



Cultural Association AMUSNAW

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TO THE COMMITTEE OF:

THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION
AGAINST WOMEN.

Presentation of the cultural association AMUSNAW.

The association, founded in 1991, is based in Tizi-Ouzou, Kabylie. It was first created to promote cultural activities but, with the changes in the context where it works, it has evolved to try and fulfil other needs of the population, especially of women and youths.

Apart from offering cultural activities, the association has tried to cover the learning needs of the youth through the establishment of a resource centre which offers training in English, computer skills, internet, computer graphics, video editing, extra help for school and a reading corner.

Sensitive to the situation of women and children who are victims of violence, the association offers psychological and legal advice through a counselling service. This service helps to break the taboos around sensitive topics such as incest or rape and to raise the awareness of the authorities and the society in general with regards to the situation of women and children. The association is strongly committed to lobbying for the improvement of the situation of women and has a lot of expertise in the subject.

In the same area of work, the association works with single mothers, widows and divorced women with children through a support programme.

Convinced that the participation of women in public and political life helps to reinforce democracy and citizenship, Amusnaw implements a training programme to strengthen the leadership of women involved in civil society organisations (associations, trade unions and political parties).

Amusnaw contributes to the promotion of local artisans and cultural and artistic patrimony through eco-tourism in Kabylie, training of female artisans and promotion of income-generating activities.

Amusnaw is becoming a catalyst for local civil society associations by supporting networking and building their capacities of intervention.

AMUSNAW wants to contribute to the instauration of a legally constituted laic and democratic State where individual and social rights are respected, where cultural and linguistic diversity are recognised and where the access to social and economic rights is guaranteed to all men and women by fair civil laws.

AMUSNAW is convinced that a well educated civil society will contribute to the instauration of this State.

INTRODUCTION:

Algeria has ratified several international conventions and treaties and its Constitution guarantees their pre-eminence over the national laws:

Art. 131: Armistice agreements, peace treaties, union alliances and treaties related to the borders of the State or the status of persons or those which involve unforeseen expenses for the budget of the State are ratified by the President of the Republic after having been passed by both Chambers of Parliament.

Art. 132: Treaties ratified by the President of the Republic according to the conditions established by the Constitution are above the Law.

The decision of the Algerian Constitutional Council of the 20th August 1989 confirming this supremacy strengthens the power of these international laws in front of the national tribunals and the possibility for every citizen to appeal to them during litigation.

Once ratified and published, all conventions are included in the national law and, according to art. 123 of the Constitution, they are above national laws, authorising all Algerian citizens to appeal to them in front of the tribunals.

During his speech of the 8th Mars 2008, the President of the Republic announced the intention of Algeria to withdraw its reservation on the CEDAW following the reform of the Code of Nationality in 2006. Consequently, the reservation on art. 9 line 2 has been withdrawn.

The ratification of the Convention on the elimination of all forms of discrimination against women (CEDAW) with reservations:

Even though Algeria has ratified the Convention on the elimination of all forms of discrimination against women, it has not committed to condemning all forms of discrimination against women and establishing policies to abolish these forms of discrimination (art. 2 of the CEDAW). It does not recognize the right of women to get around freely and to choose their home or address (art. 15 line 4).

Algeria refuses art. 16 which establishes equality in marriage.

Algeria has ratified the CEDAW with so many reservations that it has emptied the Convention of meaning since it places religion and discriminatory laws such as the Family Code above the Convention.

Even though Algeria has repeatedly declared its intention to join the Facultative protocol of the CEDAW, so far it has not done so.

The new Human Rights Council has invited Algeria to withdraw its reservations. However, the recommendation refers only to art. 2 of the CEDAW.

Introduction :

I. FAMILY CODE :

The Family code, in force since 1984 and amended in February 2005, defines and orders the family unit, attacks the dignity of Algerian women and sanctions their inferiority to men.

This law is against the Algerian Constitution, supreme law which establishes the principle of equality in its articles 29, 31, 33, 34, 36 and 51.

The persevering work of women rights associations achieved the reform of the Family Code in 2005 but many associations still regret the disparity between this law and the Algerian Constitution. The improvements achieved in 2005 do not eliminate the inequality of the legal status of women within families, which contradicts the equality between men and women established by the Algerian Constitution.

The Family Code sanctions legal violence by maintaining repudiation, polygamy, unequal access to inheritance...

Marriage :

Unequal legal status of women in the Family Code: the institution of the "Wali":

Art. 11 of the Family Code establishes that the marriage contract of a woman of age, or of an under-aged, is done in front of her wali (tutor). This could be her father, a relative or any other person that she chooses.

This article sanctions the inequality of rights and responsibilities of the spouses during the marriage.

If the role of the Wali is redefined so that a woman of age can sign her marriage contract herself, the distinction between a woman of age and an under-aged would be clarified. By keeping the figure of the Wali, all Algerian women are considered under-aged. Therefore, Algerian women can choose their tutor but not their husband.

Polygamy, from information to consent.

Another improvement (if it can be considered an improvement) regards the necessary agreement of the wife or wives to the polygamy of their husband. According to 1984's Family Code, the husband was only obliged to inform his wife or wives of his intention to remarry. Now, women can refuse to suffer this affront, whereas in the old text they could only see it coming.

It must be said that the 2006 reform allows a magistrate to contradict the wish of the wife if he ascertains that equal conditions are guaranteed. Therefore, polygamy continues to be a sword suspended over the necks of Algerian women.

Repudiation is maintained.

«Talaq » (repudiation) is the result of the wish of the husband, recorded by the judge, whose only role is to ensure possible compensations to the wife.

Inequality in the request for divorce is maintained.

Inheritance:

The law in terms of inheritance remains very discriminatory towards women, who don't have the right to an equal share to their brothers in the distribution of inheritance. The Algerian State justifies this situation because it is in the Koranic Law. However, the existence of a religious law should not exempt the State from aligning its laws with the International Covenant on Economic,

Social and Cultural Rights ratified by it.

II. Violence against women in Algeria :
Physical and psychological violence, marital violence, homicides, sexual harassment, rape, legal and social inequalities, etc. have been made public by feminist associations, institutions and organisations which have revealed the seriousness of the subject and denounced the accomplice silence of society.

The trans-disciplinary and trans-institutional survey on violence against women carried out in Algeria in 2002 (and published on the 25th November 2005) by the National Health Institute (INSP) – and which remains the only one on the subject- has revealed the seriousness of the consequences of this violence on the health of women, children and men.

Projects to take care of women victims of violence have been put forward by feminist associations and groups of female professionals such as doctors, psychiatrists and lawyers offering legal and psychological counselling.

The launch of the national strategy against violence against women in 2006 has not had any practical effects since there is still no law that condemns violence against women, especially within the marriage.

Violence against women in Algeria today could be classified in four categories: domestic violence, sexual harassment, status of single mothers and women living on their own (ie: punitive strikes against women in Hassi-Messaoud in July 2001 and at the beginning of 2010) and violence during the black decade.

A national survey on violence against women carried out in 2006 by the Ministry in charge of family and the status of women revealed that 9,4% of Algerian women between the ages of 19 and 64 have regularly suffered physical or psychological violence. This survey also revealed the existence of marital rape and other forms of sexual abuse (10,9% of women admitted to having been repeatedly forced to have sexual relations by their partners).

What are the support systems available in case of marital violence in Algeria?

In terms of the psychological support, there is no emergency response system in place, not even when the life of the woman, and sometimes of the children, is under threat.

Neighbours don't feel compelled to react against violence that takes place in

the privacy of the home.

While the woman often feels too ashamed to reveal her suffering, the witnesses pretend not to hear or see a thing. Those who decide to denounce the situation are often exposed to reprisals from the family or the circle of friends of the attacker. Children can either push the victim to leave her partner so as not to expose them to any more violence or to stay and keep suffering the violence.

Legal framework:

Algerian law considers that what happens in the home between a married couple belongs to the private sphere. There is no mention of "domestic violence" in any law, although art. 264 of the penal code mentions the punishment of deliberate blows and injuries. Art. 267 refers to violence towards parents.

Therefore:

- Violence in the marriage does not constitute a specific type of offence.
- Rape or sexual violence in the couple are not mentioned.
- A woman victim of domestic violence can address herself to the police or the attorney but can decide not to press charges even during a tribunal hearing without the State taking any responsibility to prosecute the accused. Sometimes the judges even invite the victim not to press charges.
- Adultery is punished with imprisonment according to art. 279 of the penal code.

Sexual violence:

Art. 336 of the penal code punishes rape, but it does not define it clearly.

The law establishes specific punishment when relatives of the victim are involved, whether they are her parents or tutors. (Art. 337).

Women victims of terrorist violence:

The ruling N° 06-01 from the Charter for National Peace and Reconciliation does not punish sexual violence against women during the black decade. There is no compensation or medical, psychological or social support available for the victims.

III. CONTRADICTIONS IN THE LAW THAT REINFORCE INEQUALITY:

Divorce and its effects: the marital home:

Art. 72 in the Family Code establishes that « *in case of divorce, the father must provide suitable accommodation for the beneficiary of the custody of the children. The woman with the custody is kept in the marital home until the father executes the judicial decision on accommodation.* »

In fact, this article allows the husband who has not obtained the custody of the children to continue living with his ex-wife and children in the marital home. Art. 72 line 2 in the Family Code appears to be for the benefit of the divorced woman who has the custody of the children but, in fact, it does not guarantee that she can have access to the family home.

In the new family code, either the wife keeps the marital home or the husband pays for a suitable rent. However, after two decades using the old code, the methods are the same: either the husband fixes his insolvency by faking the sale of his home or he offers an insufficient amount for the rent, given the ambiguity of the term "suitable accommodation".

According to AMUSNAW's files on the women counselled by the association, the average amount demanded to the ex-husbands for a month's rent is between 4000 and 6000 Algerian Dinars, which is completely ridiculous considering the prices of rents in Algeria. Besides, the stereotype of single women makes it difficult to find landlords who are prepared to rent to women on their own or with children.

This payment finishes with the custody, when the children come of age or the mother re-marries.

In that way, the father can control the use of the home and be assured of the woman's dedication to her children. The home is guaranteed for the children, their stability and their well-being.

The woman is the care-taker of the children and has no right to a new life if she gets divorced.

Tutelage:

Art. 11 in the Family Code establishes that the marriage contract of a woman of age, as well as of an under-aged is done in front of her wali (tutor), who can be her father, a relative or any other person of her choice. Apart from the fact that this article sanctions the inequality of rights and responsibilities of the spouses during the marriage, it is worth highlighting its effects on certain situations, like the tutelage of children whose father is missing.

Within the current legal framework, a person can be declared missing under the Family Code when serious circumstances stop them from going back home and their absence can damage others. The difficulty lays on having proof of the absence of the missing person. Many wives of missing people have to fight bureaucracy for years to get the tutelage of their children or the administration of the property of their husband. This is not the case for the husbands of missing women, who can manage family business without obstacles.

Therefore, the refusal to establish parental authority hinders equality and the

rights of women. In fact, art. 87 in the family code maintains father's tutelage but attributes it exclusively to the mother when she gets the custody of the children in case of divorce. Neither the rights of women nor the best interests of children or divorced parents are taken into account.

IV. Nationality Code,

Marriage of an Algerian woman with a non-Muslim:

Even though Algeria has tried to withdraw its reservation to art 9 of the CEDAW, according to the new Nationality Code from 2005 and Comment n° 23 of the Committee from the 11th January 2005, Algerian women still suffer discrimination in terms of:

Ways to acquire Algerian nationality:

The new law has reorganised the ways to acquire the nationality: descent, birth and marriage.

In terms of descent, the reform is essential. Before, descent referred only to the father, the mother only being taken into account when the father was unknown or stateless. With the new law, the Algerian nationality of the child can come through the father or the mother indistinctively. (Article 6 in the Nationality Code).

Nonetheless, this article contradicts art. 41 in the Family Code, which establishes descent only from the father.

The new law also includes an article 9bis which allows a foreign man or woman to acquire Algerian nationality through marriage.

Apart from general conditions such as morality, effective residency in Algeria, means of subsistence and absence of conviction, the main condition is the legality of the marriage. This requirement refers to the family code, specifically to art. 30 and 31.

Art. 30 "temporarily" prohibits marriage between "a Muslim woman and a non-Muslim man" while art. 31 refers to a ruling that should establish the conditions of marriage between Algerians and foreigners.

The first one refers to the religion of the bride whereas the second refers to nationality both of the bride and the groom.

This confusion between the status of Algerian and Muslim (which appears in the Family Code from 1984 and the Nationality Code from 1975) seems to have disappeared in the new version of the family code (2005) but maintains the inequality of the sexes in the marriage.

The reform of the Nationality Code is essential for the modernization of the law but its links to the Family Code hinder its implementation in terms of equality between sexes.

The illegality of the marriage between a Muslim woman and a non-Muslim man (even if he is Algerian) affects the status of the children. According to art.6, they have Algerian nationality but do they have to have their mother's surname or be recognized by their father according to art 40 in the family code?

Are the rights of the children of an Algerian woman with a non-Algerian non-Muslim man similar to those of children of unknown father and do they have to take their mother's name in order to get Algerian nationality?

The fact that there is no distinction between Algerian nationality and a specific religion prevents children of an Algerian mother and a non-Muslim foreign man to acquire Algerian nationality while keeping their father's name, as established by the convention of children's rights.

Mixed marriages.

The marriage of an Algerian woman to a foreigner is not recognized by the family code, which refers to Muslim women, rather than Algerian.

For an Algerian woman to marry a non-Muslim foreigner, he has to convert to Islam. From the point of view of Algerian law, Algerian men are Algerians whereas Algerian women are Muslims.

And when the involved parties decide to start the legal procedures for the marriage, they have to go through long and difficult proceedings at the ministry of religious affairs and at the police services, where the procedure can take up to 12 months and where they can be intimidated by certain policemen with questions to the Algerian woman such as "does your father know you're doing this?" or "why do you have to marry a foreigner?".

The right to education: the religion of the father.

In the new family code, the custody of the children is given in the first instance to the mother. The family code establishes that children must be brought up in the faith of the father, whereas international laws refer to the religion of the parents.

"The right of the parents to choose the education of their children (Universal Declaration art. 26.3) and to ensure the religious and moral education of their children according to their own beliefs (International Covenant on Economic, Social and Cultural Rights Art. 13.3 and International Covenant on Civil and Political Rights Art. 18.4)."

Therefore, a non-Muslim woman married to an Algerian Muslim man cannot

bring up her children according to her beliefs.

Status of single mothers:

A single mother can be admitted to a maternity hospital from the 8th month of pregnancy, which is often disregarded due to the irresponsibility or disinformation of some mid-wives and officers in charge who are not properly trained to receive this type of patients.

Also, even though the new nationality code allows single mothers to give their surname to their children, this is often not done because either the possibility is not offered to the mother or directly denied.

Children outside the marriage: legal void.

The mother conceives a child with someone but she carries him or her on her own, she is on her own when she gives birth and she suffers with him or her his unhappy and cruel destiny.

The law doesn't cover this subject, which deserves special attention given the seriousness of the statistics and the fact that it is managed by contradictions between different chapters and sections of laws.

- Algerian Penal Code does not forbid sexual relations outside the marriage as long as they happen between willing single adults and outside the public space. It punishes the attack against decency when it happens in public and relations with under-aged or married people when the spouse presses charges (the spouse being either the wife or the husband). The family code does not establish the status of children conceived during these "legal" (since they are not prohibited) relations. There isn't any Algerian law that stipulates any obligation towards the natural child. Moreover, the law, specifically the family code, forbids the legitimization of the child through the marriage of his or her biological parents.
- To sum up, Algerian law authorizes children outside the marriage but doesn't give them any right or status and condemns them to live forever in a legal void.
- The status of a natural child in the Algerian law continues to be a taboo that needs to be addressed.
- The status of the single mother who decides to keep her child remains also in a legal void.

The participation of women in public and political life.

The state has tried to encourage women to take part in public and political life. The number of women elected during the 2007 elections was a long way under parity. The African Peer Evaluation Mechanism in its report on the national governance programme registered 38 women at the National Assembly (8,33%), 130 in the assemblies of the wilayas (7,81%) and 102 in the community assemblies (0,73%).

Following a campaign by different civil society associations appealing to the President of the Republic for the establishment of a parity law in political and public institutions, the reform of the Constitution of the 15th April 2008 introduced art. 31 bis which says "*The State promotes the political rights of women by increasing their chances to access elected assemblies. The details of this disposition will be established by an Organic Law*". This Organic Law has not yet been passed.

The new text of the law on parity, passed in 2011 and published in January 2012, establishes a quota of 1/3 of women (33%), which – despite its limits- can be considered an improvement.

Access to employment and to fair work conditions:

According to a report by the Ministry of the family and women's condition in 2004 only 18% of employed Algerians are women. According to a survey from June 2006, they are only 14,6%, and only 18,7% of all Algerian women of working age are employed, 60% of them in the public sector and 40% in the private sector.

These figures can be explained by different factors, mainly the lack of systems to promote women's employment such as nurseries or pre-schools.

Even though women take part in many economic and public sectors, they often represent only a small percentage. They have access to national education and work in the legal and public sectors but they do not occupy management positions, even though the number of women with a University diploma at the end of their degrees is higher than the number of men. The fact that only 3,8% of the employees in the financial sector and 6,7% of high education professors (including researchers) are women goes to show the difficulty for Algerian society to include women in traditionally male dominated sectors.

Moreover, even though the law for equal salaries between men and women is respected, according to trade unions, women receive a much lower salary than men.

Finally, apart from some amendments made to school books, which are not always thorough, representatives from Algerian civil society claim that nothing has been done by the government to eliminate the stereotypes regarding the

roles of men and women in Algerian society.

Sexual harassment of women at the workplace.

An article in El Wantan states that:

« Sexual harassment, normally by managers or colleagues putting pressure on female employees, continues to go unpunished and disregarded by the law. The taboo around the subject means that the woman often doesn't say anything because she fears retaliation and the legislative bodies, unaware of the depth of the problem, disregard the need to provide a legal response and simply apply the penal code (art. 341 punishing the harasser), which has limited effects even though it clearly states "any person who has abused the power given by their position or profession by giving orders, threatening or putting pressure on people to obtain sexual favours is considered to have committed sexual harassment and will be punished with 2 month to 1 year imprisonment and a fine of 50.000 to 100.000 Algerian Dinars. In case of second offence, the punishment will be doubled." »

The introduction of the sexual harassment offence in the Algerian penal code in 2004 has not reduced the number of cases. In practice, the difficulty to prove the crime and to protect the witnesses stop women from appealing to the legal system.

Moreover, sexual harassment has not been included in labor laws as a serious offence by the employer.

Conclusion :

Regarding the observations made by the committee on the 11th January 2005, it can be noted that:

Observation 49 has not been respected,

The observation on civil society's participation on the preparation of a report of the State have not been respected,

Observations 39, 40, 41 on the evaluation and promotion of women's work in the informal sector remain unfulfilled since the amount of information on the situation of rural women continues to be scarce.

Observations 35 and 36 on the survival of discriminatory practices and stereotypes regarding the roles of men and women in the family and the society have no practical effect since no campaign against stereotypes has been launched.

In their observation number 22, the committee advises the State to include in

its constitution or other appropriate laws a definition of discrimination in line with art.2 line q of the convention. There is no such definition in the new laws.

V. Recommendations

1. To invite Algeria to withdraw its reservations on the Convention.
2. To continue the reform of the family code to remove the tutelage of women at marriage, to establish shared parental authority over the children and perfect equality in terms of divorce and inheritance.
3. To ensure the strict enforcement of the organic law on the participation of women in public life during the next elections.
4. To introduce sexual harassment as a serious offence in labor laws, to guarantee the protection of the victim and to encourage formal complaints through the protection of victims and witnesses.
5. To put into practice a national policy on gender creating a general framework for sector policies and programmes.
6. To put into practice a national plan to fight stereotypes in all sectors of society.
7. To carry out awareness campaigns to give effect to the reforms in terms of the protection of the equality between men and women.
8. To do research on the implementation of the 2005 family code.
9. To launch a national survey on violence against women including all public sectors, security services and civil society.
10. To pass an outline law (including all sectors) to stop violence against women as an attack to the dignity of the person.
11. To invite the Government to ratify the International Convention on the protection of the rights of migrant workers and members of their families.
12. To invite the Government to ratify the additional protocol of the International Convention against all forms of discrimination against women.

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