



Morocco's Compliance with the Convention on Economic, Social and Cultural Rights
SUGGESTED LIST OF ISSUES RELATING TO ESC RIGHTS OF WOMEN

Submitted by The Advocates for Human Rights,
a non-governmental organization in special consultative status with ECOSOC
and

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a non-governmental organization based in Rabat, Morocco
in collaboration with an alliance of Moroccan NGOs¹

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I. Reporting Organizations

1. **The Advocates for Human Rights** (“The Advocates”) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates’ Women’s Human Rights Program has published 22 [reports](#) on violence against women as a human rights issue, frequently provides consultation and commentary on drafting laws on domestic violence, and trains lawyers, police, prosecutors, and judges to implement new and existing laws on domestic violence effectively.

2. **Mobilising for Rights Associates** (“MRA”) is an international nongovernmental women’s rights organization based in Rabat and currently working in Morocco, Tunisia and Libya. MRA collaborates with grassroots level women’s rights activists and organizations to promote women’s full enjoyment of their human rights through changes in laws, structures, relationships and culture. Together with our partners MRA creates and implements long-term strategies to address the diverse causes of discrimination against women and develop meaningful, effective solutions. Our multidimensional strategies include popular human rights education, legal accompaniment, cause-lawyering, action-research, national law reform, and international advocacy. By engaging with local actors at different levels, MRA fosters micro-level changes in culture and relationships to support our activism for macro level legal and institutional reform.

¹ Association Amal pour la femme et le développement (El Hajeb), Association Aspirations Féminines (Meknès) Association Forum des Femmes pour l’égalité et le développement au Nord du Maroc (Larache), Association Tafiiil Mobadarat (Taza), Association des jeunes avocats (Khemisset), Club de la femme (Sefrou), Initiatives pour la Promotion des Droits des Femmes (Meknès), and Voix de Femmes Marocaines (Agadir).



II. Issues Relating to the Economic, Social and Cultural Rights of Women

A. Violence Against Women

1. Morocco Lacks Violence Against Women Legislation

3. In 2006, the Committee noted its concern that the Morocco's Criminal Code contains no specific provision making domestic violence a punishable offence.² In Recommendation 50, the Committee invited Morocco to "step up its efforts to combat domestic violence by making such violence an offence under the Criminal Code and by providing law-enforcement personnel and judges with training on the criminal nature of domestic violence."³

4. Violence against women is a widespread problem in Morocco. A 2011 national study found that 62.8% of women in Morocco of ages 18-64 had been victims of some form of violence during the year preceding the study.⁴ The Moroccan Government referred to this study in its report to the Committee, noting that the study found that 55% of these acts of violence were committed by a victim's husband, and the violence was reported by the wife in only 3% of such cases.⁵ Another 2011 report identified that in cases of violence against women, the perpetrator is the husband in eight out of ten cases.⁶ Furthermore, there is an overall acceptance of domestic violence and a distrust of the justice system that make it unlikely that a victim will report domestic violence. One survey found that 33 percent of respondents believed that a man is sometimes justified to beat his wife.⁷ Another study found that of those women who have experienced domestic violence, 68 percent expressed a distrust of the justice system.⁸

5. **Currently, no specific legislation addressing violence against women exists in Morocco.** Instead, violence against women is covered under the outdated, generally applicable provisions of the 1962 Penal Code. The Penal Code does contain some general prohibitions that may be applied to domestic violence,

² U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations: MOROCCO*, para. 23, E/C.12/MAR/CO/3 (4 September 2006).

³ U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations: MOROCCO*, para. 50, E/C.12/MAR/CO/3 (4 September 2006).

⁴ Moroccan *Haut Commissaire au Plan*, "Principaux résultats de l'Enquête Nationale sur la Prévalence de la Violence à l'Égard des Femmes (version française)", (January 2011), available at http://www.hcp.ma/Conference-debat-consacree-a-l-etude-de-la-violence-a-l-egard-de-femmes-au-Maroc_a66.html; see also, UN Women, "Moroccan Government Release Extensive Gender-Based Violence Study", (10 January 2011), available at <http://www.unwomen.org/2011/01/moroccan-government-releases-extensive-gender-based-violence-study/>.

⁵ *Id.* U.N. Committee on Economic, Social and Cultural Rights, *Fourth periodic reports of States parties due in 2009: Morocco*, para. 138, E/C.12/MAR/4 (24 March 2014).

⁶ U.S. Department of State, Country Reports on Human Rights Practices, "[2010 Human Rights Practices: Morocco](#)", (April 8, 2011), referencing the Democratic League for Women's Rights (LDDF), available at <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154468.htm>.

⁷ UN Women, "[2011-2012 Progress of the World's Women, Factsheet: Middle East and North Africa](#)", (2011-2012), available at <http://progress.unwomen.org/wp-content/uploads/2011/06/EN-Factsheet-MENA-Progress-of-the-Worlds-Women.pdf>.

⁸ *Id.*



including provisions establishing that a spousal relationship is an aggravating circumstance for sentencing purposes in assault and battery cases.⁹

6. However, current laws have legal gaps, are insufficient to prevent, investigate, and punish violence against women, are discriminatory, and rarely enforced by the justice system in cases of gender-based violence, such as sexual harassment, rape, and domestic abuse. The law enforcement and justice systems do not respond adequately to complaints of violence against women; few VAW cases reach the courts due to the failures of the system to investigate crimes of violence, protect victims and hold perpetrators accountable.

A woman living in Casablanca with her four children was a victim of constant physical and verbal abuse by her husband. When she filed a criminal complaint and sought divorce, her husband harassed her on the street to the point that she fled to Marrakech with her children. She couldn't find anywhere that would accept all five family members, and ended up working in domestic service. Lacking adequate housing, one daughter was raped and another was a victim of sexual harassment.¹⁰

7. Barriers to prosecuting violence against women include the requirement that a victim suffer injuries that result in more than 20 days of disability in order to bring an assault complaint;¹¹ the requirement that a victim meet a high standard to prove the *result* of the act of violence, a physical injury, rather than the act of violence itself; and the lack of police powers to intervene immediately in domestic abuse unless there is imminent threat of death. Spouses evicted without justification from the marital home are returned home by the Public Prosecutor;¹² returning a woman who has been effectively evicted due to domestic violence back into the abusive situation is not, however, a solution when the justice system actors cannot or will not provide for her safety in the home.

8. MRA conducted assessments in spring 2014 among local Moroccan NGOs, who reported that public authorities only intervene in cases of severe injuries or murder.¹³ Lengthy proceedings, lack of protection measures, attitudes blaming the victim, and high rates of cases closed without investigation or follow-up deter women from reporting and prosecuting violence.

A street vendor was constantly assaulted by husband at work, and on several occasions asked for assistance and protection from passers-by. She filed for divorce. One day the husband came and stabbed her in the street; she fled went to the police station to file a complaint. The police asked her to leave and wash the blood off of her first. When she asked for protection they replied that they were

⁹ Moroccan Penal Code, Articles 404 and 414; See Government's Response to the Committee's LOI, para. 72; see also, Freedom House Inc., Special Reports <http://www.freedomhouse.org/template.cfm?page=178>

¹⁰ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 23, 2014.

¹¹ Penal Code articles 400 and 401.

¹² Family Code article 53.

¹³ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 27, 2014.



busy, told her not to get blood on their chairs, and directed her to the hospital to obtain a medical certificate.¹⁴

9. Rape cases are difficult to prove, as actual physical injuries are required to prove non-consent; victims who report rape risk prosecution for illicit sexual relations. Sexual relations outside the framework of legal marriage remain illegal in Morocco.¹⁵ Discriminatory legal provisions continue to place the burden of proof solely on the victim of violence.

A woman stabbed by her live in partner obtained the necessary 21-day disability medical certificate and went to file a complaint at the police station. She was interrogated and then arrested for illicit sexual relations, while in the meantime the violent partner fled town¹⁶.

10. Further, the government itself has made contradictory statements as to whether or not marital rape is a crime in Morocco.¹⁷ In November 2011 the Moroccan government declared to the United Nations Committee on Torture that marital rape was in fact a crime under the Moroccan Penal Code.¹⁸ However, in contrast, during a meeting with an alliance of Moroccan NGOs in March 2013 the Minister of Justice declared that it was be impossible to criminalize marital rape because “you can’t deprive a man of what is rightfully his.”¹⁹

11. Violence against women Cells (multi-sector Committees of justice, health, and law enforcement personnel established at each Court of First Instance) remain ineffective and not functional, limited to a purely administrative bureaucratic role of completing paperwork rather than providing information, services or protection to women victims of violence. Many women report that they prefer to seek assistance from local NGOs instead.

A women victim of violence by her husband filed for divorce for irreconcilable differences after five criminal complaints in two years that went unpursued. During the mandatory reconciliation session, the public social worker criticized the woman for filing for divorce and for “wanting to destroy her family.” The social worker said that she could “tell from his face the husband was a good and nice person and any woman would be happy to marry him.”²⁰

12. Draft bills addressing violence against women: Since 2006, the Moroccan Government has made

¹⁴ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 27, 2014.

¹⁵ Moroccan Penal Code, Articles 490 and 491.

¹⁶ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 27, 2014.

¹⁷ The Penal Code does not explicitly mention rape between spouses and hence it cannot legally be considered to be criminalized.

¹⁸ Alkarama Foundation, *La Royaume du Maroc devant la La Royaume du Maroc devant la Comité contre la torture*, (41: 30), (Nov. 2011). http://www.youtube.com/watch?v=E81HCCNCv_k&feature=share at 41 minutes, 30 seconds.

¹⁹ Written report by the associations attending the meeting at the Ministry of Justice on March 18, 2013 in the context of a legislative advocacy campaign for a violence against women law.

²⁰ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 26, 2014.



numerous and on-going public declarations nationally and to international bodies of its intention to promulgate a violence against women law.²¹ These include January 2008, March 2008, and November 2011 statements by the Moroccan government to respectively the CEDAW Committee, the Human Rights Council Working Group on the Universal Periodic Review, and the Committee against Torture, that a violence against women law was pending. The Moroccan Government's report states that they have "been working since 2010 on a draft law"²² but provides no timeframe for passage. To date, the State Party has not adopted a violence against women law.

13. Ministers from each of the two prior governments had submitted draft violence against women bills to the *Secretariat General du Gouvernement* (SGG), marking the first step in the legislative process. Neither of these bills, from 2007 and 2010 respectively, were made public and both were withdrawn from the SGG before any further progress was made.

14. A proposed VAW bill (Bill 103-13) submitted by the current Family Minister to the Government Council in November 2013 was tabled by the Head of Government, who announced his intention to create an ad hoc commission in charge of violence against women legislation.²³ But Bill 103-13, with its 18 articles, falls well short of complying with international standards or meeting the advocacy demands made by civil society for over a decade. Rather than proposing a specific law with both criminal and civil provisions, a UPR recommendation accepted by Morocco in 2012²⁴ the Bill is limited to minor reforms to the Criminal Code and the Code of Criminal Procedure. These are mainly comprised of making certain existing crimes applicable to spouses (such as theft, defamation, fraud), and increasing penalties for existing crimes when the victim is the offender's spouse. The latter provision already exists for certain crimes in the Penal Code such as for assault. Despite the title of the bill as "Violence against Women," its articles do not apply to such violence crimes committed against women, but as committed "between spouses." The bill did not provide for any Civil Protection or Temporary Restraining Orders or other civil remedies.

15. The current status of the Governmental Commission announced in November 2013 is unknown and it is unclear what if any subsequent steps have been taken to draft and promulgate a violence against women law.

Recommended Questions Related to Violence Against Women

16. The Moroccan Government should be asked:

- Please indicate the status of the Covenant in the legal order of the State party.

²¹ Examples include the Prime Minister's statement International Day for the Elimination of Violence against Women in November 2006, and numerous televised statements from 2007 – 2013 by both the previous and current Family Ministers that such a law was "imminent."

²² U.N. Committee on Economic, Social and Cultural Rights, *Fourth periodic reports of States parties due in 2009: Morocco*, para. 137, E/C.12/MAR/4 (24 March 2014).

²³ <http://www.medias24.com/POLITIQUE/5975-Benkirane-desavoue-Bassima-Hakkaoui.html>

²⁴ Report of the Working Group on the Universal Periodic Review, Morocco, Human Rights Council twenty-first session, A/HRC/21/3.

- Article 22 of the new Constitution prohibits all violations of physical and moral integrity and dignity, as well as all cruel, inhuman and degrading treatment, under any circumstances, whether committed by State or private actors. Please confirm that, pursuant to Article 22, domestic violence is a violation of women's rights under the Constitution.
- Please clarify exactly the current stage in the legislative process the announced, specific Violence Against Women bill is currently in, and what the timeframe is for its enactment.
- What specific civil remedies for women victims of violence to guarantee their right to housing such as a civil protection orders and orders removing the violent offender from the home does the government intend to enact?

2. Lack of Access to Housing for Victims of Violence

17. In August 2013 a law was promulgated eliminating Penal Code articles 494, 495, and 496, which had criminalized hiding, harboring, or abducting a married woman and effectively making illegal shelters for women victims of violence.²⁵

18. However, the lack of a clear legal status and framework for shelters creates several obstacles to providing safe housing and adequate protection for women victims of violence. In the absence of a specific domestic violence law or legal framework on shelters for women victims of violence, Law 14-05²⁶ on "Social Protection Establishments" is considered as the applicable law. Law 14-05 pertains to centers providing services and care, including shelter, to people in "difficult, precarious or indigent situations" but the law is not specific to and does not appropriately take into account work with women victims of violence. The few shelters that exist in Morocco have difficulty providing adequate security for women because of this lack of clarity in the law. Because shelters are considered mere "programs" or projects of a local NGO, law enforcement often cannot or will not intervene or provide security.²⁷

19. Local Moroccan NGOs contributing to this submission reported that access to safe and stable housing is a significant problem for women victims of domestic violence.²⁸ Women who are kicked out of the home or flee violent situations have limited options for shelter or housing. NGOs report that women find themselves in the street and homeless, without protection, where they often become victims of other types of violence. Women, especially those with children, who seek shelter with family or friends may not be welcome because of the additional economic burden they bring. NGOs frequently report women in this situation are denigrated and exploited by their own family members. Further, families, friends and neighbors who provide shelter report fear of violence, harassment and reprisals from the violent husband.

²⁵ Published in the Arabic version of the Bulletin officiel number 6177, August 12, 2013. The bill had been sponsored by a Parliamentary Group.

²⁶ *Dahir n°1-06-154 du 30 chaoual 1427 (22 novembre 2006) portant promulgation de la loi n° 14-05 relative aux conditions d'ouverture et de gestion des établissements de protection sociale.*

²⁷ Note that even though provisions of the Penal Code that make it illegal to shelter a married women have been abrogated, some NGOs continue to report experiences of needing to have a certificate/permission from the Social Protection department to avoid being sued by husbands and legal guardians of minors for "kidnapping." NGOs also reported the perception that without the certificate, they cannot prevent a husband or legal guardian from entering the shelter and forcibly taking the woman.

²⁸ Communications from local Moroccan NGOs to MRA and the Advocates, December 2014 – January 2015



20. Such shelter offered by family and friends is usually temporary and women seeking refuge from domestic violence can be asked to leave at any time. For these reasons, many women eventually have no choice but to return to home to the abuser and the violence, as illustrated in the example below:²⁹

A woman victim of physical and verbal violence on the part of her husband – assault, beatings and insults – was kicked out of her home with her seven children. Her own family refused to take them in; the shelters in the region refused to accept her because had so many children. A local NGO intervened to convince her family to take her in for a short while. The NGO also helped her file a court case for financial support. Her fear of the husband was so great, however, that the woman eventually dropped the assault case, renounced her case for financial support and returned to her husband.

21. Some shelters for victims of domestic violence do exist in Morocco, providing services such counseling, legal accompaniment, literacy, awareness-raising and professional training in addition to limited sleeping facilities. However, local Moroccan NGOs agree that shelters for women victims of domestic violence are few in number and exist only in big cities. NGOs contributing to this report are located in seven Moroccan provinces, yet shelters only exist in the major cities of three of the provinces. NGOs report having to contact shelters in other cities to seek housing for women victims of violence, imposing travel expenses that can be significant and at time prohibitive for the victims. Given the limited number of shelters in Morocco, the few that exist are very frequently full. In the absence of State financial support, they are underfunded and understaffed. NGOs also report difficulties renting housing to use for shelters due to a societal reluctance to accept shelter programs in their neighborhoods. As a result, NGOs operating shelters report landlords charging higher than market rents.

22. Accessing the few existing shelter programs in Morocco is further complicated by rules such as limitations on the duration of stay and limits on the number of children (NGOs report no more than 3 children are allowed to accompany the woman). Women cannot benefit from a shelter if they have a communicable disease, mental illness or drug addiction. Some NGOs report income limits on eligibility for shelter, as well as the need to have been referred from the public hospital or police. Others report that before she can access a shelter, a woman must have made a statement to the Prosecutor to the effect that she has been excluded from their conjugal home and that her life is in danger. If a woman has fled or been kicked out of her home at a time when the Prosecutor's office is closed (such as the weekend), obtaining a Prosecutor's order/permission for shelter can be difficult or impossible to obtain.

Recommended Questions Related to Access to Housing

23. The Moroccan Government should be asked:

- Please describe what measures are anticipated to create a legal framework and state financial support for shelters and housing to women victims of violence. What steps is the State Party taking to meet the best practice standard of a shelter/safe place for every 10,000 members of the population, located in both rural and urban areas, which can accommodate complainants/victims and their children?

²⁹ Communications from local Moroccan NGOs to MRA and the Advocates, December 2014 – January 2015.

- Please indicate how article 53 of the Family Code is applied in cases of domestic violence, and describe any plans to reform laws so that women and children don't have to leave the family home pending the legal procedures.
- Please clarify the current legal framework for NGO run shelters for women victims of violence. What support, if any, does the government provide to these NGO-run shelters?
- Please clarify the legal conditions that must be met and legal procedures that must be completed for women victims of violence to be able to obtain shelter at NGO or government run centers.
- Please confirm that Penal Code articles 494, 495, and 496 making it illegal to provide shelter to married women have been abrogated, and describe efforts to disseminate this information to lawyers, NGOs, public actors and other stakeholders.
- Has the State Party undertaken any efforts to train police, prosecutors, judges, social workers and other systems actors on violence against women, including domestic violence? Please describe.

3. Lack of Access to Healthcare for Victims of Violence

24. While procedures and services for Moroccan women victims of violence seeking medical attention can vary, the general procedure is for a victim to be received at the Violence Against Women (VAW) unit at hospital by a nurse who completes a specific domestic violence questionnaire.³⁰ The victim is then referred to the designated doctor at the hospital to provide a medical certificate attesting to the injuries and length of incapacity. The disability certificate must also be stamped and validated by the Chief Medical doctor at the hospital. Sometimes there is also a social worker at the hospital to assist the victim.³¹

25. NGOs report that domestic violence cases must be received at a hospital where a VAW unit has been established but that even in large cities there is only one hospital with such a unit. Usually, there is only one doctor and nurse designated for the VAW unit at the hospital. In practice, NGOs report how the responding nurse has other functions, is frequently too busy, and is not specifically trained in counseling women victims of violence. NGOs report insufficient training for hospital staff on any issues related to violence against women.³² They also describe how nurses and doctors often try to reconcile couples, telling women to be patient in order to preserve their families.

26. NGOs report that women have problems obtaining a disability certificate with sufficient duration (21 or more days) necessary to bring a criminal complaint for assault. According to the NGOs, most certificates range from 1 to 20 days, which does not allow for the husband's arrest. They also report some doctors resist providing the disability certificates to avoid having to appear in court. Doctors (usually

³⁰ NGOs report that the DV questionnaire is primarily an administrative form required by the competent Ministry for statistics purposes, with mainly biographical information on the woman. Sometimes it is a social worker who completes the questionnaire.

³¹ NGOs in large cities report that there are 1-2 social workers for the whole city ;their work is not limited just to VAW cases, and they lack of training on human rights and gender. Another NGO reports that there is no privacy or adequate facilities for the social worker to meet with women.

³² In one town, a local NGO reported that the hospital Director with a purely administrative role is the only staff member who has received any training on how to receive women victims of violence. The rest of the team, in direct contact with women, has not received any such training.



men) often will not capture the full impact of the violence or note the full extent of the injuries in the disability certificate.³³ In addition, they note only visible physical manifestations of violence instead of taking into account the full history of domestic violence and patterns of coercive control. Women can't obtain the necessary disability certificate when the doctor is absent, for example on weekends and holidays.

A 38 year old women victim of violence was stabbed by her husband and went to hospital. The doctor examining her saw that the violence was so severe that the husband risked substantial prison time. To avoid this, the doctor tried to convince the woman not to file a complaint, to renounce her rights, forgive her husband, and return to the conjugal home. The woman insisted on pursuing the case, but since the doctor only gave her an incapacity certificate for 20 days, the case is still pending even though she filed the complaint 6 months ago.

27. The lack of free health services for women victims of violence is an obstacle to obtaining the care they need and the documentation required for court cases. Some NGOs report that only the disability certificates provided by the specific VAW unit doctor are provided for free – if that specific doctor is absent the women have to pay for the certificate. One NGO reports that hospitals ask for a fee for the certificate if women are not accompanied by an NGO member to advocate on her behalf. Other than instances where the VAW unit doctor will provide the disability certificate for free, analyses and x-rays are at cost, and often women must travel to Rabat or Casablanca for the tests and treatment.

A 20 year old woman recently married to a 50 year old man was beaten all over her body while she was 5 months pregnant. The husband tried to strangle her with a rope until she passed out. She went to the hospital, where she was examined visually. She had a hemorrhage and needed to have analyses for her stomach, but the public hospital in her town lacked the necessary equipment. She had to go to a private clinic and pay for the analyses. Then she returned to the public hospital for the disability certificate needed to bring a criminal complaint, but the doctor there only gave her a 15 day incapacity certificate. She still suffers from fainting, hemorrhages and psychological trauma, but does not have the means to pay for treatment.

Recommended Questions Related to Access to Healthcare

28. The Moroccan Government should be asked:

³³ Additionally, the medical certificates, and other specific services and procedures at VAW units are only given for conjugal violence, not other forms of violence. AN NGO in a large city reports how there is no gynecologist at the main hospital with the VAW unit, and so sexual assault and rape victims have to go to another hospital for appropriate medical care and certificates; NGOs in this city report how a prosecutor's order is necessary to access these. Several NGOs reported the lack of specialized doctors (gynecologist), in one medium size town for example the gynecologist is present only two days a week, mainly doing operations for women. As a result, women are forced to travel to another city to go to a gynecologist.

- What steps is the Moroccan government taking to provide expand the number of VAW units at hospitals and ensure that they are provided with adequate human and material resources, sufficient space, and specialized training?
- What steps is the government taking to guarantee free medical care and treatment for women victims of violence in both rural and urban areas of Morocco?
- What specific reforms related to the current 21 day incapacity period necessary for a woman to bring an assault charge and to the procedures necessary to obtain a medical certificate does the government intend to enact?

B. Polygamy

29. During the last review of Morocco in 2006, the Committee on Economic, Social and Cultural Rights (Committee) noted that “certain traditions, customs and cultural practices in Morocco continue to prevent women from fully exercising their rights under the Covenant.”³⁴ In particular, the Committee noted with regret in its Concluding Observations that polygamy, which is a violation of a woman’s dignity and constitutes discrimination against women, continues to be practiced in Morocco despite the new Family Code.³⁵ In Recommendation 38, the Committee encouraged Morocco to step up its efforts to respect and protect the rights of women and abolish polygamy once and for all.³⁶ In its 2006 Concluding Observations, the Committee also expressed continued concern in regard to Moroccan legislation that continues to contain discriminatory provisions that violate the rights of women, particularly with regard to inheritance and criminal matters.³⁷

30. To date, the government of Morocco has failed to abolish polygamy. The 2004 Family Code³⁸ continues to allow polygamy when the wife has not stipulated a monogamy clause into the marriage contract and when there is not a risk of inequity between the wives.³⁹ A husband must file a petition for authorization to take another wife, which then goes to a judge to verify the marriage contract and then assess the risk of inequity between the wives. The judge may only authorize polygamy if the husband (a) proves that he has an exceptional and objective justification for taking another wife, and (b) has sufficient resources to support both families and guarantee equality in all aspects of life.⁴⁰ Once the husband files a

³⁴U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations: MOROCCO*, para. 10, E/C.12/MAR/CO/3 (4 September 2006).

³⁵U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations: MOROCCO*, para. 15, E/C.12/MAR/CO/3 (4 September 2006).

³⁶U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations: MOROCCO*, para. 38, E/C.12/MAR/CO/3 (4 September 2006).

³⁷U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations: MOROCCO*, para. 16, E/C.12/MAR/CO/3 (4 September 2006).

³⁸ Dahir n° 1-04-22 du 12 hija 1424 (3 février 2004) portant promulgation de la loi n° 70-03 portant Code de la Famille («Family Code »).

³⁹ Family Code Article 40. Several of these mechanisms existed prior to the 2004 Family Code in the previously applicable Personal Status Code, notably the possibility to insert a monogamy clause in the marriage contract (Personal Status Code Article 31) and the requirement that both the current and future wives be notified (Personal Status Code Article 31). The 2004 legal reforms reinforced judicial control over the authorization and notification procedures.

⁴⁰ Family Code Article 41.



petition for authorization to take another wife, the judge must summon the current wife for a hearing to obtain her consent. If she does not agree to the marriage, the judge will move forward with irreconcilable differences divorce proceedings (*chiqaq*).⁴¹ The judge must also notify the future wife that the petitioner husband is already married, and she must consent to this before the marriage may be concluded.⁴²

31. In practice, women rarely stipulate to monogamy clauses in their marriage contracts. A review of 75,173 marriage contracts in Morocco found that only 87 contained a monogamy clause preventing the husband from taking another wife.⁴³

32. The Moroccan Government reports that polygamy “occurs only in exceptional cases” and that “statistical data indicates that the practice of polygamy is in decline.”⁴⁴ According to official statistics, only 0.29% of marriages contracted in 2007 were polygamous.⁴⁵

33. However, the approval rate of petitions for authorization to take another wife is high and increasing; 43.41% of petitions for polygamy authorizations were granted in 2010, up from 40.36% in 2009.⁴⁶ NGO reports describe how rather than requiring the petitioner husband to prove an exceptional and objective reason, judges tend to grant authorizations based on his financial situation alone.⁴⁷

34. The 2004 Family Code sought to eliminate the practice of *fatiha* or *orfi* marriages which may be used as a means of circumventing the formal system to create a polygamous marriage. Concluded verbally and without a written contract, such marriages frequently occur in rural areas distant from the public administration. They place women in vulnerable situations when the “husband” abandons them and their children with no rights stemming from legal marriage. Article 16 of the code sought to counteract these consequences and initially gave couples without a written contract a five year grace period to petition for recognition of their marriage,⁴⁸ a deadline later extended to ten years.⁴⁹ Henceforth, the subsequent written and registered marriage contract is legal proof of marriage.

35. In practice, the Family Code’s provisions permitting verbal marriages fail to step the problem of polygamous marriages in Morocco. Rather than go through the process of petitioning for authorization to

⁴¹ Family Code Articles 43, 44, 45.

⁴² Family Code Article 46.

⁴³ Global Rights, *Promoting Women’s Human Rights in Morocco, Algeria and Tunisia through Strategic Use of the Marriage Contract* (2011).

⁴⁴ U.N. Committee on Economic, Social and Cultural Rights, *Fourth periodic reports of States parties due in 2009: Morocco*, para. 115, E/C.12/MAR/4 (24 March 2014). The Moroccan Government also notes that, according to the Ministry of Justice, polygamous marriages accounted for 0.3 percent of all marriages in 2006, 0.27 percent of all marriages in 2007, and 0.31 percent of all marriages in 2009. *Id.*

⁴⁵ <http://adala.justice.gov.ma/production/statistiques/famille/FR/Actes%20de%20marriage%20et%20actes%20de%20Odivorce.pdf>

⁴⁶ Association Démocratique des Femmes du Maroc (ADFM), *Rapport des ONG de défense des droits des femmes au Maroc au titre du 2e Examen Périodique Universel (EPU)* (November 2011).

⁴⁷ LDDF, *Droits des femmes et code de la famille après 4 ans d’application* (2007).

⁴⁸ Family Code Article 16.

⁴⁹ Dahir n° 1-10-103 du 3 chaabane 1431 (16 juillet 2010) portant promulgation de la loi n° 08-09 modifiant l’article 16 de la loi n° 70-03 portant Code de la famille.

take another wife, NGOs report that men have used the Article 16 procedure for recognizing a previously unregistered verbal marriage in order to take another wife. In other words, they are claiming a previously unregistered verbal marriage when in fact it is a new polygamous marriage. Official statistics from 2004 – 2008 indicated that the number of judicial recognitions of verbal marriage rose from 6,918 to 23,390, and increased proportionally from 2.84% to 7.07% of all marriages (increasing from one judicial recognition per thirty-four marriages to one judicial recognition per thirteen marriages.)⁵⁰ Read in light of the Family Code reforms, these statistics likely reflect a higher rate of polygamy in reality than is officially recognized.

Recommended Questions for about Polygamy:

36. The Moroccan Government should be asked:

- What steps have been taken by the Moroccan government to effectively abolish polygamy?.
- Please indicate measures taken by the government to ensure that the marriage registration procedures have not been used to circumvent polygamy restrictions.

C. Marriage of Minor Girls

37. The Committee noted with satisfaction in its 2006 Concluding Observations that the age of consent to marriage has been set to 18 for men and women alike.⁵¹

38. Early marriage of girls, however, remains a significant problem in Morocco. While the legal age of marriage for both men and women is 18, the Family Code⁵² allows the marriage of minors when “justified” and after control by the Family Affairs judge.⁵³ According to the Ministry of Justice, the law requires that the minor have “the maturity and physical aptitude to assume the responsibilities of marriage and the discernment to consent to marriage.”⁵⁴ Judges are supposed to conduct a medical expertise or a social enquiry, and explain the reasons justifying the marriage in a well-founded decision.⁵⁵

39. Both the number of petitions for authorization to marry minors and the approval rate are high and increasing. In 2007, 10.03% of marriages were of minors, and 86.8% of the 33,596 petitions were authorized.⁵⁶ In 2011, the rate had risen to 11.99% of all marriages and 89.56% of 46,927 petitions for

⁵⁰ <http://adala.justice.gov.ma/production/statistiques/Tribunaux/FR/Mar & Div pour Site FR.pdf>

⁵¹ U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations: MOROCCO*, para. 7, E/C.12/MAR/CO/3 (4 September 2006).

⁵² Dahir n° 1-04-22 du 12 hijra 1424 (3 février 2004) portant promulgation de la loi n° 70-03 portant Code de la Famille («Family Code »).

⁵³ The authorization is not subject to appeal. *Id.* art. 20. Article 21 also requires the legal tutor’s (guardian’s) consent. *Id.* art. 21.

⁵⁴ Ministère de la Justice, *Guide Pratique du code de la famille* (2005).

⁵⁵ Family Code Article 20.

⁵⁶ <http://adala.justice.gov.ma/production/statistiques/famille/FR/Actes%20de%20marriage%20et%20actes%20de%20divorce.pdf>



authorization to marry a minor were granted. 33.58% of petitions in 2011 were for minors ages 14-16⁵⁷. The overwhelming majority of the minor spouses, 99.31%, were girls.⁵⁸

40. In May 2014, the Minister of Justice and Liberties stated that the rate of marriage of minors has continued to rise over recent years; the Minister revealed that the number of cases of marriage has nearly doubled in the past 10 years, with 35,152 cases in 2013 alone.⁵⁹ Further, the Family Code provides no threshold minimum age below which authorization to marry may never be granted. Local NGOs report marriages of girls as young as thirteen, fourteen and fifteen.⁶⁰

41. In practice, judges often issue authorization to marry minors based on their own cursory visual examination of the minor girl's physical appearance and determination that she is capable of assuming "marital responsibilities," rather than resorting to the required expertise.⁶¹ Reasons advanced by judges for authorizing underage marriage include saving family honor, avoiding scandal, protecting the girl's chastity and preventing her from debauchery. Some cite marriage as a solution to poverty. At times judges do not even substantiate their decisions in writing. Corruption among public actors and the ease by which medical certificates attesting to the minor girl's "maturity" can be obtained are also factors allowing circumvention of the law.⁶²

42. **Note on Penal Code Article 475:** In February 2014 a law was promulgated eliminating the 2nd paragraph of Penal Code article 475,⁶³ which had provided that whoever "abducts or deceives" a minor, without using violence, threat or fraud, can escape prosecution and imprisonment if (i) the abductor marries the victim, and (ii) those persons who have a right to request annulment of the marriage do not file a complaint.

43. The amendment did not increase penalties for such abduction or deception of a minor, which remain at 1 to 5 years imprisonment and a 200 – 500 dirham (\$24-\$60) fine. Abrogating a single paragraph of one article is of limited impact without more comprehensive accompanying measures. Reforms did not offer minor victims of rape any services or solutions to address problems of social stigma, family pressure, threats of prosecution for illicit sexual relations, unwed motherhood, continuing education, or

⁵⁷ *Id.* Note that these numbers are consistent with information from the local level. One local association that works with MRA reported that from January to November 2013, the First Instance Court in Khemisset granted 325 of 442 petitions for authorization to marry minors. Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs (5 December 2013).

⁵⁸ See, e.g., <http://adala.justice.gov.ma/production/statistiques/SJF/FR/30-10-12%20VR%20Finale%20Statistique%20Francais.pdf>

⁵⁹ <http://www.yabiladi.com/articles/details/26304/mariages-mineurs-maroc-enregistres-2013.html>

⁶⁰ Ligue démocratique de défense des droits des femmes (LDDF), *Droits des femmes et code de la famille après 4 ans d'application* (2007).

⁶¹ Interviews with Local Morocco NGOs, (May 2012 – December 2013).

⁶² Abdellah Ounnir, *Les justiciables dans le circuit judiciaire relatif au contentieux de la famille*, in *Le Code de la famille: Perceptions et pratique judiciaire*, pp. 89-139 (Morocco: Friedrich Ebert Stiftung, 2007); *Démocratique des Femmes du Maroc (ADFM), Implementation of the CEDAW Convention: Non-Governmental Organisations' Shadow Report to the Third and the Fourth Periodic Report of the Moroccan Government* (Nov. 2007).

⁶³ Dahir n° 1-14-06 du 20 rabii II 1435 (20 février 2014) portant promulgation de la loi n° 15-14 modifiant et complétant l'article 475 du Code pénal.



psychological and health care. Initial reports from local NGOs indicate that in the absence of any alternatives, minor victims of rape and their families still view marriage to the rapist as a “solution.”⁶⁴ Since the amendment of article 475, rapes of minors now risk not even coming to the attention of the police authorities as a first step in the process; rather than reporting the rape first, the respective families negotiate informally the marriage between the victim and her aggressor.

Recommended Questions about Marriage of Minor Girls

44. The Moroccan Government should be asked:

- Please provide the Committee with the most recent statistical data on the: 1) number of cases of marriage of minors, including age at time of marriage, gender and age difference between spouses; 2) number of petitions for authorization to marry minors, as well as the percentage of petitions granted; and 3) comparative changes in these numbers and rates over preceding years.
- What steps are being taken to provide services for minor victims of rape?

D. Sexual Harassment

45. The Committee observed in 2006 that, while sexual harassment in the workplace is regarded as serious misconduct under the State party’s Labour Code, it remained concerned that such conduct is not an offence under the Criminal Code.⁶⁵ In Recommendation 52, the Committee invited Morocco to take the necessary legislative measures to make sexual harassment in the workplace an offence under the Criminal Code.⁶⁶ In its state report, the Moroccan Government reported that the Moroccan Criminal Code, as amended by Act No. 24.03 of 11 November 2003, explicitly creates the offence of sexual harassment in article 503-1: “Any person who abuses the authority conferred upon him by his position to harass another person, using orders, threats, coercion or any other means to obtain sexual favors, is guilty of sexual harassment and shall be punishable with imprisonment for between one and two years and a fine of between DH 5,000 and DH 50,000.”⁶⁷

46. Since its last review by the Committee, the Moroccan government has failed to take any legislative action related to improving protections from sexual harassment and bringing them into compliance with

⁶⁴One recent case that received substantial press coverage involved a 17 year old girl who was taken to the Ibn Tofail hospital in Marrakech on November 8, 2014 with multiple wounds to her face, hands and chest. Her husband had slashed her with a razor blade when she tried to return to her mother’s home and seek a divorce, telling her, “I swear that no one after me will marry you!” The girl’s mother reported that her daughter had been raped a year ago but the family chose to pardon him after his arrest by the police because he proposed to marry her daughter (who was 16 at the time) in order to “to repair and protect her.”

http://telquel.ma/2014/11/11/marrakech-mineure-violee-mariee-force-defiguree_1422317

⁶⁵U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations: MOROCCO*, para. 24, E/C.12/MAR/CO/3 (4 September 2006).

⁶⁶U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations: MOROCCO*, para. 52, E/C.12/MAR/CO/3 (4 September 2006).

⁶⁷U.N. Committee on Economic, Social and Cultural Rights, *Fourth periodic reports of States parties due in 2009: Morocco*, para. 82, E/C.12/MAR/4 (24 March 2014).

international human rights standards.⁶⁸ Article 503-1 (from 2003) remains the only article in the Criminal Code related to sexual harassment. On its face, article 503-1 is limited in that it only covers the offence of sexual harassment that takes place in the workplace by a superior and with the purpose of obtaining sexual favors. Sexual harassment that occurs in other spaces or is committed by someone else in the workplace who is not in a higher position is not an offence under article 503-1. Further, behavior that creates a hostile work environment would not be defined as sexual harassment under article 503-1.

47. Further, women in Morocco experience multiple barriers to reporting sexual harassment. Sexual harassment occurs often for women working in agriculture or other areas in the unofficial sector Female seasonal agricultural workers, who don't have official contracts, health insurance, or job benefits, say that many cases of sexual harassment go unreported because of threats of firing or physical abuse.⁶⁹ Other Moroccan women don't report sexual harassment due to a lack of trust in the police and judicial system.⁷⁰ Many women who experience sexual harassment at work report in the form of verbal sexual comments report feeling helpless to stop the harassment or sue because of the lack of evidence to present in court.⁷¹

Recommended Questions Related to Sexual Harassment

48. The Moroccan Government should be asked:

- Please provide information on cases which have been brought before domestic courts involving violations of rights enshrined in the Covenant, including those related to sexual harassment.
- What steps is the State Party taking to ensure its sexual harassment laws include the core elements as identified by UN Women?⁷²

⁶⁸ See UN Women Virtual Knowledge Center to End Violence against Women and Girls, Core Elements of Sexual Harassment Laws, <http://www.endvawnow.org/en/articles/494-core-elements-of-sexual-harassment-laws-.html?next=495>.

⁶⁹ *Female Workers in Villages...Forgotten by the Government and Face Sexual Harassment*, Al-Zahara' Forum for Moroccan Women, 20 January 2012. <http://www.fz.ma/news140.html>

⁷⁰ Nadia Al Hani , *Public Transportation... A playground for Sexual Harassment*, , Alyaoum,24, 27 February, 2014. <http://www.alyaoum24.com/172442.html>

⁷¹ Amal Abu Al-Ala', *Women of Sexual violence Speak out*, , Alyaoum24, 7 September, 2013. <http://www.alyaoum24.com/164523.html>

⁷² The core elements of sexual harassment laws include:

- A statement of purpose, also known as a preamble, that references international, regional, and existing national protections against discrimination and violence against women;
- A broad definition that includes examples of prohibited behavior;
- Judicial and/or administrative procedures to enforce the prohibition on harassment, including confidential complaint procedures;
- Provision for effective, proportionate compensation and/or reparation related to damages and losses suffered as a result of the harassment;
- Dissuasive penalties for perpetrators;
- Placing the burden of proof in civil proceedings on the alleged perpetrator, once a prima facie case is made;
- Protections against retaliation;
- Guidance for interpretation of the law;



- What steps is the State Party taking to broaden the definition of sexual harassment to harassment that occurs in the place of work or in a work related environment; occurs because of the person's sex and/or it is related to or about sex; is unwelcome, unwanted, uninvited, not returned, not mutual; and affect the terms or conditions of employment or the work environment itself?⁷³
- What steps is the State Party taking to broaden the definition of sexual harassment to cover all work-based relationships, not solely supervisors harassing employees?
- What steps is the State Party taking to broaden the definition of sexual harassment to prohibit both sexual behavior (conduct of a sexual nature such as inappropriate touching or sexual jokes) and sex-based behavior (conduct that occurs because of the sex of the intended victim but is not necessarily sexual in nature)?

-
- Measures for prevention such as policy development, including confidential complaint procedures, and training;
 - Designated oversight body with the power to enforce the law, provide assistance to victims, collect data, and publish appropriate reports.

UN Women Virtual Knowledge Center to End Violence against Women and Girls, Core Elements of Sexual Harassment Laws, <http://www.endvawnow.org/en/articles/494-core-elements-of-sexual-harassment-laws-.html?next=495>.

⁷³ UN Women Virtual Knowledge Center to End Violence against Women and Girls, Sexual Harassment, <http://www.endvawnow.org/en/articles/817-overview-and-definition.html?next=509>.

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