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Divorce Experiences: What The 2004 Moudawana Does and Does Not Do for Women In Morocco

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**Divorce Experiences: What The 2004 Moudawana Does and Does
Not Do for Women In Morocco**

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ABSTRACT

In 2004, the parliament amended the original Moudawana, or Family Code, from 1958. Among the changes, they altered the laws regarding divorce. The 2004 Moudawana included new provisions for women to obtain divorces in an attempt to create more progressive and equitable laws. The process of divorce, however, is still unequal for men and women. Despite women's social conditions improving under the 2004 Moudawana, discrimination against women within the Moroccan legal system continues to prevent women from accessing their rights. A complex legal system and general lack of knowledge about the law create an overwhelming experience for women who do not have the financial means to obtain a lawyer. Even when women are able to obtain a divorce, they face custody and property battles after divorce. Many men do not pay the child support the court legally requires them to pay. Women often do not have the financial means to bring their case back to court. Furthermore, societal and cultural norms greatly deter women from seeking a divorce even in the direst of circumstances. The purpose of this study is to uncover the true implementation and social reality of Moroccan divorce laws. This study uses information gathered from interviews to uncover the social and legal reality of divorce in Morocco, focusing on questions such as: Has the new Moudawana improved women's access to divorce? What are obstacles in the divorce process? Do women have fair access to divorce under the law? What are women's lives like after obtaining a divorce? Ultimately, this study finds that while the new Moudawana has improved women's access to divorce, a series of legal and social obstacles prevent women from accessing their rights.

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INTRODUCTION

After nearly half a century of gradual developments in gender equality, the original 1958 Moudawana, or family code, was reformed in 2004 to grant women more legal rights. The 2004 Moudawana introduced two new categories of divorce, mutual consent and irreconcilable differences (*shiqaq*), which allowed women the right to seek divorce, a right they previously did not have. Despite the advancements for women within the legal system, wide gaps of implementation and lack of knowledge about the law limit women's ability to access the full spectrum of their rights. Although the Moudawana has notably increased women's access to divorce, women still face many impediments to obtain a divorce including inefficient bureaucratic practices, judicial corruption, social stigma, financial dependency, and general unawareness of the law. Men also continue to have the right to unilaterally divorce their spouse without reason, which women do not have.

This study seeks to uncover the reality of Moroccan divorced women's experiences. The study begins with an interview with an expert of Islamic law and women's rights to provide a foundation for the subsequent interviews. To assess societal perceptions of divorced women, this study includes interviews with Moroccans about their views of divorce. This study ultimately focuses on interviews with divorced women who share their personal stories. Through the interviews, I hope to personalize the public's understanding of women's divorce experiences in Morocco by recording their multifaceted and diverse experiences. I will focus on questions such as: What is people's knowledge of the Moudawana? How do Moroccans view divorced women? What are the causes of divorce? What are obstacles in the divorce process? What are women's lives like after divorce? Finally, this study concludes with recommendations for the country to improve women's access to divorce.

CONTEXT AND LITERATURE REVIEW

Moroccan family law is built around the Moudawana, which is a set of personal status and family code laws that governs marriage, divorce, child custody, inheritance, and polygamy. The Moudawana is the only law in Morocco based on religious precepts, specifically based on the Maliki school of Sunni Islamic jurisprudence (Bordat 2019). It was enacted in 1958, two years after Morocco gained its independence from France. Professor Fatima Sadiqi at Sidi Mohamed Ben Abdellah University in Fes places the Moudawana as the “prime locus of legal and civil discrimination against women” within contemporary Moroccan society (Sadiqi 2006). The original Moudawana was seen as discriminatory towards women because it systemized unequal rights for men and women and “it considered women immature for life” (El Younssi 2015). Since its enactment, various groups including women’s rights associations have pressured the government for reform. In 1993, Morocco ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) leading to King Hassan II reforming the Moudawana in the same year; however, the reforms were limited and insufficient (El Younssi 2015). Fundamentalist surges within Morocco prevented the enactment of Moudawana reforms in the 1999 Action Plan.

Finally, in 2004, the Moudawana was significantly altered within the context of modernization, progress, economic development, democratization, and internal NGO mobilization. It simultaneously uses the Sharia, Islamic principles of tolerance, *ijtihad*, and international human rights as its sources (Bordat 2019). Major changes to the Moudawana include raising the minimum age for marriage for women from fifteen to eighteen, changing the legal status of men as no longer the head of the household, changing the legal obligation for

women to obey their husbands, and, most significantly for my research, changing the divorce laws (The Moroccan Family Code).

Under the previous family code, Article 71 stipulates that marriage could be dissolved by death, annulment, divorce, repudiation, or *khol'* (divorce in exchange for compensation by the wife.) Article 48 gave the husband the sole ability to dissolve a marriage by repudiation (*talaq*), while women could not repudiate a marriage except for six specific reasons taken from the Quran including 1) non-respect by the husband of one of the conditions in the marriage contract; 2) harm; 3) non-maintenance; 4) absence; 5) latent defect; and 6) abstinence and abandonment (The Moroccan Family Code). However, cases in which women obtained a divorce for these six reasons were extremely rare both due to societal pressure and discrimination in the court system (Moghissi 2005).

The 2004 Moudawana permitted two new categories of divorce for women including, mutual consent and irreconcilable differences (*shiqaq*) (Bordat 2019). The new Moudawana attempted to create a balance between the husband and wife. *Shiqaq* may be sought by either spouse and now makes up 50% of the divorces in Morocco. International human rights lawyer Katie Zoglin cites the introduction of the new types of divorce available to women as the most significant developments in the 2004 Moudawana because they allow women to exit their marriages “without providing explicit justifications for their decisions” (Zoglin 2009). Previously, the most dominant way for a woman to dissolve her marriage was by *khol'* where the wife paid a sum of money to obtain the divorce. Many men abused this type of divorce by blackmailing their wives to obtain their freedom. The rise in the divorce rate has led many people to blame the reforms of the Moudawana for the increased rate of divorce (Lamlili 2008). Others, such as sociologist Abdelghani Moundib, believe that “Today, the woman has demands.

She is no longer the weak link the chain. That's why the divorce rate is increasing." (El Younssi 2015). Women, who were previously unable to file for divorce, were able to under the 2004 Moudawana, leading to a rise in divorce rates after 2004.

It is also important to note that the Moroccan legislator emphasizes the importance of sustaining matrimonial relationships. The Moroccan legislator stipulated in Article 70 that "No one should resort to the dissolution of the bonds of matrimony through repudiation or divorce except in exceptional circumstances, considering the rule of the least harm, given the family dislocation and harmful effects on children" (The Moroccan Family Code). While the *Hadith* recognizes people's right to divorce, the 2004 changes also came with the provision that it shall be upheld in accordance "to the rules established on the basis of the *Hadith* by Prophet Mohammed, Peace Be Upon Him, 'the most hateful to God among all lawful things is divorce.'" (The Moroccan Family Code).

Furthermore, not all people are even aware of the Moudawana. The Ministry of Solidarity, Women, Family and Social Development of Morocco conducted a survey in 2016 to gauge Moroccans knowledge and attitudes regarding the 2004 Moudawana. 86.6% of Moroccans stated that they were aware of the existence of the 2004 Moudawana, while 13.4% were not. Similar percentages of men and women knew about the Moudawana. There are also varying levels of awareness of the Moudawana between women living in urban and rural areas, varying education levels, and women of different ages. Women living in urban areas are more likely to say that they know a lot about the Moudawana than women living in rural areas. As women's education levels increase, the percentage of women who have heard a lot about the Moudawana increases as well. Furthermore, women from the ages 18 to 44 are more likely to have heard a lot

about the Moudawana compared to women ages 45 and older (10 Ans D'Application du Code de la Famille).

While the modified family code has integrated international human rights, there is inconsistent application of the law across the country; if something is not addressed in the law then judicial interpretations are permitted, which leads to discriminatory and unequal practices throughout Morocco. Women are often burdened with the task to provide evidence of their irreconcilable differences in order to attain a divorce, while men still have the right to unilaterally divorce without cause (Bordat 2019). Zoglin analyzes the family code in Morocco and the reality of its implementation. While she lauds the legal steps towards equality for men and women, she also criticizes the way in which it is implemented across the country. She specifically focuses on the negative public perception of the judiciary, the need for educational programs on people's legal rights, and the excessive responsibility placed on poorly trained judicial officials. She examines how the family law system has a series of problems, such as underfunded facilities, frequent delays, and overworked and sometimes corrupt court employees, which discourage people from accessing their full rights. Furthermore, she points out that the judge acts as both the mediator and the trial overseer which can create compounded unjust outcomes of cases (Zoglin 2009). While the Moudawana represents a milestone in the progress of Morocco in the field of women's rights, it does not create equality for men and women. There are large differences, especially on the issue of divorce, between the old Moudawana and the new one; however, legal and societal discrimination continues to persist.

METHODOLOGY AND ETHICS

Research Design

I conducted an exploratory study to analyze how the 2004 Moudawana has impacted women's access to divorce, women's experience and obstacles to obtain divorce, and how people's experience with divorce could be improved in the future. To assess possible discrimination that women still face, I interviewed an expert on Moroccan women's studies from the Center for Women's Studies in Islam affiliated with the Rabita Mohammadia of Ulema, Moroccans about their perceptions of divorce, and, most importantly, Moroccan divorced women about their experiences. Before conducting my interviews, I analyzed interviews from a secondary source: the Al-Jazeera film "Marriage and Divorce in Morocco" in order to gain a more comprehensive understanding about Moroccan divorce laws and women's experiences. The film provided me with additional qualitative data from experts about the law as well as Moroccan women's personal experiences.

My primary focus for my study is the stories of divorced women; however, I began my research by gaining background information from an expert on the Moudawana and by assessing public perceptions of divorced women. I interviewed participants in person and one via an online messaging service, WhatsApp, who I could not meet in person. I conducted my interviews in English and French and used a translator when Darija and Tamazight were needed. I used a translator for interviews that needed to be conducted in Fus'ha (traditional Arabic), Darija (the Moroccan Arabic dialect) or Tamazight (Amazigh language). I conducted the interviews in a semi structured style. I created a set of pre-written questions for divorced women, Moroccan citizens, and academics to prompt my participants, while also permitting interviewees to share their own experiences.

In order to gain a complete understanding of varying divorce experiences throughout Morocco, I interviewed women from different areas in Morocco. At the start of my project, I

hoped to interview women from metropolitan areas including Rabat and Tangier, women from the rural North, women from the Sahara Desert, women from the Essaouira region, and women from the Western Sahara. However, due to the social stigma surrounding divorce, divorced women that I did not have a mutual connection with were unwilling to participate in my study. By interviewing divorced women from different areas in Morocco, I hoped to uncover if different societal norms throughout Morocco result in varying applications of the Moudawana and resulting divorce experiences. I was able to interview two women in Rabat, one woman in Beni Kolla (a small village in the North), and two women in Hassilibead (a small village in the Sahara Desert). I attempted to interview women in Essaouira and Tangier; however, they were unwilling to participate as I did not have a reference. My first two interviews were in Rabat where I did not use a translator. I interviewed an Arabic teacher from the CCCL in English and a host mother of a fellow student in French about their divorce experiences. My next interview was held in the village of Beni Kolla. The woman I interviewed solely spoke Darija so I used a translator for the interview. Lastly, I conducted two interviews with divorced women who spoke Darija and Tamazight in Hassilibead, so I also used a translator.

In order to gain an academic perspective of the Moudawana in both law and practice, I interviewed a researcher, Ilyass Bouzghaia, from the Center for Women's Studies in Islam. For further information on the process of divorce within the Moroccan legal system, I contacted about thirty NGOs. Four responded to my initial request; however, none of the NGOs responded to further requests for information. The majority of my research focuses on my interviews with divorced women from Rabat, Beni Kolla, and Hassilibead. I also wanted to gain different perspectives on the Moudawana and divorce in society, so I interviewed Moroccans from Rabat, Beni Kolla, Hassilibead, and Guelmim about their perceptions of divorce. Overall, my research

focuses on divorced women's experiences; however, I supplemented my research with the interviews I conducted and analyzed of other Moroccans.

Ethics

I took special actions to ensure full compliance with SIT's Local Institutional Review Board, including the use of informed consent forms. I had all interviewees read and sign an individual consent form to comply with the IRB. The consent form outlined the rights of the interviewees and was provided to the interviewees in their language. Furthermore, I altered the names of the participants and any identifying information in order to protect the participants' identities. Finally, it is also important to note how my positionality as a white, American, female student contributed to my perceptions of divorced women's experiences and to my subject's willingness to participate in my research. As a female student, I was able to speak freely and intimately with divorced women about their personal experiences that would have been impossible as a male student. The women that I spoke to provided me with candid recounts of their personal stories.

INTERVIEWS AND ANALYSIS

An Expert on Islamic Law and Women's Rights

While my research focuses on the experiences and stories of divorced women, I began my research by interviewing Ilyass Bouzghaia. Ilyass is a researcher at the Center for Women's Studies in Islam affiliated with the Rabita Mohammadia of Ulema. He is a PhD candidate and recently submitted his thesis for defense at Sidi Mohamed Ben Abdellah University in Fes. He is a graduate from the Women's and Gender Studies master program (2011) and published his M.A thesis entitled "Feminist Movement and Social Change in Morocco". I contacted Ilyass directly

and he graciously agreed for me to come to the Center for Women's Studies in Islam located in Rabat. The center is situated in an old palace, intricately and beautifully constructed. The first time we met, Ilyass explained his work at the Center and its purpose. The Center aims to fill an academic gap in the field of women's studies from an Islamic perspective. "It provides a reformist approach to current women's issues in line with Islamic theology and social realities by exploring the egalitarian potentials within the spiritual message of Islam and the advancement of human knowledge" (Center for Women's Study in Islam).

Ilyass agreed for me to interview him about the Moudawana reforms and current divorce laws. His expertise on the subject provided me with the academic perspective that informed my subsequent interviews. As Ilyass explained, according to Article 71 marriage may be dissolved by death, annulment, repudiation (*talaq*), divorce (*tatliq*), or divorce in exchange for compensation by the wife (*khol'*). Articles 78, 79, 80, 81 sets the procedures a spouse must follow to repudiate a marriage. Article 78 defines *talaq* as the unilateral dissolution presented by one of the spouses, usually the husband. If the request is presented by the wife, she must have received her husband's consent (*tamlik*), which is given either in exchange for compensation (*khol'*) or for the remainder of the dowry if it has not been paid in full. *Talaq* creates discriminatory divorce practices by only allowing the wife to request a divorce if she relinquishes her right to compensation. Many women are financially dependent on their husband, so they are unable to seek a divorce if they are required to compensate their husband. By removing the option for financial security post-divorce, the legal system prevents many women from seeking a divorce.

Ilyass continued to explain that "In divorce (*tatliq*), there are two types: divorce sought by either spouse for irreconcilable differences (*shiqaq*), and divorce for other causes." Divorce

for irreconcilable differences (*shiqaq*) is based on the verse 35 from Surat Annisae, which states “If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation: For Allah hath full knowledge, and is acquainted with all things.” (translation of the Quran by Abdullah Yusuf Ali). *Shiqaq* was introduced to the new family code. As with other forms of divorce, it also begins with attempts of reconciliation. If these attempts fail then the court will grant divorce and set the amount to be paid by considering each spouse’s responsibility for the cause of the separation. Besides *shiqaq*, women may also pursue a divorce for six other causes based on the Sharia which include non-respect by the husband of one of the conditions in the marriage contract; harm; non-maintenance; absence; latent defect; and abstinence and abandonment.

Ilyass subsequently elucidated the role of the wife in a dissolution of marriage. He explained that “unlike the previous personal status code, where the most dominant way for the woman to get divorce was the exchange for compensation (*khol'*) procedure, which allowed a lot of men to blackmail their wives to get their freedom, the current family code, implemented in 2004, came with a provision that makes divorce a prerogative that may be exercised as much by the husband as by the wife.” In his opinion, the 2004 family code was a progressive implementation of gender equality because women finally were able to pursue divorce for irreconcilable differences, a right that they were previously deprived. However, women and men still do not have equal access to divorce. The husband has the right to unilaterally repudiate (*talaq*) their spouse, while the wife does not. The wife has the right to repudiate (*talaq*) the husband only if she already obtained that right from her husband (*tamlík*) stated in their marriage contract. Furthermore, women are often subjected to more scrutiny by the court than men when they request *shiqaq* by having to provide evidence of irreconcilable differences for the court.

Women face fundamental challenges when obtaining a dissolution of marriage. Women are often discouraged to ask for divorce, even if there are serious problems within their marriage. Ilyass pointed out that “cultural and social barriers hold them [women] back, especially among their families.” Furthermore, women, often under a financial burden, face obstacles to access information and lawyers. Women are often required to provide evidence and proof of harm or neglect, which proves arduous. Public notaries, lawyers, and judges who may have biased views against women also pose a problem.

Ilyass also explained that many women do not seek a divorce due to fear of financial difficulty and custody issues. The family code attempts to protect women’s rights after divorce in three areas, which are custody, alimony, and division of property. However, women face difficulty attempting to gain custody, receiving their alimony payments, or proving how they have contributed to the total property during marriage. Some men prefer to go to jail rather than pay for alimony and some lie about their real income in order to lower the sum of the alimony. Women also face challenges after divorce due to social stigma and public shame. A divorced woman has a diminished social standing and thus reduced chance of remarriage. Ilyass believes that Moroccan mentality is shifting in this regard; however, at the moment women continue to suffer from social, psychological, and economic problems.

After exploring how divorce laws are implemented and the social reality of divorce, I wanted to determine if the 2004 Moudawana has truly been an advancement for women’s rights. In Ilyass’ opinion, the Moudawana represents a milestone in the progress for Morocco in the field of women’s rights, and for a longtime did not seem like a possibility. “It wouldn’t be possible to issue this law without the combination of social transformations that entitled women a better position in society, the consistent struggle of the feminist movement that lobbied for

changing the old family laws, and the royal will to arbitrate between the Islamists and the secularists to bring about a law derived from Islamic principles and the requirements of human and women's rights." Ilyass' opinion that the law required many different actors and specific situations to become a reality, highlights the difficulty in advancing women's rights in Morocco, especially as Islamist groups gain traction. As a law, the Moudawana presents a positive change for women. The next step for further equality is for society to catch up with the progressive nature of the law. In order for further advancements, policy makers, civil society, and stakeholders must work on conciliating disparities between society, Islam, and the rule of law.

At the end of the interview, Ilyass noted that Moroccan customary practices and social norms are not homogenous. They vary depending on different variables including geographical locations, social class, and political ideologies. However, the majority of Moroccans share the cultural norm that divorce is negative particularly for women. He ended with the statement that "A divorced woman is usually looked with a mixed view of disgrace and empathy. The collective social perception towards divorced women usually affect women's decision to plea for divorce. Therefore, usually, most women resort to divorce only in extreme cases of suffering."

Moroccan Perceptions of Divorce

While the focus of my research are my interviews with divorced women, I wanted to situate their experiences within a social context. Ilyass explained that the Moudawana is a progressive law that needs society to catch up to its advancements. I hoped to determine if his assessment was true in reality by interviewing other Moroccans. I planned to interview Moroccans in each location that I interviewed a divorced woman. I began by interviewing a female Moroccan student and a male Moroccan student about their perceptions of divorce. At the Mohammed V University in Rabat, I met the students in an outdoor café area. They happily

agreed to speak with me. I interviewed the female and male student separately. The female student had heard of the Moudawana, but only had a vague understanding about the specific laws in the 2004 version. She believed that the law treated men and women equally; however, the problem was with Moroccan society who hold men and women to different standards. She was hopeful that the millennial generation would positively affect women's rights because "we are more open minded than the previous generation." The male student expressed similar sentiments. He believed that "our generation will make it better for women. We watch international TV shows and are on social media. This changes how we think so we are more accepting and progressive. This will make the future better." Overall, the female and male student shared views that the younger generation will shift Moroccan society towards a more equitable place.

It is important to note that the two Moroccans I interviewed in Rabat were university students, which could affect their views. Morocco is not a homogenous society, so it is important to gather information from people in a variety of geographical locations and socio-economic situations. I subsequently interviewed a male Moroccan, Mohammad, living in the house next to me in the village Beni Kolla to gain another perspective. Mohammad works at the Association for Development in Beni Kolla. He explained that most people in village have never heard of the Moudawana and do not know their rights under the law. Many people who have heard of the Moudawana believe that it is "biased for women because it allows women to take the man's property." Mohammad continued to explain the societal norms surrounding divorce in his village and the reasons that people divorce. He began by stating that "most women in my village are married around sixteen years old to older men that their parents decide. Very young women marry older men because their parents believe that he will take care of her, especially if he is well-off. The women are often too young for marriage and are unhappy because they did not

choose their husband.” Another problem that Mohammad cited as causing divorce is problems between the wife and the mother in law. In their society, the bride will frequently move into the family home of the husband. The close proximity may result in discord within the family.

Mohammad also stated that “girls may marry a bad man who does not bear responsibility. He is always drunk and does not take care of his wife.” He cited these three reasons as the main cause for divorce in Beni Kolla.

Mohammad also emphasized the importance of women’s virginity in their society. Men only want to marry a woman who is a virgin. Men often will confirm a woman’s virginity by talking to neighbors. A divorced woman is essentially worthless because she is no longer a virgin. People think that since she has already had sex, she will have sex with anyone.

Mohammad said that many people believe that divorced women will turn to prostitution. He was less optimistic than the university students in Rabat that people’s mentalities would change in the future. It was clear from our discussion and my observations that there is a strong negative stereotype of divorced women in Beni Kolla.

The last person I interviewed in regards to society’s view of divorce was the Arabic teacher, Zahra, with whom I lived in the village Hassilibead in the Sahara Desert. Zahra explained the customs surrounding marriage and divorce in the Sahara, as well as how Amazigh practices influence these customs. Zahra, just as Mohammad previously stated, said that the majority of the village inhabitants had never heard of the Moudawana. Many women in the village are not educated and are illiterate, so they do not know their rights under the law. The marriage practices in Hassilibead are similar to those in Beni Kolla despite their vast geographical differences. It is customary for teenage women to marry men around ten years their senior. Most of the time, parents determine who their children will marry, sometimes without

their children ever meeting prior to the marriage. Virginity is heavily empathized in the Sahara region as well. Before the marriage celebration, the bride will visit a doctor who determines if she is a virgin. Zahra explained that the main reason people obtained divorces in their society was due to disagreements between the bride and the husband's family. It is also customary in this region for the bride to move into the home of the husband's family after their marriage. Zahra explained that "the girls are not mature enough to marry and are overwhelmed in a new environment leading to problems." However, many women unhappily stay in their marriages because they do not know their rights, do not have the financial independence, or are scared of societies reaction. Zahra believes that if more women are educated and work, they will be able to exercise their rights.

Divorced Women

While still studying with the Center for Cross Cultural Learning (CCCL) in Rabat, I began to search for divorced women who would be willing to take the brave step to speak with me about this sensitive topic. I asked my Arabic professor if she could refer me to any divorced women. The next day she introduced me to a fellow Arabic professor, Zaima¹, who had been divorced in 2002, two years prior to the change of law. She agreed to tell me her story at the CCCL the next day after Arabic class. I prepared a set of questions for our semi-structured interview, while still allowing room for her to lead the conversation. Within the first few moments of the interview, I realized how difficult it may be for women to talk about their divorce experiences. Zaima had met her husband in school. After they married, he insisted that they move to Japan to further their studies. He began drinking and engaging in extramarital

¹ All divorced women's names have been changed to protect their anonymity.

relations while she raised their son. After a few years, he instructed her to move back to Morocco; she had no choice in the matter. Zaima recounted, “I suffered for six years before the divorce but it did not affect him that we were still married but it affected me. It affected me every day.” Zaima’s life was completely restricted because she was still technically married to him. Zaima had no way to divorce him without undergoing a lengthy and expensive legal process, which she could not afford. Furthermore, her husband underwent specific actions to legally and socially make it appear that they were still married. He would send her very small sums of money each month and stay at her home when he visited Morocco. By staying at her home, he purposely made it appear to society that they were still engaging in sexual relations. Zaima could not file for divorce because the law prior to 2004 only allowed women to obtain a divorce under the six specific circumstances and not for “irreconcilable differences”. Her husband needed to initiate the divorce, which he would not do.

Finally, after six years of living in limbo her husband filed for divorce because he impregnated a Japanese woman. However, he only agreed to go through with the divorce if she agreed to a *khol’* divorce in which the wife compensates the husband or does not require him to pay the rest of the dowry, which she immediately agreed to do. Zaima explained, “I waited so long to get a divorce that once he agreed to obtain one I did not want to fight.” When I asked why she did not obtain a lawyer, Zaima responded that “I did not fight him in court with a lawyer. It would take a lot of money and time. The divorce took one week. I think he paid off officials. The judge told my husband to pay me child support every month but he never paid me and there was nothing I could do.” Not only are many women unaware of their rights, but it is also costly and time consuming for women to return to court to fight for alimony or child support payments. Many women choose not to return to court.

I inquired if the changes in the 2004 Moudawana would have changed the type of treatment she endured. She said, “Before when a man decided to divorce or leave you he could and he had all the power. Now with the new Moudawana it is a little different. There is still some corruption and punishment for women but the law now exists.” She explained that in her view the law does not need to be changed but Moroccan mindsets do. Divorced women are looked down upon within Moroccan society. Zaima said that after her divorce she was viewed as just a “sexual fruit” and was in a position to prove that she was not interested in men. She said that “society, not the law, is the biggest reason that women stay in a bad marriage.”

The next woman I interviewed was a fellow student’s host mother, Saadia. She agreed to meet with me in her home, which was in the Medina after she picked her son up from school. I was curious to see how Saadia’s experience differed from Zaima’s because she obtained her divorce in 2018, fourteen years after the changes in the Moudawana. I met Saadia in her courtyard where I began by asking her about her prior knowledge of the Moudawana. She said that she did not know about the Moudawana or her rights before she got a divorce despite living in an urban area. “The majority of women do not know the code.” I proceeded to ask her to relay her experience with me as her two sons ran about the courtyard. Saadia explained that her husband smoked hashish from dawn until dusk resulting in many marital problems. She told him not to smoke in order for them to properly provide for their children; however, he did not stop so she set the motions forward for a divorce. Because Saadia did not know her rights, she hired a lawyer to assist her. Under the new Moudawana she was able to file for *shiqaq*, or irreconcilable differences. The judge awarded her custody of their children and required her ex-husband to pay monthly child support. In Saadia’s view, “The woman whose personality is weak is the one who suffers from the reality of divorce. I am independent which is how I got a divorce.” Just as Zaima

previously stated, Saadia explained that she thinks the current divorce laws are fair for women; however, Moroccan culture is the biggest obstacle for women to obtain a divorce.

After speaking to two women from urban areas, I wanted to interview women in rural areas. I travelled to a small village, Beni Kolla, with about one hundred inhabitants. In the entire village, there was only one woman, Aya, who was divorced. She is the President of the Association for Development for Beni Kolla. Aya agreed to speak with me; however, she only spoke Darija and Tamazigh, so I used a translator for our interview. She, like all of the other women in the village when asked, had never heard of the Moudawana nor that it impacted her rights to divorce. I began the interview by asking Aya to tell me about her divorce experience. She explained that she was married at the age of sixteen to a man ten years her senior. “My family decided that I would get married. I did not know him. I met him fifteen days before we married. At first I was excited but then I regretted it.” When I asked her why she regretted it, she continued, “There was no perfect day in my marriage. He drank every day and came back to beat me at night. He never let me leave the house. He raped me at night. After four months, I got pregnant but lost the baby because he beat me.” I was shocked and moved by her experience. Aya relayed her story through tears as she rocked back and forth on a couch and hugged a pillow.

It was difficult to continue asking her questions about her divorce after uncovering such a traumatic history. I assured her that we could take a break from the interview but she insisted on continuing to relay her experience. “After a year I could not stay anymore. I was able to report him to the *jon daram* (village police) but he only stayed two nights in the police station. When I returned home, my parents were shamed that I wanted a divorce. They told me that I eventually would go back to my husband and not to get a divorce, but I said to my mom that if I had to go

back to him I would commit suicide.” When I asked her why her family was shamed by her divorce, she explained that people think that divorced women would have sex with anyone because they already lost their virginity. There is no stereotype surrounding divorced men who typically remarry unlike divorced women. She explained that this is why so few women ask for divorce. Their reputation is essentially sullied by divorce.

Despite not knowing about the Moudawana, Aya used the *shiqaq* to obtain her divorce. She used a lawyer from a nearby city, Ouzzane, which cost 3000 dirhams. She recounted, “The judge tried to have us reconcile but I would not go back to him. It took about six months to get the divorce.” Her ex-husband never went to prison for his abuse. She believes that he bribed the authorities. I asked if the laws should change in her opinion. Aya responded that “the laws should be changed and give more rights to women. When I went to the court I found a lot of teenage women get divorced because there is no law to protect them. If there is a strict law to protect women then men won’t divorce women right after marriage.” She also reiterated Zaima’s and Saadia’s previous sentiments that “people need to change their mind about their views of women. To avoid the problem of divorce, people need to change their mindset and let girls pursue their studies and allow the girl to choose her husband.” Her statement about the future concluded our interview. Aya’s bravery and perseverance was a testament to her strength. Her story exhibited the painful reality that many women in rural areas in Morocco endure. Their autonomy and rights are stripped from them at an early age when their family instructs them to marry an older man.

I wanted a broader scope of rural women’s experiences to see how different societal customs impacted them. I travelled to the village Hassilibead in the region of Merzouga in the Sahara Desert. I stayed a week with the family of Zahra, the Arabic teacher of the local

association. The inhabitants of Hassilibead are Amazigh. They have a strong cultural heritage and traditions. While the village had about fifteen divorced women, only two who knew Zahra well agreed to be interviewed. Zahra explained that divorce is a difficult subject so few people would be willing to discuss it with me, an outsider. I interviewed the first woman on my third day in the village. Zahra unexpectedly called me from my room into the communal space where I surprisingly found her friend, Najat, ready to speak with me. Najat spoke Darija and Tamazight, so Zahra kindly translated for me.

Most women, including Najat, in Hassilibead have not heard of the Moudawana. Najat said that she knew she could divorce her husband but “it is very expensive for a woman to divorce because the women pay everything. Many women don’t ask for divorce especially because they cannot pay for it so they stay in a bad marriage.” Similar to the northern rural village, women customarily marry around the age of sixteen in the Sahara region. Najat explained that men and women usually do not choose their spouse. Rather, the man’s parents propose the intention of marriage to the woman’s family who either accept the proposal or deny it. Najat married an older man from a neighboring village when she was sixteen years old. She explained the customs surrounding marriage in the Sahara region to me. “Most people marry soon after they first meet. We have virginity checks with a doctor before the marriage celebration. I went with my husband two days before the celebration. This idea is good so there are not future problems in the marriage if the girl is not a virgin.” The importance placed on a woman’s virginity exhibits why it can be extremely difficult for a woman to divorce. Her worth is placed on her sexuality and if she has already had sexual intercourse her worth diminishes. Najat explained that most women, including herself, move into the family home of the man that they marry. “This creates many problems for a lot of women. There were so many people living

in the house. I was only sixteen. His mother told me to do everything. I could not make any decisions. I had a son so we moved to Marrakech for my husband to work. I was happy to be away from his mother but my husband did not let me go outside. I wanted to make clothes and sell them but my husband would not let me.” Najat’s isolation led her to move back home with her family in Hassilibead. Her husband subsequently filed for a divorce because she refused to return to Marrakech. Without lawyers, they went to a court in Erfoud where the judge gave them fifteen days to find a solution to their marital problems. They did not come to a solution so they returned to the court. The judge granted the divorce and instructed the husband to pay child support each month; however, he has never payed Najat. When I inquired why Najat has not gone to court for her child support she responded “it is too difficult and a lot of money to go to the court. God will reward me in the future.” Najat explained that men assume she would sleep with anyone now that she is not a virgin. As mentioned before, a woman’s virginity is very important to her worth and social standing. Najat confirmed the notion that a divorced woman’s status decreases because she is no longer a virgin.

The last divorced woman I interviewed, Fatima, also lived in Hassilibead. Zahra translated the conversation again. Following the region’s practices, Fatima married a twenty-seven-year-old man when she was sixteen. Her family arranged the marriage and, as part of their customs, went to the doctor for her virginity check. Fatima smiled when she recounted the wedding festivities, however, she grew somber once she began to describe her first night with her new husband. Fatima explained that “the problems started the first night. We could not have sex because I had the kind of virginity where I could not be penetrated. I did not know what was happening. I was so young. I should have gone to a doctor but instead the mother of my new husband took a razor to me. She cut me so I could have sex.” I was shocked by this criminal

action and asked if her husband participated in this crime. She responded that he did not and that his mother was the root of their problems. She could not live in harmony with her husband's family. Her mother in law continued to treat her badly, berating her at every turn. She finally left to live with her own mother and went to the court to divorce her husband. Each time she attempted to file for divorce, her request was postponed. "My husband had money. He did not want a divorce so he paid off the government officials. It took five years before I finally got the divorce. I know other women who did not get a divorce because of this too." While, as a whole, Morocco does not have a corrupt government, my research has shown that some officials take bribes. Her experience exemplifies that in some cases it is possible to evade the law in Morocco if one has the means.

While the five women that I interviewed had different divorce experiences due both to the law and societal customs, their stories illustrate the difficult reality that Moroccan women face. Moroccans obtain divorce for a series of reasons. In rural areas, it appears that the main cause for divorce is disagreement between the wife and the husband's family, particularly his mother because they all share the same space. Furthermore, knowledge of one's rights appears to be one of the largest impediments for women to fully gain access to the law. Many women face problems after divorce to receive their child support or alimony payments. They do not have the means or time to bring their case back to court. Furthermore, society's perceptions and treatment of divorced women prevents many women from obtaining a divorce even if they are greatly suffering.

Divorce is Celebrated?

While in the majority of Moroccan society divorce is negatively viewed for women, some Sahrawi tribes in southern Morocco celebrate divorced women. As Ilyass pointed out, Morocco

is not a homogenous country; there are different practices and customs throughout Morocco including in regards to divorce. I reached out to the contacts I had in Morocco inquiring if they had any Sahrawi friends willing to participate in my research. One university aged student, Aziza, from Guelmim in southern Morocco agreed to be interviewed via WhatsApp. I hoped to learn, by interviewing her, if there are different customs and perceptions of divorce in southern Morocco.

Aziza began by explaining that marriage is considered sacred and respected by Sahrawi tribes. They are expensive and largely celebrated events. The same legal procedures as anywhere in Morocco are in place for marriage and divorce. However, divorce is considered normal in the Sahrawi society. Some tribes even celebrate divorced women by acknowledging her honor and prestige. Aziza explained, “They raise her morale through these celebrations after an unsuccessful marriage.” Contrary to the degradation of social worth that I found through my previous research, Sahrawi women are given a high degree of appreciation and respect. This small pocket of southern Morocco proves that Morocco is not a homogenous society, and that for some women divorce does not reduce their social standing. As a whole, however, Morocco continues to have unequal laws and societal views of men and women, particularly in regards to divorce.

CONCLUSION

Implications

Although there have been significant legal gains under the 2004 Moudawana and the 2011 constitutional reforms, substantial gaps in universal implementation of the law remain. The introduction of two new categories of divorce for women, including mutual consent and

irreconcilable differences (*shiqaq*) in the 2004 Moudawana, greatly improved women's access to divorce, exhibited by the fact that now more than 50% of divorces are filed under *shiqaq*.

Despite the improvement in the law, women continue to face many barriers if they plan to obtain a divorce. Most women in rural and underdeveloped areas, many of whom are illiterate, have no knowledge of their rights under the Moudawana. Many do not have the financial means, or information, to obtain adequate legal representation during or after their divorce. Inefficient or corrupt courtroom practices oftentimes deter women from attempting to navigate the divorce process or obtain their court settlements. As exhibited through my interviews, some women are prevented by court officials from filing for divorce. Women who do not work are dependent on their husbands for a livelihood, limiting their ability to leave them even in the direst of circumstances. Women who are granted child support by the courts often are not paid by their husbands. It is costly and time consuming to fight for child support in court, so many women are left to solely support their family. Furthermore, as Ilyass Bouzghaia stated, many women will not divorce their husbands, despite knowing their rights, due to the social stigma surrounding divorced women. Society still negatively views divorced women, often considering them as a social burden or sexually deviant.

Recommendations

Morocco should take steps to ensure full and proper implementation of the 2004 Moudawana divorce laws. The government should implement educational programs to make women aware and knowledgeable of their rights, offer free legal advice in courts, reduce corruption, and improve training programs for judges and public officials. They also need to find ways to reach remote areas; a possible solution could be mobile administration. An underlying problem leading to divorce is that women in rural areas marry as young teenagers. Judges must

be required to follow the 2004 Moudawana's stipulation that the legal minimum age for marriage for women is eighteen. Additional laws protecting young women should be implemented.

Furthermore, women often face social and financial problems after their divorce. Steps must be taken to ensure that women receive their alimony or child support payments without having to hire a costly lawyer. While legal and bureaucratic steps must be taken to advance women's rights, Moroccan society must shift their collective mindset from demonizing divorced women to supporting them. Educational initiatives and social awareness could aid in this social transformation.

I hope that all of my interviews, particularly recounting the stories of Zaima, Saadia, Aya, Najat, and Fatima, will help to bridge the gap between the academic and personal and that my findings will contribute to the publications of the Moroccan woman's experience.

APPENDIXES

Appendix A- Articles of the Moudawana Cited

Article 48

Conditions that confer a legitimate benefit on the person who drew them up are valid and binding on the spouse who agreed to them. If facts or circumstances render the material performance of a condition difficult, the person bound by it may ask the court for a waiver or a modification of the condition, for as long as these facts or circumstances exist, taking into consideration the provisions of preceding Article 40.

Article 70

No one should resort to the dissolution of the bonds of matrimony through repudiation or divorce except in exceptional circumstances, considering the rule of the least harm, given the family dislocation and harmful effects on children.

Article 71

Marriage is dissolved by death, annulment, divorce, repudiation or *khol'* (divorce in exchange for compensation by the wife).

Article 78

Repudiation is the dissolution of the bonds of matrimony exercised by the husband and wife, each according to his or her respective conditions, under judicial supervision and according to the provisions of this Moudawana.

Article 79

Whoever wishes to repudiate must petition the court for authorization to certify the repudiation by two adouls (public notaries) accredited for this purpose in the judicial district of the conjugal domicile, the wife's domicile or place of residence, or the place where the marriage contract was issued, in that order.

Article 80

The petition for authorization to certify a repudiation contains the identity of both spouses, their professions, their address(es), and the number of children if any, their ages, and their state of health and educational status. The petition must be accompanied by the marriage record and evidence of the husband's material situation and financial obligations.

Article 81

The court shall subpoena the two spouses for a reconciliation attempt. If the husband personally receives the summons and does not appear, this is considered a withdrawal of his petition. If the wife personally receives the summons, and neither appears nor submits a written response, the court notifies her through the Public Prosecutor that if she does not appear, the case will be decided in her absence. When the wife's address is unknown, the court, with the assistance of the Public Prosecutor, determines the facts, and if it is established that the husband provided false

statements, upon the wife's request he shall incur the penalties provided for by Article 361 of the Penal Code

Article 94

If either or both spouses ask the court to settle a dispute that risks to breakdown their marriage, the court must make all efforts to reconcile them according to the provisions of preceding Article 82.

Article 98

The wife may petition for divorce on one of the following grounds:

- 1- Non-respect by the husband of one of the conditions in the marriage contract;
- 2- Harm;
- 3- Non-maintenance;
- 4- Absence;
- 5- Latent defect;
- 6- Abstinence and abandonment

Appendix B- Semi Structured Interview Questions

Interview Questions for Ilyass

- Please tell me about yourself.
- What are the legal bases for divorce in Morocco?
- What is the role of women in the dissolution of marriage?
- Can you please describe some of the fundamental challenges women face in obtaining a divorce?
- Can you please describe some of the fundamental legal challenges women face after a divorce?
- Can you assess the man's position in the dissolution of marriage? Can a husband divorce without any legal base? Will the court ask for the reason of divorce when initiated by the husband?
- What is your assessment of Moudawana with regards to the dissolution of marriage? Is this a helpful law? Are there other laws that apply to the same matter?
- Can you briefly provide an analysis of the role of the customary practices and social norms that affect the dissolution of marriage?

Interview Questions for Moroccans about Divorce

- What do you know about the Moudawana?
- What do you think about the Moudawana?
- Should there be more changes to the Moudawana in the future?
- What do you think of divorce?
- Why do people get divorced?
- Do more people get divorced now verses before the 2004 Moudawana?
- Do more women or more men ask for divorce?
- What is the process of obtaining a divorce?
- How do women get a divorce if they cannot read or write?
- If a man asks for divorce does he pay his wife?
- If a woman asks for divorce does the husband pay his wife?
- Who gets the children after divorce?
- Who has the property after divorce?
- What do people think of a divorced woman?
- Do people think they will have sex with anyone?
- What do divorced women do with their time after the divorce?

Interview Questions for Divorced Women

- What do you know about the Moudawana?
- What do you think about the Moudawana?
- If you could change the laws concerning divorce in anyway would you? Please describe how you met your husband.
- Please describe your wedding for me.
- Please describe your divorce experience for me.
- Was it you or your husband who filed for divorce?
- If it was you who filed for divorce, what were some of the reasons that you filed?
- What type of divorce was filed?

- Did you use a lawyer in your divorce case?
- Do you feel that you were treated equally as your husband under the law?
- Within the case, did the judge treat you and your husband equally?
- What was your financial situation after your divorce? Were you able to support yourself financially? Did you receive any compensation from your divorce?
- How did you feel going through your divorce? And how do you feel now after your divorce?

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