



*Partners for Justice*

**THE MOROCCAN FAMILY CODE (*MOUDAWANA*)  
of February 5, 2004**

**An unofficial English translation of the original Arabic text**

This unofficial English translation of the 2004 Moroccan Family Law (*Moudawana*) was prepared by a team of English and Arabic speaking lawyers at the Global Rights head office in Washington D.C. and our field office in Rabat, and a professional Arabic-English Moroccan translator. Our intention was to produce an English language text that reproduces as faithfully as possible the original Arabic text, rather than to elaborate an autonomous English legal text. We have therefore privileged a literal translation rather than attempted to clarify, explain or interpret the intention of the legislator. Global Rights hopes that this translation will be useful to researchers, NGOs and public authorities interested in family law and the rights of women in Morocco. For more information on our work in Morocco and worldwide, please consult our website at [www.globalrights.org](http://www.globalrights.org).

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Issue 5184 - 14 *Dou Al Hijja* 1424 (February 5, 2004)

**Official Gazette**

**General Provisions**

***Sherifyan Dahir* (Royal Edict) n° 1.04.22 issued on 12 *Dou Al Hijja* 1424 (February 3, 2004)**

**To Implement Law n° 70.03 as the Family Code**

Praise Be to God,

The *Sherifyan* Seal – enclosed herewith:

(Mohamed Ibnou Al Hassan Ibnou Mohamed Ibnou Youssef, May God be his Protector)

From our *Sherifyan Dahir* (Royal Edict), May God Glorify, we notify of:

On the basis of the Constitution, notably Chapters 26 and 58,

We issued our *Sherifyan* Order with the following:

To be enforced and published in the Official Gazette, our *Sherifyan Dahir* (Royal Edict), Law n° 70.03 as the Family Code, as it has been approved by the House of Representatives and the Chamber of Counselors.

Written in Rabat on 12 *Dou Al Hijja* 1424 (February 3, 2004)

Affixed with countersignature by:

The Prime Minister,

Signed: Driss Jettou

## Preamble

Since acceding to the throne of his noble ancestors, His Majesty King Mohamed VI, our Chief Commander of the Faithful, may God protect him, has made the promotion of human rights a priority which lies at the very heart of the modernist democratic social project of which His Majesty is a leader. Doing justice to women, protecting children's rights and preserving men's dignity are a fundamental part of this project, which adheres to Islam's tolerant ends and objectives, notably justice, equality, solidarity, *ijtihad* (juridical reasoning) and receptiveness to the spirit of our modern era and the requirements of progress and development.

Whereas the late King Mohamed V, may God rest him in peace, upon Morocco's recovery of its sovereignty worked to establish a Personal Status Code, which constituted then the first step in establishing the rule of law and the unification of provisions in this regard; given that the work of the late King Hassan II, may God enlighten his tomb, was distinguished by the constitutional consecration of equality before the law, with a priority given, may God glorify his soul, to an exceptional attention to family issues, clearly manifested in all aspects of political, institutional, economic, social and cultural life. As a result, Moroccan women occupy more prominent positions that have enabled them to participate actively in different areas of public life.

In the same vein, and following the right path of his august grandfather and father, His Majesty King Mohamed VI, may God glorify him - in order to illustrate his commitment to the policies of local democracy and participation, respond to the legitimate expectations of the Moroccan people, and further emphasize the shared will that unites the entire nation with its leader on the path of comprehensive reform, swift progress, and the strengthening of the Kingdom's civilizational enlightenment - has insisted, may God protect him, on making the Moroccan family - based upon shared responsibility, affection, equality, equity, amicable social relations and proper upbringing of children - a substantial major component of the democratization process, given that the family constitutes the essential nucleus of society.

King Mohamed VI, may God glorify him, has, since acceding to the throne and assuming the great responsibility of ruling over the Believers, followed the path of wisdom and insight to realize such a noble objective, and to this end appointed an advisory Royal Commission constituted of the finest experts and religious scholars, men and women from a diversity of profiles and fields, to conduct a fundamental review of the Personal Status Code. His Majesty, may God cherish him, provided the Commission with his constant enlightened guidance and advice in order to prepare a new Family Code bill, and insisted upon their fidelity to the provisions of *Sharia* (religious law) and Islamic principles of tolerance, and encouraged the use of *ijtihad* (juridical reasoning) to deduce laws and precepts, while taking into consideration the spirit of our modern era and the imperatives of development, in accordance with the Kingdom's commitment to internationally recognized human rights.

One of the results of this supreme royal attention was the historic achievement of this pioneering Family Code, its provisions drafted in a modern legal jurisprudential style, in conformity with Islam's tolerant rules and exemplary purposes while providing balanced, fair and pragmatic solutions resulting from enlightened open *ijtihad* (juridical reasoning). This code further stipulates that human and citizenship rights are accorded to all Moroccans, women and men equally, in respect of the holy divine religious references.

The Parliament, with its two Houses, is proud of the wisdom, insight, responsibility and realism that King Mohamed VI, may God glorify him, has made predominant throughout the entire preparatory process of this social human rights document, and proudly values the distinguished historical transition that this Family Code represents, given that it is a legal text constitutive of the modern democratic society.

The nation's representatives in the Parliament praise the democratic initiative of his Majesty the King, who ordered the presentation of the Family Code bill to the two Houses of Parliament for consideration, because of the belief of His Majesty, the Commander of the Faithful and sovereign representative of the nation, in the prominent role of the Parliament in the democratic construction of a country of institutions.

The Parliament also gratefully praises the King's provision for specialized Family Courts and a just, fit, modern and efficient system of family justice. The Parliament further emphasizes the mobilization of all its Members behind the Commander of the Faithful to provide all the means and texts to permit the establishment of an integrated and harmonious legislative apparatus, which will serve to consolidate the family and enhance the joining of forces in society.

Given all of these considerations, the Parliament is proud of the precious content and enlightened guidance in His Majesty the King's historical speech upon the opening of the second legislative year of the seventh term. Those orientations will be adopted by the Parliament as the best preamble for the Family Code, particularly what was included in the sovereign Royal speech, as the King, may God support him said:

“In our sovereign instructions and guidance to the Commission, and while giving our views on the Family Code bill, we adopted the following fundamental reforms:

One: Adopt a modern form of wording and remove degrading and debasing terms for women. Place the family under the joint responsibility of both spouses, given that ‘women are men's sisters before the law’ in keeping with the words of my ancestor the Chosen Prophet Sidna Mohammed, Peace Be Upon Him, as reported, ‘Only an honourable person dignifies women, and only a villainous one degrades them.’

Two: Entitle the woman who has come of age to tutelage as a right, and she may exercise it according to her choice and interests, on the basis of an interpretation of a holy verse stipulating that a woman cannot be compelled to marry against her will: “...place not difficulties in the way of their marrying their husbands, if it is agreed between them in kindness.’ A woman may of her own free will delegate tutelage to her father or a male relative.

Three: Equality between women and men with respect to the minimum age for marriage, which is now fixed at eighteen years for both, in accordance with certain provisions of the *Malekite* School, and authorize the judge to reduce this age only in justified cases, and further, equality between girls and boys under custody who may choose their custodian at the age of fifteen.

Four: Concerning polygamy, we took into consideration the commitment to the tolerant principles of Islam in establishing justice, which the Almighty requires for polygamy to take place, as it is plainly stated in the Holy Koran: He said '...and if you fear that you cannot do

justice (to so many) then one (only).’ And since the Almighty ruled out the possibility for men to do justice in this particular case, He said: ‘You will not be able to deal equally between (your) wives, however much you wish (to do so),’ and he thus made polygamy quasi impossible under *Sharia* (religious law).

We further adhered to the distinguished wisdom of Islam in allowing men to legitimately take a second wife, but only under compelling circumstances and stringent restrictions, with the judge’s authorisation, instead of illegitimate polygamy occurring if we prohibit it entirely.

From thence, polygamy shall be allowed only in the following circumstances and according to the following legal conditions:

- The judge shall not authorize polygamy unless he has verified the husband’s ability to guarantee equality with the first wife and her children in all areas of life, and there is an objective and exceptional motive that justifies polygamy.
- The woman has the right to stipulate a condition in the marriage contract by which her husband will refrain from taking another wife, as Omar Ibn Al-Khattab, may God be pleased with him, is quoted as saying: ‘The intersection of rights is in the conditions.’ In the absence of such a condition, the first wife is summoned to obtain her consent, and the second wife must also be notified and consent to the fact that the husband is already married to another woman. Moreover, the first wife has the right to petition for divorce for harm suffered.

Five: As a token of our royal concern for our dear subjects residing abroad, marriage procedures are to be simplified for them: the marriage contract is to be drawn up in the presence of two Muslim witnesses and in accordance with the procedures in effect in the country of residence, and then registered with the proper Moroccan consular or judicial authorities, according to the *Hadith*: ‘Seek ease, not hardship.’

Six: Make divorce, defined as the dissolution of marriage, a prerogative that may be exercised as much by the husband as by the wife, in accordance with legal conditions established for each party and under judicial supervision to control and restrict the abusive arbitrary practices of the husband in exercising repudiation, and this according to the rules established on the basis of the *Hadith* by Prophet Mohammed, Peace Be Upon Him, ‘The most hateful to God among all lawful things is divorce.’ The new legislation also reinforces the mechanisms for reconciliation and mediation both through the family and the judge. If the husband has the right of repudiation, the wife may also avail herself of this right through *tamleek* (assignation). In all cases, before repudiation may be authorized it must be ascertained that the repudiated woman has received all of her vested rights. A new procedure for repudiation has been established that requires judicial permission, and the repudiation can not be registered until all vested rights owed to the wife and children have been paid in full by the husband. Irregular pronouncements of repudiation by the husband shall not be considered valid.

Seven: Expand the woman’s right to file for divorce when the husband does not fulfil any of the conditions stipulated in the marriage contract, or for harm caused to the wife such as lack of financial support, abandonment, violence, and other harm, in view of endorsing the general legal principle: ‘neither harm nor be harmed,’ to promote equality and equity between the two spouses. Another new provision introduces of the right of divorce by mutual consent under judicial supervision.

Eight: Protect children's rights by inserting provisions of international conventions ratified by Morocco into the *Moudawana*. Children's interests with respect to custody are also guaranteed by awarding custody to the mother, then to the father, then to the maternal grandmother. Should this prove impossible, the judge will entrust custody to the most qualified relative. Furthermore, the child under custody is guaranteed suitable accommodation, separate from the other financial maintenance obligations, and cases concerning maintenance obligations must be settled swiftly within a one-month time limit.

Nine: Protect the child's right to acknowledgement of paternity in the event the marriage has not been officially registered for reasons of *force majeure*, where the court examines the evidence presented to prove filiation, and establish a five year time limit for settling outstanding cases in this regard to put an end to the suffering endured by children in this situation.

Ten: Allow the granddaughter and grandson on the daughter's side the right to inherit from their grandfather, just as the grandchildren on the son's side, in keeping with the principles of *ijtihad* (juridical reasoning) and justice in the compulsory legacy.

Eleven: Concerning the management of property acquired by the two spouses during marriage: while confirming the principle of separate marital property, the bill makes it possible for the couple to agree, in a document separate from the marriage contract, on a framework for managing assets acquired during marriage. In case of disagreement, the judge shall resort to general rules of evidence to assess each spouse's contribution to the development of the family capital.

Ladies and gentlemen, honourable Members of Parliament,

The reforms, of which we cited the most important, should not be considered as a victory of one group over another, but rather constitute achievements for all Moroccans, and we took care to ensure that they were consistent with the following principles and references:

- I cannot, as Commander of the Faithful, permit what God has forbidden and forbid what God has permitted.
- Adopt the tolerant principles of Islam in advocating human dignity, and enhancing justice, equality and good amicable social relations, and with the cohesiveness of the *Malekite* School as well as *ijtihad* (juridical reasoning), which makes Islam valid for any time and place, to implement a modern *Moudawana* for the family, consistent with the spirit of our glorious religion.
- Not consider the *Moudawana* as a law for the woman only, but a *Moudawana* for the entire family - father, mother and children - and further ensure that this *Moudawana* eliminates discrimination against women, protects the rights of children and preserves men's dignity. Would any one of you agree to throw his family, wife and children out of the home into the street, or for his daughter or sister to be treated unjustly?

As the King of all Moroccans, we do not legislate for specific groups or categories of people, rather we epitomize the general will of the nation, which we consider as our extended family.

To protect the rights of our faithful subjects of Jewish faith, we have emphasized in the new Family Code that they shall be governed by the provisions of the Hebraic Moroccan Family Law.

Whereas the 1957 *Moudawana* was enacted before the creation of the Parliament, and amended in 1993 during a transitional constitutional period by virtue of *Sherifyan Dahirs* (Royal Edicts), we have esteemed it perspicacious to present the Family Code bill to the Parliament for the first time in view of its implications for civil law, noting that its religious legal provisions fall within the competence of the Commander of the Faithful.

We expect you to rise to this historical responsibility, both through your respect of the sacredness of this bill's texts, inspired by the tolerant principles of *Sharia* (religious law), and through your adoption of other texts. These provisions should not be considered as exhaustive or approached in a narrow-minded way, but rather should be approached realistically and insightfully, because this constitutes an *ijtihad* (juridical reasoning) effort suitable for contemporary Morocco and our openness to development which we are determined to integrate wisely and progressively.

As the Commander of the Faithful, we will follow your work in the light of the words of God, '...and consult with them upon the conduct of affairs,' and 'And when thou art resolved, put thy trust in Allah.'

In order to ensure all conditions necessary for the optimal enforcement of the Family Code, we addressed a Royal letter to our Minister of Justice. In this letter, we explained that whatever reforms the *Moudawana* may contain, its implementation hinges on the creation of a fair, modern and effective family justice system - particularly since it became clear from the application of the present *Moudawana* that the inadequacies and flaws it contains are not simply due to its clauses, but rather are the consequences of the absence of a qualified family justice system in terms of logistics, human resources and procedures - to fulfil all conditions of justice and equity, accelerate the resolution of cases and promptly enforce judgements.

We further ordered him to accelerate the establishment of suitable facilities for the administration of family justice within the different courts of the Kingdom and the training of qualified personnel at different levels, given the powers that this bill gives to the judiciary, in addition to the necessity to accelerate the creation of a Family Solidarity Fund.

Furthermore, we ordered him to submit to us proposals for the constitution of a committee of experts to draft a practical guide containing different provisions, texts and procedures concerning the family justice system for it to serve as its unified source of reference and as the procedure for this Family Code, and efforts must also be made to reduce the current Civil Procedure Code deadlines for the execution of family affairs."

**Law n° 70.03**  
**Enacted as The Family Code**

**PRELIMINARY TITLE**

**General Provisions**

*Article 1*

This law is entitled the Family Code and will be referred to thereafter as the *Moudawana*.

*Article 2*

The articles of this *Moudawana* apply to:

- 1- All Moroccans, including those with another nationality,
- 2- Refugees, including stateless persons, by virtue of the Geneva Treaty signed on July 28, 1951 relating to the status of refugees,
- 3- Relationships in which one of the parties is Moroccan,
- 4- Relationships between two Moroccans, one of whom is Muslim.

Moroccans of Jewish faith shall be governed by the provisions of the Hebraic Moroccan Family Law.

*Article 3*

The Public Prosecutor's Office is an essential party to all legal actions related to the implementation of the provisions of this *Moudawana*.

**BOOK ONE: OF MARRIAGE**

**Title One: Of Engagement and Marriage**

*Article 4*

Marriage is a legal contract by which a man and a woman mutually consent to unite in a common and enduring conjugal life. Its purpose is fidelity, virtue and the creation of a stable family, under the supervision of both spouses according to the provisions of this *Moudawana*.

**Chapter I: Of Engagement**

*Article 5*

Engagement is the reciprocal promise of marriage between a man and a woman.

Engagement takes place through the expression by the two parties of a reciprocal promise to marry by any accepted means, including the reading of the *Sura of Al Fatiha* from the Holy Koran and the customary exchange of presents.

*Article 6*



The two parties are considered to be in an engagement period until the marriage is officially registered. Each party has the right to break off the engagement.

#### *Article 7*

No compensation is due for breaking off the engagement.

However, if one of the parties causes any harm to the other, the injured party may ask for compensation from the other.

#### *Article 8*

Either party may recover the presents he or she offered to the other provided that the breaking off of the engagement was not his or her decision.

Presents are returned in the state in which they were initially offered or reimbursed according to their value, depending on the circumstances.

#### *Article 9*

If the engaged man pays the dowry or part of it and the engagement is broken off, or if one of the parties dies during the engagement period, he or his inheritors recovers what the latter initially offered in its original state, something comparable, or something of equivalent value.

If the engaged woman refuses to reimburse the money with which she bought furniture, the person responsible for breaking off the engagement assumes the loss between the value of the furniture and the amount of money initially paid.

### **Chapter II: Of Marriage**

#### *Article 10*

1. Marriage is legally concluded by an offer expressed by one of the parties and acceptance by the other, in any accepted expression from which the meaning of marriage is inferred verbally or conventionally.

2. Persons unable to speak may legally write their consent if they are literate, and if they cannot write, any clear sign understood by the other party and the witnesses is legally sufficient.

#### *Article 11*

To be valid, the offer and acceptance must be:

- 1- expressed verbally whenever possible; otherwise, they must be written; or else expressed by means of an unequivocal sign;
- 2- congruent and concurrent;
- 3- irrevocable and not restricted by a condition or a suspensive or nullifying deadline.

#### *Article 12*

Any marriage contract concluded under duress or by fraud is subject to the provisions of Articles 63 and 66 below.

#### *Article 13*

The conditions required to contract marriage are:

- 1- The legal capacity of both spouses to marry;
- 2- No intention or agreement to cancel the dowry;
- 3- A marital tutor, if required;
- 4- The hearing and notarized statement by two *adouls* (public notaries) of the offer and acceptance pronounced by the two spouses;
- 5- The absence of any legal impediments.

#### *Article 14*

Moroccans living abroad may conclude their marriage according to the local administrative procedures of their country of residence, provided that the conditions of consent, capacity, and the marital tutor if required are all fulfilled, and that there are no legal impediments to the marriage nor cancellation of the dowry; and this in the presence of two Muslim witnesses and subject to the provisions of Article 21 below.

#### *Article 15*

Moroccans who have concluded their marriage according to the laws of their country of residence must submit a copy of the marriage contract within three months of its conclusion to the Moroccan consular section of the consular district where the marriage contract was concluded.

In the absence of a Moroccan Consulate, the copy must be sent within the same deadline to the appropriate department at the Ministry of Foreign Affairs.

The appropriate department at the Ministry of Foreign Affairs will transmit this copy to the Civil Status Officer and to the Family Court at the birthplaces of both spouses.

If both or one of the spouses was not born in Morocco, the copy will be transmitted to the Family Court in Rabat and to the Attorney General's Office at the Court of First Instance in Rabat.

#### *Article 16*

A marriage contract is the accepted legal proof of marriage.

If for reasons of *force majeure* the marriage contract was not officially registered in due time, the court may take into consideration all legal evidence and expertise;

During its enquiry the court shall take into consideration the existence of children or a pregnancy from the conjugal relationship, and whether the petition was brought during the couple's lifetimes;

Petitions for recognition of a marriage are admissible within an interim period not to exceed five years from the date this law goes into effect.

#### *Article 17*

The marriage contract is concluded in the presence of the parties. However, delegation to a proxy is possible with the authorization of the Family Affairs Judge in charge of marriage under the following conditions:

- 1- Special circumstances that prevent the delegating party to be personally present to conclude the marriage contract;
- 2- A delegation for the marriage contract drawn up by a notary or public authority, or a private contract with the notarized signature of the delegating party;
- 3- The proxy must have reached the age of legal majority, enjoy full civil capacity, and fulfil the conditions of tutelage if designated by the marital tutor;
- 4- The delegating party must indicate in the delegation the name of the other spouse, his/her personal information, and all other information that she or he judges useful to include;
- 5- The delegation must include the amount of the dowry payable in advance or in the future. The delegating party must also specify the conditions that she or he wants to stipulate in the marriage contract and the conditions that she or he is willing to accept from the other party;
- 6- The delegation must be certified by the judge once he verifies that it meets all of the required conditions.

#### *Article 18*

A judge may not validate the marriage of a person under his tutelage to himself or to any of his ascendants or descendants.

### **Title Two: Of Capacity, Tutelage and the Dowry**

#### **Chapter I: Of Capacity and Tutelage in Marriage**

#### *Article 19*

Men and women acquire the capacity to marry when they are of sound mind and have completed eighteen full Gregorian years of age.

#### *Article 20*

The Family Affairs Judge in charge of marriage may authorize the marriage of a girl or boy below the legal age of marriage as stipulated in preceding Article 19, in a well-substantiated decision explaining the interest and reasons justifying the marriage, after having heard the parents of the minor who has not yet reached the age of capacity or his/her legal tutor, with the assistance of medical expertise or after having conducted a social enquiry.

The decree granting the petition to marry for a minor who has not reached the age of legal capacity for marriage is not open to appeal.

#### *Article 21*

The marriage of a minor is contingent on the consent of his/her legal tutor.

The legal tutor's consent is expressed by signing, along with the minor, the marriage authorization petition and being present during the conclusion of the marriage contract.

If the minor's legal tutor refuses to consent, the Family Affairs Judge rules on the matter.

#### *Article 22*

The two spouses acquire, pursuant to preceding Article 20, the civil capacity to bring suit on matters pertaining to the rights and obligations created by the marriage contract.

The court may, upon request from one of the spouses or his/her legal tutor, determine the financial obligations of the husband in question as well as payment methods.

#### *Article 23*

The Family Affairs Judge in charge of marriage may authorize the marriage of a mentally disabled person after presentation by one or several medical experts of a report on the state of the person's disability.

The judge informs the other party of the findings and officially records the notice.

The other party must be of legal majority and explicitly consent in an official record to marrying a disabled person.

#### *Article 24*

Marital tutelage is the woman's right, which she exercises upon reaching majority according to her choice and interests.

#### *Article 25*

The woman of legal majority may conclude her marriage contract herself or delegate this power to her father or one of her relatives.

### **Chapter II: Of the Dowry**

#### *Article 26*

The dowry is that which the husband gives to his wife as an expression of his desire to marry her and to build a stable family based on affection and good amicable relations between husband and wife. Its legitimacy is based on its moral and symbolic value rather than its material value.

#### *Article 27*

The dowry amount is specified upon the conclusion of the marriage contract, and in the event it is not specified, the marriage is deemed one of "entrustment."

If the husband and wife do not agree on the amount of dowry during the marriage of “entrustment”, the court shall determine its amount by taking into consideration the social background of both the husband and wife.

#### *Article 28*

Anything that constitutes a source of legal commitment can serve as a dowry, and the dowry should be modest.

#### *Article 29*

The dowry is the woman’s property to use as she wishes, and the husband has no right to ask her for furniture or anything else in exchange for the dowry he gave her.

#### *Article 30*

The husband and wife may agree on the immediate or deferred payment of the dowry within a fixed deadline, be it for the entire amount or for part of it.

#### *Article 31*

The dowry is paid on the fixed deadline.

The wife may ask for the payment of the dowry before starting conjugal life.

When conjugal life commences before payment of the dowry, it becomes a debt on the husband.

#### *Article 32*

The wife’s right to the totality of the dowry vests with the consummation of the marriage or if she dies before the husband does.

She has the right to half of the dowry if divorce occurs before the marriage is consummated.

She has no right to the dowry before the marriage is consummated:

- 1- When the marriage contract is nullified;
- 2- When the marriage contract is rejected because of a defect in the wife or because of a defect in the husband;
- 3- When divorce occurs in a marriage of “entrustment.”

#### *Article 33*

When the payment of the dowry before the marriage is consummated is in dispute, the wife’s declaration takes precedence over the husband’s.

When the payment of the deferred dowry is in dispute, the husband must prove that he has paid it.

The dowry is not subject to prescription.

*Article 34*

All possessions the wife brings with her to the marriage including furniture and accompanying items are her property.

When disputes arise concerning the remaining household furnishings, the matter is decided according to general rules of evidence.

However, if neither the husband nor the wife presents any evidence, the husband under oath claims those effects that men habitually use and the wife under oath claims those effects that women habitually use. Objects commonly used by men and women will be, upon the sworn word of both of the spouses, shared between them when neither of them renounces his or her oath.

**Title Three: Of Marriage Impediments**

*Article 35*

There are two categories of marriage impediments: permanent and temporary.

**Chapter I: Of Permanent Impediments**

*Article 36*

Prohibited degrees of blood kinship relations, including a man's ancestors, ascendants, and descendants.

*Article 37*

Forbidden degrees of kinship by marriage, including the wives' ascendants at the moment the marriage contract is concluded and their descendants if the marriage has been consummated with the mother, as well as the lineal paternal wives and the direct filial wives at the time of the marriage contract's conclusion.

*Article 38*

Impediments to marriage resulting from kinship by breastfeeding are the same as those prohibited through blood kinship and kinship by marriage.

Only the breastfed child – not his or her brothers and sisters - is considered the child of the woman who breastfeeds him or her and of her husband.

Breastfeeding is only an impediment to marriage if it occurred during the first two years of the child's life.

**Chapter II: Of the Temporary Impediments**

### *Article 39*

The temporary impediments to marriage are:

- 1- Marriage simultaneously to two sisters or to a woman and her paternal or maternal aunt, be the relation one of blood kinship or breastfeeding;
- 2- Marriage to more than the legally authorized number of wives;
- 3- After three successive repudiations, unless the wife's *iddat* (or legal waiting period) has expired following the lawful conclusion and consummation of a marriage to another man. The remarriage of the thrice repudiated woman to another man annuls the three previous repudiations pronounced by the first repudiating husband. The resumption of marriage with this husband renews his right to repudiate her anew three times.
- 4- The marriage of a Muslim woman to a non-Muslim man, and the marriage of a Muslim man to a non-Muslim woman unless she is of the Christian or Jewish faith;
- 5- A married woman or a woman who is observing the *iddat* (legal waiting period).

### *Article 40*

Polygamy is forbidden when there is the risk of inequity between the wives. It is also forbidden when the wife stipulates in the marriage contract that her husband will not take another wife.

### *Article 41*

The court will not authorize polygamy:

- If an exceptional and objective justification is not proven.
- If the man does not have sufficient resources to support the two families and guarantee all maintenance rights, accommodation and equality in all aspects of life.

### *Article 42*

In the absence of a stipulation by the wife in the marriage contract precluding polygamy, the husband wishing to resort to it must petition the court for authorization.

The authorization petition should include the exceptional and objective motives that justify the request, and attach a statement on the applicant's financial situation.

### *Article 43*

The court summons the wife whose husband wishes to take another wife. When she personally receives the summons and does not appear in court, or refuses to accept the summons, the court sends her a formal notice by a process server instructing her that if she does not appear at the hearing scheduled in the notice, the husband's petition will be decided in her absence.

The petition is also decided in the wife's absence when it is impossible for the Public Prosecutor Office to ascertain her permanent address or place of residence where the summons may be delivered.

When the wife does not receive the summons due to the mala fide transmission of a false address by the husband or the falsification of the wife's name, the husband incurs, upon request by the prejudiced wife, the penalties provided for in Article 361 of the Penal Code.

#### *Article 44*

The hearing takes place in the consultation room in the presence of both parties, and both are heard in order to reach agreement and reconcile them after an examination of the facts and the presentation of the requested justifications.

The court may authorize polygamy in a well-founded decision not open to appeal once it establishes the existence of an objective and exceptional justification and puts into place conditions benefiting the first wife and her children.

#### *Article 45*

When the court confirms in the discussions that continuation of the conjugal relationship is impossible, and where the wife whose husband wants to take another wife persists in her request for a divorce, the court determines a sum of money corresponding to the first wife's full rights as well as those of their children that he is required to support.

The husband must pay the fixed sum of money within a maximum time limit of seven days.

Upon submission of the requisite sum of money, the court issues the divorce decree.

This decision is not open to appeal as concerns the dissolution of the marital relationship.

The non submission of the requisite sum of money within the fixed deadline is considered as a withdrawal of the polygamy authorization petition.

If the husband persists in his polygamy authorization petition, and the wife to whom he wishes to join a co-wife refuses to consent and does not ask for divorce, the court automatically applies the irreconcilable differences procedure in Articles 94 and 97 below.

#### *Article 46*

If the polygamy authorisation petition is granted, the marriage with the future wife cannot be concluded until the judge has informed her that the applicant husband is already married and she has consented to this.

This notice and consent are recorded in an official report.

### **Title Four: Of Volitional Conditions in the Marriage Contract and their Effects**

#### *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.

#### *Article 48*



Conditions that confer a legitimate benefit on the person who drew them up are valid and binding on the spouse who agreed to them.

If facts or circumstances render the material performance of a condition difficult, the person bound by it may ask the court for a waiver or a modification of the condition, for as long as these facts or circumstances exist, taking into consideration the provisions of preceding Article 40.

#### *Article 49*

Each of the two spouses has an estate separate from the other. However, the two spouses may, under the framework of the management of assets to be acquired during the marriage, agree on their investment and distribution.

This agreement is indicated in a written document separate from the marriage contract.

The *Adouls* (public notaries) inform the two parties of these provisions at the time of the marriage.

In the absence of such an agreement, recourse is made to general standards of evidence, while taking into consideration the work of each spouse, the efforts made as well as the responsibilities assumed in the development of the family assets.

### **Title Five: Of Marriage Categories and Provisions**

#### **Chapter I: Of the Valid Marriage and its Effects**

##### *Article 50*

When the marriage contract meets all legal requirements, and there are no impediments to the marriage, the marriage is considered a valid one, and leads to the full implication of rights and duties that the *Sharia* (religious law) establishes between the husband and wife, children and relatives as stated in this *Moudawana*.

##### ***Section 1: Of the Husband and Wife***

##### *Article 51*

The mutual rights and duties between spouses are:

- 1- lawful cohabitation on the basis of good conjugal relations, justice, equality in case of polygamy, mutual fidelity, virtue, and the preservation of family honour and their children;
- 2- cohabitation, mutual respect, affection, and the preservation of the family interests;
- 3- the wife's assuming with the husband the responsibility of managing and protecting household affairs and the children's education;
- 4- consultation on decisions concerning the management of family affairs, children, and family planning;
- 5- good relations with each other's parents and close relatives, respecting, visiting and hosting them within accepted standards;

6- the right to inherit from each other.

#### *Article 52*

When either spouse continually fails to fulfil his or her obligations in marriage, as specified in the preceding article, the other party may compel the spouse to execute the obligation or resort to the irreconcilable differences procedure provided for in Articles 94, 95, 96 and 97 below.

#### *Article 53*

When either spouse evicts the other from the marital home without justification, the Public Prosecutor shall intervene to return the evicted person to the house immediately and shall take all necessary measures to guarantee his or her safety and protection.

### ***Section 2: Of Children***

#### *Article 54*

Children have the right to the following care from their parents:

- 1- Protection of their lives and health from conception until they come of legal age;
- 2- Ensuring respect of their identity and its preservation, particularly their name, nationality and registration in the civil status record;
- 3- Paternity, custodial care and financial maintenance in conformity with the provisions of the third book of this *Moudawana*;
- 4- Breastfeeding by the mother whenever possible;
- 5- All possible measures that guarantee the children's natural development, with the protection of their physical and psychological integrity, and care for their health through both prevention and treatment;
- 6- Religious guidance, proper education on sound noble principles of honesty in statements and actions, prevention of violence against children that leads to physical and psychological harm, and protection from any exploitation that might harm their interests;
- 7- Providing them with education and training that will enable them to integrate professional life and become useful citizens in society. To the extent possible, parents must provide adequate circumstances for their children to pursue their studies according to their physical and intellectual capacities.

In the event of divorce between the spouses, these duties are distributed between the spouses according to the custody provisions.

In the event of the death of one or both spouses, these duties are incumbent upon the custodian and the legal tutor, according to their respective responsibilities.

The disabled child enjoys, in addition to the abovementioned rights, the right to special care for his condition, particularly adequate education and rehabilitation appropriate for his disability in order to facilitate his integration into society.

The State is responsible for taking the necessary adequate measures to protect children, and for guaranteeing and protecting their rights according to the law.

The Public Prosecutor's Office shall monitor the application of the preceding provisions.

### ***Section 3: Of Relatives***

#### *Article 55*

The marriage contract has effects that extend to each spouse's relatives, including marriage impediments due to kinship by marriage, breastfeeding, and affiliation.

## **Chapter II: Of the Invalid Marriage and its Effects**

#### *Article 56*

The invalid marriage is either null and void or defective.

### ***Section 1: Of the Null and Void Marriage***

#### *Article 57*

The marriage is null and void when:

- 1- One of the fundamental conditions cited in Article 10 is not fulfilled;
- 2- If one of the marriage impediments cited in preceding Articles 35 to 39 exists between the spouses;
- 3- Absence of congruence between the offer and the acceptance.

#### *Article 58*

The court shall declare such a marriage invalid in accordance with the provisions of preceding Article 57 the moment it gains knowledge of it, or upon the request of the concerned party.

After consummation, this marriage results in payment of the dowry, and when good intentions are present it also results in the acknowledgement of paternity as well as the impediments that result from the marriage.

### ***Section 2: Of the Defective Marriage***

#### *Article 59*

The marriage is defective if one of the conditions for its validity is not fulfilled, in accordance with Articles 60 and 61 below. Some of these marriages are annulled before they are consummated and validated after consummation, while other marriages are annulled before and after consummation.

#### *Article 60*

The defective marriage is annulled before it is consummated and does not result in a dowry when the dowry does not meet the legal conditions. The marriage may be validated after it has been consummated by a dowry established by the court in consideration of the social status of both spouses.

#### *Article 61*

The marriage that is defective because of the contract is annulled before and after consummation in the following cases:

- If the marriage was concluded when either spouse had a serious contagious disease, unless the sick person was cured after the marriage;
- When the husband contracts the marriage in order to permit a woman who has been repudiated three times to remarry her former husband;
- When the marriage took place without the presence of the marital tutor when his presence is required;
- Repudiation and divorce in the preceding cases are valid if pronounced before the annulment decree.

#### *Article 62*

If the offer and acceptance are constrained by a deadline or a suspensive or nullifying condition, the provisions of preceding Article 47 apply.

#### *Article 63*

Either spouse who was placed under duress or deceived by fraud with the intent to induce him or her to agree to the marriage, or by facts expressly stipulated as a condition in the contract, can petition for the annulment of the marriage before or after consummation within a period not to exceed two months from the date when the duress was lifted, or she or he discovered the fraud. She or he has the right to demand compensation.

#### *Article 64*

The marriage which is annulled by virtue of preceding Articles 60 and 61 has no effects before consummation, but after it consummation it has the same effects as a valid marriage contract until the annulment decree is rendered.

### **Title Six: Of the Formalities and Administrative Measures to Legalize a Marriage Contract**

#### *Article 65*

I. A marriage contract record is created and maintained at the Court Clerk's office at the Family Court where the marriage is to be concluded, and it shall include the following documents:

- 1- An application form requesting registration of the marriage contract. Its form and content shall be specified in a decree by the Minister of Justice;
- 2- A copy of the birth certificate. The civil status officer shall mention in the margins of this copy its date of issuance, specifying that it was issued for the purpose of marriage;

- 3- An administrative certificate for both of the engaged parties, whose content shall be defined in a joint decree by the Ministers of Justice and Interior;
- 4- A medical certificate for each of the two engaged parties, whose content and procedures for issuing shall be defined in a joint decree by the Ministers of Justice and Health;
- 5- A marriage authorization is also required in the following cases:
  - Marriage of persons not yet of legal age;
  - Polygamy when the conditions required by this *Moudawana* are fulfilled;
  - The marriage of a mentally disabled person;
  - The marriage of persons who have converted to Islam and foreigners.
- 6- A certificate of capacity to marry or its equivalent for foreigners.

II. The Family Affairs Judge in charge of marriage records officially certifies the record containing the abovementioned documents, and files it at the Court Clerk's office under its assigned number.

III: The Family Affairs Judge authorizes the two *adouls* (public notaries) to draw up the marriage contract.

IV: The two *adouls* note in the marriage contract the declaration by both spouses specifying whether or not they have been married previously.

In case of a previous marriage, the declaration must be accompanied by proof of the legality of the marriage to be concluded.

#### *Article 66*

If a person employs fraud to obtain the authorization or the certificate of capacity mentioned in Clauses 5 and 6 of the preceding Article or to evade them, the dispositions of Article 366 of the Penal Code will be applied to the author and his accomplices upon request by the injured party.

The injured party has the right to ask for the annulment of the marriage with compensation.

#### *Article 67*

The marriage contract shall contain the following:

- 1- Mention of the judge's authorization, its number, its date of issuance, and the number of the marriage document record as well as the court where it was filed;
- 2- The family names, first names, country or place of residence, place of birth and age, national identity card number or its equivalent, and nationality of both spouses;
- 3- The name of the marital tutor if required;
- 4- The offer and acceptance by the two contracting parties who exercise full capacity and the ability to choose and discern;
- 5- In the case of marriage by proxy, the name and national identity card number of the representative, and the date and place of issuance of the marriage delegation;
- 6- Mention of the legal status of the spouse who has been married previously;

- 7- The amount of the dowry in cases where it has been specified, denoting any amount paid in advance or to be paid in future instalment(s), and whether it has been paid in front of witnesses or if there is mere acknowledgement;
- 8- Conditions agreed upon by both parties;
- 9- The signatures of both spouses and the tutor when required;
- 10- The names of the two *adouls* (public notaries) and each one's signature with the date of the marriage contract;
- 11-The authentication of the marriage contract by the judge affixed with his seal.

The list of documents required to constitute the marriage record as well as their content may be modified or completed by ministerial decree.

#### *Article 68*

The contract is registered at the Family Court records. A summary of it is transmitted to the Civil Status office at the birthplaces of both spouses, accompanied by a return receipt within fifteen days after the judge has authenticated it.

If one or both spouses were not born in Morocco, the marriage contract summary is transmitted to the Office of the Attorney General at the Court of First Instance in Rabat.

The civil status officer records the information from this summary in the margins of the copy of the birth certificates of both spouses.

The format, content and information recorded as cited in the first paragraph above shall be determined in a decree by the Minister of Justice.

#### *Article 69*

The original marriage contract is remitted to the wife and a copy provided to the husband once the judge authenticates it.

## **BOOK TWO: OF THE DISSOLUTION OF THE BONDS OF MATRIMONY AND ITS EFFECTS**

### **Title One: General Provisions**

#### *Article 70*

No one should resort to the dissolution of the bonds of matrimony through repudiation or divorce except in exceptional circumstances, considering the rule of the least harm, given the family dislocation and harmful effects on children.

#### *Article 71*

Marriage is dissolved by death, annulment, divorce, repudiation or *khol'* (divorce in exchange for compensation by the wife).

#### *Article 72*

Dissolution of a marriage produces the effects cited in this *Moudawana* from the date of the:

- 1- Death of either spouse, or the issuance of a judgement declaring him or her deceased;
- 2- Annulment, repudiation, divorce, or *khol'* (divorce in exchange for compensation by the wife).

*Article 73*

Divorce must be expressed by explicitly spoken words and in writing, and for those incapable of both, an unequivocal sign from which divorce is inferred.

**Title Two: Of Death and Annullment**

**Chapter I: Of Death**

*Article 74*

Death and its date are established before the court by all accepted means.

The court shall declare a disappeared person deceased according to Articles 327 and following.

*Article 75*

If a disappeared person who has been pronounced deceased by the court turns out to be alive, the Public Prosecutor's Office or the concerned person shall petition the court to issue a decision declaring that he or she is still alive.

The court's decision declaring the person still alive nullifies the previous judgement pronouncing the person deceased and annuls all of its effects, with the exception of the remarriage of the disappeared person's wife, which remains valid if consummated.

*Article 76*

In the event the real date of death is proven and turns out to be different from the one issued by the court, the Public Prosecutor's Office as well as all concerned parties should petition for the issuing of a judgement proving that fact, and this nullifies the effects related to the wrong date of death, except for the remarriage of the wife.

**Chapter II: Of Annulment**

*Article 77*

The annulment of the marriage contract before or after the marriage is consummated is decreed in certain cases and according to the conditions set out in this *Moudawana*.

**Title Three: Of Repudiation**

*Article 78*

Repudiation is the dissolution of the bonds of matrimony exercised by the husband and wife, each according to his or her respective conditions, under judicial supervision and according to the provisions of this *Moudawana*.

#### *Article 79*

Whoever wishes to repudiate must petition the court for authorization to certify the repudiation by two *adouls* (public notaries) accredited for this purpose in the judicial district of the conjugal domicile, the wife's domicile or place of residence, or the place where the marriage contract was issued, in that order.

#### *Article 80*

The petition for authorization to certify a repudiation contains the identity of both spouses, their professions, their address(es), and the number of children if any, their ages, and their state of health and educational status.

The petition must be accompanied by the marriage record and evidence of the husband's material situation and financial obligations.

#### *Article 81*

The court shall subpoena the two spouses for a reconciliation attempt.

If the husband personally receives the summons and does not appear, this is considered a withdrawal of his petition.

If the wife personally receives the summons, and neither appears nor submits a written response, the court notifies her through the Public Prosecutor that if she does not appear, the case will be decided in her absence.

When the wife's address is unknown, the court, with the assistance of the Public Prosecutor, determines the facts, and if it is established that the husband provided false statements, upon the wife's request he shall incur the penalties provided for by Article 361 of the Penal Code.

#### *Article 82*

When the two spouses appear, the discussions take place in the consultation room, including the hearing of witnesses and any other person the court deems useful to hear.

The court may take all necessary measures, including the appointment of two arbitrators, a family council or whomever it deems qualified to reconcile the couple. In the existence of children, the court undertakes two reconciliation attempts separated by a minimum of 30 days.

If the attempts to reconcile the spouses succeed, an official report is written and filed at the court.

#### *Article 83*



If the attempts to reconcile the spouses fail, the court shall fix a sum of money that the husband must deposit at the court within a maximum delay of thirty days to discharge all vested rights due to the wife and dependent children as provided for by the two following articles.

#### *Article 84*

The amount due to the wife includes: the delayed dowry if appropriate, maintenance for the *iddat* (legal waiting period) and the Consolation Gift, which is assessed based on the length of the marriage, the financial means of the husband, the reasons for the repudiation, and the degree to which the husband has abused this right.

During the *iddat* period the wife remains in the conjugal home, or, if need be, in a suitable home based on her and the husband's financial situation. Failing this, the court shall fix an amount of money to cover housing expenses to be deposited with the court as part of the vested rights due to the wife.

#### *Article 85*

The amount of vested rights due to dependent children is determined according to Articles 168 and 190 below, taking into consideration their standard of living and educational situation prior to the divorce.

#### *Article 86*

If the husband does not deposit the amount of money provided for in preceding Article 83 within the fixed deadline, this is considered as a renunciation of his intention to repudiate, and the court certifies this.

#### *Article 87*

As soon as the husband deposits the required sum of money, the court authorizes him to register the repudiation with the two *adouls* (public notaries) in the same district as the court.

As soon as the judge has affixed his seal to the repudiation decree, a copy is transmitted to the court that issued the repudiation authorization.

#### *Article 88*

After the court receives the copy indicated in the preceding article, it shall issue a well-substantiated decision that includes:

- 1- The names, dates and places of birth and of the marriage, and domicile(s) or place(s) of residence of the two spouses;
- 2- A summary of the two parties' claims and their requests, the evidence and arguments they presented, the procedures already undertaken, and the Public Prosecutor's conclusions;
- 3- The date of the authentication of the repudiation;
- 4- Whether the wife is pregnant or not;
- 5- The names of their children, their ages, the name(s) of their custodian(s), and the organization of visitation rights;

6- Specification of the amount due as cited in preceding Articles 84 and 86, and the salary due to the child custodian after the *iddat* (legal waiting period).

The court's decision is open to appeal according to the usual procedures.

#### *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. The court shall verify that the conditions for the assignation of the right of repudiation as agreed upon by the two spouses are fulfilled, and attempt reconciliation according to the provisions of preceding Articles 81 and 82.

If the reconciliation attempt fails, the court shall authorize the wife to petition for the certification of the repudiation and rule on her vested rights, and if appropriate, those of her children, in accordance with preceding Articles 84 and 85.

The husband cannot prevent his wife from exercising the right of repudiation that he has previously assigned to her.

#### *Article 90*

The repudiation authorization petition is not accepted from an inebriated person, a person who has been forced to do so, or an irate person.

#### *Article 91*

Vows and pledges do not result in repudiation.

#### *Article 92*

Multiple expressions of repudiation pronounced verbally, with a symbolic gesture or in writing result in only one repudiation.

#### *Article 93*

Repudiation made conditional on doing something or abstaining from something has no effect.

### **Title Four: Of Divorce**

#### **Chapter I: Of Divorce Sought by Either Spouse for Irreconcilable Differences**

#### *Article 94*

If either or both spouses ask the court to settle a dispute that risks to breakdown their marriage, the court must make all efforts to reconcile them according to the provisions of preceding Article 82.

#### *Article 95*

The two arbitrators or two persons that can assume this role shall investigate the causes of the dispute between the spouses and do their best to resolve the conflict.

If the two arbitrators reconcile the two spouses, they shall write a report, make three copies of it, signed by them as well as the spouses, and submit the three copies to the court, which remits a copy to each spouse and files one in the record, and certifies it.

#### *Article 96*

When the two arbitrators disagree on the content of the report or in the attribution of responsibility, or do not submit the report within the requisite deadline, the court may conduct an additional investigation by all means it judges appropriate.

#### *Article 97*

In the event reconciliation is impossible to reach, and the conflict between the spouses persists, the court shall make written mention of this in an official report of the proceedings, and grant the divorce as well as fix the vested rights to be paid according to preceding Articles 83, 84 and 85, taking into account each spouse's responsibility for the cause of the separation when considering measures it will order the responsible party to take in favour of the other spouse.

The irreconcilable differences suit shall be settled within a deadline not to exceed six months from the date the petition was filed.

### **Chapter Two: Of Divorce for Other Causes**

#### *Article 98*

The wife may petition for divorce on one of the following grounds:

- 1- Non respect by the husband of one of the conditions in the marriage contract;
- 2- Harm;
- 3- Non maintenance;
- 4- Absence;
- 5- Latent defect;
- 6- Abstinence and abandonment.

#### ***Section 1: Of Non Respect of One of the Conditions in the Marriage Contract or Harm***

#### *Article 99*

Failure to respect any condition in the marriage contract constitutes a harm justifying a divorce request.

Any ignominious behaviour by the husband or act against good character that causes the wife material or moral harm such that the continuance of the conjugal relationship is rendered unendurable shall be considered a harm justifying a divorce request

#### *Article 100*

The harm suffered is established by all means of proof, including the testimony of witnesses, who are heard by the court in the consultation room.

If the wife does not prove the harm and maintains her request for divorce, she may resort to the irreconcilable differences procedure.

#### *Article 101*

In the event the court grants divorce on the grounds of harm, the court may fix in the same judgement the amount of compensation due for the harm.

### ***Section 2: Of Non Maintenance***

#### *Article 102*

The wife may petition for divorce on the grounds of non respect by the husband of his current maintenance obligations towards her, in accordance with the following situations and provisions:

- 1- If the husband has assets from which to award maintenance, the court may fix the means for paying the wife maintenance, and does not grant her petition for divorce.
- 2- In the event the husband proves his incapacity, the court shall fix, according to the circumstances, a deadline for the husband not to exceed thirty days to provide maintenance to his wife, under penalty of divorce, except in cases of *force majeure* or exceptional circumstances.
- 3- The court shall grant the wife's petition for divorce immediately if the husband refuses to provide maintenance and does not prove his financial incapacity.

#### *Article 103*

The same provisions shall be applied to the absent husband whose address of residence is known and who receives notice of the petition.

If the absent husband's address of residence is unknown, the court shall confirm this with assistance of the Public Prosecutor's Office, verify the validity of the request, and proceed to settle the case in light of the results of the investigation and the supporting documents.

### ***Section 3: Of Absence***

#### *Article 104*

If the husband is absent from the conjugal home for more than one year, the wife may petition for divorce.

The court shall verify the absence, its length, and his location by all means. If the husband's absence is established and his address of residence is known, the court shall inform him about the petition by formal notice to allow him to respond, and grant the divorce if he does not appear to cohabit with his wife or if he does not bring her to live with him.

#### *Article 105*

If the absent husband's address is unknown, the court, with the help of the Public Prosecutor's Office, shall take all appropriate measures to notify him of the wife's petition, including the appointment of a proxy. If he does not appear, the court shall grant the divorce.

#### *Article 106*

If the husband has been sentenced to imprisonment or detention for more than three years, the wife may petition for divorce after a year of his detention, and in all cases she may petition for divorce two years after his detention.

### ***Section 4: Of The Latent Defect***

#### *Article 107*

Defects that are considered as impacting the stability of conjugal life and that justify its dissolution are:

- 1- Any defect that prevents intimate conjugal relations;
- 2- Diseases that will endanger the life or the health of the other spouse and cannot be cured within one year.

#### *Article 108*

The petition filed by one of the spouses for divorce on the basis of a latent defect is subject to the following conditions:

- 1- The petitioner must not have known about the defect at the time the marriage contract was concluded;
- 2- The petitioner must not have behaved in a way that would imply his or her consent to the latent defect once she or he had knowledge of its incurable nature.

#### *Article 109*

No dowry is paid in the case of divorce on the grounds of a latent defect granted by the court before the marriage is consummated, and if the marriage has been consummated, the husband has the right to seek reimbursement of the dowry from a spouse who misled him or knowingly hid a latent defect.

#### *Article 110*

When the husband is aware of the defect before the marriage contract is concluded, and divorces before the marriage is consummated, half of the dowry must be paid.

#### *Article 111*

Recourse is made to specialized experts to help identify the defect or disease.

## ***Section 5: Of Abstinence or Abandonment***

### *Article 112*

When the husband takes an oath of abstinence from his wife or abandons her, the wife may petition the court, which will set a deadline of four months, and if after this time the husband has not repented his oath, the court shall grant the divorce.

## ***Section 6: Of Divorce Suits***

### *Article 113*

Decisions shall be rendered in divorce suits based on one of the grounds provided for in preceding Article 98 after a reconciliation attempt, except in cases based on absence, and within a delay not to exceed six months, barring exceptional circumstances.

The court shall also rule on the vested rights of the wife and children, as specified in preceding Articles 84 and 85.

## **Title Five: Of Divorce by Mutual Consent or Divorce in Exchange for Compensation**

### **Chapter I: Of Divorce by Mutual Consent**

#### *Article 114*

The spouses may mutually agree on the principle of ending their conjugal relationship with or without conditions, provided that the conditions do not contradict the provisions of this *Moudawana*, and do not harm the children's interests.

When the spouses agree, one or both of them shall petition the court for divorce, accompanied by the authorization to validate it.

The court shall attempt to reconcile the husband and wife. When this proves impossible, the court shall authorize the certification and validation of the divorce.

### **Chapter II: Of Divorce in Exchange for Compensation (*khol*)**

#### *Article 115*

The spouses may agree on divorce in exchange for compensation according to the provisions of preceding Article 114.

#### *Article 116*

A woman of legal majority may obtain divorce in exchange for compensation, whereas divorce by a woman who has not yet reached the age of legal majority occurs when a third party pays in her place, and she cannot be forced to undertake this procedure unless her legal tutor consents.

#### *Article 117*

The wife may recover the sum she paid to obtain the divorce if she proves that she acted under duress or as the result of harm caused by her husband, and in all cases the divorce shall be granted.

*Article 118*

Anything that constitutes a source of legal commitment may be used to pay to obtain divorce, without, however, any abuse or exaggeration.

*Article 119*

If the woman is in a precarious financial situation, the compensation for divorce shall not be exchanged from funds reserved for the children or their maintenance.

If the woman who divorced in exchange for compensation cannot financially maintain her children, their maintenance becomes an obligation of the father, without calling into question his right to renew conjugal life with her.

*Article 120*

If the spouses agree on the principle of divorce in exchange for compensation, yet disagree on its amount, the case shall be brought before the court to attempt reconciliation. If the reconciliation attempt does not succeed, the court shall grant the divorce in exchange for compensation after fixing its amount, taking into consideration the amount of the dowry, the duration of the marriage, the reasons for the divorce petition, and the material situation of the wife.

If the wife maintains her request for a divorce in return for compensation and the husband does not consent, she may resort to the irreconcilable differences procedure.

**Title Six: Of Divorce and Repudiation Categories**

**Chapter I: Of Interim Orders**

*Article 121*

When a suit between the spouses is brought before the court, and cohabitation between them is impossible, the court may, on its own motion or upon request, prescribe interim measures it deems appropriate for the wife and children pending judgment on the case, including the choice of living with one of her or her husband's relatives. Such measures shall be immediately enforced by the Public Prosecutor.

**Chapter II: Of Revocable and Irrevocable Divorces**

*Article 122*

Any divorce granted by the court is irrevocable, with the exception of cases of divorce on the grounds of abandonment and non maintenance.

*Article 123*

Any divorce pronounced by the husband is revocable, with the exception of a third repudiation, divorce before the marriage is consummated, divorce by mutual consent, divorce in exchange for compensation, and repudiation when the husband has assigned his right to exercise it to his wife.

#### *Article 124*

The husband may take his wife back during the legal waiting period (*iddat*).

If the husband wants to take back his wife after a revocable divorce, two *adouls* (public notaries) shall certify this and immediately inform the judge.

Before validating the “resumption document,” the judge must summon the wife to inform her of this. If she doesn’t comply with this request and refuses to return, she may resort to the irreconcilable differences procedure in preceding Article 94.

#### *Article 125*

At the conclusion of the legal waiting period (*iddat*) following a revocable divorce, the woman is deemed irrevocably divorced.

#### *Article 126*

Irrevocable divorce not practiced for the third time puts an immediate end to the marriage relationship, but does not prohibit the renewal of the marriage contract.

#### *Article 127*

Divorce for the third time puts an immediate end to the marriage relationship and prohibits the renewal of the marriage contract with the divorced woman unless the *iddat* (legal waiting period) following a legitimately consummated marriage with another husband has expired.

#### *Article 128*

Judicial decisions on divorce, divorce in exchange for compensation or annulment, rendered in accordance with the provisions of this code, shall not be open to appeal as concerns the termination of the marital relationship.

Decisions rendered by foreign courts concerning repudiation, divorce, divorce in exchange for compensation, or annulment shall be admissible when they are issued by a court with jurisdiction over the matter and are based on grounds for terminating the marriage relationship that do not contradict those contained in this *Moudawana*.

The same standard applies for decrees issued abroad before officials and civil servants with jurisdiction in the matter after meeting all required legal measures, noting on these decrees the mention that they are enforceable in conformity to Articles 430, 431 and 432 of the Civil Procedure Code.

### **Title Seven: Of the Effects of the Dissolution of the Marriage Contract**



## **Chapter I: Of the Legal Waiting Period (*iddat*)**

### *Article 129*

The legal waiting period starts to run from the date of the repudiation, divorce, annulment or death.

### *Article 130*

The legal waiting period is mandatory only when the marriage has been consummated and real intimacy has occurred, or upon the death of the husband.

### *Article 131*

During the legal waiting period the divorced woman or the woman whose husband has died shall reside in the marital home or in another home prepared for her.

### ***Section 1: Of the Legal Waiting Period Following the Death of the Husband***

#### *Article 132*

The legal waiting period of the woman whose husband has died and who is not pregnant is four full months and ten days.

### ***Section 2: Of the Legal Waiting Period of the Pregnant Woman***

#### *Article 133*

The pregnant woman's legal waiting period ends with the delivery of the baby or the end of the pregnancy.

#### *Article 134*

In the event the woman observing the legal waiting period claims doubt about her pregnancy, and there is a dispute on this matter, the case shall be referred to the court, which will resort to expert assistance to ascertain the pregnancy and date of conception in order to decide whether the legal waiting period should continue or not.

#### *Article 135*

The maximum duration of pregnancy is one year from the date of the divorce or death of the husband.

#### *Article 136*

The legal waiting period for non pregnant women is:

- 1- three full cycles for women who still have menstrual cycles;

- 2- three full months for women who have never had menstrual cycles or for those who have reached menopause, but if she menstruates before the end of the three months, she continues her legal waiting period for three additional cycles;
- 3- for women whose menstrual cycles are late or irregular or who cannot distinguish menstrual flow from other secretions, they observe the legal waiting period for three cycles after a waiting period of nine months.

## **Chapter II: Of the Overlapping of Legal Waiting Periods**

### *Article 137*

When the husband of the woman who was divorced through a revocable divorce dies while she is still under the legal waiting period, she observes the waiting period for death rather than the legal waiting period for divorce.

## **Title Eight: Of Divorce Certification Procedures and Content**

### *Article 138*

Divorce must be certified by two 'adouls' (public notaries) specialized in the matter, once the court authorizes it and after submission of the marriage record.

### *Article 139*

The divorce decree should include the following:

- 1-The date of the divorce authorization and its number;
- 2-The identities, addresses, identity card numbers or their substitute of the former spouses;
- 3-The marriage contract date of issuance, its number in the record cited in preceding Article 68;
- 4-The type of divorce and its number.

### *Article 140*

The wife has the right to obtain the divorce decree fifteen days after the divorce has been certified, and the husband may also obtain a copy.

### *Article 141*

The court shall submit a summary of the repudiation decree, the "resumption document," the divorce decree, the marriage contract annulment, or its invalidation to the Civil Status Officer at the birthplace of both spouses, along with the certificate of submission of a copy of it fifteen days after it has been certified or after the issuing of divorce decree by the court, or the annulment or invalidation.

The Civil Status Officer must make mention of the content of the summary in the margins of the birth certificate of both spouses.

If both or either of the spouses was not born in Morocco, the summary shall be remitted to the Attorney General at the Court of First Instance in Rabat.

The information that must be included in the summary cited in the first paragraph above shall be determined in a decree by the Minister of Justice.

### **BOOK THREE: OF BIRTH AND ITS EFFECTS**

#### **Title One: Of Filiation and Paternity**

##### **Chapter I: Of Filiation**

###### *Article 142*

Filiation is established through the attribution of a child to his or her parents, and it may be legitimate or illegitimate.

###### *Article 143*

Filiation to the father and mother is considered legitimate until proven to the contrary.

###### *Article 144*

Legitimate filiation is established to the father in cases where one of the paternity conditions is fulfilled, and it creates all of the legal effects of paternity.

###### *Article 145*

When the filiation of a child of unknown paternity is established by acknowledgement of paternity or by judicial decision, the child shall become legitimate, acquire his father's name and religion, they mutually inherit from each other, and such filiation creates the marriage impediments and results in the paternity and filiation rights and duties.

###### *Article 146*

Filiation to the mother produces the same effects regardless of whether the children are the result of a legitimate or illegitimate relationship.

###### *Article 147*

Filiation to the mother is established by:

- the delivery of the child;
- acknowledgement by the mother, in accordance with the conditions cited in Article 160 below;
- judicial decision.

Maternal filiation is deemed legitimate in cases of marriage, sexual relations by error and rape.

###### *Article 148*

Illegitimate filiation to the father does not produce any of the effects of legitimate filiation.

*Article 149*

Adoption has no legal value and does not result in any of the effects of legitimate filiation.

“Gratitude adoption” (*jaza*) or “testamentary adoption” (*tanzil*) cannot prove paternity, and are subject to the terms of the testament.

**Chapter II: Of Paternity and Modes of its Proof**

*Article 150*

Paternity is a legitimate bond between the father and the child that is transmitted through generations.

*Article 151*

Paternity is established by presumption and may only be refuted by judicial decision.

*Article 152*

Paternity is established by:

- 1- the conjugal bed;
- 2- acknowledgement;
- 3- sexual relations by error.

*Article 153*

The conjugal bed is proven by the same means used to prove the marital relationship. The conjugal bed that meets the required conditions is irrefutable proof of paternity, only subject to disavowal by the husband through a sworn allegation of adultery committed by his spouse, or by means of an irrefutable expertise, upon two conditions:

- The husband must present solid proof of his allegations;
- Issuance of a judicial decision ordering the expertise.

*Article 154*

The paternity of a child is proven by the conjugal bed:

- 1- If the child is born six months after the marriage contract was concluded and the opportunity for sexual intercourse has existed, whether the marriage contract is valid or defective;
- 2- When the child is born during the year that follows the date of separation.

*Article 155*

If a pregnancy results from sexual relations by error and the woman delivers within the minimum and maximum statutory pregnancy period, the child's paternity shall be attributed to the author of the sexual intercourse.

Paternity due to sexual relations by error is established by all legal means.

#### *Article 156*

If an engagement takes place by an offer and acceptance but for reasons of *force majeure* the marriage contract was not officially concluded, and during the engagement period the engaged woman shows signs of pregnancy, the child is affiliated to the engaged man on the grounds of sexual relations by error when the following conditions are met:

- a- If the two engaged person's families are aware of the engagement, and if the woman's legal tutor, if required, has approved the engagement;
- b- If it appears that the engaged woman became pregnant during the engagement period;
- c- If the two engaged persons mutually acknowledge that they are responsible for the pregnancy.

These conditions are established by a judicial decision not open to appeal.

If the engaged man denies responsibility for the pregnancy, all legal means may be used to prove paternity.

#### *Article 157*

When paternity is proven, even if the marriage is defective, if it results from sexual relations by error, or by acknowledgement, it produces all of the effects of kinship, including the prohibition of marriage within degrees of kinship and breastfeeding relations, and creates kinship maintenance and inheritance rights.

#### *Article 158*

Paternity is proven by the conjugal bed, the father's acknowledgement, the testimony of two public notaries (*adouls*), oral testimony, and by all other legal means, including judicial expertise.

#### *Article 159*

The husband's paternity of the child and the pregnancy of his wife may only be refuted by judicial decision, in accordance with preceding Article 153.

#### *Article 160*

Paternity is proven by the father's acknowledgement of his paternity of the child in question, even in a "deathbed declaration", according to the following conditions:

- 1- That the acknowledging father be of sound mind;
- 2- That the child's paternity be unknown;

- 3- That the declarations of the author of the acknowledgement not be contradicted by the truth or plausibility;
- 4- That the child accepts the acknowledgement if she or he has reached the age of legal majority, and if not, she or he has the right to petition to contest the paternity upon coming of age.

The designated mother may deny her affiliation to the child or present evidence that rebuts it.

Any interested party may contest the validity of the existence of the preceding conditions for acknowledgement provided that the acknowledged person is still alive.

#### *Article 161*

Only the father may acknowledge paternity.

#### *Article 162*

The acknowledgement shall be proven by official certification or by an indisputable handwritten statement irrefutably made by the person making the acknowledgement

### **Title Two: Of Custody**

#### **Chapter I: General Provisions**

#### *Article 163*

Custody preserves the child from harm and ensures his or her education and the protection of his or her interests.

The custodian must take all necessary measures to guarantee the physical and psychological security of the child in his or her custody, manage his or her interests in the absence of the legal tutor, and as necessary when then interests of the child in his or her custody are jeopardized.

#### *Article 164*

Custody is the parents' duty as long as the marriage relationship exists.

#### *Article 165*

If among the people entitled to be entrusted with custody no one accepts it or fulfils the required conditions, either the party concerned or the Public Prosecutor's Office may request the court to appoint whomever it deems fit among the child's relatives or other persons, or else selects an institution designated for this purpose.

#### *Article 166*

Custody is exercised until both the boy and the girl reach the age of legal majority.

Following the termination of his or her parents' marriage, a child who completes fifteen years of age has the right to choose either the father or mother as custodian.

A child without parents may choose one of the relatives cited in following Article 171, provided that his or her interests are not jeopardized and that the legal tutor consents.

In the absence of agreement, the case shall be presented to the judge to settle the matter according to the interests of the minor.

#### *Article 167*

The custodial salary and expenses shall be covered by the person responsible for the child's maintenance, and are separate from the breastfeeding salary and child support.

No custodial salary is due the mother when the marriage relationship still exists, or during the legal waiting period following a revocable repudiation.

#### *Article 168*

Accommodation expenses for the child shall be fixed separately from child support, the custodial salary and other custodial expenses.

The father must provide accommodation for his children or pay a sum of money estimated by the court for the payment of their rent, in accordance with the provisions of Article 191 below.

Children may not be evicted from their parents' conjugal home until the father executes the judgment for their accommodation.

The court shall define the measures and procedures that will guarantee the execution of the judgment by the father concerned.

#### *Article 169*

The father or the legal tutor and the mother custodian must safeguard the child's interests, including his or her education and upbringing; however, the ward always spends the night at the custodian's house unless the judge decides otherwise.

If the custodian is other than the mother, that custodian must supervise and follow up daily on the child's homework.

In the event of disagreement between the legal tutor and the custodian, the case shall be presented to the court to settle according to the child's interests.

#### *Article 170*

The right of custody shall be restored to the person entitled to it when the grounds for its withdrawal no longer exist.

The court may reconsider custody when it is in the interests of the child.

## **Chapter II: Of People Entitled to Custody and their Order of Priority**

### *Article 171*

Child custody shall be awarded first to the mother, then to the father, then to the maternal grandmother of the child. If this proves difficult, the court shall decide, in light of the evidence before it and in view of what would serve the interests of the child, to award custody to the most qualified of the child's relatives, while guaranteeing the child suitable lodging as one of the custody obligations.

### *Article 172*

The court may resort to the assistance of a social worker to prepare a report on the custodian's home and the extent to which it meets the material and moral needs of the child.

## **Chapter III: Conditions for Awarding Custody and Causes for its Withdrawal**

### *Article 173*

Custodian Criteria:

1. Persons other than the parents must have reached the age of legal majority;
2. Moral rectitude and trustworthiness;
3. The ability to raise the child, protect his or her health and ensure his or her moral and religious upbringing and schooling;
4. Women petitioners for custody may not marry except in the cases provided for in Articles 174 and 175 below.

Should changes occur in the status of the custodian that are likely to cause harm to the child, child custody shall be withdrawn and awarded to the next eligible person.

### *Article 174:*

The marriage of a woman custodian other than the mother shall result in her loss of custody, except in the two following instances:

1. If her husband is in a degree of kinship relations that precludes marriage, or is the child's legal representative;
2. If she is the child's legal representative.

### *Article 175:*

The marriage of the custodial mother shall not result in the loss of her custody of the child in the following cases:

1. If the child has not attained the age of seven years; or if such a separation may inflict harm on him or her;
2. If the child suffers from an illness or a handicap which renders his or her custody difficult for any person other than the mother;



3. If her husband is in a degree of kinship relations precluding marriage, or is the child's legal representative;
4. If she is the child's legal representative.

The marriage of the custodial mother shall exonerate the father from payment of the child's accommodation expenses and the custodial salary, and the father shall remain responsible for payment of child support.

*Article 176:*

Silence on the part of the person entitled to custody of the child for a period of one year after she or he has knowledge of the marriage shall result in the forfeiture of his or her right to custody, except in cases of *force majeure*.

*Article 177:*

The father and the mother of the child, as well as his or her relatives and any third party, shall notify the Public Prosecutor's Office of any harm endured by the child so that it may take all necessary measures to safeguard the child's rights, including withdrawal of custody.

*Article 178:*

Child custody is not lost if the custodian or legal tutor moves to another locality within Morocco, unless it is established for the court that there is cause for its withdrawal, taking into account the best interests of the child, the particular conditions of the father or legal representative, as well as the distance separating the child from his or her legal tutor.

*Article 179:*

The court may, at the request of the Public Prosecutor's Office or the child's legal representative, include in the custody decree or any subsequent decision an injunction prohibiting travel by the child outside of Morocco without the prior consent of his or her legal representative.

The Public Prosecutor's Office shall notify the competent authorities about the injunction so that they may take all measures necessary to guarantee the execution of this decision.

In the event that permission to travel outside of Morocco with the child is not obtained, the custodian may petition the judge in charge of expeditious cases to secure such permission.

Permission shall not be granted until the judge has ascertained that such travel is temporary and that the child will be returned to Morocco.

#### **Chapter IV: Of Child Visitation**

*Article 180:*

The non-custodial parent is entitled to visit and be visited by the child.

*Article 181:*

The parents may organize such visits by mutual agreement, which is then conveyed to the court and its terms recorded in the custody decree.

*Article 182:*

In the event the parents fail to agree, in its custody decree the court shall establish the visitation times and places with such exactitude as to prevent any attempt intended to thwart such visits.

In its determination, the court shall take into account the conditions of each party and the specific circumstances pertaining to each case, and its decision may be open to appeal.

*Article 183:*

Should any circumstances arise that render the organization of visits, as previously agreed upon by both parents or as determined by court decree, detrimental to either person or to the child, the terms of the visits may be revised and amended to take into account the new circumstances.

*Article 184:*

The court may take any measures it deems necessary, including the modification of the visitation terms and withdrawal of custody, in the event of breach of or deception in the execution of the agreement or the visitation decree.

*Article 185:*

If either of the child's parents should die, the parents of the deceased shall be entitled to visit the child in accordance with the previous child visitation arrangements.

*Article 186:*

The court shall take into account the interests of the child when applying the provisions of the present Section.

### **Title Three: Of Financial Maintenance**

#### **Chapter I: General Provisions**

*Article 187:*

Each person shall support himself or herself with his or own resources, with the exception of those persons who have been statutorily exempted.

Financial maintenance for others is due for reasons of marriage, kinship, and commitment.

*Article 188:*

No person is required to pay maintenance to any other person unless he first has sufficient means to support himself, and self-sufficiency is presumed until proven to the contrary.

*Article 189:*

Maintenance shall include food, clothing, medical care, and all that is deemed indispensable, as well as children's education, taking into consideration the provisions of preceding Article 168.

A number of elements shall be taken into account to fix maintenance: a pondered average, the income of the maintenance provider, the status of the maintenance recipient, the cost of living, as well as the customs and traditions prevailing in the locality where maintenance is awarded.

*Article 190:*

In assessing maintenance, the court shall rely on the declarations made by the two parties and the evidence they present, taking into account the provisions of preceding Articles 85 and 189, and may resort to expert assistance.

All cases pertaining to maintenance shall be decided within a maximum of one month.

*Article 191:*

The court shall determine the means by which the maintenance decree and accommodation costs will be executed from the resources of the person ordered to pay them, or withheld from his source of income or salary earned, and if necessary any guarantees to ensure the continuity of maintenance payments.

The decision rendered on the assessment of maintenance shall remain in effect until the issuance of another decision that replaces it or until the right of the person benefiting from the maintenance lapses.

*Article 192:*

No petition for an increase, or alternatively, a decrease in the agreed-upon or legally fixed maintenance shall be admissible before one year has elapsed, except in exceptional circumstances.

*Article 193:*

If the person obligated to pay maintenance is unable to pay it to all persons he is legally required to support, precedence shall be given to the wife, to younger children, be they boys or girls, then to daughters, sons, mother, and then to the father.

## **Chapter II: Of Maintenance Paid to the Wife**

*Article 194:*

The husband shall be obligated to pay maintenance to his wife the moment their marriage is consummated, as well as if she has bidden her husband to consummate their marriage once it has been duly concluded.

*Article 195:*

Maintenance for the wife shall be awarded by judicial decision starting from the date the husband has ceased to pay the maintenance expenses incumbent upon him, and the wife does not lose her right to maintenance unless she has been ordered to return to the conjugal home and has refused.

*Article 196:*

A wife who has been revocably repudiated shall lose her right to accommodation but not to maintenance if she leaves the home where she is required to observe the legal waiting period without the consent of her husband or without a good reason.

A wife who is pregnant and has been irrevocably repudiated shall be entitled to maintenance until the delivery and if she is not pregnant she is entitled to accommodation only until her legal waiting period has ended.

### **Chapter III: Of Maintenance Paid to Close Relatives**

*Article 197:*

Among close relatives, maintenance is an obligation of children towards their two parents, and of the two parents towards their children, according to the dispositions of this *Moudawana*.

#### ***Section 1: Of Maintenance Paid to Children***

*Article 198:*

Maintenance paid by the father to his children shall continue until they come of legal age, or until those who have pursued their education reach the age of twenty-five.

In any case, maintenance paid to the daughter shall not cease until she can earn a living on her own or until her maintenance becomes incumbent upon her husband.

The father shall continue to pay maintenance to children suffering from a handicap and unable to earn a living.

*Article 199:*

In the event the father becomes wholly or partly unable to pay maintenance to his children, and the mother is affluent, the latter shall become responsible for their maintenance in proportion to the amount the father is unable to pay.

*Article 200:*

An injunction to pay maintenance to children shall be issued starting from the day such payment has ceased.

*Article 201:*

The salary due for the breastfeeding of the child shall be incumbent upon the person to whom the maintenance of the child devolves.

*Article 202:*

Whoever is responsible for child maintenance but fails to pay it without good reason for a period exceeding one month shall become liable under the provisions governing family neglect.

### ***Section 2: Of Maintenance Paid to Parents***

*Article 203:*

Maintenance due to parents is shared by their children according to their affluence and not according to their inheritance shares.

*Article 204:*

The injunction ordering maintenance for parents shall start from the date the request was filed.

## **Chapter IV: Of the Commitment to Pay Maintenance**

*Article 205:*

Whoever commits to paying maintenance to another person, be he young or old, for a limited period of time shall become liable for his commitment, and if the maintenance is for an undetermined period the court shall, in determining the period in question, refer to customary practice.

## **BOOK FOUR: OF LEGAL CAPACITY AND REPRESENTATION**

### **Title One: Of Legal Capacity, Causes of Guardianship due to Legal Incapacity (*Al-Hajr*), and Acts of Disposal**

#### **Chapter I: Of Legal Capacity**

*Article 206:*

There are two types of capacity: legal capacity and functional capacity.

*Article 207:*

Legal capacity entails the acquisition of rights and the assumption of liabilities, as defined by the law, that are indivisible from a person during his lifetime and of which he cannot be deprived.

*Article 208:*

Functional capacity entails the exercise of personal and financial rights and the power of disposal, with the law defining the conditions governing their acquisition and causes of their limitation or deprivation.

*Article 209:*

The age of legal majority is eighteen complete Gregorian years.

*Article 210:*

Any person that comes of legal age and presents none of the causes which limit or deprive him of his capacity shall be considered fully able to exercise his rights and to assume his obligations.

*Article 211:*

Any person devoid of or lacking in capacity shall be subjected, according to the circumstances, to the provisions governing legal tutelage, testamentary guardianship or court-appointed guardianship, in accordance with the rules set forth in this *Moudawana*.

## **Chapter II: Of Grounds for *Al-Hajr* (Placing Under Guardianship due to Incapacity) and Procedures to Establish it**

### ***Section 1: Of the Grounds for Al-Hajr***

*Article 212:*

The grounds for placing a person under guardianship fall into one of two categories: the first impairs a person's capacity while the other deprives the person of capacity.

*Article 213:*

Those considered as not fully capable of legally exercising their rights:

1. a young person who has attained the age of discernment but not yet reached the age of legal majority;
2. a prodigal person;
3. a demented person.

*Article 214:*

A discerning young person is one who has completed twelve full Gregorian years.

*Article 215:*

A prodigal person is one who squanders his money on trifles or on things reasonable people consider futile, in a way which inflicts harm on himself or on his family.

*Article 216:*

A demented person is a person suffering from a mental handicap that prevents him from controlling his thoughts and actions.

*Article 217:*

Those considered as incapable of exercising their rights:

First, a young person that has not attained the age of discernment;

Second, an insane person and a person who has lost his mind.

A person who loses his mind in an intermittent way shall be considered as being fully capable during his intervals of lucidity.

Voluntary loss of mind shall not dispense one from responsibility.

*Article 218:*

Guardianship over a minor shall terminate once the minor comes of legal age, unless she or he is placed under guardianship anew due to the existence of a cause warranting it.

A person placed under guardianship due to a mental handicap or prodigality may request the court to remove it if she or he demonstrates signs of majority, and his or her legal representative may do likewise.

A minor who has attained the age of sixteen may request the court to declare him or her as having reached legal majority.

His or her legal representative may also request the court to declare the majority of the minor who has attained the aforementioned age, if the minor demonstrates signs of majority.

Declaring the majority of a minor results in the acquisition by the latter of his property, as well as full capacity to manage and dispose of it, and the exercise of non-monetary rights shall remain subject to the legal texts governing them.

In all cases, legal majority may not be conferred on any of the above persons unless it has been proven to the court following all necessary legal procedures.

*Article 219:*

If the legal representative considers that the ward, before coming of legal age, has been afflicted with a mental handicap or has become prodigal, the representative shall refer the matter to the court, which will examine whether guardianship should continue, and the court may resort to all legal means of proof.

## ***Section 2: Of the Procedures to Establish al-Hajr and to Remove it***

### *Article 220:*

Demented, prodigal, and insane persons shall be placed under guardianship by a ruling from the time their state is established, and guardianship shall be removed as of the date of the extinction of its causes, in accordance with the provisions of this present *Moudawana*.

### *Article 221:*

A ruling placing a person under guardianship or removing it shall be issued by the court at the request of the person concerned, the Public Prosecutor's Office, or any person with a stake in the matter.

### *Article 222:*

In upholding the guardianship or removing it, the court shall rely on medical expertise as well as all other legal means of proof.

### *Article: 223:*

A ruling placing a person under guardianship or removing it shall be publicized by all means deemed appropriate by the court.

## **Chapter III: Of the Acts of the Person Placed Under Guardianship**

### ***Section 1: Of the Acts of a Person Devoid of Capacity***

#### *Article 224:*

The acts of a person devoid of capacity are null and without effect.

### ***Section 2: Of the Acts of a Person Not Fully Capable***

#### *Article 225:*

The acts of a discerning young person are governed by the following provisions:

1. They are valid if they are fully beneficial to him or her;
2. They are null if they are harmful to him or her;
3. Their effects shall be subject to the permission of his or her legal representative, if the acts are neither clearly beneficial nor harmful, and the legal representative shall, within the limits of the authority vested in him, safeguard the interests of the ward.

#### *Article 226:*

A discerning young person may receive a portion of his property to manage on a probationary basis.



Permission shall be granted by the legal tutor, or by decision of the Guardianship Judge on the basis of a request initiated by the testamentary guardian, the court-appointed guardian or the young person concerned.

The Guardianship Judge may revoke the decision granting this permission at the request of the testamentary guardian, the court-appointed guardian, the Public Prosecutor's Office, or on its own motion, if it is established that there is mismanagement by the person concerned.

A person under guardianship is deemed fully capable of acts he or she has been authorized to perform, as well as to engage in legal proceedings concerning them.

*Article 227:*

The legal tutor may withdraw the permission granted the young discerning person if there are grounds for it.

*Article 228:*

The acts of prodigal and demented persons shall be subject to the provisions of preceding Article 225.

## **Title Two: Of Legal Representation**

### **Chapter I: General Provisions**

*Article 229:*

Legal representation of a minor shall be exercised by the legal tutor, the testamentary guardian or a court-appointed guardian.

*Article 230:*

Legal representative in this code means:

1. The legal tutor: the father, the mother, and the judge;
2. The testamentary guardian: designated in a testament by the father or mother;
3. The court-appointed guardian.

*Article 231:*

Legal representation is exercised by:

1. A father of legal majority;
2. A mother of legal majority, in the absence of the father or when the father is deprived of his capacity;
3. A testamentary guardian designated by the father;
4. A testamentary guardian designated by the mother;
5. The judge;
6. The court-appointed guardian.

*Article 232:*

In the event the minor is under the effective protection of a person or an institution, that person or institution shall be considered as the legal representative of the minor in his or personal affairs until the judge appoints an official guardian for the minor.

*Article 233:*

A legal representative shall act as the legal tutor of a minor and his or her property until the minor has attained legal majority. He or she shall act in the same way regarding an insane person until the guardianship is removed by court decision. Legal representation of prodigal and demented persons shall be limited to their property until guardianship is removed by court decision.

*Article 234:*

The court may appoint a court-appointed guardian, in addition to the testamentary guardian, in order to assist him or her or to manage some of the minor's financial interests.

## **Chapter II: Of the Functions and Responsibilities of the Legal Representative**

*Article 235:*

The legal representative shall manage the personal affairs of the ward, including religious orientation, training, and preparation for life, and shall also assume the daily management of the ward's property.

The legal representative is required to notify the Guardianship Judge of the existence of money, documents, jewellery, and any valuable movable property and is for failure to do so, and on the basis of a judicial order the money and movable property shall be deposited in an account for the minor at a public institution for it to be preserved.

In the exercise of these responsibilities, the legal representative shall be subjected to judicial supervision, in accordance with the provisions of the following articles.

### ***Section 1: Of the Legal Tutor***

#### **§ 1. The Father**

*Article 236:*

By law, the father is the tutor of his children unless he is disqualified by judicial order. The mother may manage urgent affairs of her children in the event the father is prevented from doing so.

*Article 237:*

The father may designate a testamentary guardian for his child or an unborn child and is entitled to revoke any such designation.

The testament shall be submitted to a judge for verification and approval upon the death of the father.

## § 2. The Mother

### *Article 238:*

The conditions under which the mother may assume tutelage over her children are:

1. She must have reached the age of legal majority;
2. Non-presence of the father due to his death, absence, or incapacity.

The mother may designate a testamentary guardian for her child, and is entitled to revoke any such designation.

The testament shall be submitted to a judge for verification and approval upon the death of the mother.

In the event of co-existence of a testamentary guardian appointed by the father and the mother, the testamentary guardian's responsibility shall be limited to the supervision of the mother's management of the child's affairs and, if necessary, notification of the court.

### *Article 239:*

The mother and any benefactor who donates money to the ward may stipulate that he or she assume legal representation in the management and investment of the money donated, and this condition shall be enforceable.

## § 3. Provisions Common to Tutelage by both Parents

### *Article 240:*

The tutor shall not be subjected to a priori court supervision in the management of the ward's money, and no legal representation shall be opened unless the value of the ward's property exceeds two hundred thousand (200,000) *dirhams*. However, the Guardianship Judge may order legal representation for amounts lower than the aforementioned figure if he deems it to be in the interests of the ward. This amount may be increased by administrative regulation.

### *Article 241:*

If the value of the ward's property exceeds two hundred thousand (200,000) *dirhams* during its management, the tutor shall notify the judge so that legal representation may be opened. The ward or his or her mother may also petition the judge to this effect.

### *Article 242:*

At the conclusion of the tutelage, and in the existence of legal representation, the tutor shall notify the Guardianship Judge of the status of the ward's property in a detailed recapitulatory report submitted for approval.

*Article 243:*

In all cases where legal representation is opened, the tutor shall submit an annual report detailing the management and investment of the ward's property, and describing the care, education and guidance given to the ward.

Following the submission of this report, the court may take all measures it deems necessary to protect the ward's property and his financial and moral interests.

***Section 2: Of the Testamentary Guardian and the Court-Appointed Guardian***

*Article 244:*

In the absence of the mother and a testamentary guardian, the court shall appoint a legal guardian for the ward, selecting the most qualified person from among the agnates, failing that, among other relatives, and if not, from among other persons.

The court may designate two or more persons to exercise guardianship if it deems that it is in the best interests of the ward, and it attributes their respective functions.

The members of the ward's family, the petitioners for guardianship, and any other person with a vested interest may propose a candidate for the court-appointed guardianship.

The court may appoint an interim guardian if need be.

*Article 245:*

The court shall immediately refer the case to the Public Prosecutor's Office for an opinion which must be given within a deadline not to exceed fifteen days, and the court shall consider the case within a time limit not exceeding fifteen days from the date of the reception of the Public Prosecutor's Office's opinion.

*Article 246:*

Testamentary and court-appointed guardians must be fully capable, diligent, and honest.

The solvability requirement is left to the appreciation of the court.

*Article 247:*

Testamentary and court-appointed guardianship may not be conferred upon:

1. A person who has been convicted for theft, breach of trust, forgery, or any other crime against morality;
2. Anyone who has been adjudicated bankrupt or placed in liquidation;
3. A person in litigation or familial conflict with the ward, where the conflict could impact adversely on the ward's interests.

*Article 248:*

The court may appoint a surrogate guardian tasked with supervising the acts of the testamentary or court-appointed guardian and orienting him or her based on the ward's interests, and the surrogate guardian shall likewise notify the court when he or she considers the management of the testamentary or court-appointed guardian deficient or fears that the ward's estate may be depleted.

*Article 249:*

If the ward's estate has not been inventoried, it becomes incumbent upon the testamentary or court-appointed guardian to carry out an inventory, and in all cases shall include the following:

1. Observations that the testamentary or court-appointed guardian may have concerning the inventory;
2. A proposed amount of annual maintenance for the ward and any person for whom the ward is responsible;
3. Specific propositions of urgent measures to be taken to safeguard the ward's estate;
4. A plan for the management of the ward's estate;
5. The known monthly or annual revenues generated by the ward's estate.

*Article 250:*

The inventory, along with its supporting documents, shall be kept in the legal representation record and transcribed on the monthly or daily management register if necessary.

The form and the content of the register shall be defined in a decree by the Minister of Justice.

*Article 251:*

At the conclusion of the inventory, the Public Prosecutor's Office, the legal representative, the family council, or one or several of the ward's relatives may submit observations to the Guardianship Judge regarding the estimation of maintenance necessary for the ward, and to organize his or her upbringing, education, and the management of the ward's estate.

A family council shall be established and entrusted with aiding the court in matters pertaining to the family's affairs; the composition and the tasks of the council shall be defined by administrative regulations.

*Article 252:*

By order and under the supervision of the Guardianship Judge, two *Adouls* (public notaries) shall undertake a final and comprehensive inventory of the ward's assets, vested rights and liabilities, after notification of the Public Prosecutor's Office and in the presence of the heirs, the legal representative, and the ward if he or she has attained the age of fifteen.

Expert assistance may be sought in the inventory process, the evaluation of assets, and the assessment of liabilities.

*Article 253:*

The testamentary or court-appointed guardian must record all acts that he or she undertakes on behalf of the ward and their dates in the register provided for in preceding Article 250.

*Article 254:*

If assets of the ward materialize that had not been entered in the previous inventory, the testamentary or court-appointed guardian shall attach an appendix to the first inventory.

*Article 255:*

The testamentary or court-appointed guardian shall submit through two certified accountants appointed by the judge an annual financial statement with all supporting documents to the Guardianship Judge.

The judge shall not approve the financial statements until he has scrutinized and controlled them and verified their accuracy.

If he detects any errors, he shall take all measures necessary in order to safeguard the ward's rights.

*Article 256:*

The testamentary or court-appointed guardian shall respond to requests by the Guardianship Judge at any time in order to provide clarifications about the management of the ward's estate and furnish a financial statement.

*Article 257:*

The testamentary or court-appointed guardian shall be held liable for mismanagement of the ward's estate. The provisions applicable to a salaried trustee shall apply to him or her even if he or she performs his mission for free. The testamentary or court-appointed guardian may be liable for criminal proceedings, if necessary.

*Article 258:*

The mission of the testamentary or court-appointed guardian comes to an end in the following cases:

1. The death of the ward, or the death or absence of the testamentary or court-appointed guardian;
2. When the ward attains the age of legal majority, unless the court decides to maintain the guardianship for other reasons;
3. When the mission for which the testamentary or court-appointed guardian was designated has been accomplished or when the period of time for which the testamentary or court-appointed guardian has been designated expires;
4. When a justification invoked to resign from the mission has been accepted;
5. When he or she loses capacity or is discharged or removed from his or her functions.

*Article 259:*

If the mission of the testamentary or court-appointed guardian comes to an end for reasons other than death or loss of civil capacity, she or he shall submit a financial statement with the requisite supporting documents within a deadline fixed by the Guardianship Judge and not to exceed thirty days, except in compelling circumstances.

The court shall examine the submitted financial statement.

*Article 260:*

The testamentary or court-appointed guardian is liable for all damages caused by any unjustified delay in the submission of the financial statements or in the transfer of the ward's assets.

*Article 261:*

The estate shall be transferred to the ward when he or she attains majority, and to his or her heirs upon death, and to the person who assumes the responsibilities of the testamentary or court-appointed guardian in other cases.

In the event the estate is not transferred, the provisions of Article 270 below shall apply.

*Article 262:*

In the event the testamentary or court-appointed guardian dies or loses his or her civil capacity, the Guardianship Judge shall take the appropriate measures to protect and safeguard the ward's estate.

Debts and compensation due to the ward from the deceased testamentary or court-appointed guardian's estate are privileged liens, in accordance with the ranks provided for in the second paragraph, *bis* of Article 1248 of the *Sherifyan Dahir* (or Royal Edict), dated August 12, 1913, which serves as the Law of Obligations and Contracts.

*Article 263:*

The ward who has come of age or whose guardianship has been removed reserves the right to take legal action against the testamentary or court-appointed guardian, or any other person entrusted with the same if he or she deems that any acts related to the management of his or her accounts or estate has been adverse to his or her interests.

Such legal actions must be brought within the two years following the attainment of majority or the removal of the guardianship, except in cases of falsification, fraud or concealment of documents, which shall be actionable within one year following knowledge of such acts.

*Article 264:*

The testamentary or court-appointed guardian may request compensation for exercising legal representation, and such compensation shall be fixed by the court as of the date of the request.

### **Chapter III: Of Judicial Oversight**

*Article 265:*

The court shall undertake the oversight of legal representation in accordance with the provisions outlined in this Book.

Oversight entails supervising the interests of the incapacitated and persons whose capacity is impaired, and ordering all measures necessary to preserve their interests and supervise their management.

*Article 266:*

If a deceased person leaves behind minor heirs, or if the testamentary or court-appointed guardian dies, the local administrative authorities and the relatives with whom the deceased lived shall notify the Guardianship Judge of the death within a time limit not to exceed eight days, and the Public Prosecutor's Office is required to notify the judge as soon as it learns of the death.

The deadline cited in the previous paragraph shall be extended to one month if the deceased's relative or the testamentary or court-appointed guardian has lost his or her capacity.

*Article 267:*

The Guardianship Judge shall order the establishment of a legal document outlining the rightful heirs and take all measures necessary to preserve the minor's personal rights and financial interests.

*Article 268:*

After consultation with the family council if necessary, the Guardianship Judge shall fix the expenses and compensation required for the management of the ward's estate.

*Article 269:*

In the event the legal representative wishes to engage in a transaction that results in a conflict of interest between himself, his wife, or one of his ascendants or descendants on the one hand, and the wards' interests on the other, he shall petition the court, which may authorize the transaction and appoint an ad hoc representative for the ward, who will conclude the requisite agreement and strive to preserve the ward's interests.

*Article 270:*

In accordance with generally applicable rules, and after he or she has not responded to a formal notice within the prescribed time limit, the testamentary or court-appointed guardian may be liable to a fine, and his or her assets subjected to attachment or receivership if he or she does not observe the provisions of preceding Article 256 or refuses to present the financial statements or to transfer any of the ward's property still in his or her possession.

In the event the testamentary or court-appointed guardian fails in his or her mission or becomes incapable of performing it, or in the existence of one the impediments cited in preceding Article 247, the court may, after hearing his or her explanation, discharge him or



her of his duties or dismiss him or her, either at its own initiative, or at the request of the Public Prosecutor's Office or the concerned person(s).

*Article 271:*

The testamentary or court-appointed guardian may not perform any of the following acts unless he has obtained authorization from the Guardianship Judge:

1. Sell any of the ward's immovable or movable property whose value exceeds 10,000 *dirhams* or perform any transaction that creates in rem rights on the property;
2. Contribute a portion of the ward's money to a civil or business firm or invest it in a business venture or speculation;
3. Waive a right or a claim, opt for reconciliation, or accept an arbitrated settlement on the ward's property;
4. Enter into leases whose expiration extends beyond the end of the guardianship;
5. Accept or reject donations encumbered by a condition or a right;
6. Pay debts for which no binding judicial decision has been issued;
7. Pay from the ward's assets any maintenance incumbent on the ward unless it has been ordered by a binding judicial decision.

Any decision issued by the judge that authorizes the performance of any of the above shall be duly justified.

*Article 272:*

The sale of movable property susceptible to depreciation and whose value exceeds 5,000 *dirhams* does not require authorization, and the same applies to immovable or movable property whose value does not exceed 5,000 *dirhams*, providing that the sale is not used as a means to evade judicial oversight.

*Article 273:*

The preceding provisions shall not apply if the price of movable property has been established in an official decision and the sale has been closed at this predetermined price.

*Article 274:*

The authorized sale of movable or immovable property shall be concluded in accordance with the procedures provided for in the Civil Procedure Code.

*Article 275:*

Division of property owned jointly by the ward and a third party shall be concluded by submitting a proposal to the court for approval, which shall be granted after the court has ascertained by expert appraisal that such division is not inequitable to the ward.

*Article 276:*

The decisions that are issued by the Guardianship Judge in accordance with Articles 226, 240, 268, and 271 are open to appeal.

**BOOK FIVE: OF WILLS (Not translated)**

**BOOK SIX: OF INHERITANCE (Not translated)**

**BOOK SEVEN: OF INTERIM AND FINAL PROVISIONS**

*Article 396:*

The deadlines cited in the present code are inclusive.

If the last day of the deadline is a holiday, the deadline is extended to the first working day.

*Article 397:*

Shall be abrogated any provisions that are contrary to, or repetitious of, the provisions in the present code, notably the following:

- *The Sherifyan Dahir* (Royal Edict) 1.57.343, issued on 28 *Rabii II A.H 1377* (corresponding to November 22, 1957) by virtue of which are applied, throughout the Kingdom of Morocco, the provisions of Books I and II addressing, respectively, marriage, and its dissolution, as they have been completed and modified, as well as their implementing texts;
- *The Sherifyan Dahir* (Royal Edict) 1.57.379, issued on 25 *Jumada I A.H 1377* (corresponding to December 18, 1957) by virtue of which are applied, throughout the Kingdom of Morocco, the provisions of Book III addressing birth and its effects;
- *The Sherifyan Dahir* (Royal Edict), 1.58.019 issued on 4 *Rajab A.H 1377* (corresponding to January 25, 1958) by virtue of which are applied, throughout the Kingdom of Morocco, the provisions of Book IV, addressing capacity and legal representation;
- *The Sherifyan Dahir* (Royal Edict) 1.58.037, issued on 30 *Rajab A.H 1377* (corresponding to February 20, 1958) by virtue of which are applied, throughout the Kingdom of Morocco, the provisions of Book V, addressing wills;
- *The Sherifyan Dahir* (Royal Edict) 1.58.112, issued on 13 *Ramadan A.H 1377* (corresponding to April 3, 1958) by virtue of which are applied, throughout the Kingdom of Morocco, the provisions of Book VI, addressing inheritance.

However, the provisions cited in the aforementioned *Sherifyan Dahirs* (Royal Edicts) which are referred to in the legislative and regulatory texts in effect shall be replaced by the corresponding provisions in the present code.

*Article 398:*

Procedural measures taken in Personal Status cases shall be valid until the date this present code comes into effect.

*Article 399:*

Decisions issued prior to the entry into effect of the present code shall remain subject to the provisions cited in the *Sherifyan Dahirs* (Royal Edicts) referred to in preceding Article 397, notably as concerns appeals and their deadlines.

*Article 400:*

For all issues not addressed by a text in the present code, reference may be made to the *Malikite* School of Jurisprudence and to *ijtihad* (juridical reasoning) which strive to fulfil and enhance Islamic values, notably justice, equality and amicable social relations.