



Algeria – Researched and compiled by the Refugee Documentation Centre of Ireland on 22 July 2011

Information on forced marriages and polygamous marriages, including the treatment of women.

A document published on the *Social Institutions and Gender Index* website, in a section titled “Family code”, states:

“According to the Family Code, women cannot marry without the consent of their guardians (who are always male). More positively, women cannot be married against their will. The minimum legal age of marriage in Algeria is 21 years for men and 18 years for women, and the age of marriage in urban communities is rising regularly, which has the positive effect of increasing the national average. A 2004 United Nations report estimated that only 4 per cent of girls between 15 and 19 years of age were married, divorced or widowed. However, early marriage is still prevalent in rural areas where family traditions prevail. The code prohibits women from marrying men who are not of Algerian nationality. Polygamy is lawful according to the Family Code, which follows Sharia law and allows Muslim men to take up to four wives. Recent amendments to the code enforce procedures that make the practice more difficult and polygamous marriages are increasingly rare.” (Social Institutions and Gender Index (undated) *Gender Equality and Social Institutions in Algeria*)

A report from the *UN Human Rights Council*, in a section titled “The Legal and Institutional Framework for Women’s Rights” (paragraphs 7-11), states:

“The Family Code establishes the main legal parameters of male-female relations in Algeria. In response to the demands of the women’s movement, it was reformed in February 2005, when the President took the initiative and issued two important decrees that were later confirmed by Parliament. The first decree fundamentally reformed the Nationality Code allowing Algerian women with foreign husbands to transfer their nationality both to their children and to their husbands. The second decree made significant improvements to the Family Code. The previous Family Code, enacted in 1984 despite the mass protests of women who decried its unconstitutionality, largely reflected reactionary interests. It stipulated that an adult woman could only get married through the offices of a male matrimonial guardian (wali); although the marriage had to occur with the woman’s consent, her wali would conclude the marriage on her behalf. Article 39 legally obliged a married woman to obey and respect her husband as the head of the family. A husband was also legally entitled to seek divorce through repudiation of his wife, whereas women could only demand divorce on very narrow grounds and often had to make a payment (khola) to their husbands to obtain a divorce. The Family Code of 2005 attempts partially to respond to women’s demand for equality, abolishing humiliating provisions such as article 39. Some of the other criticized institutions are symbolically retained, but rendered legally irrelevant. The institution of the matrimonial guardian still exists, but an adult woman can now choose her wali. Moreover, the woman herself now concludes the marriage and her wali of choice only has to be present during the ceremony.” (UN Human Rights Council (13 February 2008) *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Yakin Ertürk: addendum: mission to Algeria*, p.6)

A report published by the *UN Committee on Economic, Social and Cultural Rights*, in a section titled “Replies to the Committee’s Concerns” (paragraph 70) refers to Algerian marriage as follows:

“Marriage is now considered in family law as a voluntary contract requiring the consent of both future spouses, as provided for in articles 9 and 10 of the Family Code:

(a) Article 9: “The marriage contract is concluded by mutual consent between the two spouses”.

(b) Article 10: “Consent arises from a request by one of the two parties and acceptance by the other expressed in a form signifying legal marriage. The request and consent on the part of disabled persons may be expressed in the form of writing or gestures signifying marriage in language or common usage”. The logical consequence of these provisions is that marriage by proxy has been abolished entirely. There cannot therefore be any such thing as a “forced marriage” and the requirement of a guardian’s consent to the marriage does not appear among the provisions of the Family Code, since the purpose of the wali’s presence is merely to add solemnity to this important act. It is out of the question that the wali should give his consent in lieu of the future spouse. In fact, articles 11 and 13 show this quite clearly:

(c) Article 11: ‘An adult woman shall conclude her marriage contract in the presence of her ‘wali’, who shall be her father or a close relative or any other person of her choice. Subject to the provisions of article 7 of this Act, a minor’s marriage is entered into through his ‘wali’, who is the father and close relatives. The judge will act as guardian of any person without a wali’.

(d) Article 13: ‘It is forbidden for a wali, whether the father or other person, to force a minor in his custody to marry, and he cannot make the minor enter into marriage without the latter’s consent’. The age of matrimonial majority is 19 years for the two future spouses, who are free to include in their marriage contract whatever clause they deem useful. With regard to polygamy, Act No. 84-11 of 9 June 1984 mentioned above introduced new conditions, with which the husband must comply’.

(e) Article 8: ‘Marriage may be entered into with more than one spouse and a request for a marriage licence may be submitted to the president of the court at the conjugal place of residence. The president of the court may authorize the new marriage, if he is satisfied that there is mutual consent and that the husband has shown good reason and his ability to offer equity and the *conditions* needed for marital life’.” (UN Committee on Economic, Social and Cultural Rights (CESCR) (6 January 2009) *Implementation of the International Covenant on Economic, Social and Cultural Rights: combined 3rd and 4th periodic reports, submitted in one document, under articles 16 and 17 of the Covenant: Algeria*, pp.14-15)

A report from the *UN Committee on the Elimination of Discrimination Against Women*, in a section titled “Family Code” (paragraph headed “Marriage”), states:

“Marriage in family law is now deemed to be a contract by mutual agreement requiring the consent of the prospective spouses. In practice, this has meant the abolition of proxy marriage. Article 9 provides that “Every marriage contract shall be concluded by an exchange of consent between the parties.” 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.” (UN Committee on the Elimination of Discrimination Against Women (24 March 2010) *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women; Combined third and fourth periodic reports of States parties: Algeria*, p.14)

A *Magharebia* article states:

“In Algeria, a number of women's organisations are leading the fight to change Algeria's two-decades-old Family Code. Activists have criticised the code's restrictions on divorce and its guardianship rules for women who want to marry. ‘Girls whose mothers were dead have had great difficulty marrying because their fathers do not wish to recognise them. There have been numerous cases and this situation is unacceptable,’ Women's rights activist Cherifa Kheddar said. Kheddar has launched a nation-wide campaign called *Kif kif devant la loi* (‘All the same in the eyes of the law’) to educate rural women on their rights under the Algerian constitution. Also in the current code, abusive husbands may have to pay if their wives choose to leave under *khol'e* rules. Ferroudja Moussaoui, a member of the women's group Amusnaw, criticized other aspects of the code. ‘Polygamy is still legal where a marriage has been consummated. The marriage of minors is indirectly legalised,’ she said. Activists dismissed the 2005 amendments to the Family Code, saying government officials chose to pander to the more conservative elements of society at the expense of an improved legal status for women.” (Magharebia (19 March 2010) *Women demand expanded rights in Algeria, Morocco*)

The 2010 *United States Department of State* religious freedom report for Algeria refers to the practice of polygamy as follows:

“The family code also affirms the Islamic practice of allowing a man to marry as many as four wives; however, under the 2005 family code amendments, he must obtain the consent of the current spouse, or spouses, as well as the intended new spouse and a judge. Furthermore, a woman has the right to a no-polygamy clause in a prenuptial agreement. Polygamy rarely occurred in practice, accounting for only 1 percent of marriages.” (United States Department of State (17 November 2010) *International Religious Freedom Report 2010: Algeria*)

See also 2011 *United States Department of State* country report for Algeria which states:

“The family code affirms the Islamic practice of allowing a man to marry as many as four wives. According to the family code, polygamy is only permitted upon the permission of the first wife and the determination of a judge as to the husband's financial ability to support an additional wife. In practice, however, this occurred in 1 to 2 percent of marriages.” (United States Department of State (8 April 2011) *2010 Human Rights Report: Algeria*)

A *Freedom House* report on women's rights in Algeria, in a section titled “Autonomy, Security, and Freedom of the Person” states:

“Polygamy remains legal under Article 8 of the family code, although it is now subject to several conditions. The court must certify that there is “justified motivation” behind the decision to take more than one wife, that the man is able to take care of an

additional spouse, and that all of the spouses involved consent to the marriage. Currently, only 3 percent of Algerian households are polygamous. However, single and divorced women are increasingly marginalized by society. A 2006 nationwide survey showed that 55 percent of the sample of women (whose average age was 33) were single, 36 percent were married, 6 percent were widows, and 3 percent were divorced.¹⁵ Consequently, becoming someone's second wife is an increasingly attractive option when the alternative is to remain single. The supporters of polygamy argue that because most people who disappeared during the Black Decade were men, there are more women than men of marrying age. Retaining polygamy while attempting to accommodate the concerns of women's rights activists may create more problems than it solves. Now that the consent of the first spouse is required, the husband often chooses to divorce the first spouse if she rejects his request for a second wife. If he and the first wife were childless or if their children are adults, the divorced wife has no right to the marital home or alimony. Consequently, women over the age of 60 increasingly find themselves divorced and homeless as their ex-husbands take new wives. This illustrates the difficult task of reconciling civil law and Islamic law, under which polygamy is conditioned not on the consent of the first wife, but on the ability of the husband to care, materially and morally, for all of his spouses. Some maintain that these are more sensible conditions than those included in the new law, but most women's rights activists argue that polygamy should be banned altogether." (Freedom House (3 March 2010) *Women's Rights in the Middle East and North Africa 2010 – Algeria*)

An *Amnesty International* report, in a section titled "Maintaining Polygamy", states:

"Article 8 has been modified to include further restrictions on polygamy, but the right of a man to marry more than one woman is maintained in the Family Code. Contracting a marriage with another wife requires "just motive" – a term not defined in the Family Code - and equal conditions and intention in the treatment of the wives. The current and future spouse must be informed, and a request for authorisation must be made to the president of the tribunal where the couple reside. The president of the tribunal may authorise the new marriage, if he or she concludes that the spouses consent, and that the husband has proved his just motive and his ability to offer equality and necessary conditions for conjugal/married life. The amended Family Code does not provide information with regards to the implementation of such conditions by judges. Maintaining the right of men to a polygamous marriage is highly symbolic, as polygamy is not practiced on a large-scale in Algeria." (Amnesty International (1 October 2007) *Algeria: Briefing to the Human Rights Committee*)

A report published by the *Office of the United Nations High Commissioner for Human Rights*, in a section titled "Challenges relating to the Family Code of 2005" (paragraph 56), states:

"The restrictions introduced by the amendments of 2005 to the practice of polygamy, which is maintained in law, are often circumvented when a husband fails to secure his first wife's agreement and has not obtained the judge's permission to take a second wife. During the visit, 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." (Office of the United Nations High Commissioner for Human Rights (OHCHR) (19 May 2011) *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, on her mission to Algeria*)

This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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