

Overall Score:

47 - Very Weak

Legal Framework Score:

60 - Weak

Actual Implementation Score:

31 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ²⁶Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

33

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | **NO**

Comments:

Anti-corruption or civil-rights groups created in order to investigate and expose government abuse during the civil war years between 1992 and 2000 are barred from legally existing through the Ordinance for National Peace and Reconciliation." This prohibition is extended to demonstrations or debates on these issues by any groups or associations.

References:

Algerian Constitution of 28 November 1996:

[...] Art. 43 – The right to create associations is guaranteed.

The State encourages the development of associative movement.

The law defines the conditions and clauses of the creation of associations. [...]

The Law on Associations, Law No. 90-31 of December 4th, 1990

[...] Article 2 – An association constitutes a convention guided by the law through natural persons or [corporate] bodies who assemble under a contractual basis and with a non-commercial objective. They assemble for this purpose for a limited or unlimited term their knowledge, their means for the advancement of activities of a professional, social, scientific, religious, educative, and cultural or sports nature. [...]

Article 4 – Under the provision of Article 5 of this law, all individuals, having reached the age of majority, are permitted to create, administer or manage an association, if they

- Possess the Algerian nationality,
- Enjoy their civil and citizens' rights
- Do not exercise activities which are contrary to the interests of the struggle for the national liberation.

Article 5 – The association is not considered an association if

- It has been founded with a goal that is contrary to the existing institutional system, to the public order, to the customs and [the general] way of life or to existing laws and regulations,
- Whose founding members do not fulfill the stipulated prerequisites of the article 4 of the present law. [...]

Ordinance 06-01 from February 27th, 2006 with regards to the Charter for Peace and National Reconciliation

[...] Article 46 – Anyone who, by speech, writing, or any other act, uses or exploits the wounds of the National Tragedy to harm the institutions of the Democratic and Popular Republic of Algeria, to weaken the state, or to undermine the good reputation of its agents who honorably served it, or to tarnish the image of Algeria internationally, shall be punished by three to five years in prison and a fine of 250,000 to 500,000 Dinars. [...]

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | **NO**

Comments:

Associations or groups which are formed to expose government abuse and crimes during the Civil War years (1992 – 2000) cannot receive any funding from either other domestic groups or associations, nor from any international institutions. Such funding is effectively barred through the Ordinance for Peace and National Reconciliation from 2006.

International funding for any Algerian association is subject to control and regulation by the Algerian Ministry of Interior.

References:

The Law on Associations, Law No. 90-31 of December 4th, 1990

[...] Chapter 4 – Resources and Assets

[...] Article 28 – Donations and assets connected with charges and conditions are not to be accepted by the associations, unless the charges and conditions are compatible with the goal assigned by the statutes and with the dispositions of the present law. Donations and assets from foreign associations or organizations cannot be accepted after the approval of the proper public authority, which verifies the origin, the sum, the accordance with the goals assigned by the statutes of the association and probable restrictions, which can come into effect. [...]

Ordinance 06-01 from February 27th, 2006 regarding the Charter for Peace and National Reconciliation.

[...] Article 46 – Anyone who, by speech, writing, or any other act, uses or exploits the wounds of the National Tragedy to harm the institutions of the Democratic and Popular Republic of Algeria, to weaken the state, or to undermine the good reputation of its agents who honorably served it, or to tarnish the image of Algeria internationally, shall be punished by three to five years in prison and a fine of 250,000 to 500,000 Dinars. [...]

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

According to the Law on Associations” every registered Algerian association must disclose its funding, whether domestic or international, to the public authorities, i. e. the Ministry of Interior.

References:

The Law on Associations, Law No. 90-31 of December 4th, 1990

[...] Chapter 2 – Rights and Obligations

[...] Article 18 – The associations are obliged to provide the proper public authorities regularly with information about their membership, the source of their funds and their financial situation and how it is financially managed. [...]

[...] Chapter 4 – Resources and Assets

[...] Article 31 – Without the authorization by the proper authority, the use of subsidies, aid and contributions, other than the ones predetermined by the consenting administration, constitutes a violation and lies, in this case, within the responsibility of [the association's] directors. [...]

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

0

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

Individuals associated with groups and associations which promote government reform, equal rights for minorities or women and human and civil rights were regularly harassed, arrested and imprisoned throughout 2006. Conventions, events or demonstrations of these groups and demonstrations were equally regularly prohibited. This tactic by the government to suppress opposition even extends to political parties, such as the FFS (Front des Forces Socialistes).

References:

1) El Watan, 14 December 2006

FFS : Des militants interpellés à Ghardaïa

http://www.algeria-watch.org/fr/mrv/mrvrepr/militants_interpelles.htm

2) Liberté, 9 November 2006

Le MSP dénonce

http://www.algeria-watch.org/fr/mrv/mrvrepr/marche_interdite.htm

3) Algeria-Watch, 24 September 2006

Deux avocats algériens paient leur engagement pour le respect des droits humains

http://www.algeria-watch.org/fr/aw/boumerdessi_sidhoum.htm

4) L'Observatoire pour la Protection des Défenseurs des Droits de l'Homme – 19 May 2006

Menaces à l'encontre de l'avocat Amine Sidhoum

http://www.algeria-watch.org/fr/mrv/mrvrepr/menaces_sidhoum_amine.htm

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

As associations are prohibited by law to engage in the political process, there were no CSOs in 2006 who actively participated in the political process in Algeria. This fact was indirectly reflected in a BBC article, which covered the past elections from Spring 2007:

[...] Turnout was low but correspondents in Algiers say this is not surprising as the real power lies with the president, the army and the intelligence services. The poll to elect 389 members of parliament is only the third multi-party vote in Algeria's history. [...]

The Islamic Salvation Front (FIS), which used to have massive popular support, was banned in 1992 when it was poised to win a general election and has not been allowed back into the political fold.

[...] Our reporter says that without the group's participation, power will remain where it has been — with the president and the military. The main political group linked to the Berber-speaking areas in the northeast boycotted the polls. The election will not change the political landscape, our correspondent says, but is important as it shows Algerians value the ballot box more than the bullet or the bomb. [...]"

References:

The Law on Associations, Law No. 90-31 of December 4th, 1990

[...] Article 2 – An association constitutes a convention guided by the law through natural persons or [corporate] bodies who assemble under a contractual basis and with a non-commercial objective. They assemble for this purpose for a limited or unlimited term their knowledge, their means for the advancement of activities of a professional, social, scientific, religious, educative, and cultural or sports nature. [...]

[...] Article 4 – Under the provision of Article 5 of this law, all individuals, having reached the age of majority, are permitted to create, administer or manage an association, if they

- Possess the Algerian nationality,
- Enjoy their civil and citizens' rights
- Do not exercise activities which are contrary to the interests of the struggle for the national liberation.

Article 5 – The association is not considered an association if

- It has been founded with a goal that is contrary to the existing institutional system, to the public order, to the customs and [the general] way of life or to existing laws and regulations,
- Whose founding members do not fulfill the stipulated prerequisites of Article 4 of the present law. [...]

BBC News, Thursday, 17 May 2007

Low turnout in Algeria elections

<http://news.bbc.co.uk/2/hi/africa/6664165.stm>

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | **NO**

Comments:

Due to the particular registration process for associations in Algeria, the government has a viable tool to prohibit unwanted activities of civil rights organizations: It simply denies the necessary confirmation of its registration. This strategy has been described in the International Journal of Not-For-Profit Law:

[...] For a government like Algeria's, enacting a law that grants rights and freedoms is one thing; enforcing it is another thing completely. The few but essential rights and privileges that the Law on Associations grants are not respected by the administration or other parts of the government.

Unfortunately, it is not possible to conduct a representative field study on this subject among the directors of associations operating in Northern Algeria, because most of them will not discuss their experiences for fear of reprisals by the government. For this reason, I cannot be very specific in describing the five associations whose directors were willing to discuss this issue.

None of the five associations ever received a written confirmation of its registration, from either the local province or the Ministry of Interior. None of the associations was given any reason for the refusal to confirm registration. One director of a national association made more than ten visits to the Ministry of Interior to obtain the confirmation. She never received an explanation for the delay, but was continually promised that an official answer from the Ministry would arrive the following week. She is still waiting today – seven years after she filed the application.

The refusal to provide written confirmation naturally puts the concerned associations and their directors and members at a serious legal risk, as they effectively operate outside the law and can be shut down by the government at any time. This is especially true for two associations that operate in the human rights area. Not only were they refused confirmation of registration by the provincial government; they also experienced government interference when they tried to organize demonstrations and reunions. One association was continuously threatened with dissolution, but fought back somewhat successfully by threatening a

press campaign in the event of a government-ordered shutdown. This organization has been waiting for more than three years for its official recognition as an association. [...]

References:

The Algerian Law on Associations Within Its Historical Context
The International Journal of Not-for-Profit Law, Volume 9, Issue 2, April 2007
Chafika Kahina Bouagache
http://www.icnl.org/knowledge/ijnl/vol9iss2/special_3.htm

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

67

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | **NO**

Comments:

Despite the formal end of the civil war in 2000 and the propagation of a national reconciliation in 2006, there have been numerous incidents of "disappearances" and imprisonments, even within the last two years. One should be aware that only a small portion of these incidents will be picked up by the press or the media, and that for the most part ordinary citizens are the targets of such indiscriminate arrests and imprisonments.

Two cases are particularly illustrative of the problem: The first case describes the arrest of two officials of the political party FFS for "having distributed 'propaganda.'" Duration of detention: 3 days. The second case describes the arrest of two students under dubious circumstances. Duration of detention here: 12 days.

Case 1: The national secretaries Fekhar and Djelmani and other members of the national Socialist party FFS were prosecuted during 2005 and 2006 for activities contrary to the national interest and for inciting a gang-up. They were arrested and imprisoned for 3 days by the Gendarmerie and legal actions against them continued until December 17th, 2006. Part of the FFS's continuing campaign is to reform the activities of the government, and that includes specifically reducing of corruption within government agencies

Case 2: Youssef Belmouaz and Brahim Abed were arrested on November 26th and 27th by plainclothed military security agents (DRS). No information was given to the relatives except in the case of Belmouaz, where the local prosecutor confirmed that the arrest had been executed by the military security agency. Until the end of 2006, the two men remained missing. It is believed that the arrests were conducted under the pretense of terrorism due to the activities as members of local mosques.

Case 1

[...] Les faits : Les Secrétaires nationaux Kamel Eddine FEKHAR et Mohamed DJELMAMI ainsi que Hamou MESBAH, Khoudir DJAADI, Ali BABEKER Ali, responsables et militants du FFS à GHARDAIA sont une nouvelle fois convoqués le 17 décembre 2006 par le procureur près la cour de GUELMA. Les faits remontent au mois de mai 2005 : en déplacement de Annaba sur Ghardaïa, le véhicule de nos camarades est intercepté par la Gendarmerie nationale dans la localité de Kallat Bousbaa, wilaya de Guelma. Après une détention de 72 heures, dans les locaux de la Gendarmerie, ils sont présentés au procureur qui décide d'engager contre eux des poursuites judiciaires pour les chefs d'inculpation : atteinte à l'intérêt national et incitation à l'attroupement. Ils doivent répondre de deux chefs d'inculpation : possession de CD Rom dans l'intention de « faire de la propagande de nature à porter atteinte à l'intérêt national », apologie d'acte d'incitation à l'attroupement. Il s'agit dans les faits de CD sur lesquels sont enregistrées les scènes de la fête qui a suivi la libération des détenus de Ghardaïa en avril 2005.

Case 2:

[...] Youssef Belmouaz , né le 28 juillet 1985, a été enlevé le 26 novembre 2006 à 11h devant l'université de Tiaret où il est inscrit en 4 e année de sciences vétérinaires. L'enlèvement a été effectué devant de nombreux étudiants par des hommes armés en tenue civile circulant à bord d'un véhicule banalisé de marque Renault express. Deux jours après la disparition de son fils, M. Belmouaz s'est rendu au parquet général de la cour de Tiaret. Le procureur général lui a affirmé que « l'arrestation avait été opérée par la « sécurité militaire » (Département du renseignement et de la sécurité, DRS) d'Alger et qu'il devait s'adresser au procureur d'Alger pour obtenir des informations ». M. Belmouaz s'est adressé à deux reprises à ce dernier ainsi qu'au ministre de la Justice et au président de la commission consultative nationale pour les droits de l'homme (CCNPDH), organisation gouvernementale, pour les informer de la disparition de son fils et requérir leur intervention. A ce jour, il n'a obtenu aucune réponse ni des uns ni des autres.

Le lendemain, 27 novembre 2006 , Brahim Abed , technicien supérieur en informatique, né le 16 juin 1983, a été enlevé à 8 heures du matin sur la voie publique à 200 mètres de son domicile à Tiaret. Des hommes en tenue civile et armés circulant à bord d'un véhicule 4X4 de couleur blanche l'ont embarqué pour une destination inconnue. La famille a fait le tour de nombreux commissariats, gendarmeries, casernes et tribunaux, en vain. Dans ce cas aussi, en raison du mode opératoire et de l'absence totale d'informations à son sujet, il est à craindre que Brahim Abed ne soit séquestré dans des locaux du DRS. [...]

References:

Communiqué d'information – FFS – Front des forces socialistes
Alger le 13 December 2006

http://www.algeria-watch.org/fr/mrv/mrvrepr/ffs_131206.htm

Les enlèvements suivis de disparitions n'ont pas cessé

Algeria-Watch et Al-Karama for Human Rights, 6 March 2007

http://www.algeria-watch.org/fr/aw/aw_ak_belmouaz_abed.htm

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

There were no fully-functioning CSOs in Algeria in 2006.

References:

There were no media articles or other information, which reported on the assault of members of civil rights associations during 2006.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

There were no fully-functioning CSOs in Algeria in 2006.

References:

There were no media articles or other information which reported on the killing of members of civil rights associations in Algeria during 2006.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

63

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

In 2006 the right of Algerian citizens to form unions continued to exist.

References:

Algerian Constitution of 28 November 1996

[...] Art. 43 – The right to create associations is guaranteed.

The State encourages the development of associative movement.

The law defines the conditions and clauses of the creation of associations.

The Law on Associations, Law No. 90-31 of December 4th, 1990

Title 1 – General Dispositions

Article 3 – Unions, federations and confederations of associations constitute associations in the sense of the present law.

Title II – Constitution, Organization and Functioning of Associations

Chapter 1: Constitution

Article 4 – Under the provision of Article 5 of this law, all individuals, having reached the age of majority, are permitted to create, administer or manage an association, if they

– Possess the Algerian nationality,

- Enjoy their civil and citizens' rights
- Do not exercise activities which are contrary to the interests of the struggle for the national liberation. [...]

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

In 2006, only one major union existed in Algeria. This union has an exceptional status due to its close relationship to the Algerian government: The UGTA (Union générale des travailleurs algériens), which represents all workers and employees working in the public sector. It is the only union which is officially recognized by the government and therefore the only one that manages to have a certain influence. On the other hand, other unions, and certainly those who dare to criticize the actions of the government, face continuous repressions by government agents. Officials were legally harassed, other unions such as the SNAPAP faced extinction by the simple refusal of the government administration to confirm the continued registration of the union.

References:

Website of Appel Algérie” – an organization that assembles various independent Algerian and French unions:

<http://appelalgerie.africa-web.org/>

Article of El Watan from 29 May 2006

Universités. Un responsable du CNES arrêté.

http://appelalgerie.africa-web.org/article.php3?id_article=133

Communiqué

Soutien au syndicat algérien snapap et à ses militants !

Union syndicale Solidaire

Mis en ligne le dimanche 8 juillet 2007

http://www.hns-info.net/article.php3?id_article=11664

The interview with the NGO official took place in June of 2007. The person prefers to stay anonymous.

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

0

5a. In law, freedom of the media is guaranteed.

YES | **NO**

Comments:

The Algerian constitution pronounces the freedom of expression in its Article 41, but the guarantee can be revoked by the government at any time under the still existing state of emergency” decree. In addition, the “Charter for Peace and National Reconciliation” restricts the public discussion/publication of media articles on the vital issue of governmental abuse and crimes during the time of the civil war (1992 – 2000).

References:

Algerian Constitution of 28 November 1996:

[...] Art. 41- Freedom of expression, association and meeting are guaranteed to the citizen. [...]

Presidential Decree No. 92-44 of February 9th, 1992 establishing the State of Emergency

[...] Article 3 – The government undertakes all measures for regulation in its competence to achieve the objectives previewed by the establishment of the State of Emergency. [...]

Ordinance 06-01 from February 27th, 2006 with regards to the Charter for Peace and National Reconciliation

[...] Article 46 – Anyone who, by speech, writing, or any other act, uses or exploits the wounds of the National Tragedy to harm the institutions of the Democratic and Popular Republic of Algeria, to weaken the state, or to undermine the good reputation of its agents who honorably served it, or to tarnish the image of Algeria internationally, shall be punished by three to five years in prison and a fine of 250,000 to 500,000 Dinars. [...]

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | **NO**

Comments:

The Algerian constitution pronounces the freedom of expression in its article 41, but the guarantee can be revoked by the government at any time under the still existing state of Emergency” decree. In addition, the “Charter for Peace and National Reconciliation” restricts the public discussion/publication of media articles on the vital issue of governmental abuse and crimes during the time of the civil war (1992 – 2000).

References:

Algerian Constitution of 28 November 1996:

[...] Art. 41- Freedom of expression, association and meeting are guaranteed to the citizen. [...]

Presidential Decree No. 92-44 of February 9th, 1992 establishing the State of Emergency

[...] Article 3 – The government undertakes all measures for regulation in its competence to achieve the objectives previewed by the establishment of the State of Emergency. [...]

Ordinance 06-01 from February 27th, 2006 with regards to the Charter for Peace and National Reconciliation

[...] Article 46 – Anyone who, by speech, writing, or any other act, uses or exploits the wounds of the National Tragedy to harm the institutions of the Democratic and Popular Republic of Algeria, to weaken the state, or to undermine the good reputation of its agents who honorably served it, or to tarnish the image of Algeria internationally, shall be punished by three to five years in prison and a fine of 250,000 to 500,000 Dinars. [...]

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

31

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Should the government perceive damage from a media outlet, which is to be created or founded, it employs all means, from legal threats arrest to threats of murder, to stop the media entity from getting into existence.”

References:

Interview with an Algerian journalist, who wishes to remain anonymous. Date: August 2007.

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | **NO**

Comments:

The above mentioned law and the particular article does not specify a formal appeal process in case a media license has been denied to a print medium.

References:

Law No. 90-07 of 3 April 1990 with regards to information,
Chapter 2

http://www.lexinter.net/DZ/loi_relative_a_l%27information.htm

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

The waiting period to obtain the license can extend to several months, before a decision by the government agency has been taken. Or it simply refuses to take a decision. This is an enormous financial burden on the media entity.”

References:

Interview with an Algerian journalist, who wishes to remain anonymous. Date: August 2007.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

0

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Citizens cannot obtain a broadcast license for television or radio, as these media outlets are completely controlled by the government.

[...] Radio and television are government-owned, with coverage favorable to government policy. During the year, opposition spokesmen were generally denied access to the public radio or television. Television access continued to be severely limited for some opposition parties. These limitations were less evident for radio. [...]"

References:

U.S. State Department
Country Reports on Human Rights Practices – Algeria – 2006
Released by the Bureau of Democracy, Human Rights, and Labor
March 6, 2007
<http://www.state.gov/g/drl/rls/hrrpt/2006/78849.htm>

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | **NO**

Comments:

Citizens cannot obtain a broadcast license for television or radio, as these media outlets are completely controlled by the government.

[...] Radio and television are government-owned, with coverage favorable to government policy. During the year, opposition spokesmen were generally denied access to the public radio or television. Television access continued to be severely limited for some opposition parties. These limitations were less evident for radio. [...]"

References:

U.S. State Department
Country Reports on Human Rights Practices – Algeria – 2006
Released by the Bureau of Democracy, Human Rights, and Labor
March 6, 2007
<http://www.state.gov/g/drl/rls/hrrpt/2006/78849.htm>

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Citizens cannot obtain a broadcast license for television or radio, as these media outlets are completely controlled by the government.

[...] Radio and television are government-owned, with coverage favorable to government policy. During the year, opposition spokesmen were generally denied access to the public radio or television. Television access continued to be severely limited for some opposition parties. These limitations were less evident for radio. [...]"

References:

U.S. State Department
Country Reports on Human Rights Practices – Algeria – 2006
Released by the Bureau of Democracy, Human Rights, and Labor
March 6, 2007
<http://www.state.gov/g/drl/rls/hrrpt/2006/78849.htm>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens cannot obtain a broadcast license for television or radio, as these media outlets are completely controlled by the government.

[...] Radio and television are government-owned, with coverage favorable to government policy. During the year, opposition spokesmen were generally denied access to the public radio or television. Television access continued to be severely limited for some opposition parties. These limitations were less evident for radio. [...]"

References:

U.S. State Department
Country Reports on Human Rights Practices – Algeria – 2006
Released by the Bureau of Democracy, Human Rights, and Labor
March 6, 2007
<http://www.state.gov/g/drl/rls/hrrpt/2006/78849.htm>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | 50 | 25 | 0

Comments:

[...] Internet Freedom

Access to the Internet was generally free; however, the government monitored email and Internet chatrooms, particularly those dealing with terrorism and security issues. Article 14 of the 1998 ministerial decree on telecommunications states that Internet service providers are legally liable for the material and Web sites they host. [...]"

References:

U.S. State Department

Country Reports on Human Rights Practices – Algeria – 2006

Released by the Bureau of Democracy, Human Rights, and Labor

March 6, 2007

<http://www.state.gov/g/drl/rls/hrrpt/2006/78849.htm>

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | 50 | 25 | 0

Comments:

It is not possible for citizens living in Algeria to create websites that are openly critical of the Algerian government. All major websites, which document government abuse and crimes were hosted outside of Algeria in 2006. Additionally the Ordinance for Peace and Reconciliation" from 2006 prohibits public critical discussion of the events during the civil war between 1992 and 2006.

Excerpt of the Ordinance for Peace and National Reconciliation:

"[...] Article 46 – Anyone who, by speech, writing, or any other act, uses or exploits the wounds of the National Tragedy to harm the institutions of the Democratic and Popular Republic of Algeria, to weaken the state, or to undermine the good reputation of its agents who honorably served it, or to tarnish the image of Algeria internationally, shall be punished by three to five years in prison and a fine of 250,000 to 500,000 Dinars. [...]"

References:

Ordinance 06-01 from February 27th, 2006 with regards to the Charter for Peace and National Reconciliation

Website of the organization Algeria-Watch”

Information on the Human Rights Situation in Algeria

<http://www.algeria-watch.org/en/aw/presentation.htm>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

0

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES

NO

Comments:

Media Stories, which connect government officials with crimes that were committed during the time of the civil war, can be prosecuted under the terms of the Ordinance for Peace and Reconciliation”.

References:

Ordinance 06-01 from February 27th, 2006 regarding the Charter for Peace and National Reconciliation

[...] Article 46 – Anyone who, by speech, writing, or any other act, uses or exploits the wounds of the National Tragedy to harm the institutions of the Democratic and Popular Republic of Algeria, to weaken the state, or to undermine the good reputation of its agents who honorably served it, or to tarnish the image of Algeria internationally, shall be punished by three to five years in prison and a fine of 250,000 to 500,000 Dinars. [...] Art 77 To 88: relative to Code of Information,

link: http://www.lexinter.net/DZ/loi_relative_a_l%27information.htm

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The media (press, television & radio) work under the constant pressure of intimidation and threats attempts by government agents. These threats are either transmitted directly or indirectly through the owner of the media outlet, thereby effectively censoring the outcome of press or other media stories on the government.” This attitude explains in part why many critical articles are instead “transported” to the French press or to other activists who publish them abroad.

References:

Interview with journalist. who wishes to remain anonymous. Date: July/August 2007.

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The media (press, television & radio) work under the constant pressure of intimidation and threats attempts by government agents. These threats are either transmitted directly or indirectly through the owner of the media outlet, thereby effectively censoring the outcome of press or other media stories on the government. These actions also include the verification of press articles or news reports favorable to the government, prior to the publishing.”

References:

Interview with Algerian journalist, who wishes to remain anonymous. Date: July/August 2007.

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

45

10a. In law, print media companies are required to disclose their ownership.

YES | NO

Comments:

According to the above-mentioned law, a declaration has to be submitted, where the ownership and the capital of the medium must be disclosed, before a license for the print medium can be obtained from the government agency.

References:

Law No. 06/01 for the Prevention and the Fight Against Corruption from 20 February 2006.
Chapter, Article 19
http://www.droit.mjustice.dz/loi_prev_lut_corrupt.pdf

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | NO

Comments:

As all television channels and radio stations are government-owned, the ownership does not have to be disclosed.

[...] Radio and television are government-owned, with coverage favorable to government policy. During the year, opposition spokesmen were generally denied access to the public radio or television. Television access continued to be severely limited for some opposition parties. These limitations were less evident for radio. [...]"

References:

U.S. State Department
Country Reports on Human Rights Practices – Algeria – 2006
Released by the Bureau of Democracy, Human Rights, and Labor
March 6, 2007
<http://www.state.gov/g/drl/rls/hrrpt/2006/78849.htm>

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | **25** | 0

Comments:

Journalists in Algeria have to live constantly under the pressure of having to report accurately due to their professional guidelines on one side and not to draw the attention of government agencies upon their reporting on the other hand, because their lives and their personal freedom would then be a high risk.”

References:

Interview with Algerian journalist, who wishes to remain anonymous. Date: July/August 2007.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell” favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | **50** | 25 | 0

Comments:

While the written press and especially radio stations give usually all political parties the opportunity to present themselves, it is not the case for the government-owned television channels who are the No. 1 media outlet to transport the president’s and the ruling party views. This includes even the local TV channels, who have become the ‘channels of the President’.”

References:

Interview with Algerian journalist and two members of two different political parties, who all wish to remain anonymous. Date: August 2007.

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | **50** | 25 | 0

Comments:

While the written press and especially radio stations give usually all political parties the opportunity to present themselves, it is not the case for the government-owned television channels who are the No. 1 media outlet to transport the president's and the ruling party views. This includes even the local TV channels, who have become the 'channels of the President'."

References:

Interview with an Algerian journalist and two members of two different political parties, who all wish to remain anonymous. Date: August 2007.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | **NO**

Comments:

There have been several incidents in 2006 where journalists have been arrested and sentenced on defamation charges, after they had investigated cases of government corruption.

Some noteworthy cases:

Exemplary Case 1:

28 December 2006 – Reporters Without Borders (RSF)

[...] Reporters Without Borders has condemned the three-month prison sentences passed by a court in eastern city of Jijel on 25 December 2006 on Omar Belhouchet, editor of the daily *El Watan*, and Chawki Amari, one of his journalists, for “libeling” the local prefect in an article last June accusing him of corruption. They were also fined 1 million dinars (approx. 10,900 euros). [...]

Exemplary case 2:

1 November 2006 – Reporters Without Borders (RSF)

[...] Reporters Without Borders protested that a court in Algiers had acted to protect Algeria’s diplomatic relations with Libya by sentencing two journalists to six months in prison and a fine equivalent to 220 euros after Libyan President Moammar Gadhafi sued them for libel. On 31 October 2006, the court in the eastern city suburb of Hussein-Dey also suspended the daily newspaper “Ech-Chourouk” for two months and ordered it to pay Gadhafi 500,000 dinars (5,500 euros) in damages. Libya’s diplomatic delegation in Algiers filed a complaint in early October against “Ech-Chourouk” editor Ali Fadil and journalist Naila Berrahal after the paper carried two articles during the summer of 2006 suggesting that the Libyan leader played a part in negotiations with Tuareg tribal leaders to create an independent state. [...]

Exemplary case 3:

24 January 2006 – Centre algérien de défense de la liberté de la presse (CALP)

[...] CALP has expressed concern that Bachir Larabi, *El Bayadh* correspondent for the Algiers-based Arabic-language daily “*El Khabar*”, has been imprisoned in the town of Aïn Sefra since 21 January 2006. The journalist has started a hunger strike to protest his incarceration. On 29 September 2005, Larabi was sentenced in absentia to one month in prison with no parole. Larabi was charged with libel resulting from a 9 December 2003 article published in “*El Khabar*” wherein the regional authorities and a local association, *El Farah*, which was responsible for the construction of a senior citizens’ hospice, were incriminated for not completing the project on the lot they had been granted to build upon. [...]

References:

International Freedom of Expression eXchange

Alerts Archive on Algeria (June 2005 – June 2007):

<http://canada.ifex.org/eng/layout/set/print/content/view/archivealerts/1445>

Various media alerts informing about arrests and imprisonments of journalists in Algeria.

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist’s work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. “Imprisoned” is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | **NO**

Comments:

Two press releases by two national and international federations of journalists allege that journalist Mourad Mahamed had been subject to several hours of forceful interrogation” (interrogatoire musclé) by the police unit ONRB at their headquarters in Algiers. At that time Mourad Mahamed was investigating the recruitment efforts of the Algerian-based “Groupe salafiste pour la prédilection et le combat” (GSPC) .

Excerpts of the press releases:

1.

The following is an abridged translation of a 31 March 2006 International Federation of Journalists (IFJ) media release:

[...] The IFJ condemns use of police pressure to force a journalist to reveal his sources
Bussels, 31 March 2006

The IFJ condemns the arrest and the detention over several hours of Mourad Mahamed, a journalist with the daily “El Khabar” and a member of National Journalist’s Union (SNJ), by police on 29 March 2006. “Mourad Mahamed has been subjected to a forceful interrogation to reveal his sources,” declared Kamel Amarni, SNJ’s secretary general. “Justice, as it applies in this case, has been grossly ignored.” The IFJ firmly agrees with the SNJ’s stance and denounces the conditions of detention and the use of force against a fundamental component of journalism. “The protection of secret sources is a sacred responsibility for journalists,” declared IFJ Secretary General Aidan White. [...]

31/03/2006
SYNDICAT NATIONAL DES JOURNALISTES
Communiqué

Mourad Mahamed, journaliste au quotidien El Khabar et membre du Syndicat national des journalistes, a vécu le mercredi 29 mars 2006 un véritable cauchemar dans les locaux de la police urbaine d’Alger (service ONRB), sis rue Docteur Saadane. Notre confrère qui a eu à traiter, dans une récente édition de El Khabar, d’un sujet sécuritaire se verra outrageusement malmené. Mourad Mahamed a subi, des heures durant, un véritable supplice moral pour qu’il daigne révéler ses sources d’information. Le Syndicat national des journalistes s’indigne de ce que l’on en arrive à ce genre de pratiques avec la corporation ; comportement que rien ne puisse justifier. [...]

References:

03 April 2006 – Press Release
Source: International Federation of Journalists (IFJ)
<http://canada.ifex.org/en/content/view/full/73282/>
<http://www.ifj.org/default.asp?index=3808&Language=FR>

31/03/2006 – Press Release
SYNDICAT NATIONAL DES JOURNALISTES
Maison de la Presse Tahar Djaout
1, rue Bachir Attar, Alger, Algérie
Tel/Fax : (213.21) 67-36-61
<http://www.ifj.org/default.asp?Index=3809&Language=FR>

1 april 2006 – Le Soir – news article
<http://www.lesoirdalgerie.com/articles/2006/04/01/article.php?sid=36365&cid=2>

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

There are no reported cases of assassinations of journalists during the year 2006.

References:

There are no reported cases of assassinations of journalists during the year 2006.

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

21 I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

33

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

The Algerian constitution and the information law outline (very vaguely) the right of Algerian citizens to obtain information from government bodies.

References:

Algerian constitution of 28 November 1996

<http://www.geocities.com/CapitolHill/1078/econst00.htm>

Law No. 90-07 of 3 April 1990 with regards to information

http://www.lexinter.net/DZ/loi_relative_a_l%27information.htm

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | **NO**

Comments:

Neither the Algerian constitution nor the information law defines a formal appeal process in case a government agency denies the right to obtain requested information.

References:

Algerian constitution of 28 November 1996

<http://www.geocities.com/CapitolHill/1078/econst00.htm>

Law No. 90-07 of 3 April 1990 with regards to information

http://www.lexinter.net/DZ/loi_relative_a_l%27information.htm

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

Comments:

There does not exist an institution or agency which establishes and/or safeguards citizens' access to government records.

Excerpt of the U.S. State Department country report for the year 2006 on Algeria:

[...] Although permitted under the constitution, access to government information was often restricted. Despite pledges to eliminate corruption, there is no law facilitating access to information. Public procurement was often tainted with irregularities, including the excessive use of private agreements. According to the Ministry of Public Works, following President Bouteflika's April 2005 statement that the use of private agreements, including single source contracts, would be prohibited, government agencies began implementing a public tender policy for all infrastructure and large government projects. Some agencies, however, continued to use direct contracts for smaller and less publicized projects. For those public tenders, evaluations were not released to participating companies, and evaluation methods and techniques were not clearly defined. [...]

References:

Algerian constitution of 28 November 1996

<http://www.geocities.com/CapitolHill/1078/econst00.htm>

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

0

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The access to government records is arbitrary. Sensitive records are not available to the public or the press. Even simple registration records of associations are often withheld by the government administration without any explanation. The access to government records depends largely on the status of the requester and his/her political influence.

Excerpt of the State Department report:

[...] Although permitted under the constitution, access to government information was often restricted. Despite pledges to eliminate corruption, there is no law facilitating access to information. [...]"

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

U.S. State Department
Country Reports on Human Rights Practices – Algeria – 2006
Released by the Bureau of Democracy, Human Rights, and Labor
March 6, 2007
<http://www.state.gov/g/drl/rls/hrrpt/2006/78849.htm>

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Access to government records is arbitrary. Sensitive records are not available to the public or the press. Even simple registration records of associations are often withheld by the government administration without any explanation. The access to government records depends largely on the status of the requester and his/her political influence.

Excerpt of the State Department report:

[...] Although permitted under the constitution, access to government information was often restricted. Despite pledges to eliminate corruption, there is no law facilitating access to information. [...]"

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

U.S. State Department
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March 6, 2007
<http://www.state.gov/g/drl/rls/hrrpt/2006/78849.htm>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Access to government records is arbitrary. Sensitive records are not available to the public or the press. Even simple registration records of associations are often withheld by the government administration without any explanation. The access to government records depends largely on the status of the requester and his/her political influence.

Excerpt of the State Department report:

[...] Although permitted under the constitution, access to government information was often restricted. Despite pledges to eliminate corruption, there is no law facilitating access to information. [...]"

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

U.S. State Department
Country Reports on Human Rights Practices – Algeria – 2006
Released by the Bureau of Democracy, Human Rights, and Labor
March 6, 2007
<http://www.state.gov/g/drl/rls/hrrpt/2006/78849.htm>

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Access to government records is arbitrary. Sensitive records are not available to the public or the press. Even simple registration records of associations are often withheld by the government administration without any explanation. The access to government records depends largely on the status of the requester and his/her political influence.

Excerpt of the State Department report:

[...] Although permitted under the constitution, access to government information was often restricted. Despite pledges to eliminate corruption, there is no law facilitating access to information. [...]"

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

U.S. State Department
Country Reports on Human Rights Practices – Algeria – 2006
Released by the Bureau of Democracy, Human Rights, and Labor
March 6, 2007
<http://www.state.gov/g/drl/rls/hrrpt/2006/78849.htm>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

Access to government records is arbitrary. Sensitive records are not available to the public or the press. Even simple registration records of associations are often withheld by the government administration without any explanation. The access to government records depends largely on the status of the requester and his/her political influence.

Excerpt of the State Department report:

[...] Although permitted under the constitution, access to government information was often restricted. Despite pledges to eliminate corruption, there is no law facilitating access to information. [...]"

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

U.S. State Department
Country Reports on Human Rights Practices – Algeria – 2006
Released by the Bureau of Democracy, Human Rights, and Labor
March 6, 2007
<http://www.state.gov/g/drl/rls/hrrpt/2006/78849.htm>

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

57
II-1. Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

Article 50 – Any citizen fulfilling the legal conditions can vote and be elected.

References:

Algerian Constitution of 28 November 1996

Chapter 4, Article 50

<http://www.geocities.com/CapitolHill/1078/econst00.htm>

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

President:

Article 74 – The duration of the presidential mandate is five years. The President of the Republic can be reelected only once.

National Assembly:

Art. 102 – The People’s National Assembly is elected for a period of five years. The mandate of the Council of Nation is limited to six years. Half the members of the Council of Nation are subject to reelection every three years.

References:

Algerian constitution of 28 November 1996

Part 2, Chapter 1 & 2

Article 74 & 102

<http://www.geocities.com/CapitolHill/1078/econst2.htm>

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

All adults, as soon as they reach the age of 18 are automatically added to the National File” in the different communities and offices of the mayor. As soon as they are registered, they receive their voter cards and they can vote during elections.

References:

Interview with government official, who wishes to remain anonymous. Date: August 2007.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

There were no federal elections in 2006.

References:

There were no federal elections in 2006.

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

There were no federal elections in 2006. The results of elections had been cancelled during a period of 3 years when no elections were held – during the early stage of the state of emergency, which had been imposed in 1992.

References:

There were no federal elections in 2006.

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

60

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

Article 50 – Any citizen fulfilling the legal conditions can elect and be elected.

Article 51 – Equal access to functions and positions in the State is guaranteed to all citizens without any other conditions except those defined by the law.

References:

Algerian Constitution of 28 November 1996

Part 1, Chapter 4

Article 50 & 51

<http://www.geocities.com/CapitolHill/1078/econst1.htm>

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

Article 50 – Any citizen fulfilling the legal conditions can elect and be elected.

Article 51 – Equal access to functions and positions in the State is guaranteed to all citizens without any other conditions except those defined by the law.

References:

Algerian Constitution of 28 November 1996

Part 1, Chapter 4

Article 50 & 51

<http://www.geocities.com/CapitolHill/1078/econst1.htm>

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

Even if the constitution allows the forming of new parties, there has not been a new party since the end of the 1980s/beginning of the 1990s. The sole exception is the “Rassemblement National pour le Démocratie” (RND), which has been created in 1997 by the leading political force. This party was created to gain ground in the parliament and to allow the ruling FLN to stay on top of the power.”

References:

Interview with a member of an Algerian opposition party, who wishes to remain anonymous. Date: August 2007.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | **50** | 25 | 0

Comments:

The candidates are often selected by groups or clans within the individual parties. Independent candidates only have a chance to present themselves if they are considered as useful by other well-established parties. Other independent candidates are not able to register as their papers are lost by the administration or they receive a response too late.

References:

Interview with a member of an Algerian opposition party, who wishes to remain anonymous. Date: August 2007.

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | **25** | 0

Comments:

Even if the opposition parties take part in elections, there are always the same parties, which stay in power. In reality, opposition parties do not have a meaningful impact on legislative issues.

References:

Interview with a member of an Algerian opposition party, who wishes to remain anonymous. Date: August 2007.

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

It should be noted that for each national election a domestic monitoring agency is created. As there were no elections in 2006, the question can only be answered in a limited way.

The above entity was created by presidential decree for the national elections in May 2007.

References:

La Commission politique nationale des élections législatives du 17 mai 2007

Décret Présidentiel n° 07-115 du 17 Avril 2007

PRESIDENCE DE LA REPUBLIQUE

JO N° 25 du 18 Avril 2007, Page 5

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

40

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | **NO**

Comments:

It should be noted that for each national election a domestic monitoring agency is created. As there were no elections in 2006, the question can only be answered in a limited way. Historically, the military and security apparatus have been continuously interfered with every part of the election process. The most famous interference was the cancellation of the December 1991 municipal elections.

References:

Décret Présidentiel n° 07-115 du 17 Avril 2007
PRESIDENCE DE LA REPUBLIQUE
JO N° 25 du 18 Avril 2007, Page 5

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | **50** | 25 | 0

Comments:

National elections did not take place in 2006. Therefore this question cannot be answered.

References:

National elections did not take place in 2006. Therefore this question cannot be answered.

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

National elections did not take place in 2006. Therefore this question cannot be answered.

References:

National elections did not take place in 2006. Therefore this question cannot be answered.

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | **50** | 25 | 0

Comments:

National elections did not take place in 2006. Therefore this question cannot be answered.

References:

National elections did not take place in 2006. Therefore this question cannot be answered.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

National elections did not take place in 2006. However, there are few known cases of penalties having ever been imposed.

References:

National elections did not take place in 2006.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

63

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

All adults, as soon as they reach the age of 18, are automatically added to the National File" in the different communities and offices of the mayor. As soon as they are registered, they receive their voter cards and they can vote during elections.

References:

Interview with a government official, who wishes to remain anonymous. Date: August 2007.

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

Though there are theoretical procedures by which election results can be appealed through the justice system, they are exceedingly complicated and in practice not useable.

References:

Interview with former member of parliament, who wishes to remain anonymous. Date: August 2007.

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The possibility to challenge election results through the court system does not exist in Algeria." Although theoretical methods exist by which to challenge election results through the courts, in practice they are so overly complicated and poorly understood that they are rendered useless.

References:

Interview with former member of the parliament, who wishes to remain anonymous. Date: August 2007.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | **50** | 25 | 0

Comments:

As there were no elections in 2006, the question can only be answered in a limited way. Historically, the military and security apparatus have been continuously interfered with every part of the election process. The most famous interference was the cancellation of the December 1991 municipal elections.

References:

National elections did not take place in 2006.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

National elections did not take place in 2006. Therefore this question can only be answered in a limited way. As the above-mentioned article indicates, international observers were allowed to observe the presidential elections in 2004.

References:

L'élection algérienne conforme aux normes européennes

Liberté

10 April 2004

<http://www.algerie-dz.com/article437.html>

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | **25** | 0

References:

Former observer in electoral processes

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

68
II-3. Political Financing

20. Are there regulations governing political financing?

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

The above mentioned law regulates the general financing of political parties.

Art. 27 – Les activités du parti politique sont financées au moyen de ressources constituées par:

- Les cotisations de ses membres,
- Les dons, legs et libéralités,
- Les revenus liés à ses activités,
- Les aides éventuelles de l'Etat.

References:

Executive Order No 97-09 of 6 March 1997

MINISTERE DE L'INTERIEUR, DES COLLECTIVITES LOCALES ET DE L'ENVIRONNEMENT

JO N° 12 of 06 March 1997, Page 24

Title 3 – Financial Dispositions

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

Comments:

The above-mentioned article limits the amount of an individual donation to political parties.

Art. 30. – Les dons, legs et libéralités ne peuvent provenir que des personnes physiques identifiées. Ils ne peuvent excéder 100 fois le salaire national minimum garanti, par donation et par an.

References:

Executive Order No 97-09 of 6 March 1997

MINISTERE DE L'INTERIEUR, DES COLLECTIVITES LOCALES ET DE L'ENVIRONNEMENT

JO N° 12 of 06 March 1997, Page 24

Title 3 – Financial Dispositions

Article 30

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

Comments:

The above-mentioned article limits the amount of an individual donation to political parties.

Art. 30. – Les dons, legs et libéralités ne peuvent provenir que des personnes physiques identifiées. Ils ne peuvent excéder 100 fois le salaire national minimum garanti, par donation et par an.

References:

Executive Order No 97-09 of 6 March 1997

MINISTERE DE L'INTERIEUR, DES COLLECTIVITES LOCALES ET DE L'ENVIRONNEMENT

JO N° 12 of 06 March 1997, Page 24

Title 3 – Financial Dispositions

Article 30.

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

Comments:

The above mentioned article of the law does not set a limit to a party's expenditures.

Article 32 – Le parti politique peut disposer des revenus lié à son activité et résultant investissements non commerciaux. [...]

References:

Executive Order No 97-09 of 6 March 1997

MINISTERE DE L'INTERIEUR, DES COLLECTIVITES LOCALES ET DE L'ENVIRONNEMENT

JO N° 12 of 6 March 1997, Page 24

Title 3 – Financial Dispositions

Article 32

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

Comments:

The above-mentioned articles regulate the disclosure of the financing of the political parties.

Article 34 – Every political party has to maintain double book-keeping and an inventory of its property. It has to present his annual accounting to the according administration [agency] and to verify at any moment the origins of its financial resources and their use.

Article 35 – A political party has to maintain a bank account, which had been opened at a national financial institution on the national territory, at the national headquarters and at its branches.

Art. 34. – Tout parti politique doit tenir une comptabilité à partie double et un inventaire de ses biens meubles et immeubles. Il est tenu de présenter ses comptes annuels à l'administration compétente et de justifier à tout moment, la provenance de ses ressources financière et leur utilisation.

Art. 35. – Un parti politique est tenu de disposer d'un compte unique, ouvert auprès d'une institution financière nationale, en son siège et en ses succursales, implantées sur le territoire national.

References:

Executive Order No 97-09 of 6 March 1997

MINISTERE DE L'INTERIEUR, DES COLLECTIVITES LOCALES ET DE L'ENVIRONNEMENT

JO N° 12 of 6 March 1997, Page 24

Title 3 – Financial Dispositions

Articles 34 & 35

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

Comments:

The above-mentioned law does not require auditing of the finances of political parties by an independent institution.

References:

Executive Order No 97-09 of 6 March 1997

MINISTERE DE L'INTERIEUR, DES COLLECTIVITES LOCALES ET DE L'ENVIRONNEMENT

JO N° 12 of 6 March 1997, Page 24

Title 3 – Financial Dispositions

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

Comments:

The above-mentioned articles assigns the Ministry of Interior the oversight of political party financing.

Art. 34. – Tout parti politique doit tenir une comptabilité à partie double et un inventaire de ses biens meubles et immeubles. Il est tenu de présenter ses comptes annuels à l'administration compétente et de justifier à tout moment, la provenance de ses ressources financière et leur utilisation.

Art. 35. – Un parti politique est tenu de disposer d'un compte unique, ouvert auprès d'une institution financière nationale, en son siège et en ses succursales, implantées sur le territoire national.

References:

Executive Order No 97-09 of 6 March 1997

MINISTERE DE L'INTERIEUR, DES COLLECTIVITES LOCALES ET DE L'ENVIRONNEMENT

JO N° 12 of 6 March 1997, Page 24

Part 3 – Financial Dispositions

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

17

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

References:

Interview with former member of the government, who wishes to remain anonymous. Date: August 2007.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

References:

Interview with former member of the government, who wishes to remain anonymous.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

References:

Interview with former government official, who wishes to remain anonymous. Date: August 2007.

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

0

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁴³Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

0

23. In law, can citizens sue the government for infringement of their civil rights?

YES | **NO**

Comments:

Although the constitution provides the legal grounding for each citizen to defend its human and civil rights, the Ordinance for Peace and National Reconciliation” prohibits any lawsuit against government agencies in connection with the civil war between 1992 and 2000.

References:

Algerian Constitution of 28 November 1996

[...] Art. 33 – Individual or associative defense of fundamental human rights and individual and collective liberties is guaranteed. [...]

Ordinance 06-01 from February 27th, 2006 with regards to the Charter for Peace and National Reconciliation

[...] Article 45 – No legal proceedings may be initiated against an individual or a collective entity, belonging to any component whatsoever of the defense and security forces of the Republic, for actions conducted for the purpose of protecting persons and property, safeguarding the nation or preserving the institutions of the Democratic and Popular Republic of Algeria. The competent judicial authorities are to summarily dismiss all accusations or complaints. [...]

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

6

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The President of Algeria discusses policy before the parliament, but there is no real discussion. The decisions by the president are not challenged by the parliament. An open and broad discussion of decisions by the president is not wanted.

References:

Interview with government official in August 2007. The official wants to stay anonymous.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The judicial branch cannot control the activities of the executive branch due to its preeminence in all aspects of the political life. It also should be noted that the magistrates are nominated by the president, the chief of the executive branch."

References:

Interview with a member of the judiciary, who wishes to remain anonymous. Date: August 2007.

Algerian Constitution of 28 November 1996

[...] The judicial power

[...] Art. 154 – The High Council of Magistracy is presided over by the President of the Republic.

Art. 155 – The High Council of Magistracy decides, within the conditions defined by the law, the appointment, transfer and the progress of the magistrate's careers. It sees to the respect of the provisions provided for the statute of the magistracy and of the control of discipline under the chairmanship of the First President of the High Court.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The the judiciary branch does not review the actions of the executive branch.”

References:

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to relay upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

Comments:

There exists a widespread abuse by the executive branch of using directives, instructions and orders to introduce and interpret upcoming or current regulations.”

References:

Interview with a member of a member of the judiciary branch, who wishes to remain anonymous.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

0

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | **NO**

Comments:

While article 573 of the Criminal law procedures foresees a prosecution of government officials for committed crimes, the “Charter for Peace & Reconciliation” prohibits any legal proceedings against members of the executive branch in connection with the civil war between 1992 and 2000.”

References:

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

Article 573 of the Code for the Criminal Law Procedure

Ordinance 06-01 from February 27th, 2006 with regards to the Charter for Peace and National Reconciliation
[...] Article 45 – No legal proceedings may be initiated against an individual or a collective entity, belonging to any component whatsoever of the defense and security forces of the Republic, for actions conducted for the purpose of protecting persons and property, safeguarding the nation or preserving the institutions of the Democratic and Popular Republic of Algeria. The competent judicial authorities are to summarily dismiss all accusations or complaints. [...]

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | **NO**

Comments:

While article 573 of the Criminal law procedures foresees a prosecution of government officials for committed crimes, the “Charter for Peace & Reconciliation” prohibits any legal proceedings against members of the executive branch in connection with the civil war between 1992 and 2000.”

References:

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

Article 573 of the Code for the Criminal Law Procedure

Ordinance 06-01 from February 27th, 2006 with regards to the Charter for Peace and National Reconciliation
[...] Article 45 – No legal proceedings may be initiated against an individual or a collective entity, belonging to any component whatsoever of the defense and security forces of the Republic, for actions conducted for the purpose of protecting persons and property, safeguarding the nation or preserving the institutions of the Democratic and Popular Republic of Algeria. The competent judicial authorities are to summarily dismiss all accusations or complaints. [...]

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

63

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

This is called declaration of assets” following the executive order from 11 January 1997. It concerns houses, apartments, furniture, vehicles, boats, cash, claims and is addressed to all members in public service.

References:

Ordonnance n° 97-04 du 11 Janvier 1997
MINISTERE DE LA JUSTICE
JO N° 3 du 12 Janvier 1997, Page 7

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

This is called declaration of assets” following the executive order from 11 January 1997. It concerns houses, apartments, furniture, vehicles, boats, cash, claims and is addressed to all members in public service.

References:

Ordonnance n° 97-04 du 11 Janvier 1997
MINISTERE DE LA JUSTICE
JO N° 3 du 12 Janvier 1997, Page 7
Article 8

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

Article 38 of the Algerian anti-corruption law makes the acceptance of a gift by a government agent a crime, if this was done in order to influence the actions of the receiver of the gift as an agent of the government.

Such a regulation does not exist. The only exception is that members of the executive branch cannot accept gifts from individuals or entities, who are parties in legal proceedings.”

References:

Law No. 06/01 for the prevention and the fight against corruption from 20 February 2006.

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

Comments:

Article 9 of the above-mentioned order states internal requirements for the audit.

References:

Ordonnance n° 97-04 du 11 Janvier 1997
MINISTERE DE LA JUSTICE
JO N° 3 du 12 Janvier 1997, Page 7
Article 9

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

Comments:

Following a major scandal on this issue (the Affaire Khalifa trials) in 2006, Ordonnance NO- 07-01 du 01/03/2007 was adopted in March 2007 to regulate post-government employment restrictions. Its efficacy in practice remains to be seen.

References:

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

The new regulation's efficacy remains to be seen in practice.

References:

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

There does not exist a regulation. The only exception is that members of the executive branch cannot accept gifts from individuals or entities, who are parties in legal proceedings."

References:

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

An audit does not take place. The declarations of the asset disclosures are simply sent to the Supreme Court and will theoretically be published in the official governmental journal.”

References:

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

83

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

The above-mentioned article foresees a publication of the submission of the declaration within two months.

References:

Ordonnance n° 97-04 du 11 Janvier 1997
MINISTERE DE LA JUSTICE
JO N° 3 du 12 Janvier 1997, Page 7
Article 12

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The official journal can be accessed through the Internet. Whether the filing and the publishing of the declarations are often delayed cannot exactly be verified.”

References:

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The official journal can be accessed through the Internet.”

References:

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

The members of the government are chosen by the president along the party lines, but certainly they are trusted allies of the president. They are certainly distrustful towards party ideology, nevertheless party and government activities are regularly mingled.”

References:

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

29. Can members of the legislature be held accountable for their actions?

50

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

Article 143 – Justice deals with appeals against an administrative authority’s decisions.

Article 147 – Judges arbitrate disputes of law only.

This is a vague area in law. The state council informally performs this role in practice though cannot be considered a judicial body per se. Theoretically the courts would have jurisdiction to review laws but in practice this does not happen.

References:

Algerian Constitution of 28 November 1996

Chapter 3, Articles 143 & 147

<http://www.geocities.com/CapitolHill/1078/econst2.htm>

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Judiciary reviews are not part of the activities of the judiciary branch.”

References:

Interviews with a member of the judiciary and a non-governmental organization attorney, who wish to remain anonymous. Date: August 2007.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

Should an Algerian legislator have been involved in crimes connected to the years of the civil war (1992 – 2000), he falls under the above cited amnesty. Additionally members of the parliament are granted immunity during their mandate.

Excerpt of the Ordinance for Peace and National Reconciliation

[...] Article 45 – No legal proceedings may be initiated against an individual or a collective entity, belonging to any component whatsoever of the defense and security forces of the Republic, for actions conducted for the purpose of protecting persons and property, safeguarding the nation or preserving the institutions of the Democratic and Popular Republic of Algeria. The competent judicial authorities are to summarily dismiss all accusations or complaints. [...]

Excerpt of the Algerian constitution:

Art. 109 – Parliamentary immunity is recognized to deputies and members of the Council of Nation during the period of their mandate. They cannot be subject to lawsuits, arrest, or in general, to any civil or penal action or pressure because of opinions they expressed, utterances they make or votes they gave during the exercise of their mandate.

Art. 110 – Lawsuits cannot be instituted against a deputy or a member of the Council of Nation for crime or infringement unless there is an explicit renunciation of the concerned or an authorization according to the case from the People's National Assembly or the Council of Nation which decides by the majority of its members to lift the immunity.

Art. 111 – In case of flagrant infringement or flagrant crime, the deputy or the member of the Council of Nation may be arrested. The bureau of the People's National Assembly or of the Council of Nation, depending on the case, is informed immediately. The informed bureau may ask the suspension of lawsuits and the liberation of the deputy or the member of the Council of Nation; it will then be proceeded according to the provisions of article 110 above mentioned.

References:

Algerian Constitution of 28 November 1996

Articles 109, 110 & 111.

<http://www.geocities.com/CapitolHill/1078/econst2.htm>

Ordinance 06-01 from February 27th, 2006 with regards to the Charter for Peace and National Reconciliation
Article 45

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

Such a requirement does not exist for Algerian legislators.”

References:

Interviews with a member of the judiciary and a nongovernmental organization attorney, who wish to remain anonymous. Date: August 2007.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

Comments:

Such a requirement does not exist for Algerian legislators.”

References:

Interviews with a member of the judiciary and a nongovernmental organization attorney, who wish to remain anonymous. Date: August 2007.

YES: A YES score is earned if there are regulations restricting national legislators’ ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

Guidelines for the acceptance of gifts and hospitality do not exist, but if the gifts are received in order to be considered as an influence on any process the elected person can be prosecuted according to the Penal Code.

References:

Interviews with a member of the judiciary and a nongovernmental organization attorney, who wish to remain anonymous. Date: August 2007.

loi n° 90-15 du 14 juillet 1990

Art; 126/1 Penal Code. http://www.lexinter.net/DZ/crimes_et_delits_et_leurs_sanctions.htm

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

Comments:

The above-mentioned article states that there are internal requirements for the organization of the auditing of the submitted declarations.

References:

Ordonnance n° 97-04 du 11 Janvier 1997

MINISTERE DE LA JUSTICE

JO N° 3 du 12 Janvier 1997, Page 7

Article 9

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Such regulations do not exist.”

References:

Interviews with a member of the judiciary and a nongovernmental organization attorney, who wish to remain anonymous. Date: August 2007.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Such regulations do not exist.”

References:

Interviews with a member of the judiciary and a nongovernmental organization attorney, who wish to remain anonymous. Date: August 2007.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | **50** | 25 | 0

Comments:

The declarations are audited, but in which way standards are applied, is not known." The declarations are audited, but they are disclosed publicly only for certain members of the government. This is not done automatically.

References:

Interviews with a member of the judiciary and a NGO attorney, who wish to remain anonymous. Date: August 2007.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

8

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

Comments:

The above-mentioned article states that the information about the assets of legislators is to be treated confidentially. Only members of the auditing commission and certain members of the judiciary can access these reports.

References:

Ordonnance n° 97-04 du 11 Janvier 1997
MINISTERE DE LA JUSTICE
JO N° 3 du 12 Janvier 1997, Page 7
Article 11

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Ordinary citizens cannot access these records.”

References:

Interviews with a member of the judiciary and a nongovernmental organization attorney, who wish to remain anonymous. Date: August 2007.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Ordinary citizens cannot access these records.” Only the records of certain legislators have been made public.

References:

Interviews with a member of the judiciary and a NGO attorney, who wish to remain anonymous. Date: August 2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

92

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Article 116 – The sittings of the Parliament are public. The proceedings are recorded in a book and published in accordance with the conditions defined by an organic law.

References:

Algerian Constitution of 28 November 1996

Article 116

<http://www.geocities.com/CapitolHill/1078/econst2.htm>

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The documents can be accessed via the Internet through the official journal through the Internet.”

References:

Interviews with a member of the judiciary and a nongovernmental organization attorney, who wish to remain anonymous. Date: August 2007.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The documents can be accessed via the Internet through the official journal via the Internet at no cost.”

References:

Interviews with a member of the judiciary and a nongovernmental organization attorney, who wish to remain anonymous. Date: August 2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

50
III-3. Judicial Accountability

33. Are judges appointed fairly?

58

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

Article 155 – The High Council of Magistracy decides, within the conditions defined by the law, the appointment, transfer and the progress of the magistrate’s careers. It sees to the respect of the provisions provided for the statute of the magistracy and of the control of discipline under the chairmanship of the First President of the High Court.

References:

Algerian Constitution of 28 November 1996

Chapter 3: The judicial power, Article 155

<http://www.geocities.com/CapitolHill/1078/econst2.htm>

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

In general, judges are appointed with regard to training and experience.”

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | **NO**

Comments:

A confirmation for the appointment of magistrates is not included in the process.

Article 155 – The High Council of Magistracy decides, within the conditions defined by the law, the appointment, transfer and the progress of the magistrate’s careers.

References:

Algerian Constitution of 28 November 1996

Chapter 3: The judicial power, Article 155

<http://www.geocities.com/CapitolHill/1078/econst2.htm>

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

42

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | **NO**

Comments:

They are not obliged to justify their decisions, unless one party discovers there was an unfair procedure because of corruption.”

References:

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

Comments:

Judges are not required to give reasons for their decisions. Therefore court decisions are often not commented by the judges. They usually do not give reasons in their decisions."But they can be accountable, if his decision was taken under any influence, if there is any proof can be prosecuted as well.

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

The disciplinary agency is called "Conseil de discipline". It is presided over by the President of the Algerian Republic according to the law, but usually the president delegates his power to his Ministry of Justice.

References:

Organic law 04-12 of 6 September 2004 regulating the composition and the functioning of the Conseil Supérieur de la Magistrature. CSM (High Council of Judges).

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

The agency is under the control of the president of the republic. Therefore it is not free from political interference.

References:

Organic law 04-12 of 6 September 2004, regulating the composition and the functioning of the Conseil Supérieur de le Magistrature.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

They rarely initiate investigations. That is rather a monopoly reserved to the Minister [of Justice].”

References:

Interviews with a member of the judiciary, who wishes to remain anonymous. Date: August 2007.

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies’ investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

Comments:

This is done quite often. Judges can be isolated, blamed or degraded. But the agency didn't have the right to prosecute; this right is exclusively reserved to the Public Prosecutor (Ministère Public)."

References:

Interview with a government official, who wishes to remain anonymous. Date: August: 2007.

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

57

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

This is called Declaration of assets" following the executive order from 11 January 1997. It concerns houses, apartments, furniture, vehicles, boats, cash, banks account (of the Judge, and his family members Husband/wife and children) claims and is addressed to all members in public service.

References:

Ordonnance n° 97-04 du 11 Janvier 1997
 MINISTERE DE LA JUSTICE
 JO N° 3 du 12 Janvier 1997, Page 7
 Article 4

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

Article 128 is the center of the section of that particular law, as it defines the terms and penalties for corruption. The position of magistrates and their penalties is mentioned at the end of the article.

[...] Every person is guilty of aiding and abetting and punished with imprisonment of 5 years, a fine of 500 to 5,000 dinars, who demands or agrees to offers or promises, demands or receives gifts or other advantages in order to receive honors, medals, distinctions or recompensations, employment in public institutions or other favors by a public authority, markets, enterprises or other benefits, which has resulted from contracts with public authorities or by the exploitation using the power of a public [institution], or the general circumstances of a favorable decision of such authority or administration and the abuse of an actual or supposed influence.

If the convicted is a magistrate, public agent or an elected official, the foreseen penalties are doubled. [...]"

"[...] Est coupable de trafic d'influence et puni d'un emprisonnement d'un à cinq ans, d'une amende de 500 à 5000 DA toute personne qui sollicite ou agréé des offres ou promesses, sollicite ou reçoit des dons, présents ou autres avantages, pour faire obtenir ou tenter de faire obtenir des décorations, médailles, distinctions ou récompenses, des places fonctions ou emplois, ou des faveurs quelconques accordés par l'autorité publique, des marchés, entreprises ou autres bénéfices résultant de traités conclus avec l'autorité publique ou avec une exploitation placée sous le contrôle de la puissance publique ou, de façon générale une décision favorable d'une telle autorité ou administration, et abuse ainsi d'une influence réelle ou supposée.

Si le coupable est magistrat, fonctionnaire ou investi d'un mandat électif, les peines prévues sont portées au double. [...]"

References:

Algerian Penal Code
Chapter IV – Crimes and Offences against Public Order
Section 2 – Corruption and Aiding and Abetting
Articles 126 – 134

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:

The above-mentioned article states that internal regulations exist for the organization for the auditing of the disclosure forms.

References:

Ordonnance n° 97-04 du 11 Janvier 1997
MINISTERE DE LA JUSTICE
JO N° 3 du 12 Janvier 1997, Page 7
Article 9

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

Comments:

Such restrictions do not exist for the members of the Algerian judiciary.”

References:

Interviews with a member of the judiciary and a NGO attorney, who wish to remain anonymous. Date: August 2007.

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | **0**

Comments:

Such regulations do not exist for the members of the Algerian judiciary.”

References:

Interviews with a member of the judiciary and a NGO attorney, who wish to remain anonymous. Date: August 2007.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

The measures are generally applied in a sufficient manner. Judges are not known for accepting gifts or bribes. When they act in a government-favorable manner, it is due to pressure from the top.”

References:

Interviews with a member of the judiciary and a nongovernmental organization attorney, who wish to remain anonymous. Date: August 2007.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The declarations are regularly audited by the commission.”

References:

Interviews with a member of the judiciary and a nongovernmental organization attorney, who wish to remain anonymous. Date:

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

Comments:

The above-mentioned article states that the information about the assets of legislators is to be treated confidentially. Only members of the auditing commission and certain members of the judiciary can access these reports.

References:

Ordonnance n° 97-04 du 11 Janvier 1997
MINISTERE DE LA JUSTICE
JO N° 3 du 12 Janvier 1997, Page 7
Article 11

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

The public cannot access these records.”

References:

Interviews with a member of the judiciary and a nongovernmental attorney, who wish to remain anonymous. Date: August 2007.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The public cannot access these records.”

References:

Interviews with a member of the judiciary and a NGO attorney, who wish to remain anonymous. Date: August 2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

37a. In law, the legislature can amend the budget.

YES | NO

Comments:

Article 122 – The Parliament legislates in the domains which the Constitution assigned to it, as well as the following domains: [...]12 – voting the State budget; [...]

References:

Algerian Constitution of 28 November 1996

Chapter 2, The Legislative power

Article 122

<http://www.geocities.com/CapitolHill/1078/econst2.htm>

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

Theoretically the legislators could use their power to create more input, but because there is no real opposition, the budget proposals by the government are largely accepted by the parliament.”

References:

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive’s personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Theoretically the legislators could use their power to create more input, but because there is no real opposition, the budget proposals by the government are largely accepted by the parliament.”

References:

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

42

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

The budgetary process can be followed by the public in a relatively sufficiently easy manner.”

References:

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Ordinary citizens cannot provide input at budgetary hearings.”

References:

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: August 2007.

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

Citizens and journalists can access individual budget items. The above-mentioned article is an example. But, in practice things seems to be more complicated.

References:

IT Mag n°95

LAPW d'Alger dégage un budget de 33 millions de dinars

by Ahmed Gasmia

l'outil informatique dans l'administration de la capitale dimanche 3 septembre 2006

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

Commission des affaires économiques, du développement, de l'industrie, du commerce et de la planification <http://www.apn-dz.org/apn/french/index.htm>

References:

Interview with a member of the parliament who wishes to remain anonymous. Date: August 2007.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

38

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

Commission des affaires économiques, du développement, de l'industrie, du commerce et de la planification <http://www.apn->

References:

Interview with a member of the parliament who wishes to remain anonymous. Date: August 2007.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | **50** | 25 | 0

Comments:

Commission des affaires économiques, du développement, de l'industrie, du commerce et de la planification <http://www.apn-dz.org/apn/french/index.htm>

References:

Interview with a member of the parliament who wishes to remain anonymous. Date: August 2007.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Commission des affaires économiques, du développement, de l'industrie, du commerce et de la planification <http://www.apn-dz.org/apn/french/index.htm>

References:

Interview with a member of the parliament who wishes to remain anonymous. Date: August 2007.

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

Commission des affaires économiques, du développement, de l'industrie, du commerce et de la planification <http://www.apn-dz.org/apn/french/index.htm>

References:

Interview with a member of the parliament who wishes to remain anonymous. Date: August 2007.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

IV-1. ⁴⁵Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The above mentioned section of the executive order defines the rights and obligations of a civil servant, which includes his responsibilities towards the state and his or her independence of influence from outside parties.

References:

Executive Order No 06-03 of 15 July 2006 with regards to the status of the civil servant
PRESIDENCE DE LA REPUBLIQUE
JO N° 46 du 16 Juillet 2006, Page 3
Title 2 – Garanties, Rights & Obligations

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

The above mentioned articles of the law define the various acts of using public resources for private gain. These acts are to be punished with imprisonment between two and ten years and a fine between 200,000 and 1,000,000 dinars.

References:

Law No. 06/01 for the prevention and the fight against corruption from 20 February 2006.
Articles 29 – 33.
http://www.droit.mjustice.dz/loi_prev_lut_corrupt.pdf

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | **NO**

Comments:

Such a mechanism does not exist.

References:

Such a mechanism does not exist.

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

The above-mentioned article states that civil agents have to resign from posts, following convictions for crimes.

The civil degradation consists of

- 1) the removal and exclusion of those convicted for all functions or higher employment by a [political] party or the state and any employment in reference to the infringement;
- 2) the removal of the right to be elected and, in general, of all the civil and political rights and the right to receive public honors;
- 3) the incapacity to be assessor, expert, to serve as a witness in all cases and to serve in the justice system otherwise, which includes giving simple advice;
- 4) the incapacity to be a guardian or court-appointed guardian, if the guardianship does not concern his or her own children.
- 5) the removal of the right to carry arms, to teach, to manage a school or to be employed in a teaching institution as a professor, instructor or guardian.

Original article:

La dégradation civique consiste :

[...] 1°) dans la destitution et l'exclusion des condamnés de toutes fonctions ou emplois supérieurs, du Parti ou de l'État, ainsi que de tous emplois en rapport avec l'infraction;

2°) dans la privation du droit d'être électeur ou éligible et, en général, de tous les droits civiques et politiques et du droit de porter toute décoration;

3°) dans l'incapacité d'être assesseur-juré, expert, de servir de témoin dans tous actes et de déposer en justice autrement que pour y donner de simples renseignements;

4°) dans l'incapacité d'être tuteur ou subrogé tuteur si ce n'est pas de ses propres enfants;

5°) dans la privation du droit de porter des armes, d'enseigner, de diriger une école ou d'être employé dans un établissement d'enseignement à titre de professeur, maître ou surveillant.

References:

Algerian penal code

General Principals

Art. 8 – (loi n° 82-04 du 13 février 1982)

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

56

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Civil agents are very often under political influence of some sort. Even officials on a local level are regarded as direct agents of the Ministry of Interior and their executors of policy actions. Therefore they have significant problems executing decisions made by the local elected officials, who might be affiliated with other parties than the Minister of the Interior. Otherwise civil agents often serve the interests of the official who has appointed them.

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

Guidelines exist for the appointment of civil agents and they are effectively based on experience for the different positions. But for certain posts on the national level or on local level, these standards are set aside in favor of personal relationships.

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | **50** | 25 | 0

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100 | 75 | **50** | 25 | 0

Comments:

Certain posts have very precise job descriptions, but these descriptions are not contained in the contracts. They are often verbally transmitted or contained within the descriptions for job applications. New demands or responsibilities may come up at any moment.

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | **50** | 25 | 0

Comments:

There is very little hard data on this issue, and most sources are extremely reluctant to discuss it.

References:

Interview with an Algerian attorney, who wishes to remain anonymous. Date: August 2007.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

References:

Interview with an Algerian attorney, who wishes to remain anonymous. Date: August 2007.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

A redress mechanism does not exist. When it comes to corruption or any matters that *might* endanger the position of a certain power broker in the civil service, it is impossible for a lower-rankling civil servant to conduct such investigations."

References:

Interview with an employee of a nongovernmental organization, who wishes to remain anonymous. Date: August 2007.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

All the salaries are paid on time, due to the pressure by the unions, who would otherwise call for strikes.

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

This regulation applies to civil servants, who are sentenced to prison terms of 3 years or longer.”

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

17

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | **NO**

Comments:

Such requirements do not exist.

References:

Such requirements do not exist.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

Comments:

Such restrictions do not exist, although a new ordinance addressing such issues has been debated (though not yet formally adopted).

References:

Such restrictions do not exist.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | **NO**

Comments:

There do not exist real guidelines or regulations for gifts and hospitality besides the mentioned laws against corruption.

References:

There do not exist real guidelines or regulations for gifts and hospitality besides the mentioned laws against corruption.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | **0**

References:

Interview with an employee of a nongovernmental organization, who wishes to remain anonymous. Date: August 2007.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

The new law against corruption exists, but it is largely ineffective.”

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with an Algerian attorney, who wishes to remain anonymous. Date: August 2007.

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

0

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

Comments:

The above-mentioned article states that the information about the assets of legislators is to be treated confidentially. Only members of the auditing commission and certain members of the judiciary can access these reports.

References:

Executive Order No. 97-04 of 11 January 1997
MINISTERE DE LA JUSTICE
JO N° 3 du 12 Janvier 1997, Page 7
Article 11

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Ordinary citizens cannot access these reports.”

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Ordinary citizens cannot access these reports.”

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

81

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

Article 45 of the above-mentioned law states that the attempt to intimidate a witness or victim of a crime or corruption will be punished with prison terms from 6 months to 5 years and a fine between 50,000 and 500,000 dinars.

References:

Law No. 06/01 for the prevention and the fight against corruption from 20 February 2006.
Title 4, Article 45.

http://www.droit.mjustice.dz/loi_prev_lut_corrupt.pdf

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | **50** | 25 | 0

Comments:

Depending on the severity of the crime and the political influence of the parties involved, a whistleblower will have to fear for his life, as it is likely that he would be assassinated. The blame would later be put on 'terrorists'."

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

Article 45 of the above-mentioned law states that the attempt to intimidate a witness or victim of a crime or corruption will be punished with prison terms from 6 months to 5 years and a fine between 50,000 and 500,000 dinars.

References:

Law No. 06/01 for the prevention and the fight against corruption from 20 February 2006.

Title 2, Article 13.

Title 4, Article 45.

http://www.droit.mjustice.dz/loi_prev_lut_corrupt.pdf

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

Yes, they are very often protected, in this case. The Labor code is a very efficient law in the country, very often used to protect the workers. And the legislator looks to protect the employees of the private sector as well. Employers are obliged to obey to the law or they can get sanctioned by the administrative courts, and even by penal courts in some cases.

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | **NO**

Comments:

An internal mechanism to report corruption is not defined by the current Algerian laws (Penal code & Law against corruption).

References:

An internal mechanism to report corruption is not defined by the current Algerian laws (Penal code & Law against corruption).

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

0

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | **0**

Comments:

An internal mechanism to report corruption is not defined by the current Algerian laws (Penal code & Law against corruption).

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

An internal mechanism to report corruption is not defined by the current Algerian laws (Penal code & Law against corruption).

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

An internal mechanism to report corruption is not defined by the current Algerian laws (Penal code & Law against corruption).

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

An internal mechanism to report corruption is not defined by the current Algerian laws (Penal code & Law against corruption).

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

27
IV-3. Procurement

48. Is the public procurement process effective?

68

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

The above mentioned article of the law states that the abuse of the function of the position by a government agent for his or her private advantage is to be punished with imprisonment between two and ten years and a fine between 200,000 and 1,000,000 dinars.

References:

Law No. 06/01 for the prevention and the fight against corruption from 20 February 2006.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | **NO**

Comments:

Mandatory regular professional training for public procurement officials does not exist.

References:

Mandatory regular professional training for public procurement officials does not exist.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | **50** | 25 | 0

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

The above mentioned section of the decree details the control mechanisms of government procurement activities.

References:

Décret présidentiel n° 02-250 du 13 Jomada El Oula 1423
correspondant au 24 juillet 2002 portant Réglementation des marchés publics.
modifié et complété par le décret présidentiel n° 03-301 du 11 Septembre 2003
Title 5, Section 1
<http://finances-alg.ifrance.com/>

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | NO

Comments:

The above-mentioned part of the presidential decree for public procurement contains the regulation for competitive bidding.

References:

Décret présidentiel n° 02-250 du 13 Jomada El Oula 1423
correspondant au 24 juillet 2002 portant Réglementation des marchés publics.
modifié et complété par le décret présidentiel n° 03-301 du 11 Septembre 2003
Title 3
<http://finances-alg.ifrance.com/>

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

The above-mentioned part of the presidential decree for public procurement contains the regulation for sole sourcing (consultation sélective”).

References:

Décret présidentiel n° 02-250 du 13 Jomada El Oula 1423
correspondant au 24 juillet 2002 portant Réglementation des marchés publics.
modifié et complété par le décret présidentiel n° 03-301 du 11 Septembre 2003
Title 3
<http://finances-alg.ifrance.com/>

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

The above-mentioned decree regulates the review process in case of bidding rejections. The review institution is the commission nationale des marchés”.

References:

Décret présidentiel n° 02-250 du 13 Jomada El Oula 1423
correspondant au 24 juillet 2002 portant Réglementation des marchés publics.
modifié et complété par le décret présidentiel n° 03-301 du 11 Septembre 2003
Title 5, Section 2, Subsection 1, Article 129
<http://finances-alg.ifrance.com/>

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

The above-mentioned decree mentions the possibility of a judicial review process in case of bidding rejections.

References:

Décret présidentiel n° 02-250 du 13 Joumada El Oula 1423
correspondant au 24 juillet 2002 portant Réglementation des marchés publics.
modifié et complété par le décret présidentiel n° 03-301 du 11 Septembre 2003
Title 4, Section 7, Subsection 3, Article 101
<http://finances-alg.ifrance.com/>

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | **NO**

Comments:

The above-mentioned articles state the conditions of breaking off a contract because of contract violations by a contractor. They do not state, however, that the contractor cannot obtain a new contract through a renewed bidding.

References:

Décret présidentiel n° 02-250 du 13 Joumada El Oula 1423
correspondant au 24 juillet 2002 portant Réglementation des marchés publics.
modifié et complété par le décret présidentiel n° 03-301 du 11 Septembre 2003
Title 4, Section 7, Sub-section 2, Article 99 & 100
<http://finances-alg.ifrance.com/>

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | **25** | 0

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

83

49a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

The above-mentioned decree is available on the Internet.

References:

Décret présidentiel n° 02-250 du 13 Joumada El Oula 1423
correspondant au 24 juillet 2002 portant Réglementation des marchés publics.
modifié et complété par le décret présidentiel n° 03-301 du 11 Septembre 2003
<http://finances-alg.ifrance.com/>

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

The above mentioned decree proscribes the public announcement of the bidding contest and the final choice of the bidder by the Algerian government.

References:

Décret présidentiel n° 02-250 du 13 Joumada El Oula 1423

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The regulations are available through the Internet.”

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The regulations are published on the Internet.”

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | **50** | 25 | 0

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | **50** | 25 | 0

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

50. Is the privatization process effective?

33

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

According to the above-mentioned law, all state-owned enterprises are subject to the same conditions and regulations of the privatization law.

References:

Ordonnance n° 01-04 du Aouel Joumada Ethania 1422 correspondant au 20 août 2001 relative à l'organisation, la gestion et la privatisation des entreprises publiques économiques.

Chapter 3 General Dispositions with regards to privatization

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

While the regulations for privatization do not regulate conflicts of interest, the above mentioned articles of the law define the

various acts of using public resources for private gain. These acts are to be punished with imprisonment between two and ten years and a fine between 200,000 and 1,000,000 dinars.

References:

Law No. 06/01 for the prevention and the fight against corruption from 20 February 2006.

Articles 29 – 33.

http://www.droit.mjustice.dz/loi_prev_lut_corrupt.pdf

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Conflict of interests are usually not regarded upon. The higher the authority of the involved ministers, the less likely it is, that the issue will play a role in the process.”

References:

Interview with former member of parliament. Date: August 2007.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

50

51a. In law, citizens can access privatization regulations.

YES | NO

Comments:

Privatization process are usually kept secret. Citizens are not allowed to access to the process. The only entity that can participate in the process, but which does not represent individual citizens, is the General Union of Algerian Workers (UGTA). In the privatization process it represents the interests of its members. Though some pro forma information is provided over the internet, such information does not provide a clear picture of the whole process.

References:

Ordonnance n°01-04 du Aouel Joumada Ethania 1422 correspondant au 20 août 2001 relative à l'organisation, la gestion et la privatisation des entreprises publiques
<http://www.lexinter.net/DZ/priv01miseoeuvre.htm>

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The advertising and the conditions of the submission should appear in at least two daily newspapers. But the citizens learn relatively little about the process of privatization, which is in the hands of the government and the minister, who is in charge of the operation. Often the citizens learn about the transaction, when it is finalized."

References:

Interview with a former member of parliament, who wishes to remain anonymous. Date: August 2007.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

The government is required to publish the planned privatization of a state-owned company in at least 2 daily newspapers. The regulation is defined in the 1995 executive order, and reaffirmed by the executive order of 2001.

Article 18. Pour chaque opération de privatisation envisagée, le conseil publie, dans au moins deux quotidiens à diffusion régionale, nationale et/ou internationale, à deux reprises au moins et à sept (7) jours d'intervalle au moins, les détails de la méthode de privatisation, les conditions de l'appel d'offres, le cas échéant, et la date de clôture des soumissions. En outre, le conseil assure la publicité de l'opération de privatisation par les moyens audiovisuels et l'affichage dans les chambres de commerce.

References:

L'ordonnance 95-22 of 26 August 1995
Article 18

Ordonnance n° 01-04 of 20 August 2001
Minister of Finances
JO N° 47 of 22 August 2001, Page 7
Article 35

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are not allowed to have access to the records, which are confidential and which contain information about decisions by different ministries.”

References:

Interview with a member of parliament, who wishes to remain anonymous. Date: August 2001.

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Ordinary citizens usually do not have access to such records.”

References:

Interview with former member of parliament, who wishes to remain anonymous. Date: August 2007.

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁵³National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

The above-mentioned decree establishes the Commission nationale consultative de promotion et de protection des droits de l'Homme" as the national ombuds-agency. The agency is little known and in practice not effective, but in law it does exist.

References:

Commission nationale consultative de promotion et de protection des droits de l'Homme"
Presidential Decree 01-71 of 25 March 2001
PRESIDENCE DE LA REPUBLIQUE
JO N° 18 du 28 Mars 2001, Page 5
Chapter 1 – General Dispositions

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

16

53a. In law, the ombudsman is protected from political interference.

YES | **NO**

Comments:

The above-mentioned decree underlines the financial and administrative independence of the commission, but re-affirms nevertheless that it is placed next to" the President of the republic, who appoints the head of the agency. Furthermore, representatives of several ministries are members of the commission.

References:

Commission nationale consultative de promotion et de protection des droits de l'Homme"
Presidential Decree 01-71 of 25 March 2001
PRESIDENCE DE LA REPUBLIQUE
JO N° 18 du 28 Mars 2001, Page 5

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

0

54a. In law, citizens can access reports of the ombudsman(s).

YES | **NO**

Comments:

The decree does not grant public access to the reports of the agency.

References:

Presidential Decree 01-71 of 25 March 2001

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with a freelance journalist, who wishes to remain anonymous. Date: August 2007.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

[...] Order N° 95-20, dated 17 July 1995, grants the Algerian Audit Court (Majlis al-Muhaasabah) comprehensive prerogatives over all public funds whatever the legal status of their managers or of their beneficiaries, as well as audit and assessment authority over the efficiency, effectiveness and economy of implementation of the budget, without the prerogative to express opinion on the opportune nature of public expenditure. In fact, the audit authority of the Algerian Audit Court excludes any questioning of the validity of the expenditures belonging in the policies and programmes set by the administrative authorities or by the public bodies. [...]

[...] The nearest English equivalent to the French appellation “Cour des Comptes” is Audit Office; however, since the word “Office” is free from the connotations associated with the word “Court” and since this “Cour des Comptes” is presided over by judges (especially in such Maghreb countries as Algeria, Mauritania, Morocco and Tunisia), we have adopted the word “Court”. [...]

References:

Website of the Algerian Audit Court (Majlis al-Muhaasabah)
<http://www.ccomptes.org/dz/>

Additional information:

Website of Arab Organisation of Supreme Audit Institutions”
http://www.arabosai.org/en/recipient_member.asp?member_id=5

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

56

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

[...] The Algerian Audit Court enjoys independent management and is subject to public accountancy control. It is presided over by a president, assisted by a vice-president.

The "Comptroller General" ("Censeur Général"), assisted by a number of vice-comptrollers, acts as director of public prosecutions.

The organisation chart of the Algerian Audit Court comprises chambers endowed with national jurisdiction (numbering eight chambers) and chambers endowed with regional jurisdiction (numbering nine chambers), as well as a treasury and financial disciplinary chamber.

The national and regional chambers are divided into sections. The Algerian Audit Court has a clerk of the court's office entrusted to a head clerk of the court, assisted by assistant clerks.

It also comprises technical departments and administrative services whose activities, monitoring and co-ordination are carried out by the Secretary General, under the authority of the President of the Algerian Audit Court. The technical departments (the Department of Studies and Data Processing and the Department of Technical Analyses and Audit) are entrusted with providing the assistance necessary towards the fulfilment of the missions of the Algerian Audit Court and the enhancement of its performance. The Management and Resources Directorate is in charge of the management of the Court's budget, staff and material means. [...]"

References:

Website of the Algerian Audit Court (Majlis al-Muhaasabah)

<http://www.ccomptes.org.dz/>

Additional information:

Website of Arab Organisation of Supreme Audit Institutions"

http://www.arabosai.org/en/recipient_member.asp?member_id=5

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The appointment and the removal are done by the President, who is not obliged to justify the decision, he under takes.

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

They have a full time staff to run their office.”

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Their funds are part of the annual national budget.”

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The audit court was used to publish regular reports, which can be accessed through the Official Journal of the government.” However, the Rules changed under the current president, who asked to get the report as personal records.

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

Even if they do have right to initiate investigations, they cannot delve into sensitive issues, which involve high-ranking government officials.”

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

0

57a. In law, citizens can access reports of the audit agency.

YES | **NO**

Comments:

The reports of the court are not available to the general public, but only to certain bodies within the government.

[...] Audit Court Reports

The Algerian Supreme Audit Court drafts every year a report which it submits to the President of the Republic, together with a copy of the same to the legislative body.

The said report comprises the main observations and evaluations resulting from the proceedings of the Supreme Audit Court. The Supreme Audit Court is required, in addition, to draft a report on the draft law bearing establishment of the budget. Finally, the Supreme Audit Court may be consulted by the President of the Republic, the President of the legislative body, or any President of a parliamentary group, with regard to all files of major national importance, or proposals of draft laws with a significant financial incidence on the public treasury. [...]"

References:

Website of Arab Organisation of Supreme Audit Institutions"
http://www.arabosai.org/en/recipient_member.asp?member_id=5

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Publication is usually made in a reasonable time according to the local policy, but it cannot be done in less than a month. They are not publicly available."

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The reports of the audit court can be accessed via the Internet through the Official Journal of the government. The reports are not available to the public.”

References:

Interview with a former member of the government, who wishes to remain anonymous. Date: August 2007.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

100

58. In law, is there a national tax collection agency?

YES | NO

Comments:

The above-mentioned law establishes the DGI (Direction Générale des Impôts) as the national tax collection agency.

References:

Direction générale des Impôts”

Official website:

<http://www.impots-dz.org/>

Disposition No. 9 of 1997 regulating the authorities of the “Direction générale des Impôts”

Ministry of Finances

<http://www.impots-dz.org/ORGANIGRAMME/Arr%EAt%E9.htm>

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

88

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency has a sufficient number of professional and trained staff to fully fulfill its mandate.”

References:

Interview with an agent of the tax office, who wishes to remain anonymous.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency receives part of its funding from the taxes, which it collects.”

References:

Interview with an agent of the tax office, who wishes to remain anonymous.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

0

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

Interview with a free-lance journalist, who wishes to remain anonymous. Date: August 2007.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

Comments:

The above-mentioned laws establish the "Direction Générale des Douanes Algériennes" as the national customs agency and the "Direction Générale des Impôts" as the excise agency.

References:

Direction Générale des Douanes Algériennes"

Official website:

<http://www.douane.gov.dz/missionorg.html>

Law No. 79-07 of 21 July 1979

MINISTERE DES FINANCES

JO N° 30 du 24 Juillet 1979, Page 514

"Direction générale des Impôts"

Official website:

<http://www.impots-dz.org/>

Disposition No. 9 of 1997 regulating the authority of the "Direction générale des Impôts"
Ministry of Finances

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

88

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with a free-lance journalist, who wishes to remain anonymous. Date: August 2007.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with a free-lance journalist, who wishes to remain anonymous. Date: August 2007.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

0

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

Interview with a free-lance journalist, who wishes to remain anonymous. Date: August 2007.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

The above-mentioned article states that the Conseil des participations de l'Etat" oversees the structure of the board of the enterprise, the nature and scope of the activities of the company.

References:

Conseil des participations de l'Etat
Décret exécutif n° 01-283 of 24 September 2001
MINISTERE DE LA PARTICIPATION ET DE LA COORDINATION DES REFORMES
JO N° 55 du 26 Septembre 2001, Page 13
Article 3

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

15

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

The article (and the website) state that the council is composed by various ministers of the government.

Le Conseil est composé :

- Du ministre d'Etat, ministre de la justice,
- Du ministre d'Etat, ministre de l'intérieur et des collectivités locales;
- Du ministre d'Etat, ministre des affaires étrangères;
- Du ministre des finances;
- Du ministre des participations;
- Du ministre du commerce;
- Du ministre du travail et de la sécurité sociale;
- Du ministre de l'aménagement du territoire et de l'environnement;
- Du ministre chargé de l'industrie;
- Du ministre délégué auprès du ministre des finances, chargé de la réforme financière;
- Du ou des ministre (s) concerné (s) par l'ordre du jour.

References:

Official website of the Conseil des participations de l'Etat" (CPE)

<http://www.mppi.dz/conseil.asp>

Executive Order 01.04 of 20 August 2001

Article 8

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | **75** | 50 | 25 | 0

Comments:

The council is composed of several ministers and under guidance of the chief of the government". The office is provided by the "Ministry of Participations."

References:

Official website of the Ministère des Participations et de la Promotion des Investissements"
"Conseil des Participations de l'Etat"

<http://www.mppi.dz/conseil.asp>

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The so-called council is a mere shell or shadow entity”, as it is solely composed of ministers and under the full control of the government. It has no real identity of its own and therefore cannot be regarded as an “agency”.

References:

Official website of the Ministère des Participations et de la Promotion des Investissements”
“Conseil des Participations de l’Etat”
<http://www.mppi.dz/conseil.asp>

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The so-called council is a mere shell or shadow entity,” as it is solely composed of ministers and under the full control of the government. It has no real identity of its own and therefore cannot be regarded as an “agency.”

References:

Official website of the Ministère des Participations et de la Promotion des Investissements”
“Conseil des Participations de l’Etat”
<http://www.mppi.dz/conseil.asp>

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The so-called council is a mere shell or shadow entity”, as it is solely composed of ministers and under the full control of the government. It has no real identity of its own and therefore cannot be regarded as an “agency”.

References:

Official website of the Ministère des Participations et de la Promotion des Investissements”
“Conseil des Participations de l’Etat”
<http://www.mppi.dz/conseil.asp>

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

10

66a. In law, citizens can access the financial records of state-owned companies.

YES | **NO**

Comments:

The above-mentioned articles do not mention the right of ordinary citizens to the financial records of state-owned companies. Furthermore, they state that the information about the financial health of the companies has to be passed from the general assembly" of the company towards the CPE.

References:

Excutive Decree No. 01-283 of 24 September 2001
MINISTERE DE LA PARTICIPATION ET DE LA COORDINATION DES REFORMES
JO N° 55 du 26 Septembre 2001, Page 13
Articles 5 -11.

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | **25** | 0

Comments:

Little is known about the financial health of the state-owned companies, as the financial records are not available to the public and only to the CPE."

References:

Interview with former member of the government, who wishes to remain anonymous. Date: August 2007.

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Little is known about the auditing process of the state-owned companies, as the financial records are not available to the public and only to the CPE.”

References:

Interview with former government official, who wishes to remain anonymous. Date: August 2007

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The public cannot access the financial records of state-owned companies.”

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The public cannot access the financial records of state-owned companies.”

References:

Interview with government official, who wishes to remain anonymous. Date: August 2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

42
V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

88

67a. In law, anyone may apply for a business license.

YES | NO

Comments:

The Centre National du registre du commerce (CNRC) lists the requirements and conditions for obtaining a business license on its Web site.

References:

Centre national du registre du commerce” (CNRC)

Official website

<http://www.cnrc.org.dz/condition.htm>

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

The Web page of the Algerian National Center for Business Registration” lists the conditions for a complaint (opposition) process, in cases where a business license has been revoked or modified by the CNRC.

References:

Centre national du registre du commerce” (CNRC)
Official website
<http://www.cnrc.org.dz/oppositon.htm>

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with a free-lance journalist, who wishes to remain anonymous. Date: August 2007.

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with a free-lance journalist, who wishes to remain anonymous. Date: August 2007.

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

The above-mentioned laws regulate the quality standards for business products and consumer rights.

References:

Décret sur le contrôle de la qualité et la répression des fraudes

http://www.lexinter.net/DZ/decret_sur_le_controle_de_la_qualite_et_la_repression_des_fraudes.htm

Loi sur la consommation

http://www.lexinter.net/DZ/code_de_la_consommation.htm

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

The above-mentioned laws regulate business requirements with regards to the environment.

References:

Décret sur le contrôle de la qualité et la répression des fraudes

Law No. 83-03 of 5 February 1983 with regards to the environment

http://www.lexinter.net/DZ/decret_sur_le_controle_de_la_qualite_et_la_repression_des_fraudes.htm

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

The above-mentioned law regulates the public safety standards for businesses.

References:

Décret sur le contrôle de la qualité et la répression des fraudes

http://www.lexinter.net/DZ/decret_sur_le_controle_de_la_qualite_et_la_repression_des_fraudes.htm

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Interview with a free-lance journalist, who wishes to remain anonymous. Date: August 2007.

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Interview with a free-lance journalist, who wishes to remain anonymous. Date: August 2007.

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Interview with a free-lance journalist, who wishes to remain anonymous. Date: August 2007.

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁵⁹Anti-Corruption Law

70. Is there legislation criminalizing corruption?

100

70a. In law, attempted corruption is illegal.

YES | NO

Comments:

The above mentioned section of the law states that the attempt to bribe a government official is to be punished with imprisonment between two and ten years and a fine between 200,000 and 1,000,000 dinars

Furthermore Article 52 stresses that the attempt of all acts defined as corruption are to be punished.

References:

Law No. 06/01 for the prevention and the fight against corruption from 20 February 2006.
Title 4, Article 25, Section 1 & Article 52.

http://www.droit.mjustice.dz/loi_prev_lut_corrupt.pdf

Section N° 2 Algerian Penal Code

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

Comments:

The above mentioned articles cover the penalties for extortion in the current criminal law of Algeria.

References:

Criminal Code of Algeria
Chapter 3 – Crimes and offences against goods
Section 1 – Theft & Extortion
Articles 350 – 371

http://www.lexinter.net/DZ/crimes_et_delits_et_leurs_sanctions.htm

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

The above mentioned section of the law states that the offering of a bribe to a government official is to be punished with imprisonment between two and ten years and a fine between 200,000 and 1,000,000 dinars.

References:

Law No. 06/01 for the prevention and the fight against corruption from 20 February 2006. Title 4, Article 25, Section 1

http://www.droit.mjustice.dz/loi_prev_lut_corrupt.pdf

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

The above mentioned section of the law states that the acceptance of a bribe by a government official (or the offering of a bribe by a government official) is to be punished with imprisonment between two and ten years and a fine between 200,000 and 1,000,000 dinars.

References:

Law No. 06/01 for the prevention and the fight against corruption from 20 February 2006.
Title 4, Article 25, Section 2.

http://www.droit.mjustice.dz/loi_prev_lut_corrupt.pdf

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

The above mentioned article of the law states that the attempt to bribe a foreign government official or the official of a international public organization” is to be punished with imprisonment between two and ten years and a fine between 200,000 and 1,000,000 Dinar.

References:

Law No. 06/01 for the prevention and the fight against corruption from 20 February 2006.
Title 4, Article 28.

http://www.droit.mjustice.dz/loi_prev_lut_corrupt.pdf

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

The above mentioned articles of the law define the various acts of using public resources for private gain. These acts are to be punished with imprisonment between two and ten years and a fine between 200,000 and 1,000,000 dinars.

References:

Law No. 06/01 for the prevention and the fight against corruption from 20 February 2006.

Articles 29 – 33.

http://www.droit.mjustice.dz/loi_prev_lut_corrupt.pdf

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

The above mentioned article of the law states that the abuse of a public position by a government agent for his or her private advantage is to be punished with imprisonment between two and ten years and a fine between 200,000 and 1,000,000 dinars.

References:

Law No. 06/01 for the prevention and the fight against corruption from 20 February 2006.

Title 4, Article 33.

http://www.droit.mjustice.dz/loi_prev_lut_corrupt.pdf

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES | NO

Comments:

The above mentioned article states that money laundering (here the whitening of a crime”) is to be punished in the same manner as in the corresponding criminal law.

References:

Law No. 06/01 for the prevention and the fight against corruption from 20 February 2006.

Title 4, Article 42.

http://www.droit.mjustice.dz/loi_prev_lut_corrupt.pdf

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

The above mentioned articles define the conditions of associating with organized crime and cover the penalties for that offense.

References:

Criminal Code of Algeria

Chapter 6 – Crimes and offences against public safety

Section 1 – Association with male-factors and assistance to criminals

Article 176 – 182

http://www.lexinter.net/DZ/crimes_et_delits_et_leurs_sanctions.htm

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

The Algerian government council has given the mandate to combat corruption to the Inspection générale des finances (IGF), a division within the Bank of Algeria.

The above-mentioned Executive Decree from 1992 details the organization, structure and its original mandate of the IGF.

References:

Inspection générale des finances (IGF)
Website of the Bank of Algeria
<http://www.bank-of-algeria.dz/present.htm>

Executive Decree No. 92-32 of 20 January 1992
Ministry of Economy
JO N° 6 du 26 Janvier 1992, Page 148
Portant organisation des structures centrales de l'inspection générale des finances.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

19

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

The Inspection générale des finances" (IGF) is an integrated unit within the Bank of Algeria and under the Minister of Finances. This is in contrast to the provision of the law against corruption, which forees an "autonomous body".

References:

Décret exécutif n° 98-230 du 19 Rabie El Aouel 1419 correspondant au 13 juillet 1998 fixant les attributions et l'organisation de l'inspection générale des services fiscaux.
Chapter 2
<http://www.impots-dz.org/ORGANIGRAMME/jounoff.htm>

Law No. 06/01 for the prevention and the fight against corruption from 20 February 2006.
Title 3, Article 19.
http://www.droit.mjustice.dz/loi_prev_lut_corrupt.pdf
Inspection générale des finances (IGF)
Website of the Bank of Algeria
<http://www.bank-of-algeria.dz/present.htm>

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Inspection générale des finances (IGF) is largely ineffective, hierarchically and politically dependent on the Ministry of Finances. In media articles is even suggested that the IGF has its own corruption, ranging from manipulated reports to unmerited promotions of inspectors.”

References:

Interview with government official, who wishes to remain anonymous. Date: August 2007.

Forum Social Algérie
10 à 15 milliards de dollars sont engloutis par les pots-de-vin
by Madjid Makedhi
<http://fsadz.org/content.php?artID=865&op=53>

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The head of the IGF can easily be removed from his position by his superiors within the Ministry of Finance, should his actions be perceived as a threat to the political leadership in the country.”

References:

Interview with a government official, who wishes to remain anonymous. Date: August 2007.

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The agency IGF is largely ineffective, hierarchically and politically dependent on the Ministry of Finances. In media articles is even suggested that the IGF has its own corruption, ranging from manipulated reports to unmerited promotions of inspectors.”

References:

Interview with government official, who wishes to remain anonymous. Date: August 2007.

Forum Social Algérie
10 à 15 milliards de dollars sont engloutis par les pots-de-vin
by Madjid Makedhi
<http://fsadz.org/content.php?artID=865&op=53>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Given the widespread corruption within the various government agencies, the Inspection générale des finances (IGF) is hopelessly understaffed and its budget is too small.”

References:

Interview with a government official, who wishes to remain anonymous. Date: August 2007.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Given the widespread corruption within the various government agencies, the Inspection générale des finances (IGF) is hopelessly understaffed and its budget is too small.”

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency’s funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

Le Soir d'Algérie

Affaire BRC

Les chiffres d'un scandale

<http://www.lesoirdalgerie.com/articles/2006/10/21/article.php?sid=44713&cid=2>

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

Comments:

Given the widespread corruption within the various government agencies, the Inspection générale des finances (IGF) is hopelessly understaffed, its budget is too small and its powers too limited."

The above-mentioned article quotes Djilali Hadjadj, the president of the private organization "Association algérienne de lutte contre la corruption" (AACC) (Algerian organization against corruption). He states that the IGF is effectively blocked in accomplishing its mission, its powers are limited and there exists information reports about manipulated reports and corruption within the IGF itself.

"[...] Selon lui, l'Inspection générale des finances (IGF) ne travaille pas d'une manière cohérente, claire et souffre d'insuffisances en matière de moyens lui permettant d'accomplir sa mission. Pis encore, cet organisme de contrôle a été même bloqué. « Il y a eu même des rapports, nous le disons et nous l'assurons, qui n'ont pas été retranscrits d'une manière fidèle, il y a eu des rapports manipulés et même de la corruption au sein de l'IGF : des inspecteurs qui ont eu des promotions non méritées », a-t-il soutenu. La réforme de cette inspection, annoncée tout récemment par le ministre des Finances, risque, selon notre interlocuteur, de déchoquer d'autant que l'IGF ne sera pas détachée de la tutelle et que son indépendance est compromise. La seule garantie de l'indépendance de cette inspection reste, a-t-il souligné, sa réhabilitation en élargissant son champ d'action. Il faut également que son indépendance soit davantage affirmée. Cela concernera aussi la nouvelle agence gouvernementale de lutte contre la corruption. Cette agence, créée conformément à la loi du 20 février 2006 de lutte contre la corruption, doit, selon lui, jouir d'une indépendance totale. [...]"

References:

Interview with government official, who wishes to remain anonymous. Date: August 2007.

Forum Social Algérie

10 à 15 milliards de dollars sont engloutis par les pots-de-vin

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | **25** | 0

Comments:

The IGF (Inspection générale des finances) only takes on wrongdoers, who are not politically powerful enough in order to defend themselves against an investigation by the IGF.”

“The agency IGF is largely ineffective, hierarchically and politically dependent on the Ministry of Finances. In media articles, it is even suggested that the IGF has its own corruption, ranging from manipulated reports to unmerited promotions of inspectors.”

References:

Interview with government official, who wishes to remain anonymous. Date: August 2007.

Forum Social Algérie
10 à 15 milliards de dollars sont engloutis par les pots-de-vin
by Madjid Makedhi
<http://fsadz.org/content.php?artID=865&op=53>

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Because of its restrictions on personnel, budget and powers, the IGF (Inspection générale des finances) cannot react on citizens' complaints in a professional and swift manner.

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

Any complainant, who dares to report criminal acts of a highly-placed government official or a member of the state security forces to any agency, must fear serious repercussions, such as imprisonment, legal action for "defamation", kidnapping or assassination."

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

44
VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

58

74a. In law, there is a general right of appeal.

YES | NO

Comments:

All the decisions are made by the Tribunals (first instance). Both parties have the right of appeal at the courts level, and these decisions can also be appealed to the Supreme Court.

Il existe deux voies de recours, les recours ordinaires et extraordinaires Art 98-101/ 102-109/ 166:168 du code de procédure civil

References:

Judges. According to the Code de Procédure Penal, & Code de Procédure Civil.

http://www.joradp.dz/JO6283/1966/047/F_Pag.htm

http://www.joradp.dz/JO6283/1966/047/F_Pag.htm

http://www.joradp.dz/JO6283/1966/047/F_Pag.htm

http://www.joradp.dz/JO6283/1966/047/F_Pag.htm

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Penal Code and the Civil Process law of Algeria define very precisely the time table for the appeals process. The courts usually follow these time tables in a diligent manner.”

References:

Interview with an Algerian attorney, who wishes to remain anonymous.

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The costs for the appeals process are not very high and are indeed affordable.” However, an appeal is quite costly and unaffordable for members of the lower middle class when factoring in lawyers’ fees.

References:

Interview with an Algerian attorney, who wishes to remain anonymous. Date: August 2007.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

0

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Judgments by the courts are very often the result of pressure applied by the ruling political parties and the military and state security apparatus.

References:

Interview with an Algerian attorney, who wishes to remain anonymous. Date: August 2007.

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

25

76. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

The courts do rarely challenge the government with court decisions that would put the government's actions on hold. The courts rather 'follow the lead' of the government. This is especially true for criminal cases."

References:

Interview with an Algerian attorney, who wishes to remain anonymous. Date: August 2007.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

63

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

Article 138 – The judicial power is independent. It is exercised within the framework of the law.

References:

Algerian Constitution of 28 November 1996

Part 2, Chapter 3, Article 138

<http://www.geocities.com/CapitolHill/1078/econst2.htm>

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

The judges are not really independent, especially due to the fact that magistrates are appointed by the President of the Republic via the ‘High Council of Magistracy.’

References:

Interview with an Algerian attorney, who wishes to remain anonymous. Date: August 2007.

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | **NO**

Comments:

The assignment of cases is not specific and can lead to judges influencing and controlling the selection of cases.

References:

Code de procédure Civil algérien

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

All judges are protected by the law in the exercise of their functions. All the decisions with regard to a removal of a judge must be exercised by the Council of Discipline," which is a body within "Conseil Supérieur de la Magistrature". Only serious professional errors justify the removal of a judge.

References:

Loi 04-11 du 6 septembre 2004 portant statut de la magistrature.
Loi organique 04-12 fixant la composition et le fonctionnement du CSM.
Journal Officiel N° 17 de la République Algérienne du 14 Mars 2007.

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

There have been no reports on cases, where judges have been physically harmed because of adjudicating corruption cases.

References:

There have been no reports on cases, where judges have been physically harmed because of adjudicating corruption cases.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

There have been no reports of cases, where judges have been killed because of adjudicating corruption cases.

References:

There have been no reports of cases, where judges have been killed because of adjudicating corruption cases.

Interview with a member of the judiciary branch, who wishes to remain anonymous. Date: September 2007.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

71

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Normally racial bias do not play a role in court decisions. But during the trials following the “Black September” incidents, demonstrators from the Berber region were arrested by the police, then charged and sentenced with heavy verdicts.”

References:

Interview with an Algerian attorney, who wishes to remain anonymous. Date: August 2007.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Woman enjoy a full and equal status, in general but there is one field in which the gap between the Constitution and the reality on the ground is huge: The Algerian Family Code effectively assigns women the status of an inferior being” with terrible legal consequences with regards to divorce, heritage and domestic violence cases.

Law No 84-11 of June 9th, 1984 containing the Code of the Family

Art. 37. – the husband is responsible for:

- 1) to support his wife within his capabilities except in the case that she has abandoned her marital home.
- 2) to act in equity towards his wives if he has more than one.

Art. 38. – the wife has the right:

- to visit her prohibited [sic] parents and to receive them in accordance to the customs.
- to freely dispose of her funds.

Art. 39. – the wife is responsible:

- 1) to obey her husband and to respect him in his capacity as the head of the household.
- 2) to nurse his descendants if she is capable to do it and to bring them up.
- 3) to respect the parents of her husband and their close relatives.

References:

Interview with an Algerian attorney, who wishes to remain anonymous. Date: August 2007.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

Comments:

Legal Aid is provided automatically for defendants in criminal cases. Legal Aid was provided for the first time with the promulgation of the public order No. 71-57 of August 5th, 1971, amended by law No. 01-06 of May 22nd, 2001; this completes order No. 71-57."

References:

Interview with an Algerian attorney, who wishes to remain anonymous. Date: August 2007.

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

Legal aid is always available, but the appointed lawyers are usually young and without experience, with the consequence that

they very often lose their cases, when the prosecutors push for trial.”

References:

Interview with an Algerian attorney, who wishes to remain anonymous. Date: August 2007.

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Even with the relatively low costs for a trial, the expenses for attorneys can be very expensive. Often so-called middle class citizens have to spend a large part of their financial resources to afford the accumulated legal costs.”

References:

Interview with an Algerian attorney, who wishes to remain anonymous. Date: August 2007.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Even with the relatively low costs for a trial, the expenses for attorneys can be very expensive. Often so-called small business owners have to spend a large part of their financial resources to afford the accumulated legal costs.”

References:

Interview with an Algerian attorney, who wishes to remain anonymous. Date: August 2007.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

Algeria has a well-built system of courts, which are accessible for its citizens even in remote, rural areas.”

References:

Interview with an Algerian attorney, who wishes to remain anonymous. Date: August 2007.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The age of future police recruit is a predominant factor. The Algerian police tend to recruit men younger than 22 years. It should be noted that a significant number of recruits join the police force, because they know, that 'money can be made' there due to the widespread corruption within the police corps."

References:

Interview with a police officer, who wishes to remain anonymous. Date: August 2007.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

In general all the law enforcement agencies (police, gendarmerie, etc.) have a sufficient budget to carry out their operations.

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | **25** | 0

Comments:

Police investigations, which deal with petty crime, and normal day-to-day business are largely not influenced by political interest or interference from above. This is not the case in major corruption cases or anything that concerns vital issues of the political life.”

References:

Interview with a former police officer, who wishes to remain anonymous. Date: August 2007.

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

25

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | **NO**

References:

There is no broad mechanism that provides an independent agency jurisdiction over the national police and the other law enforcement agencies.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

An independent law enforcement agency, which acts upon citizens' complaints against the police or other law enforcement agencies, does not exist.

References:

Interview with government official who wishes to remain anonymous. Date: August 2007.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

[...] Role of the Police and Security Apparatus

The General Directorate for National Security (DGSN), or the national police force, falls under the control of the Ministry of Interior and has national jurisdiction. The Gendarmerie, under the Ministry of Defense, also perform police-like functions outside urban areas. Police were generally effective at maintaining order throughout the country. Low levels of corruption existed, especially in the customs police.

Impunity remained a problem. The government did not provide disaggregated public information on the numbers, infractions, or punishments of police, military, or other security force personnel. According to human rights attorneys, police officials, and local NGOs, the most frequent abuse of police authority occurred as a result of officers not following established guidelines for arrests. In January 2005, all security forces were provided a copy of a code of conduct establishing regulations for conduct and sanctions for abuses.

In March the DGSN director stated that as part of a national police internal crackdown on malfeasance, several DGSN officials had been arrested for embezzlement, use of public money for personal gain, and cronyism. In April the Judicial Police (the main body of the DGSN) brought official legal action against 10 police officers. Results had not been made public by year's end. In March the Gendarmerie officially announced that 4,200 gendarmes had been dismissed between 2000 and 2005 for lack of discipline and abuse of power. [...]"

References:

Judicial Police of the General Directorate for National Security"

Official website of the Algerian Police

<http://www.dgsn.dz/fr/index.php>

http://www.lexinter.net/DZ/crimes_et_delits_et_leurs_sanctions.htm Art 130

(loi n° 88-26 du 12 juillet 1988)(Art 120, 121, 124, 126)

U.S. State Department

Country Reports on Human Rights Practices – Algeria – 2006

Released by the Bureau of Democracy, Human Rights, and Labor

March 6, 2007

<http://www.state.gov/g/drl/rls/hrrpt/2006/78849.htm>

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

As it is in other government agencies, the corruption in law enforcement agencies are widespread. Therefore the judiciary police, as an example, has great difficulties investigating and eradicating corruption within the police."

Excerpt of the above-mentioned State Department report:

"[...] Role of the Police and Security Apparatus

The General Directorate for National Security (DGSN), or the national police force, falls under the control of the Ministry of Interior and has national jurisdiction. The Gendarmerie, under the Ministry of Defense, also perform police-like functions outside urban areas. Police were generally effective at maintaining order throughout the country. Low levels of corruption existed, especially in the customs police.

Impunity remained a problem. The government did not provide disaggregated public information on the numbers, infractions, or punishments of police, military, or other security force personnel. According to human rights attorneys, police officials, and local NGOs, the most frequent abuse of police authority occurred as a result of officers not following established guidelines for arrests. In January 2005, all security forces were provided a copy of a code of conduct establishing regulations for conduct and sanctions for abuses.

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References:

Interview with government official, who wishes to remain anonymous. Date: August 2007.

U.S. State Department
Country Reports on Human Rights Practices – Algeria – 2006
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<http://www.state.gov/g/drl/rls/hrrpt/2006/78849.htm>

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | **NO**

Comments:

While article 573 of the Criminal law procedures foresees a prosecution of government officials for committed crimes, the Charter for Peace & Reconciliation” prohibits any legal proceedings against members of the executive branch in connection with the civil war between 1992 and 2000.

[...] Article 45 – No legal proceedings may be initiated against an individual or a collective entity, belonging to any component whatsoever of the defense and security forces of the Republic, for actions conducted for the purpose of protecting persons and property, safeguarding the nation or preserving the institutions of the Democratic and Popular Republic of Algeria. The competent judicial authorities are to summarily dismiss all accusations or complaints. [...]

References:

Ordinance 06-01 from February 27th, 2006 with regards to the Charter for Peace and National Reconciliation

Article 573 of the Code for the Criminal Law Procedure

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

Comments:

While individual police officers are likely to be prosecuted in cases of financial corruption, any complaints of violation of human rights by security forces against Algerian citizens are still swept under the carpet. In that regard not much has changed since the end of the civil war.

Excerpt of the Ordinance for Peace and National Reconciliation:

[...] Article 45 – No legal proceedings may be initiated against an individual or a collective entity, belonging to any component whatsoever of the defense and security forces of the Republic, for actions conducted for the purpose of protecting persons and property, safeguarding the nation or preserving the institutions of the Democratic and Popular Republic of Algeria. The competent judicial authorities are to summarily dismiss all accusations or complaints. [...]

Excerpt of the State Department report:

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Impunity remained a problem. The government did not provide disaggregated public information on the numbers, infractions, or punishments of police, military, or other security force personnel. According to human rights attorneys, police officials, and local NGOs, the most frequent abuse of police authority occurred as a result of officers not following established guidelines for arrests. In January 2005, all security forces were provided a copy of a code of conduct establishing regulations for conduct and sanctions for abuses.

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References:

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<http://www.state.gov/g/drl/rls/hrrpt/2006/78849.htm>

Unrestrained powers: Torture by Algerias Military Security
Report by Amnesty International
10 July 2006
<http://web.amnesty.org/library/Index/ENGMDE280042006?open&of=ENG-DZA>

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
