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The Integrated Gender Approach: The Normative Convergence of Moroccan Domestic Law with International Law

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Abstract – Gender-sensitive normative convergence is a process aimed at transposing international treaties into domestic law in the realm of gender equality or integrating a gender-sensitive approach into national legislation. The Moroccan Constitution of 2011, aligned with European constitutions, explicitly enshrines gender equality in its preamble. Prior to this reform, legislative revisions, such as those of the Family Code and the Nationality Code, initiated a dynamic of harmonization. While both reforms contributed to this dynamic, the Family Code remains central as it directly shapes gender relations within Moroccan society and is currently being revised through a nationwide debate and broad public consultation. However, structural and sociocultural barriers hinder the effective implementation of this normative convergence. The emergence of normative spheres of influence, driven by international organizations or foreign agencies, provides fresh momentum to this process. The Council of Europe and the United States have supported key reforms, particularly in combating violence against women and ensuring equitable access to land for women in ethnic communities. The ongoing reform of the Family Code reflects a commitment by Moroccan institutions to harmonize national law with international commitments, while respecting cultural and institutional specificities.

Keywords: Normative convergence; Gender equality; International law; Legislative reforms; Integrated gender approach

Introduction

Morocco has consistently demonstrated a proactive commitment to ratifying international conventions on human rights. From the adoption of the Universal Declaration of Human Rights in 1948 to the ratification of the International Covenants on Civil and Political Rights, as well as Economic, Social and Cultural Rights, the Kingdom has affirmed its dedication to conventional law. However, this commitment has occasionally been accompanied by reservations, as illustrated by the 1993 ratification of the Convention on the Elimination of All Forms of Discrimination Against Women

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(CEDAW). These reservations, notably concerning the transmission of nationality by mothers and the right of women to initiate divorce, were significant points of contention. The withdrawal of Morocco's main reservations to CEDAW in 2011 marked a pivotal moment in the country's commitment to international human rights standards, coinciding with the adoption of the new Constitution. This reform enshrines the primacy of international law over domestic law, notably reflected in Article 55, which stipulates that ratified treaties prevail over national legislation once published. Article 19 goes further by explicitly guaranteeing the equality of men and women, aligning Morocco's domestic framework with its obligations under CEDAW. The Preamble reinforces this by affirming Morocco's adherence to universally recognized human rights. While the 1996 Constitution did guarantee general equality before the law for all citizens, it did not explicitly enshrine gender equality as a fundamental constitutional principle. The 2011 constitutional reform therefore represents a significant normative shift, laying the groundwork for a gradual harmonization of domestic law with international standards, particularly in the field of gender equality. This shift laid the foundations for a gradual normative convergence.

The concept of normative convergence, understood as a mechanism for regulatory harmonization, is central to this process. In this paper, 'normative convergence' refers to the gradual alignment of Morocco's domestic legal and regulatory frameworks with external international standards. It implies the progressive harmonization of principles, norms and institutional practices through mechanisms such as soft law, policy learning and selective adaptation (Mouline, 2013). Applied to gender equality, it aims to standardize legislation by integrating a gender-sensitive approach and addressing persistent disparities in rights between men and women. Gendered normative convergence thus entails the transposition of international legal principles into domestic law through the lens of gender equality, requiring significant revisions to discriminatory laws. However, the effective implementation of this mechanism faces structural and sociocultural challenges, necessitating strong political will and institutional support.

Moreover, the partnership between Morocco and the Council of Europe, alongside the advanced status granted by the European Union since 2008, provides strategic frameworks for cooperation to experiment with this normative convergence. These collaborations go beyond legal harmonization, contributing to the creation of normative influence spheres that promote gender equality across various legislative domains, such as combating violence against women and ensuring equitable access to resources within ethnic communities. In this context, gendered normative convergence between Morocco and its European partners has the potential to serve as a model for advancing global gender equality, transcending north-south divides.

This study, therefore, aims to address, in the first part, the current state of Morocco's international commitments on gender equality and to evaluate the extent to which gendered normative convergence between domestic and international law has been initiated. It will also identify the obstacles and resistance impeding this harmonization process. In the second part, the analysis will explore the potential to broaden gendered normative convergence to a global legislative coherence that extends beyond conventions on human rights. This approach would integrate reforms supported by external normative influence spheres. Initiatives led by international organizations or foreign governmental agencies play a crucial role in implementing targeted reforms, particularly regarding combatting violence against women and ensuring equal access to resources within ethnic communities. The ongoing reform of the Family Code serves as a case study to illustrate the scope and impact of these normative influence spheres.

The integration of gender equality into domestic law: A structured transposition of international treaties promoting gender equality

The 2011 Moroccan Constitution, in an effort to align with European constitutions, explicitly enshrines gender equality in its preamble. Article 19 reinforces this commitment by guaranteeing

equal rights for men and women, in line with the international conventions ratified by Morocco, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This legal development represents a foundational step toward gendered normative convergence between Moroccan domestic law and international law.

However, the specific nature of Moroccan law, which is based on a triple legal foundation – Islamic law, customary law, and modern law – complicates the full adoption of international norms on gender equality. This normative plurality creates tensions between the universal principles enshrined in international conventions and the religious and identity-based considerations that remain deeply embedded in Morocco's legal framework. These factors present significant structural obstacles to achieving a genuine and sustainable normative convergence.

The alignment of the Moroccan Constitution with international commitments on gender equality

The 2011 Moroccan Constitution marks a significant rapprochement with European constitutions, both in structure and content. This constitutional revision, materialized notably through the inclusion in the Preamble of “human rights as they are universally recognized,” illustrates a substantial legal transformation of Moroccan law (Melloni, 2013). This overhaul reflects an explicit desire to integrate international norms into the domestic legal framework, particularly concerning gender equality.

Article 19 of the Constitution constitutes a central pillar of this transformation. It states that

men and women shall enjoy, on an equal footing, the rights and freedoms of a civil, political, economic, social, cultural, and environmental nature, as set out in this Title and in the other provisions of the Constitution, as well as in the international conventions and treaties duly ratified by Morocco, and this, in accordance with the provisions of the Constitution, the constants of the Kingdom, and its laws. The State shall work towards achieving parity between men and women. To this end, an Authority for Parity and the Fight Against All Forms of Discrimination shall be established.

This article integrates an extensive normative framework inspired not only by civil and political rights but also by economic and social rights as outlined in international instruments such as the Universal Declaration of Human Rights (1948), the International Covenants (1948), and the Convention on the Elimination of All Forms of Discrimination Against Women (1979). By embedding these principles into its constitutional framework, Morocco reaffirms the explicit prohibition of all forms of discrimination based on gender and establishes gender equality as a legal imperative.

The creation of an Authority for Parity and the Fight Against Discrimination further reinforces this approach, demonstrating a clear commitment to promoting women's rights. This mechanism is designed not only to combat inequalities but also to ensure the progressive integration of women into all spheres of Moroccan society, including those traditionally reserved for men.

The Throne Speech of July 30, 2022, delivered by His Majesty King Mohammed VI, marked an important milestone in this dynamic by asserting that “the principle of parity is an objective that the State must strive to achieve” (Le Matin, 2022). This speech not only reiterated Morocco's commitment to gender equality but also emphasized the necessity of operationalizing constitutional institutions concerned with women's and family rights and updating national legislation to ensure the full enjoyment of women's rights. The King insisted that these reforms do not constitute privileges, but rather legitimate rights enshrined in law.

Morocco's approach aligns with what Amy Mazur and Dorothy McBride Stetson define as “state feminism.” This concept, developed in 1995, refers to “the activities of government and administrative institutions officially responsible for promoting women's rights and, more broadly, gender equality.” This notion finds particular resonance in Morocco, where the state, under the King's leadership, has spearheaded progressive reforms, notably in areas previously restricted to men, such as the religious sphere. The example of the *Mourchidates* (women tasked with disseminating religious teachings)

embodies this desire to promote a modernized and inclusive Islam that integrates gender equality values.

On the jurisprudential level, the Constitutional Court has relied on Article 19 to strengthen the principles of equality and parity. Two landmark decisions (Decision No. 817/11 and Decision No. 820/11) have conferred constitutional value on these principles. Decision No. 817/11 addressed the issue of equal opportunities and the prohibition of discrimination, particularly in the context of electoral laws, confirming that the principle of equality of opportunity has binding constitutional status and must guide legislative and administrative action (Constitutional Court of the Kingdom of Morocco, 2011). Decision No. 820/11 focused on gender parity in political representation, interpreting Articles 19 and 30 of the 2011 Constitution, and held that achieving parity is a constitutional objective that requires proactive measures and specific quotas to ensure balanced participation of men and women in elected bodies (Constitutional Court of the Kingdom of Morocco, 2011).

However, the persistence of legal asymmetries in family law (such as the unequal right to initiate repudiation) illustrates how cultural and religious considerations continue to constrain full gender parity. This shows that Morocco's version of state feminism remains a hybrid model, marked by a continuous negotiation between international gender equality standards and local sociocultural specificities. Consequently, gender parity has become a legally binding objective requiring effective and measurable implementation, but its full realization depends on overcoming structural and cultural obstacles through genuine legislative and institutional reforms.

The Primacy of International Law Over Domestic Law: The Impact of International Conventions Enshrining Gender Equality Before the 2011 Constitutional Revision

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was signed by the Kingdom of Morocco in 1993 with two major reservations: the transmission of nationality by the mother and the right of women to initiate divorce. These reservations reflected the tensions between Morocco's international commitments and the principles of its domestic legal order, which is deeply influenced by religious and customary considerations. However, significant legislative reforms were initiated prior to the 2011 constitutional revision, laying the groundwork for partial normative convergence.

The 2004 reform of the Family Code introduced substantial changes to key aspects of marriage and its dissolution. Repudiation, initially a unilateral act of divorce initiated by the husband, was maintained but subjected to judicial oversight to ensure the wife's right to a defense. This modification rebalanced rights in the dissolution of marriage while preserving its religious foundations.¹ Furthermore, additional types of divorce were introduced, including divorce for discord, which allows women to petition a judge to dissolve the marriage within a six-month period. This procedural innovation rendered Morocco's reservation to CEDAW concerning divorce obsolete as early as 2004, thereby strengthening women's legal autonomy in this area.

In 2007, the Nationality Code underwent a significant overhaul. Article 6 of Law No. 62-06 definitely states that "a child born to a Moroccan father or mother is considered Moroccan" (Official Bulletin of Morocco, 2007). This inclusive amendment abolished a major inequality that previously prevented Moroccan women married to foreigners from transmitting their nationality to their children (Tak-Tak, 2017). This reform, which included retroactive application, aimed to eliminate disparities among Moroccan citizens concerning this issue.² It constitutes a clear example of normative convergence between Moroccan law and the principles enshrined in international instruments.

While these reforms were significant, they revealed the limits of effective normative convergence, which remains hindered by the weight of traditions and religious influences. Nonetheless, these legislative changes paved the way for subsequent developments, particularly through the 2011 constitutional revision, which explicitly enshrines the primacy of international conventions over domestic law.

The Preamble of the 2011 Constitution asserts that “international conventions duly ratified by Morocco shall prevail over domestic law,” thereby granting these instruments a superior status to ordinary laws. However, this primacy is not absolute. Pursuant to Article 55, international commitments must undergo a prior constitutional review. If a provision is found to conflict with the Constitution, its ratification requires a prior amendment of the constitutional text. This mechanism ensures a coherent articulation between national and international norms while highlighting the political and legal constraints inherent to their integration. These constraints include not only constitutional review but also the enduring references to Morocco’s religious and national identity, which frame the application of international norms. Morocco has committed “to protecting human rights in both their universality and indivisibility” (Francophone Association of Constitutional Courts, 2014). Despite this normative framework, the convergence between Moroccan law and international law, particularly regarding gender equality, remains incomplete.

Yasmine Berriane identifies four priority areas to address these gaps: combating poverty and the economic marginalization of women, reforming legislation to protect them from all forms of violence, strengthening education and literacy initiatives, and increasing their representation in religious and political spheres. These recommendations emphasize that gender equality cannot be fully achieved without a holistic approach that incorporates economic, social, and institutional reforms (Berriane, 2013).

In conclusion, the legislative reforms undertaken before 2011 laid the foundation for normative convergence, but their impact remains limited in the absence of full adherence to the universal principles enshrined in international law. The 2011 Constitution reinforced this process by affirming the primacy of international conventions, but the operationalization of this legal framework depends on sustained political will and appropriate institutional support.

Manifestations of normative convergence with international law on gender equality

The 2011 constitutional reform paved the way for Morocco’s increased adherence to international instruments enshrining gender equality. In 2015, the Kingdom ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).³ This protocol grants the CEDAW Committee the authority to examine communications or petitions submitted by individuals or groups alleging violations of rights guaranteed by the Convention.

Under this framework, Moroccan women facing discrimination have the possibility to submit complaints to the Committee. However, this right is contingent upon the exhaustion of all available domestic remedies. Anonymous complaints or those concerning events that occurred prior to Morocco’s ratification of the protocol remain inadmissible. Additionally, the protocol allows the Committee to conduct field investigations when credible information is provided, indicating serious or repeated violations of the rights outlined in the Convention. This strengthens the international monitoring mechanism.

Aligned with Morocco’s commitments under CEDAW, significant progress has been made in combating violence against women. The adoption of Law No. 103.13 in 2018, which addresses violence against women, introduced specific provisions into the Penal Code. These measures target offenses related to violations of honor, sexual harassment, and abuse committed through social media platforms. Enacted under Section V of the Penal Code, these provisions underscore Morocco’s commitment to protecting women within a societal context influenced by traditional, Muslim, and conservative norms.

Furthermore, the enactment of Law No. 79-14 in 2017 established the Authority for Parity and the Fight Against All Forms of Discrimination, as envisioned in the 2011 Constitution (Morocco, 2017). This institution is designed to play a pivotal role in protecting women from all forms of discrimination. With its mandate as both an observatory and a consultative body, the Authority examines complaints, provides recommendations, and works to align national legislation with

Morocco's international commitments. In line with its mandate, the Authority is empowered to receive and investigate complaints of discrimination stemming from both state and non-state actors. This institution demonstrates a commitment to operationalizing the constitutional principles of gender equality and ensuring their effective implementation.

These normative advancements reflect a growing intent to transpose international instruments into Morocco's domestic legal order. However, despite these efforts, tensions persist between Morocco's international commitments and certain provisions within its domestic legal framework. This dissonance illustrates the challenges inherent in harmonizing legal systems that operate under differing logics. Concrete examples of these contradictions will be analyzed in greater depth in the following section.

Obstacles to the normative convergence of conventional law promoting gender equality with domestic law

According to Professor Omar Bendourou, "international conventions that contradict Islam, which constitutes one of its essential components, have no place in domestic law" (Bendourou, 2014). This position highlights the tension between the primacy of international law and the specificities of the Moroccan legal order, which is deeply rooted in religious and national identity principles. He further asserts that "the ratification and implementation of international conventions can only be envisaged insofar as they respect national identity, which remains ambiguous" (Bendourou, 2011). This statement underscores the challenges posed by the coexistence of Morocco's international commitments and the elusive concept of national identity.

The primacy of international norms over domestic law is thus limited by two fundamental parameters: national identity and religion. However, according to Professor Bendourou, the concept of national identity itself is difficult to define, complicating its use as a criterion for assessing the compatibility of international conventions. These inherent limitations directly affect the effectiveness of constitutional provisions, with Bendourou asserting that the text is "dominated by provisions that render it incomprehensible" (Bendourou, 2011).

This complexity is particularly apparent in Article 19 of the 2011 Constitution, which enshrines the principle of gender equality. According to Bendourou, the normative impact of this article is constrained by the requirement that equality be exercised in accordance with "the provisions of the Constitution, the constants of the Kingdom, and its laws" (Bendourou, 2011). These constants shape the implementation of international gender norms and call for a careful reconciliation between international commitments and national specificities. Bendourou's analysis sheds light on the inherent challenges of transposing international norms into the Moroccan legal framework. This situation reflects the complex interaction between the desire to integrate international commitments and the constraints imposed by national, religious, and cultural considerations.

Bendourou's analysis is fully endorsed here, as it convincingly captures the structural tension that explains the partial and sometimes fragmented nature of Morocco's normative convergence with international gender equality standards.

Moroccan Law: A superposition of legal sources

Moroccan law is based on three foundational sources (Filali Meknassi, 1994):

- **Islamic Law (*Sharia*):** Inspired by the Maliki school of thought, it governs fundamental areas such as family law (marriage, divorce, inheritance) and land law. These provisions are deeply rooted in religious texts, particularly Quranic verses, and hold a sacred dimension within the Moroccan legal order.
- **Customary Law (*Orf*):** This source is derived from local customs, which vary according to tribes and ethnic communities. It continues to play a role in certain domains, particularly in

the rules governing collective land management. However, it has often been criticized for perpetuating glaring inequalities, especially regarding women's inheritance rights, as illustrated by the *Soulaliyates* movement.

- **Modern Law:** Inherited from the French Protectorate, it encompasses general law, such as the Dahir of Obligations and Contracts, judicial organization, the Penal Code, and the Dahir on the civil status of foreigners. The latter, promulgated in 1913, represents one of the earliest codifications of private international law in Morocco. Although still in force, certain provisions of this law are now outdated, particularly regarding conflict-of-law rules in the context of marriage, such as the rule of the spouses' common nationality.

These pluralistic foundations raise a central question: do they constitute obstacles to normative convergence between Moroccan law and international law, particularly concerning gender equality? The modern legal system derived from the Protectorate does not, in itself, represent a major obstacle to normative convergence. However, the slow pace of reforming some of its provisions hampers its effectiveness, especially in addressing the requirements of gender equality. Customary law, by contrast, reflects deep structural inequalities. The exclusion of women from inheritance rights in certain ethnic communities underscores these disparities.

Islamic law, meanwhile, constitutes the primary source of tension with international law. The Moroccan Constitution of 2011 explicitly stipulates that international law cannot prevail in cases of contradiction with religion. In the 2022 Throne Speech, His Majesty King Mohammed VI, in his capacity as Amir Al-Mouminine (Commander of the Faithful), reiterated this primacy by declaring: "I cannot authorize what God has prohibited, nor forbid what the Almighty has authorized, particularly regarding matters governed by explicit Quranic texts." Thus, any normative convergence between Moroccan law and international standards on gender equality must necessarily be considered through the lens of Sharia. The automatic transposition of international norms, based solely on the principle of the primacy of international law, proves ineffective in this context.

As David Melloni aptly notes, "the preamble also introduced a significant reservation to the effectiveness of this new normative hierarchy." This reservation, grounded in the "constants of the Kingdom," reflects a legal and political approach that seeks to balance the integration of international norms with the preservation of Morocco's religious and cultural specificities (Melloni, 2013).

The exception of unconstitutionality in the 2011 Constitution: a tool to reconcile domestic law with conventional norms on gender equality?

The case of the exception of unconstitutionality, as provided for under Article 113 of the 2011 Moroccan Constitution, represents a significant step toward convergence with European constitutional practices, particularly the model of the *Question Prioritaire de Constitutionnalité* (QPC) in France. This article grants the Constitutional Court the authority to rule, by way of exception, on the constitutionality of a law when it is alleged to infringe upon rights and freedoms guaranteed by the Constitution. Beyond this alignment with major constitutional systems, the exception of unconstitutionality also embodies the recommendations of the Equity and Reconciliation Commission (Bendourou, 2012).

However, this provision remains inapplicable in the absence of an organic law defining the conditions and modalities for its implementation. Since 2011, the adoption of this organic law has faced repeated delays, reflecting institutional and political resistance to establishing an effective ex-post control mechanism. Rejected for the first time by the Constitutional Court in 2018, a revised version of the organic law, adopted by Parliament in April 2022, was again rejected by the Court in 2023 (MAP Express, 2022). Had it been promulgated, this organic law would have enabled litigants to raise, during a trial, explicit violations of gender equality principles, particularly in the realm of family law. This ex-post control mechanism could have paved the way for challenging several provisions currently applied by Moroccan courts, which are deemed inconsistent with the country's international commitments.

These shortcomings highlight a structural difficulty in ensuring the optimal use of international conventions, particularly in their constitutional role of anchoring gender equality. In this context, it becomes crucial to explore alternatives to the immediate transposition or direct harmonization of international norms. “Normative spheres of influence,” as indirect mechanisms, emerge as a promising avenue for gradually aligning Moroccan law with international standards while respecting the country’s institutional and cultural specificities.

Normative spheres of influence in gender equality: from external support to internal advocacy for normative convergence

This paper adopts the concept of ‘normative spheres of influence’ as an analytical lens to explain how international standards progressively permeate domestic legal systems. These spheres rest on three interrelated dimensions: first, they operate through soft law mechanisms, such as recommendations, action plans or guidelines, rather than binding rules; second, they foster a gradual and flexible normative alignment that adjusts to local contexts and institutional constraints; and third, they rely on mutual assistance, training and capacity-building provided by international organizations and transnational partnerships. Together, these dimensions demonstrate how Morocco’s legal framework can be influenced through indirect, supportive channels that facilitate the harmonization of national law with international gender equality norms.

This conceptual framework can be illustrated through concrete foreign partnerships that translate these spheres of influence into practice. Foreign partnerships play a crucial role in assisting states in achieving normative transitions in key strategic areas. For example, the Council of Europe, through its Neighborhood Partnership, actively supports Morocco in its normative alignment with international human rights standards. Similarly, the United States, through a governmental agency, has provided support for the reform of the *Soulalyates*’ rights within ethnic communities, particularly in relation to land management. These external collaborations go beyond one-off assistance; they contribute to raising awareness among legal professionals and stakeholders, thereby enabling the progressive integration of international norms into national practices.

This approach, focused on the creation of normative spheres of influence, fosters the emergence of new internal demands for gender equality. The ongoing reform of the Family Code exemplifies the impact of these influences on public debates and legislative initiatives. Indeed, numerous institutions, associations, and academics are advocating for the alignment of the Family Code with international treaties ratified by Morocco. This now constant and recurring demand reflects the progressive appropriation of international norms by internal actors.

These dynamics, combining external support and internal pressures, not only accelerate normative convergence but also ensure a contextually sensitive adaptation that respects Morocco’s cultural and institutional specificities. The challenge lies in Morocco’s ability to transform these spheres of influence into structural levers for effective and sustainable reform of its national legal framework.

The impact of international organizations on normative convergence

a) The role of the Council of Europe in combating violence against women

Morocco, although not a member of the Council of Europe, is considered a privileged partner due to its commitment to human rights, the rule of law, and democracy. Since 2012, Neighborhood Partnerships between the Council of Europe and Morocco have established roadmaps in various fields related to human rights.

This collaboration is based on reinforced cooperation and support for normative activities. The Council of Europe provides expertise through the drafting of new legislative texts, the revision of existing legislation, and the establishment of institutions promoting human rights and good governance, grounded in European and international standards (Council of Europe, 2022). This

partnership has focused particularly on combating violence against women, culminating in the drafting of Law No. 103-13. Moreover, the Council of Europe has supported the implementation of this legislation by training legal professionals, raising public awareness, and strengthening the National Commission for the Care of Women Victims of Violence, established in 2019.

The partnership aims to consolidate achievements and ensure the effective implementation of Law 103-13 on combating violence against women by legal and judicial professionals. It is part of a broader strategy to create a normative sphere of influence, which includes strengthening the capacities of legal professionals to apply legislation in line with international and European standards. Furthermore, Morocco's inclusion in the European Commission for the Efficiency of Justice (CEPEJ) as an observer aims to enhance the functioning and performance of Moroccan judicial services.

The European HELP program has also played a key role in providing human rights training to Moroccan legal professionals, particularly in the areas of combating violence against women.⁴ These training sessions, conducted in Arabic, aim to dispel any perception of foreign interference or imposition of Western norms, thereby fostering greater acceptance.

The creation of a European normative sphere of influence in the field of human rights is beginning to take shape. The law on combating violence against women demonstrates a clear intention to align Moroccan law with conventional standards. Combating discrimination against women has become one of the new areas of cooperation prioritized by the Council of Europe.

This influence in Morocco's normative development has yielded significant results through a gradual approach that facilitates adherence to international instruments while taking into account the specificities of Moroccan society. Training legal actors will have an even greater impact by encouraging judges to apply Moroccan law through the lens of international conventions. Moroccan jurisprudence, as a source of law, will progressively reflect these influences in the field of human rights.

The European normative sphere of influence marks a new era of normative convergence between Moroccan law and international law. Modifying national law through influence is less abrupt than normative convergence imposed by the hierarchy of norms through the primacy of international law. Preparing professionals for these new norms involves training in Arabic to dispel any perception of foreign interference or the imposition of Western values. Normative cooperation, supported by reform assistance programs, is expected to produce far more sustainable results. The Council of Europe is not alone in seeking to expand its normative sphere of influence in the field of gender equality. The United States has also intervened in a domain that concentrates structural inequalities: land law.

b) The American sphere of influence in advancing gender equality in land governance

Since 2004, the United States has operated a development assistance agency called the Millennium Challenge Corporation (MCC), which establishes partnerships with countries to reduce poverty by engaging local populations. The Millennium Challenge Account-Morocco (MCA-Morocco), a public institution, was established in September 2016 (Official Bulletin of the Kingdom of Morocco, 2016). A cooperation agreement was signed in 2019 to implement a land governance project in Morocco.

As part of this project, a center will be established to integrate a gender-sensitive approach into the *Melkisation* process of *Soulaliyate* lands for the benefit of rightful claimants.⁵ This center will also be responsible for creating a database on women's land rights to promote their access to land as beneficiaries. Under demographic and land pressure, collective lands have undergone profound transformations, adversely affecting the social situation of rightful claimants and the country's natural resources. These changes have been accompanied by social, economic, and legal shifts, rendering customary rules and the discretionary power of *Jmaa* (community) representatives obsolete, particularly in governing the status of women from ethnic communities (*Soulaliyates*).

The *Soulaliyates* are women who have fought for their right to equitable distribution and access to collective lands, challenging discriminatory practices rooted in local customs known as *Orfs*. Historically excluded from the processes of allocation, succession, and exploitation of collective lands

in favor of men as “heads of households,” they have become a symbol of the struggle for gender equality in land governance.

The MCC program supported these women in exercising and defending their land rights while assisting the government in implementing reforms to secure these rights. This influence was pivotal in the emergence of new land rights for women, materialized through Law No. 62.17 on the administrative guardianship of *Soulaliyate* communities and the management of their assets. Article 6 of this law states:

Members of ethnic communities, both men and women, shall enjoy the assets of the community to which they belong, in accordance with the distribution carried out by the delegates’ assembly referred to in Article 9 of this law. This enjoyment entitles them only to the personal and direct exploitation of these assets.⁶

Before this reform, *Soulaliyate* women were supported by associations and the MCC in their legal proceedings before Moroccan courts. Moroccan jurisprudence played a crucial role in establishing the principle of gender equality in access to land. On July 23, 2009, the Ministry of the Interior issued Circular No. 2620, addressed to the Wali of the El Gharb-Charda-Béni Hssen region and the Governor of the Kenitra province, ensuring that women received the same compensation as men during land transactions (Ministry of the Interior, 2009). The impact was significant, allowing nearly 800 women to be registered as rightful claimants eligible for compensation.

The actions of the *Soulaliyates* from the Gharb region led to the extension of this measure to all Moroccan provinces through a circular issued on October 25, 2010. This extension aligned with the Moroccan Constitution and conformed to the International Covenant on Civil and Political Rights of 1948. Furthermore, a 2012 circular expanded women’s rights by enabling them to benefit from the distribution of agricultural land parcels and to inherit from deceased beneficiaries (Berriane & Rignall, 2017).

The creation of normative spheres of influence goes beyond the strict framework of regulatory transition assistance provided by international organizations or states. Civil society actors also advocate for this normative convergence with international treaties on gender equality.

The reform of the family code: An adoption of normative convergence with international treaties by Moroccan society

The reform of the family code: A call to the Nation for gender equality

His Majesty King Mohammed VI has, on three occasions, called for the reform of the current Family Code:

- In the Throne Speech of July 30, 2022, the King emphasized: “The Family Code represented a genuine leap forward; however, it is no longer sufficient as it stands. Experience has revealed certain obstacles that prevent the completion of the initiated reform and the achievement of the desired objectives” (Le Matin, 2022).
- A Royal Letter, issued on September 26, 2023, provided High Royal Instructions to establish the institutional and collective framework for the drafting process of the reform project (Le Matin, 2023).
- Finally, during the opening of the parliamentary session on October 13, 2023, the King reiterated this call for reform.

An Instance tasked with revising the Family Code has been mandated to conduct extensive consultations with civil society actors, academic researchers, legal professionals, and associations. These consultations consistently highlight the incompatibilities between the Family Code and the

international conventions ratified by the Kingdom of Morocco, underscoring the need for comprehensive reform.

The Economic, Social, and Environmental Council (ESEC) was consulted by the House of Representatives on November 13, 2023, to provide an opinion on the issue of child marriage and its socio-economic impact on girls. According to the ESEC, any reform must be grounded in “the full harmonization of the legal framework with the Constitution and the international conventions ratified by the Kingdom” (Economic, Social, and Environmental Council, 2023).

Child marriage: A challenge for normative convergence

Although the 2004 family code prohibits child marriage, exceptional provisions allow for circumvention of this ban. Article 20 of the *Mudawana* grants family judges the discretion to authorize “the marriage of a boy or a girl before reaching the age of matrimonial capacity through a reasoned decision specifying the interest and the grounds justifying the marriage.” However, data collected by the Public Prosecutor’s Office reveals that these exemptions are widely granted by judges, often without conducting thorough social investigations and based solely on a simple medical certificate. These exemptions concern 96% of underage girls, revealing a widespread practice that contravenes gender equality principles and children’s rights.

Furthermore, the persistence of customary marriages conducted without judicial procedures exacerbates these significant violations of children’s rights. In response, the ESEC has called for the inclusion of a provision in the Family Code enshrining “the best interests of the child,” aligned with the principles of the International Convention on the Rights of the Child (Economic, Social, and Environmental Council, 2023). This provision should include a clear definition and explicit mechanisms for its implementation to ensure effective application.

The standardization of expectations for gender equality: A shared critique of family law provisions contrary to international treaties

The recommendations of the National Human Rights Council (CNDH), the Economic, Social, and Environmental Council (CESE), as well as numerous human rights associations and political parties, converge on a common objective: achieving equality between men and women across the family sphere. These shared aspirations transcend institutions, partisan divides, and the entities they represent.

These national organizations, now actors within spheres of normative influence, are actively working to promote adherence to international commitments within domestic law. The reform of the Family Code exemplifies this lasting influence, bringing together civil society, political, and institutional actors around the shared demand for gender equality.

The consultations conducted by the Instance in charge of revising the Family Code reveal recurring expectations grounded in gender equality. Among the main demands are:

- The abolition of polygamy, even though the conditions for its practice have been tightened since the adoption of the Family Code in 2004;
- The removal of the prohibition on marriage between a Muslim woman and a non-Muslim man or between a Muslim man and a woman who does not belong to the People of the Book (Christians or Jews);
- The establishment of equality in guardianship between spouses. Currently, only the father holds guardianship in cases of divorce, while the mother is limited to custodial rights;
- The mitigation of inheritance inequalities through the abolition of the *Taasib* rule (agnatic inheritance) and prioritization of wills. However, the half-share rule for women remains difficult to contest due to its religious foundation.⁷

Can it be said that this growing influence of international law on gender equality might encounter resistance from religion? Professor Nadia Bernoussi emphasizes that the constants of the Nation rest

on “moderate Islam” and “democratic choice.” Moroccan society aspires to reconcile these two references (Medias24, 2024). Ijtihad, as a method of interpreting sacred texts in light of contemporary societal developments, could play a central role. The Higher Council of *Ulemas*, a member of the Instance for the revision, is associated with this approach.⁸ The call for Ijtihad does not aim to question the word of God in the Holy Quran but rather to consider an interpretation of the texts that is compatible with the rights enshrined in the Constitution and international treaties, particularly in matters of gender equality.

Nouzha Chekrouni and Abdessalam Saad Jaldi (2024) affirm that:

The new Code must restore the principle of justice advocated by the sacred text and the foundations of the Muslim religion by eliminating inequalities between men and women. The jurisprudential rule stipulates that where there is interest, there is the law of God. This rule, discussed by Imam Al-Shatibi in his book *Al-Muwafaqat*, can inspire our policymakers to enact a new Code in harmony with the requirements of equality and democracy advocated by the Constitution and Morocco’s international commitments. The issue of women should no longer be tied to religion and the sacred. No injustice based on gender can be justified by Islam or the Sacred Text, whose ultimate goal is justice and equality among believers, both men and women.

Conclusion

The reform of the Family Code represents an unprecedented testing ground for normative convergence with international treaties on gender equality. The publication of the upcoming draft law will reveal the impact of these spheres of influence on the emergence of legislation that eliminates gender inequality.

The reform of the Family Code represents a profoundly Moroccan initiative, the result of a dialogue between modernity and tradition, driven by and for Moroccans. The emergence of normative spheres of influence, whether external or internal, has contributed to uniting demands around gender equality, reflecting a growing consensus among various actors, whether from civil society or institutional frameworks. However, these dynamic faces resistance, particularly from certain conservative groups who view this reform as a threat to the religious and cultural foundations of society (Khetrou, 2024).⁹

This positive influence, aimed at ensuring gender equality, is reversed by some as an attempt to import Western family law principles. Misinformation is particularly prevalent, to the extent that on the issue of inheritance equality, Moroccans hesitate to advocate for a fairer distribution of inheritance for fear of committing a religious offense (Benboubker, 2023).

Despite these tensions, reform advocates rely on strong arguments, emphasizing that the proposed amendments align with Islamic principles, the Constitution, and Morocco’s international commitments. This normative convergence, far from representing a clash between tradition and modernity, offers an opportunity to reinterpret norms in harmony with contemporary social developments.

Ultimately, the realization of this reform provides a unique opportunity for Morocco to position itself as a key player in promoting human rights on the international stage, while ensuring a national appropriation of universal principles. It is hoped that resistance will diminish in favor of a constructive consensus, allowing the Family Code to serve as a symbolic example of reconciling local specificities with international standards.

Notes

1. In cases of repudiation, the husband must deposit a substantial sum with the court registry. This financial condition aimed to make its application more difficult to execute.

2. The new provisions concerning the acquisition of Moroccan nationality, under this article, by birth to a Moroccan mother, shall apply to all individuals born prior to the publication date of this law.
3. Morocco acceded to the CEDAW in June 1993. The Optional Protocol was unanimously adopted on July 7, 2015, by the House of Representatives. This ratification, enacted through legislation, was published in the Official Bulletin on August 17, 2015.
4. The European Human Rights Training Program for Legal Professionals, <https://www.coe.int/en/web/help/home?desktop=true>
5. *Melkisation* is the process of transforming collective lands into private ownership, enabling the individualization of plots.
6. Morocco. (2023). Law No. 62.17 on the administrative guardianship of *Soulaliyate* communities and the management of their assets.
7. Opinion of the CESE, op. cit., "Women cannot be legal guardians of their children. In practice, the mother has sole custody of the children by default, except in specific cases, while the father is considered the sole legal guardian of the children. This situation contradicts the principles of shared responsibilities between spouses in family matters, particularly regarding children. It also undermines the rights and obligations of divorced parents towards their children when conflicts between separated spouses persist. Moreover, the right to remarry is penalized for women by the loss of child custody, except in exceptional circumstances."
8. *Ijtihad* literally means "effort" or "exertion" in Arabic. It refers to the process of legal decision-making through independent interpretation of the sources of Islamic law.
9. The President of the CNDH responded to the criticisms of former Prime Minister Benkirane, stating that "the proposed amendment was based on Islamic principles, the Constitution of the Kingdom, and the international treaties ratified by Morocco, thereby ensuring its compatibility with the existing legal framework."

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