

The Historical Development of the Entrenchment of Rights and Freedoms in Algerian Constitutions

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Abstract

This study examines the subject of rights and public freedoms as one of the foundational pillars of the rule-of-law state, by elucidating the concepts of right and freedom and the principal jurisprudential schools of thought relating to them, as well as identifying the most prominent classifications of rights and freedoms — in particular their division into successive generations that reflect their historical evolution and the diversity of their domains. The study further examines the trajectory of the constitutional entrenchment of rights and public freedoms in Algeria, by tracing their development through the political and constitutional transformations the country has undergone, and the accompanying expansion in the scope of rights and freedoms and the strengthening of the guarantees established for their protection. The study concludes that constitutional recognition of rights and freedoms, however significant, remains contingent upon the effectiveness of the legal and judicial mechanisms that ensure their exercise and protection.

Keywords: Rights and Public Freedoms; Human Rights; Freedom; Constitutional Protection; Algerian Constitutions; Constitutional Guarantees.

Introduction

Rights and public freedoms constitute one of the foundational pillars upon which the rule-of-law state rests, given their profound importance in protecting human dignity and enabling individuals to exercise their various rights and freedoms. They have equally become an essential criterion for assessing the extent to which a state respects democratic principles and the rule of law. These rights and freedoms have attracted growing attention, both at the domestic level through their entrenchment in constitutions and legislation, and at the international level through the various charters and international conventions that have worked to enhance their protection and promotion. This, in turn, has contributed to the evolution of their concept, the broadening of their scope, and the diversification of their forms in a manner commensurate with the developments experienced by modern societies.

Algeria has itself witnessed a progressive development in the entrenchment of rights and public freedoms. These rights underwent gradual evolution through the successive constitutions the country has known, from the Constitution of 1963 through to the Constitution of 2020, which enhanced the standing of rights and freedoms and established for them more advanced constitutional and institutional guarantees — reflecting the growing attention devoted to protecting the individual and

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securing rights and freedoms within the framework of the rule-of-law state. Against this background, the study raises the following central question: what is the concept of rights and public freedoms, what are their principal forms, and to what extent have they been entrenched and guaranteed in the Algerian constitutions?

Section One: Rights and Public Freedoms

Rights and public freedoms constitute the essential foundation of the strong, law-based state in which democratic values are embodied, and whose constitution protects and organizes them in accordance with the international frameworks that promote and defend them. This has contributed to the notable progress observed in the protection and regulation of these fundamental rights and freedoms, which occupy a prominent place in contemporary constitutions by reason of their importance to individuals, as they allow people to enjoy a life of dignity. This section examines the definition of rights and freedoms in the first subsection, and their classifications in the second.

1.1 Defining Rights and Public Freedoms

The definition of rights and freedoms may be regarded as a precondition for activating the fundamental guarantees that modern constitutions establish for citizens; these rights are further reinforced by international protection through the various charters and recommendations of international bodies. Given that rights and public freedoms enshrine various fundamental human values and benefit from the comparative legal perspective in the protection of constitutional principles, they are recognized as rights regardless of how they are described — particularly in the absence of a legal definition of the concept of freedom, which has given rise to a multiplicity of definitions. As a consequence, all public freedoms are considered fundamental rights.²

In this regard, numerous French jurists, notably Rivero, have held that all freedoms, whether relating to the constitution or to European law, are fundamental and essential rights.³

In order to define rights and public freedoms, it is necessary to begin with each term separately. The first subsection addresses the definition of right, both linguistically and technically; the second examines the definition of freedom, again linguistically and technically, so as to arrive at a composite definition of the two concepts together.

1.1.1 Defining the Concept of Right

Linguistic Definition. The word right (haqq in Arabic) appears in various dictionaries and lexicons with different meanings, including: ownership, existence, establishment, property, affirmation, and obligation. Among the well-known sayings on right is that of al-Razi, who defined right as the opposite of falsehood; al-Azhari similarly stated that the meaning of right is that which is established or obligatory.⁴ Al-Jawhari defined right as the opposite of falsehood, and right as the singular of rights.⁵ Right thus connotes establishment and obligation; it is said that a matter is right meaning it is established and confirmed. It also denotes the opposite of falsehood, with its plural being rights; right may further refer to property or ownership, or to a share and a portion.⁶

Technical Definition. Scholarly opinion on the meaning of right has varied according to the diversity of intellectual and legal orientations. Some view it through the perspective of its holder — the one who

²Alaa Muhammad al-Filkawi. *The Role of Constitutional Judiciary in the Protection of Rights and Public Freedoms*. Modern University Office, Alexandria, 2018, p. 12.

³Rivero, J. *Les libertés publiques*. P.U.F., 1981, pp. 31 et s.; Favoreu, L. et al. *Droit constitutionnel*, 14th ed., 2011, pp. 887–888; Burdeau, G. *Libertés publiques*. L.G.D.J., 1972.

⁴Muhammad al-Bashir ibn Ahmad Musa. *Rights and Public Freedoms between Tradition and Modernity*. Dar Misr for Publishing and Distribution, 1st ed., Cairo, 2022, p. 3.

⁵*Ibid.*, p. 3.

⁶Hussein Wahid Abbud al-Issawi. *Political Rights and Freedoms in the Constitution: A Comparative Study*. Arab Centre for Publishing and Distribution, Egypt, 1st ed., 2018, p. 18.

possesses the authority to enjoy it — while others view it through the perspective of the object of the right. From a legal standpoint, right has several conceptual meanings corresponding to the various schools and orientations adopted by jurists in their definitions. These may be summarized in three distinct theories: the subjective theory, the objective theory, and the eclectic theory that combines both.

(a) The Subjective Theory. Proponents of this theory hold that right is defined from a purely subjective perspective, regarding it as a legal privilege conferred upon a specific person to enable that person to realize a particular lawful interest. In the view of its proponents, right is **“the volitional capacity or power that the law confers upon a person within a defined sphere.”**⁷

(b) The Objective Theory. Proponents of this theory view right through the lens of its object rather than its holder, focusing on the subject-matter of the right and its purpose. They accordingly define right as **“an interest protected by law.”**⁸ These scholars view right from two angles: the interest and its legal protection. The interest consists in the benefit accruing to the holder of the right, while legal protection is embodied in the judiciary as a guarantee of the exercise of that right. A right arises, in their view, wherever an established interest is protected by law through the possibility of claiming it before the courts.

(c) The Eclectic Theory. Proponents of this theory seek to combine the two preceding theories by viewing right from two complementary perspectives: the first focuses on the element of will, and the second on the element of interest. These two elements together constitute the essence of right. The adherents of this theory differ, however, on which element is paramount. Some give precedence to will over interest, defining right as the volitional power conferred upon a person for the purpose of realizing an interest protected by law⁹; others give precedence to interest over will, defining right as a person’s interest protected by law through the volitional capacity recognized by law to represent and defend that interest.¹⁰

This eclectic theory constitutes a conciliatory approach that seeks to overcome the deficiencies of both preceding theories, combining them to offer a comprehensive view of the nature of right — one that takes into account the law’s goal of reconciling individual freedom with the requirements of the public interest.

The concept of right is closely linked to the term human rights, which has become the preoccupation of legal systems worldwide. Scholarship has considered human rights to be a matter inherently and inextricably tied to the individual, whose existence does not require formal recognition: it suffices for them to be recognized intrinsically, since any violation by any authority does not alter their essence or existence.¹¹

A portion of legal scholarship has defined human rights as the natural rights inherent to the human being, remaining in existence even if not formally recognized and even if violated by a public authority.¹² Others have defined them as the rights enjoyed by human beings by virtue of their humanity, recognized without regard to nationality, religion, race, or social or economic status — natural rights that precede

⁷Al-Issawi, op. cit., p. 20.

⁸Ali Yusuf al-Shukri, Muhammad Ali al-Nasiri, and Mahmud al-Tai. *Studies on the Iraqi Constitution*. Afaq Foundation for Iraqi Studies and Research, 1st ed., 2008, p. 486.

⁹Hussein Kira. *Introduction to Law*. Munsha'at al-Ma'arif, Alexandria, 1971, p. 433.

¹⁰Nabil Ibrahim Sa'd. *Introduction to Law: Theory of Rights*. Halabi Legal Publications, Beirut, 1st ed., 2010, p. 28.

¹¹Al-Issawi, op. cit., p. 24.

¹²Muhammad al-Sa'id Majdhub. *Public Freedoms and Human Rights*. Juros Press, Lebanon, 1st ed., 1986, p. 9.

the state and stand above it.¹³ A further definition describes them as a set of fundamental rights that are indispensable to human life, which the state is bound to recognize, organize, and protect.¹⁴

1.1.2 Defining the Concept of Freedom

Linguistic Definition. The Arabic term *hurriyya* (freedom) denotes the opposite of servitude — the condition of the free person as opposed to the slave. Linguistically it signifies release from bondage: to free a person means to liberate them. Freedom is thus a state of well-being and the antithesis of slavery; its derivatives carry the meanings of removal of constraints and release from bondage.¹⁵ In classical Arabic usage, the free person among people is the most excellent and virtuous, and the freedom of the Arabs is their nobility.¹⁶ The Latin equivalent is *libertas*, derived from the adjective free or liberty; both terms are used in Latin dictionaries to convey the same meaning, denoting a particular social condition of an individual: liberation from slavery, emancipation, the dignity of decent living, independence, and the breaking of constraints. English distinguishes between freedom and liberation (*libération*), though liberty is the most widely used term when expressing freedom in political theory.¹⁷¹⁸

Technical Definition. Discussion of freedom began with the early stirrings of democracy in ancient Greece at the dawn of the state and its political entity.¹⁹ Since then, scholars and researchers have offered diverse and varied definitions. One school has defined freedom as **“the absence of hardship suffered by the individual, both internally and externally.”**²⁰ Another has defined it as **“the deliberate choice of an act with the capacity to refrain from choosing its opposite.”**²¹ In modern scholarship, freedom has been defined as the capacity of an individual to determine what they should accept and to shape their conduct and life in a manner arising from within, not imposed by any external force.²² It has also been characterized as **“the spontaneous and systematic activity of the complete human personality, consciously directed toward the realization of a vision of the common good in which one believes.”**²³

From a political perspective, freedom has been described as the ability of the individual to escape the grip of power, with its proponents holding that freedom exists and prevails in a society that is politically structured on the distinction between a governing minority and a governed majority, and that the regime of freedom begins where the activity of authority ends.²⁴

From a legal perspective, a range of celebrated jurists have offered their own definitions. Jean-Jacques Rousseau defined freedom as **“obedience to the general will”**; Locke defined it as **“the right to do what is permitted by law”**; Laski defined it as **“freedom from the constraints that deny the citizen the right to activity and progress”**; Montesquieu held that freedom is **“the right to do what the law permits”**, which requires depriving of their freedom any citizen who permits themselves what the

¹³Hadi Na'im al-Maliki. Introduction to the Study of International Human Rights Law. Al-Sanhoury Library, Baghdad, 2nd ed., 2011, p. 9.

¹⁴Mahir Abd al-Hadi. Human Rights: Their Legal Value and Impact on Certain Branches of Positive Law. Dar al-Nahda al-Arabiyya, Cairo, 1984, p. 27.

¹⁵Al-Issawi, op. cit., p. 26.

¹⁶Ibn Ahmad Musa, op. cit., p. 24.

¹⁷The Intermediate Dictionary. Academy of the Arabic Language, Vol. 1, Cairo, 3rd ed., p. 172; cited in al-Issawi, op. cit., p. 26.

¹⁸Ibn Ahmad Musa, op. cit., pp. 24–25.

¹⁹Mu'tazz Muhammad Abu Zayd. Freedom of Belief between Restriction and Appreciation. Cairo, 1st ed., 2010, p. 8.

²⁰Ali Yusuf al-Shukri. Human Rights between Theory and Practice. Itrak for Printing, Publishing and Distribution, Cairo, 1st ed., 2009, p. 6.

²¹Ismail Ibrahim al-Badawi. Pillars of Governance in Islamic Law and Contemporary Systems. Encyclopedia of Judiciary and Jurisprudence for Arab States, Cairo, 1st ed., 1980, p. 17.

²²Na'im Atiyya. General Theories of Individual Freedoms. Al-Dar al-Qawmiyya, Arab Library, Cairo, 1965, p. 31.

²³Ibid., p. 32.

²⁴Al-Issawi, op. cit., p. 29.

law does not permit, since this would give all other citizens the same power; and Voltaire expressed it in the formula **“when I am able to do what I will, that is my freedom.”**²⁵

The legal dictionary of Dr. Cornu (CORNU) defines freedom as **“the supreme good of the individual or of the people, aimed at living free from enslavement, exploitation, oppression, or any form of domination, whether internal or external.”** The same dictionary adds a further definition: **“freedom is a situation guaranteed by law that allows every individual to be master of themselves and to exercise, according to their will, all available possibilities.”**²⁶

A broad definition of public freedoms has emerged from the logic of their nomenclature, under which this concept encompasses the largest possible number of rights and freedoms. Some views have come to regard public freedoms as a set of fundamental rights that are a genuine necessity in modern liberal states.²⁷ Proponents of this view have insisted on including all the necessary rights and freedoms through which human dignity is respected — including not only freedoms that may be resolved into the power of self-determination and the freedom of independence, but also political freedoms. From a judicial perspective, the legally useful definition of public freedoms is the definition that encompasses the enumeration of public freedoms in positive law.²⁸

The most broadly accepted definition is accordingly one that takes into account the enumeration of public freedoms in positive law, together with the protection that those laws afford them. Public freedoms may thus be defined as the power of human self-determination, directed at securing independence, in the form recognized by legislative authority, thereby benefiting from a legal regime of protection, including as against the public authorities.²⁹ This definition identifies the constitutive elements of public freedoms: the self-determination of the individual without interference by others — including the state — while the role of others is limited to refraining from impeding the exercise of those freedoms. However, this element of self-determination in public freedoms does not encompass the positive claims on society that require an affirmative response from others.³⁰

1.2 Classification of Rights and Freedoms by Generations

This classification is among the most widely recognized classifications of public freedoms, which are viewed through the lens of their historical emergence and divided into three generations.

First-Generation Freedoms. First-generation freedoms are those whose existence was promoted by the liberal order. They are characterized by their call for state non-intervention in the affairs of individuals, allowing the individual to be independent and to enjoy the greatest possible measure of freedom — what some refer to as the negative obligation of the state.³¹

These rights and freedoms were set out in the earliest human rights declarations, including the French Declaration of the Rights of Man and of the Citizen of 1789, which enumerated personal freedoms: the right to life, the prohibition of slavery, torture, and inhuman punishment, the prohibition of arbitrary detention, the right to private and family life, freedom of belief and religion, freedom of property, freedom of education, freedom of contract, and various political freedoms such as the right to vote and to stand for election. These freedoms were also enshrined in the International Covenant on Civil and Political Rights of 1966, to which the Algerian Republic acceded on 16 May 1989.³²

²⁵Abd al-Fattah Murad. *Commentary on Public Freedoms and Court Applications Thereon*. Modern University Office, Alexandria, p. 19.

²⁶Ibn Ahmad Musa, *op. cit.*, p. 31.

²⁷Robert, J. *Libertés publiques*, Mémento, Dalloz, 8th ed., 1987, p. 7.

²⁸Al-Filkawi, *op. cit.*, p. 77.

²⁹Lebreton, G. *Libertés publiques et droits de l'homme*. Armand Colin, 4th ed., 1999, p. 10.

³⁰Al-Filkawi, *op. cit.*, p. 83.

³¹Rabih Sana. *Lectures on Public Freedoms*. Dar Belkece for Publishing, Algeria, 2018, p. 26.

³²*Ibid.*, p. 27.

Second-Generation Freedoms. These rights and freedoms emerged in the wake of the Industrial Revolution in Europe, which gave rise to the development of various social and solidarity theories. They are known as **“economic, social, and cultural freedoms.”**³³ Interest in these rights intensified after the end of the Second World War, as the principle of the **“police state”** or **“nightwatch state”** gradually gave way to the **“welfare state,”** which requires positive intervention by the state committed to realizing a set of rights and freedoms for the benefit of individuals. These include the right to work, the right to strike, the right to health, the right to housing, and the right to equality, among others. These rights and freedoms are enshrined in the International Covenant on Economic, Social and Cultural Rights of 1966.

Third-Generation Freedoms. The term appeared in the late 1970s, thanks to the legal scholar Karel Vasak, when a new generation of rights known as **“solidarity rights”** emerged. These rights established a global solidarity around a set of shared moral values; the concept of third-generation rights and freedoms may accordingly be understood as premised on an organized international community governed by rules specific to it and distinct from those governing interstate relations.³⁴

The necessities of contemporary life, particularly following the scientific and technological advances experienced by the world, gave rise to a set of rights and freedoms requiring the intervention of the international community to create the cooperation necessary to realize and give effect to them on the ground — hence their designation as **“solidarity freedoms.”** These freedoms are also understood as rights and freedoms derived from international human rights law, imposing mutual solidarity obligations on states in pursuit of the formation of a just international community.³⁵ Solidarity rights contain a set of elements not precisely defined, but which originally comprised: the right to development, directed at the equitable distribution of wealth within the international community; the right to peace; the right to a healthy environment; the right to respect for world heritage; and communications rights beyond borders.

Section Two: The Constitutional Entrenchment of Rights and Public Freedoms in Algerian Constitutions

Since the constitution is the principal legal instrument that defines the general framework of rights and public freedoms within the state and constitutes the supreme reference from which all other laws derive, and since it is the fundamental guarantor of the protection of these rights against any violation or abuse of authority, the Algerian constitution was required to entrench and organize rights and public freedoms in a manner consistent with the requirements of global development and the growing concern for human rights and freedoms. This is indeed what the successive Algerian constitutions have endeavored to do from their inception, consistently recognizing and organizing these rights in accordance with the international instruments to which Algeria has acceded and ratified. Given that Algeria has undergone several developments across its various constitutions, this study examines their regulation of rights and freedoms across two phases: the phase of single-party rule and the socialist system under the Constitutions of 1963 and 1976, and the post-reform phase of political openness and multi-party pluralism under the Constitutions of 1989 and 1996 through to the most recent amendment of 2020.

2.1 Rights and Freedoms under the Constitutions of the Single-Party and Socialist Phase

2.1.1 The Constitution of 1963

Algeria found itself, in the immediate aftermath of independence, confronted with formidable challenges. The country entered a profound institutional vacuum against a backdrop of economic

³³Ibid., p. 27.

³⁴Vasak, Karel. "Pour une troisième génération des droits de l'homme," in *Studies and Essays on International Humanitarian Law and the Principles of the Red Cross in Honour of Jean Pictet*. Martinus Nijhoff Publishers, The Hague, Netherlands, 1984, p. 837.

³⁵Omar Sa'd Allah. *Human Rights and Peoples' Rights: The Relationship and Legal Developments*. University Publications Office, 2nd ed., Algeria, 1996, p. 75.

collapse that reflected the poverty and illiteracy endured by the population. Convinced that the path out of this crisis lay in adopting the socialist model under a single-party system, these orientations were translated into constitutional principles. The Constitution of 1963 regulated rights and public freedoms through the socialist lens that Algeria had adopted as the means of achieving social justice; Article 22 provided: **“No one may use the rights and freedoms set forth above to undermine the independence of the nation, its territorial integrity, national unity, the institutions of the Republic, the socialist interests of the people, or the principle of the unity of the National Liberation Front.”**

The constitutional founding document entrenched, in the Constitution of 1963, fundamental individual and collective rights in their various forms — civil, political, social, and economic — in Articles 12 through 22. No separate chapter was, however, dedicated to them, given that this constitution was not structured in chapters and titles as were the subsequent constitutions of the Algerian Republic.³⁶ In Article 11, Algeria expressed its adherence to the Universal Declaration of Human Rights and its full readiness to join any international organization serving the interests of the Algerian people.³⁷ Notably, Algeria went beyond merely organizing rights and freedoms, extending its position to affirm the right of asylum for all who struggle for freedom, in accordance with Article 21 — a reflection of its solidarity with liberation movements worldwide.

In general, it may be said that rights and freedoms did not receive their full due in the Constitution of 1963, owing to the fact that the country was in its infancy of construction and institution-building. Human rights and freedoms were not among the governing elite's immediate priorities at that time; the overriding concern was the construction of the state and the preservation of national unity through the socialist system and single-party rule.

2.1.2 The Constitution of 1976

The Constitution of 1976 was produced in a particular political and social context marked by the concentration of power in the hands of the Revolutionary Council under President Houari Boumediene, following the suspension of the Constitution of 1963. Through this constitution, the authorities sought to restore constitutional legitimacy to the prevailing political system and to give an institutional character to its socialist orientations, particularly following the adoption of the National Charter in the same year.

Unlike the Constitution of 1963, the Constitution of 1976 dedicated an entire chapter to socialism, in which the constitutional founding document elaborated at length on the objectives and goals of the socialist choice, which it characterized as an irrevocable choice.³⁸ This constitution placed upon the state the positive duty of ensuring the genuine progress of the human being, as set out in Article 11, which provided that socialism aims to achieve the country's development, to transform workers and peasants into conscious and responsible producers, to spread social justice, and to provide the conditions for the flourishing of the citizen's personality. Unlike the Constitution of 1963, which was unstructured in terms of chapters and titles, the Constitution of 1976 entitled Chapter Four of its first title **“Fundamental Freedoms and the Rights of Man and the Citizen,”** enshrining therein a range of rights and freedoms across 34 articles. These included civil, political, and economic rights, such as the protection of the family (Article 65), intellectual and artistic innovation (Article 54), the right to healthcare (Article 67), the protection of the rights and property of foreigners (Article 70), and the right of political asylum (Article 73).

³⁶Nasr al-Din al-Akhdhri. *Public Freedoms in Light of the Algerian Constitution and Legislation*. Al-Saihi Publications, Algeria, 1st ed., 2017, p. 201.

³⁷Mabruk Abd al-Nur. "Human Rights and Public Freedoms in the Successive Algerian Constitutions." *Al-Risala Journal of Humanities Studies and Research*, Vol. 5, No. 3, October 2020, p. 90.

³⁸Al-Akhdhri, op. cit., p. 200.

Article 71 provided that the law shall punish all violations of the fundamental rights and freedoms of the human being. Article 195 further stipulated that no constitutional amendment may affect the republican character of the government, the religion of the state, the socialist choice, or the fundamental freedoms of the human being and the citizen.

The texts of the Constitution of 1976 reveal that it presented a comprehensive body of political, civil, and social rights and freedoms, yet placed them within a rigid ideological framework premised on single-party dominance and the service of the socialist orientation. The rights and freedoms enshrined were accordingly closer to political directives than to genuine, practically enforceable guarantees.

2.2 Rights and Freedoms under the Constitutions of the Political Pluralism and Economic Openness Phase

2.2.1 The Constitution of 1989

Algeria experienced, in the 1980s, a comprehensive crisis that struck at the foundations of the political and social system established by the Constitution of 1976. On the economic front, the collapse of oil prices from 1986 led to a decline in the revenues of the rentier state, a deepening of indebtedness, rising unemployment, and a deterioration of citizens' purchasing power. On the social front, this crisis was reflected in growing popular discontent, exacerbated by the limited channels of political participation and the closed nature of the single-party system.

The events of October 1988 represented the apex of this crisis, when thousands of young people took to the streets to protest the social and economic conditions. The demonstrations transformed into a broad political movement against the prevailing system and ended with the intervention of the army and the deaths of hundreds. Faced with these developments, the political authorities undertook a profound review of the political system and transitioned from single-party rule to political pluralism, in keeping with the regional and international changes marked by the collapse of socialist regimes. A new constitution was accordingly drafted and submitted to popular referendum in February 1989.

The constitutional founding document entrenched human rights and freedoms in Chapter Four, from Article 28 through to Article 56, under the heading **"Rights and Freedoms."** The Constitution of 1989 recognized new rights compared with the preceding Constitution of 1976, including the guarantee of the right of defence both individually and through associations for the defence of fundamental human rights.³⁹

Of particular significance among the provisions of this constitution was Article 40, which recognized the right to establish associations of a political character: **"The right to create associations of a political character is recognized. This right may not be invoked to undermine fundamental freedoms, national unity, territorial integrity, the independence of the country, or the sovereignty of the people."** Article 153 of the same constitution established the Constitutional Council as a supervisory body charged with reviewing the conformity of legislation with constitutional provisions, constituting an important additional guarantee for the protection of fundamental rights and freedoms.

The Constitution of 1989 thus marked a decisive turning point in the trajectory of rights and freedoms in Algeria, transitioning from a single-party system to a pluralist system grounded in political and individual freedoms. Notwithstanding, despite its entrenchment of these principles, it left extensive authority to the law to restrict them, which meant that practical implementation in the 1990s encountered significant difficulties and tensions.

2.2.2 The Constitution of 1996 and the Amendments of 2002 and 2008

Algeria experienced, in the mid-1990s, a complex situation characterized by acute political and security instability resulting from the national crisis and the accompanying acts of armed violence. This

³⁹Abd al-Nur, op. cit., p. 92.

necessitated the search for a new constitutional framework to reorganize state institutions and enhance their legitimacy. In this context, the Constitution of 1996 was drafted as an instrument for strengthening national unity and consolidating the political pluralism established since the Constitution of 1989, while incorporating fuller guarantees for the protection of fundamental rights and freedoms.

The Constitution of 1996. This constitution organized rights and freedoms in its fourth chapter, affirming fundamental principles in this domain. Article 29 stipulated equality among citizens before the law without discrimination on grounds of birth, race, sex, or opinion. Article 32 guaranteed fundamental freedoms and the rights of the human being and the citizen. Article 34 affirmed the state's guarantee of the inviolability of the human person and prohibited any physical or moral violence against human dignity.

Personal and individual freedoms were set out in Articles 34 through 40, encompassing freedom of belief and opinion (Article 36), freedom of trade and industry (Article 37), freedom of intellectual innovation (Article 38), protection of private life (Article 39), and the inviolability of the domicile, which may be searched only by virtue of a written order from the judicial authority (Article 40).

With regard to freedom of expression and association, Articles 41 through 43 guaranteed freedom of expression, the creation of associations, and the right of assembly for citizens. Article 42 recognized and guaranteed the right to create political parties, while specifying that this right may not be used to found political parties on a religious, linguistic, ethnic, gender-based, professional, or regional basis — in order to preserve national and territorial unity.

Civil and political rights were addressed in Articles 45 through 51, with Article 44 affirming the presumption of innocence until conviction by a competent judicial authority, and Articles 47, 48, and 49 providing the judicial guarantees enjoyed by the individual in criminal proceedings. Collective rights including the right to education, healthcare, and work were addressed in Articles 53 through 57; the right to family protection was enshrined in Article 58.

The Constitution of 1996 also established new institutions, including a bicameral parliament,⁴⁰ the Council of State, and the Court of Conflicts,⁴¹ all of which contribute to the protection of individual rights from various forms of encroachment.

The 2002 Amendment. This amendment consolidated the recognition of Tamazight (Amazigh) as a national language alongside Arabic, in accordance with Article 3 bis — a notable development in the cultural and identity rights of Algerian citizens.⁴²

The 2008 Amendment. This amendment focused primarily on institutional aspects, in particular the removal of the limitation on presidential terms. It did not, however, neglect rights and freedoms, affirming the enhanced role of political parties in organizing citizens and participating in public life. The amendment also formally recognized the status of Algerian women, acknowledging their acquisition during the War of Liberation, by establishing a provision ensuring their genuine place in society. Article 31 bis provided that the state shall work to promote the political rights of women by expanding their chances of representation in elected assemblies.^{43,44}

2.2.3 The Constitutional Amendment of 2016

The constitutional amendment of 2016 represented a landmark in the trajectory of entrenchment of fundamental rights and freedoms in Algeria, reorganizing this domain in a broader and more precise manner, in keeping with political and social transformations and responding to the requirements of

⁴⁰Article 28 of the Constitution of 1996.

⁴¹Article 52 of the same constitution.

⁴²Fatima Zarruqi. *Constitutional Law: Rights and Freedoms in Algeria*. Dar al-Khalduniyya, Algeria, 2010, p. 233.

⁴³Ahmad Rabhi. *Constitutional Amendments in Algeria: A Reading of the Process and Outcomes*. Dar al-Umma, Algeria, 2012, p. 162.

⁴⁴Abd al-Nur, op. cit., p. 93.

engagement with international human rights standards. The amendment was distinguished by the inclusion of new rights not previously entrenched, the strengthening of protection guarantees for individual, collective, and social rights, and a reinstatement of national identity as the unifying framework for all the achievements of the Algerian people.

Individual Rights and Freedoms. Article 40 affirmed the inviolability of the human person and explicitly prohibited all forms of torture, degrading treatment, or inhuman treatment. Article 46 protected the private life of individuals and guaranteed the confidentiality of correspondence and communications. Article 55 established freedom of movement as a fundamental right that may only be restricted by law and for specified justified requirements.

Freedoms Connected with Human Thought. Article 41 enshrined freedom of expression, freedom of association and political party formation, and freedom of assembly and peaceful demonstration. Article 50 accorded press freedom a distinguished status, providing that it is free and cannot be subjected to any form of prior censorship. Article 44 guaranteed the right to education and ensured its free provision at all levels; academic freedom and freedom of scientific research were similarly enshrined as constitutional rights.

Economic and Social Rights. The amendment accorded particular importance to the family and childhood as the nucleus of society, with Article 72 guaranteeing their protection. Article 36 committed the state to promoting the status of women and ensuring their effective equality with men in positions of responsibility. Article 37 recognized the importance of youth as the energy of society by providing for their inclusion in the national development process and the establishment of the Supreme Youth Council. Articles 67 and those following addressed economic rights including the right to work, social security, healthcare, and the right to a healthy environment.

Collective Rights. The amendment established additional guarantees for freedom to form political parties (Article 42), recognized the rights of the parliamentary opposition and affirmed its effective participation in legislative life (Article 114), and entrenched the right to a healthy environment as a collective right, obligating the state to protect it (Article 68).

Finally, the constitutional amendment of 2016 reaffirmed national identity as the cornerstone of state and society, re-emphasizing the national constants of Islam, the Arab heritage, and the Amazigh heritage, and elevated Tamazight to the status of national and official language alongside Arabic, with the state committed to its promotion and development.

2.2.4 Rights and Public Freedoms in the Constitution of 2020

The Constitution of 2020 constitutes a landmark in the trajectory of Algerian constitutional development. It offers a clearer vision of the protection of rights and freedoms compared with preceding constitutions, and notably, for the first time, dedicates an independent title specifically entitled **“Rights and Freedoms,”** reflecting awareness of the importance of these rights as the basis of constitutional legitimacy and a pillar of the rule-of-law state.⁴⁵ The rights and freedoms are set out in Chapter One of Title Two, from Articles 34 through 83.⁴⁶

Individual Rights and Freedoms. Article 38 established, for the first time, the right to life as a human right protected by law. Article 39(2) prohibited physical violence or any affront to dignity and provided that torture shall be punishable by law. Article 40 introduced a significant innovation by providing that **“the state shall protect women from all forms of violence in all places and circumstances”** — a first explicit constitutional provision on the protection of women from gender-based violence, going beyond the mere affirmation of equality that had characterized preceding constitutions. Article 47

⁴⁵Abd al-Qadir Bal'ans. Op. cit., p. 135.

⁴⁶Zahia Issa. "The Constitutional Framework of Rights and Freedoms in Algerian Constitutions." *Journal of Law and Political Science*, p. 7.

guaranteed each person's right to the protection of their private life and honor, and Article 52 independently entrenched freedom of expression and extended its guarantees to freedom of assembly and peaceful demonstration.

Political and Civil Rights. Article 37 confirmed that all citizens are equal before the law and entitled to equal protection. Article 67 provided that all citizens are equal in access to public functions and duties, with the exception of functions connected with national sovereignty and security. Articles 56 and 57 entrenched the right to vote and the right to create political parties, the latter article specifying that political parties may not be founded on a religious, linguistic, ethnic, gender-based, professional, or regional basis. Article 59 went beyond merely guaranteeing electoral representation of women, obligating the state to promote their political rights and to encourage their access to positions of responsibility.

Economic, Social, and Cultural Rights. Article 65 entrenched the right to education and schooling with a commitment to continuous improvement of their quality. Article 66 recognized work as both a right and a duty, expressing the spirit of citizenship. Article 63 guaranteed healthcare, safe drinking water, and special attention to persons in need. Article 69 guaranteed the trade union right as freely exercised within the framework of law. Article 74 guaranteed freedom of intellectual creativity, including its scientific and artistic dimensions. Article 75 guaranteed academic freedoms and freedom of scientific research — recognizing the importance of the knowledge economy. Article 63 also enshrined the right to a healthy environment within the framework of sustainable development.

Constitutional and Institutional Guarantees. The Constitution of 2020 established the Constitutional Court to replace the Constitutional Council, regulated in Articles 184 through 198, and expanded its powers — particularly by enabling litigants to raise a plea of unconstitutionality, thereby affording direct protection of rights and freedoms. The constitution also defined the conditions for the declaration of a state of emergency, siege, or exceptional state, linking them to parliamentary oversight and limiting their duration, thereby constituting a guarantee against the abuse of rights and freedoms through exceptional powers.

It is apparent that the Constitution of 2020 has effected a degree of discontinuity with preceding constitutions through its dedication of a complete title to rights and freedoms, its entrenchment of substantive innovations such as the protection of women from violence, the guarantee of the right to private life, the recognition of the right to a healthy environment, and the strengthening of media freedom, as well as through the introduction of new judicial and institutional guarantees.

Conclusion

It emerges from this study of rights and public freedoms that they represent one of the foundational pillars of the rule-of-law state, by reason of the role they play in protecting human dignity and ensuring the enjoyment of rights and freedoms by individuals. The evolution of their concept has led to a diversification of their forms and a broadening of their fields, consonant with the transformations experienced by societies and the development of legal and constitutional thought.

The study of the Algerian constitutional experience has demonstrated that the entrenchment of rights and public freedoms underwent a gradual evolution, from the Constitution of 1963 through to the Constitution of 2020, which worked to broaden the scope of constitutional protection and to strengthen the guarantees established in their support. Constitutional entrenchment, however significant, achieves genuine protection of rights and freedoms only through the assurance of their respect in practice and the provision of the legal and judicial mechanisms capable of protecting them — thereby achieving the balance between the exercise of power on the one hand and the guarantee of the rights and freedoms of individuals on the other.

References

- Abd al-Nur, Mabruk. "Human Rights and Public Freedoms in the Successive Algerian Constitutions." *Al-Risala Journal of Humanities Studies and Research*, Vol. 5, No. 3, October 2020.
- Abu Zayd, Mu'tazz Muhammad. *Freedom of Belief between Restriction and Appreciation*. Cairo, 1st ed., 2010.
- Academy of the Arabic Language. *The Intermediate Dictionary (Al-Mu'jam al-Wasit)*, Vol. 1. Cairo, 3rd ed.
- Al-Akhdhri, Nasr al-Din. *Public Freedoms in Light of the Algerian Constitution and Legislation*. Al-Saihi Publications, Algeria, 1st ed., 2017.
- Al-Badawi, Ismail Ibrahim. *Pillars of Governance in Islamic Law and Contemporary Systems. Encyclopedia of Judiciary and Jurisprudence for Arab States*, Cairo, 1st ed., 1980.
- Al-Filkawi, Alaa Muhammad. *The Role of Constitutional Judiciary in the Protection of Rights and Public Freedoms*. Modern University Office, Alexandria, 2018.
- Al-Issawi, Hussein Wahid Abbud. *Political Rights and Freedoms in the Constitution: A Comparative Study*. Arab Centre for Publishing and Distribution, Egypt, 1st ed., 2018.
- Al-Maliki, Hadi Na'im. *Introduction to the Study of International Human Rights Law*. Al-Sanhoury Library, Baghdad, 2nd ed., 2011.
- Al-Shukri, Ali Yusuf, Muhammad Ali al-Nasiri, and Mahmud al-Tai. *Studies on the Iraqi Constitution*. Afaq Foundation for Iraqi Studies and Research, 1st ed., 2008.
- Al-Shukri, Ali Yusuf. *Human Rights between Theory and Practice*. Itrak for Printing, Publishing and Distribution, Cairo, 1st ed., 2009.
- Atiyya, Na'im. *General Theories of Individual Freedoms*. Al-Dar al-Qawmiyya, Arab Library, Cairo, 1965.
- Burdeau, Georges. *Libertés publiques*. L.G.D.J., 1972.
- Constitution of the People's Democratic Republic of Algeria, dated 8 September 1963. Official Gazette No. 64, issued 10 September 1963.
- Favoreu, Louis et al. *Droit constitutionnel*, 14th ed., 2011.
- Ibn Ahmad Musa, Muhammad al-Bashir. *Rights and Public Freedoms between Tradition and Modernity*. Dar Misr for Publishing and Distribution, Cairo, 1st ed., 2022.
- Issa, Zahia. "The Constitutional Framework of Rights and Freedoms in Algerian Constitutions." *Journal of Law and Political Science*.
- Kira, Hussein. *Introduction to Law*. Munsha'at al-Ma'arif, Alexandria, 1971.
- Law No. 16/01 of 6 March 2016 comprising the constitutional amendment. Official Gazette No. 14, issued 7 March 2016.
- Lebreton, Gilles. *Libertés publiques et droits de l'homme*. Armand Colin, 4th ed., 1999.
- Mahir Abd al-Hadi. *Human Rights: Their Legal Value and Impact on Certain Branches of Positive Law*. Dar al-Nahda al-Arabiyya, Cairo, 1984.
- Majdhub, Muhammad al-Sa'id. *Public Freedoms and Human Rights*. Juros Press, Lebanon, 1st ed., 1986.

- Murad, Abd al-Fattah. Commentary on Public Freedoms and Court Applications Thereon. Modern University Office, Alexandria.
- Order No. 76/97 of 22 November 1976 promulgating the Constitution of the People's Democratic Republic of Algeria. Official Gazette No. 94, issued 24 November 1976.
- Presidential Decree No. 20/442 of 30 December 2020 promulgating the constitutional amendment approved by referendum on 1 November 2020. Official Gazette No. 82, issued 30 December 2020.
- Presidential Decree No. 89/18 of 28 February 1989 promulgating the Constitution approved by referendum on 23 February 1989. Official Gazette No. 09, issued 1 March 1989.
- Presidential Decree No. 96/438 of 7 December 1996 promulgating the constitutional amendment approved by referendum on 28 November 1996. Official Gazette No. 76, issued 8 December 1996.
- Rabhi, Ahmad. Constitutional Amendments in Algeria: A Reading of the Process and Outcomes. Dar al-Umma, Algeria, 2012.
- Rivero, Jean. Les libertés publiques. P.U.F., 1981.
- Robert, Jacques. Libertés publiques, Mémento, Dalloz, 8th ed., 1987.
- Sa'd Allah, Omar. Human Rights and Peoples' Rights: The Relationship and Legal Developments. University Publications Office, 2nd ed., Algeria, 1996.
- Sa'd, Nabil Ibrahim. Introduction to Law: Theory of Rights. Halabi Legal Publications, Beirut, 1st ed., 2010.
- Sana, Rabih. Lectures on Public Freedoms. Dar Belkece for Publishing, Algeria, 2018.
- Vasak, Karel. "Pour une troisième génération des droits de l'homme," in Studies and Essays on International Humanitarian Law and the Principles of the Red Cross in Honour of Jean Pictet. Martinus Nijhoff Publishers, The Hague, Netherlands, 1984.
- Zarruqi, Fatima. Constitutional Law: Rights and Freedoms in Algeria. Dar al-Khalduniyya, Algeria, 2010.