

## **Truth and Justice on Hold: The New State Commission on “Disappearances”**

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## I. Summary

On September 20, Algerian President Abdelaziz Bouteflika announced a new body to investigate the thousands of cases of persons who were “disappeared” during the civil strife of the 1990s and who remain unaccounted for. The announcement reflected a growing acknowledgement of the state’s responsibility for resolving the tragedy of “disappearances.”

The presidential decree defining the new mechanism’s powers and mandate were made public in mid-November. The decree gives this new body weak investigative powers and defines the information it can seek narrowly. While it may take the welcome steps of verifying claims of “disappearance” and proposing compensation to families, it is unlikely to challenge the long-standing refusal of state agencies to divulge how “disappearances” were carried out by their agents and which units and individuals are responsible for them. Unless it embraces a more expansive interpretation of its mandate to investigate and make recommendations, the new body is unlikely to help Algerians turn the page on this national tragedy and end the climate of impunity for human rights abuses.

Since 1999 there have been only very isolated reports of new “disappearances.” However, the state has not implemented legal and institutional safeguards surrounding arrest and detention procedures that would help to prevent the practice in the future.

Police continue to sporadically harass relatives of the “disappeared” who demonstrate regularly to demand to know the fate of their missing. And Algeria, although a member this year of the United Nations Commission on Human Rights, has refused since 2000 to grant a request for a visit by the U.N. Working Group on Enforced and Involuntary Disappearances.

## II. The President Announces a New Commission on “Disappearances”

President Abdelaziz Bouteflika announced on September 20, 2003, a new “ad hoc mechanism” to address Algeria’s thousands of cases of “disappeared” persons. The mechanism, which will report to the office of the president, is the first mechanism authorities have established to deal solely with this issue. Bouteflika announced its creation in a speech covered on state television and delivered before senior government officials and powerful members of the military establishment.<sup>1</sup> The speech reflected the growing acknowledgment of the state’s responsibility for resolving the tragedy of “disappearances,” in which several thousand Algerians were abducted, mostly by state agents, during the civil strife of the 1990s and remain missing to this day.

Two months after this high-profile announcement, the decree defining the commission’s mandate and powers was made public.<sup>2</sup> The decree confirmed the president’s presentation of the commission as more of an “interface” between public authorities and victims’ families than as a commission of inquiry. While it speaks of investigations and possible compensation and assistance to families, the decree makes no explicit reference to any rights belonging to victims or to their relatives. With its weak investigative powers and narrow mandate, this new commission is unlikely to provide the measures of truth, justice, and restitution that will allow Algerians to reckon fully with this long-standing and continuing tragedy.

The decree creates the new mechanism as a temporary, ad hoc body within the institutional framework of the National Consultative Commission for the Promotion and Protection of Human Rights (Commission nationale consultative de promotion et de protection des droits de l’Homme, CNCPPDH), which reports to the president.<sup>3</sup> President Bouteflika named Moustapha Farouk Ksentini to head the mechanism. Ksentini, a lawyer, continues to head the CNCPPDH itself.

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<sup>1</sup> The text of the speech in French can be found on the website of the Office of the President, [www.el-mouradia.dz](http://www.el-mouradia.dz) (retrieved November 18, 2003).

<sup>2</sup> Presidential decree 03-299 of September 11, 2003, published in the *Journal Officiel* of September 14, 2003, online at [www.joradp.dz](http://www.joradp.dz). The *Journal Officiel* is normally published several weeks after the issue date.

<sup>3</sup> The CNCPPDH was established by presidential decree 01-71 of March 25, 2001, published in the *Journal Officiel* of March 28, 2001, online at [www.joradp.dz](http://www.joradp.dz).

For nearly a decade, state institutions charged with handling complaints of “disappearances” failed utterly to provide families with credible information about the fate or whereabouts of their relatives, or to identify persons or units responsible for carrying out “disappearances.” These include the now-defunct National Human Rights Observatory (Observatoire national des droits de l’Homme, ONDH), its successor, the CNCPPDH, and the regional offices that the Ministry of Interior established in 1998 to receive complaints of “disappearances.” These regional offices were structurally part of the security apparatus implicated in the “disappearances”; the ONDH and the CNCPPDH, while structurally independent of the security forces, lacked any statutory or de facto means of compelling security forces to cooperate with requests for information.

Algeria’s courts have also failed to provide remedies to the hundreds, if not thousands, of families who have filed cases concerning relatives abducted by the security services. President Bouteflika declared in a 1999 interview, “Algerian justice will spare no effort, conducted in the framework of the law, to seek solutions to [“disappearance”] cases fully documented with verified evidence.”<sup>4</sup> However, lawyers queried by Human Rights Watch said they knew of no case that resulted in a court locating a “disappeared” person, alive or dead, or in identifying or charging members of the security forces for their role in a case of “disappearance.” Even when they produced eyewitnesses willing to testify, plaintiffs received no response whatsoever from the prosecutor’s office or from the investigating judge, or the case remained “pending” with no progress reported, or the responsible judge ruled to close the file.

The new mechanism is endowed with few statutory powers greater than those of the earlier institutions that proved so ineffective in clarifying “disappearances.” The decree states that the mechanism shall be in charge of the “centralization and consolidation of all facts related to the question of ‘the disappeared.’” It will also be tasked with - “coordination among the different branches involved in handling the issue of resolving legal matters emanating from cases that have been resolved.” (This is presumably a reference to issues of civil status, inheritance, custody, and the like.) And the body will also “ensure regular communication with the families of persons declared as ‘disappeared.’”

However, in terms of the search for the truth, the mechanism’s mandate is limited to “identifying cases of alleged disappearances” and “determining the whereabouts of persons declared as ‘disappeared.’” It has no statutory mandate to establish what

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<sup>4</sup> Interview, *Middle East Insight*, November 1999.

happened to persons from the moment they were taken into custody, or to identify persons or units implicated in their illegal detention and “disappearance.”

In pursuit of its objectives, the mechanism is “empowered” to:

- “gather from public bodies and all concerned parties the information necessary to the accomplishment of its mission;
- “gather any information that could help identify and locate a person declared as ‘disappeared’; and ....
- “receive any useful testimony, seek any information and request the submission of any document useful for the accomplishment of its mission.”

The commission is tasked with “get[ting] the appropriate authorities to conduct the research necessary to locate persons declared as ‘disappeared’ and to carry out procedures to identify the bodies that are found.” However, neither the decree nor the president’s speech indicates that the body will have the power to compel testimony or the production of documents, or to conduct onsite inspections at will. It can make requests, but there is no threat of sanctions for officials who fail to cooperate with such requests. In light of this, the new mechanism will likely confront continued stone-walling by state agents when it comes to revealing the fate of persons who “disappeared” in their custody.

The mechanism is to “inform the families of persons declared as ‘disappeared’ of the result of the search undertaken and to orient them on the procedures to follow to resolve legal issues of civil status and inheritance emanating from the various situations.” Here, and in several other places, the decree implies that the “disappeared” are deceased. Nowhere does it include language pertaining to cases where a missing person may be found alive. For example, the commission is to “devise, in coordination with public authorities, measures to provide aid and compensation to the beneficiaries of ‘disappeared’ persons.” It is to “propose measures of financial or material assistance and psychological support to families of persons who have ‘disappeared.’” But it is not asked to draw up any plan for rehabilitating, providing psychological help for, or compensating persons found alive. Whether such cases exist is a matter for a thorough and independent investigation; the commission gets off on the wrong foot by implicitly pre-judging the question.

Of course, confirming a death to families who have been in agonizing uncertainty for years will bring a measure of closure and enable them to conduct their mourning. But such a disclosure needs to be done in a fashion that enables the family to verify the information if it so wishes. On this, the decree is silent.

From the decree, the president's speech, and the many statements to the press made by Ksentini, it would appear that the new structure may be a vehicle for an eventual state admission of responsibility in an unspecified number of "disappearance" cases, and for initiating a process for compensating relatives.

Human Rights Watch welcomes steps by the state to acknowledge responsibility for "disappearances" and to fulfill the important right of families to receive compensation. However, unless the mandate and powers of the new mechanism are broadened considerably beyond the way they have been publicly presented so far, it will not fulfill Algeria's obligations under international law. It will also likely to contribute little to helping Algerians "turn the page" on this traumatic issue.

First, the new mechanism, without strong powers to investigate, will be unable to provide families with concrete information about what happened to their relatives after their abduction. In Human Rights Watch's view, the families' right to know means the right to obtaining as full a picture of the "disappearance" of their relative as can be reliably assembled. They have a right to know, if they so desire, the motives and circumstances of the arrest; whether the "disappearance" was premeditated or spontaneous; and, if the victim died, the date, location, and circumstance of death.

If an investigative commission, using appropriately rigorous standards of evidence, identifies individuals or units suspected of perpetrating "disappearances," their names should be referred to police and judicial authorities capable of taking appropriate action. In most cases they should also be rendered public, unless doing so could jeopardize a criminal investigation or could otherwise prejudice the interests of justice.

Algeria's commission, by contrast, is unlikely in its current form to expose the perpetrators of "disappearances" or challenge the complete impunity that they have enjoyed. President Bouteflika declared in his speech that the mechanism "must not be seen as a commission of inquiry that would take the place of the appropriate administrative and judicial authorities." On the one hand, the mechanism has no mandate to identify those persons or agencies suspected of responsibility for carrying out "disappearances." But on the other hand, if this is the job of administrative and judicial authorities, they have done anything over the past decade to identify the perpetrators and bring them to justice.

On the question of whether the page can be turned on past atrocities while ignoring the identity of perpetrators, the Commission on the Truth for El Salvador provides a useful

precedent. Its 1993 report named forty perpetrators from both sides of that country's civil war, the majority of them Salvadoran military officers. The commission explained its action thus:

[T]he whole truth cannot be told without naming names.... [T]he Commission was asked to describe exceptionally important acts of violence and to recommend measures to prevent the repetition of such acts. This task cannot be performed in the abstract, suppressing information...where there is reliable testimony available, especially when the persons identified occupy senior positions and perform official functions directly related to violations or the cover-up of violations. Not to name names would be to reinforce the very impunity to which the Parties instructed the Commission to put to an end.<sup>5</sup>

According to Thomas Buergenthal, one of the commissioners, the option of keeping the names confidential and transmitting them to Salvadoran police and courts for possible action was ruled out on the grounds that the justice system was "corrupt, ineffective, and incapable of rendering impartial judgments in so-called 'political' cases."<sup>6</sup>

In Algeria, as elsewhere, it is important to release the information collected by a thorough investigation not only to the victims' families but also to the public at large. The Algerian people have a collective right to information about past oppression as part of their national heritage, and also as a tool in their efforts to build safeguards against a recurrence of "disappearances" in the future.

President Bouteflika, rejecting the notion that the new mechanism would be a commission of investigation, presented it instead as "firmly based within the vast project of national reconciliation." This was a troubling reference to the amnesty-driven policy of "Civil Harmony" that he implemented shortly after his election in 1999. The centerpiece of that policy, the Law of Civil Harmony, offered to armed rebels who surrendered a reduction or conversion to probation of the criminal penalties they would

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<sup>5</sup> *From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador*, UN Doc. S/25500, Annex, 1993; reprinted in United Nations, *The United Nations and El Salvador: 1990-1995* (New York: United Nations, 1995), p. 25, online at [http://www.usip.org/library/tc/doc/reports/el\\_salvador/tc\\_es\\_03151993\\_mandate.html](http://www.usip.org/library/tc/doc/reports/el_salvador/tc_es_03151993_mandate.html) (retrieved November 24, 2003).

<sup>6</sup> Thomas Buergenthal, "The United Nations Truth Commission for El Salvador," *Vanderbilt Journal of Transnational Law* 27 (1994), p. 520.

normally face.<sup>7</sup> In practice, the law undermined individual accountability because authorities chose, in the vast majority of cases, to amnesty militants without investigating whether they had committed indiscriminate killings or other atrocities that were supposed to have been exempted from the amnesty.<sup>8</sup>

In a further indication that the new mechanism will contribute nothing to ending impunity, Ksentini was quoted on September 22, two days after the mechanism was announced, as opposing legal accountability for the perpetrators. “Algeria is not in a position to do it because the social ruptures are just too great,” he told Reuters. “With so many deaths and so many divisions in the country,” he said, “the state should apologize so that the page can be turned.”<sup>9</sup>

It is regrettable that the head of the new mechanism on the “disappeared” espouses a pro-impunity position that contradicts international law. Widespread and systematic “disappearances,” such as were perpetrated in Algeria over the past decade, constitute crimes against humanity. International jurisprudence and standard-setting of the last ten years have consolidated the view that those responsible for crimes against humanity and other serious violations of human rights should not be granted amnesty.<sup>10</sup>

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<sup>7</sup> For an English translation of the law, see [http://www.algeria-interface.com/new/article.php?article\\_id=463&lng=e](http://www.algeria-interface.com/new/article.php?article_id=463&lng=e) (retrieved November 24, 2003).

<sup>8</sup> Amnesty International noted, “Consistent reports during the last three and a half years have indicated that individuals or groups of individuals who gave themselves up after 13 January 2000 have been allowed to return home immediately or shortly after their surrender, suggesting that they are being granted exemption from prosecution. Given that such measures do not fit within the framework of any legal provisions, they can only be described as arbitrary. Moreover, no investigations appear to be conducted into what human rights abuses, such as killings of civilians, these former armed group members may have committed.” Amnesty International, “Algeria: Steps toward Change or Empty Promises?” London: Amnesty International, 2003, online at <http://web.amnesty.org/library/Index/ENGMDE280052003>. See also Human Rights Watch, *World Report 2002* (New York: Human Rights Watch, 2002), p. 407 online at <http://www.hrw.org/wr2k2/mena1.html>.

<sup>9</sup> Paul De Bended, “Interview: Algeria Should Apologise for Disappearances, Not Prosecute,” *Reuters*, September 22, 2003. Ksentini had earlier in 2003 come out in favor of a general amnesty: “The first beneficiaries of such an amnesty would be persons belonging to institutions accused of having carried out disappearances.... Such a measure would have the effect of halting all investigations. To be sure, an amnesty would benefit a certain number of criminals, but that’s the way it works, and it’s the best we can hope for to enable Algeria to turn the page and move forward. A general amnesty is in my view inevitable. All wars end thus, but it’s a political decision that will be made at a particular moment.” “Farouk Ksentini, président de la Commission nationale de protection des droits de l’homme : ‘Une amnistie générale est inéluctable,’” *Le Monde*, January 7, 2003. Ksentini also made similar arguments before Algerian journalists on October 6, 2002. See Mohamed Zaâf, “L’amnistie, c’est la paix civile,” *Le jeune indépendant*, October 7, 2002.

<sup>10</sup> This point is emphasized by expert Manfred Nowak in his 2002 report on “disappearances” to the U.N. Commission on Human Rights: “As the [U.N.] Human Rights Committee rightly concluded, in the case of particularly serious human rights violations, such as enforced disappearances, justice means criminal justice, and purely disciplinary and administrative remedies cannot be deemed to provide sufficient satisfaction to the victims. Perpetrators of enforced disappearance should, therefore, not benefit from amnesty laws or similar measures.” United Nations Commission on Human Rights, “Report submitted January 8, 2002, by Mr. Manfred



The new mechanism may contribute to verifying "disappearances" and compensating families. But this does not negate the state's obligation to hold perpetrators accountable, whether or not the mechanism is itself the best vehicle for achieving this. Moreover, the persistence of impunity arguably makes it harder for Algerians to eradicate the practice of "disappearances" in their midst.

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Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearance, pursuant to paragraph 11 of Commission resolution 2001/46" (New York: United Nations, 2002), E/CN.4/2002/71, online at [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2002.71.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2002.71.En?Opendocument) (retrieved November 18, 2003).

### III. “Disappearances” in Algeria

Between 1992 and 1998, Algerian security forces and their civilian allies organized in “self-defense groups” arrested and “disappeared” more than 7,000 persons who remain unaccounted for to this day.<sup>11</sup> Not one security force agent accused of participating in an act of “disappearance” has been charged or brought to trial, and few, if any families of a “disappeared” person have been provided with concrete, verifiable information about the fate of their missing relatives.

The “disappearances” occurred in the context of widespread political violence that claimed over 100,000 lives in the decade since 1992. Armed groups fighting the government targeted not only the security forces but also indiscriminately slaughtered thousands of civilians. Security forces engaged in summary executions, “disappearances,” and a systematic practice of torture. The violence continues in certain regions of the country, although the number of victims has declined considerably in recent years.

Government discourse on the “disappeared” has evolved substantially since the mid-1990s, due to domestic and international pressure. Authorities first denied the problem. Then, beginning in 1998, they acknowledged but minimized it while claiming to be investigating and resolving individual cases. But the issue continued to tarnish Algeria’s image abroad. In 1999, officials began acknowledging the problem as a difficult one that needed to be addressed.

While the number of new cases dropped sharply with the overall decline in political violence since 1999, “disappearances” are not merely a legacy from the past. There are continuing, though rare, reports of new cases. Authorities have not put in place new legal or enforcement safeguards to prevent the security forces from reviving this abhorrent practice. State agents continue to flout with impunity those laws that are designed to ensure that a person’s arrest is recorded and regulated. And in a violation of

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<sup>11</sup> The national gendarmerie, the agency under Ministry of Defense authority that is charged with conducting investigations in response to “disappearance” complaints, reportedly acknowledged receiving 7,046 complaints about “disappeared” persons. Cited in Florence Beaugé, “En Algérie, aucun survivant parmi les disparus de la ‘sale guerre,’” *Le Monde*, January 7, 2003. Ksentini of the CNCPPDH told Human Rights Watch in November 2002, “I think there are 7,000 to 10,000 cases total, maybe as many as 12,000.” He made clear he was referring to cases for which the security forces and their allies were responsible. Quoted in Human Rights Watch, “Time for Reckoning: Enforced Disappearances in Algeria,” *A Human Rights Watch Report*, vol. 15, no. 2(E), February 2003, online at [www.hrw.org/reports2003/algeria0203](http://www.hrw.org/reports2003/algeria0203).

the right to freedom of association, police continue to harass men and women who demonstrate publicly on behalf of abducted children, spouses, and siblings.

Algeria could also be far more cooperative with U.N. mechanisms when it comes to the issue of “disappearances.” The U.N. Working Group on Enforced and Involuntary Disappearances (WGEID) has been seeking permission since 2000 from authorities to visit Algeria, and has over 1,000 unresolved cases from that country. Algeria is not among the 48 U.N. member states that have issued a standing invitation to the Thematic Special Procedures of the United Nations Commission on Human Rights (of which the WGEID is one), even though Algeria is itself a member of the Commission.<sup>12</sup>

Human Rights Watch published in February 2003 a report on “disappearances” in Algeria, a follow-up to its 1998 report on the same subject.<sup>13</sup> Algerian authorities have not responded directly to the report’s findings or recommendations. Nor have they approved Human Rights Watch’s many requests since January 2003 for visas to conduct research, just as they have refused entry to Human Rights Watch and other human rights organizations for long periods in the past.

### ***Persons Abducted by Armed Groups and Still Missing***

In addition to the “disappearances” where the available evidence points to security forces or their allies as the perpetrators, there are hundreds if not thousands of abducted and still-missing Algerians where the evidence points to armed groups as the perpetrators. No organization or government agency has compiled a nominative list of such cases, and there is no reliable estimate of the magnitude of the problem.

One nongovernmental organization founded in 1996 by families of missing persons, Somoud (Arabic for “steadfastness”), claims that the number of Algerians kidnapped by armed groups since 1992 is around 10,000, of which more than half remain missing. Rabha Tounsi, national secretary of the National Organization of Families and Beneficiaries of Victims of Terrorism (l’Organisation nationale des victimes du terrorisme et ayants-droit, ONVTAD), told a Human Rights Watch delegation on May 22, 2000, that there were about 4,200 cases of people abducted by the armed groups

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<sup>12</sup> For a list of the 48 countries, see <http://193.194.138.190/html/menu2/2/invitations.htm> (retrieved November 19, 2003).

<sup>13</sup> Human Rights Watch, “Time for Reckoning,” and Human Rights Watch, “Neither Among the Living nor the Dead: State-Sponsored ‘Disappearances’ in Algeria,” *A Human Rights Watch Report*, vol. 10, no. 1(E), February 1998, online at [www.hrw.org/reports98/algeria2](http://www.hrw.org/reports98/algeria2) and in Arabic at <http://www.hrw.org/arabic/reports/2002/alg98-1.htm>.

whose bodies had not been found. Ksentini put the number of persons missing as the result of armed groups at 10,000.<sup>14</sup>

Relatives of missing persons have a common anguish regardless of whether the perpetrators were the security forces or the armed groups that are fighting the government. They confront many of the same economic problems when the missing person is a family bread-winner, and many of the same legal problems when the person is missing but not legally dead.

The decree establishing the new mechanism does not define a “disappearance,” but the language suggests it will accept cases from any family that declares a member to be “disappeared,” regardless of the suspected culprits. Ksentini has for his part often used the term “disappeared” when referring both to victims of the security forces and of armed groups fighting the government. In a meeting with representatives of the Algiers-based Somoud that took place after the mechanism was announced, Ksentini indicated that it would receive and investigate cases of persons allegedly abducted by armed groups, and provide information to families and formulate recommendations regarding social assistance and compensation for them, according to Somoud Secretary-General Adnane Bouchaïb.<sup>15</sup> Bouchaïb’s father was kidnapped by an armed group in 1995 and has been missing since.

### ***Prelude to the New “Mechanism”***

Ksentini said early in his CNCPPDH tenure that with respect to “disappearances,” “the truth must become known, whatever it may be. The honor of the country and its institutions are at stake. The horrible things from the last few years must never be repeated.”<sup>16</sup>

In late March 2003, the CNCPPDH, Algeria’s official human rights commission, reportedly submitted its first formal report to President Abdelaziz Bouteflika.<sup>17</sup> CNCPPDH head Ksentini said in interviews at the time that his institution had made the issue of “disappearances” a top priority during its first year. While the commission’s

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<sup>14</sup> Amar Rafa, “Le dossier des disparus peut être réglé en quatre à cinq mois,” *La Tribune*, September 22, 2003.

<sup>15</sup> Human Rights Watch phone interview, October 31, 2003.

<sup>16</sup> “Me. Farouk Ksentini: ‘Il faut que la vérité sur les disparus soit révélée,’” *Algeria Interface* (an online journal), June 28, 2002 [an online journal], [http://www.algeria-interface.com/new/article.php?article\\_id=570](http://www.algeria-interface.com/new/article.php?article_id=570) (retrieved October 30, 2003).

<sup>17</sup> Nacer Boucetta, Secretary-General of the Commission, stated that the report had been submitted by the end of March to the president. Human Rights Watch phone interview, August 2, 2003.

report to the president has not been made public, Ksentini said he had recommended the president establish a first-ever body to conduct investigations into the thousands of “disappearances” carried out in the mid-1990s and provide answers to the families about the fate of missing persons.

“This commission of inquiry, in contrast to the CNCPPDH, which cannot conduct investigations, should have the ability to investigate case by case,” Ksentini said on March 29 at the Forum el-Moudjahid, a speaking venue in Algiers sponsored by the daily newspaper *El-Moudjahid*.<sup>18</sup>

Ksentini said the issue of the “disappeared” needs to be resolved once and for all, and that “informing the families” constituted a basic duty. He also said it was necessary to establish the precise number of “disappearances,” “distinguish the real from the false cases,” “rehabilitate the genuine ‘disappeared,’” “provide [material and social] assistance to those families that wished it,” and ensure “the right of families to know the truth.”<sup>19</sup>

But Ksentini’s declarations at the time cast doubt on the freedom the new body would enjoy to pursue evidence where it may lead. Most significantly, Ksentini insisted, *a priori*, that while individuals might be guilty of carrying out “disappearances” state institutions as such could not be implicated. “Disappearances,” he declared, according to *Liberté*, “are the work of individuals, members of the army who took the decision themselves to carry out illegally the abduction of such-and-such a person.”<sup>20</sup> They are not, he insisted, “the work of state institutions,” *Le Matin* quoted him as saying. “I refuse to believe or admit that the National Popular Army could have ordered such outrages.”<sup>21</sup>

Since January 2003, Ksentini has been often quoted as calling the state and its institutions “responsible” for “disappearances” insofar as they had failed their constitutional duty to protect citizens, but not “guilty” of having committed these crimes. The first “disappeared” he said repeatedly, was the state itself, whose “absence” during the bloodiest years of internal strife in the mid-1990s created “a certain chaos and disorder that permitted individuals and groups of individuals to act in a totally illegal fashion.”<sup>22</sup>

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<sup>18</sup> Nadia Mellal, “Issad et Ksentini disculpent l’armée,” *Liberté*, March 30, 2003.

<sup>19</sup> “Le rapport annuel sera remis à Bouteflika à la fin du mois,” *Le Matin*, March 30, 2003.

<sup>20</sup> Nadia Mellal, “Issad et Ksentini disculpent l’armée,” *Liberté*, March 30, 2003.

<sup>21</sup> *Le Matin*, March 30, 2003.

<sup>22</sup> Arab Chih, “Farouk Ksentini : C’est un holocauste qui se prépare,” *El-Watan*, March 30, 2003.

It would severely handicap any effort to establish the truth and identify the reforms needed to prevent future “disappearances” if any future investigation — or the country’s judicial institutions, for that matter — were prevented, *a priori*, from exploring the responsibility of parties superior in rank to those state agents who physically took part in acts of forcible disappearance. It is not credible to impute to “chaos” the fact that over the course of more than five years, in streets, homes, and workplaces across the country, state agents seized, with impunity, a total of several thousand Algerians whose whereabouts remain unknown to this day. These acts, and their cover-up, were systematic.

In later comments, Ksentini entertained the possibility of criminal prosecutions for “disappearances” while continuing to insist that they must be considered as the acts of rogue individuals that did not implicate state institutions. The daily *l’Authentique* of May 10 quotes him as saying:

If it comes to be proven that these “disappeared” persons have in fact died or were the victims of summary executions carried out by certain agents of the state acting in complete disregard for the law amidst the disorder and chaos to which the county was reduced between 1992 and 1999, it would be appropriate in my view for the State to offer its apology to the nation and to families of the “disappeared,” without prejudice to the criminal prosecution of individuals who abused their status as state agents to commit illegal acts against persons whose security the State itself, according to the intent of the Constitution, was supposed to guarantee.<sup>23</sup>

The mechanism created by President Bouteflika tracks what Ksentini advocated in his public comments. Its mandate focuses on verifying alleged cases of “disappearances,” exploring formulas for state acknowledgement, compensation, and social assistance, but not on probing issues of responsibility or of fact—questions that might, in Ksentini’s view, aggravate Algeria’s “social ruptures.”<sup>24</sup>

The seven-member commission named by Bouteflika also is consistent with Ksentini’s insistence that it exclude foreigners. In a radio interview in March, he said, the eventual

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<sup>23</sup> “Me. Farouk Ksentini à l’Authentique: “3,300 personnes enterrées sous X subiront des tests ADN,” *l’Authentique*, May 10, 2003.

<sup>24</sup> “Interview,” Reuters, September 22, 2003.

body should be “purely Algerian, composed of Algerians. It is out of the question to permit foreigners to interfere in our affairs. It is simply a matter of sovereignty and of principle. Besides, the problem of the ‘disappeared’ is a purely Algerian problem. It is up to Algerians to resolve it.”<sup>25</sup> However, in a two-hour meeting with families of the “disappeared” on March 27, Ksentini said it is conceivable for the commission to invite foreigners as observers, according to one person present at the meeting. The decree states that the new mechanism “may call upon any expert whom it believes can contribute to the accomplishment of its mission.”

In addition to Ksentini, the members, designated by President Bouteflika “on behalf of civil society and the professions” are judge Bencheikh el-Hachemi, physician Zoubir Zehani, former National Popular Assembly deputies Abdelkrim Sidi Moussa and Ahmed Bayoud, Red Crescent President Abdelkader Boukhroufa and journalist Nacéra Belloula. Bouteflika said in his speech that their selection was “dictated by twin concerns: those of impartiality and independence and also of effectiveness.”

Human Rights Watch believes that the nationality of commission members is less important than the question of whether the commission is endowed with the expertise, powers, resources, independence, and transparency to conform to international standards for a body investigating grave crimes such as “disappearances.” Furthermore, without questioning the credentials of the appointees, it is noteworthy that the panel does not include a member of the movement of the families of the “disappeared” or any lawyers who have represented them.

The body will have a mandate lasting eighteen months, according to the decree. It will be tasked with producing interim reports as well as a general report encompassing “the commission’s work, including the information gathered and the results of its analysis, the measures taken or proposed, as well as the recommendations deemed useful to resolve the issue.” Bouteflika stated in his speech that the reports “will be examined with the greatest care.” But he did not specify if any of the reports will be made public, and the decree does not, either.

We believe the commission should set forth in its reports what further governmental measures are necessary, beyond the scope of the work it is able to accomplish itself, in order to insure for families their rights to truth, justice, and compensation. We also urge the commission to insist that its reports be made public.

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<sup>25</sup> Interview, Algiers Radio Station Three, March 10, 2003. Tape recording on file at Human Rights Watch.

In the eight weeks since President Bouteflika announced the mechanism's establishment, it held no meeting to which members of the public or families of the "disappeared" or their representatives were invited. As this report went to press, the Algerian Embassy in Washington was unable to provide any information about the mechanism's activities to date, and a request for this information that Human Rights Watch faxed to Ksentini at the CNCPPDH had not been answered.

### ***Two Recent "Disappearances"***

While the overwhelming majority of "disappearances" in Algeria occurred between 1993 and 1998, Algerians continue occasionally to "disappear" after being taken into custody by the security forces. These cases show the failure by the state to implement strong safeguards against the recurrence of "disappearances," raising the specter that they could be resurrected as a common practice if authorities once again deemed them useful.

Kamel Boudahri remains unaccounted for one year after he and his brother Mohamed were arrested in the city of Mostaghanem on November 13, 2002, according to Mohamed Smaïn, spokesperson for the Relizane chapter of the Algerian League for the Defense of Human Rights (Ligue Algérienne de défense des droits de l'Homme, LADDH). Mohamed Boudahri returned home a few hours after their arrest, saying that he and his brother had been taken to a military base and that he himself had been interrogated and released. When their father returned to a local military headquarters, he was informed that Kamel had escaped and apparently joined the armed groups in the wilaya (province) of Relizane. But Kamel's whereabouts remain unknown since the day he was taken into custody, according to Smaïn.

Abdelkader Mezouar's whereabouts have been a mystery since July 2, 2002, when he was seized by four men in plainclothes who came in an unmarked vehicle to the mechanic's garage where he both lives and works in Hraoua, near the city of Aïn Taya in the wilaya of Boumerdès, east of Algiers. Mezouar is forty-four and single. An eight-year-old neighbor witnessed the incident.

Although authorities have not acknowledged arresting Mezouar, the circumstances point to the security forces. The men who took him also confiscated personal papers and other personal affects from the garage, according to Mezouar's father Ahmed, who lives in Khemis el-Khechna. The same day, authorities sealed the garage, preventing access to it for several months before unsealing it again. The day after Mezouar's arrest, gendarmes confiscated Mezouar's automobile, a white Renault Clio. They later invited



Mezouar's father to reclaim the car but he reportedly refused to do so until his son was found.

Ahmed Mezouar filed reports about his son's case with various authorities and with the CNCPPDH. He received a response in December 2002 from the Ministry of Justice, saying the case had been referred to the prosecutor's office and assigned case number 4395. The same month, the Military Headquarters for the Boumderdès region summoned Ahmed Mezouar and questioned him concerning what he knew about the case. He was also asked about the incident by local police, as was the eight-year-old witness to the operation. The father received a response to his inquiry to the CNCPPDH, dated May 4, 2003, stating that his son had been kidnapped by "unknown individuals."<sup>26</sup>

### ***Harassment of Relatives of the "Disappeared"***

Since 1998, relatives of the "disappeared" have assembled at regular intervals to stage peaceful and non-obstructive sit-ins in Algiers, Constantine, Oran, and other cities. On most occasions, their rallies have drawn up to several dozen participants and run their course without incident. However, on several occasions, and especially when the sit-in participants attempt to march toward President Bouteflika's office or another public building, police intervene and forcefully turn them back or disperse them, even when they are not blocking sidewalks or streets.

On the morning of July 9, 2003, at the weekly sit-in in front of the courthouse in the western city of Oran, plainclothes police arrested seven of the women as they were ending their gathering, drove them in marked police cars to the police station of Oran's second arrondissement, and questioned them. Hachimia Bouteiba said police seized her shortly after she had given an interview at the sit-in to a journalist from *Ar-Ra'y*, an Oran-based daily that has covered the "disappearance" issue extensively. *Ar-Ra'y* had recently reported that police had tried to pressure women to sign statements to the effect that their "disappeared" relatives had been taken by "terrorists" rather than by the security forces (see below).<sup>27</sup>

Bouteiba told Human Rights Watch that the police at the station asked the women — five mothers, one wife, and one sister of "disappeared" persons — questions such as why they believed that it was the security forces who took their relatives. The women

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<sup>26</sup> Human Rights Watch phone interview with Ahmed Mezouar and with Amine Sidhoum, an attorney working with SOS Disparus, an Algiers-based organization, July 21, 2003.

<sup>27</sup> Human Rights Watch phone interview with Hachimia Bouteiba, July 21, 2003.

were presented with statements written in Arabic to sign, even though some of them, such as Bouteiba herself, do not read Arabic. They were then transferred to the central police station where they were photographed and fingerprinted. At 8 p.m. they were released with a summons to appear before a prosecutor on July 12. On that date the prosecutor questioned them about their demonstrations and summoned them to appear again on October 4 on charges of “disturbing the public order.” On October 4 all seven were convicted of the charge and fined 1000 dinars (US\$10). Bouteiba, reached by phone, said that despite the conviction, she and other relatives of the “disappeared” have continued to demonstrate each week without being harassed or dispersed.<sup>28</sup>

Bouteiba’s son, Miloud Bouteiba, a postal inspector and father of two, has been missing since July 31, 1994, when armed men in plainclothes seized him from his workplace, in front of his colleagues, on the fourth floor of Oran’s main post office.

On March 26, 2003, families of the “disappeared” organized a rally in front of the CNCPPDH headquarters in Algiers that attracted some 300 participants, including many who had traveled from other wilayas for the occasion. This was far larger than the families’ usual weekly protests. According to interviews with some of those present, the police did not intervene until a group of participants attempted to march toward the office of the president. Police prevented them from departing. When they noticed a Dutch photographer taking pictures of them shoving the demonstrators, they snatched the film from her camera, spoiling it.

Algeria remains under a state of emergency, in effect continuously since 1992, which empowers officials of the Ministry of Interior to ban public demonstrations deemed “liable to disturb public order and calm.”<sup>29</sup> An order indefinitely banning marches in the capital has been in effect since June 18, 2001.

### ***Families Pressured to Drop Accusations against the Security Forces***

There have been isolated attempts by authorities to close cases of “disappearances” through contacts with individual families, contacts that reportedly include promises of financial assistance but preclude any serious effort to determine the fate of the “disappeared” person or the parties responsible for the “disappearance.” It is unclear whether these attempts are conducted at the initiative of local authorities or are part of a wider effort to test the water for broader solutions of the issue.

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<sup>28</sup> Human Rights Watch phone interview, October 30, 2003.

<sup>29</sup> Presidential decree no. 92-44 of February 9, 1992, imposing emergency law, Article 7.

Since May 13, according to the Algiers-based SOS Disparus ([www.disparus-dz.org](http://www.disparus-dz.org)) and the Paris-based Collective of Families of the Disappeared in Algeria (le Collectif des familles de disparu[e]s en Algérie, CFDA, [www.maghreb-ddh.sgdg.org/cfda/](http://www.maghreb-ddh.sgdg.org/cfda/)), the Department of Security and Information (Département de Sécurité et de Renseignements, DRS, the agency formerly known as Military Security) has summoned several relatives of “disappeared” persons in the wilaya of Oran for questioning. They were instructed to come bearing the family identity papers and a photograph and birth certificate of the “disappeared” person.<sup>30</sup> They were questioned about the circumstances of the “disappearance” of their relatives and told to return the following day to sign written versions of their statements. An agent indicated to them that they would begin receiving public assistance. (Throughout Algeria families of the “disappeared” face economic difficulties since the missing person was often the sole or a key breadwinner for the family.) When the women returned, however, at least one of them was presented with a written statement that distorted her testimony of the day before. Yakout Bouguetaya, who does not read Arabic, was informed by her Arabic-reading daughter that the statement quotes her as blaming “terrorists” for the abduction of her son, Abdelkader Acem, rather than the security forces.<sup>31</sup> Bouguetaya refused to sign. The family maintains that Acem, a student born in 1975, was taken on January 16, 1994, by members of the Military Security agency from the home of a neighbor at the Cité des 150 Logements housing project in the Maraval neighborhood of Oran, in front of neighbors and members of his family.<sup>32</sup>

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<sup>30</sup> “Des familles de disparus ‘convoquées’ par le DRS,” *El-Watan*, June 22, 2003.

<sup>31</sup> Human Rights Watch phone interview with Hachima Bouteiba, July 21, 2003.

<sup>32</sup> The case dossier was compiled by the CFDA and SOS Disparus. A copy is on file at Human Rights Watch.

## IV. Mass Graves

There have been declarations to the press by officials since early 2003 concerning the more than 3,000 Algerians thought to be buried in unidentified graves. An “authorized source” in the armed forces was quoted in *Le Monde* of January 7, 2003, as putting the number at 3,030, presumably referring to cases related to the internal strife that began in the early 1990s.<sup>33</sup> In his speech before the Forum el-Moudjahid on March 29, Ksentini referred to a figure of 3,300 persons buried anonymously, saying that his recommendations to the president would include the use of modern techniques for identifying the dead. “This solution will help to resolve, among other things, the issue of the ‘disappeared’ and permit relatives to mourn for the dead.”<sup>34</sup> In a later press interview, Ksentini is quoted as suggesting that conducting DNA testing would help to determine whether or not the anonymously buried persons include the “disappeared.”<sup>35</sup>

The decree establishing the new commission is tasked with getting the appropriate authorities to “to carry out procedures to identify the bodies that are found.” To date, no government official has to our knowledge clarified the means by which authorities collect, examine, analyze, and preserve the evidence contained in these anonymous graves connected to political killings, nor how they consult and share information with concerned parties.

The issue is of potential interest not only to families of the “disappeared” but also to relatives of persons abducted by armed groups. During the strife of the 1990s, armed groups battling the government kidnapped hundreds if not thousands of Algerians who remain missing. These acts, like the systematic practice of “disappearances,” constitute crimes against humanity.

In a letter to the CNCPPDH, Somoud, an organization that represents families of persons abducted by armed groups and still missing, criticized the failure by the state to employ modern means to identify the corpses found in mass graves.<sup>36</sup>

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<sup>33</sup> Florence Beaugé, “En Algérie, aucun survivant parmi les disparus de la ‘sale guerre,’” *Le Monde*, January 7, 2003.

<sup>34</sup> Nabila K., “La question des disparus est loin de connaître son épilogue: Ksentini propose la création d’une commission judiciaire,” *Le Jeune Indépendant*, 30 mars 2003.

<sup>35</sup> “Me. Farouk Ksentini à *l’Authentique*: ‘3,300 personnes enterrées sous X subiront des tests ADN,’” *l’Authentique*, May 10, 2003.

<sup>36</sup> Somoud press release, undated, from March 2003.

It is worth noting that many relatives of the “disappeared” refuse to discuss investigations of gravesites; they presume their loved ones to be alive, perhaps held in secret places of detention, absent any confirmation of their whereabouts after they were seized.

## V. Obstacles Placed before the U.N. Working Group and Nongovernmental Organizations

Algeria continues to impede the work of organizations and agencies whose work includes monitoring of “disappearances.”

The U.N. Working Group on Enforced and Involuntary Disappearances (WGEID), the chief mechanism within the U.N. system dealing with the phenomenon, has been requesting access to the country since August 2000, without success. Meanwhile, in response to the continuing requests by the WGEID for information on specific cases, the government periodically furnishes stock answers that provide no evidence of serious investigations.

On June 17, 2003, the WGEID informed the Collective of Families of the Disappeared in Algeria of the government’s reply to eight cases that the CFDA had submitted in the past. The responses were not enlightening. In seven of the eight cases, the response was that “the person was the subject of a search and was not found.” In the eighth case, the answer was, “the person is currently the subject of investigation and a search.”

In a letter dated June 17, 2003 to the Europe-based human rights organization Algeria Watch ([www.algeria-watch.org](http://www.algeria-watch.org)), the WGEID transmitted replies received from the Algerian government in nine cases. In six cases, the answer was “the person was the subject of a search and was not found.” In two cases, the answer was “the person is currently the subject of investigation and a search.” In one case, the answer was “the person was released after being held for investigation.”

These responses do not square with the evidence compiled by human rights organizations based on interviews with family members. For example, Abdelhalim Abbane is among those whom authorities state they searched for but could not find. According to Algeria Watch, he was arrested along with his wife at their home in Algiers on February 4, 1997, by agents of Military Security. His wife, who was released three days later, was reportedly forced to watch him being tortured. Two youths later stated that they had been incarcerated with Abbane at Châteauneuf, a military detention center.<sup>37</sup>

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<sup>37</sup> [http://www.algeria-watch.org/mrv/2002/1000\\_disparitions/1000\\_disparitions\\_A.htm](http://www.algeria-watch.org/mrv/2002/1000_disparitions/1000_disparitions_A.htm) (retrieved November 20, 2003).

Amad Amari and Belkacim Benabid were also “searched for but not found,” according to authorities. But according to Algeria Watch, Amari, a father of four, was arrested by plainclothes police on June 7, 1997, in Dar el-Beïda, near Algiers, along with two brothers. The brothers were freed one day later.<sup>38</sup> Benabid, a physician and father of four, had been elected vice-president of the city council of Setif as a member of the Islamic Salvation Front, before that party was banned. On November 14, 1994, three armed men in plainclothes forced him into the back of his own automobile in front of his medical office, before the eyes of his nurse and patients. He was driven away and reportedly held initially at a Setif police station before all traces of him were lost.<sup>39</sup>

In its report on its work during 2002, the WGEID referred to 1,089 outstanding cases in Algeria. It said it received replies during the year from the government on twelve of the cases. Again, the answers were formulaic replies that denied government responsibility while providing no verifiable information about the person’s whereabouts. According to the WGEID, the government replies fell into the following categories: “in 8 cases, investigations had been carried out but the persons concerned were not located; in 3 cases, the persons concerned were sought by security services for involvement in acts of terrorism; and in 1 other case, the person was released after investigations.”<sup>40</sup>

Inside Algeria, authorities continue to deny legal recognition to the organization SOS Disparus. During 2003, officials at the Prefecture of Algiers on more than one occasion refused to accept SOS Disparus’ application for legal status as a regional organization. Although SOS continues to function openly, the lack of recognition has been an administrative burden, forcing it to rent its Algiers office and conduct public events under the auspices of a legally recognized organization, the Algerian League for the Defense of Human Rights.

Human Rights Watch has been permitted access to Algeria only sporadically for the last decade to conduct research. As noted above, it has not been issued visas to visit Algeria during 2003 despite formally requesting visas beginning on January 9. The only reply to its repeated requests came in a letter dated May 28, 2003, in which Driss Jazairy,

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<sup>38</sup> [http://www.algeria-watch.org/mrv/2002/1000\\_disparitions/1000\\_disparitions\\_A.htm](http://www.algeria-watch.org/mrv/2002/1000_disparitions/1000_disparitions_A.htm) (retrieved November 20, 2003).

<sup>39</sup> [http://www.algeria-watch.org/mrv/2002/1000\\_disparitions/1000\\_disparitions\\_B.htm](http://www.algeria-watch.org/mrv/2002/1000_disparitions/1000_disparitions_B.htm) (retrieved November 20, 2003).

<sup>40</sup> Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/2003/70\* January 21, 2003, online at [www.unhcr.ch/Huridocda/Huridoca.nsf/0/fa6dfcaaa997fe9dc1256ce80054e3a5/\\$FILE/G0311318.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/fa6dfcaaa997fe9dc1256ce80054e3a5/$FILE/G0311318.pdf) (retrieved October 30, 2003).

ambassador to the United States, wrote that in view of the destructive earthquakes that had just occurred east of Algiers, it was “not an appropriate time for anything other than rescue and emergency assistance visits from abroad.” Subsequent letters from Human Rights Watch have gone unanswered.

Algerian authorities have not commented publicly concerning the report issued by Human Rights Watch in February 2003 charging a systematic pattern of “disappearances” in Algeria during the 1990s. Numerous efforts by Human Rights Watch to solicit information and to meet with officials prior to issuing the report met with no response. Similarly, no official comment of any kind was delivered in response to the report on “disappearances” published by Human Rights Watch in 1998.



## VI. Recommendations

Human Rights Watch welcomes the September 20 speech of President Bouteflika, in which he urges the state to assume its responsibility for the “disappearances” that occurred during the civil strife of the 1990s. We also welcome his decision to create a mechanism to determine the fate of “disappeared” individuals and inform families of its findings; to draft proposals for compensating the victims’ families; and to provide them with social assistance. Full acknowledgment, disclosure to the families, and offers of compensation and social assistance that conform to internationally accepted principles and guidelines, are all important parts of addressing the suffering and abuse that have been inflicted on victims of “disappearance” and their families.

But the new mechanism, with its largely passive powers and narrow mandate to seek answers about what happened to the “disappeared,” cannot substitute for a full and transparent investigation into the circumstances of the thousands of cases of “disappearances”; efforts to bring perpetrators of these crimes against humanity to justice; and concrete reforms of laws and practices that will safeguard against future “disappearances.” Only by acting decisively on these fronts can Algeria comply with its obligations under international law, do justice to the victims, and reckon fully with its legacy of “disappearances”.

Human Rights Watch’s February 2003 report on “disappearances” in Algeria contained a series of recommendations addressed to the government of Algeria, among other parties. We believe these recommendations remain relevant and reproduce below those addressed to the government.

We also believe that Algeria’s newly established commission on the “disappeared,” as a state-appointed body, should strive to implement those of our recommendations that lie within the scope of its mission. It should also, under its mandate to propose measures “deemed useful for resolving the issue,” urge the government to implement fully the recommendations listed below.

We also urge third parties, notably the European Union and its member nations and the United States and Canada, to encourage, while critically monitoring, efforts by the Algerian government to address the “disappeared” issue. They should insist that the measures taken:

- conform to international standards for conducting a thorough investigation, including those criteria outlined below;
- lead to the immediate release of “disappeared” persons who are still alive and in custody;
- ensure all the rights belonging to relatives of the “disappeared,” including the right to learn the truth and to receive compensation;
- contribute to imposing criminal accountability for those involved in carrying out “disappearances”; and
- contribute to establishing legal safeguards to prevent future “disappearances.”

Algerian authorities should:

- Acknowledge at the highest level that state agents are responsible for large numbers of the “disappearances” that have occurred since 1992;
- Introduce legislation making “disappearance” a criminal offense that is punishable by sanctions commensurate with the gravity of the crime; the statute should apply explicitly to all state agents as well as those acting on their behalf;
- Commit to providing families information on the fate of the “disappeared” and on the parties responsible for “disappearances,” except in those cases where families elect to forego this information;
- Declare that investigations into “disappearances” should continue for as long as the fate of the victim remains unclarified. Toward this end, ensure that any mechanism established to investigate “disappearances” meets criteria for effectiveness outlined by Amnesty International,<sup>41</sup> among others, including:
  - the independence, authority and integrity to obtain information from state agencies, including the security forces, about the “disappeared” – their whereabouts, their status, and who bears responsibility for their plight;
  - working methods that are clearly and publicly defined;
  - structural and operational independence from any government institution;

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<sup>41</sup> See Amnesty International, “Fourteen-Point Program for the Prevention of ‘Disappearances,’” online at <http://web.amnesty.org/web/web.nsf/print/aboutai-recs-disappear-eng> (retrieved November 17, 2003).

- the financial resources and staff with the necessary expertise and integrity to examine impartially, effectively and speedily, information relating to “disappearances” across the country;
- investigative powers to search unannounced and unaccompanied military, police and intelligence facilities and archives; and
- full and effective powers to compel the attendance of those implicated in carrying out, ordering or acquiescing in “disappearances,” and to compel the disclosure and production of documents, including medical-legal records and existing court files, and other items of evidence.

In addition, the country's highest authorities should order all state agencies to cooperate with the commission, and declare that officials who obstruct or fail to cooperate with the commission will face penalties.

Algerian authorities should also:

- Provide compensation to victims of state-sponsored “disappearances” or their beneficiaries who elect to receive it, and ensure they have access to counseling and social assistance programs;
- Declare that the widespread and systematic “disappearances” perpetrated in Algeria over the past decade constitute crimes against humanity whose perpetrators must be brought to justice. They should benefit neither from amnesty laws nor from statutes of limitation. Similarly, members of armed groups who have abducted persons who remain missing or who were killed or grievously harmed by their abductors should not be eligible under any amnesty and their crimes should not be subject to statutes of limitation;
- Issue a standing invitation to visit Algeria to all mechanisms of the U.N. Commission on Human Rights (CHR); as a member of the CHR, Algeria should join the forty-eight U.N. member nations that have already done so;
- Approve, in particular, long-standing requests to visit by the U.N. Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on Torture and the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions. Algeria should ensure that these thematic mechanisms have full access to regular and ad-hoc detention facilities, sites of mass or makeshift graves, and official documents relevant to their mandates;
- Grant legal status to all Algerian nongovernmental organizations such as Somoud, SOS Disparus, the Association of the Families of the Disappeared of Constantine (Association des familles de disparus de la wilaya de Constantine), and the National Association of Families of the Disappeared (Association

nationale des familles de disparus), that work on “disappearances” and abductions and that apply for legal recognition; and

- Respect the right of freedom of assembly by ending the frequent practice of forcibly dispersing peaceful and non-disruptive public rallies staged by relatives of the “disappeared.”

With respect both to state-sponsored “disappearances” and persons abducted by armed groups, Algerian authorities should:

- Instruct Algeria's courts to fulfill their responsibility as guarantors of impartial justice; investigating judges and prosecutors should fully investigate “disappearance” cases by, among other things, identifying and questioning witnesses — including, where warranted, members of the security forces — capable of shedding light on the perpetrators of “disappearances” or abductions by armed groups. Plaintiffs who submitted “disappearance” complaints to investigating judges or prosecutors only to have their petitions unfairly dismissed should be encouraged to re-submit them for a proper hearing;
- Establish procedures, in consultation with victims' families, on keeping them informed of progress in investigations into “disappearances” and abductions, as well as about the discovery of mass graves and any work carried out to identify or remove the bodies found;
- Ensure that any information derived from the interrogation of captured or surrendering militants that pertains to the identity and fate of abducted persons is made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation; ensure that families are informed of the prosecution of persons in connection with specific abductions, so that relatives can provide relevant testimony or attend or follow any resulting trial; and
- Take steps to ensure that all persons involved in the investigation of “disappearances,” including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

Regarding mass graves, Algerian authorities should:

- Immediately put in place procedures to preserve evidence at all discovered and yet-to-be-discovered unmarked gravesites that are suspected of holding victims of political violence, and inform families of missing persons about the procedures in place for exhuming and identifying human remains; and,

- Seek the involvement of qualified domestic and international nongovernmental organizations and other institutions, if the state lacks resources or technical means to properly conduct exhumations. Qualified independent organizations or individuals should be invited to be present as observers during exhumations.

In order to prevent future “disappearances,” Algerian authorities should:

- Review all practices of detention that facilitate “disappearances” and implement the following steps when persons are arrested:
- Keep a detention record regarding every detainee, including information on the date, time, and location of detention, the name of the detainee, the reasons for the detention, and the name of the forces effecting the detention; such registers should be readily available to detainees’ family, counsel, and other legitimately interested persons;
- Hold all detainees only in officially recognized places of detention, and cease the practice of secret detention even if it takes place on the premises of an officially recognized detention facility;
- Inform detainees immediately of the grounds of arrest and any charges against them, and provide immediate and regular access to lawyers of their own choosing;
- Promptly convey to the family accurate information about a detainee's whereabouts and legal status, and provide them with prompt access to the detainee;
- Ensure that arresting officers always identify themselves to the person arrested and produce official identification showing their names, the agency they work for, and the branch of that agency where they are based;
- Ensure that detainees are taken into custody only on the basis of an arrest warrant issued by a judge (except where genuinely detained *en flagrante delicto*); and
- Introduce legislation to shorten the maximum duration of *garde à vue* (pre-arraignment) detention from the twelve-day maximum allowed under 1995 legislation. The proposed amendment should conform to the U.N. Human Rights Committee's determination that a suspect must be brought before a judge or other officer authorized to exercise judicial power within “a few days.”<sup>42</sup>

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<sup>42</sup> General Comment 8 interpreting Article 9 of the International Covenant on Civil and Political Rights, which requires that detainees be brought “promptly” before a judge. HRI\GEN\1\Rev.1 at 8 (1994). Online at <http://www1.umn.edu/humanrts/gencomm/hrcom8.htm> (retrieved November 17, 2003).

**Appendix: Presidential Decree Creating New Mechanism on “Disappearances”**

## DECRETS

**Décret présidentiel n° 03-299 du 14 Rajab 1424 correspondant au 11 septembre 2003 complétant le décret présidentiel n° 01-71 du 30 Dhou El Hidja 1421 correspondant au 25 mars 2001 portant création de la commission nationale consultative de promotion et de protection des droits de l'Homme (CNCPPDH).**

Le Président de la République,

Vu la Constitution, notamment ses articles 77-6° et 125 (alinéa 1er) ;

Vu le décret présidentiel n° 01-71 du 30 Dhou El Hidja 1421 correspondant au 25 mars 2001 portant création de la commission nationale consultative de promotion et de protection des droits de l'Homme ;

### Décrète :

Article 1er. — Les dispositions du décret présidentiel n° 01-71 du 30 Dhou El Hidja 1421 correspondant au 25 mars 2001, susvisé, sont complétées par les articles 7 bis, 7 ter, 7 quater et 10 bis suivants :

“Art. 7. bis. — La commission est, en outre, investie d'une mission spécifique et temporaire de prise en charge des requêtes tendant à la recherche de toute personne déclarée disparue par un membre de sa famille.

Dans ce cadre, la commission est chargée :

a) d'identifier les cas d'allégations de disparition sur la base de l'ensemble des informations déjà recueillies ou de celles résultant des actions qu'elle aura à mener dans le cadre de sa mission ;

b) de faire entreprendre par les autorités compétentes, toutes les recherches nécessaires pour localiser les personnes déclarées disparues et de faire procéder aux opérations d'identification des cadavres retrouvés ;

c) d'informer les familles des personnes déclarées disparues du résultat des recherches entreprises et de les orienter sur les procédures à suivre pour le règlement des questions matrimoniales et patrimoniales induites par les différents cas ;

d) de concevoir, en liaison avec les autorités publiques, les mesures d'aide et d'indemnisation au profit des ayants-droit des personnes disparues ;

e) d'assurer le rôle d'interface entre les institutions publiques et les familles des personnes déclarées disparues.

A ce titre, la commission est chargée notamment de :

— recueillir les requêtes relatives aux personnes déclarées disparues ;

— assurer la centralisation et la consolidation de l'ensemble des données relatives à la question des disparus ;

— assurer la coordination entre les différents secteurs concernés par la gestion du dossier pour le règlement des aspects juridiques des cas résolus ;

— assurer une communication permanente avec les familles des personnes déclarées disparues.”

“Art. 7. ter. — Pour l'accomplissement de la mission mentionnée à l'article 7 bis, la commission est habilitée à :

a) recueillir auprès de tous les intervenants publics et de toutes les parties concernées, les informations nécessaires à la réalisation de sa mission ;

b) recueillir toute information tendant à identifier et à localiser les personnes déclarées disparues ;

c) initier toute réflexion tendant au règlement des problèmes induits en matière de droits patrimoniaux et proposer toute mesure d'aide financière ou matérielle et/ou de soutien psychologique aux familles des personnes portées disparues.

Dans ce cadre, la commission, dans sa formation *ad hoc*, telle que définie à l'article 10 bis ci-dessous, peut recevoir tout témoignage utile, solliciter toute information et demander communication de tout document utile à l'exécution de sa mission.”

“Art. 7. quater. — Les travaux de la commission, comportant les éléments d'information recueillis et les résultats d'analyse, les mesures prises ou proposées ainsi que les recommandations jugées utiles pour le règlement de la question, donnent lieu à l'élaboration de rapports d'étape semestriels et d'un rapport général.

Le rapport général est remis au Président de la République dans un délai de dix huit (18) mois à compter de la date d'installation de la formation de la commission chargée de la mission mentionnée à l'article 7 bis”.

“Art. 10. bis. — Pour l'accomplissement de la mission temporaire mentionnée à l'article 7 bis, la commission se réunit en formation *ad hoc* composée :

— du président de la commission, président,

— du membre de la commission désigné au titre du conseil supérieur de la magistrature,

— du membre de la commission désigné au titre du conseil de l'ordre des avocats,

— du membre de la commission désigné au titre du conseil national de déontologie médicale,

— du membre de la commission désigné au titre du conseil supérieur de l'éthique et de la déontologie des journalistes,

— du membre de la commission désigné au titre du Croissant rouge algérien,

— d'un membre choisi par le président de la commission parmi les membres désignés au titre des institutions publiques ayant voix délibérative.

La commission constituée en formation *ad hoc* peut, à l'initiative de son président, se faire assister de tout membre de la commission. Elle peut également faire appel à tout expert dont la contribution à la réalisation de sa mission est jugée utile.

Les modalités de fonctionnement et l'organisation des travaux de la commission constituée en formation *ad hoc* sont, le cas échéant, fixés par une délibération de la formation *ad hoc* approuvée par l'autorité de rattachement.”.

Art. 2. — Le présent décret sera publié au *Journal officiel* de la République algérienne démocratique et populaire.

Fait à Alger, le 14 Rajab 1424 correspondant au 11 septembre 2003.

Abdelaziz BOUTEFLIKA.

