



# Morocco

## Gender Justice & The Law

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# Morocco

## Gender Justice

Assessment of laws affecting gender equality and protection against gender-based violence

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# ACRONYMS

<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CEDAW Committee</b>	UN Committee on the Elimination of Discrimination against Women
<b>ESCWA</b>	Economic and Social Commission for West Asia
<b>FGM/C</b>	female genital mutilation / cutting
<b>GBV</b>	Gender-based violence
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>NGO</b>	Non-government organization
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>SDGs</b>	Sustainable Development Goals
<b>UNDP</b>	United Nations Development Programme
<b>UNESCWA</b>	United Nations Economic and Social Commission for West Asia
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNFPA</b>	United Nations Population Fund
<b>UNHCR</b>	United Nations High Commission for Refugees (UN Refugee Agency)
<b>UNICEF</b>	United Nations Children's Fund
<b>UN Women</b>	United Nations Entity for Gender Equality and the Empowerment of Women
<b>WHO</b>	World Health Organization
<b>Arabic terms</b>	
<b>fatwa</b>	Ruling or pronouncement on a point of Islamic law
<b>'idda</b>	The period a woman must observe after the death of her spouse or after a divorce during which she may not remarry
<b>khalwa</b>	Social mingling of men and women who are unrelated
<b>khul'a</b>	Divorce process initiated by the wife requiring return of her mahr
<b>mahr</b>	Mandatory payment by the groom or his father to the bride which then becomes her property
<b>talaq</b>	Repudiation; divorce process whereby the husband repudiates his wife
<b>'urf</b>	Custom
<b>wali</b>	Guardian
<b>wilaya</b>	Guardianship
<b>zina</b>	Unlawful sex, including adultery and sex between two persons neither of whom are married

# INTRODUCTION

## Scope

UNDP, in partnership with UN Women, UNFPA, and ESCWA, has conducted a study on Gender Justice and the Law to provide a comprehensive assessment of laws and policies affecting gender equality and protection against gender-based violence in the Arab states region.

The study is composed of an introductory piece that describes the background, rationale, analytical framework and methodology, and a total of 18 country profiles. Each country profile maps the country's key legislative and policy developments regarding gender justice.

This country profile presents the findings of the study relating to Morocco. It provides an analysis of whether the country's laws and policies promote or impede equality between women and men before the law, and whether they provide protection against gender-based violence.

This country profile includes analysis of the following areas of the law:

- Constitutional guarantees of gender equality and constitutional protections against gender-based violence
- Status of penal codes and whether the country has domestic violence laws that address gender-based violence
- Status of personal status codes and how they impact gender equality
- Status of nationality laws and whether they ensure that women and men enjoy equal rights in relation to citizenship
- Status of labour laws and whether they provide protection from discrimination and gender-based violence in the workplace

## Methodology and acknowledgements

The study was conducted in two phases:

1. A literature review was conducted between January 2016 and June 2017 of the various laws, regulations, policies, and law enforcement practices related to gender justice in each of the 18 countries, which then formed the basis of draft country profiles.
2. Realizing the limitations of desk-based literature reviews, country validation processes for each of the draft country profiles were led by UN Country Teams and national consultants. Country validation processes took place between September 2017 and August 2018 to ensure the accuracy of each country profile. These sought the views of government partners and other key national stakeholders.

The Morocco country profile was reviewed by Ms. Raphaëlle Rafin, Programme Manager, UN Women Maghreb, and Mr. Abdessalam El Ouazzani, Ending Violence Against Women and Girls Intern, UN Women Maghreb. This country profile was informed by consultations conducted by UN Women Morocco consultant Mr. Benyounes Merzougui with: Members of the Committee on Equality within the House of Representatives; Ministry of Justice; Public Prosecutor's office; Ministry of the Family, Solidarity, Equality and Social Development; Ministry of State for Human Rights; the Ministry delegated to the Minister for Foreign Affairs in charge of Moroccans residing abroad and immigration affairs; Ministry of Employment and Vocational Training, Ministry of Health; Representative of the National Directorate of National Security; Representative of the Royal Gendarmerie; Moroccan Association of Women Judges; Bar Association of Morocco's lawyers and civil society organizations. Their contributions are gratefully acknowledged.

The literature reviews that formed the basis of the country assessment were authored by consultants John Godwin and Nadya Khalife. They also edited the final drafts for publication after feedback from national counterparts. Their insights and hard work are recognized with gratitude. Nadya Khalife and Amr Khairy translated the outputs of the study into Arabic and English. Gratitude is also extended to John Tessitore for assistance with copyediting in English.



# MOROCCO



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The colour-coded representation below provides a comparison of the laws identified in the country profile with international human rights standards, the recommendations of the UN Committee on the Elimination of Violence against Women and country recommendations under the country's respective Universal Periodic Reviews.

## Gender Justice & The Law

DOES THE LAW ENSURE GENDER EQUALITY AND PROTECTION FROM VIOLENCE?

### YES

The law provides for gender equality and/or protection from gender-based violence and is substantially compliant with international standards. A green category does not indicate that the law is perfect or that gender justice in the relevant topic area has been fully achieved.

### NO

The law does not provide for gender equality and/or there is no or minimal protection from gender-based violence.

### Partly

Some gender justice aspects of the law have been addressed, but important gender inequalities remain.

No available data or inadequate information.

## Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Morocco ratified CEDAW in 1993 and maintains a reservation to Article 29(1) (relating to process for resolving disputes), and a declaration to Article 2, stating that the government of Morocco is ready to apply the provisions of the Article as long as these do not conflict with Islamic law.

## Constitution

The 2011 Constitution includes a commitment to the protection of human rights and the prohibition against all forms of discrimination, including discrimination because of sex. Article 19 addresses equality between women and men.

## NATIONALITY LAW

### NATIONALITY

Women enjoy equal rights with men to confer their citizenship on their children under the Nationality Law. Women do not enjoy equal rights with men to confer citizenship on a foreign spouse. A Bill proposing to amend the Nationality Law to provide equal rights to women has been drafted.



## CRIMINAL LAWS

### Domestic violence

Women and girls are protected by the Law on Combating all Forms of Violence against Women, Law No. 103-13. However, it does not address marital rape. The Law could be strengthened by criminalizing marital rape as a form of violence against women and by clarifying the definition of domestic violence.

### Abortion for rape survivors

Article 449 of the Penal Code criminalizes abortion. There is no specific exception for rape. The Penal Code does not penalize abortion if it is necessary to preserve the health of the mother when a doctor performs the abortion with the permission of the husband.

### Female Genital Mutilation / Cutting (FGM/C)

There is no legal prohibition. There are no documented cases.

### Marital rape

Marital rape is not criminalized.

### Sexual harassment

Article 503 of the Penal Code criminalizes sexual harassment.

### Human trafficking

Law No. 27-14 on Combating Trafficking in Persons criminalizes human trafficking and addresses trafficking prevention and protection measures.

### Rape (other than of a spouse)

Article 486 of the Penal Code criminalizes rape, which is defined as sexual intercourse between a man and a woman without her consent.

### Honour crimes: Mitigation of penalty

Article 418 of the Penal Code provides that a husband or wife benefits from a mitigated sentence if they kill their spouse caught in an act of adultery. Article 420 provides for a reduced sentence for a head of a household who assaults a person he finds in his home engaged in illegal sex.

### Sex work and anti-prostitution laws

Prostitution is prohibited by Article 498 of the Penal Code.

### Exoneration by marriage

There is no 'marry-your-rapist / abductor' provision in the Penal Code.

### Adultery

Adultery is an offence under Article 491 of the Penal Code.

### Sexual orientation

Homosexual conduct between consenting adults is a criminal offence under Article 489 of the Penal Code.

## PERSONAL STATUS LAWS

### Minimum age of marriage

Article 19 of the Family Code provides that the legal age for marriage for males and females is 18 years. Courts can approve marriage of minors. Article 16 has been used by some courts to recognize child marriage.

### Guardianship of children

The father is the legal guardian of his minor children. The mother is guardian if the father is absent or is deprived of capacity.

### Male guardianship over women

The Family Code does not require women to have a male marriage guardian.

### Custody of children

In the event of divorce, child custody is awarded first to the mother, and children can choose to be in the custody of the mother or father when they reach 15. A mother loses custody if she remarries unless conditions specified in the Family Code are met.

### Marriage and divorce

Women enjoy equal rights in most aspects of marriage and divorce. A court may grant divorce based on mutual consent or on specified grounds. A man wishing to divorce unilaterally must apply for court permission. If the wife wants divorce but her husband does not consent, divorce may be granted if the wife pays compensation.

### Inheritance

The Family Code requires Sharia rules of inheritance to be applied. Women have a right to inheritance, but in many cases receive less than men. Daughters receive half the share that sons receive. The child of a deceased mother inherits from the maternal grandparents in the same way as a child of a deceased father.

### Polygamy

Polygamy is permitted by the Family Code, subject to strict conditions. The husband must provide a court with evidence of an "exceptional justification" for the marriage and to prove he has sufficient financial resources to cover family expenses, housing, and to ensure equal treatment of his wives.

## LABOUR LAWS

### Right to equal pay for the same work as men

Article 346 of the Labour Code prohibits discrimination in remuneration between men and women.

### Domestic workers

Domestic workers are not protected by the Labour Code. Under the Law on Domestic Workers of 2016, domestic workers have some rights, including entitlement to written contracts and a minimum wage.

### Dismissal for pregnancy

Employers are prohibited from dismissing women because of pregnancy by Article 152 of the Labour Code.

### Paid maternity leave

Women have the right to 14 weeks of paid maternity leave under Article 152 of the Labour Code. This meets the ILO recommendation for paid maternity leave.

### Legal restrictions on women's work

Women are restricted from participating in some occupations, including mining. The Labour Code prohibits the employment of women in occupations listed in regulations, including work that poses excessive risk, is considered beyond their capabilities, or is likely to undermine morality.

# OVERVIEW

## Legal framework

### International laws

Morocco ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1993 and maintains a reservation to Article 29(1) (relating to the process for resolving disputes), a declaration to Article 15(4) (stating that women can choose their residence and domicile only if compatible with relevant provisions of the Family Code), and a declaration to Article 2 (stating that the government of Morocco is ready to apply the provisions of the Article as long as these do not conflict with Islamic law). Article 2 of CEDAW urges all countries to work towards eradicating discrimination against women by introducing new laws or policies, changing existing discriminatory laws, and providing sanctions for discrimination where it occurs.

In 2011, Morocco withdrew its reservations to Article 9(2) (nationality) and Article 16 (equality in marriage and family life).

### Domestic laws

The main laws relevant to gender justice are:

- Constitution of 2011
- Nationality Law of 1958, as modified and completed (October 2011)
- Penal Code of 1962 last amended in 2016<sup>1</sup>
- Labour Code of 2003
- Family Code of 2004
- Law on Combating Violence against Women of 2018

### Constitution

The Constitution states that international conventions duly ratified by Morocco take precedence over national law.<sup>2</sup> Text of the Constitution relevant to protection from gender-based violence (GBV) include:

- ☒ The enjoyment of dignity, equality, equal opportunity, social justice, and the foundations of decent living by all people . . . as a basis for the consolidation and strengthening of institutions of the modern State, with the State's emphasis on its adherence to universally recognized human rights and its commitment to the protection of human rights and international humanitarian law, taking into account the universal character of those rights, their indivisibility, the prohibition and the fight against all forms of discrimination, on the basis of sex, colour or . . . any personal situation . . .<sup>3</sup>
- ☒ The government works towards creating conditions permitting the effective liberty and general equality of female citizens and male citizens as well as their participation in political, economic, cultural, and social life.<sup>4</sup>
- ☒ Men and women enjoy, in equality, the rights and freedoms of civil, political, economic, social, cultural, and environmental character, enounced in provisions of the Constitution, as well as in the international conventions and pacts duly ratified by Morocco, and this with respect for the provisions of the Constitution, the Kingdom, and of its laws. An Authority for parity and the struggle against all forms of discrimination is created to this effect.<sup>5</sup>
- ☒ All have the right to the security of their person and of their kin and to the protection of their assets.<sup>6</sup> The physical or moral integrity of anyone may not be infringed, in whatever circumstance that may be, and by any party that may be, public or private. No one may inflict on others, under whatever pretext there may be, cruel, inhuman, [or] degrading treatments or infringements of human dignity.<sup>7</sup>
- ☒ The law provides for the promotion of equality of opportunity between women and men in elective positions.<sup>8</sup>
- ☒ The government enacts and implements policies designed for persons and for categories of specific needs, including

<sup>1</sup> The Ministry of Justice regularly publishes updated versions of the Penal Code. The last one has been produced in July 2018, and includes law 103.13 on eliminating violence against women, which is not yet in force. Pending entry into force of this law, the Code has been last modified in 2016 by law 27-14 on human trafficking. Penal Code – consolidated version as of 5 July 2018, <http://adala.justice.gov.ma/production/legislation/fr/Nouveautes/code%20penal.pdf>.

<sup>2</sup> Constitution of 2011, Preamble.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid., Art. 6.

<sup>5</sup> Ibid., Art. 19.

<sup>6</sup> Ibid., Art. 21.

<sup>7</sup> Ibid., Art. 22.

<sup>8</sup> Ibid., Art. 30.

addressing the vulnerable situations of groups of women and mothers.<sup>9</sup>

- ☒ Provisions to improve the representation of women within local government councils.<sup>10</sup>
- ☒ The regulation of public services on the basis of equal access between citizens.<sup>11</sup>

The Constitution promulgated the establishment of relevant institutions and bodies. Those specifically concerned with issues related to women and the family are as follows:

- ☒ The Authority for Parity and the Fight against all forms of Discrimination, established by Law 79.14 in 2017 in accordance with the 2011 Constitution<sup>12</sup>
- ☒ Advisory Council for Family and Childhood<sup>13</sup>

Other bodies concerned with human rights include:

- ☒ National Council for Human Rights<sup>14</sup>
- ☒ Ombudsperson's Institution<sup>15</sup>
- ☒ Council of the Moroccan Community Abroad<sup>16</sup>

## Policy framework

### ICRAM Plans

In 2012, the Ministry of Solidarity, Women, Family, and Social Development adopted the first four-year Governmental Plan for Gender Equality (ICRAM) for the period 2012–2016. A second government Plan for Equality (ICRAM 2) has been developed for the period 2017–2021.

These government plans provide a framework for the realization and the convergence of various initiatives to promote gender equality and the integration of women's rights into public policies and development programmes. They are based on the requirements of the Constitution and Morocco's international commitments to build new social relations between women and men, also aim at ensuring the full and equitable participation of women in various fields and ensuring equal and equitable benefits.

The Council of Ministers approved the government's first Plan for Equality in June 2013, and a decree was issued to establish the Ministerial Committee for the Government's Plan for Equality in July 2013. At the end of the period allocated to the plan, the results of its implementation were presented in 2016. The Minister of Solidarity, Women, Family, and Social Development stated that 73 per cent of its procedures were achieved by 100 per cent, while 83 per cent of the procedures were achieved by more than 70 per cent. Important sectoral initiatives were achieved, notably the establishment of specialized monitoring institutions and mechanisms to support women, especially those who are victims of discrimination and violence.

As a result of the first Government Plan for Equality, the Ministry claimed that 39 measures were implemented towards eliminating discrimination and violence against women, and 37 others were implemented towards institutionalizing and disseminating the principles of equality. Seven measures were related to the rehabilitation of the education system and training on the basis of equality, seven measures were related to the promotion of equitable and equal access to health services, and 20 measures were related to the social and economic empowerment of women and the development of basic infrastructure to improve the living conditions of women and girls.

### National Observatory for Violence against Women

The National Observatory for Violence against Women is a tripartite national mechanism that brings together institutional and community partners and researchers representing university research and research centres. The Ministry of Solidarity, Women, Family, and Social Development is the permanent secretariat for the National Observatory for Violence against Women, which was created on 7 August 2014.<sup>17</sup> The Observatory publishes every year a compilation of data from cases reported to the police, the gendarmerie, the justice, and to hospitals.

9 Ibid., Art. 34.

10 Ibid., Art. 146.

11 Ibid., Art. 154.

12 Law 79.14, [http://www.sgg.gov.ma/Portals/1/lois/Loi\\_79.14\\_ar.pdf?ver=2017-11-16-112448-930](http://www.sgg.gov.ma/Portals/1/lois/Loi_79.14_ar.pdf?ver=2017-11-16-112448-930)

13 Law 78.14, [http://www.sgg.gov.ma/Portals/1/lois/Loi\\_78.14\\_Ar.pdf?ver=2016-09-16-131703-033](http://www.sgg.gov.ma/Portals/1/lois/Loi_78.14_Ar.pdf?ver=2016-09-16-131703-033)

14 Available from [http://www.sgg.gov.ma/Portals/1/lois/CNDH\\_Ar.pdf](http://www.sgg.gov.ma/Portals/1/lois/CNDH_Ar.pdf)

15 Available from [http://www.sgg.gov.ma/Portals/1/lois/Mediateur\\_Ar.pdf](http://www.sgg.gov.ma/Portals/1/lois/Mediateur_Ar.pdf)

16 Decree 1.07.208, [http://www.sgg.gov.ma/Portals/1/lois/dahir\\_1.07.208\\_ar.pdf?ver=2016-12-14-115613-153](http://www.sgg.gov.ma/Portals/1/lois/dahir_1.07.208_ar.pdf?ver=2016-12-14-115613-153)

17 Available from <http://www.social.gov.ma/ar/1-مناهضة-العنف-والتمييز-ضد-النساء/المرصد-الوطني-للعنف-ضد-النساء>

## National Strategy to Fight Violence against Women (2004)

A national strategy to fight violence against women was adopted in 2004 and was followed by a framework for implementation in 2005. This Strategic Framework presents the most important national efforts to combat violence against women and presents the strategic framework to address and reduce GBV.

## National Strategy on Migration and Asylum

In 2014, the government adopted a national strategy on migration and asylum, which included anti-trafficking measures as well as measures specifically dedicated to promoting the integration of female migrants and their access to social services. The government also developed a national anti-trafficking action plan, which included commitments to finalize and adopt an anti-trafficking law, develop victim protection measures, provide anti-trafficking training for officials, and invest in prevention campaigns.

## Legal and support services

The institutional information system on violence against women was created to consolidate all data related to women and girls who are victims of GBV. A protocol on exchange of information on cases of violence against women was signed in 2014 by the Ministry of Justice and Freedoms, Ministry of Health, The Royal Gendarmerie, the Directorate of National Security of the Ministry of Interior, and the Ministry of Solidarity, Women, Family, and Social Development.

The government is in the process of creating dedicated multifunctional spaces for women, and provides support to non-governmental organizations (NGOs) in the provision of services to women survivors of violence.

Multifunctional spaces for women provide counselling, social, and legal services to women who are victims of violence to support the efforts of the Ministry of Solidarity, Women, Family, and Social Development in combating violence against women. These facilities provide economic and social empowerment programmes for women, temporary shelter services, and care for women and girls in difficult situations.

The Ministry has completed a practical guide containing information relevant to the institutional cells that serve as the spaces for the reception and protection of women and children who are victims of violence.

Many domestic NGOs work to advance women's rights and promote women's issues, notably through advocacy efforts at the national and the international levels and awareness-raising campaigns. Domestic NGOs also run networks of counselling centres as well as some shelters for survivors of GBV.

## Services to survivors of trafficking

The government relies heavily on NGOs to provide protective services to survivors of trafficking. The Ministry of Moroccans Residing Abroad and Migration Affairs has partnership agreements with civil society organizations to provide urgent humanitarian services to vulnerable migrant populations, including potential trafficking victims. The government also works with the tourism industry to prevent sexual exploitation of children.

Recognized refugees can gain access to health care services. Although asylum seekers residing illegally in the country do not have access to health insurance, the Ministry of Health has put in place rules that allow access to public hospitals to all persons, regardless of their legal status or nationality.<sup>18</sup> Law 27-14 on fighting human trafficking introduces the obligation for the State to provide protection, health care, housing, and psychological and legal assistance to victims of human trafficking.<sup>19</sup>

## Access to justice

The Ministry of Justice has put in place starting from 2004 institutional cells specialized in providing support to women and children survivors of violence, which are now present in all Courts of First Instance and Appeals Courts. The national police force and the gendarmerie have set up similar structures within local stations. Although women have access to free legal aid provided by the King's Prosecutor, female witness testimonies are not generally considered to be of the same weight or reliability as men. Domestic violence is usually mediated within the family, rather than through formal litigation or prosecution.

Access to the court system remains low for women survivors of violence. The National Survey on the Prevalence of Violence against Women conducted in 2009 by the High-Commissioner for Planning with the support of UN Women showed that only 17.4 per cent of women subjected to violence in public spaces in the twelve months preceding the survey lodged a complaint with the

18 Hicham El Berri, "Medical Coverage of Migrants in Morocco." Paper presented at the Ministry of Health on 9 April 2018 for the World Health Day, [http://www.sante.gov.ma/Documents/2018/04/JMS\\_Migrants\\_V2.pdf](http://www.sante.gov.ma/Documents/2018/04/JMS_Migrants_V2.pdf)

19 Dahir n°1-16-127 promulgating Law n°27-14 on fighting human trafficking, Official gazette n°6526, 15 December 2016, p. 1952.

police, and that only 3 per cent of women who had been subjected to violence by their husband within the same period reported their case to the police.<sup>20</sup>

Although the Family Code enacted in 2004 is considered one of the most progressive personal status laws in the Arab world, it is not well understood among women in the general population, and especially in rural areas.

Widespread female illiteracy also limits women's ability to access justice.

## PROTECTION FROM DOMESTIC VIOLENCE AND SEXUAL VIOLENCE

### Law on Combating Violence against Women

A draft Law on Combating All Forms of Violence against Women was submitted to the Cabinet in 2013. The Ministry of Family submitted the draft bill (Bill 103-13) to the Chamber of Representatives on 17 March 2016. After a series of delays, the bill was passed on 14 February 2018 and entered into force in August 2018.<sup>21</sup>

The Law contains 17 articles, the first of which includes a broad definition of violence against women, including any material or moral act or omission based on gender discrimination that results in physical, sexual, psychological, or economic harm to a woman. The Law criminalizes domestic violence, establishes prevention measures, and provides new protections for survivors. The Law, however, does not criminalize marital rape.

The Law allows for protection orders that prohibit a person convicted of a crime of harassment, assault, sexual abuse, mistreatment, or violence against women or minors from contacting, approaching, or communicating with the victim. Violations of protection orders or protective measures can lead to imprisonment or fines. The Law requires that a criminal prosecution be launched against the perpetrator in order for a woman to obtain a protection order. The Law inserts Article 88-1 into the Penal Code, which states:

If a person is convicted for a crime of harassment, assault, sexual abuse, mistreatment, or violence against women or minors, regardless of the nature of the act or the perpetrator thereof, the court may adjudicate the following:

- 1 – Prohibit the convict from contacting the victim, approaching victim's whereabouts, communicating with the victim by any means whatsoever for a period no longer than five years as of the date of his release, or as of the date of the judicial decision in case of a suspended sentence, fine or alternative punishment; Reconciliation between the spouses shall terminate the prohibition against contact with the victim;
- 2 – The convict shall be subject to appropriate psychological treatment throughout the period provided for in the above item or throughout his imprisonment time.

The judicial decision of conviction may include the implementation of such procedure (treatment) temporarily regardless of any form of appeal exercised;

The court may issue an order prohibiting the convict indefinitely from contacting the victim, approaching victim's whereabouts, or communicating with the victim, provided that the court justifies such order.

Article 88-3 provides that during a prosecution for the offences listed in Article 88-1 the investigating judge (or the court, if necessary) may give an order prohibiting the prosecuted from contacting the victim, approaching the victim's whereabouts, or communicating with the victim by any means whatsoever. Such order may also be issued at the victim's request, and shall remain in effect until the court issues its final decision.

The Law amends a number of other articles of the Penal Code. It increases penalties for some forms of violence that are offences in the Penal Code when the crimes are committed within the family. The Law also establishes several new crimes, including forced marriage, squandering money or property to circumvent payment of maintenance or other dues arising from a divorce, expelling or preventing a spouse from returning home, and sexual harassment in public spaces and Internet harassment. It expands the definition of sexual harassment in Article 503 of the Penal Code to include harassment by a co-worker or a family member.

The Law requires public authorities to take prevention measures, including programmes to raise awareness about violence against women. It also provides for specialized units for women and children in courts, government agencies, and security forces, and local, regional, and national committees to address violence against women.

For the Ministry, the Law aims at empowering the Kingdom of Morocco with a clear and coherent legal provision that guarantees the minimum standards and regulations for the legal protection of women victims of violence and the creation of institutional and integrated mechanisms to ensure compliance with the necessary rules and regulations. These institutions are required

<sup>20</sup> High Commission for Planning, National Survey on the Prevalence of Violence against Women (2009), [https://www.hcp.ma/Enquete-nationale-de-la-prevalence-de-la-violence-a-l-egard-des-femmes\\_a105.html](https://www.hcp.ma/Enquete-nationale-de-la-prevalence-de-la-violence-a-l-egard-des-femmes_a105.html).

<sup>21</sup> Human Rights Watch, New Violence Against Women Law (26 February 2018), <https://www.hrw.org/news/2018/02/26/morocco-new-violence-against-women-law>.



to ensure that the interventions are quick and efficient for the various stakeholders involved in the implementation of this law through the following:

- Establishing a specific and precise conceptual framework that would assist the service providers in identifying and limiting acts and behaviours involved in violence against women by defining the concept of violence and its various forms;
- Establishing mechanisms to ensure that women and children who are victims of violence are supported;
- Establishing mechanisms for coordination between those involved in the fight against violence against women and their protection;
- Criminalizing certain acts of violence against women, including sexual harassment, with increased penalties if harassment is committed in certain circumstances and by specific persons;
- Increasing penalties for certain acts if committed in specific circumstances, such as violence against a pregnant woman, against a spouse, or in the presence of children or parents;
- Adopting new protection measures within the framework of the Code of Penal Procedure.

## Penal Code provisions

The Penal Code contains some provisions protecting women from certain forms of discrimination, physical violence, and certain forms of sexual violence, including sexual harassment perpetrated by a supervisor in the workplace, rape, and indecent assault. The classification of sexual violence offences is discriminatory, in that offences such as rape and indecent assault are categorized as crimes against family order and morality, rather than crimes against persons, as is assault and battery for instance. The Penal Code also incriminates adultery and sexual relations outside marriage.

## Indecent assault

Indecent assault is a criminal act if committed against a minor (under 18 years) or a person who is incapacitated, disabled, or known to be mentally disabled, whether male or female, without violence. Penalty is 2–5 years' imprisonment.<sup>22</sup>

In the case of use of violence, the penalty is increased to 5–10 years' imprisonment, whether it is assault or attempted assault, and to a maximum of 10–20 years if the victim is a child under the age of 18 years, incapacitated or disabled, or known to be mentally impaired.<sup>23</sup>

## Rape

The crime of rape is defined as "sexual intercourse between a man and a woman without her consent," which carries a maximum penalty of imprisonment of five years, or imprisonment of 10–20 years if the victim is less than 18 years of age, incapacitated or disabled, is made vulnerable by a mental disability, or pregnant.<sup>24</sup>

If the perpetrator is from the victim's family, or has authority over the victim, or is a legal guardian, or a paid worker, or a religious leader or official, or any person who assaults one or more persons, the punishment is 5–10 years in prison but can be as much as 20–30, depending on the severity of the case.<sup>25</sup>

The penalty shall also be increased if the crime results in the "deflowering" of the victim (loss of virginity).<sup>26</sup>

Spousal rape is not specifically defined as a crime.

## Sexual harassment

Sexual harassment by a supervisor in the workplace is criminalized by Article 503-1 of the Penal Code, and carries a maximum sentence of two years' imprisonment. The Penal Code was amended by the Law on Combating Violence against Women to include the following sexual harassment offence:

Article 503-1-1: Any person who persistently harasses another person shall be considered as a perpetrator of a sexual harassment crime and shall be sentenced with one to six months of imprisonment and a fine ranging from 2,000 to 10,000 Dirhams or one of them, namely:

1 – Harassment in public spaces by words, acts, or signals of a sexual nature for sexual purposes;

2 – Written letters, phone or electronic messages, records, or images of sexual nature for sexual purposes. Such punishment shall be doubled if the perpetrator is a work colleague or one of those in charge of order or security of public places.

<sup>22</sup> Penal Code, Art. 484.

<sup>23</sup> Ibid., Art. 485.

<sup>24</sup> Ibid., Art. 486.

<sup>25</sup> Ibid., Art. 487.

<sup>26</sup> Ibid., Art. 488.

## Criminalization of gender-based discrimination

The Penal Code treats discrimination on grounds of gender or marital status as follows. Sex discrimination is criminalized under the section on crimes and misdemeanours against persons. Discrimination is any distinction between natural persons on grounds of national origin or social status, colour, sex, family status, health status, disability, political opinion, trade union affiliation, or affiliation or non-affiliation to a race, nation, or religion. Discrimination is punishable by imprisonment from one to two years and a fine of 1,200 to 50,000 Dirhams.<sup>27</sup>

Punishment for discrimination is excluded for:

- ☒ activities that prevent the risk of death or the risk of harm to a person's physical health, or the risk of incapacitation or disability, and those activities intended to cover these risks, or
- ☒ refusing to hire a person on the basis of health conditions or disability that would prevent him or her from working, in accordance with the provisions of labour legislation and legislation related to civil service regulations, or
- ☒ refusing to hire a person for a position for which being of one or the other gender is an essential requirement of that position.<sup>28</sup>

## HONOUR CRIMES

The Moroccan legislation does not provide for excuses or mitigating circumstances in cases of so-called "honour crimes." However, the Penal Code provides for mitigating circumstances for so-called "crimes of passion," for instance, when a husband or wife benefits from a mitigated sentence if they kill their spouse caught in an act of adultery.<sup>29</sup> A reduced sentence also applies to a head of a household for assault or battery of a person he finds in his home engaged in illegal sex.<sup>30</sup>

## ADULTERY AND SEX OUTSIDE OF MARRIAGE

Any married person convicted of adultery is punishable by imprisonment for one to two years. An adultery prosecution is pursued only on a complaint from the offended spouse, except in the case of the absence of one of the spouses outside Morocco, in which case the public prosecutor may prosecute the spouse engaged in adultery on their own initiative.<sup>31</sup>

In view of the nature of this crime, the waiver by one of the spouses of his/her complaint ends the prosecution of the husband or wife engaged in adultery; and if the waiver is granted after the issuance of an irrevocable judgment, the sentence against the convicted spouse is terminated and its legal effects annulled. However, neither the wife's partner nor the husband's partner shall benefit from such a waiver.<sup>32</sup>

"Fornication" is a crime defined as a sexual relationship between an unmarried man or unmarried woman, which is penalized with a prison term of one month up to one year.<sup>33</sup>

Crimes of fornication and adultery can only be proven on the basis of an official record issued by a judicial police officer in cases of being caught in the act of committing the offence (in flagrante delicto), or on the basis of a confession contained in letters or documents issued by the accused or through a judicial confession.<sup>34</sup>

27 Ibid., Art. 431(2).

28 Ibid., Art. 431(4).

29 Ibid., Art. 418. As amended by Decree No. 207.03.1 of 16 Ramadan 1424 (November 11, 2003), Law No. 03.24.

30 Ibid., Art. 420.

31 Ibid., Art. 491.

32 Ibid., Art. 492.

33 Ibid., Art. 490.

34 Ibid., Art. 493.

# ABORTION FOR RAPE SURVIVORS

Anyone who aborts or attempts to abort a pregnant woman, or a woman whom the offender believes is pregnant, with or without her consent, whether through the provision of food, drink, drugs, deception, violence, or any other means, is liable to imprisonment for one to five years and a fine of 200–500 Dirhams. If the abortion results in her death, the penalty is imprisonment for 10–20 years.<sup>35</sup>

The Penal Code also incriminates physicians, surgeons, health workers, dentists, midwives, pharmacists, medical or dental students, pharmacy workers, herbalists, surgical equipment vendors, nurses, and obstetricians who provide advice on the use of abortion methods,<sup>36</sup> and provides for sentences of imprisonment for up to five years (20 years if the woman dies as a result of the abortion), as well as for the revocation of professional licenses, either permanently or for a limited period.

The Penal Code does not penalize abortion if it is necessary to preserve the health of the mother when a doctor or surgeon has publicly performed it with the permission of the husband. This permission is not required if the doctor considers that the mother's life is in danger. In the absence of a husband or if the husband refrains from granting his consent, the doctor or surgeon may perform the surgical procedure or use a treatment that may result in abortion only with written permission from the chief health officer of the province, stating that the mother's health can be maintained only with such treatment.<sup>37</sup>

Any woman who deliberately aborts herself, attempts to do so, or accepts to be aborted by others, or accepted the use of what she has been advised or given for this purpose is punished by imprisonment from six months to two years and a fine of 2,500 Dirhams.<sup>38</sup> The same penalty is applied to those who incite abortion, even if this incitement does not lead to the abortion.<sup>39</sup>

A draft law was adopted by the Council of Government in June 2016 to review Article 453 of the Penal Code and to decriminalize abortion in three cases: if the pregnant woman is the victim of rape or incest and a judicial inquiry was launched; if the pregnant woman suffers from a mental disorder; or in case of foetal deformities.

# FEMALE GENITAL MUTILATION/CUTTING (FGM/C)

No law prohibits FGM/C specifically. It is not known to be practiced in Moroccan cultures, but may be present among migrant populations originating from countries where the practice is common.

# FAMILY MATTERS

## Marriage

The Family Code<sup>40</sup> places the family under the joint responsibility of both spouses. Men and women enjoy equal rights in most aspects of marriage, divorce, and children.

A woman can contract her own marriage, without guardian consent. There is no requirement for a guardian (*wali*).<sup>41</sup> The legal age for marriage for males and females is 18 years.<sup>42</sup> Parents can apply for a waiver from a judge to permit underage marriage with the informed consent of the minor. The judge may authorize an underage marriage after considering the reasons justifying the marriage, after having heard the views of parents or guardians and with the assistance of medical evidence, or after having conducted a 'social enquiry'.<sup>43</sup>

35 Ibid., Art. 449.

36 Ibid., Art. 451.

37 Ibid., Art. 453.

38 Ibid., Art. 454.

39 Ibid., Art. 455.

40 Family Code (Moudawana) of 2004.

41 Ibid., Arts. 24–25.

42 Ibid., Art. 19.

43 Ibid., Art. 20.

The marriage of a minor is subject to the consent of the legal guardian, and if the guardian does not consent, the judge rules on whether the marriage is authorized.<sup>44</sup> Child marriage remains a concern in Morocco, particularly in rural areas. See discussion of Article 16 (below), which is exploited to formalize some child marriages.

A person who suffers a mental disability has the right to marry.<sup>45</sup>

Both spouses have reciprocal rights and obligations in marriage, including cohabitation, marital relationship, responsibilities for household affairs and affairs of their children, good relations between relatives, and rights to inheritance.<sup>46</sup> If either spouse does not uphold his or her obligations, he or she may request the implementation of marital obligations or resort to the authorities for separation.<sup>47</sup>

The public prosecutor may intervene on behalf of either spouse who is expelled from the marital home and to ensure they are safeguarded and protected.<sup>48</sup>

The Family Code permits a court to authorize polygamy in exceptional cases, subject to requirements that include documentary evidence of the husband's financial ability to support more than one wife.<sup>49</sup> Polygamy is restricted to conditions prescribed by Islamic law to ensure justice and equality between the first wife and her children in all aspects of life.<sup>50</sup>

The law requires that the to-be second wife be notified that the man she intends to marry is already married (after permission to take another wife) in order for the marriage to be contracted, so as to ensure that she has consented to marrying an already-married man. The marriage cannot be concluded until she has consented to this.<sup>51</sup>

The Family Code prohibits polygamy "if there is unfairness between the wives, or if the wife sets a condition in the marriage contract that does not allow the husband to take an additional wife."<sup>52</sup>

Article 41 places clear conditions on courts to prohibit polygamy, especially if there is no evidence of exceptional circumstances or if the husband does not have the financial means to provide financially for his family, to provide all rights to maintenance and housing to his wives and children, and to ensure equality in all aspects of life.

## Exploitation of Article 16 of the Family Code: polygamy, child marriages, and customary marriages

Article 16 enables an applicant who failed to register a marriage in due time to lodge a petition for recognition of the marriage by the court. The court can consider pregnancy or children of the couple as evidence of marriage. Article 16 was designed to allow rural couples additional time to register their marriages during a transitional period after the Family Code was introduced. However, it has been exploited to register child and polygamous marriages, contrary to its original purpose. The initial five-year transition period has been renewed since and is still in force.

Article 16 of the Family Code is exploited to avoid the conditions set on polygamy by Article 41, as Article 16 does not require the plaintiff to present a certificate that he is single or has sufficient resources or that he will ensure all rights to maintenance and housing and equality in all aspects of life.

The exploitation of Article 16 is also used to override the articles governing the marriage of minors. Although the eligibility of marriage is set at 18 years for men and women, Article 20 states that "the marriage of a minor is subject to the consent of his or her legal guardian"; and according to Article 21, "the marriage of a minor depends on the consent of the legal guardian . . . provided that his signature is apposed along that of the minor on the application for permission to marry and that he attends the conclusion of the contract," and that the refusal of the legal guardian to consent authorizes the family judge in charge of marriage to decide the matter.

It should be noted that the marriage of minors is a violation of the rights of the child, especially the right to education, training, and health, and is contrary to the provisions contained in international treaties and conventions ratified by Morocco.

Article 16 of the Family Code is also exploited to formalize undocumented marriages, including customary marriages entered without a contract or by proclaiming "*al fatiha*" (from the Quran). Article 16 thus encourages this type of marriage because the courts can find that the marriage is valid by taking into account "the existence of children or pregnancy resulting from the marital

44 Ibid., Art. 21.

45 Ibid., Art. 23.

46 Ibid., Art. 51.

47 Ibid., Art. 52.

48 Ibid., Art. 53.

49 Ibid., Arts. 40, 41.

50 Ibid., Arts. 40, 41, 42.

51 Ibid., Art. 46.

52 Ibid., Art. 40.

relationship," which allows for the deception of women, especially minors, even with their consent, through abuse or rape, in order to use "pregnancy" to establish a marital claim.

The misapplication of Article 16 has led to negative outcomes that are harmful to women. Among the most important are the avoidance of the requirements of Article 13 concerning the conditions necessary for the marriage contract and Articles 6 and 65 concerning administrative and formal procedures for the conclusion of a marriage contract.

The misuse of Article 16 has raised the number of single mothers, especially among minors and survivors of violence; has promoted forced marriages, the suffering of women from infidelity, and the loss of women's rights and the rights of their children; and has increased the number of unregistered children born of unrecognized marriages.

To resolve these problems, civil society associations have proposed amendments to Article 16, including:

- ☒ A limit to the transitional period
- ☒ Adherence to the rules established by the other articles of the Code in relation to polygamy and marriage of minors
- ☒ Confirmation that the marriage contract should become the only acceptable means of establishing marriage

## Forced marriage

On 29 March 2018 the Office of the Chief Prosecutor issued a bulletin requiring prosecutors across the country to make use of all of their powers to ensure that the adjudication of petitions for child marriage authorizations take into account the interests of the bride or the groom to be.<sup>53</sup> In particular, the bulletin requires that prosecutors use court hearings as an opportunity to raise the awareness of the minor parties on the impact that marriage can have on their lives, to request further medical examinations and social investigations, and to present motions opposing granting the authorization should it become evident that the proposed marriage would harm the interests of the minor.

In 2018, under Law 103.13 on Fighting Violence against Women, a new provision was added to the Penal Code to criminalize forced marriage as follows:<sup>54</sup>

Article 503-2-1: Without prejudice to the severe criminal sentences, any person having coerced the other to marriage by means of violence or threat shall be sentenced with six months to one year of imprisonment and a fine ranging from 10,000 to 30,000 Dirhams or one of them only. Such sentence shall be doubled if such coercion to marriage by means of violence or threat is perpetrated against a minor, a woman because of her gender, a woman with disability or known to have mental incapacity.

Prosecution shall only be possible upon a complaint submitted by the person upon whom the coercion has been exercised. The prosecution shall be put to an end if the complainant waived his/her right thereto. After such waiver is made the impact of the judicial decision if rendered shall also be ineffective.

## Divorce

The dissolution of a marriage contract occurs by death, annulment, divorce, or *khul'a*.<sup>55</sup>

Divorce is the dissolution of marriage exercised by the husband or the wife, under different conditions for women and men, under the supervision of the judiciary and in accordance with the provisions of the Family Code.<sup>56</sup>

A married man wishing to divorce must apply for permission, certified by two notaries, and submitted to the court, whose jurisdiction includes the marital home, the wife's home or place of residence, or where the marriage contract was concluded.<sup>57</sup>

The court must make every effort to remedy the dispute if one of the spouses requests to settle a dispute and is afraid of discord.<sup>58</sup>

The wife may request divorce from her husband if he violates a condition in the marriage contract, or causes harm (*darar*), does not provide for his wife, is absent for more than year with no valid reason, has a defect, or refrains from sexual intercourse with his wife.<sup>59</sup>

The wife may request divorce from her husband if he violates a condition in the marriage contract, if he mistreats her, or abuses her financially or morally.<sup>60</sup> Physical abuse is grounds for divorce, but the wife must be able to call on witnesses to prove the

53 Office of the Chief Prosecutor, Bulletin to the Prosecutor to the Supreme Court, to the Appeals Courts, and to the Courts of First Instance on the Marriage of Minors (2018).

54 Law on Combating Violence against Women, Art. 5.

55 Family Code, Art. 71.

56 Ibid., Art. 78.

57 Ibid., Art. 79.

58 Ibid., Arts. 82, 94.

59 Ibid., Art. 98.

60 Ibid., Art. 99.



abuse. Proof of harm includes all means of proof, including hearing of witnesses. When there is no proof, the wife also has the right to resort to the principle of discord.<sup>61</sup>

The court may determine the amount of compensation due to be paid in the event of a judgment of divorce due to harm.<sup>62</sup>

The wife may apply for divorce if the husband fails to provide her with maintenance.<sup>63</sup>

The wife may request divorce from her husband who has been absent for more than one year.<sup>64</sup>

Any spouse may request the termination of the marital relationship due to a defect resulting in impediments to marital cohabitation or of serious diseases that are not excusable within the year.<sup>65</sup>

If the husband swears to leave his wife or refrains from having sexual intercourse with her, her case is brought to court, which allows a period of four months for the husband to resume sexual activity with his wife. If he does not respond to the request, the wife is divorced from the husband.<sup>66</sup>

Divorce cases are settled no later than six months unless special circumstances exist, after an attempt has been made to reconcile the spouses, except in case of absence or abandonment.<sup>67</sup>

Spouses may agree to terminate the marital relationship amicably without conditions or with conditions that do not contradict the provisions of the Family Code and do not harm the interests of the children, if any.<sup>68</sup>

Spouses may agree to divorce through *khul'a* in accordance with the provisions referred to divorce by mutual consent.<sup>69</sup>

## Squandering property

In 2018, under Law 103.13 on Combatting Violence against Women, the following amendment was made to the Penal Code, pending the entry into force of the law:

Article 526-1: If any one of the spouses wilfully squanders or delegates his or her property to inflict prejudice on the other party or children, or to circumvent the provisions of the Family Code, especially those relating to maintenance (*alimony*), accommodation, rights ensuing from a divorce or to property division, shall be sentenced with one month to six months of imprisonment and a fine ranging from 2,000 to 10,000 Dirhams or one of them only.

## Guardianship and custody of children

The father is the legal guardian or 'tutor' of his minor children. The mother is the legal representative of her minor children if the father is absent or is deprived of capacity.<sup>70</sup> The guardian is required to manage the personal affairs of the ward, including religious orientation, training, preparation for life, and the daily management of the ward's property.<sup>71</sup>

Custody rights are shared during the marriage. In the event of divorce, child custody shall be awarded first to the mother, then to the father, then to the maternal grandmother of the child.<sup>72</sup> At the age of 15 children are allowed to choose between their mother and father to be their custodian.<sup>73</sup>

61 Ibid., Art. 100.  
62 Ibid., Art. 101.  
63 Ibid., Art. 102.  
64 Ibid., Art. 104.  
65 Ibid., Art. 107.  
66 Ibid., Art. 112.  
67 Ibid., Art. 113.  
68 Ibid., Art. 114.  
69 Ibid., Art. 115.  
70 Ibid., Art. 231.  
71 Ibid., Art. 235.  
72 Ibid., Art. 171.  
73 Ibid., Art. 166.

# INHERITANCE

The introduction of the Family Code in 2004 removed some inheritance provisions that discriminated against women,<sup>74</sup> but women are still disadvantaged. For example, daughters typically receive half the amount that sons receive.

Grandchildren are treated more equally than prior to the introduction of the Family Code. The children of a man's daughters as well as those of his sons may now inherit from him, which means the children of a deceased mother can inherit from the maternal grandparents in the same way as children of a deceased father.

# NATIONALITY

Women enjoy equal rights with men related to conferring their nationality to their children. Morocco's Nationality Law of 2011 defines a Moroccan child as a child born to a Moroccan mother or father. A bill purporting to amend the Nationality Law to enable Moroccan women to pass on their nationality to their foreign spouses was introduced in November 2017 to the Chamber of Representatives, where it is under consideration by the Justice Commission of the Chamber.<sup>75</sup>

# LABOUR LAWS

## Entering employment

The Labour Code<sup>76</sup> prohibits discrimination in recruitment on the grounds of sex or marital status.<sup>77</sup>

Women are restricted from participating in some occupations, including mining.<sup>78</sup> The Labour Code prohibits the employment of women in occupations listed as posing excessive risk, considered to be beyond their capabilities or likely to undermine morality.<sup>79</sup> These include occupations exposing women to the risk of falling or slipping, work requiring lengthy periods of squatting or leaning or that exposes them to dangerous chemicals.<sup>80</sup> Women may engage in night work, subject to exceptions defined by regulation taking their health and social situation into account, and after consultation with trade unions and employer associations.<sup>81</sup>

## Remaining in employment

The Labour Code prohibits discrimination in remuneration between men and women if the value of the work they perform is equal.<sup>82</sup>

The Labour Code prohibits employers from engaging in acts or practices that violate the principle of equal opportunity or equal treatment in employment or the practice of a profession.<sup>83</sup> It also prohibits discrimination on the grounds of sex or marital status among workers in remuneration and other aspects of employment, including holidays, training, promotion, disciplinary actions, and dismissal.<sup>84</sup> It is unlawful to dismiss a woman from employment due to pregnancy or taking maternity leave.<sup>85</sup> Discrimination on the grounds of sex is also a criminal offence under the Penal Code.<sup>86</sup>

74 Ibid., Book Six.

75 Chamber of Representatives, Article 10 of the Dahir n°1-58-250 published on 21 safar 1378 Promulgating Nationality Law.

76 Law No. 65-99 establishing the Labour Code by Decree No. 1-03-194 of 11 September 2003.

77 Labour Code, Art. 9.

78 Ibid., Art. 179.

79 Ibid., Art. 181.

80 Decree No. 2-10-183 of 9 hijra 1431 fixing the list of work for which it is prohibited to employ certain categories of persons.

81 Labour Code, Art. 172.

82 Ibid., Art. 346.

83 Ibid., Art. 9.

84 Ibid., Art. 9, 478.

85 Ibid., Art. 152.

86 Penal Code, Art. 431

Women are entitled to 14 weeks of maternity leave, which is paid by the government.<sup>87</sup> Employers are required to provide a special room for breastfeeding and childcare if they employ 50 or more women.<sup>88</sup>

## Workplace sexual harassment

Sexual harassment by a person in position of authority is an offence under the Penal Code, with a penalty of one to three years' imprisonment and a fine of 5,000 to 50,000 Dirhams.<sup>89</sup> Sexual harassment by an employer is illegal under the Labour Code. The Labour Code provides that an employee can claim unfair dismissal if the employee has to leave employment because of serious misconduct by the employer or the head of the company, including as a result of any form of violence or aggression against the employee, sexual harassment, or incitement to debauchery.<sup>90</sup>

## Domestic workers

The Labour Code does not apply to domestic workers.<sup>91</sup> Domestic workers are protected by the Law on Domestic Workers, which was adopted in 2016. Under this law, the employment of domestic workers is conditioned upon signing and notarizing a standard written contract. Furthermore, the law provides for basic entitlements of domestic workers, such as a minimum wage, an annual leave, and access to educational programmes set up by the state.<sup>92</sup> Domestic workers often include vulnerable women and children who have migrated from other countries or rural areas of Morocco. Domestic workers are vulnerable to forced labour, non-payment of wages, withholding of passports, and physical abuse at the hands of their employers. The Law provides for a five-year transition period during which the minimum age to be employed as a domestic worker is reduced from 18 to 16 years.

# SEX WORK AND ANTI-PROSTITUTION LAWS

The Penal Code criminalizes soliciting in public, which is punishable by imprisonment from one month to one year and a fine of 20,000 to 200,000 Dirhams.<sup>93</sup> People who engage in sex work may also be prosecuted for extra-marital sex (corruption or adultery). Activities associated with sex work are criminalized, including procuring, assisting, or profiting from another person who engages in prostitution,<sup>94</sup> or managing, operating, financing, or owning an establishment used for prostitution.<sup>95</sup> It is also an offence to obstruct agencies engaged in prevention and control of prostitution, or assistance or re-education of people engaged in prostitution.<sup>96</sup>

A penalty of imprisonment from two to ten years and a fine of 10,000 to 2 million Dirhams applies for the incitement, encouragement, or facilitation of minors (under the age of 18) into prostitution or if the offence is committed against a person who is vulnerable due to age, illness, or disability.<sup>97</sup>

Penalties apply to persons who engage in prostitution with a pregnant woman, regardless if her pregnancy is known to the perpetrator, if the offence was committed against several persons, or if the perpetrator was one of the spouses or a person mentioned in Article 487.<sup>98</sup>

The penalty shall be up to 10 to 20 years' imprisonment with a fine if committed by a criminal gang or imprisonment for life if committed through torture or cruelty.<sup>99</sup>

The law extended the scope of application of these penalties even if some of the acts constituting the elements of the crime were committed outside the Kingdom.<sup>100</sup>

87 Labour Code, Art. 152; Social Insurance Law of 1972 (1-72-184), Arts. 37, 38.

88 Labour Code, Art. 162.

89 Penal Code, Art. 503(1).

90 Labour Code, Art. 40.

91 Ibid., Art. 4.

92 Dahir n°1-16-121 promulgating the Law n°19-12 determining the conditions of work and employment of domestic workers, Official Gazette n°6610 of October 5, 2017, p. 1038.

93 Penal Code, Art. 502.

94 Ibid., Art. 498.

95 Ibid., Art. 501.

96 Ibid.

97 Ibid., Art. 497.

98 Ibid., Art. 499.

99 Ibid., Art. 499.

100 Ibid., Art. 500.

# HUMAN TRAFFICKING

Morocco ratified the United Nations Convention against Transnational Organized Crime (the Palermo Convention) in 2002, and its Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children in 2011. Parliament approved Law No. 27.14 on Combating Trafficking in Persons on 2 August 2016.<sup>101</sup> This Law inserted new provisions into the Penal Code to address trafficking in persons, as defined as:

the recruitment, enticement, transportation, transfer, harbouring, or receipt of a person, or being a mediator thereto, by means of use of force, threat of use of force, or all other forms of coercion, abduction, fraud, deception; or abuse of power, office or authority; or taking advantage of a position of vulnerability or poverty; or giving or receiving of payments, benefits, or advantages to obtain consent of a person having control over another person for the purpose of the exploitation.<sup>102</sup>

The use of any of the means provided for in the above paragraph is not required for the offence of trafficking in persons under the age of 18 if the intended exploitation is well established.<sup>103</sup>

Exploitation includes “all forms of sexual exploitation, especially exploitation of the prostitution of others, and exploitation through pornographic materials, including via communication means and technological communication. It shall also include exploitation in the form of forced labour, peonage, beggary, slavery, slavery-like practices, removal and sale of organs and tissues of human origin, or exploitation by means of conducting experiments of medical research on the living, or using a person in crime or armed conflicts.”<sup>104</sup>

Penalties range from five to ten years’ imprisonment and a fine of 10,000 to 500,000 Dirhams.<sup>105</sup> In some cases, the penalty can be increased to 10–20 years’ imprisonment and a fine of 100,000 to 1 million Dirhams.<sup>106</sup>

If the offence is committed against a person who is in a vulnerable situation due to age, illness, disability, physical or psychological disability, or a pregnant woman, or if the perpetrator is a spouse of the victim, a descendant or ascendant of the victim, or a legal guardian, the penalty shall be between 20 and 30 years imprisonment and a fine of 200,000 to 2 million Dirhams.<sup>107</sup>

# SEXUAL ORIENTATION, GENDER IDENTITY, AND RELATED ISSUES

Homosexual sex is criminalized by the Penal Code under the offence of committing “an indecent act or act against nature” with someone of the same sex and is punished by six months to three years’ imprisonment and a fine.<sup>108</sup> According to the data collected by the Chief Prosecutor’s Office, 197 people were prosecuted for homosexual sex in 2017.<sup>109</sup>

It is reported that sexual orientation and gender identity in Morocco are a basis for violence and harassment.<sup>110</sup> There are no specific laws protecting people from being targeted for violence or discrimination because of their sexual orientation or gender identity. There are no legal protections for, or legal recognition of, transgender people.

101 Royal Edict 1.16.127, 25 August 2016, implementing Law No 27.14 on combating trafficking in persons, [http://www.sgg.gov.ma/BO/Ar/2016/BO\\_6501\\_Ar.PDF?ver=2016-09-21-141835-253](http://www.sgg.gov.ma/BO/Ar/2016/BO_6501_Ar.PDF?ver=2016-09-21-141835-253).

102 Penal Code, Art. 448(1).

103 Ibid.

104 Ibid.

105 Ibid., Art. 448 (2).

106 Ibid., Art. 448 (3).

107 Ibid., Art. 448 (4).

108 Ibid., Art. 489.

109 Office of the Chief Prosecutor. 2018. Annual Report on the Implementation of the Penal Policy and the Functioning of the Prosecution Service, <http://www.presidenceministerepublic.ma/?p=3608>.

110 Human Rights Watch, *Audacity in Adversity: LGBT activism in the Middle East and North Africa*, 16 April 2018.

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