

Moroccan Feminists: The Innovators and Drivers Behind  
Progressive Legal Reform:  
Successes, Setbacks, and Future Priorities

By  
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## Abstract

This project evaluates the effect of feminist activism to challenge discriminatory articles in the 2004 Family Law and 2003 Penal Code. The Moroccan women's movement has been divided between competing feminist and anti-feminist coalitions regarding how best to promote gender equality and women's rights in Moroccan society. Much of the friction between these coalitions can be explained by Sabatier's Advocacy Coalition Framework (ACF), which delineates between coalitions based on conflicting core beliefs, policy core beliefs, and secondary beliefs. Whereas the feminists embrace the UN human rights discourse and concentrate on breaking down patriarchal hierarchies and male privilege, anti-feminists subscribe to complementary gender roles and the preeminence of religious legal references. This polarization limits the potential of feminist associations to effectively lobby the government for progressive legislative reforms. This project identifies two possible solutions to this dilemma. First, coalitions can inform and be informed by each other leading to policy-oriented learning. Second, the late Moroccan feminist scholar Fatima Mernissi and subsequent Islamic exegetes propose a potential synthesis of the dominant debates, an emancipatory progressive Muslim feminist discourse with an Islamic reference.

Using a feminist intersectional approach and ACF, I interview stakeholders from across the Moroccan political and social spectrum: women's rights, human rights, youth, Amazigh, and single mother associations to incorporate a broad cross section of marginalized groups in Moroccan society. I conclude that the 2004 Family Law, although revolutionary at the time, as well as the antiquated 2003 Penal Code, systematically disadvantage women and leave them vulnerable to various forms of violence. In addition, certain articles in the law, though explicitly indiscriminate, are implemented in a way that systematically disadvantages women.

Furthermore, the legal codes are undergirded by complex, contested, and constructed patriarchal cultural norms and conservative religious interpretations that purport to protect women, yet instead, systematically disadvantage them and leave them vulnerable to precarious socioeconomic changes and various forms of violence. Finally, this project is broadly prescriptive in that Morocco is in many ways a regional leader in the advancement of women's rights among Muslim-majority countries. Therefore, the case study identifies and details the most effective strategies, tools, and institutional mechanisms devised by Moroccan feminists to reform and implement discriminatory laws for potential appropriation by activists and advocates in other countries.

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## Introduction

Violence against Women (VAW)<sup>1</sup> is a pervasive global issue that is frequently overlooked, even condoned, across societies. Even more alarming is the high percentage of violence originating from those closest to the victim as 35% of women worldwide experience either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime.<sup>2</sup> The high prevalence of domestic violence across the globe is recognized as a major public health problem with a ripple effect across society that poses social and economic costs to present society and future generations. Yet, domestic violence is still perceived by many segments of society as a private matter, often hidden or excused. Moreover, VAW victims are often twice victimized: first, by an intimate partner or close relation and second, by the state or society to which they turn for help.

Morocco is no exception to this global phenomenon.<sup>3</sup> In the late 1990s women's associations first brought the magnitude of this phenomenon to the attention of policy makers through real-life statistics based on the testimonies of VAW victims from their listening centers. The Union of Feminist Action (UAF) indicated: "when the violence centers opened, there was an incredible demand from women. Women were, for example, in Casa, Rabat...30, 40 women each day at the Nejma centers, so this is something that is very serious and represents different forms of violence as sometimes a woman is a victim of multiple forms of violence."<sup>4</sup> In 2011 Morocco's High Commissariat of Planning (HCP) released results from the first national survey of VAW in Morocco indicating 63% of women between the ages of 18 and 64 reported being subjected to violence within the past year alone, with 55% of those victims of conjugal violence. Despite these statistics, only 3% of VAW victims file a report with the pertinent authorities and only 1% of cases reach prosecution.<sup>5</sup> Furthermore, no piece of Moroccan legislation explicitly addresses VAW. Although a 71-country survey between 1975 and 2005 indicates that Morocco demonstrated the greatest change in reducing gender discrimination in the legal codes (Htun and Weldon 2011: 162), this survey represented *de jure* legislation and not the *de facto* effects of these reforms on discrimination or VAW in Moroccan society.

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<sup>1</sup> Violence against Women (VAW) and Gender-Based Violence (GBV) are often used interchangeably. For this project the term VAW will be used to specifically address violence directed at women due to their gender.

<sup>2</sup> World Health Organization 2016 statistics. (Retrieved 10 October 2016).

<sup>3</sup> This assessment is based on publications from the Anaruz network of listening centers for VAW victims, the Oyoun Nissaeya Observatoire, and the 2011 High Commissariat for Planning survey.

<sup>4</sup> Personal interview with UAF (Tetouan) July 8, 2013

<sup>5</sup> High Commissariat for Planning 2011 Report (See web-site hcp.ma)

As an issue of international redress, VAW is a relative new comer to the human rights agenda, prompted largely by the feminist discourse and activism (Weldon 2006). The notions of human rights, gender equality, and discrimination evolved through the confluence of national human rights movements converging into an international human rights consensus. In 1979 the UN General Assembly (UNGA) adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that obliges signatory states to change cultural practices that subordinate women, while not specifically mentioning VAW. In 1980 the UN Conference in Copenhagen raised VAW as a human right's offense and the 1985 Conference in Nairobi raised the issue of reducing VAW. CEDAW addressed gender discrimination, but not VAW directly, until the addition of two General Recommendations in 1989 and 1992 added VAW as a form of gender discrimination and made governments accountable for VAW violations. By 1990 the Economic and Social Council (ECOSOC) adopted a **resolution** recommended by the Commission on the Status of Women (CSW), asserting that VAW arises from the unequal status of women in society and calling for governments to develop policies to prevent and control VAW.

The 1993 Vienna Declaration placed VAW center stage as an issue of international concern with governments declaring that “violence against women is a manifestation of historically unequal power relations between men and women...[and represents] one of the crucial mechanisms by which women are forced into a subordinate position.” The UN defined VAW as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”<sup>6</sup> In Morocco the Spring of Dignity Coalition expanded the UN definition of VAW to include *economic violence*, and described VAW as “an extreme form of discrimination that includes psychological, physical, sexual, and economic violence.”<sup>7</sup> The 1993 Vienna Declaration recognized **women's rights as human rights** and appealed to state to eradicate conflict between the rights of women and the harmful effects of **traditional and cultural practices**, calling for the appointment of a UN Rapporteur for VAW and a declaration to eliminate VAW. The same year the CSW developed the Declaration on the Elimination of VAW, claiming **VAW is constructed and historically justified, not natural, but stemming from unequal power relations between the genders.**

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<sup>6</sup> General Assembly Resolution 48/104 *Declaration on the Elimination of Violence against Women*, 1993

<sup>7</sup> Memorandum of the Spring of Dignity Coalition for a Law that eliminates VAW (2014).

The Declaration asserts that Gender-Based Violence (GBV) is a violation of human rights and prohibits customs, traditions, and religious considerations to avoid state obligations to pursue *due diligence* in addressing VAW, based on recommendations to address VAW from the CEDAW Committee. In 1994 the UNGA adopted the Declaration on the Elimination of VAW and urged state signatories to exercise *due diligence* to prevent, investigate and punish VAW. The 1995 Beijing Platform of Action outlined measures to address VAW in a number of policy areas. The development of global norms that treated VAW as a **human rights violation** requiring state intervention and the practice of *due diligence* fueled feminist movements, which in turn advocated for national legal reforms.

### **Authoritarian Structures and VAW**

Traditionally family relations fell under the purview of churches, clans, tribes, and cultural communities, which delineated the relative rights and responsibilities within the family in the national or sub-national family laws. Extended families and religious authorities monitored compliance with family laws, while the states viewed compliance and regulation of family law as largely a private matter and outside the domain of state responsibility. States were responsible for governing citizen interaction within the public sphere as well as interstate relations; the private domain was under the authority of non-state actors, specifically the family, tribes, and religious leaders. These relations were largely patriarchal with the father seen legally as the head of the household in an atmosphere of authoritarianism. These hierarchical and asymmetrical power structures, placed women in not only a subordinate, but also a vulnerable position vis-à-vis male relations.

These “private” relations are often reinforced by state authoritarianism, while authoritarian structures often dissipate in democratic polities, where norms of equality are challenged and diffused from the public to the private sphere earlier than in authoritarian regimes. In Morocco, upon independence from the French in 1956, King Mohamed V maintained traditional political power structures by accommodating patriarchal tribal networks in exchange for political patronage, creating patrilineal networks characterized by a mutually reinforcing dependence and institutional structure that is resistant to change (Pierson 2000). In terms of the 1957 Personal Status Code (PSC), however, Mohamed V assembled a commission of ten religious scholars, who drafted a PSC to govern family relations, in parallel with the

seventh-century *shari'a* law. This reliance on Islamic Law to inform familial relations reflects a larger cooptation of religious elements into the monarchy's power base. To a degree, the breakdown of traditional authorities (tribal-religious-familial) as mechanisms to govern family relations may jeopardize monarchical or authoritarian authority. To this end, in developing states, family law becomes the nexus of competing authorities and references: "As the state strengthens and expands, it often—but not always—seeks to seize control over family law from churches, clans, tribes, and other cultural communities" (Htun and Weldon 2012: 3). Following independence, the Moroccan monarchy preserved traditional family law to win the support of clan groups (Charrad 2001, Htun and Weldon 2012: 6). Thus, while Moroccan women experienced a culture change in the public sphere with higher levels of education and workforce participation, a subsequent rebalancing of power in the legal codes to reflect and promote changes taking place in the family did not take place. In Western democracies, however, in the 1970s domestic abuse and other violence within the family was cast as **a criminal offense** and a violation of a woman's human rights. By the 1980s the emphasis shifted to concern over the **safety of victims, leading to the development of temporary restraining orders and domestic violence shelters**, where victims could escape the violence. In the 1990s the focus again shifted from protecting the victim to **rehabilitating the abuser**. By criminalizing various forms of violence within the family the state has taken an increasing role in regulating and arbitrating disputes (Merry 2009). This process is also occurring in Morocco and other authoritarian regimes, but at a slower pace.

Although international treaty obligations have placed the address of gendered legal discrimination and subsequent VAW firmly on the shoulders of state signatories, state responsiveness has been mixed. States must weigh their policy responses to VAW in terms of both external and internal pressures, balancing international legitimacy and the prospect of foreign trade and investment with local consensus and support. Beyond state **responsibility** for VAW, state **responsiveness** to VAW requires a combination of state capacity, political will, and policy effectiveness. First, does the state have the **capacity** to adopt and enforce VAW laws? Second, is the **state willing**<sup>8</sup> to implement and enforce these laws? Third, are the laws themselves **effective**<sup>9</sup> and capable of mitigating VAW. **Policy adoption** is only a first yet critical

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<sup>8</sup> State will includes policy expense and implementation burden.

<sup>9</sup> "Effectiveness depends on sound policy design, state capacity, political will, and myriad other factors" (Htun and Weldon 2012: 551). The data for the study of effectiveness currently doesn't exist.

step representing *de jure* recognition of the state's prioritization and support for a given policy. The translation of law into practical action requires proactive measures to transform the *de jure* into the *de facto*. Another mitigating factor of state responsiveness to VAW is the form and strength of existing **political institutions** (Weldon 2002: xi). For the purposes of this project those institutions include both **formal institutions** (discriminatory legal codes) and **informal institutions** (patriarchal cultural norms and conservative religious interpretations).

In addition, I explore **systemic, structural, and formal and informal institutional factors** that lead to VAW. In keeping with the UN human right's conventions, I view VAW as a human rights violation and hold states accountable for eliminating VAW perpetrated by public authorities and for exercising *due diligence* to eliminate VAW by private individuals.

- In terms of **systemic factors**, I break these into global-, societal-, communal-, and familial-level factors as well as systemic issues in individual legal codes. At the global level, the implication for women and children of supply and demand responses to national legal structures and the implications for Morocco must be explored. For example, when Sweden, the UK, and other European countries criminalized the demand side of prostitution, i.e. imposing tough penalties on the johns and pimps, Morocco experienced an increased immigration of European sexual predators, particularly into Marrakech. Likewise, the judicial system as a legal framework, especially the notion of *qiwama* (maintenance) evokes societal-, communal-, and familial-level biases against women in terms of education, employment, and financial resources.
- In terms of **structural factors** impacting VAW, I focus on the interplay between patriarchal, patrilineal, and autocratic structures within the Moroccan family, society, and state and the implications for institutions governing familial relations (addressed below). The familial patriarchal structures are reinforced by societal patrilineal structures and autocratic structures, which King Mohamed V maintained following Moroccan independence in 1956 when the King preserved tribal networks who pledged their loyalty to the monarchy.<sup>10</sup> In addition, to the extent possible, I incorporate structural factors, such as class, culture, and age inequalities, the gendered nature of illiteracy (90% female illiteracy rates in poor rural regions), the implications of the bifurcated educational system, and linguistic discrimination (especially among the culturally distinct Tamazight population). An unanticipated observation was the role marital status plays in women's marginalization, in that the rights of single, divorced, and widowed women are not fully protected in the Moroccan legal system.
- In terms of **institutional factors**, I focus on the discriminatory nature of the legal system and the laws themselves and their impact on the power dynamics within the family institution. The patriarchal structures that underlie the Moroccan legal system are painfully antiquated, dating back to 1962. These legal structures maintain gendered

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<sup>10</sup> For additional analysis regarding the patrilineal networks in Morocco in contrast to the breakup of such networks in Tunisia under President Habib Bourguiba, see Charrad 2001 and 2011.

power imbalances through the division of rights and responsibilities undergirding another crucial institution, the family. These discriminatory legal institutions bolster discriminatory laws and practices governing marriage and divorce, child custody, guardianship, child support, marital property, and inheritance that leave women vulnerable when contracting a marriage and even more vulnerable in the event of its dissolution. Although Moroccan society has changed and evolved, the conceptualization of the Moroccan family has not. The personal status code is now termed the family code, emphasizing as did King Mohamed VI in a speech introducing the 2004 Moudawana that **the family and not the individual remains the most basic element of Moroccan society**. Consequently, single women, single mothers, divorced women, and widows are “outsiders” in the Moroccan legal institutions.

### **Patriarchal Cultural Norms and Conservative Religious Interpretations: Impediments to Legal Reform and Policy Change**

In addition to the patrilineal structuring of Moroccan society and patriarchal structures in the family, **conservative religious interpretations and patriarchal cultural norms**, frequently conflated, perpetuate discrimination and VAW against women. In this project, I attempt to separate the effects of conservative interpretations of Islamic texts on VAW from those factors that are specifically cultural norms. With regard to both religious interpretations and cultural norms, essentializing the Islamic faith or Moroccan culture as homogenous sustains the view of relativists that religion and culture are not arenas of contestation. This is simply untrue. Religion and culture are both areas of contestation and change as societies evolve and the religions and culture inform and are informed by the need to address current reality. For this reason, in my research, I distinguish two trends within the Islamic faith that are apparent in Morocco, which I identify as **progressive Muslim feminists**<sup>11</sup> and **conservative Islamic anti-feminists**.<sup>12</sup> Progressive Muslim feminists<sup>13</sup> (re)interpret the Qur’an in the context of its time and find a more egalitarian emancipatory message; conservative Islamic anti-feminists defend the existing order, the gendered power asymmetries, and male privilege.

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<sup>11</sup> Mir-Husseini (2006, 2014) and Badran (2005, 2006, 2013) term these progressive Muslim thinkers “Islamic feminists,” but I will maintain the term “progressive Muslim feminists” that I have used in previous publications (Feather 2012, 2014) for Muslim women and men who challenge patriarchal power asymmetries and male privilege. Upon further analysis and further specification of conservative religious/traditional thought and through insight from Tadros 2016 book on Egypt, (See Mariz Tadros. (2016). *Resistance, Revolt, & Gender Justice in Egypt*. New York: Syracuse University Press, who characterizes Islamic feminists as anti-feminists in that they espouse a Shari’a-based political agenda and maintain patriarchal gender hierarchies (chapter 2) work on Egypt). I reserve the term “anti-feminists” for conservative or traditionalist Islamic women who seek to maintain the existing power asymmetries in the private sphere with such terms as “complementarity,” “protection,” and “maintenance.” Although they may sanction women’s inclusion in the public sphere and women’s socioeconomic and political empowerment.

<sup>12</sup> Actually a third trend, ultra-conservative Islamic groups is also apparent. This third trend is addressed by Mariz Tadros (2016) in her work on Egypt, but due to space constraints for this project, I will limit my discussion to the aforementioned two types.

<sup>13</sup> Islamic exegetes include Fatima Mernissi (Morocco), Iqbal Gharbi (Tunisia), Nawal Saadawi (Egypt), Leila Ahmed (Egypt-U.S.), Amina Wadud (African American), Asma Barlas (Pakistan), Mir-Hussein (Iran), and Badran (Egypt). They read a more egalitarian message into the sacred texts, but believe the seventh century Islamic revolution meant to emancipate women was usurped by the male elite of that time, who realized the emancipatory message challenged the status quo and their male privilege. The Muslim feminist trend and the prominent influence of Fatima Mernissi’s theoretical work in praxis is covered extensively in Chapter 2.

Cultural essentialism assumes that “those who belong to a specific culture exhibit morals, ideas, and traits universally” (Erturk 2007: 9), which is untrue. Culture is a contested domain, a social construct that may be instrumentalized to maintain or breakdown existing power hierarchies. Nevertheless, cultural and structural factors, such as patriarchal power asymmetries, may pose an impediment to legal reform and policy change as they constitute the arena in which culture is defined and challenged (Merry 2009, 2011, 2016; Erturk 2007, 2012). The development of a human rights culture built on international law and global consensus implies that culture is apolitical, which is again untrue. Moreover, CEDAW requires all state signatories to take all “appropriate measures” to modify the social and cultural patterns of conduct of men and women linked to inequality between the genders. Therefore, while addressing VAW is often presented as a dichotomy between human rights progress and resistance due to patriarchal cultural norms or conservative religious interpretations, I posit cultural specificity arguments are instead the instrumentalization of culture by those in power to preserve existing power hierarchies. Instead, I assume that patriarchal cultural norms and conservative religious interpretations **are contested concepts** and I *purposely* incorporate perspectives from across the political spectrum into an **inclusive case study** of the various opinions forming and informing the discourse on women’s rights in Moroccan society.

Cultural relativists may attempt to legitimize domestic violence as “discipline” or “warranted” instead of criminalizing and delegitimizing domestic violence as “abuse” and “a violation of human rights.” These cultural relativist justifications, however, preserve discriminatory practices and allow perpetrators to act with impunity, while victims are blamed (i.e. rape, domestic violence). On the opposite end of the cultural spectrum, the creation of UN documents by **international consensus** represents an act of transnational culture creation (Merry 2006). Local activists then appropriate these documents to assert their rights, incrementally change their legal reality, and over time changing the traditional views regarding what represents acceptable cultural practices.

### **Determinants of VAW**

An extensive literature attempts to theorize the key determinants of VAW as stemming from **gendered inequality and discrimination in national laws and state policies, which leave women disproportionately vulnerable**. Feminists link VAW to the historically unequal power

relations between men and women enshrined in discriminatory legal codes and maintained by patriarchal cultural norms and conservative religious interpretations. Gender equality policies are said to dismantle masculine power hierarchies and male privilege (Weldon and Htun 2010: 28), but what are the determinates of gender equality policies in national laws? Htun and Weldon (2010) propose a framework for determining when governments promote sex equality policy to include “state capacity, institutional legacies, vulnerability to international pressure, and the degree of democracy” (208). Unfortunately, the indicators of change in authoritarian regimes are likely quite distinct from those in consolidated democracies. In terms of determinants of VAW, I proceed as follows: **First**, in terms of indicators, this study analyzes gender discrimination in the family law and penal code and the reforms attributable to feminist activism from the 1990s to 2017. I identify the problems with the discriminatory application of the laws and legal loopholes, unanticipated outcomes of prior reforms, preconditions feminists place on reforms, and recent retrograde supreme court decisions that undermine prior progress. **Second**, I delineate the role underlying patriarchal cultural norms and conservative religious interpretations play in resisting reform and preventing its application. **Third**, I identify the types of VAW the current legal discrimination perpetuates, major reform initiatives, and distinctions between feminist and conservative perspectives. **Finally**, this study explores whether feminist civil society activism plays a similar role in a developing non-democracies as it does among democracies in the developed world and demonstrates the additional constraints, challenges, and pitfalls feminist civil society faces due to the strength of existing non-democratic formal and informal institutions.

This project makes several **assumptions**: **First**, the definition of violence must be expanded beyond **physical violence** to include **psychological, sexual, and economic violence**, which leave women vulnerable to manipulation and maltreatment. **Second**, adopting a feminist lens, I assume that women’s vulnerability to violence is based on unequal power relations within the family and society more generally. Hence, “[w]omen’s subjugation ... is a systematic and categorical ‘othering’ of women” (Erturk 2016: 37) that autonomous feminist women’s associations must challenge. Women’s second-class status is a construct and can therefore be deconstructed. **Third**, I assume that **patriarchal cultural norms** and **conservative religious interpretations** are both contested arenas with competing constituents and debates. I contend patriarchal cultural norms, both informal practices and formal laws, disempower women as a

group and leave them vulnerable to violence in many forms, whereas the **human rights culture** of consensus moves towards a more egalitarian vision of world society. Likewise, essentializing the Islamic faith as homogenous sustains the view of relativists that religious interpretation is not an arena of contestation. In practice, this is simply untrue. Religious interpretation, like culture, is an area of contestation and debate. The **Islamic faith and Islamic jurisprudence** have multiple distinct interpretations – progressive, moderate, conservative, ultraconservative – of women’s role in society. I assume that “the equality among believers” dictated by the Qur’an is a vision for all Muslim societies, and therefore, women must be included in a progressive rereading of the Islamic texts. **Finally**, I assume the Moroccan state is obliged to practice *due diligence* in compliance with its international treaty obligations and expect these obligations to inform the address of discriminatory laws and practices. Consequently, the state should not only **amend discriminatory laws** but also ensure that laws are **implemented, applied, and monitored indiscriminately**.

This dissertation proceeds as follows: **First**, I review the **available literature** on VAW as a global problem. In Morocco specifically, I establish the preeminent role of feminist advocacy and the link between discriminatory legal codes and VAW. **Second**, I outline **the Advocacy Coalition Framework (ACF)**, the theoretical tool which I use to analyze the competing advocacy coalitions and discourses within the Moroccan women’s movement. I also outline my iterated methodology. **Third**, I analyze the major debates, accomplishments, and shortcomings surrounding the new 2011 Constitution, 2004 Family Law, 2003 Penal Code, and VAW 103.13 bill. In addition, I identify the resilience of discriminatory legal codes due to underlying patriarchal cultural norms and conservative religious. **Fourth**, I identify the most effective strategies, tools, and institutional mechanisms developed by Moroccan feminists to turn *de jure* laws into *de facto* implementation. **Finally**, I conclude with a brief review of the **major findings** from the Moroccan case study, the **lessons learned** from the Moroccan reform experience, and the **implications and recommendations** for future change nationally and perhaps among other Muslim-majority countries.

## Literature Review

The relationship between law, policy, and gender relations is “crucial and understudied” (Weldon and Htun 2010: 208). Multiple quantitative studies have demonstrated a strong correlation between feminist activism and progressive policy change in established democracies, but scant work has been done in emerging democracies. Cross-sectional studies at both the national and international levels have consistently identified **feminist civil society activism** as the key determinate of women’s policies adoption generally (Schwindt-Bayer and Mishler 2005; Htun and Weldon 2013) and progressive policy change on GBV and VAW more specifically (Weldon 2002, 2004, Htun and Weldon 2012, 2013). Feminist activism is more important than leftist parties, percent of women legislators, or national wealth as “drivers of progressive policy change” (Weldon and Htun 2013: 231). Nevertheless, the determinates of gender equality policies in established democracies within the developed world may differ extensively from those in the developing world (Weldon and Htun 2010: 207). In the case of Morocco, feminist activism takes place within an autocratic not democratic arena with embedded structures of power asymmetries both in the patrilineal networks and patriarchal family structures. Furthermore, existing studies do not address the implementation of legislation, only the reform itself (Weldon and Htun 2013: 234).

Autonomous feminist associations are crucial in the struggle to amend discriminatory legal codes and increase gender equality: First, their priorities represent feminist concerns, particularly challenging gender discrimination across society. Second, feminist policy prescriptions generally challenge prevailing gender roles, which would be difficult within a bureaucratic or elected position. Third, women’s issues are perceived as of interest only to women and are easily marginalized by organizations that do not prioritize gender equality (Htun and Weldon 2012: 553). To these qualifications I would add a **fourth** qualification unique to the spread and adoption of global norms: domestic feminist associations are uniquely positioned to act as norm entrepreneurs, appropriating new ideas and framing them in culturally sensitive language and symbols, adapted to particular domestic audiences. Feminist associations maneuver the sensitive terrain between insider and outsider, cognizant of and sensitive to cultural and contextual identities while transforming international norms and frameworks into locally palatable initiatives.

The task of feminist associations in Muslim-majority countries is further complicated by the presence of alternative discourses among women's rights associations. All women's associations are not feminist, i.e. challenging patriarchal hierarchies and male privilege. In Morocco the women's movement also includes Islamic associations that offer an alternative discourse based on traditional, complementary gender roles, *qiwama* (*maintenance*), and religious references instead of the international human rights framework. I define these associations as anti-feminist.<sup>14</sup> Importantly, these associations do not uniformly pursue policies that are "bad for women," some anti-feminists promote women's issues (i.e. maternal and child health services and rights for female heads of household). Nevertheless, they subscribe to traditional power hierarchies, male privilege, and gendered rights and duties within the family. To note, I do not place all Muslims in the category of anti-feminists. Some associations and activists identify as Muslim but with a progressive, emancipatory agenda that sees women's empowerment and gender equality as stemming from Islamic principles. These associations I define as progressive Muslim feminists.

**Puzzle:** Whereas Moroccan legal codes discriminate against women and leave them vulnerable to violence, nevertheless, fractures and cleavages within the the women's movement seem to divide along divergent belief systems and priorities that inhibit action. To answer this puzzle, I apply the Advocacy Coalition Framework from public policy to the woman question in Morocco in order to systematically analyze the Moroccan women's movement and coalitional alignment along core, policy core, and secondary beliefs. The analysis provides insight into areas of potential collaboration and consensus-building as well the role of a progressive Muslim feminist discourse within the Moroccan women's movement that has the potential of reconciling the divisions between feminists and anti-feminists by pursuing a progressive feminist agenda from within an Islamic reference.

Second, to overcome gaps in the literature, this project explores the distinct challenges feminist activism faces within autocratic regimes in addressing legal discrimination that perpetuates VAW. Third, by using in-depth interviews and inter- and intra-associational comparative analysis, the project goes beyond *de jure* reform of discriminatory legal codes to explore the *de facto* implementation of the codes and their affect on the lives of Moroccan

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<sup>14</sup> I borrow Mariz Tadros' definition in distinguishing between Egyptian women's associations. Into this category Tadros places the conservative Muslim Sisters and ultra-conservative Salafi women. (See Mariz Tadros. *Resistance, Revolt, & Gender Justice in Egypt*. Gender, Culture, and Politics in the Middle East. New York: Syracuse University Press, 2016.)

women. Fourth, this project identifies problems within the legal codes both in terms of remaining discrimination and actual indiscriminate application of the law and thus aspires to be prescriptive. Finally, due to Morocco's position as a leader among Arab Muslim-majority states, Morocco's feminist activism provides possible tactics, strategies, and institutional mechanisms to promote gender equality in other Muslim-majority states.

The project attempts to answer several related research questions in the course of the analysis:

**Primary Research Question:** What is the relationship between discriminatory legal codes, patriarchal cultural norms, and conservative religious interpretations and the perpetuation of VAW in Morocco?

**Intermediary Research Questions:**

- How can the theoretical approaches in ACF help **explain** the competing women's rights advocacy **agendas** (feminist and anti-feminist) within Moroccan society?
- Can ACF explain where women's associations with different **core beliefs, policy core beliefs, and secondary beliefs** may **cooperate** to advance women's rights and address VAW?
- What are the **positive and negative outcomes** that have taken place in the Moroccan legal reforms?
- What are the **systemic, structural, and institutional factors** in Moroccan society and the Moroccan legal codes that perpetuate VAW?
- Are **feminist women's associations** the drivers of gender equality policies in Morocco as they are in established democracies? What additional obstacles do women's associations face in authoritarian regimes?
- What **strategies** have feminist women's associations utilized to advance a progressive women's rights agenda in Morocco at the international, regional, and national levels?
- How have **international human rights conventions** and **associated mechanisms** been used by women's associations to advocate for national legal reform?
- What **critical junctures** allowed the Moroccan women's rights movement to make advances in legislation promoting gender equality?
- What are the **discriminatory articles** in the Moroccan family law, penal code, and other gendered legislation? In what ways are articles **applied in a discriminatory manner**?
- Changing discriminatory laws is only the first step in progressive change and requires **implementation** of existing legal codes to alleviate VAW. How can *de jure* laws become *de facto change*? What policy prescriptions, strategies, mechanisms are necessary to implement the necessary reforms?
- Has the Moroccan state response to VAW demonstrated **state capacity, state will, and effective policy formulation** to fight VAW?

## Chapter 1 Theory and Methodology

### ACF Theory

The theoretical framework I utilize is ACF,<sup>15</sup> which was developed by Paul Sabatier and Jenkins-Smith for use in public policy and is uniquely suited to provide the theoretical underpinnings to evaluate public policy on women's rights in Morocco as well as how and why competing coalitions polarize within the Moroccan women's movement. ACF includes actors at multiple levels of decision-making both inside and outside the state and thus this project focuses on women's associations, rights groups, and youth movements within civil society as well as political party activists, women parliamentarians, and judicial official. The polarization occurs over **core beliefs**, which are normative, ontological, and resistant to change. The two more malleable beliefs are **policy core beliefs** and **secondary beliefs**. Policy core beliefs are policy positions, basic strategies, and prescriptions to implement core beliefs. They are based on epistemological differences between coalitions and are difficult but not impossible to change. Secondary beliefs are instrumental considerations of how to implement policy core beliefs and are more flexible and easily compromised. Policy change occurs largely at one of these two levels.

Using ACF, I identify advocacy coalitions<sup>16</sup> within the Moroccan women's movement: **one feminist** and **a second anti-feminist**. **Feminists** view gender inequality as constructed and consequently susceptible to deconstruction. Underlying the inequality are patriarchal cultural norms and conservative religious interpretations, which feminists contest using the international human rights framework and a progressive Muslim feminist discourse. The feminist coalition includes women's associations of various ilks: **secularists** (such as ADFM, MRA, IPDF), **socialists** (LDDF and UAF), and **progressive Muslim feminists** (AMDF and Annisae). As feminists, these associations agree that patriarchy, sustained by conservative religious interpretations, is the underlying challenge to gender equality. They may disagree, however, on secondary beliefs, such as relative priorities, ideological referents, degrees of alignment with the Monarchy and the challenge that it may pose to the democratization process in Morocco, and leadership and constituency. The **anti-feminists** -- which I define as an alternative, traditionalist

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<sup>15</sup> For more information on ACF, see Sabatier 1998, 1999, 2007, Sabatier and Jenkins-Smith 1993, 1999; for ACF's adaptation to the interplay between domestic and international forces, see Litfin 2000; for ACF's use in policy change on domestic violence in the UK, see Abrar et al 2000.

<sup>16</sup> In addition to women's rights associations of various ideologies, political parties also align along these polarities with the *Socialist Union of Popular Forces (USFP)* and the *Socialist Party of Progress and Socialism (PPS)* largely supporting the feminist policy objectives and the *Islamic Party for Justice and Development (PJD)* supporting and being supported by the agenda and prescriptions of the Islamic anti-feminist associations.

discourse -- do not prioritize breaking down patriarchal structures, instead deciding to maintain those structures or not seeing them as the priority. This group includes conservative Islamic associations (al-Hidn and Forum Zahrae) who subscribe to conservative interpretations of the Qur'an and seek to **protect** women through complementary gender roles and the legal institution of marriage. Nevertheless, I argue these **charitable positions** privilege men and inevitably leave women both inside and outside the marriage institution in a subordinate and potentially vulnerable position. Other groups I include under the anti-feminist banner are youth-led organizations focused on **social justice** (Droite et Justice and 20 February Movement), which may more accurately be called **post-feminists** as they do not view feminist concerns as the priority. The youth social justice organizations' leadership and constituency crosses genders. Moreover, they do not focus simply on breaking down patriarchal cultural norms, but instead prioritize social justice concerns. The inclusion of the post-feminist youth social justice associations in this project represents an **intersectional** approach that incorporates not just gender concerns, but the interstices of gender, class, and race, a horizontalization and democratization of the project. Lastly, I would like to add that Moroccan **feminist** and **anti-feminist** associations are neither homogenous nor do they operate in a vacuum. Instead, they both inform and are informed by one another's strategies, tactics, and discourse and therefore are best analyzed in tandem. (See Figure 1 for distinctions between the feminist and anti-feminist coalitions.)

The feminists come from diverse backgrounds with clear differences: some are more secular, some more socialist, and some more religious in tone, but they are united and work together toward many objectives and policy prescriptions. The UAF, for example, sprung from a small group of women that formed around the March 8 journal. Most of the members were from the leftist political party, the Organization for Action Populaire (OADP), which was legalized in 1982 and would later become the Unified Socialist Party (PSU). When party priorities placed women's rights second after democratization, a group of women formed the UAF in 1987 with a commitment to focus specifically on women's issues. The UAF accepted financial assistance from French and Spanish organizations to start literacy programs and is especially active in urban areas, indicating that the state has dominated work in rural areas. UAF has also taken a major role in training women for political positions and created a national organization called Woman to Woman that works with women who have been elected as parliamentarians or councilors. In addition, UAF pushed for political parties to honor a pact to increase women's

representation in Parliament, going from 10 percent in 2000 to 12 percent in 2009 to 17 percent in 2011.<sup>17</sup> Parliamentary quotas have been invaluable to increasing women's statistical representation in government, but further study must determine if they are able to then advocate for women from within the system or if they are simply co-opted into maintaining the status quo.

In terms of agenda setting and theoretical approaches within the women's movement, some differences in focus are clear even within the feminist trend. ADFM indicates, "All social change begins with the family, whether economically, socially, politically, or culturally."<sup>18</sup> Therefore, the feminists concentrate their efforts on alleviating the feminization of unemployment, school dropouts, and the lack of education. Moreover, ADFM's "focus on women is not from a charitable perspective, but from the perspective of women's rights as citizens."<sup>19</sup> UAF indicates that gender equality is a matter of changing attitudes and mentalities in the family and at school as "school is the foundation, and current textbooks reproduce stereotypes that exist against women. [For example,] Fatima is always helping her mother in the kitchen and Mohammed is always going to the mosque with his dad."<sup>20</sup> For AMDF, the question is more theoretical: "How do we define the problems of Moroccan society, and is the question of women a priority?"<sup>21</sup> AMDF points out that in all the ministerial sittings on education, employment, and immigration, they never talk about women, who are once again marginalized. Moreover, within the national budget, there is only a minimal amount of money allocated for the improvement of the status of women.<sup>22</sup> UAF notes that judges—who interpret and apply the laws—are conservative and working within a patriarchal system, and measures that should have accompanied the Moudawana reform simply did not follow.<sup>23</sup> While the feminists focus on women as the unit of analysis, ICWAD's treasurer Souad Slaoui offers a perspicacious elaboration that "gender equality is not simply a woman's fight, but men need to be included in the process as well."<sup>24</sup> While poverty, illiteracy, and violence are overwhelmingly feminized, the solution is one that will require efforts from all members of society—men and women.

While the feminists have focused on advocacy employing international conventions to reform national laws, anti-feminist associations ground women's empowerment within Qur'anic

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<sup>17</sup> Personal interview with UAF (Tetouan) July 8, 2013.

<sup>18</sup> Personal interview with ADFM General Secretary (Rabat) July 11, 2013

<sup>19</sup> Ibid.

<sup>20</sup> Personal interview with UAF (Tetouan) July 8, 2013

<sup>21</sup> Personal Interview with AMDF in General Secretary (Casablanca) July 10, 2013

<sup>22</sup> Ibid.

<sup>23</sup> Personal interview with UAF (Tetouan) July 8, 2013

<sup>24</sup> Personal Interview with ICWAD Treasurer Dr. Souad Slouai (Meknes) June 28, 2013

principles. Instead of seeing women's advancement as coming through a Western human rights discourse focusing on the individual (with patriarchal male privileges as the villain) or the socialist perspective of overcoming women's marginalization (due to capitalist exploitive system constraints), anti-feminists seek a collective emancipation from colonial and systemic impediments. Moreover, as illustrated by the massive response demonstrations in Casablanca organized by Islamic groups opposing the Family Law reforms, the anti-feminist associations clearly resonate with the masses and boast a powerbase at the grassroots level that dwarfs that of the feminists. While the feminists concentrate on top-down emancipation, the anti-feminists focus on a different trajectory: relief will come from the bottom-up. While the feminist associations focus on the text of national laws and compliance with international commitments as a strategy, their first priority is to equalize the rights and obligations between men and women in the Family Law. Nevertheless, clear differences are obvious in their assessments regarding implementation of the 2004 Family Law. A principle distinction between the feminists and anti-feminists is that the former focuses on the woman as the unit of analysis, whereas the latter focuses on the family and society as a whole as the unit of analysis. For example, the al-Hidn Association, representing the anti-feminist perspective, noted that marriage is not between a man and a woman, but between two families. This is a very subtle distinction, but one that becomes increasingly apparent through interviews with representatives from both feminist and anti-feminist coalitions. Likewise, the feminists emphasize equality between the genders, while the anti-feminists promote the complementarity of gender roles and the wife as a dependent first of her father and then of her husband. Finally, the feminists rely on rules, universal laws, and international norms to dictate and construct the type of society in which they live, while the anti-feminists promote cultural relativism and acknowledging exceptions within society. The anti-feminists above all credit Islam and the framework it provides as assuring women economic security.

These contrasting frames are most clear through in-depth interviews and examples, as leaders from both sides address the implementation of these laws and the impact they are having on Morocco's women. The articles from the Family Law that most directly impact women are discussed in these interviews, including marrying age, the role of *wali* (or legal sponsor) in a marriage, polygamy, divorce, child custody, guardianship, child support, and property rights. The contrasting viewpoints are subtle, but important.

Main Differences Between Feminist and Anti-Feminist Coalitions						
	Associations	Priorities	Religious Reference	Aligned with Monarchy or Parliament	Composition	Which Rights are the Priority?
<b>Feminists</b>						
Secularists	ADFM, IPDF MRA, Amal, Tafiiil, AMDH	Gender equality Legal Reform Capacity-building &	None None	Monarchy	Women, aging	Civil, Political,
Socialists	UAF <sup>25</sup> LDDF	Gender equality	Inclusive	Parliament	Women, aging	Social, Economic,
Progressive Muslim	AMDF Annisae Lamrabat's CFSI	Ijtihad religious texts to include women	Equality arises from within Islam	Monarchy	Women, aging	Civil, Political
<b>Anti-feminists</b>						
Progressive Muslim: rereading Qur'an from a progressive women's perspective (Zvan-Elliott 2015: 53)	JC Yassine JC Yerfout	Gender Justice (Zvan-Elliott 2015: 91)	Religious	Parliament and Democracy	Women and Men	Social and economic (Gray 2015: 118) Work and education (Zvan-Elliott 2015: 92)
Conservative Islamic	Al-Hidn, Forum Zahrae/PJD ORFC	Protect women Family Unity	Religious Reference	Monarchy	Women and Men	Social, Economic
Social Justice	Droite et Justice; 20 February Movement; AMDH Youth Wing	Social Justice; post-feminist discourse	Secular	Parliament and Democracy	Youth-led; Cross-genders	Social, Economic
Cultural	La Voix de Amazigh	Amazigh culture and language	Secular	Parliament	Cross-genders	Cultural

Figure 1 Advocacy Coalition Framework: Main Differences Between Feminist and Anti-Feminist Coalitions

In the case of Morocco, coalitions within the women's movement align along core beliefs. Feminists reference the international rights conventions and privilege the rights of the individual over the family or society as a whole in the pursuit of gender equality. The anti-feminists, on the other hand, promote women's rights in keeping with the Islamic faith, the elevation of Moroccan society as a whole rather than its constituent parts, and the complementarity of gender roles. The anti-feminists view the implantation of Western legal institutions in Moroccan Islamic society as ill conceived and provide illustrations of how laws intended to protect Moroccan women actually leave them vulnerable to precarious socioeconomic shifts of fortune. (See Figure 2 for a categorical breakdown of the competing core beliefs.) In addition to core beliefs, policy core beliefs and secondary beliefs also affect the way coalitions compete and cooperate, while offering greater flexibility for policy-oriented learning, consensus building, and compromise. These two types of beliefs are further delineated in Figures 3 and 4 of Chapter 4 on discrimination within the legal codes and coalitional responses.

<sup>25</sup> UAF and a few other organizations endorsed the RCC to consider Family Law reform, while ADFM and LDDF opposed it. Justice and Charity member, Nadia Yassine, criticizes the feminist as caught in a funding and leadership struggle and that they are partisan and have ties with the *Mahzen*. Furthermore, they have no interest in social justice (Zvan-Elliott 2015: 58-59).

Main Differences in Core Beliefs between Feminists and Anti-Feminists		
	Feminists	Anti-Feminist
Unit of Analysis	Individual	Family or Society at Large
Gender Roles	Equality	Complementarity
Textual Reference (Input)	Human rights conventions (CEDAW, CRC, CAT)	Religious texts ( <i>Qur'an, sunna, hadith, shari'a</i> )
Rules (Output)	Universal Human Rights	Exceptions and Cultural Specificity
Equality	Focused on women reaching equality with men	Equality of both genders and their simultaneous elevation
Theoretical Assumptions	Deconstructing and Reconstructing reality	Independent Reality
Support Base	Elite and Educated	Common People
Basis for reforms	Human rights questions	Social and Religious Question
Approach towards women's rights	Equal rights and duties as a citizens	Protection, Charitable
Approach towards women's empowerment	Social and Economic Empowerment	Maintenance & Protection
Goal for individual women	Independence	Dependence
Rights Focus	Civil, Political, Legal	Social and Economic
Factors → VAW	Inequality, Patriarchy & Power Asymmetries	Social Factors: Alcohol & Drugs
Advocacy Approach	Top-down: legalistic approach & strategic interests <sup>26</sup>	Bottom-up: practical interests
Cultural Beliefs → VAW	Culture is Contested, human rights culture	Cultural Specificity, Preservation of culture
Religious Interpretation → VAW	Religious interpretations are irrelevant (secularists) or contested (Muslim feminists)	Family Honor vs. debauchery mantra

Figure 2 Main Differences in Core Beliefs between Feminists and Anti-Feminists

Three additional underlying principles behind the ACF framework illustrate the relative constraints on and avenues for overcoming the competition and conflict and pursuing instead cooperation and collaboration. First, decision-making is limited by the *bounded rationality* of the actors. Actors must make decisions with incomplete information, limited resources, limited ability to process available information, and reliance on heuristics in decision-making.<sup>27</sup> This limits the ability of coalitions to understand and appreciate the competing coalition's arguments and concerns. Second, ACF incorporates Quattrone and Tversky's prospect theory, in which actors will exaggerate the maliciousness of perceived opponents—a *devil's shift*—amplifying the severity of losses to a rival coalition while mobilizing coordinated action among policy allies.<sup>28</sup> These cleavages and ideological contretemps are apparent in the Moroccan women's rights movement, perhaps limiting the effectiveness of the movement as a whole to the detriment of Moroccan women's empowerment. Finally, and perhaps more productively, the concept of *policy-oriented learning* offers a means for cooperation and understanding between coalitions. Policy-oriented learning is brokered by norm entrepreneurs and convergent discourse arenas

<sup>26</sup> Moroccan feminists purportedly promote **strategic interests**, whereas the JC promotes **practical interests**. (Molyneux 1985; Zvan-Elliott 2015: 60)

<sup>27</sup> Herbert Simon, "Human Nature in Politics: the Dialogue of Psychology with Political Science," *American Political Science Review* 79 (1985): 293–304.

<sup>28</sup> George Quattrone and Amos Tversky, "Contrasting Rational and Psychological Analyses of Political Choice," *The American Political Science Review* 83 no. 3 (1988): 719–736.

such as the UN Committee Sessions to review periodic reports and shadow reports as well as local workshops that explore particular concepts such as Asma Lamrabet's recent workshops on *qiwama*. In policy-oriented learning competing coalitions are informed by and inform one another, which allows for enhanced and expanded understandings of complex issues. These conceptual additions to the ACF theoretical framework expand its usefulness to explain the dynamics within the Moroccan women's movement by conceptualizing both the constraints and the promise surrounding inter-coalition dialog.

Coalitions do not operate within a vacuum. **External shocks** outside the policy subsystem and **internal shocks** within the policy subsystem may redistribute political and coalition resources and lead to shifts in **policy core beliefs**. For Morocco, **external shocks** included the 2003 Casablanca and 2011 Marrakech terrorist attacks by Islamic extremists, which placed suspicion on Islamist elements and gave impetus to feminist demands. The May 16, 2003 Casablanca bombings gave rise to the May 29, 2003 Penal Code reforms, known as the Law to Combat Terror Bill 03.03, and the passage of the 2004 Family Law reforms in the wake of anti-terrorist rhetoric. Likewise, the April 28, 2011 Marrakech bombings gave rise to the July 1, 2011 Constitutional reform. In addition, parliamentary elections may represent an **internal shock** to the women's rights policy subsystem as coalitions include actors both inside and outside government (See footnote 6). For example, the election of the opposition Socialist Union of Popular Forces (USFP) in 1997-2001 and 2002-2007 as the largest party in parliament marked an influx of progressive legislation, including the aforementioned family and penal codes, as well as the 2004 Labor Code and 2007 Nationality Code. Likewise, the 2011 and 2016 elections of the moderate Islamic Justice and Development Party (PJD) shifted the balance of political power in favor of the *anti-feminist* discourse, which means feminists must be increasingly resourceful to maintain the momentum for progressive reforms as their intra-parliamentary allies are not as strong. Another **internal shock** within **the policy subsystem and example of negotiated compromise** is the 2012 suicide of Amina Filali and the subsequent 2014 amendment to Article 475 of the Penal Code, which had condemned Amina to marry her rapist in order to restore the family honor. In this case, both feminist and anti-feminist women's associations pressured the PJD government to amend the law to prevent rapists to escape prosecution by marrying their underage victims.

ACF's departure from the traditional "stage model" of the public policy process focusing on agenda-setting, fact-finding, and top-down decision-making to instead highlight the *bottom-up contributions of advocacy coalition networks* in policy change (Sabatier and Jenkins-Smith 1993: 2-4; Sabatier 1998, 2007) makes it especially well suited to the case study of Morocco. In addition, ACF is not a stagnant framework, but a dynamic, adaptive framework that has been regularly updated and expanded by its authors. ACF, which was originally applied strictly to the dynamics between domestic actors in policy change, has been expanded to include international influences on domestic policy, **the adaptation of global norms to local circumstances**, and the **interaction between domestic and foreign influences** (Litfin 2000, Elliot and Schlaepfer 2001). Litfin (2000) expands ACF to include interplay between *domestic and international forces* on national public policy, which is particularly relevant in the Moroccan women's right's case as international norms meet local realities and the interstices provides a venue for policy-oriented activism. This synergy dovetails with Robertson's (1995) notion of *glocalization* in which global concepts are adapted to fit local cultures and norms, providing a two-way transformative process in which ideas and notions are not simply collectively borrowed or imposed from other sources, but transformed to fit local realities and in turn generating alternative models.

Another factor making ACF particularly attractive as a theoretical framework for analyzing the Moroccan women's rights policy subsystem is the incorporation of *feminist ideas* to ACF application (Abrar et al 2000). **Abrar et al use ACF to frame their work on domestic violence policy change.** Feminist ideas are especially effective in societies with continuing patriarchal infrastructures and public and private space proscriptions. Abrar et al address the **patriarchal and discriminatory structures with women-centered solutions to right the imbalance. Feminist advocacy prescriptions are equally relevant for examining Moroccan gendered change, but face traditional and conservative opposition from the status quo. Feminist proclivities align along the competing frameworks. Feminist Moroccan associations view women's second-class status as *constructed* and *nurtured* and therefore **discriminatory laws can be amended and their inferior status deconstructed with equality between the genders as the goal. Islamic feminists view women by *nature* as only part of a whole, and a mere complement to men. This essentialist perspective places women in an immutable and****

**somewhat charitable status**, which feminists argue undermines the premise of equality of between the genders.

Finally, Sabatier's framework emphasizes the importance of **policy brokers** in facilitating cross-coalition policy-oriented learning. These policy brokers will include women (and men) on the inside (bureaucrats, parliamentarians, and cabinet ministers) and on the outside (women's associations, grass roots organizations, researchers, and the media). **The application of feminist ideas is crucial to the study of the Moroccan women's movement, which is an amalgam of different feminist belief systems: radical feminism, secular feminism, socialists, and Muslim feminism**, opposite Islamic anti-feminism. In Morocco *secular, socialist, and Muslim feminists* offer a **competing framework for women's rights** to the more *conservative Islamic anti-feminists*. Within the feminists are secular feminists, Socialists, and Muslim feminists, each with slightly different perspectives, but general agreement on many of the major strategies and objectives. Political parties also align along these polarities with the *Socialist Union of Popular Forces (USFP)* and *the Socialist Party of Progress and Socialism (PPS)* largely supporting the feminist policy objectives and the *Islamic Party for Justice and Development (PJD)* supporting and being supported by the agenda and prescriptions of the Islamic anti-feminist associations.

The literature on the women's movement in Morocco further substantiates my use of the ACF framework and division of the women's movement into these competing coalitions. Valentine Moghadam notes that the rise of the women's rights discourse in Morocco as a part of feminism's second wave was "often in direct confrontation with fundamentalism, political Islam, and religio-nationalist trends."<sup>29</sup> Fatima Sadiqi indicates that the "liberal" feminists did not concentrate on religious texts, but instead articulated their legal demands in terms of "liberalizing" society.<sup>30</sup> Zakia Salime in her 2011 book *Between Feminism and Islam: Human Rights and Sharia Law in Morocco* offers an excellent detailed introduction to the early friction between the feminist and anti-feminist trends and how these trends within the movement chastened and motivated one another.<sup>31</sup> Salime's narrative ends, however, with the passage of the 2004 Family Law without an indication of how effective the new family law is at facilitating gender equality within individual families. Likewise, no in-depth study has been undertaken to

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<sup>29</sup> Valentine Moghadam, *Modernizing Women: Gender and Social Change in the Middle East* (Colorado: Lynne Rienner Publishers, 2013), 66.

<sup>30</sup> Fatima Sadiqi and Moha Ennaji, *Women in the Middle East and North Africa* (New York: Routledge, 2011), 36–38.

<sup>31</sup> Zakia Salime, *Between Feminism and Islam: Human Rights and Sharia Law* (Minnesota: University of Minnesota Press, 2011), 58–60.

analyze the persistent discrepancies between the feminists and anti-feminists regarding the challenges to full implementation of the legal reforms in Moroccan society or, more importantly, the impact of these reforms on Moroccan women's lives. This project aims to illuminate the divergent trends and perceptions within the Moroccan women's movement in hopes of fostering greater intra-movement cooperation and understanding.

### **Methodology**

I use a gender lens to analyze discriminatory articles in the family law and penal code and their impact on VAW. To this end, I employed several qualitative methods and an iterative approach to understand and analyze gender discrimination in the legal codes and women's associational activism and use of international conventions to address these inequities. My methods include: historical analysis, content analysis, surveys, focus groups, and elite interviews. First, with the historical analysis, I carefully traced the sequence of events and the role of key players in the development to date of the Moroccan family law and gendered legal codes. Second, I used a gender lens and content analysis of the family law and penal code to identify articles that discriminate against women. Third, I conducted surveys on two college campuses to further delineate opinions within society regarding the effectiveness of current reforms and solicited suggestions regarding additional mechanisms and state support needed to fully implement the existing legal codes. Finally, I conducted elite interviews and focus groups of women's associations, human right's associations, parliamentarians, cabinet members, and judicial officials – judges and lawyers from across the Moroccan political spectrum – as well as VAW listening centers, VAW overnight shelters, and VAW victims themselves. In these interviews and focus groups I questioned discrimination within the 2004 Family Law and 2003 Penal Code, amendments necessary to rectify discriminatory articles, and prescriptions to problems with fully implementing both existing laws and necessary legal reforms.

These investigations have been an integral and on-going part of my MA and PhD work since 2010 and have proceeded in iterative phases of fieldwork and analysis.

**Phase I:** In my MA thesis I compared family law and other gendered reforms in Morocco and Egypt. On the Moroccan side, this included extensive reading and historical analysis juxtaposing women's associational activism with reform initiatives in Morocco under the two most recent monarchs, Hassan II (1961-1999) and Mohamed VI (1999-present), and the role of the national leadership in promoting or inhibiting reform initiatives. These critical junctures of change are moderated by international women's rights networks, national and regional associational

activism, and the relative power of opposition voices, particularly the Islamists, vis-à-vis the state.

**Phase II:** One criticism the feminist Moroccan women's rights movement has received is that it is an elite top-down initiative focused on changing legal codes with little consideration of the "reality on the ground" of average Moroccans. AMDF in Casablanca confirmed this saying, "originally the women's right's movement in Morocco was an elite enterprise."<sup>32</sup> The feminist discourse was further challenged by the rise of the moderate Islamic party, the Party for Justice and Development (PJD), to power in 2011 and again in 2016 parliamentary elections. The women's movement in Morocco and Moroccan society at large is clearly divided between more human rights-driven reform and more conservative religious-based thinking.

Two better understand these cleavages in society, in Phase II of this case study, in March-April 2012, I conducted a survey on two university campuses. While both universities are public universities, one has higher entry standards based on the secondary academic scores while the other has more liberal entrance requirements. I used this as a proxy for the population of Morocco as a whole when garnering perspectives on the effectiveness of the 2004 Family Law and other gendered legislation. For the university with higher entry standards (IAV in Rabat) I expected the test sample to largely come from the upper class in Morocco, which accounted for approximately 25% of the surveys. The second university (Sidi Mohamed bin Abdullah in Fes), on the other hand, draws students from a more modest segment of society, i.e. the middle and less privileged classes. The students at Sidi Mohamed are strong academically and can pass the entrance exams to pursue a public university education, but they likely did not come from private high schools nor were their test scores sufficient for entry into more prestigious universities such as IAV, according to one Sidi Mohamed faculty member. For this reason, 75% of the respondents are from the public university. The surveys were word-of-mouth snowball samplings. The 125 respondents included 107 students and 18 faculty members. Of the respondents 67 were female and 58 were male. Morocco has a population of 33 million with 4.5 million Moroccans living abroad, 90% of those are male,<sup>33</sup> therefore, the sex ratio for the survey is a close approximation of the sex ratio of Moroccan society at large with slightly more female to male respondents.

Content-wise, the survey explored the state's attempt to address high gendered illiteracy rates, promote women's socioeconomic incorporation into Moroccan society, and address VAW. In addition, the survey explored the effectiveness of the 2004 Family Law reforms in attenuating the legal discrimination in the law governing women's role in the family, especially regarding issues of marriage, divorce, child custody, and inheritance.

Following the surveys, I conducted content analysis on key items of national legislation that affect Moroccan women including the 2004 Family Law, the 2003 Penal Code, the 2004 Labor Code, the 2007 Nationality Code, and the 2011 Constitution. To this, I added international conventions affecting gender equality and women's rights to which Morocco is a signatory: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention against Torture (CAT). (See

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<sup>32</sup> Personal Interview with AMDF in General Secretary (Casablanca) July 10, 2013

<sup>33</sup> World Bank 2013 Statistics.

**bibliography for full list of documents included in analysis.)** By studying both the national legislation and international commitments, I could further identify articles that required reform to be fully compliant with international convention obligations.

**Phase III:** Through the surveys and content analysis, I identified eight contested issue areas to address from the Moudawana: minimal marriage age, marriage tutor (*tutelle* or *wali*), polygamy, divorce, child custody (*hadaanat/la guard*), child guardianship, child support, and property rights. In addition, I determined eight issues/articles in the penal code as contested subjects from a gender-perspective, which I added to my core questions to be further explored through interviews: the criminalization of domestic violence, Article 475 (allows an accused “rapist” (*sic*) to escape prosecution by marrying his underage victim), Article 486 (does not meet international standards in defining violence), Article 487 (does not recognize conjugal rape as a legal offense), Article 488 (distinguishes rape victims by virginity and age), Article 490 (criminalizes extramarital sex), Article 494 (does not protect kidnapping victims the same regardless of sex or marital status), and Article 496 (criminalizes the sheltering of a married woman). Each of these issues/articles required further analysis, which I pursued through in-depth interviews.

In June-July 2013 and June 2014, I conducted elite interviews and focus groups with women’s associations, human right’s associations, parliamentarians, cabinet members, rights advocates, professors, and judicial officials across the Moroccan political spectrum. I conducted interviews in eight Moroccan cities: Rabat, Fez, Meknes, Casablanca, Tetouan, Tangier, Ouarzazate, and Ifrane. I purposely incorporated secular, socialist, progressive Muslim feminist, and conservative Islamic associations as well as single-issue grass roots organizations. Interviews to date include: the Democratic Association of Moroccan Women (ADFM), the Union of Feminine Action (UAF), the Moroccan Association for Women’s Rights (AMDF), the conservative Islamic al-Hidn Association, Fatima Sadiqi with ISIS/INLAC, FEDER, PJD Parliamentarian Jamila Mousali, La Vie Associative au Service Citoyen, Dr. Souad Slaoui, Najia Adib with Don’t Touch My Children, Dr. Abdellatif Zaki, Teach 4 Morocco, Amnesty International, family law lawyer Najat Chentouf, and citizenship Law lawyer Hakima Fassi-Fihr. In addition to the interviews, I conducted six focus groups 1 in Fez, 2 in Ifrane, and 3 in Rabat composed of students and youth (ages 18-35) from across Morocco to better understand the problems in current legal codes from the perspective of the future leaders, and often marginalized, youth of Morocco.

**Phase IV:** Having determined that many of the problems facing women stem from a combination of factors including, discriminatory legal codes, conservative cultural values, high illiteracy, and poor economic opportunities, in June 2014 I conducted research in Ouarzazate, a remote city located in southeast Morocco across the Atlas Mountains, to investigate the reach of government-sponsored initiatives, such as the National Initiative for Human Development (INDH) as well as grass roots programs. I was able to interview the INDH director and observe at a site funded by INDH that specializes in *tarbia* (women’s trades), such as sewing and cooking, and literacy classes for the children. This organization helps approximately 200 women and children throughout the year. Other organizations I had planned to visit were closed as Ramadan was approaching. They included: the Federation de la Ligue Democratique des

Droits des Femmes (FLDDF), which focuses on women's labor rights, and the governmental Consultative Council for Human Rights (CCDH).

**Phase V:** In June 2015, I focused on a more in-depth analysis of a single grassroots organization to assess the work of activist, Najia Adib, who founded *Don't Touch My Children for Child Protection* in addressing one aspect of sexual violence in Morocco, pedophilia. This concentrated research allowed me to look more in-depth at the structural and systemic factors that complicate adequate address of complex social issues. Some of the same discriminatory articles in the penal code that perpetuate VAW in Moroccan society also prevent adequate address of sexual violence against Moroccan children, for example Article 496 (recently repealed) that prevented the overnight sheltering of married VAW victims, even in the event of abuse. These factors are legal, cultural, structural, and systemic and shed light on the larger issues with addressing VAW in Moroccan society.

In addition, in 2015 and 2016 I also conducted three fieldwork trips to Tunisia to interview women's rights activists and political leaders on the same issues I analyze in Morocco. Morocco and Tunisia both adhere to the classical rules of the Maliki Madhhab, which at times has conflicted with the modernization occurring in other aspects of social life in these countries. Moroccan and Tunisian feminist women's rights activists have collaborated together with Algeria on the 95 Maghreb Equality Regional Project and in many ways Tunisia is seen as the regional leader due to Tunisian President Bourghiba's early push for modernizing legal codes. The discourses, framing, and innovations in Tunisia may offer insight for advocacy initiatives in Morocco. I interviewed: CAWTAR, Dr. Amel Grami, from Manouba University, UNFT President, UGTT, Former ATFD President, ATFD/AFTURD activist Khedija Arfaoui, the Ministry of Women's Affairs, the Association for Equality and Parity, AFTURD, and Former Minister of Women's Affairs during the transitional government Lilia Labidi. These interviews were especially helpful as Tunisia has criminalized domestic violence and conjugal rape and decriminalized sexual relations outside of marriage and abortion. Likewise, Tunisia has promoted very progressive policies using DNA testing to hold fathers accountable for paternity outside of wedlock.

**Phase VI:** In this final phase, using a gender lens, I refocused my research on the effects of discriminatory laws, cultural norms, and conservative religious practices on the perpetuation of VAW. To this end, following the example of UN Special Rapporteur on VAW Radhika Coomaraswamy (1994-2003) I returned to Morocco in September, October, and January 2017 for an additional seven weeks of fieldwork in which I interviewed more than 30 representatives from feminist women's associations, Amazigh associations, conservative anti-feminist associations, listening centers in Rabat, Casablanca, Fez, El Hajeb, and Taza, LDDF's domestic violence shelter (habergement) Tilila in El Jadida, and VAW victims. These groups are the stakeholders within Moroccan society that either experience or have the opportunity to mediate the relationship between discriminatory laws, patriarchal cultural practices, and conservative religious interpretations, and the perpetuation of VAW.

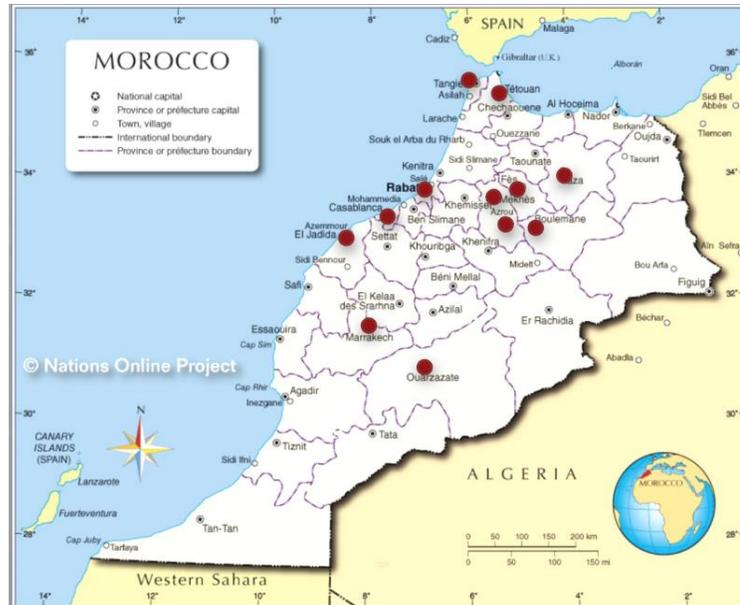


Figure 3 Map of the interview locations for this project.

All interviews were conducted in French, Arabic, or English, based on the preferences of the respondent. They were each recorded and transcribed and translated for follow-on analysis. (For a complete list of my Morocco and Tunisia interviews, see Appendix A.)

This project offers a comparative analysis of the feminist and anti-feminist perspectives through in-depth interviews with coalition leaders in order to provide greater clarity of the nature of the polarization within the Moroccan women’s movement. A clearer differentiation of the competing trends within the women’s movement and Moroccan society at large may serve to promote intra-movement understanding and dialogue thus strengthening the women’s movement as a whole.

As for analyzing the interviews themselves, I utilize *The Long Interview* method described by Grant McCracken (1988) in his book by the same title. The interviews are semi-structured around particular articles or issues in the 2004 Family Law deemed as ineffective or discriminatory by the initial 125 surveys and the follow-on pilot study interviews in 2012. I viewed each utterance as an observation and organized these observations by themes according to the evidence in the transcripts. By focusing on the observations instead of the transcripts themselves patterns and themes became apparent that allowed me to:

- Identify the strategies and tactics used by Moroccan women’s associations to challenge discriminatory laws, as well as both positive and negative outcomes

- Understand the effect of legal discrimination on VAW
- Determine that the application of the law and not the law itself at times lead to VAW
- Identify the patriarchal cultural norms that underlie legal discrimination and lead to VAW.
- Challenge the conservative religious interpretations that underlie legal discrimination and lead to VAW by offering a more progressive reading of religious texts.

## Chapter 2 An Emancipatory Feminist Discourse within an Islamic Reference: Potential Synthesis of the Dominant Debates

The UN human rights discourse and democratic principles are often juxtaposed against an Islamic reference and cultural specificity as informing women's rights activism and advocacy. To an extreme, women in Muslim majority countries, such as Morocco, are depicted by Western media as submissive, subjugated, voiceless creatures, relegated to veiled, segregated lives within the private sphere. Conversely, Western feminists are derided by Islamic conservatives as anathema to Islamic precepts and concepts of womanhood in Muslim countries, where unlimited freedom leads inevitably to sexual promiscuity and debauchery. Moroccan feminist scholar Fatima Mernissi's pioneering approach to the reinterpretation of the sacred texts through a feminist lens and in light of historical context fostered an unprecedented wave of Islamic exegete scholarship that debunks the dichotomy between a so-called *Western* human rights discourse and an Islamic discourse portrayed as patriarchal and misogynistic. In *The Veil and The Male Elite* (1975) and *Beyond the Veil* (1987), Mernissi envisions an alternative to the stalemate that is both culturally sensitive and emancipatory, Muslim feminism. The progressive Muslim feminist viewpoint delivers the rich religious underpinnings and cultural sensitivities absent from Western feminist theories, while enabling Muslim women to author and be the subjects of their own narratives. Essentialist dichotomizing and othering between women's rights coalitions hinder meaningful engagement and dialogue. This dichotomization is particularly salient in the Moroccan women's movement, stymying progression toward a more egalitarian society.

Mernissi reinterpreted Islamic religious texts utilizing Islamic exegesis, a critical explanation (*tafsir*) or interpretation (*ijtihad*) of the religious texts from a historical context. Instead of women's subjugation, these exegetes emphasize an emancipatory feminist discourse in the religious texts that challenges patriarchal cultural norms, conservative religious interpretations, and male privilege. These scholars embrace the human rights agenda of gender equality in addition to democratic principles, yet do so within an Islamic reference. Mernissi harnessed Islamic exegesis to contend that gender equality and democratic principles, often perceived as Western imperialist constructs imposed on the Muslim world, actually originated during the seventh century with the advent of the Muslim faith. Islam was founded on the principle of the equality of all believers regardless of their sex, ethnic background, or social origin (Mernissi 1987: 42). Mernissi asserts, however, that "the political elite instrumentalized

religious texts to disguise women's past in order to dim their future" (1987: 11). She inspired academics, activists, and advocates with a culturally sensitive reconciliation of the prevalent international human rights discourse with their Islamic faith. Mernissi and other exegetes offered unique theoretical insights, which challenged prevailing patriarchal power asymmetries and informed the women's rights discourse of Muslim rights advocates around the world. **This chapter briefly demonstrates Mernissi's theoretical contributions, then focuses on the practical application of her work by women's rights activists and advocates, the nexus of Mernissi's theories with Moroccan women's realities. This chapter analyzes Mernissi's legacy in praxis as Mernissi and the progressive Muslim feminist discourse offer alternative visions of gender equality from within an Islamic reference.**

### **Muslim Feminist Theory: A History of Gender Equality**

Mernissi rejected archaic male-elite consensus underlying previous interpretations of the religious texts and actively reinterpreted and contextualized Islam as an egalitarian revolution for women. Mernissi's unique theoretical and interpretive innovations influenced and inspired a generation of exegete scholars across the globe, who further developed and expanded Mernissi's insights into a multicultural, global perspective, **Muslim feminism**. Muslim feminist scholars include Egyptian Nawal El-Saadawi, Egyptian-American Leila Ahmed, Pakistani Asma Barlas, and African American Amina Wadud, as well as Iranian Ziba Mir-Hosseini, American historian Margot Badran, and American Kecia Ali, who address the same phenomenon, under the term Islamic feminism. The Muslim feminist scholarship represents a global application of *ijtihad* by feminist scholars and provides a reconciliation of the dominant debates.

For Muslim feminists, the Islamic Revolution initiated by Muhammad was a break from the ignorant past (*jahaliyya*) and a democratic reform movement for Islamic believers. Mernissi asserts: "Democracy and human rights...full participation in the political and social affairs of our country, stems from no imported Western values, but is a true part of the Muslim tradition" (1987: viii). In terms of gender equality, Mernissi (1987) notes "Islam promised equality and dignity for all, men and women...whatever their sex and ethnic or social background" (1987: 42). Nevertheless, the male elite [especially under the second caliph Omar] could not tolerate an Islam that overturned the traditional pre-Islamic relations between women and men, *especially within the family* (Mernissi 1987: 130). Instead, upon Muhammad's death, the male-elite, feeling their position challenged, limited the revolution to public and spiritual life, but aborted

the revolution within the family by instituting a conservative interpretation of women's position, in effect using the sacred to institutionalize male dominance (Mernissi 1987: 142). Islamic doctrine was further solidified under the androcentric, misogynistic society of Abbasid Iraq, which stifled the voice of equality and institutionalized patriarchal hierarchy (Ahmed 1992: 75 and 87).

As Muslim feminists observe, male privilege was further cemented by the separation of public and private space in contradiction to the way the Prophet Muhammad conducted his own life. The male elite instrumentalized the sacred to institutionalize their control and to legitimize certain privileges: some political and some sexual in nature (Mernissi 1987: 43, 147). In the political sphere, Mernissi indicates the examples of the Prophet and his wives did not demonstrate gendered power asymmetries. Muhammad's first wife, Khadija, asked the Prophet to marry her, was the first convert to Islam, and Muhammad's most important confidant during the early stages of Islam. Another wife, Aisha, became a political leader and commanded an Islamic army (Mernissi 1975: 51). Furthermore, Mernissi shows that women at the time of Mohammad had the right to enter into the councils of the Muslim *umma*, to speak freely to the Prophet, to dispute with the men, and to be involved in the management of military and political affairs (1987: viii). The political roles these women played reveal equality between believers and women's access to high-level leadership positions. Wadud notes "the *Qur'an* uses no terms to imply that the position of ruler is inappropriate for a woman. On the contrary, the *Qur'anic* story of Bilqis celebrates both her political and religious practices" (Wadud 1999: 40). Moreover, Mernissi discredited the *hadith* that says "'Those who entrust their affairs to a woman will never know prosperity,' which is used to keep women out of politics" (Mernissi 1987: 49). In her analysis, Mernissi shows that Abu Bakra, who purportedly heard the Prophet say this misogynistic phrase, was later flogged for giving false testimony and, therefore, must be rejected as a source of *hadith* (61). Based on women's position of strength in Islamic tradition, Mernissi questions why men would want such a subservient companion: "How did the tradition succeed in transforming the Muslim woman into that submissive, marginal creature [and] why does the Muslim man need such a mutilated companion" (Mernissi 1987: 42)? Instead, Mernissi advocates equality between the genders and promotes women's equal responsibility for directing and guiding the Moroccan state.

Mernissi and Muslim feminist scholars also addressed male privilege with regard to **sexual matters**. Mernissi contends “Islam banished all practices in which the sexual self-determination of women was asserted” (1975: 67). Instead, “Islam socializes sexual intercourse through the institution of marriage within the framework of the family” (Mernissi 1975: 59). Whereas women’s sexuality was curbed and civilized by Islam; men’s sexuality was made more promiscuous due to polygamy and more lax by virtue of repudiation by which men could divorce on a whim (Mernissi 1975: 46). Egyptian exegete Saadawi asserts that, “chastity and virginity were considered essential for women, whereas freedom and even licentiousness were looked upon as natural where men were concerned” (Saadawi 1980: 27). For example, according to Mernissi, there was no reliable evidence of polygamy in pre-Islamic times in Mecca or Medina (1975: 68). Saadawi reinterprets *surah* 4:3 (a passage used to claim polygamy as a right for Muslim men), to demonstrate instead through a feminist lens that the passage actually discredits polygamy as a legitimate option. “Marry as many women as you wish, two or three or four. If you fear you can not to treat them equally, marry only one. Indeed, you will not be able to be just between your wives even if you try” (Saadawi 1997: 80). This circular logic allows polygamy if a man is able to treat his wives equally, yet also denies the possibility that a man can be just between multiple wives.

### **Mernissi and the Public-Private Paradigm**

An underlying assumption Mernissi and other exegetes address is the necessary movement of women from the private to the public sphere and their engagement as full citizens through access to education, employment, and political power. In the **social sphere**, Mernissi suggests that a practical way Western donor countries could promote women’s advancement in Muslim states would be to make “loans to the Arab world from the World Bank and International Monetary Fund...conditioned on support of women’s development, since 60-70% of [Moroccan] women are illiterate.”<sup>34</sup> Mernissi likewise promoted a pragmatic rationale for the incorporation of women into the Moroccan economy, postulating that Muslim **economic weakness** is attributable to the fact that only half the nation works, which in effect halves the country’s creative potential and energy (Mernissi 1975: 14). It should be noted that conservative Islamic anti-feminist women’s associations, such as Forum Zahrae, do promote women’s access to

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<sup>34</sup> Interview of Fatima Mernissi on *Charlie Roads* 14 September 1994 (Retrieved 15 November 2016).

education and guarantees that women have equal access to public sector jobs, so they are not against women's equality in the public sector and actively promote women's access to public sector employment.<sup>35</sup> Whereas the face of gender relations has changed substantially in the public sector through compulsory primary education for both boys and girls and women's integration into the economy, gender equality in the private sphere has lagged behind in both formal legal codes and cultural practices. Furthermore, complementary gender roles still underlie the 2004 Family Law and the gender relations in the families it governs.

### **Mernissi in Praxis: Moroccan Activists Champion Gender Equality through Family Law Reform**

Wadud asserts that *shari'a*, which serves as the referent for the Moroccan Family Law, is thoroughly patriarchal as women were left out of its institutionalization and she claims the reinterpretation must include women's voices to correct this discrepancy.<sup>36</sup> Many Moroccan Muslim women's rights associations fight for full equality between men and women and address existing legal discrimination from within an emancipatory Islamic reference. Quoting one Moroccan women's rights advocate who wished to remain anonymous, "If we're talking about the advocates and NGOs...I think [Mernissi] definitely played a huge role in enlightening their gender parity perspective."<sup>37</sup> Following decades of women's rights activism and advocacy, the 1956 Personal Status Code was reformed in 1993 and again in 2004. While the 1993 changes seem somewhat insubstantial, they illustrated that the family law that had originally been viewed as untouchable and sacred could be reformed to institutionalize more equal relations within the Moroccan family. The 2004 reforms dropped the legal requirement for a wife to obey her husband, stipulated that both spouses are responsible for the management of the household, and raised the legal minimum age of marriage for women from 15 to 18, to equal that of men. In addition, the 2004 Family Law circumscribed a man's right to repudiate his wife as well as a man's right to polygamy, both of which now require court approval. Nevertheless, feminist women's associations are quick to identify lingering discrimination in the Family Law, inconsistent with both the UN human rights discourse as well as the Islamic exegete's view of gender equality as stemming from within Islam. To analyze exactly how feminist activists

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<sup>35</sup> Personal Interview with Forum Azzahrae Pour la Femme Marocaine (Rabat) October 5, 2016)

<sup>36</sup> Amina Wadud, *Frontline Interview*, March 2002 (Retrieved 10 January 2017).

<sup>37</sup> Anonymous. Conversation with women's rights advocate on January 13, 2017.

across Morocco have applied Mernissi's principles to address legalized discrimination within the family, I explore three issues that demonstrate Mernissi's theoretical argument's application in practice: **underage marriage, wali (marital tutor), and maintenance (*qiwama*)**.

### **Underage Marriage and Legal Loopholes**

In 1975 Mernissi argued that institutionalizing early marriage "limited women's life and expectations" (xxvi). Feminist associations acknowledge that although the 2004 Family Law raised the minimum age of marriage for women to eighteen to equal that of men (**Article 19**), the application of the law has been gendered and discriminatory. ADFM in Rabat indicates that as of 2012, 12% of contracted marriages involved the marriage of minors with the number of underage marriages increasing each year.<sup>38</sup> AMDF in Casablanca notes, after the 2004 Family Law reform "all of the statistics that the women's associations carried out in the different regions of Morocco said that the exception stopped at sixteen. That is to say that people married their daughters at seventeen, at sixteen, but now they don't marry their daughters at sixteen, it's at fifteen, it's at fourteen, it's at thirteen."<sup>39</sup> Mernissi notes that historically this was a rural phenomenon with parents marrying off their daughters before they reached puberty around 13. Sons pushed their parents to allow them to marry for love, but girls were largely submissive to the will of their parents (1975: 101-107). Likewise, Moroccan marriages were traditionally virilocal, so the wife would go to live with her husband's family, especially in rural areas.

Mernissi criticized the Moroccan state for not producing an ideology or legal code consistent with its modernizing project, particularly with regard to the family code (1987: 148, 152, 171-172). Feminists point out that there are several legal loopholes to the minimum marriage age that perpetuate discriminatory application of the law and leave women vulnerable to violence. First, judges (mostly male) are granted discretionary power to authorize underage marriage (**Article 20**), provided there is a reason for the exception, the approval of the minor's parents, and a medical exam or an investigation by a social worker confirming the eligibility of the minor. Nevertheless, the discretionary power of the judges is unmonitored and ninety-nine percent of underage marriages are girls, not boys,<sup>40</sup> indicating the gendered nature of underage marriage. Furthermore, IPDF in Fez, which deals with VAW victims, reports that one-third of its

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<sup>38</sup> Personal interview with ADFM General Secretary (Rabat) July 11, 2013

<sup>39</sup> Personal interview with AMDF General Secretary (Casablanca) July 10, 2013

<sup>40</sup> Personal Interview with AMDF (Casablanca) July 10, 2013

clients were married as minors, indicating that minors may be predisposed to domestic violence.<sup>41</sup> Likewise, ninety-nine percent of requests to marry minors, almost exclusively girls, are accepted with possible reasons for the exception including the walk to school is too long and dangerous, the family is poor, or a medical certificate says the girl is likely to have sexual relations.<sup>42</sup> With regard to parental consent, Amnesty International in Rabat indicates, the problem of underage marriage is especially common in rural areas, where parents cannot support their daughters longer because they do not have the means and where underage marriages are also the custom. If the girl exceeds sixteen and she is not married, then she cannot marry and often parents fear for it.<sup>43</sup> As for the medical exam or investigation by a social worker, the Amal Association notes that some violations occur at the level of medical tests for the minor, which are not usually done by a gynecologist and are usually based on mere observation. For the judiciary, it is enough that the girl looks physically normal, but feminist women's associations insist the minor should have a medical exam by a gynecologist and a psychological survey.<sup>44</sup> The goal for these feminist women's associations is the empowerment of the women and equality with men in their relations. In contrast, the alternative perspective from the conservative Islamic association al-Hidn in Casablanca, whom I would classify as anti-feminist based on their maintenance of traditional power asymmetries in the family, is less focused on women's development and equality with men and more focused on family **honor** and **the girl's protection**. "By marrying off his underage daughter, the father clears himself of her and is at peace knowing she is married. There are no problems of *honor*."<sup>45</sup> Furthermore, al-Hidn casts marriage as a means of *protection* for the minor, but these rationales for an underage marriage do not consider the challenges the girl will face due to the absence of an education as an empowerment tool, within the marriage as an unequal partner, and in the event of a divorce. Instead, al-Hidn focuses on the benefits of (underage) marriage from a legal standpoint and from the point of view of protection for the girl. "When she has children, she has children who have papers, she has children who have a name, she has a husband who has legal responsibilities towards his children, to maintain. So it's to *protect* her."<sup>46</sup> This concept of *protection*, however, disempowers women and prevents them from reaching complete autonomy, instead seeing them only within the context of a marital

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<sup>41</sup> Personal Interview with Initiative Pour la Protection des Droits des Femmes (IPDF) (Fez) October 14, 2016

<sup>42</sup> Personal Interview with Initiative Pour la Protection des Droits des Femmes (IPDF) (Fez) October 14, 2016

<sup>43</sup> Personal interview with Amnesty International/Rabat on July 4, 2013

<sup>44</sup> Personal Interview with the Association Amal Pour la Femme et le Development (El Hajej) October 12, 2016

<sup>45</sup> Personal interview with five members of the conservative Islamic al-Hidn Association Casablanca July 10, 2013.

<sup>46</sup> Personal interview with five members of the conservative Islamic al-Hidn Association Casablanca July 10, 2013.

relationship and complementary rights and responsibilities. Mernissi criticizes this honor and protection based discourse, which revolves around a girl's virginity as "reduc[ing] a woman's role its sexual dimension: reproduction within an early marriage" (1975: xxiv). Al-Hidn asserts that the custom of marrying girls off in poor rural areas after puberty is a cultural rather than religious practice. Nevertheless, the girl's choices are framed within a conservative religious context where the concept of "family honor" is prioritized over the social welfare and autonomy of the individual (and consistently female) child. Feminist women's rights associations call for an end to these exceptions as early marriage prevents a girl from receiving an education and demonstrates higher vulnerability to VAW.<sup>47</sup>

An additional legal loophole beyond the discretionary power of the judges is **Article 16**, which empowers the court to register marriages post-facto, within an interim period not to exceed five years from the date the law went into effect. The interim period was intended to allow couples with an unregistered (*fatiha*) marriage an opportunity for official registration, but this five-year period has been twice extended. Furthermore, couples and families have used Article 16 to receive formal recognition for an underage or polygamous marriage, sidestepping the criteria that allowed for these two specific and clearly conditioned categories of marriage.<sup>48</sup> Families also use Article 16 to circumvent the law and get a marriage certificate for a girl who has gotten pregnant following a *fatiha* marriage. The Amal Association in El Hajeb notes that Article 16 is considered a loophole and is often exploited to legalize underage marriage, as well as to justify a polygamous marriage. Given that polygamy is now virtually illegal, this article allows men to manipulate the law for their own benefit and gives them the chance to marry more than one woman.<sup>49</sup> This article is challenged by feminist rights associations, who argue that it allows families, men, and even the girls themselves to circumvent the law and engage in a *fatiha* or polygamous marriage, thereby forcing the judge post-facto to register a marriage that would not have been legally sanctioned in the first place.

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<sup>47</sup> Personal Interview with Initiative Pour la Protection des Droits des Femmes (IPDF) (Fez) October 14, 2016

<sup>48</sup> Personal interview with Law Professor (Rabat) October 5, 2016.

<sup>49</sup> Personal interview with the Association Amal Pour la Femme et le Developpement (El Hajeb) October 12, 2016

### **Wali or Tutelle (Marital Tutor)**

Mernissi asserts that the male elite under Omar instrumentalized religion and patriarchal structures in an attempt to control and contain women. Many of the formal and informal institutions surrounding marriage and family were designed to control women's sexuality and avoid *fitna* (chaos) or *zina* (fornication) and the family's honor is inextricably tied to a woman's virtue and chastity (1975: 39). Although the Qur'an promotes the equality of all believers regardless of gender, Mernissi contends, the *wali* is one institution intended to curtail women's self-determination due to fear of *fitna* (1975: 53). Although Moroccan women enjoyed advancement in the public sphere in terms of education and professional opportunities, in the private sphere they remained perpetual minors, going from the custody of their father to their husband. Femme Action indicates:

a *wali* used to be obligatory, so a 50-year old women who had lost her husband and wanted to remarry needed a *wali* and sometimes the *wali* would be a son from her first marriage. Even at 50, she was considered a minor. Today although a *wali* is no longer legally required, women fear their family will view it as a lack of respect if they get married without a *wali*. Furthermore, some family members agree to a marriage if the woman gives them money or land, so it is transactional.<sup>50</sup>

In the 2004 Family Law the *wali* role was revised so that a woman of legal marrying age could contract a marriage herself without the intervention of a *wali* or she can appoint someone to protect her interests (Articles 24-25). Nevertheless, only 20% of women are against a *wali*, while 80% are for it,<sup>51</sup> indicating the *wali*'s role is a social custom and a sign of the respect a woman feels toward her family. "A girl who goes to sign her marriage contract without her parents is a girl of the streets, she's an easy girl, and .... even her husband doesn't respect her."<sup>52</sup> Furthermore, the *wali* represents an insurance policy, protecting the woman's financial interests before and after the marriage by overseeing the marital contract and in the event of marital conflict or divorce intervening on the woman's behalf. Without demonstrating proper respect to the family by including them in the marriage arrangements, a woman is likely to find herself homeless and destitute in the event the marriage fails.

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<sup>50</sup> Personal interview with Feminine Action President (Rabat) October 7, 2016

<sup>51</sup> Personal Interview with Forum Azzahrae Pour la Femme Marocaine (Rabat) October 5, 2016

<sup>52</sup> Personal Interview with AMDF in General Secretary (Casablanca) July 10, 2013

### ***Qiwama*: Institutionalized Male Responsibility and Female Privilege**

The concept of *qiwama*, based on *surah* 4:34, which says “men are in charge of women by what Allah has given one over the other and what men spend [for maintenance] from their wealth” in effect reduces women to a legal dependent of their husbands. Instead, Mernissi contextualizes the *surah* and posits, Islam does not advance women’s inherent inferiority...or legal subordination in the family structure” (1975: 19). She further notes that one of the first acts in independent China was to relieve husbands of the responsibility to support their wives and to encourage wives to earn their own living as productive and not simply reproductive agents (1975: 151). Tunisian exegete, Iqbal Gharbi, further explains, *qiwama* has been interpreted as the superiority of men over women, but actually should be rendered “make the responsibility of” and is incompatible with gender equality. All male privilege accorded by Islam is conditional on financially supporting female family members.<sup>53</sup> To this end, Article 194 of the Family Code obliges the husband to pay *nafaqa* (maintenance) to his wife the moment the marriage is consummated. The wives give obedience and sexual and reproductive services to husbands who provide for their material needs. Nevertheless, husbands are able to “strike their wives in the event of *nushuz* (rebellion) against male authority” (Surah 4:34). Therefore, *qiwama* is a legal obligation for men when they marry and a right of women. Mernissi suggests that employing women is simply an act of benevolence as the Moroccan state has kept the woman in the home, under the (economic) control of men (1987: 148, 152, 171-172). *Qiwama*, according to Mernissi is also a means of sexual control, in that if the wife refuses her husband’s advances, he can withhold maintenance (1975: 59).

Nevertheless, the husband’s obligation to pay for his wife’s maintenance places married women *ipso facto* into a dependent and subordinate position, denying them autonomy and agency.<sup>54</sup> In addition, until the 2004 Family Law, wives were legally obliged to obey their husbands and husbands could discipline their wives for disobedience, a cultural norm that still contributes to high degrees of social acceptance of domestic violence. At a societal level, *qiwama* privileges the socioeconomic investment in boys and men as the providers, while indirectly undermining women’s right to an education and employment.<sup>55</sup> Likewise, especially

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<sup>53</sup> Interview with Tunisian Islamic Exegete Iqbal Gharbi at Zaituna University (Tunis) in June 2016

<sup>54</sup> See the importance of women’s autonomy in the 1995 Beijing Platform Plan of Action and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

<sup>55</sup> The International Convention of Economic, Social, and Cultural Rights guarantees a woman’s right to an education and employment in Articles 13 and 6 respectively.

for poor agricultural families, *qiwama* and the expectation that sons must provide and daughters be provided for in marriage in effect makes daughters a financial liability to their natal family and encourages their early marriage, while promoting the education and development of sons who must provide. In effect, *qiwama* perpetuates patriarchal power structures, traditional gender roles, and male privilege by making wives the financial dependents of their husbands.

The concept of a husband's role as *bread winner* or *provider*, however, is positioned within the marital framework, which leaves single women economically vulnerable and married women disadvantaged in the event of a divorce, abandonment, or even the husband's illness. One example illustrates this point: Aisha is a middle-aged woman, whom I interviewed at Tafiiil Moubadarat in Taza. Her husband had been abusive and she sought help at the center. The husband is no longer abusive, but he is now ill and no longer able to provide for her and their three teenage children. The husband did not work in the public sector and does not receive a pension, so Aisha must now learn a trade and become *the provider* for her family, a *gendered role* for which she was never groomed.<sup>56</sup> Gender equality as envisioned by Mernissi in a feminist reading of the sacred texts would not leave a woman incapacitated in the event her husband is unable to fulfill his gendered role as provider.

## Conclusion

Mernissi's feminist approach to Islamic exegesis and reinterpreting Islamic texts fostered the progressive Muslim feminist discourse that informs Moroccan women's rights activists. Mernissi advocates the pursuit of a rights-based discourse of gender equality, not as a Western construct but instead from within an Islamic reference. The progressive Muslim feminist discourse within the Moroccan women's movement and at the international level has contributed new strategies and understandings for activism and advocacy that does not alienate but incorporates Muslim Moroccans into the women's rights discourse. This ability to overcome differences and garner consensus has helped establish Morocco as one of the most progressive Arab Muslim countries in terms of gender equality. Many Muslim activists and advocates self-identify as Muslim but also adhere to the universal human rights discourse and a feminist sensitivity in addressing patriarchal norms and male privilege. These activists cross ideological divides (secular, socialist, and progressive Muslim) to address shared concerns regarding

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<sup>56</sup> Personal interview with "Aisha" (a pseudonym) at Tafiiil Moubadarat (Taza) October 13, 2016.

gendered legal discrimination and gendered application of certain articles as well as the underlying patriarchal cultural norms and conservative religious interpretations that make these gendered structures and systemic biases so resistant to change.

### Chapter 3: Moroccan Feminist Activism and Advocacy: at the International, Regional, and National Level

Following independence from France, King Mohamed V directed a commission to develop the first Personal Status Code (PSC) in 1957 in the spirit of *shari'a*. Since then, despite the progressive evolution of Moroccan society with more women pursuing an education and working outside the home, the country's legal framework has remained largely stagnant. In the 1980s feminist women's associations initiated demands for reforms to the PSC. UAF<sup>57</sup> mobilized the first national-level feminist initiative in 1992 with a *One Million Signatures Campaign*, requesting that Parliament amend the PSC, which was then deemed immutable as it was based on *shari'a* and considered sacred. In response, King Hassan II, as *Commander of the Faithful* and descendant of the Prophet, received representatives of the women's movement – excluding UAF representatives<sup>58</sup> -- and used his religious authority to appoint a Royal Consultative Commission (RCC) to address the women's demands. In 1993 the King approved the RCC's recommendations, which, though limited in scope,<sup>59</sup> demonstrated that the PSC was not immutable and could undergo reform. In response, conservative Islamic groups countered with a petition and fatwa condemning the UAF's interpretation of equality, justice, and tolerance.<sup>60</sup>

In 1991 ADFM<sup>61</sup> formed a regional coalition, the Collectif Maghreb Egalite 95, with women's associations in Tunisia and Algeria, and issued the 1995 *One Hundred Measures*.<sup>62</sup> By 1995 ADFM became the reputed leader of the Moroccan feminist coalition, drawing funding from the World Bank and inspiration from the 1995 Beijing Conference. Meanwhile, the rise of the socialist USFP in 1997 parliamentary elections and the ascent of the progressive King Mohamed VI to the throne in 1999 paved the way for feminists to pursue additional reform initiatives. In 1999 ADFM created the Action Plan for the Integration of Women in Development (PANIFD), linked to the Beijing Action Plan, which promoted four issues: literacy,

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<sup>57</sup> UAF was created in 1987 by women members of the leftist Organisation de l'Action Democratique et Populaire (OADP), and is "open to all women regardless of their political affiliation or sensibilities" (Salime 2011: 24)

<sup>58</sup> Fatima Harrak. 2009. "The History and Significance of the New Moroccan Family Code. Working Paper No. 09-002. Buffett Center for International and Comparative Studies Northwestern University, p. 3.

<sup>59</sup> The 1993 reforms made the wife's verbal consent to marriage necessary, abolished the father's right to compel his daughter to marry, and on polygamy required the first wife be informed prior to the taking of a second wife and the second wife be informed of the existence of a first wife.

<sup>60</sup> <http://nvdatabase.swarthmore.edu/content/moroccan-feminist-groups-campaign-reform-moudawana-personal-status-codeislamic-family-law-19> (Retrieved March 6, 2017)

<sup>61</sup> ADFM was formed in 1985 and was associated with the Communist party, Party of Progress and Socialism (PPS), before declaring its independence from any political party. Today ADFM functions as a federating organization for women's associations on gender issues (Salime 2011: 23).

<sup>62</sup> For additional information regarding the 100 Steps initiative, see [www.wluml.org/sites/wluml.org/files/import/english/pubs/rtf/misc/100-steps.rtf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/rtf/misc/100-steps.rtf) (Retrieved on February 2, 2017)

reproductive health, economic development, and women's empowerment. PANIFD also impacted the PSC with calls for the abolition of polygamy.<sup>63</sup> The USFP Prime Minister originally supported PANIFD and ADFM organized teach-ins and formed networks of NGOs in support of this initiative. On March 12, 2000 ADFM organized a large march in Rabat in support of the PANIFD.<sup>64</sup> On the same day, however, opposition Islamic groups launched an even larger segregated countermarch in Casablanca, advocating for an Islamic reference and cultural relativism.<sup>65</sup> The PANIFD was doomed to failure as "proponents relied solely on secular women's organizations and categorically excluded Islamic actors."<sup>66</sup> This exclusive approach backfired and alienated potential allies among Islamic elements.

The simultaneous marches and obvious polarization of the country had two main consequences. First, King Mohamed VI intervened to appoint a second RCC in 2001, composed of scientists, lawyers, sociologists, and doctors, including three modernist women, to review civil society's demands for PSC reform (See section on Family Law for additional details on 2004 Family Law RCC dynamics). Second, feminist coalitions revised their strategy and issue framing to include progressive readings of Islamic texts in their arguments (Moghadam and Gheytauchi 2010: 275). At the regional level, the *Collectif Egalite* coalition developed a four-prong argument to address legal inequality, known as *Dalil* (The Guide),<sup>67</sup> it included legal, juridical (*fiqhi*), sociological, and universal human rights arguments, which feminists could utilize based on the context and audience. At the national level, ADFM and other feminist associations formed the **Spring of Equality Coalition** in 2001, which lobbied for serious family law reform by writing memoranda, creating pamphlets, launching awareness raising campaigns, holding sit-ins and poetry readings in front of parliament, building community centers, and launching literacy campaigns to maintain the momentum for reform.<sup>68</sup>

On May 16, 2003 a radical Islamic terrorist organization attacked several locations in Casablanca, turning public opinion toward new, more inclusive religious interpretations that

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<sup>63</sup> In addition, with regard to Family Law, the plan proposed the abolition of repudiation, polygamy, and guardianship for women who have reached the age of majority, the equal division of property acquired during marriage, and the creation of family courts.

<sup>64</sup> Fatima Harrak. 2009. "The History and Significance of the New Moroccan Family Code. Working Paper No. 09-002. Buffett Center for International and Comparative Studies Northwestern University, p. 4.

<sup>65</sup> It is important to note the rise of Islamic women's associations within the divided Moroccan women's movement, who sought consultative status in the UN Economic and Social Council and challenged feminists' role as sole representatives of Moroccan women, instead adopting an Islamic reference and cultural specificity discourse. The al-Hidn Organization and Forum Zahrae are two such Islamic leaning women's associations. Khadija Moufid founded al-Hidn in 2002.

<sup>66</sup> Brita Ytre-Arne. 2016. *Gendered Citizenship and the Politics of Representation*. London: Macmillan Publishers Ltd., p. 118.

<sup>67</sup> For more information regarding the Guide, see [www.learningpartnership.org](http://www.learningpartnership.org) (Retrieved on February 6, 2017).

<sup>68</sup> <http://nvdatabase.swarthmore.edu/content/moroccan-feminist-groups-campaign-reform-moudawana-personal-status-codeislamic-family-law-19> (Retrieved March 6, 2017)

included women. In February 2004 the Moroccan parliament passed the new Family Law, which included over 100 amendments. In April ADFM formed the national Anaruz network of listening centers to monitor family law implementation and provide services to VAW victims. The Anaruz network is composed of 44 associations and drop-in centers with a national coordinator and four regional coordinators. The network collects statistics on gender-based violence and submits annual reports to the state. Each association presents its own memo because even within the feminist trend “we don’t always have the same vision, the same demand.”<sup>69</sup> For example, ADFM wants secularity, while other associations do not make that their aim. AMDF in Casablanca frames its advocacy within the principles and beliefs in the inalienable and universal rights of man and notes the importance of the legal text and judicial support based on the “equality of opportunity and the equality of choice between the genders.”<sup>70</sup> Despite varying policy perspectives within the feminist coalition, associations generally agree to combine their efforts and work together on behalf of Moroccan women. The listening centers developed “a numerical reality” of the problems faced by Moroccan women, especially VAW. These centers have not only helped to quantify the level of difficulties from which women are suffering, but they have also been a pivotal instrument by which to “give a human face to” the problems plaguing women visiting the centers. The UAF president in Tetouan indicates that when the listening centers opened in Rabat and Casablanca 30–40 women visited each day for assistance.<sup>71</sup> AMDF notes that it began largely as an elite-driven organization, so it had to determine if its leadership’s perspectives on women’s rights and the particular hardships women face were in keeping with the perspectives of the Moroccan population at large. At that time, the listening centers could only provide legal advice and education, since Article 496 criminalized the sheltering of married women, even victims of domestic violence, an article that has recently been repealed.

The Nejma Centers focus on advocacy and providing women with legal training and empowerment, but they also proved to be a mechanism for synchronizing the agenda of the feminists with women at risk. After hearing about families’ problems caused by the previous nationality code, ADFM was able to advocate more effectively for the new 2007 Nationality Code. ADFM quantified the difficulties faced by women due to the discriminatory nature of the

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<sup>69</sup> Personal interview with ADFM General Secretary (Rabat) July 11, 2013

<sup>70</sup> Personal Interview with AMDF in General Secretary (Casablanca) July 10, 2013

<sup>71</sup> Personal interview with UAF (Tetouan) July 8, 2013.

nationality code, which did not allow Moroccan women married to foreigners to pass on Moroccan citizenship to their children. Prior to the 2007 reform, the children of Moroccan women married to foreigners were ineligible for services provided to Moroccan citizens, such as health care, education, and employment. They were essentially treated as foreigners in their own country. In addition, based on case studies at the Nejma Centers, ADFM was able to include statistics and examples from the center's clients in its advocacy for the 2004 Labor Code reform, which included articles against child labor and sexual harassment in the workplace. "Before, women had no legal recourse by which to address workplace sexual harassment, but now they at least have a legal footing to complain."<sup>72</sup>

In addition to legal advice, the Nejma Centers offer psychological, medical, social, and administrative support to women, based on the feminists' application of international norms and legal texts. According to AMDF, the feminists determined that the violence is based on political, economic, and social discrimination in women's public and private lives as well as inequalities between women and men in everyday life and legal texts. From this, the feminists decided to focus on the family law, the penal code, and politics. While the listening centers sensitize elite members of the women's organizations to the problems real Moroccan women face, they simultaneously allow the women's associations to educate the victims of violence on their rights. In addition, the women's associations began incorporating the authorities with the power to remediate gender-based violence, such as judges and police, into the dialogue with the victims. The women's firsthand accounts of the difficulty of assisting abused women and the challenges they face helped enlighten legal and judicial officials. By discussing the discriminatory practices in the law, the women's organizations addressed public policy, the government, and the constitution. These insights then fostered a dialogue with local and national authorities, and the women's associations were able to back up their recommendations with real-life statistics from interactions with victims. According to AMDF, "the issue [of discrimination against women] is no longer driven by the elite, but by social realities."<sup>73</sup>

### **International Frameworks and National Agenda Setting**

Moroccan feminist associations appropriate and engage the UN human rights framework, in tandem with these national and regional-level advocacy campaigns and strategies, to inform

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<sup>72</sup> Personal interview with ADFM General Secretary (Rabat) July 11, 2013

<sup>73</sup> Personal Interview with AMDF in General Secretary (Casablanca) July 10, 2013

and frame their priorities, strategies, and policy prescriptions, and to push through domestic intransigence. Feminists use several UN conventions as frameworks and mechanisms for engagement: **the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention Against Torture (CAT).**

After the 1993 PSC reforms, Morocco ratified **CEDAW** on June 21, 1993,<sup>74</sup> but with reservations to Articles 2, 9(2), 15(4), 16, and 29, which contradicted national laws. These so-called Islamic reservations and the Optional Protocol<sup>75</sup> served as **focal points** for national and regional advocacy campaigns. The **periodic government reports and civil society shadow reports** became crucial **mechanisms** for feminists to coalesce around particular discriminatory national laws.<sup>76</sup> For example, feminists used **Article 9(2)**, stipulating the equality between spouses to pass on their nationality to a child, to inform the **2007 Nationality Code**.<sup>77</sup> Likewise, the 2004 Family Code and 2011 Constitution preambles affirm Morocco's commitment to gender equality **in principle** within marriage and divorce laws in compliance with **CEDAW Article 16**, nevertheless, complementary gender roles persist in the actual **legally-binding** articles. ADFM was instrumental in launching the **2006 Equality without Reservations (EWR) Campaign**<sup>78</sup> to pressure national governments to lift the remaining CEDAW reservations, harmonize national laws with CEDAW, and to ratify the Optional Protocol to CEDAW as an **instrument to ensure CEDAW's implementation**. On April 8, 2011, Mohamed VI withdrew reservations to Articles 9(2) and 16. During a parliamentary break, the government headed by the Istiqlal Party's Abbas al-Fassi withdrew the remaining reservations to CEDAW without consulting the parliament (Zvan-Elliott 2015: 85). This bold unilateral move highlights the difficulty Morocco faced in removing the reservations through conventional channels. Morocco also adopted **the Optional Protocol**.<sup>79</sup>

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<sup>74</sup> In order for a law to be legally binding, it must be published in the official bulletin, which didn't happen with CEDAW until 2001.

<sup>75</sup> The Optional Protocol establishes that states parties allow the CEDAW Committee to hear complaints from individuals or inquire into grave or systematic violations of the Convention.

<sup>76</sup> ADFM. (2008). Equality without Reservations Memorandum.

<sup>77</sup> Nevertheless, this reform only partially resolved the discrimination in the Nationality Code, a Moroccan woman is still prohibited from marrying a non-Muslim foreigner unless he converts to Islam. Moroccan men do not face a similar restriction when marrying non-Moroccans.

<sup>78</sup> The **2006 Equality Without Reservations (EWR) Campaign**, which includes 120 organizations in 17 countries, met initially in Rabat, and issued the Rabat Call to Action. See the EWR website at <https://cedaw.wordpress.com/2008/.../rabat-call-for-support-equality-without-reservation...6> equality without reservations or the Women's Learning Partnership website at [play.learningpartnership.org](http://play.learningpartnership.org)

<sup>79</sup> On November 12, 2012 the Council of Ministers adopted the CEDAW Optional Protocol, along with the CAT and ICCPR Optional Protocols, according to the Moroccan Embassy in the U.S. [www.embassyofmorocco.us/adoption.pdf](http://www.embassyofmorocco.us/adoption.pdf) (Retrieved 23 February 2017)

Feminists use the **CRC**<sup>80</sup> to pursue women's rights through their children. The CRC provides a particularly probing conceptual framework, whereby the rights of one individual become the responsibility of another. **First**, feminists considered the “**best interests of the child**” in the 2004 Family Law to be a great success: for the first time, part of an international convention was directly incorporated into a Moroccan national law.<sup>81</sup> The topics on which children's rights are theoretically considered include: breast feeding, polygamous marriages, parental care, standard of living and education, divorce, child custody, legal guardianship, and child support. Child's rights directly affect women's rights in Morocco, since the mother is first in line for custody in the event of divorce. Nevertheless, the welfare of the child is not always recognized in the actual application of the law, which often follows legal precedents and customary practices.<sup>82</sup> **Second**, feminists have used Articles 2, 7, 8, 9, and 18 to advocate for the recognition of children born outside of wedlock through paternity testing.<sup>83</sup> Despite Moroccan feminist efforts, however, traditional attitudes regarding paternity were maintained in the 2004 Family Law (see paternity next section).

Feminists have also used CAT<sup>84</sup> to address VAW and outline protective measures. In the 2004 CAT shadow report, ADFM highlighted the consequences of torture for women, including unwanted pregnancies and miscarriages, and requested several **best practices scenarios**: VAW victims should be provided with female police officers, psychological counselors, legal advisors, physicians, and social workers based on the Anaruz network reports. Furthermore, ADFM requested that the Moroccan government launch an information and training campaign for judges, public prosecutors, and law enforcement officers, addressing gender-related issues and the specific types of violence that affect women.<sup>85</sup> These recommendations informed the Moroccan state's development of VAW cells in hospitals, police stations, and courts; though underfunded and inadequately staffed, the cells represent the Moroccan state's initial response

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<sup>80</sup> Morocco signed the CRC January 26, 1990 and ratified the convention June 21, 1993. Morocco ratified the Optional Protocol to the CRC regarding communications procedures in 2012 and ratified the convention November 14, 2014. In addition, Morocco signed two Optional Protocols to the CRC in 2000 concerning Children in armed Conflict and the Sale of Children, Child Prostitution, and Child Pornography and ratified them on May 22, 2002 and October 2, 2001 respectively.

<sup>81</sup> Personal interview with RCC member Nouzha Guessous on 18 July 2017

<sup>82</sup> Personal interview with UAF (Tetouan) July 8, 2013.

<sup>83</sup> For example, the Tunisian state holds fathers accountable for their “illegitimate” children in accordance with **CRC Article 2(2)**, which provides for “the protection of the child against all forms of discrimination or punishment on the basis of the legal status of the parents.” Therefore, the denial of the child's right to filiation based on the fact that the parents are not legally married constitutes a violation of the child's fundamental rights. Nisirine Abiad. (2008). *Sharia, Muslim states and international human right treaty obligations: A comparative study*. BIICL, p 157.

<sup>84</sup> Morocco signed **CAT** in January 8, 1986, ratified it on June 21, 1993, and ratified the Optional Protocol November 24, 2014.

<sup>85</sup> For additional information, see ADFM's 2004 report to the UN Committee against Torture entitled “State Violence in Morocco” ( www.omct.org ) (Retrieved February 2, 2017)

create a formal institution to directly assist VAW victims. In 2011, the Advocates and Global Rights used their Shadow Report to frame domestic violence as a form of torture (CAT/Article 1) and outlined a comprehensive plan of action to address shortcomings in the Moroccan Criminal Code and Code of Criminal Procedures.<sup>86</sup>

Nevertheless, the globalization of the feminist women's rights discourse elicited a backlash from anti-feminist associations that take exception to feminists speaking for all Moroccan women; instead, promoting Moroccan exceptionalism and cultural specificity. The anti-feminists created the first women's rights organization with an Islamist agenda in 1992: the Organization for the Renewal of Women's Awareness (ORWA). This allowed anti-feminists to take part in the international dynamics of women's rights. In order to be included in the United Nations process, ORWA founding member Khadija Mufid created an offshoot organization, the al-Hidn organization, which focuses on low-income families. Forum Zahrae is associated with the PJD party. Both al-Hidn and Forum Zahrae have Consultative Status with the Economic and Social Council (ECOSOC) and are able to submit shadow reports to the pertinent UN committees, thus registering their own particular perspectives. This fragmentation between feminists and anti-feminists in the women's movement leads to regional and international coalition formation and generates alternative and competing rights discourses.

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<sup>86</sup> The Advocates and Global Rights used CAT's expanded definition of torture as including non-state actors and appealed to the Moroccan government for legislative, administrative, and judicial measures to frame domestic violence as a form of torture by **private actors** (Article 2), to criminalize domestic violence (Article 4), to prosecute domestic violence (Article 7), to investigate domestic violence (Article 12), to oblige states to examine complaints of domestic violence, and to advocate a victims' right to redress and compensation. See Global Rights 2011 Shadow Report to the CAT Committee, available on the Mobilising Rights Association (MRA) web-site at [mrawomen.ma](http://mrawomen.ma) (Retrieved September 25, 2016)

## Chapter 4 Discrimination in National Laws, Patriarchal Cultural Norms, and Conservative Religious Interpretations

### The 2011 Moroccan Constitution

Moroccan feminists formed the **Spring for Democracy and Equality** in 2011 to inform the Constitutional reforms, realizing that the passage of a new constitution represents a **critical juncture** within a country and can be either progressive, status quo, or reactionary. In Morocco's case, the 2011 Constitution appears to provide several distinct advances towards equality: **first, Article 19** affirms "equality between men and women... in political, social, civil, and cultural rights, but problematically "within the country's constants (*thawbit*)," i.e. Islamic law (Zvan-Elliot 2015: 82), which undermines the harmonization of national laws with convention commitments. **Second**, the Preamble confirms the primacy of international rights conventions and a commitment to fight gender-based discrimination. **Third**, Article 19 exhorts the state to establish a specific authority for equality and the address of discrimination, while Article 164 defines the mandate of this authority as defined by the UN human rights conventions and their pertinent mechanisms. This authority was established with the creation of the National Human Rights Council (NHRC) that enjoys independence and immunity to intervene in any perceived human rights violations (Abou-Habib 2011). Nevertheless, the principles underlying the 2011 Constitution are clearly a strategic balance between a progressive women's rights agenda based on the UN human rights framework and a conservative religious interpretation. **Finally, Article 22** prohibits all violations of "physical and moral integrity and dignity, as well as all cruel, inhuman and degrading treatment, under any circumstances, whether committed by the State or private actors." This article has been referenced by feminists when equating domestic violence to torture and thus a violation of women's constitutional rights.

### 2004 Family Law Reform

The RCC in charge of negotiating the 2004 Family Law reform combined both conservative and reformist elements, but 16 of the 20 were more conservative in their leanings.<sup>87</sup> The RCC met for 30 months between 2001 and 2004, reviewing the reports of 80 NGOs and state bodies regarding the Family Law reform. Notably, of the 60 proposals the RCC reviewed, 59 included religious references to the *Qur'an* and *Fiqh*, in addition to referencing universal

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<sup>87</sup> Zhour al Horr, a former judge and one of the three women on the RCC in Birthe Pedersen. 18 November. 2013. "Ten Years of the Law that Transformed Moroccan Society." KVINFORM.org/mena/ten-years-law-transformed-moroccan-society (Retrieved 6 March 2017)

human rights principles.<sup>88</sup> Even feminist associations adjusted their discourse to advocate for reforms by incorporating progressive readings of Islamic religious texts, **a Muslim feminist discourse**. In fact, some of the feminists' most effective advocacy strategies included "rewriting gender equality through cultural lenses utilizing Islam's founding principles – *Maqasid* – as a structural component...a sort of cultural-deconstruction reconstruction" (Guessous 2012: 10). Instead of polarizing the Moroccan women's movement, feminist adoption of cultural and religious arguments builds bridges, quells resistance, and produces consensus among ideological adversaries. Therefore, with the King's encouragement, the Muslim feminist tactics produced clear, albeit limited, advances in gender equality in the revised Family Law: The definition of marriage was reconstituted with the principle of equality between husbands and wives through joint and equal responsibility for the family (**Article 51**). This redefinition of marriage with its basis on mutual respect and co-responsibility and suppression of *taa'* (a woman's total obedience to her husband) represents a conceptual and philosophical revolution. Other major advances include: the **woman's right to contract marriage on her own without a wali**, establishing the **minimum marriage age at 18 for both genders**, and ensuring that **women could obtain a shiqaq (irreconcilable differences) divorce without having to pay compensation or forfeiting child custody as in kuhl' divorces**.

The **progressive Muslim feminist discourse** sets Morocco apart from other Muslim-majority countries. Muslim feminism as pioneered by Moroccan feminist Fatima Mernissi advocated gender equality based on a progressive feminist reading of Islamic texts, Islamic exegesis or *ijtihad*.<sup>89</sup> Furthermore, feminist associations and researchers engage in the religious debates to argue that prior conservative, masculine interpretations placed women in a precarious, subordinate position. This **repositioning of the feminist discourse within an Islamic reference**, Muslim feminism, circumvents the polarization between feminist and religious discourses and offers opportunity for consensus building. RCC member Nouzha Guessous acknowledges:

Indeed, several parameters showed that no change could have been made without advocacy based on cultural and religious arguments, because of the cultural impact of decades of patriarchal and conservative religious education at school, in

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<sup>88</sup> Personal interview with RCC member Nouzha Guessous on 18 July 2017 and interview with Guessous on 29 May 2012 entitled "Philosophy and Social Criticism" published in *Economia* (Retrieved 28 February 2017)

<sup>89</sup> Nouzha Guessous. 13 February 2012. "The Long Path of the Moroccan Family Code." Interview by Nina zu Furstenberg. [www.resetdoc.org/story/0000021908](http://www.resetdoc.org/story/0000021908) (Retrieved 6 March 2017)

the mosques, and via the media.<sup>90</sup>

Nevertheless, a clear toggling of egalitarian-conservative opinions is present in the Family Law. For example, for crafting the definition of family and marriage, the most progressive language was adopted, but when the exact rights and duties were defined in the articles, *nafaqa* (maintenance) and the more conservative positions were maintained.<sup>91</sup>

Furthermore, laws themselves have both a structural and a transformative effect, providing a legal framework with requisite duties and obligations while also fostering learning and new self-images. Hence, “the question of **legislation** is very important because it changes the situation and the mentality.”<sup>92</sup> The law acts as a mechanism to construct a more enlightened, just future. MRA co-founder Stephanie Bordat, formerly with Global Rights, blames **inadequate legal codes** for the non-responsive state institutions. “You can’t just tell the police, ‘now be nice to the poor victims of violence.’ The police can’t act if they don’t have a law telling them that they CAN act. You need a law.”<sup>93</sup> Bordat’s observation highlights a key shortcoming in the Moroccan penal code and code of criminal procedure, clearly defined responsibilities and procedures must be present for the state institutions in charge of implementing and enforcing the law to succeed.

### **Structural Issues within the Family Law**

When the 1993 PSC was reformed in 2004 the name was changed to the Moroccan Family Law,<sup>94</sup> signaling a shift in **the unit of analysis** and the underlying assumptions of the new code. The unit of analysis is **NOT** the **individual** of the UN human rights framework, but instead the **family unit**. The preamble reiterates that the **family, and not the individual**, constitutes the nucleus of Moroccan society. This familial framework of father, mother, and children is problematic for several reasons: **First**, it excludes single women, single mothers and their children, and divorced and widowed women from the legal framework.<sup>95</sup> **Second**, the family as the unit of analysis privileges familial and societal concerns over that of the individual, allowing individual rights to be subordinated to the higher interests of the family unit. This preference ordering is problematic in the event of discord or violence within the marriage and

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<sup>90</sup> Nouzha Guessous. 29 May 2012. “Women’s Rights in Muslim societies: Lessons from the Moroccan Experience.” *Philosophy and Social Criticism*. [www.journals.sagepub.com/www2.lib.ku.edu/doi/10.1177/0191453712448000](http://www.journals.sagepub.com/www2.lib.ku.edu/doi/10.1177/0191453712448000) (Retrieved 27 February 2017)

<sup>91</sup> Personal interview with RCC member Nouzha Guessous (Casablanca) January 18, 2017

<sup>92</sup> Personal interview with LDDH (Rabat) September 29, 2016

<sup>93</sup> Personal interview with Mobilising Rights Association (Rabat) September 23, 2016

<sup>94</sup> Personal Interview with National Council of Human Rights (Rabat) October 17, 2016

<sup>95</sup> Personal Interview with National Council of Human Rights Rabat October 17, 2016

prejudices court rulings in favor of family. **Finally**, the Family Law Preamble, like the 2011 Constitution, stipulates that “human and citizenship rights are accorded to all Moroccans, women and men equally, in respect of the holy divine religious references.”<sup>96</sup> The religious references, if based on a conservative interpretation, however, bias the legal system in favor of traditional gender roles, patriarchal power hierarchies, and male privilege.

### **Systemic Issues with the Family Law**

The problems with promoting gender equality in Morocco go beyond the existing codes - some issues are more **systemic** in nature. **First**, the **existing laws are inadequate and discriminatory** and the articles are full of legal loopholes. **Second**, the laws are not adequately or impartially applied. **Third**, the **judges are conservative** and wield excessive **discretionary power**, whereas the **public prosecutors** and **police** do not protect the rights of women on an equal basis with men.

### **Discrimination and Contention in the 2004 Family Law**

#### **Underage marriage**

The minimum marriage age was a very contentious issue during the 2004 Family Law debates, but the King dictated the majority age would be 18 rather than 21. Therefore, the Family Law increased the minimum age of marriage for women from 15 to 18 to equal that of men (**Article 19**). Nevertheless, judges authorize or register a rising number of underage marriages based on Articles 20 and 16 respectively. **Article 20** grants the family judge **discretionary power** to authorize underage marriage **only in exceptional cases** and contingent upon three specific criteria: an objective reason for the exception, the minor’s parents or legal representative’s consent, and a medical examination or social investigation. Although these are supposedly **exceptions**, the number of underage marriages continues to increase. **Judges sidestep the conditions** to grant underage marriages. Girls and their families manipulate the **legal loopholes** - especially if the girl is pregnant. The discretionary power of the judges is not monitored and judicial decisions vary from one city to the next. Some judges are bribed; others would benefit from additional training.<sup>97</sup> **Article 16** concerns **registering a marriage post-**

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<sup>96</sup> Preamble to 2004 Family Code. [www.hrea.org/programs/gender-equality-and-womens-empowerment/moudawana](http://www.hrea.org/programs/gender-equality-and-womens-empowerment/moudawana) (Retrieved 20 September 2016)

<sup>97</sup> Personal interview with Feminine Action President (Rabat) October 7, 2016

**facto** and is considered a **legal loophole** through which the court can register underage or polygamous marriages.<sup>98</sup> Moreover, **Article 16** has been amended multiple times to extend the period for registering unregistered (*fatiha*) marriages. ADFM was against the amendments to lengthen the grace period for registering marriages from 5 to 10 to 15 years, accessing that the extensions promote polygamy and early marriage.<sup>99</sup> The original goal of Article 16 was to provide a window of opportunity to register *fatiha* marriages that had not been formalized due to major impediments. Nevertheless, Article 16 has been exploited to allow the marriage of minors and polygamy, especially in rural, poverty-stricken areas. Furthermore, **Article 16** does not require the couple to submit a celibacy certificate, nor is the judge required to inquire into the couple's family situation or to investigate the matter further.<sup>100</sup>

In addition, in Morocco there is a culture of early marriage where parents fear if their daughters do not marry by 16, they will not marry. The anti-feminist al-Hidn Association sees early marriage in terms of **honor and protection**. Early marriage represents protection for the girls, who have legal papers, a legal husband, and legal children with a name and papers. Likewise, the father has a legal obligation to provide for (*qiwama*) his wife and children. In contrast, a **single mother** has neither rights nor protection so imposing a minimum marriage age denies women this protective legal framework. If an unmarried girl has children, she will have neither studies, nor family, nor a protective legal framework. Furthermore, al-Hidn asserts, marrying girls off in poor rural areas after puberty is a **cultural and not a religious practice**.<sup>101</sup> Likewise, the PJD and PJD-affiliated Forum Zahrae view early marriage as a solution to single motherhood and prostitution.<sup>102</sup> Nevertheless, the girl's choices are framed within a **conservative religious** context where the concept of "*family honor*" is more important than the social welfare of the individual (girl) child. The concepts of "protection" and "honor" are disempowering. Al-Hidn and Forum Zahrae project only two possible scenarios for a young girl reaching puberty in the rural areas: early marriage or debauchery and single motherhood. Proponents of underage marriage do not consider the problems faced by underage wives. For example, 34% of the VAW clients at IPDF were married as minors despite the fact that only 12%

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<sup>98</sup> Personal interview with Law Professor (Rabat) October 5, 2016.

<sup>99</sup> Personal interview with ADFM (Rabat) 26 September, 2016

<sup>100</sup> "The Family Code, ten years later." 8 February 2014. *Le Matin*. Droite et Justice website (Retrieved on December 14, 2016)

<sup>101</sup> Personal interview with five members of the conservative Islamic al-Hidn Association Casablanca July 10, 2013.

<sup>102</sup> Personal Interview with Forum Azzahrae Pour la Femme Marocaine (Rabat) October 5, 2016) However, with a population of only 33 million in Morocco, I find it difficult to believe that 6% of the population was born out of wedlock.

of marriages are underage marriages,<sup>103</sup> indicating a higher propensity for underage marriages to result in violence than the general population. Feminists attribute this difference to an asymmetrical power differential between an adult male and his child bride.

ICWAD treasurer Souad Slaoui notes that the governing Islamic PJD has considered lowering the marrying age to 16, blaming the increased marrying age on the rising problem of prostitution.<sup>38</sup> A Moroccan girl who gets pregnant out of wedlock often has no choice but to go to another city to raise her child, as few Moroccan men will marry girls they slept with before getting married, and the child is considered illegitimate by her family and community. For this reason, the PJD believes lowering the marrying age will reduce the problem of promiscuity and premarital sex among young girls. Likewise, the al-Hidn organization claims that even if the early marriage does not last, the girl and any children are not considered illegitimate.

### *Wali*

As for the issue of the *wali* or legal guardian, according to the 2004 Family Law, girls can now marry without the approval or permission of a *wali* (Article 24-25). While the feminists and anti-feminists seem to agree that although women may legally marry without a *wali*, respectable women still involve their families in this important decision. AMDF notes that legally a Moroccan girl in 2013 does not need her father's permission to marry and nothing obliges her to seek her father's permission. Nevertheless, when signing a marriage contract, the adults who write the contract ask where the girl's father and mother are. A girl who signs her marriage contract without her parents is considered a "girl of the streets" and is seen in a bad light if she gets married alone.<sup>104</sup> As previously mentioned, the al-Hidn organization emphasizes that marriage is not between a man and a woman, but instead between two families. Therefore, the role of the *wali* is still extremely important. The *wali* gets to know the family, and if the marriage has problems or ends in divorce the *wali* supports the family and intercedes where necessary.<sup>105</sup> Al-Hidn emphasizes that this is not a religious but a cultural phenomenon, but in their opinion, "the court should demand the family's authorization. The *wali* offers the wife protection, and by eliminating this mechanism of support, the woman is left vulnerable."<sup>106</sup> In addition, the *wali* is traditionally also responsible for helping to write the marriage contract and

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<sup>103</sup> Personal Interview with Initiative Pour la Protection des Droits des Femmes (IPDF) (Fez) October 14, 2016

<sup>104</sup> Personal Interview with AMDF in General Secretary (Casablanca) July 10, 2013

<sup>105</sup> Personal interview with five members of the conservative Islamic al-Hidn Association Casablanca July 10, 2013.

<sup>106</sup> Ibid.

the property contract, which is separate. In the absence of the *wali*, the wife might not know how to best ensure her own legal protections within the marriage.

### **Polygamy**

Polygamy, the ultimate male privilege, is restricted, but not abolished, in the 2004 Family Law. The National Human Rights Council (CNDH) indicates the spirit of the family law regulated polygamy so as to make it impossible. In theory, the family court judge must verify fundamental and procedural conditions.<sup>107</sup> For example, polygamy is forbidden when there is risk of inequality between the wives or when the first wife includes a monogamy clause in the marriage contract. Moreover, polygamy is allowed only under certain conditions: First, the husband must have an **exceptional and objective justification** (infertility, illness, the wife can not have sexual relations) and second, the husband must have **sufficient means** (demonstrated through a financial statement) to support two wives. This is one of the few times in the Moroccan legal codes when the **onus is on the man** to provide the courts with documentation. To determine child support, domestic violence, and sexual harassment, the wife/victim is the one who must provide all the evidence, but the 2004 Family Law places the burden of proof on the man to pursue a polygamous marriage.

Despite the formal legal restrictions, judges do not always take the time to verify each of the conditions. Furthermore, husbands may resort to deceptive means to take a second wife, such as using Article 16 to register a polygamous marriage post-facto, thereby side-stepping the legal restrictions. Regardless, even before the new family law restrictions, polygamy was declining as a percentage of Moroccan households, dropping from 5.1% in 1992 to 3.6% in 2005.<sup>108</sup> The Ministry of Justice indicates only .34% of marriages authorized in 2011 were polygamous.<sup>109</sup>

Nevertheless, Court of Cassation<sup>110</sup> **Decision 331 of 23 June 2015**, related to case 2015/1/2/276 upheld “a man’s right to polygamy as he has a right to have sons. If his wife bears only daughters, he has a right to marry another woman in order to have sons.”<sup>111</sup> This court ruling seems completely illogical as basic knowledge of biology indicates the man/sperm (XY

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<sup>107</sup> Personal Interview with National Council of Human Rights (Rabat) October 17, 2016

<sup>108</sup> Dalil Pour l’egalite dans la famille au Maghreb Guide to Equality, p. 66

<sup>109</sup> For more information on the the increase in polygamous marriages in Morocco, see: <http://www.al-monitor.com/pulse/culture/2013/05/increasing-popularity-of-polygamy-in-morocco.html#ixzz4PrZE6G56> (Retrieved 12 October 2016)

<sup>110</sup> The Court of Cassation is the Moroccan Supreme Court and decisions made by the Court of Cassation inform cases under consideration in lower courts, so this court ruling will have widespread repercussions and is a way of changing the law without amending the law.

<sup>111</sup> Personal Interview with National Council of Human Rights (Rabat) October 17, 2016

chromosomes) determines the gender of the child, and NOT the woman/egg (XX chromosomes). Feminist RCC member Nouzha Guessous indicates, however, that due to the inheritance laws, if a man dies without a male heir, his brother inherits 1/3-1/2 of his property,<sup>112</sup> so discriminatory legal codes, such as the inheritance law, may compel men to pursue sons or risk financial ruin for their families.

Furthermore, conservative Islamic associations often justify polygamy on the basis it is allowed in the *Qur'an*. *Surah* 4:3 indicates a man may “[M]arry two, three or four women as you see fit, however if you cannot be equitable, take only one woman...You cannot treat all your wives equally, even if you wish to do so.” Conversely, progressive readings of this verse interpret it as prohibiting polygamy. As assessed previously, it is a man’s right to marry more than one woman; however, a woman can specify in her marriage contract if that is something she is amenable to or reserve the right to divorce her husband if he decides to take another wife. Al-Hidn notes that a man is limited to four wives and no girlfriends, and he must treat them all equally. Nevertheless, al-Hidn adds, there are exceptions when polygamy can be beneficial for women and provide them greater protection, such as in the event that a man’s wife is sterile. If polygamy were strictly forbidden, al-Hidn illustrates, these women would risk divorce from husbands who desire children. Polygamy allows a husband to stay married and provide for the first wife, while taking a legal second wife who can produce children.<sup>113</sup> ICWAD’s President Fatima Sadiqi notes that this supposition does not consider that it may be the husband who is unable to father children, and not the wife who is sterile.<sup>114</sup> Another exception, pointed out by al-Hidn, is that in the event that a first wife becomes ill, the husband can stay married to the first wife while taking a second wife. Finally, al-Hidn notes, polygamy allows for men to grant more than one wife and children legitimacy. Men who have mistresses deny the woman legal recourse and legitimization. Al-Hidn views marriage, whether monogamous or polygamous, as **legal protection** for the wife and children. Neither a mistress nor illegitimate children have rights, but a second wife and her children have rights and are protected. A mistress is without papers, rights, legal children with paternal affiliation. In a marriage, women have rights; even in a polygamous family, the man’s co-wives have rights. The second wife is a wife, so she must also be **protected**. According to al-Hidn, polygamy protects the wife, the children, **and society**. Al-Hidn

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<sup>112</sup> Nouzha Guessous. 18 July 2016. “Give me a son...Or I take a second wife.” *The Economist*. [www.leconomiste.com/.../1000143-tu-me-donne-un-fils-ou-je-prends-une-deuxieme-femme](http://www.leconomiste.com/.../1000143-tu-me-donne-un-fils-ou-je-prends-une-deuxieme-femme) (Retrieved 15 February 2017) .

<sup>113</sup> Personal interview with five members of the conservative Islamic al-Hidn Association Casablanca July 10, 2013.

<sup>114</sup> Personal correspondence with ICWAD President Dr. Fatima Sadiqi (Fez) 2014

contends “it is better to have **institutionalized relationships than to have three or four mistresses with one child with this one, a daughter with that one.**”<sup>115</sup> Furthermore, any children of the pair are considered illegitimate and lack the legal protections a marriage provides. While polygamy is limited and stigmatized, it provides for these exceptions. The Islamic allowance of multiple wives, according to al-Hidn, is an economic plan for women, providing them a safety net.<sup>116</sup> Therefore, while the feminists view the practice of polygamy as antiquated and see the restrictions on polygamy as a positive first step, the anti-feminists believe polygamy can actually protect women and provide them with more options. The conservative Islamic discourse, however, dichotomizes the choices surrounding polygamy like those around underage marriage as a choice between protection, rights, and honor and single motherhood, debauchery, illegitimacy, and prostitution. Nevertheless, there are more than two choices and by dichotomizing and vilifying the alternative perspective there exists little opportunity for understanding and problem solving.

#### **Filiation: Single Mothers and the Lack of Paternal Accountability**

Whereas maternal filiation produces the same effects whether legitimate or illegitimate, illegitimate paternal filiation does not ensure any of the protections of legitimate filiation (Articles 146, 148). Moreover, children without paternal filiation are considered bastards without legal rights or legal documents.<sup>117</sup> Although **CRC Article 9 indicates “a child’s right to both parents”** and **CRC Article 18(2) states BOTH parents “have common responsibility for the upbringing and development of the child,”** in Morocco the father of an illegitimate child is responsible **only if he chooses** – an unlikely proposition given the fact that extramarital sexual relations is a criminal offense (Article 490). One clause that was added to the 2004 Family Law by feminists that has been used by women to pursue their rights as a married woman to *muta*’ (compensation) or to pursue paternity rights for their children is **Article 156**, which notes if there is evidence of an unregistered marriage (*fatiha*)/engagement with a ceremony, pictures, video, and witnesses, then the judge may authorize DNA testing to prove paternity.<sup>118</sup> Regardless, the father/perpetrator escapes co-accountability and again gendered impunity is the rule. Regardless, there is a significant difference between a father **being held responsible by**

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<sup>115</sup> Personal interview with five members of the conservative Islamic al-Hidn Association Casablanca July 10, 2013.

<sup>116</sup> Ibid.

<sup>117</sup> Personal interview with Droite et Justice (Casablanca) October 11, 2016

<sup>118</sup> Personal Interview with National Council of Human Rights Rabat October 17, 2016

**the state** for paternity and a father's right to a legal document to acknowledge paternity **if he chooses. The Moroccan state is not assuming its responsibilities in obliging fathers to take responsibility for their children born out-of-wedlock in accordance with pertinent CRC articles.** The feminists in the RCC attempted to obligate greater responsibility from the father, whereas conservatives offered arguments against DNA testing and paternal accountability. They claimed it would promote extramarital sexual relations, women would use it as a weapon to get men to marry them, and they feared it would destroy families. Furthermore, conservatives insisted they have their own traditional methods for determining paternity, such as *lian* (swearing on a *Qur'an* in a mosque) and comparing the child and father's feet – processes which were dropped from the 2004 Family Law.<sup>119</sup>

Although DNA testing can unequivocally confirm the paternity of the child and children have a right to paternity, this right is denied the Moroccan child, which perpetuates discrimination and VAW against single mothers and their children on administrative, judicial, financial, material, and social matters. Single mothers are at “risk of being killed by their families, so they often leave their family home, which frequently leads to total debauchery ... prostitution, drugs, illegal trafficking.”<sup>120</sup> Likewise, criminalizing extramarital sex (Article 490) and abortion (Article 453) disproportionately affects women who get pregnant out-of-wedlock, leaving them few options. Although the man and the woman created the child together, the woman alone is castigated and vilified -- a traditional societal response -- not based on the UN human rights framework. IPDF indicates that an unwed expectant mother carries the proof of her crime and some hospitals report her to the police. Authorities may arrest her based on Article 490, which carries a one-month to one-year prison sentence. For this reason, most unmarried women give birth outside of a hospital, putting both the mother and child at risk. The space is not sterile and the person helping her is frequently untrained. In addition, giving birth outside a hospital creates administrative complications for the mother and child because the hospital generally certifies maternal filiation. Children who are not registered have difficulty administratively with education because they lack the necessary documentation.<sup>121</sup> Unwed mothers “cannot obtain a *Livre de Famille*, the Moroccan legal document that lists the family members and proves the civil status, which can only be obtained by men upon marriage,

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<sup>119</sup> Personal interview with RCC member Nouzha Guessous (Casablanca) January 19, 2017

<sup>120</sup> Personal interview with UAF and member of the Regional Human Rights Commission of Tangier (Tetouan) July 8, 2013 and Amnesty International/Morocco (Rabat) July 4, 2013

<sup>121</sup> Personal Interview with IPDF (Fez) October 14, 2016

systematically excluding unwed mothers.”<sup>122</sup> Likewise, while applying for work, Moroccans must show a **National Identity Card (Carte d’Identite Nationale) (CIN)**.<sup>123</sup> Each time the child pursues a job, the CIN shows that he is illegitimate and the child can not register for **social security (Caisse Nationale de Securite Sociale) (CNSS)**<sup>124</sup> because unless the mother is registered, she can not register the child.<sup>125</sup>

The lack of paternal accountability has long-term deleterious effects on the mother and the child and constitutes an extreme discrimination in filiation between mother and father and a violation of the rights of the child. Fathers refuse paternity based on a *hadith* of the Prophet that “the illegitimate child will never make a legitimate marriage,” so the father treats her like a prostitute. The father’s rejection of paternity based on this religious reference leads to discrimination against both the mother and child. There is no child support. The child can not prove his grandfather, which eliminates him from being considered for inheritance. The child can take the name of the father, but not the grandfather, which also identifies the child as illegitimate.<sup>126</sup>

### *Qiwama*

The financial obligations of men towards women and the authority they exercise over them (*qiwama*) are based on surah 4:34: “Men have authority over women because Allah has made the one superior to/responsible for the other, and because they spend their wealth (to maintain them).” *Qiwama* obliges the husband to pay *nafaqa* (maintenance) to his wife from the moment the marriage is consummated (Articles 194-196, 198) and is juxtaposed against a woman’s right to keep her own earnings and NOT contribute to the maintenance of the family. Nevertheless, many women do work outside the home and contribute to the maintenance of the family. In tandem, these two gendered assumptions fall far short of the equal rights and responsibilities for the family envisioned in the Family Law preamble.

*Qiwama* is inappropriate in an egalitarian society of shared responsibilities within and

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<sup>122</sup> Kristen McTighe. (June 9, 2011) “Help for Unwed Mothers in Morocco.” *New York Times*. [www.nytimes.com/2011/06/02/world/.../02iht-M02-MOROCCO-HAMMAM.html](http://www.nytimes.com/2011/06/02/world/.../02iht-M02-MOROCCO-HAMMAM.html) (Retrieved February 3, 2017)

<sup>123</sup> The CIN is an official document that permits Moroccan citizens to justify their identity and nationality. Every Moroccan is required to get a CNI once they reach 18 and they’re valid for 10 years. The CIN is used to get a passport. (Retrieved from [consulatdumar.ca](http://consulatdumar.ca) 14 October 2016)

<sup>124</sup> If a Moroccan works and pays contributions to CNSS, he gets points that accumulate towards retirement and disability. Both he and his employers contribute to this fund. Employers must participate in the program and must enroll all employees. Benefits include: maternity leave, sick leave, disability compensation, retirement pensions, and death allowances. CNSS covers employees in agriculture, commerce, craftsmanship, fishery, forestry, liberal professions, and industry. Employers contribute 6% of company payroll to social security and employees contribute 3% of earnings. (Retrieved from [expatfocus.com](http://expatfocus.com) 1 October 2016)

<sup>125</sup> Personal Interview with Initiative Pour la Protection des Droits des Femmes (IPDF) (Fez) October 14, 2016

<sup>126</sup> Personal Interview with Initiative Pour la Protection des Droits des Femmes (IPDF) (Fez) October 14, 2016

outside the home. Nevertheless, *qiwama* informs aspects of the Moroccan legal code: the man as head of household (rescinded), a wife's obedience (*taa'*) (rescinded), legal guardianship, and inheritance laws.<sup>127</sup> All male privilege accorded by traditions based on patriarchal reading and understanding of the Qur'an.<sup>128</sup> Morocco, where women help support their families. Furthermore, in 2014 18.6% of Moroccan households were female-headed.<sup>129</sup> Likewise, *qiwama* undermines the concept of women's unpaid housework and childcare as "contributing to the family maintenance" as equally valued as the husband's paid labor. Critically, the Moroccan High Commissariat au Plan made a recent calculation that homework is 50% of the combined labor of the spouses.<sup>130</sup>

Nevertheless, *nafaqa* is cast as a legal right for women and seen by many Moroccan women as a gift from God. This entitlement, however, undermines a woman's autonomy, independence, and empowerment.<sup>131</sup> Conservatives describe *nafaqa* as financial protection, but *nafaqa* inevitably disadvantages daughters in the distribution of family resources as sons will be legally responsible for providing for their wives and families. Furthermore, *nafaqa* disadvantages women at the societal level both in education and employment opportunities by serving as a basis for *complementary* gender roles. In the event of a divorce, abandonment, or widowhood, a husband's role as provider leaves women economically vulnerable and disadvantaged -- even the long-term illness of the husband can leave a family destitute as demonstrated by the following experience of a former VAW victim at Tafiil Moubadarat (Taza):

Aisha's husband was abusive so she turned to Tafiil for help. Her husband is no longer abusive, but he is now ill and no longer able to **provide for** her and their three teenage children. The husband did not work for the government and does not receive a pension, so Aisha is now learning a trade in order to **provide for** the family. The family is near destitute because she was never trained or empowered to work outside the home, but with her husband's impairment, she has become the bread winner, a role for which she was never prepared.<sup>132</sup>

In the RCC feminists attempted to rescind the husband's legal responsibility to provide *nafaqa*, instead making wives co-responsible for maintaining the family in keeping with the declaration of principles. However, Guessous recommended sharing this burden contingent on several

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<sup>127</sup> Personal interview with RCC member Nouzha Guessous (Casablanca) January 18, 2017

<sup>128</sup> Interview with Tunisian Islamic Exegetes at Zaituna University (Tunis) in June 2016

<sup>129</sup> 2005 Dalil Pour l'egalite dans la famille au Maghreb Gide to Equality, p. 86

<sup>130</sup> Personal interview with RCC member Nouzha Guessous (Casablanca) January 18, 2017 from HCP (2014)

<sup>131</sup> See the importance of women's autonomy in the 1995 Beijing Platform Plan of Action and CEDAW

<sup>132</sup> Personal interview with "Aisha" (a pseudonym) at Tafiil Moubadarat (Taza) October 13, 2016.

**conditions: first**, the recognition of women's unremunerated work in the home as a contribution to the family; **second**, joint legal guardianship of children; and **third**, the sharing of property acquired during marriage before the application of inheritance laws. RCC conservatives did not accept these conditions and Guessous withdrew the proposal.<sup>133</sup> Overturning *nafaqa* would make women vulnerable if their husband takes a second wife or divorces her. In the event of a divorce, the Moroccan husband does not pay the wife **alimony** and the husband's obligation to *nafaqa* stops. While a woman may receive **compensation** (*muta'*) following a divorce for the years spent with her husband, women without children may receive limited financial compensation.<sup>134</sup> Furthermore, in the absence of a court order, a husband might leave his wife without any financial compensation.

### **Discrimination in Divorce Laws**

Feminists fought for equal divorce rights and made significant progress towards this goal with the 2004 Family Law. Previously, men could repudiate their wives on a whim. Today all divorces are administered through the courts. In the 1993 PSC, **divorce in exchange for compensation** (*khul'*) was the only **no-fault** divorce option available to women. *Khul'* divorce obliged women to return the dowry (*sadaq*) and often to forfeit child custody (*hadana*) just to get out of the marriage. One of the greatest advances for women in the 2004 Family Law was the introduction of **irreconcilable differences** (*shiqaq*) divorce. In 2005 and 2006 the number of divorces increased dramatically as cases that had been in court for 2, 5, 10, 15 years could be resolved through *shiqaq*. In *shiqaq* divorce a judge organizes three reconciliation sessions between the spouses and after the third session, if the husband or wife still wants the divorce, then the judge grants the request. In *shiqaq* the wife is not obligated to present all of the evidence required in other types of divorce.<sup>135</sup> Nevertheless, court-mandated reconciliation sessions expose women fleeing domestic violence to repeated danger. Recently, however, the Court of Cassation ruled that if **the wife** initiates a *shiqaq* divorce, then she loses compensation (*muta' tamatta'*), which sets a legal precedent and informs lower court rulings, an indirect way of

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<sup>133</sup> Feminists learned a valuable lesson from the egalitarian gesture they made in the 1993 PSC, placing husbands instead of maternal grandmothers in the number two position for child custody after the mother. This gesture backfired and left women vulnerable to lose child custody if they remarried because they failed to drop the clause that if a custodial mother remarries she can lose custody and ex-husbands have used this oversight to prevent their ex-wives remarrying. Personal interview with RCC member Nouzha Guessous (Casablanca) January 18, 2017

<sup>134</sup> Personal interview with the Nejma Domestic Violence Center (Rabat) October 10, 2016

<sup>135</sup> Personal Interview with AMDF in General Secretary (Casablanca) July 10, 2013

changing the law. By contrast, if the husband initiates the divorce, the wife receives *muta'*.<sup>136</sup> For this reason, men often coerce their wives to ask for the *shiqaq* divorce to avoid paying *muta'*. While a woman with children is entitled to child support (*pension alimentaire*) if she is the custodial parent, women without children may be left destitute following a divorce.<sup>137</sup>

Al-Hidn views divorce from the impact it has on the entire family and not as a right to which women are entitled. “Women are more emotional,” according to al-Hidn. “With the smallest problem, a woman might repudiate her husband and then take him back the next day.”<sup>138</sup> Al-Hidn emphasizes respect for the primacy of Islam and indicates that the interpretation of law creates problems. Al-Hidn does not see a woman as an individual first and foremost, but instead in relation to her family, husband, and children. Al-Hidn is alarmed by the growing number of divorces, which have multiplied extensively since the 2004 Moudawana, indicating that divine law should prevail over human law. In the case of domestic violence, however, al-Hidn insists that divorce is acceptable, as marriage should be based on love and respect. Al-Hidn quoted Surah al-Baqarah 2:229 that “a divorce is only permissible twice: after that, the parties should either hold together on equitable terms, or separate with kindness.”<sup>139</sup> Above all, al-Hidn reiterates, the Islamic plan is an economic security plan for women. By allowing secular laws to replace Islamic law, women’s economic safety net is threatened.

### **Property Rights: Property Contract, Inheritance, and Expulsion from the Family Home**

The property held by men and women before the marriage remains their individual property (Article 34). Furthermore, the Family Law gives women the right to sign a property agreement separate from the marriage contract to designate the disposition of property acquired during the marriage (Article 49). Although this property agreement is a right for women, it is clear from the interviews that many feminists do not understand the exact stipulations of the law. Article 49 obliges the public notary (*adoul*) to inform both spouses of the provisions for a property contract, separate from the marriage contract that they may sign. It is the wife’s right to negotiate a property agreement separate from the marriage contract, but if she does not exercise this right, then she forfeits the protection it provides. Consequently, few couples write a property agreement.

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<sup>136</sup> Personal Interview with National Council of Human Rights (Rabat) October 17, 2016

<sup>137</sup> Personal interview with the Nejma Listening Center for Domestic Violence (Rabat) on October 10, 2016

<sup>138</sup> Personal interview with five members of the conservative Islamic al-Hidn Association Casablanca July 10, 2013.

<sup>139</sup> Personal interview with five members of the conservative Islamic al-Hidn Association Casablanca July 10, 2013.

According to article 49, the judge is only legally responsible for overseeing the division of assets “in the absence of” a property agreement and the division is based on “the general rules of evidence” (invoices, receipts), taking into consideration the work of each spouse, and “the efforts made as well as the responsibilities assumed on the development of the family assets.” The judge is supposed to consider women’s unremunerated work cleaning, cooking, and taking care of and educating children.<sup>140</sup> Nevertheless, as this is not explicitly stated in the law, the judge is under no obligation to consider women’s unremunerated work. Furthermore, most women do not have evidence to prove their contribution. The husband contracts property, such as the house, in his name. In the event of divorce, the woman has no proof and the judge can not quantify women’s unremunerated work.<sup>141</sup>

In addition, inheritance laws systematically discriminate against women, but are explicitly detailed in **surah 4:11** and thus, deemed intractable by religious conservatives. The 2004 Family Code allows wives and husbands the right to inherit from each other in the event of death (Article 51). In addition, grandchildren on the daughter’s side can also inherit (*Wassiya Wajiba*). Still, daughters inherit half that of brothers, a policy derived from *qiwama*, which has been used to justify unequal inheritance based on **surah 4:5** “Give not unto the foolish (what is in) your (keeping of their) wealth, which Allah hath given you to maintain.” Although the daughter inheriting half that of her brothers was revolutionary during the seventh century promulgation when women moved something that could be inherited to subjects who could inherit (Mernissi 1987: 120), the gender inequality is out-of-step with the socioeconomic changes that have taken place in Moroccan society today with female-headed households and women contributing to the maintenance of the family. Moreover, daughters play a key role in supporting their elderly and disabled parents, whereas new socioeconomic insecurity prevents their brothers from supporting their sisters and mother.<sup>142</sup> Rural areas specifically have the tendency of not dividing the land when a parent dies, instead preserving it for the family. According to the Moroccan culture, girls never receive a full share of this property.<sup>143</sup> Furthermore, the **Rule of Taasib**<sup>144</sup> deprives daughters of one-third to one-half of the parents’ patrimony if they have no brothers, in favor of uncles and cousins.

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<sup>140</sup> Personal Interview with National Council of Human Rights (Rabat) October 17, 2016

<sup>141</sup> Personal interview with ADFM General Secretary (Rabat) July 11, 2013

<sup>142</sup> Interview with Tunisian Islamic Exegetes (Tunis) in June 2016

<sup>143</sup> Personal Interview with Forum Azzahrae Pour la Femme Marocaine (Rabat) October 5, 2016

<sup>144</sup> The agnatic inheritance rule is based on seniority within a patrilineal system, where the siblings of the first generation are favored over the children or second generation.

Finally, women are disproportionately disadvantaged and left vulnerable by the law governing eviction from the conjugal home (Article 53). When the husband or wife is evicted from the conjugal home without justification, the public prosecutor returns the evicted spouse to the home and theoretically “takes all necessary measures to guarantee his or her safety and protection.” Nevertheless, there are no clearly defined protective measures in the law, so women often find themselves in a vulnerable position and seek temporary accommodation in scarce Moroccan shelters.<sup>145</sup> If the marital home belongs to the husband’s father, the latter refuses to let the woman in so that she stays in the street.<sup>146</sup> Likewise, UAF indicates that upon returning home the wife is likely to be beaten even more. In one case, there was a woman who was burned after being returned to the conjugal home by the public prosecutor.<sup>147</sup> AMDF indicates that such expulsions and VAW victims testimonies informed the development of protocols used by the feminist listening centers, which also inform the state cells for VAW victims.<sup>148</sup>

### **Child Custody and Child Legal Guardianship: Reinforcing Gender Roles**

Prior to the 1993 PSC, **child custody** first went to the mother, second to the maternal grandmother, and finally to the father, but feminists, in a gesture of equality and good faith, advocated for the father to be in the second position for custody instead of the maternal grandmother. Another clause assesses that if the custodial parent remarries, she may lose custody. By consequence, a woman who attempts to remarry may and often does lose custody of her children – a decision formed by the judge “in the best interest of the child.”<sup>149</sup> In the 2004 Family Law, custody goes automatically to the mother until the child is 15. Moreover, the **custodial mother may not remarry** except in certain circumstances (Articles 171-175). Fathers, on the other hand, generally do remarry without negative legal consequences. Furthermore, while child custody is an absolute right of the mother, it is also a burdensome responsibility. Most mothers are not economically autonomous, as almost two-thirds of Moroccan women do not work and of those unemployed almost all are illiterate. Furthermore, if the child is disabled the mother maintains custody indefinitely and, of course, she faces poor prospects of remarrying

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<sup>145</sup> Personal interview with the Association Amal Pour la Femme et le Developpement (El Hajeb) October 12, 2016

<sup>146</sup> Personal interview with Tafiil Mubadarat (Taza) October 13, 2016

<sup>147</sup> Personal interview with UAF General Secretary in Tetouan and member of the Regional Human Rights Commission of Tangier (Tetouan) July 8, 2013

<sup>148</sup> Personal Interview with AMDF in General Secretary (Casablanca) July 10, 2013

<sup>149</sup> Personal Interview with National Council of Human Rights (NCHR) Rabat October 17, 2016

with a disabled child, as Moroccan men rarely accept wives with disabled children.<sup>150</sup> Juxtaposed to child custody, **legal guardianship** (*tutelle*) is automatically relegated to the father, which poses additional problems for the custodial mother. **In 2013 the Moroccan parliament revised the legal guardianship article to allow the mother guardianship of her children if the father is deceased, incapacitated, in prison.**<sup>151</sup> Likewise, Article 4 of the Moudawana indicates the family is the responsibility of both spouses, and yet the mother does not have the right to guardianship of her children. Feminists demand equal guardianship rights between father and mother, claiming “for any administrative formalities, national card, passport, travel abroad, registration in school, it is the father who is the guardian. This is not normal, it is discriminatory, it is unconstitutional.”<sup>152</sup> Furthermore, the father having guardianship while the mother has custody poses many problems: First, when the father has legal guardianship of the children, the mother can not relocate to another city with family members for support following a divorce because the mother does not have the right to move the children or the authorization to register the children at another school.<sup>153</sup> Second, if the custodial mother needs a passport, visa or legal document, they are forced to appeal to the ex-husband with husbands frequently using guardianship as a means of blackmail.<sup>154</sup> Third, even mothers who are financially autonomous and who are providing for their children’s financial needs must get the father’s permission if they want to move the children to a different school.<sup>155</sup> Finally, as the mother is not a legal guardian of the children, problems with the patrimony (inheritance from the parents) occur in the event of a divorce or death.

### Child Support

The 2004 Family Law asserts the right of children to child support (Articles 168, 190, 202), but when it comes to the application for this assistance, there are many loopholes exploited by fathers who do not pay child support or only pay a minimal amount.<sup>156</sup> The case for child support is determined by the judge. If the father works for the state, child support payments come out of each paycheck. However, if he is not a civil servant, the father can hide his real

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<sup>150</sup> Personal Interview with AMDF in General Secretary (Casablanca) July 10, 2013

<sup>151</sup> Personal interview with Law Professor (Rabat) October 5, 2016.

<sup>152</sup> “The Family Code, ten years later.” 8 February 2014. *Le Matin*. Droite et Justice website (Retrieved on December 14, 2016)

<sup>153</sup> Personal interview with the Nejma Listening Center for Domestic Violence Mou on October 10, 2016

<sup>154</sup> Personal interview with UAF General Secretary in Tetouan and member of the Regional Human Rights Commission of Tangier (Tetouan) July 8, 2013

<sup>155</sup> Personal Interview with Forum Azzahrae Pour la Femme Marocaine (Rabat) October 5, 2016)

<sup>156</sup> Personal Interview with AMDF in General Secretary (Casablanca) July 10, 2013

income. The courts are supposed to “remain neutral,” so neither the judge nor social services is obliged to help prove the husband’s assets. Instead, the wife must defend herself as she is able by providing documents and proof of her husband’s assets,<sup>157</sup> an action which requires a professional lawyer and financial resources. Furthermore, although the wife must prove her husband’s worth through evidence, she is obstructed by confidentiality laws regarding, for example, social security. Meanwhile, the court does not ask the husband for financial documents. The wife must prove her husband’s revenue.<sup>158</sup> Furthermore, many men refuse to pay child support and prefer short prison sentences, usually less than 45 days (Article 202), cancelling his obligation to pay child support.<sup>159</sup> One of the first amendments feminists proposed to the Family Code was a state fund for divorced and abandoned women as well as those who do not receive child support from their husbands. On January 1, 2011, the parliament established the Family Solidarity Fund which provides 350 MDH/month (\$34.45/month) for each child up to 3 children or 1,050 MDH/\$103.35/month total. Nevertheless, if the woman has 4 or more children, she will not receive more money and is required to provide extensive documentation in order to receive any support at all.<sup>160</sup>

### **Property Rights**

The final issue addressed in the Moudawana at the demand of feminists concerns the division of property acquired after marriage. ADFM notes that the husband must enter a separate contract from the marriage contract to agree on how to manage the property. The person who registers the marriage contract is responsible for overseeing the property contract as well. The judge does not take responsibility for the property contract. Unfortunately, according to ADFM, there is no example of how to write the property contract. In the absence of a property contract, the judge decides the division of the couple’s assets based on the available evidence, but women generally do not have any evidence.<sup>161</sup> “They do the housework, but there’s no evidence for sweeping, for doing laundry, for homeschooling your children, and usually women do all of the work. And the man, what does he do? He contracts the property in his name.”<sup>162</sup> This dichotomy

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<sup>157</sup> Personal Interview with National Council of Human Rights Rabat October 17, 2016; Personal Interview with AMDF in General Secretary (Casablanca) July 10, 2013

<sup>158</sup> Personal Interview with Initiative Pour la Protection des Droits des Femmes (IPDF) (Fez) October 14, 2016

<sup>159</sup> Personal interview with the Nejma Listening Center for Domestic Violence (Rabat) October 10, 2016

<sup>160</sup> Ibid.

<sup>161</sup> Personal interview with ADFM General Secretary (Rabat) July 11, 2013

<sup>162</sup> Ibid.

is problematic. In the event of a divorce, the wife has no proof, and the husband has contracts indicating he has paid for the house, so the judge cannot weigh the unacknowledged work of the wife in the home. Several articles in the Family Law protect women's property rights: Article 29 safeguards a woman's right to control her dowry, Article 34 protects the possessions a woman brings to the marriage, and Article 49 stipulates a couple may draw up a property contract to govern management of property acquired during a marriage. Nevertheless, these articles are often misapplied. In Islamic teachings, according to al-Hidn, a woman takes a dowry with her into the marriage, and if the marriage ends, she is entitled to keep the dowry. In addition, a woman's earnings during the marriage are her own because in Islamic teaching, men are legally required to provide for their wives and children, and women can use their own earnings as they see fit.<sup>163</sup>

<b>Main Differences in Policy Core Beliefs between Feminists and Anti-Feminists</b>		
	<b>Feminists</b>	<b>Anti-Feminist</b>
<b>Declaration of principles</b>	Equality	Complementarity
<b>Redefinition of marriage (Article 51)</b>	Partnership and co-responsibility for the family, <i>taa'</i> suppressed	Wife's required obedience to husband ( <i>taa'</i> )
<b>Underage Marriage (Articles 19, 20, 16)</b> Article 16 –gave 5 year period in which to register fatiha marriages (up to 2009), then the MOJ announced a second extension to 5 Feb 2014 (Zvan-Elliott 2015: 110)	Should be prohibited	Exceptions, better than debauchery, marriage is a protected legal framework; linked to the notion of family honor
<b>Polygamy (Article 16)</b> <b>Monogamy clause (Article 40)</b>	Should be prohibited	Exceptions, provides a legal framework for women and children
<b>Marital Tutors (wilayat) (Article 25)</b>	Women no longer perpetual minors, nevertheless only 10% of women actually marry without a marital tutor	Entering a marriage without a (male) family member says you're a girl of the streets; you lose family protection in the event of a divorce
<b>Single Mothers</b>	Solidarity Feminine & Lalla Salma recognized this problem	Does not exist: all single mothers are prostitutes
<b>Lack of Paternal Accountability</b>	Paternal accountability in the event of an engagement (fatiha marriage) Tunisian example: Fathers accountable through DNA testing, rights as if legitimate child A child's right to get paternity through the courts (ADFM 100 points);	Extensions to Article 16 – makes it easier for husband to acknowledge paternity in unregistered marriage
<b>Qiwama → nafqa (Article 194-198)</b>	Since I claim equality and co-responsibility (Guessous), but with CONDITIONS (see table 5)	Obligation of Men; Maintenance is a woman's right
<b>Divorce: shiqaq (Articles 94-97)</b>	-- Women have their <i>shiqaq</i> divorce -- Recent supreme court decision a setback, women lose compensation if they initiate <i>shiqaq</i>	-- Before only khul' (divorce for compensation) and women could also lose custody of their children --What about the family: husband and children?
<b>Housework and Childrearing: Unpaid labor</b>	High Commissariat au Plan: 50% of the work within a family; Should be recognized in the event of divorce	The Role of the woman is to take care of the home, husband, and children ORCF/Hakkoui: should be recognized profession (Gray 2015: 121)
<b>Alimony</b>	A woman's right to alimony (100 Points); non payment of alimony or maintenance, a 3-month to 1-year prison sentence	A woman is not entitled to compensation following a divorce; dowry in exchange for maintenance ( <i>muta'</i> )
<b>Property Rights after marriage (Article 49)</b>	Emphasize value of women's unpaid labor	Emphasize the need to preserve the marriage

<sup>163</sup> Personal interview with five members of the conservative Islamic al-Hidn Association Casablanca July 10, 2013.

<b>Eviction from Marital Home (Article 53)</b>	Custodial parent should keep the home.	Custodial parent and child should be maintained to the same level as during marriage
<b>Child Custody (Article 171-173)</b>	Gave 2 <sup>nd</sup> priority to father, but now men use this if wives remarry; should be decided in the best interests of the child (100 Points)	Should go to the mother first
<b>Loss of child custody with remarriage (Article 175)</b>	Women should have the same right to remarry as men without fear of losing child custody	
<b>Legal Guardian (Article 236)</b>	Should be joint guardianship or exercised by the custodial parent (100 points) Article 231: goes to woman in absence of husband	If the husband does not pay child support, he should lose legal guardianship
<b>Child Support (Articles 169, 190, 202)</b>	Spouses should be mutually responsible for the maintenance of the child (100 points)	
<b>Inheritance (Article 51)</b>	<i>Wassiya Wajiba</i> : Grandchildren on daughter's side can also inherit; Equality in inheritance right (100 points)	Should be decided according to Islamic tradition
<b>Domestic Violence (Article 404)</b>	A violation of a woman's physical integrity; should be a criminal offense	Justified, a wife should be obedient to her husband; men escape with impunity → inordinate punishment
<b>Conjugal Rape</b>	Sexual relations should be consensual	Marriage implies sexual access to a woman
<b>Sexual Relations Outside Marriage (Article 490)</b>	Should be legal between consenting adults	Prostitution, debauchery, single mothers
<b>Abortion (Article 453)</b>	The right of a woman to control over her body	Sanctity of life
<b>Wife under Husband's Authority (Article 494)</b>	An infringement on women's rights (Abolished)	A protection
<b>Harboring a Married Woman (Article 496)</b>	Impeded civil society's assistance to VAW victims (Abolished)	

Figure 4 Main Differences in Policy Core Beliefs between Feminists and Anti-Feminists

<b>Secondary Beliefs between Feminists and Anti-Feminists and Possible Consensus</b>		
	<b>Feminists</b>	<b>Anti-feminists</b>
<b>Rape of a minor should not escape with impunity (Article 475) (Amended)</b>	Rapist should be prosecuted under the criminal code	Chemical castration
<b>Abortion in cases of incest, rape, and malformation of fetus (Article 453) (Amended)</b>	Women should have greater control over their bodies	In certain circumstances abortion is acceptable if done early in the pregnancy. PJD supports abortion (Gray 2015: 114)
<b>Domestic Violence (Article 404) (Amended)</b>	Should be criminalized (Amended to increase punishment in the event of family ties)	The abuse of power by a man against a woman is dealt with excessively Hakkoui: work across ideologies (Gray 2015: 120)
<b>Social Rights: Right to an education (Article 13 1996 Constitution)</b>	Girls right to an education	Girls right to an education
<b>Economic Rights: Right to work (Article 31 2011 Constitution)</b>	Equal rights to employment	Equal rights to public sector jobs
<b>Wife under Husband's Authority (Article 494) (Abolished)</b>	An infringement on women's sovereignty	A protection, <i>qiwama/nafaqa</i> a right of women
<b>Harboring a Married Woman a Criminal Offense (Article 496) (Abolished)</b>	Impeded civil society's assistance to VAW victims	A husband has authority over his wife
<b>Trafficking Law 27-14 (Article 448) (Amended 25 August 2016)</b>		

Figure 5 Secondary Beliefs between Feminists and Anti-Feminists and Possible Consensus

To determine how best to focus their efforts, the feminist coalition conferred with the Spanish, French, Americans, and Finns for comparative studies of legal texts. The coalition realized that in order to change the Family Law, it was necessary to change other legal texts, beginning with the penal code. For example, the Family Law does not punish a husband who beats his wife, because punishments are reserved for the penal code.

AMDF has combined efforts with other feminist organizations to promote penal code reform. The Spring of Dignity Coalition formed in 2008 advocates for a total reform of the penal code. ADFM adds that this coalition works for both legal and judicial reform and “present[s] a new feminist vision of justice as it relates to women.”<sup>164</sup> For example, according to ADFM, the 2003 Penal Code puts the honor of the family and state security ahead of the rights of the woman, which is unacceptable. Therefore, ADFM favors a major reform of the penal code, focusing first, on the philosophy behind the law; second, on the structure of the law; and third, on discriminatory articles in the law. Amnesty International, on the other hand, draw attention to particular discriminatory articles in the law. While ADFM agrees with Amnesty International in substance, ADFM’s approach is a little more strategic.<sup>165</sup> UAF indicates that there is debate not simply about reforming the penal code, but about the entire criminal justice system. This is because the penal code only *punishes* criminal activity, whereas more must be done to *prevent* criminal activity and to *protect* women from abuse before it happens.<sup>166</sup> Over time, the feminists have worked with jurists, university professors, and judicial experts to understand what is and is not working in the 2003 Penal Code, pointing out discriminatory articles in the code, especially pertaining to violence or violations of women’s universal rights. Within the penal code there is no mention of **equality** or **universal human rights**, so AMDF notes that they are pursuing a radical reform of the penal code, including its language, articles, and prologue. AMDF desires a prologue that highlights the principles of equality, inalienable rights, international rights, and the principles of liberty and equality. Even within the feminist coalition, there are clear differences in opinion over how best to approach penal code reform, particularly whether to focus on specific discriminatory articles or to advocate for a total overhaul of the code.

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<sup>164</sup> Personal interview with ADFM General Secretary (Rabat) July 11, 2013

<sup>165</sup> Ibid.

<sup>166</sup> Personal interview with UAF General Secretary in Tetouan and member of the Regional Human Rights Commission of Tangier (Tetouan) July 8, 2013

### 2003 Penal Code and VAW Bill 103.13

In addition to the 2004 Family Law, the 2003 Penal Code, the Code of Criminal Procedures, and potentially the VAW bill 103.13 form a legal framework to confront or perpetuate VAW in Moroccan society. The feminists formed the **Spring of Dignity Coalition in 2010** to address these reforms. Key issues are **definitional** (what constitutes certain types of violence) and **procedural** (who has the right and/or obligation to intervene). In Morocco, male aggressors have perpetuated domestic violence with impunity, bolstered by underlying cultural norms and conservative religious interpretations that give men the right -- perhaps even obligation -- to rule over and discipline wives as though they were children. Due in large part to feminist activism, many of these popular notions have been challenged to comply with international standards of human rights and justice. Several of the most discriminatory and gendered issues addressed by feminists include: domestic violence, conjugal rape, sexual harassment, the criminalization of extramarital relations, and abortion.

**Domestic violence** was not explicitly criminalized in Morocco until recently, and quite discretely, adding a reference specifically “assault by a spouse.” (Article 404, revised by Law 24-03) This revision trails years of advocacy by feminist associations in Morocco.<sup>167</sup> This revision trails years of advocacy by feminist associations in Morocco.<sup>168</sup> Nevertheless, domestic violence is still understood by many Moroccans as a husband’s right to control his wife. ADFM’s 2008 shadow report to the CEDAW Committee indicates “three interdependent factors account for spousal violence: the legal and social status of women, the social acceptance of spousal violence (seen as a misfortune plaguing married women), and the impunity of aggressors.”<sup>169</sup> While feminists view domestic violence as “abuse” and “a violation of human rights,” cultural relativists excuse and legitimize domestic violence as “discipline” or “warranted.” These justifications, however, allow perpetrators to act with impunity. “Certain types of violence are more or less related to culture such as the belief that men have to educate women and they have to be violent, whereas women are expected to be patient.”<sup>170</sup> “If she is beaten by her husband, it's her fault.”<sup>171</sup> Furthermore, conservative religious interpretations underlie these cultural norms, asserting that the *Qur'an* sanctions a husband “disciplining” or

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<sup>167</sup> Personal Interview with Family Law Lawyer (Tangier) July 8, 2013

<sup>168</sup> Personal Interview with Family Law Lawyer (Tangier) July 8, 2013

<sup>169</sup> ADFM (2008). Third CEDAW Shadow Report to CEDAW Committee, p. 11. (Retrieved 20 September 2016)

<sup>170</sup> Personal Interview with Forum Azzahrae Pour la Femme Marocaine (Rabat) October 5, 2016)

<sup>171</sup> Personal interview with UAF General Secretary in Tetouan and member of the Regional Human Rights Commission of Tangier (Tetouan) July 8, 2013

“beating” his wife based on surah 4:34.<sup>172</sup>

Today women are able to talk about domestic violence using legal terminology. The 2010 Anaruz network’s report showed that one in two women is a victim of domestic violence, and ADFM blames this violence on discriminatory laws. Furthermore, the state has taken over these statistics, so the women’s associations no longer track VAW incidents.<sup>173</sup> UAF indicates that domestic abuse is a major issue and one that affects all socioeconomic classes. Whereas poor women have nothing to lose and come forward more readily, the more socioeconomically privileged women, such as female university professors or female doctors who are victims of violence, have more to lose by speaking out.<sup>174</sup> Nonetheless, ICWAD treasurer Souad Slaoui stresses the social taboo of talking about domestic violence has been lifted and police and law enforcement are being trained that domestic violence is not simply a family matter, but potentially a criminal offense. In addition to legal resources, the listening centers provide VAW victims assistance in escaping this type of violence. Ironically, however, the listening centers themselves were actually violating Article 496 regarding the sheltering of a married woman and complaints could be lodged against the centers for sheltering domestic violence victims before the law was repealed.

Change takes time. UAF asserts, “The conservative mentality is part of the problem. When a wife is beaten by her husband, she has done something to bring it on herself. It is her fault. This is the norm.”<sup>175</sup> Women are repeatedly sent back to abusive spouses where they receive more abuse. UAF gives an example that “one woman went to the police to complain that her husband beats her, but was told ‘every man beats his wife.’”<sup>176</sup> In order to support victims of violence, the UAF may accompany women when they file a complaint or appear in court. In addition, there is a commission for the protection of women and children that meets every three to four months with the prosecutor, assistant prosecutors, or the police to follow up on complicated cases. As a last resort, the UAF has worked with the attorney or talked with the judges on certain cases.<sup>177</sup>

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<sup>172</sup> “... Therefore, the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part you fear disloyalty and ill conduct, admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly)...”

<sup>173</sup> Personal interview with ADFM General Secretary (Rabat) July 11, 2013

<sup>174</sup> Personal interview with UAF General Secretary in Tetouan and member of the Regional Human Rights Commission of Tangier (Tetouan) July 8, 2013

<sup>175</sup> Ibid.

<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

Likewise, **conjugal rape** is not a criminal offense and cultural practices venerating female virginity, the intact hymen, and the violence surrounding defloration on the wedding night promote nothing short of conjugal rape.<sup>178</sup> For example, on the wedding night, if a man can not deflower his wife, he has recourse to a service of women, often from the family, who will deflower the woman with the ends of candles, which is rape. It's done with force, but it's not recognized as rape.<sup>179</sup> Conjugal rape has been supported by conservative interpretations of surah 2:223, claiming "Your wives are your tilth; go then unto your tilth as you may desire," which is translated in the Family Law as the husband's right to sexual access to his wife. In other words, if the husband pays the dowry, he can dispose of his wife as he wishes, even raping her, legally. It is the weight of the *shari'a* that stipulates the total obedience of the wife to the husband. This understanding is further bolstered by the principle of *taa'* (a wife's absolute obedience to her husband), an argument which feminists challenged and defeated in the 2004 Family Law.<sup>180</sup> Nevertheless, the literal reading does not take into account the historical context and violates the freedom and rights of women. Muslim Feminists interpret this surah quite differently, interpreting it to mean, go to **YOUR** field (as opposed to someone else's) in order to produce. A Muslim feminist likewise views *produce* to mean something done deliberately and for a purpose, not in a foolhardy manner.

Conjugal rape is also challenging to prove as the victim must demonstrate lack of consent through bodily harm and there are generally no witnesses with the possible exception of the couple's children. In one high profile case in El Jadida, a couple's oldest daughter testified against her father, who was not found guilty of conjugal rape, as it is not a criminal offense in Morocco, but of sodomy. Feminists, apply a broader definition of rape to conclude that he indeed raped his wife, but he was in fact convicted under a different article.<sup>181</sup> This case also demonstrates the definitional problems surrounding rape as a criminal offense.

**The definition of rape** is confined to "a man having sexual intercourse with a woman against her will," which does not meet international standards and should be expanded. The World Health Organization (WHO) recommends that the definition of rape be gender neutral, encompass a range of sexual acts including vaginal, oral, and anal sex, and expand the instrument of the sex act to include not only a penis, but also other body parts and foreign

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<sup>178</sup> The Oyoum Nissaeya Observatoire Memorandum on Conjugal Rape. 2011.

<sup>179</sup> Personal Interview with Initiative Pour la Protection des Droits des Femmes (IPDF) (Fez) October 14, 2016

<sup>180</sup> Interview with Tunisian Islamic Exegetes at Zaituna University (Tunis) in June 2016

<sup>181</sup> Personal Interview with Family Law Lawyer (Tangier) July 8, 2013

objects. In addition, the principle of forced sex or coercion must be eliminated as coercion includes a gradient of force.<sup>182</sup> Currently Moroccan law compels rape and sexual assault victims to demonstrate physical injury in order to prove non-consent. Furthermore, if rape victims can not prove non-consent, then they can be prosecuted for extramarital sexual relations (Article 490) or face defamation charges, which are being strengthened in new VAW bill.

**Sexual harassment** was made a criminal offense in Morocco with a penalty of 1-2 years and a fine of 5,000-50,000MDH (Article 503-1 in the Penal Code and Article 40 of 2004 Labor Code).<sup>183</sup> Nevertheless, an addition to the Code of Criminal Procedures outlining how to prove sexual harassment is necessary.<sup>184</sup> Currently, if a woman takes a complaint of sexual harassment to the public prosecutor without legal evidence, nothing will happen. For this reason, the **Spring of Dignity Coalition** is calling for a framework law to address inconsistencies in the Penal Code and Code of Criminal Procedures.<sup>185</sup> Nevertheless, the right of the harasser to pursue defamation charges and hold the victim liable for slander deters reporting.

**Extramarital sexual relations** (*zina*) between a man and a woman are considered a type of public disorder and a criminal offense and punishable by one-month to one-year imprisonment (**Article 490**).<sup>186</sup> Furthermore, patriarchal cultural norms glorifying male virility and female chastity perpetuate a gendered sexual double-standard. Feminists believe sexual relations between consenting adults is a private matter and should not be criminalized, but conservative religious elements believe legalizing extramarital relations would contribute to debauchery, illegitimate children, and prostitution. Furthermore, while the legal code itself is not gendered, the application of Article 490 **disproportionately affects women**:

If a woman lodges a complaint against a man claiming she had sex with him and became pregnant ... the police conduct ... the preliminary investigation, and the man denies...having had sexual relations with her. The man is not prosecuted...because he denies having sex with her. Nevertheless, she has demonstrated in her belly, she bears the evidence of sexual relations, of the debauchery, so she is condemned and not him.<sup>187</sup>

Based on **Article 18** in the CRC, BOTH parents are responsible for the upbringing and

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<sup>182</sup> World Health Organization Report on Violence and Health. who.int p. 149 (Retrieved on 26 December 2016).

<sup>183</sup> **Sexual Harassment:** "Any person who abuses the authority conferred upon him by his position, to harass another using orders, threats, coercion or any other means in order to obtain sexual favors is guilty of sexual harassment and is punishable by one to two years- imprisonment and a fine."

<sup>184</sup> Personal Interview with Family Law Lawyer (Tangier) July 8, 2013

<sup>185</sup> Ibid.

<sup>186</sup> **Article 490** Anyone having sexual relations with someone of the opposite sex outside of marriage is punished by imprisonment from one month to one year.

<sup>187</sup> Personal Interview with National Council of Human Rights (Rabat) October 17, 2016

development of a child. Nevertheless, in Morocco an unwed father is responsible only if he chooses to take responsibility, which given the fact that extramarital sexual relations are a criminal offense is unlikely. In the Family Law, a father may make a written document in which he acknowledges a child born out of wedlock in a process called “*istirhaq*.”<sup>188</sup> Regardless, there is a huge difference between a father is held responsible by the state and a father can sign a legal document to acknowledge paternity if he chooses. An unwed mother may also hold the father accountable through DNA testing, but only if there is evidence of an engagement (fatiha/unregistered marriage) between the couple with photos or a video showing an engagement party, then the court may order DNA testing.<sup>189</sup>

In addition, a rape victim may be hesitant to report a crime due to lack of proof and potential imprisonment based on Article 490. In addition, according to UAF, another major problem women face, which is complicated by Article 490, is prostitution, which is also a criminal offense and a last resort for many single mothers. Furthermore, prostitution is not always voluntary, and UAF is working in conjunction with Jordan and Egypt on a project to fight trafficking in women, a phenomenon that has been especially prevalent in the Gulf States. Women go to the Gulf for work, then find themselves in a totally different situation than what they originally expected. They have their passports taken away, and they are indebted for their travel and food and are told they must work off this debt. UAF adds that sub-Saharan migrants transiting through Morocco find themselves in a similar situation.<sup>190</sup> The PJD differs in approach from the feminist associations that try to protect women in exploitative. The PJD can not accept extramarital relations, wishing instead maintain extramarital relations as a criminal offense. The PJD does not accept this because Islam does not accept sexual relations outside of a marriage. Instead, the police can arrest you if you are caught in such a compromised relationship.<sup>191</sup>

Until recently **abortion** was a criminal offense unless the health of the mother was endangered (**Article 453**). Through feminist activism, the abortion law was amended on June 9, 2016, to allow an abortion in cases of incest, rape, and birth defects of the fetus. Nevertheless,

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<sup>188</sup> Personal Interview with National Council of Human Rights Mostafa Naoui Rabat October 17, 2016

<sup>189</sup> Personal Interview with National Council of Human Rights Mostafa Naoui Rabat October 17, 2016

<sup>190</sup> Personal interview with UAF General Secretary in Tetouan and member of the Regional Human Rights Commission of Tangier (Tetouan) July 8, 2013

<sup>191</sup> Personal interview with UAF General Secretary in Tetouan and member of the Regional Human Rights Commission of Tangier (Tetouan) July 8, 2013

feminist fear the right to life established in the 2011 Constitution (Article 20) will be used to reinforce arguments criminalizing abortion. Religious conservatives believe **Surah 17:31** “Kill not your children for fear of want. We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin,” denies abortion as a legitimate alternative. Women who need an abortion find themselves in a very vulnerable position. They must find someone who is willing to perform a clandestine abortion and often risk injury or death due to medical malpractice. The Spring of Dignity Coalition casts the criminalization of abortion as a public health issue and a restriction of women’s right to control their bodies, representing GBV and legal violence against women, citing Tunisia’s legalization of abortions as a model for other Arab countries.<sup>192</sup> Nevertheless, abortions are widespread in Morocco with the Moroccan Association for the Fight Against Clandestine Abortion (AMLAC) reporting that 800 illegal abortions are performed daily in Morocco, which is roughly 220,000 annually.<sup>193</sup>

**The 2012 Amina Filali Case**<sup>194</sup> represented a critical juncture where feminists and anti-feminist associations and legislators put aside their ideological differences to amend **Article 475** allowing an accused rapist to escape prosecution by marrying his victim. Filali’s accused rapist should have been tried in criminal court for the rape of a minor under Article 486. Instead, the judge misapplied Article 475, concerning “**the corruption of a minor without violence, threats, or fraud**” allowing Filali’s rapist to escape prosecution by marrying his victim. Article 475 is applied if the family, not the judge, requires the minor to marry her attacker, which is attributable to the prevailing cultural mentality focused on family honor.<sup>195</sup> **The law was amended on January 23, 2014.**

**Finally, harboring a married woman was a criminal offense (Article 496) until the Moroccan parliament repealed this article in August 2013.** Feminists opposed this article for inhibiting domestic violence shelters from assisting married VAW victims escape abusive situations. The shelters asked the state to amend the law and the reform has enabled associations to assist more married VAW victims without fear of legal repercussions.<sup>196</sup>

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<sup>192</sup> *Spring of Dignity Coalition. (April 2015). Memorandum for the Right to an Abortion, p. 3.*

<sup>193</sup> Bryn Miller. June 10, 2016. “Morocco Liberalizes Abortion Laws, Amends Penal Code.” Morocco World News. [Morocccoworldnews.com](http://Morocccoworldnews.com) (Retrieved 15 October 2016)

<sup>194</sup> Amina Filali, a 15-year old in Larache, near Tangier, was allegedly raped by a 23-year old assailant in 2012. When Filali went to the judge to press charges, the judge instead married Filali to her assailant, who escaped prosecution by agreeing to marry his victim, thus, restoring the family honor. Abused and raped in her marriage, Filali committed suicide by drinking rat poison and died in the street.

<sup>195</sup> Personal Interview with Family Law Lawyer (Tangier) July 8, 2013

<sup>196</sup> Personal Interview with at LDDF Centre d’Habergement Tilila (El Jadida) October 11, 2016

## VAW Bill 103.13 and the Context for Debate

ADFM and the Anaruz network resolved that individual amendments to the 2003 Penal Code did not go far enough and that a separate VAW law was necessary, especially in light of the 2011 Constitution, guaranteeing equal rights between the genders. They wrote several memoranda<sup>197</sup> outlining their vision for a global reform of the penal code, but the current bill under consideration falls far short of expectations given the years of statistical documentation and activism detailing the level and types of VAW. Feminists criticize the bill as focusing almost exclusively on increasing the penalties on particular crimes (i.e. the 1% of VAW crimes that actually get prosecuted in Morocco) while ignoring earlier stages in the legal address of VAW: prevention, reporting, investigation, and protection. Without considering these stages and the clear delineation of the judiciary's responsibilities in implementing the laws, VAW in Morocco will not be adequately addressed. As the bill is still under discussion in the second house, I provide only a brief overview of the main shortcomings identified by feminists in the bill:

- **A VAW bill should include both criminal and civil measures.** For example, Temporary Restraining Orders (TROs) should be a **civil procedure** and excluded from the criminal code, which could be considered *double-jeopardy*.<sup>198</sup> Furthermore, VAW victims can not get a TRO until the prosecutor starts **the prosecution proceedings** (i.e. 3% of cases). The period of time when women are most vulnerable (reporting, investigation phases) is not covered.
- The bill focuses on increasing the penalties for existing criminal offenses in cases of spousal or other family relationships, but does not address “access to medical care, social services, legal counseling, safe housing, or other mechanisms to protect and support VAW victims”<sup>199</sup>
- The **high burden of proof** (21-days incapacitation and 2 witnesses) falls exclusively on the victim, while the judicial procedures and responsibilities of law enforcement are not explicit. If the victim withdraws the charges, the case is dropped. Instead, a No-Drop Policy should be adopted for the prosecutor to pursue cases where there is evidence of a crime even if the victim withdraws the charges.

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<sup>197</sup> ADFM produced an Analytical and Critical Reading of VAW bill 103.13 (2013), a Protest Memorandum for the Reform of the Judicial System (2013), a Memorandum for the Spring of Dignity Coalition for a VAW Law (2014), and publications from the Anaruz Network Listening Centers regarding GBV.

<sup>198</sup> Personal interview with Mobilising Rights Association (Rabat) September 23, 2016

<sup>199</sup> Mobilising Rights for Women Analysis and Advocacy Chart based on September 7, 2016 updates (See MRA's website for extensive analysis and advocacy initiatives for women's rights in Morocco.)

- The bill does not address the **high burden of proof** of physical injury required in domestic violence, rape, and sexual harassment cases or abolish Article 490, which leaves women unable to prove rape vulnerable to prosecution. Furthermore, the bill strengthens defamation procedures, which deters reporting of VAW.
- **Finally**, the bill revolves around **married women**, instead of addressing women who fall outside the marital framework (**single, divorcees, widows**), who should also have access to justice. Unmarried women who are violated do not receive the same treatment because of the notion of *pudeur* (*shame*), which blames the victim. For example, in **rape cases**, lawmakers neither take rape victims seriously, nor do they consider their case a type of violence.<sup>200</sup>

### **PJD and Progress**

As in Tunisia and Egypt, the success of the moderate Islamic Justice and Development Party (PJD) in Morocco's 2011 and 2016 parliamentary elections and the appointment of PJD leader Abdelilah Benkirane as prime minister marked the rise of political Islam through democratic elections in another North African state. Concern arose quickly over what these election results might mean to the status of women in Morocco, and these concerns heightened when only one woman—Bassima Hakkaoui from the PJD—received a ministerial appointment as minister of solidarity, women, family, and social development in the 2011 Cabinet. This single appointment seemed a significant setback for Moroccan women, who had recently boasted as many as seven women in a cabinet positions. The PJD coalition-led parliament seemed positioned to promote a more religious-based political agenda, closely aligned with the anti-feminist perspective on women. While some of these concerns were addressed by the government reshuffle in October 2013 and King Mohammed VI's appointment of five additional women cabinet ministers, feminists remain concerned that the PJD, Hakkaoui, and the anti-feminist's more conservative policy prescriptions may represent a major setback for Moroccan women's rights.

As the moderate Islamic PJD is more in sync with the anti-feminist trend within the Moroccan women's movement, some feminists fear PJD governance may represent a setback from previous women's rights advances. AMDF notes the PJD "has always been our enemy...didn't waste their ideas on the question of women and the rights of women. Moreover, Islam

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<sup>200</sup> Personal interview with LDDF Rabat Section President (Rabat) September 29, 2016

gave the rights—all rights—to women, and women have only to read the Qur’an.”<sup>201</sup> UAF indicates that the dominance of the PJD in the government is “obviously a setback for women.”<sup>202</sup> The number of women ministers was up to 7, or 20 percent, under the socialist party, and now there is only one woman. More importantly, UAF knows the PJD—which has always been against women’s *equal* rights—and has a long history of fighting them. According to UAF, the PJD speaks of complementarity and not equality, which has profound meaning and shows what type of society it seeks. The PJD is always very hesitant about women’s rights and human rights as they are universally recognized. Instead, the PJD speaks of “cultural specificity,” which allows everything to be relegated to culture. This perspective can also be seen in the program of the PJD government and the treatment of women in a very secondary manner, mainly related to the social question. Instead, according to UAF, the PJD concentrates on marginalized women and poor women, not the true empowerment of all women or true equality between men and women in all areas. The PJD treats women from a charitable perspective, not from a vision of equal rights.<sup>203</sup> In the government that formed in October 2013 after the nationalist Istiqlal Party resigned, the royalist RNI Party made advances and may facilitate a different direction for women.

AMDF attributes the lack of real progress on the question of women’s rights to a lack of political will. Explaining that in Rabat there are ministry buildings everywhere, AMDF asks “What do all of these [government employees] do? It means that we don’t lack the budget or the personnel...It’s more the approach.”<sup>204</sup> AMDF notes that Morocco is a complex society and, therefore, a better understanding of these complexities is crucial. AMDF suggests that social and human sciences such as sociology, anthropology, ethnography, and philosophy would provide some of the answers to Morocco’s complex social issues, adding that in public education there is a hesitancy to learn about concepts that are perceived to be Western—such as human rights, which is seen as American—while everyone takes a class on Islamic education. Moreover, according to AMDF, the current crises in Morocco in health, education, and teaching make Moroccans more susceptible to Islamist discourse and identity. A feeling of religious and racial superiority can strengthen otherwise impoverished people. By wearing the veil, women feel superior, as though they know and understand their religion better than the unveiled. Moroccan

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<sup>201</sup> Personal Interview with AMDF in General Secretary (Casablanca) July 10, 2013

<sup>202</sup> Personal interview with UAF (Tetouan) July 8, 2013

<sup>203</sup> Ibid.

<sup>204</sup> Personal Interview with AMDF in General Secretary (Casablanca) July 10, 2013

society is still in many ways not ready to receive Western feminist discourse, according to AMDF. At the same time, AMDF finds itself at odds with human rights associations who focus on human rights but not women's rights in particular.<sup>205</sup>

On the other hand, Hakkaoui recently mentioned international conventions and is increasingly using the term "equality." Nevertheless, ADFM indicates that Hakkaoui, like the rest of the PJD, takes a charitable approach even when there are self-help programs that are economical and doing well. ADFM does not want women to gain their rights from a charitable perspective, but because they should be able to enjoy human rights and autonomy.<sup>206</sup> Nevertheless, UAF indicates that with the current Islamization of society, schools are reproducing stereotypes and discrimination against women instead of changing the mentality in favor of gender equality.<sup>207</sup> UAF adds:

Hakkaoui's ministry lacks the necessary resources and budget, receiving only .03 percent of the national budget, and yet responsible for all the difficult and complicated social issues. Women are always put in a 'package' instead of being given a ministry focusing on the status of women. Instead, the woman is placed within the context of the family, as if her only role is in reproduction, nothing else.<sup>208</sup>

This focus on women within the family context is consistent with the anti-feminist and PJD perspective. As the PJD was elected to another five-year term in October 2016, feminist will have to find avenues of engagement with the governing party and its anti-feminist supporters or risk a period of stagnation in the progress towards equal rights.

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<sup>205</sup> Ibid.

<sup>206</sup> Personal interview with ADFM General Secretary (Rabat) July 11, 2013

<sup>207</sup> Personal interview with UAF (Tetouan) July 8, 2013

<sup>208</sup> Ibid.

## **Chapter 5: Fostering Change: Feminist Innovations, Tools, and Strategies**

The changes in Moroccan legal codes would not have occurred without the constant vigilance of Moroccan feminist associations, who not only identified legal discrimination but also developed practical solutions and innovative tools and institutional mechanisms to overcome state complacency. Some of feminists' most innovative tools and strategies to address legal discrimination, promote progressive judicial outcomes, and protect VAW victims include: networks of listening centers and legal accompaniment programs for VAW victims, strategic litigation databases to publicize more progressive legal verdicts and incorporation of international human rights commitments into national legal verdicts, and sensitization caravans for judges and lawyers. Feminists have also devised practical institutional mechanisms to model "best practices" learning. Some of these include: templates for marriage and property contracts and procedural protocols for hospitals, prosecutors, police, and judges. Moroccan feminists have been innovative in their development of strategies and tools to advocate for equality and the address of VAW, but also practical in their development and deployment of simple solutions to ongoing problems. (For additional details on these strategies, tools, and institutional mechanisms, see Figures 6 and 7.)

<b>Feminist Mechanisms and Institutions to address VAW</b>	
<b>The Anaruz network of listening centers</b>	Consists of 39 listening centers that receive VAW victims, document their legal and social challenges, and provide legal advice and assistance, psychological counseling, and often rights and skills training. They broke the silence on domestic violence, conjugal rape, and other VAW in Moroccan society, providing a numeric reality of the phenomena. They have served as a model for the state cells.
<b>Legal Accompaniment Programs</b>	Women’s associations, such as UAF and MRA, started legal accompaniment programs for VAW victims to hospitals, police stations, and courts to provide support and legal advice. MRA provides practical guides (mrawomen.ma) as well as training for legal assistants. At IPDF, <b>VAW survivors</b> have started accompaniment programs for VAW victims. Having been through the judicial process themselves, they have become activists and advocates. They can say where the legal system works and where it does not, while providing protection and support to victims. This survivor’s activism and advocacy provides a unique diagnostic. While jurists can explain the law and what it says, but VAW survivors are best positioned to attest to the effects of the laws on their lives. <sup>209</sup> The legal assistants also inform and educate the judiciary regarding women’s legal rights and document best practices as a guide for future interactions between victims and the legal system.
<b>Strategic Litigation Database</b>	Human rights are not descriptive of a particular country. Instead, they represent an ideal type and constructivist vision. “The guarantees contained in the texts are meant to be definitional as tools and a starting point from which rights-based litigation can be elaborated, specified, particularized and implemented.” <sup>210</sup> In 2006 Global Rights created a practical guide for the strategic litigation of international human rights standards in domestic courts. The MRA team (formerly Global Rights) now maintains a strategic litigation database to provide examples of how international conventions and the 2011 Constitution can inform progressive Moroccan judicial verdicts.
<b>Sensitization Caravans for Judiciary</b>	Some Moroccan associations focus on sensitizing young judges, <sup>211</sup> while others bring together members of the judiciary with VAW victims to hear their stories firsthand. <sup>212</sup> This inclusive approach turns the judiciary from opponents to partners.
<b>Model Marriage Contract</b>	Although the Family Law allows for a separate property contract to be signed at the time of the marriage contract, no template exists and only 424 such contracts were signed in 2006 (ADFM 2008 Shadow Report: 61). MRA provides a model marriage contract with the questions that can and should be considered in such an agreement.
<b>Proper Receiving Protocols at hospitals, prosecutor’s office, police stations, and courts</b>	As domestic violence and conjugal rape are not historically treated by the Moroccan state and its law enforcement institutions, establishing the <b>proper procedures and protocols</b> to receive VAW victims at the hospitals, public prosecutor’s offices, police station, and at court hearings is necessary, a <b>“best practices” checklist</b> . Viewing domestic violence and conjugal rape as crimes are also new concepts in Morocco, so procedural guides for dealing with VAW victims and collecting the pertinent evidence in the event of a crime.
<b>Skills Training for economic autonomy</b>	Economic dependence is a key hurdle VAW victims face when deciding if they should stay or leave an abusive relationship: Women’s associations provide VAW survivors <b>skills training in cooking, sewing, and handicrafts</b> that empowers them and provides them economic autonomy. Free child care is also provided. In some programs, women receive a certificate from the state if they complete the program, giving them a credential to get a job in a restaurant or boutique. (Amal in El Hajeb, Tafil Moubadarat in Taza)
<b>Single Mothers: Free childcare and Jobs</b>	Single mothers are an exceptionally vulnerable population in Morocco. Solidarity Feminine in Marrakech provides <b>free childcare and operates a café and spa</b> that allows single mothers to earn a living while their children are cared for and nurtured.

*Figure 6 Moroccan Feminist Mechanisms and Institutions to Address VAW*

<sup>209</sup> Personal Interview with Initiative Pour la Protection des Droits des Femmes (IPDF) (Fez) October 14, 2016

<sup>210</sup> Global Rights. 2006. “Promoting Women’s Human Rights: A Resource Guide for Litigating International Law in Domestic Courts.” p. 2.

<sup>211</sup> Personal interview with LDDF Rabat Section President (Rabat) September 29, 2016

<sup>212</sup> Personal Interview with AMDF in General Secretary (Casablanca) July 10, 2013

<b>Moroccan Feminist Advocacy Strategies and Tools</b>	
Signature Campaigns and Petitions	This strategy was used in the 1992 Campaign for reform of the PSC that led to the 1993 revisions as well as the 2000 campaign for Family Law reform
Demonstrations and Marches	This strategy was used effectively in 2000 to prompt the 2004 Family Law reform and in cities across Morocco 2012-2014 to rally for change in Article 475 following the Amina Filali Case.
Open Letters to Government Officials	Feminist associations run these letters run in the Moroccan newspapers addressed to the Prime Minister, Minister of Justice, or Minister of Solidarity, Women, Family, and Social Development. The letters have even received responses on several occasions from the ministers concerned.
Press Conferences	Feminist associations often use press conferences to highlight the main achievements of a particular reform measure as well as remaining shortcomings. These were used by ADFM during the shadow report “advocacy campaigns”
Media Campaigns	The media campaigns tend to be longer running opportunities to inform and educate the general public
Social Media Campaigns	Social media, whether websites, Facebook, Twitter, or YouTube, has been an effective tool of the younger generation.
Coalition-building and Networking	As demonstrated in chapter 1, feminist associations are effective coalition-builders, often forming and working within networks at the national, regional, and international levels
Direct Lobbying	Women’s associations directly lobby parliamentarians, ministers, political parties, & the media, using the memoranda and studies they have produced on particular issues. For example, women’s associations have analyzed the key weaknesses in the new VAW bill 103.13, which was amended in the first house and has moved to the second house for consideration.
Training and Sensitization Caravans	Training and sensitization caravans have taken many forms in Morocco, from caravans to different cities to train lawyers, judges, and the general population about the new codes to targeted training of young lawyers and judges.
Opinion polls, surveys, guidebooks, and memoranda	These materials are used to inform and advocate, providing empirical evidence and logical arguments for reform
Legal Training and Advocacy Assistance to vulnerable populations	<b>Soulaliyates Women’s Movement:</b> regarding discriminatory inheritance practices following the breakup of collective lands (ADFM) <b>Unwed Mothers:</b> Solidarity Feminine and INSAF assist unwed mothers

*Figure 7 Moroccan Feminist Advocacy Strategies and Tools*

## **Chapter 6 Conclusion: Consensus and Collaboration**

The feminists and anti-feminists share many of the same concerns, but they approach these issues from competing and contradictory worldviews, leading to vastly different approaches as to how best to empower Moroccan women. Returning to ACF, the polarization of and friction between various trends in the Moroccan women's movement is attributable to opposing core beliefs and policy prescriptions characterizing the competing coalitions. The actors in the two camps are limited by a bounded rationality to the information they are able to take in and process due to cognitive biases predisposing them to seek out information that confirms their beliefs and reject that which discredits their perspectives. Moreover, the coalitions exaggerate the maliciousness of perceived opponents—a devil's shift—amplifying the severity of losses to a rival coalition while coordinating action among policy allies. These cleavages and ideological clashes are subtle, yet pervasive in the Moroccan women's rights movement, perhaps limiting the effectiveness of the movement as a whole to the detriment of Moroccan women's empowerment.

This somewhat unoptimistic conclusion begs the question, how can these divergent frameworks, put aside differences to make positive progress for Moroccan women and society at large? The feminists began as an elite-driven, top-down approach to Moroccan women's rights and empowerment, while the anti-feminists pursue a broad-based, bottom-up approach to society's collective advancement. A main distinction between the feminist and the anti-feminist perspectives is their unit of analysis, specifically, that the feminists privilege individual rights over the rights of the family or society as a whole, while the anti-feminists' privilege the family and society over the individual. Second, while the feminists promote the equality between genders, the anti-feminists focus on the complementarity of gender roles. Finally, the feminists do not want to discuss Moroccan specificity, instead believing that women's rights and human rights are universal and normative, whereas Islamic feminists emphasize cultural and religious specificity and exceptionalism.

These distinctions lead to contrasting public policy prescriptions. The anti-feminists believe the Family Law leaves women vulnerable. Today the marrying age is returning to pre-Family Law levels, and the number of single mothers and divorcees is on the rise. Furthermore, in the event of divorce, women are consistently getting custody of their children and then are legally responsible for physically caring for them, whether they are financially able or not.

Meanwhile, guardianship remains with the father, leaving women at the mercy of ex-husbands for many simple administrative matters, such as school enrollment and travel. Domestic abuse is not given the full force of the law that comes with explicit legal proscriptions, but the strengthening of Article 400 on assault through tougher penalties for spousal abuse can be considered a step towards recognizing violence in the family as a criminal offense. In addition, civil society organizations can now shelter VAW victims without fear of being charged under Article 496. Nevertheless, extramarital sex and abortion are still criminal offenses that disproportionately impact women, while the penal code generally protects some Moroccan citizens more than others, based on gender, marital status, and virginity.

Only a more detailed study of the current laws, policy prescriptions, and legal enforcement can move the Moroccan women's movement forward collectively. To this end, perhaps the first step must come from within the advocacy coalitions as the feminist and anti-feminist coalitions identify and seek to understand the concerns and perspectives of their competition in order to best refine and deploy their own strategies and tactics. In the meantime, this initial case study and deployment of the ACF framework does provide important insight into the accomplishments, shortcomings, and future priorities of feminist activism in Morocco.

**Major findings:** Moroccan feminists propelled major advances in the recognition of gender equality and the role of international convention obligations as informing national laws in the 2011 Constitution. The 2004 Family Law established the principle of co-responsibility of husbands and wives for the family and theoretically included considerations of the rights of the child in divorce, custody, and child support decisions. The Family Law allows Moroccan women to marry without a *wali*, to enjoy increased access to divorce through *shiqaq* proceedings, and no longer have to obey their husbands but instead enjoy co-responsibility for the family. Nevertheless, these advances are circumscribed by legal loopholes, excessive discretionary power of judges, and recent conservative Court of Cassation rulings. Feminists have identified their priorities in the upcoming 2017 Family Law reform campaign as setting the legal age of marriage at 18 **without exception**, ensuring legal guardianship is **joint**, encouraging **equality in inheritance, abolishing polygamy**, and requiring compulsory **registration of marriage**.<sup>213</sup> These priorities converge with those of some anti-feminist associations, such as

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<sup>213</sup> Personal interview with ADFM (Rabat) 26 September, 2016

the concept of joint legal guardianship, and thus may resonate with a broader cross-section of Moroccan society.

With regard to the penal code, some positive changes have occurred, such as amendments to Article 404 on assault to include tougher penalties when the perpetrator is a spouse (i.e. domestic violence), the repeal of Articles 494-496, which placed a married woman under her husband's authority and criminalized harboring a married woman (even one fleeing domestic violence), the amendment of Article 475, which allowed rapists to escape prosecution by marrying their underage victim, and the amendment of Article 453, which extends women's right to abortion to include cases of incest, rape, and fetal malformation. Change is apparent on discriminatory articles that leave women vulnerable. Nevertheless, the VAW bill 103.13 currently under consideration in Morocco's second chamber demonstrates the hesitancy of the Moroccan state to commit to decisive legal reform to address VAW in Moroccan society as well as the challenges posed by conservative religious interpretations and underlying patriarchal cultural norms which maintain women's subordinate and dependent position through *qiwama and subsequent gendered privilege and entitlement*.

The Moroccan case study exemplifies several **lessons learned** in the fight against discrimination and resulting VAW:

- **First**, the **ACF taxonomy of core, policy core, and secondary beliefs** underlying the Moroccan case study provides valuable insight into the contested and competing ideological frameworks shaping contentious issues within the Moroccan women's rights policy subsystem. By fleshing out the differences and similarities within and among Moroccan women's advocacy coalitions, the ACF framework circumvents the reductionist, essentialist dichotomization that maintains this ideological struggle and identifies avenues and opportunities for understanding and consensus building. Furthermore, the belief system framework highlights a high frequency of cross-coalition alignment, especially among feminists and youth social justice organizations, indicating the potential for intergenerational cooperation and collaboration as well as potential generational points of contention within coalitions.
- **Second**, the working methodology both of Moroccan feminist associations and the 2004 RCC was not secular, but advocated for women's rights using progressive religious arguments (i.e. within an Islamic reference). This emerging **progressive Muslim feminist rights** discourse, coming from within an Islamic reference, yet embracing the international women's rights agenda, has the potential to overcome the polarization, which has limited women's rights progress across the Muslim-majority world. By embracing equality as the defining global norm, a product of international consensus, and originating from the equality between Islamic believers regardless of race, gender, or age, Moroccan feminists have

achieved progress where alternative approaches of feminist activists in other Muslim-majority countries have failed.

- **Third**, feminist organizations have also learned valuable lessons through the reform process. This includes the importance of incorporating **necessary conditions** prior to reforms to mitigate any negative repercussions for women as occurred following the 1993 PSC reform with regard to child custody. In the 2004 RCC Nouzha Guessous proposed the co-financial responsibility for the household between husbands and wives, which would in effect challenge a man's obligation to pay *nafaqa* and make wives equally responsible for contributing to the family, but **only with certain conditions**: first, housework and childcare should be considered a contribution;<sup>214</sup> second, the father and mother should share legal representation of the children; and third, in the event of a divorce or death of one spouse, there should be an equal division of property acquired during marriage before the application of Islamic inheritance laws.<sup>215</sup>

The Moroccan case study provides insight contributing to several **recommendations for future reforms as well as for the global campaign**:

- **First**, prioritization must be given to passing clear laws that **transform the principle of equality into practical legally-binding solutions**, while anticipating tangential repercussions and putting into place the necessary pre-conditions. The lawyers, prosecutors, and judges can only interpret existing laws and the police can only enforce laws for which they have the authority to reinforce.
- **Second**, although indiscriminate legal codes are the necessary first step, this should be followed by **mechanisms** and **institutions** to implement and enforce the new codes. The women's associations and listening centers have modeled the appropriate response, protocols, and procedures VAW victims need to have their unique circumstances attended. These **best practices checklists and protocols** should be refined and adopted by state actors. Likewise, oversight mechanisms should monitor the judge's discretionary power and should promote progressive legal verdicts that incorporate Morocco's international treaty obligations.
- **Third**, the **ACF framework** provides valuable insight into the key distinctions between competing coalitions within the women's rights policy subfield as well as areas of possible compromise and collaboration. The Muslim feminist discourse pioneered by Moroccan feminist Fatima Mernissi places women in the valuable position of norm entrepreneurs, deconstructing patriarchal structures and institutions and reconstructing norms of equality and shared rights and responsibilities in a culturally sensitive manner that appeals to a broad cross-section of society.
- **Fourth**, this study and the use of ACF intends to discredit essentialist stereotypes and broaden the understanding of the elements making up Moroccan society. **First**, this study

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<sup>214</sup> A recent survey by the Moroccan High Commissariat au Plan (HCP) (2014) indicated that housework would equal 50% of the couple's revenue. (Personal interview with RCC member Nouzha Guessouss.)

<sup>215</sup> Personal interview with RCC member Nouzha Guessouss (Casablanca) January 2017.

will expand understandings of the **multiple feminisms** affecting the Moroccan women's movement and the status of women in Muslim-majority states more generally. The distinct variations in Islamic thought (between progressives and conservatives) are often lost in Western oversimplifications. **Second**, one fear in Western media over the rise of **political Islam** in newly democratizing Muslim-majority states has been the impact of that rise on women. This study contributes to international understanding of the additional constraints in pursuing progressive reforms in democratizing and authoritarian systems dominated by conservative, anti-feminist core beliefs. **Third**, this study identifies various *venues* in which **policy-oriented learning occurs within the women's rights policy subfield** and provides evidence of *framing* and *reframing* within and among competing coalitions as coalitions adopt new perspectives based on updated preferences, statistical analysis, and policy-oriented learning. **Fourth**, the taxonomy of core, policy core, and secondary belief systems coupled with policy-oriented learning provide an effective mechanism for identifying areas of potential **intra- and inter-coalition compromise and convergence**.

- **Finally**, the inclusion of **anti-feminist** (conservative Islamic) and **post-feminist** (youth social justice) perspectives in the Moroccan case study is intentional and represents a cross-section of the major stakeholders in the women's right policy subfield. These inclusions contribute an **intersectional approach** in that social justice and gender equality should be interlinked as feminists must include the largely disenfranchised youth or risk losing them to less progressive, but perhaps more inclusive ideological bents.

## Appendix A: Personal Interviews

### Morocco:

ICWAD President Dr. Fatima Sadiqi (Fez) March 2012  
ICWAD Treasurer Dr. Souad Slouai (Meknes) June 28, 2013  
Amnesty International/Morocco (Rabat) July 4, 2013  
UAF President/Tetouan (Tetouan) July 8, 2013  
Human Rights Lawyer Najat Chentouf (Tangier) July 8, 2013  
AMDF Secretary General (Headquarters Casablanca) July 10, 2013  
al-Hidn Leaders and members (Headquarters Casablanca) July 10, 2013  
ADFM Treasurer (ADFM Headquarters Rabat) July 11, 2013  
Mobilising for Rights Associates (Rabat) September 23, 2016  
ADFM Family Law (Rabat) September 26, 2016  
LDDF Rabat Section President (Rabat) September 29, 2016  
Forum Azzahrae pour la Femme Marocaine October 5, 2016  
Law professor at Mohamed V School of Law who focuses on family law and the nationality code October 5, 2016  
La Voix de la Femme Amazighe de la Femme Amazighe (Rabat) October 7, 2016  
Femme Action (Rabat) October 7, 2016  
Nejma Center(Rabat) October 10, 2016  
Association Droits et Justice (Casablanca) October 11, 2016  
LDDH Centre d'Ecoute (Casablanca) October 11, 2016  
LDDH Centre d'Haberegement Tilila Director (El Jadida) October 11, 2016  
Association Amal Pour la Femme et le Developpement (El Hajeb) October 12, 2016  
Association Tafiil Al Moubadarat Amal (Taza) October 13, 2016  
VAW victim "Khadija" (a pseudonym) (Taza) October 13, 2016  
VAW victim "Aisha" (a pseudonum) (Taza) October 13, 2016  
Association Initiatives pour la Protection des Droits des Femmes (IPDF) (Fez) October 14, 2016  
National Human Rights Council (CNDH) (Rabat) October 17, 2016  
Moroccan Association of Human Rights (AMDH) Youth Council and leader of February 20<sup>th</sup> Movement (Rabat) October 18, 2016  
Moroccan Association of Human Rights (AMDH) (Rabat) October 19, 2016  
Solidarite Feminine (Casablanca) January 9, 2017  
Member of the 2004 RCC Nouzha Guessous (Casablanca) January 19, 2017

## Appendix B: Legal Terminology in Arabic and French

**Qiwamah:** a man's responsibility to take care of his wife, mother, sisters

**Wilayah:** legal guardian

**Nikah:** marriage

**fatiha/urfi:** unregistered marriages

**Muta'<sub>a</sub>:** a temporary marriage for a fixed period after which the woman receives compensation

**Muta':** consolation – a comfort provided to someone who has suffered

**Mahr/dot:** dowry – the marriage gift a husband gives to the wife as an expression of his desire to marry her (Article 26 of 2004 Moudawana)

**Sadaq:** woman receives at the marriage

**Shawar:** woman brings to the marriage

**Nafaqa:** maintenance during marriage and for a time following the divorce – a wife's right and a husband's obligation

**Talaaq:** Divorce

**Shiqaq:** irreconcilable difference divorce

**Khul':** divorce in exchange for compensation

**'iddah or 'iddat:** waiting period after the death of a spouse or divorce during which the wife may not remarry in order to identify paternity. This is an indemnity (security or protection against a loss or other financial burden)

**Child custody:** *la guard<sub>f</sub> or hadaanat<sub>a</sub>*

**Legal guardian:** *le tutelle<sub>f</sub> or wali*

**Child Support:** *pension<sub>f</sub>*

**Alimony:** *pension<sub>f</sub> or nafaqat<sub>a</sub>*

**Family Court:**

**Court of First Instance:**

**Court of Notaries:**

**Prosecutor-General:** *Al-naib al-'amm*

## **Appendix C: Acronyms Used in this Case Study**

### **Moroccan and relevant Tunisian Acronyms:**

ADFM: Democratic Association of Moroccan Women  
AMDF: Moroccan Association of Women's Rights  
UAF: Union of Feminist Action  
LDDF: Democratic League of Women's Rights  
PJD: moderate Islamic Justice and Development Party  
USFP: Socialist Union of Popular Forces  
PPS: Party of Progress and Socialism  
ATFD: the Tunisian Association of Democratic Women  
CNDH: National Human Rights Council

### **UN and International Organization Acronyms:**

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women  
ICCPR: International Convention on Civil and Political Rights  
ICESCR: International Convention on Economic, Social, and Cultural Rights  
CRC: Convention on the Rights of the Child  
CAT: Convention Against Torture  
GBV: Gender-based violence  
VAW: violence against women  
WHO: World Health Organization

## Appendix D: Major Family Law Initiatives

	1993/ 2004	Legal Loopholes/Court of Cassation Rulings	Feminist Prescriptions	Patriarchal Culture/Conservative; Religious Inter.	VAW
<b>Consent to Marry</b>	Requires wife's consent to marry				Women could be legally married against their will.
<b>Father can compel daughter to marry</b>	Abolishes father's right to compel daughter to marry				Father's could legally force their daughters to marry
<b>Repudiation</b>	Repudiation authorized by judge				A husband could unilaterally divorce his wife
<b>Wife required Obedience to Husband (taa')</b>	Eliminate principle of obedience to husband; instead, joint and equal responsibility for family based on mutual respect and partnership		Progressive Muslim feminist interpretations might emphasize that a man is being directed to go into HIS field (versus some else's field) or point out the seriousness with which men go to their fields, in order to PRODUCE as emphasizing the child and seriousness of production.	Taa' (a wife's total obedience to her husband was seen as a religious duty) based on Surah 2: 223: "So go to your tilth when or how you will."	Disobedience justifies domestic violence
<b>Wilayat (marital guardianship)</b>	<b>Article 23-25:</b> women can contract marriage on their own		The doula (court notary) often refuses to marry a woman without a family member.	A woman who marries without her family is a girl of the streets; Provides protection in the event the marriage sours.	Women were perpetual minors requiring permission of a male relative to marry
<b>Minimum Marriage Age</b>	<b>Article 19:</b> Raised minimum age of marriage to 18 for both men and women	<b>Article 20:</b> Judges discretionary power to allow underage marriage  <b>Article 16</b> Judge can register underage or polygamous marriage post-facto	Some feminists assert that 18 should be an absolute minimum age of marriage, but others believe 16-18 should be the absolute. The 5-year extension should be to regularize the new law and allow <i>fatiha</i> marriages to be registered. Feminist condition: Absolute minimum age should be 16, so exceptions occur between 16-18 <b>CRC 28:</b> Compulsory education – high school	Religious conservatives dichotomize minimum age of marriage: honor and protection vs. debauchery and single motherhood  Legal protection for women and children: rights, papers, name, paternity.  Marriage by 16: the desire to protect the family honor and fear of extramarital sexual relations and unwanted pregnancy  There is nothing in the <i>Qur'an</i> or	Underage marriage is gendered and increasing, child brides are more prone to domestic violence (IPDF)

				<i>hadith</i> that stipulates a minimum age of marriage (Dalil 2005: 34)	
<b>Qiwama: men are superior to women and must maintain them.</b> <b>Qiwama informs the concepts of men as head of family, a wife's obedience (taa'), legal representative, nafaqa, inheritance inequality</b>	<b>Article 194-196, 199:</b> husband required to pay <i>sadaq</i> (dowry) and then <i>nafaqa</i> (maintenance) in exchange for sexual access to wife		Maintenance of the family should be shared, women help support the family, but to make them equally responsible other laws conditions need to be put in place Women and men support their families: 23% of women work outside the home; 18% are women-headed households Women's housework should be considered a contribution Co-legal representation Property acquired during marriage divided first complementary gender roles envisions women as part of a whole	<b>Surah 4:34:</b> "Men have authority over women because Allah has made the one superior to/responsible for the other, and because they spend their wealth (to maintain them)."  Husbands are responsible for maintaining their wives and children	Informs women's systematic subjugation  Anti-feminists see it as a protection, but <i>qiwama</i> disadvantages women in the distribution of family resources, education and jobs.
<b>A woman's right to keep her earnings</b>	In reality working women contribute to the household; homework and child rearing is not always considered a contribution		Feminists acknowledge women's contribution both inside and outside the home	Complementary gender roles: the man as provider and the woman's place is in the home taking care of the family. Some women save their money in the event of divorce or death of the spouse	
<b>Polygamy</b>	<b>1993:</b> Requires prior knowledge of wife and potential wife before 2 <sup>nd</sup> marriage; authorized by judge <b>2004:</b> <b>Article 40-46</b> Restrictions on	<b>Article 16:</b> Allows the registration of a polygamous marriage post-facto  <b>Decision Nr. 331 of 23 June 2015, related to case</b>	Feminists view polygamy as the ultimate inequality.  If a woman has only daughters, her husband can take a second wife to attempt to have sons as his	<b>Surah 4:3</b> "[M]arry two, three or four women as you see fit, however if you cannot be equitable, take only one woman... You cannot treat all your wives equally, even if you wish to	The fear of a husband taking a second wife is very real.

	polygamy, allowing it only with conditions: a. exceptional reason, b. adequate funds	<b>2015/1/2/276:</b> A man has a right to a son	brothers are in line before his wife and daughters to inherit.	do so.” Conservatives see polygamy as a legal marriage that provides wives and children legal protection and justify it as a man’s right based on Legal protection for women and children: rights, papers, name, paternity.  PJD, MUR, and ORCF polygamy is not about sexual satisfaction, it is about providing for widows and orphans, a social safety net	
<b>Property acquired during marriage</b>	<b>Article 49:</b> women can sign separate contract to stipulate handling of property acquired during marriage  <b>Article 67 of the Code of Immeublement:</b> Women do not register property, apartments, or houses in their name	Less than 1% sign a property agreement (Zvan-Elliott 2015: 126-127)	Most women do not sign this “prenuptial” agreement and in the event of divorce, have no legal claims to the house and furnishings that are often only in the husband’s name  Women’s work in the home and with children should be valued as labor	The man is still seen as the head of household and often the house, apartment, and furnishings are registered in the husband’s name.	In the event of divorce, women have no legal rights to shared property.  When the court decides the division of property, often women have little evidence and the court does not acknowledge women’s unpaid labor
<b>Patrimony and Inheritance</b>	<b>Article 51:</b> wives and husbands can inherit from each other  <b>Wassiya Wajiba:</b> Maternal grandchildren can inherit like paternal grandchildren			<b>Rule of Taasib:</b> girls deprived of 1/3 to 1/2 of patrimony of parents if they have no brothers, in favor of uncles and cousins. <b>Surah 4:11:</b> delineating the division of inheritance <b>Surah 4:5</b> “Give not unto the foolish (what is in) your (keeping of their) wealth, which Allah hath given you to maintain.” Women do not take their share in order to have a place to return in event of divorce	If a man has only daughters, and dies his brother may inherit his house and leave his wife and daughters destitute
<b>Eviction from marital home</b>	<b>Article 53:</b> prosecutor returns woman to home		The marital home should go to the custodial parent		Physical and sexual violence; Economic violence due to lack of housing

<b>Filiation: Maternity vs. Paternity</b> <b>Single Mother Stigma; Paternal Impunity</b>	<b>Article 146, 148:</b> maternal and paternal filiation differ based on child's "legitimacy"; <b>Article 156:</b> if there is evidence of an engagement ( <i>fatiha</i> marriage), judge can rule there is a marriage or paternity		<b>CRC Article 2(2):</b> protect child regardless of legal status of parents <b>CRC Article 18:</b> both parents responsible for education and upbringing of child  Single mothers are stigmatized and disowned	<b>Hadith:</b> "The illegitimate child will never make a legitimate marriage," so he will treat her like a prostitute and refuses to take a paternity test based on the hadith (IPDF)	<b>Article 490</b> criminalizes extramarital relations – so babies not born in hospitals <b>Article 453</b> criminalizes abortion – abortions not performed in hospitals See Tunisian example
<b>Divorce (1 of 6 Moroccan marriages)</b>	<b>1993:</b> repudiation Only khul': pay for divorce, maybe even give up children  <b>2004: Article 94-97: <i>shiqaq</i>:</b> irreconcilable differences divorce, do not have to pay, do not lose children	<b>No compensation (muta') if wife initiates divorce (CNDH, Nejma)</b>	Women should not lose muta' if they initiate the divorce. The required 3 reconciliation sessions should be eliminated if there is evidence of domestic violence Women are not economically autonomous, nearly 2/3 do not work outside the home		With the khul' divorce, women could not afford to pay for a divorce or risk losing their children so they stayed in abusive relationships
<b>Child custody (hadana)</b>	<b>1993 1<sup>st</sup> position</b> mother; <b>2<sup>nd</sup> position</b> switched from maternal grandmother to father <b>2004: Article 171-175</b> Goes automatically to the mother until age 15; but mother can lose custody if she remarries	<b>Article 175: Women do not remarry for fear of losing custody of their children</b>		Women are largely the preferred parent as they are deemed more caring and compassionate with young children. Hadith: "[The mother] ha[s] more right to [the child] as long as [she] do[es] not re-marry."	Article 175 Custodial mother can lose custody if she remarries, whereas fathers do remarry without consequences
<b>Legal Guardianship (tutelle)</b>	<b>Article 236:</b> Awarded to the father. In 2013 the Moroccan parliament revised the legal guardianship article to allow the mother guardianship of her children if the father is dead, incapacitated, in prison. (Ouhida)		Feminist believe that this should be shared, unless the father has a history of violence.		Custodial mothers can not register their children for school, get them a passport or VISA
<b>Child Support</b>	<b>Articles 168,</b>		Husbands who do	One of the first	This is not a

(pension alimentaire)	190, 202		not pay child support should lose custodial tutelage.	amendments feminists proposed to the 2004 Family Law was a state fund for divorced and abandoned women as well as those who do not receive child support from their husbands. On January 1, 2011, state established the Family Solidarity Fund which provides 350 MDHs/month (\$34.45month) for each child up to 3 children or 1,050 MDH/\$103.35/month total	problem if the father is a civil servant, but if he works in the private sector he underreports his earnings. The court does not hold him accountable, the wife must show evidence of his earnings, which is challenging with privacy laws The state Solidarity of the Family Fund: 350 MDH/month/child up to 3 children
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**Appendix E: Major Moroccan Penal Code Initiatives**

Issue – Articles concerned	Patriarchal Cultural Norms	Conservative Religious Interpretation	Feminist Prescription/Human Rights Norms/Progressive Religious Interpretations	Types of VAW
<p><b>Domestic Violence</b></p> <p>Article 404 regarding aggravated assault was revised by Law 24-03, adding “assault by a spouse,” to encapsulate domestic violence.</p>	<p>At a societal level family matters are seen as a private affair and not the responsibility of the state. Men have to educate women and that they have to be violent, whereas women are expected to be patient (Forum Zahrae) Cultural taboo to discuss Domestic violence has to do with patriarchal structures and power differentials: Victim blaming (UAF) Non-interference in “family” matters Stay for the children, this always happens (Tafii) Virilocal custom leaves women isolated (IPDF) Turning to the police is not Moroccan custom, families cover up violence (Ouhida) “discipline” warranted No law, so police urge reconciliation</p>	<p><b>Surah 4:34:</b> the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part you fear disloyalty and ill conduct, admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, seek not against them means (of annoyance) for Allah is Most High, Great (above you all).”</p> <p>Do not break up the family, patience Be patient, forgive Private life is private A man’s right in Islam Women’s nature, immutable, charitable status</p>	<p>A form of torture (CAT Articles 1, 2, 4, 7, 12, 13, 14); Article 22 of 2011 Constitution – private actor Muslim feminists deconstruct women’s 2<sup>nd</sup> class status, submission and patience to reconstruct women’s empowerment Follow the Sunnah, Muhammad’s examples: Did he beat his wives Some see this abuse of power and that the husband should be punished for abusing the power differential Woman-centered solution Not nature, but nurture, a construct A woman’s right to bodily integrity Expel abuser from home No mediation in domestic violence cases Issue civil protection orders and expulsion order Increase penalties for domestic violence Develop Procedural Checklist for VAW care and case handling No Drop policy for domestic violence: Lower high burden of proof: 21-days incapacitation &amp; 2 eye witnesses Allow police to Intervene immediately in domestic violence cases Penalties for even minor infractions Increase penalties for recidivism Criminal offense &amp; Human rights violation</p>	<p>Physical Sexual Financial Emotional Psychological Verbal abuse Economic dependence Due to virilocal tradition – violence may be at the hand of mother-in-law, sister-in-law or other family members Twice victimized: The judicial system places the burden of proof (21-days incapacitation certificate from hospital and 2 eye-witnesses) on victim. Victim goes to court of First Instance for letter from Prosecutor for Police to launch an investigation. NO temporary restraining orders. If victim drops charges, case is dismissed (Nejma)</p>
<p><b>Definition of Rape Article 486</b></p>		<p>Women provoke men with what they wear and how they act (Zaki)</p>	<p>Should be expanded to include oral and anal sex Should include foreign objects as well as body parts other than the penis Should eliminate the concept of force in rape (WTO)</p>	<p>Sexual and physical violence Due to the narrow legal definition many acts that constitute rape are not considered rape The high burden of proof to prove rape makes women hesitant to report rape</p>
<p><b>Conjugal Rape Article 487</b></p>	<p>Cultural practices venerating female virginity, the intact hymen, and the violence surrounding defloration on the wedding night promote nothing short of conjugal rape.</p>	<p><b>Surah 2:223:</b> Your wives are for you a <i>tilth</i> (a place to sow seeds); come to your tilth (place of cultivation) however you wish and put forth [righteousness] for yourselves. Fear Allah and know that you will meet him” principle of <i>taa’</i> (a wife’s absolute obedience to her husband).</p>	<p>Feminists believe conjugal rape should be a criminal offense. Unless it is explicitly criminalized, it can not be punished.</p> <p>In El Jadida case feminist claim husband was found guilty of conjugal rape but only with an expanded definition of rape. In reality, the husband was found guilty of forcing his wife to have anal sex in front of their children, which is not considered rape, but was prosecuted under a different article.</p>	<p>Sexual and physical violence</p>
<p><b>Sexual Harassment Article 503-1 and 2004 Labor Code Article 40</b></p>		<p>Victim blaming and the right of the harasser to pursue defamation charges prevents reporting</p>	<p>To prove the sexual harassment a text in the Code of Criminal Procedures is necessary that outlines how to prove sexual harassment, so if a complaint of sexual harassment is taken to the Public Prosecutor nothing will come of it because there is no evidence. For this reason, the Spring of Dignity Coalition that is</p>	<p>Psychological, physical, sexual, and economic</p>

			working on the Penal Code and the Code of Criminal Procedure is calling for a framework law to address these inconsistencies in the legal text (Chentouf)	
<b>Extramarital sexual relations Article 490</b>	Only sexual relations within a marriage are legitimate; Men should be sexually experienced and women's virginity is highly prized	Comes from religion (Chentouf)	Sexual relations between two consenting adults is a private matter	Women are disproportionately vulnerable to repercussions from extramarital relations: out-of-wedlock pregnancies, abortions, single parenthood
<b>Article 453:</b> Abortion is illegal unless the mother's health is in danger This article was amended to allow an abortion in cases of incest, rape, and malformation of the fetus on June 9, 2016		<b>Surah 17:31</b> warns believers in general: "Kill not your children for fear of want. We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin."	A woman has a right to control her own body  Muslim feminists argue that the fetus is not a child, but a fetus.	Women do not get abortions in a hospital and often not from a trained professional and may suffer from medical complications with dire consequences
<b>Impunity for rape of minor Article 475:</b>  Paragraph 2 was abolished on January 22, 2014	The priority of family honor over the rights of the child	The loss of virginity of a female family member outside of wedlock, even due to rape, represents a blight on the family's honor	The rape of a minor is a criminal offense and should be prosecuted accordingly.  The rights of an individual to justice are prioritized higher than the honor of a family; the loss of virginity even in rape cases is often blamed on the victim.	Loss of virginity, even due to rape, may mean abandonment by family The victim is blamed because of what she wore, her behavior, or where she was
<b>Harboring a married woman (Article 496)</b> was a criminal offense The Moroccan parliament amended this article in August 2013	Husbands had authority over their wives.	<b>Surah 4:34:</b> "Men have authority over women because Allah has made the one superior to/responsible for the other, and because they spend their wealth (to maintain them)."	Feminists noted that a wife's obedience to her husband was removed from the 2004 Family Law to contest this law. Domestic violence centers also argued that fear of prosecution prevented them from helping married VAW victims flee their abusers.	Leaves women without families without recourse but to return to abuser
<b>Impunity</b>	Khadija Souidi was raped and tortured by 8 men in Ben Guerir, north of Marrakech. She reported the rape and named the perpetrators, who were quickly arrested, but later released and threatened to put pictures of her rape and torture, (which they filmed on their phones), on the internet. She set herself on fire on 30 July 2016 and died later at the hospital. This case launched the debate about the impunity of aggressors in Morocco.	The prejudice of the judge and the notion that "she deserved what happened to her" because "the girl is allowed to go out and wear those clothes" so you can't blame the eight men who raped her (CNDH)	The Spring of Dignity Coalition, with AMDH, and Don't Touch My Child also took up Khadija's case The prosecutor reopened the investigation in August 2016; an appeal trial began on August 29 against 9 persons charged with blackmail, exploitation, threats to a minor, and duty to rescue, with the 9 <sup>th</sup> man involved in the blackmail video after the rape One attacker has been sentenced to 20 years, the maximum sentence	Perpetuates VAW by implying state acceptance

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## **Key International, Regional, and National Conventions and Codes**

Convention on Civil and Political Rights (CCPR)  
Convention on Economic, Social, and Cultural Rights (CESCR)  
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)  
    General Recommendation Nr. 12  
    General Recommendation Nr. 19  
    General Recommendation Nr. 21  
    General Recommendation Nr. 31  
    General Recommendation Nr. 33  
Convention on the Rights of the Child (CRC)  
Convention Against Torture (CAT)

Cairo Declaration on Human Rights in Islam. 1990  
Vienna Declaration 1993  
Beijing Declaration and Platform for Action 1995

Collectif 95 Maghreb-Egality. (1995). 100 Measures.  
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2003 Penal Code/Code of Criminal Procedures  
2004 Family Law  
2007 Nationality Code  
2011 Constitution  
2011 High Commissariat for Planning  
VAW bill 103.13  
Human Trafficking Law 27.14

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