

Renewed Public Debate over Revising Morocco’s Family Code

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In an effort to preserve a basic threshold for social and political balance, the Moroccan government passed the Family Code, or Mudawana, in 2004. Twenty years later, the matter of personal status law remains a pertinent and mobilizing issue for many.

The discussion around personal status law has occupied a central place in reform movements in Morocco since the end of the French protectorate in 1956 and the establishment of an independent Moroccan state. The law is seen by many citizens as the embodiment of the state’s religious, moral, and social orientation. As a result, the personal status law has become a battleground between conservative and reform-minded forces within society.

Advocates for reforming the civil code have butted heads with traditionalist forces intent on keeping personal status law within the religious sphere. For decades, these competing sectors failed to reach any sort of common ground. Fiery debates in the 1990s and early 2000s over personal status law highlighted the increasing divisions within Moroccan society. In an effort to preserve a basic threshold for social and political balance, the Moroccan government passed the Family Code, or *Mudawana*, in 2004. Sweeping in its scope and scale, the Family Code marked a significant shift in the state’s policy toward women’s status, marriage, inheritance, and other important socio-cultural matters.

While significant, the implementation of the Family Code did not satisfy all parties. Twenty years later, the matter of personal status law remains a pertinent and mobilizing issue for many. Now, the question of reforming the contents of the *Mudawana* is once again a subject of debate. What are the specific issues currently under debate, and where will these discussions lead?

Public debate over the *Mudawana*

The Moroccan legal system has not clearly defined its ideological framework, but two main voices have arisen since independence presenting conflicting attitudes towards the underpinnings of the law. Whenever debate arises over amending or reviewing the Family Code, religious scholars have been vocal regarding the need to ground the personal status law in Islamic jurisprudence. This attitude has provoked the ire of the “modernist” forces, who call for democratizing and secularizing all Moroccan law without exception. This is why personal status law in particular has historically ignited passions on both sides.

Since independence, these debates focused especially around the basis for the personal status law, i.e. whether it should be derived from religious or positive legal sources. Personal status law in Morocco has always been linked to Islamic precepts. Proponents of a religious basis for the law include Islamist jurists (*fuqaha*) such as Allal al-Fassi, while the more progressive position is championed by jurists such as Maurice Duverger. Eventuality, the two sides reached a sort of compromise: the personal status law was dealt with as an Islamic legal question, while other legal matters (such as financial and criminal cases) fell under the purview of positive law. This is why many of these issues have traditionally been seen as the domain of Islamic jurists (*fuqaha*) and were left to religious institutions rather than open debate.

Nevertheless, revising the family code has more recently become itself a subject of extensive [public debate](#) (<https://ae.linkedin.com/pulse/%25D8%25A7%25D9%2584%25D8%25AA%25D8%25B7%25D9%2580%25D9%2588%25D8%25B1-%25D8%25A7%25D9%2584%25D8%25AA%25D8%25A7%25D8%25B1%25D9%258A%25D8%25AE%25D9%2580%25D9%258A-%25D9%2584%25D9%2585%25D8%25AF%25D9%2588%25D9%2586%25D9%2580%25D8%25A9-%25D8%25A7%25D9%2584%25D8%25A3%25D8%25B3%25D9%2580%25D9%2580%25D8%25B1%25D8%25A9-%25D8%25A7%25D9%2584%25D9%2585%25D8%25BA%25D9%2580%25D8%25B1%25D8%25A8%25D9%258A%25D9%2580%25D8%25A9-rachid-zizaoui>) in Morocco. With this more open discussion of potential reforms, raucous debate has become a hallmark of any amendment process to the law relating to this issue.

For example, in 1993, during the reform of personal status law, there was a flurry of debate in Moroccan society on issues including women’s guardianship, regulations around multiple wives, and the bride’s consent to marriage. Such debates came about in part due to reformists took an increasing interest in the matter that had encouraged the Moroccan state to revisit and modernize personal status law in the first place. In 1993, this pressure did result in amendments to the personal status law, although these fell short of civil society and political actors’ hopes.

The key takeaway from this moment, however, was that the code was no longer seen as untouchable and moved into spheres of law that were subject to debate and discussion. In other words, the personal status law, like any other law but in contrast to past years, could be subject to societal and political scrutiny in legislative institutions. These legislative institutions represent the political will of the Moroccan people and the building of a civil state. This is further enshrined in Article 71 of the 2011 [Moroccan constitution](#) (https://www.constituteproject.org/constitution/Morocco_2011?lang=ar), which listed the “family code and civil status” as one of the spheres of law under Parliament’s jurisdiction.

More recently, a move by King Mohammed VI signaled yet another possible development for personal status law. In September 2023, the Moroccan Royal Court issued a communique announcing that the king, in his capacity as “commander of the faithful” (amir al-mu’minin), had sent a letter to the head of the Moroccan government asking him to revisit the Family Code. The king’s letter stated that the code needed to adhere to the principle of “broad participatory consultation” with all concerned parties. This includes both official entities (state institutions) as well as civil society actors, researchers, and specialists.

This is perhaps one of the main reasons for religious leaders’ concerns regarding amending the Moroccan Family Code. There is a shift taking place from an Islamic legal approach to a positivist legal approach in Moroccan family law. This is particularly worrisome for Islamic entities in society that expect Islamic law to be [the sole source of legislation and public decision-making in Morocco](#). (<https://www.maghress.com/attajdid/13386>)

It is worth noting that current public debate is occurring at the same time as the devastating earthquake that hit southern Morocco in September. The amendment to the Family Code was proposed only two weeks after the earthquake. This suggests that the issue has been on the official agenda for a while, but took on a greater urgency after the earthquake. A communiqué issued by the Royal Court during the king’s [Throne Day speech in 2022](#) (<https://www.hespress.com/%25D9%2587%25D8%25B0%25D8%25A7-%25D8%25A7%25D9%2584%25D9%2586%25D8%25B5-%25D8%25A7%25D9%2584%25D9%2583%25D8%25A7%25D9%2585%25D9%2584-%25D9%2584%25D8%25AE%25D8%25B7%25D8%25A7%25D8%25A8-%25D8%25B9%25D9%258A%25D8%25AF->

[%25D8%25A7%25D9%2584%25D8%25B9%25D8%25B1%25D8%25B4-1209372.html](#)), which focused on the Family Code and referred to the proposed amendments as a “key reform,” further suggests that this topic has been on the agenda for some time.

Conservative structures in the public sphere

Following reports of the royal court’s communiqué about amending the Family Code in the news and on social media, [many have expressed their opposition \(https://howiyapress.com/%25D9%2585%25D9%2586-%25D8%25A3%25D8%25AC%25D9%2584-%25D9%258A%25D9%2582%25D8%25B8%25D8%25A9-%25D8%25B4%25D8%25B9%25D8%25A8%25D9%258A%25D8%25A9-%25D9%2585%25D8%25B5%25D8%25A7%25D8%25AD%25D8%25A8%25D8%25A9-%25D9%2584%25D8%25AA%25D8%25B9%25D8%25AF%25D9%258A%25D9%2584-%25D9%2585%25D8%25AF%25D9%2588%25D9%2586%25D8%25A9-%25D8%25A7/\)](#) to the idea of reforming the *Mudawana*. This opposition is the product of rumors circulating (given the lack of concrete proposals thus far) regarding the government’s intent to enact changes to “sensitive” religious matters within the code, such as inheritance, men’s guardianship, alimony, and arrangements for dividing joint spousal resources in case of divorce.

The Royal Court’s aforementioned communiqué in September affirms that this shift is underway in the official promulgation of family law. The draft amendment to the Family Code will be prepared under the supervision of the Ministry of Justice, the Supreme Council of Judicial Power, and the chief of the Public Prosecution, due to the centrality of the legal and judicial components of the matters in question. Those institutions—rather than the king—were also instructed to include other relevant bodies in the reform process, particularly the Supreme Ulema Council, the religious institution responsible for issuing Islamic legal opinions (*fatawa*) of an “advisory” nature. All of this points in the direction of a more positivist approach to Moroccan family law.

The campaign against the proposed reforms to the Family Code has been led by certain figures affiliated with the [Salafist/Wahhabi movements \(https://www.youtube.com/watch?v=o6L68-yTt3A\)](#) and the [Muslim Brotherhood \(https://howiyapress.com/%25D8%25A7%25D9%2584%25D8%25B9%25D8%25AF%25D9%2584-%25D9%2588%25D8%25A7%25D9%2584%25D8%25A5%25D8%25AD%25D8%25B3%25D8%25A7%25D9%2586-%25D8%25AA%25D8%25AF%25D8%25AE%25D9%2584-%25D8%25B9%25D9%2584%25D9%2589-%25D8%25AE%25D8%25B7-%25D8%25AA%25D8%25B9%25D8%25AF%25D9%258A%25D9%2584-%25D9%2585%25D8%25AF%25D9%2588%25D9%2586%25D8%25A9/\)](#). There are also several political figures involved: the former prime minister and [current secretary-general of the Justice and Development Party \(https://www.independentarabia.com/node/502111/%25D8%25A7%25D9%2584%25D8%25A3%25D8%25AF%25D8%25A8%25D8%25A7%25D8%25B1/%25D8%25A7%25D9%2584%25D8%25A7%25D9%2584%25D8%25B9%25D8%25B1%25D8%25A8%25D9%258A/%25D8%25AA%25D8%25B9%25D8%25AF%25D9%258A%25D9%2584-%25D9%2585%25D8%25AF%25D9%2588%25D9%2586%25D8%25A9-%25D8%25A7%25D9%2584%25D8%25A3%25D8%25B3%25D8%25B1%25D8%25A9-%25D8%25A8%25D9%258A%25D9%2586-%25D8%25B4%25D8%25AF-%25D9%2588%25D8%25AC%25D8%25B0%25D8%25A8-%25D9%2581%25D9%258A-%25D8%25A7%25D9%2584%25D9%2585%25D8%25BA%25D8%25B1%25D8%25A8\)](#) has sharply criticized the idea of instituting modernizing reforms to the Family Code on the grounds that this would go against “Moroccan values and identity.”

The intense pushback from religious and conservative figures speaks to the underlying power dynamics within Moroccan society. Although the king has acquiesced to activists’ demands and implemented modernization efforts, attempts to make deeper infrastructural changes have not able to gain the same traction. In the latter context, conservative forces retain control even as some of the power these traditional forces exert in the public sphere has receded. Changing the role these forces play in societal decision-making will be no small feat. Shifting power from more traditional, established forces will require both the approval of the state and the mobilization of democratic forces.

Limits to reform: aspirations and realities

[Proponents of civil rights \(https://www.mc-doualiya.com/%25D8%25A7%25D9%2584%25D9%2585%25D8%25BA%25D8%25B1%25D8%25A8-%25D8%25A7%25D9%2584%25D8%25B9%25D8%25B1%25D8%25A8%25D9%258A/20230927-%25D8%25A7%25D9%2584%25D8%25AD%25D9%2583%25D9%2588%25D9%2585%25D8%25A9-%25D8%25A7%25D9%2584%25D9%2585%25D8%25BA%25D8%25B1%25D8%25A8%25D9%258A%25A9-%25D8%25A3%25D9%2585%25D8%25A7%25D9%2585-%25D8%25AA%25D8%25AD%25D8%25AF%25D9%258A-%25D8%25AA%25D8%25B9%25D8%25AF%25D9%258A%25D9%2584-%25D9%2582%25D8%25A7%25D9%2586%25D9%2588%25D9%2586-%25D9%2585%25D8%25AF%25D9%2588%25D9%2586%25D8%25A9-%25D8%25A7%25D9%2584%25D8%25A3%25D8%25B3%25D8%25B1%25D8%25A9-%25D9%2588%25D8%25AD%25D9%2582%25D9%2588%25D9%2582%25D9%258A%25D9%2588%25D9%2586-%25D9%258A%25D8%25B1%25D8%25A7%25D9%2587%25D9%2586%25D9%2588%25D9%2586-%25D8%25B9%25D9%2584%25D9%2589-%25D8%25A7%25D9%2584%25D8%25A7%25D9%2586%25D8%25AA%25D8%25B5%25D8%25A7%25D8%25B1-%25D9%2584%25D9%2584%25D8%25AD%25D8%25B1%25D9%258A%25D8%25A7%25D8%25AA\)](#) in Morocco are optimistic about comprehensive reform of the *Mudawana* that will have far-reaching impacts on multiple aspects of civil, political, economic, and social importance to Moroccan citizens. Such optimism has been motivated by the growing accessibility of international instruments including the Universal Periodic Review (UPR) and other international treaties. Civil society considers these instruments empowering tools which enable them to advocate on the international level to achieve full equality between men and women with regard to guardianship, inheritance, and joint responsibilities of spouses. Civil society’s demands for reforms have been widely accepted by international right organizations which proceeded and submitted its recommendations to the Moroccan state encouraging it to enact legislative reforms favorable to family and women.

However, it is crucial to note that reforming the family code is not a legislative matter, but also a cultural and political issue. We should take into account the conservative nature of Moroccan social structures as discussed above, and that the political system itself still embraces certain [traditional conservative elements, some of which are protected by the 2011 constitution \(https://studies.aljazeera.net/ar/article/5060#:~:text=](#) [%2520%25D8%25A7%25D9%2584%25D9%2581%25D9%2582%25D8%25B1%25D8%25A9%25203%2520%25D9%2585%25D9%2586%2520%25D8%25A7%25D9%2584%25D9%2581](#) . The political system is also grounded in traditional structures with regard to the three components of Moroccan Islam, namely the Maliki school of law, Ash ‘ari doctrine, and the Junaydi Sufi order, in addition to the monarch as “commander of the faithful” as a key institution in Moroccan political life. There is also the oath of allegiance that requires a pledge to “protect creed and religion.” As a result, there are limits to how far the Family Code can be amended, and this will likely fall short of what international or national rights movements are hoping for.

Furthermore, the king’s 2022 Throne Day speech set the general parameters for potential amendments to the Family Code. The king said: [“I will not permit what God has forbidden, and I will not forbid what God has permitted.” \(https://www.hespress.com/%25D8%25A7%25D9%2584%25D9%2585%25D9%2584%25D9%2583-%25D9%2585%25D8%25AD%25D9%2585%25D8%25AF-%25D8%25A7%25D9%2584%25D8%25B3%25D8%25A7%25D8%25AF%25D8%25B3-%25D9%2584%25D8%25A7-%25D8%25A3%25D8%25AD%25D9%2590%25D9%2584-%25D8%25AD%25D8%25B1%25D8%25A7%25D9%2585%25D8%25A7-%25D9%2588%25D9%2584%25D8%25A7-%25D8%25A3%25D8%25AD%25D8%25B1-1025966.html\)](#) This constrains the space in which the committee drafting the amendments will be able to work; the same will be true for the Parliament when it ratifies the draft. The king’s speeches hold significant sway and it will be difficult for any actor in the public sphere to challenge the framework he has set.

The possibility of changing the Moroccan Family Code has ignited passions on social media, even though no official draft for these potential amendments yet exists. In the coming days, this could escalate further and growing polarization could make debate impossible, as was the case during previous attempts to amend the personal status law. In this context, it is useful to consider three potential scenarios as to where public debate about the Family Code could lead:

Scenario I: Complete alignment of the provisions of the Family Code with international human rights law, thus fully satisfying the demands of the rights-based movement in Morocco. This outcome is unlikely at the moment due to the political, cultural, and social factors discussed above.

Scenario II: Minor changes are made to the Family Code without altering its essence. This is unlikely because it would not further the political regime’s image of implementing reform (either for a national or international audience).

Scenario III: Pursuing amendments that are acceptable to all political and social actors in Morocco, and maintaining sufficient balance between these actors in order to bolster the political regime’s legitimacy. This is the most likely scenario.

In conclusion, reforming the Family Code will remain one of the most persistent issues in Moroccan society, and there is no doubt that the reform process will be carried out in a gradual manner that ensures consistency with prevailing social and cultural structures. Moreover, reforming the Family Code is also a major concern for all segments of Moroccan society since its impact is not only limited to the family, but extends to encompass all aspect of public life of the Moroccan citizens. Therefore, all concerned political and civil actors should avoid making the reform process an arena for tension and polarization. ❖

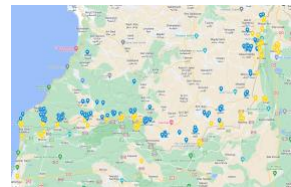
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