



# Algeria

## **The national institution for human rights in Algeria before the International Coordinating Committee of NHRIs**

**Alkarama for Human Rights, 5 February 2009**

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## 1. Introduction

The Sub-Committee of Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) has asked the National Consultative Commission for the Promotion and Protection of Human Rights (CNCPPDH) - hereinafter referred to as the Commission - to provide evidence within a year that it has not ceased to comply with the Paris Principles that determine the actions of national human rights institutions Human Rights (NHRIs). The ICC review of these documents is scheduled for the end of March 2009.

Under its terms, the Sub-Committee "intends to recommend that the ICC award it a B accreditation status", for the following reasons:

- 1) The Commission did not provide its report for the current year, but only a list of activities relating to the period from 2002 to 2004;
- 2) The Sub-Committee refers to General Observation "Establishment of national institutions" to emphasize the importance it attaches to the establishment of national institutions by means of a constitutional or statutory text;
- 3) The process of appointment and dismissal of the President and members of the committee is neither clear nor transparent. The Sub-Committee refers to General Observation "Selection and appointment of the governing body";
- 4) The Sub-Committee encourages the Commission to work effectively with the human rights system of the United Nations, and especially with conventional bodies. It also recommends that it contribute to the monitoring of recommendations at the national level, in accordance with the provisions of General Comment "Interaction with the international system of human rights.

Alkarama wishes to contribute to the Committee's review with a number of observations. These will try to support three matters raised by the Subcommittee, and raise other issues in relation to its concerns about the Commission's actions.

Following the recommendations of the Committee on Human Rights during its 94th session in October 2008, and in order to participate in the follow-up procedure, our organization sent correspondence to the CNCPPDH on September 15th, 2008, to remind it of its mandate as part of its expected collaboration with the UN system of human rights. Alkarama also on this occasion sent a report to the Committee on Human Rights.<sup>1</sup>

## 2. The absence of a constitutional or legal text for the establishment of the Commission.

The Commission states on its website<sup>2</sup> that its "Framework for Action "is defined by Resolution 48/134 of the UN General Assembly on 20 December 1993 relating to NHRIs (Paris Principles). The resolution clearly states that the creation of the NHRI should be based on a constitutional or legal text. However, in the case of Algeria, it is Presidential Decree No. 01-71 of 25 March 2001 which establishes the Commission and defines its mandate and mission.

The Presidential Decree is considered in the hierarchy of legal standards in Algeria as the Executive Act *par excellence*.

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<sup>1</sup> [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/Alkarama\\_Algeria-HRC\\_fr.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/Alkarama_Algeria-HRC_fr.pdf)

<sup>2</sup> <http://www.cncppdh-dz.org>

The Commission replaced the National Observatory of Human Rights (ONDH) and took over the budget, property and personal property and in particular its headquarters at the "People's Palace", a residence of the President of the Republic . Like the Observatory before it, the Commission is accountable only to the authority which established it, ie the President of the Republic (art. 3 of the Decree: the Committee is placed under the authority of the President of the Republic) who chooses the President of the Commission and selects all its members (art. 9).

Indeed at its inauguration to replace the ONDH, the Commission took on "administrative and technical staff of the permanent secretariat of the Observatory, including those exercising the high-level functions of the state, by Presidential Decree ° 92-433 of 30 November 1992 (article 20 of Decree No. 01-71).

Therefore, it would appear that because of its creation by an act of executive power, the NHRI in Algeria cannot operate in a sustainable and independent manner and does not conform with the Paris Principles.

### **3. The process for the appointment and dismissal of the President and members of the Committee is not transparent.**

Members of the Commission are appointed for a renewable term of office of four (4) years by Presidential Decree. Decree 01-299 of 10 October 2001 shows that the appointment of the Chairman and other members is to be made according to their institutional affiliations (public, unions, associations etc). Their allocation within the Commission, however, is not specified.

The second term of the Commission was also decided in the same manner by the executive, in Presidential Decree No. 06-444 of 10 December 2006. Mr. Farouk Ksentini, president since his appointment in 2001, was reappointed. The other members were appointed by the executive according to that same document.

It should be noted that during the interval between the end of the first term, 9 October 2005 and the beginning of the second, on 10 December 2006, for 14 months, the Commission had no legal existence, even though it continued to operate in practice. This situation was pointed out by the Algerian press, which said that the new appointments included "Me Ksentini's assistants (who) are mostly representatives of the largest departments of the Executive".<sup>3</sup>

According to the same newspaper, the last annual report to the President of the Republic dates from 2004 and it appears that in 2005 and 2006 the Commission did not submit an annual report.<sup>4</sup> However, given that these reports are not made public, it is impossible to confirm this.

The presidential decree refers to Me Farouk Ksentini as the official spokesperson of the Commission and also states that members are "appointed by the President of the Republic after their candidacy is put forward by national institutions and nationwide civil associations whose work relates to human rights "(Article 8 of Decree No. 01-71).

However, the nomination of candidates is neither public nor transparent. The selection procedure is not known and vacancies are not advertised.

Because of the prerogatives of the President of the Republic, it does not appear that the Commission has the power to choose and appoint its own staff.

The Vice-President of the Algerian League for the Defense of Human Rights (LADDH), Noureddine Benissad, says that human rights "have become a political football in Algeria." Governments spend,

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<sup>3</sup> Liberté, 12 December 2006

<sup>4</sup> Idem.

he said, colossal amounts of public money to 'whitewash' Algeria's image. "The budget of the commission headed by Farouk Ksentini should be made public," he declared.<sup>5</sup>

#### **4. The lack of cooperation with the Human Rights systems of the United Nations.**

*The Paris Principles state that: It is important that NHRIs interact with the international system of human rights, in particular the Council of Human Rights and its mechanisms (Special Procedures agents) and with Treaty bodies. This generally means providing documentation and participating in the sessions of these mechanisms, and following up on recommendations made by the international system of human rights at a national level.*

The Presidential Decree establishing the Commission states that its mission is "to contribute to the preparation of reports that the State must submit to the bodies and committees of the United Nations" (Article 6 of Decree 01-71).

It is not clear how the Commission is associated with the state in its report-writing. It should be noted that Mr. Sid-Ahmed Hamed-Abdelouhab, adviser at the Office of the Department of Justice, was a member of the official delegation during the presentation of Algeria's periodic report to the Human Rights Committee and Committee Against Torture, while at the same time working within the structure of the Commission.<sup>6</sup> Is this sort of prerogative compatible with the independence necessary for the normal functioning of such an institution?

In practice, it should be noted that the Commission works very poorly with the international system for the protection of human rights. It does not provide its own documentation and does not contribute independently to the process of reviewing the periodic reports of Algeria by the Human Rights Committee and Committee Against Torture. It has never published the latter's observations and does not follow recommendations from treaty bodies at the national level.

It has not recommended a visit to the Government by the Special Rapporteurs on torture and summary executions, who have been asking to visit Algeria for over a decade.

During the process of reviewing the periodic reports by the Human Rights Committee in October 2007 and the Committee against Torture in May 2008, it did not produce any document or make any statement. It was only after the publication of the Observations of the Committee on Human Rights that Mr. Ksentini challenged the conclusions of the experts by saying on national radio:

"There are no secret detention and torture centers in Algeria, neither for ordinary citizens nor for terrorists." In this context, he described the information reported by the Committee on Human Rights to the UN in Geneva on the situation in Algeria as "a pile of fables that are nothing more than foolishness".<sup>7</sup>

The President of the Commission accused the Committee of Human Rights of the United Nations of trying to tarnish the reputation of Algeria through these "suspicions". "Referring to the position of the United Nations during the major massacres in the 1990s, Me Ksentini said the committee "had taken up the cause of terrorism against Algeria in the past".<sup>8</sup>

Commenting on the universal periodic review by the Human Rights Council on 14 April 2008, Mr. Farouk Ksentini stated that "the questions asked of the Algerian delegation on torture, states of emergency or women's rights are a habitual attack by international organizations to put pressure on us, rather than encourage the work we are doing" and added "how can they ask us when we will

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<sup>5</sup> El Watan, 13 December 2008.

<sup>6</sup> [http://www.cncppdh-dz.org/home.php?rub=notre\\_composante](http://www.cncppdh-dz.org/home.php?rub=notre_composante)

<sup>7</sup> Farouk Ksentini: There are no secret prisons in Algeria, by Djamel B., Le Quotidien d'Oran, 4 November 2007

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Idem.

allow the UN Committee delegates to visit Algeria? Algeria is not some shack, where people come and go as they please".<sup>9</sup>

Such public statements from the President of the Commission are clearly not consistent with its duty to cooperate with the human rights system of the United Nations.

## **5. Lack of communication to the public about the Commission's activities**

*The Paris Principles state that: As part of its operation, the institution must engage the public directly, or through all available media, in particular to publicize its opinions and recommendations.*

The Commission's only communication to the public is through statements from its spokesman, Mr. Farouk Ksentini. It has no means of dissemination of its own, except its website, launched in 2007. It does not issue press releases or written statements and does not publish studies within its field of competence.

It should, however, according to its statutes, publish an annual report; it has not presented a single one in seven years. The President of the Commission states, however, that he regularly submits reports to the President of the Republic.

When questioned by a journalist who wanted to know why the annual reports submitted to the President are not made public, Mr. Ksentini replied: "It is beyond my authority. My mission is merely to hand over documents with recommendations to the President of the Republic."<sup>10</sup>

Public debates and other events organized to raise awareness of human rights among Algerians are rare.

The public is not told about any reviews of human rights processes that might lead to the development of recommendations to be submitted to the authorities.

As long as a particular subject is not really on the agenda at the political level, the Commission may adopt a position on it that is contrary to that of the government. But as soon as the issue becomes relevant at an international level, the Commission adopts the official government position.

For example, Me Ksentini may deplore the situation of detainees in Algerian prisons: "We know, however, that prison conditions are harsh, inhuman and unacceptable"<sup>11</sup> and distinguishes himself, as noted by another newspaper, by his "obstinate denunciation of the abuse of preventive detention, brutality against prisoners and prison overcrowding".<sup>12</sup>

A few months later, when the Committee against Torture is informed of the use of torture in El Harrach prison<sup>13</sup>, he is at pains to assert that Algerian prison conditions are acceptable.<sup>14</sup>

When carrying out tasks, the Commission does not inform human rights NGO representatives in Algeria of its intentions. Indeed, NGO members are not invited to participate in the Commission's activities. Thus it was the press, which reported the comments of the head of prisons, that revealed the Commission's plans to visit certain prisons.<sup>15</sup> The delegation was composed of personalities and

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<sup>9</sup> Farouk Ksentini considers the situation of prisons as positive, El Khabar, 16 April 2008.

<sup>10</sup> El Watan, 27 April 2004.

<sup>11</sup> El Watan, 27 April 2004.

<sup>12</sup> Liberté, 12 December 2006.

<sup>13</sup> ALKARAMA for Human Rights, Algeria: Torture remains a common practice, 4 April 2008, [http://fr.alkarama.org/index.php?option=com\\_docman&task=doc\\_download&gid=171](http://fr.alkarama.org/index.php?option=com_docman&task=doc_download&gid=171)

<sup>14</sup> Farouk Ksentini considers the situation of prisons as positive, El Khabar, 16 April 2008.

<sup>15</sup> El Watan 9 August 2007.

MPs<sup>16</sup>. In December 2008, the Commission produced a report after the inspection of 34 prisons, which was not made public.

Some journalists, however, obviously had access to this report, since one of the national newspapers reported the following: "In the 250-page document submitted to the President of the Republic, the most surprising aspect is that in the conclusion, the situation is reported as rosy, whereas in the record of visits, serious shortcomings and gaps in care for inmates are noted."<sup>17</sup>

In public statements these days, Mr. Ksentini today puts any problems down to overcrowding. He repeatedly asserts that the situation is due to excessive use of preventive detention.<sup>18</sup>

However, he has never recommended that the government bring a particularly serious case to trial, that of Mr. Malik Medjnoun, who has been in preventive detention for 10 years. Yet this case was widely publicized and the UN Committee on Human Rights, which heard the case, urged the Algerian government to bring it to the courts.<sup>19</sup>

## **6. Lack of communication and collaboration with NGOs on Human Rights.**

*The Paris Principles state that: Given the fundamental amplification role played by NGOs in support of national bodies, the national institution shall foster the development of relations with non-governmental organizations dedicated to the protection and promotion of human rights as a priority.*

The Commission has no relations with NGOs and independent representative for the defense of human rights in Algeria. It does not organise exchanges, meetings or seminars.

The Commission does not cooperate with any of the major international NGOs. The few contacts there are take place only during the official visits allowed by the government, like that of Amnesty International in May 2005. NGO delegations seek to meet with representatives of the Commission, not the other way around.

In early February 2007, several organizations, including associations for families of missing persons and victims of terrorism, organized a seminar called: "For Truth, Peace and Reconciliation." International experts, international and national NGOs, the families of Algerian victims and all of Algerian civil society was invited. Ksentini was also invited due to his position as chairman of the Commission. The Algerian authorities never expressed any opposition to the holding of this symposium. When all the participants were at the seminar, the police turned off the lights and expelled everyone by force.<sup>20</sup> The seminar could not be held. Ksentini, who was not present, did not speak out publicly against this police action.

## **7. The Commission and the issue of enforced disappearances in Algeria**

These days, it is impossible to deny the tragedy of enforced disappearances, following the abductions and arrests by law enforcement authorities and the secret detentions by the Department of Intelligence and Security (DRS) during the 1990s. The State does not wish to accept any responsibility, but it could not conceal this outrage. The State has established two methods to try and close this file: compensation for families of the missing, and amnesties for those responsible for enforced disappearances.

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<sup>16</sup> El Khabar, 26 August 2007.

<sup>17</sup> El Watan, 15 December 2008.

<sup>18</sup> The New Republic, 11 October 2006.

<sup>19</sup> Communication No. 1297/2004: Algeria. 09/08/2006. CCPR/C/87/D/1297/2004. (Jurisprudence)

<sup>20</sup> ACAT France - THE OBSERVATORY FOR THE PROTECTION OF THE DEFENDERS OF HUMAN RIGHTS (FIDH-OMCT), release of 8 February 2007.

This serious issue has been addressed formally through the CNPPDH and its president, Farouk Ksentini. He was appointed in September 2003 by presidential decree<sup>21</sup> to lead an "ad hoc mechanism" on the issue of disappearances. This decree ordered him "to facilitate the interface between the public and families of persons reported missing", in particular by gathering all available information from the families but also from the security forces and other public institutions.

On 31 March 2005, a report was submitted to the President of the Republic. A few days later, Mr. Ksentini stated that "it is impossible to judge the state agents who engineered the disappearances because they are difficult to identify. (...) He explained that the circumstances that prevailed during the period 1992-1998, the main aspect of which was the absence of the state and a breakdown in the chain of command, meant that any excesses were committed without the possibility of finding clues, even in the archives".<sup>22</sup> However, it is an acknowledged fact that thousands of testimonies and other documents are available on this subject.

The Commission's actions were summarized in our contribution to the Committee against Torture in April 2008 in which we highlighted that, at the beginning of his investigation, Mr Ksentini had this to say about the number of missing persons:

"The exact figure was 7 200 missing persons due to institutional misconduct. This is a figure supplied by the national police force, which collects data throughout the nation (...). It will also indicate that more than 4 200 cases of disappearance have been filed with the CNPPDH by families of the disappeared."<sup>23</sup>

In March 2005, as he was about to submit his final report to the President of the Republic, he argued that the official figure is of 6146 missing "due to the actions of state agents." A few months later however, during a radio broadcast on 29 August 2005, he rejects what he describes as "allegations" from some organizations of families of the missing that "state agents were involved in cases of disappearances", asking these families to provide concrete evidence to support these allegations. "While the state has a civil liability with respect of the disappeared, we must keep things in perspective, because there are fake disappearances"<sup>24</sup>.

Furthermore, he later said that "at least 3 000 of the disappeared are those who have joined the maquis and subsequently died, or are hidden abroad"<sup>25</sup>. On 23 June 2006, he also announced on national radio that "183 people reported missing were found alive and have been struck off the list". However he did not fulfil requests from our organization as well as from the LADDH for the publication of the list of persons who allegedly reappeared.

He explained on several occasions that the figure of 6146 people is actually based on information from families. However, it must be remembered that Mr. Ksentini had himself stated that the police estimated the number of missing to be 7 200. And even though the "ad hoc mechanism" had no mandate to conduct independent investigations, it was still expected to act as an "interface between government and the families concerned" to "identify cases of alleged disappearances on the basis of all the information already collected. It should also have "taken any action based on leads found during the investigations and the search for the disappeared, and passed them on to the relevant authorities"<sup>26</sup>. This research was to be conducted with an emphasis on queries directed to the various security forces. This means that the figure of 6146 missing persons had already been formally established on this basis. Asserting a few months later that half of these people are "the fake disappeared" undermines the work of the "ad hoc mechanism" and that of the CNPPDH.<sup>27</sup>

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<sup>21</sup> N ° 03-299 of 11 September 2003 supplementing the Presidential 25 March 2001 establishing the National Advisory Decree No. 01-71 Committee for the Promotion and Protection of Human Rights (CNPPDH).

<sup>22</sup> Le Quotidien d'Oran, 13 April 2005.

<sup>23</sup> La Tribune, 22 September 2003.

<sup>24</sup> La Tribune 30 August 2005.

<sup>25</sup> Le Quotidien d'Oran, 8 December 2005.

<sup>26</sup> La Tribune, 21 September 2003.

<sup>27</sup> ALKARAMA for Human Rights, Algeria: Torture remains a common practice, April 2008, [http://fr.alkarama.org/index.php?option=com\\_docman&task=doc\\_download&gid=171](http://fr.alkarama.org/index.php?option=com_docman&task=doc_download&gid=171)

According to the associations of families of disappeared, "the ad hoc instrument" was in fact an instrument to identify the families of missing, so that they could be asked if they would accept compensation. Me Ksentini said during his mission that "70% of families encountered so far are willing to accept compensation with no political strings, within the strict framework of national solidarity".<sup>28</sup> These payments, which have been trumpeted as a form of social welfare assistance, are an attempt to end all claims for truth and justice from the victims' families.

None of the Human Rights Committee recommendations concerning the tragedy of enforced disappearances was taken into account or publicised by the Commission. "The ad hoc instrument" on disappearances, chaired by Mr Farouk Ksentini, has still not publicly released the report it submitted to the President of the Republic on 31 March 2005. No list of names of the missing has been published.

## **8. The national institution for human rights and the issue of the general amnesty proclaimed in Algeria**

In July 2003, Mr. Ksentini stated publicly that a commission of inquiry into the enforced disappearances needed to be set up: "This has been done in other countries. We must establish the responsibility of those concerned in this matter," He also recognised "the impunity" surrounding this case, which benefits agents of the state.<sup>29</sup>

He said in a later interview that the amnesty is the President's best option: "The primary beneficiaries of any such amnesty would be the people who belong to the institutions charged with having carried out these disappearances. This would result in the termination of all investigations. Of course, an amnesty would benefit a number of criminals, but it would be for the best, and it would be a sensible move, allowing Algeria to turn the page and move forward. In my opinion, the general amnesty is inevitable, all wars end this way. It is, however, a political decision, which will be taken when needed."<sup>30</sup>

During his various interviews, at no point does Me Ksentini mention the fact that the legal enactment of an amnesty for crimes considered crimes against humanity under international law is a violation of basic principles formulated in the Treaties to which Algeria is party.

## **9. Conclusion**

Algeria has been in a state of emergency since the 9th of February 1992, so the sub-committee could legitimately expect that, given the situation, the Commission would exercise its mandate with a high level of vigilance and independence.

In reality, the national institution's lack of commitment to the protection and promotion of human rights is clear, owing to non-compliance with key standards set out in General Comments, and hence of the Principles of Paris.

It is also important to stress that this institution is perceived by the general public and civil society in particular as purely a state tool, and does not therefore represent the interests of citizens' human rights.

Thus, any events - which are prohibited and punishable - by citizens that seek to challenge government policy on issues related to human rights, such as the protests by mothers of the disappeared, are conducted each week in Algiers outside the seat of the CCPDDH, which symbolises the state in the eyes of victims and the public.

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<sup>28</sup> L'Expression, 06 September 2004.

<sup>29</sup> El Watan, 6 July 2003.

<sup>30</sup> Le Monde, 8 January 2003.