

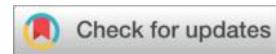


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The Legal Framework of the Death Penalty in Algeria: A Comparative Study between National Legislation and International Obligations

Abstract:

This research aims to analyze the legal framework of the death penalty in Algeria, focusing on the crimes punishable by it, the judicial procedures related thereto, and Algeria's position regarding relevant international conventions, in addition to reviewing the jurisprudential and legal debate surrounding it.

The problematic aspect of the study in Algeria lies in the apparent contradiction between the legal retention of the death penalty in the provisions of the Algerian Penal Code and the actual suspension of its implementation since 1993. This complex legal situation raises questions about the extent of Algeria's commitment to international human rights standards, especially in light of the growing debate and popular demands to reactivate this penalty to confront serious crimes that shock public opinion.

The aforementioned problem was addressed by relying on the analytical method to study Algerian legal texts related to the death penalty, and the comparative method to analyze Algeria's position in light of international and regional human rights conventions.

Keywords: Death penalty , punishment , crime , general deterrence , human rights

Introduction:

The death penalty is considered one of the most severe and controversial punishments at both the national and international levels, due to its infringement on the fundamental right to life, which is regarded as one of the highest rights that legislation and international conventions seek to protect.

The Algerian legislator adopted the death penalty from the dawn of independence, like many legal systems around the world, and provided for it in a very large number of crimes, which may conflict with modern penal philosophy that focuses on rehabilitating offenders rather than

merely achieving general deterrence. Penal philosophy in Algeria, like many legal systems, has evolved from mere revenge and retribution to achieving reform and deterrence, which has affected the legislator's view of punishment and the necessity of restricting it so that it becomes a tool for achieving justice and deterrence rather than mere vengeance. Algeria relied on the death penalty from independence until 1993, when it suspended its application after ratifying international human rights conventions concerned with protecting the right to life.

This led us to question whether Algeria will comply with international human rights conventions and abolish or maintain the suspension of the death penalty, or whether it will adhere to its domestic laws and apply the death sentence in judicial rulings and decisions. To answer the previous problem, the study was conducted along two axes: the first addresses the legal basis, the crimes punishable by death, and judicial procedures, while the second addresses the current situation and Algeria's position regarding international law and the ongoing jurisprudential debate.

Chapter One: The Legal Basis of the Death Penalty in Algerian Legislation

The Algerian legislator stipulated the death penalty in the Penal Code, specifying the crimes that may be punished by this penalty, such as premeditated murder, treason, terrorism, and military crimes. Despite the suspension of its implementation since 1993, Algerian courts continue to issue death sentences, which renders this penalty legally existent. Article 27 of the Algerian Penal Code provides for the classification of crimes into felonies, misdemeanors, and infractions, and determines the appropriate penalties for each. The principal penalties for felonies include death, life imprisonment, and temporary imprisonment. Articles 261 and 263 of the Penal Code provide for the application of the death penalty in cases of premeditated murder, especially if accompanied by another crime or preceded or followed by another crime.

Since 1993, Algeria has ceased carrying out death sentences, despite the continued issuance of death judgments by the courts. This suspension came under pressure from international human rights organizations, but it did not reach the level of abolishing the penalty from the Penal Code. Accordingly, the death penalty has, in practical reality, been transformed into life imprisonment.

First: The Principle of Criminal Legality and the Death Penalty

The principle of criminal legality is the cornerstone of any modern legal system, and it is applied with particular strictness when it comes to the death penalty due to its final and irreversible nature. Algerian law clearly affirms this principle, as the death penalty may not be imposed on any person unless they have committed an act punishable by this penalty pursuant to an explicit and clear legal provision, and based on a judicial ruling issued by a competent court and grounded in a law that criminalizes the act. This principle is clearly stipulated in Article 1 of the Algerian Penal Code, which provides that “there shall be no crime, no punishment, and no security measures without law.” The Algerian Constitution of 1996 further reinforces this principle in Article 58, which affirms that “there shall be no conviction except pursuant to a law enacted prior to the commission of the criminal act.”

The importance of this principle in the context of the death penalty lies in its role as a fundamental guarantee of rights and freedoms, as it protects individuals from arbitrariness and abuse in the application of the most severe punishments. The final nature of the death penalty, which deprives the individual of the right to life, requires the highest degrees of legal certainty and transparency in defining the crimes that warrant it and the procedures followed to apply it. Adherence to the principle of legality ensures that the application of the death penalty, even if provided for in law, cannot be carried out arbitrarily or abusively, but must be subject to a predetermined legal framework, reflecting the state’s commitment to the principles of criminal justice even in its most severe forms.

Second: Crimes Punishable by Death in the Algerian Penal Code

The Algerian Penal Code (Order No. 66-156, as amended and supplemented) classifies the death penalty as a principal penalty for felonies. The crimes that warrant this penalty can be classified into main categories reflecting the state’s security and societal priorities:

1. Crimes Against State Security (External and Internal):

These crimes aim to protect the entity, sovereignty, and stability of the state.

A. External State Security Crimes:

- **Treason:** Every Algerian, whether by original or acquired nationality, who bears arms against Algeria is punishable by death. This crime also includes participation in any project aimed at weakening the morale of the army or the nation with the intent to harm national defense,

facilitating the enemy's entry into the country, or delivering fortresses, installations, sites, ports, forces, territories, cities, equipment, ammunition, buildings, ships, or Algerian aircraft to a foreign state or its agents. The death penalty is also imposed on anyone who contacts a foreign state to incite hostile acts against Algeria, destroys or damages means of national defense, or discloses defense secrets that must remain confidential for the national interest.

- **Espionage:** Pursuant to Article 64 of the Algerian Penal Code, any foreigner who commits any of the acts of treason mentioned above is punishable by death.

B. Internal State Security Crimes:

- **Assault on the System of Government and National Territorial Unity:** Any assault intended either to overthrow or change the system of government, incite citizens or residents to take up arms against state authority or against one another, or undermine national territorial unity is punishable by death.
- **Disobedience to Government Orders and Organizing Rebellions:** This includes assuming any military command without right or lawful justification, or retaining such command contrary to government orders.
- The death penalty is also imposed on anyone who forms armed forces or works to form them, uses or recruits soldiers, or supplies them with weapons or ammunition without an order or authorization from the legitimate authority.
- The death penalty is likewise imposed on those who manage or organize a rebellion, or who deliberately or knowingly supply or support it with weapons or ammunition.
- **Terrorist and Subversive Acts:** Any act targeting state security, national unity, territorial integrity, institutional stability, or the normal functioning of public services is considered a terrorist or subversive act. The death penalty is applied when the penalty provided for by law is life imprisonment in the context of terrorist acts.

2. Crimes Against Persons: These crimes target the right to life and physical integrity of individuals.

A. Intentional Murder:

- **Intentional murder or murder with premeditation and lying in wait (ambush and poisoning):** Whoever commits intentional murder, the killing of ascendants (father, mother, or any legitimate ascendant), or poisoning is punishable by death.
- **Murder associated with a felony or misdemeanor:** Murder is punishable by death if it precedes, accompanies, or follows another felony. It is also punishable by death if the purpose

of the murder is to prepare, facilitate, or execute a misdemeanor, facilitate the escape of its perpetrators or accomplices, or ensure their evasion of punishment.

- **Murder using torture or acts of cruelty:** Any offender, regardless of description, who uses torture or commits acts of cruelty to perpetrate their felony is considered a murderer and is punishable by death.
- **Kidnapping leading to death:** The death penalty is applied to the kidnapper or kidnappers if the crime of kidnapping results in the death of the kidnapped person.

3. Sabotage and Fraud Crimes:

A. Destruction of Public Facilities Using Explosives: Whoever demolishes or attempts to demolish, by means of a mine or any other explosive materials, public roads, dams, reservoirs, roads, bridges, commercial, industrial, or railway installations, port or aviation facilities, exploitations, production complexes, or any building of public utility is punishable by death.

B. Fraud in Goods and Food and Medical Products:

Article 432 of the Penal Code provides that perpetrators of fraud in the sale of goods or adulteration of food and medical products are punishable by death if such adulterated, spoiled, or toxic products lead to the death of a person.

4. Military Law Crimes:

A. Any military personnel in the service of Algeria who bears arms against Algeria is punishable by death with deprivation of military rank.

B. Any person who incites military personnel to join the enemy, facilitates the means for them to do so with knowledge thereof, or recruits individuals on behalf of a state at war with Algeria is considered as enlisted for the enemy and is punishable by death.

C. Any military personnel or any traveling person who commits the crime of refusal to obey when ordered to advance to confront the enemy or to perform any other service ordered by their superior in the presence of the enemy or before an armed group is punishable by death.

Third: The Evolution of the Scope of Crimes Punishable by Death:

The scope of crimes punishable by death in the Algerian Penal Code has witnessed a noticeable reduction through subsequent amendments, such as those of 2001, 2006, and 2014. For example, the death penalty was abolished for felonies involving embezzlement, misappropriation, seizure, or theft of public funds committed by public officials, as well as for felonies of theft, breach of trust, and fraud that harm public institutions. It was also abolished

for crimes of currency counterfeiting, armed robbery, and arson of private or state-owned property. It was likewise abolished under the 2004 Law on Drugs and Psychotropic Substances, after it had previously been applied if the crime affected the moral health of the Algerian people. This expansion in the list of crimes warranting the death penalty, particularly those related to state security, reflects a historical focus on protecting the state and its stability, which may stem from periods of internal unrest and external threats experienced by Algeria. However, the reduction in the scope of crimes warranting the death penalty, such as economic crimes or drug-related offenses, indicates a gradual, albeit cautious, legislative trend toward alignment with international trends that restrict the death penalty to only the “most serious crimes,” as provided for in Article 6 of the International Covenant on Civil and Political Rights. This development reflects a shift in penal philosophy away from excessive criminalization toward a more targeted application of the ultimate punishment, which may indicate an internal reassessment of the necessity of this penalty for certain crimes.

Table 1: Summary of Crimes Punishable by Death in the Algerian Penal Code

Main Category of Crimes	Specific Crime	Legal Article (Algerian Penal Code)
Crimes against External State Security	Assault aimed at overthrowing or changing the system of government; incitement to take up arms against the state; undermining national territorial unity; bearing arms against Algeria; facilitating the entry of the enemy; contacting a foreign state to incite aggression; destruction of means of national defense; disclosure of defense secrets.	Article 77, Article 64 (for espionage by foreigners)
Crimes against Internal State Security	Formation of armed forces or recruitment of soldiers without lawful authorization; assuming military command without right; managing or organizing a rebellion; supplying it with weapons and ammunition; terrorist or subversive acts targeting state security (when the principal penalty is life imprisonment).	Article 80, Article 81, Article 90, Article 87 bis 1
Crimes against Persons	Intentional murder; killing of ascendants; poisoning; murder associated with another felony (preceding, accompanying, or following); murder with the aim of preparing, facilitating, or	Article 261, Article 263,

Main Category of Crimes	Specific Crime	Legal Article (Algerian Penal Code)
	executing a misdemeanor or facilitating the escape of its perpetrators; murder using torture or acts of cruelty; kidnapping leading to the death of the kidnapped person.	Article 262, Article 293 bis
Sabotage and Fraud Crimes	Destruction or attempted destruction of public or public-utility installations by explosives (if leading to death); fraud in the sale of goods or adulteration of food or medical products (if leading to death).	Article 401, Article 432
Military Crimes	Bearing arms against Algeria (for military personnel); inciting military personnel to join the enemy or recruiting individuals for a state at war; refusal to obey in the presence of the enemy or an armed group (for military personnel).	Article 278, Article 308

Fourth: Judicial Procedures Related to the Death Penalty in the Code of Criminal Procedure

All guarantees of a fair trial provided for in the Code of Criminal Procedure apply to death penalty cases, including the right to remain silent, the right to legal counsel, the presence of a lawyer during investigation, and the right to defense—fundamental guarantees consistent with international justice standards.

- 1- Procedures for Pronouncing the Judgment:** Death sentences are pronounced in public hearings by criminal courts. However, under the current situation, these sentences are automatically reduced to life imprisonment in practice, due to the suspension of the actual execution of the death penalty in Algeria since 1993.
- 2- Procedures for Supervision and Documentation of Execution (if activated):** In the event that the suspension is lifted and execution resumes, the Code of Criminal Procedure sets strict procedures for supervising execution to ensure legality and transparency. Execution of the death sentence is supervised by the Public Prosecutor or one of their deputies. A number of officials must be present to ensure the process proceeds in accordance with the law: the director of the correction and rehabilitation center (prison), the director of police of the jurisdiction, the clerk of the court that issued the judgment, the prison doctor, and a member of the clergy of the religion to which the

condemned person belongs. In addition, the court clerk draws up an official record of the execution of the death penalty, signed by the representative of the Public Prosecution, the prison director, the doctor, and the clerk, and this record is kept by the Public Prosecution as an official document.

These detailed procedural requirements for the execution of the death penalty, even though currently suspended, underscore the seriousness with which the Algerian legal system treats this ultimate punishment. The involvement of this number of officials—from the Public Prosecutor to the member of the clergy—aims not only to ensure legal legitimacy, but also reflects an attempt to ensure accountability and adherence to ethical standards. This strict procedural framework constitutes a domestic embodiment of judicial guarantees recognized by civilized peoples and is a basic standard required by international humanitarian law even in non-international armed conflicts, where criminal prosecutions are subject to national law.

3- Pretrial Detention in Death Penalty Cases: The Code of Criminal Procedure contains special rules on pretrial detention in felony cases that may lead to the death penalty. Pretrial detention may be extended for up to sixteen months in felony cases punishable by life imprisonment or death, reflecting the exceptional nature and high seriousness of these cases in the view of the legislator.

Chapter Two: The Death Penalty in Algeria and Its Position under International Law

The death penalty is provided for within Algerian legislation (the Prison Organization Law No. 02/72, repealed by Law No. 04/05 relating to the organization of prisons and the social reintegration of prisoners). It is pronounced by various judicial bodies, but it has not been executed since 1993 due to international commitments that Algeria has decided to be a party to, such as the International Covenant on Civil and Political Rights (ICCPR), the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, and other international and regional instruments to be explained later.

First: Suspension of the Execution of the Death Penalty in Algeria

With regard to the death penalty, the Algerian legislator adopted a specific approach: it did not abolish the penalty from the law, but rather suspended its application, in line with the international agreements ratified by Algeria, which call for the suspension of this penalty on the grounds that it is inhumane, according to their view.

1- History of the Suspension and Its Reasons:

Algeria has not carried out any executions since 1993. This actual halt to execution, known as a “de facto suspension” or “moratorium,” does not mean the abolition of the penalty from legal texts, but rather constitutes a sovereign decision consistent with Algeria’s commitments under international human rights instruments. This position places Algeria among the states that have abolished the death penalty in practice, allowing it to align with the global trend toward abolition or restriction without a legally binding commitment to total abolition.

2- Death Sentences Issued and Their De Facto Commutation: Despite the de facto suspension, Algerian courts continue to issue death sentences in felonies provided for by law. However, these sentences are automatically commuted to life imprisonment in practice due to the freeze on execution. This automatic conversion renders the death penalty in Algeria a symbolic ultimate punishment rather than an effective one, raising questions about its true deterrent effectiveness. In 2022, there was a marked increase in death sentences, which multiplied sixfold according to an Amnesty International report, due to mass murder cases that shook public opinion, such as the case of Jamal Ben Ismail.

3- National Debate and Calls for Reactivation of the Penalty: Algeria has witnessed a growing movement and increasing popular demands to reactivate the death penalty, particularly in cases of murder, kidnapping, corruption, and neighborhood gang crimes targeting vulnerable groups such as children and women. These demands often come from victims’ families seeking deterrence and retribution and reflect a deep societal sense of the need to apply the harshest penalties to confront heinous crimes. The Algerian Minister of Justice announced the opening of a national debate on this issue and called for an in-depth academic study on whether or not to return to executing the penalty, indicating the seriousness with which this sensitive issue and the growing societal pressure are being addressed.

This de facto suspension of the death penalty, which represents a practical concession to international human rights standards, creates a complex and potentially volatile dynamic within Algeria. While this suspension allows Algeria to avoid direct international condemnation for carrying out executions, it simultaneously fuels internal frustration and increases demands for reinstating the penalty, especially following heinous crimes that deeply affect public opinion. This situation points to a real political dilemma, as the Algerian government must continually balance its international image and commitments on the one hand, and internal popular demands for retribution and justice on the other, making the current suspension a politically sensitive and potentially unstable position.

Second: The Death Penalty in Light of International Human Rights Instruments

The death penalty in Algerian legislation interacts with a set of international human rights instruments to which Algeria is committed, or which serve as references for global trends.

1- International Covenant on Civil and Political Rights (ICCPR): Algeria is a State Party to the ICCPR, having ratified it in 1989. Article 6 of the Covenant recognizes the inherent right to life and, although it does not expressly prohibit the death penalty, it significantly restricts its application. It may be imposed only for the “most serious crimes” and in accordance with the law in force at the time the crime was committed. The article also prohibits its execution on persons under 18 years of age and on pregnant women. The Covenant encourages States Parties to abolish the death penalty, considering any progress toward abolition as a step toward strengthening the right to life.

2- Second Optional Protocol to the ICCPR Aiming at the Abolition of the Death Penalty:

Despite the de facto freeze on executions, Algeria has not signed or ratified this Protocol to date. The Protocol obliges States Parties that ratify it to abolish the death penalty within their jurisdiction, with the sole possible reservation allowing its application in time of war for extremely serious military crimes, provided that the Secretary-General of the United Nations is notified thereof.

4- The 1949 Geneva Conventions and the 1977 Additional Protocols (International Humanitarian Law): The Geneva Conventions and the Additional Protocols apply in the context of armed conflicts, whether international or non-international.

A- Common Article 3 of the Four Geneva Conventions: Considered a “mini-convention,” it applies as a minimum standard in non-international armed conflicts. It prohibits the passing of sentences and the carrying out of executions without a prior judgment rendered by a regularly constituted court affording all the judicial guarantees recognized as indispensable by civilized peoples.

B- Additional Protocol II (AP II): Applies to non-international armed conflicts of higher intensity. It provides fundamental guarantees to persons who do not take part or have ceased to take part in hostilities, including the right to a fair trial. However, Protocol II does not contain provisions on “grave breaches” that provide international

criminal enforcement mechanisms, leaving criminal prosecutions for violations of humanitarian law in non-international conflicts to national authorities.

C- Restrictions on the Death Penalty in Armed Conflicts: The Geneva Conventions and the Additional Protocols prohibit the death penalty for persons under 18 years of age, pregnant women, and mothers of young children.

4- Convention on the Rights of the Child: Algeria ratified the Convention on the Rights of the Child in 1992. The Convention expressly prohibits the imposition of the death penalty or life imprisonment without the possibility of release for crimes committed by persons under 18 years of age.

Third: The Death Penalty and Regional Instruments

A- The European System: Considered the most advanced in abolishing the death penalty, having abolished it entirely in all circumstances (including in time of war) under Protocols 6 and 13 to the European Convention on Human Rights. The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) affirmed the right of every person to life as a right protected by law, and prohibited the intentional deprivation of life except in execution of a judicial sentence following conviction for a crime for which the law provides such a penalty, and also prohibited the expulsion or extradition of persons to a country where they may face this penalty.

B- The Inter-American System: The Protocol to the American Convention on Human Rights to Abolish the Death Penalty provides in its Article 1 that “States Parties to this Protocol shall not apply the death penalty in their territory to any person subject to their jurisdiction.” No reservations may be made to this Protocol; however, States Parties may, upon ratification or accession, declare that they reserve the right to apply the death penalty in time of war in accordance with international law for extremely serious crimes of a military nature.

C- The African System: Less detailed in prohibiting the death penalty in general, but the protocols on the rights of women and children prohibit the death penalty for pregnant women, nursing mothers, and children.

D- The Arab System: The Arab Charter on Human Rights (2004) permits the death penalty only for the “most serious crimes” and pursuant to a final judgment issued by a competent court, and grants the right to seek pardon or commutation of the sentence. The Charter prohibits the execution of persons under 18 years of age, pregnant women until after childbirth, and nursing mothers until two years after childbirth. Islamic declarations of human rights permit the death penalty based on Islamic Sharia.

Algeria's choice not to sign or ratify the Second Optional Protocol to the ICCPR, despite its de facto commitment to freezing executions, indicates a clear strategic decision to preserve legislative sovereignty flexibility with regard to criminal law. This position is likely influenced by the significant role of Islamic Sharia in the country's legal identity, in addition to ongoing local pressures calling for retribution. This situation highlights a broader tension between global human rights standards and state sovereignty, where states with strong legal, cultural, or religious traditions may resist total abolition, preferring to manage the issue through a practical suspension rather than a formal legal commitment. This confirms that the path to abolition is not uniform and is often shaped by complex internal factors that go beyond mere international legal pressure.

Table 2: Comparison between Algeria's position and some international and regional instruments regarding the death penalty

Criterion / Instrument	Position of the instrument on the death penalty	Algeria's position	Remarks / Explanation
International Covenant on Civil and Political Rights (ICCPR)	Recognizes the right to life; restricts the death penalty to the “most serious crimes”; prohibits it for persons under 18 years of age and for pregnant women; and encourages abolition.	Ratified in 1989.	Algeria complies with the restrictions imposed on the application of the death penalty (such as excluded categories).
Second Optional Protocol to the ICCPR (OP2-ICCPR)	Aims at the complete abolition of the death penalty, with the possibility of a single reservation for time of war.	Neither signed nor ratified.	Reflects Algeria's desire to retain legislative sovereignty and flexibility, despite the de facto moratorium.
Convention on the Rights of the Child (CRC)	Prohibits the imposition of the death penalty or life imprisonment without the possibility of release for crimes committed by persons under 18 years of age.	Ratified in 1992.	Algeria adheres to this prohibition, which is consistent with its judicial practice.

Criterion / Instrument	Position of the instrument on the death penalty	Algeria's position	Remarks / Explanation
Geneva Conventions and Additional Protocols (IHL)	Prohibit executions without a fair trial; restrict them in armed conflicts; and prohibit them for persons under 18 years of age, pregnant women, and mothers of young children.	Party to the conventions and protocols.	Algeria complies with procedural safeguards in criminal cases, including those related to the death penalty.
Arab Charter on Human Rights	Permits the death penalty for the “most serious crimes” by final judgment; prohibits it for persons under 18 years of age and for pregnant and nursing women.	Ratified in 2004.	The Charter is consistent with Islamic Sharia, and Algeria’s position accords with some of its provisions.

Fourth: Jurisprudential and legal debate on the death penalty in Algeria

The death penalty in Algeria is the subject of an ongoing jurisprudential and legal debate, reflecting tensions between local legal traditions, religious principles, and global human rights trends.

1- Arguments in favor of the death penalty:

Proponents believe that the death penalty is the most deterrent punishment and achieves both general and special deterrence, as it instills fear in potential offenders, and that its abolition may lead to an increase in serious crime rates. Execution is considered necessary to achieve absolute justice, as the punishment corresponds to the gravity of the crime, especially in cases of premeditated murder; it is seen as retribution that satisfies the families of victims and society. It is also regarded as a decisive means of protecting society from dangerous criminals who cannot be reformed or rehabilitated. There is also increasing popular pressure to activate the penalty, especially in cases of heinous crimes against children and women that shake society, as some believe that enforcing it prevents individuals from resorting to private vengeance and achieves social justice. From a religious perspective, retribution (qisas) is a fixed and legitimate punishment in Islam that fulfills the objectives of Sharia in preserving life and deterring offenders, and it is not revenge but a sanction that serves the interest of society, citing the Almighty's saying: “And there is life for you in retribution, O people of understanding.”

2- Arguments against the death penalty:

Opponents argue that the death penalty constitutes a clear violation of the most fundamental human right—the right to life—which is a divine gift rather than a grant from the state; therefore, the state has no right to take it away. One of the strongest arguments against the death penalty is its irreversibility; the punishment is final, and there is a constant risk of executing an innocent person due to possible judicial errors, making it morally unacceptable. It is also considered a brutal punishment that is incompatible with principles of human dignity and the development of modern societies, and it causes psychological and physical suffering to the condemned person and their family. Opponents maintain that there is no tangible evidence or conclusive studies proving that the death penalty deters crime more effectively than life imprisonment; in some cases, it may have no real deterrent effect at all. The punishment also contradicts the goals of modern penal policy, which focus on reforming and rehabilitating offenders and reintegrating them into society, as execution eliminates any possibility of this. Finally, the death penalty can be exploited by governments to eliminate political opponents, threatening freedoms and turning justice into a tool of repression.

3- The position of Islamic Sharia and its impact on Algerian legislation:

Islamic Sharia recognizes the death penalty in specific cases within the provisions of retribution (for intentional killing), hudud (such as adultery and highway robbery), and discretionary punishment (ta‘zir) in exceptional cases. These penalties are applied according to strict rules and safeguards to protect individuals.

Retribution in Islam is not revenge but a sanction for the crime of intentional assault on life, and it benefits society as a whole. As for ta‘zir, it is an unquantified punishment whose origin is discipline; ta‘zir by killing is not permitted except in very exceptional cases according to some jurists.

The Algerian legislator’s position on the death penalty reflects a fluctuation between the requirements of Islamic Sharia and international obligations, creating a delicate balance in its criminal policy.

The intense debate over the death penalty in Algeria reflects a fundamental tension between deeply rooted societal values—strongly influenced by Islamic jurisprudence and popular demands for retribution in heinous crimes—and the evolving principles of international human rights law. This interaction indicates that any future legislative change regarding the death penalty will be a highly complex and sensitive process. Legal transformations in this area

cannot be merely technical; they are closely linked to national identity, religious beliefs, and public sentiment, making them slow and culturally contested.

Conclusion:

This study has shown that the legal framework of the death penalty in Algeria is characterized by a unique specificity. Algeria retains this punishment in its criminal law for a number of serious crimes, particularly those related to state security and offenses against life, while there has been a gradual tendency to narrow its scope over time. Despite its legal retention, there has been a de facto suspension of executions since 1993, with issued sentences effectively commuted to life imprisonment. This situation places Algeria in a unique position between states that have legally abolished the penalty and those that continue to carry it out. Algeria has not ratified the Second Optional Protocol to the ICCPR, reflecting its desire to retain legislative sovereignty and flexibility in dealing with this punishment, especially in light of internal pressures. The debate over reactivating the penalty is escalating due to popular demands following heinous crimes, placing pressure on the authorities to reconsider their position. This debate is strongly influenced by the stance of Islamic Sharia, which constitutes an important reference for supporters of retaining the penalty.

The current situation—suspension of execution while retaining the legal text—may continue as a compromise solution that allows Algeria to maintain a balance between internal and external pressures. However, this situation remains subject to increasing internal pressure, especially in light of rising serious crimes. The future of the death penalty in Algeria depends on the state's ability to achieve a delicate balance between protecting society from serious crimes, respecting fundamental human rights, and responding to public opinion and its aspirations, while taking into account developments in international law and regional instruments.

Recommendations: Based on the foregoing, the following are recommended:

- Conducting a deep and comprehensive national dialogue bringing together various stakeholders in society, with the aim of balancing legitimate popular demands for justice, Islamic Sharia principles, and international human rights obligations.
- The necessity of referring to the rulings of Islamic Sharia and the issued fatwas regarding the application of the death penalty as legislated, in pursuit of a fundamental objective: the preservation of life, which Islam seeks to protect.

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