



MOROCCO:

Submission to the Human Rights Committee
Relating to the Rights of Women

for the 118th Session
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by

The Advocates for Human Rights,

a non-governmental organization in special consultative status with ECOSOC since 1996
and

MRA Mobilising for Rights Associates,

a non-governmental organization based in Rabat, Morocco
in collaboration with an alliance of Moroccan NGOs¹

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I. Reporting Organizations

1. **The Advocates for Human Rights** (“The Advocates”) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates’ Women’s Human Rights Program has published 25 reports on violence against women as a human rights issue, frequently provides consultation and commentary on drafting laws on domestic violence, and trains lawyers, police, prosecutors, and judges to effectively implement new and existing laws to better protect women from gender-based violence.
2. **Mobilising for Rights Associates** (“MRA”) is an international nongovernmental women’s rights organization based in Rabat and currently working in Morocco, Tunisia and Libya. MRA collaborates with grassroots level women’s rights activists and organizations to promote women’s full enjoyment of their human rights through changes in laws, structures, relationships and culture. Together with our partners MRA creates and implements long-term strategies to address the diverse causes of discrimination against women and develop meaningful, effective solutions. Our multidimensional strategies include popular human rights education, legal accompaniment, monitoring and

¹ Association Amal pour la femme et le développement (El Hajeb), Association Aspirations Féminines (Meknès) Association Forum des Femmes pour l’égalité et le développement au Nord du Maroc (Larache), Association Tafil Mobadarat (Taza), Club de la femme (Sefrou), Initiatives pour la Promotion des Droits des Femmes (Meknès), and Voix de Femmes Marocaines (Agadir).

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documentation, strategic litigation, action-research, national law reform, and international advocacy. By engaging with local actors at different levels, MRA fosters micro-level changes in culture and relationships to support our activism for macro level legal and institutional reform.

II. Morocco's Compliance with the International Covenant on Civil and Political Rights

- A. **List of Issues, para. 6, Polygamy and Divorce** (Non-discrimination, gender equality, protection of the family and children, Articles 2, 3, 17, 23, 24 and 26)
3. During the last review of Morocco in 2004, the Human Rights Committee ("the Committee") noted with regret that the new Family Code, while placing limitations on the practice of polygamy, nevertheless does not ban it, despite the fact that it is detrimental to women's dignity.² The Committee stated that Morocco "should ban polygamy clearly and definitively."³ The Committee also noted with concern "that inequalities between women and men persist in the area of [...] divorce," and recommended that the "State party should review its legislation and ensure that any gender-based discrimination in the area of [...] divorce is eliminated."⁴ In para. 6 of the List of Issues, the Committee asks Morocco to "indicate whether any measures have been taken [...], or are planned, to rescind the remaining legal provisions that discriminate against women," especially in matters of polygamy and divorce.⁵
 4. **To date, the government of Morocco has failed to abolish polygamy.** The 2004 Family Code⁶ continues to allow polygamy when the wife has not stipulated a monogamy clause into the marriage contract and when there is not a risk of inequity between the wives.⁷ A husband must file a petition with the court for authorization to take another wife. The judge may only authorize polygamy if the husband (a) proves that he has an exceptional and objective justification for taking another wife, and (b) has sufficient resources to support both families and guarantee equality in all aspects of life.⁸ Once the husband files a petition for authorization to take another wife, the judge must summon the current wife for a hearing to obtain her consent. If she does not agree to the marriage, the judge will move forward with irreconcilable differences divorce proceedings (*chiqaq*).⁹ The judge must also notify the future wife that the petitioner husband is

²U.N. Human Rights Committee, *Concluding observations of the Human Rights Committee: MOROCCO* (hereinafter referred to as "Concluding Observations"), (Dec. 1, 2004), U.N. Doc. CCPR/CO/82/MAR ¶ 30.

³Concluding Observations, ¶ 30.

⁴Concluding Observations, para. 33.

⁵U.N. Human Rights Committee, *List of issues in relation to the sixth periodic report of Morocco* (hereinafter referred to as "List of Issues"), (May 9, 2016), U.N. Doc. CCPR/C/MAR/Q/6, ¶ 6.

⁶Dahir n° 1-04-22 du 12 hija 1424 (3 février 2004) portant promulgation de la loi n° 70-03 portant Code de la Famille (hereinafter referred to as "Family Code").

⁷Family Code, Article 40. Several of these mechanisms existed prior to the 2004 Family Code in the previously applicable Personal Status Code, notably the possibility to insert a monogamy clause in the marriage contract (Personal Status Code, Article 31) and the requirement that both the current and future wives be notified (Personal Status Code, Article 31). The 2004 legal reforms reinforced judicial control over the authorization and notification procedures.

⁸Family Code, Article 41.

⁹Family Code, Articles 43, 44, 45.

already married, and she must consent to this before the marriage may be concluded.¹⁰

5. In practice, women rarely stipulate to monogamy clauses in their marriage contracts. A review of 75,173 marriage contracts in Morocco found that only 87 contained a monogamy clause preventing the husband from taking another wife.¹¹
6. In its periodic report, the Moroccan Government states that “the incidence of polygamous marriages has fallen compared with previous years, and accounts for no more than 0.25 per cent of the total number of marriages.”¹² While these statistics for 2012 and 2013 are accurate, it should be noted that official statistics for 2011 indicated 1104 polygamous marriages, representing 0.34% of all marriages, a slight increase from 2010.¹³
7. **Additionally, the approval rate of petitions for authorization to take another wife remains significant and is increasing**, with official statistics indicating that approximately 50% of the petitions for polygamy authorizations were granted in 2011,¹⁴ compared to 43.41% of petitions for polygamy authorizations granted in 2010, up from 40.36% in 2009.¹⁵ NGO reports describe how rather than requiring the petitioner husband to prove an exceptional and objective reason, judges tend to grant authorizations based on his financial situation alone.¹⁶
8. The 2004 Family Code sought to eliminate the practice of *fatiha* or *orfi* marriages, which may be used as a means of circumventing the formal system to create a polygamous marriage. Concluded verbally and without a written contract, such marriages frequently occur in rural areas distant from the public administration. They place women in vulnerable situations when the “husband” abandons them and their children with no rights stemming from legal marriage. Article 16 of the code sought to counteract these consequences and initially gave couples without a written contract a five year grace period to petition for recognition of their marriage,¹⁷ a deadline later extended to ten years¹⁸ and again to fifteen years (until 2019).¹⁹ Henceforth, the subsequent written and registered marriage contract is legal proof of marriage.
9. In practice, the Family Code’s provisions permitting verbal marriages fail to stop the

¹⁰ Family Code, Article 46.

¹¹ Global Rights, *Promoting Women’s Human Rights in Morocco, Algeria and Tunisia through Strategic Use of the Marriage Contract* (2011).

¹² U.N. Human Rights Committee, *Sixth periodic reports of States parties due in 2008: Morocco* (hereinafter referred to as “Sixth Periodic Report”), (Aug. 31, 2015), U.N. Doc. CCPR/C/MAR/6, ¶ 95.

¹³ <http://adala.justice.gov.ma/production/statistiques/SJF/FR/30-10-12%20VR%20Finale%20Statistique%20Francais.pdf>

¹⁴ <http://adala.justice.gov.ma/production/statistiques/SJF/FR/30-10-12%20VR%20Finale%20Statistique%20Francais.pdf>

¹⁵ LDDF, *Droits des femmes et code de la famille après 4 ans d’application* (2007).

¹⁶ LDDF, *Droits des femmes et code de la famille après 4 ans d’application* (2007).

¹⁷ Family Code, Article 16.

¹⁸ Dahir n° 1-10-103 du 3 chaabane 1431 (16 juillet 2010) portant promulgation de la loi n° 08-09 modifiant l’article 16 de la loi n° 70-03 portant Code de la famille.

¹⁹ Dahir n° 1-16-2 du 1^{er} rabii II 1437 (12 janvier 2016) portant promulgation de la loi n° 102-15; Bulletin Officiel n° 6436 du 24 rabii II 1437 (4 février 2016), p. 163

problem of polygamous marriages in Morocco. Rather than go through the process of petitioning for authorization to take another wife, NGOs report that men have used the Article 16 procedure for recognizing a previously unregistered verbal marriage in order to take another wife. In other words, they are claiming a previously unregistered verbal marriage when in fact it is a new polygamous marriage. Official statistics from 2010 to 2011 indicate a 228.54% increase in recognition of verbal marriage from 2010 to 2011, increasing from 11,856 to 38,952 cases, representing 10.7% of all marriages.²⁰ This represents an increase from the 7.07% of all marriages in 2008.²¹ Read in light of the Family Code reforms, these statistics likely reflect a higher rate of polygamy in reality than is officially recognized.

10. Men and women still have unequal access to divorce under the 2004 Family Code. While the code introduced a new ground for divorce – irreconcilable differences (*chiqaq*), the Code also maintained the previous forms of divorce available only to men or women respectively.
11. The Family Code still allows the husband to unilaterally divorce his wife without providing a reason and without her agreement. The wife has no such corresponding means by which to divorce her husband.²² In *khol'* divorce available to the wife, she pays compensation to her husband in return for him agreeing to repudiate her - *khol'* still requires the husband's agreement.²³
12. The newly introduced *chiqaq* is, in theory, open to both spouses but used primarily by women. Technically, in *chiqaq* the petitioner spouse must give reasons for seeking divorce, but is not obligated to provide any evidence of harm or fault. However, in practice judges often require proof of the motive for seeking divorce, holding *chiqaq* to the same standard of evidence as a fault-based divorce. At the same time, *chiqaq* cases are often decided on grounds more appropriate for a fault based divorce such as abuse, lack of financial support, and abandonment.²⁴ Additionally, women who seek divorce through *chiqaq* frequently renounce their financial rights in order to obtain a divorce.
13. The only other form of divorce open to women is a judicial divorce for fault, on one of the following limited grounds: (1) violation of a clause in the marriage contract; (2) harm; (3) husband's failure to support his wife; (4) husband's absence or imprisonment; (5) hidden "flaw" or disease; or (6) husband's oath of abstinence towards his wife.²⁵ These

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

²¹ Family Code, Articles 78 – 87.

²² Family Code, Articles 78 – 87.

²³ Family Code, Articles 115-120.

²⁴ Rabha Zeidguy, "Analyse de la jurisprudence," in *Le Code de la famille: Perceptions et pratique judiciaire* (Morocco: Friedrich Ebert Stiftung, 2007), 217-271.

²⁵ Family Code, Articles 98 – 112.

forms of divorce is extremely rare in reality, ranging from 0.01% - 1.47% of divorces sought by women.²⁶

B. List of Issues, para. 7, Marriage of Minor Girls (Non-discrimination, gender equality, protection of the family and children, Articles 2, 3, 17, 23, 24 and 26)

14. In List of Issues para. 7, the Committee notes the “high number of early marriages entered into in application of the derogation permitted under article 20 of the Family Code” and asks the government of Morocco to “indicate whether any legislative amendments or other measures are being considered to eliminate this practice.”²⁷ The government of Morocco failed to provide any response to this question in the Replies of Morocco to the list of issues.

15. **Early marriage of girls remains a significant problem in Morocco.** While the legal age of marriage for both men and women is 18, the Family Code²⁸ allows the marriage of minors when “justified” and after control by the Family Affairs judge.²⁹ According to the Ministry of Justice, the law requires that the minor have “the maturity and physical aptitude to assume the responsibilities of marriage and the discernment to consent to marriage.”³⁰ Judges are supposed to conduct a medical expertise or a social enquiry, and explain the reasons justifying the marriage in a well-founded decision.³¹

16. **Both the number of petitions for authorization to marry minors and the approval rate are high and increasing.** In 2007, 10.03% of marriages were of minors, and 86.8% of the 33,596 petitions were authorized.³² In 2011, the rate had risen to 11.99% of all marriages and 89.56% of 46,927 petitions for authorization to marry a minor were granted. 33.58% of petitions in 2011 were for minors ages 14-16.³³ The overwhelming majority, 99.31%, of the minor spouses were girls.³⁴

17. In May 2014, the Minister of Justice and Liberties stated that the rate of marriage of minors has continued to rise over recent years; the Minister revealed that the number of

²⁶Ministère de la Justice et des Libertés, *Statistiques des sections de la justice de la famille Année 2011*, (Septembre 2012) available online at <http://adala.justice.gov.ma/production/statistiques/SJF/FR/30-10-12%20VR%20Finale%20Statistique%20Francais.pdf> (accessed August 15, 2016).

²⁷List of Issues, ¶ 7.

²⁸Dahir n° 1-04-22 du 12 hija 1424 (3 février 2004) portant promulgation de la loi n° 70-03 portant Code de la Famille (Family Code).

²⁹The authorization is not subject to appeal. *Id.* art. 20. Article 21 also requires the legal tutor’s (guardian’s) consent. *Id.* art. 21.

³⁰Ministère de la Justice, *Guide Pratique du code de la famille* (2005).

³¹Family Code, Article 20.

³²<http://adala.justice.gov.ma/production/statistiques/famille/FR/Actes%20de%20marriage%20et%20actes%20de%20divorce.pdf>

³³<http://adala.justice.gov.ma/production/statistiques/famille/FR/Actes%20de%20marriage%20et%20actes%20de%20divorce.pdf>. Note that these numbers are consistent with information from the local level. One local association that works with MRA reported that from January to November 2013, one First Instance Court granted 325 of 442 petitions for authorization to marry minors. Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs (December 5, 2013).

³⁴See, e.g., <http://adala.justice.gov.ma/production/statistiques/SJF/FR/30-10-12%20VR%20Finale%20Statistique%20Francais.pdf>

cases of marriage has nearly doubled in the past 10 years, with 35,152 cases in 2013 alone.³⁵ Further, the Family Code provides no threshold minimum age below which authorization to marry may never be granted. Local NGOs report marriages of girls as young as thirteen, fourteen and fifteen.³⁶

18. In practice, judges often issue authorization to marry minors based on their own cursory visual examination of the minor girl's physical appearance and determination that she is capable of assuming "marital responsibilities," rather than resorting to the required expertise.³⁷ Reasons advanced by judges for authorizing underage marriage include saving family honor, avoiding scandal, protecting the girl's chastity and preventing her from debauchery. Some cite marriage as a solution to poverty. At times judges do not even substantiate their decisions in writing. Corruption among public actors and the ease by which medical certificates attesting to the minor girl's "maturity" can be obtained are also factors allowing circumvention of the law.³⁸
19. **Note on Penal Code Article 475:** In February 2014, a law was promulgated eliminating the second paragraph of Penal Code article 475,³⁹ which had provided that whoever "abducts or deceives" a minor, without using violence, threat or fraud, can escape prosecution and imprisonment if (i) the abductor marries the victim, and (ii) those persons who have a right to request annulment of the marriage do not file a complaint.
20. The amendment did not increase penalties for such abduction or deception of a minor, which remain at 1 to 5 years imprisonment and a 200 – 500 dirham (\$24-\$60) fine. Abrogating a single paragraph of one article is of limited impact without more comprehensive accompanying measures. Reforms did not offer minor victims of rape any services or solutions to address problems of social stigma, family pressure, threats of prosecution for illicit sexual relations, unwed motherhood, continuing education, or psychological and health care. Initial reports from local NGOs indicate that in the absence of any alternatives, minor victims of rape and their families still view marriage to the rapist as a "solution."⁴⁰ Since the amendment of article 475, rapes of minors now risk

³⁵ "Marriages of minors in Morocco: 35,152 cases recorded in 2013," May 29, 2014,

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

³⁶ Ligue démocratique de défense des droits des femmes (LDDF), *Droits des femmes et code de la famille après 4 ans d'application* (2007).

³⁷ Interviews with Local Morocco NGOs, (May 2012 – December 2013).

³⁸ Abdellah Ounnir, *Les justiciables dans le circuit judiciaire relatif au contentieux de la famille*, in *Le Code de la famille: Perceptions et pratique judiciaire*, 89-139 (Morocco: Friedrich Ebert Stiftung, 2007); Démocratique des Femmes du Maroc (ADFM), *Implementation of the CEDAW Convention: Non-Governmental Organisations' Shadow Report to the Third and the Fourth Periodic Report of the Moroccan Government* (Nov. 2007).

³⁹ Dahir n° 1-14-06 du 20rabii II 1435 (20 février 2014) portant promulgation de la loi n° 15-14 modifiant et complétant l'article 475 du Code pénal.

⁴⁰ One recent case that received substantial press coverage involved a 17 year old girl who was taken to the Ibn Tofail hospital in Marrakech on November 8, 2014 with multiple wounds to her face, hands and chest. Her husband had slashed her with a razor blade when she tried to return to her mother's home and seek a divorce, telling her, "I swear that no one after me will marry you!" The girl's mother reported that her daughter had been raped a year ago but the family chose to pardon him after his arrest by the police because he proposed to marry her daughter (who was 16 at the time) in order to "to repair and protect her." See http://telquel.ma/2014/11/11/marrakech-mineure-violee-mariee-force-defiguree_1422317

not even coming to the attention of the police authorities as a first step in the process; rather than reporting the rape first, the respective families negotiate informally the marriage between the victim and her aggressor.

C. List of Issues, para. 9, Domestic Violence (arts. 3, 6 and 7)

21. In 2004, the Human Rights Committee noted its concern about the high level of domestic violence against women and called upon Morocco to “take suitable practical measures to combat this phenomenon.”⁴¹ In para. 9 of the List of Issues, the Committee asks for information on “measures taken to criminalize” and combat “all forms of violence against women,” particularly domestic violence and sexual harassment.⁴²
22. **Violence against women remains a widespread problem in Morocco.** A 2011 national study found that 62.8% of women in Morocco of ages 18-64 had been victims of some form of violence during the year preceding the study.⁴³ The Moroccan Government referred to this study in its recent report to the Committee on Economic, Social and Cultural Rights, noting that the study found that 55% of these acts of violence were committed by a victim’s husband, and the violence was reported by the wife in only 3% of such cases.⁴⁴ Another 2011 report identified that in cases of violence against women, the perpetrator is the husband in eight out of ten cases.⁴⁵
23. Furthermore, there is an overall acceptance of domestic violence and a distrust of the justice system that make it unlikely that a victim will report domestic violence. One survey found that 33 percent of respondents believed that a man is sometimes justified to beat his wife.⁴⁶ Another study found that of those women who have experienced domestic violence, 68 percent expressed a distrust of the justice system.⁴⁷
24. **Currently, no specific legislation addressing violence against women exists in Morocco.** The Replies of Morocco to the list of issues states that there “are plans to include amendments in the draft revised Criminal Code that will strengthen protection

⁴¹Concluding Observations, ¶ 28.

⁴²List of Issues, ¶ 9.

⁴³Moroccan Haut Commissaire au Plan, “Principaux résultats de l’Enquête Nationale sur la Prévalence de la Violence à l’Egard des Femmes (version française)”, (January 2011), available at http://www.hcp.ma/Conference-debat-consacree-a-l-etude-de-la-violence-a-l-egard-de-femmes-au-Maroc_a66.html ; see also, UN Women, “Moroccan Government Release Extensive Gender-Based Violence Study”, (10 January 2011), available at <http://www.unwomen.org/2011/01/moroccan-government-releases-extensive-gender-based-violence-study/>.

⁴⁴*Id.* U.N. Committee on Economic, Social and Cultural Rights, *Fourth periodic reports of States parties due in 2009: Morocco*, para. 138, E/C.12/MAR/4 (24 March 2014).

⁴⁵U.S. Department of State, Country Reports on Human Rights Practices, “2010 Human Rights Practices: Morocco,” (April 8, 2011), referencing the Democratic League for Women’s Rights (LDDF).

⁴⁶U.N. Women, “2011-2012 Progress of the World’s Women, Factsheet: Middle East and North Africa,” (2011-2012), available online at <http://progress.unwomen.org/wp-content/uploads/2011/06/EN-Factsheet-MENA-Progress-of-the-Worlds-Women.pdf> (accessed August 12, 2016).

⁴⁷UN Women, “2011-2012 Progress of the World’s Women, Factsheet: Middle East and North Africa”, (2011-2012), available ONLINE at <http://progress.unwomen.org/wp-content/uploads/2011/06/EN-Factsheet-MENA-Progress-of-the-Worlds-Women.pdf> (accessed August 12, 2016).

for women against violence”⁴⁸ and “Bill No. 103-13 on combating violence against women ... is currently under consideration by Parliament”⁴⁹ (see paragraphs 31-35 for further discussion of Morocco’s draft laws). It is important to note, however, that violence against women in Morocco currently remains covered under the outdated, generally applicable provisions of the 1962 Penal Code. The Penal Code does contain some general prohibitions that may be applied to domestic violence, including provisions establishing that a spousal relationship is an aggravating circumstance for sentencing purposes in assault and battery cases.⁵⁰ However, in Morocco’s 2015 draft bill for reforms to the Penal Code, proposed article 420 would expand impunity for honor killings by changing “head of household” to “any family member,” thus expanding the category of persons eligible for exoneration from assault.⁵¹

25. Current laws have legal gaps, are insufficient to prevent, investigate, and punish violence against women, are discriminatory, and rarely enforced by the justice system in cases of gender-based violence, such as sexual harassment, rape, and domestic abuse. The law enforcement and justice systems do not respond adequately to complaints of violence against women; few VAW cases reach the courts due to the failures of the system to investigate crimes of violence, protect victims and hold perpetrators accountable.

A woman living in Casablanca with her four children was a victim of constant physical and verbal abuse by her husband. When she filed a criminal complaint and sought divorce, her husband harassed her on the street to the point that she fled to Marrakech with her children. She couldn’t find anywhere that would accept all five family members, and ended up working in domestic service. Lacking adequate housing, one daughter was raped and another was a victim of sexual harassment.⁵²

26. Barriers to prosecuting violence against women include the requirement that a victim suffer injuries that result in more than 20 days of disability in order to bring a criminal assault complaint;⁵³ the requirement that a victim meet a high standard to prove the *result* of the act of violence, a physical injury, rather than the act of violence itself; and the lack of police powers to intervene immediately in domestic abuse unless there is imminent threat of death. Spouses evicted without justification from the marital home are returned home by the Public Prosecutor;⁵⁴ returning a woman who has been effectively evicted

⁴⁸ U.N. Human Rights Committee, *List of issues in relation to the sixth periodic report of Morocco: Replies of Morocco to the list of issues* (hereinafter referred to as “Replies to List of Issues”), (August 10, 2016), U.N. Doc. CCPR/C/MAR/Q/6/Add.1, ¶ 26.

⁴⁹ Replies to List of Issues ¶ 29.

⁵⁰ Moroccan Penal Code, Articles 404 and 414; See Government’s Response to the Committee’s LOI, para. 72; see also, Freedom House Inc., Special Reports <http://www.freedomhouse.org/template.cfm?page=178>

⁵¹ Human Rights Watch, “Letter from Human Rights Watch to the Government of Morocco on Domestic Violence Law Reforms,” (Feb. 15, 2016), available online at <https://www.hrw.org/news/2016/02/15/letter-human-rights-watch-government-morocco-domestic-violence-law-reforms> (accessed August 15, 2016).

⁵² Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 23, 2014.

⁵³ Penal Code, Articles 400 and 401.

⁵⁴ Family Code Article 53.

due to domestic violence back into the abusive situation is not, however, a solution when the justice system actors cannot or will not provide for her safety in the home.

27. MRA conducted assessments in spring 2014 among local Moroccan NGOs, who reported that public authorities only intervene in cases of severe injuries or murder.⁵⁵ Lengthy proceedings, lack of protection measures, attitudes blaming the victim, and high rates of cases closed without investigation or follow-up deter women from reporting and prosecuting violence. The above-mentioned national study found that, excluding ongoing cases (15 %), most complaints resulted in a written report (25 %), conciliation between spouses or withdrawal of the complaint (38 %). Offenders are arrested only 1.3 % of the time and indicted in 1.8 % of the cases.⁵⁶ The Economic and Social Council⁵⁷ cites Justice Ministry statistics report that in the period 2007 to 2011 the total number of VAW complaints was 169,351, increasing annually from 28,419 in 2007 to 40,147 in 2011. More than half of the complaints (54 percent) were closed with no further action taken.

A street vendor was constantly assaulted by husband at work, and on several occasions asked for assistance and protection from passers-by. She filed for divorce. One day the husband came and stabbed her in the street; she fled went to the police station to file a complaint. The police asked her to leave and wash the blood off of her first. When she asked for protection they replied that they were busy, told her not to get blood on their chairs, and directed her to the hospital to obtain a medical certificate.⁵⁸

28. Rape cases are difficult to prove, as actual physical injuries are required to prove non-consent; victims who report rape risk prosecution for illicit sexual relations. Sexual relations outside the framework of legal marriage remain illegal in Morocco.⁵⁹ Discriminatory legal provisions continue to place the burden of proof solely on the victim of violence.

A woman stabbed by her live-in partner obtained the necessary 21-day disability medical certificate and went to file a complaint at the police station. She was interrogated and then arrested for illicit sexual relations, while in the meantime the violent partner fled town.⁶⁰

⁵⁵ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 27, 2014.

⁵⁶ Moroccan Haut Commissaire au Plan, "Principaux résultats de l'Enquête Nationale sur la Prévalence de la Violence à l'Égard des Femmes (version française)", (January 2011), available at http://www.hcp.ma/Conference-debat-consacree-a-l-etude-de-la-violence-a-l-egard-de-femmes-au-Maroc_a66.html

⁵⁷ Promotion de l'égalité entre les femmes et les hommes dans la vie économique, sociale, culturelle et politique: Concrétiser l'égalité entre les femmes et les hommes, une responsabilité de tous : concepts, recommandations normatives et institutionnelles, available at <http://www.ces.ma/Documents/PDF/Rapport-egalite-Volet1-VF.pdf>

⁵⁸ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 27, 2014.

⁵⁹ Moroccan Penal Code, Articles 490 and 491.

⁶⁰ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 27, 2014.

29. Further, the government itself has made contradictory statements as to whether or not marital rape is a crime in Morocco.⁶¹ In November 2011 the Moroccan government declared to the United Nations Committee on Torture that marital rape was in fact a crime under the Moroccan Penal Code.⁶² However, in contrast, during a meeting with an alliance of Moroccan NGOs in March 2013 the Minister of Justice declared that it was be impossible to criminalize marital rape because “you can’t deprive a man of what is rightfully his.”⁶³
30. Violence against women Cells (multi-sector Committees of justice, health, and law enforcement personnel established at each Court of First Instance) remain ineffective and not functional, limited to a purely administrative bureaucratic role of completing paperwork rather than providing information, services or protection to women victims of violence. Many women report that they prefer to seek assistance from local NGOs instead.

A women victim of violence by her husband filed for divorce for irreconcilable differences after five criminal complaints in two years that went unpursued. During the mandatory reconciliation session, the public social worker criticized the woman for filing for divorce and for “wanting to destroy her family.” The social worker said that she could “tell from his face the husband was a good and nice person and any woman would be happy to marry him.”⁶⁴

31. **Draft bills addressing violence against women:** Since 2006, the Moroccan Government has made numerous and on-going public declarations nationally and to international bodies of its intention to promulgate a violence against women law.⁶⁵ These include January 2008, March 2008, November 2011, and October 2015 statements by the Moroccan government to respectively the CEDAW Committee, the Human Rights Council Working Group on the Universal Periodic Review, the Committee against Torture, and the Committee on Economic, Social and Cultural Rights that a violence against women law was imminent. The Moroccan Government’s report to the HRC states that a draft law is “in the process of being adopted”⁶⁶ but provides no timeframe for passage. At the time of submission of this report, the State Party has not enacted a violence against women law.

⁶¹ The Penal Code does not explicitly mention rape between spouses and hence it cannot legally be considered to be criminalized.

⁶² Alkarama Foundation, *La Royaume du Maroc devant la Comité contre la torture*, (41: 30), (Nov. 2011), available online at http://www.youtube.com/watch?v=E81HCCNCv_k&feature=share at 41 minutes, 30 seconds.

⁶³ Written report by the associations attending the meeting at the Ministry of Justice on March 18, 2013 in the context of a legislative advocacy campaign for a violence against women law.

⁶⁴ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 26, 2014.

⁶⁵ Examples include the Prime Minister’s statement International Day for the Elimination of Violence against Women in November 2006, and numerous televised statements from 2007 – 2013 by both the previous and current Family Ministers that such a law was “imminent.”

⁶⁶ 2008 Periodic Report, ¶ 261.

32. Ministers from each of the two prior governments had submitted draft violence against women bills to the *Secrétariat Général du Gouvernement* (SGG), marking the first step in the legislative process. Neither of these bills, from 2007 and 2010 respectively, were made public and both were withdrawn from the SGG before any further progress was made.
33. A proposed VAW bill (Bill 103-13) submitted by the current Family Minister to the Government Council in November 2013 was initially tabled by the Head of Government⁶⁷ before being approved in Government Council on March 17, 2016. It is worth noting that the bill was passed in the House of Representatives the Justice, Legislation and Human Rights Commission by only nine votes out of 44 members, the rest being absent the day of the vote. Likewise, only 105 out of 395 MPs were present for the plenary vote on the bill.
34. The most recent version of this 17-article VAW bill, voted with minor amendments by the House of Representatives on July 20, 2016,⁶⁸ and currently under consideration by the House of Councillors, represents a start in efforts to address violence against women, but much work remains to produce an effective legislative response. Bill 103-13 has numerous, substantial gaps, and many critical issues are not addressed at all. The draft bill does not fulfill Morocco's international commitments on violence against women, reflect the over a decade of advocacy by local women's NGOs, or respond to the voiced needs of women victims of violence. It does not cover all forms of VAW or provide protection to all women victims of violence.
35. Rather than proposing a specific law with both criminal and civil provisions, a UPR recommendation accepted by Morocco in 2012,⁶⁹ Bill 103-13 is limited to minor reforms to the Penal Code and the Code of Penal Procedure. These are mainly comprised of making certain existing crimes applicable to spouses (such as theft, defamation, fraud), and increasing penalties for existing crimes when the victim is the offender's spouse. The latter provision exists already in the Penal Code for certain crimes such as for assault. Despite the title of the bill as "Violence against Women," its articles do not apply to such violence crimes committed against women, but as committed "between spouses." The bill does not address the critical, earlier steps in the law enforcement process, such as the reporting, investigation, and prosecution phases of violence against women cases. It does not address the deficiencies in the current rape and sexual assault laws. The bill does not provide for any Civil Protection or Temporary Restraining Orders or other civil remedies, or establish any specific services or provide concrete support for women victims of violence.⁷⁰

⁶⁷ <http://www.medias24.com/POLITIQUE/5975-Benkirane-desavoue-Bassima-Hakkaoui.html>

⁶⁸ Available at http://www.mcrp.gov.ma/pdf/Lois/Projets/103.13/Representants/SP_LEC_1.pdf

⁶⁹ Report of the Working Group on the Universal Periodic Review, Morocco, Human Rights Council twenty-first session, A/HRC/21/3.

⁷⁰ <http://mrawomen.ma/wp-content/uploads/doc/MRA%20Draft%20VAW%20law%20Morocco%20Analysis%20and%20Advocacy%20Chart%20September%207%20version.pdf>

36. **Lack of Access to Housing for Victims of Violence.** The lack of a clear legal status and framework for shelters in Morocco creates several obstacles to providing safe housing and adequate protection for women victims of violence. In the absence of a specific domestic violence law or legal framework on shelters for women victims of violence, Law 14-05⁷¹ on “Social Protection Establishments” is considered as the applicable law. Law 14-05 pertains to centers providing services and care, including shelter, to people in “difficult, precarious or indigent situations” but the law is not specific to and does not appropriately take into account work with women victims of violence. The few shelters that exist in Morocco have difficulty providing adequate security for women because of this lack of clarity in the law. Because shelters are considered mere “programs” or projects of a local NGO, law enforcement often cannot or will not intervene or provide security.⁷²
37. Local Moroccan NGOs contributing to this submission reported that access to safe and stable housing is a significant problem for women victims of domestic violence.⁷³ Women who are kicked out of the home or flee violent situations have limited options for shelter or housing.
38. The government references the “development of 40 multifunctional facilities for women victims of violence”.⁷⁴ Some shelters for victims of domestic violence do exist in Morocco, providing services such counseling, legal accompaniment, literacy, awareness-raising and professional training in addition to limited sleeping facilities. However, local Moroccan NGOs agree that shelters for women victims of domestic violence are few in number and exist only in big cities.
39. **Lack of Access to Healthcare for Victims of Violence.** While procedures and services for Moroccan women victims of violence seeking medical attention can vary, the general procedure is for a victim to be received at the Violence against Women (VAW) unit at hospital by a nurse who completes a specific domestic violence questionnaire.⁷⁵ The victim is then referred to the designated doctor at the hospital to provide a medical certificate attesting to the injuries and length of incapacity. The disability certificate must also be stamped and validated by the Chief Medical doctor at the hospital.
40. NGOs report that women have problems obtaining a disability certificate with sufficient duration (21 or more days) necessary to bring a criminal complaint for assault. According

⁷¹Dahir n°1-06-154 du 30 chaoual 1427 (Novembre 22, 2006) portant promulgation de la loi n° 14-05 relative aux conditions d’ouverture et de gestion des établissements de protection sociale.

⁷²Note that even though provisions of the Penal Code that make it illegal to shelter a married women have been abrogated, some NGOs continue to report experiences of needing to have a certificate/permission from the Social Protection department to avoid being sued by husbands and legal guardians of minors for “kidnapping.” NGOs also reported the perception that without the certificate, they cannot prevent a husband or legal guardian from entering the shelter and forcibly taking the woman.

⁷³Communications from local Moroccan NGOs to MRA and the Advocates, December 2014 – January 2015

⁷⁴Replies to List of Issues, ¶ 33.

⁷⁵NGOs report that the DV questionnaire is primarily an administrative form required by the competent Ministry for statistics purposes, with mainly biographical information on the woman. Sometimes it is a social worker who completes the questionnaire.

to the NGOs, most certificates range from 1 to 20 days, which does not allow for the husband's arrest. They also report some doctors resist providing the disability certificates to avoid having to appear in court. Doctors (usually men) often will not capture the full impact of the violence or note the full extent of the injuries in the disability certificate.⁷⁶ In addition, they note only visible physical manifestations of violence instead of taking into account the full history of domestic violence and patterns of coercive control. Women can't obtain the necessary disability certificate when the doctor is absent, for example on weekends and holidays.

A 38-year-old female victim of violence was stabbed by her husband and went to hospital. The doctor examining her saw that the violence was so severe that the husband risked substantial prison time. To avoid this, the doctor tried to convince the woman not to file a complaint, to renounce her rights, forgive her husband, and return to the conjugal home. The woman insisted on pursuing the case, but since the doctor only gave her an incapacity certificate for 20 days, the case is still pending even though she filed the complaint 6 months ago.⁷⁷

41. Further, the draft bill for reforms to the Penal Code, released by the Minister of Justice in April 2015, would increase the duration necessary for such a disability certificate from 20 or more days⁷⁸ to 21 or more days,⁷⁹ making it even more difficult for women to bring a criminal complaint for assault.⁷⁹

D. List of Issues, para. 9, Sexual Harassment (arts. 3, 6 and 7)

42. The Moroccan Government reported that the Moroccan Penal Code, as amended by Act No. 24.03 of November 2003, criminalizes "sexual harassment in all its forms."⁸⁰
43. Article 503-1 (from 2003) remains the only article in the Penal Code related to sexual harassment. Further, on its face, article 503-1 is limited in that it only covers the offence of sexual harassment that takes place in the workplace by a superior and with the purpose of obtaining sexual favors. Sexual harassment that occurs in other spaces or is committed by someone else in the workplace who is not in a higher position is not an offence under article 503-1. Further, behavior that creates a hostile work environment would not be defined as sexual harassment under article 503-1.

⁷⁶Additionally, the medical certificates, and other specific services and procedures at VAW units are only given for conjugal violence, not other forms of violence. AN NGO in a large city reports how there is no gynecologist at the main hospital with the VAW unit, and so sexual assault and rape victims have to go to another hospital for appropriate medical care and certificates; NGOs in this city report how a prosecutor's order is necessary to access these. Several NGOs reported the lack of specialized doctors (gynecologist), in one medium size town for example the gynecologist is present only two days a week, mainly doing operations for women. As a result, women are forced to travel to another city to go to a gynecologist.

⁷⁷ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs, May 27, 2014.

⁷⁸ Penal Code, Articles 400, 401, 409.

⁷⁹"Draft Bill on Reforms to the Criminal Code," <http://www.justice.gov.ma/lg-1/documents/doccat-4.aspx>.

⁸⁰Sixth Periodic Report, ¶ 260.

44. Further, women in Morocco experience multiple barriers to reporting sexual harassment. Sexual harassment occurs often for women working in agriculture or other areas in the unofficial sector. Female seasonal agricultural workers, who don't have official contracts, health insurance, or job benefits, say that many cases of sexual harassment go unreported because of threats of firing or physical abuse.⁸¹ Many women who experience sexual harassment at work report in the form of verbal sexual comments report feeling helpless to stop the harassment or sue because of the lack of evidence to present in court.⁸²
45. An additional barrier that often prevents Moroccan women from reporting sexual harassment is a lack of trust in the police and judicial system.⁸³ Many women fear that if they report sexual harassment, they will face detrimental consequences. One recent example highlights this fear:

On June 14, 2015 in Inezgane, a town in southwest Morocco near the city of Agadir, two women were sexually harassed by a group of men who targeted them based on the dresses they were wearing.⁸⁴ The women were whistled at and then threatened by a larger group of people who began to stalk them. Concerned about their safety, the women sought refuge in a shop while waiting for the police to arrive to handle the situation. When the police arrived, several people claimed that the women were "harming public morality" because their dresses were "too short".⁸⁵ The police arrested the women on the basis that the dresses which they were wearing were "indecent" and charged them under Penal Code article 483.⁸⁶ The women were acquitted on July 13, 2015 but have moved to a different town as a result of their treatment in Inezgane.⁸⁷ Their forced relocation has an impact on many areas of their lives, including employment. It remains unclear, however, whether any of the men who sexually harassed them will be arrested and prosecuted.⁸⁸

46. **Draft bills related to sexual harassment.** While Morocco has not yet taken the necessary legislative steps to adequately protect women from sexual harassment, the VAW Bill 103-13 currently under review proposes new articles related to sexual

⁸¹ *Female Workers in Villages...Forgotten by the Government and Face Sexual Harassment*, Al-Zahara' Forum for Moroccan Women, 20 January 2012. <http://www.fz.ma/news140.html>

⁸² Amal Abu Al-Ala', *Women of Sexual violence Speak out*, Alyaoum24, September 7, 2013.

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

⁸³ Nadia Al Hani , *Public Transportation... A playground for Sexual Harassment*, Alyaoum24, February 27, 2014. <http://www.alyaoum24.com/172442.html>.

⁸⁴ "Deux Marocaines poursuivies en raison de leurs robes jugées trop courtes," June 25, 2015, Jeune Afrique, <http://www.jeuneafrique.com/239715/societe/deux-marocaines-poursuivies-en-raison-de-leurs-jupes-jugees-trop-courtes/>.

⁸⁵ *Id.*; Interviews by MRA with Local Morocco NGOs (June 2015 – July 2015).

⁸⁶ Penal Code, Article 483. Article 483 criminalizes "public indecency" through a "voluntary state of nudity or obscene gestures or acts" with imprisonment of 1 month to 2 years and a 200 to 500 dirham fine.

⁸⁷ Interviews by MRA with Local Morocco NGOs (June 2015 – July 2015).

⁸⁸ Interviews by MRA with Local Morocco NGOs (June 2015 – July 2015).

harassment. These include a new article 503-1-1 providing that “Harassment in public spaces or other by words, acts or signals of a sexual nature for sexual purposes” or “Written letters, phone or electronic messages, records or images of sexual nature for sexual purposes” shall be punished with one to six months of imprisonment and a fine ranging from 2,000 to 10,000 MAD or one of them, with the punishment doubled “if the perpetrator is a work colleague or one of those in charge of order or security of public places or else.”

47. Article 503-1-2 would likewise impose a sentence of three to five years of imprisonment and a fine ranging from 5,000 to 50,000 MAD “if the sexual harasser is one of the ascendants, or one of the unmarriageables, custodian, or is someone who has authority or tutorship on the victim. Such sentence shall also be applicable if the victim is a minor.”
48. While the draft amendments to the Penal Code would expand Morocco’s protections against sexual harassment, the State Party has not given a clear timeline as to when it will adopt such changes. Until the Government of Morocco implements the reforms to its Penal Code, protections against sexual harassment will remain extremely limited and inaccessible to victims.

E. List of Issues, para. 12, Right to Life (Articles 2 and 6)

49. In its last review of Morocco, the Committee noted “with concern that abortion is still a criminal offence [...] unless it is carried out to save the mother’s life” and recommended the government “relax the legislation relating to abortion” to “ensure that women are not forced to carry a pregnancy to full term where that would be incompatible with its obligations under the Covenant.”⁸⁹ In para. 12 of the List of Issues, the Committee asks the State party, in light of the recommendation, to indicate whether it “has taken or plans to take measures to revise its legislation on voluntary termination of pregnancy in order to prevent clandestine abortions which can lead to the woman’s death.”⁹⁰
50. In Morocco, abortion remains illegal unless it is deemed necessary to protect the mother’s health⁹¹ and may only be carried out within the first six weeks of pregnancy. In addition, the husband’s authorization is required, except in cases where the mother’s life is in danger. In the absence of spousal authorization, the doctor must seek written permission from the Chief Medical Doctor in the district before performing the abortion.⁹²
51. Abortion is not legally permitted in cases of rape or incest, foetal impairment, for economic or social reasons, or simply upon request. Moroccan laws also punish a woman

⁸⁹ Concluding Observations, ¶ 29.

⁹⁰ List of Issues, ¶ 12.

⁹¹ Articles 449-452 of the Moroccan Penal Code punish performing an abortion with 1 – 5 years imprisonment (doubled if the person performing the abortion habitually does so), and medical professionals may also be barred from exercising their profession temporarily or permanently. In 2008, 12 doctors were imprisoned under these provisions of the Penal Code. « Réformer l’Interruption Médicale de Grossesse... pour en finir avec l’avortement clandestine,” *Femmes du Maroc*, No. 160, April 2009.

⁹² Article 453 of the Moroccan Penal Code.

who has an abortion (or attempts to)⁹³ as well as anyone who is deemed to have incited an abortion through public statements or distribution of written or visual materials.⁹⁴

52. A 2007 study by the Association marocaine de planification familiale (AMPF) in collaboration with the Institut National d'administration Sanitaire (INAS) estimates that 600 women per day have an abortion in Morocco, 52% of whom are married.⁹⁵ The survey suggests that 35% of women in Morocco have had an abortion in their lifetime.⁹⁶ According to the World Health Organization, 13% of maternal mortality in Morocco is due to an abortion.⁹⁷
53. As the government of Morocco stated in its Replies to the List of Issues, a Royal Commission submitted recommendations for reforms to the Penal Code related to abortion in May 2015.⁹⁸ The announced reforms have not been implemented, however, and the current status in the enactment process of the announced reforms remains unclear.

III. Recommendations for the Government of Morocco

54. The Advocates for Human Rights and Mobilising for Rights Associates recommend the following:
- Indicate the status of the Covenant in the legal order of the State party.
 - Confirm that, pursuant to Article 22, domestic violence is a violation of women's rights under the Constitution.
 - Clarify exactly the current stage in the legislative process the announced, specific Violence against Women bill is currently in, and what the timeframe is for its enactment.
 - Ensure that the VAW bill currently under consideration is expanded beyond minor Penal Code reforms in order to provide a comprehensive state response to VAW that integrates prevention, protection, criminalization, and concrete compensation and services for all women victims of violence. The eventually enacted law should contain:
 - Specific civil remedies for women victims of violence to guarantee their right to housing, such as civil protection orders and orders removing the violent offender from the home, that are a separate, stand-alone Civil (not Penal) remedy that women should be able to obtain without launching a criminal complaint. Additionally, under the draft law even women who do launch criminal

⁹³ Article 454 of the Moroccan Penal Code provides for a prison term of 6 months to 2 years a woman who has or attempts to have an abortion.

⁹⁴ Article 455 of the Moroccan Penal Code punishes a host of such acts with a 2 month to 2 year prison sentence.

⁹⁵ Association marocaine de planification familiale, *Etude exploratoire l'avortement à risqué* (Nov. 2008), available online at http://www.ampf.org.ma/index.php?option=com_content&view=article&id=12&Itemid=18. This report was widely covered in the media in Morocco. See *600 avortements clandestins par jour, à quand une loi plus souple ?*, La Vie éco, Nov. 7 2008, available online at <http://lavieeco.com/news/societe/600-avortements-clandestins-par-jour-a-quand-une-loi-plus-souple-12146.html#w4OzRWYGYrhDhK1Z.99>. Also reported in *l'Economiste* and posted on Redacteur, Oct. 25, 2008.

⁹⁶ Association marocaine de planification familiale, *Etude exploratoire l'avortement à risqué* (Nov. 2008), available online at http://www.ampf.org.ma/index.php?option=com_content&view=article&id=12&Itemid=18.

⁹⁷ Association marocaine de planification familiale, *Etude exploratoire l'avortement à risqué* (Nov. 2008), available online at http://www.ampf.org.ma/index.php?option=com_content&view=article&id=12&Itemid=18.

⁹⁸ Replies to List of Issues, ¶ 41.

proceedings would not benefit from protective measures until the prosecution phase, leaving them unprotected from potential violence during the complaint and investigation phase.

- Reforms to the Penal Procedure Code to effectively address the reporting, investigation, and prosecution phases of violence against women cases;
 - Measures to address the current deficiencies in the rape laws by reforming the high requirement that women victims of rape demonstrate physical injury to prove non-consent (b) abolishing the risk that rape victims who cannot prove non consent can be prosecuted for illicit sexual relations themselves, and (c) criminalizing marital rape.
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- Describe what measures are anticipated to create a legal framework and state financial support for shelters and housing to women victims of violence.
 - Indicate how Article 53 of the Family Code is applied in cases of domestic violence, and describe any plans to reform laws so that women and children don't have to leave the family home pending the legal procedures.
 - Enact specific reforms related to the current 21-day incapacity period necessary for a woman to bring an assault charge and to the procedures necessary to obtain a medical certificate.
 - Take steps to eliminate discrimination between men and women in access to divorce.
 - Take steps to effectively abolish polygamy.
 - Indicate measures taken by the government to ensure that the marriage registration procedures have not been used to circumvent polygamy restrictions.
 - Provide the Committee with the most recent statistical data on the: 1) number of cases of marriage of minors, including age at time of marriage, gender and age difference between spouses; 2) number of petitions for authorization to marry minors, as well as the percentage of petitions granted; and 3) comparative changes in these numbers and rates over preceding years.
 - Provide services for minor victims of rape.
 - Broaden the definition of sexual harassment to cover all forms of sexual harassment in both public spaces and the workplace.
 - Clarify exactly the current stage in the legislative process the announced reforms to the Penal Code related to abortion are currently in, and what the timeframe is for their enactment.
 - Clarify the cases under which the proposed reforms would decriminalize abortion and exactly to what extent these reforms would meet the Committee's previous recommendation to relax the legislation on abortion.