

Repercussions of the Reform of the Family Code in Morocco

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On 3rd February 2004, after due consideration, the Moroccan parliament adopted the “Family Code” bill (*Moudawana Al Ousra*) in a context marked by an unprecedented debate on the status of women in a country which is supposed to be in transition towards democracy, but where resistance to change is everywhere.

The combined result of a struggle by women for almost three decades and a certain degree of real political will, the Family Code is more than a simple legal reform. The philosophy supporting the new text and the provisions it is structured into have an effective symbolic impact, calling into question a practice largely shared between the countries of the southern shore of the Mediterranean; that is, the use of religion to uphold patriarchy.

The Family Code replaces the Personal Status Code (PSC) which was drawn up in 1958 immediately following independence, with reference exclusively to Muslim law. Its eminently discriminatory character was therefore legitimised and it had the direct effect of keeping women in a subordinate status as minors for life.

In 1993, and under pressure from the women’s movement, there was a superficial reform, but a dynamic has really been put in place to tackle this reform since 1999, with the National Plan for the Integration of Woman to Development (PANIFD)² which bore fruit five years later with the current reform.³ The new features of the code can be broken down into three points:

- A significant advance concerning the spirit with which the text is structured, calling into question the discriminatory essence of the old PSC. Three major provisions confirm this tendency: that is, the abolition of matrimonial wardship; the recognition of the “co-responsibility of the two spouses” concerning the family, and the “equality of rights and duties between spouses.”
- Specific measures putting into law equality between boys and girls in many areas, such as the age of marriage (18 years old), the age for choosing a parent/guardian (15 years old) and inheritance from the grandparents. Other measures establishing more equity and justice in male-female relationships, such as the introduction of new divorce procedures in favour of women and the right granted to women to remarry without losing custody

of their children, under certain conditions.

- Terminology which tends to get rid of degrading, disparaging terms for women, alongside a simplification of the text following the example of other legal texts making it accessible to the general public and not only to the *Foukaha*, or specialists in Muslim law.

One of the special features of this reform, linked to the Moroccan context, lies in the fact that it was demanded from two directions: the purposes of *sharia* and through ratified international conventions. It is, therefore, the result of negotiation that is translated into its limitations, including the maintenance of polygamy⁴ or the discriminatory aspect of inheritance.⁵ Nevertheless, the code’s advances have been unanimously considered as of the highest importance because of the impact they can have in the short and long term.

The new reform reduces the gap that was opening up between the law and social reality. Morocco has gone through far-reaching demographic and socio-economic changes in the half century separating it from the promulgation of the first code. These changes have had a real impact on families,⁶ and particularly on women, notably, in fact, on their access to education, to paid work and

¹ Independent organisation advocating Women’s Rights, founded in 1985.

² The PANIFD was launched a month before the arrival of the Youssoufi government (March 1998), which took it up. Of 200 measures, 7 concerning the PSC have been considered by conservatives not to comply with Islam. It is in this context, marked by a considerable presence of the women’s movement, that the King’s involvement took a practical form, with the establishment of a Commission to head the reform.

³ See chronology.

⁴ Polygamy is subject to the authorisation of a judge and to draconian legal conditions that make it almost impossible.

⁵ The issue of inheritance has been approached only by recognising the right of grandchildren to inherit from their grandfather on the mother’s side with the same rights as grandchildren on the father’s side.

⁶ For example, the percentage of nuclear families has moved from 51% in 1982 to 62% in 1995, according to data from the Statistics Office (2000).

FAMILY CODE: A FEW LANDMARKS

- 1958: Promulgation of the Personal Status Code based on discrimination.
- 1993: First reform, superficial.
- March 1999: The Prime Minister, A. Youssefi, presents the Action Plan for the Integration of Women into Development (PANIFD), drawn up with the participation of women's associations. 7 out of its 200 measures concern the reform of the Personal Status Code.
- April – May 1999 : Violent reaction of conservatives leading to government backtracking.
- July 1999: Creation of the "PANIFD Support Network," made up of more than 200 women's, human rights, citizens' and development associations to support the Plan.
- 12th March 2000: Organisation of the women's march in Rabat, within the framework of the World March Against Poverty and Violence, under the slogan of reform of the code – Islamist counter-march in Casablanca.
- 5th March 2001: King Mohammed VI receives a delegation of women representing women's associations, political parties and national personalities.
- 16th March 2001: Establishment of the group "Spring of Equality," a network of feminist associations in favour of reforming the code (initially 9 associations, subsequently enlarged to 30).
- 20th March 2001: This group sends the King a memorandum on its aspirations concerning the reform.
- 26th April 2001: The King sets up the Committee in charge of reforming the Personal Status Code.
- June 2001 – June 2003 : Spring of Equality undertakes a long, sustained awareness-raising campaign advocating reform based on the principle of equality .
- 12th September 2003 : The commission issues its report.
- 10th October 2003: The King presents the Family Code Bill in the Parliament
- 3rd February 2004: Parliament adopts the Family Code.
- 5th February 2004: The code is published in the Official Gazette and comes into force.

to contraception. The economic role of women (30% of the active population, 20% of heads of households) is a statistic which has not been without its effect on the hierarchical male-female relationship so that men are not the sole family breadwinners.

Several new provisions will have a structural effect. The abolition of wardship, considered by the women's movement as the main advance of the code, is equivalent to the enfranchisement of women because of the fact that they have finally had recognised the legal capacity to contract marriage without a guardian (except for those who so wish). Reciprocity of rights and duties between spouses brings down the pillar of the ancient *Mudawanna*; that is, the duty of obedience more worthy of slave-owning societies.

Although divorce may not be judicial in the true sense of the term for the two partners (repudiation has not been abolished, but is only subject to authorisation by a court), women will have resources that have not existed up to now so they can demand divorce because of ill-treatment, without having to prove it as in the old text. Despite their limitations, these measures should reduce the suffering of women who spent years going to court and who often gave up because

of lack of means or, above all, lack of protection from the laws in force.

One of the issues for which the Code has attempted to provide an answer involves the division between the spouses of the goods acquired during the marriage in the case of separation. The new text introduces the possibility of the partners agreeing, in a document separate from the act of marriage, to define a framework for the management of this property. In the case of disagreement, the judge assesses each one's contribution. Children's rights have also taken a step forward. For the first time, explicit reference is made to the harmonisation of family legislation with the Convention on the Rights of the Child and its two founding principles; that is, non-discrimination and the superior interest of children. Legislators have been particularly interested in the problems resulting from the dissolution of marriage bonds, and in issues of filiation,⁷ custody and maintenance, but also in children's rights to harmonious development and protection by their parents from ill-treatment and from all forms of exploitation and negligence. In the case of difficulties, responsibility falls on the State. Ultimately, the new code marks an advance in terms of the recognition of individual rights within the family. It breaks

the vicious circle which legitimised the subordination of women because of the "sacred" nature of the *Mudawana* and which, because of this, halted any attempt at reform respecting personal rights.

This aspect of the reform, which is based on an evolutionary interpretation of the founding texts of Islam, should have a certain impact at a social and cultural level: in view of the dynamic aroused by this new code at national level. The code and the values of equality and equity that sustain it, has created quite a stir in several areas such as universities, regional educational academies, young people's organisations, etc. and this since the presentation of the bill to the Parliament by King Mohammed VI on 10th October 2003. Women's organisations have actively supported the reform process and taken action in it, and have deployed and are continuing to deploy, enormous effort to ensure the controlled application of the code.

This new dynamic brings elements favouring a change in practices and mentalities in the sense of enshrining equality between men and women and consolidating democracy and the rule of law. But the effectiveness of this tendency is now dependent on preliminary measures to be taken by the State in esta-

⁷ Recognition of paternity in the case where marriage has not been formalised by act for reasons of force majeure (extension of the field of legal tests, including DNA testing).

blishing the new code as part of the framework of a strategic vision for promoting women's rights guided by a triple objective:

- Guaranteeing the application of the code by practitioners impregnated with the spirit of the reform and not only with its technical and procedural side, giving rise to the need for far-reaching awareness-raising and training work with magistrates, lawyers and other professionals in related fields, both men and women;

- Publicising the reform with a systematic, extensive and sustained campaign targeting the general public, using powerful tools such as the audio-visual media;
- Educating the younger generation, boys and girls, to live together, respecting differences and rejecting discrimination, and making the culture of equality the backdrop to the education system.

The Moroccan experience concerning reform of the Family Code allows very

useful conclusions to be drawn⁸ for different Muslim countries, taking into consideration their diversity, where the legitimisation of discrimination is justified in terms of religion. It shows that our societies can attain modernity and appropriate its universal values, while still safeguarding their own identities (because they are plural); that a political will to act is fundamental, and that it is essential for women to have a combative spirit in order to achieve and consolidate their objectives.

⁸ Work to document the entire process of reforming the Personal Status Code is being carried out by the ADFM with the support of UNICEF.