

Kohl: A Journal for Body and Gender Research
Vol. 1, No. 1 (Summer 2015)

**The Bill on Fighting Violence against Women in Morocco:
Anything new?**

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The Moroccan experience in the advancement of the status of women remains an excellent model in the Arab and Islamic context, given the boldness of the amendments that Morocco adopted in its legislation, and that constituted an exceptional leap in giving Moroccan women the rightful position they deserve. This interest was reflected in a series of measures at both the legislative and the institutional levels, some of which are:

- The enrolment of Morocco in the International Human Rights Council by ratifying most of the fundamental mechanisms of human rights: the International Covenant on Civil and Political Rights, the International Covenant on Economic and Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention to Eliminate All Forms of Discrimination Against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the two optional protocols attached to it, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention on the Rights of Persons with Disabilities.
- The promotion of Women's Rights through a constitution starting July 2011, by its statement of the prohibition and the combatting of all forms of gender-based discrimination and the necessity of men and women having equal rights and equal civil, political, economic, social, cultural, and environmental freedoms. It also proclaimed the implementation of equality between women and men, and the creation of a committee for equity and for fighting all forms of related discrimination.
- The reviewing of a large number of laws and their modification to conform to the ratified international conventions in order to eliminate all forms of gender-based discrimination, the first of which were the Family Code, the Labor Code, the Criminal Law and the Criminal Procedure Law, the Code of Commerce, the Law on Obligations and Contracts, the Civil Status Law, the Law of Custody of Abandoned Children, and the Law of Nationality.
- The involvement of Morocco in the Millenium Development Goals, which constitute a reference in the production of public policies and strategies. The Moroccan government has actually worked with perseverance on the preparation of indicators suitable for the follow-up and evaluation of the Millenium Development Goals and the preparation of national reports in that regard. The Second National Report for Millenium Development Goals for the year 2005 was also drafted, by incorporating an approach to gender.
- The adoption of a national strategy for the equity and equality of the two sexes by integrating the approach of gender into policies and development programs in March 2006 in the framework of public policies pertaining to gender equality and the empowerment of women. Since the year 2005, Morocco has witnessed the establishment of a budget dedicated to the gender approach, and it is in the process of developing it and promoting it by strengthening the capacity of various sectors, and by involving the parliament in the support of this initiative.

- The preparation of a national initiative in charge of the advancement of women's rights by the Ministry of Social Development, Family and Solidarity, through a strategic plan for the period between the years 2008 and 2012, whereby the second strategic axis was allocated "to the advancement of women's rights and the integration of the gender approach and the equality of opportunities", which was implemented by six goals.

To crown these efforts, a new draft law pertaining to fighting the violence against women has recently been announced in Morocco.¹ The truth of the matter is that this is not a new subject; it is rather an initiative that has been shelved for years before finding the light, in principle, with the announcement of the above-mentioned law, which falls within the national efforts aimed at advancing humans' rights' issues in general, and women's rights' in particular.²

Given the importance of the issuance of a special legislation to combat violence against women in view of the international and the national recommendations in this regard, it is essential to refer back to the general framework governing this initiative. Important too is to mention the accumulated efforts of the national and international structures involved in the field, one of which is the valuable initiative done by the United Nations' Division for the Empowerment of Women that adopted a guide for legislations related to violence against women in 2010. This guide aims at helping countries and other involved sectors in this field to reinforce existing laws or to draft new laws to protect women from violence.³ To what extent has the project of fighting violence against women in Morocco responded to international standards in this area?

Going back to the United Nations' guide for legislations regarding violence against women, we find that it has set three primary steps to be followed prior to the issuance of legislation related to violence against women:

The first step lies in defining the legislative goal, which means determining the primary purpose of the issuance of a new law for violence against women, whereby it ought to mainly aim at accomplishing two primary goals. The first goal pertains to guaranteeing the persecution of perpetrators of violence and their punishment, and the second pertains to the provision of protection and support for battered women. It seems, at this level, that the new draft law responded in principle to these recommendations, as it includes clauses that criminalize all forms of violence that target women: physical, sexual, economic, and psychological violence. It also created committees and support units to take care of battered women.

The second step lies in the necessity of opening discussions with the professionals concerned, and in particular with entities primarily involved in the reinforcement of the new law on violence against women. At the lead of these stakeholders are battered women themselves, non-governmental organizations that

¹ This pertains to the bill number 103.13 related to fighting violence against women

² Look up the preamble of the bill mentioned above

³ United Nations, Division for the Empowerment of Women, Department of Economic and Social affairs, legislation on violence against women guide, United Nations Publication under icon ST/ESA/329, 2010 New York.

work in the field of violence against women, governmental departments, national human rights institutions,⁴ judges, lawyers, police, gendarmerie, doctors, and court staff, etc.

It seems, in this regard, that this step was overpassed during the issuance of the new bill, which was direct in its preamble, mentioning that it is “*the fruit of a cooperation only between the Ministry of Justice and Freedoms and the Ministry of Solidarity and Women and Family and Social Development.*”⁵ This statement dismisses any role of discussions with activist circles or other actors such as judges and lawyers and other intervening sectors despite of their accumulation of a large field experience in the area of violence against women.

The *third step* involves adopting a methodology based on evidence when writing legislations, which means preparing new legislations using reliable evidence-based studies, research and statistics. Such a step also seems to be missing in the new bill, which clearly ignored the contribution of civil society,⁶ and even dismissed, quite surprisingly, the results of highly important studies and research, one of which, for example, is the national research about the spread of the phenomenon of violence against women that was conducted by the High Planning Commission in 2011.⁷

Consequently, the new draft law concerning violence against women remains, from a methodological perspective, far from conforming, in principle, to the international standards pertaining to the issuance of legislations on fighting violence against women. However, these preliminary observations do not prevent the attempt to read the contents of the new bill that has many positive aspects capable of fighting the phenomenon of violence against women, in spite of the existence of some reservations that can be noted regarding the initiative.

First: The Positive Aspects of the Bill:

The request of the issuance of a framework law to fight violence against women has constituted one of the pressing demands of the feminist movement in Morocco. This growing issue of violence casts a shadow over the stability of the family specifically and social stability generally. And despite the many consecutive amendments that changed the criminal law, these were not able to guarantee a radical change in the treatment of the different types of crimes that target women for being women—that is, for

⁴ For example the National Council for Human Rights.

⁵ Look up the preamble of the bill mentioned above.

⁶ Look up for example:

The study conducted by the Democratic Foundation for Moroccan Women and the Moroccan Foundation for the Defence of Women’s Rights: “Reading of the Penal Code for a criminal legislation that defends women from discrimination and violence”, July 2010.

Memorandum by Spring Dignity and the coalition of feminist and humans’ rights organizations for a law that guarantees the rights and freedoms of women, protects them from violence, and fights gender-based discrimination, July 2011

⁷ Provided the results of a national research about the spreading of the phenomenon of violence against women conducted by the High Planning Council on the 10th of January 2011. This research highlighted the fact that among 9.5 million women aged 18 to 64, about 6 million of them, i.e. 63%, had been subject to some form of violence during the preceding twelve month, and 3.7 million of them, i.e. 55%, were suffering from marital violence.

gender-based considerations. It also could not fight the discrimination that women face, for several reasons, including that this law reached a stage where it could no longer undergo any further partial amendments, given the many modifications that it underwent. Another reason was that the historical context in which it was issued differed from the lived reality and the developments that were witnessed by the national and international human rights thought. Therefore, there was an imperative need for a comprehensive review of all clauses after it has aged for about a century and a half.

1 – Determining the Conceptual Framework and Providing Advanced Definitions of Violence:

Among the most important features of the text of a new bill is its determination of the conceptual framework of a number of terms contained in the text of amendment, and the provision of advanced definitions of violence against women, by enumerating its types and forms in a semi-comprehensive manner (physical, psychological, sexual, economic).⁸

Violence against women: Any material or moral act or abstention based on discrimination because of sex, the effect of which is physical, psychological, sexual or economic harm to a woman.

Physical violence: Any act or abstention that affects or is aimed at affecting the physical safety of a woman or a child: whoever its perpetrator is, whatever their method, and wherever the place where it is committed.

Sexual violence: Any utterance, act or exploitation aimed at violating the sanctity of a woman or a child's body for sexual or commercial purposes, irrespective of the method used to do it.

Psychological violence: Any verbal assault, coercion, threat, neglect or deprivation whether in the aim of violating the dignity or the tranquillity of a woman or a child or in the aim of scaring or intimidating them.

Economic violence: Any act or abstention of act of an economic or financial nature that harms or aims at harming the social or economic rights of woman or a child.

Sexual harassment was also defined as “any persistent harassing of others in public places with acts, utterances or signs of sexual nature or for sexual purposes.”⁹

Among the advantages of this text is that it did not only punish harassment against women that is perpetrated by men, but it punished harassment in all its forms. Demonstrated by the term “others”, it includes men and women equally. Thus all forms of persistent harassment of others or another in public spaces in front of people are considered a crime, whether it was through acts, utterances or signs of a sexual nature or for sexual purposes. And despite the difficulties that may arise with the application of this text because it relies on proofs or evidences, it still constitutes a major step in fighting a phenomenon that has become practically pervasive for multiple reasons, including the collapse of the role of values within communities, the corruption of the public taste, the dominance of stereotypical notions that

⁸ The first article of the above-mentioned bill number 103.13 related to fighting violence against women.

⁹ Look up Article 12 of the above-mentioned bill, and the amendments that were made to the Penal Code by adding a new paragraph to chapter 1- 503.

encourage harassment and tolerate it, and the perception of women as inferior, by considering them mere sexual objects.¹⁰

2- Criminalizing a Number of Acts and Behaviors that had Remained Outside the Circle of Criminalization and that Constitute Multiple Faces of Violence against Women

Among the positive aspects of the new project is the criminalization of a number of acts that were previously not criminalized, especially those related to the application of the Family Code. Until recently, this family code has been undermining all the protective features that the code tried to enforce to protect the rights of women particularly and the family generally. And so came about the criminalization of the return of an evicted spouse to the conjugal home within the scope of what is stipulated in Article 53 of the Family Code,¹¹ as well as the criminalization of the coercion or forcing of a woman to get married,¹² with severe punishment in the case where it is accompanied by physical violence. This new bill also criminalized any recording of a woman's body using any kind of audio or visual methods or any sexual act in nature or in purpose with the aim of slandering or offending her. It also promised severe punishment if the crime is committed by a husband, relative, legal guardian, or a person that has power or authority over the victim, or is charged with taking care of her.¹³ In the same context, the stealing or breach of trust or fraud between a couple was also criminalized.¹⁴

3 - Building a legal Framework for Support Units that Support Women and Children who are Victims of Violence

Another positive aspect of the project is its provision of a legal framework that organizes the work of support units for women and children who are victims of violence.¹⁵ Such units were recently built in most

¹⁰ Amira Lamrini: Women's and children's rights in the Arab World between the international commitments of governments and the guarantees of the Arab Charter for Human Rights, an article published within a collective work under the title "No protection for anyone", Cairo Institute for Human Rights, series of reform issues, without other data, page 167.

¹¹ The draft amendment of chapter 1-480 stipulates, in the new added paragraph, that: "A penalty of imprisonment for one to three months and a penalty ranging from a thousand to three thousand Dirhams goes to the refraining of the return of an evicted spouse to the conjugal home, within the framework of Article 53 of the Family Code.

¹² The draft amendment of chapter 494 stipulates that "A penalty of imprisonment from three to six months and a penalty ranging from two thousand to ten thousand Dirhams or one of those two penalties go to whoever coerces or obliges a women to marry. And if the coercion was accompanied by violence, the penalty is imprisonment from six months to a year and ten thousand to thirty thousand Dirhams, unless the crime was graver.

¹³ The draft amendment of chapter 495 stipulates that: "A penalty of imprisonment of two years to five years and a penalty of five thousand to ten thousand Dirhams go to anyone who violates the sanctity of a woman's body by audio or visual recording or any act sexual in nature or in purpose, with the aim of slandering or offending her. Penalty is doubled in case of repetition or in the case where the crime is committed by the husband or a relative or a sponsor, or a person that has power or authority over the victim, or is charged with taking care of her.

¹⁴ Look up the draft amendment of chapter 1-506 and 1-542 and 1-550 of the Penal Code.

¹⁵ On the work of these support units: Amina Afroukhy, « Support units for a successful judicial care of women and children. » Journal of Criminal Affairs, first issue, December 2011, page 94

of the kingdom's courts. In this context, this pertains to local support units that exist at the level of every elementary court, and that are concerned with providing prevention and protection of all the forms of violence that women and children may be subjected to. There is currently about 86 such support units, whether spread at the national level in elementary courts, or at the level of courts of appeal. Their headquarters are located in the public prosecutor's offices, and are constituted of the different components of the judicial body inside the court. They are formed of a representative of the public prosecutor, the investigating judge, the ruling judge, the juvenile judge, the clerk, and the court's social assistant. These support units constitute an initial point of contact between the judiciary and the victims, whereby they provide all the legal assistance aimed at speeding up decisions regarding the case files of women and children who are victims of abuse. They also provide free health-related and administrative services for them, and ensure that the judicial procedure remains the last resort to be used only after the failure of all attempts of reconciliation between the parties involved in the conflict.¹⁶

4 – Developing New Protective Measures for Battered Women

Some of the most important new protective measures for battered women are:¹⁷

- Temporarily distancing the husband from the conjugal house and returning the wife to it.
- Referring the victim and her children to women's shelter centres and housing them in the case of marital violence.
- Forbidding the perpetrator from approaching the victim, or her place of residence, work or studies.
- Enrolling the perpetrator into psychotherapy when needed.
- Compiling an inventory of family properties that are in the conjugal home in case of marital violence.
- Stripping the perpetrator of weapons if he holds any, in the case where he might use them.
- Notifying the perpetrator that he is forbidden from managing the shared funds

Second: The Negative Aspects of the New Bill:

The negative aspects of the bill on violence against women will be highlighted, in terms of both form and content.

In terms of form: Among the reservations that could be noted about the bill on violence against women are:

- There is a conflict and disharmony between the title of the new bill and its contents. While the title describes a bill on fighting violence against women, we are surprised with the content that includes

¹⁶ The Ministry of Justice and Freedoms: A practical guide to typical criteria for the judicial care of women and children, the Directorate of Criminal Affairs and Amnesty.

¹⁷ Article 15 of the above-mentioned bill 103.13 which included a number of new measures to protect battered women reported by Article 1.5.82

requirements pertaining to violence against women and children. This sets the stage for the persistence of the typical way of addressing issues related to women, by continuing to tie them to children's issues as if women are still minors. The bill also includes clauses that criminalize violence against relatives and sponsors and husbands, which means that the bill is not one that aims at fighting violence against women only, but one that deals with familial violence in general.

The bill is not aimed at providing a new law for fighting violence, but rather the amendment of a number of rulings of the Penal Code issued in 1961, either by deleting chapters of it or adding paragraphs to it. We therefore face a complemented and amended text of the current Penal Code, and not a framework law for fighting violence against women that can be classified among the special criminal laws.

- The language of the bill remains in many aspects inconsistent with the development that the national and international legal scene is witnessing. It uses a conservative language and sometimes repeats the same previous positions based on preconceived notions around women's issues. It is sufficient here to refer to chapter 495 in the new bill text that criminalizes the violation of the sanctity of a woman's body, where this text seems to reproduce the same stereotypical image of women's bodies as a source of shame.

- The bill's philosophy is a continuation of the philosophy of the Penal code that was issued in 1961. This is apparent in the preoccupation with security concerns and the predominance of the prohibitive approach and of the concepts of men's honor, the family, and the sanctity of women's bodies. Hence, the amendments introduced by the bill were not able to decrease the conservative character of the Penal Code in its initial form, which is also evident in the continuation of the same criticized classification. Examples of these are the insertion of rape and the assault of honor under crimes related to the violation of decency and public morals; the insertion of the crime of discrimination on grounds of sex under the crimes of youth corruption and prostitution. The name of the latter was also changed to "*sexual exploitation and corruption of youth*." Crimes of gender-based violence are treated as crimes of violence in general, and not as crimes that target the human rights of women. Additionally, there is an exclusion of any specific category for gender-based crimes, which means continuing to absent a gendered approach in all its manifestations to the new bill.

In terms of the content: Despite the positive aspects of the new bill on violence against women, the absence of a participatory approach and the lack of consultation with all stakeholders and all those involved in its application has affected the content of this draft. This absence is apparent on many levels:

In terms of the preamble: It was brief and it failed to mention the historical development of fighting violence against women in Morocco. It also failed to mention the role of civil society and the national human rights movement in the field of fighting all forms of violence against women through advocacy, listening centres, statements, petitions, and the studies they undertook. Instead, the preamble exclusively focused on governmental efforts, which is obvious in the text's statement that the draft is the fruit of a cooperation between the Ministry of Solidarity, Women, Family and Social Development and the Ministry of Justice as mentioned above.

The preamble also failed to reference official or non-official national statistics related to the reality of violence against women, which would have helped with understanding the framework in which this initiative falls and its general and specific contexts.

On another hand, the new bill neglected a number of issues that have comprised the center of the demands of human rights movements, within the framework of fighting all forms of gender-based violence in its various manifestations. Some of these issues are:

- The failure to criminalize marital rape, despite the fact that the number of complaints in this regard is ever increasing. There is also an absence of a text that criminalizes sexual violence between the couple, in spite of some occasional judicial interpretations, one of which is the recent verdict of the Court of Appeal in Al-Jadida that punished, for the first time, a husband for compromising the honor of his wife with violence.¹⁸

- The omission of demands related to the review of abortion requirements, through allowing it in particular cases including incest, and rape of minors followed by pregnancy.¹⁹

- The failure to criminalize underage marriage without the obtainment of an exceptional court permit. Since the draft did punish coercion into marriage, it should have been its priority to criminalize the marriage of minor girls without obtaining a court permit. There is extreme danger to minor girls and their rights in such marriages that happen outside the law and far from the eyes of jurisdiction, and these could be considered gender-based violence.

- The failure to include special punishments in the context of fighting the economic violence that a large number of women face because of customs, traditions, and the perception of women as inferior. This is especially true in cases of denying women their inheritance or their shared land property, which are widespread practices in many social circles. It was incumbent upon the legislators, just as they criminalized theft, fraud and, breach of trust between couples, to criminalize as well, with a separate text, the crimes of maliciously managing inheritance before its division among relatives in the case of the presence of a women. These practices target women for being women and are based on beliefs that women are inferior, but they also constitute gender-based economic violence.

- The failure to include a text that pertains to the necessity of appointing workers specialized in the field of combating violence against women, whether as part of the judicial police, the courts or even the

¹⁸ In a unique decision of the Chamber of the Criminal Court Appeal in Al-Jadida was stipulated: "If the woman, by virtue of the marital bond, is asked to give herself to her husband, then the husband is asked in turn to protect his life partner from outrageous acts that violate her body, the honor of which ought not be compromised, and not to force upon her any obscene act. And from respect to her decency, he ought not start intercourse through the mouth or the anus without her consent, for the marital bond should provide protection for the wife and should not be used as an excuse for the husband to force any obscenity on her. "

The Court of Appeal in Al Jadida: criminal file number 36/2644/2013, dated: 05.06.2013.

¹⁹ Look up for example the study conducted by the Democratic Foundation for Moroccan Women and the Moroccan Organization for the Defence of Women's Rights around "Reading of the Penal Code for a Criminal Legislation that Defends Women from Discrimination and Violence" and the memorandum by Spring Dignity.

recently formed support units and committees. The selection of those in charge of fighting violence against women was not based on clear standards. In fact, those who appoint them are given full authority to designate the members of committees and support units. This ambiguity in the selection criteria may sometimes lead to the appointment of people who are unprepared for a certain task, who are unaware of gender-sensitive considerations, or who are not understanding or not accepting of the laws related to fighting violence against women. The absence of a specialized staff leads to inefficiency, particularly when the workers are burdened with additional duties and responsibilities. The bill also neglected to stipulate the obligatory and the continuous training of members of these recently formed support units and committees. It also failed to connect the work of committees and support units and with monetary or moral motives, which could negatively affect their expected productivity and effectiveness.

- In terms of procedure and due process, the new bill did not introduce important amendments to ways of addressing cases of violence against women. It also did not care to establish a specialized court or to create specialized branches or chambers within existing courts. It also failed to require those existing courts to allocate special sessions for cases of violence against women. Even in terms of the requirements set by the Code of Criminal Procedure pertaining to the secrecy of preliminary investigation, the bill did not exclude the cases of women and children who were victims of violence and taken in custody, and did not provide a special text that would have allowed them to be heard in the presence of someone that they trust, which would not breach the secrecy of the investigation. Therefore, the bill on violence against women did not provide a qualitative addition to the experience of support units that exist at the level of courts.

- The dominance of prohibitive concerns over the rehabilitative approach: The new bill limited itself to criminalizing a number of acts that were considered violence against women and increased the penalty in other situations that require it. It did not find the need to stipulate the necessity of trying to rehabilitate the suspects of violent crimes or harassment, by obliging them to undergo therapy sessions and applying the rehabilitative justice principle.

- The bill, despite its positive aspects, contains requirements that remain under scrutiny and could contribute to limiting its efficiency. Of those is the stipulation that if a spouse who pressed charges drops the case, the penalty would be discontinued in certain instances. Such stipulation promotes the policy of impunity and normalizes the phenomenon of marital violence, and even legitimizes prevalent notions that place hundreds of obstacles before battered wives or women who want to press charges, many of whom end up not doing so, to avoid shame or out of fear of scandal or to evade familial or social pressures.

Overall, the announcement of the issuance of a bill on violence against women is considered a much welcomed step in itself. Yet it can be criticized for excluding those concerned with its content from the debate, whereby the new bill came out in complete isolation from the accumulated accomplishments of years of work by civil society in the field of fighting violence against women. It is as if Morocco has only

a recent experience in it,²⁰ when in fact, it was the first Arab country to set a strategy to fight violence against women at an earlier period, when the issue was regarded as part of unspoken taboos.²¹ In fact, the bill did not even make use of the evaluation of support units that had existed at the level of courts. These evaluations have shown the shortcomings due to the lack of specialization, of full-time commitment, means of action, and of incentives of those in charge of them. There was also a difficulty of cooperation between them and a lack of compulsion in ways of working.²²

I hope that these observations and criticisms that were expressed by many sources do not stand in the face of the issuance of the new bill, for they are observations aimed at defending the outcome of years of field work and research and study.

Finally, one must refer to a critical matter: the way the media deals with this bill. The media has sometimes been, unfortunately, lacking in professionalism and objectivity, whereby it has reduced the whole discussion around the bill to the issue of sexual harassment. The patriarchal mentality was even able to dilute the discussion to the point of eliminating the examination of all the chapters of the bill comprehensively, and its diminution to one aspect dealing with men harassing women, and presenting this phenomenon in a caricatured, humorous manner²³ which contradicts the gravity of violence against women and the pain engendered by it.

²⁰ The Moroccan Experience in the Fight of Violence Against Women, Accomplishments and Challenges, paper prepared by the National Council for Human Rights, presented in Doha on November 28th 2011.

²¹ Morocco is considered the first Arab Islamic state that put a national strategy to fight violence against women, which happened in 2002. This document was prepared as a result of a series of extensive consultation between government actors and civil society members. This allowed for the elaboration of a large consensus regarding the directions and priorities that should be accorded the highest importance to face all forms of violence against women and setting the measures that should be taken in this regard. These efforts were activated by taking a number of assistive steps, most important of which was the announcement of an executive scheme for strategy in 2005, and the launch of a number of other programs.

The Ministry Charged of the Status of Women and Family and Children Care and Integration of the Disabled, National Strategy for Fighting Violence Against Women, Axions Communication Press, Rabat, 2003, page 26.

Secretary of State Charged with Family and Childhood and Disabled Persons, Monitoring Achievement in the Filed of Fighting Violence Against Women, with the support of the International Canadian Agency for Development, Bani Yaznas Press, Rabat, page 6.

The Ministry Charged of the Status of Women and the Protection of Family and Childhood, Together against violence towards women, Rabat, 2002, pages 26-28

²² In this regard, consult the diagnostic study of the care of battered women in Morocco, the Ministry of Justice, the Directorate of Criminal Affairs and Amnesty, 2008.

²³ In this regard, a study conducted by Amnesty International can be consulted, about: "Prevalent Gender-Based Stereotypical Images in Morocco, an Analytic Review. " May 2013.