

## **Algeria<sup>1</sup>**

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### **Summary and Analysis**

Algeria currently possesses a limited child protection system but is collaborating with UNICEF in expanding it and getting it to meet international norms. The current system is based on a combination of provisions in the Constitution, the Code of the Family and the Penal Code. The Constitution promotes the protection of children and the family in broad strokes while the Penal Code criminalizes the abandonment or neglect of children. The Code of the Family defines the conditions of accepting foster children and gives some rights to children over thirteen, such as the right to decide whether they want to return home from foster care should the parents so request. The Code of the Family also specifies that incompetent parties, including children, must be represented by guardians. Children below the age of sixteen are viewed as lacking the sense to discern and their actions are legally invalid, while the actions of children above that age have limited legal validity. None of the codes specifically discuss children's right to be heard in accordance with article 12 of the CRC.

Certain protective structures are in place to serve the needs of foster children as well as other children in difficulty. Social workers and psychologists are charged with assisting these children and their families. Algeria ratified the Convention on the Rights of Children in 1992 and is still attempting to ensure the implementation of all its provisions.<sup>2</sup> A National Commission to reform Algeria's legal system, whose goals were to ensure the independence of judges and implement international conventions to which Algeria adheres, including the CRC, was instituted in 2000. For this purpose, Algeria created the "Institut National de la Magistrature" (INM; the "National Institute of Magistrates"). UNICEF and INM work to increase the knowledge on children's rights, because they view the lack of this knowledge as a major obstacle to the implementation of the CRC. Indeed, even though international treaties have higher legal power than any Algerian national law except for the Constitution and despite the fact that ratified treaties are published in the official newspaper, there is doubt about whether judges, lawyers, and the police will follow these treaties. The INM's emphasis on education has resulted in a new legal course called "International Human Rights Legal Instruments" and a legal one-year specialization on juvenile justice after the regular postgraduate legal program that the INM provides for future magistrates. The INM has further begun studying the relationship between Algerian legislation and the CRC in 2002 with the purpose of eventually proposing any necessary amendments that would harmonize Algerian law with international law. The Algerian Minister of Justice decided to create a Department for Human Rights with a Directorate for Child Rights, and the Parliamentary Committee on Youth and on Justice is cooperating with UNICEF to properly implement the CRC in legislation before Parliament.<sup>3</sup>

### **Related Sources of Law (In Order of Authority)**

#### Original Text (French)

*Constitution*

#### **Constitution<sup>4</sup>**

Art. 58 - La famille bénéficie de la protection de l'Etat et de la société.

Art. 63 - L'ensemble des libertés de chacun s'exerce dans le respect des droits reconnus à autrui par la Constitution, particulièrement dans le respect du droit à l'honneur, à l'intimité et à la protection de la famille, à celle de la jeunesse et de l'enfance.

Art. 65 - La loi sanctionne le devoir des parents dans l'éducation et la protection de leurs enfants, ainsi que le devoir des enfants dans l'aide et l'assistance à leurs parents.

#### *International Law*

#### **Convention relative aux droits de l'enfant,<sup>5</sup>**

##### Article 12

1. Les Etats parties garantissent à l'enfant qui est capable de discernement le droit d'exprimer librement son opinion sur toute question l'intéressant, les opinions de l'enfant étant dûment prises en considération eu égard à son âge et à son degré de maturité.

2. A cette fin, on donnera notamment à l'enfant la possibilité d'être entendu dans toute procédure judiciaire ou administrative l'intéressant, soit directement, soit par l'intermédiaire d'un représentant ou d'une organisation approprié, de façon compatible avec les règles de procédure de la législation nationale.

#### *Regional Agreements*

#### **Charte Africaine des Droits et du Bein-être de l'Enfant<sup>6</sup>**

##### Article 4. Interet Supérieur de L'Enfant

1. Dans toute action concernant un enfant, entreprise par une quelconque personne ou autorité, l'intérêt de supérieur l'enfant sera la considération primordiale.

2. Dans toute procédure judiciaire ou administrative affectant un enfant qui est capable de communiquer, on fera en sorte que les vues de l'enfant puissent être entendues soit directement, soit par le truchement d'un représentant impartial qui prendra part à la procédure, et ses vues seront prises en considération par l'autorité compétente, conformément aux dispositions des lois applicables en la matière.

##### Article 7. Liberte d'Expression

Tout enfant qui est capable de communiquer se verra garantir le droit d'exprimer ses opinions librement dans tous les domaines et de faire connaître ses opinions, sous réserve des restrictions prévues par la loi.

#### *Statutes*

#### **Droit penal<sup>7</sup>**

Art. 314 - Quiconque expose ou fait exposer, délaisse ou fait délaisser, en un lieu solitaire, un enfant ou un incapable, hors d'état de se protéger lui-même à raison de son état physique ou mental, est pour ce seul fait, puni de l'emprisonnement d'un à trois ans.

S'il est résulté de l'exposition ou du délaissement une maladie ou incapacité totale de plus de vingt jours, la peine est l'emprisonnement de deux à cinq ans.

Si l'enfant ou l'incapable est demeuré mutilé ou estropié, ou s'il est resté atteint d'une infirmité permanente, la peine est la réclusion de cinq à dix ans.

Si l'exposition ou le délaissement a occasionné la mort, la peine est la réclusion, de dix à vingt ans.

### **Droit civil<sup>8</sup>**

Art. 42. – La personne dépourvue de discernement à cause de son jeune âge ou par suite de sa faiblesse d'esprit ou de sa démence, n'a pas la capacité d'exercer ses droits civils. Est réputé dépourvu de discernement, l'enfant qui n'a pas atteint l'âge de seize ans.

Art. 43. – Celui qui a atteint l'âge de discernement, sans être majeur, de même que celui qui a atteint sa majorité, tout en étant prodigue ou frappé d'imbécillité, ont une capacité limitée conformément aux prescriptions de la loi.

### **Droit de la famille (2003)<sup>9</sup>**

Art.81 - Toute personne complètement ou partiellement incapable du fait de son jeune âge, de sa démence, de son imbécillité ou de sa prodigalité est légalement représentée par un tuteur légal ou testamentaire ou d'un tuteur datif, conformément aux dispositions de la présente loi.

Art.116 - Le recueil légal est l'engagement de prendre bénévolement en charge l'entretien, l'éducation et la protection d'un enfant mineur, au même titre que le ferait un père pour son fils. Il est établi par acte legal

Art. 117 - Le recueil légal est accordé par-devant le Juge ou le notaire avec le consentement de l'enfant quand celui-ci a un père et une mère.

Art. 118 - Le titulaire du droit de recueil légal (kàfil) doit être musulman. sensé. Intègre. à même d'entretenir l'enfant recueilli (makfoul) et capable de le protéger.

### **Droit de la famille (2005)<sup>10</sup>**

Art. 42 – La personne dépourvue de discernement à cause de son jeune âge ou par suite de sa faiblesse d'esprit ou de sa démence, n'a pas la capacité d'exercer ses droits civils.

Est réputé dépourvu de discernement l'enfant qui n'a pas atteint l'âge de treize ans.

Art. 43 – Celui qui a atteint l'âge de discernement, sans être majeur, de même que celui qui a atteint la majorité, tout en étant prodigue ou frappé d'imbécilité, ont une capacité limitée conformément aux prescriptions de la loi.

Translation<sup>11</sup>

*Constitution*

**Constitution**

Art. 58 - The family benefits from the protection of the state and society.

Art. 63 - The total of each individual's liberty is exercised with respect toward the rights that the Constitution grants to others, especially with respect toward the right to honor, intimacy and the protection of the family, that of youth and that of childhood.

Art. 65 - The law sanctions the duty of parents in the education and the protection of their children as well as the duty of children in the help and assistance of their parents.

#### *International Law*

#### **Convention on the Rights of the Child<sup>12</sup>**

##### Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

#### *Regional Agreements*

#### **African Charter on the Rights and Welfare of the Child,<sup>13</sup>**

##### Article 4. Best Interests of the Child

1. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.

2. In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, an opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.

##### Article 7: Freedom of Expression

Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.

#### *Statutes*

#### **Penal Code**

Art. 314. – Whoever exposes or allows to be exposed, neglects or allows to be neglected, in a solitary place, a child or an incompetent, who is unable to protect himself due to his physical or mental state, is for this fact alone punishable by imprisonment from one to three years.

If total illness or incapacitation of more than twenty days follows, the punishment is of two to five years in prison.

If the child or incompetent remains mutilated or disabled, or if he remains with a permanent handicap, the punishment is five to ten years.

If the exposal or neglect causes death, the punishment is ten to twenty years.

## Civil Code

Art. 42. – The person lacking the sense to discern due to his young age or weakness of spirit or dementia does not have the capacity to exercise his civil rights. The child who has not reached the age of sixteen is considered to be lacking the sense to discern.

Art. 43. – The person who has attained the age to discern without being an adult as well as the person who has reached adulthood while suffering from mental defect have a limited capacity according to the law.

## Code of the Family (2003)

Art. 81 - Any person that is completely or partly incompetent due to his young age or mental defect is legally represented by a legal guardian or one designated by will, conforming to the dispositions of the current law.

Art. 116 - The legal acceptance of foster care constitutes in voluntarily taking over the responsibility for the sustenance, education, and protection of a minor child in the manner that a father would do it for his son. It is established by legal action.

Art. 117 - The acceptance of foster care given by the judge or notary with the consent of the child when he has a father and mother.

Art. 118 - The individual in charge of the foster care (kafil) must be Muslim, sensible, honest, and capable of sustaining and protecting the child (makfoul).

## Code of the Family (2005)

Art. 42 - The person who lacks the sense to discern due to his young age or feebleness of spirit or mental defect does not have the capacity to exercise his civil rights. Any child who has not attained the age of thirteen lacks the sense to discern.

Art. 43 - The person who has attained the age to discern, without having reached adulthood, as well as the person who has reached adulthood and suffers from mental defect, have limited capacity conforming to the prescriptions of the law.

## Additional Resources and Links

LEXALGERIA

<http://www.lexalgeria.net/>

Université Alger – Faculté de droit (University of Algiers Law Faculty)

<http://www.univ-alger.dz/facultedroit.htm>

Ecole Supérieure de la Magistrature (Higher Education Institution for Magistrates)  
<http://www.inm-dz.org/>

UNICEF Algeria  
<http://www.unicef.org/french/infobycountry/algeria.html>

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<sup>1</sup> This page is also available as a [.pdf Document](#), and [Word Document](#).

<sup>2</sup> Algeria has also ratified the African Charter on the Rights and Welfare of the Child.

<sup>3</sup> UNICEF, *Promotion of the Convention on the Rights of the Child and the Legal Protection of Children and Adolescents – Algeria* (2002), available at <http://www.unicef.org/evaluation/files/algeria2002crc.doc>, and also [here](#), and also as [.pdf Document](#), and also as [Word Document](#).

<sup>4</sup> CONSTITUTION DE LA RÉPUBLIQUE ALGÉRIENNE DÉMOCRATIQUE ET POPULAIRE [Constitution of the Democratic and Popular Republic of Algeria] (1996), available at <http://www.algeria-un.org/default.asp?lang=2&doc=const> (French) and <http://www.algeria-un.org/default.asp?doc=const&section=&treaty=> (English).

<sup>5</sup> Convention relative aux droits de l'enfant, G.A. Res. 44/125, U.N. GAOR, 44th Session, Supp. No. 49, U.N. Doc. A/44/736 (1989), available at <http://www.ohchr.org/french/law/crc.htm>.

<sup>6</sup> Charte Africaine des Droits et du Bien-être de l'Enfant, opened for signature July 11, 1990, OAU Doc. CAB/LEG/24.9/49 available at <http://www.africa-union.org/>.

<sup>7</sup> Code Penal [Penal Code], available at <http://www.lexalgeria.net/penal3.htm>

<sup>8</sup> Code Civil [Civil Code], available at <http://www.lexalgeria.net/cvildispogen.htm>.

<sup>9</sup> Droit de la famille, Livre deuxième: de la Représentation Légale (2003) [Code of the Family, Second Book: on Legal Representation], available at [http://www.psy-desir.com/leg/imprimer.php?id\\_article=680](http://www.psy-desir.com/leg/imprimer.php?id_article=680), and also [here](#), and also as [.pdf Document](#), and also as [Word Document](#).

<sup>10</sup> Droit de la famille (2005) [Code of the Family], available at [http://www.joradp.dz/JO2000/2005/044/F\\_Pag.htm](http://www.joradp.dz/JO2000/2005/044/F_Pag.htm), at 17.

<sup>11</sup> Translations for the constitution and statutes were provided by a translator from the Jerome N. Frank Legal Services Organization.

<sup>12</sup> United Nations Convention on the Rights of the Child art. 12, Dec. 12, 1989, UN General Assembly Document A/RES/44/25, available at <http://www.ohchr.org/english/law/crc.htm>.

<sup>13</sup> African Charter on the Rights and Welfare of the Child, opened for signature July 11, 1990, OAU Doc. CAB/LEG/24.9/49 available at <http://www.africa-union.org/>.