



**National Consultative Commission for the Promotion and
Protection of Human Rights**

**Review of the status of the Algerian National Institution
for Human Rights by the Sub-Committee on
Accreditation: Recent data**

Alkarama, October 2010

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1. Introduction

In its latest report, the Accreditation Subcommittee notes that the reports of the National Consultative Commission for the Promotion and Protection of Human Rights – denoted Commission henceforth – are presented to the President of the Republic but not to the Parliament and are not widely disseminated, debated or examined. The Committee for Human Rights and the Committee Against Torture had also made this observation in their examinations of the periodic reports of Algeria in 2007 and 2008. We would like to further point out that, to this day, these reports have not been made available to the public. They are not produced for wider dissemination in print or through a website. The official website of the Commission has, in fact, now disappeared. This website had been idle for some years, with occasional updates such as when the Commission was demoted (four reports were published – see Al Karama’s previous note). The Commission has not had a website at its official URL address <http://cncppdh-dz.org/>¹ since then, and our recent attempts to get some information about the matter from the members of this Algerian institution have been in vain.

Another point raised by the Subcommittee deals with the lack of relations and cooperation with civil society. In previous reports, Alkarama had also raised this issue to show that the president and spokesperson of the Commission prefers to communicate with civil society through the official media. The Commission does not look as an institution with diverse membership and activities, but rather as the monopoly of its president, its sole voice. It almost never organizes meetings with representatives of civil society and less so with human rights organizations. Instead, the Commission seizes every opportunity to discredit them. Mr. Ksentini acts as the official spokesperson of the government on human rights issues as we shall show below.

2. According to Mr. Ksentini, the case of the disappeared is "closed"

Since February 2010, when we reported our recent observations, the Commission has once again drawn opprobrium on itself by the harmful statements of its Chairman against the families of victims of enforced disappearances. On the eve of the fifth anniversary of the promulgation of the Charter for Peace and National Reconciliation, the powers that be decided to close the painful file of enforced disappearances, Mr. Ksentini taking responsibility for representing the security authorities.

Thus the Arabic-language newspaper *El Khabar* announced, on 27 June 2010, that Mr. Ksentini would no longer tolerate protests outside the headquarters of the official body he has been presiding since 2001, and that he had ordered to ban them.² For over ten years, families of the disappeared had been used to meeting before the Commission’s premises to demand "truth and justice" and protest "against forgetting and impunity." These gatherings had been tolerated but after the declaration of Mr. Ksentini, the ban of the protests was enforced. On Wednesday 4 August 2010, an important police force blocked the entrance to the headquarters, and since then all the weekly attempts to gather before the Commission were repressed. The police did not even spare the aging mothers and grandmothers from physical violence as they were harshly pushed away and hit at random by the police. Some other relatives of the disappeared were arrested and beaten up by police without the Commission protesting about this disproportionate repression. Instead, Mr. Ksentini justified the ban on gatherings by stating, on 11 August 2010: "I am against violence in all its forms. It is clear however that if we refer to the law, it prohibits the sit-in."³

1 Our last check was on 3 October 2010.

2 "Ksentini irritated by the families of missing", *El Khabar (in Arabic)*, 27 June 2010.

3 Ghania Oukazi, "Families of the disappeared: a gathering dispersed by the police", *Le Quotidien d’Oran (in French)*, 12 August 2010.

With regards to the case of the disappeared, he insists that it is "closed": "We must go back to the obvious fact that the Charter for Peace and National Reconciliation prohibits us even of speaking about the disappeared. [...] That is the problem! [...] The Charter has the force of law; one should read it to understand that the problem of the disappeared has been dealt with. Their case is closed." And therefore, according to him, the gatherings of the families of the disappeared should no longer be held since the issue of the disappeared has been "solved in 95% of the cases."⁴

The president of the Algerian institution continues to ignore the question of truth and justice, saying: "There are no records or testimonies. As for justice, these families think that it is conceivable that the Algerian state may prosecute some of its agents who allegedly perpetrated these disappearances. How can they be identified? How can one prove the allegations against them? The State does not need to ridicule itself by launching prosecutions it knows are impossible."⁵

3. Ksentini continues to justify the denial of justice

It should be noted that, for the first time, Mr Ksentini refers to specific provisions of the Ordinance implementing the Charter for Peace and National Reconciliation, a law enacted in February 2006 to codify impunity. He claims that "the slogan advocated by the families of the disappeared, 'Truth and Justice', conflicts with the provisions of the Charter of National Reconciliation, in particular Articles 45 and 46."⁶ Families call for the trial of the perpetrators of the enforced disappearances and their commanders, which happen to be military chiefs and politicians in power at the time. Ksentini is aware of this, this is why he says: "Now it happens that Article 45 of the Charter of National Reconciliation, adopted by referendum by 85% of citizens, is absolutely clear since it prohibits any such legal proceedings. So how can I agree with this slogan? I respect the laws."⁷ Article 45 of the Ordinance states: "No prosecution may be initiated against individuals or groups of the defence and security forces of the Republic, all forces included, for actions undertaken in order to protect persons and properties, to safeguard the nation and to preserve the institutions of the Algerian People's Democratic Republic. Any charge or complaint should be declared inadmissible by the competent judicial authority."⁸

It seems ironic that a defender of human rights supports the application of a law that promotes impunity and a statutory provision which punishes the recourse to justice by providing "a term of three (3) years to five (5) years and a fine of 250,000 to 500,000 AD, [to] anyone who by speech, writing or any other act, uses or exploits the wounds of the national tragedy to harm the institutions of the Algerian People's Democratic Republic, weaken the state, harm the good reputation of its agents who served it honourably, or to tarnish the image of Algeria internationally."⁹ This explains why he does not condemn the brutal repression of the families of the disappeared since they challenge the official version of events.

4 Ghania Oukazi, "Families of the disappeared: A gathering dispersed by the police", *Le Quotidien d'Oran*, 12 August 2010.

5 LamiaTagzout, 'Mr Ksentini : "The State does not need to ridicule itself by launching prosecutions it knows are impossible" ', *El Watan*, 13 August 2010.

6 M. B., 'Case of the disappeared: "I will not speak about it again, I promise" ', *Liberté*, 28 August 2010.

7 M. B., 'Case of the disappeared: "I will not speak about it again, I promise" ', *Liberté*, 28 August 2010. He explained during a discussion on human rights: "The provisions of the charter are clear on this subject and especially in their Sections 45 and 46 with regard to the impossibility of prosecuting security forces accused of carrying out abductions since the evidence does not exist and this happened at a time of political confusion where the state was threatened with collapse." In TMA, 'Human Rights: The issue of human rights in Algeria is following a quite favourable course', *El Moudjahid*, August 27, 2010.

8 Ordinance n°06-01 of 28 Muharram 1427 (corresponding to 27 February 2006) to implement the Charter for Peace and National Reconciliation.

9 Ordinance n°06-01 of 28 Muharram 1427 (corresponding to 27 February 2006) to implement the Charter for Peace and National Reconciliation.

4. From a "national reconciliation" to a general amnesty

While the overwhelming majority of Algerians agree about the need for reconciliation, its content is not unanimous. The Ordinance implementing the Charter has been widely criticized not only by human rights organizations but also by the Committees of human rights and against torture. In their final observations, the latter expressed a great concern about certain provisions of the Ordinance implementing the "Charter for Peace and National Reconciliation", in particular those relating to the immunity from prosecution in cases of "crimes such as torture, including rape, and enforced disappearance which are not subject to statutory limitation." They advocate that "the State party should take without delay all necessary measures" to ensure that these crimes, past or recent, "are subject to systematic and impartial investigations, that perpetrators are prosecuted and punished (...)." ¹⁰

However, Mr. Ksentini acts as a staunch defender of the official view of "national reconciliation". He dismisses all these criticisms, be they political or legal. He considers that "the motivation of this charter is political", and "honestly, [that] this is the only way for the return to civil peace. It is a blueprint for a society based on brotherhood and unity." He considers the text "of extreme generosity, and based on forgiveness." Ksentini goes on to say: "If I were to choose between the country's future and justice, I would choose the country's future." ¹¹

Today, the Commission calls for a general amnesty. At a discussion about this issue before the promulgation of the Charter, Mr. Hocine Khaldoun, Chairman of the Sub-Committee of Legal Affairs at the Commission, explained that "the general amnesty is simply an extension of a process that began with the civil concord, and then evolved into a national reconciliation and has now reached a general amnesty. Algerians have a civil responsibility for contributing to promoting it within the population." ¹²

Voicing the problem raised by the families of the disappeared, a reporter once asked: "Without truth and justice, would it be possible to establish a peace in which minds are appeased and wounds are healed?" Me Ksentini answered: "Justice and truth is a matter for historians, not politicians." ¹³ It is true that, according to him, "now, we have yet to turn the page once for all and forget the black decade. The main purpose of man's memory is to forget, not remember." ¹⁴

Mr Ksentini, NGOs and the UN

It should not be forgotten that Mr Ksentini had openly accused the UN Committee of Human Rights of "siding in the past with terrorism against Algeria." ¹⁵ In recent months, the President of the Commission made contradictory statements about possible visits of the country by human rights NGOs and UN special rapporteurs. The press reported on 25 August 2010 that Mr Ksentini had confirmed that "a dozen governmental organizations, from France, the United States, Canada and Morocco, as well as any other

10 Committee Against Torture, Final Observations, CAT/C/DZA/CO/3, 15 May 2008, para 11.

11 Ghania Oukazi, 'Ksentini and human rights, terrorism, alienation and second generation terrorism', *Le Quotidien d'Oran*, 31 December 2007.

12 Tahar Mohamed Al Anouar, 'Roundtable on national reconciliation and general amnesty at the press centre of El Moudjahid', *El Moudjahid*, 8 May 2005.

13 Nissa Hammadi, Farouk Ksentini spells out his idea on general amnesty: "The reasonable time has come to end [the conflict]", *Liberté*, 3 September 2009.

14 Lamia Tagzout, 'Mr Ksentini : "The State does not need to ridicule itself by launching prosecutions it knows are impossible" ', *El Watan*, 13 August 2010.

15 Djamel B., 'Farouk Ksentini : "There are no secret prisons in Algeria" ', *Le Quotidien d'Oran*, 4 November 2007.

nongovernmental organizations active in defending human rights, can now visit and operate in Algeria." He had even explained that "instructions were given to Algerian diplomatic representations to facilitate the granting of visas to any NGO which so requests." Asked about the identity of these NGOs, he had mentioned the International Federation of Human Rights (FIDH), Human Rights Watch (HRW) and Amnesty International. He had added that "Algeria wants to prove that it is under the rule of law" and that the prison doors "are open" to these NGOs. "We want to show that there are no secret detention facilities.¹⁶ NGOs will be able to go wherever they want, we will take them without hesitation. They will have to confront their sources which have accused Algeria of having secret prisons."¹⁷

However, two days later he said: "NGOs have not yet been allowed to come. Algeria has broken with the NGOs which supported terrorism." He stated further that these NGOs "will have to apologize to the people and government of Algeria"¹⁸. He added however that "the Prime Minister decide recently to invite the UN rapporteurs on human rights and institutions of human rights belonging to other countries." He described this decision as "extremely important", "considerable progress" and "substantial."¹⁹ But this announcement is nothing new since Mr. Mourad Medelci, the Algerian Foreign Minister, had announced, on 1 March 2010 before the UN Council for Human Rights, that as early as 2010 seven special rapporteurs would be invited to visit Algeria. The Special Rapporteurs invited are those dealing with violence against women, the right to education, right to physical and mental health, the right to food, the right to adequate housing and the right to access to safe water and sanitation. However, the rapporteurs in charge of the most sensitive issues - torture, extrajudicial executions, enforced and involuntary disappearances, promotion and protection of human rights in the fight against terrorism - are not invited. Fifteen years on, they are still waiting for some special procedures to be completed for them to be able to visit the country.

16 All reports of NGOs as well as the Concluding Observations of the Committees report the practice of incommunicado detention.

17 Mohamed Mehdi, 'According to Ksentini: Ouyahia's green light for NGOs', *Le Quotidien d'Oran*, 25 August 2010.

18 Rafik Tadjer, 'Algeria invites the UN Special Rapporteurs, but international NGOs are still undesirable', *Tout sur l'Algérie*, 27 August 2010

19 TMA, Droits de l'homme : La question des droits de l'homme en Algérie suit un cours tout à fait favorable, *El Moudjahid*, 27 août 2010.