

**The World Organisation Against Torture (OMCT)  
operating the SOS-TORTURE NETWORK**


The World Organisation Against Torture (OMCT), based in Geneva, is today the largest international coalition of non-governmental organisations fighting against torture, summary executions, forced disappearances and all other forms of cruel, inhuman or degrading treatment or punishment.

OMCT coordinates a network – SOS-Torture – of more than 260 national, regional and international organisations in 85 countries. The urgent appeals issued by the network on behalf of victims or potential victims of violence reach more than 90,000 governmental institutions, non-governmental organisations, associations and interest groups.

OMCT has, since its inception, worked towards reinforcing and supporting the actions of organisations in the field, at the international level. The structure of the SOS-Torture network has enabled OMCT to reinforce local activity while favouring the access of national NGOs to international institutions.

OMCT provides support to victims or potential victims of torture through urgent campaigns (notably in favour of children, women and human rights defenders), through the provision of urgent legal, social and/or medical assistance to victims and by way of the submission of alternative country reports to the various United Nations treaty monitoring bodies.

*Geneva, November 2003*



**Committee  
on the Elimination  
of Discrimination  
against Women**

*29th session  
30 June - 18 July 2003*

**Implementation of the Convention  
on the Elimination of All Forms  
of Discrimination against Women  
by Morocco**

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*The United Nations Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979. In 1981, the Convention entered into force and the Committee on the Elimination of Discrimination against Women was formally established. The major task of the Committee is to review the reports submitted by the States parties in order to oversee the implementation of the Convention.*

*The issue of gender-based violence is not specifically addressed in the Convention, but it is however essential to its most fundamental provisions. In the general recommendation No. 19 adopted at its eleventh session in 1992, the Committee on the Elimination of Discrimination against Women formally extended the general prohibition on gender-based discrimination to include gender-based violence. The Committee affirmed that violence against women constitutes a violation of their internationally recognised human rights, regardless of whether the perpetrator is a public official or a private person.*

*One becomes inevitably aware of the fact that the States present reports that show only a one-sided image of reality, which is frequently incomplete. The case being, the effectiveness of this supervision and control depends on the quality of information available to the members of the various committees. Recent information, verified by reliable sources, is consequently indispensable.*

*In submitting alternative reports to the Committee on the Elimination of Discrimination against Women (CEDAW), OMCT seeks to provide de facto information concerning violence against women, including torture, in a specific country as well as analyse national legislation that fosters violence against women.*

*OMCT's reports highlight the legal provisions, both penal and civil, of the States concerned, which discriminate against women or which, without being discriminatory as such, become so through their application. Unequal power relations between men and women have led to the domination of and discrimination against women, which in turn leads to violence against women.*

*Furthermore, the reports draw attention to the lack of ways for the victims of violence to obtain reparation and identify the mechanisms guaranteeing the impunity of torturers.*

*The reports include recommendations for reform of de facto practices and legislation aimed at reducing the incidence of violence against women in the country in question.*

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# I

## Preliminary Observations

In its General Recommendation No.19, (Eleventh session, 1992) the Committee on the Elimination of Discrimination against Women (hereafter referred to as CEDAW) recommended that States parties should take all appropriate measures to overcome all forms of gender-based violence whether by public or private act. Moreover, the CEDAW stated that laws against family violence and abuse, rape, sexual assault and other gender-based violence should give adequate protection to all women, while promoting respect for their dignity and integrity. The Committee requested States parties to report on the nature and extent of violence and on the measures they have undertaken to overcome violence.<sup>1</sup> In this regard, The CEDAW, in its Observations of 1997, urged the Government of Morocco to address the issue of violence against women, to adopt the necessary measures to overcome this phenomenon and to establish support services for victims of violence, in both urban and rural areas, in accordance with General Recommendation No.19.

The World Organisation Against Torture (OMCT) welcomes Part IV of the Second periodic report of Morocco submitted to the Committee on the Elimination of Discrimination against Women,<sup>2</sup> which is devoted to violence against women. It however notes that the report contains no statistical data on the prevalence of the different forms of violence in Morocco such as domestic violence, including marital rape, rape in the community, and trafficking in women. The report does not mention any detailed legislative measures aimed at the protection of women from violence. Moreover, no link is made in the report between the high incidence of violence against women in the country and the extent of discrimination against Moroccan women in criminal and civil laws, the lack of specific legal sanctions or protective measures to counter violence and sexual abuse of women, including marital rape, and the low socio-economic status of women.

In light of the above and in line with the objectives of OMCT's programme on Violence against Women, this alternative report will, after a brief overview of Morocco's international obligations, look at the political, legal, economic and social status of women in Morocco before going on to

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1 – U.N. Doc. HRI/GEN/1Rev.2.

2 – Morocco, Second Periodic Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/C/MOR/2.

examine violence against women in the domestic and community spheres as well as violence perpetrated by the State from both a *de jure* and *de facto* point of view. The report ends with a series of conclusions and recommendations.

## 1.1 Morocco's International Legal Obligations

Morocco acceded to the Convention on the Elimination of All Forms of Discrimination against Women on June 22, 1993. When becoming a party to this Convention, Morocco made the following declarations and reservations:

Declarations:

1. With regard to article 2:

The Government of the Kingdom of Morocco express its readiness to apply the provisions of this article provided that:

- They are without prejudice to the constitutional requirement that regulate the rules of succession to the throne of the Kingdom of Morocco;

- They do not conflict with the provisions of the Islamic Shariah. It should be noted that certain of the provisions contained in the Moroccan Code of Personal Status according women rights that differ from the rights conferred on men may not be infringed upon or abrogated because they derive primarily from the Islamic Shariah, which strives, among its other objectives, to strike a balance between the spouses in order to preserve the coherence of family life.

2. With regard to article 15, paragraph 4:

The Government of the Kingdom of Morocco declares that it can only be bound by the provisions of this paragraph, in particular those relating to the right of women to choose their residence and domicile, to the extent that they are not incompatible with articles 34 and 36 of the Moroccan Code of Personal Status.

## Reservations:

With regard to article 9, paragraph 2:

The Government of the Kingdom of Morocco makes a reservation with regard to this article in view of the fact that the Law of Moroccan Nationality permits a child to bear the nationality of its mother only in the cases where it is born to an unknown father, regardless of place of birth, or to a stateless father, when born in Morocco, and it does so in order to guarantee to each child its right to a nationality. Further, a child born in Morocco of a Moroccan mother and a foreign father may acquire the nationality of its mother by declaring, within two years of reaching the age of majority, its desire to acquire that nationality, provided that, on making such declaration, its customary and regular residence is in Morocco.

With regard to article 16:

The Government of the Kingdom of Morocco makes a reservation with regard to the provisions of this article, particularly those relating to the equality of men and women, in respect of rights and responsibilities on entry into and at dissolution of marriage. Equality of this kind is considered incompatible with the Islamic Shariah, which guarantees to each of the spouses rights and responsibilities within a framework of equilibrium and complementary in order to preserve the sacred bond of matrimony.

The provisions of the Islamic Shariah oblige the husband to provide a nuptial gift upon marriage and to support his family, while the wife is not required by law to support the family.

Further, at dissolution of marriage, the husband is obliged to pay maintenance. In contrast, the wife enjoys complete freedom of disposition of her property during the marriage and upon its dissolution without supervision by the husband, the husband having no jurisdiction over his wife's property.

For these reasons, the Islamic Shariah confers the right of divorce on a woman only by decision of a Shariah judge.



With regard to article 29:

The Government of the Kingdom of Morocco does not consider itself bound by the first paragraph of this article, which provides that ‘Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration.’

The Government of the Kingdom of Morocco is of the view that any dispute of this kind can only be referred to arbitration by agreement of all the parties to the dispute.

Article 2(1) of the Vienna Convention on the Law of Treaties defines a reservation to mean “a unilateral statement” made by a State when ratifying a treaty “whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.” Article 19 of this Convention provides that a State ratifying a treaty may make a reservation unless it is “prohibited by the treaty” or “is incompatible with the object and purpose of the treaty.”

Although the Convention on the Elimination of All Forms of Discrimination Against Women permits the making of reservations, according to article 28(2) of the Convention, which adopts the impermissibility principle contained in the Vienna Convention on the Law of Treaties, those reservations that are incompatible with the object and purpose of the Convention shall not be permitted.

OMCT is concerned that the declarations and reservations made by Morocco to the substantive provisions of the Convention pose a serious threat to the obligations of Morocco under the Convention to take steps to ensure the elimination of all forms of discrimination against women as well as to ensure equality between women and men. Therefore, OMCT finds these declarations and reservations incompatible with the object and purpose of the treaty.

In its Concluding Observations of 1997, the Committee on the Elimination of Discrimination against Women expressed the view that, “although the instrument of ratification of the Convention by the Kingdom of Morocco was in itself an important event, the fact that it had been accompanied by declarations and reservations concerning the substance of the Convention seriously hindered the latter's implementation.” It further stated that the

“Committee was deeply concerned at the number and importance of the reservations made by Morocco, particularly the reservation to article 2, one of the Convention's central articles. The Committee considers any reservation to that article to be contrary to the object and purpose of the Convention and incompatible with international law. The Committee was likewise concerned that the combination of reservations to articles 2 and 15 leave no room for evolving concepts of Islamic law.” The Committee further “expressed the hope that the Government would envisage, through the political will of its leaders, the progressive withdrawal of the many reservations that were seriously undermining the proper implementation of the Convention.”<sup>3</sup>

OMCT would welcome the withdrawal of the reservations and declarations made by Morocco and highlights in this respect that the Second periodic report of Morocco submitted to the Committee on the Elimination of Discrimination against Women<sup>4</sup> mentions in part five that the current Moroccan government “undertook, in the context of a statement made before both chambers of Parliament, to work to harmonize Moroccan law with international Instruments, (...) to enhance the legal position of women on the basis of the principle of equality of opportunity and the application of international instruments and declarations ratified by Morocco” and that it “committed itself to a gradual revision of the Moudouana (Code of Personal Status), insofar as such revision was incompatible with the values of Islamic religion.” Finally, the government stated that “these commitments, taken together, may be regarded as an important indication that Morocco’s declarations on and reservations to certain articles of the Convention on the Elimination of All Forms of Discrimination against Women are likely to be withdrawn in due course.”

OMCT regrets that Morocco has neither ratified nor signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.

Morocco is also party to other international instruments relating to human rights which protect women from violence, *inter alia*: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and

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3 – U.N. Committee on the Elimination of Discrimination against Women, U.N. Doc A/52/38/Rev.1, paras. 45-80. (Concluding Observations/Comments).

4 – Morocco, Second Periodic Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/C/MOR/2.

Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child and its two Optional Protocols; the Convention on the Elimination of All Forms Racial Discrimination; and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. OMCT notes with concern that Morocco has not ratified the Optional Protocols to the International Covenant on Civil and Political Rights.

At the regional level, Morocco has been a State party to the African Charter on Human and Peoples' Rights since 1983. Article 18(3) of the African Charter provides that States parties shall ensure the elimination of all forms of discrimination against women as well as the protection of the rights of women "as stipulated in international declarations and conventions."

OMCT notes, however, that the Constitution of Morocco contains no provision that deals with the status of ratified international treaties in the hierarchy of legal norms and their effective applicability within the internal legal order of Morocco. This is a matter of concern as Morocco's national legislation as well as its practices are not always in harmony with its legal obligations under the ratified international treaties.

## III

# Status of Women and Girls in Morocco

## 2.1 De Jure Discrimination against Women

OMCT notes that the national legislation of Morocco contains numerous provisions concerning equality between men and women, which are contradictory to the Convention on the Elimination of All Forms Discrimination against Women as well as other sources of international law under which Morocco has obligations.

The Preamble of the Constitution of Morocco makes a reference to human rights as universally recognised,<sup>5</sup> but the Constitution does not expressly mention equality between women and men. Only article 8 of the Constitution guarantees that women and men enjoy the same political rights. A woman can vote and can be elected. In all other fields, equality between men and women can be inferred by reading laws in conjunction with article 5 of the Constitution, which provides that all Moroccans are equal before the law.

*De jure* discrimination against women continues to persist in many provisions in the Personal Status Code (Mudawwana, Law of 1957/58, amended in 1993), the *Dahir* of 1958 concerning nationality and the Penal Code of Morocco.

The Personal Status Code covers subjects typically seen as belonging to the private sphere such as marriage, divorce, maintenance, child custody and inheritance, but it has an equal effect on women's public lives, acting as a potent mechanism of control over women's political, social, civic and cultural activities.<sup>6</sup> It was last modified in 1993, and despite some reforms, numerous provisions still discriminate against women. In 1999, in an attempt to address discrimination against women, the Prime Minister El-Yousoufi presented a National Plan for the Integration of Women in Development. The section of the plan on reforming the personal status code would, among other things, raise the minimum age for marriage for

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5 – The Preamble reads " Aware of the need of incorporating its work within the frame of the international organisations of which it has become an active and dynamic member, the Kingdom of Morocco fully adheres to the principles, rights and obligations arising from the charters of such organisations, as it reaffirms its determination to abide by the universally recognised human rights." available at [www.oefre.unibe.ch/law/icl/mo\\_\\_indx.html](http://www.oefre.unibe.ch/law/icl/mo__indx.html)

girls and women to 18, outlaw polygamy with the exception of certain cases, give women better access to judicial divorce and allow divorced mothers to retain custody of their children if they remarry.

However, the plan, and in particular the section on reforming the Personal Status Code, was met with strong opposition from conservative and Islamic groups and this has led to the suspension of the reform of the Code. In March 2001, King Mohammed VI met with women representatives of women's rights and political organisations and announced the formation of a Commission charged with the reform of the Personal Status Code. No final conclusions of the work of this Commission are known yet and discrimination continues to persist.

With regard to the age of marriage, OMCT notes that the Personal Status Code provides that the legal age for marriage is 18 for boys while it is only 15 for girls. Between 1995 and 2000, a United Nations Population Fund reported that in Morocco 13 percent of the girls between the ages of 15 and 19 are married.<sup>7</sup> In order to put spouses on an equal footing, OMCT believes that the legal age for marriage should be the same for women and men. An earlier permissible age of marriage for women indicates that the government does not value girls' completion of schooling and their entry into the skilled labour market as it values these activities for boys. Moreover, early marriage may expose women to domestic violence as well as to early pregnancy.<sup>8</sup> OMCT notes that under the Convention on the Rights of the Child, persons under the age of 18 are considered children.

Generally, a woman cannot contract a marriage herself; a woman must be represented by a man (Wali) in order to contract her marriage. Only a woman older than 21 whose father has died can contract her marriage herself (article 12 of the Personal Status Code).

Provisions in the Personal Status Code continue to authorise polygamy, although there are some restrictions. To be polygamous, the husband must

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6 – Nadia Hijab, *Laws Regulation and Practices Impeding Women's Economic Participation in the MENA Region*, shadow report, submitted to the World Bank 2001, quoted in Rabéa Naciri and Isis Nusair, The Euro-Mediterranean Human Rights Network, *The Integration of Women's Rights into the Euro-Mediterranean Partnership*, 2003, p. 15.

7 – Regional Analyses, Middle East and Northern Africa, Second World Congress against Commercial Exploitation of Children, Yokohama, Japan, 17-20 December 2001, [www.csecworldcongress.org](http://www.csecworldcongress.org).

8 – OMCT notes that the average age of women entering their first marriage continues to rise in Morocco and is currently 26.7 years. Quoted in The Euro-Mediterranean Human Rights Network, *The Integration of Women's Rights into the Euro-Mediterranean Partnership*, 2003, p. 32.

inform his first and future wives (article 30 of the Personal Status Code). The wife can stipulate that the man refrain from marrying another woman (article 30, paragraph 2 of the Personal Status Code) and a judge may legally prohibit a polygamous marriage (article 30, paragraph 4 of the Personal Status Code). According to article 31 of the Personal Status Code, the first wife can go to the judge to ask for a divorce if she feels wronged by her husband's remarriage.

Although the practice of polygamy is declining, it continues to be a threat to women, as it undermines a woman's dignity, perpetuates notions of male dominance, and above all creates domestic environments where women become vulnerable to abuse because they are in the difficult position of agreeing to their husbands' marriage or asking for divorce. OMCT recalls that General Recommendation 21 of the Committee on the Elimination of Discrimination against Women states, "Polygamous marriage contravenes a woman's right to equality with men and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited."<sup>9</sup>

According to article 36 of the Personal Status Code, a wife must obey her husband. A wife has to accept her husband as head of the household; he chooses the conjugal domicile, and the wife has to obey and follow. If a wife leaves the conjugal domicile without her husband's permission, she can be brought to justice for disobeying her husband. OMCT is concerned that this obligation of obedience is a major cause of discrimination against women. Moreover, due to this clause, a husband can forbid his wife from leaving the home in order to work. OMCT therefore welcomes the fact that the new draft Employment Code, which will be examined by Parliament, suggests abolishing the requirement of a husband's permission for a wife to work outside the house.<sup>10</sup>

According to article 48 paragraph 1 of the Personal Status Code, a man continues to have the right to repudiate his wife, thereby effecting a divorce, without having to justify his decision. Repudiation can be recorded with the presence of both spouses and after authorisation from a judge. A woman, on the other hand, must seek authorisation from the court on one of five grounds when she wants to divorce. These grounds are: her husband's lack of financial support; his unjustifiable prolonged absence;

9 – U.N. Doc.HRI/GEN/1Rev.4.

10 – The Euro-Mediterranean Human Rights Network, *The Integration of Women's Rights into the Euro-Mediterranean Partnership*, 2003, p. 32.

his suffering from an incurable disease or defect; his abstinence from sexual relations for more than four months; or his doing her harm. Although spousal violence is not one of the grounds on which a divorce may be granted it is considered to constitute harm. However, as will be discussed hereunder, the burden of proof is on the woman to show she has been a victim of violence and the standard of proof applied is extremely high. Another way for a woman to get a divorce is to offer financial compensation in exchange for repudiation ('khul'). However, this option is not considered attractive as it often requires women to give up future financial support and property to which they would be otherwise entitled.

Article 148 of the Personal Status Code states that the father is the legal guardian. Only if the father is deceased or has lost his civil capacity may the adult mother become the guardian. However, she cannot alienate a minor from his belongings without the permission of a judge.

Article 102 of the Personal Status Code provides that in case of divorce, the mother is granted priority for custody of girls who are 15 years and younger and for boys who are 12 years and younger. According to article 99 of this Code, the children can decide which of the parents they want to live with once they are older than the ages provided for in the law. According to article 105 of this Code, the child-minding mother who remarries someone other than a close relative of the child loses her right to guardianship. Moreover, according to article 107 of the Personal Status Code, a mother who has custody of the children must live where the (ex)husband (legal guardian of the children) lives; if not she can lose her custodial right.

With regard to travelling, circular No. 3035 passed in 1990, which required the husband's permission for a wife to obtain a passport, was abolished in 1994. A new circular authorises the husband to object to his wife travelling abroad by writing to the relevant authority.<sup>11</sup>

With regard to discrimination in the Penal Code, article 418 currently grants extenuating circumstances to husbands who murder, beat and cause injury to their adulterous wives or partners, while a wife does not benefit from these mitigating circumstances. OMCT notes that this article is abolished in the draft amendment to the Penal Code, recently presented by the Ministry of Justice.<sup>12</sup>

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11 – *Ibid.* p. 67.

12 – *Ibid.*

Moreover, article 491 paragraph 2 of the Penal Code authorises the office of public prosecution to bring a woman in an adulterous relationship to justice while her husband is abroad. However, the prosecution of a man in the reverse situation is not possible.

OMCT notes with grave concern that article 496 of the Penal Code provides for imprisonment from 2 to 5 years for whoever hides a married woman without taking into account the reasons for which she is in hiding.

According to article 336 paragraph 2 of the Code of Criminal Procedure, a woman cannot bring an independent legal action against her husband without the authorisation of the court. OMCT notes that the draft Code of Criminal Procedure, which was adopted in July 2002 foresees the abolition of this article.

Under the *Dahir* of 1958, women face discrimination in relation to nationality, violating the Convention on the Elimination of all Forms of Discrimination Against Women, the Convention on the Rights of the Child and the Covenant on Civil and Political Rights. The foreign wife of a Moroccan man can acquire her husband's nationality automatically. The foreign husband of a Moroccan woman does not have the same automatic right: he must live in Morocco, speak Arabic and apply for naturalisation. A child born to a Moroccan mother and foreign father can have Moroccan nationality if the child lives in Morocco and declares to continue to do so 2 years before he or she becomes of age. A child born to a Moroccan mother and an unknown or stateless father may also acquire Moroccan nationality if born in Morocco.

## 2.2 Discrimination against Women in Education, Employment and Politics

The adult literacy rate among women is extremely low: 36%,<sup>13</sup> in particular when compared with the male literacy rate, which is 62%. Also the youth illiteracy rate is of concern with 41.7% for female and 23.9% for male (% of people aged 15-24).<sup>14</sup> Schooling rates also show disparities between the levels of schooling for women and men in Morocco. The gross primary school enrolment ratio is 94% for both girls and boys and the net primary

13 – UNICEF statistics, consulted 19 May 2003.

14 – World Bank: <http://genderstats.worldbank.org>.



school enrolment ratio is 77% for boys and 64% for girls.<sup>15</sup> OMCT welcomes the fact that girls' enrolment in primary school in 17 provinces increased within one year by more than 10 percent, which was attributed to high level government commitment, well coordinated national and provincial planning, social mobilisation communication activities, research, and teacher training, among other reasons.<sup>16</sup> The gross secondary school enrolment ratio is 44% for male while it is only 34% for female.<sup>17</sup> It should be noted that there exist great discrepancies in school enrolment between rural and urban areas.

The rate of female economic activity was 41.4 % in the year 2000, which is 52% of the male rate of economic activity.<sup>18</sup> It is interesting to note that while Morocco has, compared to other countries in the region, a high female illiteracy rate and a low female enrolment in education, Moroccan women participate more in economic activity (at a rate of 41.4% in Morocco whereas the regional average is 29%).<sup>19</sup> In Morocco, 54% of the employed women work in services, 40% in industry and 6% in agriculture.<sup>20</sup> A considerable part of the female workforce is illiterate and occupies low qualified jobs.<sup>21</sup> Consequently, a higher employment rate of women does not necessarily mean a high degree of women's economic development.<sup>22</sup>

The Constitution of Morocco guarantees equal political rights for women and men and since 1963 women have had the right to vote. In reality, because of the traditional division of gender roles and the restrictions on women entering the public sphere, women's participation in political life is low. At the Parliamentary elections of September 2002, 35 women were elected subsequent to an agreement by the political parties to reserve 30 seats for women on the national lists, making the current percentage of women in the Chamber of Deputies 10% and their percentage in the two

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15 – UNICEF statistics, consulted 19 May 2003.

16 – UNICEF, World Education Forum, Dakar 2000, <http://www.unicef.org/efa/girlsred.htm#Morocco>.

17 – UNICEF statistics, consulted 19 May 2003.

18 – UNDP World Human Development Report, 2002.

19 – The Euro-Mediterranean Human Rights Network, *The Integration of Women's Rights into the Euro-Mediterranean Partnership*, 2003, p. 6.

20 – UNDP World Human Development Report, 2002.

21 – In 2000, female estimated non-agricultural income was US \$2019 and male estimate non-agricultural income was US \$5086 per capita, in UNDP World Human Development Report, 2002.

22 – See also the Euro-Mediterranean Human Rights Network, *The Integration of Women's Rights into the Euro-Mediterranean Partnership*, 2003, p. 23.

Chambers 11%. Women hold only 4.9% of the posts in government and women occupy only 0.4% of the seats in the Senate.<sup>23</sup>

Although the percentage of women in Parliament rose during the last elections, OMCT is concerned that women in Morocco remain generally isolated from political, legislative and economic decision-making. This has serious implications for the advancement of women as well as for the full enjoyment of their fundamental rights and renders women vulnerable to violence, both in the domestic and the community sphere.

### 2.3 Women's Reproductive Rights

Some progress on women's reproductive rights can be mentioned: higher life expectancy of women, lower infant mortality and increasing access to contraception. However, maternal mortality, in particular in the rural areas due to inadequate health infrastructures, remains high<sup>24</sup> and birth assistance and follow up remain low.

Article 453 of the Penal Code, amended by Royal Decree No. 181-66 in 1967, provides that the performance of an abortion shall not be punished when it is a necessary measure to safeguard the health of the mother and is openly performed by a physician or a surgeon with the consent of the spouse. If the husband refuses or is prevented from giving his consent or there is no husband, the abortion cannot be performed without the written opinion of the chief medical officer of the province or prefecture, certifying that the intervention is the only means of safeguarding the health of the woman.<sup>25</sup> However, if the physician has grounds to believe that the woman's life is in danger, the consent of the spouse or opinion of the chief medical officer is not required. The physician or surgeon must, however, give his opinion to the chief medical officer of the province or prefecture.<sup>26</sup>

Abortion is illegal under the Penal Code in all other cases, even when the pregnancy is a result of rape and incest. A person performing an illegal abortion is subject to one to five years imprisonment and payment of a fine of 120-500 Moroccan dirhams. In case of a person who regularly performs

23 – UNDP, World Human Development Report, 2002.

24 – Morocco, Second Periodic Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/C/MOR/2.

25 – <http://www.un.org/esa/population/publications/abortion/doc/morocco.doc>, consulted on 15 June 2003.

26 – *Ibid.*

regularly abortions, the punishment is doubled. Medical and health personnel who perform an illegal abortion are subject to the same penalties, as well as to temporary or permanent suspension from exercising their profession. A woman who induces her own abortion or consents to it being induced is subject to between six months and two years imprisonment and payment of a fine of DH 120-500.<sup>27</sup>

In practice, however, illegal abortion appears to be widespread in Morocco. Many women obtain an abortion as a contraceptive method.<sup>28</sup> However, the prevalence of illegal abortion is underestimated as it appears that particularly married women from the urban upper and middle classes resort to abortion in a private clinic.<sup>29</sup>

OMCT notes with concern that underprivileged women are not able to pay for the expensive clandestine abortions and have little access to contraception. Surveys of public hospitals suggest that a significant number of admissions are women from lower socio-economic groups suffering from complications due to illegal abortion.<sup>30</sup> When they become unmarried mothers, they become the victims of discrimination in the law and culture. Single mothers and their children are rarely accepted by the family and a single mother can be convicted of having had unlawful sexual intercourse.<sup>31</sup> As a consequence, unmarried mothers are particularly vulnerable to violence, in particular trafficking.<sup>32</sup>

In 1997, the Committee on the Elimination of All Forms of Discrimination noted with concern the high rate of maternal mortality in Morocco, the high number of unattended births, the unavailability of safe abortion and the need to develop further reproductive and sexual health services, including family planning.

OMCT is concerned that women in Morocco do not have the right to decide freely and responsibly about the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. This also includes the right to make decisions concerning reproduction free from

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27 – *Ibid.*

28 – *Ibid.*

29 – *Ibid.*

30 – *Ibid.*

31 – Report on the mission of the Special Rapporteur on the sale of children, child prostitution and child pornography to the Kingdom of Morocco, (28 February-3 March 2000), U.N. Doc. E/CN.4/2001/78/Add.1.

32 – Morocco, Second Periodic Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/C/MOR/2.

discrimination, coercion and violence. OMCT is concerned that not all women have access to safe abortions and that even for a legal abortion, a wife must have the permission of her husband.



## General Observations on Violence against Women in Morocco

Only very recently, violence against women has been brought on the Moroccan social and political agendas, mainly due to the work of women's human rights NGOs. Before, as women have an inferior status in the Personal Status Codes, violence against women was socially justified and accepted.

The recent initiatives by NGOs and government mechanisms as well as the awareness and recognition of the phenomenon of violence against women in Morocco has pushed the Ministry on the Status of Women, the Protection of the Family and Children and the Integration of Handicapped People, to put in place a "National Strategy against Violence" elaborated in conjunction with governmental and non-governmental organisations.<sup>33</sup>

A major positive step constitutes a study realised on violence against women, between 1 July 1998 to 31 December 1999, by the Ministry of Justice, with the support of the United Nations Population Fund (UNFPA), on the basis of cases brought before the courts of Casa Blanca. Moreover, a unit for women victims of violence has been created in the Hospitals Ibn Sina in Rabat and Ibn Rochd in Casa Blanca, with a register that specifically records the victims of domestic violence.<sup>34</sup> In the same sense, the Directory of the Judicial Police of the National security has put in place a "focal point on gender" and created a new special entity to fight against violence in the family within this Directory with a superintendent of the police at its head.

33 – Rabéa Naciri, La Violence basée sur le genre au Maroc, Atelier "Femmes et homes au Maroc: Analyse de la situation et de l'évolution des écarts dans une perspective genre", Royaume du Maroc, Premier Ministre, Département de la Prévision Economique et du Plan, Direction de la Statistique, UNDP, UNIFEM, ESCWA, 18-19 Mars 2003.

34 – *Ibid.*

Nevertheless, domestic and sexual violence still continue to be regarded as a private sphere phenomenon which does not constitute a human rights violation or a veritable social problem that merits investigation, research and analysis.<sup>35</sup> As has been described above, the low status of women in society as well as the actual state of gender relations make it difficult to collect data and information on the prevalence, forms and manifestations of violence against women, its causes and consequences. Violence against women continues to be surrounded by a culture of silence. Furthermore, as many laws in Morocco discriminate against women, it is hard to distinguish which type of discrimination is legal and which is a crime. As a consequence, there are serious gaps in the levels of awareness of the problem as well as legislation, political definition and appropriate programmes focusing on the elimination of violence against women. As a result, violence against women is not taken seriously, is underestimated, and often is only addressed in the private sphere.

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35 – *Ibid.*

## IV

# Violence against Women in the Family

## 4.1 Woman battering

A survey of 1500 persons conducted by the “Association Démocratique des Femmes du Maroc” of both sexes, has shown that domestic violence against women is not a socially isolated phenomenon: 45.3% of the respondents are of the opinion that under specific circumstances it is legitimate for a husband to physically assault his wife.<sup>36</sup> For example, adultery or the simple fact that a wife does not obey her husband are socially accepted justifications for domestic violence.<sup>37</sup> Some women are convinced that the law authorises a husband to correct his wife. Such a context makes identification and recognition of domestic violence very difficult as women rarely report this violence. Other reasons for not reporting are: fear and shame particularly in the rural areas where, in general, denouncing your husband is socially unacceptable; the (lack of) legislation specifically dealing with violence against women; the lack of sensitivity on the part of law enforcement officials; poverty; and lack of adequate structures to shelter and help women.

Although domestic violence appears to be a serious and widespread phenomenon in Morocco, there is no specific legislation on domestic violence. Cases of domestic violence are brought under the general assault provisions of the Penal Code,<sup>38</sup> which do not take into account the special relationship that exists between the perpetrator and the victim in cases of domestic violence, which involve emotional and financial dependencies and thus give rise to special protection and remedial needs.

One main problem with the prosecution of domestic violence under the general assault provisions of the Penal Code is the issue of presenting evidence. Besides a medical certificate, the testimony of a witness of the assault is required to prove and punish physical assault.<sup>39</sup> This condition

36 – Association Démocratique des Femmes du Maroc, *Etudes auprès du grand public sur le renforcement juridique de la femme*, March 2000, quoted in *ibid.*, p. 13.

37 – Survey by ADMF/UNIFEM, *Potentiel de changement de la position des femmes dans le cadre des relations familiales*, 1999.

38 – Morocco, *Second Periodic Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women*, U.N. Doc. CEDAW/C/MOR/2.

39 – Rabéa Naciri, *La Violence basée sur le genre au Maroc*, *Ibid.*

prevents women from reporting cases of domestic violence, as domestic violence often does not involve the presence of eyewitnesses.

The State report submitted by Morocco mentions cultural inheritance, the view that women are inferior, the reluctance to women to speak out, women's ignorance of their rights and the lack of shelters as factors which have resulted in increased violence against women despite the penal sanctions. OMCT would like to note that besides these factors, the lack of comprehensive specific legislation on domestic violence and the current discriminatory provisions in the Moroccan national legislation has resulted in impunity of the perpetrators of domestic violence.

Law enforcement officials reportedly do not adequately respond to complaints of domestic violence. They continue to perceive domestic violence against women as a private matter and probably deserved by the woman concerned. In this context, it is interesting to note that physical violence reported by women to NGOs concerns mainly domestic violence whereas most of the violence against women reported to the police and hospitals concerns violence by strangers.<sup>40</sup>

Finally, as mentioned above, article 496 of the Penal Code provides for imprisonment from 2 to 5 years for whoever hides a married women from the authority to which she is legally submitted. Thus, someone who helps a woman, knowing she has left her conjugal domicile without the consent of her husband, may fall under this law. This provision reportedly discourages NGOs from opening shelters for battered women who have fled their homes without the consent of their husband.<sup>41</sup>

## 4.2 Marital Rape

OMCT notes with concern that marital rape and violent sexual assaults within the home are not punishable under Moroccan law. The most important part of the society in Morocco tends to hold on to the idea that a husband legally has the right to the body of his wife whenever he wants.<sup>42</sup>

OMCT considers that marriage should not, in any circumstances, relieve a man of criminal responsibility when he rapes his wife or otherwise subjects

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40 – *Ibid.*

41 – *Ibid.*

42 – *Ibid.*

her to sexual violence. This impunity nullifies the right of equality between men and women and heightens the risk of continuous physical, sexual and psychological violence in the home.



## Violence against Women in the Community

### 5.1 Rape and other Forms of Sexual Violence

The Criminal Code provides for severe punishments for rape and other forms of sexual violence.<sup>43</sup> In fact, the basic principle is that any sexual activity outside marriage is punishable. However, rape and other forms of sexual violence appear to be seriously underreported. In 1999, Morocco recorded only 17 cases of rape and 63 cases of indecent assaults.<sup>44</sup>

A main reason for underreporting rapes is the social stigma attached to the loss of virginity. Moreover, the concept of “violation of sexual modesty” (“atteinte et attentat à la pudeur”) contained in the penal legislation can cover several acts which are not always precise. The notion of sexual modesty (pudeur) is not defined by law. It is in the judge’s discretion to determine the immorality of the act.<sup>45</sup> The courts reportedly only consider cases of rape with physical violence, especially when visible, where the consent of a woman is absent.<sup>46</sup> However, the courts do not take psychological violence easily into consideration. In reality, women have great difficulties proving that they have been raped which is due to the fact that, on the one hand, there is generally no witness to the violence and on the other hand the judges oftentimes confuse the proof of absence of

43 – Morocco, Second Periodic Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, U.N. Doc. CEDAW/C/MOR/2.

44 – Regional Analyses, Middle East and Northern Africa, Second World Congress against Commercial Exploitation of Children, Yokohama, Japan, 17-20 December 2001, [www.csecworldcongress.org](http://www.csecworldcongress.org).

45 – Michelle Zirari, Professor of Law at the University Mohamed V, quoted in Rabéa Naciri, *La Violence basée sur le genre au Maroc*, *Ibid.*

46 – *Ibid.*



consent to rape with the proof of a woman's sexual morality.<sup>47</sup> When the absence of consent is not established, than the crime of cannot be proven.<sup>48</sup>

Another fact that may discourage women from filing a complaint is that when she is pregnant, and cannot prove that she was raped, she runs the risk of being charged with having had unlawful sex.<sup>49</sup>

OMCT is also concerned that article 475 of the Penal Code provides that in cases where a nubile minor girl has been abducted, all legal proceedings and the enforcement of sentences will cease if the abductor and the girl subsequently marry.

## 5.2 Sexual Harassment

According to a survey carried out by the “Association Marocaine de Défense des Droits des Femmes” among female public officials, a bit more than 56% of the women interviewed declared that they have been the subject of sexual harassment.<sup>50</sup> Only a few women have filed complaints against sexual harassment, as most women do not report the crime for economic (fear of losing the job) and social (fear and shame towards their families) reasons. OMCT welcomes that the new project of the Penal Code criminalizes sexual harassment.

## 5.3 Trafficking in Women and Girls

Although there is a lack of statistics on trafficking in women in Morocco, reports show that the phenomenon is a growing problem in the country due to issues such as poverty, migration from rural to urban areas, emigration to Europe and the Arab Gulf States and the heavy dependence on foreign tourism and investment. Morocco is both a source and transit country for trafficked persons. Moroccan women are trafficked abroad to the Middle

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47 – *Ibid.*

48 – *Ibid.*

49 – Report on the mission of the Special Rapporteur on the sale of children, child prostitution and child pornography to the Kingdom of Morocco, (28 February-3 March 2000), U.N. Doc. E/CN.4/2001/78/Add.1.

50 – AMDF, *Le harcèlement sexuel, un crime*, Edition le Fenec, 2001, quoted in Rabéa Naciri, *La Violence basée sur le genre au Maroc*, *Ibid.* This survey was carried out among 85 female public officials of the cities of Casablanca, Rabat and Kenitra.

East and Europe under the guise of legitimate job offers and then sexually exploited.<sup>51</sup>

There is also internal trafficking of women and girls. Girls are mainly trafficked for domestic servitude and women for the purpose of sexual exploitation.

Morocco has neither signed nor ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the UN Convention against Transnational Organised Crimes. Moreover, the country has no law that specifically prohibits trafficking. However, provisions of the Criminal Code regarding kidnapping, forced prostitution and coercion are used to prosecute and punish traffickers.

Prostitution- and public solicitation-related activities are illegal in Morocco and are addressed by Articles 497-502 of the Criminal Code. However, OMCT is concerned about the treatment of women who are victims of sexual exploitation as these women and girls are more likely to be treated as criminals than as victims.<sup>52</sup> Such treatment may discourage women and girls from filing a complaint against sexual exploiters including traffickers.

## 5.4 Violence against Girl Domestic Workers

Although there are no estimates as to how many children are employed in domestic service due to the hidden nature of the work, the Special Rapporteur on the sale of children, child prostitution and child pornography confirmed in the year 2000 with several government ministries, United Nations agencies and most NGOs that the widespread abuse of young girls working as household maids, or *petites bonnes*, is one of the major problems confronting Moroccan children.<sup>53</sup> She reported that in most cases, the girls, 50 per cent of whom are below the age of 10, are sent by their families from rural areas to work as maids in houses of the

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51 – US Dept of State, Country Reports on Human Rights Practices, 2002.

52 – Report on the mission of the Special Rapporteur on the sale of children, child prostitution and child pornography to the Kingdom of Morocco, (28 February-3 March 2000), U.N. Doc. E/CN.4/2001/78/Add.1.

53 – *Ibid.*

cities.<sup>54</sup> Other girls are internally trafficked for this purpose.<sup>55</sup> According to a survey, over 80% of the child maids are illiterate and over 80% are from rural areas.<sup>56</sup>

These young girls are extremely vulnerable to exploitation in domestic servitude. They are often far from home, with hardly any opportunity to meet people outside the household and consequently nowhere to go and no one to turn to for help. The little money they earn is usually given to the parents. A survey found that 72% of child domestic workers began their day before 7 a.m. and went to bed after 11 p.m.<sup>57</sup>

OMCT is also particularly concerned over the vulnerability of these girls to physical and sexual abuse as the child is dependent on her employer for protection. The Minister for Human Rights, the Ministry of Foreign Affairs and the Parliamentary Commission on Social Affairs confirmed to the Special Rapporteur on the sale of children, child prostitution and child pornography that there was a high incidence of rape and ill-treatment of child maids.<sup>58</sup> When girl domestic servants run away, they are at great risk of being trafficked to brothels in El hajeb in the Mid-Atlas.<sup>59</sup>

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54 – *Ibid.*

55 – ILO-IPEC, Trafficking of Children, The problem and responses worldwide, quoting Anti-Slavery International, Reporter, 2001.

56 – US Dept of State, Country Reports on Human Rights Practices, 2002.

57 – UNICEF; Innocenti Digest 5, Child Domestic Work, p. 7.

58 – Report on the mission of the Special Rapporteur on the sale of children, child prostitution and child pornography to the Kingdom of Morocco, (28 February-3 March 2000), U.N. Doc. E/CN.4/2001/78/Add.1.

59 – *Ibid.*

## VI

# Threats against Women's Human Rights Defenders

In the year 2001, OMCT submitted an urgent appeal concerning the campaign of harassment and threats carried out against the Moroccan poet, feminist and human rights defender, a member of the Moroccan Association for Human Rights (Association marocaine des droits de l'Homme – AMHD), **Hakima Chaoui**.<sup>60</sup> Ms. Chaoui had read a poem she had written defending women's rights during a Moroccan radio special to commemorate international women's day on March 8, 2001. Since that time, she has been vilified in the press, namely, by the newspaper "Attajid" which accused her of insulting the Prophet Mohammed and apostasy. Certain Imams in mosques around Morocco have also reportedly attacked Ms. Chaoui's reputation during Friday prayers, declaring her guilty of apostasy.

In response to a July 2001 letter from a Moroccan human rights organisation calling upon the Moroccan government to take action in relation to the harassment of Ms. Chaoui, the Ministry for Islamic Affairs replied that it was not aware of any violations of Islamic law. The Ministry further noted that the preacher was entirely free to choose the subject of the Friday prayers and that while the protection of individual reputations was important, the protection of the sacred religious principles represented in the person of the Prophet must be given priority.

On August 5, 2001, Ms. Chaoui was invited by a group of trade unions and political associations to give a presentation on "the national plan for the integration of women in development: limitations and perspectives". During and following her presentation Ms. Chaoui was allegedly heckled, threatened and accused of lying about the campaign of insults and intimidation being carried out against her.

On August 19, 2001, Ms. Chaoui began receiving repeated telephone messages calling her a liar, and insulting and threatening her in obscene language.

Ms Chaoui continued being libelled in 2002 by people belonging to the Islamists movements, because of her poems in support of women's rights.<sup>61</sup> At the end of March 2002, she was invited by the town of Kaalat Magouna to speak on "Women's Rights; between legislation and reality". The Islamists published an intimidation press-release which included derogatory remarks against her and called for the conference to be boycotted. In the 16th and 17th February 2002 issues of the newspaper *Raïssalat Al Oumma*, which tends towards the Islamists, the Preacher Zamzami called her an "adulterous, atheistic poet". In an interview dated 26 July 2002 in *All Aasr*, which is affiliated to the Islamic party "Justice and Development", a member of the Islamic movement "Salafia Jihadia" said "she should be killed mercilessly".

The investigation, that was started after the libel and intimidation campaigns against her in 2001, in particular after one of her poems on women's rights was read on the radio on Women's Day (March 8) has not led anywhere.<sup>62</sup>

OMCT is gravely concerned by reports that Hakima Chaoui has been subjected to harassment and intimidation as a result of her work as a defender of the human rights of women. These alleged acts of harassment, which include threats against Ms. Chaoui's physical safety, constitute violations of her right to liberty and security of person, discrimination on the basis of sex and violations of her right to freedom of expression.

OMCT is also concerned about the case of Maria Makrem, a Moroccan journalists working on El-ayam weekly newspaper and covering women's issues, who was physically attacked on March 13, 2003 after receiving a threatening telephone call from someone claiming to be part of a system called "the king protector".<sup>63</sup> The person reminded her how she dared to investigate a secret detention centre in "Tamara" city, which is the Centre of Moroccan's Security Services. Immediately after the call she was physically attacked by an unknown person. This attack was followed by another call that threatened Maria with further attacks if she continued writing on these types of issues. This alleged attack and these threats constitute violations of her right to liberty and security of person and violates her right to freedom of expression.

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61 – The Observatory for the Protection of Human Rights Defenders – OMCT and FIDH; *Human Rights Defenders on the Front Line, Annual Report 2002, 2003*, pp.236-237.

62 – *Ibid.*

63 – Women Living Under Muslim Laws, Morocco: Call for solidarity with Maria Makrem, Moroccan Journalists under Threat, 2003.

## VII

# Conclusions and Recommendations

Morocco has made several important reservations and declarations of understanding that condition its ratification of the Convention on the Elimination of All Forms of Discrimination Against Women and it has neither ratified nor signed the Optional Protocol to the Convention.

OMCT would insist upon the need to implement all provisions of the Convention on the Elimination of All Forms of Discrimination Against Women and to repeal the reservations made to this Convention. OMCT would also insist that Morocco ratify the Optional Protocol to the Convention, enabling the Committee to receive individual communications relating to Morocco and to conduct inquiries into grave or systematic abuse of women's human rights.

While OMCT welcomes the efforts made by the government of Morocco to advance the human rights of women, women are still far from fully enjoying human rights on an equal footing with men. Women continue to suffer from discriminatory laws and practices, due to many factors, including the persistence of a traditional male-dominated society.

The discriminatory Personal Status Code has established a system of inequality between men and women and relegates women to a subordinate status in the family and society as a whole. The Code still provides for a discrepancy in the legal age of marriage for women and men and obligates women of any age to be represented by a man (Wali) in order to contract her marriage, except under narrow circumstances. The Personal Status Code further discriminates against women by allowing men to have up to four wives simultaneously and a husband enjoys a unilateral right to repudiate his wife while a wife has a much more limited ability to initiate a divorce. Moreover, the law stipulates that the man is the head of the family, that a wife has to obey her husband, and that the responsibilities for the maintenance of children lie in the first place with the father. Also provisions in the Penal Code and the Nationality Code continue to discriminate against women.

OMCT would call upon the government of Morocco to reform all of these laws which discriminate against women either directly or indirectly as it announced it would do in 1999 when it presented a National Plan for the Integration of Women in Development.

OMCT welcomes the efforts of the Moroccan government with respect to the increasing presence of women in education. It notices with concern, however, that the illiteracy rate for women is still very high, in particular in the rural areas, and that, although women appear to be economically active compared to other countries in the region, women frequently occupy the low-qualified jobs. It is also concerned by the fact that women are still severely underrepresented in politics. OMCT would encourage the state to take strong and immediate measures to address these problems as these areas are of utmost importance for women's empowerment.

A serious consequence of the current systematic and routine *de jure* and *de facto* discrimination against women that it renders them vulnerable to violence. Although the government has paid some attention to the problem, OMCT notes the lack of data on violence against women. In Morocco, domestic and sexual violence still continue to be regarded as private sphere phenomena.

Although domestic violence is little-documented and seldom reported, it appears to be a serious problem in Morocco. Greater attention must be paid to the barriers that currently prevent women and girls in Morocco from lodging complaints in relation to domestic violence. These factors include: traditional social beliefs concerning the inferiority of women; the social inacceptability of denouncing your husband; the (lack of) specific legislation on violence against women; the lack of sensitivity on the part of law enforcement officials; poverty; the lack of adequate structures to shelter and help women; the difficulty for women to obtain a judicial divorce on the grounds of harm and the obstacles to proving and punishing physical assault in the domestic sphere, which perpetuates the message that domestic violence is to a certain degree acceptable.

OMCT is very concerned that the Government has yet to develop a comprehensive policy and legislative response to the problem of domestic violence. As there is no specific legislation dealing with domestic violence, OMCT would like to call upon the Government to urgently discuss, draft and adopt specific legislation for the prevention, prohibition and punishment of domestic violence along the lines of the guidelines submitted by the United Nations Special Rapporteur on violence against women to the fifty-second session of the United Nations Commission on Human Rights (U.N. doc. E/CN.4/1996/53, Add.2). This legislation should be drafted in such a way that it covers both physical and psychological violence and that it provides for protective mechanisms

including restraining orders. The Penal Code should explicitly prohibit rape occurring within marriage. Moreover, OMCT would insist on the necessity of training law enforcement officials and members of the judiciary in relation to the investigation, prosecution and punishment of cases of family-based violence.

Rape in Morocco appears to be heavily underreported due to the social stigma attached to the loss of virginity and the difficulties women face in proving that they have been raped which is due to the fact that on the one hand there is generally no witness to the violence and on the other hand the judges oftentimes confuse the proof of absence of consent to rape with the proof of a woman's sexual morality. Another fact that may discourage women from filing a complaint is the risk of being charged with having had unlawful sex in a case where she is pregnant and cannot prove that she was raped.<sup>64</sup>

OMCT would recommend that the Government of Morocco repeal the evidentiary rules which place a large part of the burden of proof on the rape victim and which may even put the victim at risk of being punished for adultery.

OMCT is also concerned about article 475 of the Penal Code which provides that in cases where a nubile minor girl has been abducted, any charges or investigations against the abductor will be dropped if he and the girl subsequently marry. As OMCT has been unable to obtain information concerning the status of this provision in the current Penal Code, it would request the Moroccan government to explain whether this “reparatory marriage” provision is still applicable.

OMCT expresses its great concern about the increase in prostitution and trafficking of women and girls. There is no specific legislation to combat trafficking in persons in Morocco. OMCT is concerned that prostitutes may be doubly victimised; first forced into prostitution and then detained since prostitution is illegal.

OMCT would urge the Government of Morocco to prepare and adopt new legislation criminalising trafficking in persons. Legislation, in particularly criminal legislation, should be closely examined to ensure that women and

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64 – Report on the mission of the Special Rapporteur on the sale of children, child prostitution and child pornography to the Kingdom of Morocco, (28 February-3 March 2000), U.N. Doc. E/CN.4/2001/78/Add.1.



girls who are the victims of sexual exploitation are not held criminally culpable. These weaknesses in the law discourage the filing of a complaint against exploiters including traffickers.

It would also urge the government to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the UN Convention against Transnational Organised Crimes. Moreover, it would urge the Government to introduce programmes aimed at increasing awareness and understanding of the seriousness of trafficking. These programmes should focus on the methods used by traffickers and the hazardous consequences of being lured into trafficking. Facilitating the access of women to viable employment and training opportunities is an essential step in the fight against trafficking. Additionally, the conditions of women working should be improved through the introduction of legislation that would guarantee working conditions in accordance with internationally accepted labour standards.

OMCT is gravely concerned about the exploitive situation of child maids. OMCT would recommend that the government reform both legislation and policy to ensure the safety of children and their access to education.

Women human rights defenders in Morocco run the risk of becoming victims of harassment. OMCT would urge the government of Morocco to address this problem with effective measures. It should take steps to ensure that all allegations, harassments, and threats are promptly, thoroughly and impartially investigated. Those responsible should be identified, brought before a competent and impartial tribunal and the sanctions provided for by law should be applied.


Finally OMCT is concerned that women in Morocco do not have the right to decide freely and responsibly about the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. This also includes the right to make decisions concerning reproduction free from discrimination, coercion and violence. OMCT notes with concern that the severe prohibition on abortion, even in cases of rape or incest, and the stigmatisation of women who give birth to children outside marriage results in clandestine, unsafe abortions which contribute to the high rate of maternal mortality in the country. OMCT would recommend that the government ensures that criminal sanctions do not have the effect of putting women's lives and health at risk and that

women have full and equal access to family planning services and to contraception.

Finally, OMCT would insist upon the need for the Government to fully implement all of the provisions of the Convention for the Elimination of All Forms of Discrimination Against Women, the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women as these instruments provide detailed protection for women against violence in the family, in the community and at the hands of State officials.







*29th session  
30 June -18 July 2003*

**Concluding Observations of the  
Committee on the Elimination of  
Discrimination Against Women:  
Morocco**

**(Advance Unedited Version)**



## I. Introduction by the State party

**1.** The Committee considered the second periodic report of Morocco (CEDAW/C/MOR/2) at its 627th and 628th meetings on 15 July 2003 (see CEDAW/C/SR.627 and 628).

**2.** In introducing Morocco's second periodic report, the representative noted that the Convention was being implemented within the context of the country's culture, religion and civilization. Since 1993, a Ministry for human rights issues was responsible for overall coordination and the preparation and practical administration of laws and regulations at all levels. A governmental body responsible for issues related to the family and the situation of women had been established in 1998, and a ministerial commission headed by the Prime Minister monitored the implementation of the national strategy for the integration of women in development. A reform of the Advisory Council on Human Rights in 2002 had in particular enhanced its role in eliminating discrimination against women, and the Council now had eight women members, out of a total of 41 members. One of the Council's working groups dealt with issues of the family and the situation of women. The Council had also gained the autonomy to handle all matters, including grievances, related to human rights. Another innovation was the creation of the Diwan al Madalim, which functioned as an Ombudsman to ensure respect for the rule of law and to redress any injustices that might be committed by the Administration.

**3.** The Constitution of Morocco recognized the primacy of international conventions to which Morocco was a party over domestic legislation, although such Conventions could not take precedence over the Constitution itself without prior revision of the Constitution. The Ministry for Human Rights had the task of ensuring that domestic legislation was in harmony with the country's international obligations, including the Convention on the Elimination of All Forms of Discrimination against Women. The Convention itself had been published in the Official Bulletin in 2001, and implementation of the Committee's recommendations and comments on Morocco's initial report had been accorded great importance in the country. In the follow-up to the Fourth World Conference on Women, Beijing 1995, a plan of action for the integration of women in development had been prepared which focused on four priority themes: education, literacy and the culture of equality; reproductive health; the economic integration of women; and the improvement of women's legal and political situation. Furthermore, efforts were underway to reform the country's Personal Status Code.

4. Turning to the report, the representative noted that all relevant departments had contributed to its preparation, and the views of civil society had also been considered.

5. The representative drew attention to the legislative measures in place against prostitution and trafficking in women. The penal code prohibited prostitution and established prison penalties ranging from 6 months to 5 years. The Government, civil society and the media had undertaken awareness-raising and sensitization measures, particularly within the most vulnerable sectors of the population, to address the dangers of prostitution and trafficking. The Government also undertook efforts to improve the living conditions of disadvantaged social groups and focused particular attention on providing assistance to women victims of prostitution. Morocco had ratified a number of international conventions related to trafficking, including the United Nations Convention against Transnational Organized Crime and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

6. According to the Constitution, women and men enjoyed political rights on a basis of equality. Women participated fully in elections, frequently accounting for 50 per cent of the electorate. The representative noted that while considerable efforts had been undertaken by governmental and non-governmental actors to increase and strengthen women's participation in the political arena and in civil service, women's representation in decision-making posts remained unsatisfactory. To address this issue, in 1998 the Prime Minister had instructed all Ministries to appoint women to decision-making positions and, in 2001, members of Government had been invited to report on the measures taken in this regard. The representative noted various developments in 2002: the diversity of decision-making posts allocated to women had increased, and a new law had been adopted, which reserved 30 seats for women in the House of Representatives. Subsequently, 35 women had been elected in the country's legislative elections of 2002.

7. The Nationality Code conferred equal rights to men and women with regard to the acquisition, change or retention of nationality. The representative noted, however, that the Code did not allow Moroccan women to transfer their nationality to their non-Moroccan spouses, or to automatically confer their nationality to children born to foreign fathers. The representative indicated that the Parliament of Morocco was currently considering a bill to allow Moroccan women the right to transfer nationality to their children.

**8.** The country's laws guaranteed the equal rights of boys and girls to education. Education was compulsory for all children above 6 years of age, and free in all types of public education. The high illiteracy and school drop - out rates in rural areas, particularly among young girls, was a major challenge faced by the Government. Various ministries, including the Ministry for Youth and Sports, were taking concrete measures to combat these problems. The representative noted that school attendance, however, was linked to socio - economic conditions and the existence of infrastructure, such as roads and hospitals .

**9.** The representative indicated that in 1999, a national education charter had been put in place, constituting the current framework for the country's education policy, and containing ambitious goals. The representative also indicated that a 1994 partnership agreement between the Ministry of National Education and the Ministry for Human Rights aimed to combat stereotyped gender roles in society through the development and dissemination of a culture of human rights through the education system. Seminars and training courses on human rights had been set up in this regard.

**10.** The representative indicated that Moroccan legislation guaranteed non - discrimination and equal opportunities for women and men in employment and in the exercise of their functions. The only restrictions for women in this area were related to professions that were considered dangerous or harmful to their health or to their role and responsibilities as mothers. The representative noted that women had been increasingly participating in traditionally male - dominated professions.

The Government had recently adopted a new Labour Code, which prohibited any form of discrimination, as well as a new law on medical coverage, which provided compulsory medical coverage for all pensioners and salaried workers. Morocco had ratified a number of international conventions and instruments affirming the principles of equality and non-discrimination in employment.

**11.** The representative indicated that the maternal mortality rate, which remained high despite its decline in recent years, was a source of concern for the Government. As a result of the measures undertaken by the Ministry of Health to implement the national programme on family planning, 3 out of 5 married women were currently using some form of contraception.

**12.** The issue of violence against women was another source of concern



for the Government. The national strategy on violence against women outlined a number of measures to be taken, including the criminalization of various forms of violence against women as violations of human rights; the development of innovative approaches to effectively intervene and provide treatment to women victims of violence; and the establishment of adequate databases to promote the scientific study and research of gender-based violence. The national strategy also outlined seven areas of strategic action on violence against women, including the reform and harmonization of laws and regulations; education, awareness-raising and communication; as well as research and partnership development. Amendments to the penal code criminalized various forms of violence, including sexual harassment. These developments were reinforced by the promulgation of the new Labour Code, which protected women from all violations of their physical or moral integrity

**13.** In concluding, the representative indicated that the Government welcomed the opportunity to dialogue with the Committee as an important means of identifying proposals and measures to improve the situation of Moroccan women and further eliminate discrimination against them.

## II. Concluding comments of the Committee

### Introduction

**14.** The Committee expresses its appreciation to the State party for submitting its second periodic report. It commends the State party for the written replies to the issues raised by the pre-session working group and the oral presentation, which provided additional information on the implementation of the Convention in Morocco.

**15.** The Committee commends the State party for its delegation headed by the Permanent Representative of the Kingdom of Morocco to the United Nations and appreciates the frank and constructive dialogue that took place between the delegation and the members of the Committee.

**16.** The Committee notes that declarations have been made by the State party to article 2 and article 15, paragraph 4; and that reservations have been made to article 9, paragraph 2, article 16 and article 29 of the Convention.

### Positive aspects

**17.** The Committee welcomes the fact that the State party acknowledges the precedence of international instruments over national legislation.

**18.** The Committee welcomes the State party's commitment to the implementation of the provisions of the Convention as reflected in a range of legal reforms such as the new Penal and Labour Codes, policies, plans and institutional arrangements. The Committee also welcomes the State party's ongoing cooperation with civil society, in particular with women's organizations.

**19.** The Committee welcomes the legislative changes and the voluntary quota system established by political parties to increase women's representation in the House of Representatives, which has led to a significant increase in the number of women elected during the last elections.

**20.** The Committee appreciates the fact that a Royal Commission has been established with the principal goal of revising the Personal Status Code. The Committee commends the State party for the draft bill on the

nationality law which would give Moroccan women the right to pass on their nationality to their children on the same basis as men.

**21.** The Committee commends the State party for the establishment of the Ministry of Human Rights, which creates a positive environment for the protection and promotion of human rights. It welcomes the publication of the Convention in the official gazette in 2001 and the efforts made to integrate human rights principles in textbooks and curricula.

### **Principal areas of concern and recommendations**

**22.** While appreciating that some progress has been made towards creating an environment for the withdrawal of the declarations made by the State party to article 2, article 15, paragraph 4, and the reservations made to article 9, paragraph 2, article 16 and article 29, of the Convention, the Committee expresses its concern that those reservations continue to be retained.

**23.** The Committee urges the State party to expedite the necessary steps for the narrowing and ultimate withdrawal of its declarations and reservations to the Convention.

**24.** The Committee is concerned that although the Constitution guarantees equality before the law, it does not contain an explicit definition of the principle of equality between women and men and of discrimination on the basis of sex. The status of international instruments, including the Convention, with respect to the Constitution and national law has not yet been clarified.

**25.** The Committee encourages the State party to incorporate the principle of equality between women and men in the Constitution and to reflect fully the definition of discrimination in article 1 of the Convention in its national legislation. The Committee urges the State party to clarify the status of international conventions within its domestic legal framework and to ensure that the provisions of the Convention are fully reflected in all legislation.

**26.** The Committee is concerned about the many remaining discriminatory provisions in the Personal Status Code, which sets different standards for women and men in issues related to marriage and family life, including, *inter alia*, a different minimum age of marriage for women and men; restrictions for women in obtaining a divorce and the risk of

repudiation. The law provides for a different age for guardianship of girls and boys and stipulates restrictions on women in becoming legal guardians of their children. A bill is still pending adoption by Parliament concerning a Moroccan woman's right to pass on her nationality to her children, when she is married to a foreigner. The Committee is also concerned about the legal difficulties faced by single mothers.

**27.** The Committee urges the State party to continue the process of legislative reform within the framework of the Royal Commission on the Personal Status Code and to expedite it, and to amend discriminatory provisions affecting women's rights within the family in relation to divorce and repudiation, legal guardianship and the age for guardianship in order to bring them into harmony with the Convention. The Committee urges the State party to take measures to raise the minimum age of marriage for women and men to 18 years, in line with the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. The Committee urges the State party to expedite the adoption of the proposed bill on nationality and withdraw its reservation concerning article 9, paragraph 2 of the Convention. The Committee urges the State party to ensure that laws with regard to the status of women in the family as well as single mothers affirm and incorporate the principle of gender equality and partnership between women and men and the full realization of women's human rights. The Committee encourages the State party to reform relevant existing laws in consultation with women's groups.

**28.** While welcoming the State party's efforts and achievements to increase women's political participation at the national level, the Committee remains concerned about the low rate of representation of women in decision-making positions in all spheres, particularly in political representation at all levels, the public and private sectors, the judiciary, the foreign service and academia.

**29.** The Committee requests the State party to take effective and sustained measures to increase the political representation of women at all levels, taking into account article 4, paragraph 1 of the Convention. It also calls upon the State party to increase women's representation in decision-making positions in all spheres. The Committee also suggests that the State party offer support and leadership training programmes to women and carry out awareness-raising campaigns concerning women's participation in decision-making, including in the public and private sectors, the foreign service, the judiciary and academia.

**30.** The Committee expresses its concern that traditional discriminatory practices and strong stereotypical attitudes persist about the roles and responsibilities of women and men in the family and society, negatively affecting women's enjoyment of their rights and impeding the full implementation of the Convention.

**31.** The Committee urges the State party to increase its efforts to design and implement comprehensive awareness-raising programmes to foster a better understanding of equality between women and men at all levels of society with a view to changing stereotypical attitudes and discriminatory cultural practices about the responsibilities and roles of women and men in the family and society. It also recommends that the media be encouraged to project positive images of women and the equal status and responsibilities of women and men in society.

**32.** The Committee is concerned that there is a lack of specific legislation to eliminate violence against women and girls, including domestic violence, and violence against domestic workers.

**33.** The Committee recommends that the State party expedite the adoption and implementation of a national strategy to combat violence against women. This would include the collection of sex-disaggregated data on all forms of violence, research into the extent of violence against women and girls, including domestic violence, and the adoption of specific legislation on domestic violence. In the light of its general recommendation 19, the Committee calls upon the State party to ensure that all forms of violence against women are prosecuted and punished adequately and that victims have immediate means of redress and protection. The Committee requests the State party to ensure the full sensitization and training of law enforcement officials, the judiciary and the public on all forms of violence against women and girls. The Committee also urges the State party to take steps towards the protection of domestic workers and to ensure that restrictions on child labour are enforced.

**34.** While noting the efforts made by the State party to set concrete targets and develop a national strategy on education, the Committee notes with concern the continuing high levels of illiteracy of women and girls, in particular in rural areas.

**35.** The Committee calls upon the State party to develop gender-sensitive measures to eradicate female illiteracy, in particular in rural areas, and to strengthen measures to create an environment that increases the enrolment and retention rates of girls in schools at all levels, through increased

training and employment of female teachers, the development of gender-sensitive educational materials and the monitoring and evaluation of progress achieved toward time-limited targets.

**36.** Although progress has been made in reducing maternal and infant mortality rates and in increasing access to means of family planning, the Committee is concerned about the insufficient number of health-care facilities and particularly about rural women, who have little or no access to health-care services and health-care professionals.

**37.** The Committee calls upon the State party to increase women's access to primary health-care services, including reproductive health care, particularly for rural women, and to further increase access to affordable means of family planning for women and men. It also calls upon the State party to increase awareness campaigns on the importance of health and reproductive rights, including information on the spread of sexually transmitted diseases (STDs), including the human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS).

**38.** The Committee notes the absence of information on the situation of women in the informal sector and is concerned about the low level of women's participation in the paid labour force and about the persistent wage gap between women and men. The Committee notes also with concern that women are discriminated against in their access to loans and other forms of financial support as well as in the enjoyment of their right to property.

**39.** The Committee urges the State party to adopt appropriate measures to ensure women's equal access to paid employment and to adopt and enforce appropriate legislation according to its commitments to the relevant conventions of the International Labour Organization to ensure equal opportunities for women and men in the public and private sectors of the labour market, and to prevent direct and indirect discrimination in employment, training and remuneration. The Committee also calls on the State party to ensure that women, particularly in rural areas, have full and equal access to loans and other forms of financial support and that they face no obstacles in the enjoyment of their right to ownership of land.

**40.** The Committee notes that, although they constitute a large proportion of the population, rural women and girls continue to be marginalized in their access to government services.

41. The Committee urges the State party to take special measures to ensure that the needs and concerns of rural women are fully integrated in the formulation and implementation of all sectoral policies and programmes and to ensure that rural women and girls have full access to education and health-care facilities.

42. The Committee notes the slow progress in the implementation of the Convention by the State party and the modest responses to the Committee's concluding comments presented after the discussion of the State party's initial report. The Committee also notes the persistence of societal attitudes that discriminate against women and girls. Consequently, the combined effects of high illiteracy rates for women and girls, low representation of women in decision-making positions and a low employment rate for women negatively affect the impact of the national policies for gender equality.

43. The Committee encourages the State party to expedite the implementation of the Convention, the concluding comments of the Committee and the national strategy for the achievement of gender equality and to strengthen its efforts to change societal attitudes in order to eliminate discrimination against women and girls. The Committee encourages the State party to establish a national mechanism with sufficient human and financial resources to strengthen cooperation and partnership between the Government and civil society, including women's organizations.

44. The Committee urges the State party to sign and ratify the Optional Protocol to the Convention and also invites the State party to accept the amendment to article 20, paragraph 1, of the Convention, concerning the meeting time of the Committee.

45. The Committee requests the State party to respond to the concerns expressed in the present concluding comments in its next periodic report to be submitted under article 18 of the Convention in 2006 as a combined third periodic report, due in 2002, and fourth periodic report, due in 2006. The Committee also requests the State party to improve the collection and analysis of statistical data, disaggregated by sex and age, and to report on the results of programmes and policies, planned and undertaken, in its next periodic report to the Committee.

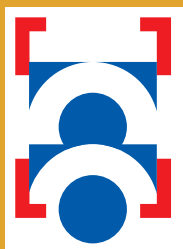
46. Taking account of the gender dimensions of declarations, programmes and platforms for action adopted by relevant United Nations conferences, summits and special sessions (such as the twenty-first special session of

the General Assembly to review and appraise the implementation of the Programme of Action of the International Conference on Population and Development, the twenty-seventh special session of the General Assembly on children, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Second World Assembly on Ageing), the Committee requests the State party to include information on the implementation of aspects of those documents relating to relevant articles of the Convention in its next periodic report.

**47.** The Committee requests the wide dissemination in Morocco of the present concluding comments in order to make the people of Morocco, and particularly government administrators and politicians, aware of the steps that have been taken to ensure *de jure* and *de facto* equality for women and the future steps required in that regard. It also requests the Government to continue to disseminate widely, in particular to women's and human rights organizations, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; the general recommendations of the Convention on the Elimination of All Forms of Discrimination against Women, the Beijing Declaration and Platform for Action; and the results of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace in the twenty-first century".



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