

Algeria's Observations and Comments regarding Communication 348/07 Submitted by Collectif des familles de disparu(e)s en Algérie on behalf of Ali Benidir

1. On 19 December 2007, the African Commission on Human and Peoples' Rights (ACHPR) sent to the Government of Algeria a Communication referenced 348/07, submitted by *Collectif des familles de disparu(e)s en Algérie* (CFDA) about an alleged case of the enforced disappearance of Mr Ali Benidir. The disappearance is alleged to have occurred between 1993 and 1998, and the Complainant alleges that it was perpetrated by government agents or agents working under the control of public authorities. The ACHPR requested the parties to submit their observations on admissibility.
2. On 9 February 2009, the Government of Algeria sent its admissibility submission to the ACHPR and requested the latter to review its decision and to declare the Communication inadmissible for the following reasons:
 - **Failure to exhaust local remedies:** the alleged victims did not institute legal proceedings nor did they continue proceedings to the very end by using the remedies available on appeal and on annulment as provided for by the Criminal Procedure Code under Sections 72 and 73. In fact, contrary to the Complainant's affirmations, the Algerian judicial system applies the principle of discretionary prosecution, whereby the Public Prosecutor may initiate criminal proceedings and, failing that, in order to make up for the shortcomings or lack of action by the prosecution, seizure by means of filing of a civil action is enough to initiate, ipso facto, criminal proceedings. This would have the effect of compelling the examining magistrate to investigate the facts outlined in the complaint even where the Public Prosecutor's Office decides otherwise.
 - The Government of Algeria stated that the Complainant cannot cite the Charter for Peace and National Reconciliation and the laws governing its implementation to exonerate itself from not having used the available legal procedures which constitute local remedies.
 - **Lis pendens of the Benidir Ali case before the Working Group on Enforced or Involuntary Disappearances of the UN Human Rights Council:** the case is still pending before the Working Group on Enforced or Involuntary

Disappearances of the UN Human Rights Council. In fact, it is one of the many cases of alleged disappearances that occurred in Algeria during the period of national tragedy. These cases are being considered within the framework of the working procedures of the Working Group following the reconciliation report presented by the Government of Algeria, with the official lists of cases of victims of the national tragedy, of cases settled under the Charter for Peace and National Reconciliation.

- The Benidir Ali case, which is on the list of the Working Group on Enforced or Involuntary Disappearances under No. 3402 and features in the reconciliation report prepared by the Algerian authorities under No. 263, is mentioned as “disappeared, declared dead by the legal successors who have been compensated”. On this issue, contacts, exchanges of correspondences and formal meetings are still ongoing between members of the Working Group and representatives of the Government of Algeria towards making, in accordance with the rules and procedures of the Working Group, decisions on the dismissal or elucidation of the cases submitted.
 - The Government of Algeria underscored that it was not appropriate for the African Commission to consider this kind of Communication as an individual complaint, highlighting the internal socio-political and security context that prevailed in Algeria during the 1990s, and indicating that efforts are being made at the national level to deal with the tragic case of missing persons, which have resulted in the implementation of the Charter for Peace and National Reconciliation.
3. The Government of Algeria, on the basis of Rule 117(2) of the Rules of Procedure of the African Commission on “additional information” under the “procedure for the determination of admissibility”, as well as the unity of the procedure for the consideration of Communications both at the admissibility and merits stages, which implies that the Communication file is still open, submitted a request for a review of the Commission’s admissibility decision and requested the Commission to:
- Conclude that *Communication 348/07 – Collectif des familles de disparu(e)s en Algérie v. Algeria* deals with a case that is still being considered by a settlement mechanism of the UN Human Rights Council.

- Conclude that at the domestic level, the Benidir Ali case has been settled amicably under the provisions of the Charter for Peace and National Reconciliation with the legal successors, who have never thought of lodging an appeal with the Supreme Court.
 - Conclude that *Collectif des familles de disparu(e)s en Algérie* and Ms. Yous Nassera do not have any legal capacity to claim to be representing the legal successors of Benidir Ali by filing and pursuing on their behalf a Communication pursuant to Article 55 of the African Charter.
 - Conclude that this NGO which submitted the Communication lacks objectivity and sincerity in all its actions which are exclusively aimed at targeting Algeria.
 - Declare inadmissible Communication 348/07 – *Collectif des familles de disparu(e)s en Algérie v. Algeria*.
4. The Government of Algeria submitted to the African Commission on Human and Peoples’ Rights detailed and substantiated responses regarding this Communication in January 2009, November 2010, September 2012 and in 2014.
 5. The Government of Algeria which cooperated in good faith with the regional human rights mechanism and provided the relevant information on the period concerned, underscored in its submissions that the Charter for Peace and National Reconciliation had provided human, social and legal redress to the beneficiaries of the victims.
 6. The ACHPR’s decision, issued at its 24th Extraordinary Session (August 2018), seems to ignore the four responses submitted by the Government of Algeria. It is in violation of the sovereign decision of the people of Algeria expressed through the referendum on the “Charter for Peace and National Reconciliation”.

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