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PART I

*What Is Social Change?*

# 1

## *Capturing Change in Legal Empowerment Programs in Morocco and Tunisia*

### *Shared Challenges and Future Directions*

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#### Introduction

This chapter describes local nongovernmental organization (NGO) efforts to promote social change related to women's rights in Morocco and Tunisia through legal empowerment initiatives. Our perspective derives from over 17 years as practitioners and activists working on programs promoting women's human and legal rights in Morocco and Tunisia.<sup>1</sup> The two countries provide both similar and contrasting experiences in lawmaking and civil society development that can be meaningfully shared for their lessons learned.

We take as a starting point the notion that "legal empowerment is the use of law to specifically strengthen the disadvantaged."<sup>2</sup> This idea involves a broader vision of the law beyond just legislation and court decisions and takes a view of empowerment as both a grassroots level-up process and a goal.<sup>3</sup> Under this model, activists promote human rights and social change through a holistic approach combining litigation and legal strategies like legislative advocacy with extra-legal strategies such as community education, services, and mobilization.<sup>4</sup> We examine how the law and legal concepts can serve as awareness-raising and organizing tools that disadvantaged and marginalized groups can use to challenge the status quo and create social change, *outside of the content of the law itself*. We offer examples of micro-level changes, especially in relationships between actors involved. While typically not captured in formal assessments, such changes both constitute significant transformations, and are essential to the success of larger law reform efforts.

## Defining Change

While previous decades have witnessed some legislative reforms related to women's rights in Morocco and Tunisia, these have been limited in both substance and process. Yet, at the same time, a tendency exists for international and national actors to applaud what are essentially nonchanges in both countries, such as long announced but not yet enacted laws related to women's rights. This criticism of the slow pace of progress related to women's rights, as well as praise for inexistent advances, focuses on the macro level of change, that of national legislative reform. In the absence of real, comprehensive legal reforms we must ask: Where do we look to find social change? How do we define, capture, and measure it? How do local actors define progress?

These questions are of great practical importance for the broad range of NGOs that work to promote women's human rights if they are to ensure sustained support for their work. National and international funders demand "results" from their grantees, and such donors place pressure on NGOs and national governments to demonstrate indicators of progress toward change. Additionally, understanding past successes is important in planning effective future strategies.

Rather than analyzing how the content of laws can create social change,<sup>5</sup> we examine how social change can be facilitated or impeded by the *process* through which law reforms are sought. We illustrate our analysis with concrete examples from our years of community-level work with NGOs in Morocco and Tunisia to promote women's rights through grassroots-level human rights education, legal accompaniment, national lobbying, and international advocacy. We highlight two national Women's Rights Mobilization Caravans held across Morocco and Tunisia in 2009 and 2014, respectively.<sup>6</sup> These Caravans consisted of human rights education sessions with groups of women and civil society roundtables on violence against women.

A major premise of this chapter is that it is not sufficient for NGO activists, lawyers, and public actors to work to enact and apply legislative reforms. We argue that they must *transform their own processes and behaviors* when implementing legal empowerment projects. We characterize this goal as "relationship change," whereby the aforementioned stakeholders put into practice the human rights values they purport to promote in order for the eventual legislation to be effective and for real social transformation to occur.

## **Defining and Assessing Social Change in Legal Empowerment Programs**

NGOs financed by grants, such as our organization and other local associations, are required to submit regular narrative reports to donors justifying the use of funds.<sup>7</sup> Since a major component of these reports is an evaluation of the “results” of our projects, we constantly reflect on how we should define and measure such results. Strikingly, when we come together at workshops or meetings, NGOs often recount detailed, vibrant stories of significant accomplishments that we had not heard before, and that these NGOs never recorded in written reports.

For example, on a visit to one of our partner NGOs we discovered that a sex worker who had previously been a beneficiary of their legal rights and health education outreach programs, had integrated into the Executive Board and become a project manager herself. On such occasions, impact and social change narratives are revealed in all their complexity and richness – in this instance, the individual empowerment of the sex worker and the diversifying and inclusive impact on the NGO management structure.

Yet when we remark to NGOs that they only communicate such information verbally and in social settings, they often reply, “I didn’t think it was that important” or “I didn’t do anything extraordinary.” Such responses represent everyone’s loss because they neither validate their experiences for themselves nor share this knowledge with others.

Most frequently, NGOs report results as discrete actions in periodic reports to their funders, rather than engaging in ongoing reflection, analysis, and deliberate learning that would inform future strategies. Trying to fit into various donor formats, NGOs often express the opinion that their reports rarely reflect the realities of their work. Instead, they must respond to funder requests for quantitative data at the output level (such as the number of people trained at a workshop), or for statistics that are related to outcomes but impossible to gather (such as the number of women who have filed a court case as the result of an awareness-raising program).

Given the historically repressive administrative and security context within which NGOs work in Morocco and Tunisia, until very recently it has been a real achievement just to organize an activity such as a conference or a workshop without state authorities banning or canceling it.<sup>8</sup> As a result, for many years the authors conflated merely holding

an activity as an outcome in itself, which, given the repressive context, it was and still can be. Moreover, with much energy expended securing official authorizations to hold an activity, or dreading the possibility of mysterious cuts in a conference hotel's water and electricity supply just before an event, local NGOs have only recently begun to have some political space necessary to reflect on and assess the longer-term social progress made by their work.

Time frames for "producing" and assessing change are also problematic within the framework of donor reporting. NGOs point to donor demands for instant results in the one- or two-year life of a standard project grant cycle. As a result, NGOs tend to assess change by reporting outputs, that is, the immediate and countable products of their activities, rather than looking for more subtle but foundational changes in the conditions of peoples' lives.

Finally, NGOs assessing advocacy projects are expected to adhere to traditional understandings of results that frequently focus on or are limited to law reforms. This framework may account for the tendency among many actors, including international donors and foreign diplomats posted in-country, to express impatience and frustration with what they view as a stagnant state of affairs. "Do you really feel like anything has changed?" and "You can't get anything done here," are sentiments we hear frequently.<sup>9</sup> "Why is it taking so long for this violence against women law to get passed?" asked one embassy official in Rabat responsible for funding an NGO advocacy campaign in Morocco.<sup>10</sup> Lack of faith in the rule of law is a dangerous sentiment. Thus, it is imperative that NGOs, governments, and funders develop more nuanced understandings of both the positive effects and limitations of law reform as a social change strategy.

A more complete understanding of the progress made by NGOs also is critical at this point given the current political climate in the region and the difficulty of the tasks faced by NGOs. After more than five years of a Moroccan government led by the Islamist *Parti de la Justice et Développement* (PJD), little real "content" progress – in law and policy – has been made in women's rights.<sup>11</sup> Indeed, many government statements and actions have suggested the risk of further regression in women's status.<sup>12</sup> While several long-pending bills related to women's rights were finally approved in the Government Council and sent to the Parliament for review in a short period in 2016,<sup>13</sup> NGOs and legal analysts have criticized these efforts as merely cosmetic, of passing laws

just to pass laws, and not containing the comprehensive and effective reforms on women's rights hoped for. Many NGOs currently describe themselves as demoralized and in a holding pattern.

In post-Revolution Tunisia, local and international actors alike have expressed fears of a backlash against women's rights and a deterioration of women's status given the rising Islamist influence and success of the Ennahda party. The significant increase in the number of women wearing the hijab (headscarf), reports that Ennahda representatives may revisit the longstanding ban on polygamy, and perceived increased violence against women all have raised concerns among women's rights observers and activists.<sup>14</sup>

It is also important to recognize how social change occurs in order to promote a healthier dynamic among NGOs in Morocco and Tunisia. Such knowledge would enable groups to see the collective contributions of many actors rather than focus their attention on one specific NGO. Traditional evaluation models are frequently based on a simplistic vision of causality, such that a specific activity by one NGO is deemed to have directly caused a specific result. In reality, multiple forces, factors, players, and conditions are involved in creating social change.

Whether in social media or at NGO conferences, round tables, and workshops, or donor meetings and receptions, it is common for individual NGOs to take credit for larger achievements. One frequently hears comments such as "Thanks to our NGO, Penal Code article 475 was amended."<sup>15</sup> Donor reporting requirements, whether implied or explicit, often lead grantees to claim their specific project caused a specific outcome, creating attribution problems, competition, and rivalry – instead of much needed collaboration – between NGOs. Indeed, donors themselves often encourage claims of a direct causal link so they can take credit for such achievements in their annual reports, social media, and other publicity and outreach materials.

As a result of and in reaction to these challenges, practitioners and scholars worldwide are increasingly recognizing that traditional evaluation models are inappropriate in both methods and substance for assessing social change efforts, and indeed, can even hamper and discourage such efforts.<sup>16</sup> As a result, an exciting global movement has begun to better define success in the context of social change activism. In this context, we take a multifaceted approach, organized around four outcome areas, to assessing change in our legal empowerment work:<sup>17</sup>

- **Content** outcomes, or changes in *written laws and policies*.
- **Structure** outcomes, or changes in local actors', NGOs', and public institutions' *procedures, operations, systems, resources, knowledge, skills, and capacities* to effectively implement written law and policies.
- **Culture** outcomes, or changes in *public knowledge, attitudes, beliefs, practices, and behaviors*.
- **Relationship** outcomes, or changes in current *hierarchical power relationships* among people and institutions based on gender, age, socioeconomic status, education, ethnicity, and geography, consistent with human rights principles.

These four domains do not necessarily change at the same pace, or even in a similar direction. A thorough systems analysis would examine the interaction between these elements, and how each can feed into social transformation as well as individually support or block the other(s) to either facilitate or prevent comprehensive, sustainable change. For the purposes of this chapter, we focus on the fourth area, relationship outcomes, and the role of legal empowerment projects in Morocco and Tunisia in creating much needed change.

### Smoke-and-Mirrors Law Reform in Morocco

If one has followed media reports over the past decade or does online searches, one gets the impression that Morocco has already enacted or is in the process of enacting a plethora of laws protecting women's rights.<sup>18</sup> In response to questions from the United Nations treaty monitoring bodies about the status of these announced laws, the Moroccan government frequently claims that a law is imminent or that a bill is in the last stages of the legislative process.<sup>19</sup> Both the national and international press frequently cite official government declarations that laws on domestic violence, sexual harassment, and abortion are in the works, completed, or "imminent," years before the law's eventual enactment.<sup>20</sup> In reality, often these announced laws then disappear from the radar. Bills may be drafted by the Ministry concerned but then get no farther in the legislative process, stalled by never being approved by the Government Council, withdrawn, or not forwarded to Parliament.

Such public relations statements on the intention to pass a law are often hailed as actual reforms, and the misinformation is widely

reproduced and applauded in social media, the press, donor promotional materials, NGO advocacy documents, foreign government human rights reports, and even academic publications. Stated intentions become reality, and announcements become achievements. Thus, laws that exist only in official declarations are equated with actual change, presenting an obstacle to real, sustainable transformation.

A good number of the intended law reforms that were announced years ago have since been (mis)construed by both domestic and international media, scholars, and decision-makers as already implemented. For the national press, reasons for this include the lack of independent or investigative journalism. For the international community, a lack of Arabic language capacity or use of primary source material leads to reliance on third- or fourth-hand French and English language reports. Other reasons include a general lack of understanding of the legislative process, as well as ambitious and misleading official government declarations. Yet, as of this writing, such purported reforms, which include laws on violence against women, sexual harassment, domestic work, and most recently, abortion,<sup>21</sup> have either not been enacted or have taken over a decade to move along in the legislative process.

In a June 2013 case in El Jadida, for example, the press and social media gave substantial coverage to a court decision through headlines declaring, “Marital rape (is) now a crime in Morocco.”<sup>22</sup> Putting aside the fact that courts cannot legally create new crimes, the Moroccan government delegation had already affirmed to the United Nations Committee against Torture in November 2011 that marital rape was a crime under the existing Penal Code.<sup>23</sup> In a March 2013 statement, however, the Minister of Justice and Liberties stated that, “it would be impossible to criminalize marital rape,”<sup>24</sup> contradicting the 2011 assertion. It is difficult to work on law reform with such a lack of clarity and consensus among decision-makers themselves over what the current laws actually say.

## Resisting Reform

At the same time the Moroccan government conducts public relations campaigns around announced reforms, it also invokes a set code of messages to justify its past, current, and intended future resistance to enacting reforms in areas it deems too sensitive or untouchable. One such strategy the Moroccan government uses to opt out of its



obligations to comply with international human rights standards is to make use of qualifier clauses in the Constitution.<sup>25</sup>

In the Concluding Observations to its review of Morocco in October 2015, the United Nations Committee on Economic, Social, and Cultural Rights (CESCR) recommended that “the provision (in the Penal Code) criminalizing illicit [i.e. extra marital] sexual relations be repealed.”<sup>26</sup> The Moroccan government responded that, “Concerning . . . the abolition of the criminalization of illicit sex, Moroccan authorities do not accept those recommendations related to sexual freedom, being in conflict with the provisions of the Moroccan Constitution, national identity and the conventional practice from Morocco.”

Another strategy used by decision-makers and other members of the socioeconomic elite in Morocco to justify not enacting reforms related to women’s rights is to claim that “the people are not ready” and “the law is not the problem, people’s mentalities are.” At the aforementioned Morocco review by the CESCR, for example, when the Committee expressed its concern that polygamy was still legal despite the fact that it constitutes discrimination against women, the head of the Moroccan government delegation replied, “You have to understand that it’s normal for a man who can’t have a son with his first wife to want to marry a second one, especially given the mentalities and customs in the rural areas.”<sup>27</sup>

Likewise, the previous Minister for Social Development, Family, and Solidarity<sup>28</sup> explained that the prenuptial property agreements allowed under Family Code article 49 “were not very common, probably because couples did not wish to contemplate the possibility of divorce.”<sup>29</sup> Under this reasoning, the fault lies not with the law itself, its implementation, or the knowledge and attitudes of public actors responsible for enforcing the provisions,<sup>30</sup> but with “romantic notions” held by couples. The Minister of Justice and Liberties<sup>31</sup> expressed a similar sentiment in the aforementioned meeting with NGOs advocating for a Violence Against Women law. In response to the call for the criminalization of marital rape, the Minister responded, “You can’t deprive a man of what is rightfully his.”<sup>32</sup> In our Morocco Caravan, we heard again and again in round tables with the local educated elite – lawyers, public actors, and NGO members – that what is needed is not law reform but awareness raising for the “population.”<sup>33</sup>

Whether resistance to reforms related to women’s rights is based on a desire to protect privilege, justify state inaction, or both, ironically

these arguments shifting blame to the ostensibly conservative and ignorant population often contradict social realities. In many instances, current laws in both Morocco and Tunisia are outdated, not responsive to, and not reflective of realities on the ground. Sexuality and violence are two prime examples of widespread social behaviors that the State refuses to acknowledge or address publicly and collectively.

For instance, although sexual relations between unmarried persons are illegal in Morocco<sup>34</sup> and in Tunisia,<sup>35</sup> social realities are quite different. National studies revealed there were 210,434 unwed mothers in Morocco from 2003–2009<sup>36</sup> and 2015 government estimates note 900–1500 births outside of marriage in Tunisia each year.<sup>37</sup> While further information on the topic is anecdotal to nonexistent, one source cites a 2007 Moroccan Ministry of Health study indicating that 36 percent of “young” Moroccan men and 15 percent of “young” Moroccan women admitted to having had sexual relations outside of marriage,<sup>38</sup> and 2014 Tunisian statistics indicate that 80 percent of men and 68 percent of women have had sexual relations outside of marriage.<sup>39</sup>

Further, marital rape is not a crime under the current Penal Codes in Morocco or Tunisia. Tunisian Personal Status Code Article 23 requires both spouses to “fulfill their conjugal duties according to practice and customs,” a provision that is generally understood to mean that sexual relations constitute a marital obligation. In contrast to the statements of the Minister of Justice, women across Morocco, including in more remote and rural areas, have spoken openly about and denounced marital rape:

There is a big problem of rape on the wedding night by the new husband, and it is difficult for the bride to protest because people will try and justify this violence by saying that the woman was not a virgin. Women therefore remain silent, and marital rape becomes a habit that women continue to suffer from.<sup>40</sup>

Government statements to the contrary, we have found that people at the local level are eager for and are engaging in profound transformations in social interactions. In this chapter, we go beyond the binary arguments and stale debates about whether we need law reform or culture change, oft-repeated at NGO- and government-organized panels, conferences, and other events related to women’s rights,<sup>41</sup> to suggest a more nuanced, interconnected, and interdependent dynamic