

## **REQUIREMENTS FOR ARAB STATES TO JOIN INTERNATIONAL LEGAL MECHANISMS TO PREVENT TORTURE:**

*The national mechanism  
for the prevention of torture and the optional protocol*

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### **Abstract:**

*Arab countries suffer from many legal complications that have caused a lack of transparency in monitoring the human rights situation in them. the concerns of human rights bodies defending human rights have increased since the outbreak of the Arab Spring revolutions in 2011. There are a number of Arab countries now falling into the clutches of the civil war, and the rest of the models suffer from Bad detention conditions in police stations and prisons, which means that Arab countries are far from the "legal abolition of torture".*

**Key words:** *Torture, Detention, Interrogation, Beating, Electrocution, Intimidation, Coercion, Confession.*

### **Introduction:**

*The United Nations General Assembly adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1984, and opened the door for signature, ratification and accession to it according to: (Resolution No. (39/46), dated: (December 10) 1984), entry into force date: (June 26, 1987).*

*The topic of the 41st session of the "Committee of the Optional Protocol to the Convention against Torture", which was held during the period (15 June - 19 July 2020), was facing the Covid 19 epidemic inside places of detention in prisons and detention centers (persons deprived of freedom), and the 40th session was held during the period (10 February – 14 February 2020) and its topic was not specified on the website of the agreement, which makes what happened during the 34 to 39 sessions confidential and it is difficult to reach what happened in them due to the difficulties in updating data with the international organization.*

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*States establish a mechanism for the prevention of torture in compliance with international obligations in the field of human rights. The French attached this mechanism to the competencies of the "Inspector General of Places of Restriction of Freedom," and the Spaniards attached the mechanism to the competences of the Office of the Protector of the Homeland, and Senegal attached the mechanism to the competences of the "National Observer of Places of National Restriction." Mali assigned it to the National Human Rights Commission. Tunisia established the "National Authority for the Prevention of Torture" (INPT), Mauritania established the "National Mechanism for the Prevention of Torture", Rabat established the "National Mechanism for the Prevention of Torture" in 2015, and the Palestinian National Authority in the West Bank established the "National Mechanism for the Prevention of Torture and Ill-Treatment" in 2015 2018.*

*According to the contents of the United Nations website, Algeria has acceded to 18 international conventions and has reservations on some of the eight articles of these conventions. In comparison between Algeria and the role of the regional world, we are in very low ranks in joining international agreements and their optional protocols for periodic accountability, and compared to the countries of the Maghreb, we are in slight disparity with neighboring countries. It has recorded a harmful Algerian delay in joining many important international agreements and their pressing mechanisms for several reasons, the most important of which are: (Algerian legal hesitation during two decades (1999-2019), the absence of a constitutional debate, the weakness of the ministerial network between the Constitutional Council and the Ministry of Foreign Affairs, Justice, Solidarity and Parliament in its two chambers, the absence of think tanks. A centralized legal specialist specializing in harnessing these agreements in the service of the Algerian role abroad, the importance of legal follow-up of the contents of the periodic reports and shadow reports written by associations). On the other hand, the comments on the legal reservations of states in general indicate that they adopt a protectionist or isolationist policy that does not make them fall under binding international law, despite their lack of full, complete and final adherence to the agreements and optional protocols they follow.*

*Based on this relatively late legal position, we can diagnose and examine the foreign role of Algeria at the international level and judge the Algerian diplomacy to retreat at the legal level in international organizations, and the Ministry of Foreign Affairs does not bear individual responsibility for this complex problem, but rather all the Algerian constitutional institutions, which are directly concerned.*

*Directly or indirectly, by challenging legal thinking about the contents of international law conventions and what they can add to the Algerian role of strength at the international level. If this Algerian delay is registered in the United Nations and its governmental organizations only, then another delay can be recorded at the level of other regional or specialized international organizations such as: (the African Union, the Arab League, the Organization of Islamic Cooperation, the Maghreb Union, a grouping of (5 + 5) countries) OPEC +, the organization of the group (the 77 countries + China), not to mention the international non-governmental organizations that have become tools used against states as well.*

*This article poses the following problem:*

*Do all countries need a legal mechanism to get rid of torture?  
And can humanity rid the modern-day man of torture?*

***Study hypotheses:***

- *First: Religious leaders and warlords have replaced torture with the totalitarian violence of sovereign national governments.*
- *Second: The practice of torture by the colonial powers led to the emergence of resistance defending the rights of the occupation forces' prisoners and rejecting their practices.*
- *Third: Wars and espionage operations legalize and legalize torture.*
- *Fourth: Citizenship is the main determinant of protection from torture, because it is immunity for citizens.*
- *Fifth: Human rights training programs help civil society organizations to monitor the prevention of torture.*

***1- History of the debate on torture:***

***the debate between justification and condemnation***

*Humanity moved from justifying torture to explaining the motives of the executioner who wanted to obtain confessions from the person subjected to torture. Theories of abolishing torture appeared in the 19th century, and discussions returned to renewed discussion of the causes of the spread of torture in the 20th century. The historical hypothesis says that the cruelty of the emperors and kings has been replaced And the violence of tribal leaders, village chiefs and local warlords, with total violence of sovereign national governments over political organization, to force the civilian population to submit to the will of the central authority, when nationalism was the justification for state building.*

*Studies have also emerged concerned with the social definition of torture, historical arguments and methodological problems to justify torture, and in parallel with this process there is an increase in human rights monitoring, academic debate about the definition of physical and*

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*psychological punishment as "not torture", and the development of legal debate to search for preventing governments from concealing acts Torture practiced by the international community, especially in times of war, against prisoners of war and the enemies of the state. And this debate is still renewed due to the Americans' torture of political prisoners in Abu Ghraib prison in Iraq or Guantanamo Bay in Cuba.*

*The torture of slaves, foreigners, prisoners of war, members of ethnic and religious groups, and political detainees were cases documented in all historical conflicts in which the executioner used pain to destroy the victim's morale and sense of self and his mind, until torture techniques after the Industrial Revolution reached the use of electricity (electric shocks) because they do not leave scars. The debate emerged about considering torture a ritual that unites society against the offenders, especially in the colonial eras, and it is good that the third world person was subjected to torture during colonialism because talking about citizenship rights as a cover and immunity for citizens from torture, the practice of torture was limited to slaves and foreigners from spies, where Honorable citizens cannot be tortured.*

*In the current 21st century, democracy has become the context preventing torture, especially as international treaties that protect human rights focus on these efforts strongly, and states have begun to actively engage in efforts to humanize the appropriate treatment of detainees and detained prisoners. A renewed justification has also emerged in the modern era for the use of torture in response to terrorist attacks, and among these efforts are the legal efforts devoted by the US Congress and the European Committee for the Prevention of Torture, and which enter under the Geneva Convention on the Torture of Enemy Combatants (Prisoners of War). Totalitarian states also run networks of spies and informants, some of whom fall into captivity, forcing the states to justify torture again. Disagreements over democratic legitimacy have increased the likelihood of reporting citizens challenging or criticizing the legitimate violence of governmental authority, especially since repressive governments interpret any opposition activity as treason.*

*Philosophically, the hypothesis says that torture did not decrease during the transition to modernity, but rather changed its nature. The transition to democracy led to a reduction in torture, but the increase in military changes led to an increase in prisoners of war and civilians in the occupied territories.*

*Legally, the United Nations defined torture as: "cruel, inhuman and degrading treatment that deliberately causes severe physical, psychological and mental pain and torture, in order to obtain confession*

or information from a suspect in committing a crime, and work to intimidate and coerce him.” Therefore, the expanded definition of treason for states has evolved from prosecuting traitors to legalizing their torture, as torture is a legal tool, not a prohibited and unethical practice. Because of the security approach, the development of this definition has led to the definition of torture as “severe physical or mental pain intentionally inflicted on a person to obtain information or a confession of a suspect in committing a crime, and is interrogated by a public official while he is under the guard or control of an official seeking to obtain a confession. Which Amnesty International rejects and is fighting against.(1)

Physically and mentally, we need medical evidence to prove cases: (beatings, electric shocks, rape and sexual assault, burns, painful pulling of limbs, crushing of the body, broken bones, cutting fingers and limbs, drowning in water, forcing to maintain an uncomfortable and uncomfortable position for a while A long time)(2), and there are punishments that end due to torture to execution, massacres, and even human extermination for enemies and prisoners of war.(3)

## **2- The legal challenges facing Arab countries regarding torture issues at the international level**

A- The challenge of "localizing" international law and implementing its reforms within national legislation:

B- The "pursuit" of international legal competition to install, incorporate, generalize and update the latest mechanisms and approaches to UN reform at the national level (in legislation, programs and policies).

3- "Taking into consideration the proportionality of the national interest" with the standards of international agreements to recognize levels of international law enforcement at the national legislative level (confirming benefits and reservations), especially since Algeria adopts the principle of (international priority over the local) with a constitutional text (unlike the western neighbor Morocco that adopts the national priority law On the international).

4- "Institutionalizing the international approach" locally within new constitutional institutions to facilitate oversight, accountability, transparency and legal documentation of cases. (An opportunity to build new legal institutions of a constitutional nature that meet the international aspirations of Algeria).

5- "Defending Algerian approaches" that reflect the Algerian identity and interest within the mechanisms of translating international agreements, and through the international platforms provided by these agreements, and to benefit from international friction in the transfer of

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*expertise and networking of constitutional and legal cooperation.*

6- *"Prosecuting Algerian rights in international organizations" to which the Algerian state pays annual subscription rights that confirm Algeria's participation in the annual financing of its budgets, such as the right to obtain documents, participate in deliberations, obtain legal advice, and possess immunities and privileges such as reception, accommodation and transportation in the headquarters of various international organizations.*

7- *"The Algerian diplomacy competes" with the various parties of the international community, in order to present the international and regional Algerian role in the various spaces of institutional belonging, to confirm the contribution of Algerians to achieving international peace and security. Especially in support of the Sahrawi cause, which is mainly related to asserting Algeria's power at the Maghreb, African, Arab and Mediterranean levels.*

8- *"Prevent opponents from tarnishing our country's image" and exploiting the potential vacancy of Algeria's absence from enrollment in any mechanism that the rest of the countries might exploit to obtain international certificates that create a comparative situation that blames the delay in the Algerian state's enrollment, following the neighbors' claims of transparency, accountability and international follow-up.*

9- *"Emphasizing the openness of the Algerian state" to the values of modernity and development, and its possession of legal energies and competencies, without this means abandoning the constants or being satisfied with full enrollment without reservations that defend the Algerian identity and interest within these international forums.*

10- *Exploiting the opportunities for "governance, rationalization and humanization" of Algerian legislation and making it capable of benefiting from legal frameworks that support institutional and societal stability at the same time, to give more legitimacy to security, institutionalization and humanization approaches and to revive them with the latest perceptions of new generations approaches to human rights, sustainable development and the Millennium Development Goals issues on issues Equality and gendered policies, reducing poverty and raising levels of education, among other goals.*

11- *Obtaining opportunities to reflect on the future plans of international foresight on various international discussions on international concerns such as (ecological, climatic, developmental, gender, educational and health concerns), and obtaining international funds for projects that meet the standards of international organizations on codifying international procedures at the local level within concrete*

and realistic experiences .

12- Benefiting from the Algerian tire training workshops to develop the legal debate on the Algerian experience, and to interact with the jurists of international constitutional law, training experts, designers of plans, programs and policies, and drafters of legislation and laws.

### **3-The reasons for the delay in**

#### **Algeria's accession at the level of international organizations**

Our country is lagging behind in modernizing its institutional building in the field of human rights for many reasons, but the most important one is that it is affected by the policies of the gang rule (1999-2019), which is known for its reliance on public relations and favoritism and disrupting competencies and merit to play its role in the face of many files that international organizations exploit to include Algeria Within the blacklists of human rights situations. The popular movement (February 22, 2019) is not a peg on which to comment on the delay recorded on the lack of achievements of the "National Council for Human Rights" during the years despite all the capabilities available to it, since the termination of the duties of the former President of the Council, Mrs. Qadir Bensalah to Professor Bouzid Lazhari, this council is not achieving noticeable institutional successes that make Algeria take specific steps or leaps, closing the doors of international and external criticism of the human rights situation in Algeria. On the contrary, it seems that the presence of Algeria on the blacklists does not call upon the officials of this institution and the concerned committees in the various ministries, to investigate at least the reasons for this matter, and this is due to several factors: (reliance on formal procedures to monitor human rights conditions, disdain and disdain for follow-up mechanisms. Periodicity at the international level, disregard for shadow reports that associations secretly send to international organizations, slowness in dealing with international institutions regarding various human rights reports or at least reports on the achievement of the Millennium Development Goals, lack of seriousness in identifying national competencies facing these dilemmas with legal merit).

There must be immediate institutional and ministerial cooperation that must take place urgently between: (the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Solidarity, the Parliament in its two chambers, and civil society organizations), to update the status of our constitutional institutions on the topics: (human rights, empowering women, unemployment issues and issues Employment, freedom of association, elderly issues, paramedic issues of childhood, conditions of the disabled, juveniles, prisons, social housing crisis, the

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*right to education and education reform to prevent extremism, the right to health services, the conditions of illegal immigrants, the conditions of the displaced and refugees, the humanization of detention centers, Cases of prevention of torture, prevention of trafficking in human beings and human organs, prevention of drugs, civil protection and prevention of traffic accidents, prevention of hatred, incitement and false news, elimination of corruption), and dozens of accumulated files indicating deficiencies in two important issues: (Inability to submit and prepare strong national reports that take into account The required points in international accountability and conditionality, and the response to the expected questions of the specialized international organizations after having seen the covert shadow reports.)*

*In this regard, we face many complex risks:*

*A- Algeria's loss of its weight and weight within the specialized organizations, its wasting of its ability to influence and access to files, and its inability to follow up the thinking cells and lobbies that control these organizations, which leads to the transformation of these organizations into a critical opponent of our national policies: (For example, the International Labor Organization that we had It has a great influence on countering strikes and organizing union action in Algeria, before the Algerian role has declined.)*

*B - The risk of interference by public and specialized international organizations in human rights files and directing harsh criticism of Algeria, which means our inability to monitor the shadow associations' reports.*

*C the risk of political parties politicizing human rights issues, which threatens government stability and increases the complexity of dealing with the details of human rights files, especially with non-governmental organizations that have secret relations with some opposition parties, such as the Amnesty International and Amnesty International.*

*D - The accumulation of human rights cases in the specialized courts, and the accumulation of civil conflicts against the administration, which means a decline in levels of confidence and an increase in the dilemmas of disrupting political and administrative reform that seek governance and rationalize policies to prevent bribery, favoritism and favoritism.*

*E - Real poor human rights conditions in the field reality as a result of the delay in following up the files and developing mechanisms to confront them at the international level, and the exploitation of the gang and the mafia loopholes of institutional work to complicate human rights files through employment mafia, human trafficking, smuggling, corruption, property mafia and loans that corrupt local development*

plans in deep Algeria .

#### **4- The Mauritanian experience in the prevention mechanism against torture**

The National Mechanism for the Prevention of Torture was established in Mauritania according to Law: (0034/2015) issued on: (September 10, 2015) in implementation of the International Convention for the Prevention of Torture that Mauritania ratified in 2012. The mechanism consists of a president, members and a secretary general appointed by decree Issued by the Council of Ministers. The head and members of the National Mechanism for the Prevention of Torture are appointed to a four-year Commission, renewable once, in whole or in part, by decree issued by the President of the Republic, and its president and members take an oath before the President of the Supreme Court before performing their duties. (4)

The Mechanism is concerned with conducting regular, programmed or sudden visits, without notice at any moment, to all places where there are or may be persons deprived of liberty, in order to examine the conditions of the detainees and to ensure that they have not been subjected to torture and other types of punishment or cruel, inhuman or Offensive, in application of the mechanism's internal regulations and systems.

It is concerned with regularly reviewing the situation of persons deprived of liberty in places of detention, with a view to strengthening their protection, when necessary, against torture and other forms of punishment or cruel treatment

The Mechanism receives complaints and allegations of torture and other types of punishment or cruel, inhuman or degrading treatment that occur in places of detention and undertakes investigations in these cases and refers them to the competent administrative and judicial authorities, expressing opinion on draft laws and regulations related to the prevention of torture and degrading practices, and formulating recommendations in order to prevent torture And other types of punishment, taking into account the law governing the functioning of the mechanism and in accordance with the standards of United Nations organizations in this regard

The mechanism works to sensitize the concerned actors about the evils of torture and other types of cruel, inhuman or degrading treatment or treatment, follow up on the recommendations emanating from the mechanism's reports, and work to create a constructive dialogue conducive to improving the conditions of detainees and protecting their rights.

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*The mechanism works on cooperation with civil society and institutions against torture.*

*In order to ensure the mechanism's independence and the full exercise of its functions, the mechanism has the right to access all places of detention, their facilities and equipment, and all information related to the number of persons deprived of freedom in places of detention, as well as information related to the treatment of persons and their conditions of detention, and the mechanism can also speak in private, without the presence of witnesses, with persons Deprived of freedom, either directly or through the intervention of a translator, as well as with anyone who can provide her with useful information*

*Due to the sensitivity of the task entrusted to the mechanism, the members of the mechanism enjoy the immunity and the privileges necessary for the exercise of their functions, and any assault on a member of the mechanism or impeding the exercise of his functions or the functions of any person requesting it is tantamount to an attack or interference against a judge during the exercise of his functions, and he shall be punished according to the legislation in force.(5)*

*Without the need to learn about the Moroccan, Mauritanian, or Tunisian experience, the submission of the three countries to the mechanism makes Algeria in a comparative position, and Algeria is the largest Maghreb country, and is subject to voluntary international control by Algeria, but joining the Optional Protocol will reflect more than one chance of Algeria obtaining UN support Training, rehabilitation and financing as well, which is what we need in the future due to the inevitable economic downturn that the world will know, in addition to the collapse of oil prices, and the pressure of international organizations on Arab countries is increasing due to the protection of the rights of child adolescents, refugees, prisoners of war and other vulnerable groups from all forms of torture. And it is used by the major powers against the developing countries as a means of pressure. (6)*

### ***Conclusion:***

*Finally, the study concluded that the national mechanism for preventing and monitoring torture is the most appropriate mechanism to join the Optional Protocol to protect human rights in detention centers, prisons and detention centers. Therefore, all countries need a legal mechanism to get rid of torture to confront the totalitarian violence of sovereign national governments with the monitoring mechanism, where citizenship remains the specified The main priority is protection from torture, because it is immunity for citizens, and human rights training programs help civil society organizations to monitor the prevention of*

torture, because official efforts are insufficient to prevent it forever.

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