



Morocco's Compliance with the International Covenant on Civil and Political Rights
SUGGESTED LIST OF ISSUES RELATING TO RIGHTS OF WOMEN

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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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 Civil and Political Rights of Women

A. Violence Against Women

3. In 2004, the Human Rights Committee noted its concern about the high level of domestic violence against women and called upon Morocco to “take suitable practical measures to combat this phenomenon”.² In spite of more than ten years of strong civil society advocacy for a comprehensive violence against women law, the Moroccan government has failed to respond and meet its obligation to protect Moroccan women from violence.³

4. **As a result, violence against women remains 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 Human Rights Committee, *Concluding Observations: Morocco*, 1 December 2004, para 28, *CCPR/CO/82/MAR* (hereinafter referred to as 2004 Concluding Observations).

³ Interviews by MRA with local NGOs; Draft Bill on Reforms to the Criminal Code, <http://www.justice.gov.ma/lg-1/documents/doccat-4.aspx>. The only notable changes related to VAW legislation in the draft bill for reforms to the Criminal Code were those concerning sexual harassment (mentioned above).

⁴ Moroccan *Haut Commissaire au Plan*, “Principaux résultats de l’Enquête Nationale sur la Prévalence de la Violence à l’Egard 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 However, in Morocco's 2015 draft bill for reforms to the Criminal Code, proposed article 420 would expand impunity for honor killings by changing "head of household" to "any family member", thus expanding the category of persons eligible for exoneration from assault when he or she happens upon his or her spouse committing adultery in the conjugal home when such assault is "*committed without the intention to cause death, even if it results.*"¹⁰

6. 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.¹¹

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 a criminal assault complaint;¹² 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;¹³ 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.¹⁴ 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.

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 Draft Bill on Reforms to the Criminal Code, article 420. <http://www.justice.gov.ma/lg-1/documents/doccat-4.aspx>.

¹¹ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 23, 2014.

¹² Penal Code articles 400 and 401.

¹³ Family Code article 53.

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

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.¹⁵

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.¹⁶ 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 town¹⁷.

10. Further, the government itself has made contradictory statements as to whether or not marital rape is a crime in Morocco.¹⁸ 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.¹⁹ 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.”²⁰

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

¹⁵ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 27, 2014.

¹⁶ Moroccan Penal Code, Articles 490 and 491.

¹⁷ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 27, 2014.

¹⁸ The Penal Code does not explicitly mention rape between spouses and hence it cannot legally be considered to be criminalized.

¹⁹ 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.

²⁰ 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.



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.”²¹

12. **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.²² These include January 2008, March 2008, November 2011, and October 2015 statements by the Moroccan government to respectively the CEDAW Committee, the Human Rights Council Working Group on the Universal Periodic Review, the Committee against Torture, and the Committee on Economic, Social and Cultural Rights that a violence against women law was imminent. The Moroccan Government’s report to the HRC states that a draft law is “in the process of being adopted”²³ 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.²⁴ 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 2012²⁵ 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.

²¹ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 26, 2014.

²² 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.”

²³ U.N. Committee on Civil and Political Rights, *Sixth periodic reports of States parties due in 2008: Morocco*, para. 261, CCPR/C/MAR/6 (31 August 2015).

²⁴ <http://www.medias24.com/POLITIQUE/5975-Benkirane-desavoue-Bassima-Hakkaoui.html>

²⁵ Report of the Working Group on the Universal Periodic Review, Morocco, Human Rights Council twenty-first session, A/HRC/21/3.

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. To date, the previous and unmodified Bill 103-13 is the only text officially on file with the SGG.²⁶

16. Lack of Access to Housing for Victims of Violence. The lack of a clear legal status and framework for shelters in Morocco 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 14-05²⁷ 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.²⁸

17. 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.²⁹ Women who are kicked out of the home or flee violent situations have limited options for shelter or housing.

18. Some shelters for victims of domestic violence do exist in Morocco, providing services such as 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.

19. Lack of Access to Healthcare for Victims of Violence 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.

²⁶ http://www.sgg.gov.ma/Portals/1/lois/Projet_loi_103.13.pdf, consulted January 4, 2016.

²⁷ *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.*

²⁸ 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.

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

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.

20. 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 men) often will not capture the full impact of the violence or note the full extent of the injuries in the disability certificate.³¹ 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.³²

21. Further, the draft bill for reforms to the Criminal Code, released by the Minister of Justice in April 2015, would increase the duration necessary for such a disability certificate from 20 or more days³³ to 21 or more days, making it even more difficult for women to bring a criminal complaint for assault.³⁴

Recommended Questions Related to Violence Against Women

22. The Moroccan Government should be asked:

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

³¹ 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.

³² Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 27, 2014.

³³ Penal Code, articles 400, 401, 409.

³⁴ Draft Bill on Reforms to the Criminal Code, <http://www.justice.gov.ma/lg-1/documents/doccat-4.aspx>.

- 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?
- Please describe what measures are anticipated to create a legal framework and state financial support for shelters and housing to women victims of violence.
- 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.
- 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

23. During the last review of Morocco in 2004, the Committee noted with regret that the new Family Code, while placing limitations on the practice of polygamy, nevertheless does not ban it, despite the fact that it is detrimental to women's dignity.³⁵ The Committee stated that Morocco "should ban polygamy clearly and definitively."³⁶

24. **To date, the government of Morocco has failed to abolish polygamy.** The 2004 Family Code³⁷ 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.³⁸ 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.³⁹ Once the husband files a 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*).⁴⁰ 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.⁴¹

25. In practice, women rarely stipulate to monogamy clauses in their marriage contracts. A review of

³⁵2004 *Concluding observations*, para. 30.

³⁶ *Id.*

³⁷ 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 »).

³⁸ 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.

³⁹ Family Code Article 41.

⁴⁰ Family Code Articles 43, 44, 45.

⁴¹ Family Code Article 46.



75,173 marriage contracts in Morocco found that only 87 contained a monogamy clause preventing the husband from taking another wife.⁴²

26. The Moroccan Government reports that polygamy “the incidence of polygamous marriages has fallen compared with previous years, and accounts for no more than 0.25 per cent of the total number of marriages.”⁴³

27. 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 2009.⁴⁴ 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.⁴⁵

28. 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,⁴⁶ a deadline later extended to ten years.⁴⁷ Henceforth, the subsequent written and registered marriage contract is legal proof of marriage.

29. 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 take another wife, NGOs report that men have used the Article 16 procedure for recognizing a previously unregistered verbal marriage in order 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.)⁴⁸ 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 Related to Polygamy:

⁴² Global Rights, *Promoting Women’s Human Rights in Morocco, Algeria and Tunisia through Strategic Use of the Marriage Contract* (2011).

⁴³ U.N. Committee on Civil and Political Rights, *Sixth periodic reports of States parties due in 2008: Morocco*, para. 95, CCPR/C/MAR/6 (31 August 2015).

⁴⁴ 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).

⁴⁵ LDDF, *Droits des femmes et code de la famille après 4 ans d’application* (2007).

⁴⁶ Family Code Article 16.

⁴⁷ 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.

⁴⁸ http://adala.justice.gov.ma/production/statistiques/Tribunaux/FR/Mar_&_Div_pour_Site_FR.pdf

30. 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

31. While the Committee did not reference early and forced marriage in its 2004 Concluding Observations, article 23, paragraph 3 of the International Covenant on Civil and Political Rights guarantees the right of all individuals to enter into marriage with the free and full consent of both parties. The Committee has stated that the age for marriage should be such as to enable each spouse to give her/his free and full personal consent under conditions prescribed by law⁴⁹ and that States should ensure that the minimum age complies with international standards and adopt active measures to prevent early marriage of girls.⁵⁰

32. **Early marriage of girls remains a significant problem in Morocco.** While the legal age of marriage for both men and women is 18, the Family Code⁵¹ allows the marriage of minors when “justified” and after control by the Family Affairs judge.⁵² 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.”⁵³ Judges are supposed to conduct a medical expertise or a social enquiry, and explain the reasons justifying the marriage in a well-founded decision.⁵⁴

33. **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.⁵⁵ In 2011, the rate had risen to 11.99% of all marriages and 89.56% of 46,927 petitions for

⁴⁹ Human Rights Committee general comment No. 19 (1990) on protection of the family, the right to marriage and equality of the spouses, para. 4. See also general comment No. 28 (2000) on equality of rights between men and women, para. 23.

⁵⁰ Concluding observations of the Human Rights Committee on Uruguay ([CCPR/C/URY/CO/5](#)), Kuwait ([CCPR/C/KWT/CO/2](#)), Yemen ([CCPR/CO/75/YEM](#)), United Republic of Tanzania ([CCPR/C/TZA/CO/4/Add.1](#)), Islamic Republic of Iran ([CCPR/C/IRN/CO/3](#)).

⁵¹ 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 »).

⁵² The authorization is not subject to appeal. *Id.* art. 20. Article 21 also requires the legal tutor’s (guardian’s) consent. *Id.* art. 21.

⁵³ Ministère de la Justice, *Guide Pratique du code de la famille* (2005).

⁵⁴ Family Code Article 20.

⁵⁵ <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 14-16⁵⁶. The overwhelming majority of the minor spouses, 99.31%, were girls.⁵⁷

34. 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.⁵⁸ 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.⁵⁹

35. 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.⁶⁰ 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.⁶¹

36. **Note on Penal Code Article 475:** In February 2014, a law was promulgated eliminating the second paragraph of Penal Code article 475,⁶² 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.

37. 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,

⁵⁶ *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).

⁵⁷ See, e.g., <http://adala.justice.gov.ma/production/statistiques/SJF/FR/30-10-12%20VR%20Finale%20Statistique%20Francais.pdf>

⁵⁸ <http://www.yabiladi.com/articles/details/26304/mariages-mineurs-maroc-enregistres-2013.html>

⁵⁹ Ligue démocratique de défense des droits des femmes (LDDF), *Droits des femmes et code de la famille après 4 ans d'application* (2007).

⁶⁰ Interviews with Local Morocco NGOs, (May 2012 – December 2013).

⁶¹ 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).

⁶² 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.

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.”⁶³ 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 Related to Marriage of Minor Girls

38. 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

39. The Moroccan Government reported that the Moroccan Criminal Code, as amended by Act No. 24.03 of 11 November 2003, criminalizes “sexual harassment in all its forms.”⁶⁴

40. Article 503-1 (from 2003) remains the only article in the Criminal Code related to sexual harassment. Further, 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.

41. 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.

42. 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

⁶³One 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

⁶⁴ U.N. Committee on Civil and Political Rights, *Sixth periodic reports of States parties due in 2008: Morocco*, para. 260, CCPR/C/MAR/6 (31 August 2015).

physical abuse.⁶⁵ 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.⁶⁶

43. An additional barrier that often prevents Moroccan women from reporting sexual harassment is a lack of trust in the police and judicial system.⁶⁷ Many women fear that if they report sexual harassment, they will face detrimental consequences. One recent example highlights this fear:

On June 14, 2015 in Inezgane, a town in southwest Morocco near the city of Agadir, two women were sexually harassed by a group of men who targeted them based on the dresses they were wearing.⁶⁸ The women were whistled at and then threatened by a larger group of people who began to stalk them. Concerned about their safety, the women sought refuge in a shop while waiting for the police to arrive to handle the situation. When the police arrived, several people claimed that the women were “harming public morality” because their dresses were “too short”.⁶⁹ The police arrested the women on the basis that the dresses which they were wearing were “indecent” and charged them under Penal Code article 483.⁷⁰ The women were acquitted on July 13, 2015 but have moved to a different town as a result of their treatment in Inezgane.⁷¹ Their forced relocation has an impact on many areas of their lives, including employment. It remains unclear, however, whether any of the men who sexually harassed them will be arrested and prosecuted.⁷²

44. **Draft bills related to sexual harassment.** While Morocco has not yet taken the necessary legislative steps to adequately protect women from sexual harassment, the Minister of Justice released a draft bill for reforms to the Penal Code in April 2015. According to the draft, article 503-1 would expand the crime of sexual harassment to include “any person using against a third party orders or threats or

⁶⁵ *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>

⁶⁶ Amal Abu Al-Ala’, *Women of Sexual violence Speak out*, Alyaoum24, 7 September, 2013.

<http://www.alyaoum24.com/164523.html>

⁶⁷ Nadia Al Hani , *Public Transportation... A playground for Sexual Harassment*, Alyaoum,24, 27 February, 2014.

<http://www.alyaoum24.com/172442.html>

⁶⁸ “Deux Marocaines poursuivies en raison de leurs robes jugées trop courtes,” 25 June 2015, Jeune Afrique, <http://www.jeuneafrique.com/239715/societe/deux-marocaines-poursuivies-en-raison-de-leurs-jupes-jugees-trop-courtes/>.

⁶⁹ *Id.*; Interviews by MRA with Local Morocco NGOs (June 2015 – July 2015).

⁷⁰ Penal Code, article 483. Article 483 criminalizes “public indecency” through a “voluntary state of nudity or obscene gestures or acts” with imprisonment of 1 month to 2 years and a 200 to 500 dirham fine.

⁷¹ Interviews by MRA with Local Morocco NGOs (June 2015 – July 2015).

⁷² *Id.*

pressures or any other means, to profit from the power of his functions for sexual aims" and would increase the possible sentence from one to two years to one to three years.⁷³

45. Further, draft Article 503-1-1 (which does not currently exist) would hold “any person who harasses another in public or other spaces, through behaviors, words or gestures of a sexual nature for sexual purposes” or “addresses messages, written or by telephone or electronic, or recordings or images of a sexual nature or for sexual purposes” guilty of sexual harassment. These acts would be punished by one to six months in prison and/or a 2000 - 10,000 Dirhams fine. The sanctions would be doubled if the perpetrator is a work colleague or someone charged with maintaining public order or security.⁷⁴
46. Additionally, the Minister of Justice proposed draft Article 503-1-2 (which also does not currently exist) which would punish sexual harassment committed by an ascendant, a legal guardian, or in cases of incest, or if the victim of the harassment is a minor (less than 18 years old) with a one to three year prison sentence and/or a 5,000 to 50,000 Dirhams fine.⁷⁵
47. While the draft amendments to the Criminal Code would expand Morocco’s protections against sexual harassment, the State Party has not given a clear timeline as to when it will adopt such changes. Until the Government of Morocco implements the reforms to its Criminal Code, protections against sexual harassment will remain extremely limited and inaccessible to victims.

Recommended Questions Related to Sexual Harassment

48. The Moroccan Government should be asked:

- What steps is the State Party taking to broaden the definition of sexual harassment to cover all forms of sexual harassment in both public spaces and the workplace?

E. Abortion

49. In 2004, the Human Rights Committee noted “with concern that abortion is still a criminal offence under Moroccan law unless it is carried out to save the mother’s life” and called on the State to “relax the legislation relating to abortion.”⁷⁶
50. In Morocco, abortion remains illegal unless it is deemed necessary to protect the mother’s health⁷⁷ and may only be carried out within the first six weeks of pregnancy. In addition, the husband’s

⁷³ Draft Bill on Reforms to the Criminal Code, article 503-1, <http://www.justice.gov.ma/lg-1/documents/doccat-4.aspx>.

⁷⁴ *Id.* Article 503-1-1.

⁷⁵ Draft Bill on Reforms to the Criminal Code, article 503-1-2, <http://www.justice.gov.ma/lg-1/documents/doccat-4.aspx>.

⁷⁶ Concluding Observations, para.29.

⁷⁷ Articles 449-452 of the Moroccan Penal Code punish performing an abortion with 1 – 5 years imprisonment (doubled if the person performing the abortion habitually does so), and medical professionals may also be barred from exercising their profession temporarily or permanently. In 2008, 12 doctors were imprisoned under these

authorization is required, except in cases where the mother's life is in danger. In the absence of spousal authorization, the doctor must seek written permission from the Chief Medical Doctor in the district before performing the abortion.⁷⁸

51. Abortion is not legally permitted in cases of rape or incest, foetal impairment, for economic or social reasons, or simply upon request. Moroccan laws also punish a woman who has an abortion (or attempts to)⁷⁹ as well as anyone who is deemed to have incited an abortion through public statements or distribution of written or visual materials.⁸⁰

52. A 2007 study by the *Association marocaine de planification familiale* (AMPF) in collaboration with the Institut National d'administration Sanitaire (INAS) estimates that 600 women per day have an abortion in Morocco, 52% of whom are married.⁸¹ The survey suggests that 35% of women in Morocco have had an abortion in their lifetime.⁸² According to the World Health Organization, 13% of maternal mortality in Morocco is due to an abortion.⁸³

53. In May 2015, a Royal Commission submitted recommendations for reforms to the Penal Code related to abortion. The current status in the enactment process of the announced reforms remains unclear.

54. The Moroccan Government should be asked:

- Please clarify exactly the current stage in the legislative process the announced reforms to the Penal Code related to abortion are currently in, and what the timeframe is for their enactment.
- Please clarify the cases under which the proposed reforms would decriminalize abortion and exactly to what extent these reforms would meet the Committee's previous recommendation to relax the legislation on abortion.

F. Divorce

55. In 2004, The Human Rights Committee noted with concern "that inequalities between women and men persist in the area of inheritance and divorce," and recommended that the "State party should

provisions of the Penal Code. « Réformer l'Interruption Médicale de Grossesse... pour en finir avec l'avortement clandestine, » *Femmes du Maroc*, No. 160, April 2009.

⁷⁸ Article 453 of the Moroccan Penal Code.

⁷⁹ Article 454 of the Moroccan Penal Code provides for a prison term of 6 months to 2 years a woman who has or attempts to have an abortion.

⁸⁰ Article 455 of the Moroccan Penal Code punishes a host of such acts with a 2 month to 2 year prison sentence.

⁸¹ Association marocaine de planification familiale, *Etude exploratoire l'avortement à risqué* (November 2008), available at http://www.ampf.org.ma/index.php?option=com_content&view=article&id=12&Itemid=18. This report was widely covered in the media in Morocco. See *600 avortements clandestins par jour, à quand une loi plus souple ?*, La Vie éco, 7 November 2008, available at <http://lavieeco.com/news/societe/600-avortements-clandestins-par-jour-a-quand-une-loi-plus-souple-12146.html#w4OzRWYGYrhDhK1Z.99>. Also reported in *l'Economiste* and posted on Redacteur, October 25, 2008.

⁸²Id.

⁸³Id.

review its legislation and ensure that any gender-based discrimination in the area of inheritance or divorce is eliminated.⁸⁴

56. Men and women still have unequal access to divorce under the 2004 Family Code. While the code introduced a new ground for divorce – irreconcilable differences (*chiqaq*), the Code also maintained the previous forms of divorce available only to men or women respectively.
57. The Family Code still allows the husband to unilaterally divorce his wife without providing a reason and without her agreement. The wife has no such corresponding means by which to divorce her husband.⁸⁵ In *khol'* divorce available to the wife, she pays compensation to her husband in return for him agreeing to repudiate her - *khol'* still requires the husband's agreement.⁸⁶
58. The newly introduced *chiqaq* is in theory open to both spouses but used primarily by women, Technically, in *chiqaq* the petitioner spouse must give reasons for seeking divorce, but is not obligated to provide any evidence of harm or fault. However, in practice judges often require proof of the motive for seeking divorce, holding *chiqaq* to the same standard of evidence as a fault-based divorce. At the same time, *chiqaq* cases are often decided on grounds more appropriate for a fault based divorce such as abuse, lack of financial support, and abandonment.⁸⁷ Additionally, women who seek divorce through *chiqaq* frequently renounce their financial rights in order to obtain a divorce.
59. The only other form of divorce open to women is a judicial divorce for fault, on one of the following limited grounds: (1) violation of a clause in the marriage contract; (2) harm; (3) husband's failure to support his wife; (4) husband's absence or imprisonment; (5) hidden "flaw" or disease; or (6) husband's oath of abstinence towards his wife.⁸⁸ These forms of divorce is extremely rare in reality, ranging from 0.01% - 1.47% of divorces sought by women.⁸⁹

The Moroccan Government should be asked:

- What steps is the State party taking to eliminate discrimination between men and women in access to divorce?

⁸⁴ Concluding Observations, para. 33.

⁸⁵ Family Code articles 78 – 87.

⁸⁶ Family Code Articles 115-120.

⁸⁷ Rabha Zeidguy "Analyse de la jurisprudence," in *Le Code de la famille : Perceptions et pratique judiciaire* (Morocco : Friedrich Ebert Stiftung, 2007), pp. 217-271.

⁸⁸ Family Code Articles 98 – 112.

⁸⁹ Ministère de la Justice et des Libertés, *Statistiques des sections de la justice de la famille Année 2011*, (Septembre 2012) available at <http://adala.justice.gov.ma/production/statistiques/SJF/FR/30-10-12%20VR%20Finale%20Statistique%20Francais.pdf> .