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des
familles
de
disparu(e)s
en
Algérie

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TRUTH AND JUSTICE

FOR THE DISAPPEARED

IN ALGERIA

NEWSLETTER

Number 18 – January/March 2006

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PUBLICATION OF DECREE IMPLEMENTING THE CHARTER FOR PEACE AND NATIONAL RECONCILIATION

As foreseen in the last paragraph of the Charter for Peace and National Reconciliation adopted on 29 September 2005¹, the President of the Republic, Abdelaziz Bouteflika, used the full powers that have been conferred on him to enact measures, by means of an *ordonnance* and three presidential *décrets* published in the *Journal Officiel* on 28 February 2006². In spite of the determination of families of the ‘disappeared’ to have their rights to truth and justice recognised, the measures adopted by presidential decree seriously muzzle the rights and freedom of all victims of this national tragedy. The President, who had promised some months ago that the measures in the Charter would be debated in the National Assembly (*APN*), preferred to accelerate the process and short-circuit Parliament by using his powers to legislate by decree when the *APN* was not in session. The *APN*, whose session opened on 4 March, had to be content with voting for the decree.

Victims’ organisations come together to oppose the Charter’s measures

As soon as the announcement of the adoption of the measures by the Council of government was made, the *Collectif des familles de disparu(e)s en Algérie (CFDA)* and *SOS Disparu(e)s* convened on 24 February at the offices of *SOS Disparu(e)s*, and at the same time held a press conference. This was done together with the National Association of Families of the ‘Disappeared’ (*Association Nationale des Familles de disparu(e)s, ANFD*), the Association of families of Victims of Terrorism (*l’Association des familles de victimes du terrorisme, Somoud*), the National Organisation of Victims of Terrorism and Legal Claimants (*l’Organisation Nationale des Victimes du terrorisme et ayants droit*

¹ Charte pour la paix et la réconciliation nationale, Chap. V : « *Le Peuple algérien souverain [...] mandate le Président de la république pour prendre toutes mesures visant à en concrétiser les dispositions.* »

² JORA n° 11 du 28 février 2006

ONVTAD) and *Djazairouna* in order to express the complete rejection by all of the measures. These organisations formed a common front in order to alert Algerians to the grave violations of human rights contained in the measures and on the manifest impossibility of attaining peace through them. They particularly castigated Articles 45 and 46 which stipulate that “*No legal proceedings may be initiated, against an individual or a collective entity, belonging to any component whatsoever of the defence and security forces of the Republic, for actions taken for the purpose of protecting persons and property, safeguarding the nation or preserving the institutions of the Democratic and Popular Algerian Republic*” and for Article 46: that “*Anybody who, by speech, writing, or any other act, uses or exploits the wounds of the national tragedy, will be punished by three to five years of imprisonment and a fine of 250 000 to 500 000 Dinars*”

In the presence of 20 or so journalists, and several national and international organisations (*LADDH, Bnet Lalla Fatma Semeur, National Democratic Institute...*), the six NGOs expressed, with one voice, their indignation and contempt for the authorities: ‘if we have to go to prison because we are calling for our right to know the truth, we shall go to prison’. They thus demonstrated their firm intention of continuing to the end to find out the truth about the victims. Amine Sidhoum, lawyer and member of *SOS Disparu(e)s*, used the occasion to expose the contradictions between these measures and the rights of Algerians recognised in law, and particularly the violation of the right to freely express oneself and to form an association.

SOS DISPARU(E)S AND THE CFDA WRITE TO THE AUTHORITIES

On 26 February *SOS Disparu(e)s* wrote to all the authorities contacted during its campaign to raise awareness of what was at stake in the amnesty. The *CFDA*, from its side, contacted international authorities: the United Nations, the European Parliament.... who were aware of the issue thanks to the early *CFDA* campaign ‘*Caravane contre oubli*’. In these letters, the two organisations raised their fears at the imminence of the adoption of provisions

which outrageously violate the rights of families of the ‘disappeared’.

Following the publication of the decree in the *Journal officiel* on 28 February, the association sent a new letter to members of the two chambers in the Algerian Parliament.

100 FAMILIES OF ‘DISAPPEARED’ SUBMIT AN APPLICATION FOR ANNULMENT TO THE PRESIDENT

On 25 March more than 100 families of the ‘disappeared’ joined with Nassera Dutour, spokesperson for the *CFDA*, in order to call on the President, by means of a petition of reprieve, to annul measures of the Charter for Peace and Reconciliation. This action, which must precede an appeal procedure for an *ultra vires* action (*excès de pouvoir*) before the State Council (*Conseil de l’Etat*), expressly requires that the Head of State annul Decree No. 06-93 referring to the indemnisation of victims of the national tragedy. It asks him to abrogate measure No. 06-01 implementing the Charter for peace and national reconciliation as well as the Charter itself. In effect, indemnisation of the legal claimants (*ayants droits*) of the victims of the national tragedy is foreseen by the *ordonnance d’application*, which, as Article 37 says: ‘*the legal claimants of the victims of the national tragedy foreseen in Article 28 below, in possession of a conclusive pronouncement of death (de cuius) have the right to an indemnity paid by the State*’. Article 32 provides that ‘*the judgement of the death of the ‘disappeared’ can be pronounced at the request of one of the heirs, of any person having an interest or of the public ministry (du ministère public), and finally ‘any person not having given any sign of life and of which the body has not been found following investigation can be declared deceased (....). A certified or official report (procès-verbal de constat) of the ‘disappearance’ of the person concerned can be established by the police judiciaire (police detective?) after investigations. It is handed over to the legal claimants of the ‘disappeared’ or to any person having an interest, within a period not longer than one year from the date of publication of the present ordonnance in the Journal officiel.*”

Thanks to volunteer lawyers, the appeal has allowed the incompatibility of the measures to be highlighted. It has shown this in the first place in the Charter itself with regard to certain rights in several international conventions which have been ratified by Algeria - conventions to which the Algerian constitution gives a higher value than to national laws:(voir encadré)

PRINCIPAL HUMAN RIGHTS VIOLATIONS IN THE CHARTER MEASURES

The Charter for Peace and National Reconciliation and particularly regulation No. 06-01 of 28 February 2006 contain clauses which violate international conventions signed and ratified by Algeria. This includes the 1966 International Pact relative to civil and political rights (*PIDCP*) and the 1981 African Human and Peoples Rights Charter (*CADHP*).

The Charter violates:

The right of families to know the fate of their relatives and the circumstances in which they ‘disappeared’. This right is protected by Articles 16 of the *PIDCP* and Article 5 of the *CADHP* which guarantee the right to the recognition of the *personnalité juridique* and therefore the right for persons to lodge complaints before courts in their countries.

The right not to have to submit to inhuman and degrading treatment. This right is recognised in Article 7 of the *PIDCP*, not only with regard to the victim of the ‘disappearance’ - of which secret detention is considered equivalent to an inhuman treatment, but equally with regard to families of ‘disappeared’. The United Nations Human Rights Committee has recognised that lack of knowledge of the fate of their relatives constitutes a form of torture for the relatives.

The right to recourse assuring the guarantee of rights recognised by international conventions. Protected by *PIDCP* Articles 2§3 *CADHP* Article 6, the impossibility of taking criminal proceedings against agents of the State who are responsible for crimes is contrary to the right of persons to be able to have an effective appeal.

The right to freedom of expression and of association. Recognised in these two international conventions (Art 19§3 and 22 of the *PIDCP* and 9§2 and 10 of the *CADHP*, they protect the right of citizens to freely express themselves in their own country on all subjects and to form an association in order to peacefully defend their rights.

MOULOUD ARAB: FREED!

It is with great relief that *SOS Disparu(e)s* welcomes the decision of the Court of Algiers on 27 March 2006 to free M Mouloud Arab. This decision puts an end to the calvary endured for 6 months by this father aged 75, who was arrested on 15 September (see Information Letters 15 and 16). Charged with 'distributing subversive tracts undermining the national interest', M Arab was finally able to be heard, following several adjournments of the trial, largely due to the deterioration of the state of his health. After having heard the pleas of his three lawyers, including Me Haasiba Bourmerdassi and Me Amine Sidhoum, demanding the discharge of their client, the Court did not follow the very severe requirements of the State Prosecutor which call for six months prison without remission. M Arab's discharge is thus a small victory.

NAAMANE MEZICHE REAPPEARS AFTER HAVING 'DISAPPEARED' FOR 45 DAYS

A further victory due to the mobilising of organisations was obtained when M Naamane Meziche 'reappeared' on 19 February in Algiers. M Meziche, of Franco-Algerian nationality and resident in Germany with his wife and two children, had 'disappeared' after his arrest on 5 January 2006 by police at Algiers airport when he arrived from Frankfurt. He was taken away for an unknown reason by the Department of Information and Security (DRS) of Ben Aknoun in Algiers. Very concerned at this situation - the father and a brother of M Meziche had 'disappeared' in 1995 after their abduction by the DRS - *SOS Disparu(e)s* and *CFDA* increased their calls for intervention by the Algerian authorities, French and German embassies and foreign offices, as well as by several human

rights organisations (Amnesty International, *FIDH*, *HRW*...). Today, M Meziche, charged with 'belonging to an active foreign network of terrorists' has benefited from the amnesty measures. The case of Naamane Meziche again shows, as the *CFDA*, *SOS Disparu(e)s* and human rights NGOs claim, the fundamental right of all that their cause be heard publicly and openly by an independent and impartial court.

DEEP DISAPPOINTMENT AT THE TRIAL OF MILITIA IN RELIZANE

The trial of two members of the militia, Ahmed Draou and Mohamed Ferrague, accused by families of kidnapping and suspected of torture and killings, opened on 20 February 2006 in Relizane. They had arrested Abdallah Brahimi at his home on 13 May 1995 at 1 am. During the arrest Ahmed Draou had fired at Brahimi's leg on the pretext that Brahimi wanted to flee; he then took him away. Miloud Ameur Mohamed was abducted on 10 August 1995 with his nephew of 19, Miloud Ameur Mokhta, by these same men. Before leaving they vandalised the field, burnt the house, took away the tractor, jewels and money of the whole family. Symbolically this trial was of major importance since for the first time Algerian Justice would have pronounced upon the excesses of its agents during the civil war. Unhappily the trial of the Relizane militia only lasted long enough for the President of the Court to decide the adjournment (*le renvoi*) of the hearing for further enquiry and to order the release of Mohamed Farrague who was in provisional custody. *SOS Disparu(e)s*, of which several members had made the journey to Relizane, was only able to note - once more - the impotence of Algerian Justice.

FIRST EVALUATION MISSIONS IN ALGERIA

The *CFDA* and *SOS Disparu(e)s* made their first evaluation missions to families of the 'disappeared' during January 2006. Intended to establish a global assessment of the needs of families of the 'disappeared', they will also provide the occasion for *SOS Disparu(e)s* to collect new testimony and to check on 'disappearance' files. A small delegation,

consisting of Nassera Dutour, Spokesperson for the *CFDA*, one of the *SOS Disparu(e)s* lawyers in Algiers, Amine Sidhoum, and an assistant who specially came from Paris, went to Jijel for three days and then to Laghouat for two days. In the small commune of Emir Abdelkader, near Jijel, the delegation met more than 30 families and recorded new files on 35 'disappeared' persons. The majority of these had been arrested in the course of two perquisitions, organised by the military security with the complicity of the militia, during the nights of 19-20 August and 22-23 August 1996. In the south of Algeria, in Laghouat, welcomed by the Algerian League for the defence of Human Rights (*LADDH*), the delegation met numerous victims' families and was able to bring back 50 'disappeared' files by families who had never transmitted them to any other organisation or authority, national or international.

The two organisations envisage continuing these missions throughout the year 2006.

NEW MEETING OF *SOS DISPARU(E)S* WITH FAROUK KSENTINI

On 11 February 2006, several members of *SOS Disparu(e)s*, including the President Fatima Yous, met, at their request, Me Farouk Ksentini, President of *CNCPDH* and of the defunct *ad hoc* commission. They were able, together, to review what has followed from the report submitted by the Commission to the President of the Republic on 31 March 2005. M Ksentini asserted that, according to him, it was necessary that a consensus exist between the Algerian authorities and the families for an effective resolution of the issue of the 'disappeared'. He took this up in an interview given to Channel 3 on 18 February. Unhappily, the goodwill displayed by M Ksentini does not seem to weigh very highly in view of the presidential decision to end once and for all the issue of the 'disappeared'.

THE FAMILIES APPEAL TO THE MINISTER OF THE INTERIOR

Having obtained no response to the large number of demands to meet with the President of the Republic, Abdelaziz Bouteflika, families of the 'disappeared' questioned the Minister of the Interior, Yazid Yerhouni, by

means of two letters on 6 and 23 March 2006. These asked him firstly, to stop the intimidation that families face from his services, and secondly, requested a meeting so that they could discuss with him the measures adopted and particularly 06-01 of 27 February 2006. Indeed, not only is this measure restricted to the proposal for financial compensation but, worse, this is conditional upon obtaining a death judgement from the families. Copies of these letters were addressed to M Ksentini asking him to intercede with the minister, without result.

9. PERILOUS OFFICE RENEWAL FOR *SOS DISPARU(E)S*

The tenancy agreements of *SOS Disparu(e)s* expired during the month of March, and it was not without difficulty that new offices were found to house *SOS Disparu(e)s* in Algiers. The *CFDA*, which systematically sees all its demands for approval rejected by the administrative authorities, has come up this year with what seems to be a deliberate intent to prevent the organisation of families of the 'disappeared' continuing. Thus *SOS Disparu(e)s* has seen the door closed to it by several proprietors of premises, who, without doubt victims of intimidation, have preferred to renege at the last minute on an agreement already made. However, thanks to the determination of *SOS Disparu(e)s* and *CFDA*, the organisation has been able to find new offices *in extremis*:

<p><i>Algiers office new address</i> <i>SOS disparu(e)s 13, boulevard Mohamed V</i> <i>16 000 Alger</i></p>

<p><i>Oran office new address</i> <i>SOS Disparu(e)s 8, rue Stora</i> <i>41 000 Oran</i></p>
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SHORT NOTES

CREATION OF MAGHREB HUMAN RIGHTS COORDINATION

Nassera Dutour, Spokesperson of the *CFDA*, participated in a seminar 'Human rights in the countries of the Maghreb?', organised by the Moroccan Human Rights organisation (*AMDH*) in Rabat, Morocco. This seminar brought together numerous human rights organisations active in several countries of the Maghreb. The *Coordination maghrébine des organisations des droits humains (CMODH)* was created on 30 March; it brings together 14 organisations of which the *CFDA* is an observer member.

PROPOSAL FOR A SEMINAR WITH THE SUPPORT OF THE FRIEDRICH EBERT FOUNDATION

In order to carry out its idea for a seminar concerning the establishment of a Commission for Truth and Justice in Algeria, *SOS Disparu(e)s* had contact with those in charge of the *Fondation Friedrich Ebert* in Algiers in order to present their proposal and ask for their partnership. This proposal has as its first objective to consider the way to create, in Algeria, such a Commission. The representatives of the Foundation were interested and did not exclude the possibility of logistical support for it.

UPDATING OF FILES CONTINUES AT *SOS DISPARU(E)S*

Updating of 'disappeared' files, which began several months ago in the office in Algiers, continued during early 2006, particularly with the files from the wilaya of Jijel.

PLAN FOR THE CREATION OF A COMMON DATA BASE

The *CFDA*, *ANFD* (National Association of Families of the 'Disappeared') and *Djazairouna* (Victims of Terrorism Association) met in order to design a common data base which would permit all cases of 'disappearance' which occurred during the 'black decade' to be brought together. This project could be carried out with the financial support of the American NGO, the World Fund for Human Rights.

CFDA CONSEIL D'ADMINISTRATION

The *CFDA* held its *Conseil d'administration (CA)* on 15 March 2006. During this meeting, after the presentation of the annual report for 2005, the considerable progress of the association, particularly in the matter of political lobbying, was underlined by members of the *CA*. The annual general meeting of the *CFDA* was fixed for 26 April 2006.

POSTPONEMENT OF THE FIRST EUROPEAN UNION-ALGERIA ASSOCIATION COUNCIL

The first meeting of the EU-Algeria Association Council, which should have taken place on 21 March in Brussels, was officially postponed until September - after the Algerian authorities decided unilaterally to cancel it because of disagreement about several points appearing in the EU declaration.

HUMAN RIGHTS BOOK SHOW

The *CFDA* had a stand at the Human rights book show which is organised each year in Paris by the *Ligue française des droits de l'Homme* (French Human Rights League). This was a new occasion for the *CFDA* to present the work carried out by the organisation since its creation, to make the association and its evolution known, and to raise the public's awareness of the drama of forced disappearance.