

THE DEATH PENALTY IN ALGERIA BETWEEN INTERNATIONAL OBLIGATIONS AND NATIONAL LEGISLATION

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Abstract:

The international law seeks to unify the values of human rights in accordance with the liberal western understanding within the framework of international treaties, especially civil and political rights, the most important of which is the right to life against which the death penalty is considered aggression.

Since Algeria is a state party to these treaties, it is concerned with taking all measures to activate them at the national legislation, such as updating its laws in accordance with its international obligations and subjecting the files of those rights to international monitoring bodies. On the other hand, it deals cautiously with this issue, given the sensitivity of the crime, especially in light of the constitutional and legal principles that govern Algerian society, the most important of which is Islam as the state religion. This research is devoted to studying Algeria's position on the death penalty in light of these contradictory obligations.

Keywords: The death penalty; human rights; international treaties; monitoring bodies; constitutional principles; penal code.

1. INTRODUCTION

Successive governments in Algeria have always sought to assure the international community of their voluntary commitment to the basic human rights treaties, foremost of which is the International Covenant on Civil and Political Rights, and to the resolutions issued by the main organs of the United Nations in the same context. Rather, its human rights files have been subject to the international monitoring bodies of the United Nations, whether they are treaty bodies, special procedures, or the Human Rights Council, and the various mechanisms it contains such as communications, reports, the universal periodic review, etc..

Knowing that these international bodies monitor the state's respect for its international obligations through some elements, the most important of which are: the state's incorporation of amendments to its internal laws, and their concrete implementation, in addition to its disclosure of the obstacles that prevent their application on the ground.

This monitoring process covers all the laws of the state, including its constitutional law, to ensure that all human rights stipulated in international conventions are applied as supposed, in this context, at the forefront of human rights at all is the right to life, which may be violated in various forms that states usually combat in the penal code by enacting deterrent penalties according to the crime committed, which may reach the point of death penalty, while the international bodies that monitor human rights within states consider that the death penalty itself is a violation of the right to life, and it is as close to retaliation as it is to deterrence.

In light of the above, It should be noted that Algeria follows a conservative line between abolishing the death penalty and activating it until it seemed as if it was establishing a balance between:

On the one hand, the internal demands that national public opinion adopts whenever crimes against the public security of citizens are committed, as is the case, for example, with the crimes of kidnapping children followed by physical liquidation, or the murder of the young volunteer Jamal bin Sma'in

On the other hand, the international recommendations that consider the death penalty in contravention of the requirements of modern criminal policy aimed at reforming the offender rather than killing him.

So what are the dimensions of the Algerian position on the death penalty in light of the difference between international obligations and national legislation?

To answer this problem, the descriptive and analytical approach was adopted, while relying almost entirely on the official sources of international and national legal documents. Noting that the objectives of the study are not limited to an accurate diagnosis of the legal reality of the death penalty in Algeria, but extends to show the development that international law has reached at the expense of national laws in human rights issues and its repercussions on the sovereignty of the state. The research also aims to find ways to overcome this legal problem.

Accordingly, the research plan was divided into two topics:

THE FIRST TOPIC: International orientation on the death penalty through United Nations documents

The international trend within the organs of the United Nations condemns the death penalty, for various reasons that can be monitored in a number of international documents that are classified into three categories:

-The first category includes the International Covenant on Civil and Political Rights and its Second Optional Protocol aiming at the abolition of the death penalty.

-The second includes eight resolutions issued by the United Nations General Assembly regarding a moratorium on the death penalty, the latest of which was issued in 2020.

While the latter includes periodic international observations and recommendations directed to Algeria by the various international human rights monitoring bodies in the same context.

Noting that these three types of documents do not differ in their content in principle, as they all urge and encourage states to stop the death penalty, but what makes the difference between them is the mandatory power of each of them, and the nature of the role assigned to it, which will be clarified successively in the following:

First requirement: Regarding international human rights treaties:

Among the totality of the main international human rights treaties and the Additional Protocols attached to them¹, in this research, we are specifically interested in the International Covenant on Civil and Political Rights and the Second Optional Protocol to it, because they are the basis of international legal obligations regarding the moratorium on the death penalty, and each of them is an international treaty in accordance with Article 2 of the Vienna Convention on the Law of Treaties, which states:

1. “For the purposes of the present Convention: (a) "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation; ”²

First section: The International Covenant on Civil and Political Rights

It is an international treaty legally binding on the States Parties, adopted and submitted for signature, ratification and accession pursuant to United Nations General Assembly Resolution 2200 A (D-21) dated December 16, 1966, and entered into force on: March 23, 1976, in accordance with the provisions of Article 49 of it. The covenant consists of 53 articles that include various civil and political rights, and article 6 of it deals with the right to life and the death penalty and clarifies its ruling as follows:

“1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the

¹ For details of these treaties, see the OHCHR website at the link:
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

² See the 1969 Vienna Convention on the Law of Treaties on the official United Nations website at the following link:
https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232_english.pdf

Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant”¹

Algeria is a state party to the Covenant. It signed it on December 10, 1968, ratified it on September 12, 1989 ², and issued it in the Official Gazette No. 20 dated May 17, 1989 corresponding to Shawwal 12, 1409. It also did not make any reservations to this article.³

This means that it is legally bound by the provisions contained therein, including those stipulated in Article 6 above, and that it must implement them in good faith, in accordance with Article 26 of the Vienna Convention on the Law of Treaties which provides for the rule of contract "pacta sunt servanda" and states that: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." ⁴

¹ See the texts of the International Covenant on Civil and Political Rights on the website of the Office of the High Commissioner for Human Rights at the following link:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

² With regard to Algeria's position on the Convention, see the website of the Office of the High Commissioner for Human Rights at the following link:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=3&Lang=EN

³ See the official website of the Official Gazette of the Algerian Republic on the following link:

<http://www.joradp.dz/HAR/Index.htm>

⁴ See Vienna Convention on the law of treaties (with annex), Concluded at Vienna on 23 May 1969, on the following link:

<https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>

Therefore, it submits its civil and political human rights files to the Human Rights Committee charged with monitoring the implementation of the aforementioned covenant ¹

Second section: The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

It is an international treaty containing 11 articles, adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989. It was specifically concluded - as its name indicates - to prevent the death penalty. For example, it is possible to read the preamble and the first article of it to know the apparent firmness and rigor in urging the international community to abolish the death penalty, and this is their content:

“The States Parties to the present Protocol,

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

Recalling article 3 of the Universal Declaration of Human Rights, adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966,

Noting that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable,

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

Desirous to undertake hereby an international commitment to abolish the death penalty,

Have agreed as follows:

Article 1

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.

¹ See about human rights monitoring mechanisms and instruments , the following link:
<https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.”¹

As for Algeria's position on this protocol, it is different from its position on the International Covenant on Civil and Political Rights, as it has not signed or ratified it, which means that it does not have any legal obligation to implement its provisions²

Second requirement: Regarding the resolutions of the United Nations General Assembly:

This requirement will be addressed through two main components: The legal value of the General Assembly resolutions to moratorium on death penalty, and the considerations on which they were based

First section: The legal value of General Assembly resolutions to moratorium on death penalty

The value of resolutions issued by the United Nations General Assembly lies in the fact that they represent the preliminary basis for the legal compliance of international treaties, because they are the main deliberative and policy-making body. It includes all states of the world, and they are equal in representation and voting, which makes its decisions reflect a kind of moral commitment to the international community³

And with reference to the resolutions of the General Assembly regarding the death penalty, which are respectively: A/RES/62/149 of 18 December 2007, A/RES /63/168 of 18 December 2008, A/RES /65/206 of 21 December 2010, A/RES /67/176 of 20 December 2012, A/RES /69/186 of 18 December 2014, A/RES /71/187 of 19 December 2016, A/RES /73/175 of 17 December 2018 and A/RES/75/183 of 16 December 2020.

As for Algeria's position on the resolutions of the General Assembly, it used to vote on them in approval, in contrast to the positions of many Arab

¹ See the full text of the protocol on the OHCHR website at the link:
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>

² See regarding Algeria's position on this protocol, the website of the OHCHR website at the link:
https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=3&Lang=EN

³ See about UN General Assembly resolutions:
<https://www.un.org/en/ga/>

countries, and this applies to all resolutions, including the last one issued on December 16, 2020 ¹

Second section: General Assembly considerations in moratorium on death penalty

It is noted that these decisions affirmed, by a majority of votes, on a number of considerations, the most important of which are that:

-The death penalty undermines human dignity, while its suspension enhances his rights and their gradual development.

-There is no conclusive evidence that the death penalty has a deterrent value.

-Any judicial error or misapplication of justice in the execution of the death penalty is irreversible.

-The death penalty is applied in a discriminatory manner, as the reports of the Secretary-General have shown that the proportion of those sentenced to death among the poor, foreign nationals, women, and persons living in hard economic conditions or exercising the human rights imposed for them or belonging to religious or ethnic minorities, is often higher than the proportion of those sentenced to the same penalty among other persons.

The resolutions also affirmed the sovereign right of all countries to establish their own legal systems, including the determination of appropriate legal penalties in accordance with their obligations under international law, and they welcomed the steps and initiatives taken by some countries to abolish the death penalty, such as reducing the number of crimes punishable by death, commuting death sentences, holding national discussions and seminars to move away from the death penalty, etc..

In conclusion, the resolutions called upon states to respect international standards that provide for guarantees that ensure the protection of the rights of people facing the death penalty, and urged them to take a set of measures that gradually reduce the application of the death penalty, such as:

¹ To know Algeria's firm position on these decisions, see its vote on the last decision on the United Nations website, at the link:

<https://undocs.org/en/A/75/PV.46>

-Non-imposition of the death penalty on persons under 18, pregnant women or people with mental disabilities

-Reducing the number of capital offenses, including removing the mandatory application of the death penalty.

-Ensuring that those sentenced to death are able to exercise their right to request pardon or commutation of sentences.

- Ensuring that the death row, their families, and their legal representatives are provided with sufficient information about the execution process (time and place) to allow for a final communication (visit or call) or the recovery of the body or notification of its whereabouts.

- Ensuring that the death penalty is not imposed on the basis of discriminatory laws or arbitrary application.

- Announcing a moratorium on the execution of death sentences in preparation for the abolition of the penalty.

Finally, the resolutions call upon countries that have abolished the death penalty not to return to it, and encourage countries that implement a moratorium to maintain it while exchanging their experiences with other countries in this regard, and urged states that are not parties to the Second Optional Protocol to accede to it.¹

Third requirement: Regarding the observations directed to Algeria by international human rights bodies

The most prominent observations made by international human rights bodies to Algeria regarding the death penalty were within the framework of the Human Rights Council under the universal periodic review mechanism, and the Human Rights Committee in the concluding observations, as will be clarified in the following points:

First section: Concerning the Human Rights Council

During the UPR process for Algeria at the Human Rights Council in 2017, several states made observations to Algeria, some of them relate to respecting international standards which are those presented by Australia, Luxembourg, Ireland, Uruguay, Brazil, Montenegro and Portugal, and It

¹ See about these resolutions, for example:
<https://www.un.org/en/ga/76/resolutions.shtml>

focused on Algeria's call to take all necessary measures to formally abolish the death penalty, including ensuring that the death penalty is not applied as a sentence in judgments, and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

While others' observations were related to the right to life, as in the case of France, Namibia, Togo and Italy which called on Algeria to continue commuting death sentences and persist the *de facto* moratorium on the application of the death penalty, maintained since 1993, as an important step towards its abolition. This is what the High Commissioner for Human Rights emphasized in a reminder to Algeria dated October 23, 2017, under the title *The Right to Life, Liberty and Personal Security*.¹

Second section: Concerning the Human Rights Committee

Under the heading of the death penalty, and more precisely in paragraphs 27 and 28, the Committee informed Algeria that it is aware of the state's effective moratorium on executions since 1993. However, it expressed its concern about its inclusion in a number of crimes not classified as very serious crimes, including premeditated murder, and regretted the inclusion of Article 293 bis in 2013 in the law Penalties that include a new offense punishable by death. While noting the clarification that the death penalty is imposed in cases of convictions in absentia, the Committee is concerned about the large number of death sentences still handed down each year and that these sentences are not automatically commuted.

Accordingly, it noted that Algeria should consider initiating a political and legislative process aimed at abolishing the death penalty and launching measures and campaigns to mobilize public opinion in support of its abolition, and that she should moreover:²

- Refrain from including new offences punishable by death ;
- Amend legislation relating to sentencing in absentia to persons, and commute sentences of death row inmates;

¹ Thematic list of recommendations, UPR of Algeria, 3rd cycle, 27th session

² CCPR/C/DZA/CO/4, Concluding observations on the fourth periodic report of Algeria.

- Take all necessary measures to accede to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.

THE SECOND TOPIC: Algeria's position on the death penalty through official documents and national legislation

After addressing the international trend regarding the death penalty in international documents, it is now necessary to explore Algeria's position on the foregoing through three main points:

First requirement: Algeria's position through official documents

What is meant by the official documents here are the ones that Algeria responds with to the international bodies and then to the countries, as will be shown below:

First section: Algeria's response to the observations made by the International bodies

The clarifications provided by Algeria about its position on the death penalty have been repeated in several documents submitted to human rights bodies. Therefore, it can be sufficient to list those stipulated in the national report submitted to the Human Rights Committee in 2017, which stated in paragraphs 155, 156 and 157 the following:

- No death sentence has been carried out since September 1993. Also, sentences handed down in the absence of the accused are not final under Algerian law, which means that a person convicted in absentia has the right to a retrial.
- No minors have been sentenced to death, and no woman has been executed. Rather, their death sentences were commuted to life imprisonment.

In addition to the moratorium, there was a gradual shift in public opinion as people began to question the usefulness of the death penalty, which was reflected in successive amendments to the Criminal Code since 2001, that abolished the death penalty for more than a dozen crimes, as well as in special laws enacted within the framework of the judicial system reform, such as: crimes against money laundering, terrorist financing, drug trafficking, corruption and smuggling, none of which is punishable by death¹

¹ CCPR/C/DZA/4, Fourth periodic reports of States parties due in 2011, Algeria, Date received: 20 January 2017.

Second section: Algeria's response to the observations made by the states

In addition to the foregoing, Algeria responded to previous observations that some countries presented to it during the universal periodic review within the Human Rights Council in some cases as supported observations, and as noted in other cases¹

It is a position that Algeria seems to adopt on trying to establish a balance between international necessities and national interests, which it considers calls for caution and no urgency in adhering to the second protocol of the International Covenant on Civil and Political Rights.

Second requirement: Algeria's position through the constitution

In the constitution, a distinction will be made between two types of principles related to the death penalty, which are the legal principles related to penalties in general, and the social principles that govern Algerian society, specifically the stipulation of Islam as the religion of the state:

First section: The legal constitutional principles related to penalties in general

Algeria's initially position on the right to life into its legal framework is embodied in what Article 38 of the 2020 constitution stipulates: "The right to life is inherent to the human being, protected by law, and no one can be deprived of it except in cases specified by law."

This means that the protection of this right is not absolute, given what the protection of the state's public order requires in some cases of the necessity of applying the death penalty to the criminal if his crime is of a high degree of seriousness, endangering the security of the country and the security of citizens.

Therefore, the idea of the position of the constitutional legislator is not complete except after knowing that the enjoyment or deprivation of the right to life has been linked to a number of constitutionally established principles, as follows:

- The principle of balancing rights and public order: Article 34/2 of the Constitution states: "The rights, freedoms and guarantees may be

¹ Thematic list of recommendations, UPR of Algeria, 3rd cycle, 27th session.

restricted only by virtue of a law, and for reasons related to maintaining public order and security, protecting national constants, as well as those necessary to protect other rights and freedoms enshrined in the Constitution.”

- The principle of the jurisdiction of punishment: Article 41 of the Constitution provides for: “Every person is considered innocent until proven guilty by a judicial authority, in a fair trial.”

- The principle of legality of punishment: Article 43 of the 2020 Constitution requires: “There is no conviction except by virtue of a law issued before the criminal act was committed.”

Second section: “Islam is the state religion” as a constitutional principle that governs Algerian society

Despite the importance of these principles, there is another one that is more important than them all, as the constitutional legislator included it among “The general principles that govern Algerian society”, specifically the principle contained in Article 2 of Chapter One of Part One, which reads: “Islam is the religion of the state.”¹

Although Islamic Sharia is not an original or even a reserve source of the penal code, the fact that the religion is the civilizational reference on which the people rely in various aspects of life makes it necessary to see Islam’s view of the death penalty and its criminal policy in its exclusion or application, as an objective study of Islam’s approach to combating crime leads to its singularity in confronting crimes with a combination of the preventive and deterrent methods as follows:

1- On the preventive level:

Islam is keen on the stability of society by securing a sound environment on the basis of the goodness of the family and other institutions of society, to prevent slipping into the preludes of crime.

From a social aspect, it prevents illegal relationships outside the family institution, commands decency and modesty in appearance and speech and lowered eyesight, urges the marriage of young people, and facilitates the reasons for marriage such as reducing dowries. It commands obedience to the husband, and honor to the wife, and cohabiting with kindness, and recognizes

¹ Official Gazette, No. 82, dated Jumada I 15, 1442 corresponding to December 30, 2020.

the child's rights over his parents, including celebrating his birth, naming him well, taking care of him, disciplining him, educating him and spending on him until he becomes able to earn, so that he grows up and leads a psychologically good life.

As for the economic aspect, Islam encourages the individual to earn legitimate income, and emphasizes the value of work and trade, and rejects dispensing with wealth or beggary, and so on. It also urges social solidarity for the benefit of the poor, the needy, debtors, wayfarers and all those who are unable to earn, and are worthy of zakat. At the same time, he stands firmly against corruption crimes that affect public money, such as bribery, embezzlement, seizure, and others, and stresses the preservation of private money from waste, gambling, foolishness, pilferage, theft, etc..

In conclusion, the provisions of Islam in the context of preventing the commission of a crime cannot be enumerated, and their main goal is to restrain rights from being violated, whether they pertain to souls, honor, money, or anything else.

2- On the deterrent level:

After blocking the outlets leading to crimes, if a crime occurs within society, the position of Islamic legislation regarding it is clear and unambiguous, which is strictly deterrence to ensure the safety of society from crimes whose punishments vary according to different degrees, and may reach the death penalty, the latter is applied in two types of crimes:

A- Al-Hudud (Fixed Punishments): They include offenses and punishments fixed in the Qur'an or Sunna, and the punishment prescribed in it is considered a right of ALLAH, and it is not acceptable to abort, neither from the individual victim nor from the community as it represents an attack on the public interest. Any disruption of its application for fear or favoritism leads to the collapse of the social fabric.

In this category, the death penalty is imposed for 3 crimes:

- Al-hirabah (armed robbery): due to the attack on public security¹.
Examples include robbery and kidnapping crimes²

- Al-Zina (for a married person who enters into sexual relations with a non-wife or husband): due to the violation of public morals;

- And apostasy (the one who abandons his religion leaving the group): due to the violation of public order.

B- AL-Qisas (restitutory): Its basis is inflicting harm on the offender equal to the harm inflicted on the victim, and therefore the death penalty is not envisaged in this regard unless the offender has committed a crime of murder. However, Islamic Sharia considers the punishment here as a right for the heirs of the dead person, and accordingly they have the right to seek retribution for their inheritor, as well as they may pardon.³

While there is a third category that has not been detailed in this research, its name is **Al-Taazir**, it is based on the idea of reforming the offender, and accordingly, it is not punishable by death.⁴

Third requirement: Algeria's position through the Penal Code

First section: Legitimacy of the death penalty sentence in Algeria:

The death penalty is one of the original penalties applied to natural persons in the field of felonies in accordance with Article 5 of the Penal Code. It is applied within the framework of the general principles stipulated by this law in the preliminary rulings, which are:

- The “principle of legality” as the first article states: “No crime, no penalty, or security measures without law.” Article 1.

¹ Surah 5. Al-Ma'idah, Verse: 33, The noble Qur'an

² See General Presidency for Scholarly Research and Iftaa of the Kingdom of Saudi Arabia, 1401 H:
<http://islamport.com/w/fqh/Web/926/4973.htm>

³ See:
Surah 2. Al-Baqarah, Verses: 178, 179, The noble Qur'an.
Surah 5. Al-Ma'idah, Verse: 45, The noble Qur'an

⁴ See:
https://www.researchgate.net/publication/292936214_The_Concept_of_Punishment_Under_Shari_a

- The “principle of immediate effect” or principle of non-retroactivity of the law only what was less severe: Article 2.
- The principle of territoriality and exceptions to it: Article 3.

Second section: Crimes punishable by the death penalty in the Algerian Penal Code

As for the crimes for which the death penalty may be imposed, the Penal Code stipulates:

1. Part 1: On felonies and misdemeanors against the public thing

Chapter 1: on felonies and misdemeanors against state security, there are specifically:

Section 1: Treason offense (Articles: 61 to 63), and Espionage offense (Article 64)

Section 3: Assaults, conspiracies, and other crimes against the authority of the State and the integrity of the national territory (Articles: 77, 80, 81)

Section 4: Felonies of murder and sabotage against the state (Articles: 84, 86)

Section 4 bis: Crimes described as terrorist or subversive acts (Articles 87 bis 1, 87 bis 7)

Section 5: Felonies of contribution to rebellion movements (Articles: 89, 90)

2. Part 2: on felonies and misdemeanors against individuals:

Chapter 1: on felonies and misdemeanors against persons, the following crimes were identified:

Section 1: Murder and other major felonies and intentional acts of violence (Articles: 261, 263, 272, 274, 293 bis, 293 bis 1)

Chapter 3: Felonies and misdemeanors against money

Section 8: Demolition, sabotage and damage resulting from Diverting direction of transportation (Articles: 399, 400, 401, 403, 417 bis)

Conclusion:

It includes a set of results and one recommendation, which can be displayed as follows:

The results:

- 1- There is a huge difference between the UN system and Islamic legislation about the total values that should govern humanity, including human rights. The essence of the dispute is that the United Nations, which is the global organization that works on the accession of all countries to human rights treaties, sanctifies individual freedoms and prevents objection to them under the pretext of public order. While Islam is based on absolute submission to the rule of ALLAH Almighty, who legislated a different system of human rights based on a careful balance between individual freedoms and the general order of the state and its main source is the Holy Qur'an and the honorable Sunnah of the Prophet.
- 2- This difference at the level of human rights was reflected in many legal provisions regulated by the United Nations treaties and Islamic law, including the death penalty, which is viewed in principle in a paradoxical manner, as the international trend views it as an affront to human dignity and an obstacle to the development of his rights, contrary to Islamic law, which considers it a necessary and just solution that guarantees both human rights and the stability of society.
- 3- Islamic Sharia and the International Covenant on Civil and Political Rights agree, but superficially only in some principles, such as the inadmissibility of depriving anyone of his life arbitrarily, the inadmissibility of the death penalty except for the most serious crimes. The reason for this is the fundamentally different concepts between them. So, what is considered arbitrary in international treaties is considered justice in Islamic law, and the most serious crimes in Islamic law are considered freedoms guaranteed in the system of universal values. For example:

- Sharia considers the crimes of kidnapping children among the crimes of Hiraba that require the death penalty, while the Human Rights Committee denied Algeria's inclusion of Article 293 bis among the crimes punishable by death, an article that was designed to confront the crimes of child abduction (see the Committee's concluding observations).

- Islamic Sharia considers that the adultery of a married person is a grave breach of public morals, necessitating the death penalty, because of his

assault on honor, mixing of lineages, and the dispersal of society. As for the criminal policy of the Algerian legislator, it is in agreement here with the Western perspective, as Article 339 stipulates that a married adulterer be punished with imprisonment from one to two years for committing the crime of adultery, and it also puts an end to all follow-up in the event of forgiveness of the aggrieved husband (wife).

- 4- Despite this, there is a narrow space in which the considerations of Islamic Sharia are compatible with international treaties, and this is the one that actually includes humanitarian cases and reasons, such as not applying the death penalty to the pregnant woman, or the child. Rather, Islamic Sharia is superior to the international system by adding the breastfeeding woman to take care of her infant child, and the repentant offender in certain cases, It also orders the suspension of the Hudud penalties in suspicion.
- 5- Islamic law is also superior to the system of human rights imposed globally in terms of its preventive criminal policy to prevent individuals from committing crimes in the first place, by establishing several controls that govern human relations and prevent any transgression of rights within the group, whether related to self, honor, reputation, money, etc. , while the international human rights system facilitated the violation of these rights from the outset when it released freedoms and restricted controls to the maximum extent.
- 6- In light of these contradictions, it seems at first glance that Algeria stands in the middle of the distance between the two parties, so we find that it has ratified the International Covenant on Civil and Political Rights without reservation on Article 6, in keeping with the international trend that devote a model to global principles, but at the same time it retains in Article 2 of the Constitution by stipulating Islam as the state religion, within the first chapter entitled Principles that govern Algerian society.
- 7- However, while some jurists interpret Article 154 of the Constitution: “Treaties ratified by the President of the Republic, according to the conditions stipulated in the Constitution, take precedence over the law” that Algerian constitution takes precedence over treaty, the

Vienna Convention on the Law of Treaties affirms in Article 27 that: “A party to a treaty may not invoke the texts of its internal law as a justification for its failure to implement the treaty. This rule does not prejudice Article 46”. Note that internal law in international documents means all kinds of law, including the constitution, and on this basis human rights monitoring bodies do not recognize if the texts of the constitutions violate international treaties, even if it is related to the state’s religion and its being one of the principles of society. In other words, international treaties outweigh the texts of ordinary legislation that agree with their content over the texts of the constitution that contradict it, especially if they are related to a religion that opposes the international trend of human rights, and in particular if this religion is Islam.

- 8- For this reason, it can be understood how Algeria is slowly progressing in its international obligations. Despite its ratification of the International Covenant on Civil and Political Rights, which narrows the scope of the death penalty, it has not yet ratified the Second Protocol relating to a moratorium on executions, but on the other hand it votes positively in favor of General Assembly resolution which urges countries to stop the death penalty.
- 9- From the foregoing, it can be noted that Algeria is ready to assume the moral obligation to stop the death penalty, but it is not eager to assume the legal obligation to do so. This may be practically attributed to two reasons: the first is the observance of the text of Article 2 of the Constitution, and this is possible, but is often excluded. The second, which is more likely, is the absorption of popular discontent left by the horrific crimes that are committed from time to time and shake public opinion.
- 10- Thus, Algeria is caught in a dilemma between two pressures: one is a continuous international and organized within a legal framework under the supervision of the UN bodies to stop the execution, which is supported by NGOs, and the other is a widespread, but not frequent, or organized popular pressure in the form of peaceful demonstrations calling for the implementation of the death penalty contained in

Islamic law, and this is often done under the heading of demanding retribution, but it may lead to security slips in the event of failure to respond to it.

- 11-This result is logical and expected because the state did not define a clear and firm position from the outset regarding international obligations in violation of Article 2 of the Constitution, and did not seriously discuss the extent of its constitutionality before its ratification, which gradually led to a decline in the status of internal law in favor of international treaties and put the country in embarrassment internally and internationally. A sublegal moral obligation does not make it a state sponsor of human rights internationally, just as issuing death sentences for horrific crimes without implementing it does not make it nationally so.

The recommendation:

Contrary to what the international bodies recommend to Algeria of the necessity of holding national seminars and forums to discuss the seriousness of the death penalty, in preparation for its abolition, the only commandment that should be taken out of this research is to resort to the will of the people, who have always claimed that human rights organizations and associations defend their sovereignty, but they do not hesitate to jump over it whenever possible, and resort instead to respecting their voice even if it contradicts international trends.

Subsequently, the people should have a referendum as "the source of all authority, and that national sovereignty belongs to him alone" as stipulated in Article 7 of the Constitution, as long as Algeria has not yet ratified the Second Protocol and becomes committed under international law to a moratorium on executions.

Outside of this optimal legal alternative, the issue is nothing more than a procrastination in which the people are lured to gradually relinquish their authority and a detraction from one of the aspects of state sovereignty.

5. Bibliography List :

The references must be directly quoted at the end of each page without omitting to mention the complete reference in the list of references at the end of the document, written in the following manner:

- 1. Books :** author's name (year), full title, publishing, country;
- 2. Theses:** researcher (year), thesis title, college, university, country ;
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- 4. Seminar article:** author's name (year), full title of the paper, title of seminar, place and date, country ;
- 5. Internet websites:** author's name (year), full title of the file, detailed web site : <http://fulladdress> (consulted on day/month/year).

6. Appendices