
The moroccan legal system

— Islamic law and its relevance in
2019 Morocco —

Overview

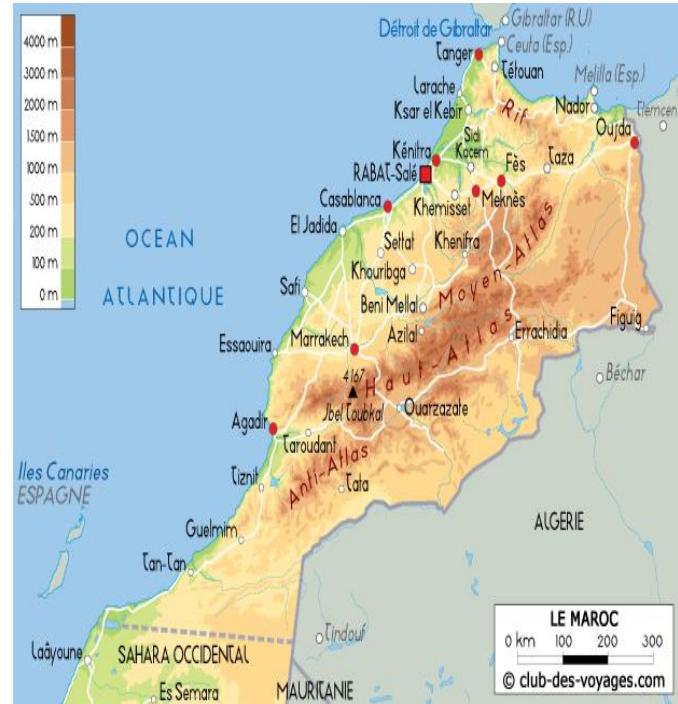
- I. The history of Morocco
- II. Defining islamic law and sharia law, clearing out any confusion between the two concepts
- III. The Moroccan legal system before and after colonization
- IV. The role of islamic law in the current Moroccan legal system
- V. The current constitutional framework of Morocco

General Presentation of Morocco



General Presentation of the country of Morocco

- ❖ Morocco is a **unitary regionalised state** located in North Africa.
- ❖ The **geography of Morocco is extremely diverse**, it is characterised by mountainous regions as well as a desert in the south of the country.
- ❖ Fun fact, Morocco is one of the only countries, with France and Spain, that has shores on the Mediterranean sea and the Atlantic Ocean.



General Presentation of the country of Morocco

- ❖ Population of Morocco : 35.74 million
- ❖ The culture of Morocco is essentially **arab and berber.**
- ❖ The official language of Morocco is **arabic**, although **amazigh** has recently been recognised as an official language as well.
- ❖ The political regime of Morocco is a **constitutional Monarchy** and the current King is Mohammed VI, 23rd of the alaouite Dynasty. He has been reigning over Morocco for twenty years.



General Presentation of the country of Morocco



The capital of Morocco is Rabat and the biggest city in Morocco is Casablanca, it is the industrial heart of Morocco.

The history of Morocco

How did Islam arrive in Morocco ?

- ❖ In 649, the conquest of north Africa by arab troops begins:
 - Berber tribes installed in the Atlas and the atlantic plains form join the Byzantine Empire installed on the mediterranean costs, which will be their ally in the fight against arabs in the beginning.
 - Around the year 700, the berbers join the arab troops and convert to islam.
- ❖ In 788, the first arab dynasty, the Idrissides, start reigning over Morocco with at their head Idriss I, descendant of the prophet, Fès is made the capital of the kingdom.
- ❖ The arab dynasties succeed each other until the advent of the Alaouites in 1666.

The history of Morocco

The islamization of Moroccan law:

- ❖ Abolition of Roman Laws which were replaced by a legal system founded on islamic principles.
 - It is important to note that in virtue of one of the fundamental principles of Islam, that there can be no compulsion in religion, people remained free to be ruled over based on the principles of their own faiths if they were not muslim. It is still the case to this day.
- ❖ According to the legend, the Alaouites are **descendants of the prophet Muhammad (pbuh)** from his son in law Ali who was also one his “well guided” successors
 - Religious legitimacy for years to come which still very much exists to this day, one of the titles of the King being “Amir al Mouminine” or the Emir of believers.

Sharia Law and Islamic Law

The confusion between “Sharia” and Islamic law:

- ❖ The term sharia comes from the arabic language شريعة, which literally translates to “the way” and does not per se refer to a body of law.
- ❖ **Sharia refers to a wide-ranging moral and broad ethical principles drawn from the Quran and the practices and sayings (hadith) of Prophet Muhammad.**
- ❖ These broad principles are interpreted by jurists to come up with specific legal rulings and moral prescriptions which constitute Islamic law or “fiqh”. It is the result of human intellectual activity and is therefore, by definition, fallible and changeable.

Sharia law, an “Islamic Bill of Rights”

The fundamental principles of sharia law:

- ❖ Muslim scholars reflecting on the larger objectives of Sharia have said that laws derived from it must always protect the following: **life, intellect, family, property and the honor of human beings.**

What is islamic law?

The different doctrines in islamic law:

- ❖ The interpretation of sharia law in the first century after the death of the Prophet resulted in the edification of different doctrines of islamic law
 - The shafi'ite rite, developed by Imam Shafi'i is inspired by rules from roman law, and it is present in Egypt, Yemen, Thailande and Malaysia
 - The Hanafite rite developed by Abu Hanifa, gives great importance to reason and opinion present in Iraq, India, Syria, Russia, China...
 - The Hanbalite rite developed by Ibn Hanbal, present mostly in Saudi Arabia
 - The Maliki rite, developed by Imam Malik Ibn Anas is and has been followed in Morocco and in the north-african region. The rules and principles of this rite explain the Quran and give answers to questions asked by muslims about their daily lives and their religious practises.

What is islamic law?

- ❖ The principles of islamic law differ from one doctrine to another and they remain largely unwritten. They are influenced by the culture and tradition of muslim countries, therefore, we cannot speak of one islamic law in a general context.
- ❖ Because of its particularities, islamic law has not been codified, despite numerous attempts throughout the years.
 - In the XIVth century, cheikh Khalil undertook to codify islamic law which resulted in a code, which despite the fact that it is not binding, is still used as a reference in countries following the malikite rite.

The moroccan legal system before colonization

- ❖ **General competence of islamic law** regarding muslim subjects: before the protectorate, the moroccan judge only applied islamic law between muslims which left room for the application of foreign law as well as christian canon law and jewish / hebraic laws.
- ❖ Principle of religious tolerance applied in Morocco is the reason that despite a muslim majority, religious diversity is still very much present in Morocco.
- ❖ In the XIXth century, Morocco concluded Treaties with foreign countries which allowed foreigners to have their own laws apply to them.

The french colonial policies under the Third Republic

- ❖ **Conference of Madrid in 1880**, the Sherifian empire stops existing and the kingdom is put under international control. The countries military had previously been dominated by France.
- ❖ Jules Ferry, partisan of the french colonial expansion, declared in 1885 in the Senate that "**Superiors had a right on inferiors**"
- ❖ Creation of the colonial party in 1890 which is going to finance a lot of the expeditions, research and studies. They will also be instrumental in the spreading of colonial propaganda.

The moroccan legal system during colonization

- ❖ The International Conference of 1906 : 12 european countries gathered to decide the faith of Morocco
 - A right of inspection on Moroccan affairs is granted to Germany
 - France and Spain are granted special privileges, among others, the right to police ports in Tangier and Ceuta.
- ❖ In 1912, Morocco is forced to sign the Treaty of Fès which places a big part of its territory under french and spanish protectorate.



“La campagne du Maroc”, the pacification of Morocco

- ❖ The adoption of the Treaty of Fès was faced with revolts in urban as well as rural areas.
- ❖ From 1912 to 1934, a number of tribes are fighting the french army in what will be known as the **insurrection of the Rif lead by Abdelkrim el-Khattabi who proclaims the Rif Republic**. It took 22 years for the french army to submit the Rif to the authority of the Sultan who was designated by the french protectorate.

The transformation of the Moroccan Legal System

Bringing the french and the moroccan legal system together, a delicate enterprise:

- ❖ The moroccan legal system moves from a system solely based on islamic law to a legal system dominated by romano-germanic law and characterized by the adoption of a number of codes some of which are still in place to this day.
- ❖ Under the **principle of the “personnalité des lois”**, islamic law does not completely disappear from the moroccan legal system under the french protectorate, it becomes confined to matters of personal status.

The Transformation of the Moroccan Legal System

- ❖ From the 12th of august 1913, a number of royal decrees are adopted to put in place codes in all the other areas of the law: commercial, contracts, criminal, civil, property...
- ❖ The transposition of french law in the moroccan legal system never stopped under the protectorate:
 - Social rights pertaining to unions in particular adopted under the Leon Blum Government in 1936 also applied in Morocco
 - Up until the very end of the protectorate in 1955 with the reform on commercial leases.

The Moroccan Independence

- ❖ 8th of november 1942, **Operation Torch**, the Allies liberate Morocco from the Vichy Regime
- ❖ **Casablanca Conference 1943**, the Allies are gathered in Morocco to prepare their strategies after the war.
 - President F. Roosevelt voices his support for the independence of Morocco and in particular for Sultan Mohammed the Vth.
- ❖ The clandestine **Congress of Rabat 18th of december 1943**, foundation of the Istiqlal Party
- ❖ **Manifesto of Independence 11th of January 1944**, the political programme of the Istiqlal Party signed by 66 moroccans.

The Revolution of the King and the People

Post WWII : the french colonial administration is weakened:

- ❖ Uprising of the moroccan people against the infringement of the “integrity and dignity of the moroccan people”, demonstrations of support to the legitimate king and strikes all over the moroccan territory.
- ❖ 1955, the french are defeated in Indochina and the Algerian war of independence begins, negotiations with Mohammed the Vth begin. One year later, Morocco regains its independence.

The Moroccan Legal System after the Independence

Moroccan exceptionalism:

- ❖ 26th of january 1965, a law is passed for the **arabization** of the justice system and its unification.
- ❖ Morocco remains anchored in the **romano-germanic legal tradition**
- ❖ **Article 3 of the Moroccan Constitution:** “**Islam is the religion of the State and it guarantees to all freedom of religion**” Islamic law remains an important source of law in matters of succession and personal status.

The Status of Islamic Law in the current Moroccan Legal System

- ❖ Islamic legal tradition: islamic law remains the religion of the state and it influences the entire legal system
- ❖ The king is the guarantor of freedom of religion and he exercises a certain amount of religious prerogatives in his quality of Emir of the believers
- ❖ Islamic law remains confined to matters of personal status
 - modernization of islamic law to ensure equality between men and women, women now have the ability to become islamic notaries which was not the case before

Constitutional Amendments after the Arab Spring

- ❖ The movement of February 20th: young people take to the streets to ask for more democracy and human rights.
- ❖ Constitutional Referendum of 2011
 - reinforces the separation of powers and the independence of the justice system
 - reaffirms its subscriptions to international principles of human rights
 - transfer of powers from the king to the prime minister head of government
 - abolition of the sacredness of the king
 - expansion of the competencies of parliament
 - Amazigh is recognized as an official language but arabic remains the official language
 - Creation of a constitutional court to which citizens will be able to present their complaints
 - Equality between men and women

Constitutional Framework of Morocco

Legislative power:

- ❖ The moroccan parliament is divided into two assemblies the Assembly of Representatives and the Assembly of Councilors. They are elected every five years by direct universal suffrage.
- ❖ The moroccan parliament votes the laws and exercise a power of control over Government and public policies.

Constitutional Framework of Morocco

Executive power:

- ❖ Exercised jointly by the King and the Government (head of government and Ministers)
- ❖ The head of Government is formally appointed by the King following the parliamentary elections and has to belong to the party that holds a majority in parliament. Current prime minister is Saadeddine Othmani.

Constitutional Framework of Morocco

Judiciary power:

- ❖ The moroccan judiciary is divided into two types of tribunals:
 - ordinary courts
 - specialized courts (military tribunal, commercial court, administrative court...)
- ❖ Jurisdictions of first instance (trial courts), courts of appeal and a Supreme Court.
- ❖ At the top of the legal system is the Constitutional Court:
 - It is competent in all matters and has a duty to uphold constitutional law.
 - Duty to ensure that the members of Parliament are elected democratically.
 - Composed of twelve members, 6 appointed by Parliament and 6 are appointed by the King, for a nine year term, non renewable.
 - Mandated to deal with objections of unconstitutionality raised by citizens during trial.

Thank you !
Merci !
شكرا !