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"Gender Reform in Contemporary Morocco"

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Recent social developments have pointed at Morocco as a focus of attention for its daring gender initiatives. President George W. Bush has personally welcomed these "*important reforms of the family status which will generate progress in the right of women*" **(1).** President Jacques Chirac of France also greeted this "*considerable evolution towards democracy which conveys the will of the kingdom of Morocco to move ahead towards a of due process of law and of equal rights between men and women within the respect of religious and cultural traditions of the kingdom*" **(2).** The 'Washington Post' underlined the originalities of the new 'Moudouana' and observed that the new measures "*could serve as an example for other third world countries*" **(3).** For its part, the British daily newspaper, the 'Guardian' stressed the possible "*contribution of the new amendments to the improvement of the situation of women in Morocco*" **(4).** For a conservative MENA region monarchy, the event is quite significant and is worth exploring, in its peculiarities.

The Kingdom of Morocco is located in North Africa. Its geographically diversified landscape (mountains, deserts and fertile plains) is about twice the size of California. Its population of 30 million inhabitants is mainly made of Muslim Arabs and Berbers, peacefully living, for many centuries, with minorities of Jews and Christians. This land of peace and tolerance, and also of conservatism and moderation, has grown to firmly adopt the "Sunni Madhab" as conveyed, since the 8th century, by the Malekite School of Thought. The introduction of this rite in Morocco by Darras Ibn Ismail El Fassi, in the 9th century, found in the newly built "Al Qaraouine" mosque (867 a.c.) [Founded by a woman patron, 'Fatima Al Fihrya'], an ideal cradle for the development and expansion of the teachings of Islam, as based on the "Coran" and "Sunna" (and basically, on the teachings of the Imam of Medine, Malik Ibnou Anass Ibnou Amer

El Asbahi, who had compiled all the relevant and authentic "Hadiths" of the Prophet, in his book "Al Moattaa"). Malekism, thus, ever served as a factor of religious and legal unity. It was increasingly bound to become more deeply rooted within the local traditions and religious understandings within its interpretation of Islam. All prevailing schools and "Medersas" of the region were to further perpetuate such a trend. All legal stipulations ever since, including those which accompanied the modernizing trends of the French Protectorate, have expressly referred to this rite. After the independence of the country in 1956, some enacted laws expressly refer to the "Malekite" rite within their stipulations **(5)**. In 1962, Morocco adopted its first Constitution, which has been modified four times ever since. The presently prevailing one has been approved by popular referendum in 1996.

Under the stipulations of the present Constitution "*All Moroccans shall be equal before the law*" (Article 5); yet, article 6 of the same Constitution stipulates that "*Islam shall be the State religion*", which necessarily implies that all enacted legislation needs to abide by the rulings of the religion. Furthermore, article 8 of the Constitution stipulates that "*Men and women shall enjoy equal political rights*". Would that be interpretable as meaning that in areas other than politics, such equality of treatment would not be guaranteed? The Constitution brings partial answers to the question: "*Opportunities for national employment and public offices shall be uniformly open to all citizens*" (Article 12); "*All citizens shall have equal rights in seeking education and employment*" (Article 13); "*The right of strike shall be guaranteed*" (Article 14); "*The right of private property and free enterprise shall be guaranteed*" (Article 15); What about the other fields of social life that might imply reminiscences of gender inequality?

Various recent reports on the questions have neither been complimentary nor laudatory. Even though the preamble of the Moroccan Constitution stipulates that Morocco "…*reaffirms its determination to abide by the universally recognized human rights*", this Arabo-Islamic country has pretty much been reproached with its expressed reserves to some of the articles of the 1981 "*Convention on the Elimination of Discrimination Against Women*", which it ratified in 1993 **(6)**.

On another scale, registered statistics during the last four decades have not been very flattering either: "*Female adult illiteracy rate reaches about 67% (89% in rural areas), compared with 41% for men. Rural women perform most difficult physical labor. Girls are much less likely to be sent to school than the boys, especially in rural areas where demand on girls' time for household chores often prevent school attendance*"**(7)**.

Despite this gloomy vision, perceptible breakthroughs have been registered at different levels. Seats in Parliament which are now held by women in Morocco reach 6.1% (while the equivalent rates in the rest of the Arab and Islamic MENA region countries are: 11.5% in Tunisia, 10.4% in Syria, 6.3% in Bahrain, 6.0% in Algeria, 4.4% in Turkey, 4.1% in Iran, 2.4% in Egypt, 2.3% in Lebanon, 0.7% in Yemen and 0% in Koweit, Saudi Arabia and the UAE. Israel's rate is 15%) **(8)**. Women have received the right to vote and to stand for elected offices in Morocco since 1960, long before countries like Algeria (1962), Iran (1963), Sudan and Libya (1964), Yemen (1967) Bahrain (1973), Jordan (1974) and … Switzerland (1971) **(9)**.

Yet, initial Moroccan figures were very meager: only 14 women candidates run for seats at the 1960 communal elections, on a total number of candidates reaching 17174, while, in the 1963 legislative elections, only 3 women candidates run for office **(10)**. Presently, more opportunities are offered and more women are seeking public office. Professionally, women have

conquered vast areas, acquired diversified skills and embraced challenging professions **(11)**; they have also been extremely successful in leadership positions, particularly in the business sector.

One might then wonder about what was so reproachable in the previous legal status that generated such multiple complaints?

I. The Previously Prevailing Status:

Up to the independence of Morocco in 1956, gender and family status for Muslim Moroccans was fundamentally based on the 'Malekite Fiqh' references, as applied by the 'Charia' Jurisdictions, while the Moroccan Jewish families depended upon 'Hebraic' family status as applied by Moroccan 'Hebraic' Tribunals. It was, and has been, evidently accepted that different statuses were applicable to different nationals from different confessions, mainly that article 3 of the Moroccan Code of nationality of September 6th, 1958 clearly stipulates that "*the law on family status and heritage specific to Moroccan Muslims is applicable to all nationals except the Moroccans of Jewish confession who depend on the Moroccan Hebraic family law*".

Thus, for the Muslim community, the Moroccan newly enacted legislation after independence, pulled mostly from the traditional "Malekite" rite **(12)** in elaborating the regulations of the family status. Beyond the general spirit presiding over the elaboration of the whole document, three articles of the "Moudouana" (articles 82, 172 and 216) were similarly formulated in terms openly referring to the "Malekite" rite: "*All cases that are not solved by the present code, will be settled by reference to the most authentically prevailing (Arrajii) or the most constantly used (Al machhour) opinion and tradition of the Malekite rite*". Article 297 is also formulated in relatively similar terms: "*For all situations not provided for by the present code, it imparts to refer to the most pertinent or best known opinion or to the most recurrent tradition within the Malekite rite*" (Arrajii Oua Al Machhour). The peculiarity of the Imam Malik's approach is that, beyond his primary reference to the "Book", the "Sunna" and the "Ijmaa" (Consensus), he also refers to the "tradition of the people of Medine" (Amale Ahle Al Madina) as a complementary source for the teachings of his rite. For this purpose, he would observe the daily attitude and behavior of the people of Medine as close contemporary neighbors of the Prophet, and draw pertinent teachings from his observations. In choosing this approach, he was evidently opposed by other key theologians such as the Imams Chafai, Ghazali and Ibnou Hazm. But even though, his school of thought made its way and prevailed all over Islamic Andalusia (mostly within the school of Cordoba) and in the Muslim Maghreb (mostly in Fes). It is within the context of this Malekite heritage that was set up, in August 1957, a committee of Islamic Scholars called upon to draw a draft of 'Family Law'.

As for the Moroccan Hebraic family status legislation, it remained basically traditional, customary and non-codified. It is solely based on theological interpretation of the "Thorah" and on the "Talmudic" 'Mishna' set forth in the 3rd century by Rabi Juda Hadushen. Over the centuries, "*Rabbis adapted religious texts without touching the dogmas*" **(13)**. Writings and 'Ijtihads' of Moroccan Rabbis set the basic reference for Moroccan modern tribunals which always include a 'Hebraic' judge in charge of settling family disputes (if any) among the members of the Moroccan Jewish community. "*It is the Grand Rabbi of Morocco who is in charge of the application of the 'Family Status' of the Moroccan Jewish community. The fundamental treaty which regulates life of the Jews is called 'the Halaka' (which means 'the March' in Hebrew), a way to behave, to live in family and in the community*" **(13)**.

Concerning the already existing Moroccan "Moudouana" [as modified in September 1993] **(14)**, some of its main rulings regarding the gender issue are mostly related to marriage, divorce and succession in heritage: Marriage was thus defined as a legal contract which aims at founding a family "***under the care of the husband***" (article 1). It cannot, however, be formed without ***"the formal agreement of the bride"*** who also needs to sign the document of marriage (article 5, #1). Yet, ***the marriage contract needs to be agreed upon for her by a "wali"*** [a sort of tutor] (article 5, #2), who must be a male relative [son, father, brother, grand father, etc…] (article 11). In certain circumstances, ***"the judge may act on her behalf"*** instead of a possible abusively opposing "wali" (articles 9 & 13). The ***"matrimonial age for the woman is 15"***, while, for the man, it is 18 (article 8). Yet, article 9 stipulates that this age can still be lowered with the agreement of the "wali" or by decision of justice. Regarding polygamy, the existing "Moudouana" acknowledges its acceptance in absolute terms. Article 30 specifies, however, that the first spouse must be notified of the intentions of her husband to marry a second wife. The new bride must also be informed of the existence of the first wife. "***Charia" then allows up to four wives***. The wife may, however, according to the stipulations of articles 30 and 31, request that her husband takes the written engagement, in the contract of marriage, not to marry any other wife and to also acknowledge his acceptance of the dissolution of his first marriage if he ever violates this engagement. In all cases, the judge may be solicited to pronounce the refusal of polygamy (article 30, #4). As for conjugal relationships, they are based on reciprocal rights and obligations of both spouses, and most particularly, for the wife, on **"*an obligation of fidelity and obedience*"**, while there are no such mentions for the husband towards his wife. Furthermore, under the stipulations of the existing "Moudouana", ***only the husband can normally decide the repudiation***. It can be written, verbal or in the case of a dumb illiterate husband "*by non equivocal signs or gestures*" (article 46). The wife can, however, also request that the judge pronounces the divorce under certain circumstances defined by articles 53 to 59 (attatliq) or chose to follow a procedure of divorce by mutual consent, based on a material compensation, provided for by articles 61 to 65 (khol'). As for the rules of succession, they are precisely defined between the categories of "fardh inheritors" and "assaba inheritors" by articles 217 to 297 of the presently prevailing "Moudouana", on the bases of the "Coranic" verses "…….".

Despite some relative progress registered by the partial 1993 reform, pressures were kept by feminist associations, civil society and other national and foreign public spheres. They ineluctably led the present revision proposal.

II. The Introduced Reforms:

It stems from a resolute royal will to bring about significant changes in an awkwardly conservative social setting. Behind the king, it is apparent that large fringes of the Moroccan society are effectively backing this initiative. The final outcome of the Parliamentary debate has led to a unanimous vote of approval of the proposed bill. Yet, most important of all, the success of the whole operation remains tributary of the performances of the judiciary system.

On the procedural point of view, it may be worth pointing out that, among the three projects of "Moudouanas" that Morocco has known since its independence, this is the first one that has been brought to the floor of Parliament. The reason is quite simple. In 1957, there was still neither a Constitution nor a Parliament. In 1993, Morocco had just adopted, by referendum, a new Constitution in 1992 (the 4th one) and was in the process of installing the constitutional institutions. And according to the stipulations of article 101 of that Constitution "*until the installation of the*

House of representatives, all legislative measures necessary for the implementation of constitutional institutions, for the functioning of public services and for the conduct of State affairs, shall be taken by the king". So, the 1993 reform of the "Moudouana" was adopted directly by a royal "Dahir". But, under present circumstances, the king has deemed that this competency falls within the areas of attribution of the Parliament, on the basis of the stipulations of article 46 of the Constitution. It must be noted, however, that by doing so, the king seems to be accepting some sort of Parliamentary competency on affairs linked with "Faith", which normally fall with his sole sphere of attributions as "The Commander of the faithful" (Amir Al Mouminine), in accordance with the stipulations of article 19 of the Constitution. In his inaugural speech before the Parliament, he himself addressed this issue: "*Although the 1957 Family Law was drawn up before the Parliament was established, and was subsequently amended by Dahir in 1993, during a constitutional transition period, I have made a decision for the proposed Family Law to be submitted to Parliament, for the first time, in view of its implications with respect to civil law. As for the provisions of a religious nature, they fall within the competence of Amir Al Muminin. I expect you to rise to this historic occasion and be worthy of the responsibilities assigned to you, not only by respecting the sacred nature of the proposed texts, which were prepared with due account being taken of the aims of our tolerant religion, but also when you adopt new legislation. These provisions should not be regarded as flawless, nor should they be perceived from a fanatic angle. Instead, you should address them with realism and clear-sightedness, keeping in mind that this is an "Ijtihad" effort which is suitable for Morocco at this point in time, in its endeavors to achieve the development objective it is pursuing, in a wise, gradual and determined manner*" **(15).**

He then outlined the main proposals which are submitted to Parliamentary debate. They globally deal with family life. Yet, seven of them may directly be linked with the gender issue and might, rightfully, be considered as daring breakthroughs. These are:

- Setting the minimum ***age for marriage*** at 18 years for both men and women; the judge may, however, lower the age of marriage in certain justifiable cases (article 19);
- Making husband and wife jointly responsible for the family (article 4); they both acquire ***equal authority in the family***;
- Entitling the woman ***the right of guardianship*** that she independently exercises according to her choice and interest (article 24); she then chooses her "wali", who may be her father or one of her relatives;
- Assuring the guarantee of ***reciprocal rights of both spouses***, instead of the previous one sided obligation of obedience and fidelity (article 51);
- Giving women new ***rights to assets acquired during marriage*** (article 49); regarding this issue of management by husband and wife, of the property acquired during marriage, and while confirming the principle of separate estate for each of them, the couple may agree, in a document other than the marriage contract, on how to manage and invest the assets acquired jointly during marriage; in case of disagreement, they shall resort to the judge who shall base his assessment on general regulations of proof to determine the contribution of each of the spouses in fructifying the family assets;
- ***Restricting polygamy*** in terms that make it almost impossible to achieve (articles 40 to 46); polygamy shall therefore not be allowed unless some legal conditions are met. In order for the judge to allow a second marriage of a requesting individual, the applicant

must demonstrate its necessity and ascertain his capacity to treat his second wife and her children on an equal footing with the first, and that he will provide the same living conditions for all. Then the process may start with a confrontation of the initial partners within the tribunal; this phase may lead either to a refusal of the request by the judge or to a permission to go ahead with the second marriage, or, if the initial wife wishes so, to a divorce. If the new marriage is permitted, it will not be contracted until the new bride is officially informed of the husband's initial marriage. In some cases, polygamy might not even be considered if the two initial partners had contractually agreed not to allow it within their marriage. In that case, the wife would have imposed a condition in the marriage contract whereby her husband will refrain from taking a second wife.

- Making ***divorce*** a prerogative that can be exercised as much by the husband as by the wife, in accordance with legal conditions set for each party, and under judicial supervision (articles 78 to 120); thus, the husband's right to resort to repudiation shall be limited by specific restrictions and conditions designed to avoid misuse of this right; For this purpose, mechanisms for reconciliation and mediation, through the family and the judge, shall be strengthened. The divorcing husband will have to seek the permission of a tribunal (article 79); the woman may also avail herself of this prerogative by using the right of option (tatleek); whatever the case, and before the divorce is authorized, it shall be ascertained that the divorced woman gets all the rights to which she is entitled; divorce cannot be duly registered until all monies owed to the wife and children have been paid in full by the husband.

In order for these reforms to be equitably implemented, and given the important role of the judge in the newly established procedures, there needs to be an important reshuffling of the judiciary apparatus. Will it prove to be up to this new challenge? The king himself has expressed concern about this issue and set forth an upgrading mechanism for this purpose **(16).**

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(1) - Message addressed by President Georges W. Bush to King Mohammed VI, congratulating him for the new 'Moudouana' initiative reform, http://www.map.co.ma , October 24, 2003.
(2) - Press Conference held by President Jacques Chirac, Rabat, October 11, 2003.
(3) - The Washington Post, October 16, 2003.
(4) - The Guardian, October 13, 2003.
(5) - Ref. articles 82, 172, 216 & 297, commented in page 5 of this paper.
(6) - Report of the 626 & 627 Meetings of the Committee on Elimination of Discrimination Against women, UN, July, 15, 2003, Press Release WOM/1413.
(7) - "Gender Sensitivity in Society: Morocco", in AFROL Gender profiles, www.afrol.com .
(8) - Source: Human Development Report, 2003, www.undp.org/hdr2003 .
(9) - Idem.
(10) - Nadira Barkallil, "The Role of the State in the Evolution of the Gender Systems in Morocco", presentation at the International Colloquium on "Gender, Population and Development in Africa", Abidjan, July 2001, p. 10.

(11) - Hassan Rahmouni, “Changes in the Contributive Function of Women to Development Through the Learning of Non Traditional Jobs”, in Femmes Partagees, directed by Fatima Mernissi, Editions Le Fennec, Casablanca, 1988.

(12) - A few authors have also explored legislative paths where Moroccan law has referred to pertinent teachings of other rites (mostly ‘Chafii’) whenever genuinely original solutions to some situations were commended by them. Ref. Mohamed Al Kachbour “….” (Code of Personal status), New Annajah Press, Casablanca, 1994; Abboud Rachid Abboud “Al Ahwal Ashakhsyia: Kawaid wa Shourouh” (Personal status: rules and explanations), Arrachad Library, Beirut, 1965; Ahmed Khamlichi “Attailik ala Kanoune Al Ahwal Ashakhsyia” (Commentary on the Code of Personal Status), Part I, Al Maarif Library, Casablanca, 1987.

(13) - Albert Sasson, Jewish Moroccan Member Consultative Council of Human Rights & President of the Council of the Jewish Community in Morocco, in “The New Family Code Will Influence the Evolution of Family Status of the Moroccan Jewish Community”, Interview with the MAP Press Agency, Rabat, October 17, 2003.

(14) - Ref. “Moudouanate Al Ahwale Ashakhsyia”, French and Arabic edition, Dar Annachr Al Maarifa, Rabat, 1999.

(15) - Maghreb Arab Press News Agency (http://www.map.co.ma), Speech delivered by His Majesty King Mohammed VI at the opening session of the Parliament Fall Session, October 10, 2003.

(16) - Written order of king Mohamed VI to the justice minister to set up facilities for family justice in Moroccan Courts, Maghreb Arab Press Agency (http://www.map.co.ma) .