The Challenge of Implementing Morocco's New Personal Status Law

By Stephanie Willman Bordat and Saida Kouzzi, Global Rights

In February 2004, the Kingdom of Morocco enacted reforms to the *Mudawwana*, or the law governing marriage, divorce, parentage, inheritance, child custody and guardianship, that have the potential to expand women's rights. Moroccan activists initially hailed the reforms as a major victory for women and for the democratic process more broadly. Whether the new law will advance women's rights in practice, however, remains to be seen.

Islamic conservatives had blocked several previous attempts to modernize the *Mudawwana*, Morocco's only code still based on Islamic precepts. In 2001, as part of his effort to project a progressive image, King Muhammad VI established a royal commission of religious authorities and legal experts to propose recommendations for amending the *Mudawwana* in accordance with religious principles. After thirty months of contentious deliberation, the commission presented its recommendations to the Palace, which used them as the basis of legislation it submitted to Parliament in October 2003. Parliament debated the reforms extensively, making some 110 amendments before unanimously approving the final text in January. (In contrast, both the original 1957 *Mudawwana* and minor revisions in 1993 were simply enacted by royal decree). The reforms' smooth passage was mainly a product of the changed political environment following the May 2003 terrorist attacks in Casablanca, in which Islamic extremists were implicated. In the aftermath of the attacks some Islamist groups were repressed and others were put on the defensive, which had the effect of muting religious opposition to the revision.

The reforms raise the minimum age of marriage for women from fifteen to eighteen; establish the right to divorce by mutual consent; place polygamy and repudiation (unilateral divorce by the husband) under strict judicial control; make the family the joint responsibility of both spouses; rescind the wife's duty of obedience to her husband; and eliminate the requirement of a marital tutor (*wali*) for women to marry.

Several factors could keep Moroccan women from enjoying these newly-granted rights. One is the judiciary's lack of familiarity with the reforms. The Ministry of Justice has begun training programs for some of the judges specializing in family issues, but such training may not suffice given that the commitment of the judiciary to the spirit behind the reforms is uncertain. Women's groups note that judges failed to adhere even to the more modest reforms enacted in 1993. According to the revised text, judges are still allowed to use religious principles to decide matters not covered in the text—of which there are many—leaving ample room for them to apply the most conservative religious interpretations. The new law also assigns judges the role of overseeing mandatory reconciliation in divorce cases, which has raised concern among women's organizations that judges will prioritize reconciliation in the interest of "family harmony" over the application of the reforms.

The structure of the judiciary presents another challenge. The new *Mudawwana* was accompanied by the creation of family courts, separate from the ordinary courts of first instance that previously had jurisdiction over family law matters. The government plans to establish seventy family courts, or one per province—a number inadequate to serve the 50 percent of the population residing in remote rural areas. In addition, some observers predict that removing family law cases from the general courts will result in a lower standard of justice for these cases. As one lawyer asked, "Why should women have a parallel, second-class justice system?"

The opposition of *adouls*—who are similar to notary publics but have a religious character—to the new law presents another complication. Under the old laws, *adouls* alone had the authority to officiate marriages and to draw up marriage contracts. The new *Mudawwana* transfers this role to the new family courts and relegates *adouls* to mere "court clerks" with a symbolic religious function. This prompted *adouls* to stage a protest at the Ministry of Justice. Yet, the conservative *adouls* may retain their huge influence over marriage anyway, because many Moroccans consider them, not judges, to be the community legal experts, and because unlike the new family courts, *adouls* are present throughout the country.

A final challenge is ensuring that the public knows about and accepts the reforms. High illiteracy rates—officially estimated at 42 percent of urban women and 82 percent of rural women—represent a significant obstacle in this regard. Under such conditions, inflammatory propaganda about the reforms being spread at the grassroots level by extremist religious groups can be quite damaging. The Ministry of Justice, the national media, and civil society organizations have begun campaigns to counteract such misinformation.

Given the difficulty of raising awareness of women's rights in a religiously conservative society, and the lack of institutions to monitor the judiciary's performance, it is clear that the passage of the reforms marked a step forward for women's rights, not the conclusion of the struggle. Women's rights groups in Morocco will be busy for a long time to come.

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