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## “Charter for Peace and National Reconciliation” in Algeria: Threatening Contradictions

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The Charter for Peace and National Reconciliation was enacted in August 2005 and approved by referendum on September 29, 2005. The law stipulates the closure of cases of prosecution and the termination of sentences for people who committed acts of violence between 1992 and 2006, excluding those responsible for some specific acts. The law provides for compensation of victims but it bans the Islamic Salvation Front from political activity.

Through this law, the government forsakes prosecuting security forces for acts perpetrated during the years of war and bans all forms of opposition to the Charter, raising ethical and legal questions. By choosing to resort to popular arbitration through a referendum, the government hoped to pre-empt public and parliamentary debates on the Charter, avoid a reform of the Constitution which protects freedom of thought. By this, government is exposing itself to criticism for violating the International Charter for Human Rights to which Algeria is a signatory.

Beyond legal and ethical issues, this process driven from the top might be seen in the future as a missed opportunity for achieving a genuine “horizontal reconciliation”. Can peace and democracy be built on these bases?

### **Historical-Political Context**

The youth uprising of October 1988, and the spontaneous strikes which followed, triggered riots in most of Algeria’s main cities. With the death toll rising to more than five hundred, mainly in the capital, a state of emergency was declared and the army intervened, for the first time since 1965. The demands of the youth and the strikers focused mainly on opening the

political regime and on solving economic problems caused by the heavy foreign debt burden and resulting economic structural adjustment which severely impacted the underprivileged classes. Chadli Benjedid, then President of the Republic and leader of the single party, the historic FLN (National Liberation Front) sympathized with the reform movements that were shaking the socialist world and Latin America at that time, and

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started a vast reform operation. The reforms were radical and systematic in the light of the times. At the political level, the most important reforms were recognition of the multi-party system, freedom of expression, independence of the judiciary and subordination of the army to the legislative power. At the economic level, the single most important change was recognition of a market economy. A new constitution was adopted soon after a referendum, and a four-year transition period commenced after which free legislative and then presidential elections should occur.

Although the transition was stopped after two years, significant democratic and economic progress was achieved in spite of the difficulties imposed from outside, such as the refusal to renegotiate the debt without conditionalities and pressures to rule out Islamic movements from the political field. The legislative elections were interrupted in January 1992 after the army intervened, dismissing the President and freezing the Constitution. The reasons put forward were the necessity to save the Republic from the danger of the Islamic Salvation Front (FIS), whose victory was assured after the first round, and the fear of a Salafist-style theocratic regime. The intervention of the army launched a long period of destabilization marked by an economic semi-paralysis and the heightening of social inequalities.

The ensuing system of terrorism/repression produced an internal conflict with many aspects. The horror came to a climax in 1996 and 1997 with the proliferation of collective massacres of innocents of all ages, which remain unexplained to this day. The current President of the Republic, Abdelaziz Bouteflika, estimated in 2004 that some 200,000 people were dead and thousands of others were missing. These long years left the society deeply traumatized, with scars that take a long time to heal, leaving deep marks on two generations of Algerians. The terms “rahma” (clemency), “reconciliation” and

“national tragedy” were later used to translate, if not exorcise, this reality.

## **The Instruments and the Mechanisms to Overcome the Crisis**

In August 2005, more than thirteen years after the elections were stopped, the “Charter for Peace and National Reconciliation” was promulgated to put an end to Islamist resistance movements (*maquis*). The text was approved by a national referendum on September 29, 2005, without a parliamentary debate, although one was expressly planned. Implementation of the Charter started on February 28, 2006 with the promulgation of one edict and three decrees of application. There is a notable difference between the Charter for Peace and National Reconciliation and the edict promulgated six months after: while the first did not explicitly mention amnesty for the security force members, the second legislated on the matter. Although it took just six months to put the finishing touches to the formal mechanism, it had taken President Bouteflika five years of patient explanations, laborious diplomacy and consummate speaking skills, in addition to an unequivocal re-election in 2004, to overcome opposition to the Charter.

In reality, attempts to find a solution between the government and the *maquis* go back a very long time. In 1996, after President Liamine Zeroual ruled out a political agreement proposal put forward by the majority of the then active opposition movements, including the FLN and the FIS, he released from prison some political Islamist leaders, started negotiations between the army and the *maquis*, and announced the “rahma” (clemency). He promised to drop legal proceedings and to discreetly reintegrate the terrorists who would lay down their arms. This initiative did not go far because of serious differences at the top level of the government regarding the content, the terms and the advantages gained from the operation. Many *maquisards* (members of the resistance) - although not enough to constitute a determining phenomenon - responded to the

appeal and dissociated themselves from their political leaders who gained nothing. A shocking new wave of terrorism was launched however it quickly ran out of steam.

In October 1997, an agreement, that was kept secret for a long time and whose specific content and terms are still unknown, was signed between the military command and the largest and most well-known armed factions (such as the Islamic Salvation Army, AIS). When President Bouteflika took office on July 13, 1999, this agreement became the “law related to the restoration of the civil concord”. It led to the large-scale release of armed groups (including the famous Islamic Armed Groups, GIA). Some leaders flaunted themselves in public and the authorities made no effort to give any legal justification for their return to civil life. A significant weight of public opinion, the press in general, and the secular political movements, distanced themselves from the government and led a campaign against this law arguing that it constituted an arbitrary impunity procedure for the abuses and crimes committed and a voluntary silence regarding the conditions in which terrorism and repression developed and ceased.

The result of the agreement can be summarized in the following five points:

- The files of the legal proceedings were closed and the sentences of the people who committed or who were accomplices in one or several violent acts between January 1992 and March 2006 (six months after the law came into force with the referendum of September 29, 2005) were dropped. Excluded from this provision were those whose implication in collective massacres, rapes and use of explosives in public places<sup>1</sup> was proven
- Compensation for the victims of terrorism and the missing.

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<sup>1</sup> It is an empty expression: there were no investigations to this day, nor there will be in the future, since they were forbidden.

- All members of the FIS were forbidden to engage in any kind of political activity.
- Any forms of opposition to the Charter was forbidden (whether through the media or associations, be it individual or collective). Any Algerian who spoke or wrote, in Algeria or abroad, about the responsibilities of individuals and structures during 1992-2006 would be sentenced to prison. The historical or intellectual writings and the political expression regarding these facts by Algerians in Algeria and abroad would be considered an offense to be penalized.
- Any legal proceedings against the forces of law and order, whatever their origin (army, police, militia) for all acts committed during the said period, were dropped.

The ministry of justice immediately announced the release of 2,000 people held prisoners for terrorist acts. Two thousand other prisoners were granted pardon. The referendum allowed the President of the Republic to take the measures he considered useful in case the application faced unexpected difficulties, which gave more freedom to adapt the procedure to the constraints of the moment and to better target the actions on the political level.

## **The Questioning**

When the government resorted to the referendum, that is to adopt the Charter by means of the polls, it had two objectives: first to avoid the organized public debate and the parliamentary debate, and second to avoid revising the Constitution that guaranteed freedom of expression. A third objective would be to put forward the “people’s will” to avoid an eventual conflict with the international law, Algeria being a signatory to the Human Rights Charter since 1990.

However, a few days after the promulgation of the texts, and despite the legal and explicit threat to penalize any criticism, the difficulties of the exercise were evident. The links between the release of the prisoners, dropping the investigations, the ban on questioning the

work of the security forces, and the abolition of freedom of expression, were neither explained nor were the arguments presented.

The reactions in Algeria were negative and immediate, especially those of the Algerian League for the Human Rights and sections of the Algerian press. Nonetheless, no public debate in the civil society or in any party was noted; the repressive legal measures proved to be efficient.

The amnesty of the Islamists and the release of the political prisoners was welcomed by their families and certainly hailed by the working classes. The hand that was extended to them was accepted, even though there was no explanation of particularly horrible and wanton acts. This could account for the majority of “ayes” in the referendum. Most of the speeches expressed the hope that the Algerian society had understood that violence was not, and cannot be, a solution. However, this is where the positive reactions ended.

Beyond that, the general opinion reflected in the press expressed scepticism and talked about a “vertical reconciliation” imposed from above, whereas a “horizontal reconciliation”, the true one, assumes the definition of acts and the identification by the victims of those responsible for them. The “horizontal reconciliation” did not exist and became impossible with the law.

These criticisms were naturally due to the fear that this terrible period would return, encouraged by the mechanisms that guarantee impunity. The long-standing arguments against the “civil concord” reappeared one by one: an “organised silence” shrouds the crimes which have been committed, undermining the law as well as the right to know the truth, and the right to inquire. Many fear that by not encouraging the search for the truth, a *sine qua non* of forgiveness and justice, the new measures would exacerbate tensions in an already distressed society. The government cleverly evaded the question by saying that even if these arguments were theoretically

well-founded, the referendum produced a massive vote in favour of the adopted solution.

Outside the country, there were questions regarding the edict’s compliance with the norms of international law to which Algeria is signatory. Nevertheless, the “political realism” of international powers is today in favour of supporting the Algerian government.

Inside Algeria, the referendum on the Charter failed to resolve crucial questions, yet to confront the people’s will (as expressed by the referendum) with international law<sup>2</sup> is not a legally acceptable argument.

Forbidding members of the FIS from participating in politics is not easy to apply and, in any case, cannot be controlled by the government. In addition, the government is not able to forbid the families of the missing from opposing the new measures, whether through politics, the media or associations, individually or collectively<sup>3</sup>. These are the main criticisms of those who argue that the Charter will not lead Algeria to a true and greatly desired reconciliation.

Should the controversy crystallize on these points, the credibility of the national reconciliation mechanism would be seriously affected. Can the State go backward? We have seen that the President of the Republic is able to use any corrective measure judged

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<sup>2</sup> A certain number of authorities, such as the Secretary General of the United Nations, United Nations’ organs, as well as powerful regional organs and international courts agreed that no amnesty or any other similar measure should grant impunity to the perpetrators of any serious attack on human rights.

<sup>3</sup> Press release of Human Rights NGOs (Amnesty International and Human Rights Watch), and arguments also used by the International Federation for Human Rights. A report issued by the American University of Maryland established that Algeria ranked 106<sup>th</sup> worldwide regarding the decline of freedoms. Very recently, four NGOs (Amnesty International, Human Rights Watch, the International Center for Transnational Justice, and the International Federation for Human Rights) denounced “the impunity and the muzzling of opinions” in the application of the Charter for reconciliation.

necessary. We have noted that this open flexibility constitutes a guarantee as well as an important and efficient instrument, should it be used advisedly. The result of at least seven years of effort shows that it is not going to be easy. The measures finally adopted showed that resistance, even if it is barely visible, would still be a burden. Moreover, the consequences of failure would be traumatic since the efforts were painful and the wait was long. For the time being, one has to note that the proposed concepts of “peace”, “national reconciliation”, “national cohesion”, “recognition of the nation”, “protectors of institutions” are legally too vague. They give substance to the suspicions that they want to “bury the files” and deal ruthlessly with human rights defenders. In order for people to regain their trust in the rule of law and to avoid an ambiguous situation, the laws should be precise and coherent with the terms used in the Constitution<sup>4</sup>.

### **What are the Positions of the Political Forces Regarding the Charter?**

Today, the national context is not favourable to questioning the Charter. In the political class, there is a conservative and authoritarian trend which runs counter to a call for true democracy. In this situation, the Charter will be easily applied.

Let us first recall that the government has always put aside any process that tends towards finding a political solution for the national tragedy. The referendum, as we have seen, put the plebiscite against political movements. This approach was done in the context of the state of emergency that limited public freedoms and judicial arbitration.

As previously mentioned, Islamists of the FIS and currents inside the social movement opposing the regime were not allowed to express themselves. Until 2003, the authorized

political forces more or less represented the interests and opinions of the upper and middle classes of the government and the private sector. These groups support the regime as best they can. In terms of politics (and not ideology) they range from the laymen of the left and the “social” Islamists to the liberals of the right and the extreme right, whether Islamists or Republicans (even if most of them would refuse these “Western” classifications).

The spectrum of political representation has been narrowing since June 2003, just before Bouteflika presented himself for a second term. After more than twelve years of instability, the political class engineered a reconstruction of the active political field around a moderate and politically conservative “Islamist-nationalist” base. The movements advocating the construction of a popular Islamic state in the 1970s and 1980s admitted that they were in a deadlock. The “Islamists” scattered, evolved and adapted. The scene is now dominated by a hurly-burly alliance made up of the majority of the political class that revolves around the government, along with the legal Islamist movements and many readjusted survivors of the FIS. It was therefore predictable that the FLN and conservative Islamist parties close to the government would unreservedly support the evolution that the Charter started.

This evolution reflects the dominant geopolitical environment. The religious and nationalist movements joined together to rule according to the old schizophrenic mode: the call to apply the Shari’a was approved almost unanimously. Isn’t Islam after all the religion of the State according to the Constitution? The rest is a matter of compromise on some incidental details. All it takes is a strong dose of morality on the questions of values and the economy to face the rising objections, and the political field is easily closed.

The new reality is less appreciated by the upper middle classes who are heard in the media and the political machinery but who find themselves downgraded in this

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<sup>4</sup> Article 36 of the Constitution stipulates “the freedom of conscience and the freedom of opinion are inviolable”.

reconstitution of the political order. The party that has lost most is the secular democrats. Because the secular democrats were unable to articulate a clear and distinctive alternative project, the Islamist-nationalist alliance was able to convert itself to the culture of formal democracy with a simple ideological and cultural remodelling based on defending “national values”. The society is therefore forced to accept the narrowing of the political field and the only possible negotiation is on election modes.

However, despite its control of the ballots, the political class does not constitute the whole society. In the working classes and the social movements, the reconstitution is taking a radically different turn: a non-formalized alliance is emerging between the grassroots political Islamists who were abandoned by their opportunist elites, and the secular milieu. The alliance is based on calls for a secular state, anti-Americanism, and the demand for jobs and public services. Protests are brewing<sup>5</sup>, and the State here, as elsewhere, is almost

destroyed by the economic, cultural and human logic of globalization. Will the President turn around and use his power to allow a recourse to justice, so that the imprescriptible crimes of the past are not erased, so that acts related to the right to freedom of expression are not punished and so that peaceful citizens are not deprived of their civic and political rights because of their opinions? The possibility of such a change in the President’s policies does not seem very high, considering his struggle to get the Charter accepted. However, it is possible to believe such an evolution could happen thanks to the palpable erosion of government power, the brutal shifts in alliances between the political forces and changes in the regional context which are difficult to predict.

In any case, if the Charter turns out to be a wrong solution, the Algerian people would have lost a historic opportunity to come out of the crisis. Once again they will be convinced that their elites are unable to assume the duties of truth and justice.

<sup>5</sup>The country has known recurrent strikes for a month, widely followed in the public sector.

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