

ARTICLE

Fighting the Violence Against Women in Morocco

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Abstract

Violence against women in all its forms is the most shameful violation of human rights. It is a violation that continues to increase over the years despite the existence of international and national laws. Morocco is one of the countries in the world that suffers from this discrimination against women. To deal with this phenomenon, national texts intervene to establish a legal framework that respects the principle of equality between women and men such as the Constitution of 2011, The Family Code (“Moudawana”) of 2004, and the adoption in 2016 of Law No. 27-14 on the fight against human trafficking, etc. In 2018, Law No. 103-13 related to the fight against violence towards women was promulgated. It is a law which constitutes a real legislative innovation in Morocco since it will reduce or even stop a certain number of abuses experienced by women. This is what leads us to ask ourselves, is Law No. 103-13 really going to allow us to abolish the segregation between men and women? And would this law allow us to fight against all kinds of violations against women?

Keywords law, violence, women, fighting, discrimination

INTRODUCTION

Violence against women is a phenomenon that has been deep-rooted for centuries. It is one of the most systematic and widespread forms of human rights violations. This violence casually affects all regions of the world, without distinction between the socio-economic status of women, their age or their level of education (Ben Sedrine 2019:1). Also, it widens gender inequality and creates strong segregation of women and girls around the world.

The United Nations defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation

of liberty, whether occurring in public or in private life”.¹ The World Health Organization defines violence as “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation” (Krug et al. 2002:5).

A multitude of causes is at the origin of this violence and discrimination, namely domination, poverty (Bisilliat 2003:36), culture, armed conflicts, etc.

International and national texts intervene to establish a legal framework that protects women against all kinds of violation and discrimination of women’s rights.

The international texts are:

- (1) The International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965);
- (2) The Convention on the Elimination of All Forms of Discrimination Against Women of 18 December 1979, which Morocco has ratified with reservations on a number of articles deemed to be contrary to Moroccan legislation in force, including the Constitution and the Shariâ (which is Islamic law);
- (3) The Declaration on the Elimination of Violence against Women (20 December 1993);
- (4) The Convention of Belém do Pará (9 June 1994);
- (5) United Nations General Assembly Resolution 54/134 (17 December 1999);
- (6) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (22 December 2000);
- (7) The Recommendation of the Committee of Ministers of the Council of Europe to member states on the protection of women against violence (30 April 2002);
- (8) The Council of Europe Convention on preventing and combating violence against women and domestic violence (7 April 2011).

In turn, national texts intervene to establish a legal framework that protects women against all kinds of discrimination, namely:

- (1) The Moroccan Constitution of 2011, which is dedicated to not only the principle of equality between women and men and that of parity through its Article 19,² but also prohibits discrimination based on gender by guaranteeing the physical and moral integrity of the individual (Article 22),³ a Constitution which in these words protects human rights and combats all kinds of indecent treatment. Added to the Constitution,
- (2) The Family Code (“Moudawana”), promulgated in 2004, which brought real innovations with regard to the elimination of discrimination against women

¹Declaration on the Elimination of Violence against Women. United Nations General Assembly Resolution 48/104, 23 February 1994.

²Article 19 of the Moroccan Constitution stipulates: “Men and women enjoy equal civil, political, economic, social, cultural and environmental rights and freedoms . . .”.

³Article 22 states: “. . . No one shall inflict on another person, on any pretext whatsoever, treatment that is cruel, inhuman, degrading or undermining human dignity. The practice of torture, in all its forms and by anyone, is a crime punishable by law.”

(El Mekkaoui 2009:10). Despite this progress, the associations for the defence of women's rights in Morocco point out that this code has not yet abolished all discriminatory laws and practices, whether in terms of polygamy, marriage of minors and inheritance (Berbour 2005:15). Thus, a controversy or confrontation exists between two opposing standpoints: the modernist and the conservative (El Mazidi 2005:21; Esbahi 2003:25), where each strongly defends its ideologies. Apart from the Family Code, can be cited:

- (3) The repeal in 2014 of paragraph 2 of Article 475 of the Penal Code relating to the marriage of the rapist to his victim;
- (4) The adoption in 2016 of Law No. 27-14 on the fight against human trafficking;
- (5) Finally, the implementation of Law No. 103-13, promulgated by Dahir No. 1-18-19 of 22 February 2018, relates to the fight against violence against women. This law is a real legislative innovation in Morocco.

In this paper, I will focus on this new legal mechanism which has been specially dedicated to the protection of women and girls against all forms of violence (verbal, physical, psychological, sexual) (El Khamlichi 2013:13), which can be practised in different contexts, whether at home, in the street, at work or elsewhere.

The text in question constitutes a legislative response to the demands of civil society and to the needs of the daily life of Moroccan women.

Thus, to what extent has Law No. 103-13, with its innovations brought by its text, protected women against all forms of violence, in relation to the common law penal system? To answer this problem, it is necessary to examine first the extent of the application of Law No. 103-13 and then to understand its procedural specificities, and the difficulties of proof underlined by this law.

SCOPE OF APPLICATION OF LAW NO. 103-13

Law No. 103-13 defines violence in its first article as "Any material or moral act or abstention based on discrimination on grounds of sex resulting in bodily, psychological, sexual or economic harm to the woman". From there, the said law criminally protects not only the bodily and psychological aspects of women but also their social or economic rights. This article is still limited in its presentation of the different forms of violence; it is as if women would only be confronted with bodily, psychological, sexual or economic violence, while other types of violence such as social, legal or political violence (which operate the distinction between the sexes) and media violence, which presents indecent images of women, are non-existent in society.

In addition, several advances can be noted at the level of this law, for example, the aggravation of the sentences of certain already-existing offences, the modification of certain provisions already provided for by the Penal Code, and the consecration of new offences.

As part of the aggravation of the penalties for certain pre-existing offences, Law No. 103-13 increases the penalty of kidnapping, already provided for in Article 436 of the Penal Code. Included are a kidnapping or sequestration committed by a spouse, a divorced spouse, a fiancé, an ascendant, a descendant, a brother, a *kafil*,

a tutor, or a person having authority over the victim or dependant, or when the victim has been subjected to any other violence of any kind. The custodial sentence is increased to imprisonment of ten to twenty years, in the case provided for in the first paragraph of Article 436 of this Penal Code and imprisonment of twenty to thirty years, in the case provided for in the second paragraph of the same item.

Similarly, the penalties provided for in Articles 425, 426, 427 and 429 of the Penal Code relating to threats are doubled when the perpetrators of the offence are the same.

Also, it can be noted that through these articles the penalties are much aggravated when there are more people involved (perpetrators of the offences), which is to be applauded. On the other hand, most of the newly defined offences are related to the protection of married, divorced or engaged women and that there is total absence of a category of women who have not been mentioned, in particular migrant women and girls, those with children out of wedlock, or those with a disability (Amnesty International 2016).

Moreover, some already existing provisions of the Penal Code (Dahir No. 1-59-413 of 26 November 1962) have undergone changes. Thus, Law No. 103-13 provides for the revision of Articles 404, 431, 446, 481 and 503-1 of the said Code which are much more protective of women who have suffered violence. An example is Article 404 of the Penal Code, which now includes protection against blows and injuries directed at women because of their sex or when they are pregnant or have a disability or are known to have weak mental abilities.

In addition, new offences, previously ignored by Moroccan criminal legislation, have appeared with the new Law No. 103-13:

The prohibition of forced marriage (Article 503-2-1), an act punishable by penalties ranging from six months to one year in prison, and fines of between 10,000 and 30,000 dirhams.

The penalty imposed on one of the spouses who dissipates or assigns his property in bad faith, with the intention of harming the other spouse or the children or circumventing the provisions of the Family Code regarding the maintenance of food, housing, rights due resulting from the breakdown of the marital relationship or the division of property. Proceedings can only be instituted upon complaint by the injured spouse.

Reference is also made to Article 503-1 of the Penal Code, which is now framed by Article 503-1-1 of the new law which redefines sexual harassment as being an abuse of authority with the aim of “[harassing] another by using orders, threats, coercion or any other means, with the aim of obtaining favours of a sexual nature”.⁴

Still in the context of sexual harassment, Article 88-1 of the new Law No. 103-13 provides for an innovation that reinforces the protection of harassed women or

⁴Article 503-1-1 of Law No. 103-13 of the Penal Code: “Is guilty of sexual harassment and is punished by imprisonment of one month to six months and a fine of 2000 to 10,000 dirhams or one of these penalties, anyone who persists in harassing another person in the following situations: 1 – in public or other places, by means of acts, words or signs of a sexual nature, or for sexual purposes; 2 – through written or electronic messages, recordings or photographs of a sexual nature or for sexual purposes. The penalty is heavier if the perpetrator is a co-worker or an individual responsible for maintaining security and order in public or other spaces.”

minors and which is explained by the fact that in the event of conviction for harassment, assault, sexual exploitation, mistreatment or violence, the court may decide to prohibit the convicted person from contacting the victim or from approaching the place where she is, or from communicating with her by any means, for a period not exceeding five years from the date of expiry of the sentence to which he was sentenced, or from the date of the pronouncement of the judicial decision when the custodial sentence was suspended, or if he was sentenced only to a fine or an alternative penalty.

After having determined the extent of the application of Law No. 103-13, it is necessary to examine the procedural specificities and the difficulties of proof underlined by this law. The paper will end with the manifestations of the protection of women violated through Law No. 103-13.

PROCEDURAL SPECIFICITIES AND DIFFICULTIES OF PROOF HIGHLIGHTED BY LAW NO. 103-13

To receive application, any special text in criminal law must go through the criminal procedure. The rules of the latter can sometimes prove to be incompatible with the specificities of the facts incriminated; hence the need to appeal to a few special procedural rules. And it is in this logic that Law No. 103-13 was invested.

Moreover, Article 6 of Law No. 103-13 amending Article 302 of the Code of Criminal Procedure provides that hearings may be held in camera at the request of the victim when it comes to a case of violence or sexual assault against a woman or a minor. This important measure makes it possible to preserve the secrecy of the debates.

In addition, ancillary civil action may only be initiated by the associations interested in cases of combating violence against women in accordance with their statutes, within the framework of Article 7 of the Code of Criminal Procedure, after authorization written by the victim.

Similarly, Article 82-5-2 of the Code of Criminal Procedure provides for new measures to protect the victim, such as placing the victim in hospitalization centres for the purposes of treatment and ordering the placement of the battered woman who needs and wants it in reception establishments or social welfare establishments.

The proof of offences of violence against women poses real problems, insofar as these offences are generally committed in a private or family setting, behind closed doors; hence there are major difficulties of proof.

However, the general principle of proof provided for by Article 286 of the Code of Criminal Procedure specifies that offences can be proven by any means of evidence unless the law provides otherwise. This general principle remains a real guarantee for the victims of violence against women, because they can prove the offence by any means of evidence available. The new law in its Article 447-1 reinforces this guarantee by providing for a fairly severe penalty which

Is punishable by imprisonment of six months to three years and a fine of 2.000 to 20.000 dirhams, anyone who knowingly proceeds and by any means, including computer systems, to the interception, recording, broadcasting or

distribution of words or information emitted in a private or confidential context, without the consent of their authors. Is liable to the same penalty, whoever proceeds, knowingly and by any means, to the capture, recording, dissemination or distribution of the photograph of a person in a private place, without his consent.

Hence, the elimination of a potential means of proof of offences of violence against women.

To conclude, I will move on to the last point which evokes the manifestations of the protection of abused women through Law No. 103-13.

MANIFESTATIONS OF THE PROTECTION OF ABUSED WOMEN THROUGH LAW NO. 103-13

The Moroccan legislator has strengthened the protection of abused women through the promulgation of Law No. 103-13. What about the manifestations of this protection?

In fact, the Moroccan legislator has focused on the protection of the victim through several mechanisms. It has set up commissions and multi-stakeholder cells, within the courts of first instance and the Courts of Appeal, as well as within the central and decentralized services of the departments responsible for justice, health, youth and women, as well as the General Directorate of National Security and the High Command of the Royal Gendarmerie.

As for the cells, these assume the missions of reception, listening, support, orientation and accompaniment for the benefit of female victims of violence.

As for the commissions, there are three: national, regional and local.

The national commission is responsible for ensuring communication and coordination, at the national level, between the interventions of government departments and central administrations concerned with violence against women.

Regional commissions have been created for the care of female victims of violence within the jurisdiction of each Court of Appeal. These regional commissions are responsible for the following tasks:

Developing regional action plans within the framework of the competences entrusted to them;

Ensuring communication and coordination between the judiciary and other departments and administrations involved in cases of care for female victims of violence at the regional level. This law also tells us about the local commissions for the care of female victims of violence within the jurisdiction of each court of first instance.

The local commissions in turn are responsible for the care of female victims of violence of the following missions:

Developing local action plans within the framework of the attributions entrusted to them;

Ensuring communication and coordination between the judiciary and other departments and administrations concerned with the issues of female victims of violence and associations working in this field.

The local commissions send their periodical reports on the functioning and assessment of their action to the regional commissions and meet at least four times a year, and whenever necessary, when convened by their presidents.

All of this demonstrates that the legislator was inspired by the theory of victimology, which aims to promote the early and specific treatment of victims. However, criticisms remain valid.

Apart from the commissions and cells just mentioned, mechanisms for the prevention of violence against women are provided for by the new law and framed by Article 17. This article provides that public authorities must take all preventive measures to combat violence against women, by developing and implementing policies, and programmes aimed at raising awareness of the risks of violence against women and improving the image of women in society, also working to raise awareness of their rights.

It is certain that the public authorities can make such programmes, but the difficulty lies in the application of these programmes, which calls on the role of civil society. Hence, there is a huge need for funding and follow-up. Civil society must increase its efforts to make people aware of the important place that women occupy in society and of the legal protection they must benefit from in order to avoid any kind of discrimination.

CONCLUSION

To conclude, it remains for us to say that it is important to stop this haemorrhage of violence, that only hinders the development of women on all fronts.

Thus, to banish violence, solutions will have to be found, such as:

Reworking mentalities by insisting on the fact that the relationship between the two sexes must be based on mutual respect, fairness and the sharing of responsibilities;

Taking an interest in the development of women in their education, health and economic independence through an integration strategy;

Seeking support from the State for victims of violence so they may be granted free treatment and health and legal follow-up.

In addition, the adoption of Law No. 103-13 is salutary, insofar as it constitutes one of the important texts strengthening the national legal arsenal concerning the protection of female victims of violence. However, this law contains a number of shortcomings, in particular, the prosecution which remains dependent on the complaint made by the victim, and sexual violence that is perpetrated in a conjugal context is far from being clearly criminalized.

Moreover, the law does not contain certain important provisions concerning access to medical care, in particular for victims of rape and other forms of sexual violence, in order to mitigate the physical and psychological consequences that have

suffered, such as having free and immediate access to medical care, including, in particular, the possibility of obtaining emergency contraception, of benefiting from tests to detect sexually transmitted infections and of receiving appropriate care if necessary, and of undergoing a forensic examination carried out in accordance with the Istanbul Protocol.

It, therefore, seems essential to promote the reaction of institutions, including the police, the judicial system, health personnel and social services to the complaints made by female victims of violence.

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TRANSLATED ABSTRACTS

Abstracto

La violencia contra la mujer en todas sus formas es la violación más vergonzosa de los derechos humanos que sigue aumentando a lo largo de los años a pesar de la existencia de leyes internacionales y nacionales. Marruecos es uno de los países del mundo que sufre esta discriminación contra la mujer. Para hacer frente a este fenómeno, intervienen textos nacionales para establecer un marco legal que respete el principio de igualdad entre mujeres y hombres como la Constitución de 2011, El Código de Familia (“Moudawana”) de 2004, y la aprobación en 2016 de la Ley No. 27-14 sobre la lucha contra la trata de seres humanos). En 2018, la Ley No. 103-13 relacionada con la lucha contra la violencia hacia las mujeres fue promulgada. Es una ley que constituye una auténtica novedad legislativa en nuestro país ya que reducirá o incluso frenará un cierto número de abusos sufridos por las mujeres. Esto es lo que nos lleva a preguntarnos, ¿realmente la Ley No. 103-13 nos permitirá abolir esta segregación entre hombres y mujeres? ¿Y esta ley nos permitiría luchar contra todo tipo de violaciones contra las mujeres?

Palabras clave ley, violencia domestica, mujeres, lucha, discriminación

Abstrait

La violence à l'égard des femmes sous toutes ses formes est la violation la plus honteuse des droits de l'homme qui ne cesse d'augmenter au fil des années malgré l'existence de lois internationales et nationales. Le Maroc est l'un des pays au monde qui souffre de cette discrimination à l'égard des femmes. Pour faire face à ce phénomène, des textes nationaux interviennent pour établir un cadre juridique respectueux du principe d'égalité entre les femmes et les hommes tels que la Constitution de 2011, le Code de la famille (« Moudawana ») de 2004, l'adoption en 2016 de la loi n° 27-14 sur la lutte contre la traite des êtres humains). En 2018, la loi n° 103-13 relative à la lutte contre les violences faites aux femmes a été promulguée. Une loi qui constitue une véritable nouveauté législative dans notre pays puisqu'elle va réduire voire stopper un certain nombre d'abus subis par les femmes. C'est ce qui nous amène à nous demander, est-ce que la loi n° 103-13 nous permet vraiment d'abolir cette ségrégation entre hommes et femmes ? Et cette loi nous permettrait-elle de lutter contre toutes sortes d'atteintes aux femmes ?

Mots-clés loi, violence domestique, femmes, combats, discrimination

抽象的

一切形式的暴力侵害妇女行为都是最可耻的侵犯人权行为。尽管存在国际和国家法律,但多年来侵权行为仍在继续增加。摩洛哥是世界上遭受这种对妇女歧视的国家之一。为应对这一现象,国家文本介入建立尊重男女平等原则的法律框架,例如(2011年宪法、2004年家庭法典“Moudawana”、2016年通过的第27号法律-14关于打击人口贩运……等)。2018年颁布了关于打击暴力侵害妇女行为的第103-13号法律。一项在我国构成真正立法创新的法律,因为它将减少甚至停止一定数量的妇女遭受的虐待。这让我们不禁要问自己,第103-13号法律真的允许我们废除男女之间的这种隔离吗?这部法律是否允许我们打击对妇女的各种侵权行为?

关键词: 法律-家庭暴力-妇女-斗争-歧视

لملخص

إن العنف ضد المرأة بجمعيه أشكاله هو أبشع انتهاك لحقوق الإنسان. انتهاك يتزايد بمرور السنين رغم وجود قوانين نولية ووطنية. المغرب من دول العالم التي تعاني من هذا التمييز ضد المرأة. ولمعالجة هذه الظاهرة، تتدخل النصوص الوطنية لوضع إطار قانوني يحترم مبدأ المساواة بين المرأة والرجل مثل (دستور 2011، مدونة الأسرة “مدونة” لعام 2004، واعتماد القانون رقم 27 في عام 2016. 14 بشأن مكافحة الاتجار بالبشر... الخ). في عام 2018، صدر القانون رقم 103-13 المتعلق بمكافحة العنف ضد المرأة. إنه قانون يشكل بدعة تشريعية حقيقية في المغرب لأنه سيقلل أو حتى يوقف عددا معيناً من الانتهاكات التي تتعرض لها المرأة. ماذا يقودنا إلى التساؤل، هل حقاً القانون رقم 103-13 سيسمح لنا بإلغاء الفصل بين الرجال والنساء؟ وهل سيسمح لنا هذا القانون بمحاربة جميع أنواع الانتهاكات ضد المرأة؟

قانون الكلمات المفتاحية: العنف، النساء، القتال، التمييز

Leila Ben Sedrine earned her doctorate of private law from the University of Perpignan, France. Presently, she is a full professor in the Faculty of Legal, Economic and Social Sciences, Souissi, Mohammed 5th University of Rabat, Morocco, in the private law department of the same faculty. The majority of her books and articles are related to the protection of human rights. A specialist in private law and more particularly in health and family law, she has led several campaigns to protect patients and women whose rights are violated. She is the President in Morocco of the scientific and legal association in health law named “Patient Rights First”.