

Situation report on discriminations against women in Algeria



INTERNATIONAL AND REGIONAL INSTRUMENTS

CEDAW and Optional Protocol

1996
Signature

2009
Last report

Council of Europe Convention on preventing and combating violence against women and domestic violence (known as Istanbul Convention)

has not received an invitation to accede

Protocol to the African Convention on the Rights of Peoples (known as the Maputo Protocol)

2016
Ratified

International Covenant on Civil and Political Rights

1989
Ratified

International Covenant on Economic, Social and Cultural Rights

1989
Ratified

MAIN OBSTACLES TO GENDER EQUALITY DE JURE AND DE FACTO



The Family Code, adopted in 1984 and inspired by Sharia law, discriminates against women, who are in a permanent system of male guardianship. The main discriminations concern marriage, polygamy, divorce, parental custody and inheritance.



Abortion is criminalised and only allowed in the case of therapeutic abortion, something that puts women who want to enjoy the right to abortion in situations that are dangerous to their health.



There is no comprehensive law criminalising violence against women that encompasses the four pillars of the Istanbul Convention: prevention, protection, prosecution and coordinated policies.



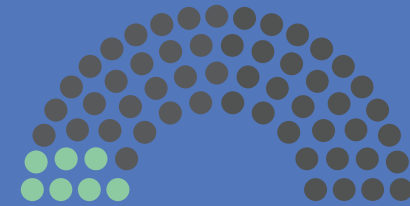
Existing laws do not make special and clear provisions for the most vulnerable categories (migrant and refugee women, women in situations of prostitution, women with disabilities, LGBTQI+).

Did you know?

RECOMMENDATIONS

- Repeal all discriminatory provisions against women and LGBTQI+ persons in national legislation, including in the Family Code and the Penal Code.
- Lift all reservations to the Convention on the Elimination of Discrimination against Women (CEDAW), ratify its Optional Protocol and submit a periodic report promptly (last report in 2009).
- Adopt comprehensive legislation to combat all forms of gender-based discrimination and violence in accordance with the provisions of the CEDAW and the Istanbul Convention on shelters and protection programmes for victims and witnesses of violence, emergency barring orders against perpetrators, adequate training of relevant institutions, among others.
- Review national education and awareness-raising policies to combat gender-based stereotypes and discriminatory behaviour.
- Request an invitation to the Council of Europe to accede to the Istanbul Convention (Convention on preventing and combating violence against women and domestic violence)

8,10%
Proportion of seats held by women in national parliaments



Unequal rights

Inheritance rights for widows and daughters



15,68 %
Female labour force participation



Not Available
Prevalence of gender violence in lifetime (% women)

Legislative framework

International conventions

Although ratified, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is far from being well implemented, despite the Algerian government's commitment to take the necessary measures to combat gender discrimination by amending, among others, the provisions of the Penal Code and the Family Code. To date, CEDAW is subject to reservations on articles 2, 15-4, 16 and 29-1¹ and the only reservation lifted so far relates to Article 9 paragraph 2 on the equal right of men and women to change the nationality of their children. Additionally, despite the ratification of the Convention, Algeria has not signed its Optional Protocol. Algeria's last report to the CEDAW Committee dates back to 2009.

Concerning other international conventions, the International Covenant on Civil and Political Rights was adopted on 16 December 1966 and entered into force on 12 December 1989. The International Covenant on Economic, Social and Cultural Rights was adopted on 16 December 1989, with entry into force on 12 December 1989. The Protocol to the African Convention on the Rights of Peoples (the so-called Maputo Protocol) was signed and ratified in 2016. To date, Algeria has not received an invitation to sign the Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention.

Constitutional equality

There are several provisions that promote equality between women and men in the Constitution, such as Article 37 which states that: "Citizens shall be equal before the law and shall be guaranteed the right to equal protection" without any discrimination on the grounds of "birth, race, gender, opinion or any other personal or social condition or situation"; and Article 35 which stipulates the responsibility of the institutions of the Republic to ensure the equality of rights and duties of all citizens. These articles ensure equal rights before the law without any discrimination based on gender. That said, Article 34 of the Constitution introduces a limitation clause that envisions the possibility to impose restrictions on Constitutional rights, freedoms and guarantees for reasons related to the need to maintain public order and security, as well as "vouchsafe other rights and freedoms protected by the Constitution".

Civil and familial rights

The Family Code, adopted on 9 June 1984, contains rules inspired by Sharia to determine family relations in Algeria. Although it was amended in 2005 to distance it from the most rigid interpretation of Sharia law², this Code still contains provisions considered forms of real institutional discrimination by feminist organisations.

This Code imposes on women conditions of life that impede equality, as it codifies discrimination by perpetuating a system of guardianship of men over women in several areas, despite the following 2005 reforms:



- **Marriage:** the “matrimonial guardian” is still necessary for women to enter into marriage, even when the woman is of age. Women thus remain under permanent guardianship.
- **Polygamy:** Article 8 of the Algerian Family Code allows a man to marry several wives within the limits of Sharia. This practice is subject to the prior consent of “the wife(s) and the future wife”. An authorisation from the President of the court is required to verify this consent as well as the husband’s “motives and ability” to ensure “equity and the necessary conditions for marital life”.
- **Divorce:** Article 54 of the Algerian Family Code allows the wife to request and obtain divorce only by compensation, meaning that, without the husband’s agreement, women can divorce only in return for the payment of a sum of money known as “khol’â”. On the contrary, the husband can obtain a divorce by what is defined as “judicial repudiation”, meaning that he is entitled to dissolve the marriage without justifying his request nor being subject to the payment of a sum of money.
- **Parental custody:** In the event of divorce, custody of the children is systematically entrusted to the wife. However, if she remarries, custody of the children is given to the father or the father’s family. The same measure does not apply to men who can remarry without losing custody.
- **Inheritance:** Inequality in inheritance is present both in law and in practice, since from a legal point of view, the woman inherits only half of what the man gets.

Political rights

Regarding political rights, Algerian women can vote and be elected. In March 2021, the 2012 quota law was repealed and replaced by the Organic Law on the Electoral Code, which provides for parity in the electoral lists. However, these lists remain open and unranked.

Sexual and reproductive rights

Articles 77 and 78 of the Health Code provide for therapeutic abortion, also known as therapeutic or medical termination, governed by Law No. 18-11 of 2 July 2018 on health, only in the specific cases cited by regulation. Abortion in any other situation is criminalised.

Certain types of sexual relations outside marriage between consenting adults are criminalised. For example, Article 339 of the Penal Code makes ‘adultery’ an offence punishable by one to two years’ imprisonment. Both the married person and the person with whom he or she has committed adultery may be prosecuted.

Sexual relations between two consenting adults of the same sex are strictly prohibited and punishable by the Code of Criminal Procedure. Indeed, Article 338 of the Penal Code stipulates that “Any person guilty of an act of homosexuality shall be punished by imprisonment for a term of two months to two years”, and Article 333 stipulates that “When the public outrage to indecency has consisted of an unnatural act with an individual of the same sex, the penalty shall be imprisonment for a term of six months to three years”.

Laws on gender-based violence/violence against women

The legal framework remains extremely weak to prevent gender-based violence.

The Penal Code still does not define the crime of rape, does not address other forms of sexual violence, and maintains a focus on “modesty” instead of physical integrity. The Penal Code was amended in late 2015 to criminalise violence against women. These amendments (Article 266 bis, Article 266 bis 2, Article 333 bis 2) might be considered as a step forward as they introduce the notion of sexual harassment and condemn any form of aggression, verbal or psychological violence or mistreatment of women, particularly in the event of a repeat offence. However, they constitute a considerable step backwards, given the introduction of the “Forgiveness clause” that allows an aggressor to escape criminal proceedings if the victim forgives him, a forgiveness that is often formulated under family and/or social pressure.

Economic and social rights

Algeria takes into account the socio-economic rights of women and even goes so far as to condemn, as stipulated in Article 330 bis of the Algerian Penal Code, any person who exerts on his wife any form of constraint or intimidation in order to dispose of her property or financial resources.

The Labour Code provides for parity between the two sexes, in

terms of salaries under article 84, access to employment under article 6 and to positions of responsibility. Moreover, every instance of discriminatory measures or decisions are nullified by Article 17.

Concerning the Algerian Constitution, Article 69 also guarantees Algerian women the right to access to work without gender discrimination. Nevertheless, the Labour Code does not provide full protection for women against sexual harassment in the workplace. Article 341 bis of Law 15-19, added in 2015, amended and supplemented the Penal Code, with a view to extending the punishable offence for sexual harassment to instances occurring in the workplace. However, the silence of the legislator on the protection of witnesses of violence may constitute a real obstacle to its implementation³.

Vulnerable and/or marginalised populations

Existing laws do not make any special and clear provision for the most vulnerable categories. Refugee women cannot enjoy their rights because Algeria still does not allow or recognise the right to asylum. Migrant women are subjected to sexual and physical violence and have no possibility of filing a complaint because they are in an irregular situation. Sex workers are stigmatised by public authorities and by the society at large, as prostitution is a criminal offence under the Penal Code.

Regarding Lesbian, Bisexual, Trans, Queer and Asexual (LBTQA) women, the Penal Code still condemns sexual relations between two consenting adults of the same sex. The persecution of the LGBTQI+ community is increasing at an alarming rate and there is a complete

legal vacuum regarding their protection. This legal vacuum prevents them from accessing to any form of legal in case of violence or other discriminatory treatment, something which creates a situation of total impunity.

De facto discrimination

In Algeria - a country where the patriarchal system governs all areas of life - prevailing morals and backward practices often take precedence over the law. As a result, certain laws are not always applied as they should be, despite the fact that they convey the desire to promote gender parity and equality.

Civil and familial rights

The family code prevents any form of equality of rights between women and men. It is the first form of institutional and symbolic violence because it legitimises gender-based discrimination and generates forms of violence against women on the exclusive ground of their being women.

Political rights

The organic law on the Electoral Code promulgated by presidential decree on 10 March 2021 provides for parity in the electoral lists. However, since the lists are open and unranked, parity is not really guaranteed in the seats obtained. This measure has therefore led to a clear drop in female representation in the National People's Assembly, amounting to only 8% of women in 2021 compared to

26% in 2017⁴.

In practice, this reform follows a representation scheme, also known as positive discrimination, based solely on the biological sex of women. It should be noted that the media and official discourse play an important role in perpetuating stereotypes that undermine the image of women candidates. During the 2021 parliamentary election campaign, a party leader compared female candidates to "strawberries" without being sanctioned.

Sexual and reproductive rights

Women often do not have access to medical institutions practicing abortion in their own or nearby localities, especially in remote areas. Only therapeutic abortion is allowed, and even if it is guaranteed by law, it is not guaranteed in practice, since women have to justify their condition and obtain evidence of her health from specialist doctors, before submitting a request to obtain the opinion of the imam and, finally, the agreement of the judge. This procedure is so long that women effectively lose their right to abortion.

In order to have access to abortion, women with sufficient financial means usually travel to Tunisia. Women in precarious situations, on the other hand, have to resort to clandestine abortion networks that do not necessarily offer the necessary hygienic conditions, something which often endangers their health and even their lives.

To date, no sex education has been integrated into the school curricula for children and young adults. Islamic education and morality are very present in schools. Within their families, girls

are taught to be patient, silent and strong in all circumstances, but above all to keep their virginity until the day of marriage, constraints to which boys are not subject. In fact, unlike girls, morality allows boys to have sexual relations outside marriage without this causing indignation, harming honour or tarnishing the name of an entire family.

It should be noted that in Algeria, the law does not overtly criminalise all instances of sexual relations between a woman and a man, both of whom are unmarried. However, deeply rooted attitudes in society are hostile to sexual relations outside marriage. These hostile attitudes result in the stigmatisation of single women, single mothers, and widows, which makes them more vulnerable to sexual violence.

Laws on gender-based violence/violence against women

Despite the promising programmes presented by Algeria to put an end to gender-based violence, there are no current and exhaustive data or statistics, nor is there any monitoring work or a census unit dedicated to violence against women.

Women victims of violence who dare to lodge a complaint are systematically subject to intimidation and social and/or family pressure to withdraw it, including from state officials. Furthermore, despite the new Article 40 of the Constitution introduced in 2020, shelters for women victims of violence are almost non-existent and resemble prison cells rather than protection centres.

In this regard, there is no law that guarantees protection for victims. There are no public resources allocated for this purpose and no adequate training for the institutions concerned. Survivors are almost always economically dependent on their abusers and face hostility and social stigmatisation, a situation that contributes directly to femicide.

Economic and social rights

The latest statistics indicate that 63% of university graduates are women⁵. Also, in the latest UNESCO report⁶, Algeria is at the top of the list with a rate of 48.5% of women engineers in the world.

Despite the legal protection that Algeria provides to women and despite promising indications, discrimination against women persists. Indeed, the employment rate for women in 2019 was only 13.5% while that of men was 61.2%. The unemployment rate for women in the same year was 20.4% while that of men was only 9.7%⁷. Algerian women face several difficulties in accessing work (to obtain financing, to reconcile work and family life, etc.), access to training and also to positions of responsibility. This contributes to the fragile situation that affects Algerian women graduates as well as women workers in the informal sector. It should be noted that the precarious situation of the latter has been accentuated because of Covid and the measures adopted to combat the spread of the pandemic.

Vulnerable and/or marginalised populations

There is no recognition, no enhanced prevention, and no support system for vulnerable groups of women, including young women, minors and girls, refugee women, displaced women, migrant women, women with disabilities, women in situations of prostitution, LGBTQA women, and indigenous women from rural areas.

Society is extremely hostile to migrants. Migrant women are often assaulted, raped and beaten in public spaces and there are no safeguards in place for their protection.

As for LGBTQA women, they survive thanks to discreet and sometimes deliberately suppressed activism. Indeed, the community is persecuted by the authorities and by society (both of which are equal in being extremely homophobic).

Recommendations

To the Algerian State:

- Repeal all discriminatory provisions against women and LGBTQI+ persons in national legislation, including: the Family Code in its entirety, Articles 266 bis, 266 bis 1, 279 and 330 bis of the Penal Code allowing perpetrators of violence to be “pardoned”, as well as Articles 333 and 338 of the Penal Code penalising same-sex relationships,
- Lift all reservations to the Convention on the Elimination of Discrimination against Women (CEDAW), ratify its Optional Protocol and submit a periodic report promptly (the last report was in 2009).
- Adopt comprehensive legislation to combat all forms of gender-based discrimination and violence in accordance with the provisions of the CEDAW and the Istanbul Convention on shelters and protection programmes for victims and witnesses of violence, emergency barring orders against perpetrators, adequate training of relevant institutions, among others.
- Review national education and awareness-raising policies to combat stereotypes and discriminatory behaviour.
- Request an invitation to the Council of Europe to accede to the Istanbul Convention (Convention on preventing and combating violence against women and domestic violence).

To the European Union, the United Nations or other international institutions:

- Integrate women’s rights and the gender dimension in the bilateral negotiations between Algeria and the European Union,
- Support the demands of women’s movements for Algeria to be invited by the Council of Europe to ratify the Istanbul Convention.



Endnotes

1 Algeria's justifications to the reservations: https://treaties.un.org/Pages/ViewDetails.aspx?s-rc=TREATY&mtdsg_no=IV-8&chapter=4&clang=fr#EndDec

2 With some reforms to the Family Code in 2005, its link to the the sacred Sharia law has been dropped. That said, Article 53 still refers to the notion of rebellion in divorce applications. This notion is used when the woman refuses to return to the marital home. As for repudiation, it is formulated by the husband's unilateral will.

3 For more information: Commentary on Article 341 bis of the Criminal Code, Dr Ounissa DAOUDI - STITI, Maîtresse de Conférences A, URL: <https://jilrc.com/le-harcelement-sexuel-en-droit-algerien-commentaire-de-larticle-341-bis-du-code-penal-ounissa-daoudi/>

4 Source: Gender global gap report 2022: <https://www.weforum.org/reports/global-gender-gap-report-2022/> Gender global gap report 2017: https://www3.weforum.org/docs/WEF_GGGR_2017.pdf

5 « Rapport mondial de suivi sur l'éducation, résumé sur l'égalité des genres 2018: Tenir nos engagements en faveur de l'égalité des genres dans l'éducation ». <https://unesdoc.unesco.org/ark:/48223/pf0000261655>

6 Rapport de l'UNESCO intitulé « La course contre la montre pour un développement plus intelligent », URL : https://unesdoc.unesco.org/ark:/48223/pf0000375429_fre

7 Ghania Khelifi, « Algérie. L'argent des femmes dans la poche des hommes ». Medfeminiswiya. Consulté : Février 2023 <https://medfeminiswiya.net/2022/05/02/algerie-largent-des-femmes-dans-la-poche-des-hommes/#:~:text=N%C3%A9anmoins%20le%20taux%20d'emploi,%C3%A9tait%20de%2061%2C2%25>