



A SHADOW REPORT ON FREEDOM OF INFORMATION IN ALGERIA

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Executive Summary

The Africa Freedom of Information Centre (AFIC) presents this shadow report on the right to information and freedom of expression on Algeria to the African Commission of Human and Peoples Rights. The right to freedom of expression and access to information is protected under Article of the African Charter on Human and Peoples' Rights.

AFIC is a pan-African membership civil society organisation and resource centre consisting of 35 civil society organizations in 22 African countries promoting the right to information in Africa. AFIC promotes democratic rule and socio-economic justice for African citizens through fostering a culture of increased transparency, integrity and accountability among governments, regional and international bodies.

This shadow report evaluates the current state of the right to information and freedom of expression in Algeria, seeking to provide an independent opinion on the measures being undertaken by the State Party to promote and protect the right of freedom of expression and access to information. This shadow report explores the progress of Algeria in its implementation of the right to information and freedom of expression in comparison to the African Union and African Commission for Human and Peoples Rights on these rights.

While noting some progress, AFIC is concerned with a systematic failure by the Algerian authorities to uphold and promote the rights to information characterized by the lack of legislation to facilitate access to information, bad laws affecting freedom of expression, poor proactive disclosures, criminal defamation, deprived media decency and media violence and intimidation. In fact, during his address to the U.N. General Assembly in

September 2012, Algerian Foreign Minister Mourad Medelci called for new limits on the freedom of expression in Algeria.¹

In authoring this shadow report, AFIC and its members intend to constructively contribute to the realisation of the right of to information protected by Article 9 of the African Charter on Human and Peoples' Rights.

1. Country Context

Algeria continues to recover from a civil war, protracted "residual" terrorism, and a strong hand of the military in politics.² As a result Algeria faces deep social, economic and political challenges. It struggles with high youth unemployment, widespread corruption in the public and private sector, and a slow and inefficient state bureaucracy.³ In December 2010 these protracted problems resulted in Algerians in joining the Arab Spring, calling for political reforms.

Algeria's aging president Abdelaziz Bouteflika survived a government toppling during the 'Arab Spring Uprisings'⁴ but, promised to carry out a political reform programme to further develop an accountable democratic government in the country. Consequently President Bouteflika lifted the 19 year-old state of emergency imposed in 1991 in the wake of the protracted civil war.

¹ 50/50 inclusive democracy – Algeria Post Election the Democratic Struggle Continues <http://news.yahoo.com/algeria-un-limit-free-speech-protect-islam-163151440.html> (last seen on the 10th of September 2015)

² Authoritarianism and Media in Algeria <http://www.mediasupport.org/wp-content/uploads/2013/07/authoritarianism-media-algeria-ims-20131.pdf> (last seen on the 10th of September 2015).

³ Authoritarianism and Media in Algeria <http://www.mediasupport.org/wp-content/uploads/2013/07/authoritarianism-media-algeria-ims-20131.pdf> (last seen on the 10th of September 2015).

⁴ Arab Uprising Algeria <http://www.bbc.com/news/world-12482297> (last seen on the 10th of August 2015).

The right to information and freedom of expression was and is already guaranteed in Algerian constitution under Articles 36, 38 and 41. The president also used his constitutional prerogative to propose an Organic Law on Information – LOI (Loi organique relative à l'information), which defined the overall ambitions for new legislation regulating information and media.

Though yet to be passed, an “organic” law on information issued by the presidency in December 2011 and received by parliament in January 2012 aims to liberalize the entire media sector – including TV, radio and Internet. The law thus holds a potential to introduce a new dynamic into the Algerian media sector.

The implementation of the reform process has, however, already been challenged, and has accordingly met criticism from media professionals and experts. Notable, is the claim that it does not sufficiently guarantee freedom of expression and the right to information.

Algeria has ratified important international instruments that provide for freedom to information (FOI) and freedom of expression (FOE) such as, the International Covenant on Civil and Political Rights;⁵ African Charter on Human and Peoples' Rights,⁶ African Union Convention on Preventing and Combating Corruption,⁷ African Charter on the Values and Principles of Public Service and Administration⁸. However, the country is yet to ratify other key African Union treaties that recognize the right to information. These

⁵ Article 19 International Covenant on Civil and Political Rights; <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed 19 August 2015).

⁶ African Charter on Human and Peoples Rights <http://www.achpr.org/instruments/achpr/>(accessed 19 August 2015). Algeria ratified on the 01/03/1987.

⁷ Article 9 of the African Union Convention on Preventing and Combating Corruption. http://www.au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_PREVENTING_COMBATING_CORRUPTION.pdf (accessed 19 August 2015). Algeria Ratified on the 23/05/2006.

⁸ Article 6 African Charter on the Values and Principles of Public Service and Administration. <http://www.au.int/en/content/african-charter-values-and-principles-public-service-and-administration> (accessed 19 August 2015).Algeria Ratified on the 11/12/2012

include the African Charter on Democracy, Elections and Governance⁹, African Youth Charter and African Charter on statistics¹⁰. In addition, Algeria's poor observance of the provisions in these instruments could be reason it struggles with the right to information.

2. Algeria's Fifth and Sixth Report

Article 62 of the African Charter on Human and Peoples Rights, obliges Algeria to

"..to submit every two years...a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognized and guaranteed by the..Charter."

Therefore Algeria is required to periodically inform the African Commission on Human and Peoples Rights about the state of the right to information and freedom of expression in the country.

It is commendable that Algeria has constantly adhered to Article 62 of the Charter by reporting to the ACHPR as required.

This shadow report is based on Algeria's fifth and sixth report, submitted to the African Commission for Human and Peoples Rights.¹¹ Algeria's report was prepared – following broad consultations bringing together all the relevant parties; by an inter-ministerial working group comprising representatives of the relevant ministries responsible for implementing Algeria's commitments relating to the African Charter on Human and Peoples Rights.

⁹ Status of Ratification of African Charter on Democracy, Elections and Governance
<http://www.au.int/en/sites/default/files/Charter%20on%20Democracy%20and%20Governance.pdf>

¹⁰ Status of Ratification of African Statistics Charter
http://www.au.int/en/sites/default/files/Charter%20on%20Statistics_0.pdf

¹¹ On the 14th of January 2015 the Government of Algeria submitted the fifth and sixth periodic state report in line with article 62 of the African Charter on Human and Peoples Rights. http://www.achpr.org/files/sessions/57th/state-reports/5-2010-2014/algeria_state_report_eng.pdf

One of the recommendations made to Algeria by the African Commission on Human and Peoples' Rights during the 29th Ordinary Session and pertinent to this report, is to *"..strengthen the rule of law by adopting measures to make the Declaration on Freedom of Expression in Africa a reality in Algeria"*. In response Algeria in its 6th State Report states that it has a proposed law on information; has strengthened freedom of expression and fully establishes the liberalization of the media sector through the opening up of the audio-visual media to the private sector.

Algeria also states that it plans to set up a broad national television broadcasting network across the country, improve communications technology and investments projects are still ongoing with the objective of opening the media sector to private investment. Paragraphs 188-209 of Algerians State Report claims there have that there been significant reforms in the information and communication sector.¹²

The State Report also states legal provisions in the Algerian constitution and the proposed Organic Law No. 12-08 that provides for the right to information and freedom of expression. The report finally discusses the Algerian Government's contribution to the emergence of an independent private media; being open television, radio and print media.

3. Applicable Framework and Standards

The applicable framework and standards for the shadow report is grounded in regional instruments and declarations. Article 9 and Article 62 of the African Charter on Human and Peoples Rights,¹³ Article 6 African Charter on Values and Principles of Public Service

¹²Algeria State Report http://www.achpr.org/files/sessions/57th/state-reports/5-2010-2014/algeria_state_report_eng.pdf

¹³ African Charter on Human and Peoples Rights <http://www.achpr.org/instruments/achpr/>(accessed 19 August 2015).

and Administration¹⁴, Article 9 African Union Convention on Combating Corruption¹⁵, and the African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression in Africa¹⁶ and the African Commission on Human and Peoples Rights Model Law on Access to Information.

Figure 1

Applicable Framework and Standards	
Framework	Questions to be answered
Article 9 of the African Charter on Human and Peoples Rights and Article 6 of the African Charter on Values and Principles of Public Service and Administration.	<ul style="list-style-type: none"> i. Does every individual in Algeria have the right to receive information held by public and appropriate private bodies? ii. Have public agencies been reformed from secretive culture to open and transparent and accountable to citizens?
The African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression in Africa	<ul style="list-style-type: none"> i. Does Algeria adhere to Principles of freedom of expression in Africa? ii. Has it passed law on freedom of information in line with Article IV of the Declaration?
Article 9 African Union Convention on Combating Corruption; and The African Model Law on Access to Information	Does Algeria's draft FOI bill reflect the spirit of the African Union Model law on Access to Information?
Article 19 of the African Charter on	Has Algeria ratified and domesticated the

¹⁴ African Charter on Values and Principles of Public Service and Administration <http://www.au.int/en/content/african-charter-values-and-principles-public-service-and-administration/> (accessed 19 August 2015).

¹⁵ African Union Convention on Combating Corruption http://www.au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_PREVENTING_COMBATING_CORRUPTION.pdf (accessed 19 August 2015).

¹⁶ Declaration of Principles on Freedom of Expression in Africa <http://www.achpr.org/sessions/32nd/resolutions/62/> (accessed 19 August 2015).

Democracy, Elections and Governance,	African Charter on Democracy, Elections and Governance?
Article 10 (3) (d) and 11 (2)(i) of the African Union Youth Charter	Has Algeria ratified and domesticated the African Youth Charter?
Article 3 of the African Statistics Charter	Has Algeria ratified and domesticated African Statistics Charter?

Article 9 of the African Charter comprises of the right to receive information and to express one's opinion. Therefore the public has a right to information and also guarantees to every individual the right to free expression, within the confines of the law.¹⁷

The African Commission on Human and Peoples' Rights in 2002 adopted Declaration of Principles on Freedom of Expression in Africa.¹⁸ The Declaration states that freedom of expression and information is a fundamental and inalienable human right. The Declaration addresses in a holistic and comprehensive manner the major threats to freedom of expression and information on the in Africa and serves as a benchmark to evaluate states compliance with Article 9 of the 'African Charter on Human and Peoples' Rights'.

The African Commission on Human and People's Rights adopted the Model Law on access to information in February 2013.¹⁹ The Model law gives specific guidelines in terms of form and content of the legislations be passed at the domestic level.²⁰

¹⁷ Article 9 of the Charter states that: " Every individual shall have the right to receive information 2. Every individual shall have the right to express and disseminate his opinions within the law.

¹⁸http://www.achpr.org/files/sessions/32nd/resolutions/62/achpr32_freedom_of_expression_eng.pdf (accessed 20 August 2015).

¹⁹ The ACHPR on 12 April 2013 officially launched its Model Law on Access to Information at a ceremony held during the ACHPR's 53rd Ordinary Session in Banjul, The Gambia. <http://www.achpr.org/instruments/access-information/> (accessed 20 December 2015).

²⁰ The objectives of this Model Law are to: (a) give effect to the right of access to information as guaranteed by the African Charter on Human and Peoples' Rights, to (i) any information held by a public body or relevant private body; and(ii) any information held by a private body that may assist in the exercise or protection of any right; (b) establish voluntary and mandatory mechanisms or procedures to give effect to the right of access to information in a manner which enables persons to obtain access to accurate information of information= holders as swiftly, inexpensively and effortlessly as is reasonably possible; (c) ensure that in keeping with the duty to promote access to information,

This report will also consider the African Platform on Access on to Information (APAI) Declaration.²¹ The Declaration concerns itself with the promotion of freedom of information legislation in Africa. The Declaration lists fourteen key principles that advance access to information. It was adopted at the first Pan African Conference on Access to Information held in Cape Town South Africa in September 2011²², with the full support of the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples Rights.

The requirements of these standards will determine the extent to which the Algerian authorities have implemented the right to information and freedom of expression in accordance with the applicable standards.

information holders create, keep, organise and maintain information in a form and manner that facilitates the right of access to information; (d) promote transparency, accountability, good governance and development by educating people about their rights under this Act. http://www.achpr.org/files/instruments/access-information/achpr_instr_model_law_access_to_information_2012_eng.pdf. (accessed 20 December 2014).

²¹ <http://www.africanplatform.org/campaign/apai-declaration/> (accessed 20 August 2015).

²² Adopted in Cape Town, South Africa, on the 19th Day of September 2011.

4. Contravention of the Right to Information in Algeria

During the 42nd Ordinary Session of the African Commission for Human and Peoples Rights, the African Commission presented a concern regarding the parallel between Algeria's 1990 law on Information and the declaration on freedom of expression in Africa. The African Commission on Human and Peoples Rights also recommended that Algeria should strengthen the rule of law by adopting measures to make the Declaration on Freedom of Expression in Africa a reality in Algeria.²³ This part of the shadow report will study using the framework presented above, if Algeria has followed these recommendations.

Figure 2

State of Right to Information in Algeria	
Principle or Law Contravened	Core Issue
The model law on access to information in Africa and the principle IV of establishing a domestic law on FOI	<ul style="list-style-type: none"> i. Lack of Freedom of Information Legislation ii. Bad Provisions in the Proposed Freedom of Information Law
The principle of maximum disclosure	<ul style="list-style-type: none"> i. Laws that Prohibit Disclosure of information
Article 9 of the African Charter: Freedom of Expression and Opinion	<ul style="list-style-type: none"> i. Criminal Defamation ii. Media Violence and Intimidation iii. Media Independence
The principle of the obligation to publish key information and the principle to promote an open government	<ul style="list-style-type: none"> i. Poor Proactive Disclosure ii. Open Data Limitations

²³ Concluding Observation on the 3rd and 4th Periodic Reports of the Peoples Democratic Republic of Algeria http://www.achpr.org/files/sessions/42nd/conc-obs/3rd-4th-2001-2006/achpr42_conc_staterep34_2007_algeria_eng.pdf (accessed 20 August 2015).

<p>Obligation take “<i>legislative or other measures., with a view to giving effect to the rights and freedoms recognized and guaranteed by the..Charter</i>” Article 62 of the African Charter on Human and Peoples Rights –</p>	<p>i. Ratifying all African Union Treaties related to the Right to Information</p>
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4.1 Model Law on Access to Information in Africa and the Principle IV of Establishing a Domestic Law.

The Model Law provides a guide for a African States in their adoption or review of access to information laws, and provide uniform benchmarks for evaluating their effective implementation.

a) Lack of Freedom of Information Legislation

Currently there is no right to information law in Algeria and no proper framework exists which the public can use to access information. Proposals have been made for an Organic Law on Information – LOI (Loi organique relative à l’information). The Government announced in February 2015 that that this law will be reviewed and presented to parliament.²⁴ The lack of law on the right of access to official information has resulted in communications officials rarely disclosing information on government affairs.²⁵

²⁴ Algeria Press Service <http://www.aps.dz/en/algeria/6095-organic-law-on-parliament-to-be-reviewed-after-amendment-of-constitution,-announces-minister> (last accessed 18th August 2015).

²⁵ Freedom House Report Algeria 2014 <https://freedomhouse.org/report/freedom-press/2014/algeria> (last accessed 11th September 2015).

b) Bad Provisions in the Proposed Freedom of Information Law

The Model Law is characteristically a comprehensive set of provisions embodying the global standards on access to information. The proposed Freedom of Information Law does not meet the global standards of Freedom of Information, particularly the Model Law.

Algeria's proposed Organic Law on Information – LOI (Loi organique relative à l'information), also has numerous complications that need to be addressed before it is passed.

Article 8 of the LOI provides that periodical publications must register with the prosecutor. Article 9 requires the periodical to submit the criminal record of the director. It is clear from the above that it would be far better for an independent body with authority for other aspects of the media, to oversee the registration process than the prosecutor.²⁶

Article 26 excludes private broadcasters from “activities inherent in national television coverage. Article 47 of the LOI permits private press agencies only with the agreement of the Minister of Information. Media independence principles require that governments may not maintain public monopolies over services which provide information to the public.²⁷

Article 65 of the LOI provides that professional journalists are those whose regular profession is journalism and who derive most of their income from this activity. Article 66 provides that at least one-third of the staff of general media outlets must be professional journalists. The Declaration of Principles on Freedom of Expression²⁸ doesn't

²⁶ Article 19 Analysis of Algeria Press-Law <https://www.article19.org/data/files/pdfs/analysis/algeria-press-law.pdf> (last accessed 11th September 2015).

²⁷Article 19 Analysis of Algeria Press-Law <https://www.article19.org/data/files/pdfs/analysis/algeria-press-law.pdf> (last accessed 11th September 2015).

²⁸ Declaration of Principles on Freedom of Expression in Africa (accessed 19 August 2015).

permit conditions to be placed on the practice of journalism. Indirect controls, such as these, are equally unacceptable.²⁹

Article 71 provides for access by professional journalists to certain government information. There are two problems with this provision. First, there is no reason to restrict access to information to professional journalists; other journalists and indeed the public at large should be able to access information held by government, as is increasingly being recognised. Second, access is only provided to information not otherwise classified or protected by the law.³⁰

Protection of journalists' sources, subject only to very limit exceptions, is clearly provided for by international law. Such protection is provided for in Article 74 of the draft LOI but is subject to a number of exceptions. Some of these, for example that journalists may be required to disclose their sources whenever issues of economic secrecy or information concerning minors is involved, go beyond what is permitted under international law which provides that the right of non-disclosure may only be removed where "justified by an overriding requirement in the public interest.

4.2 The Principle of Maximum Disclosure

The principle of maximum disclosure, establishes a presumption that all information is accessible and subject only to a narrow system of exceptions. The principle holds that all information held by public bodies should presumptively be accessible, and that this presumption may be overcome only in very limited circumstances

²⁹ Article 19 Analysis of Algeria Press-Law <https://www.article19.org/data/files/pdfs/analysis/algeria-press-law.pdf> (last accessed 11th September 2015).

³⁰ Article 19 Analysis of Algeria Press-Law <https://www.article19.org/data/files/pdfs/analysis/algeria-press-law.pdf> (last accessed 11th September 2015).

a) Domestic Laws that Prohibit Disclosure

Algeria's Media Law

While the legal provisions in Algeria appear to promote FOI and FOE this is not the case. Freedom of expression is guaranteed in Algeria's constitution,³¹ but they are subject to extensive restrictions. The Penal Code and other laws include prohibitions on insulting or criticizing the military and government officials, the media face many limitations on what and how they may report, and human rights defenders have been prosecuted for their work on security-related issues. Algeria's legal system also criminalizes blasphemous expression and other forms of religious insult, including seeking to convert Muslims to other faiths.³²

Critics, including the UN Special Rapporteur on the Right to Freedom of Opinion and Expression, agrees that Algeria's new media law, In spite of its claim to adhere to safeguarding the Freedom of Expression, suppresses this freedom by way of vague conditions that provide the authorities with the mandate to curtail information.

The Media law despite allowing for opening-up of the audio-visual sector in principle, the law was described by media professionals as "liberticidal".³³ Although Article 2 says that "news reporting is a freely exercised activity," it immediately restricts this activity by subjecting it to 12 catch-all conditions including respect for "national identity," "economic interests" and "public order." These restrictions also apply to the electronic media (see Article 71). Many of the law's provisions restrict freedom of information in a disproportionate manner. They include Article 112 on the right of "any person or entity" to respond to articles "attacking national values and national interest," article 123 on

³¹ Constitution of Algeria, Article 36: Freedom of religion and freedom of expression are inviolable.

³²Freedom House Report Algeria 2014- <https://freedomhouse.org/report/freedom-press/2014/algeria> (last accessed 11th September 2015).

³³ <http://www.algeriasolidaritycampaign.com/algerian-media-restricting-freedom-of-expression-2/> (accessed 18th August 2015) also see Human Rights Watch Report Algeria <https://www.hrw.org/world-report/2014/country-chapters/algeria> (accessed 18th August 2015)

“causing offence to foreign heads of state” and article 119 on “publishing a document that violates the confidentiality of a judicial investigation.”³⁴

Articles 2, 80 and 124 forbid journalists to address aspects linked to state security, strategic economic information and foreign policy.

Under this legislation, media professionals are still subject to charges, which can reach up to 300,000 dinars (\$ 3,900), an outrageous measure taking into account the meagre salaries of journalists.

Algeria’s media law authorizes the creation of privately owned television channels however the same law also introduces numerous restrictions on content – most notably, a ban on news coverage without prior authorization.³⁵ Further still media coverage is generally tainted with accusations of fraud and corruption.³⁶ The Government has targeted, Al-Atlas Television because of its critical coverage of the government, and President Bouteflika, in particular.³⁷

Cybercrime Law

A cybercrime law also gives authorities the right to block websites "contrary to the public order or decency," and a centralized system monitors internet traffic.³⁸

³⁴ As the UN special rapporteur said in his report, “the current legal framework is still restrictive.” Despite the promises given by the authorities when Law 12-05, a new law on information, was being drafted, freedom of expression and the right to information are not sufficiently guaranteed.

³⁵ Freedom House Report-Algeria <https://freedomhouse.org/report/freedom-world/2015/algeria#.VdMwt7Kqqko> (accessed 18th August 2015).

³⁶ Freedom House Report-Algeria <https://freedomhouse.org/report/freedom-world/2015/algeria#.VdMwt7Kqqko> (accessed 18th August 2015).

³⁷ Amnesty International ‘ Pre-election clamp-down exposes gaping holes in human rights record’ <https://www.amnesty.org/en/latest/news/2014/04/algeria-pre-election-clampdown-exposes-gaping-holes-human-rights-record/> (accessed 18th August 2015).

³⁸ Freedom House Report-Algeria <https://freedomhouse.org/report/freedom-world/2015/algeria#.VdMwt7Kqqko> (accessed 18th August 2015).

4.3 Article 9 of the African Charter: Freedom of Expression and Opinion

Article 9, the African Charter guarantees every individual the right to receive information and express and disseminate his/her opinions within the law. According to the African Commission's Special Rapporteur Special Rapporteur on Freedom of Expression and Access to Information this freedom is considered as the corner stone of development and should be adhered to absolutely.

a) Criminal Defamation

The Algerian constitution guarantees freedom of expression. Nevertheless, substantial legal restrictions on press freedom remain. The threat of criminal defamation and other charges hinders the press's ability to cover the news.³⁹ Algeria's information code criminalizes writing, speech, and cartoons that insult or offend the president, the parliament, the judiciary, or the armed forces. Bloggers, like traditional journalists, are subject to defamation suits, and several have been fined for posting "defamatory material."

In September 2013, authorities arrested Abdelghani Aloui on charges of "insulting state institutions" as well as "glorification of terrorism" for uploading cartoons mocking Bouteflika on his Facebook page.

The prosecution of Djamel Ghanem, a cartoonist with the daily La Voix de l'Oranie, also caused a stir. He was accused of "insulting the president" in an unsigned cartoon alluding to Bouteflika's fourth term that was never published.⁴⁰ Intimidated by the

³⁹ Freedom House Report Algeria 2014 <https://freedomhouse.org/report/freedom-press/2014/algeria> (accessed 18th August 2015).

⁴⁰ Reporters Without Borders, Letter to John Kerry About Freedom of Information in Algeria <http://en.rsf.org/algerie-letter-to-john-kerry-about-freedom-02-04-2014,46074.html> (accessed 20th September 2015).

prosecutor's determination and fearing for his and his family's safety, Ghanem decided to leave Algeria and seek asylum in France.⁴¹

b) Media Violence and Intimidation

Reporters occasionally suffer physical attacks or harassment in the course of their work. For example, Zouheir Ait Mouhoub, an investigative journalist for *El-Watan*, was subjected to harassment by internal security personnel in 2012 for conducting research on organized crime in the country. Few cases of physical violence were reported in 2013—a notable improvement from the previous year.⁴²

Algerian authorities obtained the suspension of a popular satirical TV programme, accusing it of “repeated excesses” and “attacking state symbols,” and briefly arrested a cartoonist for “defaming and attacking the president.” The suspension of “Weekend,” a satirical programme broadcast by El Djazaira TV on Friday evenings, has triggered outrage.⁴³ One of its journalists, Abdou Semmar, who is also the editor of *Algérie-Focus*, said the programme enraged the authorities by referring on 17 April to the Parisian apartments of several Algerian ministers and Prime Minister Abdelmalek Sellal's daughter.⁴⁴

State agencies regularly engage in both direct and indirect censorship. A media blackout was imposed on coverage of the terrorist attack at the British Petroleum-operated gas

⁴¹ Reporters Without Borders, Letter to John Kerry About Freedom of Information in Algeria <http://en.rsf.org/algerie-letter-to-john-kerry-about-freedom-02-04-2014,46074.html> (accessed 20th September 2015).

⁴² Freedom House Report Algeria 2014 <https://freedomhouse.org/report/freedom-press/2014/algeria> (accessed 18th August 2015).

⁴³ Reporters Without Borders, Letter to John Kerry About Freedom of Information in Algeria <http://en.rsf.org/algerie-letter-to-john-kerry-about-freedom-02-04-2014,46074.html> (accessed 20th September 2015).

⁴⁴ Reporters Without Borders, Letter to John Kerry About Freedom of Information in Algeria <http://en.rsf.org/algerie-letter-to-john-kerry-about-freedom-02-04-2014,46074.html> (accessed 20th September 2015).

plant in Amenas.⁴⁵ The Ministry of Communications blocked publication of two newspapers, when they attempted to print articles stating that Bouteflika's health had deteriorated, despite official reports to the contrary.⁴⁶ Self-censorship also remains widespread, motivated largely by a fear of government retaliation.⁴⁷

Meziane Abane, a journalist with Al-Watan Week-End and an active member of the "Barakat" movement, was arrested while in his hotel room in Batna. He had been planning to do a report on the incidents that rocked the region after Bouteflika's campaign manager, former prime minister Abdelmalek Sellal. After his arrest, Abane was taken to the local gendarmerie headquarters, where he was questioned about his supposed obligation to do military service, although he has been exempted.⁴⁸

c) Media Independence

Though the Broadcasting Regulatory Authority (CSC) has yet to be created, many groups have voiced concern about the lack of independence of the Broadcasting Regulatory Authority that is to be created. While Article 89 provides that the CSC is to be independent and lists a number of very positive goals of the CSC. Its nine members will be appointed by presidential decree and five of them will be chosen by the president himself. Its powers include the ability to restrict the length of the news programmes of the privately owned stations. Its powers include the ability to restrict the length of the news programmes of the privately owned stations. No privately-owned station has so far obtained approval.

⁴⁵ Freedom House Report Algeria 2014 <https://freedomhouse.org/report/freedom-press/2014/algeria> (accessed 18th August 2015).

⁴⁶ Freedom House Report Algeria 2014 <https://freedomhouse.org/report/freedom-press/2014/algeria> (accessed 18th August 2015).

⁴⁷ Freedom House Report Algeria 2014 <https://freedomhouse.org/report/freedom-press/2014/algeria> (accessed 18th August 2015).

⁴⁸ Freedom House Report Algeria 2014 <https://freedomhouse.org/report/freedom-press/2014/algeria> (accessed 18th August 2015).

The proposed Freedom of Information Organic Law imposes many obstacles on publishing and the creation of media. Article 11 says that anyone is “free to publish a periodical” but it nonetheless stipulates that publications require official approval.⁴⁹ Perhaps the most restrictive provisions of the organic law relate to foreigners. Any participation by non-Algerians in media enterprises on their territory, and indeed any participation by Algerians in foreign media enterprises, is subjected to strict control by either the relevant minister or the CSC. Article 10 provides that only Algerians can be directors of press outlets. Article 13 prevents foreigners from participating in the financing of the press, unless authorized by the CSC and also allows foreigners to establish press outlets only with ministerial authorization. No conditions on the exercise of these discretionary powers are established. Importing, publishing, printing and distributing foreign publications is allowed only with ministerial authorization, pursuant to Article 18. Similarly, Article 34 provides that only local broadcasters may be licensed while Article 35 provides that the capital of such broadcasters must be held exclusively by Algerians, unless foreign involvement has been authorized by the CSC. Finally, professional Algerian journalists working for foreign media enterprises need ministerial accreditation, which may be withdrawn by the same minister.

Foreign media outlets continue to face barriers to free reporting. Officials block distribution of foreign papers when they carry content deemed subversive. In particular, foreign media coverage of issues related to national security and terrorism is restricted. The Algeria office of Qatar’s Al-Jazeera satellite television network remained closed in 2013.

Foreign-owned TV stations must obtain accreditation in advance in order to be able to broadcast from Algeria⁵⁰. Some, such as Annahar TV and Echourouk TV, are already

⁴⁹ Reporters Without Borders, Letter to John Kerry About Freedom of Information in Algeria <http://en.rsf.org/algerie-letter-to-john-kerry-about-freedom-02-04-2014,46074.html> (accessed 20th September 2015).

⁵⁰ Reporters Without Borders, Letter to John Kerry About Freedom of Information in Algeria <http://en.rsf.org/algerie-letter-to-john-kerry-about-freedom-02-04-2014,46074.html> (accessed 20th September 2015).

operating. The fact that all take a pro-government line suggests, at the very least, that this is a requirement for obtaining and retaining accreditation. The case of Al-Atlas TV, a foreign-owned station that began operating in March 2013, is illustrative. Its premises were raided three times in 2015. First, plainclothes gendarmes with a search warrant swooped on its headquarters at around 4 p.m. on 11 March.⁵¹ Al-Atlas TV's CEO said the authorities targeted the station because of its critical coverage of the government, and President Bouteflika, in particular. The station also covered the protests by those opposed to Bouteflika.⁵²

Vigilance is needed as there is a danger that the new privately-owned TV stations will all end up being owned by powerful businessmen with close links to the political elite and the armed forces, in which case, ending the state's monopoly of broadcasting would change little and would fail to boost media pluralism.⁵³ There are more than 80 newspapers available in the capital, although only six are considered truly independent, as many are owned by private business interests closely affiliated with the government or the intelligence services.⁵⁴

The government has significant economic influence over print media, as most papers are printed on state-controlled presses. In 2008, the government had placed six state-owned printing presses under the direct control of the Communications Ministry, threatening the editorial autonomy of half of Algeria's privately owned newspapers. The state-owned advertising agency favors content with a pro-government bias by controlling the

⁵¹ Reporters Without Borders, Letter to John Kerry About Freedom of Information in Algeria <http://en.rsf.org/algerie-letter-to-john-kerry-about-freedom-02-04-2014,46074.html> (accessed 20th September 2015).

⁵² Reporters Without Borders, Letter to John Kerry About Freedom of Information in Algeria <http://en.rsf.org/algerie-letter-to-john-kerry-about-freedom-02-04-2014,46074.html> (accessed 20th September 2015).

⁵³ Reporters Without Borders, Letter to John Kerry About Freedom of Information in Algeria <http://en.rsf.org/algerie-letter-to-john-kerry-about-freedom-02-04-2014,46074.html> (accessed 20th September 2015).

⁵⁴ Reporters Without Borders, Letter to John Kerry About Freedom of Information in Algeria <http://en.rsf.org/algerie-letter-to-john-kerry-about-freedom-02-04-2014,46074.html> (accessed 20th September 2015).

placement of ads for state entities and companies, which form the largest source of income for most papers.⁵⁵

The print media, which have been pluralistic in principle since the 1990s, continue to suffer from monopolistic practices, especially as regards printing and distribution. Most are dependent on state-controlled printing houses (such as the Société d'Impression d'Alger) and distribution networks, and the state acts as it sees fit, deciding arbitrarily which publications will be printed and distributed.⁵⁶

Advertising is also used to pressure the media. Created in December 1967 and operational since April 1968, the National Publishing and Advertising Agency (ANEP) allocate advertising on behalf of state agencies and companies. State advertising is a major source of funding for the print media and strings are always attached to its renewal.⁵⁷ Therefore it is easy for the government to throttle critical newspapers economically. This has led to attempts by a number of publications to emancipate them from this tutelage. But the authorities can always fall back on another feared weapon – tax adjustments. This is a threat constantly hanging over independently-minded newspapers.

4.4 The Principle of the Obligation to Publish Key Information and the Principle to Promote an Open Government

Freedom of information implies not only that public bodies should accede to requests for information, but also that they should publish and disseminate widely documents of significant public interest.

⁵⁵ Reporters Without Borders, Letter to John Kerry About Freedom of Information in Algeria <http://en.rsf.org/algerie-letter-to-john-kerry-about-freedom-02-04-2014,46074.html> (accessed 20th September 2015).

⁵⁶ Reporters Without Borders, Letter to John Kerry About Freedom of Information in Algeria <http://en.rsf.org/algerie-letter-to-john-kerry-about-freedom-02-04-2014,46074.html> (accessed 20th September 2015).

⁵⁷ Reporters Without Borders, Letter to John Kerry About Freedom of Information in Algeria <http://en.rsf.org/algerie-letter-to-john-kerry-about-freedom-02-04-2014,46074.html> (accessed 20th September 2015).

a) **Poor Proactive Disclosure**

The model law on access to information requires states to publish information proactively. The proposed Organic Law requires state bodies to proactively publish information. This is a huge challenge for Algeria; rarely is information published and a key barrier to accessing information is poor proactive disclosure. Information related to economic opportunities at national or local level, as well as to administrative procedures, may exist online on government agency websites, but citizens are neither informed nor encouraged to use the internet as a formal and official source of information.⁵⁸

b) **Open Data**

About 17 percent of the population accessed the internet in 2014, one of the lowest rates in North Africa. The government monitors e-mail and online chat rooms, and internet service providers and are legally liable for the content they host. An outdated communications network and inadequate investment in computers and high-speed internet means that the country lags behind its Arab counterparts in the use of blogs and social networks. The government has been slow to extend these services to the Algerian people—a move viewed by critics as intended to limit access to alternative news sources of information.⁵⁹

4.5 Obligation take measures..” with a view to giving effect to the rights and freedoms recognized and guaranteed by the..African Charter”⁶⁰

a) Ratifying all African Union Treaties related to the Right to Information

⁵⁸Freedom House Report Algeria 2014 <https://freedomhouse.org/report/freedom-press/2014/algeria> (accessed 18th August 2015).

⁵⁹ Committee to Protect Journalists, 10 Most Censored Countries; <https://cpj.org/2015/04/10-most-censored-countries.php> (accessed 18th August 2015).

⁶⁰ Article 62 of the African Charter on Human and Peoples Rights –

The African Union ('AU') seeks to achieve its policy goals through the adoption of treaties. The realization of these goals requires that the treaties be signed, ratified and implemented by the member states. As an institution, the AU lacks powers to compel member states to ratify its treaties and comply with their provisions.

Algeria is yet to ratify important AU treaties related to the right to information. Article 19 of the African Charter on Democracy, Elections and Good Governance⁶¹ Article 4 African Youth Charter⁶² and Article 2 African Statistics Charter⁶³ all provide explicit provisions related to the right to information. By not focusing on the basic ratification– signature correlations of these treaties, Algeria has demonstrated little treaty commitment to taking measures to ensure the right to information is fully recognized in Algeria.

Algeria should therefore examine the major factors that impede expeditious ratification of these AU treaties and make recommendations on how to overcome them.

5. Positive Developments of Freedom of Information and Freedom of Expression in Algeria

5.1 Access to Information Using ICT

Algerian Government recently revealed a new strategic plan for developing ICTs in the country. The e-Algeria 2013 initiative is supposed to accelerate the government's application of technology to increase access to government information. This strategy is the result of the deliberations of a so-called "e-committee" headed by President Abdelaziz Bouteflika.⁶⁴

⁶¹ African Charter on Democracy, Elections and Good Governance

http://www.au.int/en/sites/default/files/AFRICAN_CHARTER_ON_DEMOCRACY_ELECTIONS_AND_GOVERNANCE.pdf/(accessed 19 August 2015).

⁶² African Youth Charter

<http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Dakar/pdf/AfricanYouthCharter.PDF>/(accessed 19 August 2015).

⁶³ African Statistics Charter, http://www.au.int/en/sites/default/files/AFRICAN_CHARTER_ON_STATISTICS.pdf (accessed 19 August 2015).

⁶⁴ Arab World Internet Institute <http://www.giswatch.org/sites/default/files/Algeria.pdf>(accessed 20th September 2015).

During the last Algeria elections a bilingual (Arab/French) website was set up that helped voters access information related to the election process. It allowed users to download documents such as the constitution, laws and other legal texts related to the election. It also included a guide for the electorate, as well as information about political parties participating in the election and about voting centers.⁶⁵

The Ministry of Health has also introduced an official Health Portal to promote access to electronic health content developed by the Ministry. It is worthwhile noting that a regulatory policy that protects the privacy and security of individual patient data should be implemented as part of any e-health strategy.⁶⁶

⁶⁵ Arab World Internet Institute <http://www.giswatch.org/sites/default/files/Algeria.pdf>(accessed 20th September 2015).

⁶⁶ Arab World Internet Institute <http://www.giswatch.org/sites/default/files/Algeria.pdf>(accessed 20th September 2015).

6. Recommendations

Figure 3

Recommendations to improve the right to information and freedom of expression in Algeria	
i.	Pass “Organic Law” Relating to Freedom of Expression in tune with the Model Law on Access to Information
ii.	Revise Freedom of Information Bill
iii.	Avoid Blanket Exclusions That Affect Principle of Maximum Disclosure
iv.	Improve Disclosure and Open data
v.	Repeal Provisions Affecting Freedom of Expression
vi.	Protection of Journalists Against Violence
vii.	Ensure Independence of the Media
viii.	Open Government Partnership
ix.	Ratify Important African Union Treaties

a) **Pass “Organic Law” Relating to Freedom of Expression in tune with the Model Law on Access to Information**

A Freedom of Information Law aims at promoting transparency and accountability, as factors contributing to human rights, democracy and development. As the product of an organ of the African Union, the Model Law on Access to Information is intended to represent the views of Member States which includes Algeria. Superficially, in Algeria this appears to be the case. However, political structures in Algeria are not conducive to effective access to information. The regime is closely guarding its power and reducing civil freedoms.

Therefore it is imperative that the Algerian government reviews and passes its current proposed Organic Law on access to information. The Organic Law will be the legislative anchor for open government in Algeria.

b) Revise Freedom of Information Bill

There are, however, many ways the Organic Law can be readily improved. Some of the proposals in this report recommend the amendment of particular provisions of the Organic Law. AFIC would welcome the opportunity to engage in further debate as to the ideal legislative model for public access to information in Algeria.

Among the changes that we believe would improve the FOI framework and assist its smooth operation are:

- ideally, registration requirements should be removed from the legislation; otherwise, the CSC should oversee the registration process substantive conditions on the character of the director should be removed from the registration process;
- any requirement on the press to deposit copies of publications should apply only to national archives and libraries.
- substantive conditions on the character of the director should be removed from the registration process;
- The legislation should impose no general restrictions on the ambit of activities of private broadcasters;
- License agreements should provide only for very general guidelines relating to overall programming
- Article 47 and 48 should be removed from the legislation;
- The process for appointments to the Broad Casting Regulatory Authority (CSC) should be open and transparent and ensure the independence of that body. Adequate provision

should be made for input from groups broadly representative of society as a whole, to ensure that the CSC is truly independent and representative.

- Conditions on CSC membership should also be explicitly provided for, in particular to prevent conflicts of interest and to preclude the appointment of individuals too closely associated with political parties or groupings. Security of tenure of CSC members should be protected to help ensure their independence while undertaking regulatory activities. All restrictions on foreign participation in the Algerian media should be removed.
- If any such restrictions are retained, they should be set out clearly in the law and applied in an objective and non-discriminatory manner, rather than being under the control of essentially political organs.

c) Avoid Blanket Exclusions That Affect Principle of Maximum Disclosure

Algeria should avoid blanket exclusions and narrow down the exemptions of disclosure of information. Some of the provisions in Algeria's media law prohibit disclosure and this is not in tune with the twin principles of maximum disclosure and minimum exemptions that should be incorporated in a good media regulation law. Although some restrictions on access are legitimate, these should be narrowly construed and subject to review by an independent authority. In general, access to government-held information should be facilitated by an independent administrative authority, with which the public may lodge complaints in case of a refusal to disclose.

At the very least such blanket exclusion for entire categories of information must be avoided and they must be replaced with circumstantial exemptions subject to a harm test. For example if disclosure of information obtained from foreign is likely to severely harm relations with the Government of Algeria or irreparably impede the ability of any of the involved parties to maintain good relations with the other parties then access "may" (as opposed to 'shall') be denied.

Provisions in statutes that prohibit the public from accessing information should be repealed. For the public to participate effectively in the management of the affairs of the country, they need to have correct information. Thus, it is imperative for the public to be provided with requisite information that will enable them to take part in policy formulation. This information could also check corruption and promote accountability on the part public officials since they know that their actions are subject to scrutiny. Accordingly, in the absence of the requisite information it would be very difficult for any member of the public to participate meaningfully in the affairs of his or her Government. Without information the citizens may not have an insight into the functioning of Government or participate in its decision-making processes.

d) Improve Disclosure and Open data

Proactive disclosure is a very important obligation. The degree of transparency necessary to maintain public trust and confidence can only be achieved by regular and proactive publication of a summary of actions taken by the Algerian Government. That requires the mandatory quarterly publication of budgets, expenses and developments of high-ranking Government officers within the public service.

Algeria should consider these questions; what data should be public, how to make data public, and how to implement and open data policy? These questions can guide Algeria to determine what an open data policy can and should do in striving to create a government data system where open data is the default. Setting the default to open means that the government and parties acting on its behalf will make public information available proactively and that they'll put that information within reach of the public through the press and online, without barriers for its consumption.

e) Repeal Provisions Affecting Freedom of Expression such as Criminal Defamation

Algeria should repeal all criminal defamation laws. These laws fundamentally affect freedom of expression. Criminal defamation laws still cast a long shadow; the possibility

of being arrested by the police, held in detention and subjected to a criminal trial will be in the back of the mind of a journalist when he or she is deciding whether to expose, for example, a case of high-level corruption. International bodies such as the UN have recognized the threat posed by criminal defamation laws and have recommended that they should be abolished.

f) Projection of Journalists against Violence and Intimidation

Algeria needs to put in place mechanisms to improve the safety of journalists and destroy impunity of violent acts against journalists. There is need for more concerted efforts on the ground to actually implement the mechanisms put in place. The government needs to ensure strict responsibility for violent acts against journalists. Algeria should comply fully with the obligations applicable to them under international law related to the protection of journalists, including the prosecution of perpetrators of violence against journalists.

g) Ensure the Independence of the Media

While Algeria's creation of a print media regulatory authority is positive in principle, questions persist about its composition, independence and extent of its powers. According to Article 50 of the Media Law three of its members, including the chair, are appointed directly by Algeria's president, two are appointed by the national assembly speaker, and two are appointed by the speaker of the national council (senate). The other seven members are elected by absolute majority from among professional journalists with at least 15 years of experience. The media law should be revised by the government, and the restrictive clauses should be amended to guarantee independence of the media and ultimately freedom of expression.

h) Open Government Partnership

The Open Government Partnership is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. In the spirit of multi-stakeholder collaboration, OGP is overseen by a Steering Committee including representatives of governments and civil society organizations. To become a member of OGP, Algeria must endorse a high-level Open Government Declaration; deliver a country action plan developed with public consultation, and commit to independent reporting on their progress going forward.

i) Ratify Important African Right to Information Treaties

For all treaties to become binding in law, they must be signed and ratified by state parties. Algeria is yet to ratify important African Union treaties that have fundamental provisions related to the right to information. These are the African Union Youth Charter, ⁶⁷African Statistics Charter⁶⁸ and the African Charter on Democracy, Elections and Good Governance⁶⁹. If the Algerian Government considers the right to information important then, it must ratify the African Union Covenants that form the core of the right to information in Africa. AFIC therefore recommends that Algeria ratifies these three treaties.

⁶⁷ African Union Youth Charter http://www.au.int/en/sites/default/files/AFRICAN_YOUTH_CHARTER.pdf (accessed 19 August 2015).

⁶⁸ African Statistics Charter, http://www.au.int/en/sites/default/files/AFRICAN_CHARTER_ON_STATISTICS.pdf (accessed 19 August 2015).

⁶⁹ African Charter on Democracy, Elections and Good Governance http://www.au.int/en/sites/default/files/AFRICAN_CHARTER_ON_DEMOCRACY_ELECTIONS_AND_GOVERNANCE.pdf (accessed 19 August 2015).



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