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## **How discriminatory national legislation contributes to women's poverty in Morocco**

**Submitted by MRA Mobilising for Rights Associates,**  
a non-governmental organization based in Rabat, Morocco

for the United Nations Special Rapporteur on extreme poverty and human rights  
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### **Introduction:**

This submission focuses on current discriminatory and unjust national laws in Morocco that create, contribute to and exacerbate women's poverty. Numerous provisions in national legislation hinder women's access to and control over assets, resources, employment and income-generating activities, thus depriving them of financial security and economic independence. In order to effectively address and combat gender-based poverty, the government should be encouraged to examine how current laws, policies and practices are pushing women into or keeping them in poverty.

Women are disproportionately burdened with financial and caretaking responsibilities for children, with fewer economic resources than men. They are also disproportionately targeted by criminal provisions related to so-called "morality" crimes, which impacts negatively on their access to financial resources and income generating opportunities.

Many of the economic burdens placed on women and this disparate impact result from a system that does not hold men accountable for their criminal actions and absolves them of financial responsibilities to others. This effectively creates a situation of "unjust enrichment" whereby men continue to benefit economically and financially at women's expense.

In the absence of concrete action for needed legislative reforms to the Penal Code and Family Code, current initiatives for women's economic empowerment and inclusion will have limited real-world impact.

## I. Penal Code provisions contributing to women's poverty

1. **Violence against women (VAW)** is a significant factor impacting women's participation in economic life and hindering their access to income.

VAW is widespread in Morocco. 57% of women ages 15 to 74 reported experiencing at least one act of violence in the previous twelve months.<sup>1</sup> The prevalence of different forms of violence reported by women included psychological violence (49%), economic violence (15%), sexual violence (14%), and physical violence (13%).

Violence against women is most prevalent in the domestic context (52% overall, 46% committed by the husband or other intimate partner or ex-partner), followed by educational institutions (19%) and public spaces (13%). 15% of working women reported violence in the workplace, and 22% of female students reported violence in education and training institutions.<sup>2</sup>

Over 14% of working women victims had to take time off work following the most serious incident of conjugal physical violence, each woman losing on average 14 days of work per year. 29.8% of working women victims of physical violence in the public sphere had to take time off, on average 8 days per year. 40% of working women victims of violence had to change jobs, while 7% left the labour market altogether.<sup>3</sup> Other studies have demonstrated how girls subjected to violence often drop out of school.<sup>4</sup>

22.8% of all women victims of physical and/or sexual violence had to bear, themselves or their families, the direct or indirect costs of the violence (such as health care and legal costs), averaging about \$100 USD per victim.<sup>5</sup>

The State public response to VAW remains inadequate. Out of the 92,247 women who sought help at the VAW units at First Instance or Appeals courts, only 21,588 (23%) benefitted from legal aid and only 4,233 (4.6%) resulted in a court hearing.<sup>6</sup>

Law 103-13 on VAW, enacted in March 2018, falls well short of complying with international standards or meeting advocacy demands made by civil society for over a decade. Rather than a comprehensive law with criminal and civil provisions, the law is limited to minor reforms to the Penal Code and Code of Penal Procedure, merely increasing penalties for existing

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<sup>1</sup> Royaume du Maroc Haut-Commissariat au Plan, *Deuxième enquête nationale sur la prévalence de la violence à l'égard des femmes*, (2019). Preliminary results available at [https://www.hcp.ma/Communique-du-Haut-Commissariat-au-Plan-a-l-occasion-de-la-campagne-nationale-et-internationale-de-mobilisation-pour-l\\_a2411.html](https://www.hcp.ma/Communique-du-Haut-Commissariat-au-Plan-a-l-occasion-de-la-campagne-nationale-et-internationale-de-mobilisation-pour-l_a2411.html)

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> See, e.g., *Virtual Violence, Real Harm* (2019); *Promoting State Responsibility for Sexual Violence against Women in Morocco* (MRA Mobilising for Rights Associates, 2021); *Promoting State Responsibility for Intimate Partner Violence against Women in Morocco* (MRA Mobilising for Rights Associates, 2021).

<sup>5</sup> <https://www.hcp.ma/file/230159/>

<sup>6</sup> Annual Report on the Implementation of the Penal Policy and the Improvement of the Performance of the Public Prosecutor, 2018.

criminal offenses in cases of spousal or other family relationships. Significant deficiencies of Law 103-13 include the following:

- It did not reform provisions related to sexual assault or rape, which is still defined as “the act whereby a man has sexual relations with a woman against her will”, essentially requiring physical injuries as proof of resistance.<sup>7</sup> Marital rape is still not criminalized in the Penal Code.
- It does not address, or establish any provisions for the reporting, investigation, prosecution, or trial of violence against women cases, or create obligations and procedures for law enforcement and justice system personnel. Policies and procedures remain unclear and inconsistent, hindering the response to VAW cases.<sup>8</sup>
- It does not provide adequate protection for women victims of violence or prevent them from being at risk of future violence. The protective measures provided under the Penal Code and Code of Penal Procedure, are limited criminal (not civil) measures, only available if and once a criminal prosecution has been launched or the offender has been convicted. None are mandatory, left to the discretion of the prosecutor or judge. They also come too late in the process, once a prosecution has been initiated or a conviction rendered. Most cases never get that far, leaving the majority of victims unprotected.<sup>9</sup>
- It did not establish specific services or provide concrete support such as health care, housing, or legal assistance for women victims of violence. NGOs report that many State-run multifunctional centres for women (EMFs) are not functional or operating, but rather are closed, empty buildings without staff.

Law enforcement officers are not empowered by law or policy to remove violent offenders from the home and hence rarely do so. In the majority of cases, NGOs report that women and children must flee the home and seek shelter elsewhere, risking homelessness.

Penal Code article 503-1 only covers the offence of sexual harassment in the workplace by a superior and with the purpose of obtaining sexual favors. Behavior that creates a hostile work environment is not defined as sexual harassment under article 503-1.

Law 103-13 on VAW expanded the scope of sexual harassment crimes, criminalizing “persistent” harassment in public spaces 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

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<sup>7</sup> Penal Code, article 486.

<sup>8</sup> Bordat, Stephanie Willman and Saida Kouzzi, USAID/Morocco Gender Analysis. Prepared by Banyan Global. 2018.

<sup>9</sup> Penal Code articles 61, 88-1, 88-3, Code of Penal Procedure Article 82-5.

for sexual purposes.”<sup>10</sup> Despite these legislative advances, women experience multiple barriers to reporting sexual harassment. Sexual harassment provisions require that the harassment be “persistent” – an undefined term that again raises issues of how to prove elements of a crime or what evidence is admissible and sufficient.

Sexual harassment occurs frequently among women working in agriculture or other unofficial sector jobs. Female seasonal agricultural workers, who often don’t have official contracts, health insurance, or job benefits, say many cases of sexual harassment go unreported because of threats of dismissal or physical abuse.<sup>11</sup> Many women who experience sexual harassment at work report feeling helpless to stop it or file a complaint because of difficulties obtaining evidence to present in court.<sup>12</sup>

Education, training and insertion activities to increase women’s employment will have limited impact in the absence of an effective State response to VAW. Hostile environments with violence and harassment foster women’s attrition from the workforce. Likewise, income-generating activities risk not resulting in increased economic autonomy for women if husbands and other male family members can use coercion and violence to appropriate women’s income with impunity.

**Recommendations :** Improve the State response to violence against women by: Providing for specific civil remedies for women victims of violence such as civil protection orders and orders removing the violent offender from the home, that are a separate, stand-alone Civil (not Penal) remedy available without having to file a criminal complaint; Enacting reforms to the Penal Procedure Code to effectively address the reporting, investigation, and prosecution phases in VAW cases by providing public actors in the health, law enforcement and justice sectors with clearly defined obligations, powers, procedures and accountability mechanisms for non-compliance; and Amending the Penal Code provisions on rape to address deficiencies related to definitions and evidentiary requirements.

2. **Sexual relations outside of marriage remain illegal in Morocco** under Penal Code articles 490-93. As a result, women in non-marital intimate partner relationships do not come forward to report any form of violence – physical, sexual, technology-facilitated, or other - for fear of being prosecuted themselves.<sup>13</sup> Similarly, women victims of rape do not report sexual assaults given the threat of being prosecuted as criminals.

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<sup>10</sup> Bordat, Stephanie Willman and Saida Kouzzi. USAID/Morocco Gender Analysis. Prepared by Banyan Global. 2018, 30.

<sup>11</sup> *Female Workers in Villages...Forgotten by the Government and Face Sexual Harassment*, Al-Zahara’ Forum for Moroccan Women, January 20, 2012. <http://www.fz.ma/news140.html>

<sup>12</sup> Amal Abu Al-Ala’, *Women of Sexual violence Speak out*, Alyaoum24, September 7, 2013. <http://www.alyaoum24.com/164523.html>

<sup>13</sup> See, e.g., *Virtual Violence, Real Harm* (2019); *Promoting State Responsibility for Sexual Violence against Women in Morocco* (MRA Mobilising for Rights Associates, 2021); *Promoting State Responsibility for Intimate Partner Violence against Women in Morocco* (MRA Mobilising for Rights Associates, 2021).

Indeed, women victims of any type of crime – including property crimes such as fraud, theft, extortion or other – in which a partner not the legal husband is the perpetrator or otherwise implicated are deterred from seeking recourse from law enforcement and the justice system by threats of being prosecuted for sexual relations outside of marriage.<sup>14</sup>

In addition to serving as a disincentive to women victims reporting violence and property crimes, these legal provisions criminalizing sexual relations outside of marriage actually encourage and facilitate violence against women by providing perpetrators with a tool – the threat of denunciation for sexual relations outside of marriage - for blackmail, extortion, and coercive control of women. Recent action research revealed specific economic harms caused by these articles, which essentially facilitate gender-based theft in cases where women are victims of scams by fake “husbands” who steal their property and money, and are left without recourse to recover their property. In other instances, perpetrators use intimate photos or videos of women to blackmail them for money or risk publication online.<sup>15</sup>

Women prosecuted for sexual relations outside of marriage incur substantial legal and court costs, and if convicted, have a criminal record that effectively prevents them from obtaining future employment. Local NGOs report that unmarried women factory workers are summarily dismissed from their jobs should they become pregnant.

In 2020 there were substantially more prosecutions for so-called morality crimes (27,378 cases against 31,799 persons) than for violence against women crimes (18,275 criminal cases against 19,570 persons).<sup>16</sup>

**Recommendation:** Repeal Penal Code articles 490-93.

3. **Abortion** remains illegal unless deemed necessary to protect the “mother’s” health.<sup>17</sup> The husband’s authorization is required, except where the mother’s life is in danger. Absent spousal authorization, the doctor must seek written permission from the Chief Medical Doctor in the district before performing the abortion.<sup>18</sup> Abortion is not legally permitted in cases of rape or incest, fetal impairment, for economic or social reasons, for women suffering from any type of impairment, or simply upon request. Moroccan laws punish women who have or attempt an abortion,<sup>19</sup> as well as anyone deemed to have incited abortion through public statements or

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<sup>14</sup> Written reports from Moroccan NGOs to MRA, May 2021 – April 2022.

<sup>15</sup> <https://mrawomen.ma/wp-content/uploads/doc/English%20490%20report%20FINAL.pdf>

<sup>16</sup> Annual Report on the Implementation of the Penal Policy and the Improvement of the Performance of the Public Prosecutor, 2020.

<sup>17</sup> Penal Code art. 449-452 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).

<sup>18</sup> Penal Code art. 453.

<sup>19</sup> Penal Code art. 454 provides for a prison term of 6 months to 2 years a woman who has or attempts to have an abortion).

distribution of written or visual materials.<sup>20</sup> Bill 10-16 that would allow abortion in cases of rape or incest, fetal impairment, or the mother's mental illness was stalled in Parliament for years and was recently withdrawn.<sup>21</sup>

Women who wish to have an abortion are often forced to turn to dangerous and costly illegal methods, including contraband abortion-inducing drugs smuggled in from foreign countries (sold for the equivalent of \$200 USD) and clandestine procedures performed by a person who may or may not be a medical professional (\$500 USD). These premium and inflated prices due to the criminalization of abortion are inaccessible to a good number of Moroccan women.

Women who are unable to obtain an abortion are forced to give birth and assume sole responsibility for the child born. The criminalization of sexual relations outside of marriage and the non-recognition of paternity to children born outside of wedlock means that unwed mothers are rejected by their families and unsupported by the biological father. They are socially isolated and economically marginalized. They also face substantial difficulties seeking employment, due to both the lack of child care resources and support.<sup>22</sup>

**Recommendation:** Remove all legal provisions related to abortion from the Penal Code, and provide a regulatory framework under the Ministry of Health. Repeal all laws, policies and practices that punish obtaining, providing or assisting with securing and/or obtaining an abortion.

## II. Family Code provisions contributing to women's poverty

Numerous provisions in the 2004 Family Code<sup>23</sup> explicitly provide for gendered and unequal access to and control over economic and financial resources. Other potentially favorable dispositions are not applied properly. In both letter and in practice, these provisions undermine women's economic security and independence and foster poverty. Many financial and economic burdens placed on women result from a system that absolves men of assuming their fair share of child-rearing costs and maintains men's hold over property and assets.

1. **Child marriage** of girls remains a significant problem in Morocco. Articles 20 and 21 of the Family Code continue to allow marriage of children under 18 when "justified" and after control by the Family Affairs judge. In 2019 the courts received 27,623 petitions to marry a

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<sup>20</sup> Penal Code art. 455 punishes a host of such acts with a 2 month to 2-year prison sentence.

<sup>21</sup> Royaume du Maroc. Projet de loi N°10.16 modifiant et complétant le Code Pénal.

<sup>22</sup> Additionally, there is no system of legal adoption in Morocco that would also offer another option.

<sup>23</sup> Royaume du Maroc. Dahir n° 1-04-22 du 12 hija 1424 (3 février 2004) Portant Promulgation de la loi n° 70-03 portant Code de la Famille («Family Code »),

child, 95% of those for girls.<sup>24</sup> Between 2011 and 2018, 85% of all marriage requests ended in an authorization.<sup>25</sup>

The persistence of child marriage affects girls' ability to pursue education and employment and, given the frequent age gaps between spouses, has implications for decision-making, power dynamics and control of assets and resources within the family. Married girl-children become unpaid domestic labour for in-laws, produce child mothers, are at a high risk of physical, sexual and economic violence, and frequently are expelled by the husband and rendered homeless.<sup>26</sup>

**Recommendation:** Repeal Family code articles 20 and 21 to ban child marriage completely.

2. **Separate marital property** between spouses is the rule, whereby each spouse retains ownership of assets acquired during marriage with no division or sharing of property upon dissolution of marriage.<sup>27</sup> These provisions are detrimental to women and prevent them from receiving their fair share of household wealth and assets generated during marriage, wealth and assets to which they made either direct financial and/or in-kind (domestic labour) contributions.

Ownership of titled property is by law deemed to be in the name of the person who registered it (usually the husband) even when both spouses contribute to its purchase. Although Family Code provisions technically hold the husband solely responsible for financially supporting his wife and children,<sup>28</sup> the reality is quite different. Women workers report that their salary is often the main source of income for their households or that they contribute equally to household expenses.<sup>29</sup>

Although article 49 provides the option for spouses to conclude a written property agreement setting out an alternative framework for how they will manage and share assets acquired during the marriage (for example, joint or community property), these are extremely rare in practice.<sup>30</sup>

**Recommendations:** Amend the Family Code to provide for a joint or community property regime and explicitly consider women's direct financial and in-kind contributions to household

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<sup>24</sup> Annual Report on the Implementation of the Penal Policy and the Improvement of the Performance of the Public Prosecutor, 2019.

<sup>25</sup> Que faire, face à la persistance du mariage d'enfants au Maroc ? Avis du Conseil Economique, Social et Environnemental (2019) <https://www.cese.ma/media/2020/10/Que-faire-face-à-la-persistance-du-mariage-d'enfants-au-Maroc.pdf>

<sup>26</sup> CESE (2019), Diagnostic Study on Child Marriage. Public Ministry, in partnership with UNICEF (November 29, 2021)

<sup>27</sup> Family Code article 49

<sup>28</sup> Family Code Articles 194, 198, 2004.

<sup>29</sup> Promotion de l'égalité entre les femmes et les hommes dans la vie économique, sociale, culturelle et politique. Les discriminations à l'égard des femmes dans la vie économique : réalités et recommandations, 2014.

<sup>30</sup> Global Rights. Conditions, Not Conflict: Promoting Women's Human Rights in the Maghreb through the Strategic Use of the Marriage Contract, 2008.

assets.

3. **Unequal access to divorce.** Men retain their right to divorce unilaterally and without cause. In contrast, women must either pay compensation to their husbands to obtain a divorce (*khul'a*) or seek judicial divorce by proving one of six specified faults committed by the husband or allege irreconcilable differences.<sup>31</sup>

**Recommendation:** Amend the Family Code to eliminate *khul'a* divorce and establish that men and women have equal access to divorce on the exact same grounds.

4. **Limited financial support and awards.** After divorce, husbands have no financial obligations, such as alimony, to their ex-wives beyond housing and maintenance expenses during the limited *idda* period.<sup>32</sup> Although fathers are technically responsible for financially supporting children after divorce by both paying child support and guaranteeing the children decent housing,<sup>33</sup> award amounts are generally extremely low, and numerous problems arise in serving notice and executing judgments. In 2011, only 60% of child support cases received decisions, and only 60% of those were enforced.<sup>34</sup> Women thus often bear the costs of raising children alone after divorce.

**Recommendation:** Improve laws and procedures for assessing, granting and enforcing awards for financial support for women and children after divorce.

5. **Legal guardianship of children.** The Family Code distinguishes between physical custody and legal guardianship of children and maintains inequality between fathers and mothers in the latter. Even after divorce, fathers remain legal guardians, controlling all decision-making and management of affairs relating to children, such as education, property, and other administrative issues.<sup>35</sup> These also include responsibilities for children's bank accounts and for receiving insurance reimbursements for children's medical expenses, even when the mother has paid those costs. Mothers with physical custody of children after divorce face obstacles to registering their children for school, to remarrying, as well as constraints to travel outside of the country with their children or to relocate within Morocco away from the father/legal guardian. These provisions hamper women's professional mobility and employment opportunities.<sup>36</sup>

**Recommendations:** Amend the Family Code to provide that mothers exercise legal guardianship over their children on an equal basis with fathers. Eliminate provisions placing

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<sup>31</sup> Family Code Articles 78 – 120, 2004.

<sup>32</sup> Family Code Articles 129 – 137. The length of the *idda* varies depending on the circumstances from three menstrual cycles to four months and ten days, or, in the case of pregnant women, through the end of the pregnancy.

<sup>33</sup> Family Code Articles 167-168, 190-191, 198-199.

<sup>34</sup> World Bank, *Morocco Mind the Gap: Empowering Women for a More Open, Inclusive, and Prosperous Society*, (2015).

<sup>35</sup> Family Code Articles 231, 236, 238.

<sup>36</sup> Family Code Articles 173, 175 and 178.



mothers at risk of losing custody of their children in case they remarry or move to another locality.

- 6. Unwed mothers and their children.** The Family Code only recognizes and attributes children to a father when he is legally engaged or married to the mother at the time of conception. “Illegitimate” or “natural” paternity does not exist in Moroccan law, and children born to unwed mothers have no rights from their biological fathers, such as the right to bear his name, receive financial support, or inherit.<sup>37</sup>

Additionally, the 2002 Civil Status Code maintains discrimination against children born out of wedlock, by making it difficult to impossible to register a child’s birth or to obtain a Family Booklet when a child is born outside of marriage, thus depriving such children of a legal identity.<sup>38</sup>

Unwed mothers are thus denied support from biological fathers, as well as access to social and economic resources. This legal marginalization and stigmatization, and threats of arrest isolate unwed mothers from their families and other support networks and push them into poverty.<sup>39</sup>

**Recommendations:** Amend the Family Code and Civil Status Code to eliminate discrimination against children born out of wedlock and explicitly provide that such children have a right to financial support and inheritance from the biological father.

- 7. Discriminatory inheritance laws** continue to award women lesser shares of inheritance than men.<sup>40</sup> Although both the Family Code and religious laws recognize women’s rights to inheritance, albeit a lesser share than men, customs and social practices often pressure women to renounce their shares of land to their brothers. A host of other means exist that allow circumvention of the inheritance laws to men’s advantage. These complex and discriminatory legal frameworks, the fragmented nature of agricultural operations, joint ownership, and the lengthy nature of administrative procedures also contribute to gender differentiated land rights.<sup>41</sup>

**Recommendations:** Amend the Family Code and land laws to eliminate discrimination in inheritance and have effective equal access to land ownership.

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<sup>37</sup> Family Code Articles 142 – 162.

<sup>38</sup> Loi de Statut Civil 2002 Loi No 37-99 relative à l’état civil, Dahir 1-02-239 du 25 rejev 1423 (3 October 2002).

<sup>39</sup> For an in-depth discussion of the situation of unwed mothers, see: Bordat, Stephanie Willman and Saida Kouzzi. Legal Empowerment of Unwed Mothers: Experiences of Moroccan NGOs. International Development Law Organization, 2010.

<sup>40</sup> Family Code Book Six, 2004.

<sup>41</sup> Food and Agriculture Organization of the United Nations. Gender and Land Rights Database. The database contains in-depth descriptions of the different national, religious and customary laws governing land ownership.