

SEMINAR'S ACTS «FOR TRUTH, PEACE AND CONCILIATION»

Brussels 18th - 19th march 2007

Organization's committee

(CFDA, SOS Disparus, FIDH, Djazai'rouna, ANFD and Somoud)

«Governments are obliged under international law to carry out exhaustive and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish their perpetrators, to grant compensation to the victims or their families, and to take effective measures to avoid future recurrence of such violations.»

Bacre Waly Ndiaye¹

¹ Special Rapporteur on Extrajudicial, summary or arbitrary executions, Report on the 7th December 1993, E/CN.4/1994/7, §§688 and 711

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PRESENTATION AND THANKS

Nassera Dutour¹

First of all, I would like to thank the International Federation of the Human Rights Leagues (FIDH) which has allowed us to meet here in Brussels. I would also like to thank the Catalan Agency for the cooperation and the development (ACCD), from Barcelona, for his financial support, given to the forbidden seminar which was supposed to take place in Algiers.

The principal aim of this seminar is to open a dialog with the Algerian authorities to obtain the truth in order to participate to the reconstruction of the Algerian society.

Our wish was to hold this seminar in Algeria, to lead a reflection and to reach a common solution, decided by the Algerian, in their country. We hoped that this seminar would lead as quickly as possible to the truth, the peace and the conciliation.



Phohibited Seminar in Algiers

It seems that this initiative was disagreeable to the Algerian authorities. On the "D" day, at 8 am, the superintendent of the region came and urged us to quit. We have tried to negotiate; we have called for help Mr Ksentini, chairman of the CNCPPDH. We have resisted for more than two hours. Then, the superintendent came with the hotel's director. This latter urged is employees to turn off the light. They have left us in a complete black out.

Nevertheless, we were determined to obtain to the truth about the crimes committed during the armed conflict which has devastated Algeria during one decade. It is why we have decided to transfer the forbidden seminar to Brussels. It is also why the aims of the seminar are still the same.

This seminar has to be a place where we, the Algerians, can exchange and understand. We have to find together the solutions to rebuild our society on healthy

¹ Founding member and spokesman of the CFDA.

basis, where violence and impunity will not exist anymore.

To accept the national reconciliation, as dictated by the Algerian authorities, means to add one more stone the wall of oblivion and silence.

Obviously, the justice can't be done if some persons are still deprived of their fundamental rights, if the government and its allies close their eyes on the human rights violations. The only way is to establish a constructive dialog to restore the trust between the Algerian people and his leaders.

Unfortunately, as the seminar's ban has demonstrated it, the authorities reject any form of reflection or solution coming from the population. The refusal of any dialog with the civil society, in particular the victims of the terrorism and the families of the disappeared, has to be analyzed as the expression of a will to ignore the pain of our population.

This seminar has to be considered as an essential step towards the establishment of a truth commission. It is a determining factor as it is the first time we will consider the needs for truth and reparation expressed by the Algerian people. It is necessary to re-establish the truth for the victims' families. They live with this painful suffering: they don't know where are their fathers, their brothers, their sons, their daughters, their husbands. The families of the disappeared hope to see again their relatives alive. They also want to know. We have to re-establish the truth in order to end their pain and to reduce their trauma.

What future for a son who has seen is father murdered? How a wife can continue her life when she has seen her husband kidnapped? All these haunting questions are worrying the one who stay; these questions are a truth torture. My son Amine has been arrested on January 30rd 1990 and since then, he is disappeared... One day, the police came, arrested one of your sons, and then, no more news. You don't have the right to know! My son wanted to live! The President then calls us as professional mourners. We will keep on making him ashamed until we know the truth!

The families are tormented by many wills and needs: to leave, to know, to see again their relatives, etc. In addition to this psychological trauma, the families are also living with the intimidation and the fear of reprisals. As a consequence, they are confined in their distress and their loneliness. Living this wayside cross since too many years, they are exhausted but they don't want to give in to fate: they won't give up their struggle for the truth. The families don't wreak vengeance on the executioners. They want to know the truth on their relatives in order to dress their wounds.

This seek for the truth is indispensable and recognized by the international law as the “right to know and the right to the truth” for the victims’ families. A right also means a duty: for the Algerian government, it is to say the truth on all the crimes committed during the civil war and to make amends. The reparation has to be not only material but also moral. However, the reparation is credible only if it is based on the truth. Then, the recognition of the victims’ status means: to recover their honour, to be rehabilitated physically, psychologically, professionally and judicially.

Today, the Algerian people are ready to face his history, marked by a power which led us from State’s violence to Islam’s exploiting and fundamentalists’ violence.

Today, it appears essential to establish a truth commission in order to take care of the victims and to find a fair solution for all the crimes of the past. Since 30 years, with some variable results, the transitional justice has allowed the rebuilding of many countries.

One other aim of this seminar, besides to open a dialog and to establish a truth commission, is to discuss on the basic elements which are necessary for the Commission and to define its role. This seminar is the first consultation which has grouped together the victims, the civil society and the national and international experts. Firstly, we will hand over to the victims in order to define the human rights violations which will determinate the object of the Commission’s mandate.

It is also about to have an influence on the positions taken by the Algerian authorities. The determining element to obtain a truth commission is the political will. This approach will give us the possibility to discuss on the difficulties generated by the Algerian law for all the victims.

A truth commission has many aims but the main one is to clear up the events, that is to say, to establish a truth and a common history of the human rights violations. A truth commission is also a way to reunify a country divided and torn by the war. It can also help to calm down the dissensions and encourage the reconciliation.

The success of a truth commission depends on its independence and its neutrality. The truth commission must have some effective powers to act properly.

The experts will then tell us about the different transitional justice experiences, which have taken place throughout the world. On this basis, we will be able to understand which progress the Algerians have to accomplish and which reef they have to avoid.

BREAKING THE WALLS OF IMPUNITY IS NO MORE A DREAM...

Luis Guillermo Perez Casas²

I would like to share with you some experiences of our fight against impunity in Latin America. I would like to start by quoting Gabriel García Marquez, after he received the 1982 Nobel Prize in Literature:

“A promising president; shut away in his palace on fire, died as he fought alone a whole army, whereas two suspicious and never elucidated air disasters put an end to the lives of a good-hearted president and a military democratic leader who succeeded in restoring the dignity of his people.

During these times, five wars triggered off, and 17 coups d'état were orchestrated. A devilish dictator, who in the name of God, set up the first ethnocide in modern Latin America. During this time, twenty million Latin American children died before they turned two. This is more than the total of Western Europe's newborns since the 1970s. About 120.000 is the number of individuals missing due to repression. It is as if today no one knew where the inhabitants of the town Upsala were. Many pregnant women who had been arrested delivered inside the prisons of Argentina, today we still ignore the destiny and identity of their children, who were given adopted clandestinely or were placed in orphanages by the military authorities. Because they said no to this situation, some 200.000 women and men across Latin America lost their lives and more than 100.000 died in three small and voluntary countries of Central America: Nicaragua, Guatemala and El Salvador. If this had happened in the United States, the proportional figure would be some 1.600.000 violent deaths in 4 years.

In Chile, a country of hospitable tradition, nearly one million people fled away, that is 10% of the population. Uruguay, which was regarded as the most civilized nation in the continent, lost one fifth of its 2 million population 'in the battle'. Since 1979, El Salvador's civil war kills almost 1 refugee every twenty minutes. The country we could build with the population of exiled people and forced immigrants of Latin America would have a population bigger than Norway's.”

This quotation is taken from the speech entitled “*the Solitude of Latin America*”.

When he mentions the energetic president, he is referring to Salvador Allende, dead on September 11th, 1973 while defending the popular will and the democratic values of the Chilean nation. He was overthrown by Augusto Pinochet,

² Secrétaire Général de la FIDH.

who died without ever being condemned by a court. But history and the human conscience will never forget what he did.

When Garcia Marquez speaks about the suspicious air disasters, he is referring to the non elucidated deaths of two progressist presidents in the region: Jaime Roldos, president of Ecuador and Omar Torrijos, de facto leader of Panama. Both refused to accept the US hegemony over the destiny of their people.

When he mentions a devilish dictator, he is making reference to Efraín Ríos Mont, who in two years of dictatorship, was able to carry out genocidal practices against the Maya communities in Guatemala. However, 25 years later, this very man, who chaired over the Guatemala Congress, is still the head of the party belonging to the alliance of the current president.

When Garcia Marquez was talking about the hundreds of thousands of assassinations and missing individuals on this continent, he could not foresee that the United States would invade Panama, and bombard its popular neighbourhoods, killing thousands of people in order to put in jail a hardworking student employed by the CIA, who had become uncontrollable. He could not imagine either that the US aggression against Nicaragua would only end eight years later after the forced failure of the Sandinistas in the elections. He could not imagine that the war in El Salvador would continue to take the lives of thousands of people until the 1991 peace agreements were signed and that in Guatemala, in spite of the end of the armed resistance in 1996, the peace agreements would still not be implemented and only terror would reign. At that time, Gabriel Garcia Marquez could not take into account the tens of thousands of victims generated by the popular war, prolonged by the Luminous Path and by the State's counter-repression. These assassinations were detailed in the report of the Peruvian Truth and Reconciliation Commission. He could not know either that the popularity of Alberto Fujimori and his shadow Vladimiro Mont - also a CIA employee - would build on the serious war crimes of the insurgent groups. He could not know that the first of these criminals would flee away to Japan although his extradition was required and that Interpol would look for him, and that finally he would be arrested in Chile and extradited to Peru. Today he is being tried for his crimes in Peru.

He couldn't imagine that in Colombia, his homeland, we would go from the practices of massive torture and generalized detention to scorched earth policy, executions, massacres and endless enforced disappearances. These practices led almost four million Colombians to forced displacement and exile. 30.000 individuals were reported as missing. In Colombia, we also went from the dirty war of the armed forces to the blatant paramilitarisation of the country. The paramilita-

ries not only control vast areas of the country but also whole pieces of the public authorities. Impunity is common currency. No one in power cares about the fate of the four million displaced or missing persons.

The serious violations of international humanitarian law and the international crimes committed by the guerrilla, namely sequestration for political or economic reasons are one of the causes of the regime of Alvaro Uribe Velez. Not only did he want to rebuild a Fujimori-like regime in Colombia, granting total impunity to the paramilitaries who committed and are still committing the most atrocious crimes against humanity in the continent, but also through the Plan Colombia, and the promotion of the Andean Regional Initiative, to consolidate the US hegemony in the region

After September 11th, 1973, the future of Latin America became deeply obscured. After September 11th, 2001, the future of mankind altogether has become uncertain. The Nixon and Kissinger administration was responsible for the first September 11th; wasn't the United States co-responsible for the second one? We know, to say the least, that Bin Laden was another CIA student, who was a US ally when the Soviets were in Afghanistan.

In many countries of Latin America which have gone through long and cruel military dictatorships or armed conflicts, amnesty and national reconciliation laws have flourished. These laws which were described as self-amnesties or impunity laws brushed off the heavy persecutions, disappearances, extrajudicial executions committed in the past; and prevented any investigations, legal proceedings, or judgment of the guilty. The price of transition to democracy or peace, we were told, was the abdication of memory and justice.

In Argentina, the exemplary fight of the «Abuelas de Plaza de Mayo» (the Grandmother of the Plaza de Mayo) and other victims' and human rights organizations triggered off an irreversible movement for the fight against impunity. Since then, putting an end to the impunity of torturers and all those who were responsible for serious human rights abuse became everywhere a paramount goal of all human rights advocates, be they professionals or activists. Impunity laws were cancelled and hundreds of military men were tried and sent to prison.

The fight for truth till justice is established never stops. Only the victims have the right to grant forgiveness and reconciliation. These can come only after a fair trial, a trial that really takes into consideration the victims, the culprits' confessions and equitable retribution.

The victims continue to build collective memory monuments, organize and mobilize themselves in Uruguay, Peru, Colombia, Guatemala and El Salvador.

They do not give up, they are not demobilized. They inquire, denounce, and summon their countries' justice. Our role as the International Federation for Human Rights is to support them through our leagues and to echo these fights at the international level.

Crimes cannot be forgotten, we cannot turn the page. Defying the official power always means that we are taking risks. What matters is that the victims still find the strength to pursue their fight.

At this moment, I want to pay tribute to those who resisted, to those who are still resisting to keep alive the human memory and dignity, to those who cannot any more be with us because their life and freedom were sacrificed: I think of Marianela García Villa, President of El Salvador's Human Rights Commission, and FIDH Vice-President, assassinated in 1983; I think of her successors, Herbert Anaya and Myriam Anaya, assassinated in 1987; of Josué Giraldo Cardona, President of the Human Rights Committee of the Meta Department in Colombia, assassinated in 1996, of Mario Calderon and Elsa ALVARADO, CINEP leaders, assassinated in Colombia in 1997, I think of our Colombian friend, lawyer and defender, Eduardo Umaña MENDOZA, assassinated in 1998, of Jesús María Vaille JARAMILLO, assassinated in 1998, etc.

At the time the victims and human rights defenders are being attracted towards the eye of the cyclone, we must, more than ever, be at their side. This is the reason why I am here, with the families of victims from North Africa, the families of all the victims of conflicts or repressions in Algeria, Morocco or Tunisia. It is thanks to you that we are here, that we are calling for a truth-based reconciliation process, and that the perpetrators of serious crimes against humanity are requesting forgiveness from the victims. But how can we forgive if these criminals did not even repent? Symbolic reparations are not sufficient. The will to continue the fight in Latin America has always been present.

For us, this fight for the defence of human rights is a commitment we are not to give up. It is thanks to this feeling of solidarity that we keep the hope that things will change. In Latin America, we were able to break silence, oblivion and the walls of immunity. The torturers should not die quietly. The goal is that these torturers could no longer be able to commit such crimes and that their abuses would never occur again. Our message is about transformation and hope. This is in our heart and in our intelligence: it is the need to continue the fight and to work together. We do not fight with revenge-filled hearts, but with social love and justice, to push forward the rule of law and democracy. We need to promote the enforcement and protection of the rights enshrined in the Universal Declaration of Human Rights!

MASSIVE HUMAN RIGHTS VIOLATIONS AND TRANSITIONAL JUSTICE

Madjid Benchikh³

The issue of transitional justice is inextricably related to massive human rights violations. In fact, it is often brought to the front when, following violent conflicts, particularly internal ones, the massive violations of human rights inflicted on the population could not be referred before legitimate and competent legal institutions.

Internal conflicts emerge out of the inability of the State and its leaders to find appropriate responses to the political, economic and social demands of the population. Violence that comes from such conflict usually leads to massive violations of human rights that the State's courts cannot process in an independent and equitable way or in accordance with international law.

The discredit surrounding the State's institutions, particularly its judicial system, are at the origin of the creation of what is known as transitional justice institutions, even though this name should be explained further. In fact, the term "*transitional*" means that the State is in transition or in the course of transformation, going from an authoritative political system to a more open and increasingly democratic one. Yet, this term also implies a "*transition*" that is in a provisional situation with reforms still to come. The remaining problem, however, is that this form of justice varies from one country to another and does not always express true transitional processes towards democracy and the rule of law.

In defining transitional justice, Mark Freeman⁴ says that: "*generally speaking, transitional justice is mainly centred on the way in which societies that are going from war to peace or from an authoritarian regime to democracy have dealt with the legacy of massive exactions*".

At the same time, dealing with the inability of a repressive authoritative State to set up a credible justice system for the damages caused by policies of massive human rights violations requires proposing alternative solutions, which are not comparable to an official justice system.

*In his report entitled "The rule of law and transitional justice in conflict and post-conflict societies"*⁵, the UN Secretary General points out that: "*Our experience*

³ Former dean of the Algiers Faculty of Law; professor emeritus at the university of Cergy-Pontoise (Paris-Valley-D'Oise).

⁴ Freeman (M.), what is transitional justice, International Centre for Transitional Justice, High Commission for Human Rights, Brussels, 2003, p. 1.

⁵ UN Security Council. S 2004/616. August 23, 2004.

in the past decade has demonstrated clearly that the consolidation of peace in the immediate post-conflict period, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice.”

Along the same line proposed by the UN Secretary General, we can thus affirm that in order to leave behind violence for good, we should lay down compensation measures for the damage suffered by victims of human rights violations, apart from the legal system of the State.

Transitional justice can thus include an extremely broad panorama of more or less institutional measures. For instance, on the international level, we may include many different organizations such as the ad-hoc tribunals for the former Yugoslavia and Rwanda, or international investigation commissions. On the national level, there are several commissions, which are based on more or less explicit compromise between the government and other organizations, in charge of establishing the truth and recommending political, economic or financial measures in order to repair serious human rights abuses and prevent the occurrence of new violations.

We should note that this last form of transitional justice is illustrated by the creation of bodies known by their generic name of “truth commissions”. These commissions (about 30 in total) were tested under various conditions, form and content, in different parts of the world, namely in South Africa, Argentina, Chile, Peru, Ghana, Sierra Leone, Sri Lanka, East Timor and more recently in Morocco⁶.

We should examine the consistency and contributions of this form of transitional justice within our search for solutions to address the damages and deplorable situations created by internal conflicts. But to understand the contribution of truth commissions, it is necessary to focus, initially, on the political, economic and social conditions which led to their creation. Here we need to examine the post-conflict situation of the countries concerned shortly after the end of the internal strife.

⁶ Other commissions can be cited, such as international investigation commissions, set up by the UN to investigate genocides, war crimes, crimes against humanity, as in Ex-Yugoslavia, Burundi and Rwanda. There are also national investigation commissions in North Ireland, set up in the late 1990s, in Honduras in 1993, and the commission for history evaluation and the consequences of the SED dictatorship, a socialist party of East Germany after the end of the communist regime.

/ THE POST-CONFLICT INSTITUTIONAL SITUATION:

It is obvious that no government with strong socio-political and official institutions will resort to transitional justice established under compromises with the forces of opposition or the international community.

Internal conflicts may end in different ways. They can result in a more or less clear victory of one of the parties, which put aside compromise with the other opponents. In Chile during Pinochet's government, in Argentina under the reign of the Army Generals or in Algeria within the framework of the current façade democracy, the government-controlled judiciary system is only entitled to settle disagreements. There is no place for "truth commissions," which would call into question actions committed not only by the opposition groups, but also by government policies. We will examine here the reasons behind the rejection, by certain governments, of "truth commissions". We will examine in this case the difficulties and obstacles to overcome before achieving social peace and national reconciliation.

Rejection of transitional solutions:

Here, we will only discuss projects of "truth commissions", even though certain governments may unilaterally accept or promote measures they define as solutions to repairing the damage and addressing conflict-generated situations. Thus, in Algeria, there is still a rejection of any idea that calls for the creation of a "truth commission". Nevertheless, the Head of State succeeded in adopting, by referendum on September 29th, 2005 "the Charter for Peace and National Reconciliation". The content and conditions under which this charter was adopted show how such rejection of "truth commissions" is expressed.

The idea of adopting a charter for peace and reconciliation started to be discussed in Algeria after the Islamist armed groups began to lose their battle for an Islamic State. In fact, this new policy primarily originated in the military, which the Head of State, in accordance with the spirit of the Algerian political system, would later advocate as his own.

No political party opposing the measures developed by the charter took part in its elaboration. During the referendum's electoral campaign, no one opposing the charter was able to express himself on television or radio, which are both under State control. Families and associations of missing individuals, as well as different human rights NGOs, were sometimes chased in the streets while trying to express their opposition. In fact, the Algerian political system has never allowed the opposition to express itself in the State-dominated media during times of re-

ferendums organized by the official authorities. In Algeria, with the support of the military, a referendum is only an instrument intended to show that everyone is supporting the government, its policies and its institutions.⁷

Parties participating in the government supported the charter, even though they did not take part in designing it.

As for the armed groups, many of them surrendered themselves to the military authorities after negotiations conducted by the army with chiefs since 1997.

The charter's content demonstrates clearly that the military had largely dictated several measures which were included. Indeed, the charter starts by praising the security policies and the army's action during the Algerian domestic conflict. As a result, the violations the army was accused of by major human rights NGO's were ignored. In addition, many crimes committed by the Islamist groups were also largely amnestied.

The Charter for Peace and National Reconciliation and its enforcement law, adopted in 2006, are diametrically in contradiction with the essence of "truth commissions". No independent and impartial investigation is considered. The only recognized truth is the one advanced by the military, which is the true power-holder in Algeria. However, in addition to the obvious human rights violations that NGO's⁸ such as Amnesty International, Human Rights Watch, the International Federation of Human Rights or Reporters Without Borders accused government forces of, there are several question marks on certain massacres and assassinations of communities and personalities such as Mohamed BOUDIAF, who was brought by the military to take the place of the President of the Republic who was ousted in 1992.

The amnesty granted to the perpetrators of assassinations, torture and enforced disappearances, after they had given up their weapons, in accordance with the law, aims to turn the page and establish peace and reconciliation. The Charter for Peace and National Reconciliation thus pursues goals comparable to those sought by "truth commissions". But as we said in the Algerian press, reconciliation cannot be obtained by diktats, and today the Algerian army still has to deal with attacks and ambushes. The authoritative system by which rulers impose their measures not only indicates how restricted the objectives of peace and reconciliation are, but also reveals the persistence of a political sys-

⁷ Benchikh (M.), *Algérie: un système politique militarisé* (Algeria: A Militarized Political System), Paris, Harmattan, 2003.

⁸ There is a large number of publications on human rights violations in Algeria. See the different reports of Amnesty International and the above mentioned NGOs. See the "livres noirs sur l'Algérie" (Algeria Black Book), published by la Découverte in 1996, 1997 and 2003, Paris.

tem that has nothing to do with a true democratic transition démocratique.⁹ In the Algerian case, the rejection of the “truth commission” shows that the balance of power is in favour of the military, giving birth to measures dictated by the conflict’s winner without any transformation in the political system.

In other cases, the rejection of “truth commissions” that are proposed to clarify the massive human rights violations can be explained by other balances of power. In Spain, for example, the defeat of the Republicans did not allow the establishment of a “truth commission” because the winners were glorified, whereas the losers were seen as damned. It was only after General FRANCO’s death that the will to establish a truth commission began to emerge, but with some hesitation. The 1977 amnesty, which benefited all authors of the civil war crimes, falls into this same scope even though it puts together forces that are hard to compare.

In Spain, Algeria, Chile, South Africa and elsewhere, the search for truth is closely related to the evolution of the balance of power within these societies.

In Spain, the change in the balance of power, manifested by the consolidation of democracy and the adhesion to the European Community, did not help to establish the truth completely. Only recently, there have been political forces advocating a more systematic rehabilitation of the republican victims.

Several reasons can explain why it is difficult to establish the truth, to discuss it and to draw conclusions from it, as in the cases of genuine “truth commissions”. The fragility of the balance of power in favour of truth can be explained, in Spain as well as elsewhere, by the conditions marking its first steps. The establishment of truth may generate fears from upheavals, within a Spanish and international climate, in which there are no forces able to lead them to destroy the old order, and most importantly to build a new one. Time will help. In Spain, as in other countries, many people think that it would be dangerous to stir up the past.

Restructuring political parties and associations, or even the society itself, takes place according to lines and options that do not comply with the fractures and values that fuelled the civil war.¹⁰ The major political parties of 21st century Spain have complex views and intersecting interests with regards to the civil war and the crimes it generated.

⁹ Sur toutes les questions relatives au système politique algérien. Voir, BENCHIKH (M.), *Algérie : un système politique militarisé*, Paris, L'Harmattan, 2003.

¹⁰ Many books were published in France about the Spanish civil war. See PEPIN (P.), *Histoire intime de la guerre d'Espagne*, MACIAS (S.), *Les fosses du franquisme*. A very interesting program was broadcasted on September 10 2006 in France via the France Inter Radio on the search for truth, the issue of reintegrating republican victims, common gaps, and disappearances and massacres. See also the Figaro newspaper, dated 25/09/06.

In Chile, the different developments in the PINOCHET affair strongly proved that if the forces in support of the search for truth are able to let themselves be heard, the other forces protecting the criminals of the dictatorial regime will remain powerful.

In light of these developments, there still remain questions relating to certain legal concepts on the border of national and international law. As in other countries, Algeria and Chile frequently put forward the sovereignty of the State in order to reject any truth-seeking effort other than the one conducted by their governments. The sovereignty exerted by repressive governments produces an expeditious interpretation of international conventions relating to genocide, war crimes and crimes against humanity¹¹ and the non-applicability of statutory limitations of these crimes¹²

When crimes to which the statute of limitations does not apply are the subject of amnesty laws, without the intervention of truth commissions through which victims would feel they are represented, we may wonder whether there has been a very selective interpretation of the peoples' right to self-determination. These interpretations of sovereignty and the right to self-determination, by privileging the role and place of the State, forget the main objectives of defending and safeguarding the freedom of people at the centre of these concepts and are their very fundamental.¹³ When the basic rights of a large part of the population are denied, enjoying the right to self-determination has, for them, lost its significance. The State and the sovereignty exerted by it in the name of the people seem, then, very far from the aspirations of the majority of the people. Peace restored only by force, without truth, reparation or political transformation cannot solve the existing problems. The situation is obviously different in countries where real truth commissions have been established.

/ CONDITIONS FOR THE CREATION OF “TRUTH COMMISSIONS”:

It is not possible to review the conditions behind the creation, implementation and success of “truth commissions”. In fact, each “truth commission” is likely to establish truth and contribute to peace and reconciliation if its advocates try to take account of the essential characteristics which mark the society, the po-

¹¹ See the 1949 Geneva Convention and the additional 1 and 2 protocols of 1977, as well as the Convention of July 17, 1998 considered as the statute of the International Criminal Court, especially Articles 6, 7 and 8.

¹² See the Convention of November 26, 1986 on the non-applicability of the statutory limitations of war crimes and crimes against humanity.

¹³ On the different conceptions present in the international community with regard to sovereignty of States and the rights of peoples, see our contribution to the mélanges in honour of Professor Jean SALMON, Brussels, Bruylant. 2007

litical scene and living conditions of the population and particularly of the main actors. This is a delicate venture. Each case is special. However, we can note the conditions which must be necessarily met so that these commissions can have higher chances of success.

The necessity to obtain a compromise

The first requirement is the existence of a compromise between the main socio-political actors. This condition is met when each force involved understands that it cannot, alone, impose its truth or solutions to the crisis generated by the internal conflict without paying a price it cannot afford. This compromise can be implicit or explicit and can be formulated in a peace agreement or other sorts of agreements putting an end to the conflict, with or without the intervention of an international organization as in East Timor, Sri Lanka, Sierra Leone or elsewhere.

On the creation of the famous South African Truth and Reconciliation Commission in 1994, compromise resulted from negotiations promoted by President MANDELA and former President DE KLERK. The main outcome of this compromise revolved around their respective balance of power and the advantages that the African National Congress and the economic and political forces of the white power believed they could take out from the creation of a commission that could contribute to the stability of the new regime, and to the reconciliation or at least pacification of the social relations, which were essential for the country's economic development. There are many examples we can mention that show the need for an explicit or implicit compromise between the opposing forces for the creation of a truth commission.

In certain cases, the creation of a truth commission seems granted by the political power. This is the case for instance in Morocco. The creation of the «Instance Équité et Réconciliation» (I.E.R), is largely due to the will of his Majesty King MOHAMED VI to differentiate himself from the heritage of his father HASSAN II, whose legacy was full of human rights violations. However, some Moroccan NGOs and independent personalities took part in designing this project and thus in negotiating the powers of this newly-created body. Truth was not accepted in the denomination, but it is a question of making truth over a period of the history of Morocco. Even though on the Moroccan political scene, the place and role of the King and the Makhzen remain dominant, the increasing claims among the civil society and the requirements related to international relations led the authorities to accept this commission. Also, the balance of power obliged a section of the civil society to be content with a commission that has limited prerogatives, particularly with regard to the delimita-

tion of personal or institutional responsibilities in the crime commission.

The requirement for a compromise is obviously translated into the composition and powers of the commissions, which are demonstrated by examining their credibility. Compromise is not enough. It must give rise to a credible truth commission, given that the judiciary bodies cannot alone ensure independent and impartial justice.

Credibility of truth commissions

This credibility can be acquired in different ways according to the situation of the country and the existing problems. Of course, we cannot review them all here.

The creation of a truth commission must be backed by an effective will to establish truth. Without such will, which must feed the main actors, the commission will be tampered and the set goals will not be reached.

Certainly, it is quite normal that everyone tries to influence the commission to impose the truth and reject the evidence which shows the violations in which they are involved. Such tampering can be as gross as in the creation of a truth commission by the dictator Idi Amin DADA in Uganda. But even in the case of commissions which are regarded as serious TRCs, as in South Africa, the parties involved, such as the African National Congress, the party in power on the one hand, and several personalities of the former white power and the Inkata party of the Buthelezi leader on the other, tried to attract the commission towards their own positions, since they failed to reduce its influence or discredit it.¹⁴

The credibility of a truth commission is essential to pursuing the goals of peace and reconciliation which their advocates are trying to accomplish. This credibility can be met only if the commission is composed of well known personalities that are considered as just, competent individuals with high moral standards. A serious membership can constitute a guarantee for the audience and success of this venture. The president of the South African commission, Desmond TUTU, a figure of well-established moral authority, the requirements for the selection of commission members in other cases and sometimes the UN intervention in this selection, and the presence of former known and independent missing individuals in the Moroccan commission are all factors that help consolidate the commissions' authority, even though all of them can be criticized.

¹⁴ On the different problems and several tampering attempts that « truth commissions » have to deal with, see Amnesty International's website: www.amnesty.org/library/print/FRAAFRS30012003. See especially the reports of Amnesty International and Human Rights Watch, index AI afr 53/001/2003 February 2003. See also the symposium held in the Free University of Brussels by the International Centre for Transitional Justice and especially the contributions of Mark Freeman and Priscilla Hayner.

The credibility of a truth commission also depends on the powers and means we agree to give it. The commission must have a clear mandate that enables it to seek truth and establish it thanks to the powers of investigation both among the citizens as well as the civil and military authorities. Access to documents and proofs must be facilitated by the suitable legal instruments.

The credibility of the commission also depends on the relationships of trust, respect, seriousness and dignity that it establishes with the victims, their families, and the witnesses. In fact, the cCommission must be able to obtain cooperation of the society or even the international community, in particular NGOs working for the protection of human rights. The Commission's credibility and how it will be received locally and abroad thus depend both on the means it has been endowed as well as on its own qualities and work.

The measures taken in Chile with the creation of a national bureau for reparation and reconciliation, in Guatemala with the creation of the foundation for peace and harmony, in El Salvador with various reform measures, all prove that the commissions' recommendations have been taken into consideration. The credibility of a truth commission can be felt; when during its work security services detain, in violation of international conventions, citizens without trial and make use of torture and enforced disappearances. Thus, the credibility of Morocco's I.E.R has been criticised by its opponents, who make reference to the obvious violations of human rights, namely the use of torture, enforced disappearances and unfair trials subsequent to the Islamists' attacks of Casablanca in April 2003. In addition to the requirements which must be met for the creation of "truth Commissions", we should examine their objectives in order to evaluate properly their contributions.

/ OBJECTIVES AND CONTRIBUTIONS OF TRUTH COMMISSIONS

Truth Commissions must be differentiated from investigation boards and courts, especially in terms of objectives and contributions.

Identification of objectives

Truth Commissions are not mere investigation boards in charge of collecting facts in relating certain events. Investigation boards certainly have an objective that corresponds to truth Commissions by seeking the truth and carrying out investigations. In both cases, the establishment of truth can identify the responsibilities of the violations' authors. But, while the mission of truth Commissions is to

establish truth, their objectives remain broader. The scope of their objectives has an effect on the place and role of truth Commissions, which cover political as well as social and ethical dimensions that investigation boards do not have.

It is true that like truth Commissions, investigation boards can face credibility problems. In cases of authoritative political systems, as in Algeria, the government establishes and annuls investigation boards and often does not publish the reports they make, as was the case during faked elections or assassinations of political figures. Thus, in Algeria, the report on enforced disappearances, made by a Commission appointed by the Head of State, was not published because, despite all precautions, it was understood from the speech of the Commission's president that the security services were responsible for more than 6,100 enforced disappearances between 1992 and 2005. We think that the military is not ready to recognize its responsibility in this respect, as claimed by the Charter for Peace and Reconciliation, which describes the action of the security services as a domestic policy for protecting the Nation and preserving democracy.

There may be investigation boards endowed with a broader scope and made of more competent and independent personalities, i.e. commissions in charge of clarifying certain historical events and if possible contributing to the rehabilitation of victims and their families. We can mention the US Commission on Wartime Relocation and Internment of Civilians, and the Canadian Royal Commission on Aboriginal People.¹⁵

Some tend to believe that Morocco's Equity and Reconciliation Authority is a landmark commission since it is charged, in a limited way, with clarifying the conditions under which the serious human rights abuses during the reign of HASSAN II were perpetrated, without identifying or punishing the perpetrators. But whatever the limits of the Moroccan I.E.R. are, its objective is too close to the current human rights situation in Morocco, including political and military personnel, to make this commission a simple historical commission. The recommendations of the commission concern various reforms covering Morocco's current political, social, legal and security systems,¹⁶ They show all the recent work of the commission and its impact on the Moroccan political transition. At the same time, it is also difficult to seriously consider the assumption of a peaceful implementation or trouble-free recommendations that would take Morocco from a monarchy of divine law that cannot be criticized, to a State where the rule of law prevails and which is open to a system of political alternation.

¹⁵ See FREEMAN (M.) and HAYNER (P.), "La divulgation de la vérité", International Centre for Transitional Justice.

¹⁶ On the Moroccan I.E.R. work and recommendations, see www.ier.ma. See also the work of the International Centre for Transitional Justice with the Free University of Brussels.

Truth commissions are not judicial courts either. Generally, the thirty or so commissions found in Africa, America, Asia and Europe were never equipped with the means and powers to try and render sentences against the violations' authors. The authority of truth commissions is not like the *res judicata* of judicial courts. It is what gives it its credibility and moral authority based on the power of truth it establishes by sharing it among all the society.

The court searches for an individual's accountability and, following the existing law, renders its decision. On the other hand, a truth commission seeks and clarifies facts and, although indirectly, involves institutions, administrations and private groups without necessarily identifying the authors. It recommends that laws and institutions are to be reformed, which is not the role of the court.

Although some commissions had the right to mention names as in El Salvador or Chad, in most cases, truth commissions do not have the right to identify the people they hold accountable for the crimes perpetrated against the victims or their relatives. Identifying names is one of the most controversial issues faced by most truth commissions. Victims and their families find it difficult to accept that the crimes they suffered from are treated "impersonally", setting their torturers free without punishment and with no opprobrium that must accompany their torturers. This claim is legitimate. But it should not be forgotten that truth commissions can only survive within the framework of the compromise that created them. Setting up truth commissions with real court powers would transform the transition situation into a victory already acquired by the forces of the new order. This is rarely the case. The balance existing within truth commissions cannot lead to a new justice based on the respect of human rights in substitution to the old system that is deeply rooted in an arbitrary mindset of authoritative political systems. Truth commissions can, at their best, herald in a new judicial order, increasingly independent from the political system and its clientele. Concerning the issue of justice as well as other issues, such as compensation or reconciliation, truth commissions are defined as institutions opening a transformation process for the established order, more than new bodies of a new order which took the place of the old one by imposing its values and justice.

These distinctions, compared to investigation boards and courts, are not sufficient to determine the objectives of truth commissions and the powers granted by their mandate.

The main objective is obviously the establishment of truth. But, several commissions state clearly that their goal is to ensure social or national reconciliation following an internal conflict that disturbed the social system and to recommend solutions to achieve this objective.

Objectives of truth and reconciliation

The two objectives of truth and reconciliation are closely inter-related. The search for truth is seen as an essential stage and key instrument to achieve the reconciliation needed by the conflict's protagonists in order to re-launch the political, economic and social life after fatal and fratricidal struggle.

The very argument which is often advanced by truth Commissions is that ignorance of truth prevaricates or ruins projects of reconciliation and reconstruction. The absence of truth means that the policies and methods used before and during the conflict cannot be discussed and will never be denounced. It is to say that truth rejection, which is already detrimental in itself, poses even more problems for future reforms. Without truth, the society will continue to live in confusion and illusion.

The establishment of truth is also essential to understand the causes of the conflict. However, without a thorough analysis of the conflict's causes, reform views and projects are likely to be hollow and out of touch with the reality. Two dangers threaten the projected reforms. First, reforms are likely to be inconsistent with the preoccupation of a large part of the population to which truth was denied. Thus, an increasing number of institutions alien to the nation or the population will emerge. As declared by Burhan Ghalioun in his work the "Arab Malaise", it is "the State against the Nation".¹⁷ Comment, dès lors, réaliser les recommandations qu'aucune Commission vérité ne manque d'adresser aux gouvernants ?

How can all the recommendations be presented by truth Commissions to their ruling authorities?

Secondly, reforms which may be decided will not likely become effective, by default of associating, during their elaboration, representatives of the parties they concern and by being taken with full knowledge of the facts. The absence of a true report prevents a true diagnosis and facilitates the emergence of erroneous policies. The dangers which arise from denying the search for truth and the conflict's causes thus profoundly corrode the social body.

Of course, we are aware of the argument that we should turn the page of violence to avoid reviving the past. Truth would but reopen wounds that are still too sensitive and would prevent reconciliation. This view is widely used to reject the search for truth in countries that have gone through civil wars with authoritative powers such as in Algeria.

Turning the page without going back to the past and without ignoring the truth is essential to ensure reconciliation. The problem, as explained above, is that recon-

¹⁷ Burhan GHALIOUN, " Le malaise arabe. Etat contre nation ". Enac édition, Alger 1991 and La Découverte, Paris.

ciliation must have solid foundations, which include the truth about the conflict's causes to implement reforms and avoid recurrence.

Moreover, we understand why authoritarian regimes stand in firm opposition to truth, particularly with regard to the conflict's causes. The involvement of the State's security services in massive human rights violations is so profound that the establishment of truth may likely cause the destabilization and discrediting of the political system, as well as overthrowing those in power.

In most domestic conflicts, authoritative regimes have practiced torture, targeted assassinations, enforced disappearances and rape in their policies to terrorize and subjugate their opponents, placing the society's domination as one of their ends. However, general international law and several international conventions define crimes committed under these conditions as crimes against humanity.¹⁸ Under Article 7¹⁹ of the convention of July 17th, 1998 establishing the Rome Statute of the International Criminal Court (ICC) "For the purpose of this Statute, «crime against humanity» means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." Among these acts there are: murder, rape, torture, enforced disappearances... precisely the instruments of terror used systematically and at a large scale by protagonists of internal armed conflicts.

The International Convention for the Protection of All Persons from Enforced Disappearance of September 23rd, 2005²⁰ stipulates in Article 5 the following: *"The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law."*

It is then difficult to understand how political systems largely dominated by civil and military forces, responsible for many crimes against humanity, could survive the establishment of the truth, which would overpower them. The rejection of truth is a means of imposing a version of facts on which allows for the survival of a system and the interests it defends. In countries where Commissions were able to establish truth, as in Chile, El Salvador, Argentina, Peru, Guatemala and East Timor or Sierra were carried out have collapsed even though some autho-

¹⁸ We should refer to the terms set by the Nuremburg and Tokyo courts after WWII and the decisions of these courts as well as to the courts' case law for ex-Yugoslavia and Rwanda, set up by the UN Security Council (TPIY and TPIR).

¹⁹ Article 7 of the Statute of the International Criminal Court seems to translate the current general international law on this issue. See also the decision of the Permanent court of peoples (international court of opinion on human rights violations in Algeria, 5-8 November 2004, Paris, website: www.fondazionebasso.it or www.algerie.tpp.org).

²⁰ The International Convention for the Protection of All Persons from Enforced Disappearance (E/CN.4/2005/WG.22 WP.1/Rev. 4 - 23 September 2005) concluded under the aegis of the United Nations. It recalls the pacts and international instruments in the fields of human rights, humanitarian law and international penal law. It takes up and develops the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the UN General Assembly (Res. 47/133 December 18, 1992), signed in Paris, in February 2007.

ritative methods have survived.

Denying the truth about human rights violations in democratic countries is more difficult to understand. In France, the use of torture and the massacres committed against the population during the liberation war in Algeria have never been examined by a truth commission. Mentioning these crimes remains the source of virulent debates, leading some French political powers to recommend, in a law adopted by the Parliament, an article praising colonization²¹ seeking thus to impose their truth which is surrounded by durable interests and ideology.

In Spain, the progress achieved in the democracy-building process after the death of General FRANCO did not elucidate the crimes committed during the civil war. Here too, interests have been manifested in a sustainable way within institutions, complicating the transparency efforts which remain essential for building a democratic society.²²

Even if the conditions and forms of the establishment of truth can vary from one country to another, the acknowledgment of facts and their causes opens the path for more solid social relations. On an ethical level and from the point of view of the values on which human rights are built, the establishment of truth constitutes an appreciable asset for the improvement of post-conflict situations, both for political and administrative personnel as well as for all aspects of legal provisions. In cases of enforced disappearances, the establishment of truth becomes essential for reasons that should be addressed separately.

/ THE ESTABLISHMENT OF TRUTH IN CASES OF ENFORCED DISAPPEARANCE

In many countries experiencing large-scale internal conflicts, enforced disappearances are generally a systematic policy used by the different parties to sow terror in their opponents and subjugate the population. These enforced disappearances thus become crimes against humanity whose authors must stand for accountability. But it should be mentioned, as indicated by the international Convention on enforced disappearances, that this is considered a persistent crime as long as the truth remains unrecognized.

The search for truth becomes more difficult since the perpetrators deny they are involved or responsible for such disappearances and because victims, by definition, are not there to testify against them. A great vacuum surrounds the search

²¹ Law of February 23, 2005 whose controversial Article 4 was finally removed.

²² Several research studies on Spain's civil war estimate that some 30.000 dead bodies are still burned in unknown graves.

for truth in cases of enforced disappearance. This situation is fought before the law through the admission of the rule of continuity, which is well established in national legislations and mentioned in Article 8 of the International Convention for the Protection of All Persons from Enforced Disappearance. The term of the statute of limitation of the criminal proceedings “Commences from the moment when the offence of enforced disappearance ceases and the fate of the disappeared person is established.”

The rule of continuity of the violation, as long as the disappearance persists, seems today to be a customary rule. Its impact on national statutes of limitations is obvious.

The modes of the statute of limitation set up by States registering cases of enforced disappearance are then not in compliance with the customary and conventional international law.²³ In spite of this, an amnesty was enacted in France in 1962, in Spain in 1977, and in Algeria in 1999 and again in 2005 with the Charter for Peace and National Reconciliation. In Algeria, lawsuits against the perpetrators of most Human rights violations such as targeted assassination, torture and enforced disappearance were removed. Excluded were only massacres, rapes and bomb attacks in public places.

The Algerian law²⁴ thus violates customary international law given that enforced disappearances that are systematically carried out in large scales, in Algeria and elsewhere, are crimes against humanity.

The position of the problem can however be, in certain ways, different within the context of the search for truth by a commission established with the consent of the families of victims of enforced disappearances and others. This is the case, for instance, in South Africa, where the recognition of the crime by its perpetrator may allow the individual to benefit from amnesty.²⁵

Certainly, families of victims of enforced disappearances cannot mourn their lost relatives as they do not know the truth about their fate. “Truth commissions” precisely allow for the resolution of this situation when they collaborate with the families of missing individuals. By collecting information from all the sources involved or from witnesses, by organizing public hearings and by

23 Most countries that went through internal conflicts tend to opt, at some point and under different conditions, for amnesty and for putting an end to lawsuits against the perpetrators of human rights violations. Certain crimes, however, are excluded from such amnesty.

24 In Algeria, the referendum of September 2005 adopted the Charter for Peace and National Reconciliation. See Algeria's Official Gazette, issue of August 15, 2005. Order n°06/01 of February 27, 2006 for the implementation of this charter. Note also Law n° 99-08 of July 13, 1999 relating to the restitution of civil concord.

25 South Africa's truth commission grants amnesty to human rights violators who recognize their crimes and request pardon from victims. The other perpetrators can be put to trial in accordance with the law.

proposing rehabilitation and reparation measures, truth commissions seem to be the appropriate instrument for ensuring the social settlement of the issue of enforced disappearances. They help achieve the right to know, which is recognized to families by international law.

Thanks to the truth they establish and disseminate among the society, and thanks to the measures they propose, truth commissions can show to families of missing individuals that their relatives died for the sake of the ideal they believed in. Moreover, and beyond the positive or negative aspects of their struggle, truth commissions help families understand that their missing ones did not die in vain, as advanced by their opponents. In addition to the clarifications and responsibilities they alone can make, truth commissions can help make families understand that it is thanks to the sacrifice of their relatives that their countries are engaging in reforms for better social justice and more democracy.²⁶ If this work begins, families of victims could withdraw their lawsuits. This implies giving effect to the statute of limitation. This means that a truth commission can be a useful instrument for ensuring effective reforms and reconciliation. Without it, nothing can prevent families of missing individuals from pursuing their fight on the national territory and abroad, using the universal competence allowed in several democratic countries.

It is necessary that the recommendations of truth commissions be designed in a way to change the situation, which gave rise to the conflict and to human rights violations, but also be applied by the competent political, economic and social institutions.

/ TRUTH COMMISSIONS AND THE INSTITUTIONAL REFORM

Whatever the need and interest of truth Commissions for the establishment of truth is, their contribution will remain insufficient if their recommendations do not indicate the reforms needed and if the competent authorities do not implement them. It is this second aspect, i.e. the work which follows the commission's report and which carries out the reforms, which makes it possible to build reconciliation.

One of the precise interests of truth Commissions is to identify the causes of the conflict. The Commission must recommend the adequate measures so that the registered abuses will not happen again and so that the rule of law will be consolidated. It is therefore advisable to materially and symbolically repair the injuries

²⁶ This point of view which we elaborated in detail in a conference held in Algiers on July 1st, 2005 on families of missing individuals in Algeria is well received by these families who believe that the government is not really and completely engaged within the spirit of the commission and its adequate measures.

which were caused to the victims and their families. These measures, generally recommended by truth Commissions, are sometimes undertaken, as in Algeria, without any advisory process of truth-seeking. The financial situation of victims and their families is often terrible. Reparation must consist, as stated by international law, of taking the necessary measures to restore things to their normal state (i.e. compensation for the destruction of houses, restitutions of confiscated goods, employment...), to financially compensate them for the damages they were incurred and the missed profits and to repair, in a symbolic way, the injuries they suffered. Material reparation, although necessary, is not enough. It may even seem as an attempt to buy the silence of victims. The restoration of individual or collective Human dignity is a requirement for the reparation action in order to carry out the fundamental reconciliation process. Reconciliation requires victims to be reintegrated as citizens in the social system. Therefore, material reparation is not enough and symbolic reparation, while necessary, must be accompanied by various reform policies.

The analysis of the conflict's causes can be done through the clarification of the conditions under which the human rights violations were perpetrated. But in practice, the designation of the conflict's causes is very delicate. Not because the commissioners or political powers do not see the political, economic and social conditions which led to the crisis, but because it is difficult to designate the failing institutions without pointing a finger at the people and systems which are responsible. Difficulties appear clearly when we try to analyze the causes of a specific conflict.

If we consider the Algerian case to determine the causes of the conflict, a possible truth commission must highlight, as have international NGOs such as Amnesty International,²⁷ the International Federation of Human Rights or Human Rights Watch, the pivotal role of security services, especially the military security, in targeted assassinations, torture and enforced disappearances. In Algeria, the political system is largely under the influence of the army. The President of the Republic has always been chosen by all or a part of the army before being elected by the people in elections manipulated by the military security that plays the role of a political police. If such analysis can be made by a truth commission, it should result in the dissolution of the political police as an essential requirement for starting a serious process for instituting the rule of law.

No Algerian government will agree to support such conclusions within the framework of the current situation without risking to be overthrown by those, which

²⁷Amnesty International and other NGOs have published many reports since 1992 on the massive human rights violations committed by the security services and the different armed groups.

the Algerian people call the “real holders of power”, i.e. the military.

In addition, the above-mentioned NGOs have clearly established the responsibility of several Islamist organizations in the massacres, assassinations, rapes, torture and enforced disappearances, terrorizing people in the name of their own interpretation of Islam. Like security services, the Algerian Islamist armed groups are responsible for crimes against humanity in accordance with Article 7 of the Rome Statute of the International Criminal Court. Such analysis concludes the dissolution of all the Islamist organizations involved in these crimes and the effective prohibition of the use of Islam to political ends. So far, few Islamist organizations accept to move on this direction. The effectiveness of measures in favour of a secular State, which is necessary for the rule of law, calls for obstinate fights in Algeria and in many Islamic countries.

The Moroccan case also clearly shows that it is impossible for a truth commission to analyze certain fundamental causes of massive abuses, such as torture, political assassinations and enforced disappearances.

In the Moroccan political system, the king is the centre of power. The army and the notorious general intelligence administration carry out policies, which are designed for the Royal Palace. However, the responsibility of King HASSAN II and a number of army generals, namely OUFKIR, DLIMI or LAÂNIGRI in the massive Human rights violations in Morocco cannot be easily analyzed by the commission.

On the eve of the creation of the Equity and Reconciliation Authority, the 2003 Casablanca attacks perpetrated by some Islamist groups gave the King the opportunity to launch a repression campaign in which torture, enforced disappearances and unfair trials were the apparent instruments. In the Moroccan case, the I.E.R., in spite of its credible truth-seeking efforts, cannot recommend measures that call the political system into question itself. Had it done so, these recommendations would certainly have remained on paper. The commission's creation is definitely due to the King's willingness to dissociate himself from his father's methods. The creation of the I.E.R. is more a sign of will that is still not clearly formulated to modernize the State in accordance with the demands of the major foreign powers than a phase in the democratic transformation process of a monarchy-dominated political system.

This difficulty in transforming the political system to launch a democratization process of the State's institutions, very apparent in Algeria and Morocco, and more subtle elsewhere, should not be interpreted as an insurmountable obstacle. The establishment of truth is only one stage, which requires other fights to be

made, and various obstacles to be overcome along a path that does not inevitably lead straight towards democracy.

But the reform of political, economic and social institutions is actually essential to securing a profound reconciliation among the people who suffered the injuries of an internal conflict. These reforms must guarantee that abuses and injustice of the past will cease for good and ensure a political, economic and social fabric, which will prevent their recurrence. In fact, this is about rebuilding a social contract that was violated by past errors and crimes, in accordance with the findings of the truth commission. This is a complex venture, which needs more than shallow and facade reforms. The damage caused by crimes against humanity cannot be repaired by reforms, which only superficially change the system that generated them, while the real goal is ensuring social or national reconciliation.

In order to ensure reconciliation among the different categories of the society, which went through a bloody conflict, TRC advocates must have a clear vision about the transformations to achieve, step by step, but in a determined way in order to succeed in truly re-establishing the social contract.

SEMINAR'S OPENING

Nourredine Benissad²⁸

In Algeria, we have a proverb which says: "God gives the watches to the Swiss people and the time to the African people". With, we can start this seminar.

I must, in spite of my will, inaugurate this seminar. In fact, as the Secretary-General of the Ligue Algérienne des droits de l'Homme, I will replace Barrister Ali Yahia ABDENOUR, the honorary chairman of the LADDH, who is sick and was not able to travel to Brussels.

As you know, this seminar was planned in Algiers on February 7th and 8th. It was impossible because the Algerian authorities forbade it. The principle goals of this seminar are to allow the participants to exchange their experiences about transitional justice all around the world, to lead a reflexion on truth and social peace and to launch a dynamic on this theme.

Now, I will read you the speech written by Barrister Ali Yahia ABDENOUR :

Dear friends,

It is a big pleasure to know that you're all brought together for this seminar. To my biggest regret, I cannot be present among you: indeed, I have to go to the hospital every day to follow treatments for my diabetics' problems and my heart condition. In spite of these difficult moments, know that my most belligerent thoughts accompany you in our fight for all the victims. I am, with all my heart, with you all, and I hope that this seminar finally allows the Algerian people to find peace, truth and reconciliation.

Barrister Ali Yahia ABDENOUR

Alger, March 2007

²⁸ Avocat, secrétaire général de la LADDH.

ENFORCED DISAPPEARANCES IN ALGERIA

Ali Yahia Abdenmour²⁹

Genocides, crimes against humanity, horrors of war, collective massacres, torture and enforced disappearances have not ceased with the end of colonialism, Nazism, Fascism, Francoism and Stalinism. They also concern the dictatorships of Latin America, Asia and Africa, and unfortunately remain the burning issue of the hour; they are the same whether they are committed by Germany, France, Chile, Argentina, Algeria, Serbia in Kosovo or in Croatia, Israel in Palestine and in Lebanon, Russia in Chechnya, America in Afghanistan or in Iraq, and the same rules of criminal conduct must be invoked against everybody. The decision-makers in Algeria, General PINOCHET who commanded over the Chilean army and State, General VIDÉLA in Argentina and Slobodan MILOSEVIC in Serbia, who proclaimed themselves the saviours of their country, and why not of the republic and democracy, have been severely criticized and unanimously condemned by the democrats and republicans, both inside and outside their country.

The events of the 90's are credited with showing that Algeria has become, in the same way as during the war of national liberation, the special place of a human tragedy, of considerable magnitude, confronted with crimes against humanity. Considering the large scale, massive, flagrant and systematic repression, the first thought that comes to the mind is to say that PAPON, MASSU, BIGEARD, TRINQUIER and AUSSARESSE spawned imitation in Algeria; repression must be ruthless, carried out in the strictest secrecy, and outside the laws, the fundamental values of the Rule of law and the respect of Human rights.

One may trace the chronology of grave Human rights violations, the grim and gruesome statistics of this disguised war without images, along with its two hundred thousand dead, thousands of wounded, more than twenty thousands of disappeared persons.

Those who perpetrated enforced disappearances are, for some, the Islamic armed groups, for others the army and the security services, and for the majority both of them. The two camps are involved in enforced disappearances

²⁹ Founding member and honorary president of the Algerian League for the Defense of Human Rights (LADDH).

which constitute terrorist acts in the war opposing the ruling power to the Islamic armed groups; the people is at the same time hostage, political stake and means of struggle. The war - each one of the two sides understood it well - may be won or lost with the population. The ruling power considers that part of the population is in collusion with the Islamic armed groups, out of conviction or out of fear, as a choice or as an obligation. It is through terror that they won the support of the population; it is through terror that one can gain the favour of the population in order to reduce its contamination and gain its support. In 1994-1995, "one-third of the country was in the hands of the terrorists", stated Mokdad SIFI, former Prime Minister; the challenge of this war lies with the population which must be taken back and for which one must contend with the Islamic armed groups, by monitoring it, strengthening control measures, and by forcing it, via the escalation of fear and terror which is a fundamental element in the psychological war, to withdraw into itself in the first place, then to join the victor. The strategy of the revolutionary war consists in making the population suffers deliberately, to hit it cruelly, to torture it and to make it understand that outside of the ruling power there is no salvation for it. It is the application of Mao TSÉ TOUNG's theory: "when the sea dries up, the fish dies".

The abductions followed by illegal detentions and disappearances were committed with full knowledge of the facts; they were covered and often ordered by the highest authorities of the State, along with an unprecedented Machiavellianism.

Not to condemn the abductions followed by disappearances by the Islamic armed groups would be a criminal act, but not to denounce the senior officials of the army and of the security services who made individuals disappear would be intolerable, and the intolerable can not be tolerated; the Rule of law opposes to the right of the State.

/ THE HISTORY OF THE DISAPPEARED IS WRITTEN DAY TO DAY

An individual is declared missing when its corpse has not been found. The testimonies accusing the ruling power and the Islamic armed groups make every year the issue of the disappeared persons bigger and bigger.

The individual files drawn out by the Algerian League for the Defense of Human Rights (LADDH) and the associations of the disappeared put forward the figure of 7,204 disappeared. The LADDH makes an estimation of eighteen thousand. Whenever a family opens up in an individual file concerning the disappearance

of a relative, they are asked to specify if the latter has been abducted alone or together with other persons. The answer is always the same: "he was kidnapped along with 2, 3 and even 5 persons, all identified". But out of fear, fatalism or out of ignorance of the laws, some families do not want to file complaints. The result is that on average one out of three families file a complaint; this makes the figure of eighteen thousand retained by the LADDH more convincing.

The families of the disappeared abducted by the Islamic armed groups retain the figure of ten thousand.

The authorities deny any responsibility for enforced disappearances. Are the disappeared dead or alive? Such is the throbbing question. The ruling authorities know their fate. Would they be alive still, detained in secret camps and subjected to brainwash in order to turn them into repentants? In this case, they must release them or bring them before the justice. If they are dead, which unfortunately is the case for many of them, the authorities must locate the mass graves where they are buried, and provide information to their distressed families who endure a terrible ordeal.

Disappeared persons cannot be declared dead as long as their corpses or bones have not been found. The authorities have established justice commissions in each Wilaya to take the issue of the disappeared away from the families, from the LAADH and from the political opposition which seek, so they say, to exploit it.

Abdel Malek SELLAL, Minister of the Interior in 1999, said, "The largest number of the persons who are said to be disappeared fell in the operations mounted against the security services. Several of them still took to the "maquis".³⁰ He forbade all individuals or organizations to take charge of the disappeared issue. Yazid ZERHOUNI, current Minister of the Interior, was more specific, "80% of the terrorists laid down their arms. As for the disappeared, 2,600 to 2,700 out of 4,600 complaints have been elucidated. These concern the persons who took to the maquis, the persons who were killed by their accomplices, the persons who were imprisoned or even the persons who are in the camp of the Islamic Salvation Army in truce since 1997".³¹ . He has the right to defend himself, the right to lie to defend himself, which constitutes, together with the right not to incriminate oneself, a fundamental right.

The truth is that none of the disappeared has reappeared or been found. According to the *Liberté* newspaper dated 1 July 2000, "74 disappeared per-

³⁰ El Watan 16/01/1999.

³¹ El Watan 20/01/1999.

sons are currently in their home, attending to their affairs. The list given by the Islamic Salvation Army to the authorities features the names of elements killed by the security forces between 1993 and 1996 while they were reported missing. 80 others are now in prisons.” Salima TLEMÇANI wrote, “more than one hundred persons declared missing have just reappeared in the ranks of the Islamic Salvation Army”.³² Lie, lie, as did Basile, something will always remain. This information contradicts the reality since none of the disappeared has ever reappeared.

On the other side, Rezzag BARA, President of the National Observatory of Human Rights (ONDH), made a statement to El Khabar newspaper which he denied 24 hours later while this daily newspaper has recorded the statements attributed to him, namely, “the ONDH has evidence about some cases of persons detained in secret places”.

/ DEFENSE OF THE FAMILIES OF THE DISAPPEARED

They have been fighting for years to know the truth. Shedding the light of the present on the truth of the past constitutes one stage of the path they have been following. As a response, they were first met with silence, then ambiguous statements, then formal lies. They refuse to believe in the death of their relatives because nobody can kill the hope. They entertain the idea that they would come back one day.

To put an end to the confusion generated by the authorities, which pretend to be unrelated to the disappearances, they demonstrated that their relatives neither took to the maquis nor went abroad; they were neither detained in prisons nor killed in clashes. But that they were indeed abducted either from their homes, from their working places or after being summoned by identified security services.

Furious at being publicly challenged, at the Harcha hall on the 15th of September, 1999, on the eve of the referendum on the civil concord, by the mothers of the disappeared who called for unraveling the truth about the fate of their children, President Abdelaziz Bouteflika called them mourners and puppet-mistresses. The disappeared, as he said to them, “are not in my pocket. We will not get out of the crisis with the past.” *Replying to a victim of Islamic terrorism, he said, “the whole Algerian people have suffered, and there is no reason to claim some sort of exceptional rights pertaining to the quality of victims.”*

³² El Watan du 01/02/2000.

/ ORDEAL EXPERIENCED BY THE FAMILIES OF THE DISAPPEARED

A disappeared person is an endless tragedy for his family which continues to wait and hope for his return. These serene-looking mothers, sisters, wives, of the disappeared have overcome their fear, moved heaven and earth and taken risks in order to find out about the fate of their relatives. Everything has turned upside down for them, who formerly embodied modesty, on the night when their children, their parents and relatives were brutally taken from their beds, hit and abducted. There is in the sobriety of their language and the seriousness of their statements, a kind of distress expressed with force and clarity.

Reality and truth mark their testimonies, expressed with a pathetic mixture which flows in a torrent of unbearable emotion and pain. These streak-faced mothers whose eyes are stung with the tears of blood shed for their children who disappeared in the turmoil, the tears of anger against the authorities, are obsessed by the search for the truth, by the duty of memory and justice. When they condemn rulers who refuse to listen to their complaints, who insult them when it does not repress them during public demonstrations, tears are shed and fade away. Their sensitivity bruised by an open wound which does not stop bleeding, they express in a long monologue their pains, their loneliness and their humiliations.

It is true that life goes on, but what a life with its sorrow, anxiety and woes, without the presence of the loved ones! This is the synthesis retained by a mother of a disappeared person, a being of blood and flesh who is looking with another eye at her miserable life bruised by the weight of her misfortune, her expectations and her calls.

The marches on the roads, in the streets, to knock on the closed doors of the authorities, are for the mothers of the disappeared a need to try to elucidate the mystery of disappearances and claim for justice. Though ignored or unjustly treated by the authorities, they fight to make their voices heard, gain control of their fate and impose themselves as interlocutors. The will to understand and the need to give testimony, to put the knife in the wound in order to know the truth, prompt them. They have the energy of the legendary heroines.

The child who was put through the mill in this cruel world witnessed the abduction of his father followed by the nervous breakdown of his mother, is living a psychological trauma and keeps in his mind images that he reproduces in his drawings.

The families of disappeared persons have launched a solemn outcry of alarm

and a pressing call to the national and international public opinion, asking them to exert pressure over the authorities in order to obtain a precise answer to the question they have been asking for years, "What have you done of the disappeared? You have taken them alive; bring them back alive to us." They managed to put an end to the conspiracy of silence and disinformation thanks to the solidarity of international humanitarian NGOs.

On January 7, 2000, during a silent evening gathering on the Pantheon Square in Paris, the relatives of the disappeared and other participants dressed in black, bearing on their faces a white mask and a candle in their hands, have through the voice of the actress Isabelle ADJANI called for truth and justice on the disappeared.

A media and political campaign was organized by the International Federation for Human Rights (FIDH) on 8-11 February 2000 in Paris, London, Brussels, Strasbourg and Geneva, in order to have the 55th session of the United Nations Commission on Human Rights adopt a resolution on the disappeared. In Geneva, about a hundred mothers of disappeared persons, supported by the Geneva diasporas and the representatives of the disappeared persons' families in Argentina and Chile, demonstrated and brandished placards along with the photos of the disappeared. Ms. Hilary CLINTON received a delegation of families of the disappeared and congratulated them on their noble fight.

/ THE CIVIL CONCORD

The law on the Civil Concord which was adopted at the double by the Parliament and put to a referendum, was not finally applied to the Islamic Salvation Army which rejected the terms of "repentant" and "surrender" and established an amnesty as well as the honors of war.

The pardon granted to the Islamic Salvation Army by presidential decree dated 10 January 2000 is anti-constitutional because pardon comes under the competence of the Parliament or of the people by means of a referendum. It is a pardon, by its form, and an amnesty, by its effects. The pardon, which enables the president to suppress a sentence decided by the judiciary, produces its effects on the punishment and not on the offence or the crime as such, keeping thus the memory of the crime intact. It erases the penalty and not the offence. It erases the memory of the crime and grants the perpetrator of the crime legal virginity.

Forgiveness and oblivion have played an eminent role to restore criminals

within the social play thanks to pardon and amnesty. The law was tortured to make it say what the authorities want. Disclosures of the repentants programmed and media-covered have neither healed up the wounds nor calmed the situation down.

The amnesty granted to the elements of the Islamic Salvation Army has harboured the feeling of injustice in the parents of the disappeared, victims of the Islamic armed groups.

/ THE PERMANENT TRIBUNAL OF PEOPLES

It held its 32nd session in Paris on 5-8 November 2004 to examine the grave human rights violations committed in Algeria between 1992 and 2004. It is in Algiers that the Universal Declaration of the Rights of Peoples, the basic reference document of the tribunal, was adopted on 4 July 1974.

At the light of the facts and testimonies received or heard, the tribunal has extensively examined the numerous massacres, of which the populations of numerous areas in Algeria were victims; “the perpetrators of these massacres attributed to the Islamic armed groups and foremost to the authorities, are declared to be responsible for crimes against humanity, pursuant to the definition provided for by Article 79 of the Statute of Rome on the International Criminal Court: the tribunal considered that taking into account their nature, scope and surrounding conditions, the thousands of enforced disappearances constitute flagrant violations of general international law and the international conventions ratified by Algeria; hence, they are crimes against humanity.” The collective massacres, tortures, abductions followed by disappearances, and rapes constitute crimes against humanity.

/ CHARTER FOR PEACE AND NATIONAL RECONCILIATION

When violence diminishes or ends up, the Heads of State find themselves, on the one hand, in front of victims hurt in their dignity, their physical and psychological integrity and their interests, or their beneficiaries in case of death, and on the other hand, in front of torturers who acted within a framework they deemed lawful. They want to look towards the future and, accordingly, to sew up the social fabric. Some of them put then reconciliation on top of any other demand of truth and justice. However, there are those who maintain, in the same logic of reconciliation and national unity, that the disclosure of the truth, the duty of memory, the administration of justice and the sentencing of the guilty are the best therapy for

the national fabric against the pathologic effects of suppression.

The key idea of the national reconciliation process is that it is the social fabric in its entirety which has to be cured from the violence of political action. "It is political to deprive hatred of its eternity." There is always a strategic and political calculation in the generous gesture of a Head of State who offers national reconciliation. This calculation must be incorporated in all analyses.

The national reconciliation which was supposed to be a major political project is reduced to its security dimension, to the concealment of crimes against humanity and to dormant consciences. It sacrificed all claims of truth and justice and established the impunity of State agents. It exculpates the army, the security services, the death squads and militias from all responsibility. It also grants impunity to the generals, because according to the terms of the law and considering the facts nothing stands in the way of their appearance before a court of justice for massive human rights violations and crimes against humanity which occurred throughout the national territory. Besides, it exempts from legal proceedings the Islamic armed groups which surrendered during the preceding years, as well as those who want to lay down their arms to the exception of those wanted or convicted for collective massacres, rape or planting explosives in public places.

The national reconciliation as presented in the Charter does not define neither the belligerent parties nor the victims nor the torturers in order to know who did what to whom and who has to forgive whom. The peace is founded on truth, justice, memory and forgiveness. The truth has the mission to establish which rights have been violated, by whom and why. The justice which discards revenge and incorporates forgiveness is reduced in the Charter to the amnesty. The word "Aaffou" designates both amnesty and forgiveness. The Charter, contrary to what happened in other countries which underwent internal conflicts, has not chosen to set up a commission for truth, justice and reconciliation.

A national conference gathering together the representatives of the State and the political parties, the civil society and national personalities, which will designate, at the end of its proceedings, two commissions, one political, the other legal, may lead to sustainable peace. It would be the opportunity to open a debate, a real one to know what can be forgiven if it is not the unforgivable, after a conflict which reached a level of extreme cruelty. How to gather together two Algerias separated by a river of blood? What to choose in order to gather together pardon against justice, or peace through justice? Must justice be truncated for amnesty, does one have to choose between law and pardon, does one

have to fight against oblivion and preserve the assaulted memory? Such is the dilemma. One cannot tread the path of oblivion and forgiveness unless justice has been administered.

The worst violence is psychological because of the impunity which arises from an amnesty law, from measures of clemency or from laxity and from the justice enjoyed by the murderers. Impunity is the opposite of truth and of justice. Not only those who execute orders must be tried, but also those behind the crimes who are at the top of the State and enjoy the benefit of impunity, which remains entrenched in the muffled silence of national sovereignty, protector of the tyrants.

Crimes are much easier to prove in the country where they were committed, but if this is not possible because justice is subject to the control of the authorities one has to seek international justice which enables to try the criminals who remain unpunished in their country. When a crime against humanity is committed, it is up to the assaulted humanity to prosecute and try those guilty. Human rights are universal and cannot be enclosed within the boundaries of national frontiers. The case law on PINOCHET's case will be an epoch-making because for the first time a former Head of State is prosecuted abroad for crimes against humanity committed in his country.

Article 18 of the Declaration of the UN General Assembly on the Protection of all Persons Against Enforced Disappearance dated 18 December 1992 states that the persons who have committed acts of enforced disappearance shall not benefit from any amnesty law or similar measures that might have the effect of exempting them from criminal proceedings or sanction. Crimes against humanity are imprescriptible.

VICTIMS' TESTIMONIES

VICTIMS OF ENFORCED DISAPPEARANCES

Fatima Yous³³

Hello, you are most welcome! After all that has been said by Nassera and ABDENOUR, it is difficult to add anything. However, I would like to tell you how much the families are suffering in Algeria, with all the promises that were not kept, for ten years. One of the most recent promises was made by the President of the Republic himself in his speech; he said that he would shed light on what happened in Algeria. Unfortunately, he did not keep his promise, either. He has betrayed us all, like all the others and he contradicted himself by imposing the Charter on us.

As provided for in the Charter, indemnification is intended to pay people so that they keep silent. The President said that he would shed light but we are still in darkness. In order to receive an indemnification, the families must carry out some measures that revive their pain. The mother of a disappeared told me that she had a feeling of “having killed her son”. So, families have to go to the gendarmerie or the police station to draw up a report of disappearance which they have to submit to a court, which will issue an order declaring the disappeared legally dead. They have to present this court order to the notary together with some administrative documents in order to settle the inheritance. Following these extremely lengthy procedures, families have to submit the whole file to one of the commissions in charge of examining its admissibility. If the person concerned receives the minimum salary, he will not be entitled to receive any indemnification. However, families do not obtain the truth with all these procedures and continue to ask questions after questions: “How would a person kidnapped from his bed or in a police station after receiving a notification die in an altercation? Big vans belonging to the gendarmerie or the police came to arrest individuals and afterwards it was said that they were dead in an altercation!” They do not know what to do, they go to SOS Disparus. The majority of them are illiterate; they know neither reading nor writing; they do not know their rights. They ask us to show them what to do. They wonder why they obtained the court order while they were just asking to receive some indemnification. The poor women are crying; I send them to Mr. SIDHOUM to draw up a petition, but things do not move forward. We want peace; we do not want blood to be shed again. During the whole campaign for the adoption of the Charter, the President of the Republic was consistently repeating, “we must turn

³³ Founding member and President of SOS Disparus..

the page", "let bygones be bygones". At one time, he would insult us in his speeches, at another time he would order us, "You must forgive". If I am not told what I have to forgive, and if nobody has come to ask me for forgiveness, what and who shall I forgive?

In addition to these pains, we experience daily intimidations. For example, one day, I informed journalists at a press conference that a mother had been raped in a police station. A few days later, the authorities came to ask me who was the perpetrator of this act. I did not answer them because the honour of this victim was at a stake and they replied, "that they will get me when I am alone". So, how can we forgive these people? Too much evil has been done, too many people have suffered. I have been in the streets for ten years; when mothers tell me their stories, I forget the story of my little son. It is impossible to restore peace of mind when one's family is lost, when one hears a mother whose husband and three children have been kidnapped. I do not forgive the people who stained their hands with blood: neither the terrorists nor the State.

With the Civil Concord Law then the Charter, the State has forgiven the terrorists. A repentant terrorist living in my surroundings, in Baraki, was granted, pursuant to the Charter, a vast plot of land. How can the State grant its pardon to terrorists while it cannot give us the truth? I want them to free those who are still alive. For those who are presumably dead, they could not have been eaten; let them just give us their bones. Our children are entitled to be buried, we have the right to go and meditate on their graves just like everybody. Otherwise, this is getting us nowhere.

VICTIMS KIDNAPPED BY ISLAMIST ARMED GROUPS

Ali Merabet³⁴

Hello everyone. We can't say anything since the national reconciliation but we have so many things to say. This seminar is a fresh air cure. I would like to thank FIDH and the organizers.

I will start by telling you my story. I was living in Sidi MOUSSA, 20 kilometres from Algiers, a "city" of 8 000 inhabitants. All the families had some relatives in the maquis. Personally, I was not involved in the conflict. One morning, at 10am, my two brothers, the younger being 14 years old, were kidnapped. They were transported to a field of orange trees, next to our house. They were tortured. My family was asked to leave the house within 24 hours. We were hunted from our house, from my house. Since my brothers' disappearance, we are uncertain and desperate about their fate.

I was among the first of the victims who asked for the truth about the disappearances. The authorities, in 1995, were telling us that our relatives were in the maquis. It was taboo, we didn't know to whom we were supposed to speak. Then, we constituted an association.

In 1997, the indemnity code was promulgated for the victims of terrorism. At the beginning, this code was only for the employees of the State (policeman, people who were working in the administration...) and not for the other victims. Then, we followed a real assault course to obtain indemnities. The families who were asking for these indemnities were facing the impartiality and the slowness of the Algerian justice. Up to now, my family has never received any financial aid.

The Charter amnestied everybody; all the persons who are asking for it. How can the State decide arbitrarily who are the victims and who are the terrorists?

In 1996, by circumstances, two of my brothers, who were armed after the kidnapping of my two brothers, have joined groups of self-defence. One of my two brothers was condemned for complicity with a terrorist group. When I went to see him in jail, I told him: "You are in jail; you can look for some information on our disappeared brothers". Then, he informed me that he met a repentant. The latter confessed to him that our two brothers aged 14 years and 30 year when they were disappeared, were kidnapped and tortured by his group because they thought that the older one collaborated with the security section of the

³⁴ President of Somoud.

police force. They threw my little brother 200 meters away from my older brother, his eyes were blindfolded and they submitted my older brother to a kind of questioning. They threatened my older brother and told him his brother and he would be killed.

My brother asked this repentant if he would accept to give his testimony. This latter accepted and, immediately, I went to see a barrister. I have informed him and submitted a complaint, asking the authorities to find the bodies of my two brothers. The legal proceedings have dragged on... The barrister told me that the repentant was transferred from one jail to another. The complaint has been forgotten in a drawer and no follow up has been given. I conducted a hunger strike during 9 days to mediatise the case. I wanted to tell my story, to denounce the authors of my brothers' disappearance. I have an idea of the place where the mass grave is, I have even pictured it but the authorities didn't do anything. Regularly, I go to the jail in order to keep an eye on this repentant.

Concerning this conference, I just want to say that its purpose is to discuss Algerian problems, to talk, to propose solutions, to listen to our friends coming from countries which have also suffered, to find out some solutions with their experiences and to transmit our wills to the Algerian's authorities. In South Africa, they listened to the executioners. In Morocco, they listened to the victims. In Algeria, the victims want to hear the truth. We are ready to forgive because we believe in God; he is the one who will give the last punishment. We want graves to gather one's thoughts. Today, we are uncertain; we can't really go into mourning because we can't know that they rest in peace.

VICTIMS OF TERRORISM

Cherifa Kheddar³⁵

Thank you for responding to our invitations. This meeting was due to be held in Algiers. We wanted to make our claims known to the representatives of the Algerian civil society as well as to national and international experts. We wanted to help Algerian citizens know what is currently going on in Algeria, what the Charter for Peace and National Reconciliation means. Mr. KSENTINI could have given us a presentation on the implementation of the Charter. The same is true with representatives of political parties. We could have discussed with them its results and negatives points. We wanted to discuss with them these points. Unfortunately for the victims, we did not have this opportunity in our own country.

The Djazairouna Association was set up on 17 October 1997 around spouses, children and close relatives of victims of terrorism, who had been subjected to killing, abduction and rape. A few months after its creation, we got the approval for registration from the Algerian authorities but only to be taken back shortly afterwards. They thought we were making a lot of noise on victims. We worked only with victims of the Mitidja region.

The “Algerian-Algerian” conflict led to a total of 200 000 victims of terrorism, among which approximately 50% of women. Kidnapped women were regarded as war looting prizes. Some women were forced into temporary marriage: they had to give birth to children for the terrorists and after the death of their “husbands”, they were forced to marry again. For others, their legal guardian (their father for instance) was killed. In Sidi Moussa, a father, who had been amputated of his two legs, was killed by the Islamists and his five daughters were abducted. He besought them to spare his life, but they answered him that his daughters could become their sabaya (slaves) only after he had been physically eliminated.

A few dozens of women returned alive from the Islamist guerrilla zones. Some, thanks to the complicity of terrorists; others were saved during search operations carried out by security services. A few rare others were able to run away. Among them, I made the acquaintance of two women who were raped and imprisoned by the terrorists. They had to prove to the authorities that they had been kidnap-

³⁵ President of Djazairouna..

ped and raped. For several days, they were subjected to the nightmare of living under the roof of terrorists and through the humiliation of the prison, even though the security services had been informed by their families that they had been abducted. Victims in Algeria are obliged to prove their innocence. It is not the duty of the security services to prove that these people are guilty.

As for the disappeared people, who were abducted by the Islamists, their families had to go through stubborn bureaucratic procedures to certify that their relatives had been abducted. After they had obtained the necessary document, they had to face interminable procedures before the competent judicial body. Parental authority being exercised by the father only, the mother could exercise such authority over her own children, only when the disappearance of the father had been acknowledged by a judicial decision. Then, it is necessary to obtain the document allowing registration of the death with the civil status office. In Algeria, this identity card is essential to pass the examinations of the diploma of fundamental studies. Victims of natural disasters, such as the Bab El Oued floods as well as the Boumerdes earthquake, were exceptionally exempted from this requirement to facilitate legal procedures. Such flexibility was not granted to the victims of the Islamist terrorism. By virtue of the promulgation of the Charter's implementing instruments, judges refuse to adopt a judgment of death for the purpose of registration to the civil status registry, under the pretext that the document in question is not the one provided for in the ordinance implementing the Charter on national reconciliation, even though procedures were in most cases already started since 1995-1996. As a consequence, youngsters cannot have national cards in the absence of their father's authorization, the mother being deprived of any legal authority on this matter.

Victims of terrorism refuse to be described in records as "victims of the national tragedy" and insist they are referred to as "victims of terrorism". Authorities however refuse to use this term. Therefore, a document is delivered in the first place with the mention "victim of terrorism", followed by another one, which is considered as the legal document though it bears the false mention, bearing the mention "victim of the national tragedy". The negation of truth is therefore sanctioned. The masquerade is pushed even further when the authorities present the Charter as having enjoyed the approval of 99% of the voters, even though the abstention rate has never been mentioned. Here we should note that the question put during the referendum was the following: "are you in favor of peace, yes or no?" Most citizens avoided this trap by deciding not to go to the polls. The Charter requests us to forgive. But who asked for forgiveness? Who admitted he had perpetrated killings? We have seen leaders and emirs stating

before the international press that they had finished off dying young Algerians. These are the very same people who are going to run for the elections of members of Parliament, and we are the ones being accused of opposing peace and the reestablishment of security.

Some of the implementing texts of the Charter on national reconciliation deprive many Algerian citizens of their most basic rights. These texts are contrary to the constitution and to international conventions ratified by Algeria.

Lastly, I would like to explain you why all our associations formed a coalition. At the beginning, each association worked separately. But with the Charter's promulgation, we thought that the best way to defend ourselves and let our claims be heard was to build a common front. We thus decided to set up this Coalition, which was set up one year after the organization of this seminar, which was to be held in Algiers last February. The first recipients of invitations to the seminars were the Minister of the Interior, the Prime Minister, and Mr. Ksentini. We thus wanted to reach out to them. Foreign representatives were to share with us their experience, and help us present solutions to the authorities. Since this seminar has never taken place, we find ourselves here to accomplish the work which could not be undertaken in Algiers.

MASSIVE HUMAN RIGHTS' VIOLATIONS IN ALGERIA

DESCRIPTION OF A DECADE - HUMAN RIGHT'S VIOLATIONS IN ALGERIA

Nourredine Benissad

Before going on, I would like to share with you two remarks on the first speeches, which were very touching testimonies. First of all, I would like to underline, as Mrs KHEDDAR said, that this seminar is a first; a huge coalition, a common approach which groups together the victims of terrorism and the official authorities. I would like also to say that we have reached a relative maturity; we are proposing peace and dialogue. We are ready to face the reality. Now, Barrister CHOUITER will talk about the “serious human rights violations in Algeria”, which is the first theme of this seminar.

Sofiane Chouiter³⁶

My brief presentation will attempt to put forward a comprehensive view on the massive human rights violations which have been perpetrated in Algeria over the last years. I think that the atrocious cycle of human rights violations which Algeria experienced has actually started after the coup of 11 January 1992. Why do I consider this date as the beginning? Because it sparked off the crisis and made it possible, following the proclamation of the state of emergency, to concentrate, in the hands of the military ruling power, inordinate prerogatives which resulted in numerous human rights violations. Obviously, before the coup, during what we called the period of the unique party, there were human rights abuses. However, they were not perpetrated as massively as during the 90's.

Article 7 of the Rome Statute establishing the International Criminal Court gives, in its 1st paragraph, the definition of the crime against humanity as follows: a set of “acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. The events which rocked Algeria for more than a decade, and which are still ravaging its people, can easily be related to this definition. Massacres of civilians, extra-judiciary executions, wrongful arrests, secret detention, torture and disappearance were systematically and consciously directed against the Algerian people by its rulers. These acts violate, in every respect, the international law and may be considered as crimes against humanity. The Geneva Conventions, to which reference is made in the Rome Statute, penalize the breaches committed by the State agents in the same way as war crimes. These

³⁶ Lawyer at the bar of Constantine.

crimes are imprescriptible according to the principles well-established in the international law.

So, after the coup d'Etat had been mounted, the slaughter started. One of the first measures adopted by the authorities, in the beginning of the black years, was the opening of administrative detention centres in the Algerian Sahara, in Reggane, Oued Namous near Tamanrasset and Ain M'Guel, where thousands of persons were detained for months, or even for years, following a simple administrative edict, because of their political or ideological convictions, without any trial. Algerian newspapers talked about 12000 persons, while the League for the Defence of Human Rights counted more than 17000 persons being conveyed to the camps of the south. These camps were called by Algerians as "concentration camps" as the conditions of detention were inhumane. Therefore, the Reggane camp, 2000 km to the south of Algiers, is situated in a particularly hostile area subject to harsh climatic conditions; the temperature may reach 50°C [...] 217 tents of 8m² are designed to receive more than ten prisoners each. Health facilities are inexistent and dysentery prevails among detainees. These latter are obliged to relieve themselves under the mocking eyes of soldiers who are continuously pointing their rifles at the prisoners.

Another particularly inhumane practice which has been rampant in Algeria during the last years: torture. This practice is not particularly unfamiliar to the Algerian people. Algerians had good teachers and these are the same methods of torture as those initiated by the colonial army during the liberation war which were resumed, after the independence, by the Algerian security services. The crime of torture has therefore been carried on over the Algerian soil in the course of time to become a systematic practice in the 90's. Wrongful arrests went at fair pace and the persons arrested were systematically ill-treated and tortured. Torture took place in police and constabulary stations as well as in the basements of the barracks but particularly in the detention centres of the DRS (Algerian secret services), more commonly known as the Military Security, specialized in the practice of torture and where numerous persons arrested were transferred. Up to now, recourse to torture by the security services has not ceased yet.

A real killing frenzy arose in Algeria in the 90's: we got out from home without being sure that we would return alive in the evening; in the middle of the street, we stepped over the corpses who were littered on the floor. For the authorities as well as for the armed Islamist groups, this was a process used, among others, to terrorize the population. In this regard, one can not give a reliable assessment about the share of extra-judiciary executions in the staggering

number of the assassinations over the decade. This can be explained by the fact that no independent and honest institution entrusted with investigating into this type of violation has been set up by the Algerian State. Throughout the recent years, the judiciary authorities have contented themselves with turning a blind eye on the sufferings of the Algerian people and, the complaints, filed by the victims or eligible parties, have never been followed by investigations worthy of the name. For any response to these complaints, justice contents itself with registering the statements and reports, drawn out by the security services, stating that the persons assassinated were, depending on the cases, either victims of a terrorist group, or killed within an armed group. Yet, concerning the victims of extra-judiciary executions, the report never states the reality as it is and the individuals are systematically considered as killed within an armed group or in an encounter. This report constitutes on its own the findings of a presumed investigation and the follow-up of the investigation. Obviously, this simple inquiry of security services is quite insufficient according to the international standards which require that the States initiate an effective and impartial investigation into the allegations of human rights violations that are submitted to them and that the perpetrators of alleged abuses be provided with access to the various stages of the investigation.

The practice of disappearance either by the armed groups or the State agents is one of the manifestations of the permanent climate of war which the Algerian people have experienced. The State has, apart from its own constitution, the obligation to guarantee the security of its citizens and to investigate into every disappearance case being submitted to it. Yet, the Algerian State not only has not protected its population against the disappearance cases perpetrated by the armed groups, but it has also made itself guilty of the disappearance of thousands of persons. Since the first years of the conflict, some detainees started to disappear from the prisons after being sentenced by the justice system. The practice of forced disappearance –by the State agents- has then been used at a large scale against all social strata.

The figures establishing the number of forced disappearance victims are contradictory. In this regard, national and international non-governmental organizations as well as the Consultative National Commission for the Promotion and the Protection of Human Rights (CNCPPDH) do not agree on the figures released on the subject. While the CNCPPDH puts forward the figure of 6146 persons disappeared at the hands of the State agents, the NGO's consider that the extent of the phenomenon exceeds by far this figure. Besides, the fact that this figure has been advanced as part of the CNCPPDH proceedings led by its pre-

sident, Mr. Farouk Ksentini, has largely undermined its credibility. Apart from the fact that the associations of the victims were not involved in these proceedings, a lot of people deplore the fact that the report of these proceedings, passed on to the President of the Republic, has never been disclosed and that nobody was thus able to check the authenticity and the sources of the data given.

Today, though thousands of forced disappearance cases have been acknowledged, the enquiries called for by the victims and advocated by the international law have never been initiated. Even the Charter for Peace and Reconciliation came to ban any complaint against the State agents. Yet, forced disappearance is a continuing crime which ceases only the day when the disappearance case is cleared.

The various human rights violations mentioned here were perpetrated by the security services of the State (DRS, police and constabulary stations, etc). Furthermore, as stated by Ali MERABET in his presentation, the Islamist groups also carried out these crimes against their victims. All strata of the Algerian society were subject to gross human rights violations. This policy of blind repression is one of the methods that the ruling power used to spread a reign of terror with a view to muzzling all forms of political expression.

Numerous reports on human rights violations in Algeria have been published by the national and international NGO's. Besides, a number of international organizations, on top of which is the UN, have recognized these abuses and the contempt displayed by the Algerian authorities for any attempt at investigating into the crimes of the past.

DISAPPEARED BECAUSE OF ARMED GROUPS - THE FORGOTTEN PERSONS FROM ALGERIA

Adnane Bouchaib³⁷

I will try to present in my brief paper the development of the situation of one particular category of disappeared in Algeria. I am one of the direct victims of this category and my association represents them: those who were abducted by terrorist groups. Until recently, there was a distinction between the two forms of disappearance at the level of terminology. In everybody's mind, the disappeared are called so for they have gone missing at the hands of the State agents and the kidnapped are called so for they were abducted by Islamist terrorists. Now, this distinction is not valid anymore. First of all, I would like to present you the historical development of our fight, both at the national and international level.

In Algeria, cases of enforced disappearance first occurred in 1992, concomitantly with the civil war, but in a targeted way. Then, mass kidnappings took place as of 1994. The victims were abducted in false checkpoints. In the beginning, the victims were of male sex: university teachers, doctors, lawyers etc. Then, women were also abducted by the terrorists to serve as sexual slaves. In this connection, the association Somoud was created on 12 December 1996 to defend the rights of this category of victims and their families. At the international level, we developed an extensive network of contacts with NGOs. In parallel, we called upon the United Nations Commission on Human Rights to intervene. However, we were soon faced with the fact that in the international law system only State agents could perpetrate enforced disappearances. Accordingly, victims of Islamist armed groups which were called "opposition groups" were excluded from the protection of international law. In addition to this initial difficulty, the complexity of the Algerian situation also played a negative role. Both the State and terrorist groups enjoyed support at the international level. The two belligerent parties, the State on the one hand and the terrorist groups on the other, used victims as a tool to tarnish the image of their opponent. Therefore, all stakeholders (NGOs, UN, etc.) in the international community were cautious when they dealt with the issue of enforced disappearances in Algeria because they feared that talking about disappearances caused by the State would imply excluding disappearances caused by the terrorist groups and vice versa.

³⁷ Lawyer at the Bar of Medea.

Therefore, the need to defend all the disappeared has gradually arisen as a core element of our fight. Indeed, the sufferings of the victims are the same regardless of the authors standing behind the disappearance cases and the same holds true with respect to the quest for truth and justice. The alliance between victims of the two categories constitutes a well-considered reaction and a response to the Charter which enshrines the impunity of both agents of the regime and of the Islamists. Yet, the international law will, immediately after the entry into force of the International Convention for the Protection of All Persons from Enforced Disappearance, cover all victims of enforced disappearance. In this regard, Article 3 of the Convention provides that States shall investigate cases of disappearances perpetrated by non-State agents.

At the domestic level, the person kidnapped by terrorists has always been put either under the category of victims of terrorism or under victim of disappearance, without ever belonging to any of the two categories. As a matter of fact, as far as victims of disappearances caused by terrorist groups are concerned, they have always been excluded, as to law, from the category of “victims of terrorism” and their families have never benefited either from the indemnification system provided by the law for families of victims of terrorism nor from the indemnification system provided by the new law on national reconciliation which only cover families of disappeared who have been abducted by State agents.

Let us talk now about the various decrees issued recently in relation to the indemnification intended for the victims of terrorism. Persons abducted by terrorist armed groups have never been recognized by these decrees and have thus been excluded from any possibility to get indemnification. The first decree adopted in 1994 deliberately omitted victims kidnapped by armed groups. Decrees adopted in 1997 and 1999 denied us the right to indemnification and only provided for “financial assistance”. However, to date, none has been granted “financial assistance”. With respect to the commission on enforced disappearances set up by the President of the Republic, it excluded from its scope persons abducted by armed Islamist groups. With regard to the legislation implementing the Charter for Peace and National Reconciliation, they did not confer any specific status to persons abducted by Islamist groups. We are the forgotten people of Algeria.

Our association considers that the Charter does not contain any element of reconciliation, except in its name. The core elements of genuine reconciliation are the following: knowing the truth, rehabilitation, judicial proceedings and prevention. Truth and reconciliation must involve: first, the recognition of the damage; second, the provision of support to the victims; third, the set-up of im-

partial judicial proceedings; fourth, reconciliation requires launching a debate on all crimes committed in the past. The main objective of a national reconciliation process - I think that our friends from countries where truth commissions were experienced can corroborate this - is to prevent the future repetition of crimes of the past. This objective requires two conditions: tell the truth and provide moral and financial indemnification for victims in order to avoid that they feel hatred and revenge. Justice must also be delivered so that those who are or will take power will think twice before infringing human rights standards. The Charter for Peace and National Reconciliation, which talks neither of justice nor truth, can by no means build national reconciliation.

Nourredine Benissad

I would like to indicate, as we continue, that Barrister BOUCHAIB is also the relative of a victim. In fact, one of his brothers, who was President of the Bar, was kidnapped during the first years of the terrorist era in Algiers

WOMEN VICTIMS OF RAPE CAUSED BY MEMBERS OF ARMED GROUPS - THE RIGHT TO BE HEARD AND TO KNOW

Nedjem Eddine Boudjakdjji³⁸

I also feel sorry we could not hold this conference in Algiers. I am the consulting lawyer for the Djazaïrouna Association, which defends victims of terrorism and their families. Through my collaboration with this association, I had the opportunity to listen to these victims. When some Djazaïrouna members heard about my participation as consulting lawyer to the association, they came in crowds to share with me the sufferings they had gone through. I think that the first right claimed by these victims was to be heard and that truth be known.

I was informed about two cases of rape. I think Algerian women do not feel at ease talking openly about such violations. A 24-year-old married woman who lived in downtown Blida, near a police building and military barracks told me about the atrocities she had suffered. In broad daylight, before midday, two men wearing djellabas rang the bell and forced the door of her house. She was kidnapped along with her 20 year-old sister-in-law, who was engaged. They ransacked the apartment and took all the money and jewels they found. They put them in a Renault 4, and drove them away to the El Afroun Mountains in Oued Djarr, a place sinisterly known in Algeria for its fake roadblocks. They travelled with their eyes shut and were only able to see once that they were in the middle of the mountains. The two victims had to support the attacks of a group of armed men for 5 days. They heard their kidnappers talking about cutting their throats on the third day. They were lucky. While the group was absent, the guard helped them to escape. They were found in El Afroun, in the constabulary stations. The gendarmes did not believe them and did not take care of them. They were kept for 48 hours before they were finally examined by a doctor, who confirmed that they had been raped. Following these events, the husband of the married woman had doubts on the paternity of his child and divorced the victim. The younger girl was luckier since she married her fiancé and now is the mother of two.

These two women have never forgotten and they want to be heard publicly. They ask for the creation of a Truth Commission: this is in fact what all victims and their relatives are asking for. The Charter which was promulgated and adopted by referendum forgot to listen to these victims who are demanding the right to the truth.

³⁸ Lawyer at the Bar of Blida.

I have another story to tell you. It is the story of a Croatian woman who was married to an Algerian doctor in Blida for years. Her husband was kidnapped to take care of an emir. In a statement given by the constabulary to the widow, a repented terrorist recognized that the doctor had been killed. The widow, who stayed in Algeria, had only one goal: finding, if only, a single bone of her husband. I think our State has the means necessary to conduct such research by cross-checking, either by locating mass graves or individual graves. I think that after the creation of a DNA laboratory within the General Department of National Security, we can identify what remains of missing victims. Every Friday, this widow goes to the cemetery of Blida. She goes there, as she wants to remember her husband. This is why victims and their relatives believe that the Charter is insufficient and cannot lead to national reconciliation. In Algeria, attacks perpetrated by Islamist groups continue. We have seen results these last days as several terrorist attacks have been perpetrated across the country. Peace has not returned to Algeria yet.

THE ALGERIAN LEGAL SYSTEM MECHANISM WHEN THERE ARE HUMAN RIGHTS' VIOLATIONS

Amine Sidhoum³⁹

Before starting my presentation strictly speaking, I would like to extend my warm thanks to the organizers of and participants in this seminar. Indeed, we would all have liked, including myself, that it took place in Algeria. However, and we have long been discussing this matter, we are aware that every time the civil society is organized, the military junta grows anxious. It refuses to see the Algerians gather together to discuss the problems that directly affect them and in which they wish to be personally involved in order to participate in the reconstruction of their country. Algerian authorities are thus undermining all the initiatives of the people liable to establish the State of law. I avail myself of this opportunity to greet all human rights militants who are in the jails of totalitarian regimes. I am particularly thinking about our dear Tunisian colleague, Mohamed ABBOU, who is serving his second year of imprisonment for having denounced the dictatorship.

My presentation will tackle the way in which law has been exploited to set up the military political legal machinery in which gross and massive human rights violations were committed over a decade. Law manipulations strictly speaking are so numerous that it is difficult for me to find a suitable starting point.

To fully understand the matter, I will start from a major event: the cancellation of the December 1991 legislative elections, from which ensued the train of events having led to the coup of 11 January 1992, by the setting up of the High State Committee which replaced all existing institutions. The state of emergency was then declared by a decree and, from then on, there was neither law nor justice in Algeria. After the military coup of 1992, the men and the institutions had no other choice but to give in to a certain situation, which is the replacement of the State of law by the state of emergency.

The first illustration of the disappearance of the State of law in Algeria was the settlement of administrative detention centres in the far south of Algeria. Thousands of Algerians were detained for years in these centres, without trial, nor any information on the grounds of their imprisonment. The testimonies of those who came out of these places alive recount the inhumane conditions they experienced in their detention.

³⁹ Lawyer at the Bar of Algiers.

Then, in September 1992, an anti-terrorist law was promulgated to provide for the setting up of special courts. These exceptional courts legalized human rights violations as thousands of Algerians were sentenced, during sessions held night and day, on the basis of confessions extracted after interminable hours of torture in secret detention; the State of emergency and the exceptional anti-terrorist laws constituted the legal framework justifying the abuses carried out by the authorities in the name of the nation's salvation: an ideal put forward but, as far as I am concerned, has never been a real motivation.

The review of the Penal Procedure Code comes to intensify contempt for the fundamental liberties organized by law. In fact, a number of provisions pertaining to police custody and the competence of the judiciary police (Criminal Investigation Department), have been reviewed.

Concerning police custody, its duration was initially fixed at 48 hours and could be extended up to 4 days. The legislative review has prolonged detention in custody for up to 12 days. Hence, torture was legalized because this extension of the deadline has made it possible for the police, the constabulary and the military security to confine the accused persons without any control. Let's mention also that the 12-day time may be extended. It is therefore with the blessing of the law that some accused persons were imprisoned for more than two years, before even being tried, while being deprived of any contact with their family or their lawyer.

As for the judiciary police, its competence was originally founded on a territorial criterion. The anti-terrorist law superseded this logic through national competence. Accordingly, all security services (Police, constabulary, Military Security), wherever they are, were permitted to arrest any individual on the Algerian territory. In more concrete words, this means that we know some persons who live in Algiers and who were arrested by the police services of another city, or even of another wilaya. It is this process which made it possible for the district police stations or the constabulary stations, when the families came to complain about the arrest or the disappearance of their close relations, to reply: "we don't know about it". This dilution of responsibilities was consciously elaborated and has contributed to generalizing torture, abductions and summary executions. Afterwards, security forces had only to deny any involvement declaring that the detainees had been killed during an escape attempt or in an encounter. Algerian authorities pushed their casualness further to the extent of not justifying themselves at all, while giving one element of response to the families: "on the run".

In 1995, special courts were superseded by the criminal court. This terminological modification has not brought about new practices. Abuses continued to the

extent that the anti-terrorist law, which was detrimental to a number of liberties, was fully incorporated in the Algerian Penal Procedure Code and Penal Code. As a consequence, the 12 days of police custody and the national competence of security services continued to be operational. In addition, new grounds for indictment were introduced in the Penal Code, allowing trials and sentences with no evidence. The charges of “belonging to armed groups” and of “complicity with armed groups” were therefore brought to justify all arbitrary procedures. An elastic law and a terminology devoid of any legal basis have made it possible to use the whole judiciary machinery for petty political ends and to protect the personal interests of the military junta.

Thus, the families of the disappeared persons were particularly affected by this manipulation of justice. Indeed, when they refer the disappearance case of their close relations to the Public Prosecutor or the Examining Magistrate, the procedure systematically ends up in dismissal. This denial of justice has worsened with the implementation decrees of the Charter for Peace and National Reconciliation. In fact, these latter confirm the impunity of the State agents by providing for the unacceptability of any complaint against the State agents. For what reason? The implementation instruments concerning the enforcement of the Charter and, more specifically article 45 of the order 06-01 of these instruments, literally point out that it is impossible to prosecute the “nation saviours”. Therefore, we are presently flouting the Algerian Constitution which recognizes in every citizen the right to seek justice, in order to protect the military regime. Who can still say that Algeria is a constitutional system? The Charter embodies in a certain manner a new fundamental law.

Now there is a question which is particularly delicate but it is necessary for this meeting. By way of conclusion, I would say: what should one do when the State loses its reason and the notions of law and justice are meaningless?

THE GOVERNMENT'S ANSWERS - THE CHARTER AND ITS IMPLEMENTATION TEXTS

THE CHARTER FOR PEACE AND NATIONAL RECONCILIATION AND THE AUTHORITARIAN POLITICAL SYSTEM

« Granting a financial compensation or any other type of compensations to the victims, without fulfilling its obligation to initiate and to conduct an investigation, does not exonerate the governments of this duty. »⁴⁰

Madjid Benchikh⁴¹

When we planned to organise the seminar in Algiers in February 2007, we wanted to insist, in the first place, on the gathering of various associations of victims of both Islamist terrorism and of the repression of security forces. This rapprochement between associations which seemed to be driven apart by too many elements is very significant of the militants' maturity within these associations. But it is also a response to the government's policies: policies made out of ignorance of the victims' views and out of the denial to seek the truth which is so essential to effect reconciliation and peace and so necessary to devise new policies which discard arbitrariness and violence. We also wanted to open the floor to victims to speak, whatever is the nature of the forces lying behind their tragedies. We should listen to the victims, all the victims because it is a key requirement for determining just measures which address the situation and the needs of the populations, particularly those who suffered more from the violence of armed Islamists and security forces. The meeting of Algiers was banned for fallacious motives: it is an erroneous and unjust banning. We should thank all those who have been earnestly working so that these objectives are attained today thanks to this seminar which is being held today in Brussels. As part of the seminar, an analysis of the various massive violations, as attested by numerous testimonies, which were committed in Algeria, has to be presented. Then, it would be proper to examine the responses of the government to these violations. Lastly, in accordance with the spirit of dialogue which prompted the organizers and the associations of victims, a synthesis of these various observations should be undertaken. In Algiers, we hoped, for example, to organize a debate between an academic (myself, to be more specific) and someone who assumed responsibilities in the area of human rights, sharing the government's views (Mr. KSENTINI seemed to be prepared to participate). We wanted to demonstrate the necessity of a debate

40 Special Rapporteur on Extrajudicial, summary or arbitrary executions, M. Bacre Waly Ndiaye, Report on the 7th December 1993, E/CN.4/1994/7, §§688 and 711.

41 Professor of law at the University of Cergy Pontoise (Paris – Val d'Oise), former President of Amnesty International in Algeria.

by tackling the different visions underlying governmental policies, human rights violations and the tragic but unknown situation of the families of victims. These steps were not undertaken as the seminar of Algiers was banned.

This attitude is revealing the will of the Algerian government to close the debate in this area before it takes place. The dialogue which the various associations of the victims of human rights violations had called for was then purely and simply dismissed. Mr. Ksentini, President of the National Consultative Commission for the Promotion and Protection of Human Rights, who was supposed to participate to this seminar in order to illustrate the government's policies, considered that the ban of the seminar in Algiers was lawful and legitimate. He also somehow put an end to the dual discourse which characterizes governmental bodies in the area of human rights in Algeria.

How can one find out about the government's responses in general? In which texts can one seek the expression of the government's policy, in the fields which we are tackling?

The Charter and its implementation texts clearly reflect the government's position. Hence, the Charter itself has peace and reconciliation as a heading; it is the image of the Algerian Constitution, of the legal system as contemplated by those in power: all these texts commit to the respect of rights and justice. The Charter advocates peace and reconciliation in the same way the Constitution commends democracy, respect for human rights, justice. The core of the problem obviously lies in examining how the rules and principles announced by the Charter and the Constitution will then be implemented. We think that we can make a comparison and establish links between the Constitution and the Charter. We would like to put forward some observations in this connection by comparing the drafting conditions of the Charter and the Constitution and examining the content of the Charter which is an extension to the authoritarian political system.

/ CONDITIONS OF THE DRAFTING OF THE CHARTER

When one looks at the conditions of drafting of the Charter, one can recognize the main elements characterizing the set-up of a constitution. We are indeed faced with the same political system which has always given the same responses to the major problems facing the country. As far as the conditions for the draft of the Charter are concerned, the crucial issue is to see if the authoritarian conditions for the development and the dual language which characterize the Algerian political system are still present.

As for all drafting of constitutions, a drafting Committee was set up. But it also operated in an informal way as its members kept hovering in the corridors of the Ministry of Defence and the Ministry of Foreign Affairs. There are good drafters in those places but particularly there are many prominent persons, very close to the ruling circles! It is in these conditions that the Constitutions of 1989 and 1996 were worked out. No consultation with independent personalities or with organizations having different views from those expressed by the persons in power was held for the elaboration of the 1989 and 1996 Constitutions.

We can also compare the adoption, by referendum, of the Constitutions and of the Charter. The primary objective of any referendum in Algeria is to reinforce a political system and to secure a political conditioning of the society in such a way as to give the impression that the whole people are behind those in power. That is why no referendum has ever allowed free debate.

Concerning the Charter, the civil society, the associations of victims of enforced disappearance and human rights violations as well as some political parties did not accept that peace and reconciliation be achieved under any conditions whatsoever. Obviously, all organizations hope for peace but the content of the policies in this regard poses serious problems which call for negotiations in order to avoid divergences and to reach compromises. The Algerian political system has never been able to accommodate this perspective in its political practice. As a matter of fact, the ruling authorities quelled the protests from the outset so that the Charter would be promulgated as promptly as possible. In addition, the Algerian media, television and radio, are in the hands of the government and they keep no space for conflicting voices. Therefore, it was impossible to have any debate, though the civil society was fervently hoping for it, with regard both to the Constitution of 1996 and to the Charter. However, repression was much more severe regarding the Charter. In 1989 and 1996, we had the possibility to express our views on constitutional texts even if it was in a marginal way. During the adoption of the Charter, the families of the disappeared and the political parties were, on the contrary, not allowed to debate. Actually, the different groups which tried to express their views against this project were not allowed to do so. Undoubtedly, because the Charter is directly connected with the problems of security which were managed and conducted by the security services, the Charter clearly shows the influence of the army over the decision-making system. The Constitution does not praise the army since it cannot do this without discrediting the whole system, whereas the Charter starts with a high praise of the action led by the security forces.

Thus, apart from their legal content, these texts reflect an authoritarian political system which does not accept any negotiation with the outside world. All this ex-

plains why the offer of dialogue extended by associations of victims, weakened by repression, cannot be accepted by the Algerian current political system. The refusal of any debate also opposed by the Algerian authorities to the civil society during the adoption of laws on exploitation of oil. Once again, in this context, the authorities have enacted new texts without concerning themselves with the root causes of the difficulties and problems they intended to address. In the case that concerns us, namely the Charter, the conditions for its drafting did not make it possible to talk about the causes of violence and human rights violations in Algeria. Yet, it is impossible to give an accurate diagnosis and to propose good solutions without trying to understand the causes of the events which disrupted Algeria. Nothing in the Charter enables us to estimate the role played by the one party, the cancelled elections, the forced resignation of the Head of State or the coup d'état in the eruption of violence. Nothing of all this is tackled by the Charter. Like the Constitution, the Charter is just a façade intended to shield reality. As quite often witnessed in authoritarian political systems, legal instruments serve more to let a situation deteriorate than to resolve a crisis. These texts are nonetheless living, and not artificial, instruments. In fact, these texts summoned up forces hostile to change instead of setting up forces advocating democracy.

We can now tackle the second point of this presentation and focus on the content of the Charter. Actually, the Charter and its implementation instruments are part of an authoritarian perspective.

/ CONTENT OF THE CHARTER

One of these points contained in the Charter and taken up in the ordinance is interesting from our point of view insofar as it threatens all those who would instrumentalise the national tragedy. Although the legal scope of these texts is interesting, what is worth pointing out is the contradiction they contain: on the one hand, the claim to reach peace and reconciliation and, on the other hand, the negation of the right to speak of anyone opposed to the Charter. This non-recognition of the freedom of expression, and of the right to oppose has, and above all is, a very concrete dimension: the offenders, those who dare opposing the Charter, incur fines up to, according to the texts, several millions of dinars. Repression and authoritarianism which characterize the Algerian system are reaching here their climax: offenders incur several years of imprisonment.

Moreover, one has the right to ask what is an instrumentalisation of the national tragedy. Indeed, in the event I denounce a proven act of torture, am I instrumentalising the national tragedy insofar as torture is strictly banned by international

conventions ratified by Algeria? Therefore, by denouncing human rights violations, one is contravening the Charter and by supporting them, the Government does not honour its international commitments.

It appears then that the phrase “instrumentalisation of the national tragedy” may have various meanings. When imams are appointed and asked to repeat word by word the government discourse, would it not be an instrumentalisation of Islam and the national tragedy as well? Are democracy and the Constitution not instrumentalised by a Charter which claims to advocate respect of the law? In a country where the victims do not have the right to speak – the ban of the seminar in Algiers testifies to this - and where the practice of torture, in spite of the upsetting number of cases reported by human rights NGOs, has never gave rise to officially published sentences, can one talk of democracy and the Rule of law? No, these concepts are rather subject to instrumentalisation.

All these problems show us that peace and national reconciliation, which are mentioned in the Charter, the Rule of law and free elections, which are contained in the Constitution, are but a façade, even if the façade democracy tries to temper the authoritarian system by maintaining margins of freedom as per the cases and conditions determined by those in power. Behind the freedom of elections, the discourse on human rights, peace and reconciliation, manipulation lies: winners are declared in advance, seats are distributed, usually in a manner that appears to challenge reality.

How can one deny so many crimes when there are thousands of disappeared, killed, raped and tortured persons? How can one assert that this is not a deliberate policy? These policies lasted for a long time and were known at the highest level. Yet, as mentioned in Article 7 of the Rome Statute, when these violations are “systematic” or “widespread”, they constitute crimes against humanity. Therefore, while the Rome Convention has explicitly defined crimes against humanity, the authorities deny this reality and the Charter was made to stick to a situation which may raise the responsibility of the Algerian State at the international level. It is true that the International Criminal Court is not competent, simply because Algeria has not ratified the Rome Statute. However, the absence of a competent international court at the legal level does not suppress all issues as other bodies and jurisdictions such as the Human Rights Committee may touch on the legal qualification, which may, at the very least, be embarrassing for the image of Algeria.

DEBATES

DEBATES

Unknown person

To be brief, I will not come back on what Cherifa said, but everything is not only black or white. We have to go through the divisions between the victims of the State, on the one hand, and of terrorism, on the other hand. The victims can suffer many times; some of them are mothers of disappeared, have been in jail, their daughters have been raped and their grand children have been adopted. There you have some particular cases which are not under a specific status. I would like to add that this Charter has completely forgotten the children born in the terrorist maquis. They are the forgotten ones of the Charter.

Unknown person

I have heard many things. We have talked about impunity. This Charter has been elaborated to state the impunity of the Islamics and probably also of the State. I don't think there was a civil war; we were jammed between the two camps. It was a war done to civilians, to intellectuals who were not officials or fundamentalists. Many people have said that the halt of the electoral process has provoked the war. Personally, I approved and I was mobilized in favour of this halt. Since the eighties, many people in Algeria who believed in a new society have been killed. Then a fundamentalist leader said: "we should import some intellectuals from Iran".

Before being a politician, I am a mother. My brother is also 21 years old. I can't imagine the situation of Nassera but I do sympathize with her. The experts are here to express their technical opinions; the victims can surely express their political opinions, which are divergent.

Louis Joinet

Have the forced disappearances affected the children? Have some pregnant woman given birth after their disappearances?

Cherifa Kheddar

Some women have been kidnapped by the Islamics. Then, they have been submitted to a wedding of pleasure. Some children are born from these weddings with a father who is an Islamic. These children don't have a civil status. However, they need to grow up and to go to school as any other children.

Unknown person

I want to bring some testimonies. I will start with what was going on during the war of Algeria. My father was kidnapped by the French army. In 1962, a harki told us where my father was executed. The French asked my father to dig his

own grave and then they shot him. We learned the place where he was executed. During the war, 35 persons from my family were executed and my village was destroyed. After independence, the torture and disappearances were recognized by the French General but they were not prosecuted. During the last decade, I have lost three people from my family; they have all been executed. I have also seen in Sidi Ahmed the killing of over 100 persons, committed by some Islamics, during Ramadan. I have seen some heads and brains exploded on the walls.

We are talking about the Charter and its insufficiencies. We should ask to the Algerian people, who knew the curfew and who live today in security. For the moment, there are some mechanisms to adopt, some things to do.

Unknown person

I am very happy to be with you, I am touched by all these testimonies, a bit shy by some declarations. I don't want to excuse the government. I have paid dearly for the putsch of 1965: one year and a half in jail. I am not here to defend the Algerian government but I don't want us to forget that the FIS and the GIA have led a terror campaign in order to eradicate all the Islamics. Anouar Haddam has declared, concerning an attack, that it was a sentence from God. I think that the Charter has for consequence a transmission from generation to generation of a collective traumatism on the pretext of the establishment of peace.

Nedjem Eddine Boudjakdji

The kidnapping and the rape of some young women and girl aged of less than 16 years old have not been particularly discussed. What we can say is that they are afraid to denounce the crime that they have been subjected to but it stays in their memories. I am asking the experts to take into consideration this point. We need some statistics to bring help and hope to these women.

Ali Merabet

I have 2 questions for Madjid BENCHIKH. Firstly, in the Charter, is there a difference between the Islamic women, the ones who stay in the maquis because they want it and the other ones who suffered from the war? Secondly, the Charter pretends to help the peace. What was its impact? How can we improve it?

Unknown person

A serious study on the women raped by the Islamics, with some statistics, has been conducted by Maghreb Egalité.

Sofiane Chouiter

In Algeria, there are not a lot of women who are disappeared because of some States' employees. I think that Somoud has this type of case. There were pre-

gnant women, kidnapped by the Islamics.

Ali Merabet

During the killings, we heard of a baby burned in an oven, of some women quartered as they were pregnant.

Nassera Dutour

I would like to insist on the fact that there is no amalgam. We are here to talk freely, to get some common recommendations, to have a common point of view; I hope this will be the case. All these persons killed, the massacres, the crimes, have to be named here in order to dissipate the small conflicts and the lack of comprehension. I remember that 2 years ago, Cherifa and I were not saying hello. Why? I don't know why, we have been put into two different camps, by circumstance. It is the same for Ali MERABET. We don't want various camps anymore; we just want to be the Algerian people all together! There is a justice and we have to apply it independently. Not everyone can forgive but we have to look together towards the future. We can't spend all our time criticizing, squabbling, we want the truth.

The history of the war of Algeria is also to be written. No war is beautiful. We are only asking for the history of the last decade. This war is particular because we have killed one another.

Roberto Garreton

Concerning the issues raised by Louis JOINET, there are two possibilities: the mother is killed and not her child or the mother is pregnant and is killed. In Argentina, we got back 69 children, born in jail and raised by families of the military. The Convention against Forced Disappearances has to investigate this situation.

Madjid Benchikh

We have not addressed the general politics and the system in which they are adopted. I hope that everybody here is convinced that these two elements are linked together. What can we see for tomorrow? We have to look for the truth, to understand the factors which led to the human rights violations in order to find solutions which match with the reality and which answer to the needs of the victims. We have to convince, through dialogue, the Algerian government of the necessity to establish a truth commission. With time and perseverance, we will go through the difficulties to view the problems differently and find solutions.

I have participated, with the organizers, in the elaboration of this seminar's program. About its title and the use of the term conciliation, it was Olivier de

Frouville who talked about the work of Louis Joinet on the topic. As many organizers were not in favour on the term reconciliation, we have in fact chosen the term conciliation. The conciliation is not the same as reconciliation. This latter can be the end product of the conciliation but it means that there is a dialog. The Charter is not about conciliation; it is a diktat. The government has dictated its solutions unilaterally.

Cherifa Kheddar

Madjid Benchikh said that the Order 06-01 planned an amendment which is too high to be applied. However, I must underline that the custodial sentence can be applied. All the Algerians who are here today and who criticize the Charter are liable to a custodial sentence of 3 to 5 years.

INTERNATIONAL MECHANISMS OF HUMAN RIGHTS PROTECTION

INTRODUCTION

Luis Guillermo Perez

I am Colombian and the Secretary General of FIDH. The subject you are talking about in this seminar is a matter of personal experience for me. We have worked and been militants in the field. We have suffered a lot; some of our friends have been killed, arrested, and disappeared. In Colombia, the “Justice and Peace law” has been imposed on the people. This law offers impunity to the paramilitaries who committed crimes against humanity. The Government has established a Truth and Reconciliation Commission but we are against it: it doesn’t give the possibility to speak to the victims.

FIDH has to protect the freedom of speech of the victims. These crimes can’t be forgotten and we can’t turn the page. Questioning the authorities always means taking risks. The important thing is that the victims keep on believing and struggling. We are here because of you and for you, the victims, because we are asking for a conciliation process, based on the truth. We also want the persons who have committed crimes against humanity to apologize to the victims. How can we forgive if the responsible don’t repent? We can’t accept only symbolic reparations.

The will to keep on struggling in Latin America has always been present. Roberto GARRETON was in Colombia, a few months ago, to show us his solidarity. For us, the struggle in favour of human rights is an involvement which can’t be denied. This feeling of solidarity is giving us hope to put changes in place.

In Latin America, despite of the law which stated the impunity and the amnesia, we have broken the silence. The executioners are not dying peacefully and we should never let them do so. The aim is that these executioners can’t commit these types of crimes again. The message from Latin America is change and hope. This message is in our heart and our intelligence: we have to keep on struggling and working together.

THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCES

Ewoud Plate⁴²

Before handing the platform over to Louis Joinet, I would like to state some interrogations about the international treaties: which ones have been ratified by the Algerian state, which ones are used by the victims, what we can expect from the Algerian state concerning the application of these texts?

Louis Joinet⁴³

It is my task now to present the Convention. I'll stick to the basics, namely important legal advances, particularly those for the fight you are leading.

What are these developments? I will mention those that, to me, are essential; Olivier de Frouville should not hesitate to interrupt me because he knows the subject better than me. It is important to remember that enforced disappearances did not exist as offences before the Convention. The Committee on Human Rights was forced to make legal contortions to address this deficiency by describing - in order to keep them criminal - violations of the right to life, integrity, safety, and human dignity...

1st development: now, the Convention specifically states:

- that enforced disappearances are a specific crime, - - that states must include the crime in their legislation in order to ratify the Convention; that they become a "crime against humanity" and therefore imprescriptible when widespread and systematic.
- In other cases, namely when they are not qualified as a crime against humanity, they can be classified as a "continuing crime" to make it more difficult to apply a statute of limitations. Consider an example for non-lawyers: in French law, the statute of limitations for criminal matters is ten years. If I commit a crime in 1980, it will normally be prescribed in 1990, whereas if the crime is legally considered as a "continuing crime," the starting point of the prescription will be set at the day the case was solved. If the judicial system was not working properly, the time requirement will be extended to the period during which justice could not be fairly carried out in a state of law.

⁴² Représentant of AIM for Human Rights.

⁴³ Independent Expert appointed by the Secretary General on the situation of human rights in Haiti, former Special Rapporteur of the Sub-Committee on Human Rights on "The fight against impunity".

2nd development: the principle of “due obedience” (superior responsibility) is not enforceable. In addition, it now explicitly concerns the case of the superior “who did not give orders but who knew” and knowingly, did not object. This may be pursued.

3rd development: as regards the severity of penalties, there was a debate during the drafting of the Convention. Some thought life imprisonment should be included or, for some delegations from retentionist States, the death penalty. Others had less radical positions. A compromise formula was adopted to refer appropriate penalties by taking into account the seriousness of the crime.

Other anticipations:

- granting mitigating circumstances in cases of cooperation with the law;

- aggravating circumstances if there was a subsequent death in connection with the disappearance when it was established, or if the person was vulnerable (pregnant women, handicapped, etc.).

4th development: as soon as the authority is aware, a complaint is not necessary to initiate prosecution. It is incumbent upon the State to implement the “initiative” for public action (prosecution). The reason for this is simple: often the people concerned do not dare complain because they fear reprisals.

5th development: A duty of investigation and protection of complainants is imposed on the State.

6th development: This is a major innovation, especially for victims and civil society, by extending the rights of victims, even the very concept of “victims.” The victim has to prove a cause of action - as in any legal system - if he or she was not him or herself the subject of a kidnapping followed by death, but the formulation of the Convention is extensive, since it specifies that this interest shall include any person who has suffered direct injury. Note that the Inter-American Commission on Human Rights, for its part, adopted a broad interpretation of this principle.

7th development: States must take steps to ensure that issues are resolved to raise the legal status of victims. Indeed, disappearances may have major consequences on the fate of families, particularly in civil law. These consequences can be tragic: problems of succession and inheritance, absence theory in civil law, social status, and rights issues (related to retirement) transmitted to other survivors, etc.

8th development: This relates to “habeas corpus,” wherein “secret defense” can no longer be opposed. In other words, anyone with a legitimate interest to act, in

the broad sense discussed above, must be able to form a “habeas corpus recourse” with the judicial branch of his or her country. A normal functioning of justice is also necessary, which is often not the case while an authoritarian regime is in place. The judge must respond to this appeal by researching who the decision-maker was, the place and time of the arrest and detention, and the details of the transfer (this is important in case of loss).

9th development: This point is related to our seminar. Article 44-7 of the Convention provides the right to form organizations and associations to victims, in a broad sense, to establish the circumstances of disappearances and the fate of missing persons. This concept is even broader than the abovementioned principle called “cause of action” in that it assumes that everyone must be able to enjoy it freely. From this point of view, the difficulties you encountered in holding this conference in Algiers showed that if Algeria did not (yet) ratify the Convention, it nonetheless respects the spirit of it.

10th development: The consecration of the principle of “universal jurisdiction,” under which a person may be tried by a foreign country even if the crime was not committed in its territory. This is what happened to General Pinochet. When I started my report on the fight against impunity, my assistant, despite extensive research, did not find a single case of the application of the principle of universal jurisdiction, even though it existed in three conventions, including that on torture. This situation has changed since the “Pinochet case.” Once a State has ratified the Convention, it should incorporate the crime of enforced disappearances into its internal law, as a specific crime, so that it can be covered in bilateral agreements.

It should be noted that there is a clause providing that there can be no extradition if the person faces a risk of enforced disappearance in the requesting country.

In conclusion: A question remains: which body will be responsible for monitoring the implementation of the Convention?

The debate is focused on the following points:

- either the competence is granted to an existing Committee, such as the Committee of Human Rights or the Committee against Torture, so that enforced disappearances are - among other things - a form of torture for families;
- or we create a special committee on enforced disappearances.

In the end, the second scenario (that creation of a special committee) has been retained. The Committee against enforced disappearance will consist of ten experts elected by secret ballot. It should in principle be established six months

after the entry into force of the Convention (after twenty ratifications). One point is noteworthy: it will be possible to refer a matter to the Committee in urgency, which is a kind of “international habeas corpus.” It will therefore be able to respond “urgently,” which is vital; I can attest to my experiences receiving a phone call warning us about a case of a disappearance (often at midnight because of the time difference). With the Internet, the referral procedure in an emergency should be increasingly effective, especially since the referral to the Committee is broad: it can be made by relatives, by legal representatives, lawyers, or any person with a legitimate interest (trade union representatives, for example). Another item was discussed at length has now been accepted: the Committee will be able to make in situ visits, particularly when it is alerted to situations of massive forced disappearances, which are relevant to the qualification of crimes against humanity.

Although important progress has been made, we must remain vigilant because - one might say - the difficult part has yet to come: getting states to ratify the Convention as soon as possible and apply it in good faith.

A Coalition for the ratification of the Convention was also created. I thank the FIDH and other NGOs initiated this movement. The objective of this initiative is clear: it requires that the Convention enter into force as soon as possible (20 ratifications are required) and that States incorporate the appropriate dispositions into their domestic law so as to ensure that they do not apply it lightly. Perhaps it would be fitting to send a letter of appreciation to States which have signed the Convention to encourage them to ratify it quickly. It would also be useful to identify which states would be reluctant to simply sign the Convention. I also propose to establish a strategy for the dissemination of the Convention by the United Nations.

Dear friends,

Let me say in closing how much I was honored to be among you, and tell you a secret. I finally agreed to participate in this seminar because I knew it was going to reunite families of all forms. There may be some differences among you, but it is important to unite our forces and move forward together with a view of conciliation.

Let me clarify the word “conciliation,” of which I am very fond, as I noted in my report on “The fight against impunity.” Indeed, reconciliation is a personal and moral act. To reconcile, we must forgive. This means that justice has identified the perpetrators and that they have shown signs of repentance. That is why I

was so insistent on this approach in my report. “Conciliation” does not mean “reconciliation,” but rather dialogue. Getting around a table to talk. Our friend Roberto Garreton – who is here – knows this more than me, him being one of the actors in this stage in Chile, a phase which helped solve practical problems, such as the location of graves.

I conclude my speech with a topical point. As you know, this seminar should be held in Algiers, not in Brussels as it was. I would like to make the following comment. While the Charter was being debated, I spoke in Paris during a meeting at Place of the Republic, stressing its incompatibility with the principles of international law. However, during the signing ceremony of the Convention in Paris, at the Ministry of Foreign Affairs, I met Mr. Bedjaoui, Minister of Foreign Affairs of Algeria. He asked me how I was doing. We have known each other for 40 years, including when he was attending the Commission on Human Rights. I told him I was doing “better than my visa that I could not obtain to go to Algiers,” and he replied: “Dear friend, give me your passport and I will issue your visa immediately.” I started to explain that I wanted to go to Algiers to attend a seminar on “enforced disappearances” which was especially important since it brought together “at last” the families of the disappeared from all sides, meaning those from some circles that caused the disappearances. He asked me... if we could not postpone this meeting because he had to... make some enquiries (this was on February 6 and the prohibited seminar was scheduled for February 7 and 8). I had to content myself with this diplomatic response and never heard news about my visa!

CASE LAW OF THE HUMAN RIGHTS' COMMITTEE ON ENFORCED DISAPPEARANCES IN ALGERIA

Olivier de Frouville⁴⁴

I would like to make a presentation on the case law of the Human Rights Committee related to the issue of enforced disappearance in Algeria.

First of all, I will briefly introduce the Human Rights Committee; it is the body that monitors the implementation of the International Covenant on Civil and Political Rights by its State Parties. The International Covenant on Civil and Political Rights enumerates all rights contained in the Universal Declaration of Human Rights. There is also an International Covenant on Economic, Social and Cultural Rights. There are a number of civil and political rights enshrined in the International Covenant on Civil and Political Rights: the right to liberty, the right not to be subjected to arbitrary arrest or detention, the right not to be subjected to torture, the inherent right to life, the right to a fair trial, etc. The Human Rights Committee has two main missions. First it must receive and examine reports submitted by State Parties. In this regard, governments must report to the Committee on the implementation of the Covenant in their country. In this connection, sessions are held in the presence of experts who put questions to the representatives of the countries by stating, "But concerning this point have you adopted all necessary measures?" At the end of this procedure, the Human Rights Committee adopts what is called "concluding observations", which consist of positive points and then more importantly negative points, in addition to recommendations put forward to the State stating, "if you want to respect the Covenant, such and such measure must be adopted". The second mission of the Human Rights Committee is to examine what is called in the UN jargon "individual communications" - which are complaints submitted by individuals or by NGOs, which may represent individuals, related to the violation, by a State Party, of provisions of the International Covenant on Civil and Political Rights. This procedure is available only if the State has ratified a particular instrument - a protocol to the International Covenant on Civil and Political Rights. And, it so happens that Algeria is a good element in this regard as it has ratified not only the International Covenant on Civil and Political Rights, but also the protocol in 1990. Hence, Algerians and others may submit individual complaints to the Human Rights Committee. In the same vein, I should mention that the Committee Against Torture is equipped with a similar procedure, which Algeria has also accepted.

⁴⁴ Professor of law at the University of Montpellier 1

With regard to the first procedure, which I will not mention again in my presentation, Algeria submitted a report in 1998. After examining this report, the Human Rights Committee had already noted then that enforced disappearance was a serious problem in Algeria and had insistently asked Algeria to adopt two measures: set up a central registry to record all reported cases of enforced disappearance and all measures adopted day by day to search disappeared persons and, as a second measure, to assist families in locating the disappeared.

I would like to focus on the case law, which consists of all individual decisions adopted by the Human Rights Committee within the framework of the second procedure - the examination of individual communications.

At present, the Human Rights Committee has issued three findings, which means in the jargon that it has adopted three decisions. The case of Mr. Saker, a case of disappearance which occurred in Constantine in 1994, the case of Mr. Ryad Boucherf, a case of disappearance which took place in Algiers in 1995 and the case of Mr. Malik Medjnoune in Tizi Ouzou in 1999. We already have three decisions by the Human Rights Committee concerning three disappearance cases in three different areas of Algeria. Therefore, we already have a demonstration of the geographical distribution of the enforced disappearance phenomenon in Algeria. The cases of Messrs. Saker and Boucherf concern two families which, up to now, have no information about the whereabouts of their disappeared one. Whereas in the Malik Medjnoune's case, the disappeared person reappeared after several months of secret detention and was subsequently subject to an unfair trial. This case is important as the process through which he and probably other persons, went through is well known. Currently, there are other cases which have been submitted to the Committee and will soon be examined. There is no reason why this should stop since the procedure has been initiated and other cases may well be submitted. What do these findings show?

As stated by Louis Joinet a short while ago, there is, for the time being, no such provision in international law as the right not to be disappeared. In fact, this right is contained in the Convention but it has not been brought yet into force. The Human Rights Committee deals with enforced disappearance cases in the light of a number of rights contained in the International Covenant on Civil and Political Rights: for instance, Article 9 provides for the right to liberty. The Human Rights Committee has always stated that enforced disappearance is a gross violation of the liberty of the person, the right not to be subjected to inhuman or degrading treatment, both for the disappeared person who is held in secret detention, which also often entails torture, and vis-à-vis the family which

suffers the distress of enforced disappearance, over many years. The Human Rights Committee also recognizes the violation of the right to an effective remedy, since the disappeared person cannot have this right determined by a judge, and since the family only came up against a wall of silence, a refusal to provide information. In some cases, the Human Rights Committee may also make a finding on the merits of a violation of the right to life, as in the case of Mr. SAKER, when there are strong presumptions that the disappeared perished in the ordeal.

The importance of such findings is that they are like a decision of justice. However, one should not have delusions about these findings as they are not binding; they are just considered as recommendations but they have the same aspects as a decision of justice, since they arise from a contradictory debate and give rise to a judgement: "The State has violated such and such rights of so-and-so". Therefore, we end up with a judgement and a set of recommendations. The objective is then to ensure an effective remedy for the victims and accordingly launch an immediate inquiry, elucidate the fate of the disappeared persons, provide redress for the victims, and to ensure that the State takes all necessary measures so that such cases of enforced disappearance will never re-occur.

/ WHAT CAN ONE DO WITH SUCH DECISION?

First, there is an individual recognition of something that happened, with a UN heading. For a State like Algeria, which has a leading position at the UN from a diplomatic point of view – Algeria enjoys a prestigious place within the United Nations- it is absolutely unthinkable that it could be condemned by a political body of the UN. So it has to be done by an independent body: the Human Rights Committee. The decisions taken by the Human Rights Committee and the Committee Against Torture are the first universal recognition of the issue of enforced disappearance in Algeria.

Before, there were only censuses carried out by the Working Group on Enforced or Involuntary Disappearances, but no legal definition was provided. The symbolic aspect is important. Later, one can refer to recommendations of the Human Rights Committee for follow-up. There is a Special Rapporteur on Follow-Up to Individual Communications of the victims. "Has the State implemented the recommendations?" If not, the Rapporteur refers to the State to have information on measures taken. The procedure is long as it takes three years, with a contradictory debate. Another element which one can raise continuously: the procedure of interim measures which the Human Rights Committee may adopt to request the protection of persons pending a deci-

sion. The Collectif des familles de disparu(e)s en Algérie (Association of the Families of Disappeared Persons in Algeria) had recourse to this procedure in three cases; more particularly in the case of Mr. BOUCHERF, at the time of the Charter for Peace and National Reconciliation, when it requested the Human Rights Committee to stop this referendum process because once the Charter was approved, enforced disappearances would never be raised again. The Human Rights Committee reacted positively by asking Algeria not to refer to the provisions of the Charter restricting freedom of expression with regard to the persons who had submitted or would be submitting complaints to the Human Rights Committee. On the one hand, this means that one may again refer cases to the Human Rights Committee should Algeria bans a seminar organized by persons who submitted communications; on the other hand, this implies that the provisions of the Charter arouse the suspicion of the Human Rights Committee in relation to its compliance with the International Covenant on Civil and Political Rights.

DEBATES

DEBATES

Louisa Ai't Hamou

I have many doubts about the fact that the Algerian government is looking after its image in front of the international institutions. I believe that this was the case before. I have experience working with the CEDAW. I am not sure that the international institutions can put pressure on the Algerian government. These organizations are interested in the investments and not in human rights. The only thing they want is a pseudo-democracy? Are you convinced that such pressure exists at the international level?

Louis Joinet

It should be recalled that the UN is made up of five regional groups and that Algeria, which sits within the African Group has, in this group, considerable influence. Algeria has a diplomatic corps of professional competence that is formidable, with the most weight in the Maghreb. For example: Algeria vigorously led the fight to reduce the importance of Special Procedures. When I was Chairman of the Working Group on Arbitrary Detention (WGAD), upon the death of my fellow member of the African Group, the question arose as to his replacement. The Ambassador of Algeria to the UN, who chaired at that time the African group, then had the idea of being appointed himself as the independent expert WGAD! He would thus have a post both as an independent expert and a representative of a State. Not such an initiative had been considered in the history of special procedures! Members of WGAD threatened to resign. The case, which went up to New York, finally ended for the Group. It was proposed to appoint an Algerian, invoking parity. This satisfied everyone..

Unknown person

I have a question for Mr Joinet about the urgent procedure which has been instituted by the Committee against the enforced disappearances. Is it different from the one instituted by the Working group on enforced or involuntary disappearances?

Louis Joinet

I think that Olivier de Frouville, who knows the Working Group well, could answer you better.

Olivier de Frouville

The measures which are taken by the Working group on forced or involuntary disappearances have inspired the Committee against Forced Disappearances.

Louis Joinet

The key difference between these two organs is that the Committee which is mentioned by Olivier will be created by the Convention. This latter will take on the States which ratify it. On the contrary, the Working Group addresses only the States which want to believe in it.

Unknown man

I think that the Convention means a real move forward. However, Article 3, on the persons who were kidnapped by Islamics, says that the State is encouraged to take action. What does that mean?

Olivier de Frouville

Within the framework of the International Covenant on Civil and Political Rights, we can submit some complaints related to a person kidnapped by a terrorist group. Then, we can denounce “negative measures” which are taken by the State. For instance, for raped women, during their custody in the police office, a negative measure is to not initiate an inquiry or to not give indemnity. It is a violation of the International Covenant on Civil and Political Rights.

Specifically, to answer to your question, Article 3 has been the object of a political discussion during the preparatory works before the adoption of the Covenant. The idea is to be able to mention the armed groups as the authors of the forced disappearances; it is very important because a lot of states said that they are not responsible of the actions which are taken by the armed groups. Many States were reticent and wanted to limit the responsibility of the States to the one enunciated in international public law. This latter doesn’t consider the individuals as subjects. This point has also been a point of contention within the NGOs, particularly the South-American NGOs, which are associating forced disappearances to a terrorism perpetrated by the State (for instance, in Argentina).

Then, we had to find a compromise so that all the responsibilities of the State and the armed group would be viewed. The article 3 is the result of this compromise. It is saying that the armed groups, as the States, can practise the enforced disappearances. This article is the result of a compromise.

Fatma-Zohra Bouchetf

My son is disappeared since 1995. In 2007, we reached a deadlock even though we submitted complaints and have testimonies. My lawyer was able to get the judicial file when she went to the court. In the file, there was the testimony of a person who was detained in the same cell as my son and said to the Prosecutor the way they were tortured. Despite this testimony, the cases have been dismissed by the justice.

Where should I go now? When the UN asked Algeria to solve the case of my son, some police officers came to my house and asked me if there was something new. I have answered them that it was their job to inform me. They told me that one more witness was necessary in order to attest that my son died under torture. I told them that there were no problems; I have the witnesses. Three days later, I submitted to them 5 possibilities of testimony. Then, they told me that it was the defence's responsibility to give me an answer. They told me that I would never obtain the truth, the grave of my son or a trial accusing the authors of my brother. They told me to go and get the indemnity.

Louis Joinet

I'd like to conclude with a question which gave rise to fierce debates, the prohibition of any amnesty for perpetrators of enforced disappearances.

A provision in the original draft – of which I chaired the work – we finally had to give up this demand with a heavy heart. Not because of conviction but for pragmatism. We need to understand that in such an exercise, it is essential to get that final adoption of the Convention by consensus. The reason is simple. Experience shows that when the adoption of a text as sensitive as this is involved, the use of a final vote almost always offers to hostile States the opportunity to trigger an avalanche of votes “against.” I have as proof the secret of a diplomat friend who confessed to me – I felt by disgust - the “joker” of his delegation. The trick was to not oppose frontally the prohibition of the amnesty during the debates, in order to be better able to raise the issue at the last minute, hoping - as the saying goes – to “break” the consensus at the moment of truth, that of the final vote; therefore the adoption, by encouraging the alignment of the delegations, without saying so explicitly, was “lagging behind,” namely against the prohibition of amnesty.

Finally, we reached a “soft” consensus, let's say “by default”: the sentence prohibiting amnesty, as well as that authorizing it, was excluded. The key was to not explicitly recognize a right to amnesty.

**TRANSITIONAL JUSTICE
SYSTEM'S EXPERIENCE
ALL AROUND THE WORLD**

TRANSITIONAL JUSTICE - EXPERIENCES AND CHALLENGES

Roberto Garreton⁴⁵

I was asked to share with you my experience of transition processes from a dictatorial regime to a democracy, from war to peace. All of these processes are not perfect; there are however, some rules that have started to appear. I can thus quickly share with you some general remarks.

I would like to talk a little about the visa I was denied to go to the Seminar of Algiers, which was ultimately banned. I was very annoyed but now anger has faded away. However, I am still angry about the statement of Farouk KSENTINI, President of the National Consultative Commission for the Promotion and Protection of Human Rights. He was registered as a speaker in Algeria, which means that he accepted the objectives of the seminar but this did not prevent him from stating that the ban of the seminar was justified by Article 46 of the Charter which prohibits any discussion on missing persons' cases. According to him, this file is closed and nobody has the right to talk about it. What a dictator! Here is a person who is invited to discuss with us, and who describes us as a bunch of delinquents. I was shocked! Very shocked! All these remarks and intrigues make me feel concerned about the creation of a Truth Commission in Algeria. What powers may have a Commission created by the authorities, who designed the Charter: the State and a façade human rights commission?

First, what are the goals of a transition process? Which institutions may lead to it? (i.e.: Guatemala, El Salvador, Colombia, Democratic Republic of Congo and, second, the transition from dictatorship to democracy).

I have a list of five objectives related to transition processes:

1. maintain peace stability, recently acquired by democracy, and prevent going back to the former regime;
2. build or rebuild the institutions destroyed by the dictatorial regime or war, and create solid and strong new institutions;
3. bring light on human rights violations;
4. establish justice and not the "justice as far as possible" referred to by the

45 Chilean lawyer, former Special rapporteur for the United Nations concerning the Human right Situation in Democratic Republic of Congo.

first Chilean President who succeeded PINOCHET;

5. compensate victims is not the icing on the cake, it is a crucial step in the transition process.

If all of these five conditions are not respected, there will never be any reconciliation.

Who are the actors? The former dictator, the political parties that fought it?

The two parties of the war do not necessarily agree on these objectives. Truth and Reconciliation Commissions must take account of the civil society, a part of which is composed by victims. The dictatorship/democracy transition process is operated by politicians. Politicians say they will defend the interests of the civil society. They will see to not returning to the former State... but Truth and Justice will only be achieved "as far as possible". I ask you to pay attention, the day when democracy will be established, do not accept blackmail: they may say they will protect your interests only to keep you aside. You must win your place in any reconciliation and peace process. Do not accept representatives who have not experienced what you have gone through.

My second question is about the issue of Truth and Justice. I am going to address it in one word: the fight against impunity. This is not only penal and judicial impunity, this is only one aspect of impunity. In fact, there are four aspects to impunity:

- Political impunity. For example, in Chile, the ministers appointed by Pinochet are today Senators, they were given the status of democrats. This is a new violation against the victims to see that the murders and those who backed the criminal policy of the State are converted into democratic actors. The Inter-American Commission of Human Rights has reiterated its astonishment vis-à-vis this situation.
- work in the name of "good things". To save the motherland, the nation, etc. As Churchill said, "the worse crimes of humanity were committed in the name of God and the motherland". People do not feel guilty, or they do not feel criminals. We cannot accept this. This is a kind of blackmail. Soldiers are told: "Go and kill'em! Kill'em all without mercy".
- Historical impunity. All these people want to be recognized in history as the builders of a nearly perfect regime. They build themselves positions, and name streets after themselves. History, however, must

recall them as murders and criminals.

- Legal impunity. This is about the lack or even the absence of penal sanction. The first three types of impunity fall within the competence of Truth and Reconciliation Commissions – it worked in South Africa, Peru, and El Salvador. Elsewhere, the true perpetrators were not really identified. In El Salvador, they tried to wipe off the names of perpetrators. We said no!

One of the recommendations of all these commissions is to maintain the files of civil society and human rights associations. The association in which I used to work with at the time of the Chilean dictatorship is now among UNESCO's world files and I am proud of this. Everything should be done so that history will be recognized. For instance, naming streets in memory of victims, and making films on human rights violations that took place in the country, etc. It is also necessary to adapt the courts, laws and ombudsmen to this will of a democratic, equal and fair society. We cannot start with reconciliation. This idea comes at the end. The torturer and the tortured are not equal. Currently, the transition in Algeria goes like "we're all good" or, if you oblige "we're all bad", that is exactly the same thing. It is however not a tie. It is us who must win the construction of a completely different society.

JUSTICE FOR VICTIMS

Souad Belhadad⁴⁶

First, I would like to say that I am impressed by what my Algerian friends have said. The fact that associations of victims of the ten-year-old Algerian conflict, overcoming divides, ended up by getting together in the name of a common fight for the memory of their dead and/or missing ones, is in fact an exceptional initiative in this country. It is exceptional because Algeria does not have a culture of democracy. It does not recognize plurality and, generally, expressing differences of opinion is regarded as an act of hostility. In this country, we still think that dialogue is impossible if your interlocutor is not on the same page. Hence, the decision to bring you closer together, to look for what could unify you both, to strengthen your search for truth beyond divides is a truly democratic and uncommon act that needs to be applauded with genuine admiration.

When I heard that this seminar would not take place in Algeria, I was not surprised. I knew that your associations have no political power, in spite of their undeniable legitimacy in the field. But by listening to you, I think that, perhaps, you must undoubtedly and despite appearances, represent something special since, even though you do not have a strong impact on the public stage, the fact that you want to meet together is quite disturbing for official authorities... You are often told that you represent nothing, and still you are considered as a disturbance. Something is wrong here...

I reiterate my assumption: your associations, which are often opposed to each other, which are often suspected of sympathy with the regime, the fundamentalists, or international human rights organizations, today gathered together, should propose a democratic opening outside of the political realm, which has never been carried out in Algeria before? Because I have known each of you, separately, for about ten years, I can tell how hard it is for you to talk to each other... That was a courageous, difficult but necessary step. If I am personally happy, that is because when I collected testimonies in Mitidja, beyond differences of sex, age, or origin, I quickly felt a genuine common discourse between you all, in spite of all your different histories and tragedies. For some of you, you had your families killed by Islamist terrorists, sometimes with the complicity of neighbours, others saw their sons taken away by police forces and never heard about them again, and others witnessed massacres, during the night, during the day time, were subjected to torture, identified perpetrators, or did not iden-

⁴⁶ Journalist, writer: Author of "Le Prix de l'oubli, (les victimes de la terreur parlent 1992-2005)" "The Price of oblivion: Terror victims speak out 1992-2005" Ed. Flammarion. .

tify any, etc. You, whatever your history, at the time I collected testimonies, you all appeared to me to be on the same line. All of you share the same claim: the right to know, the right to know the truth, to obtain justice. Only then, perhaps, we will talk about forgiveness. But truth comes first.

/ “TURNING THE PAGE” IS IMPOSSIBLE FOR VICTIMS

What touched me, in your rapprochement initiative is that, although it was fair and legitimate, it did not have any other choice. Because the era of national reconciliation is one which officialises the end of your relatives without elucidating anything about their fate. The era of national reconciliation expresses the society's will “to start a new chapter”, to forget, even though temporarily, - but talking about forgiveness is still not accepted by victims.

Why is it impossible for the victims to turn the page?

In order to answer this question, I would like to recall my where I stand. My book “Algeria, the price of oblivion”, clearly supports the side of victims. I collected testimonials from a dozen victims, none of whom belonged to any guerrillas groups, tortured people in police stations, committed acts of killing, or took part in exactions, but all of them however suffered from the Algerian tragedy since all of them had at least one relative who took part in the conflict.

All and everything was imposed on these people: first, the conflict, and then its so-called resolution. Concerning conflict resolution in general, I would like to clarify something: as a journalist, I noted in several places throughout the world that the conclusion of a conflict is necessary and that it often goes through amnesty laws. It would be naive not to admit it. Therefore, I do not claim that in order to attempt to solve a conflict, one should necessarily rule out a solution that is, by any means, unsatisfactory and disappointing. As shocking as that may seem, we can understand the need for a society to turn the page.

The Algerian psychiatrist, Houria SALHI, who works in Blida, explains very well how sometimes, it is necessary to turn, temporarily, the page of the past in order to build the future, and that by doing so will not necessarily have a repressive effect. Violence, economic crisis, mourning, etc. the society aspires to turn the page and to examine atrocities committed later on. It is like a time of respite, which can be set at a given time. But for victims this respite is impossible.

Because when oblivion is organized, the victim represents the core of the collective memory of what occurred in the country. Whereas a law providing for national reconciliation or amnesty attempt to facilitate the rebuilding of the society, the vic-

tim, on the other hand, may only remain excluded from this process. Cluttered up in its past experience, the victim deprived of any element of knowledge, or truth remains frozen in his/her time of trauma. Would the victim like to turn the page, he/she would not be able to do so... This is a suspended time, which cannot move forward. And whereas the majority of the country tends towards oblivion, or even repression of feelings, the victim remains condemned to his/her suffering and isolation. Unwillingly the undeniable proof that, contrary to the official line, something actually happened, this victim is readily considered as cumbersome in the eyes of the State and the society as well.

Thus, the following questions are essential: how, in a post-conflict situation, can amnesty be articulated? How can we prepare the population? And, above all, how can we avoid causing prejudice to the victims? Denying him/her its status of victim? Because I have witnessed it in Lebanon, ex-Yugoslavia, Rwanda. The time of laws never coincides with the time of victims. Establishing an amnesty is officially recognising that it did not happen? It is refusing to call it by its name. However, the victim follows an opposite path: It happened. It actually took place.

/ WHAT KIND OF FORGIVENESS?

We often try to lock up victims in an infinite resentment, in a willingness to withdraw into their own tragedy. Let us not forget that the victims too, are looking for peace. They are even willing to forgive. But forgive who? How? And on what basis? How, in the case of Algeria, which is full of cruelty, can we achieve forgiveness when there is not even a small piece of truth? Sabrina, Fatma and Zohra say they are willing to forgive if they are told the truth. Ali and Cherifa ask for public pardon, and request that steles are built in public spaces and that this page of history is included in school handbooks. Amina says the dead ones should not be betrayed.

Let us listen to Sabrina, mother and wife of missing victims: "I have two sons who are missing. One day, I went to the morgue and I had a shock. I went to identify my younger son and I found his old brother instead. On his body was written: the day of August 27th, Algerian terrorist, shot down. My son, it is the army which took him away. Why? To live again together with the police officer who did nothing yes, the one who did it, no. He must ask me for forgiveness. I need to understand why he did it. Was he following orders? I need to see his heart."

Let us listen to Ali, who lost his two brothers under torture by Islamist terrorists, without being given the right to unearth the mass graves where their remainders would allegedly lie: "If I am to forgive, I need to know why the terrorist has

chosen to point his rifle against the State, and why he killed my two brothers, I need to hear him say that it is terrible what he did and that he is sorry, then I'll be ready to forgive. But I do not say that I accept what he did."

He ended up saying with much pain and dignity at the same time: "(...) I, in Algeria, I know that I am nothing. I know that I am insignificant in this country. I know that here you may lose four or five people you know in one same night, or hundreds of people, as in Benthala and there will be no national mourning. Whereas when any Arab leader from Yemen, about whom no Algerian knows anything, we declare three days of national mourning And for us, nothing. We do not count. I am nothing. We were condemned to be victims. And today, in fact, they ask us why we were victims. (...) For us, my brothers and I who remained in the straight path, life is hard. Very hard indeed. Some families of terrorists built huge villas, and started businesses. Us, we are trapped in our daily concerns. Us, we do not even have the right to think about the future. The future, it is too far. "

THE PERUVIAN EXPERIENCE

Claudia Josi⁴⁷

I will try to make a short introduction on Peru's Truth and Reconciliation Commission. As Roberto said, normally we talk about transition process when there has been either a war or a dictatorship. In Peru, there were both: a civil war between 1980 and 2000, and a dictatorship under the regime of Fujimori since 1992. Within the framework of the anti-terrorism war carried out by Fujimori in the 1990s, serious human rights violations were perpetrated and an autocratic and corrupted regime that led to a serious degradation of Peru's institutions and democratic culture was in place. In 2000, the third unconstitutional and fraudulent re-election of FUJIMORI occurred, only to be followed by the disclosure of the regime's massive and systematic corruption, leading to mass protests by the Peruvian people and, finally, to Fujimori's running away to Japan.

In 2001, a transitional government was set up. It launched the Peruvian Truth and Reconciliation Commission (TRC) to investigate human rights violations perpetrated during the civil war and the Fujimori regime. The Commission's mandate covered the period running from 1980 to 2000. Its mission was to analyse the context which had contributed to the internal violence, cast light on serious human rights violations, identify those responsible for them, identify the victims, draw up proposals to indemnify victims and suggest initiatives to consolidate democratic institutions.

The Commission had the power to hold public hearings, interrogate any person that may provide a testimony on human rights violations, accede to all files deemed relevant and undertake local field visits. Within the framework of its activity, the TRC operated on twelve lines of action, the most important of which were the public hearings carried out in the eight regions which were most affected by violence, as well as collecting testimonies in these areas. 422 people were therefore heard by the Commission directly in the framework of its public hearings, and more than 15 000 testimonies were collected. The Peruvian TRC's main purpose was therefore to let the voices of victims be heard, recognize their sufferings and, thus, restore their dignity as citizens. During the periods of conflict, the majority of the country did not pay any attention to the crimes committed against those victims, going as far as the negation of the crimes. Another important line of action of the TRC

⁴⁷ Lawyer, PhD student at the University of Freiburg - Switzerland, and member of the Collective "Movimiento Ciudadano Para Que No Se Repita" in Lima - Peru.

was the exhumation operations. At the end of its mandate, the Commission submitted a register of secret burial places, with the recommendation to set up exhumation teams and begin this important task. In addition, the TRC insisted on the importance of achieving justice: i.e. identifying, prosecuting and condemning the persons responsible of human rights violations committed in the past.

Moreover, thinking about the future, the TRC designed an integral reparation plan for victims of human rights violations and made specific proposals for institutional reforms. There was thus a will to carry out a comprehensive legal, political, social and psychological settlement of human rights violations of the past.

The TRC submitted its report in August 2003. The report's findings were quite a shock for the whole country. The Commission pointed out that even though the "Luminous Path" guerrilla was accountable for 54% of victims, the other half was imputable to the State. The TRC noted that Armed Forces had resorted to disproportionate violence, and that Human rights' violations were not isolated acts. On the contrary, in some places and at certain periods of time, human rights abuses had been generalized and systematic. Similarly, following the work of the TRC, the figures on victims of the conflict was corrected. Before the TRC's report, figures indicated some 30,000 people had died as a result of the conflict. This number, as proved by the Commission, was actually much higher. The TRC estimated that more than 70,000 people had been killed due to internal violence. The country had not realize, before the Commission, the scope of the conflict and the high number of victims. In this context, the TRC examined the characteristics of victims: 79% of them lived in rural areas, 56% were farmers, 76% spoke Quechua or another indigenous language as their native tongue and 78% had an education level below elementary school. Hence, violence prevailed especially among the excluded population of the Peruvian society: the aboriginal, rural and marginalized population of Peru. Therefore, there was a close link between poverty and exclusion and the likelihood of being a victim of the conflict.

In its final report, the TRC made several recommendations in order to overcome abuses of the past and build a democratic future in full compliance with human rights. It therefore proposed institutional reforms, a national plan for the exhumation and indemnification of victims, referring cases of human rights violations to the courts (starting criminal investigation and punishing perpetrators), and setting up a monitoring system to implement these recommendations.

Unfortunately, at the level of institutional reforms, only modest progress was achieved. This is very alarming and remains a serious problem facing the Peruvian transition.

Nevertheless, with respect to reparation and the establishment of justice, a notable progress was registered. In this regard, the High Level Multisector Commission (HLMC) in charge of the implementation of the TRC's recommendations, and the Council for Reparations in charge of creating the National Register of Victims were set up. This represents a giant leap forward, as the register is the prerequisite to victim reparation.

In 2003, the TRC referred 47 cases of human rights violations to the Public Ministry. Since then many lawsuits were launched and, currently, some 30 lawsuits are in different stages of the judiciary system. A remarkable fact is the creation of a specialized penal subsystem for human rights violations. In addition, there were important jurisprudential advances such as the acceptance of international human rights standards as well as penal exceptions. Finally, the launch of important lawsuits against the death squads of "Grupo Colina" and against former president Fujimori also mark a significant progress. Unfortunately, these penal processes are moving very slowly.

There are not only economic constraints, procedural problems and a chronic justice overload, but also an apparent lack of political will. In this context, the temporary character of a great number of magistrates within the judiciary system and the continuous attempts by the military justice to process cases of human rights violations represent serious obstacles to the functioning of justice. Moreover, the judicialization process has undergone a serious decline since Alan GARCIA returned to power in 2006.

Having been president in the 1980s and personally involved in cases of human right violations committed at that time, Alan GARCIA showed from the beginning a clear reserve against the judicialization process. Since he came to office, a political campaign against the TRC and the judges of the subsystem was carried out. Furthermore, he launched several disturbing proposals such as removing the competence of the Inter-American Court of Human Rights, restoring capital punishment and setting up a legal body to defend soldiers accused of human rights violations. This is all the more shocking having regard to the fact that many victims of these violations enjoy no legal support.

In conclusion, it should be noted that currently, the judicialization process is in a very delicate position. Till 2006, it was possible to affirm that there was a significant progress in the judicialization process but, today, I can only ex-

press my concerns in this respect. Since Alan GARCIA came to office, this process underwent regression, or at least came to a standstill. The only recent progress being made concerns the indemnification process of victims. It seems easier to provide reparation than to establish justice and I fear that this situation of impunity is not a coincidence, but accords to Alan GARCIA. In the light of all these facts, the situation thus remains very preoccupying!

GACACA JURISDICTIONS FOR RECONCILIATION: COLLECTIVE UTOPIA AND INDIVIDUAL REALITIES

Marie-Odile Godard⁴⁸

Here are some thoughts on what appears to be as an exceptional situation: the setting up of the Gacaca jurisdictions in Rwanda, twelve years after the genocide of the Tutsis. A genocide is obviously an exceptional event, so exceptional measures must be adopted to attempt to stop its effects.

What happened in Rwanda? In order to understand this, one has to go back in history because a genocide doesn't break out beneath a clear sky, it has to be prepared for a long time, organized by a State, executed by an army, militias, and even by neighbours, as you will see. To simplify, the Belgian colonization strengthened and "ethnicized" the strata of the traditional society in order to use it to maintain its domination. By exacerbating inter-group differences, it sowed the first seeds of a racist society. Settlers confined Rwandans into an identity of Hutu, biologically inferior, and of Tutsi, biologically superior. The Missionary Church took upon itself to form Tutsi elite.

At the time of independence, the colonial power, fearful of the Tutsis' claims for independence, took sides with the Hutus. Flemish priests conveyed the ideology of a "people with a Hutu majority", exploited and republican, avid for social progress, against Tutsis identified as rich minority group, arrogant and communist, advocate of a reactionary monarchic regime. These were the first signs of the famous Social Revolution of 1959 which laid the foundations for the exclusion policy directed against the Tutsis.

Therefore, when Rwanda gained its independence, the Tutsis were "naturally" designated as a source of danger by the rest of the Rwandan population.

Thirty years later, the genocide took place; it lasted for one hundred days with more than one million Rwandans being massacred.

When this genocide came to an end, the Rwandan society, after a time of confusion and stupor, reconstituted itself, slowly at first, then more energetically. All got down to work: those formerly exiled in Burundi, those formerly exiled in Uganda, those formerly exiled in the Congo, those who came from Europe and

⁴⁸ Psychologist, Psychoanalyst and Senior Lecturer at the University of Picardie - Jules Vernes.

America, but particularly those who lived in Rwanda, the great majority of the Rwandan people who witnessed the genocide, who perpetrated the genocide and the handful of survivors: 300 000 or less at present.

Objectively, everything was destroyed, the administration, of course, the buildings too, crops, livestock, everything... Everything was turned upside down. However, the population had to live again and live again together since no area in Rwanda had an ethnic specificity and since the whole population could only but reconstruct their country: ethnicism had to be eliminated.

The population had to live again together. Yet, for decades, the culture of impunity had been prevailing: under the domination of the racist regimes of presidents Kayibanda and Habyarimana, it was not that serious to kill a Tutsi. The organizers of the massacres of 59, 63, 73, 90... were even rewarded by enviable social promotions. A great number of them made their fortune on the property of the exiled Tutsis. Once the genocide ended, the forces of evil reached another level. The first genocide perpetrators who were arrested were surprised at their arrest. They felt that they were quite within their rights; they just behaved in a slightly different manner than usual: "when you receive a new order, you hesitate, but you toe the line, otherwise you are taking a risk. When you are suitably sensitized by the radios and advised, you toe the line very easily, even if the order is to kill your neighbours."⁴⁹ Thus talked a genocide perpetrator in a writing by Hatzfeld.

The victims were killed by their neighbours, their relatives; neighbours and relatives killed each others. All sense of solidarity disappeared, and each adult and youngster who experienced the genocide is doomed to carry the images, the screams, the fears and the scent of these one hundred days. However, all Rwandans have to live again together, but how? No "Hutu land", no "Tutsi land", though some European politicians have suggested so.

In 1996, on the return of the refugees, a large number of them, coming from the camps of the Congo, were imprisoned for crimes and genocide as soon as they entered the country. 120,000, 130,000 prisoners were piled up in prisons.

Once ethnic distinctions were banned by the law and the generalization of education was instituted for all children, justice had to be set in motion through "classical" legal proceedings, but more than one hundred years would have to pass before those who were presumably guilty were tried.

One particularity: they all lived together and now they live all together. Over a very small territory, each one needs the other. That's why it was so important

⁴⁹ Hatzfeld Jean, *Une saison de machettes*, le seuil, p. 85.

and ultimately “easy” to involve the neighbour in the killings.

In Rwanda, the culture of impunity had to come to an end. The situation was different from that of South Africa; the apartheid was a civil war between two belligerents who could confront each other in spite of their forces of unequal magnitude. In Rwanda, one side was armed with machetes, bludgeons and firearms whereas the others had to rely on their bare hands to defend themselves. It was also necessary to break free from the damaging effects of a policy coming from the West and to revive tradition.

As of 1995, the need had emerged to draw from tradition in order to restore and reuse old forms of justice and reconciliation. Rwandan researchers, namely Philibert Kagabo, an anthropologist, got down to work and the law on the establishment of the “Gacaca Jurisdictions for Reconciliation” was enacted on 15 March 2001.

“Gacaca” is the name that designates the grass on which all the inhabitants of the hill were seated around the elderly, wise and honest men. Disputes between families and neighbours were settled before the whole community. The judges took their decisions while endeavouring to redress the damage suffered. It was within the group and through the group that neighbourhood conflicts were settled; never had homicides been dealt with by these jurisdictions.

Exhuming this tradition was to oppose ancestral cultures to the devastating effects of the so-called modern cultures.

The law of 2001 covered a specific period: from 1 October 1990 until 31 December 1994. These jurisdictions are organized into four levels modelled on the administrative organization of the Rwandan society: the cell, the sector, the district and the province. There are 12 provinces, 106 districts, and 1 545 sectors each comprising from 5 to 10 cells (the administrative structure has changed but the distribution of the Gacaca is the same).

The setting up of the Gacaca Jurisdictions for Reconciliation required a public awareness campaign. Meetings on the hills and in the prisons were organized. As accusers, the survivors were extremely afraid of being confronted to their torturers; this fear was amplified after the first assassinations of witnesses.

The judges, the Inyangamugayo, the honest men, were elected then trained to facilitate the process of reconstructing the past; they learnt to hear and ask questions; they were also given some notions on the trauma. They had to know how to read and write.

These jurisdictions followed two stages: the pre-trial investigation stage, then

the trial stage. The first stage focused on the reconstruction of the facts and classification of acts. Within this framework, there are three levels of guilt: the planners who will be prosecuted by “classical” courts; the perpetrators and accomplices of voluntary homicides; and the perpetrators of the offences of robbery and plundering.

In order to establish the existence of these crimes, the facts had to be examined. This implied that the inhabitants should remember who lived on the hill before the genocide, then they had to remember the genocide perpetrators. In addition, a list of deceased persons was drawn up. The functioning rules of the Gacaca are very strict; they are made up of a general assembly (quorum of 100 persons), a bench (in the beginning 19 judges and now 9) and a coordination committee (5 persons taking notes). After a trial period in 2002 carried out in some regions, this procedure was subsequently extended all over the country. From the outset, some witnesses were murdered, then some judges were accused of genocide (14 000 among them), then imprisoned. 4 500 jurisdictions are held each week, with a different day for each week, as per the sectors (Sundays and Saturdays in Kigali).

But the convening of the Gacaca brought about new situations which were as difficult as the non trial of guilty parties would have been. Some witnesses minutely described the cruelty inflicted on victims of torture, thus causing “crises” of despair for the survivors; some of them were declared unfit and were called fools for having “exploded” whereas other judges found themselves accused by the survivors of genocide acts. On the other hand, some of the accused passed on the message to one another: do not say anything more. It is even said that an association has been created “Ceceka”, “Be quiet”; it encourages the accused to say nothing, to make no confession; “no measure can be undertaken against us, the proof, the prisoners will be released”. And, indeed, in August 2005, 30 000 detainees were set free. To benefit from this measure, they just had to admit their crime, to accept to appear before the Gacaca and not to belong to the first category (planners of the genocide and rapists).

Survivors, on the other side, whereas they were afraid of the consequences of their own accusations and their own words, they stuck to only one thing: the truth, to get to know what happened and to know the location of corpses in order to duly honour the disappeared. With regard to prisoners, a large number of them betook themselves to the Gacaca; they realized that more than 10 years of silence on the crimes committed may be heavy and that to admit them may not only get them out of prison, but soothe them as well. Some talked too much to offload the responsibility rather than to address the survivors’ need for

the truth. Some of these survivors went farther to think that the Gacaca process is an instrument for the benefit of the guilty parties, an instrument that can help them recover their humanity. In fact, by expressing their inner feelings, these accused came out of their morbid retreat into silence.

The genocide perpetrators are re humanized through words.

Would the survivors not indirectly take advantage of a society which is recovering its humanity? Naasson Munyandamutsa, a Rwandan psychiatrist, notes what may appear to be as therapeutic in the Gacaca process. According to him, this process consists of enabling the group, the foundation of the Rwandan society, to re-emerge.

“The Gacaca is like the truth which is not always good to tell; one has to choose the right context to tell it. This will constitute an opportunity to bring the Awful into the group which is the only entity which can take it because one person cannot live with the Awful... living with the Awful in the heart, in the mind, it is simply difficult. It is complex, but I hope that we will be creative”. Naasson Munyandamutsa further says, “the right to speak is given without realizing what this would cause and without even knowing the signs of helplessness and confusion. To what extent is the Gacaca not risky for the survivor? The survivor is vulnerable and what can be proposed for his protection?”

Will the Gacaca make it possible that the “unsaid” of a real-life experience which is too heavy to be borne by individuals is assumed by the whole group, as it used to do in the past?

Survivors of the Shoah and the genocide of the Armenians have taught us that what is not said help pass on this “unsaid” from generation to generation. What will be said in the Gacaca will perhaps avoid this transmission both to the children of the victims and to the children of the torturers.

Everyone knows that in these assemblies, speaking and questioning have to go through the “honest” men and women and that nobody can seethe with anger at his torturer. Everybody knows and gets prepared accordingly.

In the Gacaca, the whole process revolves around truths, but plural truths which are gathered together, but sometimes contradict each other: there are individual truths, the truth of the torturer who firmly believed what was said to him: “these are cockroaches”, the truth of the torturer who did not believe in it but this truth suited him, the truth of the torturer who would not have wanted to do what he did, but felt pressured to do it, and, on the other side, the truth of the one who suffered torture, at the very moment he suffered it. In other words, the truth of each

one encompasses the meaning he assigns to the event.

The Gacaca unleashed the words of those involved in the genocide. Some of them had kept buried, for 11 years, the acts they had committed and it is because another genocide perpetrator talks, because there is a negotiation, a confession against a remission of sentence for example, then they tell the truth; it is because someone else “denounced” him that he starts talking; he realizes that it is possible and this soothes him, so he gives vent to his inner feelings; sometimes he even soothes himself outside the Gacaca. Hence, this friend of Esther MUJAWAYO⁵⁰ working in a hard-labour camp, was called by her torturer to recount to her in detail how her brother had been killed. Who is breaking loose in this case? Who will be soothed then? Doing this is obviously to recover one’s humanity and address the other in order to seek his pardon and accordingly re enter the community of human beings. When things proceed in this way, mental truth cannot obviously be on the side of distance.

How to counter the pain of the Gacaca? An original initiative developed out of the collaboration between Ibuka (an association of survivors) and MDM (Médecins du Monde). Following each assembly of the Gacaca, “post Gacaca therapeutic groups” convene in six different places.

They gather together interested survivors, supported by a psychologist, two trauma counsellors, psychosocial agents, one paralegal and students in psychology. This is a therapeutic group which tries to deal with the impact of the violence of what is called “retraumatization” of the truth disclosed within this framework.

If the experience continues to be explored and further developed, the participants already noticed the beneficial effects of such a group. It has positive effects to deal with the isolation of the survivor and enables him to express some feelings, which are not allowed during the Gacaca assemblies, such as anger and outrage; it also helps everyone to realize that there is no singularity in horror, grief and sorrow, that if every survivor suffers in a unique way, he is not the only one who suffers. Besides, it allows to put words together on affects, which are not permitted in the context of the Gacaca.

Other problems arise and they are sometimes solved:

Who is the survivor? Can Tutsi men who were forced to kill after being hunted down take part in this group? Do Tutsi women married to Hutus who protected their spouses have a place within this group? The team of practitioners is confronted to this kind of situations which is not easy to deal with. The limits

50 MUJAWAYO E. & BELLADDAD S., *la fleur de Stéphanie* (Stephanie’s flower), Flammarion, 2006.

of the group, its “compartmentalization” or its “permeability”, its heterogeneity, the conditions of admissibility of the members of the group, the management of external and intruding elements, the explicit and implicit rules regulating the group: can one cry, get angry or differentiate oneself from the group?

These are, among others, the issues which therapeutic groups are confronted with and for which they don’t always have the appropriate - and particularly the definitive - answer.

Conducting a therapeutic group requires the therapists to carry, contain and transform the anxiety of the group into a form that can be heard by everybody. The persecuting anxiety is accentuated within the group by the conscious and unconscious effects of the genocide on each member of the group. The group receives all these contradictions and endeavours to back out the isolation that the survivors suffer from.

This initiative poses a challenge: the challenge that through the therapeutic group the survivor takes up with a membership group.

Unfortunately, we know via other experiences such as the consequences of the Shoah or the genocide of the Armenians that the survivor never dissolves in society. When society obliges him to do this by “ignoring” his specificity, it is at the cost of a suffering which is sometimes discreet and inward and, sometimes, explosive.

This is the reason why, once again, the effort for the coherence of mental health in Rwanda and its networking in the whole society, as new problems crop out, has to be publicized, sustained and portrayed as exemplary.

Whereas the reconstruction of the country can sometimes appear to the survivors as an insult to all its disappeared persons, the commemorations, the re burials, the Gacaca are considered as necessary ordeals. Society demands a lot from the survivors, but the latter, in their turn, place great expectations on society. They ask for everything, but they will never be satisfied because this genocide, seeking to destroy the group as a whole, has destroyed the Tutsis one by one, and it is one by one that they have suffered the genocide, even if it is by re forging links with other survivors, with other men that they attempt to regain their foothold. Upholding on the efforts of the society, they have, one by one, to free themselves from horror, they have to re make their way from trauma to ordinary life; this way has to go through moments, spaces, symbols which have still to be constructed individually and collectively. The task is enormous: rejoin or reconstruct a membership group.

THE MOROCCAN CASE

Mustapha Iznasni⁵¹

Since the 90s, Morocco has witnessed a slow and uneven process of liberalization which has gradually improved the situation of human rights and fostered an institutional development leading to political openness. This turning point in the 90s was marked by a series of measures which followed the setting up of the Consultative Council for Human Rights (CCHR) in 1990 which was entrusted with the mission of protecting and promoting human rights. The year 1991 saw the release of the victims of enforced disappearance confined in Tazmamart, followed by that of the disappeared of Agdez and Qalaat Mgouna; then came the royal pardon in 1994 which brought the release of more than 300 political detainees and the return of the exiled to their homeland; then the preamble of the reviewed Constitution of 1992 reaffirmed Morocco's commitment to respect human rights as universally recognized; there was also the declared will to resolve the issue of gross human rights violations committed in the past as well as the principle to redress the victims which was contained in the royal speech given at the opening of the parliamentary session of October 1997...

Thus, following the example of a large number of countries which opted for a non judiciary mechanism to settle the issue of gross human rights violations perpetrated in the past, Morocco has gone through a process of transitional justice at two stages.

- The independent arbitration commission which was set up in 1999 and whose mandate was limited to the financial compensation of victims of enforced disappearance and arbitrary detention. The mandate of the commission lasted for three years during which it set about indemnifying 7 700 victims and eligible parties. The State thus admitted its responsibility, but the public debate on the settlement of the issue of gross human rights violations, which was continuously revived by the mobilisation of victims' families and active associations for the protection of human rights, had never been closed for all that. The converging will of the State and the civil society led to the creation of a new mechanism of transitional justice..
- The Equity and Reconciliation Commission, Moroccan commission for Truth (hereafter "ERC"), which was created on 7 January 2004,

51 Ancien membre de l'Instance Équité et Réconciliation (IER).

presented its final report on 30 November 2005. This report which the King ordered to be immediately published and disseminated, draws up the outcome of the 23 months of proceedings conducted by the Committee with regard to the three major strategic objectives with which it was entrusted::

- The establishment of the Truth with regard to human rights violations committed between 1956, the year of the independence, and 1999, the year of the creation of the independent arbitration commission, and the definition of institutional responsibilities. The ERC considered as gross human rights violations those abuses which had a systematic and/or massive character, namely enforced disappearance, arbitrary detention followed or not by a trial, torture, sexual violences, infringement on the right to life by means of a disproportionate use of public force during urban demonstrations, and forced exile.
- The draft of recommendations and reform proposals which may guarantee the non repetition of gross human rights violations.
- Redress for individual and collective damage suffered by victims and eligible parties.

Composed of 17 members and a president who are all well known for their commitment to human rights, with half of them being selected among the CCHR, the ERC was given a more extended mandate than that of the independent arbitration commission; it started its proceedings by drawing up its statutes, published then by a royal decree, and by fixing a new deadline for victims and eligible parties to submit their petitions (from 12 January to 13 February 2004, considering that the ERC took into account all petitions submitted between the end of the mission of the independent arbitration commission and the creation of the ERC).

At the same time, the Commission held continuous consultations with the international network of Truth Commissions, as part of a partnership agreement concluded with the New York based International Centre for Transitional Justice.

The ERC was organized into three permanent working groups: investigations; reparations; researches and studies. It also established ad hoc commissions in charge of preparing public hearings and the final report... The group of collaborators (secretaries and assistants) was made up of up to 350 persons.

With respect to the establishment of the Truth, it is worth pointing out, on the one hand, the time range covered by the ERC's mandate (43 years), the longest duration a commission of truth has ever had to tackle, and, on the other hand, the varied nature of crises and violent acts which had caused gross human rights violations and involved a large number of State and non-State agents. Adding to this the fact that there is no precise definition in the Moroccan law of enforced disappearance (complex violation leading to a breach of all internationally protected human rights, in the first place the right to life). This resulted in the designation of the notion of enforced disappearance in the public debate related to human rights in Morocco by such expressions as "persons of unknown fate", "abducted persons", "abducted persons of unknown fate". In fact, these designations encompassed not only enforced disappearance as defined by international human rights law, but also other forms of arbitrary deprivation of freedom followed in many cases by the deprivation of the right to life, either because of an abuse of power, or a disproportionate and excessive use of public force during urban riots, or following torture or ill treatments, or during armed clashes.

The ERC faced the absence of any trustworthy documentation and academic works on this period of time. This is why its action took on various forms: public hearings of victims, some of which being broadcast live by the public television channels and radio stations; hundreds of in-camera testimonies recorded and kept in the archives of the Commission; academic symposia and tens of seminars on various themes largely contributed to enlarge the debate on the past of human rights violations in the country. These various activities also contributed to a further understanding of the truth on this past. Through the combination of field investigations, visits of former places of detention, hearings of public servants, examination of existing archives (mortuaries, courts, security services), the ERC gathered a huge and important historical material on gross violations committed over a century.

Thus, the ERC managed to determine the fate of 742 individuals considered until then as disappeared. Investigations helped to determine the circumstances of their death and, quite often, their identity and the place of their burial. The final report draws up the list of the various categories of victims who died in the centres of illegal imprisonment, during the urban riots of 1965, 1981, 1984 and 1990, or during their arbitrary detention or during armed clashes. The 70s saw the largest number of death cases, namely 109 cases whereas subsequent years marked a major regression: 9 cases during the 80s and 2 cases in the 90s. At the end of the works of the ERC, 66 cases remained unsolved; for this

reason the ERC recommended the State to pursue the investigations.

The second programme of the ERC focused on providing a remedy for individual and collective damage: at the individual level, financial compensation, medical and psychological rehabilitation, reinstatement of former civil servants who were dismissed for political reasons, social rehabilitation of victims or eligible parties, settlement of difficulties experienced by victims or eligible parties in obtaining administrative documents (for instance passports, death certificates). The ERC introduced into its proceedings a gender dimension as transversal theme by particularly taking into consideration, in its programmes of individual and community reparations, violations suffered by women. A sociological study covering approximately forty women was also conducted by young researchers. In addition, the ERC devised a programme of community reparations geared towards regions subject to massive violations and whose populations felt marginalized, as well as towards regions which hosted centres of illegal detention. This programme was particularly intended for women and the young.

Lastly, the final report contains recommendations for reforms with regard mainly to the consolidation of human rights protection, the primacy of international law over domestic law, the prohibition of serious crimes such as enforced disappearance, arbitrary detention, etc., the reinforcement of fundamental rights and freedoms, the reform of justice, security governance and a national strategy to combat impunity.

Immediately after the ERC submitted its final report, the Consultative Council for Human Rights (CCHR) which was commissioned to follow-up the implementation of these recommendations set up a follow-up commission and started consultations with the public authorities which led to the creation of the following five mixed commissions:

- Commission in charge of finalizing investigations;
- Commission in charge of implementing recommendations related to archives, History and the preservation of the memory;
- Commission in charge of implementing individual reparations;
- Commission in charge of community reparations;
- Commission in charge of implementing the recommendations related to institutional and legal reforms.

With regard to financial compensation, about 16 000 victims and eligible par-

ties received indemnification.

Medical insurance has been extended to all victims (12 000 families, that is to say a population of 45 000 individuals) and other programmes for individual and community reparation are under way.

Recommendations related to institutional and legal reforms are discussed with concerned governmental departments.

A reform of criminal law is being prepared. (The CCHR keeps a watchful eye on international standards and norms). Agreements have been signed between the CCHR and the Ministry of the Interior to provide training in human rights to authority agents and agents in charge of law enforcement. A similar agreement has been signed with the Ministry of Education on the promotion of the culture of human rights in the educational system. The CCHR has also initiated a programme for the promotion of the culture of human rights in partnership with national institutions and concerned associations. A citizenship platform for education on human rights has been elaborated and is about to be implemented.

JUSTICE, TRUTH OR RECONCILIATION: DILEMMAS AND STRATEGIES IN SOUTH AFRICA, MOZAMBIQUE AND THE DEMOCRATIC REPUBLIC OF CONGO

Tyrone Savage⁵²

“When a tree is chopped down, the hatchet promptly forgets about it, but the tree cannot forget”. This saying from Zimbabwe vividly illustrates the temptation to forget, which is impossible for the victims. In Kinshasa, a conference was held in a stadium, the “Martyrs Stadium”. A man wanted to give a testimony at this conference, he started talking and said, “For the nation we must forgive; I lost a child, I know the torturer; for peace I must forgive”. His testimony was particularly appreciated but he was asked: “Do you have another child? What would you do if he were killed?” He replied that he would kill the torturer. Where does forgiveness lie here? I believe that the whole challenge of conciliation and reconciliation resides here! We are working in a space, to quote Martha MINOW’s words, between revenge and forgiveness. All our struggle is part of this framework: the possibilities of justice and reconciliation. There is a challenge: one has to face what happened. Mr. ZALAQUETT used the following words “All the truth and justice as far as possible”. We also have to talk about the existing danger when an effort is made to pursue justice or effect reconciliation after the commission of violations on a massive scale. If we examine the situation in Rwanda: more than 100 000 victims of genocide, approximately, 1 000 000 were killed, how can people be reconciled? Is forgiveness necessary to effect reconciliation? When there is no justice, this implies that there is a de facto amnesty. How should we deal with serious violations? Several programmes for reconciliation were launched in Africa; I will cover today the programmes of Congo, Mozambique and South Africa.

In Congo, a Commission for Truth and Reconciliation was set up. The members of this Commission were appointed by the parties which had signed the peace agreement. The result? Each member sought to overshadow the human rights violations committed by one of the parties in order to highlight the responsibilities of the other parties in these acts of violence. The experience of Congo shows that in the absence of truth, reconciliation cannot take place. A project is under way to set up a new Commission for Truth and Reconciliation in Congo. In Mozambique, there was a terrible war that struck entire communi-

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ties: children were abducted and forced to commit atrocities within their own community. Once the war came to an end, these children wanted to get back to their communities. However, the latter did not accept them back because they were still under the shock of atrocities perpetrated by these children. The torturers and the victims were told that the souls had been stained by violence. In this context, a large national project was carried out. Chiefs of villages opened a dialogue with the children who had to recount everything they had done so that the whole community would hear them. It was difficult for a child to find the capacity to speak. However, this step was important since it gave the child the possibility to re-negotiate his relations with the community.

In South Africa, in order to illustrate this dilemma, I will relate a conversation between Nelson MANDELA and a general belonging to the Apartheid regime which took place during the negotiations. The General said: "I can't understand, you are the leader of a liberation movement, you are engaged in a war that you cannot win; we have the nuclear weapon, 40 000 soldiers..." MANDELA replied, "You are right, we cannot win. But you are engaged in a war on a racial basis; if one black person only remains in this country, you would still have to continue this war". In fact, the war having no more or no basis, negotiation was imposed on the different parties.

Therefore, the African National Congress (ANC) set up an independent commission to conduct investigations on the alleged acts of torture perpetrated by its members. Despite the fact that the struggle against the apartheid was legitimate, means used to this end were not always fair. A distinguished figure of the ANC, Pallo JORDAN, addressing its members, said that they blamed the regime for torture but they themselves committed these acts. Therefore, a moral had to be drawn in this connection to stress the fact that "torture is torture after all". The regime sought an amnesty which the African National Congress could not accept since it had not accepted the general amnesty with regard to massive human rights violations. Accordingly, the set up of the Commission for Truth and Reconciliation was finally proposed. It was well understood that truth was crucial in South Africa. The regime enjoyed all military capacities. So, this amnesty was intended for individuals who admitted having committed human rights violations while explaining their motives ("I wanted to protect my State", "The acts I committed were part of the struggle for liberation"). In fact, a great number of truths were told.

I will conclude my presentation by reporting an incident which took place at the Commission for Truth and Reconciliation. This concerns a woman whose husband was killed, and the person having given the order to kill him asked to be

granted amnesty. When he decided to appear before the Commission for Truth and Reconciliation and recount the details of the story, he thought that it would be less stressful than a court of justice. The woman said, "Sir, you have taken my husband, you want to take my pardon, what else do you want? If you want to be quite off hand about this matter, I can't do this, but if only I had been able to see a slight sign of humanity, I would have answered in a humane way, but I see nothing". Maybe in South Africa and Mozambique, we are looking for humanity. I asked at the beginning of my presentation whether programmes of reconciliation were efficient. Reconciliation remains a means for survival, a strategy for rediscovering humanity after gross abuses. The truth remains a crucial point; the fight for justice must pursue its course. I will finish by quoting Hannah ARENDT. She talks about a certain moment of history, about a nation which is established neither by past events nor by inevitable results. In such moments, there is the possibility of truth. It is the Truth which changes a given situation.

DEBATES

DEBATES

Roberto Garreton

We are going to listen to some questions, now.

Sofiane Chouiter

I have noticed that in many countries the seeking of truth is done by non judicial organs; except for Rwanda and its penal court. These experiences show that amnesty laws are an obstacle for the seeking for truth. In Algeria, if the Charter is not repealed, the commissioners could be stopped from accomplishing their mission because of the prohibition to talk about the “national tragedy”. I also noticed in Chile that the amnesty laws have not been repealed. In Morocco, there is no amnesty law but some royal decrees. The issue of impunity is stated in the final report by the IER. This report doesn't recommend judging the executioners or dismissing them from their functions. In South Africa, the Constitutional Court has declared that the amnesty laws were in accordance with the Constitution. Everybody wants the truth but amnesty laws are important obstacles.

Slimane

Mr Garreton, you have quoted South Africa, El Salvador, Peru; we have heard today the victims who have suffered in these countries.

Nassera Dutour

Claudia, I would like to know how you obtained the establishment of a truth commission? Considering the political context in Algeria, we still don't know why a Muslim has killed in the name of the Islam.

Unknown man

I would like to thank the country that hosts this conference, FIDH, Nassera for all she did to hold this seminar, and I say hello to all the members of SOS Disparus. Madams, Sirs, ours brothers and our sons have been kidnapped. My question is how SOS Disparus and the associations of the victims of the terrorism can act together in order to change this authoritarian and unfair regime? What can we do to repeal Article 46 of the Charter?

Unknown woman

I would like to know the physical and psychological impacts of the conflict in Peru on the population.

Paulette Thornander

I have asked myself some questions on what has been going on in Rwanda, on the troubles generated by confessions. I thought about the book written by General Aussares, confessing that he tortured during the Algerian war; I was not able to read it. Can we really measure the regrets during a trial?

Unknown man

The Moroccan experience in the field of transitional justice was about hearing the victims, and giving them indemnities without saying who the executioners were. This is the only experience of reconciliation in the Arabic world; isn't it dangerous, because there was no change of regime? Will it call into question the politics of the other regimes?

Roberto Garreton

International law says that amnesty laws are not in accordance with international human rights law. The Inter-American Court of Human Rights and its Commission and the Human Rights Committee have declared that these laws are not in accordance with international law. The peace agreements in Sierra Leone have included an amnesty law for the rebels at the moment where talks were going on with the other countries. During the signature of these peace agreements, the Representative of the UN Secretary-General said that he approved but he clarified that, for the UN, an amnesty law was contrary to international rights. I have noted it in a report about Colombia entitled "Justice and Peace": amnesty laws are not admissible. I would like the name of the executioners to be mentioned. Our best weapon against the dictatorships is human rights. It is for sure a political struggle; we want a political struggle but it must be non-partisan.

Claudia Josi

The determining factor in the creation of the truth and reconciliation in Peru was the flight of Fujimori. As a consequence, a transitional government was named. One more factor was the personality of the President of the transitional government. He was a perfectly honest democrat, with a faultless path, who was personally involved and who was particularly persevering. There was a lot of support from the human rights associations and from the ombudsman office (one of the State's organs). Also, there were a lot of protests in civil society, who were discovering the fact that the human rights violations were massive and systematic.

The truth and reconciliation commission has studied the situation during the era of the Sentier Lumineux and the eighties. It was a small part of the Sentier Lumineux that was armed. The extreme poverty contributed to the rising of vio-

lence. This violence exploded because, during the eighties, the government had no strategy to face these guerrillas. The massive repression operated by the military generated many human rights violations. The police corps was not prepared to face an internal war.

The movement struggling in favour of human rights in Peru is not united. It is grouped in functions of the different kinds of victims and the regions where they are from. This movement does not have real empowerment because the victims came from marginalized social classes. 85% were from 5 departments among the poorest in all Peru. The Sentier Lumineux entered in the villages and was in a popular trial before the entire village. Then they killed everybody. There were no forced disappearances.

Mustapha Iznasni

Some newspapers and human rights associations have published the names of the executioners in Morocco. It is quite difficult, without any proof, to deny the presumption of innocence. In the IER, we have never censored the names quoted by the victims; during public hearings, in the field, or in the offices of the IER. There was no censorship and we registered all the hearings. We wanted a law on the archives in order to protect and avoid their destruction or theft. We want our archives to be kept properly.

Otherwise I don't believe that the work of the IER was only about listening to the victims and giving them indemnities. On the contrary, we investigated the human rights violations which occurred during 43 years. Former responsible staff, working in the hospitals and the mortuary, have been heard. The IER has taken notice of the violations, and established responsibilities (army, police or the combination of several state corps). Our status forbade us to name just anyone. We don't think that there is only one model of transitional justice. Some of our friends told us that the only way to benefit from the experiences in the other countries was to detect the errors and to avoid their reproduction.

Tyrone Savage

I don't know what is working out better for the victims. In the transitional situations, there are many different interests. For instance, in Sierra Leone, we gave priority to the executioners because we were afraid of them, of what they could do.

Only one more thing, concerning the process in South Africa, there was a conditional amnesty: the authors of the violations had to explain their acts but don't have to say "I am sorry". In fact, it would have been an insult for the victims. The right to forgive is held by the victims.

WORKSHOP 1

FOR THE ESTABLISHMENT OF RECONCILIATION COMMISSION IN ALGERIA - MANDATE, COMPOSITION AND PREROGATIVES

Madjid Benchikh

Mr Garreton and I will be moderating this workshop. This is essential to the process of the research of truth in Algeria.

In our country, regarding the failing governmental political named reconciliation one, notably the Charter for Peace and National Reconciliation and its application texts, the solution is a Truth Commission. This latter could be named "Commission for Truth, Peace and Conciliation".

First, I propose that we exchange our different points of view on the necessity to establish a Truth Commission in Algeria. We should also talk about the title of this Commission. Secondly, it would be interesting to launch a reflection on the composition and mandate of the Commission, without giving too many details.

At the present time, it seems that it is more appropriate to articulate the debate around some principles. This seminar is the first big meeting organized around issues concerning transitional justice in Algeria. From this point onwards, a consensus will have to emerge on the main principles of a truth commission in Algeria. Afterwards, when the concrete and difficult decisions related to this project will need to be made, we will have to ask ourselves more detailed questions.

Moreover, truth commissions are generally formed on the initiative of civil society with the agreement of the government. If we delay technical questions, the Algerian authorities could refuse to be part of the project, pretending that it has been elaborated without their collaboration. This situation would not help our common goals of truth and justice.

We can now start the debate on these "main issues".

Dalila Zekal

What do you mean by "details"?

Madjid Benchikh

The debates will allow us, step by step, to define what a detail is and what the main principles are.

/ THE NECESSITY TO ESTABLISH A TRUTH COMMISSION IN ALGERIA

Denys Robilard

The idea of a truth commission is incompatible with the Charter. How is it possible to work on a Commission with this Charter? Is it possible for the two mechanisms to coexist? What are the political conditions for the establishment of the Commission?

Ewoud Plate

For the families, truth cannot be seen separately from justice. In certain cases, as in South Africa, truth has been exchanged with justice. Victims have been relatively disappointed by the results of the commission, particularly about disappearances, because only a few cases have been resolved. This is why the families of the disappeared should not be the instigators of such a mechanism. I want to underline the fact that my question is voluntarily provocative.

Ali Merabet

We have to know the truth on the disappeared. We need a truth commission to hear from the executioners. They have to express some regret and beg for forgiveness. If the truth commission doesn't give a part of the truth, the families will never obtain satisfaction.

Gaëlle Loir

Practically all the countries which have experienced transitional justice, for instance South Africa, have not dealt with enforced disappearances. The situation is quite different in Algeria.

Tyrone Savage

Yes, it is true. In South Africa, we obtained the truth but we accepted, as a compromise, to dismiss traditional justice.

Sofiane Chouiter

If we choose the option of a truth commission, we will have to search for the truth.

The question is whether traditional justice is able to accomplish this search for the truth, as most of the judges are not independent. We also have to analyze the causes of the human rights violations and reform the institutions which don't deal properly, for the moment, with the victims. The institutions are not able to lead effective investigations on human rights violations.

Roberto Garreton

I give you a key-word: progress.

During the dictatorship in Chile, there was no justice. The first truth commission has not judged the executioners; its mandate was reduced to seeking truth. There were no juridical consequences. However, it provided for nine members from the military junta to be brought before the court. In El Salvador, the truth commission was efficient in naming the executioners. However, the cases there have been classified without any follow-up. Right after the publication of the report, there was no judicial prosecution and an amnesty law was promulgated. In Guatemala, they have talked about genocide. The South African commission is not a model to follow as it has no judicial prerogatives. The Peruvian Commission had no judicial prerogatives but gave an impetus to the trials.

The dilemma of truth versus justice is everywhere. There an adage which said: "If you look for truth and justice, you will find neither of the two." I do not agree with this proverb but the problem really exists.

The Charter and its amnesty laws are some diktats which can't be seen as limits to our demands. In Argentina, in Chile and in other countries, there were some amnesty laws but afterwards there was also some important progress.

Adnane Bouchaib

The situation is very closed and difficult in Algeria. The Charter is the product of the alliance between the government and the Islamics. It will be better to ask first for the minimum: the truth before everything.

Nesroulah Yous

I have seen the killings and I don't want to be a victim anymore; I want to get out. I don't want to feel guilty about the fact that I have seen so many friends dying. For which reasons are we here today? It is already a big step to be able to have a discussion together. The most important thing is to start reflecting in order to define and understand why the violence occurred. We don't have to make differences between the victims. Just knowing why everything happened would be a great victory.

Madjid Benchikh

Is there any incompatibility between the Charter and the establishment of a truth commission? Everybody here has already agreed on the necessity to establish a Commission. As we are determined to look for the truth, no juridical argument should be a major obstacle. The question of the usefulness of a Commission, as the government has promulgated the Charter, is still to be considered.

It is not because the government has decided to hide the truth that looking for

it is impossible. In society, there are victims who want the truth. Several people think that this search has a basis and is articulated around the right to know: in which conditions have the crimes, killings, and forced disappearances in Algeria during the nineties been led?

To be contented with the Charter will mean to give up the human rights and the right to know, which are internationally recognized. It is clear that the government, with the promulgation of the Charter, wanted to hide the truth. Article 46, evoked yesterday, is a good example. It is not necessary to wait for the abrogation of the Charter. We can already start our search for truth.

Unknown man

What could be the catalyst used to submit the idea of a truth commission to the Algerian authorities?

Sofiane Chouiter

In response to pressure from international NGOs and the international community, an ad hoc Commission on forced disappearances, chaired by Barrister Farouk Ksentini, was created. The decree of application expresses a desire to know the truth. However, in practise, Barrister Ksentini has only announced 6,146 disappeared, because of the State's employee action, without giving any response on their whereabouts.

Dalila Zekal

In the spirit of the Charter, we have compiled many files. For several months, we have done all necessary procedures for families to obtain indemnities. We have not received an answer yet.

Roberto Garreton

Algeria is not, for the moment, in a favourable situation regarding the establishment of a truth commission. In fact, all truth commissions have been created either after the fall of a government which committed crimes or in the framework of a transitional government. Maybe Bouteflika will never establish a truth commission but we can't wait for him; we have to continue the struggle!

The first step was accomplished here with the current seminar. The second step is to keep going on and start reflecting on the transitional process. We have to call out the President and say to him: "One day, your regime will end. Maybe it is your role to lead the investigations on the conflict's victims. Then, you will be the first and you will mark history. If your successor deals with this matter, it will be a failure for you! It is better to start the process, together, now!"

Madjid Benchikh

We have already made small steps but there is still a long road to cover. In the Charter, there is a section saying that the moment is no longer favourable for the debate. Nevertheless, by saying “we want a truth commission”, we are starting the discussion. We are aware that the government won’t accept this idea tomorrow but, for the victims, it is necessary to be looking to the future in the spirit of the right to truth.

In conclusion, we can say at this stage of the debate that the idea of proposing a truth commission is shared by all the participants. The next point to discuss is the composition of the Commission.

/ THE MANDATE AND COMPOSITION OF THE TRUTH COMMISSION

Ewoud Plate

The families want to go further but there is also a need to review the history. We have to look for a historic interpretation which will allow the Algerian people to say: “I recognize myself in this history”. Then, we have to accomplish the work of an historian.

Madjid Benchikh

We can introduce this element in the mandate or in the preliminary conditions.

Sofiane Chouiter

In the next steps, we have to struggle in order to obtain the reform of the institutions and the abrogation of certain dispositions in the Charter.

Amine Sidhoum

The victims or their representatives should be members of the Commission. The institutions of the State should also be in the Commission; for instance, the Home office. In fact, these institutions have records of where people are arrested. The other problem is: who can make the decision about the composition.

Madjid Benchikh

We must differentiate the composition and the means used to create the Commission. A Truth Commission must be independent, credible, and it has to win the victims’ trust and be acceptable for the government.

Amine Sidhoum

Do you think that this government will accent some perfectly honest personalities as members of the Commission?

Madjid Benchikh

Generally, the establishment of a credible Truth Commission occurs in the framework of a political transition. Therefore, President Bouteflika will not accept it straight away.

Roberto Garreton

The truth commissions that were not really efficient were composed by the families of the victims or by the politicians. For instance, the Commissions in the DRC and Paraguay are in force but we can't say that they really exist because their members are the victims. On the contrary, the Commissions from Peru, Chile and Argentina were ideally composed. Their members were untouchable as they were independent personalities. Surely, the Commission will have to address the concerned institutions

The question which remains is whether the Commission needs to be composed exclusively by Algerians or if it could include foreign individuals or international organizations. In El Salvador, it has been impossible to find credible nationals and the Commission has been chaired by an American, a Venezuelan and a Colombian. In Guatemala, there were 2 Venezuelans and a Guatemalan.

Ali Merabet

In certain countries, it was more complex as they were many ethnic groups and religions. However, they have succeeded. .

Sofiane Chouiter

For the members of the Commission, the essential thing is that that they have a high morality. They also need to be credible, impartial and honest. Civil society needs to propose some candidates and must be included in the selection process.

Tyrone Savage

How can we depoliticize the composition of the truth commission? In the DRC, there were only political personalities as members of the commission and it was a disaster. In Peru, the members of the Commission could not be members of a political party (they had to give back their membership card to be part of the commission).

Claudia Josi

In Peru, nationality was considered and there were only national members. This reinforces the legitimacy of a truth commission.

Sofiane Chouiter

Should we give the government the opportunity to propose some members?

Madjid Benchikh

Now we have to discuss on the duration of the mandate.

Gaëlle Loir

We need to discuss the period of human rights violations that will be examined by the commission. We also have to examine the length of time the Commission will work.

Nesroulah Yous

I think that it is important to define the causes of the conflict before 1992 and we have to go back until 1988.

Sofiane Chouiter

The Charter did not determinate the period of the tragedy. A truth commission is not a court. Can we prosecute some individuals? Will a truth commission, once created, with the agreement given by the Parliament or the government, have the prerogatives to access the judicial and military archives?

Denys Robiliard

I don't believe that the aim of a truth commission is to write the history. Rather, it must establish the facts and the responsibilities. The prosecutor has to establish the guilt. We don't have to forbid the truth commission from denouncing and naming the executioners. The presumption of innocence has to be respected. However, the Commission must have the following prerogatives: to summon the defendants and to look after the witnesses who will take the oath. It is not a good idea to give strict limits to the mandate.

Roberto Garreton

On the role of the truth commission in writing the history: it is not its mandate. However, we can't disconnect the conflicts from the social context in which they occurred. The Shining Path, in Peru, would not have existed if there had been social justice. The Commission, in Peru, has described the main points of Peruvian history; the main problems have been hidden then unveiled and expressed. After all, the Commission has analyzed the human rights violations. In Guatemala, before the work of the Commission, nobody was aware of the various ethnic groups who were living together. The Commission allowed for an inventory of the war's premises. In Algeria, there are certainly some taboos to explore. Concerning the mandate of the Commission, it has to be established by law because a presidential decree could lead us to some problems.

Madjid Benchikh

Regarding the problem of the history, it is not to included in the principle mandate of the Truth Commission. Nevertheless, we have to consider the human rights violations in an historical perspective.

Nesroulah Yous

Yes. For instance, why did they give the power to the Islamics only to withdraw it afterwards?

Claudia Josi

We have to keep in mind the future perspectives! It is important to analyse the causes to know the past but also to avoid its repetition in the future.

Abelhamid Rehioui

In each conflict, there are victims. In Algeria, it is the people who paid for it. After the riots in 1988, which we have to remember, the Constitution of 1989, enacting the multiparty system, represented a transition. The latter led us into a spiral of violence. So, I think that we have to take into consideration the events of 1988, 1992 and from 1992 to 2006 in order to keep in mind the different parts of the Algerian history.

Madjid Benchikh

In fact, some massive violations have occurred since 1988. To fix a date doesn't mean not giving an explanation to the events which preceded the killings of 1988. One more question has to be asked: who will establish the Commission? The President or the Parliament? A decree or a law?

Dalila Zekal

Could we consider October's victims as part of this process?

Madjid Benchikh

Toutes les violations des droits de l'Homme entreront dans le processus. Mais concernant le décret ou la loi, qu'est-ce qui serait préférable ?

In the current state of affairs, it is unthinkable that the President will accept the idea of a Truth Commission within the next several months. It is obvious that neither the National Assembly nor the executive power will create such a mechanism. Immediately, it is not very important to know if the Commission will be established by a law or by a decree but in the future it will be important: the President has more authority and the Assembly has less political influence but is more representative, in theory. The Commission would have more legitimacy if created by a law.

Tyrone Savage

It is a very difficult decision to make for several strategic reasons. In South Africa, many debates have been organized, during the preparatory work, to collect the people's suggestions, in order to have moral legitimacy.

Denys Robiliard

A priori, is the law judicially superior to a decree? In these conditions, does a decree give as much powers to the Commission as a law?

Madjid Benchikh

For sure, a decree gives less power than a law.

Adnane Bouchaïb

Nevertheless, the decree can be enacted with a law or conversely.

Madjid Benchikh

It is however obvious that some prerogatives can only be attributed by a law.

Abdelhamid Rehioui

Firstly, we have to say that a law is more protective regarding the members of the truth commission.

Madjid Benchikh

Obviously.

Gaëlle Loir

The process could also be a proposition or a project of law.

Madjid Benchikh

In Algeria, the deputies never follow these procedures.

Denys Robiliard

Two dates have been mentioned: 1988 and 1992. 1992 marks the end of the electoral process. Does the Commission have to answer to the following question: was it acceptable or not to stop the electoral process? ?

Madjid Benchikh

Some human rights violations have also occurred in 1998. We have to figure out a departure point. Everything depends on how the truth commission will conceive and lead its mission.

Ewoud Plate

The establishment of a commission must coincide with the beginning of a

transitional process. One more important thing among the preliminary conditions is that the people must be at the heart of the process.

Paulette Thornander

How should we lead these consultations?

Madjid Benchikh

Quelles sont les prérogatives, les pouvoirs d'une Commission Vérité ? S'approche-t-elle d'une forme de justice ? Quelles sont ses prérogatives vis-à-vis des témoins, des archives ?

Adnane Bouchaib

Yes, this Commission must have the power to hear witnesses but also to order sanctions if the witnesses refuse to assist in the hearings. Concerning the archives, it is obvious: in Algeria, no register will prove the human rights violations.

Roberto Garreton

There is also the financial aspect; we need resources to get Algeria over the current situation but also to find the executioners, the registering, to be equipped with computers, etc.

Madjid Benchikh

Yes, we will need human and material resources to ensure that the Commission's missions are working out.

Ewoud Plate

Could the mandate include the exhumation of mass graves?

Madjid Benchikh

The problem is to know whether the Commission would decide to proceed itself with the exhumations or whether it would ask the authorities to proceed with this matter.

Adnane Bouchaib

It would be better if the Commission was itself in charge of the exhumations.

Madjid Benchikh

The Commission should have the strongest investigation powers possible

Roberto Garreton

We should also get in touch with some forensic experts.

Nesroulah Yous

We should already gather documents, testimonies and all other information that would be useful for the Commission.

Dalila Zekal

My association has already established a database which gathered the testimonies of over 200 families of victims of terrorism and of the State.

Abdelhamid Rehioui

There is also the problem of the confrontation between the victims and their executioners; some people are afraid to talk. The members of the Commission will have to obtain some guarantees and protect the investigators. Who will give these guarantees; particularly in the regions which are still dangerous?

Dalila Zekal

Yes, doing research without any protection will be very difficult. Some people have been very touched. There are a lot of risks; we absolutely need some guarantees.

Madjid Benchikh

This is true, but a lot of NGOs have been able to investigate even during difficult periods.

Roberto Garreton

We have to study the situation before defining the temporal mandate of the Commission (which could be 1988-2003). A perpetual Commission is not possible. Even in Peru, Guatemala, etc, the human rights violations continue but there is an absolute need to establish a duration that can't exceed one or two years.

Ewoud Plate

What could be the actions taken by the associations to prepare for the establishment of the Commission?

Nesroulah Yous

Regarding the current situation, it would be difficult to investigate.

Denys Robiliard

The Commission won't have the power to incarcerate but reparations have to be listed in the mandate. The beginning of the competency, regarding the mandate of the Commission, should be 1988 but why are we ending it in 2003? The Algerian power is still the same. We can hope that asking for the establishment of a transitional justice will lead to the transition. Once the agreement is obtai-

ned, we will be able to fix the end of the mandate. We can't act as if the human rights violations have ended. If the Commission is established, then we will be able to consider that the period is finished.

Madjid Benchikh

Yes, it is only the beginning of the reflection. We have to keep in mind that the Commission must have a determinate duration because it is one of the conditions of its efficiency. So, we should not already fix the end of the period covered by the Commission.

Roberto Garreton

We have to agree on the different types of violations which will be studied by the Commission.

Madjid Benchikh

It is symbolic to say that human rights violations considered as massive are killings, forced disappearances, torture, rape and all other attacks on fundamental freedoms. Regarding kidnappings, these actions are a matter of forced disappearances.

Roberto Garreton

We have to underline the differences between forced disappearances committed by the Islamics, on the one hand, and the State, on the other hand. The latter enjoys impunity, unlike the terrorists.

WORKSHOP 2

INDIVIDUAL AND COLLECTIVE REPARATION

Mariana Pena⁵³

We will examine at this workshop some issues related to “peace, truth and reconciliation”. Promote justice, re-establish the truth and provide full reparation to achieve reconciliation: these are the guiding principles of truth and reconciliation commissions, which were discussed yesterday. Reparation is a principle of law but the ethical, psychological and sociological dimensions of this concept should also be pointed out. One has to keep in mind that international law prevails over domestic law in this field. The right to reparation has been part of public international law since the beginning of the 20th century.

The International Court of Justice (ICJ), headquartered in the Netherlands, has recognized a principle of international law: the violation by a State of one of its commitments brings about the obligation of reparation. It has thus become a customary rule. In the classical conception of international law, only a State could claim for reparation from another State. Nowadays, this conception has evolved: an individual may also claim for reparation for flagrant violations of human rights or of the international humanitarian law. This has been codified in the Van Boven Principles, after the name of the Special Rapporteur of the Human Rights Commission who was in charge of the issue of reparation. These Principles were adopted by the UN General Assembly in 2005. They do not sanction a new rule of international law. Rather, they reflect rules already existing in customary international law.

Who is entitled to reparation? The victims! Who is a victim? A victim is a person who has, individually or collectively, suffered a damage. Therefore, one can notice that the notion of damage is central to the definition of victim. According to these principles, it is recognized that the close family of the victim can claim for reparation. Thus, the suffering of the victim and the suffering of his/her dependents are both recognized. A person who is considered a victim is entitled to reparation, regardless of the fact that the perpetrator of the violation is identified, arrested, prosecuted or sentenced. It is an important principle within the framework of truth and reconciliation commissions. It is not because no criminal proceedings are launched that one is not victim. What is a flagrant human rights violation? Is there any definition in international law? Yes. The Statute of the International Criminal Court provides

⁵³ FIDH Permanent Representative before the ICC.

that these flagrant human rights violations include: the crime of genocide, crimes against humanity and war crimes. As a matter of fact, reparation can be claimed for these crimes before the International Criminal Court.

Who has the obligation, the duty of reparation? According to the Van Boven Principles, it is the State. This latter is duty-bound to provide reparation when it is directly responsible for the violations, but also when these violations are imputed to non State groups. Therefore, the obligation to uphold the respect of human rights and prevent their violation is incumbent upon the State. This obligation is incumbent upon the State and not on the government! It is one of the most important observations within the framework of transitional justice because governments may change but the State remains.

What do the obligations of reparation consist of? Reparation consists in providing a form of compensation in order to restore the social situation which existed before the damage. With respect to gross human rights violations, no reparation may be substituted to the necessary official recognition of sufferings. However, the reparation process can enable the victims to regain a part of their dignity.

What are the forms that reparation can take on? Five forms are generally referred to: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. I will elaborate on each of these five forms of reparation and provide some concrete examples.

1. Restitution: It involves stolen property and withheld rights such as liberty, citizenship and family life. For instance, I will talk about the Inter-American Court of Human Rights which has extensively dealt with the issue of reparation in its case law. With respect to restitution, the Court has gone so far as to ask the State to reinstate a person in his/her functions, and to return him/her non-received salaries and contributions to pension fund (in a lawsuit for unfair dismissal). Yet, when one talks about restitution in respect of massive human rights violations, one is aware that pain can not be erased; hence the necessity to obtain a proper recognition.
2. Compensation: With respect to human rights violations, compensation for the damage suffered proves to be difficult to assess from a financial point of view. As a matter of fact, compensation for psychic damage may be awarded but the latter is difficult to assess. The principle of proportionality has also to be taken into consideration in the assessment. In order to award compensation, the Inter-American Court of Human Rights bases its decision on the damage caused by the human rights violations to the

development of the victim's "life project". Compensation will be paid for the costs and losses caused by the search for the disappeared person and also to cover salaries not received by this disappeared person, who is in most cases the sole source of revenue of the family. We can also mention, with regard to compensation, the system of pensions established by the Truth and Reconciliation Commission in Sierra Leone, particularly for those wounded during the war.

3. Rehabilitation: This measure consists in providing legal support, as well as social and psychological services. We can find examples of this form of reparation in the recommendations put forward by the Truth and Reconciliation Commission of Sierra Leone. The latter proposed that victims of sexual violence and those wounded during the war should be granted medical, psychological and social assistance until they become fully rehabilitated. This may lead to the assumption that the victims may enjoy the benefit of these measures during their whole life. For instance, the Commission recommended free education for those wounded during the war, child soldiers, victims of sexual violence and orphans.
4. Satisfaction: It is what we call a form of symbolic reparation. It includes the following measures: disclosure of the truth, prosecution of senior officials and other measures. The Inter-American Court of Human Rights proposed in its decisions several types of satisfaction: official and public apologies by the State involving recognition, the organisation of commemorations, paying tribute to victims, the set-up memorials and centres, transforming former detention centres into museums. With respect to disappeared persons, the identification and burial of corpses also constitute a form of satisfaction
5. Guarantees of non-repetition: This involves institutional, criminal and legislative reforms purporting to prevent the re-occurrence of human rights violations. There is a link between satisfaction and the non-repetition since satisfaction is linked to recognition of and the search for truth. Therefore, one must look for the causes of the conflict in order to suppress what is liable to lead to new violations. The right to reparation should not exclude some categories of the population. Otherwise, it would amount to discriminatory practices. Another principle of the right to reparation is the consultation of victims: victims must be consulted, have access to information on the different forms of reparation, and must be entitled to have their say in the forms of reparation that they deem most appropriate to their situation.

One can see that it is almost always necessary to combine different forms of

reparation. Financial reparation is almost always insufficient. In Algeria, the Charter for Peace and National Reconciliation was not supplemented by recognition. A few years ago, the Government in Argentina offered financial compensation to the Plaza de Mayo Mothers. They refused this offer because they considered it an attempt to buy their silence. In South Africa, the victims considered that their suffering could not be redressed solely by recognition; it had to be supplemented by financial compensation.

Truth, peace and conciliation are the themes of this seminar. Truth is a form of individual and collective reparation. I think that you have already talked a great deal about the right to the truth. One can say that the right to know is inalienable. This right also emanates from a human need to know the truth. It then encompasses some psychological and social aspects. This right emerged in the 70s, 80s and 90s. The right to the truth can be applied to violations other than enforced disappearance. For instance, in Argentina, a victim who was tortured stated that she was looking for the truth concerning the cruelty inflicted on her so that everybody know what happened to her. It consists in knowing and making others know. This notion of truth is linked to collective reparation. This search in the past, which entails the understanding of the causes of the conflict, contributes to the emergence of debates within the society. As regard the search for the truth at the community level, the Equity and Reconciliation Commission (Instance Équité et Réconciliation - IER), in Morocco, contributed to fostering a dynamic process on the issue of the memory. The IER's action was centred on organizing symposia and public hearings; establishing facts in a database; conducting researches and analyses in universities; and staging public debates. Therefore, all these events constituted the historical work that was undertaken. Then, it was largely disseminated through the media. These forms of reparation were allegedly suggested by the victims themselves. In Morocco, the victims expressed their concern about detention centres. So, the IER recommended transforming some places, including detention centres, into historical monuments, and using and classifying archives to enrich the collections of national or regional museums of history.

Nourredine Benissad

L'exposé de Mariana contient plusieurs aspects qui devraient servir de base à notre discussion : les principes de droit international applicables, la réparation : le rôle de l'Etat en la matière et les différentes formes qu'elle peut prendre, l'identification des auteurs des violations des droits de l'Homme, l'importance des statuts de la CPI, quelques cas de jurisprudence de la Cour interaméricaine des droits de l'Homme, la proportionnalité et la consultation des victimes ainsi que les différents exemples qui peuvent nous inspirer : l'Afrique du Sud, l'Argentine et le Maroc (IER).

Louisa Ai't Hamou

I would like to raise the issue of impunity which was confirmed in the "Charter for Peace and Reconciliation". It is obvious that as long as the Judiciary does not assume its role, namely, punish criminals and provide redress to victims, our society will neither be able to restore peace nor reconstruct itself. There is a general belief among all experts that, in the absence of any punishment, violence will resurge one day. In fact, we have already begun to witness its early manifestations – the decay of social norms, the rise of urban violence, crimes of sexual violence, etc.). For this reason I think it is important to talk about a specific form of violation which has often been suppressed or manipulated for political aims: the rape of women by terrorists. If I wish today to speak on their behalf, it is because we have once again walled them in a traumatic silence and because, as written by Mr. Imarène Djerbal, "they will never be celebrated as embodying the glory of the homeland or that of the nation »⁵⁴

The media have frequently reported cases of women's rape and abduction perpetrated by the terrorists but no investigation on this issue has ever been conducted at the national level. We can refer to the figure mentioned in the Press: 3,700 rapes of women 700 abductions of women. Apart from these figures, we are aware that appalling tragedies have totally destroyed the lives of women.

The International Criminal Court clearly defines crimes against humanity in Article (7) of its Statutes. Pursuant to it, enslavement (7c), rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity (7g) are included in the list of crimes against humanity. It is worth mentioning here that Algeria has acceded to the Treaty of Rome which adopted the statutes of the International Criminal Court.

What is our reality?

⁵⁴ see the proceedings of the seminar of Wassila network on «the rape of woman by the terrorist. A crime against humanity», 8 march 2004

In addition to the pains, sufferings and tortures endured by women, victims of rape perpetrated by the terrorists, the criminal policy of omertà – the law of silence – has been imposed.

What arises out of this tragedy is a cynical manipulation by the State which, once again, uses the body of women for petty political goals. When the State had to justify its “policy of eradication” in the 90’s (particularly vis-à-vis European countries and the US), it used heavy media tools to display open testimonies by women victims of rape perpetrated by terrorists. Today, we ask them to keep quiet subject to the punishment of the law. What kind of State can exploit the suffering of women? What kind of State can use the body of women for its own political schemes? One may answer that the State took care of women in the 90’s when it ensured that the Higher Islamic Council would issue a “fatwa” that allowed the abortion of women raped by terrorists. This “fatwa”, presented as a courageous act by the State, was in fact a mere reactivation of one of the provisions of the Public Health Code which permitted voluntary interruption of pregnancy should the physical or mental health of women be endangered by the pregnancy. Female victims had to provide evidence of rape by a terrorist if they wanted to undertake a voluntary interruption of pregnancy. How many women had to face shame, humiliation, the accusing look of others, and rejection by their families when they declared themselves victims of rape? What measures were undertaken to implement this provision? None. And today what has become of these women? What has become of the children born in the “maquis” (areas occupied by the guerrilla)? On the contrary, what we observe is that despite this “fatwa” and despite the opening by the Ministry of Solidarity of a Centre in Bou Ismail for female victims of rape by terrorists, the political will to take care seriously of the victims was missing. Claims expressed by associations of women and terrorism victims, namely the recognition of the rape women by terrorists as a form of war crime, the prosecution of criminals and the provision of indemnification, remained unanswered. Worse than that, the “Charter for Peace and Reconciliation” requires victims to erase everything and forgive, in order to make them sink into oblivion.

The society is guilty of maintaining silence on this violation, a silence which is often justified as compliance with the “horma” and the State is responsible for this denial of justice. As written by Ms. Imarène Djerbal, “maintaining silence on these crimes inflicted on women is also a means to avoid launching a political debate over the status of women in our society. It is the State which is responsible for the absolute silence maintained with regard to the acts of violence committed against women”².

Forty years after the independence of our country, Louisette Ighilahriz was brave enough to denounce publicly that she had been victim of rape by the French colonial army during the national liberation war. I hope that we will not once more wait forty years to provide redress to women victims of rape by terrorists for the damage inflicted to their flesh, their dignity and their rights.

Cherifa Kheddar

This workshop is about the various forms of reparation, which are material as well as moral. They have been realised by many Truth and Reconciliation Commissions in different countries. Concerning Algeria, I wanted to give an overview of the 1990s. During this period, the collective consciousness gave its approval to the use of violence against intellectuals. Furthermore, the fact that the victims were suffering was not recognised. They “did something, they are guilty”: these few words excused the human rights violations. Then, we pretended that the disappeared were terrorists, without any proof. In this context, a lot of victims have suffered, on the one hand, from the authorities and, on the other hand, from the Islamics. The victims were civilians, unarmed, who were killed next to their houses. Concerning the disappearances, the victims have been arrested at their homes or in their workplaces. They were considered guilty because they didn’t choose their camp; they have paid dearly for it. Some people have lost their relatives, because of the State or because of the Islamics. They were not partisan, State employees or armed.

When we state these human rights violations, we understand how important the moral reparation are. In fact, all of the victim’s rights must be rehabilitated. Concerning the material reparation, many victims deny it but we have to keep on asking for it because it is necessary, for the society, to recognize the victims’ pain. Many people think that is an attack on dignity but I believe that moral reparations have to be listed in the propositions for a Truth and Reconciliation Commission. The experiences from Chile, Peru and South Africa, to name only a few, have demonstrated that a change in the political regime is necessary to repair the victims’ damage. Breaking with the former regime has allowed these Commissions to work freely. The situation in Algeria is quite similar to Morocco because there was no political transition. Despite this, Morocco has the IER. Nevertheless and contrary to Morocco, in Algeria, the authorities are exclusively responsible for the human rights violations. Thus, the Algerian situation is more like that in Peru or Sierra Leone.

I would like also to insist on the importance in finding appropriate reparations for raped women. Our struggle and our claims, when we are talking about a Truth and Reconciliation Commission, need to make sense for these women.

We also have to consider the significant amount of killings committed in Algeria. We have to introduce particular and adapted propositions to repair these violations. The authorities have pretended that they have given indemnities to the victims of terrorism but this is false! The victims' widows only get a pension. The authorities avoid saying that these pensions were given to all the widows. In consequence, this is not about indemnity and there is no consideration of circumstances of the killings. Algeria tries by every possible means to convince the national and international community that a reparation process is on the way; the Charter is a good illustration as are the artificial excuses given by the President of the Republic. In fact, the Algerian State simply denies the existence of the victims, their pain, and the role of their relatives. The text giving application of the Charter, "Ordonnance 01-06", has introduced sentences and amends for every person who would talk about her pain. The State wants us to forget. The truth is known, not only by the victims but also by the authorities, about the arrests and the mass graves. Among the people who were kidnapped by the Islamics, we know, with their confessions, that the victims died under torture, and that they were coldly killed. What are the different forms of moral reparation? Can we propose some memorials built on the mass graves? The memory is not only for the victims of terrorism. The people need to be sensitised in order for history not to be repeated.

DEBATES

Nassera Dutour

I notice that among the various forms of reparation we have talked about, we have not mentioned justice. It is true that in the truth there is justice but why don't we ask for more? We have to start a debate, in this workshop, on this issue: which form of justice are we asking for?

We have lived through awful years. We were crossing pools of blood, dead people, bombs were bursted from everywhere and repression was going on and on. No one was concerned about the Algerian people. Today, Bouteflika urges us to be silent and to turn the page. We want to tell him: "Never again!"

I don't want to talk only about penal justice; there are various forms of justice. Here, we have to decide which form of justice we want. Are we willing to accept the confessions, to forgive and to turn the page?

Having the truth is one thing; do we want to prosecute the executioners? Do we want to put them in jail? Should we resign because of the justice's interdiction stated by the Charter? Absolutely not! However, we have to consider article 45 of the text giving application of the Charter, which forbids us to complain about a State's employee. This legal text, as said yesterday, is muzzling us.

Furthermore, the indemnities stated by the Charter are only given if a death sentence is delivered by the Court. How can we force a mother to declare her son dead? How can we muzzle the hope of an entire family, forbidding them the truth? The mother of a disappeared person told me: "Asking for indemnities means, from my point of view, killing my son!" The request for indemnities also means complex administrative proceedings. The family has to go to the constabulary or the police station in order to obtain the certified report of the disappearance. Then, they have to depose this document to the court and ask for a disappearance's judgement. Afterwards, they meet the notary in order to finalize the succession. After all these actions, the family can submit a request of indemnity to the wilaya. When this step is accomplished, the indemnity is not systematically given. In fact, the administration denies it to all the families who have some resources (even the pension given to those handicapped in the war!): they are too rich! How can we consider this indemnity as reparation? With the indemnities, the authorities are buying our silence but I am convinced that this silence is everything except reparation.

Many families have faced this nonsense! A mother of a disappeared person,

who lived in the wilaya of Tipaza, after all of the indemnity process, received the policeman. They told her that her son was in jail, at Chlef, even though she obtained a judgement. This situation demonstrates that justice is everything except the truth; it is a real denial of justice. Since then, this mother has stopped all her attempts. She feels guilty...

To come back to the raped woman, I want to underline the fact that the executioners of these sexual crimes were also the State's employees. Many women have been raped in the police stations; I am talking about 50-year-old women suffering these crimes! Many of them don't want to talk about it or only want to express their pain to us, to the association. Hopefully, the young women, I mean the virgins, who were tortured in the police stations, have not been raped. I don't know why but the important thing is that they have been tortured! When we are talking about raped women, we have to underline the crime, never mind the authors.

Nourredine Benissad

We must also address issues of peace and conciliation as we specified before that reparation comes after justice and reconciliation. We know that reparation must follow justice and reconciliation. Mr. Garreton told us yesterday there are two scenarios of democratic transition: from dictatorship to democracy or from war to peace. In Algeria, there is both a dictatorship and a conflict. Concerning the Algerian judicial apparatus, we pointed out, on several occasions, that it was also instrumentalised. Can we talk here about the duty of justice? Besides, do we have to talk about transitional justice or traditional justice?

Unknown person

We have talked about the establishment of truth and reconciliation commissions, following some democratic changes, referring to the regimes; for instance, in Latin America and in Africa. In Algeria, these changes are not actually on the agenda. So, what can we expect?

Unknown person

I just wanted to say that material reparations are important and that most of the victims need it. On March 8th, a widow talked on TV: she spent 8 months looking for food in the trash. For the official's widows, the case is different as they are still receiving their husbands' salary. First, the victims have to obtain a moral recognition. The first victims of terrorism obtained some certificates. What can we do on an international level: to put pressure on the Algerian authorities so that they tell the truth and rehabilitate the victims. The priority has to be given to the recognition and afterwards material reparations will follow.

Unknown person

It is true that the workshops' themes match up and we can't talk about peace without talking about truth. We have to discuss about victims, how to collect their testimonies, and the executioners, we know them and we have to name them. This recognition of the facts and the human rights violations could help the victims and be a form of moral reparation. We know that in Algeria some people have recognized some terrorist actions. The families of the disappeared also know the authors of the disappearances. The recognition of the facts is part of the reparation. There is also the work of the legal system.

Unknown person

I don't understand why we are afraid of the word "justice".

Unknown person

In fact, we can't talk about reparations without talking about justice. Mr Smaïn has reminded me of the situation in Rwanda: the community courts. A recent trial, concerning raped women, has been conducted in this country. They have struggled to obtain justice, they have a lot of courage but the trials have been unfair. Finally, traditional justice has relayed community justice: these women forgave but the traditional justice didn't fulfil its missions. If we overshadow justice, no real reparation is possible.

Cherifa Kheddar

We do have to talk about justice; the conciliation will occur afterwards. I think that a truth and reconciliation commission, on a transitional justice perspective, could be presented to the President.

Mariana Pena

We are usually afraid of talking about forgiveness. We have talked about different situations in which forgiveness and truth can occur. Personally, I think that it is impossible to forgive even when the truth is known. Forgiveness is an ethical question and it is the victim's right to forgive or not. Even if the victim says that he or she forgave, it is impossible to know if he or she really forgave in the bottom of their heart. During my work experience at the ICC, particularly concerning the situations in sub-Saharan Africa, the forgiveness issue has been frequently raised. The Algerian victims are the only ones who have the right to decide if they will forgive or not.

Concerning sexual crimes, they are defined in the ICC Statute. This recognition is a big step but we have to pursue the struggle in order to obtain inquiries and prosecutions for the victims. We can be delighted about the ICC's warrants

of arrest; particularly the one on Darfur's situation, which included the sexual dimension. Nevertheless, in this latter affair, concerning the responsibility of Ituri's militia (Democratic Republic of Congo), no prosecutions on sexual crimes have been conducted even though these crimes occurred. Concerning the term "sexual crime", I want to underline the fact that it includes both men and women. Furthermore, it includes various forms of sexual crimes, such as sexual slavery and forced pregnancies.

As for the protection of the freedom of expression, we don't have to look very far in the human rights treaties: the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights mention this freedom.

Barrister Benissad has insisted on the particular situation of Algeria. I direct your attention to the fact that, in the Charter, we use some tools which are linked to the truth and reconciliation commission: amnesty, material indemnity, etc. Nevertheless, the Algerian authorities have arbitrarily selected these tools and didn't consider the truth, which is indispensable to any reconciliation.

What can we do if there is no political will? The answer: put pressure on the authorities. It is a job for the national and the international civil society. I want to recommend to you two elements to ensure the follow-up of our debate: it is necessary to talk about justice but also to lead a reflection on the various forms of reparation, taking in consideration the victims' particularities.

Mohamed Harbi

In his presentation, yesterday, Mr. Garreton set out a fundamental element: the issues confronting the Algerians today may not be addressed without taking into account the political context. The particularity of Algeria lies in the fact that the issues that come back up to the surface, especially those of the disappeared, call for other questionings which have not been answered: the diversity, the structure of the political scene, etc. Each one defends his own problems, his own interests and we do not manage to exert pressures all together so that the ruling power changes. However, the latter cannot any longer be the only one to speak, even if it holds the majority of means of expression. Indeed, it is today obliged to adopt a dilatory attitude and to incorporate, in its practices as well as in its schemes, a part of the arguments defended by the opposition. There is also some progress within the Algerian context, but a major problem remains: the lack of communication between the different political groups and the different movements. The one-party regime still carries much weight and impedes unity, though it is necessary in order to compel the current rulers to negotiate. Today, it is a great victory to see

that the victims are gathering together, regardless of their political trends, in order to set common objectives. The decisions of the various groups must no longer be the source of dismissal and the authorities must not, accordingly, minimize the claims. There is also another problem: State secrets, the withholding of information and the suppression of the truth continue to cause pernicious effects on all the other problems experienced by the Algerian society. One has to get round this danger, for as long as it is not properly addressed, it will be difficult to find solutions to the blockings currently faced. In fact, the debates of the past continue to weigh heavy on the problems of the present. If we had extensively worked on the way in which the war of independence took place, there are some behavioural patterns which would have stopped intruding: torture, sexual crimes etc. The war of liberation was, in some respects, a civil war. There is also a problem of history: the French experienced it during the events of 8 May 1945. The French Government tried to redress the situation while completely dismissing the problem of its political responsibility in what had happened. One has to see how the French addressed this problem; there are archives on this topic. There are some researchers who have seen how the agricultural banks, some notables decided to grant compensation. I think that it is an interesting experience which would allow to object to the Algerian Government that it merely takes up practices of which the Algerian nationals had been victims.

Unknown person

In May 1945, we were still studying the way in which women have been treated. Someone has talked about peace. There are some things going on, in Europe, on this issue. I think specifically of Northern Ireland, which has a colonial past, terrorism and a State. They were not talking about civil war but about troubles. When I heard about the “national tragedy”, it is the same euphemism. Maybe we should contact the groups of women in Northern Ireland in order to determine how they rebuilt themselves after the violations inflicted on them. On the sexual issue, I have followed the situations in Rwanda and former Yugoslavia. I can surely affirm that this is an essential question. The women are everywhere: they are on the combatants’ side and on the victims’ side. The problem is quite complex: women frequently depend on someone, for various reasons, but they are dependant.

Unknown person

We often talk about the reconciliation in South Africa, which occurred after several years of apartheid, crimes and violations. The success of this truth and reconciliation commission must therefore be placed in its context. In Algeria, there is a need for a real upheaval so that mentalities can evolve. We have to

recognize the Other as he or she is, we can't marginalize the Other.

Nourredine Benissad

In Algeria, justice is directly managed by the executive power and from this reality many problems arise. For this reason, I did not want to approach this point. The Algerian legislation does not codify either crimes against humanity or genocides. Thus, traditional justice is hard to run in Algeria: trials may take exceptionally long periods of time and, before they take place, the procedure looks interminable: one to two years for the pre-trial investigation! Files can thus remain for years in the maze of the court of first instance, the court of appeal and, finally, the Supreme Court. Such ineffectiveness characterizing the legal system, added to the considerable financial resources to be deployed, often discourage applicants. The identification of the real culprits seems also very difficult. In fact, the court is limited by a very constraining approach in penal issues which results in its restrictive (or subjective?) interpretations.

Algeria ratified many international conventions and should, therefore, comply with international standards. However, these commitments are not incorporated into the Algerian domestic laws. In addition, judges are taught no specific training on human rights. Accordingly, it is not possible to refer to international conventions before the Algerian courts because judges are not familiar with the international standards applicable in this regard.

Since traditional justice proves to be strictly punitive, we can thus contemplate another form of justice: transitional justice, which has a more repairing aspect. Within this framework, Truth and Reconciliation Commissions have a very broad field of application. A Commission can have a mandate of short duration but may still manage to elucidate a whole part of our history; something that traditional justice cannot do. This form of justice makes it possible to take into account all the violations of human rights. A Truth and Reconciliation Commission has its own rules, apart from the procedures of traditional justice. Thus, and contrary to courts, the civil society is given an opportunity to get actively involved in Truth and Reconciliation Commissions. It is also up to the civil society to ensure that the mandate and the prerogatives of the Commission correspond to the expectations of victims. It is necessary that the participation of victims in the proceedings of the Truth Commission be included in our recommendations. Concerning reparation work, as explained by Mariana Pena, it can be individual or collective but the most important thing is that it should meet the victims' needs. No specific form of reparation should be imposed on them. It is crucial that victims are heard.

Truth and Reconciliation Commissions can follow a more flexible approach whereas a traditional judge must abide by very strict provisions. Thus, TRCs fall within an approach which not only comprises the duty to remember and the access to the truth but also to ensure a better understanding of the past.

Unknown person

What is the position of the current workshop on the Charter? Should we write down our position on this text in our conclusions? Why don't we talk about the creation of an alternative Charter or simply ask for its repeal? Should we ask only for the repeal of selected elements in the Charter? If we go further in this text, should we choose between its repeal or its substitution by a text elaborated by all the parties.

Rapporteur

Concerning the different elements which have been pointed out until now in the current workshop, I would summarize it as following:

- Recognition of the victim's status (regardless of whether the executors were terrorists or officials); ;
- Moral reparation: satisfaction, identification, searching mass graves, creation of some memorial, the idea of a museum.

There are also some other important issues:

- To establish the truth;
- To make use of rehabilitation and medical aid for the victims;
- To give indemnities; for instance, financial.
- To guaranty the non-repetition of the crimes: to understand why the crimes occurred, the duty of memory, the recognition of the other, the essential modification of the legislation, the necessity of justice.

Nedjem Eddine Boudjakdji

I think that we have examined the essential points. We have been able to debate on the potential solutions to the following issues: reparation and justice. It seems that only the creation of a truth and reconciliation commission will lead us to our goal. Eventually, we could obtain conciliation. Nevertheless, one particular problem about Algeria is the composition of a Commission. Obviously, President Bouteflika would design its members. I think that there might be other problems: the power of the Algerian State, the victims, the combatants. An important issue which has been raised since yesterday is the recognition of the

Other. We will have to sit down around a table, all together: the different parties of the conflicts. It supposes that combatants will sit down next to combatants. Aside from GIA and Al Qaeda, we will have to include all the components of the Algerian Society. I am voluntarily provocative but we have to study this possibility.

Unknown person

The Charter for peace and national reconciliation is a governmental project which can only fail because this text brought neither peace nor reconciliation. On the contrary, it was about force because this text has been imposed and we have to denounce it. Would the establishment of a truth and reconciliation commission let us skip the Charter? Peace and reconciliation can't be ordered by texts but it is our reality in Algeria. The civil society has to force the government to create and be part of a Commission.

Fatima Yous

Do you believe that, until this seminar, we did nothing? Again and again, we have called out to authorities and we have met several times with Mr. Ksentini. We have always called to him and to the higher authorities that we want peace and that reconciliation can't occur without truth.

We know a part of the truth because, when we collect testimonies and build up the files, it generally appears that the families of the disappeared know the executioners' identity. We have denounced them, we have constituted files and submitted them to the Algerian courts, but we have not received any answers. We want the disappeared who are alive to be released. For the ones who are dead, we want their bodies. Give us the right to know. Then, maybe we could forgive, but who? And what? Nobody is asking for forgiveness.

Unknown person

The crisis, which is still being experienced by Algerian society, has to be studied, as well as its origins. No matter the economic or hegemonic interests, the international community has to support our struggle for the truth. Personally, I am never going to sit down next to a GIA member. Furthermore, I don't even know if he asks himself about the origins of the crisis.

Family of a disappeared

When they arrested my brother in 1995, I went from one police office to another, from one court to the other. I learned how to write letters. The terrorists are considered outlaws. However, the State's employees, as they have arrested and disappeared our children, should receive a double punishment because they represent the law. Today, with some mothers, we move forward.

We have been beaten but we are still gathering together in order to obtain the truth. Every Wednesday, since 1998, we have gathered together in front of the Commission nationale consultative pour la promotion et la protection des droits de l'Homme (CNCCPDH). We can't stay at home and wait! No legal or administrative institution has acknowledged receipt of our complaints. Once, the Public Prosecutor of the Algiers' Court told me: "What should we do? As the State has not decided anything, I can't do anything". I have witnesses who told me that my son was arrested and died under torture at the Algiers' central police station. The justice branch has never recognized this fact; however there is proof in the court's file. The struggle is going on, we will never give up.

Nourredine Benissad

You know that criminal justice is meant to be in the form of a popular court. In the past, the Algerian justice was copied from the French model: a four-member jury and three professional magistrates. In 1992, this model was abrogated by a new law which cut down the number of jurors from 4 to 2. This so-called reform illustrates the lack of confidence in the jury. Currently, and even in cases not related to terrorism, this new law is still being applied. We are always far from international standards: fair trials and independence.

G rard Dutour

We should come back to the recommendations. To whom we should address it? To the authorities or the hidden authorities: the military? The civil authorities in Algeria do not exist. Behind this front, introduced by Bouteflika as democratic to the international community, there are some hidden clans composed by the military, who really hold the power.

Unknown person

It is essential that the international community put pressure on the Algerian authorities. As a matter of fact, we have to remember that Algeria is member of the UN Human Rights Council. Algeria will have to be examined in the next few months by a new mechanism: the Universal Periodic Review. Civil society has to be part of this process. The Committee Against Torture will also examine Algeria in 2008. Then, we have to go to Geneva and submit a shadow report. By giving objective information regarding the human rights violations in Algeria to the experts, we will be able to obtain recommendations that are quasi obligatory for the State. Why don't you submit communications to the CEDAW? There are many other actions to take. Several NGOs such as the Organisation Mondiale Contre la Torture, Human Rights Watch and Amnesty International are by the side of the victims.

Moderator

We should also ask Algeria to ratify the Statute of the ICC. However, the ICC can examine violations only if they occurred after the Statute's entry into force. Algeria has signed the Convention against Forced Disappearances. We should recommend that Algeria ratify it.

WORKSHOP'S RESTITUTION

THE NECESSITY OF A TRUTH COMMISSION AND ITS NAMING

Gaëlle Loir : rapporteure

The workshop gave an opinion in favour of a truth commission which could be named: "Commission for Peace, Truth and Reconciliation".

The issue of the coexistence between the Charter and the Commission has been raised. It is not an obstacle to the establishment of a Commission that is established to make the truth. Regarding the links between truth and justice, the workshop considered two aims which are not incompatible. This is the Commission's prerogative and will have to be about the establishment of the truth. The workshop that was supposed to study reparations has to examine what the justice's place is. The establishment of the truth can be a step forward towards appropriate and concrete solutions in favour of justice but is not a substitution of justice.

/ THE COMPOSITION OF THE COMMISSION:

Concerning the members of the commission, they will be 10 to 15, with moral and intellectual authority, trained in various fields (law, history, sociology, medicine, etc.) and women will have to be represented. These members will be credible, independent, competent in human rights, able to work with different experts and to check on staff. Without talking about the definitive composition, the workshop has judged that it would be better if the members were Algerian, living in the country or in exile. Many personalities, in Algeria, have these qualities. This commission should not be composed by the victims or the parties of the conflict.

It would be better if the civil society was part of the process and gave its advice about the composition and work of the Commission.

/ THE MANDATE OF THE COMMISSION:

Should the mandate be determined by a decree or by law? As the Commission will have a mandate on human rights violations, it would be better to establish the Commission by law, adopted by the national assembly. It is preferable to a presidential decree.

The Commission should have the appropriate prerogatives to establish the truth. It should be able to summon and question witnesses, to order investigations and to mandate competent experts in the field of research of the truth, in particular the identification of mass graves and their exhumation. The Commission should be able to investigate within public and private sources, to have access to the archives and to safeguard them, to organize debates and public hearings, to guarantee the security of witnesses, members and staff, to be able to move easily from one place to another in Algeria and in other countries.

The Commission should have a proper budget with human and material resources, necessary to the accomplishment of its mission.

The workshop has considered the duration of the investigation, determined by the mandate of the Commission: it should start in 1998, an important year in terms of human rights violations in Algeria. It would, however, be difficult to define an end date for the investigations. The Commission will have to take into consideration all the existing problems in the Algerian society.

The Commission will have to look for the truth about human rights violations in Algeria. The Commission will have to research all the conflict's actors. The Commission will also have to study the killings, massacres, forced disappearances, rapes, torture, and other human rights violations.

The mandate of the commission will be for one to two years.

THE VARIOUS FORMS OF REPARATION

Nedjem Eddine Boudjakdji : rapporteur

Our workshop was about the various forms of reparation but we have also talked about peace and reconciliation.

/ REPARATION

It is an inalienable right; it is due to the victims by the State.

There are various forms of reparation: recognition of the victims and financial indemnity are part of moral reparations. Material reparations are essential for most of the victims regarding their precarious situations, following the loss of their relatives. Financial reparations must include free medical services. We also envision the creation of museums and memorials; which will be more about memory and history. Reparations are also about the mass graves, resulting from human rights violations by Islamics or State's employees. We must also consider the identification of the victims' bodies in order for the family to go into mourning.

/ JUSTICE

Reparations also include a right to justice. Traditionally, justice has a penal dimension. Today, in Algeria, there is a lack of political will and political authorities have a real control of the legal system. In other words, it is difficult to hope that individual or collective complaints will end up as something concrete.

It is also necessary to review the actual legislation and incorporate international treaties into Algerian laws. Furthermore, the Convention against Forced Disappearances and the Rome Statute have to be ratified.

The workshop has also paid particular attention to the recognition of sexual crimes: rape. We don't know the exact number of rapes committed so it is essential to study the subject more in depth. In the Charter, rape is mentioned but no medical aid is provided. We also have to state the rights of the victims of rape. They have the right to material reparation and the right to medical aid.

Our workshop considered that reparations are an essential element to establishing peace. Reconciliation will be possible as soon as the different parties

of the conflict are identified and agree to contribute to the establishment of the truth. As a consequence, the truth will lead to the non repetition of these crimes.

Cherifa Kheddar

Concerning the recommendations of the first workshop, I would suggest complementary propositions.

The victims or their representatives should not be members of the Commission. Nevertheless, I think that the representatives have to be associated with the Commission. They have to come with the victims and support them during the hearings.

Regarding the establishment of the Commission by a law, it would be better to also consider the option of a decree. In fact, a law can be voted and proposed by the elected representatives. I don't think that an Algerian would take this initiative. We have to consider these two options.

Concerning reparations, specifically their moral dimension, I would like to propose the establishment of a National Victims Day, where families would gather thoughts and, when there are no graves, the victims could go to a memorial.

Madjid Benchikh

Our workshop has deeply discussed the issue of the participation of victims and their families in the Commission. First, it has been proposed that all parties to the conflict become members of the Commission. After discussions, it is a sore point. We have therefore decided to adopt the following proposal: the Commission would be composed by independent and neutral personalities. However, the Commission will stay tuned to the civil society and particularly the families of the victims. Furthermore, we have stressed the fact that society, in a general perspective, has to be permanently informed on the progress of the Commission.

Roberto Garreton

I have personally formulated several reservations to the participation of victims in the Commission. In Paraguay, the Colorado Party, a quasi unique party, decided that the truth and reconciliation commission will be instituted by law and composed essentially by the relatives of the disappeared. I did not have the opportunity to mention this example earlier because the Commission has existed three years and has not produced many results. However, the fact that the parties of the conflict were part of the Commission has considerably weakened its efficiency. The Truth Commission has to be independent and neutral in order to be fair, to respect the proceedings, to listen to the people, to recognize the executioners

and the victims. We can't be both judges and parties.

I would like to stress one more point: the Commission must contribute to the information for Algerian society, particularly on human rights violations. In fact, there is a part of society which is selfish, which doesn't want to know. It is this part of the society that we have to address and demonstrate that awful crimes have been committed.

Madjid Benchikh

I think that it is important to underline that there is a difference between the victims and the parties to the conflict. Nevertheless, I think that to ensure the independence and the neutrality of the Commission, the parties of the conflict and the victims should not be members. In other words, the members should not be part of the Commission to introduce their proper claims. Then, we can't, on the one hand, decide what the appropriate measures are and, on the other hand, benefit from them.

One more point has been raised during this debate: the establishment of the Commission by law or by a decree. Our workshop has not excluded the possibility of the establishment by a presidential decree, because the Algerian Constitution gives some important prerogatives to the President, as important as the Algerian National Assembly's. We thought it was better for the Commission to be established by law because it will have to look into the human rights violations and the rule of law. However, in Algeria, these competences are linked to the Parliament, as stated by the Algerian Constitution; this is the same in several other countries. The law is preferable but is not a definitive choice.

Ali Merabet

The truth and reconciliation commission should be very meticulous in order to determine who the victims are. The Commission will have to establish the appropriate criteria and will have to be very careful to the propositions of civil society. Regarding peace, this is a preliminary condition to the establishment of a Truth Commission. Otherwise, how could we talk about a truth commission?

Madjid Benchikh

The associations have for a long time discussed the title of the conference: "For the Peace, the Truth and the Reconciliation". This latter is the product of a compromise. It is then interesting to maintain "Peace, Truth and Reconciliation" as the name of the Commission. Concerning the peace, this term includes many dimensions. It is true that peace is not perfectly established in Algeria, but we can't wait for the perfect situation. We will have to struggle for the establishment

of a truth commission. We also have to put pressure on the Commission so that its propositions will consolidate peace. With this perspective, the reference to the peace is interesting. All Algerians want the truth after all these years of violence.

The truth and reconciliation commission must have the necessary prerogatives to fully accomplish its mission. Civil society has to establish a power struggle in order that the State takes all its claims into consideration. The Commission has to be equipped with large prerogatives regarding its actions. So, we have to discuss the Commission's concept and not only its composition, its mandate, etc. It is the beginning of the reflection...

Unknown person

The members of the Commission, even if they are competent and independent, will face many obstacles. Several victims are afraid to bring their testimonies if they have to face their executioners. In fact, there are several victims who are still affected by the violations that they have seen or suffered from (for instance, the huge violations which occurred during 1997-1998). Many victims are afraid and they have doubted themselves, they are ashamed; for instance, raped woman. Our work will be particularly difficult in rural areas. The Commission will have to establish some teams to go in the field in order to be close to the victims.

Sofiane Chouiter

Regarding reparations, based on the several foreign experiences, it is the role of the Commission. It must have the prerogative to define what the appropriate criteria are for reparations and indemnities. It could also give itself indemnities, as the IER did. Reparations are the essential point in the final recommendations of the Commission; regardless of its mandate. From my point of view, reparations are about the State's responsibility and it will begin when the Commission ends its mission.

One more point is very important, and it indicates the achievement of a truth commission. It is the inscription, within the recommendation, of the guarantees of non-repetition. The civil society has to be inspired by the results of the truth commissions which have existed throughout the world and to be mobilized in order not to repeat the crimes of the past.

Nourredine Benissad

We said that each country has its own particularity. I think that truth and reparations go together. The truth commission could be considered as a platform for the recommendations of our workshop.

Nassera Dutour

I would like to come back to the important points which have been touched upon. Concerning the involvement of the victims' representatives in the Commission: from my point of view, they should work closely with the Commission. Our role will be to transmit the files that we have compiled, to assist and to support the victims, to make some proposals to the Commission, to contribute effectively to the Commission's work. Civil society, and particularly the representatives of the victims should, from the creation of the Commission, be mobilized and create a control and follow-up platform within the truth commission. For this platform, we will have to organize a debate throughout Algeria. We will have to associate civil society and the victims, to take into consideration the claims expressed by victims and to transmit them to the Commission. During the debates, we will have to explain the goal, prerogatives and mandate of the Commission, but we will also have to prepare the victims and to be interested in the works of the Commission.

However, I don't think that the truth commission should give financial aid to the victims. The truth commission should define on which basis indemnities will be given. The Commission will also have to plan the administrative process as simple as possible in order for the victims and their families to access the indemnities easily. Finally, it is important to address the issue of rehabilitation; in a medical sense. We have talked about the creation of medical commissions. They are more than useful: the Algerian society is totally destroyed from a psychological perspective. We will have to set up some rehabilitation centres to offer a medical and psychological pick-up charge. No one can be unharmed after the last few years: the killings, bombs, attacks, the torture, the disappearances, etc. In practice, all Algerian families have known the throes of a war which doesn't admit its name.

Roberto Garreton

I think that the ban of the Algiers' seminar has been really hard, morally, for the victims and the organizers. You have been able to face a new challenge, by organizing this seminar with courage and determination. I think that this seminar is a success; it gives a new breath to your struggle in favour of democracy, for respect of human rights.

During the dictatorship in Chile, all the complaints introduced haven't resulted in a lot, but these files have been used by Spanish courts to ask for the extradition of Pinochet. So, you lose the seminar of Algiers but you win this one and the international community has been sensitized to your struggle.

Cherifa Kheddar

We have to decide the conditions for the establishment of a truth commission: should we wait for the peace before having the truth? Is the goal of this seminar only to make recommendations or should we start to work in favour of the establishment of a truth commission? Before the organization of this seminar, we have met with all the foreign embassies in Algeria and all the Algerian parties in order to obtain support and participation for this seminar. We have been surprised by some people, who said that it was not the right time to launch a truth Commission. We have to act now and all together.

Madjid Benchikh

I think that we have to say that our discussions are easy to resume: we can't wait anymore and we have to transmit our claims to the government as soon as possible even if it is obvious that the government is not going to accept the establishment of a Commission right now.

SYNTHESIS AND CONCLUSIONS

SYNTHESIS AND CONCLUSIONS

Mohamed Harbi⁵⁵

As the reports of the workshops were substantial, I will stick to some formal evocations. This seminar was a real success. First of all, it was a success because a conference banned in Algeria was promptly organized somewhere else and under excellent conditions. In spite of the ban of the seminar of Algiers, the goal of this seminar is a real success and I think that the willingness for dialogue was amply demonstrated. I have noticed that the unanimism which prevailed for a long time in Algeria has been superseded by a will to reach unanimous consensus through confrontation. We ought to pay tribute to the associations which, despite distinct itineraries, have decided to unite, by bringing the Algerian Government through sustainable action to recognize them as qualified interlocutors. You have managed to gain the sympathy of recognized international experts such as Louis Joinet and Roberto Garreton, let alone the numerous experts of the FIDH. On your behalf, I wish to extend to them my hearty thanks. We have talked a great deal about the Charter; the Algerians have experienced other charters: the Tripoli, Algiers, and National Charter. Like those preceding it, the Charter for Peace and National Reconciliation is doomed to criticism: it is not very faithful to reality. To believe that one may work through violence and its pernicious effects, that oblivion is possible without laying one's cards on the table, is an illusion which can be dearly paid for in politics. In the discussions which took place throughout this seminar, the analysis work has always been founded upon values. One must admit the idea of not discarding these values; the work of analysis is not a moralizing lesson. It is very simple to hold individuals responsible for crimes committed either on account of religious drifts or because of the authorities. It's not enough to say "never this again" or to put forward reconciliation. One cannot turn over the page unless it is written: it is not the way in which our leaders are engaging. You have mentioned the causes of the crisis: this debate has been gnawing away at the society for decades. One has to go back to the intellectual constructions which emerged in the 30s. They are the constructions of a specific period of time but they are not abreast of what Algeria has become. They did not suit, even then, the social diversity of Algeria. Therefore, they have to be reviewed in order not to multiply disputes among Algerians. One has also to tackle the political choices which have been made since 1954. This is the conception according to which

⁵⁵ Historien.

we can progress only through authority and through the conflicts to which I am referring. We have examples of several societies which accept the opposition between the systems of interests and they also accept that disputes push things forward. Algeria is rather marked by perverse disputes, veiled conflicts, the obligation imposed on people to put a mask on. Even the noblest ideas were victims of these insidious practices. The mask is put on to deceive for a moment but not the whole time. Finally, there is a topic to which you have attached tremendous importance: memory. It is important to preserve. One has to distinguish between memory and history. The victims who appeared here and gave their testimonies are more distressing than political cants. We will always be by the side of the victims, regardless of threats facing them. The problems we are all facing are related to politics. We have to address them; otherwise those who address them will lead you in the right directions or lead you astray. In Algeria, there are many disputes; they last for a long time and they are stacked one up another; one tends to throw people head against the wall. You have the strength to raise the problem and try to find solutions in order to resolve it in whole and as soon as possible. The setting of frequent concealment always ends up in the reversal of the connection between truth and lie. The revolution against colonialism is currently the main topic of this reversal. One may think that the revolutionaries have led to the present situation, but one ought not to attribute to them, for all that, the persons who are today in the forefront.

ATTACHED

PRESENTATION OF PARTICIPANTS

Abdenour Ali Yahia

Founding Member and honorary president of the Algerian League for the Defense of Human Rights (LADDH).

Belhadad Souad

Journalist, writer: Author of “Le Prix de l’oubli, (les victimes de la terreur parlent 1992-2005)” “The Price of oblivion: Terror victims speak out 1992-2005” Ed. Flammarion. .

Benchikh Madjid

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Benissad Nourredine

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Chouiter Sofiane

Lawyer at the bar of Constantine.

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Professor of law at the University of Montpellier 1..

Dutour Nassera

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Chilean lawyer, former Special rapporteur for the United Nations concerning the Human right Situation in Democratic Republic of Congo.

Guillermo Pérez Casas Luis

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Psychologist, Psychoanalyst and Senior Lecturer at the University of Picardie - Jules Vernes.

Harbi Mohammed

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Iznasni Mustapha

Former member of the Equity and Reconciliation Commission.

Josi Claudia

Jurist, PhD student at the University of Freiburg - Switzerland, and member of the Collective “Movimiento Ciudadano Para Que No Se Repita” in Lima – Peru.

Joinet Louis

Independent expert on the Human rights’ situation in Haiti nominated by the Secretary-General, former special rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights about the fight against impunity.

Kheddar Cherifa

Founding Member and President of Djazaïrouna.

Merabet Ali

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Sidhoum Amine

Lawyer at the Bar of Algiers.

Yous Fatima

Founding Member and President of SOS Disparus.

PROGRAMME

18 > 19 mars 2007 – Bruxelles (Belgium)

“For Truth, Peace and Conciliation”

Sunday 18th March 2007

8h30 **Welcome of the participants**

9h00 **Seminar’s opening**

President : **Nourredine Benissad**

Reading of Barrister Ali Yahia Abdennour’s speech,
Founding Member and honorary president of the Algerian
League for the Defense of Human Rights (LADDH)

Presentation and Thanks

Nassera Dutour, Founding Member and spokesman
of the CFDA.

9h30 **Victims’ Testimonies**

Fatima Yous (SOS Disparu(e)s), **Cherifa Kheddar**
(Djazairouna), **Ali Merabet** (Somoud)

10h30 **Massive Human rights’s violations in Algeria**

General intervention

Description of a decade: Human right’s violations in Algeria
Sofiane Chouiter, Lawyer at the bar of Constantine

Thematic intervention

***Disappeared because of armed groups: the forgotten
persons from Algeria***

Adnane Bouchaib, Lawyer at the Bar of Medea.

***Women victims of rape caused by members of armed
groups: the right to be heard and to know the truth***
Nedjem Eddine Boudjakdji, Lawyer at the Bar of Blida

***The Alegrian legal system mechanism when there are
Human rights’ violations***

Amine Sidhoum, Lawyer at the Bar of Algiers

- 11h30 **Break**
- 11h45 **The government's answers: The Charter and its implementation texts**
 President : **Cherifa Kheddar**
The Charter For Peace And National Reconciliation and the authoritarian political system
Madjid Benchikh,, Former dean of the Algiers Faculty of Law and professor emeritus at the university of Cergy-Pontoise (Paris-Valley-D'Oise)
- 12h15 **Debates**
- 13h15 **Lunch**
- 14h30 **International mechanisms**
 President: **Ewoud Plate**, Humanist Committee on Human Rights.
Case law of the Human rights' committee on enforced disappearances in Algeria, by Olivier de Frouville,
 Professor of law at the University of Montpellier 1.
The International Convention For the protection of all Persons From Enforced Disappearance, Louis Joinet,,
Louis Joinet, Independent expert on the Human rights' situation in Haiti nominated by the Secretary-General, former special rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights about the fight against impunity.
- 15h00 **Transitional justice system's experience all around the world**
 President : **Roberto Garretón**, Chilean lawyer, former Special rapporteur for the United Nations concerning the Human right Situation in Democratic Republic of Congo.
Introduction : Transitional justice: Experiences and challenges, Roberto Garretón
The Peruvian experience,
Claudia JOSI, Lawyer, PhD student at the University of Freiburg

- Switzerland, and member of the Collective “Movimiento Ciudadano Para Que No Se Repita” in Lima – Peru.

Gacaca jurisdictions for reconciliation: Collective utopia and Individual realities,

Marie Odile Godard, Psychologist, Psychoanalyst and Senior Lecturer at the University of Picardie - Jules Vernes.

The Moroccan experience, Mustapha Iznasni,

Mustapha Iznasni, Former member of the Equity and Reconciliation Commission.

Justice, truth or reconciliation: dilemmas and strategies in South Africa, Mozambique, and the Democratic Republic of Congo,

Tyrone Savage, ICTJ

16h15 **Break**

16h30 **Debates**

Monday 19th March 2007

9h00 **Workshop 1**

For the establishment of reconciliation commission in Algeria: mandate, composition and prerogatives

Moderator: **Madjid Benchikh**, Former dean of the Algiers Faculty of Law; professor emeritus at the university of Cergy-Pontoise (Paris-Valley-D'Oise).

Workshop 2 :

Moderator : **Nourredine Benissad**, Lawyer, Secretary General of the LADDH.

Individual and collective reparation by Mariana Pena, FIDH Permanent Representative before the ICC.

Cherifa Kheddar, Founding Member and President of Djazaïrouna.

11h00 **Break**

11h15	<u>Workshop</u>
13h00	<u>Lunch</u>
14h 30	<u>Workshop's Restitution</u> President : Mohammed Harbi , historian
	<u>Debates</u>
17h30	<u>Synthesis and Conclusions</u>

CHARTER FOR PEACE AND NATIONAL CONCILIATION

L'Histoire de l'Algérie est une suite de luttes livrées par son peuple pour défendre sa liberté et sa dignité. Cet héritage, constitué au fil du temps, a fait de l'Algérie une terre de respect des valeurs de tolérance, de paix, de dialogue et de civilisation. Le peuple algérien, puisant sa force dans son unité et s'appuyant sur ses valeurs spirituelles et morales séculaires, a su triompher des épreuves les plus douloureuses pour écrire de nouvelles pages glorieuses de son Histoire. Refusant de se soumettre à l'oppression, il a su, avec patience et détermination, organiser sa résistance, malgré les terribles tentatives de décul-turation et d'extermination dont il a été victime durant plus d'un siècle d'occu-pation coloniale. La glorieuse révolution du 1er Novembre 1954 est venue, telle une lumière dans une nuit de ténèbres, cristalliser les aspirations du peuple algérien et le guider dans la voie du combat pour la reconquête de son indé-pendance et de sa liberté.

Ce combat historique a été suivi par d'autres batailles, non moins importantes, pour la reconstruction de l'Etat et le développement de la nation. Depuis plus d'une décennie, l'évolution de l'Algérie a été déviée de son cours naturel par une agression criminelle sans précédent, visant dans ses sinistres desseins à effacer les acquis du peuple engrangés au prix d'incommensurables sacri-fices, mais, ce qui est plus grave encore, à remettre en cause l'Etat national lui-même. Dans sa très grande majorité, le peuple algérien a très vite compris qu'une telle agression portait atteinte à sa nature, à son Histoire et à sa culture. C'est donc naturellement qu'il s'est mis progressivement à lui résister, puis à la combattre pour enfin en triompher. Le peuple algérien a vécu, dans sa chair et dans son âme, les affres de cette grande fitna qui s'est abattue sur l'Algérie. Pour les citoyennes et les citoyens, pour les familles algériennes, il est vital de transcender définitivement cette tragédie qui ne réside pas dans des débats théoriques, abstraits ou idéologiques, donnant lieu à des échanges de vues entre acteurs ou organisations, agissant à l'intérieur ou hors du territoire natio-nal. Cette question vitale concerne la sécurité des biens et celle des person-nes et même leur honneur, c'est-à-dire tout ce que l'Islam sacralise et que la loi protège et garantit. L'Algérie a survécu à cette dramatique épreuve grâce à la résistance farouche de son peuple et à son abnégation, qui lui ont coûté un terrible et lourd tribut de sang consenti pour la survie de la patrie. L'Algérie a survécu grâce au patriotisme et aux sacrifices des unités de l'Armée natio-nale populaire, des forces de sécurité et de l'ensemble des Patriotes qui ont su,

patiemment et avec détermination, organiser la résistance de la nation face à cette agression criminelle inhumaine. Le peuple algérien honore et honorera à jamais la mémoire de tous ceux qui ont consenti le sacrifice suprême pour que vive la République algérienne démocratique et populaire. Il demeurera aux côtés des familles des martyrs du devoir national et des familles des victimes du terrorisme, parce que leurs sacrifices sont dignes des valeurs de la société algérienne. L'Etat n'épargnera aucun effort, moral et matériel, pour que ces familles et leurs ayants droit continuent de faire l'objet de sa considération, de son hommage et d'un soutien à la mesure des sacrifices consentis. Le peuple algérien est et restera indivisible. C'est le terrorisme qui a ciblé les biens et les personnes, qui a fait perdre au pays une partie inestimable de ses richesses humaines et matérielles et qui a terni son image sur le plan international. Cette tourmente a instrumentalisé la religion ainsi qu'un certain nombre d'Algériens à des fins antinationales. L'Islam, composante fondamentale de l'identité nationale, a été, à travers l'Histoire et, contrairement aux thèses soutenues par les commanditaires de cette odieuse mystification, un ciment fédérateur et une source de lumière, de paix, de liberté et de tolérance. Ce terrorisme barbare qui a endeuillé le peuple algérien durant une décennie est en contradiction avec les authentiques valeurs de l'Islam et les traditions musulmanes de paix, de tolérance et de solidarité. Ce terrorisme a été vaincu par le peuple algérien qui entend aujourd'hui transcender la fitna et ses terribles conséquences et retrouver définitivement la paix et la sécurité. Le terrorisme a été - par la grâce d'Allah le Tout-Puissant et le Miséricordieux - combattu puis maîtrisé sur l'ensemble du territoire national qui a enregistré un retour de la paix et de la sécurité. Les Algériennes et les Algériens sont profondément convaincus que, sans le retour de la paix et de la sécurité, nulle démarche de développement politique, économique et social ne peut donner les fruits qu'ils en attendent. Pour avoir, momentanément, été privés de cette paix et de cette sécurité, ils en apprécient l'importance, en toute conscience, non seulement pour chacun d'entre eux, mais aussi pour l'ensemble de la nation. Pour leur consolidation définitive, la paix et la sécurité exigent aujourd'hui la mise en oeuvre d'une démarche nouvelle visant à concrétiser la réconciliation nationale, car c'est seulement par la réconciliation nationale que seront cicatrisées les plaies générées par la tragédie nationale. La réconciliation nationale est une attente réelle du peuple algérien. C'est une attente d'autant plus pressante que l'Algérie est interpellée par les multiples défis du développement auxquels elle est confrontée. Le peuple algérien sait, avec certitude, que la réconciliation nationale est porteuse d'espoir et qu'elle est de nature à consolider les atouts de l'Algérie démocratique et républicaine, au grand bénéfice de tous les citoyens. Il le sait avec certitude depuis qu'il a adhéré massivement à la

politique de concorde civile sur laquelle il s'est déjà souverainement prononcé. La politique de concorde civile - tout comme la politique de la rahma qui l'a précédée - a permis de briser l'entreprise diabolique visant à faire imploser la nation. Elle a également permis d'épargner des milliers de vies humaines et de faire retrouver à l'Algérie sa stabilité politique, économique, sociale et institutionnelle. La politique de paix et de réconciliation parachèvera les efforts consentis par toutes les composantes du peuple algérien pour que vive l'Algérie. Le peuple algérien est appelé aujourd'hui à se prononcer sur les dispositions de la présente Charte pour la paix et la réconciliation nationale. Par son approbation, le peuple algérien appuie solennellement les mesures nécessaires à la consolidation de la paix et de la réconciliation nationale. Par cette approbation, il affirme sa détermination à capitaliser les enseignements tirés de cette tragédie, afin de consolider le socle sur lequel sera édifiée l'Algérie de demain. Le peuple algérien, respectueux de l'Etat de droit et des engagements internationaux de l'Algérie, approuve les mesures suivantes visant à consolider la paix et à rétablir la réconciliation nationale, en réponse aux multiples appels des familles algériennes éprouvées par cette tragédie nationale.

I. RECONNAISSANCE DU PEUPLE ALGÉRIEN ENVERS LES ARTISANS DE LA SAUVEGARDE DE LA RÉPUBLIQUE ALGÉRIENNE DÉMOCRATIQUE ET POPULAIRE

Le peuple algérien tient à rendre un vibrant hommage à l'Armée nationale populaire, aux services de sécurité ainsi qu'à tous les Patriotes et citoyens anonymes qui les ont aidés, pour leur engagement patriotique et leurs sacrifices qui ont permis de sauver l'Algérie et de préserver les acquis et les institutions de la République. En adoptant souverainement cette charte, le peuple algérien affirme que nul, en Algérie ou à l'étranger, n'est habilité à utiliser ou à instrumentaliser les blessures de la tragédie nationale pour porter atteinte aux institutions de la République algérienne démocratique et populaire, fragiliser l'Etat, nuire à l'honorabilité de tous ses agents qui l'ont dignement servie ou ternir l'image de l'Algérie sur le plan international.

II. MESURES DESTINÉES À CONSOLIDER LA PAIX

Premièrement : Extinction des poursuites judiciaires à l'encontre des individus qui se sont rendus aux autorités depuis le 13 janvier 2000, date de forclusion des effets de la loi portant concorde civile.

Deuxièmement : Extinction des poursuites à l'encontre de tous les individus

qui mettent fin à leur activité armée et remettent les armes en leur possession. Cette extinction des poursuites ne s'applique pas aux individus impliqués dans les massacres collectifs, les viols et les attentats à l'explosif dans les lieux publics.

Troisièmement : Extinction des poursuites judiciaires à l'encontre des individus recherchés, sur le territoire national ou à l'étranger, qui décident de se présenter volontairement devant les instances algériennes compétentes. Cette extinction des poursuites ne s'étend pas aux individus impliqués dans les massacres collectifs, les viols et les attentats à l'explosif dans les lieux publics.

Quatrièmement : Extinction des poursuites judiciaires à l'encontre de tous les individus impliqués dans des réseaux de soutien au terrorisme qui décident de déclarer, aux autorités algériennes compétentes, leurs activités

Cinquièmement : Extinction des poursuites judiciaires pour les individus condamnés par contumace, autres que ceux impliqués dans les massacres collectifs, les viols et les attentats à l'explosif dans les lieux publics.

Sixièmement : Grâce pour les individus condamnés et détenus pour des activités de soutien au terrorisme.

Septièmement : Grâce pour les individus condamnés et détenus pour des actes de violence, autres que les massacres collectifs, les viols et les attentats à l'explosif dans les lieux publics.

Huitièmement : Commutation et remise de peines pour tous les autres individus condamnés définitivement ou recherchés qui ne sont pas concernés par les mesures d'extinction de poursuites ou de grâce énoncées ci-dessus.

III. MESURES DESTINÉES À CONSOLIDER LA RÉCONCILIATION NATIONALE

En vue de consolider la réconciliation nationale, le peuple algérien est favorable à la prise de mesures destinées à renforcer son unité, à éliminer les germes de la haine et à se prémunir contre de nouvelles dérives.

Premièrement : Le peuple algérien souverain adhère à la mise en oeuvre de dispositions concrètes destinées à lever définitivement les contraintes que continuent de rencontrer les personnes qui ont choisi d'adhérer à la politique de concorde civile, plaçant ainsi leur devoir patriotique au-dessus de toute autre considération. Ces citoyens ont agi et continuent d'agir de manière responsable pour la consolidation de la paix et la réconciliation nationale, refusant toute instrumentalisation de la crise vécue par l'Algérie par les milieux hostiles

de l'intérieur et leurs relais à l'extérieur.

Deuxièmement : Le peuple algérien souverain soutient également, au profit des citoyens ayant, suite aux actes qu'ils ont commis, fait l'objet de mesures administratives de licenciement décrétées par l'Etat, dans le cadre des missions qui lui sont imparties, les mesures nécessaires pour leur permettre ainsi qu'à leurs familles de normaliser définitivement leur situation sociale.

Troisièmement : Tout en étant disposé à la mansuétude, le peuple algérien ne peut oublier les tragiques conséquences de l'odieuse instrumentalisation des préceptes de l'Islam, religion de l'Etat. Il affirme son droit de se protéger de toute répétition de telles dérives et décide, souverainement, d'interdire aux responsables de cette instrumentalisation de la religion toute possibilité d'exercice d'une activité politique, et ce, sous quelque couverture que ce soit. Le peuple algérien souverain décide également que le droit à l'exercice d'une activité politique ne saurait être reconnu à quiconque ayant participé à des actions terroristes et qui refuse toujours, et malgré les effroyables dégâts humains et matériels commis par le terrorisme et l'instrumentalisation de la religion à des fins criminelles, de reconnaître sa responsabilité dans la conception et dans la mise en oeuvre d'une politique prônant le pseudo *djihad* contre la nation et les institutions de la République.

IV. MESURES D'APPUI DE LA POLITIQUE DE PRISE EN CHARGE DUDRAMATIQUE DOSSIER DES DISPARUS

Le peuple algérien rappelle que le dossier des disparus retient l'attention de l'Etat depuis une décennie déjà et fait l'objet d'une attention particulière en vue de son traitement approprié. Il rappelle également que le drame des personnes disparues est l'une des conséquences du fléau du terrorisme qui s'est abattu sur l'Algérie. Il affirme aussi que, dans de nombreux cas, ces disparitions sont une conséquence de l'activité criminelle de terroristes sanguinaires qui se sont arrogé le droit de vie ou de mort sur toute personne, qu'elle soit algérienne ou étrangère. Le peuple algérien souverain rejette toute allégation visant à faire endosser par l'Etat la responsabilité d'un phénomène délibéré de disparition. Il considère que les actes répréhensibles d'agents de l'Etat, qui ont été sanctionnés par la justice chaque fois qu'ils ont été établis, ne sauraient servir de prétexte pour jeter le discrédit sur l'ensemble des forces de l'ordre qui ont accompli leur devoir, avec l'appui des citoyens et au service de la patrie. C'est dans cet esprit que le peuple algérien décide des dispositions suivantes destinées à favoriser le règlement définitif du dossier des disparus :

Premièrement : L'Etat prend en charge le sort de toutes les personnes disparues dans le contexte de la tragédie nationale et il prendra les mesures nécessaires en connaissance de cause.

Deuxièmement : L'Etat prendra toutes mesures appropriées pour permettre aux ayants droit des personnes disparues de transcender cette terrible épreuve dans la dignité.

Troisièmement : Les personnes disparues sont considérées comme victimes de la tragédie nationale et leurs ayants droit ont droit à réparation.

V. MESURES DESTINÉES À RENFORCER LA COHÉSION NATIONALE

Premièrement : Le peuple algérien tient compte du fait que la tragédie nationale a affecté toute la nation, entravé la construction nationale et porté atteinte directement ou indirectement à la vie de millions de citoyens.

Deuxièmement : Le peuple algérien considère que fait partie du devoir national la prévention de tout sentiment d'exclusion chez des citoyens non responsables du choix malheureux fait par un de leurs proches. Il considère que l'intérêt de l'Algérie exige d'éliminer définitivement tous les facteurs d'exclusion qui pourraient être exploités par les ennemis de la nation.

Troisièmement : Le peuple algérien considère que la réconciliation nationale doit prendre en charge le drame des familles dont des membres ont pris part à l'action terroriste.

Quatrièmement : Le peuple algérien décide que l'Etat prendra des mesures de solidarité nationale au bénéfice de ces familles qui sont démunies et qui ont été éprouvées par le terrorisme à travers l'implication de leurs proches. A travers son approbation de la présente charte, le peuple algérien entend consolider la paix et les fondements de la réconciliation nationale. Il considère qu'il est désormais du devoir de chaque citoyenne et de chaque citoyen d'apporter son tribut à la paix, à la sécurité et à la réalisation de la réconciliation nationale, pour que l'Algérie ne connaisse plus jamais la tragédie nationale qu'elle a vécue, et proclame « *Plus jamais ça !* » Il mandate le Président de la République pour solliciter, au nom de la nation, le pardon de toutes les victimes de la tragédie nationale et sceller ainsi la paix et la réconciliation nationale. Le peuple algérien ne peut oublier les ingérences extérieures et les manoeuvres politiciennes internes qui ont contribué à faire perdurer et à aggraver les affres de la tragédie nationale. Le peuple algérien, qui fait sienne la présente charte, déclare qu'il

revient désormais à tous, à l'intérieur du pays, de se plier à sa volonté. Il rejette toute interférence extérieure qui tenterait de contester son choix souverain, librement et démocratiquement exprimé à travers la présente charte. Il affirme qu'il revient désormais à chaque citoyenne et à chaque citoyen de se consacrer à l'oeuvre de construction nationale, dans le respect des droits et des devoirs reconnus à chacun par la Constitution et par les lois de la République. Le peuple algérien déclare qu'il est déterminé à défendre, à travers toutes les institutions de l'Etat, la République algérienne démocratique et populaire ainsi que son système démocratique pluraliste contre toute tentative de dérapage extrémiste ou antinational. Tout en soulignant sa volonté d'ancrer l'Algérie dans la modernité, il proclame sa détermination à oeuvrer à la promotion de sa personnalité et de son identité. Le peuple algérien appelle chaque citoyenne et chaque citoyen à apporter sa contribution au renforcement de l'unité nationale, à la promotion et à la consolidation de la personnalité et de l'identité nationales et à la perpétuation des nobles valeurs de la Déclaration du Premier Novembre 1954 à travers les générations. Convaincu de l'importance de cette oeuvre qui mettra les générations futures à l'abri des dangers d'un éloignement de leurs racines et de leur culture, il charge les institutions de l'Etat de prendre toutes les mesures de nature à préserver et à promouvoir la personnalité et l'identité nationales, à travers la valorisation de l'Histoire nationale ainsi que dans les domaines religieux, culturel et linguistique. Le peuple algérien souverain approuve la présente Charte pour la paix et la réconciliation nationale et mandate le Président de la République pour prendre toutes les mesures visant à en concrétiser les dispositions.

Alger, le 9 Rajab 1426 correspondant au 14 août 2005

ORDONNANCE N° 06-01

DU 28 MOHARRAM 1427

Correspondant au 27 février 2006 portant mise en oeuvre de la Charte pour la paix et la réconciliation nationale

CHAPITRE PREMIER : DISPOSITIONS PRELIMINAIRES

Article 1er. La présente ordonnance a pour objet :

- la mise en oeuvre des dispositions de la Charte pour la paix et la réconciliation nationale, expression de la volonté souveraine du peuple algérien ;
- la concrétisation de la détermination du peuple algérien à parachever la politique de paix et de réconciliation nationale, indispensable à la stabilité et au développement de la Nation.

CHAPITRE DEUXIEME : MISE EN OEUVRE DES MESURES DESTINEES A CONSOLIDER LA PAIX

Section 1: Dispositions générales

Art. 2. Les dispositions énoncées au présent chapitre sont applicables aux personnes qui ont commis ou ont été les complices d'un ou de plusieurs faits prévus et punis par les articles 87 bis, 87 bis 1, 87 bis 2, 87 bis 3, 87 bis 4, 87 bis 5, 87 bis 6 (alinéa 2), 87 bis 7, 87 bis 8, 87 bis 9 et 87 bis 10 du code pénal ainsi que des faits qui leurs sont connexes.

Art. 3. La chambre d'accusation est compétente pour statuer sur les questions incidentes qui peuvent survenir au cours de l'application des dispositions du présent chapitre.

Section 2 : L'extinction de l'action publique

Art. 4. L'action publique est éteinte à l'égard de toute personne qui a commis un ou plusieurs des faits prévus par les dispositions visées à l'article 2 ci-dessus, ou en a été le complice, et qui s'est rendue aux autorités compétentes au cours de la période comprise entre le 13 janvier 2000 et la date de publication de la présente ordonnance au Journal officiel.

Art. 5. L'action publique est éteinte à l'égard de toute personne qui, dans un délai maximum de six (6) mois à compter de la publication de la présente ordonnance au Journal officiel, se présente volontairement aux autorités com-

pétentes, cesse de commettre les faits prévus par les dispositions des articles 87 bis, 87 bis 1, 87 bis 2, 87 bis 3, 87 bis 6 (alinéa 2), 87 bis 7, 87 bis 8, 87 bis 9 et 87 bis 10 du code pénal et remet les armes, munitions, explosifs et tout autre moyen en sa possession.

Art. 6. L'action publique est éteinte à l'égard de toute personne recherchée à l'intérieur ou à l'extérieur du territoire national, pour avoir commis ou avoir été complice d'un ou de plusieurs faits prévus par les dispositions visées à l'article 2 ci-dessus, qui, dans un délai maximum de six (6) mois à compter de la publication de la présente ordonnance au Journal officiel, se présente volontairement aux autorités compétentes et déclare mettre fin à ses activités.

Art. 7. L'action publique est éteinte à l'égard de toute personne qui a commis ou a été complice d'un ou de plusieurs faits prévus aux articles 87 bis 4 et 87 bis 5 du code pénal, et qui dans un délai maximum de six (6) mois à compter de la publication de la présente ordonnance au Journal officiel, met fin à ses activités et le déclare aux autorités compétentes devant lesquelles elle se présente.

Art. 8. L'action publique est éteinte à l'égard de toute personne condamnée par défaut ou par contumace, pour avoir commis un ou plusieurs faits prévus par les dispositions visées à l'article 2 ci-dessus, qui dans un délai maximum de six (6) mois à compter de la publication de la présente ordonnance au Journal officiel, se présente volontairement aux autorités compétentes et déclare mettre fin à ses activités.

Art. 9. L'action publique est éteinte à l'égard de toute personne détenue, non condamnée définitivement, pour avoir commis ou avoir été complice d'un ou de plusieurs des faits prévus aux dispositions visées à l'article 2 ci-dessus.

Art. 10. Les mesures prévues aux articles 5, 6, 8 et 9 ci-dessus, ne s'appliquent pas aux personnes qui ont commis ou ont été les complices ou les instigatrices des faits de massacres collectifs, de viols ou d'utilisation d'explosifs dans les lieux publics.

Art. 11. Les bénéficiaires de l'extinction de l'action publique, objet des articles 5, 6, 7, 8, et 9 ci-dessus, rejoignent leurs foyers, sitôt accomplies les formalités prévues par la présente ordonnance.

Section 3 : Règles de procédure pour l'extinction de l'action publique

Art. 12. Au sens du présent chapitre, on entend par autorités compétentes, notamment les autorités ci-après :

- les ambassades, les consulats généraux et les consulats algériens ;

- les procureurs généraux ;
- les procureurs de la République ;
- les services de la sûreté nationale ;
- les services de la gendarmerie nationale,
- les officiers de police judiciaire tel que défini à l'article 15 (alinéa 7) du code de procédure pénale.

Art. 13. Toute personne qui s'est présentée aux autorités compétentes, dans le cadre de l'application des dispositions des articles 5, 6, 7 et 8 ci-dessus, est tenue de faire une déclaration qui doit porter notamment sur :

- les faits qu'elle a commis ou dont elle a été complice ou instigatrice ;
- les armes, munitions ou explosifs ou tout autre moyen qu'elle détient ayant eu une relation avec ces faits.

Dans ce cas, elle doit les remettre auxdites autorités ou leur indiquer le lieu où ils se trouvent.

Le modèle de déclaration et les mentions qui doivent y figurer sont fixés par voie réglementaire.

Art. 14. Dès la comparution de la personne devant elles, les autorités compétentes doivent en aviser le procureur général qui prend, le cas échéant, les mesures légales appropriées.

Si la personne comparaît devant les ambassades ou consulats algériens, ces derniers doivent porter ses déclarations à la connaissance du ministère des affaires étrangères qui les transmet au ministère de la justice qui prend toute mesure légale qu'il juge utile.

Art. 15. Les cas d'extinction de l'action publique prévus aux articles 4, 5, 6, 7, 8 et 9 ci-dessus sont soumis aux règles suivantes :

1. si la procédure est en phase d'enquête préliminaire, le procureur de la République décide l'exonération des poursuites judiciaires ;
2. si les faits font l'objet d'une information judiciaire, la juridiction d'instruction doit rendre une ordonnance ou un arrêt prononçant l'extinction de l'action publique ;
3. si l'affaire est renvoyée, enrôlée ou en délibéré devant les juridictions de jugement, le dossier est, à la diligence du ministère public, soumis à la

chambre d'accusation qui prononce l'extinction de l'action publique ;

4. les règles prévues au troisièmement ci-dessus sont applicables au pourvoi en cassation devant la Cour suprême.

En cas de pluralité de poursuites ou de décisions, le parquet compétent est celui dans le ressort duquel se trouve le lieu où la personne s'est présentée.

Section 4 : De la grâce

Art. 16. Les personnes condamnées définitivement pour avoir commis ou avoir été complices d'un ou de plusieurs des faits prévus aux dispositions visées à l'article 2 ci-dessus, bénéficient de la grâce, conformément aux dispositions prévues par la Constitution.

Sont exclues du bénéfice de la grâce, les personnes condamnées définitivement pour avoir commis ou ont été les complices ou les instigatrices des faits de massacres collectifs, de viols ou d'utilisation d'explosifs dans les lieux publics.

Art. 17. Les personnes condamnées définitivement pour avoir commis ou avoir été complices d'un ou de plusieurs faits prévus aux articles 87 bis 4 et 87 bis 5 du code pénal, bénéficient de la grâce, conformément aux dispositions prévues par la Constitution.

Section 5 : De la commutation et remise de peine

Art. 18. Bénéficie de la commutation ou de la remise de peine, conformément aux dispositions prévues par la Constitution, toute personne condamnée définitivement pour avoir commis ou avoir été complice d'un ou de plusieurs des faits prévus aux dispositions visées à l'article 2 ci-dessus, non concernée par les mesures d'extinction de l'action publique et la grâce prévues par la présente ordonnance.

Art. 19. Bénéficie après condamnation définitive, de la commutation ou de la remise de peine, conformément aux dispositions prévues par la Constitution, toute personne recherchée pour avoir commis ou avoir été complice d'un ou de plusieurs des faits prévus aux dispositions visées à l'article 2 ci-dessus, non concernée par les mesures d'extinction de l'action publique ou de la grâce prévues par la présente ordonnance.

Art. 20. Quiconque qui, ayant bénéficié de l'une des mesures énoncées dans le présent chapitre, aura à l'avenir commis un ou plusieurs des faits prévus dans les dispositions visées à l'article 2 ci-dessus, est passible des dispositions du code pénal relatives à la récidive.

CHAPITRE TROISIEME : MESURES DESTINEES A CONSOLIDER LA RECONCILIATION NATIONALE

Section 1 : Mesures au profit des personnes ayant bénéficié de la loi relative au rétablissement de la concorde civile

Art. 21. Sont abrogées les mesures de privation de droits instaurées à l'encontre de personnes ayant bénéficié des dispositions de la loi relative au rétablissement de la concorde civile.

Le bénéfice de l'exonération des poursuites obtenu conformément aux articles 3 et 4 de la loi relative au rétablissement de la concorde civile prend un caractère définitif.

Art. 22. Quiconque qui, bénéficiant des dispositions de l'article 21 ci-dessus, se rend à l'avenir coupable d'un ou de plusieurs des faits prévus par les dispositions du code pénal visés à l'article 2 de la présente ordonnance, est passible des dispositions du code pénal relatives à la récidive.

Art. 23. Sont abrogées les mesures de privation légales de droits prises à l'encontre de personnes ayant bénéficié des dispositions de la loi relative au rétablissement de la concorde civile.

Art. 24. l'Etat prend, autant que de besoin, les mesures requises, dans le cadre des lois et règlements en vigueur, pour lever toute entrave administrative rencontrée par des personnes ayant bénéficié des dispositions de la loi relative au rétablissement de la concorde civile.

Section 2 : Mesures au bénéfice des personnes ayant fait l'objet de licenciement administratif pour des faits liés à la tragédie nationale

Art. 25. Quiconque qui, pour des faits liés à la tragédie nationale, a fait l'objet de mesures administratives de licenciement, décrétées par l'Etat dans le cadre des missions qui lui sont imparties, a droit dans le cadre de la législation en vigueur, à la réintégration au monde du travail ou, le cas échéant, à une indemnisation versée par l'Etat.

Les modalités d'application du présent article sont précisées par voie réglementaire.

Section 3 : Mesures pour prévenir la répétition de la tragédie nationale

Art. 26. L'exercice de l'activité politique est interdit, sous quelque forme que ce soit, pour toute personne responsable de l'instrumentalisation de la religion ayant conduit à la tragédie nationale.

L'exercice de l'activité politique est interdit également à quiconque, ayant participé à des actions terroristes refuse, malgré les dégâts commis par le terrorisme et l'instrumentalisation de la religion à des fins criminelles, de reconnaître sa responsabilité dans la conception et la mise en oeuvre d'une politique prônant la violence contre la Nation et les institutions de l'Etat.

CHAPITRE QUATRIEME : MESURES D'APPUI DE LA POLITIQUE DE PRISE EN CHARGE DU DOSSIER DES DISPARUS

Section 1 : Dispositions générales

Art. 27. Est considérée comme victime de la tragédie nationale, la personne déclarée disparue dans le contexte particulier généré par la tragédie nationale, au sujet de laquelle le peuple algérien s'est souverainement prononcé à travers l'approbation de la Charte pour la paix et la réconciliation nationale.

La qualité de victime de la tragédie nationale découle d'un constat de disparition établi par la police judiciaire à l'issue de recherches demeurées infructueuses.

Art. 28. La qualité de victime de la tragédie nationale ouvre droit à la déclaration de décès par jugement.

Section 2 : Procédure applicable pour la déclaration de décès par jugement

Art. 29. Nonobstant les dispositions du code de la famille, les dispositions énoncées dans la présente section sont applicables aux disparus visés à l'article 28 ci-dessus.

Art. 30. Est déclarée décédée par jugement toute personne n'ayant plus donné signe de vie et dont le corps n'a pas été retrouvé après investigations, par tous les moyens légaux, demeurées infructueuses.

Un procès-verbal de constat de disparition de la personne concernée est établi par la police judiciaire à l'issue de recherches. Il est remis aux ayants droit du disparu ou à toute personne y ayant intérêt, dans un délai n'excédant pas une année à partir de la date de la publication de la présente ordonnance au Journal officiel.

Art. 31. Les personnes citées à l'article 30 ci-dessus doivent saisir la juridiction compétente dans un délai n'excédant pas six (6) mois à partir de la date de remise du procès-verbal de constat de disparition.

Art. 32. Le jugement de décès du disparu est prononcé sur requête de l'un des

héritiers, de toute personne y ayant intérêt ou du ministère public.

Le juge compétent se prononce en premier et dernier ressort dans un délai n'excédant pas deux (2) mois à compter de la date de l'introduction de l'action.

Art. 33. Le jugement de décès peut faire l'objet d'un pourvoi en cassation dans un délai n'excédant pas un (1) mois à compter de la date de son prononcé. La Cour suprême se prononce dans un délai n'excédant pas six (6) mois à compter de la date de saisine.

Art. 34. Le bénéfice de l'assistance judiciaire est accordé de plein droit sur demande de l'une des personnes citées à l'article 32 ci-dessus.

Art. 35. Les droits dus au notaire pour l'établissement de l'acte de Frédha sont supportés par le budget de l'Etat. Cet acte est exempté du droit de timbre et d'enregistrement.

Art. 36. Le jugement définitif de décès doit être transcrit sur les registres d'état civil à la diligence du ministère public.

Il produit l'ensemble des effets juridiques prévus par la législation en vigueur.

Section 3 : Indemnisation des ayants droit des victimes de la tragédie nationale

Art. 37. Outre les droits et avantages prévus par la législation et la réglementation en vigueur, les ayants droit des personnes victimes de la tragédie nationale visées à l'article 28 ci-dessus, en possession d'un jugement définitif de décès du de cujus, ont droit à une indemnisation versée par l'Etat.

Art. 38. L'indemnisation prévue à l'article 37 ci-dessus, exclut toute autre réparation du fait de la responsabilité civile de l'Etat.

Art. 39. Pour le calcul et le versement de l'indemnisation visée à l'article 37 ci-dessus, il est fait usage des dispositions prévues par la législation et la réglementation en vigueur au profit des victimes décédées du terrorisme.

Les modalités d'application du présent article sont précisées par voie réglementaire.

CHAPITRE CINQUIEME : MESURES DESTINEES A RENFORCER LA COHESION NATIONALE

Art. 40. Les membres des familles éprouvées par l'implication de l'un de leurs proches dans les faits visés à l'article 2 ci-dessus, ne peuvent être considérés comme auteurs, coauteurs, instigateurs ou complices, ou pénalisés, à quelque titre que ce soit, pour des actes individuels commis par leur proche identifié comme étant seul responsable de ses actes devant la loi.

Art. 41. Toute discrimination, de quelque nature que ce soit, à l'encontre des membres des familles visées à l'article 40 ci-dessus, est puni d'un emprisonnement de six (6) mois à trois (3) ans et d'une amende de 10.000 DA à 100.000 DA.

Art. 42. Les familles démunies éprouvées par l'implication d'un de leurs proches dans le terrorisme bénéficient d'une aide de l'Etat, au titre de la solidarité nationale.

Le droit à l'aide susvisé est établi par une attestation délivrée par les autorités administratives compétentes. Les modalités d'application du présent article sont précisées par voie réglementaire.

Art. 43. L'aide de l'Etat visée à l'article 42 ci-dessus est décaissée sur le compte d'affectation spéciale du Trésor intitulé «*Fonds spécial de solidarité nationale*». Les modalités d'application du présent article sont précisées par voie réglementaire.

CHAPITRE SIXIEME : MESURES DE MISE EN OEUVRE DE LA RE-CONNAISSANCE DU PEUPLE ALGERIEN ENVERS LES ARTISANS DE LA SAUVEGARDE DE LA REPUBLIQUE ALGERIENNE DEMOCRATIQUE ET POPULAIRE

Art. 44. Les citoyens qui ont, par leur engagement et détermination, contribué à sauver l'Algérie et à préserver les acquis de la Nation ont fait acte de patriotisme.

Art. 45. Aucune poursuite ne peut être engagée, à titre individuel ou collectif, à l'encontre des éléments des forces de défense et de sécurité de la République, toutes composantes confondues, pour des actions menées en vue de la protection des personnes et des biens, de la sauvegarde de la Nation et de la préservation des institutions de la République algérienne démocratique et populaire.

Toute dénonciation ou plainte doit être déclarée irrecevable par l'autorité judiciaire compétente.

Art. 46. Est puni d'un emprisonnement de trois (3) ans à cinq (5) ans et d'une amende de 250.000 DA à 500.000 DA, quiconque qui, par ses déclarations, écrits ou tout autre acte, utilise ou instrumentalise les blessures de la tragédie nationale, pour porter atteinte aux institutions de la République algérienne démocratique et populaire, fragiliser l'Etat, nuire à l'honorabilité de ses agents qui l'ont dignement servie, ou ternir l'image de l'Algérie sur le plan international.

Les poursuites pénales sont engagées d'office par le ministère public.

En cas de récidive, la peine prévue au présent article est portée au double.

CHAPITRE SEPTIEME : DISPOSITIONS FINALES

Art. 47. En vertu du mandat qui lui est conféré par le référendum du 29 septembre 2005 et conformément aux pouvoirs qui lui sont dévolus par la Constitution, le Président de la République peut, à tout moment, prendre toutes autres mesures requises pour la mise en oeuvre de la Charte pour la Paix et la réconciliation nationale.

Art. 48. La présente ordonnance sera publiée au Journal officiel de la République algérienne démocratique et populaire.

Fait à Alger, le 28 Moharram 1427 correspondant au 27 février 2006.

Abdelaziz BOUTEFLIKA.

DÉCRET PRÉSIDENTIEL N° 06-93

DU 29 MOHARRAM 1427

correspondant au 28 février 2006 relatif à l'indemnisation des victimes de la tragédie nationale

CHAPITRE PREMIER : DISPOSITIONS GENERALES

Article 1er. Le présent décret détermine les modalités d'application de l'article 39 de l'ordonnance n° 06-01 du 28 Moharram 1427 correspondant au 27 février 2006 portant mise en oeuvre de la Charte pour la paix et la réconciliation nationale, relatif à l'indemnisation des victimes de la tragédie nationale.

Art. 2. Est considérée victime de la tragédie nationale, toute personne disparue dans le cadre des événements visés par la Charte et ayant fait l'objet d'un constat de disparition établi par la police judiciaire à l'issue de ses recherches.

Art. 3. Le jugement de déclaration de décès de la victime de la tragédie nationale ouvre droit à ses ayants droit à l'indemnisation au sens du présent décret.

Art. 4. Sont considérés relevant du ministère de la Défense Nationale au sens du présent décret, les personnels militaires et civils, quels que soient leur statut et leur position statutaire, y compris ceux en situation irrégulière, ainsi que les titulaires d'une pension militaire de retraite.

Art. 5. Est considéré fonctionnaire ou agent public au sens du présent décret, tout travailleur exerçant au niveau des institutions, des administrations, des collectivités locales ou des organismes publics, y compris des établissements publics relevant d'une tutelle administrative.

Art. 6. Selon leur situation et les conditions énumérées dans le présent décret, les ayants droit des victimes de la tragédie nationale bénéficient d'une indemnisation dans l'une des formes ci-après :

1. une pension de service ;
2. une pension mensuelle ;
3. un capital global ;
4. un capital unique.

Art. 7. Les ayants droit ayant bénéficié d'une réparation prononcée par voie de justice, avant la publication du présent décret, ne peuvent prétendre à l'indem-

nisation prévue à l'article 6 ci-dessus.

Art. 8. Le bénéfice de l'indemnisation est confirmé par une décision délivrée sur la base de l'attestation de recherche établie par la police judiciaire et de l'extrait du jugement portant déclaration de décès, par :

- le ministère de la Défense Nationale, pour les ayants droit des victimes faisant partie des personnels militaires et civils relevant de ce dernier ;
- l'organisme employeur, pour les ayants droit des victimes fonctionnaires et agents publics ;
- le directeur général de la sûreté nationale, pour les ayants droit des victimes relevant des personnels de la sûreté nationale ;
- le wali de la wilaya de résidence, pour les ayants droit des autres victimes.

Art. 9. Sont considérés comme ayants droit au sens du présent décret :

- les conjoints ;
- les enfants du de cujus âgés de moins de 19 ans, ou de 21 ans au plus, s'ils poursuivent des études, ou s'ils sont placés en apprentissage, ainsi que les enfants à charge conformément à la législation en vigueur et dans les mêmes conditions que les enfants du de cujus ;
- les enfants quel que soit leur âge, qui, par suite d'infirmité ou de maladie chronique, sont dans l'impossibilité permanente d'exercer une activité rémunérée ;
- les enfants de sexe féminin, sans revenu, à la charge effective du de cujus au moment de sa disparition, quel que soit leur âge ;
- les ascendants du de cujus.

Art. 10. La part revenant à chaque ayant droit, au titre de l'indemnisation visée à l'article 6 ci-dessus est fixée comme suit :

- 100 % de l'indemnisation en faveur du (des) conjoint(s) lorsque le de cujus n'a laissé ni enfants, ni ascendants survivants ;
- 50 % de l'indemnisation en faveur du (des) conjoint (s) et 50% répartis à parts égales en faveur des autres ayants droit, lorsque le de cujus a laissé un ou plusieurs conjoints survivants, ainsi que d'autres ayants droit constitués d'enfants et/ou d'ascendants ;
- 70 % de l'indemnisation répartis à part égales en faveur des enfants du de cujus (ou 70% en faveur de l'enfant unique, le cas échéant) et 30% répartis

à parts égales en faveur des ascendants (ou 30% en faveur de l'ascendant unique, le cas échéant), lorsqu'il n'existe pas de conjoint survivant ;

- 50 % de l'indemnisation en faveur de chacun des ascendants lorsque le de cujus n'a laissé ni conjoints ni enfants survivants ;
- 75 % de l'indemnisation en faveur de l'ascendant unique, lorsque le de cujus n'a laissé ni conjoint ni enfant survivants.

Art. 11. Dans le cas où l'indemnisation prévue à l'article 6 ci-dessus est constituée d'une pension de service ou d'une pension mensuelle, les taux prévus sont révisés au fur et à mesure qu'intervient une modification du nombre d'ayants droit.

Art. 12. En cas de pluralité de veuves, l'indemnisation leur revenant est partagée entre elles à parts égales.

Art. 13. En cas de remariage de la veuve ou de son décès, la part de pension qu'elle percevait est transférée aux enfants.

Néanmoins, et au cas où il existe plusieurs veuves, cette part de pension revient à l'autre ou aux autre(s) veuve(s) survivante(s) non remariée(s).

Art. 14. A l'exception des ayants droit des victimes de la tragédie nationale, relevant des personnels du ministère de la Défense Nationale tels que définis à l'article 4 ci-dessus, le dossier comptable à constituer au titre de l'indemnisation telle que définie dans les dispositions du présent décret, comprend :

- la décision visée à l'article 8 du présent décret ;
- une copie de la Frédha, certifiée conforme à l'original aux fins
- d'identification des ayants droit, ainsi que, le cas échéant et pour les personnes ne figurant pas sur la Frédha, un extrait d'acte d'état civil justifiant leur qualité d'ayant droit, au sens de l'article 9 du présent décret, y compris les conjoints de confession non musulmane, les enfants à charge ou considérés comme tels ;
- une copie du jugement désignant le curateur, lorsque la part de la pension revenant aux enfants n'est pas versée à la mère ou au père ;
- la décision d'attribution et de répartition de la pension de service ou du capital unique.

Art. 15. L'acte de Frédha est établi dans un délai d'un mois, à titre gratuit par une étude notariale, à la demande des ayants droit, de l'organisme employeur ou du wali, sur réquisition du parquet territorialement compétent.

Les modalités de prise en charge des honoraires dus au notaire, sont fixées par un arrêté conjoint du ministre de la justice et du ministre des finances.

Art. 16. Un compte courant postal est ouvert à chacun des ayants droit, par le centre des chèques postaux, dans les huit (8) jours suivant le dépôt du dossier, sur une simple présentation d'une copie de la décision d'octroi de la pension de service, de la pension mensuelle, du capital global ou du capital unique.

CHAPITRE II : REGIME D'INDEMNISATION APPLICABLE AUX AYANTS DROIT DE VICTIMES DE LA TRAGEDIE NATIONALE FAISANT PARTIE DES PERSONNELS MILITAIRES ET CIVILS RELEVANT DU MINISTERE DE LA DEFENSE NATIONALE

Art. 17. Les ayants droit des personnels militaires et civils relevant du ministère de la Défense Nationale, tels que définis à l'article 4 ci-dessus, victimes de la tragédie nationale, ont droit à une indemnisation par versement d'une pension de service sur le budget de l'Etat.

Art. 18. La pension de service est liquidée et payée par le centre payeur de l'Armée nationale populaire ou par le centre payeur régional du lieu de résidence des bénéficiaires de la pension.

Art. 19. La pension de service est soumise aux retenues légales applicables aux traitements et salaires aux taux fixés par la législation en vigueur.

Art. 20. La pension de service est acquise aux ayants droit jusqu'à la date à laquelle le de cujus aurait atteint l'âge de 60 ans ou, s'agissant des personnels civils, jusqu'à l'âge légal de mise à la retraite, prévu par le code des pensions militaires.

Art. 21. Le droit à la pension de retraite de reversion est acquis aux ayants droit du de cujus, à la cessation de la pension de service.

Art. 22. Les ayants droit des victimes de la tragédie nationale relevant du ministère de la Défense Nationale, et qui étaient à la retraite, bénéficient d'un capital unique sur le budget de l'Etat et cela sans préjudice des dispositions du code des pensions militaires relatives au capital décès.

Art. 23. Les règles de calcul et d'évolution de la pension de service, de la pension de retraite et du capital unique énoncées aux articles 17, 21 et 22 ci-dessus, sont celles prévues par la réglementation spécifique en vigueur, fixant les modalités d'application pour les personnels du ministère de la Défense Nationale, ainsi que leurs ayants droit, des mesures d'indemnisation prévues

dans le cadre de la protection sociale des victimes du terrorisme.

Art. 24. La liquidation et le paiement du capital unique prévu à l'article 22 du présent décret sont effectués par la caisse des retraites militaires.

Le remboursement des sommes engagées à ce titre par la Caisse des retraites militaires est effectué sur le budget de l'Etat, par le Trésor public.

Art. 25. La définition des ayants droit et les règles de répartition de la pension mensuelle et du capital unique, visés au présent chapitre, sont celles énoncées aux articles 9 à 13 du présent décret.

Art. 26. Outre les dispositions de l'article 8 (alinéa 1er) du présent décret, les modalités de constitution du dossier pour les indemnisations visées au présent chapitre sont fixées par arrêté du ministère de la défense nationale.

CHAPITRE III : REGIME D'INDEMNISATION APPLICABLE AUX AYANTS DROIT DE VICTIMES DE LA TRAGEDIE NATIONALE FONCTIONNAIRES OU AGENTS PUBLICS

Art. 27. Les ayants droit des fonctionnaires ou agents publics tels que définis à l'article 5 ci-dessus, victimes de la tragédie nationale, ont droit à une indemnisation par versement d'une pension de service, jusqu'à la date légale d'admission à la retraite du de cujus.

Les modalités de calcul de la pension de service susvisée sont celles énoncées aux articles 18, 19 et 20 du décret exécutif n° 99-47 du 13 février 1999 relatif à l'indemnisation des personnes physiques victimes de dommages corporels ou matériels subis par suite d'actes de terrorisme ou d'accidents survenus dans le cadre de la lutte anti-terroriste, ainsi qu'à leurs ayants droit.

Art. 28. La pension de service est soumise aux retenues légales applicables aux traitements et salaires, aux taux fixés par la législation en vigueur.

Le versement de la pension de service est assuré par le département ministériel ou l'organisme public d'appartenance ou de tutelle.

Le département ministériel concerné peut confier la gestion de la pension de service à l'organisme sous tutelle et déléguer les crédits nécessaires à ce dernier.

Art. 29. Le droit à pension de retraite de reversion est acquis aux ayants droit du de cujus, à la cessation de la pension de service.

Art. 30. La pension de reversion qui succède à la pension de service est calculée et servie conformément aux dispositions des articles 24 et 25 du décret

exécutif n° 99-47 du 13 février 1999, susvisé.

Le paiement de la pension de reversion est effectué par la caisse de retraite.

Art. 31. Sans préjudice des dispositions de la législation relative à la sécurité sociale en matière d'allocation-décès, les ayants droit des fonctionnaires et agents de l'Etat, victimes de la tragédie nationale, en âge ou en position de retraite au moment de leur disparition, bénéficient d'un capital unique servi par la caisse de retraite.

Le montant du capital unique est calculé conformément aux dispositions de l'article 36 du décret exécutif n° 99-47 du 13 février 1999, susvisé. Le remboursement des sommes versées à ce titre par la caisse de retraite est effectué sur le budget de l'Etat, par le Trésor public.

Art. 32. La définition des ayants droit et les règles de répartition de la pension mensuelle et du capital unique, visées au présent chapitre, sont celles énoncées aux articles 9 à 13 du présent décret. Obéit aux mêmes dispositions, la répartition du capital unique prévu à l'article 31 ci-dessus.

Art. 33. Le dossier comptable à constituer au titre de l'indemnisation visée au présent chapitre doit correspondre aux termes de l'article 14 ci-dessus, et être déposé auprès de l'organisme employeur du de cujus.

CHAPITRE IV : REGIME D'INDEMNISATION PAR LE VERSEMENT DE LA PENSION MENSUELLE

Art. 34. Bénéficient d'une indemnisation par versement d'une pension mensuelle, les ayants droit des victimes de la tragédie nationale relevant du secteur économique public et privé ou sans emploi, lorsque le de cujus était âgé de moins de 50 ans au moment de sa disparition et a laissé :

- des enfants mineurs ;
- et/ou des enfants quel que soit leur âge, qui sont, par suite d'infirmité ou de maladie chronique, dans l'impossibilité permanente d'exercer une activité rémunérée ;
- et/ou des enfants de sexe féminin, sans revenu, quel que soit leur âge, à la charge effective du de cujus au moment de sa disparition.

Art. 35. La pension mensuelle est servie jusqu'à la date légale d'admission à la retraite du de cujus.

Pour les ayants droit des victimes salariées du secteur économique public ou

privé, la pension de reversion succède à la pension mensuelle.

Art. 36. La pension mensuelle est versée par le fonds d'indemnisation des victimes du terrorisme.

Art. 37. Le montant de la pension mensuelle est fixé à 16.000 DA.

Elle est majorée, le cas échéant, des prestations d'allocations familiales.

Art. 38. La pension mensuelle est soumise à retenue de sécurité sociale aux taux prévus par la législation en vigueur.

Art. 39. Outre les dispositions énoncées à l'article 8 ci-dessus, le dépôt du dossier pour le bénéfice de la pension mensuelle doit être effectué auprès de la wilaya de résidence de la victime.

Il donne lieu à règlement de la pension mensuelle, par le trésorier payeur de cette même wilaya.

Art. 40. Les modalités énoncées aux articles 9 à 13 du présent décret sont applicables pour la définition des ayants droit et la répartition de la pension mensuelle et de la pension de reversion.

Art. 41. Le dossier comptable à constituer au titre de l'indemnisation définie au présent chapitre doit correspondre au contenu fixé par l'article 14 ci-dessus et être déposé auprès du wali de la circonscription de résidence.

CHAPITRE V : REGIME D'INDEMNISATION PAR LE CAPITAL GLOBAL

Art. 42. Les dispositions du présent chapitre s'appliquent aux ayants droit des victimes autres que celles visées aux chapitres II, III et IV du présent décret.

Art. 43. Les ayants droit de victime de la tragédie nationale constitués du conjoint sans enfants et/ou des ascendants du de cujus, bénéficient au titre du fonds d'indemnisation des victimes du terrorisme, d'un capital global d'indemnisation qui correspond à 120 fois le montant de 16.000 DA.

Art. 44. Lorsque la disparition de la victime de la tragédie nationale est survenue moins de 10 années avant l'âge supposé de la retraite, et dans tous les cas, y compris en présence d'enfants mineurs ou considérés comme tels, les ayants droit bénéficient du capital global d'indemnisation qui correspond à 120 fois le montant de 16.000 DA.

Art. 45. Lorsque la victime de la tragédie nationale était mineure, ses ayants droit bénéficient d'un capital global d'indemnisation équivalant à 120 fois le

montant de 10.000 DA.

Art. 46. Lorsque la victime de la tragédie nationale était âgée de plus de 60 ans et non affiliée à une caisse de retraite, ses ayants droit bénéficient d'un capital global d'indemnisation équivalent à 120 fois le montant de 10.000 DA.

Art. 47. Le capital global d'indemnisation visé aux articles 43, 44, 45 et 46 ci-dessus est versé aux ayants droit au titre du fonds d'indemnisation des victimes du terrorisme.

Art. 48. Sans préjudice des dispositions législatives en vigueur en matière d'allocation-décès, les ayants droit des victimes de la tragédie nationale, en âge ou en position de retraite, et affiliés à une caisse de retraite, bénéficient d'un capital unique, servi par la caisse de retraite, dont le montant est égal au double du montant annuel de la pension de retraite du de cujus, sans toutefois qu'il soit inférieur à 100 fois le montant de 10.000 DA.

Le remboursement des sommes versées à ce titre par la caisse de retraite est effectué, sur le budget de l'Etat, par le Trésor public.

Art. 49. La répartition du capital global d'indemnisation visé aux articles 43 à 46 ci-dessus s'effectue selon les règles définies aux articles 10 à 13 du présent décret. Obéit aux mêmes règles, la répartition du capital unique visé à l'article 48 ci-dessus.

Art. 50. Le dossier comptable à constituer au titre de l'indemnisation prévue au présent chapitre doit correspondre aux termes de l'article 14 ci-dessus et être déposé auprès du wali de la circonscription de résidence des ayants droit.

CHAPITRE VI : DISPOSITIONS PARTICULIERES

Art. 51. Dans le cadre de l'application du présent décret, les modalités de fonctionnement du fonds d'indemnisation des victimes du terrorisme sont celles définies par le décret exécutif n° 99-47 du 13 février 1999, susvisé, et notamment ses articles 105 à 111.

Art. 52. Les ayants droit bénéficiaires des dispositions du présent décret peuvent se désister par acte notarié de l'indemnisation ou de la part de l'indemnisation leur revenant, au profit d'un des ayants droit prévus à l'article 9 ci-dessus.

Art. 53. Le présent décret sera publié au Journal officiel de la République algérienne démocratique et populaire.

Fait à Alger, le 29 Moharram 1427 correspondant au 28 février 2006.

Abdelaziz BOUTEFLIKA