

FEMINISM IN MOROCCO: BETWEEN THE LOCAL AND THE GLOBAL

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- *An assessment of the work of NGOs to defend women's rights in relation to the Family Code* •

ABSTRACT

*In her 2005 book *Les Islamistes Marocains le défi au monarchie (Moroccan Islamists and the Challenges to the Monarchy)* (Paris: Éditions La Découverte, 2005), the Tunisian writer Malika Zeghal argues that the question of the Moroccan nation has been - for more than a century - formulated in relation to Islam. She argues however, that now a supplementary question has been added - that of the representation and the political participation of the individual citizen. This newly created space for citizenship has, at least in part, been initiated by Moroccan feminists' claims for women's rights and the secularisation of the Family Code, a collection of laws regularising family relationships including marriage, divorce, custody and inheritance. In this paper I will describe the notion of equal rights, which were codified by the 2004 amended Family Code and put forward by two of the leading women's non-governmental organisations (NGOs) in Morocco - L'union de l'action féminine and the Association démocratique des femmes du Maroc. I will note the challenges to the Code's implementation, especially in rural areas, and discuss an alternative ideology of gender justice, which predates the 2004 Family Code.*

KEYWORDS

Morocco | NGOs | Feminism | Family Code | CEDAW

1 • Feminism in Morocco

Since the emergence of the first women's NGOs during the late 1980's, the 1957 Family Code has been the focus of their activism. Militant feminism's *raison d'être* has been to struggle against sexism in the 1957 Family Code in which women are perceived to be reduced to a uniform and subordinate status. Under the 1957 Code, the traditional "model" of man and woman is embodied; marital relationships are fixed in a judicial framework, which Moroccan feminists qualify as "insensitive to social evolutions and the emergence of women's socio-economic agency."¹ (interview with Latifa Djebabdi) From this perspective, feminism in Morocco gained its legitimacy from the existence of the law.² However, this legitimacy has resulted in a feminist legal discourse that reduces the diversity of women's conditions. By arguing for the rights of Moroccan women, Moroccan feminists replicate the official discourse's reductionist view of a homogenised group of women, neglecting disparities among women from rural and urban areas as well as from different classes.

King Mohammed VI announced a draft Family Code at the opening of parliament in autumn 2003. This draft code, adopted by parliament in January 2004, was a major amendment of the 1957 Family Code, known in Arabic as *Mudowana* or *Code de statut personnel* in French. Although it equalised men's and women's status in Morocco it is important to note that it impacts women in different ways.³ Instead of the previous law's definition of the family in terms of "a union for procreation under the leadership of the husband", the 2004 defines the family in terms of a partnership between two equal citizens. The system of tutelage was removed and women can, according to the new law, sign their marriage contract without a need for a male tutor or representative. Women can also have access to judicial divorce. According to the previous law, only men could start divorce procedures.⁴

While describing types of feminisms in Morocco, Rahma Bourquia – the Moroccan sociologist and one of the three female members of the Royal Commission behind the 2004 Family Code – states that because militant feminism operates in sites where the struggle for power occurs, it is limited by the impact of a few feminist activists who subsequently gain power. According to Bourquia, although militant feminism represents a voice of protest, it is quickly pulled into the realm of power either because it denounces one power only to establish another, or because it is founded on the same conceptual categories of a socially "masculinised" discourse, where women and men are defined according to a set of binaries. By building on these binaries, political feminism claims for the woman what the man has, i.e. a new identity constructed on the patriarchal model.⁵ The paradox of this type of feminism is that it, too, is patriarchal. It claims for women a status within identification but not difference. The debate on sameness and difference obscures the fact that it maintains a male model as the reference. In both sameness and difference women are determined in relation to the male, who is assumed to be the standard and the norm. So equality would mean a correspondence to the standard, and difference would be the negation of this correspondence, both of which maintain the preexistence of a model. Bourquia points out however, that despite its limitations, this feminism has contributed

to the visibility of gender issues in the country.⁶ To illustrate this paradox, the following section discusses two examples of how the change to the Family Code – led by Moroccan feminist NGOs – does not necessarily translate into gender equality.

2 • Toward a revised Family Code

On 7 March 1992, *L'Union de l'Action Féminine* (UAF or Union of Women's Action) launched a one million-signature petition to revise the Family Code.⁷ The UAF's main objectives were

*to make women responsible in the same way men are once they achieve the age of majority; to codify the rights and obligations of spouses as equal [and] to give women the same right as men to their children.*⁸

Although arguing for equality, UAF's text equates individuality with masculinity while at the same time suggesting that sameness is the basis of equality. From this perspective, UAF argues that the dissolution of the notion of the man as head of the household is based not only on women's equal financial responsibility but also on her eventual exclusive responsibility for *nafaqua* (financial support of the family).⁹

Yet, despite its paradoxes, UAF's petition has succeeded in unraveling and removing the debate on women's rights from a closed circle of conservative theologians to public debates in the national and international media. In Morocco, the feminisation of politics and the politicisation of feminism reached its culmination in March 2000 when, for the first time in the history of contemporary the country, thousands marched in the streets of the country's two biggest cities to either support or protest against the elevation of women's status. The *denouement* of the crisis came with the king's intervention and the amendment of the Family Code in October 2003 and its subsequent parliamentary ratification in January 2004.

In 2000, the *Association Démocratique des Femmes du Maroc* (ADFM or the Association of Democratic Women of Morocco) undertook a fieldwork study in which male and female factory workers were interviewed about sexual harassment in the workplace. The study shows that the majority of the female factory workers based their definitions of sexual harassment on religious precepts.¹⁰ The study points out that, while talking about their experience of sexual harassment in the workplace, the women did not raise the issue of violence despite the fact that the Convention on the Elimination of Discrimination against Women (CEDAW) considers sexual harassment a type of violence against women. Furthermore, neither the men nor the women referred to the Moroccan penal code while talking about sexual harassment, even though article 483 of the Penal Code – *atteinte à la pudeur* (attack against public morality) – can be applied to an act of sexual harassment.¹¹ This shows the weak impact of these legal texts on a population's view of justice. The meaning of rights

for those interviewed does not emanate from identifiable rights, indicating the difficulty for an organisation to base its representation of women's rights merely on advocacy for international conventions and how women are represented in legal texts.

However, ADFM's development as an advocacy NGO was mainly determined by its position with regard to gender equality as it is determined by the "universal standards" to which the Moroccan legal system does not fully adhere. Such a position is reflected by the reports it presents that call attention to the non-conformity of the legal modifications of the Moroccan legal system with the U.N. ideal:

Despite the reforms in recent years for the elevation of women's legal status the evaluation of Moroccan legislation with regard to CEDAW concludes negatively. It is, in fact, no longer possible that Moroccan women's conditions remain unequal to the egalitarian U.N. ideal as well as to Moroccan women's expectations of gender equality.¹²

Equating women's expectations and the U.N. ideal of non-discrimination suggests the primacy of the U.N. principle and the non-existence of any local institution supporting egalitarianism. Moreover, the report endorses an essential contradiction of a misogynist Moroccan *shari'a* law (Muslim canonical texts based on the interpretation of the scripture as well as the Prophet's recorded sayings) named *loi interne* (internal law) and the egalitarian feminist international principle. The report's critique rests on the constitutional silence on the superiority of the international law and its consequent primacy over the *loi interne* (internal law) "which is considered to be a source of discrimination against women."¹³

By maintaining the dichotomy between *loi interne* and *loi externe*, ADFM's stand endorses the external neutral, apolitical, and singular meaning of equality. ADFM's discourse seems to maintain the dichotomisation of women's rights through confining the issue merely to non-conformity with the U.N. principle of gender equality. This disregards the centrality of theological discourse on women's rights issues within the context of a Muslim majority country, which will be discussed in the following section.

3 • Islam and feminism

The theological discourse, according to Abdullah Anaim, should be seriously considered and dealt with rather than simply rejected as misogynist or backward. Engaging critically with the theological discourse on women's human rights can be more adequately addressed through contesting the foundations of a monolithic view on gender in connection to Muslim canonical texts. Anaim further notes that by examining the historical and political contexts for the construction of *shari'a*, advocacy of women's human rights can play an important role in setting up the principles that promote

women's rights in the normative construction of law.¹⁴ However, Anaim concludes that the task of endorsing women's rights within the Muslim context is met with the difficult reconciliation between women's rights as a universal value and *shari'a*. The latter, according to Anaim, not only maintains conventional gender distinctions but also discriminates against women. Anaim, points out that challenging *shari'a* from a feminist perspective should be distinguished from challenging Islam in general since *shari'a* is a human interpretation of Islam shaped by specific historical and political impacts.¹⁵

Nevertheless, upholding the confusion between *fiqh* (jurisprudence) and *shari'a* that both have to be reconciled with universal egalitarian standards, only serves to either reproduce the same canon upon which essentialist, orthodox views are put forward, or confirms assumptions about an emancipatory universal standard as opposed to an interpretation of Muslim canonical texts as being oppressive. For this reason, challenging gender injustice from within *shari'a* should not be merely grounded on the existence of universal standards of gender equality. It can also result from a critical inquiry from within the canons, which define *shari'a* as essentially misogynist.

In her groundbreaking book *Le Harem Politique*,¹⁶ Fatima Mernissi undertakes a feminist inquiry into religious literature, particularly focusing on misogynist texts. Mernissi's point of departure is to unravel the religious scholars' exclusive access to the scripture. This explains the dominance of a uni-dimensional misogynist perspective in terms of the mediation between the scripture and its interpretation and its rewriting into legal norms. This, indeed, leaves the space free for the political manipulation of the texts. Mernissi notes that this manipulation has become a structural characteristic of maintaining power in Muslim societies.¹⁷

Mernissi's act is not a simple reading; it is an interrogation of the religious literature from a feminist perspective. She asks "[c]an we simply read a text where the political and the sacred join each other to the extent that they become indistinguishable?"¹⁸ Mernissi's act of reading is *un voyage dans le temps* (a journey in time)¹⁹ where the past is not analysed as a refuge or a myth, but read through the lens of present conditions. Reading the past from the present perspective is, for Mernissi, the only way out of the new imperialism's hegemony, which is furthering its reign through the global economy.

Given the ambiguity of the sacred texts on issues related to gender, the interference of an authoritative reading between the scripture and the legal text makes interpretation an area of dispute. Interpretation is an inevitable act in the transfer of meaning from the sources of Islamic law, namely the *Qur'an* and the *Hadith*, since statements related to women and the family are open to different readings. The question remains, what determines the right of interpretation? Whose interpretations prevail and why?

Reading the interpretation of the scripture in specific historical and political contexts reveals that the exclusive and authoritative reading of the text is only one among

many possible readings. Such a reading also reveals that the presence of a gender-discriminating perspective on the one hand and the oppression of a feminist outlook on the other, are not determined by an essentially misogynist Islam. Misogyny is rather a perspective from which interpretation is produced.

4 • Islam and the 2004 Family Code

As a legal text in which gender policy is founded on “religious evidence” labelled in terms of the “Muslim identity” of the state, the Moroccan Family Code inextricably links the legal status of women and men to the religious foundations of political power. The disparity between the 1957 and 2004 Family Code is a case in point; both texts are the principle source in which “Moroccan Muslim identity” is articulated. While the 1957 Code was created in order to put forward and maintain the anti-colonial post-independent newly established nation state, the 2004 Code is part of the national agenda for the promotion of a “Modern Moroccan and moderate Islam” that was officially set up in the aftermath of the 2003 Casablanca attacks.

While declaring the amendment of the Family Code at the opening of the parliament in autumn 2003, King Mohamed VI stated that:

*It is necessary to be mindful of the tolerant aim of Islam, which advocates human dignity, equality and harmonious relations, and also relies on the cohesiveness of the Malikite rite and on Ijtihad.*²⁰

Based on the egalitarian spirit of the *Qur'an* and *sunna*, the king used the royal prerogative of the Commander of the Believers to break with some of the male legal privileges such as male guardianship over women (*wilaya*) and repudiation and unilateral rights for divorce. This lay the ground for a shift in the state’s definition of the family. The 1957 Family Code defined the family as a union for procreation under the leadership of the husband with a determination of gender roles in terms of the authoritative purveyor husband and the obedient domestic worker wife. The 2004 Code, in contrast, defines the family in term of a partnership between two equal modern Muslim citizens. These amendments reflect the level of leverage of feminists on the evolution of the legal status of Moroccan women, but also the absence of feminists’ theological perspective in the reform.

Islam or Islamic identity as represented by some conservative religious scholarship is still set up in a contrasting dualism even with the feminists’ claims. Women’s individual rights are often dualistically opposed to the values of Muslim family based on complementarity of roles and sexual hierarchical difference. This construction of women’s rights as equivalent to abandoning local Muslim cultures and espousing a supposedly inherently-egalitarian Western culture is countered by the feminists who offered a universal and singular model for gender equality. For example, in 1994 ADFM, and the “95 collective for Equality”,

a Maghreb collective, elaborated a model for an egalitarian Family Code, which partly influenced the 2004 Family Code. It included the universality of women's rights, which does not abide by religious, gender or ethnic differences. Consequently, it suggested increasing the marriage age of women so as to be equal to that of men (18 years), the abolition of guardianship, unilateral rights of divorce and that *nafaqa* (alimony) become a duty for both men and women. For both ADFM and UAF, the dissolution of gender inequality from the legal system in general and the Family Code in particular is based on equality as sameness. Women's rights, in this case, means women's "access to what men already have access to" without challenging the system that produces inequality.²¹

Citing Joan Scott's critique of French feminism, Talal Asad argues that a secular egalitarian position might create paradoxical situations:

*Post-suffrage feminism was constructed in the space of a paradox: there was the declared sameness of women and men under the sign of citizenship (or the abstract individual), and there was the exclusionary masculinity of the individual subject. On the one side was the presumed equality that followed from the legally guaranteed possession of universal rights; on the other was the inequality that followed from the presumed natural facts of sexual difference.*²²

For Moroccan feminists the taken for granted equality is universal and presumably secular. This is illustrated by the Moroccan women's organisation statement assessing the achievements of the Beijing Conference:

*The fourth global conference in Beijing constituted a success towards women's legal equality since it confirmed these two principles, universality and equality. The achievement of the universality equality agenda will bring respect for Moroccan women as human beings and as citizens.*²³

This presumed universalist notion of equality keeps women's perspectives of justice, democracy and policy-making within predetermined and abstract universal standards of gender equality while reducing the complexity of gender to legal equality between the sexes. This constrains women's varying subject positions and complex ways of negotiating with differing levels of power relationships to a singular "woman" or a homogeneous group of women undergoing subordination. The notions of man and woman as having diverse meanings and diverse rights are very often obscured by a singular definition of the rights of Moroccan "women" as advocated by feminists. In this sense, in the name of gender equality, feminists are endorsing the same homogenising thesis that was at the origin of the codification of the 1957 Code. The post independent nationalisation policy and the advent of the first 1957 Family Code led to the abolition of *kad wa siaya*, a local *sharia*-based right for women, which valued women's labour in the field and at home, granting housewives

and rural women working in agriculture the right to half of the property accumulated during the marriage. This concept was traditionally advocated by rural theologians such as Ibn Ardoun in 16th century and which was strongly rejected by the urban theologians of Fez. This had been a *sharia*-based notion of gender justice developed by Moroccan *fiqh* (jurisprudence) in Berber villages, particularly in the Sous region.

5 • The 2004 Family Code in practice

This right is also denied to women by article 49 of the 2004 Family Code. Rather, the 2004 Code, which is largely inspired by the French prenuptial agreement that is based on the assumption of woman as a modern contract-making detached autonomous citizen with a salary in a formal economy, and which requires a formal prenuptial agreement to be entered into in order that the woman's right to the property accumulated during the marriage is protected. This understanding of a single meaning of equality premised on non-existent conditions such as individualism, autonomy, access to education, state institutions and the formal economy reduces the impact of the egalitarian intention of the 2004 Family Code.

A recent ethnographic study, undertaken by the sociology department at Ibn Tofail University in Kenitra, in the rural Gharb (western) region, shows that women filing divorce cases or seeking alimony rarely see a lawyer, either because they do not see the point of doing so, or because it is too expensive and is not worth the small alimony which does not go beyond US\$ 30 per month for each child. Article 49 of the 2004 Code provides an option for the couple to enter into a prenuptial agreement on the basis of a contractual property framework, separate to the marriage contract, with the agreement being subject to civil law. This is, however, not possible for most couples since most rural marriages are arranged between the husband and wife's families. Out of 400 marriages in the Gharb region not one couple signed a prenuptial agreement. Furthermore, the same research shows that women working in the informal economy have no way to take part in a prenuptial contract because of the lack of legal evidence of employment. The other significant information provided by this research is that none of the interviewed women knew about the 2004 Family Code.

6 • Conclusion

The importance of the achievement of feminist activism in Morocco should not be dismissed, nor should the positive symbolic and substantial change of the reform for middle class urban educated women. However, the limitations of the reforms for rural women raises the questions of how can we best create effective interventions on behalf of women's rights? And how can the debate on women's rights be more respectful of alternative notions and practices of gender justice embraced by different segments of the population rather than simply reflecting identity blocs such as Maliki Islam or secular universal feminism upon which the rules of legislation or policy making are currently based?

NOTES

- 1 • Author's interview with Latifa Djebabdi in 2003.
- 2 • Rahma Bourqia, *Femmes et fécondité* (Casablanca: Afrique Orient, 1996), 11.
- 3 • Women negotiate their life conditions according to their socioeconomic status. Concerning the question of divorce for instance, poor women usually have issues of alimony procedures (*Nafaqua*), while the rich ones pay for their divorce (*khul'*); education is also an other factor in addition to socioeconomic status determined by either class or residence, e.g. rural versus urban; 1994 national statistics reveal that 78.1 per cent of girls in urban areas were schooled compared to rural areas where the figure was 24.6 per cent.
- 4 • For more details, see an English translation of the Moroccan 2004 Family Code at <http://www.hrea.org/programs/gender-equality-and-womens-empowerment/moudawana/>.
- 5 • Bourqia, *Femmes*.
- 6 • Ibid., 13-14.
- 7 • The petition called for the codification of gender equality. As a part of the petition, an open letter by the L'Union de l'Action Féminine (UAF) developed its arguments and specified its claims including gender equality within the family, judicial divorce and women's right to start divorce procedures, the abolition of tutorship and polygamy. All these claims were said to be based on Maqussid sharia (the spirit of the Islamic canonical texts) and the international conventions including the CEDAW that Morocco had ratified.
- 8 • See UAF's petition for the 1993 Family Code reform.
- 9 • The 2004 amended Family Code places the family under the joint responsibility of the husband and the wife while the previous law codified men's leadership of the family.
- 10 • Association Démocratique des Femmes du Maroc (ADFM), *Le harcèlement sexuel au Maroc: Brisons le mur du silence, Étude sociologique et juridique*. (Casablanca: Le Fennec, 2000), 24-25. It is worth noting that he study also equates the use of religious references with low education and socioeconomic status noting that "[o]nly three women [out of how many?] with higher positions, gained through work experience and not through education, referred to religion in their definition of harassment."
- 11 • ADFM, *Le harcèlement*, 32-33. Author's own translation.
- 12 • Association Démocratique des Femmes du Maroc (ADFM), *Convention CEDAW rapport parallèle*, coordination Rabéa Naciri (Casablanca: ADFM, 2001), 54.
- 13 • Ibid., 116-117.
- 14 • Abdullahi An-Naim, "The Dichotomy Between Religious and Secular Discourse in Islamic Societies," in *Faith and Freedom, Women's rights in the Muslim World*, ed. Mahnaz Afkhami (London: Syracuse University Press, 1995), 57.
- 15 • An-Naim, "The Dichotomy", 59.
- 16 • After its 1987 publication, this book was condemned and censored and a death fatwa was pronounced against its author (Fatima Mernissi, *Le Harem politique: Le Prophète et les femmes* (Paris: Albin Michel, 1987).
- 17 • Mernissi, *Le Harem*, 16.
- 18 • Ibid., 81.
- 19 • Ibid., 24.
- 20 • Mohamed VI, in a speech to Parliament on October 10, 2003, excerpts in English available at <http://www.memri.org/report/en/print991.htm>, accessed November 30, 2016. *Malikite* is a school of Sunni Islam named after the 8th century Sunni Scholar Malik Iben Anas.
- 21 • Catherine Mackinnon, "Difference and Dominance: On Sex Discrimination," in *Feminism and Politics*, ed. Anne Philips (Oxford and New York: Oxford University Press, 1998), 295-313.
- 22 • Talal Asad, "French Secularism and the 'Islamic Veil Affair,'" *The Hedgehog Review* (Spring

& Summer 2006): 93-106, accessed November 30, 2011, <http://www.iasc-culture.org/THR/archives/AfterSecularization/8.12IASad.pdf>.

23 • Association Démocratique des Femmes du Maroc, Communication, April 1995, on file with the author.



SOUAD EDDOUADA – Morocco

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