

Situation report on discriminations against women in Morocco

March 2023

INTERNATIONAL AND REGIONAL INSTRUMENTS

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Optional Protocol

1993

Ratified

2022

ratified but reserves
Art 2 and 15 (paragraph 2)

Council of Europe Convention on preventing and combating violence against women and domestic violence (known as Istanbul Convention)

Morocco was invited to sign but had not yet signed.

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)

Not ratified

International Covenant on Civil and Political Rights

1979

Ratified

International Covenant on Economic, Social and Cultural Rights

1979

Ratified

MAIN OBSTACLES TO GENDER EQUALITY DE JURE AND DE FACTO



The Penal Code criminalises sexual relations outside marriage and sexual relations between persons of the same sex.



The Family Code discriminates against women, on issues concerning legal guardianship, parental custody, division of property in marriage and unequal inheritance, among others.



Abortion is criminalised and only permitted in cases of danger to the mother. Clandestine abortion under unsanitary conditions is the leading cause of death among adolescents and a major factor in maternal mortality.



There are no specific legal provisions for vulnerable populations (single mothers, refugee women, asylum seekers and migrants).

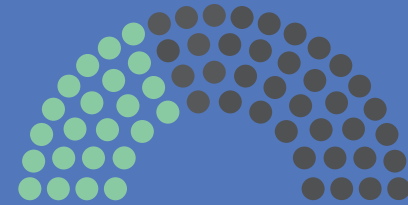
RECOMMENDATIONS

- Harmonise all laws with the Constitution and Morocco's international commitments (reform of the family code, revision of the penal code, revision of law 103-13, revision and application of the law for the creation of the Authority for Parity and the Fight against Discrimination and the operationalisation of this institution).
- Draft a general law defining equality and direct and indirect discrimination against women.
- Integrate the gender dimension in the planning, implementation, monitoring and evaluation of national, sectoral and territorial public policies on the basis of a global and intersectoral approach.
- Set up institutional mechanisms in charge of gender equality, with the necessary capacities to ensure intersectoral coordination, monitoring and evaluation of the implementation of public policies in this area.
- Promote a culture of equality and the fight against prejudice and sexist stereotypes in all areas.

Did you know ?

24.10%

Proportion of seats held by women in national parliaments



Unequal Rights

Inheritance rights for widows and daughters



22.01%

Female labour force participation



56.50 %

Prevalence of gender violence in lifetime
(% women)

Source: Haut-Commissariat au Plan 2019

*Source: Gender global gap report 2022:
<https://www.weforum.org/reports/global-gender-gap-report-2022/>

Legislative framework

International conventions

Morocco ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 21 June 1993. In 2011, Morocco withdrew its reservations to articles 9 (paragraph 2) and 16 of the Convention and maintained its interpretative declarations on articles 2 and 15 (paragraph 2). Morocco has acceded to the Optional Protocol and in August 2015 published the law relating to this protocol. The instruments of accession to the Optional Protocol to CEDAW were deposited with the UN Secretary General in 2022. The Moroccan government's last report on CEDAW was submitted on 22 June 2022 at the 82nd Session of the CEDAW Committee. The convention is still not adequately implemented: Morocco does not have a comprehensive legislative framework defining, prohibiting and sanctioning discrimination against women in accordance with Article 1 of CEDAW. Moreover, many discriminatory provisions persist in its legislative arsenal, which is still not harmonised with the 2011 Constitution and ratified international conventions.

Other conventions in Morocco include the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, ratified on 3 May 1979. The Protocol to the African Convention on the Rights of Peoples (the so-called Maputo Protocol) has not been ratified. The last Universal Periodic Review (UPR) report of Morocco's fourth report was submitted on 8 November 2022. Concerning the Council of Europe Convention on Preventing and Combating Violence against

Women and Domestic Violence (the so-called Istanbul Convention), Morocco has been invited to sign it but has not yet done so¹. Other existing conventions in Morocco are the Convention on Action against Trafficking in Human Beings and Sexual Exploitation, ratified on 17 August 1973, and the Slavery Convention, signed on 11 May 1959. Morocco signed the Convention on the Rights of the Child on 26 January 1990.

Constitutional equality

In Morocco, the 2011 Constitution enshrines equality between men and women in all areas, the prohibition of all forms of discrimination and the principle on the primacy of ratified international conventions over domestic law. However, as of 2023, laws with a direct impact on women's rights are still not harmonised with Morocco's international commitments.

The 2011 Constitution contains 18 provisions related to women's rights. For example, the preamble of the Constitution enshrines the principle of equality, dignity and freedom, the prohibition and fight against all forms of discrimination, including on the basis of gender and personal circumstance. Article 19 states that "men and women enjoy equal rights and freedoms of a civil, political, economic, social, cultural and environmental nature, as set out in this title and in the other provisions of the Constitution, as well as the international conventions and covenants duly ratified by the Kingdom, in compliance with the provisions of the Constitution, the constants of the Kingdom and of its laws ". Article 6 also commits the public authorities to work: (i) to "create the conditions permitting the effectiveness of liberty and of equality of its citizens, as well as

their participation in political, economic, cultural and social life”; and (ii) to “mobilise all available means to facilitate the equal access of citizens to the conditions that enable them to enjoy their rights” (art. 31).

Civil and familial rights

The **2004 reform of the Family Code** was considered a revolution, as it incorporated many changes to the sacred text. The main changes are as follows:

- Men and women are equal in rights and responsibilities and therefore women no longer owe obedience to their husbands in return for a living. The family is placed under the responsibility of both spouses.
- The minimum legal age of marriage for girls is raised from 15 to 18.
- Polygamy becomes more difficult to practice.
- Repudiation now requires judicial review and no longer depends solely on auls (religious judges).

Concerning the main discriminations, the **Family Code of 2004** has not been harmonised with CEDAW yet, in particular regarding:

- **Marriage of minors:** Article 20 gives discretionary power to the judge for the marriage of minors, who most often authorises it on the basis of the child’s capacity to procreate. This practice has continued to increase each year.
- **Polygamy** continues to be authorised by the judge if the man has sufficient financial resources to support a second or third

wife.

- **Legal guardianship:** Although the Family Code recognises the equality of spouses in rights and responsibilities, the provisions of Article 233 grant legal guardianship to the father.
- **Parental custody:** If a divorced mother remarries, she loses custody of her child, whereas this same criterion does not apply to the father.
- **The division of property between spouses:** the terms of this division must be set out in a contract annexed to the marriage. However, the latter is not compulsory and very often wives are not informed of its existence.
- **Single mothers** and their children are deprived of all rights, including, for example, the refusal of access to the family booklet, proving the existence of family ties between them (only a copy of the child’s birth certificate is granted). They are also deprived of the Family Mutual Assistance Fund which provides support exclusively to widows.
- **Inequality of inheritance** is still the rule. Especially after the death of the father, men inherit double the share of their sisters.

The Nationality Code, which was amended in 2007, provides that a foreign wife may acquire the nationality of her Moroccan spouse, whereas this right is not recognised for the foreign husband of a Moroccan woman (Article 10). Furthermore, Article 19 of the Code introduces a new form of discrimination by providing that « A Moroccan woman who, upon marrying a foreigner, acquires, by virtue of her marriage, the nationality of the husband and has been authorised by decree prior to the conclusion of the marriage, to renounce her Moroccan nationality, shall lose her Moroccan nationality».

Political rights

Any adult with legal capacity can stand for election. Article 30 of the 2011 Constitution stipulates the need to include in the law «provisions to promote equal access of women and men to elective offices » and Article 115 on the representation of women in the Supreme Council of the Judiciary is in line with this. Article 146 relating to regions and territorial authorities stipulates that an organic law shall establish « (...) provisions to ensure better participation of women in territorial councils ». **The organic law n°27.11 relating to the House of Representatives and the organic law n°59.11 relating to the election of the members of the councils of the territorial authorities** have put in place legal and institutional measures (national lists, quotas, annexed seats, reservation of seats, principle of alternation, support fund) to increase women's representation and participation.

Sexual and reproductive rights

Abortion is criminalised by the Moroccan Penal Code. The section dealing with abortion, found classified in the chapter "crimes and offences against family order and public morality", contains 10 repressive articles (Articles 449 to 458). A woman who has an abortion faces 6 to 24 months in prison, while the persons who performed the abortion face 1 to 6 years in prison. The only exception is if the abortion is a necessary measure to safeguard the health of the mother and is performed by a doctor or surgeon with the permission of the spouse. A commission, set up by the King, had recommended in 2015 that abortion be allowed in certain cases of

force majeure such as incest, rape, foetal malformation and mental disability. This recommendation was included in the penal code bill submitted to the parliament by the former government. However, this bill was withdrawn from parliament by the new government as part of the reform of the penal code.

Article 490 of the Penal Code **criminalises sexual relations outside marriage**. Article 489 **criminalises same-sex sexual relations**.

Laws on gender-based violence/violence against women

Law 103-13 on combating violence against women was adopted by Parliament in February 2018. It defines, in its first article, violence against women as "any material or moral act or abstention based on gender discrimination resulting in physical, psychological, sexual or economic harm to the woman". However, this law does not protect all women against all types of violence, in particular psychological violence, domestic violence and marital rape.

The law remains incomplete in terms of protection, reparation measures and sanctions, particularly against domestic/marital violence (marital rape, theft, fraud, etc.). It does not meet the standards of "due diligence". This law makes no reference to the legal protection of several categories of women, notably single mothers, migrant women and women with special needs.

The Penal Code, which dates back to 1962, reflects a patriarchal, freedom-destroying and discriminatory vision in its provisions. The

criminal legislation does not criminalise marital rape or certain forms of violence and does not allow easy access for indigent women to protection institutions or to legal and judicial assistance. The provisions on rape introduce a hierarchy between victims (married and unmarried, virgins and non-virgins). The crimes of rape and 'indecent assault' are described as 'offences against family order and public morality'.

The criminal legislation underwent some revisions in 2017. However, these amendments, made in a fragmented and selective manner, did not meet the requirements of combating discrimination, protecting women against violence and against the infringements of their rights and freedoms. The same gaps characterised the draft penal code (No. 10-16) adopted by the government council in June 2016 and then submitted for discussion in Parliament. This bill was withdrawn by the new government from the scope of the "parliamentary shuttle" (the discussion, amendment and approval procedure for a proposed bill) on 8 November 2021

Economic and social rights

The **Labour Code**, which was promulgated on 11 September 2003 and came into force on 8 May 2004, is the result of many years of struggle for women's rights in the workplace. The preamble stipulates that the law guarantees equal pay, prohibits discrimination in employment and any measure aimed at undermining the stability of employees at work, including on the grounds of maternity or pregnancy. Article 9 confirms and completes the preamble, enshrining the principle of equality between men and women by prohibiting any discrimination against employees on the basis of

sex, which has the effect of violating or altering the principle of equal opportunities or equal treatment in employment or in the exercise of a profession. Specific reference is made to discrimination with regard to recruitment, the conduct and distribution of work, vocational training, salary, promotion, the granting of social benefits, disciplinary measures and dismissal. Article 172 lifts the ban on night work for women, thereby repealing a long-standing form of discrimination against women.

Concerning protective measures for pregnant women, Article 152 has increased the duration of leave from 12 to 14 weeks, unless more favourable provisions exist. In addition, women have the right to rest during work (Article 161) and to a special room for breastfeeding (Article 162). Furthermore, the employer may not terminate the employment contract of an employee because of pregnancy or complications related to pregnancy (Article 159). Finally, Article 346 enshrines equal pay for both sexes for work of equal value.

Vulnerable and/or marginalised populations

There are no specific legal provisions regarding the social, economic and cultural rights of refugee, asylum-seeking and migrant women.

Articles 497-499 of the Criminal Code prohibit forced prostitution and child prostitution and prescribe sentences of up to 10 years' imprisonment or life imprisonment for offences involving aggravating circumstances.

There are specific laws concerning persons with disabilities and trafficking in human beings. The **Framework Law No. 97-13** of

27 April 2016 on the protection and promotion of persons with disabilities guarantees in its Article 3 equality between men and women with disabilities, respect for the evolving capacities of children with disabilities and their right to preserve their identity. Also, **Law 27-14 on the fight against human trafficking** of 2016 prohibits all forms of human trafficking and provides (art. 4) for protection, medical care and psychological and social assistance for victims of trafficking. It strengthens sanctions against criminals when the victims are women, children or minors. The victim also receives free legal assistance.

Regarding **LGBTQI+ community**, the Penal Code criminalises sexual relations outside marriage and sexual relations between persons of the same sex.

De facto discrimination

Civil and familial rights

The codes governing civil rights (family code, nationality code, penal code) continue to discriminate against women. Their discriminatory provisions are in contradiction with the spirit of the 2011 Constitution and with Morocco's international commitments.

For the effectiveness of women's rights in Morocco, these codes must be subject to a comprehensive reform, giving priority to the Family Code. The provisions of the latter are discriminatory for both women and children, which subjects them (mainly in disadvantaged areas) to a condition of high precariousness. As for the Penal Code,

it remains marked by a patriarchal and discriminatory vision in its philosophy, structure and provisions. The penal provisions trivialise violence against women. The criminalisation of sexual relations outside marriage, adultery and abortion encourages pregnant women to abandon their children, to commit infanticide or expose themselves to mortal danger. The non-criminalisation of marital rape leads to the "maintenance" and "transmission" of marital violence.

Political rights

The political and public participation of Moroccan women has improved, in relative terms, since 2017. Indeed, the organic law relating to the House of Representatives adopted in 2011 and amended in 2021, which provides for 90 seats out of 395 to be reserved for women, has enabled the proportion of women to rise from 20.5% in 2016 to 24.3% in 2021. At the level of the Chamber of Councillors, despite the principle of alternation established by the law on the Chamber of Councillors, the representation of women remains negligible: only 13 councillors out of the 120 members of this chamber are women. Moreover, only one woman out of eleven and four out of fourteen are members of the offices of the 2nd and 1st chambers of parliament respectively.

None of the eight parliamentary groups or groupings in the House of Representatives is chaired by a woman. Of the 11 groups in the House of Councillors, only one is chaired by a woman.



Women have free access to family planning centres. These centres offer gynaecological consultation services, raise awareness on reproductive and maternal health and provide free contraception (pill, IUD, etc.). However, they do not have access to medical centres practicing abortion despite the demands of feminist organisations. To escape the stigma of a birth out of wedlock, women resort to clandestine abortion in unsafe sanitary conditions, which is the main cause of death among teenagers and one of the major factors in maternal mortality. Sex education is not integrated into the school curriculum for children and young adults.

Maternal mortality remains very high in rural areas. According to the High Commission for Planning (HCP), one in four rural women do not give birth in a health facility and only 15% of rural women have access to postnatal care.

Laws on gender-based violence/violence against women

Two surveys on the prevalence of violence against women were conducted in 2009 and 2019 by the High Commission for Planning (HCP). According to the second survey in 2019, the prevalence rate of violence against women is 57%, i.e. more than 7 million women aged 15-74 years (out of 13.4 million) had experienced at least one act of violence in the twelve months preceding the survey.

The domestic context remains the most marked by violence with a prevalence of 52%, followed by places of education (22%), professional environments (15%), cyber-violence (14%) and public

space (13%). The HCP regularly provides data and statistics on violence against women, both in terms of the prevalence of violence and of the economic cost of violence².

Economic and social rights

Women and girls face unequal treatment compared to men. In terms of **education and training**, great efforts have been made to reduce the gap between girls and boys. However, illiteracy affects more than 45% of women and more than 20% of girls between the ages of 4 and 17 are outside the school system. Moreover, more than 50% of girls aged 12 have not completed primary education according to the HCP. In terms of **employment**, despite the progress in women's education, Morocco lags far behind in terms of women's participation in the labour market. The jobs held by women are generally precarious and informal. Women are over-represented as family helpers and in unpaid jobs, and under-represented as employers and among the self-employed. According to HCP statistics, in the third quarter of 2022, the activity rate was 69.5% for men and only 19.3% for women. The reconciliation of private and professional life is also an obstacle. In terms of **health**, palpable progress has been made. However, women, especially poor and/or rural women, face many obstacles in accessing health care. The main indicators relating to reproductive health remain below those recorded by countries at a comparable level of development. The proportion of births attended by skilled health personnel remains low, while the maternal mortality rate remains among the highest in the Arab region.

Vulnerable and/or marginalised populations

Four factors interact strongly on the particular vulnerability of women and girls to discrimination: poverty, age, disability and social exclusion. Often combined, these factors contribute to certain categories of women being forgotten by public policies.

Regarding the **feminisation of poverty**, poor and/or socially vulnerable women face difficulties in accessing social security benefits, assets related to the dissolution of marriage (namely alimony for themselves and their children and share of assets acquired during marriage) and social benefits related to employment. **Age discrimination** is compounded by gender discrimination. Poverty, widowhood and divorce further aggravate this discrimination, the proportion of which will rise, according to HCP projections, from 14.8% in 2014 to 25.1% in 2030 and 41.9% in 2050. Regarding **gender and disability**, this can become a factor of double economic and social vulnerability, as national legislation continues to consider disabled people “as asexual beings”. The lack of relevant, accurate and standardised data on the situation and living conditions of people with disabilities in Morocco contributes to the exclusion and political and social invisibility of this category, particularly girls and women. In addition, women who have children out of wedlock, as well as said children, suffer from legal, economic and social exclusion. While it is true that the criminalisation of sexual relations outside of marriage concerns both men and women, for women pregnancy constitutes the proof of this relationship, combined with the legal impossibility of establishing paternity outside of marriage. The children of single mothers are also excluded from the financial maintenance provided by the Family Assistance Fund, which is

contrary to the provisions of Article 32 of the Constitution. These children cannot take their father’s name even if he is known.

Finally, the Moroccan State does not provide any assistance to **female refugees, asylum seekers and migrants**. Women who have refugee status and are heads of household occasionally receive DH400 for schooling per child and food aid, provided by the UNHCR - the United Nations Refugee Agency. As for asylum seekers and migrants in a regular or irregular situation, they do not receive any specific assistance from the UNHCR.



Recommendations

To the Moroccan State:

- Harmonise all laws with the Constitution and Morocco's international commitments by prioritising the reform of the family code, the promulgation of a general law defining equality and direct and indirect discrimination, the revision of the penal code, the revision of law 103-13 and the revision of the law on the creation of the Authority for Parity and the Fight against Discrimination.
- Draft a general law defining equality and direct and indirect discrimination against women.
- Integrate the gender dimension in the planning, implementation, monitoring and evaluation of national, sectoral and territorial public policies on the basis of a global and intersectoral approach.
- Set up institutional mechanisms in charge of gender equality, with the necessary capacities to ensure inter-sectoral coordination, monitoring and evaluation of the implementation of public policies in this area.
- Promote the culture of equality and the fight against prejudice and sexist stereotypes through the institutionalisation of public awareness campaigns, the integration of the culture of equality in the education sector and the training of the main actors in the fight against violence against women: justice, police,

gendarmerie, etc.

To the European Union, the United Nations or other international institutions:

- The integration of the effectiveness of women's rights and gender freedoms in the bilateral negotiations between Morocco and the European Union.
- Planning and monitoring the implementation and evaluation of EU-supported cooperation programmes following a results-based approach.
- Financial support to women's associations.

Endnotes

- 1 It should be noted that in December 2022, the Moroccan Parliament organised, together with the Parliamentary Assembly of the Council of Europe, a meeting to reflect on the role of parliamentarians in the fight against violence against women. The Istanbul Convention was on the agenda of this meeting.
- 2 Haut-Commissariat au Plan (HCP) : https://www.hcp.ma/Genre_r579.html