

# “POLITICAL REFORMS” OR ADDITIONAL LOCK ON SOCIETY AND POLITICS IN ALGERIA?

## A CRITICAL ANALYSIS



Collectif  
des familles  
de  
disparu(e)s  
en  
Algérie

الجمعية الوطنية لحقوق الإنسان  
Ligue Algérienne pour le Défense des Droits de l'Homme  
الجمعية الوطنية لحقوق الإنسان  
الجمعية الوطنية لحقوق الإنسان  
الجمعية الوطنية لحقوق الإنسان



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK  
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME  
الشبكة الأوروبية - المتوسطية لحقوق الإنسان

# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	<b>5</b>
<b>INFORMATION SHEET 1 - ORGANIC LAW NO.12-01 OF 12 JANUARY, 2012</b>	
on the electoral system .....	13
• RECOMMENDATIONS .....	25
<b>INFORMATION SHEET 2 - ORGANIC LAW NO. 12-03 OF 12 JANUARY 2012</b>	
setting out conditions for increasing women’s chances of acceding to representation in elected assemblies .....	29
• RECOMMENDATIONS .....	37
<b>INFORMATION SHEET 3 – ORGANIC LAW NO. 12-04 OF 12 JANUARY 2012</b>	
on political parties .....	43
• RECOMMENDATIONS .....	50
<b>INFORMATION SHEET 4 – ORGANIC LAW NO. 12-05 OF 12 JANUARY 2012</b>	
on information .....	53
• RECOMMENDATIONS .....	61
<b>INFORMATION SHEET 5 – LAW NO. 12-06 OF 12 JANUARY 2012</b>	
on associations .....	63
• RECOMMENDATIONS .....	69

This report is the outcome of work conducted jointly by the Coalition of Families of the Disappeared in Algeria (*Collectif des familles des disparu(e)s en Algérie*, CFDA), the Algerian Human Rights Defence League (*Ligue algérienne pour la défense des droits de l’Homme*, LADDH) and the National Union of Independent Public Servants (*Syndicat national du personnel autonome de l’administration publique*, SNAPAP), with support from the Euro-Mediterranean Human Rights Network (EMHRN).

The purpose of the report is to provide a critical perspective on the new legislation that was enacted in Algeria in January 2012, in the form of thematic information sheets and recommendations.

# “ POLITICAL REFORMS ” OR ADDITIONAL LOCK ON SOCIETY AND POLITICS IN ALGERIA?

## A CRITICAL ANALYSIS



Collectif  
des  
familles  
de  
disparu(e)s  
en  
Algérie



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK  
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME  
الشبكة الأوروبية - المتوسطية لحقوق الإنسان



# EXECUTIVE SUMMARY

In an address to the nation given on 14 April 2011, the president of the Republic, Abdelaziz Bouteflika, announced his determination to undertake ‘political reforms in order to anchor the democratic process more deeply’. These measures, coupled with the repeal of the state of emergency a few months earlier, were described as the Algerian government’s response to the protests that had intensified in the country since the beginning of 2011. Against the backdrop of a region undergoing profound political transformations, including the overthrow of former dictators in Tunisia and Egypt, the announcement of forthcoming reforms in Algeria was immediately greeted with enthusiasm in diplomatic circles.

And yet, the gap between the official announcements and the practices of the authorities was already making itself felt. The government’s response to the first peaceful demonstrations in February 2011, in Algiers and especially in Oran, was disproportionate. The marches were unauthorised, in violation of the Algerian constitution and international treaties. Tens of thousands of police officers were deployed in Algiers to prevent demonstrators from reaching the rallying points; hundreds of protesters were arrested.

The lifting of the state of emergency in February 2011, one of the demonstrators’ main demands, did not result in greater protection of basic rights and freedoms, in particular the freedoms of association and assembly and the right to hold a demonstration. As a recent EMHRN report pointed out, harassment of protesters by the police, unwarranted bans on demonstrations and public rallies, and the use

of abusive bureaucratic practices to block the establishment of associations are among the tactics commonly used to weaken civil society and raise obstacles to its activities<sup>1</sup>.

Given these developments, it was difficult to believe that any reforms would lead to progress. The legislation adopted in January 2012<sup>2</sup>, far from bearing the hallmarks of overture and democratisation that had been announced by the president, are a setback for public freedoms, in violation of international commitments made by Algeria, in particular through the International Covenant on Civil and Political Rights (ICCPR). The government's response to demands for reform has, in effect, turned into an opportunity to further restrict civil society and the scope for political action – a tool for exerting greater control over Algerian society.

This report presents an overview of the different pieces of legislation through a series of thematic information sheets (or 'info sheets'). Five laws have been analysed: the law on the electoral system (info sheet 1); the law setting out the conditions for increasing women's chances of acceding to representation in elected assemblies (info sheet 2); the law on political parties (info sheet 3); the law on information (info sheet 4); and the law on associations (info sheet 5). To make comparisons easier, each info sheet presents a detailed analysis of the provisions of the law on which it focuses and assesses the extent to which the new law represents an advance or a setback relative to its predecessor. The info sheet also analyses the aspects of the new law that break with the past and with administrative practices as well as those that are a continuation of previous laws and practices.

<sup>1</sup> Euro-Mediterranean Human Rights Network (EMHRN), *Lifting the State of Emergency in Algeria - A Game of Smoke and Mirrors*, February 2012; available online at <http://www.euromedrights.org/en/publications-en/emhrn-publications/emhrn-publications-2012/11269.html>.

<sup>2</sup> Law 12-01 of 12 January 2012 on the electoral system (*Journal officiel de la République algérienne [JORA]* No. 01, 14 January 2012, p. 8); Law 12-03 of 12 January 2012 setting out conditions to increase women's chances of acceding to representation in elected assemblies (*JORA* No. 01, 14 January 2012, p. 39); Law 12-04 of 12 January 2012 on political parties (*JORA* No. 02, 15 January 2012, p. 9); Law 12-05 of 12 January 2012 on information (*JORA* No. 02, 15 January 2012, p. 18); Law 12-06 of 12 January 2012 on associations (*JORA* No. 01, 14 January 2012, p. 28). Law 12-02 of 12 January 2012, setting out cases of incompatibility with the parliamentary mandate, is not part of this analysis.



## A POWERFUL ADMINISTRATION AND A TIGHTLY CONTROLLED JUDICIAL SYSTEM

Any analysis of the new legislation must begin with the issue of the independence and impartiality of the Algerian judiciary<sup>3</sup>. Although the separation of powers is entrenched in the constitution, the country's president retains decisive powers over the judicial system: the president appoints the chairman of the Constitutional Council<sup>4</sup>, presides over the Higher Council of the Judiciary<sup>5</sup>, selects judges<sup>6</sup> and can impose disciplinary sanctions on them. For his part, the minister of justice can suspend a judge even before the Higher Council of the Judiciary has had an opportunity to review the file.<sup>7</sup>

The lack of independence of the judiciary is intimately linked to the fundamental issue of the fight against impunity. Fighting against impunity should be the foundation of genuine political reforms, but the Charter for Peace and National Reconciliation, which, along with implementing laws and decrees, upholds impunity and encourages collective amnesia, is still in place and has even become a reference used in the new legislation. Given the total lack of a 'truth and justice' process, these provisions give immunity from prosecution to the members of armed Islamist groups, except 'those who were involved in committing rape, who took part in massacres or in bomb attacks in public places'. However, since these provisions are applied without any transparency or without any control by the public, impunity seems to be the rule not only for those who were involved in acts of terrorism but also for all state officials who committed crimes, since the laws and decrees implementing the Charter grant them jurisdictional immunity.

These issues have an impact not only on the transparency of elections (info sheet 1) but also on Algerian society and citizens in general. For example, the laws on associations (info sheet 5) and political parties (info sheet 3) allow appeals to be filed when an application to register or approve an organisation is denied. This would

---

3 EMHRN Report : « The independence and impartiality of the judiciary », October 2011. Available online at : <http://www.euromedrights.org/en/news-en/emhrn-releases/emhrn-statements-2011/10624.html>.

4 Under article 164, paragraph 3 of the constitution, the chair of the Constitutional Council is appointed by the President of the Republic for a single term of six years.

5 Organic Law 04-12 of 6 September 2004 regulating the composition and functioning of the Higher Council of the Judiciary, notably article 3 stipulating that the president of the Council is the President of the Republic and the vice president is the Minister of the Interior.

6 Under article 3 of Organic Law 04-11 of 6 September 2004, judges are appointed by presidential decree at the recommendation of the Minister of Justice, following a debate by the Higher Council of the Judiciary.

7 According to article 65 of Organic Law 04-11 of 6 September 2004.

normally be considered a positive fact, except that the lack of an impartial judiciary means that in practice, the right of appeal is illusory.

Given these circumstances, it is difficult to avoid the arbitrary nature of the bureaucracy. Beyond the nature and quality of the legislation, the government's abhorrent practices pose an obstacle to the establishment of associations and political parties, among others. Even though the law states that a refusal must be accompanied by explanations, there is nothing to ensure that the authorities comply with this provision. There is also nothing to ensure that acknowledgments will be issued to parties or associations applying for an appeal.



## A VERY NEGATIVE ASSESSMENT OF THE NEW LEGISLATION

Among the laws adopted in January 2012, Law 12-03 setting out the conditions for increasing women's chances of acceding to representation in elected assemblies (info sheet 2) introduces, based on the principle of positive discrimination, quotas supporting the presence of women on the parties' candidate lists. This allows the government to claim that the law marks a breakthrough for women's rights, but it is a very relative breakthrough indeed. An analysis of the wording suggests that, at best, the law is an encouragement to submit candidate lists that include women, without making it mandatory that they be given a chance to win an election. In other contexts, the law deals only with elected assemblies, not board, and there is no review of the Family Code, which remains one of the most discriminatory laws against women in Algeria (and in the whole Maghreb region).

While a close examination of each one of the new laws reveals its provisions and shortcomings in detail, an overall review of all these laws taken together exposes certain regressive traits that are common to all legislation that violates civil and political rights as defined in the international treaties ratified by Algeria. These traits include: the use of very vague and non-specific wording, leaving the door open to arbitrary interpretations; greater powers given to the political authorities; additional restrictions on relations or cooperation with outside entities; the shift from a declarative system to one based on prior approval; the presence of particularly broad criteria attached to the suspension and dissolution of associations.



## **USE OF VERY VAGUE AND NON-SPECIFIC WORDING.**

The new laws on the electoral system, political parties, information and associations contain vague and non-specific references to ‘the national identity’, ‘the national values’ and ‘cultural values of society’, ‘the values and essential components of the national identity’, ‘the economic interests of the country’, ‘the ethics of Islam’, etc. These expressions commonly found in the different laws contribute to growing fears about the arbitrary and extensive interpretations that not only the bureaucracy but also, because of their lack of independence, the judicial authorities could give to these words.

## **GREATER POWERS GIVEN TO THE POLITICAL AUTHORITIES.**

In general terms, the new laws on the electoral system, the political parties, information and associations give the Ministry of the Interior very broad powers not only with respect to the establishment of associations and political parties but also to the approval of changes in their bylaws. In addition to the interior ministry giving its approval, the Ministry of Foreign Affairs must give its prior opinion in the case of foreign associations (info sheet 5). The law on information states that a request to import foreign periodicals must be submitted directly to the Ministry of Foreign Affairs for approval (info sheet 4).

## **ADDITIONAL RESTRICTIONS ON RELATIONS OR COOPERATION WITH FOREIGN ENTITIES.**

In addition to the specific authorisations expected from the Ministry of Foreign Affairs, any type of relation or cooperation with outside entities is subject to strict provisions in the new laws, whether they deal with associations, information or political parties. These strict rules target Algerian citizens as well as foreigners and foreign nationals living and working in Algeria. A case in point is the law on information, which bars foreigners living in Algeria from occupying the position of editor. For example, a Tunisian would be unable to be a newspaper editor in Algeria. Algerian associations – and only those that have been ‘authorised’ in compliance with the law – wishing to cooperate with foreign NGOs must now obtain prior approval by the proper authority, whereas Algerian political parties are forbidden from engaging in activities or establishing relations with foreign entities when it is seen as an attack against ‘the state or its symbols, institutions and economic and diplomatic interests’. Any type of funding from abroad is banned, or is conditional in certain cases upon prior approval by the authorities, where associations, political parties and information are concerned. Restrictions also include a ban on the use of foreign languages, or a strict limitation on such use, even though the government itself continues to use the

French language in many areas. The officials of political parties are strictly forbidden from speaking in languages other than the national languages in public, while the law on information states that publications written in foreign languages must seek ‘the approval of the authority charged with regulating the written media’. In addition, the criteria applying to the selection of candidates for the presidency of the Republic extend to their spouses: under article 136 of the Electoral Code, they must submit a certificate establishing their Algerian nationality.

### **THE SHIFT FROM A DECLARATIVE SYSTEM TO ONE BASED ON PRIOR APPROVAL.**

Some of the abusive measures practiced by the bureaucracy have now been entrenched in the legislation. Article 8 of the law on associations establishes in law the shift from a declarative system to one based on prior approval (info sheet 5), which is contrary to the spirit and the letter of the International Covenant on Civil and Political Rights (ICCPR). All publications are subject to prior approval by the relevant bureaucracy (info sheet 4). The creation of political parties is subject to a multiple approval process in three stages<sup>8</sup>, where the bureaucracy has extensive discretionary powers (info sheet 3). A refusal by the authorities may be appealed by the applicant, but the administrative obstacles that impede the issuance of an acknowledgment confirming the receipt of the appeal tend to negate the freedom to exercise that right.

### **THE PRESENCE OF PARTICULARLY BROAD CRITERIA ATTACHED TO THE SUSPENSION AND DISSOLUTION OF ASSOCIATIONS.**

Not only have the procedures attached to the creation of an association, a party or a publication become more complicated and more restrictive, but the criteria that can be applied in suspension or dissolution decisions by the authorities are especially broad. In particular, the new laws on information and on political parties contain additional provisions regarding suspension or dissolution. For example, a party may be dissolved if it does not present candidates ‘in at least four consecutive legislative or local elections’, while an association risks a similar fate if it has received funding from foreign NGOs or if it engages in ‘activities other than those stipulated in its statutes’. What is even more ominous is that an Algerian association runs the risk of being dissolved if it engages in activities that ‘intrude in the internal affairs of the country or constitute an attack against the nation’s sovereignty’. Is it not the goal of an Algerian organisation to be involved in the internal affairs of its own country – for example, an association fighting corruption or promoting human

<sup>8</sup> Article 16 of Organic Law 12-04 of 12 January 2012 on political parties.

rights? Essentially, therefore, the new legislation prohibits Algerian citizens who are members of an Algerian organisation from taking an interest in issues that directly concern them. Another significant feature of the new laws is that they represent a setback relative to the prior situation. In the past, a judicial decision was needed to suspend an association or a political party, but now a simple bureaucratic fiat is sufficient.

The overall assessment of these reforms is therefore negative. The few instances of progress are actually subject to significant limitations or even a hardening of the previous measures in place, and abusive practices already engaged in by the bureaucracy have now become law. The approaching elections of 10 May 2012 are the focus of everyone's attention at the moment. This critical assessment of the official rhetoric about 'reforms' is aimed at informing civil-society organisations on both sides of the Mediterranean and fostering a debate on the genuine reforms that remain to be accomplished in Algeria.



The image features a 10x10 grid of rounded squares. The squares are arranged in a regular pattern. The central square, located at the intersection of the 5th and 6th columns and the 5th and 6th rows, is a solid dark blue color. Inside this central square, the number '1' is written in a white, sans-serif font. All other squares in the grid are a light, muted blue color.

1

# ORGANIC LAW NO.12-01 OF 12 JANUARY, 2012

## ON THE ELECTORAL SYSTEM

Organic law No.12-01 on the electoral system was the first law in the legal reform package to enter into force on 12 January 2012. This new law replaces the former electoral code amended and completed by Order No.97-07 of 6 March 1997. According to the Algerian authorities, the adoption of a new organic law on this subject is aimed at guaranteeing the transparency of the elections. It is an organic law of great importance which, together with *the law on political parties* and *the law setting out conditions for increasing women's chances of acceding to representation in elected assemblies* – to which, in fact, the organic law makes no reference -, has a direct impact on the holding of legislative elections on 10 May 2012.

It would have been possible to justify the adoption of such a crucial law on the holding of elections so close to the date of the elections by the introduction of essential reforms marking a real move towards democracy. Clearly however, not only do the provisions of the new law fail to bring about any fundamental changes compared to the prior text, but the few novelties introduced do not provide sufficient guarantees for the elections to be conducted in a free and transparent fashion.

By contrast, fundamental issues on the conduct of the elections such as the revision of the electoral ballot or the creation of a truly independent authority to monitor the elections have not undergone any reform. It is clearly the independence of the judiciary which will allow the judiciary to act as a bulwark against executive interference and a guarantor of the monitoring of transparency and compliance of the electoral process with standards of domestic and international law (Box 4). And yet, the absence of independence of the judiciary remains a fundamental obstacle to the success of any political reform in Algeria.

## I. SOME NOVELTIES IN THE NEW ELECTORAL CODE, BUT WITH LIMITED SCOPE

- The use of transparent ballot boxes (Art.44).
- The minimum age of candidates running for the people's communal or Wilaya assembly has been lowered from 25 to 23 years (Art.78, paragraph 2).
- With regard to the presidential election, the number of individual signatures required for a candidate to qualify has been lowered from 75,000 to 60,000 (Art.139, paragraph 2).
- In addition, the use of places of worship, institutions, administrations and all educational and vocational establishments for the collection of signatures to support candidates or for campaigning is prohibited (Art.197). Although this provision is a positive step, in practice it is the lack of neutrality of the administration, generally perceived as being partisan, that destroys the public's confidence in the electoral process. Moreover, even if the election campaign is prohibited in mosques, the Minister of Religious Affairs, M. Bouabdallah Ghamallah, has never hesitated to state publicly that an imams' role is also to «raise awareness among citizens about the importance of going to the polling station to perform their electoral duty».
- Affixing fingerprints on the voters' register instead of signatures, for all voters (Art. 46). Compared to the former electoral code, which explicitly provided for the vote of each elector to be confirmed by their signature, Article 46 of the new Code no longer provides for the obligation for voters to sign the voters' register. Affixing a fingerprint certainly means preventing voting in several polling stations at the same time. However, the Article as it is written suggests that the fingerprint shall replace the signature – instead of being used in addition to -, which is problematic since, in the event of an appeal, it deprives the voters' register of an additional means of verification and makes the authentication of a voter's identity using a fingerprint a much longer and more complex process as compared to the verification of a signature.

- Finally, thanks to the new law, the voters, independent candidates and political party representatives will be able to “consult the relevant electoral list” (Art. 18). This measure, while it is a novelty compared to the former text, does not resolve one of the key issues for the success of free and transparent elections: cleaning up the national electoral list. One of the first steps the Algerian authorities should have taken to show that they are truly open to change and wish to restore confidence in the elections among citizens was to clean up the electoral list, as requested by part of civil society and the opposition parties who draw attention to the fact that the increase in the number of voters from one election to the next does not seem to reflect the demographic trend of Algeria’s population. Such accusations, which surface at every election, have never led to a complete overhaul of the national electoral list by an authority independent of the government and the political parties (Box 1).

## 1. NATIONAL ELECTORAL LIST: STILL NO ANSWER FOR SUSPECTED FRAUD

Articles 15 and 16 of the new Electoral Code govern the revision process of the electoral lists. For the legislative elections in 2012, the Algerian authorities undertook an exceptional revision of the electoral list, as provided for in Art. 14 of the new Electoral code. The revision took place between 12 and 21 February.

The revision, which was carried out just months before the election date, casting doubt over even the technical possibilities of implementing such a revision, only served to inflame suspicion around the accuracy of the electoral list, that had begun to surface well before the new Electoral code entered into force. In December 2011, the Interior Minister announced the addition of four million voters for the legislative elections in May 2012, causing those who accuse the authorities of swelling the number of voters disproportionately to throw up their hands in horror and put forward figures on the demographic growth of the population which dispute the validity of the figures announced by the Minister.

Later, once the exceptional revision of the list was completed, it was the turn of the National Commission for Monitoring the Legislative Elections (CNSEL) to publicly condemn *"the injection of 33,000 new voters - military personnel - into the electoral roll of the Wilaya of Tindouf after the expiry of the deadline for registering on the electoral lists, without striking them from their initial lists"*<sup>9</sup>. The Commission has already frozen its activity more than once to press its claims.

At this writing, the Commission is still waiting for the decision of justice concerning the appeals filed in dozens of Wilayas to contest the bulk registration of thousands of military personnel on the electoral lists..

## II. INSUFFICIENT GUARANTEES TO ENSURE FREE AND TRANSPARENT ELECTIONS

Beyond the novelties with limited scope examined above, the new Electoral Code also introduces two new items compared to the former text but which do not provide sufficient guarantees to ensure the conduct of free and transparent elections.

Firstly, the president of the National Commission for Monitoring the Legislative Elections, composed of political party representatives taking part in the election as well as independent candidates, will no longer be appointed by the President of the Republic, but elected by the members of the Commission. Once more, this apparent step forward is in reality of limited scope. Although the President of the Republic loses that prerogative, tougher procedures to create political parties result in more administrative interference, a priori, in political parties (info sheet 3).

Secondly, the new Electoral Code introduces an additional supervisory commission for the elections. The Commission, which is supposed to control and supervise electoral procedures, is composed exclusively of magistrates appointed by the President of the Republic (Art.168) and has no real authority, since it can only

9 [http://www.tsa-algerie.com/politique/la-commission-de-surveillance-gele-une-nouvelle-fois-ses-activites\\_20065.html](http://www.tsa-algerie.com/politique/la-commission-de-surveillance-gele-une-nouvelle-fois-ses-activites_20065.html)



examine any possible irregularities. It would without doubt have been preferable to institute a single independent authority, modeled after the High Independent Authority for Elections (ISIE) in Tunisia for example (Box 2), rather than an additional commission.

Furthermore, the relations between the two commissions, between the commissions and the Constitutional Council and their hierarchical link are not clearly provided for by either the organic law or by the rules and regulations of either commission.

## 2. ELECTIONS FOR THE CONSTITUENT ASSEMBLY IN TUNISIA, 23 OCTOBER 2011: AN INDEPENDENT AUTHORITY FOR THE HOLDING AND CONDUCT OF THE ELECTIONS

The High Independent Authority for Elections (ISIE) was created by Decree-law No.2011-27 on 18 April 2011.

Totally independent of both state institutions and political parties, it has a structure and a budget which guarantee its autonomy as well as a wide range of competencies which guarantee the transparency of the elections.

### a) SETTING UP A NATIONAL COMMISSION FOR SUPERVISING THE ELECTIONS, COMPOSED OF MAGISTRATES

This commission, currently presided by Slimane Boudi<sup>10</sup>, is composed of 316 members. It brings together magistrates from the Supreme Court, the Council of State and other jurisdictions, all *"exclusively appointed by the President of the Republic"* (Art.168).

According to the provisions of Article 170, its role is:

- *to examine any transgression affecting the credibility and transparency of the electoral process*
- *to examine any violation of the provisions of this organic law*
- *to examine any questions referred to it by the National Commission for Monitoring the Elections.*

<sup>10</sup> Presidential decree No.12-69 of 11 February 2012 on the appointment of the members of the National Commission for Monitoring the 2012 Legislative Election (O.J No.06 of 12 February 2012)

Co-ordination with the National Commission for Monitoring the Elections is not provided for. The sole reference to such co-ordination is in Article 4 of its rules of procedure which provides that the Commission is responsible for *“exchanging with the National Commission for Monitoring the Election any information on the holding and conduct of the elections”*.

Presidential Decree No.12-69 of 11 February 2012, as well as the rules of procedure of the Commission, provides that the Commission may be referred to in order to examine any electoral fraud, or may refer the matter to itself. However, the manner in which its decisions on the recorded irregularities are taken into consideration by the Constitutional Council – which remains the sole guarantor of the validity of the elections – is not provided for by the law.

Finally, after completing its work, the Commission produces an activity report (Art.33) but it is not provided for that it be made public.

#### **b) THE NATIONAL COMMISSION FOR MONITORING THE ELECTIONS (CNSEL)**

This commission was created by the President of the Republic for the local elections in 2007 to ensure the transparency of the elections. Article 171 of the new Electoral Code requires the creation of such a commission for each election.

It is composed of *“representatives of political parties taking part in the election”* and has a permanent secretariat (Art.172). The independent candidates are also represented but their participation depends on a draw held by the other candidates. The law does not provide for their number.

The commission undertakes to *“monitor and control the electoral process and the neutrality of the agents in charge of the process”* (Art.174). It delegates members to make field visits *“to record the compliance of the electoral process with the provisions of the law”*, at all stages and in all technical aspects of the process.

The Monitoring Commission does not have sufficient authority to make itself heard by an omnipotent administration. The Commission *“has the right to refer to the official institutions in charge of managing the electoral process with any observations, failures, inadequacies or excesses recorded in the holding or conduct of the elections”*. However, already during the 2007 elections, the President of the National Political Commission for Monitoring the Legislative Elections, Saïd

Bouchaïr, indicated several cases of fraud and wrote to the Head of State, asking him to *"intervene to put an end to the serious excesses which accompany the electoral process and which have gone beyond the limits of isolated acts"*. The election results were nevertheless validated and there was no follow-up regarding the message sent to the President<sup>11</sup>.

### **c) THE ROLE OF THE CONSTITUTIONAL COUNCIL**

According to Article 164 of the Constitution: "The Constitutional Council is composed of nine (9) members: three (3) appointed by the President of the Republic and which include the President, two (2) elected by the People's National Assembly, two (2) elected by the Council of the Nation, one (1) elected by the Supreme Court, and one (1) elected by the Council of State".

Article 163 of the Algerian Constitution gives the Constitutional Council the exclusive authority to *"monitor the regularity of the referendum process, the election of the President of the Republic and the legislative elections"*. Ultimately, it is the Council which is the sole guarantor of the elections, as it is the institution which has the authority:

- to receive and examine *"the results protocols centralising the results of the People's National Assembly elections produced by the Wilaya electoral commissions as well as those produced by Algerians residing abroad"* (Art. 36);
- *"to approve the results of the legislative electoral process and decide on the relevant appeals"* (Art. 42);
- *"to rule on the campaigns accounts of candidates competing in the People's National Assembly elections"* (Art. 43)<sup>12</sup>.

<sup>11</sup> See notably the article by Salima Tlemçani, «Le dernier de mot de Bouchaïr», published in *El Watan* on 2 June 2007.

<sup>12</sup> Regulation establishing the operating rules of the Constitutional Council on 6 August 2000 amended by Decision on 14 January 2009.

And yet, the Constitutional Council has never taken into account the appeals and denunciations of numerous candidates with regard to the manipulation that has marred the elections. Similarly, the Council validated the presidential election in April 1999 during which every candidate except one stood down after declaring that both the administration and the security services were preparing and setting up a large-scale fraud<sup>13</sup>.

The question of the independence of the Algerian justice system from the executive branch is still current. On 29 March 2012, the Minister of Justice, Tayeb Belaiz<sup>14</sup>, was appointed president of the Constitutional Council by the President of the Republic, without resigning as Minister. It was only on 5 April 2012, when Ahmed Noui, who was until then the Chief Cabinet Secretary, was appointed to the position that he stepped down. Although the time elapsed between one appointment and the other was very short, the direct passage of Mr. Belaiz from Minister of Justice to the presidency of the Constitutional Council still represents a serious breach of the principle of constitutional control over executive and legislative action.

It is also important to note that the former president of the Constitutional Council, Mr. Boualem Bessaih held his position long after his term of office, which officially ended in September 2011<sup>15</sup>. At the time the Constitutional Council was examining and declaring the constitutionality of the texts of the adopted laws, within the framework of the legislative reforms that we are examining here, its president was actually acting outside his mandate.

13 EMHRN report: "Algérie: l'indépendance et l'impartialité du système judiciaire", "Algeria: the Independence and Impartiality of the Judiciary" October 2011. See: <http://www.euromedrights.org/en/news-en/emhrn-releases/emhrn-statements-2011/10624.html>

14 After studying law, he served in the external services of the Ministry of the Interior. He then left the services to serve as a magistrate for over 25 years. He was notably president of the Oran Court, president of the court of Sidi-Bel-Abbès, and finally Justice of the Supreme Court. In 1999, he became a member of the National Commission for Judiciary Reform, implemented by President Bouteflika – and which remained, for the most part, without effect. In 2002, he was appointed Minister of Employment and National Solidarity. Since 2003, he has served as Minister of Justice, a position he was still holding in April 2012 despite his appointment as President of the Constitutional Council.

15 M. Bessaih was appointed President of the Council on 26 September 2005

### 3. INTERNATIONAL ELECTORAL OBSERVATION MISSIONS WITH VERY LIMITED MEANS: 533 INTERNATIONAL OBSERVERS FOR 42,000 POLLING STATIONS

The African Union, the European Union, The Arab League, the Organisation of Islamic Cooperation and the United Nations as well as the American NGO, National Democratic Institute (NDI), have confirmed sending electoral observation missions to Algeria for the legislative elections on 10 May 2012.

The teams of observers will be deployed as early as April and will remain there until the results of the elections are announced. The electoral campaign will take place between 15 April and 6 May.

The biggest mission, deployed by the African Union, will include 200 observers whereas the European Union will send only around 120. An investment proportionally much less significant compared to the recent elections in Tunisia where out of a total of 533 international observers, 180 were part of the EU observation mission. In Tunisia, the 180 European observers were able to visit 1,600 polling stations out of a total of 4,500.

In Algeria, given the size of the territory and the existence of nine times more polling stations (42,000 in total), one can already raise doubts as to the impact the international observers will have.

Furthermore, the deployment of international observers in Tunisia in the various polling stations was managed by the High Independent Authority for Elections (Box 1) whereas no clear provision has yet been made public by the Algerian authorities in this respect, which leads us to believe that the decision will be made directly by the executive branch. Moreover, as in the past, the officials and members of the polling stations are appointed by a decree of the Prefect or *wali* (Article 36). It is common practice for the members to be chosen among the administration's civil servants, a condition which does not encourage them to denounce election irregularities and makes them more vulnerable to the risk of retaliation from their superiors.

Beyond the technical aspects of the conduct of the elections, it is important to understand to what extent an electoral observation mission is able to seriously examine both the electoral and pre-electoral context, including the basic freedoms and human rights situation within the country. How can one hope for free and

transparent elections when the police harassment of activists, the banning of protests and public meetings without justification, and the use of abusive administrative practices remain commonly used tactics in Algeria? For further information, see the EMHRN report: *Lifting the state of emergency in Algeria: a game of smoke and mirrors*, February 2012.

In addition it should be noted that, despite the official announcements according to which “all observers will be welcome to monitor the elections”, the international NGOs are regularly denied access to the country. The lifting of the state of emergency has not allowed the situation to improve.

Furthermore, while several Special Rapporteurs were recently able to visit Algeria (Violence against women, 1-10 November 2010, freedom of expression, 10-17 April 2011, right to adequate housing, 10-19 July 2011), the Special Rapporteurs on torture and on the promotion and protection of human rights while countering terrorism, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the liberty of association, the Working Group on enforced and involuntary disappearances (WGEID) and the Working Group on arbitrary detention, were never invited to go to Algeria despite their requests.

#### 4. THE RIGHT TO PARTICIPATE IN ELECTIONS IS A HUMAN RIGHT

*The Universal Declaration of Human Rights (UDHR) stipulates that “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.” (Article 21, 1).*

As well “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.” (Article 21, 3).

*The International Covenant on Civil and Political Rights (ICCPR) provides that every citizen has the right and opportunity, without any discrimination «to vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.» (Article 25).*

Articles 19, 21 and 22 are also a benchmark for election.

### **Article 19**

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - a) For respect of the rights or reputations of others;
  - b) For the protection of national security or of public order, or of public health or morals.

### **Article 21**

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

### **Article 22**

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

*The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* guarantees women the right «to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; to participate in non-governmental organizations and associations concerned with public and political life of the country» (Article 7). The article also stated: «States Parties shall take all appropriate measures to eliminate discrimination against women in political and public life of the country and, in particular, shall ensure to women, under equal terms with men.»

*The Convention on the Elimination of All Forms of Racial Discrimination (CERD)* commits States «to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law” notably in the enjoyment of certain rights, such as political rights, including «the right to participate in elections - to vote and to stand for election - on the basis of universal and equal suffrage, to take part in the government as well as in the conduct of public affairs at any level and to have equal access to public service» (Article 5)..



# RECOMMENDATIONS :

## FOR THE ELECTIONS

- Ensure Algerian legislation conforms with articles 19, 20, 21 and 25 of the International Covenant on Civil and Political Rights
- Establish an independent authority, with autonomous administrative, financial and technical personnel, notably responsible for: cleaning up the national electoral list, organising the conduct of the elections, appointing and training the presidents and members of the polling stations, accrediting the national and international observers, conducting and monitoring the electoral process and counting, producing a public report of its work.

## FOR THE INDEPENDENCE OF THE JUDICIARY

- Ratify other international human rights instruments, in particular the Rome Statute of the International Criminal Court, the Convention for the Protection of all Persons from Enforced Disappearance, the Second Optional Protocol to the International Covenant on Civil and Political Rights, as well as the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention against Torture
- Harmonise domestic legislation with international conventions on the independence of the judiciary that Algeria has ratified
- Reform the institutional framework, in both its constitutional and legislative dimensions, so as to strengthen the independence of the judicial system and ensure equal access to justice, equality before the law and respect of the right to a fair trial for all.
- Explicitly proclaim the right of Algerian judges to freedom of expression, association and assembly, conforming to the basic principles on the independence of the judiciary

- Facilitate cooperation among members of the various legal professions in developing a Code of Ethics that will consolidate the independence and impartiality of the judiciary
- Organise a broad, open and all-encompassing debate with a variety of civil-society players on the state of the judiciary, and in particular on the basic issue of its independence.

#### **ON THE ACCESS TO THE COUNTRY OF INTERNATIONAL OBSERVERS**

- Comply with the requests from numerous non-governmental human rights defence organisations to send delegations to Algeria
- Facilitate the granting of visas to officials of non-governmental human rights defence organisations invited by their national counterparts
- Invite the various United Nations Special Rapporteurs who have requested a visit, in particular:
  - The Special Rapporteur on extrajudicial, summary or arbitrary executions;
  - The Special Rapporteur on the promotion and protection of human rights while countering terrorism;
  - The Special Rapporteur on torture;
  - The Special Rapporteur on the liberty of association;
  - The Working Group on arbitrary detention;
  - The Working Group on enforced and involuntary disappearances.

#### **IN VIEW OF ITS OBSERVATION MISSION OF THE LEGISLATIVE ELECTIONS ON 10 MAY 2012 IN ALGERIA, THE EUROPEAN UNION IS CALLED UPON:**

- o publicly condemn the repressive measures contained within the laws adopted in January 2012 and the deterioration of the human rights and public freedom situation in Algeria;
- To call upon the Algerian authorities:
  - To guarantee the freedom of peaceful assembly and demonstration for the Algerian citizens in Algiers and other regions of the country;
  - To rescind the decree of the Head of Government of 18 June 2001 which bans peaceful demonstrations and all forms of public gatherings in Algiers;

- To guarantee the freedom of assembly and provide organisations, independent trade unions and other associations with public meeting places, in accordance with the declaratory system and the timeframe provided for by Law 91-19;
- To guarantee the freedoms of trade unions by allowing among other things the legal registration of new trade unions;
- To guarantee in all circumstances the physical and psychological integrity of all unionists and human rights defenders in Algeria;
- To duly recognise the status of human rights defender including for members of associations fighting impunity, by transposing into domestic legislation the provisions of the United Nations Declaration on the rights and responsibilities of the defenders in question;
- To implement the provisions of the United Nations Declaration on human rights defenders (1998), particularly in Articles 12 and 9.
- To call upon the Algerian government to reform without delay the laws relative to the electoral system and to political parties and to ensure the good conduct and transparency of the elections and to guarantee a political context of free electoral competition.



The image features a background of a grid of small, light-brown squares. In the upper-left quadrant, a larger, rounded square of a slightly darker shade of brown is centered. Inside this larger square, the number '2' is written in a white, sans-serif font.

2

# ORGANIC LAW NO. 12-03 OF 12 JANUARY 2012 SETTING OUT CONDITIONS FOR INCREASING WOMEN'S CHANCES OF ACCEDING TO REPRESENTATION IN ELECTED ASSEMBLIES<sup>16</sup>

In Algeria, women and militants in civil society organizations such as political parties are regularly restrained in their work and, like men, are subjected to strict controls and repression of public freedom. In a general sense, claiming women's rights cannot be separate from an authentic democratization of public open spaces and the establishment of a rule of law from which men and women, as citizens, can benefit. In a legal point of view, this new law *setting out conditions for increasing women's chances of acceding to representation in elected assemblies* is merely a "drop in the ocean" in relation to all the legal discriminatory provisions, still strongly applied in Algeria on women.

The Law of 12 January 2012 has been adopted in application of article 31 bis of the Algerian Constitution<sup>17</sup> that stipulates "The State works to promote women's political rights by increasing their chances of acceding to representation in elected assemblies". The organic law's text is very short: it only contains 8 articles after the visas.

As its name implies, this law aims to increase women's chances of acceding to representation in elected assemblies by introducing quotas reserved for women in the electoral lists. Nevertheless, its purpose, hardly ambitious to begin with, is very restrained. Firstly, its aim is not to ensure equal representation for men and women in elected assemblies, nor does it concretely increase the number of elected women. It simply favours the access to such reality; moreover, by being limiting only to elected assemblies, the law doesn't aim to favour access to

<sup>16</sup> JORA No. 01 of January 14, 2012, p. 39.

<sup>17</sup> As per Constitutional Law No. 08-19 of 15 November 2008, JORA No. 63 of November 16, 2008.

politics for all Algerian women. Thus, it does not encourage ensuring significant feminine representation, neither in the government nor within the Upper House of the Parliament, the Council of the Nation. While the president appoints a third of the members of the latter, he is not obliged by the either Constitution or the law to respect any parity in said appointments. This state of facts reflects the lack of real will to make things evolve because the president doesn't use the mechanisms available and puts forward Article 31bis of the Constitution, introduced during the constitutional reform of 2008, which removed the limitation of presidential terms as a diversionary measure.

The poor representation of women in politics in Algeria is still very visible. Even if it allows Algerian authorities to display a so-called progress in equality, passing this new law actually hides the power's resistance when it comes to the in-depth issues that maintain discriminations against women, particularly the family code, the fight against unemployment and precarious employment that affect mostly women, or the fight against stereotypes propagated by certain media networks and also by politicians.

## I. CONTRIBUTIONS TO LAW NO. 12-03 TO THE PARTICIPATION OF ALGERIAN WOMEN IN POLITICS

### a) GENERAL LEGAL AND CONSTITUTIONAL CONTEXT

It must be clarified that before this organic law was adopted, there were no any legal or regulatory provisions forbidding or restraining the participation of Algerian women in politics. In fact the right to vote and to be elected has been constitutionally guaranteed since 1962<sup>18</sup>. Ordinance No. 97-07 of 6 March 1997 on the organic law relative to the electoral system<sup>19</sup> excluded all discrimination founded on gender setting conditions for being an elector, in the same way as the new organic law on the electoral system, which makes no reference to the organic law on increasing women's chances of acceding to representation in elected assemblies that was implemented the same day.

<sup>18</sup> Article 50 of the Algerian Constitution.

<sup>19</sup> Organic Law No. 12-01 of 12 January 2012 on the electoral system, JORA No. 01 of January 14, 2012.

Furthermore, certain institutional mechanisms have been implemented over the past few years to favour women's participation in politics. As a result, a delegate ministry responsible for families and women's condition was created in 2002. Although its initial goal was to promote The Algerian Women's role in economic and social development, the ministry instituted a plan of action that aims notably to inform women about their rights and created a national Council for families and women. It is an advisory organ responsible for ensuring, since the 7th of March 2007, consultation, dialogue, coordination and evaluation of the actions and activities concerning families and women.

The Algerian legislation has had strong developments between 2000 and 2006, including amendments to the Penal Code<sup>20</sup>, the Nationality Code<sup>21</sup>, the Labour Code<sup>22</sup> and the Family Code<sup>23</sup>. Nevertheless, despite the authorities declaration that *"non-discrimination is a constitutional principal"* and that *"any legal text containing a discriminatory measure is likely to be reviewed by the Constitutional Council"*<sup>24</sup>, the Constitution's definition of discrimination doesn't comply with that of the Committee on the Elimination of Discrimination Against Women (CEDAW). In practice, discrimination is clearly present in several legal texts, particularly in the Penal Code and family legislation, which the Algerian authorities refuse to even discuss<sup>25</sup>.

It is necessary to point out that Algeria ratified and supported the CEDAW in 1996 (articles 2, 15 par.4, 16 and 29) without explanation in either the ratification decree or in the ordinance for the approbation of the Convention<sup>26</sup>. However Algeria has not yet ratified the optional protocol regarding the CEDAW to allow the UN Committee on the Elimination of Discrimination Against Women to monitor its

20 Ordinance No. 66-156 of 8 June 1966 on the Penal Code, JORA No. 49, June 11, 1966.

21 Ordinance No. 05-01 of 27 February 2005 amending and supplementing Ordinance No. 70-86 of 15 December 1970 on the Algerian nationality Code, JORA No. 15, dated 27 February 2005.

22 Law No. 90-11 of April 21, 1990 on Labor Relations, JORA No. 17, April 25, 1990.

23 Law No. 84-11 of 9 June 1984 on the Family Code JORA No. 24 June 12, 1984, amended by Ordinance 05-02 of 27 February, 2005.

24 See reports on Algeria as part of the Universal Periodic Review (UPR).

25 EMHRN report : «L'égalité des sexes dans la région euro-méditerranéenne : du Plan d'action à l'action? Rapport parallèle sur la mise en œuvre du plan d'action d'Istanbul», octobre 2009. See: <http://www.euromedrights.org/en/publications-en/emhrn-publications/emhrn-publications-2009/3915.html>

26 To inspect the ratifications and reservations at the CEDAW, go to The United Nations website: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg\\_no=IV-8&chapter=4&lang=en&clang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg_no=IV-8&chapter=4&lang=en&clang=en)  
See also Presidential Decree No. 96-51 of 22 January, 1996 and Ordinance No. 96-03 of 10 January, 1996, approving with reservation of the 1979 Convention on the Elimination of all forms of discrimination against women, JORA No. 3 of January 14, 1996. For more information on reservations made by Algeria, see box 5.

application, as article 1 points out: *"Any State Party to this Protocol recognizes the competence of the Committee on the Elimination of Discrimination Against Women regarding the receipt and review of submissions"*. This deficiency undoubtedly reveals an imperfect international commitment. This confirms Algeria entering the protocol to the African Charter on human and peoples' rights on the rights of women<sup>27</sup>, adopted at Maputo, July 12, 2003, without respecting its main provision concerning political rights, article 9, entitled *"right to political participation and decision-making"* in which it prescribes equal representation for women at all levels in electoral processes.

## **b) OPPORTUNITY AND FOUNDATION OF THE LAW**

It was not until 2012 that a law allowing for the application of Article 31 bis, introduced into the Constitution in 2008, was born. Another article of the Constitution, Article 51, curiously not mentioned by the legislator, guaranteeing *"equal access to posts and positions within the State (...) to all citizens, without any conditions other than those set by law"* is another legal basis for this law.

The extremely low level of women's representation in elected assemblies, which nevertheless constitutes the *"place of public participation in governance"* (Article 16 of the Constitution), is a serious limitation for Algerian politics and society. For example, the current People's National Assembly (PNA), elected in 2007, has 31 women out of 389 deputies, a rate of 7.9%<sup>28</sup>. Considering that the underrepresentation of women in legislative bodies is explained notably by their difficulty in acceding to political party electoral lists, the legislator deemed it necessary to introduce affirmative action into the law, such as quotas. In an environment so unfavourable to women's participation in politics, the introduction of quotas could be a first step towards equal opportunities.

In Morocco for example, the proportion of women in parliament did not exceed 0.6% before the 2002 elections. Today, thanks to the quota agreement, there has been a marked improvement, although the number of elected women is still well below 30%, as criticized by women's movements.

<sup>27</sup> Signed by Algeria, 29 December 2003.

<sup>28</sup> According to the People's National Assembly website.



### c) DISCREET PROGRESS

The new law sets a mandatory rate of representation of women on candidate lists (Art. 2) in legislative, municipal and Wilaya elections, in proportion to the number of available seats.

The legislation's main clause is Article 5, under which electoral rolls that do not respect the rates set by law will be sanctioned by the having the list rejected. This provision is fundamental as to guaranteeing real participation of women on electoral rolls.

To increase the effectiveness of these provisions, the legislator has also introduced an incentive measure by allowing the state to grant financial assistance specific to political parties, according to the number of feminine candidates elected in people's municipal assemblies, Wilayas and parliament (Art. 7).

## II. THE LIMITS OF ORGANIC LAW

### a) BEHIND THE SCENES

If the legislature aims to increase women's chances to access representation in elected assemblies by setting percentages of women on the rolls, it seems to exclude some municipalities in the people's municipal assembly elections. Hence in Article 2 paragraph 3, only People's Municipal Assemblies located at administrative centres of *dairas* and in municipalities with a population of more than 20,000 inhabitants. What about the less populated communes? More exactly, why did the Algerian legislature exclude the commune category from these rates?<sup>29</sup>

This point was revealed by the Constitutional Council yet without acknowledging its unconstitutionality. In its preceding notice, the council considers that *"the legislature doesn't intend to exclude the wife of her right to representation in elected assemblies in these PMA, but included this provision to prevent the rejection of the election rolls in these PMA if they do not contain sufficient number of women due to socio-cultural constraints"*. Such a notice highlights the law's limits: while contradicting openly

<sup>29</sup> See article 79 of the electoral code.

the principle of affirmative action it seeks to introduce, the Council is supposedly considering socio-cultural limits as the cause of women's exclusion and refuses to correct them throughout Algeria. It probably assumes that certain categories of the Algerian population, particularly in rural areas, would be impervious to arguments in favour of equal rights between women and men.

Moreover, contrarily to what was provided in the draft legislation, the rates have been lowered and tend to decrease depending on the number of available posts. The fewer the available seats, the fewer women should be presented in the electoral rolls. If introducing quotas represents a starting point for more feminine participation, it happens to be a very meagre progress.

It is also crucial to emphasize that the regulation setting the application rules of Article 7 on specific financial assistance granted by the state political parties applying the law has not yet been adopted and will not be in time for the legislative elections in May 2012.

Finally, the fact that there is no mention of the law in the visas of the organic law on the electoral system nor of the visas relating to political parties - despite being benchmark laws for elections - shows that the issue of women's participation remains tightly confined, limited to be considered as a specific issue and not a matter of rights for every citizen to participate in elections such as parties' politics and governance.

## **b) AN INCOMPLETE LAW**

Despite the fact the organic law No.12-03 of January 12, 2012 determines the modalities to increase women's chances of acceding to representation in elected assemblies, it excludes from its scope the Council of the Nation, Parliament's second house<sup>30</sup>. Yet it is made up of 144 members, 96 of whom are elected by indirect suffrage<sup>31</sup>.

But today there are no women among the elected members of the Council of the Nation. If it can be accepted as complex, but not impossible, to extend the provisions of Organic Law No. 12-03 to an indirect election, the absence of women

<sup>30</sup> Constitutional Law of 28 November 1996, Jora No. 76 of 8 December 1996.

<sup>31</sup> Elected among and by the members of the People's Municipal Assemblies of the People's Wilaya Assembly in an average of 2 members for each Wilaya.

among the elected members of the Council of the Nation would alone justify such an extension. Moreover, it would have been very simple to introduce during the 2008 review a minimum number of women required for non-elected members of the Council of the Nation, who are appointed by the president. Currently, the Council of the Nation has only seven women as part of the *"presidential tiers"*.

Furthermore, the organic law doesn't ultimately guarantee any efficient presence of women in the elected assemblies to which it refers. As for the rates of women elected, the law doesn't really provide specific clauses to reproduce the percentages of feminine candidates on electoral lists with regard to women elected on both national and local scales. In addition, the new Election Code provides that candidate ranking must be taken into consideration. Therefore, regarding the election of members of people's municipal assemblies and Wilaya members, based on a proportional party-list system, article 69 provides that *"the allocation of seats among the candidates of a list must obey the candidates ranking order on that list. The lists of candidates for the election of people's municipal assemblies and Wilayas must be ranked"*. The same applies to deputy elections since article 88 provides that *"seats are allocated to candidates in the order appearing on each list"*.

However, although the ranking order has to be respected, the new law does not, at any time, provide mandatory alternation between men and women on the lists, although this was mentioned in the bill discussed by the PNA. Yet it is this measure combined with the introduction of quotas that allows women to be in eligible positions and to obtain more significant representation in elected bodies. Without it, putting the women's quota at the bottom of the list (in a non-eligible position) is enough to keep the status quo...

The example of the law passed in Tunisia in view of the constituent Assembly elections, which imposed 50% equality and mandatory alternation of men/women on the lists<sup>32</sup>, shows that this measure can have significant albeit still relative effects: at the constituent Assembly elections in October 2011, 49 out of 217 seats were won by women, that is 22.5% of the total.

---

32 Article 16 of legislative decree No. 35 of 10 May 2011 on elections to the Constituent National Assembly.

Ultimately, the only guarantee for women acceding to elected assemblies is in Article 6, which provides “the replacement of candidates or elected representatives by a person of the same gender”. This provision protects feminine candidates because it preserves the places they acquired in elections. Nevertheless, the fact that this law doesn’t ultimately guarantee any efficient presence of women in the elected assemblies to which it refers, this provision results in preventing the number of women representatives from exceeding that of elected candidates in case of resignation, since a woman candidate can never claim to replace an elected male representative.

### **c) ARTICLE 8: EVALUATION REPORT**

Other criticisms of the organic law stem from the Constitutional Council itself. The legislature thereby provided in article 8 of the project, the subject of the referral, to hand over, after each concerned assembly election, a governmental report to parliament evaluating the application of the organic law application. This provision was declared unconstitutional pursuant to the principal of the separation of the legislative and executive powers under which, according to the Constitutional Council, “each power must focus its action within the strict limitations as defined by the Constitution”. The Constitutional Council has also decided that by providing such a mechanism, “the legislature has instituted, for its own benefit, a device to control the government’s actions”. However, the council could have, with regard to article 99 of the Constitution it quotes - that confers upon the parliament the right to control the government’s action -, encouraged the organic legislature to confer said legitimate control to parliament, of which one of its roles is, precisely, to evaluate public policies.

## RECOMMENDATIONS

- Implement a more ambitious policy to favour women's representation in all public decision-making authorities, at all levels;
- Establish mandatory alternation between men and women in electoral lists;
- Immediately pass the regulation setting the application method of article 7, relative to the specific financial assistance granted by the government to political parties applying organic law No.12-03 of January 12, 2012;
- Clearly and fully remove the reservations to articles 2, 15 (paragraph 4), 16 and 29, at the CEDAW;
- Include in the Algerian legislation, particularly the constitution, a definition of discrimination complying with that of Article 1 of the CEDAW Convention ratified by Algeria;
- Ratify and effectively implement the Optional Protocol annex to the CEDAW;
- Repeal all legal provisions that are still discriminatory against women and replace them with provisions ensuring equality of rights and duties between men and women, primarily:
  - the provisions of the Family Code on polygamy ; the unequal provisions on marriage dissolution such as divorce unilaterally pronounced by the husband and also inequality in succession matters;
  - the Nationality Code so as to recognize marriage between an Algerian woman and a foreigner as well as allowing an Algerian woman married to a foreigner to pass on her nationality to her children, pursuant to a clear and transparent mechanism and not based on conditions that could vary from individual to individual

## 5. ALGERIA'S CEDAW RESERVATIONS

### Article 2

*States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:*

- a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- g) To repeal all national penal provisions which constitute discrimination against women.

## Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

## Article 15 (paragraph 4)

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

## Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
  - a) The same right to enter into marriage;
  - b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
  - c) The same rights and responsibilities during marriage and at its dissolution;
  - d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
  - e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
  - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
  - g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
  - h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory..



## Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

The full text is available at <http://www2.ohchr.org/english/law/cedaw.htm>

The image features a 12x12 grid of rounded squares. The background is a solid blue color. In the second column from the left and the third row from the top, there is a dark blue rounded square containing the white number '3'.

3

# ORGANIC LAW NO. 12-04 OF 12 JANUARY 2012

## ON POLITICAL PARTIES

The new law on political parties, divided into 84 articles, brings no major changes relative to Organic Law No. 97-09 of 6 March 1997. The legislation's only new features are that the Ministry of the Interior must issue a document acknowledging receipt of a declaration (article 18) – even though there is no provision guaranteeing that this obligation will be met in practice – and that a political party whose application has been denied by the bureaucracy may appeal the decision to the Council of State throughout its establishment process.

Generally speaking, however, the new law consolidates the powers of the bureaucracy and the Ministry of the Interior vis-à-vis the political parties. The Minister of the Interior has very broad powers that allow him or her to exercise substantial control over political parties, including over their mode of establishment and their internal organisation.

The new law raises problems not only because the wording of some of its provisions is vague and imprecise but also, and especially, because the rules governing the dissolution of parties are flexible and because the law contains restrictions that affect the creation of parties, changes to their bylaws and their relations with foreign bodies.

# 1. RULES GOVERNING THE CREATION OF POLITICAL PARTIES

Although a number of parties have long been demanding a softening of the rules governing their establishment, this has not been achieved in the new legislation. Lawmakers seem to have completely turned their backs on the notification system that had been initiated by Law No. 89-11 of 5 July 1989, the first Algerian legislation dealing with political parties.

The new law passed in 2012 maintains the prior-approval regime already in place for the establishment of political parties. This regime, introduced by the previous organic law of 6 March 1997 on political parties, forces them to obtain the approval of the Ministry of the Interior before they can begin their activities (article 16). Under the new law, the establishment of a party takes place in three stages: the party must first obtain an acknowledgment that its application has been received; then comes a decision by the bureaucracy that the party may hold its convention; and third, the party is then approved.

Thus the Minister of the Interior has significant powers in this area, giving him de facto discretion to accept or refuse the creation of a party that wishes to take part in and contribute to political life.

Both the Algerian constitution and international treaties such as the International Covenant on Civil and Political Rights guarantee the freedom to create a party through a simple notification system and favour a flexible set of rules to allow the formation of parties. Despite this, the Minister of the Interior defended the new law by stating that he did not know of any country that allowed the establishment of political parties through a simple notification system. "This shortcut would be too dangerous and totally illegal," he said. "It would open the way to confusion and anarchy."<sup>33</sup> Thus the minister was apparently unaware that the notification system has been adopted by the majority of democratic countries.

33 Statement by Dahou Ould Kabila, Minister of the Interior, at the plenary session of the APN on 24 November 2011. [Note: All translated quotations provided in this document are unofficial.]

In addition, the law sets out very strict criteria governing the approval of parties. Article 21, for example, stipulates that the founders of a political party must have made arrangements to have headquarters for the party – before it has even secured the approval that alone will give it the legal status needed to acquire a headquarters.

At the same time, as in the case of the Electoral Code (information sheet 1), no linkage is established with new Organic Law No. 12-03 of 12 January 2012 setting out the conditions for increasing women’s chances of acceding to representation in elected assemblies (information sheet 2), even though article 17 imposes as a condition that a ‘representative proportion of women’ be included among the founding members and article 41 states that a party must include ‘a proportion of women in its governing bodies’. The law does not specify what these proportions should be. There are no provisions indicating what steps would be taken if, for example, a party has no women among its governing bodies or its founding members. Would the party be subject to sanctions imposed by the bureaucracy? Could approval of a party be denied on such grounds?

## 2. RESTRICTIONS ON THE ESTABLISHMENT OF PARTIES

Article 8 prohibits the establishment of a political party whose goals are contrary to ‘the values and basic components of the nation’s identity’ or ‘to the ethic of Islam’ (par. 1 and 2). These criteria are very vague and imprecise, opening the way to the potential for arbitrary interpretations by the government.

Article 5 makes it illegal for a political party to be established by ‘anyone responsible for having exploited religion in a way that led to the national tragedy’ as well as ‘anyone who, having taken part in terrorist activities, refuses to acknowledge his or her responsibility or participation in the design, conduct and execution of a policy advocating violence and subversion against the nation and the institutions of the state’. This provision seems to be aimed at the members of armed Islamist groups.

At the same time, articles 6 and 9 of the new law are clearly intended to prevent the return of the banned Islamic Salvation Front (*Front islamique du salut, FIS*) to the political arena. There is a strict rule stating that parties must not 'take their inspiration from the agenda of a political party that has been dissolved by judicial decision',<sup>34</sup> a description that applies to the former FIS.

These provisions, which appear to be aimed at reassuring part of the population, raise a number of issues. For example, it is not clear whether the responsibility 'for having exploited religion in a way that led to the national tragedy' is seen as a political or criminal responsibility. If it is a political responsibility, the law does not indicate how this responsibility is defined. If it is a criminal responsibility, then neither criminal law nor Ordinance No. 06-01 of 27 February 2006 proclaiming the Charter for Peace and Reconciliation refer to an offence defined as 'exploiting religion in a way that led to the national tragedy' that would serve as a basis for criminal responsibility in this case.<sup>35</sup>

At the same time, there are unresolved issues, especially when one takes into account the fact that this same Ordinance No. 06-01 provides for the annulment of criminal prosecutions or the granting of amnesty for anyone who is being sought or has been convicted or imprisoned for terrorist activities, except for those individuals who have been accused or convicted of mass murder, rape or bombing attacks in public places, as well as the accomplices and instigators of such actions. It is worth pointing out, however, that Ordinance No. 06-01 has been applied in secrecy. The Algerian public does not know how many people have been granted amnesty or

34 ...and must not 'adopt the name, full acronym or any other distinctive symbol belonging to a pre-existing party or organisation, or having belonged to a movement of any type whatsoever, whose attitude or activities were contrary to the nation's interests and to the principles and ideals of the Revolution of 1 November 1954'. The reference to the principles and ideals of the 1954 Revolution suggests that any party inspired by, for example, the former Algerian People's Party (*Parti du peuple algérien*, PPA) or the Algerian National Movement (*Mouvement national algérien*, MNA), would also be targeted by this prohibition.

35 Article 5 of Organic Law 12-04 applies to the creation of political parties the same prohibition that is stipulated in article 26 of Order 06-01, in which par. 1 states that 'the exercise of political activities, in whatever form, is forbidden to anyone who was responsible for exploiting religion in a way that led to the national tragedy', while par. 2 adds that 'the exercise of political activities is also forbidden to anyone who, having taken part in terrorist activities, refuses, despite the damage caused by terrorism and by the exploitation of religion for criminal purposes, to acknowledge his or her responsibility in the design and implementation of a policy advocating violence against the nation and the institutions of the state'.

pardons under this decree nor, it goes without saying, what offences they had committed, and thus it is impossible to determine if the exclusions stipulated in the decree have been complied with. There are serious doubts surrounding this issue because the heads of some armed Islamist groups have received grants of amnesty or pardons.<sup>36</sup>

The issue of the forfeiture of political rights, in particular the right to vote and to run for elected office, is crucial in a country that underwent a period of severe violence in the 1990s. The issue must therefore be treated seriously and it is important to set out clear criteria that are in line with Algeria's international commitments. In this regard, it seems critical, from both a political and a legal point of view, to consider the severity of the crime committed, especially during the period when the state of emergency was in effect, whatever the title or status of the author of the crime, and that forfeiture be decided in each individual case only after a fair trial. Without any clear criteria applied by an independent tribunal, there is a risk that the ban on political activities described in Ordinance No. 06-01 will continue to be applied in secrecy and arbitrarily, allowing some of those responsible for terrorist crimes to go free because they are now siding with the government.

### 3. MODIFICATIONS

Article 36 of the law stipulates that 'changes taking place in compliance with statute and bylaws of the party, in the organisation and composition of the governing bodies, as well as any changes in the statute, must be notified to the Minister of the Interior, for approval, within thirty (30) days'.

The organic law of 6 March 1997 contained similar provisions<sup>37</sup>; however, the changes were not subject to the Minister's approval, they only needed to be declared to the ministry for informational purposes. Thus article 36 strengthens the government's determination to control political parties not only at the moment

36 See, for example, Farid Allilat, 'Madani Mezrag ne regrette rien' ('Madani Mezrag has no regrets'), *Jeune Afrique L'Intelligent*, 2 January 2006, <http://www.jeuneafrique.com/article.php?idarticle=LIN25126madanneiret0>; see also Salima Tlemçani, 'Après les promesses électorales, la réalité reprend le dessus' ('After the electoral promises, reality has returned'), in *El Watan* (French-language daily), 12 April 2010, <http://www.elwatan.com/Bouteflika-partage-entre-le-pardon?page=plan>.

37 Article 20 of the organic law of 6 March 1997 stipulates that 'any change in the leadership or administration regularly designated by the political party, as well as any change in the statute or the creation of any new local units, must within a month following the change be notified to the minister in charge of interior affairs'.

of their creation but also in their organisation. That is a serious interference in the internal operation of the parties, even though the government maintained before the adoption of the law it would not countenance such interference.<sup>38</sup>

## 4. DISSOLUTION

The new law introduces new rules governing the abolition of political parties. Paragraph 2, Article 70 stipulates that a move to dissolve a party may be undertaken by the Minister of the Interior before the Council of State if the party 'has not submitted candidates in at least four consecutive legislative and local elections'. This can be seen as a threat by some opposition parties and also interferes in the democratic decision-making process of parties that may have decided to boycott elections, for example, or to wage a campaign in favour of abstention. This provision of the new law signals once again the government's interference in the internal affairs of political parties and violates the 'rules of free choice' by the members that are addressed in Article 38 of the same law.

Beyond the standard approach to the dissolution of a political party, 'in emergency situations' and 'before any decision is made as a result of any judicial action undertaken', the interior minister has the authority, according to article 71, to 'take any protective measure needed to prevent, deal with or put an end to emergency situations and violations of the laws in effect. This provision gives the Minister of the Interior full discretion to decide whether or not there is an emergency warranting protective measures that could be prejudicial to the political party in this situation because, even if the latter 'has leave to appeal to the Council of State at a special hearing to request the annulment of a protective measure, appeals do not result in the suspension of such measures' (par. 2). The party targeted by the measure will thus have no alternative but to submit to this temporary suspension while awaiting the decision of the Council of State, which cannot be appealed.

<sup>38</sup> The release issued by council of ministers on 11-12 September 2011 stated that 'the proposed legislation does not allow any interference in the internal organisation of political parties and merely sets out provides that the statutes of the parties must contain democratic rules governing their operation, encourage the promotion of women in their governing bodies, and set out rules to ensure transparency in the finances of the parties and to fight against all forms of corruption in the political arena'.



In addition, article 64 of this law authorises the Minister of the Interior, 'in cases of emergency' or 'imminent threat to law and order', to suspend all party-related activities of the founding members and order the closure of the premises used for these activities through a simple administrative decision, 'duly justified'. This only serves to reinforce the government's power and place it beyond the reach of justice. While Article 64 does stipulate that the suspension decision may be appealed to the Council of State, it also prevents the petitioner from appealing the Council's decision.

## 5. BAN ON EXTERNAL RELATIONS

Section 3 of the chapter devoted to the operation and activities of a political party bears the title 'Relations of the political party with other parties', but in reality it is concerned with forbidding parties from maintaining relations with outside bodies. Article 51 states, among other things, that a party is forbidden from 'engaging in activities abroad that constitute attacks against the state, its symbols, its institutions and its economic and diplomatic interests, or from maintaining links or relations that could give it the status of a foreign section, association or political group'. This provision is an attack on freedom of expression that is intended to ensure that leaders of the political opposition questioning the choices made by the Algerian government will not receive support in the international arena. As in the case of the new law on associations (information sheet 5), the issue of relations with the outside once again sets a kind of 'red line' which, in the eyes of the Algerian government, must not be crossed.<sup>39</sup>

<sup>39</sup> A similar provision is included in article 46 of Ordinance no. 06-01 of 27 February 2006 establishing the Charter on Peace and National Reconciliation.

## RECOMMENDATIONS

- Rescind Law 12-04 on political parties.
- Draft a new law on political parties that is in compliance with relevant international standards, and in particular:
  - Guarantee that parties may be established through a simple notification system, without requiring prior approval;
  - Guarantee that the authorities issue systematically and immediately the document acknowledging receipt of a party's application for registration, in particular by making available the possibility of notification by electronic means along with the standard notification procedure;
  - Guarantee an effective remedy in impartial and independent tribunals, and within reasonable deadlines, to parties from which approval has been withheld by the competent authority;
  - Guarantee freedom of expression, of meeting and peaceful assembly, and of movement to all citizens, including the leaders of political parties.

### RECOMMENDATIONS REGARDING THE CHARTER FOR PEACE AND NATIONAL RECONCILIATION

- Put an end to the deliberate blocking of access to the rights to truth, justice and full and complete reparation as defined in several international instruments to which Algeria is a party.
- Rescind the implementing laws and decrees of the Charter for Peace and National Reconciliation that confer impunity for all human rights violations that took place during the civil war.
- Establish a 'truth, justice and reconciliation' commission charged with ascertaining the truth about the crimes committed during the 1990s as well as the fate of the victims, with the mandate and the resources needed to conduct in-depth and impartial investigations.

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance, signed by Algeria on 6 February 2007.
- Allow the United Nations Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur on Torture and the Working Group on Arbitrary Detention to visit Algeria in the near future.



The image features a solid purple background with a grid of 12x12 rounded squares. The squares are arranged in a uniform pattern. In the center of the grid, there is a white number '4' inside a slightly larger, rounded square that is also white, creating a focal point.

4

# ORGANIC LAW NO. 12-05 OF 12 JANUARY 2012

ON INFORMATION

## 1. RESTRICTIONS AND CONDITIONS TARGETING THE AUTHORS OF INFORMATION

Article 2 of the law states that information is an ‘activity’. In other words, information is no longer seen as ‘the right of the citizen to receive full and objective information<sup>40</sup>’ but as an activity that is subject to a large number of conditions defined by lawmakers.

Although Article 2 stipulates that this activity is practiced ‘freely’, the new legislation includes 12 conditions with which anyone practicing the activity must comply. These conditions, worded in very broad terms, include the obligation to respect ‘the national identity and the cultural values of society, national sovereignty and national unity, the requirements of law and order, the economic interests of the country, and the missions and obligations of public service’.

These provisions could lead to the censorship or self-censorship of information providers, thus giving rise to severe restrictions against freedom of speech. In addition, compliance with these provisions will be required not only from journalists, who are already subject to other restrictions imposed by this same legislation, but from anyone providing information, including associations, political parties, human rights activists, etc. because the information activity is defined as including

<sup>40</sup> Article 2 of Law 90-07 on information.

‘any publication or broadcast of news information, messages, opinions, ideas and knowledge by any written, audio, audio-visual or electronic medium aimed at the general public or at a specific segment of the population’ (Article 3).

In addition to being subject to these conditions, journalists must comply with the provisions of Article 92, which sets 11 new requirements beyond the restrictions that were already part of Law 90-07,<sup>41</sup> including that a journalist must ‘respect the attributes and symbols of the state’ and ‘refrain from distributing or publishing images or remarks seen as amoral or as an affront to the sensitivity of citizens’. These very broadly worded restrictions represent a severe threat to the freedom of journalists and could lead to their being censored or practicing self-censorship.

Words such as ‘amoral’, ‘affront’ and ‘sensitivity’ are not given clear, unambiguous definitions and thus there is a risk that they will be interpreted subjectively and used as additional censorship tools. Also regrettable is the change in wording in the new law, journalists will no longer be able to ‘comment’ on events as the former law allowed<sup>42</sup> but will now be restricted to ‘reporting’ the news, according to paragraph 5 of Article 92 of the new law. This provision constrains the scope of the journalist’s freedom of expression, freedom of opinion and freedom of thought.

The provision of information is not an activity open to all: Article 4 of the law lists the entities that are allowed to engage in information activities, including ‘media belonging to or created by... approved associations’. This article clearly restricts the conduct of information-related activities to ‘approved’ organisations, thereby prohibiting non-approved bodies such as *SOS Disparus* from publishing information. As a result, the ability of associations to exercise their right to freedom of expression is left to the discretion of national authorities who are empowered to agree or refuse an association’s registration.

<sup>41</sup> Article 40 of Law 90-07 on information.

<sup>42</sup> Article 40, par. 4, of Law 90-07 on information.

## 2. RESTRICTIONS AGAINST FREEDOM OF PUBLICATION CAUSED BY BURDENSOME REQUIREMENTS, APPROVAL PROCEDURES AND OTHER CONDITIONS FACED BY EDITORS

While the principle that ‘the publication of any periodical is free’ has been reiterated in Article 11 of the law, this activity is subject to new requirements. A declaration form must first be filled out and signed by the publisher, for registration and ‘truthfulness control’ purposes. Under the legislation in effect until now, all that was needed was that a declaration be filed with a judicial authority, the head public prosecutor (*Procureur de la République*), but from now on, the declaration must be submitted to the authority responsible for regulating the written media.

In addition, Article 13 provides that the ‘authority responsible for regulating the written media will issue its approval within sixty (60) days following the date the statement was submitted’. In other words, not only does the law lengthen the period between the filing and release dates of a new periodical issue from 30 to 60 days, but the publication itself is subjected to an approval process, whereas previously only a declarative process was needed.

Article 23 adds new requirements that the editor of any periodical must meet: the editor of a general information periodical must demonstrate that he or she has at least 10 years’ experience in the information field, while the editor of a scientific, technical or technological publication must show at least five years’ experience. This requirement is even more constraining than what had originally been contemplated: in the draft legislation, where the prior experience required for either a general information periodical or a scientific journal was five years. It should be pointed out, however, that another requirement that had been included in the draft – namely, that the editor of a periodical should reside in Algeria – was deemed unconstitutional by the Constitutional Council and removed from the final text. This requirement, if adopted, would have severely restricted the ability of Algerians living abroad to act as editors. At the same time, the requirement that the editor be an Algerian citizen was maintained, thus excluding any non-Algerian living in Algeria from acting as editor.

### 3. BROAD POWERS CONFERRED UPON THE REGULATORY AUTHORITY IN CHARGE OF WRITTEN MEDIA

The powers conferred upon the authority responsible for regulating the written media give this body a considerable degree of discretion that could be used to undermine the right to freedom of expression and opinion. Article 40 states that this body is responsible for ‘encouraging diversity in information and defining the ways in which the rights to the expression of different opinions can be exercised’.

In addition, if a periodical is found to have failed to meet the law’s requirements, the regulatory authority in charge of the written media would forward its observations and recommendations to the periodical, which would then be obligated to publish them.<sup>43</sup> The sanctions that have been included in Article 100 of the proposed legislation – the withdrawal of the approval to publish or the possibility of asking a judge to suspend the publication – were not retained in the final text, thus removing the threat of an additional violation of the right to freedom of expression.

While the law gives Amazigh equal status with Arabic as a language used in general information periodicals, one deplores the fact that Article 20 subjects foreign-language publications and Algerian publications intended for nationwide and international distribution to the approval of the regulatory authority in charge of the written media. Whereas the projected legislation provided for ‘notification’ of the regulator, the latter now has the power to approve or prohibit the use of a foreign language.

### 4. AN OPENING BENEFITING ONLY THE AUDIOVISUAL INDUSTRY

The anticipated opening of the audiovisual industry to private Algerian companies, which had long been demanded by media representatives and by Algerian civil society, is to be welcomed, but we deplore the fact that it is so limited. Article 59 of the law states that ‘audiovisual activities are a public service’, and are thus subject to considerations of general interest and public order, and cannot be pursued in total freedom. In addition, these activities are subject to compliance with

<sup>43</sup> Article 42 of the law.



Articles 2 and 5 of the new law. At the same time, the cable distribution of radio, audio and television broadcasts, as well as the use of radio-electric frequencies, will be subject, under Article 63, to 'approval granted by decree'. The Algerian Constitution states that the country's President 'signs presidential decrees' and must approve decrees signed by the Prime Minister. In other words, only the President is authorised to give or withhold his approval.<sup>44</sup>

## 5. THE RIGHT TO A CORRECTION

Under the law, the editor of a periodical must now comply with the right to a correction and publish or broadcast, free of charge, any correction that is sent to him or her, without any judicial decision being needed. Article 100 provides as follows: 'The director of a publication, of an audiovisual communication service, of an electronic media organisation or of an information agency must publish or broadcast free of charge any correction that is sent to them by any individual or organisation about facts or opinions that may have been inaccurately reported by the information organisation'. Article 112 adds the following: 'Any Algerian individual or organisation has the right to respond to any written article or audiovisual broadcast attacking national values and the interests of the nation'. Thus, only Algerian individuals and organisations will be entitled to demand a correction to published information.

Moreover, the law does not specify which authority will be given the mandate to determine whether facts or opinions have truly been reported inaccurately or whether they represent attacks against the 'values' and 'interests' of the nation. These are vague and particularly imprecise concepts that could be used to restrict freedom of expression. In addition, it's regrettable that the right to a correction and the right to respond were not made available to individuals and organisations targeted by slanderous allegations made on the basis of their origin, ethnic identity, race, nation or religion.

During official election campaigns (Article 106), the period allowed for publishing a response or correction in daily newspapers is reduced to 24 hours. There are then reasons to fear that, in such cases, the editor would be obligated to publish within 24 hours a correction of facts or opinions that a third party considers inaccurate.

<sup>44</sup> Article 77, par. 8, and Article 85, par. 3, of the Constitution of the People's Democratic Republic of Algeria of 8 December 1996, as amended by Law No. 08-19 of 16 November 2008.

## 6. RESTRICTIONS TARGETING FOREIGN NATIONALS AND THE FOREIGN MEDIA

The new legislation sets many restrictions on the printing of publications owned by foreign companies, the importation into Algeria of foreign periodicals and the importation and/or production of periodicals that are intended to be distributed free of charge in Algeria by foreign organisations and diplomatic missions.

First, article 22 provides that the printing of any periodical owned by a foreign corporation 'is subject to the approval of the ministry in charge of communication', thus giving an extensive power to an executive body to control these publications. In addition, whereas until now the legislation required prior authorisation only for the importation of foreign publications, Article 38 of the new law makes it mandatory to obtain 'prior authorisation from the Ministry of Foreign Affairs' for the production and importation of periodicals intended for free distribution by foreign organisations and diplomatic missions. Whereas approval was given by the relevant government body under the previous legislation, it must now be sought from an executive body. These restrictions target the foreign press in particular, but they are also aimed at non-Algerians who are members of foreign associations or staff of diplomatic missions.

The law also prohibits 'direct or indirect financial assistance by any foreign party<sup>45</sup>'. This means that editors of periodicals or other information publications may not receive, on their own behalf or on behalf of the publication, 'money... or... benefits from a foreign public or private organisation. Those who fail to comply with this provision risk a fine of between 100,000 and 400,000 Algerian dinars (DA) under Article 117. The purpose of this ban appears to be to prevent any support from abroad, whether financial or moral, and any influence, in order to exercise tighter control over periodicals.

<sup>45</sup> Article 29 of the Organic Law on Information.

## 7. INCREASED FINES AND RETENTION OF PROVISIONS PENALISING VIOLATIONS OF THE PRESS LAWS

The legislation does not provide for imprisonment in the case of offences committed through the media. However, the level of the fines has been raised considerably and is now set at a maximum of 500,000 DA. Fines are applied in particular to the publication or broadcasting of proceedings in trials dealing with the status of individuals or abortion. It may seem strange that lawmakers singled out the issue of abortion in a set of rules dealing with information, but what is even more surprising is that the fines have increased 100-fold: Article 121 of the new law provides for fines of 50,000 DA to 200,000 DA, whereas in Article 93 of Law No. 90-07, the fines ranged from 2,000 DA to 10,000 DA.<sup>46</sup>

Moreover, the law does not repeal the provisions of the Criminal Code that impose sanctions for violations of the press laws, slander, etc. that are currently in place and act as a significant deterrent to freedom of information. While some provisions of the Criminal Code were amended by Law No. 11-14 of 20 August 2011 by replacing prison sentences with fines, there are still circumstances in which the exercise of the right to freedom of expression and information can be punished by imprisonment. Under such provisions as Articles 96 and 298 of the Criminal Code, journalists still run the risk of receiving prison sentences for attempting to exercise their right to freedom of expression. Article 96, for example, states that anyone who 'distributes leaflets, newsletters or messages capable of undermining the national interest will be punished by a prison sentence of between six months and three years, as well as a fine of between 20,000 DA and 100,000 DA'. The prison sentence may be lengthened to five years if the 'leaflets, newsletters or messages are of foreign origin'. Article 298 punishes slander with a prison sentence of between two and six months or a fine, or both.

<sup>46</sup> Article 93 of Law 90-07 of 3 April 1990 on information: 'Anyone who publishes or broadcasts the proceedings of trials dealing with the status of individuals or abortion will be assessed a fine of between 2,000 DA and 10,000 DA'.

Finally, Article 46 of the Order implementing the Charter for Peace and National Reconciliation<sup>47</sup> provides for a prison sentence of 'between three (3) and five (5) years and a fine of between 250,000 DA and 500,000 DA' against 'anyone who, in statements, writings or any other form, uses or exploits the wounds of the national tragedy to attack the institutions of the People's Democratic Republic of Algeria, weaken the state, harm the honourable character of its agents who have served the Republic with dignity, or tarnish the image of Algeria in the international arena.' This, despite the fact that international bodies devoted to the protection of human rights – in particular the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr Frank La Rue<sup>48</sup> – have repeatedly stated that this legal provision is in violation of the right to freedom of opinion and expression.



47 Ordinance No. 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation.

48 <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10949&LangID=E>.

## RECOMMENDATIONS

- Guarantee the rights to freedom of expression, of opinion and of information, in particular by entrenching the independence of journalists and facilitating the access of all citizens to the media;
- Ensure that Algerian laws are in compliance with the provisions of the International Covenant on Civil and Political Rights, and in particular with article 19;
- Repeal Organic Law 12-05 of 12 January 2012 on information;
- Draft a new law on information that complies with international standards, and in particular with the United Nations International Covenant on Civil and Political Rights;
- Effectively open the audiovisual field without limiting this opening to thematic channels;
- Lift the state monopoly on advertising and mandate an independent authority to manage and distribute it in accordance with specific and transparent criteria;
- Eliminate fines targeting publishers of newspapers and other information outlets in respect of all types of foreign funding;
- Guarantee the independence of the regulatory authority in charge of written media;
- Allow the publication and importation of foreign media without requiring prior approval by the authorities;
- Eliminate the requirement to obtain prior approval by the authorities for the publication of foreign periodicals;
- Repeal the provisions of the Criminal Code that set sanctions for violations of the press laws and defamation;
- Repeal Order 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation.



5

# LAW NO.12-06

## F 12 JANUARY 2012

### ON ASSOCIATIONS<sup>49</sup>

The new associations' law does not guarantee the rights of Algerian associations – i.e. non-governmental organisations (NGOs) – as defined in the international treaties ratified by Algeria, even though the country's constitution states that these treaties have precedence over domestic laws. Our concerns, on which we elaborate below, bear on five aspects of the law: 1) the fact that the establishment of an association requires prior authorisation by the government; 2) funding arrangements for associations; 3) restrictions on cooperation with foreign NGOs; 4) the regime under which foreign NGOs are allowed to operate in Algeria; and 5) the particularly broad criteria that can be invoked to suspend or dissolve an association.

**1.** Under the new law, the registration of associations is no longer a matter of simply notifying the authorities. Thus the creation of an NGO is no longer subject to a '*declarative regime*' based on simple notification but must be pre-authorized by the government, which must either send the association a registration receipt that signifies its approval or notify it that registration has been denied (art. 8). Thus the new legislation entrenches in law a practice that was already widely applied by the administrative authorities, and it gives them broader powers while failing to guarantee that NGOs will be governed by independent and impartial regulations.

Under Law 12-06, the government can refuse to register an association whose purpose or goals are deemed '*contrary to basic national values and to law and*

49 The following is an updated version of a memorandum originally released by EMHRN, CFDA and LADDH in October 2011, when the proposed legislation was still being debated. This analysis is based on the law as enacted in January 2012.

*order, public morality and the provisions of existing laws and regulations'* (art. 39). In concrete terms, there are reasons to fear that these extremely vague criteria will allow the bureaucracy to block the registration of a large number of human rights NGOs, women's rights organisations seeking the repeal of the Family Code, and associations of families of victims of the 1990s civil war, such as SOS Disparus, which has been advocating for truth and justice beyond what is provided for in the Charter for Peace and National Reconciliation.<sup>50</sup>

If the government does not respond to an application, the association is deemed to be legally constituted, but it must still wait until it receives the registration acknowledgment before it can begin to operate legally (art. 11). Moreover, the law adds that in the event that an association, after having been rejected by the authorities, is able to win its case in a court of law, *'the government has up to three months to nullify the registration of the association'* (art. 10). Not only does this prerogative conferred on the government create a very cumbersome procedure, but it gives the authorities the power to control the entire range of NGOs ex post facto.

In addition, the highly controversial article 45 of Law No. 90-31, which provided for prison sentences for *'anyone administering an association that has not been approved'* and which hung like a sword above the heads of activists working in associations that had not received legal confirmation of their registration, has been retained in the new legislation. Article 46 of the new law states these sentences can apply not only to representatives of an association *'not approved'* but also to those associations *'not yet registered, suspended or dissolved'*. While the same article reduces the length of prison sentences, it considerably increases the amount of fines. It is unfortunate that the provision of Law 90-31 that left to a judge the decision to choose between the two types of penalties has now been eliminated.

And finally, while Law 90-31 stipulated that 15 founding members were needed to establish a new association – a cumbersome requirement in itself that the associations had denounced at the Estates-General<sup>51</sup> – the new law is even more

50 Article 46 of Order 06-01 of 27 February 2006 also provides that *'anyone who, in statements, writings or by any other means, uses or exploits the wounds of the national tragedy to attack the institutions of the People's Democratic Republic of Algeria, weaken the state, impugn the reputation of officials who have served the state with dignity, or tarnish the international image of Algeria'* will receive a prison sentence of between three and five years, and a fine of between 250,000 and 500,000 Algerian dinars.

51 The 'Estates-General of civil society' took place on 14-16 June 2011 under the aegis of the National Economic and Social Council (CNES) in order to, as President Bouteflika put it, *'allow civil society to express itself freely in the realm of a new system of governance'*.



demanding, requiring a minimum of 10 members to create an association at the local (commune) level; 15 members for a wilaya-level organisation, who must be from at least three different communes; 21 members for a multi-wilaya organisation, who must be from at least three different wilayas; and no fewer than 25 members from at least 12 wilayas for a national organisation – even though, in general, only two people are needed to form an association.

**2.** The new law states that the financial resources of associations are made up of, among others, subsidies ‘*granted*’ by the state, the department or the commune (art.29). This particularly vague wording raises concerns that the authorities could rely on a narrow interpretation of this provision to control all NGO funding.

Contrary to the previous legislation, which allowed Algerian associations to receive donations and bequests from foreign NGOs once their request has been approved by the authorities, Law 12-06 stipulates that, ‘*except in cases where duly established cooperation agreements exist*’, Algerian associations are forbidden from receiving donations, grants or any other type of contribution from any ‘*foreign mission or non-governmental organisation*’ and that any funding must first be allowed by the relevant authority (art. 30). In other words, the new law deprives associations of a source of funding that is critical to their survival. In addition, by imposing a regime of so-called partnership agreements, the government grants itself additional control over the resources of Algerian NGOs, and thus over their activities and their partners, enabling it to interfere in their internal affairs and to force them to follow a preferred course of action.

At the same time, while article 18 reiterates provisions contained in Law 90-31,<sup>52</sup> article 19 details the information that NGOs must supply to the government after each general assembly (minutes of meetings, activities report, financial report), giving the authorities greater control over NGO activities. Associations that refuse to provide this information will face a fine (art. 20).

<sup>52</sup> Article 18 stipulates that an association must notify the proper authorities of any changes in its statutes and its governing bodies.

**3.** The provisions of article 21 of the 1990 law, which stated that only national associations could become members of international NGOs and that any such membership required prior approval by the Interior Ministry, have been amended. Under the new law, all associations that have been ‘*approved*’ may join foreign NGOs, but the Interior Minister must be informed of this decision beforehand, and the Foreign Ministry will be asked to give an opinion. In addition, the Interior Minister has 60 days to oppose the application of an Algerian association to join an international organisation. Law 12-06 also states that cooperation within a partnership with foreign or international NGOs must be pre-approved by the government (art.23), whereas Law 90-31 had no such requirement.

**4.** Another source of concern has to do with the fact that foreign NGOs – that is, associations ‘*whose headquarters are based abroad or, if based in Algeria, that are partly or completely headed by foreigners*’ (art. 59) – are subject to a different and much more restrictive regime than Algerian associations. First, the new law gives the government 90 days to grant or refuse its approval in the case of foreign organisations, whereas only 60 days are needed for domestic associations (art. 61).

Second, article 63 of the new law states that ‘*a request for recognition submitted by a foreign organisation must have as an objective the implementation of provisions set out in an agreement signed between the Algerian government and the government of the country of origin of the foreign association – that is, to promote friendly relations and brotherhood between the Algerian people and the people of the other country*’. This is tantamount to giving the government the right to decide what activities foreign associations may perform. Article 65 raises the stakes by stipulating that the agreement may be suspended or terminated ‘*if the foreign association clearly interferes in the affairs of the host country or performs activities that violate national sovereignty, the established institutional order, national unity, the integrity of the national territory, law and order, public morality, or the civilizational values of the Algerian people*’. This very vague language restricts freedom of association even further, highlighting a determination to silence any criticism voiced by foreign NGOs.

The financial resources of foreign associations are also targeted. The new law states that ‘*a ceiling may be imposed*’ on the amount of their financial resources (art. 67).

5. On the subject of the suspension and dissolution of associations, the procedure set out in the new law results in severe restrictions on freedom of association. An association may see its activities suspended or may be dissolved *'if it interferes in the internal affairs of the country or violates national sovereignty'* (art. 39). This very vaguely worded provision deprives NGOs of the ability to review, criticise and monitor the state in the conduct of public policy, even though this is a prerequisite for the operation of any democracy. Our associations believe that all citizens, wherever they may live, have a right and a duty to be involved in the affairs of their country, and point out that, according to article 22 of the International Covenant on Civil and Political Rights,<sup>53</sup> *'no restrictions may be placed on the exercise of [the right to freedom of association] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others'*.

Article 43 of the law states that an association may be dissolved if it has *'received funding from foreign missions or NGOs'* or *'performed activities other than those stipulated in its bylaws'*. The ambiguous wording of this provision again raises concerns about an improper interpretation by the bureaucracy. It would have been more consistent with the liberal legislations in effect in other countries of the region to allow the dissolution of an association that pursued *'objectives'* or *'goals'* that are contrary to its statutes.

Even worse, that same article allows a petition for the dissolution of an association to be submitted by *'a third party that is in a conflict-of-interest situation with that association'*, which suggests that an organisation supported or even created by the government (a so-called GONGO, or government-operated NGO) could launch legal proceedings to prevent an independent NGO from carrying out its activities.

With regard to the procedure for suspending an association, the new law nullifies a valuable legal precedent. Whereas, since 1990, a judge's decision was needed to suspend an association, this safeguard is no longer present in Law 12-06 and all that is needed now is an administrative decision to suspend the activities of an association if they are deemed to circumvent certain provisions of the law – without specifying the provisions in question (art. 41).

---

53 Ratified by Algeria on 12 September 1989.

Finally, contrary to the recommendation of the United Nations Special Rapporteur on human rights defenders, which suggested that *'in the event of the adoption of a new law, all previously registered NGOs should be considered as continuing to operate legally and be provided with accelerated procedures to update their registration'*,<sup>54</sup> article 70 provides that *'associations duly constituted under Law 90-31 must now comply with the law by submitting new statutes that are in compliance with the law'*. This puts in jeopardy all the NGOs that were established under the previous legislation. Those failing to meet this requirement within a specified deadline will automatically be dissolved.



<sup>54</sup> Report on Freedom of Association, Conclusions and Recommendations, A/64/226, par. 108.

## RECOMMENDATIONS

- To rescind Law 12-06 of 12 January 2012 on associations;
- To develop a new law on associations that complies with international standards, and in particular:
  - Guarantee that associations can be established upon simple notification of their existence to the authorities without any requirement for prior authorization;
  - Guarantee that the document acknowledging the receipt of their bylaws will be forwarded to them systematically and immediately;
  - Guarantee that associations whose registration has been denied by the administrative authority have access to an effective appeal mechanism within a reasonable period;
  - Remove penalties (prison sentences and fines) for the leaders of associations that are unregistered, unapproved, suspended or dissolved and that continue their activities, as these measures are contrary to the spirit of the declarative system;
  - Allow associations to receive funding from foreign sources without having to secure prior authorization from the authorities;
  - Give foreign organizations wishing to carry out activities in Algeria or to cooperate with Algerian associations the same rights as those enjoyed by Algerian organizations;
- To rescind all laws and regulations banning meetings and demonstrations in public places; to put an end to practices that prevent civil-society organizations from meeting; and to encourage such organizations to express their views.





Copenhagen – April 2012

**EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK**

Vestergade 16 - 1456 Copenhagen K - Denmark

Tel: +45 32 64 17 00 - Fax: +45 32 64 17 02

Email: [info@euromedrights.net](mailto:info@euromedrights.net)

Website: <http://www.euromedrights.org>

© Copyright 2012 Euro-Mediterranean Human Rights Network

**B I B L I O G R A P H I C I N F O R M A T I O N**

**Title:** "Political reforms" or additional lock on society and politics in Algeria? A critical analysis

**Authors:** Coalition of Families of the Disappeared in Algeria (CFDA), Algerian Human Rights Defence League (LADDH), National Union of Independent Public Servants (SNAPAP) and the secretariat of the Euro-Mediterranean Human Rights Network (EMHRN)

**Publisher:** Euro-Mediterranean Human Rights Network (EMHRN)

**Date of first publication:** April 2012 - **Pages:** 72

**ISBN:** 978-87-91224-86-7

**Layout:** Hamza Abderazik

**Index terms:** Algeria, Electoral Code, women's rights, freedom of association, freedom of information, political parties, European Union.

This document has been produced with the financial assistance of the Norwegian Ministry of Foreign Affairs.



**NORWEGIAN MINISTRY  
OF FOREIGN AFFAIRS**

The contents of this document are the sole responsibility of the Euro-Mediterranean Human Rights Network and can under no circumstances be regarded as reflecting the position of the Norwegian Ministry of Foreign Affairs.



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK  
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME

الشبكة الأوروبية - المتوسطية لحقوق الإنسان