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Legal Empowerment of
Unwed Mothers:
Experiences of Moroccan
NGOs

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LEGAL EMPOWERMENT WORKING PAPERS

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LEGAL EMPOWERMENT OF UNWED MOTHERS: EXPERIENCES OF MOROCCAN NGOS

Stephanie Willman Bordat and Saida Kouzzi¹

Executive Summary

This chapter examines Moroccan non-governmental organization (NGO) initiatives that promote the rights of unwed mothers with children born out of wedlock. Social stigmatization, criminal repression and legal discrimination marginalize these women and their children, and impact on their ability to obtain official identity papers. Without such legal identity, they cannot access a host of other fundamental rights, and legal empowerment can be impossible.

In focusing on child registration and Family Booklet² procedures as they affect unwed mothers, this chapter argues that law and development initiatives should take into account complex, intimidating legal realities that disadvantaged populations such as these women and children face, including: existing laws that may not be applied in reality, that are discriminatory on their face, that are unclear and open to disparities in their interpretation or that are silent on an issue and thereby create legal voids.

Four youth-led local women's rights NGOs created in the past five to eight years in diverse regions across Morocco, in collaboration with an international human rights capacity-building organization, currently implement grassroots-level human and legal rights education and launched a pilot Court Accompaniment Program in 2006 primarily for illiterate women in their respective communities. Initial indicators of impact of these two initiatives hint at shifts in attitudes and behavior among unwed mothers and local authorities charged with helping them access their legal rights.

The popular discourse in Morocco claims that the main obstacle to people making use of their rights is their ignorance of the laws and their rights; this could be remedied by legal education campaigns. The experience of these NGOs working with unwed mothers illustrates how knowledge of the laws alone is not sufficient. In order to access their rights, people need concrete help in navigating government services and bureaucracies that are often indifferent, intimidating or even hostile.

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² The Family Booklet is the main and most important official document proving one's legal identity and civil status. Created upon marriage, it contains all personal information about the Family Booklet's owner, spouse(s) and descendants.

In addition to providing legal information to unwed mothers, these and other NGOs play a critical intermediary role between women and local authorities, both in facilitating various processes for unwed mothers as well as serving as a watchdog over these authorities. In areas where the law is unclear, NGOs encourage the more advantageous interpretations of laws. Where there is a legal void, they apply strategies and encourage solutions that benefit women's rights. By accompanying and otherwise assisting unwed mothers, NGOs also help them avoid humiliation at public administration offices, navigate complex procedures, and help protect them from corruption and abuse of authority by civil servants.

Drawing on these experiences, the chapter cautions that appropriate program objectives and desired results of any law and development initiative depend on establishing an accurate legal baseline from the outset. Voices of unwed mothers themselves also suggest that their desired outcomes sometimes differ from those of some NGOs. This has powerful implications for how one chooses to measure success and define legal empowerment for marginalized populations. In a long-term strategic process to respond to unwed mothers' priorities, future legal empowerment initiatives for them should focus on access to the justice system, broadly defined to include local government and administrative offices and the courts. Future work should build on the pilot experiences implemented at the local level and current, unofficial practices to support a legislative reform process to consolidate women's rights in law.

Introduction

This chapter³ examines local NGO initiatives that protect the rights of unwed mothers in Morocco. Both the topic and country profiled raise interesting and timely questions about women's legal empowerment and NGO strategies for its promotion.⁴

The term "unwed mother" is used here to refer to women who have children outside the framework of legal marriage.⁵ They and their children – defined by law as "illegitimate" – are among the most legally and socially marginalized people in the Middle East and North Africa (MENA) region, not just in Morocco.

One must legally exist before being able to benefit from any rights contained in the law. Without such a legal identity, legal empowerment can be impossible. Unwed mothers and their children are not legally recognized because they lack the legal identity necessary to assert a host of other fundamental rights; at best, neither officially exists; at worst, unwed mothers can be and often are criminally prosecuted for having had sexual relations outside of marriage.

This legal invisibility combined with social taboos result in a complete absence of any reliable statistics on numbers of unwed mothers and their children in Morocco, with the few available sources conveying primarily sensationalist and anecdotal information. One article claims that in 2003 in Casablanca, there were 5,000 unwed mothers, although this is clearly underestimated given the current Moroccan administrative and social context.⁶

This chapter focuses on laws and NGO programs in the country. But the social status and legal framework surrounding unwed mothers is similar to those in other countries where women live under Muslim laws. Given recent legal improvements to women's status, such as the 2004 promulgation of the new Family Code, the international community, foreign governments, donors and NGOs often refer to Morocco as an example for reform efforts in other countries in the MENA region.

³ This chapter is based on the authors' nine years of working in Morocco with local NGOs designing and implementing programs to develop their capacities to promote women's legal and human rights. Information presented here is based on written quarterly progress reports submitted by local partner NGOs, regular site visits and assessment missions by the authors to the NGOs, monthly implementation assessments of telephone programs, and anecdotal evidence. Baseline information for this chapter was gathered during a United Nations Development Programme (UNDP) and Association for the Development and Enhancement of Women regional study on women, *Gender and Citizenship in the Arab World: To Be or Not to Be: Women's Legal Existence and their Compromised Citizenship* (2004), involving focus groups with women and structured interviews with decision-makers. Updated information, supplemental details and clarifications were gathered by the authors in May and June 2009 through a detailed six-page questionnaire sent to the four partner NGOs profiled here. Finally, the authors followed up on the questionnaire through telephone interviews with NGO staff and several local lawyers.

⁴ The authors depart from their usual practice of citing and thanking the partner NGOs by name for their program work and contributions to this chapter. As described below, the work of these NGOs with unwed mothers is based on maintaining good relationships with local authorities and could be compromised by too much public attention. In addition, the chapter describes how one aspect of NGO efforts involves convincing local authorities to provide unwed mothers rights not specifically allowed in the law. NGOs thus requested anonymity out of concern that local authorities might cease cooperating in this manner.

⁵ The term 'unwed mothers' as used here does not therefore include divorced or widowed women who had children while legally married to the father.

⁶ Unnamed survey referred to in J Abbiateci, 'Maroc: l'impossible combat des mères célibataires', *Basta!* (18 February 2007) <<http://www.bastamag.net/spip.php?article154>> at 10 January 2010. As a point of reference, Casablanca represents approximately 10 percent of the total Moroccan population of 32 million (authors' note).

For these reasons, the Moroccan experience may be useful for initiatives to promote women's rights in other countries in the MENA region. This does not assume that what has been implemented and applied in Morocco will necessarily work elsewhere. Rather, the chapter shares examples of strategies used by local NGOs to obtain individual justice for single women in a complex legal environment with the aim to inform and inspire other NGOs creating their own strategies. Indeed, this chapter illustrates how some provisions presented publicly as positive reforms may be, in reality, be anything but, and encourages activists in other countries to consider this when advocating for legal reforms in their own domestic systems.

1. Legal context

It is important to analyse the Moroccan legal context surrounding unwed mothers and understand it accurately in order to establish a reality-based starting point from which to establish appropriate measures of progress and definitions of successful results. Many research studies, needs assessments and strategic plans only conduct a superficial analysis of laws, and give limited attention to ascertaining what legal texts actually state.

Not only can the actual language of laws be challenging to grasp for people from a different legal tradition or linguistic background, but vague and erroneous public descriptions of laws may be repeated so frequently that they become commonly accepted and cited as reality. Explanations of laws in Morocco often avoid accurate interpretation, intellectual debate, or plausible differences of opinion. Moral imperatives, political propaganda goals, and a desire to have one's own organization or institution receive credit for legal reforms are among many reasons that the state, Islamist groups or NGOs themselves may sometimes contribute to the circulation of legal misinformation in the country. Widespread misconceptions and claims that do not reflect the actual language of the laws camouflage reality, encourage inaccurate conclusions, and mislead legal development efforts.

For example, numerous on-line articles about the status of unwed mothers in Morocco congratulate the country on its reforms. Many sources specifically claim that unwed mothers now have the legal right to obtain a Family Booklet and to request DNA testing to prove paternity of children conceived out of wedlock. As shown below, neither of these is actually provided for by law.

Even laws that currently exist on paper and that protect women's rights in theory are often not applied in reality. Local NGOs have documented the frequent non-application of laws by courts in practice.⁷ In addition, no mechanisms have been put into place to monitor and control the implementation by the relevant authorities of reforms related to women's rights, which accounts for the tenuousness of these legislative gains.

1.1 Relevant laws

Both criminal and civil laws in Morocco severely repress behavior associated with being a unwed mother and have gaps that prevent unwed mothers from accessing their rights, leading to their social invisibility and legal inexistence.

The religious exceptionalism created for issues related to women is one factor impacting on their status. The Moroccan Family Code governing marriage,

⁷ See, for example, the Ligue démocratique des droits des femmes, *Rapports Annuels sur la mise en place du Code de la famille* (2005, 2006, 2007, 2008).

divorce, child custody and guardianship, parentage, inheritance, and marital property is the only law in the country inspired by religious precepts and that provides for broad judicial discretion to interpret and apply Islamic jurisprudence and reasoning.⁸ All other legislation governing areas such as contracts, torts, administration and commerce is derived from secular, European-style civil codes.

For example, the Family Code does not recognize either adoption or “natural” paternity. Furthermore, the Penal Code bans sexual relations outside of marriage and outlaws abortion. These facets of the laws are often – whether correctly or incorrectly – attributed to religious precepts. As a result, the sacred nature of these laws makes them more difficult to contest and advocate for change.

1.1.1 Penal Code

Sexual relations outside of marriage are illegal in Morocco, with increased penalties where one or both parties are married to another person.⁹ In addition, rape is classified as a crime against morality.¹⁰ Non-consent is difficult for victims to prove in order to establish rape, often requiring actual physical injury. If rape is not proven, charges may be brought against the victim for having engaged in illicit sexual relations.

In addition to the fact that people – mainly women – are still actually imprisoned under these provisions, the mere threat of arrest and definition of sexual relations outside of marriage as illegal impacts on people’s behavior, attitudes, health and access to their rights. This is particularly true for unwed mothers, as illustrated below.

The Moroccan Penal Codes also criminalizes abortion as a public morality offense.¹¹ Abortion is illegal unless deemed necessary to protect the mother’s health and conducted by a medical doctor.¹² It is not legally permitted in cases of rape or incest, fetal impairment, for economic or social reasons, or simply upon request. As a result, many single women may be forced to be mothers, whether the pregnancy resulted from illicit sexual relations between two consenting parties or rape, due to the lack of access to legal, safe and affordable means by which to end unwanted – and in this context, illegal – pregnancies.

1.1.2 The Family Code

The Family Code only recognizes legitimate paternal filiation, by which children are attributed to a father when he is legally married to the mother at the time of conception. “Illegitimate” or “natural” paternity does not exist in Moroccan law, and children born to unwed mothers have no rights from their biological fathers, such as the right to bear his name, receive financial support, or inherit. In

⁸ *Code de la Famille* 2004 (La Moudawana) Dahir No.1-04-22 du 12 Hija 1424, full text available at <<http://www.justice.gov.ma/MOUDAWANA/Frame.htm>> at 10 January 2010. Please see the unofficial English language translation of the Family Code available at <http://www.globalrights.org/site/DocServer/Moudawana-English_Translation.pdf?docID=3106>.

⁹ *Code Pénal* 1962 Dahir No. 1-59-413 du 28 Joumada Ii 1382 (26 Novembre 1962) Portant Approbation du Texte du Code Penal, as modified by Dahir N° 1-03-207 du 16 Ramadan 1424 (11 Novembre 2003) Portant Promulgation de la Loi N° 24-03. Art. 490 punishes sexual relations between unmarried persons of the opposite sex with a prison sentence of one month to one year. Code Pénal 2003 Art. 491 punishes adultery with a with 1–2 year prison sentence.

¹⁰ *Code Pénal* 1962 Art. 486-488.

¹¹ In Morocco, abortion is covered by Code Pénal 1962 Art. 449–458, in the section “Crimes and Misdemeanours against Family Order and Public Morality”.

¹² *Code Pénal* 1962 Art. 449-452 punish performing an abortion with 1–5 years’ imprisonment (doubled if the person performing the abortion does so habitually), and medical professionals may also be barred from exercising their profession temporarily or permanently.

contrast, mothers are legally affiliated to and responsible for their children merely by the fact of giving birth to them.¹³

The law provides for DNA testing to establish paternity, but only to prove or contest the parentage of a child conceived during a legal marriage.¹⁴ The 2004 reforms to the Family Code attribute legitimate paternity to a child conceived during the parents' "engagement period", taking steps to protect children's rights and acknowledging that in reality couples may have sexual relations before marriage. However, the law does not provide for court-ordered paternity testing of a biological father against his will upon the unwed mother's or her child's request.

As a result, the only way for children to benefit from "legitimate" paternity if their parents are not legally married is to claim that they were engaged at the time of conception. Evidence of an engagement may be required, such as photos, videos, sworn statements by family and neighbors and, most importantly, the biological father's consent to cooperate. In the case of unwed mothers, this is definitely not an assumed fact.

Finally, the fact that adoption is not legal in Morocco further limits options available to unmarried women who become pregnant.¹⁵

1.1.3 Civil Status Laws and Procedures

Another law of interest here is the Civil Status Law, which sets out all administrative procedures related to one's legal identity and civil status, including birth, marriage, divorce, and death.¹⁶ Readers familiar with the French legal system will recognize the heavy bureaucracy and large amount of paperwork involved, where the smallest act in daily life requires obtaining copies of official documents on one's identity and legal status from the local Civil Status Office.

The two main procedures impacting on unwed mothers and their children relevant to this discussion are: registering a child's birth and obtaining a Family Booklet.¹⁷

First, for a child to legally exist, the birth must be registered at the Civil Status Office where s/he was born. While the previous Civil Status Law did not explicitly provide for registration of out-of-wedlock children, 2002 reforms introduced specific provisions allowing a unwed mother to register her child's birth.

Registration requires a birth attestation written by a doctor or midwife and legalized by the local authorities, as well as a copy of the parents' marriage certificate. Births must be registered within 30 days, after which time a court petition must be filed to obtain a judicial declaration of birth. Failure to register a birth within the legal limits is punishable by a 300–1,200 dirhams fine.¹⁸

¹³ *Code de la famille* 2004, Art. 142–162.

¹⁴ *Code de la famille* 2004, Art. 153, 156.

¹⁵ *Code de la famille* 2004, Art. 149 provides that: "Adoption has no legal value and does not result in any of the effects of legitimate filiation."

¹⁶ Loi de Statut Civil 2002 Loi No 37-99 relative à l'état civil, Dahir 1-02-239 du 25 regeb 1423 (3 October 2002).

¹⁷ In French, the *livret de famille*, and in Arabic, the *dftar ailli*. It is worth noting that the previous law referred to a *carnet d'état civil* in French and *hala madania* in Arabic, which translates as Civil Status Book.

¹⁸ Approximately US\$40–150 as of January 2010. The legal, yet unenforced, monthly minimum wage in Morocco is approximately US\$250.

Unwed mothers may register their child's birth, but must choose a first name for the child's fictional biological father that begins with *Abd*.¹⁹ In contrast, prior to the 2002 Civil Status Law reforms, the child of a unwed mother was registered as the child of "father unknown" or "xxx."

Second, the Family Booklet is the main official document proving one's legal identity and civil status, and is of utmost importance in one's daily life. It is drafted upon marriage and contains all personal information about the Family Booklet's owner (the husband), his wife/wives, and any children born of the marriage(s).²⁰ Names, places and dates of marriage, eventual divorce, births, and deaths of each family member are recorded and, if necessary, modified later. Only one original Family Booklet is issued – in the husband's name, given to him, and deemed his property. A wife, divorced woman, widow or legal tutor may request a *legalized copy*.

The Family Booklet is the single most essential document in people's lives – it is on this basis that other official papers attesting to one's legal identity and civil status necessary to carrying out most daily acts may be obtained. The Family Booklet is required for, *inter alia*, obtaining a National Identity Card, a passport, a driver's license, free medical care and other social services, legal aid assistance in courts, and a vaccination booklet. Also, to request an official birth, marriage or residence certificate, one needs to present the Family Booklet. A consultation of Moroccan Government websites reveals no fewer than 12 official documents related to civil status that are required for certain routine activities, and for which one needs to present a Family Booklet. It is also necessary as proof of identity to be able to obtain employment, register for government literacy classes, be admitted to the hospital, start a business, purchase a home or other property based on credit, get married, open a bank account, receive money transfers, and claim inheritance rights from one's parents. Registration in a Family Booklet is generally required to enroll children in school. Without a Family Booklet, people simply do not legally exist.

Finally, it is actually illegal not to have official identity papers on one's person. People can be stopped by the police, asked to produce identity papers, questioned and imprisoned if they are not carrying them.

A central question here is whether or not unwed mothers have the legal right to obtain a Family Booklet for themselves and their children. Unwed mothers are not addressed in the law's provisions on the Family Booklet, although as mentioned above, the law does specifically allow them to register their children's births. It is worth noting that under the pre-2002 Civil Status Law, any single person, man or woman, could obtain their own Family Booklet. In contrast, the current law restricts the drafting and granting of a Family Booklet to a married man only; there are a few exceptions where his wife may obtain a copy.

In May 2009, interviews conducted by the authors with several practicing lawyers in Morocco resulted in contradictory or "I don't know" responses and thus do not help answer the question of whether or not the law actually allows unwed mothers to obtain a Family Booklet. The text of the law makes no specific provisions for unwed mothers to do so, and leads some to conclude that they do not legally have the right to obtain one. Others argue that there is a void that

¹⁹ Examples include *Abdellah* or *Abdassalam*: *Abd* means "slave of" and is followed by one of the sacred names for God.

²⁰ A person is registered in his or her own father's Family Booklet until and unless they get married, at which point they are registered in a new Family Booklet created for them and their spouse.

invites creative and active interpretation of the law,²¹ reasoning that, since this provision in the previous law was not explicitly repealed, the legal possibility for single persons to get a Family Booklet still exists.

Previous interviews conducted by local NGOs representatives with Civil Status Officers directly charged with issuing Family Booklets had yielded similarly confusing results.²² When asked whether or not unwed mothers may obtain an individual Family Booklet in their own name in which to register their children, a Civil Status Officer from one major city answered, "Unmarried mothers...now have the legal right to have a Family Booklet." In contrast, a Civil Status Officer from another town stated,

The mother of illegitimate children has no right to have a Family Booklet, because the pre-requisite for obtaining a Family Booklet is the marriage license. In the past, the mother of illegitimate children could obtain a Family Booklet so that she could have registration references and or for guardianship purposes. Now she cannot have a Family Booklet because, as I have just explained, the essential condition for obtaining one is the marriage license.²³

As recently as June 2009, yet a third Civil Status Officer in a small city replied that he did not know whether or not the law allowed unwed mothers to obtain a Family Booklet. In his opinion, they cannot, and at the Civil Status Office where he presides, they do not give Family Booklets to them.²⁴

1.2 Implications for setting baselines and assessing change

It is essential that practitioners, policymakers and donors give sufficient attention to obtaining a solid picture of the legal reality in any given country as a necessary first step to any legal rights-oriented development initiative. Appropriate program objectives, measures of progress and desired results depend on establishing an accurate legal baseline from the outset, and should take into account the following possible circumstances:

- existing laws that are clearly written but not applied in reality, whether beneficial or detrimental for women's rights;
- laws that are apparently discriminatory;
- laws that are poorly drafted and therefore unclear and open to disparities in their interpretation and divergences in their application;
- laws that are silent on an issue and create legal voids; and
- contradictions between laws that make their respective application impossible. In a context of recent legal reforms, changes to one code may be contradictory to dispositions in another, older law that has not yet been amended to reflect or be consistent with the new law. For

²¹ Taking into consideration, however, that Moroccan authorities, operating in a civil law country and not a common law country, are charged with merely applying the law, and there are major limitations in both law and its practice, as well as in interpreting them to expand rights or to disregard those they consider unpropitious.

²² UNDP and Association for the Development and Enhancement of Women, above n 3.

²³ The Civil Status Officer interviewed objected to the term 'unwed mother', preferring to use the term 'mother of illegitimate children'.

²⁴ In following up on an interview conducted by a practicing lawyer and member of a local NGO, this Civil Status Officer sent a written request to the Ministry of the Interior posing the question and requesting official legal guidance. At the time this paper was submitted, he had not yet received a response.

example, while the Civil Status Law allows unwed mothers to register their children, the Penal Code still criminalizes sexual relations outside of marriage.

Project objectives, strategies and definitions of success will be determined according to the respective legal circumstances, This chapter discusses local NGO programs with unwed mothers, and reflects on their lessons learned that have implications on choices in measuring impact and defining success within any given legal and social context.

2. Social context

Women's status in Morocco, just as worldwide, is characterized by inequality, discrimination, economic dependence and marginalization. High illiteracy rates in particular among women, in particular in rural populations, as well as significant disparities between urban and rural areas in the availability and proximity of infrastructures, justice system personnel, education and transportation also affect women's ability to access their rights. Rural women are physically remote from public and private services, and illiteracy hinders women in general from knowing their legal rights and makes them vulnerable to misinformation and propaganda.

Of particular interest here are the policies and attitudes of control over women's bodies and sexual behavior by individual men, the family and the state. As one beneficiary of a local NGO's services stated:

Society belittles women and has the commonly held view that a woman's place is in her home, believing that a woman is born to live under the authority of her father, or her brother, and later on that of her husband. The result of this belief is that a woman remains dependent on her father's or her husband's legal documents.

The conservative legal, social and religious context surrounding women's rights and sexuality means that many issues have been considered too sensitive to address openly and directly. A major recent development in Morocco is that several topics and social phenomena previously considered taboo are increasingly debated openly, popularized through the press and cultural media, addressed by local NGO programs, and even integrated into official speeches.

2.1 The virginity discourse

The legal prohibition of sexual relations outside of marriage and the importance placed on female "intactness" before marriage combined with the increasing number of single people in their late 20s and 30s, and changing social norms can and do lead to inconsistent, even contradictory reporting on sexual behavior and attitudes about female virginity.²⁵

For example, a perusal of recent editions of national Moroccan magazines such as *TelQuel*, *Femmes du Maroc*, *Citadine* and *Ousra* reveals numerous articles describing the extent to which virginity is still important for women yet claiming that sexual relations prior to marriage are becoming increasingly frequent. Explanations for this include the increasing age of marriage, women's decreasing financial dependence on their families or a prospective husband, and the

²⁵ There is no cultural or social imperative for men to remain virgins before marriage.

possibility that one may never get married.²⁶ As one article describes it, although “arriving intact” at one’s marriage is still a strong social imperative in Morocco, an increasing number of couples make alternative mutual agreements.

The lack of statistics and people’s hesitation to speak openly about their own experiences make it difficult to draw an accurate picture of reality.²⁷ One survey reported that 62 percent of young Moroccans think that having a premarital sexual relationship would be complicated, the major obstacles being the reactions of their family (43 percent) and neighbors (23 percent). The same survey found that 67 percent of Moroccan men claimed to have had sexual relations before marriage, while the same percentage of Moroccan women claimed not to have.²⁸

People will rarely openly admit that they were not virgins upon marriage, although most people will talk about how they know someone who was not. Indeed, practices such as obtaining virginity certificates or operations by gynecologists to reconstruct the hymen illustrate the extent to which some women will go to preserve appearances.

The focus on technical virginity has implications for knowledge on sexuality and reproductive and sexual health. A recent survey found that 68 percent of Moroccans have never received any sexual education, and that 31.5 percent think that such education is harmful for children.²⁹ Typically, false stories and rumors circulate on sexuality in communities.

In addition, one article suggests that less than half of young couples in Morocco use some form of contraception³⁰ although the lack of comprehensive surveys and taboos surrounding the topic make it difficult to assess. Moreover, official government policy treats contraceptive use as a family planning method to space pregnancies within the context of marriage only, rather than as a form of birth control for unmarried couples. As a result, awareness-raising campaigns are not designed to target unmarried couples, who may lack sufficient knowledge about safe sex practices and may be hesitant to seek out advice and contraception from pharmacists, doctors or public health clinics.

It is within these legal and social contexts that women in Morocco may be unwed mothers for a variety of reasons – from sexual relations with a boyfriend based on promises of marriage to rape of domestic workers by their employers. These contexts also have implications for how unwed mothers view themselves, and for how they are treated by their family, society and the state.

The next sections describe the behavior of different actors and their attitudes toward unwed mothers in Morocco, with a particular focus on establishing a baseline on which to assess changes in the communities assisted by the local NGOs of interest. Personal, familial, social and administrative obstacles identified below all have implications for programs designed to promote the empowerment of unwed mothers in Morocco.

²⁶ N Lamlili, ‘Virginité. Est-ce encore un tabou?’, *Tel Quel* (28 July 2007) <http://www.telquel-online.com/284/couverture_284> at 10 January 2010.

²⁷ J Mdidech, ‘Relations sexuelles avant le mariage, les jeunes en parlent’, *La Vie Eco* (6 May 2007) <<http://www.bladi.net/12617-relations-sexuelles-mariage-jeunes.html>> at 10 January 2010.

²⁸ Survey conducted by *L’Economiste* as reported in Lamlili, above n 26.

²⁹ *Ibid.*

³⁰ Mdidech, above n 27.

2.2 Unwed mothers

2.2.1 Description

Unwed mothers frequently isolate themselves from friends and family out of shame and fear, or are actively ostracized and abandoned by them once their pregnancy is discovered. Also, many are unemployed, either because they have been fired or have resigned to avoid scandal at the workplace, or to give birth. Those who flee from their family homes may move far away where they are without connections or a social network, placed at risk of homelessness and turning to sex work. Considered by many as criminals who deserve their fate, unwed mothers are thus frequently without social or financial resources to support themselves and their children.

Unwed mothers who approach local NGOs usually request financial and material assistance in raising and supporting their children. They also ask for help officially registering a verbal marriage, obtaining housing and medical care, and enrolling their children in school. Many ask the NGO to facilitate employment for them, fearing that employers will refuse to hire them if they discover that they are unwed mothers.

Others who have abandoned their children at birth ask for the NGO's help in regaining custody. One result of society's marginalization of unwed mothers is that – with no support from the state, families, employers or the children's fathers – unwed mothers may abandon their children.

Finally, unwed mothers also ask NGOs to help them register their children's birth and obtain Family Booklets. They describe how persons who lack Family Status Booklets are considered non-existent and how they feel as though they are not full citizens. They see themselves as societal outcasts, deprived of their rights, often feeling inferior without an identity.

2.2.2 Obstacles to unwed mothers seeking out NGO services

Personal obstacles to soliciting assistance from local NGOs include the difficulty unwed mothers frequently have in breaking the silence surrounding their situations and speaking openly about their problems. A unwed mother may be reluctant to seek out the services of an NGO located in the neighborhood where she lives for fear of public knowledge of her situation. She may well prefer to solicit help from an NGO in a distant neighborhood where people do not know her.

At times, unwed mothers first come to ask for advice "on behalf of a friend" until they are convinced of the NGO's credibility and trustworthiness and only then admit that they are seeking assistance for themselves. Such hesitation is fueled by reports by unwed mothers who feel they are "interrogated" and "judged" when they have approached NGOs for help, as well as by a case widely reported in the newspapers in 2003 where local NGO staff were prosecuted for trafficking in children born to unwed mothers.

2.2.3 Family reactions and treatment

Typically, a unwed mother's family will reject her once they learn of her pregnancy. Several local NGOs even describe violent treatment of such women by their families. While individual family members may secretly help her, often she will be forced out of the household to live with another relative or friend, or in a brothel.

Anecdotal evidence from local NGOs suggests that in rare instances where the family accepts the situation, the unwed mother works to provide an income to support herself and her child. Acceptance is also reported to be more likely in families where there are no brothers pressured to defend the family honor who would force her to leave home or whose violent behavior causes her to flee.

Similarly, the biological father usually denies having had a sexual relationship with the unwed mother. He and his family may even deny knowing her, even when the relationship may be common knowledge in the community. Even in cases of *ourfi*³¹ marriages, where the couple is considered married by their families and community, but does not have official paperwork to prove the marriage, sometimes the child's father and his family deny that the woman is his common law wife or that the child is his. They will accordingly refuse to acknowledge the child's existence and refuse to register the child's birth or obtain a Family Booklet.

2.3 Attitudes and behavior of relevant institutions towards unwed mothers

2.3.1 Hospitals and health personnel

Frequent reports from local NGOs as well as the few published studies on unwed mothers in Morocco describe verbal abuse, insults and humiliation inflicted on unwed mothers by hospital personnel and health professionals, as well as corruption practiced by these persons.^{32, 33} Women who go to hospitals to give birth without a husband accompanying them or official proof of marriage are frequently interrogated by hospital staff to determine if they are legally married or not.

In addition, unwed mothers who do not request a birth attestation from the hospital where the child was born at the time of birth frequently encounter difficulties obtaining this attestation from the hospital later on.

2.3.2 Police

When hospital staff suspect that a pregnant woman who has come to give birth is unmarried, they often alert the police, who go to the hospital to question her. If they determine that she is in fact a unwed mother, police in rural areas particularly often then arrest her and launch a criminal prosecution of her for illicit sexual relations. In major cities, however, one study³⁴ and reports from local NGOs indicate that police interventions at hospitals are increasingly limited to preventing child abandonment, verifying the mother's identity, and ensuring registration of the child's birth.

One woman – the daughter of a unwed mother and without any identity papers – describes how whenever she travels to visit her family in another city, she is terrified when gendarmes stop the bus, for fear that they will ask her to present her identity papers.

³¹ These marriages, concluded orally with the reading of the *Fatiha* and in the absence of a written marriage contract, are no longer recognized as valid after the 2004 Family Law reforms.

³² Haut Commissariat au Plan, Direction régionale du Grand Casablanca, *Etude sur les mères célibataires et les enfants nés hors mariage dans la Wilaya de Casablanca* (2002).

³³ Some corruption practices include asking for bribes in order to provide basic hospital services, minimal medical care, or even hospital admission. This is relatively widespread and standard, but unwed mothers are impacted more than other people by such practices, because their illegal status makes them particularly vulnerable to such extortion and their disadvantaged economic status means that they have fewer means to pay such bribes.

³⁴ Haut Commissariat au Plan, above n 32.

Local NGOs in different cities also report that police tend to keep unwed mothers under close surveillance, monitoring and filing reports on their movements. It is not clear if this is with the aim of being able to arrest the unwed mothers should they break the law, or to harass, threaten or blackmail them should they “step out of line”.

2.3.3 Civil Status Authorities

This social and legal context also influences how unwed mothers are received and treated at the Civil Status Office, where local administrative authorities (Civil Status Officers and other public civil servant support staff) provide citizens with official civil status documents, such as birth registrations, Family Booklets, marriage certificates, and other identity papers. One unwed mother felt that women in general are marginalized and “treated like insects when they go to a public administration office.”

These four NGOs all describe how unwed mothers are humiliated at the Civil Status Office, and are the target of insults and inappropriate behavior by the civil servants working there.

In addition, unwed mothers are also frequently the targets of extortion for bribes by local civil status authorities. One woman explains her experience obtaining a Family Booklet:

I am an unmarried mother with two children. I wanted to register my children in a Family Booklet and I was confronted with a very disdainful attitude from civil servants who put all sorts of obstacles in my way to discourage me. I kept on insisting on my desire to get this legal document and refused to bribe anyone. But after some months I came to the conclusion that there was no other way I could obtain a Family Booklet and that my children would suffer as a result. I therefore decided to give a very important sum of money to a civil servant, who then took care of all of the procedures, and now I have a Family Booklet.

A third reaction of local authorities to unwed mothers seeking official documentation is to launch criminal prosecutions against them, even when the mothers have approached the authorities to obtain assistance. One local NGO describes cases of unwed mothers who filed civil court cases to obtain their rights – for a paternity declaration or financial maintenance from the biological father – and instead were deemed to have confessed to sexual relations outside of marriage and were arrested.

In one town known for its brothels, the situation of unwed mothers is exacerbated by the fact that the authorities presume that all unwed mothers are sex workers and thus mistreat them. Similarly, a local NGO in this town describes how some residents do not support and even oppose its work because they consider that by working with unwed mothers, the NGO is encouraging prostitution.

In 2003, in a series of focus groups conducted by five local Moroccan NGOs with 93 different female heads of household³⁵(not just unwed mothers but also married, divorced, widowed, abandoned, and separated women), not one was able to obtain a Family Booklet themselves without any assistance from a third party.³⁶ As this figure includes divorced, widowed and other women who, unlike

³⁵ UNDP and the Association for the Development and Enhancement of Women, above n 3.

³⁶ Assistance in obtaining the Family Booklet was provided by local NGOs, high-ranking civil servants to whom the women paid bribes, relatives who were civil servants and worked in the relevant

unwed mothers, actually had the legal right to obtain a copy of the Family Booklet, one can only presume that unwed mothers faced even more resistance and difficulties than other women due to their illegal status and lack of legal provisions guaranteeing their right to obtain a Family Booklet.

2.4 Do unwed mothers use the law in their favor?

Most unwed mothers who seek out local NGO assistance are not aware of their legal rights under Moroccan law, and consequently do not take steps to access them.

One common assumption in law-and-development discourse is that “knowledge is power”. Even the unwed mothers who know their rights are frequently unwilling or unable to claim their rights, due to the above-described personal, familial, social and administrative obstacles. Although unwed mothers have had the clear legal right to register their children’s births since 2002, such obstacles dissuade them from using the law in their favor.

Unwed mothers cite numerous reasons for not registering their children or attempting to obtain a Family Booklet even when aware of their legal rights,

- In order to file a complete application to register a child’s birth or request a Family Booklet, a host of official identity documents including the parents’ birth certificates must be sought from the local administration at the person’s birthplace. If this is in a remote town or village, people must travel long distances to obtain the necessary documents.

Lack of local administrative offices in one’s place of residence, especially in remote rural areas and even in some medium-size towns also means that people frequently need to travel to another town to obtain official documents.

Unwed mothers often cannot travel to obtain such documents due to prohibitive transportation costs, time limitations and constraints on women traveling alone.

- Another deterrent to registering children and obtaining a Family Booklet is the high costs of gathering and obtaining all of the necessary administrative documents to complete the application. In addition to travel expenses, application fees – 50 Moroccan dirhams (approximately US\$6) – are also prohibitive for many women without resources.

In addition to the intimidation and fear of criminal prosecution that characterize unwed mothers’ interaction with administrative and police authorities, bribery and corruption dissuade many of them from attempting to exercise their rights. They describe how civil servants may take advantage of women’s ignorance, blackmail unwed mothers, and exploit their vulnerability by asking them for large sums of money.³⁷

administration, or intermediaries specialized in facilitating interactions with the administration who charged the women enormous fees for their services.

³⁷ Seventy-six percent of acts of corruption in the Ministry of Interior services relate to obtaining an administrative document or an authorization; a right guaranteed to the citizen by law. The services under this Ministry were perceived as among the most corrupt and with the highest indicators of non-transparency: 41 percent of people having had contact with the *moquaddem* (civil status officers) in 2000 admitted to making an illicit payment to them either to have the law applied or circumvent it. Transparency Maroc, *La corruption au Maroc: Synthèse des résultats des enquêtes d’intégrité* (2002).

The procedures for registering children and obtaining a Family Booklet are also extremely complicated and difficult to understand, and require an inordinate amount of official paperwork that is frequently impossible to obtain. Many women simply lack the official paperwork necessary to register the child's birth or obtain a Family Booklet. The Civil Status Office requires a legalized birth certificate in order to register a birth in the State Birth Registry. In order to obtain this certificate, one must have a letter from a doctor or midwife attesting to the birth. However, unwed mothers frequently give birth privately and do not dare go to a hospital, clinic or a medical professional for fear of being reported to the police or out of shame. Without this letter from a medical professional attesting to the birth, they cannot get a legalized birth certificate from the local administrative authorities, and thus cannot register their child at the Civil Status Office.

In addition, parents need copies of their own birth certificates as part of the file to register their child. Unwed mothers often hide or are estranged from their own families, and thus may be unable to contact them in order to obtain the necessary documents (e.g. she may be registered in her father's Family Booklet, which she needs in order to get her own official identity and civil status papers).

- Furthermore, the vagueness of the laws and procedures opens them up to different interpretations and abuse of power by authorities.

The lengthy and time-consuming nature of the procedures also discourages many women from registering their children and attempting to obtain a Family Booklet. For example, seven unwed mothers from a major city in southern Morocco said they gave up after trying more than five times to obtain their Family Booklets.

- Finally, in ethnically Amazigh regions of Morocco, the Tamazight language is more frequently spoken within the family and women in particular will speak only the local Tamazight dialect, while Arabic is the official language for all administrative purposes. This language barrier often prevents women from seeking official documents or accessing the justice system.

While these obstacles to claiming one's rights can impact on all people generally, they affect women disproportionately and unwed mothers even more so. Many administrative procedures in Morocco are facilitated through social networks. While men have more personal connections in the public sphere and therefore have a wider network of people when interacting with the administration, women lack these types of connections; unwed mothers in particular are completely ostracized and excluded from their family and society, and therefore have no support network when dealing with the administration.

3. Indications of progress of local NGO programs on unwed mothers' rights

This section examines the initiatives of local NGOs to promote women's empowerment in Morocco. More specifically, it focuses on the four NGOs of interest located in different regions across the country – the northwest, Middle Atlas, southwest and south central – which are devoted to women's rights and empowerment. Linked nationally in partnership with Global Rights, an

international human rights capacity-building organization, the local NGOs implement grassroots-level human and legal rights education and court accompaniment programs primarily for illiterate women in their respective communities. In addition to these collaborative projects with Global Rights, the NGOs (all youth-led organizations created three to six years ago) also implement literacy, health awareness, professional training and income-generation programs for women.

While there are a handful of NGOs helping unwed mothers in several major cities in Morocco, none of the four NGOs specifically targets unwed mothers; rather, they are included in their women's rights programs together with other beneficiaries. These NGOs implement peer education programs and include unwed mothers in their governance structures and as legal rights education facilitators. They contrast their work with that of religious charitable institutions that allocate financial assistance.

Given the prevailing social and cultural contexts, these NGOs prioritize promoting equality and non-discrimination between unwed mothers and other women. They encourage experience sharing between them in order to create an atmosphere of solidarity and mutual assistance.

3.1 Grassroots-level human and legal rights education

Since the early to mid-2000s, these four local NGOs have been leading members of a group of local organizations from across the country, which, in collaboration with Global Rights, designed and currently implements a widespread grassroots-level program of human and legal rights education for primarily illiterate women from traditionally underserved and marginalized populations.

This broad-based, long-term initiative includes: participatory drafting of an Arabic language facilitator's manual with 74 two-hour program sessions on diverse human and legal rights topics; intensive training and ongoing peer evaluation of hundreds of local NGO members – primarily young women – as program facilitators; and implementation of the program by network member NGOs with tens of thousands of women participants in different areas across Morocco. Based on in-depth consultations with the participants, the program was expanded to contain additional themes identified by the women themselves. The program does not limit itself to providing mere information about the laws, but uses a participatory methodology appropriate for developing individual capacities to defend one's rights and building group skills for advocacy and social change.

3.1.1 Indications of progress on unwed mothers

This program also enables unwed mothers to break the silence and speak out about their lives. In 2002, unwed mothers participated actively with other women beneficiaries to revise the first draft of the program manual, suggesting modifications and additions related specifically to sessions on the rights of unwed mothers. They also proposed new topics of interest to them for the program. As a result, the second version of the Manual, published in 2004,³⁸ contains a session on procedures for obtaining a Family Booklet as well as field visits to Civil Status Offices, hospitals and the police, all of which also benefit other women.

Unwed mothers also concretely profit from the legal information in the specific program session on their rights, which explains the procedures for registering a child's birth and applying for a Family Booklet. In one example in south- central

³⁸ The *Arabic Language Manual* and *English Summary* can be downloaded in PDF format from <www.globalrights.org>.

Morocco, two rural, unwed mothers participated in an education session on the procedures for registering children out of wedlock. Afterwards, they approached the facilitator, who directed them to the NGO court accompaniment services. As a result, both women went on to file court cases and obtain judicial birth declarations for their previously unregistered children.

An integral part of the human and legal rights education program includes group field trips to local public institutions responsible for women's rights – such as the police station, Civil Status Office and courthouse – during which women meet and hold question and answer sessions with relevant personnel.

In field visits to Civil Status Offices, women learn about services offered, papers necessary for different applications and files, and procedures to follow. They also become familiar with the offices, and make contact and form relationships with the staff that then allow them to return to the Civil Status Offices for assistance. Unwed mothers actively ask questions during these field visits, including on procedures for registering children and obtaining a Family Booklet. Local NGOs also report how these field visits demystify the local public administrations and make them a less intimidating and threatening place for women.

In the four NGO experiences described here, unwed mothers also formed independent discussion, peer education and support groups among themselves to share their experiences and collectively analyze them. In one medium-sized town in particular, the unwed mothers who participated in the program decided to create their own NGO just for unwed mothers.

3.1.2 Indications of progress on other program participants

Similarly, NGOs describe the impact that participating in the legal and human rights education program has on other program participants, as a result of unwed mothers' presence in the groups as well as the specific program sessions on unwed mothers' rights. They mention how attitudes of rejection towards unwed mothers were replaced with sympathy and support. On a larger scale, as a result of the program, there was a shift from the consensus of silence around the issue of unwed mothers to a shared vision of participants that unwed motherhood is a social reality that must be addressed.

As one NGO described it, the other women "started behaving normally towards the unwed mothers and stopped marginalizing them".

3.1.3 Indications of progress on implementing NGOs' capacities

Implementing the group legal and human rights education program increases demand for the NGOs' other services. Education sessions not only provide a context where women learn about their legal rights, but also a safe space to encourage them to develop trust in the NGO and later seek out its direct services to address their individual legal problems.

NGOs also emphasize the advantages of implementing such a program from the creation of their organization, advantages that are not merely limited to providing a space where women learn about their rights. These sessions also create opportunities for implementing NGOs to learn more about women's perspectives and realities. By listening to women participants during program sessions, local NGOs can continually design and adapt their programming to effectively address women's concerns.

3.1.4 Indications of progress on local authorities

When the human and legal rights education program was first conceived, implementing organizations primarily focused on and looked for evidence of impact on the participants and NGO capacity building. However, one unanticipated positive result reported by local NGOs is the effect the program has on local public administrative staff and authorities, particularly due to the field visits organized in the program.

As specifically concerns unwed mothers, NGOs organize field trips to Civil Status Offices where program participants meet with the local authorities and public servants, mainly Civil Status Officers. After a presentation on the Civil Status Office structure, staff and procedures, the authorities then engage in a question and answer session with the women, who have prepared questions in advance. Since authorities address the entire group, positive, superficial answers to questions posed will be witnessed by many. The authorities then become accountable for such statements when women later return to apply the laws and procedures in their specific cases.

3.2 The Court Accompaniment Program

In 2006, in collaboration with Global Rights, local NGOs in eight different regions in Morocco launched a one-year pilot initiative to set up structures for Court Accompaniment Programs within their organizations. In this program, local NGO staff accompany women to courts and other relevant government offices and public services in order to orient them to the justice system and provide support during the process. The staff monitor the authorities' behavior in and decisions on these cases and conduct outreach activities for local authorities and civil servants, raising their awareness on women's rights. They also provide legal counseling for women and referrals to lawyers for pro bono or reduced fee services.

While the program was initially conceived as primarily accompanying women to courts and monitoring the judiciary, women also frequently approach NGOs for assistance with legal problems involving other public administrations, such as the police station, Civil Status Offices and hospitals.

Most of these services are provided on a volunteer basis by young women trained by the NGOs as counselors, who work with a small staff averaging five people to implement the entire range of NGO programs. In addition to the initial one-year training period by Global Rights in which the NGOs received a small monthly stipend for costs related to program set-up, the NGOs operate their programs on small budgets comprised mainly of individual contributions by its members.

The four local NGOs handle diverse family and criminal law matters concerning hundreds of women beneficiaries per year. Unwed mothers comprise approximately 10 percent of their total beneficiaries of court accompaniment activities. NGOs' support to unwed mothers includes legal orientation and accompaniment to court and government offices as well as assistance in registering their children's births and obtaining a Family Booklet. The NGOs also facilitate access to emergency shelters for homeless unwed mothers.

Moreover, one NGO working in a large southern city convinces local schools to enroll undocumented children even in the absence of the official identity paperwork normally required for school admission. According to this NGO, a

ministerial circular stipulates that schools must admit children who do not have identity papers up to the end of primary school.³⁹

The NGOs' approach is to provide information, support and orientation so that women can complete much of the legwork and administrative steps themselves. For unwed mothers in particular, the NGO explains the procedures and list of documents necessary to register a child, and helps them prepare the necessary paperwork themselves. Once their file is complete, an NGO representative accompanies them to the administration to file the case.

Local NGOs also intervene with local authorities to find solutions to the obstacles listed above to unwed mothers when registering their children. For example, local NGOs frequently accompany these mothers to the hospital if they have difficulties obtaining a birth attestation. When unwed mothers cannot obtain certain required documents, the NGOs work with local administrative authorities to find an alternative solution that will allow them to eventually register their children. In frequent cases where the 30-day deadline to register a child's birth has expired, volunteer lawyers help unwed mothers file a court case to obtain a judicial declaration of birth.

3.2.1 Indications of progress on local authorities

As with the human and legal rights education program, while the court accompaniment program was intended first and foremost to help women access their rights through individualized legal orientation and assistance, the Court Accompaniment Program also impacted local authorities' attitudes, behavior and policies towards unwed mothers.

In all four towns and cities discussed above, local Civil Status Authorities requested that local NGO collaborate in awareness-raising campaigns to encourage unwed mothers to register their children's births. It is worth noting, however, that in at least one of the towns, the aim of the campaign was described by the local authorities organizing it as that of registering children born "in the absence of a marriage contract", deceptively presenting it as registering children born in *ourfi* marriages rather than to unwed mothers. This approach of camouflaging reality out of sensitivity or morality concerns is relatively frequent among Moroccan Government initiatives.

Moreover, local NGOs describe how now many of their unwed mother beneficiaries are referred to them by the local authorities themselves. One NGO in a large city describes how when police officers are informed by the hospital of a birth to an unmarried woman, they have become hesitant to arrest unwed mothers and instead refer them to the local NGO for information and assistance. Local Civil Status authorities will likewise send unwed mothers to local NGOs for help in preparing applications for official documents.

Furthermore, unwed mothers are reportedly treated with more dignity at the Civil Status Office if an NGO representative accompanies them. Anecdotal evidence from local NGOs describes how local Civil Status authorities are now friendly, polite, respectful and willing to provide unwed mothers with information, and try to simplify procedures for them. In one large city, local Civil Status Officers accommodate unwed mothers known to be beneficiaries of the local NGO and help them with their paperwork from other offices and administrations, facilitating all of the steps necessary to process the case with other civil servants.

³⁹ The other three local NGOs and lawyers from other areas in Morocco consulted for this chapter were previously unaware of this ministerial circular.

Civil Status Officers in the communities where the four local NGOs work also reach informal working agreements whereby the Officers are more flexible in the paperwork required to register a child or get a Family Booklet for unwed mothers accompanied by local NGO members. NGO contacts among the local authorities in one city have also led to the authorities simplifying procedures for unwed mothers seeking access to diverse public services. For example, the Public Prosecutor there now systematically issues an order for homeless unwed mothers to go to a local shelter.

Local NGOs attribute this shift in attitude and behavior to two factors related to their Court Accompaniment programs: good working relationships and contacts with local authorities established by local NGOs during the above-mentioned campaigns and the watchdog role of the NGO representative that serves to monitor and guide the actions of the Civil Status Officer handling the file.

3.2.2 Indicators of impact on unwed mothers' lives

One indicator of social change highlighted by local NGOs is that unwed mothers actively seek out NGO services and assert their rights openly rather than hiding and accepting their plight. Second, local NGOs describe how the program led some unwed mothers to confront authorities directly and resolve problems themselves without the NGO accompanying them. Third, nearly all of the unwed mothers who contacted the four local NGOs to date have been able not only to register their children's births, but also to obtain Family Booklets in their name in which to record their children.

In the two years since the May 2007 completion of the initial one-year pilot period of training and setting up of the Court Accompaniment Program structures, the four local NGOs have each, on average, been able to obtain Family Booklets for 11 unwed mothers per year, a significant number in the context. If it were not for the NGO Court Accompaniment program, the number would likely be zero.

In addition to the limited NGO human and financial resources described earlier, the lengthy procedures mean that even with NGO assistance, it takes unwed mothers three to eight months to obtain a Family Booklet. Many unwed mothers still hesitate to address their situation openly because of the taboo and criminal nature of the issue. Since legal reforms impacting unwed mothers' status have only recently been enacted, the authorities are still grappling with their interpretation and application. Most importantly, unwed mothers do not actually have a clear legal right under law to obtain a Family Booklet. In many places such as the small city where there is no NGO Court Accompaniment Program, the Civil Status Office does not give unwed mothers Family Booklets.

Obtaining a Family Booklet enabled the unwed mothers to establish and enjoy all of the benefits of a legal identity for themselves and their children. They no longer encounter problems enrolling their children in school, applying for jobs, accessing health care in public hospitals, obtaining National Identity Cards, or traveling freely around the country. One unwed mother with a Family Booklet mentioned that she would now be able to get a passport to take her child abroad for much-needed medical care for a physical disability.

3.2.3 Indicators of impact on implementing NGO's capacity

Local NGOs describe the contribution of the Court Accompaniment program to their own institutional development. Through these hands-on, skills-building opportunities and mentoring by Global Rights, local NGOs have enhanced their ability to forge relationships with local authorities, to address risky and taboo topics with government officials and to put pressure on them to change their

attitude towards and treatment of unwed mothers and have advocated for policy change at the local level. They have also put pressure on them to develop a support base of lawyers willing to provide pro bono legal assistance.

The program also improved NGO members' knowledge of laws and procedures, increased the number of NGO beneficiaries and contributed to women's trust in the NGO. It also enhanced the NGOs' overall reputation and credibility in the community as well as with national government representatives and international donors from whom to leverage support.

Finally, providing direct services at the grassroots level helps local NGOs engage with women in the community so that they continually assess and develop the next phases of their activities to be responsive to their priorities. In the case of unwed mothers, regularly listening to their needs has helped consolidate local NGO plans for future advocacy strategies concerning their realities.

When consulted by local NGOs, unwed mother beneficiaries expressed conflicting opinions about efforts to register their children's births and obtain their own Family Booklet. Many unwed mothers do not necessarily want this solution for themselves and their children, for several reasons. Some complain that registering a natural child's birth and obtaining an individual Family Booklet maintain their current stigmatization and that of their child. Since the law requires a symbolic father's name beginning with *Abd*, children are easily identifiable as being born to unwed mothers. Following the 2002 legal reforms, unwed mothers are the only unmarried persons now requesting exemptions to the law restricting Family Booklets to legally married couples.

Unwed mothers also point out that obtaining their own Family Booklet exonerates biological fathers of all obligations to their children and reinforces the idea that mothers alone are financially and morally responsible for their children, as if the father does not exist. Many would prefer an approach where the biological father's paternity is attributed and where he assumes his share of the child's upbringing.

Some unwed mothers believe that NGOs are facilitating the abandonment of their children by the biological father. While they agree that unwed mothers need official identity papers, they argue that steps need to be taken to ensure that biological fathers assume responsibility for their children. They insist on sustainable measures, rather than the current solution of forcing the biological father to marry the mother only to divorce her immediately afterwards.

As one NGO member summarized the viewpoints of many unwed mothers, what is the point of being legally empowered as an individual if other actors – the state, biological fathers – are thus absolved of their legal responsibility? Local NGOs have now requested assistance from Global Rights to design and implement future activities to address this perspective voiced by unwed mothers.

Discussion and conclusions

Implications for the role of local NGOs

This chapter began by suggesting that practitioners, policymakers and donors give careful consideration to the details of any given legal context when designing, implementing and evaluating law-oriented development initiatives. Laws concerning unwed mothers have implications for the role of local NGOs, and highlight implications for the defining results and measuring success. Different

circumstances can make it difficult to consider whether or not projects promote women's legal empowerment.

The popular discourse one frequently hears in Morocco – especially among the authorities, intellectuals and other members of the elite – is that the current problem is the population's ignorance of the laws and their rights. A recurring comment by both official and civil society actors is that legal education campaigns are the needed solution to many social ills. Under the above circumstances, in which laws are either not applied, are unclear, or have gaps, awareness of them is insufficient; knowledge alone is not power and does not effect change. The situation of unwed mothers in Morocco illustrates the need for concrete assistance in accessing the public administration and in navigating the system in order to obtain some measure of justice for themselves.

The question then becomes what the role of local NGOs is in this context. In addition to providing legal information and advice, they serve as intermediaries between women and the authorities. The knowledge of procedures of NGO staff and their personal contacts with staff at different administrations facilitate the process for unwed mothers as well as the civil servants' jobs. The NGO presence also serves as watchdog over local authorities.

Through such accompaniment, NGOs help unwed mothers avoid humiliation at public administrations and provide protection from corruption and abuse of authority by civil servants. In the absence of traditional family support networks and social connections that usually facilitate this for less ostracized people, NGOs step in to fill this role for unwed mothers.

In areas where the law is unclear or vague, NGOs complement the work of the local authorities and encourage advantageous interpretations of laws. This is the case with the local police, who now limit their hospital interventions at hospitals to determine the unwed mother's identity in order to avoid child abandonment. Without any orders or specific guidelines on how to deal with unwed mothers, the police frequently refer them to local NGOs for assistance instead of arresting them.

In areas where there is a legal gap, as with issuing a Family Booklet to unwed mothers, local NGOs work with local authorities to encourage alternative solutions that are more beneficial to women's rights, such as convincing the local Civil Status Office to give unwed mothers their own Family Booklet.

Under such circumstances, practitioners, policy-makers and donors must realize that support for NGOs that provide such direct assistance to marginalized populations will be necessary over the long term until the larger structural issues of social stigmatization, illiteracy, corruption, and legal and administrative reform are addressed.

Implications for measuring success and evaluating progress

How one views the role of local NGOs determines how indicators should be developed in order to assess progress and judge outcomes.

For example, the traditional solution of convincing biological fathers to marry unwed mothers is generally viewed by society as positive. In this instance, a report to donors might cite the number of marriages concluded between the biological parents of a child born out of wedlock as an indicator of success. However, many social workers acknowledge that a large majority of these marriages turn out badly – in violence and/or the father's subsequent repudiation

of the mother.⁴⁰ NGOs emphasizing family reconciliation may cite statistics on the percentage of unwed mothers who have returned home to their families, irrespective of possible abuse.

In the more recent approach focusing on official documents, NGOs may assess their work by citing the number of birth registrations of “natural” children and Family Booklets issued to unwed mothers that they assisted.

How would one describe or measure the non-application of a discriminatory law against women as a result of NGO efforts? Even though the penal code prohibits sexual relations outside of marriage, the police are increasingly reluctant to arrest unwed mothers. One wonders if local NGOs could be encouraged by donors, local authorities or other stakeholders to report reduced numbers of arrests of unwed mothers in hospital and prosecutions for sexual relations outside of marriage, and how this would even be feasible.

Similarly, if the impact of NGO work is circumventing the law to grant rights that do not legally exist, how and why would they openly report on this, given the risks? When probed by the authors for more explicit information, the four local NGOs resisted questioning local civil status authorities further to explain the legal basis on which they provide unwed mothers with Family Booklets. The NGOs feared that the authorities would conclude that there is actually no legal basis and consequently stop providing them with these booklets.⁴¹

It is the authors’ view that practitioners, policy-makers and donors should be aware of how different results presented by NGOs working with unwed mothers demonstrate that, while in the guises of social science and empowerment, they may in reality reflect society’s morality imperatives. One should also be sensitive to political constraints to information and data gathering in a context that encourages a trade-off between immediate solutions to individual problems and speaking openly and publicly about larger institutional dysfunctions. Finally, steps towards progress should not be confused with longer-term empowerment.

Implications for how we define empowerment

The legal and social contexts also affect one’s definition of empowerment, and hence how one assesses law and development initiatives designed to support marginalized populations. An examination of different approaches used by local NGOs in Morocco when working with unwed mothers helps reflect on how one’s conception of legal empowerment.

The initial approach used by some NGOs to address the issue of unwed mothers, in the words of one NGO President was, “we go find the biological father and corner him into marrying the mother!” In this traditional vision, the unwed mother is seen as needing a man to marry her in order to save her honor and put her in her proper place, married with legitimate children.

NGOs frequently contact the biological father to try and convince him to assume his responsibilities and recognize his child. It is worth emphasizing that this entails claiming that he and the mother were actually legally married – or at least engaged to be married – when the child was conceived, and not merely admitting biological paternity. Along the same lines, many NGOs include family reconciliation as part of their work, contacting the unwed mother’s family to convince them to allow her to return home.

⁴⁰ Femme du Maroc, ‘Mères célibataires’ <<http://www.femmesdumaroc.com/Magazine/Societe/meres-celibataires-le-happy-end-est-il-possible>> at 1 December 2009.

⁴¹ For this reason, the towns and cities where the NGOs described are located have not been named.

More recently, local NGOs have instead begun using the strategies described above, providing assistance to unwed mothers and intervening with the administration in order to register her children and obtain a Family Booklet in her name. This strategy is frequently seen as promoting the empowerment of unwed mothers, who have begun to obtain legal identities for themselves and their children.

However, many unwed mothers consider obtaining individual identity papers as a band-aid solution to a larger problem of legal accountability of biological fathers for their children. This raises the question of how to understand legal empowerment – whether it is according to our definition as practitioners, policy-makers or donors of progress and positive laws or according to what the women themselves want, and how these should be reconciled.

Any definition of legal empowerment should take into account women’s own priorities, concerns, and recommendations when elaborating program goals, indicators of success and desired results. Definitions of legal empowerment for women are easily influenced by morality concerns and ideas that do not necessarily take into account unwed mother’s perspectives. The question becomes whether unwed mothers should adapt to society and the existing legal system; therefore, the extent to which they access it is evaluated and measured as success. Alternatively, should the legal system be adapted and become inclusive of and responsive to the needs of unwed mothers?

When asked⁴² what changes should be made concerning identity paper procedures, women listed the following:

- assistance from Civil Status Officers responsible for birth registrations and Family Booklets;
- simplification and acceleration of administrative procedures;
- elimination of corruption and punishment of bribery in public administrations;
- reduced fees for official documents;
- respectful treatment of unwed mothers by civil servants;
- awareness-raising and advice for women on their legal rights;
- responsibility of biological fathers for their children on an equal basis with biological mothers;
- guarantee of the legal right to all women – including unwed mothers – to obtain a Family Booklet.

An assessment of local NGO efforts to date suggests that in the short three-year timeframe described here, current programs have succeeded in obtaining improvements related to all but the last two bullet points, at least on the local level. Even this claim comes with the caveat that these have been achieved on a case-by-case, unofficial basis through ongoing NGO interventions, and not yet made official law or policy that applies equally to all. The last two points require legal reforms and have not yet been addressed or made the focus of any advocacy campaigns. Based on input from unwed mothers, local NGOs identify legislative reform campaigns as a priority for future collaboration from Global Rights.

⁴² UNDP and the Association for the Development and Enhancement of Women, above n 3.

LEGAL EMPOWERMENT OF UNWED MOTHERS:
EXPERIENCES OF MOROCCAN NGOS

The current legal context in Morocco also raises questions about defining legal empowerment. As described above, legal empowerment for unwed mothers not only concerns ensuring that good laws are applied or that women have access to the rights contained therein, as is the case with registering births, but also involves local NGO work with local authorities to not apply certain laws such as penal code provisions outlawing sexual relations outside of marriage, or overcoming legal gaps – in the case of the Family Booklet to obtain a right not provided for by the law.

Future legal empowerment initiatives concerning unwed mothers should therefore focus on access not only to the justice system, but also to the legislative reform process. In a long-term strategic process to respond to unwed mother's priorities and opinions, NGOs can build on the pilot experiences implemented at the local level and consolidate current unofficial practices to generate support and mobilize the state to integrate and recognize unwed mothers and their specific realities and concerns in the law.