

# Domestic Violence in the African North

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## Introduction

Theories, debates and activism on sexual health and rights have travelled with reasonable speed in North Africa in the past three decades or so and considerable headway has been achieved on this front (see Chaouachi, 1997; Charrad, 2001; Sadiqi, 2008; Ennaji and Sadiqi *forthcoming*). However, although related, questions of domestic violence, which may also include sexual assault and rape, have been rather side-lined theoretically, in spite of the fact that activism and legal reform work remain strong in the region, and in spite of the fact that gender-based violence is considered essential to the most fundamental provisions of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>1</sup> This regression in theoretical work on domestic violence in the region has resulted in lack of action on the part of policy-makers.

One can understand that the issue of domestic violence is generally eschewed by the policies promoting gender equality in the region as such policies are blind to what is undertaken in the private sphere, generally considered not political because not economically productive. But academic theory on the topic cannot make any headway without focusing on the private with the aim of rendering it public. Indeed, although it is true that law and family constitute only one element of the broader constellation of gender relations and institutions, it is a crucial and understudied one. In other words, while North Africa has witnessed deep social, economic and political transformations in the last three decades, there is need to reopen the old debates on domestic violence in new ways that address these new transformations. It should be noted at this juncture that the overall status of women in this part of the world is rather privileged in comparison to those of many Arab and Muslim countries. A number of questions may be raised in this respect: Are the theoretical debates

on domestic violence in the 70s and 80s still valid for the present times? What impact do the significant advances on the legal, economic and political fronts have on these debates? What role could the changing notion of the family, perceived as a central safe haven in North African societies, have on these debates?

In an attempt to answer these questions, this paper is organized as follows: Section 1 presents the changing nature of the family in the region and Section 2 looks at the state of affairs with regard to domestic violence in the African North. The last section presents new ways of dealing with domestic violence but concludes that much is still to be done.

## **The changing nature of the family in North Africa**

Domestic violence is closely related to the nature and structure of the family. North African societies are deeply patriarchal and the family space has always functioned as the realm of male dominance over women and children. Such family spaces were often households sheltering members of the extended family with the father or grandfather as the head figure. In these societies, men decide to marry, not women; women are “given” in marriage. Further, within the North African family structure, the rule is to “correct” children with the aim of “upbringing and educating” them (there is only one term for both in Arabic: *rbbi*). Consequently, it is natural to hit children and women with the aim of “correcting” them.

This cultural given started to change with women’s education and salaried job-taking. The independence of the Maghrebian countries was accompanied with massive scholarisation of girls in urban areas. Women’s education, women’s work have been accompanied by a gradual transformation of households into nuclear families sheltering parents and children. The transition from bigger to smaller families has had its challenges: various types of violence accompanied the new gender negotiations within the family. In 2003, Fouzia Ghissassi and Moulay R’Chid edited a book where a number of Moroccan university teachers and professors gave testimonies of domestic abuse. Granting that domestic violence is a universal phenomenon that has been attested in the cultural histories of all nations, talking about it, especially in educated circles, is still taboo.

In the last decade or so, the result of a combination of economic crises, unemployment, and a superficial form of religiosity led to a crisis of masculinity in the Maghreb, a fact which resulted in more domestic

violence. The North African family has long been described as a patriarchal unit, and it has been noted that Muslim family laws have served to reinforce patriarchal gender relations and women's subordinate position within the family. Again, granting that patriarchy is universal and multi-faceted, Arab-Muslim patriarchy is space-based and takes the family as its abode. Whereas mainstream Western patriarchies are more public and based on the "ideal image of a woman", Arab-Muslim patriarchy is more "private". As such, it considers the family, kin ties and women's reproductive capacities as "essential" and "natural". The emphasis on biology has led to reductionist and functionalist accounts of the family that we find in both Arab-Muslim and mainstream Western societies. In both societies, the family serves to socialize children into society's normative system of values and provide an emotional environment that will ensure a psychologically protective environment for the (male) worker/breadwinner. In both types of society, these functions are carried out by the wife and mother.

It is for these reasons that in modern North African societies, the role of women and the family are striking. Marriage and family are central to social reproduction. It is also at this juncture that religion and culture intermingle to the extent that the two melt into one. For example, the Egyptian Islamist Seyid Qutb described the family as "the nursery of the future which breeds precious human products under the guardianship of women". In this context, a woman primarily functions as a wife and mother and a man as breadwinner and authority in the private and public spaces (Choueiri, 1990: 127-8). It is this authority that sanctions domestic violence on the cultural level.

On the other hand, domestic violence may have roots that transcend the boundaries of the family. The state, for example, may directly or indirectly monitor domestic violence through its own mechanisms. Studies have shown that state-building in the Maghreb has been based on family regulation (Charrad, 2010). The state's grip on the family is channelled through the regulation of marriage registration and the laws which differ according to societies (Sadiqi, 2008). In addition, states devise laws regulating women's reproductive rights as well as family disintegration (divorce, death, etc.). In brief, the family is not an enclave in its relationship with the state and it is in the fine line between the private space and the public space that the relationship between the two resides.

## The State of Affairs with Regard to Domestic Violence in North Africa

### *Morocco*

Of the three countries of the Maghreb, Morocco fares best in its dealings with domestic violence. However, the road is still long as the following facts show.<sup>2</sup> Article 490 of the penal code criminalizes extramarital sex for women, calling for punishments ranging from one month to one year in jail. These cases are rarely taken to court, since a conviction depends on either eyewitness testimony or a confession by one of the perpetrators. An unmarried woman's pregnancy is proof of sexual relations and may lead to criminal prosecution, while the fault of her male partner is not established by law. Further, no laws specifically prohibit domestic violence, though general prohibitions against assault found within the penal code are theoretically applicable to such situations. Physical abuse is grounds for divorce, but the wife must be able to call on witnesses to support her claims (See Article 100 of the Moudawana). If she is unable to prove her case, the authorities will return a woman to her abuser's home, leaving her in a worse situation than before she filed the complaint. Consequently, few women report domestic abuse. Sexual assault and rape are both criminalized under the penal code, although spousal rape is not. The maximum sentence for each crime is five years in prison. Given prevailing societal concepts of personal and family honour, victims of sexual violence rarely come forward for fear of shaming their families.

As for "honour killings," in which women are murdered by family members for perceived sexual or moral transgressions, they do occur in Morocco but are rather rare compared with some other countries in the region. As with other forms of gender-based violence, honour killing is traditionally seen as a private issue, meaning police are rarely summoned and are hesitant to intervene. Article 475 of the penal code stipulates that a kidnapper or seducer of a minor girl can be acquitted if he marries her.

Although prohibited under Article 184a and Article 184b of the penal code, prostitution is common, especially in urban centres. However, the government neither prosecutes nor protects women who have been coerced into providing sexual services. Trafficking in persons, particularly in child maids, is a problem.

In principle, women are protected from gender-based and discriminatory arrest, detention, and exile. Article 10 of the constitution formally protects

all people from arbitrary arrest and detention (Article 10 states: “(1) No one can be arrested, detained, or punished except in the cases and forms provided by law. (2) The home is inviolable. There can be no searches or inspection except under the conditions and the forms provided by the law.”) In practice, however, women may be singled out for arrest when they are deemed to behave immodestly, particularly in rural communities.

In a move that bore both symbolic and substantive meaning for women in Morocco, the government announced on December 10, 2008, the 60th anniversary of the Universal Declaration of Human Rights, that it would lift all reservations to CEDAW (Democratic Association of Moroccan Women, “The Withdrawal of the Reservations to CEDAW by Morocco,” news release, December 17, 2008).<sup>3</sup>

When it ratified the convention in 1993, Morocco, like many other Arab and Muslim countries, made multiple reservations and declarations covering portions that were thought to conflict with Islamic or national law. The reservations include provisions such as Article 9, which relates to the transmission of nationality to children, and Article 16, regarding the equality of men and women’s marital rights. The king declared that the reservations were “obsolete” in light of the progressive legislation adopted in recent years. The public proclamations regarding their removal created a stronger legal basis for additional progress on women’s rights issues, and carried a political and universal message that was widely applauded by civil society (Sarah Touahri, “Morocco Retracts CEDAW Reservations,” *Magharebia*, December 17, 2008).<sup>4</sup>

The government and the media did not adequately explain the content of the convention or the implications of the decision to withdraw the reservations. However, the Moroccan Association of Human Rights and similar organizations are determined to ensure that CEDAW is fully implemented and that all discrimination against women is eradicated.

Women victims of spousal violence are not well protected by the law or the society. Women often have difficulty providing evidence of domestic violence, as they usually lack witnesses and their word is not given much weight by the authorities. The Ministry of Social Development, Family, and Solidarity began publishing official data on violence against women in late 2007. In March 2008, the ministry responded to an upsurge in reported incidents by announcing an action plan to increase the number of support centres for victims and to prepare a draft bill that would specifically outlaw violence against women. According to the ministry, some 17,000 incidents of gender-

based violence were reported in the first three months of 2008 alone, 78.8 percent of which were committed by the victims' husbands (Sarah Touahri, "Morocco Seeks to Criminalize Violence Against Women," *Magharebia*, April 1, 2008).<sup>5</sup> Violence against women instigated by men under the strain of financial difficulties is also on the rise (Amina Barakat, "Renewed Efforts to End Violence Against Women," *Inter Press Service*, March 17, 2009).<sup>6</sup>

In February 2007, the Ministry of Social Development, Family, and Solidarity presented a draft bill offering a legal framework for protecting women's rights by providing safe spaces for women victims of violence. If a woman is a victim of violence perpetrated by her employer, she will be provided with a safe harbor in her workplace and, depending on her condition, given reduced work hours or temporary cessation of work. Support networks and shelters for abused women started to appear in big cities like Casablanca, Rabat, and Fes in 2002.

On February 2, 2009, the Union for Women's Action and the Anaruz network launched an initiative to organize public forums aimed at sensitizing local communities to the plight of women victims of violence, set up "listening centres" where abused women are encouraged to speak about their traumatic experiences, and created a free telephone hotline to give legal help and counseling to women. A victim can either file a complaint with the court or, if she can afford it, hire a lawyer to handle the case.

The media play a role in raising awareness of violence toward women and showcasing the activities of civil society groups on the issue. There is debate in the media and within society about the creation of rehabilitation centres where violent men would be helped to control their behavior and psychological problems. Investigative reports and advertisements regarding violence against women are aired on television, and guests on talk shows are invited to discuss the topic. Gender-based violence outside the home is still a reality. However, societal taboos prevent women from coming forward to report sexual violence, and the police and medical personnel are not trained to deal with such issues. Sexual harassment on the streets has decreased but is still a problem.

Women's rights groups and other civil society actors work freely and effectively to improve the status of women's personal autonomy and security. Their activities include national and international networking, tending directly to the victims of violence, and campaigns aimed at sensitizing the general public to the issues surrounding gender-based violence and implementation

of the family law. The impact of these efforts has been tremendous, but they must be increased in rural and semi-urban areas.

The mainstream media do not reflect the real progress made by women, and rarely use gender-sensitive language. Although they have attempted to tackle issues such as sexual harassment, domestic violence, and gender roles, these efforts have been insufficient. There is a proliferation of magazines in Arabic and French that focus on women's interests, but they tend to be geared toward elite and educated women. Rural and semi-urban women are marginalized in the media generally due to poverty and illiteracy.

Poverty has a disproportionate effect on women. Although welfare is available to divorcees and widows, it is not offered to single mothers as such. Even in instances where they are entitled to welfare, poor or illiterate women often have difficulty maintaining the necessary paperwork and making frequent visits to the relevant offices. Although women have the right to housing and the same legal opportunity to obtain housing as men, very few own their own residence in practice. The 2004 family law obliges a husband to house his wife during marriage and during the waiting period before a final divorce, either in the marital home or a suitable substitute. Article 53 of the family law states that if either spouse unjustifiably evicts the other spouse from the marital home, the public prosecutor will intervene on behalf of the evicted to spouse and "shall take all necessary measures for his or her safety and protection." However, reports indicate that authorities are slow to implement this measure and that women are having difficulty proving that they were expelled from the house. Additionally, a father must provide financial maintenance, including housing, to his minor children, even if they are in the divorced mother's custody. However, there is no guarantee that the wife will retain the marital home after a divorce is finalized, and husbands often use personal connections and bribery to avoid a court ruling to that effect.

Women's rights NGOs have been very active in alleviating the plight of poor and illiterate women. Their work is encouraged by the government, and the positive effects are apparent. For example, groups like Feminine Solidarity and Bayti (My House) have been catering to women in financial distress and single mothers. Meanwhile, through investments in rural roads, other infrastructure, and social programs, the government is attempting to improve the life of the rural population as a whole, although these efforts are still very insufficient: paved roads, running water, and schools are still luxuries for most of the

countryside in Morocco. The poverty rate in rural areas dropped from 36 percent in 2004 to 21 percent in 2007, according to the findings of a survey by the High Commissioner for Planning, but work to alleviate poverty is still sorely needed.

There exist around 100 counselling and listening centres in Morocco. These centres help women victims of domestic violence cope with their tragedies by providing legal, psychological and social support. The role of these centres is also to organize sensitizing campaigns against domestic violence, formation seminars and follow-ups of women victims of domestic violence. These centres were initiated by the Anaruz network. Established in April 2004 following a consensus workshop that brought together several organizations and counselling centres in Morocco, the Anaruz network counts now 39 centres located throughout the country.

The various bulletins of Anaruz and counselling centres show that domestic violence has the lion's share of the violence impacted on women in Morocco, an average of 74%, says an Anaruz report on violence based on gender, which covered the period September 2005/October 2006. In this report, other forms of violence cover institutional violence (8.8%), violence outside marriage (6.8%), societal violence (4.4%) and domestic violence (4.2%). Regarding domestic violence itself, the report notes that violence against the rights of women represents the largest percentage, 43, 6%, including the deprivation of family expenditure represents a large percentage (58.4%) followed by physical abuse (30.4%). Concerning violence against women's rights outside of marriage, the report states that societal violence is one of the most important forms of physical violence directed against women (33, 9%), followed by rape and sexual harassment, which occupy the top spots in this percentage, respectively 57.7% and 42.3%.

To remedy this situation, the report underlines the need to criminalize violence against women generally and domestic violence in particular. It thus activates the role of prosecutor to ensure the protection of a divorced woman's right when she returns to the matrimonial home. The report also calls for the establishment of shelters and the spread of listening centres nationwide, in addition to coordination between the government and women's groups, as well as the human rights groups with the aim of producing a comprehensive national report on violence against women that binds all the parties involved.

In parallel, the Global Rights in Morocco, in collaboration with partner NGOs from various regions across the country, launched a campaign of



legislative advocacy through two new tools: a poster called “Penalties, Privacy, No Tolerance: Claims of women for a law against violence”, and a discussion booklet that accompanies it. These tools are intended for local NGOs in their advocacy for women’s rights in Morocco. The poster illustrates twelve reasons for a comprehensive law on violence against women, with texts simplified in French, Arabic and Tifinagh. The discussion booklet explains the rationale for these proposals, provides statistics and testimonies of women, and provides concrete examples of legislation that are contained in the framework for model legislation on violence in the family and interpersonal relations, based on the UN stance on the issue of violence against women. The result is 161 consultation sessions in 35 towns and villages with 1836 women in their communities to solicit their suggestions and priorities for national legislation on violence against women. Local artists have worked with women to create drawings illustrating their claims. The twelve themes identified by women in legislative reforms on the civil and the criminal law are: Expel the perpetrator’s home; No mediation in domestic violence cases; Provide support during conflict relating to domestic violence; Issue protective orders against perpetrators; Develop a writing document of any scene of domestic violence suspect; increase penalties for domestic violence; Criminalizing marital rape, Criminalize all forms of sexual harassment; Prosecution of domestic violence without resorting to witness; Empower the police to intervene immediately in case of domestic violence; Penalize even minor offenses in cases of domestic violence, increase penalties for repeated acts of domestic violence. Pursuant to that, Global Rights and its partners distributed 2,000 copies of the poster and booklet for discussion across the country. During this campaign, the 10 partner NGOs organized public meetings in their communities with local decision makers, parliamentary representatives, authorities, hospital staff and staff of the justice system to present the poster and the discussion paper.

On the ground, the most important centre that treats domestic violence against women is Nejma. During the months of January and February 2010, around 270 domestic violence cases were tackled by Nejma, in addition to 274 cases ranging over phone calls, emails or fax messages, most of which suffering from psychological violence<sup>7</sup>. Five types of domestic violence are reported: psychological violence (58%), economic and social violence (17%), corporal violence (15%), legal violence (6%) and sexual violence (5%).

According to women’s stories, the most important motive for going to the centre is a desire to release their feelings towards violence that they have

been holding for years. The major reasons which keeps them from going to the centre are their inability to confront society especially in cases of rape or sexual harassment, fear of homelessness and destitution in cases of poor and jobless women with children. This category of women have recourse to the logics of “patience” and “taboo” (so valued in Moroccan culture<sup>8</sup>), a fact which deepens the problem. Another reason is women’s conviction that their private life should remain their own whatever the impact of violence on their lives. Another reason is women’s reluctance to ask legal advice because of lack of trust in the law and the institutions related to it.

The main problems that these centres face is securing proof that rape took place and hence protecting the victim, and the impossibility of finding witnesses given the nature of the circumstances in which rape takes place. This lets many rapists escape punishment. Here is a case reported by Nejma: a 22 year old woman was stopped by a man with a butcher’s knife and was led to a secluded place. She was raped and taken to the rapist’s home where she was kept for 3 days. During this time, the young woman was repeatedly beaten and raped. Upon her release, she presented a complaint to the court. However, in spite of her physical state and the doctor’s certificate, she was not given justice because of lack of witnesses. The rapist got 3 months without prison.

In other cases, the victims of rape are often seen as the criminals, or at least as the ones who provoked violence by the way they dress, talk, look. In these cases the abuser is seen as a victim who committed his crime without “meaning to” do it.

On May 15, 2010, a draft law was presented to the government and the official criminalisation of domestic violence is imminent. This opens a window of hope although it will probably take some time to be implemented on the ground.

## Algeria

Violence overshadowed Algeria for nearly a half-century. A million lives were lost in the battle for independence from France in 1962, and another 150,000 to 200,000 people were slaughtered in a brutal civil war that followed the annulment of 1992 elections, though trouble has subsided since 2003. In Algeria, domestic violence is still a legal, and a social, problem. Facts show that some 7,400 women filed domestic violence complaints in Algeria in 2009, 1,555 more than in 2004, according to the law enforcement agency that handles such cases. According to Belala, referring to the Berber-speaking

nomads who live in the Sahara region:

"Violence against women is a pervasive problem in Algeria. It touches all social classes and all regions, except in the extreme south where the Tuaregs banish men who rape women."

SOS Woman, an Algerian NGO set up some 15 years ago, was the first group to publicly denounce domestic violence against women. This was a pioneer act in Algeria's modern history. According to this group, although domestic violence is increasing in Algeria, victims still fear scandal and, thus avoid taking cases to the police or the court. The spokesperson of this group said:

"Victims talk to us anonymously on the phone. We get hundreds of calls from women who complain of being sodomized or forced to do things they are not morally comfortable with."

## Tunisia

Gender equality has been inscribed in the Tunisian government policies since 1956<sup>9</sup>, making the status and position of women in this country a privileged one. However, the implementation of this gender equality is still a challenge in this country. So far as domestic violence is concerned, the Tunisian official discourse does not consider it a social phenomenon, but a rare occurrence. However, according to the Committee on Economic, Social and Cultural Rights (1999), domestic violence, including sexual violence, battering and other physical and psychological violence, is widespread in Tunisia; what is rare is official data on this phenomenon. On the other hand, the 1999 edition of Collectif Maghreb Egalité revealed many cases of threats and intimidation within the confines of marriage. For example, it has reported the case of a 49 year old mother of 6 children who had been married for 30 years and who was subjected to physical, psychological and sexual violence throughout the 30 years of marriage. This woman filed a case against her husband in 1979 but had to withdraw her case when her husband was arrested and held in custody for a week. This woman was beaten by her husband in 1998 demanding that she leave her job. The woman left her home and presented a medical certificate showing her injuries, but her husband asked for divorce on the ground that his wife deserted the family home.

The only Tunisian association which runs a shelter for abused women is the Tunisian Association of Democratic Women (ATFD). In 2001, this association issued a report on women victims of domestic violence. According to this report, most women who seek shelter in AFTD are beaten either by their husbands/

partners or by a male member of their extended family. As in the Moroccan case, the main reasons that push women not to report violence are economic dependence and lack of self esteem. As for the official stance on domestic violence, the Tunisian state prefers to leave it to the extended family.

On the legal front, domestic violence is dealt with in Article 218 of the Tunisian Penal Code. An amendment was introduced on this article in 1993, according to which penalties when an assault is committed by one spouse against another or in cases where the assault is committed by a parent on a child than are heavier. According to the Tunisian Penalty Code, the penalty for domestic violence under article 218 is imprisonment for two years and a fine of 2,000 dinars with the sanctions being increased to three years' imprisonment and a fine of 3,000 dinars if it was carried out with premeditation. In situations where the spouse or child victim decides to withdraw the case, the article stipulates that the proceedings, trial or enforcement of the penalty shall be discontinued.

### **New ways of dealing with domestic violence?**

The nature of domestic violence as well as of its causes has changed in the last few decades. Today, domestic violence is considered by many outside the Islamic world to be a problem in Muslim-majority cultures. Ways of dealing with violence have also changed in accordance with the overall historical and socio-economic context, as well as with the advent of the internet and cyber media. There is no consensus among scholars as to the relationship between Islam and domestic violence. The debate among religious leaders and Islamic scholars in this domain focuses on whether there is religious evidence that a man may beat his wife. Forms of beating wives under specific circumstances are explicit in the *Qur'an*, especially *An-Nisa*, 34. Some scholars think that beating is the last resort and should not result in physical injury. Verse 34 of *an-Nisa* is one of the most important verses for the husband and wife relationship in Islam. In most translations, it gives permission to men to beat/hit (they both have the same word in Arabic) their wives if they fear "rebellion," or "*nushûz*". Many interpretive problems have arisen regarding the occasions (if any) on which beating is appropriate, the type of beating prescribed, and whether beating remains discountenanced even if acceptable.

However, in North African societies, very little is reported on domestic violence. Women are ashamed of showing their bruises or complaining to authorities about their husbands. Such complaints are culturally considered

as breaches of the Code of Honour and may harm their own families. Studies on this specific aspect are badly needed, and statistics of beaten women are very difficult to find.

## Conclusion

Theorizing domestic violence in North Africa has always been difficult. At a time when technology is pulling down the frontiers between the private and the public spaces, violence has not decreased; on the contrary it is finding new reasons: the shrinking of family size, less interference from the extended family, stress, and so on. Some headway has been achieved at the level of policy-making in Morocco but the road is still long before the taboo surrounding domestic violence is infiltrated.

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## Endnotes

1. In 1992, the Committee on CEDAW formally affirmed that violence against women constitutes a violation of internationally recognised human rights, regardless of whether the perpetrator is a public official or a private person. CEDAW was adopted by the General Assembly in 1979 and entered into force in 1981. The countries of North Africa signed CEDAW, two of them without reservations.
2. The information about Morocco in this section is taken from “Women’s Rights in the Middle East and North Africa, Morocco (2010). An Analytical Assessment of the 2004–2009 Period”. New York: The Freedom House. New York: Spring 2010.
3. <http://www.euromedrights.net/pages/556/news/focus/68402>.
4. [http://www.magharebia.com/cocoon/awi/xhtml1/en\\_GB/features/awi/features/2008/12/17/feature-02](http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2008/12/17/feature-02).
5. [http://www.magharebia.com/cocoon/awi/xhtml1/en\\_GB/features/awi/features/2008/04/01/feature-01](http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2008/04/01/feature-01).
6. <http://ipsnews.net/africa/nota.asp?idnews=46150>.
7. The information and statistics in this section are taken from the Nejmanews bulletin, published by the ADFM (Association Démocratique des Femmes du Maroc), No 1, April 2010.
8. See Sadiqi, 2003.
9. Habib Bourguiba, the first Tunisian president after independence in 1956 is credited with the inscription of women’s rights in Tunisia.