

ALGERIA

Article 29 of the Algerian Constitution of 1976 states that “[a]ll citizens are equal before the law, without distinction on the grounds of birth, race, sex, opinion, or any other personal or social condition or circumstance.”¹ Article 31 provides that “[t]he institutions aim to assure equality in rights and duties of all male and female citizens in removing the obstacles that hinder the blooming of the human person and prevent effective participation of all in political, economic, social and cultural life.”² Equality Now welcomes the steps that have been taken to ensure gender equality as set forth in Algeria’s Constitution. However, Equality Now has concerns with regard to implementation in Algeria of these provisions and wishes to highlight several civil and criminal laws which remain in force despite their discriminatory impact upon women. The codification of Islamic *Shari’a* law through federal legislation imposes many limitations on the fundamental human rights of women including the right to equality before the law and the right of self-determination as guaranteed under Articles 1, 2, 3, and 26 of the Covenant. Equality Now is also deeply concerned about the targeting of women by Islamic terrorists and their use of rape and “temporary marriages” as a weapon in their fundamentalist war. Details on the following summary of concerns can be found in the attached documents from Women Living Under Muslim Laws (WLUML),and

Gender Discrimination in the Family Code of 1984

Many provisions of the Family Code—*Qanun al-Ushrah*--contradict both the Algerian Constitution’s promise of equality for all and the equality provisions of the Covenant. The Code is a set of legal provisions regulating marriage and the family based on a conservative interpretation of *Shari’a* and relegates women of all ages to the status of a minor. The Code was discussed and put away several times before finally being enacted. In 1981, the proposed Code provoked unprecedented opposition from Algerian women. It was enacted on June 9, 1984 during Ramadan, taking the country by surprise.

Women’s groups convened in April 1996 and formulated twenty-two amendments to the Code which they demanded be immediately adopted in order to alleviate the inequality and discrimination against women inherent in the laws. (Annex a) Although the government has recently proposed its own revisions of the Code (Annex b), its proposal maintains the provisions for polygyny, matrimonial guardians for women, as well as other inequalities in marriage, divorce, custody and inheritance rights between men and women. Despite pleas from women’s groups all throughout the country for more radical reform, the government has chosen to ignore these suggestions for achieving equality in line with the Algerian Constitution and the Covenant.

¹Original in French: “Les citoyens sont égaux devant la loi, sans que puisse prévaloir aucune discrimination pour cause de naissance, de race, de sexe, d’opinion ou de toute autre condition ou circonstance personnelle ou sociale.”

²Original in French: “Les institutions ont pour finalité d’assurer l’égalité en droits et devoirs de tous les citoyens et citoyennes en supprimant les obstacles qui entravent l’épanouissement de la personne humaine et empêchent la participation effective de tous à la vie politique, économique, sociale et culturelle.”

Some of the more discriminatory provisions of the Code regarding marriage and divorce are as follows:

Article 7 of the Code provides that the legal age for marriage is 21 years for men and 18 years for women. In addition, the judge can waive the age requirement “if it is in the interest of the parties or is otherwise advisable.” Equality Now submits that the legal age of marriage should be the same for men and women, in accordance with the right to equality under the law.

Although the Family Code defines marriage as a “legal contract between a man and a woman,” women’s legal capacity, as defined by the same Code, makes this provision for consensual marriage effectively void. Under this Code, a woman’s actions are subject to the approval of her matrimonial guardian (who must, according to the Code, be a male). In fact, marriage in Algeria takes the form of a contract between the matrimonial guardian and future husband. In this regard, the Family Code violates the rights guaranteed to women under Articles 3 and 23 of the Covenant.

In addition, Article 8 of the Code provides that a man can contract marriage with up to four wives “if there is a just ground and the conditions of equality can be fulfilled—provided that the previous and future wives are duly informed.” While polygamy is rarely practiced in Algeria, the legal codification of the practice violates Articles 3 and 26 of the Covenant.

Women may not marry non-Muslims according to Article 31, but the same prohibition does not apply to men. Article 39 demands that a woman obey her husband in his role as head of the family that requires that she breast-feed her children.

Under the present law, divorce can arise “from the will of the husband, mutual consent of the spouses, or the demand of the wife.” While the husband can simply repudiate the marriage by his words, the wife may only request a divorce on seven grounds laid out in Article 53. The wife can also get a divorce from her husband “in case of incompatibility....by exchanging her freedom for money paid to her husband, a practice the *Shari’a* calls *khul*.”³

Equality Now considers the practices outlined above to be violations of the rights of women to equality under the law, the right to consensual marriage, and equal protection of the law guaranteed by Articles 3, 26 and 23 of the Covenant.

The Criminalization of Abortion

Abortion is permitted under Algerian law only when deemed essential to save the life, physical or mental health of the woman.⁴ The government has misconstrued Article 6 of the Covenant, guaranteeing the right to life to justify the prohibition of abortion; in its State Party report to the Committee on the Rights of the Child in 1996 (CRC/C/28/Add.4), the government underscored

³Lazreg, Marnia. The Eloquence of Silence. New York: Routledge, 1994, p. 152.

⁴Coliver, Sandra Ed., The Right To Know: Human Rights and Access to Reproductive Health Information. Philadelphia: University of Pennsylvania Press, 1995, p. 112.

its commitment to the right of the child “at all stages of development” by noting its proscription of abortion. The legal ban is codified in Article 72 of the Public Health Code and amended by Law No. 85-05 of February 16, 1985, which provides:

“Abortion for therapeutic reasons may be considered as an essential measure to save the mother’s life or to preserve her physiological or mental health if it is seriously in danger. An abortion may be performed only by a doctor in a specialist hospital or clinic after a medical examination and with the agreement of a consultant.”⁵

In addition, Article 308 of the Penal Code requires that the doctor notify administrative authorities prior to performing the abortion and Article 304 of the Penal Code provides that anyone who performs, or attempts to perform an abortion is punishable by up to five years’ imprisonment and a fine of up to 10,000 dinars.⁶ If the procedure results in the death of the woman, the penalty is solitary confinement with hard labor for a period of between 10 and 20 years.

The abortion law has been strictly construed to permit abortion only when the pregnancy constitutes a physical danger to the woman’s life.⁷ The results of this strict ban are devastating. A study of women who had committed suicide in Algeria showed that 30% of them had been pregnant and unmarried.⁸ Additionally, the Algerian government has wavered back and forth on whether or not to permit abortion in the case of rape by terrorists. In April 1998 the government issued directives to permit abortions “in cases of extreme necessity and with a medical note stating no risk to the mother.”⁹ The council, which is Algeria’s highest Islamic body, stressed that rape by terrorists was “the only possible condition for allowing abortion.”¹⁰ However, just a few days later, Algeria’s highest religious body issued an edict banning such abortions.¹¹ The *fatwa* banning abortions for women impregnated by terrorists stated that rape was not included under the exception made for “cases of absolute necessity”.¹² Equality Now submits that forced maternity constitutes cruel, inhuman and degrading treatment, in violation of Article 7 of the Covenant. This is particularly true in the case of pregnancy resulting from rape.

⁵Ibid.

⁶Ibid.

⁷Ibid.

⁸Ibid at 113.

⁹“Algeria council allows abortion for rape victims,” in Women Living Under Muslim Laws Newsheet, Thursday, April 14, 1998, p. 2.

¹⁰Ibid.

¹¹“Algeria renews ban on abortion for rape victims,” in [CNN interactive](#), April 27, 1998.

¹²“Algeria restores honor to rape victims,” in [nandotimes news](#), April 27, 1998.

Moreover, Equality Now notes that the criminalization of abortion leads to higher rates of maternal mortality. According to World Health Organization and World Bank, in 1997 the maternal mortality rate in Algeria was 1 woman in 120.¹³ Equality Now submits that women have a right to control their reproductive functions and should have access to safe and legal abortions. Denial of this right constitutes a threat to the right to life, guaranteed by Article 6 of the Covenant.

Freedom of Movement

The Family Code does not permit females under 19 and males under 18 to travel abroad without their husband's or father's permission. The discriminatory limitation on women's movement in leaving the country violates both the right to freedom of movement guaranteed under Article 12 and the right to equality under Article 3 of the Covenant.

Abduction, Rape and Slavery by Terrorists and State Security Forces

Equality Now is extremely concerned by the abduction, rape and enslavement of women by Islamic fundamentalists and by state security forces. According to WLUML, despite the consistent placing of the blame solely on "crazed Islamic radicals", there are a "torrent of reports from human rights groups that torture and murder are committed...by the Algerian state."¹⁴

Fundamentalists rebels—including members of the Islamic Salvation Front (FIS) and Armed Islamic Group (GIA)-- have been terrorizing civilians and in particular targeting women, since the authorities called off a general election dominated in the first round of voting by FIS in January 1992. According to an alert by International Women's Human Rights Law, the goal of this campaign against civilians, characterized as a "jihad" or "holy war", is to establish a strict Islamic state. In March 1994, GIA issued a statement declaring that all unveiled women appearing in public were potential military targets. On March 28, 1994, **Katia Bengan**, an unveiled 17 year old high school student in Bilda was gunned down in the street while walking with a veiled friend after having been warned by local fundamentalists.¹⁵ Every day women are assassinated and dragged off for "temporary marriages"¹⁶ where they are raped and then abandoned or killed.¹⁷

¹³"Maternal Health Around the World" poster. World Health Organization and the World Bank 1997.

¹⁴"Who is behind Algeria's one-sided bloodshed?" in Women Living Under Muslim Laws Newsheet, January 8, 1998, p. 2.

¹⁵Bennoune, Karima. "S.O.S. Algeria: Women's Human Rights Under Siege" in Women Living Under Muslim Laws Dossier 18, pp. 32-33.

¹⁶"...self-proclaimed emirs would assert that Islam authorizes them to take any woman they desire as a 'temporary wife'. This practice from the dark ages has now become 'legal' and was generalized by a 'fatwa'. In this way, barbaric acts such as rape, mutilation, and decapitation are trivialized and justified as retaliation and appropriate punishment for women who refuse to submit..." Sadou, Zazi. "Algeria: The Martyrdom of Girls raped by Islamic Armed Groups," in Women Living Under Muslim Laws Dossier 16 [originally presented at the opening session of the Women's Tribunal on Violence Against Women, held at the Beijing International Conference on Women in September 1995]

Nabila Djahnine was a 31 year old architect and a women's rights activist who led an organization called *Tigrinet Nettouth* (The Cry of Women) which called for the elimination of discriminatory provisions from the Family Code. She was killed on February 15, 1995 when she was gunned down by two men in a car as she walked to work in Tizi Ouzou.

Ourda was a 17 year old secondary school student in Algiers in October of 1994 when she was kidnaped on her way home from school. She was taken to an old dilapidated house where about 10 other girls ranging in age from 10 to over 20 were being held. The girls were made to cook, wash, and sew, and they were raped every day by the armed men who watched over them. Several of the girls there were impregnated by their rapists and the children resulting from these forced pregnancies were abandoned in hospitals while the girls themselves were sent out of their homes. (Annex #)

Karima Belhadj was a 21 year old typist in the Youth and Sports Department of the General Office of National Security when she was repeatedly shot in the head and abdomen as she walked home from work on April 7, 1993.

Derouche Mimouna was 28 years old when she was decapitated in front of her family on January 23, 1994 in Tiaret.

Saida and **Zoulinka** were 15 and 21 when they were gang raped, had their fingernails and toenails removed, throats slit, and then were discarded on the side of the road. The sisters were reportedly punished for refusing to submit to temporary marriage. 20 days later, their mother was found in a mass grave having been raped and killed as well.

According to Khalida Messaoudi, a leading Algerian feminist, the battle raging in her country "is not a fight *between* the military-backed 'Front Liberation National' (FLN) Government and Islamic fundamentalists. It is more like a war against an unarmed civilian population by a group intent on imposing its narrow vision on all Algerians."¹⁸

There is some suggestion that the government has been complicit in, or has even been the sole perpetrator of, some of the terrorist acts. WLUML reports that last year, "a number of former diplomats, secret policemen and soldiers broke their silence...[and] said that they knew the massacres...had been the work, not of Islamic activists, but of Algeria's secret police."¹⁹ Amnesty International (AI) notes that many of the massacres and other acts of terrorism have taken place in the most militarized region of the country. AI further reports that army barracks and security force posts have been within sight and earshot of some attacks and that in certain

¹⁷See Annex #.

¹⁸"A Sample of the New Internationalist Interview Khalida Messaoudi.

¹⁹"Who is behind Algeria's one-sided bloodshed?" in Women Living Under Muslim Laws Newsheet, January 1, 1998, p. 2.

cases, “army units with armoured vehicles were stationed nearby, yet no one intervened to stop the massacres.”²⁰ Additionally incriminating to the government is the fact that most massacres have occurred in districts where there is a significant population of those who voted for FIS before the canceled 1992 elections. Regardless of its involvement in the terrorism, Equality Now believes that the Government of Algeria should be held accountable for human rights violations which occur in its territory, and the Government should take effective measures to stop such violations.

Discrimination in Education and Employment

According to the Inter-Parliamentary Union, illiteracy among women 15-24 was 37.8 % and 79.5% among women 25 and older in 1987. The U.N. Department of Economic and Social Affairs Statistics Division reported that in 1995 women made up 24% of the nation’s adult labor force. Salima Ghezali, editor of La Nation, has suggested that “Algeria’s civil war has enabled women to take top jobs because they are dangerous positions.”²¹

Representation in Government

[U.S. State Dept. statistics]

2 women in the Cabinet

11 of 380 members of the lower house of Parliament are women

25% of judges are women

0/4 1995 presidential candidates was a woman

As of April 1998, only 12 of the 380 seats of the lower house of Parliament were held by women, according to the Inter-Parliamentary Union.

Violence Against Women

While there are no national studies on violence against women, the Central Hospital in Algiers reported 4,600 cases of abuse against women requiring medical treatment in 1991 and 1992 in that hospital alone.²² Women who suffer abuse at the hands of their husbands may file criminal charges, but such actions are rarely taken since civil courts are much more likely to rule in favor of the abuser.²³

[From the U.S. State Dept. report] Although there are no reliable studies on spousal abuse, women’s rights advocates assert that it is common. There are no laws on the books protecting

²⁰“Algeria: When the State Fails,” in Amnesty International External Archive, AI Index: 28/47/97, December 23, 1997.

²¹Wainwright, Julie. “How Danger Helps Women Into Top Posts,” Gemini News Service

²²“Country Reports on Human Rights Practices For 1993: Algeria,” in Women’s International Network News, Spring 1994, p. 17.

²³Ibid.

women from spouse rape or abuse. Battered women must obtain medical certification of the physical effects of the abuse before lodging a complaint with the police. Fewer than half of abused women seek such certification. Women's rights groups assert that police and courts are lenient with men accused of battering their wives.

[From the Concluding Observation of the Committee on the Rights of the Child: Algeria (DRC/C/15/Add.76) June 18, 1997] "...the law applicable in the case of rape of a minor excuses the perpetrator of the crime from penal prosecution if he is prepared to marry his victim.* *
*Article 7 of the Algerian Family Code allows the judge to lower the age of marriage if the victim is a minor."

After six years of armed conflict between the government and the Islamic fundamentalists, the dialogue on rape has gotten even more muddled. An article in The Irish Times quotes Mr. Abdelhak Bererhi, an Algerian senator and former education minister as saying during a French radio debate, "It is indecent to compare a rape in a police commissariat with a rape by a GIA terrorist."²⁴

The failure of the government to effectively protect women from violence constitutes a violation of their right to equal protection of the law, as set forth in Article 26 of the Covenant.

²⁴"Voices for Algerian democracy speak out," in The Irish Times On the Web, Tuesday, March 31, 1998.

INDEX OF ANNEXES

A. Gender Discrimination in the Family Code of 1984

1. Code de la Famille, selected provisions of the Family Code of 1984 in French.
2. Algeria: The Family Code of 1984, selected provisions of the Family Code of 1984 in English.
3. Preface to the 22 amendments of the Family Code of 1984 proposed by various women's groups, in French, originally printed in WLUML Compilation d'informations, Spring 1997.
4. "Pour le droit des femmes" (the 22 amendments proposed by Algerian women's groups, in French), originally printed in WLUML Compilation d'informations, Spring 1997.
5. 22 amendments proposed by Algerian women's groups, in English, from WLUML.
6. Avant projet de la loi portant amendement de la loi 84-11 du 9 juin 1984 portant Code de la Famille (The Algerian Government's proposal for revisions to the Family Code of 1984, in French).
7. Code de la Famille: l'ambivalence d'un discours, El Watan, May 28, 1998.
8. Solidarity with the struggles of the women of Algeria, Women Living Under Muslim Laws Newsheet, dated February 27, 1998, vol. X, no. 1, p. 3.
9. Femmes: Déclaration préliminaire, La Nouvelle République, February 21, 1998.
10. Code de la Famille: un remport contre toutes les derives, El Moudjahid, April 11, 1998.
11. Contre l'intégrisme en demandant, pour defendre leurs droits, une transformation profonde du Code de la Famille, le pouvoir repond par le mepris, El Watan, April 27, 1998, p. 8.
12. Nadia Ait-Zai, L'égalité, un principe mal compris, El Watan, May 11, 1998.

B. Criminalization of Abortion

Equality Now submission to the UN Human Rights Committee

63rd Session, July 1998

1. Algeria council allows abortion for rape victims, Women Living Under Muslim Laws Newsheet, dated April 14, 1998, vol. X, no. 1, p 2.

2. Ahmed A., Femmes violées par les terroristes: enfin un statut!, La Nouvelle République, April 26, 1998.
3. Ce que dit la fetwa du HCI “les femmes violées par les terroristes sont pures”, Liberté, April 27, 1998, pp. 2-3.
4. Algeria renews ban on abortion for rape victims, CNN interactive on-line, April 27, 1998.
5. Youssef M. Ibrahim, Algeria to Permit Abortions for Rape Victims, New York Times, April 14, 1998.

C. Women as a Weapon in the War Between Terrorists and State Security Forces

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2. Communiqué #49 issued by GIA on October 15, 1996.
3. Who is behind Algeria’s one-sided bloodshed? Women Living Under Muslim Laws Newsheet, dated January 8, 1998, vol. X, no. 1, pp. 1-2.
4. Zazi Sadou, Algeria: The Martyrdom of Girls raped by Islamic Armed Groups, Women Living Under Muslim Laws Dossier 16, pp. 7- 16.
5. Survivors recall Algeria’s worst massacre, Middle East Times, January 9-18, 1998, p. 9.
6. Youssef M. Ibrahim, 2 Unveiled Women Killed in Algeria: Muslim militants had issued a warning, San Francisco Chronicle, March 31, 1994, p. A15.
7. Leslie Camhi, Veil of Tears: All Algerian Women are Targets in an Uncivil War, Village Voice, November 28, 1995.
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11. Bob Herbert, Algerian Terror, New York Times, November 9, 1997, p. 15.
12. Bob Herbert, Terrorism by the Book, New York Times, November 30, 1997, p. 9.

13. Robert Fisk, Lost Souls of the Algerian Night: Now Their Torturers Tell the Truth, The Independent, October 1997.

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