



مركز دراسات حقوق الإنسان والديمقراطية
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Centre d'Etudes en Droits Humains et Démocratie

Universal Periodic Review Parallel report to the fourth report Of the Kingdom of Morocco

**Prepared by the Center for
Human Rights and Democracy
Studies**

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Introduction

The Center for Human Rights and Democracy Studies was established in December 2005 in Rabat/Morocco as an independent non-governmental organization, to be a space for reflection and promotion of human rights culture through seminars, training workshops and realization of human rights-focused studies and guides. This parallel report seeks to assess public policies and advocate for law and programs reform in a manner that will contribute to putting Morocco's international commitments into practice. So far, the Center has organized tens of seminars and training workshops and has issued about fifty books and specialized magazines. Hundreds of law enforcement officials, civil actors, parliamentarians, youth, women among other actors have benefited from its activities and publications, with the support of and in partnership

with several international and local entities.

On that basis, the Center for Human Rights and Democracy Studies is presenting this parallel report as part of the current cycle of the universal periodic review.

1. Interacting with the universal periodic review mechanism

In accordance with the provisions of UN Resolution No. 60.251 issued by the General Assembly in March 2006, Morocco submitted to the relevant team, as part of its commitments in this regard, three national reports in the UPR rounds in 2008, 2012, and 2017. It also submitted a progress report in 2019.

The Kingdom of Morocco is expected to submit the fourth report four years after the third report, but until the time of preparation of this parallel report, it has not yet been submitted.

Recommendation:

Submit the fourth report of the comprehensive international review in accordance with the Kingdom's commitments.

2. Establishing and strengthening the institutions set forth in the Constitution

In this regard, articles 161 to 170 of the Moroccan constitution set forth numerous entities: some are concerned with the protection and promotion of human rights; some seek to advance human and sustainable development and participatory democracy, and others focus on good governance and regulations. More than a decade after the emergence of the new Moroccan constitution, some of these entities have not yet started working. These entities are:

The Authority for parity and fight against all forms of discrimination, which has not yet been created despite the publication of Law 74.79 establishing it in 2017¹.

The Advisory Council for Youth and Associations, despite the publication in the Official Gazette² of the Law 15.89 establishing it.

The Consultative Council for the Family and Childhood, despite the issuance of Law No. 14.78 relating to the Consultative Council for the Family

¹ Official Gazette No. 6612 (October 12, 2017) p. 5823

² Official Gazette No. 6640 (January 18, 2018) p. 436

and Childhood in the Official Gazette³.

Recommandation :

To expedite the establishment of these three entities and them with the means to function.

3. Reform of the iudicial svstem

It was expected that the Criminal Code and the Code of Criminal Procedure would be amended as part of the justice system reform in Morocco, but the House of Representatives received a request from the Moroccan Prime Minister of the current government to withdraw bill N° 16.10 which aims at completing and changing all of the criminal law⁴, the reason given were the intent to prepare a comprehensive reform project instead.

It is to be noted that although the Moroccan Constitution provides for the right to life with the non-implementation of the death penalty in Morocco since 1993, Moroccan laws contain provisions that carry the death penalty.

Furthermore, Morocco has not acceded to the Rome Statute of the International Criminal Court either.

³ Official Gazette No. 6640 (January 18, 2018) p. 436

⁴ <https://www.chambredesrepresentants.ma/ar>

Recommendations:

Accelerating the reform of the Moroccan criminal system to achieve the following objectives:

- Accelerate the reform of the Moroccan criminal system in order to ensure that criminal convictions are based on evidence other than the confessions of the accused;
- Ensure that impartial and effective investigations are conducted into all allegations related to torture, arbitrary arrest and detention and that those responsible for such offenses and those who bear responsibility for it are brought to justice;
- Strengthening judicial oversight of the work of the judicial police;
- Enabling the arrested person to have access to a lawyer as of the arrest and allowing the lawyer to see the full file, in addition to providing access to an independent doctor as of the moment of the arrest, and respecting the right of the arrested person to inform his/her family of the arrest and of the place where the person is being held and where he/she will be brought before a judge;

- Reducing the time spent in custody for crimes with time periods up to 96 hours that could be extended;
- Decriminalizing minor misdemeanors and applying alternative penalties;
- Legal abolishing of the death penalty;
- Joining the Rome Statute of the International Criminal Court.

4. Training and human rights education

If the project to reform the justice system in Morocco has given special attention to the material aspect leading to noticeable improvement in the judges' quality of life and court facilities, the training and human rights education did not receive the same degree of attention, both for basic and on-going training.

Recommendation:

Adoption of a comprehensive and integrated training strategy which highlights the importance of basic training in the university as well as the provisions to further upgrade law enforcement officers training institutes, while providing continuous training sessions open to real life issues linking the theoretical dimension to the professional practice and international

developments as well as judicial jurisprudence.

5. The situation of prisons⁵

It seems that the increase of the number of prison institutions with new prisons to improve detention conditions is still hampered by overcrowding and pretrial detention which limits the implementation of life humanization programs in prisons and better implementation of rehabilitation programs for prisoners to enable them to enjoy their rights and respect their dignity.

Recommendations:

Strengthening the normative aspect:

- Adoption of alternative penalties;
- Reconsidering the procedures and provisions related to pardon and conditional release and the role of the penalty execution...;
- Implementing the new law for prison institutions;
- Qualitative improvement in the judiciary's monitoring of prisons, the improvement of its reports, and the follow-up of the implementation of its recommendations.

Strengthening health care:

⁵ [We have relied in this regard on a study-report made by the Center for Human Rights and Democracy Studies](#)

Strengthening expertise in the field of mental health,

Improving prison conditions and humanizing them:

- Reducing the excessive use of pretrial detention and revising the legal concept that frames it;
- Adoption of alternative penalties with the actual application of them;
- Implementing the gender approach and providing care to vulnerable groups, especially women, juveniles, prisoners with disabilities and foreign prisoners in Morocco, in the criminal system and the law governing prisons;
- Making detention an exception for juveniles in conflict with the law.

Improving human resources:

- Boosting human resources to improve the percentage of multi-qualified supervision in prison institutions and improve the material and moral conditions of employees;
- Qualifying male and female employees in prison institutions and raising their capabilities

(n) to keep pace with the various legal, communicative and job developments,

6.Consolidating parity and gender equality in public policies

During the last two decades, important reforms have been implemented at the political, institutional and legal levels to achieve equality and parity. This period was also marked by the strategies, visions and projects launched for economic, social and environmental development with new approaches including the gender approach.

More than a decade after the adoption of the new constitution, which enshrines the principle of equality and the State's responsibility to implement parity, discrimination and violation of women's rights still exist, and the political, economic and societal representation of women is still weak, falling far short of announced ambitions. This is evident at the level of government (7 women ministers out of 28), the two chambers of parliament (24% and 8%), the presidency of district councils '1 out of 12' and the collective councils of major cities (3 cities), and in positions of responsibility in the public service 23.5%. The number of women appointed by decree to senior

positions did not exceed 137 out of a total of 1,160 positions for the period 2012-2020, i.e., a rate of 11.8%⁶

Recommendations:

- Taking effective and specific measures of positive discrimination aimed at ensuring equal access to positions of responsibility;
- Raising the number of women holding senior positions from 11.4 to 35 percent by 2035; as per the new development model project.

7. Other fundamental rights of women

In 2004, Morocco adopted a new family code, which at that time constituted a major advance in the field of women's rights. After two decades as Morocco ratified many international conventions related to human rights, it has a new constitution which enshrines the principle of equality and calls for the compatibility of national laws with the international obligations, and that's the reason why it has become necessary to introduce various reforms including:

Guardianship of children

⁶ See the report of the ministry of Economy and Finance related to the preparation of the budget for the year 2021, website:

https://www.finances.gov.ma/Publication/db/2020/PLF2021-20218_Rapport%20RH_AR.pdf

The Family Code in its fourth law that the purpose of marriage is to establish a stable family under the care of the spouses, and that the care of the children is the responsibility of both the father and the mother. The father is the legal guardian of the children even when the custody of the children is entrusted to the mother, who cannot take any administrative action regarding the child without the permission of the legal guardian. This contradicts the articles that define the responsibility of spouses in the family code (particularly articles 4 and 5), article 19 of the Moroccan constitution and article 16 of the Convention on the Elimination of All Forms of Discrimination against Women.

Recommendations:

- A suitable Family Code providing for the guardianship of mothers and fathers together over their children, in a way that guarantees the best interests of the child.
- Full respect of the mother's right to rebuild her marital life and not to forfeit her right to custody of her children in the event of her marriage.

Early marriage

Article 19 of the Family Code is that the eligibility for marriage is complete when a male person and a female person who are of full mental capacities have completed eighteen solar years. However, Article 19 of the same Code grants the family judge the possibility of marrying off minors under certain conditions, and this contradicts Article 23 of the International Covenant on Civil and Political Rights and Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, which expressly stipulates the need to set a minimum age for marriage and legal abolition of child marriage.

Recommendation:

Enact strict laws without the slightest exception prohibiting marriage before the age of eighteen for both sexes, and apply deterrent and injunctive penalties for anyone who marries a girl before the legal age of marriage.

Polvaamv

The Moudawana (family code) lays down the conditions to permit polygamy, including the consent of the first wife. However, the published figures reveal that many husbands marry more than one woman, either as a result of the consent

of the first wife or by resorting to tricks.

Recommendation:

The enactment of clear texts prohibiting polygamy, as it does not respect women's feelings, humanity and rights, does not protect the family and children, and is not in line with Morocco's international obligations.

Property acquired during marriage:

Domestic work for a woman during marriage is not recognized and results in the wife being deprived of her share of property acquired during married life when she is unable to prove her direct contribution to the development of family property.

Recommendation:

Adopting the obligatory family property management contract as part of the documents necessary for the marriage file, explicitly stipulating the consideration of the role of domestic work and child rearing in evaluating the contribution of women.

Miscarriage

Article 453 of the Moroccan Penal Code talks about permissible abortions, when the pregnancy is the result of rape, when the fetus suffers deformity, or when the life or health of the mother is at risk.

Recommendation:

A clear definition of the concept of health in the legal text that also includes mental health and social status, in accordance with the definition given by the World Health Organization.

Violence against women and girls

Violence against girls and women is a widespread phenomenon in Morocco. According to research conducted by the High Commission for Planning, in 2019, 57% of women have experienced at least one form of violence.

Yet these measures did not have a tangible effect in order to reduce and eliminate the severity of the phenomenon, according to the opinion of the Economic, Social and Environmental Council for the year 2020⁷.

Recommendations:

⁷ The Economic, Social and Environmental Council, eliminating violence against girls and women: a national urgency, self-referral, 2020, available on the website

Given the above-mentioned situation, the Center recommends:

- Making the issue of combating violence against women and girls a priority to be translated into a comprehensive and cross-cutting public policy based on a sustainable and specific budget.

Sexual harassment

Sexual harassment is at the forefront of the types of violence women are subjected to in the public space in Morocco. In a "Memorandum on Violence against Women and Girls" published by the High Commission for Planning, out of 12.6% of women who experienced violence in public places within a period of twelve months, 7.7% were victims of sexual violence. It is to be noted that the number of cases of violence is increasing in the public sphere, in the workplace, and in institutions that are supposed to protect women from violence.

Moroccan law on combating violence against women, which came into force in September 2018, punishes sexual harassment in public spaces, whether by "acts, words or gestures of a sexual nature or for sexual purposes." The penalty ranges from one month to six months in prison and a fine of Two thousand to ten thousand dirhams, or one

of the two penalties.

However, in many cases, victims of sexual harassment are unable to report what they have been exposed to, due to the difficulty of providing proof, and the weakness of mechanisms to ensure that women are listened to when reporting.

Recommendations:

- Strengthening the legal framework for combating moral and sexual harassment against women in public and private spaces;
- Inclusion of women's safety and protection from violence and harassment in public transportation and in public space in the policies of the city, urban planning, housing programs, etc.

Rape

According to Article 486 of the Moroccan Penal Code, the term "rape" means "the intercourse of a man with a woman without her consent," and is punishable by 5 to 10 years in prison according to the aforementioned article.

The criminal code considers that rape requires the absence of marital relationship between the accused and the victim. defloration is one of the elements increasing the severity of the penalty.

Law 486 states that "if the victim is under eighteen years of age, the offender shall be liable to imprisonment ranging from ten to twenty years." Also, Law 484 addresses "indecent assault" and stipulates a prison sentence between two and five years for every "indecent assault or attempted indecent assault of a minor..., whether male or female."

Recommendations:

- Create a special Code for the child to protect him/her from all dangers;
- Not to consider breaking the fast a condition for aggravating the penalty, but rather to tighten it in all cases of rape;
- Clarify the phrase "without her consent" in Law 486 to include all forms of violence that the abuser may engage in (moral, verbal, physical and psychological) as elements that emphasize the victim's lack of consent;
- Criminalizing marital rape by amending Law 486 to include this type of rape;
- Not applying mitigating circumstances for cases of sexual assaults against minors, even without violence;

The report is touching on these issues due to the priority given to them in the work of the Center. The report does not negate the various other commitments of Morocco, including the recommendations it approved before the Human Rights Council.