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	<p>Title of research article</p>
	<p><b>The Role of Custody in Safeguarding Family Bonds in Moroccan Legislation</b></p>
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<p><b>Keywords</b></p>	<p>Maghreb legislations, custody, housing, visitation rights, child.</p>
<p><b>Abstract</b></p>	
<p>This study addresses a topic of considerable sensitivity due to its close connection to the family and society, particularly within the framework of Maghreb legislations—namely, child custody. Custody is a fundamental matter with both legal and religious dimensions, as affirmed by Maghreb legislations in their regulation of custody in accordance with Islamic legal principles. Among the primary rights accorded to the child under custody are the right to housing, visitation rights, and the right to nursing. In their pursuit of protecting the best interests of the child, Moroccan lawmakers have enacted specific provisions governing custody, recognizing its central impact on the family unit and the wider society.</p>	
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### Introduction

Marriage is a consensual contract between a man and a woman, founded on mutual affection and compassion, with the aim of establishing a family. Divorce, along with its resulting consequences, has long been a major concern for legislators—particularly in the Maghreb context—as well as for researchers seeking alternative means to mitigate its negative impact, especially on children under custody.

While custody is one of the legal consequences of divorce, it also reflects the attention that Maghreb

legislations devote to the protection of children, a responsibility that is traditionally entrusted to women. This is codified in Algerian law under Ordinance 05-02 amending and supplementing Law 84-11, and in Morocco within the first chapter of the second section of the Moroccan Family Code.

The comparative study of custody in Algerian and Moroccan law is justified by their shared legal and religious foundations, which recognize the right of a divorced mother to custody and regulate its associated provisions. It is also supported by the social similarities between the two countries, notwithstanding certain differences in substantive and procedural rules, and consequently in each legislature's approach to determining the custodial rights of divorced mothers.

This study is guided by a central question: *How effective is the custody framework in each country in protecting the rights of children under custody in Algeria and Morocco?* From this main question arise two subsidiary questions:

- Have Algerian and Moroccan legislators succeeded in safeguarding the divorced mother's right to custody of her children?
- To what extent are the existing legal frameworks sufficient to protect the rights of the child under custody in both jurisdictions?

The objective of this research is to present a comprehensive examination of custody provisions in order to identify shortcomings and highlight the strengths of each legal system. The study proceeds from the understanding that awarding custody to either parent produces specific consequences—some of an entitlement nature (Part One) and others of a compensatory nature (Part Two).

### **Part One: Custody-Related Effects of an Entitlement Nature**

Custody is one of the most significant matters relating to children's rights, encompassing their upbringing, protection, care, and both material and moral support. Custody provisions are an expression of the Islamic legal system's deep concern for childhood, which further elevates the importance and value of custody in society. For this reason, Maghreb legislations—within the scope of this study—have adopted a range of provisions ensuring the protection and welfare of the child under custody.

#### **Section One: The Right to Visit the Child in Islamic Jurisprudence**

When parents divorce, the child remains in the custody of one parent to the exclusion of the other. In such cases, the non-custodial parent is granted the right to visit the child. This right serves not only to ensure material care but also to secure the moral and emotional well-being of the child. Visitation, as recognized in Islamic jurisprudence, is therefore a right owed to the non-custodial parent and, more importantly, a right that exists for the benefit of the child.

#### **A. The Concept of Visitation in Language and Legal Terminology**

The highest form of a child's upbringing is achieved when both parents are present to provide care and affection. However, when the parents separate, custody is granted to the parent deemed most capable of serving the child's best interests. Even so, neither parent may prevent the other from visiting or seeing the child. On this basis, it is essential to clarify the linguistic and juristic meanings of the term *visitation*.

#### **a) Definition of Visitation in Linguistic and Juridical Usage**

## 1. Linguistic Definition

The term *ziyārah* (زيارة, visitation) derives from the verb *zāra* (زار), meaning *to visit*. In Arabic usage, it refers to the act of going to see someone, such as in the expressions: *zārahu ziyārah* or *zuwārah*, and also *izdārahu*, which similarly conveys the act of visiting. (Ibn Manzur, p. 355)

The word *zār* also denotes “visitors,” as in the expressions *rajul zā’ir* (a visiting man) and *qawm zār* (a group of visitors), with *zār* being the feminine plural form. (Al-Jawhari, 1990, p. 417)

## 2. Juridical Definition

In Islamic jurisprudence, visitation is defined as the act of meeting the child under custody and inquiring into his or her living, educational, moral, and health conditions, within the same environment where the child resides. Jurists have expressed the notion of visitation through various synonymous terms, such as *seeing one’s child*, *observing the child’s well-being*, and *maintaining personal contact and care*. (Al-Zu’nani, n.d, p. 39)

### b) Definition of Visitation in Maghreb Legislations

The Algerian legislator addressed visitation rights in Article 64 of the Algerian Family Code, which provides: “*When awarding custody, the judge must also rule on visitation rights.*” Accordingly, the Algerian legislator neither defined the concept of visitation nor clarified its purpose or underlying rationale. Instead, the law merely obliges the judge, when granting custody, to also grant visitation rights. Furthermore, the legislator did not regulate the modalities of visitation, leaving such matters to the discretion of the judge pursuant to Article 222 of the Algerian Family Code.

In contrast, the Moroccan legislator addressed visitation in Article 180 of the Moroccan Family Code,<sup>1</sup> which stipulates: “*The non-custodial parent has the right to visit and host the child.*” Like Algerian law, Moroccan law provides no precise definition of visitation nor specifies its objectives. However, it differs in that it extends visitation rights to grandparents — specifically, to the parents of the deceased parent — provided that one of the child’s parents is deceased. In such cases, only the parents of the deceased parent may visit or host the child.

### B. Legitimacy of the Right to Visitation in Maghreb Legislations

Maghreb family laws expressly recognize the legitimacy of visitation rights for the non-custodial parent, as reflected in a series of statutory provisions governing this right.

In Algeria, as provided in the second paragraph of Article 64 cited above, the judge — when granting divorce — is required, if custody is awarded to the mother or another person, to also grant visitation rights to the other parent. The judgment must specify the times and locations for exercising visitation. This right goes beyond merely seeing the child; it also encompasses monitoring the child’s welfare, ensuring his or her proper care, and strengthening the relationship between the child and the non-custodial parent. Visitation rights are not subject to the personal whims of either the custodial or non-custodial parent; rather, they are a binding legal obligation regulated by the court at the time custody is granted, with the child’s best interests as

<sup>1</sup>. Law No. 03/70, enacted by Royal Decree No. 22/4/01, dated 03/02/2004, (*Official Gazette*, No. 5184, concerning the Moroccan Personal Status Code).

the guiding principle.

As for Morocco, the legitimacy of visitation rights is established not only through statutory recognition but also through detailed procedural safeguards. Articles 180 to 186 of the Moroccan Family Code (Shafi'i, 1995, p. 231) set out rules for visitation and grant judges discretionary authority to ensure proper regulation and enforcement. The Moroccan legislator provides for visitation either through mutual agreement between the parents or, in the event of disagreement, through judicial intervention. The court specifies and regulates visitation in detail within the custody award judgment.

### **C. Abuse of the Right to Visit the Child**

Jurists unanimously agree that parents have the right to see their child under custody and that it is impermissible to prevent either of them from doing so, as this is a right vested in both the child and the parents. Denial of visitation fosters estrangement and the severing of family ties. However, scholars have differed regarding the frequency of visitation: some advocate daily visits, while others limit them to once every few days. (Al-Shirbini, n.d, p. 199)

Forms of abuse of visitation rights include delaying or obstructing the implementation of visitation schedules. The custodial parent may postpone visitation under the pretext of protecting the child, changing the place of residence, or acting out of obstinacy or retaliation against the non-custodial parent.

Similarly, the non-custodial parent may abuse the right by choosing inappropriate times for visitation — such as late at night, during the custodial parent's working hours, or by prolonging the visit beyond the customary duration. Another form of abuse is the refusal to return the child to the custodial parent after the scheduled visitation period, with the intent to cause emotional harm or deprive the custodial parent of time with the child.

## **Section Two: The Right to Visit the Child in Maghreb Legislations**

Custody is one of the essential requirements for the welfare of the child, and it is a duty incumbent upon the parents, the family, and society both during and after the marital relationship. For this reason, Maghreb legislators have explicitly recognized the right to visitation as one of the most important means of maintaining the child's bond with his or her family environment.

To safeguard this right, Maghreb legislations have surrounded it with a range of guarantees, most notably the principle of the child's best interests, entrusted to the discretionary authority of the judiciary.

### **A. The Right to Visit the Child under Algerian Family Law**

The underlying rationale for visitation rights, as reflected in Algerian legislation, is to enable the non-custodial parent to monitor the child's living conditions, moral upbringing, education, and religious guidance through continuous oversight in the exercise of parental authority. It is impermissible to prevent the non-custodial parent from seeing the child or to sever their relationship.

#### **a) Legal Nature of the Persons Entitled to Visitation**

Custody is a vested right of the child. Article 62 of the Algerian Family Code defines custody as the care, education, and upbringing of the child in the religion of his father, and the safeguarding of his physical and moral well-being. Article 134 of the Algerian Civil Code further provides:

*“Anyone who, by law or by agreement, is required to supervise a person in need of protection due to his mental or physical condition, is liable for any harm caused by that person to others through his harmful act...”*

Thus, the legislator has placed sole responsibility on the father for damage caused by his child to third parties so long as the child resides with him. In cases of separation, when the child moves to live with the mother, the requirement of cohabitation ceases, and so does the father’s liability.

Referring again to Article 64 of the Family Code, we note that the legislator grants visitation rights without restricting them to a specific party, leaving the determination of eligible visitors to the judge’s discretion, in order to ensure the child’s welfare. (Abd al-Aziz, 1989, p. 87)

Visitation rights are not confined to the disputing parents but may extend to relatives such as the child’s grandparents. This interpretation is supported by a ruling of the Algerian Supreme Court, which held:

*“It is established in law that just as a grandfather is obliged to provide maintenance, so too does the grandson have the right to visit him. Therefore, when the trial court granted visitation rights to the grandfather – who is considered an ascendant of the child and stands in the place of the deceased father – and since he is also liable for maintenance, it follows that he is equally entitled to visitation in accordance with Article 77 of the Family Code. The court, in so ruling, correctly applied the law, and the appeal must therefore be rejected.”* (Supreme Court, 2001, p. 192)

#### **b) The Role of the Judiciary in Regulating Visitation Rights**

Visitation should take place in an environment where the child can enjoy the care and attention of the visitor, even if only for a few hours, and the location should not cause undue embarrassment to the visitor, such as requiring the visit to occur at the custodial parent’s home.

The legislator has not specified the place where visitation must occur. The parties may therefore agree on the location or any suitable arrangement to facilitate the exercise of visitation rights. (Dhiabi, 2008, pp. 91-92) If no agreement can be reached, the judge will determine the place of visitation.

Judicial precedent has also recognized that custody may be forfeited where geographical distance prevents the exercise of effective visitation rights – for example, when the custodial mother resides abroad while the father remains in Algeria – as the father’s ability to oversee the upbringing of the children through visitation would be impeded.

### **B. The Right to Visitation in the Moroccan Family Code**

The Moroccan Family Code not only recognizes visitation rights but also establishes detailed rules and procedures for their regulation. These new provisions grant the judiciary the authority to intervene in order to ensure the proper organization and enforcement of visitation rights, as set out in Articles 180 to 186 of the Code.

#### **a) Visitation Rights for the Non-Custodial Parent**

Article 180 of the Moroccan Family Code expressly provides: *“The non-custodial parent has the right to visit and host the child.”* This makes it clear that visitation and hosting rights form part of public policy and

<sup>1</sup>. *Al-Qanun al-Madani al-Jaza'iri* (Algerian Civil Code), enacted by Ordinance No. 75-58 dated 20 Ramadan 1395 AH / 26 September 1975, Official Gazette No. 78.

therefore cannot be waived or contracted away. For the same reason, Moroccan judicial practice has established that enforcement of visitation rights – when obstructed – does not require a substantive ruling, but rather falls within the jurisdiction of the summary proceedings judge. (Al-Fakhuri, 2012, p. 332)

This principle is affirmed in an urgent ruling by the Casablanca Court of First Instance, which stated:

*“...The judge in summary proceedings is competent to take any measures necessary to ensure the proper exercise of this right as required by law. The nature of kinship ties calls for immediate enforcement in the interest of affection.”* (Primary Court, 1992, p. 208)

The Moroccan legislator also allows for visitation arrangements to be determined by agreement between the parents. Article 181 of the Code provides: *“The parents may organize this visitation by mutual agreement, which they submit to the court; the court then records its content in the custody award.”* The key advantage of an agreed arrangement is the precise specification of the time, place, and duration of visitation. If no agreement is reached, the court, exercising its discretion, regulates the visitation schedule and location to prevent any manipulation or abuse, while ensuring the interests of both the parents and the child. (Al-Fakhuri, 2012, p. 339)

#### **b) Modification of Visitation Schedules**

Circumstances may arise that cause harm to one of the parties if the visitation schedule remains as originally agreed or as determined by the court. Such situations require adjustments to the schedule in order to suit the new conditions.

Under Article 183 of the Code, the judge may extend visitation hours for the benefit of one parent, including permitting overnight stays, particularly during holidays and special occasions. Changes to visitation schedules may also become necessary upon the death of one parent, especially if the custodial parent obstructs or prevents visitation by the child’s extended family.

In this respect, Article 185 of the Moroccan Family Code provides: *“If one of the child’s parents dies, his or her own parents shall take his or her place in exercising the visitation rights regulated by the preceding provisions.”* (Hamidu, 2004–2005, p. 203)

### **Part Two: Custody-Related Effects of a Compensatory Nature**

The essence of custody lies in caring for the child both materially and morally. It is therefore a legitimate activity for which compensation may be granted. This work – which includes breastfeeding, safeguarding, and protecting the child during the custody period – constitutes an essential aspect of the custodian’s responsibilities.

#### **Section One: The Compensatory Nature of the Right to Nursing Allowance in Maghreb Legislations**

Breastfeeding a child with milk is an obligation for as long as the child needs it, as it is one of his fundamental rights and the basis of his nutrition. During the first two years of life, a child’s survival depends primarily on his mother’s milk. Breastfeeding is considered part of the expenses incurred for the child’s upbringing, and Maghreb legislations recognize this as among the rights of the child, including the divorced mother’s right to a nursing allowance.

#### **A. The Compensatory Nature of the Right to Nursing Allowance in Islamic Jurisprudence**

Breastfeeding is founded upon compassion and kindness rather than on dispute and contention. No matter how much a father pays the mother for nursing their child, he cannot truly repay her effort and care. It is in the child's best interest to be nursed by his own mother, as she is the most affectionate, gentle, and attentive to his needs.

#### a) Definition of Breastfeeding in Linguistic and Juridical Usage

Before addressing the legal implications of breastfeeding, it is necessary to present its linguistic and juristic definitions.

##### 1. Linguistic Definition

The term *riḍāʿ* (رضاع, breastfeeding) – with the *rāʾ* either broken or opened – is derived from the verb *raḍaʿa* (رضع), meaning *to suckle*, from the same pattern as *samiʿa* (*to hear*). *Raḍaʿa ummahu* means “he nursed from his mother's breast,” and *raḍaʿa* also means “to extract milk from her breast.” The term *raḍūʿah* refers to a sheep that suckles its young. (Al-Firuzabadi, n.d, p. 23)

The noun *murāḍaʿah* denotes “the act of drinking milk from the breast or from a nursing woman”. (Ibn Durayd, 1987, p. 746)

##### 2. Juridical Definition

Islamic jurists have provided various definitions of breastfeeding, including: “*The infant's sucking milk from the breast of a human female during the nursing period*”, (Al-Jurjani, 1405 AH, p. 148) and “*The actual or deemed drinking by a child of pure or predominantly mixed milk from a human female within a specific period*”. (Al-Manawi, 1410 AH / 1990, p. 366) Breastfeeding, in this context, is not limited to a fixed number of nursing instances, whether two or more.

As for the Algerian and Moroccan legislators, they have not provided a precise statutory definition of breastfeeding, as such definitions fall within the domain of Islamic jurisprudence.

#### b) Compensation for Nursing Allowance in Islamic Jurisprudence

Islamic jurists differ on whether a nursing mother is entitled to compensation for breastfeeding, depending on her marital status, as follows:

- **Hanafis:** A mother is not entitled to a nursing allowance if she is a wife or is divorced under a revocable divorce. However, if she is divorced irrevocably (*bāʿin*), some scholars hold that she is entitled to the allowance, while others deny her this right. (Al-Kasani, 1982, p. 41)
- **Malikis:** They distinguish between two situations. If the nursing mother is still married to the father, she is obliged to breastfeed without remuneration. However, if she is divorced irrevocably, she is not obliged to nurse; if she does, she is entitled to compensation. (Al-Dusuqi, 1419 AH / 1998, p. 826)
- **Shafiʿis:** They also differentiate between two cases:
  1. If the nursing mother is either still married or in her waiting period (*ʿidda*) following a revocable divorce, they hold that if both parents agree that she will nurse the child – with or without pay – and she accepts, then the arrangement is valid.
  2. If the nursing mother is irrevocably divorced, they say that if she volunteers to breastfeed, the father cannot prevent her or compel her to do so.



- If she requests payment equal to the prevailing rate (*ujrat al-mithl*) and the father has no one else to nurse the child without charge, she has the stronger right.
- If she demands more than the prevailing rate, the child may be removed from her care and given to another nurse.
- If she requests the prevailing rate but the father has another willing volunteer, two opinions exist:
- She has the stronger right, since she has accepted the standard rate.
- The father may still remove the child from her, as paying for nursing when a free alternative exists would cause him unnecessary expense. (Al-Nawawi, 1405 AH, p. 89)
- **Hanbalis:** They maintain that if the mother requests the prevailing rate for breastfeeding, she has the stronger right to nurse the child, regardless of whether she is still married or divorced, and whether or not the father can find another volunteer. (Ibn Muflih, 1400 AH, p. 22)

*B. Subsection Two: The Compensatory Nature of the Right to Nursing Allowance in Maghreb Legislations*

Breastfeeding a child with milk is an obligation for as long as the child needs it, as it is a fundamental right and the basis of his nutrition. In practice, a period of two years is sufficient for the child's body to receive from the mother's milk what it needs to grow during this time. Maghreb legislations have incorporated this principle into their family laws.

a) Compensation for Nursing Allowance in Algerian Family Law

The Algerian legislator obliges a wife to breastfeed her children and links the husband's right over his wife to three duties: obedience to the husband, respect for his parents and relatives, and breastfeeding the children. Under Algerian law, a nursing allowance is not granted if the mother is still married or divorced under a revocable divorce, (Belhaj, 2007, p. 167) because breastfeeding is a duty she must perform.

For a mother divorced irrevocably, the legislator does not expressly provide for a nursing allowance but includes it implicitly within the father's obligation to provide maintenance for his children. The father's duty to support a nursing infant is part of his financial obligation toward his offspring. In such matters, the Algerian legislator allows reference to Islamic legal principles, in accordance with Article 222 of the Algerian Family Code. (Abd al-Aziz, 1989, p. 98)

b) Compensation for Nursing Allowance in the Moroccan Family Code

Article 167 of the Moroccan Family Code<sup>7</sup> provides for a custody allowance and obliges the father of the child to pay it. A wife is not entitled to a nursing allowance as long as the marriage remains in effect. (Al-Kashbur, 2004, pp. 135-136)

The Moroccan legislator grants the nursing mother a nursing allowance once the marriage ends through death, irrevocable divorce, or the completion of the waiting period after a revocable divorce, provided she breastfeeds her child within the first two years. If the nursing mother is not the child's mother, she is entitled to the allowance regardless.

<sup>7</sup>. Article 167 of the Family Code: "The wages for breastfeeding and its expenses are borne by the person responsible for the maintenance of the child; they are distinct from custody wages and maintenance."



By analogy with the custody allowance, the nursing allowance may be waived as a gift or offered in lieu of *khul'* (mutual divorce), since anything that can be lawfully obligated can also serve as consideration in a *khul'* agreement. (Al-Tabbal, 2006-2007, p. 225)

## Section Two: The Compensatory Nature of the Right to Housing Allowance in Maghreb Legislations

A dwelling represents comfort and stability for all family members, especially the custodial child, who receives affection, warmth, and proper upbringing within it. Housing is an essential element, and the responsibility of providing it rests on the husband, whether during the marital relationship or after its dissolution. The sanctity of the person requires that he feel safe in his home, protected in his privacy, free in his movement, and able to satisfy various psychological, material, and social needs.

### A. Defining the Conceptual Framework of Housing

Just as maintenance (*nafaqa*) is, in its essence, a financial obligation incumbent upon the husband toward his wife, housing is included within it. It is therefore a mandatory right for the wife, enabling her to exercise her custody in a specific place, namely the *custody dwelling*.

#### a) Linguistic and Juridical Definitions of Housing

In Arabic, *sakan* (سكن) derives from *sakana*, meaning “to be still” as opposed to movement. *Sakan al-shay'* means “the thing became still.” A *maskan* is a place to which one returns for family and property. (Al-Fayyumi, 2001, p. 3003) The noun *sakan* also refers to inhabiting a dwelling without paying rent, and more generally to any place in which one finds comfort and tranquility, whether with family or otherwise. (Al-Azhari, 2001, p. 93)

#### b) Juridical Definition

In legal usage, housing is defined as “a dwelling prepared by the husband, which should be independent and contain all necessary amenities such as a bathroom and kitchen.” It is also defined as “a dwelling that must be free of other occupants, consisting of a separate room in a house, equipped with a lock and necessary facilities, such as a latrine and kitchen, to fulfill its intended purpose”. (Ibn 'Abidin, n.d)

This concept carries two dimensions:

1. **Abstract** – A legal link binding a person to a particular location, which becomes the legal center of his affairs.

2. **Concrete** – The actual place of residence, i.e., the physical site where a person truly lives.

#### c) Definition of Housing in Maghreb Legislations

The Algerian legislator defines housing in Article 355 of the Penal Code:

*“A dwelling is considered inhabited if it is any building, house, room, tent, or kiosk, even if mobile, whenever it is intended for residence, whether or not it is inhabited at the time. It includes all appurtenances such as courtyards, barns, grain stores, stables, and any structures within them, whatever their use, even if surrounded by a private fence within a public enclosure.”*

This demonstrates the legislator's broad conception of housing, its legal protection, and the sanctity afforded to it.

In contrast, the Moroccan legislator does not provide a specific definition of housing. Notably, housing

is no longer considered part of maintenance but rather an independent obligation. Article 168 of the Moroccan Family Code states:

*“The costs of housing for the custodial child are considered independent in their assessment from maintenance, custody allowance, and other obligations”.* (Shafi'i, 1995, p. 169)

Thus, both Algerian and Moroccan legislators require not only the provision of housing for the custodial child but also that it be suitable, as stipulated in Article 72 of the Algerian Family Code and Article 171 of the Moroccan Family Code.

#### **B. Forms of the Custodian's Entitlement to Housing in Maghreb Legislations**

The obligation of the father to provide housing for the custodial child, as stipulated in Maghreb legislations, stems from the child's pressing need for it. However, legislators have required that such housing be suitable for the exercise of custody.

##### *a) The Custodian's Entitlement to Housing under the Algerian Family Code*

The husband is responsible for providing housing for the custodian and the custodial child during the marital relationship, and this obligation extends beyond the dissolution of marriage when there are children. The conditions for this entitlement depend on the arrangements in place during the marriage.

##### **First – Ownership of the dwelling by the spouses**

Article 53(3) of the Algerian Family Code does not require that the dwelling be owned or rented by the father in order to deny the divorced custodian the right to remain in it. Nor does ownership of the dwelling by the father constitute a reason to deprive the custodian and her children of remaining there. Likewise, if the dwelling is owned by the custodian herself, the husband must leave it after divorce since ownership is vested in her.

In cases where the dwelling is jointly owned by the spouses as part of the assets acquired during the marriage, this falls under Article 37 of the Algerian Family Code, which states:

*“The spouses may agree in the marriage contract, or in a subsequent notarized contract, on the joint assets acquired during their marital life and on the respective shares that shall devolve to each of them.”* (Haddad, 2017, pp. 166-167)

##### **Second – Ownership of the dwelling by relatives of the spouses**

If the marital home belongs to the husband's family prior to separation, the custodian and the children cannot claim the right to occupy it. She also has no right to evict the husband from his family's home to keep it for herself and the children. Similarly, if the marital home belongs to the wife's family, the husband must vacate it after divorce, and she may require that he provide another residence for the exercise of custody or pay rental compensation.

##### **Third – Housing linked to employment**

If the spouses reside in employer-provided housing granted by the state for professional reasons—usually to be close to the workplace—this housing cannot be retained by the custodian after divorce. It is tied to the employment of the worker, in this case the husband, and must be vacated when the employment-based

entitlement ends. Allocating such a dwelling to the custodian is not possible because it is contractually linked to the employee's position. (Abd Al-Karim & Abd al-Sabur Khalaf Allah, n.d, p. 252)

*b) The Custodian's Entitlement to Housing under the Moroccan Family Code*

The Moroccan legislator no longer considers housing to be part of maintenance (*nafaqa*), but rather an independent obligation in its own right, as stated in Article 168 of the Moroccan Family Code.<sup>1</sup>

**First – Scope of the housing obligation**

Under Article 168, the father has the option of either providing his children with a suitable independent residence in which they live together with their custodial mother, vacating his own residence for them, or paying them rental compensation. The court must approve this arrangement and may reassess it at its discretion.

**Second – Ways in which the custodian may benefit from her former husband's housing**

Article 175 of the Moroccan Family Code<sup>2</sup> provides that if the custodial mother marries another man, the latter also benefits from the housing by virtue of living with her. In such a case, the father is relieved of the obligation to provide housing.

A further difficulty arises when the custodian and the child remain in the marital home, which belongs to the father, and the mother refuses to vacate it after the *'idda* period. The father, as owner, has the right to reclaim his property but may find himself effectively homeless while the custodian insists on remaining for custody purposes.

Given these practical difficulties in enforcing the custodian's housing rights, the Family Code has established that the custodian and child may not be evicted from the marital home until the father has complied with the judgment requiring him to provide appropriate housing for the child or to pay the court-determined rental compensation. (Al-Azhar, 2010, p. 398)

**Conclusion**

Custody (*ḥaḍāna*) is one of the most sensitive and significant legal issues, as it is a right intrinsically linked to the family, grounded primarily in the best interest of the child, and closely tied to both the material and moral capacities of the custodian.

The purpose of this study has been to assess the extent of convergence and harmony between the Algerian and Moroccan legislators, with the ultimate aim of moving toward a comprehensive and unified legal framework that ensures equal protection for the custodian and the child's welfare.

**Findings**

1. Maghreb legislators give particular attention to family matters, considering them a matter of public order and a core component of family legislation in general.

<sup>1</sup>. Article 168 of the Moroccan Family Code: "...The court shall determine in its ruling the measures necessary to ensure the continued execution of this judgment by the father who has been ordered to do so."

<sup>2</sup>. Article 175 of the Moroccan Family Code states: "The remarriage of the custodial mother does not terminate her custody in the following cases:

a. If the child has not yet reached seven years of age.  
b. If the child has a disability or defect.  
c. If her new husband is a prohibited relative or a legal guardian.

The remarriage of the custodial mother relieves the father of the costs of housing the child and the wages of custody..."

2. Maghreb legislators recognize the divorced custodian's right to remain in the marital home, while leaving it to the judge to consider several factors related to the nature and location of the dwelling.

3. Maghreb legislators prioritize the child's interest over that of the custodian by granting the judge discretionary authority in awarding custody.

4. Maghreb legislators stipulate that if the custodial mother remarries, she loses her right to the marital home or to rental compensation.

5. In Algeria, Article 64 of the Family Code, which regulates visitation rights, is succinct and lacks clear mechanisms to safeguard and organize this right in a way that ensures the child's stability.

### Recommendations

The Maghreb legislators' approach to custody provisions remains insufficient for fully protecting the custodian and the child, given the absence of certain legal safeguards and the failure to address some pressing issues that weigh heavily on Maghreb families.

Accordingly, the following recommendations are proposed to address these gaps:

1. The Algerian legislator should follow the Moroccan model by introducing a provision requiring that visitation rights be organized either by agreement between the parties or, in the absence of agreement, by judicial determination.

2. Establish training programs to educate people in family management skills, conflict resolution, and the principles of constructive family interaction.

3. The Algerian legislator should broaden the circle of individuals entitled to visitation through an explicit statutory provision, as has been done in Morocco.

4. The Algerian legislator should provide for custody and nursing allowances upon dissolution of marriage, following the Moroccan example.

5. Adopt detailed and precise legal provisions specifying the conditions that a dwelling must meet for the custodian to exercise her custody therein.

6. Strengthen the legal protection of the divorced custodian and her children by adopting more effective and enforceable measures.

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