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Country Policy and Information Note

Algeria: Sexual orientation and gender identity

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Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained with this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country information

COI in this note has been researched in accordance with principles set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#) and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), namely taking into account its relevance, reliability, accuracy, objectivity, currency, transparency and traceability.

All information is carefully selected from generally reliable, publicly accessible sources or is information that can be made publicly available. Full publication details of supporting documentation are provided in footnotes. Multiple sourcing is normally used to ensure that the information is accurate, balanced and corroborated, and that a comprehensive and up-to-date picture at the time of publication is provided. Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source is not an endorsement of it or any views expressed.

Feedback

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Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

Contents

Policy guidance	4
1. Introduction	4
1.1 Basis of claim	4
1.2 Points to note	4
2. Consideration of issues	4
2.1 Credibility	4
2.2 Particular social group	4
2.3 Assessment of risk	5
2.4 Protection	8
2.5 Internal relocation	8
2.6 Certification	9
3. Policy summary	10
Country information	11
4. Legal context	11
4.1 Constitutional protections	11
4.2 Sharia Law	11
4.3 Criminal/Penal Code	12
4.4 Law in practice	13
5. State attitudes and treatment	14
5.1 Arrests	14
5.2 Ill Treatment by the authorities	15
6. Societal attitudes and treatment	16
6.1 Societal norms	16
6.2 Public opinion	17
6.3 Gay 'scene' or 'community'	17
6.4 LGBT websites	18
6.5 Family treatment	18
6.6 Religious attitudes/treatment	19
6.7 Employment	20
7. Media attitudes	20
8. Access to Healthcare	20
9. LGBT groups	22
Version control and contacts	23

Policy guidance

Updated: 22 September 2017

1. Introduction

1.1 Basis of claim

- 1.1.1 Fear of persecution or serious harm by the state and/or non-state actors due to the person's actual or perceived sexual orientation and/or gender identity.

1.2 Points to note

- 1.2.1 This note provides policy guidance on the general situation of gay men, lesbians, bisexuals and transgender persons. They are referred to collectively as 'LGBT persons', but the experiences of each group may differ.
- 1.2.2 The country guidance case [OO \(Gay Men\) \(CG\) \[2016\] UKUT 65 \(IAC\) \(26 January 2016\)](#) replaces the earlier country guidance case of [OO \(gay men: risk\) Algeria CG \[2013\] UKUT 63 \(IAC\) \(08 April 2013\)](#) (see paras 3 and 4 of OO 2016 determination).
- 1.2.3 Decision makers must also refer to the [Asylum Instruction on Sexual identity issues in the asylum claim](#) and the [Asylum Instruction on Gender identity issues in the asylum claim](#).

[Back to Contents](#)

2. Consideration of issues

2.1 Credibility

- 2.1.1 For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#). Decision makers must also refer to the [Asylum Instruction on Sexual identity issues in the asylum claim](#) and the [Asylum Instruction on Gender identity issues in the asylum claim](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

[Back to Contents](#)

2.2 Particular social group

- 2.2.1 LGBT persons in Algeria form a particular social group (PSG) within the meaning of the Refugee Convention because they share an innate characteristic or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to their identity or conscience that they should not be forced to renounce it, and have a distinct identity which is perceived as being different by the surrounding society.
- 2.2.2 Although LGBT persons in Algeria form a PSG, establishing such membership is not sufficient to be recognised as a refugee. The question to

be addressed is whether the particular person will face a real risk of persecution on account of their membership of such a group.

- 2.2.3 For further guidance on particular social groups, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

2.3 Assessment of risk

a. General points

- 2.3.1 Decision makers must establish whether or not the person, if returned to their country of origin, will live freely and openly as a LGBT person. This involves a wide spectrum of conduct which goes beyond merely attracting partners and maintaining relationships with them. If it is found that the person will in fact conceal aspects of his or her sexual orientation/identity if returned, decision makers must consider why the person will do so.
- 2.3.2 If this will simply be in response to social pressures or for cultural or religious reasons of their own choosing and not because of a fear of persecution, then they may not have a well-founded fear of persecution. Decision makers should also consider if there are individual or country specific factors that could put the person at risk even if they choose to live discreetly because of social or religious pressures.
- 2.3.3 But if a material reason why the person will live discreetly is that they genuinely fear that otherwise they will be persecuted, it will be necessary to consider whether that fear is well-founded.
- 2.3.4 For further guidance, see the [Asylum Instruction on Sexual identity issues in the asylum claim](#) and the [Asylum Instruction on Gender identity issues in the asylum claim](#).

b. State treatment

- 2.3.5 The Algerian Penal Code criminalises same-sex sexual acts. This applies to both men and women. There are also laws against 'outrages of public decency' which some sources claim affects 'feminine' men and transgender people (see [State attitudes and treatment](#)).
- 2.3.6 However, the existence of such laws does not in itself constitute persecution.
- 2.3.7 While there have been a few reports of LGBT people being detained for 'immoral behaviour' and experiencing police harassment, prosecutions of same-sex sexual acts are extremely rare (see [Law in practice](#) and [Arrests](#)).
- 2.3.8 The state generally do not close down pro-LGBT websites or underground movements, although such organisations are not officially recognised or allowed to register as legal associations. Human rights defenders addressing LGBT rights reportedly face stigmatisation, and accusations of being anti-Islamic (see [State attitudes and treatment](#)).
- 2.3.9 In the country guidance case [OO \(Gay Men\) \(CG\) \[2016\] UKUT 65 \(IAC\) \(26 January 2016\)](#), heard on 23-24 September 2015, the Upper Tribunal held:
'Although the Algerian Criminal Code makes homosexual behaviour unlawful, the authorities do not seek to prosecute gay men and there is no real risk of prosecution, even when the authorities become aware of such behaviour. In the very few cases where there has been a prosecution for

homosexual behaviour, there has been some other feature that has given rise to the prosecution. The state does not actively seek out gay men in order to take any form of action against them, either by means of prosecution or by subjecting gay men to other forms of persecutory ill-treatment' (paragraph 172).

2.3.10 The evidence does not show a significant change in the country situation since [OO \[2016\]](#) was promulgated.

2.3.11 In general, LGBT persons in Algeria are not subject to treatment by the state which amounts to persecution or serious harm. However, decision makers must consider whether there are particular factors specific to the person which would place them at real risk. The onus is on the person to demonstrate this.

c. Societal treatment

2.3.12 Algeria is a conservative society where behaviour is referenced by the strict Islamic values endorsed by the state. Male/female gender roles are considered distinct. Public displays of affection are not acceptable. While there is limited information that there is an open LGBT 'community' of people who are open about their sexuality or gender identity, in recent years LGBT people have become increasingly visible online, albeit generally in an anonymous capacity (see [societal norms](#) and [Societal treatment](#)).

2.3.13 In the country guidance case of [OO \[2016\]](#), the Upper Tribunal noted that very few gay men are open about their sexuality but this is because of a desire to avoid social disapproval, to avoid violating deep-rooted cultural norms, or because such norms mean that Algerian men who have a sexual 'preference' for other men do not view themselves as 'gay'. Their decision to be discreet is not generally because of a fear of persecution.

2.3.14 The UT further explained that:

'Put another way, a gay man who did live openly as such in Algeria may well attract upsetting comments; find his relationships with friends or work colleagues damaged; or suffer other discriminatory repercussions such as experiencing difficulty in dealing with some suppliers or services. But none of that amounts to persecution' (see paras 166 and 168).

2.3.15 Within their own family, an LGBT person who 'comes out' may face abuse, including physical violence and forced marriage although there is limited information on how prevalent this is (see [Family treatment](#)).

2.3.16 In [OO \[2016\]](#), the Upper Tribunal found with regard to gay men in particular that:

'... [they] may well face an extremely hostile reaction from family members when their homosexuality is discovered that may escalate into violence. There is a risk of that being the case throughout Algerian society but it is clear from the evidence that that is especially the case in the less affluent and densely populated neighbourhoods where, typically, values will be conservative and non-secular and households are under close scrutiny from neighbours' (paragraph 147).

2.3.17 The Upper Tribunal in [OO \[2016\]](#) went on to find that:

- ‘The only risk of ill-treatment at a level to become persecution likely to be encountered by a gay man in Algeria is at the hands of his own family, after they have discovered that he is gay. There is no reliable evidence such as to establish that a gay man, identified as such, faces a real risk of persecutory ill-treatment from persons outside his own family.
- ‘Where a gay man remains living with his family to whom he has disclosed his sexual orientation in circumstances where they are prepared to tolerate that, his decision to live discreetly and to conceal his homosexuality outside the family home is not taken to avoid persecution but to avoid shame or disrespect being brought upon his family. That means that he has chosen to live discreetly, not to avoid persecution but for reasons that do not give rise to a right to international protection.
- ‘Where a gay man has to flee his family home to avoid persecution from family members, in his place of relocation he will attract no real risk of persecution because, generally, he will not live openly as a gay man. As the evidence does not establish that he will face a real risk of persecution if subsequently suspected to be a gay man, his decision to live discreetly and to conceal his sexual orientation is driven by respect for social mores and a desire to avoid attracting disapproval of a type that falls well below the threshold of persecution. Quite apart from that, an Algerian man who has a settled preference for same sex relationships may well continue to entertain doubts as to his sexuality and not to regard himself as a gay man , in any event’ (paragraph 186).

2.3.18 The Upper Tribunal concluded that:

‘... a gay man from Algeria will be entitled to be recognised as a refugee only if he shows that, due to his personal circumstances, it would be unreasonable and unduly harsh to expect him to relocate within Algeria to avoid persecution from family members, or because he has a particular characteristics that might, unusually and contrary to what is generally to be expected, give rise to a risk of attracting disapproval at the highest level of the possible range of adverse responses from those seeking to express their disapproval of the fact of his sexual orientation’ (paragraph 190).

2.3.19 In the CG case of [OO \[2016\]](#), the Upper Tribunal only considered the position of gay men (and in effect bi-sexual men since it is their same-sex sexual conduct which may lead to difficulties), not lesbian (or bisexual women) or trans persons.

2.3.20 However, it is likely that such persons may experience societal intolerance and discrimination, including from members of their family, where their sexual orientation or gender identity becomes known (see [societal attitudes and treatment](#)).

2.3.21 Similarly to gay (and bisexual) men, lesbian, bi-sexual and transgender persons may also adapt their behaviour to be discreet about their sexual orientation or gender identity in order to comply with social norms and expectations, rather than to avoid persecution or serious harm.

- 2.3.22 In the case of women this may compound the discrimination they face in law and through traditional social practices.
- 2.3.23 For further information on conditions for women, see the country policy and information note on [Algeria: Background information including actors of pretection and internal relocation](#).
- 2.3.24 For further guidance on assessing risk, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.3.25 Decision makers must also refer to the [Asylum Instruction on Sexual identity issues in the asylum claim](#) and the [Asylum Instruction on Gender identity issues in the asylum claim](#).

[Back to Contents](#)

2.4 Protection

- 2.4.1 Where the person's fear is of persecution or serious harm at the hands of the state, they will not be able to obtain protection.
- 2.4.2 In the case of [OO \[2016\]](#), the Upper Tribunal found that
'... where a gay man does face a real risk of persecution, which, when such occurs, is likely to be from his own family members, there is no sufficiency of protection available from the police or other state authorities' (para 176).
- 2.4.3 This applies equally to lesbian, bi-sexual and transgender persons.
- 2.4.4 Reports published since the promulgation of [OO \[2016\]](#) noted that LGBT persons were reluctant to report abuse to the police for fear of reprisal by the authorities (see [State attitudes and treatment](#)).
- 2.4.5 For further guidance on assessing the availability of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.4.6 See also country policy and information note on [Algeria: Background information including actors of pretection and internal relocation](#).

[Back to Contents](#)

2.5 Internal relocation

- 2.5.1 As the person's fear is of persecution and/or serious harm by the state, they will not be able to relocate to escape that risk.
- 2.5.2 Where the threat is from a non-state actor, decision makers should consider each case on its individual circumstances to ascertain if the threat is local and could be removed by internal relocation.
- 2.5.3 In regard to gay men, in the case of [OO \[2016\]](#) the Upper Tribunal found:
'... whether there is a safe and reasonable internal relocation option, is a difficult and complex one in the Algerian context. Generally, there will be no real difficulty preventing relocation and there is no indication that disapproving family members have the means, inclination or reach to cause difficulties after relocation. But where such a person has established himself elsewhere in Algeria, as marriage is expected of Algerian men, in pursuance of what is seen as an "Islamic duty to procreate", it may well, sooner or later,

become apparent that he has not adhered to the norms expected and that is likely to generate suspicion that he is a gay man .

[... However] [t]here is no real risk of gay men being subjected to violence or other persecutory ill-treatment outside the family home, either at the hands of the authorities or by members of the public with whom gay men have to engage. There is an absence of reliable evidence of that occurring' (paragraphs 181-182).

2.5.4 The Upper Tribunal also found that:

'Where a gay man has to flee his family home to avoid persecution from family members, in his place of relocation he will attract no real risk of persecution because, generally, he will not live openly as a gay man. As the evidence does not establish that he will face a real risk of persecution if subsequently suspected to be a gay man, his decision to live discreetly and conceal his sexual orientation is driven by respect for social mores and a desire to avoid attracting disapproval of a type that falls well below the threshold of persecution. Quite apart from that, an Algerian man who has a settled preference for same sex relationships may well continue to entertain doubts as to his sexuality and not regard himself as a gay man, in any event' (paragraph 186 (c)).

2.5.5 The Upper Tribunal in OO only considered the position for gay men. However, Algeria is a patriarchal society where women have an inferior status to men. Lesbians and bisexual women may face difficulties in internally relocating that do not exist for men. Equally, bi-sexual and transgender men face similar difficulties where they do not conform to cultural norms (see [Gender norms](#)).

2.5.6 Internal relocation will not be an option if it depends on the person concealing their sexual orientation and / or gender identity in the proposed new location for fear of persecution.

2.5.7 See also country policy and information note on [Algeria: Background information including actors of pretection and internal relocation](#).

2.5.8 For further guidance on internal relocation, see the Asylum Instructions on [Assessing Credibility and Refugee Status](#), [Sexual orientation in asylum claims](#) and [Gender identity issues in the asylum claim](#).

[Back to Contents](#)

2.6 Certification

2.6.1 Where a claim is refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

2.6.2 For further guidance on certification, see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

[Back to Contents](#)

3. Policy summary

- 3.1.1 While same-sex sexual acts are criminalised, LGBT people are not generally prosecuted or persecuted by the State
- 3.1.2 Caselaw has found that the only risk of ill-treatment at a level to become persecution and likely to be encountered by a gay man is at the hands of his own family, after they have discovered that he is gay. The evidence does not establish that a man will face persecution from people outside his family.
- 3.1.3 Caselaw has also found that where a gay man remains living with his family to whom he has disclosed his sexual orientation, his decision to conceal his sexual orientation outside the family home is not taken to avoid persecution but to avoid shame or disrespect being brought upon his family.
- 3.1.4 Alternatively, where a gay man has to flee his family home to avoid persecution from family members, he is unlikely to live as an openly gay man; this is because of a respect for social mores and a desire to avoid attracting disapproval of a type that falls well below the threshold of persecution.
- 3.1.5 Lesbians, bisexual women and trans people are likely to experience societal intolerance and discrimination, including from members of their family, where their sexual orientation or gender identity becomes known. In the case of women this may compound the discrimination they face in law and through traditional social practices because of their gender.
- 3.1.6 LGBT people may face societal discrimination and ill-treatment from non-state actors but not generally at a level that gives rise to a risk of persecution or serious harm. However, there may be circumstances where ill-treatment may be sufficiently serious by its nature and repetition to constitute persecution or serious harm. Each case needs to be decided on its merits.
- 3.1.7 Where LGBT people have a well founded fear of persecution, protection is not available.
- 3.1.8 Internal relocation is generally reasonable in most cases, but it will depend on the facts of the case, and the individual circumstances of the person.
- 3.1.9 Where a claim is refused, it is unlikely to be certifiable as 'clearly unfounded'.

[Back to Contents](#)

Country information

Updated: 22 September 2017

4. Legal context

4.1 Constitutional protections

4.1.1 According to an undated article on the Refugeelegalaid.org website:
'Although homosexuality is illegal in Algeria, there should be some broad protections provided in the Algerian Constitution:

- Equality for all citizens (Art 24)
- Respect for Human Rights (Art 36)
- Freedom of creed and opinion (Art 36)
- Right to privacy (Art 39)¹

4.1.2 However, the same site opined that 'Unfortunately, however, the rights established in the Constitution do very little to prevent discrimination of the LGBTI Community. The government has introduced no anti-discrimination laws to protect homosexuals from harassment.'²

[Back to Contents](#)

4.2 Sharia Law

4.2.1 The undated article on the Refugeelegalaid.org website noted that 'Algeria also practices Sharia law, which reportedly calls for the death of homosexuals'³.

4.2.2 The US State Department's 2013 International Religious Freedom Report for Algeria noted that 'family law ... draws on sharia (Islamic) law.'⁴

4.2.3 Similarly, the US State Department's 2016 International Religious Freedom Report for Algeria stated 'The constitution declares Islam to be the state religion and prohibits state institutions from engaging in behaviour incompatible with Islamic values.'⁵

See also [Religious attitudes/treatment](#).

[Back to Contents](#)

¹ Refugeelegalaid.org. 'Rights in Exile Programme', undated, <http://www.refugeelegalaidinformation.org/algeria-lgbi-resources>. Accessed 6 July 2017

² Refugeelegalaid.org. 'Rights in Exile Programme', undated, <http://www.refugeelegalaidinformation.org/algeria-lgbi-resources>. Accessed 6 July 2017

³ Refugeelegalaid.org. 'Rights in Exile Programme', undated, <http://www.refugeelegalaidinformation.org/algeria-lgbi-resources>. Accessed 6 July 2017

⁴ USSD, International Religious Freedom Report for 2013 – Algeria, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper>, Accessed 19 August 2015

⁵ USSD, International Religious Freedom Report for 2016 – Algeria - August 2017 <https://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=268884&year=2016#wrapper> Accessed 29 August 2017

4.3 Criminal/Penal Code

4.3.1 The Algerian Penal Code (Ordinance 66-156 of 8 June 1966) states that:

- ‘any outrage of public decency will be punished with two months to two years imprisonment and a fine of 500-2,000 dinars’ (Article 333)
- ‘if that outrage of public decency consists of an act against nature with an individual of the same sex, the punishment will be six months to three years imprisonment and a fine of 1,000-10,000 dinars’ (Article 333)
- ‘anyone who participates in the creation or the distribution of any material that are inconsistent with public decency will be punished to two months to two years imprisonment and a fine of 500-2,000 dinars’ (Article 333).⁶
- “A breach of decency punished by two months to two years in prison and a fine of 500 to 2000 Algerian dinar. 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.” (Article 338).⁷

4.3.2 The International Lesbian, Gay, Bi-sexual, Trans & Intersex Association (ILGA) noted:

‘In the 2014 and 1982 revisions of this gender-neutral Penal Code, Article 338 outlaws “d’homosexualité”, while Article 333 reiterated public decency makes the publication of writings, images, etc, contrary to this standard punishable. This then goes beyond the scope of traditional sexual behaviour-based regulation, and is more akin to the ‘promotion’ of non-heterosexual identity found in Russia, Nigeria and other States. Article 338 finds root in the French colonial legal system in place prior to the adaptation of the first national penal code in 1966.

‘In its 2nd cycle UPR [Universal Periodic Review] in May 2012, Algeria ‘noted’ (functionally rejected) two recommendations (Spain and Canada) to decriminalise same-sex sexual relations, “and take measures to ensure equality and non-discrimination on all grounds” in conformity with Articles 17 and 26 (privacy and non-discrimination) of the International Covenant on Civil and Political Rights (ICCPR).’⁸

4.3.3 The USSD report for 2016 states:

“The law criminalises public and consensual same-sex sexual relations by men or women with penalties that include imprisonment of six months to three years and a fine of DZD 1,000 to DZD 10,000 (\$9 to \$92). The law also stipulates penalties that include imprisonment of two months to two

⁶ International Refugee Rights Initiative, Algeria LGBTI Resources (undated), <http://www.refugeelegalaidinformation.org/algeria-lgbti-resources-0>, accessed 23 June 2017

⁷ International Lesbian, Gay, Bisexual, Trans and Intersex Association, ‘State sponsored homophobia – Algeria, 15 October 2016 http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf Accessed 23 June 2017

⁸ International Lesbian, Gay, Bisexual, Trans and Intersex Association, ‘State sponsored homophobia – Algeria’ 15 October 2016 http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf. Accessed 23 June 2017

years and fines of DZD 500 to DZD 2,000 (\$5 to \$18) for anyone convicted of having committed a 'homosexual act'. If a minor is involved, the adult may face up to three years' imprisonment and a fine of DZD 10,000 (\$92).⁹

- 4.3.4 According to the Amnesty International submission for the Universal Periodic Review – 27th session of the UPR working group, May 2017 'Article 338 of the Penal Code carries up to three years in prison and a fine; Article 339 of the Penal Code carries up to two years in prison. In June 2016, Algeria was one of 18 members of the UN Human Rights Council to vote against the appointment of an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.'¹⁰

[Back to Contents](#)

4.4 Law in practice

- 4.4.1 Human Rights Watch, in their World Report for 2017 – Algeria, note: Algeria's penal code criminalizes same sex relations with a prison sentence of two months to two years. In 2015, several people were arrested for same-sex relations but none were prosecuted.¹¹

- 4.4.2 The news website 'Muftah' noted:

'In Algeria, homosexuality is criminalized in Section 6 of the Penal Code, "Offenses against Morality," specifically in Articles 333 and 338. Both male and female homosexuality are denied and seen as "abnormal."

'Article 333 states that "[e]very person who commits a public indecency outrage is punished by imprisonment of two months and a fine ranging from 500 to 2000 DA (Algerian Dinars). When the public indecency outrage consists of an act against nature with a same-sex person, the sentence is imprisonment from six months to three years and fines from 1000 to 10000 DA."

'Article 338 states that "Whoever is guilty of a homosexual act will be punished with imprisonment from two months to two years and a fine from 500 to 2000 DA. If one of the persons is a minor under 18 years old, the sentence for the adult person maybe raised to three years of imprisonment and a fine of 10000 DA."

'Society punishes gay and lesbian persons by marginalizing them. In fact, few Algerians are aware of the penal articles criminalizing homosexuality. They are rarely enforced, and few complaints are filed. As such, this legal framework strengthens the fear and shame surrounding homosexuality and supports religious, social, and familial-based prohibitions about sexuality in general and "deviant" sexual behaviour in particular.'¹²

⁹ USSD, Country Report on Human Rights Practices – 2016, (Section 6 Discrimination, Societal Abuses, and Trafficking in Persons), 3 March 2017, <https://www.state.gov/documents/organization/265702.pdf> Accessed 21 July 2017

¹⁰ Amnesty International, "Impunity Past and Present": Amnesty International submission for the un Universal Periodic Review – 27th session of the upr working group, May 2017' September 2016 <http://www.refworld.org/pdfid/5878f2a04.pdf> Accessed 23 June 2017

¹¹ Human Rights Watch: World Report 2017: Algeria: Dated 12 January 2017 <https://www.hrw.org/world-report/2017/country-chapters/algeria> Accessed 1 August 2017

¹² Muftah, 'Gay and Lesbian Mobilisation in Algeria', 15 December 2014, <https://muftah.org/gay-and-lesbian-mobilization-in-algeria/#.WVUbhvn5xRQ> Accessed 29 June 2017

- 4.4.3 In the UN Human Rights Council document, 'Summary of other stakeholders' submissions on Algeria*, Report of the Office of the United Nations High Commissioner for Human Rights', from the working group on the Universal period Review, 27th session, in May 2017, JS4 (Association Alouen, Algeria, and Mantiqitna, Brussels, Belgium) stated that:

'despite the constitutional guarantee of the right to non-discrimination, lesbian, gay, bisexual and transgender (LGBT) persons continued to be subjected to discriminatory acts that marginalized them even more, that limited opportunities to set up associations for the promotion of LGBT rights and that made greater awareness of their existence nearly impossible. FLD (Front Line Defenders, Dublin, Ireland) reported that accusations related to being anti-Islam are also used against human rights defenders addressing LGBTI rights, who face stigmatisation and persecution and are forced to work maintaining a very low profile.

'JS4 recommended that Algeria introduce legislation to combat discrimination, including discrimination on grounds of sexual orientation and gender identity, that it define homophobic crime and that it impose severe criminal penalties for homophobic acts and discrimination on grounds of gender identity and sexual orientation.

'...JS4 recommended the adoption of legal reforms to prevent, penalize and eliminate discrimination, including discrimination on grounds of sexual orientation and gender identity.'¹³

- 4.4.4 In May 2017, the Human Rights Council, working on the Universal Periodic Review – 27th session, Summary of other stakeholders' submissions on Algeria – stated:

'JS4 regretted that article 336 of the Criminal Code, under which rape was considered to be a crime, did not address the different circumstances of rape in the case of lesbian, bisexual, transgender and queer women, who were often victims of corrective rape perpetrated by persons in their social or family circles.'¹⁴

[Back to Contents](#)

5. State attitudes and treatment

5.1 Arrests

- 5.1.1 The USSD report on human rights practices 2016 noted:

'Activists said that the government did not actively punish LGBTI behaviour, but it was complicit in the hate speech propagated by conservative, cultural, and religion-based organizations, some of which associated LGBTI

¹³ UN Human Rights Council, Summary of other stakeholders' submissions on Algeria, Dated 20 February 2017, A/HRC/WG.6/27/DZA/3, Section C – Equality and non-discrimination, <http://www.refworld.org/docid/59198b074.html> accessed 27 July 2017

¹⁴ UN Human Rights Council, 27TH UPR WORKING GROUP SESSIONS. SOGIESC RECOMMENDATIONS 1 May – 12 May 2017 – Algeria Summary of stakeholders information [http://ilga.org/downloads/27TH UPR WORKING GROUP SESSIONS SOGIESC RECOMMENDATIONS.pdf](http://ilga.org/downloads/27TH_UPR_WORKING_GROUP_SESSIONS_SOGIESC_RECOMMENDATIONS.pdf) accessed 1 August 2017

individuals with pedophiles and encouraged excluding them from family and society.¹⁵

‘LGBTI activists reported that the vague wording of laws identifying “homosexual acts” and “acts against nature” permitted sweeping accusations that resulted during the year in multiple arrests for same-sex sexual relations but no known prosecutions.’¹⁶

[Back to Contents](#)

5.2 III Treatment by the authorities

5.2.1 The USSD report stated:

‘Another report released by Trans Homo DZ in November [2016] included allegations by an anonymous former prisoner alleging that prisoners at El Harrach Prison suffered physical and sexual abuse based on their sexual orientation. The former prisoner’s report said prisoners who were perceived as gay or transgender were placed in a specific cellblock near other prisoners who had committed serious crimes. The report said gay and transgender prisoners were frequently victims of sexual assaults, including one incident in which prison guards mocked and initially refused medical treatment to a prisoner who was the victim of a gang rape.’

5.2.2 And:

‘Due to the hacking of one LGBTI organization’s website in 2015 and increased offensive and derogatory media coverage specifically denouncing LGBTI practices, activists reported the need to focus their advocacy on personal safety and minimized their activities during the year. Activists reported that members of the LGBTI community declined to report abuse and thus lessened their capacity to report cases of homophobic abuse and rape due to fear of reprisal by authorities. Reporting that access to health services could be difficult because medical personnel often treated LGBTI patients unprofessionally, activists noted that some organizations maintained a list of “LGBTI-friendly” hospitals, and several NGOs operated mobile clinics specifically for vulnerable communities.’¹⁷

5.2.3 Freedom House reported, in their World Report 2016: ‘Same-sex sexual relations are punishable with two months to two years in prison, though no prosecutions were reported in 2015.’¹⁸

5.2.4 The Human Rights Watch World Report (HRW) for 2017 noted that ‘Algeria’s penal code criminalizes same sex relations with a prison sentence of two

¹⁵ (USSD), Country Report on Human Rights Practices – 2016 – Algeria Section 6. Discrimination, Societal Abuses, and Trafficking in Persons–3 March 2017

<https://www.state.gov/documents/organization/265702.pdf> Accessed 21 June 2017

¹⁶ USSD Country Report on Human Rights Practices – 2016 – Algeria Section 6. Discrimination, Societal Abuses, and Trafficking in Persons–3 March 2017

<https://www.state.gov/documents/organization/265702.pdf> Accessed 21 July 2017

¹⁷ USSD Country Report on Human Rights Practices – 2016 – Algeria Section 6. Discrimination, Societal Abuses, and Trafficking in Persons – Date of report 3 March 2017

<https://www.state.gov/documents/organization/265702.pdf> Accessed 29 August 2017

¹⁸ Freedom House, ‘World Report 2016 – Algeria’, July 2016, <https://freedomhouse.org/report/freedom-world/2016/algeria> Accessed 1 August 2017

months to two years. In 2015, several people were arrested for same-sex relations but none were prosecuted.¹⁹

[Back to Contents](#)

6. Societal attitudes and treatment

6.1 Societal norms

6.1.1 The USSD Country Report on human rights practices 2016 (Algeria) stated:

‘...LGBTI persons faced strong societal and religious discrimination. While some lived openly, the vast majority did not, and most feared reprisal from their families or harassment from authorities. One activist reported that of the 100 LGBTI persons he knew, only three had “come out.” During a May 2015 radio interview, Minister of Religious Affairs Mohamed Aissa said that combatting individuals who promote the deviation of morality and the dismantling of the family (a reference to the behavior of LGBTI individuals) was more important than the fight against Da’esh...’²⁰

6.1.2 In the UN Human Rights Council document, ‘Summary of other stakeholders’ submissions on Algeria*, Report of the Office of the United Nations High Commissioner for Human Rights’, from the working group on the Universal period Review, 27th session, in May 2017, it was noted by ‘JS4 (Association Alouen, Algeria, and Mantiqitna, Brussels, Belgium) that:

‘hate speech and incitement to hatred targeting the LGBT community had become common even in the media. Prominent religious figures took to television studio sets and encouraged violence against homosexuals. In addition, health workers still viewed homosexuals as persons with psychological disorders. There was a lack of activist human rights and feminist associations owing to the fear that taking a public stance in favour of LGBT rights would result in the immediate withdrawal of accreditation.’²¹

6.1.3 Freedom House reported, in their World Report 2016 ‘...Traditional social mores create an extremely hostile environment for LGBT (lesbian, gay, bisexual, and transgender) people. In 2015, LGBT advocacy groups focused mainly on personal safety due to an increase in the intensity of hate speech coming from conservative clerics and the media.’²²

6.1.4 The news website ‘Muftah’, in an article dated 15 December 2014, stated ‘In many regional states, homosexuality is seen as a real danger jeopardizing the social order and Muslim culture. The Algerian state has embraced this commonly shared view and used homosexuality’s criminalization to protect

¹⁹ Human Rights Watch, World Report, Algeria, ‘Sexual Orientation and Gender Identity’ 12 January 2017 <https://www.hrw.org/world-report/2017/country-chapters/algeria> Accessed 25 July 2017

²⁰ USSD Country Report on Human Rights Practices – 2016 – Algeria Section 6. Discrimination, Societal Abuses, and Trafficking in Persons – 3 March 2017 <https://www.state.gov/documents/organization/265702.pdf> Accessed 21 June 2017

²¹ UN Human Rights Council, 27TH UPR WORKING GROUP SESSIONS. SOGIESC RECOMMENDATIONS 1 May – 12 May 2017 – Algeria Summary of stakeholders information [http://ilga.org/downloads/27TH UPR WORKING GROUP SESSIONS SOGIESC RECOMMENDATIONS.pdf](http://ilga.org/downloads/27TH_UPR_WORKING_GROUP_SESSIONS_SOGIESC_RECOMMENDATIONS.pdf) accessed 29th August 2017

²² Freedom House, ‘World Report 2016 – Algeria’, July 2016, <https://freedomhouse.org/report/freedom-world/2016/algeria> Date accessed 1 August 2017

against it. While this legal framework is somewhat “flexible,” social and family pressures are harder with which to deal.²³

[Back to Contents](#)

6.2 Public opinion

6.2.1 A Landinfo report dated 4 September 2014 observed:

‘Algeria is a conservative society in terms of gender, where male and female gender roles are clearly distinct and where breaking away from gender roles is not commonly accepted. In these societies, according to gender stereotypes, “masculine” characteristics in men are emphasised and assigned positive value, whereas “feminine” characteristics in men are considered inappropriate and abnormal, which is reflected in the terms used to refer to this group. This means that “feminine” men in particular are subjected to patronising comments and ridicule in the public sphere.’²⁴

[Back to Contents](#)

6.3 Gay ‘scene’ or ‘community’

6.3.1 A North African blogging website ‘Mashreq Politics & Culture’ posted a blog by Anouar Rahmani dated 1 July 2015, describing public attitudes to LGBT people in his country:

‘In Algeria, it is very hard to express yourself the way you are. So people currently express their opinions and feelings the way it should be regardless what they really are. Gays are also considered by this definition but the majority of them prefer to express the contrary of what they think and feel to avoid problems and to save their social life and their relationship with the society.

‘However, a part of this community prefers to struggle to live. LGBT in Algeria today show strong courage and they fight for their rights, so many of them are organised in secret associations and groups like inter alia Alouane, Abu Nawas and Micha. They are doing their best to inform the society that being gay is not a choice and love is not a crime.

‘Social media helps homosexuals to express their opinions and convey their message to the society. Hundreds of pages on Facebook emerged this way and some E-Magazines and newspapers are also helping this community such as Nafhamag, Algeriefocus and Choufchouf. However some other strong media networks in Algeria like Echourouk repeatedly attack this social minority and try to present a false image of them...

‘...Gays in Algeria are like all gays anywhere in the world. All what they want is love and respect. But for some people this seems to be too much to ask.’²⁵

[Back to Contents](#)

²³ ‘Muftah’ ‘Gay and Lesbian Mobilisation in Algeria’ Date of Report 15 December 2014 <https://muftah.org/gay-and-lesbian-mobilization-in-algeria/#.WVUbhvn5xR0> Accessed 29 June 2017

²⁴ Landinfo, ‘Algeria: Conditions for gay men’, 4 September 2014 (translated, available on request)

²⁵ Mashreq Politics & Culture: ‘What does the world know LGBT in Algeria?’ Anouar Rahmani, 1 July 2015 <http://mpc-journal.org/blog/2015/07/01/what-does-the-world-know-about-lgbt-in-algeria/> Accessed 21 July 2017

6.4 LGBT websites

6.4.1 The news website 'Muftah', which provides commentary on North Africa and the Middle East, stated in December 2014:

'Over the past few decades, human rights violations based on sexual orientation and gender identity (SOGI) have become more visible across the world, especially in the Middle East and North Africa region (MENA). Eighty-one countries criminalize homosexuality, with penalties ranging from fines and imprisonment to the death penalty. Each country in the MENA region directly or indirectly criminalizes homosexuality.

'Algeria is part of this group. Forbidden by the Qu'ran, punished by the Penal Code, and stigmatized by society, non-normative sexuality is still taboo in Algerian society. Nevertheless, for several years now, the country's gay and lesbian community has organized to claim its rights through a network of associations. This mobilization has been efficient and innovative, and relied, in part, on the Internet and digital social networks.'²⁶

[Back to Contents](#)

6.5 Family treatment

6.5.1 The news website 'Muftah', in an article dated 15 December 2014, states:

'In big cities, like Algiers, gay and lesbian visibility is growing. People reveal their sexual orientation among close friends, within their intimate spheres. More and more "rainbow weddings" (unions between lesbian and gay persons) are even being celebrated. But, while social acceptance and diversity are ongoing processes, the family remains an impenetrable and unforgiving realm. As a result, for many gay and lesbian persons, the secrecy of a double life is the only option.

'Family and marriage are two of the main pillars of Algerian society. Many gay and lesbian Algerians endure significant pressure from their families to get married. Fearing rejection from their families, friends, and society, some individuals, homosexual persons, especially lesbians, will have heterosexual marriages.

'Outing oneself within one's family is still unthinkable for most lesbian and gay Algerians because of social norms and binding traditions. With gay and lesbian individuals trapped within a four-tiered prison of religion, law, family, and society, several Algerian associations have been coordinating to defend gay and lesbian rights.'²⁷

6.5.2 The Landinfo report referenced earlier reported on the importance of marriage in Algerian culture:

'Marriage is an obligation in Islam and a fundamental part of Arab-Islamic culture. All Muslims are expected to marry and celibacy is considered unwanted and abnormal. Marriage is regarded as a rite of passage that marks the transition from being a child to becoming an autonomous and

²⁶ 'Muftah' Gay and Lesbian Mobilisation in Algeria' Date of Report 15 December 2014
<https://muftah.org/gay-and-lesbian-mobilization-in-algeria/#.WVUbhvn5xR0> Accessed 29 June 2017

²⁷ 'Muftah' 'Gay and Lesbian Mobilisation in Algeria' Date of Report 15 December 2014
<https://muftah.org/gay-and-lesbian-mobilization-in-algeria/#.WVUbhvn5xR0> Accessed 29 August 2017

independent adult, and an unmarried (and childless) person will never be fully perceived as a responsible adult, regardless of age. Marriage is considered to be so fundamental in Arab-Islamic culture that anything that could affect its stability is considered threatening...²⁸

- 6.5.3 The Immigration and Refugee Board of Canada, in a response dated 2013, but drawing on a range of sources, noted:

‘An article entitled "Being Gay in Algeria Today" dated 13 September 2010 noted that a Cappuccino bar in the Hydra neighbourhood is the "main unofficial gay venue" (Gay Maroc 13 Sept. 2010)...

‘The "Being Gay in Algeria Today" article also stated that "[m]any gays live with either their family or their wife" (Gay Maroc 13 Sept. 2010). Similarly, the online news source France24 reported that in Algeria, homosexual men and women marry to [translation] "keep up appearances" (10 Oct. 2012). The Algérie-Focus article reported that according to one of the women interviewed, homosexual girls are often forced into marriage in order to [translation] "keep up appearances" (Algérie-Focus 28 Aug. 2012). According to her, the girls agree to it so as to not be [translation] "the shame of their families" (ibid.).²⁹

[Back to Contents](#)

6.6 Religious attitudes/treatment

- 6.6.1 The website Muftah, wrote about religious attitudes to male homosexuals:

‘...On a literal reading of the Qu’ran (which not all Muslims share), homosexuality is judged as against God’s wish because it denies the experience of otherness. The academic Abdelwahab Bouhdiba has observed that the Islamic tradition “considers that four categories of people suffer from the anger of God: men who dress as women, women who dress as men, those who have sex with animals and the ones who have sex with men.”

‘Imam Yussuf Al-Qaradawi, a Muslim Brotherhood ideologue and author of the book entitled The Lawful and the Prohibited (1997) declared that murder of homosexual people “is just a means to purify the Muslim society of those noxious human beings (homosexuals) who bring (cause) to the loss of humanity.”

‘In 2007, a member of the Algerian Ministry of Religious Affairs, Mufti Yahia, confirmed this view: “homosexuality is an inversion against nature that has to be cured and, literally, in the Holy Koran, punished by death. How, therefore, could this practice not be perceived as an aberration?”³⁰

[Back to Contents](#)

²⁸ Landinfo, ‘Algeria: Conditions for gay men’, 4 September 2014 (translated, available on request)

²⁹ Immigration and Refugee Board of Canada: Algeria: Situation of sexual minorities, including treatment by authorities and societal attitudes; availability of legal recourse, state protection and support services (2010-July 2013) [DZA104507.E], 09 August 2013 (available at [ecoi.net](http://www.ecoi.net)) http://www.ecoi.net/local_link/256858/368812_en.html (accessed 30 August 2017)

³⁰ ‘Muftah’ Gay and Lesbian Mobilisation in Algeria’ Date of Report 15 December 2014 <https://muftah.org/gay-and-lesbian-mobilization-in-algeria/#.WVUbhvn5xR0> Accessed 1 August 2017

6.7 Employment

According to the USSD report for Algeria, 2016 LGBTI persons experienced discrimination in obtaining employment. ‘Employers refused jobs to LGBTI persons, particularly men perceived as effeminate. Activists also reported cases of individuals denied drivers licenses due to their perceived sexual orientation. Community members said that obtaining legal assistance was also a challenge due to similar discrimination. Members of the LGBTI community reported that forced marriage was a problem, particularly for lesbians.’³¹

(See [Public Opinion](#)).

[Back to Contents](#)

7. Media attitudes

7.1.1 The USSD report for 2016 noted:

‘...Trans Homos DZ, a local organization that advocated for the rights of LGBTI persons, published a report on anti-LGBTI hate speech in the media, detailing several incidents from recent years including programs broadcast by Arabic-language media outlets, such as Ennahar TV and Echourouk TV, that demonized LGBTI persons.

‘The report also detailed social media and other online hate speech directed at the LGBTI community between 2013 and 2015. The organization reported in April that two men who used homophobic slurs physically attacked an activist who supported LGBTI rights in Algiers. In another incident a video posted on YouTube in November 2015 showed what appeared to be a group of men surrounding a transgender woman on the street. Several of the men were shown kicking and punching her while others looked on without intervening. The government did not announce investigations into the perpetrators of either alleged attack...

‘...Due to the hacking of one LGBTI organization’s website in 2015 and increased offensive and derogatory media coverage specifically denouncing LGBTI practices, activists reported the need to focus their advocacy on personal safety and minimized their activities during the year.’³²

[Back to Contents](#)

8. Access to Healthcare

8.1.1 The USSD report for 2016 cited activists as having reported ‘... that access to health services could be difficult because medical personnel often treated LGBTI patients unprofessionally, activists noted that some organizations

³¹ USSD Country Report on Human Rights Practices – 2016 – Algeria Section 6. Discrimination, Societal Abuses, and Trafficking in Persons – Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity – 3 March 2017
<https://www.state.gov/documents/organization/265702.pdf> Accessed 1 August 2017

³² USSD, Country Report on Human Rights Practices – 2016 – Algeria Section 6. Discrimination, Societal Abuses, and Trafficking in Persons – 3 March 2017
<https://www.state.gov/documents/organization/265702.pdf> Accessed 21 June 2017

maintained a list of “LGBTI-friendly” hospitals, and several NGOs operated mobile clinics specifically for vulnerable communities.’³³

8.1.2 The US State Department country report on human rights practices noted:

‘HIV/AIDS was widely considered a shameful disease. There were more reported cases in men than women, with the exception of women between ages 15 and 24. The government continued to offer free antiretroviral treatment to all persons, including migrants. Authorities virtually eliminated new HIV infections among children. The Joint UN Program on HIV/AIDS (UNAIDS) reported the existence of more than 2,000 centres offering free testing and counselling services, 1,500 of which the government managed. Strong social stigma towards the vulnerable groups in which HIV/AIDS was most concentrated – commercial sex workers, men who have sexual relations with men, and drug users – deterred testing of these groups...’³⁴

8.1.3 The Office of the UNHCR noted the visit to Algeria of the United Nations Special Rapporteur on the right to health, Dainius Pūras, in 2016, and stated ‘The expert praised Algeria for putting in place programmes to fight HIV/AIDS and ensure access to treatment for key populations, including men who have sex with men, sex workers, people who use drugs, and migrants. But he called for concerted efforts to reach out to these populations who still face serious barriers, stigma and discrimination, both in law and in practice, and avoid using healthcare services.’³⁵

8.1.4 However, the 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, dated 20 April 2017, stated:

‘...the key populations faced serious barriers, in law and in practice, to the enjoyment of the right to health.

‘HIV/AIDS remains a taboo in Algerian society. People living with HIV/AIDS face different forms of discrimination and stigma in accessing health care and treatment, and tend to avoid using health services. Algeria does not have legislation specifically prohibiting non-discrimination of persons living with HIV/AIDS. General provisions on the prohibition of discrimination are contained in, inter alia, the Constitution (art. 29) and the Code of Medical Ethics (art. 7). In 2005, the Family Code was amended (by Ordinance No. 05-02 of 27 February 2005) to introduce an obligatory prenuptial medical examination as part of the marriage procedure, which may include HIV testing. Although the test results do not prevent couples from getting married, this requirement is incompatible with obligations under the right to health as it infringes upon the rights to privacy, autonomy and refusal of non-consensual treatment.

³³ USSD Country Report on Human Rights Practices – 2016, Algeria (Section 6), 3 March 2017 <https://www.state.gov/documents/organization/265702.pdf>. Accessed 21 June 2017

³⁴ USSD Country Report on Human Rights Practices – 2016 – Algeria Section 6. Discrimination, Societal Abuses, and Trafficking in Persons – HIV & Aids Social Stigma – Date of report 3 March 2017 <https://www.state.gov/documents/organization/265702.pdf> Accessed 21 June 2017

³⁵ OHCHR: Algeria/Right to health: “More efforts needed to ensure that no one is left behind” – UN expert – 10 May 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19935&LangID=E> accessed 30 August 2017

'The Penal Code criminalizes homosexuality and sex work (arts. 338, 343 and 347), which is not only discriminatory, but can have dramatic public health effects. While the adoption of health-related policies and programmes targeting key affected populations is commendable, it does not offset the impact of criminalization, which is a serious barrier to the enjoyment of 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.'³⁶

[Back to Contents](#)

9. LGBT groups

9.1.1 The website 'Muftah' reported that:

'Because of homosexuality's criminalization, it is impossible to create an organization or space openly dedicated to gays and lesbians in Algeria. However, in the last several years, two main associations have emerged.

'Founded on October 10, 2011, Alouen is an association gathering together young gay and lesbian volunteers with one goal: the improvement of the legal situation for homosexuals, i.e. the abolition of Articles 333 and 338 of the Penal Code.

'Alouen emerged from Algeria's particularly hostile atmosphere for gays and lesbians. Within the MENA region, Algeria has some of the slowest rates of improvement when it comes to gay rights. Alouen is dedicated to ending the isolation of gays and lesbians and helping a real community emerge.

Alouen's mission has four components: 1. fighting against any forms of discrimination against homosexuals; 2. fighting against any forms of violence (especially through awareness-raising campaigns against physical, psychological, and moral violence); 3. facilitating acceptance and integration of gays and lesbians; and 4. fighting against HIV/Aids and other sexually transmitted infections through support group.

'Founded on October 10, 2007, Abu Nawas, another association dedicated to gay and lesbian mobilization in Algeria, and is composed of activists from both Algeria and around the world. Like Alouen, Abu Nawas takes action to abolish Articles 333 and 338 and support gays and lesbians at a national and international level. It is also a member of the first North African LGBT network, Khomsa.³⁷

9.1.2 The USSD noted: 'Alouen, an Oran-based LGBTI advocacy group, continued cyberactivism on behalf of the LGBTI community'³⁸.

[Back to Contents](#)

³⁶ UN Human Rights Council, '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', 20 April 2017, <http://www.refworld.org/docid/593948a74.html>. Accessed 2 August 2017

³⁷ 'Muftah' Gay and Lesbian Mobilisation in Algeria' Date of Report 15 December 2014 <https://muftah.org/gay-and-lesbian-mobilization-in-algeria/#.WVUbhvn5xR0> Accessed 27 July 2017

³⁸ USSD, 'Country Report on Human Rights Practices – 2016', Algeria (Section 6), 3 March 2017 <https://www.state.gov/documents/organization/265702.pdf>. Accessed 21 June 2017

Version control and contacts

Contacts

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Clearance

Below is information on when this note was cleared:

- version **2.0**
- valid from **22 September 2017**

Changes from last version of this note

Update of country information.

[Back to Contents](#)