] This crowns the de-radicalization policy which Algeria applies and emphasize as value on both the international and regional scene, especially in coordination with the United Nations.
Constitutionalism in the Algerian Constitution is evident in the assertion in its text of the principles of freedom; free, transparent, and regular elections; separation of powers; political pluralism; and constitutionality review. These are the characteristics of the Republic.

B. Democratic representation, women's representation and popular participation

The means of exercising sovereignty by the people is direct universal suffrage to choose their representatives, as well as other means to determine the popular will, such as referendum. Participation is another reflection of popular sovereignty. Accordingly, it seems self-evident that this sovereignty cannot be properly exercised without the consolidation of laws on elections. Periodic and 'observed' elections are an important achievement. They offer the opportunity for significant democratic education. However, as long as the political personnel do not fully understand the constitutional choice of the institutions, the aim of which is to achieve stability and peace, performance will remain poor.

Since the opening up of the Algerian political system to pluralism, elections have become one of the most important instruments for measuring the depth of the democratic process. The legal framework of the elections illustrates the great steps forward, such as, specifically, the constitutional and legislative dispositions that govern elections, particularly the organic law of 2012 related to the electoral regime. This organic law guarantees the holding of free, transparent, and genuine elections. Furthermore, the elections in Algeria have become regular and no election has been missed.

[53] Art. 15 of the 2016 Constitution.
[54] Constitutional Council opinion N° 01/16 A.RC/CC/ January 28, 2016 relating to the revision of the Constitution.

The Republic ensures popular participation.[55] Complementary to and palliating the difficulties of representative democracy in Algeria that are encountered in practice,[56] this participation has to take into account gender equality and women's participation through their political representation.

Article 31a(35) of the Constitution is the fruit of the 2008 constitutional revision. The content of this article is enshrined in the organic law aimed at promoting the growth of women's opportunities within the elected Assemblies. This includes organic law n° 12-03 of 12 January 2012, fixing the rules for improving opportunities for women's access to representation in the elected Assemblies. This law is also a political measure requiring political parties to contribute to the consolidation of women's representation in the elected Assemblies. For the Algerian State, it is also a way to respond to the binding obligations resulting from its ratification of international treaties, particularly the Convention on the Elimination of all forms of Discrimination against Women, ratified by Algeria in 1996, as well as the Beijing Declaration.[57]

The presence of women on the electoral lists was, for the first time, a key issue in the legislative elections held in May 2012. The increased rate of representation of women in the legislative elections resulted in a proportional increase of women in the National People's Assembly, rising from 30 seats of a total of 389 in the previous Parliament (2007-2012), to 146 seats in the current Parliament, an increase of 31.6 per cent. The proportion of elected women in the local assemblies has also increased from 0.58 per cent in 1997 to 18 per cent in 2012.

These representation rates of women have permitted Algeria to acquire a very important place in the Arab world and even among many developed and developing countries. This experience saw Algeria, the day after the legislative elections of May 2012, move up from the 122nd place to the 27th in the world ranking of women in parliament and to take the first place in the Arab world.

C. Constitutionalism and the rule of law

The Constitution is presented as a 'fundamental law which guarantees the individual and collective rights and freedoms and gives legitimacy to the exercise of power'.[58]

The constitutional legality intended by the 1976 Constitution had a unique function: the fulfillment of the objectives of the National Charter.[59] On the other hand, constitutionalism, seen as moving towards the supremacy of the rule of law through transparent political competition, has become a goal since the 1989 Constitution.

---

[55] Art. 16 of the 2016 Constitution provides that the state shall encourage participative democracy in the local administration.

[56] Art. 12 of Law n° 11-10 of 22 June 2011 on the Commune Code is an example of popular participation.

[57] The Beijing Declaration and Platform for Action was the result of a World Conference on Women held in Beijing in 1995, and was signed by 189 countries. It recommends at paragraph 144(c) that states '[s]trengthen the role of women and ensure equal representation of women at all decision-making levels in national and international institutions'.

[58] Preamble, §10 (12).

[59] 'Qui constituait la source fondamentale de la politique de la Nation et de la loi de l'Etat': Nasser-Eddine Ghozali, 'Le constitutionalisme à l'épreuve du principat algérien ou la loi désincarnée', in *Algérie cinquante ans après, la part du droit, ouvrage collectif sous la direction de Walid LAGGOUNE*, Tome II (AJED, Alger, 2013), 511-546, at 513.

The fundamental principles of the Constitution appear in the organization of political power. The construction of the rule of law is announced as an objective: a state where law determines the space of competences of institutions and takes precedence over persons; in other words, submission to normativity. Other normative principles will come to complete the concept of the rule of law. These are the protection of human rights and the guarantee of fundamental freedoms. Great strides have been made on the normative front in the field of political and union pluralism.

As already mentioned, in the preceding paragraphs, the two new general principles are the democratic alternation and the policy of peace and national reconciliation, as well as the constitutionalization of the separation of powers, which constitute an anchoring with constitutionalism and consolidate the Rule of Law.

The 2016 constitutional revision also raised with the row of the constitutional principles, fight against corruption, trafficking and abuse,[60] illegal enrichment and the confiscation of properties by using electoral mandates,[61] in addition to the negative influence on the impartiality of the public administration. All these new norms reinforce the constitutional values.

D. Islam: the religion of the State

The Constitution is the expression of the Muslim people's will. It is obvious that Islam is the religion of the State and, above all, one of the Constitution's constants. Islam, which is the religion of nearly all the Algerian people and affirmed as the State religion by all the fundamental texts,[62] is among the general principles governing Algerian society.[63] This has clear repercussions for the political system,[64] but it has also posed difficulties caused by potential conflicts between positive law and these religious precepts. The right balance between Islamic precepts and the Republic's values has to be found.

Theoretically, the fact that Islam is the State religion causes two major difficulties. The first concerns the relationship between Islam and republican constitutionalism; the second concerns the place of freedom of conscience in such a situation (this question will be dealt with in Part III).

Islam and constitutionalism are two principles of equal constitutional value. The Republic must consecrate a principle of international law – freedom of religion – in the framework of the need imposed by one basis of Algerian society, which is Islam, and that is affirmed by the Constitution as the State religion. Article 2 of the Constitution asserts that Islam is the religion of the State, and prohibits institutions from undertaking any activity that is contrary to Islamic ethics,[65] which means that the Algerian Constitution sets Islam as a constitutional and ideological reference. This also means that the positive rights defined by the Constitution cannot be contrary to Islamic ethics. The effects of this reference include, inter alia, the following fundamental issue: the President of the Republic, to be eligible, should be a

[60] Art. 8 (9)
[61] Art. 21 (23).
[62] Art. 2 of the Constitution.
[63] Expression enunciated in the First Title of the Constitution.
[64] Saïd Bouchair, *Système politique algérien*, Tome II (OPU, Alger, 2010) 69.
[65] Art. 9 (10) of the Constitution claims that '[i]nstitutions are not allowed: – practices that are contrary to Islamic ethics'.

Muslim[66] and in his oath, he 'swears by God the Merciful and the Compassionate to respect and glorify the Islamic religion'.[67] Article 178 (212) of the 1996 Constitution enshrines the immutability of the religion of the State as constants in these words: '[I]n no case shall a constitutional revision undermine: […] 3- Islam, the state religion'.

In this theoretical construction, it is hard to separate religion and the State or to speak about secularism. However, it must be stressed that religion, inter alia, is forbidden[68] from being the basis of political competition. Moreover, political parties cannot be founded on a religious basis or in religious places.[69] This considerably reduces the role of the religion in the political functioning of the State, particularly in the political inter-institutional relationships. Thus the political system functions in a democratic and republican mode.

E. A Social State

The other specificity that should be highlighted concerns the social character of the Algerian State. All the Algerian constitutions have reaffirmed this feature, which is dictated by the recent history of the Algerian people, the promises of the Revolution, and the specificities of the Algerian economy. Its socialist anchoring was reinforced right after Algeria's independence, and resulted in a deeply social state in the ideological wake of the Tripoli Platform.

The objective of the socialist model chosen by Algeria following independence was to tackle multifaceted inequalities created by the colonial system. According to Article 41 of the 1976 Constitution, 'the State ensures equality between all citizens by suppressing economic, social and cultural barriers that hinder equality between citizens'. It is known that the promises of the November Revolution and several decades of socialism have deeply marked the socio-economic system. This rapid historical reminder helps one to understand the genesis of the entrenchment of the social form of the Algerian State and, thus, helps to determine the connotation of the notion of equality which is compatible with Algerian reality. This is particularly plausible, as a consolidated comprehension of Article 59(73) of the Constitution affirms that 'the living conditions of the citizens under working age or of those unable to [work] are guaranteed'.

Consequently, it becomes obvious that equality as enshrined in Article 29(32) of the Constitution constitutes the conceptual form, i.e. legal equality, equality 'before the law. But at the same time, the notion of the 'social state' has as its objective to correct the inequalities previously experienced. It must be underlined that the general philosophy of the Algerian State, as explained above – this conceptual equality – is combined with other equality guarantees dictated by the form of the chosen 'social state' and confirmed by various constitutional amendments and implementation through many social programs.

The role in this area of the structure of the Algerian economy should not be neglected. Indeed, an economy based on a single product, hydrocarbons, that yield an annuity whose revenues

[66] Art. 73 (87) of the Constitution.
[67] Art. 76 (90) of the Constitution.
[68] Art. 42 (52) of the Constitution and Arts. 5 and 8 of the Organic law n° 12-04 of 12 January 2012 on political parties.
[69] Art. 197 of the Organic law n° 12-01 of 12 January 2012 on the electoral system.

are centralized, unquestionably offers temptation to the central power to draw political dividends from social action.

Also, the weight of Islamic values and ethics in the social orientation of the Algerian State should not be overlooked. This can be seen especially during religious occasions when donations and other forms of assistance are distributed to the needy. Public institutions also look after aged people, the disabled, and the permanently incapacitated.

The Algerian conception of human rights and fundamental freedoms, enshrined in the Constitution, will be detailed in the Part III. However, it should be stressed here that health, education, and training until university are free. The wide consumer staples are subsidized. Article 31(34) of the Constitution opens up the way to social action by public institutions in order to strengthen social justice and the integration of all social categories.

The 2016 revision of the Constitution enshrines the values of social integration, national cohesion, national mutual aid and solidarity. In order to realize these values, the revised Constitution reinforces the fundamental principles of the society by precising their content, and by making them operational.

The public institutions ensure the effectiveness of the principle of equality[70] through the equal access to school and to vocation training;[71] provide healthcare conditions for the needy people,[72] houses constructions,[73] and social security rights for workers among other rights,[74] as well as the protection of children, the elderly and weak people having special needs.[75]

F. Constants: territorial integrity and the identity specificities of the Algerian people

The challenge facing the country is to safeguard its territorial integrity while respecting the cultural and linguistic pluralism that is part of the specific and national identity of the Algerian people: in other words, they are the constants of the Constitution.

Among the basics of the Algerian system are the specificities of the Algerian people, which have been repeated as constants in the successive constitutions since 1963 and much before that in the fundamental texts of the Revolution. The republican system is also considered a constant. The international commitments of Algeria relating to human rights and fundamental freedoms are, too, classified as constants.

It should also be noted that the 'constants' of the Algerian State have been preserved. In fact, these values are specific to the great majority of the people. The constants were also promises of the Revolution, taken from the Declaration of 1 November 1954 and the Congress of Soummam in 1955. These constants were partly incorporated in the 1963 Constitution and were then protected as 'fundamental values of the Nation' by Article 195 of the Constitution of 1976. They were an integral part of the general principles governing Algerian society in the 1989 Constitution and are again protected as constants in the 1996 Constitution. Article 178 contains the same content as Article 195 of the 1976 Constitution, but replaces the socialist

[70] Revised Art. 31 (34).
[71] Revised Art. 53 (65).
[72] Revised Art. 54 (66).
[73] New Art. 67.
[74] Revised Art. 55 (69).
[75] Revised Art. 58 (72).

option and universal suffrage by a democratic order, based on a multiparty system and with Arabic as a national and official language.

It must be emphasized that a fledgling democracy, with the conditions of Algeria, needs to renew and adapt the social contract included in the operational part of the Constitution in its quest for a consensus. Within that framework, Tamazight was constitutionalized as a national language in 2002.

The constants and the fundamental values of Algeria have gone through various constitutional reforms without significant changes. We can classify the general principles governing Algerian society into two categories. In the first are grouped the fundamental principles enshrined in the Constitution, such as the republican nature of the State, which is based on a multiparty system, fundamental freedoms, and human and citizens' rights. In the second group are the principles related to the preservation of the components of the national identity, namely 'Islam, Arabism and Tamazight:[76] Islam the state religion, Arabic the national and the official language, integrity and unity of the national territory'. All these principles, values, and components of the national identity are consecrated as national constants since they are not subject to any constitutional revision. Article 178(212) makes them intangible. Thus, no constitutional revision can affect the constants locked into that Article. Nevertheless, some substantial changes were made constant in 1989, with the substitution of socialism and the single party with a multiparty system and the opening up towards a market economy.

The other specificity of the new generation of constitutions is that they ensure the preservation of state symbols. For the Algerian constituency, the two symbols of the Revolution and the Republic are the national emblem and the national anthem. These symbols have been made inviolable by the constitutional revision of 2008. The principle of alternation providing that the President of the Republic is re-eligible only once is added as constant in the 2016 revision ; that Article, renumbered, is actually under number 212.

The other great progress that has been observed is political pluralism. The opening up of the political arena to the opposition through the broadening of participation in the coalition government is a fact. Participation in the legislature is also a fact, including non-discrimination of gender and equality of access for women to political office.

It should be noted that the road ahead is still long and paved with obstacles. Difficulties persist; they are related to technical, human, and material problems. For example, implementation of the democratic standard requires organizational resources and operational safeguards; that is to say, clear and precise texts, a balance of constitutional powers, and procedural mechanisms for self-execution of fundamental norms.

Respect for human rights and the guarantee of fundamental freedoms are *sine qua non* conditions that ensure the effectiveness of the principles governing Algerian society; the 2016 constitutional revision made much more progress in these fields as will be shown when dealing with the theme in the next Part.

III. Fundamental human rights protection

[76] Tamazight was claimed as a national language in the 2002 constitutional revision, it was upgraded to official language beside Arabic in 2016.

With its accession to the United Nations, Algeria committed itself to preserve and promote human rights, as well as to guarantee the fundamental freedoms of individuals. Such a commitment emanates also from the principal treaties on the international protection of human rights. Since the adoption of the 1989 Constitution, Algeria has acceded to most of the international treaties on the protection of human rights and fundamental freedoms, including the International Covenants of 1966.[77] All the principles contained in these instruments are now an integral part of the fundamentals of the Algerian State. It is true that sometimes, special interpretations are given to the texts and specific applications place restrictions on certain principles, especially those related to religion and freedom of conscience.

Article 2 of the International Covenant on Economic, Social and Cultural Rights provides, in its first paragraph, that 'States Parties ... undertake ... to take steps to achieve progressively the full realization of the rights recognized ... including particularly the adoption of legislative measures'. The second paragraph of Article 2 of the International Covenant on Civil and Political Rights stipulates that 'States Parties undertake to adopt, in accordance with their constitutional processes and with the provisions of the present Covenant, arrangements to allow the adoption of such legislative measures'.

The rules of protection of fundamental human rights require more attention; therefore, the primacy of these norms over the State's laws is not enough. They have advantages that guarantee them a more prominent place. These rights must have clear constitutional guarantees, as they are the pillars on which other rights depend to ensure the balanced development of society and to enable sustainable development.

Most of the rights and freedoms enshrined in the 1976 Constitution were followed by the expression 'within the law', which deprived them, thus, of constitutional guarantee. By taking on a declarative character, the Constitution referred the implementation of these rights and freedoms to the restricted area of the law. In practice, the law could change or modify them and set conditions to gain benefit from them. In other words, the rights guaranteed by the Constitution were likely to be subject to legislative restrictions. Indeed, it is difficult to claim that the 1976 Constitution, which enshrined the one-party system, provided guarantees for freedom of opinion and expression (for instance), knowing that the rights and freedoms arising therefrom are the theoretical and practical pillars of a true democracy.

The 1989 Constitution and the 1996 constitutional amendment included most of the provisions and guarantees contained in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Thus, that Constitution guaranteed the fundamental rights and freedoms on which democratic systems are built.

The Algerian Constitution guarantees the rights to equality, non-discrimination, freedom of opinion, freedom of expression, and to form political parties. By these assertions, the current Constitution contains the theoretical ingredients to establish a democratic state based on human rights and the protection of the fundamental freedoms of citizens according to the rule of law. Other rights and principles are asserted, such as voting rights, representative democracy, and popular participation. The basic principles of the constitutional organization of a modern state are also enshrined in the Constitution, including separation of powers and independence of the judiciary.

[77] Ratified on 16 May 1989, JORA n° 20.

In Algeria, colonialism went beyond the limits of what is acceptable. Inequalities, various forms of discrimination, and systematic abuses by the colonial administration were among the main reasons for the uprising of the people and the Revolution, to restore national liberation.[78] Freedom and equality were an integral part of the ideals of the Revolution. To incorporate them in successive Algerian Constitutions has been an act of fidelity to the promises of the War of National Liberation. This justifies the Constitution's degree of detail concerning the principles of freedom and equality. That is to say, in addition to their consecration as a constitutional standard, their practical implementation and the role of the State's institutions are well defined. The same principles have an important place in the jurisprudence of the Constitutional Council.

A. Freedoms

The independence of Algeria is an application of the right to self-determination, which is in itself a collective freedom. Then began a quest to ensure freedom: to find the best form and the appropriate choice to realize civil and political rights in terms of political action. Based on pluralism in general and on political pluralism in particular, this action releases initiative and, therefore, constitutes the lever that controls the economic, social, and cultural rights. Political pluralism and its corollary, the multiparty system, are basic fundamental freedoms. The multiparty system is the means of stopping force by force, peacefully of course.

1. The recent constitutional adoption of a multiparty system

The multiparty system is paramount to liberal democracy. It allows the coexistence of and provides harmony among the various political hues of society because it paves the way to debates on political conflict, to multiple-choice elections, to the plurality of programs and alternation. Further, the multiparty system functions with tolerance and the possibility of being criticized. All of this enormous potential offered by a multiparty system on the theoretical level gives a solid foundation for political pluralism, allowing the opposition to fulfill its role in the modern state through freedom of opinion and expression, helping citizens who are in a situation of direct or indirect control by executive action.

The introduction of a multiparty system in the constitutional order of Algeria was enveloped, at the beginning, by great political caution, in order to overcome the internal reluctance within the system. Moreover, the 1989 Constitution did not mention political parties or a multiparty system. Specifically, Article 40 of the Constitution recognized 'the right to form associations of a political nature'. The 1989 law on associations of a political nature[79] and other political laws of the same period followed the same path.

The 1996 Constitution was the first to use the established expression 'political parties'. Indeed, Article 42 of that Constitution[80] recognizes this right, drafted in the words 'the right to create political parties is recognized and guaranteed.' However, the right to form political parties is subject to some limitations. Taking into account the novelty of the experience and, in order to safeguard national unity and the stability and independence of the country's institutions and to guarantee fundamental freedoms and ensure the integrity and continuity of

[78] Didier Guignard, *L'abus de pouvoir dans l'Algérie coloniale, visibilité et singularité* (Presses Universitaires de Paris Ouest, 2010) 53.
[79] Law n° 89-11 of 5 July 1989, JORA n°27.
[80] This Article has remained unchanged in the different constitutional amendments since 1996.

the Algerian State, the Constitution also prohibits the foundation of parties and partisan propaganda on religion, language, race, gender, or other corporatist or regional elements. Article 42 prohibits political parties resorting to violence and receiving funding from abroad. In fact, an analysis of the elements that have been excluded from the fields concerning supporters shows that most were justified by the first experience of pluralist parliamentary elections in 1991. The failure of this experience brought concerns of insecurity to the country; those elections were expedited and unprepared.

However, the Constitutional Council rejected additional restrictions with respect to the creation of political parties, as it has ensured the repeal of all requirements related to the organic law on political parties. In its Opinion on the organic law on political parties, the Constitutional Council stipulated that 'by affirming the expansion of the bases on which a political party cannot be founded',[81] the legislature had breached the exclusivity of the Constitution.

In fact, although the multiparty system is already anchored in the political understanding of the ruling class a quarter century after its adoption, difficulties remain concerning its incorporation in the behavior of voter citizens. The socio-cultural allegiances often take over.

The other consequence of the social specificity of the new multiparty system in Algeria is that political parties find it difficult to establish themselves in society, to encourage membership, and to convince the voter citizens on a purely ideological basis. The number of parties is increasing without ensuring a qualitative representation in the elected Assemblies. The social and religious attachment comes before the ideological commitment.

To alleviate the weakness of representativeness, the legislator has provided other means,[82] notably based on the principle of public participation enshrined in the Constitution. Overall, *representative* democracy, stemming from a young multiparty system, is consolidated by *participatory* democracy, which aims at governance based on the exchange of ideas, the sharing of responsibility, and the opportunity to question the content of public policy. An inclusive participatory system opens up other possibilities for popular participation, particularly through civil society associations.

In the same vein of the difficulties facing the multiparty system, it should be pointed out that the establishment of a representative democracy based on electoral legitimacy involves the organization of free and transparent elections. Clean elections are a condition but are not always sufficient on their own to deliver a genuinely representative ruling class. This is another reason that explains the complementarity between representative democracy and participatory democracy in the Algerian Constitution, so that it might meet modern norms of governance.[83]

The vast majority of political parties, which have no real ambition or popular support, fail to draw in the population. Their internal management lacks transparency; they often suffer

[81] Opinion n° 01/O.C.C/12.
[82] Arts. 11 to 14 of the Law n° 11-10 of 22 June 2011 on the Commune, JORA n° 37.
[83] Art. 31 (34): 'Institutions are intended to ensure equality ... by removing barriers which hinder the progress of human beings and impede the effective participation of all in political, economic, social and cultural life.' Article 16 (17): 'The elected Assembly represents the basis of decentralization and place of citizen participation in the management of public affairs'.

divisions and schisms, which are signs of a clear lack of internal democracy. Men of power sometimes make 'modifications' to political parties.

In order to tackle some of the remaining problems in the field of pluralism, the constitutional revision of 2016 targets in particular the consecration of the stability and the consolidation of political rights; freedom of peaceful demonstration is guaranteed by the new Article 49. As for the new Article 53, it ensures to the approved political parties, access to public media, and financing for those represented at the Parliament, as well as the equal treatment and the right to access to power.

The fact that the revision refers to the organic law for the conditions of exercise of these rights and freedoms and the conditions of the creation of associations has two objectives: the first is to submit them for the same jurisdictional system and the second is to provide more stability for the text, which will inevitably offer them greater legal security.[84]

2. Freedom of opinion is the fundamental norm, while freedom of expression ensures its externalization

In its collective dimension, freedom has allowed the Algerian people to free themselves from submission to the colonial power. This broad meaning of the word 'freedom' describes the collective feeling of the Algerian people who are possessive of their independence for the same reasons already mentioned in relation to equality.

In principle, freedom allows the individual to be free of constraints. The concept also includes freedom of opinion and its corollary, freedom of conscience. It also covers the various forms of externalization, as well as the freedoms of expression, intellectual creation, communication, and publication. These freedoms and related rights guarantee the right to associate over the same political ideas or other legal objectives.

The evolution of the constitutional text on public freedoms in Algeria shows a considerable advance in the preferred option, which is complementary between freedom of conscience and freedom of opinion, twinned in Article 36(42) of the Constitution. This development in fact concerns an expansion, in a more liberal sense, of freedom of conscience and opinion, since the text affirming the inviolability of these freedoms has remained virtually unchanged since the Constitution of 1976. It should be recalled that Article 53 of that Constitution was drafted in the singular 'freedom of conscience and opinion *is* inviolable'. However, by aligning the definition that separates freedom of conscience from freedom of opinion, Article 35 of the 1989 Constitution, now Article 36(42) in the 1996 amendment, has achieved a nuance between the two freedoms. Indeed, the wording of Article 36(42), in the plural 'freedom of conscience and freedom of opinion *are* inviolable', shows first that it is now a question of two different freedoms and second, that the intention of the Constituent is to provide a boost to fundamental freedoms throughout adaptable external forms to reinforce the pluralistic expression of opinions.

The arrangement of the Articles relating to freedom of conscience, opinion, and expression in the Constitution reveals the gradual evolution, but also reflects the theoretical complementarities between the three concepts. Freedom of conscience covers personal beliefs in the sphere of morals or ethics,[85] while freedom of opinion instead concerns political and

[84] Art. 43 (54).

[85] In the constitutions of some countries, freedom of conscience also encompasses religious freedom, which concerns religious beliefs and faith. Such an interpretation is not possible in countries that proclaim Islam as the

intellectual ideas. Both freedoms are private; that is why freedom of conscience and freedom of opinion, as such, only require a declaration of inviolability in the Constitution. Nevertheless, by coupling them in the same Article, the intention is to submit freedom of conscience and freedom of opinion to the same legal regime.

In this context, print media enjoys an enviable freedom. The new broadcasting law, which opens up the field of television to competition, has created a regulatory authority in the media field.[86]

Knowing that these freedoms are private, they are worthless unless they are externalized to some degree. While freedom of conscience is expressed through the formulation, publication, or other means that ensure its emergence so as to become a public knowledge, the 'expressed' freedom of opinion becomes a need in the public domain and should, therefore, be protected by law. Article 36(42) of the Constitution provides this protection. Freedom of opinion requires freedoms of expression, of association, and of meeting. Article 41(48) guarantees the freedoms that allow externalization.[87]

Article 42(52) of the Constitution also confirms the orientation of freedom of opinion towards the political domain. That Article aims, within the same context, to recognize and guarantee the right to form political parties. However, it should be highlighted that what emanated from the drafting of Article 36(42) of the Constitution was a significant normative development. Pluralist democracy and establishing the rule of law are the objectives of this normativity, and freedom of opinion concerns instead the political and scientific fields. This freedom has become the cornerstone of democracy building.

The significant place that freedom of opinion and its corollary, freedom of expression, occupy in the system of fundamental rights[88] and freedoms confers to them the status of guarantor of identity and the intellectual autonomy of the individual and, therefore, makes conditional their relationships with other individuals and society.[89] Guarantees of free choice in politics give a real dimension to the vote, to candidacy, and to citizenship in general.

By revising the Constitution in 2016 concerning these matters the constituency will is to give genuine rise to fundamental freedoms by making it possible to consolidate expression of plural opinions as required by political pluralism.

State religion in their constitution, even though the 2016 constitutional revision in Algeria added to Article 36 (42) the freedom of worship.

[86] Law n° 14-04 of 2014, Chap. III.

[87] Art. 41 (48) : 'Freedom of expression, association and meeting *are guaranteed* to the citizen'.

[88] The importance of freedom of expression, which is oriented toward the right to information, publishing, and the press in general, is such that an appeal was made to request that violations of that freedom be criminalized. The appeal was signed by four international experts representing organizations from different continents, namely the Special Rapporteur of the UN on the promotion and protection of the right to freedom of opinion and expression, the Organization for Security and Co-operation in Europe (OSCE) representative, the Special Rapporteur on freedom of expression of the Organization of American States (OAS), and the Special Rapporteur on freedom of expression and access to information of the African Commission on Human Rights and Peoples' Rights (ACHPR).

[89] Michel Verpaux, 'La liberté d'expression dans les jurisprudences constitutionnelles' (2012) 30 Les nouveaux cahiers du Conseil constitutionnel 142.

The guarantees of freedom of speech are fortified by the right to freedom of assembly and peaceful demonstration[90] and freedom of opinion that needs the freedom of speech, freedom of association and freedom of meeting, for their externalization (expression).

The new provisions concerning the freedom of the written press, audiovisual and information networks improve the freedom of press, in a way that the violation of press laws is not punished by a sentence of imprisonment (jail), which in its nature reinforces the freedom of the media.[91] The access to the information and to the documents is guaranteed.[92]

3. Freedom of conscience and Islam within the Constitution of the Republic

Freedom of conscience does not, in any case, implicitly include freedom of religion. However, the right to change one's religion is incompatible with Islam, the declared State religion. Nonetheless, religious freedoms are limited to the freedom of religious practices to non-Muslims. This interpretation has been confirmed in the 2016 revision by adding a new §2 to Article 36(42) guaranteeing the freedom of worship.

First, freedom of conscience is outlined in two different ways in the Constitution of the Republic. The first is general; it proceeds from a reading of Article 32(38), which states: '[T]he fundamental human and citizens' rights and liberties are guaranteed. They are a common heritage of all Algerians, men and women, whose duty is to transmit it from one generation to another in order to preserve it and keep it inviolable.'

Freedom of conscience is, as a fundamental freedom, guaranteed by Article 32(38). Article 36(42) enshrines its inviolability. The 1996 Constitution takes an explicit position on freedom of conscience by providing in Article 36(42) that 'freedom of conscience and opinion are inviolable.' While Article 2 of the same Constitution affirms Islam as the State religion, this actually contradicts **'**freedom of religion**'**. Other provisions of the Constitution favor, in practice, the Muslim religion, such as the condition that the candidate for Presidency must be Muslim, and so on.

The Constitution, which is a modern positive law, and hierarchically above laws, calls this issue to mind. Is freedom of conscience affirmed in the name of a classical Islamic law, or in the name of international human rights law?

It should be noted that the 2016 constitutional revision clarified the relationship between conscience and religion referring that the freedom of the worship is guaranteed by the addition of a new §2 to Article 36(42), showing also the complementarity between freedom of conscience and freedom of opinion combined in this article of the Constitution. Thus clarifying that the freedom of practicing a religion is resulting from the freedom of conscience, it constitutes one of the external manifestations.

4. Other freedoms

The Algerian Constitution also enshrines other freedoms, such as freedom of association and freedom of residence. The 2016 revision added academic freedoms and environmental rights.

i. Freedom of association

[90] New Art. 49.
[91] New Art. 50.
[92] New Art. 51.

The right to belong to a trade union is constitutional and enjoyed by everyone. Regarding the scope of Article 56(70), which recognizes the trade union's right, the Constitutional Council has pointed out that no one may restrict this right: 'if the legislature is entitled to impose conditions on the exercise of the trade union right, due to the specificity of the judicial profession, no one may restrict this constitutional right'. The Council found that this right was restricted by its linkage to the statement of the magistrate on his trade union activities made to the Minister of Justice. The right to belong to a trade union is strengthened by a right to strike recognized in the Constitution.[93]

The amendment of Article 43(54) which replaced "the ordinary law" carrying the determination of the conditions and procedures of creation of association by the "organic law" provides more stability to the text and an additional legal security for the associations.

ii. Freedom of residence and private communication

Article 44(55) guarantees the choice of place of residence. The Constitutional Council confirmed this right as part of the fundamental freedoms protected by the Constitution and that it is the responsibility of the legislator to protect them when legislating. This was corroborated by the Constitutional Council in its constitutional review of the organic law on political parties in 1997.[94] It reaffirmed, by all means, the freedom to choose one's place of residence, whether in the country or abroad.[95] No privacy invasion, with the right to circulate the correspondence or the private communication in all its forms can be tolerated without a justified requisition of the judicial authority.[96]

iii. Academic freedoms

The constitutionalization of academic freedoms and the freedom of scientific research[97] consecrates the constitutional guarantees for the benefit of academicians and researchers.

iv. Environmental rights

The right to clean environment is recognized in a new Article 68. Coupled with the new Article 19, this should enhance the protection of the environment. The latter relates to the preservation of the natural resources and environmental protection, as essential conditions for the sustainable development.

The theoretical potential field of freedoms and rights has greatly expanded in Algeria since the 1963 Constitution, increasing from 11 Articles dealing with rights and freedoms in the 1963 Constitution to 32 Articles in the 2008 revision, the chapter concerning rights and procedures gained again 10 Articles in the 2016 revision to reach 42 articles. This is a sign of progress in the normative fields. Unfortunately, the exercise of these rights and freedoms does not necessarily and continuously follow the same trend.

5. Equality

[93] Art. 57 (71).
[94] Opinion n° 01/A.L.O/ 12.
[95] Opinion n° 01/ A.CC/12.
[96] Arts. 39 (46) and 44 (55).
[97] New §4 of Art. 38 (44).

Article 29(32) of the Constitution, which has remained unchanged since the 1989 Constitution,[98] enshrines the principle of equality in these words: 'all citizens are equal before the law. No discrimination shall prevail because of birth, race, sex, opinion or any other personal or social condition or circumstance'. The content of this Article is similar to those concerning the guarantee of equality found in international instruments, particularly the International Covenant on Civil and Political Rights of 1966, which Algeria has ratified since the adoption of the Constitution of 1989.

This ratification shows that Algeria has opted for a liberal democracy. Therefore, it becomes clear that equality, enshrined in Article 29(32) of the Constitution, constitutes the conceptual form, i.e. legal equality, equality 'before the law'. Besides, it must be emphasized that in the general philosophy of the Algerian State, as explained above, this conceptual equality is enlivened by other guarantees of equality dictated by the form of a 'social state', selected and confirmed by various constitutional amendments and established through multiple social programs.

i. Equality between conception and reality

The equilibrium between the theoretical equality of persons before the law and their inequality in reality resides either in a political choice, which would guarantee the equivalence of chances conceptually, or in a preference to tackle economic and social inequalities so as to reduce or eliminate them. The first option is a perpetual source of dichotomy on philosophical and political terms. In this sense, Article 31(34) of the Constitution gives operational effect to equality by setting out the objective to the institutions to ensure equality through the removal of barriers that prevent the effective participation of all citizens in political, economic, social, and cultural life.

The Algerian Constitution goes even further in the consecration of the principle of equality by giving constitutional guarantees to the institutions to ensure effective equality in the most fundamental areas in society, namely equal access to functions and positions in the State,[99] equal access to education and professional training,[100] tax equality,[101] and equality before the law.[102]

ii. Gender equality

The constitutional revision of 2008 gave more concrete content to gender equality by adding Article 31a to increase women's chances of access to effective representation in the elected Assemblies. This operational arrangement allows the State to fulfill its duties regarding the promotion of women's political rights.[103] This is remarkable progress in terms of women's political rights, the effects of which have been immediate in other areas of life, particularly social life. The right of women to participate in political life is the subject of Article 31a(35) of the Constitution, from which sprang the organic law guaranteeing the proportional representation of women. When reviewing the constitutionality of the organic law, the

[98] The current Article 29 (32) was under n° 28 in the 1989 Constitution.
[99] Art. 51 (63): '…equal access to functions and positions in the State is guaranteed to all citizens…'.
[100] Art. 53 (65): '…the State ensures the equal access to education and professional training…'.
[101] Art. 64 (78): 'the citizens are equal before the taxes'.
[102] Art. 140 (158): 'justice is founded of the principles of lawfulness and equality'.
[103] Art. 31a (35): 'the State works for the promotion of the political rights of women by increasing their chances of access to representation in elected assemblies'.

Constitutional Council stressed the need to remove all obstacles to women's participation in political life, synchronizing Article 29(32) and Article 31(34) of the Constitution.[104]

The introduction of Article 31a(35) – 'The State works for the promotion of the political rights of women by increasing their chances of access to representation in elected assemblies' – has generated many positive and negative reactions, questions, and doubts about the real intention behind this provision. There is no question that in terms of pure law, this Article is revolutionary for a Muslim country in the Maghreb, but the reality on the ground encourages one to become more circumspect about the real motives.

Article 51(63) of the Constitution, which was the only one guaranteeing 'equal access to functions and positions in the State . . . to all citizens without any other conditions except those defined by law', is another legal basis for the law on the representation of women in the elected Assemblies and testifies to the attention paid by the country to gender equality.

The new Article 36 of the 2016 Constitution is an obvious result and a logical and gradual implementation of the principle of gender equality. For the Constitutional Council, 'the constitutionalization of the promotion of parity between men and women in the labour market is likely to consolidate women's rights and to reinforce their effective participation in the economic, social and cultural life of the country'. [105]

Thus, in Algeria more than elsewhere, the place of women has been strongly linked to the political and social developments of the country. Women are regularly praised as heroes of the war of independence and the fight against terrorism. Therefore, it is quite natural that equality is so prominent in Algeria's practice and constitutional jurisprudence. The Constitutional Council has very assertive jurisprudence on the principle of equality. It has removed several conditions set in legal texts that were deemed to be discriminatory and therefore infringed this principle.

iii. Equality in the jurisprudence of the Constitutional Council

Constitutional jurisprudence has continued to be developed in this area over the twenty-five years of the Constitutional Council's existence. It has focused on the principle of equality, the right to form political parties, the protection of private life, the trade union right, and the protection of fundamental freedoms such as freedom of residence.

Convinced that achieving democratic transformation requires the guarantee of citizenship rights and the protection of fundamental freedoms, the Constitutional Council based its first decision[106] on the principle of the equality of citizens before the law, which is enshrined in the Constitution and in the international instruments on human rights ratified by Algeria. The Constitutional Council has removed several conditions in the legislation that would have restricted this right, such as the requirement of native Algerian nationality for the spouse of a candidate for the Presidency of the Republic, and the requirement of Algerian nationality, either native or acquired for 10 years, for the founding members of a political party. In this context, the Council found that the conditions relating to the native nationality of the spouse

[104] Opinion n°05/O/CC/11.
[105] Opinion n° 01/16 A.RC/CC/ of 28 January 2016 on the constitutional revision.
[106] Decision n° 01/D/CC of 20 August 1989 on the review of compliance of the electoral code with the Constitution.

of the candidate for the Presidency 'constitutes a breach of the principle of equality'.[107] The Council also considered that the conditions of personal circumstance for the creation of political parties contained in the law on political parties were discriminatory and 'violate Article 29 of the Constitution which enshrines the equality of citizens before the law',[108] and therefore were unconstitutional.

Other decisions and opinions of the Constitutional Council have declared other unconstitutional laws to be void because of their discriminatory nature. This concerned, in particular, disrespect of the principle of equality in terms of public burdens, and discrimination among categories of individuals in the same situation.[109] It also considered that the legislator, by 'submitting the independent electoral lists to an additional condition compared to what was provided for the lists presented by political parties, will have infringed the principle of equality'.[110]

IV. Separation of Powers

Separation of powers is a general principle that is inseparable from the liberal conception of democracy. It is intrinsically linked to the organization of powers. It is derived from the idea once advocated by Montesquieu that 'all would be lost if the same man or the same body of principal men exercised the three powers.' Hence the need to distinguish, in the power of the State, three essential functions: that of issuing norms, by the expression of the general will; that of implementing and applying norms; and finally, to judge or, specifically, to sanction the implementation of those norms.

The separation of powers as a fundamental constitutional principle in a democratic state was totally absent in the 1976 Constitution, which centered the unity of power in the hands of the Head of State. The other institutions were not powers; they only exercised functions.

The constitutional reforms since 1989 established authorities that required the adoption of the principle of separation of powers, essential for building the rule of law into the framework of the superiority of the Constitution, which distributes powers and delimits the fields of their practice. This organization of power alone guarantees the rights of citizens against abuse, because power will stop power. The separation of powers and respect for the constitutional division of areas of competence also ensure a faithful reproduction of the sovereign will of the people in an organization based on democratic representation.

Indeed, Article 14(15) of the Constitution provides that 'the State is based on the principles of a democratic organization'. Thereafter come the three chapters of the second Title of the Constitution that establish the executive power, the legislative power, and the judiciary.

The fact that the separation of powers is not explicitly provided for in the 1996 Constitution did not prevent the Constitutional Council, through consistent jurisprudence, to raise it as a fundamental organizing principle of government, which is worth stressing here. In its Opinion n° 4 of 19 February 1997 on the constitutionality of the Ordinance on Judicial Division, the

[107] Decision n° 01/D. L.CC of 20 August 1989 on the electoral code.
[108] Opinion n° 01 of 6 March 1997 on the compliance of the organic law on political parties with the Constitution.
[109] Opinion n° 2/O/CC of 22 August 2004 on the review of compliance of the organic law on the status of the judiciary with the Constitution.
[110] Opinion n° 07 of 23 July 2007.

Constitutional Council considered that 'the Constitution, by making the separation of powers a fundamental principle of the organization of public authorities, intends to set their jurisdictions which cannot be exercised unless in the cases and on the terms explicitly set by the Constitution'.[111] The Constitutional Council also highlighted the principle of separation of powers when reviewing the particular status of the deputy. It stated in this regard: 'the principle of separation of powers obliges each power to exercise its competence in the areas granted to it by the Constitution.'[112]

In its opinion on the review of compliance of the organic law of the State Council, the Constitutional Council confirmed that 'the independence of the judiciary ... flows from the constitutional principle of separation of powers ...'.[113] It also found that the submission of the rules of procedure of the State Council's Office for the approval of the President of the Republic as approved by the legislature 'infringes the principle of separation of powers.'

The Constitutional Council has also highlighted the constitutional principle of division of areas of competence, which is corollary to the principle of separation of powers. In its opinion on the review of compliance with the Constitution of the status of deputy, it stressed that 'under the constitutional principle of the distribution of competence, the legislator is subject, in the exercise of his power, to the domain fixed by the Constitution, the text submitted to his control in a way not to include provisions relating to the Constitution, to the field of competence of other texts; whereas it is necessary therefore to exclude these provisions from the scope of this law'.[114]

The organization of public authorities under the 1996 Constitution maps the contours of a semi-presidential regime. It borrows from the presidential regime the election by universal suffrage of the Head of State for a renewable term of five (5) years. The Prime Minister is doubly responsible before the National People's Assembly, on the occasion of the presentation of the road map or the declaration of general policy and, before the Head of State who appointed him, to fulfill his program and dismiss him from his office. In order to implement the action plan, the Prime Minister has a regulatory power.[115] Conversely, the Head of State can dissolve the National People's Assembly. The Senate is the second Chamber of Parliament, which ensures the continuity of the State. It is not subject to dissolution. It enjoys a veto power. The shortcomings of the judicial power are due, in large part, to the lack of expertise and difficulty in adapting to the new status of the judiciary as an independent power.

The trend of the constitutional revision of 2016 towards the effective concretization of the bicameral system in Parliament and the bicephalism (double power) on the level of the executive is clear. The repartitions of the prerogatives inside the executive power and in the legislative power are witnesses.

A. The executive

In fact, the 1989 Constitution established a dual executive power, where in addition to the President of the Republic, the Head of Government had real power. He chose the ministers

[111] Constitutional Council (1997) 2 *The Algerian Constitutional Jurisprudence* 9.
[112] Decision n° 02 – D – CC – 89.
[113] Opinion n° 06/ O.L.O/ CC/98.
[114] Opinion n° 12/O.L/01.
[115] Arts. 77 to 86 of the 1996 Constitution.

and submitted his program for approval to the unicameral legislature (the National People's Assembly).[116] If these texts had been applied, they would have strengthened the National People's Assembly and would have formed a bloc 'government and parliamentary majority', by creating cohesion between the government and its majority in order to implement the government program and enable the minority in Parliament to play the role of opposition.

The failure of the pluralistic experience and the cancelling of the electoral process that came out of these objectives and threatened the stability of the Algerian State are the reasons that led to the creation of a Parliament composed of two Chambers, which was introduced in the Constitution of 1996. The second Chamber was conceived as an element of stability and continuity of the Algerian State.

It is difficult to classify the Algerian system, in so far as the President of the Republic enjoys wide powers compared to the legislative power, which is justified, largely, for the sake of stability and to safeguard the republican political system, territorial integrity, and unity of the nation.

The balance of powers established by the 1989 Constitution has undergone two major changes, resulting in a real shift of power in favor of the President of the Republic. The first was made to the detriment of the legislative power by the 1996 constitutional amendment, by the introduction of a bicameral system through the creation of the Senate. The drafters of the new text ensured that the second Chamber, either by its composition or by its functioning or its competence, constitutes several levels of blocking.[117] The second, within the executive, was at the expense of the Head of Government, who became Prime Minister in the constitutional amendment of 2008. The Prime Minister has lost all powers related to the title of Head of Government. The two-headed government established by the 1989 Constitution was simply abandoned. The Prime Minister no longer has his own program to defend before Parliament, but presents an action plan to Parliament for approval to implement the program of the Head of State.[118] The Prime Minister plays a coordinating role under the authority of the President of the Republic. The exercise of executive powers is subject to the prior approval of the President.[119]

The 1996 Constitution kept the two-headed power (the President of the Republic and the Head of Government) and created a bicameral legislature (Parliament, consisting of a National People's Assembly and a Council of the Nation). The dual executive power was the source of political dispute, which ended with the unification of the executive power in the 2008 amendment, submitting the Prime Minister to the authority of the President of the Republic,[120] because the powers of the Prime Minister allow him only to implement his action plan. The most important powers cannot be exercised without the approval of the President of the Republic.[121] The Prime Minister no longer has the choice of his ministers. The Head of State appoints the members of the government, after consulting the Prime Minister, who coordinates government action.[122]

---

[116] Arts. 75 and 76 of the 1996 Constitution.
[117] For more details, see Part IV.B.2.
[118] Art. 80 of the 2008 constitutional amendment.
[119] Saïd Bouchair, T. III *The Algerian Political System* (OPU, Alger, 2010) 97 (in Arabic).
[120] Art. 79 of the 2008 Constitution.
[121] Art. 85 of the 2008 constitutional amendment.
[122] Art. 79 of the 2008 constitutional amendment.

The constitutional revision of 2016 bought back a hint of bicephalism at the executive power.

Article 79(93) and the addition of § 3 to Article 85(99) of the Constitution constitutes a readjustment within the executive power; the Prime Minister gained additional powers.

The reference to the program of the President of the Republic does not exist anymore in the Constitution.[123] The Prime Minster is appointed after the consultations of the parliamentary majority,[124] and he then takes part in the nomination of the Government. He submits his plan of action which is an equivalent to the program of the government to Parliament for approval.

The elaboration of the plan of action is no longer the task of the Prime Minster alone but that of his Government.[125] The Prime Minster coordinates the action of the Government and also chairs its meetings.[126]

The Prime Minister submits the government's plan of action to the National People's Assembly.[127] He signs the executive decrees[128] following the removal from subparagraph 3 of the expression, 'after the approval of the President of the Republic'. The Prime Minster benefits also from the possibility of making referrals to the Constitutional Council.[129] All this suggests a return to a kind of bicephalism at the summit of the executive.

The President of the Republic, elected by universal suffrage by the people, embodies the unity of the nation; he has the exclusive competences related to the executive power. He legislates by ordinance under certain conditions. He has the right to dissolve the National People's Assembly. Moreover, the President of the Republic is the Supreme Head of the armed forces and leads foreign affairs.

As to the question of the guarantee of alternation, it is highly controversial. It is true that the President of the Republic has a fixed and rigorously determined term of five years, but there remains the thorny issue of the number of terms that a Head of State can have. Some are in favor of an infinite renewal of the mandate as long as it is supported by the people's will and legitimized by voters' confirmation, while others are firmly opposed because the *ad infinitum* renewal of a Head of State, whatever his popular backing, compromises alternation. Alternation is a requirement of democracy. It is defined as the succession to power in the organs of the State that emanate from universal suffrage, namely the legislative and the executive powers, and political parties representing different opinions. The people will then exercise power through their elected representatives because in democracy, elections remain the mode of accession to power as long as sovereignty belongs to the people. It is true that the government in power has the means to influence the course of elections and that alternation is a healthy measure. However, considering the paucity of a political elite, it would be unwise to place power in incompetent hands that additionally lack popular backing. It is important to note also that imposed alternation would complicate the situation of a country that is looking for stability. The plight experienced by some countries in the region that have tried forced alternation reinforces the position for the majority in Algeria. The popularity of the President,

[123] The expression « The Prime minister implements the program of the President of the Republic » is removed from article 79 as amended in 2008.
[124] Article 77 §5 (91 §5).
[125] Art. 79 §3 (93 §3).
[126] Arts. 79 §2 (93 §2) and 85 §2a (99 new §3).
[127] Art.80 (94).
[128] Art. 85 (99).
[129] Art. 166 (187).

the state in which he found the country, and his illness have to be taken into account to make a defendable point of view on the situation in the country.

The constitutional turnaround consecrates anew the principle of alternation to power in the 2016 revision, which is dictated[130] by the evolution of the concept of democracy, in an international society in permanent progress and the deep mutation of the Algerian society.

It is clear that the commitment to democratic alternation of power at the summit of the State, at this stage of the evolution of the Algerian political system is bound to strengthen the emerging democratic culture and constitutionalism. It should be noted that when removing the presidential terms in 2008, the constituent assembly was guided by the need for internal stability, a situation which has considerably changed since. And the country has found its serenity.

The return to the limitation of the presidential mandates by the amendment of the article 74(88) aims to consecrate the principle of democratic alternation by fixing the re-eligibility of the President of the Republic just once. Thus translating the content of §12 of the preamble which is raised to general principles governing the Algerian society, democratic alternation to the power. Beside its consolidation as an immunable democratic principle according to article 178(212) guarantees its stability.

The constitutions adopted by countries following the collapse of communism and by the former socialist countries are moving towards the semi-presidential system.[131] This regime is more suitable for a gradual democratic transition. It allows a double standard of legitimacy and accountability for the two components of the executive, the President and the government, *vis-à-vis* the electorate and the legislative power between them.[132]

Indeed, Algeria has chosen a semi-presidential system whose 'parliament is restricted', but with an asymmetrical separation of powers and a progressive democracy, compensated by popular participation, which is justified by the absence of an organized political force and the lack of peaceful political opposition.

B. The legislature

The 1976 Constitution talked about the 'legislative function' and entrusted it to a single assembly called the 'National People's Assembly'. This Assembly was not in itself a power. It had the power to legislate, draft laws, and approve them in accordance with Article 126.

Despite the radical political changes introduced by the 1989 Constitution – the substitution of a socialist economic system by a liberal one, and the abandonment of the single party system for a pluralist system – that Constitution kept in the legislative field the same Article 126 of the 1976 Constitution,[133] which became Article 92. Meanwhile it was strengthened by the new Article 93, which stipulated that the National People's Assembly controlled government activity. This shows that although it transcribed the same terms, the text on the legislature in its new context in the new Constitution provided for a legislature that could undertake all its

[130] §12 of the Preamble and new Arts. 88 and 212 of the 2016 Constitution.
[131] Cindy Skach, 'The "Newest" separation of power: Semipresidentialism' (January 2007) 5 International Journal of Constitutional Law 93-121, p.93.
[132] Ibid, p. 97.
[133] It worth noting that the 1976 Constitution was a document used for the drafting of the 1989 Constitution and some text was kept, some changed and suppressed, and some new text was added.

dimensions. Unfortunately, the failure of the first multiparty elections circumscribed the ambitions of the 1989 Constitution to guarantee the democratic transition.

The 1996 Constitution created a Parliament of two Chambers: the National People's Assembly and the Council of the Nation (Senate), which are characterized by the difference in their composition and the unequal division of legislative power.

The amendment of the Constitution in 2016 concerning the legislature can be treated in the following three points:

- Guarantee of the minority rights: The right to seize the Constitutional Council granted to 50 deputies or 30 members of the Council of Nation[134] constitutes an important reinforcement of the pluralistic democratic debate procedures, and as such contributing certainly to the protection of rights and individual and collective freedoms.

Moreover, the parliamentary minority was seen granting the right of an effective participation to parliamentary works and in the political life. In that framework, the new Article 114 provides the schedule by each chamber of the Parliament of a monthly meeting to debate an agenda presented by one or many parliamentary groups of the opposition.

These rights reinforce the action of parliamentary opposition, by ensuring their effective participations, they revive the role of the opposition in the political life and guarantee the respect of its opinion.

- The attendance of the deputies and the interdiction of political nomadism[135] of the members of Parliament: The new Articles 116 and 117 aim to compel the deputies and members of the Council of Nation to devote themselves to fully effective participation in the parliamentary works. Moreover, deputies and members of the Council of Nation who change their political belonging under the aegis that were elected shall loose their mandate. Meanwhile there exists a means for preserving their membership of the Parliament which is to become an independent (unaffiliated) deputy.[136]

- Beginning of the legislature and standardization of the procedures of vote: Article 118(135) fixes the starting date of the legislature, and the uniqueness of the Parliament session, which is of ten (10) months duration, likely to be prolonged by the request of the Prime minister.

1. The National People's Assembly

The NPA's members are elected by direct and secret universal suffrage[137] for five years. The number of seats in the Assembly, based on the delimitation of the electoral districts of 2012, is 462. If women's representation (146 seats) is significant, the total number of seats remains high compared to countries with lower houses whose population is higher than that of Algeria.[138]

The electoral system has also undergone repeated modifications, justified by a lack of experience, the rush of others to gain power, and the political carelessness of leaders of some political parties.

---

[134] Art. 166 (187).
[135] This term is used to devote "changing political party during the parliamentary term".
[136] New art. 117 §3.
[137] Art. 101 (118) of the Constitution.
[138] Bouchair, n.96, p. 16.

The proportional list system contained in the 1989 Act was quickly abandoned before being applied in favor of the nominal list pursuant to the 1991 amendment. This amendment was political because the nominal electoral roll is more representative, and therefore closer to true democracy.

The return to a proportional list was made in accordance with the electoral law of 1997. The proportional list guarantees continuity, stability, and progressive change. It gives the deputy, on the one hand, less personal power, whereby he or she belongs to the list of his or her party and engages in the policy and direction of his or her party, and, on the other hand, it allows the administration to follow closely the political race to avoid anything that could threaten the continuity of the State.

2. The Council of the Nation (Senate)

As part of the bicameralism introduced into the Algerian political system, the 1996 Constitution provides for a Council of the Nation in addition to the National People's Assembly in the legislative branch.

The philosophy that justifies the introduction of the Senate is that it represents the entire nation, hence its name 'Council of the Nation'. However, in reality, this Council has very important political objectives. It ensures the stability and continuity of the regime of the Algerian State, since the President of the Senate assumes the office of Head of State in the case of a vacancy related to the resignation or death of the President of the Republic. The mandate of the Senate is six (6) years, and contrary to the National People's Assembly, the Senate is not subject to dissolution, which provides an additional guarantee of continuity.

Moreover, the Council of the Nation, by its composition and functioning, prevents the tendencies that might cause the National People's Assembly to impede government action by opposing and bringing about substantial changes to draft laws.

It should also be noted that representation in the Council of the Nation is based on the equal representation of all *wilayas*, whatever the number of their inhabitants.[139] Two thirds of the 144 members of the Council of the Nation are elected by indirect and secret suffrage among and by members of the Popular Communal Assemblies and the Popular Assemblies of the *wilayas*. The remaining third is appointed by the President of the Republic among national personalities and local experts in the scientific, cultural, professional, economic, and social fields.[140]

The texts of laws are voted for by three-quarters of members of the Council of the Nation.[141] In light of the method of their election and appointment, the executive will have little difficulty finding one quarter to block the vote, which is a kind of veto belonging to the Presidential third in the Council of the Nation, allowing it to prevent a majority of the First Chamber to disrupt the implementation of the government program, or to attempt to impose its guidelines upon the government. Another objective of this composition is to ensure a broad balance among the legislative power.

[139] Two senators per 48 *wilayas* plus one-third of the presidential appointments makes up 144 senators.
[140] Art. 101 (118).
[141] Art. 120 (138).

The term of office of members of the Council of the Nation exceeds by one year the term for members of the National People's Assembly[142] and also the President of the Republic, which is five years.[143] This is another way to avoid any constitutional vacuum and to ensure continuity.

In the case of a permanent vacancy at the presidency of the Republic, the President of the Council of the Nation assumes the responsibilities of Head of State until presidential elections are held, followed by the President of the Constitutional Council. The ranking to replace the President of the Republic was set out differently in the 1989 Constitution.[144]

3. Competence of Parliament in matters of legislation and control

Parliament legislates in all fields conferred to it by the Constitution.[145] Any legislation that goes beyond the field of legislation by Parliament renders the text of the passed law subject to annulment by the Constitutional Council on grounds of unconstitutionality.

In fact, the Council of the Nation has only one negative role in the legislative process, since the National People's Assembly discusses and deliberates the draft laws proposed by the government or its own legislative proposals, while the Council of the Nation deliberates and votes on laws without being able to make amendments. Disagreements between the two Chambers concerning legislative texts are submitted to a Joint Commission convened by the Prime Minister according to Article 120 before the last amendment. The Council of the Nation did not have the power to propose laws under the 1996 Constitution, and has no possibility to carry a motion of censure on the activities of the government.

The constitutional revision of 2016 gave competence to the Council of Nation members, to initiate laws in the fields related to the local organization, regional planning and for territorial cutting.[146] Law drafts relating to these fields are put, in priority, on the desk of the Council of Nation. This provision finds its logic and foundation in the specificity of the composing 2/3 of the Council of Nation membership, issued from the local assemblies.

In addition, the members of the two Chambers are constitutionally authorized to make propositions of laws on these subject matters.

Reviewed §1 of Article 120(138) of the Constitution makes it possible for the Senate to deliberate in the same way as the National People's Assembly of any draft or law proposition. The three new paragraphs of Article 120(138) trace the way which the government project must follow, and at the same time the procedures of vote in each chamber of the Parliament were harmonized.[147]

The legislative procedure between the two Chambers has been standardized. The Council of Nation deliberates in the same way as the National People's Assembly[148] and the texts of laws are adopted in the same conditions at the two Chambers.[149]

---

[142] Art. 102 (119).
[143] Art. 74 (88).
[144] Art. 84 (98).
[145] Art. 122 (140).
[146] New Art. 137.
[147] Art.120 §3, 4 and 5 (138 §3, 4 and 5).
[148] Art. 120 §1 (138 §1).
[149] Article 120 §5 (138 §5), « …the Council of Nation adopts the text voted by the National People's Assembly, in the majority of her attending members for the ordinary law draft, or in the majority absolute for the organic

The prime Minister files, according to the case, the project of law on the desk of the National People's Assembly or on that of the Council of Nation, and ensures the shuttle between the two chambers.

The meeting of the joint committee was done, before, only on convocation of the Prime Minister, who had no rush to do it. From now on, and thanks to the revision of the Constitution, the joint committee meets in a period of 15 days.[150]

It has also to be noted that this constitutional revision bought a genuine limitation to the power or resorting to ordinance legislation. In that sense, the recourse of the President of the Republic to the legislation by ordinance is limited in article 124(142) as amended to the urgent questions, and only in case of the National People's Assembly vacancy or during the parliamentary holidays. These ordinances are submitted prior to the State Council for an obligatory opinion before their presentation to the Council of Ministers.

i. The legislation

Despite the constitutional limitation on the scope of legislation, the executive power tends to prefer the legislative mode of regulation in matters relating to the rights and freedoms of citizens and other sensitive issues requiring more wisdom. The participation of the people's representatives helps to lessen the political and social pressure on the government.[151]

ii. The parliamentary control of the government

The power to control the government is vested in Parliament in its capacity as representative of the popular will. The constitutional means that allow Parliament to control the government are discussing draft laws,[152] opening up a debate on the government's action plan, and its adaptation, if any, before its approval. The declaration of the general policy also gives rise to a debate on the government's activity, after which it can be censored.[153] The government must also present its resignation in the case of non-approval of the action plan by the National People's Assembly.

Parliamentary control also takes less stringent forms, since it does not engage the government's responsibility. In this context, Parliament members can question the government on current issues,[154] in written or oral form. Parliamentarians can address questions to members of the government.[155]

The revision of Article 133(151) fixes a thirty (30) days deadline for the government to answer the questions asked by the members of Parliament. The members of Government also have to respond within a period of thirty (30) days as well, to the oral questions posed by members of Parliament.[156]

Moreover, each of the two chambers of Parliament must hold weekly sessions devoted to the answering by members of government of any oral questions posed by members of Parliament.

---

laws (Article 123 subparagraph 2). The laws are adopted in the majority of the 2/3 of the deputies and the members of the Council of Nation in second reading (Article 127 of the Constitution).

[150] Ibid.

[151] Bouchair, n.96, p. 111.

[152] Art. 120 (138).

[153] Art. 84 (98).

[154] Art. 133 (151).

[155] Art. 134 (152).

[156] New §3 of Art. 134 (152).

The amendment of Article 131(149) includes the bilateral or multilateral agreements relating to the free-trade zones, to associations and to the economic integrations, amongst the agreements and treaties demanding an express approval from the two chambers of the Parliament before their ratification by the President of the Republic.

The establishment of commissions of inquiry on matters of general interest is another lever that can be utilized by each of the two Chambers of Parliament to control government activity. Management of the financial year is another such opportunity.[157]

iii. The Algerian experience in the field of a bicameral legislative power

The main motivations for adopting the bicameral system[158] were the circumstances witnessed by Algeria at the end of the first round of the 1991 elections and the constitutional vacuum caused by the resignation of the President of the Republic, and the political instability and the difficult security conditions that characterized this period. The conditions for adoption of the bicameral system in the Algerian Parliament are singular. One cannot say that Algeria has adopted the bicameral system for the same reasons as other countries because the second Chamber appeared under the 1996 Constitution, which came following the difficult experience that Algeria faced after the failure of the first multiparty elections, and the threats that beset the stability and security of the country.

The broadest reform in the 1996 Constitution was, thus, the establishment of the Council of the Nation as a second Chamber in the legislature. Its basic objective is to safeguard the stability and continuity of the constitutional institutions. As has been mentioned above, the composition of the Council of the Nation, its powers, its functioning mode, and the status of the President of the Council at the summit of power are elements that ensure the stability and continuity of the State's institutions, so as to avoid what happened in the past.

However, with the weakening of the elected institutions, the powers and fields of activity of the National People's Assembly, like other elected assemblies (communal and the *wilaya*), have been dramatically reduced. These weak institutions with diminished powers may be discredited in the eyes of the population. Other constitutional institutions, which in a democratic system are supported by the independence of the legislature, are in their turn affected by an invasive executive.

In order to liberalise the law-making process, the constitutional revision of 2016 extended the right to initiate laws to the Members of the Council of Nation. Following this revision, the adoption of the law procedures of the two chambers of Parliament was harmonized so as to strengthen the bicameral system provided for in Article 98(112) and to ensure its effectiveness.

Notwithstanding, the fact that it cannot initiate the laws outside the fields that are favorable to it, the Senate henceforth is fully involved in the legislative action.

The current system of legislative power in Algeria oscillates between democratic requirements and the establishment of the rule of law.

Political prudence has been reflected in legal provisions that ensure the non-domination of one political formation in power. The proportional list system, the appointment of one third

[157] Art. 160 (179).
[158] Art. 98 (112).

of the Council of the Nation members by the Head of State, the period of organization of by-elections, and other legal loopholes may be a way out of political crisis.

Although the Algerian Parliament and other institutions that have supposedly resulted from the ballot box have not benefited from a genuine transfer of power, it would be very naive to speak about balance between political forces, which is a prerequisite to guaranteeing a true democracy. The political landscape is not totally bleak; rather, it can be argued that Algeria has gone a long way toward liberalization with the establishment of the multiparty system and the holding of periodic multiparty[159] elections.

C. The judiciary

The independence of the judiciary is guaranteed by Article 138 (156) of the Constitution. Justice is proclaimed as power by the Constitution. Previously, it was only the 'judicial function'.

The judiciary is composed of the Supreme Court and the Council of State. The Supreme Court regulates the activity of the courts, while the Council of State regulates the activity of administrative courts. A tribunal of conflicts settles conflicts of competence between the two bodies of the judiciary.

A High Council of the Magistracy[160] meets under the presidency[161] of the First President of the Supreme Court to decide on disciplinary cases concerning judges and to ensure respect for the provisions of the status of the magistracy in general.

An organic law[162] ensures the independence of the judiciary. Judges obey only the law.[163] Judges are subject to confidentiality to protect them from any suspicion and to guarantee their impartiality and independence.[164] The judiciary is the main guarantor of rights and fundamental freedoms, taking into account the independence it enjoys from the other powers, organically and functionally. However, the judiciary in Algeria has not yet attained the level of an independent power, particularly when compared with the executive.

Nevertheless the 2016 revision of the Constitution consolidates the independence of the judicial power,[165] consecrate the principle of double degree of the jurisdiction in the penal cases,[166] rigor in the execution of judicial decisions.[167] The constituent reinforced the protection of the judge and secured him from any sort of pressure, intervention or any maneuver that annoys the good accomplishment of his mission.[168]

---

[159] Bouhandel, n.31, p. 20.
[160] The High Council of the Magistracy includes the Minister of Justice, the Vice President, the first President of the Supreme Court, the Attorney General at the Supreme Court, ten (10) judges elected by their peers, and six (6) persons chosen by the President of the Republic for their competence outside the body of the judiciary. The administrative and financial autonomy of the High Council of Magistracy provided for by Article 176 of the 2016 Constitution as amended would strengthen this trend.
[161] Usually, it is presided by the President of the Republic: Art. 154 of the Constitution. The Council manages the careers of judges, including their appointments and their transfers.
[162] Organic law n° 04-11 of 6 September 2004 on the status of the magistracy.
[163] Art. 8 of organic law n° 04-11.
[164] Art. 7 of organic law n° 04-11.
[165] Art. 138 (156).
[166] Art. 142 (160).
[167] Art. 145 (163).
[168] Art. 148 (166).

In order to reinforce the independence of the judge and to consolidate the judicial power, the referral of the Superior Council of the magistracy by the magistrate raised to the constitutional norm would offer more protection to the judge, and thus guarantee his free will.[169]

Moreover, the new Article 170 provides guarantees for the protection of the lawyer advocate in order that he can practice his profession in a serene manner.

These advances by themselves are not enough, for a review of the reasons and consideration of the decline of the judicial institutions refer us to the lack of human resources necessary for the judiciary to fulfill the role of guarantor of the rule of law. Indeed, the lack of availability of the qualifications necessary to oversee the judiciary is a major obstacle to the performance of justice.

V. Constitutional Adjudication

Respect for the normative hierarchy requires a mechanism of review and subordination of the work of the legislature to the authority of the Constitution. The constitutional judge is empowered by the Constitution to uphold the Basic Law by submitting the law to the Constitution and beyond, to confine political power within the limits of the domain recognized by the Constitution. This control is generally regarded as the major function of constitutional courts and a vital function of democracy.

The Algerian Constitutional Council is distinguished by its composition, the mode of appointment of its members, and its prerogatives. It is composed of nine members: three appointed by the President of the Republic, one of whom is the President of the Council; two elected by the National People's Assembly; two elected by the Council of the Nation; one elected by the Supreme Court; and one elected by the Council of State. This composition mimics the composition of some arbitral institutions. It is based on a representative formula in which we find the three powers**:** the executive, the legislature, and the judiciary.

The 2016 amendments introduced in Articles 163(182) and 164(183) devote the independence of the Constitutional Council by granting the administrative and financial autonomy to it. Its composition is increased, the number of its members went from 09 to12 members, in order to ensure balanced representation of the three powers. The members of the Constitutional Council have to take the oath before they assume their functions and also benefit from several immunities.[170]

By appointing four members, the President of the Republic is not subject to any condition.[171] The election of two members by each Chamber of Parliament is also free of any conditions. Nevertheless, in practice, these two categories of members of the Constitutional Council generally have legal training, especially those appointed by the President of the Republic, and are often academics from law faculties. However, it seems that this choice is dominated by political elements. The two members of the Supreme Court and the two the Council of State have legal training, which has enabled them to move up the ladder in the judiciary and to

[169] Being already secured by Articles 26 and 33 or organic law 04-11 relating to the statute of the magistrate.
[170] New Art. 185.
[171] The 2016 constitutional revision introduced general conditions for membership of the Council. These conditions are enumerated in the new Article 184. The Council member should be aged at least forty on the day of designation or election, and should have no less than 15 years of experience in teaching law or as magistrate or advocate.

accumulate long experience in the legal field. They have usually graduated from the high National School of Magistracy or the National School of Administration.

The procedure for a constitutional review of treaties, laws, and regulations commences following a referral from the President of the Republic, the President of the National Assembly, or the President of the Senate.[172] Article 166 amended in 2016, now under number 187 widens the referral of the Constitutional Council to a number of 50 deputies or 30 members of the Council of Nation as well as to the Prime Minister. The Constitutional Council must decide on the constitutionality of treaties, laws, and regulations, either through an opinion that has binding effect if these are not enforced, or by a decision, if that is not the case.[173]

The Council also pronounces on compulsory referrals by the President of the Republic, *a priori* opinions concerning organic laws, and the rules of procedure of each of the two Chambers of Parliament. Specific procedures are required for the ratification of peace and armistice treaties in accordance with Articles 97(111), 131(149), 165(186), and 168(190). The latter article states that the ratification of an international treaty cannot take place when the Constitutional Council considers it to be unconstitutional. This procedure demonstrates that this category of treaties is higher than that of organic laws.

The only difference between organic laws and the international treaties submitted to the Constitutional Council is that in the case of organic laws, the Council expresses a *binding opinion* while reviewing their compliance, whereas it considers[174] or decides by an opinion the constitutionality of international treaties that are considered to be international texts that can be put into effect internationally.

Another function that is as important as constitutional review is the protection of fundamental rights. This is a function that has resulted from the recent developments of the normative supremacy of the Constitution that is now guaranteed by the jurisdiction of the judiciary. It consists of checking the application of all the rights and individual and collective freedoms guaranteed by the Constitution. Today, the protection of fundamental rights is one of the functions of the constitutional judge. It is true that the protection of human rights is omnipresent in the jurisprudence of the Constitutional Council, although the 1996 Constitution does not provide for individual access to constitutional justice. It should be noted that many claims from the opposition, civil society, and a fringe of the majority are asking that future constitutional amendment takes this deficiency into account. Some even seek the establishment of a constitutional court to substitute the Council. The 2016 constitutional revision met these requirements by widening the referral to the Constitutional Council to the citizens by the way of the unconstitutionality exception.[175]

Furthermore, in the case of review of ordinary laws, which have gone through all stages of the legislative process and which have been promulgated by the President of the Republic, the Council must make decisions on the constitutionality of the legal text.

[172] Art. 166 (187) of the Constitution.
[173] Art. 165 §1 (186 §1).
[174] This expression differs from the language of the Constitution concerning the powers of the Council. Article 168 is drafted as follows: 'When the Constitutional Council considers that a treaty, an agreement or a convention is not constitutional, its ratification cannot take place.'
[175] New Art. 188.

The jurisprudence of the Constitutional Council has known two stages, the first from the constitutional reform of 1989 to 1996, and the second from the amendment of the Constitution in 1996 until today. The objective of the Council during the first period was to guarantee political pluralism and independence of powers. During the second period, the Council has ensured the proper functioning of institutions, the promotion of democracy, and the continuity of the State through the viability of its institutions.

In its jurisprudence, the Constitutional Council has occasionally used expressions such as 'the people's trust', 'the free choice of the people', and the objective 'not to affect the will of the constituency'. These are in essence expressions with vague political connotations. In fact they have a political-legal basis, which the Council has used and which concerns the principles governing Algerian society, since most of these expressions are contained in Part I of the Constitution that enshrines the 'General Principles Governing Algerian Society'. The Constitutional Council also invoked these expressions as part of the document promoting the draft constitutional amendment in 2002 and the draft revision of the Constitution in 2008, which were texts for the revision of the Constitution submitted by the President of the Republic under Article 176(210) of the Constitution. Also mentioned in the Council's opinion on the organic laws relating to the postponement of local elections in 2007 were the terms 'popular will' and 'no limits to represent the people', and 'to fulfill the confidence of the people'. The expression 'without prejudice to the will of the constituency, the constitutional founder' was used in the opinion on the compliance review of the organic law on the Superior Council of the Magistracy in 2004.

Among the techniques used by the Constitutional Council are the correction and filling in of gaps in legal drafting matters, hierarchical respect for legal provisions, and respect for the domain of each law, as these are questions of measures relating to a lack of clarity in the drafting of text, the avoidance of any ambiguity in wording, and the need to harmonize the drafting of the provisions of the law. The Council's decisions lead to the annulment of separable unconstitutional text of the law, or the annulment of the whole law for inseparability.

The Constitutional Council's techniques have gained significant momentum in terms of importance since the adoption of a series of new organic laws pursuant to Article 123 of the 1996 Constitution, which concern the areas of the organization of power in general, the political party system, information, and the judiciary. The organic laws governing these areas are subject to special procedures that are more complex than ordinary laws; they are adopted by the absolute majority of deputies and by a majority of three-quarters of the members of the Council of the Nation. These laws are subject to a compulsory review of compliance with the Constitution before they are promulgated, which sometimes raises questions about the legitimacy of the intervention of the Constitutional Council.

It is worth reiterating that 'the opinion of the Constitutional Council and its decisions are final and not subject to appeal and continue to have effect lasting as long as the reasons on which they are based remain and as long as the provisions of the Constitution will not have been revised'.[176]

VI. International Law and Regional Integration

[176] Opinion n° 01/A.CC/12.

The executive power in Algeria has the necessary competence to conclude executive treaties and integrate them into national law. The Algerian Constitution confers on the President of the Republic the power to conclude and ratify international treaties.[177] Sometimes, the ratification procedure requires the express approval of both Chambers of Parliament separately. The approval concerns political treaties and international treaties, whose effects can influence the powers of the legislature. Article 131(149) of the Constitution lists these treaties as follows: armistice agreements, peace treaties, alliances and union treaties, treaties relating to state borders, and treaties relating to personal status as well as treaties involving expenses not provided for in the budget.

Algeria ratified the 1969 Vienna Convention on the Law of Treaties in 1987.[178] It is therefore bound to respect its provisions, particularly those enshrined in Articles 27 and 46. Fully aligned with Article 27 of the Vienna Convention, Article 132(150) of the Constitution provides that treaties ratified by the President of the Republic, as provided by Constitution, are superior to laws. The constitutional evolution in Algeria has placed international treaties ratified by the President of the Republic at a higher rank than laws. Moreover, the Constitutional Council stressed this primacy soon after the constitutional reform of 1989. Indeed, in its decision of 20 August 1989, the Constitutional Council considered that a treaty 'after its ratification, acquires a higher status than laws, permitting any Algerian citizen to invoke it before the courts, that this is the case concerning the International Covenant on Civil and Political Rights of 1966 ... and the African Charter on Human and Peoples' Rights'.[179]

Under the conditions of the Algerian political system, it is clear that the national judge will apply the provisions and principles of international law when adopted and integrated into national law in accordance with the procedure required by the Constitution.

Algeria is a country of stability in the North African region. Strengthened by its proven experience in the fight against terrorism and the conduct of national reconciliation policy, Algeria has also built itself a reputation as a natural leader and a key player for stability in the region. Moreover, its policies of solidarity and good neighborliness, as well as its commitment to the principle of non-intervention, have enhanced that position. This standing of principle on the matter has become a reference point in the status of Algeria internationally.

The principle of non-intervention is enshrined in Article 28(31) of the Constitution, which states that 'Algeria works for the reinforcement of international cooperation and to the development of friendly relations among states, on equal basis, mutual interest and non-interference in internal affairs. It endorses the principles and objectives of the United Nations Charter'. This is a principle the basis of which, it must be recalled, is also found in the UN Charter,[180] on the same terms as the principle of the sovereign equality of states. It is one of the fundamental principles of international relations. It is proper that each state enjoys the ability to exercise exclusively the powers under its national domain without external constraint.

The UN's goals are very broad, but they all converge towards maintaining peace and international security by taking collective and effective measures. Regional integration is an

[177] Art. 77 §11 (91 §9).
[178] JORA n° 42 of 14 Oct. 1987.
[179] Decision n° 1, Constitutional Council, 20 August 1989.
[180] Art. 2 §7 of the Charter.

additional means of the UN in matters of international security in a given region. Having political stability and the economic development as its objectives, regional integration is involved in achieving the UN's objectives in the long term, since it 'constitutes the process of overcoming, by common agreement, political, physical, economic and social barriers that separate countries from their neighbors'.[181] The principles of non-intervention in internal affairs and equitable cooperation among states, advocated by the Constitution, are implemented in a realistic and pragmatic approach to the Algerian policy of integration in the African, Arab, and Mediterranean regional areas. However, and like all emerging countries, Algeria seeks out modes of integration that have little effect on its sovereignty.

Algeria is a member of the United Nations, the Arab Maghreb Union, the Arab League, and the African Union. All of these are political spaces for dialogue and multilateral cooperation for the preservation of peace and international security and the protection of friendly political relations. However, the two normally strategic regional entities for Algeria, namely the Arab Maghreb and the Arab League, are suffering from political inconsistency between their members. In the Maghreb region, which is always searching for solutions, regional integration regarding the strengthening of institutional capacity and the complementarity of regional markets, economic diversification, and infrastructure interconnections are not functioning, due to the Western Sahara issue.

The goal of the Arab League, according to its Charter, is to strengthen relationships between the member states to improve cooperation, preserve independence and sovereignty, and defend the interests of its 22 members. Nevertheless, their contradictory political systems often prevent the consolidation of relationships and the integration that is so desired by the peoples of the region.

However, the opening up of democracy has been the occasion for the inauguration of a new regional integration process within the African Union system. Africa, which is in search of a way that accommodates its specificities and corresponds to the aspirations of its people, has created mechanisms consistent with state sovereignty, such as New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM). Essentially based on the economic and social areas of governance and respect for human rights, this new generation of integration has concerns that interest Algeria. Indeed, Algeria has turned resolutely towards Africa and its strategic depth thanks to NEPAD, of which it was one of the initiator countries. NEPAD is regarded as the best continental development initiative. The mechanism has existed for 10 years, with positive results in various areas such as science, technology, agriculture, and infrastructure. NEPAD is a strategic tool of development, with the most important development strategies in priority sectors such as agriculture and infrastructure. The APRM allows for international control that is in harmony with the principle of sovereignty, since it is undertaken by peers.

The latest newborns are the Charter of Africa for Democracy, Elections and Governance with its operating body, the African Platform of Democracy, of Elections and Governance, and the Union for the Mediterranean. These all create areas and consultation mechanisms and undertakings that operate well with the principle of national sovereignty. Integration requires stability and democratic rule of law, to which Algeria aspires by its engagement with other African states that reject unconstitutional change. By registering another remarkable advance

[181] The European Union's definition of regional integration.

through the African Governance Platform, the continent has identified the appropriate regional integration mechanisms.

Furthermore, Algeria is a significant actor in the Union for the Mediterranean process. This is a very commendable process for regional integration since it aspires to create a space for reflection and mutual trust between northern African countries and those of the southern Mediterranean, but unfortunately it is still in standby mode because of the Israeli-Palestinian conflict.

Moreover, given the challenges to Arab and Maghreb integration, Algeria has expressed its strong commitment to fully participate in the continental economic system. For a country that is working on diversifying its economy, and strengthening and deepening regional integration in Africa, it represents a way to better control its development and take on a leading role. However, the strengthening of institutional capacity, the need to overcome the fragmentation of regional markets, economic diversification, and finally infrastructure interconnections remain at the wished-for level.

VII. Final Remarks

Since the adoption of the 1989 Constitution, Algeria has made real progress in the field of constitutionalism and consolidation of the rule of law. Nevertheless, the failure of its first implementation did put the country in a difficult situation. The insecurity and ferocity of terrorist groups have caused much damage to people and property. The normative provisions adopted by the authorities to deal with that situation were bound to affect the rights and freedoms of citizens in particular, and the construction of a democratic system to manage the country in general.

Successive reforms undertaken by Algeria in this period of transition were designed to meet two imperatives: the first concerning the protection and safeguarding of the Algerian State as a People's Democratic Republic and the guarantee of its continuity by ensuring the stability of its institutions; the second concerning the opportunity to consolidate the reforms with regard to their pace, amplitude, and timing. This will avert hasty reforms; the *leitmotiv* is to head towards constitutionalism, slowly but surely.

The ongoing constitutional revision is intended to be consensual and is regarded by its initiators as profound. It is consensual insofar as the widest possible consultations are being undertaken, involving political parties, unions, civil society, and university professors, although it should be pointed out that part of the opposition declined the invitation to participate. Furthermore, newspapers and audiovisual media, including those in the private sector, have reserved large amounts of media space for debates and various opinions in connection with the revision of the Constitution. It is regarded as profound due to the degree and orientation of the proposed amendments, which tend towards greater freedoms, human rights, and democracy to offer good governance to Algeria. Already, the text proposed for discussion enshrines openings in the areas of participation of parliamentary opposition by offering, for instance, the possibility of referral to the Constitutional Council, allowing the upper house of Parliament to amend drafts of bills, and constitutional guarantees for those arrested, such as the presence of a lawyer from the first hour of custody. As to issues that are still being challenged, concerning the reform of the Constitutional Council and the adoption of the constitutional complaint procedure, which would allow a defendant to challenge the

constitutionality of laws, available information shows that the claims persist and are on the way to being satisfied. As shown in the paragraphs added to this report, the 2016 constitutional revision made a great normative progress in all the concerned issues.

Positive political competition between the Maghreb countries is very beneficial to the adoption of democratic principles in the constitutions of these countries. There is indeed a virtuous circle in the North Africa region that really helps the consolidation of democracy and the improvement of constitutionalism through the rule of law. For example, Algeria is the reference point in matters of representation of women, while the adoption of the constitutional complaint procedure in the other states of the region was introduced in the 2016 Algerian constitutional amendments.

The constitutional revision of 2016, either created new institutions or constitutionalized some of the existing ones. New Article 194 constitutionalized the High Independent Entity for Monitoring Elections.

The other constitutionalized institutions[182]are consultative. They constitute think-tanks for the President of the Republic and the Government. They also contribute to improving governance by submitting reports and recommendations to the Head of State or to the government.

[182] The High Islamic Council. New Arts : 195 and 196, High security Council. New Art. 197; National Council on Human Rights. New Arts: 198 and 199; the High Council on Youth. New Arts:200 and 201 ; The National Organ for the Prevention and anti-corruption. New Arts: 202 and 203; the National Economic and Social Council. New Arts: 204 and 205; the Scientific Research and Technologies National Council. New Arts: 206 and 207.