

Flygtningenævnets baggrundsmateriale

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ALGERIA

Provisions in force

- **Penal Code** (Ordinance 66-156 of 8 June 1966).

Act of homosexuality

Art. 338.

Any person who commits an act of homosexuality against a person of the same sex shall be punished by imprisonment from two months to two years and a fine of 500 to 2,000 dinars.

Indecent Acts

Article 333 (modified) [in 1982].

When the indecent exposure consisted of an act against nature with an individual of the same sex, the penalty is imprisonment for six months to three years and a fine of 1,000 to 10,000 dinars.

Breach of modesty - Barrier to SOGI expression

Article 333. Reiterated.

The making or possession, importing or attempts to import for trade, distribution, for payment, copying, exhibition or display or attempts to display to the public, or for selling or attempts to sell, or distribution or engaged in the distribution of each publication, an editor or a drawing or a declaration or pictures or paintings or photographs, or the origin of the image or its template or produced anything in breach of modesty shall be punished with imprisonment from two months to two years and a fine of 500 to 2,000 dinars.

A breach of decency punished by two months to two years in prison and a fine of 500 to 2,000 Algerian dinars. The punishment for those convicted of "abnormal sexual acts" is six months to three years in prison and a fine of 1,000 to 10,000 Algerian dinars.

Human Rights Situation

An article from October 2015 points to a resilient LGBT community despite their vilification by some religious leaders.¹ In 2016, a gay Algerian man's refugee asylum claim to the UK was rejected, in part based on the lack of prosecutions or arrests in recent years,² but the case did not account for the extremes of family and societal shame, threats and violence that pervades rural and urban Algeria regarding diverse sexual orientations in men and women. It has been claimed that sexual minorities

in Algeria have been historically ridiculed, perceived and treated as a group of "second class citizens" who are constantly subjected to violence.³ Social rejection of sexual diversity is reported to be so radical that heterosexual marriage is often seen by gay and lesbian people as the only viable option to remain safe.⁴ According to Human Rights Watch, legislation that prohibits the registration of NGOs whose aims are inconsistent with "public morals" and prescribes criminal penalties for

¹ "Homosexualité en Algérie : ils ont osé le coming out", *France 24*, 9 October 2015.

² Upper Tribunal (Immigration and Asylum Chamber), *OO (Gay Men) Algeria CG* [2016] *UKUT* 00065 (IAC).

³ "Homosexuals in Algeria: from self-hating to sexual apartheid", *The Dissident Blog*, 18 December 2017.

⁴ "Gay Algerians seek 'rainbow marriages' to elude rigid society", *France 24*, 12 October 2017.

members of unregistered organisations, has resulted in no work being carried out on LGBTI issues in the country.⁵ Community LGBTI leaders have been allegedly forced to flee the country due to the harassment and violence caused by the anti-LGBT rhetoric and sentiment from politicians and the media.⁶

In February 2017, a writer received threats and was interrogated by the police over “blasphemous” allegations made in his latest novel, which spoke in favour of LGBT communities.⁷ It has been reported that LGBTI people are repeatedly arrested for engaging in consensual same-sex sexual acts, suffer abuse by police officers, and are discriminated against in health and employment contexts.⁸

UN voting record

In 2011, Algeria was not a member of the Human Rights Council and, therefore, did not participate in the vote for any of the first two SOGI resolutions.⁹ In 2016, Algeria voted against the adoption of Resolution 32/2 which created the mandate of the Independent Expert on protection against violence and discrimination based on SOGI.¹⁰ At the session of Third Committee of the UN General Assembly held in 2016, Algeria voted against the LAC amendment to remove Operative Paragraph 2,¹¹ and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session in December 2016. Additionally, Algeria voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

National Human Rights Institution

There is no evidence that Algeria's NHRI (Conseil National des Droits de l'Homme) addresses on SOGI issues.

International advocacy and supervision

Universal Periodic Review

In its second cycle UPR in May 2012, Algeria “noted” (rejected) two recommendations to decriminalise same-sex sexual acts and to ensure non-discrimination on all grounds.¹²

In its third cycle UPR in May 2017, Algeria continued to reject recommendations based on the continuing discrimination of the LGBT community. Even though the State accepted one from France on protection against discrimination, it specifically excluded “discrimination based on SOGI”.¹³ Algeria expressed that “universality only makes sense if the diversity of the human family is respected” therefore arguing that respect of the religious beliefs of the majority of its population should be prioritised in regard to this issue. Moreover, the State manifested its understanding of sexual orientation being “a choice of persons”.¹⁴

Treaty Bodies

In 2018, the **Human Rights Committee** urged Algeria to repeal Article 338 of the Penal Code and release all people arrested on its basis.¹⁵

Special Procedures

In 2017, the **Special Rapporteur on the right to health** urged Algeria to decriminalise, noting that it was a barrier to the right to health of those at risk, driving them away from the services they need and increasing health-related risks for them and society as a whole.¹⁶

⁵ Human Rights Watch, *Audacity in Adversity. LGBT Activism in the Middle East and North Africa* (2018), 39.

⁶ Human Rights Watch, *World Report 2018* (2017), 23-28.

⁷ “Algeria: Don’t Prosecute a Writer for Insulting Islam”, *Human Rights Watch Website*, 8 March 2017.

⁸ United States Department of State, *Algeria 2017 Human Rights Report* (2018), 30, 31.

⁹ Human Rights Council, *Resolution 17/19: Human rights, sexual orientation and gender identity*, A/HRC/RES/17/19, 14 July 2011; Human Rights Council, *Resolution 27/32: Human rights, sexual orientation and gender identity*, A/HRC/RES/27/32, 2 October 2014.

¹⁰ Human Rights Council, *Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity*, A/HRC/RES/32/2, 15 July 2016.

¹¹ Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

¹² *Report of the Working Group on the Universal Periodic Review: Algeria*, A/HRC/21/13, 5 July 2012.

¹³ *Report of the Working Group on the Universal Periodic Review: Algeria*, A/HRC/36/13, 19 July 2017.

¹⁴ *Report of the Working Group on the Universal Periodic Review: Algeria*, A/HRC/36/13, 19 July 2017, Section B.

¹⁵ *Concluding observations on the fourth periodic report of Algeria*, CCPR/C/DZA/CO/4, 17 August 2018, para. 20.

¹⁶ *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his visit to Algeria*, A/HRC/35/21/Add.1, 20 April 2017, para. 102.