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Refugee Documentation Centre

Country Marriage Pack

Morocco

Disclaimer

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1. Types of Marriage

Civil Marriage

A report by the *United States Department of State* under the heading 'Women' states:

"The 2004 family code changed the minimum age of marriage for women from 15 to 18 (with the exception that a judge may approve underage marriage with parental permission), placed the family under the joint responsibility of both spouses, and rescinded the wife's duty of obedience to her husband. The law removed the requirement for women to have a marital tutor as a condition of marriage, made divorce available by mutual consent, and placed legal limits on polygamy. The penal code criminalizes "knowingly hiding or subverting the search for a married woman who is evading the authority to which she is legally subject," which has been used to involuntarily return women to abusive homes.

Implementation of the reformed family law remained a concern largely because of the judiciary's lack of willingness to enforce it, as many judges did not agree with it. Corruption among working-level court clerks and lack of knowledge about its provisions among lawyers were also obstacles to greater enforcement of the law. Widespread women's illiteracy also limited women's ability to navigate the legal system." (United States Department of State (19 April 2013) *2012 Human Rights Practices: Morocco*)

In a section titled 'Children' it states:

“Child Marriage: The legal age for marriage is 18, but parents, with informed consent of the minor, may secure a waiver from a judge for underage marriage. The judiciary approved the vast majority of petitions for underage marriages. In 2011 the Social Development Ministry reported there were more than 33,000 underage married girls. Child marriage remained a concern, especially in rural areas, as highlighted by the case of Amina Filali (see section 6, Women). UNICEF reported 11 percent of women under the age of 20 were or had been married.” (ibid)

A report by *Freedom House* under the heading ‘Autonomy, Security, And Freedom of The Person’ states:

“Despite improvements, it remains difficult for women to negotiate their full and equal marriage rights. Article 19 of the 2004 family law fixes the minimum age for marriage at 18 for both men and women, in accordance with certain provisions of the Maliki school of Sunni jurisprudence. Women who have attained this age may contract their own marriages without the consent of their fathers. However, judges are empowered to waive the minimum age rule, and as a practical matter they are very reluctant to uphold it. About 10 percent of marriages in Morocco involve underage girls, according to the Democratic League for the Rights of Women (LDDF), and such unions have increased in rural areas. The LDDF also warned against what it described as “too many exceptions” in the case of polygamy. The family law (Articles 40–46) allows polygamy only when it is approved by a judge, who must verify that the husband can provide equally for each wife and their respective children. Women have the right to forbid polygamy as a condition in their marriage contracts. Moreover, the first wife must give her consent for a second marriage, and the prospective new wife must be informed of the husband's marital status. In practice, however, a first wife who lacks financial independence may feel compelled to agree to polygamy.” (Freedom House (3 March 2010) *Women’s Rights in the Middle East and North Africa 2010 – Morocco*)

Religious Marriage

A report by the *United States Department of State* under the heading ‘Restrictions on Religious Freedom’ states:

“There are two sets of laws and courts--one for Jews and one for Muslims--pertaining to marriage, inheritance, and family matters. The family law courts are administered, depending on the law that applies, by rabbinical and Islamic authorities who are court officials. Parliament authorizes any changes to those laws. Under the new Family Law Code for Muslims, judges will be retrained and new civil judges will be recruited. Rabbinical authorities will continue to administer family courts for Jews. Non-Koranic sections of Muslim law on personal status are applicable to non-Muslim and non-Jewish persons. Christians inherit according to the civil law, which reflects the recent change to the family code. Jewish citizens maintain their own separate inheritance law based on Jewish tradition. The Catholic Church may legally perform marriages for citizens who are confirmed Catholics.” (United States Department of State (15 September 2004) *International Religious Freedom Report 2004 Morocco*)

Another report by the *United States Department of State* under the heading 'Legal/Policy Framework' states:

"There is a separate set of laws and courts with authority over personal status matters for Jews covering issues such as marriage, inheritance, and other family matters. Rabbinical authorities, who are also court officials, administer Jewish family courts. Judges trained in the country's interpretation of Sharia (Islamic law) administer the courts for personal status matters for those of all other religious groups. However, Christians inherit according to civil law. There are no other legal mechanisms recognizing the Christian community (or other non-Muslims) in the same way the state recognizes its Jewish community. Non-Muslims must formally convert to Islam before they can become guardians of abandoned children. Pursuant to a 2012 Ministry of Justice circular, guardianship is restricted to qualified individuals who permanently reside in Morocco. According to the law, a Muslim man may marry a non-Muslim woman. However, a Muslim woman may not marry a non-Muslim man unless he converts to Islam." (United States Department of State (20 May 2013) *2012 International Religious Freedom Report Morocco*)

Traditional/Other Marriage

The report by *Freedom House* also states:

"Generally, the biggest problem associated with the new family law is enforcing provisions that run contrary to traditional practices. The new provisions are virtually unknown in rural areas, and sometimes even urban areas. In addition, many male judges resist the application of the law.

The new law also has a number of gaps. It concentrates on the rights of married Moroccan women, generally ignoring the needs of single women and foreign women married to Moroccan men. It also failed to abolish four institutions that perpetuate inequality: polygamy, repudiation, khula, and unequal inheritance rules. These institutions remain because activists considered the reforms contained in the new law to be radical enough; to push for more change would have jeopardized general support. Provisions related to inheritance are clearly outlined in the Koran, and many argue that polygamy is endorsed as well, meaning Muslims are generally unwilling to negotiate on these issues. The hope is that education will eventually succeed in conveying the inequality of such practices, and that polygamy, at least, will come to a natural end." (Freedom House (3 March 2010) *Women's Rights in the Middle East and North Africa 2010 – Morocco* - pg.10)

Proxy Marriage

The *Human Rights Education Associates (HREA)* under the heading 'Chapter II: Of Marriage' states:

"Article 17

The marriage contract is concluded in the presence of the parties. However, delegation to a proxy is possible with the authorization of the Family Affairs Judge in charge of marriage under the following conditions:

1- Special circumstances that prevent the delegating party to be personally present to conclude the marriage contract;

- 2- A delegation for the marriage contract drawn up by a notary or public authority, or a private contract with the notarized signature of the delegating party;
- 3- The proxy must have reached the age of legal majority, enjoy full civil capacity, and fulfil the conditions of tutelage if designated by the marital tutor;
- 4- The delegating party must indicate in the delegation the name of the other spouse, his/her personal information, and all other information that she or he judges useful to include;
- 5- The delegation must include the amount of the dowry payable in advance or in the future. The delegating party must also specify the conditions that she or he wants to stipulate in the marriage contract and the conditions that she or he is willing to accept from the other party;
- 6- The delegation must be certified by the judge once he verifies that it meets all of the required conditions.” (Human Rights Education Associates (HREA) (2005) *The Moroccan Family Code (Moudawana) of February 5, 2004 - An unofficial English translation of the original Arabic text*)

2. Formalities of Marriage (Consent, Minimum Age and Registration of Marriage)

A report by the *United States Department of State* under the heading ‘Marriage Certificates and Divorce Certificates’ states:

“Moroccan Moslems may obtain a copy of their marriage certificate by applying to the Cadi Court (Koranic Court) that presided over their marriage. Divorce certificates are obtained from the court rendering the decree. Mail applications for both marriage and divorce certificates are best handled through an attorney or a third party in the country.

Moroccan Jews married or divorced prior to September 30, 1965 should apply for marriage or divorce certificates to the Rabbinical Court that presided over the marriage or rendered the divorce decree. Moroccan Jews married after September 30, 1965 should apply to the Bureau d'Etat Civil having authority over their place of marriage. Moroccan Jews divorced after September 30, 1965 should apply to the Tribunal de lere Instance that rendered the divorce decree.

Non-Moroccans who were married in the former French Protectorate Zone during the period from 1912 to 1956 may obtain a marriage certificate from the Bureau d'Etat Civil having jurisdiction over the place where the marriage was celebrated.

Non-Moroccans who were married in the former Spanish Protectorate Zone during the period from 1912 to 1956 may obtain a marriage certificate by applying to the church where the marriage was celebrated.

Non-Moroccans married in the former Tangier International Zone during the period from 1912 to 1960 should write to their Consulate or Embassy for assistance. (There were no civil licensing procedures in the Spanish Zone prior to 1960.) Certificates of marriage for marriages celebrated after 1956 in the former French or Spanish Protectorate Zones, or celebrated after 1960 in the former Tangier International Zone, may be obtained from the Bureau d'Etat Civil having jurisdiction over the place where the marriage was

celebrated and recorded. Mail application for marriage certificates is possible and should be accompanied by a self-addressed envelope and a postal money order sufficient to cover the cost of the certificate and the return postage. Divorce certificates for non-Moroccans may be obtained from the Tribunal de Premiere Instance rendering the decree.” (United States Department of State (Undated) *Morocco Reciprocity Schedule*)

A report by the *United Nations Committee on the Elimination of Racial Discrimination (CERD)* under the heading ‘The right to marriage and choice of spouse’ states:

“The latest amendment to the 2004 Family Code was an important legislative initiative. With a view to promoting the universal values of justice, fairness and equality and ensuring the requisite protection for the family and children, the marriageable age was raised to 18 for both sexes.

The Family Code recognizes the principle of the equal right of men and women to marry. To begin with, the engagement, according to article 5 of the Code, is “a mutual promise of marriage between a man and a woman”. Hence, it does not refer solely to the man’s pledge as in the previous version, so that the woman and man are equally entitled to take the initiative of asking for the other party’s hand in marriage. Moreover, they may both withdraw from the engagement on equal terms. The purpose of marriage is to create a stable family under the joint care of the two spouses. The same principles and conditions are applicable to both, including equality in terms of the marriageable age. Moreover, the right of matrimonial guardianship (*wilaya*) is now enjoyed by women and may be exercised by adult women in accordance with their choice and interests (art. 24).

The Family Code also seeks to ensure balance and reciprocity between the spouses in terms of rights and duties, and to promote relations between them that are based on courtesy, mutual respect, affection and understanding, and a commitment to preserve the interests of the family. They are also deemed to be jointly responsible for running the home and looking after their children. The Code includes many other provisions aimed at ensuring legal and practical equality between the spouses, even in the case of polygamy, to which a restrictive legal approach is adopted based on the principle that marriage to a single wife is the rule and that polygamy is the exception or is permissible on condition that the wives are equitably treated in all areas of marital life, a condition that is not easy to fulfil.

Although the Code permits polygamy under exceptional circumstances, the court may authorize it only if its objective justification and exceptional character have been established. As this is the case only where the requisite conditions and rules have been fulfilled, polygamy is well-nigh impossible in practice. Statistics show that there has been a steady decline in the polygamy rate. It declined from 0.30 % of the total number of marriages recorded in 2006 to 0.29 % in 2007.” (United Nations Committee on the Elimination of Racial Discrimination (CERD) (9 November 2009) *Reports submitted by States Parties under article 9 of the Convention: International Convention on the Elimination of all Forms of Racial Discrimination: 17th and 18th periodic reports of States parties due in 2006: Morocco- pg.30*)

A report by the *United Nations Committee on Economic, Social and Cultural Rights (CESCR)* under the heading 'Article 3. The right to equal enjoyment by men and women of economic, social and cultural rights' states:

"Marriageable age, which is now uniformly set at 18, although certain exceptions may be made where warranted, at the sole discretion of the court. Girls and boys who are wards have also been placed on an equal footing, and both now have the right to choose their guardian at the age of 15 (instead of 12 for boys and 15 for girls);

Severe restrictions on polygamy, which is now authorized only by the courts. Judges will authorize polygamy only if they are convinced of the husband's ability to treat the second wife and the children equitably and on an equal footing with the first wife, and to guarantee them the same standard of living. It should be noted that a woman may make it a condition of marriage, to be stipulated in the marriage contract, that her husband shall agree not to take any other wives;

Simplification of marriage procedures for expatriates; the only requirement for drawing up a marriage contract is the presence of two Muslim witnesses, in accordance with the procedure applicable in the host country;" (United Nations Committee on Economic, Social and Cultural Rights (CESCR) (17 January 2005) *UN Committee on Economic, Social and Cultural Rights: Addendum to the Third Periodic Reports Submitted by States Parties, Morocco – pg. 15*)

A report by *Emory Law* states:

"Marriage Registration: obligatory

Polygamy: polygamy not to be permitted in case of fear of unequal treatment; requirement of notification of prospective and existing wives; woman who did not insert stipulation limiting husband's right to marry polygamously in marriage contract and whose husband does so may seek judicial divorce on grounds of harm" (Emory Law (Undated) *Morocco, Kingdom of (& Western Sahara)*)

The *Foreign & Commonwealth Office (UK)* under the heading 'Marriage in Morocco' states:

"Please be aware that the documents required for marriage in Morocco may vary depending on where in the country you are getting married. We therefore strongly advise you to check with the authorities in the location of your intended marriage for their actual requirements. British Consular staff in Morocco cannot perform consular marriages." (Foreign & Commonwealth Office (UK) (10 July 2013) *Living in Morocco*)

The report continues:

"If you plan to marry a Moroccan and you are resident in Morocco (for which purpose you must have lived in Morocco for over 21 days before giving notice), the documents which you will need to bring with you are listed below.

Please note that it takes a total of 6 weeks (including the residency period in Morocco) to issue the Certificate and this time period cannot be shortened.

Your passport

If you have been married before, your decree absolute for each marriage, or if widowed, your late spouse's death certificate

Your Moroccan fiancé(e)'s identity card

If your fiancé(e) has been married before, he/she will need to produce the original divorce certificate in Arabic (and a translation) for each marriage, or previous spouse's death certificate if widowed.

Evidence of your address in Morocco

You will need to make a Declaration of Honour that you are free to marry and a Notice of Marriage will be displayed at the British Embassy for 21 clear days. After the Notice of Marriage has been displayed for 21 days we will issue:

A Certificate of No Impediment

A certified copy of your passport

Both these documents are issued in French, which is acceptable by the Ministry of Foreign Affairs where the documents must be legalised. They are valid for three months from the date they are issued. The date of issue will be the date that the 21 day notice of marriage period ends. If you do not make arrangements to be married within three months of that date, you will need to re-apply. It is therefore advisable to keep this date in mind when making all other arrangements for your intended marriage." (Ibid)

In a section titled 'Will I need to provide any other documents for the Family Court Judge?' it states:

"The following is a list of documents that may be required. We cannot guarantee that this list is complete and strongly advise you to check with your local Family Court:

1. Proof of Religion.

For British men: A certified copy of your certificate of conversion to Islam, or a document proving that you were born Muslim.

For British women: Any of the following:

For Christians: a document showing you are Christian

For Jewish women: a document showing you are Jewish

For Muslim women: a certificate of conversion or a document showing that you were born Muslim.

1. If you are under 18 years old: written permission from your legal guardians (normally mother and father) for you to marry.
2. A certified copy of your marriage certificate and divorce decree absolute if you have been married before.
3. A copy of your full Birth Certificate (stating both your parents' names).
4. A copy of your fiancé(e)s full birth certificate.
5. A certificate of no-objection issued by the British Embassy and certified by the Ministry of Foreign Affairs office.
6. A letter addressed to the judge saying that you both wish to be married, with your personal details (including UK address), and passport details, and your Moroccan fiancé(e)'s personal and identity card details. This letter must be written in Arabic.
7. A certified copy of your passport issued by the British Embassy and certified by the Ministry of Foreign Affairs office.
8. A police record issued by the local police in the UK for UK residents. Please apply at the police station closest to your home in the UK.
9. Whether you are a resident in the UK or Morocco, a record of no previous conviction for non-Moroccans (extrait de casier judiciaire), issued by the Ministry of Justice, Place Mamounia, Bab El Had, Rabat. For this the British national will need to take: a photocopy of their full birth certificate (showing their parents' names); a photocopy of their passport photo ID page; a photocopy of their passport page which shows the latest entry stamp into Morocco; 1x 10 dirham stamp, purchased from a licensed tobacconist.
10. A document proving your occupation and income.
11. A certified copy of a valid identity card and a certificate of residency for those residing in Morocco or in a country other than their country of origin.
12. A copy of the passport and a copy of the page showing the date of entry into Morocco.
13. A medical certificate for each fiancé(e).
14. A certificate of celibacy for the Moroccan fiancé(e).
15. A certificate of residency for the Moroccan fiancé(e).
16. 5 photos for the British person and 1 photo for the Moroccan fiancé(e).”(Ibid)

The *Department of Foreign Affairs (Ireland)* state on their website:

“Some countries may require non-nationals, before they can get married in their jurisdiction, to produce a certificate from their country of origin that they are free to marry. These are usually known as Certificats de Coutume or in the case of Italy 'Nulla Osta' and may be issued to Irish citizens abroad who

apply, to the Irish Diplomatic or Consular Mission nearest to where the applicant normally resides..." (The *Department of Foreign Affairs (Ireland)* (18 April 2012) *Marriage Abroad*)

The Foreign & Commonwealth Office (UK) state:

"A Certificate of No Impediment (CNI) is a certificate which confirms there are no objections to your proposed marriage.

If you are getting married overseas, you may be asked to prove that you are single or that you are allowed to marry. In most cases, you will be able to obtain a CNI for this purpose. You should check with the authorities in the country where you are getting married if you need a CNI..." (Foreign & Commonwealth Office (UK) (6 April 2011) *Certificate of No Impediment and Nulla Osta*s)

The *Human Rights Education Associates (HREA)* under the heading 'Title Six: Of the Formalities and Administrative Measures to Legalize a Marriage Contract' states:

"Article 67

The marriage contract shall contain the following:

- 1- Mention of the judge's authorization, its number, its date of issuance, and the number of the marriage document record as well as the court where it was filed;
- 2- The family names, first names, country or place of residence, place of birth and age, national identity card number or its equivalent, and nationality of both spouses;
- 3- The name of the marital tutor if required;
- 4- The offer and acceptance by the two contracting parties who exercise full capacity and the ability to choose and discern;
- 5- In the case of marriage by proxy, the name and national identity card number of the representative, and the date and place of issuance of the marriage delegation;
- 6- Mention of the legal status of the spouse who has been married previously;
- 7- The amount of the dowry in cases where it has been specified, denoting any amount paid in advance or to be paid in future instalment(s), and whether it has been paid in front of witnesses or if there is mere acknowledgement;
- 8- Conditions agreed upon by both parties;
- 9- The signatures of both spouses and the tutor when required;

10- The names of the two adouls (public notaries) and each one's signature with the date of the marriage contract;

11-The authentication of the marriage contract by the judge affixed with his seal.

The list of documents required to constitute the marriage record as well as their content may be modified or completed by ministerial decree.” (Human Rights Education Associates (HREA) (2005) *The Moroccan Family Code (Moudawana) of February 5, 2004 - An unofficial English translation of the original Arabic text*)

3. Divorce

A *Freedom House* report under the heading ‘Women’s Rights in the Middle East and North Africa 2010 – Morocco’ states:

“The 2004 family law gives women the right to file for divorce based on harmful behavior by the husband, such as abandonment or failure to provide financial support. Divorce due to irreconcilable differences, initiated by either spouse, is also possible, as is divorce by mutual consent. The latter type of divorce can include khula, in which the woman obtains a divorce by providing the husband with financial compensation, traditionally by returning her dowry. Husbands can still initiate divorce through "repudiation," but the practice is now subject to more judicial oversight, and husbands can grant their wives the authority to use repudiation as well (Articles 78–93).

By law, all divorces go through a reconciliation period and should be finalized within six months, but in reality, divorce remains a tedious procedure that may drag on for many months. The results are often advantageous to the husbands due to bribery of the judge and the weight of tradition, which stigmatizes women's appearance in court. Existing social conditions also mean that the wife is sometimes unable to pay the court expenses because of poverty. Social norms encourage men to neglect to pay the nafaqa, or maintenance owed by a man to his ex-wife, and khula divorces are abused as an opportunity to extort money from women eager for a divorce. However, amendments to khula procedures under the 2004 law permit arbitration by a judge when the parties cannot agree to a final amount.

Under Article 171 of the family law, a mother is the first choice for custody of her child, followed by the father and then the maternal grandmother. In a change from previous rules, the father no longer automatically assumes custody of children whose divorced mothers remarry or move out of town. However, a divorced woman with children over the age of seven will lose custody at her ex-husband's request if she remarries. In such instances, the woman retains legal guardianship of her minor children only if their father is dead or incompetent. Both girls and boys are entitled to choose the mother or father as custodian when they reach the age of 15.” (Freedom House (3 March 2010) *Women’s Rights in the Middle East and North Africa 2010 – Morocco*)

A report by *United Nations Committee on Economic, Social and Cultural Rights (CESCR)* under the heading 'Article 3. The right to equal enjoyment by men and women of economic, social and cultural rights' states:

"Dissolution of the bonds of marriage, which is now a right that may be exercised by husband or wife, subject to judicial supervision. Additionally, limitations have been placed on the right to repudiate by strengthening conciliation and mediation mechanisms. Divorce by mutual consent has also been introduced;

Greater balance within the marriage, with a view to extending the woman's right to seek judicial divorce where the husband fails to comply with one of the conditions set down in the marriage contract, or if she suffers harm through, for example, defaulting on maintenance, desertion of the marital home or violence;

Recognition and preservation of children's rights, specifically through the incorporation into the Family Code of the relevant provisions of the international conventions ratified by Morocco, and through efforts to safeguard the child's best interests as regards care (custody), which must be awarded to the mother, then the father, then the maternal grandmother. Where none of these options is feasible, the court alone may place the child in the care of whichever close relative is best able to provide such care, taking account of the child's interests. In addition, the obligation to provide a child in care with decent accommodation is now separate from maintenance-related obligations. Maintenance procedures must be completed within a maximum of one month;..." (United Nations Committee on Economic, Social and Cultural Rights (CESCR) (17 January 2005) *UN Committee on Economic, Social and Cultural Rights: Addendum to the Third Periodic Reports Submitted by States Parties, Morocco* - pg.15)

A report by the *United Nations Committee on the Elimination of Discrimination Against Women (CEDAW)* under the heading 'Article 16: Equal rights in family matters' states:

"The dissolution of any marriage now requires a court decision. Both husband and wife must be present after an attempt at reconciliation, followed by a second attempt where there are children. The only situation in which both spouses are not required to be present is a petition for divorce on the grounds of the husband's absence.

The Family Code has introduced two other forms of dissolution of marriage: divorce by mutual consent, and divorce on the grounds of irreconcilable differences. The latter procedure terminates conjugal life by reason of disagreement so profound as to make conjugal life impossible, as certified in a written report by mediators designated to reconcile the husband and wife. The dissolution of marriage on the grounds of irreconcilable differences has been instituted to simplify the procedure.

In addition, Moroccan law regulates divorce in return for a consideration, with a view to eliminating unconscionable considerations that jeopardized the rights of the wife and might also infringe on the rights of the children, such as the wife's renouncing her right to the custody of the children or her support payments.

A woman may lawfully petition the courts for divorce on any of the grounds contemplated in article 98 of the Family Code: failure on the husband's part to observe one or more of the conditions stipulated in the marriage contract, hardship, non-support, absence, redhibitory defect, an oath of abstention from marital relations or desertion. However, a woman may not lawfully seek a divorce in return for a consideration.

The Code contains many provisions aimed at safeguarding the rights of the wife and children. Some of those provisions are designed to guarantee the interests of all parties, and of the children in particular, by specifying that the ex-husband shall be required to pay the cost of the children's lodging, independently of the cost of the ex-wife's maintenance. The purpose of these provisions is to ensure that the wife and children will have somewhere to live after the ex-wife has completed her waiting period.

The simplification and rapidity of procedures under the Code are noteworthy, especially in respect of the dissolution of marriage, which should not take more than six months, and in respect of support payments, which must be settled within one month at most. In all cases, the interests of children are the main consideration.

A further illustration of the equality of rights and responsibilities upon the dissolution of marriage is to be seen in the fact that in the event of a revocable divorce, the husband does not have an automatic right to take his wife back before the expiration of her waiting period: he must state his intention of doing so before two adults (witnesses under Islamic law), who immediately inform the judge. Before issuing the certificate of revocation, the judge summons the woman to inform her of the matter, and if she refuses, she may seek a divorce on the grounds of irreconcilable differences under the provisions of article 124 of the Family Code.

The unequal aspects of the effects of divorce have been mitigated to some extent, especially as regards the grounds on which the woman loses custody of her children in the event of her remarriage. In the first place, this does not happen in all cases, but only where it is in the children's interest. In the second place, a woman who remarries does not lose custody of a child who is under seven years of age, a child to whom separation from his or her mother would be detrimental, a child affected by a disease that would make nurturing difficult for any person other than his or her mother, a child whose mother is his or her legal guardian, or a child to whom the husband is related within the prohibited degrees." (United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) (18 September 2006) *UN Committee on the Elimination of Discrimination against Women: Combined Third and Fourth Periodic Report of States Parties, Morocco - pg.59*)

A response by the *Immigration and Refugee Board of Canada* states:

"Under the former Moudawana, a husband could terminate the marriage simply by uttering the ritual words for a divorce and his decision would be legally binding (BBC 28 Jan. 2004; Sunday Herald 1 Feb. 2004; Qantara.de 2004). Under the new family code, the legalization of repudiation can only be obtained by a court decision (Maroc Hebdo International 14-20 May 2004; BBC 28 Jan. 2004; InfoSud 30 Jan. 2004; The Sunday Herald 1 Feb. 2004;

Qantara.de 2004; Sisyphé 20 Nov. 2003; L'Express 11 Dec. 2003a; *ibid.* 11 Dec. 2003b; La Vie Économique 17 Oct. 2003). Under the former code, Judges had the responsibility of registering decisions of repudiation (L'Express 11 Dec. 2003b).

The new family code also lightens the process for women filing for divorce (Maroc Hebdo International 14-20 May 2004; Qantara.de 2004; L'Express 11 Dec. 2003a) and breaks new ground by allowing consensual divorce (The Arab Reform Bulletin Sept. 2004; Maghreb Canada Express Dec. 2003; L'Express 11 Dec. 2003a).

Under the new family code, a public notary (*adul*) can no longer authorize a divorce (Qantara.de 2004). Additional information on the role of *aduls* in divorce proceedings could not be found among the sources consulted by the Research Directorate.

Divorce of any kind must be authorized by a government family court (Qantara.de 2004). Zhor El Horr, president of a court of first instance, said in an interview published in the 7 March 2004 issue of the Moroccan daily *Le Matin* that family courts were being created as a result of the new family code and that judges specializing in family law were increasing in numbers (7 Mar. 2004b).

The objective was to create 70 family courts in which 500 specialized judges would render decisions (La Vie Économique 13 Feb. 2004). The family courts are made up of a Crown prosecutor, two judges and their assistants (Jeune Afrique/L'Intelligent 27 June 2004; Maroc Hebdo International 14-20 May 2004). Leila Rhiwi, a Moroccan women's rights activist, pointed out the difference with the former situation in which [translation] "family matters, particularly divorce, were judged by only one magistrate, who ruled arbitrarily and summarily" (Jeune Afrique/L'Intelligent 27 June 2004)." (Immigration and Refugee Board of Canada (13 October 2004) *MAR43044.FE Morocco: Authorities that can effect or recognize a divorce, including cases of divorce by mutual consent; whether a Moroccan embassy or consulate has the authority to effect or recognize a divorce (2003-October 2004)*)

The *Human Rights Education Associates (HREA)* under the heading 'Title Eight: Of Divorce Certification Procedures and Content' states:

"Article 138

Divorce must be certified by two '*adouls*' (public notaries) specialized in the matter, once the court authorizes it and after submission of the marriage record.

Article 139

The divorce decree should include the following:

- 1-The date of the divorce authorization and its number;
- 2-The identities, addresses, identity card numbers or their substitute of the former spouses;
- 3-The marriage contract date of issuance, its number in the record cited in preceding Article 68;
- 4-The type of divorce and its number.

Article 140

The wife has the right to obtain the divorce decree fifteen days after the divorce has been certified, and the husband may also obtain a copy.” (Human Rights Education Associates (HREA) (2005) *The Moroccan Family Code (Moudawana) of February 5, 2004 - An unofficial English translation of the original Arabic text*)

4. Marriage between Non Nationals and Nationals – Marriage between two Non-Nationals

A report by the *United Nations Committee on the Elimination of Racial Discrimination (CERD)* under the heading ‘The right to marriage and choice of spouse’ states:

“With regard to the choice of a spouse, the Family Code affirms the right to marry and start a family in terms that are consistent with international treaties and make no distinction on grounds of race, language, nationality, region, class or wealth. The basic requirements for marriage are uniform and the legal rules are applicable to persons in terms of their status and not their sex. With a view to promoting the application of the provisions of the Code in practice, the Ministry of Justice continuously monitors their implementation in cooperation with the different actors involved (courts, lawyers, women’s associations and human rights bodies) and seeks to ensure that the Code is properly applied by the judicial authorities.” (United Nations Committee on the Elimination of Racial Discrimination (CERD) (9 November 2009) *Reports submitted by States Parties under article 9 of the Convention: International Convention on the Elimination of all Forms of Racial Discrimination: 17th and 18th periodic reports of States parties due in 2006: Morocco - pg.30*)

The report by *Freedom House* under the heading ‘Non-discrimination And Access To Justice’ states:

“Thanks in part to the efforts of women's groups, particularly the Democratic Association of Moroccan Women, a new nationality code was passed in January 2007, thereby improving gender equality with respect to citizenship rights. Article 7 of the new law, which came into force in April 2008, enables women married to noncitizen men to pass their nationality to their children. However, the only children eligible for citizenship under this provision are those of a Moroccan woman and a Muslim noncitizen man who married in accordance with the Moudawana. In practical terms, Moroccan women married to non-Muslim men and those married outside of the country and its laws are excluded by the code. Furthermore, while foreign wives may receive Moroccan citizenship within five years of marriage to a Moroccan man, the foreign husbands of Moroccan women remain altogether ineligible for Moroccan citizenship. Although imperfect, the amendments to the code provide significant benefits for children with Moroccan mothers and noncitizen fathers who were previously excluded from receiving the free education and health care available to citizens.” (Freedom House (3 March 2010) *Women’s Rights in the Middle East and North Africa 2010 – Morocco*)

A response by the *Immigration and Refugee Board of Canada* states:

“According to a 19 August 2002 article in *Aujourd'hui le Maroc*, there are no religious restrictions on mixed marriages between Moroccan men and foreign women. However, there are restrictions on marriages between Moroccan women and foreign men-non-Muslim men are not allowed to marry Muslim women without converting to Islam (*Aujourd'hui le Maroc* 19 Aug. 2002; *La Gazette du Maroc* 30 Dec. 2002). In addition, children born of marriages between Moroccan women and foreign men do not have Moroccan citizenship (*ibid.*; *Aujourd'hui le Maroc* 21 Jan. 2002; *Le Matin* 20 Jan. 2004).

In a 30 December 2002 article, *La Gazette du Maroc* pointed out that a Moroccan woman who decides to marry a foreign man is [translation] "very brave" because she risks being rejected by her family, neighbours, friends and society in general. Another article in the same newspaper indicated that [translation] "mixed marriage is generally frowned upon in Morocco because of religious restrictions" (*La Gazette du Maroc* 3 Feb. 2003).

A member of the board of directors of the Moroccan Association for Human Rights (*Association marocaine des droits humains, AMDH*) provided the following information during a 25 October 2004 telephone interview.

According to Islamic law, marriages between Muslim women and non-Muslim men are not permitted. In order to marry a Muslim woman, a non-Muslim man must convert. The procedure is quick and involves reciting a phrase in front of two imams. Subsequently, practising Islam is not required. A marriage between a Muslim woman and a non-Muslim man does not lead to legal problems later; however, social problems can exist with other women and with children (for women who do not tell everyone that their husband is Muslim.)” (*Immigration and Refugee Board of Canada* (28 October 2004) *MAR43088.FE Morocco: Legality and possibility of marriage between a non-Muslim man and a Muslim woman; social and legal consequences of such a marriage, including a prison sentence for the man*)

Marriage between two Non-Nationals

No information on the above issue could be found among sources available.

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