



**THE IMPLEMENTATION OF
MOROCCO'S 2004 FAMILY CODE MOUDAWANA:
STOCK-TAKING & RECOMMENDATIONS**



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“How can society achieve progress, while women, who represent half the nation, see their rights violated and suffer as a result of injustice, violence, and marginalization, notwithstanding the dignity and justice granted them by our glorious religion?” – King Mohammed VI (August 20, 1999)¹

FOREWORD

This study was conducted as part of the Moroccan-Danish partnership project ‘Strengthening Women’s Rights and the Access to Justice in the Moroccan Legal System’, (2010-2013) under the aegis of the Ministry of Justice, Morocco, and KVINFO, the Danish Centre for Information on Gender, Equality and Diversity and funded by the Danish Ministry of Foreign Affairs through its initiative the ‘Danish-Arab Partnership Programme’.

The project constitutes the second phase of a partnership initiated in 2007 with the project ‘Morocco-Denmark Partnership Project for the Implementation of Women’s Rights and the Family Code’ (2007-2010).

The project has focused on capacity development within the Moroccan family courts with regard to reception techniques at the information desks and units for violence against women, and the use of conflict mediation among judges. Furthermore, the project supported the establishment of a Legal Aid Centre in Temara.

The 10th anniversary of the new Family Code coincides with the conclusion of the second phase of the project and provides an opportunity to reflect upon the achievements and ways forward on the path towards securing access to justice for women as well as men in Morocco.

ABSTRACT

This study will take stock of the impact of the implementation of the reforms in a *de jure vs. de facto* approach; and provide an assessment of the social and institutional barriers restricting women's ability to exercise their rights under the family law. The study will be divided in three sections. Section I provides an overview of the reformed Moudawana's advances and the different legal, policy, institutional and other initiatives and mechanisms put in place to support the implementation of the reformed Family law. Section II assesses the status of implementation of the reformed Moudawana, with a focus on the following levels: judicial system; law enforcement; government policy and allocation of resources; capacity building for administrators of women's access to justice; public knowledge and perceptions on the reformed Moudawana, with a main objective focusing on discrepancies of women's access to justice between rural and urban areas in Morocco; and Section III presents key recommendations and conclusions to advance women's access to justice under the family law. These encompass the following areas:

- **Consolidating Traditional Justice with Formal: State-Administered Justice:** Government assistance should be more focused on strengthening the integrity the informal justice system and its integration with the formal one, to become more responsive and more effective in meeting the needs of justice for rural populations, especially women
- **Provision of Legal Aid Services:** Legal aid clinics could help communities, especially women in rural areas, by introducing family law and dispersing information about how family law actually operates in practice
- **Simplification of Legal Processes:** There should be a strong move towards simplifying procedures in all family law matters, as well as promoting systems of alternative dispute resolution that are not only swifter and cheaper, but also which are more effective in attaining practical resolutions to problems
- **Transforming the Role of the Legal Profession** to allocate more time and resources for pro-bono work in support of women's legal protection
- **Building Multidisciplinary Partnerships** by partnering with law schools and also representatives from outside the legal community who can bring new perspectives and help broaden support.

A public perception analysis of similarities and differences between women's access to justice in urban areas and rural areas, conducted as part of the study unveiled that gaps persist in terms of how family law is written into legislation and how family law is applied in practice, specifically pertaining to women's access to justice.² By law, as outlined in the *Moudawana*, there is no differentiation of access to justice among women. However, in practice, women in rural areas have much less access to justice than women in urban areas, as the *Moudawana* is limited mainly to urban areas.

RESEARCH METHODOLOGY

The paper's legal framework will analyze national and international laws that apply to the right of women to access adequate and effective remedies related to family law since the 2004 reforms were passed, while also drawing comparisons to the past amendments of the *Moudawana*. This is, particularly, timely as Morocco reformed its Constitution in summer 2011, and for the first time the Constitution declares the country's adherence to human rights as recognized universally as well as recognizes the preeminence of international law over national legislation, as clearly laid out in the Preamble of the new text.³ In terms of analyzing international commitments, I will refer to notable international and regional instruments, namely the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified in 1993.

Investigation into this topic will require a thorough examination of many different sources. By using the archival research technique, a **Desk study and literature review** of scholarly, development, and policy publications as well as text of laws related to the implementation of the reformed Family Law will be collected. The research will be organized in a qualitative methodology, and backed by hard data, when available, to emphasize key points. **Annex I** provides a summarized international literature review on women's access to justice.

A **Baseline study** will be included in the form of an analysis of the 2004 *Moudawana*'s advances and the different legal, policy, institutional and other initiatives and mechanisms put in place to support implementation since its passage.

Stakeholder in country interviews (List of Stakeholders enclosed as **Annex II**) will be conducted with Moroccan actors from the following disciplines: Law & Judiciary (Lawyers &

Judges Professional Association); Government (namely, Ministry of Justice; Ministry of Relations with Civil Society and Parliament); Civil Society; House of Representatives of the Parliament; faculties of law as well as a sample of women in urban and rural parts of the country to develop a **public perception analysis**, as follows:

1. **Public Perceptions analysis:** discuss similarities and differences between women's access to justice in urban areas and rural areas.
 - a. Do some women enjoy more access to justice than others due to the way the reforms are written and/or executed in practice?
 - b. Description of the Sample Selection: Dividing up the country into rural and urban areas. For the purposes of this paper, our urban sample will be the capital city, Rabat.
2. Data Collection on **legal analysis** on access to justice for women in Morocco, under the 2004 Moudawana: Is there a gap between the reformed family code of Morocco as written into legislation, and in practice as it pertains to implementation?
 - a. Part I: urban Morocco:
 - i. Data collection of women's access to justice in urban areas:
 1. Literature review
 2. Legal documentation
 3. Stakeholder Interviews & Questionnaire (enclosed as **Annex II & Annex III**)
 - b. Part II: Rural Morocco:
 - i. Data collection of women's access to justice in rural areas:
 1. Literature review
 2. Legal documentation and court cases
 3. Stakeholder Interviews & Questionnaire (enclosed as **Annex II & Annex III**)

INTRODUCTION

The 2004 *Moudawana* is undoubtedly a progressive piece of legislation for women in Morocco. King Mohamed VI's reforms are a major breakthrough in the long struggle for equal rights by Moroccan women. Two aspects of the new Moroccan family law make it novel. First, it admits the principle of equality in marriage, and does this by redefining the notion of authority in the family within an Islamic framework. Secondly, the reforms were achieved after decades of Moroccan women's activism for better access to justice. These two features distinguish the 2004 Moroccan Family Code from its predecessors in Middle Eastern and North African countries. Previous reforms either were not so comprehensive (as in Egypt and elsewhere), or they were granted from above (as in Tunisia), or accomplished by putting the Islamic framework aside (as in Turkey).⁴

The *Moudawana* regulates all matters pertaining to family life and family law, the area of the legal system that most directly impacts women. Family law is the only area of law in Morocco that adheres to Sha'ria law. Other areas of law, such as penal law and the Constitution, are based on civil law. For the purpose of this paper, access to justice is defined as "people's ability to solve disputes and reach adequate remedies for grievances"⁵ by using "formal or informal/traditional justice systems, governmental and non-governmental, judicial or non-judicial"⁶ means which are "in conformity with human rights principles and standards."⁷

SECTION 1: ASSESSMENT OF ADVANCES OF 2004 MOUDAWANA & ITS IMPLEMENTATION

The revised personal status Code, the *Moudawana*, was adopted in January 2004, and passed into legislation in February 2004. Several important rights were secured for Moroccan women via the 2004 *Moudawana*, including the right to self-guardianship, the right to divorce, and the right to child custody.⁸ Additionally, sexual harassment was made punishable by law under the revised *Moudawana*. The age of marriage for girls was raised from fifteen to eighteen years of age, and girls were no longer required to have a *male guardian* approve their marriage. Women seem to have taken readily to their new autonomy, exercising the right to marry without a male guardian in 20.7% of all marriages in 2008, up from 18.9% in 2004.⁹ The reforms also abolished the legal requirement of a wife's obedience to her husband, and stipulated that both the husband and the

wife are joint heads of the household, however, the husband is still legally required to financially support his wife in accordance with Islamic Fiqh (teachings).¹⁰

While the revised personal status Code did not completely abolish polygamy, women could now stipulate clauses into their marriage contracts, such as a ‘monogamy clause’, which can legally forbid their husbands from taking another wife. Men must now obtain judicial authorization to take a second wife, and they must prove to the judge that they can financially care for all their wives and children. Importantly, “the first wife must be present when the husband appears before the judge to seek authorization.”¹¹ Since the reforms, the number of polygamous marriages “has decreased rapidly.”¹² From 2205 to 2006 there was a 12.5% decrease in the percentage of polygamous marriage relative to all marriages, from .32% to .28%.¹³ However, the rate of change is extremely variant from city to city, seemingly based on the pre-reform statistics and socio-economic difference.¹⁴ The revised personal status Code did not completely abolish unilateral repudiation of a wife by her husband, but the practice of repudiation was placed under judicial oversight. Additionally, two new forms of divorce were introduced. Children could now also acquire Moroccan nationality through their mother, therefore, a Moroccan woman who has a child with a non-Moroccan man can pass the Moroccan nationality on to their offspring.

It should be noted that before the passage of the 2004 Moroccan Family Law, women had to depend more heavily on traditional systems of justice. If they had a complaint or wanted to file a claim, they used to have to go to the *ulama* (religious leaders), who are male by definition, and tell them about the issue they were having. Many women expressed their belief that this system was intimidating for them. In addition to this intimidation factor, it seemed futile to many women to make a complaint, as the *ulama* would only give them a yes or no answer to their complaint as there was no chance of appeal in the traditional system of justice. Not having the right of appeal dissuaded people from filing cases or making claims because if the answer was no, then it might cause friction between them and the defendant, or even within their community. Therefore, it was common for women to simply drop their cases, rather than bring these cases to the traditional system of justice.¹⁵

Since the reformed *Moudawana* was passed, and with the presence of legal aid organizations, women have found a valid resource for advice and assistance on filing a claim in the courts.¹⁶

Furthermore, “family courts and the training of judges to staff these courts have served to create a friendlier environment for women. In addition, a fund has been established to guarantee payment of alimony and child support pursuant to an enforceable judgment.”¹⁷ Additionally, divorce cases and custody cases are receiving faster attention from the courts, and the courts have “got this system down to a consistent, speedy procedure.”¹⁸

In the area of gender-based violence, notable progress has been made. In urban areas, the *Moudawana* has created a system for dealing effectively and efficiently with domestic violence and increased the number of women filing domestic violence complaints in the court systems.¹⁹ Also, the reform of the Code of Criminal Procedure (CCP) helped in this regard. Article 336 of the CCP, which previously only allowed women to take civil action against their husbands with prior authorization from the court, was changed, enabling women equal access to the courts.²⁰

In 2003, certain articles within the penal Code were also altered to impose heavier penalties on a spouse who injures the other spouse. Article 446 of the penal Code was also redrafted to authorize health care workers to waive professional confidentiality rules in cases of suspected violence between spouses or gender-based violence, and to report such incidents to judicial or administrative authorities.²¹

Gradually, the response to these domestic violence claims has proven to be satisfactory. In urban areas, a significant increase was cited in immediate response to domestic violence issues due to provisions in the *Moudawana* that were never an option prior to 2004.²² For example, the *Moudawana* has created what would be the equivalent to a restraining order in the American court system. In 2007, the Ministry of Social Development, Family, and Solidarity began publishing information and official data on violence against women.²³ The Ministry also “presented a draft bill offering a legal framework for protecting women’s rights by providing safe spaces for female victims of violence.”²⁴ There was a substantial increase in the reported incidents of domestic or spousal violence, and the government responded by developing an action plan in March 2008 to prepare a draft bill that would specifically outlaw violence against

women. The action plan also outlined plans to increase the number of support centers for women who were victims of domestic violence.²⁵

*The Ending Violence against Women: From Words to Action*²⁶ which was released by the United Nations in 2006 illustrated an important fact about violence against women that sparked States attention to this issue—that violence stops women from fulfilling their potential, restricts economic growth and undermines development. In Morocco, the Government had pressing obligations to address violence against women, especially given its consequences on economic welfare of communities where violence occurs. As rightly articulated by international women’s rights expert Susan Ross Deller, “Where women thrive, communities thrive.”²⁷

SECTION 2: STOCK-TAKING OF BARRIERS TO IMPLEMENTATION OF THE MOUDAWANA

Despite the forward bounds the *Moudawana* brings to Moroccan women’s rights, it remains hindered by several hurdles. Today, there are still blatant shortcomings, both *de jure* and *de facto*, in improving the situation of women’s access in Morocco vis-à-vis the *Moudawana*. There are many indicators which can be used to measure and quantify access to justice, one of which is WJP Rule of Law Index[®].²⁸ The *WJP Rule of Law Index[®] 2011* report²⁹ presents data from 66 countries and jurisdictions, including Morocco.³⁰

i. Deficiencies in the Wording of the Moudawana

Adopting revisions to the *Moudawana* and passing this revised text into legislation in 2004 should be viewed as a stepping stone towards achieving women’s access to justice, because there are still many areas in which the text of the *Moudawana* fails women in their quest towards equality. There is what might be termed as deficiencies in the wording of the Code itself. For example, the Code does not specify a threshold age below which special permission to marry before the lawful age of 18 years may not be granted. Another weakness is that the Code’s provisions on the joint administration of property acquired during marriage do not include standards for evaluating the wife’s contribution in the form of domestic duties, where there is no contract between the spouses.”³¹ The *Moudawana* “did not completely abolish polygamy, unilateral repudiation of the wife by the husband, separation by compensation (*khula*), or

discrimination in inheritance rules.”³² Furthermore, while improvements have been made for women in some areas of civil and criminal law, the areas of family law lag behind other areas of law. One striking example is that women possess equal testimony rights in most civil and criminal cases, however, “the court gives their testimony half the weight of a man’s when it comes to family matters.”³³ Finally, the *Moudawana* concentrates mainly on the rights of Moroccan women who are married, and fails to address the rights for Moroccan women who are single, or foreign women who are married to Moroccan men, and vice-versa.³⁴ The latter point, particularly, is timely as the number of multicultural marriages is in the rise.

In the area of constitutional equality, even though all of Morocco’s post-independence constitutions have stressed the principle of equality between men and women, it was not implemented in reality.³⁵ In the concluding observations of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)’s 2003 Report to Morocco, there was a clear indication that the Constitution does not “explicitly” define the principle of equality between women and men or of gender discrimination.³⁶ However, in Morocco’s 2011 Constitution, women’s rights catapulted to the top of the agenda. The Constitution institutionalizes gender equality by encouraging the creation of women’s rights organizations and giving women more legal rights including the right to maintain custody over their children even if they remarry.³⁷

ii. Government Allocation of Resources

Civil society organizations (CSOs) feel that gaps persist in terms of **how family law is written into legislation and how family law is applied in practice**, specifically pertaining to women’s access to justice.³⁸ By law, as outlined in the *Moudawana*, there is no differentiation of access to justice among women. However, in practice, women in rural areas have much less access to justice than women in urban areas, as the *Moudawana* is limited mainly to urban areas. A 2003 report to the CEDAW Committee emphasized that despite the progress of the *Moudawana*, “a number of constraints and difficulties have emerged, including in particular difficulties attributable to inadequate infrastructure and logistic resources, a lack of awareness and training among officials responsible for enforcing the Code, and the persons in charge of publicizing it and propagating an understanding of it throughout Morocco’s social fabric.”³⁹ There are still a

very high proportion of CSOs in cities, but a void of these types of services or organizations in rural parts of the country. Many rural areas lack crucial physical infrastructure, such as roads, which impedes many civil society organizations, which are mainly based in major urban centers, such as Rabat and Casablanca, to exert the same levels of influence in rural areas as they can in urban areas. Physical infrastructure, such as roads, helps villages gain access to justice by being more physically accessible to legal aid and non-profit organizations.

The views of a segment of civil society members is that knowledge about the *Moudawana* has not spread consistently or evenly to Moroccans who live outside of urban centers.⁴⁰ Many women outside of the reach of civil society organizations are either unaware of their legal rights, or are misinformed about their legal rights, the reformed *Moudawana*.⁴¹ Information is sparse: “women generally, and rural women in particular, are frequently unaware of their political rights. There is a genuine communication problem in Morocco. Most literature regarding women’s rights, political or otherwise, is written in Arabic and French, meaning it is inaccessible to large numbers of women. Some CSOs use Moroccan Arabic (Darija) and Berber in their outreach campaigns, but these efforts are insufficient, particularly in light of the high illiteracy rates among women.”⁴²

The Moroccan government is working with the Human Development Index to increase physical infrastructure, such as roads, as well as to improve education, in order to help develop the economy. While the government’s main aim is not directed solely at increasing women’s access to justice, this could be an indirect effect of the Human Development Index, as it could allow the non-profits and the growing civil sector to utilize these roads to reach out to previously inaccessible communities. Despite these limitations, organizations try to spread information about the *Moudawana* into all parts of Morocco. Organizations would travel into rural villages as a group, sometimes bringing women with medical, legal, educational backgrounds with them, and speak to women in the villages. Moroccan activists refer to these trips as “Rural World”. Members of the organizations would select two or three local women in the village communities and give them each a mobile phone with several phone numbers pre-programmed into the phone. They, then, instruct the women about the services that these organizations provide, in terms of domestic violence, legal aid, etc. and instruct them to call the numbers in the phone if there are

any emergencies that would require help from the cities. With more sustainable financial support, civil society groups would be able to reach more communities in the future.

There is also a paucity of **government sponsored training for the judges and public officials** to learn about the provisions of the *Moudawana*. These programs are usually led through national government initiatives or international donor agencies with significant positive results. The challenge is, however, scaling up these efforts so that all regions in Morocco benefit, as so far, it is mainly the large cities which are gaining from these programs. That said, access to justice barriers still persist in urban areas.¹ For example, some public notaries do not inform women that they have to request the inclusion of certain provisions, into their marriage contracts which leads women might think those provisions will automatically appear in their marriage contracts. While there are a variety of programs to train the legal professionals to understand the new laws, it boils down to these experts skills of how to adapt new texts to ongoing realities. Unfortunately, there continues to be a gap within this dimension.

iii. The Judicial System

Another notable weakness of implementation is rooted in the **delays in the courts**, a typical feature of the Moroccan legal system. The operation of an efficient and effective court system is crucial to the administration of justice. Innumerable legislative and administrative initiatives have been undertaken over the years, and while many have been successful in their specific aims, court delays continue to be an ongoing problem. There are multiple causes of delay, such as increased caseload; increased length of hearings; insufficient court resources, both human and financial; problems with the management of court resources and caseload; inefficient legal procedures and court processes; and party delays.⁴³ Members of the Moroccan legal community interviewed for this research have confirmed that although measures for new initiatives are needed to fix specific problems causing these delays, the problem of court delays and its causes and effects cannot be dealt with as a straightforward matter.

¹ Hanafi, Leila. Personal Interviews with Moroccan academics regarding the *Moudawana*. See *Annex II* for more information.

The success of the *Moudawana* depends explicitly on the **legitimacy of the justice system**. Several aspects of the reforms fall to judicial discretion, such as: approval for polygamous marriages; waivers for child marriage; and overseeing all divorce proceedings. While the judicial system has been effective in several of these matters, there is evidence of a patriarchal lean in others, most notably child marriage.⁴⁴ In divorce for cause claims brought by women, judges have tended to discount reasons other than failure to provide financially for one's wife, including alcoholism or physical abuse.⁴⁵ In less obvious ways, the judicial system plays a role in effective implementation through the length of proceedings and resulting fees incurred as well as enforcing equitable decisions. Exorbitant length of proceedings in some cases have led to such a great a time and financial burden that seeking divorce becomes infeasible.⁴⁶ Lawyers and magistrates alike have not attributed the full importance necessary to the *Moudawana* reforms; leading to a lack of understanding how to apply the law appropriately or handle cases to their full capacity.⁴⁷ As a result of these shortcomings in the judicial system, many women fear failure or harbor mistrust that prevents them from seeking out judicial resolutions.⁴⁸

Certain local governments, particularly in rural areas, have resisted the changes as well. Their desire to maintain the status quo has led to minimal follow through in judicial decisions. Instances in which child support has been withheld have occurred,⁴⁹ leading to the need for supplementation from national government and international organizations.

iv. Level of Social Acceptance of the Law & its Enforcement

Barriers for women's access to their rights under the *Moudawana* are also notable in terms of **social and cultural norms**, particularly the relationship between Islam and Moroccan nationalism.⁵⁰ The *Moudawana* has created many divisions within Moroccan society, and group leaders have used these divisions to mobilize followers. At first, there was a lot of resistance from men because they thought the *Moudawana* was only about giving women the right to divorce, and would enable women to divorce their husbands very easily. In actuality, the *Moudawana* does much more than this. The debates within Morocco over the family law reforms amount to more than just a binary dialogue between conservative Islamists who oppose the family law reform and liberal modernists who condone the family law reform. Within each of these two groups lie numerous sub-groups, many of which do not fall neatly into any one

category. For example, within the group of conservative Islamists who oppose the family law reform, there are sub-groups whose opposition stems from their interpretation of Islam, and their interpretation of the role that Islam should play in politics and government. There are also conservative Islamists who interpret Islam such that they believe family law reforms are inherently Islamic and good, but nonetheless, they opposed the reforms because they fear it is nothing more than an infiltration of westernization that seeks to erode and destroy Moroccan social and national identity.⁵¹

The calls for reform to the *Moudawana* were contentious because the Moroccan government is a monarchy in which Islam plays a central role, and the king and the *ulama* are intermediaries who can only enact family law reform “on the basis of the sacred texts and the *ijtihad* of the *ulama*”.⁵² Adding further complexity to this issue is the fact that Moroccan independence movement was so intertwined with Islamic ideology. Therefore, any person who wishes for the family law Code to be reformed for any reason risks being accused of not only being a heretic, as they are challenging the king’s role as Commander of the Faithful, but they also risk being accused of treason-like elements, as lobbying against Moroccan family law correlates to lobbying against Moroccan nationalism and national identity.⁵³ In this context, the necessity to manage conflict constructively is made more salient as participation in the public sphere increasingly becomes framed as an issue of being anti-Islamic.

Research data also indicates that women do not want to insult their husbands by asking for certain provisions in their marriage contracts. Furthermore, the ambiguous wording of the *Moudawana* grants judges and public officials with an unacceptably high level of arbitrary/discretionary power, which leads to de facto problems of implementation.⁵⁴ That is because of a heavy patriarchal set of values and traditions within the profession of law which are resistant to the changes of the *Moudawana*. “Some judges tend to adhere to the traditional divisions between the male-dominated public space and the private space assigned to females.”⁵⁵ This is not to say that they are unjust, but they are resistant to the policy changes.⁵⁶ Judges, for example, “are reluctant to uphold”⁵⁷ the minimum age for marriage (18 years old), and they are also empowered to waive the minimum age rule in specific cases. The Democratic League for

the Rights of Women (LDDF) found that approximately “10% of marriages in Morocco involve underage girls, and such unions have increased in rural areas.”⁵⁸

In the current context, the real challenge is to **ensure that all the legal procedures in the *Moudawana* are reinforced through family courts** to maintain the notions of justice, equity, and objectivity and at the same time the quick flow of justice.⁵⁹ Several members of the legal community interviewed for this study are of the view that: It would be helpful if: more judges are assigned to the family courts to handle the high volume of cases, to reduce delays, and to provide litigants with the opportunity to be heard; public prosecutors need to learn about and to fulfill their statutory obligations. Furthermore, court .⁶⁰clerks play a fundamental role in the judicial system. They are seen as corrupt and responsible for delaying cases. Efforts to improve the professionalism and reduce corruption of the clerks are much needed.

When Morocco ratified CEDAW in 1993, it noted several reservations for conflicts with Islamic law, including reservations on certain provisions of the conventions on Article 2 pertaining to equality before the law and prohibiting discrimination against women; on condition that its provisions do not contradict with constitutional requirements that regulate accession to the throne in Morocco, or with the provisions of Islamic law. Morocco also made a reservation on Article 9(2) concerning equal rights of parents as to their children's citizenship that women cannot pass on their nationality to their children if their husbands are non-Muslims.⁶¹

Since ratification of CEDAW in 1993, the Moroccan government has submitted progress reports on the Convention to the United Nations (in 1994, 1997, and 2000), and in each report, “Morocco demonstrated progress towards reforming the legal Code and improving the status of women.”⁶² Yet, while progress has been made in some areas (for example, one of the CEDAW reservations, Article 9 dealing with the right of a mother to transmit her citizenship to her children, was abandoned in 2007)⁶³, there are still apparent delays in lifting all reservations, and arrangements need to be put in place to enforce these changes, at the domestic level. Today, some of the reservations still find their parallels in laws and traditional practices that reinforce gender discrimination, with respect to matters of marriage and divorce. For instance, Article 2 of CEDAW urges States Parties to refrain from engaging in any act or practice of discrimination

against women, and to ensure that public authorities and institutions act in conformity with this obligation.⁶⁴ But in Morocco today, even though the law sets the minimum age for marriage at 18 for males and females, judges have discretion to waive the minimum age for marriage, thus allowing minors to be married. Because girls tend to be married to far older men and often are married when they are minors, this discretion given to judges has a disproportionate impact on young girls.⁶⁵

Even though the country is a party to several international law conventions and acknowledges the precedence of international instruments over national legislation, the CEDAW Committee registered several obstacles in its evaluation of Morocco's family law progress because of many remaining discriminatory provisions in the Family Code. Some examples include setting different standards for women and men in issues related to marriage and family life; a different minimum age of marriage for women and men; restrictions for women in obtaining a divorce; and the risk of repudiation.⁶⁶

It is important to note that ratifying CEDAW does not have a concrete impact on the situation of women when it is not been accompanied by the harmonization of national legislation with the spirit of CEDAW provisions. A decision to lift formally the reservations to CEDAW would be an immensely important part of Morocco's efforts to improve and strengthen women's rights and would serve as an example for many countries in the Middle East and North Africa region that still have reservations to core articles of the Convention. King Mohammed VI announced during a speech on December 10th, 2008, the sixtieth anniversary of the Universal Declaration of Human Rights, that Morocco retracts its reservations on the Convention. The King expressed that the reservations become "obsolete due to the advanced legislation that has been adopted by our country."⁶⁷ The United Nations and the international human rights community expressed satisfaction with the King's move which signaled Morocco's desire to be forward-looking in upholding women's rights. Regarding the CEDAW Optional Protocol, the Moroccan Council of Ministers adopted it, during its meeting held on November 12th, 2012 in Marrakesh, in its efforts to curtail gender discrimination. The decision of ratification was welcomed by human rights and women's rights organizations in Morocco who consider the protocol to be an essential instrument for the implementation of CEDAW and the fight against women's rights violations.⁶⁸

By announcing its decision to ratify the Optional Protocol to CEDAW, Morocco is also expected to set a great example in the Arab region for countries which have yet to ratify it.

v. *Level of Public Knowledge and Understanding of the Law*

One of the most substantial hurdles to accessing the newly defined rights is **educating women** about them according to women civil society leaders.⁶⁹ Countrywide, there is a disparity in illiteracy rates to the detriment of women, in 2000, 64% of Moroccan women were illiterate.⁷⁰ Many typical methods of raising awareness through pamphlets and the like would thus be ineffective. Women, particularly in rural communities where illiteracy rates are highest, are unable to access or comprehend dense judicial opinions. This adds to an overall ignorance of judicial matter within the general public.⁷¹

Morocco suffers from extreme poverty in many parts of the country, which affect women and children significantly greater than men. For example, there is a positive correlation between levels of education attained by women, and their awareness of the *Moudawana*; “as education levels increase for women, the percentage of those saying they have heard about the *Moudawana* increases as well.”⁷² Yet, it is still very poorly understood in rural areas. As such, it is integral to heighten access to justice efforts in rural areas of the country as legal and societal barriers often obstruct women’s access to the justice system in these parts of the kingdom.

Finally, to address this obstacle it is important to study the weaknesses and hindrances on access to justice in the Moroccan legal system in order to design a suitable program and mechanism for legal empowerment and legal aid for women. This should also include a discussion about promoting access to justice remedies for women through more concerted efforts in urban and rural areas; the importance of disseminating information and knowledge about the law, legal and women’s rights; and the role of media in promoting and disseminating the right knowledge to the public.⁷³

**SECTION 3:
RECOMMENDATIONS TO ADVANCE WOMEN’S ACCESS TO JUSTICE UNDER
THE MOUDAWANA⁷⁴**

Consolidating Traditional Justice with Formal State-Administered Justice

In considering access to justice in terms of the particular needs of rural women, it is necessary to consider the variety of available legal services to which they may seek access, the variety of services from which they seek legal assistance, and the preferred methods of resolution which they seek to employ. In that context, the interplay between the formal and informal mechanisms of access to justice comes into question. The rule of law⁷⁵ involves the administration of justice and security by both formal and informal mechanisms. In many countries, the formal state-administered justice system coexists with one or more informal systems of justice provision. These mechanisms, widely used in rural and poor urban areas worldwide, are also often referred to as “traditional”, “indigenous”, or “customary” justice systems.⁷⁶

Usually, in rural areas where illiteracy rates are high among the women population, they tend to not have recourse to the formal system for many reasons, such as misunderstanding of the law; fear and/or intimidation; lack of resources; issues pertaining to language; and a lack of familiarity with formal procedures.⁷⁷ As such, some women perceive themselves as divorced from the formal legal framework of public institutions. Such a divorce also reflects a gap between the law as it is written in the books and the law as implemented and experienced in action. Informal justice systems, therefore, are the cornerstone of access to justice and dispute resolution for the majority of these women. Nevertheless, the support of informal justice systems is very limited.

Informal justice systems are critiqued for being discriminatory towards women and disadvantaged groups, not always adhering to international human rights standards, and depending on the skills and moral values of the individual operator. Despite the challenges, engaging with traditional systems is necessary for enhancing access to justice for many women since it is their cornerstone for accessing justice remedies. As such, ignoring such mechanisms will not change problematic practices present in the operations of informal justice systems. In Morocco, specifically, the traditional justice system is home-grown, culturally appropriate, and

embraced by the communities it serves for its potential to provide quick, cheap, and adequate remedies. Government assistance should be more focused on strengthening the integrity the informal justice system and its integration with the formal one, to become more responsive and more effective in meeting the needs of justice for rural populations, especially women.

Legal Aid Clinics

Legal aid clinics - public interest bodies specializing in the provision of legal information, counsel, and assistance to disadvantaged populations – constitute a highly effective, successful, and increasingly global means of combating the lack of access to justice for marginalized populations throughout the world. Legal clinics, also known as law clinics or law school clinics, are law school programs providing hands-on-legal experience to law school students and free legal services to those most in need. Legal aid clinics could help communities, especially women in rural areas, by introducing family law and dispersing information about how family law actually operates in practice. However, in order for this to materialize, faculties of law around the country must recognize the benefits of clinical legal education and adopt this approach.

In conclusion, legal clinics are considered effective institutions both on a human level, providing legal assistance to those with no other means of accessing it, and on a legal and judicial development level, serving as vehicles of social change and as advocates for the disenfranchised voices.

Legal Processes

While due process of law is one of the great achievements of our time, legal processes have become unduly complicated, drawn out, and technical. Not only does this lead to immense delays and expenses, but the litigants also feel disempowered because they do not fully comprehend the processes. There should be a strong move towards simplifying procedures in all family law matters, as well as promoting systems of alternative dispute resolution that are not only swifter and cheaper, but also which are more effective in attaining practical resolutions to problems. This step has been initiated in Morocco through the institutionalization of mediation in family courts in 2007, and recruitment of social assistants to make the link between the judges and the women seeking justice services. These attempts to accelerate implementation of the

Family Code through alternative dispute resolution methods have proven successful and should be promulgated throughout the country.

Transforming the Role of the Legal Profession

Public defenders and community law centers also have a huge role to play. Paralegals, for instance, can be enormously helpful to women seeking legal assistance for particular problems and claims in a variety of settings, such as employment training centers, neighborhood community centers, and health centers, to name a few. Many successful law firms set aside certain amounts of their time for what is called pro-bono work (for the good of itself, not for money). Allocating time and resources for pro-bono work not only responds to their feelings of social responsibility, but it also enables law firms to attract some of the most brilliant recent graduates who wish to see their legal skills being used to overcome injustice, and not just to make money.

Multidisciplinary Partnerships

Successful access to justice efforts are founded upon a strong partnership among the bar; the judiciary, and legal aid providers. Law schools can also be key partners, while representatives from outside the legal community can bring new perspectives and help broaden support. Each of the key institutional partners - the bar, the courts, and legal aid providers - brings a particular set of strengths to the table. Law schools, for example, can become key access to justice partners as law faculty and students can serve as valuable civil legal assistance providers, through clinical programs. Building support for equal justice in the next generation of attorneys should be at the forefront of access to justice efforts throughout Morocco.

CONCLUSION

There is no doubt that the enactment of the *Moudawana* marked a significant step forward in improving the legal status of women in Morocco, yet its application is still not in full effect. The judiciary in particular plays a critical role in enforcing the provisions of the *Moudawana* as it has the ability to make the legal reforms a reality or alternatively to disregard the changes. At the same time, efforts at the grassroots level to educate citizens about their rights and responsibilities under the Family Code are still needed. While women's rights groups and civil society actors work freely and effectively to promote gender equality and equal access to justice and have gained momentum in recent years, their efforts are often challenged by cultural conservatism. In rural areas, particularly, there is little information on civil society groups in general, and no research has been carried out on the human, material and financial resources of the CSOs working with rural women. This requires a collaborative approach of a variety of actors (the government, media, educational institutions, and civil society groups).

Today, the Moroccan family law is just one of the many examples of how societies grapple with balancing the ideals of tradition, justice and the rule of law with the imperative of making societies safer and more just for their citizens.

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