

# WOMEN'S LAND OWNERSHIP IN MOROCCO: CURRENT STATE & CHALLENGES

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## Abstract

Land is the most relevant, yet the most undermined, type of property for women in Morocco and the MENA region in general for different reasons. The paper provides an overview about the factors undermining women's land ownership in Morocco. It focuses on the legal aspect and exposes the body of regulations governing women's land ownership, the historical process underlying it accounting for the colonial legacy and tribal politics. It highlights the legal changes and their impact, since 2010, granting women more access to communal land as well as the role of the *Soulaleyyate*, a Moroccan women's land rights movement, in stirring the reforms. Lastly, it addresses the challenges facing these reforms and future prospects.

Key Words: property rights, land ownership, Soulaleyyate, law, women's self-ownership

## Introduction

Strong systems of property rights are synonymous of economic growth and prosperity. It comes as no surprise then that the most prosperous countries top the ranking of the Fraser's Legal System & Property Rights indicator (one of the five areas measured under the Economic Freedom Index). Finland, Norway, New Zealand, Switzerland occupy respectively the first four places. Iceland comes fifth followed by Luxembourg, Sweden and Singapore. (Fraser Institute 2017, pp. 13-17)

The Fraser's Economic Freedom of the World report notes that "Countries with major deficiencies in this area [Legal System & Property Rights] are unlikely to prosper regardless of their policies in the other four areas [Size of Government; Access to Sound Money; Freedom to Trade Internationally; Regulation of Credit, Labor, and Business]." The report adds that "security of property rights, protected by the rule of law, provides the foundation for both economic freedom and the efficient operation of markets." (Fraser Institute 2014, p. 5)

Property typically includes immovable assets (property that cannot be moved such as land and buildings), movable assets (such as jewelry, business equipment, house appliances), and financial property (and this includes cash and monetary assets). (Rockefeller Foundation 2013, p. 3) Many studies have made the case for the positive relationship between protection of property and wealth creation.<sup>1</sup> Yet, Women's property rights are most insecure in MENA, South Asia and Sub-Saharan Africa (Rockefeller 2013, p. 2). Women in the MENA (as well as in the other regions) lack secure property rights for three major reasons summarized by the Rockefeller Foundation as follows:

Lack of formal legal property rights: an estimated number of 25 million urban women in the MENA are affected by the lack of equal constitutional and statutory property rights.

Lack of the ability to exercise existing property rights: Women in MENA (along with women in Sub-Saharan Africa and South Asia) are the most affected by limited access to formal land tenure, with less than 25% having official title to land. The rate of active formal savings among women is lowest in MENA, 4% of urban women.

Lack of property rights due to customary laws and cultural norms: Despite the existence of laws, women are prohibited from exercising their legal property rights through social pressures and threats. (Rockefeller Foundation 2013, p. 10)

These factors perfectly summarize the situation of women's property rights in Morocco in general and the situation of female land ownership in particular.

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<sup>1</sup> "On average, GDP per capita, measured in terms of purchasing power parity, is twice as high in nations with the strongest protection of property (\$23,769) than in those providing only fairly good protection (\$13,027). Once the protection of property shows clear signs of deterioration (moderate protection), even without a totally corrupt judicial environment, GDP per capita drops to a fifth of that in countries with the strongest protection (\$4,963)." (O'Driscoll Jr & Hoskins 2003, p. 9)

## **I- Current State Of Female Land Ownership In Morocco**

Land is the most relevant type of property for women in Morocco and the MENA region for different reasons. First, because women have legal rights to inheritance of land, so access to land is theoretically guaranteed by the law, which makes it less difficult than in other contexts. Second, because land generates wealth (could be cultivated, rented out, used for construction), which is more likely to empower women socially and economically. Third, land could be used as a collateral to get loans from financial institutions, which is not the case for movable assets. Land is as a matter of fact the most relevant material property to women's property rights in that it has the greatest potential of empowering women given the status quo.

In all the MENA countries, the Shari'a- based inheritance laws guarantee women their share of all the deceased's property including land. However, a set of factors, both socio-cultural and legal, prevent women from exercising their existing rights to access their property and use it as they wish. The prevailing customary laws in many countries, the complexity of land registration, the lack of information and the limited freedom of movement are all factors that undermine women's property rights in the MENA. Out of eight world regions, as classified by the FAO, MENA records the lowest rates of female agricultural holders. A rate of 0.8% of female agricultural holders is registered in Saudi Arabia, 3% in Jordan, approximately 4% in Algeria and Morocco and the highest rate in the region is recorded by Lebanon, 7.1%. For a sense of comparison, 18% is registered in Malaysia, 12.8% in India, 34.7% in Botswana and 50.7% in Cape Verde. (FAO 2015)

In some regions of Morocco for instance, (villages in the region of Tasoute, the southern region of Marrakech and the Rif), daughters of the deceased cede their inheritance share to their brothers, or do not claim it, leaving it as common property. They sometimes "chose" to do so in order to stay in good terms with their brothers and to maintain the family support and protection, or they feel forced to do it under social and family pressure. (COHRE 2006, p. 79) The widow (especially when she does not have children) is often denied her right to inheritance by her in-laws and could be even expelled from the matrimonial house. (FAO 2015)

Land has particular status and connotation in Morocco and in the MENA region in general. "Land is not regarded merely as a piece of property or as a means to satisfy material needs; rather, it is seen as requisite to confirming one's ancestry, lineage and place in the community, indeed, one's fundamental identity." (COHRE 2006, p. 79) As such, and given that daughters get married and widows might remarry again, they might be deprived of their inheritance share that would be eventually enjoyed by their husbands and children belonging to different lineages. Women in Morocco generally comply with the de facto rules, especially in rural areas where female illiteracy rate is 60.4% (HCP 2016, p. 6), which hinders to a great extent access to information. In some cases, they do claim their rights by both judicial and non-judicial means. (COHRE 2006, p. 80)

Although, in Morocco, obstacles preventing women from accessing their rightful share of land are mainly pertaining to customary laws and the lack of information, there are also cases where formal laws are discriminatory. In Morocco, collective or communal lands (“owned by a group of inhabitants belonging to the same lineage [tribe]”) are governed by a particular set of laws that comply with the tribal traditions. The right to exploitation of these lands (a total area of 10 million acres) is only inherited by men. (COHRE 2006, p. 78) In addition, the formal law related to “hyazat”, possession, is also discriminatory. The Islamic jurisprudence based law stipulates that any person living in or cultivating a land for a non-interrupted period of 15 years, would benefit from the right to exploitation of this land, called “hyazat” to be formalized by two notaries in the presence of witnesses. The law requires 12 witnesses to formalize the exploitation rights for men and 24 for women. (FAO 2015) This inequality is grounded in misogynistic interpretations of the religious text and entrenched cultural practices.

Land ownership in Morocco is governed by a body of regulations combining both formal and customary laws, which creates confusions and hurdles to which women are particularly vulnerable. There are four types of land tenure recognized by the law in Morocco (USAID 2010, p 6):

*Melk* (Arabic for ownership), which corresponds to the conventional private ownership and its implications including the right to exclusive possession, use and transfer. This type of land tenure covers about 28% of Morocco’s land, which includes 76% of agricultural land. Most of it is owned jointly by several family members and by religious orders. In the latter case, the *Melk* is referred to as *Habous* or *Waqf (endowment)*, and is a donation by wealthy individuals to religious institutions that cannot be sold but used to generate income.

*Collective land*, represents about 42% of Morocco’s land and is owned collectively by tribes; it cannot be alienated outside the tribe. This type of land only implies usufruct rights 98% of the land is though individualized and heritable.

*Guich land* (guich=Arabic for military), refers to the land that was originally given by the monarchy to members of the military. “The land is within the private domain of the state with occupants holding use-rights. Over time, the state has retaken a large portion of *guich* land, in exchange of giving the occupants freehold rights to a smaller parcel of land. The rights of occupants of the remaining parcels (mostly near cities) are considered insecure; based on past practice, the state will likely look to the remaining *guich* land to meet land needs for urban expansion and peri-urban development.” (guich lands fall under the tribe property)

*State land*, represents about 30% of Morocco’s land and includes roads, parks, forests, etc. and land held in the state’s private domain. The latter includes agricultural land, expropriated land, and land used for government functions. “Leaseholds on state land are available for periods up to 40 years”. This categorization is the culmination of a long historical process of “interaction” between the central

power and tribes on the one hand and the process of state formation within that context on the other hand. The region of the Maghreb was originally, before the formation of modern states, characterized by its tribal structure. In Morocco, tribes and central power had always had a conflictual and rival relationship. Central power, represented by the Sultan, used every means to subdue the tribes and include them in their tax realm; the tribes responded by rebelling against the Sultan and refusing to pay the imposed taxes. Alliances were then made and broken among tribes, and between tribes and the Sultans, according to the power balance in place. Charrad extensively analyses these processes using the dichotomy between land of government and land of dissidence (bilad al-makhazan vs. bilad al-siba). The former refers to “areas of submissiveness” that accepted the sultan’s authority and the latter to “areas of defiance”. Charrad notes that there were also “pockets of defiance in areas of submissiveness”. (Charrad 2001, p 103)

## **II- Historical Background: Tribal Politics Between Past And Present**

Tribal politics in the Maghreb (as well as in the Middle East) is very much underpinned by the principles of unity and kinship. These principles have been embedded as noted by Charrad in a number of patterns, including patterns of residence and above all patterns of ownership. Women have been “a significant part of these patterns and, through endogamy, have contributed to the stability of the land holdings owned by the patrilineal kin group.” (Charrad 2001, p 73) It is interesting to observe how tribal politics and tribes’ ownership patterns are shaped by women’s marriage patterns. Tribe’s survival (defined by its position in the power game which is determined in its turn by land ownership) rested very much on the control of these patterns, and hence of women’ lives.

Endogamy has been used by tribes in a way to get around the Islamic law granting women inheritance rights. Women’s inheritance share was kept under the control of the tribe, of men, through marriage. Women, have had access, at least indirectly, to tribal land when they are married from the tribe as they are financially supported by their husbands. Non-married women used to live in the same household, with the extended family, also benefiting, indirectly, from the land generated production and income as they were financially supported by the head of the household. Charrad refers to studies of household size that show that “the extended kin group remained important as a residential unit as late as the 1950s in several regions of the Maghreb.” (Charrad 2001, p 73) Residency patterns, supported by a set of cultural and social factors, contributed in sustaining land ownership patterns for a long time. The process of urbanization started in Morocco in the 1960s and was accompanied by the emergence of ‘nuclear family’ as the new family structure undermining and replacing progressively extended family households. These processes (urbanization and change of the family structure) disrupted the old ownership patterns and replaced them with more individualized ones leaving out of the equation non-married women.

Although the Moroccan family and tribal structure have undergone major changes throughout the last century due to the political process of state formation and other socioeconomic processes such as

urbanization, land ownership patterns excluding women have not changed much. However, their negative impact on women's and sometimes their children's lives and well-being have become more evident and inescapable. It is of no surprise if we know that collective lands are still governed under the same law that governed them in 1919, promulgated by the French "Protectorate" at the time. The *Dahir* enacted on April 27, 1919 has transformed tribes' territories to "inalienable property" of tribes under the tutelage of the Ministry of the Interior. The patrilineal rules related to land usage, that could be traced back to the time before the penetration of Islam in the 7th century, were made statutory and inalienable. (Berriane 2011, p17) Although the *Dahir* does not specify any rules related to the management and usage of collective land, it acknowledges tribes' rights to handle their property according to their *Urf* (tradition). The apparent language is not discriminatory but it implies and legalizes discriminatory practices that are knowingly part of the *Urf*.

The colonizer's motivation behind the *Dahir* was mainly political, to bring the tribes under the control of the state through the tutelage of the the Ministry of the Interior. Expropriation of land from tribes, although it only happened in few instances, was a way to react to dissidence. (Bouderbala 1996, p 151) Given the colonizer's reluctance to use this measure, expropriation, one could say that the law had more of a deterring and controlling function. It is interesting to note that a series of measures cutting off tribes' property and limiting their access to resources, in the name of building the "modern state", preceded the *Dahir* of April 1919. After tribes were able to access and use the extended spaces surrounding them, these spaces were suddenly limited by roads, train tracks and administrative boundaries with no access to forests that were made to fall under the private domain of the state. (Bouderbala 1996, p 146) Acknowledging tribes' rights to some of the land they had initially access to, while keeping them under the control of the state was finally a smart, well thought out move that was informed by the French experience in Algeria. Indeed, the excessive expropriation of Algerian tribes had had negative impacts [a more active resistance that led to bloodily confrontations] that France wished to avoid in Morocco. (Bouderbala 1996, p 151)

The *Dahir* at the time did only acknowledge (and put under control) the existing tribal structure, tradition, and power balances. Women did not have direct access to land but they were financially supported by the head of the household; this was part of the tradition. The tribal structure has dramatically changed since then and it is almost only the name that is left out. However, the *Dahir* is still the law governing collective land in Morocco. Although important legal changes happened in the last two decades in favor of equality and women's rights, the situation of women's access to land in Morocco is still unsatisfactory. The relationship of longstanding tension and competition between the autonomous tribes and the central power has shaped politics in Morocco, the process of state formation and to a great extent the legal environment.

### **III- Communal Land And The Soulaieyyate**

As stated earlier, collective or communal lands represent the greatest share, 42%, of Morocco's land.

The figure makes more sense in light of the historical context provided above. This type of land tenure happens to be the one that most alienated (and still alienates as we shall see later) women as usufruct rights and inheritance rights had been transferable to men only according to customary law acknowledged and protected by the statutory law (the *Dahir*).

Only in 2012 was this rule “reversed” to include women, although not yet in practice. The process started in 2010 with the ministerial circular number 60, issued on October 25, 2010, to benefit women from the income generated from the use of land (transfer or lease). Another ministerial circular (number 17) was issued on March 30, 2012, to give women usufruct rights and inheritance rights to collective land. (Ministry of the Interior, 2012) However, it has been proven hard to put these circulars to work because they are not laws and so cannot be enforced. According to the Moroccan Ministry of the Interior itself, major challenges hinder the implementation process: 1- some Communal Delegates rejecting the requests presented by many women and refusing to add women’s names to the list of “right holders” to access to and benefit from communal land. 2- Many women not submitting requests at all. 3- Women’s share in the communal land varying from one commune to another. Indeed, in the absence of legislation, communes decide on their own on the share to give to women and this varies from one “share” - equivalent of half of a man’s share- to one third, which is equal to one sixth of a man’s share. (Ministry of the Interior, 2012)

The 2010 and 2012 ministerial circulars were the direct result of the struggle of a Moroccan women’s land rights movement called *Soulaleyyate*<sup>2</sup>, supported by a national women’s rights NGO, ADFM (Democratic Association for Morocco’s Women). More than 900 women from different tribes and provinces all across Morocco protested in front of the Parliament on Thursday, 2 July 2009 to advocate for their rights in communal land. (ADFM, 2009) In 2011, on the International Women’s Day, a rally was organized, in the capital Rabat, by *Soulaleyyate* women to advocate for their inheritance rights to communal land. (GolbalPost, 2012) Although these protests and continued advocacy efforts had led to the Minister of the Interior issuing the two circulars, *Soulaleyyate* women still widely suffer from the non-enforcement of the circulars.

There are a lot of stories that reflect what these women have had to suffer due to the absence of laws protecting one of their basic property rights. There is no better illustration of this than voices of women themselves who shared their stories with NGOs and journalists hoping they would reach decision makers but also other women who have not yet spoken up.

Rkia Bellot, who was 66 in 2012 when she was interviewed by a GlobaPost journalist, is one symbolic figure of the *Soulaleyyate* women’s movement since she was the one who first launched it. In the

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<sup>2</sup> “from *soulala*, meaning the bond that units members of an ethnic community” (Berriane in Gray and Sonneveld 2017, p 69)

mentioned interview, Bellot explained that she had supported her entire family since age 20 when her father died. Yet, she received nothing from her brothers when they sold the land. When she went to complain to the tribe leaders, the latter would respond, 'well, we can't do anything, it's the tribal law.' "Bellot sought help from a lawyer in Rabat, but he told her that chances of success through the legal system were slim." She went then, along with a small group of women, from her hometown Kenitra, 25 miles away from the capital Rabat, to seek help from ADFM. The latter adopted the cause, trained Bellot and her colleagues on advocacy skills, supported the organization of sit-ins in front of the Parliament in Rabat and expanded their support program to include women in rural areas across the Kingdom. Bellot first organized a protest including 500 women in 2007.

Her advocacy efforts supported by the ADFM and other civil society organizations have drawn both national and international attention. On one of her visits to Morocco, Michelle Bachelet, then the Executive Director of the UN Women's Program, delivered a special address to the *Soulaliyyate* women, "you, the *Soulaliyyates*, succeeded in mobilizing the media and public opinion against the violation of your rights. I congratulate you for obtaining official recognition of women's rights." (Global Post 2012) The way to an official recognition of women's rights followed by concrete actions is still a long way away.

As explained earlier, ministerial circulars do not have the same status as laws hence their enforcement depends mostly on the willingness Communal Delegates and the pressure from local populations (women). There has been no comprehensive study evaluating the impact of the circulars and their scope of enforcement, but some examples and case studies are reported from different regions, revealing interesting insights and practices. The Mehdawa community- inhabitants of Qasbat Mediya- presents one of the most interesting case studies because the community was among the first ones to comply with the ministerial circulars. (Berriane in Gray and Sonneveld 2017, p 81) Qasbat Mehdiya is located in the province of Kenitra in the northern part of Morocco, the birth place of the *Soulaleyyate* movement. The case study of Mehdawa illustrates the importance of bridging the gap between state authorities and the community, and the significant role that community leaders (communal delegates) played with that regard. Indeed, it was community leaders, seemingly influenced by local authorities, who convinced their members of the community to abide by the ministerial decision. Community discussions took months and a lot of efforts to convince reluctant men to give up part of their privileges to women. Sometimes, those discussions would take place at a very micro-scale level in cafés. The discussions culminated in a decision document that does recognize the need "to respect the rights of all member of the community, whether male or female." In the document, three major justifications are mentioned, "(1) the reforms introduced to promote gender equality in the country, such as the 2004 moudawana reforms, (2) the recent Ministry circulars, and (3) women's inheritance rights in Islam. In addition, the document stating the delegate's decision was framed as the initiation of a new 'custom'." (Berriane in Gray and Sonneveld 2017, pp 81-83) While the

Mehdawa community could be considered to be a success story, the circulars are still faced with a lot of reluctance in many other communities as reported by the Ministry of the Interior itself. In conclusion, *Solaleyyate* is still a great example of how a grassroots' women movement could challenge the patriarchy and a deeply rooted customary law that not even the state was willing to intervene to change.

#### **IV- Moroccan Women And Other Types of Land Tenure: General Concluding Remarks**

Moroccan women have not only been excluded from collective land ownership, but also, although not in the same way, from *Melk* (private ownership). The rate of female ownership of land is 7% in urban areas in Morocco while it goes down to 1% in rural areas. (FAO 2015) Although their inheritance rights are established by the law, these rights are not protected and are in many cases skirted around in favor of cultural practices that disinherit women. Given that women's mobility is limited, especially in rural areas, and the perception of men as primary breadwinners, women are generally pressured to give up their inheritance share, or at least their control over it, to their brothers or closest male relatives. Sometimes, private *habous*, was used as a "trick" to exclude women from inheritance by limiting the use of a property to male heirs throughout generations. In 2010, the Ministry of Habous & Religious Affairs issued a new code prohibiting the practice of private *habous*. (Daoudi 2011)

Certain circumstances and legal aspects make the situation even worse for certain women. A single mother for instance would lose all her rights to property, including inherited land and assets, as she gets rejected by her family and community. Considered a criminal in the eye of the law, she cannot file any case to proclaim her rights. Indeed, "Article 490 of the penal code criminalizes extramarital sex for women, calling for punishments ranging from one month to one year in jail [...] An unmarried woman's pregnancy is proof of sexual relations and may lead to criminal prosecution, while the fault of her male partner is not established by law." (Sadiqi 2011, p 5) In addition to the fact that women have no property rights in their own bodies, they are most likely to lose their external property in land, housing and financial assets when they get pregnant out of wedlock. Rejected by their families and communities with no resources, they are unable to access justice especially since they are deemed to be in violation of the law.

Threat of violence is also present in women's considerations when they decide not to go against the will of their husbands, and/or male relatives, and claim their property rights via the justice system. Women's bodily integrity is not sufficiently protected by the law in Morocco, and Gender Based Violence (GBV) is still a major issue. According to the Ministry of Solidarity, Women, Family and Social Development, as cited in a report issued by the Freedom House, "17,000 incidents of gender-based violence were reported in the first three months of 2008 alone, 78.8 percent of which were committed by the victims' husbands. Violence against women instigated by men under the stain of financial difficulties is also on the rise." (Sadiqi 2011, p 11) In 2011, a national study on the prevalence of violence against women announced that

in 2010, 62.8% of women in Morocco, 18-64 of age, had been victims of some form of violence. (HCP, 2011) Besides the societal and cultural barriers that obstruct women's access to justice in the case of violence, there are legal aspects that undermine women's trust in the system's ability and willingness to protect them. There is no domestic violence legislation in Morocco and hence no protection orders. Protection orders "allow for removal of the perpetrator from the common home and prohibit contact with the victim," and are considered one of the most effective remedies to victims of violence. (World Bank 2016) In the case of domestic violence, the wife must have witnesses to support her claims to get divorce. Otherwise, the authorities will return her to her abuser's home; it comes as no surprise that domestic violence is underreported. Moreover, a woman's testimony in family matters is given half the weight of man's by the court, even if it is not the case in most civil and criminal cases. (Sadiqi 2011)

Property rights in one's self, which include in my opinion freedom of movement, freedom from violence and freedom to make decision affecting one's own life, are necessary in understanding other the types of property rights; they become even more relevant in the case of women. Lack of women's property in their own selves, a lack created by cultural practices and formalized by various laws and policies, undermines their ability and rights to access land ownership. The latter is, as we have shown, also directly undermined by discriminatory land laws and cultural practices.

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