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„Women’s access to justice under the 2004 Family  
Code: The difficult balance between conservatism and  
modernity“

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

MENA- Middle East and North Africa	CSM- High Judicial Council
CEDAW- Convention on the Elimination of all Forms of Discrimination against Women	USAID- United States Agency for International Development
UDHR- Universal Declaration of Human Rights	TI- Transparency International
ICCPR- International Covenant on Civil and Political Rights	CPI- Corruption Perceptions Index
CNDH- National Council for Human Rights	UNCAC- United Nations Convention against Corruption
WHRF- World Human Rights Forum	ICPC- Central Authority for the Prevention of Torture
NGO- Non Governmental Organisation	OIG- Office of the Inspector General
UN- United Nations	WB- World Bank
MRA- Mobilizing for Rights Associates	UPR- Universal Periodic Review
INSAF- National Institution for Solidarity for Women in Fear	HRC- Human Rights Council
ADFM- Democratic Association for Women in Morocco	UNDP- United Nations Development Programme
ASF- Association for Women Solidarity	WJP- The World Justice Project
UAF- Union for Feminine Action	ROL- Rule of Law
ICJ- International Commission of Jurists	IAACA- International Association of Anti-Corruption Authorities
WJP- World Justice Project	CSO- Civil Society Organisation
MDGs- Millennium Development Goals	IDLO- International Development Law Organization
MOJ- Minister of Justice	IO- International Organisation
	GoM- Government of Morocco

## INTRODUCTION

### *Background of the study*

Discourses on women's rights and gender equality are part of the widely contested issues particularly in contemporary Arab societies. Since Morocco's independence from France in 1957 <sup>1</sup> as well as the enactment of the first Family Code in 1958 <sup>2</sup>, Morocco has become a lively platform for discussion around women's rights and family-related matters. From this moment onwards, Moroccan women have contested gender inequalities and demanded more rights, as they were dissatisfied with the content of the Code.<sup>3</sup> In fact, the historic Code contained various provisions discriminating women in areas of family law, such as divorce, marriage, child custody, inheritance and financial maintenance.<sup>4</sup> From a western perspective, the Muslim woman is often being stereotyped as vulnerable, oppressed and dominated by males. While Morocco remains a deeply patriarchal society, trends towards feminization of public space and empowerment of women can be noted.<sup>5</sup>

Compared to other countries in the North African region, Morocco's political development appears to be a unique case. In fact, 'Moroccan exceptionalism' is a result of a decade of reforms the monarchy has implemented.<sup>6</sup> Especially since the arrival of the new King Mohammed VI in 1999 <sup>7</sup>, a series of reforms have been made to improve the protection of human rights in the country and modernize the nation. The 2004 Family Code (commonly referred to as the Moudawana) is among the most significant reforms of juridical texts concerning women's rights.<sup>8</sup> It can be regarded as a major milestone of Morocco's modernization process, deeply changing the historic Code of

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<sup>1</sup> Abitbol, 2009, p.553.

<sup>2</sup> Ariane, 2014, p.1.

<sup>3</sup> Sadiqi, 2008, p. 325.

<sup>4</sup> Ibid, p.2.

<sup>5</sup> Sadiqi & Ennaji, 2006, p.1.

<sup>6</sup> Hashas, 2013, p.1.

<sup>7</sup> Ibid, p.9.

<sup>8</sup> Talhaoui, 2013, p.715.

1958 and improving women's rights situation, on paper at least.<sup>9</sup> Despite the progress made in terms of enhancing gender equality, Morocco still faces a number of challenges and the effective implementation of these reforms have yet to be materialized.

Family Codes are laws that govern an individual's rights within the family.<sup>10</sup> They namely exist in Islamic countries, throughout the Middle East and North Africa (MENA) and are based on Islamic law or the so-called 'Shari'a law'.<sup>11</sup> In Morocco, 98 % of Morocco's population is Muslim and practices the Maliki School of Sunni Islam.<sup>12</sup> In comparison to the three other schools of Sunni Islam, the Maliki School can be regarded as a "moderate form of Islam, more tolerant, aspiring to equality and quasi-democratic rights based on clear values and human dignity".<sup>13</sup> The Moroccan Family Code incorporates the Maliki jurisprudence. It is the only law in Morocco that is based on religion<sup>14</sup> becoming the "symbol for national unity and Islamic identity".<sup>15</sup>

As of 1957, feminist movements and women's rights organisations have continuously called for reforms, trying to change the Shari'a-based Moudawana and make it more 'modern'.<sup>16</sup> After various attempts, difficult negotiations and tensions among conservative and progressive groups, a new Moudawana came to be adopted in 2004.<sup>17</sup> It worked towards closing the gender gap, giving more rights to women, on paper at least.<sup>18</sup> However, in practice, the extent to which these rights are effectively being implemented is highly questionable and will be discussed throughout this thesis. The reformed Code can be regarded as one of the most liberal and progressive family law frameworks in the MENA region.<sup>19</sup> As stated by Fauzaya Talhaoui, the Moudawana was "heralded at the international level as the most fundamental step towards

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<sup>9</sup> Talhaoui, 2013, p.715.

<sup>10</sup> Malchiodi, 2008, p.4.

<sup>11</sup> Ibid.

<sup>12</sup> Talhaoui, 2013, p.714.

<sup>13</sup> Ibid.

<sup>14</sup> Malchiodi, 2008, p.4.

<sup>15</sup> Harrak, 2009, p.2.

<sup>16</sup> Ibid.

<sup>17</sup> Abitbol, 2009, p.596.

<sup>18</sup> Prettitore, 2014, p.1.

<sup>19</sup> Ibid.

democratization in Morocco”.<sup>20</sup> The role of King Mohammed VI has been crucial to this effect, as he tipped the balance in favour of change and served as arbiter between the conservative groups who are against any reform of the Code and the more progressive segments of Moroccan society willing to opt for change.<sup>21</sup>

Morocco has signed and ratified a number of core international human rights treaties, which recognize and promote women’s rights and gender equality. These include the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW), the *Universal Declaration of Human Rights* (UDHR) and the *International Covenant on Civil and Political Rights* (ICCPR)<sup>22</sup>. Additionally, by adopting the *Charter for the reform of the Judicial System* in 2013<sup>23</sup> and namely by claiming the independence of the judicial system in its 2011 Constitution<sup>24</sup>, Morocco has showed its commitment towards ensuring adequate standards of justice for women under the Family Code. Despite these commitments, the monarchy does not seem to have delivered enough efforts in terms of upholding gender equality or guaranteeing adequate access to justice. Official statistics show how poorly Morocco is performing in terms of upholding gender equality. According to the *Gender Gap Report of 2014*, Morocco ranks among the nations with the most gender inequalities. In fact, it was ranked 133 out of 142 countries with a score of 0.599.<sup>25</sup>

The 2004 reforms also called upon a ‘restructuring’ of the Moroccan legal system.<sup>26</sup> In this perspective, the judicial system plays a crucial role in the effective implementation of the Code. In order to live up to the new changes the new legislation has brought, there is a need to adapt the judicial system to the new progressive and liberal standards Morocco has established on paper.<sup>27</sup> The Moroccan judicial system has

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<sup>20</sup> Talhaoui, 2013, p.715.

<sup>21</sup> Harrak, 2009, p.6.

<sup>22</sup> Hursh, 2012, p.282.

<sup>23</sup> La Haute Instance du Dialogue National sur la Réforme du Système Judiciaire, 2013, p.1.

<sup>24</sup> La Constitution, 2011, p.19.

<sup>25</sup> World Economic Forum, 2014, p.273.  
0.00= inequality; 1.00=equality.

<sup>26</sup> Lahsika, 2008, p.2.

<sup>27</sup> Ibid.



largely been criticized for not having followed this evolution.<sup>28</sup> One of the underlying reasons of the limited success of the Code lies with the deficiencies of the judicial system: “because the law depends on the judiciary’s willingness to enforce it, implementation of the law remains problematic”.<sup>29</sup> In fact, the shortcomings of the legal system, which will be investigated throughout the present thesis, prevent women from accessing their most fundamental rights expressed in the Moudawana. Additionally, it should be noted that the Moroccan legal system largely remains hindered by the difficult balance between conservatism and modernity.

### ***Rationale***

My interest in this research topic developed when I worked as an intern at the *National Human Rights Council* (CNDH) in Rabat in October 2014. I more specifically worked for the organizing committee of the *Second World Human Rights Forum* (WHRF), an event held in Marrakech in November 2014 and which hosted more than 7000 participants worldwide. Over 100 countries were present, representing local, regional and international NGOs, UN agencies, governments, national human rights institutions, international organisations, trade unions and corporations, political leaders... Having been able to organize and attend such a world event has allowed me to gain some practice-oriented insight into the national and global human rights issues and thereby related challenges. Women’s rights were undoubtedly at the core of the debates throughout this world forum. Moreover, I was confronted to this topic in my daily tasks throughout my internship period. Local colleagues as well as Moroccan women strongly encouraged me to work on this newly created Family Code.

For the purpose of this research paper, I also took the opportunity alongside my internship period to explore the country and visit numerous women’s rights organisations. In this regard, I quickly understood how important and crucial networking is in order to have access to adequate information and data. I mainly

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<sup>28</sup> Rhissassi, Fouzia & Berjaoui, 2010, p.63.

<sup>29</sup> Lopez, 2014, p.41.

established contacts throughout my internship at the CNDH in Rabat and during the WHRF in Marrakesh.

So why focus on the 2004 Moroccan Family Code? Ever since its codification, this law has heightened many questions and provoked contemporary debates going all the way to grassroots levels.<sup>30</sup> Through various talks with local people, it became clear to me that it was a topic which needed due attention. The discrepancies between the way the legislation is written on paper and the way it is implemented in practice make this topic especially sensitive and complex. The topic underpins notions of ‘tradition’ and ‘conservatism’ on the one hand and ‘modernity’ and ‘progressivism’ on the other hand. As clearly stated by Leila Hanafi, “gaps persist as to the way the Moudawana is written into legislation and how family law is applied in practice, specifically pertaining to women’s access to justice”.<sup>31</sup> Furthermore, the extent to which the Moroccan population has accepted or is ready to accept these far-reaching reforms remains an open question.

Abundant research exists on the general impact of the 2004 Family Code on women’s rights and the analysis of the major differences between the historic Code and the new one. However, no to little prior research exists on the crucial role of the Moroccan judicial system with regard to the effective implementation of the Moudawana. The judicial system can be regarded as the basis of the enforcement of the Code, as it “is responsible for guaranteeing equal application of the law”.<sup>32</sup> No adequate attention has been given to the functioning of the Moroccan legal system and its impact on women’s access to justice under the Moudawana. The shortcomings of the justice sector have been silenced and need to be taken into consideration.

The present thesis will not analyze the general impact of the Code on women’s rights and assess the different obstacles towards its effective implementation. The focus will

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<sup>30</sup> Bordat & Davis & Kouzzi, 2011, p.90.

<sup>31</sup> Hanafi, 2013, p.4.

<sup>32</sup> Lopez, 2014, p.6.

rather be put on one specific and crucial obstacle which is hindering the advancement of women's rights under the Family Code: the Moroccan judicial system.

This research is worthwhile and timely as we just celebrated the 10<sup>th</sup> anniversary of the existence of the Code. Moreover, Morocco has recently reformed its Constitution in 2011. It more specifically established the concept of gender equality and proclaimed the independence of the judicial system.<sup>33</sup> Thus, it seems a perfect opportunity to take stock and reflect upon the progress made with regard to the functioning of the Moroccan legal system and women's access to justice under the reformed Moudawana. Ten years is a relatively short period of time to fully analyze the major changes, yet one can already investigate the major trends that have been made.

Furthermore, this research is necessary and specific as it aims at responding to important research gaps, giving an updated analysis on the question of women's access to justice under the Family Code in Morocco.

### ***Aim of the study and Research Question***

The ultimate aims of this thesis are to:

- Bring to the fourth the major advancements the Code has brought in terms of advancing women's rights (on both legal and institutional levels);
- Identify the crucial role of the judicial system in enforcing the provisions of the Moudawana and ensuring women's access to justice;
- Illuminate the major deficiencies and challenges of the Moroccan judicial system which are hampering the effective implementation of the new Code and more precisely pertaining to women's access to justice;
- Assess whether Morocco is in line with the relevant international standards of gender equality, women's rights and justice;

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<sup>33</sup> La Constitution, 2011, p.5 &19.

- Analyze and examine the population's views and perceptions on the new Moudawana and the efficiency of the justice sector;
- Give possible recommendations on how to improve women's access to justice under the reformed Code.

Various studies have demonstrated that Morocco can be regarded as a model of a progressive, moderate Muslim State.<sup>34</sup> Yet, this thesis seeks to illustrate to which extent Morocco is failing to uphold its progressive image, namely in terms of ensuring women's access to justice under the Family Code.

The main research question of the present research is as follows:

*To what extent are the deficiencies of the Moroccan judicial system still hampering women's access to justice under the Family Code?*

### ***Research Methodology and Literature Review***

A thorough investigation of the proposed research topic requires the use of various sources and methods. This thesis draws upon approaches from disciplines such as law, human rights and social sciences. As previously mentioned, this paper will complement the limited available literature on the specific issue of women's access to justice under the reformed Family Code.

The present research topic primarily adopts an underlying strong-grounded theoretical foundation. Diverse secondary sources are used as a background to this study, such as academic books, scientific articles, reports of international organisations and NGOs working on women's rights, journals, and international and national human rights conventions. This data has mainly been collected at libraries in both Vienna and Rabat. The main sources of literature used for this thesis are in English or French language.

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<sup>34</sup> Gomez-Rivas, 2008, p.1.

Quantitative data (namely statistics) is also an integral part of this thesis and will be used to emphasize certain qualitative findings and analyze major trends and evolutions.

Furthermore, a legal analysis will be made of the 2004 reformed Family Code briefly comparing it to the previous one of 1958. International human rights instruments, namely the CEDAW, the UDHR, and the ICCPR will be used as points of reference throughout the thesis to investigate whether Morocco is effectively in line with these international standards. In other words, by analyzing the Moudawana and namely the 2011 Constitution, the proposed research will assess whether Morocco complies with the international standards of justice and gender equality.

The 2004 Moroccan Family Code, originally in Arab language, will undoubtedly serve as a core document of this thesis. A team of lawyers of a Rabat-based NGO, *Mobilizing for Rights Associates (MRA)*, drafted the only available translation into English. A literal translation was privileged rather than attempts to clarify, explain or interpret the intention of the legislator.<sup>35</sup> Another important source, which has highly inspired me to further investigate into this topic, is a study realized in 2008 by Khalid Lahsika. It more specifically draws upon the crucial role of the Moroccan judiciary actors in the effective implementation of the new Code.<sup>36</sup>

While the present thesis is largely a result of extensive documentation analysis, it does not limit itself to the use of secondary data. To gain a more profound understanding of the issue, I conducted field research during my stay in Morocco. Having visited the country a couple of times after the end of my internship has allowed me to get a better understanding of the Islamic culture as a whole and stay in contact with Moroccan people.

For the purpose of this thesis, semi-open structured interviews were conducted with a diverse sample of actors from the Moroccan society ranging from civil society actors,

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<sup>35</sup> The Moroccan Family Code, 2005.

<sup>36</sup> Lahsika, 2008, pp.1-134.

students, local women and men, feminists to legal experts in the field and representatives of women's rights organisations. Semi-structured interviews seemed to be the most suitable in this research, as they allowed for both the interviewer and the interviewee for some kind of openness. They can be regarded as an indispensable tool in better understanding and identifying the different perceptions of the Moroccan population regarding the impact of the new legislation and the functioning of the legal system. The aim of the interviews is not to test their knowledge about the Code and the different judicial mechanisms in place but rather to get an overview of their perceptions and opinions.

As the topic tackles a complex legal issue, it seemed crucial not only to interview a sample of the local population but also to approach legal experts such as judges who have the adequate knowledge and experience to give elements of response to the research question. Furthermore, throughout the investigation process, I quickly became aware of the importance to have a foreigner's perspective working in this field on the given topic. In this regard, I had the opportunity to meet a Moroccan judge who is confronted to the daily shortcomings of the Moroccan judicial system. Furthermore, another person whom provided me with some in-depth and crucial information regarding the Moroccan judicial functioning is Stephanie Willman Bordat, an American Lawyer and director of a Rabat-based NGO MRA. MRA collaborates with grassroots level women's rights activists and organisations to promote women's full enjoyment of their human rights through changes in laws, structures, relationships and culture.<sup>37</sup>

The following table gives an overview of the different interviews carried out for this research with the respective organisations and positions. As some of the data gathered throughout the interview process can be of a sensitive matter, the specific names of the people interviewed are not always mentioned in the present thesis. In fact, most of the interviewees preferred to remain anonymous. As portrayed in the table, the people interviewed come from diverse organisations which all tackle the issue of women's

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<sup>37</sup> MRA, available at <http://www.mrawomen.ma> [consulted on 23 April 2015].

rights from a specific angle. The aim was to have an as much diverse sample as possible to limit biased misconceptions on the given subject and objectively tackle the research question.

*Table: Overview of the interviews carried out for the purpose of this research*

	<b>Organisation</b>	<b>Position</b>	<b>Location</b>
<b>1</b>	Mobilizing for Rights Associates (MRA)	Director and Founding Partner (Lawyer)	Rabat
<b>2</b>	Belgium Embassy in Rabat	Deputy for Development Cooperation	Rabat
<b>3</b>	Court of Appeal	Moroccan Lawyer	Rabat
<b>4</b>	National Human Rights Council (CNDH)	Local Staff	Rabat
<b>5</b>		Locals (2 women and 3 men)	Rabat
<b>6</b>	National Institution for Solidarity for Women in fear (INSAF)	President	Casablanca
<b>7</b>	Association Solidarité Féminine (ASF)	President	Casablanca
<b>8</b>	Democratic Association for Women in Morocco (ADFM)	President	Casablanca
<b>9</b>	Mohammed V University and Collaborator of the Moroccan Review of Political and Social Sciences (CRESS)	University Professor and Women Activist	Rabat
<b>10</b>	Mohammed V University	2 female students 2 male students	Rabat

As seen in the table, interviews were not only carried out in the capital city of Rabat but also in Casablanca. These on the field experiences have truly inspired me and confronted me with the harsh reality Moroccan women are facing. In general, I did not encounter any language problems. Most of the interviews were conducted in French (spoken fluently by the interviewee and the interviewer), considered as a national language of Morocco. Yet, in rare cases, the lack of Arabic language was seen as an obstacle. For instance, during my visit to INSAF in Casablanca, an NGO giving legal support to unwed women, the latter did not have any knowledge of the French language and only spoke Berber, widely spoken by rural women. I must admit that, knowledge of the Arabic language would have been an additional asset, as it would have allowed me to have access to more in-depth data and different kind of data. Additionally, something that has I believed advantaged me throughout my qualitative interviews is the simple fact of being a women, which has facilitated contacts with other women.

It is important to bear in mind that the sample of interviewed people does not represent the Moroccan public opinion as a whole. In fact, the aim was to collect some Moroccan society actors' opinions on the given issue which deeply divides and touches Morocco's Islamic identity. Additionally, it is important to recall that this thesis is primarily theory-based and the findings of the primary sources of data are used to support and complement the overarching theoretical foundations grounded on secondary data. As such, only one specific chapter will be dedicated to illustrate the findings of the interviews.



## ***Framework***

Tackling the proposed research topic will be done through five different chapters. First of all, in order to fully understand the 2004 reforms, it is necessary to analyze and examine the context in which the law has been enacted. Due attention will more specifically be given to Morocco's legal framework that applies to the promotion and protection of women's access to justice. Chapter two of the present thesis will highlight the major amendments brought to the Code. Both the legal and institutional levels will be dealt with, continuously drawing comparisons to the previous Code. A third and most crucial chapter of this thesis will more specifically explain the deficiencies of the Moroccan judicial system and analyze to which extent these are still preventing women from accessing their right to justice under the Code. To this end, an assessment of Morocco's law in light of relevant international standards will be made throughout this section. Chapter 4 will investigate the different qualitative findings and field research undertaken for the purpose of this research. To this end, a snapshot will be given of the different perceptions and attitudes generated by the Moudawana and the justice system among a restricted and diverse sample of the Moroccan population. A final part of this research will attempt to formulate recommendations to improve women's access to justice under the 2004 Family Code.

## **CHAPTER 1: UNDERSTANDING THE CONTEXT OF THE NEWLY CREATED MOROCCAN FAMILY CODE**

In order to have a profound understanding of the reforms brought to the Moroccan Family Code and its impact on women's access to justice, it seems crucial to examine the context in which the reforms were promulgated. In this first section, critical attention will be given to the difficult balance between two opposing legal frameworks, the Shariah-based law and the law of occidental nature. One will then discuss the overarching power of the King and the crucial role of women's activists in the reforms. Moreover, an analysis will be made of the impact of Morocco's modernization process on the family structure and related status of women. Furthermore, it seems indispensable to examine the importance of an independent judicial system with regard to ensuring women's access to justice under the reformed Family Code. Finally, the present chapter will outline Morocco's legal framework and obligations that apply to the promotion and protection of women's access to justice under the Family Code.

### ***1.1 The Moudawana: finding the balance between traditional Islamic law and modernized family law***

*“Doing justice to women, protecting children's rights and preserving men's dignity are a fundamental part of this project, which adheres to Islam's tolerant ends and objectives, notably justice, equality, solidarity, ijihad (juridical reasoning) and receptiveness to the spirit of our modern era and the requirements of progress and development” – Preamble, Moroccan Family Code 2004.* <sup>38</sup>

The Moroccan Family Code has undergone three major stages of reform: in 1957, 1993 and 2004. <sup>39</sup> From 1957 to 2004, Morocco adhered to conservative family law traditions, starting with the enactment of the first Code in 1958, in the aftermath of

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<sup>38</sup> The Moroccan Family Code, 2005, p.5.

<sup>39</sup> Zoglin, 2009, p.965.

Morocco's independence from France.<sup>40</sup> It can be regarded as the government's second most important action after the abolishment of the Berber customary law.<sup>41</sup> Furthermore, it is the only law in the Moroccan legal system which is based on religious Islamic principles. As such, this is clearly emphasized by Stephanie Bordat, director of MRA who states that "in contrast to other laws derived from secular civil Codes, the Family Code is the only law in Morocco still based on religious percepts- specifically on the Maliki school of Islam".<sup>42</sup> The Islam practiced in Morocco is of the Maliki School, one of the four major schools of *Fiqh* (religious law) within Sunni Islam.<sup>43</sup> The Maliki School is seen as being one of the most progressive forms of Islamic Law, also referred to as Shariah-law<sup>44</sup>, aspiring to principles of equality and human rights. The Maliki School of jurisprudence does not only rely on the Qu'ran as a primarily source of law, but also endorses sources such as the "use of analogical reasoning (qiyas), opinion (r'ay), and public interest (istihlah)".<sup>45</sup> Consequently, it gives rise to laws that are constantly changing and evolving. As such, various classical jurists regard the Shariah law is being very flexible. They see it "less as a list of rules and more a system for interpreting the law"<sup>46</sup>. The Qu'ran is the primary source of Shariah-law and is seen as divine and strictly immutable, as it is the voice of God. However, while the text is not amendable in any way, its interpretation is.<sup>47</sup> As stated by Irmgard Marboe, Islamic law comprises a sophisticated legal system as it not only contains "in addition to religious duties and moral exhortations, numerous binding norms in many different areas of law".

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Women across the world are seen as a vulnerable group, facing discriminations in their daily lives. There is a widely held stereotype that harsh discrimination towards women is persistent especially in Islamic States which adhere to the Shariah.<sup>49</sup> As in most Islamic States, family law in Morocco is placed under the Shariah law and contains

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<sup>40</sup> Abitbol, 2009, p.544.

<sup>41</sup> Harrak, 2009, p.2.

<sup>42</sup> Bordat & Davis & Kouzzi, 2011, p.94.

<sup>43</sup> Talhaoui, 2013, p.714.

<sup>44</sup> Nowak & Januszewski & Hofstätter, 2012, p.261.

<sup>45</sup> Benson, 2013, p.4.

<sup>46</sup> Ibid, p.3.

<sup>47</sup> Hursh, 2012, p.291.

<sup>48</sup> Nowak & Januszewski & Hofstätter, 2012, p.261.

<sup>49</sup> Hursh, 2012, p.254.

many regulations that restrict women's rights.<sup>50</sup> In fact, this post-independence Family Code, enacted by Royal decree, was not seen as particularly egalitarian or gender-based.<sup>51</sup> It denied women fundamental rights in areas such marriage, divorce, inheritance and child custody. The specific regulations will be dealt with in the second section of the present thesis. As conveyed by John Hursh, the provisions "deeply affect the daily lives of women, since they order social relations and define the rights and duties of women with respect to fundamental social and familial practices".<sup>52</sup>

As a result of the constraining provisions of the Shariah-based Moudawana, women associations and political groups have pressured from the 1990s onwards for a second set of reforms to change the Code.<sup>53</sup> In this regard, King Hassan II established a commission of male religious leaders and judges to analyze the Code, leading to some modest changes in 1993.<sup>54</sup> However, these were not seen as revolutionary in any kind as they were still in line with the ideology inspired the 1958 Code and did not improve women's status within the family sphere. As clearly pointed out by John Hursh in the *Berkeley Journal of Gender, Law and Justice*, "the majority of the Moroccans considered the 1993 reforms insufficient, failing to meet the expectation of meaningful reform".<sup>55</sup> While these second set of reforms were limited, they can be regarded as an important step toward taking into consideration women's rights.

The third set of reforms to the Family Code started in 1999 and resulted in the adoption of the revised Moudawana in 2004.<sup>56</sup> The same year the new King Mohammed VI amounted to the throne replacing his father King Hassan II, a new plan of action was proposed to improve women's status in Morocco: the so-called "Plan d'action national pour l'intégration de la femme au development" (The Plan for the Integration of

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<sup>50</sup> Ibid, p.255.

<sup>51</sup> Zogling, 2009, p.965.

<sup>52</sup> Hursh, 2012, p.255.

<sup>53</sup> Zogling, 2009, p.966.

<sup>54</sup> Ibid.

<sup>55</sup> Hursh, 2012, p.259.

<sup>56</sup> Zogling, 2009, p.967.

Women in Development).<sup>57</sup> It more specifically called upon changes to the previous Family Code of 1993, such as the abolition of wife repudiation, polygamy, guardianship for women who have attained majority, an equal division of property between spouses during marriage or divorce, as well as the implementation of family tribunals.<sup>58</sup>

Reactions to the proposed plan were diverse. The resulting widespread debates around the status of women reflected the disparate views and perceptions of Moroccans with regard to this specific issue. Women's groups and liberal political forces in favour of the plan, thus opting for change, were vigorously opposed and contested by conservative and Islamist groups who favoured the traditional Moroccan family setting.<sup>59</sup> Furthermore, some conservative Islamists objected it because they saw it as "an effort sponsored by the World Bank and the West".<sup>60</sup> As from 2000, demonstrations began to amount resulting from these opposing views. As conveyed in a Moroccan Magazine, *TelQuel*, Morocco seemed to be divided in two different camps, symbolized by two cities: Rabat and Casablanca.<sup>61</sup> The source of this 'conflict' was the reform of the Family Code, incorporated in the National Plan as previously mentioned. A march was held in Rabat in 2000 organized by women's associations and liberal groups, or the so-called 'modernists'. An estimated 40 to 50 000 people demonstrated in this march in support of the Plan and equality for women.<sup>62</sup> At the same time in Casablanca, Islamist groups sponsored a demonstration, attracting three times as many people as in Rabat with the overall aim of denouncing the plan and promoting the message that "the Women's plan was contrary to Islam and Islamic family values".<sup>63</sup>

Ever since these two manifestations, Morocco has been struggling with which model of society to adopt. As conveyed by Abdellah Tourabi, the first model is conservative, codified around tradition, the family and the importance of the community. The second,

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<sup>57</sup> Harrak, 2009, p.4.

<sup>58</sup> Ibid.

<sup>59</sup> Maddy-Weitzam, 2005, p.393.

<sup>60</sup> Zoglin, 2009, p.967.

<sup>61</sup> Tourabi, 2014, p.27.

<sup>62</sup> Maddy-Weitzam, 2005, p.393.

<sup>63</sup> Zoglin, 2009, p.968.

modernist and secularist model focuses rather on the individual and its liberties.<sup>64</sup> Moroccan society has been torn and is still torn between these two opposing models, reflecting conflicting interests.

The long battle over the changes of the Family Code came to an end in March 2001, when King Mohammed VI announced that he wanted to halt the plan and change the Code.<sup>65</sup> To this end, a Royal Commission was established to revise the Code “in light of religious law, legal reasoning (ijtihad), Islamic principles of fairness, and universal human rights standards”.<sup>66</sup> According to Amna Assad, the 2004 reforms were prepared in conformity with the Islamic legal mode of ijtihad, which is seen as an “interpretive technique in Islamic law that may aid reformers in advancing women’s rights within Islamic States”.<sup>67</sup> This is briefly outlined in the Preamble of the legislation, recalled at the beginning of the chapter. To be more precise, it is a method that includes the re-reading of religious texts in light of new knowledge and societal development.<sup>68</sup> John Hursh argues that “ijtihad brings traditional Islamic law in line with contemporary Morocco”.<sup>69</sup>

As elucidated by Katie Zoglin, the major challenge the Commission faced was to establish the underlying legal framework. In other words, discussions were held on whether the law should be based on international human rights standards, jurisprudence or reflect the Maliki school of Islam.<sup>70</sup> The king played a critical role in this regard, advising the Commission that the new Code should respect international human rights standards as well as respect the Shariah law.<sup>71</sup> Finally, in October 2003, after extensive discussions and lengthy debates, the King officially denounced his plan to change the old Moudawana and “replace it with a modern Family Code”.<sup>72</sup> While the Family Codes

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<sup>64</sup> Tourabi, 2014, p.27.

<sup>65</sup> Bargach, 2005, p.253.

<sup>66</sup> Zoglin, 2005, p. 968.

<sup>67</sup> Hursh, 2012, p.295.

<sup>68</sup> Talhaoui, 2013, p.716.

<sup>69</sup> Hursh, 2012, p.296.

<sup>70</sup> Zoglin, 2005, p.968.

<sup>71</sup> Harrak, 2009, p.6.

<sup>72</sup> Ibid.

of 1957 and 1993 were enacted by Royal decrees, the Code of 2004 came to be adopted by the Parliament on 25<sup>th</sup> January 2004.<sup>73</sup> The Moroccan weekly magazine *L'Economiste* described this historical event as a 'big bang'<sup>74</sup>, overturning many discriminatory elements of the historic Family Code. Ann M. Eisenberg argues that the Moudawana is "one of the few examples of a transition between traditional Islamic family law and modernized family law based in Islam".<sup>75</sup> As a matter of fact, the resulted new Code of 2004 can be regarded as a milestone in Morocco's modernization and democratization process.<sup>76</sup> Significant progress was made in terms of furthering human rights and establishing gender equality. As such, women have gained stronger legal rights within the family sphere. Additionally, it is important to recall that the revised law can now be considered as "one of the most progressive legal texts on the Arab world".<sup>77</sup>

The method of ijithad was essentially used to 'modernize' the law, eliminating various aspects of traditional Islamic family law, which are considered as sacred and untouchable.<sup>78</sup> Thus, the 2004 reforms 'desacralized' the ancient Code. Nevertheless, the Code still largely derives from Islamic principles.<sup>79</sup> This clearly illustrates how flexible Shariah-law can be. In other words, the new Family Code can be seen as an attempt to 'straddle' tradition and modernity, trying to maintain Morocco's religious Islamic identity while at the same time striving for openness and taking steps to liberalize Islamic tradition. In fact, as observed in the following statement of the Preamble, the Moroccan Family Code seeks to establish a balance between Islamic principles and principles underpinned by universal standards:

*"Doing justice to women, protecting children's rights and preserving men's dignity are a fundamental part of this project, which adheres to Islam's*

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<sup>73</sup> Harrak, 2009, p.6.

<sup>74</sup> Ibid.

<sup>75</sup> Eisenberg, 2011, p. 697.

<sup>76</sup> Talhaoui, 2013, p.715.

<sup>77</sup> Sadiqi, 2010, p.4.

<sup>78</sup> Talhaoui, 2013, p.717.

<sup>79</sup> Eisenberg, 2011, p.705.

*tolerant ends and objectives, notably justice, equality, solidarity, ijihad (juridical reasoning) and receptiveness to the spirit of our modern era and the requirements of progress and development”.*<sup>80</sup>

As such, Moroccan women constantly live under this dual opposing legal framework: on the one hand the public sphere which is based on universal standards deriving from the Moroccan Constitution and international human rights instruments and on the other hand the private sphere primarily based on Islamic law.<sup>81</sup>

To sum up this first sub-section, one can clearly state that “ legal reforms have allowed the government to promote a modern and democratic image of Morocco at the international level, bringing certain benefits to society at large”.<sup>82</sup> However, while these legal reforms have been made on paper, their implementation still remains problematic. As a matter of fact, despite the progress made on paper, various authors assert that “the effect of the law remained largely intact and that women’s rights were still severely circumscribed”.<sup>83</sup> The reason will largely be dealt with in the following sections of the present thesis.

### ***1.2 King Mohammed VI: arbiter between Islamist forces and modernists***

Morocco is described as a constitutional monarchy in which the essential power remains in the hands of the King.<sup>84</sup> In fact, he has a dual role. First of all, he can be regarded as the head of the government and representative of the nation. Article 42 of the 2011 reformed Moroccan Constitution clearly states that the King is the “head of the State, symbol of the unity of the nation, guarantor of its existence and continuity, and the highest judge (referee) among its institutions”.<sup>85</sup> Secondly, besides being the head of

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<sup>80</sup> The Moroccan Family Code, 2005, p.5.

<sup>81</sup> Hursh, 2012, p.301.

<sup>82</sup> Sadiqi, 2010, p.4.

<sup>83</sup> Malchiodi, 2008, p.4.

<sup>84</sup> Zoglin, 2009, p.965.

<sup>85</sup> La Constitution, 2011, p.9. (own translation from French language).



State, King Mohammed VI is at the same time the religious leader, or the so-called “commander of the believers”.<sup>86</sup> In other words, this means that the King has the overarching decision power and is the “arbitrator of all conflicts in Morocco, specifically the ones involving reforming the Moudawana”.<sup>87</sup> This status of ‘commander of the believers’ gives the King supreme legitimacy, legitimacy which allows him to be above the human laws such as the Constitution.<sup>88</sup> In fact, Mohammed Hashas states that “in exercising his powers, the monarch is not accountable to any body or institution but only to his ‘democratic spirit’ ”.<sup>89</sup> In a nutshell, no one can put into question the King’s legitimacy, political and religious authority.

Ever since his arrival on the throne in 1999, the Moroccan King Mohammed VI has played an important role in the drafting and implementation of the new Family Code. As elucidated by Mohammed Hashas, Mohammed VI has inaugurated a new era of reforms ever since he came to power.<sup>90</sup> The new Moudawana can be regarded as “Mohammed VI’s flagship reforms” at the beginning of his reign.<sup>91</sup> This is the reason why he has acquired the label of ‘reformist King’.<sup>92</sup> While his predecessors have made various attempts (in 1958 and 1993) to change the Code, Mohammed VI paid due attention to the issue and managed to incorporate major changes to the Moudawana, thus improving women’s status on paper. The fact that he put women’s issues at the core of the debate is clearly reflected in his speech just a month after taking power:

*“ 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? ”.*<sup>93</sup>

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<sup>86</sup> Bencheikh, 2013, p.46.

<sup>87</sup> Ariane, 2014, p.63.

<sup>88</sup> Bencheikh, 2013, p.45.

<sup>89</sup> Hashas, 2013, p.11.

<sup>90</sup> Ibid, p.9.

<sup>91</sup> Talhaoui, 2013, p.715.

<sup>92</sup> Hashas, 2013, p.9.

<sup>93</sup> Zoglin, 2009, p.967.

Since 1999, women's rights issues and the Moudawana have increasingly become part of the Moroccan public discourse. In fact, a recent popular Moroccan magazine of 2011, *Femmes du Maroc* (Women of Morocco) features various articles about the advancements made in favour of women's rights, focusing on the particular provisions of the Moudawana.<sup>94</sup> Examples of such articles are for instance "Mohammed VI, the King who wants to do us good", or "15 years of reign and the advancement of women's rights".<sup>95</sup> While some Moroccan women magazines outline the positive evolutions that have been made with the new King, various recent articles and studies have been published demonstrating that the new Moudawana is not as revolutionary as it seemed. This will largely be dealt with in the third section of the thesis.

So why is King Mohammed VI so different to his predecessors? He quickly projected an image of himself as being a more accessible leader, willing to opt for change and improve women's rights situation consistent with the Islamic principles.<sup>96</sup> He declared that the new Family Code was "meant to free women from injustices they endure, in addition to protecting children's rights and safeguarding men's dignity".<sup>97</sup> When looking back to the rulers in Morocco, a lot has changed regarding the place of women within Moroccan society. In fact, in contrast to the previous rulers who kept their marriage nearly secret, King Mohammed VI declared his marriage publicly.<sup>98</sup> Additionally, he married a young woman from a middle-class urban family, instead of following tradition and choosing the daughter of a rural Berber notable.<sup>99</sup> The public announcement, the choice of a 'modern bride' as well as the following public celebrations, illustrate that the King has 'broken with tradition'. In fact, as conveyed by Bruce Maddy-Weitzman, "the royal house was now modern in outlook, marching forward in the spirit of the times with a focus on the future, a future which promised better days for women".<sup>100</sup>

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<sup>94</sup> Lahlou, 2014, p.6

<sup>95</sup> Ibid.

<sup>96</sup> Bencheikh, 2013, p.47.

<sup>97</sup> Harrak, 2009, p.6.

<sup>98</sup> Maddy-Weitzman, 2005, p.396.

<sup>99</sup> Ibid, p.397.

<sup>100</sup> Ibid.

Reforming the Moudawana and thus establishing more rights for women raised many tensions, especially among conservatives and modernists. Morocco is an Islamic State, which means that while there is a desire and need to modernize the State and society on the one hand, the desire to retain a strong Muslim identity is equally as strong.<sup>101</sup> It is within this context of rivalry and tension that the Code was enacted under the King's initiative. As argued by Bruce Maddy-Weitzmann, the King played a crucial role as arbiter between the Islamist movements and the other conservative forces in Moroccan society.<sup>102</sup> Similarly, the same author concludes that "the monarch serves as the ultimate arbiter for society and acts as an 'orienting icon', using selective discourse of modernity to promote controlled change and maintain social peace"<sup>103</sup>. Although various studies illustrate the King's success in securing women more rights and for having tipped the balance in favor of change, implementation of these rights still remains problematic.

### ***1.3 The crucial role of women's activism in reforming the Moudawana***

Women movements have increasingly been present ever since the enactment of the first post-independence Family Code promulgated in 1958.<sup>104</sup> In this regard, it is important to stress the vital role women activists have played in the process of reforming the law in question. Although Moroccan women were not the sole actors in the 2004 reforms, they acted as "a major pooling force behind it"<sup>105</sup>. In fact, while the power of the King was critical, the Moudawana reforms would not have taken place without the pressure and active lobbying efforts of women's activists and associations at grassroots levels. Many authors refer to the Code as the 'Women's Code', since it was largely the result of women lobbying.<sup>106</sup> Since the law was based on purely Shariah principles, women activists faced some fundamental challenges in striving to change it.<sup>107</sup>

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<sup>101</sup> Hursh, 2012, p.261.

<sup>102</sup> Maddy-Weitzman, 2005, p.394.

<sup>103</sup> Ibid, p.409.

<sup>104</sup> Sadiqi, 2008, p.325.

<sup>105</sup> Sadiqi & Ennaji, 2006, p.86.

<sup>106</sup> Elliott, 2014, p.3.

<sup>107</sup> Benson, 2013, p.5.

The 1970s gave rise to an emerging class of feminist scholars who engaged in the re-reading of Qu’ranic texts and the method of *ijtihad* to “counter the effect of Islamic fundamentalism”.<sup>108</sup> By doing so, these feminists maintained their focus on the necessity to change the Family Code. In the 1990s, increasing women grassroots activism was noted pressuring the government to bring changes to the legislation.<sup>109</sup> To this end, various NGOs emerged, backed up by powerful international organisations and civil society organisations (CSO) with the aim of advocating for the promotion of women’s rights and legal reforms.<sup>110</sup> A compelling example of a women’s association that contributed to reforming the law is the so-called “Union de l’Action Feminine/UAF” (Union for Feminine Action), who in 1991 launched a petition in favor of reforms.<sup>111</sup> Although it had a lot of support on the one hand, it also faced serious criticisms from Islamist groups who considered it was a serious threat to the Islam in Morocco.<sup>112</sup> Here again, one cannot stress enough the persisting tension between conservatives and modernists. Although the reforms of 1993 were not revolutionary in any way, feminists considered them as symbolic because they were able to bring “an almost sacred religious document into the heart of the public debate”.<sup>113</sup>

Due to Moroccan women’s greater participation and involvement in public debates especially around family law and their place in society, the public sphere has changed and become more and more feminized.<sup>114</sup> The well-established concept of ‘public sphere’ used by Habermas can be defined as “a modern institution and a set of values that brings private persons together in public to engage in a context of reasoned debates”.<sup>115</sup> While the public sphere used to be largely dedicated to men, women are gradually challenging the patriarchal underpinnings of the Moroccan state. The debates around the Family Code clearly show that “women’s feminist ideas and associations were inserting themselves into the public sphere, changing the terms of participation

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<sup>108</sup> Benson, 2013, p.5.

<sup>109</sup> Ibid, p.7.

<sup>110</sup> Sadiqi, 2008, p.328.

<sup>111</sup> Harrak, 2009, p.2.

<sup>112</sup> Hursh, 2012, p.271.

<sup>113</sup> Sadiqi, 2008, p.331.

<sup>114</sup> Moghadam & Sadiqi, 2006, p.1.

<sup>115</sup> Ibid.

within this sphere, and making women and gender issues a matter of national dialogue and contention for the first time in Morocco's history".<sup>116</sup>

#### ***1.4 Perspectives on the status of Moroccan women***

The Family Code regulates women's legal status within the family. Under the historic Code of 1958, women were excluded some basic rights, "placing them into a status of lifelong dependency and subordination to the power of a male relative or husband".<sup>117</sup> In this regard, post-independent Morocco is largely seen as a patriarchal, patrilineal and class-based society, leaving women as second-class citizens with a subordinated status.<sup>118</sup> However, as discussed previously, since the 1980s, feminist movements have risen, willing to fight for equal rights and challenge the patriarchal aspects of Moroccan society.<sup>119</sup> As such, the 2004 reforms constitute a significant reformulation of the rights and obligations of women in their daily lives.<sup>120</sup> The major amendments brought to the Code will thoroughly be discussed throughout the second section of the present thesis.

It is important to stress that the new legislation has contributed to the reinforcement of some changes to the traditional Moroccan family setting and a transformation of the political and social status of the Moroccan woman.<sup>121</sup> In fact, some trends can be noted alongside Morocco's modernization and democratization process. According to Hakima Laala Hafdane, author of the recently published book *Les Femmes marocaines une société en mouvement*, some major tendencies of the 21<sup>st</sup> century include massive scolarisation and increasing access of women to the workforce, the decrease in the actual size of the Moroccan family and the emergence of new individualistic values allowing women to be more autonomous and less restricted to male authority.<sup>122</sup> It is also important to mention that, as in most Arab-patriarchal societies, the focus is put on

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<sup>116</sup> Sadiqi & Ennaji, 2006, p.87.

<sup>117</sup> Woodrow Wilson International Center for Scholars, 2005, p.5.

<sup>118</sup> Maddy-Weitzman, 2005, p.394.

<sup>119</sup> Zerari, 2006, p.65.

<sup>120</sup> Malchiodi, 2008, p.5.

<sup>121</sup> Zerari, 2006, p.76.

<sup>122</sup> Laala Hafdane, 2013, p.60.

the community rather than on the individual.<sup>123</sup> As stated by the Preamble “family constitutes the essential nucleus of society”<sup>124</sup> in which the woman plays a crucial role. In fact, “women’s citizenship became yoked to their positions in a kinship structure embedded in a larger religious identity that together formed the nation”.<sup>125</sup> To put it simply, the Moroccan woman can be regarded as the ‘backbone’ of the family on which the society is based.

These changes have been made within the context of an amalgam between tradition and modernity.<sup>126</sup> In other words, an on-going tension persists among tenants of the traditional Moroccan family setting and related distribution of women’s role and status within the family sphere and those who claim that the modernization of the Moroccan family cannot be accomplished without the redistribution of women’s role and status and incorporating values of equality between men and women.<sup>127</sup> While the former are mainly present in poorer rural areas of Morocco where women are still subjected to strong male authority, the latter tend to be more dominant in urbanized cities.<sup>128</sup>

Despite the major trends and evolutions related to women’s status within the family sphere, women’s rights still largely remain hindered by the patriarchal underpinnings of the Moroccan society, preventing women from fully enjoying their rights.<sup>129</sup> The Preamble of the new legislation reflects this patriarchal aspect by stating that the aims of the Code is “doing justice to women, protecting children’s rights and preserving men’s dignity”.<sup>130</sup> By preserving men’s dignity, the law implicitly affirms the patriarchal role of men as heads of the household. Additionally, the overarching presence of men in Moroccan society is also reflected through the public/private space distribution.<sup>131</sup> Although some progress has been noted with regard to ‘re-organizing’

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<sup>123</sup> Benson, 2013, p.7.

<sup>124</sup> The Moroccan Family Code, 2005, p.5.

<sup>125</sup> Benson, 2013, p.7.

<sup>126</sup> Laala Hafdane, 2013, p.60.

<sup>127</sup> Lahsika, 2008, p.25.

<sup>128</sup> Ibid.

<sup>129</sup> Belarbi, 2012, p.21.

<sup>130</sup> The Moroccan Family Code, 2005, p.5.

<sup>131</sup> Sadiqi & Ennaji, 2006, p.87.

this strict public/private space dichotomy, the latter still remains very rigid. In fact, the distribution of space in most Arab countries is strictly gender-based, associating the public space (the outdoor/exterior) to men and the private space (the inside) to women.<sup>132</sup> As a result, “men do not only dominate and manage the private space but control their wives’ movement in the public space as well”.<sup>133</sup>

In a nutshell, one can claim that Moroccan women, in seeking more rights, are strongly hindered and influenced by these so-called stereotypes and contested vulnerable images around women’s roles and status within Moroccan society.

### ***1.5 The importance of an independent and well-functioning judicial system in securing women’s access to justice under the Family Code***

As clearly laid out in the Preamble of the 2004 Family Code, one of the overarching goals of the law is “doing justice to women”.<sup>134</sup> To this end, various provisions of the law have been revised and implemented to enhance women’s access to justice. These will shortly be discussed in the following chapter. According to the United Nations Secretary General, access to justice can be defined as follows:

*“A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers,*

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<sup>132</sup> Sadiqi & Ennaji, 2006, p.88.

<sup>133</sup> Ibid, p.90.

<sup>134</sup> The Moroccan Family Code, 2005, p.5.

*participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency”.*<sup>135</sup>

Drawing upon what was already mentioned in the previous section, Moroccan women are generally regarded as the vulnerable segment of the Moroccan population. Consequently, women remain the main victims of certain discriminatory aspects of the law. In fact, as clearly expressed by Arian Marion in her book *Family Law and Women's Rights in Morocco*, “family law is the epicenter of the inequalities endured by women”.<sup>136</sup> Poverty in this regard is a crucial factor influencing women's right to justice, as women in rural areas have much less access to justice than women in urban areas.<sup>137</sup> To this end, it is crucial to have a well-functioning and independent judicial system.

What does an independent judicial system mean? A report of the *International Commission of Jurists* (ICJ) clearly states that “the judicial system is central to respect for the rule of law and the protection of human rights [...]. An independent judiciary means that victims can redress, that perpetrators of human rights violations are brought to justice, and that anyone suspected of a criminal offense receives a fair trial”.<sup>138</sup> In the absence of an effective judicial system, women are unable to address their respective rights and seek adequate justice. Thus, an independent judicial system is an essential element ensuring the rule of law (ROL) and human rights in general. According to the 2014 *World Justice Project*, the Rule of Law Index ranks Morocco 52 out of 99 countries for its respect of the rule of law and 84 out of 99 on respect for fundamental rights.<sup>139</sup>

The Moroccan judicial system is responsible to guarantee an equal application of the law in question.<sup>140</sup> In fact, it has the responsibility to secure women's access to justice

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<sup>135</sup> UNDP, 2013, p.3.

<sup>136</sup> Ariane, 2014, p.1.

<sup>137</sup> Hanafi, 2013, p.4.

<sup>138</sup> ICJ, 2013, p.4.

<sup>139</sup> The WJP, 2014, p.120.

<sup>140</sup> Lopez, 2014, p.6.



under the reformed Family Code. As such, one can say that the judiciary plays a critical role in enforcing the provisions of the new legislation as it “has the ability to make the legal reforms a reality or alternatively to disregard the changes”.<sup>141</sup> In other words, the effective implementation of the Code largely depends on the legitimacy of the Moroccan justice system.<sup>142</sup> In the case of Morocco, various authors have highly criticized the judicial system, as it has not proven to be independent nor efficient in securing women’s rights under the Family Code in particular.<sup>143</sup> In fact, the various shortcomings of the justice sector that are hindering women’s access to justice will be discussed in the following chapters of the thesis.

### ***1.6 Morocco’s legal framework that applies to the promotion and protection of women’s access to justice under the Family Code***

One of the aims of the 2004 reforms on which the King insisted was to bring the Code in conformity with internationally recognized human rights instruments and principles.<sup>144</sup> In order to assess Morocco’s compliance with relevant international human rights principles, it seems crucial to bring to the fourth its legal framework relevant to the promotion and protection of women’s rights and more specifically pertaining to women’s access to justice related to family law.

Regarding Morocco’s national legislation, it is important to stress that the monarchy has recently reformed its Constitution in 2011.<sup>145</sup> The new Constitution declares for the first time the following:

*“ Aware of the need to strengthen its role on the global stage, the Kingdom of Morocco, as an active member within the international organisations, is committed to adhere to the principles, rights and obligations set forth in*

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<sup>141</sup> Zoglin, 2009, p.983.

<sup>142</sup> Hanafi, 2013, p.13.

<sup>143</sup> Rhissassi, Fouzia & Berjaoui, 2010, p.63.

<sup>144</sup> The Moroccan Family Code, 2005, p.5.

<sup>145</sup> Bencheikh, 2013, p.11.

*their respective charters and conventions; and it affirms its commitment to human rights as they are universally recognized”.*<sup>146</sup>

Moreover, as clearly laid out in the Preamble of the text, Morocco recognizes the preeminence and supremacy of international law over its national legislation.<sup>147</sup>

Article 19 of the Constitution guarantees gender equality between men and women, stating that :

*“Women and men enjoy equal civil, political, economic, social, cultural, and environmental rights [...] in accordance with the international conventions ratified by Morocco and with respect to the provisions of the Constitution, the ‘constantes’ and laws of the Kingdom”.*<sup>148</sup>

However, careful attention needs to be drawn to the specific wording of this article, which is to some extent ambiguous and contradictory. What is meant by “constantes” is that the State will guarantee gender equality unless when it contravenes with the laws and principles derived from Islamic law.<sup>149</sup> This clearly reflects the existing tension between two opposing legal frameworks, the modern law of occidental nature and the Shariah-based law.

Furthermore, in its ‘Title VII’, the newly reformed Constitution establishes judicial independence through the principle that judges are ‘irremovable’ (article 108)<sup>150</sup> and that “judges shall enjoy freedom of expression and freedom [...] with respect to the duties of impartiality and independence, as provided by law”.<sup>151</sup> The right of citizens to access justice and receive adequate and effective remedies is also recognized throughout articles 117 to 128 of the Constitution.<sup>152</sup>

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<sup>146</sup> La Constitution, 2011, p.2. (own translation from French language)

<sup>147</sup> Ibid.

<sup>148</sup> La Constitution, 2011, p.5. (own translation from French language).

<sup>149</sup> Elliott, 2014, p.14.

<sup>150</sup> La Constitution, 2011, p.19. (own translation from French language).

<sup>151</sup> La Constitution, 2011, p.19 (own translation from article 111).

<sup>152</sup> La Constitution, 2011, p.19-21.

In this same perspective, Morocco has signed a *Charter for the reform of the Judicial System* in 2013, released by Morocco's High National Dialogue for Judicial Reform.<sup>153</sup> In his speech on March 9, 2011, the King insisted on the need to build an independent justice system and to "reinforce the preeminence of the Constitution and consolidate the supremacy of law and the equality of all before it".<sup>154</sup> In order to realize the judicial reforms, chapter two of the Charter establishes six major objectives:

*"Consolidate the independence of the judicial power; establish a code of ethics; strengthen the protection of rights and liberties within the justice system; increase the effectiveness and efficiency of the judicial system; develop institutional capacities of the judicial system; modernize the judicial administration and strengthen its governance".*<sup>155</sup>

Whether Morocco has effectively implemented these reforms will be discussed throughout the following chapters of the present thesis.

Regarding the international legal framework, Morocco has ratified a number of international human rights conventions and declarations that advance women's rights and recognize the right to justice such as the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), the *Universal Declaration of Human Rights* (UDHR), the *Beijing Platform for Action*, the *International Covenant on Civil and Political Rights* (ICCPR), and committed itself towards attaining the *Millennium Development Goals* (MDGs).<sup>156</sup> This clearly reflects Morocco's engagement and adherence to universally recognized human rights principles, at least on paper.

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<sup>153</sup> La Haute Instance du Dialogue National sur la Réforme du Système Judiciaire, 2013, p.1.

<sup>154</sup> Ibid, 2013, p. 27. (own translation from French language).

<sup>155</sup> La Haute Instance du Dialogue National sur la Réforme du Système Judiciaire, 2013, p. 46 (own translation from French language).

<sup>156</sup> Elliott, 2014, p.14-15.

The Kingdom of Morocco ratified CEDAW in 1993 closely after the first era of reforms to the Family Code.<sup>157</sup> CEDAW can be regarded as “the most important international legal instrument for achieving gender equality”.<sup>158</sup> This Convention defines the concept of discrimination towards women and promotes the principle of gender equality between men and women. As such, CEDAW recognizes that discrimination towards women is closely linked to a lack of gender equality.<sup>159</sup> However, at the time of ratification of CEDAW, Morocco made reservations and declarations to several articles.<sup>160</sup>

Regarding the reservations, CEDAW states that:

*“A number of States enter reservations to particular articles on the ground that national law, tradition, religion or culture are not congruent with Convention principles, and purport to justify the reservation on that basis”.*<sup>161</sup>

In this regard Morocco made a reservation to article 9 (2) affirming that “States shall grant women equal rights with men with respect to the nationality of their children”.<sup>162</sup> Morocco’s reservation maintains women’s inferiority based on the simple fact that Moroccan law allows a child to bear the nationality of the mother only when it is born to an unknown-father. In this regard, Morocco deemed article 9 as incompatible with Islamic principles.

Additionally, a reservation was made to article 16 which entails key principles of gender equality within family and marital relationships.<sup>163</sup> Morocco made this reservation stating that “equality of this kind is considered incompatible with the Islamic Shariah, which guarantees to each of the spouses rights and responsibilities

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<sup>157</sup> Ariane, 2014, p.3.

<sup>158</sup> Hursh, 2012, p.283.

<sup>159</sup> Elliott, 2014, p.17.

<sup>160</sup> UN Women, “Declarations, Reservations and Objections to CEDAW”, available at <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> [consulted on 16 March 2015].

<sup>161</sup> Ariane, 2014, p.9.

<sup>162</sup> CEDAW, 2012, p.64.

<sup>163</sup> CEDAW, 2012, p.66.

within a framework of equilibrium and complementary in order to preserve the sacred bond of matrimony”.<sup>164</sup> Men and women have thus different set of rights and obligations rather than equal rights. The reservation concludes by stating “the Islamic Shariah confers the right to divorce a woman only by a decision of a Shariah judge”.<sup>165</sup> This statement clearly undermines the concept of gender equality. Requiring a woman to receive the approval of a judge to divorce undermines a women’s autonomy and prevents her from enjoying the basic right to end a marriage.

These reservations demonstrate that Morocco favors religious law over international law.<sup>166</sup> However, as clearly stated by Ariane Marion “Morocco asserts that the principle of universality of human rights does not prevent references to cultural and religious values and that the reserves issued by Morocco on certain provisions are the result of a national consensus”.<sup>167</sup> It is important to note that Morocco withdrew its reservations to CEDAW in December 2008 claiming that “our reservations have become obsolete due to the advanced legislation that has been adopted by our country”.<sup>168</sup> Consequently, Morocco’s national law should be in conformity to international treaties such as CEDAW.

Furthermore, Morocco issued an important declaration to article 2 of CEDAW, regarded as one of the core provisions which spells out state obligations with regard to instituting gender equality.<sup>169</sup> It requires among others to embody the principle of gender equality into national legislation and urges states to foster a culture of equality.<sup>170</sup> In Morocco’s declaration to this article, it claimed that “certain of the provisions contained in the Moroccan Code of Personal Status according women rights that differ from the rights conferred on men may not be infringed upon or abrogated because they derive primarily

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<sup>164</sup> UN Women, “Declarations, Reservations and Objections to CEDAW”, available at <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> [consulted on 16 March 2015].

<sup>165</sup> Hursh, 2012, p.286.

<sup>166</sup> Ibid.

<sup>167</sup> Ariane, 2014, p.11.

<sup>168</sup> Hursh, 2012, p.287.

<sup>169</sup> Elliott, 2014, p.18.

<sup>170</sup> CEDAW, 2012, p.63.

from the Islamic Shariah”.<sup>171</sup> To put it simply, Morocco shall only comply to CEDAW provisions unless they violate Shariah-law and more specifically the Moudawana. In addition to article 2, Morocco has also made a declaration regarding article 15.4 which provides that “States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile”.<sup>172</sup> Here again, Morocco insisted on the supremacy of the Moudawana stating that it could only be bound by this article if it is not incompatible with articles 34 and 36 of the Code.<sup>173</sup> Given the fact that Morocco still retains both declarations significantly weakens the Convention’s effect.

While the equal right to justice is secured in articles 8 and 10 of the UDHR, it is also enshrined in article 14 of the ICCPR, to which Morocco is a party:

*“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”.*<sup>174</sup>

As expressed in the article, access to justice is an international principle of justice that entails several components: the right to bring a claim before a court of law; the right to have his or her case analyzed with substantive standards of fairness and justice and the right to obtain access to remedy, legal aid.<sup>175</sup>

As explained in this last section, Morocco has committed itself, through the ratification of relevant conventions, towards establishing gender equality and ensuring the right to adequate justice, at least on paper. However, several questions remain unanswered: Is

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<sup>171</sup> Ariane, 2014, p.12.

<sup>172</sup> CEDAW, 2012, p.66.

<sup>173</sup> Elliott, 2014, p.19.

<sup>174</sup> ICCPR, 2012, p.36-37.

<sup>175</sup> Lopez, 2014, p.34.

Morocco effectively implementing these international standards of justice and gender equality in practice? Is Morocco's Constitution in line with the CEDAW Convention? To which extent is Morocco fulfilling its international obligations in terms of securing women's access to justice? As such, the aim of the following two chapters will be to assess to which extent the monarchy, pursuant to its international human rights instruments and major principles, is securing women's access to justice under the reformed Family Code.

## CHAPTER 2: THE 2004 REFORMS - PAVING ITS WAY TOWARDS ENHANCING WOMEN'S RIGHTS

The present chapter will elucidate the major changes brought by the 2004 reforms most affecting women's rights. To do so, a first sub-section will analyze the legislative advancements made to the law itself continuously drawing brief comparisons to the previous Code of 1958. While the first section is mainly dedicated to the analysis of the 'legislative level', a second section will examine the institutional 'arena'. As such, a restructuring of the judicial system was required to support the Family Code. In this regard, the focus will be put on the major changes brought to the judiciary and impacting women's access to justice.

### *2.1 Overview of the major legislative amendments brought to the Code itself*

Various authors underline that the 2004 Family Code can be regarded as a landmark reform of the status of women, overturning many discriminatory provisions and enhancing gender equality in various spheres of family law.<sup>176</sup> Following is an overview of the major amendments and innovations introduced by the 2004 reforms with a specific focus on the ones that enhance women's rights.

The Preamble of the 2004 Code refers to King Mohammed VI's speech in which he enumerates eleven major reforms he wanted the law to incorporate.<sup>177</sup> From these eleven reforms, eight put a particular focus on women:

*“One: [...] Remove degrading treatment and debasing terms for women.  
Place the family under the joint responsibility of both spouses, given that  
'women are men's sisters before the law' [...]  
Two: [...] a woman cannot be compelled to marry against her will [...]*

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<sup>176</sup> Harrak, 2009, p.7

<sup>177</sup> The Moroccan Family Code, 2005, p.6.



*Three: Equality between women and men with respect to the minimum age for marriage, which is now fixed at eighteen for both [...]*

*Four: Concerning polygamy, we took into consideration the commitment to the tolerant principles of Islam in establishing justice, which the Almighty requires for polygamy to take place, as it is plainly stated in the Holy Koran: he said ‘...and if you fear that you cannot do justice (to so many) then one (only).’ And since the Almighty ruled out the possibility for men to do justice in this particular case, He said ‘... You will not be able to deal equally between (your) wives, however, much you wish (to do so), ‘and he thus made polygamy quasi impossible under Sharia (religious law) [...]*

*Six: Make divorce [...] a prerogative that may be exercised as much by the husband as by the wife [...]*

*Seven: Expand the women’s rights to file for divorce [...].*<sup>178</sup>

By introducing these changes within the family sphere, the law can be seen as “a radical elevation of women’s legal status in Morocco, sharply contrasting the status of women in much of the Muslim world”.<sup>179</sup> It is important to mention that women are now legally able to appear before the Courts to testify and seek justice when needed.<sup>180</sup>

It is worth assessing more specifically these above-mentioned innovations that are most affecting women’s rights. The focus will be put on the provisions of (i) marriage, (ii) divorce, (iii) child custody and inheritance, as they are the best illustrations of the enhancement of women’s rights and gender equality. These provisions can be found accordingly in *Book one* “Of Marriage”, *Book two* “Of the dissolution of the bonds of matrimony and its effects”, *Book three* “Of birth and its effects” and *Book six* “Of Inheritance” of the 2004 Family Code.<sup>181</sup> In order to fully grasp and understand the degree of the innovations, comparisons will be made to the previous historic Code.

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<sup>178</sup> The Moroccan Family Code, 2005, pp.6-7.

<sup>179</sup> Eisenberg, 2011, p.700.

<sup>180</sup> USAID, 2010, p.21.

<sup>181</sup> The Moroccan Family Code, 2005, pp.1-62.

i) *Marriage*

The 2004 Code defines marriage as following:

*“A legal contract by which a man and a woman mutually consent to unite in a common and enduring conjugal life. Its purpose is fidelity, virtue, and the creation of a stable family, under the supervision of both spouses according to the provisions of this Moudawana”. (article 4)*<sup>182</sup>

As elucidated in the above statement, the emphasis is put on the need for a “mutual consent” in order to enter into marriage. Whereas the previous Code allowed men alone to direct the marriage, men and women have now equal rights and duties within the marriage contract.<sup>183</sup> Another provision that enhanced gender equality within marriage is the establishment of the minimum age of marriage at eighteen for both girls and boys.<sup>184</sup> Under the previous Code, young women were allowed to marry at the age of fifteen and boys at the age of eighteen.<sup>185</sup> Article 19 of the new Code now establishes that “men and women acquire the capacity to marry when they are of sound mind and have completed eighteen full Gregorian years of age”.<sup>186</sup> However, underage age marriage is still made possible by a judge’s permission under article 20 of the new Code.<sup>187</sup> Furthermore, article 11 of the previous Code mentions the need for a male tutor (wali) for a woman to consent to her marriage.<sup>188</sup> Whereas women could not marry without the consent of a male tutor, the new Code introduced a major innovation allowing women to enter into marriage on their own and removing this guardianship requirement (article 25 of the new Code).<sup>189</sup>

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<sup>182</sup> The Moroccan Family Code, 2005, p.10.

<sup>183</sup> Deiana, 2009, p.73.

<sup>184</sup> Ibid, p.74.

<sup>185</sup> The Moroccan Family Code, 2005, p.11. (article 8).

<sup>186</sup> Ibid, p.13. (article 19).

<sup>187</sup> Ibid. (article 20).

<sup>188</sup> Moudawana, 1958 (article 11).

<sup>189</sup> The Moroccan Family Code, 2005, p.14. (article 25).

Polygamy can be regarded as “one of the most difficult of all sharia’ matters to reconcile with modernity”.<sup>190</sup> Various authors emphasize that the ability of a man to marry different wives is incompatible with women’s rights.<sup>191</sup> Polygamy under the new Code is not prohibited but is subject to strict conditions. The conditions introduced by the new law throughout articles 40 to 46 make this social practice now rather a “practical impossibility”.<sup>192</sup> In contrast to the previous Code, which authorized polygamy with a simple notification of the husband to his first wife (article 31)<sup>193</sup>, the new law insists on the need for a judicial approval.<sup>194</sup> Moreover, the consent of the first wife is needed before the husband decides to marry another woman.<sup>195</sup> As stated in article 40, she has the right to stipulate in her marriage contract that she does not want a polygamous situation.<sup>196</sup> In the case when the wife objects to the husband taking another wife, the husband must go to Court and show that there is “an exceptional and objective justification” and prove that he has “sufficient resources to support the two families”.<sup>197</sup> Thus, by imposing these strict conditions, the new legislation essentially “prohibits one of the most problematic aspects of Islamic law in relation to women’s rights”.<sup>198</sup>

Finally, the historic Code mentioned that men and women had different rights and duties within the family sphere.<sup>199</sup> The reformed Code eliminates such language by introducing the principle of joint responsibility and suppressing male authority as guardian of the family.<sup>200</sup>

These major innovations have benefited women in various ways. In fact, removing male guardianship, elevating the minimum age of marriage from fifteen to eighteen and

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<sup>190</sup> Maddy-Weitzman, 2005, p.405.

<sup>191</sup> Hursh, 2012, p.263.

<sup>192</sup> Weingartner, 2005, p.700.

<sup>193</sup> Moudawana, 1958.

<sup>194</sup> Zoglin, 2009, p.972.

<sup>195</sup> The Moroccan Family Code, 2005, p.17. (article 40).

<sup>196</sup> Ibid.

<sup>197</sup> Ibid. (article 41).

<sup>198</sup> Hursh, 2012, p.264.

<sup>199</sup> Moudawana, 1958.

<sup>200</sup> Harrak, 2009, p.7.

restricting polygamy are innovations among others which have enhanced women's autonomy and independence. The reforms "redefined marriage closer to an equitable partnership rather than male-dominated subjugation".<sup>201</sup> Women are less seen as sexual objects with the ultimate aim of "procreating".<sup>202</sup> The emphasis is now rather put on the reciprocal rights and duties of both men and women within the family sphere.

## *ii) Divorce*

Under article 44 of the previous Family Code, only the husband could initiate divorce verbally without any need for court approval.<sup>203</sup> In other words, "the repudiation or unilateral declaration was the exclusive right of the husband to put an end to the marriage without any valid motivation, granting him an absolute discretionary power".<sup>204</sup> In contrast, the new legislation expanded a woman's right to divorce. As a matter of fact, article 98 of the reformed legislation enumerates the different grounds on which the wife can petition for divorce: "non respect by the husband of one of the conditions in the marriage contract; harm; non maintenance, absence, latent defect, abstinence and abandonment".<sup>205</sup> Importantly, a woman can now petition for judicial authorization to obtain a divorce.<sup>206</sup> No matter which type of divorce is initiated it requires a judge's permission. In fact, "since verbal repudiation by the husband is no longer valid, divorce is now subject to Family Court ruling".<sup>207</sup>

Concerning property acquired during marriage, the new legislation introduced the principle of separation of goods, giving the possibility to both husband and wife to establish a contract defining the management of assets.<sup>208</sup> In the case where they cannot come to an agreement, it is up to the judges to determine how the assets should be

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<sup>201</sup> Hursh, 2012, p.263.

<sup>202</sup> Moudawana, 1958. (article 1).

<sup>203</sup> Ibid. (article 44).

<sup>204</sup> Deiana, 2009, p.71.

<sup>205</sup> The Moroccan Family Code, 2005, p.30. (article 98).

<sup>206</sup> Weingartner, 2005, p.701.

<sup>207</sup> Harrak, 2009, p.7.

<sup>208</sup> Ibid.

divided when couples divorce.<sup>209</sup> Here again, judges play a crucial role in ensuring equity between men and women.

### *iii) Child Custody and inheritance rights*

With reference to the international agreements Morocco ratified on this subject, the new legislation introduced a set of provisions aimed at enhancing children's rights. More specifically, a mother has priority over her child's custody under the current Code.<sup>210</sup> This is outlined in article 171 which states "child custody shall be awarded first to the mother, then to the father, then to the maternal grandmother of the child".<sup>211</sup> In the case when this is impossible, it is up to the judge to determine the guardian and to take into account the best interests of the child when taking a decision.<sup>212</sup> This contrasts with the previous Code, where the father is seen as "the legal representative of the child".<sup>213</sup> A woman could only be the legal representative of her kids in case of her husband's death or incapacity.<sup>214</sup> Furthermore, women who remarried after divorce traditionally lost custody over the children of the ex-husband.<sup>215</sup> However, the new legislation provides that the mother may retain custody of her child even in the case when she remarries. In fact, article 175 provides in this regard the different conditions in which a mother may retain custody over her child after re-marriage.<sup>216</sup>

Another positive change is that both girls and boys can choose at the age of fifteen with which parent to live with after divorce.<sup>217</sup> Under the prior Code, boys could already make this decision already at the age of twelve and girls only at the age of fifteen.<sup>218</sup>

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<sup>209</sup> Zoglin, 2009, p.973.

<sup>210</sup> Weingartner, 2005, p.703.

<sup>211</sup> The Moroccan Family Code, 2005, p.13. (article 17).

<sup>212</sup> Zoglin, 2009, p.974.

<sup>213</sup> Moudawana, 1958. (article 148).

<sup>214</sup> Ibid.

<sup>215</sup> Weingartner, 2005, p.702.

<sup>216</sup> The Moroccan Family Code, 2005, p. 43. (article 175).

<sup>217</sup> Ibid, p.41. (article 166).

<sup>218</sup> Moudawana, 1958.

Furthermore, the reformed Code mentions that the husband is entitled to provide food, lodging and financial support to his children following a divorce.<sup>219</sup> This language was absent under the old legislation. Once the husband divorced his wife, he no longer had the obligation to further support his children.<sup>220</sup>

One of the most crucial changes regarding child custody relates to the judiciary. In fact, while under the historic Code there was no deadline with regard to solving disputes from a divorce, the current Code establishes a time limit of maximum 6 months to close a case.<sup>221</sup> As stated by John Hursh, “judicial inaction could cause a wife and children to wait for years to receive any support from the husband”.<sup>222</sup> To this end, a number of family courts have been established to support the number of family caseloads.

The new Code has also enhanced gender equality with regard to inheritance rights. In fact, one of the main advancements the new Code has brought is the fact that grandchildren on the daughter’s side can also inherit from their grandparents just as the grandchildren on the son’s side.<sup>223</sup> Thus, equality between sexes has been extended, allowing grandchildren on the daughter’s side to also inherit.

The above-mentioned innovations demonstrate the Moudawana’s commitment in eliminating gender bias and favoring women’s rights. In fact, the couple emerging from the previous Code was “founded on a relation of domination with no sense of complementarity nor reciprocity but confirming a hierarchy harmful to women”.<sup>224</sup> With the new legislation, women gained some prominent rights.

Moreover, it is important to highlight the proactive role of the judiciary in cases related to family matters. While the judiciary was inexistent during the implementation of the old Code, it has gained crucial importance with the 2004 reforms.<sup>225</sup> In fact, the new

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<sup>219</sup> The Moroccan Family Code, 2005, p. 47. (article 198).

<sup>220</sup> Hursh, 2012, p.265.

<sup>221</sup> Hursh, 2012, p.266.

<sup>222</sup> Ibid.

<sup>223</sup> Harrak, 2009, p.7.

<sup>224</sup> Deiana, 2009, p.71.

<sup>225</sup> Zoglin, 2009, p.970.

legislation has given due weight to the involvement of judges and prosecutors in safeguarding the rights of women in particular.<sup>226</sup> Moreover, several mechanisms such as family tribunals have been introduced to support the provisions of the new Moudawana.<sup>227</sup> This will more thoroughly be discussed in the following sub-section.

## ***2.2 Restructuring the judicial system***

In light of what has already been mentioned in the first chapter, Morocco has, namely by adopting the *Charter of Judicial Reform* in 2013, committed itself towards reforming the judicial system as a whole. As a reminder, the six main objectives of these reforms are as follows:<sup>228</sup>

1. Consolidate the independence of the judicial power
2. Establish a judicial code of ethics
3. Strengthen the protection of rights and liberties in the justice system
4. Increase the effectiveness and efficiency of justice
5. Develop the institutional capacities of the judicial system
6. Modernize judicial administration and strengthen its governance

Facilitating access to justice is enshrined in the fourth objective- increasing the effectiveness and efficiency of the judicial system- of the reforms of the judicial system.

<sup>229</sup> . This would be done by:

1. Promoting the legal aid system;
2. Implementing a free juridical aid system;
3. Improving the conditions of reception of citizens in the courts and generalizing legal and judicial information;
4. Ensuring communication of the courts with the litigants in a language they understand, particularly the Amazigh language and Hassani language;

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<sup>226</sup> Ibid.

<sup>227</sup> Harrak, 2009, p.7.

<sup>228</sup> La Haute Instance du Dialogue National sur la Réforme du Système Judiciaire, 2013, p.46. (own translation from French language).

<sup>229</sup> Ibid, p.78.

5. Strengthening communication capacities of the courts with the citizens;
6. Facilitating the communication of people with special needs with the courts;
7. Setting up a communication mechanism between the courts and the media, in order to contribute to the implementation of the principle of the right to information and to guarantee a specialized criminal investigation.<sup>230</sup>

One of the overarching aims of these reforms is to bring the national Moroccan justice system in line with the Constitution and international conventions.<sup>231</sup> However, Morocco has to face some serious challenges and shortcomings in implementing these reforms. These will be discussed in the following chapter.

As clearly highlighted in the report *Reforming the Judiciary in Morocco* of the ICJ, an independent and well-functioning justice system means that “victims can seek redress, that perpetrators of human rights violations are brought to justice, and that anyone suspected of a criminal offence receives a fair trial”.<sup>232</sup> From what has been explained throughout the first chapter, women tend to remain the most vulnerable fragment of the Moroccan population, being the main victims of discriminatory aspects of the law.

With the enactment of the new legislation, a restructuring of the judicial system was seen as a prerequisite in order to adapt it to the current family and societal structures which have led to a new distribution of roles and women’s status.<sup>233</sup> As clearly pointed out in a recent article published in *L’Economiste*, the main objective is to proceed to a re-organization and restructuring of the judicial system, namely through the adoption of modern approaches of management.<sup>234</sup> In this regard, it is worth noting that before the 2004 reforms, Moroccan women had to rely on a more ‘traditional’ system of justice.<sup>235</sup> This means that if they wanted to file a complaint, they had to go to the religious leaders

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<sup>230</sup> Ibid.

<sup>231</sup> Lopez, 2014, p.21.

<sup>232</sup> ICJ, 2013, p.4.

<sup>233</sup> Lahsika, 2008, p.2.

<sup>234</sup> L’Economiste, 2014, p.5.

<sup>235</sup> Hanafi, 2013, p.7.



or the so-called ‘ulama’ since family tribunals were inexistent at that time.<sup>236</sup> As these religious leaders were mainly male, many women found it intimidating to talk to them about their issues.<sup>237</sup> Furthermore, their complaint would not be taken into consideration because of the little to no chance of getting an appeal.<sup>238</sup> Consequently, “not having the right to 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 with the community”.<sup>239</sup> Thus, under the traditional Moroccan justice system prior to the 2004 reforms, women simply did not claim justice or dropped their cases.

In the aftermath of the 2004 reforms, several amendments have not only been brought to the ‘legal’ aspect of the text, but also to the institutional structure of the justice system. In contrast to the traditional setting of justice, the new legislation has brought some positive changes, making women’s access to justice less intimidating and more accessible. First, the law required the establishment of a modern family court system to support the effective implementation of the new Code and secure women’s access to justice.<sup>240</sup> Consequently, due importance has been given to the role of judges and prosecutors as everything passes through them in family-related matters.<sup>241</sup> As clearly mentioned by Leila Hanafi, “the family courts and the training of judges to staff these courts have served to create a friendlier environment for women”.<sup>242</sup> A major improvement in this regard is that family cases, especially divorce and custody related matters, are given much more and quicker attention by the Courts. In fact, “courts have got this system down to a consistent, speedy procedure”.<sup>243</sup>

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<sup>236</sup> Ibid.

<sup>237</sup> Ibid.

<sup>238</sup> Ibid.

<sup>239</sup> Hanafi, 2013, p.7.

<sup>240</sup> Maddy-Weitzman, 2005, p.406.

<sup>241</sup> Zogling, 2009, p.970.

<sup>242</sup> Hanafi, 2013, p.8.

<sup>243</sup> Ibid.

Moreover, ever since the enactment of the new Code, there has been an increase in legal aid organisations.<sup>244</sup> As such, various NGOs and associations across Morocco have introduced grassroots programs of legal rights education, focusing not only on urban areas but also rural areas where women need it the most.<sup>245</sup> Just to cite an example, a crucial international women's rights capacity building NGO called MRA, collaborates with associations and women's rights activists with the aim of changing laws, structures, relationships and cultural norms in order to promote and protect women's rights.<sup>246</sup> During my interview with Stephanie Willman Bordat, founding partner of MRA, she further elaborated on her tasks within this association. She more precisely "collaborates in the development, implementation and evaluation of multifaceted women's rights programs, including grassroots level human and legal rights education, legal accompaniment, monitoring, and documentation of the justice system, action research, strategic litigation, national law reform and international advocacy".<sup>247</sup> As clearly stated by Stephanie Willman Bordat in her recently published paper *Women as agents of grassroots change*, the overall aim of these legal rights programs is as following:

*"Not only to increase women's knowledge of their legal and human rights under Moroccan and international human rights laws, but also to develop their individual and collective capacities for critical analysis, to defend their rights, and to mobilize for change".*<sup>248</sup>

Thus, these legal aid organisations are designed to empower women and make them more aware of their legal rights, which in turn facilitate their access to court.

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<sup>244</sup> Hanafi, 2013, p.7.

<sup>245</sup> Bordat & Davis & Kouzzi, 2011, p.101.

<sup>246</sup> MRA, available at <http://www.mrawomen.ma> [consulted on 23 April 2015].

<sup>247</sup> Ibid.

<sup>248</sup> Bordat & Davis & Kouzzi, 2011, p.101.

King Mohammed VI, as head of the monarchy, has excessive power in the judiciary and has the ability to appoint key figures such as the Minister of Justice (MOJ), judges and magistrates.<sup>249</sup> As such the King has an indirect “oversight of the justice sector”.<sup>250</sup> Shortly after the enactment of the legislation, the advisory Royal Commission of experts and religious leaders - appointed by the King to conduct a review of the new Family Code- addressed a letter to the MOJ stating the following:

*“Whatever reforms the Moudawana may contain, its implementation hinges on the creation of a fair, modern and effective family justice system to fulfill all conditions of justice and equity, accelerate the resolution of cases and promptly enforce judgments”.*<sup>251</sup>

Additionally, the Royal Commission added:

*“We further ordered him to accelerate the establishment of suitable facilities for the administration of family justice within the different courts of the Kingdom and the training of qualified personnel at different levels, given the powers that this bill gives to the judiciary, in addition to the necessity to accelerate the creation of a Family Solidarity Fund”.*<sup>252</sup>

The MOJ plays a prominent role in the effective implementation of these family tribunals. He more specifically retains control over the judicial system through the so-called *Conseil Supérieur de la Magistrature* (CSM), the High Judicial Council.<sup>253</sup> The CSM is intended as “a buffer between the executive and the judiciary as to shield the latter from the executive in matters of appointment, discipline, transfer and promotion of judges”.<sup>254</sup> Whereas the King presides the CSM, the MOJ is the vice-president.<sup>255</sup>

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<sup>249</sup> Lopez, 2014, p.25.

<sup>250</sup> Ibid, p.37.

<sup>251</sup> The Moroccan Family Code, 2005, p.9.

<sup>252</sup> The Moroccan Family Code, 2005, p.9.

<sup>253</sup> ICJ, 2013, p.5.

<sup>254</sup> USAID, 2010, p.13.

<sup>255</sup> ICJ, 2003, p.5.

This means that he has the ability to “oversee the selection, appointment and promotion of judges”.<sup>256</sup>

Moreover, the MOJ guaranteed that some measures had to be taken to ensure the effective implementation of the Code within the family tribunals.<sup>257</sup> As follows are some of the most crucial measures introduced after the entry into force of the new law. First of all, specific time periods are dedicated to the formation of judges and magistrates in order to assist them in the accomplishment of their tasks within specific sections of the family tribunals.<sup>258</sup> They are given advice on how to take into account citizen’s demands, to orientate them and how to accomplish the different formalities.<sup>259</sup> In this regard, another important measure taken is the elaboration of simplified leaflets (according to the different areas such as marriage, divorce, child custody, legal representation...) allowing litigants and others to broaden their knowledge about the formalities to be accomplished when coming in front of the tribunals.<sup>260</sup> Additionally, a practical guide for citizens has been published to explain and simplify the provisions of the Family Code.<sup>261</sup> However, a question remains whether these measures are sufficient and effective enough in order to ensure women’s access to justice under the new legislation. This will mainly be dealt with in the next chapter of the present research paper.

Drawing upon the main innovations brought to the Code- mentioned in the first subsection- one cannot highlight enough the increasing presence of judges needed to oversee and effectively implement the new provisions. As a matter of fact, the reformed legislation has given judges and prosecutors key roles within the family tribunals. To be more precise, they have been given the duty to play proactive roles in overseeing family cases and have the responsibility to safeguard the rights of women.<sup>262</sup> Whereas the

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<sup>256</sup> ICJ, 2003, p.5.

<sup>257</sup> Rhissassi & Berjaoui, 2010, p.70.

<sup>258</sup> Ibid.

<sup>259</sup> Ibid, p.71.

<sup>260</sup> Ibid, p.70.

<sup>261</sup> Rhissassi & Berjaoui, 2010, p.71.

<sup>262</sup> Zogling, 2009, p.970.

judicial was quasi inexistent during the old Code, judicial approval is now needed to validate family-related cases under the Moudawana. <sup>263</sup> In the case when certain provisions of the Moudawana are not very clear, judges are given more discretion in applying these articles. <sup>264</sup> In this regard, the Family Code provides some guidance to judges in how to exercise discretion. <sup>265</sup> For instance, for all matters that are not explicitly expressed in the Moudawana, judges should refer to article 400 of the present Code which states the following:

*“Reference may be made to the Malikite School of jurisprudence and to ijthad (juridical reasoning) which strive to fulfill and enhance Islamic values, notably justice, equality and amicable social relations.”* <sup>266</sup>

The fact that judges are given this ‘freedom of interpretation’ can be seen as a challenge and may negatively affect women’s rights. The specific reasons will be the subject of the following chapter.

Furthermore, Morocco is considered to be one of the first Arab countries to have offered the possibility to women to exercise the profession of judge. <sup>267</sup> Today, 648 judges are female, which account for 20% of high responsibility postings at judicial level. <sup>268</sup> Especially since the enactment of the new Code, one may note an increasing number of women in the justice system. <sup>269</sup> This is a positive trend, as women judges will better understand women and their specific needs. <sup>270</sup> Another worthwhile fact is that under article 111 of the 2011 Constitution, judges are given the right to freedom of expression to be exercised in a manner consistent with their obligations of reserve and judicial ethics. <sup>271</sup>

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<sup>263</sup> Zogling, 2009, p.970.

<sup>264</sup> Ibid, p.971.

<sup>265</sup> Ibid.

<sup>266</sup> The Moroccan Family Code, 2005, p.62.

<sup>267</sup> Rhissassi & Berjaoui, 2010, p.97.

<sup>268</sup> Ibid.

<sup>269</sup> Ibid, p.100.

<sup>270</sup> Ibid, p.97.

<sup>271</sup> La Constitution, 2011, p.19. (article 111).

In a nutshell, one can say that the Family Code has brought various changes to the institutional level: the implementation of family tribunals and proactive roles of judges and prosecutors as well as an increase in legal aid organisations, have all contributed to creating a ‘friendlier’ and more accessible environment for women under the new law.

To conclude this second chapter, it is worth noting that the major innovations brought to the text as well as the implementation of judicial mechanisms to support it, have paved the way towards closing the gap in terms of gender inequality, making the law more favorable for women. In fact, the 2004 overturned many discriminatory provisions of the ancient Code.<sup>272</sup> In this regard, the “Moroccan Moudawana is a pioneering law in the Arab world, and has set an example in the region”.<sup>273</sup> According to Latifa Jbadi’s, a strong Moroccan activist and founder of the UAF (*Union de l’Action Feminine*), the new law has achieved “a peaceful revolution for women”.<sup>274</sup>

While on paper, the Moudawana has established major advancements, namely the legal right of a woman to appear before court, these have yet to be materialized into practice. In fact, various authors stress the existence of a gap between the legislation as written on paper and the law as it should be applied in reality, specifically pertaining to women’s access to justice.<sup>275</sup> This is clearly outlined by Ann M. Eisenberg: “despite its revolutionary language, the Moudawana may face a level of impotence, exemplifying the reality that drafting and enacting a new law is one thing, implementing it is another”.<sup>276</sup> Despite the legal and institutional advancements elucidated throughout this second chapter, women’s access to justice still largely remains hindered by various shortcomings of the Moroccan judicial system.<sup>277</sup> This will be the focus point of the subsequent chapter.

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<sup>272</sup> Jorgen, “Moudawana: A peaceful revolution for Moroccan Women”, 2013, available at <http://www.ikkevold.no/2013/03/moudawana-a-peaceful-revolution-for-moroccan-women/> [consulted on 27 May 2015].

<sup>273</sup> Ibid, p.4.

<sup>274</sup> Ibid, p.4.

<sup>275</sup> Eisenberg, 2011, p.697.

<sup>276</sup> Ibid, p.696.

<sup>277</sup> ICJ, 2013, p.4.

### **CHAPTER 3: BARRIERS HINDERING WOMEN'S ACCESS TO JUSTICE UNDER THE 2004 FAMILY CODE**

Despite the major advancements the Code has brought to women's rights, it largely remains hindered by several hurdles.<sup>278</sup> The so-claimed 'independent' Moroccan judicial system - as stated in the 2011 Constitution<sup>279</sup>- is supposed to give a general feeling of security among citizens and protect them when needed. However, the reality of the judicial system has clearly emphasized that there is an evident gap between the judicial provisions as written in theory and their translation into practice.<sup>280</sup> The new legislation struggles to find a balance between the emerging modern realities and the safety of conservatism.<sup>281</sup>

The chapter at hand examines the rarely talked about shortcomings and deficiencies of the legal system which impact women's access to justice under the Family Code. In this regard, one will demonstrate to which extent Morocco is failing to abide to the international standards of justice and standards of gender equality provided in the Constitution and other international human rights conventions which it has ratified. In order to understand how the legal deficiencies keep Moroccan women from fully enjoying their rights expressed in the Code, the present chapter will first look into the shortcomings of the judicial system itself, putting a focus on the lack of judicial independence, corruption and the under-ressourcement of family tribunals. Then, one will analyze the different loopholes in the legislation itself and illustrate the persistence of social and cultural practices as a result of the high level of discretionary power given to judges while implementing certain provisions. A third section will focus on the absence of public knowledge of the Moudawana and how poverty is undermining women's access to justice.

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<sup>278</sup> Hanafi, 2013, p.9.

<sup>279</sup> La Constitution, 2011, p.19.

<sup>280</sup> Eisenberg, 2011, p.697.

<sup>281</sup> Bordat & Kouzzi, 2011, p.91.

### *3.1 Deficiencies of the judicial system limiting women's access to justice*

A well functioning and independent justice system can be regarded as an essential aspect of the rule of law and has been at the core of Morocco's reform commitments.<sup>282</sup> As affirmed by the *United States Institute of Peace*, an independent judicial system constitutes an important factor to prevent different crimes, consolidate access to justice, ensure that the individual and collective fundamental rights of the citizens are preserved and protected.<sup>283</sup> In this regard, "the judiciary is not only an essential prerequisite to ensure citizens are equal before the law, but it is also a mainstay of justice and of social stability. The legitimacy of the state itself and the inviolability of its institutions derive their strength from the power of justice, which is the cornerstone of governance systems."<sup>284</sup>

Despite Morocco's willingness to reform the justice system, it still largely remains hindered by several challenges which in term hamper women's access to justice under the new Family Code. The Moroccan population regards the judiciary as ineffective. In fact, findings from a public survey on the Moroccan Judiciary highlight that "Moroccans perceive justice as a matter of power dynamics rather than as part of an independent, impartial and accessible rule of law system".<sup>285</sup>

According to a 2010 assessment undertaken by the *United States Agency for International Development* (USAID) on the Rule of Law in Morocco, the Moroccan judicial system suffers from major structural problems such as (i) a lack of judicial independence, (ii) a high level of judicial corruption and (iii) inefficiency within the family tribunals.<sup>286</sup>

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<sup>282</sup> Lopez, 2014, p.2.

<sup>283</sup> United States Institute of Peace, "Rule of Law", available at <http://www.usip.org/category/issue-areas/rule-of-law> [consulted on 1 June 2015].

<sup>284</sup> USAID, 2010, p.7.

<sup>285</sup> Lopez, 2014, p.6.

<sup>286</sup> USAID, 2010, p.ii.



i) *Lack of judicial independence*

It is important to distinguish two different levels of judicial independence. In this regard, the *American Judicature Society* established the following definition:

*“Judicial independence is a concept that expresses the ideal state of the judicial branch of government. The concept encompasses the idea that individual judges and the judicial branch as a whole should work free of ideological influence [...] Decisional independence refers to a judge’s ability to render decisions free from political or popular influence based solely on the individual facts and applicable law. Institutional independence describes the separation of the judicial branch from the executive and legislation branches of government”.*<sup>287</sup>

As a reminder, the independence of the Moroccan judicial system is guaranteed in Title VII ‘*The Judiciary*’ of the 2011 Constitution. Concerning the level of institutional independence, article 107 establishes that “the judicial authority is independent of the legislative power and of the executive power”.<sup>288</sup> However, attention needs to be drawn to the specific wording of this article. The latter mentions that the judiciary is an ‘authority’ instead of a separate and autonomous independent branch of the government. In other words, this means that Morocco has opted for the constitutional model similar to the French system, where the executive (comprised of the King) dominates the judicial branch.<sup>289</sup> In fact, “despite the guarantees of judicial independence and separation of powers in the 2011 Constitution, the executive branch continues to dominate the judiciary, impeding judicial independence and eroding public trust in the justice system”.<sup>290</sup> The judicial branch strongly remains under control of the MOJ, which in turn is appointed by the King.<sup>291</sup>

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<sup>287</sup> USAID, 2010, p.11.

<sup>288</sup> La Constitution, 2011, p.19. (own translation from French language).

<sup>289</sup> USAID, 2010, p.12.

<sup>290</sup> Lopez, 2014, p.37.

<sup>291</sup> ICJ, 2013, p.6.

Regarding the so-called ‘decisional independence’, as quoted in the definition; it is of crucial importance that there is judicial independence in order to ensure that judges “remain impartial in their decisions, guaranteeing the equal application of the law”.<sup>292</sup> In this regard, the concept of impartiality of judges is seen as a crucial prerequisite of the rule of law and is a well-established human right guaranteed in international instruments. To be more precise, it is enshrined in article 14 of the ICCPR:

*“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”.*<sup>293</sup>

Similarly, the concept is also guaranteed in article 10 of the UDHR which provides:

*“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal”.*<sup>294</sup>

While Morocco has committed itself to these international human rights conventions, it fails to abide by these principles. In fact, pursuant to article 42 of the Constitution which states “The King shall be the guarantor of the independence of the nation and the territorial integrity of the Kingdom within all its rightful boundaries”; the overarching decision power lies within the hands of the monarch.<sup>295</sup> Thus, little to no decision space is given to the judiciary branch, namely the judges.

Other provisions highlighting the King’s influence over the judiciary are article 123 of the Constitution which provides that all “judgments are rendered and executed in the

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<sup>292</sup> USAID, 2010, p.11.

<sup>293</sup> ICCPR, 2012, p.36-37.

<sup>294</sup> UDHR, 2012, p. 11.

<sup>295</sup> La Constitution, 2011, p.5. (own translation from French language).

name of the King and the law”<sup>296</sup> and article 115 enabling the King to preside over the High Judicial Council (CSM).<sup>297</sup> This CSM is mainly composed of members of the executive branch and is according to the ICJ the main reason why it “has failed to ensure the independence of the judiciary”.<sup>298</sup> The King, as President, is charged to appoint the Vice-President (MOJ) who in turn is responsible for overseeing the appointment and recruitment of judges. As a result, “the careers of the judges are dependent on the goodwill of the executive”.<sup>299</sup> In other words, the MOJ has authority over the whole appointment and recruitment process of the judges. This is inconsistent with the international standards of justice, as no objective criteria’s are being applied. In this regard, the Human Rights Committee and the UN special Rapporteur on the independence of judges and lawyers have raised concerns about the excessive influence of the executive branch in the selection, appointment and promotion process of judges.

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In a nutshell, one can note that the judicial independence is undermined by the overarching power of the King who disposes the last word in every decision and the MOJ who does the practical work in his capacity as vice-president of the CSM. As clearly outlined in the *Global Corruption Report in Judicial Systems* the ‘King commands and the law disposes’.<sup>301</sup>

With reference to the different factors elaborated in this section, one can say that judicial independence is lacking at both the institutional and decisional level. As such, Morocco fails to comply to the international standards of justice and other standards enshrined in Conventions it has ratified to this effect. This namely has been confirmed by a 2004 review elaborated by the Human Rights Committee on Morocco’s obligations under the ICCPR.<sup>302</sup>

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<sup>296</sup> La Constitution, 2011, p.20. (own translation from French language).

<sup>297</sup> Ibid.

<sup>298</sup> ICJ, 2013, p.5.

<sup>299</sup> Ibid.

<sup>300</sup> Ibid.

<sup>301</sup> TI, 2007, p.233.

<sup>302</sup> ICJ, 2013, p.4.

ii) *High Judicial Corruption*

One of the major challenges Morocco faces is the significant level of corruption within its judicial system.<sup>303</sup> A 2007 report from *Transparency International (TI)* on the Corruption in Judicial systems defines the concept of judicial corruption as follows:

*“The abuse of entrusted power for private gain. This means both financial or material gain and non-material gain, such as the furtherance of political and professional ambitions. Judicial corruption includes any inappropriate influence on the impartiality of the judicial process by any actor within the court system”.*<sup>304</sup>

With reference to the most recent TI’s 2014 *Global Corruption Barometer* which addresses people’s experiences with bribery and takes into account their perceptions on corruption within the main institutions of their countries, the Moroccan justice system is claimed to be one of the most corrupt sectors in the country.<sup>305</sup> To be more precise, the *Corruption Perceptions Index (CPI)*, which measures the perceived levels of public corruption in 175 countries around the world, ranks Morocco 80 out of 175 countries with a score of 39 on a scale of 0 (highly corrupt) to 100 (very clean).<sup>306</sup> Consequently, Morocco is part of the two third of the countries which are at the bottom of the list and that score below 50.<sup>307</sup> José Ugaz, Chair of *TI*, claims that: “countries at the bottom need to adopt radical anti-corruption measures in favour of their people”.<sup>308</sup>

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<sup>303</sup> USAID, 2010, p.iii.

<sup>304</sup> TI, 2007, p.xxi.

<sup>305</sup> TI, “Corruption Perceptions Index 2014: Results”, 2014, available at <http://www.transparency.org/cpi2014/results> [consulted on 6 May 2015].

<sup>306</sup> Ibid.

<sup>307</sup> Ibid.

<sup>308</sup> Ibid.

In this regard, Morocco ratified the *United Nations Convention Against Corruption* (UNCAC) in 2007.<sup>309</sup> In order to comply with the standards enshrined in this Convention and as a result of the poor-performing scores of Morocco on the CPI, the King decided to establish a *Central Authority for the Prevention of Corruption* (ICPC) and appointed its members in December 2008.<sup>310</sup> Its main mission is to coordinate anti-corruption policies, oversee policies and monitor their implementation and compile and disseminate information relating to corruption.<sup>311</sup> Thus, it does not have any powers of investigation nor prosecution, but is rather focused on increasing public awareness-raising and receiving complaints in the country.<sup>312</sup> As mentioned by USAID, the instance lacks certain mechanisms and organizational components such as “uniform operating procedures for all governmental agencies, codes of ethics, internal and external controls, training, and uniform protocols for sanctions and disciplines” in order to be really effective in fighting judicial corruption.<sup>313</sup>

With reference to the Chair of *Transparency International's* claim, another anticorruption measure the monarchy has adopted is the establishment by the executive power of an “Office of Inspector General” (OIGs) in each ministry.<sup>314</sup> These offices aim at conducting inspections of the different bureaus presided by each ministry.<sup>315</sup> For instance, the OIG annually carries out court inspections under the Minister of Justice.<sup>316</sup> In the words of the World Bank (WB), the work of the OIGs can be described as follows: “[...] inspection reports are primarily designed to identify judicial needs and court malfunctions, to inform and direct judicial personnel towards better practices, and

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<sup>309</sup> UNODC, “United Nations Convention against Corruption: Signature and Ratification status as of 1 April 2015”, available at <http://www.unodc.org/unodc/treaties/CAC/signatories.html> [consulted on 15 May 2015].

<sup>310</sup> IAACA, “Central Authority for the Prevention of Corruption”, available at [http://www.iaaca.org/AntiCorruptionAuthorities/ByCountriesandRegions/M/Moroccojigou/201202/t20120210\\_802435.shtml](http://www.iaaca.org/AntiCorruptionAuthorities/ByCountriesandRegions/M/Moroccojigou/201202/t20120210_802435.shtml) [consulted on 5 May 2015].

<sup>311</sup> Ibid.

<sup>312</sup> USAID, 2010, p.8.

<sup>313</sup> Ibid.

<sup>314</sup> Ibid.

<sup>315</sup> Ibid.

<sup>316</sup> Ibid.

to suggest training sessions”.<sup>317</sup> Despite the good intentions behind this measure, various allegations have been made regarding the OIG’s work, as the inspections tend to be politically motivated.<sup>318</sup> Moreover, according to USAID’s assessment of the ROL in Morocco, this system is “in practice not as inclusive and courts do not always receive the inspection results and are, therefore, unable to positively benefit the findings”.<sup>319</sup>

The significant corruption level within the justice system and the lack of effective measures to combat this phenomenon undermine women’s confidence in the judiciary, therefore hampering their access to justice. In fact, “when defendants or litigants already have a low opinion of the honesty of judges and the judicial process, they are far more likely to resort to bribing court officials, lawyers and judges to achieve their ends”.<sup>320</sup> As a result, bribery is regarded as a frequent practice, nearly 50% of the population in 2013 has reported having paid a bribe to the judiciary.<sup>321</sup> Furthermore, there is an overall perception that the courts serve the rich and the powerful.<sup>322</sup> In this regard, 70% of the litigants consider that the costs of bringing a claim to court are too high.<sup>323</sup> This undoubtedly negatively impacts women’s access to justice, as they will often seek to solve their problems via other remedies. This will be discussed shortly.

In a nutshell, the WB regards corruption as “a crucial problem, unanimously seen as a major obstacle to the efficient and fair functioning of the Moroccan justice system”.<sup>324</sup> The significant level of corruption clearly reflects a poor state of justice in Morocco. Hence, tackling this phenomenon should be regarded as a prerequisite in order to fully improve the effective implementation of the Code and secure women’s access to justice.

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<sup>317</sup> WB, 2003, p.33.

<sup>318</sup> USAID, 2010, p.8.

<sup>319</sup> Ibid.

<sup>320</sup> TI, 2007, p.xxiv.

<sup>321</sup> TI, 2013, p.33.

<sup>322</sup> The National, “Morocco promises profound reforms to its justice system”, 2013, available at <http://www.thenational.ae/world/middle-east/morocco-promises-profound-reforms-to-its-justice-system> [consulted on 6 May 2015].

<sup>323</sup> Benradi & et al, 2007, p.123.

<sup>324</sup> Eisenberg, 2011, p.719.

iii) *Inefficiency of the family tribunals*

Another notable weakness of the Moroccan justice system is the inefficient workings of the family tribunals. First of all, it is important to mention that family courts struggle from financial problems which result in insufficient court resources on both material and human grounds.<sup>325</sup> In fact, there is a “lack of adequate policies and standards for procedural application of the law”.<sup>326</sup> Additionally, the lack of appropriate enforcement mechanisms to monitor the judiciary’s work also raises some serious concerns.<sup>327</sup> In this regard, the public prosecutor has been assigned the role to safeguard the rights of the citizens and ensure that courts adequately implement the provisions of the Code.<sup>328</sup> For instance, they are responsible to oversee that parents are effectively taking care of their children, giving them the needed financial support and education.<sup>329</sup> Similarly, the public prosecutor intervenes in the case when there is a dispute between wife and husband, when the husband forces his wife to leave.<sup>330</sup> However, these public prosecutors are often criticized for not fulfilling their responsibilities and rarely intervene even when asked.<sup>331</sup> In sum, “public prosecutors rarely fulfill their important statutory role of safeguarding rights”.<sup>332</sup>

Furthermore, according to a recent article published in 2013 by Hajar Secker Raihand,<sup>333</sup> a young Moroccan activist and university professor at the Mohammed VI University in Rabat, the working conditions within family tribunals are alarming. In fact, the judicial staff, often under trained, lack of respect towards the litigants, accept or demand bribery, work in emergency and more than ten hours a day for a salary varying from only 2500 to 6000 MDR a month.<sup>334</sup> These are some of the reasons that explain why

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<sup>325</sup> Hanafi, 2013, p.12.

<sup>326</sup> USAID, 2010, p.ii.

<sup>327</sup> Eisenberg, 2011, p.709.

<sup>328</sup> Zogling, 2009, p.981.

<sup>329</sup> Zogling, 2009, p.982.

<sup>330</sup> Ibid.

<sup>331</sup> Ibid.

<sup>332</sup> Ibid.

<sup>333</sup> Sekher, 2013, p.55.

<sup>334</sup> Ibid.

Moroccan courts are often on strike.<sup>335</sup> These working conditions have with no doubt negative consequences on the efficient and effective functioning of the family tribunals.

Despite the time limit, which the 2004 reforms have allocated to resolve family-related cases, delays in the courts, in particular in family tribunals, remain one of the major ongoing problems.<sup>336</sup> One of the conditions provided under Article 14 of the ICCPR clearly mentions that everyone shall have the right “to be tried without undue delay”.<sup>337</sup> In this regard, Morocco has fallen short to guarantee this provision. Not only introducing a case, but also the judicial procedures and the final execution of judgments take a considerable amount of time.<sup>338</sup> According to statistics of the MOJ from the 8.104 litigants who have demanded a case in justice in 2013, only 2.990 have received a positive response.<sup>339</sup> This largely is due to the increased number of caseload and the insufficient number of family tribunals to handle these cases.<sup>340</sup> The most important caseload after the enactment of the new Code concerns divorce matters.<sup>341</sup> This is likely a result of the ‘freedom effect’ for women who previously never had the chance to claim for divorce. Leila Hanafi mentions that: “the exorbitant length of proceedings in some cases have led to such a great time and financial burden that seeking divorce becomes infeasible”.<sup>342</sup> Although the right to seek divorce has been granted to women on paper, it remains hindered by the deficiencies of the justice system. This raises serious concerns and further emphasizes the existing gap between theory and practice.

Due to these lengthy and costly procedures, litigants, in particular women, tend to hesitate more and more to seek justice. Even though statistics reveal an increase in the number of claims brought to justice since the enactment of the new legislation<sup>343</sup>,

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<sup>335</sup> Sekher, 2013, p.55.

<sup>336</sup> Hanafi, 2013, p.12.

<sup>337</sup> ICCPR, 2012, pp.36-37.

<sup>338</sup> Sekher, 2013, p.55.

<sup>339</sup> L’Economiste, “Projet de Budget 2014: Les défaillances de la justice mises à nu”, 2013, available at <http://www.leconomiste.com/article/912555-projet-de-budget-2014-les-d-faillances-de-la-justice-mises-nue> [consulted on 5 July 2015].

<sup>340</sup> Eisenberg, 2011, p.709.

<sup>341</sup> Benradi & et al, 2007, p.96.

<sup>342</sup> Hanafi, 2013, p.13.

<sup>343</sup> Benradi & et al, 2007, p.96.



women try to resolve their conflicts via other ways and avoid bringing their claims directly to the family courts.<sup>344</sup> According to a 2007 study carried out by various organizations on a specific focus group of 102 litigants (46 men and 56 women) in family-related issues, 23,45% of the litigants wait two years before bringing their case to justice<sup>345</sup> and 84% of the litigants have tempted to solve their family-related disputes via family, friends or neighbors.<sup>346</sup> In addition, “women are reluctant to defend their rights in court, particularly if male family members are responsible for the violations or if it is perceived that their legal action could damage their family reputation”.<sup>347</sup>

As a result of the shortcomings of the justice sector, “many women fear failure or harbor mistrust that prevents them from seeking justice”.<sup>348</sup> This is highly problematic, as family tribunals should be regarded as a first instance to support and protect women when needed and should not be seen as a last resort.

Coupled together, it should be noted that the continuing increase in case load, as well as the lengthy procedures and the under-ressourcement of the family tribunals are factors among others that affect the efficiency and efficacy of the family tribunals and contribute to an unequal access to justice for women under the Moudawana.

To conclude the first sub-section, it is important to recall that the lack of judicial independence, the significant level of corruption as well as the inefficient workings of the family tribunals contribute to the mismanagement of the Moroccan justice sector. In other words, the third branch lacks of sufficient capacity to fully perform its given functions.<sup>349</sup> Since Morocco is not able to guarantee judicial independence and the separation of powers nor adequate conditions for women to access the courts, one can state that Morocco fails to meet its obligations under international law and abide by the standards of justice and gender equality enshrined in the Constitution and other

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<sup>344</sup> Benradi & et al, 2007, p.116.

<sup>345</sup> Ibid.

<sup>346</sup> Ibid.

<sup>347</sup> Sadiqi, 2010, p.5.

<sup>348</sup> Hanafi, 2013, p.13.

<sup>349</sup> USAID, 2010, p.11.

international human rights conventions –namely the ICCPR, the UDHR and the CEDAW- to which it has committed itself, at least in theory.

Since the “success of the Code largely depends of the legitimacy of the justice sector”<sup>350</sup>, women tend to be the main victims of it and face significant difficulties in accessing justice.

### ***3.2 Deficiencies in the text of the Moudawana itself***

As demonstrated throughout chapter two of the present thesis, the 2004 Family Code has enhanced women’s equality in various spheres of family life. It is important to recall that Morocco is a party to several international human rights instruments and has acknowledged the precedence of the latter over national legislation.<sup>351</sup> Yet, in CEDAW’s evaluation of Morocco’s family law progress, it namely set fourth the existence of several obstacles which are largely due to the remaining discriminatory provisions in the law.<sup>352</sup> In fact, the so-claimed progressive content of the Code remains undermined by several loopholes and flaws in the text itself.<sup>353</sup> To this end, special attention needs to be given to the sometimes ambiguous and unclear wording of several provisions in the legislation, which remain discriminatory towards women.

First, it is worth looking into the specific wording of the Preamble of the Moudawana itself. It namely declares that one of the overarching goals of the law alongside “doing justice to women”, is “preserving men’s dignity”.<sup>354</sup> This formulation emphasizes the patriarchal role of men within the family sphere. Despite the law’s aim at enhancing women’s rights, it remains hindered by deeply rooted patriarchal values enshrined within the Moroccan society. As presented in a recent article published in the *Journal of Middle East Women’s Studies*, the author comes to the conclusion that “at the heart of the reformed Code is the preservation of the established and traditional patriarchal

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<sup>350</sup> Hanafi, 2013, p.13.

<sup>351</sup> La Constitution, 2011, p.2.

<sup>352</sup> Hanafi, 2013, p.16.

<sup>353</sup> Gomez-Rivas, 2008, p.2.

<sup>354</sup> The Moroccan Family Code, 2005, p.5.

system, in which the family dictates the roles, life choices, and behavior of its members”.<sup>355</sup> Furthermore, while the Preamble declares that: “ the family constitutes the essential nucleus of society”<sup>356</sup>, the focus is put on the family rather than on the individual. Therefore, it fails to recognize women as autonomous individuals with intrinsic rights; a concept clearly established in the preamble of the UDHR<sup>357</sup> and the CEDAW<sup>358</sup>; to which Morocco has adhered.

While in areas of civil and criminal law, women are entitled to equal testimonial rights as their male compatriots; the areas of family law are behind in this regard.<sup>359</sup> A striking example is that under the 2004 Moudawana, a woman’s testimony in court decisions is only given half the importance of a man’s.<sup>360</sup> Another weakness or deficiency of the Code itself is the fact that it only concentrates on married women, therefore failing to address the needs of single mothers.<sup>361</sup> In fact, “while the Moudawana purports to establish gender equality in Morocco, this equality is still confined to women who have been married or divorced, and leaves one stigmatized demographic at the bottom of the social and legal totem pole”.<sup>362</sup> Therefore, various associations have nowadays committed themselves towards protecting the rights of unmarried women and offering legal support.<sup>363</sup> Furthermore, regarding the underage marriage permitted under article 20 of the Code<sup>364</sup>, the latter does not specify a threshold age below which special permission to marry before the legal age of eighteen may not be granted.<sup>365</sup> Moreover, the fact the polygamy is not completely abolished can also be regarded as an alarming fact which is not favourable towards women.<sup>366</sup>

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<sup>355</sup> Elliott, 2014, p.16.

<sup>356</sup> The Moroccan Family Code, 2005, p.5.

<sup>357</sup> UDHR, 2012, p.10.

<sup>358</sup> CEDAW, 2012, p.62.

<sup>359</sup> Sadiqi, 2010, p.5.

<sup>360</sup> Ibid.

<sup>361</sup> Bargach, 2005, p.246.

<sup>362</sup> Eisenberg, 2011, p.723.

<sup>363</sup> I visited several associations in Casablanca (INSAF, ASF...) who are committed to offering help and support to single mothers. I conducted an interview with the well-know president of ‘Solidarité Féminine’ Ms. Aïsha Ech-Channa, who has stressed the lack of support these women get under the new legislation.

<sup>364</sup> The Moroccan Family Code, 2005, p. 13.

<sup>365</sup> Hanafi, 2013, p.9.

<sup>366</sup> The Moroccan Family Code, 2005, p.17.

i) *The problematic high discretionary power given to judges*

As a result of the partly unclear and ambiguous wording of certain provisions of the Moudawana, judges are given an unacceptably high level of discretionary power or so-called discretion power.<sup>367</sup> In other words, they have a high margin of appreciation in applying certain articles, which in turn lead to problems of implementation of the law. It is therefore critical to examine how judges exercise this discretion.

Pursuant to article 400 of the reformed Code, judges are given the possibility to refer to the religious principles of the Islam when the law does not explicitly provide an answer:

*“For all issues not addressed by the text in the present Code, reference may be made to the Malikite School of Jurisprudence and to ijthad (juridical reasoning) which strive to fulfill and enhance Islamic values, notably justice, equality and amicable social relations”.*<sup>368</sup>

However, judges have often been criticized for not appropriately exercising this discretion in consistent terms with the law.<sup>369</sup> As a matter of fact, not all judges come from the same background and therefore hold different views on the status of women and religion within society.<sup>370</sup> This is clearly reflected in the outcomes of judge's decisions on ambiguous articles the Moudawana. For instance, progressive judges will try to opt for broader interpretations of the unclear articles which favour women's rights.<sup>371</sup> On the opposite, conservative judges will tend to base their decisions on stricter interpretations of women's rights, relying more on religion percepts rather than on the law.<sup>372</sup> In this regard, the strong role of the Islam cannot be overlooked and is reflected in the judge's decisions, as they tend to rely on religious sources of Islamic law. This exercise of discretion is highly problematic as “judges who oppose the law on

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<sup>367</sup> Hanafi, 2013, p.14.

<sup>368</sup> The Moroccan Family Code, 2005, p.62.

<sup>369</sup> Zogling, 2009, p.979.

<sup>370</sup> Ibid.

<sup>371</sup> Ibid.

<sup>372</sup> Ibid.

political or religious grounds are, therefore, able to undermine the Moudawana's objectives by applying their personal judgment and ignoring the intent behind the code".

<sup>373</sup> Here again, the effective implementation of the Code is hindered by the difficult balance between conservative interpretations and more progressive ones.

However, it must be noted that the interpretative power given to judges is also largely influenced by the legislator, namely the Minister of Justice.<sup>374</sup> In fact, as stated previously, a practical guide has been elaborated by the MOJ on how the judges should best apply the provisions.<sup>375</sup> To this end, the executive branch 'orientates' to some extent the judges' opinions.

To make it clear, Stephanie Willman Bordat, director of the NGO MRA, notes that judges are intertwined between three different imperatives: "the policy statements of the Ministry of Justice, the text of the new personal status code and the precedents of Maliki law".<sup>376</sup> This difficult 'balance' undermines the proper implementation of the Code.

*ii) Persistence of social practices as examples of the conservative mentality of the judges and ineffective implementation of the Code*

The high substantial level of discretion given to judges' gives them the possibility to carry on with old social practices.<sup>377</sup> In this regard, the persistence of marriage of minors is one of the most striking examples of the law's inefficacy and the judge's conservative interpretation. Pursuant to article 19 of the legislation, underage marriage is strictly forbidden.<sup>378</sup> However, exceptions are allowed under article 20 of the Moudawana:

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<sup>373</sup> Eisenberg, 2011, p.718.

<sup>374</sup> Benradi & et al, 2007, p.158.

<sup>375</sup> Ibid.

<sup>376</sup> Gomez-Rivas, 2008, p.2.

<sup>377</sup> Ibid.

<sup>378</sup> The Moroccan Family Code, 2005, p.13.

*“The Family Affairs Judge in charge of marriage may authorize the marriage of a girl or a boy below the legal age of marriage as stipulated in preceding article 19, in a well-substantiated decision explaining the interest and reasons justifying the marriage, after having heard the parents of the minor who has not yet reached the age of capacity or his/her legal tutor, with the assistance of medical expertise or having conducted a social enquiry”.*<sup>379</sup>

Official statistics of the *Ministry of Justice and Liberties* demonstrate that ten years after the enactment of the Code, marriage of minors still remains a flagrant reality which cannot be overlooked.<sup>380</sup> Although the percentage of minor marriages compared to the total of acts of marriage concluded has remained quite stable over the last ten years (between 8% and 11%), the number of under-age marriages has doubled between 2004 and 2014.<sup>381</sup> The numbers indicate that 18.341 cases of under-age marriage have been conducted in 2004 compared to 35.152 registered in 2014.<sup>382</sup> It should also be noted that girls tend to largely be subject to this phenomenon then boys. For instance, on the 43.508 demands of minor marriages in 2013, only 93 concerned boys.<sup>383</sup> The fact that the Code has not been able to limit this social practice ten years after its enactment is an issue of serious concern, which clearly questions the ‘proper’ application of article 20 of the Code. These numbers show that the majority of the judges still tend to base their judicial decisions on conservative interpretations of the law which are not favourable for women.

Another striking example of the weakness of the Code is seen through the evolution of divorce rates (based on irreconcilable differences) the past ten years. Pursuant to article

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<sup>379</sup> The Moroccan Family Code, 2005, p.13.

<sup>380</sup> Benezha, 2014, p.2.

<sup>381</sup> Le Matin, “Code de la famille: Le mariage des mineurs gagne du terrain”, 2014, available at [http://www.lematin.ma/journal/2014/code-de-la-famille\\_le-mariage-des-mineurs-gagne-du-terrain/205666.html](http://www.lematin.ma/journal/2014/code-de-la-famille_le-mariage-des-mineurs-gagne-du-terrain/205666.html) [consulted on 2 April 2015].

<sup>382</sup> Benezha, 2014, p.2.

<sup>383</sup> Le Matin, “Code de la famille: Le mariage des mineurs gagne du terrain”, 2014, available at [http://www.lematin.ma/journal/2014/code-de-la-famille\\_le-mariage-des-mineurs-gagne-du-terrain/205666.html](http://www.lematin.ma/journal/2014/code-de-la-famille_le-mariage-des-mineurs-gagne-du-terrain/205666.html) [consulted on 2 April 2015].

94 of the reformed Code, divorce based on irreconcilable differences can only be granted by the judge if certain pre-conditions are fulfilled:

*“If either or both spouses ask the court to settle a dispute that risks down to breakdown their marriage, the court must make all efforts to reconcile them according to the provisions of preceding article 82”.*<sup>384</sup>

Article 82 mentions that it is up to the Court to ensure that all measures are taken (appointment of arbitrators, family council) in order to reconcile the couple.<sup>385</sup> However, statistics reveal that this procedure of reconciliation is not often applied by judges, who rather end up granting divorce in most of the cases. In fact, the number of judgments concerning divorce based on irreconcilable differences account for 39.836 in 2013 compared to 4.865 in 2009.<sup>386</sup> Moreover, this type of divorce remains the most common type preferred by couples, as it represents 97% of the total divorce cases registered in 2013.<sup>387</sup>

What about the widely-spoken phenomenon of polygamy? As explained throughout chapter two, the new Code has limited polygamy by imposing a certain number of strict and drastic conditions, making it almost impossible to get the judges’ approval.<sup>388</sup> Nevertheless, it has not stopped judges from further authorizing these. In fact, between 2006 and 2013, there has been an increase of 25% of demands for polygamy having received the approval of the judges.<sup>389</sup> This clearly demonstrates that judges are still very ‘open’ towards having multiple wives. However, despite the increase in the number of favorable demands concerning polygamy, the latter only accounts for 0.26% of the total number of marriage acts concluded in 2013. It outlines to some extent the progress which has been made in applying the new provisions of the Code.

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<sup>384</sup> The Moroccan Family Code, 2005, p.29.

<sup>385</sup> The Moroccan Family Code, 2005, p. 26.

<sup>386</sup> Benezha, 2014, p.2.

<sup>387</sup> Le Matin, “Code de la famille: Le mariage des mineurs gagne du terrain”, 2014, available at [http://www.lematin.ma/journal/2014/code-de-la-famille\\_le-mariage-des-mineurs-gagne-du-terrain/205666.html](http://www.lematin.ma/journal/2014/code-de-la-famille_le-mariage-des-mineurs-gagne-du-terrain/205666.html) [consulted on 2 April 2015].

<sup>388</sup> The Moroccan Family Code, 2005, pp.17-18. (articles 40-46).

<sup>389</sup> Benezha, 2014, p.2.

In a nutshell, it is important to mention that the on-going increase of child marriages and number of divorces based on irreconcilable differences as well as a persisting trend of polygamy, are significant factors - profoundly touching women and young girls- that emphasize judge's conservative mentality in applying certain provisions of the Code. Moreover, the statistical trends previously mentioned empathize how difficult it is to eradicate these deeply rooted social practices as well as the patriarchal values enshrined in Moroccan culture. This undoubtedly has negative effects on the effective implementation of the legislation and hinders women's full enjoyment of their rights under the Code.

*iii) The lack of judge's harmonization with current evolutions*

As elaborated above, the broad interpretation power given to judges and the lack of oversight on their decisions result in different interpretations of the law, even on similar cases.<sup>390</sup> Various authors stress that judges are resistant to change and refuse to follow the progressive content of the Code nor the current evolutions towards modernity; which in turn lead to an unequal application of the law.<sup>391</sup> In fact, they are still hindered by the heavy set of patriarchal and conservative values anchored in the profession of law.<sup>392</sup> Consequently, judges tend to "adhere to the traditional divisions between the male-dominated public space and the private space assigned to females".<sup>393</sup> In sum, judges are at the crossroads between the strong remaining conservative mentalities and the more progressive values enshrined in the Code.

The lack of homogeneity among judges as well as the inappropriate training are factors among others which partly explain the weakness and non 'objectiveness' of judges' actions.<sup>394</sup> Concerning the lack of homogeneity, there is a strong amalgam of progressive and conservative judges – particularly since the enactment of the new Code

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<sup>390</sup> USAID, 2010, p.17.

<sup>391</sup> Lahsika, 2008, p.3.

<sup>392</sup> Hanafi, 2013, p.14.

<sup>393</sup> Ibid.

<sup>394</sup> Sekher, 2013.



- within the corps of judges which negatively impact the effective implementation of the Code.<sup>395</sup> As for the training, judges only receive a formation based on private and public law without any possibility of openness towards for instance philosophy, sociology, human rights of other disciplines within the field of social sciences.<sup>396</sup> As already said, this leads judges to adopt a conservative mindset when interpreting articles. Adequate training of judges is clearly lacking and a lot needs to be done in this area.<sup>397</sup> In fact, in order to ‘live up’ to the progressive provisions of the legislation, training methodologies and curricula at the Magistrates School need to be updated and further expanded.<sup>398</sup> As a result, there is a significant lack of competent experts in the field of family law. This has been emphasized by a 2003 report of the CEDAW Committee which stated that despite the progress the Moudawana has made “a number of constraints and difficulties have emerged, including in particular difficulties attributable [...] to a lack of awareness and training among officials responsible for enforcing the Code and the persons in charge of publicizing it and propagating and understanding of it throughout Morocco’s social fabric”.<sup>399</sup>

The significant lack of specialization and adequate training of judges create issues with the protection of the rights of the citizens and the implementation of the law. As a matter of fact, since judges are lacking of training on specific issues related to family law, they are not able to adequately fulfill and serve the needs of women in particular.

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To conclude the second section, it should be noted that alongside the under-implementation of the law resulting from the deficiencies of the Moroccan justice system (discussed in the first section), there are still some flagrant shortcomings in the wording of the legislation itself. As discussed, women and young girls tend to be the main victims of it. The persistence of social practices ten years after the implementation

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<sup>395</sup> Rhissassi & Berjaoui, 2010, p.68.

<sup>396</sup> Sekher, 2013.

<sup>397</sup> Rhissassi & Berjaoui, 2010, p.68.

<sup>398</sup> USAID, 2010, p.ii.

<sup>399</sup> Hanafi, 2013, p.10.

<sup>400</sup> USAID, 2010, p.21.

of the Code indicate that the justice system is failing to adequately improve the legal status of women under the Moudawana and “consider women as autonomous and individual human being with intrinsic rights”.<sup>401</sup> In this regard, the way how the law and the justice system conceptualize Moroccan women, goes against the principle of individuality enshrined in the UDHR and the CEDAW, to which Morocco is a party.<sup>402</sup> If one wants to effectively tackle the issue in question and improve women’s access to justice under the Code, there is a need to change the conservative mindset of the judicial personnel, which can namely be improved through a more adequate and specialized training.

### ***3.3 The lack of public knowledge and understanding of the Moudawana resulting in women’s unequal access to justice***

#### ***i) Poverty and Illiteracy***

Illiteracy can be seen today as one of the major obstacles hindering women’s access to justice under the Moudawana. It finds its source in the non-schooling or poor schooling of children, which is a major consequence of poverty.<sup>403</sup> According to the *Rural Poverty Portal*, around four million of the Moroccan population –approximately 14%-lives below the national poverty line and 75% of this group live in rural areas.<sup>404</sup> This gap between rural and urban areas is alarming. As a result of poverty “nearly each element of the law is less likely to appeal or to be realistically available to someone constrained by poverty”.<sup>405</sup> Just to take an example, poorer families tend to press girls to marry as soon as possible, as it reduces their number of dependents and are financially supported once they step into a marriage contract.<sup>406</sup> In this regard, Newcob

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<sup>401</sup> Elliott, 2014, p.1.

<sup>402</sup> Ibid.

<sup>403</sup> Agence Nationale de Lutte Contre l’Analphabétisme, 2014, p.12.

<sup>404</sup> Rural Poverty Portal, “Rural Poverty in the Kingdom of Morocco”, available at <http://www.ruralpovertyportal.org/country/home/tags/morocco> [consulted on 27 May 2015].

<sup>405</sup> Eisenberg, 2011, p.719.

<sup>406</sup> Ibid.

argues that “poverty, faced by globalization, structural adjustment programs, and uneven modernization, is the root cause of female oppression in Islamic States”.<sup>407</sup>

MRA reports the alarming gap of illiteracy between rural and urban areas, affecting 42% of women in urban areas and a significant number of 82% of rural women.<sup>408</sup> These statistics clearly indicate that a large portion of Moroccan women face a high risk of exclusion of discourses concerning the Code, particularly pertaining to the right to access justice.

Despite the education and literacy programmes devoted to women in particular, one can say that Moroccan women are twice as vulnerable to illiteracy than their male compatriots.<sup>409</sup> The Moroccan school remains in a large context, a space for social inequalities. As a result of the high persisting illiteracy rates, the Family Code is not universally being enforced, only affecting a certain proportion of women in urban areas. Therefore, poverty and illiteracy, in rural areas in particular, are perhaps two of the largest issues obstructing women’s access to justice under the new legislation.

*ii) Popular discourse: a broad ignorance of the existence of the Code*

A major challenge women face in using their rights- namely as a result of the high illiteracy rates particularly in rural communities- is their broad ignorance of the existence of the Code and the rights they are entitled to.<sup>410</sup> In fact, most of the rural women are not aware that such a Code has been implemented or have a very low knowledge and understanding of their rights.<sup>411</sup> According to the State’s High Planning Commission released in 2007, only 65% of families were aware of the existence of the new Code 3 years after its enforcement.<sup>412</sup> Consequently, women tend to be vulnerable to misinformation. Stephanie Willman Bordat’s paper on *Legal Empowerment of Unwed Mothers*, concludes that “widespread misconceptions and claims that do not

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<sup>407</sup> Hursh, 2012, p.278.

<sup>408</sup> Eisenberg, 2011, p.721.

<sup>409</sup> Hursh, 2012, p.280.

<sup>410</sup> Bordat & Kouzzi, 2009, p.i.

<sup>411</sup> Deiana, 2009, p.74.

<sup>412</sup> Gomez-Rivas, 2008, p.5.

reflect the actual language of the laws camouflage reality, encourage inaccurate conclusions and mislead legal development efforts”.<sup>413</sup> It should be noted that there is a positive link between the level of education of women and their awareness of the Family Code. As stipulated in Leila Hanafi’s 2012 report, “as education levels increase for women, the percentage of those saying they have heard about the Moudawana increases as well”.<sup>414</sup> Yet, the Moudawana is still very poorly understood by rural women, which obstructs their access to justice. Summarized, only those who are aware of the existence of the Code can benefit from it.<sup>415</sup>

*iii) The complex legal language of the Code as a major factor obstructing women’s access to justice*

Another related problem that explains the limited success of the Code is its complex legal language.<sup>416</sup> Taking into account that a large number of Moroccan women are not educated or poorly educated, the precise content of the Code is very legal and hard to understand.<sup>417</sup> The complex and sometimes obscure legal language of the Code obstructs women’s access to justice, as they do not know which rights they are entitled to and how to seek justice when needed. Additionally, the language diversity throughout the country can be seen as a real challenge taking into account that besides Arabic and French, over 50% of the population in particular rural women speaks Berber (Tamazight).<sup>418</sup> Morocco is still a society that values the oral language.<sup>419</sup> The issue is that until now, the Family Code has not been available in Tamazight language, a Berber dialect in which a large portion of rural Moroccan women communicates in. Rural women are denied the possibility to testify in their own language in front of a judge. In this regard, Morocco is in clear violation of article 14.3 (a) of the ICCPR, to which Morocco has adhered. It more precisely establishes the “right to be informed promptly

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<sup>413</sup> Bordat & Kouzzi, p.2.

<sup>414</sup> Hanafi, 2013, p.17.

<sup>415</sup> Gomez-Rivas, 2008, p.4.

<sup>416</sup> Elliott, 2009, p.221.

<sup>417</sup> Ibid.

<sup>418</sup> Edwards, 2010, p.14.

<sup>419</sup> Elliott 2009, p.221.

and in detail in a language which he understands”.<sup>420</sup> However, in November 2014, it has been stated that Moroccan Courts will soon adopt the Tamazight language enabling Moroccans to litigate in this Berber language.<sup>421</sup> Yet, this still needs to be implemented into practice.

*iv) The lack of adequate legal services to meet women’s demands*

It seems important to stress the lack of adequate legal services, particularly for vulnerable groups including women, which hinder women’s access to justice.<sup>422</sup> In fact, as noted in *Morocco’s Rule of Law Assessment*, there are not enough legal services (including free ones) to meet the growing demand, making access to justice highly problematic.<sup>423</sup> In this regard, poverty is seen as a major factor hindering women’s access to courts since few free legal services are available for those who cannot afford a private lawyer.<sup>424</sup> In fact, the quality of available legal aid services needs to be put into question, as there is a lack of judicial personnel who are often constrained by time and financial reasons. Regarding the workings of the family tribunals, lawyers are made available to support the litigants without proper resources.<sup>425</sup> Yet, given the low salaries lawyers get, legal assistance is generally very poor.<sup>426</sup> As a result, lawyers do not provide the needed efforts to properly defend their litigants. Moreover, the state does not provide any funding for indigent counsel.<sup>427</sup> The fundamental right of choosing legal assistance when accessing the justice system is provided in article 14 (d) of the ICCPR, to which Morocco is a party:

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<sup>420</sup> ICCPR, 2012, pp.36-37.

<sup>421</sup> Morocco World News, “Moroccan Courts to Adopt Tamazight language”, 2014, available at <http://www.moroccoworldnews.com/2014/11/143835/moroccan-courts-to-adopt-tamazight-language/> [consulted on 27 November 2014].

<sup>422</sup> USAID, 2010, p.ii.

<sup>423</sup> Ibid, p.23.

<sup>424</sup> Eisenberg, 2011, p.720.

<sup>425</sup> Sekher, 2014.

<sup>426</sup> Ibid.

<sup>427</sup> USAID, 2010, p.23.

*“To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”.*<sup>428</sup>

Since Morocco is a party to this international human rights convention, it should abide by its principles. Yet, this is not the case.

As a result of the inadequate and lack of legal services provided by the justice sector, women tend to have restricted access to information regarding the accessibility of their rights and the specific proceedings on filing a case in front of a court. As mentioned by an article entitled *Under-Enforcement of Morocco’s 2004 Family Law, the Moudawana*, the lack of legal education and services pose “ a significant barrier for individuals to access information regarding their rights, and, in turn, limits the accessibility of those rights, such as those provided by the Moudawana”.<sup>429</sup> Thus, one can say that women are trapped in this vicious circle.

Despite the growing legal rights education initiatives and legal empowerment programmes particularly devoted to women, these remain insufficient to tackle the issue at stake.<sup>430</sup> The majority of women (especially rural women) have too little knowledge about the reformed Code and are thus unable to defend and claim their legal rights. This inevitably leads to the under-enforcement of the Code, making it not universally accessible for all women.

To conclude, one can say that the Code is absent for the ones who most need it, namely vulnerable women. The deficiencies of the judicial system obstruct women’s access to justice, making the effective implementation of the law an issue of grave concern.

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<sup>428</sup> ICCPR, 2012, pp.36-37.

<sup>429</sup> Eisenberg, 2011, p.721.

<sup>430</sup> Bordat & Davis & Kouzzi, 2011, p.93.

The overall challenge in this context is “to ensure that all 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”.<sup>431</sup> Similarly, ratifying fundamental international human rights instruments such as the CEDAW, ICCPR and UDHR does not have a concrete impact on women’s rights if Morocco does not harmonize its national legislation in line with these conventions.<sup>432</sup>

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<sup>431</sup> Hanafi, 2013, p.15.

<sup>432</sup> Ibid, p.16.

## **CHAPTER 4: OVERVIEW OF THE QUALITATIVE FINDINGS: PERCEPTIONS AND VIEWS FROM THE ‘FIELD’**

This chapter primarily draws upon the qualitative data and field research collected throughout the interview investigation process. A sample of interviews was carried out in cities across Morocco to fulfill the different aims of the thesis and more particularly bring elements of response to the proposed research question. An overview of the different interviews and related organisations and positions is given in the introduction of the thesis.<sup>433</sup> As a reminder, the main research question is as follows:

*To what extent are the deficiencies of the Moroccan judicial system still hampering women's access to justice under the Family Code?*

It should be noted that an analytical research based on a sample of 17 interviews cannot be taken as a representative sample of the Moroccan population. Nevertheless, it can be regarded as a good basis for a further detailed investigation in the studied area. In order to develop a public perception analysis, interviews were conducted with a diverse sample of Moroccan actors, ranging from students, women activists, locals, to legal representative of women's associations and lawyers. Because of the sensitiveness of the topic, the majority of the participants preferred to remain anonymous and not have their name cited in the present thesis. Furthermore, it is important to stress that the opinions of the participants are subjectively constructed. In fact, the given testimonies are biased as they remain conditioned by the participants' own personal, cultural and ideological representations.

The main purpose of these interviews is not to test the knowledge of the participants on the Moudawana and the justice sector but rather to understand the different perceptions and conceptions certain fragments of the Moroccan population have with regard to the given topic. One will try to give a snapshot of the different perceptions and attitudes

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<sup>433</sup> cf. table in Introduction p.10.



generated by the Moudawana and the justice system among a restricted and diverse sample of the Moroccan population.

Two different dimensions have been investigated in more detail on the basis of the data acquired throughout the interviews.

The first dimension involves analyzing the level of social acceptance of the Moudawana:

- How does the Moroccan population perceive the Moudawana?
- Are attitudes towards the new reforms rather positive or negative?
- To what extent does the law really enhance women's rights?

The second dimension includes further investigating into the Moroccan justice system:

- Are participants aware of the extent to which the shortcomings of the judicial system are hampering women's access to justice under the Code?
- How do women experience the process of going to court?
- What needs to be done to better secure this fundamental right?

These two distinct levels serve as a lens through which it is possible to get a better overview of the participant's understandings and perceptions on the issue in question.

#### ***4.1 Analysing the level of social acceptance of the law***

Reactions regarding the new law and its impact on women's rights are mixed. From the interviews carried out with local people (namely two women and three men encountered in the streets of Rabat), general tendencies can be noted. To the question of whether they think the Code has enhanced gender equality, both women, coming from relatively wealthy families, see the new Code in general as a positive evolution in terms of closing the gender gaps. However, one of them, aged 48 and divorced with two sons, mentioned: *"the new legislation has lead to increased widespread debates and various*

*tensions among conservatives who are against such reforms and the more liberal groups supporting the new legislation*".<sup>434</sup> The other female and single mother, views the Family Code as a positive evolution for women's rights when looking back to the previous one but stills feels pressured by the heavy patriarchal values enshrined in the legislation.<sup>435</sup> Similarly, a Moroccan lawyer, aged 56, insisted on the strong persisting role of the Islam and deeply patriarchal lean which according to him can be seen as major obstacles hindering women's full access to their rights under the Moudawana.<sup>436</sup> It is important to mention that the interviewed women in Rabat are relatively well educated and employed which allows them to have acquired a minimum knowledge of the law. Reactions would likely have been different if one would have interviewed women in rural areas for instance. This is emphasized by 2006 national statistics, which outline that "68% of men and 62% of women reported knowledge of the law, with awareness higher in urban areas (72%) versus rural (55%) areas".<sup>437</sup>

It seemed not only crucial to interrogate women but also to have men's opinion on the given subject. In this regard, reactions of the men were diverging. From the comments of two men encountered in the streets of the capital city, it can be inferred that they see the law as one of the major achievements of modern Morocco, giving the female population the rights they have long strived for.<sup>438</sup> By contrast, a young single man - aged 35 and recently divorced - opined the following: *"I think the law went too far and gave women too many rights, diminishing the role of men within the family sphere"*.<sup>439</sup> He did not accept the fact that women were given more rights as it clearly undermines men's authority.

The interviewed Moroccan lawyer had a similar reaction. He is very sceptical about the new law stating: *"the law has caused some deep fractures within Moroccan society. It has come too early, the Moroccan society was not ready yet to accept such far reaching*

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<sup>434</sup> Anonymous interview (in French), Rabat, November 2014.

<sup>435</sup> Ibid.

<sup>436</sup> Anonymous interview (in French), Rabat, June 2015.

<sup>437</sup> Prettitore, 2014, p.1.

<sup>438</sup> Anonymous interviews (in French), Rabat, November 2014.

<sup>439</sup> Ibid.

*progressive reforms*".<sup>440</sup> However, when asked about the general impact of the Code on women's access to justice, he recognized: *"From my own experiences and daily confrontations in the court rooms, I do have to say that, ever since the implementation of the new legislation, more and more women tend to show up in Court to claim their respective rights"*.<sup>441</sup> In this regard, the Code cannot be seen as totally ineffective.

Hajar Sekher, a young Moroccan women activist and current university professor at the Mohammed V University in Rabat stressed the following: *"the law would can be seen as a real revolution in terms of gender equality. It is mainly thanks to the ongoing pressure of women's organisations and civil society actors, that this modern law has been conceptualized"*.<sup>442</sup> Nevertheless, she acknowledged the fact that the law still poses a great number of shortcomings, making the law not as favourable to women as it seems on paper.

Similarly, the former chief deputy of the Cooperation Development Department at the Belgian Embassy -specialized on the question of women's rights- explained that despite the overall progress the Code has brought to women's rights, there is a flagrant gap between the legislation as written on paper and the law as it should be implemented in practice.<sup>443</sup> It is important to note that this so-called gap between theory and practice has been emphasized by the majority of the participants.

Furthermore, the conducted interviews with a sample of four Moroccan master students of the University of Rabat (two female and two male) brought about some interesting findings. To the question of what they think about the reforms, answers were divided among female and male students. While all the students know about the existence of the Code, their knowledge of the exact content remains superficial. In fact, none of the students has read the Code and no specific lectures at the university are given on this subject. Additionally, when asked whether the new Code respects Islamic traditions,

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<sup>440</sup> Anonymous interview (in French), Rabat, June 2015.

<sup>441</sup> Ibid.

<sup>442</sup> Interview (in French), Sekher, Rabat, March 2015.

<sup>443</sup> Interview (in French), Chief Deputy of the Cooperation Development Department, Belgian Embassy, Rabat, November 2014.

answers were also divided among all students. A 24-year-old female master student noted the following: *“I think that despite the main innovations the new Code has brought for women, these are problematic as they mainly contradict with Islamic principles. The content of the Code is too progressive in accordance to the traditional Moroccan society”*.<sup>444</sup> In contrast, another female master student mentioned: *“I don’t see the Code as contradicting our religion since the method of ijtiḥad was used to adapt it to the current period”*.<sup>445</sup> Both male students shared similar sayings admitting that the Code has elevated women’s overall status within the family sphere but is not 100% in line with the Islamic principles and values.<sup>446</sup> One of them mentioned: *“I consider the Code as an amalgam between conservatism and modernism”*.<sup>447</sup>

These opinions illustrate the complexity of the issue of stake, as the Code seems to be hindered by the difficult balance between the safety of conservative and traditional values on the one hand and trends towards modernity on the other hand.

From the conducted interviews, one can mention that women are generally more likely than men to view the reforms of the Moudawana in a positive way. This is clearly reflected in official statistics carried out by the GoM in a 2006 survey which confirms that “ 62% of women view the reforms positively in contrast to 36% of men”.<sup>448</sup>

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<sup>444</sup> Anonymous interview (in French), Rabat, November 2014.

<sup>445</sup> Ibid.

<sup>446</sup> Anonymous interview (in French), Rabat, November 2014.

<sup>447</sup> Ibid.

<sup>448</sup> Prettitore, 2014, p.1.

#### ***4.2 The judicial system under the lens: perceptions from the public***

*“Women cannot be turned away from public institutions, women cannot give up seeking State assistance out of frustration. I hope that one day, Moroccan women will no longer contemplate suicide as an option to end their suffering”*<sup>449</sup> - Statement by Stephanie Willman Bordat, Director of the Rabat-based NGO MRA.

In order to have a clearer understanding of the population's views on the enforcement of the law by the judicial system, lawyers seem in this regard the most adequate persons to interview. In fact, both of the interviewed lawyers - the Moroccan lawyer and the American lawyer, Stephanie Willman Bordat - are unanimous in considering that the law has led to a radical change in the judicial environment in charge for family-related cases as well as in the nature of the conflicts and relations between men and women. In fact, the Moroccan judge stipulates the following: *“The Code has led to serious fractures within the Moroccan family. One only needs to look at the high rate of divorces since the enactment of the Code to understand this”*.<sup>450</sup>

Similarly, American lawyer Stephanie Willman Bordat, is daily confronted to the difficult realities women face when accessing courts. In this regard, the NGO MRA more specifically works with numerous women's rights organisations and activists to promote women's full enjoyment of their rights. To be more precise, the interviewee develops legal aid programmes and promotes legal rights education not only to increase women's knowledge about their legal rights but also to develop their ability to defend and claim the rights they are entitled to.<sup>451</sup> She stated the following: *“The situation within family courts is alarming. Women are hindered by major obstacles such as the*

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<sup>449</sup> Gender Across Borders, “Conquering Culture and creating change: A grassroots level view from Morocco”, 2011, available at <http://www.genderacrossborders.com/2011/10/27/conquering-culture-and-creating-change-a-grassroots-level-view-from-morocco/> [consulted on 28 May 2015].

<sup>450</sup> Anonymous interview (in French), Rabat, June 2015.

<sup>451</sup> MRA, available at <http://www.mrawomen.ma> [consulted on 23 April 2015].

*under resourced tribunals, social pressures and stereotypes and a lack of legal services. These clearly result in women's unequal access to justice".* <sup>452</sup>

When analysing people's views on the functioning of the judicial system, it seems also important to elucidate and get a deeper insight into the realities and practical issues of the actual process a woman faces when bringing a case to court. In this regard, a worthwhile testimony comes from a woman interviewed in the streets of Rabat who recently had to experience the whole process of going to a family tribunal, as she filed for a divorce from her husband. From what came out of her testimony is that the entire process is far from being positive but rather frustrating and dissatisfying. In fact, she mentioned the following: *"Approximately three years ago I decided to file a divorce. Thus, I had to get approval from the judges in order to get this divorce. Going through this whole legal process was stressful, chaotic and very intimidating. I barely received any help or information on the proceedings needed to file a divorce. And once I was in the court room, I felt intimidated by the judge, he lacked respect and gave me very little time to speak."* <sup>453</sup> When asked whether it is easier or not to access justice as a woman under the reformed Code she replied explicitly: *"To be honest, even though we have been granted this legal right to access courts, my experience has proved the contrary. I felt that my right was violated in various ways".* <sup>454</sup>

One of the most noteworthy and interesting interviews was conducted with the president and founder of the Association *Solidarité Feminine* (ASF) in Casablanca, Aïcha Ech-Channa. In 1985, she founded this association for which she has been working the past 35 years. She is a well-known woman activist who has been fighting daily to help single mothers and provide them with the needed services such as legal assistance, literacy classes and counselling to further ensure their livelihoods. In 2009 and at the age of 68, she received the prestigious Opus Prize, a prize which is annually given to recognize certain people for their entrepreneurial spirit and faith to combat seemingly intractable

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<sup>452</sup> Interview (in English), Bordat, Rabat, September 2014.

<sup>453</sup> Anonymous interview (in French), Rabat, November 2014.

<sup>454</sup> Anonymous interview (in French), Rabat, November 2014.

global issues like poverty, illiteracy, hunger and injustice.<sup>455</sup> Through her work, she has demonstrated that ‘change is possible. To the question of why she has founded an association specifically dedicated to single mothers, she explained the following: *“Unmarried women with children in particular remain one of the most stigmatized and vulnerable segments of the Moroccan population. Since the new Family Code does not take into account the rights of these women, they are excluded from discourses of the law. For the past 35 years, I have daily been confronted to the difficult realities and problems these women face”*.<sup>456</sup> She further continued by explaining a case a couple of years back which more precisely gave her the incentive to build up this association and take action: *“I had just come out of maternity leave, and this single young mother was breastfeeding her baby in the room next to mine. Then, a social worker came with some paperwork, which she had to sign, and took away the baby with force to place it in an orphanage. From that moment onwards, I felt pain and anger and told myself this needed to stop”*.<sup>457</sup>

In May 2014, Aïcha Ech-Channa published a book containing real testimonies of women, with the aim of denouncing the alarming situation they are facing.<sup>458</sup> One of the concluding and inspiring statements she made regarding her recently published book is: *“To act, now and forever, is not enough: one has to talk, one has to write, one has to be listened to, one has to be read, but this as well will not be sufficient. This first book is a first act of many more to come”*.<sup>459</sup> Moreover, she is also seen as an adequate person to give an objective perception of the evolution since the enactment of the first Code. She recognized that: *“We have a lot of success stories, but a lot stills to be done to support the rights of these marginalized women in Morocco”*.<sup>460</sup>

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<sup>455</sup> OPUS PRIZE, “Overview of the Prize”, available at <http://www.opusprize.org/about/overview.cfm> [consulted on 2 June 2015].

<sup>456</sup> Interview (in French), Ech-Channa, Casablanca, June 2015.

<sup>457</sup> Ibid.

<sup>458</sup> see book: *Miseria: Témoignages*, Aïcha Ech-Channa, 2014.

<sup>459</sup> Interview (in French), Ech-Channa, Casablanca, June 2015.

<sup>460</sup> Ibid.

In this same regard, my fieldtrip to the *National Institution for Solidarity for Women in fear* (INSAF) based in Casablanca was also inspiring<sup>461</sup> Similarly to ASF, INSAF also focuses on giving the needed skills and knowledge to reintegrate unmarried women with their children into society. In fact, as mentioned by the vice-president: *“Our main vision is to contribute to a society that guarantees to each woman and child the respect of their most fundamental rights in a suitable and responsible environment”*.<sup>462</sup> Upon arrival at the association, a group of single women were given legal advice and information regarding the different rights they are entitled to under the Family Code. As said by the vice-president: *“Most of the beneficiaries we work with largely lack of confidence because they have very little to no knowledge of the different rights they have and do not know how to claim them when needed”*.<sup>463</sup> Giving legal assistance to help them navigate the complex and sometimes intimidating judicial system, is one of the main objectives of this organisation.

An important statement, illustrating the complexity of the judicial system in securing the provisions of the Code and the resulted significant hurdles women face when accessing justice, comes from the Moroccan lawyer: *“Women’s rights are far from being secured: one of the major obstacles is the weight of traditions and norms which are extremely difficult to eradicate. Concerning access to justice, there are large discrepancies between rural and urban areas. The situation of women back in the 60s and 70s was better then today. I knew my mother as walking around the street with a skirt and no headscarf! Nowadays, you only see Moroccan women completely dressed from head to toe and headscarf, there are only some rare exceptions. The Islam remains a strong factor which hinders the advancement of women’s rights in the country”*.<sup>464</sup>

Concerning women’s access to justice under the Code, the majority of the interviews carried out with the representatives of women’s associations (CNDH, AFDM, INSAF, ASF) highlight similar findings. In fact, while most of them acknowledge the

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<sup>461</sup> Interview (in French), vice-president of INSAF, Casablanca, December 2014.

<sup>462</sup> Ibid.

<sup>463</sup> Ibid.

<sup>464</sup> Anonymous interview (in French), Rabat, June 2015.



advancements the Code has brought in securing women's access to justice, they portray an overall pessimistic perception of the working of the justice system. As explained by the president of AFDM: *"In my opinion, women's access to justice under the actual Code can only be better secured if the Moroccan society, namely the judges, change their conservative mentality and mind-sets"*.<sup>465</sup> Moreover, a local staff working at the division of women's rights at the CNDH mentioned: *"I am very concerned by the fact that women still cannot fully access their fundamental rights under the present Code even ten years after its implementation. It seems to me that the Moroccan society as a whole is threatened by anything that carries the label of modernity. It will still take time to change the conservative mentality of the people"*.<sup>466</sup>

Summarizing the most important findings of the diverse sample of interviewed people, one can say that there is a general pessimistic and distrustful reaction regarding the impact of the newly created Code on women's rights. In fact, it appears that the public expresses a feeling of ambivalence towards the judicial system as a whole. As the interviewee's opinions illustrate, the lack of confidence in the legal system -namely due its shortcomings- significantly hinders women's access to justice under the Code, therefore undermining its effective implementation. In short, the public's perceptions and views highlight the complexity of the analysed issue. As such, the succeeding and concluding chapter of the present research will attempt to formulate possible strategies and recommendations aimed at improving women's access to justice.

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<sup>465</sup> Interview (in French) with president of AFDM, Rabat, December 2015.

<sup>466</sup> Anonymous interview (in French), CNDH, Rabat, September 2014.

## **CHAPTER 5: VITAL ACTIONS AND MEASURES TO IMPROVE WOMEN'S ACCESS TO JUSTICE UNDER THE MOUDAWANA – *OPPORTUNITIES FOR CHANGE: WHICH WAYS FORWARD?***

In light of what has been investigated throughout the preceding chapters, it should be stressed that the 2004 reforms of the Family Code are far from being flawless. The complexity of the interrelated factors hindering the proper enforcement of the law by the justice system indicates the necessity to establish multi-faceted strategies to tackle the issue at stake. Moreover, since the Code has already marked its 10<sup>th</sup> anniversary of existence and is still suffering from various shortcomings, there is a need to seek for solutions, which go to the root of the conflict. The chapter at hand attempts to formulate diverse strategies and recommendations aiming at improving women's access to justice under the given Code. To do so, reports of international organizations and NGOs, relevant secondary literature, case studies from other countries, as well as the interview's testimonies, will serve as a basis for this chapter. In order to effectively tackle the core of the problem, various dimensions need to be thoroughly investigated. Potential solutions for the problem at hand are as follows:

### ***5.1 Remove the remaining discriminatory aspects of the law itself***

Due attention needs to be given to the legislative aspect of the Code itself. As a result of the high illiteracy rate among Moroccan women in particular, there is a need to simplify the legal language of the text to make it more universally accessible. From a legislative standpoint, the remaining discriminatory aspects in the law itself should be removed, as they set different standards for women and men concerning various issues within the family sphere. As follows, are a number of actions which should be taken:

- Revise the Code to ensure that single women are given the same rights as married women.
- Limit formulations, especially within the preamble, which outline men's authority.

- Further restrict the conditions under which polygamy is still made possible.
- Eliminate the specific clause giving judges the possibility to accept under-age marriages.
- Limit the high discretionary power given to judges with respect to several articles in the Code such as the right of children and divorced women, polygamy, management of assets during marriage and divorce based on irreconcilable differences.<sup>467</sup>

## ***5.2 Introduce adequate legal services***

Another highly recommended measure which should be taken to ensure that women can fully enjoy their respective rights and to better guaranty the implementation of the Code includes introducing more adequate legal services. To this end, priority needs to be given to the ones that most need it, particularly vulnerable women in rural areas of Morocco. As the latter do not have the sufficient financial means, the state should provide sufficient and good quality free legal services to support them in every way possible. For instance, drawing upon a specific case study in Sierra Leone, legal paralegals were one of the diverse successful methods used to improve access justice for women.<sup>468</sup> As such, the Moroccan government should invest in more paralegals, as they are seen as very helpful for women who need legal assistance.<sup>469</sup> Similarly, legal aid clinics, as recommended by Leila Hanafi, seem to be the most suitable and effective entity in terms of providing legal information about the Code and giving the needed support to the most marginalized populations.<sup>470</sup>

Furthermore, a special focus should be given to women's legal empowerment not only to "increase women's knowledge of their legal rights under the Moroccan and international human rights laws, but also to develop their individual and collective

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<sup>467</sup> ADFM, 2007, p.10.

<sup>468</sup> Eisenberg, 2011, p.725.

<sup>469</sup> Hanafi, 2013, p.20.

<sup>470</sup> Ibid, p.19.

capacities for critical analysis, to defend their rights, and to mobilize for change”.<sup>471</sup> As such, *Global Rights*, an international human rights capacity building NGO, can be regarded as the perfect example in terms of promoting human rights and legal education among the most vulnerable women in Morocco. Similar initiatives and grassroots-level programmes with women need to be established across the country to further promote and enhance women’s access to justice under the Moudawana.

### ***5.3 Initiate sensitization campaigns and promote the culture of equality***

Drawing upon the main testimonies from the ‘field’, women are largely hindered by the conservative mind-sets of both judges and society as a whole.<sup>472</sup> In this regard, the government should initiate sensitization campaigns oriented towards judges and lawyers in particular, with the aim of sensitizing them to fair justice practices and to the progressive values enshrined in the Code. Not only judges should benefit from these campaigns, but also the Moroccan population as a whole.

### ***5.4 Ensure adequate training for judges and judicial staff***

Since the law’s enforcement largely depends on the legitimacy of the justice system,<sup>473</sup> it seems crucial to ensure that judges in particular are adequately trained and have the sufficient knowledge to effectively implement the provisions. As clearly mentioned by USAID’s *Rule of Law Assessment in Morocco*, the curriculums and training programmes dedicated to judges and lawyers should be updated and further expanded to reflect the provisions of the new Code and meet the current trends towards modernity. In this regard, it is important that the curriculum provides a multidisciplinary approach. In other words, it should not only be based on law but also include training on themes such as human rights, gender and corruption.<sup>474</sup>

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<sup>471</sup> Bordat & Davis & Kouzzi, 2011, p.101.

<sup>472</sup> interviews

<sup>473</sup> Hanafi, 2013, p.13.

<sup>474</sup> USAID, 2010, p.iv.

Furthermore, in-depth training should be given to judges in specific areas of family law with the aim of having competent experts in every field of the family law (for instance in divorce, marriage, inheritance and child custody). This would contribute to better judicial outcomes and the gradual elimination of social practices. In fact, one of the overarching aims behind this training is to progressively alter judge's conservative attitudes and stereotypical images they have on women's role and status within the family.

While the focus should primarily be put on the quality of the education given, the Moroccan government should also consider reallocating its budget to increase the number of judicial staff and family courts within the country. A higher number of judges and more adequate infrastructure within family tribunals would increase the judge's productivity and working conditions in general, therefore strengthening women's rights under the Code.

### *5.5 Simplify the judicial proceedings*

As explained throughout the research and further illustrated throughout the conducted interviews in the field, women find it very difficult and intimidating to navigate the justice system. To this end, the judicial processes of accessing the family tribunals should be simplified and made less technical, making them more accessible for women. The difficult procedures should be cut down in all family-related matters. Moreover, while alternative methods of dispute resolutions such as mediation in family courts have already been initialized, these need to be further promulgated throughout the country.

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As a result of the difficult procedures in accessing the court, women tend to feel disempowered and frustrated. This worrying trend should be remedied by the dissemination of accurate and accessible information regarding the Code. In fact,

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<sup>475</sup> Hanafi, 2013, p.19.

awareness raising of the Code should be an integral part of effectively combatting the lack of justice. As elucidated by various authors, more information needs to be disseminated on the different provisions of the Family Code and on how it actually works in practice.<sup>476</sup>

### ***5.6 Enhance the independence of the judiciary***

In order to tackle the various shortcomings and deficiencies family tribunals suffer from, there is a need to firstly enhance the independence of the judiciary, notably through the implementation of several measures:

- Reduce the excessive power of the MOJ for the selection, recruitment and nominating of judges by the establishment of independent committees.<sup>477</sup>
- Ensure that judges and prosecutors are independent and impartial in their decisions.
- Ensure that the CSM is not influenced by the executive branch and “adopts clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them, in line with international standards”.<sup>478</sup>
- Continue prioritizing the reform of justice, under the principle of separation of powers.<sup>479</sup>

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<sup>476</sup> Rhissassi & Berjaoui, 2010, p.101. / Eisenberg, 2011, p.726.

<sup>477</sup> Lopez, 2014, p.56.

<sup>478</sup> Amnesty International, “Morocco: Unprecedented legal reforms must uphold human rights”, no. MDE 29/1438/2015, 2015, available at <https://www.amnesty.org/en/documents/document/?indexNumber=mde29%2F1438%2F2015&language=en> [consulted on 3 June 2015].

<sup>479</sup> HRC, “Report of the Working Group on the Universal Periodic Review: Morocco”, A/HRC/21/3, 2012, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MASession13.aspx> [consulted on 1 June 2015].

### ***5.7 Reduce corruption within the judicial sector***

Addressing the widespread issue of corruption within family tribunals should be regarded as a prerequisite in enhancing women's equal access to justice. In this regard, it is highly recommended to adopt the following measures:

- Further extend the powers of the ICPC to grant it the possibility not only to raise awareness but also to prosecute and investigate.
- Ensure that the OIGs are able to correctly carry out Court inspections without excessive influence from the executive.<sup>480</sup>
- Ensure that judges and prosecutors have reasonable salaries to avoid practices such as bribery.<sup>481</sup>
- Implement stronger enforcement mechanisms to ensure that judges correctly apply the law and that the practice of corruption is avoided. To be more precise, the Public Prosecutor should correctly carry out their statutory role of safeguarding the rights and ensuring the proper enforcement of the law.

### ***5.8 Further harmonize Morocco's legal framework with international instruments***

As discussed throughout the present thesis, Morocco's legal framework does not fully conform to international instruments such as the CEDAW. In light of Morocco's second periodic report introduced in 2003 to the CEDAW Committee, the latter made several recommendations. The majority of them are still of relevance today. These namely include the following<sup>482</sup>:

- Withdraw the remaining reservations and declarations (especially article 2 of CEDAW)

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<sup>480</sup> USAID, 2010, p.8.

<sup>481</sup> Lopez, 2014, p.57.

<sup>482</sup> UN, "Report of the Committee on the Elimination of Discrimination Against Women", A/58/38, 2003, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f58%2f38\(SUPP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f58%2f38(SUPP)&Lang=en) [consulted on 1 June 2015].

- Finish the process of ratifying the Optional Protocol (OP) to CEDAW. Ratifying the OP would imply Morocco's recognition of the CEDAW Committee to receive and consider complaints from individuals or groups within its jurisdiction.
- Incorporate an explicit provision stating the principle of equality between men and women in the 2011 Constitution.
- Explicitly include an article referring to the discrimination against women (as provided by article 1 of the CEDAW) in its national legislation.
- Ensure that CEDAW's provisions are fully incorporated and reflected within Morocco's national legislation.
- Ensure that the status of international human rights conventions is clearly mentioned within Morocco's national framework.

### ***5.9 Enhance the joint responsibility of various actors***

Whereas the justice system as a whole plays a crucial role in ensuring women's access to justice and the effective enforcement of the law, other actors should also be part of the game. In fact, it implies a so-called 'joint responsibility'<sup>483</sup>, a responsibility which should be shared by a diverse set of actors ranging from the state, the government, political parties to civil society actors, women's rights organizations and researchers.

To this end and as recommended by Leila Hanafi's 2013 study, a special focus should be put on building multidisciplinary partnerships.<sup>484</sup> In fact, considering the complexity of challenges faced, it is essential to enhance communication and coordination among different actors of Moroccan society to avoid overlapping or gaps. For instance, partnerships should be built with law schools or representatives from outside the legal community in order to have greater support and broaden the perspectives on the issue at stake.<sup>485</sup> Civil society should also act as a 'driver for change'<sup>486</sup> and take an active leadership role in giving the needed support to the most marginalized.

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<sup>483</sup> Rhissassi & Berjaoui, 2010, p.101.

<sup>484</sup> Hanafi, 2013, p.3.

<sup>485</sup> Ibid.



Furthermore, a new instance has recently been created (*L'Observatoire National*) with the aim of improving women's status within the media, combat against the stereotypical image of women and promote values of justice and equality between sexes. However, as the latter still remains at its infancy, further efforts need to be taken to adequately support and enhance the collaboration of other stakeholders to promote women's rights in the country.<sup>487</sup>

#### **5.10 *Pursue efforts to further integrate women in the dialogue***

Last but not least, it seems absolutely crucial that women themselves are regarded as the special focus and priority. In fact, it is essential to listen to women's needs and concerns in family-related issues and further include them in the dialogue with other stakeholders, so that adequate solutions are enacted to enhance their access to justice under the Code.

To conclude this decisive chapter, it should be noted that the above-mentioned recommendations aim at enhancing women's access to justice, therefore making the law more universally accessible. Morocco is still in the process of ratifying certain recommendations submitted for instance at Morocco's first Universal Periodic Review (UPR) of the Human Rights Council (HRC) in 2012<sup>488</sup> or from the CEDAW Committee in 2003.<sup>489</sup> The proposed recommendations are essential to ensure Morocco's compliance with international standards of justice, gender equality and the

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<sup>486</sup> Gender Across Borders, "Conquering Culture and creating change: A grassroots level view from Morocco", 2011, available at <http://www.genderacrossborders.com/2011/10/27/conquering-culture-and-creating-change-a-grassroots-level-view-from-morocco/> [consulted on 28 May 2015].

<sup>487</sup> InfoMédiaire, "Image de la femme: Du concret au Maroc", 2015, available at <http://www.infomediaire.net/news/maroc/image-de-la-femme-du-concret-au-maroc> [consulted on 22 June 2015].

<sup>488</sup> HRC, "Report of the Working Group on the Universal Periodic Review: Morocco", A/HRC/21/3, 2012, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MASession13.aspx> [consulted on 1 June 2015].

<sup>489</sup> CEDAW, "Second Periodic Report of State Parties: Morocco", CEDAW/C/MOR/2, 2000, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/382/70/PDF/N0038270.pdf?OpenElement> [consulted on 1 June 2015].

rule of law. The majority of the listed measures and actions, if carried out correctly, will contribute towards closing the significant gap between theory and practice. Yet, it is important to bear in mind that the majority of the recommendations are part of a long-term process and will take time to radically improve women's access to justice.

## CONCLUSION

The present master thesis was set out to explore women's access to justice under the reformed Moroccan Family Code. As a reminder, it sought to answer the following research question: *To which extent are the deficiencies of the Moroccan justice system still hampering women's access to justice under the 2004 Family Code?*

In an attempt to adequately tackle the given question, several aims were clearly established from the start. These included:

- Bringing to the fourth the main innovations the Code has brought in terms of advancing women's access to justice;
- Identifying Morocco's legal framework pertaining to women's access to justice and assessing whether Morocco is in line with the relevant international human rights conventions;
- Illuminating the major deficiencies and challenges of the justice system which are hampering women's access to courts;
- Analysing the public's views and perceptions on the Moudawana and the workings of the justice system;
- Giving possible recommendations to improve women's access to justice under the new Code.

In this regard, the strong-grounded theory based research aimed at fulfilling these aims through the elaboration of five different chapters. In order to fully understand the issue at stake, the first chapter elucidated the needed context pertaining to women's rights under the Family Code. As such, it is important to recall that the Islamic method of 'ijithad' was used to revise the traditional historic Code and bring it in line with contemporary Morocco. Yet, the new Code still largely derives from traditional Islamic principles. Moroccan women live under the umbrella of two opposing legal frameworks: the traditional Islamic law and the law of occidental nature underpinned by universal standards and principles. The crucial role of the King Mohammed VI was outlined in this regard. In fact, he mainly acts as an 'arbiter' between the conservative forces- who are against the new Code and see it as contradicting with traditional Islamic

principles- and more liberal groups, who support the reforms and are in favour of advancing women's rights. Furthermore, the new Code would not have been enacted without the on-going and strong advocacy from women's organisations themselves. For instance, a women's rights organisation, known as *Union de l'Action Féminine* is one among others that fought to make the law more equitable towards women and tipped the balance in favour of change. The first chapter also explained Morocco's legal framework pertaining to women's access to justice. The newly reformed 2011 Constitution establishes the independence of the judiciary as well as gender equality between men and women. With regard to the international legal framework, the monarchy ratified major human rights instruments – namely CEDAW, ICCPR, UDHR- that guarantee principles of justice and gender equality. Pursuant to the Constitution, Morocco recognizes the supremacy of international human rights instruments over its national legislation. Additionally, a specific section highlighted the crucial role of the justice system in enforcing the new legislation. It has been demonstrated that the effective implementation of the law and equal access to justice largely depends on the legitimacy of the judiciary.

Chapter two is essential as it gave an overview of the main innovations the Code has brought on both legislative and institutional levels. The first section described the extent to which the Code increased the rights of women within the family. In fact, by introducing a number of reforms, the Code can be regarded as one of the most progressive ones in the MENA region, opening the doors for Moroccan women to exercise new rights. With contrast to the previous historic Code, the 2004 reforms namely:

- Raised the age of marriage for women from 15 to 18;
- Introduced the legal right of women to appear in front of a court and testify;
- Eliminated the role of the husband as guardian of the family placing the family under the joint responsibility of both spouses;
- Suppressed the wife's obedience to the husband;
- Eliminated the requirement of a so-called wali (male tutor) for a woman to be able to marry;

- Implemented divorce by mutual consent and by irreconcilable differences;
- Gave the possibility to women to sign their own separate property contract regarding marital property;
- Further restricted polygamy by introducing stricter conditions and judicial control.

These innovations were hailed as a significant step forward, at least on paper.

The Code not only brought some changes to the text itself, but also contributed to some judicial amendments. In fact, the second sub-section explained that the new Family Code required a re-organization of the judicial system to meet and adapt it to the current trends towards modernity and the progressive content of the legislation. As such, since the adoption of the Code in 2004, efforts have been made by the government to provide better access to justice, especially through the implementation of family tribunals and legal aid centres. Moreover, the Code also ensured judges and prosecutors key roles in overseeing the effective implementation of the Code and safeguarding the rights of women. Furthermore, by adopting the *Charter for Judicial Reform* in 2013, Morocco committed itself towards reforming the justice system, bringing it in line with the Constitution and relevant international instruments. It should be noted that facilitating women's access to justice was seen as one of the major objectives of the reforms.

The most crucial chapter of the thesis at hand is the third one, as it clearly lays out the root of the issue. There is no doubt to the fact that the Code marked a step forward in terms of advancing women's rights. Yet, women largely remain hindered not only by the shortcomings of the justice system, but also by loopholes in the legislation itself. In this regard, one has demonstrated that despite Morocco's commitment to several international human rights instruments, it fails to uphold by universal principles of justice and gender equality.

First, the paper discussed how the legal deficiencies of the judicial sector keep Moroccan women from fully accessing their rights under the Code. It has been argued that Morocco suffers from major structural problems, such as a lack of judicial independence, both decisional and institutional. Although judicial independence is

guaranteed in its Constitution, it still remains hindered by the excessive power and influence of the King and the MOJ. Furthermore, it has been argued that the justice system is seen as the most corrupt sector within the country. As such, the high judicial corruption as well as the lack of proper mechanisms to combat it, undermine women's confidence in the justice system. Another factor contributing to women's unequal access to justice under the new legislation is the mal-functioning of the family tribunals. In fact, due to the delays in courts and the costly and complex judicial procedures as well as the under-ressourcement of the courts, women hesitate to seek justice and try every other mean to solve a dispute. Since women's access to justice largely depends on the legitimacy of the justice system, women face significant difficulties in accessing the Courts.

Second, the proposed research outlined the major shortcomings in the law itself. The Code still contains various discriminatory and ambiguous provisions. Especially the high discretionary power given to judges with respect to applying certain provisions (e.g: minor marriages, divorce and polygamy) is highly problematic since it leads to significant problems of implementation. Judge's acceptance of traditional practices such as under-age marriage and polygamy illustrate how difficult it is to dislodge such traditions and especially to change the conservative mind-set of the judges.

A third sub-section of this chapter illustrated the lack of awareness and understanding of the law. In this regard, poverty and illiteracy remain major hurdles hindering women's access to justice under the Moudawana. Official statistics revealed a significant gap between rural and urban areas. Another challenge Moroccan women face is the broad ignorance of the existence of the law. The lack of awareness and knowledge of the Code, the complex legal language as well as the absence of adequate legal services are significant barriers among others that negatively impact women's access to justice. One of the major findings to this effect is that the Code is absent for the ones that most need it, in particular women in rural areas who are largely excluded from discourses concerning the law. Despite women's legal right to appear in Courts, it still remains a huge challenge. In sum, the chapter notably unveiled the persisting gap in terms of how the Code is written into legislation and how it is applied in practice, especially pertaining to women's access to justice.

Having in mind that the qualitative findings mainly aimed at supporting the strong-grounded theoretical foundations on which this thesis is based, they still offered valuable insight into the practical realities women face daily. The fourth chapter dedicated to the analysis of the field research undertaken in Morocco clearly illustrated the complexity and sensitiveness of the issue at stake. Despite the non-representativeness of the sample of people interviewed, the latter gave a solid and thought-provoking overview of the main perceptions pertaining to the new law. One of the most noteworthy findings is that the majority of them claimed that the Code is 'hindered' by the complex balance between the strong rooted traditional values and the current trends towards modernity. Overall, opinions regarding the issue were divided. While some claimed that the Moroccan society is not ready to accept such far-reaching progressive changes, others were strongly in favour of further promoting women's rights and moving towards a 'modern Morocco'. As such, the interviewee's opinions clearly portray the existing tension between conservatives and modernists, which is negatively impacting women's access to justice. Women's testimonies revealed that the conservative mentality of the judges in particular as well as the overall poor functioning of the justice system are seen as major hurdles women face in fully being able to seek justice under the Moudawana.

With the four preceding chapters, it was possible to propose some main recommendations and measures which should be taken to move forward and improve women's access to justice under the Code. While official statistics and reports of international organisations and international human rights instruments have noted the progress made within the ten years after the enactment of the Code, Morocco still has a long path to go to fully secure women's access to justice and live up to its progressive image. To this end, chapter five offered several ways to effectively move forward. First, priority should be given towards removing the remaining discriminatory provisions in the Code itself. In addition to providing more adequate legal services to women in particular, special attention needs to be drawn to providing adequate and a multidisciplinary training to judges and lawyers to ensure that the provisions are effectively being implemented. Similarly, awareness raising and sensitization

campaigns to educate women about their rights under the Code are still needed. Simplifying judicial proceedings so that women can more easily navigate the justice system should also be considered. Moreover, enhancing the independence of the justice system as well as reducing corruption should be seen as an integral part of Morocco's reforms. Furthermore, drawing upon the major findings of the research, it seems indispensable for Morocco to further harmonize its legal framework and bring it in conformity with relevant international human rights instruments to which it is a party. Finally, a collaborative approach of a diverse set of actors is needed to effectively seek solutions towards improving women's access to justice. A special focus should also be put on women themselves, with the need to integrate them in the dialogue and listen to their specific needs and concerns.

The general lack of adequate and available data on the issue at hand ten years after the enactment of the Code calls for further research. Since most of the given actions and measures are part of a long-term process, further research should be carried out to measure to progress made in the coming years. Research should also be built on the rights of unwed mothers and rural women in particular, as they are one of the most marginalized segments of the population.

Sixteen years ago, King Mohammed stated the following:

*"How can Moroccan society achieve progress, while women, who represent half the nation, see their rights violated and suffer as a result of injustice, violence and marginalization?"*<sup>490</sup>.

The fact that this question can still be asked today raises issues of grave concern. As long as the justice system does not fully comply with the international standards of justice and the rule of law, women will not be able to fully enjoy their rights under the Code and adequately seek justice.

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<sup>490</sup> Morocco World News, "Gender Equality: Bad news for Moroccan Women", 2014, available at <http://www.moroccoworldnews.com/2014/10/142724/gender-equality-bad-news-for-moroccan-women/> [consulted on 29 October 2014].



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United States Institute of Peace, “Rule of Law”, available at <http://www.usip.org/category/issue-areas/rule-of-law> [consulted on 1 June 2015].

#### Interviews:

- Anonymous interviews (in French) with five locals, Rabat, November 2014.
- Anonymous interviews (in English and French) with four master students, Rabat, November 2014.
- Interview (in English) with Stephanie Willman Bordat, American lawyer and director of MRA, Rabat, September 2014.



- Interview (in French) with Aïcha Ech-Channa, founder of ASF and OPUS prize-winner, Casablanca, June 2015.
- Interview (in French) with former Chief Deputy of the Cooperation Development Department, Belgian Embassy, Rabat, November 2014.
- Interview (in French) with Hajar Sekher, Moroccan activist and university professor, Rabat, March 2015.
- Interview (in French) with local staff CNDH, Rabat, September 2014.
- Interview (in French) with Moroccan lawyer, Rabat, June 2015.
- Interview (in French) with president of AFDM, Rabat, December 2014.
- Interview (in French) with vice-president of INSAF, Casablanca, December 2014.

Attended Conference:

Second World Human Rights Forum, Marrakech (27-30 November 2014).

## ENGLISH ABSTRACT

*The 2004 Moroccan Family Code, commonly referred to as the 'Moudawana', can be regarded as a major step forward for women's rights. It embodies both traditional principles of Islamic law as well as a modern understanding of human rights, making it one of the most progressive family laws in the MENA region. This research elucidates how the constant tension between the safety of conservatism and the groundbreaking change to modernity hinders women's access to justice under the Code. Despite the law's aim of 'doing justice to women', women face major difficulties in accessing courts and adequate legal remedies. The independent Moroccan judicial system, as guaranteed by the 2011 Constitution, suffers from a number of shortcomings, thus restricting women's ability to fully enjoy their rights and manifesting an evident gap between theory and practice. The paper seeks to address that the success of the Code largely depends on the legitimacy of the legal system, as the latter has the aim of enforcing the provisions of the Moudawana. In respect thereof, this thesis examines to which extent Morocco is fulfilling its obligations in accordance with relevant international human rights instruments, namely CEDAW, UDHR and ICCPR. It illustrates that despite the advancements the new Code has brought, Morocco still has a long path to go if it wants to secure access to justice for all women and live up to its progressive image. Lastly, recommendations are made to overcome the gap and improve women's access to justice.*

**Key Words:** Morocco, Women's Rights, Moudawana, Judicial System, Access to Justice, Conservatism, Modernity

## DEUTSCHER ABSTRAKT

*Das marokkanische Familiengesetzbuch von 2004, allgemein "Moudawana" genannt, kann als ein bedeutender Schritt für Frauenrechte betrachtet werden. Es enthält sowohl traditionelle Prinzipien des islamischen Rechts, als auch ein modernes Verständnis von Menschenrechte, was es zu einem der progressivsten Familiengesetze in der MENA-Region macht. Diese Masterarbeit erläutert, wie die permanente Spannung zwischen der Sicherheit des Konservatismus und den grundlegenden Veränderungen hin zur Moderne den Zugang von Frauen zum Justizsystem unter dem Familiengesetz(buch) einschränkt. Trotz des rechtlichen Ziels "Frauen gerecht zu werden", haben Frauen erhebliche Schwierigkeiten angemessene Rechtsmittel und Zugang zu Gerichten zu erhalten. Das unabhängige marokkanische Justizsystem, 2011 durch die Verfassung garantiert, leidet unter einigen Unzulänglichkeiten, welche die Möglichkeit von Frauen einschränkt vollständig ihre Rechte auszuüben und somit die Kluft zwischen Theorie und Praxis zeigt. Die Masterarbeit versucht herauszustellen, dass der Erfolg des Familiengesetzbuches hauptsächlich von der Legitimität des Rechtssystems abhängt, da dieses die Rechtsvorschriften der Moudawana durchsetzt. In dieser Hinsicht untersucht diese Arbeit, inwiefern Marokko seine internationalen - Verpflichtungen gemäß den internationalen Menschenrechtsinstrumenten (CEDAW, UDHR und ICCPR) erfüllt. Diese Arbeit veranschaulicht, dass trotz den Fortschritten des neuen Familiengesetzbuches, Marokko noch einen langen Weg vor sich hat, um den Zugang zum Justizsystem für alle Frauen sicherzustellen und seinem fortschrittlichen Image gerecht zu werden. Zuletzt werden Empfehlungen aufgezeigt um die Kluft zwischen Theorie und Praxis zu schließen, und den Zugang von Frauen zum Justizsystem zu verbessern.*

*Schlüsselwörter:* Marokko, Frauenrechte, Moudawana, Justizsystem, Zugang zur Justiz, Konservatismus, Modernität

## CURRICULUM VITAE

Aline Carruet

### EDUCATION

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**Vienna Master of Arts in Human Rights (Director: Prof. Dr. Manfred Nowak)** **2013-2015**

Law School, University of Vienna (Austria).

**Bachelor in Political Science** **2010-2013**

Université Saint-Louis (Brussels, Belgium). Trilingual programme (English, French, Dutch).  
Bachelor completed with distinction.

**Baccalauréat en Science Economique et Sociale Section Européenne Anglais** **2004-2010**

2009-2010: Lycée Français Jean-Monnet (Brussels, Belgium)  
2008-2009: Narrabundah College (Canberra, Australia)

**Diplôme National du Brevet** **2004-2008**

2005-2008: Lycée Franco-Australien de Canberra/Telopea Park School (Canberra, Australia)  
2004-2005: Lycée Fustel de Coulanges (Yaoundé, Cameroun)

### SKILLS

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#### Language skills

Dutch	Native speaker	
French	Excellent	Lycée Français and French/English/Dutch-language university
English	Excellent	secondary school in bilingual French/English system bachelor trilingual education French/English/Dutch master programme in English
Spanish	Good reading skills, basic speaking and writing skills	
German	Basic reading, speaking and writing skills (A1.2)	

#### Foreign experience

Lived and studied in Geneva (Switzerland: 2 yrs.), Stockholm (Sweden: 4 yrs.), Toronto (Canada: 4 yrs.), Yaoundé (Cameroon: 2 yrs.), Canberra (Australia: 4 yrs.), Brussels (Belgium: 4 yrs.) and Vienna (Austria: 2 yr.).

## PROFESSIONAL EXPERIENCE (internships)

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### **Permanent Representation of Belgium to the United Nations, Geneva (Switzerland) 2 months** **2015**

Dealing with global human rights issues, elaborating reports, attending meetings, attending the Universal Periodic Review sessions and engaging in some preparatory work for the Human Rights Council Session.

*Key learning points:* attending the Universal Periodic review allowed me to get some in-depth insight into the functioning of the human rights mechanisms and the United Nations in general. Elaborating concise and clear reports was an integral part of my work.

### **National Council of Human Rights, Rabat (Morocco) 2 months** **2014**

Worked in the Organizing Committee of the "World Human Rights Forum" in Marrakesh. Involved analysing, summarizing and writing reports dealing with both national and international human rights issues, translating documents, attending general and coordination meetings, contributing to the website of the World Forum, contacting prominent international personalities and ensuring their intervention at the Forum.

*Key learning points:* actively taking part of a world event, which hosted 7000 participants allowed me to gain practice-oriented insight into the global human rights issues and thereby related challenges. It has given me multiple networking opportunities and research data for my master dissertation.

### **Le Silex, Brussels (Belgium)** **2010-2011**

Center for disabled youth. Involved in planning, organizing activities, assisting meetings. Showed commitment and team-working spirit.

*Key learning points:* working with disabled people taught me to be more patient and to listen to people's demands. It influenced the way I look at life, appreciating more my everyday life and abilities.

### **Ministry of Foreign Affairs, Brussels (Belgium) 1 month** **2010**

Press department. Helped with the organization of the Belgian Presidency of the EU.

*Key learning points:* through intense and continuous contacts with international journalists, I significantly improved my professional communication skills. The job demanded flexibility and a strong ability to cope with stressful situations.

## VOLUNTEERING WORK

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### **AIESEC Choose Life Not Drug 6 week Project (Mauritius)** **2013**

Main objective: raise awareness among youngsters of the danger associated with drugs.

Involved benevolent work, attending workshops in NGOs on drug issues, visiting rehabilitation centers, developing awareness campaigns, and making presentations in local secondary schools.

*Key learning points:* acquiring knowledge on the issue of drugs, international team leadership, participating pro-actively in every event, and enhancing management and leadership skills.

### **Vétérinaires sans Frontières, Brussels (Belgium)** **2011**

Development education department. Translated policy documents and summarized scientific articles.

*Key learning points:* working in a structured way, summarizing complex problems concisely.

### **Royal Belgian Embassy, Canberra (Australia)** **2008**

Involved in the classification of documents, paperwork and administrative tasks.

*Key learning points:* I understood how precise and accurate work is in a professional environment.

### **National Equestrian Center Kerrabee, Canberra (Australia)** **2006-2009**

Worked as junior staff. Involved in organizing youth camps, taking care of horses and cleaning stables.

*Key learning points:* satisfaction and hardship of manual work.