

MOUDAWANA AND WOMEN'S RIGHTS IN MOROCCO: BALANCING NATIONAL AND INTERNATIONAL LAW

Leila Hanafi

I.	INTRODUCTION.....	515
II.	PRE-REFORM ERA OF FAMILY LAW IN MOROCCO.....	517
III.	ANALYSIS OF WOMEN'S' RIGHT TO ACCESS TO JUSTICE UNDER NATIONAL AND INTERNATIONAL LAW.....	518
	A. <i>2004 Moudawana and Other National Laws</i>	518
	B. <i>Constitutional Equality</i>	520
IV.	INTERNATIONAL LAW INSTRUMENTS	521
V.	REGIONAL CHARTERS	523
VI.	BARRIERS TO ACCESS TO JUSTICE FOR WOMEN IN MOROCCO: ANALYSIS OF DISCRIMINATION.....	524
	A. <i>The Notion of Access to Justice</i>	524
	B. <i>Cost of Discrimination: De Jure and De Facto Application of the Moudawana</i>	524
VII.	RECOMMENDATIONS AND CONCLUSIONS TO OVERCOME BARRIERS TO ACCESS TO JUSTICE FOR WOMEN	527
VIII.	INFORMAL JUSTICE REMEDIES IN RURAL MOROCCO	528
IX.	LEGAL PROCESSES	528
X.	TRANSFORMING THE ROLE OF THE LEGAL PROFESSION.....	529

I. INTRODUCTION

Morocco's 2004 *Moudawana* (family code) is undoubtedly a progressive piece of legislation for women in Morocco. Two aspects of the family law make it novel. First, it admits the principle of equality in marriage, and does this by redefining the notion of authority in the family within an Islamic framework. Secondly, the reforms were achieved after decades of Moroccan women's activism for better access to justice. These two features distinguish the 2004 Moroccan Family Code from its predecessors in Middle East and North African countries. Previous reforms either were not so comprehensive (as in Egypt and elsewhere) or they were granted from above (as in Tunisia), or accomplished by putting the Islamic framework aside (as in Turkey).¹

1. Ziba Mir-Hosseini, *Islam and Gender Justice*, in 5 VOICES OF ISLAM 85-113 (Vincent Cornell & Omid Safi eds., 2007).

This paper seeks to assess women's access to justice in Morocco through the lens of family law since the *Moudawana* was passed in 2004, as well as provide recommendations to increase women's benefits from it through improving the current mechanisms that provide access to justice to women. The paper examines whether some women experience access to justice differently than other women because of how the reforms are written and/or executed in practice, with a main objective focusing on discrepancies of women's access to justice between urban and rural areas where Berber indigenous populations are highly concentrated. The paper's legal framework will analyze national and international laws that apply to the right of women to access adequate and effective remedies related to family law since the 2004 reforms were passed, while also drawing comparisons to the past amendments of the *Moudawana*. This is, particularly, timely as Morocco reformed its Constitution in summer, 2011, and for the first time the new Constitution declares in its preamble the country's adherence to human rights as recognized universally, as well as recognizes the preeminence of international law over national legislation, as clearly laid out in Article 11 of the new text.²

The paper's legal framework is focused on international human rights law standards that apply to women's right to access justice through effective remedies as well under Morocco's national law, especially the *Moudawana*. In terms of analyzing international commitments, I will refer to notable international and regional instruments, namely the United Nations (U.N.) conventions on human rights: the two International Covenants on Civil and Political Rights (ICCPR), on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified respectively in 1979 and 1993. The *Moudawana* aspects that I will address in this paper are, mainly, related to: celebration of marriage and its dissolution (divorce) as these are the two key areas where reforms were introduced.

My paper is divided into four sections. Section I provides a historical overview of the pre-reform era of family law that existed in Morocco. Section II analyzes women's right of access to justice under national and international law instruments. Section III examines barriers to access to justice for women in Morocco, through the lens of discrimination. Section IV presents my key recommendations and conclusions to advance women's access to justice under the *Moudawana*.

2. See generally MOROCCO CONST., July 2011, ch. IV, art. 11 (stipulating that the primacy of the international conventions duly ratified by the Kingdom over domestic laws).

II. PRE-REFORM ERA OF FAMILY LAW IN MOROCCO

Before analyzing the 2004 *Moudawana*, the following section outlines a historical overview of the pre-reform of the family law that existed in Morocco. The selection of historical events is by no means extensive, but nonetheless, represents events that are deemed important to the understanding of how the current *Moudawana* surfaced to being.

The *Moudawana* is “a legal document that governs the rights and obligations of families in Morocco,”³ and “regulates the rights and duties pertaining to marriage, divorce, the custody of children, alimony and inheritance.”⁴ The *Moudawana* was modeled after the Tunisian family law code. However, it was much more conservative than the Tunisian family law code, and “followed the prescriptions of classical Maliki jurisprudence on most points.”⁵

The history of the calls for reform to the *Moudawana* stem back to the date of its codification. As early as 1965, the government recognized the “shortcomings in the family law, such as in its rules concerning marriage guardianship and maintenance,”⁶ and subsequently, established an official commission in attempt to find ways to amend family law. The first strong wave of calls for reforms occurred in 1982, although it was not until the 1990s that calls for reform became a heated debate.⁷

The 1993 reforms, however, were not substantial and did not diverge much from the classical Islamic *Maliki* tradition. Under the 1993 Moroccan personal status laws, the husband enjoyed a unilateral and unconditional right to divorce (repudiate) his wife. Men were granted sole right to repudiation, and the right to revoke the repudiation at will within three months. A husband could exercise repudiation three times and revoke it two times. If a wife is summoned to court and does not attend, and her husband insists on the repudiation, her presence is immaterial.⁸ Women, in

3. Jacqueline Powers, *Working Women: An Examination of Family Dynamics and the Law on Financial Maintenance in Morocco*, U.S. FULBRIGHT COMM’N, Dec. 14, 2009, at 18.

4. Katja Zvan Elliott, *Reforming the Moroccan Personal Status Code: A Revolution for Whom?* 14 MEDITERRANEAN POL. 213, 213 (2009).

5. Leon Buskens, *Recent Debates on Family Law Reform in Morocco: Islamic Law as Politics in an Emerging Public Sphere*, 10 ISLAMIC L. & SOCIETY 73, 73 (2003).

6. *Id.* at 77.

7. Telephone Interview by Leila Hanafi with Nadia Serhani, Women’s Rights Activist (Oct. 15, 2011).

8. Law No. 1-57-343 of Nov. 22, 1957, Bulletin Officiel [Official Bulletin], May 23, 1958 (Morocco), amended by Law No. 1-93-347 of Sept. 10, 1993, Bulletin Officiel [Official Bulletin], Dec. 1, 1993 (Morocco). For a French translation, see FRANCOIS-PAUL BLANC & RABHA ZEIDGUY,

contrast, had much more limited ability to initiate divorce. Unlike men, women could not divorce their husbands without specific grounds: her husband's lack of financial support, his unjustifiable prolonged absence, his suffering from an incurable disease, and his abstinence from sexual relations for more than four months, or his doing her harm.⁹ In 2001, Morocco's new King, Mohamed VI, formed a women's rights commission to discuss the 1993 *Moudawana*. Shortly afterwards, revisions were underway.¹⁰

III. ANALYSIS OF WOMEN'S' RIGHT TO ACCESS TO JUSTICE UNDER NATIONAL AND INTERNATIONAL LAW

This section examines the legal framework that applies to women's right to access justice through the following: Morocco's national laws pronounced in the 2004 *Moudawana* and the 2011 Constitution. Relevant international and regional human rights law standards contained in the Convention on the Elimination of all Forms of Discrimination Against Women, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, as well as regional human rights charters through the Arab Charter on Human Rights. These texts give principal importance to women's right to participate in society and stress the commitment of States to this right without discrimination.

A. 2004 *Moudawana* and Other National Laws

Several important rights were secured for Moroccan women via the 2004 *Moudawana*, including the right to self-guardianship, the right to divorce, and the right to child custody.¹¹ Additionally, sexual harassment was made punishable by law under the revised *Moudawana*. The age of marriage for girls was raised from fifteen to eighteen years of age, and girls were no longer required to have a *male guardian* approve their marriage. The reforms also abolished the legal requirement of a wife's obedience to her husband, and stipulated that both the husband and the wife are joint

MOUDAWANA: CODE DE STATUT PERSONEL ET DES SUCCESSIONS [CODE OF PERSONAL STATUS AND SUCCESSIONS] (1994).

9. Michel Faucompré, *L'Islam et les Femmes au Maroc? [Islam and Women in Morocco]*, PARIS: REVUE DU MAGHREB [REVIEW MAGHREB] 80 (2004) (Fr.).

10. See generally Beau Nicolas et Graciet Catherine, *Quand le Maroc Sera Islamiste [When Morocco Will be Islamisr]*, LA DÉCOUVERTE [THE DISCOVERY] (2006) (Fr.).

11. Fatima Sadiqi, *Five Years After the New Moroccan Family Law*, 590 UNIV. OF FEZ GENDER STUD. J. 2, 2 (2010).

heads of the household, however, the husband is still legally required to financially support his wife in accordance with Islamic Fiqh (teachings).¹²

While the revised personal status code did not completely abolish polygamy, women could stipulate clauses into their marriage contracts, such as a “monogamy clause,” which can legally forbid their husbands from taking another wife. Men must obtain judicial authorization to take a second wife, and they must prove to the judge that they can financially care for all their wives and children. Importantly, “the first wife must be present when the husband appears before the judge to seek authorization.”¹³ The revised personal status code also did not completely abolish unilateral repudiation of a wife by her husband, but the practice of repudiation was placed under judicial oversight.

In the area of gender-based violence, notable progress has been made. In urban areas, the *Moudawana* has created a system for dealing effectively and efficiently with domestic violence and increased the number of women filing domestic violence complaints in the court systems.¹⁴ Also, the reform of the Code of Criminal Procedure (CCP) helped in this regard. Article 336 of the CCP, which previously only allowed women to take civil action against their husbands with prior authorization from the court, was changed, enabling women equal access to the courts.¹⁵ In 2003, certain articles within the penal code were also altered to impose heavier penalties on a spouse who injures the other spouse. Article 446 of the penal code was also redrafted to authorize health care workers to waive professional confidentiality rules in cases of suspected violence between spouses or gender-based violence, and to report such incidents to judicial or administrative authorities.¹⁶

Gradually, the response to these domestic violence claims has proven to be satisfactory. In urban areas, a significant increase was cited in

12. See generally FAMILY CODE (Morocco), translated in *The Moroccan Family Code (Moudawana)*, GLOBAL RTS. (Feb. 5, 2004), http://www.globalrights.org/site/DocServer/Moudawana-English_Translation.pdf (last visited Mar. 14, 2012).

13. Beth Malchiodi, *Assessing the Impact of the 2004 Moudawana on Women's Rights in Morocco*, 2008 FULBRIGHT-HAYS SUMMER SEMINARS ABROAD MOROCCO (2008), http://www.outreachworld.org/Files/u_texas/Women_and_family_law_Morocco_curriculum.pdf. (last visited Mar. 14, 2012).

14. See generally Benradi Khachani Malika, *Les Nouvelles Révisions du Code de Statut Personnel, La Permanence de La Tradition Juridique Islamique [New Revisions of the Code of Personal Status, the Permanence of the Islamic Legal Tradition]* Malékite, APPROCHES (2008) (Fr.).

15. MOROCCO CRIM. CODE OF PROC., art. 336 (Fr.), June 5, 1963, available at <http://adala.justice.gov.ma/production/legislation/fr/penal/Code%20Penal.htm> (last visited Mar. 14, 2012).

16. *Id.* art. 446.

immediate response to domestic violence issues due to provisions in the *Moudawana* that were never an option prior to 2004. For example, the *Moudawana* has created what would be the equivalent to a restraining order in the American court system. In 2007, the Ministry of Social Development, Family, and Solidarity began publishing information and official data on violence against women.¹⁷ *The Ending Violence against Women: From Words to Action*¹⁸ which was released by the United Nations in 2006 illustrated an important fact about violence against women that sparked States attention to this issue—that violence stops women from fulfilling their potential, restricts economic growth and undermines development. In Morocco, the Government had pressing obligations to address violence against women, especially given its consequences on economic welfare of communities where violence occurs. As rightly articulated by international women’s rights expert Susan Ross Deller, “Where women thrive, communities thrive.”¹⁹

B. Constitutional Equality

Even though all of Morocco’s post independence constitutions have stressed the principle of equality between men and women, it was not implemented in reality.²⁰ In the concluding observations of CEDAW’s 2003 Report to Morocco, there was a clear indication that the Constitution does not “explicitly” define the principle of equality between women and men or of gender discrimination.²¹ However, in Morocco’s recently introduced Constitution, women’s rights catapulted to the top of the agenda. The Constitution institutionalizes gender equality by encouraging the creation of women’s rights organizations and giving women more legal rights including the right to maintain custody over their children even if they remarry.²²

17. Sadiqi, *supra* note 11, at 7.

18. U.N. Secretary-General, *Ending Violence against Women: From Words to Action* (Oct. 9, 2006), <http://www.un.org/womenwatch/daw/vaw/launch/english/v.a.w-exeE-use.pdf> (last visited Mar. 14, 2012).

19. *See generally* SUSAN DELLER ROSS, *WOMEN’S HUMAN RIGHTS: THE INTERNATIONAL AND COMPARATIVE LAW CASEBOOK* (2008).

20. MORROCO CONST. 1962, § 2, art. 3.

21. Convention on the Elimination of All Forms of Discrimination against Women’s Committee, June. 3–July 18, 2003, 58 U.N.T.S. 101, 109–117.

22. MORROCO CONST. 2011, § 5, art. 2 (stating that “primacy of the international conventions duly ratified by the Kingdom over domestic laws.”).

IV. INTERNATIONAL LAW INSTRUMENTS

In 2000, gender equality and women's empowerment were adopted by the United Nations as the third of eight Millennium Development Goals (MDGs)²³ aimed at combating poverty and enhancing human development. This is especially important in Morocco where women comprise more than 50% of the population, redefine their roles, and forge new pathways of participation and leadership.²⁴ Morocco's low ranking on the United Nations Development Program (UNDP) Human Development Index in 2003 (124th position) came as a wake-up call to many in the country.²⁵ As a result, social and human development catapulted to the center of the Government's development agenda. Today, the advances Morocco has achieved since the millennium have contributed largely to improving many human development indicators, especially for women.²⁶

Even though Morocco is a party to several international law conventions and acknowledges the precedence of international instruments over national legislation, the CEDAW Committee registered several obstacles in its evaluation of Morocco's family law progress in 2003 because of discriminatory provisions in the Family Code. These reservations related to legal and constitutional equality between men and women, equality within the family, the right of women to pass on their nationality to their foreign-born spouses and children, and women's right to freedom of movement.

As such, a decision to formally lift the reservations to CEDAW was considered to be an immensely important part of Morocco's efforts to improve and strengthen women's rights. A few years later, King Mohammed VI announced during a speech on December 10th, 2008, the sixtieth anniversary of the Universal Declaration of Human Rights, that Morocco retracts its reservations on the Convention. The King expressed that the reservations become "obsolete due to the advanced legislation that has been adopted by our country."²⁷ The United Nations and the international human rights community expressed satisfaction with the

23. U.N. Millennium Developmental Goals, UN.ORG, <http://www.un.org/millenniumgoals/> (last visited Mar. 14, 2012).

24. See generally U.N. Dev. Programme [UNPD], Regional Bureau for Arab States, Arab Human Development Report 2004: Towards Freedom in the Arab World (2004).

25. U.N. Stat. Div., Millennium Developmental Indicators Database, <http://millenniumindicators.un.org> (last visited Mar. 14, 2012).

26. World Bank, *Gender and Development in the Middle East and North Africa [MENA]: Women in the Public Sphere*, at xii–xiii, MENA Doc. 28115 (2004).

27. WOMEN'S LEARNING P'SHIP, *Morocco Lifts CEDAW Reservations* (2011), www.learningpartnership.org (last visited Mar. 14, 2012).

King's move which signaled Morocco's desire to be forward-looking in upholding women's rights.

For example, one of the CEDAW reservations, Article 9 dealing with the right of a mother to transmit her citizenship to her children, was abandoned in 2007.²⁸ However, there are still apparent delays in lifting all reservations and arrangements need to be put in place to enforce these changes, at the domestic level. Today, some of the reservations still find their parallels in laws and traditional practices, which reinforce gender discrimination, with respect to matters of marriage and divorce.

For instance, Article 2 of CEDAW urges States to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.²⁹ But in Morocco today, even though the law sets the minimum age for marriage at eighteen for males and females, it gives judge's discretion to waive the minimum age and allow minors to be married. Because girls tend to be married to far older men and often are married when they are minors, this discretion given to judges has a disproportionate impact on young girls.³⁰ Lifting this reservation and others will provide a legal framework for starting to address discriminatory laws and practices such as this one. It is important to note that ratifying CEDAW does not have a concrete impact on the situation of women when it has not been accompanied by the harmonization of national legislation with the spirit of CEDAW provisions.

Regarding the CEDAW Optional Protocol, Morocco expects to ratify it before the end of 2011 in its efforts to curtail gender discrimination.³¹ The decision of ratification was welcomed by human rights and women's rights organizations in Morocco who consider the protocol to be an essential instrument for the implementation of CEDAW and the fight against women's rights violations.³² By announcing its decision to ratify the Optional Protocol to CEDAW, Morocco is also expected to set a great example in the Arab region for countries which have yet to ratify it.

28. *See generally* FAM. CODE (Morocco).

29. Convention on the Elimination of All Forms of Discrimination against Women art. 2, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

30. *See generally* FAM.CODE (Morocco).

31. Convention on the Elimination of All Forms of Discrimination against Women Optional Protocol, UN.ORG, <http://www.un.org/womenwatch/daw/cedaw/protocol/> (last visited March 14, 2012).

32. The author's personal knowledge and experiences seminar on Women and Democratic Transitions in the MENA region where Moroccan Minister of Women's Affairs, Nouzha Skalli announced Morocco's expected ratification of CEDAW's Optional Protocol, May 20, 2011.

In concert with its obligations under the ICESCR, Morocco has also sought to reform its labor laws, and in 2003 the principle of non-discrimination between men and women was codified in Morocco's new Labor Code, including such measures as equality in pay, access to employment, and promotions.³³

V. REGIONAL CHARTERS

The Arab League has espoused a set of basic principles and obligations pertaining to the right of access to adequate judicial protection. The Arab Charter on Human Rights was adopted by the Council of the League of Arab States on May 22, 2004, and entered into force in 2008 after receiving seven ratifications. The Charter claims to affirm the principles contained in the U.N. Charter, the Universal Declaration of Human Rights, and the International Covenants on Human Rights.³⁴

The Charter ostensibly condemns discrimination against women, as pronounced in Article 2:

Each State Party to the present Charter undertakes to ensure to all individuals within its territory and subject to its Jurisdiction the right to enjoy all the rights and freedoms recognized herein, without any distinction on grounds of race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status and without any discrimination between men and women, [and ensures] the right of all persons to be equal before the law.³⁵

However, the protection of these rights is not reinforced by the States' obligation to respect the rights and obligations recognized in the Charter, since it is not binding. Indeed, the Charter is far from becoming a binding treaty since nearly half of the members of the Arab League have yet to ratify the Charter, as it does not recognize many important rights that are consistent with international human rights law as reflected in treaties, jurisprudence, and opinions of U.N. expert bodies.³⁶

33. Law No. 65-99 of Sept. 11, 2003 (Morocco) Bulletin Officiel [Official Bulletin], available at http://www.justice.gov.ma/ar/legislation/legislation_.aspx?ty=2&id_l=57 (last visited Mar. 14, 2012).

34. Arab League [AL], *Charter on Human Rights, unofficial translation* (Mohamed Midari trans., Arab Center for International Humanitarian Law and Human Rights Education) (2012), available at http://www.arableagueonline.org/wps/portal/las_ar/inner/tut/p/c5/vZLLkolwEEW (last visited Mar. 14, 2012).

35. *Id.*

36. *Id.*

VI. BARRIERS TO ACCESS TO JUSTICE FOR WOMEN IN MOROCCO:
ANALYSIS OF DISCRIMINATION

A. The Notion of Access to Justice

The United Nations Development Program (UNDP), a key international player in the field of access to justice and the rule of law, defines access to justice to include the entire machinery of law making, law interpretation and application, and law enforcement.³⁷ “Access to justice entails much more than improving an individual’s access to courts or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable.”³⁸ According to the UNDP, one of the most prevalent obstacles to access to justice is gender bias and discrimination in the legal systems through: inadequacies in existing laws which fail to protect women (*de jure*), or through limitations in judicial remedies provided in practice (*de facto*).³⁹

B. Cost of Discrimination: De Jure and De Facto Application of the Moudawana

Morocco has taken unprecedented steps in the country’s history to help eradicate discrimination against women and to improve gender equality. The decision to lift formally the reservations to CEDAW was an important part of Morocco’s efforts to improve and strengthen women’s rights. It has also the potential to serve as an example for many countries in the MENA region that still have reservations to core articles to the Convention. By ratifying the following international instruments, Morocco has committed to the obligation not to discriminate and to provide equal protection of the law for the purpose of achieving women’s equality with men in the enjoyment of their human rights. For instance, Article 26 of the ICCPR features a poignant equality clause pertaining to women.⁴⁰ Also, Article 1 of CEDAW has an express definition of discrimination against women.⁴¹ However, despite this international commitment, blatant shortcomings in improving the situation of women’s access to justice in Morocco still prevail. These shortcomings are both *de jure* and *de facto*. Adopting

37. U.N. Dev. Programme [UNPD], *Access to Justice: Practice Note*, at 3, (Aug. 3, 2004).

38. *Id.*

39. See generally Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, 41 *CARNEGIE ENDOWMENT FOR INT’L PEACE R. L. SER.* (2003).

40. International Covenant on Civil and Political Rights art. 26, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

41. *Id.* at 21.

revisions to the *Moudawana* and passing this revised text into legislation in 2004 should be viewed as a stepping stone towards achieving women's access to justice because there are still many areas in which the text of the *Moudawana* fails women in their quest towards equality.

There is what might better be termed deficiencies in the wording of the Code itself. For example, the Code does not specify a threshold age below which special permission to marry before the lawful age of eighteen years may not be granted.⁴² Another weakness is that the Code's provisions on the joint administration of property acquired during marriage do not include standards for evaluating the wife's contribution in the form of domestic duties where there is no contract between the spouses.⁴³ Furthermore, while women possess equal testimony rights in most civil and criminal cases, "the court gives their testimony half the weight of a man's when it comes to family matters."⁴⁴

By law, as outlined in the *Moudawana*, there is no differentiation of access to justice among women. However, in practice, women in rural areas have much less access to justice than women in urban areas, as the *Moudawana* is limited mainly to urban areas. This is alarming since more than 80% of women in rural Morocco are illiterate and are in dire need of legal information about the *Moudawana*.⁴⁵ A 2003 report to the CEDAW Committee emphasized that despite the progress of the *Moudawana*,

[A] number of constraints and difficulties have emerged, including in particular difficulties attributable to inadequate infrastructure and logistic resources, a lack of awareness and training among officials responsible for enforcing the Code, and the persons in charge of publicizing it and propagating an understanding of it throughout Morocco's social fabric.⁴⁶

42. See generally FAM. CODE (Morocco).

43. Arab Women Law Database: http://www.arabwomenlaw.com/Tash_V_Country.aspx?ID=1088&Country=13 (last visited March 23, 2012).

44. Angles Ramirez, *Le long processus de changement de la Moudawwana au Maro L'Année du Maghreb* [The Long Process of Change of the Moudawwana in Morocco in the Year of the Maghreb], in DOSSIER FEMMES, FAMILLE ET DROIT (CNRS Editions 2007) (Fr.).

45. U.N. Dev. Fund for Women [UNIFEM], Arab States Regional Office, *Progress of Arab Women 2009*, at 3 (2009), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/563/69/PDF/N0656369.pdf?OpenElement> (last visited Mar. 14, 2012).

46. *Id.*

Cook and Cusack rightly define State obligations to address discrimination through wrongful gender stereotyping⁴⁷ based on a tripartite framework (obligation to respect, obligation to protect, obligation to fulfill). Despite the fact that Article 2(f) of the Convention⁴⁸ obligates State Parties “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices which constitute discrimination against women,” this obligation has not been fulfilled in the case of Morocco as barriers for women’s access to justice are prevalent in social and cultural norms. For example, Moroccan Ministry of Justice 2010 research data indicates that women do not want to insult their husbands by asking for certain provisions in their marriage contracts due to long existing social practices.⁴⁹

In the current context, the real challenge is to ensure that all the legal procedures in the *Moudawana* are reinforced through family courts to maintain the notions of justice, equity, and objectivity, and at the same time, the quick flow of justice. In adopting CEDAW’s definition of discrimination against women in CEDAW General Comment No.16 on equality, the Committee on Economic, Social, and Cultural Rights has on Economic has affirmed that “discrimination on the basis of sex may be based on the differential treatment of women because of their biology.”⁵⁰ In *The Lenses of Gender*, Sandra Bem offers an excellent description of the dynamics that propagate gender discrimination. Bem’s main arguments is that: “[W]hat is ultimately responsible for every aspect of it, is not male-female difference but a social world so organized from a male perspective that men’s special needs are automatically taken care of while women’s special needs are either treated as special case or left unmet.”⁵¹ In Morocco, often administrators of justice, especially in remote rural areas,

47. See generally Rebecca J. Cook & Simone Cusack, GENDER STEREOTYPING: TRANSNATIONAL LEGAL PERSPECTIVES (2010).

48. U.N. Comm. on the Elimination of Discrimination against Women, General Recommendation on Special Temporary Measures, U.N. Doc./CEDAW/C/2004/I/WP.1/Rev.1 (Jan. 30, 2004), available at [http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf) (last visited Mar. 14, 2012).

49. See generally Royaume du Maroc, *Justice de la Famille [Justice of the Family]*, 15 DU MINISTERE DE LA JUSTICE (2010) (Fr.).

50. U.N. Comm. on Economic, Social and Cultural Rights, General Comment No. 16, *The Equal Rights of Men and Women to the Enjoyment of All Economic, Social, and Cultural Rights*, U.N. Doc. E/C.12/2005/4 (Aug. 11, 2005), available at <http://www.unhcr.org/refworld/docid/43f3067ae.html> (last visited Mar. 14, 2012).

51. See generally Sandra Lipsitz Bem, *The Lenses of Gender*, 5 PSYCHOL. INQUIRY 97 (1994), available at <http://www.jstor.org/stable/pdfplus/1449094.pdf?acceptTC=true> (last visited Mar. 15, 2012).

tie women's rights and benefits to their being the wife or daughter of a male citizen, thus rendering them dependent, second-class members of society.⁵² Consequently, the notion of access to justice has remained gendered due in part to Morocco's patriarchal society that reinforces a man's ability to assert authority and control over women within the context of the family.

VII. RECOMMENDATIONS AND CONCLUSIONS TO OVERCOME BARRIERS TO ACCESS TO JUSTICE FOR WOMEN

There is no doubt that the enactment of the 2004 *Moudawana* marked a significant step forward in improving the legal status of women in Morocco, yet its application is still not in full effect. The judiciary in particular plays a critical role in enforcing the provisions of the *Moudawana*, as it has the ability to make the legal reforms a reality, or alternatively, to disregard the changes. At the same time, efforts at the grassroots level to educate citizens about their rights and responsibilities under the Family Code are still needed. While women's rights groups and civil society actors work freely and effectively to promote gender equality and equal access to justice, and have gained momentum in recent years, their efforts are often challenged by cultural conservatism.⁵³ In rural areas, particularly, there is scarce information on civil society groups in general, and limited research has been carried out on the human, material and financial resources of the NGOs working with rural women. This requires a collaborative approach of a variety of actors (the government, media, educational institutions and civil society groups).

Successful access to justice efforts are founded upon a strong partnership among the bar, the judiciary, and legal aid providers. Law schools can also be key partners, while representatives from outside the legal community can bring new perspectives and help broaden support.⁵⁴ Each of the key institutional partners—the bar, the courts, and legal aid providers—brings a particular set of strengths to the table. Law schools, for example, can become key access to justice partners, as with law faculty and students serving as valuable civil legal assistance providers, through

52. Barkalli Nadira, *Le rôle de l'État dans l'évolution des systèmes de genre au Maroc, contribution au colloque Genre, population et développement en Afrique* [The Role of the State in the Evolution of Systems of Kind in Morocco, Contribution to the Symposium Kind, Population and Development in Africa], ABIDIGIAN, at 2–10 (2010) (Fr.).

53. Jean-Philippe Bras, *La réforme du code de la famille au Maroc et en Algérie: quelles avancées pour la démocratie?* [The Reform of the Family Code in the Morocco and Algeria: What Progress for Democracy?], in 37 CRITIQUE INTERNATIONALE 93, 125 (2007) (Fr.).

54. World Justice Forum [WJF], *World Justice Project's Annual Forum*, at 20–23 (June 2011).

clinical programs. Building support for equal justice in the next generation of attorneys should be at the forefront of access to justice efforts throughout Morocco. Also, the following recommendations encompass my personal suggestions to improve access to justice for women in Morocco.

VIII. INFORMAL JUSTICE REMEDIES IN RURAL MOROCCO

Usually, in rural areas where illiteracy rates are high among the women population, they tend to not have recourse to the formal system for many reasons, such as misunderstanding of the law, fear and intimidation, lack of resources, language issues, and unfamiliarity of formal procedures.⁵⁵ As such, these women perceive themselves as divorced from the formal legal framework of public institutions. Such a divorce also reflects a gap between the law in the books and the law in action. Informal justice systems, therefore, are the cornerstone of access to justice and dispute resolution for the majority of these women. Nevertheless, the support of informal justice systems is very limited.

In Morocco, the traditional justice system is home-grown, culturally appropriate, and embraced by the communities it serves for its potential to provide quick, cheap, and adequate remedies.⁵⁶ Government assistance should be more focused on strengthening the integrity the informal justice systems and its integration with the formal one, to become more responsive and more effective in meeting the needs of justice for rural populations—especially women.

IX. LEGAL PROCESSES

While due process of law is one of the great achievements of our time, legal processes have become unduly complicated, drawn out and technical. Not only does this lead to immense delays and expense, but the litigants also feel disempowered because they do not understand what is going on. There should be a strong move towards simplifying procedures in all family law matters, as well as promoting systems of alternative dispute resolution that are not only swifter and cheaper, but more effective in getting practical resolution to the problem. This step has been initiated in Morocco through the institutionalization of mediation in family courts in 2007, and recruitment of social assistants that make the link between the judges and the women seeking justice services. These attempts to accelerate

55. See generally *Access to Justice: Promotion of Legal Outreach in the Arab World*, BIBLIOTHECA ALEXANDRINA (2009).

56. Kandiyoti Deniz, *Malaise identitaire: les femmes et la nation* [Malaise Identity: Women and the Nation] *FEMMES SOUS LOIS MUSULMANES* 450 (2010) (Fr.).

implementation of the Family Code through alternative dispute resolution methods have proven successful and, in my view, should be promulgated throughout the country.

X. TRANSFORMING THE ROLE OF THE LEGAL PROFESSION

Local Bar Associations and faculties of law have a pivotal role to play in advancing women's access to adequate and effective family law remedies. For example, law students and paralegals can play a significant role in helping women with their legal problems, especially in rural areas.

Today, the Moroccan family law is just one of the many examples of how societies grapple with balancing the ideals of tradition, national and international law with the imperative of making society more just for women.