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## *COUNTRY REPORT: MOROCCO*

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European University Institute, Florence  
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EUDO Citizenship Observatory

***Report on Morocco***

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# Morocco\*

## by Delphine Perrin

### *Abstract*

Moroccan citizenship has evolved since the colonial period to reflect changing views of allegiance and belonging. Before 1880, the Sultan's personal legitimacy derived mainly from his status as descendent of the Prophet. With the Madrid Convention of 1880 came the emergence of the idea of a *de facto* nationality linked to the territory of Morocco, while an incipient legal notion of nationality surfaced in 1912 via the Fes Treaty, which recognised distinctions between individuals based not only on religion but also "national" origin. The struggle for independence highlighted the significance of nationality as a source of political legitimacy, while in the immediate post-colonial period Hassan II resurrected the trans-historical idea of personal and perpetual allegiance to the sovereign based on divine right. Under the citizenship Code adopted in 1958 Moroccan citizenship was de-linked from religion and became political. It was based mainly on *ius sanguinis*, specifically paternal descent. This patriarchal emphasis resulted in numerous discriminatory effects against women, including the inability of a Moroccan woman to transmit her nationality to her foreign husband or children. Double *ius soli* was retained from the Protectorate, providing a way to become Moroccan with a paternal link. The 1958 Code also introduced several ways of forfeiting citizenship. Under the influence of regional struggles for women's rights as well as the ascendance of Mohammed VI to the throne in 2000, the current citizenship regime is much more favourable to women and provides for the transmission of nationality by woman or man to children, though some discriminatory provisions remain.

### **1. Introduction**

The concept of Moroccan citizenship has evolved since the colonial period to reflect changing views of allegiance and belonging.. There are important differences, between Moroccan understandings of citizenship and established European models: the nature of sovereignty in pre-colonial Morocco was never exclusively territorial but established through networks linking the Sultan to significant others, particularly the Prophet, as Commander of the Faithful. Moroccan citizenship is not formally egalitarian, since it recognises significant gender differences and has denied important citizenship rights to women. It also presents a relatively homogenous vision of the nation and recent reforms have struggled with the possibility of naturalisation for Morocco's growing immigrant population.

Despite the upheavals of the colonial occupation Moroccan citizenship was recognised during the colonial period as a separate status from French or Spanish citizenship. Its subsequent evolution was the product of strategic political choices

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made by successive leaders, notably Mohammed V, who used citizenship to consolidate power, and Hassan II, who used it in relation to the Western Sahara to consolidate territory.

The most recent reform to the Citizenship Code, introduced by Mohammed VI was enacted in 2007. It was the first change in 50 years and destabilised a vision of Moroccan citizenship as static with the introduction of important symbolic and practical changes. In most cases the reforms were not drastic enough to satisfy prominent critics but sufficient to unsettle certain establishment interests. The aim was to reinforce national unity by extending citizenship rights to individuals already seen as belonging to the nation (women, their children and emigrants) while restricting access to citizenship for immigrants. This paper sets the current situation following these reforms, against the historical development of citizenship in Morocco.

## 2. Historical background

Moroccan citizenship is said to have been the creation of colonial powers, since the express notion of nationality was first used in reference to the foreign presence in the territory. Still, Morocco is also reputed to be the oldest state in the region, with an organized and centralized power personified by the Sultan. Unlike in Europe where sovereignty was primarily territorial, the power of the Sultan was established through personal allegiance (*ba'a*) to his authority. Considered *Amir al-Mu'minin* (i.e. Commander of the Faithful) and descendant of the Prophet, the Sultan's personal legitimacy derives from Islam. He presides over a bureaucracy known as *Maghzen*, which embodies the unity of the national community on the basis of a trans-historical legitimacy (Benali 1987: 120). The Moroccan state has been imagined as divided into two zones: the *bilad al-maghzen*, covering the territories of tribes which accepted the Sultan's authority, and the *bilad al-siba*, where tribes were not submissive to central government. Both varied in size throughout Morocco's history, while an intermediary zone would, at times, accept *maghzen* rule and, at other times, reject it, depending on the sultan in power (Burke 1976: 12). At independence in 1956, *bilad al-maghzen* and *bilad al-siba* formed the Kingdom of Morocco and the first citizenship law was adopted in 1958.

### 2.1 Allegiance to the Sultan and Legitimacy of the *Maghzen*

Morocco was the first state to be created in the Maghreb. The unity of the northern region was at least eight centuries old when the Almohad empire conquered Central Morocco in the twelfth century, including Fès, founded in 807, and Marrakesh, created by the Almoravid dynasty in 1062. Islam had previously spread there and already constituted a source of political legitimacy for powers designed as representative of the Prophet, if not of Allah Himself (Tozy 1999: 34).

Topography influenced political development and the search for autonomy of some regions, but "*all regions were condemned by ecology, religion and the trade routes to membership in a greater Moroccan entity*" (Burke 1976: 2). Islam gave a

semblance of unity to the collection of tribes and rural groups (Burke 1976: 10), but the population was also remarkably homogeneous, composed of only two linguistic groups, i.e. Berber and Arab, and two religions, the Maliki legal rite and the Jewish faith.

The shape of politics and social life in pre-colonial Morocco were greatly influenced by the geography and ecology of the country. The Mediterranean, the Atlantic and the Sahara, then separated from the rest of North Africa by the Atlas Mountains and the Pre-Saharan steppe on the east and the south, helped to cushion Morocco from outside influences (Burke 1976: 1). Moroccan tribes managed to push back Spanish and Portuguese conquerors in the fifteenth century without the need of Ottoman protection. During the sixteenth century, Morocco and the Ottoman Empire concluded various treaties in order to define the Western limits of Ottoman expansion into Africa. These limits were confirmed by subsequent treaties between France and Morocco after the former had conquered Algeria.

After centuries of unstable power of successive *asabiya*<sup>1</sup>, the Alawite Dynasty eventually consolidated its power in the seventeenth century after the conquest of Central Morocco, and reinforced Morocco's unity. Made up of *chorfa*, who were considered descendants of the Prophet, the Alawite controlled the *bilad al-maghzen*.

In its 1975 advisory opinion on the Western Sahara<sup>2</sup>, the International Court of Justice (ICJ) recognised the existence of a pre-colonial organised power in the *bilad al-maghzen* through links of allegiance between tribes and the Sultan. It also mentioned the variety of relations which tribes could have with the *Maghzen* and the difficulty in mapping these relations. For this reason, it is difficult to know with certainty the extent of Morocco's pre-colonial sovereignty, particularly in a desert space and over a nomad people as was the case in the Western Sahara. It seems that, right through the nineteenth century, the territories situated between Oued Nassa in the North and Oued Noun in the South and beyond Cap Boujdour were outside political and fiscal control and thus in *siba* (Tozy 1999: 54).

The Western Sahara case before the ICJ gave Morocco the opportunity to insist on its having been created in the early Middle Ages with the Arab conquest and to claim its right to be reconstituted along its historical borders, which were dismantled by colonization. Morocco argued that its special character was based on the fact that its people were united by the common religious bond of Islam and the allegiance of the various tribes to the Sultan, through their *caïds* or *sheikhs*, rather than by territorial notions, constituted partly of the *bilad al-maghzen* and the *bilad al-siba*<sup>3</sup>. Indeed, the *Maghzen* had and still has a capacity to cope with, and even benefit from dissent (Tozy 1999: 58), which is not inconsistent with its power.

All the tribes were Islamic and the whole territory remained within the Dar al-Islam. Consequently, "state" organisation was not based on sovereign control over a territory but on a personal oath to the Sultan as the Commander of the Faithful. Power links depended on Islam, and Arabic became the national official language of the Sherifian Kingdom. There was no strict definition of a citizen, independent of religion.

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<sup>1</sup> Defined by Ibn Khaldun (1332-1406) as a political structure which combines tribal solidarity and the leadership of a great family.

<sup>2</sup> *Western Sahara*, ICJ, advisory opinion, *Rec.1975*.

<sup>3</sup> ICJ *Rec.1975 op.cit.* §95.

## 2.2 The Foreign Presence in Morocco and the Emergence of Nationality

The first reference to nationality appeared with the Madrid Convention of 3 July 1880, following the Madrid conference of May 1880 on capitulatory privileges of Europeans in Morocco. Indeed, Spain declared its protectorate on Rio del Oro in Western Sahara in 1884, on Ifni in 1904 and on the Sakiet El-Hamra, also in the Western Sahara, in 1912. This foreign intervention implied the superimposing of Western notions of nationality and citizenship on the local notion of *Umma*, where *dhimmis* (non-Muslims) were protected by the Muslim state, but without equality of rights and duties (Djebali 2004: 145).

Article 15 of the Madrid Convention dealt with the naturalisation of Moroccans abroad. When a Moroccan naturalised abroad returned to Morocco after a period of time spent in Morocco equal to the period previously spent abroad, s/he had to renounce foreign citizenship or leave Morocco, unless authorisation was granted by the *Maghzen* to obtain that other citizenship.

This marked the emergence of the notion of nationality, but it was not *de jure* yet; it still had a *de facto* meaning, based on allegiance to the Sultan linked, in turn, to religion. A Moroccan national was supposed to be a Muslim and to live in Morocco.

Under the Fès Treaty of 1912, Morocco was placed under a French and Spanish Protectorate. Morocco was still considered sovereign, but legislative power was shared. During this Protectorate, the notion of nationality became part of a legal framework; distinction between individuals was not only based on religion but also on nationality.

In 1923, a dispute arose between France and Great Britain as to the effect on British citizens of French measures regarding nationality in Morocco<sup>4</sup>. In 1856, Great Britain had concluded a treaty of extra-territoriality and capitulatory rights with Morocco, which enabled British citizens in Morocco to remain British citizens. Yet, on 8 November 1921, a Sherifian Dahir<sup>5</sup> and a French decree were issued and introduced the double *ius soli*. The one-article-dahir provided:

*“A Moroccan is, with the exception of citizens, subjects or nationals of the Protecting Power other than our subjects, any individual born in the French zone of our Empire, to foreign parents of whom one is also born there”.*

On the same date, the French President promulgated a decree of which article 1 was expressed:

*“A French citizen is any person born in the French zone of the Sherifian empire to parents of whom one, subject as a foreigner of the French tribunals of the Protectorate, is also born in this zone, provided the filiation is established in accordance with national law’s prescriptions concerning the ascendant or with French law, before twenty-one years of age”.*

According to the Court, France’s competence to legislate on foreign nationals in the protected territory depended on the international agreement concluded between

<sup>4</sup> *Nationality Decrees issued in Tunisia and Morocco*, PCIJ (Permanent Court of International Justice), series B, opinion of 7 February 1923.

<sup>5</sup> I.e. a royal decree.

France and Morocco which prescribed the division of competences between the two entities. The result was that Morocco implemented a nationality rule in order to distinguish its nationals from other nationals. While in 1810, the criteria introduced were Moroccan origin and residency<sup>6</sup>, in 1921, double *ius soli* appeared. In both cases, the territorial criterion is of great importance, constituting a change in the traditional conception of belonging based on allegiance to Islam and the Sultan.

In fact, the Dahir of 8 November 1921 had no practical effect. It was a decision parallel to the French decree, which aimed at increasing the number of the French population in the territory under the Protectorate. According to the French decree, residents with European origins were supposed to become French. Residents with different origins did not receive French citizenship, and the Dahir of 8 November 1921 only confirmed this duality. The Protectorate's tribunals defined the outlines of Moroccan nationality, without any text, on the only basis of *ius sanguinis*, without any other means of acquisition or loss. During the Protectorate, Moroccan nationality remained, since the Moroccan state was recognised as being separate from France.

Unlike in Algeria, Jewish residents did not obtain any specific rights under the French Protectorate. They were subjects of the Sultan but, excluded from the social and political spheres, they had no real rights and duties from or towards the Muslim state (Djebali 2004: 144). Unlike non-Muslims in the Middle East, Maghreb Jewish subjects did not participate in nationalist movements (Djebali 2004: 146). After World War II and the creation of Israel, a large number of Moroccan Jews left the country, modifying its demographic structure. Morocco, in fact, became religiously more homogeneous. Furthermore, French attempts to divide Arabs and Berbers in the Protectorate era<sup>7</sup> did not succeed and both major components of the country were unified by anti-colonial and nationalist sentiments. This unity continued after independence, due in large part to strong religious links and in spite of some attempts at destabilization, which had political rather than ethnic origins.

In 1927, the French colonizers chose Mohammed V to become the Sultan of Morocco. Reputedly weak, he showed himself, instead, to be a great nationalist. In a speech on 10 April 1947, he called for independence and the pro-independence party *Istiqlal* reconciled itself with him over this common objective. Yet, after an attempted *coup d'Etat* in 1953, Mohammed V was dismissed by the French and exiled to Madagascar, being replaced by Mohammed Ben Arfa, who was on the throne for only two years. With growing instability and pro-independence pressure in the following years, France restored Mohammed V to power in 1955. France was weakened by its defeat in Indochina and focused on a coming war for independence in Algeria where widespread insurrection had begun.

When independence was proclaimed on 2 March 1956, Sultan Mohammed V became king, with his legitimacy depending in part on his role in the nationalist struggle for independence. Yet, when he died in 1961, his son Hassan II required the *ba'a* of the Ulemas. In doing so, he rehabilitated allegiance as a constitutive element of power, and claimed a historical authority which pre-dated the authority of the state. While re-establishing this trans-historical legitimacy, Hassan II also reinforced

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<sup>6</sup> It is noteworthy that during the same period, in 1869, an Ottoman law was adopted, which emancipated citizenship from religion by recognising citizenship based on residency and (paternal) descent. This was formalized in the 1876 Ottoman constitution.

<sup>7</sup> E.g the 1930 Berber Dahirs which aimed at creating a system of tribunals applying their traditional law to Berbers.



nationalism, particularly with his claims on the Western Sahara and the Green Walk in 1975.

### 2.3 Independence and the First Nationality Code

Independence in 1956 meant the end of the distinction between *bilad al-maghzen* and *bilad al-siba*, and also a fusion between French and Spanish parts of colonised Morocco. Yet some territorial disputes still remained. The Western Sahara, created in 1958 by the union of Rio de Oro and Sakiet el-Hamra, was still under Spanish control and remained so till 1976, while Tarfaya was integrated into Morocco in 1958 and Ifni in 1969. Morocco gave up its territorial claims over Mauritania the same year, but international pressure had been growing on Spain to decolonise the Western Sahara and to respect its people's right to self-determination. When Spain eventually agreed to organise a referendum for self-determination in the territory, Morocco expressed its opposition and demanded reintegration into Moroccan territory. Subsequently seized by the United Nations General Assembly, the ICJ recognised the existence of links of allegiance between tribes in the Western Sahara and the Sultan before the Spanish colonisation, but did not agree to Moroccan territorial sovereignty in the pre-colonial era, and called for the organisation of a referendum.

Hassan II considered this judicial acknowledgment of historical links as an opportunity and in 1975, organised the "Green Walk", which resulted in the annexation of the territory. Since then, disputes about the census of people in the Western Sahara and the number of citizens who would be allowed to vote at the referendum for self-determination have never ceased.

In 1979, the Western Sahara was officially considered Moroccan by Morocco, which extended its citizenship law there. Yet, in 1976, a Spanish decree had offered one year to Sahraouis to the facilitated acquisition of Spanish citizenship. Spain still allows Sahraouis easier access to citizenship, given that Western Sahara was a former colony, while this is not extended to the Rif or Ifni, which makes Morocco assume that Spain is challenging its sovereignty over the Western Sahara.

On 22 December 2008, Mohamed VI dismissed Ahmed Lekhrif from the office of secretary of foreign affairs after he became a Spanish citizen<sup>8</sup>. The official reason was that such a position within a sovereign service was inconsistent with the acquisition of another form of citizenship. Actually, the real problem came from the type of acquisition, a kind of "reintegration" of Spanish citizenship for this *Sahraoui* citizen.

Independence saw the departure of most European colonisers, and also a large number of Moroccans Jews, who were enticed to emigrate to Europe or the recently formed state of Israel. Between 1958 and 1962, 100,000 Jews left the country, i.e. one third of the 300,000 Jewish residents living in Morocco before independence, down from a population of 8 million. The Jewish community today numbers only a few thousand persons (Laâbi 1999: 120). The Maghreb began to experience a religious homogeneity never known before in its history. In Morocco, like much of the rest of its newly independent Arab neighbours, authoritarian political powers became entrenched, and a strong Arabizing influence could be felt.

<sup>8</sup> MAP (Maghreb Arab Press), 22 December 2008.

The citizenship Code was among the first legal texts to be adopted by the new state, even before the Constitution. The Dahir n°1-58-250 of 12 September 1958 entered into force on 1<sup>st</sup> October, at the same time as the *Moudawana*, i.e. the family Code, and the civil liberties Code.

With the Dahir n°1-58-250, Moroccan citizenship was separated from religion and became political. The new citizenship law was based mainly on *ius sanguinis*, and more specifically on paternal descent. The *ius soli* introduced during the Protectorate remained, with some amendments, and a prescription of *ius soli* was also added to combat statelessness.

Moroccan citizenship law was turned towards integrating and uniting Muslims, in line with Moroccan identity as defined in the Constitution. The priority was not to increase the population – already in surplus – but rather to favour national unity and to avoid the creation of parallel communities. Allegiance to the Sultan, as the *Amir Al-Mu'minin*, underlay the new Code and was permanent. However any decision linked to citizenship was now delivered by the government, not the Monarch.

### ***The importance of the principle of family national unity: a patriarchal basis***

Morocco's citizenship Code was inspired by the principle of family national unity on a paternal basis, which implied one family, one nationality. It explains the denying of citizenship rights to women, and the attribution of the father's citizenship to his wife and children. The same lines could be found in the 1954 League of Arab States' Agreement on citizenship, though not ratified by Morocco<sup>9</sup>. *Ius sanguinis* was paternal, provided the family relationships were stated on the basis of the applicable family law (art.6-1), which meant that it was determined according to the religious affiliation of the father. The Moroccan Family Law Code for Muslims did not allow any exception to the principle that descent could only be established by birth within wedlock. Still, article 6-1 did not distinguish between religions, and the illegitimate child of a Christian male, if the filiations were established, could be a Moroccan.

To avoid the consequences of exclusive paternal *ius sanguinis* on statelessness, a Moroccan mother's child was also considered a Moroccan of origin if the father was unknown (art.6-2), which solved the problem of illegitimate children, even if born abroad. Their situation was thus more favourable than children born to a Moroccan mother and a stateless father, since these children could become Moroccans only if they were born in Morocco (art.7-1). Born abroad, to a Palestinian father, for instance, the citizenship of their mother was not sufficient to grant Moroccan citizenship.

In a similar bid to avoid statelessness, any child found in Morocco, born to unknown parents, was a Moroccan (art.7-2). This basic and necessary provision was not extended to children born in the country to stateless parents, who would thus remain stateless. Besides, the adoption of a child had no effect on his/her nationality, since adoption is not recognised as a family relationship in Muslim law.

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<sup>9</sup> This agreement was adopted on 5 April 1954 by the League of Arab States. It was ratified by only eight countries and never entered into force. It stipulated two main principles, which seemed to be shared among Arab states, i.e. a male transmission of nationality to children and wives, and the prohibition of dual Arab citizenship.

In accordance with the principle of family national unity on a paternal basis, a foreign woman marrying a Moroccan man had a right to become a Moroccan if she declared this wish before the Ministry of Justice after two years of marriage and residence in the country (art.10). A foreign man marrying a Moroccan woman did not gain any right or ability to become a Moroccan national.

### ***Becoming a Moroccan citizen***

The main novelty of the 1958 citizenship code was to introduce the possibility of becoming a Moroccan, and not only being a Moroccan. The Moroccan mother could not transmit her citizenship to her child born to a foreign father, but this child had the opportunity to acquire Moroccan citizenship, if he/she was born in Morocco, and had his/her regular and legal residence there when he/she applied for citizenship. The declaration had to be established within two years of coming of age (21 years old) (art.9-1). The Minister's silence for six months was supposed to mean assent (art.26-27), but delays had become extremely long and Moroccan mothers' children, already considered foreign nationals while minors, often had to remain foreign nationals in their own country after they reached majority, with obvious repercussions on their daily lives.

The 1958 citizenship Code retained the double *ius soli* introduced during the French Protectorate, but to prevent colonial descendants from benefiting from this provision a temporal limit was introduced. Consequently, children born in Morocco to foreign parents also born there could become Moroccans if their parents were born after independence. Children of Moroccan mothers had to complete their declaration two years before coming of age, and the absence of ministerial opposition during six months equalled acquisition (art.9-2).

Double *ius soli* was not time-limited when applied to Muslim descendants (art.9). Indeed, the person born in Morocco to a foreign father also born there at any time could become a Moroccan, if the father came from a country where the majority of the population practiced Islam and spoke Arabic and if he belonged to this community. Here, no delay to application was indicated, and the ministry could also oppose. This provision, combined with the former, aimed at hindering access to citizenship for colonial offspring, and favoured national unity based on shared values. This provision can also be found in Egypt, and is close to some equivalents in Africa where co-ethnicity is based on African origins. In Morocco, it could enable the integration of descendants of Algerians or Palestinians.

During the year after the adoption of the 1958 Code, foreign persons, who had their origins in a country where the majority of the population was Muslim and spoke Arabic, could opt for Moroccan citizenship if they had resided in Morocco for at least fifteen years, or if they had worked in the Moroccan administration for ten years, or were married to a Moroccan female and resided for at least one year in the country (art.45). This opting right was also applicable to persons from Morocco's frontier zones who had their residence in Moroccan territory. The minor children of the person acquiring the Moroccan citizenship in this way also became Moroccans (art.18).

The procedure of naturalisation for adults was introduced in 1958 (art.11).

The residence requirement was reasonable, since the applicant had to prove a five-year residence and that he or she was still a regular and legal resident when they applied (art.11-1, 2). The criterion that the applicant had to be sane of body and spirit (art.11-4) implied that he/she should not suffer from physical or mental disability unless providing a service to the state (art.12). Other conditions included good morality and the absence of a non-rehabilitated condemnation for crime or for an ‘infamous’ offence (art.11-5), a sufficient knowledge of Arabic (art.11-6) and sufficient means of living (art.11-7).

The application had to be lodged with the Minister of Justice, and the decision was given by decree in the Council of Ministers. Names could be changed (art.13). Any refusal on the part of the government in terms of the inadmissibility of the request had to be justified, while refusal on grounds of substance need not be. These conditions (except good morals) were not relevant for people who had rendered exceptional services to the state, who could acquire citizenship upon a sovereign *Dahir* (art.12-13).

Within one year of the publication of the naturalisation act, citizenship could be withdrawn if it occurred that the applicant had not fulfilled conditions.

Citizenship could be extended to the non-married minor children of the naturalised person, but children above sixteen must repudiate citizenship three years before coming of age (art.18).

Foreign nationals who have requested Moroccan citizenship are rarely immigrants, but mostly “fellow nationals” who are born in the country or have been living there for more than forty years, like, for example, Algerian residents in Morocco. Indeed, of the 900 applications for Moroccan naturalisation pending in 2007, 480 were submitted by Algerians<sup>10</sup>. Though this border has been officially closed since 1994 it has not been demarcated and circulation between the two countries is intense. A great number of citizens from each country live in the other and a number of them wish to obtain the citizenship of the country in which they reside. These people have suffered from the troubled relations between neighbouring states. After the Algerian “Black Walk”, following the Moroccan “Green Walk”, between Algeria and Morocco, Hassan II reacted to the expulsion of Moroccan citizens from Algeria and requested his administration to treat Algerian applications for naturalisation with circumspection. Yet 62% of persons who obtained Moroccan citizenship between 1959 and 2007 were, in any case, Algerian<sup>11</sup>.

Moroccan Citizenship Law distinguished nationality and citizenship, since new nationals could not enjoy political rights (voting rights, eligibility) nor have access to civil service for five years after naturalisation, unless these incapacities were removed (art.17).

Reintegration was possible for nationals of Moroccan origin who had lost their citizenship. This opportunity was not extended to Moroccans by acquisition. Reintegration had a collective effect on minor non-married children if they effectively lived with the reintegrated person (art.18).

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<sup>10</sup> Source: Moroccan Ministry of Justice.

<sup>11</sup> Id.

### *Losing citizenship*

The 1958 Code introduced the possibility of losing Moroccan citizenship in five cases, including three possibilities, one right and one forced loss:

- (1) Upon request, after authorisation by decree, if the adult voluntarily acquired another nationality abroad: this was a reaction to the Madrid Convention which enabled Spain to naturalise a large number of Moroccans living in Spanish territory (art.19-1);
- (2) The authorisation given by decree to a Moroccan citizen, even minors, who had another nationality, to lose his/her Moroccan citizenship (art.19-2);
- (3) The possibility for a Moroccan woman getting married to a foreign citizen and acquiring his nationality through marriage, to ask, before the wedding, to renounce her Moroccan citizenship (art.19-3);
- (4) The repudiation by the child who gained citizenship through the collective effect when he or she was sixteen or older, as provided in article 18 (art.19-4);
- (5) The potential loss for citizens working in a foreign civil service or army who did not quit this activity within six months despite an official request to do so (art.19-5), after they had presented their observations and provided that they were able to quit this job (art.20-4)

According to the principle of family national unity, the loss had a collective effect upon non-married minors who effectively lived with the person who lost citizenship. Yet, the loss could not be collective in case (5) above (art.21).

Forfeiture might also apply to Moroccans by acquisition, within ten years after acquisition (art.22), and for three broad types of reasons: for a condemnation (whatever the penalty) for an offence or crime against the sovereign or members of his family; for any crime or misdemeanour (whatever the penalty) against internal or external security; or for a crime leading to at least five years in prison; non-compliance with military service obligations; any act to benefit another state which is inconsistent with being a citizen or that is against Morocco's fundamental interests. The forfeiture would have to be made within five years of the act. It might result in statelessness for the person responsible, but not for wife and children to whom the measure would be extended only if they had dual citizenship. The measure would extend to non-married minor children only if it was extended to their mother (art.24).

Cases of forfeiture or loss of citizenship have been extremely scarce. According to Khalid Berjaoui<sup>12</sup>, only two cases of removal of citizenship are known and it concerned Jewish citizens. Indeed, the principle of perpetual allegiance has a religious basis – perpetual allegiance to the Commander of the Faithful.

For fifty years Morocco's citizenship law was neither reformed nor modified, which may be linked to the concept of Moroccan citizenship as steady and permanent and summed up as "*on naît et on meurt Marocain*". This adage not only reflects the perpetual allegiance to the *Sherif*, but also the difficulty of including diversity and difference in the nation. Indeed, only 1,646 persons obtained Moroccan citizenship

<sup>12</sup> Head of the department of private law in the law faculty of Souissi-Rabat, interview in Yabiladi.com, 9/07/2008, <http://www.yabiladi.com/article-societe-2554.html>

between 1959 and 2007<sup>13</sup>. This relatively low rate of integration is not only due to a relatively low number of applicants for Moroccan citizenship. It is, above all, grounded in a strict definition of belonging in a country where diversity is increasing.

Considered a country of emigration, Morocco is also an immigration country, even if the rate of regular foreign residents is relatively low. The 1994 Moroccan census estimated the number of foreign residents born in Morocco at 27,778 persons, including 17,500 Arabs (among them 11,474 Algerians, 2,981 Libyans and 830 Tunisians), 2,310 Sub-Saharan (among them 1,100 Malians) and 7,346 Europeans. In 2005, 62,348 foreign residents were registered: i.e. 0.2% of the population<sup>14</sup>. Africans and Europeans account for almost the same levels (between 20,000 and 30,000 each). Algerians form the biggest national group (around 12,000 residents). Mixed marriages have also increased. In 1997, 996 Moroccan women and 614 Moroccan men married foreign citizens in Morocco. In 2001, they were around 2,500 women and 1,300 men; in 2007, 5,660 women and 4,320 men, five times more than ten years earlier<sup>15</sup>. Foreign spouses are mainly Europeans.

Morocco is well known for the difficulties involved in obtaining citizenship and its slowness in processing applications. This is said to be why the demand for Moroccan citizenship has decreased. Between 2003 and 2005, 542 applications for naturalisation were discussed within the commission in charge. The number of applications reached 199 in 2004 and only 79 in 2005. Applicants were mainly Europeans and Arabs, among whom were included Algerians, but also Africans who have been living in the country for a very long time<sup>16</sup>.

### 3. The current Moroccan citizenship regime

The 1958 citizenship law mainly failed children of mixed nationality parents, who had to remain foreign residents during their minority, and even after due to too long delays in dealing with applications. The negation of women's right to transmit their citizenship dramatically affected these children.

When Mohamed VI became King in 2000, he promised to improve women's rights. The Moroccan social and political context had been evolving. In 2002, the age of majority dropped from 21 to 18 years old, paving the way for the *Moudawana* reform two years later. On 11 November 2003, Morocco adopted its Law n°02-03 on the entry and stay of foreign nationals into the Kingdom of Morocco, irregular emigration and immigration.

The fact that citizenship regulation was reformed during the same period might suggest that the government had established a link between immigration and citizenship, as has been done in Europe. However this reform was not motivated by an awareness of an increased foreign presence or an intention to integrate new sections of the population. It was instead due to the struggle for women's rights at

<sup>13</sup> The Minister of Justice, M. Bouzoubaâ, in a declaration to the Parliament, published in (2007) *REMALD* 178: 70. It is important to stress the lack of transparency regarding citizenship data, which are hardly published.

<sup>14</sup> See official census and other figures on CARIM (Consortium for Applied Research on International Migration) demographic database: <http://www.carim.org/index.php?callContent=58>

<sup>15</sup> Minister of Justice, op.cit.

<sup>16</sup> Ibid.

national and regional levels<sup>17</sup>. In fact, the family Code was also reformed along these lines three years before the citizenship reform. In the same period Egypt (in 2004) and Algeria (in 2005) revised their citizenship regulations to give women the right to transmit their nationality.

The reform of the citizenship Code was announced by Mohamed VI in his *Discours du Trône* on 30 July 2005 in Tangier. Before that three amendments had been presented to Moroccan representatives by the parliamentary group USFP<sup>18</sup>, but these were rejected. In 2000, the Casablanca Walk against the plan for women's integration had encouraged policy makers to be prudent on the topic. A royal initiative was expected. The reform of the *Moudawana* in December 2003 was an important step towards the success of an amendment in the citizenship Code. Law n°62-06 modified Dahir n°1-58-250 and was promulgated by Dahir n°01-07, 3 March 2007.

The small changes in citizenship law, not linked to gender, tend to place further limits on the access of foreign nationals to citizenship. The Moroccan Reform of 2007 was arguably inspired not only by a wish to improve equality between the sexes, but also reflected a reaction to migration and a reluctance to accept mixed marriages. The new regulation aims at reinforcing national unity by improving the place and status of parts of the population which already belong to the nation: women, their children and emigrants.

The 2007 reform, like that in 1958, retained *ius sanguinis* as the basis for the Moroccan citizenship Code, which perfectly fits this country's wish to keep a link with its diaspora. This wish is reinforced by the principle of perpetual allegiance to the Kingdom.

The 2007 reform's main contributions are linked to:

- Improvements in the rights of women and their children born to a foreign father.
- Consideration of the *kafala*.
- Rationalization of procedures.
- A mistrust towards migrants, reflected in conditions for mixed marriage and naturalisation.

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<sup>17</sup> See the International campaign for "Arab women's right to citizenship" or "vingt ans barakat" in Algeria. Algeria and Egypt preceded Morocco in reforming their citizenship regulations, respectively in 2004 and 2005. In Morocco, the ADFM (Association Démocratique des Femmes Marocaines) was also very active.

<sup>18</sup> Union Socialiste des Forces Populaires.

### 3.1. Acquisition and loss of citizenship

#### 3.1.1. The acquisition of Moroccan citizenship at birth

##### a. *Ius sanguinis*

Following Egyptian and Algerian precedents, Morocco has enabled women to transmit their citizenship to children born to a foreign father: this was previously possible only when the father was unknown or stateless.

Morocco now grants citizenship to mixed couples' children born to a male *or* a female citizen and a foreign national, whatever the birthplace (art.6)<sup>19</sup>. Henceforth, children born to a Moroccan mother and a foreign father will receive the citizenship of both of their parents. They are dual citizens at birth, as is the child born to a Moroccan father and a foreign woman (provided that the law of this woman's country of origin enables her to pass on her nationality).

Still, unlike a Moroccan father's child, a Moroccan mother's child has the right to repudiate his/her Moroccan citizenship upon declaration when he/she is between 18 and 21 years old (art.19). Morocco, indeed, opted for the Mauritanian model, by giving the opportunity to children born to a foreign father to repudiate their mother's citizenship when they come of age. An argument for discrimination of this kind<sup>20</sup> lies in the fact that it enables these children to get their father's citizenship (supposedly from the Middle East) where the father can pass on citizenship only if the mother does not. This discrimination may limit the scope of the latest reforms in the development of dual citizenship and, above all, it may affect children born abroad to emigrant mothers. Because repudiation has been made easier, these children may be obliged to use it in order to acquire, for instance, German citizenship<sup>21</sup>, while children of emigrant fathers may not.

By introducing this opportunity for young Moroccans to repudiate their citizenship, Morocco may reduce cases of dual citizenship, as requested by some European host countries. In 2005, the Dutch government pleaded with Rabat to put an end to the Moroccan citizenship of third generation Moroccans living in the Netherlands. Mohamed VI declined, recalling the famous "perpetual allegiance" principle. However, Morocco now provides a repudiation facility even if reserved to the offspring of female citizens. Yet it has not limited the discrimination to children born abroad, as has Mali, but extended it to all children of Moroccan mothers.

Despite the reform, Morocco retains a conservative concept of family national unity, which should follow the father's link. Moreover, the notion of perpetual

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<sup>19</sup> This is also noteworthy that the 2004 reform of the *Moudawana* had introduced the possibility for men to recognize their children born out of wedlock.

<sup>20</sup> Interview with a Moroccan civil servant (anonymous) from the Foreign Affairs and Cooperation Ministry, Section of Studies and Administrative Conventions, 24 June 2010.

<sup>21</sup> In Germany, the prohibition of dual citizenship is the principle but exceptions can be made when it proves impossible or very difficult to renounce citizenship of origin, which has been the case for Moroccan citizenship. See section 12 of the German Nationality Act (2007 version) which can be found on the EUDO Citizenship website here <http://eudo-citizenship.eu/national-citizenship-laws/?search=1&name=&year=&country=Germany&submit=Search>



allegiance – so highly valued in Morocco – seems especially significant when male descent is in question.

*b. Ius soli*

The 2007 reform does not prevent statelessness. It retains the grant of the citizenship to the child born in Morocco to unknown parents (art.7), but does not extend it to the child born in Morocco to two stateless parents.

**3.1.2. The acquisition of Moroccan citizenship after birth**

*a. The acquisition of Moroccan citizenship as a right*

Morocco has maintained the double *ius soli* but the provision applying to descendants of Muslims has slightly changed (art.9-1). There is still a right for the child born in Morocco to foreign parents also born in Morocco to become a citizen after the entering into force of the initial citizenship code, if he/she usually and regularly lives in the country and presents a declaration within the two years before coming of age (18 years old). An option also exists, at any age, for the child born in Morocco to foreign parents if the father, born there at any time, is from a country where the majority of the population is Muslim and speaks Arabic and if he belongs to this community. The main change in this provision lies in the addition of a condition of the applicant's regular and usual residence in Morocco. An individual current linkage is now required to guarantee the reality and effectiveness of national belonging.

These two kinds of citizenship acquisition have a collective effect on the new citizens' minors (art.18). Only the opposition of the Ministry of Justice will be an obstacle to citizenship acquisition through these procedures.

The new Code enables some positive steps for adopted children. Still not assimilated to filiations in terms of inheritance, the *kafala* is now ruled by a Dahir of 2002 (n°16-01 of 13 June 2002), which allowed non-married women to be a *kafil*. Furthermore, the Citizenship reform has introduced the possibility for a child, born abroad to unknown parents, to become a national after five years of *kafala* upon the declaration of his or her Moroccan *kafil*, or to opt for citizenship on his or her own two years before coming of age (art.9-2).

*b. The acquisition of Moroccan citizenship as a possibility*

*The acquisition of Moroccan citizenship by marriage*

As previously in Europe, the first breach in the principle of family national unity came in 2007 with the recognition of a woman's right to transmit citizenship to her children. As in Europe, further efforts are needed to extend a woman's citizenship to her spouse and Morocco had not yet taken that step.

Morocco does respect – though it has not yet ratified – the international Convention on the nationality of married women<sup>22</sup>, which prohibits the automatic acquisition or loss of citizenship through marriage; a Moroccan woman does not lose her citizenship when marrying a foreign national, unless she wishes to (art.19-3). However, despite the 2007 reform, Morocco maintains harsh gender discrimination when addressing the effect of marriage on citizenship.

Women are still unable to transmit their citizenship to their husband, and marrying a Moroccan woman does not give any explicit advantage or priority in terms of naturalisation or access to citizenship. It may be considered as an element of integration to be taken into account in naturalisation. Only men though can transmit citizenship through marriage. Nevertheless, given the increase in mixed marriages, Morocco has strengthened the conditions needed for a foreign woman to obtain citizenship. It extended the probationary time needed for a resident foreign woman married to a Moroccan citizen. The period required before being allowed to submit an application for Moroccan citizenship rose from two to five years (art.10), i.e. equal to the period required for general naturalisation. The government claimed here to be combating marriages of convenience, given a recent increase in the number of mixed couples. Adult foreign nationals wishing to obtain Moroccan citizenship are now subject to the same residency requirement be they men or women, though not the same procedure.

The residence still has to be regular and usual, and the declaration still has to be made during the marriage. Yet, if the marriage ends after the declaration, it has no effect on the right to obtain citizenship. The Ministry of Justice decides within one year, and silence means refusal.

### *The acquisition of Moroccan citizenship by naturalisation*

The main formal criteria for naturalisation have remained the same, but some hindrances to citizenship have been introduced (art.11).

Applicants are required to be of age; to have had his/her usual and regular residency in Morocco for at least five years; to be sane of body and spirit (unless the physical or mental disability is due to a service to the state); to be of good morals; to have a sufficient knowledge of Arabic; and to have sufficient means of living.

These conditions are quite common, but the criteria linked to the absence of disability, even if widespread in the Maghreb region, is discriminatory. The desire to avoid a new burden on an already fragile state is understandable – all the more so because it does not provide for disabled persons – but the basis of this discrimination can hardly be morally and legally justified.

As far as the residency requirement is concerned, a new condition has appeared since 2007. Residency has to be established when the declaration is made, but now must still be established when the request is decided upon (art.11-1). If the applicant has already left the country, the application cannot succeed. Like the similar amendment regarding co-ethnic double ius soli, this confirms the will to favour effective citizenship.

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<sup>22</sup> This convention entered into force in 1958.

Already considered as the most difficult naturalisation process in the Maghreb, Moroccan naturalisation has become still more challenging with the addition of categories of offences or attitudes likely to constitute obstacles to citizenship. To the absence of a non-rehabilitated condemnation for a crime or an ‘infamous’ misdemeanour, have been added the absence of condemnation for an act of terrorism, infringements to laws governing legal residency in Morocco, or acts leading to commercial capacity forfeiture.

This means that there are particularly strong consequences for irregular migration, and this kind of infringement is now incompatible with citizenship. These provisions seem disproportionate to the offences in question, all the more so since they put no time-limit on the negative effects of a previous irregular stay. Besides, it is not clear whether the addition of this new hindrance was even particularly useful since naturalisation conditions already prevent an irregular migrant from having access to citizenship. In the midst of an intense campaign against irregular migration, Morocco used the announcement in its citizenship reform as it did in its migration-related reform three years earlier.

The law does not provide for expedited naturalisation, except to someone who has rendered exceptional service to the Kingdom (art. 12); this carries no conditions except good morals. This gift is reserved to the King, who decides by a Dahir (art.13). Names can be changed with naturalisation (art.13). Becoming a national does not imply renouncing the subject’s previous citizenship. Dual citizenship is tolerated and, indeed, widespread, provided that it is allowed by the origin country.

Naturalisation can still be removed within one year of the naturalisation act if conditions go unfulfilled (art.14). The naturalisation can be extended to the naturalised citizen’s non-married minors, but children over 16 can repudiate citizenship from 18 to 21 years of age (art.18).

Naturalised nationals are still discriminated against for some years before becoming full citizens. Morocco does not immediately grant new nationals all the rights linked to citizenship, and in particular it does not grant political rights for five years following naturalisation. New nationals have to wait five years before being allowed to benefit from voting and eligibility rights in political elections and also if they wish to work in the civil service (art.17). It thus keeps a distinction between nationality and citizenship and requires naturalised nationals to prove that they deserve full citizenship with associated rights, and a place in protected areas such as the political class and sensitive job positions.

### *Reintegration*

Reintegration is still possible in Moroccan citizenship for Moroccans of origin upon request (art.15). It has a collective effect on minor, non-married children if they effectively live with the reintegrated person (art.18).

### 3.1.3 External citizenship

Moroccan legislation allows dual citizenship, since no provision hinders a Moroccan citizen from acquiring another citizenship, nor demands authorization.

A Moroccan acquiring citizenship abroad is said to be allowed to ask permission to renounce his/her Moroccan citizenship (art.19-1). Likewise, a Moroccan citizen, even a minor, might be allowed to renounce to her/his Moroccan citizenship if he/she has another citizenship of origin (art.19-2). In practice, Morocco upholds the principle of perpetual allegiance according to which no Moroccan citizen can renounce their citizenship. The procedure for renunciation is very long and seems not to succeed. Some Moroccans testify that, if needed, consulates may deliver a certificate of loss which has no other effect than to enable the applicant to acquire another citizenship – when dual citizenship is not allowed – but has no impact on Moroccan citizenship.

Yet, the 2007 reform has introduced a simplified procedure, limited to mixed couples' children born to a Moroccan mother, for repudiating citizenship upon declaration, regardless of birthplace or place of residence (art.19).

#### *Political rights*

The benefit of voting rights for all citizens fully enjoying civic and political rights was guaranteed by the 1962 Constitution. However, it had never been implemented for expatriates, with the exception of the 1984-1992 period when Moroccans residing abroad (MRAs) were represented in the Parliament by five representatives.

Mohamed VI launched a royal initiative on 6 November 2005 asking the government to restore the full citizenship of MRAs, who account for around three million people, representing ten percent of the population. The initiative has four branches: the right of MRAs to be represented in the Parliament; the right to vote abroad in new electoral sections to be created in host countries; the extension of the voting and eligibility right to successive generations of MRAs in political elections; the creation of a High Council of the Moroccan Community Abroad. Law n°23-06 has enabled young Moroccans born abroad to be registered on electoral lists in Morocco in order to vote and be eligible. Electoral districts have been defined in view of the next general elections in 2012. An Initiative *Daba 2012 pour tous* has been launched in 2009 for the right to political participation of Moroccans residing abroad. So far, the theoretical right has been recognized, but it has not been implemented in practice, even if the 2011 reform of the Constitution also stipulates that Moroccans residing abroad shall benefit from full citizenship rights, including the right to vote and to be elected in local, regional and national elections (art.17).

This reveals the uneasy relations between Morocco and its expatriates. While a Consultative Council of Moroccans Abroad was created in 2007 to strengthen the link between the Sherifian Kingdom and its diaspora, the government remains suspicious of Moroccans residing abroad and of their destabilising potential.

### ***3.1.4 The loss of Moroccan citizenship***

The five reasons theoretically enabling or leading to the loss of citizenship have remained the same since 1958:

(1) Upon request, after authorisation by decree, if the adult applicant voluntarily acquired another nationality abroad (art.19-1); the formulation has not changed and remains linked to an acquisition abroad, which contradicts the freedom to acquire and lose citizenship.

(2) The authorisation given by decree to a Moroccan, even minor, who has another citizenship, to lose his Moroccan citizenship (art.19-2); these two possibilities exclude the case of a Moroccan of Moroccan origin who acquires another citizenship in Morocco.

(3) The possibility for a Moroccan woman marrying a foreign citizen to ask, before the ceremony, to renounce her Moroccan citizenship (art.19-3); this provision seeks to take into account the remaining discriminatory regulations which link a woman's marriage to the automatic acquisition of her husband's nationality. The loss is effective when the act of marriage is concluded (art.20-2).

(4) The repudiation by the child who was granted Moroccan citizenship through the collective effect when he/she was over sixteen, as provided in article 18 (art.19-4);

(5) The possible loss for Moroccan citizens on mission or working for a foreign civil service or army who do not quit this activity within six months despite an official request to do so (art.19-5), after they presented their observations (art.20-1).

Modifications added in 2007 cover the addition of the term "mission" in order to stretch the scope of the provision, but also the clarification that this mission or work shall prove to be against the national interest. It is noteworthy that the reference to a possibility for the citizen to resign is no longer a criterion to be examined.

The loss has a collective effect on minor non-married children who effectively live with the person who loses citizenship, with the possible exception of the last case (art.21).

To these cases of loss has been added repudiation for Moroccan mothers' children upon declaration between 18 and 21 years old. Their mothers are also allowed to make the same request during the minority of the children; if they do so, the children can renounce their mother's choice upon declaration when they are aged between 18 and 21 years of age.

#### *Forfeiture*

In line with the remaining discrimination between origin nationals and new nationals, Moroccans who have acquired citizenship may lose their citizenship within ten years of the acquisition (art.22). One extra reason has been added by the 2007 reform. Citizenship can still be removed for non-compliance with military-service obligations; for any act profiting another state and inconsistent with being a Moroccan citizen or that is against Morocco's fundamental interests; for a condemnation (whatever the penalty) for insult or crime against the sovereign or members of his family, for a

crime or offence against internal or external security, for a crime leading to at least five years in prison. The list now includes a condemnation for terrorist acts. Forfeiture can only be decided within five years of the act(s).

It may result in statelessness for the person responsible, but not for his wife and children to whom the measure can be extended only if they have citizenship in another country. This will be extended to non-married minor children only if it is also extended to their mother (art.24).

### 3.2 Special Categories

Morocco is a Member state of the League of Arab States, but it did not sign the agreement related to citizenship in member states (5 April 1954), which stipulated family national unity, with a patriarchal basis, and exclusive allegiance, aimed at prohibiting Arab dual citizenship.

Likewise, Morocco did not commit itself to respecting the 1965 Casablanca Protocol for the treatment of Palestinians in Arab states, which insisted on the granting of citizen's rights without citizenship. In 1959, the League of Arab states also recommended that its member states offer job opportunities to Palestinian nationals residing on their territory, without granting them citizenship.

Only one provision is expressly co-ethnic in Moroccan citizenship law, and concerns a specific access to citizenship through double *ius soli*, a specificity it shares with Egypt. The child born in the country to foreign parents has a right to citizenship if the father, also born in the country, comes from a country whose population is mostly Arabic-speaking and Muslim and that the father belongs to this religious-linguistic majority (art.9). This provision had a specific use in the post-independence context but has a limited current impact, since Moroccan regulation also provides a non co-ethnic double *ius soli* (see above). The temporal difference between the two provisions will expire. Yet, the non co-ethnic provision requires both parents to be born in Morocco in order for any child of theirs also born there to acquire citizenship.

Being an Arab may be an advantage when applying for naturalisation, in particular since skills in Arabic are required and because being an Arab may mean easy compliance with Muslim requirements and values. In its constitution, Morocco defines itself as a Muslim country, belonging to the Great Maghreb, with Arabic as its official language, but it also defines itself as an African state. Yet, being Arabs, Palestinian nationals may not be naturalised.

According to Ministry of Justice's data, Europeans and Algerians account for most foreign nationals gaining Moroccan citizenship.

Naturalisation is arguably possible only for Muslims. Yet, while being a Muslim is obviously not sufficient to gain Moroccan citizenship, it seems feasible for non-Muslims to acquire it, especially through maternal *ius sanguinis* and double *ius soli*.

### 3.3 Special institutional arrangements

Under the 1958 Code, silence of the administration within six months following a declaration (after marriage or double *ius soli* or Moroccan mother's children) expressed assent (art.26-27). The 2007 reform revised procedures of acquisition and loss. The delay for the exam of declarations has been doubled, being extended from six months to one year – which seems more realistic. Most of all, the silence of the administration now means rejection (art.26-27). This reversal of the meaning of silence is due to the lack of feasibility of the previous procedure. Delays and slowness in the treatment of declarations engendered a large number of involuntary assent.

Applications for naturalisation are still addressed to the Ministry of Justice. After a police inquiry, they are sent to a naturalisation commission, whose creation was prescribed by the 2007 citizenship law (art.11). Actually, this commission was already in place and was renewed in 2008 by a decree relating to its composition and organisation. It is still directed by the Director of civil affairs in the Ministry of Justice who convenes its five members meeting, made up of representatives of the royal cabinet, the Interior Ministry, the Government and the Foreign Affairs Ministry. Decisions are taken by the majority, and then confirmed by council of ministers' decrees. This procedure does not apply to exceptional naturalisation, decided by royal *Dahir*, on the basis of article 12.

## 4 Current political debates

### *Gender discrimination*

Morocco was already party to the 1979 Convention for the Elimination of Discrimination Against Women (CEDAW), but with reservations on article 9-2 which prescribes equal rights regarding citizenship. This reservation was removed on 8 March 2006, some months after Mohamed VI announced the coming reform, but before said reform was adopted. Two problems remain. First, with the removal of the reservation but the maintenance of gender discrimination, Morocco now infringes CEDAW. And second, it has not ratified the Protocol on the Committee competent to receive individual communications and to hold inquiries.

Two kinds of gender discrimination remain. The most obvious is related to the absence of women's right to transmit their citizenship to their spouse, unlike men. The repudiation facility for a Moroccan mother's offspring is also discriminatory, whatever the reasons might be. The general possibility of repudiating Moroccan citizenship (art.19-1 and 2) is sufficient to apply to all situations.

## *Statelessness*

Morocco is not party to the 1954 Convention Related to the Status of Stateless Persons<sup>23</sup> or the 1961 Convention on Reduction of Statelessness Cases<sup>24</sup>. Above all, the current regulation does not completely respond to the risk of statelessness, not least because it is silent on the issue of stateless parents' children born in Morocco, but also since it theoretically enables a forfeiture of Moroccan citizenship even if this would lead to statelessness.

Morocco ratified the 1966 Convention on Civil and Political Rights and the 1989 Convention on the Rights of Children, both of which set out the right of each child to acquire citizenship. Morocco is also a party to the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which states in Article 29 that “each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality”.

## *External citizenship*

The principle of perpetual allegiance engenders potential tensions with countries receiving several generations of Moroccan migrants. This is obviously the case with the Netherlands, whose government has, since 2005, officially requested that Morocco facilitate the loss of citizenship for the third generation of Moroccans abroad. Morocco refused on the basis of the principle of “perpetual allegiance”. The Dutch regulation usually requires applicants for naturalisation to renounce their citizenship of origin<sup>25</sup>. When it is impossible or too difficult, as in the case of Morocco, exceptions can be made. Moroccan citizens are consequently allowed to be dual nationals and 200,000 Moroccan citizens living in the Netherlands are said to be nationals of the two countries<sup>26</sup>. The 2007 reform enabling Moroccan mother's children to repudiate their citizenship could create a differentiated treatment between Moroccan descendants.

Morocco is not ready to follow the Turkish precedent, where citizenship repudiation was facilitated and a “privileged non-citizen status” was developed in 1995. Beside the fact that it would go against the spirit of perpetual allegiance, the Turkish precedent has revealed a paradoxical effect of such a policy, which has led to a decrease in the number of Turkish nationals applying for German naturalisation. Indeed, facilitating a repudiation of the original nationality implies placing a number of people in the difficulty of choosing between two nationalities and may deter healthy integration.

A number of external citizenship issues still have to be resolved and the new naturalisation commission may find itself in charge of regularization procedures for

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<sup>23</sup> 28 September 1954.

<sup>24</sup> 30 August 1961.

<sup>25</sup> See article 9 of the Netherlands Nationality Act, as in force on 13 April 2010, available on EUDO citizenship website here: [http://eudo-citizenship.eu/NationalDB/docs/NL%20Netherlands%20Nationality%20Act%20\(consolidated%202010,%20English\).pdf](http://eudo-citizenship.eu/NationalDB/docs/NL%20Netherlands%20Nationality%20Act%20(consolidated%202010,%20English).pdf)

<sup>26</sup> Dutch Central Office of Statistics, 2009.



Moroccan nationals who have been living in Senegal or Gambia for decades and who have not been registered to date.

## 5 Conclusion

Historically, Moroccan citizenship has been influenced by a view of sovereignty derived from allegiance to the Sultan, rather than through any clear territorial referent. This began to change during the protectorate period and the link between territoriality and sovereignty was successfully exploited by Hassan II in his claims for Moroccan sovereignty over the Western Sahara in the 1970s. The 2007 reform further reinforces the significance of territory, by recognising rights specifically to people who are present on Moroccan territory.

The legitimacy of the Sultan was historically associated with his role as *Amir al-Mu'minin* (Commander of the Faithful) and this has also been central to the role of the King post independence. Sovereignty therefore continues to depend significantly on religion. Following the historical desire to restrict access to citizenship for former *colons*, it was much easier for Muslims to obtain citizenship. The 2007 reforms introduced restrictions on the naturalisation process even for Muslim immigrants, indicating that the role of religion is slowly declining in favour of a more firmly territorial sovereignty.

A further significant trend in Moroccan citizenship is a gradual extension of rights to women. The 1958 Citizenship Code institutionalised a severe inequality between men and women. The 2003 reform to the Moudawana and the 2007 Citizenship reforms have taken important steps to alter this, often in the face of significant protests from traditionalists in Morocco. Most significantly, Moroccan women are now able to pass on their nationality to their children where the father is not a Moroccan citizen. The proposals still fall short of formal gender equality, however and further change is likely in this area.

An important symbolic effect of the 2007 reforms was the acknowledgement that Moroccan citizenship, which had not changed in 50 years, was not a fixed, immutable property but was required to change in response to social and political changes in Morocco and the wider region. The political change that has swept across North Africa in 2011 has had a much less dramatic impact on Morocco than countries elsewhere in the region. Yet the new 2011 constitution and a widespread resurgence of a rights based discourse amongst civil society groups has demonstrated the tremendous significance of ideals of Moroccan citizenship in terms of individual liberties and the nature of the relationship between individuals and the state. To the surprise of some, this has not resulted in any widespread challenge to the status of the King as the basis for the sovereign relationship. Yet it is an important step towards a more constitutional form of monarchy which will frame further developments in Moroccan citizenship in the future.

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