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**Revision of the Family Code in Morocco:
does the polarization dominate again?**

Driss KSSIM

Doctor in public law from Sidi Mohammed ben Abdellah University Fes.

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Revision of the Family Code in Morocco: does the polarization dominate again?

Abstract:

This article addresses the reform of the Family Code in Morocco. It argues that it remains one of the most contentious terrains of polarization between Islamists and Secularists/Modernists in Morocco. To demonstrate that, the article pinpoints the evolution of the historical reform: from the Personal Status Code of 1957 to the Moudawna of 2004. The last was the real first confrontation between the two sides and creates a division which its influence was extended to the street. Since then, the employment of ideological and identity references has become critical for all positions of both parties. The proposed reform of the Family Code revived the polarized climate of 1999, especially in light of the relative decline of the political and social influence of the Islamic movements.

Keywords: Family Code, Polarization, Reform, Islamic reference.



Revision of the Family Code in Morocco: does the polarization dominate again?

Introduction:

On the 26 of last September, King Mohamed VI has instructed the Head of Government Aziz Akhannouch to ensure the revision of Morocco's family code. Before that, in a speech to the nation on the occasion of the 23rd anniversary of Throne Day, the Monarch called for a reform of the family code, in order to overcome the restrictions that had prevented its best application. The first amendment of this code was in 1993, and after ten years, it was revised in February 2004 by the Parliament and promulgated by King Mohammed VI on 10 October 2004. The latter reform was accompanied by a deep and sharp divide between two factions: conservative led by Islamists movements advocating the supremacy of Islamic reference, and secularist faction defending women's rights as recognized in international conventions.

In fact, the current debate about the Family Code, revived the ideological and cultural differences over the approach and reference that should be adopted, especially that this time, inheritance law as it is applied in Sharia, is under the demands of revision. Furthermore, it seems that the political context intervenes and indirectly affects this debate. The Party of Justice and Development, as an Islamic pole defending the supremacy of Islamic reference, is in a state of political isolation after its resounding defeat in the September 8, 2021 elections, while no clear attitudes emanating from the rest of the Islamic faction.

What this paper will focus on subsequently, is the current state of debate concerning the Family Code. I start with a historical summary of calls for reform, from 1958s Personal Status Code (PSC), to the family law reform authorized by the late King Hassan II in 1993. Then, I discuss the 1999s



Revision of the Family Code in Morocco: does the polarization dominate again?

Plan for the Integration of Women in Development, as a radical reform of the PSC, and as a first real confrontation between Islamists and secularists. Finally, I treat rationales and contexts related to the expected reform, and various signs of a new phase of polarization.

Methodology

For this purpose, our study will be based on a historical reading. The importance of this approach lies in providing a global view of the evolution of this issue and its transformations throughout Moroccan modern history. In addition, the analytical method opens the way for shedding light on the different attitudes of the parties concerned and involved in family and women's affairs. Also, the subject and the core of the study impose an interpretive approach that explains the polarization, the political debate and the ideological conflict about the family code and its proposed reform.



Revision of the Family Code in Morocco: does the polarization dominate again?

Family Code in Morocco: Historical overview

The PSC which was codified after the independence of Morocco in 1956 was the first legal regulation of family affairs. In 1957 the late King Mohamed V created a committee headed by the political leader Allal El Fassi, charged to draw up a religious code of family and inheritance matters. This PSC was finished in 1958 with 297 articles¹. The end of the Cold War in the early 1990s has had a critical impact on the promotion of human rights in general, and gender equality in particular. Elliott argues that "the end of the Cold War intensified calls for democratization... it becomes clear that the autocratic regime of King Hassan II would not survive without addressing and changing its quasi-democratic and quasi-pluralistic political system, and allowing the political arena to become more inclusive rather than exclusive"². This context has encouraged feminist emancipatory association like Union of Women's Action to lead a signature campaign in 1992, with aims to collect a million signatures in order to exert pressures on the regime to reform the PSC. In spite of the popular aspect of the initiative, the reform declared by King Hassan II was limited, and the demands of women's association went largely unmet. Two main reasons explain the unwillingness of the regime at the time to adopt a deep reform. The first one is the "advanced" demands of women's association and their secular character. They had advocated the occidental model of women's rights, which doesn't comply with the Islamic rules. In Morocco, liberalism is

¹ Yolanda Aixelà Cabré, "The Mudawwana and Koranic Law from a Gender Perspective. The Substantial Changes in the Moroccan Family Code of 2004", *Language and Intercultural Communication*, Issue 2, Volume 7, (2007): 133-143. 136.

² Katja Zvan Elliott, "Reforming the Moroccan Personal Status Code: A Revolution for Whom?", *Mediterranean Politics*, Vol. 14, No. 2, (2009): 231-227. 214.



Revision of the Family Code in Morocco: does the polarization dominate again?

accepted at the economic level, but not at the societal level, especially around certain social issues like gender. In fact, despite the openness and the ability to debate sensitive religious questions like: secularism, liberties, abortion... the structure and the culture of Moroccan society is inherently biased to Islamic values. This poses a real challenge to the liberal demands of women's association. The second is related to the regional context. The Moroccan regime was worried about the rise of political Islam in neighboring Algeria. The "women's campaign" has coincided with the turmoil in Algeria after the military coup and the cancellation of election results, which were swept by the Islamic Salvation Front (FIS). King Hassan II was aware of the danger of giving Moroccan Islamists, sympathetic to their Algerian "brothers", an opportunity to accuse the regime of bias towards the liberal discourse on women's issues. So, the modification was insubstantial, and was aimed at silencing the two sides: feminist emancipatory association³, and the Islamist front. It's an aspect of strategy of equilibrium and balance of power, which remains one of the main characteristics of the Moroccan regime.

The reform of 2004: the first real confrontation

In 1999, the political landscape in Morocco is opened to a new phase. At the first time in modern history of the kingdom, the leftists led a coalition and formed a government called "alternance". The King asked the leader of the USFP (Socialist Union of Popular Forces), which remained in the opposition for forty years, to form the new government in 1998, and the party accepted. The idea

³ Ibid.



Revision of the Family Code in Morocco: does the polarization dominate again?

and the opportunity of a vast reform gained momentum, and led to the socialist-led government's proposal in 1999 of the Plan for the Integration of Women in Development, which included the Family Code reforms⁴. Obviously, the new reform contains the most advanced amendments of the old Personal Status Code: responsibility for the family and household management, restriction of polygamy, concluding marriage without male guardian permission, raising the minimum age of marriage for girls to 18, giving women recourse to more channels for divorce...

Islamists and conservative forces; especially Justice and Development Party and Justice and Charity Organization (Al Adl wa'l Ihssan); saw this reform as an alignment to a secular approach of women's issues, they accused the government of westernizing the Personal Status Code, and transforming it a tool for secularizing society as a whole, they saw it as an effort sponsored by the World Bank and the West. The other front, composed of women's association such as UAF (Union of Women Action) and ADFM (Democratic Association of Moroccan Women), considered the reform a moment of realizing the modernist democratic project that will be building the "modernist democratic project". Consequently, the rivalry has moved to the "street". On March 2000, in reaction to the announcement of the Plan, and also in celebration of International Women's Day, some 50,000 to 100,000 people marched in Rabat. At the same time, Islamist

⁴ Janine A. Clark, Amy E. Young, "Islamism and Family Law Reform in Morocco and Jordan", *Mediterranean Politics*, Vol 13, No. 3, (2008): 333-352. 336.



Revision of the Family Code in Morocco: does the polarization dominate again?

groups organized a larger march against the Plan – estimates vary, but by most accounts it attracted 10 times the participants of the Rabat march, including many women⁵.

In fact, the difference between Islamic and secular fronts went beyond the debate about the family's code reform. For Islamic organizations, the Casablanca march - as an unprecedented manifestation of force, has been an opportunity to show their organizational strength, and their popular mass. It was evident, that this march is a step with more to follow. After the success of the popular mobilization, Islamists felt that they had become a powerful, political and social force. Instead, the liberal and secular front considered Islamists an " obscurantist minority"⁶, and that Morocco's natural cultural affiliation, is liberal and modernist. In their point of view, the Islamic attitudes towards the reform plan put the "national dialogue" in danger⁷, they accused the conservatives of using religion in politics and the un-Moroccaness of their intellectual thesis. In reality, these mutual accusations had opened a door for a period of permanent conflict between the both factions, which has manifested in several issues: relation between politics and religion, individual freedom, language, identity, relation with monarchy, the attitude towards democracy and rights... Consequently, differences and contradictions between Islamists and secularists had become structural. Although both sides adopted a discourse of accepting diversity, pluralism,

⁵ Ibid.

⁶ Léon Buskens, "Recent debates on family law reform in Morocco: Islamic law as politics in an emerging public sphere", *Islamic Law and Society*, 10(1): 70-131. 101.

⁷ Ibid.



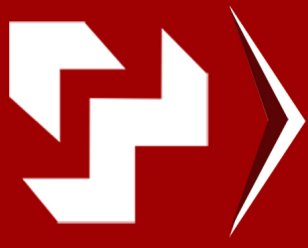
Revision of the Family Code in Morocco: does the polarization dominate again?

dialogue, accepting the other and difference, tension and polarization have always marked their relationship, and even physical violence still sometimes affects it, like what happened in April 2014, when a student belonging to Attjdid Attolabi (Student renewal) an organization close to the Islamists, was killed by left-wing extremists students in Sidi Mohamed Ben Abdellah University. But despite this mutual mistrust and suspicion, the cultural and ideological co-existence still guarantees a real societal peace. But the question is: could the new proposed reform of Family Code open a new confrontation between Islamists and secularists?

Proposed reform of the Family Code: return to polarization

The last call of Moroccan King Mohamed 6 to reform the family code in July 2022, has "captured" by feminist associations and human rights organizations. In reaction to the royal call, the first demand was the amendment of the inheritance system in order to equality of men and women. Morocco's Association of Moroccan Women for Research and Development carried out a survey in partnership with the National Council for Human Rights, showing that around 34% of Moroccans are calling to reform the [inheritance](#) laws in Morocco⁸. Within the same context, A group of Moroccan women's organizations and women activists have formed a new initiative called "Women's Coordination for a Comprehensive Amendment of the Family Code" in order to carry

⁸ Safaa Kasraoui, "Moudawana: King Says All Decisions Should Comply With Islamic Law", *Morocco World News*, July 30 2022, accessed May 30, 2023, <https://shorturl.at/hAB08>.



Revision of the Family Code in Morocco: does the polarization dominate again?

out activities, studies and works for having a more equal and fair family code. The Coordination Committee also calls for the amendment of Article 342 to ensure gender equality for inheritance⁹. Instead, the Justice and Development Party was strongly criticized these calls. His General Secretary Abdelilah Benkirane considered these demands as a "danger to relations within the family, and to the legitimacy and holiness of the Coran", he cautioned that "these calls could open a door to extremism and unknown, and create a political problem"¹⁰. Furthermore, the PJD clashed with the National Human Rights Council (CNDH). Benkirane called this instance to "stop abusing the religious constants of the Moroccan people"¹¹.

For its part, the Movement for Unity and Reform (MUR), one of the largest Islamic movements in Morocco, called for "respecting the supremacy of the Sharia in any modification or revision of the Family Code"¹², and it formed an internal committee to keep pacing the public debate about it¹³.

These attitudes represent the first signs of potential conflict between secularists and Islamists about the Family Code, especially that the language employed in this debate is inspired from their

⁹ Hanane Harit, "Moroccan women demand amendment of family code", *JinHaAgency*, May 26, 2023, accessed Mai 30 2023, <https://shorturl.at/HINT8>.

¹⁰ عادل نجدي، "المغرب: سجل الإرث يشتعل"، *العربي الجديد*، 14 مارس 2023، تاريخ الزيارة 30 ماي 2023، <https://shorturl.at/fhilB>.

¹¹ Basma El Atti, "Benkirane's party clashes with Moroccan human rights council over inheritance law", *The New Arab*, 21 June 2023, accessed June 02, 2023, <https://shorturl.at/vzGR5>.

¹² "التوحيد والإصلاح" تطالب باحترام سمو الشريعة في مراجعة مدونة الأسرة وتستنكر استفزازات الشان بالجزائر"، *حركة التوحيد والإصلاح*، 21 يناير 2023، تاريخ الزيارة 02 يونيو، [https://shorturl.at/hwzDW\(2023](https://shorturl.at/hwzDW(2023).

¹³ "التوحيد والإصلاح" تشكل لجنة لمواكبة النقاش العمومي حول مراجعة مدونة الأسرة وتجدد إدانتها للتطبيع (بلاغ)"، *حركة التوحيد والإصلاح*، 21 يناير 2023، تاريخ الزيارة 04 يونيو 2023، <https://shorturl.at/jlql6>.



Revision of the Family Code in Morocco: does the polarization dominate again?

ideologies and political culture. The Organization of the Ittihadies Women (USFP Party), condemned statements by PJD, and described it "a mobilization and a cunning employment of the religious common". Similarly, Progress and Socialism Party (PPS), which Said Saadi one of its former leaders and ministers was the "godfather" of the Plan for the Integration of Women in Development in 1999; called to "adopting a constructive approach to the equality issue far from threatening, frightening, betraying, and accusations"¹⁴.

In fact, the reform of the Family Code still a "project", it has not yet entered into force, but it is clear that the both factions (Islamists and secularists) are in a real "preemptive battle", which calls identity, ideology, and also the political context. Islamists are clinging to the reference of religion in this reform. Primarily, they perceive the Modawana as a religious regulation of the family affairs. In struggle with secularists, they strengthen their position on the religious character of monarchy, especially, the famous declaration of King Mohamed VI in an October 2003 address to Parliament about the changes to the family code: " I can't in my capacity as commander of the faithful, permit what God has forbidden, nor forbid what the Almighty has allowed".

It is important to mention at this stage that the PJD and its religious arm (MUR), are the only Islamic "voices" who have involved in the debate about the Family Code. We can explain that by the following two points: First, the fact that PJD and MUR, along with the Justice and Charity Organization (JCO), formed the core of the opposition of the Plan for the Integration of Women in

¹⁴ عادل نجدي، مرجع سابق.



Revision of the Family Code in Morocco: does the polarization dominate again?

Development in 1999. This attitude towards the plan was a milestone moment in their relations, presence, ambitions, future... This plan created favorable conditions for the PJD to integrate into political life, and express his political positions et visions. Although the outputs of the sharp polarization around the 1999's Plan were not completely biased towards the Islamic front's thesis at the time, the political returns were important for the next two decades. Consequently, the defense of the religious approach of the Family matters in general, and the Family Code in particular, was contributing in the construction of the legitimacy of the Moroccan Islamic organizations. It is a major component in their identity, ideological/cultural definition, and discourse oriented to the public, especially, as it is inspired from unequivocal Quranic prescriptions (inheritance for instance). Second, it's clear that political considerations are present in the "new" debate about the Family Code, especially, if we bear in mind the bitter PJD's defeat in the elections of September 8, 2021. The Party is convinced that the current context isn't comparable to the that in which the 1999's Plan was presented. The possibility of transporting the debate to the street this time isn't appropriate for many considerations, and therefore, political benefits will not be similar. Thus, the approach of defending the Family Code is different. It seems that PJD is seeking this time the full support of the monarchy in two ways: first, it seeks to make the monarch on its side by disseminating a discourse that depicts the exact match between it and the monarch about the supremacy of Islamic reference, and that this choice, has become irreversible since the adoption of the Family Code in 2004. Furthermore, PJD considers that the reform of the Family Code is an



Revision of the Family Code in Morocco: does the polarization dominate again?

opportunity for the royal institution to anchor its religious legitimacy, and arbitral character¹⁵.

Second, from the point of view of the PJD, the political reading of the royal call to reform the Family Code, is strongly present, especially the emphasis on the prominent role of Sharia's purposes. After the tougher defeat of September 8, 2021 PJD returned to the narrative of its exclusion from the political life. It found in the King's emphasis on the centrality of the Islamic Reference, a kind of reassurance to the Islamists, that the electoral defeat, isn't an orientation or strategy to the exclusion.

These positions and readings prove the Islamist obsession, especially PJD party about the expected reform. Their concerns are manifested in two issues: the first is the predominance of the secular and modernist current, which strongly supports the supremacy of international charters and conventions. Their ideological choices and ideas may intersect –within certain circumstances or contexts- with official orientation. The second is the probability that the "Islamic voice" may be excluded and marginalized in the consultations of the Legal and Judicial Committee charged with preparing a draft of the new family code.

¹⁵ بلال التليدي، "المغرب: إصلاح مدونة الأسرة والشرعية الجديدة للحكم"، *القدس العربي*، 04 غشت 2022، تاريخ الزيارة 10 يونيو 2023،

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Revision of the Family Code in Morocco: does the polarization dominate again?

Summary

Since the 1990s, the debate about the family legislation and laws in Morocco, has transformed into question of references: Islamic inspired from Sharia rules, and secularist derived from the contents of human rights charters and international conventions. The 1999 Plan for the Integration of Women in Development was the first real confrontation between partisans of both references. Since then, it has become clear that, in Morocco, two projects are in a state of polarization and scramble, which affects all cultural, identity and religious issues, and even the political arena. This is evident in the discourse of the both sides: Secularists accuse Islamists of exploiting this debate for political purposes, instead, PJD party, as a pole advocating the Islamic reference, considers that its defeat in the elections of September 8, 2021 is employed to achieve two goals: isolating it politically, and passing some articles in the new Family Code that oppose the Islamic reference, such as equality in inheritance between man and women.

In sum, after two decades of the adoption of the Mudawana after a royal arbitration, the King's call to reform it, revived the debate, not only about limitations which have hindered its optimal implementation, but also, about the role of Islamic rules and laws. It's clear that the Islamic organizations, defending the Islamic reference, still consider its supremacy as a necessary condition for any reform of the Family Code.



Revision of the Family Code in Morocco: does the polarization dominate again?

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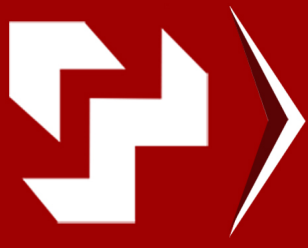
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Revision of the Family Code in Morocco: does the polarization dominate again?

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