

*"Single Mothers" Between Law and Civil Society in Morocco*

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Abstract

Throughout the world, Morocco is cited as an example of moderation and progressiveness in its attitudes and laws regarding women in the Middle East and North Africa (MENA) region. However, despite this perception, several Moroccan laws contain deep inequalities for women, which marginalize and stigmatize them. Single mothers are among those women who suffer from this marginalization. The term "Single Mother" refers to women who have children outside the framework of legal marriage; they and their children are defined by law as illegitimate. Hence, they are unprotected by law. In Morocco, and in most Arab countries, the issue of single mothers is still a taboo, however women's organizations are working hard to challenge this stigmatization as well as to help these women gain their rights. Single mothers are considered as a source of trouble, shame and dishonor; therefore, they are totally rejected by society. Indeed, social stigmatization, criminal repression and legal discrimination marginalize these women and their children, and impact on their ability to live a normal life. In the scope of this presentation, I will be dealing with the issue of single mothers in Morocco; I will examine the Moroccan legal context surrounding unwed mothers as well as the NGO's initiatives that protect the right of unwed mothers and their children in Morocco. I shall argue that even though these women are supported by the non-governmental organizations, they are still marginalized and not protected by law.

## Introduction:

Throughout the world, Morocco is known by its restraint and progressiveness in its attitudes and laws regarding women in the Middle East and North Africa (MENA) region. Despite this perception, several Moroccan laws still contain deep inequalities for women and marginalize them. Single mothers or unwed mothers are among those women who suffer from stigmatization and rejection in Morocco, they are legally and socially marginalized not just in Morocco but in all the Arab countries (MENA).

This Article will shed lights on the issue of single mothers more specifically from legal and social perspectives; it will examine the Moroccan legal context surrounding unwed mothers as well as the NGO's initiatives that protect the right of single mothers and their children in Morocco. I shall argue that even though these women are supported by the non-governmental organizations; they are still overlooked and not protected by law.

The term "Single mother" or "unwed mother" in this study refers to every woman having children outside the framework of legal marriage. In Morocco; and in all the Arab countries (MENA) region, Single Mothers represent a source of shame and illegitimacy. Discussing such an issue remains among the taboos that no one could talk about. However, and thanks to the feminist movement that works hard to strengthen the situation of women in Morocco, this phenomenon has become debatable and discussed throughout all the Media.

It is difficult to gather the statistics that precisely depict the number of unwed mothers in the Arab world. However, "*Official statistics and field studies in the Arab countries indicated that the number of single mothers is on the rise*"<sup>1</sup>. In a big country like Egypt "*Egyptian courts have registered more than 12000 paternity cases during the last few years, most of these are related to children born of common law or "ORFI"*<sup>2</sup> marriages"<sup>3</sup>. Moreover, in Tunisia "*statistics show that about 1200 births occur out of legal wedlock every year*"<sup>4</sup>. In Morocco, the number is increasing. According to the 2004 report of the **National Institution of Solidarity with Women**

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<sup>1</sup> Nabil Mohammad. "Single Mothers and Children without Identity". Available at <http://arab-reform.net/spip.php?article654&lang=en>. 30 January 2007. 19/02/2011

<sup>2</sup> Orfi marriage is a simple contract drawn between the two partners and the two witnesses

<sup>3</sup> Nabil Mohammad. "Single Mothers and Children without Identity". Available at <http://arab-reform.net/spip.php?article654&lang=en>. 30 January 2007. 19/02/2011

<sup>4</sup> <http://www.ashoka-arab.org/ar/morocco/aicha-ech-channa.html> 19/02/2011

**in Distress (INSAF)** association, “two of every five births are considered illegitimate, these numbers do not take into account births that happen at home, abortions, or cases of infanticide<sup>1</sup>”. Another report published by the same (**INSAF**) states that the number of unmarried mothers in 2009 was 27200 compared with 11016 in 2008 and 5040 in 2002 in CASABLANCA. These numbers are underestimated because they do not include hidden cases.

Many factors contribute to the rise of the number of single mothers among which poverty which lead to the dropping out of education, marriage promises and lack of sexual education which remains among the important factors that contributes in being a single mother. These factors put them in a situation where they suffer from marginalization, exploitation and rejection.

### **a) Poverty**

Poverty plays an important role in the fact of being a single mother especially in rural areas where most of people still live under poor conditions. According to Loubna Skalli’s work: “*Women and Poverty in Morocco: The Many Faces of Social Exclusion*” (2001), “*Poverty has many faces and dimensions. Its dominant face in Morocco is becoming increasingly female, rural, illiterate and unskilled*”<sup>2</sup>. This idea was much emphasized while I was doing my interviews with 30 single mothers from the “**Association Solidarité Féminine**” (**ASF**) in Casablanca; the majority of single mothers that I talked with were coming from poor areas where they have no accessibility to education as well as working skills, all of them argued that they were working as housemaids because of the need of income to support their families. “*Non-governmental organizations estimate that about 90 percent of single mothers in Morocco were housemaids in their childhood*”<sup>3</sup>. All this stresses the idea that the issue of single mothers is more common in the underprivileged areas where these women suffer from suppression and marginalization.

### **b) Lack of education**

Education in Morocco is free and compulsory from 6 till 15 years old. Poor parents especially in rural areas who do not know the importance of education most of the time withdraw their children especially girls from schools due to the demands for

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<sup>1</sup> Soumaya Naamane Guessous Chakib Guessous. *Grossesses de La Honte* (Pregnancies of shame). Association Solidarité Feminine and le Fennec, Mai 2005. P.29 (My translation of the « Autrement dit, à Casablanca, chaque jour naissent au mois deux enfants illégitimes. Faut-il rappeler que ces chiffres

<sup>2</sup> Loubna H.Skalli. “Women and Poverty in Morocco : The Many Faces of Social Exclusion”, Palgrave Macmillan Journals, 2007.p.73

<sup>3</sup> <http://streetkidnews.blogspot.com/category/1/africa/morocco-streetkid-news/> 24/02/2011

household income which often push children to work. This problem lies often among girls whose parents are uneducated and lacking awareness. Therefore, many girls are affected. They leave their homes at a very early age in order to work outside; hence, they become victims that can be easily manipulated by the others.

Parents in rural areas do not value girl's education; they think that it is not of necessity since they will go to their husband's house and become housewives. They deny that educated women are better informed about their legal rights. If women are educated, they will have the skills, the self confidence and the information they need to become good mothers, workers, and citizens as well as they will have the power to defend themselves in the case of any problem.

### **C) Marriage promises**

Another factor that represents a great portion in the fact of being a single mother is "marriage promises" meaning when a man promises to marry a woman but he does not. *According to Association Solidarité Feminine (ASF)'s survey on 276 unmarried women, 73% are from marriage promises*<sup>1</sup>. In 2003, INSAF association published the result of a survey on 684 single mothers arguing that *74% of illegal pregnancies are due to marriage promises*. In fact, due to the complexity of living and the protection they suffered from in their villages, and because of the excess of independence and freedom these girls have in the city once they arrive, they lose their identities and they start setting up relationships with young men, these relationships are based on marriage promises which are never achieved. Feeling unsecured, these girls seek to find someone who could protect or cover them; as it is said in our Moroccan culture "*man is the cover of a woman's head*".

Single mothers trust their lovers and start abiding by their needs waiting for the day of marriage. However, they find themselves pregnant before that day comes. Having a baby out of wedlock is considered a sin and it is punishable by law. "*Women who become pregnant outside of marriage can be imprisoned for prostitution, although the law is reportedly seldom enforced*"<sup>2</sup>, this is the reason why the majority of men who are "the fathers" of these children deny their responsibilities and ask the mothers for

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<sup>1</sup> Myriam Tinouch Stucki « *Dire la maternité célibataire Étude menée entre Casablanca et Rabat, Maroc* ». Mémoire de licence en ethnologie, 2004 p.90 (My translation of « L'enquête menée par ASF auprès de 276 mères non mariées l'ayant contacté parle de différents types d'agressions à l'origine de la grossesse illégitime : 73% issues de promesse de mariage (non tenue).

<sup>2</sup> Refugee Review Tribunal, RRT RESEARCH RESPONSE, Research Response Number: MAR31637, Morocco, 3 May 2007 p.1

“abortion” which is also forbidden in Islam. All these problems are due to the naivety that these categories of girls suffer from.

#### **d) Lack of sexual education**

In Morocco, the expression of “sexual education” is a part of the taboos that characterizes the society of this country, talking about sexuality remains among the illegitimacies that no one could discuss. Sexual education as a part of the programs of the academic study exists neither in the primary nor in the secondary academic programs. “*What is taught is provided in the form of scientific knowledge of the anatomy of the sexual organs and of the biology of fertilization.*”<sup>1</sup> In Morocco, there is a big difference between boys and girls; boys are encouraged to display their genital organs, while girls are supposed to hide their intimacy. Therefore, women remain secluded and pushed to the margin. Mothers tend to talk with their girls but they do not talk about sexual education as they talk about the obligation to preserve the virginity which remains the important characteristic in Moroccan society. “*The principal role of the mother is to obligate her daughter to preserve her virginity with a talk full of modesty and “hchouma” shame*”<sup>2</sup>. In such a situation, children, especially girls, are the most affected since they lack communication with their parents in topics that could help them in the future.

Based on my interviews, I have noticed that lack of sexual education has affected many girls in the association where I have conducted my survey. The majority of single mothers in the (ASF) did not know that they could get pregnant without losing their virginity. Hence, they ignore the fact of being pregnant till they find themselves in the sixth or fifth month of pregnancy. At that time they find themselves obliged to keep the baby as they could not abort it. Many mothers in ASF reinforced that they have never talked with their parents in topics related to sexuality. According to Aboubakr HAKAKAT, psychotherapist and sex therapist in Casablanca, it is the lack of sex education that helps in spreading the phenomenon of single mothers. He argues that *the majority of girls who has sexual problems with men do not even know the seriousness of the problem, because they had no education in the Family*<sup>3</sup>. Indeed, many factors contribute in the fact of being a single mother. These factors make them suffer from all kinds of marginalization, exploitation and social stigmatization as well as a lack of legal protection.

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<sup>1</sup> <http://www2.hu-berlin.de/sexology/IES/morocco.html#3> 25/05/2013

<sup>2</sup> <http://www2.hu-berlin.de/sexology/IES/morocco.html#3> 25/05/2013

<sup>3</sup> Myriam Tinouch Stucki « *Dire la maternité célibataire Étude menée entre Casablanca et Rabat, Maroc* ». Mémoire de licence en ethnologie, 2004 P.93 (my translation of « Selon Aboubakr HAKAKAT28, psychothérapeute et sexologue à Casablanca, C’est le manque d’éducation sexuelle qui fait que le phénomène des mères célibataires se répand, Je peux vous dire que la plupart des jeunes filles qui ont eu des problèmes sexuels avec les hommes ne savent même pas le sérieux du problème, parce qu’elle n’a pas eu une éducation dans la famille »).



The following section, will discuss the issue of single mothers from a legal perspective. It will try to answer the following question: What is the position of the penal code over illegitimate pregnancies in Morocco?

### ➤ Penal Code

Sexual relations outside marriage are illegal in Morocco. According to the penal code "*pregnancies outside the wedlock are considered Illegitimate by the penal code as a result of series of crimes*"<sup>1</sup>. Article 490 of the Penal Code stipulates that "*all persons of opposite sex who are not related by marriage, and have sex with each other, are punished by imprisonment of one month to one year*"<sup>2</sup>, additionally, article 491 states that "*any married person convicted of adultery is punished by imprisonment of one to two years, the prosecution is exercised only on a complaint from offended spouse. However, if one of the spouses is out of Morocco, the adulterous spouse may be prosecuted automatically at the initiative of the prosecution*"<sup>3</sup>.

Abortion is also criticized by the penal Code. It is illegal unless deemed necessary to protect the mother's health and conducted by a medical doctor (art.453). According to Article 449 of the Penal Code, *voluntary abortions are illegal, with harsh penalties levied on women who seek abortions*. In 2008, the Morocco Planning Foundation claimed that *nearly 600 illegal abortions take place every day, carried out in secret, sometimes under inhumane and medically unsafe conditions*<sup>4</sup>. Moreover, it is not legally permitted in cases of rape or incest. As a result, many single mothers find themselves obliged to become mothers even though the pregnancy has resulted from illicit sexual relation between two consenting parties or rape. Here we notice that the

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<sup>1</sup> Soumaya Naamane Guessous Chakib Guessous. *Grossesses de La Honte* (Pregnancies of shame), Association Solidarité Feminine and le Fennec, Mai 2005 P.172 (My translation of « la grossesse illégitime est considérée par le code pénal comme résultante de toute une série de délits »).

<sup>2</sup> Penal Code. Dahir 25/7/1993, loi 11.99. El BADII Edition. 2001. Article 490 Morocco (My translation of « Sont punies de l'emprisonnement d'un mois à un an, toutes personnes de sexe différent qui, n'étant pas unies par les liens du mariage, ont entre elles des relations sexuelles »).

<sup>3</sup> Penal Code. Dahir 25/7/1993, loi 11.99. El BADII Edition. 2001. Article 491 (my translation of « Est punie de l'emprisonnement d'un à deux ans toute personne mariée convaincue d'adultère. La poursuite n'est exercée que sur plainte du conjoint offensé. Toutefois, lorsque l'un des époux est éloigné du territoire du Royaume, l'autre époux qui, de notoriété publique, entretient des relations adultères, peut être poursuivi d'office à la diligence du ministère public »).

<sup>4</sup> [http://www.magharebia.com/cocoon/awi/xhtml1/en\\_GB/features/awi/features/2009/12/04/feature-0115/02/2011](http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2009/12/04/feature-0115/02/2011)

legislature has only thought of the physical health of the mothers and he has forgotten the mental health of these mothers. The girl who carries in her womb the fruit of rape or incest of relationship will suffer all her life. As Soumaya Naamane Guessous argued in her work *Grossesses de La Honte* (Pregnancies of shame) 2005, “*obliging a girl victim of rape or incest to keep her pregnancy and give birth to her child is like dooming her to live ill all her life*”<sup>1</sup>.

In case of rape, the man is punished from five to ten years. If the rape is committed against a minor under eighteen years, a person known by its weak mental faculties, or a pregnant woman, the punishment is imprisonment from ten to twenty years (Art.486). This exists only on papers but if a rape is reported to the police, they will order a medical examination and an investigation, physical proof of rape is required for the woman to be believed and for the crime to be prosecuted. Additionally, many judges eliminate the act of rape if the victim accompanied her rapist in private places such as houses or cars as, one single mother whom I interviewed from Casablanca argued. Another single mother called Fatima argues that “*when she became pregnant, she went to fill an application with the police and requested a judicial declaration of the paternity of her child; the judge declared her to be a prostitute and fined her 500 Moroccan Dirhams*”<sup>2</sup>. In short, it can be said that single mothers are not protected by the penal code, they are in fact considered as prostitutes and they are punished for that. The family code has also worked hard to improve the situation of women, the following section will examine the new changes that the Modawana brought for women in order to strengthen their situations and will try to answer the following questions: What are the efforts made by the Moroccan feminists to change the situation of single mothers in Morocco? What is the position of the new family code over single mother?

### ➤ **The Family Code ( Moudawana)**

Recently, Moroccan government has worked deeply to improve the status of women in Morocco by reforming the Family Code or the Moudawana. These efforts have taken many years in order to reach the Moroccan people. However, despite the legal

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<sup>1</sup> Soumaya Naamane Guessous, Chakib Guessous. *Grossesses de La Honte* (Pregnancies of shame). Association Solidarité Feminine and le Fennec, Mai 2005 P.194. (My translation of « *Obliger une fille victime de viol/ou d'inceste à garder sa grossesse jusqu'à terme et à enfanter, c'est la condamner à vivre malade le restant de sa vie* »).

<sup>2</sup> Personal interview with Hassania, Association Solidarité Féminine client, in Casablanca, Morocco (July 13, 2010).

changes, *women in Morocco continue to face discriminatory attitudes from men, and corruption in the judicial system which prevents them from asserting their rights.*<sup>1</sup>

The Moudawana is not only a set of laws that exists on paper, but it is a significant step of legal changes that protect women and children's lives. It has brought many changes in terms of age of marriage, divorce, and polygamy. The Moudawana has also reached the situation of single mothers and it has come with a new element that could help to some extent single mothers and their children.

The new family code has introduced a new element which is the right to have a paternity certificate if it is recognized that the pregnancy has been in the engagement period. I mean here by 'engagement' the traditional Moroccan one; when the family of the pretender came to demand the girl for marriage.

(Article 156):

If an engagement takes place by an offer and acceptance but for reasons of *force majeure* the marriage contract was not officially concluded, and during the engagement period the engaged woman shows signs of pregnancy, the child is affiliated to the engaged man on the grounds of sexual relations by error when the following conditions are met:

- a- If the two engaged person's families are aware of the engagement, and if the woman's legal tutor, if required, has approved the engagement;
- b- If it appears that the engaged woman became pregnant during the engagement period;
- c- If the two engaged persons mutually acknowledge that they are responsible for the pregnancy.

These conditions are established by a judicial decision not open to appeal.

If the engaged man denies responsibility for the pregnancy, all legal means may be used to prove paternity.<sup>1</sup>

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<sup>1</sup>Steven Erlanger and Souad Mekhennet. "Family Code Gets Nudge, but Women Seek a Push". N.Y. TIMES, August 19, 2009, available at [http://www.nytimes.com/2009/08/19/world/africa/19tangiers.html?\\_r=1&emc=eta1](http://www.nytimes.com/2009/08/19/world/africa/19tangiers.html?_r=1&emc=eta1) 6/04/2011



A single mother has to prove that she was engaged to her partner either by photos, videos, or sworn statements by family and neighbors. Otherwise, her child will not benefit from “legitimate” paternity. This act is beneficial for the situation of single mothers but, at the same time it is detriment because in Morocco, most families celebrate the engagement between the concerned people (husband’s and wife’s families). Hence, the majority of single mothers find themselves unable to prove their engagement, therefore, their children are affected.

Another element that could be used to prove the paternity is the DNA test. However, this latter is not reachable of every single mother. “*The new family code requires this test only in the case of pregnancies occurred in the engagement period*”<sup>2</sup>. Many people misunderstood the utility of the test; they have thought that it is accessible to every pregnant girl outside marriage; however it is required only for the girl that have the proof that she was engaged to the father of her child as it is argued by Naima AME the lawyer of the Association Solidarité Feminine<sup>3</sup>.

According to my data collection based on my personal interviews, the woman must be able to prove that she was engaged to the father before a judge can order a man to undergo DNA paternity tests. The proof should be photos, videos, sworn statements by family and neighbors. Additionally, the woman must pay the cost of the paternity test (about 3500 DH) if she is the one who requests the test, and it is rare that the court orders the test to be carried out. In some circumstances, if there is enough evidence, the court will make a judicial decision establishing the paternity of the father. Once paternity is established, fathers can be required to pay child support, though it is infrequently enforced. For example, the father of Mouna’s child agreed to accept paternity of her son and file the necessary paternity paperwork only if Mouna agreed to waive her right to child support.<sup>4</sup> Mouna was among the cases that gained the paternity certificate, Hassania and other girls in the Association Solidarité Feminine did not because they do not have the prove; Hassania, a single mother from Fes, was engaged to the father of her child but when she became pregnant, he refused to marry

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<sup>1</sup>The Moroccan Family Code (*MOUDAWANA*) of February 5, 2004, an English translation of the original Arabic text, Global Right 2005.

<sup>2</sup> Soumiya Naamane Guessous Chakib Guessous. *Grossesses de La Honte* (Pregnancies of shame). le Fennec, Mai 2005. p.193 my translation of « le code de la famille n’exige ce test que dans le cas de grossesses survenues dans la periode des fiancailles officieuses ».

<sup>3</sup> Personal interview with Naima AME the lawyer of Association Solidarité Féminine in Casablanca. Morocco. July 1, 2010.

<sup>4</sup> Personal interview with Mouna, Association Solidarité Féminine in Casablanca. Morocco. July 13, 2010.

her. When she filed a paternity claim, the judge found her guilty of prostitution and refused to order a paternity test.<sup>1</sup>

Having an unknown father's name was one of the most serious problems that children born outside the wedlock had to suffer. However, in the late nineteenth, and thanks to the efforts made by the civil society, *single mothers became allowed to give her family name to her child if her father or brother gives her their permission*<sup>2</sup>. If the family of the mother does not know about her pregnancy, the civil status service *gives single mothers a list of names from which she can choose one for her child*<sup>3</sup>. All this has been made by the effort of the activists, feminists and associations that seek to improve and develop the situation of women and especially single mothers and their children.

As it is stated above, the situation of Moroccan women has been improved thanks to the efforts made by the Moroccan feminist. However, discrimination and violence against women still exist, and single mothers are among the categories of women that suffer from it. Because of that, Moroccan feminists called for many changes among them the reform of Moudawana which was a great step for them to voice out their demands. Civil Society has also played an important role in supporting women in difficult situations especially single mothers. "Solidarité Féminine" is one of the first associations that started working on the issue of single mothers. The next section will illustrate the work done by this association to support those women and help them reintegrate society after being rejected and ostracized.

### ➤ Civil society

The first non- governmental organization that dealt with the issue of single mothers was Association Solidarité Féminine run by Aicha Echana. This woman remains an icon in Morocco when it comes to human and civil rights for single mothers and their children. For more than 30 years, Aicha Ech Channa has been the defender and the

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<sup>1</sup>Personal interview with Hassania, Association Solidarité Féminine, Casablanca. Morocco. July 13, 2010.

<sup>2</sup> Soumaya Naamane Guessous Chakib Guessous. *Grossesses de La Honte* (Pregnancies of shame). Association Solidarité Féminine and le Fennec, Mai 2005 P.185 (My translation of « *à partir de la deuxième moitié des années quatre-vingt-dix, grâce aux associations, on autorisa la mère à donner un nom à son enfant. L'enfant peut porter le nom de famille de sa mère, à condition que le père de la mère ou son frère lui en donne l'autorisation* »).

<sup>3</sup> Soumaya Naamane Guessous Chakib Guessous. *Grossesses de La Honte* (Pregnancies of shame). Association Solidarité Féminine and le Fennec, Mai 2005 p.186 (my translation of « *Si la mère na pas informé sa famille de sa grossesse et de son accouchement, ce qui est courant, les services d'état civil lui donnent une liste de noms parmi lesquels elle en choisit un pour son enfant* »).

public spokes person of single mothers. In 1985, she founded the association ASF in Casablanca to provide services for the unmarried women and their children.

Aicha Ech Channa has deconstructed a social cultural taboo in order to change the social perception towards single mothers. Thus they could be transformed from a condemned population to a recognized one. She trains these girls to be independent and to rely on themselves. Additionally, she also advocates a legal reform that would make the biological fathers take the paternity tests and make them convinced of the importance of recognizing and supporting their children. Thanks to this work, 19% of single mothers have been married, 7.6% were reconciled with their families and 38.5 have found jobs.

More than 50 women receive training every year in literacy, human rights, cooking, baking, sewing, fitness services and accounting. The beneficiary participants as they call them in the association also receive daily child care and medical treatments in addition to social, psychological and legal support and counseling for better reintegration in their society.

ASF aims to establish a bond between the mother and the child. Rajae, a social assistant says, "Enabling a woman to nurse and care for her child for a short time leads her to change her decision to get rid of him and gives her an opportunity to become attached to her child and reconnect with him."

ASF also initiates contacts with the single mother's family in order to bring them closer, search for a means of reconciliation and urge acceptance of their daughter's new circumstance. They also help single mothers register the child's civil status to protect them from being abandoned or subject to an adoption in which the child loses all connection to his biological mother. Through this process, the child is given a family name, even if borrowed, rather than the term "Father: Unknown", which could affect the child throughout his life. The association also provides emotional and psychological support for single mothers in order to make them overcome their psychological troubles.

Thanks to the efforts made by the associations, and civil society, single mothers have become able to register their children in the registry of civil status and obtain a family booklet. They have also gained the right to request a paternity test AND, and a paternity certificate to prove the paternity of their children conceived out of wedlock.

In short, single mothers have gained numerous rights that enabled them to ameliorate their situation. However, none of these is actually applicable by law for 100%. Laws which are supposed to protect women's rights exist only on paper. They are often not applied in reality while their implementation would take a long time to be executed.

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