Baker McKenzie.

# Fighting Domestic Violence

Pro Bono Initiative

## Middle East and North Africa

In association with

GLOBAL RIGHTS for WOMEN Justice for Victims of Violence

EVERY WOMAN TREATY

Baker McKenzie.

# Morocco

## Domestic Violence Legislation

> "...the Moroccan government tends to encourage policies aimed at reducing violence against women."

# Morocco

# 1 Legal provisions

## 1.1 What are the relevant statutes and codes?

As a preliminary remark, Morocco is part of the African Union but has not signed nor ratified the Maputo protocol. Morocco is a party to the 1979 Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Morocco ratified the CEDAW on 21 June 1993 but has declarations regarding Article 2, Paragraph 4 of Article 15 and reservations toward Article 29 of the CEDAW as they contravened some aspects of the Moroccan personal status code and the Islamic sharia.

**Applicable local laws**

Local applicable laws regarding domestic violence are as follows:

- The Moroccan constitution, which prohibits, among others, (i) discrimination, (ii) harming moral or physical integrity of any person under any circumstances whatsoever and by any party whatsoever, private or public, and (iii) cruel, inhuman or degrading treatment or treatment that offends human dignity.
- The Moudawana (Moroccan personal statute and family code), as reformed in 2004.
- Some provisions of the Moroccan Penal Code and the Penal Procedure Code, in particular as amended by Law No. 103-13 regarding the fight against violence towards women as promulgated by Dahir No. 1-18-19 of 5 Jumada II 1439 (22 February 2018) ("**Law No. 103-13**"). Such law reinforces the provisions applicable to violence against women and has the merit of recognizing certain forms of abuse that many women suffer from their husbands and families.

## 1.2 What is the controlling case law?

As Law No. 103-13 has been recently adopted there is no controlling case law per se. However, there is case law that could set a precedent for cases of marital rape. The wife in this case was able to prove the brutal nature of the matter by producing medical evidence. Despite the fact that Law No. 103-13 does not provide for marital rape, the Tangier court referred to the Moroccan penal code and its Articles 400 and 485 which stipulate "whoever, voluntarily, wounds or beats another person or commits any other violence or assault, either without causing illness or incapacity, or without causing personal illness or incapacity to work for not more than twenty days, shall be punished by imprisonment for one month to one year and a fine of 200 to 500 dirhams or by one of these two penalties." Article 485, for its part, details the penalties that can range from "five to ten years for any indecent assault committed or attempted with violence against persons of

either sex." The court's ruling sentenced the man to two years' imprisonment, a fine of MAD 2,000 and a payment to the victim of MAD 30,000 as compensation.

## 1.3 What are the specific parts of the court system that address domestic violence?

The Moroccan constitution prohibits discrimination on the basis of sex, just as it prohibits physical or moral attacks. However, the Moroccan Penal Code does not yet ensure the effective protection for women against violence and discrimination specifically directed against them. As previously mentioned, the passing of Law No. 103-13 on combatting violence against women criminalizes other aspects of violence against women such as forced marriages and sexual harassment. It also doubles the penalty for those who threaten another person with death or other injury if the perpetrator is a spouse/former spouse, fiancé/former fiancé, ascendant and or legal guardian. The recently adopted law has also introduced the setting up of violence management units, which has greatly facilitated the lodging of criminal complaints.

## 1.4 What are potential causes of action?

The potential causes of action provided for by Law No. 103-13 are as follows:

- physical violence (i.e., for pregnant women as well)
- failure to assist a person in danger
- breach of professional secrecy
- eviction from the matrimonial home
- sexual harassment
- aggression
- exploitation
- mistreatment or violence committed against women or minors
- prohibition of the convicted person from contacting the victim or approaching the victim's location or communicating with the victim
- kidnapping or false imprisonment
- insult against a woman on the basis of her sex
- libel against a woman on the basis of her gender
- dissipation or assignment of property in bad faith, with the intention of harming the other spouse or the children or of circumventing the provisions of the Family Code concerning alimony, housing, rights arising from the breakdown of the marital relationship or the distribution of property

# 2 Introduction: framework guiding domestic violence law

## 2.1 Are there civil and criminal legal remedies for domestic violence victims?

Yes, these are provided for in Law No. 103-13. They vary from fines to imprisonment depending on the nature and gravity of the infraction.

## 2.2 Is protection from domestic violence identified in national law as a human right?

In its title II, named "fundamental rights and freedom," the Moroccan constitution prohibits, among others, (i) discrimination, (ii) harming the moral or physical integrity of any person under any circumstances whatsoever and by any party whatsoever, private or public, and (iii) cruel, inhuman or degrading treatment or treatment that offends human dignity.

## 2.3 Has your country signed and ratified the conventions?

Morocco has ratified the 1969 Vienna Convention on the Law of Treaties, which is reflected in the new constitution by the primacy of duly ratified international conventions over domestic law.

Morocco is party to the CEDAW. However, it has declarations regarding Article 2, Paragraph 4 of Article 15 and reservations towards Article 29 of the CEDAW as they contravened some aspects of the Moroccan personal status code and the Islamic sharia.

In the judicial field, Morocco has concluded bilateral judicial agreements with several European member states.

## 2.4 If it has ratified the Maputo Protocol, how has it been implemented into national law (African Union member states only)?

Morocco has not ratified the Maputo Protocol, despite being part of the African Union.

## 2.5 If it has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law?

We are not aware of any explicit implementation of this recommendation. However, please note that the Moroccan government tends to encourage policies aimed at reducing violence against women.

## 2.6 If the conventions have not been ratified or signed, is it envisaged that your country will do so?

Morocco has not signed nor ratified the Maputo Convention, even though it is part of the African Union.

Regarding the CEDAW, Morocco has ratified the conventions but has declarations and reservations regarding some of its articles (see above).

# 3 Similarities and differences in terminology

| Term | Definition |
|---|---|
| Domestic violence | There appears to be no specific legal definition of domestic violence. Moroccan law and in particular Law No. 103-13 defines four types of violence: violence against women, physical violence, sexual violence and psychological violence.<br><br>It is however commonly known (Cf. UN definition) that domestic violence does refer to a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner. Abuse can be physical, sexual, emotional, economic or psychological actions or threats of actions that influence another person. This includes any behaviors that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure or wound someone. Domestic abuse can happen to anyone of any race, age, sexual orientation, religion or gender. It can occur within a range of relationships including couples who are married, living together or dating. Domestic violence affects people of all socioeconomic backgrounds and education levels. |
| Stalking | There appears to be no specific definition of "stalking" in the aforementioned report submitted by the National Human Rights Council in Morocco (NHRC). The council proposes the introduction of this notion as a whole and defines it as "repeated and deliberate harassment, the use of a third party for this purpose, the use of the victim's personal data to offer the victim goods or services, and any other act that may seriously violate the victim's lifestyle." |
| Harassment | There appears to be no specific definition, however Article 503-1-1 of the Law No. 103-13 provides that: "Anyone who **persists** in harassing others is guilty of sexual harassment and is punished by imprisonment for one month to six months and a fine of 2,000 to 10,000 dirhams or by either of these penalties in the following cases:<br><br>1. In public or other spaces, by actions, words, gestures of a sexual nature or for sexual purposes;<br><br>2. By writing, telephone or electronic messages, recordings or images of a sexual nature or for sexual purposes."<br><br>Based on the above, we understand that under Moroccan law, harassment involves persistence in (i) actions, words or gestures of a sexual nature or for sexual purposes; or (ii) writing, phoning, electronic messages, recordings or images of a sexual nature or for sexual purposes. |
| Victim | Our research suggests that there is no clear definition of a "victim." Similarly to the above, the NHRC has recommended that in the elaboration of such definition, the latter should include both young girls, women and pregnant women, in this particular context. |
| Abuser | There appears to be no specific definition. |

| Term | Definition |
|---|---|
| Civil protection order | There appears to be no specific definition. |
| Causes of action | Please refer to Section 1.4 entitled "What are potential causes of action?" |
| Marital rape | There is no legal definition of marital rape however as previously mentioned, marital rape was punished by the law for the first time in a decision rendered by the Tangier court in 2019.<br>In addition, we can note that the NHRC, in a project that aims to provide an opinion on the recently adopted law (Law No. 103-13) has amongst its recommendations proposed a definition for rape as follows: "Is considered rape: any sexual penetration, whatever its nature and purpose, committed against another person by means of violence, coercion, threat or surprise, regardless of the relationship between the victim and the perpetrator." The NHRC suggests that the aim is that this definition will also include marital rape.<br>Despite the pressure of the civil society, this definition was not introduced in Law No. 103-13. |

## 3.1 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

Domestic violence terms referred to are the following:

| Term | Definition |
|---|---|
| Violence against women | Any material or moral act or abstention based on discrimination on the grounds of sex resulting in physical, psychological, sexual or economic harm to women. |
| Bodily violence | Any act or abstention that causes or is likely to cause harm to the physical integrity of a woman, whoever the perpetrator, the means used to commit it or the place where it is committed. |
| Sexual violence | Any word or act or exploitation likely to harm the woman's bodily integrity for sexual or commercial purposes, regardless of the means used to commit it. |
| Psychological violence | Any verbal aggression, coercion, threat, negligence or deprivation of liberty, either to undermine a women's dignity, freedom and tranquility, or to intimidate or terrorize them. |
| Economic violence | Any act or abstention of an economic or financial nature that violates or is likely to violate women's social or economic rights. |

# 4 Protection for domestic violence victims and relief granted

## 4.1 Civil protection orders

### 4.1.1 Are there civil protection orders available to victims of domestic abuse?

The law provides for civil protection orders as stipulated in Article 61 of the Moroccan Penal Code, as amended by Law No. 103-13, which states the following:

"Personal security measures" are:

- relegation
- the forfeiture of paternal power rights
- prohibition of the convicted person from coming into contact with the victim
- the submission of the convicted person to psychological treatment

### 4.1.2 Who can petition for civil protection orders?

The CPO is ordered or approved by the judge and requested by the victim or its legal representatives.

### 4.1.3 Are there temporary custody of a child or child support orders?

- Article 82-5-2 of Penal Procedure Code provides that as part of the protective measures the court can "bring the child in custody together with the person who has custody of the child back to the accommodation designated for him/her by the court."
- Additionally, Article 61 of the Penal Procedure Code as amended by Law No. 103-13 provides that the "the father or abuser can be deprived of his paternal right." This provision means that custody would go to the mother. In the event the mother is unable to take care of the child, we suggest a wider analysis and therefore a referral to the Moroccan Family Code which stipulates in Article 171: "Custody must first be entrusted to the mother who is more predisposed than the father to take on this role, then to the father and then, according to the article, to the maternal grandmother; otherwise the court has the option of entrusting custody to one of the close relatives able to ensure it without distinction between the father's relatives and the mother's relatives." Further to this, Article 172 stipulates: "The court may call upon the services of a social worker to draw up a report on the housing of the custodian and the conditions under which the custodian provides for the basic material and moral needs of the child in care."
- In the absence of sufficient elements regarding the determination of the level of housing and in order to ensure that its assessment is based on sound justifications, the court may call upon the services of authorized social workers in order to identify these elements.
- There appears to be no other provisions relating to the child support order when it is a case of violence.

### 4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?

Yes, according to Article 61 of the Moroccan Penal Code as amended by Law No. 103-13, the judge can prohibit the convicted person from contacting the victim. Article 88-3 of the Moroccan Penal Code (as amended) provides that in the event of prosecution for the offences of harassment, aggression, sexual abuse, violence against women or minors, regardless of the nature of the act or its author, the public prosecutor, the examining magistrate or the court, as the case may be, or at the request of the victim, may prohibit the person prosecuted from contacting the victim or approaching the place where he or she is or communicating with them by any means whatsoever. This measure will remain in force until the court rules on the case.

In addition, please note that Article 88-1 of the Moroccan Penal Code (as amended) provides the following:

In case of conviction for harassment, assault, sexual exploitation, abuse or violence committed against women or minors, whatever the nature of the act or the perpetrator, the court may decide the following:

i. Prohibit the convicted person from contacting the victim or approaching the victim's location or communicating with the victim by any means, for a period not exceeding five years from the date of expiry of the sentence to which he or she has been sentenced or from the date of pronouncement of the judicial decision where the custodial sentence has been suspended or where he or she has been sentenced only to a fine or an alternative penalty.

ii. Conciliate between the spouses puts an end to the ban on contacting the victim;

The submission of the sentenced person, during the period provided for in paragraph (i) above or during the enforcement of the custodial sentence, to appropriate psychological treatment.

The execution decision imposing the sentence may order the provisional enforcement of this measure notwithstanding any appeal.

The court may definitively prohibit, by means of a reasoned decision, the sentenced person from contacting the victim or from approaching the victim's location or from communicating with the victim.

Article 321-1 of the Moroccan Penal Code (as amended) further states:

> Is punishable by imprisonment from six months to two years and a fine from 2,000 to 20,000 dirhams or by one of these two penalties, any violation of the prohibition measure or of the right to contact the victim, to approach her or to communicate with her, by any means whatsoever, or the refusal to submit to appropriate psychological treatment.

### 4.1.5 Are there any other types of emergency, preventive and civil protection orders?

The same as previously mentioned. Please see above.

### 4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

Yes.

### 4.1.7 Are there different types of civil protection orders e.g., short-term period?

Same as previously mentioned. Please see above.

### 4.1.8 Are *ex parte* orders permitted without the aggressor being present?

There appears to be no mention of the above. Moroccan law is unclear in this respect.

### 4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

There appears to be no mention of the above. Moroccan law is unclear in this respect.

### 4.1.10 How long do the orders last?

The court may place an order until the judgement is rendered or the court may definitively prohibit, by means of a reasoned decision, the sentenced person from contacting the victim or from approaching the victim's location or from communicating with the victim.

### 4.1.11 Please provide any data or hyperlinks to government or NGO websites that include information on how often civil protection orders are issued, and any demographic information, e.g., police reports, convictions, etc.

N/A

## 4.2 Steps for receiving a protective order

### 4.2.1 What documentation is needed to obtain a civil protection order?

We are not aware of any specific proper documentation provided for expressly by law as it depends on the situation. The judge orders the civil protection order by assessing the specifics of each case. Please note that as a general rule, proof evidencing the abuse may be requested in order to obtain a civil protection order. Any document that attests the physical or moral abuse/danger may support the civil protection order request.

### 4.2.2 Does the victim need to attend a hearing?

The victim has the right not to attend the hearing and be represented by a lawyer. The victim remains a civil party.

### 4.2.3 Can you request remedies?

Yes, as a civil party the victim can claim damages for the prejudice they may have suffered.

### 4.2.4 Are there time limits?

If it is a misdemeanor it is four years and if it is a criminal offense it is 10 years.

### 4.2.5 Are there different rules in emergencies?

Aside from assisting the victim with the help of a specialized organization there are no other rules in cases of emergencies. However, we can note that if it is a flagrant action i.e., the perpetrator was arrested at the time of the commission of the offence the perpetrator can be brought before the public prosecutor promptly.

Please note that Moroccan law is not straightforward in this respect.

## 4.3 Judicial discretion

### 4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

The judge will assess the situation and it is on a case-by-case basis depending on the facts. Please refer to our answers above.

### 4.3.2 Are there age limits on who can obtain orders?

We are not aware of any age limit on obtaining orders. Moroccan law is unclear in this respect.

## 4.4 Restitution and remedies available to victims

### 4.4.1 Can victims ask for costs and restitution to be paid?

Yes.

### 4.4.2 Can they recover wages and profits lost?

If the victim is working and presents a medical certificate that serves as proof that the prejudice they have suffered has prevented them from working, they can request that the loss of earnings be compensated.

### 4.4.3 Is a separate civil process required?

No, the victim is not required to do so, but they can be a civil party in criminal proceedings and claim damages. In fact, in practice the victim will generally present themselves as a civil party.

# 5 Prosecutorial considerations

## 5.1 Police procedures

### 5.1.1 When do the police get involved in domestic disputes or legal actions?

The police can intervene at the time of the commission of the offence and after the filing of the complaint. If the complaint is filed by the victim, the judicial police will take care of the investigation and forward it to the prosecutor.

### 5.1.2 What circumstances effect law firm involvement?

N/A

## 5.2 Standard of proof

### 5.2.1 Is proof required by any legal means?

Yes, proof is mandatory.

### 5.2.2 Are their requirements for evidence and documents?

Yes.

### 5.2.3 Is proof "beyond a reasonable doubt" required?

No, doubt always benefits the accused.

### 5.2.4 Is the standard of proof different for *ex parte* orders?

N/A

## 5.3 Affirmative defenses

### 5.3.1 Are affirmative defenses available to the accused?

N/A

### 5.3.2 Is willful intent required?

The accused must have intended to commit the offence, which is the moral element (mens rea), and the material element, which is the damage committed (actus reus).

### 5.3.3 Are false accusations punishable for the victim?

Yes.

### 5.3.4 How is consent discussed in the law?

N/A

### 5.3.5 Is self-defense or insanity a defense?

Yes.

## 5.4 Witness status

### 5.4.1 What is a witness's duty to testify honestly and completely?

The witness is obliged to give an honest testimony as the witness takes an oath before the judge.

### 5.4.2 Who may abstain from testifying in certain situations?

The ascendants, descendants and spouses as they have legal protection.

### 5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

Moroccan law is not straightforward in this respect.

### 5.4.4 What is the impact of domestic violence on witnesses who are children?

They have legal protection for juveniles and are only required to testify before the juvenile judge in appropriate circumstances.

### 5.4.5 Can children be called upon to testify?

Yes, before the juvenile judge in particular conditions.

### 5.4.6 What is the effect of a child victim on the charges against the offender?

Moroccan law and practice is unclear in this respect.

## 5.5 Penalties and sentencing; penalty enhancements

### 5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

N/A

### 5.5.2 Are there criminal penalties?

Yes.

### 5.5.3 What is the result of a violation of an existing order for protection?

Article 323-1 of the law stipulates: "Is punished by imprisonment from six months to two years and a fine from 2,000 to 20,000 dirhams or by one of these two penalties, any violation of the prohibition measure or of the right to contact the victim, to approach her or to communicate with her, by any means whatsoever."

### 5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

The fines imposed in the frame of the Law No. 103-13 on combating violence against women vary from MAD 2,000 to MAD 120,000

## 5.6 Post-release restrictions

### 5.6.1 Does the law notify the victim of the offender's release from custody?

Each court decision is in general notified to the parties.

# 6 Special issues

## 6.1 Battered woman syndrome

### 6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered woman syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations).

Moroccan law and practice is unclear in this respect.

## 6.2 Domestic violence in the workplace

### 6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

In principle yes. Please note that Moroccan law is not straightforward in this respect.

### 6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

Moroccan law does not refer to such aspect. Please note as a general rule that Moroccan law is not straightforward.

### 6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

N/A

## 6.3 Immigration

### 6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents of your country from using immigration laws to perpetrate domestic violence against their spouse?

Moroccan law and practice is unclear in this respect.

### 6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?

There are no provisions that we are aware of in this respect.

### 6.3.3 Does domestic violence law discuss asylum accessibility?

N/A

## 6.4 Armed forces

### 6.4.1 Can a victim seek a military protective order if the abuser is in active military?

In principle, military personnel are judged by military courts. The law is however unclear on whether a victim can seek a military protective order if the abuser is an active military.

## 6.5 Child custody and child/spousal support

### 6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

Assessment is on a case-by-case basis based on the evidence shown in court. Please note as a general rule that Moroccan law is not straightforward regarding this matter.

### 6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

Assessment of testimonies/proof is on a case-by-case basis.

## 6.6 Housing rights of domestic violence victims

### 6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

Moroccan law and practice is unclear in this respect.

### 6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

Moroccan law and practice is unclear in this respect.

### 6.6.3 Can an order exclude the abuser from the residence?

Moroccan law and practice is unclear in this respect.

### 6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

Moroccan law and practice is unclear in this respect.

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