



استقبال الجزائر
التعليم
التمكين

Algeria

Gender Justice & The Law

Copyright © 2018. All rights reserved.

United Nations Development Programme,
One UN Plaza, New York, NY, 10017, USA

This publication may be freely used for non-commercial, fair use purposes, with proper acknowledgment and attribution to UNDP. Any other use must be authorized in writing by UNDP.

This “Gender Justice & The Law” publication was developed by the United Nations Development Programme (UNDP) in collaboration with the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the United Nations Population Fund (UNFPA) and the United Nations Economic and Social Commission for West Asia (ESCWA).

The views and analysis in this publication do not necessarily reflect the views of the United Nations Development Programme, its Executive Board Members, the United Nations, any of its Member States or any of its affiliated organizations.

Cover picture: © UNFPA Algeria

Design and layout: Prolance FZC

ISBN:

The work on this publication was made possible with the support from Government of Japan, and donors contributing to the UN Global Focal Point for Police, Justice and Corrections, among others.

Algeria

Gender Justice

Assessment of laws affecting gender equality and protection against gender-based violence

TABLE OF CONTENTS

Glossary of Acronyms and Terms	6
Introduction	7
Overview	10
Protection from domestic violence and sexual violence	12
Honour crimes	13
Adultery and sex outside of marriage	13
Abortion for rape survivors	13
Female Genital Mutilation/Cutting (FGM/C)	13
Family matters	14
Inheritance	15
Nationality	15
Labour laws	15
Human trafficking	16
Sex work and anti-prostitution laws	17
Sexual orientation, gender identity, and related issues	17
Algeria: Key resources	18

ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	UN Committee on the Elimination of Discrimination against Women
ESCWA	Economic and Social Commission for West Asia
FGM/C	female genital mutilation / cutting
GBV	Gender-based violence
ILO	International Labour Organization
IOM	International Organization for Migration
NGO	Non-government organization
OECD	Organisation for Economic Co-operation and Development
SDGs	Sustainable Development Goals
UNDP	United Nations Development Programme
UNESCWA	United Nations Economic and Social Commission for West Asia
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commission for Refugees (UN Refugee Agency)
UNICEF	United Nations Children's Fund
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
WHO	World Health Organization
Arabic terms	
fatwa	Ruling or pronouncement on a point of Islamic law
'idda	The period a woman must observe after the death of her spouse or after a divorce during which she may not remarry
khalwa	Social mingling of men and women who are unrelated
khul'a	Divorce process initiated by the wife requiring return of her mahr
mahr	Mandatory payment by the groom or his father to the bride which then becomes her property
talaq	Repudiation; divorce process whereby the husband repudiates his wife
'urf	Custom
wali	Guardian
wilaya	Guardianship
zina	Unlawful sex, including adultery and sex between two persons neither of whom are married

INTRODUCTION

Scope

UNDP, in partnership with UN Women, UNFPA, and ESCWA, has conducted a study on Gender Justice and the Law to provide a comprehensive assessment of laws and policies affecting gender equality and protection against gender-based violence in the Arab states region.

The study is composed of an introductory piece that describes the background, rationale, analytical framework and methodology, and a total of 18 country profiles. Each country profile maps the country's key legislative and policy developments regarding gender justice.

This country profile presents the findings of the study relating to Algeria. It provides an analysis of whether the country's laws and policies promote or impede equality between women and men before the law, and whether they provide protection against gender-based violence.

This country profile includes analysis of the following areas of the law:

- Constitutional guarantees of gender equality and constitutional protections against gender-based violence
- Status of penal codes and whether the country has domestic violence laws that address gender-based violence
- Status of personal status codes and how they impact gender equality
- Status of nationality laws and whether they ensure that women and men enjoy equal rights in relation to citizenship
- Status of labour laws and whether they provide protection from discrimination and gender-based violence in the workplace

Methodology and acknowledgements

The study was conducted in two phases:

1. A literature review was conducted between January 2016 and June 2017 of the various laws, regulations, policies, and law enforcement practices related to gender justice in each of the 18 countries, which then formed the basis of draft country profiles.
2. Realizing the limitations of desk-based literature reviews, country validation processes for each of the draft country profiles were led by UN Country Teams and national consultants. Country validation processes took place between September 2017 and August 2018 to ensure the accuracy of each country profile. These sought the views of government partners and other key national stakeholders.

The Algeria country profile was reviewed by Ms. Nadia Aït Zai, lawyer and Director of the Information Centre on Women's and Children's Rights; the UNDP Country Office in Algeria; the Ministry of National Solidarity, Family and Status of Women; and the Ministry of Justice. Their contributions are gratefully acknowledged.

The literature reviews that formed the basis of the country assessment were authored by consultants John Godwin and Nadya Khalife. They also edited the final drafts for publication after feedback from national counterparts. Their insights and hard work are recognized with gratitude. Nadya Khalife and Amr Khairy translated the outputs of the study into Arabic and English. Gratitude is also extended to John Tessitore for assistance with copyediting in English.

ALGERIA



© UNFPA Algeria

The colour-coded representation below provides a comparison of the laws identified in the country profile with international human rights standards, the recommendations of the UN Committee on the Elimination of Violence against Women and country recommendations under the country's respective Universal Periodic Reviews.

Gender Justice & The Law

DOES THE LAW ENSURE GENDER EQUALITY AND PROTECTION FROM VIOLENCE?

YES

The law provides for gender equality and/or protection from gender-based violence and is substantially compliant with international standards. A green category does not indicate that the law is perfect or that gender justice in the relevant topic area has been fully achieved.

NO

The law does not provide for gender equality and/or there is no or minimal protection from gender-based violence.

Partly

Some gender justice aspects of the law have been addressed, but important gender inequalities remain.

No available data or inadequate information.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Algeria ratified CEDAW in 1996 and maintains reservations to Article 2 (policy measures), Article 15(4) (freedom to choose residence and domicile), Article 16 (equality in marriage and family life), and Article 29 (administration of the convention and arbitration of disputes).

Constitution

Article 32 of the 2016 Constitution states that all citizens are equal before the law and no discrimination shall prevail because of birth, race, sex, opinion, or any other personal or social condition or circumstance. Article 34 refers to equality of rights and duties of all citizens, men, and women.

NATIONALITY LAW

NATIONALITY

Women enjoy equality under the Nationality Code. Women and men have the same rights in relation to passing their nationality to a child and spouse.

CRIMINAL LAWS

Domestic violence

Domestic violence was criminalized by Law No. 15-19 of 30 December 2015 amending the Penal Code. Penalties for some Penal Code offences involving spouses were increased. However, there is no law on domestic violence prevention measures, such as protection orders.

Abortion for rape survivors

Abortion is prohibited by Articles 304–313 of the Penal Code, including for women who have been raped. A fatwa was issued in 1998 permitting abortion for rape survivors in some cases, and the public health law allows abortion if it is essential for a woman's mental

Female Genital Mutilation / Cutting (FGM/C)

FGM/C is not commonly practised in Algeria. Some cases may exist in migrant communities. There is no legal prohibition against FGM/C.

Marital rape

Marital rape is not criminalized.

Sexual harassment

Sexual harassment is criminalized by Articles 333 bis and 341 bis of the Penal Code.

Human trafficking

All forms of human trafficking are criminalized by Article 303 of the Penal Code. However, Algeria does not have a comprehensive anti-trafficking law that also addresses prevention and protection measures.

Rape (other than of a spouse)

The Penal Code No. 66-156 of 1966 criminalizes rape. Rape is considered a crime against the family and morals. The penalty for rape is 5–10 years' imprisonment. If the rape was committed against a minor, the sentence is imprisonment for 10–20 years.

Honour crimes: Mitigation of penalty

Article 279 of the Penal Code provides that a person who kills or injures his or her spouse benefits from mitigating circumstances if his or her spouse was caught in an act of adultery.

Sex work and anti-prostitution laws

Prostitution is prohibited by Articles 343–347 of the Penal Code.

Exoneration by marriage

Article 326 of the Penal Code exonerates a man who abducts a girl under 18 without violence, threat or deception if he later marries her. If the victim marries her abductor, the offender can only be prosecuted if the marriage is annulled.

Adultery

Adultery is an offence under Article 339 of the Penal Code.

Sexual orientation

Homosexual conduct between consenting adults is a criminal offence under Articles 333 and 338 of the Penal Code. Anyone guilty of a homosexual act is punishable with between two months and two years' imprisonment and a fine.

PERSONAL STATUS LAWS

Minimum age of marriage

The Family Code sets the age of marriage for males and females at 19 years. However, in exceptional circumstances the judge may approve a marriage for those under 19 years.

Male guardianship over women

Since the 2005 revision of the Family Code, the role of male guardian is limited to a symbolic role in approving the marriage contract. A bride's wali (guardian) must be present when she concludes her marital contract. A wali cannot force a woman to marry someone against her will or oppose the marriage.

Marriage and divorce

Both spouses can stipulate conditions in the marriage contract. A husband must maintain his wife. Women do not enjoy equal rights in divorce. A man can seek divorce without grounds. If a woman seeks divorce with no grounds and no consent, compensation must be paid to the husband.

Polygamy

Polygamy is permitted by the Family Code. Polygamy is subject to the wife's approval and the certification by a court of a "justified motivation" for the marriage and that the husband has adequate financial means to provide support.

Guardianship of children

The father has guardianship over his children including after divorce. However, in some circumstances the mother may also act as guardian.

Custody of children

In the case of divorce, custody is granted to the mother unless it is not considered to be in the best interests of the child. A mother may be granted custody of her sons until they reach the age of ten and of her daughters until they reach the age of marriage.

Inheritance

The Family Code applies Sharia rules of inheritance. Women have a right to inheritance, but in many cases receive less than men. Daughters receive half the share that sons receive.

LABOUR LAWS

Right to equal pay for the same work as men

Article 84 of the Labour Code requires employers to pay equal remuneration to male and female employees.

Domestic workers

Domestic workers have legal protections under the Labour Code and the national social protection scheme.

Dismissal for pregnancy

There is no provision in the Labour Code specifically prohibiting the termination of employment based on pregnancy. However, such a case may be considered as unlawful discrimination or an unfair dismissal.

Paid maternity leave

Women have the right to 14 weeks (98 days) maternity leave in line with international standards as stipulated by ILO Convention No. 183 at the full normal pay rate, which is paid by the government according to the Social Insurance Law, Law No. 83-II of 1983, Articles 28 and 29.

Legal restrictions on women's work

Most restrictions on the employment of women in industries based on gender or sex have been removed. Article 29 of the Labour Code prohibits employing women for night work, unless a special exception has been granted.

OVERVIEW

Legal framework

International laws

Algeria ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1996 and maintains reservations to Article 2 (policy measures), Article 15(4) (freedom to choose residence and domicile), Article 16 (equality in marriage and family life), and Article 29 (administration of the convention and arbitration of disputes). The reservations made to Articles 2, 15(4) and 16 relate to the Family Code.

Algeria ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) in 2016, with interpretive declarations.¹

Algeria acceded to the Convention on the Political Rights of Women in 2004 and signed the agreement to establish the Arab Women's Organization in 2003.

Domestic laws

The main laws relevant to gender justice are:

- Constitution of the Algerian Democratic and Popular Republic of 1996²
- Penal Code of 1966, as amended in 2014 and 2015
- Family Code of 1984, as amended in 2005³
- Labour Code of 1990, as amended in 2008
- Organic Law on Political Parties, 1997
- Nationality Code, 2005

Sharia law and customary law play important roles in family law and criminal law, especially involving women and girls. The Civil Code stipulates in Article 1(2) that "the law shall apply to all matters dealing with its provisions in its language or its content; and in the absence of any legal disposition, the judge pronounces himself according to the principle of Islamic law and, if necessary, according to customary law."

The Penal Code, amended in 2014, defines the criminal offence of discrimination as follows:

Any distinction, exclusion, restriction, or preference based on sex, race, colour, descent, or national or ethnic origin, the purpose or effect of which is to hinder or impair recognition, enjoyment or exercise, on equal terms, of fundamental human rights and freedoms in the political, economic, social, cultural, and other fields of public life.⁴

The penalty for discrimination is between six months and three years in prison and a fine of between 50,000 and 150,000 Algerian Dinars (DA).⁵

Algerian Constitution

The Constitution enshrines the principles of equality before the law and non-discrimination. Articles of the Constitution relevant to gender justice include:

- All citizens are equal before the law. No discrimination shall prevail because of birth, race, sex, opinion, or any other personal or social condition or circumstance (Article 32).

¹ Presidential Decree ratifying the Maputo Protocol, published 27 September 2016.

² The Constitution of 1996 was amended in 2002 by Law No. 02-03 of 10 April 2002, Law No. 08-19 of 15 November 2008, and Law No. 16-01 of 6 March 2016.

³ Ordinance No. 05-02 of 27 February 2005 amending and supplementing the 1984 Family Code.

⁴ Penal Code of 1966, Art. 295 bis (1), as amended by Law No. 14-01 of 4 February 2014.

⁵ Ibid, Art. 295 bis (1).

- The aim of the institutions (of the Algerian Republic) is to ensure equality of rights and duties of all citizens, men and women, by removing the obstacles that hinder the progress of human beings and impede the effective participation of all in the political, economic, social, and cultural life (Article 34).
- The State works to promote parity between men and women in the labour market (Article 36).
- Fundamental human and citizen's rights and liberties are guaranteed. They are a common heritage of all Algerians, men and women, whose duty is to transmit it from one generation to the next in order to preserve it and keep it inviolable (Article 38).
- Individual or associative defence of the fundamental human rights and individual and collective liberties is guaranteed (Article 39).
- The State guarantees the inviolability of the human person. Any form of physical or moral violence or breach of dignity is forbidden (Article 40).

Policy framework

The National Council on Family and Women was established in 2006 and has 48 members. It develops and evaluates programmes addressing the needs of women, conducts research, and provides advice on legislation and policy affecting women.

The National Strategy to Combat Violence Against Women was introduced by the Delegate Ministry for the Family and the Status of Women in 2007. The National Strategy recommended establishment of centres for victims of violence. It also called for new mechanisms for the registration of complaints by women, the establishment of special police units to refer victims to shelters, a standard protocol on handling gender-based violence cases, and the training of female officers on gender-based violence.

A 2008 National Strategy for the Promotion and Integration of Women includes combating gender-based violence as a core principle.

In 2016, a presidential decree established the inter-ministerial Anti-trafficking Committee under the auspices of the Prime Minister's office. The Committee coordinates implementation of the national Anti-trafficking Action Plan.

Legal and support services

Algeria's National Strategy to Combat Violence against Women includes the following interventions and services:

- Security and protection
- Appropriate care by health workers
- Legal protection and legal assistance
- Mobilization and community sensitization/awareness
- Self-empowerment of girls and women and reintegration in society and the economy
- Protection of young girls and adolescents against gender-based violence⁶

The Ministry of National Solidarity, Family and Status of Women operates two national shelters that receive women and girls in difficult situations and provides for their psychological support, health and moral care, and their reintegration into the family and workforce. In addition, the Ministry also operates reception centres for adolescent girls under the age of 18 and centres for the elderly that receive women who are older than 60 years. These centres are organized and operated in accordance to an implementing decree.

Many NGOs, including Women in Distress "SOS" and Rassemblement Contre la Hogra et pour les Droits des Algériennes (RACHDA),⁷ also operate shelters. The Wassila Network and Balsam Network provide legal and psychological assistance.

Algeria's Constitution guarantees legal assistance to vulnerable persons.⁸ Legal protections against gender-based violence were strengthened in 2015 as a result of amendments to the Penal Code. These amendments may help to generate greater community confidence in the law and encourage survivors of violence to access the justice system.

⁶ National Strategy to Combat Violence against Women, <http://gbvaor.net/wp-content/uploads/sites/3/2015/04/Strategie-Nationale-de-lutte-contre-la-violence-a-legard-des-femmes-Algeria.pdf>.

⁷ The word "hogra" is Algerian Arabic. It means to show contempt or to insult to with the intent to injure; to condone violence against those who are forgotten.

⁸ Constitution, Art. 57.

PROTECTION FROM DOMESTIC VIOLENCE AND SEXUAL VIOLENCE

In 2015, domestic violence was criminalized. New offences were inserted in the Penal Code and penalties for some Penal Code offences involving spouses were increased.

The Penal Code criminalizes verbal or emotional abuse, even if it does not result in physical injury. New criminal offences in the Penal Code include:⁹

- Deliberately causing injury or death to a spouse and repeated verbal or emotional violence that affects the dignity of the victim or affects her physical or emotional health.¹⁰
- A husband who deliberately abandons his wife for a period exceeding two months for no serious reason.¹¹
- Anyone who uses any form of coercion or intimidation against his wife to dispose of her property or financial resources.¹²
- Anyone who harasses a woman in a public place verbally with any act, statement, or sign that infringes on her modesty.¹³

The amendments to the Penal Code introduced heavier sentences in cases where the victim of an assault is a current or ex-spouse. Penalties for domestic violence include life imprisonment if violence results in the death of the victim and 20 years if the assault results in a permanent disability.

Other penalties range from fines of 50,000 to 500,000 DA and imprisonment up to ten years, depending on the degree of violence and the status of the survivor (for example, if she is a minor or if the violence resulted in an illness or a disability). An assault of a spouse that causes illness or incapacity for work for fewer than 15 days is punished by a prison term of up to three years, and a fine.¹⁴ The linking of the penalty to the degree of physical injury caused by the assault means that evidence from medical practitioners is required to determine sentences. A person claiming domestic abuse must visit a forensic doctor for an examination to document injuries.

The 2015 amendments also increased the penalties for existing sexual harassment offences, including acts in public or in the workplace, with imprisonment and a fine.¹⁵ However, the amendments allow the offender to escape punishment or to receive a reduced sentence if the victim pardons the perpetrator.¹⁶ In cases of psychological and economic violence and of physical violence that do not lead to permanent disabilities, the victim's pardon results in the prosecution being dropped.

The establishment of a process for obtaining a protection order or a restraining order to prevent future incidents of violence is programmed within the plan of the Ministry of National Solidarity, the Family and Status of Women as well as the work of the National Committee for the Protection of Women from Violence at the ministerial level. The protection of victims of crimes that are subject to prosecution is addressed in the Law on Criminal Procedures.¹⁷

Rape

The word "rape" is not clearly defined in the Penal Code. The criminal offence is referred to as "undermining morals." Rape is considered a crime against the family and morality. The crime of rape can only be proved after medical expertise has been used.

The penalty for rape is between five and ten years' imprisonment. If the rape was committed against a minor, the sentence is imprisonment is between ten and twenty years.¹⁸

Marital rape is not recognized or criminalized in the Penal Code.

Indecent assaults

Other forms of sexual assault can be prosecuted as 'indecent assaults', with penalties varying depending on the age of the survivor and whether violence was involved. Indecent assaults committed with violence or against a child under 16 years is punished with five to ten years' imprisonment.¹⁹ The penalty increases to ten to twenty years if committed with violence against a child under 16.²⁰ Increased penalties also apply if the perpetrator is an ascendant or has authority over the survivor, is a public

9 Law No. 15-19 of 30 December 2015 amending the Penal Code.

10 Penal Code, Arts. 266 bis, 266 bis 1.

11 Ibid., Art. 330.

12 Ibid., Art. 330 bis.

13 Ibid., Art. 333 bis 1.

14 Ibid., Art. 442.

15 Ibid., Art. 341 bis.

16 Ibid., Art. 226 bis, 266 bis, 330 bis.

17 Law No. 15-02 of 23 July 2015, Arts. 65 bis 19 to 65 bis 28.

18 Penal Code, Art. 336.

19 Ibid., Art. 334.

20 Ibid., Art. 335.

official, or is a religious authority.

Abduction

Abduction or kidnapping is an offence under the Penal Code. In some cases, the law provides for exoneration of an abductor of a child if he marries his victim. The Penal Code provides that a person who, without violence, threat, or deception, abducts or removes a minor under 18 years or attempts to do so will be punished by one to five years' imprisonment and a fine of between 500 and 2000 DA.²¹ If the victim marries her abductor, the offender can only be prosecuted if the marriage is annulled. The marriage makes public prosecution subject to the complaint of the person who has the right to annul the marriage. The abductor is not sentenced until after the annulment ruling.

Under the Family Code, marriage is based on the primary principle of the mutual satisfaction of the spouses.²² This principle applies to an abducted child who marries her abductor. According to Article 33 of the Family Code, the marriage is invalid if both spouses are not satisfied. The dissatisfaction of the abductee gives her the right to request an annulment and the right to complain of abduction. In the case of the abductee's consent, under the criminal law there is no offence because the abducted child is considered to have voluntarily escaped with the offender.

HONOUR CRIMES

A person who kills or injures his or her spouse benefits from mitigating circumstances if his or her spouse was caught in an act of adultery.²³

ADULTERY AND SEX OUTSIDE OF MARRIAGE

Adultery is punishable with imprisonment for one to two years.²⁴ Consensual sex between an adult man and adult woman neither of whom is married is not criminalized.

ABORTION FOR RAPE SURVIVORS

Health Law No. 18-11 states that abortion is allowed to protect the health of the mother when her life or emotional and psychological balance is threatened by pregnancy.²⁵ A pregnancy resulting from rape can be aborted to preserve the health of the woman since rape can lead to emotional and psychological imbalance.

FEMALE GENITAL MUTILATION/CUTTING (FGM/C)

There is no legal prohibition against FGM/C, but instances of the practice are not reported in Algeria.

²¹ Ibid., Art. 326.

²² Family Code, Art. 9.

²³ Penal Code, Art. 279. "Murder, wounding, and beating shall be subject to excuse if committed by one spouse against the other spouse or against his/her partner at the moment of surprising them in the act of adultery."

²⁴ Ibid., Art. 339.

²⁵ Health Law No. 18-11 of 2 July 2018, Art. 77.

FAMILY MATTERS

The Family Code was revised in 2005 to provide women with increased rights in marriage and divorce.²⁶ The amendments also give judges greater authority to intervene in urgent matters related to custody, visitation rights, residence, and maintenance.²⁷

Marriage

The Family Code sets the age of marriage for males and females at 19 years. In exceptional circumstances, however, the judge may approve a marriage for those under 19 years. A female minor's guardian cannot give her in marriage without her consent. Since the 2005 revision of the Family Code, the role of male guardian has been reduced to a symbolic role in approving the marriage contract. A bride's *wali* (marriage guardian chosen by the bride, usually her closest male relative) must be present when she concludes her marital contract.²⁸ A *wali* cannot force a woman to marry someone against her will or oppose the marriage. The consent of both husband and wife is required to the marriage.

Polygamy is legal, subject to conditions.²⁹ The wife must approve the husband taking a new wife. The court must certify that there is "justified motivation" behind the decision to take more than one wife, that the man is able to take care of an additional spouse, and that all of the spouses involved consent to the marriage.

Divorce

There are four types of divorce:

- 1) Divorce by the husband's will.
- 2) Divorce at the request of the wife based on the grounds for divorce specified in Article 53 of the Family Code.
- 3) Divorce by mutual consent of spouses.
- 4) *Khul'a* divorce at the request of the wife without the need to provide a reason.

A woman can file for divorce on a number of specified grounds.³⁰ A woman has the right to compensation if the reason for the divorce is that her husband is found to be abusive.³¹ The wife has the right to appropriate compensation, in addition to retaining all her rights resulting from the dissolution of marriage.

If a wife seeks divorce without providing grounds and without the husband's consent, the wife pays compensation to the husband, which should not exceed the amount of the dowry.³²

Guardianship and custody of children

Article 87 of the Family Code gives the father guardianship rights until his death, and then to the mother thereafter. In a case of divorce, guardianship is settled by the judge for the person who has custody.

Priority in relation to custody is addressed by Article 64 of the Family Code. The mother is placed first, followed by the father, the maternal grandmother, then the maternal aunt, then the paternal aunt, and then relatives to the closest degree. A mother is granted custody of her sons until they reach the age of ten and of her daughters until they reach the age of marriage. The parent with custody (*hadana*) is responsible for the education of the child in the religion of the father, for schooling, and for the maintenance of moral and physical health.

The Family Code provides that if custody is in favour of the mother, the father is obliged to provide a home or financial compensation.³³ The woman and her children should remain in the marital home until a judicial ruling is issued regarding housing.³⁴

Divorced women who have custody of children have the right to maintenance. If the divorced husband fails to provide financial

²⁶ Family Code, Law No. 84-11 of 1984, amended by Ordinance 05-02 of 2005.

²⁷ Ministry of National Solidarity, Family and the Status of Women, National Report of the People's Democratic Republic of Algeria, Beijing + 20, <http://www.escwa.org.lb/sites/beijingplus20/docs/AlgeriaAR.pdf>.

²⁸ Family Code, Art 11.

²⁹ *Ibid.*, Art. 8.

³⁰ *Ibid.*, Art. 48.

³¹ *Ibid.*, Art. 52.

³² *Ibid.*, Art. 54.

³³ *Ibid.*, Art. 72.

³⁴ *Ibid.*

support, financial assistance for maintenance and child support may be paid out of a special government fund to meet the needs of divorced women.³⁵

INHERITANCE

Inheritance is governed by the Family Code, which is based on Sharia law. Women have the legal right to inherit property according to the rules of inheritance based on Sharia principles.

NATIONALITY

Women enjoy equality under the Nationality Code. Women and men have the same rights in relation to passing their nationality to a child or spouse.³⁶

LABOUR LAWS

Entering employment

The development of Algerian society has led to the entry of women into various fields of work, in partnership with men, in accordance with the amendments to the Algerian Constitution of 2016.

The Penal Code prohibits discrimination on the basis of sex in recruitment, except in cases where the sex of the worker is a fundamental prerequisite for the exercise of work or professional activity.³⁷ The Penal Code also prohibits discrimination in recruitment on the basis of a worker's state of health or disability, subject to exceptions.

Article 29 of the Labour Code of 1990 prohibits employing women for night work, unless a special exception has been granted.

Remaining in employment

There are legal protections for women against workplace discrimination. The Labour Code of 1990 prohibits any provision in an employment contract or collective agreement that gives rise to discrimination in employment, remuneration, or working conditions on the grounds of sex, marital situation, or family relations (among other grounds).³⁸

The Penal Code prohibits discrimination in employment and other areas of life. Individuals and companies may be liable under the Penal Code for acts of discrimination. Individuals may be punished with between six months and three years in prison and a penalty between 50,000 and 150,000 DA.³⁹ Without prejudice to the penalties applicable to its directors a corporate legal person that commits an act of discrimination shall be punished by a fine of 150,000 to 750,000 DA.⁴⁰

The Labour Code requires employers to pay equal remuneration to male and female employees who perform work of equal value without discrimination.⁴¹

Women have the right to 14 weeks (98 days) maternity leave at the full normal pay rate, which is paid by the government through

35 Law No. 15-01 of 4 January 2015 on the Alimony Fund.

36 Ordinance No. 05-01 of 27 February 2005 amending the Code of Algerian Nationality.

37 Penal Code, Arts. 295 bis (1) and (2).

38 Labour Code of 1990, Art. 17.

39 Penal Code, Art. 295 bis (2).

40 Ibid.

41 Labour Code of 1990, Art. 84.

the social insurance system.⁴² This complies with the standards set by the International Labour Organization.

There is no provision in the Labour Code specifically prohibiting the termination of employment based on pregnancy or for being on maternity leave. However, such a case may be considered as an unfair dismissal and therefore unlawful under the general provisions of the Labour Code.⁴³ Depending on the circumstances, it may also be considered an offence of discrimination under the Penal Code.

Domestic workers have a number of legal protections. They are covered by the national social protection scheme under the Social Security Law regulations; and they are protected by the Labour Code, which is a general law for all workers, whether at the level of private houses, companies, or institutions.

Sexual harassment in the workplace

The Penal Code criminalizes sexual harassment with imprisonment or a fine.⁴⁴ Sexual harassment is defined by the Penal Code as abusing the authority conferred by a person's function or profession in order to threaten, impose constraints, or exercise pressure on another person for the purpose of obtaining sexual favours.⁴⁵ It also includes harassment in public places, which covers cases of workplace sexual harassment where there is an abuse of authority.

Prison sentences apply if the harassment offence is committed in the workplace under aggravating circumstances. These include cases where the victim is under 16 years of age; the offender has taken advantage of the victim's vulnerability, ill-health, infirmity, or physical or mental impairment; the victim is pregnant; the offence is committed in the presence of minors; or the victim is threatened with a weapon.

HUMAN TRAFFICKING

Trafficking is addressed in the Penal Code.⁴⁶ Trafficking in persons is defined by the Penal Code as the recruitment or transfer of more than one person by threat or force, kidnapping, deceit, the use of power to abuse their weakness, or the offer and receipt of money or gifts for the purpose of exploitation.⁴⁷

The term "exploitation" is defined to include prostitution and other forms of sexual exploitation, begging, forced labour, slavery or practices similar to slavery, and the removal of organs.

Trafficking in persons is punishable with three to ten years' imprisonment and a fine between 300,000 and 1 million DA. The punishment and fines are increased to five to fifteen years in prison and 500,000 to 1.5 million DA if the victim is vulnerable through age, illness, or physical or mental impairment and the disadvantages are known to the perpetrator.⁴⁸

The buying and selling of children under the age of 18 years is punishable by terms of three to twenty years' imprisonment for individuals and groups.⁴⁹

The Penal Code defines comprehensive penalties for human trafficking offences, but does not address measures to prevent trafficking or provide protective mechanisms for survivors of trafficking.

42 Social Insurance Law, Law No. 83-11 of 1983, Arts. 28, 29.

43 Labour Code of 1990, Arts. 73(3), 73(4).

44 Penal Code, Arts. 333 bis, 341 bis.

45 Ibid.

46 Ibid., Arts. 303 bis (4)–303 bis (15).

47 Ibid., Art. 303 bis (4).

48 Ibid.

49 Law No.14-01 of 2014.

SEX WORK AND ANTI-PROSTITUTION LAWS

Prostitution is illegal under the Penal Code. It is an offence to publicly solicit for sex or debauchery through gestures, words, writings, or by any other means.⁵⁰

The Penal Code also prohibits:⁵¹

- aiding, assisting, or protecting the prostitution of others in any way, or soliciting for sex;
- sharing the proceeds of another's prostitution or receiving money from a person who habitually engages in prostitution;
- living with a person who habitually engages in prostitution;
- being in a habitual relationship with one or more persons engaged in prostitution to support their lifestyle;
- acting as an intermediary between persons engaged in prostitution or debauchery and persons who exploit or remunerate the prostitution or debauchery of others;
- hindering acts of prevention, control, assistance, or rehabilitation for people engaged in prostitution through threats, pressure, or any other means.

It is also an offence to keep, manage, operate, finance, or contribute to the financing of an establishment for the purpose of prostitution.⁵²

The Penal Code also prohibits procuring or enticing a person into prostitution. These offences are punishable by a fine and imprisonment for two to five years. Punishment may increase from five to ten years when the offence is committed against a minor under the age of 18 or when the offense is accompanied by threats, duress, violence, assault, abuse of authority, or fraud.

SEXUAL ORIENTATION, GENDER IDENTITY, AND RELATED ISSUES

Homosexual conduct of men or women is an offence and considered an "outrage to public decency." Article 333 of the Penal Code provides:

When the outrage to public decency has consisted of an act against nature with an individual of the same sex, the penalty is imprisonment of between six months and three years, and a fine of between 1,000 and 10,000 DA.

Article 338 of the Penal Code provides:

Anyone guilty of a homosexual act is punishable with imprisonment of between two months and two years, and with a fine of 500 to 2,000 DA. If one of the participants is under 18 years, the punishment for the older person can be raised to three years' imprisonment and a fine of 10,000 DA.

There are no specific laws protecting people from hate crimes, violence, or discrimination where it occurs because of sexual orientation or transgender status. There are no legal protections for, or legal recognition of, transgender people.

Although prosecution for homosexual conduct is rare, criminalization of homosexual conduct adds to stigma and the vulnerability to violence. Many homosexual people fear reprisal from their families or harassment from authorities.

50 Penal Code, Art. 347.

51 Ibid., Art. 343.

52 Ibid., Art. 346.

ALGERIA: KEY RESOURCES

Legislation

Penal Code, Ordinance No. 66-156 of 8 June 1966.

Available from http://www.wipo.int/wipolex/en/text.jsp?file_id=228298.

Family Code, Law No. 84-11 of 1984, amended by Ordinance 05-02 of 27 February 2005.

Available from http://www.droit.mjustice.dz/code_famille.pdf.

Labour Code, Law No. 90-11 of 21 April 1990, as amended. Available from <ftp://pogar.org/LocalUser/pogarp/other/laws/labor/labor-alg-90-e.pdf>.

Nationality Code, Ordinance 05-01 of 27 February 2005 supplementing Ordinance No. 70-86 of 15 December 1970. Available from <http://www.refworld.org/docid/3ae6b4d714.html>.

Constitution of the Algerian Democratic and Popular Republic, Law No.16-01 of 6 March 2016.

Available from <http://www.conseil-constitutionnel.dz/index.php/fr/conseil-constitutionnel/les-constitutions-de-l-algerie>.

Law No. 15-19 of 30 December 2015, amending the 1966 Penal Code.

Selected references

Algerian Democratic and Popular Republic, Ministry of Family Affairs, *National Strategy to Fight Violence against Women*. Available from <http://gbvaor.net/wp-content/uploads/sites/3/2015/04/Strategie-Nationale-de-lutte-contre-la-violence-a-legend-des-femmes-Algeria.pdf>.

BALSAM, Counseling Centres National Network on Violence against Women, *Violence against Women in Algeria: Second Results (2010)*, Available from http://ciddef-dz.com/pdf/autres-publications/balsam_anglais.pdf.

Organisation for Economic Co-operation and Development, *Social Institutions Gender Index: Algeria (2014)*. Available from <http://www.genderindex.org/country/algeria>.

People's Democratic Republic of Algeria, Ministry of National Solidarity, Family and the Status of Women, *National Report of the People's Democratic Republic of Algeria, Beijing + 20 (2014)*. Available from <http://www.escwa.org.lb/sites/beijingplus20/docs/AlgeriaAR.pdf>.

Protection Project, *A Human Rights Report on Trafficking in Persons, Especially Women and Children: Algeria (2010)*. Available from <http://www.protectionproject.org/wp-content/uploads/2010/09/Algeria.pdf>.

United Nations, *CEDAW Committee Concluding Observations of the Committee on the Elimination of Discrimination against Women: Algeria (2 March 2012)*, CEDAW/C/DZA/CO/3-4. Available from <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-DZA-CO-3-4.pdf>.

United Nations Children's Fund, *Algeria, MENA Gender Equality Profile (2011)*. Available from <http://www.genderindex.org/country/algeria>.

United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), *Spring Forward for Women Programme: Algeria*. Available from <http://spring-forward.unwomen.org/en/countries/algeria>.

United Nations Human Rights Council, *UPR National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/2: Algeria (20 February 2017)*, A/HRC/WG.6/27/DZA/1.

United Nations, *Human Rights Council Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo, on her mission to Algeria (19 May 2011)*. Available from <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-26-Add3.pdf>.

United Nations, *Human Rights Council Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Yakin Ertürk: mission to Algeria* (13 February 2008). Available from <http://www.refworld.org/docid/47ce626c2.html>.

United Kingdom Home Office, *Country Policy and Information Note, Algeria: Sexual orientation and gender identity* (2017). Available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646716/algeria_sexual_orientation_gender_identity_v2_0_september_2017.pdf.



Algeria
Gender Justice
& The Law