

# Law on the Books vs. Law in Action: Under-Enforcement of Morocco's Reformed 2004 Family Law, the *Moudawana*

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## Introduction

In 2010, a Saudi royal advisor issued a *fatwa*<sup>1</sup> declaring that Muslim

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1. The term *fatwa* has several definitions, including a "non-binding advisory opinion to an individual questioner;" a jurist's response to a question from a judge, an individual, or an institution; or proffered evidence of Islamic law. Shaheen Sardar Ali, *Resurrecting Siyar Through Fatwas? (Re)Constructing 'Islamic International Law' in a Post-(Iraq) Invasion World*, 14 J. CONFLICT & SECURITY L. 115, 121 (2009).

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women could breastfeed grown men in order to circumvent *Shari'a*'s<sup>2</sup> ban on non-family gender mixing,<sup>3</sup> proffering a controversial interpretation of Islam's tenet that those who breastfeed from the same woman are de facto family members.<sup>4</sup> Although this instance of extremism generated heated debate throughout the Muslim world,<sup>5</sup> such a debasing stance towards women is not inconsistent with the spirit of Islamic law in many societies. In Saudi Arabia,<sup>6</sup> for example, the influential religious establishment holds that gender equality is "against the laws of God and against the laws of nature."<sup>7</sup>

Such extremism has captured the global community's attention; Islamic societies' treatment of women has generated political, religious, and social controversy.<sup>8</sup> However, one should not allow such instances of extremism to overshadow the expansion of women's rights in many Muslim societies. This Note focuses on women's family law rights in Morocco, a country located in northwestern Africa, and often regarded as the Western boundary of the Muslim-Arab world.<sup>9</sup> Significantly, despite Morocco's shared roots with nations such as Saudi Arabia in culture, religion, and language, the Moroccan government has interpreted similar traditions to yield the starkly different stance that gender equality is desirable.

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2. *Shari'a* is known as the "all-encompassing law of Islam. In Muslim countries where the *Shari'a*] governs, it functions as a full legal system backed by the government." Amna Arshad, *Ijtihad as a Tool for Islamic Legal Reform: Advancing Women's Rights in Morocco*, 16 KAN. J.L. & PUB. POL'Y 129, 131 (2006-2007).

3. *Fatwa Fight Rages Between Saudi Clerics*, AL ARABIYA NEWS CHANNEL (July 1, 2010), <http://www.alarabiya.net/articles/2010/07/01/112770.html#003>.

4. AVNER GILADI, *INFANTS, PARENTS, AND WET NURSES: MEDIEVAL ISLAMIC VIEWS ON BREASTFEEDING AND THEIR SOCIAL IMPLICATIONS* 21 (1999).

5. See, e.g., *Saudi Clerics Battle over Adult-Breastfeeding, Music Fatwas*, HURRIYET DAILY NEWS & ECON.REV. (July 2, 2010), <http://www.hurriyetydailynews.com/n.php?n=saudi-clerics-battle-over-adult-breastfeeding-music-fatwas-2010-06-30>.

6. The kingdom of Saudi Arabia has been described as "the quintessential fundamentalist Islamic state." Dr. William Millward, *Commentary No. 30: The Rising Tide of Islamic Fundamentalism (I)*, CAN. SEC. INTELLIGENCE SERV. (April 1993), <http://www.csis-scrs.gc.ca/pblctns/cmmntr/cm30-eng.asp>.

7. FARIDA DEIF, HUMAN RIGHTS WATCH, *PERPETUAL MINORS: HUMAN RIGHTS ABUSES STEMMING FROM MALE GUARDIANSHIP AND SEX SEGREGATION IN SAUDI ARABIA* 8 (2008).

8. See, e.g., Mohamed Younis, *Daughters of the Nile: The Evolution of Feminism in Egypt*, 13 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 463, 483 (2007).

9. "Slightly larger than California" and with a population of approximately 35 million, Morocco borders the Mediterranean Sea to the north and the Atlantic Ocean to the west. *Background Note: Morocco*, U.S. DEP'T OF STATE (Apr. 20, 2011), <http://www.state.gov/r/pa/ei/bgn/5431.htm> [hereinafter *Morocco Background Note*]. "Morocco is a constitutional monarchy with a bicameral parliament and independent judiciary; however, ultimate authority rests with the king." *Morocco: Country Specific Information*, U.S. DEP'T OF STATE (May 25, 2011), [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_975.html#country](http://travel.state.gov/travel/cis_pa_tw/cis/cis_975.html#country). Culturally, its inhabitants are 99.1% ethnic Arabs, Berbers (indigenous Moroccans), or mixed Arab-Berber, and speak either Darija (Moroccan colloquial Arabic) or one of several Berber dialects, although French serves as a language of commerce. Morocco is an Islamic state, and 98.7% of Moroccans are Muslim. Among other groups, Morocco is a member of the Arab League, the Arab Maghreb Union, and the Organization of the Islamic Conference. See *Morocco Background Note*, *supra*.

Morocco's new *Moudawana*,<sup>10</sup> the 2004 legislation on family law with provisions largely derived from Islamic sources,<sup>11</sup> confers unprecedented rights on Moroccan women.<sup>12</sup> Even before the law's passage, the past several decades in Morocco witnessed drastic changes in women's status. These changes range from an increase in women legislators<sup>13</sup> to unionized women doctors.<sup>14</sup> With the help of the new *Moudawana*, the transformation expands to a codification of women's rights to be protected from practices such as child marriage, and to have equal footing with men in both marriage and divorce.<sup>15</sup> The *Moudawana* is almost revolutionary, eliminating aspects of traditional Islamic family law, which many consider sacred and unalterable.<sup>16</sup>

Seven years after the law's passage, however, varied sources indicate that it has been less effective in practice than its proponents would hope.<sup>17</sup> For instance, observers and NGOs report judicial opposition to the law, as well as judicial corruption, both of which result in under-implemen-

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10. See *The Moroccan Family Code (Moudawana) of February 5, 2004: An Unofficial English Translation of the Original Arabic Text*, GLOBAL RIGHTS PARTNERS FOR JUSTICE (2005), [http://www.globalrights.org/site/DocServer/Moudawana-English\\_Translation.pdf?docID=3106](http://www.globalrights.org/site/DocServer/Moudawana-English_Translation.pdf?docID=3106) [hereinafter *Moudawana*].

11. See Arshad, *supra* note 2, at 135.

12. See *id.* at 139.

13. See *The Moroccan Women's Movement: A Study in Dynamism*, GLOBAL FUND FOR WOMEN (2010), <http://www.globalfundforwomen.org/what-we-do/publications/reports/latest-annual-report/912>.

14. See Sarah Touahri, *Morocco's Women Doctors to Intensify Protest Action*, MAGHAREBIA (Jan. 28, 2009), [http://www.magharebia.com/cocoon/awi/xhtml1/en\\_GB/features/awi/features/2009/01/28/feature-01](http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2009/01/28/feature-01).

15. *Moudawana*, *supra* note 10, at arts. 19, 25, 51 (stating in Article 51 that "[t]he mutual rights and duties between spouses are . . . the wife's assuming with the husband the responsibility of managing and protecting household affairs and the children's education"). Although the *Moudawana* does not address the issue of violence against women, it is a major concern in Morocco. See Sarah Touahri, *Morocco Seeks to Criminalise Violence Against Women*, MAGHAREBIA (Apr. 1, 2008), [http://www.magharebia.com/cocoon/awi/xhtml1/en\\_GB/features/awi/features/2008/04/01/feature-01](http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2008/04/01/feature-01). In 2011, the Moroccan government released a report indicating that "63 percent of Moroccan women have been victims of violence recently and about a quarter of them have been sexually assaulted at least once in their lives." *Two-Thirds of Morocco Women Face Violence: Study*, AGENCE FRANCE-PRESSE (Jan. 10, 2011), available at [http://www.google.com/hostednews/afp/article/ALeqM5iANukyJhCZFntoH\\_wHWv7sohEo-A?docId=CNG.a7256a3419e3e3b03b8d1b50e17ae892.fdl](http://www.google.com/hostednews/afp/article/ALeqM5iANukyJhCZFntoH_wHWv7sohEo-A?docId=CNG.a7256a3419e3e3b03b8d1b50e17ae892.fdl).

16. See, e.g., Hajar Dehmani & Zineb Ibnouzahir Lahlou, *Il y a 15 ans, les Marocaines ne pouvaient pas . . .*, FEMMES DU MAROC, Jan. 2011, at 38.

17. For example, a prominent women's rights NGO with several offices in Morocco, *La Ligue Démocratique des Droits de la Femme* (the Democratic League for Women's Rights), has published several reports on the effectiveness of the *Moudawana's* application. The 2006 report is the latest available. Each report surveys statistics—which are incomplete and perhaps questionable—from Morocco's eight family courts, located in Rabat, Casablanca, Marrakech, Fkih Ben Saleh, Ouarzazate, Mohammedia, Larache, and Beni Mellal. While the League has reported some successes, the reports have also shown major under-implementation, as well as a lack of cooperation and transparency from government officials with regard to access to statistics on marriage and divorce. See LIGUE DÉMOCRATIQUE DES DROITS DES FEMMES, RAPPORT ANNUEL 2006, at 2–13 (2006), available at [http://www.flddf.ma/FLDDF/ciofem/ciofem\\_Publications.htm](http://www.flddf.ma/FLDDF/ciofem/ciofem_Publications.htm) [hereinafter 2006 LDDF REPORT].

tion.<sup>18</sup> Another important indicator of the *Moudawana*'s limited success is that the rate of child marriage has risen rather than abated,<sup>19</sup> a trend that suggests easy circumvention of the law's new minimum marriage age of 18.<sup>20</sup> These and other difficulties seem especially daunting in areas where economic development progresses slowly.<sup>21</sup> Despite its revolutionary language, the *Moudawana* may face a level of impotence, exemplifying the reality that "[d]rafting and enacting a new law is one thing, implementing it is another."<sup>22</sup> The law's very origination with the King, rather than with Parliament—the Moroccan government's representative body, at least nominally—is another warning sign that Moroccan society may not be ready to accept these new standards.<sup>23</sup>

The accomplishments and the challenges surrounding the *Moudawana*'s enactment and implementation have implications for women's rights initiatives around the world. It is not unusual for legislative women's rights reforms to encounter barriers to achieving tangible successes.<sup>24</sup> This is particularly evident in the field of international human rights, where targeted communities may perceive values enshrined in laws

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18. See 2009 Human Rights Practices: Morocco, U.S. DEP'T OF STATE (Mar. 11, 2010), <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136075.htm> [hereinafter *Morocco Human Rights Report*]; see also THE WORLD BANK LEGAL VICE PRESIDENCY, MOROCCO: LEGAL & JUDICIAL SECTOR ASSESSMENT 32 (June 2003), available at <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/MoroccoSA.pdf> [hereinafter *MOROCCO ASSESSMENT*].

19. Sarah Touahri, *Child Marriage in Morocco Criticized*, MAGHAREBIA (May 5, 2009), [http://www.magharebia.com/cocoon/awi/xhtml1/en\\_GB/features/awi/features/2009/05/05/feature-01](http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2009/05/05/feature-01).

20. See *id.*; see also *Moudawana*, *supra* note 10, at art. 19.

21. See Beatrice Beloubab, *La situation des Marocaines a-t-elle vraiment évoluée?*, FEMMES DU MAROC, Jan. 2011, at 46 ("Certainly, from a legislative point of view, women's condition has evolved. . . . But in reality, in rural areas or in the outskirts of cities, women . . . live in a state of precariousness. One even sometimes has the impression that their situation is regressing, often because of the economic problems and the crisis.").

22. Keith A. Rosten, *The Scaffolding for Legal Infrastructure: Developing Sustainable Approaches*, 16 TUL. J. INT'L & COMP. L. 395, 415 (2008) (quoting MARK DIETRICH, LIZBETHE HASSE & KETEVAN KVATSKHAVA, RULE OF LAW ASSISTANCE IMPACT ASSESSMENT: GEORGIA 38 (2002)).

23. See Omar Brouksy, *Le Processus D'Adoption de la Moudawana, Entre la Preeminence du roi et la Lassitude du Parlement*, 41 ANNUAIRE DE L'AFRIQUE DU NORD 235, 235-36 (2005). In February 2011, although in circumstances less tumultuous than in other areas of the Arab world, Moroccans joined in the mass protests calling for democratic reform and increased government transparency. See Lisa Abend, *Protests in Morocco: Just Don't Call It a Revolution*, TIME, Feb. 22, 2011, available at <http://www.time.com/time/world/article/0,8599,2052901,00.html>.

24. E.g., Anne N. Arbuckle, *The Condom Crisis: An Application of Feminist Legal Theory to AIDS Prevention in African Women*, 3 IND. J. GLOBAL LEGAL STUD. 413, 445 (1996) (discussing the ineffectuality of laws aimed at improving women's status in Sub-Saharan Africa); H. Ray Liaw, *Women's Land Rights in Rural China: Transforming Existing Laws into a Source of Property Rights*, 17 PAC. RIM L. & POL'Y J. 237, 238 (2008) (noting how social mores' intersection with rights reforms in rural China limits reforms' effects for women).

to be “external” to their actual value systems.<sup>25</sup> Such instances of “norm externalization” contribute to discrepancies between law as written and law as followed.<sup>26</sup> In this regard, the question of women’s rights is especially sensitive and complex. Most human rights groups adopt an “abolitionist” approach, advocating for total elimination of societal practices that impede women’s advancement.<sup>27</sup> This approach fails to promote the efficacy of laws, however, because it spurs accusations of cultural imperialism, neglects the difficulties of altering cultural practices, and fails to provide a holistic account of the context in which these laws fail.<sup>28</sup> It is, therefore, essential for women’s rights advocates to develop a nuanced and multi-faceted strategy for bridging the gap between ancient custom and modern legislation. The *Moudawana* is, consequently, a test case whose situation warrants scrutiny; where the law succeeds and fails may provide an indicator for similar future undertakings of how to account for cultural contexts with controversial, rights-based laws.

The *Moudawana* is also of particular interest because it is one of few examples of a transition between traditional Islamic family law and modernized family law based in Islam.<sup>29</sup> Because this law is grounded in Islam, it illustrates how sacred tradition need not be inimical to modern, rights-based law. Approximately 1.5 billion people in the world practice Islam,<sup>30</sup> and various countries continue to apply *Shar’ia*,<sup>31</sup> so a law that reconciles these two conceptions of rights has implications for a large portion of the global community. As Muslim feminists continue to develop a dialogue that incorporates principles of both Islamic tradition and gender equality,<sup>32</sup> the *Moudawana*’s example will be informative.

Inevitably, time and resources are required for the full implementation

25. See Allison D. Kent, *Custody, Maintenance, and Succession: The Internalization of Women’s and Children’s Rights Under Customary Law in Africa*, 28 MICH. J. INT’L L. 507, 519–20 (2007).

26. See, e.g., Liaw, *supra* note 24, at 238.

27. Celestine I. Nyamu, *How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?*, 41 HARV. INT’L L.J. 381, 392 (2000).

28. *Id.* at 393.

29. See Ziba Mir-Hosseini, The World Justice Project MENA Rule of Law Conference: The Road to Justice in MENA: National, International, and Traditional Justice Systems Working Together—The Case of Morocco 1 (2010), available at [www.mena2010wjp.org/. . . /Ziba-Mir-Hosseini-Anthropologist-Hauser-Global-Law-School-Program-New-York-University.doc](http://www.mena2010wjp.org/. . . /Ziba-Mir-Hosseini-Anthropologist-Hauser-Global-Law-School-Program-New-York-University.doc).

30. PEW RESEARCH CTR. FORUM ON RELIGION & PUB. LIFE, MAPPING THE GLOBAL MUSLIM POPULATION: A REPORT ON THE SIZE OF THE WORLD’S MUSLIM POPULATION 1 (Oct. 2009), available at [http://pewforum.org/uploadedfiles/Orphan\\_Migrated\\_Content/Muslimpopulation.pdf](http://pewforum.org/uploadedfiles/Orphan_Migrated_Content/Muslimpopulation.pdf).

31. See, e.g., Central Intelligence Agency, *Iran*, THE WORLD FACTBOOK (June 14, 2011), <https://www.cia.gov/library/publications/the-world-factbook/geos/ir.html>; Central Intelligence Agency, *Malaysia*, THE WORLD FACTBOOK (June 14, 2011), <https://www.cia.gov/library/publications/the-world-factbook/geos/my.html>; Central Intelligence Agency, *Somalia*, THE WORLD FACTBOOK (June 14, 2011), <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>.

32. See Andra Nahal Behrouz, *Women’s Rebellion: Towards a New Understanding of Domestic Violence in Islamic Law*, 5 UCLA J. ISLAMIC & NEAR E. L. 153, 165 (2005–2006).

of any law, particularly if the reform is controversial.<sup>33</sup> That is, “[i]f there is not an indigenous demand for reform, building the demand will be a long-term effort requiring a sustained commitment of time and energy.”<sup>34</sup> Perhaps here, where public and judicial support for the law is questionable, the relevant inquiry is whether the Moroccan government recognizes the numerous impediments to the law’s effectiveness, and whether adequate efforts to build support are fueled with “a sustained commitment of time and energy.”<sup>35</sup> Currently, reports of societal practices indicate that, without significant intervention, the law may remain ineffective for those who need it most, particularly women with low incomes or those living in rural areas.<sup>36</sup>

Part I of this Note evaluates the *Moudawana* in light of its break with traditional *Shari’a*, alongside its fidelity to other Islamic law principles, in giving Moroccan women unprecedented rights. While the new *Moudawana* has provisions addressing inheritance, children’s rights, and assets within a marriage, this Note focuses on the provisions concerning marriage and divorce because they provide the simplest and most accessible illustrations of the law’s practical efficacy.<sup>37</sup> Part II—with the aid of qualitative evidence gathered in rural Morocco—posits that the *Moudawana* is not universally enforced, and that under-enforcement likely results from deeply entrenched societal factors, as well as more immediate influences. Finally, the conclusion proposes additional reforms to the *Moudawana* and implementation mechanisms. These proposed reforms would better account for the complex realities of rural life in Morocco, as well as the fact that the *Moudawana* affronts many people’s value systems, undermining its efficacy. A basis for the proposed reforms is one human rights NGO’s experimental paralegal program in Sierra Leone, which works to reconcile rights-

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33. See Hiram E. Chodosh, *Reforming Judicial Reform Inspired by U.S. Models*, 52 DEPAUL L. REV. 351, 358–63 (2002) (discussing the reform of judicial institutions).

34. Rosten, *supra* note 22, at 404. Although the *Moudawana* was passed, in part, because of an indigenous demand for reform, the demand came from a committed group of activists who do not necessarily reflect the point of view of polarized Moroccan society. See *Morocco: A Look at Women’s Rights 5 Years After Reforms*, THE HUFFINGTON POST (June 9, 2009), [http://www.huffingtonpost.com/2009/06/09/morocco-a-look-at-womens\\_n\\_213362.html](http://www.huffingtonpost.com/2009/06/09/morocco-a-look-at-womens_n_213362.html) [hereinafter *A Look at Women’s Rights*].

35. Rosten, *supra* note 22, at 404.

36. See Beloubab, *supra* note 21, at 46.

37. “The new *Moudawana* . . . requires that both sexes have reached the minimum age of eighteen [to marry]. It authorizes women who have reached the age of majority to marry without the intermediary of a marital tutor. . . . The new *Moudawana* does not abolish polygamy; instead, polygamy is subject to prior court authorization to safeguard the rights of the first wife and her children. . . . The new Code authorizes a woman who wishes to end the marriage to file a petition before the court for divorce for [irreconcilable differences]. . . . The court is obliged, in such cases, to grant and pronounce the divorce.” Marie-Claire Foblets, *Moroccan Women in Europe: Bargaining for Autonomy*, 64 WASH. & LEE L. REV. 1385, 1390–93 (2007). The law also gives women rights to alimony and equality in custody over children. See Siham Ali, *Moroccans Assess Moudawana Progress*, MAGHAREBIA (Oct. 9, 2009), [http://www.magharebia.com/cocoon/awi/xhtml/en\\_GB/features/awi/reportage/2009/10/09/reportage-01](http://www.magharebia.com/cocoon/awi/xhtml/en_GB/features/awi/reportage/2009/10/09/reportage-01).

based law with rural cultural norms.<sup>38</sup>

This Note does not purport to indict Islamic law or tradition. Rather, it presupposes that effective legislation protecting women's rights is universally desirable, and that this is an area in need of development worldwide. The stereotypes associated with Islamic law in the West are often warped and unwarranted.<sup>39</sup> Further, many suffer from ignorance of the historical path that has rendered what was once a relatively moderate and community-based system into what is now often a state-sponsored tool of repression.<sup>40</sup> Many principles within the realm of traditional Islamic law are egalitarian in spirit, concerned with social justice, and friendly to women.<sup>41</sup> This Note, however, faces the sensitive challenge of assessing obstacles to the efficacy of a piece of legislation which many see as progress, while many others see it as contravening the divine.

## I. Tracing the *Moudawana's* Path Through Pre-Reform Morocco

### A. The *Moudawana* in the Context of Traditional Islamic Law

The preamble to the *Moudawana* quotes a speech which King Mohammed VI gave on the day he introduced the law,<sup>42</sup> listing eleven fundamental reforms he wanted the *Moudawana* to incorporate, including:

One: . . . [R]emove degrading 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' in keeping with the words of my ancestor the Chosen Prophet Sidna Mohammed, Peace Be Upon Him, as reported, 'Only an honourable person dignifies women, and only a villainous one degrades them.'

Two: . . . [A] woman cannot be compelled to marry against her will. . . .

Three: Equality between women and men with respect to the minimum age for marriage. . . .<sup>43</sup>

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

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38. See Vivek Maru, *Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide*, 31 YALE J. INT'L L. 427, 429 (2006).

39. For example, although the term "jihad" has come to be associated solely with terrorist holy wars, it can also mean "the internal struggle to be a moral person" or "the struggle for social justice." *What are Some Typical Misperceptions and Stereotypes Westerners Hold About Islam and the Middle East, and Vice Versa?*, PBS GLOBAL CONNECTIONS THE MIDDLE EAST, <http://www.pbs.org/wgbh/globalconnections/mideast/questions/types/index.html> (last visited Feb. 26, 2011) [hereinafter *Typical Misperceptions and Stereotypes*].

40. See generally Wael B. Hallaq, AN INTRODUCTION TO ISLAMIC LAW 85-140 (2009).

41. See *Typical Misperceptions and Stereotypes*, *supra* note 39.

42. He did this pursuant to his powers derived from Article 19 of the Moroccan Constitution. See Brouksy, *supra* note 23, at 237.

43. *Moudawana*, *supra* note 10, at pmbl.

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 woman's right to file for divorce. . . .<sup>44</sup>

Enacting changes in practices of marriage, divorce, and equality within the family sphere, the law was a radical elevation of women's legal status in Morocco,<sup>45</sup> sharply contrasting the status of women in much of the Muslim world.<sup>46</sup> The *Moudawana* resulted from the King's initiative, giving it the official sanction of the designated Leader of the Believers<sup>47</sup> and, thus, the support of a critical element of the nation's religious establishment. As such, this legislation represents an Islamic State's attempt to straddle tradition and modernity, maintaining Morocco's religious identity while contemporaneously expanding access to human and civil rights.

The new distinctions between Morocco's family law and that of societies such as Saudi Arabia illustrate the diversity of attitudes and legal systems within Islamic cultures. While commentators often refer to "the Muslim world" as a singular entity,<sup>48</sup> Muslim nations reflect significant variations, especially in their legal systems.<sup>49</sup> For example, immediately upon gaining independence from France in 1956, Tunisia enacted a progressive family law conferring unparalleled rights to women.<sup>50</sup> Habib

44. *Id.*

45. See Arshad, *supra* note 2, at 130.

46. See, e.g., Michele Brandt & Jeffrey A. Kaplan, *The Tension Between Women's Rights and Religious Rights: Reservations to CEDAW by Egypt, Bangladesh and Tunisia*, 12 J. L. & RELIGION 105, 109 (1995-1996) (stating that certain reservations to CEDAW by Bangladesh, Egypt, Iraq, Libya, and Tunisia are for Islamic reasons); Jennifer Kristen Lee, *Legal Reform to Advance the Rights of Women in Afghanistan Within the Framework of Islam*, 49 SANTA CLARA L. REV. 531, 561 (2009) (stating that "[b]ecause of the systematic, unequal treatment of women in Afghan society, necessary improvements in women's rights are long overdue"); Manar Waheed, *Domestic Violence in Pakistan: The Tension Between Intervention & Sovereign Autonomy in Human Rights Law*, 29 BROOK. J. INT'L L. 937, 970 (2004) (discussing Pakistan's denial of women's fundamental right to protection from domestic violence). It is important to note that nations ascribing to many faiths, not just Islam, also neglect women's rights. See, e.g., Sarah R. Hamilton, *The Status of Women in Chile: Violations of Human Rights and Recourse Under International Law*, 25 WOMEN'S RTS. L. REP. 111, 122 (2004) (noting that "following the lead of the Catholic Church, [Chile] remains generally unwilling to reform its laws on women's status in society").

47. See Brouksy, *supra* note 23, at 235.

48. See *About WLUML*, WOMEN LIVING UNDER MUSLIM LAWS, <http://www.wluml.org/node/5408> (last visited June 16, 2011) (arguing that notion of a homogenous "Muslim world" is a deliberately created myth neglecting contextual variations and the multiple sources of Islamic laws).

49. See Arshad, *supra* note 2, at 132; see also MOUNIRA M. CHARRAD, *STATES AND WOMEN'S RIGHTS: THE MAKING OF POSTCOLONIAL TUNISIA, ALGERIA, AND MOROCCO* 31 (2001) (discussing variations within four main legal schools of thought within dominant Sunni Islam, including *Maliki* and *Hanafi*).

50. See CHARRAD, *supra* note 49, at 1.



Bourguiba, President of Tunisia from 1956 until 1987,<sup>51</sup> described the law as “the end of a barbaric age and the beginning of an era of social equilibrium and civilization.”<sup>52</sup> As with the enactment of Morocco’s new *Moudawana*, Tunisian officials emphasized the law’s origin in Islamic sources and *ijtihad*,<sup>53</sup> distinguishing it from the secular Turkish Civil Code of 1926.<sup>54</sup> Tunisia’s law “can be interpreted either way, as an Islamic body of legislation inspired by secular norms, or a secular body of legislation inspired by Islam.”<sup>55</sup> The law eventually evolved into a source of national pride<sup>56</sup> as well as “a yardstick against which to judge changes in family law in other Middle Eastern countries.”<sup>57</sup> Thus, as the Tunisian and Moroccan examples illustrate, women’s rights legislation and Muslim societies are far from mutually exclusive.<sup>58</sup>

Nevertheless, most Muslim countries, like many other countries, share an ancient tradition of conservative women’s rights practices,<sup>59</sup> with interpretations of Islamic law as the foundation of those practices.<sup>60</sup> The

51. *Background Note: Tunisia*, U.S. DEP’T OF STATE, (Oct. 13, 2010), available at <http://www.state.gov/r/pa/ei/bgn/5439.htm> [hereinafter *Tunisia Background Note*].

52. CHARRAD, *supra* note 49, at 220. However, it is worth noting, as the events of 2010 illustrate, that Tunisia operated under a dictatorship from independence until recently. President Bourguiba, a would-be women’s rights hero, also “stood unopposed for re-election several times and was named ‘President for Life’ in 1974 by a constitutional amendment.” *Tunisia Background Note*, *supra* note 51. After 1987, however, subsequent President Ben Ali promised more respect for human rights and political freedoms. *See id.* One French senator noted that, in supporting these dictatorships, “France took cover behind the fact that [Tunisia] is the good student of the Maghreb in the matter of education, women’s rights, and teaching French.” Raphaëlle Bacque & Jean-Pierre Tuquoi, *Une France Très Protectrice*, LE MONDE (Jan. 15, 2011), [http://www.lemonde.fr/a-la-une/article/2011/01/15/une-france-tres-protectrice\\_1466017\\_3208.html](http://www.lemonde.fr/a-la-une/article/2011/01/15/une-france-tres-protectrice_1466017_3208.html). Thus, the Tunisian government may have had somewhat of an “advantage” in effectively enforcing its women’s rights law, in that it likely did so through repressive tactics and severely centralized authority.

53. *Ijtihad* is a mode of legal analysis, and “the vehicle for reinterpretation of Islamic law.” Arshad, *supra* note 2, at 130; *see also* CHARRAD, *supra* note 49, at 221.

54. *See* CHARRAD, *supra* note 49, at 221.

55. *Id.* at 222.

56. *See id.* at 231.

57. *Id.* at 1.

58. *See A Look at Women’s Rights*, *supra* note 34 (stating that “activists [in Morocco] say a key to their success was arguing for reform in the vocabulary of Islam, rather than Western feminism. The effort required re-reading Muslim theology and applying its lessons on social justice to the question of gender discrimination. The result was a uniquely Moroccan case for change.”).

59. *See, e.g.,* Janice A. Lee, *Family Law of the Two Chinas: A Comparative Look at the Rights of Married Women in the People’s Republic of China and the Republic of China*, 5 CARDOZO J. INT’L & COMP. L. 217, 221 (1997) (discussing women’s low position under the traditional Confucian system in China); Martha I. Morgan, *Constitution-Making in a Time of Cholera: Women and the 1991 Colombian Constitution*, 4 YALE J.L. & FEMINISM 353, 359 (1992) (discussing women’s limited rights in post-colonial Colombia).

60. *See e.g.,* Brandt & Kaplan, *supra* note 46, at 109. *But see* Laura H. Weingartner, *Family Law & Reform in Morocco—The Mudawana: Modernist Islam and Women’s Rights in the Code of Personal Status*, 82 U. DET. MERCY L. REV. 687, 692 (2005) (noting that most Muslims regard the advent of *Shari’a* as a major improvement in women’s rights because, for example, before *Shari’a*, women could be freely sold into marriage).

Qur'an and the Sunnah<sup>61</sup> are the primary textual sources of Islamic law,<sup>62</sup> with conflicting methodologies governing their application: *ijtihad* (continuing reinterpretation) versus *taqleed* ("imitation," *i.e.*, adhering to precedent).<sup>63</sup> Historically, scholars interpreted the Qur'an to uphold customs practiced during the time of the Prophet, because association with the Prophet allowed the scholars to assume his tacit approval.<sup>64</sup> Although *ijtihad* was popular for many years, it fell into disuse in favor of *taqleed* around the tenth century,<sup>65</sup> both because of "existing insufficiencies in the legal arena" and because many presumed *taqleed* to be the methodology most faithful to tradition.<sup>66</sup> Consequently, as the original principles of Islamic law stemmed from seventh century patriarchal customs of Arab communities, those patriarchal principles have endured.<sup>67</sup> Thus, for hundreds of years, the traditional rules of *Shari'a* required, *inter alia*: (1) obedience of the wife to the husband in exchange for financial maintenance;<sup>68</sup> (2) a male legal guardian (*wali*)<sup>69</sup> to choose the marriage partner for a woman;<sup>70</sup> (3) the husband's exclusive right of *talaq*, or repudiation, a form of unilateral divorce, usually using words alone;<sup>71</sup> and (4) the husband's unfettered option to take up to four wives.<sup>72</sup> These rules continue to heavily influence family life throughout the world, including in Pakistan, Afghanistan, Saudi Arabia, Egypt, and Mali.<sup>73</sup>

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61. The Qur'an is the holy book of Islam and the Sunnah includes the Prophet's interpretation of the Qur'an. The Qur'an takes hierarchical precedence over the Sunnah. See Liaquat Ali Khan, *Jurodynamics of Islamic Law*, 61 RUTGERS L. REV. 231, 256 (2009).

62. Arshad, *supra* note 2, at 132.

63. *Id.* at 134. The notion of the duty of *taqleed* gained popularity in the 10th century, requiring jurists "to follow the established doctrines created by Islamic schools of law rather than refer to and interpret the original primary sources. . . . Thus, with *taqleed* began the era of following Islamic law precedent." *Id.*

64. See DAVID PEARL & WERNER MENSKI, *MUSLIM FAMILY LAW 4* (Sweet & Maxwell eds., 3d ed. 1998).

65. Andra Nahal Behrouz, *Transforming Islamic Family Law: State Responsibility and the Role of Internal Initiative*, 103 COLUM. L. REV. 1136, 1148 (2003).

66. Arshad, *supra* note 2, at 146.

67. See Weingartner, *supra* note 60, at 693 (stating that "early Islamic jurisprudence tended to incorporate pre-Islamic customs . . . , [which] resulted in a continuation of tribal patriarchal and patrilineal social systems").

68. See Ali, *supra* note 37.

69. See RACHEL NEWCOMB, *WOMEN OF FES: AMBIGUITIES OF URBAN LIFE IN MOROCCO* 68 (2009).

70. See CHARRAD, *supra* note 49, at 33-34.

71. Arshad, *supra* note 2, at 129.

72. See *id.*

73. See, e.g., Brandt & Kaplan, *supra* note 46, at 109 (stating that certain reservations to CEDAW by Bangladesh, Egypt, Iraq, Libya, and Tunisia are for Islamic reasons); Lee, *supra* note 46, at 561 (stating that "[b]ecause of the systematic, unequal treatment of women in Afghan society, necessary improvements in women's rights are long overdue"); Waheed, *supra* note 46, at 970 (discussing Pakistan's denial of women's fundamental right to protection from domestic violence); Martin Vogl, *Mali Women's Rights Bill Blocked*, BBC NEWS (Aug. 27, 2009), <http://news.bbc.co.uk/2/hi/8223736.stm>.

## B. History of the Reform

Between independence in 1956 and 2004, Morocco subscribed to conservative Islamic family law traditions, beginning with its adoption of the Code of Personal Status in 1958.<sup>74</sup> The new government prioritized the “preserv[ation of] Morocco’s national and Islamic identity by creating a uniform family code based upon the Maliki school of Islamic law.”<sup>75</sup> As such, the 1958 law was “the only major area of the Moroccan legal system based on Islamic *Shari’a* law.”<sup>76</sup> Criminal and business law, for example, were drafted in secular terms.<sup>77</sup> As per tradition, the Code of Personal Status included provisions for: (1) a wife’s obedience to her husband in exchange for financial maintenance;<sup>78</sup> (2) the husband’s right of repudiation;<sup>79</sup> (3) the husband’s right of polygamy;<sup>80</sup> (4) the wife’s ability to travel contingent upon her husband’s permission, and other similar restrictions;<sup>81</sup> (5) the minimum marriage age of 18 years for men and 15 for women;<sup>82</sup> and (6) guardianship of children automatically going to a “male agnate”<sup>83</sup>. Manifestly, prior to the 2004 change in the *Moudawana*, Moroccan women’s rights were more aligned with those of women in countries such as Saudi Arabia, Pakistan, and Afghanistan, indicating the significance of *Shari’a* as a part of Morocco’s history, culture, and legal precedent.<sup>84</sup> Moroccan family law’s initial derivation from Islamic law “made it especially difficult to reform, as the law itself is thought of by many as a sacred, unalterable text.”<sup>85</sup>

Practical realities for women in Morocco under *Shari’a* were difficult legally, economically, and socially.<sup>86</sup> For example, if a husband divorced his wife—an issue in which she could have little input—he would most

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74. See CHARRAD, *supra* note 49, at 1.

75. Arshad, *supra* note 2, at 135. *Maliki* is one of four orthodox Sunni schools of Islamic jurisprudence. Behrouz, *supra* note 65, at 1147–49. While “[t]he classical method of Islamic jurisprudence has been designed to limit the influence of independent value judgments . . . , [t]he Maliki methodology has historically given weight to the welfare (*maslaha*) of the general community and the local custom (*urf*) of people . . . as long as these do not conflict with the principles and injunctions of Islam.” *Id.* The *Maliki* school has influenced Islamic jurisprudence throughout, among other areas, North and West Africa, Egypt, and Sudan. See *id.* at 1148.

76. Weingartner, *supra* note 60, at 693.

77. See NEWCOMB, *supra* note 69, at 61.

78. See Arshad, *supra* note 2, at 135–36.

79. See *id.*

80. See *id.*

81. See *id.*

82. Weingartner, *supra* note 60, at 694.

83. *Id.* at 696.

84. See generally Arshad, *supra* note 2, at 129–38.

85. Oriana Wuerth, *The Reform of the Moudawana: The Role of Women’s Civil Society Organizations in Changing the Personal Status Code in Morocco*, 3 *HAWWA* 309, 312 (2005). In 1975, feminist Fatima Mernissi wrote: “Although many material things have changed dramatically in Muslim societies . . . , [a]ll attempts to bring about serious breaches in traditional ideology or to abandon traditional cultural models concerning the family are denounced as atheist deviations.” *Id.* at 313.

86. See NEWCOMB, *supra* note 69, at 79–81.

likely acquire custody of their children.<sup>87</sup> However, if a woman somehow maintained custody, she would lose custody if she remarried.<sup>88</sup> Having remained financially dependent on her first husband, following a divorce, she would have to choose between keeping her children and finding a job despite having few skills, or remarrying and losing her children.<sup>89</sup> These constraints drove many women, especially in rural areas, to seek low-paying jobs as housekeepers, where they were often subject to exploitation and sexual abuse.<sup>90</sup> There was, in fact, a “blurry line between domestic work and prostitution,” and the people walking that line were women who wanted only to keep custody of their children.<sup>91</sup>

In 2003, drafters of Morocco’s new *Moudawana* responded to various pressures<sup>92</sup>—including that of a significant feminist movement<sup>93</sup>—by making radical changes to the 1958 Personal Status Code, thereby distinguishing it considerably from traditional *Shari’a*, and nearly codifying legal equality for women. Among other elements, the law now states that: (1) both a man and a woman must “consent to unite” to be married, implying a woman’s right to refuse;<sup>94</sup> (2) the age of consent for marriage is 18 for both sexes;<sup>95</sup> (3) a woman no longer requires a male guardian to conclude a marriage on her behalf, although she may choose to have one;<sup>96</sup> (4) reciprocal rights and duties exist between the husband and wife to equally provide “respect, fidelity, affection, preservation of the interests of the family, [and] responsibility for the care and management of the children and the family’s assets . . . ;”<sup>97</sup> (5) polygamy is prohibited where the wife does not consent to her husband taking a second wife or where the second wife is uninformed of the first wife’s existence;<sup>98</sup> (6) the husband’s right of oral repudiation is eliminated,<sup>99</sup> and the wife may also seek divorce;<sup>100</sup> and (7) after divorce, the wife is the default custodian of children, and the husband

87. See Weingartner, *supra* note 60, at 696.

88. See NEWCOMB, *supra* note 69, at 80.

89. See *id.* at 80-81.

90. See *id.* at 80-81.

91. See *id.*

92. “[E]xternal pressures helped promote reform and the opening up of society. Morocco’s bid to become a full member of the European Union gave the government an incentive to democratize and to respond to the women’s movement. The Morocco-European Union and Morocco-United States free trade agreements brought social and economic provisions that placed pressure on the government to carry on down the path of reform.” Ziba Mir-Hosseini, *How the Door of Ijtihad Was Opened and Closed: A Comparative Analysis of Recent Family Law Reforms in Iran and Morocco*, 64 WASH. & LEE L. REV. 1499, 1510 (2007).

93. See generally Brouksy, *supra* note 23, at 235-42. In 2000, the government also outlined a national plan to improve women’s status, entitled the “National Strategy for the Integration of Women in Development.” Wuerth, *supra* note 85, at 310.

94. Weingartner, *supra* note 60, at 697-98.

95. *Id.* at 698.

96. *Id.* at 699.

97. *Id.*

98. *Id.* at 700; see also *Moudawana*, *supra* note 10, at arts. 40-46.

99. NEWCOMB, *supra* note 69, at 80-81.

100. See Weingartner, *supra* note 60, at 701-02.

must pay alimony.<sup>101</sup> Essentially, Moroccan women gained fundamental powers relating to marriage, divorce, household decision-making, and childrearing.

In drafting the new *Moudawana*, reformers looked to principles of Islam for guidance, and incorporated elements of *Shari'a*.<sup>102</sup> Despite the law's apparent liberality on women's issues, many provisions maintain aspects of the traditional regime.<sup>103</sup> The issue of polygamy exemplifies the drafters' use of *ijtihad* to modernize the law while maintaining its legitimacy in the context of Islamic tradition. For years, scholars and religious figures have debated the meaning of the portion of the Qur'an's provisions on polygamy.<sup>104</sup> While some view the words as sanctioning polygamy if a husband treats his wives equally,<sup>105</sup> others argue that total equality in treatment is impossible,<sup>106</sup> and thus, the Qur'an actually promotes monogamy by making polygamy contingent upon an impossible condition.<sup>107</sup> By looking to this latter interpretation,<sup>108</sup> the *Moudawana*'s reformers kept the law within the scope of traditional Islamic dialogue while taking steps to liberalize it.

Despite the reform's basis in Islam, the Moroccan community received the new *Moudawana* with mixed reactions after over a decade of virulent debate about potential reforms of the Personal Status Code.<sup>109</sup> In 2003, after King Mohamed VI officially announced the reform, Morocco's plethora of women's rights groups celebrated, while others were outraged.<sup>110</sup> The reaction mirrored the polarization of the pre-reform dialogue. Propo-

101. See *id.* at 702-03.

102. *Moudawana*, *supra* note 10, at pmb1.

103. *Id.* at arts. 26, 39 (stating in Article 26 that the husband gives the wife a dowry, and in Article 39 that "[t]he temporary impediments to marriage are: . . . The marriage of a Muslim woman to a non-Muslim man, and the marriage of a Muslim man to a non-Muslim woman unless she is of the Christian or Jewish faith").

104. Surah 4, Verse 3 of the Qur'an says, "If you fear you cannot be equitable to orphan girls (in your charge, or misuse their persons), then marry women who are lawful for you, two three, or four; but if you fear you cannot treat so many with equity, marry only one, or a maid or captive. This is better than being iniquitous." AHMED ALI, *THE QUR'AN: A CONTEMPORARY TRANSLATION* (Sacred Writings 1984); see *Egypt Scholars Engage in Debate over Polygamy*, AL ARABIYA NEWS CHANNEL (June 27, 2010), <http://www.alarabiya.net/articles/2010/06/27/112438.html>.

105. See, e.g., *Polygamy in Islam*, POLYGAMY 411, <http://polygamy411.com> (last visited May 31, 2011).

106. See, e.g., *How Many Wives?*, PBS GLOBAL CONNECTIONS THE MIDDLE EAST, <http://www.pbs.org/wgbh/globalconnections/mideast/educators/women/lesson3a.html> (last visited Feb. 26, 2011).

107. See *Moudawana*, *supra* note 10, at pmb1.

108. *Id.* at art. 40 ("Polygamy is forbidden when there is the risk of inequity between the wives. It is also forbidden when the wife stipulates in the marriage contract that her husband will not take another wife.").

109. See Aicha El Hajjami, *Gender Equality and Islamic law—The Case of Morocco*, in *NEW DIRECTIONS IN ISLAMIC THOUGHT* 101-02 (Vogt et al. eds., 2009).

110. See Ilhem Rachidi, *After Struggle, New Equality for Moroccan Women*, THE CHRISTIAN SCIENCE MONITOR (Oct. 24, 2003), <http://www.csmonitor.com/2003/1024/p09s01-wome.html> (quoting one man saying: "Now I will be commanded by a woman in my home. What do I have left to do in this country now?" and another saying: "It's fine with me as long as a father or a brother can still correct the behavior of a woman. Some

nents spoke in terms of international human rights, pointing to Morocco's signature on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>111</sup> Opponents, including many women, insisted that the reforms were against Islam or "a direct critique of God's immutable design."<sup>112</sup> Some now argue that the *Moudawana's* passage was attributable only to the aftermath of a May 2003 terrorist attack in Casablanca, after which Islamic extremists had reason to remain silent or were actively repressed.<sup>113</sup> Offering a sober perspective as to how much popular support the law actually had, Moroccan political analyst Mohamed Tozy predicted that year that the law would "have a real impact 'only if it [were] combined with the massive education of young girls. One should not expect that it will change society. It will go along with social change.'"<sup>114</sup>

The *Moudawana* remains part of the public discourse in Morocco. In January 2011, a popular magazine, "*Femmes du Maroc*" (Women of Morocco), featured several stories about legal changes favoring women, including articles such as, "15 Years Ago, Moroccan Women Could Not . . . ," and "Has Moroccan Women's Situation Really Evolved?" The magazine explicitly referenced many of the *Moudawana's* provisions, and also clarified the split within Moroccan society over the issue of women's rights.<sup>115</sup> For example, one article featured the opinions of people interviewed on the street regarding women's new right to acquire a passport without her husband's permission.<sup>116</sup> On one end of the spectrum, one finds interviewee Sarah who expressed: "Women are free to do all that they want, with neither their husbands nor their fathers. It's important that they be able to travel without their consent. . . . This [right] opens doors for women."<sup>117</sup> On the other end, one finds interviewee Abderrahmane who

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women behave very badly;" while quoting a women's rights activist as saying: "This reform . . . brought me back my dignity as a woman . . . like a slave who frees himself.").

111. See NEWCOMB, *supra* note 69, at 57. CEDAW addressed "women's equality before the law, women's right in the family, and women's access to health care and education, among many other [issues]." Afra Afsharipour, *Empowering Ourselves: The Role of Women's NGOs in the Enforcement of the Women's Convention*, 99 COLUM. L. REV. 129, 130 (1999).

112. NEWCOMB, *supra* note 69, at 53.

113. See Stephanie Willman Bordat & Saida Kouzzi, *The Challenge of Implementing Morocco's New Personal Status Law*, 2 ARAB REFORM BULLETIN no. 8 (Carnegie Endowment for International Peace 2004). Indeed, the fact that the law's passage came from the King's initiative was abnormal because laws usually go through the Government Council, the Council of Ministers, and debates in Parliament. See Brouksy, *supra* note 23, at 237. However, pressure from the Islamic movement in Casablanca in 2000 prevented the *Moudawana's* progression through normal avenues. See *id.*

114. Rachidi, *supra* note 110. According to a poll discussed in *Le Monde*, the law was still unpopular in 2009. "The most severe criticisms the King takes bear on the *Moudawana* . . . Surprise! Almost one Moroccan out of two thinks that the King went too far in his desire to liberate women . . . all [of the gains within it] are far from well-received. Only 16% of Moroccans think that women ought to have yet more rights." Florence Beaugé, *Maroc: Le Sondage Interdit*, LE MONDE (Aug. 3, 2009) [http://www.lemonde.fr/afrique/article/2009/08/03/maroc-le-sondage-interdit\\_1225217\\_3212.html](http://www.lemonde.fr/afrique/article/2009/08/03/maroc-le-sondage-interdit_1225217_3212.html).

115. See Dehhani & Lahlou, *supra* note 16, at 36.

116. See *id.*

117. *Id.*

said: "It's not normal that a woman can now have a passport without asking her husband if he agrees or not. When a woman marries, she takes her husband's name, and she thus needs to obtain his agreement for everything. She belongs to him and cannot decide by herself to leave."<sup>118</sup> The fact that the *Moudawana* continues to inspire passionate responses from Morocco's populace influences the law's efficacy.

## II. The Reality of the New *Moudawana's* Implementation

The effect of a law in action often fails to mirror the law as stated on the books.<sup>119</sup> This reality suggests the importance of assessing the *Moudawana's* real-world impact, rather than unquestioningly accepting that it has accomplished its goals. Real-world assessment seems particularly appropriate in the case of women's rights legislation in Morocco, where the law's passage involved cultural upheaval and political controversy. Human rights literature almost instinctively regards it as an unambiguous sign of progress,<sup>120</sup> yet voices from within Morocco suggest more mixed achievement.<sup>121</sup>

Evaluating the *Moudawana's* impact benefits from varying sources of information. This Part uses Moroccan periodicals, reports published by Moroccan women's rights groups, U.S. State Department reports, and traditional scholarly sources such as books and articles to evaluate the *Moudawana's* impact. In addition, this Part relies on qualitative information, which is essential to assessing law in action.<sup>122</sup> The qualitative data used here was gathered by the author in 18 field interviews in Azilal Province,<sup>123</sup> located in central Morocco, in January 2011.<sup>124</sup> Encompassing much of the Middle and High Atlas Mountains, Azilal Province is among the poorer provinces in Morocco.<sup>125</sup> Its population is a large percent Berber ("Amazigh"), an ethnic group which has been consistently marginal-

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118. See *id.*

119. See e.g., ROBERT ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991); see also Stewart Macaulay, *The New Versus the Old Legal Realism: "Things Ain't the Way They Used to Be"*, 2005 WIS. L. REV. 365, 367 (2005) (describing the history of studying the law in action).

120. See, e.g., Weingartner, *supra* note 60, at 687.

121. See, e.g., Ali, *supra* note 37.

122. See, e.g., ELLICKSON, *supra* note 119.

123. There was also one interview with a women's rights activist in December 2010 in Casablanca, Morocco's largest city.

124. As the author is American, obvious concerns exist about a non-national conducting interviews in a foreign language about a sensitive domestic issue. Although these concerns cannot be entirely eliminated, the author's background should, hopefully, ameliorate them for purposes of the present study. The author's twenty-seven months of Peace Corps service in the Azilal Province, fluency in French (the language of commerce in Morocco) and Darija (the Moroccan Arabic dialect), and proficiency in Tamazight (an indigenous Berber language of Morocco) provided contacts, facilitated the identification of interviewees, and promoted interviewee participation and candor. The author completed Cornell University's online training for ethical research involving human subjects and Cornell's Institutional Review Board approved the project.

125. See SOC. & ECON. DEV. GRP. MIDDLE EAST & N. AFRICA REGION, KINGDOM OF MOROCCO POVERTY REPORT 39 (Sept. 2004).

ized throughout Morocco's history, and which tends to suffer from more poverty and repression more than Morocco's Arab population.<sup>126</sup>

The research methodology entailed face-to-face interviews in French, Darija (Moroccan Arabic), and Tamazight (Berber) with individuals and groups, with subsequent translation into English by the author. Due to the personal and controversial nature of the subject matter, participants were guaranteed anonymity. Participants' stories and opinions function to illustrate perceptions and examples of the *Moudawana's* impact, and the varied ways in which the law fails to account for realities of life in rural Morocco. The purpose of this case-oriented analysis of the interviews' content is to exemplify underlying implications and patterns of relationships as they relate to trends concerning family law in Morocco, and the ways in which the *Moudawana* does not accomplish its objectives.<sup>127</sup> In the following discussion, this Note will address potential reforms that can be used to address these shortcomings.

The anecdotes and opinions included in this Note are not part of a statistically representative sample. The interviews came from a small group of people in two rural areas, and there are limits as to what may be inferred or extrapolated from them. Had the group of participants included people of more varied backgrounds, the results would have painted a different picture. However, the interviewees represent an important demographic in Moroccan society. Approximately 50% of Morocco's population is rural,<sup>128</sup> thus, one may infer that the interviewees' experiences are not atypical, and that their stories reflect areas where the *Moudawana* would benefit from additional reform. It is likely, of course, that segments of Moroccan society with better access to finances, education, and infrastructural resources have more positive experiences with the *Moudawana*. As little data exists about experiences among either demographic, this Note focuses on challenges faced by those at the highest risk of exclusion from advances accompanying legal developments, and on how the *Moudawana* could better account for the realities of life in rural Morocco.

#### A. The *Moudawana's* Under-Implementation

As Moroccan sociologist Mohamed Tozy foresaw, while the international community hails the *Moudawana* as a revolutionary step,<sup>129</sup> the law has been different in practice than in writing.<sup>130</sup> Indeed, women's rights activists expressed concern about the law's implementation from its incep-

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126. See Said Bennis, *The Amazigh Question and National Identity in Morocco*, ARAB REFORM INITIATIVE (July 20, 2009), <http://arab-reform.net/spip.php?article2245>.

127. See EARL BABBIE, *THE PRACTICE OF SOCIAL RESEARCH* 378-80 (Thompson Wadsworth ed., 11th ed. 2007).

128. Independent Evaluation Group, *Morocco—Socioeconomic Influence of Rural Roads: Fourth Highway Project*, THE WORLD BANK GROUP (2011), <http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/7BEC60EE0D81629F852567F5005D3597>.

129. See Weingartner, *supra* note 60, at 687.

130. See *Morocco Human Rights Report*, *supra* note 18.



tion.<sup>131</sup> The judicial system itself appeared ill-equipped to implement the new legislation. First, judges had failed to adhere to more modest reforms in 1993,<sup>132</sup> and nothing indicated that adherence to the 2004 reforms would be more successful. Second, the law gave judges freedom to apply religious principles to certain issues,<sup>133</sup> or to otherwise exercise their discretion,<sup>134</sup> creating the risk that individuals' political or religious sympathies would undermine the law's objectives. Third, the law did not guarantee any training of the judiciary in its new provisions.<sup>135</sup> Moreover, advocates were wary of the legislation's establishment of separate family courts,<sup>136</sup> which they claimed would employ lower standards than regular courts.<sup>137</sup> The provision of one family court per province also seemed insufficient to handle a large number of cases, or to be accessible by people living in remote areas. Finally, the lack of a mechanism to monitor the judiciary's progress raised accountability concerns.<sup>138</sup>

Activists also raised concerns relating to cultural and societal issues. Women's high illiteracy rate,<sup>139</sup> for example, risked preventing them from learning about the law or from effectively exercising their rights within the legal system. Further, the law's implementation was likely to suffer as a result of grassroots anti-*Moudawana* propaganda from religious groups who strongly opposed it.<sup>140</sup> Finally, Moroccans' continued respect for traditional *adouls*<sup>141</sup> as family law authorities would affect their willingness to seek guidance and redress in family courts.<sup>142</sup>

Advocates' fears have since been largely validated. In 2009, the U.S. State Department Human Rights Practices Country Report on Morocco indicated that implementation of the new family law "remained a concern."<sup>143</sup> NGOs and journalists have reported the same assessment: various factors come together to generally hamper effective implementation of the *Moudawana*.<sup>144</sup> Several women interviewed for this Note in Morocco's Azilal Province shared the perception that the *Moudawana* has not had the

131. See Bordat & Kouzzi, *supra* note 113.

132. *Id.*

133. *Moudawana*, *supra* note 10, at art. 54 (children have right to religious guidance from parents and breastfeeding from their mothers).

134. See *id.* at art. 81.

135. See Bordat & Kouzzi, *supra* note 113.

136. See *Moudawana*, *supra* note 10, at pmb1.

137. See Bordat & Kouzzi, *supra* note 113.

138. See *id.*

139. See ROYAUME DU MAROC HAUT COMMISSARIAT AU PLAN, RECENSEMENT GENERAL DE LA POPULATION ET DE L'HABITAT 2004: CARACTERISTIQUES DEMOGRAPHIQUES ET SOCIO ECONOMIQUES DE LA POPULATION 23 (2004) [hereinafter RECENSEMENT GENERAL].

140. See Bordat & Kouzzi, *supra* note 113.

141. "Adoul is typically translated as 'notary' or in French, 'notaire.' These individuals have, however, greater magisterial responsibility and legal significance than the acknowledgment function of their American counterparts." Weingartner, *supra* note 60, at 695 n.46.

142. See Bordat & Kouzzi, *supra* note 113.

143. *Morocco Human Rights Report*, *supra* note 18.

144. See, e.g., *The Moroccan Family Code "Moudawana"*, EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK (July 13, 2009), <http://en.euromedrights.org/index.php/themes/3690.html>; see also Ali, *supra* note 37.

impact anticipated in their area of the country. One commented, “What *Moudawana* is there? There is no *Moudawana*. There’s a *Moudawana* for people with money. . . . If I had money, I’d do whatever I like with the law [too].”<sup>145</sup> Another explained, “[F]ew people do this *Moudawana*. There’s no *Moudawana* because people aren’t aware of it.”<sup>146</sup> Ample evidence, including opinions such as these, suggests that the *Moudawana* has not effected the changes intended.

Child marriage is perhaps the clearest example of the *Moudawana*’s under-implementation.<sup>147</sup> The increase between 2007 and 2008 of underage married girls<sup>148</sup> suggests that one target of the law remains unaffected. Most likely, the law’s provision raising the minimum marriage age for girls from 15 to 18 is ineffectual because interested parties can obtain waivers to restrictions on underage marriage with relative ease.<sup>149</sup> Between 2006 and 2009, requests for such waivers increased approximately 25% each year, with the judiciary approving 90% of these petitions in 2008,<sup>150</sup> a trend the Huffington Post called “an alarming resurgence of underage marriage in Morocco’s more conservative, rural areas.”<sup>151</sup> Seemingly minor provisions have rendered the *Moudawana* more symbolic than actual in this regard. Despite the praise it has received, no one has reported significant vindication of a female child’s new right to be unwed until she reaches 18. On the contrary, one might argue that the law’s loopholes have facilitated the practice of underage marriage.

Women interviewed in Azilal readily shared many stories of girls who had recently been married before reaching the age of 18, indicating the pervasiveness of the *Moudawana*’s ineffectuality in this area. When asked how many such girls they knew, several simply answered, “a lot.”<sup>152</sup> One interviewee, a university student, recounted the story of her neighbor and friend who was married in 2010 at the age of 16. She explained, “[My friend] didn’t want to [get married]. She was crying. On the day of the wedding, she said she was going to commit suicide. But that’s it, at the

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145. Interview with two women, in Afourer, Azilal, Morocco (Ann Eisenberg trans., Jan. 6, 2011) [hereinafter Interview #4].

146. Interview with two women, in Afourer, Azilal, Morocco (Ann Eisenberg trans., Jan. 8, 2011) [hereinafter Interview #13].

147. See, e.g., Imane Belhaj, *Increase in Underage Marriage Worries Moroccan Women’s Groups*, MAGHAREBIA (Nov. 14, 2008), [http://www.magharebia.com/cocoon/awi/xhtml1/en\\_GB/features/awi/reportage/2008/11/14/reportage-01](http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/reportage/2008/11/14/reportage-01). Although outside the scope of this Note, circumstances within marriages are often dire for women, indicating that the *Moudawana*’s objective of equality within marriage also goes underserved. Magharebia, an online Moroccan periodical, recounted a typical case: “In spite of her young age [of 14], [Meriem] thought her betrothed was better than everything she had ever imagined. He was not too much older . . . [but h]er rosy dreams quickly faded. He thought he had acquired a maid, Meriem said, who had no rights other than compliance to his brutal sexual desires.” *Id.* Women are also often dominated by their mothers-in-law and treated like servants. See *id.*

148. See Touahri, *supra* note 19.

149. See *id.*

150. *Morocco Human Rights Report*, *supra* note 18.

151. *A Look at Women’s Rights*, *supra* note 34.

152. E.g., Interview #13, *supra* note 146.

end, she got married.”<sup>153</sup> Another interviewee, a high school senior, added: “A girl who lived close by, she was studying like me. But her father didn’t let her finish her studies. And she got married. . . . [She was] sixteen.”<sup>154</sup> These interviewees opined that girls entering marriage before they reach eighteen is so commonplace that they would not be able to keep track.<sup>155</sup> These anecdotes illustrate the discrepancy between the law as written—which appears to raise the minimum marriage age in Morocco—and the law as practiced—which seems to do nothing of the sort. Rather, familial commitment to social values and practices seems to be the “real” law as practiced. The prevalence of such examples denotes shortcomings in the legislation and its implementation mechanisms, which will be discussed in detail below.

The *Moudawana*’s provision for alimony payments also appears particularly ineffective. One women’s rights activist reported that judicial discretion over alimony payments leaves the requirement largely moot because judges consistently award insufficient amounts. She said, “It’s [always] very low . . . 300 or 400 [dirhams per month,<sup>156</sup> which] is insufficient to rent a residence for the family. . . . The judge is the one who measures the salary, the situation of the woman, how many children there are. It’s discretionary, [and] the judgments are insufficient.”<sup>157</sup> In addition to judicial discretion not going in their favor, another major impediment to divorced women receiving money is the law’s provision sending ex-husbands to jail for failure to pay. Although such punishment is arguably desirable, the women receive no compensation after their husbands are sentenced.<sup>158</sup>

Other obstacles to obtaining alimony arise as well, varying according to specific circumstances.<sup>159</sup> One woman recounted her divorced daughter’s situation:

Now, the poor thing, she’s lost. It’s been three years since he divorced her. And she has a daughter who is eight years old. [Her ex-husband] doesn’t give us alimony or a single thing. He went abroad. He’s fleeing. We’re lost. She got a lawyer and the lawyer hasn’t done a single thing. He says, “Okay, okay, okay, okay.” And he takes money, but hasn’t done a thing. We paid and he did nothing. Now I’m working in a café so her daughter can eat.<sup>160</sup>

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153. *Id.*

154. *Id.*

155. *E.g.*, Interview #13, *supra* note 146.

156. On January 21, 2011, one U.S. Dollar was worth about 8.2 Moroccan Dirhams. *US Dollar (USD) to Moroccan Dirham (MAD) Exchange Rate History*, EXCHANGE RATES UK, <http://www.exchangerates.org.uk/USD-MAD-exchange-rate-history.html> (last visited May 29, 2011).

157. Interview with women’s rights activist, in Casablanca, Morocco (Ann Eisenberg trans., Dec. 31, 2010) [hereinafter Interview #1].

158. *See* Ali, *supra* note 37; *see also*, *e.g.*, Interview with woman, in Afourer, Azilal, Morocco (Ann Eisenberg trans., Jan. 6, 2011) [hereinafter Interview #5] (describing that “he got out [of jail]. They gave him a month and a half. What’s a month and a half when no money comes?”).

159. For example, marriages may not be officially recorded, giving women no legal right to alimony or child support. *See* Belhaj, *supra* note 147.

160. Interview with woman, in Afourer, Azilal, Morocco (Ann Eisenberg trans., Jan. 6, 2011) [hereinafter Interview #7]

This interviewee's story exemplifies how interrelated factors hamper the *Moudawana's* capacity to provide redress, especially in cases of alimony payments. Specifically, the law itself does not account for a unique situation where an ex-husband flees and an incompetent or corrupt lawyer exploits a client in need. Nonetheless, such complex and desperate stories are typical of life in rural Morocco. Although, arguably, no law can address all unique circumstances, the commonness of situations such as these indicates a need for further reform.

Rivaling the challenge of implementing the law is the challenge of assessing the extent to which it is or is not being implemented. In a country with a developing legal infrastructure, "trying to assess the extent of implementation is 'methodologically very challenging.'"<sup>161</sup> This challenge is all the more problematic where the law is still relatively new and few statistics have been gathered. Nonetheless, it is clear that a new law must "take into consideration the country's political, social, and economic realities to make the system effective."<sup>162</sup> In the case of Morocco's *Moudawana*, evidence of a trend of under-enforcement clarifies the reality of widespread obstacles to effective implementation. The outcries of NGOs, trends in child marriage, and the U.S. State Department's Human Rights Report tell the same story: Moroccan society has not universally incorporated this law into its regular operations.<sup>163</sup> Continued reform is necessary, if the law is to serve its objectives.

It is important to note, however, that the *Moudawana* has not been entirely ineffective. In addition to illustrating challenges to the *Moudawana's* implementation, the Moroccan interviewees' stories also suggested, often in conflicting accounts, aspects of the law that may have had a tangible impact in rural areas. The two aspects several women considered the most effective were the provision raising the minimum marriage age and the provision restricting polygamous marriage. Regarding the marriage age, one woman said, "I have [a daughter] I'll tell you about, she was 14 [when she got married]. . . . There wasn't yet this law. She lives well, thank God. But now there is the *Moudawana*. They don't like to [do that] anymore. . . . It's 18 years now. Whoever wants some girl pays for her until she's 18. It's the contract."<sup>164</sup> Another woman, who was 18, said she did not know any girls younger than 18 who were married, and that all of her friends waited to get married until they met the minimum marriage age.<sup>165</sup> Several women thought that polygamous marriages were very infrequent now because of the law.<sup>166</sup> "They've restricted it," one woman

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161. Rosten, *supra* note 22, at 417 (quoting the European Bank for Reconstruction and Development).

162. Anne Janet DeAses, *Developing Countries: Increasing Transparency and Other Methods of Eliminating Corruption in the Public Procurement Process*, 34 PUB. CONT. L.J. 553, 559 (2005).

163. See *Morocco Human Rights Report*, *supra* note 18; see also Touahri, *supra* note 19.

164. Interview #4, *supra* note 145.

165. Interview with woman, in Ait Bouguemez, Azilal, Morocco (Ann Eisenberg trans., Jan. 13, 2011) [hereinafter Interview #17].

166. E.g., *id.*; Interview #13, *supra* note 146.

explained. “It’s necessary that [the first wife] give her agreement.”<sup>167</sup> Thus, one finds evidence of the *Moudawana*’s tangible impact on the lives of rural women. Even though observations of the law’s effects may reflect inaccuracies, there is a minimal level of awareness and a perception of social and legal change. The *Moudawana* at least boasts more than total anonymity, which is a sign that public awareness is not entirely lacking.

Statistical evidence gathered by the Democratic League of Women’s Rights [LDDF] suggests that the *Moudawana* has had other tangible successes. Table 1 reports the national two-year pattern of marriages without a male tutor and of polygamous marriages.<sup>168</sup>

**Table 1: Rates of Marriage Without Male Tutor and Polygamy**

	2005	2006
Number of marriages	259,612	289,821
Number of women marrying without male tutor	49,175	60,095
Percent of marriages without male tutor	18.9%	20.7%
Number of polygamous marriages	841	811
Percent of marriages that are polygamous	0.32%	0.28%

From 2005 to 2006, the percent of marriages without a male tutor increased from 18.9% of marriages to 20.7% of marriages, an increase of 9.5% from the 2005 level.<sup>169</sup> The rate of polygamous marriages decreased from 0.32% to 0.28%, a decrease of 12.5% from the 2005 level. Table 1 indicates that more women are exercising their right to marry without a tutor, and fewer men are marrying multiple women.

However, regional evidence is more mixed. Table 2, again using LDDF data, depicts the rates of approval of polygamous marriage in two family courts: Beni Mellal and Fqih Bensaleh. The Table shows that in Beni Mellal—the largest city near the economically disadvantaged Azilal Province—the rate of approval of polygamous marriages declined from 73.3% in 2004 to 27.3% in 2006.<sup>170</sup> The nearby city of Fqih Bensaleh, however, showed

167. *Id.*

168. 2006 LDDF REPORT, *supra* note 17, at 5 (providing statistics on marriage in Morocco).

169. However, some of the statistics seem questionable. In Rabat—the nation’s capital—it is reported that there were only twenty-nine cases of women over the age of 18 seeking marriage without a guardian and 7,202 cases of marriage sought with guardians in 2006. *See id.* at 4. This is dramatically different from the rate in other regions. *See id.* An additional concern with statistical accuracy is that the LDDF numbers survey only eight family law tribunals, and data from those courts may not accurately account for people living in remote areas who do not seek the courts’ formal services.

170. Compare 2006 LDDF REPORT, *supra* note 17, at 16, and LIGUE DÉMOCRATIQUE DES DROITS DES FEMMES, RAPPORT ANNUEL SUR L’APPLICATION DU CODE DE LA FAMILLE (2004) [hereinafter 2004 LDDF REPORT], with LIGUE DÉMOCRATIQUE DES DROITS DES FEMMES, RAPPORT SUR L’APPLICATION DU CODE DE LA FAMILLE DEUX ANS APRÈS SON ENTRÉE EN VIGUEUR 8 (2005) [hereinafter 2005 LDDF REPORT]. However, the LDDF also chastised Beni Mellal authorities for failing to confirm the absence of pressure on the first wife to agree to the addition of the second wife. *See* 2006 LDDF REPORT, *supra* note 17, at 18–19.

no similarly consistent trend.<sup>171</sup>

**Table 2: Rates of Approval of Polygamous Marriage, Two Family Courts, 2004 to 2006**

	2004	2005	2006
<b>Beni Mellal</b>			
Number of demands for polygamy	30	35	33
Number of authorizations	22	14	9
Authorization rate	73.3%	40%	27.3%
<b>Fqih Bensaleh</b>			
Number of demands for polygamy	41	42	43
Number of authorizations	6	9	7
Authorization rate	14.6%	21.4%	16.3%

Thus, the exercise of rights is sporadic even when successful, with different locations seeing differing interplays of the many factors that result in the *Moudawana's* under-implementation.

#### B. Factors Contributing to Under-Enforcement<sup>172</sup>

Various societal factors contribute to the divergence between written law and “living law.”<sup>173</sup> Such factors may include scarce resources, interests of individuals and organizations, and the basic unlikelihood of passive compliance.<sup>174</sup> This Section discusses the influence of the following factors on the implementation of the *Moudawana* in at least one rural area of Morocco: social practices and values, judicial corruption, poverty, illiteracy, perceptions of the law, and legislative gaps. There are likely other relevant factors, yet the legislation would nonetheless be more effective if creative and multi-faceted reforms accounted for the influence of these factors. Part IV will recommend such measures.

171. See generally 2006 LDDF REPORT, *supra* note 17; 2004 LDDF REPORT, *supra* note 170; 2005 LDDF REPORT, *supra* note 170.

172. In assessing factors affecting the *Moudawana's* efficacy, the author attempts to avoid the pitfalls of a “Liberal Feminist Agenda,” which has been characterized as “imagin[ing] itself as an equal opportunity critic of culture wherever that culture subordinates women,” a position which “hides the cultural valence of Liberal legal feminism itself, making it the norm against which all other cultures must inevitably fail.” Cyra Akila Choudhury, *Exporting Subjects: Globalizing Family Law Progress Through International Human Rights*, 32 MICH. J. INT’L L. 259, 315 (2011). Rather, although the legislation in question here is presumed to be desirable, the author intends a descriptive account of the causes rendering written law different from practiced law. Although the following discussion of solutions is intended as normative, this discussion of Moroccan culture is not meant to portray Moroccan culture or Islam as “other,” “bad,” or even as capable of being accurately characterized.

173. See Macaulay, *supra* note 119, at 383.

174. See *id.*

### 1. *Social Practices and Values*

Moroccan society's apparent unwillingness to accept a prohibition on child marriage illustrates the power that engrained social practice can wield over law. Similarly, social practices have impeded the effectiveness of the *Moudawana* in particular. Critics of the law's unsuccessful implementation point to its child marriage loophole as a source of under-enforcement: The law gives judges the power to allow exceptions to the age minimum.<sup>175</sup> This provision for discretion "has enabled thousands of families to marry off their daughters prematurely."<sup>176</sup> Yet, it is the societal attachment to this practice—the fact that there is a demand to meet the supply—that contributes to its persistence.

Social practices such as child marriage can have roots that are difficult to dislodge. Jamal Badaoui, a Moroccan sociologist, explains: "Mindsets are much harder to change than laws. Parents living in the midst of poverty and illiteracy continue to believe that girls must be married off as soon as possible. They can't imagine a future outside of marriage."<sup>177</sup> According to the Moroccan government's census, in 2004, 14% of women aged fifteen to nineteen in rural areas were married,<sup>178</sup> while a mere 6.5% of the rural population had attended high school.<sup>179</sup> It is unlikely for women in particular to achieve higher levels of education.<sup>180</sup> Thus, parents have incentives to marry off their daughter as early as possible: They are securing her future, relieving themselves of a financial burden, and possibly gaining a large dowry.<sup>181</sup> Essentially, without the law tangibly affecting their lives, Moroccans who embrace this tradition have little incentive to question it.

Marriage's special place in Moroccan society undoubtedly affects the effectiveness of several provisions of the *Moudawana*.<sup>182</sup> A popular proverb in Fez says, "marriage fulfills half the duty of religion."<sup>183</sup> That is, people tend to consider seeking out and staying in a marriage to be an obligation under Islam. Further, in some communities, "[u]nmarried men and women are [considered] . . . a threat to the social order" because their sexuality, which has not yet been legitimated by marriage, risks provoking social chaos.<sup>184</sup> Accordingly, many Moroccan families try to have their

175. See Touahri, *supra* note 19.

176. *Id.*

177. *Id.* In 2009, Nouzha Skalli, "[t]he Moroccan minister who oversees issues relating [to] women and the family," commented: "It's very difficult to uproot a culture in five years." *A Look at Women's Rights*, *supra* note 34.

178. See RECENTSEMENT GENERAL, *supra* note 139, at 18. In 2004, a total of 169,586 Moroccan girls were married between the ages of 15 and 19. *Id.* at 71. In addition to this, 1,426 girls aged 10 to 14 were married, 47 girls aged 10 to 14 were widows, and 30 girls aged 10 to 14 were divorced. *Id.*

179. See *id.* at 27.

180. See *id.* at 28.

181. See NEWCOMB, *supra* note 69, at 66; see also *Moudawana*, *supra* note 10, at art 26.

182. See, e.g., *A Look at Women's Rights*, *supra* note 34 (noting that "some traditionalists [in Morocco] worry that marriage is under attack [by the *Moudawana*]").

183. NEWCOMB, *supra* note 69, at 39.

184. *Id.*

children married as soon as possible. For women seeking divorce, the social stigma associated with being single is likely a major deterrent to exercising that new legal right.<sup>185</sup> Similarly, despite women's new right to choose their own husbands, familial pressure to fulfill their religious duty of marriage may well trump the choice. As Rachel Newcomb noted while living in Morocco, "[i]ntense societal pressure to marry still falls hardest on women, and whenever an unmarried woman in her late twenties or older is present at intimate family gatherings, the discussion always turns toward her problematic status."<sup>186</sup> Evidently, despite the *Moudawana's* provisions for freedom in marriage and divorce, individual women still do not necessarily have freedom from familial and community-based pressures.

The false freedom in the choice of a marriage partner or the choice to seek divorce also applies to the choice to seek marriage without the permission of a marriage tutor. A recent high school graduate living in the isolated mountain valley of Ait Bouguemez shared her perception of the unrealistic nature of this choice in light of social constraints:

Especially here in our village, a girl can't go get married by herself, without her tutor. [The law] came here incomplete. With regards to the family code, as for women, they like it. The ones that understand it. Among men, there are few. Like now, at eighteen years, a girl can go get married without a marriage tutor. But here in our place? No. There has to be a marriage tutor. Especially here in Ait Bouguemez. I've never heard of some girl going to get married without a marriage tutor . . . Here in Ait Bouguemez, it's hard. That is, she'll find problems with her family . . . They might follow her, they might do something that's not good. You see? They're not going to be complacent. The honor of that family, necessarily, will affect that girl.<sup>187</sup>

As this interviewee's opinion illustrates, social pressures are compressed in small communities, and traditions often have priority over individual interests. In attempting to exercise her right under the *Moudawana*, a young woman may well alienate an entire town. Considering the widespread nature of such traditions and values,<sup>188</sup> it becomes clear that the law or its enforcement mechanisms must be modified to account for nuances of Moroccan society, especially the community-oriented basis of traditions.

Patriarchy is another social value in Morocco that will be difficult for the *Moudawana's* provisions not to affront because, as Newcomb argues,

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185. In some areas, the loss of virginity during a first marriage might also make a second marriage impossible because non-virgins are considered undesirable. This might, in turn, deter a woman from seeking divorce in a first marriage. See Interview #5, *supra* note 158 (noting that "they'll say about her that she's not a virgin, not me, [I'm not going to be the one to marry her], this isn't a virgin. You see? This is the problem. . . . And especially in these regions, there are a lot of problems like this."); see also Houria Abdelghani, *15 Ans de Changements au Féminin*, FEMMES DU MAROC, Jan. 2011, at 34 ("Divorcée: a title synonymous with opprobrium, ringing most often, the knell of any love or social life.").

186. NEWCOMB, *supra* note 69, at 40.

187. Interview #17, *supra* note 165.

188. See NEWCOMB, *supra* note 69, at 59-60.



“patriarchy in North Africa infuses all aspects of social life.”<sup>189</sup> Moroccan activist Fatima Maghnaoui observed that “the [*Moudawana*] is often applied in a ‘patriarchal’ manner, ‘to the benefit of the men.’”<sup>190</sup> That is, patriarchy permeates society, but also affects the judiciary. Newcomb explains further, “[t]he continued appeal of patriarchal social structures lies in the fact that patriarchy ‘provides the basis for a system of social security, and what is of undoubtedly even greater importance, the emotional comfort of personal identity.’”<sup>191</sup> The proposed impossibility of marriage without a tutor in Ait Bouguemez exemplifies this value: Familial identity is at stake when a woman attempts to marry, so people perceive the need for the marriage process to be controlled by men.

Originally, Morocco’s Personal Status Code “protect[ed] the power of the patrilineage,”<sup>192</sup> facilitating a sense of security for families and individuals that both tradition and identity would be perpetuated through association with men. Consequently, the reforms, in giving power to women, inherently took power from men.<sup>193</sup> This transfer of power threatened not only a social system, but also a basis of personal identity.<sup>194</sup> It is unsurprising, then, that a law that cuts to the very center of daily life encounters significant resistance, from both within the courts and without. Put simply, a women’s rights activist explained that when a law “takes nice things that one group had and gives them to another, it’s normal that whoever had [the nice things] taken from him is going to get upset.”<sup>195</sup> Moreover, patriarchy is an important social value even among women. For instance, a 27-year-old woman interviewed in “*Femmes du Maroc*” explained that she was against women’s right to marry without a tutor’s consent. “We are Muslim and we ought to give value to divine laws. For me, the act of getting married without the consent of one’s father is unacceptable. It’s true that this gives more freedom to women, but I find that it diminishes [marriage’s] value too.”<sup>196</sup> In the minds of many, by violating principles of patriarchy the *Moudawana* also violates Islamic law, rendering it automatically unacceptable among those who adhere to tradition. As an affront to the social and religious values of a significant portion of the Moroccan population, the *Moudawana*’s efficacy is compromised, an indication that its provisions and enforcement must be massaged to render it more acceptable to the

189. *Id.*

190. Ali, *supra* note 37.

191. NEWCOMB, *supra* note 69, at 61.

192. *Id.* at 61.

193. *See id.* at 68 (stating that “[p]atriarchal authority is challenged by the suggestion that women should have the right to contract their own marriages without the approval of the *wali* or the marriage tutor”).

194. *See id.* at 61 (“For many Fassis, membership in a renowned family line guarantees strong familial bonds that carry weight in the larger community as well. The ability of a male patriarch to protect female relatives supports his prestige as a leader not only of the family but also within the community . . . even at the highest levels of Moroccan society, patronage networks contribute to the formation of public policy.”).

195. Interview #1, *supra* note 157.

196. Dehhani & Lahlou, *supra* note 16, at 38.

community, while still serving its main objective of establishing gender equality.

## 2. Judicial Corruption

The State Department's Human Rights Report indicates that judicial corruption impedes the *Moudawana's* effectiveness.<sup>197</sup> In particular, because of the law's "controversial nature," drafters "provide[d] broad interpretive latitude to individual judges, not all of whom agreed with its intent."<sup>198</sup> Judges who oppose the law on 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. As the law is "largely dependent on the judiciary's ability and willingness to put it into practice,"<sup>199</sup> judicial opposition remains an obstacle to the realization of the *Moudawana's* objectives.

One interviewee gave an example of obstacles posed either by officials themselves or by discriminatory policies that serve the status quo:

A lot of girls go to court, but [court officials] don't like to let them get divorced. Their husbands don't like it. They don't like to treat them, and at the same time, they don't like to treat them well. They don't let them go out. One girl was [waiting at] the court, and her husband came with a knife. He grabbed her and took her away. She was trying to tell the judge, I want [out], that's it. To get divorced. But he came and took her away with a knife. They let him. What are they going to do? The police that we have here won't go if there was no blood.<sup>200</sup>

Again, one sees a unique set of circumstances that the *Moudawana* does not account for: the combination of husbands' influence on local actors, police passivity, and an apparent desire among officials not to interfere in domestic disputes. This anecdote is another illustration of the *Moudawana's* failure to account for complex circumstances that arise in many communities.

Judges are not the only players in the judicial system who do not serve the law's objectives, though such a limitation is not necessarily deliberate. According to the State Department, "[c]orruption among working-level clerks in the courts and a lack of knowledge about its provisions among lawyers also constituted obstacles [to implementation]."<sup>201</sup> While the government has made efforts to train judges and civil servants, these trainings are often insufficient to influence workers' personal views or to effect widespread understanding among members of the legal profession.<sup>202</sup> In a similar vein, many people working in the legal sphere simply do not realize the significant implications of the *Moudawana*, and, thus, do not attempt to

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197. See *Morocco Human Rights Report*, *supra* note 18.

198. *Id.*

199. *Id.*

200. Interview #13, *supra* note 146.

201. *Morocco Human Rights Report*, *supra* note 18.

202. See, e.g., Ali, *supra* note 37.

understand its provisions.<sup>203</sup> According to the World Bank, judicial enforcement issues are numerous in Morocco: “[It] is a crucial problem, unanimously seen as a major obstacle to the efficient and fair functioning of the Moroccan justice system. Enforcement problems are caused by the unclear role and competence of . . . personnel, lackadaisical attitudes to enforcement, outdated . . . procedures, and corruption.”<sup>204</sup> The complexity of the issues compromising the judiciary’s effectiveness indicates a central infrastructural challenge to implementation of laws in Morocco.

### 3. *Poverty*

Issues of poverty affect many aspects of life in Morocco, touching both rural and urban communities. Although “the incidence of poverty in urban areas is consistently, and markedly, lower than in rural areas,”<sup>205</sup> larger cities tend to have significant shantytown populations<sup>206</sup> whose inhabitants do not have access to drinkable water.<sup>207</sup> Between 1994 and 2004, the national unemployment rate stayed at around 16%,<sup>208</sup> with the rate among women running twice as high.<sup>209</sup> Approximately four million people—13% of the population—live below the poverty line, and 75% of that group live in rural areas.<sup>210</sup>

Although financial difficulties do not necessarily relate to each of the *Moudawana’s* provisions, such constraints are profound: Nearly each element of the law is less likely to appeal to or be realistically available to someone constrained by poverty. For the marriage age, families have an incentive to marry off daughters early because they reduce their number of dependents and receive a potentially large dowry.<sup>211</sup> In the case of the girl who threatened suicide because of her early marriage, the interviewee explained: “It was her family that told her, ‘You have to get married.’ It’s greed. Because [the man] has a lot of money.”<sup>212</sup> Another interviewee commented: “Whoever has money, he’s going to pay and get married, even

203. *See id.*

204. MOROCCO ASSESSMENT, *supra* note 18, at 6.

205. PETER LANJOUW, THE GEOGRAPHY OF POVERTY IN MOROCCO: MICRO-LEVEL ESTIMATES OF POVERTY AND INEQUALITY FROM COMBINED CENSUS AND HOUSEHOLD SURVEY DATA 8 (Feb. 24, 2004), available at <http://siteresources.worldbank.org/INTPGI/Resources/342674-1092157888460/Lanjouw.GeographyPovertyMorocco.pdf>.

206. *See* NEWCOMB, *supra* note 69, at 38.

207. *See id.*

208. *See* RECENSEMENT GENERAL, *supra* note 139, at 35.

209. *See id.* Note that this figure only includes women actively looking for jobs.

210. *See Rural Poverty in the Kingdom of Morocco*, RURAL POVERTY PORTAL, <http://www.ruralpovertyportal.org/web/guest/country/home/tags/morocco> (last visited May 29, 2011).

211. Jamal Badaoui proposed that “[a]n improvement in families’ economic circumstances will also help to limit the phenomenon” of child marriage trends. Touahri, *supra* note 19; *see also* NEWCOMB, *supra* note 69, at 66. One interviewee explained that “a lot of girls [get married young]. You couldn’t count them. So many. Whoever isn’t wealthy, if they don’t have money, they say, better to get her married. Better for the girl to get married than to have her finish her studies because with what [money] is she going to finish them? That is, better for her to get married.” Interview #13, *supra* note 146.

212. Interview #13, *supra* note 146.

if [the girl] is sixteen.”<sup>213</sup> A woman has an incentive to not seek a divorce because she is likely financially dependent on her husband. Moreover, attempting to force an ex-husband to pay alimony entails significant difficulties, or may result in the husband’s imprisonment, which still leaves the woman without financial support.<sup>214</sup> Further, a woman has little incentive to exercise the right to choose a husband if it risks alienating her nuclear family, which would deprive her of another means of financial support, or a place to return to in case of divorce. In sum, poverty undermines the *Moudawana* by providing disincentives to follow many of the law’s essential provisions, whether in terms of foregoing financial gain or preventing familial disputes.

Poverty also contributes to the *Moudawana*’s inefficacy by impeding access to legal services, courts, and privileges from judicial actors. According to the World Bank, legal aid services in Morocco are “embryonic and restricted to criminal matters.”<sup>215</sup> Thus, for the many who cannot afford private lawyers, few free services are available for addressing the civil matters covered by the *Moudawana*. Linguistic issues may also arise. As many indigent people in Morocco speak only Berber, they will face difficulties functioning in the Arabic-speaking judicial system, or collaborating with a lawyer from a city who may speak only French.<sup>216</sup> Additionally, the simple fact of not being able to leave one’s job freely—such as in the agricultural sector—in order to go to court renders the working class less likely to be able to physically access the court system. Finally, with corruption among judges arguably a commonplace reality,<sup>217</sup> outcomes may be determined by someone’s ability to bribe, leaving those with low incomes at a disadvantage in terms of favorable or speedy resolutions of disputes. As women tend to have less access to money than men, these factors likely influence women’s access to justice all the more harshly. Although the *Moudawana* cannot be expected to account for every societal difficulty in Morocco, in failing to do so somewhat, its objectives go unfulfilled.

#### 4. Illiteracy

In 2004, 39.5% of urban women and 74.5% of rural women could not read, according to a Moroccan census report.<sup>218</sup> Currently, the NGO Global Rights reports the illiteracy rate as 42% of urban and 82% of rural women.<sup>219</sup> Illiteracy naturally impedes public participation,<sup>220</sup> thus, these

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213. Interview with two women, in Afourer, Azilal, Morocco (Ann Eisenberg trans., Jan. 6, 2011) [hereinafter Interview #6].

214. See Ali, *supra* note 37; see also, e.g., Interview #13, *supra* note 146 (describing that “[the woman] went to the court and asked for a divorce. . . . The court told him he had to give her money, but he didn’t give it to her, so he went to prison. He went to jail for not giving her money. [He was there] I think, some six months.”).

215. MOROCCO ASSESSMENT, *supra* note 18, at 5.

216. See *id.* at 20.

217. See Morocco Human Rights Report, *supra* note 18.

218. See RECENSEMENT GENERAL, *supra* note 139, at 23.

219. Morocco, GLOBAL RIGHTS PARTNERS FOR JUSTICE (2009), [http://www.globalrights.org/site/PageServer?pagename=www\\_africa\\_morocco](http://www.globalrights.org/site/PageServer?pagename=www_africa_morocco) (last visited May 29, 2011).

statistics indicate that vast numbers of Moroccan women risk exclusion from discourses concerning the law. Moreover, the public in Morocco generally “has little access to legal information.”<sup>221</sup> Consequently, the *Moudawana* simply may not enter the lives of a large portion of Moroccan women due to their lack of awareness. Even if an illiterate woman were aware of the law, her illiteracy might impede her ability to understand her rights or to operate effectively within the legal system. Lack of education poses 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>222</sup>

### 5. *Perceptions of the Law’s Aims and Effects*

Moroccan citizens have reported varied perceptions of what the *Moudawana*’s effects have been or will be. Some have said that women’s new power will cause men to fear marriage and increase the divorce rate.<sup>223</sup> Going even further, others have said that the *Moudawana* has allowed exploitative women to gain an even higher footing than the law intended, and that more men are now victims of domestic violence.<sup>224</sup> One man living in Azilal opined: “The law went too far. It gave a lot to women and men are suffering, poor things.”<sup>225</sup> Indeed, such stories feed anti-*Moudawana* sympathies. His wife moved with their daughter to a neighboring town without his consent, pulling her out of school and leaving the interviewee alone with their 16-year-old son. If the interviewee sought divorce, she would gain custody of both children under the new law. Also, as their marriage had never been recorded, because they were cousins, judicial redress might not have been available to them at all. Thus, rather than seeking judicial redress, the interviewee stayed with one child and felt forced to accept the absence of the other.<sup>226</sup> Examples such as this one, where the law seems to serve injustice, as well as perceptions of the law that may be less grounded in reality, promote antipathy towards the *Moudawana* and further undermine its objectives.

### 6. *Gaps in the Law Itself*

Where the *Moudawana* logically should provide redress, loopholes and absent provisions often render it a useless tool. Drafters deliberately main-

220. See Dianne Otto, *A Sign of “Weakness”? Disrupting Gender Certainties in the Implementation of Security Council Resolution 1325*, 13 MICH. J. GENDER & L. 113, 151 (2006) (discussing rural residences, illiteracy, access to information, transportation problems, and conservative patriarchal culture as interrelating factors undermining women’s public participation).

221. MOROCCO ASSESSMENT, *supra* note 18, at 5.

222. See Ali, *supra* note 37.

223. See *A Look at Women’s Rights*, *supra* note 34. Four years after the law’s enactment, however, marriage had increased and the divorce rate had stayed the same. See *id.*

224. Interview with woman, in Afourer, Azilal, Morocco (Ann Eisenberg trans., Jan. 5, 2011) [hereinafter Interview #3].

225. Interview with man, in Afourer, Azilal, Morocco (Ann Eisenberg trans., Jan. 4, 2011) [hereinafter Interview #2].

226. *Id.*

tained many aspects of the *Moudawana*'s more conservative *Shari'a* predecessor, perhaps to make a concession to fundamental Islamists who wield significant political power,<sup>227</sup> or to encourage popular support for the law. The result, however, is that the law does not account for certain basic rights that one would expect to be included in a progressive women's rights law.<sup>228</sup> The provision for waivers of the minimum marriage age is one example of the legislation effectively undermining itself. In another instance, an online Moroccan newspaper reported a story about a married woman whose husband "stole" her daughters. Although she sued for custody, the court told her that "the law talks of custody, but only in the case of divorce."<sup>229</sup> Due to this ambiguity, she "has suffered years of separation from her children."<sup>230</sup> Additionally, although men's legal guardianship of women was purportedly eliminated, "women still do not have the right to give their under-age children permission to fill in official documents such as passport applications."<sup>231</sup> One activist explained: "We've seen cases of fathers who never . . . see their child, yet their permission is still needed before the child can get life-saving surgery."<sup>232</sup> Husbands continue to wield significant power within the familial sphere, even if they are no longer present in it.

A glaring absence in the legislation is that the *Moudawana* does not recognize the rights of unwed mothers. The New York Times reported in 2009: "Despite an important reform of Morocco's family code in 2004, pressed upon a reluctant Parliament by the young king, Muhammed VI, sex outside marriage is not recognized in Morocco, any more than homosexuality is."<sup>233</sup> Since Moroccan law actually forbids sex outside marriage, single mothers have no right to child support payments. Dealing with their situation socially may be as difficult as accepting their lack of legal options. "Single mothers are, generally speaking, considered as pariahs," anthropologist Jamila Bargach explained to the BBC.<sup>234</sup> If a young woman comes home pregnant and unmarried, her family may well beat her or cast her out.<sup>235</sup> "Even intellectuals don't accept the idea of single mothers," added women's rights activist Aicha Ech Chana.<sup>236</sup> Thus, while the *Moudawana* purports to establish gender equality in Morocco, this equality

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227. See Brouksy, *supra* note 23, at 237-38; see also *A Look at Women's Rights*, *supra* note 34 (referring to judicial discretion to allow underage marriage as a "little window that was opened by Islamists in parliament").

228. See, e.g., Convention on the Elimination of Discrimination Against Women art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13.

229. Ali, *supra* note 37.

230. *Id.*

231. *Id.*

232. *A Look at Women's Rights*, *supra* note 34 (quoting Latifa Jbabdi, head of the Women's Action Union).

233. Steven Erlanger & Souad Mekhennet, *Family Code Gets Nudge, But Women Seek a Push*, N.Y. TIMES, Aug. 19, 2009, at A9, available at [http://www.nytimes.com/2009/08/19/world/africa/19tangiers.html?\\_r=1&ref=global-home&pagewanted=all](http://www.nytimes.com/2009/08/19/world/africa/19tangiers.html?_r=1&ref=global-home&pagewanted=all).

234. James Copnall, *Helping Morocco's Outcast Single Mothers*, BBC NEWS (Jan. 12, 2009), <http://news.bbc.co.uk/2/hi/africa/7818384.stm>.

235. See Erlanger & Mekhennet, *supra* note 233.

236. Copnall, *supra* note 234.

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.

In sum, numerous interrelated factors act as bricks in a wall that impedes the *Moudawana*'s successful implementation and undermines its objectives. Some, such as the influence of religion and patriarchal values, stem from Morocco's unique cultural and historical context. Others—poverty, illiteracy, and corruption, for instance—are typical obstacles to effective legal infrastructure and citizen participation,<sup>237</sup> and would tend to paralyze the vindication of rights worldwide. The complexity and variety of these factors indicate the necessity for intensive, multi-faceted strategies for promoting the law's objectives.

### III. Recommendations from Sierra Leone: Re-Imagining Legal Services

The *Moudawana*'s situation is not unique. Failures “to heed socio-legal specificity”<sup>238</sup> often result in unsuccessful legal projects, compromising, for example, the implementation of international human rights norms,<sup>239</sup> or legal services in developing countries imported from the United States.<sup>240</sup> Although local norms traditionally seemed trivial to well-intentioned reformers, these norms can make or break potentially revolutionary changes. This is particularly true in sub-Saharan Africa, where many countries continue to be bifurcated between “formal legal systems inherited from the former colonial powers” and “‘customary’ legal regimes derived from traditional approaches to justice.” This indicates the age-old incompatibility of these clashing entities.<sup>241</sup> Thus, it is beneficial to assess the potential for further reform to the *Moudawana* in relation to other instances of conflicts of norms.

Some of the necessary reforms to the *Moudawana* are clear, and the potential for most may be limited by a lack of resources or political will.<sup>242</sup>

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237. See, e.g., C. Raj Kumar, *Corruption, Development and Good Governance: Challenges for Promoting Access to Justice in Asia*, 16 MICH. ST. J. INT'L L. 475, 542-43 (2008) (discussing corruption, resource allocation, and poverty as impediments to development in South Asia).

238. Maru, *supra* note 38, at 429.

239. See Mark A. Drumbl, *Rights, Culture, and Crime: The Role of Rule of Law for the Women of Afghanistan*, 42 COLUM. J. TRANSNAT'L L. 349, 352 (2004).

240. See, e.g., Maru, *supra* note 38, at 429.

241. Vivek Maru, *The Challenges of African Legal Dualism: An Experiment in Sierra Leone*, OPEN SOCIETY, 18 (2005), available at [http://www.timapforjustice.org/file\\_download/3](http://www.timapforjustice.org/file_download/3).

242. The role of Morocco's women's rights groups should not be overlooked in evaluating past and potential reforms to the *Moudawana*. Women's groups have been active in Morocco at least since independence. See Wuerth, *supra* note 85, at 314. In 1993, initial reforms to the *Moudawana* resulted directly from the *Union de l'Action Feminine*'s (UAF) campaign to collect one million signatures on a petition for such reform. See *id.* at 317-18. This reform, though modest by Western standards, was a landmark in an arena theretofore governed by *Shari'a*, valued as sacred and unalterable. Significantly, “the government's 1993 reform of the *Moudawana* was the first time that the government . . . paid attention and responded to the demands of a civil society organization.” *Id.* at 319. Thus, the *Moudawana*'s 2004 reform was even more groundbreaking in the substantive

From a legislative standpoint: Single mothers must be afforded the same rights as wed ones; waivers to the minimum marriage age must be eliminated; alimony payments must be sufficient and enforceable; vestiges of patriarchal authority over children must be removed; and judicial discretion should be limited. As for the judiciary: Corruption and lassitude must be rooted out, as in any system that is to be effective; women judges must be continuously recruited; judicial sensitization trainings must be increased; and the infrastructure of family courts and legal services should be expanded.

However, such reforms, if enacted, would continue to make slow progress towards serving the *Moudawana*'s objectives universally,<sup>243</sup> indicating the necessity of a solution that goes to the root of the conflict: The law contravenes the culture. Additionally, legislative and judicial reforms would still be far removed from systemic issues such as poverty and illiteracy. This is the stage where looking to other countries with analogous situations becomes essential. A model that could be followed is that of the increasingly prominent Sierra Leonean NGO, Timap [Stand Up] for Justice. Functioning in a nation recently ravaged by civil war and where there were only 100 lawyers in 2006,<sup>244</sup> Timap's system overcomes various cultural and societal barriers to enhance access to international human rights norms in rural Sierra Leone through free justice services around the country. Although working with a domestic law, the *Moudawana*'s proponents should look to the structures and principles that Timap has utilized to overcome analogous circumstances of norm externalization.

Timap first became active in 2004, drawing inspiration from paralegal programs in South Africa that were started to combat apartheid.<sup>245</sup>

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changes that were achieved, and women's groups played a key role in securing those changes. *See id.* at 320. Feminist groups use a sophisticated approach in advocating for additional reforms to the *Moudawana* itself and to its execution. First, they continue to change the dialogue of feminism to make it more appealing to conservative, traditionalist groups, which is a vital element in the campaign for garnering grassroots support. *See id.* Second, feminist groups pressure the government for changes both to legislation and to government practices. For instance, the head of the LDDF, Fouzia Assouli, has demanded reform of the *Moudawana* "to restrict and clearly define . . . judges' powers regarding child marriage." Touahri, *supra* note 19. LDDF and other groups have also pressured the Ministry of Justice "to impose strict penalties against any legal guardian who facilitates underage marriage and on any man who marries a minor girl without permission from the court." Belhaj, *supra* note 147. They have additionally asked for the implementation of the Convention of the Rights of the Child, as well as increased public awareness campaigns. *See id.* Despite such laudable efforts, certain barriers may limit what women's groups can accomplish, including limited activities in rural areas, society's rejection of feminist values as anti-Islam, and the lack of a cohesive women's movement with clear objectives. *See* Wuerth, *supra* note 85, at 326-27.

243. *See* Maru, *supra* note 38, at 440 (stating that "macrocosmic progress is slow").

244. *See id.* at 436.

245. *See* Simeon Koroma & Vivek Maru, *Sierra Leone: Timap for Justice: An Experiment in Providing Basic Justice Services to the Poor*, CONCORD TIMES, Mar. 24, 2006, at Part II; *see also* PAMELA DALE, DELIVERING JUSTICE TO SIERRA LEONE'S POOR: AN ANALYSIS OF THE WORK OF TIMAP FOR JUSTICE 1 (2009), available at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2009/12/04/000112742\\_20091204184834/Rendered/PDF/518850REPLACEM1arch0Report0Nov02009.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2009/12/04/000112742_20091204184834/Rendered/PDF/518850REPLACEM1arch0Report0Nov02009.pdf).



Timap's goal is "to bring justice and conflict-resolution services to poor and marginalized communities while simultaneously increasing their own capacity to seek and advocate for better justice services."<sup>246</sup> Particular problems the founders hoped to address with this experimental program included lacking infrastructure and the dearth of legal services in rural areas.<sup>247</sup> In addition, Vivek Maru, Timap's co-founder, described Sierra Leonean society as "a system of layered, personalized, authoritarian patrimonialism," which stands in inherent tension with principles of justice, fairness, and autonomy.<sup>248</sup> Courts in Sierra Leone are split between local, customary law courts, which apply customary law that often conflicts with international human rights norms, and a formal system concentrated in Freetown, which most people cannot access.<sup>249</sup> Customary law rarely aligns with the constitution as it is supposed to, is often applied unfairly, and has no mechanism for independent review.<sup>250</sup> Thus, Timap's founders decided "to contribute to the process of reform from below"<sup>251</sup> by establishing a human rights advocacy system based on the notion that customary law is malleable rather than monolithic, and that "societal internalization" is a viable strategy for "promot[ing] positive social change from within."<sup>252</sup>

The organization now has 13 field offices, a headquarters in Freetown, and a staff of 25 paralegals and several lawyers.<sup>253</sup> Their model is simple and does not aim "to supplant either customary or formal dispute mechanisms. To the contrary, much of [their] work involves helping clients to access and navigate both sets of institutions."<sup>254</sup> First, paralegals—easier to come by than lawyers, and requiring less pay—are recruited from the communities where they will ultimately work. Unlike with legal aid services in cities, this policy ameliorates issues of differing dialects or ignorance of cultural norms on the part of service providers. Next, these paralegals are trained in law, government processes, and paralegal skills, and trainings continue throughout their employment. Paralegal teams then return to their communities where they tailor their objectives to the communities' needs and requests. For instance, Vivek Maru noted that some issues community members asked them to address included "domestic violence . . . corruption, police abuse, economic exploitation . . . and right to health."<sup>255</sup> Accordingly, paralegals use diverse methods to further access to justice:

For individual justice-related problems (e.g., a woman is beaten by her husband or a juvenile is wrongfully detained), the paralegals provide informa-

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246. DALE, *supra* note 245, at 1.

247. See Koroma & Maru, *supra* note 245, at Part II.

248. Maru, *supra* note 38, at 435.

249. See *id.* at 436-37.

250. See *id.* at 437.

251. *Id.* at 440.

252. Kent, *supra* note 25, at 527.

253. DALE, *supra* note 245, at 1.

254. Maru, *supra* note 38, at 449.

255. *Id.* at 442.

tion on rights and procedures, mediate conflicts, and assist clients in dealing with government and chiefdom authorities. For community-level problems (e.g., domestic violence is prevalent in the community or a police department has adopted a policy of detaining juveniles with adults), they engage in community education and dialogue, advocate for change with both traditional and formal authorities, and organize community members to undertake collective action. The paralegals and the program as a whole straddle the dualist legal system, drawing on and engaging both customary and formal institutions depending on the needs of a given case. In a small number of cases, chosen either because the injustice is particularly severe or because of the possibility of legal impact, the coordinating lawyers provide direct legal representation or high-level advocacy.<sup>256</sup>

This model goes above and beyond the typical legal services provider, and thereby empowers local community members to address diverse problems in a context that they understand and accept. Timap workers are educators, mediators, advocates, community organizers, and litigators all in one. What is most essential, however, is that they are from the communities they are assisting, mitigating perceptions of externally-imposed value systems as they act in furtherance of the law.

The *Moudawana's* objectives would be better served if such a system were in place. Factors contributing to the *Moudawana's* inefficacy include social values and practices such as patriarchy and an attachment to child marriage, judicial corruption, poverty, illiteracy, misperceptions about the law, and legislative gaps. Timap's model would mitigate the effects of most of these factors. For social values, the presence of a paralegal from a given community would make the women's rights dialogue a local one, garnering deeper respect for the question and an incentive to listen. By making information about law and the judicial system more accessible, Timap's model would make illiteracy and poverty less extreme impediments to accessing justice. Finally, through education about the law and community organizing, Timap's model would both increase awareness and equip rural community members to advocate for the changes they perceive as necessary.

The analogy between Morocco and Sierra Leone does not transfer completely in several regards. In particular, Morocco's system of "legal dualism" is less pronounced than Sierra Leone's.<sup>257</sup> Additionally, Morocco is wealthier, has better-functioning institutional infrastructures, and has a greater reliance on Islam in daily operations.<sup>258</sup> However, Morocco's situation is analogous to Sierra Leone's in that, where informal institutions are not concrete, cultural norms and values themselves function as a de facto structure juxtaposed against the formal judicial one, as demonstrated by the way they are able to undermine formal law. The effects of limited respect for the formal judicial institution, limited access to it, and numerous disincentives to use it are similar in Morocco and

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256. *Id.*

257. See generally MOROCCO ASSESSMENT, *supra* note 18.

258. Compare Morocco Background Note, *supra* note 9, with Background Note: Sierra Leone, U.S. DEP'T OF STATE (Aug. 1, 2011), <http://www.state.gov/r/pa/ei/bgn/5475.htm>.

Sierra Leone, indicating that an effective rural legal services system in the latter would also be effective in the former.

There are compelling reasons for countries such as Morocco to incorporate legal empowerment systems akin to that of Timap for Justice. Vivek Maru outlined these reasons. First, “institutional reform is slow and difficult, and there is a need to tend to those wounded by broken systems not yet fixed.”<sup>259</sup> Second, “lasting institutional change depends on a more empowered polity.”<sup>260</sup> Noting that rights awareness education can only go so far, and that legal services tend to act as Band-Aids, he added that “the institution of the paralegal offers a promising methodology of legal empowerment that fits between legal education and legal representation, one that maintains a focus on achieving concrete solutions to people’s justice problems but which employs, in addition to litigation, the more flexible, creative tools of social movements.”<sup>261</sup>

Surprisingly, “paralegals have received scant attention from legal scholars and major institutions involved in human rights and development.”<sup>262</sup> Yet, “the program’s success has come quickly,” and the World Bank awarded Timap an expansion grant of \$880,000 in 2006.<sup>263</sup> One World Bank researcher reported that Timap’s work to ensure institutional accountability “improved community perceptions of institutional fairness and effectiveness,”<sup>264</sup> and that court case monitoring and follow-ups lead to faster processing and reduced fees.<sup>265</sup> Although little information is available about Timap’s overall impact, both anecdotal evidence and an intense public respect for the program indicate that Timap is perceived to promote justice, and is, therefore, likely catalyzing the process of norm internalization in rural Sierra Leone.<sup>266</sup>

Of course, no system is without flaws, and Timap’s model brings with it risks of its own. First, as with other local bodies, there is the possibility that men will wield disproportionate influence and manipulate informal judicial processes to achieve their desired results, to the detriment of women. In the same vein, NGO actors’ adherence to tradition or religion may affect their willingness to serve interests of gender equality or to afford certain privileges to women. Finally, perhaps little can realistically be done to ameliorate the obstacle of familial incentives not to exercise rights under the *Moudawana*—what infrastructure can or should eliminate an individual woman’s desire not to alienate her family? Yet, nuanced solutions can be found with Timap’s model, encouraging family-wide dialogue, understanding of the woman’s point of view, and spreading awareness about the official sanction of women’s rights in Morocco.

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259. Maru, *supra* note 38, at 428.

260. *Id.*

261. *Id.*

262. *Id.* at 429.

263. Richa Gulati, *Matter of Justice*, LITTLE INDIA (Apr. 3, 2007), <http://www.littleindia.com/news/134/ARTICLE/1461/2007-04-03.html>.

264. DALE, *supra* note 245, at 38.

265. *See id.*

266. *See* Kent, *supra* note 25, at 528; *see also* DALE, *supra* note 245, at 38.

## Conclusion

The problems facing the *Moudawana* require a creative solution. Obvious legislative reforms, such as recognizing the rights of single mothers and eliminating minimum marriage age waivers, are necessary. Yet to account for subtler, more contextualized obstacles to the law's effectiveness, a community-based initiative such as that of Timap for Justice would best address deeply-entrenched societal factors including religious values, tradition, illiteracy, and poverty.

One must not underestimate the significance of the *Moudawana's* enactment. The King of Morocco, Leader of the Believers, has formally sanctioned gender equality, taking a conscious step away from *Shari'a* and towards the elevation of women's legal status. He did this with the use of *ijtihad*, remaining within the scope of Moroccan and Islamic tradition. Whatever the practical result of this step may be, "[t]he symbolic force of rights can have a concrete effect on the advancement of marginalized groups in society . . . [they are] 'the magic wand of visibility and invisibility, of inclusion and exclusion, of power and no power.'"<sup>267</sup> The *Moudawana* is a powerful symbol, opening the doors for Moroccan women to exercise new freedoms.<sup>268</sup> In turn, the *Moudawana* is a model for women's rights initiatives globally, exemplifying an attempt to build a bridge between tradition and modernity.

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267. Laboni Amena Hoq, *The Women's Convention and its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights*, 32 COLUM. HUM. RTS. L. REV. 677, 724 (2001).

268. The *Moudawana* also sets an example for nations around the world. See *A Look at Women's Rights*, *supra* note 34 (quoting Isobel Coleman, senior fellow at Council on Foreign Relations: "Family law is a very sensitive and critical issue around the region and the example from Morocco is being brought to bear in Iraq, in Afghanistan, [and] in Iran. . . ."; and stating that "[i]n particular, the million signature campaign . . . at the center of Iranian feminists' efforts to rework their country's family law was really inspired by what women in Morocco had accomplished.").