

Main Advances in Women's Rights in Morocco since 2002

1. **Revision of the Code of Criminal Procedure (CPP, 2002):** Article 336 of the CPP, forbidding a wife from instituting a civil action against her husband without prior authorisation from the court applied to, has just been repealed, thus allowing married women the same access to justice as married men, under the same conditions.

2. **Revision of the Labour Code** (adopted in June, 2003) has enabled introduction of the following amendments relating to women's rights:

2.1 For the first time, the Labour Code recognizes the principle of non-discrimination, including between men and women (in matters of employment, pay...);

2.2 For the first time in Moroccan law, reference is made to sexual harassment in the work place, henceforth considered to be serious misconduct;

2.3 Maternity leave has been increased from 12 to 14 weeks;

2.4 Codification of the work carried out by domestic workers (the majority of who are women and young girls) has been planned for the new Labour Code.

3. **Partial revision of the Penal Code** (adopted in July, 2003) has, to a large degree, responded to the demands of the women's movement, notably:

3.1. The end of male/female discrimination relating to the penalty for murdering a spouse when the spouse is caught in the act of committing adultery. Prior to this reform, extenuating circumstances were only granted to a husband who murdered, beat or injured his adulterous spouse or her partner;

3.2 Harsher penalties for beatings and injuries deliberately inflicted upon one spouse by the other;

3.3 Harsher penalties in the case of one spouse re-offending against the other;

3.4 Authorization of health professionals not to respect medical confidentiality when they observe cases of marital violence or violence against women;

3.6 Introduction of a new aggravating circumstance for rape: the fact that the victim is pregnant;

3.7 Harsher penalties for living off the earnings of prostitutes when the crime is committed against a pregnant woman and if the crime is committed by the spouse;

3.8 Incrimination of sexual harassment, henceforth defined as being *an abuse of authority*.

4. **The Family Code** (January, 2004)

The Family Code, adopted by Parliament in January, 2004, has introduced very important changes, notably:

4.1 **The equality and co-responsibility of spouses:**

- henceforth, both spouses are head of the family, whereas, under the former code, only the husband was head of the family;
- the duty of the woman to obey her husband has been abolished in the current plan, in favour of spouses' equal rights and responsibilities;

4.2 **Reinforcing the effectiveness of the provisions of the new Family Code** which stipulates that the public prosecutor is the interested party in any action applying the provisions of this Code (provisions which did not exist in the former text);

4.3 **Equality relating to the age one can marry**: fixed at age 18 for men and women, whereas, in the previous code, the age was fixed at 15 for women and 18 for men;

4.4 **Abolition of the obligatory matrimonial tutor for women**: henceforth, it is the right of an adult woman to make and exercise her choice according to her own will and free consent. The former Moudawana (Family Law), revised in 1993, required that non-fatherless women had to have a matrimonial tutor in order for the marriage to be valid;

4.5 Regulation of polygamy, which has been made subject to the judge's authorisation and draconian legal conditions, rendering it practically impossible, i.e. :

- The first wife must be told of her husband's intention to take another wife. Similarly, the future second wife must be told that her intended husband is already married ;
- The woman has the right to demand that her intended husband promises not to take another wife and he must recognise that she has the right to divorce him if he breaks his promise;
- Polygamy is forbidden if there is any fear of injustice amongst wives ;
- The court will not authorise polygamy if it isn't proved necessary; if the husband cannot provide for two families and guarantee their right to a living allowance and housing and ensure equality between the two wives.

4.6 Regulation of divorce and new perspectives for women aimed at limiting the abuse resulting from the husband's right to repudiation¹ (the right of the husband to divorce unilaterally); procedures for dissolving the marriage are subject to attempts at reconciliation and the divorce is pronounced after a maximum six month time limit.

Whilst the new law has retained the old divorce procedures (procedures when a woman wants to dissolve the marriage), it has nevertheless attempted to introduce slight modifications to make things easier, for example, in the case of divorce for harm suffered and divorce in exchange for compensation (when the woman buys her freedom), which is no longer subject to the husband's consent, as in the past.

However, what is really new are the possibilities women are being offered with *the consensual divorce* and divorce for *irreconcilable breakdown*, accessible to men and women on an equal footing. These new procedures will liberate women and enable them to divorce under the same conditions as men, obliging them neither to produce evidence - often impossible to gather - or buy their freedom and subject themselves to worse blackmail (divorce in exchange for compensation).

4.7 The division of wealth and goods accrued during the marriage between spouses: whilst recognizing the division of goods principle in the previous law, the new Code has introduced the possibility for both spouses to come to an agreement, in a document separate from the marriage deed, defining a framework for the management and fruition of wealth and goods accrued during the marriage.

4.8 Reinforcement of the mother's right to custody: Whilst in the former law the divorced mother and children's guardian lost her custodial rights in the case of remarriage, the new Family Code has made it possible for the woman to retain custody under certain conditions, even after she remarries or moves away from the area where her husband lives. Similarly, she can regain custody if the reasons why she lost it, voluntarily or involuntarily, no longer exist.

4.9 The rights of the child: The main changes are on two levels:

- existing discrimination in the former code have been abolished; henceforth, this law treats boys and girls in the same way. Unlike the previous text², in the case of divorce, a child of 15 can choose to be in the custody of the father or mother;

- specific provisions relating to the rights of the child have been introduced in line with the Convention on the Rights of the Child, to which Morocco has subscribed. In cases where parents divorce, the new code grants important guarantees upholding the rights of the child, such as the right to decent housing and a living allowance paid in the months following pronouncement of the divorce, the creation of a fund guaranteeing a living allowance from the State, etc.

¹ The new Family Code subjects repudiation to prior authorisation from the court and requires the husband to ensure the settlement of all rights due to his wife and children.

² In the former Personal Status Code, the boy could choose the parent guardian at the age of the 12 and the girl at 15.