



Morocco's Implementation of Accepted UPR Recommendations On Women's Rights

Submitted by The Advocates for Human Rights,
a non-governmental organization in special consultative status with ECOSOC
and
MRA Mobilising for Rights Associates,
a non-governmental organization based in Rabat, Morocco
in collaboration with an alliance of Moroccan NGOs¹

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The two reporting organizations previously submitted a Joint Written Statement on violence against women for the 2012 Morocco Universal Periodic Review.² This report follows up on that Statement and assesses Morocco's implementation to date of accepted UPR recommendations on women's rights.

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 cultural attitudes. 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

¹ Association Amal pour la femme et le développement (El Hajeb), Association el Amane pour le développement de la femme (Marrakech), Association Tawaza pour le plaidoyer de la femme (Martil), Association Tafoukt Souss pour le développement de la femme (Agadir), and Association des jeunes avocats (Khemisset).

² http://www.theadvocatesforhumanrights.org/uploads/joint_upr_submission_on_morocco_-_vaw_2.pdf



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.

3. Methodological note: The reporting organizations conducted mid-term assessments during the spring of 2014 with local Moroccan NGOs to evaluate the status of implementation of the accepted UPR recommendations at the local level. Information from these assessments forms the basis of this submission. The reporting organizations noted challenges in accessing updated and accurate information from government sources on legislative reforms efforts in Morocco. Research and consultation with numerous diverse official government sources revealed incomplete and/or outdated information. On several instances official government sources contained contradictory information, for instance one source indicating that publication of a law voted was still pending, and another indicating that a final law had been published in the Bulletin official. Telephone inquiries to relevant Ministries to even determine the planned submission status of the announced government mid-term review report did not lead to any information.

II. Status of Implementation of UPR Recommendations Accepted by Morocco

A. Violence Against Women/Domestic Violence

4. Recommendations Accepted by Morocco:

- 129.12. Submit to Parliament law on the protection of women from violence, which was announced during the UPR in 2008 (Switzerland);
- 129.14. Accelerate the deliberations on the draft law on domestic violence (Belgium);
- 129.16. Adopt a specific law for domestic violence, containing both criminal and civil provisions (Brazil);
- 129.19. Bring its legal system in line with its Constitution by implementing measures that guarantee gender equality and adopting legislation guaranteeing women effective remedies against violence (Estonia);
- 129.21. Accelerate the drafting process of a bill on domestic violence and take appropriate measures in order to effectively prevent gender discrimination (Germany);
- 129.24. Adopt a specific law on violence against women that contain both criminal and civil provisions (Norway);
- 129.26. Adopt legislative measures to combat violence against women, especially improve their protection in rural areas (Spain);
- 129.39. Promote gender equality and parity and prevent violence against women (Thailand);
- 129.51. Adopt a specific law on domestic violence ...; remove discriminatory legislative provisions that place the burden of proof solely on the victim (Austria);
- 129.55. Consider putting in place measures or legislation to ensure prevention and punishment of acts of violence against women ... (Botswana); and
- 129.57. Step up its efforts to ensure the protection of women against violence (Indonesia).

Status of Implementation

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5. 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.³ This same 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.⁴ Another 2011 report identified that in cases of violence against women, the perpetrator is the husband in eight out of ten cases.⁵ 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.⁶ Another study found that of those women who have experienced domestic violence, 68 percent expressed a distrust of the justice system.⁷

6. 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. 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.⁸

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; 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

³ 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/>.

⁴ Id.

⁵ U.S. Department of State, Country Reports on Human Rights Practices, "[2010 Human Rights Practices: Morocco](http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154468.htm)", (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>.

⁶ UN Women, "[2011-2012 Progress of the World's Women, Factsheet: Middle East and North Africa](http://progress.unwomen.org/wp-content/uploads/2011/06/EN-Factsheet-MENA-Progress-of-the-Worlds-Women.pdf)", (2011-2012), available at <http://progress.unwomen.org/wp-content/uploads/2011/06/EN-Factsheet-MENA-Progress-of-the-Worlds-Women.pdf>.

⁷ Id.

⁸ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 23, 2014.



is imminent threat of death. Spouses evicted without justification from the marital home are returned home by the Public Prosecutor; 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. 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.

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 town⁹.

8. Mid-term assessments conducted in spring 2014 among local Moroccan NGOs report little changes on the ground for women victims of violence since the 2012 UPR. Public authorities only intervene in cases of severe injuries or murder. 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 busy, told her not to get blood on their chairs, and directed her to the hospital to obtain a medical certificate.¹⁰

9. Rape victims are deterred from seeking help out of fear of prosecution for illicit sexual relations. Further, the government itself has made contradictory statements as to whether or not marital rape is a crime in Morocco.¹¹ 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.¹² 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.”¹³

10. 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

⁹ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 27, 2014.

¹⁰ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 27, 2014.

¹¹ The Penal Code does not explicitly mention rape between spouses and hence it cannot legally be considered to be criminalized.

¹² https://www.youtube.com/watch?v=E81HCCNCv_k&feature=share at 41 minutes, 30 seconds.

¹³ 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.



assistance from local NGOs instead. The few shelters that exist have very limited capacity, place such stringent conditions on women as to be prohibitory, and do not have adequate security or police protection. Women victims of violence often feel pressured to return to their husbands.

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.”¹⁴

11. Draft bills addressing violence against women: Since 2006, the Moroccan Government has made numerous and on-going public declarations nationally and to international bodies of its intention to promulgate a violence against women law.¹⁵ 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.

12. 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.

13. The Morocco State report to the Working Group on the Universal Periodic Review in May 2012 states that in March 2011, the Government approved an equality agenda for 2011–2015. Placed on hold, this agenda then became the *Government Plan for Equality « ICRAM » Towards the Achievement of Gender Parity*. Described as five year plan from 2012 – 2016, it was only adopted by the Government Council in June 2013. The second axis of this Plan, “Combat all forms of discrimination and violence against women” includes Measure 41, “Enacting the law on fighting violence against women.” To date the government has not met its own deadline for this measure, listed in the Plan Implementation Calendar as 2013.

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.¹⁶

15. 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 criminal and civil provisions, a UPR recommendation accepted by Morocco, the Bill is limited to minor

¹⁴ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 26, 2014.

¹⁵ Additional 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.”

¹⁶ <http://www.medias24.com/POLITIQUE/5975-Benkirane-desavoue-Bassima-Hakkaoui.html>



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 measures or other civil remedies.

16. 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.

B. Penal Code Article 475

17. Recommendations Accepted by Morocco:

129.51 Adopt a specific law on domestic violence and abolish the provisions allowing a rapist to escape punishment by marrying the victim; remove discriminatory legislative provisions that place the burden of proof solely on the victim (Austria);

129.54. Abolish the provisions which allow the rapist to escape from prosecution by marrying the victim (Belgium);

129.55. Consider putting in place measures or legislation to ensure prevention and punishment of acts of violence against women, and ensure that rapists do not evade criminal prosecution by marrying their victims (Botswana);

129.63. Take all necessary actions to eliminate the practices enabling perpetrators of rape to escape a criminal conviction by marrying their young victims and safeguard the rights of rape victims (Netherlands);

129.64. Repeal articles 475 of the Penal Code, which permits perpetrators of rape to marry their victims to evade prosecution (Portugal);

Status of Implementation:

18. In February 2014 a law was promulgated eliminating the 2nd paragraph of Penal Code article 475,¹⁷ 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.

19. 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 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."

¹⁷ 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.



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.

C. National Legal Framework/Reforms to the Penal and Family Codes

20. Recommendations Accepted by Morocco:

- 129.15. Revise the Family Code to guarantee equality between fathers and mothers in guardianship of their children (Belgium);
- 129.17. Codify the principles of gender equality in all areas of its national legal framework (Denmark);
- 129.19. Bring its legal system in line with its Constitution by implementing measures that guarantee gender equality and adopting legislation guaranteeing women effective remedies against violence (Estonia);
- 129.21. Accelerate the drafting process of a bill on domestic violence and *take appropriate measures in order to effectively prevent gender discrimination*;
- 129.22. Adopt measures to harmonize the legal order with the constitutional provisions on equality between men and women, including the revision of the Penal Code (Mexico);
- 129.23. Revise the Penal Code as well as other legislation such as the Family Code to ensure that they are in compliance with international standards (Norway);
- 129.25. Revise the Family Code and adopt and implement other appropriate measures to prevent marriages of minors (Slovakia);
- 129.39. Promote gender equality and parity and prevent violence against women (Thailand);
- 129.43. Continue to address the remaining challenges, including in empowering women and ensuring gender equality in purposeful manner (Bangladesh);
- 129.44. Put in place the necessary arrangements to implement the new Constitution's guarantees of equality between men and women, in accordance with its international obligations, including CEDAW's Article 16 regarding marriage and family life (Canada)

Status of Implementation:

21. The new Moroccan Constitution: In July 2011, a new Moroccan Constitution was approved by referendum and promulgated.¹⁸ Morocco's lack of implementation of the accepted UPR recommendations also appears to violate the Moroccan Constitution, including the Preamble, which provides that duly ratified international conventions have primacy over domestic law. This assertion has been repeated by the Moroccan Government before UN treaty monitoring bodies.¹⁹

22. The new Constitution contains some provisions which, if effectively implemented, could support a

¹⁸ The official French version of the 2011 Constitution is available at http://www.sgg.gov.ma/constitution_2011_Fr.pdf.

¹⁹ Moroccan government affirmation in November 2011 to the United Nations Committee Against Torture. See http://www.youtube.com/watch?v=E81HCCNCv_k; The Moroccan Government had already made this claim under the previous Constitution. See also Press Release, United Nations, U.N. Doc. WOM/1413 (15 July 2003), available at <http://www.un.org/News/Press/docs/2003/wom1413.doc.htm>.



more pro-active and positive approach to addressing domestic violence in Morocco.²⁰ Article 19 announces equal civil, political, economic, social, cultural, and environmental rights for men and women. Article 20 provides for the right to life, while Article 21 provides for the right to personal security. Of direct relevance is Article 22, which explicitly 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* (emphasis added).

23. Reforms to the Penal Code: The Penal Code does contain some general prohibitions that may be applied to domestic violence, including provisions establishing that a spousal relationship is an aggravating circumstance for sentencing purposes in assault and battery cases.²¹ In addition to the 2014 amendment to article 475, 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.²²

24. Sexual relations outside the framework of legal marriage remain illegal in Morocco.²³ Discriminatory legal provisions continue to place the burden of proof solely on the victim of violence.

25. The *Government Plan for Equality « ICRAM »* includes Measure 40 “Amending the Criminal Code and the Code of Criminal Procedure,” although the government has not met its own deadline for this measure, listed in the Plan Implementation Calendar as 2013-2014. The Plan does not detail what amendments are to be made.

26. The current status of any governmental efforts to reform the Penal Code is unknown. It is unclear what subsequent steps if any have been taken to implement this UPR recommendation. Extensive research has not revealed the existence of any bills to reform the Penal Code currently pending in the Government or in front of Parliament.

27. Changes to Family Code: The 2004 Family Code²⁴ allows polygamy, maintains men’s power to unilaterally divorce their wives without cause, provides for unequal access to divorce between men and women, maintains discrimination in child custody and guardianship and inheritance, and does not adequately protect women’s economic rights during marriage or upon divorce. Unwed mothers are discriminated against and made vulnerable to abuse.

28. Early marriage remains a significant problem in Morocco. While the legal age of marriage for both men and women is 18, the Family Code allows the marriage of minors when “justified” and after control

²⁰ Id.

²¹ 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>

²² Published in the Arabic version of the Bulletin officiel number 6177, August 12, 2013. The bill had been sponsored by a Parliamentary Group.

²³ Moroccan Penal Code, Articles 490 and 491.

²⁴ 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 »).



by the Family Affairs judge.²⁵ 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.²⁶ In 2011, the rate had risen to 11.99% of all marriages and 89.56% of 46,927 petitions for authorization to marry a minor were granted. 33.58% of petitions in 2011 were for minors ages 14-16²⁷. The overwhelming majority of the minor spouses, 99.31%, were girls.²⁸ 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.²⁹

29. In practice, judges often issue authorizations 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.³⁰ 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 even 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.³¹

30. The *Government Plan for Equality « ICRAM »* contains no measures that would reform the Family Code. The current status of any governmental efforts to reform the Family Code is unknown. It is unclear what subsequent steps if any have been taken to implement this UPR recommendation; extensive research has not revealed the existence of any bills to reform any aspects of the Family Code currently pending in the Government or in front of Parliament.

²⁵ The authorization is not subject to appeal. *Id.* art. 20. Article 21 also requires the legal tutor's (guardian's) consent. *Id.* art. 21.

²⁶ <http://adala.justice.gov.ma/production/statistiques/famille/FR/Actes%20de%20marriage%20et%20actes%20de%20divorce.pdf>

²⁷ *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).

²⁸ See, e.g., <http://adala.justice.gov.ma/production/statistiques/SJF/FR/30-10-12%20VR%20Finale%20Statistique%20Francais.pdf>

²⁹ Ligue démocratique de défense des droits des femmes (LDDF), *Droits des femmes et code de la famille après 4 ans d'application* (2007).

³⁰ Interviews with Local Morocco NGOs, (May 2012 – December 2013).

³¹ 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).