

Immigration and Refugee Board of Canada

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> Responses to Information Requests

Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website. Please note that some RIRs have attachments which are not electronically accessible. To obtain a PDF copy of an RIR attachment please email Basesdedonnees.DatabaseUnit@irb-cisr.gc.ca.

9 September 2013

MAR104565.FE

Morocco: Application of adultery laws, in particular, of Article 490 of the Penal Code and of the articles that follow it; treatment by family members and in-laws of people who commit adultery (2010-August 2013)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Adultery Laws

1.1 Penal Code Provisions

The Moroccan Penal Code contains the following provisions on adultery:

[translation]

Article 490

All persons of the opposite sex who are not related by marriage, and have sexual relations with each other, are punishable by imprisonment for one month to one year.

Article 491

Any married person convicted of adultery is punishable by imprisonment for one to two years; prosecution is pursued only on a complaint from the offended spouse.

However, if one of the spouses is outside of Morocco, the adulterous spouse (by common knowledge) may be prosecuted automatically on the initiative of the prosecution.

Article 492

Withdrawal of the complaint by the offended spouse terminates the proceedings against their spouse for adultery.

Withdrawal after a conviction becomes irrevocable terminates the consequences of that conviction for the convicted spouse.

Withdrawal of the complaint never applies to the adulterous spouse's accomplice.

Article 493

Evidence of offences under articles 490 and 491 may be established either by a record prepared by a judicial police officer certifying violation of the offence, by confession in letters or documents by the accused or by a legal confession (Morocco 1963).

1.2 Application of Penal Code Provisions on Adultery

Sources consulted by the Research Directorate mention Article 490 of the Penal Code and emphasize that it criminalizes extramarital sexual relations (AI 1 Mar. 2013; Freedom House 2010).

According to Freedom House, extramarital sexual relation cases are "rarely" taken to court, because a conviction can be based on only eyewitness testimony or a confession by one of the accused (2010). However, in an article published by the Moroccan magazine *MarocHebdo*, a representative of the Democratic League for Women's Rights (Ligue démocratique pour les droits de la femme, LDDF), a Moroccan NGO (LDDF n.d.), stated the following:

[translation]

"In the absence of formal evidence or a flagrant case, the man's statement is always believed over the woman's. ... Many women are therefore accused of adultery simply because they were one-on-one at home with a man other than their husband or even in a public place. Without a witness, if they are unable to prove that their relationship with that man is purely professional and void of any sexual connotation, they do not escape justice." (*MarocHebdo* 16 Mar. 2011)

More specific information on the prevalence of convictions under the above mentioned articles of the Penal Code could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the article published by the Moroccan magazine *MarocHebdo*, which points out that, according to the law, judicial prosecution against a person who has committed adultery may only be initiated upon request by the [translation] "'offended' spouse,"

even if the "offended" spouse withdraws their complaint, ...the author of the infidelity remains subject to prosecution by the public prosecutor for debauchery, prostitution or any other violation of good morals (16 Mar. 2011).

Various media have reported cases in which Penal Code provisions regarding adultery have been applied (*La Nouvelle Tribune* 26 Jan. 2012; *ibid.* 7 Mar. 2013; *Mediapart* 4 Jan. 2013; *Le Matin* 19 Apr. 2013).

- In January 2012, an article in the Beninese daily *La Nouvelle Tribune* stated that a woman had been arrested for adultery after an investigation had been conducted by a private detective hired by her husband (26 Jan. 2012). The article does not indicate the date of the arrest.
- In an article published by the French online newspaper *Mediapart* in January 2013, the author states that, while reporting in the women's wing of the Oukacha prison, she noted that some women had been imprisoned there for [translation] "adultery" or for having "extramarital sexual relations" (4 Jan. 2013).
- In March 2013, the *Nouvelle Tribune* reported that, between 1 January and 27 February 2013, police in the city of Kenitra had arrested 14 people for adultery (7 Mar. 2013). Information on the outcome of those arrests could not be found among the sources consulted by the Research Directorate.
- In 2013, a trial court sentenced two presumed [translation] "lovers" accused of committing adultery to six months in prison, and ordered them to pay 15,000 dirhams [about C\$1,840 (XE 6 Sept. 2013)] to the husband who was allegedly cheated on (*Le Matin* 19 Apr. 2013). However, the conviction was set aside in the court of appeal because the accused had [translation] "not been found committing the adulterous act" (*ibid.*).

Other examples of the application of the law to adulterous affairs could not be found among the sources consulted by the Research Directorate.

1.3 Activists for the Abolition of the Penal Code Provisions on Extramarital Sexual Relations

Media articles in June and July 2012 state that the Moroccan Association for Human Rights (Association marocaine des droits humains, AMDH) is advocating for the abolition of the Penal Code provisions that criminalize extramarital sexual relations between adults (*Jeune Afrique* 28 June 2012; Ajib 13 July 2012; *aufait* 19 June 2012). According to two of those sources, the government of the party in power, the Justice and Development Party (Parti de la justice et du développement, PJD), stated that it did not want to abolish these provisions because it considers extramarital sexual relations to be [translation] "a crime" (*ibid.*; Ajib 13 July 2012). In July 2013, an article in the *L'Observateur du Maroc* stated that Adala, a Moroccan association that advocates for the right to a fair trial for all (Adala n.d.), also calls for the [translation] "decriminalization of extramarital sexual relations" (*L'Observateur du Maroc* 11 July 2013). According to *L'Observateur du Maroc*, it is a [translation] "fight that is far from being won" (*ibid.*). Corroborating information could not be found among the sources consulted by the Research Directorate.

2. Treatment of People Accused of Adultery by Society and Family

Sources state that adultery is a [translation] "taboo" subject in Morocco (Researcher 4 Sept. 2013a; *MarocHebdo* 16 Mar. 2011). According to an article published by *Jeune Afrique*, extramarital sexual relations are carried out [translation] "discreetly" (28 June 2012).

The Research Directorate contacted a researcher at the University of Nijmegen, in the Netherlands, who is especially interested in honour crimes and who went to Morocco in 2009 to research the subject (Researcher 4 Sept. 2013b). During a telephone interview with the Research Directorate, this Researcher pointed out that it is [translation] "difficult to generalize" and "that we cannot paint a general picture of the adultery situation in Morocco" because there are "always exceptions" and "many variables" can influence the situation (ibid.). Describing in general terms the treatment of people accused of adultery, he stated that confessing to such an act in Morocco [translation] "has considerable consequences both for the man and for the woman," although the woman is generally in a "weaker position" than the man (ibid.). The researcher explained that the woman [translation] "has a lot to lose by publicizing the affair," particularly honour and esteem (ibid.). He added that not only she, but also members of her family, that is, her father, brothers and uncles, will have to face the social stigma (ibid.). The researcher pointed out that it [translation] "is better to hide the misconduct of the person at fault" (ibid.). According to him, a wife accused of adultery could be subjected to violence [translation] "by her spouse and also by members of her own family," such as her father, brothers and uncles, as well as by her in-laws (ibid.). According to the article in *MarocHebdo*, [translation] "many different facts reported daily in the news" show that the humiliation associated with an act of adultery can lead men to [translation] "murder" or "suicide" (16 Mar. 2011). The Researcher explained the following:

[translation]

A man may kill his wife if he finds out that she committed adultery, but he would not do so in order to "regain his honour." Such a situation would result in a new stigma associated with that man, that of "having killed his wife (of being a murderer)". (4 Sept. 2013b)

Among the sources consulted by the Research Directorate within the time constraints of this Response, the Research Directorate found an article concerning the case of a man who had killed the woman with whom he was having an affair under the pretext that she was having an adulterous relationship with another man (eMarrakech 31 July 2013).

The researcher stated that [translation] "if adultery is known by the community, the couple has no other choice but to divorce, even if the husband does not want to (and if he forgives his wife) (4 Sept. 2013b). He pointed out that [translation] "pressure from the community is strong" (ibid.). The researcher also explained that [translation] "if the adultery is not known by the community, divorce is not necessary" but that "the adulterous wife may have difficulty refusing to let her husband have a second wife (polygamy is legal in Morocco)" (ibid.). The researcher continued by stating that if it is the man who is accused with committing adultery, the wife has the right to separate, but it depends on the position of her family (whether her family agrees) and the [translation] "status of the man" (ibid.). He added that [translation] "a man who commits adultery may be forgiven more easily" than a woman (ibid.). Similarly, according to the article by *MarocHebdo*, [translation] "social disgrace falls more on the adulterous Moroccan woman than on the unfaithful Moroccan man" (16 Mar. 2011).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Additional Sources Consulted

Oral sources: Attempts to contact the following people and organizations were unsuccessful: Association démocratique des femmes du Maroc, Association des femmes arabes de la presse et de la communication, Association Hanna Massouda, Association marocaine des droits humains, Faculté des lettres et des sciences humaines Hay Inara Ain Chock, Femmes sous lois musulmanes, Initiatives pour la protection des droits de la femme, Institution nationale de solidarité avec les femmes en détresse, JOSSOUR Forum des femmes marocaines, Organisation marocaine des droits humains, Réseau espace de la citoyenneté, Réseau international de solidarité, Union des avocats arabes. A representative at the Center for Women and Development was unable to provide information for this Response.

Internet sites, including: Centre for Women and Development; Directmatin.fr; ecoi.net; Euro-Mediterranean Human Rights Network; Fédération internationale des ligues des droits de l'homme; Femmes sous lois musulmanes; Human Rights Watch; International Crisis Group; Le Maroc au féminin; United Nations – Committee on the Elimination of Discrimination Against Women, UN Women, ReliefWeb; United States – Department of State.

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