



**Morocco's Compliance with the Convention on the Rights of the Child
Suggested List of Issues Relating to Sexual Abuse of Minors and
Article 475 of the Moroccan Penal Code**

Submitted by The Advocates for Human Rights,
a non-governmental organization in special consultative status with ECOSOC
and
MRA Mobilising for Rights Associates,
a non-governmental organization based in Rabat, Morocco
in collaboration with an alliance of Moroccan NGOs¹

**67th Session of the Committee on the Rights of the Child, Geneva
3-7 February 2014**

I. Reporting Organizations

- The Advocates for Human Rights** ("The Advocates") is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates' Women's Human Rights Program has published 22 reports on violence against women as a human rights issue, frequently provides consultation and commentary on drafting laws on domestic violence, and trains lawyers, police, prosecutors, and judges to implement new and existing laws on domestic violence effectively. The law firm of Faegre Baker Daniels LLP provided pro bono support for this submission.
- Mobilising for Rights Associates** ("MRA") is an international nongovernmental women's rights organization based in Rabat and currently working in Morocco, Tunisia and Libya. MRA collaborates with grassroots level women's rights activists and organizations to promote women's full enjoyment of their human rights through changes in laws, structures, practices and beliefs. Together with our partners MRA creates and implements long-term strategies to address the diverse causes of discrimination against women and develop meaningful, effective solutions. Our multidimensional strategies include popular human rights education, legal accompaniment, cause-lawyering, action-research, national law reform, and international advocacy. By engaging with local actors at different

¹ Association Amal pour la femme et le développement (El Hajeb), Association el Amane pour le développement de la femme (Marrakech), Association Tawaza pour le plaidoyer de la femme (Martil), Association Tafoukt Souss pour le développement de la femme (Agadir), and Association des jeunes avocats (Khemisset).

levels, MRA fosters micro-level changes in culture and relationships to support our activism for macro level legal and institutional reform.

II. Issue Summary

3. Article 475 of the Moroccan Penal Code provides that whoever “abducts or deceives” a minor, without using violence, threat or fraud, can escape prosecution and imprisonment if (i) the abductor marries the victim, and (ii) those persons who have a right to request annulment of the marriage do not file a complaint.² Organizations and news reports from Morocco indicate that Article 475 has been applied in cases of sexual abuse of minors in order to preserve the “honor” of the victim and her family. Notably, this issue has received widespread coverage following the 2012 suicide of Amina Filali, a sixteen year-old girl who killed herself after being forced to marry a man - ten years older than her - who raped her.³ Additional news reports confirm that the use of Article 475 continues.⁴
4. Information from Moroccan associations working with MRA illustrates the extent of the problems with the application of Article 475. One association reported that, of 11 cases involving rape of a minor that they handled in 2013, Article 475 was raised in 6 cases; the age of the victims ranged from 14-17, while the age of the rapists ranged from 23-28.⁵ In one case, a 14 year old girl was raped by her 28 year old cousin, and she became pregnant as a result. She sought help from the association to file a criminal complaint, and there were several court hearings. DNA testing established that the accused was the rapist. Under Article 475, the two families agreed on a temporary marriage between the rapist and the victim to avoid shame, with a predetermined divorce date after one month of marriage.⁶

² Dahir n° 1-59-413 du 28 jourmada II 1382 (26 novembre 1962) portant approbation du texte du code pénal, as amended, (« Penal Code »), Art. 475: 1) Quiconque, sans violences, menaces ou fraudes, enlève ou détourne, ou tente d'enlever ou de détourner, un mineur de moins de dix-huit ans (Article modifié par l'article premier de la loi n° 24-03 modifiant et complétant le code pénal, précitée), est puni de l'emprisonnement d'un à cinq ans et d'une amende de 200 (cf. supra note correspondant à l'article 111) à 500 dirhams. 2) Lorsqu'une mineure nubile ainsi enlevée ou détournée a épousé son ravisseur, celui-ci ne peut être poursuivi que sur la plainte des personnes ayant qualité pour demander l'annulation du mariage et ne peut être condamné qu'après que cette annulation du mariage a été prononcée.

available at <http://adala.justice.gov.ma/FR/Legislation/TextesJuridiques.aspx>.

³ See, e.g., http://www.nytimes.com/2012/04/06/world/africa/death-of-rape-victim-in-morocco-sparks-calls-for-legal-reform.html?_r=2&pagewanted=all&_, <http://www.bbc.co.uk/news/world-africa-17379721>.

⁴ See, e.g., <http://www.illionweb.com/larticle-475-tue-toujours/>, <http://www.illionweb.com/bouchra-victime-gang/>, and <http://www.yabiladi.com/articles/details/21035/tetouan-fille-suicide-apres-avoir.html>. In addition, one association working with MRA reported that their region of Morocco alone, three girls married under Art. 475 had recently tried to kill themselves. Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs (5 December 2013).

⁵ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs (5 December 2013). In the same Written Communications, another association from a different region reported that Article 475 was raised in 3 of 5 rape cases that they handled where the victim was a minor. A third association reported their experience that in 6 cases where Article 475 was raised since 2011, the average age difference between the victim and the rapist was 10 years (with victims ranging in age from 14-17 and rapists from 23-28). *Id.*

⁶ *Id.*

5. Associations working at the local level in Morocco report that the young victims experience tremendous pressure to abandon criminal prosecution and agree to the application of Article 475 from law enforcement, justice system personnel, as well as the families of the perpetrators. Even their own families pressure them to agree to marriage under Article 475 in order to avoid shame. Because all sexual relations outside of marriage are illegal under the Moroccan Penal Code,⁷ victims also fear prosecution and imprisonment under Penal Code Article 490.⁸ In fact, one Moroccan association reported several cases of rape victims who filed complaints to initiate criminal prosecution but were prosecuted themselves under Article 490.⁹
6. In one instance, a 15 year old girl was raped by a 25 year old man. She became pregnant as a result of the rape, which is considered proof of illicit sexual relations. She did not want to file a criminal complaint because she feared prosecution under Article 490, so she fled her home and sought shelter through a local Moroccan association. The rapist's family made threats against the victim's mother, however, and she was pressured to not file a criminal complaint and to marry the rapist under Article 475 instead.¹⁰
7. Associations working at the local level in Morocco also report that girls married under Article 475 continue to suffer rape and domestic violence after the marriage. In a case reported by one association, a 15 year old girl was constantly harassed and threatened by a 35 year old man. He waited for her each day outside of her school and on several occasions told her, "I will force you to marry me." One day, he abducted and raped her at knifepoint. The victim made a complaint to the gendarmes, who arrested the man. In his statement to the police, the rapist admitted his crime, declaring that he did it "because it was the only way I would be able to marry her." In order to avoid scandal, the victim dropped out of school and married him. She told members of the association, "I am raped now every day."
8. Article 475 must be understood in the context of early marriage in Morocco. While the legal age of marriage for both men and women is now 18 in Morocco,¹¹ the Family Code allows the marriage of minors when "justified" and after substantial control by the Family Affairs judge.¹² Both the number of petitions for authorization to marry minors and the approval rate are high and increasing. In 2007, 10.03% of marriages were of minors, and 86.8% of the 33,596 petitions were authorized.¹³ In 2011,

⁷ Dahir n° 1-59-413 du 28 jourmada II 1382 (26 novembre 1962) portant approbation du texte du code pénal, as amended, (« Penal Code ») art. 490.

⁸ Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs (5 December 2013).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Dahir n° 1-04-22 du 12 hija 1424 (3 février 2004) portant promulgation de la loi n° 70-03 portant Code de la Famille (« Family Code ») art. 19.

¹² The authorization is not subject to appeal. *Id.* art. 20. Article 21 also requires the legal tutor's (guardian's) consent. *Id.* art. 21.

¹³ <http://adala.justice.gov.ma/production/statistiques/famille/FR/Actes%20de%20mariage%20et%20actes%20de%20divorce.pdf>

the rate had risen to 11.99% of all marriages and 89.56% of 46,927 petitions for authorization to marry a minor were granted. 33.58% of petitions in 2011 were for minors ages 14-16¹⁴. The overwhelming majority of the minor spouses, 99.31%, were girls.¹⁵ The Family Code provides no threshold minimum age below which authorization to marry may never be granted. Local NGOs report marriages of girls as young as thirteen, fourteen and fifteen.¹⁶

9. In practice, judges often issue authorizations based on their own cursory visual examination of the minor girl's physical appearance and determination that she is capable of assuming "marital responsibilities," rather than resorting to the required expertise.¹⁷ Reasons advanced by judges for authorizing underage marriage include saving family honor, avoiding scandal, protecting the girl's chastity and preventing her from debauchery. Some even cite marriage as a solution to poverty. At times judges do not even substantiate their decisions in writing. Corruption among public actors and the ease by which medical certificates attesting to the minor girl's "maturity" can be obtained are also factors allowing circumvention of the law.¹⁸
10. Although bills have been introduced in the Moroccan Parliament that would amend or abrogate Article 475, no action has been taken on them to date.¹⁹ In addition, in spite of the reality of early and forced marriage for young Moroccan girls, the Moroccan Government has made statements in recent United Nations submissions that Article 475 does not apply to, and has not been applied in,

¹⁴ *Id.* Note that these numbers are consistent with information from the local level. One local association that works with MRA reported that from January to November 2013, the First Instance Court in Khemisset granted 325 of 442 petitions for authorization to marry minors. Written Communications to MRA and The Advocates for Human Rights from Moroccan NGOs (5 December 2013).

¹⁵ See, e.g., <http://adala.justice.gov.ma/production/statistiques/SJF/FR/30-10-12%20VR%20Finale%20Statistique%20Francais.pdf>

¹⁶ Ligue démocratique de défense des droits des femmes (LDDF), *Droits des femmes et code de la famille après 4 ans d'application* (2007).

¹⁷ Interviews with Local Morocco NGOs, (May 2012 – December 2013).

¹⁸ Abdellah Ounnir, *Les justiciables dans le circuit judiciaire relatif au contentieux de la famille*, in *Le Code de la famille: Perceptions et pratique judiciaire*, pp. 89-139 (Morocco: Friedrich Ebert Stiftung, 2007); Démocratique des Femmes du Maroc (ADFM), *Implementation of the CEDAW Convention: Non-Governmental Organisations' Shadow Report to the Third and the Fourth Periodic Report of the Moroccan Government* (Nov. 2007).

¹⁹ In January 2013, the Justice Minister made a statement to the effect that he would not oppose proposed modifications to 475. A bill (sponsored by MPs) to modify and complete article 475 was adopted by the Council of the 2nd Chamber of Parliament and transferred to the relevant Committee on legislation within that Chamber for review on January 29, 2013. This bill would increase the penalties, eliminate the 2nd paragraph of 475, and reinforces the link between 475 and the later sexual abuse of minors articles in the Penal Code. A second bill (sponsored by MPs) presented in the 1st Chamber would eliminate the 2nd paragraph of 475 (among other modifications to the articles on sexual abuse), but the version adopted by the legislation committee had eliminated these reforms. Another bill (sponsored by MPs) for a VAW law in 1st chamber that would cancel 475 among its 35 articles was transferred for review to the legislation committee in February 2013. The current status of these three bills is unknown and it is unclear what subsequent steps if any have been taken on these three bills. A proposed VAW bill submitted by the Family Minister to the Government Council (and tabled) did not contain any modifications to Article 475. See <http://www.medias24.com/POLITIQUE/5975-Benkirane-desavoue-Bassima-Hakkaoui.html>.

cases of sexual abuse of minors. Given the factual situation on the ground in Morocco and the clear violations of Morocco's obligations under the Convention on the Rights of the Child, we recommend that the Committee further investigate the issue of marriage of minor girls, as well as the role Article 475 plays in instances of sexual abuse involving minors.

III. Concluding Observations

11. To date, the Committee has not made any direct recommendations or concluding observations relating to Article 475. However, the Committee has in the past noted (i) the high incidence of sexual exploitation in Morocco, and (ii) the concern that child victims of exploitation may be treated as offenders.²⁰ Accordingly, the Committee recommended that child victims never be considered as offenders but rather benefit from programs for rehabilitation and recovery.²¹ These recommendations were in response to a report from Morocco that identified the protections afforded by Article 475 as evidence of its progress in preventing the abduction of children while notably omitting reference to the exception to prosecution where the victim marries the abductor.²²

IV. Moroccan Government Report

12. The Moroccan Government did not address Article 475 in its third and fourth periodic report to the Committee.²³ The report merely states that Morocco has "an array of legislation which protects children from sexual abuse."²⁴
13. However, in response to the most recent concluding observations of the Committee Against Torture, the Moroccan Government directly addressed Article 475. In this report, the Moroccan Government stated that Article 475 does not apply in cases of sexual abuse and that there is no statutory text in Morocco that exempts the "perpetrator of child rape from punishment when he makes the child concerned his wife, because anyone who commits rape is punished in all instances, even when he marries the victim of rape."²⁵ The Moroccan Government further stated that Article 475 "is not applicable to rape but rather to the crime of the abduction of a minor who leaves the parental home to be with someone and agrees to marry him."²⁶ In other words, in the Moroccan Government's view

²⁰ U.N. Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding observations: Morocco*, para. 62, CRC/C/15/Add.211 (10 July 2003).

²¹ *Id.* para. 63.

²² U.N. Committee Against Torture, *Consideration of reports submitted by States parties under Article 19 of the Convention, Information Received From the Government of Morocco in Response to the Concluding Observations of the Committee Against Torture*, para. 662, CAT/C/MAR/CO/4/Add.1 (9 September 2013).

²³ U.N. Committee on the Rights of the Child, *Consideration of the reports submitted by States parties under article 44 of the Convention, Third and Fourth Periodic Reports of States Parties Due in 2009 – Morocco*, CRC/C/MAR/3-4 (05 Aug. 2013).

²⁴ *Id.* para. 240.

²⁵ U.N. Committee Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Information Received From the Government of Morocco in Response to the Concluding Observations of the Committee Against Torture*, para. 111, CAT/C/MAR/CO/4/Add.1 (9 September 2013).

²⁶ *Id.* para. 112.

and in contrast to the many reports originating from Morocco, Article 475 is intended to address situations involving marriage without the consent of the family where the prosecution for abduction of a minor can be dropped if the victim's family withdraws the complaint to "maintain good family relations and to protect the make-up of the family if arresting the husband could lead his minor wife to lose any chance of a normal life."²⁷

V. Legal Framework

14. The reported use of Article 475 in cases of sexual abuse involving minors would conflict most directly with Articles 19 and 34 of the Convention on the Rights of the Child.²⁸ Additional rights and protections violated by the application of Article 475 include those enumerated in Articles 2, 3, 4, and 12.
15. Article 475 also appears to violate the Moroccan Constitution, including the Preamble, which provides that duly ratified international conventions have primacy over domestic law. This assertion has been repeated by the Moroccan Government before UN treaty monitoring bodies.²⁹ The Moroccan Constitution also guarantees equal civil, political, economic, social, cultural and environmental rights for men and women (Article 19), the right to life (Article 20), the right to personal security (Article 21) and legal, social and moral protection for all children (article 32). Further, Article 475 violates Article 22 of the Constitution, which prohibits all violations of physical and moral integrity and dignity, as well as all cruel, inhuman and degrading treatment, under any circumstances, whether committed by State or private actors.³⁰

VI. General Comments

16. The Committee has commented at length regarding the importance of the rights of a child to freedom from all forms of violence, including as outlined in Article 19 of the Convention.³¹ This expressly includes freedom from sexual abuse and forced marriage.³² In General Comment No. 13, the

²⁷ U.N. Committee Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Information Received From the Government of Morocco in Response to the Concluding Observations of the Committee Against Torture*, para. 112, CAT/C/MAR/CO/4/Add.1 (9 September 2013).

²⁸ Convention on the Rights of the Child, Nov. 20, 1989, U.N.T.S. vol. 1577 p. 3, available at <http://treaties.un.org/doc/Publication/UNTS/Volume%201577/v1577.pdf>.

²⁹ Moroccan government affirmation in November 2011 to the United Nations Committee Against Torture. See http://www.youtube.com/watch?v=E8IHCCNCv_k; The Moroccan Government had already made this claim under the previous Constitution. See also Press Release, United Nations, U.N. Doc. WOM/1413 (15 July 2003), available at <http://www.un.org/News/Press/docs/2003/wom1413.doc.htm>.

³⁰ Constitution of the Kingdom of Morocco, Dahir n° 1-11-91 du 27 chaabane 1432 (29 juillet 2011) portant promulgation du texte de la constitution.

³¹ U.N. Committee on the Rights of the Child, *General comment No. 13 (2011), The Right of the Child to Freedom From all Forms of Violence*, CRC/C/GC/13, (18 April 2011).

³² *Id.* para. 25.

Committee also noted the social costs and implications of early and forced marriage.³³ Further, the Committee has defined forced marriage and early marriage as a harmful practice for children.³⁴

VII. Other UN Body Recommendations

17. In 2008, the Committee on the Elimination of Discrimination against Women expressly called upon Morocco to “ensure that...criminal proceedings against rapists are not terminated when they marry their victims.”³⁵ More recently, the Committee against Torture, was “deeply concerned” by the fact that “the rapist of a minor can avoid criminal responsibility by marrying the victim” and regretted the lack of information about the number of cases in which this occurred.³⁶ Further, in 2011 the Committee against Torture also expressly stated that Morocco should amend its Criminal Code without delay to ensure that criminal proceedings against rapists are not terminated if they marry their victims.³⁷
18. During the Human Rights Council’s Universal Periodic Review of Morocco in May 2012, 34 of the 148 recommendations made by delegations concerned women’s rights issues, several citing Article 475 specifically. Those recommendations that “enjoyed the support of Morocco” included those to revise the Family Code to ensure its compliance with international standards and “prevent” the marriage of minors. However, the Moroccan government did not support recommendations to revise the Family Code to “prohibit polygamy and marriage of minors.”³⁸

VIII. Recommended Questions

19. The Moroccan Government should be asked to:
- Provide detailed information regarding the numbers and types of sexual abuse cases in which Penal Code Article 475 has been implicated, including the age differences between the minor girls and their rapists, and the outcome of those cases.
 - Explain the discrepancy between the reported use of Article 475 in cases of sexual abuse to absolve the rapist where the rapist marries the victim and the interpretation of Article 475 provided by Morocco in its most recent response to the Committee against Torture.
 - Describe Morocco’s plan for addressing this discrepancy and educating the judiciary and public about this issue.

³³ *Id.* para. 16.

³⁴ *Id.* para. 29(e).

³⁵ U.N. Committee on the Elimination of Discrimination Against Women, *Concluding Comments of the Committee on the Elimination of Discrimination against Women – Morocco*, para. 21, CEDAW/C/MAR/CO/4 (8 April 2008).

³⁶ U.N. Committee Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Concluding Observations of the Committee Against Torture – Morocco*, para. 23, CAT/C/MAR/CO/4, (21 December 2011).

³⁷ *Id.*

³⁸ Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review, Morocco*, A/HRC/WG.6/13/L.1 (25 May 2012); Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Morocco*, A/HRC/21/3 (06 July 2012).

- Provide detailed and updated information on the status of announced and proposed bills to amend or abrogate article 475.
- Provide statistics on the marriage of minors, including numbers, ages of underage spouses, rates of authorizations granted for the marriage of minors, age differences between spouses, gender of underage spouses, and comparative changes in these numbers and rates over preceding years.
- Provide detailed information regarding the numbers and types of cases in which minors have been prosecuted for illicit sexual relations under Penal Code article 490, and the outcome of these cases.

IX. Suggested Recommendations

20. The Committee should recommend that the Moroccan Government:

- Amend Morocco's Penal Code to abolish the Article 475 provision that allows a perpetrator of rape to escape prosecution by marrying his victim.
- Amend Morocco's Penal Code and Penal Procedure Code to facilitate procedures for bringing sexual abuse and rape of minors cases, including eliminating discriminatory legal provisions that require proof of actual physical injury and place heavy burdens of proof solely on the victim.
- Amend Morocco's Penal Code to abolish criminal prosecutions under Article 490 for "illicit sexual relations."
- Develop and implement a plan for educating the judiciary and public that criminal proceedings against rapists will not be terminated if they marry their victims and that Article 475 is not to be applied in cases of sexual abuse and rape of minors.
- Penalize all acts to encourage, pressure, or threaten minors to marry, whether by public or private actors.
- Amend Morocco's Family Code to establish clear and objective criteria under which judicial authorizations for the marriage of minors may be granted in only exceptional cases, and in all events establish a threshold minimum age under which authorization to marry may never be granted.

X. Websites, Reports, and other Resources

- Amnesty International, "Morocco/Western Sahara, Comprehensive Reforms to End Violence Against Women Long Overdue"
<http://www.amnesty.org/fr/library/asset/MDE29/001/2013/en/f868e056-17d7-421f-86fc-b27269d9681d/mde290012013en.pdf>.
- "Moroccan girl commits suicide after being forced to marry her rapist"
<http://english.alarabiya.net/articles/2012/03/14/200577.html>.
- 475 the Film (available in English) <http://www.475lefilm.org/>



- The Human Rights Watch communiqué on <http://www.hrw.org/news/2012/03/23/morocco-girl-s-death-highlights-flawed-laws>
- “Article 475 Continues to Kill” <http://www.illionweb.com/larticle-475-tue-toujours/>
- “Bouchra, Victim of Physical Violence” <http://www.illionweb.com/bouchra-victime-gang/>