



Ten Years After Morocco's Family Code Reforms: Are Gender Gaps Closing?

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Introduction: In 2004, the Government of Morocco (GoM) made major amendments to its Family Code, known as the *Moudawana*, which covers personal status issues such as marriage, divorce, alimony, child support, child custody and inheritance. These reforms increased the rights of women within the family, and should boost women's agency beyond family matters, for example increasing their control of economic assets. The revisions followed a process of relatively open public debate with much of the discussion driven by women's civil society organizations (CSOs).

The revised *Moudawana* closed a number of gender gaps related to family and personal life, making it one of the most progressive family law frameworks in the MNA region in terms of gender equality. The ten year anniversary of the reforms has sparked discussions about progress on implementation and emerging impact. Ten years is a relatively short time period to affect major changes in family life, especially if social norms restrict gains in women's agency that should result from legislative reforms. Yet it is an opportune time to measure where there has been progress. The Ministry of Justice and Liberty has proposed measuring implementation of the *Moudawana* as part of its *Charter for the Reform Judicial System*, adopted in summer 2013. And the issue of women's agency in family life is being assessed as part of the World Bank's Morocco Country Gender Assessment 2014.

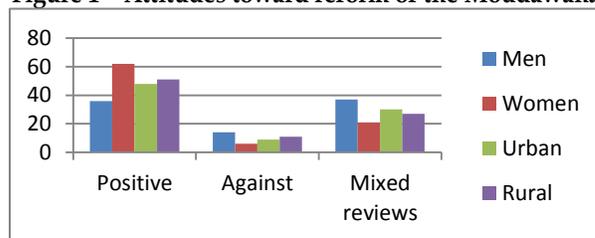
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Moroccan Women Working at the Maison D'Acceuil Orphanage (World Bank Photos)

Two years after the reforms, public attitudes were more positive than negative, and awareness of the amendments was widespread. A 2006 GoM survey found that 68% of men and 62% of women reported knowledge of the reforms, with awareness higher in urban (72%) versus rural (55%) areas. (Figure 1) Of those reporting awareness, women were much more likely than men to view the reforms positively (62% of women vs. 36% of men), with little variation between urban (48%) and rural (51%) areas. Most men (37%) views were mixed, only a small percentage had negative views.

Figure 1 – Attitudes toward reform of the Moudawana²



² La Femme Marocaine sous le regard de son environnement social, Haut Commissariat au Plan, Royaume du Maroc - 2006

Despite the generally positive views of the reforms, it seems likely that social norms are at least partially restricting the ability of women to exercise these new rights. For example, a 2009 survey found 19% of urban and 15% of rural women reporting domestic violence linked to their exercise of rights under the *Moudawana* - higher percentages of violence than reported for 'economic' violence.³ And public sector services linked to these rights are often inadequate. The same survey found that over 50% of women entitled to alimony were not receiving it regularly, with about one-quarter not receiving any payments. Non-payment of alimony and child support negatively affects poor women in particular. Almost one-third of these women reported no other sources of income and around 18% had no paid employment, making them financially dependent on such payments. And over one-third of the women reported having to provide some financial resources to supplement unpaid child support from their former husbands. It is not clear the situation has improved considerably since then. The Family Solidarity Fund, established to directly assist such vulnerable women, had only around 800 beneficiaries as of the end of 2013, a relatively small number given the scope of the problem.

Primary Reforms and Implementation: The *Moudawana* reforms covered a broad array of personal status issues important from the perspective of gender equality. Women's rights within the household improved on two levels. The first was that husbands and wives were provided 'joint responsibility' in family matters, making both *de jure* heads of household. Theoretically, this could allow wives to exert more influence in household decision-making. The second was that women were no longer required to be obedient to husbands, a key element of the earlier law which continues to exist in other MENA family codes. Obedience had been used as a justification for husbands to, among others, forbid wives from working, traveling, controlling their own incomes and acquiring economic assets. Failure of a wife to obey had been legal grounds for loss of access to alimony - financial resources to care for the family - which a husband is legally required to provide.

The reforms also introduced a small amount of flexibility in applying traditional views of rights and responsibilities of men and women within the family. Married couples now have the right to conclude contracts covering the management of economic assets linked to marriage, for example establishing a community property regime. And judges can make decisions on child custody based on the best interests of the child rather than exclusively in consideration of the rights of parents. One area untouched by the reforms was the obligation related to financial maintenance within the household. Men are still legally required to provide financially for the maintenance of their families - women have no such responsibility.

Assessing implementation of the reforms is difficult due to a lack of comprehensive data applicable to the primary legislative reforms, in particular gender disaggregated data. The World Bank's Morocco Country Gender Assessment 2014, now under preparation, includes an assessment of gender equality in family law as part of a broader review of women's agency in family and personal life. What limited data is available sheds some light on implementation in three areas where reforms were aimed at greater gender parity: procedures for entering into marriage; management of marital property; and access to divorce.

Marriage Procedures: Women were given the right to marry without the consent of a male guardian, previously necessary to conclude the marriage contract. Women can now sign their own contracts. This could increase a woman's bargaining power both before and during marriage, since the contracts regulate factors such as financial maintenance of the wife and dowries. However, women are not yet doing so in large numbers. The percentage of women signing their own marriage contracts in place of a male relative was only 21% in 2010, mostly unchanged since 2007.⁴ Women can also stipulations in the marriage to protect their interests, including forbidding polygamy and allowing a wife unilateral repudiation as a form of divorce. There is no comprehensive data to assess the levels to which

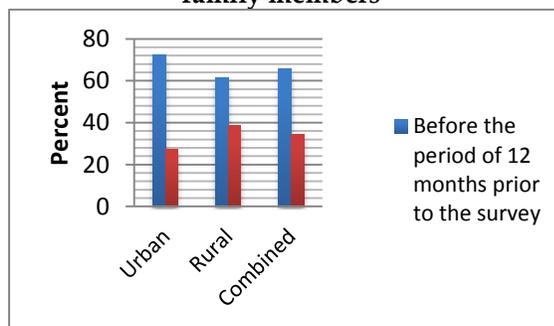
³ Enquête nationale sur la prévalence de la violence à l'égard des femmes (ENPVEF), Haut Commissariat au Plan (2009).

⁴ Femme Marocaine en Chiffres, Tendances d'évolution des caractéristiques démographiques et socioprofessionnelles, Journée Nationale de la Femme, Haut-Commissariat au Plan, Royaume du Maroc (2012).

women are indeed adding such stipulations and its impact.

A 2009 household survey suggests women enjoy wide discretion in decisions about who to marry. The percentage of married women reporting being forced by family to accept marriage proposals is low, roughly 9%, with a rural/urban gap of 3% (11% in rural vs. 8% in urban areas).⁵ Fathers are usually the ones to intervene - in 67% of cases (70% in rural and 65% in urban areas) it was reported the woman's father forced her into the marriage. Marriage without a women's consent has some demonstrated negative effects. Women whose first marriages took place without consent were three times as likely to report domestic violence as those who had consented. For unmarried women who refused marriage proposals, 62% of the time it was the woman who refused, with the woman's family rejecting the proposal in the 39% of cases. An interesting trend relates to the decreasing incidence of families rejecting a female family member's decision to marry, suggesting women are able to exert greater decision-making related to entering marriage. (Figure 2)

Figure 2. Rejection of request for marriage by family members⁶



Marriage of minors remains a contentious point of family law. The revised *Moudawana* raised the minimum age of marriage for girls from fifteen to eighteen, equalizing it with that for boys. However, an exception was reserved allowing both boys and girls to be married between the ages of fifteen to eighteen with the consent of judge. If the aim of this reform was to decrease the number of underage marriages, it is failing. The number of marriages

involving parties under the age of eighteen has been increasing - from 38,331 in 2007 to 44,134 in 2010. Judicial consent does not appear to be an adequate screen for the legitimacy of requests for such marriages, with 89% of requests approved in 2007 and 92% in 2010. And the burden of underage marriage falls almost exclusively on girls.

In 2010, 99% of requests for certification of underage marriage made to courts involved girls, a percentage that has not changed since 2007.⁷ Girls married as minors face certain risks. Data shows that marriages involving under-aged girls tend to result in divorce and re-marriage, with 62% of women in a second or greater marriage reporting their first marriage took place before age eighteen.⁸ Domestic violence rates for married women are highest among younger women, particularly for those between the ages of eighteen and twenty-four. Although girls under the age of eighteen were not included in the survey, data suggests the younger the age of a woman at marriage the more likely she is to be subjected to domestic violence.

Control of Marital Property: The default marital property regime remains separate property, with spouses remaining legal owners of assets registered to them acquired during or before their marriage. In case of divorce, each party takes any assets registered under their names. The *Moudawana* now allows married couples to sign a contract, separate from the marriage contract, setting the terms under which assets acquired during marriage are managed. One option is for married couples to establish a community property regime whereby any assets acquired during the marriage are considered jointly-owned and evenly divided upon divorce. A community property regime is beneficial to a spouse that is outside the formal labor force and performs non-compensated tasks related to the household. Moroccan CSOs have offered assistance to women in these contracts. But there is no comprehensive data available as to the extent to which married couples are entering such agreements. Given the low labor force participation of women these arrangements could be beneficial in

⁵ ENPVEF, Haut Commissariat au Plan (2009).

⁶ Haut Commissariat au Plan (ENPVEF) (2009), "Enquête nationale sur la prévalence de la violence à l'égard des femmes".

⁷ La Femme Marocaine en Chiffres, Tendances d'évolution des caractéristiques démographiques et socioprofessionnelles, Journée Nationale de la Femme, Haut-Commissariat au Plan, Royaume du Maroc (2012).

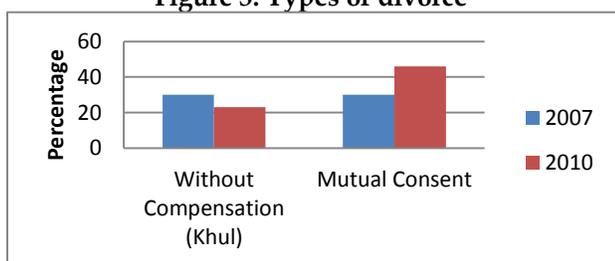
⁸ ENPVEF, Haut Commissariat au Plan (2009).

increasing women’s control of economic assets during marriage and after divorce.

Access to Divorce: Options for initiating divorce are not entirely equal for men and women. The primary effect of the reforms to the *Moudawana* on divorce was to provide women the ability to initiate divorce without having to show some type of cause by their husbands, such as lack of financial support, failure to abide by the marriage contract, abandonment, harm or absence. Apart from showing cause, women could obtain divorce only by renouncing their rights to their dowries and alimony (*khul*), which for many women, especially the poor, may be their only economic assets.

Women can now seek divorce by mutual consent, with consent from both parties, and irreconcilable differences, which can be initiated by either husband or wife. Men can still unilaterally repudiate the marriage, but this now requires judicial consent. Women are provided this option only if this stipulation is in the marriage contract, which requires a husband’s consent. Available data suggests a positive trend away from women having to renounce financial interests in return for divorce, and towards divorce based on the mutual consent of husband and wife, allowing them to keep economic assets related to marriage. As an added protection for women, the reforms require all monies owed to a wife and children be paid before the divorce can be finalized.

Figure 3. Types of divorce⁹



Moving Forward: The *Moudawana* reforms led to one of the most progressive family codes on gender equality in MENA. They increased women’s rights

within the family and added protections to their economic interests involving marital assets. They should enhance women’s agency by increasing their ability to make decisions about their personal lives and their roles within the family household. For these reasons measuring implementation is important. However, assessing implementation is undermined by a lack of comprehensive data. What data is available demonstrates mixed performance. It does suggest that women have made gains in determining who to marry, and are more able to access to divorce without renouncing their financial assets. However, underage marriage for girls remains a considerable problem.

On many other key issues, such as the use of stipulations in marriage contracts to increase women’s decision-making within marriage and control of economic assets, as well as the extent to which community property regimes have been adopted by married couples, the lack of data prevents effective measurement of progress. Plans of the Ministry of Justice and Liberty to measure implementation of the *Moudawana* linked with the *Charter for the Reform of the Judicial System* will hopefully provide the GoM a useful tool in ensuring further narrowing of gender equality gaps.

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⁹ *Femme Marocaine en Chiffres, Tendances d’évolution des caractéristiques démographiques et socioprofessionnelles, Journée Nationale de la Femme, Haut-Commissariat au Plan, Royaume du Maroc (2012).*