



## POLICY BRIEF

# Custody, gender and power - rethinking article 66 and the Algerian family law

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## KEY MESSAGES BACKGROUND

**Algeria's Family Code continues to reflect patriarchal structures that limit women's rights and children's welfare.** Custody is automatically lost by mothers upon remarriage, and guardianship is exclusively vested in fathers, restricting mothers' authority over education travel, and finances. The "best interest of the child" is narrowly defined, and institutional mechanisms, including child-sensitive judicial practices, remain weak. Constitutional guarantees of equality are undermined, reservations to the Convention on the Elimination of All Violence Against Women (CEDAW) persist, and cultural resistance limits the social acceptance of reforms, leaving children's voices largely absent in custody disputes.

### Issues and implications

- **Custody and guardianship:** Mothers automatically lose custody upon remarriage (Article 66), and fathers hold exclusive guardianship, restricting women's legal authority over children's education, travel, and finances
- **Best interest of the child:** This principle is narrowly interpreted, often emphasizing moral and religious conformity over children's psychological and emotional welfare
- **Children's participation:** Children's voices are largely absent in custody disputes, contrary to obligations under the Convention on the Rights of the Child (CRC)
- **Legal contradictions and cultural resistance:** Constitutional equality is undermined by the Family Code, and reforms face social resistance, being framed as foreign or anti-religious.

**These challenges limit women's rights, restrict children's welfare and development, and perpetuate systemic gender inequalities in Algerian society.**

### Key recommendations



**Legal reform:** Amend the Family Code to ensure that custody and guardianship laws align with constitutional equality and international obligations, including CEDAW and CRC



**Expand best interest principle:** Broaden the interpretation to include children's psychological, emotional, and developmental needs



**Strengthen institutional mechanisms:** Establish family mediation centers and implement child-sensitive judicial practices to support fair and participatory custody proceedings



**Promote children's participation:** Incorporate mechanisms to ensure children's voices are heard in decisions affecting them



**Public awareness and cultural engagement:** Conduct awareness campaigns to foster social acceptance of reforms and challenge patriarchal norms



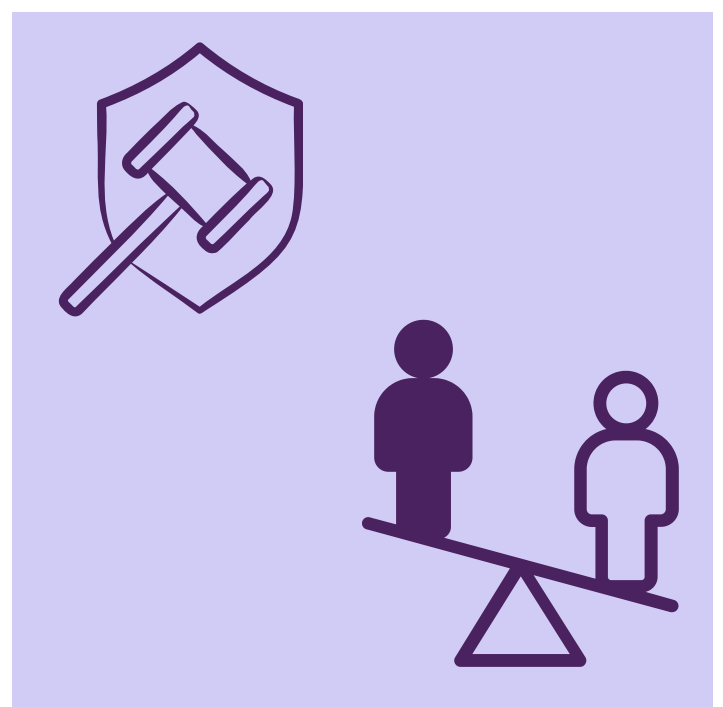
## INTRODUCTION

The Algerian Family Code (Code de la Famille), adopted in 1984 and amended in 2005 and 2014, remained the primary legal framework governing marriage, divorce, inheritance custody (hadhanah), and guardianship (wilaya). **While Algeria made some progress in revising discriminatory provisions, the Code still reflected a deeply patriarchal vision of family structures.** Custody provisions, particularly Articles 64–66, revealed the gendered nature of these laws, where women's rights were considered conditional and secondary to paternal authority. Under these articles, custody was generally granted to the mother following divorce. Algeria had also enshrined the principle of equality in Article 40 of the 2020 Constitution and had affirmed international obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). Algeria ratified CEDAW in 1996 but maintained reservations regarding family law citing Sharia principles as justification.[1]

These reservations created **a legal contradiction in which Algeria publicly pledged equality on the international stage while maintaining discriminatory practices domestically.** Under the Family Code, a mother's custodial rights were conditional: if they remarried, they automatically lost custody, regardless of the child's welfare, age, or expressed wishes. This system compromised both the stability of children and the dignity of women. At the same time, guardianship - the legal authority to make decisions regarding children's education, travel, finances, and civil status - remained exclusively in the hands of fathers, further

reinforcing gendered hierarchies within family law.

**Concerning education, travel, legal matters, and financial affairs, the authority remained the exclusive right of the father.** The mother, even if she was the custodial parent, was excluded from this sphere of decision-making. Such provisions contradicted Algeria's constitutional commitments to equality before the law. Custody laws were therefore not only a legal issue but also a societal and political matter, reflecting the intersection of religion, gender norms, and state policy. **Reforming these provisions would have signaled Algeria's commitment to justice, gender equality, and the protection of children's rights, while demonstrating that Islamic jurisprudence could evolve in ways consistent with both tradition and modern human rights standards.**



[1] Algerian Family Code. (1984, amended 2005). Code de la famille. Journal Officiel de la République Algérienne.



## WHAT IS MEANT BY...

### **Custody**

Referred to the day-to-day physical care and upbringing of the child, including their housing nutrition, education, and emotional welfare.

### **Guardianship**

Referred to the legal authority over a child, including decisions related to schooling, travel finances, and legal representation.

### **Best interest of the child**

Is the legal principle enshrined in the Convention on the Rights of the Child (CRC), meaning that all decisions regarding children had to prioritize their safety, well-being, and development.

### **Shared custody**

Was an arrangement where both parents were responsible for the physical care of the child and participated equally in decision-making.

### **Gender equality in family law**

Ensured that mothers and fathers enjoyed equal rights and responsibilities toward their children. This included equal opportunities to provide care, exercise authority, and make legal or financial decisions in the child's life.

## GENDER, RELIGION, AND CUSTODY LINKAGES

Custody laws in Algeria are deeply rooted in gender norms that privileged paternal authority while constraining women's roles. Women are primarily seen as caretakers while men are viewed as protectors and decision-makers. This division was codified in the Family Code where mothers could care for children, but fathers retained ultimate authority through guardianship.

The impact of these laws on women was profound. A divorced mother faced the constant threat of losing custody if she chose to remarry, effectively forcing her into a trade-off between motherhood and her right to personal and marital freedom. This restriction not only undermined women's autonomy but also reinforced economic vulnerability, as many divorced women relied on their custody role for social legitimacy and stability. For children, the automatic forfeiture of maternal custody upon remarriage often disregards their emotional bonds and psychological needs, treating them as objects of parental authority rather than as rights-bearing individuals.[2]



The absence of a child-centered approach contradicted Article 3 of the CRC, which obliges states to prioritize the child's best interests in all decisions affecting them. These stories illustrate the real-life consequences of such laws:

"These stories are well known... Thousands of women divorced at a young age cannot remarry because of the risk of losing custody. They are forced to put their lives on hold until their children reach adulthood."



One woman recounted:

**"He took my children even before I remarried."**

Others highlighted systemic abuse:

**"My uncle, a former judge, divorced several times. All of his ex-wives lost custody because his colleagues favored him, using the article that allows a judge to disqualify a mother as 'incapable.'"**

Many women described the psychological and social burden of living under the constant threat of losing custody: **"As a divorced woman, the fear of losing my child has never left me. The idea of remarrying is unimaginable because I risk losing my daughter, who is my whole life."** Another said **"I find this law deeply unjust toward women. It gives men the power to control them even after divorce."** Numerous accounts confirm the widespread impact: **"Many women have suffered because of these laws. Some of them were our neighbors or relatives. "**

Their husbands exploited legal loopholes, aided by unethical lawyers, to prove mothers were unfit, just to harm them - even if they did not seek custody. One personal example illustrates this clearly: **"My aunt lost custody of her children because she remarried."**

About 99% of the population in Algeria are Muslims (USCIRF, 2025). Within Islamic law, there is flexibility for reinterpretation, as it is not static but dynamic and has historically accommodated diverse interpretations. The principle of maqasid al-sharia (objectives of Islamic law) emphasized justice, compassion, and the protection of family and community. Many Islamic jurists argued that ensuring the welfare of children and preserving their stability fell squarely within these objectives. By invoking maslaha and ijtihad, reforms could be designed that remained faithful to Islamic tradition while responding to contemporary realities. Examples from Morocco, Tunisia, and Southeast Asia illustrated how Muslim-majority countries had reformed custody laws without undermining religious authenticity. Thus, reforming Algeria's custody laws was not to be framed as a rejection of tradition but as a recovery of Islam's inherent adaptability and concern for justice.[3].

[3] Abdelrahman A.A. Mohammed Hassanein, "The Complementarity of Ijtihad and the Maqasid Al-Shariah in Islamic Law," International Journal of Academic Research in Business and Social Sciences).



## LEGISLATIVE FRAMEWORK

**The Algerian Family Code's custody provisions were embedded in a broader legal framework that continued to resist gender equality.** The contradiction between Algeria's constitutional commitments, international obligations, and its family law was stark. Articles 64–66 outlined custody eligibility. Mothers were prioritized in custody arrangements, followed by grandmothers and other female relatives. However, Article 66 explicitly stated that maternal custody was forfeited if the mother remarried, regardless of circumstances.[4]

This policy brief sought to address the pressing need for reform of custody laws in Algeria. Its objective was fourfold.

- First, it aimed to identify the discriminatory aspects of the Family Code, focusing on how Articles 64–66 conditioned maternal custody and restricted women's authority
- Second, it emphasized the centrality of the best interest of the child, which should have been the guiding principle of custody arrangements but was currently overshadowed by rigid gendered rules
- Third, the brief provided a framework for reconciling religious authenticity with social justice by showing how Islamic legal principles such as *maslaha* (public interest) and *ijtihad* (independent reasoning) supported reforms that protected children and promoted gender equality
- Finally, the brief proposed concrete legal, institutional, and social reforms aimed at legislators, policymakers, civil society organizations, and international partners working to advance women's and children's rights in Algeria.

By offering a roadmap for reform, this brief sought to contribute to ongoing debates on family law in Algeria and to support the emergence of a custody system that was child-centered, equitable, and consistent with the country's constitutional and international obligations.

The purpose of this policy brief was to outline the urgent reforms required in Algeria's custody laws. This brief was intended for policymakers, legal practitioners, civil society organizations women's rights groups, and international partners supporting justice reform in Algeria.

### The aim was to:

- ✓ Protect the best interest of the child as the primary guiding principle.
- ✓ Promote gender equality in parental rights and responsibilities.
- ✓ Reconcile religious authenticity with social justice, through Islamic jurisprudential tools such as *maslaha* (public interest) and *ijtihad* (independent reasoning).
- ✓ Provide concrete recommendations for legal, judicial, and institutional reforms.

[4] Algerian Family Code.



## COMPARATIVE PERSPECTIVES

This comparative analysis was conducted through a review of legal texts, academic literature and policy reports on family law reforms in Algeria, Morocco, Tunisia, Malaysia, and Indonesia. Key documents included national Family Codes, scholarly articles on Islamic jurisprudence and child custody, and reports from international organizations on children's rights and gender equality. The selection of countries was based on their relevance as Islamic-majority nations with documented reforms in family law. Information was analyzed to identify patterns in custody and guardianship laws, the integration of children's best interests and the compatibility of reforms with Islamic legal traditions. **Comparative analysis showed that reform was not only possible but also consistent with Islamic traditions.**



### **Morocco's 2004 Family Code (Moudawana):**

This reform recognized joint parental authority and explicitly considered the best interest of the child in custody cases. Maternal custody was no longer automatically forfeited upon remarriage, providing greater protection to women and children alike.[5]

### **Tunisia's Personal Status Code:**

Since 1956, Tunisia has granted equal rights in guardianship and custody, reflecting a more progressive interpretation of Sharia. The child's welfare was placed at the center of custody decisions, setting a model for other countries in the region.[6]

### **Malaysia:**

Syariah courts had used maslaha to interpret custody laws flexibly, allowing mothers to retain custody even after remarriage in cases where this served the child's best interests.[7]

### **Indonesia:**

Courts considered psychological, educational, and social needs when determining custody. Custody was viewed as a dynamic process that adapted to the changing needs of children.[8]

**These examples demonstrated that religion and reform were not mutually exclusive.** They also revealed that Algeria was increasingly isolated in maintaining rigid rules that penalized women and neglected children's welfare.

[5] Morocco's 2004 Family Code (Moudawana)

[6] Charrad, M. M. (2001). *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco*. University of California Press.

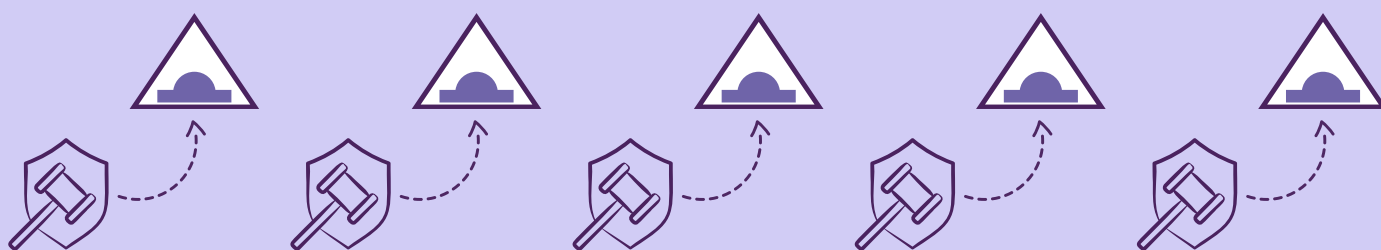
[7] Ali, Z. A., & Leong, W. (2019). *Muslim Family Law in Malaysia: Islamic Justice and Women's Rights*. Springer.

[8] Cammack, M. (2007). Inching toward equality: Recent developments in Indonesian inheritance law. *Indonesian Journal of International & Comparative Law*. – supports Indonesia's dynamic custody practices considering children's needs.



## CHALLENGES

Reforming custody laws in Algeria faced several obstacles.



**First, the rigidity of the Family Code and its patriarchal underpinnings made reform politically sensitive.** Family law was often portrayed as a domain of religious authenticity, making changes appear threatening to tradition.[9]

**Second, judicial practices reinforced discrimination.** Judges often applied custody rules mechanically, prioritizing paternal authority even when this undermined children's interests. Training on child-centered approaches and gender equality was limited, perpetuating patriarchal norms within the judiciary.[10]

**Third, Algeria's reservations to CEDAW continued to shield family law from international scrutiny, limiting external pressure for reform.** These reservations weakened the potential of international treaties to serve as tools for domestic change.[11]

**Fourth, social resistance remained strong.** Family law reforms were often met with opposition from conservative segments of society who viewed them as foreign impositions. Without broad-based cultural change, legal reform risked being rejected or poorly implemented.[12]

**Fifth, children's participation in custody proceedings was absent.** Despite Algeria's obligations under the CRC, children's voices were rarely heard in court, leaving their needs and preferences ignored.[13]

[9] Human Rights Watch. (2011). A Question of Custody: Algeria.

[10] International Commission of Jurists (ICJ). (2021). Women's Access to Justice in Algeria: Challenges and Reform Needs. Geneva: ICJ.

[11] UN Treaty Collection. (2024). CEDAW Declarations, Reservations, and Objections – Algeria.

[12] Charrad, M. M. (2001). States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco. University of California Press.

[13] UNICEF Algeria. (2020). Protection de l'enfance et bien-être familial.

## RECOMMENDATIONS

### LEGAL REFORM



- **The Algerian legislature amended Articles 64–66 of the Family Code to explicitly establish the principle of shared custody, ensuring that both physical care and legal guardianship were determined based on the best interests of the child without discrimination based on the gender or marital status of the parent.** The Ministry of Justice issued clear guidelines for custody allocation and enforceable procedures to facilitate equitable shared custody arrangements after divorce.
- **The Family Code was amended to eliminate restrictions that penalized remarried mothers, ensuring that custody decisions were fully guided by the child’s best interests and applied fairly, not only in this matter but across all related family law provisions.** The judiciary implemented these changes uniformly to guarantee equitable and non-discriminatory custody rulings.
- **The Algerian legislature codified the child’s right to be heard in custody disputes, in accordance with Article 12 of the UN Convention on the Rights of the Child (CRC).** Family courts established child-sensitive procedures to ensure children’s views were meaningfully considered in all custody decisions.
- **The Algerian legislature harmonized the Family Code with the Constitution by explicitly guaranteeing equality between men and women in all family law provisions.** The Ministry of Justice reviewed and amended existing articles to align with constitutional and international gender equality standards.

### POLICY AND INTERNATIONAL ALIGNMENT



- **The Algerian government withdrew its reservations to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), particularly those related to family relations, marriage, and guardianship.** The Ministry of Foreign Affairs, in coordination with the Ministry of Justice, initiated the legal and diplomatic procedures required to align national family laws with Algeria’s international obligations under CEDAW.
- **The Ministry of Solidarity, Family, and Women’s Affairs, in coordination with the Ministry of Justice, adopted a national child protection policy that recognized custody as a fundamental component of child welfare rather than merely a parental dispute.** The policy established clear standards for protecting children’s rights and well-being in all custody-related proceedings.
- The Algerian government, through the Ministry of Justice and the Ministry of Solidarity Family, and Women’s Affairs, cooperated with international bodies such as UN Women UNICEF, and the African Union to exchange expertise and implement best practices in custody law reform. This collaboration focused on aligning national legislation with international child protection and gender equality standards.



## RECOMMENDATIONS

### JUDICIAL AND INSTITUTIONAL MEASURES



- **The High Judicial Council, in collaboration with the Ministry of Justice and national bar associations, should provide mandatory training for judges and lawyers** on the gender-sensitive interpretation of custody laws and the application of international human rights standards, including CEDAW and the CRC
- **The Ministry of Justice should establish family mediation centers within courts to facilitate amicable settlements in custody disputes, prioritize the child's welfare and reduce adversarial conflicts between parents.** These centers should be staffed with trained mediators specializing in child rights and family law.
- **The Ministry of Justice should strengthen monitoring and enforcement mechanisms to ensure custody rulings are implemented fairly, transparently, and without gender bias.** A dedicated oversight body or judicial unit should be established to track compliance and address violations of custody decisions.

### SOCIAL AND CULTURAL CHANGE



- **The Ministry of Communication, in partnership with the Ministry of Solidarity Family and Women's Affairs and civil society organizations, launched nationwide public awareness campaigns to challenge stereotypes portraying women as secondary caregivers and to promote the concept of shared parental responsibility and equal caregiving roles**
- **The government and international partners supported civil society and feminist organizations in advocating for custody law reform and providing accessible legal aid to both mothers and fathers navigating custody disputes.** This collaboration strengthened community-level awareness and promoted equitable access to justice in family matters
- **The Ministry of Education, in coordination with the Ministry of Solidarity, Family and Women's Affairs, integrated family rights education into school curricula and community programs, emphasizing the equal responsibilities of both parents in caregiving and promoting awareness of children's rights in custody matters.**



## CONCLUSION - WHY NOW?



The reform of custody laws in Algeria was both a legal necessity and a social imperative. Although the Algerian Constitution guaranteed equality between men and women discriminatory provisions within the Family Code continued to undermine this principle. Aligning custody and guardianship laws with the Constitution would not only have strengthened the rule of law but also restored public trust in the justice system by demonstrating that constitutional rights were meaningful in people's everyday lives.

Reform was also required to fulfill Algeria's international obligations. As a state party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), Algeria had committed to ensuring equality and protecting the best interest of the child. Yet, the country's current reservations and the persistence of discriminatory family provisions stood in sharp contrast with these commitments. By amending the Family Code, Algeria would have sent a strong message to the international community that it took its treaty obligations seriously and was ready to translate them into domestic law.

Social realities further underlined the urgency of reform. Divorce rates were steadily rising women were increasingly active in the workforce, and younger generations were pushing for greater gender equality and justice. The existing legal framework, rooted in outdated patriarchal norms, did not reflect these evolving dynamics. Unless addressed, the gap between law and social reality would have continued to generate hardship for families and children caught in the middle of custody disputes.

Finally, reforming custody and guardianship laws was essential for long-term social stability. Protecting children's welfare and ensuring that both parents shared responsibility after separation helped build stronger and healthier families. This, in turn, contributed to social cohesion, reduced intergenerational trauma, and promoted a more just and equitable society. By modernizing its family laws, Algeria had the opportunity to bridge the gap between tradition and justice, creating a legal framework that safeguarded children, respected women, and reflected the lived realities of Algerian families.



## REFERENCES

- Ali, Z. A., & Leong, W. (2019). Muslim family law in Malaysia: Islamic justice and women's rights. Springer
- Abdelrahman, A. A. A. (n.d.). The complementarity of Ijtihad and the Maqasid Al Shariah in Islamic law. International Journal of Academic Research in Business and Social Sciences
- Cammack, M. (2007). Inching toward equality: Recent developments in Indonesian inheritance law. Indonesian Journal of International & Comparative Law
- Charrad, M. M. (2001). States and women's rights: The making of postcolonial Tunisia, Algeria, and Morocco. University of California Press
- Human Rights Watch. (2011). A question of custody: Algeria
- International Commission of Jurists (ICJ). (2021). Women's access to justice in Algeria: Challenges and reform needs. Geneva: ICJ
- UN Treaty Collection. (2024). CEDAW declarations, reservations, and objections – Algeria
- UNICEF Algeria. (2020). Protection de l'enfance et bien-être familial
- Algerian Family Code. (1984, amended 2005). Code de la famille. Journal Officiel de la République Algérienne
- Morocco's Family Code (Moudawana). (2004).



## ABOUT THE PAPER

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