



THE ALGERIAN APPROACH TO TRANSITIONAL JUSTICE IN LIGHT OF THE NATIONAL RECONCILIATION LAW

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Abstract:

The Algerian approach to transitional justice in light of the National Reconciliation Law has a particular importance in light of the current international, regional, and even local situation, which has resulted in the consolidation of this discourse in the current political and legal literature. It also constituted the great challenge that faced the Algerian experience in order to gain acceptance at the domestic and international levels, as many specialists consider the Algerian experience a new and special approach in dealing with the terrorist phenomenon.

Key words: reconciliation; justice; amnesty; accountability; fairness.

1. INTRODUCTION :

Transitional justice is a topic that is currently receiving a lot of attention from both national and international audiences. It is a process that is particularly relevant for societies that have experienced human rights violations and crimes against citizens due to repressive authoritarian regimes, or those that have been affected by internal conflicts and civil wars. Algeria is one such society that is seeking to transition to a democratic system that respects human rights. Transitional justice is necessary in order to address past violations and ensure justice.

After the cancellation of the 1992 electoral process, Algeria faced a severe security crisis from 1992 to 2000 due to the spread of terrorism. This crisis threatened the foundations of the state, prompting the government to rely on a deterrent policy as the first course of action. However, when this approach failed, the legislature searched for more effective mechanisms to restore security through peaceful means. The Mercy Law was issued by Order 95-12 on February 25, 1995, followed by the Civil Harmony Law by Order 99-08 on July 13, 1999. The National Reconciliation Law was inaugurated by Presidential Decree No. 05-278 on August 14, 2005. The decree called for a referendum on national reconciliation to achieve transitional justice.

The objectives of the National Reconciliation Law extend beyond the mere pursuit of peace and security. They aim to address the effects of the national tragedy in a comprehensive manner that leads to genuine national reconciliation. In fact, it refers us to the concept of transitional justice as defined by the UN Secretary-General, who defines it as "a range of processes and mechanisms associated with society's attempts to address the legacy of widespread past abuses in order to ensure accountability, justice, and reconciliation."

The National Reconciliation Law's policy of leniency for perpetrators, which includes reducing penalties or granting full amnesty according to special decrees, has raised numerous legal and human rights concerns. This policy has also received significant internal and international criticism, with some viewing it as contradictory to the principles of transitional justice. Meanwhile, others viewed the National Reconciliation Law as an adaptation of these principles to Algeria's unique political, social, and economic circumstances.

Based on what has been said above, this paper aims to examine Algeria's approach to transitional justice in light of the National Reconciliation Law through raising the following question:

To what extent has Algeria's National Reconciliation Law contributed to upholding the principles of transitional justice and adhering to its standards?

The main objectives of this research are:



- Clarify the extent to which the pillars of transitional justice are complete in the Algerian experience and the relationship between national reconciliation in Algeria and the principles of transitional justice.
- Elucidate how the Algerian approach, in its procedural dimension, deals with the mechanisms of transitional justice.
- Find a vision or legal framework that governs and regulates the idea of transitional justice in dealing with the crimes of the past and relies on it to build the desired peace.

In order to address the above issue, a descriptive analytical approach was adopted to study, examine and analyze the legal texts related to national reconciliation, especially the Charter for Peace and National Reconciliation, because it is unique in dealing with terrorist phenomena. Therefore, it is necessary to study and analyze the reconciliation procedures in order to evaluate the experience accordingly.

2. The concept of transitional justice and national reconciliation:

The novelty and complexity of concepts often leads to a multiplicity of their definitions, which makes it difficult to understand their meanings, especially for the concept of transitional justice, which has evolved in the light of the transition to democracy. Similarly, national reconciliation is a modern concept that began to be used and applied in the last quarter of the twentieth century, especially in some South American countries, in the countries of the socialist pole after its disintegration, and in some African countries that experienced waves of what was called democratic transition, high levels of state maturity, and the strengthening of citizenship. Therefore, it is important to address the concept of transitional justice and then the concept of national reconciliation.

2.1. The concept of transitional justice:

The following is a definition of transitional justice, its objectives and characteristics:

2.1.2. Definition of transitional justice:

The meaning of transitional justice is the realization of justice during a country's transition. Moreover, it refers to the field of research or investigation that focuses on societies with a legacy of human rights abuses, genocide and other forms of violations including crimes against humanity or civil war, in order to build a more democratic society for a secure future.

The main mechanisms for achieving transitional justice are: truth commissions, national reconciliation, reparations and compensation for victims, reform of public institutions of the state, security forces and the army, as the latter are often accused of involvement in violations and crimes committed at the state level. (Souad Khodja, 2017, p. 148).

Accordingly, transitional justice is a response to systematic or widespread violations of human rights. It aims to achieve recognition of the violations endured by victims and to enhance the possibilities for peace, reconciliation and democracy. It is an adaptation of justice to societies undergoing a period of transformation, sometimes abruptly, and sometimes over many decades (Souad Khodja, *ibid*).

Furthermore, in a Security Council report issued on August 24, 2004 by the United Nations, transitional justice was defined as encompassing the full range of processes and mechanisms associated with a society's attempts to make sense of its legacy of large-scale past abuses in order to ensure accountability, justice, and reconciliation. These may include both judicial and non-judicial mechanisms, with varying levels of international involvement or none at all, trials of individuals, compensation, truth-seeking, constitutional reform, personal records to detect and adjudicate abuses, or a combination of both. (Ahmed Shawky Benyoub, 2013, p. 129)

In addition, the Arab Spring Institute defines it as a set of methods and mechanisms used by a society to achieve justice during a transitional period in its history, often following a revolution or war. Transitional justice mechanisms focus on at least four main approaches to address past human rights violations: criminal prosecutions, truth commissions, reparations programs, and institutional reform. (Idris Bakhouya, 2017, p. 99)



Transitional justice has also been defined by the Tunisian draft organic law on transitional justice as an integrated process of mechanisms and methods used to understand and deal with past human rights violations by revealing their truths and holding those responsible accountable, providing reparations and restitution to victims in order to achieve national reconciliation, preserving and documenting the collective memory, ensuring the non-repetition of such violations, and transitioning from an authoritarian state to a democratic system that contributes to the consolidation of the human rights system. (Draft Organic Law on Transitional Justice on setting the foundations of transitional justice and its sphere of competence, 2012, <http://www.tunisien.tn>)

On the other hand, to achieve transitional justice, countries have adopted different mechanisms and strategies depending on the transitional context in which the democratic transition took place, which dictates the adoption of a punitive or restorative model, or a combination of both. (Souad Khoja, 2017, p. 150). Transitional justice mechanisms also include trials, whether civil or criminal, national or international, local or foreign; truth-seeking and fact-finding, whether through official investigations such as truth commissions, international commissions of inquiry, UN mechanisms, or the efforts of non-governmental organizations; and reparations, whether through compensation or rehabilitation, the erection of memorials, and the establishment of so-called collective memory. (Idris Bakhouya, 2017, p. 101).

It is worth mentioning that transitional justice differs from traditional justice in that it concerns transitional periods, such as the transition from war to peace in societies suffering from local conflicts, or in the case of democratic transition, when an authoritarian totalitarian regime is replaced by a democratic one, etc., so that measures are taken to address past violations. (Souad Khodja, 2017, p. 148)

2.1.2. The objectives and characteristics of transitional justice:

The following are the most important objectives and characteristics of transitional justice.

2.1.2.1. The objectives of transitional justice:

Deterrence: The purpose of deterrence is to prevent a criminal from repeating his crime and violating the rights of others, as well as to prevent others from imitating him. As a result of human rights violations, a country is usually characterized by chaos and violence, as well as security threats due to the occurrence of security outbreaks when the rule of law seems to be absent. Consequently, effective and rigorous measures are needed to restore the rule of law. This can only be achieved through a responsible judicial policy that prosecutes past crimes and prevents new ones.

Strengthening democracy: The establishment of a democratic society after massive human rights violations in a particular country is primarily achieved by caring for the victims and meeting their needs and demands, and should also be accompanied by a commitment to achieving truth, justice, reconciliation and peace. (Souad Khodja, 2017, p. 155)

A country whose citizens have been subjected to violations and which is seeking democratic transformation is in the process of building a new, balanced society in which a sense of justice and respect for individual rights prevails. It should establish a culture of accountability in its dealings, beginning with the legacy of past violations by prosecuting and punishing perpetrators. This will strengthen respect for human rights, serve as a deterrent, prevent the recurrence of violations and establish accountability. (Mohamed Sherif Bassiouni, 2012, p. 102).

If properly conceived and planned, democratic transition can bring lasting democracy and peace through the rebuilding of democratic institutions and the establishment and promotion of a culture of human rights. (Yasmine Souka, 2006, p. 33)

Feeling moral duty in facing the past: The existence of victims as a result of past violations in a given country is not something that cannot be ignored and forgotten, nor can it be relegated to the past, because it will continue to exist in the present. The victims continue to seek justice, and when this is not done, they turn to revenge, which is expressed through the outburst of memory and appears in a form of violence. (Souad Khodja, 2017, p. 155).



Restoring the dignity of victims and building trust between individuals in the state and between citizens and state institutions: Taking responsibility for past violations, holding criminals accountable and compensating victims is the only way to achieve this. Achieving these steps in reality creates a sense of justice in the hearts of victims and restores confidence in the state and its institutions. Alternatively, it leads to continued violence that undermines confidence in the state and its institutions, and it appears incapable of enforcing the rule of law. (Souad Khodja, 2017, p. 155).

2.2.1.2. Characteristics of transitional justice:

Transitional justice is based on a comprehensive approach to human rights violations committed during a specific period in the past. It focuses on the consequences of past human rights violations and addresses them through various mechanisms, including accountability for the crimes and criminal accountability of perpetrators, as well as reparations. In doing so, it seeks to prevent their recurrence in the future, maintain peace, build trust between the state and its citizens in a democratic state, and achieve national reconciliation. (Souad Khodja, 2017, p. 156).

Transitional justice operates within a framework that prioritizes balancing and integrating justice by punishing perpetrators of violations and achieving sustainable peace after war and conflict. It does not seek to achieve peace at the expense of justice, or vice versa. This is achieved by formulating transitional justice policy in such a way that the two objectives are as closely linked as possible, since both are necessary at this stage. (ICTJ, 2017, www.ictj.org).

Moreover, transitional justice focuses on victims to address past violations, and assess its success on the basis of their attitudes towards it, either in support or opposition. Meanwhile, the legitimacy of transitional justice mechanisms is measured by the extent to which victims oppose or support them, and the extent to which they are able to participate in and benefit from them. (Eric Sotas, 2008, p. 90).

2.2. The concept of national reconciliation:

Many countries, especially those that have experienced internal revolutions or the scourge of colonization, have embraced the concept of national reconciliation. They see it as the only way to overcome conflict, achieve stability and benefit society. In this context, the definition of national reconciliation will be discussed first, followed by the conditions for its success.

2.2.1. Definition of national reconciliation:

Reconciliation is a complex concept that is often linked to specific contexts. In psychology, for example, it can refer to self-reconciliation, while in social contexts, it may refer to family reconciliation. In politics, it is often associated with national reconciliation. The latter is divided into several branches: reconciliation between the government and the people, reconciliation between the government and a group of people (the terrorist group), and reconciliation between the three parties (the government, the people, and the terrorist group). National reconciliation is defined as a process of national consensus on the basis of which a relationship between political and societal parties is established. It is based on the values of tolerance and removing the effects of the past through specific and clear mechanisms, according to a set of procedures, aiming to reach the point of convergence. (Idris Bakhuya, 2017, p. 101)

Some view it as a national agreement aimed at reconciling different perspectives and bridging gaps between opposing or warring parties. (Al-Mustafa Souleih, 2005, p. 3).

Transitional justice is also defined as a necessary process to help society move from a divided past to a future shared by all. Its purpose is to establish society on the basis of legal legitimacy, pluralism, and democracy. (Mohammed Al-Mukhlafi, 2012)

Furthermore, it is construed as a procedural strategy adopted by the state in order to resolve conflicts and overcome crises resulting from violence and similar acts. Its aim is to restore peace and eliminate internal disputes that may threaten the stability of the state (Fatima and Nass, 2013, p. 11).

On the other hand, reconciliation is defined as a national consensus aimed at bridging gaps between opposing or warring parties, correcting mistakes, violations, and crimes, finding



acceptable solutions, and addressing these issues through dialogue instead of violence or cancellation of the other. It looks optimistically to the future, forgives the past, and establishes participation. (Idris Bakhuya, 2017, p. 102)

Mohamed Laakab explains that the concept of national reconciliation in Algeria originated from the political crisis that arose due to the cancellation of the electoral process for the legislation on December 26, 1991. This was followed by the emergence of the terrorist phenomenon on January 11, 1992, which led to a serious deterioration in the security status. National reconciliation emerged as a response to the worsening security situation and as a policy to address the political and security crisis in Algeria. It is a policy that rejects violence and promotes political solutions. The crisis in Algeria was primarily political and required a political resolution. However, the process of national reconciliation underwent several name changes before settling on its current title. These included the Measures of Mercy, the Civil Harmony Law, and the National Reconciliation Law in anticipation of National Harmony (Mohamed Laakab, 2005, p. 68).

National reconciliation in Algeria is a political, legal, and social project aimed at combating terrorist crime and restoring social peace in society. It urges terrorists and those involved in terrorism to surrender voluntarily in exchange for amnesty and the termination of prosecutions. (Abdelrazak Bakhalel, 2010, p. 72)

2.2.2. Conditions and factors for the success of national reconciliation:

For national reconciliation to succeed in a country, certain conditions and factors must be met. These are outlined below:

2.2.2.1. Conditions for the success of national reconciliation:

- There must be a formal recognition of the facts that constituted a violation of human rights and accountability for the perpetrators of crimes and those responsible for the destruction of the rights of innocent people. This must be done in a restorative manner that covers all political and social aspects. (Fatima Ouanas, 2013, p. 12)
- There must be material and moral support for persons and families affected by violence caused by the system, and that compensation should be formally established and enforced as a principle. (Fatima Ouanas, 2013, p. 12)
- Make every effort to identify all disappeared and missing persons, identify how they disappeared, take care of their families and provide assistance for finding them. (Abd al-Majid Ahmad Biok, 2017, www.alarabia.com)
- Define the far-reaching goals of national reconciliation and its short-term objectives, as well as linking reconciliation to holistic reform while working together to ensure that there is no recurrence of aggression and no tolerance, either now or in the future, for other possible attacks on the rights and liberties of individuals (Idris Bakhuya, 2017, p. 102).

2.2.2.2. Factors for the success of national reconciliation: (Abdenmour Mansouri, 2010, p.82)

Peaceful solution to the conflict: National reconciliation is linked to the adoption of a peaceful solution to the conflict that is satisfactory to both parties.

Mutuality of commitments: Mutuality is a crucial factor for the success of the national reconciliation process. This mutuality should exist between the two conflicting parties in both official and unofficial commitments. During the years of conflict, an atmosphere of hostility and distrust prevailed. Therefore, both sides must demonstrate enthusiasm and satisfaction to change these feelings and take actions that are often simple but symbolic, highlighting good intentions and aiming to build peaceful relations. These actions and endeavors contribute to establishing a peaceful environment that prevails in society and provides continuous support for reconciliation.

Leaders' engagement in the peaceful process: This refers to the identification of the leaders involved in the peace process and the trust relationships that unite them, despite potential opposition within the same group that may hinder the peace process. Leaders must overcome these obstacles and demonstrate their commitment to continuing peace efforts.

Supporting advocates of the national reconciliation process: National reconciliation necessitates the participation of individuals, groups, and organizations to



persuade hesitant or opposing parties of the significance of national reconciliation. Additionally, it requires an effective approach to strengthen peaceful relations between former adversaries. Therefore, all parties must be convinced that national reconciliation is a crucial goal that must be achieved.

Mobilizing civil society organizations to support the national reconciliation process: These organizations comprise political, military, social, cultural, and educational institutions. They should mobilize to support national reconciliation.

Supporting the international community: This factor is important because it provides a significant boost to the national reconciliation process. When the international community shows a particular interest in a peaceful settlement, it facilitates the process and encourages the parties to overcome difficulties. This can provide real and tangible support for the continuation of the process.

3. The Completeness of Transitional Justice Pillars in the Context of the Algerian Experience

Transitional justice aims to balance a set of different and sometimes contradictory objectives. On one hand, the Algerian approach does not seek to achieve retroactive justice at any cost, nor is it based on maintaining peace at the expense of victims. Instead, it integrates restorative and criminal elements to achieve a just reconciliation. However, unlike transitional justice, which requires national reconciliation programs to undertake the restorative elements of transitional justice through a comprehensive approach, the Algerian approach is based on compensation as an alternative to reparations. This approach disregards the right to truth and adopts the option of amnesty.

Compensation as a substitute for reparation and denial of the right to truth:

This section examines the Algerian legislator's conceptualization of the right to remedy and reparation. It also addresses the extent to which the National Reconciliation Law enshrines the right to knowledge and the issue of missing persons.

2.2.3 The Conceptualization of the Right to Remedy and Reparation by the Algerian Legislator:

The National Reconciliation Law enshrines the right to redress and reparation in accordance with the Algerian legislator's own conception of the basis and dimensions of reparation. The National Reconciliation Law assesses the State's responsibility to compensate for the national tragedy on the basis of damage, without considering fault or wrongdoing as elements of responsibility.

Clause 4 of the draft Charter for Peace and National Reconciliation distinguishes between criminal liability for enforced disappearances, which is attributed to both the criminal activity of terrorists and individual abuses by state agents, and the State's civil liability for compensation, which is completely independent of any criminal liability. (Kenza Hamdaoui, 2015, p. 110)

The National Reconciliation Law limits the criteria for being recognized as a victim of the national tragedy to the issuance of a death declaration based on a report prepared by the judicial police. This report must follow an exhaustive search and investigation process that yielded no results. The law does not require any element of the unlawful act or even associate the status of victim of the national tragedy with the risks arising from the legitimate actions of security agents in the framework of the fight against terrorism. (Nazir Amirch, 2011, p. 468)

The legal grounds for compensation in the context of the procedures for handling missing persons' files under the provisions of the National Reconciliation Law have been expanded. Compensation entitlement for victims of the national tragedy as defined in Article 2 of Presidential Decree No. 06-93 is no longer limited to cases involving grave fault or risks arising from the actions of security agents. Instead, it is now based on social risks. (Nazir Amirch, 2011, p. 471).

Compensation for measures aimed at promoting national reconciliation and national cohesion in Algeria is based on social solidarity. This is demonstrated by the right to compensation or reintegration into employment for employees who were subject to administrative dismissal due to acts related to the national tragedy. These employees may be rehired if they have a legally justified dismissal decision, have not been replaced by a judicial or administrative decision prior to the date of publication of this decree, and are on the list of persons either detained under an



administrative procedure, prosecuted, imprisoned or sentenced for acts related to the national tragedy, or benefiting from the provisions of the Civil Harmony Law and the Ordinance on National Reconciliation. (Kenza Hamdaoui, 2015, p. 112).

As part of its efforts to strengthen national cohesion, the Algerian legislature has established the right of disadvantaged families whose relatives were involved in terrorism to receive a state subsidy under the rubric of social solidarity. The legislature has also removed the charge of perpetrator, instigator, contributor, or accomplice from families whose relatives were involved in the acts referred to in Article 2 of the same decree and has criminalized any discrimination against this group. (Kenza Hamdaoui, 2015).

Critics argue that the Algerian legislature has not achieved completeness and comprehensiveness in the compensation program under the framework of national reconciliation. They argue that the concept of victimhood should be extended beyond the national tragedy in the legal texts related to compensating victims of terrorism. This approach links compensation and subsidies to the national tragedy, preventing further disparities in measures aimed at restoring the dignity of victims. (Hamdaoui, 2015, p. 115).

Furthermore, the legislature expanded the scope of reparations to include families who were denied financial assistance under the title of social solidarity, as well as individuals who were dismissed from work due to their involvement in the national tragedy. However, many victims were ultimately excluded from receiving compensation. (Hamdaoui, 2015, p. 116).

If the search results of the judicial police indicate that the missing person did not die and it is proven that the loss was not due to the person's membership in terrorist groups, the direct victim is not entitled to compensation. The exclusion criteria for beneficiaries of the national tragedy fund include children aged 21 years and above, as well as children aged 19 years and above who are not in school or not pursuing an apprenticeship. Additionally, daughters of the deceased who have an income are also excluded. (Article 6 of Presidential Decree No. 06-93, dated February 28, 2006, concerns the compensation of victims of the national tragedy, as published in OJPDR No. 11 on the same date.).

Criticism has been directed at the Algerian legislature for failing to distinguish between individuals who were administratively demobilized due to their involvement in the national tragedy and were later found innocent, and those who were found guilty. This issue is particularly evident in the reintegration procedures. (Hamdaoui, 2015, p. 116)

Additionally, the national tragedy failed to acknowledge a significant number of direct victims who suffered serious violations of international human rights and humanitarian law, including women who were subjected to sexual violence and children born in the mountains whose paternity remains unknown. (Kenza Hamdaoui, 2015, p. 117).

Moreover, the Reconciliation Law reduces reparations in their substantive dimension to financial compensation. However, reparations programs should not rely on financial compensation alone. Therefore, comprehensive reparations programs require rehabilitation, restitution, and guarantees of non-repetition and satisfaction. (Kenza Hamdaoui, 2015, p. 117).

3.2.1. The National Reconciliation Law's treatment of the right to know and the issue of missing persons:

The right to know is fundamental to achieve justice and restoring rights. In the context of transitional justice, it is crucial to understand the facts and develop appropriate plans to achieve desired outcomes. This right is universal and should be taught and understood by all members of society. Furthermore, to ensure that these crimes are not forgotten, they must be preserved for future generations within a specific moral, psychological, social, and legislative framework. (Carole Mottet, 2000, p 16).

In addition, the judicial authorities must inform the victims or their relatives of all measures taken or to be taken, including access to all files relating to the cases of their victims or missing persons before the security, judicial or administrative authorities. This right can be a means of achieving what formal and semi-official judicial institutions may not be able to achieve, namely



reconciliation. In essence, the right to know means removing any doubt or suspicion that the suspects may have been coerced into committing such grave violations, or that they may have acted under a mistaken belief, which could lead them to seek and accept excuses from their victims. The right to know is a fundamental right that can lead to reconciliation and justice for all parties involved. However, it should be noted that reconciliation is a voluntary and optional matter, and there is no reason to make it mandatory between the two parties seeking or accepting an apology (Quada Hawari, 2018, p. 90).

In this vein, the Ambassador of the Czech Republic stated that the role of the Tribunal is to deliver justice, not reconciliation. The court may be the driving force behind justice, but it is not responsible for promoting reconciliation. Justice deals with criminals who may be misleading in their testimony. Reconciliation is a complex process that cannot be achieved unless the criminals who have violated rights repent and ask forgiveness from their victims. Only then can reconciliation be achieved (Maupas, 2007, p. 12).

The right to truth has become a crucial issue in the aftermath of conflicts and internal turmoil. It has traditionally been linked to the rights of victims and their families to know the facts and circumstances of enforced disappearances. However, its scope has since broadened to encompass all forms of severe human rights violations (Yasmin Naqbi, 2006, p. 58).

This right, which is closely linked to other rights, is considered an inalienable right that has received wide attention in comparative experiences of transitional justice. Amnesty measures that lack accountability are a common obstacle to their implementation. (Yasmine Sooka, 2006, p. 31).

This is evident in the National Reconciliation Law, which prioritizes material compensation for the families of the disappeared, but excludes the right to truth in its individual dimension. The families' ability to obtain compensation is dependent on their willingness to declare the death of their loved ones. Furthermore, this right causes significant psychological distress for the families of the victims. It also undermines the search process conducted by the Judicial Police, as it only leads to the drafting of a missing person's report due to the inability to locate the missing person, without considering any other possibilities or potential outcomes of the search. (Article 30 of Order 06-01, dated February 27, 2006, which implements the Charter for Peace and National Reconciliation, OJPDRA No. 11, issued on February 28, 2006)

Additionally, the National Reconciliation Law does not acknowledge the families of victims' right to obtain adequate information regarding the circumstances of the disappearance, determine the location and cause of death, and locate the burial site of their loved ones. (Human Rights Committee, 2007, p. 12).

The UN Human Rights Committee has accused the Algerian authorities of neglecting to address the issue of enforced disappearances. The report emphasized the lack of measures to clarify the whereabouts of missing individuals and, in the event of their death, to repatriate their remains to their families. The concern regarding Article 3 of Presidential Decree No. 06-93, issued on February 28, 2006, which links the granting of compensation to the families of the missing to the recognition of death, was also restated. (Article 3 of Presidential Decree No. 06-93, dated February 28, 2006, pertains to compensation for victims of the national tragedy.)

However, Article 11 of the National Reconciliation Law excludes the collective dimension of the right to truth. The article states that anyone who uses or references the national tragedy to undermine the institutions of the People's Democratic Republic of Algeria, weaken the State, damage the dignity of its agents who served it with honor, or tarnish the reputation of Algeria in international forums, shall be punished by imprisonment from 1 to 1 year and a fine from 11000 DZ to 1000000 DZ. (Article 46 of Ordinance 06-01, dated February 27, 2006, implements the Charter for Peace and National Reconciliation, as published in OJPDRA No. 11 on February 28, 2006.)

The resolution of disappearance cases has been hindered by the absence of political will and a legal framework. It is crucial to distinguish between civilian disappearance or absence caused by natural disasters, accidents, or voluntary actions, and disappearance caused by criminal acts. The lack of clarity surrounding this issue has resulted in a legal loophole that prevents the families of the



disappeared from receiving the truth and justice they deserve. The families do not find the state's proposed solution of providing financial compensation acceptable, as they seek more than just monetary compensation.

For the reconciliation process to succeed, it is crucial that the truth is revealed without any injustice, fraud, or deception. The families of the disappeared are seeking only the truth, which is a prerequisite. There are numerous examples of the ineffectiveness of amnesty if it is not based on truth and justice, particularly since the offenses in question are not subject to the statute of limitations.

In South Africa, amnesty was granted in exchange for truth after many criminals were tried and convicted. The Condor Plan, created in 1975 to eliminate dissidents in Argentina, Chile, Bolivia, Uruguay, and Paraguay, included ineffective amnesty laws, reconciliation, and financial compensation. More than twenty years after the tyrannical generals committed crimes, they have once again been caught by the justice system. Despite their advanced age and declining health, they have become involved in cases they had hoped to leave behind.

2.3 Amnesty in the National Reconciliation Law:

The legitimacy of states' right to grant amnesty depends on compliance with the restrictions imposed by international law to combat impunity. The Algerian National Reconciliation Law is considered by some to be another form of impunity disguised as an unaccountable blanket amnesty. This will be discussed further below.

2.2.3. Unrestricted amnesty without accountability:

The Office of the United Nations High Commissioner for Human Rights (OHCHR) defines amnesty as a legal measure that prohibits subsequent criminal prosecution and, in some cases, civil proceedings against certain persons or categories of persons for specific criminal conduct committed prior to the adoption of the amnesty provision. Amnesty can also extinguish legal liability that was previously established. (Office of the United Nations High Commissioner for Human Rights, 2009, p. 6).

Although the term 'amnesty' is commonly used, it is rarely defined and appears to be used inconsistently. However, based on its usage, amnesties can be reasonably defined as excluding broad categories of perpetrators of serious human rights violations, on an individual basis, from prosecution and/or civil liability without beneficiaries having to meet certain conditions, including those related to ensuring full disclosure of what they know about the offenses covered by the amnesty law.

The National Reconciliation Law has fulfilled the UN definition of amnesty by allowing individuals to avoid prosecution if they follow the procedures for terminating public prosecution. This applies if the case is still at the preliminary investigation level or if it is the subject of a judicial investigation, postponement, docketing, or deliberation before the judicial authorities for judgment. As a result, criminal and civil proceedings against the person who has repented for the acts subject to the amnesty law are prohibited, (Article 15 of Order 06-01, dated February 27, 2006, implements the Charter for Peace and National Reconciliation, as published in OJPDRA No. 11 on February 28, 2006.), for the following categories:

- Individuals who surrendered to the authorities between January 13, 2000, and February 28, 2006.
- Individuals who refrain from committing the actions described in Articles 87bis to 87bis10 of the Penal Code may voluntarily present themselves to the appropriate authorities and provide a statement regarding the actions they have committed or incited, as well as the means associated with said actions, and surrender or disclose their location. Additionally, individuals who avoid engaging in the actions described in Articles 87bis to 87bis10 of the Penal Code.
- Individuals who are being investigated, either domestically or internationally, for committing or participating in one or more offenses under Article 02 of this law, and who present themselves voluntarily to the appropriate authorities within the aforementioned six-month period. This order contains the implementation of the Charter for Peace and National Reconciliation, OJPDRA. No. 11, issued on 28 February 2006.



- Individuals who cease their activities and declare it within a period of six months, limited to the provisions of Articles 87bis 4 and 87bis 5. (Article 6 of Order 06-01, dated February 27, 2006, implements the Charter for Peace and National Reconciliation, J.R.G.D.S. No. 11, issued on February 28, 2006).

- Individuals who have been convicted in absentia through the default process for violating Article 13 of the law.

Additionally, the National Reconciliation Law permits terrorists who express remorse to receive amnesty for their involvement in acts outlined in Article 2 of the National Reconciliation Law or Articles 87 bis 4 and 87 bis 5 of the Penal Code. The President of the Republic is authorized to grant special pardons in accordance with the Constitution's provisions. (Articles 16 and 17 of Ordinance 06-01, dated 27 February 2006, which contains the implementation of the Charter for Peace and National Reconciliation, OJPDR No. 11, issued on February 28, 2006).

2.2.4. Forms of Impunity:

Impunity under the National Reconciliation Law is exemplified by the fact that persons who committed, participated in, or instigated acts of mass killings, desecration, or the use of explosives in public places are excluded from benefiting from its provisions. The National Reconciliation Law provisions grant this group the right to benefit from sentence commutation or reduction. However, the UN High Commissioner considers this policy incomplete and insufficient in accommodating all categories of behavior that should be subject to effective investigation and criminal prosecution when evidence is proven. (Articles 10, 16, 18, and 20 of Ordinance 06-01, dated February 27, 2006, implementing the Charter for Peace and National Reconciliation, OJPDR No. 11, issued on February 28, 2006).

The National Reconciliation Law established de facto amnesty provisions in the form of immunity from prosecution through Ordinance 06-01. This ordinance implements the Charter for Peace and National Reconciliation, which prohibits any individual or collective prosecution of members of the defense and security forces of the Republic for acts carried out to protect persons and property and to save the People's Democratic Republic of Algeria, (Article 45 of Ordinance 06-01, dated 27 February 2006, implements the Charter for Peace and National Reconciliation, OJPDR No. 11, issued on February 28, 2006). According to Kenza Hamdawi (2015, p. 126), while public prosecutions are unacceptable due to the rules of fairness, human rights, and the principle of inviolability of the institutions of the Republic, individual prosecutions have no justification for their exclusion, unless the victims themselves exclude them or they are automatically excluded by the competent public prosecution.

3. CONCLUSION:

Examining the National Reconciliation Law in the context of transitional justice in Algeria, it can be concluded that:

- The Algerian government has implemented a new strategy to address the security crisis, utilizing a combination of deterrence and containment policies alongside the concept of national reconciliation. The Algerian legislature has implemented a range of legislative frameworks, including measures of clemency and the incorporation of popular opinion through the Civil Harmony and National Reconciliation Acts.

- The National Reconciliation Law is considered an incomplete approach to transitional justice because it does not fulfill all the necessary elements. It lacks a comprehensive approach to restorative elements, limiting itself to compensation as a substitute for reparations. Additionally, it fails to address all the necessary restorative elements. It also failed to uphold the right to truth and included amnesty options that allow for impunity. Additionally, the National Reconciliation Law excludes transitional justice mechanisms, whether restorative or punitive, from its provisions.

In consideration of the aforementioned, we present a collection of the most significant recommendations as follows:

- The need to supplement the restorative elements of transitional justice, such as reparations and institutional reform, is crucial. It is also important to enshrine the right to truth, at least in its



individual dimension for the families of the missing. This should be done through a comprehensive and integrated approach, and effective mechanisms should be put in place to fulfill this role.

- It is important to determine the criminal responsibility of perpetrators of crimes against human rights in the past. Additionally, it is crucial to research and publish the results of truth commissions and implement their recommendations, particularly regarding reparations for victims.

- The need to enshrine fundamental principles of criminal law, such as the principle of non-retroactivity of penalties, the principle of the legality of criminalization and the principle of the presumption of innocence.

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