

Conditions, Not Conflict :

Promoting Women's Human Rights in the Maghreb
through Strategic Use of the Marriage Contract



Partenaires pour la Justice

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Global Rights is an international advocacy organization that for 30 years has partnered with local activists to challenge oppressive ideologies and power structures, channel international pressure to secure human rights protections, and amplify new voices within the global discourse. With offices in ten countries around the world, we help local activists create just societies through proven strategies for effecting change. For more information, please consult our website at www.globalrights.org.

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I. INTRODUCTION	05
II. LEGAL RESEARCH	06
1. Objectives	06
2. Methodology and Logistics	07
3. Description and Analysis of the Findings	10
A. Current National Legal Framework on the Marriage Contract.....	10
(i) International Human Rights Law	10
(ii) National Constitutions	16
(iii) National Legislation	18
(iv) Customary Law	22
B. Legal Procedures for Concluding the Marriage Contract	22
C. Realities of women's legal rights with respect to the marriage contract.....	26
III. COMMUNITY CONSULTATIONS	36
A. Overview of Community Consultations	36
B. Methodology and Logistics	39
C. Description and Analysis of the Results	43
a. Women's knowledge of the marriage contract	43
b. Women's experiences with the marriage contract	49
c. Women's opinions on the marriage contract	55
d. Issues proposed by the women to be included in an ideal marriage contract.....	60
I. Personal rights	61
1) Domestic violence and cruelty	61
2) The right to work outside the home	62
3) The right to pursue studies	63
4) Independent conjugal home	63
5) Family planning	64
6) Sharing household tasks and responsibilities	65
7) Polygamy	65
8) The right to medical care	66
9) The right to freedom of movement	67
10) Divorce	67

11) Children	69
12) The rights of single mothers in marriage	69
2. Property Rights	69
1) Division of property upon divorce	69
2) Attribution of the conjugal home upon dissolution of marriage	70
3) Financial support after divorce	71
4) The right to freely dispose of one's personal income and property	72
5) Contribution to household expenses	74
6) The Dower	74
7) Management and disposal (sale, rent, donation) of assets during marriage...	75
8) Bank account	75
9) Compensation for domestic labour	75
3. Other conditions suggested spontaneously by the participants	76
e. Challenges and obstacles the women see to negotiating and stipulating these clauses into a marriage contract	77
1) Personal obstacles	77
2) Family obstacles	78
3) Social obstacles	79
4) Administrative obstacles	80
f. Strategies to overcome these obstacles	81
g. Final Remarks	83
IV. ANNEXES.....	85
1) Community Consultations Facilitators' Protocol	86
2) Community Consultations Data	93
3) Legal Research Framework.....	102
4) Internet Resources.....	113
5) Directory of Project Partners.....	115
V. Model Marriage Contract	117

I. INTRODUCTION

Global Rights created this initiative to promote women's rights in the Maghreb region of North Africa through the strategic use of marriage contracts in grassroots community mobilization and civic education. The program is enhanced by significant regional network-building among local NGOs and lawyers in the target countries and includes advocacy efforts that challenge national institutions to address the rights of women within the family.

In response to requests from our NGO and lawyer partners in Algeria, Morocco, and Tunisia, our collaboration is designed to promote the widespread use of detailed marriage contracts as an effective women's human rights tool to:

- Educate and empower individual women at the grassroots level to demand a written marriage contract and to negotiate clauses protecting their human rights;
- Promote the use of a detailed *Model Marriage Contract* by legal professionals drawing up such contracts;
- Pressure national courts to enforce progressive such marriage contracts and recognize women's human rights;
- Pressure local authorities officiating marriages and the national courts to enforce such marriage contracts and recognize women's human rights;
- Create a legislative advocacy tool to promote better laws on women's human rights. A *Model Marriage Contract* that enters into widespread use will result in practices more progressive than existing legislation and can serve as a concrete model for legislative change in the personal status laws;
- Provide an advocacy tool for use by local NGOs and lawyers to help them campaign for the adoption and implementation of an official, mandatory standard *Marriage Contract* form that protects women's rights.

I. Conceptual Framework and Technical Justification

In all three target countries of the Maghreb – Algeria, Morocco and Tunisia - marriage, divorce and property matters impacting women's rights are governed by family or personal status laws. In contrast to other legislation governing contracts, torts, criminal matters, and commerce, which are based on secular, European-style civil codes, personal status laws are based on Islamic precepts in all of the Maghreb countries. While this religious exceptionalism regarding family matters often prevents women from exercising basic human rights, it also presents a unique opportunity to use common marriage contracts as a tool in promoting Muslim women's rights. While the three countries have different legal arsenals, they share common social realities that maintain different forms of discrimination against women.

Under Islamic legal theory, marriage is a civil contract between spouses rather than a sacrament as in some other religious traditions. The concept of marriage as a contract presupposes a negotiated agreement between two consenting parties that creates legally enforceable obligations. Spouses are free to define their respective rights and duties through detailed clauses introduced into the marriage contract. Likewise, non-respect of such clauses is considered a breach of contract for which the wronged spouse may seek a remedy, including compensation and divorce.

The personal status laws in the three target countries of the Maghreb all explicitly reaffirm the principle that marriage is a freely negotiated contract between two consenting parties and that it creates legally enforceable obligations. However, women in the Maghreb are frequently denied access to their rights when contracting a marriage, and as a result of this initial denial, their rights continue to be violated during and upon dissolution of marriage.

Some limited positive precedent for the use of marriage contracts to promote women's rights can be found in Pakistan and in Bangladesh, where civil authorities use a mandatory marriage contract administrative form – several pages long – with numerous clauses presented for spousal consent, including the woman's right to deny her husband the right to take an additional wife and limiting his right to unilateral divorce (repudiation). Likewise, Muslim communities in the United States and in the United Kingdom have quite recently launched initiatives to draft and promote the use of a standard marriage contract with detailed rights protective clauses for women.

Integrating women's rights into clauses in the marriage contracts used in the Maghreb region will allow individual women to:

- Reinforce and reiterate rights specifically protected in existing legislation;
- Clarify areas of the law that are unclear or poorly written in existing legislation; and
- Remedy discriminatory provisions in existing legislation.

2. Programmatic Approach

Global Rights implemented a polyvalent set of activities designed to promote the use of the marriage contract as a strategic tool to promote women's rights, collaborating with local NGO and lawyer partners from Morocco, Algeria, and Tunisia to conduct:

- Community Consultations (*focus group discussions*) with groups of women at the grassroots level;
- Study and analysis of laws, jurisprudence, and available statistics on the marriage contract;
- Individual interviews and round tables with local authorities, public officials and legal professionals;
- A Regional workshop uniting all partners to present and analyze the results.

This report compiles and presents the results from the first phases of the project, and is designed to serve as a practical tool for local NGOs and lawyers in Morocco, Algeria and Tunisia in the next phases of this initiative, which include awareness-raising campaigns based on this report and attached Model Marriage Contract with NGOs, the media, policymakers, legal professionals, public officials and other stakeholders, as well as in civic education with groups of grassroots level women about their legal rights to a detailed marriage contract.

II. LEGAL RESEARCH

I. Objectives

In order to better understand the status of the marriage contract in Morocco, Algeria and Tunisia, in particular the legal possibility for future spouses to stipulate additional negotiated clauses, Global Rights collaborated with local lawyers to gather information on existing laws, jurisprudence, policies, practices, opinions and proposals for reforms on the application of existing legal texts related to the marriage contract.

Partner lawyers in each of the three target countries conducted legal research combining a literature review, individual focused interviews, and round table discussions to:¹

- Analyze current legislation and jurisprudence interpreting and enforcing marriage contract clauses in the three countries, through a review of existing laws, court decisions, and any prior research or available academic studies addressing the marriage contract in their respective countries;
- Assess lawyers' knowledge and practices in drawing up detailed marriage contracts for their clients, collect models of typical marriage contracts used in their respective countries, gather suggestions for clauses that could be legally integrated into marriage contracts, and identify legal obstacles that could impede such an effort;
- Interview local authorities responsible for the validation of marriage contracts to assess their knowledge and practice of informing women of their rights, and their acceptance of additional clauses stipulated by the spouses;
- Write specific reports with the findings and program design options for the project's final implementation phase.

2. Methodology and Logistics

A. Overview

- In order to assess the current legal framework on women's rights in marriage across the three countries, and review existing laws, policies and jurisprudence interpreting and enforcing marriage contract clauses, partner lawyers completed theoretical research focusing on:
 - The formal status of international law in the domestic hierarchy of laws, and each State's position on the applicability of international norms in the national system, in particular the ratification of international human rights conventions, measures taken to integrate them into the national legal framework, any reservations made to them, and their justiciability in front of national courts;
 - Any articles in the national Constitutions directly or indirectly relevant to the marriage contract and the possibility of stipulating additional clauses;
 - All provisions in their national legislations addressing the marriage contract, in particular those articles on the legal definition of marriage, the possibility to stipulate additional negotiated clauses into the marriage contract, compulsory clauses necessary for the validity of the marriage contract, and consequences of the non-respect or violation by one of the parties of any of their obligations in the marriage contract. The legal research also compared these provisions - primarily found in the Family or Personal Status Codes – with those general principles found in the Codes of Contracts and Obligations related to freedom of contract, mandatory elements of a valid contract, legal effects of the conclusion of a contract, and consequences for the violation of any contractual obligation. Partner lawyers also examined the legal procedures and formalities surrounding the drafting and

¹ This theoretical research was conducted based on a Legal Research Framework elaborated by Global Rights and that can be found in the annexes to this report.

signing of the marriage contract as specified in the Civil Status, Family or Personal Status Codes;

- Any domestic court decisions or decrees affirming the validity, or reinforcing or interpreting the practice, of stipulated negotiated clauses into the marriage contract;
- The impact of any local customary practices on each country's laws and jurisprudence;
- Any Ministerial Circulars or public statements by decision makers on the marriage contract issue and the possibility of stipulating additional negotiated clauses.

- The partner lawyers in the three target countries each organized a national round table with local authorities, practitioners and other stakeholders to debate current laws and practices related to the marriage contract, identify legal obstacles and practices which prevent women from including clauses in their marriage contracts, present models of typical marriage contracts used in their communities, and solicit proposals for rights-protective clauses women can stipulate into an ideal marriage contract. A total of 177 lawyers, judges, notaries, *adoul*, Civil Status Officers, Ministry of Justice staff, university professors, and NGO representatives participated in the three round tables.

As part of the round table program, the local NGO partners in this initiative presented the results of the Community Consultations held with groups of women in diverse communities across the three countries, conveying to the round table participants the women's opinions, experiences, obstacles, and suggestions on marriage contract content and procedures, as well as their proposals for clauses to be included in marriage contracts.

- To complete their research, the partner lawyers also conducted more than 100 individual focused interviews with women's NGO representatives, lawyers, notaries, judges, Parliamentarians and local authorities charged with the drafting and validation of marriage contracts in each country (*adoul* and Civil Status Officers). These interviews were based on three detailed questionnaires² designed to assess their knowledge, opinions and common practices concerning the stipulation of additional negotiated clauses into the marriage contract and notification of the future spouses of their right to do so.

Partner lawyers conducted individual focused interviews with a total of:

Country	Decision makers	Public Officials	Lawyers and University Professors	Women's Rights NGOs
<i>Morocco</i>		3 judges 4 <i>adouls</i>	40 lawyers	4 NGOs
<i>Algeria</i>	1 Parliamentarian	2 notaries 1 Civil Status Officer	25 lawyers	1 NGO
<i>Tunisia</i>	2 Parliamentarians	4 Civil Status Officers (1 woman and 3 men) 1 <i>adoul</i>	10 lawyers 3 professors	1 NGO
Total	3 Parliamentarians	15 public officials	75 lawyers and 3 professors	6 NGOs

² These questionnaires were designed by Global Rights and are included in the Annexes to this report.

B. Remarks

- While most of the people participating in the individual focused interviews and the round tables play or could play a key role in informing future spouses of their legal right to stipulate additional negotiated clauses in their marriage contract, the research indicates a general lack of knowledge of the national laws on the subject,³ and a resistance to and/or distrust of them, on the justification that such a detailed and prior negotiated contract is incompatible with the relationship of trust presumed to exist between spouses and is detrimental to the sanctity of the marital bond;
- The majority of people consulted blamed the general non exercise of this legal right on prevailing traditions and family opposition to the idea of stipulating additional negotiated clauses into marriage contracts out of fear that this would violate the trust presumed to exist between the spouses and their respective families;⁴
- Many people consulted based their responses and justifications on «Islamic Sharia» rather than on existing laws;⁵
- Civil Status Officers charged with the drafting and validation of marriage contracts in Algeria have no legal training or its equivalent that would enable them to explain the law and their legal rights to future spouses.⁶
- It was quite difficult to obtain individual interviews with notaries in Algeria, who expressed much reluctance about the topic of marriage contracts, and as a result the choice of notary interviewees for the research there was quite limited.
- Lawyers in Morocco reacted favourably to requests to participate in the research, with 40 out of 45 lawyers to whom the questionnaire was sent responding on time. In contrast, only 10 lawyers agreed to participate in the project in Tunisia.
- NGO members in Tunisia preferred to participate in the research as individuals rather than as representatives of their organization.
- The research process itself served to raise awareness among the participants, especially the notaries, Civil Status Officers, lawyers, and judges, and encouraged them to examine their current policies and practices and reflect on respective responsibilities of different parties for enforcing the laws.⁷

³In response to the question «Are there specific laws on marital property?» one Civil Status Officer replied, “Not that I know of,” and “Not at our municipality.”

⁴In response to the question on the characteristics of women who have stipulated additional conditions into their marriage contracts, one notary replied, “Since I have reservations concerning this category of contracts, I have not seen any yet.”

⁵ When asked about the laws allowing women to include clauses in the marriage contract, one notary in Algeria replied, «There is no law more appropriate than that of Islamic Sharia, her conditions are preserved and guaranteed.”

⁶ “He doesn’t have any legal training because anyone with a university degree in law will refuse to work as a civil servant in the municipality and live on that type of salary. The person just has to have a good reputation and know how to speak,” answered a Civil status officer in Algeria in response to a question about the training necessary for Civil status officers charged with drafting and validating marriage contracts.

⁷ An Algerian Parliamentarian declared that “the government should collaborate with civil society organisations and other local associations to organise awareness raising campaigns about this topic.”

3. Description and Analysis of the Findings

A. Current National Legal Framework on the Marriage Contract

This section examines international human rights laws, national legislation and policy statements, and local customs in the three target countries in order to assess their current legal framework and provisions related directly or indirectly to women's rights in the marriage contract.

(i) International Human Rights Law

Several international human rights norms apply – or could be interpreted to apply – to the stipulation of rights protective clauses for women into the marriage contract, in particular the guarantees of equality between spouses within the family as well as other human rights that are compromised or denied women in marriage.

Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires States Parties to take all appropriate measures « to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women» the same rights to enter into marriage; to choose a spouse and to enter into marriage only with their free and full consent; during marriage and at its dissolution; as parents, irrespective of their marital status, in matters relating to their children; decide freely and responsibly on the number and spacing of their children; with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions; to choose a family name, a profession and an occupation; and in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

Article 15 of the CEDAW requires States Parties to accord to women equality with men before the law, in particular in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity as well as equal rights to conclude contracts and to administer property. In addition, this article also provides that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void, and requires States Parties to accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Likewise, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights⁸ have also issued general comments interpreting certain articles of the two Covenants they are charged with monitoring as creating obligations for States Parties with regard to the equality of men and women in marriage. For example, the Human Rights Committee has:

- Asked States Parties to provide information on any legal provision or any practice which restricts women's right to freedom of movement, for example the exercise of marital powers over the wife;
- Declared that the right of everyone to be recognized everywhere as a person before the law implies that the capacity of women to own property, to enter into a contract or to

⁸ Respectively tasked with monitoring implementation of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground;

- Required that States treat men and women equally in marriage, which can only be entered into with their free and full consent;
- Declared that matrimonial regimes must contain equal rights and obligations for both spouses with regard to the custody and care of children and their religious and moral education; to the ownership or administration of property, whether common property or property in the sole ownership of either spouse; and to residence rights;
- Defined equality during marriage as implying that husband and wife should participate equally in responsibility and authority within the family;
- Called on States to ensure equality in the dissolution of marriage, which excludes the possibility of repudiation and declares that the grounds for divorce and decisions on property distribution, alimony and child custody should be the same for men and women.⁹

The Committee on Economic, Social and Cultural Rights has likewise declared that States Parties have the obligation to ensure that women have equal rights to marital property and inheritance upon their husband's death, as well as the right to own, use or otherwise control housing, land and property on an equal basis with men.¹⁰

Treaty monitoring bodies charged with the application of international human rights conventions have also raised questions with regard to the marriage contract specifically. During its consideration of the 3rd and 4th combined periodic reports of Morocco, the Committee on the Elimination of Discrimination against Women asked the Moroccan government for clarification on the nature of divorce rights for women, including alimony and maintenance payments, and asked why prenuptial agreements were not encouraged by raising awareness among women of this possibility that would provide them greater protection.¹¹ The government responded by admitting that such contracts were rare, and attributed this fact to romantic notions held by couples and reluctance to think about divorce at the time of marriage. The Human Rights Committee has likewise called on the Moroccan and Algerian governments to eliminate discrimination against women with regard to marriage, divorce, marital property and inheritance.¹²

Morocco, Algeria and Tunisia have all ratified a certain number of international human rights conventions (see the chart below). The majority of these conventions were ratified and published in the three countries' Official Gazettes without any reservations or declarations, and as a result created legally binding obligations according to the hierarchy of laws in each country.

However, with the ratification of the CEDAW, which requires States to eradicate all forms of gender inequality, for the first time the three target countries of the Maghreb claim their

⁹ General Comment No. 28: Equality of rights between men and women (CCPR/C/21/Rev.1/Add.10; 29/03/2000).

¹⁰ General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights (E/C.12/2005/4).

¹¹ During its 40th Session, held from January 14 – February 1, 2008, [CEDAW/C/SR.824](#) [CEDAW/C/SR.825](#).

¹² See for example CCPR/CO/82/MAR and CCPR/C/DZA/CO/3.

specificities and cite incompatibilities between international human rights and their Islamic traditions.

What is surprising is that the three countries had not, until then, resorted to their Constitutional provisions declaring Islam as the official religion, all having ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights without any reference to the unconstitutionality of these ratifications. In addition, the three countries had previously ratified several conventions relevant to women's rights without any reference to their Islamic identity; Morocco, Algeria, and Tunisia ratified, without any reservation, the main International Labour Organization conventions on equal remuneration, night work, and non discrimination.

The CEDAW was the first international convention to compel State parties to eliminate from their legislation all forms of gender-based discrimination and to guarantee full equality in all areas of public and private life, and to which the three countries unanimously reacted by claiming their specificity and using religion to reject the Article 16 provisions on marriage. Algeria actually cites its national legislation rather than religion as the basis for its reservation to Article 16, a slight nuance but one worth mentioning.

(a) *Morocco:*

Despite the absence of a clear text definitively establishing the place of duly ratified international conventions in the domestic hierarchy of laws - Article 31 of the Moroccan Constitution merely sets out the treaty ratification process and the institutions and persons responsible for its different phases¹³ - the Constitution nonetheless attaches great importance to these conventions by declaring in its Preamble that:

Aware of the need of incorporating its work within the frame of the international organisations of which it has become an active and dynamic member, the Kingdom of Morocco fully adheres to the principles, rights and obligations arising from the charters of such organisations, as it reaffirms its determination to abide by the universally recognised human rights.

In addition, certain Moroccan laws¹⁴ explicitly assert the supremacy of duly ratified international conventions over national legislation; Article I of the Moroccan Nationality Code for example states that:

Sources of law in terms of nationality: Provisions concerning Moroccan nationality are determined by law and eventually by ratified and published international treaties or agreements. Provisions of ratified and published treaties or international agreements take precedence over internal laws.

¹³ Article 31: The King shall sign and ratify treaties. However, treaties committing State finances shall not be ratified without having been approved under the law. Treaties likely to affect the constitutional provisions shall be approved in accordance with the procedures prescribed for the modification of the Constitution.

¹⁴ Moroccan Nationality Code, Article I; Law governing the Legal Profession, Articles 5, 18, 31; Decree on the handing over of foreign prisoners; Code of Criminal Procedure, Article 173.

Moroccan government representatives speaking in front of different United Nations treaty-monitoring bodies repeatedly assert the supremacy of international law over domestic law and their direct applicability in the internal legal system:

32. In response to the Committee's concern about the status of international instruments, including the Convention in particular, in relation to Morocco's Constitution and domestic law, we may note that international instruments that have been duly ratified and published in the Official Gazette take precedence over domestic legislation in the event of conflict, as may be seen from a number of Supreme Court rulings (decision No. 49 of 1 October 1976, decision No. 5 of 3 November 1972, and decision No. 162 of 3 August 1976) and from the Nationality Code of 6 September 1958 and the new Code of Criminal Procedure.¹⁵

(b) Tunisia:

Article 32 of the Tunisian Constitution as amended in June 2002¹⁶ provides that treaties signed by the President of the Republic and approved by the Chamber of Deputies have authority over domestic laws.

The Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Mr. Abid Hussain, presents and analyses the information he gathered during his mission in Tunisia in December 1999. In the section on international obligations, he stressed the direct application of treaties by domestic courts:

13. Under article 32 of the Constitution, international conventions that have been duly ratified are granted legal precedence over domestic laws. As a result of this principle, in cases where there is a contradiction between a treaty and domestic legislation, the treaty has the force of law. Likewise, treaties may be applied directly in domestic legislation by the magistrates and authorities responsible for their application.¹⁷

In its 5th periodic report to the Human Rights Committee on April 24th, 2007, the Tunisian government declared that,

While under article 32 of the Constitution international instruments take precedence over domestic laws and take immediate effect upon their official

¹⁵ Third and fourth periodic reports presented by Morocco to the CEDAW Committee, 40th session (2008).

¹⁶ Article 32: The President of the Republic shall ratify treaties. Treaties concerning the State's borders, commercial treaties, treaties related to international organization, treaties concerning financial commitments of the State, as well as treaties including provisions of a legislative nature or relating to the status of persons, may be ratified only after being approved by the Chamber of Deputies. Treaties come into force only following their ratification and provided they are applied by the other party. Treaties ratified by the President of the Republic and approved by the Chamber of Deputies have a higher authority than that of laws.

¹⁷ E/CN.4/2000/63/Add.4.

*publication, Tunisia has brought its domestic legislation into line with international norms for the protection of human rights.*¹⁸

As concerns women's rights specifically, the Tunisian government has yet to submit its 5th periodic report to the CEDAW Committee, originally due in 2002.

(c) *Algeria:*

Algeria has likewise ratified numerous international human rights conventions, and provides for their supremacy over domestic laws in its Constitution:

Article 131: Armistice agreements, peace, alliance and union treaties, treaties related to State borders as well as treaties involving expenses not provided for in the State budget are ratified by the President of the Republic following an explicit approval by each of the chambers of the Parliament.

Article 132: Treaties ratified by the President of the Republic in accordance with the conditions provided for by the Constitution are superior to the law.

The Constitutional Court confirmed this supremacy in a decision rendered on August 20th, 1989, which also declared the direct applicability of international conventions in domestic courts and the possibility for any citizen to invoke them as the basis of a claim.

*Considering that after its ratification and as soon as it is published, any convention becomes part of domestic law and, pursuant to article 132 of the Constitution, acquires an authority higher than that of the law, allowing any Algerian citizen to invoke it before the courts.*¹⁹

In a Declaration made on March 8th, 2008, the President of the Republic declared his country's intention to lift certain reservations to the CEDAW in compliance with the 2006 Nationality Code.

(d) *International human rights conventions ratified by the three countries:*

Among the conventions ratified by the three target countries and relevant to this research we can cite the following:

¹⁸ CCPR/C/TUN/5

¹⁹ <http://www.conseil-constitutionnel.dz/indexFR.htm>

International instruments	Ratified (R) or Published in the Official Gazette (OG)			Key Articles	Reservations		
	Algeria	Morocco	Tunisia		Algeria	Morocco	Tunisia
International Covenant on Economic, Social and Cultural Rights	17/05/1989 (O.G.)	21/05/1980 (O.G.)	1968 (R)	<ul style="list-style-type: none"> o Art 6 ¶1 o Art 10 ¶ 1&2 o Art 13 	NO	NO	NO
International Covenant on Civil and Political Rights	17/05/1989 (O.G.)	21/05/1980 (O.G.)	1968 (R)	<ul style="list-style-type: none"> o Art 16 o Art 23 ¶ 3 et 4 	NO	NO	NO
Convention on the Elimination of All Forms of Discrimination against Women	21/06/1996 (O.G.)	18/01/2001 (O.G.)	20/09/1985 (R)	<ul style="list-style-type: none"> o Art 10 o Art 11 o Art 15 o Art 16 	<ul style="list-style-type: none"> o Art 2 o Art 9 ¶ 2 o Art 15 ¶ 4 o Art 16 o Art 29 	<ul style="list-style-type: none"> o Art 9 ¶ 2 o Art 16 o Art 29 (Declaration) o Art 2 o Art 15 ¶ 4 	<ul style="list-style-type: none"> o Art 9 ¶ 2 o Art 16 (c) (d) (f) (g) (h) o Art 29 ¶ 1 (Declaration) o Art 15 ¶ 4
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages	NO	NO	24/01/1968				

(e) *Reservations:*

Despite the fact that the three target countries have ratified the CEDAW Convention, important reservations were made to these ratifications: Morocco and Algeria don't undertake to condemn discrimination against women and to pursue by all means a policy that aims at eliminating gender discrimination (Article 2); Morocco and Algeria do not acknowledge women's right to freedom of movement, to chose their place of residence and domicile (art. 15.4);²⁰ Morocco and Algeria totally reject article 16²¹ which claims equality between the spouses, which Tunisia subscribes to,

²⁰ Article 15 (4) : States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

²¹ Article 16 :

I. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right to freely choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

except for one point: namely the one which grants the spouses the same rights and responsibilities within marriage and after its dissolution, in other words the essence of this article. The three countries ratified the CEDAW with such reservations that, for Morocco and Algeria, void the ratification of its substance, since they place religion and their non-egalitarian and discriminatory legislation above the convention. Tunisia also made reservations by invoking Article 2 of its Constitution that stipulates that Islam is the official religion, and stating that paragraphs (g) and (h) should not conflict with Personal Status Code provisions on the attribution of the family name to children and on inheritance rights.

Although the three countries have declared on several occasions²² that they intend to adhere to the Optional Protocol to the CEDAW, only Tunisia has done so, on June 9, 2008.

The new Human Rights Council called on the three countries to withdraw its reservations to the CEDAW, a recommendation all three agreed to in principle (although in the case of Algeria, the recommendation was limited to Article 2 of CEDAW).²³

Admittedly Algeria, Morocco and Tunisia all ratified the CEDAW with reservations, but this does not demean in any way the importance of the ratification itself, given the resulting declared commitment by the three countries of their intention to adhere to human rights principles.

It is worth pointing out that neither Algeria nor Morocco has ratified the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

(ii) National Constitutions

The three national Constitutions contain several articles that guarantee, or could guarantee, women's rights in different areas, (see the chart below), including within the family and in the marriage contract, either directly or indirectly.

Formal equality for all citizens is explicitly proclaimed in the three constitutions. For Algeria, Article 29 of the 1996 Constitution stipulates that "All citizens are equal before the law. No discrimination shall prevail because of birth, race, sex, opinion or any other personal or social condition or circumstance." Article 6 of the 1991 Tunisian Constitution states that "All citizens

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

²² For example, as recently as March 2008 in front of the Human Rights Committee for Tunisia and in February 2008 before the CEDAW Committee for Morocco.

²³ *Coalition Egalité Sans Réserve* during the First session of the Universal Periodic Review in Geneva, April 2008.

have the same rights and the same duties. They are equal before the law,” while Article 5 of the 1996 Moroccan Constitution provides that “All Moroccan citizens shall be equal before the law.”

In addition, the three constitutions declare the States’ respect of and commitment to guaranteeing fundamental freedoms and human rights to their citizens in specific articles,²⁴ except for the Moroccan Constitution which limits these to political rights only.²⁵

However, the recourse made in the Constitutions to Islam as the official religion²⁶ constitutes a real barrier to the incorporation of women’s human rights as provided for by international instruments into local laws. The reservations made to certain provisions of the CEDAW reveal internal contradictions between different Constitutional provisions as well as with the three countries’ political will to promote and protect women’s human rights.

Constitutional Provisions Related to Women’s Human Rights in the Three Target Countries:

Country	Article in Constitution	Rights Covered
<i>Morocco</i>	<i>Article 5</i>	All Moroccan citizens shall be equal before the law.
	<i>Article 8</i>	Men and women shall enjoy equal political rights.
	<i>Article 9</i>	The constitution shall guarantee all citizens the following: (a) freedom of movement through, and of settlement in, all parts of the Kingdom;...
	<i>Article 13</i>	All citizens shall have equal rights in seeking education and employment.
	<i>Article 15</i>	The right of private property and free enterprise shall be guaranteed.
<i>Algeria</i>	<i>Article 29</i>	All citizens are equal before the law. No discrimination shall prevail because of birth, race, sex, opinion or any other personal or social condition or circumstance.
	<i>Article 31</i>	The aim of the institutions is to ensure equality of rights and duties of all citizens, men and women, by removing the obstacles which hinder the progress of human beings and impede the effective participation of all in the political, economic, social and cultural life.
	<i>Article 32</i>	The fundamental human and citizen’s rights and liberties are guaranteed.
	<i>Article 44</i>	Any citizen enjoying his civil and political rights has the right to choose freely his place of dwelling and to move on the national territory.
	<i>Article 52</i>	Private property is guaranteed. The right to inherit is guaranteed.
	<i>Article 53</i>	The right for education is guaranteed.
	<i>Article 55</i>	All citizens have right for work.
	<i>Article 58</i>	The family gains protection from the State and the society.
<i>Tunisia</i>	<i>Article 5</i>	The Republic of Tunisia shall guarantee fundamental

²⁴ Algerian Constitution (Article 32), Tunisian Constitution (Article 5).

²⁵ Moroccan Constitution (Article 8).

²⁶ Tunisian Constitution (Article 1), Algerian Constitution (Article 2), Moroccan Constitution (Article 6).

		<p>freedoms and human rights in their universality, comprehensiveness, complementarity and interdependence.</p> <p>The Republic of Tunisia shall be founded upon the principles of the rule of law and pluralism and shall strive to promote human dignity and to develop the human personality.</p> <p>The state and society shall strive to entrench the values of solidarity, mutual assistance and tolerance among individuals, social categories and generations.</p> <p>The Republic of Tunisia shall guarantee the inviolability of the human person and freedom of conscience, and defends the free practice of religious beliefs provided this does not disturb public order.</p>
	<i>Article 6</i>	All citizens have the same rights and obligations. All are equal before the law.
	<i>Article 7</i>	Citizens exercise all their rights in the forms and according to the terms provided for by law. The exercise of these rights can be limited only by laws enacted to protect the rights of others, the respect of public order, national defense, the development of the economy and social progress.
	<i>Article 10</i>	Every citizen has the right to move freely within the country, to leave it, and to take up residence within the limits established by the law.

(iii) National Legislation

The Family or Personal Status Codes in the three target countries explicitly reaffirm the principle that marriage is a freely negotiated contract between two consenting parties that creates legally binding obligations.²⁷ The 2005 amendments to the Algerian Family Code for the first time refer explicitly to the “marriage contract,” in comparison to the 1984 code which referred only to “marriage.”

The Moroccan and Algerian Family Codes, even prior to the reforms made in 2004 and 2005 respectively,²⁸ and the 1956 Tunisian Personal Status Code, all explicitly provide that spouses may legally stipulate additional negotiated clauses into their marriage contract.²⁹ In addition, the three Codes go even further to give specific examples of conditions that may be included into the marriage contract, including clauses related to persons such as a monogamy clauses, the delegation of the husband’s right to repudiation, and the wife’s right to work, as well as clauses related to property ownership and division.³⁰ These articles essentially allow future spouses to stipulate any

²⁷ Algerian Family Code, Articles 4, 7, 9, 10, 13, 19, 53(9); Moroccan Family Code, Articles 4, 10 (1), 11, 12, 57(3), 63; Tunisian Personal Status Code, Articles 3, 11, 21.

²⁸ 1993 Moroccan Family Code, Articles 30 and 31; 1984 Algerian Family Code Article 19.

²⁹ Tunisian Personal Status Code, Article 11; Algerian Family Code, Article 19; Moroccan Family Code, Articles 47, 48.

³⁰ Article 49 of the Moroccan Family Code and Article 37 of the Algerian Family Code introduced the possibility for spouses to conclude a separate marital property contract, and the Tunisian Law 98-91 of 9/11/1998 introduced an optional community property regime for married couples. Under the provisions of Islamic law, and in all national legislations in the Maghreb, the general rule is that of separate property, which deprives the housewife who has no salary from sharing her husband’s salary

and all clauses agreed upon into the marriage contract, provided they are not in contradiction with the inherent nature of marriage.³¹ Likewise, non respect of such clauses is considered a breach of contract for which the wronged party may seek a remedy, including compensation and divorce.³²

and any marital property bought by him, or registered under his name, even when she contributed to development of the family assets through her housework.

³¹ Moroccan Family Code, Articles 47, 48; Algerian Family Code, Articles 19, 32; Tunisian Personal Status Code, Article 21.

³² Moroccan Family Code, Articles 98, 99; Algerian Family Code, Article 52; Tunisian Personal Status Code, Article 11.

Legal Provisions Allowing Spouses to Stipulate Negotiated Clauses into the Marriage Contract

Country	Law	Articles
Morocco	Family Code	<p>Article 4: Marriage is a legal contract by which a man and a woman mutually consent to unite in a common and enduring conjugal life. Its purpose is fidelity, virtue and the creation of a stable family, under the supervision of both spouses according to the provisions of this <i>Moudawana</i>.</p> <p>Article 40: Polygamy is forbidden when there is the risk of inequity between the wives. It is also forbidden when the wife stipulates in the marriage contract that her husband will not take another wife.</p> <p>Article 47: All conditions are binding except for those contrary to the terms and objectives of marriage and to compulsory legal rules; such conditions are void while the contract remains valid.</p> <p>Article 48: Conditions that confer a legitimate benefit on the person who drew them up are valid and binding on the spouse who agreed to them. If facts or circumstances render the material performance of a condition difficult, the person bound by it may ask the court for a waiver or a modification of the condition, for as long as these facts or circumstances exist, taking into consideration the provisions of preceding Article 40.</p> <p>Article 49: Each of the two spouses has an estate separate from the other. However, the two spouses may, under the framework of the management of assets to be acquired during the marriage, agree on their investment and distribution.</p> <p>This agreement is indicated in a written document separate from the marriage contract.</p> <p>The <i>Adouls</i> (public notaries) inform the two parties of these provisions at the time of the marriage.</p> <p>In the absence of such an agreement, recourse is made to general standards of evidence, while taking into consideration the work of each spouse, the efforts made as well as the responsibilities assumed in the development of the family assets.</p> <p>Article 89: If the husband has assigned his right of repudiation to his wife, she can exercise this right by petitioning the court according to the provisions of preceding Articles 79 and 80. The court shall verify that the conditions for the assignment of the right of repudiation as agreed upon by the two spouses are fulfilled.</p> <p>Article 98 : The wife may petition for divorce on one of the following grounds: I - Non respect by the husband of one of the conditions in the marriage contract;</p> <p>Article 99: Failure to respect any condition in the marriage contract constitutes a harm justifying a divorce request.</p>
Tunisia	Personal Status Code	<p>Article 3: Marriage is formed only upon the consent of the spouses.</p>

Algeria	Law 98-91 on the Community Property Regime	Article 11: Any clause pertaining to persons or possessions can be included in the contract. In case of non-execution or violation of the clause, the marriage may be dissolved through divorce.
		Article 1. – The regime of the joint estate is an optional regime which the spouses may choose at the time of the marriage contract or at a subsequent date. The aim of this regime is to ensure that the spouses have joint ownership of any immovable property or group of immovable properties which are specifically intended for the family's use.
		Article 2. – When the spouses declare that they have chosen the regime of the joint estate they shall be subject to the provisions of this Act. They shall be responsible, however, for any agreement to increase the extent of the joint estate provided that, in so doing, it is explicitly mentioned.
		Article 7. – The official entrusted with the conclusion of the marriage contract must remind the two parties of the provisions of articles 1 and 2 of this law and record their responses in the contract.
		Article 8. – A joint property agreement subsequent to the conclusion of the marriage contract must be recorded in a notarized document.
	Family Code	Article 4: Marriage is contract based on consent concluded between a man and a woman according to legal formalities.
		Article 15: The dower is specified in the marriage contract whether its payment is immediate or deferred.
		Article 19: The two spouses may stipulate in the marriage contract or in a subsequent notarized contract any clause they deem useful, notably with regard to polygamy and the wife's work, unless these conditions are in contradiction with this law.
		Article 32: The marriage is declared null when there is an impediment to it or a clause contrary to the aim of the contract.
		Article 37: Each spouse retains his/her own personal property. However, the two spouses may agree in the marriage contract or in a subsequent notarized contract, on joint ownership of property acquired during the marriage and determine the proportion to be attributed to each of them.
	Civil Status Code	Article 35: The civil status officer reads the documents to the appearing parties or their proxy and to the witnesses, and urges the parties to read them before they sign them.

(iv) Customary Law

In Morocco, customary law referred to as “*kad et siaya*,” is practiced and applied in the southern provinces, particularly in the Souss region. Under this system, and according to the definitions provided by religious scholars, the wife is entitled to the material possessions that she constitutes and establishes with her husband during their marriage.

This customary law entitles the wife, upon dissolution of the marriage by divorce or the husband’s death, to conduct an inventory and assessment of the possessions accumulated during the marriage. She is thus guaranteed a share of the property in compensation for the moral and physical efforts that she made alongside her husband.

Thanks to the joint efforts of different social and civil society actors in Morocco, this custom is often cited as the source of inspiration for Article 49 of the new Moroccan Family Code mentioned above, and many argue as a result that it should be used by the judiciary as a source for the interpretation of this article.

Likewise, in the northern provinces there existed until very recently what was known as the “*chka*” or « effort » customary law, under which upon dissolution of the marriage the wife received a share of the property acquired during the marriage period in compensation for her efforts and her work within the household.

In Algeria, prevailing customary laws pertaining to marriage contract procedures are called in local dialect “*katie achart*,” which refer to the moral agreement concluded between the two families just after the exchange of consent, and in which they agree to all the conditions and details concerning the marriage. This practice became customary law because once the expression mentioned above is pronounced, it signifies agreement to the marriage pending the engagement concomitant to the reading of the “*fatiha*” and the conclusion of the marriage at the municipality.

While the conditions agreed to may differ from one region to another, this custom implies that marriage cannot occur without consent to the conditions agreed to by the two families or between the groom and the wife’s marital tutor. However, these verbal conditions remain at the level of principles to be respected by the two spouses in virtue of the moral agreement between the husband and the wife’s marital tutor.

According to this custom, the non respect by one of the spouses of one of the conditions can lead to the dissolution of the marriage. Lawyers and judges in Algeria describe the frequency of divorce cases based on by the violation by one or both of the spouses of verbal promises made prior to the marriage.

B. Legal Procedures for Concluding the Marriage Contract:

Given the social aspects of marriage, the spousal relationship between the two parties, and the obligations created by the conclusion and/or dissolution of the marriage contract, the three Family/Personal Status Codes in the Maghreb pay particular attention to specifying its content as well as the conditions necessary for its conclusion. Articles 3 and 6 of the Tunisian Personal Status Code requires the consent of the two parties and that of the marital tutor and mother for a

minor,³³ the presence of witnesses, and specification of the wife's dower for the formation of a valid marriage contract. Similarly, articles 10, 11 and 13 of the Moroccan Family Code list the conditions necessary to contract marriage as the legal capacity of both spouses to marry, no intention or agreement to cancel the dower, and the marital tutor if required or elected, the hearing and notarized statement by two *adoul* (public notaries) of the offer and acceptance pronounced by the two spouses, and the absence of any legal impediments. In Algeria, articles 9, 9bis and 10 of the Family Code require the legal capacity of both parties to enter into marriage, the dower, the presence of two witnesses and the absence of any legal impediments. The marital tutor for the bride remains mandatory in Algeria despite the 2005 reforms to the Family Code.

In Morocco and Tunisia, marriage may only be proven by a written, official document governed by a specific law, respectively Family Code articles 16 and 17 and Title 4 and Personal Status Code article 4 referring to Chapter 3 of the 1957 Civil Law. In contrast, article 6 of the Algerian Family Code still recognizes marriages concluded without an official document.³⁴ Title 3 of the same Code sets out the procedures for the conclusion of the marriage contract, with articles 21 and 22 referring to the Civil Status Code provisions on their registration.

The Family/Personal Status Codes and Civil Status Codes in the Maghreb also set out the necessary formalities for drawing up the marriage contract, with the presence of two witnesses legally required in all three countries.

- In **Algeria** marriage contracts may be drawn up either by a Civil Status Officer at the municipality³⁵ or by a private notary,³⁶ although contracts drawn up by notaries are not considered official and do not produce any legal effects until registered at the municipality.
- In **Tunisia** marriage contracts may be drawn up either by a Civil Status Officer at the municipality (designated from among elected municipal councillors) or by two *adoul*³⁷ acting in their capacity as public officials and not as representatives of a religious authority, the latter required to have a law degree and pass a competitive examination.
- In **Morocco** marriage contracts are drawn up by two *adoul* acting in their capacity as public officials and not as representatives of a religious authority, and are required to have a university degree in law or Sharia and pass a competitive examination.

³³ Article 6: The marriage of a minor requires the consent of the latter's legal tutor or the mother. In case the tutor or mother refuses and the minor persists, the judge is seized.

³⁴ Algerian Family Code, Article 6: The "fatiha" concomitant to the engagement. "El-khitba" is not considered marriage. However, the "fatiha" concomitant with the engagement "el-khitba" in a contractual session constitutes marriage if the two parties consent and conditions for marriage are met, in compliance with the provisions of article 9bis of the present law.

³⁵ Article 1 of the Civil Status Code defines the Civil Status Officer as the Presidents and Vice Presidents of municipal assemblies, or the heads of diplomatic and consular offices abroad. However, Article 2 of the Code stipulates that the President of the municipal assembly can delegate his Civil Status Officer functions to a municipal civil servant or other permanent civil servant over 21 years old.

³⁶ With a university degree in law and then an internship at a notary's office.

³⁷ Tunisian Civil Status Code, Article 31: The marriage contract is concluded in Tunisia before two notaries or before the Civil Status Officer and in the presence of two honourable witnesses. The marriage of Tunisians abroad is celebrated before Tunisian diplomatic or consular officers, or in conformity with local law.

Nationals of these three countries residing abroad celebrate their marriage at their country's diplomatic or consular missions in the foreign country.

In order to conclude a marriage contract in Morocco, a record is created and filed at the Court Clerk's office at the Family Court where the marriage is to be concluded, with the contents of the file as listed in article 65.³⁸ In compliance with paragraph three of article 49, at the time of marriage the *adoul* must inform the two parties of the « previous provisions» without specifying whether «previous provisions» refers only to the two preceding paragraphs of article 49 or to articles 47 and 48 as well. In any event, there is no legal guarantee that the *adoul* have actually notified the two spouses of either of these options, since it is sufficient that the *adoul* note in the marriage contract - that they write up themselves - that the two spouses have been informed in order to be discharged of all responsibility.

The contract is registered at the Family Court records. A summary of it is transmitted to the Civil Status office at the birthplaces of both spouses, accompanied by a return receipt within fifteen days after the judge has authenticated it. The original marriage contract is remitted to the wife and a copy provided to the husband once the judge authenticates it.

Article 67 of the Moroccan Family code requires that the marriage contract contain 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; 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; the name of the marital tutor if required; the offer and acceptance by the two contracting parties who exercise full capacity and the ability to choose and discern; in the

³⁸Moroccan Family Code Art 65: I. A marriage contract record is created and maintained at the Court Clerk's office at the Family Court where the marriage is to be concluded, and it shall include the following documents:

- 1- An application form requesting registration of the marriage contract. Its form and content shall be specified in a decree by the Minister of Justice;
- 2- A copy of the birth certificate. The civil status officer shall mention in the margins of this copy its date of issuance, specifying that it was issued for the purpose of marriage;
- 3- An administrative certificate for both of the engaged parties, whose content shall be defined in a joint decree by the Ministers of Justice and Interior;
- 4- A medical certificate for each of the two engaged parties, whose content and procedures for issuing shall be defined in a joint decree by the Ministers of Justice and Health;
- 5- A marriage authorization is also required in the following cases:
 - Marriage of persons not yet of legal age;
 - Polygamy when the conditions required by this *Moudawana* are fulfilled;
 - The marriage of a mentally disabled person;
 - The marriage of persons who have converted to Islam and foreigners.
- 6- A certificate of capacity to marry or its equivalent for foreigners.

II. The Family Affairs Judge in charge of marriage records officially certifies the record containing the abovementioned documents, and files it at the Court Clerk's office under its assigned number.

III: The Family Affairs Judge authorizes the two *adoul* (public notaries) to draw up the marriage contract.

IV: The two *adoul* note in the marriage contract the declaration by both spouses specifying whether or not they have been married previously. In case of a previous marriage, the declaration must be accompanied by proof of the legality of the marriage to be concluded.

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; mention of the legal status of the spouse who has been married previously; 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; any conditions agreed upon by both parties; the signatures of both spouses and the tutor when required; the names of the two *adoul* (public notaries) and each one's signature with the date of the marriage contract; and 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.

The public official entrusted with the conclusion of marriage contracts in Tunisia is only required to inform the two parties of their right to choose the community property regime, and must give them a written form to this effect two weeks before the conclusion of the marriage contract. In contrast, the public official is not obliged to inform them of the provisions of article 11 of the Personal Status Code.³⁹

The official drawing up the marriage contract is required to send a copy to the Civil Status Office at the two spouses' birthplace(s). Article 8 of the Law 98-91 on the Community Property Regime provides that any subsequent community property agreement must be recorded in a notarized contract. The *adoul* are required, before delivering an official copy of the marriage contract to the spouses and within one month after its conclusion, to send a notification of marriage to the Civil Status Officer in their district. The notification should conform to the model provided in the present law. Any failure to comply with these dispositions is liable to a fine of ten thousand francs.⁴⁰

In compliance with article 32 of the Tunisian Civil Status Code, the marriage contract must include the spouses' names, professions, ages, dates and places of birth, home addresses and places of residence, and nationalities. It should also contain each spouse's parents' names, professions, home address and nationalities; declarations by two witnesses that the two future spouses are free of all other matrimonial ties; the names of any previous spouse(s) as well as the dates of death or divorce that led to the dissolution of any previous marriage(s). Where required, any consent or authorization required by the law should also be included along with mention of the dowry.

In Algeria, article 21 of the amended Family Code provides that marriage contract registration procedures are governed by the provisions of the Civil Status Code. Article 18 of the Family Code designates the parties competent to conclude marriage contracts as either a legally

³⁹Law 98-91 on the Community Property Regime, Article 7. In addition, article 9 provides that "Any public officer who does not comply with the provisions of paragraphs 1 and 2 of article 7 and paragraph 2 of article 8 will be fined 100 dinars." The public officer may be a Civil Status Officer or the *adoul*. In reality the Civil Status Officer has to prepare the forms in which the marital property regime is specified prior to the date of marriage, which constitutes in itself a guarantee that the spouses have been informed about the different legal possibilities concerning their marital property. In contrast, in practice the *adouls* need go no further than to note in the marriage contract that the two spouses have been informed of the possibility of choosing the community property regime).

⁴⁰ Civil Status Code, article 33.

designated civil servant or a notary. However, articles 71 and 72 of the 1970 Civil Status Code⁴¹ refer not to the notary but to the judge, and provide that marriage contracts are drawn up either by judges or by Civil Status Officers. What we can deduce from the 2005 Family Code reforms is that the notary has replaced the judge in the conclusion of marriage contracts, with the judge's role now limited to authorizing the marriage of minors and polygamous marriages.

Article 73 of the Civil Status Code provides that the marriage contract must include the spouses' names, dates and places of birth, their parents' names, the witnesses' names and ages, and any legal authorization or exemption necessary to conclude the marriage. For this purpose, the Civil Status Officer is limited to using the existing marriage contract models⁴² established by the 1970 Civil Status Code and used ever since up to the present time. In contrast, notaries drawing up marriage contracts are not obligated to limit themselves to these pre-established forms and may elaborate a marriage contract based on the spouses' wishes.

Article 74 of the Civil Status Code requires each of the future spouses to submit proof of their civil status by submitting a birth certificate drawn up within three months of birth or legal order recognizing the birth, as well as the Family Record Book from any previous marriage.

Nowhere does the law require the Civil Status Officer or notary (or judge) to inform the two spouses of their legal rights to stipulate additional clauses in their marriage contract or in a subsequent notarized contract.

C. Realities of women's legal rights with respect to the marriage contract

(i) Tunisia

The Tunisian legislator placed the two spouses on somewhat equal terms with respect to their rights and obligations⁴³ by enabling women to participate in the management of family affairs, although the law does nonetheless maintain the husband's status as head of household.

⁴¹ Article 71: The Civil Status Officer or judge competent to draw up a marriage contract for future spouses is either the one located where both or one of the future spouses has their domicile or has lived continuously for at least a month at the time of marriage.

Article 72: When marriage takes place in front of a Civil Status Officer, he registers the contract immediately at the time of marriage and gives the spouses a Family Record Book as proof of marriage. When marriage takes place in front of a judge, he draws up the marriage contract and gives the parties a certificate. A marriage certificate is sent by the judge to the Civil Status Officer within three days; the latter registers the contract in the Civil Status Records within five days of its reception and gives the spouses a Family Record Book; mention of the marriage is registered in the margins of the birth certificates of each of the spouses.

⁴² "I cannot add anything into the marriage contract without a court order or permission from the public prosecutor," replied a Civil Status Officer in Algeria in response to a question about what types of clauses he can add into the marriage contract.

⁴³ Personal Status Code, Article 23: Spouses shall treat each other with benevolence, live in harmony, and avoid causing each other harm. The two spouses must fulfil their conjugal duties according to practices and customs. They cooperate on family matters, the upbringing and management of children's affairs, including education, travel, and financial matters. The husband, as head of household, must provide for his wife and children according to his means and their status under the framework established for financial maintenance. The wife must contribute to family expenses if she has assets.

The Personal Status Code prohibits polygamy, eliminates the marital tutor, only recognizes judicial divorce, and forbids repudiation. It allows adoption and eliminates from the succession order uncles and cousins, who in Islamic law share inheritance with daughters when there is no male heir. The Code also grants legal guardianship of children to the mother upon the father's death, abolishes the wife's duty of obedience to her husband, establishes the legal age of marriage as 18 for girls and boys, and establishes paternity testing for abandoned children and for children of unknown families. In 1998 a law instituted an optional community property regime for spouses.

In order to protect the rights of Tunisian women who marry foreign men, the Ministry of Justice published recommendations encouraging Civil Status Officials to advise Tunisian women planning to marry foreigners as to the legal possibility to stipulate conditions into their marriage contracts. The initiatives focus in particular on Tunisian women who marry men from other Arab-Muslim countries where the laws do not protect women's rights to the same extent as in the Tunisian Personal Status Code. In the majority of these other countries, polygamy is legal, verbal marriages are recognized, and repudiation replaces judicial divorce, resulting in the loss by the woman and her children of many of their rights.

Experience has shown that many Tunisian women who married husbands from other Arab-Muslim countries were repudiated and denied their rights and all the guarantees offered by Tunisian law simply because of their ignorance of the differences that exist between the two countries' legal systems and laws. In some cases, the Tunisian consular officials had to intervene and repatriate women victims of such practices. For this reason, officials responsible for drawing up marriage contracts were asked to inform Tunisian women planning to marry foreign men of the legal possibility to stipulate conditions in their marriage contracts as provided for by article II of the Personal Status Code. Particular attention has been given to conditions that can protect women upon divorce, such as clauses granting women the right to initiate divorce (*isma*), the amount of the deferred dower, and the right to travel with one's children among others.

This trend has enabled certain families who are more concerned than others (especially in the cases of mixed marriages) to have lawyers draw up marriage contracts for them and become better acquainted with the laws that prevail in the countries where the future wife intends to settle, as well as to ask the Civil Status Officer drafting the marriage contract to include all possible conditions and information on the spouses and their property as a means of eventually protecting the wife's rights.

Since the promulgation of the Personal Status Code in 1956, article 24 confirms the principle that the husband has no power over the wife's property, in order to protect the wife from being expropriated by her husband. This rule of separation of property, originally established to protect the wife, became an obstacle to her obtaining a share of assets accumulated during the marriage, assets often acquired by the joint efforts of both spouses. This situation was exacerbated by the fact that Article II of the same Code allowing for the stipulation of additional conditions into the marriage contract did not achieve the desired results.

Article 24. The husband has no power of management over his wife's property.

The Law 98-91 on the Community Property Regime allows spouses to adopt a joint property regime upon the conclusion of the marriage contract or at a subsequent date. Under this optional regime, some or all immovable property can become common property as long as they are intended for the family's use. This community property regime allows spouses to opt out of the legal default regime of separate marital property, especially given the failure of the article 11 provisions on the stipulation of additional clauses and in recognition of the wife's growing economic role and participation in the development of family assets.

This law was promulgated in large part in response to recent evolutions in Tunisian society. Women have become full citizens with rights and obligations, and real partners alongside men in achieving family harmony, as well as dynamic actors in its economic development, frequently earning a higher salary than their husbands and contributing through work and money to household management and the well-being of its members.

The theoretical basis of community property does not contradict Islamic jurisprudence, which established the principle of allowing spouses to stipulate binding conditions related to persons or property into the marriage contract and provided that the party harmed by non respect of these conditions may seek divorce. The community property regime draws its theoretical foundations from the law of choice of conditions anchored in Islamic jurisprudence but without its risks, as this regime rules out the possibility for one of the spouses to seek divorce in case breach of contract, and is merely considered a financial system with no effect on marital stability.

(ii) Algeria

The Algerian Family Code defines the aims of marriage as “to found a family based on affection, goodwill and mutual support, to morally protect both spouses and to preserve family ties.”⁴⁴

Article 36 of this same Code establishes the spouses' mutual rights and obligations,⁴⁵ including joint cooperation to preserve family interests, a sound upbringing for children, and consultation and consensus in the management of family affairs.

For the first time, Decree n° 05-02 of February 27, 2005 modifying and completing the 1984 Family Code explicitly refers to marriage as a “contract.” It also sets the legal age of marriage at 19 for both sexes, gives the two spouses the right to stipulate in the marriage contract or in a subsequent notarized contract any clause which they deem useful, and provides that spouses may make a community property agreement. Despite these improvements to the Family Code, the law maintains marital tutorship and polygamy. As amended, the law still requires adult women to have a marital tutor (of their choice) to contract marriage for them; repudiation remains a right reserved exclusively to men; polygamy is maintained despite procedural amendments designed to

⁴⁴ Article 4.

⁴⁵ Art. 36: The two spouses have the following obligations: 1 – preserve marital bonds and the obligations of marital life, 2 – harmonious cohabitation, mutual respect, and goodwill, 3 - jointly contribute to the preservation of family interests, protecting of children and their sound upbringing, 4 – mutual consultation in the management of family affairs and family planning, 5 - respect of their respective parents, their relatives, and paying them visits, 6 –preserving family ties and good relations with parents and relatives, 7 –each spouse has the right to visit and be visited by parents and kin in all goodwill.

render it more difficult,⁴⁶ and article 72 provides that the wife with custody of her children can remain in the family home until the father provides them with a decent house or rents one for them.

Marriage may be proven and formally recorded in the Civil Status Registry by court order or by witness testimony, as stipulated by article 22 of the Family Code.⁴⁷ As a result of the combination of these provisions with aforementioned article 6,⁴⁸ a man may take a second wife without the consent of the first spouse and without judicial authorization, and this despite article 8 which limits the husband's right to practice polygamy.

Despite the fact that article 36 provides an exhaustive list of the spouses' mutual rights and obligations, these are described in very general terms such as respect, decent treatment, and cooperation to preserve family interests. Other rights such as the right to work, pursue ones studies, freedom of mobility and family planning are not specified. Nonetheless, the law does provide the spouses free latitude to specify respective rights and obligations by creating the possibility of stipulating into the marriage or other subsequent contract conditions they deem necessary and adequate provided they do not contradict the law.

Family Code article 18 designates the persons authorized to draw up marriage contracts, declaring that marriage contracts may be concluded either before a notary or a legally habilitated civil servant. Article I of the Civil Status Code defines the latter as the Civil Status Officer, who can be the Presidents and Vice Presidents of municipal assemblies, or the heads of diplomatic and consular missions abroad.

This definition would lead one to believe that the official charged with concluding the marriage contract would have a certain intellectual level, familiar with legal knowledge and practices related to marriage contracts laws and procedures, given that article I restricts Civil Status Officer functions to the Presidents and Vice Presidents of municipal assemblies, or the heads of diplomatic and consular missions abroad. However, article 2 of the same Code provides that the President of the municipal assembly can delegate his Civil Status Officer functions to a municipal civil servant or other permanent civil servants over 21 years of age. Such delegation of powers has become common practice in the majority of municipalities, where marriage contracts are concluded by municipal civil servants and not the Civil Status Officers as defined in aforementioned article I of the Civil Status Code.

The legal powers of Civil Status Officers charged with drawing up marriage contracts are defined by law, under which they are not authorized to elaborate marriage contracts capable of protecting the spouses' rights as allowed by the Constitution and the Family Code.

Despite the fact that the Family Code explicitly states that spouses may stipulate conditions in the marriage contract, in practice they conclude their marriage contracts at the municipality without stipulating any additional conditions, because the Civil Status Officer is himself legally restricted

⁴⁶ Article 8 places polygamy under judicial control.

⁴⁷ Article 22. Marriage is proven by issuing a certificate from the Civil Status registry. When there is no registration, it is declared valid by a court decision. The decree of marriage validation must be noted on the Civil Status at the behest of the Public Prosecutor's office.

⁴⁸ Article 6 recognizes a marriage concluded by engagement concomitant to the fatiha in a contractual session.

to using marriage contract models and registers established by the 1970 Civil Status Code that continue to be applicable to this day.

Future spouses rarely elaborate their marriage contract at the notary, due to both their lack of legal knowledge and the high cost involved, especially when contrasted to the fact that marriage contracts are concluded free of charge at the municipality.

This situation raises two questions: If future spouses wish to stipulate conditions into the marriage contract, how can they know if these conditions don't contradict the law? How can the condition be stipulated into the contract by the Civil Status Officer?

The Civil Status Officer charged with drawing up the marriage contract is not familiar enough with the law to be able to know if a condition is in contradiction with the Family Code or not, and therefore cannot assume the responsibility of including or writing in a condition that might go against the law.⁴⁹

Given that the Civil Status Officer functions are determined by the 1970 Civil Status Code, which was not modified once the Family Code was amended in 2005, the Civil Status Officer is limited to the models and registers used before the 2005 amendments, and cannot add anything to the contract other than provisions allowed and used in Algeria since the publication of the Civil Status Code in 1970.⁵⁰

Even if the spouses agree on the elaboration of a subsequent contract, this contract is still like any other binding civil contract between two parties, and the Civil Status Officer does not have the authority to then integrate the subsequent contract's conditions into the marriage contract. The only documents that may be integrated into Civil Status documents are those published by judicial decision, as provided for by article 58 of the Civil Status Code.

As a result, Family Code articles 19 and 37 on marital property have not served their intended purpose, notably the protection of the spouses' rights through the stipulation of conditions into the marriage contracts, because the two parties are not aware of these legal provisions and because the Civil Status Officer refuses to integrate any additional conditions when he draws up the marriage contract.

Therefore, the only way to stipulate conditions in the marriage contract in Algeria is by drawing it up in front of a notary. This is not a viable solution because most notaries avoid drawing up such detailed, negotiated marriage contracts.⁵¹ Notaries fear that conflicts might arise later between the

⁴⁹«I have no legal knowledge of the laws and the amendments introduced concerning marriage contracts, except for those on the medical certificate requirement that attests to the spouses' good health. Other than this, I have no knowledge whatsoever about the possibility of including conditions in the marriage contract,” declared a Civil Service Officer in Algeria. When asked whether he informs the spouses of their right to include clauses, he replied “no.” In Tunisia, “Spouses are reminded that they must choose a marital property regime but often without sufficient clarification unless the two parties ask for it explicitly,” according to a Civil Status Officer.

⁵⁰ Civil Status Code, Article 31: Civil Status Officers cannot add anything written or heard into documents other than the required declarations nor draw up a legal document on their own initiative.

⁵¹ When asked about the types of conditions that can be included in a marriage contract, one notary replied, “I am against this idea because I think there is no need to include conditions in a marriage contract. The idea just does not make sense.”

spouses over the wording of the contract or the conditions included, in which case the notaries would be drawn into any litigation by the fact of having drafted the contract.

As the dower is a fundamental condition for a valid marriage, its absence leads to the annulment of the contract, as provided for by Family Code Article 33. However, when examining marriage contracts concluded at municipalities, one rarely finds mention of or specifications about the dower. The dower remains a mere agreement between the wife's marital tutor and the husband once the agreement to the principle of the marriage has been reached.

While specific clauses in the marriage contract concern the dower, these clauses do not specify its exact amount or whether it is to be paid immediately or deferred. This has led to a significant amount of litigation in courts upon divorce or the husband's death. The problem lies with the difficulty of proving dower-related claims: resort is made to the wife's oath prior to the consummation of marriage, while resort is made to husband's (or his heirs') oath in conflicts arising after its consummation.⁵² Resorting to proof through the taking of an oath is a violation of the wife's right to the dower to which she is legally entitled; in cases of divorce or death after consummation of the marriage the husband or his heirs have the last word by taking an oath, thus denying the wife her dower.

(iii) Morocco

Article 4 of the Family Code defines marriage as "a legal contract by which a man and a woman mutually consent to unite in a common and enduring conjugal life. Its purpose is fidelity, virtue and the creation of a stable family, under the supervision of both spouses according to the provisions of this *Moudawana*."

As a result of reforms made to the Family Code in 2004, spouses have reciprocal rights and obligations. Husband and wife assume joint responsibility for household management and protection of the children, respecting the principle of consultation in decisions about children, family planning and the management of family affairs.⁵³

These reforms also granted women certain rights in marriage, including the elimination of the mandatory marital tutor and duty of obedience to the husband, and introduced the possibility of judicial divorce by mutual consent or for irreconcilable differences.

⁵² Family Code, Article 17.

⁵³ Article 51 : The mutual rights and duties between spouses are:

- 1- lawful cohabitation on the basis of good conjugal relations, justice, equality in case of polygamy, mutual fidelity, virtue, and the preservation of family honour and their children;
- 2- cohabitation, mutual respect, affection, and the preservation of the family interests;
- 3- the wife's assuming with the husband the responsibility of managing and protecting household affairs and the children's education;
- 4- consultation on decisions concerning the management of family affairs, children, and family planning;
- 5- good relations with each other's parents and close relatives, respecting, visiting and hosting them within accepted standards;
- 6- the right to inherit from each other.

The husband is exonerated from his obligation to support the family if the wife can provide for the children's needs.⁵⁴ The rule that women are usually not obligated to contribute to household expenses comes from the Islamic tradition under which husbands are required to provide for their wife and children. In reality, not only do women contribute to the development of family assets through their "invisible" work in the home, but also through their salary if they have paid employment.

This reform has significant symbolic value by acknowledging that a husband may not provide for the household and that the wife contributes to family maintenance and well-being. However, in so doing the law opens the door for the husband to evade his responsibilities towards his wife and children by declaring his total or partial incapacity to provide for his family, while such failure to support remains one of six grounds on which the wife may seek divorce.

If one spouse wrongly evicts the other from the conjugal home without good reason while they are still married, the Public Prosecutor intervenes immediately to return the evicted spouse to the conjugal home and takes measures to guarantee their security and protection.

Upon divorce, the wife without children has the right to remain in the conjugal home or other appropriate accommodation according to the husband's financial means until the end of the legal waiting period (*idda*) without compensation to the husband. The divorced woman with custody of children has the right to ask her husband to provide her with a home or to rent accommodation before she leaves the conjugal home.

Since there is no statute of limitations placed on the dower and the wife may claim it even after thirty years of marriage, in practice the dower is often considered as a debt that the husband must pay his wife after a specified time period or as a financial guarantee should the husband exercise his right to repudiate his wife.

Although repudiation is maintained in the law and the husband still has the discretionary right to unilaterally divorce his wife without cause, he must now do so in front of a judge. Polygamy remains legal, although it is regulated and placed under judicial control.

While maintaining the rule of separate marital property for assets acquired by the spouses during marriage, the reforms created the legal possibility for spouses to draw up a framework for joint management and investment of assets acquired during the marriage. This agreement must be written in a document separate from the marriage contract, and the *adoul* must notify the two parties of this possibility at the time of marriage. In the absence of a written agreement, recourse is made to general standards of evidence, while taking into consideration the work of each spouse, the efforts made as well as the responsibilities assumed in the development of the family assets.⁵⁵

Under the law, several situations may be imagined as concerns assets acquired during marriage:

- The assets, whether money, movable or immovable property, are acquired jointly, in which case neither spouse acting alone may dispose of the property, and upon dissolution of the marriage the assets are divided between the spouses;
- The assets are acquired by one of the spouses, who agrees to designate them as joint property in a contract separate from the marriage contract, in which case neither

⁵⁴ Article 199.

⁵⁵ Family Code, Article 49.

spouse acting alone may dispose of the property, and upon dissolution of the marriage the assets are divided between the spouses;

- The assets are acquired by one of the spouses and there is no property contract governing them. In this case, the general rule of separate marital property applies and the judge will resort to general standards of evidence, while taking into consideration the work of each spouse, the efforts made as well as the responsibilities assumed in the development of the family assets.

The rules on acquired assets also apply to debts, and the spouse who contracts a debt individually is responsible for its repayment while spouses must repay their respective part of joint debts.

Each spouse has the right to open an individual bank account in their own name, but spouses may agree to open and manage a joint account as allowed for under banking laws.

A random survey of 34 marriage contracts filed at the Khemisset Family Court between August – October 2007 found that only 1 of the contracts had an additional clause stipulated into it, in which the husband agreed not to be absent from the conjugal home for more than 3 months at a time. None had a separate marital property contract attached. On a national scale, the separate marital property contract provision introduced in the 2004 Family Law reforms remains quite rare in practice. Out of 289,821 marriages concluded in 2006, there were only 424 separate marital property contracts concluded, while in 2007 there were 900 marital property contracts concluded out of 316,411 marriages.⁵⁶

(iv) Common Realities

The individual interviews and round table debates conducted in the three target countries with policymakers, authorities, legal professionals and other stakeholders revealed the following common realities with regard to laws and practices on the marriage contract:

While the three countries proclaim the supremacy of duly ratified and published international conventions over internal laws, the absence of a legal framework and clear laws regulating the relationship between these conventions and national laws as well as their justiciability leads to irregularities and contradictions within each country's legal system that are not subject to review or control. As a result, individual rights are not adequately protected, a situation made worse by the fact that judges often base their decisions on personal attitudes and traditional ways of thinking when addressing issues of equality between men and women.

While the conclusion of marriage contracts in all three countries requires the consent of both parties, and despite the fact that the national laws all explicitly state that the two spouses have the right to stipulate conditions pertaining to their persons and property into the marriage contract, the research revealed that in practice these laws are rarely applied or are misinterpreted. This is due in large part to lack of information, mistrust, and prevailing mentalities, including among people legally charged with informing spouses of these rights at the time of marriage.

Given the concept of marriage as a contract, one might turn to general contract principles as found in the Codes of Contracts and Obligations or Commitments, under which the contract becomes law between contracting parties, all stipulated clauses are binding, and the non respect by one of the parties of the contract releases the other from his commitment and allows the wronged

⁵⁶ Official statistics from the Ministry of Justice.

party to seek compensation. However, the jurisprudence in the three countries has not adopted this position with respect to the marriage contract and clauses stipulated on the basis of the Family and Personal Status Codes. The general trend is to consider the marriage contract as a special contract or rather a legal institution that cannot be governed by general laws of contracts.⁵⁷ This position is based on the argument that marriage leads to the founding of a family, birth of children, and a series of mutual interests which are not founded solely on material ties, but on psychological, emotional, ethical, and social ties as well.

As a result, the laws in the three countries focus primarily on the social aspects of the marital relationship and do not give as much attention to the financial aspects of the relationship, with the exception of a few provisions addressing conflicts arising related to gifts between the fiancés and the dower. Spouses have the right to create a framework for their financial relations during marriage according to their circumstances. However, the few articles on this subject in the Moroccan and Algerian codes provide no orientation or guidance to spouses that would help them choose a marital property regime or draft an effective contract regulating their financial relationship.

Practices in the three countries also contradict the intent and potential to protect and promote women's rights behind provisions allowing spouses to stipulate conditions into the marriage contract. In reality this possibility has been used to limit women's rights, by men imposing such conditions on their wives as renouncing her job after marriage or stipulating that she is a virgin.⁵⁸ In Tunisia the government has only encouraged the stipulation of additional clauses in cases where Tunisian women married foreigners.

In addition, the three Family or Personal Status Codes provide that spouses may not stipulate conditions that go against the objectives of marriage or the Code itself, a restriction that contradicts the general principle that a contract is "the law of the contracting parties."

In both Morocco and Tunisia marriage contracts concluded by *adoul* are frequently drawn up at home or in another private place, or at the mosque (Tunisia) or at the *adoul's* office (Morocco), and in the presence of the two families. It would be both difficult and considered inappropriate for women to discuss marriage contract conditions under such circumstances.

⁵⁷ "The contractual relationship regulated by the marriage contract does not by itself guarantee equality, due to legal and cultural reasons caused by the existing inequality between men and women. The true alternatives to guarantee this equality are the development of the concept of marriage to make it a contract for reciprocal rights and obligations between the two parties on an equal basis," according to officials charged with concluding marriage contracts in Morocco.

⁵⁸ According to responses of mayors interviewed by the Algerian press (El Watan of December 15th, 2005) on article 7bis of the Family Code, some of them consider that if a girl is virgin then she cannot have any disease. Others refer to a study conducted by the Ministry of Interior on the causes of divorce which allegedly found that the issue of virginity is one of the main causes. This illustrates misapplications of laws reflecting the divided public opinion on the importance of virginity in marriage. The numerous complaints of women's associations about certain Civil Status Officers' behaviour show that these apprehensions are not the result of feminists' imagination (taken from an article written by Wassyla Tamzali, lawyer in Algiers and ex-director of women's right at UNESCO at http://www.manifeste.org/article.php?id_article=336).

Men are still considered the head of household given that they are legally required to financially support their wife and children,⁵⁹ and the husband is the designated legal tutor over children and their property.⁶⁰

A woman who has custody of children upon divorce risks losing custody if she moves a certain distance away from the father, travels with the children or remarries a man not related to the child or not the child's legal representative. In order to keep custody in these cases, the father must give his consent and be able to continue to exercise legal tutorship over the children.

Legislative reforms on women's rights in the three target countries are frequently used for political propaganda and public relations purposes, rather than being accompanied by awareness-raising campaigns to inform the population and mobilize the support around the reforms necessary to ensure their acceptance and effective application. In addition, reforms related to women's rights have not been accompanied by measures designed to monitor and control their implementation by authorities charged with applying them. This accounts for the lack of interest, hostility and fragility of these legislative gains. Others add the future spouses' absence of legal culture and frequent refusal to stipulate clauses in the marriage contract out of fear that it could lead to a lack of trust within the couple.⁶¹

It suffices for the *adoul* in Morocco and Tunisia to write in the marriage contract that the two spouses have been informed about article 49 of the Family Code and the 98-91 Tunisian law relative to the community property, because the *adoul's* obligation of notification is not subject to any real control. In Algeria this responsibility to notify the spouses of their rights depends on the good will of notaries who are under no obligation to do so.⁶²

As a result of the above realities, stakeholders in individual focused interviews and round table participants made the following recommendations and conclusions:

- Provide detailed conditions covering all of the spouses' rights during marriage and upon its dissolution in a model contract and spouses may then accept or reject these conditions.
- Regulate the use of this contract by law in front of all municipalities, courts, notaries, and *adoul*, depending on the country.
- In Algeria stakeholders suggested establishing a committee of judges specialised in Family Laws and giving them the legal power to conclude marriage contracts, as was the case before the promulgation of the 1984 Code of Personal Status and Family Affairs.
- Policymakers should specify conditions in a model contract to protect the two spouses' rights and ensure their awareness of their rights and obligations; their responsibility to

⁵⁹ Tunisian Personal Status Code, Article 23; Algerian Family Code, Article 74; Moroccan Family Code, Article 198.

⁶⁰ Tunisian Personal Status Code, Articles 154 and 155; Algerian Family Code, Article 87; Moroccan Family Code, Article 236.

⁶¹ "We often have problems to inform the two spouses about their rights to include clauses in their marriage contracts," stated an *adoul* in Morocco.

⁶² In response to the question as to whether it is necessary to elaborate a separate marital property contract or whether clauses related to property should be included in the marriage contract itself, one notary in Algeria replied, "I do not see the need to discuss marital property either in the marriage contract or in a separate contract because the two spouses form one and the same indivisible entity."

either accept or refuse these conditions will help avoid possible misunderstandings after the marriage.

- In order to avoid the above-noted conflicts over the dower that exist in Algeria, specific clauses should be included in a model marriage contract noting the specific amount of dower and whether it is immediate or deferred. Such a system would avoid the current proof through oath-taking which violates women's right to her dower. Noting the specific dower in the contract would also avoid conflicts about its amount in cases of *khula* or compensatory divorce initiated by the wife.
- Based on the numerous cases of neglect brought to court, it is very difficult for the wife to demonstrate that her husband has failed to meet his obligation to support the family financially. Definitive proof of neglect is only established when the husband abandons the family home and this is noted in an official report. In addition, it is more difficult for the wife to bring a complaint against the husband for neglect if she continues to reside in the conjugal home. This problem can be avoided by specifying in the marriage contract a monthly amount of financial maintenance and payment schedule so that responsibilities are clear in conflicts over the husband's failure to provide for his family.
- There is also the possibility to specify the wife's right to make decisions concerning reproduction and family planning, including contraceptive use in case of illness or any other situation where this might be necessary. This condition would protect the wife from abusive divorce or remarriage by the husband, as well as from potential family or social pressures for not having children.

III. COMMUNITY CONSULTATIONS

Within the framework of the Global Rights *Promoting Women's Rights in the Maghreb through Strategic Use of the Marriage Contract* initiative, the fifteen partner organisations in Morocco, Algeria and Tunisia organized a series of consultations with groups of women in their communities to discuss and debate issues surrounding the marriage contract and the possibility of stipulating rights-protective clauses into it.

I. Overview of Community Consultations

A. Definition

Community consultations are group meetings in which people gather in order to discuss a specific topic of interest. The discussion is led by a facilitator, whose role is to ask questions to guide and encourage the group to have a natural and free conversation.

Community consultations are designed to encourage the participants to talk among themselves and exchange their ideas and points of view. The interaction of the group in community consultations is important because it helps us understand different ways people think about the issues being discussed.

Community consultations are organized around targeted questions on the specific theme being studied. In this project, the questions focus on the marriage contract in order to gather a detailed idea of women's perceptions of the marriage contract and clauses they consider important for an ideal marriage contract.

B. Objectives

Community consultations are neither interviews nor surveys. In community consultations, the focus of analysis is the interaction among the group members. The discussions have the advantage of being more natural and free-flowing than more structured individual interviews.

Community consultations should not be used as an easy and quick way to conduct a survey or a number of individual interviews all at once. The main purpose of community consultations is to explore how the group collectively understands and defines the topic at hand.

Likewise, the goal of community consultations is to gain a large and profound qualitative understanding of the subject rather than a quantitative summary. The following analysis neither pretends nor seeks to present quantitative statistics, just as it does not attempt to establish any cause and effect link among different variables. Rather, emphasis is placed on women's ideas, opinions, perspectives and positions rather than on specific facts. The result is a rich understanding of the subject, in this specific project the marriage contract as a useful tool for promoting women's human rights in the Maghreb.

C. Structure of the Groups

Community consultations are focused in two ways. First of all, the questions asked are themselves focused on one or two major subjects. In our case, the questions focus on the marriage contract. The consultations are also focused in that participants in any given group generally share common characteristics such as age, gender, education level, religion or anything else related to the subject of discussion because in relatively homogeneous groups the participants are more likely to speak freely about common experiences.

(i) Frequency and Geographical Distribution of the Groups

Each of the fifteen partner organizations first organized an all-day workshop to train at least five facilitators apiece for the community consultations. The minimum of 25 facilitators in each country was established to ensure as large a scope of action as possible across the five regions where the partner NGOs are located within each country.⁶³ The five partner organizations in each country come from different regions, and each was encouraged to organize community consultations throughout their respective region in sites as diverse as possible.

⁶³ Global Rights organized an initial training on organizing and facilitating community consultations (techniques, the role of the facilitator, ways to ask questions, strategies for group management) for the fifteen partner NGOs during a Start-Up workshop for this project held in Fes in September 2007. Upon return to their respective communities, partner organizations repeated the facilitator training workshop for selected members of their organization and other local organizations in their regions, according to a suggested facilitator training workshop agenda developed by Global Rights that can be found in the appendices to this report. More information on the Start-Up workshop may be found in English at

http://www.globalrights.org/site/DocServer/Maghreb_MC_training_workshop_report_Nov2007.pdf?docID=8863

and in Arabic at

http://www.globalrights.org/site/DocServer/Maghreb_MC_training_workshop_report_Arabic_Nov2007.pdf?docID=8883

Each consultation lasted at least 4 hours, held in either a single meeting or divided into two meetings depending on the participants' availability and wishes.

In order to ensure that participants would feel comfortable and at ease during the discussions by being in a familiar environment, facilitators travelled to join women in their own communities, rather than the opposite.

(ii) Number and Characteristics of the Participants

In order to ensure a diversity of perspectives and experiences during the consultations, partner organizations were encouraged to invite a diverse balance of women to include:

- Urban and rural
- Arabic and Tamazight (Berber) speaking
- All age brackets (from age 18 up, with no maximum)
- Different marital statuses and experiences with marriage
- Different socio-economic levels
- Different education and literacy levels
- Different professional activities

Each group was ideally composed of 8 to 10 women sharing common characteristics according to the above list. These similarities were intended to help the women feel comfortable, find points in common, and encourage them to complement and even disagree with each other.

D. Community Consultations Format

Facilitators led the discussions according to the structure and content set out in the *Community Consultations Protocol* developed beforehand by Global Rights.⁶⁴ The Protocol outlines the agenda for the discussions, provides a checklist of topics to be discussed, and proposes a list of questions to help the facilitator guide and probe the discussions. The consultations were structured around questions and discussions focusing on the following elements, in this order:

- (i) Introductions
 - Welcome remarks, presentations, description of the project, explanation of the agenda for the session
- (ii) Women's *knowledge* of the marriage contract
 - its role
 - its content
 - laws regulating the marriage contract
 - the legal possibility to stipulate written conditions in additional negotiated clauses
- (iii) Women's *experiences* with the marriage contract
 - with the marriage process
 - with the stipulation of additional conditions in the contract
- (iv) Women's *opinions* about the marriage contract
 - its importance
 - about the possibility of stipulating additional conditions in writing

⁶⁴ This Protocol can be found in the annexes to this report.

- (v) *Conditions* women would like to stipulate in an ideal marriage contract
 - Here the women brainstormed and then debated in order to elaborate a list of all of the conditions they would like to stipulate in clauses for an ideal marriage contract.
- (vi) *Challenges and obstacles* women see to stipulating such conditions
- (vii) *Strategies* to overcome these obstacles
- (viii) Closing remarks

The consultations were designed as part of an “action-research,” in other words with the objective of elaborating a model marriage contract that contains all of the conditions women would like to stipulate and that responds to their priorities and to the realities of their lives. For this reason, the questions in the consultations specifically targeted the stipulation of conditions in clauses added to the marriage contract.

2. Methodology and Logistics

A. General Overview⁶⁵

Community Consultations were held in Morocco, Algeria and Tunisia by our 15 partner organizations - 5 in each country - in this initiative. The organizations come from different regions within each country: for Morocco, in Tetouan (northwest), El Hajeb (Middle Atlas), Marrakech (High Atlas), Agadir (southwest), and Zagora (southeast); for Algeria in Tlemcen (west), Oran (northwest), Bogara (central north), Tizi Ouzou (Kabylie) and Tebessa (east); for Tunisia (Tunis, the capital), Zagouan (central north), Siliana (center) and Kasserine (west).

In October 2007, the partner organizations each organized a workshop to train their members and members of other local organizations in their respective communities as consultation facilitators and recorders.⁶⁶ In total, the 15 partners mobilized 58 additional local organizations to participate in and support this project and trained a total of 163 facilitators.

Between October and December 2007,⁶⁷ the 15 partner organizations held a total of 119 consultations (45 in Morocco, 48 in Algeria, 26 in Tunisia)⁶⁸ in 70 different and diverse large, medium, and small cities, peri-urban areas, and rural villages across the three countries and within every region where the partner organizations are located (28 in Morocco, 26 in Algeria, 16 in Tunisia).⁶⁹

⁶⁵ A chart with detailed data on the Community Consultations may be found in the appendices of the report.

⁶⁶ With the exception of the facilitator training workshop in Tunisia held in January 2008.

⁶⁷ In four out of five regions in Tunisia the consultations were held in February and March 2008.

⁶⁸ In the majority of instances the consultations were completed in one session, with a few exceptions; there were thus 119 different groups of women but 122 sessions held since a couple of the groups met twice in order to finish the discussions.

⁶⁹ For the sake of simplicity and in order to protect the identities of the participants quoted, this report refers only to the town where the implementing NGO is located and not the specific place where any given consultation took place. As an example, “one participant in Agadir” could refer to a woman from a rural village – Agadir only meaning that the consultation took place in the larger region by the NGO located there and not necessarily in the city itself.

The discussions were guided by a facilitator, assisted by a recorder who took detailed written notes to be able to later write the minutes of every single meeting. In addition, some groups agreed to allow audio recordings of the discussions as well as to have photos taken, and in a few rare cases the women agreed to be filmed. In all cases facilitators asked the women's permission to record or film beforehand and respected their decisions. In most instances the participants asked questions about the objectives of recording the session – who would watch/listen or use the recordings, for what purpose, would the photos be published in newspapers or the video broadcast on television. A few women expressed fears about the authorities obtaining the recordings and other confidentiality concerns.

The sessions lasted an average of 4 hours, and took place in either the local Arabic or Tamazight (Berber) dialect. French was also spoken in the groups of women with a certain education level.

In total, 1474 women participated in the consultations (466 in Morocco, 741 in Algeria, 267 in Tunisia), divided fairly equally among 10 year age brackets from 17 to 85. Each partner organization working in their respective region achieved a diversity of and balance among the participants according to the different characteristics enumerated above, namely urban, peri-urban and rural areas; Arab and Tamazight speaking; marital status and experiences with marriage; socio economic levels; education and literacy levels; and professional activities.

B. Observations

Generally speaking, partner organizations did not have any problems **recruiting** women for the consultations, as many participants were selected from among existing beneficiaries of the organizations' diverse programmes⁷⁰ and therefore were already familiar with the organization's work and had a pre-existing relationship of trust with its members. Other participants were invited from among the organisation members' and beneficiaries' acquaintances and neighbours or by word of mouth and door-to-door recruitment. With only one exception, women were not paid for their participation in the consultations.

We recruited participants through the Director of a sewing workshop, the owner of a hairdressing salon who contacted his clients, and a school principal who invited schoolteachers. In small villages we had to invite all of the women to participate so we had to try to see how to organize and divide them into groups. We had no problem recruiting or motivating women to participate - they all attended the consultations, even despite the bad weather in one village where there was snow and the facilitators were nearly stuck up in the mountains. We later heard from our partner associations that women who hadn't participated in the consultations came and complained about why they had not been invited. (Tizi Ouzou, Algeria)

In the two cases where it was noted that women hesitated to participate, one was among a group of rural women who asked "what will the discussion change in our lives?" and "what does the association really want from us?" For a group of single mothers, "it was difficult to convince them that their opinions and points of view were important because they are single mothers."⁷¹

⁷⁰ Including counselling for victims of violence, legal orientation and advice, literacy, microcredit and economic development.

⁷¹ In Zagora (Morocco) and Tunis (Tunisia) respectively.

Similarly, facilitators reported that they had no difficulty encouraging women to **speak up and express their opinions** during the discussions, the prevailing ambiance in the consultations described almost uniformly as dynamic, open, warm, convivial and friendly. In the majority of cases the women expressed their opinions in a free, natural, spontaneous, active, motivated, straightforward and honest manner. One notable exception to this observation was remarked in a couple of the groups in Tunisia, where a few women preferred not to talk and only listened, out of fear that what they said would be repeated later on outside of the consultations by other participants in the group to whom they were related.

We had situations where the father-in-law prevented his daughter-in-law from participating under the pretext that her husband was away and as a result she could not go out to see us, as well as a widow whose mother-in-law prevented her from seeing us. Another participant wanted to share her painful experience with us but her husband sent his sister to participate as well so she could report back to him anything his wife said, while another woman was afraid that her neighbours would repeat her statements to her husband. However, what surprised us most was an intellectual woman schoolteacher who first told us that she had a happy life, but then at the end of the meeting after one of her husband's relatives had left the room, she told us that she wanted to see us a second time for a longer meeting so that she could share her misfortunes. She also declared that she did not say so at first because her husband had warned her and had forbidden her to speak to us openly, and she was afraid that he would prevent her from working or would mistreat her in front of her in-laws with whom she lived. Here, we noticed that the husband forced his wife to falsify reality and we ignore the reasons for this. (Siliana, Tunisia)

Otherwise, in almost all groups the participation was particularly significant among divorcees and women who had experienced or were experiencing marital problems, and these women often dominated the discussions. They frequently offered their experiences as evidence to convince the other participants of the necessity of having a detailed marriage contract from the beginning so that other women may avoid living the same problems they themselves had experienced. At other times they just wanted to seek a sympathetic ear from the others or concrete assistance and advice on their specific problems.

Partner NGOs also cited other reasons for the active participation in the discussions. For a large number of women it was the first time in their lives that they had participated in such a meeting or that someone had asked them about their opinions. The very first remark made by one of the participants in a group of rural women in Oran was to express her satisfaction at participating in a debate that normally she was only accustomed to seeing on television. The topic itself is something that the women had never been consulted on before.

The discussion among the participants was so lively that one of them told another (x) that everything she said was being recorded and could be listened to by the authorities. In response, participant (x) contended that she was expressing her opinion frankly and that she wanted her ideas and her voice to reach the President of the Republic if need be. (Bogara, Algeria)

In Tunisia, it was noted that most trainings, meetings and other activities are never concerned with the human rights dimension of marriage contracts. Local associations tend to be more focused on providing financial assistance to women through microcredit or specific training, and women have never been asked what the marriage contract means or represents for them.

It is in this context that partner organizations were able to generate massive participation and open and honest discussions about women's concerns.

In many groups, facilitators noted that all of the women wanted to tell their stories at the same time. Mother expressed their enthusiasm at the idea that their daughters might benefit from this project, and wanted to contribute to its success precisely for this reason. Women in Algeria who were victims of and traumatized by the civil war, who lost their husbands, children and their property, expressed their motivation and desire for positive change.

Other participants appreciated the opportunity to criticize the conditions under which they live, the family structure and society, using as an example the phrase often heard and repeated in the Tizi Ouzou region that "women built this country but remain slaves." At the end of the discussions the participants frequently remarked that the consultations allowed them to be heard and provided a space for relief and self-expression, as well as the opportunity to speak openly and say everything that was on their mind.

Unanimously the participants at the end of the consultations asked the organizations to hold additional meetings to continue discussing the marriage contract and other topics of concern to them. One of the organizations⁷² indicated that the four hours allotted for the session was insufficient - the women themselves considered that the consultations were a unique opportunity to speak out not to be missed and extended the meeting times to an average of five hours.

"I have been able to get rid of the heavy burden that weighed heavily on my heart, now I can go plough the land, finish weaving my carpet, and laugh wholeheartedly; the burden of my family has become as light as a feather." (Kasserine, Tunisia)

The partner organizations reported several immediate **impacts** of this phase of the project. While the primary objective of the community consultations was to gather the women's perceptions, experiences, opinions and points of view, the discussions also played a considerable role in awareness raising with regard to the marriage contract and to women's rights in general, not only among the participants but also among external stakeholders and people in the communities where they were held.

All of the partner organisations indicated that following the community consultations, many participants and their acquaintances came to the organisation's office to seek legal assistance. Often participants telephoned or came by the organization to ask for more meetings of this type. In other instances, women who did not participate in the consultations contacted the organization to ask for more information on the project. Participants in some of the groups⁷³ asked the organizations to invite young men to participate in the discussions or organize a group specifically for men. In Zagora (Morocco), two young women about to get married came to the organization to ask for help in drafting clauses to stipulate in their marriage contracts.

In many cases,⁷⁴ local authorities heard about the consultations, came to ask the organizations for more information, and expressed their interest and support for the project, as well as their desire to collaborate and help the project succeed. These included several municipal councillors,

⁷² El Hajeb (Morocco).

⁷³ Zagora (Morocco), Tizi Ouzou (Algeria).

⁷⁴ Agadir, Tetouan, Zagora (Morocco), Bogara (Algeria), Siliana (Tunisia).

a few mayors, a public prosecutor and two Parliamentarians, one of whom requested proposals for a model marriage contract as well as the final project report for him to use to submit draft legislation.

The partner organization in Tunisia working primarily on sustainable development reported that on an internal institutional level, the community consultations sensitized their Board of Directors, in particular the men, about the importance of promoting human rights and enhancing women's knowledge of their rights through the marriage contract. The organization decided that it needs to expand its work in this area rather than limiting its activities to economic development.

In terms of external relations, the same partner organization concluded that in all four regions where it has local sections that conducted the community consultations, the fact of organizing such activities expanded the local section's scope of work to include women's rights, and allowed them to promote the marriage contract and the idea of rights protective clauses among the population, something that previously had never been addressed by any other organization. In Zaghouan in particular the contacts between the facilitator and the participants has encouraged the groups to work with the organization to develop additional programs on women's rights.

As a result of participating in this project, an organization for single mothers in Tunis contacted a Municipal Councillor responsible for marriage contracts in order to draw up marriage contracts with stipulated conditions addressing the specific concerns of single mothers. Clauses now systematically included in marriage contracts by single mothers who later marry men not the biological father of their children include acceptance by the husband of the child born from a previous relationship and his commitment to financially support the child. In addition, prior to this project single mothers from this organization used to get married in front of the *adoul*, while now they conclude their marriage at the municipality for a mere fraction of what it costs to get married in front of the *adoul*.

3. Description and Analysis of the Results

A. Women's knowledge of the marriage contract

Several partner organizations described the conceptual challenges which they sometimes faced at the beginning of the sessions to establish a common understanding among the participants about what was meant by "marriage contract." Certain misunderstandings about what the facilitators intended by "marriage contract" manifested themselves in different ways during the discussions. While the vast majority of women know that there is a document called the marriage contract, they used a variety of different terms to refer to it - certificate, contract, paper and others. In many groups, when participants were asked to give a definition of the marriage contract, they hesitated because for them the answer was obvious and does not need any response, everybody knows what a marriage contract is, which required the facilitator to rephrase the question.

One striking exception to the general knowledge of the existence of such a document occurred where "when the question was asked, 'do you have a marriage contract?' we found that many women do not know what a marriage contract is. One of the participants even got angry and cried 'but I have never seen this contract, I don't know what this is about.' Other women replied sadly that due to their ignorance and illiteracy they had never heard about the marriage contract until

they had two or three children, and received despising looks from the father.”⁷⁵ A few similar examples were given in Oran (Algeria) by two divorced women who only learned about marriage contracts from their lawyers during the divorce process.

(i) Knowledge of the role of the marriage contract

Despite the diversity and the peculiarities that distinguish the groups, there was general agreement and similar definitions formulated with regard to the **concept** and **role** of the marriage contract. The majority of groups consider the contract as (a) regulating sexual relations within a legal framework and (b) protecting to a certain extent the rights of women and children.

In the first place, the majority of participants emphasized the fundamental role that the marriage contract plays in rendering legal and legitimate sexual relations between the two spouses.

All the women affirmed that it was necessary to have a marriage contract as irrefutable evidence of the legitimacy of the marital relationship. When the question was posed, they unanimously answered that the contract means ‘halal’ or ‘legitimate’...without this contract the woman would be lost It is a sacred contract proving the marriage...For most of the participants, the objective behind such a contract is limited to giving legitimacy to conjugal life. (Agadir, Morocco)

It follows from this limited concept of the marriage contract as proof of the legitimacy of the sexual relationship that most women end up linking the marriage contract with its importance to the children because the contract establishes legal filiation of the children to their fathers.

All of the groups described as a result of this legitimizing function towards sexual relations and children’s filiation, the role that the marriage contract plays or should play in the protection of the rights of the wife and children during marriage and upon divorce or the husband’s death. Nonetheless, the discussions revealed a narrow definition of the ‘rights’ supposedly protected by the marriage contract, with the women citing only the children’s rights to filiation, a name and civil identity, education and inheritance, and women’s right to financial maintenance.

The concept of the marriage contract offered by single mothers in Tunis (Tunisia) gives a poignant illustration of the perspective of women who do not benefit from this ‘legitimacy,’ who describe the marriage contract as “an agreement or a union between a woman and a man, a form of participation, a sharing, and uncontested proof of a marital relationship which seeks to constitute and found a family...(it) gives women the opportunity to found a family and have children as well as the right to a respectful life where loyalty and respect prevail. Through this marriage contract, the woman ensures her right to family stability as well as her legitimate right to be financially supported, to be treated with dignity while guaranteeing for her children their rights to education and filiation.”

At the practical level, some groups also cited the fact that the marriage contract is necessary to obtain many administrative family certificates, pointing out that it is with this contract that children obtain legal documents such as a birth certificate and others. A few groups added that the marriage contract can guarantee the continuity of the conjugal relationship, and serve a public relations function - as some women in Zagora (Morocco) affirmed that “it’s so people know that we are married.”

⁷⁵ Zagora (Morocco).

Several groups⁷⁶ defined the marriage contract by contrasting it to the *fatiha* in which two persons are declared married after the reading of the Koranic verses from the *Surah* of the *fatiha*.⁷⁷ Participants who were married in this traditional manner and whose marriage has not been proven stated that the marriage contract is a form of protection when the husband tries to betray the wife and helps prove the children's legitimate filiation.

The reports of the ten partner organizations in Morocco and in Tunisia tended to place more emphasis on the concept of the marriage contract as legitimizing sexual relations between two persons than did the reports submitted by the five partner organizations in Algeria. The latter focused more on an administrative concept of the marriage contract, with participants defining the contract according to its process and content rather than according to its so-called socio-legal moralizing role. The marriage contract for women in Algeria is an official document drafted by the municipality or judge, that proves the matrimonial bonds between a woman and man, and whose content is limited to personal information about the two spouses, witnesses and the wife's marital tutor.

Most of the discussions in Algeria on the definition of the marriage contract centered on the participants' knowledge of the possibility to draw up a marriage contract and of the amendments made to the Family Code in 2005. Although these amendments explicitly refer to a "marriage contract" in contrast to the 1984 Family Code which only referred to "marriage," this concept has not yet changed in mentalities or in practice. In general, the participants from all groups combined didn't know that the Family Code has been amended or were unaware of the specific reforms made. The majority did not know that the Code gives women the possibility to draw up a negotiated marriage contract in advance in front of a notary, their perception of the marriage contract limited to its registration by the judge or Civil Status Officer in the presence of the two spouses, the parents and the witnesses. A participant in Oran who works in the Social Action Administration and has experience with the different administrative and social problems women encounter, said that at times marriage contracts are drawn up beforehand and their signature by the two spouses is a mere formality.

(ii) Women's knowledge of the marriage contract content

Despite the fact that the majority of women are aware of the existence of the marriage contract as a legal document, a significant number of participants did not know the content of their own marriage contracts.⁷⁸

⁷⁶ Zagora (Morocco), Bogara (Algeria).

⁷⁷ The « *fatiha* » is thus a verbal marriage without a written marriage contract.

⁷⁸ Noted in the reports from Zagora, Agadir, Tetouan, El Hajeb (Morocco), Bogara (Algeria), Tunis, Zagouan, Siliana and Kasserine (Tunisia).

For the women, the document is something vague whose content they ignore and only 1% of them know the content of the contract. Other women are unaware of the contract content, all they know is that it includes the two spouses' names and aside from this everything was normal and there was nothing to try to know, at the end of the day it's a marriage contract which remains similar to all the other contracts and only *adoul* have the right to know about its content....Most women consider that it is a document which is similar or uniform and whose content is known only by the *adoul* who drafted it and in as much as it bestowed legitimacy on the marital relationship, what was written inside it was unimportant as long as the person who drafted it knows the law better than us, according to what one participant said. (Agadir, Morocco)

Women in several consultations in Morocco cited the problem of illiteracy and the fact that husbands often hide the marriage contract from their wives. Single mothers in Tunis said that they were unaware of the marriage contract, citing as reasons the confidentiality surrounding its drafting and the lack of information made available to the public. In Zaghouan, Siliana and Kasserine (Tunisia), a large number of participants don't know the content of their marriage contracts and the rights implied in its clauses, remaining "ignorant of their rights and believing that their tyrannical husband is part and parcel of a destiny, a fate which she must put up with and accept..." and this for a number of reasons identified by the facilitators. The majority of women ignore the content of the marriage contract because their marriages are concluded mainly via their families who decide whether to marry them or cancel their weddings. In one of the groups in Siliana, none of the participants had ever looked at their marriage contract because none could read or write.

All of the community consultations reports from Tunisia describe the relationship between women's knowledge of the content of their marriage contracts and the process by which they got married. For those women who concluded their marriage contract in front of the *adouls* their lack of knowledge and information was exacerbated by the fact that the *adoul* merely ask the bride a single question as to her consent to marriage and never explain the marriage contract content to women so that they may understand it. The bride's physical presence in front of the *adoul* was thus a mere formality with no real importance given that the *adoul* did not read aloud the content of the marriage contract and its annexes. In contrast, those women who concluded their marriage contracts in front of the Civil Status Officer had the marriage contract read aloud to them by the latter prior to their signature.

Another question raised by the consultations is the relationship between knowledge of the marriage contract and the spouse who physically keeps it. In community consultations organized in Zagora (Morocco), only 1% of the women keep their marriage contracts themselves while the remaining 99% say that their husbands have possession of the marriage contract and that they have never seen it at all. Among the groups in Zaghouan (Tunisia), more than 90% of the participants do not possess a copy of their marriage contract and do not know where their husbands keep it. In contrast in Kasserine (Tunisia) where men tend to work far away from the conjugal home either abroad or in another region of the country, 80% of the participants have copies of their own marriage contracts.

(iii) Areas of confusion about the laws on the marriage contract

A remark made in the report from Siliana (Tunisia) illustrates something said about all of the community consultation groups, that the participants “found in this dialogue the opportunity to raise women’s awareness about the importance of the marriage contract in their lives.” In order to reach the main objective of consulting women on their knowledge, experiences, opinions and wishes with respect to the marriage contract, at times facilitators needed to provide clarification and basic information before moving on to the discussion per se. This allowed facilitators to notice other areas of confusion among the participants on legal questions related to family matters. This was particularly noticeable in Morocco and in Algeria, where participants expressed their confusion and misconceptions about the recent reforms made to the Family Codes in 2004 and in 2005 respectively.

In Morocco, all five partner organizations noted women’s confusion about marital property laws after the recent reforms. Indeed, one piece of misinformation frequently mentioned by participants is the idea that under the new law women systematically have the right to one half of all marital property upon divorce. Some reports remarked that participants tended to mix up “conditions” as such and material possessions. For example, at the beginning of many of the Marrakech community consultations women limited themselves to talking about designating ownership of possessions like gold, money, real estate, and furniture and other movable property. Facilitators then explained the distinction between conditions on the rights and obligations of persons, and conditions dealing with property ownership and division of assets. In Agadir, facilitators also noticed that women confused the marriage contract per se with the separate marital property contract. One of the participants in Zagora (Morocco) who is a housewife asked, “since I know that he (her husband) possesses absolutely nothing, what could I stipulate in terms of conditions?” In El Hajeb, some women claimed (wrongly) that under the new Family Code men had completely lost the right to polygamy.

Similarly, in Algeria, the partner organization in Oran described how, within a group of rural women, the discussion very quickly turned to the 2005 reforms to the Family Code. “All of the women present wanted to know more, and especially wanted to verify the information they had, for example, ‘Is it true that women can now keep the family home?’”

In other groups in the Bogara region, some participants said that they thought the marriage contract was the same as the civil status document and that the bride did not have to be present during the conclusion of the marriage contract at the municipality as long as she consented to the marriage.

Despite their anecdotal nature, these examples illustrate how, once informed of the possibility to stipulate negotiated clauses in the marriage contract (in the following section), women’s confusion and misconceptions about the applicable family laws then affected their suggestions for ideal clauses to include in a marriage contract. Sometimes they proposed conditions on rights already protected in the law or to the contrary, did not suggest clauses on rights they thought the law already protected.

(iv) Women’s knowledge of the possibility to stipulate clauses in the marriage contract

All groups combined, the large majority of women were unaware that the law gave them the possibility to stipulate additional written clauses in the marriage contract, and declared that it was the first time anyone raised this issue with them.⁷⁹ Some reports went so far as to note how the question itself generated significant surprise and astonishment among the participants, and the idea of including conditions into marriage contracts motivated the discussions to the point that on some occasions they got out of control.⁸⁰ Some facilitators even felt in certain groups the women's regrets at not having benefited from this possibility.

Among participants in community consultations held in Marrakech and in Tetouan, 70% and 80% of the women respectively were unaware of the possibility to stipulate clauses into the marriage contract. In these two regions, the majority of the 20% of participants who knew about this possibility, either through their own experiences or those of women they knew,⁸¹ were between 28 and 38 years old. Nevertheless, none of women among the 20% cite the articles in the laws addressing the possibility of including conditions in the marriage contract.

In Agadir (Morocco) some women said that they had heard about such a possibility but that they did not believe it, while in Bogara (Algeria) a few participants knew about introducing and including conditions in an official contract but did not know that this was a legal right guaranteed by law. In Tizi Ouzou (Algeria), a group of women professionals mentioned the detailed marriage contracts that exist in France, but they went on to say that such a thing would be difficult to put into place in a country like Algeria and especially in the Kabylie region.

Frequently, participants did not distinguish between verbal conditions agreed to by the two spouses (or their families) and written clauses stipulated into the marriage contract. In numerous groups, women gave examples of verbal conditions as if they were actually written into the marriage contract. Based on the consultations, it doesn't appear that the idea of negotiating conditions when one gets married is actually new, but rather the fact that that it is a legal right and that spouses may put these conditions down in writing that was new for many participants.

In Tizi Ouzou (Algeria), women stated categorically that with or without a contract, marriage is the affair of men, meaning that men in the spouse's families discuss and make decisions about any verbal conditions. Even if the bride is informed afterwards, she does not take part in these discussions. Similarly, the groups of "educated women" and "working women" in Oran (Algeria) also explained how none of them were aware of the possibility of negotiating clauses in the contract. They too considered marriage a verbal agreement rather than a negotiated agreement with written clauses stipulated into it. For them the marriage contract itself is a mere administrative procedure, given that it is prepared in advance and all that remains for the spouses to do is sign it.

⁷⁹ The main exception to this observation is in the consultations held in El Hajeb (Morocco), where only 5% of participants did not know about this legal possibility, while other even cited specific articles from the Family Code. It turns out that the participants were recruited from among the beneficiaries of the organization's legal rights education program.

⁸⁰ Zagora, Agadir (Morocco).

⁸¹ In Marrakech (Morocco), 10% were aware of this possibility because of their participation in the organization's legal rights education program. In Zagora (Morocco), 80% of the participants likewise said that they had not been aware of this possibility.

Some women had heard of such conditions, particularly used in the Sahara. One participant who lived in that region for awhile heard women in the Sahara mention a condition imposed by the father, brother or uncle of the bride, in other words, the male head of the family imposes a condition related to polygamy, a condition prohibiting polygamy through the inclusion in the contract of the statement that “she won’t be followed nor following,” a statement which in itself and as soon as it is written in the contract prohibits the husband from taking another wife. In other consultations, such as the two held in Agadir, women had heard about the possibility of including conditions but always to the benefit of the husband and to the detriment of the wife. For example one participant said that men have the right make all the demands they want from women because they will become their wives and bear his name and bear his children, and he therefore has the right to make her wear the veil and not work outside the home in order to take care of him...(Agadir, Morocco)

The consultations in Tunisia also revealed women’s lack of awareness of both the legal possibility to stipulate conditions in the marriage contract and the option of drawing up a separate community property contract. In the capital Tunis in particular, participants’ superficial knowledge of the potential guarantees of women’s rights through the marriage contract stemmed from their belief that current laws regulating the institution of marriage protect their rights and that there is no need to further introduce any conditions.

It is also interesting to note in the Tunisia consultations that the lack of awareness about the legal possibility to draw up a separate community property contract was the same among all women regardless of whether they were married before or after the promulgation of the community property law creating this option. Some participants with university educations concluded a separate community property contract but they were still unaware of the legal possibility (under article 11) to stipulate additional conditions into the marriage. In addition, even participants with a separate community property contract stated that they do not understand their rights under this system very well. Most often they had not asked questions about the system until the time of signature, which limited their freedom of choice and time to think about this option. Most stated that they did not have any say in the matter and ended up going along with their husbands’ decision since they had not had the opportunity to discuss the topic with him beforehand.

B. Women’s experiences with the marriage contract

(i) Women’s experiences with the process of marriage

Descriptions women gave of the process of their own marriages raised questions of women’s physical presence during different stages, people involved in negotiating the marriage contract, and the participation of women in the marriage contract’s elaboration and conclusion. The marriage process itself partially explains women’s general lack of awareness about their legal rights or the content of their own contract.

In terms of women’s actual physical *presence* at their wedding, a large number of participants in Morocco aged 50 and above stated that they were not even present at the conclusion of their marriage contracts, which took place in absentia, to be able to even think about stipulating conditions in the contract. They merely signed the contract, and those who were so shy that they even refused to be present during the conclusion of the marriage delegated the task of signing itself to their sisters or another relative. Others who were absent explained that their marriage contract was concluded only by their father or marital tutor and that they themselves did not even

sign the contract. According to some participants, women who dared appear alongside the marital tutor at their marriage were considered disrespectful to society and scorned by the in-laws. One woman from the Agadir region explained how, “we would like to attend the marriage contract conclusion but you can not imagine what would happen if people found out, my family’s reputation would at stake and could be damaged.”

With the exception of a few cases in Algeria, all of the Algerian and Tunisian participants, regardless of their age, claimed to have been physically present at the conclusion of their marriage contracts, with the concerns of women in these two countries more focused on the two following issues.⁸²

In terms of the *negotiations* surrounding the marriage contract, a large number of participants in Morocco and Algeria claimed that these took place exclusively among the men in the families, be it the father, grandfather, uncle or eldest brother. One 34-year old woman from Agadir said that, “ignorance certainly exists, yes, that is a fact, but what is worse is men’s domination and the prevalence of customs and traditions that prevent women from talking and speaking up even if we know very well that have the right to participate.” In Tizi Ouzou, none of the women participated in the negotiations surrounding their marriages; rather it was the men from the future spouses’ families who discussed matters amongst themselves.

The future husband and father or marital tutor are responsible for the marriage contract and the women don’t know anything about its content. One 54 year old woman said that she did not meet her husband until the actual wedding day. Some other participants said that they were forced by their fathers to get married and signed their marriage contract under threats by their fathers or brothers. One woman even described how her father threatened to kick her out of the house and remove her name from the family civil status document in which she was registered as his daughter if she refused to get married, an example given by six other participants aged between 48 and 58 years old. Most of the time, future husbands have the marriage contract drafted by *adoul* who are their friends or relatives. (Tetouan, Morocco)

Numerous women aged between 45 and 65 years old from the Bogara region did not know their husbands prior to the wedding, since their fathers arranged their marriages and concluded the agreement with the future husband. They themselves had no say in their own marriages and their fathers had the final words on the matter. According to one participant, her father had met her future husband in a café and they agreed on all of the marriage terms without even consulting her. She did not even know at that time that her future husband was already married with children.

Similarly, the majority of women from Oran describe how they met their husbands the day of the marriage and that their families had arranged everything. “My father chose my husband for me, and I had absolutely nothing to say!” “I only met my husband once we were in front of the judge, and anyway there was no way I could say no, otherwise people would think I had something to hide!”

⁸² One notable exception to this comes from Oran in the group of rural women where one participant had been married by force as a minor during colonisation. Another participant, a gynaecologist, pointed out that forced marriages still exist today despite the requirement in the Family Code of both spouse’s consent, and according to her these cases are more frequent than one might think.

In terms of women's *participation* in the conclusion of the marriage contract:

In all groups without exception, the women were unanimous about the fact that their presence at the conclusion of their marriage contract was a mere formality and that they were in no way involved otherwise. Be it in Morocco, (for the participants younger than 50 years old), in Algeria, or in Tunisia, the official responsible for concluding the marriage (judge, *adoul*, or Civil Status Officer depending) only asked the bride for her consent to marry and then to sign the contract and did not explain the marriage contract content. All participants described how they signed the contract without anyone telling them that they could stipulate conditions into it.⁸³ In Morocco, even participants who got married after the 2004 Family Code reforms explained that they were not informed about the possibility of concluding a separate marital property contract. Similarly, the participants in Algeria who got married after the 2005 amendments to the Family Code said that the Civil Status Officer neither asked them if they had any conditions to stipulate nor informed them about their rights under the law and in the contract.

In Algeria, many women aged 45 to 65 years old were married verbally by the “fatiha” and did not go to the municipality to register their marriage until after the marriage was consummated or sometimes only upon the birth of their children. There were also examples of younger women who did not have a written marriage contract because they were married by the “fatiha” during the civil war in the nineties. Finally, the community consultations in Tlemcen suggest that a large number of women in rural areas are still getting married by the “fatiha,” usually in cases of second wives.

While in Algeria the law provides the option of drawing up a marriage contract in advance at a notary's office, partner NGOs found very few cases among participants who had done so, and the few that had were young women with a certain level of education. Otherwise, most participants in Algeria (except for those married by the “fatiha”) were married in front of the Civil Status Officer or judge.

In Tunisia, participants who concluded their marriage in front of the *adoul*, in a ceremony where religious, customary and traditional aspects prevail and that takes place either in the bride's parents' home or in the mosque, affirmed that the *adoul* only asked them the classical question about their consent. The bride often sat in a separate room, far away from where the men met with the *adoul*, and where she was only given the document to be signed once the marriage was concluded in her absence. Most women stated that the *adoul* not only did not notify them about the possibility of stipulating conditions in the contract but did not even read the marriage contract aloud. As a result, the women were not informed about the contract's content or about their rights and were ignorant of what they consented to.

By contrast, the women who concluded their marriage contracts at the municipality said that the Civil Status Officer explained the marriage contract content to them before asking for their signature. The majority clarified however that while the contract's content was *explained* to them at the time of marriage, it was not *discussed* in advance between the spouses during the period of the marriage preparations.

⁸³ With the notable exception of marriage concluded in front of the Civil Status Officer in Tunisia, as described below.

(ii) Women's experiences with negotiated conditions

Practically none of the participants in any of the community consultations groups in the three target countries had stipulated any additional conditions in writing into their marriage contracts, with a few exceptions:

- One participant in Marrakech described her daughter's experience of going by herself with her future husband to the *adoul* to elaborate together a marriage contract that included a clause guaranteeing her right to work outside of the home. This participant maintained that this was the result of a mutual agreement between her daughter and her fiancé and that no one else took part in the process.
- In the Agadir region, some women mentioned the local customary law by which women prepare a written inventory listing and estimating all of their possessions and gifts they bring with them to the marital home, and this list is included in the contract. However, women aged 28 to 38 years old who live in the same regions maintained that this practice no longer exists.
- One of the participants in El Hajeb said that she put a monogamy clause into her contract but that in return her husband required that she never leave the home.
- A participant in her twenties from Oran with an advanced education level negotiated a marriage contract in front of a notary and stipulated clauses pertaining to her own property, something which she claimed reassured her family.
- Another working woman in Oran had stipulated a condition guaranteeing her right to pursue her studies.
- In Zaghouan, one of the participants included a condition related to where she would live since her husband was from another region and she stipulated in her contract that she would not move away with him to his native region.
- In Tunisia, some of the participants with a university education concluded the separate community property contract.

In terms of statistics, among the 466 participants in Morocco, 3 did not have a written marriage contract, 4 had stipulated conditions in writing in their contracts and none had concluded a separate marital property contract. Among the 741 participants in Algeria, 14 did not have a written contract, 1 had stipulated written conditions, and 6 had concluded a separate marital property contract. In Tunisia, among the 215 participants (excluding the single mothers), all of the participants had a written marriage contract, 2 had stipulated written conditions in their contracts, and 51 had concluded the separate community property contract.

Given that the groups were made up of women from different age brackets and with different marital statuses, as well women who were married both before and after legislative reforms in the three countries related to the marriage contract, these statistics are not given and do not pretend to establish % or causal relationships or identify trends. They are presented only to illustrate and give a general idea of the current general status of marriage contracts in the Maghreb, all women combined.

While the vast majority of women had not stipulated any written clauses into the marriage contract, many referred to verbal conditions upon which they (or their families) agreed at the time of marriage.

One participant in Agadir explained that she was present at the conclusion of her marriage contract and insisted upon having an independent home and keeping her job as an embroiderer since she owned an embroidery shop. These conditions were not written down in the marriage contract because she did not know that such a possibility existed and that it was legal, so she just stated them verbally in front of the people present and the witnesses. According to her, her husband has always respected this condition.

In all of the groups in Algeria, participants described how any conditions were limited to verbal agreements between the future spouses' parents and how the wife's marital tutor was the one to place demands on the future husband prior to the marriage. Among these, women cited conditions such as stability and happiness, money or gifts such as gold jewellery, clothes or other presents for the bride, the woman's right to continue working outside the home or to pursue her studies, an independent home, the children's upbringing and the husband's honesty.

As these conditions are only verbal and not written down in the marriage contract, they are not legally binding on the husband and the wife has no recourse should he not respect the agreement later on. Participants offered numerous examples of cases where the families and/or spouses initially agreed upon the wife's right to continue working or studying but that once married the woman stopped working due to pressure from her husband or in-laws. Others described the blackmail made in exchange for their right to work, where the husband agreed to allow his wife to work provided she turned all of her salary over to him. Several housewives in Oran told stories and experiences of how women they know were cheated by their husbands who had initially promised them the right to work, pursue their studies or have an independent home, but then later reneged on these promises once married.

In Oran, certain women (10% of the groups of housewives) cited the right to work upon the registration of the marriage contract, but when the husband forbade them from working once they got officially married, the women had no choice but to carry out his orders and give up working. According to these women, even if conditions are discussed by the families and consented to by the spouses, the marriage contract remains a purely administrative formality. The spouses' parents, witnesses and marital tutor are present when the negotiated conditions are discussed yet will never intervene when they are not respected or when conflicts arise.

However, for other women in Oran (in the groups of working women and women with advanced education levels) 32% of them reached a moral agreement with their husbands in which they negotiated their right to work, a condition which they claim was respected after the marriage. One should point out that these are women aged 50 years or more, with university educations and working as high level civil servants. These women say that this type of contract has suited them, but could otherwise have not worked because the community consultation session made them realize that their rights are not really protected by such a verbal agreement.

When the participants were asked why they did not stipulate any conditions in writing in their own marriage contracts, they gave the following reasons:

- They were not aware of this possibility;
- It did not even occur to them, given the domination of their families and especially by the male members, the most important thing being that the girl gets married and as concerns any other details, she does not have the right to intervene;

- They did not even know the husband prior to the marriage to be able to discuss and agree to any such condition with him;
- They did not attend the marriage contract elaboration;
- The *adoul* did not ask them whether they wanted to include any conditions in their marriage contract;
- Their father's presence embarrassed and intimidated them, and made them feel the weight of societal taboos especially in front of the husband's family;
- They were busy with the preparations for the wedding ceremony and party and gave no importance to the marriage contract or its content;
- They were in love and therefore did not even think about it;
- Taboos and shame played a large role in making them stay silent about their rights even if they were aware of them;
- One participant declared that her father forbade her from including any condition in her marriage contract;
- Some claimed that they would not have included any conditions in their marriage contracts even if they had known about this possibility, out of compassion for their future husband and to preserve his dignity.

In Marrakech, one participant explained that she knew she had the right to stipulate clauses into her marriage contract and even raised the issue upon the conclusion of her marriage, to which the *adoul* responded by saying that she “should thank the Good Lord and consider herself lucky because others can’t even find someone to marry,” and as a result she remained silent.

“I got married in order to find stability and found a family, I was totally ignorant of the marriage contract content. I was present for the conclusion of the contract, and the *adoul* asked me whether I consented to the marriage or not, but he did not inform me about the possibility of introducing conditions in the contract nor did he tell me anything about the possibility of choosing a community property system.”

“I was present for the conclusion of my marriage contract, the *adoul* asked me about the dower (in money or in gold) but did not inform me about the possibility of including conditions in the contract, nor did he ask me anything about the community property option, and mind you my husband has nothing except his salary while I owned a house I had inherited from my father. (Siliana, Tunisia)

It is interesting to contrast the abovementioned examples of the women who concluded their marriage contracts in front of the *adoul* with those who concluded their marriage contract at the municipality in front of the Civil Status Officer. In the latter cases, women pointed out that the problem was no longer a problem of lack of information, but rather one of the non respect and the non application of clauses stipulated in the marriage contract.

"I was present during the conclusion of my marriage contract, the Civil Status Officer at the municipality read me the contract's content and asked me if I wanted to include any conditions, and I only asked to choose the community property option. I was very embarrassed because everyone was looking at me as if I was asking for something impossible or for something extremely difficult. My husband had agreed to community property but he rapidly changed after our marriage and started registering our properties in his father's name so that I wouldn't be able to get a share of them. What is more striking is that he gave the terrace of our house to his brother for the latter to build a house on it without even asking for my permission. When I found out about this and protested, he beat me and tore my hair, pulling me in the street and insulting me in front of his mother, his brothers and sisters and then forbade me from going out or visiting my family." (Siliana, Tunisia)

C. Women's opinions on the marriage contract

(i) Women's opinions on the importance of the marriage contract

Despite the significant number of participants who don't know the content of their own marriage contract, they all largely agree on the importance of the marriage contract to women's lives. This importance is directly linked to their understanding of the concept and role of the marriage contract described above. Consequently, the great importance given to the marriage contract remains, nevertheless, within this limited framework and thus for most women does not go beyond the fact that it establishes the marriage's legitimacy and guarantees the children's rights to filiation and inheritance.

For most participants, the contract has paramount importance and is even a necessity in as much as it bestows legitimacy on the relationship between man and woman. Similarly, it guarantees the rights of pregnant women to prove the legitimate filiation of their children, and therefore establishes the children's rights to a civil status, inheritance, financial support, and other rights. As one participant from Tetouan (Morocco) maintained, "women can't do anything without a marriage contract."

Where do you keep your marriage contracts? The other participants laughed wholeheartedly, for the answers were all the same. Most of them keep their marriage contracts with their other precious things such as money, jewellery, and property documents. The most important thing being to keep it out of others' reach and far from their sight. Some women even give their marriage contracts to persons they consider trustworthy such as their mothers or sisters. More than half of the participants know that without a marriage contract they can't obtain a civil status document or any other document to prove the children's filiation to their fathers because it is the father who is always in possession of the civil status document. It is thus advisable for women to keep their marriage contracts with them to be prepared for life's surprises. (Agadir, Morocco)

Participants gave numerous counter-examples in order to illustrate these points, affirming that without a marriage contract the relationship between the man and woman is illegal and the woman is then lost. In many groups in Algeria and in Morocco, women who were married in the traditional way by the "fatiha" described the problems they encountered when trying to prove their marriages and obtain civil status documents for their children, a process that took 20 years in some cases. These women emotionally described how much they suffered and how much time, effort, and money it took to prove their marriage in the absence of a written contract.

They also affirmed to the other participants that the marriage contract is more than necessary and that without it, women were like single mothers. In Bogara (Algeria), women married by the “fatiha” also declared that the marriage contract is a “form of protection when the husband is tempted to betray you.”

A significant exception to the limited justifications for the marriage contract was raised in the Agadir consultations. Participants highlighted the importance of the marriage contract because, in addition to the abovementioned reasons, it also guarantees women’s rights to real estate under the Souss region customary law, according to which the husband must give his wife either a house or two plots of land, one to be sold and the proceeds used to build a home on the other plot.⁸⁴

It was interesting to note that in most groups, while women gave specific examples concerning the rights of children guaranteed by the fact of having a marriage contract, the participants were vaguer when it came to giving examples of women’s rights protected by the contract. Apart from claims that the contract valorises and preserves women’s dignity, the reports do not note any concrete example given by the participants of their own rights protected by the marriage contract. In fact, it was frequently at this point that the consultations deviated towards a discussion of how women’s rights have never been respected anyway.

This cynicism with regard to the rights given to women as a result of a marriage contract was particularly prominent in the community consultations in Algeria and in Morocco. As a participant in El Hajeb (Morocco) said, “the marriage contract does not guarantee our rights to financial support and the home.” In Bogara, women started off by saying that the contract is a means to prove the marriage and guarantee the woman’s rights upon its dissolution, yet later in the discussion went on to say that the law is unjust to woman and does not give them any rights, that the 2005 amendments changed nothing, and that women’s rights are never respected. Others contended that even if the law does guarantee certain rights, it is difficult to obtain them through the justice system.

In discussion groups with divorced women, we divided the participants into two subgroups, those who obtained their divorce after the family code was amended and those who got divorced prior to the amendments. We noticed that there was no difference between the social situation of the two groups, and all the participants said that even if there are laws that guarantee certain rights to divorced women, they’re just theoretical and not applied, nor do they have any concrete impact, according to their experiences. (Bogara, Algeria)

In Oran, women regardless of their specific characteristics were perfectly aware of the necessity of having a marriage contract, but thought that it would be difficult to make this accepted by the environment and by Algerian society, in particular men who had and enjoyed all the rights with the 1984 Family Code.

⁸⁴ However, women aged 28 to 38 from the same regions affirmed that these customs did not exist any more.

According to one participant, the marriage contract is important and yet at the same time is not important. Sometimes it turns out to be useless, particularly when we suffer from problems related to financial support or repudiation, at this moment this document has no importance. What's more, generally speaking, the law is never applied and is always on the man's side. Another woman took the floor to say that laws protecting women only exist in cities like Casablanca and Tangier. In the Chaouen valley, the law is never applied. Any woman who wants to obtain her rights has to go to the courts in Tangier or Casablanca. (Tetouan, Morocco)

(ii) Women's opinions on the possibility of stipulating written clauses into the marriage contract

Once facilitators informed the women of the legal possibility of stipulating rights-protective written clauses into the marriage contract, the discussions became quite lively and many diverse opinions expressed.

The majority of participants strongly supported, at least in theory, the idea of stipulating written conditions protecting women's rights into the marriage contract. At the end of almost all of the community consultation sessions, the participants asked the facilitators, Can we really integrate these clauses into our marriage contracts?

When we asked participants for the reasons behind the elaboration of a detailed marriage contract, the same Berber proverb was repeated in four different groups, according to which "when we live in peace and harmony, we write, and when conflicts and quarrels start then we read what we wrote." One of the women further added that "a marriage based on conditions does not necessarily mean a conditioned marriage, but rather a marriage that seeks to be successful, and our own experiences and those of our ancestors are proof of this. (Agadir, Morocco)

Women's personal situation was frequently one factor related to whether or not they supported this possibility:

- Women currently experiencing problems with their husbands and divorced women were among the most vocal supporters of the idea of detailed clauses, on the basis of their failed marriages and other unjust situations to which they had been personally exposed. Not only did they want to convince the others to avoid the same problems and that anyone can be a victim of divorce, they also unanimously insisted that should they ever get remarried they were going to demand written conditions to avoid reliving what they had undergone in their first marriages.
- Young single women in general expressed satisfaction at the thought that in the near future they could negotiate clauses and include them in their own marriage contract.
- Numerous older women who have been married for many years now expressed their regret with regard to the fact they were not aware of the possibility to include conditions in the marriage contract and had not done so themselves. In Siliana (Tunisia), one participant explained that "I could not possibly have imposed conditions like modern young girls nowadays can, this golden opportunity was not offered to me." These women expressed envy of the younger women because they consider themselves too old and therefore can't introduce any new conditions in their marriage contracts after so many long years have gone by.

- Nonetheless, these older women frequently asked whether it was possible to rewrite their own marriage contracts in order to include conditions in them. As noted in the Siliana (Tunisia) reports, participants didn't stop asking the facilitator, "How can we introduce changes in our marriage contracts after so many years have passed?"
- Mothers who expressed their desire for a better future for their daughters vowed that in the future they were going to make sure there were conditions included in marriage contracts for girls in their families and entourages. As described by a participant in Oran (Algeria), "I accepted his (her husband's) conditions in order to preserve my house and my children, I am the victim and I don't dare say anything. But now that I understand things better, I will impose a marriage contract upon marrying my daughters, I don't want them to suffer." The women expressed their enthusiasm at the idea that future generations could benefit from such a contract. In Tizi Ouzou (Algeria), "some women with daughters to marry have sworn that if their daughters decide to get married tomorrow, they will demand that everything be written down, otherwise they would prefer that their daughters remain single."

One should point out, however, that while the young single participants seemed to be very enthusiastic about the proposed detailed marriage contract, the idea of applying it to their own couple was not so easily or clearly accepted. Many agreed with and supported the idea of stipulating conditions but not in their own marriage contract. In Tunis (Tunisia), for example, some participants declared that they would not include any conditions even if they knew about this possibility before the marriage because of a number of factors relating to private and personal matters that cannot be discussed before the consummation of the marriage, or out of fear of the husband's reaction, given that the main objective here is to get married and be united, and other details will come later.

In general the participants offered a diversity of reasons for why, in their opinion, detailed clauses in the contract are important and necessary, and how this practice would protect women's rights both during marriage as well as after its dissolution.

For some, since marriage is "like the lottery, a game where one can win or lose,"⁸⁵ it is better to draw up a detailed contract that can be a tool to *guarantee the stability and continuity of the marriage*. It will help the wife avoid divorce because if she imposes conditions from the beginning, this will prevent the husband from even thinking about divorce in order to avoid the application of all these conditions.

Others mentioned that a marriage contract drafted this way provides *clarity* for the couple from the beginning of the marriage, as the two spouses have mutually agreed to certain conditions and everything is clear for them before the marriage, and the wife is not surprised after the marriage, for example, by a husband who prohibits her from finishing her studies, working outside the home or visiting her family.

Some participants in Oran, namely housewives, divorced women and rural women, consider that a detailed marriage contract is important because it plays an *educational* role by informing women about their rights in marriage.

⁸⁵ Bogara, Algeria.

These same women also think that the marriage contract can play a *preventive* role by warding off conflicts with the husband and in-laws.

Some participants suggested that a detailed marriage contract will also encourage greater *transparency* and honesty between future spouses, by highlighting each one's flaws and prevent them from hiding their respective weaknesses from each other.

Others said that with such a contract, women will have more *confidence* in themselves and be better able to work towards her family's fulfilment and development. As a rural woman from Agadir said, "If I had included conditions that would have protected me in my marriage contract, I could have lived at ease. Without such clauses, women live in fear of divorce, or of another wife who will take everything away from her."

Women also added that even if divorce occurs, the wife will *obtain her rights* according to the conditions that she had initially stipulated in the marriage contract.

Single mothers warmly welcomed the idea and declared they would include conditions in their contracts that would guarantee the rights of their children.

This is an opportunity to be seized, because this way we can defend ourselves, not experience submission and humiliation anymore, and we shall no longer be thrown out like 'dirty laundry.' (Tlemcen, Algeria)

The significant minority of participants who did not support the idea of stipulating written clauses were no less vocal in their opposition. As was the case for those who supported the proposal, women's personal situation had an influence on those who were opposed to it:

- Some reports noted that the minority of women who were against the idea (in some groups, the rate was as low as 5%) do not suffer from any problems with their husbands according to their own statements and according to what they say about their own experiences.
- On many occasions, women aged 47 to 58 years old expressed their opposition to the idea of accepting such conditions because of the fact that they would be marrying off their own sons soon and such contracts would put their sons in a position of weakness, something which these women did not appreciate at all.

There were many debates about issues of trust between the two spouses, and the fact that just talking about such conditions shows a "lack of confidence in the partner," which could lead to divorce. On numerous occasions and in all groups, participants said that stipulating written conditions in the marriage contract is embarrassing for the bride and her family, the most important thing in marriage is good faith, which could be destroyed forever if written conditions were imposed from the beginning of the relationship, because this would prove the bride's bad faith towards her husband.

A major concern expressed by opponents to detailed clauses, in all groups and among mothers as well as young single women, was the risk that merely talking with the would-be husband about marriage contract conditions might make him change his mind and hence compromise the girl's marriage plans.

In a noteworthy retort to this argument, older women in Tizi Ouzou (Algeria) exclaimed that they were “scandalized by these young women who get married nowadays and accept all of the future husband’s conditions in what can only be described as a race to get a husband.”

A not insignificant number of women in many groups said that what counted most was understanding and mutual respect between husband and wife and not what is legal or written down in the laws. Some participants in Tlemcen (Algeria) even said that this idea is “satanic” and is “meant to disrupt and distort the nature of marriage based on respect.”

A 59 year old widow remarked that “if the wife is respectful of her husband and if she fulfils his needs, he will never deprive her of her rights,” an opinion then supported by four other participants.

One of the others did not agree with them, given that she herself had many problems with her husband. She contended that without legal documents to protect women, even if the wife is devoted body and soul to serving her husband, he will always find a way to turn his back on her and marry another woman. He can even become violent towards her and kick her out of the conjugal home at anytime, as had happened to her. She described her own experience with her husband who took another wife and had chased her and her children out of their home. (Tetouan, Morocco)

One of the participants in Bogara (Algeria) resisted the suggestion that women should play an active role in the marriage ceremony, saying that “the reason for the bride’s presence at the conclusion of the marriage contract is to sign the document and express her consent, she should not ask what her rights are, nor should she ask about the consequences of marriage.”

On many occasions in the different groups, women were not opposed to the idea of stipulating clauses in the contract per se, but expressed their scepticism about the feasibility of doing so and characterized it as a utopia, citing social and institutional obstacles. In Marrakech (Morocco), some participants said that only women with a certain intellectual level or who work can impose conditions, while those who are unemployed cannot. Similarly, in Bogara (Algeria) one of the women explained that, “in my hometown it is impossible to include conditions in the marriage contract in front of the Civil Status Officer.”

In Algeria, women with a certain education level in Oran were particularly sceptical about any outcomes from the marriage contract. They are concerned that the Family Code reforms on the marriage contract will just remain on paper and won’t be applied, especially given women’s status as legal minors in the Code. In any event, according to these women, even if the law recognizes the right to stipulate conditions, in contrast the social context is particularly unfavourable to it.

D. Issues proposed by the women to be included in an ideal marriage contract

This section describes all of the clauses that women would like to include in an ideal marriage contract, as well as their reasons for suggesting each particular condition. The consultation notetakers took particular care to:

- Distinguish between clauses women themselves identified and proposed and those which the facilitator had to raise and incite the participants to think about;

- For each clause, note reasons why the women saw it as useful or desirable, and in case of disagreement, why not;
- Describe diversity and divergences of opinion, or consensus;
- Record what women suggested as a remedies for violation of these clauses.

The below conditions are listed in order according to the frequency with which they were cited in the 15 partner organization reports. The first number in parentheses represents the total number of reports in which the condition was raised, and the second the number of times among these that the subject was raised by the facilitator instead of being spontaneously suggested by the women.

Personal Rights:

I. Domestic violence and cruelty (15/1)

In all 15 regions where community consultations were held, women uniformly proposed a clause prohibiting all forms of violence as a fundamental condition for a marriage contract. Domestic violence and cruelty was repeatedly cited as a priority concern in all of the discussions.

Women described how they would like to have marriages based on respect and dialogue, and that a clear condition in the marriage contract should forbid all forms of violence, whether physical, sexual, psychological or verbal. In all of the groups, participants gave examples of violence they suffer in their own lives and that they would like to prohibit in the marriage contract, which included insults and offences to exploitation by one husband who forces his wife to go to work and beats her when she comes back without any money.

“It is impossible to live with my husband, he is a monster, a savage who treats me like an animal, he beats me to death and even ties me to a tree trunk all night in the forest. He not only beat me but also beat my daughter to the point that she went deaf.” (Siliana, Tunisia)

In many groups, women described the in-laws’ complicity with their violent husbands. While some women talked about how their in-laws do not intervene if their husband beats them, others told how they were humiliated on a daily basis in front of their in-laws by husbands purposely wanting to demonstrate their authority and power. In Siliana (Tunisia), even those women with no problems with their husbands described how they constantly suffer from problems with their in-laws and particularly from their mother-in-law, who in this region is considered the ‘second husband’ who really ‘rules the roost.’

Despite the fact that a condition prohibiting domestic violence was proposed in all the groups, it was still a controversial and hotly debated issue. Some participants argued that such a clause is not justified because husbands have the right to beat their wives. In the only region where the women did not spontaneously propose this condition, yet strongly supported once the facilitator probed them about it, it turned out that women had not considered domestic violence as a violation of their human rights in order to even think about suggesting it as a clause for a marriage contract.

During two discussion groups there were a couple of anecdotes on this subject:

An older woman in her fifties said that if a woman deserves to be beaten, meaning when she does something foolish, her husband has the right to beat her. A long debate ensued and the other participants threatened to go call this woman's husband to come to the village square and give him a stick so that he could beat her.

In another group, a young woman who had studied law intervened to say that in the Koran there is a verse that authorizes men to beat their wives. The others reacted by saying that if she wanted to be beaten she could speak for herself but not for everyone else. (Tizi Ouzou, Algeria)

Among the other arguments put forward by women who did not support the idea of stipulating such a clause in the marriage contract:

- This clause could create problems and the husband could do just the opposite and be violent with his wife;
- This condition won't work because men cannot control their behaviour;
- The difficulty for women to provide evidence proving that her husband has been violent to her, especially violence committed inside the home and at night. Supporters of this clause replied very emotionally by asking, "Does every woman have to have a camera to film and prove the violence committed against her?"

In terms of penalties and compensation proposed for the non-respect of this condition, participants suggested imprisonment (long imprisonment insisted one group), divorce and financial compensation. Some participants disagreed with the idea of prison sentences for their husbands because that would be an insult to them and to their children.

2. The right to work outside the home (13/2)

A large majority of participants spontaneously identified the right to work outside the home as an essential condition to be stipulated in writing in the marriage contract. From Tetouan to Tizi Ouzou to Tlemcen to Oran to Kasserine, numerous women described how they quit their jobs once they got married due to demands, divorce threats or even direct prohibition of them working by their husbands. In Algeria, women gave many examples where, despite the fact that their right to work was specifically negotiated and verbally agreed to by the respective families upon their marriage, later the husbands forbade their wives from working and scorned their initial commitments.

Among reasons women gave for wanting to stipulate such a condition, they cited the facts that work can guarantee a respectable life, ensure woman's dignity, autonomy and financial independence from her husband, help her avoid being subordinated to the husband, provide for families' needs when the husband cannot support the family alone, prevent women from being penniless upon divorce, and save women from being dependent on her husband for her material needs, which is a source of embarrassment.

"I would like to be able to rewrite my marriage contract anew in order to include a special clause concerning my right to work, bearing in mind that my husband only let me work only much effort." (Siliana, Tunisia)

A few participants were concerned that if they included this condition and then decided they did not want to work anymore, the husband would still force them to work. There were also a number of differences of opinion on the question of sanctions for non respect of this condition. Some women said that once the spouses agree on an amount of monthly compensation for the wife, then she should abandon her work, while others refused this solution by saying that work valorises women and this can not be compensated by any amount of money. These latter women suggested divorce as the sanction for non-respect of this condition.

3. The right to pursue studies (13/3)

This condition was identified by young participants who wish to pursue their studies once they get married, as well as by older women who married young, dropped out of school, and wanted to pursue their studies. Many women testified about how their husbands forced them to give up their studies once they got married. Participants also gave several recent examples of young women who had gotten married while they were still students, and whose husbands then forced them to give up their studies once they got pregnant.

"If I were not an old woman, my husband would never let me come to the association and take literacy courses...most of us in the village got married at the age of 12, and since then we haven't been able to do anything without our husbands' authorisation, we haven't been able to study, all we've done is procreate." (Agadir, Morocco)

4. Independent conjugal home (12)

A condition guaranteeing a home independent of the in-laws and determining the spouse's place of residence was also one of the first issues raised by participants in all groups and defined as fundamental. Women expressed their desire to be independent in their marital lives and avoid problems caused by the husband's family. In their opinion, problems between the spouses are caused by the constant interference of the in-laws (father in-law, mother in-law, and brother and sisters in-law) in their lives, and the family's influence on the husband.

Participants in Siliana (Tunisia) described the prevailing norm of living in the same home as the in-laws as the inevitable destiny for all women in the region because even if the husband lives far away, his family prohibits him from taking his wife with him so that she remains living with them and at their service.

For a large majority of the participants, an autonomous home guarantees peace and stability. Some young women in Tizi Ouzou explained that this does not mean that they reject their in-laws, but that they consider this condition necessary for living in peace and fulfilment."⁸⁶

"My parents-in-law intervene in my life and beat me, they force me to wake up early in order to prepare food and wash the entire family's dirty laundry, and my husband knows about all this. I could no longer stand this situation so I fled to my parents' house and asked for divorce, I will only return to my husband if he finds me a home far from his family."

⁸⁶ Some of the single mothers in Tunisia were nonetheless prepared to live with their in-laws provided that they had free use of the home and its furnishings, and that the mother-in-law or other family member took care of her children in her absence.

One should, nevertheless, mention that this proposal did not find favourable echoes among all participants, the level of support for this clause seemingly linked to the participants' ages. Within all groups, the women 38 years old and younger insisted the most on this issue, while participants who were over 50 more frequently manifested their opposition to this idea. Very often, women with sons about to get married contended that "these young generations of women want to have husbands without families!" These women categorically refused this condition because they would like to have their sons and daughters in-law living with them under the same roof. Others from the same category of women argued that this condition is not appropriate for all circumstances and that it depends on the husband's financial situation. According to them, current circumstances do not allow women to impose such a condition in the contract, and this might cause men to give up on the idea of marriage.

5. Family planning (12/5)

While a large number of participants stressed the importance of mutual consent between the spouses on family planning, the idea of stipulating conditions in the marriage contract on these issues generated lively debates between its advocates and opponents, with particularly strong resistance voiced among participants in Morocco.

The majority of women 38 years old and younger felt that it was fundamental to agree in advance about and negotiate clauses related to spacing between pregnancies (they suggested 3 years), number of children, minimum amount of time between the marriage and the first pregnancy (they suggested 3 years in order to make sure that the marriage would succeed before deciding whether they could have children or not with their husbands)⁸⁷ and contraceptive use.

Participants gave numerous examples of women whose forced successive pregnancies had a negative impact on their social and economic status. They described how some men use children as a way to pressure their wives to stay at home and not work outside. Women no longer want to be considered passive objects of procreation, and told of women from their communities whose health suffered at the because of multiple pregnancies.

On the other hand, two Algerian participants (from Oran and Tlemcen) described how they want to have children but their husbands forbade it, one because he already has children from a previous marriage, and the other because he is unemployed and the couple lives with their in-laws.

In Morocco in particular, participants aged 50 years and older objected to this condition for a number of reasons: arbitrary circumstances of life and destiny; the very personal nature of the topic makes it inappropriate for such intervention; the idea that one should not interfere in the will of God.

In one of the few groups where participants discussed possible sanctions for non-respect of this condition (Agadir, Morocco), they had a difficult time reaching agreement. Some asked for divorce, while others suggested financial compensation and the husband bearing all expenses related to pregnancy and medical care, as well as supporting the children financially since he was the one who imposed their births.

⁸⁷ In Tunis however certain participants were against this idea and claimed that having a child right after marriage is the best guarantee for the wife and reinforces family ties.

6. Sharing household tasks and responsibilities (10/1)

A large majority of women expressed their wish to stipulate a clause in the marriage contract establishing equal responsibility for household chores and the children's upbringing. For them, while husbands should share these responsibilities alongside their wives, men always find pretexts to get out of these tasks and leave it up to women as usual to assume responsibility for the children's upbringing, studies and health.

"Before our marriage, my husband promised that we were going to help each other and do everything together, and that he was going to be very understanding about my working conditions, but unfortunately he didn't keep his promise, and by the time we had our second child, he was spending the majority of his time outside instead of helping me raise the children and sharing household work with me. Even the maid who helps me, I am the one who pays her." (Tetouan, Morocco)

While some argued that it is only normal that women do all of the housework if they don't work outside the home, most participants insisted on this condition regardless of whether the woman works outside the home or is a homemaker.

It is interesting to examine which specific responsibilities participants defined as "household chores" that they would like their husbands to take joint responsibility for. One participant from Agadir (Morocco) gave as an example for this issue how, "The very day after my wedding, I put on my boots and went outside to milk the cow and take care of it. I only saw my husband a week later, as if I were married to the cow instead."

In case of non-respect of this condition, participants suggested the right to sue their husbands for financial compensation and the right to ask for divorce.

7. Polygamy (9)⁸⁸

With very few exceptions, the majority of women insisted on the importance of imposing a monogamy clause in the marriage contract that would prohibit polygamy and thus protect the wife and preserve her dignity. According to a participant in Tetouan (Morocco), "polygamy should be completely banned because it is totally meaningless, no woman would agree to share her husband with another woman."

⁸⁸ The importance given to this clause by the women must be considered in light of the fact that it was cited in 9 out of 10 regions in the 2 countries concerned – Morocco and Algeria – where polygamy is still legal. Since polygamy is illegal in Tunisia there was no need to discuss it. Nonetheless, some of the single mothers asked that polygamy be allowed in order to give single mothers the opportunity to get married.

One of the participants is married with five children and her husband is described by all as kind, friendly and a loving father. One day she discovered that he had married another woman, and she tried everything possible to get him to divorce his second wife but he refused. After a series of negotiations, she accepted that her husband would spend a few hours each day at her house and that his real life would be with the other wife. "You know, in this situation I am the one who has become the second wife, despite the fact that I was the first one and am the mother of his children. I accepted his conditions to save my home and protect my children. I am a victim and I don't dare say anything. But now I understand that when I marry off my daughters I will require a marriage contract with detailed clauses. I don't want them to suffer like I did." (Oran, Algeria)

Among the minority of participants who resisted this clause,⁸⁹ they offered reasons including the fact that they could be sterile or have a permanent illness; that according to the religion husbands have the right to take more than one wife if they have the financial means to do so; that even questioning polygamy is a violation of Islam. Others were not actively against a monogamy clause but expressed their non opposition to polygamy on the condition that the husband is fair and just towards both wives.

As a sanction for violation of a monogamy clause, participants suggested that the husband be forced to divorce the second wife and pay her all the financial rights to which she is entitled, imprisonment to deter the husband from repeating his mistake, financial compensation for the first wife, the right for the latter to seek divorce, and attribution of the family home to the first wife upon divorce or in the event the second marriage is not dissolved.

8. The right to medical care (9)

It is interesting to notice that this condition was not included in the *Community Consultations Protocol* nor on the list of topics provided to facilitators to be suggested to participants. However, in 9 out of the 15 regions, participants spontaneously expressed their hope to stipulate a clause providing that the husband would guarantee the wife's right to medical care. Because the women themselves considered this as very important, this condition is included in this section of the report. It is also very interesting to note that the 9 regions where this clause was proposed include all 5 regions in Algeria.

Most of the participants, particularly those who were unemployed, asked for access to medical care in case they get sick, the right to preserve their health, a prohibition of remarriage by a husband whose first wife is sick, and a ban on repudiation of women who are sterile or have a permanent illness. They also wanted husbands to take care of wives when they are sick and not send them back home to their families. They described how even husbands who take care of their children's health do not provide the same attention and care to their wives. In Tlemcen (Algeria), participants listened to the moving testimony of a woman with breast cancer who, after much humiliation within her own family, was rejected and repudiated by her husband and left without any medical care.

⁸⁹ Including two second wives in the consultations in Tetouan (Morocco). This small minority was the highest in El Hajeb and Marrakech (Morocco) where it reached 20%.

9. The right to freedom of movement (8/3)

The right to freedom of movement, travel and visit family and friends was mentioned as a necessary condition to be stipulated into marriage contracts by participants in 8 out of 15 regions where community consultations groups were held (and one wonders why in Algeria this issue was only raised in the Bogara region report).

Most of the women expressed their desire to move about freely in the sense of travelling to visit their families. The discussions, at least in Morocco and Tunisia, revealed that a large number of participants had problems to travel and visit family members. Some explained how they haven't been able to visit their families for a long time because of their husband's refusal to let them travel, with a poignant example from El Hajeb (Morocco) of a woman who burst into tears and described her depression at not having seen her family for 20 years.

One participant wasn't able to travel and visit her family during her father's illness, because her husband prevented her from travelling until she was informed of her father's death. Another woman whose husband forbade her to travel to her sister's wedding had to escape and flee from him in order to attend the wedding ceremony. Yet another said that her husband prohibited her from visiting her family while he was working in Spain and she had to wait for him to return once a year during summer holidays to take her to her parents' place and bring her back himself. (Tetouan, Morocco)

In addition to other similar examples such as that of a woman in Bogara who was unable to visit her father before his death lest her husband repudiate her for having left the home in his absence, this freedom of movement condition was also proposed by a few participants in the same region who don't have the right to go see the doctor because their husbands prohibit them from going out unless they are accompanied by them or their mothers.

In Tunisia, facilitators noted how the husband in Siliana is omnipotent because he can prevent his wife from visiting her family members and his parents-in-law from visiting their daughter. Women from Tunis added that this clause should include the right to travel abroad without necessarily being accompanied by one's husband, and the right for woman to take her children with her when she travels without the father's permission.

There was, however, a minority (5%) of participants in El Hajeb (Morocco) who said that men have the right to forbid their wives from travelling.

10. Divorce (6/3)

Proposals for clauses addressing access to or conditions for divorce did not represent a significant part of the consultations, neither in the content of the debates nor geographically among the groups. The majority of discussions on this issue took place in Morocco and almost none at all in Tunisia. One report from Algeria suggested agreeing in the marriage contract that the couple will only divorce by mutual consent.⁹⁰

⁹⁰ The varying level of discussion is not surprising given the respective divorce laws in Morocco and Tunisia; one wonders however why this subject did not play a very important role in the consultations in Algeria.

Debates in Morocco on the issue of divorce focused on the possibility to stipulate the power of “*isma*” in the marriage contract, in which the husband effectively delegates his right of repudiation to his wife. In many cases, women did not know about this option, as was the case for example in the groups in Tetouan, where 95% of participants were surprised to hear that this possibility existed and that it was legal. Once the facilitator explained it, these women considered this “*isma*” clause as fundamental and among the most important. They then explained that they themselves did not suggest this condition, not because they considered it unimportant or undesirable, but because they were unaware of its existence and the legal possibility of including it as a clause in the contract.

However, support for the idea of granting women the right to divorce in the marriage contract was far from unanimous, and once again the discussions suggested divergences of opinion according to the different age groups. The majority of participants advocating for this right were in the 50 years old and younger age brackets, who described this condition as necessary to “protect the wife from her husband’s abuse and despotism.” Older women expressed some reservations and even opposed this condition by arguing that according to customs, traditions and religion it is the man and only the man who should have the power of divorce. Heated debates ensued between those who thought that women should not renounce their right to divorce with no reason, and those who said that sometimes women are obliged to suffer at the hands of their husbands in order to raise their children with their fathers.

The second aspect of divorce that could be addressed by a clause in the marriage contract, and once again debated only in the Morocco consultations, was that of divorce by the woman in exchange for compensation paid to the husband (*khula*). Many women supported a clause on this type of divorce that would specify in advance in the marriage contract the amount of compensation to be paid. One of the participants from Tetouan (Morocco) described the legal problems she still had with her husband about the amount of compensation she should pay for the divorce. Her husband haggled and threatened her, and even when she offered 20,000 dirhams he still refused and asked for even more. For these reasons, she thought it would be preferable if the amount of compensation was fixed from the beginning in the marriage contract. In several groups, women insisted that the amount of compensation in this type of divorce should not exceed 10,000 dirhams.

The third aspect of divorce raised by women concerned compensation due the wife if the husband divorces her. In the three regions where this subject was debated – Agadir, Tetouan and El Hajeb (all in Morocco) - 10% of participants refused any compensation on the grounds that their human dignity was at stake. One woman said, “He did not purchase me for his enjoyment,” while others declared that no amount of money could compensate a divorced woman for all the efforts she made during the marriage.

The rest of the participants considered compensation for divorced woman as a right which should be structured and fixed in the marriage contract. Some proposed that a net sum of money be fixed in the contract at the time of marriage, while most suggested that the amount should be determined at the time of divorce and take into consideration a certain number of criteria, circumstances and specificities, namely the length of the marriage, the divorced women’s family, economic and social status, and the husband’s revenue and standard of living. Most women in the community consultations in Bogara (Algeria), for example, think that the amount of compensation awarded by courts does not compensate wives adequately for the harm suffered

upon divorce, and that is why the amount should be increased and stipulated in advance in a marriage contract clause.

Finally, 50% of the participants in Marrakech (Morocco) supported a proposal to proscribe divorce completely in the marriage contract, while the other half of the participants argued that if there is no understanding and harmony between the spouses, why should women be deprived of the right to divorce.

II. Children (6/4)

Some groups of women proposed stipulating marriage contract provisions concerning child custody and legal tutelage upon divorce. In the groups where this issue was raised, all the women agreed upon the need for one condition in particular, namely that the mother retain custody of children even if she relocates or travels inside the country or abroad or remarries, and this without needing to obtain permission in advance from the ex-husband or a judge.

Some participants also brought up the possibility of stipulating a clause designating the mother as the legal tutor of her children.

12. The rights of single mothers in marriage

As one of the partners in this project in Tunisia works specifically with single mothers, the majority of participants in the community consultations organized by this organization were single mothers. They offered numerous ideas for marriage contract clauses that would address their specific concerns about marriages to men who are not the biological fathers of their children. The clauses they proposed with regard to themselves (in their own words) are as follows:

- Respectful treatment and the same respect and financial support just like a normal wife;
- Keeping the woman's status as a single mother secret and confidential in the neighbourhood so as not to harm her reputation;
- Non exploitation of the woman's social status as a single mother to pressure her to assume all family expenses and pay rent.

They also wanted to stipulate clauses on the rights of their children, born out of wedlock in a previous relationship, from the new husband:

- Decent treatment of this child and maintaining a positive attitude towards him even if a new child is born to this marriage;
- Financially support and take care of this child as if he were the legitimate child of the new husband;
- Access to inheritance rights just as if he were a normal child.

Property Rights:

I. Division of property upon divorce (15)

In every single group and without any prodding from the facilitator, women unanimously insisted on the need for marriage contract clauses guaranteeing the equitable division between the spouses of property acquired during the marriage in case of divorce. All women agreed that upon divorce, woman currently recover nothing except possibly their dower.

Nonetheless, participants deliberated over what an “equal” or “equitable” division of property would look like, and made the following suggestions:

- Distinction should be made between property acquired before and after the marriage, with each spouse recovering any property they owned prior to the marriage and an equal and equitable division between spouses of property acquired after the marriage;
- Acquired property should be divided according to a fixed percentage or based on each spouse’s efforts and contributions, while taking into consideration the woman’s domestic work inside the house;
- Some women said that even if they don’t work outside the home and don’t receive a salary, their household work and responsibilities should entitle them to a share of property and assets acquired by the husband after marriage;
- Spouses should agree in the marriage contract to register all acquired assets in both spouses’ names. Participants gave numerous examples where spouses had taken out and then jointly repaid a bank loan to purchase a home, but upon divorce the wife was unable to recover her share of the property because homes are generally registered in the name of the husband only.

All of the women had contributed to the purchase of some property with their husbands. Some even sold their jewellery to finance the construction of a big home, and the husbands later pretended that the property was theirs exclusively. Despite the fact that jewellery sold to buy or build a home was the wife’s, she then finds herself with the choice of accepting the situation to stay with her children or leave. (Oran, Algeria)

According to most participants, clauses on division of property and assets or an entire separate marital property should be made mandatory at the time of marriage because no man will agree to sharing property or negotiating such a contract if the law does not impose it.

In Tunisia spouses have the right to opt out of the default separate property regime through an addendum to their marriage contract choosing the alternative community property regime. Participants in the Tunisian community consultations wanted to expand the division of property between the spouses to include all property and assets and not just the limited property covered under the law. They specifically mentioned including movable property in the community property in addition to real estate, as well as property acquired prior to the marriage. Numerous women also suggested that the community property regime become the default legal system in the absence of a contract to the contrary, thereby replacing the existing separate property regime.

However, even those Tunisian participants who opted for the community property regime in their marriage contracts pointed out that their husbands started registering all property acquired after the marriage in their fathers’ or other relatives’ names in order to prevent their wives from being entitled to a part of the property.

2. Attribution of the conjugal home upon dissolution of marriage (I4/I)

The vast majority of women all groups combined proposed a clause in the marriage contract attributing the family home to the wife and children upon dissolution of the marriage, broadly defining dissolution to include both divorce and the husband’s death.

Participants disagreed, however, on the terms of and justifications for this attribution. Some suggested that partial or complete ownership of the home be transferred to the wife at the time of marriage, while other asked merely for the right to remain in the home until the children reach the age of legal majority.

When the family live in a rented home, numerous participants proposed that the wife retain the right to live there and that if she does not have a fixed income the husband should pay the rent. If both spouses work, they should agree on each one's respective contribution to rental costs.

Many women linked this attribution of the family home to the wife to her status as a mother of minor children, considering her right to the family home as necessary to protect the children and ensure their well-being. However, a few participants in Oran (Algeria), Tunis, Zaghuan and Kasserine (Tunisia) proposed including a clause awarding the home to divorced women regardless of whether or not they have children in order to protect those women who are childless or whose children have come of age.

Some considered the award of the conjugal home to the woman without anything in exchange as justified to compensate her for everything she endured as well as for the numerous responsibilities and household chores she took on.

Two widowed sisters-in-law living with their in-laws told us, "now that our husbands have died we don't even have our own homes to live in, we're stuck with our in-laws and especially with our tyrannical sister in-law. They own a big house but refuse to give us our share of our husbands' inheritance and we live at their mercy. We suffer in silence because we have nowhere to go with each of our 3 children." (Oran, Algeria)

On the other hand, 40% of participants in Tetouan (Morocco) declared that the husband could not be deprived of his right to a share of the conjugal home. They suggested that its value be divided equitably between the two spouses, and if they were unable to live together then one pays his share in cash to the other. In the event that neither spouse can afford this solution, then the house should be sold and the proceeds divided between them.

In Algeria, despite the fact that amendments made to the Family Code in 2005 gave women with children the right to remain in the family home upon divorce, participants in numerous community consultations groups insisted on the importance of stipulating and going into the details of such a condition in the marriage contract given the fact that judicial application of the legal provisions in this regard are minimal to nonexistent. According to the perspective of numerous women in the region of Tlemcen, the attribution of the marital household remains something impossible, and the majority of the women who have divorced return to their parents' homes.

3. Financial support after divorce (13/2)

Participants in nearly all of the groups considered financial support after divorce an essential issue for inclusion in the marriage contract, and insisted on this condition because most problems between former spouses revolve around financial support. The majority of discussions on this topic focused specifically on the question of financial support provided by the ex-husband for children after divorce, with a few exceptions.

Women suggested that the amount of financial support for children be fixed in advance in the marriage contract according to the husband's income, or at least that this criteria be stipulated in the contract. Among other criteria to be taken into consideration, participants also cited the children's standard of living prior to the divorce, and pointed out that provisions should be made to increase the amount periodically to meet the children's increasing needs.

Similarly, deadlines and a payment schedule should be fixed in the marriage contract. Participants insisted that the husband pay financial support for children on time, since delays place children under difficult and precarious conditions, particularly if the ex-wife is unemployed.

One of the participants had divorced her husband and then resumed her relationship with him. She was now waiting to obtain her second divorce from him. She described how when they remarried, her husband used all types of ruses and subterfuges to get her to sign an IOU to him for six million to prevent her from ever being able to seek financial support from him in the future. She was shocked when she found out about this, for she thought she had signed a medical care form and not an IOU. After having obtained what he wanted, her husband turned against her and became more and more violent. He kicked her out of the conjugal him when she was pregnant and never even tried to see his son. (Siliana, Tunisia)

In several groups in Tunisia, participants mentioned the need for a clause guaranteeing financial support for the ex-wife as well as the children by the husband after divorce. In Bogara (Algeria), women even proposed stipulating in the marriage contract that the wife be given a monthly salary in the event of divorce. However, the rationale behind this proposal is not really clear, as the discussions do not indicate whether such a payment is intended to be preventive, compensatory, based on the ex-wife's financial needs, or a combination of these. Some participants stated that such a condition would make the husband think twice before deciding to divorce his wife and would serve as a preventive measure to protect the wife from her husband abusing his right to divorce her with no reason. One woman explained that, "I would like to benefit from a monthly salary to be able to survive in case of divorce and to be compensated for the material and moral harm caused by the divorce."

Finally, a minority of participants in Marrakech hesitated at the idea of stipulating a clause on financial support out of fear that the husband would think there is cupidity and covetousness behind the marriage.

4. The right to freely dispose of one's personal income and property (12/I)

Women in nearly all community consultations groups insisted on the need to reiterate in a marriage contract clause women's right to freely manage and dispose of her own property. Conditions prohibiting the husband from interfering in or disposing of the wife's property were considered of paramount importance. As participants in Oran explained, even though this right is traditionally protected under Muslim law, it should be reinforced through clauses in the marriage contract.

The personal property which participants would like to protect in the marriage contract includes their salary, inheritance, jewellery and gold, gifts offered by the husband to the wife, and everything the wife brings with her in terms of personal items and furniture for the house.

There are many problems with regard to women's ownership and management of their personal property which they would like to solve through the inclusion of detailed clauses in the marriage contract.

The first proposal addressed the issue of the property title deed and registration of the assets in question. Participants suggested that in addition to registering property in her name in the title deed, the marriage contract should include an inventory clearly listing the wife's personal property.

Second, a number of women in different groups described their experiences of losing their personal property after their husbands disposed of them without their consent.

For a significant part of the discussion, the women expressed their sufferings with regard to this issue given that they generally bring numerous assets in the form of furniture, gifts and jewellery that during the course of marriage the husband frequently appropriates and disposes of everything and then repudiates his wife and kicks her out of the marital household without a thing. When she tries to seek assistance from the justice system, she is told that there is no such thing as theft between spouses. This is why women insisted on the necessity of stipulating clauses in the contract on the management and ownership of the wife's personal property. (El Hajeb, Morocco)

This suggestion was proposed because certain husbands consider their wife's assets as their own and as rightfully belonging to them, particularly when it comes to plots of land and real estate. Husbands force their wives to sign over power of attorney to them in order to manage and dispose of the assets as they please. In this regard, one participant gave the example of her neighbour who registered all of her property in her husband's name; he then disposed of all of the property, married another woman, and moved to a foreign country with his second wife. The wronged first wife is currently seeking divorce before the court and is facing numerous difficulties because of her husband's absence and her inability to notify him of her divorce petition. (Bogara, Algeria)

A former schoolteacher in Tlemcen described how she never even cashed her own pay check since her husband insisted on having power of attorney as the condition for his giving her permission to work. It should also be noted that groups of divorced women in Oran mentioned the difficulties that some of them encounter even to recover their dower.

Third, women explained that very often they cannot use their salaries or their personal properties without the consent of their husbands or in-laws.

Finally, women would like to freely dispose of their salaries as they wish without being compelled to contribute to family expenditures.

We also noticed that most of the women who work at the carpet factory assume responsibility for paying the rent on the family home, support their children and pay for all household expenses. According to their descriptions of their experiences, their husbands take away all of the wife's possessions - money, jewellery, and other items - and demand accountings from their wives each month in order to use her earnings on alcohol and gambling. Unemployment and debauchery incite husbands to use violence against their wives when the latter refuse to turn over their salaries. (Siliana, Tunisia)

5. Contribution to household expenses (7/2)

Discussions on possible clauses fixing the spouses' respective contributions to household's expenses revolved around two problems identified by the women: one, compelling husbands to provide for the family's needs, and two, the nature and amount of the wife's contribution – if any – to household's expenses.

Many groups of women in the three countries identified the necessity of a clause compelling the husband to fulfil his obligation to support the family financially. This is due to numerous participants' opinion that in principle men are responsible for all household expenses as well as the financial maintenance of the wife and children. In reality however, women gave numerous examples during the community consultations describing how husbands frequently assume no household expenses whatsoever, leaving this responsibility entirely to their wives.

The majority of women in the region contribute to family expenses by raising poultry, weaving, and domestic work, and despite all this neither their husbands nor society in general ever show any form of gratitude. Women are always categorized as being unemployed. (Kasserine, Tunisia)

"I would like to mention something I neglected to say before, namely the fact that I suffer from many problems with my mother-in-law and my sisters-in-law with whom I live. My husband takes away all of my earnings, he works during the summer and sleeps in the winter to spend all of the money I save for hard times, for as you know I work weaving carpets to be able to meet my family's needs, and I would like to be able to compel my husband to assume his responsibilities." (Siliana, Tunisia)

The question was then posed about, if the woman works outside the home and earns a salary, what is the nature of her contribution to household expenses and how should it be determined?

Given the principle cited above that the husband is normally responsible for all household expenditures, participants declared that any contribution by the wife to these expenses should be optional, the amount fixed by her, and made voluntarily without any pressure from the husband or his family. This contribution was defined in numerous discussions as "help" provided to the husband, who remains the person primarily responsible for household expenses. Some women added that given that the wife assumes all obligations related to children and household affairs, this in itself is already a large contribution. Participants in Tunis suggested that a ceiling of 50% of her salary be placed on the wife's contribution to household expenses, a percentage that may not be exceeded under any circumstances, and that she keep the rest of her salary for her own personal use.

6. The Dower (7/2)

While suggesting potential contractual clauses regarding the dower, participants focused on two issues – its amount and its payment terms.

Some women proposed that the amount of the dower be 'reasonable' and based on the husband's means and revenue, or even symbolic. Several participants ages 29 - 38 mentioned that the dower is not very important for them, and that what they really want from their husbands is respect, happiness and decent treatment. Some suggested eliminating the dower entirely because it insults women's dignity and encourages the perception that women are merchandise subject to

negotiation. Others called for a dialogue between the future spouses on the dower in order to guarantee equal rights between them.

Others countered that the value of the dower should be quite high as leverage to ensure respect of the marriage contract conditions, and insisted that the dower is very important for the woman, for it valorizes her and should be defended as a fundamental right.

Some participants expressed the need for a uniform dower that would put an end to all discussion because its amount would be predetermined by the law and everyone would be placed on equal footing. It should be noted that some proponents of this idea wanted to standardize a relatively low amount of dower, while others called to establish legal minimums for the dower.

Most often, however, participants insisted on the need to stipulate into the marriage contract a very high amount of deferred dower to be paid *a posteriori* 'like they do in Middle East' in order to control the husband's caprices and dissuade him from divorcing his wife.

Many participants in Morocco and Algeria described how they were cheated out of their dowers by their husbands and how they never even received the amount noted down in their marriage contract. Among divorced women, some also mentioned how they are encountering a number of difficulties just to recover their dowers.

According to the participants, the dower should be paid at the time of the marriage contract conclusion and in front of the Civil Status Officer or *adoul*, and that it is not enough to simply ask the bride whether she has received her dower or not.

7. Management and disposal (sale, rent, donation) of assets during marriage (6)

Many participants thought that it would be useful to stipulate a condition specifying joint management by the two spouses of all shared property. The example was given by a woman who allowed her husband to construct a house on a plot of land that she had inherited from her family. The house was then registered in her husband's name and she has never been allowed to live there or to sell it. She would like this possibility of including conditions in the marriage contracts to become a reality so that women will no longer fall into this trap.

8. Bank account (+)

In four regions (all in Morocco), some participants suggested stipulating a clause in the marriage contract affirming their right to have an autonomous banking account in order to avoid future conflicts with their husbands over money.

9. Compensation for domestic labour (2)

In a couple of groups, participants who work exclusively within the home want to stipulate a clause providing for a monthly or weekly salary from the husband to compensate women for their unpaid domestic labour.

Other conditions suggested spontaneously by the participants:

- Prohibition of adultery (3): In three regions in Morocco,⁹¹ the participants proposed and approved the idea of stipulating the prohibition of adultery in the marriage contract, with a compensatory payment for non respect of this condition as well as a long prison sentence.
- Inheritance rights for wives and daughters (3): In several community consultations held in three regions in Algeria, women asked whether there was a possibility to introduce the issue of inheritance into the marriage contract, and gave examples of women they knew who only had daughters and when the husband died, the male members of his family, i.e. his brothers or uncles, came to appropriate the assets which the husband and wife had acquired together. A group of highly educated women proposed the stipulation of a clause in the marriage contract that could remedy the discriminatory provisions in the Family Code on inheritance. Although such a clause might be in contradiction with the Family Code, the women proposed that the two spouses freely and jointly agree in their marriage contract to share their property equitably.
- Responsibility for debts (I): With regard to loans, some participants highlighted the cooperation and assistance they provided their husbands to pay off the latter's loans, whether taken out before or during the marriage, given the understanding and harmony that existed within their couples. However, other women refused this idea, especially as regards loans taken out by the husbands that do not benefit the family.
- Possibility to modify the contract (I): Participants suggested a clause allowing for modifications to be introduced into the marriage contract according to changes in circumstances, particularly with regard to the amount of financial maintenance required to maintain a certain standard of living as well as changes in either spouse's employment status.
- The condition described as fundamental by all participants in the Bogara region of Algeria is that the husband respect his wife and assume his responsibilities towards her, and that he bring her stability and happiness. Throughout the discussions, women insisted that stability and happiness should not only be promised orally, but guaranteed through clear, written clauses in the contract.
- Good conduct of the husband (Bogara): Participants proposed a clause attesting to the fact that the husband does not have a criminal record, is not an alcoholic or drug addict, and does not commit crimes punished by the law, like theft for example.
- Knowledge of the husband's state of health (3 regions, all in Algeria): A few participants suggested requiring medical certificates on the basis of specialized analyses.
- Protect children's rights in case of the mother's death (Bogara): A condition was proposed that would protect children's rights because, according to some women, husbands often remarry after their wife's death and then neglect their children. Participants added that this is the opposite of what happens after husbands die, where women continue to take care of their children.
- Virginity certificates for women (Bogara): This suggestion was made by a highly educated woman as well as by a retired teacher. When the facilitator asked for the reasons behind this suggestion, these two participants explained that female university

⁹¹ Zagora, Marrakech and El Hajeb.

students have a bad reputation and that some husbands intentionally create problems after getting married by claiming that their wives were not virgins at the time of marriage because they attended university and therefore went out and frequented other men. According to the participants, a virginity certificate would allow young women to avoid this type of scenario and prove that the only man who deflowered her was her husband, and not another man she might have met at university.

- In Tizi Ouzou as well as in Oran, a few participants raised the issue of the right to sexual fulfilment.
- In Kasserine (Tunisia), women want to stipulate a clause to compel their husband to bring their wives along if he immigrates abroad, while in El Hajeb (Morocco) a few participants proposed a clause by which the husband commits to not be absent for a long period of time without informing his wife beforehand.

Remarks:

- Many of the clauses suggested by the participants are already protected in national laws, and in some instances have been for a long time, even in previous versions of the Family Codes that existed prior to the recent reforms. This raises questions about women's knowledge of the existing laws and/or the application of current laws by the relevant authorities.
- Other suggestions made by the participants would be difficult if not impossible to integrate as clauses, or are not appropriate subject matter for a contract, but are included here in order to illustrate the women's concerns, experiences and priorities as they expressed them.
- One might raise the question as to why the community consultations included women of diverse age groups and civil statuses, particularly older women who have been married for a long time already. Are their experiences relevant or should this initiative focus specifically on younger/unmarried women, as future brides? The answer is that older women are still married and currently facing the problems they describe – and they have the right to be protected and their rights respected in their present marriage.
- The above topics are presented in the form of a list, each clause in isolation from the others. When drawing up an integrated marriage contract, one should analyze and reflection on the relationship and correlation between clauses, in order to identify and avoid repetition and contradictions between clauses, and achieve a complete and comprehensive whole.

E. Challenges and obstacles the women see to negotiating and stipulating these clauses into a marriage contract

The similarity in the participants' responses across the three countries with regard to obstacles to negotiating and stipulating such clauses in a marriage contract is striking.

(i) Personal obstacles

The first obstacle cited unanimously by all participants is women's *fear of not being able to find a husband* or losing the current fiancé, given men's resistance and refusal to consider the contract as a prerequisite to marriage. Daughters as well as their mothers think that if they impose conditions in the contract, men will change their minds and back out of the marriage altogether.

In the women's view, the future husband will most likely think that by talking about conditions his fiancée is showing bad faith and a lack of trust in him.

The idea of never getting married, fear of ending up a spinster and feelings of denigration of unmarried women are unbearable in the opinion of most participants. As explained during the community consultations in Oran, given that women only exist as wives and mothers and especially mothers of boys, the idea of demanding a contract with specific clauses frightens a lot of women. "She finds someone who wants to marry her and then dares require conditions! And what else!" exclaimed one participant.

This fear of never finding a husband comes from the fact that marriage is still considered a form of protection and the man as guarantee of a respectable social status for the woman, who is still treated as burden on her family. In addition, the stigmatization of single women pushes them to consent to marry just about anybody without thinking about stipulating rights-protective conditions. According to participants, they accept anything and anyone just to get married.

For similar reasons, participants described how women would need a lot of courage to propose a contract to their husbands during the course of their marriage as well. As explained by one of the participants in Oran, "It's impossible, men would rather divorce than share their property." On this question of the ability to draw up a contract for property acquired during the marriage, for example for the joint purchase of a car or a house, the participants went on to say that it was better "not to talk about a marriage contract while married, because this could hurt the husband's vanity and pride as a man and as a result lead to conflicts and even divorce."

The second personal obstacle mentioned by the participants is their *lack of information on the laws and lack of knowledge about their rights*. As one participant in Agadir inquired, "How can we ask for something we don't even know exists?"

Nevertheless, a few participants declared that they would not include any conditions in their contract despite knowing about this possibility, because of factors related to private and personal matters that cannot be discussed before the consummation of the marriage, either out of fear of the husband's reaction, compassion towards him, or a desire to preserve his dignity. In these women's view, given that the major objective is to be united in matrimony, the other details can come later.

Among other personal obstacles, participants cited intimidation, taboos, illiteracy, embarrassment, shame, lack of self confidence, love for the future husband, excessive trust in him and his promises during the engagement period, respect for their family, and the fact that prior to the marriage they are too preoccupied with less important personal preparations for the wedding such as their gowns and make-up instead of focusing on contractual issues.

(ii) Family obstacles

All groups cited the *omnipresence of families in the conclusion of marriage* as a major obstacle to women stipulating clauses into their marriage contracts. Most of the time negotiations take place between the two spouses' families, specifically between the male family members, particularly the fathers, and the couple, especially the bride, is marginalized and kept apart.

Families generally do not give young women the opportunity to discuss her marriage contract and do not solicit their opinion on the marriage. Brides remain subordinate to their fathers,

who in many examples offered by the participants threatened the young women with respect to their marriages. This male monopoly of the conclusion of marriage contracts makes it extremely difficult for the women in the family to intervene.

One participant affirmed that, “in our family, woman still can not be present during the conclusion of the contract, that is a utopian idea. For another participant, “marriage is the domain of the male family members, and it is difficult for us as women to intervene unless we find a solution or a way to impose our conditions peacefully.” (Agadir, Morocco)

In Tizi Ouzou, participants remarked that even when two young persons know each other, go out together with their families’ knowledge, and decide to get married out of love, once it comes to discussing the marriage the families take over and exclude the future spouses. The couple does not even exist and does not have a say in the content and conclusion of the marriage contract. Even when marriages are concluded out of love, it is the parents who agree upon any conditions (which in most cases are agreed upon verbally, as previously described).

To dare defy paternal authority, said one participant in Siliana, is considered an extreme insult of the father.

A few women ages 50 and above opposed the idea of accepting these conditions in a marriage contract, for the simple reason that they were about to marry off their sons and believed that such conditions would disadvantage them, something they did not appreciate.

On many occasions participants repeated fears that the future husband’s family would cancel the engagement merely at the idea of talking about the marriage contract. His family would strongly disapprove of a contract as a prerequisite to marriage. Her family generally refuses to include conditions in the marriage contract lest the future husband change his mind and abandon the idea of marriage altogether.

“My relatives’ interference made my life a tragedy; even when I would return to my parents’ house angry against my husband who would beat me, my father would send me back saying that women need either a marital home or a grave, which encouraged my husband to abuse me even more.” (Siliana, Tunisia)

Family pressure is also manifested in another way that prevents women from stipulating clauses in their marriage contracts. According to women in Bogara, problems existing within her own family incite young women to dream about running away from her family and escaping harassment by their father, brother and sisters in-law. All she can think about is fleeing problems at home, and sees marriage as the only solution even if she is not really thrilled about the future husband. One 27 year old participant said that she married a man 21 years older than her just to escape from her own family’s problems and her father’s beatings, but in her own words, “I fled from the prison to find myself in front of its door,” given that her husband turned out to be a drug addict.

(iii) Social obstacles

Women first spoke about fears of *society’s judgement and scorn* if ever a bride dared stipulate conditions in her marriage contract.

In this regard, participants in El Hajeb concluded that, “one cannot say that illiteracy is one of the major causes of women’s silence, for even educated intellectual women are unable to include

conditions in their marriage contracts lest they might be judged by society or considered materialistic.” In a similar vein, other women in Marrakech declared that if the wife includes conditions in her marriage contract, that would make her “arrogant and capricious.”

The social mentality is merciless, women are afraid that the negotiation of conditions will create or generate a sort of social chaos. According to one participant, “if one of my daughters negotiates conditions in her contract, my other daughters will end up spinsters because people will start thinking that we are a family who complicates things, even when these are our ultimate rights, society still remains merciless.” Another said that all these ideas are good but society will condemn them, explaining that “we would like society to authorize this possibility. Such conditions are a dream for me but we are still far away from such achievements.” (Agadir, Morocco)

Participants also cited *society's view of women as an object that causes shame and a bad reputation* and that *marriage is a sort of protection that prevents any gossiping about her*. Divorced, widowed or older woman should get remarried or else they are considered as being of bad reputation because no man wanted them. These women's only concern is to get married in order to put an end to people's backbiting. As a result, they cannot impose any conditions lest the future husband change his mind.

Among other prevailing ideas, that in society *man is the strongest and has all decision-making power*, and in return the woman accepts a life where she is not respected and lives without dignity to avoid being divorced and losing all of her rights. Participants in Tunisia described society's view that the only purpose of marriage is to found a family presided by man whose every order shall be carried out without discussion.

Women also mentioned *customs and traditions which denigrate women* and do not give them the opportunity to express their opinions in her marriage contract or even know about its content.

Finally, several participants claimed that according to Arab social customs and traditions, the idea of stipulating conditions in marriage does not exist and is even prohibited in some Arab countries because of the Arab patriarchal ideology which has not yet addressed the question of how to guarantee women's rights through marriage contract conditions.⁹²

(iv) Administrative obstacles

Participants in community consultations in all three countries were categorical and unanimous in their criticism of the administrative procedures for concluding marriage, and particularly of the authorities responsible for drawing up marriage contracts.

In Algeria, where marriage takes place either before a Civil Status Officer or a notary, participants targeted above all the competence of personnel charged with the conclusion of marriage contracts. Given that these institutions responsible for applying and implementing laws are made up of men, participants wondered what they could expect from them in terms of the protection of women's rights. According to them, the authorities do not choose people competent to draw up marriage

⁹² This claim is historically false, but it is interesting to note that on many instances women revealed their (wrong) understanding of “Arab traditions and customs” as being against detailed marriage contracts with clauses stipulated by women.

contracts, for example one sees administrative staff responsible for the conclusion of marriage contracts who view women negatively and do not even respect their own wives and sisters.

In Morocco and Tunisia, participants were unequivocal in their opinions of the *adoul* responsible for drafting and concluding marriage contracts. Women were unanimous about the fact that, during the conclusion of the marriage, the *adoul* do not explain the contract's content, do not inform the future wife of her right to stipulate conditions that can guarantee and protect her and her future children's rights, and do not ask for her opinion except to obtain her consent to the marriage. "If the *adoul* would explain the contract's content to us, inform us of our rights to stipulate conditions into the contract, and ask for our opinions, we would be encouraged to include conditions in our marriage contracts," the women affirmed.

Under the current circumstances, participants described the difficulty of communicating with the *adoul*, particularly since the latter create a halo of mystery and enigma around the conclusion of the marriage contract. As one participant from Agadir explained, "the *adoul* always arrive late, rush to write the contract in two minutes, eat quickly and leave in a hurry so that they won't miss another marriage."

In Tunisia, participants emphasized how the marriage contract concluded in front of the *adoul* is a ceremony where religious, customary and traditional aspects prevail, and is held either in the bride's parent's home or at the mosque. This does not give the bride the opportunity to study the contract's content or the diverse clauses, particularly since she is often seated in a room apart, far from the place where the male family members meet with the *adoul*, and where she is only given the completed document to sign.

In addition, the lack of municipal precincts in rural zones in Tunisia where people could get married in front of a Civil Status Officer makes resorting to the *adoul* the only possible way to conclude a marriage contract in these areas.

Participants in all three countries also regretted the inexistence of a model contract with sample conditions in order to give them examples to draw upon.

Finally, several participants expressed a certain cynicism as concerns the application of any clauses eventually stipulated in the contract, citing numerous examples of women who have still never received their dower despite the fact that the amount is specified in writing in their marriage contract.

F. Strategies to overcome these obstacles

In order to overcome these obstacles, participants suggested strategies aimed essentially at *reforming the administrative procedures* for the conclusion of the marriage contract and *raising public awareness* about women's rights in the marriage contract.

On the administrative level, women enthusiastically supported the proposal to develop and adopt an *official, detailed marriage contract form* that includes all possible conditions. In their opinion, this form should be *compulsory* for all couples and not just optional, and imposed by the government on all persons responsible for drawing up marriage contracts.

According to the participants, this type of obligatory standard marriage contract form would prevent future wives from being intimidated by external influences and from feeling embarrassed and ashamed. It would break the taboos around the marriage contract, ward off any problems

related to lack of trust between the two spouses at the beginning of their marital life, and would encourage the couple to adhere to the conditions they wish. This all due to the fact that it would be the law, rather than the individual bride, imposing a standard form and requiring the stipulation of conditions, making marriage contracts the same for all couples. Participants widely agreed that it would be good if everyone went through the same procedure and if the law treated all women on equal footing when it comes to their marriage contracts.

It is in this sense for example that in numerous community consultations held in Agadir, most of the discussions ended on questions related to the marital property contract. Participants felt that these contracts must be made compulsory by law and generalized for all, which would help women to preserve their property rights.

Participants also noted that *women need to be more involved in the process*, that they be responsible for negotiating their own marriage contracts by themselves in order to be able to express themselves freely and without any restrictions.

Participants suggested *preliminary meetings* well before the conclusion of the marriage contract between the future spouses and the relevant authorities in order to be informed about the laws and their rights, allow a period of reflection on desired contractual conditions, ensure genuine agreement and consent to the conditions. Such a preliminary meeting would help prevent the future wife from feeling intimidated or being unduly influenced during the actual conclusion of her marriage contract. Establishment of a regular information service on the topic at civil status offices, as well as creation of specialized institutions to work with future spouses on the subject of the marriage contract, were also proposed by participants.

In a few of the community consultations held in Oran (Algeria), women pointed out that managed this way, laws related to the marriage contract would serve a pedagogical function instead of just being applied in an administrative manner.

In all three countries, participants called for *delegation of the authority to conclude marriage contracts to more qualified persons*. In Algeria, women thought the selection process for civil authorities responsible for this task needs to be reconsidered, and that the persons chosen should have some legal background and a good reputation; some even said that marriage should be concluded by a judge specialized in family affairs. In Morocco and Tunisia, participants suggested reflecting on removing this function from the *adoul* altogether. On numerous occasions in the community consultations held in Morocco, participants asked why such an important contract should be drawn up by the *adoul*, and said that judges should be in charge of this instead.

One participant declared that, “there needs to be recruitment of civil servants capable of communicating with people, who can draft marriage contracts and explain the law to future spouses in all clarity and simplicity, unlike the ambiguity of the *adoul* whose statements we don’t even understand and who are sputtering all the time.” (Agadir, Morocco)

It follows that the authorities responsible for concluding marriage contracts should be sensitized to women’s human rights, receive further training on laws governing the marriage contract, and sanctioned if they fail to fulfil their professional obligation to inform future spouses about their rights in the marriage contract. All of the authorities involved (mayors, judges, lawyers, *adoul*) should be trained on and compelled to apply the law, in other words that procedures be standardized and their application monitored.

Finally, participants said that the Family Codes in the three countries should be re-examined in order to add strong and clear provisions that would create a more concrete and detailed framework for stipulating conditions in the marriage contract.

Women also unanimously agreed on the need for *information campaigns* in order to disseminate information on women rights in the marriage contract and laws promoting them, as well as *awareness raising campaigns* to change people's mentalities.

Participants first highlighted the importance of campaigns to be conducted among women on the marriage contract's importance and women's right to stipulate conditions in this contract. Campaigns should target young girls in particular to encourage them to include conditions in their marriage contracts and learn from other women's past experiences. Some women mentioned that such campaigns should not only transmit information, but also develop women's capacities to defend and claim her rights. As one participant from Agadir said, "we still need many things before we will be able to confront society and our families. The first thing we need is a strong personality because our upbringing imposes discretion and a low profile, which we adopt even when we should not because in religion there is no reason to feel ashamed."

Women also underlined the necessity of targeting future husbands and other men to increase their understanding of the topic, as well parents and other relatives of the future spouses. Some suggested repeating these same community consultations with men, since they are just as affected by the marriage contract as women are, particularly fathers who have a stake in guaranteeing and protecting the rights of their daughters.

Non governmental organizations, the media and governments should all play a role in these campaigns, according to the participants. As well as the usual associations working on women's rights, organizations active in social and economic development could play an active role in the implementation of these campaigns among marginalized populations in rural areas.

In addition to popular education programs conducted through civic caravans, available cultural fora and public debates, participants proposed the use of public service announcements and clips on television and radio in order to sensitize the population on the marriage contract's importance and the possibility of including conditions, as well as involving schools, for example, through textbooks and civic education syllabi.

G. Final Remarks:

Many facilitators commented that it was difficult to bring each consultation session to a close, after all of the topics that had been raised and all the time spent together debating them. Very frequently, towards the end of the discussions participants asked questions about follow-up to the meeting. What are the next stages? When will this detailed contract be made available and take effect? And among women who have already been married for a long time, will it be possible for us to amend our existing marriage contracts?

Women were very enthusiastic at the prospect of having a model marriage contract come to fruition, in this way expressing their expectations concerning the results of and follow-up to the consultations. Some insisted on the necessity of speeding up the process of the presentation of the community consultations results and of keeping them informed about the anticipated innovations related to the marriage contract.

Participants asked for additional, on-going meetings such as these, due to their expressed appreciation of the following aspects of the consultations in particular:

- The *awareness-raising* aspect about their rights, especially on a topic they have never been informed of before;
- The *self-expression* aspect, in exchanging experiences and sharing their hardships;
- The *consultation* aspect by which they were able to express freely their opinions and points of view on the subject;
- The *participation* aspect by which women expressed feelings of having contributed through their suggestions to an initiative that could have a positive impact on their lives and on their communities.

According to participants in Bogara (Algeria), the community consultations provided them with a space for expression that enabled them to put forth their beliefs and opinions and take part in a discussion of social and political subjects they have never participated in before.

As one of the participants asked, “how can we, as women who are marginalized, contribute to improving women’s situation and to protecting our rights?” At the same time she added that this experience was the first of its kind in the sense that it allowed her to feel like an important member of society and that she has the potential to be an agent for creating and stimulating change ... She continued to say that if this marriage contract is ever implemented according to the objectives of this program, she will be honoured to make a declaration on the radio and television to say that she took part in this initiative. (Bogara, Algeria)

A facilitator in Tizi Ouzou (Algeria) even added that in her region some years ago, it would have been impossible to organize an assembly of women in a village and speak about women rights. The fact that today they have been able to do so makes her very hopeful about the successful impact that the promulgation of a law on the marriage contract will have on women’s lives in her country.

ANNEXES

Annex I:

Community Consultations Facilitators' Protocol

I. Introductions

At the beginning of each meeting the facilitator should:

- Welcome the participants and thank them for their participation in the group discussion ;
- Introduce herself, and ask the note taker/recorder to introduce herself as well;
- Ask each participant to introduce herself;
- Explain the general framework for the meeting;
For example: In today's meeting we want to talk about the marriage contract – what it means to you and why? And we're here to listen to what sorts of things you would like to have included in your marriage contract.
- Make sure that the participants know that the discussions will be kept confidential and that they feel free to express themselves ;
- Explain that the goal of the meeting is for them to share their experiences with the marriage contract, and that the meeting is part of a larger project on the marriage contract and the types of conditions that women can include in it ;
- Describe the regional nature of the program, how it includes Tunisia, Algeria and Morocco, to gather women's opinions and suggestions on the marriage contract through many meetings in diverse regions in the three countries;
- Explain how the meeting will take place, how the facilitator will ask a series of questions about the marriage contract that they will discuss and debate amongst themselves;
- Reassure the participants that there are no right or wrong answers, that we are just interested in listening to their opinions, that given their experiences they are the experts on the topic ;
- Tell the participants that the meeting will probably last about 4 hours, and ask them to decide if they would like to have one meeting or if they would prefer to divide the time into two meetings;
- Ask their permission to tape record (or film or take photos) by explaining that this will help them remember all of the answers later on, and that their names will not be recorded ; in the event the women don't agree, then the note taker will need to take a detailed written minutes of the meeting;
- Ask if anyone has any questions before starting.

Reminders:

The facilitator should:

- Speak in simple language, using words that the women will understand;
- Avoid asking closed questions that lead to yes or no answers, preferring open ended questions that begin with who, what, where, when, why and how;
- Use the normal common language or dialect spoken by women in their communities;
- Respect the women's answers and don't ask leading questions or try to influence them;

- Remember the participants' names or note them on a piece of paper;
- Verify that the participants have understood and that they don't have any questions before starting the meeting.

2. Women's knowledge of the marriage contract

In this section, the facilitator will lead an open discussion through questions designed to assess women's knowledge of the importance of the marriage contract, existing laws on the marriage contract and the legal possibility to stipulate additional, negotiated clauses into it.

- What are some of the rights that women have in marriage?
- Who can tell me what the marriage contract is? What is it used for?
(After the discussion on this point seems to have ended, the facilitator may need to explain that among other things the contract establishes the rights of the spouses in marriage.)
- To what extent do you think the marriage contract is important for women's lives? Why or why not? How?
- Who can tell us what the Family Code says about the possibility of including negotiated clauses into the marriage contract?
(In the event that at the end of the discussion on this point the participants haven't given a correct or complete description, the facilitator can give a simplified explanation of the law in their respective country on this and ask them if they had heard about this before.)

3. Women's opinions about the marriage contract

In this section, the facilitator will lead an open discussion through questions designed to assess women's opinions about the above laws on the marriage contract and the possibility to stipulate additional, negotiated clauses into it.

- What do you think about this possibility? To what extent do you think this could be important or helpful? How? Why or why not?

4. Women's experiences with the marriage contract

In this section, the facilitator will encourage the participants to talk about their personal experiences with their marriage contract, both in terms of its content and the procedures involved in its elaboration and signature.

- Who here has a marriage contract? Why or why not?
- What is written down in your marriage contract? What does it contain?

If there are participants who reply that they don't know the content of their marriage contract, the facilitator can ask:

- Why do you think that sometimes we don't know what is written down in our marriage contract?

For the following questions, in the consultations in Morocco and Algeria, the facilitator and note taker/recorder should be careful to distinguish between the responses of women who got married

prior to the Family Code reforms in 2004 and 2005 respectively, and those of women married after these reforms.

- Were you physically present for the elaboration and signing of your marriage contract? Why or why not? Can you describe how your marriage took place?
- To what extent did you participate in the negotiation and elaboration of your marriage contract? Who else participated? How were you consulted (or how not?) Why or why not?
- Who was the official responsible for drawing up and validating your marriage contract? What if anything did this person say to you during the ceremony?
- What if anything did this person tell you about stipulating additional clauses into your marriage contract?
- What if anything did this person tell you about your money and property once you got married?

Next the facilitator will ask questions specifically designed to target the experiences of participants about the stipulation of additional clauses into their marriage contracts.

- Who here stipulated additional clauses into their own marriage contract? Who here knows someone who did?

For the participants who reply in the affirmative,

- What were the reasons for doing this?
- Can you tell us how you did it?
- Which conditions did you add to your contract?

For those who reply in the negative,

- Can you tell us why not?
- Would you like to have done so?

5. Clauses proposed by the women for inclusion in a model marriage contract

This part of the discussion is the most important, and should therefore take up a good part of the total time allocated for the meeting. The facilitator should encourage the participants to brainstorm and debate all of the possible clauses they would want in an ideal marriage contract that could protect their rights.

Before beginning, the facilitator should remind the participants of the relevant laws in their country that gives them the right to stipulate additional clauses into the marriage contract, and that the objective of the meeting is to elaborate a model marriage contract based on their input and contributions.

- In your opinion, what are some of the conditions that can be included into the marriage contract and that could protect women's rights?

After an initial discussion, in order to encourage and stimulate further debate, the facilitator can remind the participants that:

- At the beginning of this meeting we talked about many rights that women have in marriage. Do you think it is possible to guarantee these rights through clauses in the marriage contract? Which ones? How or how not?
- Are there any rights that women have in marriage but that are not respected and that should be included in the marriage contract? Which ones? How or how not?

Here the role of the facilitator is to encourage the participants to think about a diverse range of topics that can be included as conditions in the marriage contract.

After each suggestion of a condition to include in the marriage contract, the facilitator should ask:

- And what if the husband doesn't respect the clause? What should happen then?

The facilitator should prompt the participants by asking questions and encourage them to throw out suggestions and ideas without influencing them.

In the event that the discussion seems stalled, and/or once the participants have stopped proposing suggested clauses (and only when and if this occurs), the facilitator can use the checklist below to ask further questions and encourage a debate that has covered as many topics as possible.

- What do you think about the dower?
 - ⇒ Amount
 - ⇒ Form (cash, in-kind, real property)
 - ⇒ Payment terms – up front or deferred (if deferred, when and under what conditions can it be claimed)
 - ⇒ Idea that the dower is the exclusive property of the wife, etc.
- What do you think about divorce?
 - ⇒ The right of *Tamlik* or *Ismaa* for the wife (assignment of the husband's right to repudiate her): Conditions for?
 - ⇒ Renunciation by the husband of his right to repudiate his wife
 - ⇒ *Khula* divorce (divorce by the wife in exchange for compensation) – conditions, amount of compensation?
 - ⇒ Compensation paid to the wife by husband after repudiation – conditions for? Payment terms? Amount? Specified sum? Dependent on income of husband at the time of divorce? Based on the length of the marriage?
- What do you think about financial maintenance paid by the husband to the wife?
 - ⇒ Amount, form (cash, in-kind, real property), payment terms, how amount to be calculated, payment schedule, etc.
 - ⇒ In terms of financial maintenance paid by the husband to the wife, be sure and think about its payment:
 - (a) during marriage – conditions to receive it (if any) (for example, even if the wife refuses to live in the conjugal home, even if she earns a salary, etc.)
 - (b) after divorce – for how long, conditions to continue to receive it, etc.
- What do you think about responsibility for household expenses?
 - ⇒ Who is responsible for

⇒ How each spouse's contribution will be calculated

- What do you think about polygamy?
 - ⇒ Compensation or other sanctions in case of violation of this condition?
- What do you think about the conjugal home?
 - ⇒ By mutual agreement
 - ⇒ Separate from in-laws
 - ⇒ Rights of use despite owner in title, right to follow husband if he moves to another city or country rather than being forced to stay behind and live with his family, etc.

In terms of the conjugal home, be sure and think about:

- (a) Rights of use during marriage
 - (b) Rights of use during separation
 - (c) Rights of use after divorce (and under what conditions – in return for payment or compensation, at no charge, etc.)
 - (d) Attribution of the home or its disposal upon divorce.
- What do you think about family planning?
 - ⇒ By mutual agreement
 - ⇒ Number of children
 - ⇒ When, intervals in between births
 - ⇒ Contraceptive use
 - What do you think about ill-treatment?
 - ⇒ Definition (physical violence, disrespect, emotional abuse, cruelty), etc.
 - ⇒ Compensation or other sanctions in case of violation of this condition?
 - What do you think about work?
 - ⇒ Freedom to choose one's profession
 - ⇒ Right to work outside of the home without authorization or approval.
 - What do you think about continuing one's studies?
 - What do you think about travel and visits to one's family?
 - What do you think about decision-making within the household?
 - What do you think about the use and disposal of your own income and property?
 - What do you think about children?
 - ⇒ Custody and guardianship after divorce
 - ⇒ Renunciation by husband of legal right to reclaim custody of children from mother if she remarries or moves away
 - ⇒ Designation of the wife as the legal guardian of the children
 - What do you think about child support?
 - ⇒ Amount
 - ⇒ Form (cash, land, property, etc.),
 - ⇒ Payment terms, how the amount will be determined, payment schedule, etc.
- In terms of child support, be sure and consider:
- (a) during the marriage – conditions for? (ex. even if the wife has an income)

(b) after divorce – for how long, conditions for?

- What do you think about any eventual changes to the marriage contract terms in the future?

Possible elements to think about concerning marital property relations:

- ⇒ Management and disposal (sale, rent, donation) of any property acquired by either spouse prior to the marriage
- ⇒ Acquisition, management and disposal (sale, rent, donation) of property acquired jointly during the marriage by both spouses
- ⇒ Acquisition, management and disposal (sale, rent, donation) of property acquired separately during the marriage by either spouse
- ⇒ Liability for debts incurred by either or both spouses before or during the marriage
- ⇒ Bank accounts – opening, management, disposal, etc. by either spouse or both spouses jointly
- ⇒ Inheritance between the spouses

Before moving on to the next stage in the discussion, the facilitator should ask the participants:

- Who here would have liked or would have accepted to have had a marriage contract like the one we just discussed, that contains all of the conditions that you just suggested? Why or why not?

6. Challenges and obstacles to negotiating and stipulating clauses into marriage contracts

In this part of the discussion, the facilitator should encourage the participants to identify the obstacles and challenges that prevent or could prevent women from negotiating such conditions into their marriage contracts.

- Based on your own experiences, or those of people you know, what problems would you expect to face when negotiating marriage contracts?
 - ⇒ Family obstacles?
 - ⇒ Administrative obstacles?
 - ⇒ Social obstacles?
 - ⇒ Personal obstacles?
 - ⇒ Other obstacles?
- Who here would want to negotiate such clauses for yourselves or for your daughters? Why or why not? How?

7. Strategies to overcome these obstacles

Based on the list of challenges and obstacles identified by the participants, the facilitator should then ask the participants to think about ways to overcome each of them.

- Who here has already had this problem and overcame it? How?

- How can we overcome this problem? What can we do? What do we need to eliminate this problem?

For the administrative obstacles, the facilitator should say to the participants:

- In some Muslim countries they use a detailed, standard government form that already has many of the clauses you have mentioned before, and this form is mandatory for all couples who get married. What do you think about this? Is this something that you think would be helpful to have here to guarantee that all of the conditions that you have mentioned are included into the marriage contract? Why or why not? How?

8. Closing

Towards the end of the discussion, the facilitator can bring the session to a close by:

- Verifying that the participants have given clear explanations for each point; if not the facilitator can return to a question to ask for more details, asking for example:
 - ⇒ Could you explain again...?
 - ⇒ Can you give us an example of ...?
 - ⇒ Why did that happen...?
- Summarizing her understanding of what the participants said and verifying that her understanding is correct.
- Taking particular note of anything said at the end of the discussion or even just afterwards. Often it is easier for the participants to speak openly and freely towards the end of the discussions – they feel more at ease speaking about the topic at hand – and frequently some of the most interesting comments are made at this time.
- Asking the participants if they have anything else they'd like to add or say before the meeting ends.
- Thank the participants and remind them of how important their participation is to the success of the project.

ANNEX 2:

Community Consultations Data

Partner NGO	Location	Other collaborating NGOs	Number of facilitator training workshops	Total number of facilitators trained	Locations of community consultations	Total number of community consultations (focus group) sessions held	Total number of community consultation participants	Description of community consultations participants
Morocco								
1. <i>Association El Amane pour le développement de la femme</i>	Marrakech (Tansift el Haouz)	<ul style="list-style-type: none"> Association Skoum Association Nahda 	1	14	<ul style="list-style-type: none"> Marrakech Skoum village Ait Msaoud village 	10 groups 10 sessions	91	<ul style="list-style-type: none"> Rural women and women from underserved and middle class urban areas Arab and Amazigh (Berber) women Young women beneficiaries of local youth centers Single, married, divorced and widowed women, single mothers Poor, modest, middle and upper class Illiterate, semi-literate, literate women Housewives, unemployed and professional women, artisans Ages 29-68
2. <i>Association Tafukt Souss pour le développement de la femme</i>	Agadir (Southwest coast)	<ul style="list-style-type: none"> Rafed Souss NGO Network of local NGOs for Women and Children in Difficulty 	1	15	<ul style="list-style-type: none"> Massa Ourir Imoran Anza Taroudant Idou Tnan 	10 groups 10 sessions	105	<ul style="list-style-type: none"> Rural women and women from underserved peri-urban and urban areas Arab and Amazigh (Berber) women

		<ul style="list-style-type: none"> • Association marocaine de développement et solidarité 			<ul style="list-style-type: none"> • Tiznit • Sidi Bibi 			<ul style="list-style-type: none"> • Illiterate, semi-literate and literate women • Housewives, unemployed and active women, factory workers, artisans • Single, married, divorced and widowed women • Ages 25-65
3. <i>Association Tawaza pour le plaidoyer de la femme</i>	Tetouan (Northwest coast and Rif mountains)	<ul style="list-style-type: none"> • Association Sahel • Association Darna • Association Zitouna • Association Mobadarat • Association Ahriq • Association Tlsmtan 	1	14	<ul style="list-style-type: none"> • Martil • Mdiq • Tanger • Chefchaouen • Ksar el Kebir 	8 groups 9 sessions	88	<ul style="list-style-type: none"> • Rural women and women from peri-urban and urban areas • Illiterate, semi-literate and literate women • Housewives, unemployed and professional women, factory workers, domestic workers, farmers, artisans, hairdressers, shop-owners, teachers, singers. • Single, married, divorced and widowed women • Arabic speaking • Ages 28-58
4. <i>Association Amal pour la Femme et le Développement</i>	El Hajeb (Middle Atlas mountains)	<ul style="list-style-type: none"> • Association Horizons féminins • IPDF • Oued Srou • Association 	1	12	<ul style="list-style-type: none"> • El Hajeb • Khenifra • Meknes • Sefrou • Ait Oulal village 	9 groups 9 sessions	83	<ul style="list-style-type: none"> • Rural women and women from urban areas • Illiterate, semi-literate and literate women • Housewives,

								professional urban women, members of local NGOs, <ul style="list-style-type: none"> • Illiterate, semi-literate and literate women • Rural and urban poor, urban middle class • Ages 25-60
8. Association Culturelle Amusenaw	Tizi Ouzou (Kabylie)	<ul style="list-style-type: none"> • Association culturelle et scientifique Aghbalou • Association village Taourirt Mokrane • Club Unesco Beni Yenni • Association comité de village Zoubga • Association Tagherma Zoubga • Association Tiliwa Ath Hychem • Local hairdressing salon 	1	11	<ul style="list-style-type: none"> • Tizi Ouzou • Ath Bouyahia village • Taourirt Mokrane village • Mizrana village • Taourirt El Hadjaj village • Zoubga village • Ait Hychem village 	13 groups 13 sessions	138	<ul style="list-style-type: none"> • Pari-urban and rural Kabylie women • Primarily Berber speaking with some occasional French and Arabic translation • Single, married, divorced and widowed women • Women beneficiaries of local centres for victims of violence • Housewives, professional women, unemployed women, farmers • Poor to modest economic status • Illiterate, semi-literate and literate women • Ages 22-85
9. Association Sociale Espoir	Tlemcen (western Algeria)	<ul style="list-style-type: none"> • Association Algérienne Pour La Planification Familiale • Association 	1	15	<ul style="list-style-type: none"> • Tlemcen • Nedroma • Chetouane • Ain Témouchent 	10 groups 10 sessions	265 (+ 250 students at an additional Day of	<ul style="list-style-type: none"> • Rural and urban women • Single, married, divorced and widowed women • Housewives, professionals,

		pour la préservation et la sauvegarde du patrimoine				village		Awareness at the University of Tlemcen)	unemployed women, university students, farmers
		<ul style="list-style-type: none">• Club Scientifique• Club amateur sportif des jeunes filles• Mouvement de la femme rurale• Infonet• Association de lutte contre le cancer• S.O.S. femmes en détresse• AIDS / Algérie				<ul style="list-style-type: none">• Sidi Bel Abbes• Tiaret• Oran• Hennaya village• Remchi			<ul style="list-style-type: none">• Illiterate, semi-literate and literate women• Ages 18-62• Rural and urban poor, urban middle class• Arabic and French speaking
10. <i>Collectif Bnat Fátma Nssoumer</i>	Bokra (Algiers region – capital, north central region called the “Triangle of Death” b/c of particular mass suffering in civil war and terrorism)	<ul style="list-style-type: none">• Association de développement de la femme rurale• Association Nour• Association de développement et de protection de la femme et de l'enfant• Association de solidarité	1	7		<ul style="list-style-type: none">• Bokra• Blida	10 groups 12 sessions	141	<ul style="list-style-type: none">• Rural and peri-urban women• Single, married, divorced and widowed women• Illiterate, semi-literate and literate women• Poor to modest economic status• Housewives, factory workers, unemployed women, students, farmers• Women beneficiaries of programs for victims of terrorism, single mother rape victims• French and Arabic

13. <i>Fondation Tunisienne pour le développement</i>	Siliana (central Tunisia)	« »	6	<ul style="list-style-type: none"> • Kisra el Jadida • Sanad Haddad • Hammam Kisra • Kasr Hadid 	5 groups 5 sessions	55	<ul style="list-style-type: none"> • Arabic and French speaking • Ages 24 – 62 • Rural • Married, divorced and widowed • Carpet factory workers, housewives and agricultural workers, civil servants, hairdressers, microcredit beneficiaries • Illiterate or elementary to secondary level education • Lower to lower middle class
14. <i>Fondation Tunisienne pour le développement</i>	Kasserine (western Tunisia)	« »	6	<ul style="list-style-type: none"> • Al Ayoun rural region • Al Ayoun town 	5 groups 5 sessions	50	<ul style="list-style-type: none"> • Arabic speaking • Ages 28 – 56 • Rural • Married, divorced and widowed • Factory workers, housewives, agricultural workers, civil servants, microcredit beneficiaries • Elementary to secondary level education • Lower to lower middle class

15. <i>Fondation Tunisienne pour le développement</i>	Zaghuan (north central Tunisia)	« »	6	<ul style="list-style-type: none"> • Nador • Zaghuan • Zriba • Fahs 	5 groups 5 sessions	53	<ul style="list-style-type: none"> • Arabic speaking • Ages 25 – 40 • Low income rural • Married and divorced women • Agricultural and textile workers, housewives, micro credit beneficiaries, civil servants • Primary to university education level
TOTALS	15 partner NGOs	58 collaborating NGOs	15 facilitator training workshops	163 facilitators trained	119 groups 122 sessions	1467 + 7 (Tunisia) participants (+ 250 students Algeria)	

Annex 3:

Legal Research Protocols

Legal Research Framework

I. Overview of the national legal framework on the marriage contract

In this first section please describe and analyse the current national legal framework on the marriage contract generally, as well as any legal provisions on the possibility for future spouses to stipulate negotiated clauses into the marriage contract. Here we are not concerned with the details of each topic or theme that may be addressed in a contractual clause – a thematic description and analysis will be covered in a subsequent section of this report. Rather, please give a general outline of what national laws currently say about the marriage contract, general principles of contracts and freedom of contract, and the possibility to insert additional negotiated clauses into a marriage contract – without going into detail about possible themes and subjects of such clauses in this first section.

A. International human rights law

Please give a brief overview of the place of international law in the national hierarchy of laws in your country and the State's position about the domestic applicability of international standards. In particular, the ratification (or not), reservations, applicability and justiciability, and the position of the following instruments in your domestic system:

- *Universal Declaration of Human Rights*, especially articles 16, 17
- *International Covenant on Civil and Political Rights*, especially article 23
- *International Covenant on Economic, Social and Cultural Rights*, especially articles 7, 10
- *Convention on the Elimination of all Forms of Discrimination against Women*, especially articles 1, 2, 15, 16
- *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*

In addition, if your country is a State Party to one or many of these conventions please:

- Consult the State Party reports to the appropriate treaty-monitoring bodies to see if the reports mention marriage contracts and the possibility to stipulate negotiated clauses into them;
- Consult the recommendations and observations made during the examination of your country's State Party reports to see if the treaty monitoring body mentions marriage contracts and the possibility to stipulate negotiated clauses into them.

B. National Constitution

Please note if there are provisions in the national Constitution directly or indirectly relevant to marriage contracts and the possibility to stipulate negotiated clauses, for example provisions for equality between the sexes, protecting freedom of contract, etc.

C. National legislation

Please describe and analyze all provisions in the national legislation related to the marriage contract – normally those found in the Family Code and in particular those providing for:

- The legal definition of the marriage contract;
- The possibility to stipulate negotiated clauses and if there are any restrictions on or formulations for this possibility;
- Mandatory elements and clauses for the marriage contract's validity (please note that here we are not talking about the *conditions* necessary for a valid marriage such as the absence of blood ties between the future spouses, but rather the *clauses* that by law must be stipulated in the written contract ;
- Any provisions on the consequences for the non respect or violation of any clause or obligation in the marriage contract.

In addition, please note if there are general principles on freedom of contract, the effects of the conclusion of a contract, the consequences of non respect of a contractual obligation, etc. provided for in other national laws, for example in the Codes of Contracts and Obligations. Please note if and when these general principles apply to the marriage contract as well, or, in contrast, if and when the laws create an exception or exemption from these general contractual principles in the specific case of the marriage contract.

D. Domestic court decisions

Please note if any courts in your country – at any level of jurisdiction – have rendered any decisions on the issue of the possibility to stipulate negotiated clauses into marriage contracts. If so, please describe the case and the court's decision.

E. Customary law

Please note if there are any customary laws in your country on the marriage contract and the possibility to stipulate negotiated clauses. Here we are particularly interested in customary law per se, i.e. customs that have the force of law, and not just simple practices.

F. Statements and policies of decision-makers

Please note if there are any policies of the relevant authorities – either written in a ministerial circular for example or expressed verbally in an official speech – that address the issue of the marriage contract and the possibility to stipulate negotiated clauses. Here for example we may include policies or statements from the Ministry of Justice, Family Ministry, the Head of State, etc.

II. **Current national procedures on the marriage contract**

- A. Please describe – citing specific laws or policies – the legal and administrative procedures in your country for the negotiation, drafting and conclusion of the marriage contract. In addition, please note the authorities legally charged with each one of these steps in the process as well as those responsible for informing future spouses about their rights in the marriage contract.
- B. Please describe the format and content of the standard, legal and obligatory marriage contract in your country, and attach a copy to this report.

III. Current assessment of women's rights in marriage and analysis of possibilities for their promotion through strategic use of the marriage contract

In this section, please elaborate:

- A description of provisions in the national legislation covering women's rights in marriage;
- An analysis of these provisions and their protective or discriminatory nature for women in marriage;
- An analysis and proposals for how each issue could be strategically addressed in detailed clauses in a marriage contract to protect women's human rights.

This analysis should reflect upon how to:

- Reinforce and reiterate rights specifically protected in existing legislation;
- Clarify areas of the law that are unclear or poorly written in existing legislation; and
- Remedy discriminatory provisions in existing legislation.

It should also examine how to:

- Ensure more equality, dignity and liberty for women in marriage, and
- Ensure financial and economic security and independence for women and children during marriage and after its dissolution.

For each of the below issues, please note:

A. Current legislative reality

- What current laws say about the issue
- What current laws say (if anything) about the possibility of addressing that issue specifically in a clause in the marriage contract

B. Possible, strategic and ideal crafting of this issue in a marriage contract clause

- The *concrete right* that women should ideally enjoy through a marriage contract clause in order to protect and promote her human rights
- The burden of proof – on whom and how – to prove non respect of the clause
- Possibilities for an effective *remedy* – damages and reparations – in case of non respect of the clause
- Legal obstacles you can foresee to the application and recognition by the courts of the legal validity of this ideal clause

I. **Dower**

- Possible elements include: its amount, form (cash, real estate, in-kind, etc.), payment terms and method – all at once or deferred (if deferred, when she can claim it and under what conditions), the idea that the dower belongs exclusively to the woman, etc.

2. **Contribution to household obligations**
 - Possible elements include: who is responsible for which expenditures, how contributions will be calculated, etc.
3. **Free use and disposal of one's salary**
4. **Decision-making on family affairs**
5. **Division of household chores and responsibilities**
6. **Decision-making and responsibility for children's upbringing**
7. **Polygamy**
8. **Family planning**
 - Possible elements include the number of children, timing, spacing between pregnancies, family planning methods, etc.
9. **Work**
 - Possible elements include freedom to choose one's profession, to work outside of the home without prior authorization or permission, etc.
10. **Education**
 - Possible elements include the free choice of studies, right to continue studying or return to school after marriage, etc.
11. **Freedom of movement**
 - Possible elements include freedom to travel, to visit one's family, etc.
12. **Ill treatment**
 - Possible elements include the definition of ill treatment (physical violence, disrespect, emotional violence, cruelty), etc.
13. **Marital home**
 - Possible elements include chosen by common agreement, separate from the in-laws, rights of use and residence despite the owner in title, right to accompany the husband if he leaves the city/country instead of being forced to stay in his family's home, etc.

In terms of the marital home, think particularly about:

 - (a) Right to live in during the marriage
 - (b) Right to live in during any period of separation
 - (c) Right to live in after divorce (and under what conditions – in exchange for compensation or free of charge, etc.)
 - (d) Definitive attribution of ownership or disposal after divorce
14. **Financial support for the wife**
 - Possible elements include: its amount, form (cash, real estate, in-kind, etc.), payment terms and methods, how the amount will be calculated, payment schedule, etc.

In terms of financial support for the wife, think about its payment:

- (a) during marriage – conditions or none for its allocation (for example, even if she refuses cohabitation, even if she has outside income, etc.)
- (b) after divorce – for how long, conditions to continue to receive it or have it terminated, etc.

15. Financial support for the children

- Possible elements include: its amount, form (cash, real estate, in kind, etc.), payment terms and conditions, how the amount will be calculated, payment schedule, etc.

In terms of financial support for the children, think about its payment:

- (a) during marriage – conditions or none for its allocation (for example, even if the wife refuses cohabitation, even if she has outside income, etc.)
- (b) after divorce – for how long, conditions to continue to receive it or have it terminated, etc.

16. Child custody and guardianship after divorce

- Possible elements include renunciation by the husband of his option to have child custody taken away from the mother for reasons provided for in national laws (freedom to travel with children, relocate to another town or country, and get remarried), designation of the wife as legal guardian of her children, etc.

17. Divorce

- Possible elements include:
 - *tamleeq* or *asmaa* for the wife: - conditions for? Or without conditions?
 - renunciation by the husband of his right to repudiate his wife
 - *khula* – conditions for, amount of compensation
 - Consolation Gift – under what circumstances, what conditions, payment terms and methods?

18. Marital property

- Possible elements include:
 - Rights of management and disposal (sale, rent, donation) of property acquired by each spouse before the marriage
 - Rights of management and disposal (sale, rent, donation) of property acquired during the marriage by the two spouses together
 - Rights of management and disposal (sale, rent, donation) of property acquired during the marriage by one spouse individually
 - Responsibility for debts contracted by one or both spouses – before and during marriage
 - Bank accounts – right to open, manage and dispose of, etc. by one or both spouses
 - Inheritance rights between spouses

Framework for Interviews with Decision-makers

Guide for meetings with NGOs, lawmakers and authorities responsible for marriage contracts

The document is designed to help develop a questionnaire for meetings with NGOs, lawyers, lawmakers and authorities responsible for drawing up and concluding marriage contracts in the context of an action-research that Global Rights is implementing in collaboration with partner lawyers for this project in three target countries in the Maghreb.

The multifaceted methodology for this project is based in large part on community consultations with groups of women at the grassroots level. While these community consultations will allow us to gather information on women's experiences, concerns, opinions and suggestions for a model marriage contract containing all conditions desired by women to guarantee and protect their human rights, we also need to understand lawmakers' and other concerned decision-makers' ideas and opinions based on their experiences and practices.

The results of these individual interviews will be compared with and added to those from the community consultations in the three countries so that we may include all points of view and suggestions of different actors in the model marriage contract eventually developed.

In order to include the opinions of all stakeholders in this project, the methodology for this action-research includes:

A- One meeting in each country with a local NGO working on women's issues.

B- Structured meetings in each country with local authorities and other persons responsible for the drafting and conclusion of marriage contracts in order to gather information on the legal specificities of each country as well as on any previous official initiatives on this issue.

This protocol provides some basic guidelines on things to take into consideration for these interviews, specifically:

- 1) Terminology
- 2) Objectives of these meetings and interviews
- 3) Topics to be discussed during the meetings and interviews

The regional nature of this action-research raises the problem of comparison: while respecting each country's specificity, identifying issues and drafting marriage contract clauses that recognize and take into account this specificity, it is important that the methodology, topics and questions be the same in the three countries. A common approach to the issue and questions to pose are crucial factors to be able to identify points in common in the final results. For this reason we hope that this guide will help the partner lawyers in the three countries create a certain coherence among these meetings.

I. Terminology

1. *Lawmaker or decision-maker*: Someone who works at a strategic level with a particular governmental institution and among their functions is the promulgation of laws and taking of decisions that have an impact on marriage contracts.
2. *Officials responsible for marriage contracts*: This designation might be confusing and may have different meanings in different countries. For this research, we are referring to government bodies directly charged with drawing up and concluding marriage

contracts. For example, in Morocco, the *adoul*, as the public institution spouses address to draw up their marriage contract. There may be more than one such institution or official charged with this function in the same country. We may also add judges, particularly the Family Court judges.

3. *NGO*: A local non governmental organisation working directly on women's rights in marriage divorce and the family generally.

II. Objectives of the meetings:

In this action-research, partner lawyers will hold two types of interviews, each with its own aims and objectives. One is an in-depth interview with a local NGO on the topic of the marriage contract, and the other is a semi-structured interview with decision-makers and officials responsible for marriage contracts.

1. *Objectives of interviews with decision-makers and officials responsible for marriage contracts:*

The main objective of these interviews is to gather information on the official position on and understanding of the marriage contract as an administrative document and its role in the protection and promotion of women's human rights, as well as on any measures taken to reinforce the role and use of this document. Here we are looking to gather opinions and experiences of a number of decision-makers and officials responsible for marriage contracts based on their respective functions.

The community consultation results may be used as the basis for elaborating questions for these interviews, but without informing the interviewees about the origin of such questions (ex : avoid saying things like « the women said...what do you think » or « I am asking this question because the women said... »)

The interviews are designed to gain insights into the decision makers' and officials' knowledge and understanding of the following:

1. The role and nature of the marriage contract as a legal document according to each country's national legislation?
2. How may the marriage contract be said to protect women's human rights?
3. Characteristics of women who stipulate clauses in their marriage contracts?
4. The types of conditions women can stipulate into the marriage contract and their legal value?
5. Obstacles that prevent women from stipulating conditions in their marriage contract?
6. Governmental initiatives to motivate and reinforce the stipulation of negotiated clauses into marriage contracts?
7. What can the government do in terms of laws, practices, training, awareness-raising, and information campaigns to reinforce the stipulation of negotiated clauses into marriage contracts?

2. *Objectives of interviews with NGOs :*

An in-depth interview with a local NGO working on women's rights in the form of an open discussion guided by a list of questions that the lawyers in the three countries will elaborate based on the six following points:

1. NGO experiences with the marriage contract
2. NGO evaluation of the marriage contract's importance in women's lives
3. NGO experiences and evaluations of State institutions and personnel and the way the latter treat women who wish to stipulate conditions in their marriage contracts
4. NGO assessment of obstacles to women stipulating conditions into their marriage contract
5. NGO evaluations of governmental initiatives
6. NGO recommendations for empowering women to obtain a marriage contract with rights protective clauses

3. *Selection of interviewees :*

The methodology of this action-research necessitates interviews with a local NGO working on women's rights issues, decision-makers and officials responsible for drawing up and concluding marriage contracts.

A. Choice of local NGO :

While your own NGO may be specialized in women's legal rights, it is important to integrate other local NGOs into this project, especially those local women's organisations with experience working directly with women on legal matters related to marriage and divorce, either through human rights education, legal orientation or court accompaniment for women.

The selection of the local NGO should be made based on the following criteria:

1. The NGO works specifically on women's rights issues;
2. The NGO does grassroots level work with women;
3. The NGO has direct experience with issues related to the marriage contract.

B. Choice of decision makers and officials :

In each country, the lawyer researcher should hold interviews with at least 2 decision-makers, 2 officials responsible for concluding marriage contracts, and 2 family court judges, who should be:

1. Responsible for legislation or policies or who contribute to decision-making on issues related to the marriage contract;
2. Persons working at the national level;
3. Responsible for legislation or policies at the regional or local level if their decisions have an impact on marriage contracts and related procedures;
4. Directly responsible for drafting and/or concluding marriage contracts.

Please note that these indications are merely suggestions and are not exhaustive. You may include different ministry staff and other persons fulfilling the mentioned characteristics.

4. *For the interviews*

As for the community consultations, interviewing is a specialized technique that requires preparation, clarity of communication with the interviewees, and the ability to listen, record, and verify information gathered.

1. Prepare the interview

The following steps may be useful in order to prepare the interviews:

- ⇒ Identify the organisation you will interview (see section 3 above).
- ⇒ Identify the most appropriate persons within each organisation you want to interview.
- ⇒ Communicate clearly with them to explain :
 - The goal of the research
 - The regional nature of the research
 - The goal of the interview
 - The amount of time necessary for the interview
 - Reasons why their participation is important for the success of the project.
- ⇒ Prepare for recording the interview. It's important that two persons conduct the interview so that one may take detailed notes and record the interview if possible.
- ⇒ Prepare a list of clear questions prior to the interview.

2. During the interview :

The following steps may be useful in order for conducting the interviews:

- ⇒ Avoid using questions that can be answered with a mere yes or no. It is better to use open ended questions beginning with: who, what, where, when, why and how.
- ⇒ Be sure to probe and verify that you have received sufficient explanations, for example:
 - Could you explain once more?
 - Could you give us an example of?
 - How can we make this happen?
 - Why does this happen?
- ⇒ It is important to summarize what the person said in response to each question to confirm what the person wanted to say exactly. This is a good time to ask if they have anything else they'd like to add.
- ⇒ Ask the interviewee to illustrate his/her responses with concrete examples.
- ⇒ Our goal is not to educate or inform the interviewees, but rather to collect their opinions and assess their degree of understanding of the topic. Sometimes interviewees may contradict themselves or provide false information. It is very important to clarify what they are saying but at the same time avoid correcting their information.
- ⇒ It may be easier for people to speak more openly towards the end of the interview when they feel more comfortable with the topic.
- ⇒ At the end of the interview it is important to ask if there is anything the interviewee would like to add.
- ⇒ You may also ask them for recommendations of other people to interview.
- ⇒ Please ask the interviewee for any documents, reports, legal texts, or other materials that might be useful for this research.

3. After the interview

The following steps may be helpful as follow-up to the interviews:

- ⇒ Be sure that there are no misunderstandings or points made during the interview that you don't understand.

- ⇒ Note any remarks or observations from the interview that could be the basis for the analysis of all of the interviews.

III. Topics to raise during the interviews:

At the beginning of each interview, please explain that what you are interested in is the interviewee's own opinions and assessments based on his /her responsibilities and experiences related to the topic.

Introduction: We are here to discuss your views on the marriage contract and its importance in women's lives, as well as the reinforcement of women's human rights through the stipulation of clauses into the marriage contract.

Questions (1):

- 1) First of all, I'd like to ask your opinion on the marriage contract and its importance in women's lives?
- 2) In your view, what are the chances that women will be able to negotiate a marriage contract with specific conditions?
- 3) Which laws may be cited that encourage women to integrate conditions into their marriage contract?
- 4) Are there any laws on marital property?
- 5) Are there any governmental initiatives on the marriage contract (for example, campaigns to register marriages, initiatives to standardize a detailed marriage contract...)?
- 6) Are there any customs that, while not having the status of a law, pertain to the marriage contract and stipulated conditions, either nationally or in certain regions?

(Please focus on current laws, making specific reference to any recent or planned reforms).

Questions (2):

- 1) To your knowledge are there women who stipulate additional conditions into their marriage contract? What type of conditions?
- 2) Based on your functions, what are the characteristics of women who stipulate conditions into their marriage contracts?
- 3) Which women have the possibility to stipulate additional conditions, and which women have difficulties to do so?
- 4) Could you give us any statistics or facts on the:
 - ⇒ Estimation of the number or percentage of unregistered marriages?
 - ⇒ Estimation of the number or percentage of marriage contracts with additional conditions negotiated between the spouses?

Main Questions

Questions (3):

- 1) What is the content of the current marriage contract? Is it legally possible to agree on a different content?

- 2) Is it necessary to draw up a separate marital property contract or may this be included in the marriage contract itself?
- 3) Who are the authorities charged with defining and modifying the marriage contract content?
- 4) What is the procedure for amending the content of a marriage contract?

(The emphasis here is on the freedom of local authorities to take the initiative to implement particular measures at the local level).

- 5) Who are the authorities responsible for drafting marriage contracts? What is the extent of their powers?
- 6) Who are the authorities responsible for concluding a marital property contract?
- 7) Could you give us an idea on the actions and steps that must be taken to conclude a marriage contract, by the future spouses as well as by the authorities charged with drawing it up?

Questions (4)

- 1) What are the conditions that can be included in a marriage contract?
- 2) What measures could guarantee the respect of these conditions? (Measures that exist in current laws or that could be proposed)
- 3) Who do you think are the most appropriate authorities to draw up marriage contracts?
- 4) Who do you think are the most appropriate authorities to draw up marital property contracts?
- 5) What would be the best way to render legally applicable a standard marriage contract with detailed clauses?
- 6) Have there been any past official initiatives or are there any future projects planned related to the marriage contract?
- 7) What could the government do in terms of legislation, practices, training, awareness-raising campaigns, etc. to launch the use of a model marriage contract?

Interview wrap-up

- 1) At the end of the interview it is important to ask if the interviewee has anything to add.
- 2) Please ask the interviewee for any documents, reports, legal texts, or other materials that might be useful for this research.

Annex 4:

Internet Resources

In French or Arabic:

<http://www.wluml.org/>

Femmes sous Lois musulmanes

http://www.mymerhaba.com/fr/main/content.asp_Q_id_E_3366

Droit Civil : Le régime matrimonial turc

<http://www.le-mariage.com/contrats.htm>

Le contrat de mariage sur les biens matrimoniaux – pourquoi et comment ?

<http://www.netenviesdemariage.com/preparation/contrats-de-mariage.php>

Les régimes matrimoniaux en France

<http://finances.fr.msn.com/projets/mariage/article.aspx?cp-documentid=991185>

Quel contrat de mariage choisir ?

<http://www.legifrance.gouv.fr>

Législation française, y compris le Code civil.

<http://www.irmcmaghreb.org/actujuridq/actuleg.htm>

Répertoire des sites web avec l'actualité législative et juridique au Maghreb.

<http://www.irmcmaghreb.org/>

Institut de Recherche sur la Maghreb contemporain, avec de nombreux liens vers des sites juridiques et gouvernementaux du Maroc, Algérie et Tunisie.

<http://www.toile.org/>

Répertoire des sites juridiques spécialisés

<http://droit.francophonie.org/>

Droit francophone est le portail de diffusion libre du droit de l'Agence intergouvernementale de la francophonie. Vous y trouverez:

- Un portail de plus de 3500 hyperliens juridiques évalués et commentés
- Des collections juridiques nationales et régionales
- Un moteur de recherche du Web juridique francophone

http://www.servicedoc.info/mot.php3?id_mot=350

Site web de Juriblog avec moteur de recherche et répertoire des sites juridiques spécialisés.

Morocco:

<http://ejustice.justice.gov.ma/justice/>

Site Web du Ministère de la Justice au Maroc.

<http://www.ccdh.org.ma>

Site Web du Conseil Consultatif des Droits de l'Homme au Maroc.

<http://www.accpuf.org/mar/>

Site web du Conseil constitutionnel au Maroc – le site web en général à <http://www.accpuf.org/> de l'Association des cours constitutionnelles de 41 pays ayant en partage l'usage de français contient une diversité de jurisprudence constitutionnelle parmi d'autres ressources.

<http://www.techno.net.ma/femmes/guide.htm>

Les droits de la femme musulmane au Maroc – avec un contrat de mariage type.

Algeria :

<http://www.mjjustice.dz/>

Site web du Ministère de la Justice en Algérie.

<http://www.joradp.dz>

الامانة العامة للحكومة و تتضمن الجريدة الرسمية

<http://www.apn-dz.org/>

المجلس الشعبي الوطني

<http://www.majliselouma.dz/>

مجلس الامة

<http://www.elmouradia.dz/>

رئاسة الجمهورية

<http://www.coursupreme-dz.org>

المحكمة العليا

<http://www.conseil-etat-dz.org/>

مجلس الدولة

Tunisia:

<http://www.jurisitetunisie.com/textes/index.html>

Site avec les codes et lois en texte intégral, les Documents en ligne,

Jurisprudences et Thèses

<http://www.chambre-dep.tn/>

In English:

http://www.beliefnet.com/story/73/story_7375_1.html

<http://weekly.ahram.org.eg/2000/484/li1.htm>

<http://family.jrank.org/pages/442/Egypt-Islamic-Marriage-Contract.html>

<http://muslim-canada.org/prenuptial.pdf>

<http://www.wluml.org/english/pubs/pdf/misc/talaq-i-tawfid-eng.pdf>

<http://www.un-instraw.org/revista/hypermail/alltickers/fr/0334.html>

http://www.astrolabe.com/product/1897/Your_Islamic_Marriage_Contract.html

<http://www.jaffari.org/files/literature/Islamic%20Marriage%20Contract.pdf>

http://www.karamah.org/articles_marriage_contract.htm

<http://www.brandeis.edu/projects/fse/Pages/marriagecontracts.html>

<http://www.minaret.org/azizah.htm>

http://www.niqabiparalegal.com/archives/2006/08/american_muslim.php

<http://www.wluml.org/english/newsfulltxt.shtml?cmd%5BI57%5D=x-I57-551952>

<http://waf.gn.apc.org/journal8p29.htm>

<http://www.islamfortoday.com/prenuptial.htm>

[http://wluml.org/english/newsfulltxt.shtml?cmd\[I57\]=x-I57-562251](http://wluml.org/english/newsfulltxt.shtml?cmd[I57]=x-I57-562251)

Annex 5:

Directory of Project Partners

<i>MOROCCO</i>			
Lawyer/NGO	Address	Telephone & Fax	E-mail
Association de Développement de la vallée de Dra (ADEDRA)	Avenue Mohamed V Zagora 49500 Maroc	Tel : (212)24-84-76-11 Fax : (212)24-84-70-35	adedra@menara.ma
Association Tafoukt Souss pour le développement de la femme	Rue 358, n°22 Amsernat Agadir	Tel : (212)28-22-25-49 Gsm : (212)66-52-58-12	bouchaitza@yahoo.fr tafoukt_souss@gmail.com
Association Amal pour la Femme et le Développement	Hay Takadoun, Rue 7 n°7 El Hajeb	Tel/Fax: (212)35-54-10-36	association.amal@gmail.com
Association El Amane pour le développement de la femme	Derb Gabss n°203, Sidi Youssef Ben Ali-Marrakech	Tel: (212)24-40-43-79 Fax: (212)24-40-97-07 Gsm: (212)68-16-47-03	acdmarakech@yahoo.fr halimaoulami@yahoo.fr
Association Tawaza pour le Plaidoyer de la Femme	Avenue Ibrahim Eroudani Immeuble Laamarti n°22 – Martil	Gsm : (212)70-77-21-91 Fax: (212)39-68-88-17	asso_tawaza@yahoo.fr maya_martil@hotmail.com
Association des jeunes Avocats de Khemisset	32, Avenue Marrakech Khemisset	Tel/Fax : (212)37-55-97-64 Tel : (212)37-55-97-64	ajakh2006@yahoo.fr
<i>ALGERIA</i>			
Association Féminine pour l'Epanouissement de la personne et l'Exercice de la Citoyenneté (AFEPEC)	13, rue Monge, Oran Algérie	Tel&Fax : (213)41 39-59-81 Gsm : (213)71-21 31-96	afepec@yahoo.fr
Association Social ESPOIR-TLEMCEM	Adresse Postale : B.P.80. Poste Boudghène - 13000 Tlemcen Algérie	Tel/Fax : (213)43- 20-83-96 Gsm : (213)62-09-21-85	km_taleb@yahoo.fr

Association El Hayat pour les sages femmes de Skikda	Secteur Sanitaire de Skikda Etablissement Publique de Santé et de proximité Arkat Zohra-Skikda Algérie	Gsm : (213) 77-14-03-789 Fax : (213)-38-76-40-98	boutaleb_mf@hotmail.fr
Association Amusnaw	B.P 123, Tizi Ouzou Algérie	Tel : (213)71-13-88-77 Fax : (213) 26-41-14-78 Gsm : (213)73-04 87-83	amusnaw15@hotmail.com faroudjm@yahoo.fr Site web : www.amusnaw.new.fr
B'net Fatma Nsoumer	32, Rue Louis Roger Château 9 AlBiar Alger - Algérie	Tel : (213)21-79-02-31 Gsm : (213)50-04-27-82	bnet_f_nsoumer@yahoo.fr zekirisabrina20@yahoo.fr
Charifi Asma Lawyer	32, Rue de Tripoli, Hussein Dey- Alger, Algérie	Tel/Fax : (213)21-77-38-68 Gsm : 213-550-04-27-82	cherifi_as@hotmail.com
TUNISIA			
Fondation Tunisienne pour le Développement Communautaire	Siège 11, rue d'Irak 1002 Lafayette Tunis	Tel : (216)71-84-32-62 Fax : (216)-71-78-25-13	ayari.wassila@yahoo.fr ffdc@planet.tn agro.services@planet.tn
Fondation Tunisienne pour le Développement Communautaire	Siège de Siliana		
Fondation Tunisienne pour le Développement Communautaire	Siège de Zaghouane		
Fondation Tunisienne pour le Développement Communautaire	Siège de Kasserine		
Association Amal pour la Famille et l'Enfant	8 Rue Aboudoulema par Rue de Palestine 1002 Tunis	Tel/Fax : (216)71-83-39-29	semiamassoudi@yahoo.fr malek.kefif@laposte.net
Saïda Ben Garrach Lawyer	34, rue Charles de Gaule Tunis	Gsm : (216)20-57-51-09 Fax : (216)71-83-15-25	saidagarrach@yahoo.fr

Conditions, Not Conflict :
Model Marriage Contract

MODEL MARRIAGE CONTRACT¹

In accordance with (insert the relevant article from the Family/Personal Status Code) which provides that spouses may stipulate negotiated clauses and conditions into their marriage contract, (insert the spouse's names and any other required personal information) hereby agree as follows:

I. General Provisions²

Article 1: Definition and purpose of marriage³

Marriage is a legal contract by which spouses mutually consent to unite in a common and enduring conjugal life. Its purpose is fidelity, virtue and the creation of a stable family (Moroccan Family Code).

Marriage is a consensual contract concluded between spouses in accordance with the law. Its objectives among others are to found a family based on affection, goodwill and mutual assistance, morally protect the two spouses, and preserve family ties (Algerian Family Code).

Article 2: Mutual Rights and Obligations⁴

The spouses mutually undertake to:

- Maintain good conjugal relations, mutual respect, benevolence, affection, assistance, support and harmony, and refrain from causing harm to the other;

¹ This model is intended to guide future spouses as they draft their marriage contract by providing suggestions for topics to discuss as well as examples of clauses to stipulate. It is designed to remind women in particular of their rights, facilitate negotiation of the contract between spouses, and provide public officials and private professionals involved in drawing up marriage contracts with a wide range of clauses to propose to couples. The most appropriate and advantageous solutions for each couple will depend on their individual situation. As a result, spouses are encouraged to choose and write clauses that will best meet their needs, while still respecting the goal of creating a contract with rights protective clauses for women and promoting equality within marriage. Couples may also add to this model any additional clause that they consider useful, as well as modify their contract at any point during the marriage to account for changes in circumstances. This model contract is only an example and does not constitute professional legal advice. Future spouses are encouraged to consult the appropriate public authorities or a private legal professional to verify the legal validity of clauses stipulated into their actual marriage contract.

² The first two provisions are stipulated in order to set the general framework of marriage, orient the relationship between spouses and serve as the basis for interpretation of the contract terms and conditions.

³ This provision may be taken directly from the relevant provisions in the Family/Personal Status Code.

⁴ This provision is intended to serve as a reminder of the general principles governing the relationship between future spouses, and may be inspired by but not necessarily limited to those contained in the relevant provisions of the Family/Personal Status Code.

- Collaborate on family management, contribute to the preservation and development of the family's material and moral interests, and equally share the chores and responsibilities necessary to do so ;
- Consult with the other on decisions concerning the management of the family's material and moral affairs.

Article 3: Dower⁵

In accordance with (insert the relevant article from the Family/Personal Status Code), the husband agrees to give his wife a dower of (stipulate the form of the dower, whether in cash, in kind, real or movable property, etc.), of a total amount or value of _____. This dower is given to the wife for its moral and symbolic value only, as an expression of his desire to marry her and to build a stable family based on affection and good amicable relations.

The wife hereby declares that she has personally received _____. The balance of _____ will be paid immediately and unconditionally upon the wife's request.

The entirety of the dower is the exclusive property of the wife. She may use it at her discretion and the husband may not ask her for anything in return.

II. Provisions on personal rights

Article 4: Monogamy⁶

As provided for by (insert the relevant article from the Family/Personal Status Code), the spouses hereby agree that their marriage will be monogamous. The husband hereby commits not to take another wife for the duration of the present marriage.

Article 5: Marital home

The two spouses agree that the marital home will be chosen by mutual agreement and that they will reside in independent and separate accommodation.

The two spouses agree that they will not individually without the consent of the other dispose of the rights by which the family lodging or its furnishings are ensured, and this irrespective of who has legal title to the property in question.

⁵ The dower is included in this preliminary section of the contract in order to clearly situate its symbolic nature as the consideration necessary for the contract's validity. Provisions related to financial relations between spouses during marriage and upon its dissolution may be found below in a separate section of the contract.

⁶ This clause may be useful not only for couples in countries like Morocco and Algeria where polygamy is still legal, but also in cases of mixed marriages where the husband comes from a country where polygamy is legal as well as in cases where a couple from a country where polygamy is prohibited relocates to a country where it is permitted.

Article 6: Right of the wife to work

The husband undertakes not to interfere in any way with the wife's exercise of her fundamental right to work, including in her decisions to start, continue or cease working as well as in her choice of profession, hours, place or conditions of work.

Article 7: Right of the wife to education

The husband undertakes not to interfere in any way with the wife's exercise of her fundamental right to education or training, including in her decisions to start, continue or cease studies as well as in her choice of subjects, type of training, hours or location.

Any costs associated with the wife's education or training will be paid by (specify if these costs will be shared between the spouses and if so according to which %, or if these costs will be covered entirely by one of the spouses).

Article 8: Right of the wife to freedom of movement

The husband undertakes not to interfere in any way with the wife's exercise of her fundamental right to move about freely and unconditionally, including her right to travel within the country or abroad and to visit her friends and relatives.

Article 9: Family planning

In accordance with (insert the relevant article from the Family/Personal Status Code), the spouses hereby agree that all decisions related to family planning shall be made by mutual consent, including those related to the spacing and timing of any pregnancy as well as the number of children to be born.

Article 10: Right to physical and moral integrity

In accordance with the definition and purpose of marriage as well as with the above-mentioned mutual rights and obligations, each spouse hereby undertakes not to abuse the other or any children, whether verbally, emotionally, physically or sexually.

Article II: Children

On Child Custody:

Custody of any children shall be shared jointly by the spouses for the duration of the marriage and in order to protect the children's interests and attend to their upbringing.

In the event that the present marriage is dissolved, the father hereby undertakes not to take legal action to have child custody removed from the mother on the grounds of (insert grounds in the national laws according fathers the right to have child custody automatically removed from the mother, such as her remarriage or relocation far from the father), but to base any such legal action solely on other objective grounds related to the best interests of the child.

The husband hereby undertakes to continue to provide for their children's accommodation expenses even in the event that the mother remarries.

On Child Guardianship:

Legal guardianship of any children shall be shared jointly by the spouses for the duration of the marriage as well as following its dissolution. The husband hereby designates the wife as the testamentary guardian of any children.

On children born from a previous relationship.

Here one may think about stipulating clauses in the event that either or both spouses already have children from a previous relationship. Among the topics that might be considered, kind treatment and responsibilities of the non-biological parent towards his/her stepchildren (support, financial maintenance, accommodation, etc.).

These questions are even more relevant for marriages of single mothers with children born outside of wedlock from a previous relationship, where the latter do not have any legal rights vis à vis their biological father. In this case the new husband might consider committing to designate the child as a beneficiary of his will, as an heir at law (tanzil), as beneficiary of a gift, or any other mechanism provided for in national laws to provide for the child financially and protect his rights like any other child.

Article 12: Divorce⁷

Option 1: Commitment by husband not to repudiate his wife

The husband hereby undertakes not to resort to the repudiation procedure provided for (in Morocco, by articles 78 and subsequent of the Family Code, in Algeria by articles 48 and subsequent of the Family Code).

Should despite this clause the husband resort to the repudiation procedure and the repudiation is authorized by the competent authority, the husband will immediately give his wife (insert the form – cash, in kind, transfer of property – as well as the method for fixing the amount or value) solely as a penalty for violation of this contractual obligation. This penalty is separate and in addition to any damages due for harm caused and the Consolation Gift, these two legal indemnities paid to the wife provided for by the law and their amounts fixed by the competent authorities.

Option 2: Delegation of the husband's right of repudiation to the wife (*tamleeq*)

The husband hereby delegates his right of repudiation to his wife (*tamleeq*) as provided for by (insert the relevant articles of the Family Code, Muslim law), who may exercise this right

⁷ As is the case for polygamy, this clause may be useful not only in cases where repudiation is still legal such as in Morocco and Algeria, but in mixed marriages where the husband comes from a country where repudiation is legal, as well as in cases where a couple from a country where repudiation is forbidden relocates to a country where it is permitted. In an egalitarian approach to family matters, there is no reason for repudiation, whether by the husband or by the wife by *tamleeq* or by *khula*, given the other existing legal options provided for divorce to spouses (mutual consent, irreconcilable differences, or for fault, which includes non respect of contractual obligations). We have nonetheless included the former options above given that the law provides for them and in order to inform and present all possible options to the concerned parties.

unconditionally and without prejudice to the other personal or material rights to which she is entitled according to the law or this contract.

Option 3: Conditions for a compensatory divorce by the wife (*khula*)

In accordance with (articles 115 and subsequent of the Moroccan Family Code, article 54 of the Algerian Family Code), the two spouses hereby agree that the wife may obtain a compensatory divorce without the husband's authorization in exchange for which the husband will receive (insert the form – cash, in kind, transfer of property – as well as the method for fixing the amount or value),⁸ and this without prejudice to the other personal or material rights to which the wife is entitled according to the law or this contract.

III. Provisions on property rights and financial relations

In terms of the spouse's financial relations, each couple will need to draw up marriage contract clauses according to their own specific circumstances in order to most equitably promote the family's materials interests as well as to protect each spouse's rights. For this reason, the following articles are not intended to be set in stone or a standard model for all couples. Rather, they are proposed as tools to help women take all possible factors into consideration and to effectively negotiate a contract that will guarantee their rights during marriage and after its dissolution.

A. Potential topics for consideration

Spouses may consider establishing an equitable and rights protective framework for their financial relations in the marriage contract on the following issues:

- *Contribution to household obligations:* The contribution of each spouse in money, property and/or efforts to household obligations, and clarification of all costs considered household expenses;
- *Financial maintenance:* The husband's financial obligations towards his wife and children after dissolution of the marriage;
- *Property ownership and division:* Definition of personal property and joint property (money, movable property, real estate), ownership of assets during marriage, powers to use, manage and dispose of personal and/or joint property during marriage, and division of property upon dissolution of the marriage.

Note: On this last point, couples may want to reflect on how to establish a framework for ownership of, powers over, and division of the following types of property:

- Assets acquired by each spouse individually prior to the marriage;
- Assets acquired jointly by the spouses during the marriage;
- Assets acquired by one spouse alone during the marriage.

⁸ Clearly it is preferable to stipulate a minimal, or even symbolic, compensation.

B. Criteria to guide decision-making

Spouses may take many different factors into consideration to establish an equitable and rights protective framework for their financial relations and draw up a marital property contract that best takes into account their circumstances, including the following:

- What is each spouse's respective revenue (salaried employment, private or unearned income and rents, retirement plans, other revenue)?
- What is each spouse's respective contribution in money, property and efforts to a family enterprise (business, company, farm, etc.)?
- What is each spouse's respective contribution to domestic labour (household chores, children's upbringing, caretaking responsibilities for older persons or other dependents)?
- What are each spouse's current capacities and future potential contributions to the preceding points?
- Are there any foreseeable changes to the previous points during the course of the marriage (for example, the wife who will completely, partially or temporarily abandon her work or studies after marriage may solicit compensation for lost income and earning potential; the spouse who is still a student at the time of the marriage who will have salaried employment once s/he completes studies will have future income to be taken into account, etc.)?
- Does either of the spouses have a high-risk profession or business (risk of unemployment, bankruptcy, seizure or foreclosure, etc.)?
- What are each spouse's current debts and other financial liabilities (loans, financial maintenance obligations to other persons, children from a previous relationship, etc.)? Does this personal debt confer a benefit upon the entire family? Are there any foreseeable changes during the course of the marriage on this point?
- What assets (cash, movable property, real property) does each spouse own at the time of marriage?
- What does each spouse anticipate receiving as inheritance during the course of the marriage?
- What are each spouse's respective age and state of health?

C. Crafting a framework for financial relations

Spouses may want to reflect on the best way to establish the forms that any future financial transactions or compensations between them will take – payment terms as well as the methods by which any amounts or values will be calculated. Often it may be preferable for example to establish a formula for any future calculations in the marriage contract clause, rather than a fixed sum at the time of marriage.

- How will the amount or value of any future financial transactions or compensations be calculated? Based on a % of the payer spouse's revenue? According to the duration of the marriage? Other criteria?
- What form will this compensation take? Cash, in-kind, transfer of title to property, or other?

- What will the payment schedule be? Weekly, monthly, annual, and for how long? Or is a lump sum payment better?
- How may any compensations or financial transactions be adjusted or modified as necessary over time and to reflect changes in either spouse's financial situation? Periodic adjustments for inflation and cost of living increases? Adjustments for changes in circumstances? (for example, unemployment of payer spouse, increased needs of the wife/children beneficiaries)

D. Drafting conditions

When drawing up clauses governing their financial relations, spouses should consider:

- As was the case with clauses related to their personal rights, noting that this or that specific clause is « in accordance with » or « as provided for by » and then insert the relevant articles from the Family/Personal Status Code;
- Paying particular care that the marital property contract is coherent as a whole and that individual clauses do not contradict each other.

Article I3: Contribution to household obligations

The spouses hereby undertake to equitably share and contribute to household obligations according to their respective revenue, property and efforts. Household obligations are defined as all expenditures and acts required for the family's needs and for the welfare of each and all of its members. This duty shall exist as long as the marriage has not been dissolved and even in the event that the spouses reside separately for any reason whatsoever.

Option 1: The spouses contribute to household expenditures in proportion to their respective revenue.

Option 2: The spouse who assumes responsibility for domestic labour and other household tasks in addition to their salaried work will only contribute (a lower or reduced % of their salary) to household expenditures in consideration of their unpaid efforts in the home.

Option 3: The wife who has salaried employment may freely dispose of her salary and in no event will she be obliged to contribute to household expenditures, which remain solely the husband's responsibility.

Option 4: In the event that the wife works exclusively in the home and has no outside income, the husband hereby undertakes to provide her with (compensation determined by the framework in section C. above) which she may freely dispose of for her own personal use without restriction or condition and which is separate from the husband's contribution to household obligations.

Article I4: Obligation to provide housing and financial support after the marriage's dissolution

In the event the marriage is dissolved, and regardless of which spouse initiates divorce or the type of divorce, the husband hereby undertakes to provide for the wife's housing and maintenance, to the extent possible, at the same standard of living prior to the divorce and according to (compensation determined by the framework in section C. above).

In the event the marriage is dissolved, and regardless of which spouse initiates divorce or the type of divorce, the husband hereby undertakes to provide for any children's housing and maintenance, to the extent possible, at the same standard of living prior to the divorce and according to (compensation determined by the framework in section C. above).

Article 15: Marital Property

(a) Assets acquired prior to the marriage

Each spouse retains exclusive ownership, administration, use and free disposal of all movable and real property s/he acquired prior to the marriage.

(b) Assets acquired during the marriage

The spouses hereby adopt the following framework for the management and ownership of movable and real property to be acquired during the marriage:

Option 1: Each spouse retains exclusive ownership, administration, use and free disposal of all movable and real property that s/he will acquire by any means during the marriage. No division of property between spouses will occur upon dissolution of the marriage.

Option 2: Each spouse retains exclusive ownership, administration, use and free disposal of all property that s/he will acquire during the marriage that is registered in his or her name. No division of this property between spouses will occur upon dissolution of the marriage.

All other property acquired during marriage by one or both spouses is considered joint property. The spouses hereby agree that decisions concerning the administration, use and disposal of this property will be taken by (each spouse may act alone, or after consultation with the other, or joint management). Upon dissolution of the marriage, joint property will be divided equally between the spouses (or by any other % or formula agreed upon by the spouses determined by the framework in section C. above).

Objects intended for individual personal use as well as property acquired free of charge (inherited or by gift) by either spouse during the marriage are excluded from this definition of joint property.

Option 3: The spouses hereby agree that the movable and real property listed below shall be considered joint property regardless of which spouse acquired it or in whose name it is registered:

The spouses hereby agree that decisions concerning the administration, use and disposal of this property will be taken by (each spouse may act alone, or after consultation with the other, or joint management). Upon dissolution of the marriage, this joint property will be divided equally between the spouses (or by any other % or formula agreed upon by the spouses determined by the framework in section C. above).

Each spouse retains exclusive ownership, administration, use and free disposal of all other movable and real property that s/he will acquire by any means during the marriage not included in the above list.

Option 4: Each spouse retains exclusive ownership, administration, use and free disposal of all movable and real property that s/he will acquire by any means during the marriage.

Nonetheless, upon dissolution of the marriage each spouse shall be entitled to $\frac{1}{2}$ of the net profits of the other's spouse's estate.⁹

Property acquired free of charge (inherited or by gift) by either spouse during the marriage is excluded from the calculation of net profits.

Option 5: All property acquired during marriage by one or both spouses is considered joint property.

The spouses hereby agree that decisions concerning the administration, use and disposal of this property will be taken by (each spouse may act alone, or after consultation with the other, or joint management). Upon dissolution of the marriage, this joint property will be divided equally between the spouses (or by any other % or formula agreed upon by the spouses determined by the framework in section C. above).

Objects intended for individual personal use as well as property acquired free of charge (inherited or by gift) by either spouse during the marriage are excluded from this definition of joint property.

IV. Final provisions

Article 16: Penalties and remedies for non respect of this contract

The non respect or violation by one of the spouses of any provision(s) of this contract shall be penalized or compensated by (insert the manner by which the spouses agree to penalize or compensate for violation of contractual obligations, which may include a transfer of property, a sum of money, the exercise by the wife of her right to *tamleeq*, or other).

Article 17: Retroactivity¹⁰

The spouses hereby agree that articles (insert the numbers of the desired clauses) will have retroactive effect dating back to the conclusion of their marriage on (insert date of marriage).

⁹ In other words, each spouse shall have the right to receive from the other the sum of the following calculation: Value of the other spouse's estate at the time of the marriage's dissolution – Value of the other spouse's estate at the time of marriage x 50%. The idea is that each spouse benefits by $\frac{1}{2}$ to the extent that the other spouse's estate has earned a profit during the course of the marriage. The respective profits compensate and partially cancel each other out, so it is really the excess or difference that is divided between spouses.

¹⁰ This clause may be of particular relevance for spouses already married for some time without a detailed marriage contract and who would like to draw one up during the course of their marriage. In particular a retroactivity clause may be useful for provisions related to property rights and financial relations.

All other provisions have legal effect upon signature of this contract and do not have retroactive effect.

Article 18: Contract modification

Any amendment, codicil, modification, waiver or termination of the agreement must be recorded in writing and signed by both spouses.

Conditions, Not Conflict :

Promoting Women's Human Rights in the Maghreb
through Strategic Use of the Marriage Contract

ΣΥ ΜΕΘΕΣ ΜΟ ΗΤΟΟ, ΣΥ ΜΕΨΣ ΜΟ ΙΟΜΟΟ :

ΜΟΜΣΣΣΥΟ | ΣΨΟΨΟ | ΗΣΥΟΣΙ | ΨΣΥΟΣΘ

ΣΣΣΣΟΙ Θ ΗΨΨΣΙ | ΣΠΣΨ ΣΨΟΠ



نكتب في الوثام لنقرأ في الخصام :

تعزيز حقوق المرأة الغاربية من خلال عقد زواج مفصل



Conditions bien pensées, conflits évités :

Promouvoir les droits humains des femmes au Maghreb
à travers l'utilisation stratégique du contrat de mariage