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Fatima Outaleb and Fatima Sadiqi

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Corresponding author: Fatima Outaleb

Author contact: outalebfatima@gmail.com

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The 2004 Moroccan Family Law (Moudawana): “Home–grown” Islamic Feminism with Potential to Grow

Fatima Outaleb¹ and Fatima Sadiqi²

¹Union Action Féminine

²Sidi Mohamed Ben Abdellah University

Introduction

The 2004 Moudawana (the Moroccan Family Law) brought about unprecedented reforms, which were worked out within an Islamic feminist framework. In this context, “Islamic feminist framework” means the use of progressive *ijtihad* (interpretations of the Prophet Muhammad’s teachings and deeds in the Qur’an and hadith) to reform the law.

The long process that led to the 2004 law was initiated by local feminist academics in the early 1980s (Mernissi, 1984; MoulayRchid, 1981). This initiative was supported by some local religious scholars (Khamlichi & MoulayRchid, 1981), and consolidated by local feminist nongovernmental organizations (NGOs), such as the Democratic Association of Moroccan women [Association Démocratique des Femmes Marocaines, ADFM] and the Union of Feminine Action [Union de l’Action Féminine, UAF]. Finally, it was translated into policy by politicians. It is in this sense that the process of reform is “home–grown”: it was started, groomed, and brought to fruition by local actors. The remarkable continuity in this process makes the Moudawana unique in the region.

However, the process was not smooth or uninterrupted; it was heavily affected by the overall historical and sociopolitical context that characterized the 1980s and 1990s—namely, the rise of political Islam, which divided Moroccan feminists (academics, activists, and politicians) into

secularists and Islamists. While both camps accepted the politico–religious authority of the king¹, the secularists sought to separate religion and politics in public spheres and social practices, while the Islamists sought to Islamize society, including social practices. However, a monumental event hastened the process of reform and drastically reduced the ideological gap between the two camps: the Casablanca terrorist attacks of May 16, 2003, during which more than 40 Moroccan people were killed at the hands of Moroccan terrorists. These attacks were immediately perceived by feminists as a “wake–up call”, which cooled down the ideological antagonisms of the 1990s and allowed a consensus to be reached for reforming the Moudawana. The reform was passed in Parliament, and unanimously sanctioned by the political parties.

The 2004 Moudawana was perceived nationally as a victory of progressive *ijtihad* with potential to grow, and internationally as an example of Islamic feminism (Badran, 2002). In June 2019, the Isis Center for Women and Development (Fes, Morocco) organized an international conference with the theme, “Today’s Islamic feminisms: national and international perspectives.” The aim of this conference was to underline the role of Islamic feminism in Muslim family law reform, and to explore the ways in which such reforms can influence, or be influenced by, transnational Islamic feminism. The conference gathered various generations of academics, activists, and experts from the Middle East and North Africa (including Morocco), wider Africa, Europe, the U.S., and Asia. Most of the ensuing discussions and recommendations pointed to the possibility of this influence².

To address these and related issues, this policy brief is structured into two main sections: the first underlines the role of secular and Islamic feminism in the promulgation of the 2004 reforms, and the second explores the potential for influence by transnational Islamic feminism. The latter section is partly based on 21 interviews with four types of actors in the Moroccan reform–linked context: scholars, activists, lawyers, and politicians. Our central concern in this brief is to underline the home–grown Islamic feminist nature of the 2004 law, and its potential to

¹Morocco is a kingdom in which the king is the highest political and religious authority.

² The proceedings of this conference are being edited by Fatima Sadiqi and will be published by Indiana University Press in 2021.

influence, or be influenced, by transnational Islamic feminism. We consider the implementation of the law a separate matter, although it is clearly just as important. The brief forms part of a project that seeks to understand the factors that might increase the influence of transnational Islamic feminism on reform processes of Islamic family laws in selected Arab countries. Morocco is one of the three countries selected; Lebanon and Egypt are the other two (see Christiansen, this issue).

How did the 2004 reform come about? The role of secular and Islamic feminism

In 1981, the feminist academic Fatima Mernissi created a research group, which included male jurists and religious scholars (ulema), with the aim to reform the Moudawana within the framework of a modernist Islam (Rhouni, 2010). In the same year she also created Woman, Family and Child, another multidisciplinary research group that aimed to research the situation of women, children, and family in Morocco (Rhouni, 2010). The latter group also included influential male religious scholars and jurists, and similarly focused on reforming the Moudawana within a progressive Islamic framework. Both groups resulted in publications, such as the book series *Approches* (Approaches), which included contributions by prominent male and female academics, jurists, and religious leaders. In 1992, another feminist collective, *Femmes Marocaines Citoyennes de Demain* (Moroccan Women Citizens of Tomorrow) followed, with the same goals. Rhouni (2010) states in this regard:

[MoulayRchid and Khamlichi's] assessment criticizes the law's exclusive reference to the Maliki school, and its closure to other schools whose jurisprudence may be more progressive. This is the case, for instance, of the Hanafi school, which abolishes the institution of marital guardianship. The two scholars also denounce the refusal of the Moudawana creators to incorporate progressive readings dealing directly with the two sources of legislation, the Qur'an and the Sunna (the Prophet's tradition mainly based on the hadith), without automatically going through *fiqh* teachings. They call for taking social context into consideration and criticize the orthodoxy's refusal to accept the intervention

of the social sciences, which explains the Moudawana's clear alienation from the changing social reality. (p. 204)

In 1987, Mernissi wrote *The Veil and the Male Elite*, in which she clearly locates Moroccan feminist thought within the Qur'anic discourse. According to Rhouni (2010; Ennaji, in press), it was the involvement of progressive male elites that occasioned Mernissi's (and we would add Morocco's) shift from a purely secularist to a modernist and Islamic take on feminism. This shift attracted the attention of transnational Islamic feminists and feminist groups such as Musawah—For Equality in the Muslim Family, which made a point of inviting Mernissi and other Moroccan scholars and activists to its launch in 2009.

Academics' ideas and thoughts found resonance in feminist civil society, which bloomed in the 1980s and 1990s to the extent of feminizing the public space (Sadiqi & Ennaji, 2006). An increasing number of nongovernmental organizations (NGOs) began to lobby for family law reform and attracted the attention of the State, itself threatened by the rise of political Islam. In other words, home-grown Islamic feminism began to influence policy-making discussions with respect to the 2004 Moudawana.

In practice, the Moudawana reform process was initiated in 1992 following the Union de l'Action Féminine (UAF)'s One Million Signatures campaign. This initiative was immediately supported by secular activists, proponents of the academic Islamic feminism described above, and human rights organizations. Under the pressure created by the success of the One Million Signatures campaign, King Hassan II was forced to form a commission to explore the possibility of reforming the Moudawana. This commission was revived in 2002 by King Mohamed VI, who succeeded his father in 1999. The work of the commission was slowed by the then-mounting conservative Islamist ideology (Sadiqi, 2014), but subsequently hastened by the aforementioned Casablanca attacks in 2003.

During the 1990s, more women's feminist associations began to seriously engage in public demands for Moudawana reform. Salient among these is UAF, which organized and led the 1992 One Million Signatures campaign. Influence extended to some political parties, especially the Union Socialiste des Forces Populaires (Socialist Union of Political Forces [USFP]) and the Parti du Progrès et Socialisme (Progress and Socialism Party [PPS]), successfully affecting political will in the face of mounting political Islam in Morocco (Sadiqi, 2014). An example of this support is the Socialist party's initiative, "The plan for integrating women in development," which was crafted and spearheaded by Mohamed Said Saadi, the then-Secretary of State for Social Protection, the Family, and Children. In 1998, when Socialists took leadership of the government for the first time in Moroccan history, this was a particularly strong source of support for the necessity of Moudawana reform.

In parallel, these developments were greatly enhanced by the uninterrupted work of individual feminist voices, such as those of Fatima Mernissi, and more recently Asma Lamrabet; as well as the voices of secular feminists, such as Latifa Jbabdi, who used Islamic arguments to promote equality between the sexes. The voices of several prominent male religious scholars, too, lent their support, such as Ahmed Khamlichi and Ahmed Abbadi, who highlighted passages from the Qur'an and hadith that promote women in public media and conferences; and other scholars from the High Council of Ulema, a religious organization that advises the king as "Commander of the Faithful" in matters related to the Moudawana.

This collective effort was accompanied by the State's endeavor to encourage an equality-based version of Islam, in which women could participate in public religion as *murshidas* (female religious guides), and, as such, preach moderate Islam (Ennaji, 2012). Such state initiatives are referred to as "State Islamic Feminism" (Eddouada & Pepicelli, 2010).

The collaboration between academics, religious scholars, activists, and politicians accounts for the Islamic feminist nature of the 2004 Moudawana. Indeed, at the grassroots level, most local associations place the Moudawana center stage in discussions of women's legal rights (Sadiqi,

2016; Ennaji, 2012). Another Islamic feminist feature of the Moudawana is its relation to women's rights and feminism in general (Sadiqi, 2008). It is also related to gender dynamics and Moroccan women's understanding of feminism (Gray, 2012), and to social norms and patriarchy (Sadiqi, 2019a).

By using progressive *ijtihad* (independent interpretation of the two sources of Islamic law: the Qur'an and hadith) and terms like "equality" and "justice," the language of the Moudawana relates directly to the broad definition of transnational Islamic feminism as both a knowledge project and a strategy that seeks to establish equality in Islamic family law (Mir-Hosseini, 2015, Christiansen, this volume). The following overview of the Moudawana exemplifies this. Before addressing some manifestations of these linkages, we will first outline the major reforms in the 2004 Moudawana.

The 2004 Moudawana reforms: an overview

The Moudawana reforms evolved around three main innovative axes, which are considered breakthroughs in Islamic feminism: equality between spouses, family equilibrium, and the protection of children (Benradi et al., 2007).

Equality between spouses

- The legal age of marriage is 18 for both sexes
- Equality in family legal responsibility
- Equality in rights and duties; abolition of the right of obedience in return for catering
- No tutorship for major women
- Repudiation and divorce in the hands of the judge; the judge also handles consensual divorce, compensation divorce, and *al-shiqaaq* (impossibility of cohabitation)
- Girls and boys of divorced parents choose which parent to live with at the age of 15
- Grandchildren (from the daughter) inherit in the same way as those from the son

- The sharing of accumulated property and benefits gathered during marriage

Guarantee of family equilibrium

- The public ministry automatically intervenes in any application of family law
- Establishment of family courts
- Reinforcement of means of reconciliation through family
- Creation of a fund for family assistance
- Recognition of Moroccan marriages contracted outside of Morocco, according to the legislations of the host countries

Protection of children's rights

- In the interests of children, the right of the divorced mother's tutorship is not lifted if she remarries, or if her residence is far from that of the father
- In the interests of children, the judge may alter the order of the family members eligible for tutorship: the mother, father, maternal grandmother, etc.
- The social status of the child is taken into consideration at the moment of divorce: the child's standard of living should be similar to that before divorce
- Recognition of paternity when the child is conceived during courtship (that is, before marriage) is formalized by a contract

The 2004 law reform was accompanied by the establishment of family courts by the Ministry of Justice, as well as the training of judges and magistrates. Other legal reforms ensued, such as the 2008 Nationality Code, according to which a Moroccan woman married to a non-Muslim can pass on her nationality to her children.

Despite these unprecedented reforms, substantive issues, including polygamy and inheritance, remained unresolved. Polygamy was not topical in the law, on the grounds that the scored legal reforms were considered already significant, especially given that the implementation of Moudawana faced resistance among judges (Sadiqi & Ennaji, 2006). Additionally, disparity remains between husbands and wives regarding legal authority; this is attributed to the father unless the mother is considered insane or is absent from home for more than one year. Finally, equality in inheritance continues to be a contentious issue; a daughter is still only entitled to inherit half of that inherited by her brother. These and related issues are hot topics of debate post-2010 Uprisings, and transnational feminism concepts such as justice and full legal equality are often brought in as arguments. The ease of transnational communication is an advantage in this respect.

The question to ask at this juncture is: to what extent can the Moudawana be affected by and/or affect transnational Islamic feminism? The potential for transnational Islamic feminism is a considerable avenue of research yet to be explored.

Avenues and potential for influence by transnational Islamic feminism

In the aftermath of the 2004 family reform, and with the advent of the 2010–2011 Uprisings, secular feminist discourses (which seek to reform the Moudawana by capitalizing on individual human rights), and Islamic feminist discourses (which seek reform by capitalizing on the unity of the family), continued to call for progressive *ijtihad*. However, the source and nature of Qur'anic exegesis remains subject to heated debates between secular and Islamist political wings. While the secular wing considers Islamic feminism to be a reflection of conservative political views that resist progressive reform, the conservative wing, especially Islamist politicians, consider feminism (whether Islamic or not) to be a Western import.

This divergence is attested in debates on specific issues, such as marital rape and early marriage. Whereas secular actors seek further reform in this case, Islamists resist it and, instead,

defend current laws on the grounds that what happens inside the family is a private matter that should not be exposed, lest the family collapses. There is, thus, a lack of generalized grasp of Islamic feminist knowledge, which is able to challenge the Islamists' views. In such cases, Islamic feminism is applied only superficially. In other words, the trickling-down of Islamic feminist knowledge to local settings is still not clear. This state of affairs is exacerbated by a lack of endeavors to translate the norms of academic Islamic feminism. Very few people understand the concepts of *qiwamah* (authority) and *wilayah* (guardianship) from a feminist or egalitarian perspective, let alone agree that women who work may be said to have *qiwamah*. There seems to be a clear limitation of Islamic feminist knowledge in the potential of the reform process.

It is important to distinguish Islamic feminism in the Moroccan context from female voices operating within the Islamist political party Justice and Development (PJD), and the radical Islamist association Justice and Benevolence (JB). While PJD is a moderate Islamist party that operates within the monarchical system, JB is a radical association that does not recognize the authority of the king. Both PJD and JB have platforms for women to reclaim rights from within Islam—albeit along the ideological guidelines of their party and association, respectively. For both groups of women, the biological difference between men and women is the basis for their different social statuses and different rights; hence they target equity and complementarity between the sexes, and not a liberal understanding of equality. The women of PJD and JB share other goals, among which the following are salient: a strong position that Islam provides women with rights, an adherence to the veil, and a tendency to consider women as part of the family and to prioritize the best interests of the family. Preaching and activism are the main channels employed by both groups of women to disseminate their thoughts.

As for the attitude of these Islamist women regarding the *Moudawana*, women in PJD view it as a positive achievement that guarantees the best interests of the child and the family. However, these women oppose law proposals against early marriage, marital rape, and amendments to the marital rape law (a law that was subsequently amended under pressure from civil society in 2014). This position is, for example, espoused by Bassima Hakkaoui, who became

Minister of Women's Issues in the 2011 Islamist-headed government. Furthermore, these women do not recognize women's *wilayah* (ability to be their own guardians) to marry themselves at the age of 18, or women's right to claim divorce and get divorced through *al-shiqaq* (divorce on the grounds of incompatibility between the spouses).

Women's voices from inside political Islam remain heavily restricted by the Islamist ideology; however, various voices in post-Uprisings period espouse Islamic feminist concepts and reject political Islam ideology. For instance, they demand equality in inheritance (Benchechrone, 2017), fight early marriage, and reject *wilayah* and polygamy. These voices position reform for more legal rights at an intersection between national and transnational Islamic feminism, and often have recourse to ideas and thoughts espoused by transnational Islamic feminist associations, such as Musawah and Women Living Under Muslim Law (WLUML).

Along these lines, some Moroccan feminist activists, using media, such as the *Qandisha*, a women's collaborative magazine, and *Mamfakkinsh* (No Compromise)³, a Facebook platform, criticize the top-down *Moudawana* reforms. They underline the importance of bottom-up approaches as the sole guarantor of collective and inclusive thinking towards implementing gender equality⁴. Without clearly identifying themselves as proponents of transnational Islamic feminism, such feminist groups address the thorny issues of full equality through a systematic attack on social and political taboos.

In parallel, some older NGOs, such as the ADFM mentioned above, succeeded in helping to pass a law to allow rural women, previously excluded from inheriting land (*sulaliyat*), to inherit land (Berriane & Rignal, 2017).

On the other hand, as the space of feminist voices widened in the post-Uprisings era, feminist Berber NGOs emerged asking for additional rights, including cultural rights. Examples of

³<https://www.acrimed.org/Mamfakinch-On-ne-lache-rien-media-alternatif-marocain>.

⁴This strategy is similar to that proposed by Al-Sharmani (2014).

such NGOs are Voix de la Femmes (Voice of Women) and Thaziri (Moonlight). Among other social problems, these organizations fight Berber women's legal illiteracy, which is mainly associated with their lack of access to standard Arabic (the language that most laws are written in), and underline the importance of local understanding of legal equality (Sadiqi, 2016). In interviews with these young Berber activists and academics, Sadiqi noted their assertion that only Islam-tied feminism can mobilize collective action at the local level. This is reminiscent of the remarkable role of Berber women as transmitters of Islamic knowledge, which is not only historical (Rausch, 2006).

The voices of Berber feminist NGO members emerged from the Berber social movement, which has been calling for the institutionalization of Berber since the 1980s. In the 2011 constitution, this demand was granted and Berber (Amazigh) was elevated to the status of an official language. At this juncture, it is interesting to note that some authors, like Tripp (2019), call the post-Uprisings era "post-Islamist." These authors draw a parallel between the weakening of political Islam and the rise of Berber activism, arguing that the Moroccan state is using Berber activism to curb extremism. We believe this last development may strengthen Islamic feminism in Morocco, and potentially open the door to gender equality, as proposed by Moroccan academic and transnational Islamic feminism. However, research is still needed on whether the promotion of Berber rights, in and of itself, is weakening Islamism in Morocco, and on whether such weakening also opens the door for Islamic feminism.

Conclusion

This brief has presented the Moroccan Moudawana reforms as the result of home-grown Islamic feminist endeavors of academics, religious scholars, activists, and politicians. It has contextualized the long process that accompanied the reforms and the constant antagonisms between the secular and Islamist trends in Moroccan society and politics. As the result of a combination of local feminist efforts and political will, the Moudawana is bound to benefit and be influenced by transnational feminist trends, especially in the post-Uprisings era in which more voices are seeking

transnational links. Whether opposed or embraced, this potential is forcing itself and may gain momentum if the search for an overarching reform of Islam garners greater appeal. In the long run, adoption of this type of Islamic feminism may bridge the historically persistent gap between the secular and the religious in Morocco, and—perhaps—the region⁵.

⁵Mir-Hosseini (personal communication).

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