



COUNTRY PROFILE

The Constitution of Algeria protects the family, while focusing on the best interests of the child, including their education and their protection from violence and exploitation.³⁹ Moreover, Article 85 provides for the rights and freedoms to be exercised in line with the Constitution and in particular, the protection of the family, amongst others. The Preamble also provides for the protection of Algerian people against all forms of discrimination and recognises the need for both men and women to participate in institutions for the achievement of equality. The Constitution protects non-discrimination on the basis of sex or gender and its Article 40 focuses on the protection of women 'from all forms of violence in all places and situations in the public, professional, and private spheres'. It further requires the law to 'guarantee victims access to shelter and care facilities, appropriate appeal methods, and free legal assistance'.

Family law in Algeria is governed by both French civil law and Islamic law. Article 2 of the Constitution provides for Islam as being the official religion of the State. Parliament has the responsibility to legislate on matters relating to 'the general rules pertaining to personal status and family law and particularly to marriage, divorce, filiation, legal capacity and inheritance'.⁴⁰ The country has a Family Code, which is based partly on Sharia although Sharia law is superior to such statutes.⁴¹

Treaty	Date of ratification	Reservations/Declarations
CEDAW	22 May 1996	"Article 2: The Government of the People's Democratic Republic of Algeria declares that it is prepared to apply the provisions of this Article on condition that they do not conflict with the provisions of the Algerian Family Code. Article 15, paragraph 4: The Government of the People's Democratic Republic of Algeria declares that the provisions of Article 15, paragraph 4, concerning the right of women to choose their residence and domicile should not be interpreted in such a manner as to contradict the provisions of chapter 4 (Article 37) of the Algerian Family Code. Article 16: The Government of the People's Democratic Republic of Algeria declares that the provisions of Article 16 concerning equal rights for men and women in all matters relating to marriage, both during marriage and at its dissolution, should not contradict the provisions of the Algerian Family Code. Article 29: The Government of the People's Democratic Republic of Algeria does not consider itself bound by article 29, paragraph 1, which states that any dispute between two or more Parties concerning the interpretation or application of the Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration or to the International Court of Justice. The Government of the People's Democratic Republic of Algeria holds that no such dispute can be submitted to arbitration or to the Court of International Justice except with the consent of all the parties to the dispute."⁴²
African Charter	1 March 1987	None
Maputo Protocol	20 November 2016	The Government of the People's Democratic Republic of Algeria placed reservations against the following articles: "Article 6 Article 7 Article 14" ⁴³

39 Article 74 of the Constitution of Algeria 1996, amended 2016. Available at https://www.constituteproject.org/constitution/Algeria_2016 (accessed 16 April 2024)

40 Article 144(2) of the Constitution of Algeria 1996, amended 2016

41 D Touchent 'Algerian Law Guide' *GlobalLex* (January 2006) <https://www.nyulawglobal.org/globalex/Algeria.html> (accessed 6 July 2022)

42 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-8&chapter=4&clang=en#EndDec (accessed 16 April 2024)

43 https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL_TO_THE_AFRICAN_CHARTER_ON_HUMAN_AND_PEOPLES_RIGHTS_ON_THE_RIGHTS_OF_WOMEN_IN_AFRICA.pdf (accessed 16 April 2024)

MAIN TRENDS IN FAMILY LAW

The 1984 Family Code of Algeria⁴⁴ is still discriminatory. In 2005, there were amendments to the Family Code.⁴⁵ However, these amendments were limited and to avoid a disruptive debate in Parliament, they were adopted as a supplementary instrument in the Council of Ministers and not a law that would require Parliament's assent.⁴⁶ The most considerable changes are as follows:⁴⁷

- ▶ The lowest permitted marriage age is 19 for both sexes (formerly 18 for women and 21 for men), though an exception remains for children of any age to marry with judicial consent.
- ▶ Marriage by proxy is no longer possible.
- ▶ The woman herself can choose her guardian (*wali*) when she is to enter marriage.
- ▶ The woman's statutory obedience to the husband is removed as is the term 'head of the family'.
- ▶ The spouses have equal rights and duties in marriage.
- ▶ Polygamy is only allowed after permission from a judge, and only under certain conditions.
- ▶ Women are given greater access to divorce.

The 2005 reforms removed the Article stating that 'a wife obeys her husband, regards him as the head of the family and respects his parents and his immediate relatives' and replaced it by equality between the spouses.⁴⁸ Removing the legal obligation for the wife to obey her husband is progress even if in reality, by and large, men still exercise control over women's lives and choices in the family.

Women are generally economically dependent on their spouses given that the man is culturally supposed to be the main provider of the family.⁴⁹ Even if women perform better than men at school, they are often expected to retire from employment to look after their household once they are married.

In 2015, the Parliament adopted Law No 15-19⁵⁰ that criminalises certain types of gender-based violence such as domestic violence, sexual harassment, harassment in public spaces, verbal harassment, cyberviolence, online harassment and psychological violence, and that provides for penalties for assault against a spouse or female family members. However, the law provides a clause for 'forgiveness or pardon' that acts as a challenge for its implementation since in many instances, the victim, especially in the context of family pressure, forgives the perpetrator.⁵¹

Women have access to safe termination of pregnancies in the event the same is necessary to preserve the women's life as per Article 308 of the Penal Code. Safe termination of pregnancies is not extended to choice, the health of the woman, or when the woman has been raped or a victim of incest, which is the international law standard.

44 https://www.pisai.it/media/410863/86_05-juin-1986.pdf (accessed 17 April 2024)

45 N Ait-Zai 'Reforms in family law in the Maghreb' 2005 <https://www.iemed.org/publication/reforms-in-family-law-in-the-maghreb/> (accessed 6 July 2022)

46 LandInfo 'Report: Algeria: Marriage and divorce' (2018) 10. Available at <https://landinfo.no/wp-content/uploads/2018/04/Report-Algeria-Marriage-and-divorce-2018-final.pdf> (accessed 16 April 2024)

47 Id at 11

48 Id at 8

49 As above

50 <https://www.joradp.dz/ftp/jo-francais/2015/f2015071.pdf> (accessed April 12 2024)

51 EuroMed Rights 'Violence against women in Algeria' (2021) 4 Available at <https://euromedrights.org/wp-content/uploads/2021/03/Violence-against-women-in-Algeria.pdf> (accessed 16 April 2024)

KEY GAPS AND CONTESTATIONS

(i) **Unregistered marriages:** Civil marriages are immediately registered and recognised. Customary and religious marriages are however not registered. In some cases where customary marriages are not registered, the Family Code provides for the validation of customary marriages by a Court.

(ii) **Gaps in laws on legal age of marriage:** Even if the 2005 amendments increased the legal age of marriage to 19, exceptions can be granted by a judge in special cases.⁵² According to the Family Code, this exception can be obtained only after an assessment of the aptitude of both parties to marriage. Nevertheless, this exception allowing children under 18 to marry is against international human rights standards as provided expressly by the Maputo Protocol. Consent is also required for the marriage of minors, as the father exercises paternal power (guardianship) over his minor children.

(iii) **Marital rape not criminalised:** While law No 15-19 is a positive step, it does not criminalise marital rape. Moreover, the 'pardon or forgiveness' for men exposes women to threats and further violence from the spouse or relatives.

(iv) **Discriminatory child guardianship:** The father is still considered as the legal guardian of the child except in urgent cases when he is unavailable or absent⁵³ even if under Article 36, both parents are responsible for the upbringing and the interests of the child. Moreover, the law on custody is discriminatory against women since the latter loses custody in the event she remarries.⁵⁴

(v) **Discrimination in initiating divorce:** The law further discriminates against women in divorce since the way a woman may initiate a divorce differs from that of a man.⁵⁵ A wife requesting divorce must fulfil one of the conditions in the Family Code such as abandonment, failure to pay alimony or violation of the marriage contract.⁵⁶ Women can also seek a no-fault divorce that does not require them to prove the above conditions but in this case, they need to pay a financial compensation to the husband.

(vi) **Unequal inheritance:** A woman or girl cannot inherit equally from their parents. If they have a brother, the girl gets half of the brother's inheritance and in the absence of the latter, the share of the brother is redistributed to male relatives.⁵⁷ Concerning surviving spouses, female spouses are entitled to only half of the amount of male surviving spouses where the spouse has descendants.⁵⁸

RECOMMENDATIONS

Legal reform:

- ▶ There must be further amendments to the Family Code in line with CEDAW and the Maputo Protocol to remove the requirement of a legal guardian for women, criminalise forced marriage, and provide for penalties, remove the exception for marriage of children under 18 years; and provide for equal rights of men and women in marriage, divorce and in custody matters.
- ▶ Law No 15-19 needs to be amended to criminalise marital rape and to remove the clause of 'forgiveness or pardon'.
- ▶ The Penal Code must be amended to allow for safe termination of pregnancies as per international human rights standards, and not only in the case when it threatens the mother's life.
- ▶ Customary and religious marriages need to be registered so that widows in such marriage can have access to the husband's inheritance.

⁵² <https://www.undp.org/sites/g/files/zskgke326/files/migration/arabstates/Algeria-Country-Assessment---English-ilovepdf-compressed.pdf> (accessed 15 April 2024)

⁵³ Article 87 of the Family Code

⁵⁴ EuroMed Rights (n above) 5

⁵⁵ <https://wbl.worldbank.org/content/dam/documents/wbl/2024/snapshots/Algeria.pdf> (accessed 17 April 2024)

⁵⁶ Article 53 of the Family Code

⁵⁷ Articles 144-148 of the Family Code

⁵⁸ Article 145-146 of the Family Code

FATIMA'S* STORY

Case study collected with the support of
Nadia Ait-Zai, La Fondation Pour l'Égalité/ CIDDEF

Algeria



Article 53 of the Algeria Family Code allows the wife to request a divorce on the following grounds: (i) non-payment of maintenance (ii) infirmities hindering the realisation of the objects of marriage; (iii) refusal of the husband to cohabit with his wife for more than four months; (iv) conviction of the husband which is of such a nature as to dishonour the family and render impossible leading of common life and conjugal relations; (v) absence of the husband for more than a year without a valid excuse or maintenance; (vi) violation of provisions of Article 8 (this Article provides that a husband is permitted to contract marriage with more than one wife within the limits of the Shari'a if there is a just ground and the conditions and intentions of equity can be fulfilled. He must inform his wife and the future wife and submit a request for marriage authorisation) ; (vii) an immoral act which is severely reprehensible; (viii) persistent disagreement between the spouses; (ix) for violation of the clauses stipulated in the marriage contract; and (x) for any legally recognised prejudice."

"My name is Fatima*, and I am a 42-year-old speech therapist living in Algiers, Algeria. I got married in 2011, and our marriage lasted for eight years.

I now live with my two children, an 11-year-old girl and a 9-year-old boy. It's still a social taboo and a disgrace to be a divorced woman in our society. I am considered as someone who was not capable of preserving her family. I had to fight to prove that I could find another job and raise my children independently.

My ex-husband was toxic. He would frequently resort to threats and blackmail if situations didn't align with his desires. For instance, he'd insist, "I'll divorce you if you go out without my permission."

Before getting married, I made it clear to him that I wanted to continue working. Despite agreeing initially, he later demanded that I quit my job.

During that time, I worked as a counsellor, supporting women in need. But I was facing psychological violence within my own relationship.

I tried my best to save the marriage, but the escalating tension and violence forced me to leave our marital home, taking my two children with me.

At first, he demanded a divorce by mutual consent, as this would enable him to avoid paying alimony. But I refused. Since I had already left my marital home, he filed for divorce by unilateral will or repudiation (Article 48 of the Family Code), where the husband has the right to end the marriage without any explanation.

My lawyer advised me that it was better this way. If I had initiated the divorce under Article 53 of the Family Code, I'd

have to prove every allegation or risk the case being rejected in court.

Furthermore, even if the divorce were granted, I'd still have had to pay a "Khol" to my ex-husband – a sum of money as compensation. The divorce process was already financially draining. I had to sell my jewellery to pay the lawyer and support my children simultaneously. So, it would not have been possible for me to pay a Khol.

After four months of legal proceedings, the divorce was finalised, granting me custody and guardianship of my children. Since our divorce was granted under the regime of separation of property, my ex-husband retained the ownership of our matrimonial home. Currently, I receive a monthly allowance from him for renting a room for myself and my children. However, it's insufficient to afford decent housing.

The divorce took a toll on my children's mental health, making it necessary for them to attend regular therapy sessions to mitigate the impact on their emotional well-being and education. Adding to my struggles, my ex-husband does not want to pay child support to me, so he is pursuing legal action to revoke my custody rights.

There are three things that I want to change in Algeria's divorce laws. Firstly, I'd like the option of family mediation for reconciliation before going to court. Secondly, I would like the alimony recovery procedure to be faster than it is currently.

Lastly, I would like to remarry, but if I do, I would lose custody of my children. So, I hope Article 66 of the Family Code gets repealed because a mother should not lose custody of her children upon remarriage."