

## ALGERIA<sup>1</sup>

### OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES

(Updated as at 31 May 2017)

| Family Law Matter  | Description  |          |   |           |  |
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|  | Legislative Framework  | Case Law | Policy  | Procedure | Practice   |
| <p><b>Equality of spouses in marriage</b></p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncoded? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncoded, or if codified laws do not sufficiently address a particular issue,</i></p> | <p>Article 32 of the Constitution provides that all citizens are equal before the law and prohibits discrimination on several basis, including sex.<sup>2</sup></p> <p>Article 55 of the Constitution provide that the family shall enjoy the protection of the State and society.<sup>3</sup></p> <p>The Algerian Family Code (AFC) is the main codified law that governs matters relating to marriage and family relations of the predominantly Muslim majority population in Algeria.<sup>4</sup> In the absence of codified laws that sufficiently address a particular matter</p> |          | <p>Algeria has reservations to Articles 2, 15(4), 16 and 29 of CEDAW.<sup>8</sup></p> <p>The Government of Algeria in its 2010 report to the CEDAW Committee explained that:<sup>9</sup></p> <ul style="list-style-type: none"> <li>The Family Code was promulgated in 1984 and had never been amended until 2005;</li> </ul> |           | <p>According to the 2016 UNDP Human Development Report, Algeria ranked 83 on the UNDP Human Development Index and 94 on the UNDP Gender Inequality Index.<sup>10</sup></p> <p>According to Algeria's 2012/13 Multiple Cluster Indicator Survey, about 11% of households in Algeria are headed by women.<sup>11</sup></p> |

<sup>1</sup> This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Algeria country table, we would also like to thank Alyssa Oravec from Harvard Law School, and Rouabhhi Omar for their inputs in its preparation.

<sup>2</sup> Article 32 of Algeria's Constitution (1989), [https://www.constituteproject.org/constitution/Algeria\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/Algeria_2008.pdf?lang=en)

<sup>3</sup> Article 58 of Algeria's Constitution (1989), [https://www.constituteproject.org/constitution/Algeria\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/Algeria_2008.pdf?lang=en)

<sup>4</sup> Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>8</sup> United Nations Treaty Collection Website, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en)

<sup>9</sup> Algerian State party report, U.N. Doc. CEDAW/C/DZA/3-4 (2010), p. 14, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>10</sup> UNDP, "Human Development Report 2016", Table 5, pp. 214-217, [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)

<sup>11</sup> Algerian Ministry of Health, Population and Hospital Reform, UNICEF & UNFPA, "Algeria Multiple indicator Cluster Survey 2012-2013", Table HH.3, p. 48, <https://mics->

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| <p><i>how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Article 16(1)(c)<br/>Paras. 17-18 GR21<br/>Paras. 54-55 GR29</p> | <p>of personal status of Muslims, according to Article 222 of the AFC, reference is to be made to the provisions of <i>Shari'ah</i>.<sup>5</sup> Generally, Islam in Algeria is influenced by the rules of Maliki jurisprudence (<i>fiqh</i>).<sup>6</sup></p> <p>The Family Code provides for a marital framework that is based on equality between the two spouses. Thus:<sup>7</sup></p> <ul style="list-style-type: none"> <li>• Article 4 of the Family Code defines marriage as a contract by mutual agreement concluded between a man and a woman in accordance with the prescribed legal formalities. Its purposes include the founding of a family based on affection, kindness and mutual assistance, the moral protection of both spouses and the preservation of family ties;</li> <li>• Article 36 of the Family Law provides that each spouse is obligated to: (i) preserve conjugal ties and the duties of life together; (ii) cohabit in</li> </ul> |  | <ul style="list-style-type: none"> <li>• Amendments were made to the Family Code because of: (i) changes that had occurred in Algerian society (particularly the status of women); (ii) demands from a number of fringe social groups; and (iii) a number of provisions in the original Family Code were not consistent with international conventions, including in particular CEDAW and the Convention on the Rights of the Child ('CRC'); and</li> <li>• Article 36 of the amended Family Code sets out the</li> </ul> |  |  |
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[surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Algeria/2012-2013/Final/Algeria%202012-13%20MICS\\_French.pdf](https://surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Algeria/2012-2013/Final/Algeria%202012-13%20MICS_French.pdf)

<sup>5</sup> Article 222 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>6</sup> The University of North Carolina at Chapel Hill, "Islamic Jurisprudence and Law," <http://veil.unc.edu/religions/islam/law/>

<sup>7</sup> Articles 4, 36 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

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|  | <p>harmony, mutual respect and kindness; (iii) contribute jointly to preservation of the family's interests, the protection of their children, and the provision of a sound education for them; (iv) mutually agree in the management of the family's affairs, and the spacing of births; (v) respect their respective parents and other family members, and visits to them; (vi) preserve the ties of kinship and good relations with parents and other family members; (vii) ensure each spouse has the right to visit and receive visits from his or her parents and other family members in kindness.</p> |  | <p>rights and duties of spouses. The old concepts of obedience to the husband and respect for the husband's parents and family members have been repealed and replaced by the reciprocal rights and duties of the husband and wife themselves, including in particular the preservation of conjugal ties and cohabitation in harmony and mutual respect.</p> |  |   |
| <p><b>Minimum and equal legal age for marriage</b></p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in</i></p> | <p>The minimum legal age for marriage is 19 for both females and males as per Article 7 of the AFC. However, Article 7 also provides that a judge may permit girls and boys below 19 to marry on the grounds of benefit or necessity and upon verification of each side's capacity for</p>  |  | <p>The Government of Algeria in its 2010 report to the CEDAW Committee reiterated that for both women and men, the legal capacity required for marriage is that they</p>   | <p>The Civil Status Order specifies the procedures for the contracting of a marriage:<sup>16</sup></p> <ul style="list-style-type: none"> <li>• Article 71 provides that a marriage</li> </ul> | <p>According to UNICEF's State of the World's Children 2016 report, 3% of women aged 20- 24 in Algeria were first married by 18<sup>17</sup> and according to Algeria's 2012/13</p> |

<sup>16</sup> Articles 71, 73-74, 77 of the Civil Status Order (1970), <http://www.joradp.dz/TRV/FCivil.pdf>

<sup>17</sup> UNICEF, "The State of the World's Children 2016", Table 9, pp. 150-153, [https://www.unicef.org/publications/files/UNICEF\\_SOWC\\_2016.pdf](https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf)

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| <p><i>the minimum age of marriage? Does the minimum age of marriage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Article 16(2)<br/>Paras. 36-39 GR21</p> | <p>marriage.<sup>12</sup></p> <p>The law does not specify an absolute minimum marriage age below which a judge may not authorise a marriage. However, Article 82 of the AFC read in conjunction with Article 42 of the Civil Code provides that a minor below 13 does not have capacity to exercise any civil rights, including entering into a marriage contract.<sup>13</sup></p> |  | <p>must be 19. This constitutes a form of safeguard for the preservation of their personal rights, including in particular those of the woman, who can thus give her informed consent in full awareness of what she is undertaking.<sup>14</sup></p> <p>In addition, the Algerian government explained that early marriage is more frequent among women of older generations (21.1% of women in the 45-49 age group), though it is also relatively common among younger women. As such, early marriage is a</p> | <p>contract must be concluded by a civil status officer or judge;</p> <ul style="list-style-type: none"> <li>• Article 73 states that the officer or judge must verify the ages of both parties and verify that court permission has been granted if either of the parties is below 19;</li> <li>• Article 74 requires both parties to present documents that prove their age at the time of contracting the marriage, such a birth certificate;</li> <li>• Article 77 of the</li> </ul> | <p>Multiple Cluster Indicator Survey, about 0.4% were first married by 15.<sup>18</sup></p> <p>According to UN World Marriage Data 2015, in 2008, the average age of first marriage among Algerian females and males was 29.1 and 32.9, respectively.<sup>19</sup></p> <p>According to information on the ground, although the official child marriage rate may be relatively low, the actual percentage of child marriage may be higher because many underage girls often do not have the opportunity to file complaints regarding their</p> |
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<sup>12</sup> Article 7 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>13</sup> Article 82 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>; Article 42 of the Civil Code (1975), <http://www.joradp.dz/TRV/FCivil.pdf>. The absolute age of capacity was originally 16 according to the 1975 version of the law. It was lowered to 13 in an amendment passed in 2005 (Law No. 10/2005).

<sup>14</sup> Algerian State party report, U.N. Doc. CEDAW/C/DZA/3-4 (2010), p. 14, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>18</sup> Algerian Ministry of Health, Population and Hospital Reform, UNICEF & UNFPA, "Algeria Multiple indicator Cluster Survey 2012-2013", Table CP.6, p. 193, [https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Algeria/2012-2013/Final/Algeria%202012-13%20MICS\\_French.pdf](https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Algeria/2012-2013/Final/Algeria%202012-13%20MICS_French.pdf)

<sup>19</sup> United Nations Population Division, "World Marriage Data 2015", <https://esa.un.org/ffps/Index.html#/maritalStatusData>

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|   |  |  | persistent problem. <sup>15</sup>   | Civil Status Order provides for a fine of 200 Algerian dinar for an officer or judge who violates any of the specified marriage contracting or registration procedures. | marriages. <sup>20</sup> |
| <p><b>Women's consent to marriage</b></p> <p><i>Is a marriage valid without the woman's consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Article 16(1)(b)<br/>Paras. 15-16 GR21<br/>Paras. 25-26, 33-34 GR29</p> | <p>Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently, <i>ijbar</i> marriages are prohibited.</p> <p>Article 9 of the Family Code states that both parties to the marriage must consent to the marriage.<sup>21</sup></p> <p>Article 13 specifies that a <i>wali</i>, whether the father or another person, is prohibited from compelling a minor under his guardianship to contract a marriage, nor may he give her in marriage to anyone without her consent.<sup>22</sup></p> |  | The Government of Algeria in its 2010 report to the CEDAW Committee explained that consent in the eyes of the law is deemed to be an essential component of a marriage. If either party has not consented, the marriage is invalid, and any concerned person, including the parties, may petition the courts to have it annulled. In this regard, the Public Prosecutor's |   |                          |

<sup>15</sup> Algerian State party report, U.N. Doc. CEDAW/C/DZA/3-4 (2010), p. 84, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>20</sup> Information obtained from Algerian advocate, February 2017.

<sup>21</sup> Articles 9 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>22</sup> Article 13 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

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|  | <p>Article 33 provides that marriage without consent is considered void.<sup>23</sup> This provision applies to both marriages that have been consummated as well as those that have not.<sup>24</sup></p> <p>Article 77 of the Civil Status Order provides for a fine of 200 Algerian dinars for an officer or judge who violates any of the specified marriage contracting or registration procedures.<sup>25</sup></p> <p>Article 441(1) of the Penal Code provides for a prison penalty, a fine or both for any officer or judge who registers a marriage contract without required consents (which include consent of a woman or her guardian).<sup>26</sup></p> <p>The mandatory registration of marriages is provided for in Articles 18 and 21 and 22 of the Family Code.<sup>27</sup></p> <p>Article 22 of the Family Law provides that in cases of non-registration of a marriage</p> |  | <p>representative for personal status plays an important role as matters of personal status is deemed to be an aspect of public policy under Algerian law. Accordingly, the Procurator of the Republic may use all available legal means to enforce the law in cases submitted to him. In line with this, Article 3bis of the Family Code provides that the Public Prosecutor's Office will be a party to all actions brought to enforce the provisions of the Code.<sup>29</sup></p> |  |  |
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<sup>23</sup> Article 33 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>24</sup> Information obtained from Algerian advocate, February 2017.

<sup>25</sup> Article 77 of the Civil Status Order (1970), <http://www.joradp.dz/TRV/FCivil.pdf>

<sup>26</sup> Article 441(1) of the Penal Code (1966), <http://www.joradp.dz/trv/fpenal.pdf>

<sup>27</sup> Articles 18, 21-22 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>29</sup> Algerian State party report, U.N. Doc. CEDAW/C/DZA/3-4 (2010), p. 14, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>



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|  | contract, marriage can be proven with a court order. <sup>28</sup>  |  |  |  |  |
| <p><b>Women’s capacity to enter into marriage</b></p> <p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 16(1)(a), 16(1)(b)<br/>Paras. 15-16 GR21<br/>Para. 34 GR29</p> | <p>An adult bride requires the presence of a marital guardian (<i>wali</i>) when contracting her marriage. The <i>wali</i> can be her father, a close relative or any person of her choice.<sup>30</sup></p> <p>The marriage of a minor is contracted through the minor’s guardian (<i>wali</i>). The <i>wali</i> can be her father or a close relative.<sup>31</sup></p> <p>A judge may act as a <i>wali</i> in the absence of one.<sup>32</sup></p> <p>Pursuant to Article 19 of the AFC both spouses may enter conditions in the marriage contract, or in a subsequent official contract. Article 19 specifically gives the prohibition of polygamy and the right to work as examples of conditions that may be included by the wife.<sup>33</sup></p> <p>Article 53(9) confers the wife the right to seek divorce in court if an agreed-upon condition in the</p> |  |  |  |  |

<sup>28</sup> Article 22 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>  
<sup>30</sup> Article 9bis, 11 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>  
<sup>31</sup> Article 11 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>  
<sup>32</sup> Article 11 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>  
<sup>33</sup> Article 19 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

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|   | marriage contract was violated. <sup>34</sup>   |  |  |  |   |
| <p><b>Polygamous marriages</b></p> <p><i>Does the law prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the marriage contract that her intended husband cannot enter into a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Para. 14 GR21<br/>Para. 34 GR29</p> | <p>A Muslim man may marry up to four wives at one time.</p> <p>Article 8 of the AFC:<sup>35</sup></p> <ul style="list-style-type: none"> <li>Permits a man to have more than one wife with the permission of a judge, and within the bounds of <i>Shari'ah</i>. Before approving a polygamous marriage, a judge must verify the existence of a justification and the conditions and intention by the husband to be fair to all wives;</li> <li>Provides that a husband must notify the existing wife or wives of his intention to enter into a new marriage and apply for permission of the court;</li> <li>States that the judge may approve the new marriage upon confirming agreement of all wives, and confirming the existence of a justification and ability of the husband to be fair</li> </ul> |  | <p>The Government of Algeria in its 2010 report to the CEDAW Committee explained that:<sup>41</sup></p> <ul style="list-style-type: none"> <li>The practice of polygamy is exceptional in Algerian society;</li> <li>The AFC contains strict requirements that make the practice particularly difficult;</li> <li>In all cases, the husband must secure the express consent of his first wife and also of the future wife in order to contract a new marriage. He must also</li> </ul> |  | <p>According to Algeria's 2012/13 Multiple Cluster Indicator Survey, 3% of marriage in Algeria are polygamous. The survey also found that:<sup>42</sup></p> <ul style="list-style-type: none"> <li>Older women were more likely than younger women to be in a polygamous marriage. For instance, 6% of women aged 45-49 were in polygamous marriages, as compared to 1% of women aged 20-24; and</li> <li>Rural women were slightly more likely to enter be in a</li> </ul> |

<sup>34</sup> Article 53(9) of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>35</sup> Article 8 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>41</sup> Algerian State party report, U.N. Doc. CEDAW/C/DZA/3-4 (2010), p. 15, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>42</sup> Algerian Ministry of Health, Population and Hospital Reform, UNICEF & UNFPA, "Algeria Multiple indicator Cluster Survey 2012-2013", Table CP.5, p. 192, [https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Algeria/2012-2013/Final/Algeria%202012-13%20MICS\\_French.pdf](https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Algeria/2012-2013/Final/Algeria%202012-13%20MICS_French.pdf)



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|  | <p>and provide the necessary conditions for married life.</p> <p>Article 8bis of the AFC provides that all wives have the right to seek divorce through the court if the husband engages in deception with respect to a polygamous marriage.<sup>36</sup></p> <p>Article 8bis(1) provides that an unconsummated new marriage is nullified if a husband fails to obtain a judge's permission in accordance with Article 8.<sup>37</sup></p> <p>Article 19 permits a wife to insert a stipulation in the marriage contract or another subsequent contract preventing her husband from entering into a polygamous marriage.<sup>38</sup></p> <p>Article 53(6) gives all wives the right to seek divorce through court if any of the provisions of Article 8 were violated.<sup>39</sup></p> <p>The AFC is silent on the prohibition or otherwise of</p> |  | <p>obtain permission from the presiding magistrate of the Family Court. The magistrate is required to determine whether the alleged reason is justifiable and whether the husband is prepared and able to provide both wives with equal treatment and the conditions necessary for conjugal life;</p> <ul style="list-style-type: none"> <li>• In the event of wilful misrepresentation with regard to a polygamous marriage, either wife may bring suit for divorce;</li> </ul> | <p>polygamous marriage than urban women (3.1% versus 2.9%).</p> <p>According to a civil society report, in cases where the existing wife rejects the husband's request to take on a new wife, he will often choose to divorce her.<sup>43</sup></p> <p>According to the UN Special Rapporteur on Violence against Women, husbands have been reported to circumvent the legal restrictions to the practice of polygamy when they fail to secure their first wives' agreement and has not obtained the judge's permission</p> |
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<sup>36</sup> Article 8bis of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>37</sup> Article 8bis(1) of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>38</sup> Article 19 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>39</sup> Article 53(6) of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>43</sup> Nadia Marzouki, "Algeria", in *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, eds. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010), p. 10, [https://freedomhouse.org/sites/default/files/inline\\_images/Algeria.pdf](https://freedomhouse.org/sites/default/files/inline_images/Algeria.pdf)

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|   | temporary marriages. The rules of Maliki <i>fiqh</i> prohibits temporary marriage. <sup>40</sup>                                 |   | <ul style="list-style-type: none"> <li>The new marriage is annulled, before its consummation, if the husband has not obtained the court's permission.</li> </ul> |   | to take a second wife. During her visit to Algeria, the Special Rapporteur heard testimonies concerning men marrying a second wife through a religious marriage that was subsequently validated by a judge. She also heard accounts from women who were subjected to violence or threats of violence by their husbands who wished to obtain consent to a polygamous marriage. <sup>44</sup> These claims have not been independently verified. |
| <p><b>Divorce rights</b></p> <p><i>Is there equal right to divorce between women and men? Can the</i></p> | The AFC provide for three different mechanisms for divorce: (i) divorce at will by the husband; (ii) judicial divorce; and (iii) | Judges are required to make several serious attempts to reconcile the | The Government of Algeria in its 2010 report to the CEDAW Committee  | The official registration of a divorce is mandatory and a |  |

<sup>40</sup> See, for example, *al-Fiqh Aala al-Madhahib al-Arba'a* for Maliki jurisprudence on temporary marriages, <http://waqfeya.com/book.php?bid=5423>  
<sup>44</sup> UN Special Rapporteur on Violence Against Women: Mission to Algeria, U.N. Doc. A/HRC/17/26/Add.3 (2011), para. 56, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/132/72/PDF/G1113272.pdf?OpenElement>

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| <p><i>husband divorce without reason and without having to go to court? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (talāq) prohibited? If unilateral divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need to go to court, is the divorced spouse informed of the divorce? Is the unilateral right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Article 16(1)(c)<br/>Paras. 17-18 GR21<br/>Paras. 34, 39-40 GR29</p> | <p>redemptive divorce (<i>khul'</i>).</p> <p>The AFC provides that divorce 'at the will of the husband' must go through the court. A divorce will only be granted after the conclusion of a reconciliation process between the spouses. The reconciliation process may not exceed three months from the date of initiation of the divorce proceedings.<sup>45</sup></p> <p>The AFC is silent on a husband's ability to delegate the right to divorce to the wife (<i>isma</i>). Nonetheless, the rules of Maliki <i>fiqh</i> allow a wife to divorce herself if delegated by the husband. The former head of the Algerian Fatwa Committee, Sheikh Mohammed Sharif, issued a statement in 2010 confirming that a husband may delegate to his wife the right to divorce herself.<sup>46</sup></p> <p>Valid grounds for seeking judicial divorce by a wife include a husband's: (i) failure to provide financial maintenance (unless the</p> | <p>spouses before issuing a ruling of divorce, in order to give them an opportunity of reconciling their differences.<sup>49</sup></p> <p>It is mandatory to transcribe court rulings validating divorces in the civil status records at the suit of the Public Prosecutor's Office.<sup>50</sup></p> | <p>explained that:<sup>51</sup></p> <ul style="list-style-type: none"> <li>• The grounds on which a wife may seek divorce have been broadened following the amendment of the AFC. For example, she may allege inconsolable differences with her husband or failure to observe the conditions set forth in the marriage contract or a contract concluded subsequently; and</li> <li>• In order to avoid practices that were adopted in the past, consisting of delaying</li> </ul> | <p>standard procedure must be followed.<sup>52</sup></p> |  |
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<sup>45</sup> Articles 48-49 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>46</sup> "Fiqh Questions and Answers", *Al-Fadjr Newspaper*, 1 March 2010, <http://www.djazairiess.com/alfadjr/143496>

<sup>49</sup> Algerian State party report, U.N. Doc. CEDAW/C/DZA/3-4 (2010), p. 16, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>50</sup> Algerian State party report, U.N. Doc. CEDAW/C/DZA/3-4 (2010), p. 16, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>51</sup> Algerian State party report, U.N. Doc. CEDAW/C/DZA/3-4 (2010), pp. 15-16, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>52</sup> Article 49 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

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|  | <p>wife knew of his financial difficulties prior to the marriage); (ii) infirmity that prevents the attainment of the purpose of marriage; (iii) abandonment of the marital bed for over four months; (iv) imprisonment for a criminal offense that affects the honour of the family in a manner that renders it impossible to continue marital life; (v) absence for over one year without an excuse or financial maintenance; (vi) violation of the provisions of Article 8 of the AFC with respect to polygamous marriage; (vii) adultery; (viii) continuous discord; (ix) violation of a condition in the marriage contract; and (x) commission of a legally recognised harm.<sup>47</sup></p> <p>A wife may seek redemptive divorce (<i>khul'</i>) in court without the consent of the husband by paying him compensation. If both parties are unable to reach a mutual agreement on the amount of compensation to be paid by the wife, the judge shall order payment of an amount not exceeding one-third of the marriage dower (<i>mahr</i>).<sup>48</sup></p> |  | <p>manoeuvres on the part of the first husband with a view to preventing his ex-wife from remarrying, every decision of a court of first instance granting a divorce is final and binding and may not be appealed to a higher court (court of appeal), except in respect of property issues. Once the ruling has been issued, the clerk of the court in question enters a transcript of the judgement of divorce in the civil status records.</p> |  |  |
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<sup>47</sup> Article 53 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>48</sup> Article 54 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

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| <p><b>Women's financial rights after divorce</b></p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon dissolution of the marriage? Is the woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut'ah)? Who is responsible for the financial maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 16(1)(c), 16(1)(h)<br/>Paras. 30-33 GR21<br/>Paras. 34-35, 43-48 GR29</p> | <p>Generally, upon divorce, a woman may be entitled to: (i) financial maintenance during the waiting period after the divorce (<i>iddah</i>); (ii) compensation if the former husband divorced her unreasonably; and (iii) compensation for any harm she suffered. There is no legal concept of matrimonial assets.</p> <p>Under the AFC, a woman is entitled to financial maintenance during the waiting period after the divorce (<i>iddah</i>). The <i>iddah</i> period is 3-10 months, depending on whether the woman is pregnant or not.<sup>53</sup></p> <p>Article 52 of the AFC mandates a judge to award compensation to the wife if it is determine that the husband's use of his right to divorce was unreasonable.<sup>54</sup></p> <p>Article 53bis of the AFC mandates the judge to award compensation to the wife for any harm she suffered.<sup>55</sup></p> <p>Article 61 of the AFC provides</p> |  | <p>The Government of Algeria in its 2010 report to the CEDAW Committee asserted that reparations are an essential component of every divorce judgement. Failure to comply with a court award of reparations is a criminal offence making the recalcitrant husband liable to prosecution. Algerian criminal courts have dealt with such cases with great severity.<sup>58</sup></p> | <p>The couple may agree on the division of assets acquired during the marriage by including a stipulation in the marriage contract or by another contract.<sup>59</sup></p> |  |
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<sup>53</sup> Articles 58-61 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>54</sup> Article 52 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>55</sup> Family Law, No. 11 of 1984, as amended, art. 53(R), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>58</sup> Algerian State party report, U.N. Doc. CEDAW/C/DZA/3-4 (2010), pp. 15-16, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>59</sup> Article 37 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

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|  | <p>that a divorced or widowed woman may not be evicted of the marital home during the <i>iddah</i> period and is entitled financial maintenance.<sup>56</sup></p> <p>Following a divorce, where a mother is awarded custody of the child or children, the father is required to provide a decent dwelling, or failing that, financial support in an amount adequate to cover the cost of rental accommodation, so that the mother can exercise her custody under acceptable conditions. The mother who has custody over the children has the right to remain in the marital home until the father implements any judicial decision in this regard.<sup>57</sup></p> |  |  |  |  |
| <p><b>Custody of Children</b></p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon re-</i></p> | <p>A mother has priority right over the custody of her daughter until she reaches a marriageable age and her son until he reaches 10. A judge may extend the mother's custody over her son until he is 16 if she has not remarried. In any event, any judgement terminating custody, must be based on the child's interest.<sup>60</sup></p>  | <p>The presiding magistrate has authority to order, upon request, temporary measures relating to financial support, the custody of children, visiting rights and</p> | <p>The Government of Algeria in its 2010 report to the CEDAW Committee explained that:<sup>64</sup></p> <ul style="list-style-type: none"> <li>• The AFC conforms to the principle of the</li> </ul> |  | <p>According to the UN Special Rapporteur on Violence against Women and another, the legal provision setting out an obligation for the father to provide a decent dwelling to the mother and the</p> |

<sup>56</sup> Article 61 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>57</sup> Article 72 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>60</sup> Articles 64-65 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>64</sup> Algerian State party report, U.N. Doc. CEDAW/C/DZA/3-4 (2010), p. 16, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>



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| <p><i>marriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 16(1)(d), 16(1)(f)<br/>Paras. 19-20 GR21</p> | <p>A mother risk losing custody of her children if she marries a man who is not closely related to the child.<sup>61</sup></p> <p>A mother also risks losing her right to custody over her children if she unable to take charge of the children's maintenance, schooling in the father's religion and physical and moral health. However, a mother's work cannot constitute a ground for terminating her right to custody. In all instances, the interest of the child must be taken into account.<sup>62</sup></p> | <p>accommodation.<sup>63</sup></p> | <p>overriding importance of the child's interests. Accordingly, a mother has priority right over the custody of the children followed by the father;</p> <ul style="list-style-type: none"> <li>• In the great majority of cases, Algerian civil courts have awarded custody of the child or children to their mothers. Where this is the case, the father is required to provide a decent dwelling, or failing that, financial support in an amount adequate to cover the cost of rental accommodation, so that the mother can exercise her</li> </ul> |  | <p>children in the event of divorce remains an issue of concern for the following reasons:</p> <ul style="list-style-type: none"> <li>• There are accounts of former husbands: (i) deliberately delaying divorce proceedings through the abuse of judicial appeals or feigning bankruptcy in order to obtain a court order to allow them to remain in the marital home. In cases of domestic violence, these situations dramatically increase women's vulnerability to further violence and abuse; (ii)</li> </ul> |
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<sup>61</sup> Articles 66 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>62</sup> Articles 67 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>63</sup> Article 57bis of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>; Algerian State party report, U.N. Doc. CEDAW/C/DZA/3-4 (2010), p. 16, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

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|  |  |  | <p>custody under acceptable conditions;</p> <ul style="list-style-type: none"> <li>• Lastly, a working mother can no longer be deprived of her right of custody.</li> </ul> |  | <p>subjecting their former wives to violence and threats of violence in order to abandon the marital home;<sup>65</sup> and</p> <ul style="list-style-type: none"> <li>• The amount of child maintenance set by the judges is based on official rental prices, whereas actual market prices are much higher; and judges do not always rule on the question of housing. In both those cases, women who cannot pay their rent are forced to become homeless or to remain in the home of their former spouses.<sup>66</sup></li> </ul> |
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<sup>65</sup> UN Special Rapporteur on Violence Against Women: Mission to Algeria, U.N. Doc. A/HRC/17/26/Add.3 (2011), para. 58, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/132/72/PDF/G1113272.pdf?OpenElement>

<sup>66</sup> Jeremy Morley, "Notes on Algeria and International Child Custody", *International Family Law*, 18 September 2014, <http://www.internationalfamilylawfirm.com/2014/09/notes-on-algeria-and-international.html>

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| <p><b>Guardianship of Children</b></p> <p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 16(1)(d), 16(1)(f)<br/>Paras. 19-20 GR21</p> | <p>A father is the default guardian of the children. A mother may become guardian upon a father's death or absence. Following a divorce, a judge transfers guardianship to the parent to whom custody of the child is granted.<sup>67</sup></p> |  | <p>The Government of Algeria in its 2010 report to the CEDAW Committee asserted remarkable progress has been achieved in the area of mothers' guardianship of their children. Specifically, a mother has: (i) the authority to act in the father's place in an emergency or in carrying out certain acts of civil life (such as administrative formalities or the children's education) where the father is absent or unable to act in the matter; (ii) the right of guardianship, following a divorce, over her own children where she has custody of them.<sup>68</sup></p> |  | <p>According to a report by the US Department of State, even though mothers are usually awarded custody, the father's authorisation is usually required for decisions relating to the child's education or taking the child out of the country.<sup>69</sup></p> |
| <p><b>Family Planning</b></p>  | <p>Article 36 of the AFC provides</p>   |  |   |  | <p>According to World</p>  |

<sup>67</sup> Articles 87 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>68</sup> Algerian State party report, U.N. Doc. CEDAW/C/DZA/3-4 (2010), p. 16, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<sup>69</sup> US Department of State, "Country Reports on Human Rights Practices for 2016: Algeria", p. 32, <https://www.state.gov/documents/organization/265702.pdf>

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| <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in practice?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Articles 16(1)(e), 12<br/>Paras. 21-23 GR21</p> | <p>that husbands and wives have to consult on the issue of spacing of children.<sup>70</sup></p> |  |  |  | <p>Bank data, the total fertility rate decreased from 7.5 children per woman in 1960 to 2.8 in 2015.<sup>71</sup></p> <p>According to Algeria's 2012/13 Multiple Cluster Indicator Survey:<sup>72</sup></p> <ul style="list-style-type: none"> <li>• 7% of Algerian women aged 15-49 have an unmet need for family planning services, with 5% having an unmet need for spacing and 2% an unmet need for limiting of children; and</li> <li>• 57% of Algerian women are using a method of contraception, with 48% of women using a modern method.</li> </ul> |
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<sup>70</sup> Article 36 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>71</sup> World Bank, "Fertility rates, total (births per woman)", <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>

<sup>72</sup> Algerian Ministry of Health, Population and Hospital Reform, UNICEF & UNFPA, "Algeria Multiple indicator Cluster Survey 2012-2013", Tables RH.4, RH.5, pp. 131, 134, [https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Algeria/2012-2013/Final/Algeria%202012-13%20MICS\\_French.pdf](https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Algeria/2012-2013/Final/Algeria%202012-13%20MICS_French.pdf)

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| <p><b>Personal rights of spouses</b></p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Article 16(1)(g)<br/>Para. 24 GR21<br/>Para. 34 GR29</p> | <p>The law does not specifically restrict the personal rights of a married woman such as her right to work, choose a profession travel, drive and study.</p> <p>Article 32 of the Constitution guarantees the fundamental liberties of all Algerians.<sup>73</sup></p> <p>Article 44 of the Constitution provides that all Algerians shall have the right to freely choose their place of residence and move about within Algeria.<sup>74</sup></p> <p>Article 53 of the Constitution guarantee the right to education and makes primary education compulsory.<sup>75</sup></p> <p>Article 55 of the Constitution declares that all Algerians have the right to work.<sup>76</sup></p> |  |  |  | <p>According to World Bank data, female labour force participation increased from 10% in 1990 to 17% in 2016.<sup>77</sup> During the same period, male labour force participation decreased from 74% to 71%.<sup>78</sup></p> <p>According to the 2016 UNDP Human Development Report:<sup>79</sup></p> <ul style="list-style-type: none"> <li>• 34% of women over 25 have at least some secondary education as compared to 36% of men of the same age group;</li> <li>• 96% of females</li> </ul> |
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<sup>73</sup> Article 32 of Algeria's Constitution (1989), [https://www.constituteproject.org/constitution/Algeria\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/Algeria_2008.pdf?lang=en)

<sup>74</sup> Article 44 of Algeria's Constitution (1989), [https://www.constituteproject.org/constitution/Algeria\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/Algeria_2008.pdf?lang=en)

<sup>75</sup> Article 53 of Algeria's Constitution (1989), [https://www.constituteproject.org/constitution/Algeria\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/Algeria_2008.pdf?lang=en)

<sup>76</sup> Article 55 of Algeria's Constitution (1989), [https://www.constituteproject.org/constitution/Algeria\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/Algeria_2008.pdf?lang=en)

<sup>77</sup> World Bank, "Labour force participation rate, female (% of female population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

<sup>78</sup> World Bank, "Labour force participation rate, male (% of male population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS>

<sup>79</sup> UNDP, "Human Development Report 2016", Tables 5, 9, 14, pp. 214-217, 230-233, 250-253, [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)

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|  |   |  |  |  | <p>and males aged 15-24 are able to read and write a short simple sentence; and</p> <ul style="list-style-type: none"> <li>• 57% of women are satisfied with their freedom of choice as compared to 56% of men.</li> </ul> |
| <p><b>Inheritance rights</b></p> <p><i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon the death of their father?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Paras. 34-35 GR21<br/>Paras. 49-53 GR29</p> | <p>Generally, inheritance rights between women and men are unequal. Article 139-183 of the AFC includes the provisions specifying the rules of inheritance.<sup>80</sup> In many cases, a woman's share is half that of a man. For example, a wife inherits one-eighth of her husband's estate if they have children, while a husband inherits one-fourth (Articles 145-146). If there are no children, a wife inherits one-fourth of her husband's estate, while a husband inherits a half (Articles 144-145).<sup>81</sup></p> <p>The children of a parent who has predeceased their own parent (i.e. the children's grandparent) can</p> |  |  |  |  |

<sup>80</sup> Articles 139-183 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>

<sup>81</sup> Articles 144-146 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>



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|  | inherit from their grandparent through an obligatory bequest. <sup>82</sup>  |  |  |   |
| <p><b>Violence against women in the family</b></p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman's mental health which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are there support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW Provision</u><br/>GRs 12 &amp; 19<br/>Para. 40 GR21</p> | <p>Article 34 of the Constitution provides that the State guarantees the inviolability of the human person. Any form of physical or psychological violence or injury to self-respect is prohibited.<sup>83</sup></p> <p>Article 35 of the Constitution provides that violations of rights and freedoms, and physical or psychological injury to the human person are subject to the penalties prescribed by the law.<sup>84</sup></p> <p>Article 63 of the Constitution provides that all individual freedoms are exercised subject to respect for the rights of others that are recognised by the Constitution, in particular respect for the right of honour, intimacy, and protection of the family, young persons and children.<sup>85</sup></p> |  | <p>The Government of Algeria in its 2010 report to the CEDAW Committee informed that a national strategy aimed at combating domestic violence was developed for the period 2007-2011.<sup>89</sup></p> | <p>According to Algeria's 2012/13 Multiple Cluster Indicator Survey, about 59% of women aged 15-49 stated that a husband is justified in hitting or beating his wife in at least one of the following circumstances: (i) she goes out without telling him (43%); (ii) she neglects the children (37%); (iii) she argues with him (26%); (iv) she burns the food (12%); (v) she disrespects his parents (48%); (vi) she refuses to give him her salary (8%);</p> |

<sup>82</sup> Articles 169-172 of the Family Code (1984), <http://www.joradp.dz/TRV/FFam.pdf>; Nadjma Yassari, "Intestate Succession in Islamic Countries", in *Comparative Succession Law: Vol. II: Intestate Succession*, eds. Kenneth Reid, Marius de Waal, Reinhard Zimmermann, (Oxford: Oxford University Press, 2015), Footnote 160, pp. 436-437; Leo Buskens, "Sharia and National Law in Morocco," in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 120, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

<sup>83</sup> Article 34(2) of Algeria's Constitution (1989), [https://www.constituteproject.org/constitution/Algeria\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/Algeria_2008.pdf?lang=en)

<sup>84</sup> Article 35 of Algeria's Constitution (1989), [https://www.constituteproject.org/constitution/Algeria\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/Algeria_2008.pdf?lang=en)

<sup>85</sup> Article 63 of Algeria's Constitution (1989), [https://www.constituteproject.org/constitution/Algeria\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/Algeria_2008.pdf?lang=en)

<sup>89</sup> Algerian State party report, U.N. Doc. CEDAW/C/DZA/3-4 (2010), p. 25, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

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|  | <p>Algeria has not adopted specific legislation to criminalise acts of domestic violence.</p> <p>The Penal Code contains provisions that are applicable to domestic violence. For instance:<sup>86</sup></p> <ul style="list-style-type: none"> <li>• Article 269-271 criminalise various forms of abuse of minors under 16. Article 272 provides for heavier punishment if the perpetrator is the victim's parent or custodian;</li> <li>• Article 275 criminalises acts that cause a person to be injured or unable to work. Article 276 provides of heavier punishment if the perpetrator is the spouse, ascendant or descendant of the victim;</li> <li>• Articles 330-332 criminalises various forms of family abandonment;</li> <li>• Article 333-335 criminalises</li> </ul> |  |  |  | <p>and (vii) she refuses to leave her job (12%).<sup>90</sup></p> <p>According to a civil society report, a victim of domestic violence can decide not to press charges and the State will not prosecute the accused. Sometimes the judges even invite the victim not to press charges.<sup>91</sup></p> <p>According to the UN Special Rapporteur on Violence against Women, Algeria has only two government-run shelters for women who have been victims of gender based violence. In the absence of sufficient shelters, police and social services officials</p> |
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<sup>86</sup> Articles 275-276, 279, 336 of the Penal Code (1966), <http://www.joradp.dz/trv/fpenal.pdf>

<sup>90</sup> Algerian Ministry of Health, Population and Hospital Reform, UNICEF & UNFPA, "Algeria Multiple indicator Cluster Survey 2012-2013", Table CP.11, p. 196, [https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Algeria/2012-2013/Final/Algeria%202012-13%20MICS\\_French.pdf](https://mics-surveys-prod.s3.amazonaws.com/MICS4/Middle%20East%20and%20North%20Africa/Algeria/2012-2013/Final/Algeria%202012-13%20MICS_French.pdf)

<sup>91</sup> Cultural Association AMUSNAW, "Algeria", *Submission to the CEDAW Committee for the 51<sup>st</sup> Session*, 2012, p. 6, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/DZA/INT\\_CEDAW\\_NGO\\_DZA\\_51\\_8626\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/DZA/INT_CEDAW_NGO_DZA_51_8626_E.pdf)

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|  | <p>gross indecency and sexual molestation; and</p> <ul style="list-style-type: none"> <li>Article 336 of the Penal Code criminalises rape.</li> </ul> <p>The Penal Code does not specifically criminalise marital rape.<sup>87</sup></p> <p>Article 279 of the Penal Code provides for lighter penalties for murder and physical assault if a spouse committed the offences at the moment of finding the other spouse in the act of adultery with another person.<sup>88</sup></p> |  |  |  | <p>direct women escaping violence to Diar Rahma institutions which accommodate a wide range of persons in need of State support. The Special Rapporteur expressed concerns on: (i) the focus that staff in these institutions place on counselling and mediation, which can lead to the perpetuation of the abuse of victims by their abusive spouses; and (ii) the involvement of these institutions in arranging and facilitating marriages between victims and men who are searching for a wife, which can be pose a high risk bearing in mind the fragile</p> |
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<sup>87</sup> Human Rights Watch, "Your Destiny is to Stay with Him: State response to domestic violence in Algeria", 2017, pp. 3, 13,

[https://www.hrw.org/sites/default/files/report\\_pdf/algeria0417\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/algeria0417_web_0.pdf)

<sup>88</sup> Article 279 of the Penal Code (1966), <http://www.joradp.dz/trv/fpenal.pdf>

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|   |  |  |  |  | psychological state of victims. <sup>92</sup> |
| <p><b>Nationality rights</b></p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the nationality of an adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p><u>Applicable CEDAW Provision</u><br/>Article 9<br/>Para. 6 GR21</p> | <p>An Algerian woman or man may pass their nationality to their non-Algerian spouses provided provided the following conditions are met: (i) The marriage is legal and in effect for at least three years at the time of application; (ii) continuous regular residence in Algeria for at least two years; (iii) Good reputation and behavior (foreign-imposed penalties may be ignored); and (iv) proving sufficient means of living.<sup>93</sup></p> <p>An Algerian mother or father may pass their citizenship to their children regardless of whether the children were born in Algeria or abroad.<sup>94</sup></p> |  | <p>Algeria withdrew its reservation to Article 9(2) of CEDAW in 2009.<sup>95</sup></p> <p>The Government of Algeria in its 2010 report to the CEDAW Committee explained that:<sup>96</sup></p> <ul style="list-style-type: none"> <li>• Algerian nationality may now be acquired by marriage with an Algerian man or woman, provided the applicant meets the conditions set forth in the law;</li> <li>• Every child born to an Algerian father or an Algerian mother is deemed to be</li> </ul> |  |   |

<sup>92</sup> UN Special Rapporteur on Violence Against Women: Mission to Algeria, U.N. Doc. A/HRC/17/26/Add.3 (2011), paras. 71-73, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/132/72/PDF/G1113272.pdf?OpenElement>

<sup>93</sup> Article 9bis of the Algerian Nationality Code (1970), <http://www.joradp.dz/TRV/FNat.pdf>

<sup>94</sup> Article 6 of the Algerian Nationality Code (1970), <http://www.joradp.dz/TRV/FNat.pdf>

<sup>95</sup> United Nations Treaty Collection Website, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en)

<sup>96</sup> Algerian State party report, U.N. Doc. CEDAW/C/DZA/3-4 (2010), p. 17, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

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|  |  |  | <p>Algerian;</p> <ul style="list-style-type: none"> <li>• Forfeiture of nationality will not extend to the spouse or minor children of the person concerned. However, it may extend to children where it also extends to their parents;</li> <li>• Every Algerian woman who, upon marrying a foreign national, acquires her husband's nationality by the fact of her marriage, will lose her Algerian nationality, subject to the condition that she has been authorised by decree to renounce her Algerian nationality. This would seem to imply that in such</li> </ul> |  |  |
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|  |  |  | a case, the Algerian woman must expressly apply for permission to renounce her nationality, failing which she retains her original nationality. |  |  |
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