

The National Human Rights Council as a National Mechanism for the Promotion and Protection of Rights and Freedoms

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Abstract:

The principles of intrinsic human entitlements have become a focal point of discussion at both the domestic and international arenas, prominently reflected in universal agreements and local legal frameworks. These prerogatives, integral to the essence of humanity, have been systematically incorporated into legislative instruments across nations. Algeria, as part of its legal evolution, embedded these values within its core statutes. To actualize these commitments, Algeria established entities devoted to ensuring ethical standards and advancing the rights of individuals and communities. The constitutional revision of 2016 marked a transformative phase by introducing a specialized entity named the National Council for Ethical Oversight and Social Equity. This initiative was designed to address longstanding critiques of its predecessor, the Advisory Commission on Civic Responsibilities, and to implement meaningful structural reforms. By emphasizing the reinforcement and elevation of fundamental liberties, the council seeks to cultivate a more equitable and inclusive societal framework.

key words: Fundamental Liberties, National Legal Frameworks, Central Body for Ethical Oversight, Foundational Legal Restructuring.

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Introduction

The prevalence of fundamental rights violations has prompted constitutional architects to institute national entities devoted to safeguarding and fostering essential liberties. This initiative aspires to fortify the institutional landscape of Algeria's commitment to human dignity and to reinforce frameworks ensuring the realization and advancement of liberties and justice. Such milestones can only be attained through the establishment of resilient and dedicated domestic bodies.

Algeria has pioneered the creation of multiple entities specializing in the safeguarding of inherent rights, deriving their authority and legitimacy from a robust legal framework that provides both stability and assurances. Notable among these entities are the Advisory Commission for the Safeguarding of Fundamental Rights and, subsequently, the Council for Ethical Oversight and Individual Freedoms.

Algeria's system of rights has undergone profound transformation, both at the statutory and institutional levels, as evidenced by successive constitutional charters that have acknowledged, safeguarded, and codified these entitlements within their provisions. This evolution has been marked by the establishment of national structures dedicated to ensuring the enhancement and protection of these principles.

The journey began in 1991 with the establishment of advisory mechanisms such as the Ministry for Fundamental Rights, which had a short-lived existence of merely seven months. Its responsibilities were succeeded by the creation of the National Observatory for Individual Liberties, which was tasked with overseeing, analyzing, and evaluating the adherence to rights standards. However, its shortcomings led to its dissolution, paving the way for the establishment of the Advisory Commission for the Advancement and Safeguarding of Liberties in 2001. A major milestone was reached following the 2016 legal overhaul, which constitutionally instituted

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the Council for Ethical and Civic Oversight, tasked with upholding and advocating for core liberties.

The pivotal question that emerges in this context is: What specific mandates define this Council, and has it proven to be an effective successor in safeguarding and advancing the rights of Algeria's citizens?

Section I: The Nature of the National Mechanism for Human Liberties

Fundamental entitlements represent a set of universal principles embedded within international agreements and legal frameworks, designed to ensure the protection of individuals and communities, particularly in their interactions with governmental authorities¹. These innate prerogatives are non-transferable and impose a binding obligation on states to safeguard them against any violations or encroachments. Achieving this protection requires a clear delineation of the relationship between individuals and the states to which they belong².

In Algeria, the constitutional reforms introduced in 2016 marked a significant shift with the creation of an independent entity devoted to promoting equity and justice. This institution emerged in response to criticisms of prior frameworks and mechanisms, particularly those associated with the former advisory body on civic entitlements. The newly established organization aims to enact comprehensive reforms, strengthen safeguards, and foster the development of a robust framework for individual and collective liberties.

First: Definition of the National Mechanism for Fundamental Liberties and Its Genesis

The Mechanism for Fundamental Liberties is an autonomous entity functioning under the purview of the Head of State, dedicated to

¹ - Saadallah, O. (2009). *Introduction to International Human Rights Law* (5th ed.). University Press, Ben Aknoun, Algeria, p. 11.

² - Khairi, G. M. (2013). *The Interconnection Between International Humanitarian Law and International Human Rights Law* (1st ed.). Dar Al-Raya Publishing and Distribution, Amman, Jordan, p. 39

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advancing and safeguarding individual and collective rights. It is endowed with full legal capacity and enjoys financial and operational independence. Its main office is situated in the capital city, Algiers¹.

As a public organization, this mechanism is recognized as an integral component of the state's institutional structure. Its financial operations adhere to a regulated administrative accounting framework, ensuring transparency and accountability. Moreover, it maintains a direct institutional connection with the office of the Head of State².

1. Introduction to the National Mechanism for Fundamental Liberties

The establishment of the Mechanism for Fundamental Liberties and the legislative framework underpinning it constitutes a pivotal advancement within the broader context of constitutional reforms. This development aligns with the obligations outlined in global legal instruments, agreements, and conventions related to the protection and advancement of individual and collective rights³.

This institution builds upon Algeria's progress in this domain, as the legal framework governing it aims to harmonize its operations with constitutional provisions. These provisions emphasize elevating the institution's status to meet international benchmarks established by global organizations.

Consequently, the institution has been promoted from the previous "B" classification held by its predecessor to an "A" status. This elevation enhances its capacity to represent Algeria effectively on

¹ - Article 02, 03 of Law No. 16-13, dated 03/02/1438 AH corresponding to 03/11/2016 AD, defines the composition of the National Human Rights Council, the methods for appointing its members, and the rules regarding its organization and functioning. This was published in the Official Journal of the Algerian Republic, No. 65, dated 06/02/1438 AH, corresponding to 06/11/2016 AD.

² - Hafai, S. (2017). *The National Human Rights Council and the Issue of the Missing Persons*. Algerian Journal of Legal and Political Sciences, 54(5), Algeria, p. 541.

³ - Abu Al-Wafa, A. (2000). *International Protection of Human Rights within the Framework of the United Nations and Specialized International Agencies* (1st ed.). Al-Nahda Al-Arabiya Publishing House, Cairo, p. 25.

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international platforms, particularly in engagements with globally recognized mechanisms focused on safeguarding liberties¹.

2. The Establishment of the National Mechanism for Fundamental Liberties in Algeria

Since constitutional rules are among the most stable and enduring, adopting the constitution as the foundational framework for the Council ensures its stability and continuity, safeguarding it from annulment or amendment outside the constitutional amendment process².

Articles 198 and 199 of the 2016 Constitution assigned the responsibility of advancing and safeguarding liberties in Algeria to this newly formed mechanism. Furthermore, the foundational method by which an entity is constituted significantly impacts its effectiveness and legitimacy³. Structures founded through constitutional provisions, such as this mechanism, are deemed more credible and impactful compared to those established through non-constitutional frameworks, such as regulatory decrees.

Second: Structure of the National Mechanism for Fundamental Liberties and Member Selection.

The Mechanism for Fundamental Liberties serves as one of the pivotal frameworks dedicated to safeguarding and advancing individual and collective entitlements. Its establishment was a cornerstone in Algeria's efforts to enhance and modernize the framework for ensuring justice and equity. This institution was designed to deliver meaningful and impactful reforms, aiming to shield fundamental liberties from potential infringements and violations. Reflecting its mission, the structure of this mechanism is

¹ - Gharbi, A. (2013). *Human Rights Institutions in Algeria: Pathways and Challenges*. PhD Thesis, Political and Administrative Organization, Faculty of Law, Political Science and International Relations, University of Algiers 3, pp. 504-505.

² - Gharbi, A. (2020). *Human Rights Institutions in Algeria: Pathways and Challenges*. Journal of the Researcher: Legal and Political Studies, 4(2), p. 541.

³ - Gharbi, A. (2020). *Human Rights Institutions in Algeria: Pathways and Challenges*. Journal of the Researcher: Legal and Political Studies, 4(2), p. 541.

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intentionally diverse, incorporating representatives from various societal sectors. This inclusivity ensures that the institution remains reflective of the broader community it serves, promoting equity and impartiality in its oversight and advocacy roles.

1. Formation of the National Mechanism for Fundamental Liberties

Law No. 16-13, dated November 3, 2016, specifies the structural framework, member selection processes, and operational guidelines of the national entity tasked with safeguarding essential freedoms. This legal provision emphasizes inclusivity, gender parity, and the application of ethical standards in appointing its members to ensure autonomy and operational efficacy¹.

This organization consists of 38 participants distributed as follows²:

- Four individuals designated by the head of state, known for their expertise and contributions to advancing ethical governance.
- Two representatives from each legislative body, selected by respective leaders in consultation with parliamentary heads.
- Ten nominees, equally divided by gender, from significant civil society groups engaged in areas such as economic justice, social equity, political inclusiveness, cultural advocacy, and rights of vulnerable populations and environmental stewardship. These nominees are proposed by their organizations.
- Eight representatives, equally divided by gender, from prominent trade unions and professional groups, such as those of legal practitioners, media personnel, and medical professionals.
- One delegate from the judicial authority, drawn from within its leadership.
- One individual from the cultural and linguistic councils, selected by their members.

¹ - Tabina, H. (2021). *The Status of the National Human Rights Council in Algeria: Constitutional Establishment and Protection Mechanisms*. Academic Journal of Legal and Political Research, University of Sétif 2, Algeria, No. 1, p. 92.

² - Article 10 of Law No. 16-13

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- One representative from gender equality advocacy groups.
- One participant from a humanitarian organization focused on relief efforts.
- Two academic specialists with expertise in the field of ethical governance.
- Two professionals involved in global or regional frameworks related to individual liberties.
- One advocate for youth representation in governance.
- The commissioner for child welfare and protection¹.

A dedicated panel is responsible for reviewing nominations and ensuring compliance with criteria set forth in the governing statute. This panel is chaired by a senior judicial figure and includes leaders of critical national oversight institutions. It is empowered to request necessary documentation, consult with stakeholders, and ensure transparent operations.

Meetings are convened as needed by the panel's chairperson or at the request of the organizational leadership. Internal regulations governing these processes are published in official records to ensure transparency and accountability².

2. Selection and Tenure of Members

Participants in the entity are designated for a term of four years, subject to renewal, through formal approval by the executive authority. The renewal process aligns with the stipulations outlined in Article 09 of Law No. 16-13, ensuring adherence to the proportional representation outlined in Article 10. Initial appointments for this body were officially made on February 12, 2017³.

The leadership of the organization is determined by an internal vote among its participants, electing an individual for a renewable four-year period. The appointment of the leader is formalized through

¹ - Article 10 of Law No. 16-13.

² - Article 11 of Law No. 16-13.

³ - Saoudi, N, (2020)"The System of the National Human Rights Council in Algerian Legislation," Academic Journal of Legal and Political Research, Issue 1, Laghouat, Algeria, 2020, p. 540.

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confirmation by the executive authority. Notably, this leadership role is deemed incompatible with any concurrent elected office, professional responsibilities, or external activities.

Protections are extended to both the head and the members, guaranteeing autonomy, impartiality, and safety in their roles. These safeguards shield them against coercion, harm, or defamatory actions, as per existing legal provisions. Members are bound by strict confidentiality and are expected to avoid actions that conflict with their assigned duties¹.

Membership may be terminated under several conditions, including the conclusion of the designated term, voluntary resignation addressed to the leader, dismissal due to unexplained absences from three successive general sessions, loss of eligibility for the role, conviction of a serious criminal offense, death, or repeated violations of professional responsibilities.

In cases of membership cessation, a successor is appointed for the remainder of the term following the original procedures of selection. Additionally, termination may result from a decision by the general assembly, requiring a majority vote².

Section Two: The Legal Framework of the National Mechanism for Fundamental Liberties

The creation and formalization of the Mechanism for Fundamental Liberties signify an alignment with global advancements in institutional governance aimed at strengthening, safeguarding, and overseeing individual and collective rights. As an entity anchored in constitutional legitimacy, it holds a superior and well-established standing compared to prior structures, ensuring a more effective approach to advancing the status of liberties. This elevated position endows the mechanism with extensive responsibilities and

¹ - Tabina, H. (2021).op cit. p 94.

²-Drar, A. (2018). The National Human Rights Council under Law 16-13 and its Internal Regulations. *Professor-Researcher Journal of Legal and Political Studies*, 3, 778.

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prerogatives dedicated to fostering and safeguarding essential freedoms, reinforcing its pivotal role in promoting equity and justice.

First: Structure and Functions of the Mechanism for Fundamental Liberties

The 2016 constitutional amendments in Algeria articulated the organizational framework of the Mechanism for Fundamental Liberties, granting it operational and financial autonomy. These provisions aimed to ensure stability, coherence, and continuity in its mandate to defend and uphold fundamental liberties. The constitutional guidelines further delineated its principal components and the core responsibilities entrusted to it.

1- Organizational Framework of the Mechanism

The Mechanism for Fundamental Liberties functions as an autonomous institution established to promote, safeguard, and advance the principles of equity and justice, aligned with both domestic priorities and international standards. Its structural design mirrors the multifaceted nature of Algerian society, incorporating diverse specialized committees and bodies that enhance its effectiveness in achieving its objectives.

Guided by the 2016 constitutional provisions, the foundational framework of this institution guarantees its independence and enduring capability to execute its duties. The governing statutes define the composition, roles, and authority of its internal entities, enabling it to act as a robust instrument in addressing multifarious challenges while offering protection against infringements.

1-1 The Plenary Assembly

The Plenary Assembly serves as the central decision-making organ within the framework of the Mechanism for Fundamental Liberties, operating alongside other specialized structures. Comprising all members, it functions as a forum for inclusive deliberations on issues falling within the scope of the mechanism's jurisdiction.

Regular sessions are convened quarterly, initiated by the chairperson. Extraordinary sessions may also be held when deemed necessary, either at the discretion of the chair or upon the request of

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two-thirds of the members. Resolutions are adopted through majority voting by the attending participants¹.

Quorum requirements necessitate the presence of at least half of the members for the validity of meetings. Should this threshold not be met, a subsequent session is called within seven days. In such cases, the deliberations proceed irrespective of attendance numbers. Notices for assembly meetings are dispatched to all members at least ten days prior to the scheduled date, accompanied by the agenda and relevant documentation for the items under discussion².

1-3 Leadership Role

The leader of the Mechanism for Fundamental Liberties is selected from its members through an internal election for a renewable term of four years. This role is formalized by executive decree, with the stipulation that it remains incompatible with any other elected office, public function, or secondary professional engagement.

Owing to the significance of this position, the leader is entrusted with several key responsibilities, including:

- Supervising, invigorating, and harmonizing the functions of the Plenary Assembly.
- Acting as the principal financial officer for the institution's budgetary operations.
- Representing the entity both domestically and internationally, particularly within the framework of global human rights mechanisms such as the Universal Periodic Review.
- Overseeing the implementation of institutional programs and compliance with internal directives.
- Managing and coordinating the administrative operations in collaboration with the Secretary-General.
- Exercising disciplinary oversight over all personnel to maintain institutional integrity and professionalism.

¹ - Article 19 of Law No. 16-13.

² - Articles 26 and 27 of the Internal Regulations of the National Human Rights Council, dated 26/01/1439 (corresponding to 17/10/2017), outline the organization and functioning of the council. *Official Journal of the People's Democratic Republic of Algeria*, No. 59, dated 26/01/1439 (corresponding to 17/10/2017), p. 31.

1-4 Central Coordination Body

The Central Coordination Body is composed of the institution's leader and the chairs of its specialized committees. Compensation for these roles is determined in accordance with the provisions outlined in the internal regulations. The body convenes on a bi-monthly basis and may hold additional meetings as needed upon the leader's request.

The core responsibilities of this entity include:

- Drafting the institution's procedural framework and submitting it to the Plenary Assembly for endorsement, followed by its publication in the Official Gazette.
- Overseeing the execution of the strategic agenda and preparing detailed schedules for Plenary Assembly sessions, as well as ensuring the effective implementation of its directives.
- Facilitating communication and administrative functions with the support of the secretary, who also serves as the secretary of the coordination body.
- Evaluating and monitoring the overall progress and challenges faced by the various committees.
- Responding to emerging internal issues and external factors influencing the landscape of fundamental liberties.

This body ensures strategic alignment, operational efficiency, and the adaptability of the institution in addressing its mandate¹.

1-5 Regional Offices

Regional offices function as extensions of the central institution, operating within their respective territorial boundaries to implement its objectives and responsibilities. Each office is managed by a regional representative selected from among the members of the institution, excluding the heads and rapporteurs of the specialized committees. The appointment of regional representatives is executed by the head of the institution, contingent upon approval from the Plenary Assembly.

¹- Drar, A. (2018), op. cit, PP 780-781.

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The regional representative serves as the institution's delegate within their assigned territory, acting under the authority granted by the head of the institution. Their primary duties involve gathering and synthesizing data critical for fulfilling the institution's mandate. These tasks include, but are not limited to:

- Monitoring developments related to fundamental liberties within the region.
- Issuing early warnings regarding potential infringements or violations.
- Conducting evaluations to ensure compliance with the standards of fundamental rights.

By decentralizing responsibilities, the regional offices enhance the institution's ability to respond effectively to local challenges and uphold its commitments to safeguarding fundamental liberties.

2. Initiatives and Responsibilities of the Mechanism

The Mechanism for Fundamental Liberties has solidified its dedication to aiding governmental endeavors to eradicate all manifestations of bias against women. It remains committed to its mandate of issuing timely alerts to the relevant authorities in instances of potential violations or encroachments on women's entitlements. On International Women's Day, the mechanism expressed its profound appreciation and support for women globally, emphasizing its endorsement of all measures undertaken to eliminate discriminatory practices irrespective of their origins¹.

The statement highlighted that this year's observance coincides with a pivotal constitutional revision that underscores the significance of women's rights. This amendment enshrines equal access to employment opportunities and electoral participation while mandating the authorities to address and mitigate acts of violence targeting women. The state is further obliged to establish facilities providing

¹- National Human Rights Council Commits to Accompanying State Efforts to "Eradicate" Forms of Discrimination Against Women. Retrieved September 19, 2024, at 14:20 from the following website: <https://cutt.us/0kXyQ>.

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comprehensive assistance, including health services, psychological care, and educational support, for women subjected to abuse.

Moreover, during the commemoration of Universal Children's Day, the mechanism called for the continued enhancement of initiatives in the realm of child welfare, advocating for the full realization of the protections and guarantees afforded to children under constitutional provisions.

Second: Responsibilities and Mandates

The autonomous institution dedicated to safeguarding fundamental liberties is tasked with a comprehensive array of functions designed to advance and uphold individual and collective rights.

1. Consultative Functions

This entity provides expert insights, recommendations, initiatives, and analyses to governmental and legislative bodies concerning issues tied to fundamental rights at both domestic and global levels¹. These contributions may be self-initiated or requested by state authorities. Key consultative roles include:

- Reviewing and analyzing proposed legislative and regulatory frameworks to ensure alignment with fundamental rights standards².
- Offering evaluations of existing legal provisions based on established principles of fundamental liberties.
- Proposing strategies for ratification or accession to global agreements on liberties and participating in the drafting of state-mandated reports for international and regional bodies, ensuring compliance with global commitments.
- Assessing the implementation of observations and recommendations issued by global entities, committees, and regional systems concerning rights and liberties.

2. Educational and Promotional Roles

¹ - Article 04 of Law No. 16-13.

² - Ben Aissa, A. (2015). Op cit, PP.264-265.

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The institution is instrumental in fostering a culture centered on the respect and protection of fundamental rights. To this end, it undertakes:

- Continuous capacity-building programs targeting various societal sectors.
- The organization of forums, seminars, and symposiums at local, regional, and international levels to discuss and advance the understanding of rights-related issues.
- The production of research, analytical studies, and awareness campaigns to inform and sensitize the public on matters related to liberties and their protection.

Through its multi-faceted competencies, this institution not only advises on legal and policy reforms but also strengthens societal understanding and appreciation of fundamental rights, positioning itself as a pivotal actor in the domain of liberties¹.

3. Mandates in Advancing Fundamental Rights

3.1. Engagement with National and Regional Entities

In executing its responsibilities, the council has the authority to solicit information or clarifications from any public or private entity. These entities are obligated to respond to such requests within a maximum of sixty days. The council ensures that all obtained data and documentation are exclusively utilized for purposes explicitly outlined by its governing legal framework, thereby safeguarding confidentiality and integrity.

3.2. Collaboration with Global Organizations and Institutions

The council actively fosters partnerships and alignment with international entities to further its mandate of advancing individual and collective liberties. It engages with United Nations bodies such as the General Assembly, the Economic and Social Council, and the Trusteeship Council. Additionally, collaboration extends to specialized agencies, including UNESCO, the World Health Organization, the

¹ - Article 05 of Law No. 16-13.

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International Labour Organization, and the Food and Agriculture Organization.

Furthermore, the council establishes cooperative relationships with international non-governmental organizations such as Amnesty International, the International Committee of the Red Cross, and other prominent global associations specializing in law and human rights. These partnerships are instrumental in strengthening Algeria's engagement with global frameworks and enhancing its adherence to international standards.

3.3. Development and Dissemination of the Annual Report

The constitutional provisions underscore the council's duty to compile and present an annual report that encapsulates the state of fundamental rights within Algeria. This report, submitted to relevant authorities, serves as a comprehensive overview of the progress, challenges, and recommendations concerning rights and liberties¹.

The council's annual publication is disseminated widely, both nationally and internationally, ensuring that all stakeholders, including the public, are apprised of Algeria's human rights situation. This transparency reinforces accountability and provides a platform for continuous improvement in the protection and promotion of fundamental liberties.

Conclusion

The establishment of the National Institution for the Safeguarding of Rights and Liberties in Algeria represents a pivotal milestone within the framework of constitutional reforms initiated in 2016. This entity is founded on several key pillars, primarily the development of institutional and legal frameworks designed to advance the protection of fundamental rights, ensuring robust safeguards against violations and abuses in various forms. Despite notable efforts, the institution has yet to achieve comprehensive fulfillment of its objectives in guaranteeing full enjoyment of rights for all individuals. While it has made relative progress in some areas,

¹ - Ben Aissa, A. (2015). Op cit, PP.269-270.

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significant challenges remain in achieving genuine and effective protection.

Recommendations:

- **Enhancing Effectiveness:** It is imperative to implement more advanced mechanisms to build governance rooted in the principles of justice and the rule of law.
- **Strengthening the National System:** Work towards creating a resilient and effective national system capable of practical implementation to safeguard rights.
- **Monitoring Violations:** Enforce strict oversight to address violations and take comprehensive measures to combat all forms of abuse.
- **Expanding Authority:** Broaden the institution's powers to enable more extensive monitoring of institutional compliance with international standards, ensuring its independence and guaranteeing that its decisions remain free from external interference.

These recommendations aim to address existing shortcomings and bolster the institution's role in advancing and protecting fundamental rights across Algeria.

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8. Internal Regulations of the National Human Rights Council, dated 26/01/1439 AH corresponding to 17/10/2017, which specifies the organization and functioning of the council. Official Journal of the People's Democratic Republic of Algeria, No. 59, dated 26/01/1439 AH corresponding to 17/10/2017.

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12. Presidential Decree No. 01-71, dated 30/12/1421 AH corresponding to 25/03/2001, establishing the National Advisory Committee for the Promotion and Protection of Human Rights. Official Journal of the People's Democratic Republic of Algeria, No. 18, dated 03/01/1422 AH corresponding to 23/03/2001.

13. Presidential Decree No. 02-298, dated 16/07/1432 AH corresponding to 23/09/2002, concerning the regional delegations of the National Advisory Committee for the Promotion and Protection of Human Rights. Official Journal of the People's Democratic Republic of Algeria, No. 63, dated 18/07/1423 AH corresponding to 25/09/2002.

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