

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Questions

- 1. Is there any information on social attitudes to pregnancy outside marriage in Algeria?**
- 2. Is it illegal to engage in sexual relationships outside marriage and are there any consequences for the male?**

RESPONSE

1. Is there any information on social attitudes to pregnancy outside marriage in Algeria?

The most recent UK Home Office *Country of Origin Information Report* on Algeria, from 30 September 2008, quotes claims from the UN Human Rights Council regarding the position of unmarried mothers. The Council notes that NGOs focusing on women in Algeria report that “increasing number of girls and unmarried women, who were ejected or fled from their homes and now live on the street”, and that “[t]he ejection may occur to punish women and girls who are perceived to have violated the family honour, including young women, who become pregnant outside marriage or engage in relationships that are not approved by the family”:

23.22 On 13 February 2008, the UN Human Rights Council in its Report of the Special Rapporteur on violence against women, its causes and consequences noted:

“The dire situation of street women and their children in Algeria is a matter of grave concern... Their plight is strikingly visible in the big cities, especially at night. While some street women may be migrants from rural areas, women very often end up in the streets due to the violence and oppression they experience in the family. Their very living conditions on the streets must be seen as a form of violence.

“While the 2005 Family Code grants women with children a right to housing, humanitarian organisations are still confronted with cases of divorced women with and without children who end up in the streets. SOS Femmes en Détresse has estimated that at least 540 more women ended up on the streets in 2006 alone.

“These organisations also note an increasing number of girls and unmarried women, who were ejected or fled from their homes and now live on the street. The ejection may occur to punish women and girls who are perceived to have violated the family honour, including young women, who become pregnant outside marriage or engage in relationships that are not approved by the family. A rupture in the family structure (e.g. if one parent dies and the other remarries) can also trigger family conflicts that ultimately result in the ejection of the most vulnerable family member. Finally, there are many cases, where the ejection stands at the end of a long history of physical or sexual abuse in the family circle.

“The ejection of women and girls into the streets must be seen as a particularly egregious form of violence against women in the Algerian context, because it usually has dire consequences for the victims, as it involves various forms of abuse and exploitation. In some cases ejection has also led women into prostitution. The police and other authorities regularly pick up street women and girls and drop them off in temporary shelters, but the authorities largely fail to offer long-term programmes to support them financially, legally and socially, and reintegrate them”. [35b] (UK Home Office 2008, *Country of Origin Information Report – Algeria*, 30 September – Attachment 1).

The abovementioned UN Human Rights Council report from February 2008 provides further information on the position of unmarried single mothers in Algeria, stating that: “A strong stigma is attached to these women and their offspring. Unmarried single mothers are often rejected by their own families and have to endure immense social pressure”. The report also claims that “women who are pregnant outside marriage will very often opt for an abortion. Since Algerian law only permits abortions under very narrow circumstances, women have to risk dangerous clandestine abortions”. For single women who choose to keep their babies, the report claims that “[s]tate support for single mothers is overall still insufficient”:

E. Single mothers and their children

39. There are also a substantial number of unmarried single mothers, with around 3,000 children born outside marriage annually. A strong stigma is attached to these women and their offspring. Unmarried single mothers are often rejected by their own families and have to endure immense social pressure. In Constantine, for instance, I was informed of the case of Salima, a young woman who committed suicide because her family had forbidden her marriage to a man she had a relationship with. The autopsy found that the woman was three months pregnant.

40. Children born outside marriage also face problems throughout their lifetime, especially since they are registered and identified as such in official documents. In such cases, girls are confronted with intersecting layers of discrimination based on their legal status and sex. Illustrative of this is the case of Fatima, a woman from the wilaya of Batna, who was born outside marriage. At birth, her mother gave her to a family under an Islamic care arrangement (kafala). Her foster brother regularly beat her until she was finally ejected from the house of her foster family at the age of 17. Living on the streets, she was abducted by a group of men and gang raped. She survived the ordeal and met a man who agreed to marry her, even though he knew that she was born outside marriage. A religious ceremony was conducted, but the man refused to officially register the marriage. He physically abused her on a regular basis and she eventually fled back to her foster family. Even though her foster

brother started beating her again, she stayed for another two years until she was thrown out. When I met her, Fatima was living at a women's shelter and working as a cleaning lady.

41. In view of these prospects, women who are pregnant outside marriage will very often opt for an abortion. Since Algerian law only permits abortions under very narrow circumstances, women have to risk dangerous clandestine abortions. Estimates on the number of clandestine abortions vary widely, but the authorities acknowledge that several dozen deaths result from unsafe clandestine abortions every year.

42. Unmarried women who choose to deliver their babies will usually try to hide their condition. Hospitals make special arrangements allowing single mothers to check in from the seventh month and give birth anonymously. In the past, single mothers were usually encouraged to give up their children into kafala arrangements. Recently, the Ministry of National Solidarity took the decision to actively encourage single mothers to keep their children. While they receive some help, State support for single mothers is overall still insufficient. For instance, single mothers do not receive preferential access to subsidised State housing, even though they can often neither return to their families nor find private housing.

43. Whereas the 1984 Family Code did not have any provisions to force the father to acknowledge paternity, article 40 of the 2005 Family Code now specifically allows DNA testing to establish paternity. This is a positive step as it substantially improves the legal position of single mothers and their children (Ertürk, Y. 2008, 'Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk – Addendum, Mission To Algeria', UN Human Rights Council, (source: Refworld), 13 February <http://www.unhcr.org/refworld/country,...DZA,,47ce626c2,0.html> – Accessed 21 April 2009 – Attachment 2).

2. Is it illegal to engage in sexual relationships outside marriage and are there any consequences for the male?

Beyond the issue of adultery, little information could be found on the legality of sexual relations outside of marriage, or specifically on the consequences for the male.

January 2004 research carried out by the Immigration and Refugee Board of Canada states that “[a]ccording to Islam, Algeria’s state religion...all sexual relations outside marriage are prohibited”, and adultery is punishable by law under article 339 of Algeria’s Penal Code:

An article published by the Académie Montpellier (a regional administration of France’s national ministry of education) on the situation of women in the Maghreb countries indicated that adultery is [translation] “grounds for severe punishment” when committed by women in Algeria, but that that is not the case for men (n.d.). According to Islam, Algeria’s state religion (Country Reports 2002 31 Mar. 2003, Sec. 2.c), all sexual relations outside marriage are prohibited (Switzerland 5 July 2000). Adultery is illegal under article 339 of Algeria’s Penal Code, and anyone found guilty of the offence faces a sentence of one to two years in prison, but only when the [translation] “offended spouse” complains (ibid.). However, according to Switzerland’s Federal Office for Refugees, in practice, the authorities enforce this provision [translation] “pragmatically and with tolerance” (ibid.).

A woman who commits adultery and has a child through the adulterous relationship could face several problems (FIDH Feb. 1999). Any voluntary interruption of a pregnancy is prohibited in Algeria, and there are almost no support centres, so many children are abandoned (ibid.). Furthermore, the Family Code stipulates that only children of valid marriages are recognized under the law, which means that the children of adulterous relationships have no legal status (ibid.) (Immigration and Refugee Board of Canada 2004,

DZA42374.FE – Algeria: Ill-treatment of some women who have committed adultery by society in general, by their family, by Muslim fundamentalists and by the justice system; the protection offered to adulterous women who are in danger, 29 January http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=419616 – Accessed 21 April 2009 – Attachment 3).

A Freedom House report on women in Algeria provides information on penalties for adultery under Algerian law:

Men and women are treated equally under the penal code except in cases of adultery and the abduction or rape of minors. Article 339 of the penal code punishes those who commit adultery with one to two years' imprisonment, with no discrimination between genders. However, unmarried men who commit adultery with a married woman will not be punished if they were unaware that the woman was married. An unmarried woman, on the other hand, who commits adultery with a married man, will receive the punishment of one to two years' imprisonment whether or not she was aware that the man was married. As for the abduction or rape of minors, the penal code allows for the guilty party to escape all forms of punishment if he marries his victim (Freedom House 2005, 'Women's Rights in the Middle East and North Africa – Algeria', <http://www.freedomhouse.org/template.cfm?page=170> – Accessed 21 April 2009 – Attachment 4).

An overview of the Algerian legal system, sourced from the Emory University law faculty website, provides background information on the 1984 Family Code:

Legal History: The Algerian legal system is based on French and Islamic law. Algeria remained under French rule for 132 years, constituting the longest direct European colonisation of any region in North Africa. After a brutal eight-year struggle for independence, Algeria became a sovereign state in July 1962.

Under French rule, courts applied Maliki principles in matters relating to personal status and succession (unless the parties were Ibadi). Commentators note that the process of adjudication and interpretation in the Franco-Algerian courts led to distinctive developments in the area of family law. In 1916, a commission headed by the French jurist Marcel Morand was appointed to formulate a draft code of Muslim law. The draft code, *Avan-project de code du droit Musulman Algerien*, based mainly on Maliki principles but incorporating some non-Maliki (mainly Hanafi) provisions, was never formally passed into law although it did influence the application and administration of family law in Algeria. The government eventually issued a *Marriage Ordinance* in 1959, enacting some Maliki principles relating to family matters; the Ibadi minority was initially exempted from the Ordinance. The legislation may have been inspired by the codification of family law in Tunisia and Morocco in 1956 and 1958 under newly-independent national governments. Though the *Marriage Ordinance* did not introduce substantial changes to family law, there were some provisions based on Hanafi principles. The Ordinance established rules for solemnisation and registration of marriage, raised the minimum marriage ages for both parties, and established certain regulations relating to judicial dissolution and court orders for post-divorce reliefs; its application was specific to those who registered their option for state legislation.

The first Constitution promulgated in 1964 declared Islam the state religion. The new regime also amended the *Marriage Ordinance* of 1959, repealing or amending certain provisions such as the exemption of Ibadi marital relations from the terms of the Ordinance and the minimum marriage-age. The second Constitution adopted in 1976 reaffirmed Islam as the state religion. Periodic demands for comprehensive codification of personal status and inheritance laws eventually led to a draft code being presented to the National Assembly in 1980. After several years of debate, discussion and protest, the Family Code was enacted in 1984.

...The provisions of the Family Code 1984 are drawn from various schools of law, the Algerian draft code of Muslim law formulated by a commission headed by Marcel Morand in 1916, and parallel legislation from neighbouring countries (particularly Moroccan enactments). Article 222 of the Code specifies the sharia as the residuary source of law, thus allowing for selection of appropriate interpretations from any school of law or directly from the original sources of law (Quran and sunnah) or from secondary sources ('Algeria, Democratic and Popular Republic of' (undated), Emory Law School website <http://www.law.emory.edu/ifl/legal/Algeria.htm> – Accessed 21 April 2009 – Attachment 5).

This summary of the 1984 Family Code is sourced from the Social Institutions and Gender Index website:

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.

The Family Code states quite clearly that men and women are not equals within a marriage: "The duty of the wife is to obey her husband". Moreover, as parental authority is given only to fathers, husbands make all decisions regarding joint matters, especially those concerning finances and the education of children. The code also states that wives are minors under the authority of their husbands and must stay at home, yet this provision does not always reflect reality. In rural areas, women are under strong social pressure to submit to this condition and dare not dispute it for fear of being stigmatised within their communities. The situation is quite different in urban areas. In principle, married women need their husbands' permission to work (or travel) outside the home, yet the percentage of women in the workforce has grown considerably in the past 30 years. These working women can acquire a certain level of independence within the household.

The code also treats men and women differently in the case of divorce. Men can divorce without any justification, but women can obtain a divorce only under certain conditions (which have become less stringent in recent years). Men who obtain a divorce keep the family house and can immediately evict their wives and children. In such cases, men are legally required to pay child support, yet many allowances remain in arrears. Even if the wife is given custody of the children, the husband retains control over

Sharia law applies in the event of inheritance. In general, for individuals sharing the same degree of relationship, the share women inherit is half that of men. Many families in urban areas disagree with the existing legislation and re-establish equality between their children by arranging donations or fictitious sales to their daughters (Gender Equality and Social Institutions in Algeria' (undated), Social Institutions and Gender Index website <http://genderindex.org/country/algeria> – Accessed 21 April 2009 – Attachment 6).

List of Sources Consulted

Internet Sources:

Google search engine <http://www.google.com.au>

Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

List of Attachments

1. UK Home Office 2008, *Country of Origin Information Report – Algeria*, 30 September – Accessed 21 April 2009. (CISNET Algeria UK Home Office COI Report [30 September 2008](#))
2. Ertürk, Y. 2008, ‘Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk – Addendum, Mission To Algeria’, UN Human Rights Council, (source: Refworld), 13 February <http://www.unhcr.org/refworld/country,,,DZA,,47ce626c2,0.html> – Accessed 21 April 2009.
3. Immigration and Refugee Board of Canada 2004, *DZA42374.FE – Algeria: Ill-treatment of some women who have committed adultery by society in general, by their family, by Muslim fundamentalists and by the justice system; the protection offered to adulterous women who are in danger*, 29 January. (REFINFO)
4. Freedom House 2005, ‘Women’s Rights in the Middle East and North Africa – Algeria’, <http://www.freedomhouse.org/template.cfm?page=170> – Accessed 21 April 2009.
5. ‘Algeria, Democratic and Popular Republic of’ (undated), Emory Law School website <http://www.law.emory.edu/ifl/legal/Algeria.htm> – Accessed 21 April 2009.
6. Gender Equality and Social Institutions in Algeria’ (undated), Social Institutions and Gender Index website <http://genderindex.org/country/algeria> – Accessed 21 April 2009.