

# Promoting Women's Human Rights in Morocco, Algeria and Tunisia through Strategic Use of the Marriage Contract

Researching and Documenting the  
Use of Marriage Contracts among  
Local Authorities



Partners for Justice

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Founded in 1978, Global Rights is a human rights capacity-building organization working in partnership with local activists in Africa, Asia, and Latin America to promote and protect the rights of marginalized populations. Through broad-based technical assistance and training, we strengthen partners to document and expose human rights abuses, conduct community outreach and mobilization, advocate for legal and policy reform, and provide legal and paralegal services. For more information, please consult our website at [www.globalrights.org](http://www.globalrights.org)

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# **Promoting Women's Human Rights in Morocco, Algeria and Tunisia through Strategic Use of the Marriage Contract**

## **Researching and Documenting the Use of Marriage Contracts among Local Authorities**

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### **INTRODUCTION**

Women in the Maghreb continue to suffer from inequality and discrimination in both law and in practice. Under the Family and Personal Status Codes, women have limited access to divorce, polygamy is still legal in Morocco and Algeria, and women have fewer rights than their husbands when it comes to child custody and guardianship. Women are not guaranteed access to adequate housing during marriage or upon its dissolution, alimony is not awarded upon divorce, and women's unpaid work in the household is rarely taken into account when dividing up marital property. In addition, social and cultural norms can limit or deny women's rights to freedom of movement, to continue studies, to work outside of the home, to control their own sexual and reproductive health, and to freedom from all forms of violence. Even laws that are positive on their face are often not applied by courts and those officials charged with enforcing them.

Since 2007, the Global Rights Maghreb office has collaborated with local NGOs in Morocco, Algeria and Tunisia to implement a civil society initiative to promote women's human and legal rights through strategic use of the marriage contract. This multi-year project empowers individual women at the grassroots level to stipulate rights-protective clauses into their marriage contracts, and to promote the use and enforcement of detailed marriage contracts by legal professionals and local authorities responsible for drawing up such contracts. The multifaceted program includes consultations and legal rights education with women across the three countries, participatory legal research, and awareness-raising and advocacy with local authorities and legal professionals.

During the first phase of this initiative,<sup>1</sup> Global Rights and its local partners worked at the grassroots level to educate and mobilize grassroots-level women around using the marriage contract as a tool for promoting their rights. Activities included a series of Community Consultations (an informal type of focus group discussion) with women from diverse regions across Morocco, Algeria and Tunisia. During these Consultations, women identified numerous personal, family, and social obstacles to negotiating rights-protective clauses into the marriage contract.<sup>2</sup>

In addition, the Consultations revealed substantial administrative obstacles to women stipulating conditions into their marriage contract or drawing up a separate property agreement. Participants felt that, rather than facilitating the process, both the legal procedures and the attitudes of local authorities responsible for concluding marriage contracts actually discourage women from taking advantage of these rights.

As a result, Global Rights and its local partners are currently focusing on administrative and procedural obstacles to women in the Maghreb taking advantage of this opportunity.

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<sup>1</sup> Conducted from 2007 – 2009.

<sup>2</sup> *Conditions, not Conflict: Promoting Women's Rights in the Maghreb through Strategic Use of the Marriage Contract* (Global Rights, 2008).

Global Rights and eleven partner NGOs and attorneys in Morocco<sup>3</sup>, Algeria,<sup>4</sup> and Tunisia<sup>5</sup> from May – December 2010<sup>6</sup> undertook action research to document how marriage contracts are currently used and to inform recommendations for future work. This report presents those findings.

## **I. CURRENT MARRIAGE CONTRACT LAWS AND PRACTICES**

In Morocco, Algeria, and Tunisia – the countries targeted in this initiative – marriage, divorce, and property matters impacting women’s rights are governed by family or personal status codes.<sup>7</sup> In contrast to legislation governing contracts, torts, criminal matters, and commerce, which are based on secular, European-style civil laws, family and personal status codes in the three countries are based on Islamic precepts. While this religious exceptionalism in family matters often prevents women from exercising their basic human rights, it also presents a unique opportunity to use common marriage contracts – which are negotiated agreements between two consenting parties that create legally enforceable obligations – as a tool to promote women’s rights.

### **A. BACKGROUND ON MARRIAGE CONTRACT CLAUSES**

Under Islamic doctrine, marriage is a civil contract between spouses, rather than a sacrament, as in some other religious traditions. The concept of marriage as a contract presupposes a negotiated agreement between two consenting parties that creates legally enforceable obligations. Spouses are free to define their respective rights and duties through detailed clauses in the marriage contract. Likewise, non-respect of such clauses is considered a breach of contract, for which the wronged party may seek redress.

The laws in the three countries of the Maghreb discussed here explicitly reaffirm the contractual nature of marriage.<sup>8</sup> The Moroccan and Algerian Family Codes, even prior to the respective reforms of 2004 and 2005,<sup>9</sup> and the 1956 Tunisian Personal Status Code, provide that spouses may stipulate negotiated clauses into their marriage contract.<sup>10</sup> In addition, the laws give specific examples of conditions protective of women’s rights that may be included in the marriage contract, including personal rights such as a monogamy clause (Morocco and Algeria), *isma* - the delegation to the wife of the husband’s right to repudiation (Morocco), and the wife’s right to work (Algeria). These provisions allow future spouses to stipulate any

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<sup>3</sup> 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 (Tétouan), Association des jeunes avocats (Khemisset), and Association Tafoukt Souss pour le développement de la femme (Agadir).

<sup>4</sup> Association Culturelle Amusnaw (Tizi Ouzou), Association Sociale Espoir (Tlemcen), and Association El Hayat pour les Sages Femmes (Skikda).

<sup>5</sup> Saida Garrach, Najoua Ben Saad, and Lamia Tlili.

<sup>6</sup> The Tunisia action research was completed in April 2011 due to events there during the time period of this project.

<sup>7</sup> In Morocco, the Family Code, or *Moudawana*, as reformed in February 2004; in Algeria, the Family Code of 1984, as modified in February 2005; and, in Tunisia, the Personal Status Code of 1956, as amended in 1992.

<sup>8</sup> Algerian Family Code, Articles 4, 7, 9, 10, 13, 19, 53(9); Moroccan Family Code, Articles 4, 10(1), 11, 12, 57(3), 63; Tunisian Personal Status Code, Articles 3, 11, 21.

<sup>9</sup> 1993 Moroccan Family Code, Articles 30 and 31; 1984 Algerian Family Code Article 19.

<sup>10</sup> Tunisian Personal Status Code, Article 11; Algerian Family Code, Article 19; Moroccan Family Code, Articles 47, 48.

mutually agreed-upon clauses into the marriage contract, provided they don't contradict the inherent nature of marriage.<sup>11</sup> Violation of a clause is considered breach of contract for which the wronged spouse may seek a remedy, including compensation and divorce.<sup>12</sup>

In addition, laws in all three countries provide that spouses may draw up a separate property agreement on their financial rights, including the management, ownership and division of assets acquired during marriage.<sup>13</sup>

Persistent inequality and discrimination against women could be addressed, and power relations between spouses rebalanced, by stipulating rights protective clauses into detailed marriage contracts. Such clauses could reinforce and reiterate rights specifically protected in current legislation. Protective clauses could also clarify areas of the law that are unclear or poorly written and help remedy existing discriminatory provisions.

## **i. PROCEDURES FOR DRAWING UP THE MARRIAGE CONTRACT**

The Family, Personal Status, and Civil Status Codes in the Maghreb set out the formalities necessary to get married. Procedures in the three countries differ significantly in terms of the persons charged with drafting and registering marriage contracts, the various steps in the administrative process, and the places where marriage contracts are concluded. The presence of two witnesses is legally required in all three countries. The *wali* – or marital tutor, usually a male relative, who signs the marriage contract on behalf of the bride – is optional in Morocco, does not exist in Tunisia, and is required in Algeria.<sup>14</sup>

In order to get married in Morocco, future spouses must first create a file and seek judicial authorization at the Family Court Clerk's office, where the marriage contract will eventually be certified by the judge and registered.<sup>15</sup> The actual marriage contract is drawn up by two *adoul* (religious notaries) acting in their capacity as public officials and not as representatives of a religious authority. They are required to have a university degree in law or *Sharia* and pass a competitive examination. Marriage contracts are usually written up during the wedding ceremony at one of the spouse's homes. The contract itself is prepared from scratch – not by completing a pre-printed form – and is usually brief, limited to basic personal data on the spouses and administrative information.<sup>16</sup>

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<sup>11</sup> Moroccan Family Code, Articles 47, 48; Algerian Family Code, Articles 19, 32; Tunisian Personal Status Code, Article 21.

<sup>12</sup> Moroccan Family Code, Articles 98, 99; Algerian Family Code, Article 52; Tunisian Personal Status Code, Article 11.

<sup>13</sup> Article 49 of the Moroccan Family Code and Article 37 of the Algerian Family Code allow spouses to conclude a separate marital property agreement, and Tunisian Law 98-91 of 9/11/1998 introduced an optional community property regime for married couples. Under traditional Islamic law, and in all national legislations in the Maghreb, the general rule is that of separate property, which deprives women from sharing her husband's income and any property acquired by him, or registered under his name, even when she contributed to development of family assets through her work in the home.

<sup>14</sup> Moroccan Family Code Articles 24, 25; Algerian Family Code Articles 9 bis, 11. This statement applies only when brides are of legal age to marry, since different marriage guardianship provisions apply to minors.

<sup>15</sup> Article 65 lists the paperwork to be filed.

<sup>16</sup> The list of items to be included in the marriage contract is defined in Article 67, which includes "any conditions agreed upon by both parties."

In Algeria marriage contracts may be drawn up either by a Civil Status Officer at the municipality<sup>17</sup> or by a private notary.<sup>18</sup> Contracts prepared by notaries are not considered official and do not produce any legal effects until registered at the municipality. The amended Family Code states that marriage contract registration procedures are governed by the Civil Status Code,<sup>19</sup> and designates the parties competent to conclude marriage contracts as either a legally designated civil servant or a notary.<sup>20</sup> However, the 1970 Civil Status Code<sup>21</sup> refers not to the notary but to the judge, and provides that marriage contracts are drawn up either by judges or by Civil Status Officers. While the Codes are thus contradictory, in reality the notary has replaced the judge in the conclusion of marriage contracts, and the latter's role is now limited to authorizing the marriage of minors and polygamous marriages.

In addition, Civil Status Officers are still limited to using the marriage contract models originally set out in the 1970 Civil Status Code, which do not allow them to add any negotiated clauses into the contract.<sup>22</sup> In contrast, notaries are not restricted to these pre-established forms and may elaborate a marriage contract based on the particular couple's wishes.

In Tunisia marriage contracts may be drawn up either by a Civil Status Officer at the municipality (designated from among elected municipal councillors) or by two *adoul*<sup>23</sup> acting in their capacity as public officials and not as representatives of a religious authority. *Adoul* are required to have a law degree and pass a competitive examination.

## **ii. OBLIGATIONS OF PERSONS OFFICIATING MARRIAGES**

Moroccan Family Code Article 49, paragraph 3 requires the *adoul* to inform the two parties of the "previous provisions" at the time of marriage. It is unclear whether «previous provisions» refers only to the two preceding paragraphs of article 49 on the separate property agreement, or to articles 47 and 48 as well, which allow stipulated conditions in the marriage contract. In any event, there is no legal mechanism to ensure that *adoul* have in fact notified the two spouses of these options. It suffices that *adoul* note in the marriage contract – which

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<sup>17</sup> Civil Status Code Article 1 designates the Municipal Assembly Presidents and Vice Presidents, or the heads of diplomatic and consular offices abroad, as Civil Status Officers. However, Article 2 of the Code allows the Municipal Assembly President to delegate his Civil Status Officer functions to a municipal civil servant or other permanent civil servant over 21 years old.

<sup>18</sup> He/she must have a university degree in law and then complete an internship at a notary's office.

<sup>19</sup> Article 21.

<sup>20</sup> Article 18.

<sup>21</sup> Article 71 provides that "The Civil Status Officer or judge competent to draw up a marriage contract for future spouses is either the one located where both or one of the future spouses has their domicile or has lived continuously for at least a month at the time of marriage." Article 72 states that "When marriage takes place in front of a Civil Status Officer, he registers the contract immediately at the time of marriage and gives the spouses a Family Record Book as proof of marriage. When marriage takes place in front of a judge, he draws up the marriage contract and gives the parties a certificate. A marriage certificate is sent by the judge to the Civil Status Officer within three days; the latter registers the contract in the Civil Status Records within five days of its reception and gives the spouses a Family Record Book; mention of the marriage is registered in the margins of the birth certificates of each of the spouses."

<sup>22</sup> "I cannot add anything into the marriage contract without a court order or authorization from the public prosecutor," replied a Civil Status Officer in Algeria when asked what types of clauses he may add into the marriage contract.

<sup>23</sup> Tunisian Civil Status Code, Article 31 provides that "The marriage contract is concluded in Tunisia before two notaries (author's note: by notaries the law refers to the *adoul*) or before the Civil Status Officer and in the presence of two honourable witnesses. The marriage of Tunisians abroad is celebrated before Tunisian diplomatic or consular officers, or in conformity with local law."

they write themselves – that the two spouses have been informed to be discharged of all responsibility.

Public officials charged with drawing up marriage contracts in Tunisia are required to inform future spouses of their right to choose the community property regime, and the law provides that “Any public officer who does not comply with the provisions of paragraphs 1 and 2 of article 7 and paragraph 2 of article 8 will be fined 100 dinars,”<sup>24</sup> “public officer” referring to either the Civil Status Officer or the *adoul*. In practice, Civil Status Officers must prepare the paperwork specifying the chosen marital property regime well in advance of the actual marriage day, which in itself guarantees that spouses have been notified of the different marital property options. On the other hand, *adoul* may merely note in the marriage contract – drawn up at the actual wedding ceremony – that the two spouses have been advised of the community property possibility.

In contrast, Tunisian law does not oblige public officers to notify the two parties of Personal Status Code article 11, which allows them to stipulate clauses into the actual marriage contract.

Nowhere does Algerian law require Civil Status Officers or notaries to inform the two spouses of their legal rights to stipulate additional clauses in their marriage contract or draw up a separate property agreement.

## **B. MARRIAGE CONTRACTS IN PRACTICE**

Despite favourable legal frameworks affirming the contractual principle of marriage and providing for the inclusion of rights-protective clauses in the contract, in practice such conditions are rarely stipulated. The vast majority of marriage contracts in the Maghreb consist of a single page with the names and signatures of the parties and their witnesses, the amount of the dowry, and the date of the marriage, with no additional clauses.

Out of 289,821 marriages in Morocco in 2006, in only 424 instances did couples draw up a separate marital property contract, and in 2007 there were just 900 marital property contracts for 316,411 marriages.<sup>25</sup> A random survey of 34 marriage contracts filed at the Khemisset Family Court between August – October 2007 found that only one had an additional clause stipulated into it, in which the husband agreed not to be absent from the conjugal home for more than three months at a time. None of the contracts had a separate property agreement attached.<sup>26</sup> The Moroccan government has acknowledged that such property agreements are rare, attributing this to romantic notions held by couples and reluctance to think about divorce at the time of marriage.<sup>27</sup>

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<sup>24</sup> Law 98-91 on the Community Property Regime, Articles 7 and 9.

<sup>25</sup> Official statistics from the Ministry of Justice, last retrieved September 6, 2010 from <http://adala.justice.gov.ma/production/statistiques/famille/FR/Actes%20de%20marriage%20et%20actes%20de%20divorce.pdf>

<sup>26</sup> The survey was conducted by the Association des jeunes avocats de Khemisset in 2008.

<sup>27</sup> In response to a question posed to the Moroccan government delegation by the Committee on the Elimination of Discrimination against Women during its consideration of Morocco’s 3<sup>rd</sup> and 4<sup>th</sup> combined periodic reports, at the Committee’s 40th Session, held from January 14 – February 1, 2008, [CEDAW/C/SR.824](#) [CEDAW/C/SR.825](#).



Likewise, discussions with women at the grassroots level about their personal experiences with the marriage contract revealed the rarity of stipulated clauses. From October 2007 – March 2008, 15 local partner NGOs in Morocco, Algeria and Tunisia held 119 community consultations on the marriage contract in 70 different and diverse large, medium, and small cities, peri-urban areas, and rural villages across the three countries with 1474 women. Among the 466 participants in Morocco, 3 did not have a written marriage contract, 4 had stipulated conditions in writing in their contracts and none had concluded a separate property agreement. Among the 741 participants in Algeria, 14 did not have a written contract, 1 had stipulated written conditions, and 6 had concluded a separate property agreement. In Tunisia, among the 215 participants (excluding the single mothers), all of the participants had a written marriage contract, 2 had stipulated written conditions in their contracts, and 51 had concluded a separate community property agreement.<sup>28</sup>

## II. RESEARCH METHODOLOGY AND LOGISTICS

As the first step in this phase of the project, the action research on marriage contract records looks at the content and frequency of stipulated clauses in marriage contracts and separate property agreements, through review of selected marriage registers. It then examines local public authorities' and other legal professionals' knowledge of, opinions on and experiences in practice with the marriage contract.

In addition to the substantive goal of obtaining the above-described information, the action research also had several human rights capacity building and advocacy objectives. It was designed to enhance local NGOs alliances and collaboration with public authorities and legal professionals. It also aimed to increase these officials' commitment to women's rights and integrate them into efforts to promote such rights through strategic use of the marriage contract.

### A. ACTION RESEARCH FRAMEWORK

Global Rights collaborated with eleven partner NGOs and attorneys in Morocco<sup>29</sup>, Algeria<sup>30</sup> and Tunisia<sup>31</sup> from May – December 2010<sup>32</sup> to carry out this action research. Through focused individual interviews, survey questionnaires, and roundtables, we examined the knowledge, opinions, experiences, and practices with marriage contract procedures among lawyers, notaries, judges, civil status officers, and *adoul*. Teams also conducted archival research at local court and city hall registries to collect qualitative and quantitative data on marriage contracts, specifically gathering information on how women currently use or do not use such contracts as a tool to promote their personal and financial rights in marriage.

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<sup>28</sup> *Conditions, not Conflict: Promoting Women's Rights in the Maghreb through Strategic Use of the Marriage Contract* (Global Rights, 2008).

<sup>29</sup> 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 (Tétouan), Association des jeunes avocats (Khemisset), and Association Tafoukt Souss pour le développement de la femme (Agadir).

<sup>30</sup> Association Culturelle Amusnaw (Tizi Ouzou), Association Sociale Espoir (Tlemcen), and Association El Hayat pour les Sages Femmes (Skikda).

<sup>31</sup> Saida Garrach, Najoua Ben Saad, and Lamia Tlili.

<sup>32</sup> The Tunisia action research was completed in April 2011 due to events there during the time period of this project.

Global Rights designed, wrote and provided to partners a set of guidelines for the action research, including an interview protocol and a framework for data collection from public records and private files.<sup>33</sup>

The data collected (Appendix 1) presents qualitative and quantitative information on the marriage contracts reviewed by local NGO and lawyer partners in their communities. To the extent possible, research teams accessed files at relevant institutions such as local court and city hall records' offices. When unable to access public registries, they asked individual *adoul*, lawyers and notaries to share any files and information they might have. NGOs started with the marriage contract records for the most recent year available, and worked backwards for as many previous years as feasible.<sup>34</sup>

In December 2010, we held a regional workshop uniting fifteen participants from Morocco, Algeria and Tunisia, including our local partner NGOs, lawyers, a municipal council representative from Tunisia, a civil status officer from Algeria and an *adoul* from Morocco. During the workshop, partners presented and collectively analyzed the results of their action-research in each of the three countries. They held guided discussions on marriage contract procedures, particularly focusing on the officials responsible, different steps of the process and places where these take place, and the timing and duration of the process.

Workshop participants then elaborated sketches dramatizing the typical marriage process in each of the three countries. These were quite comical, and illustrated many aspects of current marriage procedures and practices that prevent women from exercising their rights in the marriage contract. These included the omnipresence of families, conservative attitudes among local authorities, the fact that the wedding ceremony often takes place at home, and high contract registration fees.

By identifying both challenges to and opportunities for using the marriage contract to promote women's rights, we hope that the results of this action research will serve as a useful tool for future reform to laws and procedures governing marriage in the Maghreb.

## **B. CONDUCTING THE ACTION RESEARCH**

In order to conduct this action research in their respective communities, local NGOs reached out to diverse local and national actors for assistance accessing marriage contract records and participation in interviews. Several NGOs adapted our guidelines to develop their own written questionnaires and interview protocols, which they shared with the other partners.

In Morocco, the five local NGOs contacted and mobilized support from various public and private actors. These included First Instance and Family Affairs Courts Presidents and Vice Presidents, other local judges and magistrates, the Justice Sector Employees Union, Regional Councils of *Adoul* Chairs and Vice Presidents, the local Bar, lawyers' associations, court copyists and records offices clerks, and the central Ministry of Justice in Rabat. Research

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<sup>33</sup> These are available in Arabic and French at Global Rights.

<sup>34</sup> NGOs gathered data to the extent possible given their human resources, the logistical constraints, and the amount of public information they were able to access at local institutions. NGOs conducted action research in their communities where they are located and have access and contacts. Sites were not preselected as representative samples, although the NGOs are located in diverse urban and rural communities in different regions of each country. The results are as thorough as possible given the circumstances, but are not scientific or statistically reflective of national realities.

teams comprised of NGO members accessed and studied marriage contract files at the First Instance Court copying divisions and records offices, as well as at local *adoul* offices.

In Algeria, the three local NGOs engaged with the magistrates' union, local Bar Associations, lawyers' union, mayors, *Wilaya*<sup>35</sup> staff, notaries' union, and civil status officers. They consulted marriage contracts at notaries' offices, at the Wilaya archives, civil status office registries, and in the case of the Tlemcen *Wilaya*, in the on-line marriage contract database.

Action research in Tunisia was completed by a team of three partner lawyers, who consulted marriage records at both civil status and *adoul* offices, and interviewed judges, lawyers, civil status officers and *adoul*.

In order to gain access to official marriage registries and obtain interviews with relevant public authorities and private legal professionals, NGOs in all three countries drew on their existing personal acquaintances and connections. They also made substantial efforts to reach out to new contacts through intermediaries, numerous telephone calls, in-person meetings, and written requests for assistance.<sup>36</sup> Most NGOs had to apply for official authorizations, either from local elected officials or First Instance Court Presidents, to be able to meet with court personnel and to consult marriage contract records.

One NGO in Morocco had to request authorization from the central Ministry of Justice in Rabat to consult records at the local First Instance Court, a process which took two months.<sup>37</sup>

Contacts were made with the Ministry of Justice to obtain authorization to access records. Similarly, we held a meeting with the Division Chief in charge of Judicial Aid, Legal and Judicial Professions at the Ministry of Justice in Rabat. Once presented with the general framework of the research, the official remarked on the significance of the study and noted the value of such research which had never before been carried out, adding that the study would certainly prove important. He also explained the magnitude of responsibility attendant upon accessing the records office and becoming acquainted with the contents of the records. He noted that these records constituted the last resort for a woman in event of loss of her marriage contract and the securing of a new copy needed to preserve the rights of women against any loss. He insisted on the weighty responsibility devolving to anyone working with the records when it comes to preserving their integrity.<sup>38</sup>

## C. OVERCOMING OBSTACLES AND CHALLENGES

NGOs in Morocco described many administrative and logistical challenges to conducting this action research. The rigid and hierarchical government bureaucracy was a significant constraint. Some judges refused to meet with NGOs or grant interviews, and research teams also had difficulties accessing marriage contract records without official authorization. Court

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<sup>35</sup> An administrative division of a country usually translated as "province."

<sup>36</sup> During this initial phase, NGOs had to present their association and this project, and convince the different respondents of their personal credibility and the importance of the research in order to obtain assistance and authorizations.

<sup>37</sup> The total time scheduled for the action research was four months, so obtaining authorizations took a substantial portion of that time.

<sup>38</sup> A report from Morocco.

personnel could not provide NGOs with any official data on marriage contracts, saying that they do not keep copies of local statistics they send to the Ministry of Justice.

The overwhelming majority of marriage contracts were transcribed and registered in hand-written ledgers.<sup>39</sup> Research teams spent a substantial amount of time working in local court records offices, painstakingly reviewing stacks, file cabinets and shelves of marriage contract files. Registers were frequently not organized chronologically, with some containing marriage contracts from three different years. In other instances, NGOs could not locate the records for an entire given year. One research team even repaired the papers and put the files in order!

Many of the marriage contracts were written in illegible handwriting. As a result, deciphering them was demanding and time consuming, and they were frequently impossible to read.

Space to consult marriage contract registers also posed a challenge. In some instances sympathetic court personnel offered their own offices to the NGOs, and in another the research team sat on the floor for lack of chairs. Records offices were usually quite small, and noise from general court business was at times distracting. The summer heat was so severe that one team brought a fan along with them. Taxi strikes made it difficult for one NGO to travel to the remotely located court in their city.

The timing of the action research from mid-June to the end of September was also a challenge for NGOs in Morocco. These months coincided with both summer vacations and the holy month of Ramadan, making it difficult to schedule meetings. Since summer is peak marriage season, *adoul* had particularly busy calendars. Court personnel also went on strike during this period.

At times we arrived at the court to discover that no one was there to open the records office for us, so we turned around and went home. Or the person in charge did not come on time and we would wait for hours for someone to arrive and open the office for us. Once the person went away on an errand, locking the door, and left the research team stuck in the archives room for hours until he returned.<sup>40</sup>

Oftentimes respondents did not show up at appointments. Family Courts are frequently overcrowded and understaffed, and the personnel are under a lot of pressure, which made it difficult to meet with people there. The NGOs who distributed written questionnaires spent substantial time following up with respondents to get them to complete and return the questionnaire, and ended up conducting individual interviews instead.

Many NGOs also described a commonly-held opinion among potential respondents that there was no need for the research, because the law already regulates marriage and protects women's rights. Some interviewees expressed their view that "this issue is a luxury that does not deserve any attention."

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<sup>39</sup> There is a complete lack of computerized systems to record marriage contracts, with two notable exceptions being a couple of marriage contracts saved on a computer in an *adoul*'s office in Morocco, and the Tlemcen *Wilaya* on-line marriage register records. This information was computerized for national security reasons, not for concerns about women's rights.

<sup>40</sup> A report from Morocco.

Given the need to contact and obtain authorizations from relevant officials, as well as the other challenges described above, three and a half months was an insufficient amount of time to conduct the action research.

In Algeria, NGOs likewise noted how obtaining administrative authorizations for such research can take months, which made it difficult to impossible to consult actual marriage registers in a thorough and systematic way. They also described the lack of statistics at local courts on separate property agreements, judges' busy schedules and limited availability, the illegible handwriting in marriage contract records, and the need to conduct individual interviews because of respondents' frequent refusals to complete written questionnaires.

Research in Tunisia was impacted by the events leading up to and following the January 2011 Revolution. Prior to that, local authorities had declined to participate in the study without official authorization. Civil servants and lawyers were frequently on strike during this entire period, and the instability, lack of security, and huge number of issues to grapple with following the Revolution limited the extent to which partner lawyers could carry out archival research or obtain interviews with respondents.

The research charts based on marriage contract records can be found in Appendix 1.

### **III. OBSERVATIONS BASED ON MARRIAGE CONTRACT RECORDS**

Review and analysis of marriage contract records suggest certain trends in both the frequency and content of stipulated clauses.

#### **MOROCCO**

In Morocco, the percentage of marriage contracts with stipulated conditions is extremely small. Out of 75,173 marriage contracts reviewed, only 822 - or 1.09% - included such additional clauses. While not claiming to be exhaustive or scientifically precise, the data collected in this action research suggest a possible albeit slight trend towards stipulating conditions. Comparative percentages by year in the contracts studied increased from 0.7% (2008) and 0.77% (2007) to 1.6% in 2009 and 1.3% in the part of 2010 covered here.

The most recurring clauses address the wife's right to work (314 instances), place of residence (178 instances), a monogamy clause preventing the husband from taking another wife (87 instances), care of children from a previous marriage (85 instances), the wife's right to pursue studies (80 instances), and the wife's right to visit and care of her family (33 instances).

Many frequently stipulated clauses concern fundamental rights already protected in the Constitution.<sup>41</sup> These include equal rights to education and work (Article 13), and freedom of movement (Article 9). In nine instances, women specifically stipulated their right to freely dispose of their income, even though separate marital property has always been the legal norm.<sup>42</sup>

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<sup>41</sup> While a new Constitution was promulgated by a July 2011 referendum, this report refers to the 1996 Constitution in effect when the study was carried out.

<sup>42</sup> Family Code Article 49: "Each of the two spouses has an estate separate from the other."

Some women apparently felt it necessary to reiterate in their marriage contract rights that are already guaranteed, at least in writing, by the national Constitution and legislation. One wonders if this is because women are unaware of these existing legal protections, or because they are skeptical about their application in reality.

While spouses can stipulate any conditions related to personal and financial relations they want into their marriage contract,<sup>43</sup> the law specifically mentions two possibilities – a monogamy clause<sup>44</sup> and an *isma* clause in which the husband delegates his right of divorce to his wife so that she may initiate divorce herself.<sup>45</sup> While monogamy clauses appeared to a minor extent in the marriage contracts reviewed, only thirteen contained an *isma* clause that would increase women's otherwise limited access to divorce.

In addition to these recurring conditions, the marriage contracts studied contained diverse, unique stipulations on a host of other topics. These reveal how couples in Morocco are grappling with some complex social issues, transformations that are not yet adequately reflected in the law. Although similar themes reappear, there does not appear to be standard language, and different formulations are used in individual contracts.

For example, a number of clauses addressed care of children from a previous marriage. Most stipulated that the spouse's prior children would live with the couple.<sup>46</sup> Another major concern was where the couple would reside. While in 83 instances the contract specified that the couple would live in an independent and separate marital home, in 58 instances it stipulated that they would stay with the husband's parents. One notes the tension between the shift towards more autonomous nuclear families and the usual practice of living with the husband's family, to the extent that some spouses even felt that the traditional way needed to be spelled out in the marriage contract.

The majority of clauses on place of residence indicated the wife's preference to live in an urban, not rural, area, or to remain in her home town. Migration overseas was also a concern, as 21 contracts contained a clause stipulating the wife's right to move abroad with her husband, presumably to avoid being left behind in Morocco. Finally, in 8 marriage contracts the husband committed to "refrain from being violent with his wife" or to "treat her graciously."

A good number of conditions created third party beneficiaries of the contract, such as a spouse's dependents. For example, some clauses specified that the husband or wife would provide care or financial support to their own (or the other spouse's) parents or children.

It is interesting – and unexpected from the researchers' perspective – to note the number of marriage contract clauses that were stipulated by husbands, rather than by wives. This raises the question of husbands' motivations. They could be protecting what they perceive as their own potentially threatened rights or could be preventing women from exercising their rights.

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<sup>43</sup> Family Code Article 47: "All conditions are binding except for those contrary to the terms and objectives of marriage and to compulsory legal rules; such conditions are void while the contract remains valid."

<sup>44</sup> Family Code Article 40: "(Polygamy) ... is also forbidden when the wife stipulates in the marriage contract that her husband will not take another wife."

<sup>45</sup> Family Code Article 89: "If the husband has assigned his right of repudiation to his wife, she can exercise this right by petitioning the court according to the provisions of preceding Articles 79 and 80."

<sup>46</sup> These clauses concerned children born to either the husband or the wife during a previous marriage. However, in several instances a spouse specified that such children would not live with the couple.

Most frequently, husbands stipulated that the couple would live with his parents, or that his children from a previous marriage would live with the couple.

However, other less frequent clauses stipulated by husbands are of dubious legal validity. For example, in 18 contracts the wife renounced her right to work outside the home, and in one she agreed to abandon her studies. Additional examples included the wife renouncing in advance the financial support to which she is legally entitled - *nafaqah* (maintenance expenses), *Iddah* (vacuity period expenses), *mut'ah* (compensation paid to a repudiated woman), or a share of marital property upon divorce. In other contracts, a husband reiterated his option to take a second wife, a wife promised not to ask her husband to divorce her, and another wife agreed not to leave the country without her husband's permission.

Finally, in several marriage contracts husbands stipulated clauses related to their wives' morality. These stated that she would "be faithful and loyal," "fear Allah and follow his commands," "perform the obligations and *Sunnah* (Prophetic Traditions) of Islam," or "not go out without his permission and only in the company of his mother."

The fact that marriage contract clauses were at times stipulated by husbands rather than by wives raises another question. Previous research illustrated how the most frequently cited reason<sup>47</sup> against negotiating marriage contract conditions is that it would demonstrate "bad faith" and a "lack of trust" between the spouses and their families.<sup>48</sup> Given the existence of clauses favoring husbands in the contracts reviewed here, one wonders how much of this opposition is actually to conditions per se, and how much is really against women in particular stipulating conditions protecting their rights.

The Moroccan Family Code provides that couples may draw up a separate marital property agreement to organize their financial relationship.<sup>49</sup> However, NGOs found only 36 instances, or .05%, where the couple had concluded such a separate property agreement.

Research teams had difficulties even finding records on separate property agreements in order to review or collect any data on them. In some instances the document was titled *Ishhad* (enlisting someone's testimony) instead of "Appended Contract" as per the Family Code. In two records offices, officials in charge did not know where such marital property agreements were kept. NGOs helped search for the agreements, and finally found them filed under "miscellaneous."

The few property agreements located in this research were very short, barely exceeding one page. Clauses were fairly general in scope and used abstract language. Many did not specify what type of property the spouses had owned prior to marriage, nor define spouses' joint property or respective shares. NGOs concluded that as written these agreements are unlikely to clarify or facilitate the resolution of any future property disputes between spouses.

Research teams also noted that these rare examples of property agreements were often concluded in cases of mixed marriages between Moroccans and foreigners. They surmised that this could be due to the fact that foreign legal systems clearly provide for such property contracts, and to address in advance any potential conflicts of laws issues that could arise.

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<sup>47</sup> Among future spouses, their families, local officials and legal professionals alike.

<sup>48</sup> See *Conditions, Not Conflict: Promoting Women's Human Rights in the Maghreb Through Strategic Use of the Marriage Contract* (Global Rights, 2008).

<sup>49</sup> Article 49.

NGOs also cautioned that couples sometimes conclude a type of civil contract called an *Omra* to organize their financial relations, and so the low numbers of separate property agreements found in marriage registries may not reflect the reality of spouses' actual practices. In addition, marriage registers in Marrakech suggest that some couples may be stipulating clauses related to their financial relationships into the actual marriage contract, rather than in a separate property agreement.

## ALGERIA

In Algeria, archival research similarly revealed the infrequency of stipulated clauses relative to the total number of marriages. However the overall percentage was higher, with 7.9% of marriage contracts studied containing additional conditions. The most frequent terms stipulated were the wife's right to continue working, to pursue studies, and to an independent and separate home, as well as a monogamy clause preventing the husband from taking a second wife. These cover rights either already explicitly protected under the Algerian Constitution, or options enumerated in national law.<sup>50</sup>

Similarly, it was difficult for NGOs in Algeria to access records on separate marital property agreements from local authorities, and the few examples described were obtained from private notaries.<sup>51</sup> Contracts concluded at the notaries were usually for the joint purchase of a home, or when the husband wished to take another wife. In other instances, couples concluding marriage contracts at the notary were immigrants living abroad, or couples in mixed marriages.

The 36 separate marriage agreements found in Algeria were likewise short, limited to two or three clauses on a single page. These usually reiterated each spouse's freedom to manage his or her own property and separate property ownership,<sup>52</sup> or established joint ownership of the marital home or family car, or registered the gift of an apartment by the husband to his wife. Research teams also noted the lack of standard terms and the diversity of formulations used in property agreements drawn up at notaries' offices.

## TUNISIA

In Tunisia, research focused exclusively on the extent to which couples take advantage of Law 98-91 on the Community Property Regime that gives them the choice of drawing up a separate property agreement. The rate of those opting for shared property in the marriages reviewed here does not even reach 50%, which local lawyers felt was low given the Tunisian context and the intent of the law to favor women. Data from the agreements studied suggested that young newlyweds who earn a salary but do not yet own any property most frequently choose this shared property regime. Research teams surmised that this is because such couples realize that they will not be able to acquire any property unless they combine and share their income.

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<sup>50</sup> The Algerian Constitution guarantees the right to work (Article 55) and to education (article 53), and the Family Code specifically mentions the wife's right to work and monogamy clause as conditions that may be stipulated into a contract (Article 19).

<sup>51</sup> Algerian Family Code Article 37 maintains the principle of separate marital property but gives spouses the option of drawing up a separate joint marital property agreement.

<sup>52</sup> This is the legal norm, as provided for by Family Code Article 37.



#### IV. OBSERVATIONS BASED ON INTERVIEWS WITH LOCAL AUTHORITIES AND LEGAL PROFESSIONALS

As part of this action research, local NGOs conducted focused individual interviews with diverse local officials and legal professionals involved in one way or another with marriage contracts. Depending on the country context, respondents included *adoul*, civil status officers, notaries, judges, lawyers, and court clerks.

Research teams conducted interviews based on a detailed protocol developed by Global Rights. The interviews focused on (a) respondents' *knowledge* of laws and procedures on the marriage contract, in particular the possibility to stipulate additional clauses and to conclude a separate property agreement; (b) their *opinions* of these legal possibilities and of the marriage contract as a tool for promoting women's rights, and (c) their *practices and experiences* drawing up and concluding marriage contracts in their every day work.

The information based on interviews with local authorities and legal professionals can be found in Appendix 2.

##### MOROCCO

###### A. Knowledge of Laws and Procedures on the Marriage Contract

NGOs in Morocco concluded that most of the people interviewed, all professions combined, had basic but not "rigorous" knowledge of the relevant Family Code articles on the marriage contract.

For example, *adoul* were generally aware of marriage contract procedures, and of their legal obligation to notify future spouses about the possibility to stipulate conditions and conclude a separate property agreement.

However, many *adoul* explained that they did not sufficiently understand the separate property agreement provisions, describing Family Code Article 49 as particularly problematic. Several added they did not have sufficient training on the topic, and that the law did not provide detailed guidance on how to draw up detailed property agreements.

NGOs commented that while most people interviewed had a fair grasp of the letter of the law, they were less aware of how laws – and those on the marriage contract in particular – could be used strategically. They also noted how many respondents expressed their support for women's rights, yet the lack of a human rights culture or training prevents this from being implemented into practice.

###### B. Opinions on the Marriage Contract and Possibility to Stipulate Clauses

All of the persons interviewed described the marriage contract as an extremely important document, for primarily legal and moral – rather than rights-based – considerations. Respondents frequently referred to it as a "sacred document" which legalizes the couple's relationship,<sup>53</sup> ensures legitimate paternity and rights of future children, and creates financial

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<sup>53</sup> Sexual relations outside of marriage are illegal under Moroccan Penal Code Article 490. As one judge said, "relations between a man and a woman without marriage are a danger to society."

obligations of the man to his wife and children. A common statement was that the marriage contract is important to prove lineage and “protect women’s rights.” One wonders which rights are being protected, other than preventing women from suffering the problems of being an unwed mother or considered a prostitute for having had sexual relations outside of marriage.

*i. On the Family Law itself*

Respondents thought the law as written was generally sufficient, but that enforcement was lacking. They attributed this to various factors, including inadequate implementation mechanisms and lack of awareness of the law and illiteracy among the population.

A notable exception to this view that the law itself was adequate concerned the marital property agreement provisions. Persons interviewed frequently thought that current laws on these are insufficient and unclear. For example, some judges described what they felt was the “problematic wording” of Family Code Article 49 that defines housework ambiguously and requires women to produce evidence of their contribution to acquired property.

*Adoul* criticized the government for “not facilitating marriage.” In the opinion of many, the 2004 Family Code has created conflicts between spouses, the divorce rate has “shot up,” families have broken up, and women have become spinsters. One *adoul* also commented, “we are constrained by a law which, being unclear, puts a burden on us, in addition to other social constraints.”

*ii. On the importance, appropriateness, and usefulness of conditions*

Respondents differed in their opinions on the importance, usefulness, and appropriateness of stipulating conditions in the marriage contract. NGOs noted that on these points, people interviewed frequently did not separate their personal opinions from their legal ones, at times taking a familial rather than a professional approach to the issue.

Research teams described the conservative attitudes of *adoul* in particular, who often expressed their view that while some conditions might be useful, they must not contradict “public order” or Islamic precepts. One *adoul* declared, “I shall never include in the contracts that I draw up any condition stipulating abstention from polygamy, because this is simply at odds with the Islamic *Sharia*.”<sup>54</sup> Many described how discussion of marriage contract conditions during what are generally described as “festive conditions” could thwart or annul the marriage altogether.

*Adoul* differed in their opinions about the desirability of a separate property agreement. Some felt that it is important to prevent future conflict, protect women financially and compensate their efforts in the home. Others said that mutual understanding is what matters most, and that property agreements can suggest ulterior, materialistic motives for the marriage. Some felt that the article 49 property agreement possibility has had a negative impact on marriage overall. In their opinion, men have not understood it and as a result are reluctant to get married out of fear that they will have to give half of their property to their wives.

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<sup>54</sup> Family Code Article 40 specifically mentions the possibility of inserting such a monogamy clause into the marriage contract.

There was disagreement among judges between those who thought that conditions are useful because they can clarify spouses' relationship from the beginning, and those who opined that clauses "deprive marriage of its legitimacy and has turned young people away from marriage."<sup>55</sup> Some judges thought it important to stipulate conditions in the marriage contract in order to protect women's rights in case of divorce.<sup>56</sup> Others expressed their concern that stipulating conditions would transform "a legal Muslim marriage into a marriage based on mere material interests," and opposed turning marriage into a "mere civil contract."

Lawyers generally felt that the "sacred aura" surrounding the marriage contract should be removed, and that it should become a civil contract to better protect women's and children's rights.

Several *adoul* questioned the utility of including certain conditions at all. Some cited the right to work as already guaranteed by the Constitution. Others said that since most brides and grooms (supposedly) have no property, there is no point raising the issue of property agreements at the time of marriage.<sup>57</sup> Finally, some *adoul* said that religion has honored women and can protect them better than conditions in a marriage contract.

Judges at times were critical of members of their own profession, describing how Article 49 "risks being obliterated because of the backward mentalities of some judges." They gave the example of how judges frequently do not consider women's household work as a contribution to the development of joint assets for property distribution purposes.

Lawyers often expressed their support, at least in principle, for the marriage contract as a tool to promote women's rights and transparency in marital relations. In their view, clear conditions stipulated from the beginning can help avoid future conflicts and disputes. However, many thought that the optional nature of marriage contract clauses and the separate property agreement prevents them from serving women's rights as they could and should. Others expressed doubts about the practical usefulness of stipulating clauses or concluding a separate property agreement, citing reasons such as the risk of the latter agreement getting lost in court registries.

*Adoul*, judges and lawyers alike pointed out that the non-binding nature of certain clauses renders them useless, a mere formality that will not protect women's rights in reality. They point out that the law does not provide for an effective penalty in case of non performance of conditions. Respondents frequently gave the example of the monogamy clause to illustrate this point. There is no way to compel a husband to respect this condition, and in event of breach of contract by taking another wife, the first wife has the choice between "submitting to his will or seeking divorce."

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<sup>55</sup> The perceived reduction in the marriage rate was a frequently raised concern. It is interesting that some respondents attributed this to potential conditions and property agreements that purportedly have turned young people away from marriage. *Adoul* thought that fear and misunderstanding of Article 49 makes men in particular reluctant to get married. The research demonstrates that in reality these clauses and agreements are rare; what's more the same respondents will also usually explain this as due to a "lack of awareness" among future spouses of these possibilities.

<sup>56</sup> One wonders what this means about judges' opinions as to how well the law does or does not protect women after divorce that makes such conditions necessary.

<sup>57</sup> This appears to be a rather odd argument, given that the separate marital property contract usually concerns any property acquired after marriage.

iii. *On the appropriate person to be in charge of drawing up marriage contracts*

An issue that frequently emerged in the interviews revolved around who is the most appropriate and qualified person to draw up marriage contracts. *Adoul* described the importance of their work, and felt that their wisdom and experience qualifies them for this function. Many saw their role as more than merely drawing up a contract but as social and educational as well, contributing to the success of marriages by helping and advising future couples.

In contrast, lawyers in particular questioned the competence and appropriateness of the *adoul* for this task, compared with modern notary or lawyer. Lawyers felt that marriage should become a civil contract and drafted by authorities other than *adoul*. They added that the law regulating the *adoul*'s profession is not rigorous enough, as it does not compel them to notify future spouses of the possibility to stipulate conditions in the marriage contract or draw up a separate property agreement. Lawyers point out that while *adoul* generally mention the Family Code during the ceremony, they do not sufficiently explain or discuss relevant provisions with the couple.

*Adoul* in turn questioned whether lawyers should have any role to play in the marriage process. As one *adoul* put it, "If lawyers intervene, they are more likely to add heat to an already heated match!"

iv. *On reasons why stipulated conditions and property agreements are rare*

*Adoul*, lawyers and judges alike agreed that both stipulated conditions and separate property agreements are extremely rare in reality. Some *adoul* estimated the frequency of additional clauses at about 2% of marriages. Persons interviewed advanced a number of opinions about this, most placing responsibility on future spouses for not exercising their legal rights.

All respondents cited the mentality of future spouses and their families, described as "imbibed" with religion, traditions and customs, as a major obstacle to stipulating conditions. In particular, society promotes the idea that marriage is a sacred bond that should be built on trust and "good intentions."

*Adoul* and judges thought that conditions and property agreements are rare because spouses are not aware of this possibility, in particular given the high illiteracy rates.<sup>58</sup> They noted how the ceremony is conducted in classical Arabic, which many future couples may not understand well. Spouses may think that talking about conditions is a sign of bad faith.

*Adoul* explained how the bride's family, especially her father, interferes with and controls the proceedings. They described the attitude of the bride as "often times rather passive" in the presence of her legal representative during the conclusion of the marriage contract, when the most dominant expressions are: "It is good intentions that count!" "Put your trust in Allah!" "Don't say or do anything which augurs divorce ...!"

Some *adoul* also attributed the rarity of stipulated conditions to women's precarious economic circumstances. In this view, women's financial dependence on men means that women cannot afford to risk losing the opportunity to marry. These *adoul* likewise think that

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<sup>58</sup> Ensuring that future spouses are aware of this legal possibility is the *adoul*'s legal obligation.

conditions are more prevalent in urban areas, where in their opinion women's higher education levels and financial independence allows them to stipulate clauses more easily. For these *adoul*, people living in poverty or economically vulnerable situations do not show any interest in setting conditions.<sup>59</sup>

It must be pointed out that these statements are presented here for their illustrative value of some *adoul*'s perceptions of reasons why such clauses are rare, and not for the truth of the reasons offered.

Finally, some lawyers said that a "widespread patriarchal mentality" prevents the stipulation of conditions. In their view, *adoul* charged with drawing up marriage contracts are deeply influenced by religion, traditions and social conventions, and do not have a human rights perspective. Lawyers also described how future husbands do not accept the idea of condition-setting from someone they belittle or look down upon, in other words, their future wives.

### C. Personal Experiences and Practices with the Marriage Contract

*Adoul* affirmed that in their daily practice, they do fulfill their legal obligation to notify future spouses of relevant Family Law provisions and of the possibility to stipulate clauses and conclude a separate property agreement.

NGOs commented that *adoul* often "mechanically read the law word by word out loud," without really explaining or ensuring that the couples understood. In other instances, according to research teams, the *adoul* writes in the contract that he informed the future spouses of their legal rights, even when he did not.

*Adoul* admitted that they generally avoid – out of embarrassment - the topic of conditions and the property agreement unless the groom specifically raises the issue. Resistance by the majority of couples and families dissuades the *adoul*, who prefer to avoid conflict, from holding in-depth discussion on the marriage contract. *Adoul* themselves say that they will not "unduly insist" out of fear that the marriage will fall through or the proceedings stopped. According to them, "many" marriages have been cancelled once brides expressed their wish to include conditions in the marriage contract. One *adoul* described how,

The wedding ceremony was brought to a halt when the bride's father stipulated that the bridegroom commit to never consider polygamy, knowing that he happens to be the bride's cousin. The bride, under the pressure of the family, was compelled to renounce the inclusion of the condition so that the ceremony could proceed.

*Adoul* also noted that when the ceremony is held at the bride's home, they cannot speak freely and in depth with the future spouses. Given the private setting, festive atmosphere, music, caterer and presence of the families, according to the *adoul* the wedding ceremony is not really the ideal context or time to discuss legal rights.

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<sup>59</sup> It seems to the authors if negotiated conditions are a matter of power relations, and that those who need stipulated conditions the most are the ones who use them the least, that this is even more justification for State intervention to protect those most vulnerable and less likely to negotiate themselves.

However, several *adoul* recounted personal experiences where the couple asked to stipulate conditions contrary to the Family Code – the wife’s renunciation of her dower and to her right to financial maintenance – and the *adoul* refused.

All respondents stated that in their personal experiences, marital property agreements were extremely rare. Persons interviewed described how they personally had drafted very few – if any – such agreements themselves. One *Adoul* Regional Council Chairman said that only one property agreement had been drawn up and registered in his city since promulgation of the 2004 Family Code.

Some *adoul* described their difficulty drafting property agreements, since they require good knowledge of financial matters. In several instances, *adoul* said they refer interested couples to a public scribe with specific expertise in this area rather than write the agreement themselves. They also noted that existing property agreement examples and models do not have uniform terms and conditions or standard formulations.

*Adoul*, magistrates and lawyers alike also cited the prohibitively high costs of property agreement registration fees, around 1000 *dirham*.<sup>60</sup> They mentioned that instead of the separate Article 49 property agreement, some couples draw up a different type of contract called an “*Al Omra*” or type of commitment which is then approved and certified at the local *arrondissement*.

Lawyers do not currently play a role in drawing up marriage contracts. Any involvement on their part comes afterward if conflicts arise during marriage, when they would review marriage contracts to plead their client’s case. The vast majority of lawyers interviewed said that, given the rarity of clauses, they had never had occasion to rely on such conditions in any legal dispute between spouses in their own practice, or had a case involving a separate property agreement.

However, one magistrate described a divorce case in which the court reaffirmed marriage as a contract and supported women’s rights:

A wife lodged a complaint, arguing that she is not obligated to perform household chores and that her husband is not entitled to compel her to perform them. The case was accepted and a ruling was issued in favor of the wife, on the basis of the *Malekite* School of Law, which defines marriage as a contract and that a woman is not obligated to serve her husband within the home; therefore, a bride can stipulate that she be spared the performance of household chores.

Another magistrate described how local customary law sometimes protects women’s financial rights in the absence of a separate property agreement.

...one agreed-upon convention in the Southern region is *Haqq as-Si`ayah wal Kadd* (the right to the fruits of one’s strivings and hard work). This right has, for a long time, been recognized in *Khamiss Anjara* because it is the woman who performs household chores as well as such outdoors activities, as trade, farming and other. As a matter of fact, the afore-mentioned right is taken into account by local courts.

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<sup>60</sup> Approximately \$125.

## ALGERIA

Interviews with local authorities and practitioners in Algeria revealed similar concerns and findings, albeit specific to the actors, procedures and context there.

In terms of knowledge of the marriage contract, participants cited its important function legalizing sexual relations and establishing children's paternity. None of the notaries interviewed had any data on the marriage contract, and judges did not have statistics available at the courts.

Respondents generally expressed the opinion that stipulated clauses could be useful, but placed the responsibility on couples to inform themselves and initiate discussions on the subject. Judges felt that it is the role of local NGOs to conduct awareness-raising with the population about their legal rights.

Many notaries explained that they prefer to be neutral on marriage contract conditions and separate property agreements, given that in their view notifying future couples about this can raise doubts in their minds and even jeopardize the marriage. Likewise, some civil status officers declared that they did not feel obligated to notify future spouses of the possibility to stipulate clauses or conclude a separate property agreement. Indeed, they described their role as limited to recording marriages in the civil status registry, and said that no law compels them to explain these legal provisions.

In terms of practices, most persons interviewed described the "insignificant" number of contracts with stipulated clauses or separate property agreements.

The majority of the contracts with conditions found in this research had been drawn up by a notary, rather than at the civil status office. However, NGOs noted that notaries are quite expensive – 12.000 to 18.000 dinars<sup>61</sup> plus taxes and registration fees. Respondents also described the complicated administrative procedures for subsequently registering a marriage contract concluded by a notary, including unrealistic deadlines for transcribing the contract at the civil status office.

In the notaries' limited experiences, they perceived that couples who stipulate clauses or conclude separate property agreements are usually educated and/or live abroad.

While most agreed that they could not reject a condition allowed by law, one notary interviewed described how he refused to draw up a contract with a monogamy clause, claiming that such a stipulation is against Islam.<sup>62</sup> Many notaries said that they don't even prepare marriage contracts anymore after a 2008 decree limiting their fees to 2% of the bride's dowry.

Overall, couples rarely contract marriage in front of a notary, choosing the less expensive and relatively easier procedures at city hall. However, research teams discovered that some civil status officers still conclude marriages according to procedures from the previous Family Code, prior to the 2005 reforms. Civil status officers themselves said that the marriage

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<sup>61</sup> Approximately \$164 - \$246.

<sup>62</sup> Article 19 of the Algerian Family Code specifically provides for the possibility to stipulate a monogamy clause.

register format does not even allow them to write in any stipulated conditions, so in their view couples' only option is to seek the services of a private notary.<sup>63</sup>

## TUNISIA

Respondents in Tunisia identified similar purposes of the marriage contract – legalizing the couple's relationship, establishing paternity, and creating financial obligations between spouses and for children.

Some *adoul* said that they felt that the community property option created in 1998 has created problems for spouses.<sup>64</sup> Thirteen years later, the Law is still controversial among both them and the population, although according to *adoul*, approximately 48% of future couples opt for the community property regime.

*Adoul* describe how previously it was embarrassing to discuss and draw up the community property agreement during the wedding festivities, but under current procedures spouses must now complete a form choosing their marriage property regime, and submit it with the marriage paperwork prior to the actual ceremony.

Nonetheless, the research team in Tunisia found that, despite these administrative procedures, families still exercise significant influence over the couple. In respondents' view, rich families in particular discourage their children from choosing the community property regime in order to preserve family wealth. In contrast, young people without property generally opt for it, given that they can't afford to purchase anything individually and hence must do so jointly with their spouse.

## CONCLUSION – FINAL COMMENTS

### Indications of Progress

In addition to the substantive goal of obtaining information on practices related to the marriage contract, the action research also had several human rights capacity building and advocacy objectives. These focused on enhancing collaboration between NGOs and local public officials, and mobilizing the latter in support of women's human rights.

Research teams made significant efforts to maneuver around various challenges that arose during the research, described previously in the Methodology section. They used many creative strategies to overcome administrative and political obstacles to accessing government records normally not available for public consultation.

As reported by one Moroccan NGO,

We derived great pleasure from accessing an important facility and undertaking a kind of research which has not been carried out before. Furthermore, the good and respectful treatment we received from the records' keeper, as well as from some of copyists, put us at ease and

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<sup>63</sup> As in Morocco, lawyers don't play a role drafting marriage contracts prior to marriage in Algeria.

<sup>64</sup> The report does not specify what these problems are.



facilitated our interactions with the copyists who came to the record-keeping area, from time to time, to look for particular contracts.

NGOs also reached out to diverse public officials and forged new relationships with key allies in their communities for future cooperation promoting women's rights in their communities. Another NGO in Morocco described how,

The research has enabled us to establish contacts which will certainly help us in our work in the future: the person in charge of the court scribes' office assured us that he would be ready to cooperate with women and to coordinate with our association. The Family Affairs Court Vice-President and registration/authentication magistrates were also forthcoming and ready to lend a hand.

The mere fact of participating in the research had an impact on the people interviewed as well as on marriage contract registry staff. Research teams noted how the archival research drew court clerks' attention to the issue of marriage contracts as a tool for promoting women's rights, an idea they had not previously considered. In this way, the process of conducting the research in and of itself served to raise awareness with local civil servants and authorities.

One local NGO in Morocco noted a shift in attitudes on the part of the *adoul* following their participation in the interviews. One regional President of the *adoul*'s union organized a meeting with the local union members to discuss marriage contract procedures, recommending that the *adoul* take more time to explain to spouses the legal possibility to stipulate rights-protective clauses. The *adoul* self-reported to the NGO that they do indeed now spend more time on this step of the procedure.

Finally, public officials requested copies of local NGOs' research findings for their own use, as the courts had not previously compiled such data and information themselves.

Traditionally, public authorities are frequently reluctant to openly collaborate with local human rights NGOs, and access to information is difficult in what are hierarchical and centralized bureaucracies. It is particularly unusual for such officials - typically older men from the educated professional elite - to collaborate with local women's rights associations such as our partners, who are primarily younger women from decentralized regions working at the grassroots level. Hopefully this action research has contributed to changing relationships between local governmental and non-governmental actors and to shifting power dynamics based on age, economic status and gender.

### **Next Phase of this Marriage Contract Initiative**

As a next step in this initiative, Global Rights collaborated with partner NGOs in Morocco and Algeria to organize local Thematic Working Groups on the marriage contract in their communities. Facilitated by the local NGOs, Working Groups were comprised of local lawyers, notaries, judges, civil status officers, and *adoul*.

On the basis of information and results from this action research, working group members collectively drafted suggestions for improvements to current marriage contract laws,

procedures, and practices to facilitate protection and promotion of women's rights.<sup>65</sup> The next phase of this initiative is designed to engage local authorities and legal professionals, via awareness-raising on women's human rights and participatory drafting of concrete recommendations for reforms to marriage procedures. The Working Group Conclusions and Recommendations will be published in a separate follow-up report to be used by local NGOs as an advocacy tool for law reform.

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<sup>65</sup> Global Rights and the local partner NGOs launched the Thematic Working Groups in January 2011, and the final reports of the Groups' work were completed in August 2011.

## APPENDIX 1 – Research Data from Marriage Contract Records

Research teams reviewed marriage contracts based on a detailed framework developed by Global Rights, noting information about the total number of marriages concluded during a given year, the number of these marriage contracts containing stipulated clauses, the topics and frequency of such clauses, the number of marriages with a separate property agreement, and the conditions and formulations used in these agreements.

### A. Morocco

Year	First Instance Court	Number of Marriage Contracts Studied	Number of Marriage Contracts with Stipulated Conditions	Conditions Stipulated	Number of times Stipulated	Remarks	Number of Marriages with Separate Property Agreements	Remarks
2006	Tetouan <sup>66</sup>	6059	60	Wife's right to work	20	In 19/20 clauses the wife stipulated the rights to work, while in 1/20 she stipulated that she not be forced to.	1	Spouses agreed that all that the bridegroom owns (property and other) and all the property that he will have acquired from the day of their marriage will be divided equally with his wife. Agreement barely exceeds one page long.

<sup>66</sup> Covers Tetouan, Martil, Mdiq, Fnideq, Oued Laou, Khemiss Anjara, Ben Quraish, Beni Hassan, Azla.

				Monogamy clause preventing the husband from taking another wife	14			
				Place of residence	10	In 2/10 clauses in which the wife stipulated place of residence the clause stated living in urban areas, in 3/10 the wife stipulated that she not be asked to live outside her home town, in 5/10 that the couple live in a separate and independent home.		
				Children from previous marriage allowed to live with couple	8	8/8 were children from the wife's previous marriage.		
				Wife's right to continue her education	3			
				That the wife will settle abroad	3			
				Husband assuming cost of the marriage ceremony	2			
				Deferred dowry	2			
				Freedom of wife to visit her children	1			
				Right to divorce be delegated to wife ( <i>isma</i> )	1			
				That the conjugal house not be acquired by means of usurious loans	1			

<b>2006</b>	<b>Agadir</b>	1040 <sup>67</sup>	6	Place of residence	3	In 3/3 cases wife stipulated an independent and separate home		
				Wife's right to work	1			
				Wife's right to live with her husband abroad and not be prevented from visiting Morocco	1			
				Wife retains right to divorce is husband takes a second wife	1			
<b>2007</b>	<b>Tetouan</b>	8429	50	Wife's right to work	15		1	The spouses agreed that all the property that the couple will acquire during their marriage will be divided equally between them, because such property is acquired by both of them thanks to the money that they earn. Agreement barely exceeds one page long.
				Wife's right to continue her education	10			

<sup>67</sup> 3982 marriage contracts were recorded in 2006.

				Monogamy clause preventing the husband from taking another wife	8			
				Place of residence	7	In 5/7 the wife stipulated an independent and separate conjugal home, 1/7 that she will live in town, and 1/7 she will not leave her home town		
				Child from previous marriage be allowed to live with couple	4	In 4/4 cases the wife's children from a previous marriage		
				Right to divorce be delegated to wife ( <i>isma</i> )	2			
				That the wife will settle abroad	2			
				That the wife be allowed to care for her parents	2			
				That the wife will not be asked to do agricultural work	1			
				That the wife should not be asked to consummate the marriage within 1 month of concluding the marriage contract	1			
				Husband stipulates that will refrain from being violent with his wife	1			
				Deferred dowry	1			
				Husband must furnish the conjugal home	1			
<b>2007</b>	<b>Khemisset (Tiflet, Oulmès</b>	2375	32	Place of residence	12	While in 8/12 of the clauses the wife stipulated a		

	and Tiddass)					separate conjugal home independent of the husbands' parents and 2/10 the place of residence (town rather than rural), in 2/12 clauses the husband stipulated that the wife should live with his parents.		
				Wife's right to work	9	While in 6/9 of the clauses the wife stipulated that her husband would not prevent her from working, in 3/9 clauses the husband stipulated that the wife would not work.		
				Monogamy clause preventing the husband from taking another wife	6			
				Freedom of the wife to travel in Morocco and abroad	1			
				Children from previous marriage be allowed to live with couple	1	The wife's son from a previous marriage		
				Wife's free disposition of her own salary	1	The clause on the wife's free disposition of her own salary specified her right to give a certain amount to her parents		
				Right to a share of marital property in case of divorce	1	Husband stipulated that wife would not ask for a share of property in case of divorce		
				Right to divorce be delegated to wife ( <i>isma</i> )	1	In the event the husband is absent for more than 3 months		

<b>2007</b>	<b>Agadir</b>	1214 <sup>68</sup>	10	Wife's right to work	5	5/5 stipulated the wife's right to work - 1 clause specifies that will not be prevented from working in a beauty salon.		
				Place of residence	5	4/5 stipulated a separate and independent home, 1/5 designated as Agadir.		
				Wife's right to pursue her education	2			
<b>2008</b>	<b>Tetouan</b>	8144	20	Wife's right to work	9			
				Child from s previous marriage be allowed to live with couple	6	In 6/6 cases, the wife's children from a previous marriage		
				That the husband will not forbid her from going abroad	4	2/4 to live abroad, 2/4 for travelling abroad		
				Place of residence	2	In 1/2 separate and independent conjugal home and in 1/2 that she should live in an urban area.		
				Monogamy clause preventing the husband from taking another wife	2			
				Wife's right to continue her education	1			
<b>2008</b>	<b>Khemisset<sup>69</sup></b>	2794	26	Wife's right to work	12	While in 11/12 of the clauses the wife stipulated that her husband would not prevent		

<sup>68</sup> 4281 Marriage contracts were recorded in 2007.

<sup>69</sup> Includes Tiflet, Oulmès and Tiddass.



						her from working (and 1 of these also included to pursue education), in 1/12 clauses the husband stipulated that the wife would not work.		
				Wife's right to visit her family	5			
				Child from spouse's previous marriage be allowed to live with couple	4	In 3/4 clauses the wife stipulated that a son from a previous marriage would live with the couple, and in 1/4 instance the husband stipulated that his daughter from a previous marriage would live with the couple.		
				Wife's free disposition of her own salary	4	The clause on the wife's free disposition of her own salary specified her right to give a certain amount to her parents.		
				<i>Isma</i>	3			
				Place of residence	3	In 2/3 clauses designating a marital home, the husband stipulated that the bride live with his parents, while in 1/3 clauses she stipulated residence in town		
				Husband stipulated his right to engage in polygamy	1			
				Right to continue studies	1			
<b>2008</b>	<b>El Hajeb Province</b>	1174	24	Place of residence	6	Overall, data gathered on who stipulated the conditions	6	Shared property; Joint management

						found that in 9 instances the husband did and in 8 instances the wife did.  In 5/6 clauses designating a marital home, the husband stipulated that the bride live with his parents, while in 1/6 clauses she stipulated an independent and separate home.		of property; Agreement that each spouse keep and manage own property separately.
				Wife's right to work	3	In 2/3 wife stipulates her right to work, in 1/3 the husband forbade his wife to work (the same husband who stipulated that the wife would not ask for any financial maintenance expenses, below)		
				Children from previous marriage will live with the couple	3	2/3 cases the wife's children from previous marriage, 1/3 the husband's		
				Independence of marital property	2			
				Husband stipulates that the bride "fear Allah and follow his commands"	2			
				Husband will not be violent with his wife and will treat her "fairly and graciously"	2			
				Monogamy clause preventing the husband from taking another wife	1			
				Wife's freedom to visit	1			

				her own family				
				Husband stipulates that his wife should not quit home save to go to work and that in the event of a divorce (God forbid) she should not claim any expenses pertaining to <i>nafaqah</i> (maintenance expenses); <i>Iddah</i> (vacuity period); and <i>mut`ah</i> (compensation paid to a divorced woman)	1			
				The groom stipulates that the bride perform the obligations and <i>Sunnah</i> (or, Prophetic Traditions) of Islam	1			
<b>2008</b>	<b>Meknes</b>	6953	N/A	N/A	N/A	N/A	13	
<b>2008</b>	<b>Marrakech</b>	598	11	Right of the wife to work	8			
				Rights of the wife to pursue education	4			
				Wife's freedom to movement and travel	2			
				Wife's right to visit her family for a month during the year	1			
				Monogamy clause preventing the husband from taking another wife	1			

<b>2008</b>	<b>Agadir</b>	1060 <sup>70</sup>	16	Right of the wife to work	9		1	
				Monogamy clause preventing the husband from taking another wife	4			
				Wife's right to pursue her studies	3			
				Place of residence	2	1/2 wife stipulated a separate and independent marital home and 1/2 wife will continue living with her family		
				Wife's right to visit her family	1			
				Specifying date of marriage party and husband's contribution to costs of ceremony	1			
<b>2009</b>	<b>Tetouan</b>	7641	52	Place of residence	13	In 2/13 clauses on place of residence the wife stipulated that she should live in an urban area, in 5/13 that she would not be asked to leave her home town, in 1/13 that she would not be made to move to a specific town and in 5/13 an independent and separate conjugal home.		
				Wife's right to work	12			
				Children from spouse's previous marriage will	12	12/12 the wife's children from a previous marriage		

<sup>70</sup> 4422 marriage contracts were recorded in 2008.

				live with couple				
				Monogamy clause preventing the husband from taking another wife	7			
				Wife's right to continue her education	4			
				That the husband will not forbid her from travelling	1			
				Wife stipulates that husband will refrain from being violent with her	2			
				That the wife would settle abroad	2			
				That the wife should not be asked to consummate the marriage before the ceremony	1			
				That the husband purchase a house and register it in her name	1			

<b>2009</b>	<b>Khemisset</b>	4337	70	Place of residence	32	In 10/32 clauses designating the marital home, the husband stipulated that the wife would live in his parents' home, in 4/32 the husband stipulated that she would live with him in the countryside, while in 17/32 instances the wife designated an independent marital home, and 1/32 the husband a designated a specific town where the wife must live with him.	6 <sup>71</sup>	
				Wife's right to work	26	While in 16/26 of the clauses the wife stipulated that her husband would not prevent her from working, in 10/26 clauses the husband stipulated that the wife would not work.		
				Monogamy clause preventing the husband from taking another wife	8			
				Child from previous marriage be allowed to live with couple	4	In 3/4 cases the wife's children from a previous marriage, in 1/4 the husband's.		
<b>2009</b>	<b>El Hajeb Province</b>	1424	26	Place of residence	10	Overall, data gathered on who stipulated the conditions found that in 15 instances the	3	Separate contracts stipulated that the spouses would

<sup>71</sup> The research in Khemisset found only 6 separate marriage contracts over the entire three-year time span of the research there (2007-2009).

						husband did and in 7 instances the wife did. In 8/10 clauses designating the marital home, the husband stipulated that the wife would live in his parents' home, while in 2/10 the wife stipulated a separate and independent home.		have a common account, with assets shared separately; would "share all future projects"; and would "share all property acquired during marital life."
				Children from previous marriage will live with the couple	6	1/6 the wife stipulated the husband's children from previous marriage will not live with couple, 4/6 the husband's children's will live with couple, and 1/6 the wife's children from previous marriage will live with the couple.		
				Wife's right to work	2			
				Husband stipulates that wife will not go out of the home	2	1/2 wife will not go outside home without husband's permission and 1/2 only in the company of his mother.		
				Monogamy clause preventing the husband from taking another wife	2			
				Wife stipulates that marriage not be consummated until a specified time	2	1/2 consummation will be after the marital home is furnished, and 1/2 a precise date.		
				Fair and gracious treatment" of children to be born of the marriage	1			
				Wife accepting groom's	1			

				disability				
				Mutual faithfulness and loyalty	1			
				Wife's freedom to visit her own family	1			
				Wife's right to live abroad with husband	1			
<b>2009</b>	<b>Meknes</b>	6840	154	Place of residence	42	In 21/42 clauses designating the marital home, the husband stipulated that the wife would live in his parents' home, while in 11/42 instances the wife designated an independent marital home and in 6/42 the wife will live in town, in 1 instance that the wife will live with the husband's first wife and her children, and in 3 instances the wife specified the town. Other instances included the wife stipulating that she live with her husband abroad, that the wife live with his mother under the same roof and "treat her fairly and graciously," that the wife live with his parents "and not go outdoors without his permission," that the wife shall not be compelled to live in the countryside, that the wife shall not reside	3	Statements referring to management of money and property as conditions in contract – not able to review the actual separate property contract.



						abroad for too long, and that he wife renounces living abroad with her husband.		
				Wife's right to work	35	32/35 clauses on the wife's right to work outside the home stipulated that she had the right to work, while in 3/35 the husband stipulated that the wife would refrain from working.		
				Children from previous marriage will live with the couple	29	In 12/29 the wife's children from previous marriage, in 1 instance the husband stipulated that wife's daughter from previous marriage would not live with the family, and 16/29 the husband's children from previous marriage will live with the couple.		
				Wife's right to pursue her education	23	In 1/23 clauses on the wife's right to pursue her education, the husband stipulated that she would abandon her studies.		
				Monogamy clause preventing the husband from taking another wife	12			
				Marital property	5	In 2/5 cases the spouses stipulated separate property and in 1/5 that they would share the conjugal home.		
				Financial maintenance	5	In 3/5 wife stipulates that		

						husband will provide a share of his salary to her parents and to her children from a previous marriage, in 1/5 the wife stipulates that a portion of her salary will be used to care for her parents and children from a previous marriage, and in 1/5 the husband specifies that a portion of his salary will be used to support his parents		
				Wife's right to travel abroad	4	1/4 the wife stipulates that the husband will not force her to live in Morocco, in 2/4 the husband stipulates that the wife will remain in Morocco, and in 1/4 the wife stipulates that she will live with her husband abroad.		
				"Fair and gracious treatment" of husband's parents by wife	3			
				Relationship between spouses	3	In 1/3 the wife stipulated that the husband would not interfere in her life or her decisions, in 1/3 the husband required the wife to obtain his permission before going out of the home, and in 1/3 they agreed on their daily life.		
				Wife's freedom to visit her own family	3	2/3 wife's right to visit her parents, and 1/3 to visit her daughter from a previous		

						marriage		
				<i>Isma</i>	3			
				Husband will abstain from battery and commit to treating his wife graciously	2			
				Husband will furnish marital home	2			
				Wife will take care of husband's mother	1			
				Wife shall not ask husband to divorce her	1			
				Wife shall not go to the marital home until the dower has been paid in full	1			
				Polygamy clause reiterating husband's right to take another wife	1			
<b>2009</b>	<b>Marrakech</b>	10528	214	Wife's right to work	125			
				Wife's right to education	22			
				Monogamy clause preventing the husband from taking another wife	20			
				Place of residence	20	12/20 independent and separate marital home, 5/20 a specific town, and 3/20 the wife will live with her family.		
				Separate marital property	10	It is interesting to note that couples stipulated a clause on their property relations into the actual marriage		

						contract rather than concluding a separate agreement.		
				Children from previous marriages will live with the couple	6			
				Concerning children (custody)	5			
				Wife's right to visit her family	4			
				Wife's right to physical safety/integrity	3			
				Wife's right to freedom of movement and travel	3			
				Granting wife right to seek divorce ( <i>isma</i> )	3			
				Wife will follow husband wherever he moves for employment	3			
				Method of division of property	3	All 3 cases agreed to divide equally all assets acquired during marriage.		
				Husband will treat her parents graciously and provide for them	2			
				Husband will not interfere with or claim wife's wages	2			
				Specifies property to be shared	2	In 1/2 all property will be shared, including real estate, and in 1/2 household furnishings will be the sole property of the wife.		
				Husband will purchase bedroom furniture	1			

				Wife shall not be prevented from leaving the country	1			
				Neither spouse will not leave the country without the other's permission	1			
<b>2009</b>	<b>Agadir</b>	1080 <sup>72</sup>	6	Place of residence	2	Separate and independent marital home		
				Wife's right to work	2			
				Wife's right to pursue her education	1			
				Monogamy clause preventing the husband from taking another wife	1			
<b>2010<sup>73</sup></b>	<b>El Hajeb Province</b>	723	18	Wife's right to work	6	Overall, data gathered on who stipulated the conditions found that in 6 instances the husband did and in 9 instances the wife did.	3	The contracts stipulated "sharing property on a 50-50 basis" and "sharing the monies acquired during marital life"
				Place of residence	5	In 5/5 clauses designating the marital home, the husband stipulated that the wife would live in his parents' home.		
				Children from previous marriage will live with the couple	2	In both cases the husband's children.		

<sup>72</sup> 4414 marriage contracts were concluded in 2009.

<sup>73</sup> January – September.

				Wife gets to keep own salary / give a part of her salary to her parents	2			
				“Fair and gracious treatment” of wife by husband	1			
				Wife’s right to continue education	1			
<b>2010</b>	<b>Marrakech</b>	2180	24	Wife’s right to work	14			
				Wife’s right to education	4			
				Separate marital property (2) and joint marital property (1).	3	It is interesting to note that couples stipulated a clause on their property relations into the actual marriage contract rather than concluding a separate agreement.		
				Place of residence	2	Independent and separate marital home		
				Wife’s right to freedom of movement and travel	1			
<b>2010</b>	<b>Agadir</b>	580 <sup>74</sup>	3	Place of residence	2	Separate and independent marital home		
				Rights of wife to work	1			
				Wife’s freedom to travel abroad	1			
				Right of wife to pursue studies	1			
<b>TOTALS</b>		<b>75,173</b>	<b>822</b>				<b>36</b>	

<sup>74</sup> Out of 3060 concluded so far.

B. Algeria

Year	City Hall	Number of Marriage Acts Studied	Number of Marriage Contracts with Stipulated Conditions	Conditions Stipulated	Number of times Stipulated	Remarks	Number of Marriages with Separate Property Agreements	Remarks
<b>2006<sup>75</sup></b>	<b>Tlemcen</b>	1991	190 <sup>76</sup>	Wife's right to continue her education	80			
				Wife's right to work	63			
				Right to separate and independent home	47			
<b>2007</b>	<b>Tlemcen</b>	1948	198	Right to separate and independent home	118			
				Wife's right to continue her education	51			
				Wife's right to work	29			
<b>2007</b>	<b>Skikda<sup>77</sup></b>	2093 <sup>78</sup>	14 <sup>79</sup>	Wife's right to work	4		2	
				Independent and separate marital home	3			
				Care and support for elderly parents	2			

<sup>75</sup> The Tlemcen City Hall marriage registries have been computerized since 2000. A review of the marriage acts from 2000 – 2005 did not reveal any stipulated clauses other than on the dower.

<sup>76</sup> The official statistics indicate 1800 contracts with clauses, but these include those with clauses related to the dower. Normally this is mandatory under the law, which begs the question as to why this is not included in all of the marriage contracts. The same remark - with the implications for calculations - is true for all five years covered here.

<sup>77</sup> This includes 13 *daira* (districts) and 27 notaries in the Skikda *Wilaya*.

<sup>78</sup> 7999 marriage contracts were registered in 2007.

<sup>79</sup> 11 of these were contracts concluded at the notary, 3 in the civil status office acts.

				Marital property	2			
				Wife's right to continue her education	2			
				Monogamy clause preventing the husband from taking another wife	1			
				Family planning	1			
				Right to visit family and friends	1			
<b>2008</b>	<b>Tlemcen</b>	1987	367	Wife's right to continue her education	243			
				Wife's right to work	67			
				Right to separate and independent home	55			
				Right to keep child from previous marriage	2			
<b>2008</b>	<b>Skikda</b>	2225 <sup>80</sup>	146 <sup>81</sup>	Independent and separate marital home	47		11	
				Wife's right to work	41			
				Monogamy clause preventing the husband from taking another wife	18			
				Wife's right to continue her education	17			
				Family planning	13			
				Marital property	11			
				Freedom of movement	3			
				Husband will abstain from repudiating his wife	3			

<sup>80</sup> 8189 marriage contracts were registered in 2008.

<sup>81</sup> All of these were contracts drawn up at a notary.



				Children	2			
				Wife not wear the veil	1			
				Wife will live with him abroad	1			
<b>2009</b>	<b>Tlemcen</b>	1830	213	Wife's right to work	109			
				Right to separate and independent home	80			
				Wife's right to continue her education	20			
				Freedom to travel	2			
				Right to medical care	1			
				Wife's right to live with her mother	1			
<b>2009</b>	<b>Skikda</b>	2360 <sup>82</sup>	216 <sup>83</sup>	Independent and separate marital home	57		23	
				Wife's right to work	54			
				Wife's right to continue her education	27			
				Marital property	23			
				Monogamy clause preventing the husband from taking another wife	21			
				Family planning	21			
				Freedom of movement	16			
				Children	5			
				Wife's right to drive car	3			
				Husband will abstain from repudiating his wife	2			

<sup>82</sup> 8503 marriage contracts were registered in 2009.

<sup>83</sup> 211 of these were contracts concluded at a notary, 5 at the city hall.

				Children from previous marriage will live with couple	2			
				Wife gives a part of her salary to her orphaned siblings	2			
				Couple will live with groom's parents	1			
<b>2010<sup>84</sup></b>	<b>Tlemcen</b>	1793	591	Independent and separate home	211			
				Wife's right to work	198			
				Wife's right to continue her education	165			
				Right to visit family	12			
				Freedom to travel	3			
				Right to freely dispose of salary	2			
<b>Totals</b>		<b>24,703<sup>85</sup></b>	<b>1955<sup>86</sup></b>				<b>36</b>	

In addition, field research at City Halls in the Kabylie region of Algeria revealed the quasi-inexistence of any stipulated clauses in marriage contracts. In Tizi Ouzou, none of the 8011 marriage contracts reviewed from 2004 – 2009 had additional stipulated clauses; none of the 233 contracts reviewed in Ain el Hammam in 2010 had any stipulated clauses; and 20 of the 232 marriage contracts reviewed in Kouba in 2010 had stipulated clauses pertaining to the wife's right to work and to a separate and independent conjugal home.

<sup>84</sup> From January 1, 2010 – December 26, 2010.

<sup>85</sup> Includes the contracts studied in the Kabylie region described in the narrative.

<sup>86</sup> Includes the contracts studied in the Kabylie region described in the narrative.

C. Tunisia

<b>Time Period</b>	<b>Location</b>	<b>Authorities</b>	<b>Total Number of Marriages Reviewed</b>	<b>Number of Marriages with Stipulating Community Property</b>
July – August 2010	Soussa	Civil Status Officers	765	353
July – August 2010	Massaken	Civil Status Officers	151	64
July – August 2010	Soussa	Adoul	114	46
<b>TOTALS</b>			<b>1030</b>	<b>463</b>

The research in Tunisia focused specifically on the extent to which couples take advantage of the community property option available to them through a separate marital property contract as provided for in the law of 1998.

## APPENDIX 2 – Interviews with local authorities and legal professionals

Association	Locations	Adoul	Magistrates	Lawyers	Court Clerks	Notaries	Other	Civil Status Officers	Total number of meetings/interviews
<b>Morocco</b>									
Association Tawaza pour le plaidoyer de la femme	Tetouan, Martil	15	4	18				N/A	31
Association des jeunes avocats de Khemisset	Khemisset	14	1	30	4		5 <sup>87</sup>	N/A	87
Association Amal pour le développement de la femme	El Hajeb, Meknes	23	4	32		0 <sup>88</sup>		N/A	83
Association Amane pour le développement de la femme	Marrakech, Ben Guerir, Essaouira	17	3	47	5	1		N/A	75
Association Tafoukt Souss pour le développement de la femme	Agadir, Anza, Ourir and Inzegan	15	4	13	5			N/A	41
<b>Algeria</b>									
Association Espoir Tlemcen	Tlemcen	N/A	2	20		3			24
Association Culturelle Amusnaw	Tizi Ouzou	N/A	1	23	1	3	4 <sup>89</sup>	6	38
Association Hayat des Sages Femmes	Skikda	N/A	5	25		11	4 <sup>90</sup>	15	60
<b>Tunisia</b>									
3 partner lawyers	Tunis, Menouba, Ariana, Benarouss, Tunis 2, Benzerte, Zaghouan	7	24	25				7	63
<b>TOTALS</b>		<b>91</b>	<b>48</b>	<b>233</b>	<b>15</b>	<b>18</b>	<b>13</b>	<b>28</b>	<b>502</b>

<sup>87</sup> Other Civil Servants.

<sup>88</sup> When contacted by the association to set up meetings, notaries declared that since they do not have any relevant information on marriage contracts and property agreements and would not be of any use for the research.

<sup>89</sup> Two law professors, an MP and a Senator.

<sup>90</sup> Legal counselors.



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