



المجلس الوطني لحقوق الإنسان
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Conseil national des droits de l'Homme

The creation of the advisory council **on family and childhood**

Contribution to public debate - N°1

CONTRIBUTION TO PUBLIC DEBATE THE CREATION OF THE ADVISORY COUNCIL ON FAMILY AND CHILDHOOD

BASIS OF OPINION

1. In accordance with its mandate and with a view to mobilizing the different stakeholders involved in the process of implementing the provisions of the Constitution of July 2011, the National Human Rights Council (CNDH) has organized a series of meetings and discussions on the mandate, mission, structure, composition and functioning of the Advisory Council on Family and Childhood, set out in Article 169 of the Constitution, as well as on the complementarity of this Council with other entities and institutions for the protection and promotion of human and citizens' rights in order to avoid duplication and overlap of functions.
2. The CNDH has drawn up this opinion in light of the recommendations of these meetings and after analyzing international experiences of countries that have similar family and childhood institutions. The objective is to provide the stakeholders with the clarification likely to enrich public decision-making concerning the creation of the Advisory Council on Family and Childhood.

NORMATIVE FOUNDATIONS

Provisions of the Constitution and national legislation relating to family and childhood

3. The Constitution affirms the right to equality before the law of all Moroccans, guarantees a wide range of rights and freedoms to all citizens and prohibits any form of discrimination on the grounds of sex, age, personal circumstances, etc. Article 32 of the Constitution provides that "The family, based on the legal bond of marriage, is the basic unit of society. The State shall seek, through the law, to protect the family from a legal, social and economic perspective in order to ensure its unity, stability and preservation. It shall ensure equal legal protection as well as social and moral consideration for all children, regardless of their family status." These constitutionally enshrined rights are inherent to the person. By referring implicitly to "the family rights of the person", which are inherent to all human beings, and to the "social rights of the family", the Constitution calls upon the State and society to fulfill their role in securing and protecting this institution. Therefore, under the Constitution, the State intervenes in family regulation in order to preserve the common good and to provide equal protection to all children "regardless of their family status" (Art. 32). The principle of equal rights for all children has thus been elevated to the status of a constitutional norm. Whether children are born in or out of wedlock, the Constitution guarantees them equal and non-discriminatory treatment.

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4. The Family Code enacted in 2004 enshrines three basic principles, namely the equal dignity of family members, co-responsibility of the spouses, and the best interests of the child in terms of custody and paternity. “The State shall be responsible for taking the necessary measures for the benefit of children as well as for the guarantee and preservation of their rights in accordance with the law” (Art. 54).

5. More recently, two new laws have enriched the legislative body on the family and children, namely Act No. 41-10 on conditions and procedures to benefit from the family solidarity fund, adopted on December 13, 2010, and Act No. 14-05 on the conditions of opening and managing social welfare institutions to improve the quality of care in social institutions, enacted on November 22, 2006.

MOROCCO'S INTERNATIONAL COMMITMENTS

6. The Convention on the Rights of the Child (CRC), ratified by Morocco on June 14, 1993 and its protocols (the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol on the Involvement of Children in Armed Conflict) provide for the following fundamental rights: (i) the child's best interests, (ii) survival and development, (iii) participation, and (iv) non-discrimination. The right to protection (creating a protective environment for the child/teaching children to protect themselves) is an overarching right that cuts across all provisions of the Convention.

7. Other relevant international conventions, particularly the Convention on the Rights of Persons with Disabilities and its Optional Protocol (CRPD, ratified by Morocco in 2009) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW, ratified by Morocco in 1993), prohibit discrimination against persons with disabilities and migrants and affirm their right and that of their families to protection by society and the State.

8. The Beijing Platform for Action (1995) enshrines the social significance of motherhood, the role of parents in the family and the upbringing of children, and the critical role that women play in caring for other family members. In addition, the Platform focuses on the sharing of responsibilities between parents, women and men, and society as a whole so that motherhood and women's family responsibilities do not constitute a source of discrimination against them and do not contribute to denying them the right to equality and justice enshrined in Article 2 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which applies to all women regardless of the form of the family, the legal system and the country's religion/tradition.

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9. On the 10th anniversary of the International Year of the Family, the proclamation of the International Year of the Family in Doha (1994) aimed to enhance public awareness of issues related to the family and reaffirmed the commitments of governments to recognize and respect the important and vital role of motherhood, the need to protect the latter and the child, and the right to build a family based on an equal marital partnership. To this end, all institutions of society should respect and support parents' efforts to nurture and care for children in a family environment.

SOCIAL AND FAMILY CHANGES IN MOROCCO

Demographic and sociological transition

10. Fertility has declined noticeably, to a level close to the level needed to replace the population. According to the High Commission for Planning (HCP), the total fertility rate between 1962 and 2010 fell from 7.20 to 2.19 at national level. This decrease affected both rural (from 6.91 to 2.70) and urban areas (from 7.77 to 1.80). This demographic transition has undeniably led to incipient population ageing in Morocco which, although at an early stage, represents a real challenge for the government and families in terms of health and social protection.

11. The decline in age at first marriage and endogamous marriage and the rising numbers of people remaining unmarried are evidence of a significant change in perceptions of marriage. In 2010, the age at first marriage had risen to 26.6 for women and 31.4 for men. From 1994 to 2010, the proportion of those remaining unmarried (at the age of 50) doubled for men and increased by 7 times for women.

12. The rise in life expectancy at birth, up from 47 years in 1962 to 74.8 years in 2010 according to the HCP, is linked to lower rates of maternal mortality and under-5 mortality. Although child mortality remains relatively high compared to countries with a similar level of development, it fell by almost 9 percentage points between 2004 and 2009.

13. Family structures and relations have gradually diversified, breaking with the model and values of the traditional family. This entirely new structural diversification has basically led to the emergence of "unconventional" families, through the shift from a unique family model to a plurality of family structures and relations (nuclear, extended, single-parent and migrant families, and families where the woman is the main or sole breadwinner; childless couples, non-family households, etc.), as well as to a decrease in household size and a new status for the child.

These developments are mostly related to urbanization, the expansion of schooling and women's work, the changing status of women, the decline in age at first marriage and the emergence of new family values.

Situation of children in Morocco

14. Although numbers of children have fallen more sharply compared to other age groups of the Moroccan population (10,692,000 in 2010 as against 11,170,000 in 2004), they still face major challenges in terms of human and income poverty.

15. The ratio of child mortality (children aged 0 to 5 years) was 36.3 in 2010, down from 104.1 in 1987 and 213 in 1962 (Repeated population survey, HCP, 2011). The effects of child malnutrition are more severe in rural than urban areas and for girls more than boys, due to girls' early involvement in domestic work and the absence of adequate nutrition to offset the corresponding energy expenditure. School deprivation, reaching 7.2% in rural areas (1.1% in urban areas), and the employment of children aged from 7 to 15 (HCP data show that 3% of this age group are working as against 9.7% in 1999) are challenges facing Morocco.

16. The incidence of income poverty is higher among children than among adults, especially in rural and suburban areas. According to the HCP, the proportion of poor children in 1991 was 17% as against 13% for adults. Indeed, although the economic value of children in urban areas has fallen sharply in favor of self-fulfillment through child success, the rural child is still perceived as an economic and practical asset. The lack of resources negatively affects children's development, health, education and well-being, as well as the protection of the most dependent family members. It reduces their chances of surviving beyond the first five years and makes them particularly vulnerable to poverty.

17. These profound demographic, social and family changes have had the following consequences:

- Changes in the values governing family relationships, as solidarity is now found much more between separate nuclear households than within the same extended family. Unity in this type of family is increasingly reduced to the symbolic sphere and is less and less felt economically and socially. The shrinking and vanishing authority of the elders is particularly apparent from the use of dialogue inside the family instead of obedience;
- The proliferation of particularly vulnerable groups increases family assistance and support tasks: rural families, single-parent families, families with disabled children, employees with disabilities, inactive persons with disabilities, migrant families, pensioners, unemployed persons, single mothers, women victims of domestic violence, abandoned children, etc.;
- The rise in women's gainful employment (25.3% of women were working in 2011) has had little effect on the sexual division of labor within the household. Domestic work is still a predominantly female activity and time spent on it does not decrease substantially for employed women (1998-99 Survey on Women's Time Budget – Statistics Directorate). Consequently, a woman's paid work (outside the home) is still regarded as contrary to

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her role as a mother. The increasing and irreversible participation of women in the labor market, accompanied by men's limited participation in housework, calls for a review of the scope of public policies in the fields of solidarity and reconciliation of family life and professional life.

18. The gap between the idealization of family and the economic and social realities affecting the lives of individuals and between this reality and the nature of government responses is becoming wider. Moroccan families assume the lead role in caring for young children, the elderly, the sick, persons with disabilities, etc. However, this model is now powerless to resolve many of the challenges faced by the overwhelming majority of families.

19. Therefore, Moroccan society and families have undergone considerable changes making it urgently necessary to reform family policies in Morocco in order to take account of these developments and the needs and aspirations of family members. Accordingly, the "family policy" to which the Moroccan Constitution alludes must not aim to homogenize realities and behaviors, because a family policy that would be appropriate for a particular type of family would not necessarily work for another type. In other words, the "normal" nuclear family (parents and unmarried children) cannot be the only target of public policies and services.

TOWARD NEW PUBLIC POLICIES FOR FAMILIES AND CHILDREN

20. Given the current changes in the Moroccan family and in order to keep pace with them and to promote equality, social justice, the empowerment of individuals and the modernization of society, family policy must be:

- A policy based on the constitutional rights of each member of the family. It should draw on the frame of reference and principles set forth in the Constitution, the Family Code and the relevant international conventions, namely (i) the guarantee of rights and freedoms of family members, (ii) the co-responsibility of the spouses, (iii) the best interests of the child and equal legal protection and social and moral consideration to all children, regardless of their family status, (iv) the recognition of the (paid and unpaid) contribution of each family member; and finally (v) intergeneration solidarity;
- An emancipatory policy that seeks to enhance the modernization process in Moroccan society, by supporting women's access to the labor market. This requires massive public investment in preschool, which must be the essential focus of early childhood policy. Particular attention should be devoted to mothers of persons with disabilities through inclusive policies that take into account these women's need for support;

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- An equitable and targeted family policy that takes account of social justice challenges: the fight against poverty and exclusion through benefits and tax measures aimed at economically and socially vulnerable families and children. Maintaining such a policy over a long period of time can have an impact on women's status, child education and the living standards of the population in general;
- This family policy requires cultural change in government bodies and public administration; in other words, it necessitates a strategic alliance between experts in social sciences (economics, sociology, demography, etc.) and administrative elites, but also all government organizations, to endow family policies with the modern and equitable dimension to which society aspires.

21. The proposals set out below constitute the CNDH contribution to the establishment of the Advisory Council on Family and Childhood on a basis that enables this future constitutional body to provide an appropriate response to action benefiting the family and the child.

THE ADVISORY COUNCIL ON FAMILY AND CHILDHOOD

Status

22. Given its mission and status as set out in the Constitution, the Advisory Council on Family and Childhood should be an advisory body independent of the executive. As the government is responsible for the supervision of family policy, it cannot as such reconcile the mission of implementation with that of monitoring and assessing public policies.

Functions

23. Article 169 of the Constitution stipulates that this Council “shall monitor the situation of the family and children, give its opinion on national plans in this field, stimulate public debate on family issues and ensure follow-up to the implementation of national programs initiated by the relevant departments, bodies and institutions”.

24. The Constitution defines the overall framework of a comprehensive and integrated “family and child policy” as well as the approaches to be adopted by the Advisory Council on Family and Childhood. Accordingly, this Council should be tasked with directing and proposing appropriate strategies and policies, providing advice and stimulating public debate.

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25. The Council should thus be entrusted with the following functions:

- Informing and guiding public policymaking and legislation in relation to its mandate through constant monitoring, providing consultations, and producing opinions, memoranda, studies, research and reports;
- Giving opinions on issues referred to it by the government and the parliament;
- Initiating and promoting public debate on government family and childhood policies, involving all stakeholders;
- Providing advice and recommendations to the government;
- Monitoring and assessing government family and child policies.

Main duties and areas of intervention

The Advisory Council on Family and Childhood may have the following duties:

26. In terms of improving knowledge:

This component aims to develop cross-cutting knowledge on the family and children in all related areas in order to enable the Council and all stakeholders to better fulfill their mandate and to improve the relevance of public policies:

- Promoting knowledge about family and childhood and family policies to analyze social, economic and demographic developments through the collection and analysis of data in order to anticipate and respond to their effects on families and children;
- Monitoring and analyzing social, economic and demographic developments through the collection and analysis of qualitative data in order to anticipate and respond to the effects on families and children. To this end, effective collaboration in the development of knowledge among the different stakeholders would help achieve this goal.

27. In terms of providing support to the government for the development and implementation of relevant integrated family policies and strategies and reforms of laws and public policies:

This component is closely related to the first duties of the Council, given that any advice/proposal should be based on a sound understanding of the situation of families. An integrated family policy should also help overcome the difficulties involved in coordinating the activities of the different government bodies and social departments. This requires the establishment of partnerships and cooperative relationships with all stakeholders. The objective is to inform about policy priorities in relation to social, economic and demographic trends:

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- Informing about family and childhood public policymaking for the development of integrated family policies that take into account education, employment and health care and complement the existing sectoral policies aimed at meeting the needs of children and family members;
- Stimulating public debate on family and child policy, by involving all stakeholders in order to shed light on guidance, prioritization and the strategic objectives of government action.

28. In terms of monitoring/assessing the implementation of national programs initiated by the various competent departments, structures and bodies:
This aims to strengthen the accountability and consistency of family and child public policies:

- Monitoring and follow-up in order to ensure that children and family members enjoy the rights granted to them by the Constitution, relevant international conventions, national legislation (particularly the Family Code) and national programs;
- Ensuring consistency of national policy programs aiming at family family members;
- Assessing national programs, whether on its own initiative or at the request of the government, whenever their challenges and effects on the family and childhood are obvious. The findings of these assessments must be brought to the attention of all stakeholders (government, parliament, socio-professional organizations, civil society, etc.).

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Priority areas of intervention

29. Based on cross-cutting issues:

The purpose is to address the issues relating to the economic, social and cultural development of the family, income inequality between heads of household, the social and legal protection of family members, and support for the reconciliation of family and professional life, particularly by:

- Supporting parenthood (or parent-child relationships), responsible parenthood, and family and intergeneration solidarity;
- Supporting the parenting of persons with disabilities, especially women with disabilities and mothers of children with disabilities;
- Proposing alternatives to child institutionalization by developing solutions to guarantee the protection and best interests of children;
- Finding solutions to the problem of reconciling family and professional life, specifically by providing care for young children;
- Ensuring coordination between intergovernmental policies and the various stakeholders for effective, efficient and coherent family and child public policies in accordance with the Constitution and the relevant international instruments.

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30. According to age and social groups:

Particular attention should be devoted to the following groups:

- Young children;
- Teenagers;
- Abandoned and abused minors, and child victims of abuse, violence and exploitation;
- Domestic workers;
- The elderly;
- Persons with disabilities;
- Single-parent households and dual-income households with young children.

Composition

31. As regards composition, it is proposed that membership in the Council should reflect should represent the diversity of stakeholders and fields of competence.

Half of the Council members could be appointed by His Majesty the King, the Head of Government and the speakers of both houses of parliament. The other half would be appointed by an ad-hoc committee following a public call for applications and on the basis of the criteria of recognized competence and proven civic engagement, while taking into account the constitutional objective of gender parity, regional diversity, etc. Considering that a rigorous knowledge of family and child developments involves various scientific fields, multidisciplinary should be an important criterion in the appointment process.

In all cases, not holding multiple offices, competence and proven experience in family and child policies should constitute objective criteria for the appointment of Council's members.

Organization and functioning

32. The Advisory Council on Family and Childhood shall be administratively and financially autonomous. It may have:

- Thematic committees and/or working groups;
- An administrative structure consisting of an executive director and a team of experts that implements the Council's agenda.

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CONCLUSION

33. From the analysis of international experiences of countries that have family and childhood institutions, some lessons have emerged that suggest the following:

- Provide the Council with independent status and managerial autonomy;
 - Favor the “human rights” approach based and inform about public policies and strategies rather than focusing on service and support;
 - Analyze the changes in family structures, in order to anticipate policies and strategies in the long term;
 - Reflect on ways to develop effective public policy coordination of family and childhood, through the establishment of a comprehensive, integrated and inclusive family policy that takes into account social diversity;
 - Consider and propose cross-cutting modalities to take into account the issue of disability in all matters relating to family and childhood;
 - Reflect on the regional dimension in order to support the regionalization process underway, and show how family policies should be rolled out at local level according to the specificities and challenges of each region and the specific needs of each area of residence
- Foster a composition that includes actors from the public and private sectors and civil society in addition to independent qualified personalities, especially in the field of family and childhood;
- Seek to ensure parity between men and women in the Council's governance and management, as well as effective involvement of civil society and the private sector in the development and implementation of family and childhood policies.



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