



THE LEGAL APPROACH TO NATIONAL RECONCILIATION AND CRIMINAL LEGAL SECURITY IN ALGERIA

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Send Article Date: 07-07-2025

Date of acceptance of the article: 26-08-2025

Abstract:

In its contemporary history, Algeria has experienced years of violence and bloody terrorism, known as the Black Decade. At that time, the state faced two options: either resorting to retributive justice, which was based on accountability, or implementing restorative justice mechanisms, which were founded upon forgiveness and amnesty. It chose the latter and, for this purpose, established a National Charter for Peace and Reconciliation as a promising political and legal project. Its primary objective was to restore stability, security, and national peace, as well as to reconcile members of society with one another and with their state institutions. This endeavour relied on special legal mechanisms within an exceptional approach that transcended traditional judicial procedures. Consequently, some of these mechanisms conflict with the principle of criminal legal security in certain aspects while complementing it in others. This approach thus represented a genuine and substantial challenge for the legislature in striking a balance between the pursuit of national peace and the demands of justice.

keywords: Approach; Reconciliation; National; Security; Criminal; Complementarity.

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Introduction

In the 1990s, Algeria experienced one of the most challenging periods in modern history, known as the Black Decade, which had severe repercussions at the humanitarian, social, economic, and political levels. This violent era resulted in thousands of victims, both killed and missing, and caused a deep rift in the national social fabric. This situation necessitated intervention to put an end to the violence and to restore national peace and stability. Thus, various mechanisms were adopted to achieve national reconciliation, the most prominent of which was the Charter for Peace and National Reconciliation, enacted through a popular referendum and approved by a majority vote in 2005.

This national charter represented a concrete manifestation of political will to close the chapter on a bitter past and move towards a new phase on the basis of peace and stability. It introduced exceptional legal measures, most notably the granting of amnesty to specific perpetrators of terrorism-related criminal acts under specified conditions, as well as the exoneration or mitigation of responsibility for former actors, within a comprehensive national settlement framework. However, this legal approach introduced by the Charter for Peace and National Reconciliation, despite its noble objectives, provoked debate both nationally and internationally, particularly owing to specific provisions that conflict with the fundamental principles of criminal law. Chief among these is the principle of criminal legal security, a deeply entrenched constitutional and legal principle in modern states, which requires clarity and stability of criminal legal norms and provides safeguards linked to criminal legality, nonretroactivity of criminal law, equality before the law, fair trial guarantees, and other foundations that collectively ensure an effective criminal justice system.

The Charter for Peace and National Reconciliation has raised a profound legal and ethical issue: whether it is possible to justify the enactment of exceptional provisions that may conflict with the rules and pillars of criminal law in the name of the higher interests of the nation, namely, compromising criminal legal security in favour of achieving national peace. Analysing this Charter through the lens of the legal approach, particularly its relationship with the principle of criminal legal security, requires a thorough analytical study of this national instrument and an examination of its compatibility with the foundations of criminal legal security.

Within the legislative orientation of the National Reconciliation Charter, which aims to turn the page on political and social conflict, a central question arises regarding the extent to which this Charter aligns with the principles of criminal legal security, particularly those related to the principle of legality, the stability of legal rules, and the guarantee of avoiding impunity. Hence, we pose the following question:

Has the Charter for Peace and National Reconciliation succeeded in striking a balance between the demands of social peace and the guarantees of criminal legal security?

We address this question in the following sections:

- **Section One:** A conceptual approach to national reconciliation and criminal legal security.
- **Section Two:** A formal approach to national reconciliation and criminal legal security.

Section One: A Conceptual Approach to National Reconciliation and Criminal Legal Security



Establishing a conceptual approach to national reconciliation and criminal legal security requires a thorough examination of the definition of each term in the eyes of law and jurisprudence. It is essential to identify the distinguishing features of both concepts in terms of their definitions on the one hand and to present the different foundations upon which each is based on the other while also highlighting areas of complementarity between these foundations. This will be addressed in the following subsections:

Subsection One: Distinguishing between National Reconciliation and Criminal Legal Security

Differentiating between national reconciliation and criminal legal security necessitates defining each term separately while identifying their similarities, differences, and complementary aspects in terms of definition, particularly since the former constitutes both a political and legal measure, whereas the latter is inherently a legal and judicial guarantee. This will be elaborated upon in the following discussion.

Subsection One: Definition of National Reconciliation

The Algerian legislature addressed the concept of national reconciliation in the Charter for Peace and National Reconciliation, which the people approved through the referendum of 29 September 2005 (Presidential Decree No. 05-278, 2005; *Official Gazette*, No. 55, 2005). Moreover, it was implemented in several legal texts, the most prominent of which is Ordinance No. 06--01 of 27 February 2006. Upon reviewing this ordinance, it becomes apparent that the legislature did not provide a precise and comprehensive legal definition of national reconciliation within an explicit statutory provision (Ordinance No. 06-01, 2006; *Official Gazette*, No. 11, 2006). Nevertheless, its essence can be inferred from the objectives and principles stipulated in this ordinance.

Accordingly, under Ordinance No. 06--01, national reconciliation may be understood as a set of legal, political, and social principles and measures adopted by the Algerian legislature within the framework of the Charter for Peace and National Reconciliation. Its primary aim is to bring an end to the national tragedy experienced by the country during the 1990s (Majid, 2013). to strengthen national unity and embody the determination of the Algerian people to complete the process of peace and reconciliation. This is pursued with a view to achieving stability within the nation, fostering its development, and reinforcing national cohesion.

The Charter seeks to accomplish these objectives through mechanisms such as conditional amnesty, compensation and reparation, reintegration of individuals, and the extinguishment of criminal proceedings or cessation of judicial actions against those who were not involved in mass killings, violations of sanctities, or bombings in public places (Ordinance No. 06-01, 2006).

National reconciliation is based on the concept of conditional forgiveness and reconciliation without impunity for serious crimes, striking a balance between society's right to peace and victims' right to justice and recognition. Under Ordinance No. 06--01, national reconciliation represents a special national mechanism for resolving a severe security crisis through transitional justice standards. This approach, however, has raised complex legal and human rights issues that remain under discussion.

Given that the legislature did not explicitly define national reconciliation in the Charter for Peace and National Reconciliation, jurisprudence has sought to provide a definition. Legal scholars regard it as an inevitable outcome experienced by states that have endured conflicts between the government and its



citizens. To end such internal conflicts, national reconciliation is pursued through reorganising and restructuring the forces of society, realigning the majority of citizens with the social order (Issa & Zreq, 2018). Moreover, judicial prosecution or retaliatory measures based on identity or affiliation should be avoided. The purpose of this process is to restore balance and national cohesion and to put an end to cycles of bloodshed.

Scholars argue that national reconciliation has two distinct interpretations. Some consider it to encompass all efforts made to turn the page on the past, to forgive, and to forget. Others, particularly human rights advocates, regard it as comprising all measures aimed at accountability, acknowledgement of crimes, and the pursuit of justice (Chennan, 2015). However, achieving these two divergent interpretations simultaneously requires a genuine confrontation with the past, which is challenging to realise in practice.

National reconciliation may therefore be defined as a set of legal measures and procedures necessary to rebuild the state and the nation upon lawful, pluralistic, and democratic foundations, ensuring the closure of a bitter chapter in history by achieving national peace through forgiveness and justice and allowing for a fresh start. National reconciliation constitutes a form of transitional justice that addresses the consequences of the past, corrects the course of society, and sets out the desired future path on the basis of agreed-upon legal principles.

Subsection Two: Definition of Criminal Legal Security

For law to serve as a fundamental pillar in regulating social relations within society, it must exhibit stability and permanence to preserve the security of legal positions. A stable legal system results in the stability of legal statuses, as it provides predictability in the relationships of those subject to the law,

fosters reassurance, and upholds the rule of law. Those subject to the law in general, and to criminal law in particular, increasingly require penal provisions that are characterised by clarity and precision in the use of terms that explicitly convey their meaning and intent. Such provisions must be easily understood and should not leave room for interpretation, which may lead to divergent judgments and undermine the legal positions of individuals (Abdul-Douri, 2023).

Finding a legal definition of criminal legal security within Algerian legislation is challenging, although not impossible. In its 2020 constitutional amendment, the constitutional legislature introduced a constitutional pillar termed “legal security” in Article 34, paragraph 4 (final paragraph), which entrusts the state with ensuring legal security when enacting any legislation directly related to fundamental rights and freedoms through the promulgation of clear and precise legal provisions that contribute to legal stability (Constitution of Algeria, 1996/2020; *Official Gazette*, Nos. 76 & 82). With this provision, the constitutional legislature established a constitutional foundation for the principle of legal security in general, which is applicable to all branches of law, including criminal law. Although criminal law itself does not explicitly define this principle, its substantive and procedural branches contain fundamental elements and principles that constitute the framework of criminal legal security, albeit dispersed throughout various provisions.

Criminal law scholars consider criminal legal security a concept that is difficult to circumscribe, given the increasing erosion of individuals’ rights and infringement of their freedoms resulting from the criminalisation of certain acts over others. This has created the necessity of seeking a legal refuge that is safe, accessible, and clear, represented by the principle of criminal legal security. According to some jurists, this principle consists of ensuring stability in substantive and procedural legal positions



by striking a balance between the rights and freedoms protected by law through the proportionality of the various values safeguarded by the Constitution, as well as by guaranteeing clarity in criminal provisions and the nonretroactivity of penal legislation. The ultimate aim is to secure legitimate trust in the law as an instrument for the protection of rights and freedoms (Sorour, 2002).

Criminal legal security represents a fundamental principle of the rule of law, intended to ensure legal assurance for citizens by guaranteeing the clarity and stability of criminal legislation. Individuals are thus made aware of criminal acts and their corresponding penalties in advance, enabling them to adjust their conduct in accordance with criminal law and shielding them from legislative surprises that could infringe upon their rights and freedoms. This, in turn, lends criminal law effectiveness and reinforces a stable relationship between individuals and state authority by balancing protected interests, ensuring the proportionality of penalties, and safeguarding justice.

Subsection Three: Convergence between the Definitions of National Reconciliation and Criminal Legal Security

A careful examination of the definitions of both national reconciliation and criminal legal security reveals that each has its own methodology and temporal context. They differ in definition and approach yet converge in their ultimate purpose. The two concepts differ in nature: national reconciliation is primarily political and social in character, although it encompasses legal dimensions. It is based on the principles of transitional justice and the higher interests of the nation and requires the participation of all actors, including the state, civil society, and victims. In contrast, criminal legal security is fundamentally legal and judicial, as it reflects the existence and supremacy of the rule

of law and is intrinsically tied to the protection of individual rights and freedoms.

They also differ in function: national reconciliation seeks to achieve national peace and political stability, rebuild the social fabric, restore trust between citizens and the state, and resolve internal conflicts. Criminal legal security, however, is designed to protect individuals from the arbitrary exercise of penal power, ensure the stability of the judicial and criminal system, and establish legal certainty in matters of punishment.

In terms of temporal context, national reconciliation arises during transitional periods following crises and internal conflicts. In contrast, criminal legal security operates within a stable legal system free from domestic turmoil and strife. They also diverge in focus: national reconciliation emphasises achieving a balance between justice and forgiveness. At the same time, criminal legal security is principally concerned with upholding criminal legal norms and ensuring their stability and clarity.

National reconciliation and criminal legal security converge in their constitutional and legal foundations. National reconciliation is enshrined in the preamble of the Algerian Constitution, which affirms that the Algerian people contributed to the implementation of the policy of peace and national reconciliation. This policy has borne fruit and must be preserved through the promotion of the values of tolerance and peace to safeguard the unity and stability of the state (Algerian Constitutional Amendment, 2020, Preamble para. 8). This principle is embodied in Ordinance No. 06-01 of 27 February 2006, which implemented the Charter for Peace and National Reconciliation, which aims to achieve peace, security, and stability for the nation and foster its development (Ordinance No. 06-01, 2006).



Similarly, criminal legal security is entrenched in the Algerian Constitution under Article 34, paragraph 4, which explicitly links it to the protection of rights and freedoms, with its practical application found in criminal law. It is also implicitly reinforced throughout various laws, including the Penal Code in both its substantive and procedural aspects. Although not expressly defined, its application is evident through the set of principles upon which criminal law is built (Presidential Decree No. 20-442, 2020).

Despite the distinction between their definitions, the relationship between national reconciliation and criminal legal security remains complementary. National reconciliation requires adherence to criminal legal security to ensure that it does not become a cover for impunity. Conversely, criminal legal security, during transitional periods, necessitates a certain degree of flexibility to enable reconciliation without sacrificing justice. Criminal legal security supports national reconciliation by providing a stable legal environment that encourages dialogue and accountability, safeguarding the rights of all parties and preventing selective prosecution.

The relationship between the National Reconciliation Law and criminal legal security, in terms of definition, is thus one of conditional complementarity. Suppose that the National Reconciliation Law is drafted in a transparent and precise manner, grounded with respect to constitutional and legal principles. In that case, it becomes a means of strengthening, rather than undermining, legal security. However, if imposed as an exceptional, vague, or ambiguous law, it risks eroding trust in justice and violating fundamental legal safeguards. Therefore, national reconciliation and criminal legal security are not inherently conflicting; instead, they are complementary, provided that fundamental principles of justice are respected and that

precise legislative mechanisms are established to strike a balance between justice and forgiveness.

Subsection Two: Distinction between the Foundations of National Reconciliation and Criminal Legal Security

Differentiating between national reconciliation and criminal legal security in terms of their respective foundations requires identifying the constitutional and statutory pillars upon which each rests while also highlighting the principles they share, such as legality, trust in the law, reparation, and others. This distinction is as follows:

Subsection One: Foundations of National Reconciliation

National reconciliation is founded upon a set of principles recognised by both law and legal scholars, with popular legitimacy being one of its most significant pillars. The Charter for Peace and National Reconciliation in Algeria was established in the aftermath of the Black Decade (Majid, 2013). As a response to the will of the Algerian people to achieve security, stability, and an end to violence and internal unrest, this initiative reflects a process grounded in the people's will and consent, conferring moral and political legitimacy upon the reconciliation measures proposed by the President of the Republic, who submitted the initiative to a popular referendum (Ben Oubaid, 2025).

This is confirmed by Presidential Decree No. 05--278 of 14 August 2005, which called upon the electoral body to participate in the referendum on national reconciliation held on Thursday, 29 September 2005 (Presidential Decree No. 05-278, 2005). The referendum was approved by 97.43 percent of voters, granting the President of the Republic the authority to implement it (Constitutional Council Declaration No. 101/D.M/05, 2005;



Official Gazette, No. 67, 2005). Through this process, the people exercised their sovereignty via a constitutionally enshrined mechanism under Article 8 of the Constitution (Constitutional Council Declaration No. 101/D.M/05, 2005; *Official Gazette*, No. 67, 2005).

This popular mandate subsequently facilitated the promulgation of Ordinance No. 06--01 of 27 February 2006, implementing the Charter for Peace and National Reconciliation, which explicitly reflects this popular will in its first article (Ordinance No. 06-01, 2006). The Algerian Constitution further enshrined this principle in its preamble, affirming people's commitment to unity and their role in achieving the policy of peace and reconciliation. This popular legitimacy enabled the state to overcome an internal crisis, restore security, and establish a national project grounded in the will of the majority.

Transitional justice constitutes another cornerstone of national reconciliation, serving as a means to achieve peace and societal harmony fairly and sustainably. It is based on confronting a painful past in a way that satisfies victims, restores trust between the state and society, and provides both a legal and ethical framework for addressing the legacy of past violations, thereby contributing to a balance between justice and peace (Majid, 2013).

Condemnation of violence is also regarded as one of the fundamental principles underpinning national reconciliation, rejecting all forms of severe violence and committing to avoiding its recurrence, as violence cannot serve as a means of resolving internal conflicts. Ordinance No. 06-01, which implements the Charter for Peace and National Reconciliation, seeks to create a societal environment characterised by dialogue and tolerance rather than violence. Although this ordinance does not explicitly articulate this principle, it implicitly affirms it by excluding from

amnesty, under paragraph 2 of Article 16, acts of mass killings, violations of sanctities, and bombings in public spaces (Ordinance No. 06-01, 2006).

Conditional amnesty and the substitution of penalties also constitute key pillars of national reconciliation. These measures grant privileges or eliminate penalties for certain individuals under specific conditions, such as noninvolvement in serious collective crimes, including mass killings, violations of sanctities, and bombings; acknowledgement of the acts committed; and the renunciation of armed activity. The legislature codifies this principle in Articles 16 to 20 of Ordinance No. 06--01, which contains the Law on Peace and National Reconciliation.

The forgiveness enshrined in the Charter for Peace and National Reconciliation can be realised only through the implementation of a fundamental principle: reparation and compensation. Repair is achieved by recognising the harm suffered by victims, addressing the damage caused, and ensuring nonrepetition. This includes the acknowledgement of victims of terrorism, both civilians and members of the armed forces, as well as the disappeared and those forcibly abducted. Compensation may be provided in both material and moral forms (Majid, 2013).

The state is committed to granting direct financial compensation to victims' families, providing pensions or assistance to those affected, and facilitating access to housing and employment opportunities for impacted families. Moral reparation includes the issuance of official documents recognising victims of terrorism and measures to facilitate the psychological and social reintegration of families into society. These provisions are stipulated in Articles 37 to 39, as well as Article 25 and other relevant provisions of Ordinance No. 06--01 mentioned above (Ordinance No. 06-01, 2006).



They were given practical effect under Presidential Decree No. 06--93, concerning compensation for victims of the national tragedy (Presidential Decree No. 06-93, 2006; *Official Gazette*, No. 11, 2006), and Presidential Decree No. 06--94, concerning state assistance for disadvantaged families with relatives involved in terrorism (Presidential Decree No. 06-94, 2006; *Official Gazette*, No. 11, 2006).

Subsection Two: Foundations of Criminal Legal Security

The principle of criminal legal security is built upon various foundations, encompassing substantive foundations, procedural foundations, and shared foundations that combine both substantive and procedural aspects.

With regard to substantive foundations, these foundations are embodied in the recognition of substantive criminal legality, which is affirmed by most constitutions and statutes, including the Algerian Constitution in Article 167 (Constitution of Algeria, 1996/2020). Moreover, the Algerian Penal Code in Article 1 stipulates: “There is no offence, penalty, or security measure except by virtue of a law.” (Ordinance No. 66-156, 1966; *Official Gazette*, No. 49, 1966) This principle limits the sources of criminalisation and punishment to codified legal provisions, excluding other sources of law such as religious law, custom, natural law principles, and equity from the domain of criminalisation, punishment, or preventive measures (Ouhaibia, 2022).

Here, the term *law* is not confined to its narrow meaning as legislation enacted solely by the legislative authority; rather, it extends to its broader sense, encompassing any general and abstract rule promulgated by a competent legislative authority.

Granting legislative authority to any body other than the legislature, such as the executive branch, would undermine the principle of criminal legal security (Abdul-Douri, 2023). To mitigate these effects, the Algerian Constitution grants legislative power to Parliament in matters of criminal law, particularly regarding felonies and misdemeanours (Constitution of Algeria, 1996, art. 139, para. 7). While leaving certain minor offences within the competence of the executive authority (Ouhaibia, 2022).

The principle of substantive legality is further reinforced by the principle of nonretroactivity of criminal law, as enshrined in Article 2 of the Penal Code. This principle establishes that criminal laws do not apply to acts committed prior to their enactment, and no individual may be punished for an act that was not criminal at the time it was committed, even if it has been criminalised by subsequent legislation (Ordinance No. 66-156, 1966). This principle embodies criminal legal security by ensuring the protection of individuals' legitimate trust in the law, shielding them from fear of future legislative changes, reinforcing stability in legal relations, and preventing legislative arbitrariness.

In addition to its substantive foundations, criminal legal security is also grounded in procedural foundations, namely, procedural legality. This principle is concerned with ensuring that an accused person is treated as innocent until guilty is proven by a final judgment not subject to appeal and with guaranteeing a fair and lawful trial (Alla, 2020). This safeguard is codified by the legislature in Article 1 of the Code of Criminal Procedure (Law No. 17-07, 2017; *Official Gazette*, No. 20, 2017).

The presumption of innocence serves as protection for the accused against arbitrary control and infringement on liberty at every stage of criminal proceedings. A fair and lawful trial, in



turn, guarantees the accused opportunity to disprove the charges brought against them. Through these two guarantees, criminal legal security is realised, providing both legal stability and fairness in the administration of criminal justice (Sorour, 1993).

Among the procedural foundations is the independence and impartiality of the judiciary. Justice cannot be realised without judicial independence, as it is a crucial guarantee for ensuring fairness and equality among litigants. The judiciary must be entrusted to judges who are genuinely capable of adjudicating with justice and are free from interference or pressure by any authority. Likewise, a judge must demonstrate impartiality in his or her rulings, avoiding bias or influence from external factors unrelated to the facts of the case, while setting aside personal interests and conflicts (Khater, 2016).

This principle is constitutionally enshrined in Article 163 of the Algerian Constitution, as the independence, impartiality, and integrity of judges constitute the cornerstone upon which justice rests. Without these guarantees, adequate criminal legal security cannot be ensured, as judges are the protectors of rights and freedoms and the guarantors of the correct application of the law, free from pressure or bias.

Moreover, evidentiary rules and the legality of evidence form an integral part of the procedural foundations of criminal legal security, particularly when they are explicit and bound by the condition of evidence lawfulness. These principles provide adequate safeguards for litigants, reinforce the rule of law, and strengthen the protection of individual rights and freedoms.

Among the substantive and procedural foundations lies shared foundations, which include the clarity of both substantive and procedural criminal provisions. This requires that criminal laws be drafted with precision, given their direct link to rights and

freedoms, as well as to the criminalisation of conduct and all procedural steps through which an individual may pass. Drafting criminal provisions with accuracy and avoiding contradictions between legal texts is essential, as inconsistency undermines trust in criminal law (Abdul-Douri, 2023).

The principle of equality before both the law and the judiciary constitutes another shared foundation, enshrined in Articles 37 and 165 of the Algerian Constitution. All individuals are equal in rights and obligations without discrimination (Constitution of Algeria, 1996/2020), a guarantee that instils confidence in both law and justice. This principle is a cornerstone of legal security, ensuring justice and stability within society while ensuring that the law protects individuals and holds them accountable under the same standards applied universally, without exception (Khater, 2016).

Furthermore, the stability of criminal legislation and the predictability of legal consequences are fundamental shared foundations. They enable individuals to know clearly what is permitted and what is prohibited. When criminal provisions, both procedural and substantive, are clear, individuals gain confidence in the legal system and feel secure in their actions, as they can anticipate the legal consequences of their behaviour, thereby avoiding unintentional criminal acts (Abdul-Douri, 2023). This reinforces the principle of legality, ensures justice, and limits arbitrary action.

Subsection Three: Complementarity between the Legal Foundations of National Reconciliation and Criminal Legal Security

Although national reconciliation is primarily concerned with addressing the consequences of internal conflicts and collective violations (Saoud, 2018), criminal legal security focuses on the



relationship between the state and the individual, strengthening mutual trust through the fair application of criminal law (Boubaya & Ouali, 2021). Nevertheless, there is significant interaction and overlap between their foundations. In matters of transitional justice, which encompasses both amnesty and trials, these measures must operate within the framework of criminal legal security by adhering to the principles of criminal legality, the nonretroactivity of criminal provisions, and the guarantee of a fair trial (Majid, 2013).

The two concepts also converge on the principles of legality and trust. The fair application of substantive and procedural criminal provisions during the process of national reconciliation reinforces confidence in both law and the state, aligning with the objectives of criminal legal security. They further share the goal of nonrepetition: national reconciliation seeks to reform security and judicial institutions to prevent the recurrence of past events that led to internal conflict, thereby strengthening criminal legal security and safeguarding against future violations.

Reparation is also a cornerstone where national reconciliation and criminal legal security intersect, as genuine reconciliation cannot be achieved without providing justice to victims. Such redress must be carried out within a clear, organised, and transparent criminal legal framework (Chabane, 2019). The two concepts further converge on the need to balance amnesty with accountability, given that national reconciliation must not be used as a tool to undermine the principle of criminal legal security (Al-Qahwaji, 2024). This is particularly the case in cases involving grave crimes, where amnesty must be strictly conditional and such offences explicitly excluded.

Section Two

A Formal Approach to National Reconciliation and Criminal Legal Security

The formal approach to the Charter for Peace and National Reconciliation and the principle of criminal legal security demonstrate the extent and scope of the Charter's legal impact on criminal legal security, particularly with respect to the balance between the requirements of justice and those of national stability. This can be observed through both areas of convergence and harmony, as well as points of tension and conflict between the two, as outlined in the following subsections:

Subsection One: Areas of Convergence between National Reconciliation and Criminal Legal Security

The objectives of the National Reconciliation Law may align and converge with the goals of the principle of criminal legal security, especially in matters related to achieving societal stability, fostering national unity, upholding the principles of justice, and building trust between citizens and the state and its various institutions. This alignment is explained below:

Paragraph One: Achieving Political and Social Stability

During the Black Decade, Algeria experienced a wave of intense armed violence that threatened both the state's existence and the fabric of society. Amid such instability, there has emerged an urgent need to rebuild the national social fabric through national reconciliation, which has become a fundamental pillar in restoring social and political stability. This approach was clearly embodied in the Charter for Peace and National Reconciliation (Fadel, 2009), which provided a realistic legal framework to address the consequences of the national crisis in Algeria and to



reunite Algerians on the basis of forgiveness and amnesty, turning the page on the past while ensuring that its remembrance would not be repeated (Amraoui & Hachouf, 2010).

The Charter for Peace and National Reconciliation is regarded as a valid point of convergence between the pursuit of national reconciliation on the one hand and the promotion of criminal legal security on the other. Its purpose extended beyond merely halting armed conflict or reintegrating members of armed groups into society; it also sought to establish a delicate balance between forgiveness and justice while preserving historical memory by ensuring that past acts would neither be forgotten nor repeated. This balance constitutes a key manifestation of political and social stability (Massali & Hamdouche, 2022).

The Charter for Peace and National Reconciliation established a series of criminal measures that reflect this balance. It granted conditional amnesty to individuals who surrendered themselves and their weapons, provided they had not committed serious crimes involving murder, rape, or bombings in public places. These individuals were subjected to legal supervision and measures aimed at facilitating their reintegration into society. At the same time, the Charter emphasised a firm stance against perpetrators of serious crimes, demonstrating the state's commitment, albeit partially, to reinforcing the principle of criminal legal security by ensuring certainty in the application of law and denying impunity for grave offences.

Furthermore, the Charter criminalised the glorification of terrorism or the questioning of its provisions (Ordinance No. 06-01, 2006, art. 46) to safeguard the nation's collective memory and prevent the resurgence of extremist ideology, which was a key factor in the Black Decade crisis. Reconciliation, therefore, was not built upon forgetting but upon recognising both individual and collective suffering, establishing accountability, and

providing legal safeguards to prevent the recurrence of past acts. These measures laid a solid foundation for political stability.

The achievement of social stability, from the perspective of the Charter for Peace and National Reconciliation, is embodied in the reintegration of thousands of individuals into ordinary civilian life and in enabling the families of victims and the disappearance of their material and moral rights, whether through the compensation mechanisms established or through transitional justice processes. This contributed significantly to fostering social stability (Fadel, 2009).

In terms of political stability, the Charter succeeded in establishing a model for resolving internal conflicts outside the framework of revenge through the promotion of a culture of dialogue and acknowledgement (Bakhouya, 2017). This political openness played a crucial role in restoring public security and creating a favourable environment for political and economic development.

The Charter for Peace and National Reconciliation embodied an approach of convergence between national reconciliation and the requirements of criminal legal security. There was no absolute prioritisation of justice at the expense of peace, nor vice versa; instead, the legislator succeeded, to a considerable extent, in serving the higher interests of the nation and preventing a return to violence. Stability is not imposed by force but is built upon a balance between rights and obligations, between memory and forgetting, and between law and fairness.

Paragraph Two: Upholding the Principles of Law and Justice

The promotion of the principles of law and justice is a fundamental factor in building a state governed by the rule of law. It constitutes the legal framework within which the



relationships between citizens, the state, and its institutions are regulated, serving to protect fundamental rights and freedoms and deter violations (Mohammed, 2021). The Charter for Peace and National Reconciliation represents an attempt to embody this commitment in response to the consequences of a profound security, political, and social crisis through an approach founded on reconciliation rather than retribution and overcoming past events without denying the demands of justice (Chennan, 2015).

The Charter for Peace and National Reconciliation, despite the controversy it generated, stands as an example of the state's attempt to reconcile two parallel yet seemingly opposing demands: the establishment of criminal justice as a cornerstone of criminal legal security and the achievement of national peace through mechanisms of forgiveness and amnesty. This balance was manifested in granting certain actors involved in the crisis an opportunity to reintegrate into society on the condition of renouncing violence, fostering reconciliation, and closing the painful chapter of the Black Decade (Ordinance No. 06-01, 2006).

In line with the principle of criminal legal security, the legislature sought to ensure the clarity and stability of legal provisions, to provide guarantees of a fair trial, and to avoid ambiguity or selectivity in the application of criminal law (Boubaya & Ouali, 2021). The Charter for Peace and National Reconciliation responded to pressing societal demands to restore order, end the cycle of violence, and unify the nation (Majid, 2013).

The approach that seeks to balance the principle of avoiding impunity with the opportunity for reconciliation and coexistence led the legislature to attempt a reconciliation between retributive justice and restorative justice. This was achieved through the enactment of exceptional legal provisions governed by strict conditions, explicitly excluding those who had committed acts of

murder, rape, or bombings from amnesty. In doing so, the legislature took into account the exceptional circumstances through which society had passed (Ordinance No. 06-01, 2006, art. 16, para. 2).

The entrenchment of the principles of law and justice was not merely a legal matter but also represented a profound political and moral undertaking. For law to attain legitimacy and acceptance, it must serve as an instrument of fairness rather than a tool of domination or a means of erasing the bloody events of the past (Fadel, 2009). Thus, criminal legal security, as a cornerstone of confidence in justice, cannot be achieved solely through the enactment of legislation (Boubaya & Ouali, 2021), it requires that citizens genuinely perceive the law as being applied with justice, impartiality, and without discrimination or selectivity (Khater, 2016).

The Charter for Peace and National Reconciliation demonstrates how the state utilised law as a tool to achieve stability without abandoning the principles of justice. Although some victims' rights were affected, the charter remains a bold step that spared Algeria from future dangers and crises that would have been difficult to remedy. This Charter merged the philosophy of law as an instrument for organising society with the philosophy of justice as a political and moral ideal. The convergence between national reconciliation and criminal legal security does not signify a contradiction but rather reflects a delicate balance between justice and peace, between punishment and forgiveness, and between law and conscience.

Paragraph Three: Restoring Trust between Citizens and the State

The urgent need to rebuild trust between citizens and the state emerged as a consequence of the Black Decade, during which



time, trust was eroded by violence, the temporary absence of the rule of law, and the lack of legal security. The Charter for Peace and National Reconciliation was introduced as a political and legal initiative to end internal armed violence, achieve reconciliation among the different segments of society, and provide a legal framework that allowed the nation to move beyond its painful past while upholding the principles of justice and the rule of law. This charter thus served as a crucial entry point for establishing the foundations of criminal legal security (Saoud, 2018).

Restoring trust between citizens and the state cannot be achieved merely by enacting laws with a reconciliatory dimension; it requires the effective implementation of these laws in a manner that guarantees the protection of citizens and reaffirms the state's commitment to administering justice without discrimination or vengeance. When citizens perceive that the state does not wield the law as a tool of repression but rather as an instrument to safeguard rights and freedoms, their confidence in the state is strengthened (Boubaya & Ouali, 2021; Chennan, 2015).

The conditional amnesty mechanism introduced by the Charter served as a legal tool to realise restorative justice without compromising public security or showing leniency toward serious crimes (Ordinance No. 06-01, 2006, art. 16, para. 2). The reinforcement of criminal legal security further consolidated this trust by reforming the judicial system, guaranteeing fair trials, and enshrining the principle of legality. This was further enhanced by the clarity of legal provisions and the predictability of their outcomes, enabling citizens to feel secure before the courts, thereby strengthening the bond of trust between citizens and the state.

The issue of rebuilding trust between citizens and the state was one of the core dimensions of the Charter for Peace and National

Reconciliation, adopted by Algeria in the aftermath of the Black Decade. It was recognised that overcoming the consequences of this period could not be achieved solely through security or judicial solutions; instead, it required a genuine effort to heal the rift that had developed between the people and state institutions.

The Charter contributed to restoring calm and, to some extent, recognising the rights of victims while also reintegrating those involved in acts of violence who had not committed serious crimes. It promoted forgiveness and prioritised dialogue over retribution, thereby fostering reconciliation and preparing the ground for renewed trust (Karbouche, 2016). The measures it introduced instilled reassurance among different segments of society, creating an environment conducive to restoring confidence between the citizen and the state.

The measures introduced by the National Charter contributed to opening channels of communication between citizens and the state, as many felt that the state was seeking to correct its course and contain a multifaceted crisis rather than reinforce division (Fadel, 2009). Despite the criticisms levelled at specific provisions of the Charter (Majid, 2013), its positive impact played a significant role in repairing the relationship between the authorities and society, a fact that cannot be denied. In this way, the Charter laid the groundwork for building trust, which constitutes both a manifestation of national reconciliation and a prerequisite for achieving stability and national peace.

Rebuilding trust between citizens and the state is not merely a temporary objective tied to events of the past but rather an ongoing process that requires further reform and the promotion of a legal culture that reinforces the law's role as a guarantor of rights rather than a weapon in the hands of state authority. This approach lays the foundation for a new chapter in the nation's history, one built on transparency without impunity.



Subsection Two: Areas of Tension between National Reconciliation and Criminal Legal Security

The distinct nature, origins, and objectives of the National Reconciliation Law and the principle of criminal legal security give each its own direction. While they converge on specific issues, they diverge from others. This is due to the exceptional nature of national reconciliation, which is aimed at establishing peace and security, in contrast with the stable, legal character of criminal legal security, which seeks to ensure the practical application of consistent and well-defined criminal provisions. These provisions are intended to deter crime, restore justice, and protect society from offences by eradicating criminality without discrimination within the same community. This contrast explains the existence of formal tensions, which are addressed as follows:

Paragraph One: Infringement of the Principle of Criminal Legality

The principle of criminal legality is a constitutional and legal principle that underpins legal security (Abdul-Douri, 2023). Forming a fundamental pillar for safeguarding individual rights and freedoms against the abuse of power. Under this principle, no act may be criminalised, nor may any penalty imposed, except pursuant to a written, explicit legal provision enacted prior to the commission of the act (Al-Majali, 2005). However, this principle conflicts with the imperatives of national reconciliation, particularly in Algeria, which experienced a Black Decade marked by serious human rights violations.

The Algerian Charter for Peace and National Reconciliation introduced broad amnesty measures for members of armed groups who had not been involved in massacres, rape, or bombings, and it granted judicial immunity to security personnel

involved in human rights violations (Ordinance No. 06-01, 2006, art. 45). Although this Charter contributed to security de-escalation and relative political stability, comprehensive amnesty has been regarded by some as a breach of the principle of criminal legality, as it prevented the prosecution and criminal accountability of perpetrators for acts criminalised under Algerian criminal law.

This situation undermines the principle of criminal legal security, both in its substantive and procedural dimensions, with the latter requiring fair and equitable trials. The measures effectively granted retroactive legitimacy to unlawful and criminal acts, conferring legal or justificatory status upon acts that were initially deemed criminal. As a result, these acts may appear acceptable or justified under the pretext of exceptional circumstances and the pursuit of national peace and security. This provision afforded constitutional and legal immunity to those involved (Bakhouya, 2017) allowing many to evade justice under the justification of national reconciliation (Al-qubaqbi, 2018).

The manifestations of this breach of the principle of legality are evident in Article 2 of Ordinance No. 06-01, implementing the Charter for Peace and National Reconciliation, which provides for the application of measures intended to restore peace to individuals who committed or participated in the commission of one or more terrorist acts threatening state security. These acts are defined and punished under Articles 87 bis, 87 bis 1, 87 bis 2, 87 bis 3, 87 bis 4, 87 bis 5, 87 bis 6 (paragraph 2), 87 bis 7, 87 bis 8, 87 bis 9, and 87 bis 10 of the Penal Code, as well as related offences.

Furthermore, Article 4 of the same ordinance decrees the extinction of criminal proceedings and prosecution (Ordinance No. 06-01, 2006). These serious terrorist and subversive crimes target the security of the state and its citizens and threaten



national unity, territorial integrity, institutional stability, and the proper functioning of state institutions (Amara, 2024). The only exceptions are individuals who committed mass killings, violated sanctities, or used explosives in public places, as well as those who participated in or incited such acts (Ordinance No. 06-01, 2006).

Notably, the legislator had prescribed severe and varying penalties for these offences, ranging from the death penalty to imprisonment for one year, along with various fines (Ordinance No. 66-156, 1966). This amnesty, however, fundamentally undermines the principle of criminal legality in both its substantive and procedural dimensions. It is inconsistent with the principles of coherent transitional justice and does not align with the foundations of criminal legal security. In this way, it erodes respect for the rule of law, entrenches inequality in the application of justice, diminishes trust in judicial institutions, and encourages impunity.

Some argue that the implementation of the National Reconciliation Charter is linked to a highly sensitive and exceptional situation concerning the security of society as a whole. Even transitional justice, in its pursuit of reconciliation in conflict zones, sometimes necessitates leniency in punishment in exchange for the restoration of social peace (Fadel, 2009). This rationale is often used to justify sacrificing the principle of criminal legality in favour of achieving national peace and reconciliation.

In the face of these competing perspectives, the most appropriate solution lies in engaging in deep reflection to find a precise balance between upholding criminal legality and achieving national reconciliation. This balance should be pursued through transitional justice mechanisms that ensure truth-seeking, reparation, and conditional accountability without allowing

impunity. Such an approach would strengthen public confidence in the justice system and firmly embed the principle of criminal legal security within the human conscience through the proper application of the law within a legal framework grounded in the principles of justice and fairness.

Paragraph Two: The Marginalisation of Victims' Rights

In the aftermath of internal conflicts and strife, states often seek to rebuild social peace by enacting legal provisions aimed at ensuring national reconciliation across all segments of society (Issa & Zreq, 2018). While such measures are intended to move beyond past events and open a new chapter, they often result in the marginalisation of victims' rights. Those who have borne brunt of severe human rights violations frequently find themselves excluded from the reconciliation process.

Rather than being prioritised in receiving justice and reparation, victims are often treated as part of a political settlement that falls short of genuine reconciliation on the basis of the principles of transitional justice. This occurs through the granting of blanket amnesty to perpetrators, the closure of judicial files without accountability, or the denial of fair compensation for the severe physical and psychological harm they have endured (Raash, 2022).

Criminal law, in accordance with the principle of legal security inherent to it, upholds the principle of equality before the law, which necessitates the rejection of impunity (Bouguerat, 2024). Punishing perpetrators is regarded as an essential step in achieving justice. However, most national reconciliation laws conflict with this principle, as they prioritise national security and political stability over individual justice for citizens (Al-qubaqbi, 2018). This dynamic often leaves victims feeling abandoned and deprived of justice.



Despite the efforts undertaken by the Algerian state, which allocated a total sum of 18.6 billion Algerian dinars in compensation and assistance distributed across three categories: families of the disappeared, families deprived due to having a member involved in terrorism, and individuals dismissed from employment as a result of the national tragedy (Ben Oubaid, 2025). These compensations remain insufficient given the large number of victims, with many excluded from benefiting altogether (Raash, 2022). This shortcoming has weakened the effectiveness of this crucial mechanism in advancing the process of national reconciliation and achieving justice.

The marginalisation of the rights of victims of the national tragedy is also reflected in their exclusion from participating in the drafting of reconciliation laws and in dialogue committees, as their views on mechanisms of reparation, assessment of compensation, and the nature of justice were not taken into account (Karbouche, 2016). Moreover, compensation remains symbolic mainly in comparison to the scale of the profound harm suffered, including not only the loss of loved ones but also significant financial losses. Such marginalisation has resulted in a loss of trust in state institutions, deepened the wounds of the national tragedy, and fostered an atmosphere of societal disillusionment.

The process of peace and national reconciliation cannot be fully realised without genuine recognition of the rights of victims. Ignoring these rights strikes at the very core of the principle of criminal legal security and disregards the fundamental rights and freedoms of individuals. It is therefore essential to acknowledge victims and their suffering and to provide effective, transparent, fair, and equitable compensation on the basis of clear and precise legal foundations. Reconciliation without justice that fully recognises victims' rights is nothing more than a temporary form of justice that may, God forbid, lead to future internal conflicts

that could prove challenging to resolve. Such outcomes must be prevented.

Paragraph Three: Restricting the Role of the Judiciary

The reliance on the National Reconciliation Charter as a strategic choice to achieve national peace risks clashing with a fundamental principle of the rule of law: criminal legal security, which is intrinsically linked to respect for legal norms and fairness, established judicial procedures. This is particularly evident in the reduction and marginalisation of the judiciary's role through the adoption of blanket amnesty laws or transitional justice mechanisms that bypass judicial authority and judges, delegating responsibilities instead of reconciliation committees or political bodies.

Such measures suspend judicial accountability for grave crimes related to terrorism and human rights violations. Rather than empowering the judiciary to prosecute offenders, they grant perpetrators legal immunity, serving as political cover under the pretext of preserving national peace and avoiding the reopening of old wounds. This undermines and constrains the judiciary's role as the authority responsible for resolving all disputes and poses a threat to the principle of equality before the law (Bakhouya, 2017).

This approach also creates a sense of injustice among victims and undermines their trust in the judicial system and the justice apparatus as an integrated whole. It infringes upon the principle of criminal judicial legal security, which requires that criminal provisions be explicit and applied consistently to all citizens without exception. The exclusion of the judiciary's role represents an explicit concession to other political bodies that prioritise power dynamics over the pursuit of justice. Consequently, this perpetuates a culture of impunity.



Despite its reconciliatory objectives (Chennan, 2015), the Law on Peace and National Reconciliation granted amnesty outside the judicial framework, empowering administrative committees under the supervision of the Ministry of the Interior with authority over highly sensitive matters, such as granting pardons or terminating judicial proceedings, rather than entrusting these decisions to the judiciary, which is inherently responsible for them. The judiciary was also excluded from prosecuting perpetrators of crimes against state security, with only a few exceptions, while many individuals were granted immunity without trial. This undermined victims' rights to fair and equitable trials.

Furthermore, judicial prosecutions were halted through political decisions, particularly for members of the security forces for actions carried out in defence of the state. The law also prohibited investigations into cases of enforced disappearance, imposed silence on these matters, and criminalised any discussion of them. The absence of judicial oversight in these areas risks eroding public trust in both the judiciary and the state, as well as undermining the principle of separation of powers, particularly where the executive interferes with judicial functions (Bakhled, 2010).

Although the National Reconciliation Law succeeded in calming the security situation, it did so at the expense of justice and truth. The marginalisation and restriction of judicial authority came at the cost of political reconciliation, using measures that deviated significantly from both national standards of criminal judicial security (Saoud, 2018). Moreover, internationally recognised principles of transitional justice (Al-qubaqbi, 2018).

The real challenge lies not in choosing between justice and national reconciliation but in striking a balance between the two by establishing legal mechanisms that ensure that there is no

impunity while recognising the specific nature of the transitional period. This requires empowering the judiciary to play its role within the reconciliation process, as it serves as a guarantee for achieving just peace, one that is not based on forgetting or temporary political settlements but rather on acknowledgement, fairness, and the restoration of trust between the state and society, ensuring all constitutionally enshrined fundamental rights.

Conclusion

The legal approach places national reconciliation on the foundation of adopting coherent legislation and effective legal mechanisms designed to turn the page on the past and achieve national peace through the enactment of amnesty laws or special measures aimed at a return to nonviolence. This approach is closely tied to the principle of criminal legal security, which guarantees the clarity and stability of laws and the protection of individuals' fundamental rights, especially during times of political transition. Its primary goal is to create a balance between society's right to justice and individuals' right to forgiveness and fairness.

This approach raises several challenges, particularly concerning the legitimacy of such laws and their alignment with international human rights standards. National reconciliation thus represents an actual test of criminal law's ability to deliver justice without retribution and ensure stability without impunity. Its success can be achieved only within a framework of sound criminal legal security, which guarantees both procedural justice and justice in outcomes. Conversely, criminal legal security cannot be fully realised without genuine reconciliation, which brings an end to conflict and rebuilds trust among citizens, the state, and judicial institutions.



From our study of this topic, we have reached a set of findings on which we propose several recommendations, as follows:

First: Findings

- National reconciliation is an exceptional political, social, and legal project whose ultimate aim is to achieve stability within society and to turn the page on a violent past.
- The reliance of national reconciliation on the concept of conditional forgiveness and reconciliation while excluding impunity for grave crimes, particularly massacres, violations of sanctities, and bombings in public places, is fundamentally a sound approach to achieving reconciliation that ensures stability and societal security.
- Criminal legal security is a legal and judicial principle that embodies the rule of law and provides citizens with legal assurance by ensuring the clarity and stability of criminal provisions, thereby guaranteeing justice and stability in the relationship between individuals and state authority.
- Logical complementarity dictates that national reconciliation requires criminal legal security to prevent it from becoming a cover or means for impunity. In contrast, criminal legal security, in turn, necessitates a degree of flexibility to facilitate national reconciliation.
- The complementarity between national reconciliation and criminal legal security ensures respect for the fundamental principles of justice and creates a balance between forgiveness and accountability.
- The existence of conflicts between the Law on Peace and National Reconciliation and the principle of criminal legal security in several areas, particularly concerning the infringement of legality, equality before the law and judiciary, the marginalisation of victims' rights, and the restriction of the judiciary's role, requires a thorough reassessment.

Second: Recommendations

- It is essential to involve victims, civil society, and all stakeholders in continuing the path of national reconciliation until there is complete national transparency regarding the past to avoid creating gaps that may cause future problems.
- Legal mechanisms based on the principles of transitional justice must be established to guarantee victims' rights, both materially and morally.
- The issuance of amnesties and the termination of criminal proceedings for terrorist crimes may leave an unresolved legacy; therefore, precise complementary legal mechanisms should be implemented to supplement the national charter and lay the groundwork for genuine transparency regarding the past.
- Given its judicial mandate, the judiciary must be involved in the implementation of national reconciliation provisions. Its role should not be restricted or marginalised, as this is essential for achieving a just peace that is not based on forgetting or temporary political arrangements.
- Clear legal safeguards must be established to balance the pursuit of peace with the pursuit of justice, thereby restoring trust in the law and in state institutions.
- There must be genuine recognition of victims' rights, along with fair, equitable, and adequate compensation that is rooted in transparency and justice and is based on well-defined legal principles. Reconciliation without fair justice, which recognises victims' rights, will remain an incomplete and temporary form of justice.
- A new phase must be established as a safeguard for society, protecting it from instability. This phase should be founded on truth, justice, and the rule of law, ensuring that national interests are upheld without compromising equality, fairness, or justice principles upon which



adequate legal provisions guaranteeing the rights of all members of society, without discrimination, are built.

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