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EUDO Citizenship Observatory

IMMIGRATION AND CITIZENSHIP LAW IN THE MAGHREB:  
TURNING ALIENS INTO CITIZENS

Delphine Perrin



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Turning Aliens into Citizens*

**DELPHINE PERRIN**

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## **Abstract**

For ten years, Maghreb countries have experienced unprecedented legislative developments, particularly in migration and citizenship law. The concomitance of reforms in both these fields – matching a parallel phenomenon in Europe – arguably reveals an awareness of being migrant-receiving countries and increasingly mixed societies. Revisions in citizenship legislation have mainly been motivated by gender-related concerns and, as such, have only affected immigrants indirectly. Despite some still rigid and discriminatory provisions, the Maghreb presents a range of regulations and national responses in addressing differences, which has the potential to turn successive generations of foreign residents into citizens. Yet, some recent changes have also demonstrated a new reluctance towards the possible integration of foreign citizens.

## **Keywords**

Citizenship – Maghreb – Gender – Naturalisation - Migration





## Introduction

Immigration and citizenship policies are intimately linked since the relationship to otherness is part and parcel of the shaping of national identity, a relationship supposedly reflected in citizenship laws. Citizenship regulations display a double image of a country: the image of its supposed identity and the image of its desired identity. Who are we? Who do we want to be? By defining what a national should be, citizenship regulations also define who cannot be included in the nation.

The issue of national identity underlying citizenship regulations was of particular relevance in the Maghreb after independence: yet this matter was hardly tackled in the following years. Certainly, demographic changes had already been recorded before the adoption of the initial citizenship laws: the departure, from Algeria, Tunisia, Libya and Morocco, of thousands of Jewish North Africans, of most European residents, and of a number of “nationals” for political or economic reasons. Still, since independence, these countries have experienced several challenges that have brought national identity into question, among these the emigration of thousands of citizens, social and economic difficulties, the failed pretensions of Arab nationalism, the intensification of immigration and a growing foreign presence. Though these demographic, social and economic changes could have legitimised reforms regarding the definition of the “people”, citizenship regulations have been essentially stable. Among the first legal texts to be adopted after independence, they had been subject to very few changes until recently, when reforms improved women’s rights.

This stability in legislation has to be seen together with the strength of political regimes and elites in the Maghreb since independence<sup>1</sup>, which not only reflects a lack of democracy but above all weakness in national questioning and difficulties in state building. These drawbacks mean that differences are not easily addressed.

First considered as emigration countries, Maghreb nations are also, to one degree or another, lands of immigration. Still, they are often said to be hostile to the incorporation of externalities in the nation. Their citizenship legislation is essentially based on the law of blood, which perfectly fits emigration countries’ wish to keep a link with the diaspora abroad. This emphasis on descent, and especially paternal descent, has not been balanced by the introduction of a substantial *ius soli*, whose effects were largely rejected after independence. Besides, their initial reluctance to embrace dual citizenship has made them appear closed societies trying to build a fragile nationhood.

Although Maghreb countries share common stakes and a relative inability – reflected in regulations as well as in practice – to integrate the other into their national identity, their citizenship policies have revealed, instead, a great diversity. The conception of perpetual allegiance has a different ideological basis in Morocco and in Algeria; Mauritania and Libya’s reluctance to admit dual citizenship depends on different reasoning. Rules themselves vary significantly within the region, concerning the degree of gender discrimination, the scope of *ius soli* or the treatment of Arab nationals.

Besides, if *ius soli* is typically considered as the main symbol of open societies, *ius sanguinis*, and its recent extension in some countries, may be a way to integrate immigrants into Maghreb nations. It may even be now the essential way to do so, since the latest reforms have further reduced the already tiny place of *ius soli*.

This paper addresses Maghreb citizenship issues *in* these countries. It does not tackle the question of the maintenance or the transfer of citizenship abroad by Maghreb emigrants. Our intention is to describe how Maghreb societies may include difference within the nation and how foreign nationals living in a Maghreb country can become citizens of that country. The paper sets out how citizenship laws and practices in Maghreb countries have interacted with other policies and regulations, especially regarding migration; and shows how despite rigid, inadequate and still discriminatory citizenship

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<sup>1</sup> For political regimes in Maghreb countries, see Luciani (1990) and Planet Contreras (2007).

regulations, Maghreb countries have been evolving towards the awareness, if not the acceptance, that they are mixed societies.

Beyond essentialist approaches, the paper opts for a country-based analysis, best able to shed light on the diversity of Maghreb nations and the specificity of each national route. It favours a contemporary comparative and contextualised study of citizenship regulations so as to produce a modern and pragmatic picture of the meaning and consequences of such regulations for individuals.

**Table 1: Citizenship and Immigration Regulations**

Country	Initial texts		Reforms		Latest reforms <sup>2</sup>	
	Citizenship	Immigration	Citizenship	Immigration	Citizenship	Immigration
<b>Algeria</b>	Code of 27/03/1963	Law 66-211 of 21/07/1966	Decree 70-86 of 15/12/1970		<b>Decree 05-01 of 27/02/2005</b>	Law 88-11 of 25/06/2008; Law 09-01 of 25/02/2009
<b>Libya</b>	Law 17/1954		Laws 47/1974, 48/1976, 3/1979, 18/1980	Law 6 of 1987	<b>GPC<sup>3</sup> decision 190/2001</b>	Law 2 of 2004; Decree 125 of 2005; Law 19 of 2010
<b>Morocco</b>	Dahir <sup>4</sup> 1-58-250 of 12/09/1958	Dahirs from 1934 to 1947			<b>Dahir 1-07 of 3/03/2007</b>	Law 02-03 of 11/11/2003
<b>Mauritania</b>	Law 1961-112 of 13/06/1961; Law 1962-157 of 15/08/1962	Decree 64-169 of 15/12/1964; Law 65-046 of 23/02/1965	Law 1976-207 of 25/08/1976		<b>Law 2010-023 of 11/02/2010</b>	Reform currently (2011) in discussion
<b>Tunisia</b>	Law 63-7 of 22/04/1963 replacing Decree of 26/01/1956	Law 1968-7 of 8/03/ 1968; Law 1975-40 of 14/03/1975	Law 71-12 of 9/03/1971; 75-79 of 14/11/1975; 84-81 of 30/11/1984; 93-62 of 23/06/1993		<b>Law 2002-4 of 21/01/2002; Law 2010-55 of 01/12/2010</b>	Law 2004-06 of 3/02/2004

<sup>2</sup> All these texts can be found on CARIM legal database: [www.carim.org](http://www.carim.org)

<sup>3</sup> General People's Congress.

<sup>4</sup> Royal decree.

## 1. An Uncertain Link between Immigration and Citizenship

Even if figures have to be taken cautiously, we can safely state that Maghreb countries are immigration countries, albeit immigration countries with important quantitative and qualitative differences. Libya is certainly the country with the highest level of foreign nationals. Algeria is in distant second place, then comes Morocco, followed by Tunisia and Mauritania (see Table 2).

In terms of proportion, levels of variance are even more dramatic. The proportion of foreign nationals in the population is 6.4% in Libya, 1.3% in Mauritania, 0.4% in Tunisia, 0.27% in Algeria and 0.2% in Morocco.

**Table 2: Foreign Nationals in the Maghreb countries<sup>5</sup>**

Country	Number of Foreign Nationals	Approx. Percentage of Foreign Nationals in the Population	Largest National Groups
Libya (2006) <sup>6</sup>	359,540	6.4	164,348 Egyptians; 43,680 Sudanese; 28,596 Palestinians; 20,683 Chadians; 19,839 Moroccans; 14,124 Tunisians; 11,614 Nigerians; 4,593 Algerians
Algeria (2008) <sup>7</sup>	95,000	0.27	18,661 Moroccans; 8,389 Tunisians; 5,943 Egyptians; 4,162 Malians
Morocco (2005) <sup>8</sup>	62,348	0.2	17,792 French; 11,581 Algerians; 1,855 Tunisians; 1,337 Italians; 1,312 Mauritanians
Tunisia (2004) <sup>9</sup>	35,192	0.4	9,612 Algerians; 6,363 Moroccans; 4,612 French; 1,738 Libyans; 1,560 Italians
Mauritania (2000) <sup>10</sup>	34,481	1.3	13,068 Senegalese; 10,793 Malians

An important question is whether a relatively low rate of resident foreign nationals in the population might deter states from adopting an inclusive citizenship policy, since there would be no integration

<sup>5</sup> This Table is purely indicative, based on official census carried out by each Maghreb country in different years as published in CARIM Demographic database <http://www.carim.org/index.php?areaid=4&contentid=57>. The table aims to give a broad picture of proportions and a tool to better understand national stakes pertaining to citizenship, but it does not offer precise and reliable figures. Tunisia and Libya recorded the foreign population, while Algeria, Mauritania and Morocco reported the foreign resident population. Some migrants in an irregular situation may be included in the figures but most are not.

<sup>6</sup> Libyan Census of Population, 30 April 2006, General Information Authority, Libya: Foreign Population by Citizenship: <http://www.carim.org/index.php?callContent=59&callTable=1440>

<sup>7</sup> The total number of foreign nationals is taken from the 2008 national census of the population, while numbers by nationality refer to the 1998 situation. Foreign Resident Population: [http://www.carim.org/public/migrationprofiles/MP\\_Algeria\\_EN.pdf](http://www.carim.org/public/migrationprofiles/MP_Algeria_EN.pdf)

<sup>8</sup> Official census 2005, Direction of General Security: Foreign Resident Population by Citizenship: <http://www.carim.org/index.php?callContent=59&callTable=133>

<sup>9</sup> General Census of the Population, 2004: Foreign population by citizenship, sex and age: <http://www.carim.org/index.php?callContent=59&callTable=638>

<sup>10</sup> General Census of the Population, 2000: Foreign Resident Population by Citizenship: <http://www.carim.org/index.php?callContent=59&callTable=1712>. Please note that figures are considerably different when regarding the foreign population by citizenship (7,516 Malians, 6,988 Senegalese citizens): <http://www.carim.org/index.php?callContent=59&callTable=1251>

issues or whether, on the contrary, it might foster openness since there would likely be few consequences for national identity.

The origin of immigrants may be of some importance. In Morocco, which has the lowest rate of foreign nationals in the population, Africans and Europeans account for almost the same levels (between 20,000 and 30,000 each). Algerians form the biggest national group (almost 12,000 residents). In Algeria, foreign nationals from Arab (including African) countries go to make up a large majority. Moroccans constitute the biggest national group (more than 18,000), followed by Tunisians, then Egyptians. In Tunisia, the majority of immigrants are also Arab (more than 21,000), above all Algerians (more than 9,000 as numerous as the European population there), Moroccans and Libyans. Arabs from the Middle East or Africa are also, overwhelmingly, the largest part of the foreign population in Libya (more than 300,000), with half being Egyptians. Yet, they come from all over the world to work in Libya (40,801 Sub-Saharan, 8,203 Asians and 3,056 Europeans). Mauritania is much closer to Sub-Saharan Africa, but immigrants still tend to come from neighbouring countries, mostly from Mali and Senegal.

Increasingly aware of their migratory situation and of its importance as a diplomatic tool, Maghreb countries aligned themselves with EU migration policies and reformed their legislation between 2003 (Morocco) and 2010 (Mauritania, Libya) (Perrin 2008). The fact that citizenship regulations were reformed during the same period might make us think that governments established a link between immigration and citizenship, as has been done in Europe. However, the connection is not so obvious in the Maghreb. Basically, reforms are not primarily motivated by an awareness of a foreign presence or a hypothetical idea of the integration of new sections of the population. Rather they are due to the struggle, at the regional level, of an already integrated section of this population: women<sup>11</sup>. Indeed, family codes were also reformed along these lines in Algeria in 2005 (the same year as citizenship reform), in Morocco in 2004 (three years before citizenship reform), in Mauritania in 2001 and in Tunisia in 1993 (the same year as citizenship reform).

The other changes in citizenship laws, not linked to gender, tend to put further limits on the access of foreign nationals to citizenship. New regulations aim 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.

Figures show that a large number of foreign nationals in Maghreb countries come from neighbouring states: Egyptians in Libya, Algerians in Tunisia and, above all, in Morocco, Moroccans in Algeria, the Senegalese in Mauritania. We might assume that geographical and identity proximity reduces the need or will to have access to another citizenship. Yet, of the 900 applications for Moroccan naturalisation pending in 2007, 480 were submitted by Algerians<sup>12</sup>, and Moroccans also form the largest group of foreign nationals applying for Algerian citizenship. Even if citizenship in Maghreb countries is less attractive than Western countries' citizenships, since Maghreb citizenship is said to grant fewer rights (especially the right to international mobility), many foreign nationals are evidently eager to gain a Maghreb citizenship, either to get more rights (equal access to work or participation in political life) or to fit in with their identity (children born and raised in the country).

The eagerness to become a national mostly depends on the levels of discrimination between nationals and foreign nationals regarding basic rights. Let us remember that the number of European citizens applying for citizenship from another European country has dramatically dropped since nationals and EU citizens have benefited from equal treatment in all member states.

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<sup>11</sup> See the International campaign for "Arab women's Right to Citizenship" or "Vingt ans Barakat" in Algeria.

<sup>12</sup> Moroccan Minister of Justice, M. Bouzoubaâ (2007) *REMALD (Revue marocaine d'administration locale et de développement)* 178: 70.

Foreign nationals who request Maghreb citizenship are rarely immigrants, but mostly “fellow nationals” who are born in the country or have been living there for more than forty years<sup>13</sup>, like Algerians in Morocco or Moroccans in Algeria. Those people have suffered from the consequences of troubled relations between neighbouring states. After the Algerian “Black Walk” following the Moroccan “Green Walk”, Hassan II reacted to the expulsion of Moroccan citizens from Algeria and requested that his administration treat Algerian applications to naturalisation with circumspection. Yet, out of the 1,646 persons who obtained Moroccan nationality between 1959 and 2007, 62% were Algerians<sup>14</sup>.

We have to note here that discrimination between foreign nationals and nationals is much less of an issue in Maghreb countries than further to the east, but it is still a factor. The worst situation can be found in Libya where it was decided in 2007<sup>15</sup> that foreign children – including children with Libyan mothers – should not have access to free public services like public schools. Because of the lack of private structures out in the countryside, some of them have been allowed to join their Libyan fellows, on payment of an annual 800 dinars<sup>16</sup>. In Libya and other Maghreb countries, the main differences between nationals and non-nationals include access to the civil service (reserved to nationals), to work in general (reserved, time- or qualification-limited jobs) or to studies (fees and quotas in universities)<sup>17</sup>.

This discrimination may affect a large number of children born and raised in a Maghreb country who have remained foreign nationals during their minority and even afterwards. Yet, the situation has recently improved.

## **2. The Domino Effect: Integrating Mixed Couples’ Offspring through the Improvement of Women’s Rights**

With the notable exception of Libya, Maghreb countries have put an end to the most unfair obstacles for children to become nationals in their own country. They now grant citizenship to mixed couples’ children born to a male *or* a female citizen and to a foreign national: note that the question was never an issue when the legal father was a national, since he always transmitted his nationality, whatever the mother’s citizenship.

When only the mother was a national, and the father was a foreign national, the child born in the country inherited his/her father’s citizenship, even if still residing in his/her mother’s original country where s/he was considered as a foreign resident until s/he obtained citizenship after the legal majority. Henceforth, this child gets the citizenship of both of his/her parents at birth, except in Libya where s/he would have to apply for naturalisation when of age and prove a three-year residency. Yet, some discrimination remains.

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<sup>13</sup> 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-Saharanans (among them 1,100 Malians) and 7,346 Europeans. According to the 2004 Tunisian census, the number of foreign residents born in Tunisia was 6,847 persons, including 5,876 Arabs (among them 4,429 Algerians), 868 Europeans, 56 Sub-Saharanans and 16 Asians. See these figures on CARIM website, Morocco’s demographic database <http://www.carim.org/index.php?callContent=59&callTable=131> and Tunisia’s demographic database <http://www.carim.org/index.php?callContent=59&callTable=631>

<sup>14</sup> Moroccan Minister of Justice, M. Bouzoubaâ (2007) *REMALD (Revue marocaine d’administration locale et de développement)* 178: 70.

<sup>15</sup> GPC Decision n° 98.

<sup>16</sup> GPC Decision n° 612 of 2007.

<sup>17</sup> It is to be remembered that the 1966 UN Pact on economic, social and cultural rights allows developing countries to apply different rules to non-citizens (art.2 al.3), whereas the Pact on civil and political rights does not.

While Mauritania and Tunisia had been the first and only countries in the region to give this right to children born in the country in the sixties, they were then behind their neighbours in terms of equality, since a child born abroad to a Mauritanian or Tunisian mother did not get her citizenship unless a specific declaration was made. In 2010, Tunisia put an end to this discriminatory practice, while Mauritania has maintained it despite further reforms in the same year (art.13). Even when born in Mauritania, the child of a Mauritanian woman has the right to repudiate his or her citizenship upon declaration at age (art.8), unlike the child of a Mauritanian father who is subject to another procedure if s/he wants to lose Mauritanian citizenship.

Following a precedent established by Egypt in 2004, Algeria (2005) and Morocco (2007) reformed their regulations to enable women to transmit their citizenship to any children born to a foreign father: previously this had only been possible when the father was unknown or stateless, in order to avoid statelessness. This was inspired by the drive for women’s rights. But only Algeria offers strict equal rights between men and women.

Morocco, indeed, opted for the Mauritanian model, by giving the opportunity to children born to a foreign father to repudiate their mother’s Moroccan citizenship when they come of age (art.19). An argument for this discrimination<sup>18</sup> lies in the fact that it would enable these children to get their father’s citizenship (supposedly from the Gulf) 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 will, above all, 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>19</sup>, while children of emigrant fathers may not. The impact of the procedure on potential rights confirms the existence of real discrimination. Moreover, the general possibility of repudiating Moroccan citizenship, already expressed in the law, should be sufficient for all situations.

**Table 3: Granting citizenship to a minor born in the country to a male or female citizen and a foreign national**

Country	To a male citizen	To a female citizen	Repudiation capacity for the child
<b>Mauritania</b>	Yes	Yes (1961)	Born to a national mother and a foreign father, in the year preceding majority (art.8)
<b>Morocco</b>	Yes	Yes (2007)	Born to a national mother and a foreign father, between 18 and 21 years of age (art.19)
<b>Algeria</b>	Yes	Yes (2005)	
<b>Tunisia</b>	Yes	Yes (1963)	
<b>Libya</b>	Yes	No	

The transmission of citizenship to foreign minors adopted by a national also constitutes an interesting aspect of citizenship regulations, since it effectively questions the traditional pattern of *ius sanguinis*. In Muslim law, it is referred to as *kafala* rather than adoption since it is not assimilated to filiation, which governs rules of inheritance. Tunisia has already enabled the transfer of citizenship to adopted children from the date of adoption (art.18). In Mauritania, the adopted person could opt for citizenship at age if he or she had resided in the country for at least five years, but the 2010 reform removed this

<sup>18</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>19</sup> In Germany, the prohibition of dual citizenship is the principle but exceptions can be made when renouncing citizenship of origin is impossible or too difficult, which has been the case for Moroccan citizenship. See section 12 of the German Nationality Act (2007 version) on the EUDO Citizenship website: <http://eudo-citizenship.eu/national-citizenship-laws/?search=1&name=&year=&country=Germany&submit=Search>

possibility. On the contrary, Morocco introduced in 2007 the possibility for an “adopted” child, who had been born abroad to unknown parents, to become a national after five years of *kafala* upon the declaration of his or her *kafil*, or to opt for citizenship on his or her own two years before coming of age (art.9). This has been received as a further step towards women, since the rules of *kafala*, defined in 2002<sup>20</sup>, have enabled a single woman to be a *kafil*. Since 2007, her “adopted” child has been allowed to get her citizenship.

### **3. A Legal Potentiality: Integrating Successive Generations of Foreign Residents through Ius Soli**

Children lacking a blood link with a national may also become citizens in some Maghreb countries, through *ius soli* and its variants. The legal diversity between the Maghreb countries concerning the status of mixed couples’ children becomes far greater when a child has two foreign parents.

Only Mauritania provided for a *ius soli* regardless of any descent. Nevertheless and, in a surprisingly anachronistic way, its 2010 reform removed two major forms of *ius soli* from the previous law and reduced the scope of a third one. Indeed, the provision enabling children born in the country to foreign parents to opt for citizenship when they come of age, as long as there had been a five-year residency (art.13 al.2), was suppressed. Similarly, the foreign national born in the country, who could apply for naturalisation without any previous residency requirement (art.18 al.2), has now to prove a five-year residency. These former provisions were particularly open to the integration of externalities. Besides, Mauritania granted nationality of origin through double *ius soli* (art.9), a form of granting which disappeared with the 2010 reform. It is striking that Mauritanian legislation was particularly inspired by the French system and enabled the integration of the second and third generations of non-nationals. From being the most integrative country in the Maghreb, Mauritania has become one of the most closed towards aliens and the most retrograde in terms of gender equality.

Consequently, and while relatively closed, Moroccan legislation seems now to be the most open to the integration of successive generations of aliens in the region. Two categories of third-generation foreign nationals can opt for Moroccan citizenship: children born in Morocco to foreign parents who were also born there *after independence*, or children born in Morocco to foreign parents if the father, also born there *at any time*, belongs to a Muslim and Arab community (art.9), something which gave a nationalist colour to its double *ius soli*. It might be argued<sup>21</sup> that this latter provision aimed at enabling the integration of Palestinians. It is also likely that it was put up to hinder 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. Tunisia followed a different route to arrive at a similar nationalist destination: *ius soli* only applies to the fourth generation, in paternal descent, born in the country, and a repudiation right is offered to persons born before 1963.

It is noteworthy that the Moroccan 2007 reform has added a residency requirement to the double *ius soli*, and put an emphasis on the link, which has to be necessarily real, between the individual and the Moroccan territory, rather than on exclusive descent. In both cases of double *ius soli*, the applicant has to have his/her main and regular residency in Morocco. Moreover, all these procedures based on *ius soli* require an act of will, an act of oath, through opting. The automatic acquisition at birth *via* double *ius soli*, introduced in Algeria and Mauritania after independence, was removed by the former in 1970 (Mahiou 2005: 400) and by the latter in 2010, as if this colonial legacy could not fit these countries’ national interests.

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<sup>20</sup> Dahir n°16-01 of 13 June 2002.

<sup>21</sup> Interview with a Moroccan civil servant (anonymous) from the Foreign Affairs and Cooperation Ministry, Section of Studies and Administrative Conventions, 24 June 2010.



In Algeria, as in Libya, *ius soli* is, therefore, absent. The foreign child born and raised in the country does not get any right to citizenship, unless he or she is a stateless child. A child born in a Maghreb country to unknown parents is granted citizenship. But the child of two stateless parents is not on an equal footing, only Libya will grant him or her citizenship and Tunisia, if the parents have lived in the country for five years. This raises, of course, the question of the treatment of Palestinians (see below), among others.

**Table 4: Granting Citizenship to a child born in the country to foreign parents**

Country	<i>Ius soli</i> <sup>22</sup> - Nationality of Origin	<i>Ius soli</i> - Opting Right	Birth and Residence - At Age	Repudiation Capacity
<b>Mauritania</b>			Naturalisation process, 5 year-residence (art.18) (2010)	
<b>Morocco</b>		<i>Double</i> : Option within 2 years before coming of age if born to foreign parents also born in the country after 1958, provided a regular residency in Morocco (art.9 al.1); <i>Double and Co-ethnic</i> : Option at any time if a regular resident in Morocco and born to foreign parents whose father born in the country comes from a country where the majority of the population is Arab and Muslim and if he belongs to this majority (art.9 al.2)		
<b>Algeria</b>				
<b>Tunisia</b>	<i>Triple</i> : to a paternal grand-father and a father also born in Tunisia (art.7)			Linked to triple <i>ius soli</i> , when grantees are born before 1963
<b>Libya</b>				

Access to Maghreb citizenship for the first and following generations of foreign nationals can be found through marriage or naturalisation, though the route to naturalisation is allegedly strewn with problems.

<sup>22</sup> Access to citizenship because of birth in the country, sometimes linked to the mother or father's birth in the country (double *ius soli*), or even to a grand-parent's birth (triple *ius soli*).

#### **4. The Remaining Influence of the Principle of Family National Unity on Mixed Marriage**

This principle of family national unity implies one family, one nationality. It is used to explain the denying of citizenship rights to women, and the transfer of a father's citizenship to his wife and children, as was recommended in the 1954 League of Arab states' agreement on citizenship<sup>23</sup>. As in Europe, a first breach in the principle came in the recognition of a woman's right to transmit citizenship to her children. And, as in Europe, there will need to be further efforts to extend the recognition to a woman's right to transmit citizenship to her spouse.

Yet, all Maghreb countries respect the international convention on the nationality of married women<sup>24</sup>, which prohibits the automatic acquisition or loss of citizenship through marriage. First, a Maghreb woman does not lose her citizenship when marrying a foreign national, unless she wishes to. Only Mauritanian citizenship could, till 2010, be immediately obtained through marriage to a male citizen, without the woman losing her origin nationality: though this has changed since the last reform. In the whole Maghreb now, then, a foreign woman does not acquire citizenship when marrying a national, even if her access to citizenship is facilitated.

If Algeria's regulation appears to be the most closed in the region, it has also been, since 2005, the most equalitarian. It is, indeed, the only regulation to attach the same consequences to marriage for both men and women. A male foreign national can apply for Algerian citizenship after three years of marriage to an Algerian woman, as can a female foreign national married to an Algerian man (art.9 bis). Since 2005, the number of mixed marriages between a female Algerian and a foreign national has notably increased, especially with men from China and from other Maghreb countries. Yet, the grant of citizenship on the basis of marriage has remained quite unpredictable and is apparently still linked to the nationality of origin. Indeed, Algerian nationals' spouses from Mali, Niger and European countries seem to face greater difficulties in obtaining citizenship<sup>25</sup>.

In the other Maghreb countries, gender discrimination is applied with regard to foreign nationals' access to citizenship through marriage to a national. Foreign women are subject to a specific procedure related to marriage, while foreign men have to follow the naturalisation process. The latter will benefit from facilitations in Tunisia, Mauritania and Libya, while in Morocco, marriage may be considered as an element of integration to be taken into account in naturalisation.

**Table 5: Grant of Citizenship through Marriage to a National Citizen**

Country	The foreign woman can acquire her husband's citizenship	The foreign man can acquire his wife's citizenship
<b>Mauritania</b>	Possible access if -5 years of marriage and residency (art.16) (2010)	
	Naturalisation possible, if 5 years of residency and marriage conform to the <i>Chariaa</i> (art.18) (2010)	
<b>Morocco</b>	Possible access if -5 years of marriage and residency (art.10) (2007)	Naturalisation procedure without facilitation
<b>Algeria</b>	Possible access if - 3-year marriage - 2-year residency - good behaviour	

<sup>23</sup> In the Maghreb, this agreement was accepted by Libya only. It never entered into force.

<sup>24</sup> This convention entered in force in 1958 and was ratified by Tunisia in 1968 and Libya in 1989.

<sup>25</sup> According to Professor Ali Mebroukine, information given by email, 25 October 2010.

	-means of living (art.9 bis) (2005)	
<b>Tunisia</b>	Right of access if -2 years of marriage and of residency (art.14), and without condition if she has lost her original citizenship	Naturalisation possible, no previous residency required, only present residency (art.21)
<b>Libya</b>	Possible access if -2 years of marriage -exclusive loyalty	Naturalisation procedure. If he is an Arab, only a 4 year previous residency is required

The Moroccan reform of 2007 was arguably inspired not only by a wish to improve equality between the sexes, but also as a reaction against migration. It was thus closely connected to the 2003 reform of its migration law. Morocco was most reluctant to accept mixed marriage. It not only refused to recognise any significance for citizenship acquisition in a marriage between a foreign man and a female citizen. It also extended, in 2007, the probationary time needed for a resident foreign woman married to a Moroccan citizen. This period, required before any submission for Moroccan citizenship is allowed, rose from two to five years, i.e. equal to the period required for general naturalisation. 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 government claimed here to be combating marriages of convenience, given a recent increase in the number of mixed couples.

Algeria opted to address a similar fear through the introduction of a new offence of “*mix marriage in the purpose (...) of getting Algerian citizenship*” in its law n°08-11 on the conditions of entry, stay and movement of foreign nationals in Algeria, which prescribes a two to five year-prison penalty. The Mauritanian bill currently in discussion concerning foreign nationals’ entry and stay also includes this kind of offence, which is spreading along with the development of obstacles to migrate. Moreover, Mauritania also extended the probationary time needed for a foreign woman married to a citizen before getting citizenship, from immediate citizenship to a five-year wait for the same, i.e. equal to the period now required from foreign males and females married to national citizens in conformity with the *Chariaa* to obtain their naturalisation. It is thus to be noted that access to citizenship through marriage to a national has been lengthened for women as for men, since the latter could previously have been naturalised without any pre-residency requirement. Besides, a specific procedure (art.16) is maintained for foreign women marrying a national in addition to the now un-gendered naturalisation process (art.18).

## 5. The Obstacle Course to Becoming Full Citizens

In Maghreb countries, the naturalisation process is long, difficult and brings with it no guarantee of success, in part because naturalisation is a sovereign prerogative of the state, but also because it is used with great parsimony. Still, the objective criteria for naturalisation that appear in legislations are, for the most part, quite reasonable. The minimum residency requirement is for five years in Morocco and Tunisia and for seven years in Algeria. The 2010 Mauritanian reform doubled the residency condition, raising it to ten years, as is the case in Libya. Speaking Arabic is everywhere a condition. Mauritania also accepts other language skills linked to the country’s linguistic diversity, but the list of these languages was surprisingly changed in 2010 and reduced from seven to four languages<sup>26</sup>. Only Mauritania and Tunisia do not expressly ask for sufficient means of living. This resources criterion appears to be very common in a worldwide perspective, but it seems, at the same time, extremely paradoxical in a Maghreb context given the extent of the informal sector, as well as the difference of treatment meted out to nationals and to foreign nationals in terms of professional opportunities, a fact which is, of course, in itself an incentive to apply for the local citizenship.

<sup>26</sup> The former list included Arabic, Toucouleur, French, Saracollé, Wolof, Bambaria or Hassania (art.19 al.2). In the new list, Toucouleur, French, Saracollé, Bambaria and Hassania have disappeared.

Last, each of the five Maghreb countries has established a list of hindrances to naturalisation, the most common of which is linked to a penal condemnation. Some of them also offer facilitations for some categories of foreign residents: Libya reserves these opportunities to Arab nationals and to those with specific professional skills; Tunisia favours foreign husbands of national women; Mauritania both foreign husbands and wives of nationals; whereas Algeria and Morocco favour those foreign nationals who have rendered exceptional services to the country.

Libya and Mauritania have not adopted the provision that can be found in Algeria, Morocco and Tunisia, which excludes people with physical or mental disabilities from naturalisation. The desire to avoid a new burden on already fragile states is understandable – all the more so because these states do not provide for disabled persons – but this form of discrimination can hardly be morally and legally justified.

Already considered as the most difficult naturalisation process in the Maghreb, Moroccan naturalisation has become still more challenging with the addition, in 2007, of categories of offences or attitudes likely to constitute obstacles to citizenship, including infringements to legal residency. This means that there are particularly strong consequences for irregular migration, and this kind of infringement is now incompatible with the status of citizen. These provisions seem disproportionate to the offence, all the more so since they put no time-limit on the negative effects of a previous irregular stay, and also because it is difficult, if not impossible, to be a long-term stable regular resident in Morocco, especially when coming from the southern hemisphere. Last, 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 a context of intense campaign against irregular migration, Morocco used the announcement in its citizenship reform as it did in its migration-related reform three years earlier.

Libyan rules related to naturalisation, like the rest of Libya’s regulations including migration law, are pragmatic, i.e. they avoid strict and precise provisions enabling openness as well as rejection. It is notable that Mauritanian citizenship legislation had as much openness and concision as its migration law, but they have evolved in a radically different way. While a law on foreign nationals’ entry and stay is still in discussion, the 2010 citizenship reform has tended to put aside the pre-existing opportunities to integrate immigrants.

**Table 6: Conditions of Naturalisation**

<b>Country</b>	<b>Previous residency</b>	<b>Language or ‘assimilation’</b>	<b>Resources</b>	<b>Facilitations for</b>	<b>Exclusions if</b>
<b>Mauritania</b>	10 years (art.18) (2010)	Arabic, Wolof, Pular or Soninké (art.19 al.2) (2010)	No requirement	A foreign national married to a Mauritanian woman or man, a person born in the country: five year-residency required (2010)	Imprisonment sentence without amnesty (art.19)
<b>Morocco</b>	5 years (art.11)	Arabic	Sufficient resources		Physical or mental disability unless providing a service to the state; crime; infamous misdemeanour. 2007 reform adds: terrorism; commercial capacity forfeiture; and infringement for legal residency rules

<b>Algeria</b>	7 years and current residency (art.10) (1970)	Assimilation	Sufficient resources		Infamous sentence; physical or mental disability unless providing a service to the state
<b>Tunisia</b>	5 years (art.20)	Arabic 'according to the applicant's condition'	No requirement	Foreign man married to a Tunisian woman: no pre-residency required	More than one year of imprisonment (art.23); physical or mental disability
<b>Libya</b>	10 years, Commitment to reside	Assimilation	Legal and sufficient resources	Arab descendant: 5 years (art.5 (b)); Libyan mother's child: 3 years; Arab man married to a Libyan woman: 4 years (art.5(a)); requested scientist: no requirement	Crime against honour

Being an Arab seems to make it easier to become a national in Maghreb countries. This is openly stated in Libya, where law n°18/1980, entitled 'Libyan Arab citizenship', added facilitations for Arabs wanting to become Libyan citizens to those facilitations already provided in the 1954 law. Still, law n°456 of 1986 also gave Arab nationals the same rights and duties as nationals if they decide to live in Libya, which made the 1980 law becoming without object. Libya is the only Maghreb country to define its people as 'Arab' – in the 1969 Constitution proclaiming the Libyan Arab Republic, as well as in the 1988 Great Green Charter of Human Rights of the Jamahiriya Era. By offering express facilitations to Arabs, Libyan laws on citizenship are more similar to Syrian provisions – which also refer to 'Arab citizenship' – or even to Jordanian laws, than they are to Maghreb regulations.

In the four other Maghreb countries, being an Arab seems to be an advantage when applying for naturalisation, in particular since skills in Arabic are required and because being an Arab may mean compliance with Muslim requirements and values. In their constitutions, indeed, these Maghreb states define themselves as Muslim countries, belonging to the Great Maghreb, with Arabic as their official language. Algeria is described as an 'Arab, Mediterranean and African country', Mauritania as 'part of the Arab nation and of Africa', Tunisia as part of the 'Arab family', and Morocco as an 'African state'.

Even though they are Arabs, Palestinian nationals are not necessarily naturalised. In 1959, the League of Arab states recommended that its member states offer job opportunities to Palestinian nationals residing on their territory, without granting them citizenship. Still concerned with the claim for the Palestinians' return to the Occupied territories, the League adopted in 1965 the Casablanca Protocol for the treatment of Palestinians in Arab states, which prescribed the grant of citizen's rights without citizenship. In the Maghreb, Algeria, Libya and Mauritania committed themselves to respecting the Protocol, and Maghreb countries generally avoid granting citizenship to Palestinians. Still, in July 2005, Mahmoud Abbas declared that their naturalisation would not be looked on badly by the Palestinian Authority. Besides, in October 2009, the Algerian Minister of Justice declared<sup>27</sup> that Palestinians have constituted the second largest national group, after French citizens, to have obtained Algerian citizenship since 1970. Mashreq countries are more affected by Palestinian–citizenship issue, for they host a much larger number of Palestinians and a collective measure could have important demographic and thus political consequences. The Palestine issue is also though of importance in the Maghreb and necessarily affects the status of Palestinians living there. In 2007 after the Riyadh-Beirut peace plan, Libya threatened to expel Palestinians from its territory, like it did in 1995 following the Oslo agreements.

<sup>27</sup> Source: Algerian Minister of Justice, [www.mjjustice.dz](http://www.mjjustice.dz), 21 October 2009.

Beyond the Palestinian issue, naturalisation is often a political gesture, intimately linked to inter-state relations and national balances. This was particularly true when Libya offered citizenship in the 1980s to a number of Tuaregs from Mali and Niger (Boilley 1999:433).

Morocco, like Algeria, is well known as a difficult place to gain citizenship, and it also has a reputation for the slow processing of applications. Consequently, the demand for Moroccan citizenship has decreased. Between 2003 and 2005, 542 applications for naturalisation were discussed by the relevant commission. The number of applications stood at 199 in 2004 and only 79 in 2005<sup>28</sup>.

The number of foreign nationals applying for Algerian citizenship has increased since the reforms of 2005. Moreover, in addition to gender reforms, in 2005 Algeria gave up the requirement that new citizens discard their older citizenship in order to become Algerian citizens. Requests for citizenship have doubled since 2000, investors and businessmen have shown a growing interest in its economic opening. 2,620 foreign nationals have obtained citizenship since 2000, 687 got citizenship in 2008, which was 100 more than in 2007. 500 requests are said to be received each year, 7,000 applications are pending, of which 1,000 are from citizens' spouses. The great majority of applicants are Moroccan citizens living in Algeria and working in Algerian companies, but according to the Ministry of Justice, the most numerous nationalities to be naturalised are the French followed by Palestinians, Syrians, Egyptians, Iraqis, Tunisians and some Sub-Saharan citizens. 47,000 persons are said to have obtained Algerian citizenship since 1970<sup>29</sup>.

Except in Libya, becoming a national does not imply renouncing the subject's previous citizenship. Dual citizenship is tolerated<sup>30</sup>, and, indeed, widespread. Only Libya is likely, officially at least, to keep making its new citizens renounce previous citizenships before being naturalised. The evolution towards a greater tolerance of dual citizenship in Maghreb countries<sup>31</sup> comes first from the wish to keep national emigrants, and, second, from the desire to foster the return of their descendants who may have lost their Maghreb citizenship<sup>32</sup>.

Yet, this evolution does not necessarily mean a greater national self-confidence since naturalised nationals are discriminated against for some years before becoming full citizens. Maghreb countries do not grant new nationals all the rights linked to citizenship, and, in particular, they are not granted political rights, for five or ten years following naturalisation. Moreover, new nationals have to wait five years before being allowed to occupy an executive job in Tunisia, or before working in the civil service in Morocco. Most of Maghreb countries thus make a distinction between nationality and citizenship and require naturalised nationals to prove that they deserve full citizenship with associated rights, and a place in protected areas like the political scene and sensitive job positions. In its 2005 reform, Algeria removed article 16 prescribing limits on political rights, and thus seemed to take a genuine step forward in equality. Yet, it has not revised its electoral code accordingly – which was though modified in 2007 – and continued to forbid new citizens from standing in nation-wide elections for five years. Nevertheless, if not only a matter of show, the 2005 reform may prepare further reforms in other fields of Algerian regulation and make equality effective.

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<sup>28</sup> Moroccan Minister of Justice, M. Bouzoubaâ (2007) *REMALD (Revue marocaine d'administration locale et de développement)* 178: 70.

<sup>29</sup> Source: Algerian Minister of Justice, [www.mjustice.dz](http://www.mjustice.dz), 21 October 2009.

<sup>30</sup> Except when becoming the Algerian or Tunisian Republic's President.

<sup>31</sup> With its 2010 reform, Mauritania has accepted dual citizenship for its nationals, responding to a long-standing popular claim and an already widespread practice.

<sup>32</sup> The return of all nationals is not wished for: see, for example, the Algerian attitude towards the 'Harkis' who fought on the side of France in the independence war and had then to leave Algeria to live in that country. A number of them have expressed their wish to come back to Algeria and receive citizenship, a request which is still perceived as unacceptable in Algeria.

**Table 7: The Acquisition of Full Citizenship Rights**

Country	Immediate	Voting right	Eligibility	Civil service	Political functions	Other incapacities
<b>Mauritania</b>	no	Immediate	5 years (art.23)	Immediate	Not able to run for the Presidency of the Republic	
<b>Morocco</b>	no	After 5 years	5 years (art.17)	5 years		
<b>Algeria</b>	no	Immediate	5 years (Electoral Code)	Immediate	Not able, if no Algerian parents or spouse, to become President of the Republic	
<b>Tunisia</b>	no	After 5 years (art.20 of the Constitution)	5 years (art.26)		Not able, if no Tunisian ascendance, to become President of the Republic, representative or adviser <sup>33</sup>	5 years to have access to an executive job
<b>Libya</b>	no		10 years if Arab, 15 years if not			

Then, for ten years after gaining citizenship, new citizens can lose citizenship, for reasons which do not figure for origin nationals. The Mauritanian reform even brought this time-limit up to twenty years (art.33). Regulations do not give many reasons for removing citizenship from origin nationals, with the exception of Libya<sup>34</sup>. In Tunisia (art.32) and Morocco (art.19), it may happen if the national does not quit his/her work in another state's civil or military service despite an official request addressed to him/her to do so. Algeria lifted, in its 2005 reform, the possibility of forced loss – the removal of Algerian citizenship must be a voluntary act. Nevertheless, the five Maghreb countries add specific reasons for naturalised persons only. Any act to the profit of another state and inconsistent with being a citizen may lead to forfeiture. So may any crime against the state's fundamental interests or security, and any crime leading to at least five years in prison. In Tunisia (art.33) and Morocco (art.22), non-compliance with military service obligations can engender forfeiture, and Morocco also includes a condemnation for terrorism, and any offence against the Sovereign or a member of his family. A naturalised Libyan may lose citizenship if he or she is absent from the country for more than two years, and a woman who is naturalised through marriage may lose citizenship if she divorces and leaves the country.

## Conclusion

Changes in immigration trends and policies in Maghreb countries have not fundamentally influenced citizenship regulations, except in Mauritania, which has put an end to what constituted a unique openness in the region. In doing so, it has without any doubt “decolonised” its citizenship law, largely inspired by the French model. It has also, in this manner, demonstrated an irrational hostility towards

<sup>33</sup> Since the 1997 reform of the Constitution, any Tunisian born to a Tunisian father *or mother* can become a representative without any discrimination.

<sup>34</sup> In Libya, the following acts can see citizenship taken away: commitment to a foreign army or non-compliance with military service obligations, desertion, conversion to a religion other than Islam, request for asylum in another country, exit of capital, betrayal, residency abroad despite a request to come back.

the integration of immigrants, and especially their descendants, without improving gender equality for citizenship transmission. In Morocco also, the last reform showed a willingness to flag up migrants who have experienced irregularity and to increase obstacles to them becoming citizens. Moroccan citizenship retains a reputation as being the most difficult citizenship to achieve, a reputation borne out by official statistics.

Yet, only Morocco and Mauritania, though in different ways, adopt *ius soli* enabling the integration of foreign nationals born in the country.

Maghreb states generally give much importance to voluntary acts of allegiance through opting rights, and access to citizenship is rarely granted automatically on the presumption of sufficient links between an individual and the country.

With the exception of Mauritania, the most recent reforms (Tunisia 2002 and 2010<sup>35</sup>, Algeria 2005, Morocco 2007) are linked to and motivated by gender equality goals, and show progress as far as women's rights are concerned, above all in Algeria. They have, in this way, improved the status of mixed couples' children and incorporated some diversity in the nation. Progress is still needed in abolishing gender discrimination and the Algerian precedent shows that this is not an unimaginable step.

Recent revisions have also directly or indirectly affected the development of dual citizenship, which also demonstrates a relative form of tolerance and of self-confidence.

In parallel, mistrust and fears towards immigrants have also been introduced into law with the emergence of new obstacles to the integration of newcomers, as the Mauritanian and Moroccan examples show. This reactive attitude may have been inspired by the current global discourse emphasising the "migration issue" and, to that extent, goes along with the evolution of migration policies in the region. In the future, the more Maghreb countries become aware of a foreign presence on their soil and of their own attractiveness as nations, the more they will perhaps open up to those wishing to be part of their homelands, as Portugal and Greece have done in 2006 and 2010 respectively.

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<sup>35</sup> The 1993 reform enabled children born abroad to a Tunisian mother and a foreign father to become Tunisian upon a joint declaration of his or her parents. The 2002 reform allowed the mother to make this declaration alone when the father was deceased or unable. The 2010 revision removed any discrimination: children born abroad to a male or a female citizen become nationals at birth.



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