

## MOROCCO<sup>1</sup>

### OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES

(Updated as at 31 May 2017)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p><b>Equality of spouses in marriage</b></p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncodified? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncodified, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the</i></p>	<p>Morocco's Constitution provide for equality between men and women in a number of provisions including:<sup>2</sup></p> <ul style="list-style-type: none"> <li>The Preamble which commits the State to prohibit and combat discrimination against anyone on several basis, including sex;</li> <li>Article 6 which guarantees equality before the law regardless of gender;</li> <li>Article 19 which provides for the equal enjoyment of civil, political, economic, social, cultural and environmental rights and freedoms by both men and women.</li> </ul> <p>Article 32 of the Constitution states that the family is founded on the legal ties of marriages and</p>		<p>Morocco has reservations on Article 29 of the CEDAW. In addition, Morocco has the following declarations<sup>9</sup></p> <ul style="list-style-type: none"> <li>It is ready to meet the provisions of Article 2 provided that they do not conflict with the provisions of <i>Shari'ah</i>;</li> <li>It can only be bound by the provisions of Article 15(4) to the extent that they are not incompatible with the <i>Moudawana</i>.</li> </ul>		<p>According to the 2016 UNDP Human Development Report, Morocco ranked 123 on the UNDP Human Development Index and 113 on the UNDP Gender Inequality Index.<sup>10</sup></p> <p>According to the UN Economic and Social Commission for Western Asia (ESCRWA), about 17% of households in Morocco are headed by women.<sup>11</sup></p>

<sup>1</sup> This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Morocco country table, we would also like to thank Houda Zekri, Asma Lamrabet and Mida Zantout for their inputs in its preparation.

<sup>2</sup> Preamble, Articles 6, 19 of Morocco's Constitution (2011), [https://www.constituteproject.org/constitution/Morocco\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Morocco_2011.pdf?lang=en)

<p><i>household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>declares family as the basic unit of society.<sup>3</sup></p> <p>The Family Code (<i>Moudawana</i>)<sup>4</sup> is the main codified law that governs marriage and family relations of the predominantly Muslim population in Morocco regardless of their sect.<sup>5</sup> In the absence of codified laws that sufficiently address a particular matter of personal status of Muslims, generally, reference may be made to rules of Maliki jurisprudence (<i>fiqh</i>) and to judicial reasoning (<i>ijtihad</i>) which “strive to fulfil and enhance Islamic values, notably, justice, equality and amicable social relations.”<sup>6</sup></p> <p>The <i>Moudawana</i> provides for a marital framework that is based on equality between the two spouses. Thus:<sup>7</sup></p> <ul style="list-style-type: none"> <li>• Article 4 defines that marriage is a “legal contract”, the pur-</li> </ul>				
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<sup>9</sup> United Nations Treaty Collection Website: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en)  
<sup>10</sup> UNDP, “Human Development Report 2016”, Table 5, pp. 214-217, [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)  
<sup>11</sup> ESCRWA et al, “A Comparative Analysis of Gender Disparities in Arab Countries: A Study Based on Household Survey Data”, p. 29, [https://www.unescwa.org/sites/www.unescwa.org/files/uploads/general\\_final\\_escwa.pdf](https://www.unescwa.org/sites/www.unescwa.org/files/uploads/general_final_escwa.pdf)  
<sup>3</sup> Article 32 of Morocco’s Constitution (2011), [https://www.constituteproject.org/constitution/Morocco\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Morocco_2011.pdf?lang=en)  
<sup>4</sup> Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>  
<sup>5</sup> Article of the Family Code (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>; Information provided by Moroccan advocate, February 2017  
<sup>6</sup> Article 400 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/programs/gender-equality-and-womens-empowerment/moudawana/>  
<sup>7</sup> Articles 4, 51, 52 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/programs/gender-equality-and-womens-empowerment/moudawana/>

	<p>pose of which is “fidelity, virtue and the formation of a stable family under the supervision of both spouses”;</p> <ul style="list-style-type: none"> <li>• Article 51 stipulates the mutual rights and duties between spouses and they include: (i) cohabitation, mutual respect, affection and the preservation of the family interest; (ii) both spouses assuming the responsibility of managing and protecting household affairs and the children’s education; (iii) consultation on decisions concerning the management of family affairs;</li> <li>• Article 52 states that when either spouse continually fails to fulfil his or his obligations in marriage, the other spouse may compel the spouse to execute the obligation or seek divorce for irreconcilable difference.</li> </ul> <p>Marriage and family relations of Morocco’s non-Muslim minority communities (e.g. Jewish) are governed by their own family laws (e.g. Hebraic Moroccan Family Law).<sup>8</sup></p>				
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<sup>8</sup> Article 2 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<p><b>Minimum and equal legal age for marriage</b></p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Does the minimum age of marriage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</p>	<p>The minimum legal age for marriage is 18 for females and males as per Article 19 of the <i>Moudawana</i>.<sup>12</sup> However, Article 20, provides that the Family Affairs Judge in charge of marriage may permit girls and boys below 18 to marry “in a well-substantiated decision explaining the reasons justifying the marriage”, after having heard the parents or legal guardian of the minor with the assistance of medical expertise or after having conducted a social enquiry.<sup>13</sup></p> <p>Article 21 of the <i>Moudawana</i> provides that the marriage of minor is contingent upon the consent of minor’s legal guardian and should the guardian refuse, the Family Affairs Judge may rule on the matter.<sup>14</sup></p> <p>The <i>Moudawana</i> does not stipulate an absolute minimum age below which a marriage may not be authorised.<sup>15</sup></p>	<p>It is common for judges to permit girls and boys below 18 particularly if there is a pregnancy involved. For instance, there is a reported case of a 12-year-old girl asking a judge for permission to marry but the female judge refused, based on the girl’s age.<sup>16</sup> A year later, the girl came back pregnant and again asked for permission. Because in Moroccan culture it’s very important that a child carry the family name of the father, the judge deemed it necessary to reconsider her decision and ultimately legalised the marriage.<sup>17</sup></p>			<p>The <i>Moudawana</i> raised the minimum age of marriage for girls from 15 to 18 amidst fierce protests by Conservative Muslim groups. These groups argued that the raising of the minimum age for marriage would be a source of moral decay.<sup>18</sup> Despite the increase in the minimum age of marriage, various sources indicate that the prevalence of child marriages in Morocco is relatively high:</p> <ul style="list-style-type: none"> <li>• According to UNICEF’s 2016 State of the World’s Children Report, 16% of</li> </ul>
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<sup>12</sup> Article 19 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>13</sup> Article 20 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>14</sup> Article 21 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>15</sup> The Advocates for Human Rights and MRA Mobilising for Rights Associates, “Morocco”, *Submission to the Committee on Economic Social and Cultural Rights for the 56<sup>th</sup> Session*, 2015, para. 44, <http://www.tanmia.ma/wp-content/uploads/2015/09/AHR-MRA-Morocco-ESC-Shadow-Report-FINAL.pdf>

<sup>16</sup> Information obtained from Moroccan advocate, February 2017

<sup>17</sup> Jake Warga, “Has Morocco’s Family Code Shown how Gender Equality can Coexist with Islam in the Courts”, *PRI*, 18 May 2015, <http://www.pri.org/stories/2015-05-18/has-moroccos-family-code-shown-how-gender-equality-can-coexist-islam-courts>

					<p>women aged 20-24 in Morocco were first married by 18 and 3% by 15;<sup>19</sup></p> <ul style="list-style-type: none"> <li>• According to the Minister of Justice in May 2014, the rate of child marriages has continued to rise over the recent years; the Minister revealed that the number of cases of marriage has nearly doubled in the past 10 years, with 35,152 cases in 2013 alone.<sup>20</sup></li> <li>• According to information compiled by Droit &amp; Justice, there were more than 102,000</li> </ul>
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<sup>18</sup> Leo Buskens, "Sharia and National Law in Morocco," in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), pp. 114-115, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

<sup>19</sup> UNICEF, "The State of the World's Children 2016", Table 9, pp. 150-153, [https://www.unicef.org/publications/files/UNICEF\\_SOWC\\_2016.pdf](https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf)

<sup>20</sup> The Advocates for Human Rights and MRA Mobilising for Rights Associates, "Morocco", *Submission to the Committee on Economic Social and Cultural Rights for the 56<sup>th</sup> Session*, 2015, para. 44, <http://www.tanmia.ma/wp-content/uploads/2015/09/AHR-MRA-Morocco-ESC-Shadow-Report-FINAL.pdf>

					<p>marriages of minor girls in Morocco between 2004 and 2014.<sup>21</sup></p> <p>According to reports by the National Human Rights Council of Morocco, the World Bank and civil society groups as well as academic research: the reasons for the high prevalence of child marriages in Morocco include:<sup>22</sup></p> <ul style="list-style-type: none"> <li>• Entrenched patriarchal attitudes, along with poverty and lack of education;</li> <li>• High and increasing number of petitions for</li> </ul>
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<sup>21</sup> Droit & Justice, “Women’s Rights in Morocco”, May 2017, p. 14

<sup>22</sup> National Human Rights Council of Morocco, ‘Gender Equality and Parity in Morocco’, 2015, para. 6, [http://www.cndh.org.ma/sites/default/files/cndh\\_-\\_r.e\\_-\\_web\\_parite\\_egalite\\_uk\\_-\\_pdf](http://www.cndh.org.ma/sites/default/files/cndh_-_r.e_-_web_parite_egalite_uk_-_pdf); Paul Pretitore, “Ten Years After Morocco’s Family Code Reform: Are Gender Gaps Closing?”, (World Bank MENA Knowledge and Learning Quick Notes Series, 121, 2014), p. 3, <http://siteresources.worldbank.org/INTMENA/Resources/QN121.pdf>; Girls Not Brides, “Morocco”, *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/morocco/>; The Advocates for Human Rights and MRA Mobilising for Rights Associates, “Morocco”, *Submission to the Committee on Economic Social and Cultural Rights for the 56<sup>th</sup> Session*, 2015, paras. 43, 45, <http://www.tanmia.ma/wp-content/uploads/2015/09/AHR-MRA-Morocco-ESC-Shadow-Report-FINAL.pdf>; Ann M. Eisenberg, “Law on the Books vs. Law in Action: Under-Enforcement of Morocco’s Reformed 2004 Family Law, the *Moudawana*”, (Cornell International Law Journal, 44, 2011), p. 710, <http://www.lawschool.cornell.edu/research/ILJ/upload/Eisenberg-final.pdf>

					<p>authorisation of child marriages and their approval rate. In 2007, 87% of the 33,596 petitions seeking approval for a child marriage were authorised. In 2011, 90% of the 46,927 petitions seeking for the approval of a child marriage were authorised, with 99% of the petitions involving girls;</p> <ul style="list-style-type: none"> <li>• Under-implementation of the law. For instance: <ul style="list-style-type: none"> <li>- Judges often issue an authorisation to marry minors based on their own visual examination of the minor girl's physical appearance and determination that she is</li> </ul> </li> </ul>
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					<p>capable of assuming “marital responsibilities,” rather than resorting to the required expertise. Reasons provided by judges for authorising underage marriage include saving family honour, 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;</p> <p>- Alleged corruption among public actors and the</p>
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					<p>ease by which medical certificates attesting to a minor girl's "maturity" can be obtained.</p> <p>According to UN World Marriage Data 2015, the average age of first marriage among Moroccan females fell slightly from 26.4 in 2004 to 26.3 in 2010/11. During the same period, the average age of first marriage among Moroccan males remained stable at 31.2.<sup>23</sup></p>
<p><b>Women's consent to marriage</b></p> <p><i>Is a marriage valid without the woman's consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that</i></p>	<p>Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently, <i>ijbar</i> marriages are prohibited.<sup>24</sup></p> <p>Article 4 of the <i>Moudawana</i> states that marriage is a legal contract by which a man and a woman mutually consent to unite in a</p>	<p>On 14 January 2005, the First Instance Court of Rabat ordered the annulment of a forced marriage between a teacher and his student.<sup>31</sup></p>		<p>A marriage contract must contain the following:<sup>32</sup></p> <ul style="list-style-type: none"> <li>• Mention of the judge's authorisation, its number, its date of issuance, and the number of</li> </ul>	<p>According to a World Bank note, a 2009 household survey showed that 8% and 11% of married women reported being forced by family to accept marriage proposals in the urban and rural</p>

<sup>23</sup> United Nations Population Division, "World Marriage Data 2015", <https://esa.un.org/ffps/Index.html#/maritalStatusData>

<sup>24</sup> Woodrow Wilson International Center for Scholars, "Best Practices": Progressive Family Laws in Muslim Countries", 2005, p.17, [https://www.wilsoncenter.org/sites/default/files/Best%20Practices%20\(English\).pdf](https://www.wilsoncenter.org/sites/default/files/Best%20Practices%20(English).pdf)

<p><i>ought to be highlighted on the basis that it advances women's rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>	<p>common and enduring conjugal life.<sup>25</sup></p> <p>Article 10 provides that the 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" while Article 11 requires the offer and acceptance to be expressed in a congruent and concurrent manner.<sup>26</sup></p> <p>Article 12, read together with Articles 63 and 64, provides for marriages that were concluded under duress or fraud to be annulled and the spouse who is the victim may demand compensation.<sup>27</sup></p> <p>Article 21 stipulates that a minor's guardian consent is expressed by signing the marriage authorisation petition "along with the minor."<sup>28</sup></p> <p>The mandatory registration of marriages at the Family Court</p>			<p>the marriage document record as well as the court where it was filed;</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• The name of the marital tutor if required;</li> <li>• The offer and acceptance by the two contracting parties who exercise full capacity and the ability to choose</li> </ul>	<p>areas, respectively. In 67% of cases (70% in rural and 65% in urban areas), the women's father was reported to have forced her into the marriage.<sup>33</sup></p> <p>The <i>Moudawana</i> sought to eliminate the practice of <i>urfi</i> marriages by making it compulsory to register a marriage. However, according to a Shadow Report by the Advocates for Human Rights and MRA Mobilising for Rights Associates as well as information on the ground:<sup>34</sup></p> <ul style="list-style-type: none"> <li>• <i>Urfi</i> marriages frequently occur in rural areas distant from the public administration.</li> </ul>
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<sup>31</sup> Information obtained from Moroccan advocate, February 2017

<sup>32</sup> Article 67 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>25</sup> Article 4 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>26</sup> Articles 10,11 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>27</sup> Articles 12, 63, 64 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>28</sup> Article 21 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

	<p>records as well as the Civil Status office is provided for by Article 68 of the <i>Moudawana</i>.<sup>29</sup> However, non-registration of a marriage contract does not necessarily invalidate the marriage. Article 16 of the <i>Moudawana</i> provides that if a marriage contract is not officially registered, when deciding whether a marriage was in fact concluded, the court is to take into consideration all legal evidence and expertise, including the existence of children or a pregnancy from the conjugal relationship, and whether the petition was brought during the couple's lifetimes.<sup>30</sup></p>			<p>and discern;</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• Mention of the legal status of the spouse who has been married previously;</li> <li>• The amount of the dowry in cases where it has been specified,</li> </ul>	<p>They place women in vulnerable situations when the "husband" abandons them and their children with no rights stemming from legal marriage;</p> <ul style="list-style-type: none"> <li>• As an interim measure, Article 16 of the <i>Moudawana</i> provided a five-year grace period within which couples who were married unofficially before the <i>Moudawana</i> came into force in 2004 to officially register their marriage. The grace period was supposed to have ended in 2009.</li> </ul>
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<sup>33</sup> Paul Pretitore, "Ten Years After Morocco's Family Code Reform: Are Gender Gaps Closing?", (World Bank MENA Knowledge and Learning Quick Notes Series, 121, 2014), p. 3, <http://siteresources.worldbank.org/INTMENA/Resources/QN121.pdf>

<sup>34</sup> Article 16 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>; Information obtained from Moroccan advocate, February 2017; Advocates for Human Rights, Morocco: Submission to the Committee on Economic Social and Cultural Rights (2015), para. 53, <http://www.tanmia.ma/wp-content/uploads/2015/09/AHR-MRA-Morocco-ESC-Shadow-Report-FINAL.pdf>

<sup>29</sup> Article 68 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>; The Advocates for Human Rights and MRA Mobilising for Rights Associates, "Morocco", *Submission to the Committee on Economic Social and Cultural Rights for the 56<sup>th</sup> Session*, 2015, para. 53, <http://www.tanmia.ma/wp-content/uploads/2015/09/AHR-MRA-Morocco-ESC-Shadow-Report-FINAL.pdf>

<sup>30</sup> Article 16 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

				<p>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 acknowledgment;</p> <ul style="list-style-type: none"> <li>• Conditions agreed upon by both parties;</li> <li>• The signatures of both spouses and the tutor when required;</li> <li>• The names of the two <i>adouls</i> (public notaries) and each one's signature with the date of the marriage contract;</li> <li>• The authentication of the marriage contract by the judge affixed with his seal.</li> </ul>	<p>However, it was later extended to 2014 and again to February 2019. Feminist groups (and many judges) have denounced the misuse of Article 16 in this manner. With the extensions to the grace period, Article 16 has somehow become a tool for:</p> <ul style="list-style-type: none"> <li>- Men to take on a second wife without following the procedure laid out in the <i>Moudawana</i> to conclude a polygamous marriage;</li> <li>- Child marriages, particularly, in instances where the child is pregnant.</li> </ul>
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<p><b>Women’s capacity to enter into marriage</b></p> <p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b) Paras. 15-16 GR21 Para. 34 GR29</p>	<p>A prospective bride and groom over 18 does not require the consent of a guardian to enter into marriage. A prospective bride and groom below 18 require the consent of their guardians or a judge to enter into marriage.</p> <p>Article 24 of the <i>Moudawana</i> states that marital tutelage is the woman’s right, which she exercises upon reaching majority (18) according to her choice and interests.<sup>35</sup> At the same time, Article 25 stipulates that a woman has the capacity to contract her own marriage upon reaching the age of majority (18). She may contract her marriage herself or delegate this power to her father or one of her relatives.<sup>36</sup></p> <p>Article 21 of the <i>Moudawana</i> states that the marriage of a minor is contingent on the consent of her or his legal tutor. If the minor’s legal tutor refuses to consent, the Family Affairs Judge may rule on the matter.<sup>37</sup></p> <p>Under the <i>Moudawana</i>, both spouses may stipulate any conditions that confer a legitimate ben-</p>				<p>According to a World Bank note, the percentage of women signing their own marriage contracts in place of male relative was only 21% in 2010, mostly unchanged since 2007.<sup>39</sup></p>
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<sup>35</sup> Articles 24, 209 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>36</sup> Article 25, 209 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>37</sup> Article 21 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

	<p>enefit to each of them in their marriage contract so long as they are not in conflict with the objectives of marriage and the law.<sup>38</sup></p>				
<p><b>Polygamous marriages</b></p> <p><i>Does the law prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the marriage contract that her intended husband cannot enter into a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Para. 14 GR21 Para. 34 GR29</p>	<p>A Muslim man may marry up to four wives at one time.</p> <p>Article 40 of the <i>Moudawana</i> prohibits polygamy when: (i) there is the risk of inequity between the wives; or (ii) when the wife stipulates in the marriage contract that her husband will not take another wife.<sup>40</sup></p> <p>Article 42 provides that in the absence of a stipulation by the wife in the marriage contract precluding polygamy, the husband who wishes to enter into a polygamous marriage must petition the court for authorisation. The authorisation petition should include the exceptional and objective motives that justify the request, and attach a statement on the applicant's financial situation.<sup>41</sup></p>	<p>On 1 February 2006, the Court of Appeal of Oujda (File 05-645) accepted a polygamy request because: (i) the first wife gave her consent; (ii) the first wife had severe renal failure; (iii) the court was of a view that the husband, a farmer, was able to maintain two families.<sup>44</sup></p> <p>On 6 June 2006, the Court of appeal of AlHuceima (File 2006/7/61) accepted the polygamy request of a man who had maintained</p>			<p>According to a report by the National Human Rights Council of Morocco as well as civil society reports:<sup>46</sup></p> <ul style="list-style-type: none"> <li>Official statistics indicate that 0.29% of marriages contracted in 2007 were polygamous. According to the Ministry of Justice in a study entitled "The Family Law Jurisprudence: Reality and perspective", in 2014, 0.34% marriages are polygamous;<sup>47</sup></li> </ul>

<sup>39</sup> Paul Pretitore, "Ten Years After Morocco's Family Code Reform: Are Gender Gaps Closing?", (World Bank MENA Knowledge and Learning Quick Notes Series, 121, 2014), p. 2, <http://siteresources.worldbank.org/INTMENA/Resources/QN121.pdf>

<sup>38</sup> Articles 47-48 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>40</sup> Article 40 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>41</sup> Article 42 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>44</sup> Information obtained from Moroccan advocate, February 2017

<sup>46</sup> National Human Rights Council of Morocco, 'Gender Equality and Parity in Morocco', 2015, para. 6, [http://www.cndh.org.ma/sites/default/files/cndh\\_-\\_r.e\\_-](http://www.cndh.org.ma/sites/default/files/cndh_-_r.e_-)

	<p>Article 41 provides that the court will not authorise polygamy: (i) if an exceptional and objective justification is not proven; or (ii) 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.<sup>42</sup></p> <p>Articles 43 and 44 provide for the concerns of the existing wife to be heard. The court is obligated to summon the wife whose husband wishes to take another wife and to hold the hearing in a consultation room in the presence of both parties.<sup>43</sup></p>	<p>an illegitimate relationship with the prospective bride and had a son with her. The first wife consented to the new marriage.</p> <p>On 19 September 2006, the Court of Appeal of El Jadida confirmed the right of the wife to her marriage annulment because the husband hid the fact that he is already married.<sup>45</sup></p>			<ul style="list-style-type: none"> <li>• Anecdotal evidence suggest that polygamy has regained popularity with two ministers freely admitting their status as polygamists. One minister was reported have said in an interview that, “It is certainly easier than having one ‘legal’ spouse and a mistress.”;</li> <li>• 43% of petitions for polygamy authorisations were granted in 2010, up from 40% in 2009;</li> <li>• There are civil society reports describing how</li> </ul>
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[web\\_parite\\_egalite\\_uk\\_-.pdf](#); Droit & Justice, “Women’s rights in Morocco”, May 2017, pp. 4-5; Advocates for Human Rights and MRA Mobilising for Rights Associates, “Morocco”, *Submission to the Committee on Economic Social and Cultural Rights for the 56<sup>th</sup> Session*, 2015, paras. 50-54, <http://www.tanmia.ma/wp-content/uploads/2015/09/AHR-MRA-Morocco-ESC-Shadow-Report-FINAL.pdf>

<sup>47</sup> Information obtained from Moroccan advocate, February 2017

<sup>42</sup> Article 41 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>43</sup> Articles 43-44 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>45</sup> Information obtained from Moroccan advocate, February 2017

					<p>rather than requiring the petitioner husband to prove an exceptional and objective reason, judges tend to grant authorisations based on the man's financial situation alone;</p> <ul style="list-style-type: none"> <li>• In practice, women rarely stipulate 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;</li> <li>• To circumvent the requirements for permission to enter into a polygamous marriage, some men change their city to produce a celibacy certificate. It</li> </ul>
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					<p>is also common for men to use unregistered marriages (<i>urfi</i>) as a means to circumvent the formal system to enter into a polygamous marriage. Rather than going through the process of petitioning for authorisation to take another wife, men have used the procedure in Article 16 of the <i>Moudawana</i> which allows for the retrospective recognition of previously unregistered verbal marriage to take another wife, particularly where she is pregnant. In other words, they are claiming a previously unregistered verbal marriage when in fact it is a new polygamous marriage. Official statistics from 2004</p>
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					– 2008 indicate that the number of judicial recognition of verbal marriages rose from 6,918 to 23,390.
<p><b>Divorce rights</b></p> <p><i>Is there equal right to divorce between women and men? Can the husband divorce without reason and without having to go to court? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (talāq) prohibited? If unilateral divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need to go to court, is the divorced spouse informed of the divorce? Is the unilateral right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</i></p>	<p>The <i>Moudawana</i> provides for four different mechanisms for divorce: (i) repudiation; (ii) judicial divorce; (ii) divorce through mutual consent; and (iv) redemptive divorce (<i>khul'</i>).<sup>48</sup></p> <p>The <i>Moudawana</i> permits a man to divorce his wife unilaterally which must be effectuated under judicial supervision. Articles 79-93 details the procedure that must be followed when seeking a divorce through repudiation. The couple have to undergo reconciliation attempts. If the reconciliation attempts fail, the court will fix a sum of money that the husband must deposit at the court within 30 days to discharge all vested rights due to the wife and dependent children. If the husband does not deposit the court-ordered amount of money within the deadline, he is deemed to have renounced his intention to repudiate. However,</p>	<p>On 22 November 2006, the Court of Cassation (Judgement No. 655, File charî 230/2/1/2006) held that coercion cannot annul the <i>khul'</i> agreement unless there is evidence that it took place at the moment of the agreement. The victim has a deadline of one year to denounce the coercion.<sup>55</sup></p> <p>On 10 September 2008, the Court of Cassation (Judgment No. 427) held that in a divorce for the irreconcilable differences, the</p>			<p>According to a report by the National Human Rights Council of Morocco, divorce for irreconcilable differences is a procedure that was meant to facilitate women's access to divorce without the obligation to prove harm. However in practice, the procedure appears to be serving some other objective. On the one hand, cases where men petition for divorce for irreconcilable difference increased from 22% in 2005 to 44% in 2013. On the other hand, many judges consider</p>

<sup>48</sup> Article 71 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>  
<sup>55</sup> Information obtained from Moroccan advocate, February 2017

<p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<p>as soon as the husband deposits the sum of money, the court authorises him to register the repudiation with the <i>adouls</i> (public notaries).<sup>49</sup></p> <p>A husband may delegate his right of repudiation to his wife, which she can exercise by petitioning the court. The court will verify that the assignment of the right of repudiation as agreed upon by the spouses are fulfilled, order that the couple attempt reconciliation and if reconciliation attempts fail, the court will authorise the wife to petition for the certification of the repudiation and rule on her vested rights, if appropriate. The husband cannot prevent his wife from exercising the right of repudiation that he has previously assigned to her.<sup>50</sup></p> <p>Valid grounds for seeking judicial divorce by a wife include: (i) non-respect by the husband of one of the conditions in the marriage contract; (ii) harm; (iii) non-maintenance; (iv) absence; (v) latent defect; (vi) abstinence and abandonment.<sup>51</sup> In addition, the wife and/or husband may petition</p>	<p>court takes into consideration the degree of responsibility of each spouse. In this case, the court considers as a proof the good will of the husband to continue his marital life by summoning his wife to the “house of obedience” (<i>bayt ta’â</i>). Her refusal is considered harmful to the husband and gives ground to indemnities.<sup>56</sup></p> <p>On 6 January 2015, the Court of Cassation (Judgement No. 2, File Charfi 469/2/1/2013) held that indemnities in a divorce for irreconcilable differences are calculated by the judge on the basis of the responsibility of each partner in</p>			<p>divorce for irreconcilable differences as a divorce for harm.<sup>58</sup></p> <p>According to a civil society report, it takes about six months for the conclusion of the divorce proceedings. This is a marked improvement from the past. However, a woman still has to go to court frequently to secure maintenance for herself and her children.<sup>59</sup></p>
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<sup>49</sup> Articles 79-93 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>50</sup> Article 89 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>51</sup> Article 98 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

	<p>the court for a divorce on the ground of irreconcilable differences.<sup>52</sup></p> <p>Pursuant to Article 114 of the <i>Moudawana</i>, the wife and the husband may petition the court for a divorce by mutual consent with or without conditions, provided that the interest of the children are not harmed. The couple will have to go through a reconciliation process. If the process fails, the court will authorise the divorce.<sup>53</sup></p> <p>The <i>Moudawana</i> permits a wife to seek redemptive divorce (<i>khul'</i>), whereby the wife is granted a divorce in exchange for a mutually agreed compensation to be paid to the husband:<sup>54</sup></p> <ul style="list-style-type: none"> <li>• If the spouses agree in principle to a <i>khul'</i> divorce but cannot agree on the amount of compensation, the case must be brought before the court to attempt reconciliation. If the</li> </ul>	<p>breaking-up the marriage. When a previous penal judgement condemns the husband for adultery, it is admissible as a proof of his responsibility of ending the marriage even though the penal judgement is not final yet.<sup>57</sup></p>			
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<sup>56</sup> Information obtained from Moroccan advocate, February 2017

<sup>58</sup> National Human Rights Council of Morocco, 'Gender Equality and Parity in Morocco', 2015, para. 8, [http://www.cndh.org.ma/sites/default/files/cndh\\_-\\_r.e.\\_-web\\_parite\\_egalite\\_uk\\_-\\_pdf](http://www.cndh.org.ma/sites/default/files/cndh_-_r.e._-web_parite_egalite_uk_-_pdf)

<sup>59</sup> Droit & Justice, "Women's Rights in Morocco", May 2017, p. 8

<sup>52</sup> Article 94 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>53</sup> Article 114 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>54</sup> Articles 115, 120 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>57</sup> Information obtained from Moroccan advocate, February 2017

	<p>reconciliation attempt does not succeed, the court will grant the divorce in exchange for compensation after fixing its amount, taking into consideration the amount of the dower, the duration of the marriage, the reasons for the divorce petition and the material situation of the wife.</p> <ul style="list-style-type: none"> <li>If the husband does not consent to the <i>khul'</i> divorce, the wife may petition the court for a divorce on the ground of irreconcilable differences.</li> </ul>				
<p><b>Women's financial rights after divorce</b></p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon dissolution of the marriage? Is the woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to</i></p>	<p>Generally, upon divorce, in addition to her delayed dower, a wife may be entitled to:<sup>60</sup></p> <ul style="list-style-type: none"> <li>Financial maintenance during the waiting period after the divorce (<i>iddah</i>). The <i>iddah</i> period depends on the women's situation e.g. whether is menstruating or pregnant and generally ranges from four months and 10 days to one year; and</li> <li>A consolatory gift or</li> </ul>	<p>On 13 December 2007, the Court of Appeal of Marrakech (No. 571, File 07/315) held that a former wife has the right to her entire dower. As the husband could not prove his payment of the dower, he had to pay the amount that was agreed upon between the two parties.<sup>65</sup></p>	<p>Morocco's <i>Moudawana</i> requires the two officials attending the marriage to inform the parties of provisions permitting the specification of a property regime. This is designed to address women's ignorance of the possibility of negotiating a property regime.<sup>70</sup></p>	<p>According to a civil society report, due to the short duration of <i>iddah</i> maintenance, women without assets are particularly vulnerable to financial distress after a divorce.<sup>71</sup></p> <p>Based on reports by the National Human Rights Council of</p>	

<sup>60</sup> Articles 84, 132, 135 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>65</sup> Information obtained from Moroccan advocate, February 2017

<sup>70</sup> Muslim Institute, "Muslim Marriage Contract, Resources: Family Laws in Muslim Majority and Minority Contexts", <http://muslimmarriagecontract.org/laws.html>

<sup>71</sup> Droit & Justice, "Women's Rights in Morocco", May 2017, p. 8

<p><i>a consolatory gift or compensation upon divorce (mu'tah)? Who is responsible for the financial maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h) Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>	<p>compensation (<i>mu'tah</i>), if the husband divorce the wife through repudiation. The amount 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.</p> <p>There is no clear legal concept of matrimonial assets. Pursuant to Article 49 of the <i>Moudawana</i>, each spouse has an estate separate from the other. However, Article 49 also provides the couple with the option of entering into a written agreement that is separate from the marriage contract on a property regime for the management, investment and distribution of assets to be acquired during the marriage. In the absence of such agreement, it remains at the discretion of the judge whether and how to divide the property acquired during the marriage by resorting to the general rules of evidence when assessing each spouse's contribution to the development of the family assets.<sup>61</sup></p>	<p>On 23 July 2007, the Court of Appeal of Rabat (No. 584, File 126/2007) held that the previous Court did not take into consideration that the marriage has lasted for 19 years and thus the consolatory gift (<i>mu'tah</i>) has to be increased to 16,000 Moroccan Dirhams.<sup>66</sup></p> <p>On 21 September 2010, the Court of Appeal of Oujda (File 623/2/1/2009) held that the former wife has no right to a consolatory payment (<i>mu'tah</i>) in a divorce on the ground of irreconcilable differences. <i>Mu'tah</i> compensation is only given in cases of repudiation (<i>talaq</i> or <i>taliq</i>).<sup>67</sup></p>			<p>Morocco and civil society, women find it difficult to secure the financial rights (including child maintenance) they are legally entitled to after a divorce. This is due to the difficulties in enforcing court-ordered maintenance. A survey conducted by the Ministry of Justice and Liberties indicated that 50% of women who are entitled to financial maintenance and compensation reported that they do not regularly receive it while about a quarter said they have never received it at all.<sup>72</sup></p> <p>According to a study by Association Marocaine de lutte contre la violence à l'égard des femme</p>
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<sup>61</sup> Article 49 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>; Leo Buskens, "Sharia and National Law in Morocco," in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 115, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

	<p>Following a divorce, a father is responsible for the financial maintenance of his children as well as their accommodation. The amount of child maintenance is assessed based on their standard of living and educational situation prior to the divorce.<sup>62</sup></p> <p>Generally, both daughters and sons are entitled to maintenance until they turn 18 or if they are pursuing their education, until they are 25. In any case, maintenance paid to the daughter shall not cease until she can earn a living of 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.<sup>63</sup></p> <p>In the event the father becomes wholly or partly unable to pay</p>	<p>On 22 January 2013, the Court of Cassation (Judgement No. 62; File Charfi 599/3/1/2012) held that the father can choose either to prepare a living place for his children or pay for it. In this case, the father insisted in paying since the family house was a shared property and would have been problematic to keep the child under custody (<i>hadanah</i>) of the mother living there. The First Instance court's decision of keeping the child and mother in the family house</p>			<p>funded by UN Women and information on the ground,<sup>73</sup> the use of a parallel contract to govern the marital property is very low in Morocco. The reasons are:</p> <ul style="list-style-type: none"> <li>• Couples feel embarrassed to deal with these issues while contracting marriage;</li> <li>• Lack of information of women coming from disadvantaged social classes;</li> <li>• Difficulties for women to find men able to assume the family</li> </ul>
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<sup>66</sup> Information obtained from Moroccan advocate, February 2017

<sup>67</sup> Information obtained from Moroccan advocate, February 2017

<sup>72</sup> National Human Rights Council of Morocco, 'Gender Equality and Parity in Morocco', 2015, para. 14, [http://www.cndh.org.ma/sites/default/files/cndh\\_-\\_r.e\\_-\\_web\\_parite\\_egalite\\_uk\\_.pdf](http://www.cndh.org.ma/sites/default/files/cndh_-_r.e_-_web_parite_egalite_uk_.pdf); Droit & Justice, "Women's Rights in Morocco", May 2017, pp. 4, 6

<sup>62</sup> Article 85, 168, 189-190, 198 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>; Leo Buskens, "Sharia and National Law in Morocco," in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 120, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

<sup>63</sup> Article 198, 209 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>; Leo Buskens, "Sharia and National Law in Morocco," in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 120, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

	<p>maintenance to his children, and the mother is affluent, the mother becomes responsible for the children's maintenance in proportion to the amount the father is unable to pay.<sup>64</sup></p>	<p>was wrong and not beneficial for the child.<sup>68</sup></p> <p>On 20 January 2015, the Court of Cassation (Judgement No. 22, File charfi No. 580/2/1/2013) confirmed a previous decision that upheld the right of a wife to indemnity upon proving that she played an important role in acquiring the marital house.<sup>69</sup></p>			<p>economic responsibility;</p> <ul style="list-style-type: none"> <li>• Men's fear from sharing their assets with their wives;</li> <li>• The weak position of women while contracting marriage due to lack of formal education;</li> <li>• Difficulties in the implementation of Article 49 and the inexistent notion of placing a value for domestic work;</li> <li>• While it is the responsibility of the two officials attending the marriage to inform the couple of the option of entering into a</li> </ul>
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<sup>73</sup> Association Marocaine de lutte contre la violence à l'égard des femme, "Family Code in Morocco: Gender equality in the division of property", 2008; Information obtained from Moroccan advocate, February 2017

<sup>64</sup> Article 199 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>68</sup> Information obtained from Moroccan advocate, February 2017

<sup>69</sup> Information obtained from Moroccan advocate, February 2017

					separate agreement to govern assets acquired during the marriage, the absence of sanctions for failing to do so highly limits the practice in real life.
<p><b>Custody of Children</b></p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon remarriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>During the marriage, both parents have custodial rights over their children.<sup>74</sup> Upon a divorce, a mother has priority right over the custody of her children (followed by the father and then maternal grandmother) until the children reach the age of 15. Thereafter, the child may choose either the mother or father to be his or her custodian.<sup>75</sup></p> <p>A mother risks losing custody of her child if she remarries and her new husband is not a close blood relative of the child or the child's legal representative.<sup>76</sup></p>				

<sup>74</sup> Article 164 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>75</sup> Articles 166, 171 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>; Leo Buskens, "Sharia and National Law in Morocco," in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 119, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

<sup>76</sup> Article 175(3) of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<p><b>Guardianship of Children</b></p> <p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>A father has priority right to guardianship (tutelage) over his children. The mother may manage urgent affairs of the children in the event the father is prevented from doing so.<sup>77</sup></p> <p>A mother may assume guardianship of her children if: (i) she is over 18; and (ii) the father is not present due to his death, absence or incapacity.<sup>78</sup></p>			<p>A mother cannot travel outside the country with her children without the permission from the children's father.<sup>79</sup></p>	<p>The National Human Rights Council of Morocco in its first thematic report on the state of gender equality and parity in Morocco highlighted the fact that mother can only exercise their right to guardianship over their children under very restrictive conditions, despite the fact that under the <i>Moudawana</i>, if the mother is "well-off", she has an obligation to cater for the children's needs.<sup>80</sup></p>
<p><b>Family Planning</b></p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in practice?</i></p> <p><u>Applicable CEDAW Provision</u></p>	<p>Article 51 of the <i>Moudawana</i> obligates spouses to consult one another on decisions concerning the management of family affairs, children, and family planning.<sup>81</sup></p> <p>Abortion is strictly prohibited unless it is to save a pregnant</p>				<p>According to World Bank data, the total fertility rate decreased from 7.1 children per woman in 1960 to 2.5 in 2015.<sup>83</sup></p>

<sup>77</sup> Article 236 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>78</sup> Article 238 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<sup>79</sup> Droit & Justice, "Women's Rights in Morocco", May 2017, p. 4

<sup>80</sup> National Human Rights Council of Morocco, 'Gender Equality and Parity in Morocco', 2015, para. 7, [http://www.cndh.org.ma/sites/default/files/cndh\\_-\\_r.e\\_-\\_web\\_parite\\_egalite\\_uk\\_-\\_pdf](http://www.cndh.org.ma/sites/default/files/cndh_-_r.e_-_web_parite_egalite_uk_-_pdf)

<sup>81</sup> Article 51 of the Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>

<p>Articles 16(1)(e), 12 Paras. 21-23 GR21</p>	<p>woman's life or to preserve her health.<sup>82</sup></p>				<p>According to the UN Population Division's 2015 Trends in Contraceptive Use Worldwide:<sup>84</sup></p> <ul style="list-style-type: none"> <li>• 68% of married women aged 15-49 are using a method of contraception, with women mainly using a modern method (58%);</li> <li>• 10% of married women aged 15-49 have an unmet need for family planning services; and</li> <li>• 75% of marriage women aged 15-49 had their demands for family planning satisfied by modern methods of contraception.</li> </ul>
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<sup>83</sup> The World Bank, "Fertility rates, total (births per woman)", <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>

<sup>82</sup> Centre for Reproductive Rights, "The World's Abortion Laws", 2014, <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/AbortionMap2014.PDF>

<sup>84</sup> United Nations Population Division, "Trends in Contraceptive Use Worldwide 2015", Annex Table 1, pp. 36-42, <http://www.un.org/en/development/desa/population/publications/pdf/family/trendsContraceptiveUse2015Report.pdf>

<p><b>Personal rights of spouses</b></p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(g) Para. 24 GR21 Para. 34 GR29</p>	<p>Article 19 of the Constitution provides for the equal enjoyment of civil, political, economic, social, cultural and environmental rights and freedoms by both men and women.<sup>85</sup></p> <p>Article 31 of the Constitution obligates the State to facilitate the equal access of all Moroccans to exercise, among other rights, their right to work.<sup>86</sup></p>				<p>According to World Bank data, female labour force participation decreased from 27% in 1990 to 25% in 2016.<sup>87</sup> During the same period, male labour force participation also decreased from 80% to 74%.<sup>88</sup></p> <p>According to the 2016 UNDP Human Development Report.<sup>89</sup></p> <ul style="list-style-type: none"> <li>• 26% of women over 25 have at least some secondary education as compared to 33% of men of the same age group;</li> <li>• 94% of females and 97% of</li> </ul>
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<sup>85</sup> Article 19 of Morocco's Constitution (2011), [https://www.constituteproject.org/constitution/Morocco\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Morocco_2011.pdf?lang=en)

<sup>86</sup> Article 31 of Morocco's Constitution (2011), [https://www.constituteproject.org/constitution/Morocco\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Morocco_2011.pdf?lang=en)

<sup>87</sup> The World Bank, "Labour force participation rate, female (% of female population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

<sup>88</sup> The World Bank, "Labour force participation rate, male (% of male population ages 15+) (modelled ILO estimate)", <http://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS>

<sup>89</sup> UNDP, "Human Development Report 2016", Tables 5, 9, 12, 14, pp. 214-217, 230-233, 242-245, 250-253, [http://hdr.undp.org/sites/default/files/2016\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf)

					<p>males aged 15-24 are able to read and write a short simple; and</p> <ul style="list-style-type: none"> <li>• 64% of women aged 15-49 consider that a husband is justified in hitting or beating his wife for at least one of the following reasons: if his wife burns the food, argues with him, goes out without telling him, neglects the children or refuses sexual relations; and</li> <li>• 58% of women are satisfied with their freedom of choice as compared to 65% of men.</li> </ul>
<p><b>Inheritance rights</b> <i>Are women and men in the same</i></p>	<p>Generally, inheritance rights between women and men are unequal. A woman inherits half of</p>				<p>According to the National Human Rights Council of</p>

<p><i>degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon the death of their father?</i></p> <p><u>Applicable CEDAW Provision</u> Paras. 34-35 GR21 Paras. 49-53 GR29</p>	<p>what a man in the same position inherits.<sup>90</sup></p> <p>The children of a parent who has predeceased their own parent (i.e. the children's grandparent) can inherit from their grandparent through an obligatory bequest.<sup>91</sup></p>				<p>Morocco, the unequal inheritance legislation contributes to increasing women's vulnerability to poverty.<sup>92</sup></p> <p>According to a media report, to overcome the inequalities in the share of inheritance between daughters and sons, it is not uncommon for parents to gift their property to their daughters while they are still alive. However, once the property is gifted, it becomes irrevocable and the parent can no longer seek restitution. It can also sometimes cause a rift between</p>
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<sup>90</sup> Leo Buskens, "Sharia and National Law in Morocco," in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 120, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

<sup>91</sup> Article 369-372 of the Moroccan Family Code (*Moudawana*) (2004), <http://www.hrea.org/wp-content/uploads/2015/02/Moudawana.pdf>; Nadjma Yassari, "Intestate Succession in Islamic Countries", in *Comparative Succession Law: Vol. II: Intestate Succession*, eds. Kenneth Reid, Marius de Waal, Reinhard Zimmermann, (Oxford: Oxford University Press, 2015), Footnote 160, pp. 436-437; Leo Buskens, "Sharia and National Law in Morocco," in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden, The Netherlands: Leiden University Press, 2010), p. 120, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/21170/file221087.pdf?sequence=1>

<sup>92</sup> National Human Rights Council of Morocco, "Gender Equality and Parity in Morocco", 2015, para. 9, [http://www.cndh.org.ma/sites/default/files/cndh\\_-\\_r.e.\\_web\\_parite\\_egalite\\_uk\\_.pdf](http://www.cndh.org.ma/sites/default/files/cndh_-_r.e._web_parite_egalite_uk_.pdf)

					sons and the parents. <sup>93</sup>
<p><b>Violence against women in the family</b></p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman's mental health which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are there support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW Provision</u> GRs 12 &amp; 19 Para. 40 GR21</p>	<p>Article 22 of the Constitution states that:<sup>94</sup></p> <ul style="list-style-type: none"> <li>The physical or moral integrity of anyone may not be infringed in whatever circumstance that may be, and by any party that may be, public or private;</li> <li>No one may inflict on others under whatever pretext that may be, cruel, inhuman, or degrading treatments or infringements of human dignity.</li> </ul> <p>Morocco has not adopted specific legislation to criminalise acts of domestic violence. There is a draft law on violence against women (103-13 bill) but is still a work-in-progress.<sup>95</sup></p> <p>The 1962 Penal Code contains some general prohibitions that may be applied to domestic violence.<sup>96</sup> These include the follow-</p>		<p>The Government of Morocco has made contradictory statements as to whether or not marital rape is a crime. 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. However, during a meeting with an alliance of Moroccan NGOs in March 2013, the Minister of Justice declared that it was be impossible to criminalise marital rape because “you can’t deprive a man of what is rightfully his.”<sup>102</sup></p>		<p>According to a Shadow Report by the Advocates for Human Rights and MRA Mobilising for Rights Associates:<sup>103</sup></p> <ul style="list-style-type: none"> <li>Available data indicate a relatively high incidence of violence against women in Morocco: <ul style="list-style-type: none"> <li>- A 2011 national study found that 63% of women aged 18-64 had been victims of some form of violence in 2009, with 55% of these acts of violence being committed by a victim’s hus-</li> </ul> </li> </ul>

<sup>93</sup> Reda Zaireg (translated by Pascale el-Khoury), “Morocco’s Inheritance Dilemma”, *Al-Monitor*, 9 February 2014, <http://www.al-monitor.com/pulse/culture/2014/02/morocco-debate-inheritance-law-women.html>

<sup>94</sup> Article 22 of Morocco’s Constitution (2011), [https://www.constituteproject.org/constitution/Morocco\\_2011.pdf?lang=en](https://www.constituteproject.org/constitution/Morocco_2011.pdf?lang=en)

<sup>95</sup> Human Rights Council Working Group on the Universal Periodic Review, U.N. Doc. A/HRC/WG.6/27/L.4 (2017), paras. 6.915, 6.197, [https://www.upr-info.org/sites/default/files/document/morocco/session\\_27\\_-\\_may\\_2017/a\\_hrc\\_wg.6\\_27\\_l.4.pdf](https://www.upr-info.org/sites/default/files/document/morocco/session_27_-_may_2017/a_hrc_wg.6_27_l.4.pdf)

<sup>96</sup> Advocates for Human Rights and MRA Mobilising for Rights Associates, “Morocco”, *Submission to the Committee on Economic Social and Cultural Rights for the 56<sup>th</sup>*

	<p>ing:</p> <ul style="list-style-type: none"> <li>Articles 404 and 414 that establish spousal relationship as an aggravating circumstance for sentencing purposes in assault and battery cases;<sup>97</sup></li> <li>Article 446 of the Penal Code which requires health workers to report suspected abuse;<sup>98</sup> and</li> <li>Article 475 of the Penal Code prohibits rapists from escaping prosecution through marriage with underage victims.<sup>99</sup></li> </ul> <p>The Penal Code does not specifically criminalise marital rape.<sup>100 101</sup></p>				<p>band and only 3% of the violence being reported by the wife;</p> <ul style="list-style-type: none"> <li>A 2011 report identified that in cases of violence against women, the perpetrator is the husband in eight out of ten cases.</li> <li>Available data also shows that there is an overall acceptance of domestic violence and a distrust of the justice system that make it unlikely that a victim will report domes-</li> </ul>
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102 Session, 2015, para. 17, <http://www.tanmia.ma/wp-content/uploads/2015/09/AHR-MRA-Morocco-ESC-Shadow-Report-FINAL.pdf>  
Advocates for Human Rights and MRA Mobilising for Rights Associates, "Morocco", *Submission to the Committee on Economic Social and Cultural Rights for the 56<sup>th</sup>*  
103 Session, 2015, para. 22, <http://www.tanmia.ma/wp-content/uploads/2015/09/AHR-MRA-Morocco-ESC-Shadow-Report-FINAL.pdf>  
Advocates for Human Rights and MRA Mobilising for Rights Associates, "Morocco", *Submission to the Committee on Economic Social and Cultural Rights for the 56<sup>th</sup>*  
97 Session, 2015, paras. 15-16, 19-20, <http://www.tanmia.ma/wp-content/uploads/2015/09/AHR-MRA-Morocco-ESC-Shadow-Report-FINAL.pdf>  
Articles 404, 414 of the Penal Code (1962), [http://www.imolin.org/doc/amlid/Morocco/Morocco\\_code\\_penal\\_1962.pdf](http://www.imolin.org/doc/amlid/Morocco/Morocco_code_penal_1962.pdf)  
98 Article 446 of the Penal Code (1962), [http://www.imolin.org/doc/amlid/Morocco/Morocco\\_code\\_penal\\_1962.pdf](http://www.imolin.org/doc/amlid/Morocco/Morocco_code_penal_1962.pdf)  
99 Article 475 of the Penal Code (1962), [http://www.imolin.org/doc/amlid/Morocco/Morocco\\_code\\_penal\\_1962.pdf](http://www.imolin.org/doc/amlid/Morocco/Morocco_code_penal_1962.pdf)  
100 Human Rights Council Working Group on the Universal Periodic Review, U.N. Doc. A/HRC/WG.6/27/L.4 (2017), paras. 6.32, 6.185, 6.195, 6.197, [https://www.upr-info.org/sites/default/files/document/morocco/session\\_27\\_-\\_may\\_2017/a\\_hrc\\_wg.6\\_27\\_l.4.pdf](https://www.upr-info.org/sites/default/files/document/morocco/session_27_-_may_2017/a_hrc_wg.6_27_l.4.pdf); Droit & Justice, "Women's Rights in Morocco", May 2017, p. 9  
101 Droit & Justice, "Women's Rights in Morocco", May 2017, p. 8

					<p>tic violence:</p> <ul style="list-style-type: none"> <li>- One survey found that 33% of respondents believed that a man is sometimes justified to beat his wife;</li> <li>- Another study found that of those women who have experienced domestic violence, 68% expressed a distrust of the justice system.</li> </ul> <ul style="list-style-type: none"> <li>• Barriers to prosecuting violence against women include:             <ul style="list-style-type: none"> <li>- The requirement that a victim suffer injuries that result in more than 20 days of disability in</li> </ul> </li> </ul>
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					<p>order to bring an assault complaint;</p> <ul style="list-style-type: none"> <li>- The requirement that a victim meet a high standard to prove the result of violence i.e. a physical injury as opposed to the act of violence itself;</li> <li>- The lack of police powers to intervene immediately in domestic abuse cases unless there is an imminent threat of death;</li> <li>- The lackadaisical treatment of cases regarding violence</li> </ul>
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					<p>against women that includes 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.</p> <p>According to Droit &amp; Justice, the 103-13 bill has been:<sup>104</sup></p> <ul style="list-style-type: none"> <li>• Severely criticised by feminist and human rights groups “due to the absence of exhaustive definitions of some forms violence, the continuous</li> </ul>
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<sup>104</sup> Droit & Justice, “Women’s Rights in Morocco”, May 2017, p. 2

					<p>denigration of women through gender stereotypes, as well as the persistence of certain obstacles to access justice and providing services to victims.”;</p> <ul style="list-style-type: none"> <li>• Approved by the Government Council but still needs to be approved by the house of councilors.</li> </ul> <p>Prior to its deletion in February 2014, Article 475(2) of the Penal Code 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</p>
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					complaint. <sup>105</sup> The deletion of Article 475(2) was prompted by the public outcry that ensued as a result of the suicide of 16-year-old Amina Filali who was forced to marry her rapist. <sup>106</sup> The amendment of Article 475 of the Penal Code appears to have the unintended consequence of preventing rapes of minors from coming to the attention of the police because rather than reporting the rape first, the respective families negotiate informally the marriage between the victim and her aggressor. <sup>107</sup>
<b>Nationality rights</b> <i>Does a wife have the right to confer her citizenship on foreign hus-</i>	A Moroccan man may pass his nationality to his non-Moroccan wife, provided she meets various conditions. The law does not spe-			The procedure by which a child born of a Moroccan mother and a non-Moroccan	According to a World Bank report, women can only pass their nationality

<sup>105</sup> Advocates for Human Rights and MRA Mobilising for Rights Associates, "Morocco", *Submission to the Committee on Economic Social and Cultural Rights for the 56<sup>th</sup> Session*, 2015, para. 46, <http://www.tanmia.ma/wp-content/uploads/2015/09/AHR-MRA-Morocco-ESC-Shadow-Report-FINAL.pdf>

<sup>106</sup> Nora Fakim, Morocco Amends Controversial Marriage Rape Law, *BBC News*, 23 January 2014, <http://www.bbc.com/news/world-africa-25855025>

<sup>107</sup> Advocates for Human Rights and MRA Mobilising for Rights Associates, "Morocco", *Submission to the Committee on Economic Social and Cultural Rights for the 56<sup>th</sup> Session*, 2015, para. 47, <http://www.tanmia.ma/wp-content/uploads/2015/09/AHR-MRA-Morocco-ESC-Shadow-Report-FINAL.pdf>

<p><i>bands and children? Can the nationality of an adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p><u>Applicable CEDAW Provision</u> Article 9 Para. 6 GR21</p>	<p>cifically provide for a Moroccan woman to confer her nationality to her foreign husband.<sup>108</sup></p> <p>A Moroccan woman who marries a non-Moroccan man does not automatically lose her Moroccan nationality unless she renounces it.<sup>109</sup></p> <p>Both a Moroccan mother and father may pass their nationality to their children regardless of where they are born.<sup>110</sup></p>			<p>father is detailed in Public Service website of the Moroccan government.<sup>111</sup></p>	<p>to children they have with a non-Moroccan husband if he is Muslim and they are married in accordance with the <i>Moudawana</i>.<sup>112</sup></p>
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<sup>108</sup> Article 10 of the Nationality Code (1958), <http://www.refworld.org/pdfid/501fc9822.pdf>; World Bank, "Morocco: Mind the Gap – Empowering Women for a More Open, Inclusive and Prosperous Society", 2015, Table 4.2, p. 59, <http://documents.worldbank.org/curated/en/798491468000266024/pdf/103907-WP-P144621-PUBLIC-Non-BOARD-VERSION-Morocco-Gender-ENG-3-8-16-web.pdf>; Delphine Perron, "Country report: Morocco", *EUDO Citizenship Observation*, 2011, p. 15, <http://eudo-citizenship.eu/docs/CountryReports/Morocco.pdf>

<sup>109</sup> Article 19(3) of the Nationality Code (1958), <http://www.refworld.org/pdfid/501fc9822.pdf>; Delphine Perron, "Country report: Morocco", *EUDO Citizenship Observation*, 2011, p. 15, <http://eudo-citizenship.eu/docs/CountryReports/Morocco.pdf>

<sup>110</sup> Article 6 of the Nationality Code (1958), <http://www.refworld.org/pdfid/501fc9822.pdf>; Women's Refugee Commission, "Our Motherland, Our Country: Gender Discrimination and Statelessness in the Middle East and North Africa", 2013, p. 9, [https://www.womensrefugeecommission.org/images/zdocs/Our\\_Motherland,\\_Our\\_Country\\_final\\_for\\_web.pdf](https://www.womensrefugeecommission.org/images/zdocs/Our_Motherland,_Our_Country_final_for_web.pdf)

<sup>111</sup> Kingdom of Morocco, "Acquisition of a Moroccan citizenship: case of persons born in Morocco from a Moroccan mother and a foreign father", <https://goo.gl/qgznam>

<sup>112</sup> World Bank, "Morocco: Mind the Gap – Empowering Women for a More Open, Inclusive and Prosperous Society", 2015, Table 4.2, p. 59, <http://documents.worldbank.org/curated/en/798491468000266024/pdf/103907-WP-P144621-PUBLIC-Non-BOARD-VERSION-Morocco-Gender-ENG-3-8-16-web.pdf>