

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	340
Land:	Algeriet
Kilde:	Immigration and Refugee Board of Canada
Titel:	Responses to Information Requests. Algeria: Treatment of persons based on their sexual orientation, gender identity and expression, and sex characteristics (SOGIESC), and treatment of their family members, by society and authorities, including legislation and state protection
Udgivet:	19. maj 2023
Optaget på baggrundsmaterialet:	7. november 2023

Document #2095435

IRB – Immigration and Refugee Board of Canada (Author)

Algeria: Treatment of persons based on their sexual orientation, gender identity and expression, and sex characteristics (SOGIESC), and treatment of their family members, by society and authorities, including legislation and state protection (2021–May 2023) [DZA200464.E]

Research Directorate, Immigration and Refugee Board of Canada

1. Legislation

According to sources, consensual sexual relations between individuals of the same sex are criminalized in Algeria, and punishable by up to two years imprisonment, as well as a fine (Amnesty International 2023-03-27, 71; US 2023-03-20, 39). Order No.°66-156 of 18 Safar 1386, corresponding to June 8, 1966, respecting the Penal Code, as amended and supplemented (*Ordonnance n° 66-156 du 18 Safar 1386 correspondant au 8 juin 1966 portant code penal, modifiée et complétée*), provides the following:

[translation]

Section 338. - Anyone convicted of a homosexual act is subject to a term of imprisonment of two (2) months to two (2) years and a fine of five hundred (500) to two thousand (2,000) Algerian dinars [C\$5–20].

If one of the perpetrators is under 18 years of age, the penalty for the other perpetrator, of majority age, may be increased up to a term of imprisonment of three (3) years and a fine of ten thousand (10,000) Algerian dinars [C\$99]. (Algeria 1966, bold in original)

The US Department of State's *Country Reports on Human Rights Practices for 2022* indicates, based on reports from "LGBTQI+ activists," that the "vague" language in the legislation criminalizing "'homosexual acts' and 'acts against nature'," allows for "sweeping accusations that resulted in multiple arrests for consensual same-sex sexual acts," though no known prosecutions related to these crimes took place in 2022 (US 2023-03-20, 39–40).

According to sources, the penal code stipulates that "any person who commits 'public indecency' can be charged with a prison sentence of between 2 months and 2 years" in addition to a fine (ILGA World 2020-12, 114) or between 6 months and 3 years in addition to a fine (US 2023-03-20, 39). The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World) adds that the penal code also provides penalties on the "possession, dissemination, or display of anything contrary to 'decency' with imprisonment from 2 months to 2 years and a fine" and "explicitly includes the 'indecent exposure of an act against the order of nature with an individual of the same sex' as an aggravated crime against good mores" (2020-12, 146). The penal code includes the following provisions:

[translation]

Section 333. (Amended) - Anyone who has committed public indecency is subject to a term of imprisonment of two (2) months to two (2) years and a fine of five hundred (500) to two thousand (2,000) Algerian dinars.

Where the public indecency consisted of an unnatural act with an individual of the same sex, the penalty is a term of imprisonment of six (6) months to three (3) years and a fine of one thousand (1,000) to ten thousand (10,000) Algerian dinars. (2)

Section 333 bis. (New) - Anyone who manufactures, possesses, imports or causes to be imported for purposes of trade, distribution, leasing, display or exhibition, exhibits or attempts to exhibit in public view, sells or attempts to sell, or distributes or attempts to distribute any printed document, written document, drawing, poster, engraving, painting, photograph, block, matrix or reproduction that is indecent is subject to a term of imprisonment of two (2) months to two (2) years and a fine of five hundred (500) to two thousand (2,000) Algerian dinars. (Algeria 1966, bold in original, footnotes omitted)

Sources report that the law does not extend protections against discrimination to individuals based on sexual orientation, gender identity (HRW 2020-10-15; US 2023-03-20, 40), gender expression or sex characteristics (US 2023-03-20, 40). US *Country Reports 2022* adds that "[l]egal gender recognition is not available" in Algeria (US 2023-03-20, 41). Furthermore, ILGA World indicates, as of 2020, that same-sex marriage, civil unions, joint adoption, and second-parent adoption are not legally recognized (2020-12, 325).

According to ILGA World, Algerian law also "affords the government broad discretion to refuse to register an association with an object that is contrary to 'good mores' (*bonnes mœurs*)" and extends "heavy fines and criminal penalties for members or leaders of informal associations" (2020-12, 170). Similarly, Human Rights Watch (HRW) reports that the law "prohibits the registration" of organizations perceived as "inconsistent with 'public morals'" and issues criminal penalties against members of unregistered organizations (2020-10-15). According to US *Country Reports 2022*, "[a]ctivists" report that due to the "criminalization of homosexual acts," there are no "LGBTQI+ NGOs" officially registered or in operation in Algeria, as "none have authorization to operate" (US 2023-03-20, 41–42). Law No. 12-06 of 18 Safar 1433, corresponding to January 12, 2012, respecting associations, (*Loi n° 12-06 du 18 Safar 1433 correspondant au 12 janvier 2012 relative aux associations*) provides the following regarding associations:

[translation]

Section 1. — The purpose of this Law is to establish the conditions and procedures for constituting, organizing and operating associations and to define its scope of application.

Section 2. — Within the meaning of this Law, an association is a grouping of natural and/or legal persons based on a term or indeterminate contract.

These persons share, on a voluntary and non-profit basis, their knowledge and resources to promote and encourage activities in professional, social, scientific, religious, educational, cultural, athletic, environmental, charitable and humanitarian fields, among others.

The purpose of the association must be precisely defined, and the association's name must reflect the connection with this purpose.

However, the purpose and the goals of its activities must be in the public interest and must not be contrary to national constants and values or to public order, good morals or provisions of laws and regulations currently in force. (Algeria 2012)

2. Treatment

Bertelsmann Stiftung's Transformation Index (BTI) 2022 indicates that LGBT+ individuals experience "discrimination in all aspects of their lives" in Algeria (Bertelsmann Stiftung 2022, 27). Freedom House similarly reports that "LGBT+ people face discrimination and violence," that they are "politically marginalized and have little practical ability to advocate for their political interests," and that "many LGBT+ activists have fled the country" (2023-03-09, Sec. B4, F4). In an interview with the Research Directorate, a lawyer and advocate of women's rights who also works on the rights of individuals based on their SOGIESC in Algeria, noted that people of diverse SOGIESC do not publicly "reveal" their SOGIESC due to the lack of legal protection and the negative perception from Algerian society (Lawyer 2023-05-02). The same source added that "as long as [an individual is] not identified publicly" based on their SOGIESC, then they may "access the rights and services that all Algerians can access" (Lawyer 2023-05-02).

2.1 By Authorities

The *BTI 2022* indicates that LGBTQ+ individuals experience "harassment in law," as homosexuality is criminalized (Bertelsmann Stiftung 2022, 14). *US Country Reports 2022* states that LGBTQI+ individuals face criminal prosecutions due to the "disproportionat[e]" application of legal provisions against them, including "laws concerning commercial sex, public indecency, and 'associating with bad characters'," as well as "harsher sentences" handed down by judges (US 2023-03-20, 40).

According to *US Country Reports 2022*, the government started a one-week campaign "against LGBTQI+ symbols" taking place in January 2023, aimed at "warn[ing] the public about the dangers of products carrying rainbow images, including the 'harmful consequences of marketing these products on the national market...especially as it concerns toys for children, school items, etc.'" (US 2023-03-20, 42, ellipsis in original). Regarding the same campaign, *Jeune Afrique*—which cites an Arabic-language article by *Ennahar*, an Algerian daily newspaper—reports that the Minister of Commerce, who led the initiative, stated his objective was [translation] "to put and end to 'these products bearing symbols and colours that undermine the religion and moral values of the Algerian people'," and cited article 19 of Law 03/09 on consumer protection and fraud repression, in order to seize "38,542 articles bearing these colours and symbols" (*Jeune Afrique* 2023-01-05). Further information on the implementation

and outcome of this campaign could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to Freedom House, "LGBT+ Algerians face mistreatment" by police (2023-03-09, Sec. F4). *US Country Reports 2022* indicates that authorities do not "act to prevent discrimination against LGBTQI+ persons" (US 2023-03-20, 40). Additionally, a joint submission [1] to the UN Office of the High Commissioner for Human Rights' (OHCHR) 2022 Universal Periodic Review (UPR), as summarized by the OHCHR, notes that the lack of access to state protection for LGBTQ+ individuals results in violations not being reported in "almost all cases," due to individuals' "fear of being outed or prosecuted, creating a situation of complete impunity" (UN 2022-08-19, para. 56). The same report provides examples of "the existing discrimination" faced by LGBTQ+ individuals, which includes "house raids and arbitrary prosecutions for actions protected by the right to privacy, bodily autonomy, and non-discrimination" under the International Covenant on Civil and Political Rights (ICCPR) [2], in addition to a "heightened risk of torture and ill-treatment by the authorities as well as by other inmates" (UN 2022-08-19, para. 57).

In a case reported by HRW in 2020, which cites an Arabic-language article by *Ennahar*, a court convicted and handed down three-year prison term sentences to 2 men, and one-year suspended terms to 42 other individuals, on charges of "'same-sex relations', 'public indecency', and 'subjecting others to harm by breaking Covid-19-related quarantine measures'," after a police raid and "mass arrests at what the police alleged was a 'gay wedding'" at a private residence in the northeastern province of Constantine (2020-10-15). The police were alerted by complaints from neighbours, which included descriptions of "the decorations, flowers, and sweets indicative of a wedding celebration and the men's supposedly gay appearance, as evidence of guilt," according to an "Algerian lawyer involved in the case" cited in the same article (HRW 2020-10-15). In another case reported by the New Arab, a London-based news website with a focus on the Middle East and North Africa (The New Arab n.d.), with reference to reporting by "Algerian newspaper *Le Matin*," two men attacked and killed a 20-year-old medical student at a university in Algeria in February 2019, and the student "was found with his throat slit at his dormitory room with 'he is gay' allegedly written in his own blood on a wall" (2019-02-13). Without providing further details, the same source notes, citing Alouen, an [Algerian LGBT youth organization, most of whose members live abroad (*Le Parisien* 2019-02-13)], that "homophobia had been stirred by local authorities and senior officials" (The New Arab 2019-02-13).

Information on the treatment of the family members of individuals based on their SOGIESC by the Algerian authorities, could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.2 By Society

The *BTI 2022* states that LGBTQ+ individuals experience "harassment" at the societal level, based on "the many cases of violence documented by LGBTQ+ rights organizations" (Bertelsmann Stiftung 2022, 14). According to "activists" cited in *US Country Reports 2022*, LGBTQI+ individuals face "hostility," including being "often followed and intimidated, and sometimes" escalating to "physical violence" (US 2023-03-20, 40).

According to Freedom House, LGBT+ individuals face "discrimination by health care providers and employers" (2023-03-09, Sec. F4). *US Country Reports 2022* similarly indicates that "LGBTQI+ persons faced discrimination" when accessing health services, including "longer wait times, refusal of treatment, and shaming" (2023-03-09, 40). Citing unnamed NGOs, the same source notes that "employers refused jobs to LGBTQI+ persons, particularly men perceived as effeminate" (US 2023-03-

20, 41). Additionally, *US Country Reports 2022* indicates that lawyers familiar with LGBTQI+ issues were not "widely accessible," and that "other lawyers feared getting involved with the cases of LGBTQI+ persons" (US 2023-03-20, 41).

Citing unnamed civil society organizations, *US Country Reports 2022* indicates that LGBTQI+ individuals experienced "additional discrimination, compounding gender-based discrimination," including in rural areas where there is a "greater prevalence of conservative views of gender roles" (US 2023-03-20, 35). Citing activists, the same source reports that "social and family pressures" placed on individuals based on their SOGIESC are "so oppressive" that their identities are "driven underground and rarely acknowledged" (US 2023-03-20, 41). According to the lawyer, people "understand tacitly" that their SOGIESC has to be "kept under the radar" due to the cultural and religious perceptions of Algerian society, even though there are cases "nowadays" of individuals whose family are aware of their SOGIESC and who accept them, but who "would still be cautious about talking openly or revealing it publicly" (2023-05-02). The same source added that while there are no clear regional differences in the acceptance of diverse SOGIESC, there are more cases of gay couples who are living together in Algiers, but these couples hide their romantic relationship and instead live publicly as roommates or friends (Lawyer 2023-05-02).

Information on the treatment of family members of individuals based on their SOGIESC by Algerian society could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3. State Protection

According to the lawyer, there are no protection mechanisms or channels provided by the state to individuals based on their SOGIESC, or to their families, but such individuals may access state protection if they "do not publicly declare their SOGIESC" (2023-05-02). The same source noted that in a legal case they worked on, a transgender client residing in Algiers had called the police due to being "harassed" by the son of their landlord, and that although the police reacted "confusedly" upon checking the client's ID card, which identified them as male, they ultimately continued to treat the case as harassment, using the client's ID to prepare the necessary paperwork for a complaint, and following up with the defendant afterwards (Lawyer 2023-05-02).

In its national report to the UPR, Algeria indicates that its National Human Rights Council (Conseil national des droits de l'homme, CNDH) is charged with "investigating any violations of human rights," and with "taking appropriate action" by bringing "the results of its investigations to the attention of the administrative authorities" or by raising them with the relevant courts (Algeria 2022-09-02, para. 14, 15). The same report states that the constitution guarantees the "right to legal aid for persons who are indigent" (Algeria 2022-09-02, para. 23). Alkarama [3] reported to the UPR that the Global Alliance of National Human Rights Institutions (GANHRI) [4] found that Algeria's CNDH does not comply with the Paris Principles [regarding "the status of national institutions for the promotion and protection of human rights" (UN 2022-08-19, para. 9)]; Alkarama underscored [translation] "the complete lack of independence of CNDH from the executive [branch]" (Alkarama 2022-03-31, 2).

According to ILGA World, state protection against homophobia is not extended in the constitution or through broad legal protections, nor is it provided in specific employment, hate crime, or incitement legislation, nor has Algeria banned conversion therapies (2020-12, 325). The joint stakeholder submission to the UPR on Algeria indicates that the "legal vacuum" regarding state protection for LGBTQ+ individuals, with the "criminalisation of consensual same sex relations (article 338 of the Penal Code), lack of awareness and training of relevant institutions," precludes these individuals from

accessing redress for situations of gender-based violence or other "discriminatory treatment" (UN 2022-08-19, para. 56).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] The joint submission was authored by DIGNITY – Danish Institute Against Torture, the Cairo Institute for Human Rights Studies, the Collective of the Families of the Disappeared in Algeria, the Justitia Center for Legal Protection of Human Rights in Algeria, and the Tharwa N'Fadhma N'Soumer Association (UN 2022-08-19, 10).

[2] The International Covenant on Civil and Political Rights (ICCPR) is an international human rights agreement established in 1966 that guarantees "freedom from torture and other cruel, inhuman or degrading treatment or punishment," "fair trial rights," "freedom of thought, religion and expression," "privacy, home and family life," and "equality and non-discrimination" (UK 2020-03-12).

[3] Alkarama is an NGO based in Geneva that assists survivors of human rights violations, advocates for reform, and raises awareness on issues of extrajudicial execution, enforced disappearance, torture, and arbitrary detention in the "Arab world" (Alkarama n.d.).

[4] The Global Alliance of National Human Rights Institutions (GANHRI) is an organization co-funded by the EU and the UN Office of the High Commissioner for Human Rights (OHCHR) that participates in the establishment and accreditation of national human rights institutions (GANHRI n.d.).

References

Algeria. 2022-09-02. *National Report Submitted in Accordance with Human Rights Council Resolutions 5/1 and 16/21*. (A/HRC/WG.6/41/DZA/1) [Accessed 2023-04-13]

Algeria. 2012. *Loi n° 12-06 du 18 Safar 1433 correspondant au 12 janvier 2012 relative aux associations*. Excerpts translated by the Translation Bureau, Public Services and Procurement Canada. [Accessed 2023-04-20]

Algeria. 1966 (amended 2012). *Ordonnance n° 66-156 du 8 juin 1966 portant code pénal, modifiée et complétée*. Excerpts translated by the Translation Bureau, Public Services and Procurement Canada. [Accessed 2023-04-20]

Alkarama. 2023-03-31. *Examen périodique universel : Algérie. Quatrième cycle, soumission au résumé des informations fournies par les autres parties*. [Accessed 2023-05-16]

Alkarama. N.d. "About." [Accessed 2023-04-17]

Amnesty International. 2023-03-27. "Algeria." *Amnesty International Report 2022/2023: The State of the World's Human Rights*. [Accessed 2023-04-11]

Bertelsmann Stiftung. 2022. "[Algeria Country Report](#)." *Bertelsmann Stiftung's Transformation Index (BTI) 2022*. [Accessed 2023-04-11]

Freedom House. 2023-03-09. "[Algeria](#)." *Freedom in the World 2023*. [Accessed 2023-04-13]

Global Alliance of National Human Rights Institutions (GANHRI). N.d. "[Strategy](#)." [Accessed 2023-04-17]

Human Rights Watch (HRW). 2020-10-15. "[Algeria: Mass Convictions for Homosexuality](#)." [Accessed 2023-04-17]

International Lesbian, Gay, Bisexual, Trans and Intersex Association World (ILGA World). 2020-12. Lucas Ramón Mendos, et al. [State-Sponsored Homophobia 2020: Global Legislation Overview Update](#). [Accessed 2023-04-19]

Jeune Afrique. 2023-01-05. Yacine Tazrout. "[Le ministère algérien du Commerce en croisade contre les couleurs LGBT](#)." [Accessed 2023-04-19]

Lawyer, Algiers. 2023-05-02. Interview with the Research Directorate.

The New Arab. 2019-02-13. "[Algerian Student Throat Slit with 'He Is Gay' Daubed on Wall with his Blood](#)." [Accessed 2023-04-24]

The New Arab. N.d. "[About Us](#)." [Accessed 2023-04-24]

Le Parisien. 2019-02-13. "[Algérie : colère à l'université d'Alger après un crime homophobe](#)." [Accessed 2023-06-13]

United Kingdom (UK). 2020-03-12. Equality and Human Rights Commission. "[International Covenant on Civil and Political Rights \(ICCPR\)](#)." [Accessed 2023-05-02]

United Nations (UN). 2022-08-19. Human Rights Council, Working Group on the Universal Periodic Review. [Summary of Stakeholders' Submissions on Algeria. Report of the Office of the United Nations High Commissioner for Human Rights](#). (A/HRC/WG.6/41/DZA/3) [Accessed 2023-04-13]

United States (US). 2023-03-20. Department of State. "[Algeria](#)." *Country Reports on Human Rights Practices for 2022*. [Accessed 2023-02-03]

Additional Sources Consulted

Oral sources: Alouen; assistant professor at an American university whose research focuses on Islamic law, and gender and sexuality in the Middle East and North Africa; assistant professor at an American university whose research focuses on LGBTQI issues, and legal and cultural Islamic history in African countries, including Algeria; doctoral student at an American university whose research focuses on Islam, and gender and sexuality in North Africa, including Algeria; Justitia Center; Pan Africa International Lesbian, Gay, Bisexual, Trans and Intersex Association; research fellow at a university in the UK whose research focuses on gender and sexuality, and political violence throughout Middle Eastern history, including in Algeria; Trans Homos DZ.

Internet sites, including: Algeria – ministère de l'Intérieur, ministère de la Justice, ministère des Affaires étrangères; Algeria Press Service; allAfrica.com; AMERA International; American Institute for Maghrib Studies – Centre d'études maghrébines en Algérie; Association pour l'information sur les drogues et le sida (AIDS) Algérie; Brookings Institution; Canada – Travel and Tourism; The Conversation Africa; Deutsche Welle; EU – EU Institute for Security Studies; EuroMed Rights; Factiva; Fédération internationale pour les droits humains; France 24; Human Dignity Trust; Institute for Security Studies; Konrad-Adenauer-Stiftung; Ligue algérienne pour la défense des droits de l'homme; Maghreb Arabe Presse; Mercer University – Department of International and Global Studies; *Le Monde diplomatique*; Morocco World News; Observatoire des inégalités; Pan Africa International Lesbian, Gay, Bisexual, Trans and Intersex Association; Radio France internationale; Reuters; Tunis Afrique Presse; UK – Home Office; UN – UNAIDS; Voice of America; Yale University – The Whitney and Betty MacMillan Center for International and Area Studies at Yale, Council on African Studies.

Associated documents

Document ID 2095435 Translation / language version

19 May 2023 | [IRB – Immigration and Refugee Board of Canada](#) (Author)

Algeria

Query response on Algeria: Treatment of persons based on their sexual orientation, gender identity and expression and sex characteristics (SOGIESC) and of their family members by society and authorities (2021 - May 2023)

Algérie : information sur le traitement réservé par la société et les autorités aux personnes en raison de leurs orientation et caractères sexuels ainsi que de leurs identité et expression de genre (OCSIEG), de même qu'aux membres de leur famille, y compris le cadre juridique et la protection offerte par l'État (2021-mai 2023) [DZA200464.EF] (Response, French)

fr

[ID 2095436](#)

ecoi.net description:

Query response on Algeria: Treatment of persons based on their sexual orientation, gender identity and expression and sex characteristics (SOGIESC) and of their family members by society and authorities (2021 - May 2023)

Country:

Algeria

Source:

[IRB – Immigration and Refugee Board of Canada](#) (Author)

Original link:

<https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=458818&pls=1>

Document type:
Response

Language:
English

Published:
19 May 2023

Available on ecoi.net since:
11 August 2023

Document ID:
2095435

Austrian Red Cross Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD)	Wiedner Hauptstraße 32, 1041 Wien T +43 1 589 00 583 F +43 1 589 00 589 info@ecoi.net	Contact Imprint & Disclaimer F.A.Q. Data Protection Notice
--	---	---

ecoi.net is run by the Austrian Red Cross (department ACCORD) in cooperation with Informationsverbund Asyl & Migration. ecoi.net is funded by the Asylum, Migration and Integration Fund, the Austrian Ministry of the Interior and Caritas Austria. ecoi.net is supported by ECRE & UNHCR.

