

Memorandum

# Proposals for reforms to the Moroccan Family Code

November 2023

Specific Measures	Justifications	Solutions
<b>Objective One : Ensure that women have equal rights with men in all aspects of family life.</b>		
<p><b>1. Ensure equality between men and women in child custody and legal guardianship.</b></p>	<ul style="list-style-type: none"> <li>• The 2004 Family Code maintains discrimination against women in custody and legal guardianship of their children.</li> <li>• Even after divorce, fathers are the sole legal guardians of their children, controlling all decision-making and management of affairs relating to children, such as their education, property, and other administrative issues. This includes control over children’s bank accounts and for receiving insurance reimbursements for children’s medical expenses, even when the mother has paid. Mothers are denied decision-making, prevented from acting in their children’s best interests, and subjected to violence, coercive control and extortion by the father even after divorce.</li> <li>• Article 237 allows the father to designate a legal guardian other than the mother; in the event of the death of the husband this subjects the mother to designated guardian’s control over the management of her children’s property.</li> <li>• Mothers with physical custody of their children after divorce face obstacles to remarrying, as well as constraints on their mobility to travel outside of the country with their children or to relocate within Morocco.</li> </ul>	<p>Repeal provisions which deny women legal guardianship of minor children on an equal basis with men, including:</p> <ul style="list-style-type: none"> <li>• Amend article 231 to provide that both the father and mother exercise legal guardianship jointly over their minor children, including after divorce;</li> <li>• Repeal articles 236-239.</li> </ul> <p>Remove provisions that expose mothers to the risk of losing custody of their children in the event of remarriage or moving to another location, including by repealing articles 174-176, 178.</p>

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<p><b>2. Ensure equality between men and women in economic and property rights within the family</b></p>	<p>Women currently do not enjoy on an equal basis with men the family assets and bear the greater economic consequences of the breakdown of the marriage than men. Discriminatory marital property laws frequently leave women and their children destitute upon divorce or widowhood.</p> <p>Current Family Code provisions establish separate marital property as the rule, whereby each spouse retains ownership of assets acquired during marriage with no division or sharing of property upon dissolution of marriage. These provisions are detrimental to women, who are not compensated for contributions made to the family's assets and economic well-being during the marriage.</p> <p>The Article 49 option for spouses to conclude a written marital property contract setting out an alternative framework for how they will manage and share assets acquired during the marriage is extremely rare in practice. Ownership of titled property is by law deemed to be in the name of the person who registered it (usually the husband) even when both spouses contribute to its purchase.</p> <p>Reasons for a scarcity of such property contracts include: the absence of designation of the person(s) authorized to draw up such contracts, patriarchal and conservative attitudes among <i>adoul</i> responsible for drawing up marriage contracts, the lack of legal provisions to compel local authorities to notify future</p>	<p>Amend Family Code article 49 on marital property to ensure equal rights between men and women in the management and eventual distribution of property post-dissolution, including :</p> <ul style="list-style-type: none"> <li>• Explicitly offer couples the choice of one of several specific marital property regimes detailed in the law (separate property, community property, or a hybrid regime);</li> <li>• Make it legally mandatory for couples to explicitly determine at the time of marriage the manner by which they choose to manage and dispose of their property in one of the proposed legal regimes;</li> <li>• Provide couples with detailed marital property contracts in standard formats;</li> <li>• Explicitly designate the person(s) authorized to draw up property contracts, for example, a lawyer or notary;</li> <li>• Create procedures and oversight structure for ensuring that the competent authorities fulfill their legal obligations to notify future spouses about their rights and the different marital property regimes available as part of the marriage contract process;</li> <li>• Provide judges with clear and detailed guidance for assessing and valuing women's participation in the accumulation of wealth and property during marriage, specifically including non-financial contributions to marital assets include household and family care, lost economic opportunity, and tangible or intangible contributions to either spouse's career development and other economic activity.</li> </ul>

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	<p>spouses of this possibility, the lack of information provided to future couples of their rights, the omnipresence of families in the marriage process, and the absence of obligatory standard marriage contract forms.</p>	
<p><b>3. Ensure equality between men and women in access to divorce.</b></p>	<ul style="list-style-type: none"> <li>• The Family Code discriminates against women in access to divorce. Men retain their right to divorce unilaterally and without cause. In contrast, women must either pay compensation to their husbands to obtain a divorce, seek judicial divorce by proving one of six specified faults committed by the husband, or by alleging irreconcilable differences.</li> <li>• The existing panoply of different forms of divorce are often unclear, contradictory, and applied differently across jurisdictions. <i>Chiqaq</i> divorce cases are often held to the same standard of evidence as fault-based divorce. In contrast, cases are often decided as <i>chiqaq</i> when they would be more appropriate for a fault-based divorce, such as in domestic violence cases. In reality, fault-based divorces are extremely rare.</li> </ul>	<p>Amend the current Book 2 provisions relating to the dissolution of marriage, specifically articles 71 and 72, and articles 78 to 141, to provide that the dissolution of marriage occurs by the death of one of the spouses, annulment, or divorce in front of a court, and replace the current multiple forms of divorce with only three forms of divorce :</p> <ol style="list-style-type: none"> <li>1. By mutual consent between the spouses;</li> <li>2. At the request of either one of the spouses due to harm suffered, clearly defining harm as any form of sexual, physical, psychological or economic violence;</li> <li>3. At the request of either the husband or wife for irreconcilable differences, without any evidentiary requirements.</li> </ol> <p>Delete any reference in the Family Code referring to divorce “according to his or her respective conditions” and specify that the above three forms of divorce are available to men and women equally.</p> <p>Delete any reference in the Family Code to the notion of “fault” and replace it with “harm.”</p> <p>Clearly distinguish between and separate any eventual</p>

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		compensation for harm caused from the economic consequences of divorce such as child support, division of marital property, housing, etc.
<p><b>4. Abolish polygamy.</b></p>	<ul style="list-style-type: none"> <li>• The Family Code continues to allow men to marry more than one woman at a time.</li> <li>• Current laws with “exceptional” conditions for polygamous marriages, providing for judicial assessments of the “justification” for taking another wife and if the man has sufficient resources to support more than one family equally, have not worked in practice for nearly 20 years.</li> <li>• Official sources note that 20,000 polygamy authorization requests were registered between 2017 and 2021. In 2021, 39% of the more than 4,000 requests were granted.</li> <li>• Monogamy clauses in marriage contracts are extremely rare in practice.</li> <li>• Women whose husbands wish to take another wife are forced to either agree or seek divorce. The mere threat of polygamy provides a source of coercive control by husbands over their wives.</li> <li>• Polygamy is a form of discrimination against women since only men are allowed to take another spouse.</li> </ul>	<p>Repeal Family Code articles 40-46 allowing men to marry more than one woman at the same time.</p>

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<p><b>5. Abolish the marital guardian (wali).</b></p>	<ul style="list-style-type: none"> <li>Article 24, providing that marital guardianship (wilaya) is the woman’s right, which she exercises upon reaching majority according to her choice and interests, places women in a difficult position, confronted with diverse cultural and social factors that impose the presence of the guardian. In reality, the majority of marriages are still conducted with the matrimonial guardian.</li> <li>In practice, a good number of marriages are concluded by the guardian in the absence of both spouses, preventing them and particularly the wife, from freely exercising their rights, for example, to stipulate conditions in the marriage contract, such as a monogamy clause, or to enter into a marital property contract.</li> </ul>	<p>Delete article 13(3) requiring the mandatory presence of a matrimonial guardian, since child marriage should be abolished altogether.</p> <p>Repeal article 24.</p>
<p><b>Objective Two: Ensure equal rights to all children without discrimination of any kind</b></p>		
<p><b>6. Eliminate child marriage.</b></p>	<ul style="list-style-type: none"> <li>The number of child marriages remains high. Ministry of Justice figures show that in 2018, there were 32,104 petitions to marry a minor, or, according to the Presidency of the Public prosecution, between 7,5 % - 12% of all marriages.</li> <li>The authorization of child marriages has become the rule rather than the exception. Ministry of Justice figures indicate that 85% of petitions for authorization to marry a minor are granted. Current laws with “exceptional” conditions for child marriages have not worked in reality for nearly 20 years.</li> </ul>	<ul style="list-style-type: none"> <li>Repeal Family Code articles 20, 21 and 22 that allow for exceptions to Family Code article 19, which sets the age of marriage for men and women at 18.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Child marriage is a form of discrimination since 99% of child marriage involve girls under 18.</li> <li>• The United Nations Convention on the Rights of the Child defines a child as “any person under the age of 18.”</li> </ul>	
<p><b>7. Eliminate legal, social and economic discrimination against children born outside of marriage.</b></p>	<ul style="list-style-type: none"> <li>• The Family Code discriminates against children born outside of legal marriage, by recognizing only legitimate paternal filiation, by which children are attributed to a father when he is legally engaged or married to the mother at the time of conception. This deprives children born outside of legal marriage of a legal identity or any personal or financial rights from their biological fathers.</li> <li>• The Family Code provides for “legal expertise” to establish paternity, but only to prove or contest the parentage of a child conceived during a legal marriage.</li> </ul>	<p>Amend Chapter II: Of Paternity and Modes of its Proof (articles 150-162) to provide for procedures to establish paternity outside of legal marriage, including (a) acknowledgment and (b) legal actions for the purposes of establishing filiation, that ensure:</p> <ul style="list-style-type: none"> <li>• Full legal recognition of children born outside marriage, including with regard to their name and right of inheritance;</li> <li>• Children’s equal right to financial support from their biological fathers regardless of their parents’ marital status;</li> <li>• Determination of paternity based on DNA testing of biological fathers, regardless of the parents’ marital status, including court-ordered testing of biological fathers upon the request of the biological mother or child.</li> </ul> <p>Take all necessary steps to amend the Civil Status Code and other implementing regulations to be in conformity with eventual Family Code reforms, including to:</p> <ul style="list-style-type: none"> <li>• Amend existing procedures for registering children’s births and obtaining a Family Booklet to ensure equal legal treatment without any discrimination based on the parent’s marital status;</li> </ul>

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		<ul style="list-style-type: none"> <li>Eliminate from identity documents all information or data that could lead to discrimination against children born out of marriage.</li> </ul>
<p><b>8. Guarantee children’s rights to the child support necessary for an adequate standard of living and for their development.</b></p>	<ul style="list-style-type: none"> <li>Although the Family Code holds fathers technically responsible for financially maintaining children after divorce both paying the custodian child support and guaranteeing the children decent housing, these provisions have not worked in practice for nearly 20 years.</li> <li>Women encounter numerous problems during the assessment, notification and execution of judgments.</li> <li>Child support amounts awarded by the courts are generally quite low.</li> <li>Women face difficulties proving the father’s income and assets. In practice, the burden of proof of the father's financial situation is placed on the wife. This is not only difficult to prove, the amount of child support risks being disproportionate to the father's actual income. There is no system for garnishing of wages.</li> <li>In 2011, only 60% of child support cases received decisions, and only 60% of those were enforced. Women thus often bear the costs of raising children alone after divorce.</li> <li>The article 190 one-month time limit in child support cases is difficult to apply and rarely enforced in reality.</li> </ul>	<p>Improve the procedures for granting and executing financial allowances for child support, including :</p> <ul style="list-style-type: none"> <li>Modify article 168 by stipulating that the guardian and her children have the right to either remain in the family home, or be provided by the father accommodation of the same standard as the family home, or receive from the father a sum to pay the rental costs of accommodation of the same standard as the family home;</li> <li>Strengthen article 190 provisions on assessing child support by establishing a reference table with a scale to help family judges determine child support in the event of parental separation, based on specific criteria such as a percentage of the father’s resources, the number of children, and the children’s needs;</li> <li>Modify article 190 to eliminate the burden of proof placed on the mother to prove the father’s financial situation, and replace it with provisions requiring the father to submit proof of all income and assets, under judicial supervision;</li> <li>Strengthen article 191 provisions for execution of payment of child support to be obtained quickly and efficiently from a third party (employer, bank, property seizure and sale, etc.), making all necessary amendments to other related laws.</li> </ul>



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<b>Objective Three: Ensure effective measures to prevent and protect women from all forms of violence</b>		
<p><b>9. Implement adequate measures to ensure comprehensive and effective prevention and protection of women against domestic and intimate partner violence.</b></p>	<ul style="list-style-type: none"> <li>• Violence against women is widespread in Morocco. 57% of women ages 15 to 74 reported experiencing at least one act of violence in the year preceding a 2019 national survey.</li> <li>• Violence against women was most prevalent in the domestic context (52% overall, 46% committed by the husband or other intimate partner or ex-partner).</li> <li>• Few VAW cases reach the law enforcement or criminal justice systems. Only 10.5% of victims filed a complaint with police, less than 8% report spousal violence. Only 4.6% of women who sought help at the VAW units at courts of first instance or appeal received a court hearing.</li> <li>• The 2018 Law 103-13 on Violence against women does not provide adequate protection for women victims of violence or prevent them from being at risk of future violence. The limited protective measures are only available in criminal cases where the victim has filed a criminal complaint, and there is a criminal prosecution or conviction.</li> <li>• Frequently, women who are victims of violence only want to stop the violence, without involving law enforcement or the criminal justice system. However, current Penal Code and Penal Procedure Code procedures are limited criminal (not civil) measures; rather than being available “immediately,” they are only available if and once a criminal prosecution has been launched or the</li> </ul>	<p>Grant the Family judge the authority to issue protection orders benefiting women victims of violence. These orders should be:</p> <ul style="list-style-type: none"> <li>• distinct and autonomous civil (non-criminal) measures;</li> <li>• issued immediately upon the demand of the victim in an emergency hearing ;</li> <li>• without the obligation to file a criminal complaint;</li> <li>• based on a civil (not criminal) standard of proof of the preponderance of the evidence (more likely than not) that there is a reasonable apprehension of future abuse;</li> <li>• applicable in cases of violence committed by the husband or any other intimate partner or ex-partner or domestic relationship;</li> <li>• temporary and renewable.</li> </ul> <p>These orders should include provisions for the duration of the order :</p> <ul style="list-style-type: none"> <li>• guaranteeing child support and housing ;</li> <li>• establishing child custody and representation;</li> <li>• providing for the right of the victim and her children to remain in the family home;</li> <li>• removing the violent offender from the home;</li> <li>• forbidding the violent offender from contacting the victim.</li> </ul> <p>Amend article 53 of the Family Code to specific that in cases of domestic violence, when the victim returns to</p>

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	<p>offender has been convicted. None are mandatory and are left to the discretion of the prosecutor or judge, who report that their optional nature and lack of clarity make them difficult to apply. In addition to requiring the victim to file a criminal complaint, these measures come too late in the process – only after a prosecution has been launched or a conviction handed down. Most cases never get that far, leaving the majority of victims unprotected.</p> <ul style="list-style-type: none"> <li>• Access to safe and stable housing is a significant problem for women victims of violence and their children, who often find themselves forced to flee their work and school, without shelter, or forced to return to the violent situation.</li> </ul>	<p>the marital home the violent offender should be removed.</p>