

PUBLIC LAW · SOURCES & HIERARCHY OF NORMS

The Architecture of Moroccan Law

Sources, hierarchy, and the formation of legal norms

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From the constitutional apex to the ministerial order, Moroccan law operates within a strict hierarchy of norms anchored in the 2011 Constitution. This article traces the structure of objective law, maps every category of legal instrument.

I. Objective law and its foundations

Objective law versus positive law

Two foundational concepts structure legal science at the outset. *Droit objectif* — objective law — denotes the body of general, impersonal rules, sanctioned by public authority, that organize collective life. It is distinguished from *droit positif* — positive law — which refers more narrowly to the rules actually in force in a given legal order at a given moment.

The distinction matters because *droit objectif* is a conceptual category — law as a system of norms — while *droit positif* is a descriptive one: law as it currently stands. This article concerns objective law in its Moroccan incarnation: the rules, their sources, and the hierarchy that governs their interaction.

Characteristics of a legal rule

Not every rule of conduct qualifies as a legal rule. Three characteristics distinguish law from morality, religion, or social convention.

- **Generality and abstraction.** A legal rule applies uniformly to all persons or situations falling within its terms — expressed through formulas such as "whosoever" or "any act." This guarantees formal equality and legal certainty: citizens know in advance the rules that bind them.
- **Obligatory character.** Breach of a legal rule exposes the person responsible to a sanction. This enforceability — the possibility of compulsion — is what marks a rule as genuinely juridical, as opposed to a purely moral injunction.

- **State coercion.** The sanction is administered by or through the authority of the state — courts, police, enforcement bodies. A religious rule may carry spiritual consequences; only a legal rule carries the threat of state-imposed compulsion.

Public law, private law, and mixed categories

Public law governs the organization of the state and the relationship between public authorities and private persons. Its principal branches are constitutional law, administrative law, public finance, and public international law. **Private law** regulates the interests of individuals in their dealings with one another: civil law, commercial law, labor law, private procedural law, and so on.

The division is not watertight. Several branches straddle both domains. Criminal law (*droit pénal*) protects public order while simultaneously guaranteeing individual rights. Private international law resolves conflicts of jurisdiction and applicable law in situations involving foreign elements. Private procedural law (*droit judiciaire privé*) combines elements of public organization with the regulation of private rights. These hybrid categories reflect the practical limits of any strict public/private boundary.

The syllogistic logic of legal reasoning

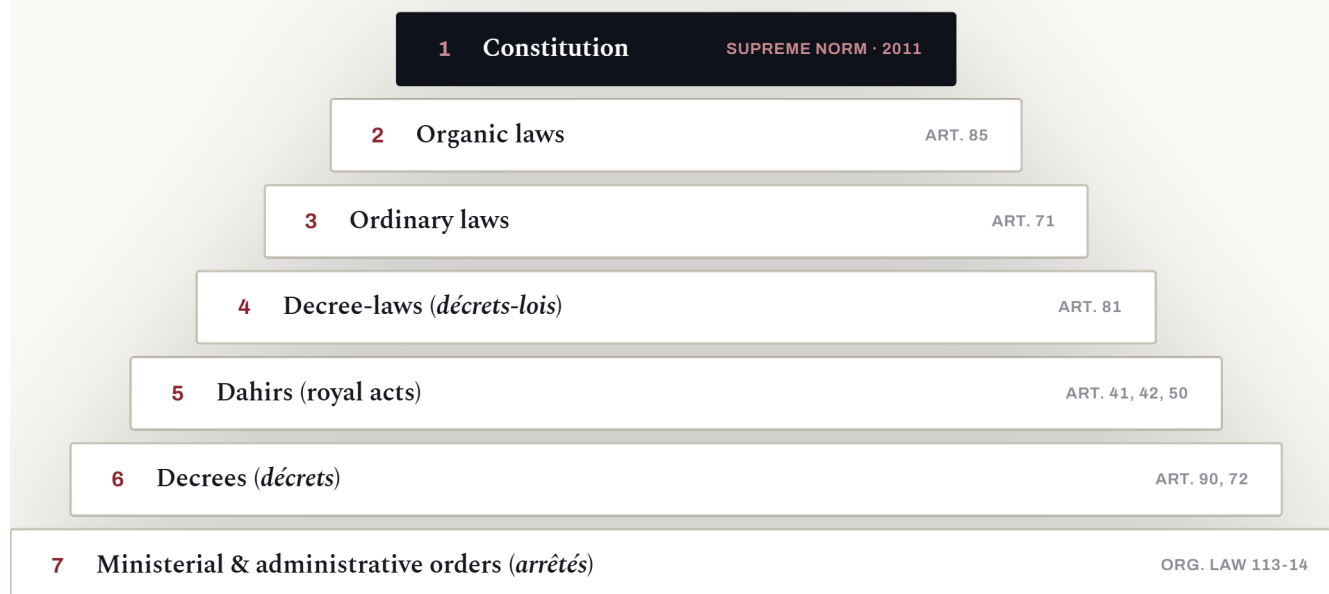
Legal reasoning is classically presented as a syllogism: a major premise (the applicable rule of law), a minor premise (the legally characterized facts), and a conclusion (the legal consequence that follows). This formal structure remains the foundation of judicial decision-making, even in complex cases where judges

draw on additional argumentative resources — proportionality, purposive interpretation, general principles — to reach a result that the strict syllogism does not mechanically deliver.

II. The hierarchy of written internal sources

The 2011 Constitution organizes Moroccan sources of law in a pyramid structure. Each level of the hierarchy must conform to all those above it. The courts — constitutional, administrative, and ordinary — police this hierarchy through the review mechanisms examined in Section V.

FIGURE 1 · THE PYRAMID OF NORMS



Each level must conform to every level above it. The Constitution sits at the apex; ministerial and administrative orders form the broad base. The dahir occupies a distinctive position, spanning both the promulgation of statute and autonomous royal acts.

The Constitution

The Constitution of 2011 is the supreme norm of the Moroccan legal order; all other instruments must conform to it. It defines the organization of state power, the respective competences of his majesty the King, the Government, and Parliament, and guarantees fundamental rights. Its Preamble — which has full constitutional force — incorporates the provisions on international conventions and proclaims the Kingdom's commitment to human rights as universally recognized. Revision follows an entrenched procedure: the initiative may come from the King, the Head of Government, or members of Parliament, and approval is in principle by referendum, with an alternative parliamentary route requiring a two-thirds majority in both chambers (Articles 172 to 175).

Organic laws

Below the Constitution but above ordinary legislation sit the *lois organiques* — organic laws. These are statutes that the Constitution expressly requires to be enacted in this elevated form because they directly complete or elaborate upon the constitutional text. Examples include the organic laws on the Finance Law, the Constitutional Court, local authorities and regions, and the official status of Amazigh. Organic laws are subject to a more demanding procedure than ordinary laws (Article 85): the bill may not be voted until ten days after its introduction, it must be passed by an absolute majority of members present in the Chamber of Representatives at final reading, and it is *automatically* transmitted to the Constitutional Court for review before promulgation. The January 2026 organic law on the plea of unconstitutionality — discussed in Section V — is a recent example.

Ordinary laws

The domain of ordinary legislation is exhaustively enumerated by Article 71 of the Constitution, which reserves to Parliament the power to legislate on fundamental freedoms, personal status, penal law, civil and commercial obligations, taxation, and related matters. Any matter not on this list falls within the regulatory power of the Government (Article 72). For ordinary laws, referral to the Constitutional Court before promulgation is optional rather than mandatory.

The ordinary legislative process involves **initiative** (from the Head of Government, as a *projet de loi*, or from parliamentarians, as a *proposition de loi*), followed by **committee examination**, **plenary debate**, **bicameral vote**, **royal promulgation** within thirty days of transmission (Article 50), and **publication** in the Official Gazette (*Bulletin Officiel*). Publication is the condition of enforceability: a law not yet published cannot bind citizens. In cases of persistent disagreement between the two chambers, the Chamber of Representatives has the final word in a definitive reading, reflecting its directly elected mandate (Article 84).

"A law not yet published in the Official Gazette cannot produce any effects against citizens: publication is the condition of its enforceability."

Decree-laws

During the intervals between parliamentary sessions, the Government may issue *décrets-lois* — decree-laws — with the agreement of the relevant parliamentary committees (Article 81). These instruments have the force of law in the matters they regulate but must be ratified by Parliament at the next ordinary session. They represent a mechanism of executive flexibility within defined constitutional limits.

The dahir: royal acts and their place in the hierarchy

The *dahir* (from Arabic *ظهير*, royal decree) is the legal instrument through which His Majesty the King exercises the functions vested in him by the Constitution (Article 42). Two categories are essential to distinguish. First, **dahirs of promulgation**: the acts by which the King formally enacts legislation passed by Parliament (Article 50) — they attest to the existence of the law and order its execution. Second, **dahirs in reserved domains**: these cover matters in which his majesty the King acts in his own right, most importantly in his capacity as *Amir Al Mouminine* (Commander of the Faithful), the constitutional function that places religious affairs under his authority (Article 41).

Dahirs are countersigned by the Head of Government, except for those expressly listed in Article 42(4) — appointments, dissolution of Parliament, the state of exception — for which his majesty the King acts alone.

Decrees and administrative orders

Below organic and ordinary legislation sit two further tiers of executive norm-making. *Décrets* — decrees — are regulatory acts issued by the Head of Government in the exercise of the executive regulatory power (Article 90), countersigned by the ministers responsible for their implementation. They may be *application decrees*, issued to implement a statute, or *autonomous decrees*, issued in matters that the Constitution places outside the legislative domain (Article 72).

Arrêtés — administrative or ministerial orders — are unilateral administrative acts of regulatory or individual scope issued by subordinate administrative authorities: individual ministries (acting on delegation or statutory authorization), joint ministerial bodies, *walis* (regional governors), governors, and the presidents of communal councils, particularly in matters of administrative policing (Organic Law 113-14 on municipalities). In the hierarchy of norms the *arrêté* is subordinate to the decree, which is itself subordinate to the law — all subject to legality review by the administrative courts (Law 41-90 establishing the administrative tribunals).

FIGURE 2 · THE LEGISLATIVE PROCESS — FROM BILL TO OFFICIAL GAZETTE

1 Initiative PROJETOR PROPOSITION DE LOI	2 Committee examination PARLIAMENTARY COMMITTEE	3 Plenary debate IN SESSION	4 Bicameral vote REPS. HAVE FINAL WORD — ART. 84	5 Royal promulgation WITHIN 30 DAYS — ART. 50	6 Publication BULLETIN OFFICIEL — ENFORCEABLE
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A bill becomes enforceable law only on publication in the Bulletin Officiel. Organic laws follow a more demanding variant of this path, with a mandatory referral to the Constitutional Court inserted before promulgation.

III. Supranational and unwritten sources

International conventions

Morocco's constitutional framework assigns a significant place to international law. Conventions duly ratified by his majesty the King and published in the Official Gazette take precedence over domestic

legislation — subject always to the provisions of the Constitution, the laws of the Kingdom, and the Kingdom's immutable national identity (Preamble, 2011 Constitution, which itself carries constitutional force). Article 55 governs the royal ratification of treaties; certain categories — those touching upon territorial integrity, defense, personal status, or involving financial commitments — require prior parliamentary authorization. Within these conditions, Morocco's ratified international obligations operate as a source of law superior to statute.

"Ratified and published international conventions take precedence over domestic legislation — subject to the Constitution, the laws of the Kingdom, and Morocco's immutable national identity."

Custom, case law, and general principles

Unwritten sources play a complementary but significant role. Custom — consistent and general practice accepted as legally obligatory — operates particularly in domains where statute is silent. Case law (*jurisprudence*) does not formally bind lower courts in the Moroccan tradition derived from French civil law, but the decisions of the Court of Cassation carry substantial persuasive authority and often consolidate into settled practice. General principles of law — proportionality,

non-retroactivity, the right to be heard — are recognized and applied by administrative courts even absent a specific statutory basis.

Islamic law and local custom retain a formally recognized role in the domain of *personal status* and certain real-property situations, reflecting Morocco's mixed legal heritage. The *Moudawana* — the Family Code, last substantially reformed in 2004 — governs marriage, divorce, parentage, and inheritance within a framework that draws on Islamic jurisprudence. A further reform of the *Moudawana* is expected in 2026.

TABLE 1 · SOURCES OF MOROCCAN LAW

INSTRUMENT	AUTHOR / ORIGIN	KEY REFERENCE
WRITTEN — INTERNAL		
Constitution	Constituent power	Const. 2011
Constitutional laws (revisions)	His majesty the King / Government / Parliament	Art. 172–175
Organic laws	Parliament	Art. 85
Ordinary laws	Parliament	Art. 71
Decree-laws (<i>décrets-lois</i>)	Government	Art. 81
Dahirs	His majesty the King	Art. 41, 42, 50
Decrees	Head of Government	Art. 90, 72
Ministerial / administrative orders	Ministers, walis, governors, municipal councils	Org. Law 113-14
SUPRANATIONAL		
International conventions (duly ratified)	King (parliamentary approval sometimes required)	Preamble; Art. 55
UNWRITTEN		
Custom, case law, general principles, doctrine, Islamic law	Courts, jurists, tradition	—

IV. Temporal and spatial application of the law

Application in time

The non-retroactivity of law is a constitutional principle. Article 6, final paragraph, of the 2011 Constitution states plainly that the law may not have retroactive effect. In **criminal law** this is reinforced by the principle of legality (Articles 3 and 4 of the Penal Code): no one may be convicted for an act that was not legally punishable at the time it was committed. Where the law changes between the commission of an offence and judgment, however, the less severe provision applies — the principle of *rétroactivité in mitius* (retroactivity of the more favorable law), codified in Article 6 of the Penal Code.

In **civil law** the new law applies immediately to ongoing legal situations (*effet immédiat*). Contracts concluded under the old law are generally governed by it for their existing effects (*survie de la loi ancienne* — survival of the old law). These principles, developed by doctrine and

case law in the absence of a general transitional provision, balance legal security against the need to update the legal framework.

Application in space

Public law and criminal law follow the principle of **territoriality**: Moroccan criminal law applies to all persons — nationals, foreigners, and stateless persons — found on Moroccan territory, subject to the exceptions of internal public law and international law (Article 10 of the Penal Code). Extraterritorial jurisdiction — for offences committed abroad by or against Moroccan nationals — is governed by Articles 707 et seq. of the Code of Criminal Procedure. The new Code of Criminal Procedure (Law 03-23) is now in force, replacing the 1959 code.

Private-law conflicts between legal systems are resolved by choice-of-law rules. In matters of personal status the connecting factor is **nationality**: the status and capacity of foreign nationals are governed by their national law. This rule derives from Article 3 of the Dahir of 12 August 1913 on the civil status of French nationals and

foreigners (*Dahir sur la condition civile des Français et des étrangers*), which remains the reference text for private-international-law conflicts in this domain.

FIGURE 3 · APPLICATION OF THE LAW IN TIME AND SPACE

IN TIME	IN SPACE
Non-retroactivity The law may not have retroactive effect — a constitutional principle. CONST. 2011, ART. 6 §FINAL	Territoriality (criminal) Moroccan criminal law applies to all persons on Moroccan territory. PENAL CODE, ART. 10
Criminal legality No conviction for an act not legally punishable when committed. PENAL CODE, ART. 3–4	Extraterritorial jurisdiction Offences abroad by or against Moroccan nationals. CODE OF CRIM. PROC., ART. 707 ET SEQ.
Rétroactivité in mitius The less severe criminal provision applies retroactively. PENAL CODE, ART. 6	Personal status — nationality Status and capacity of foreigners governed by their national law. DAHIR OF 12 AUG. 1913, ART. 3
Civil — immediate effect & survival <i>Effet immédiat</i> to ongoing situations; old law survives for contracts concluded under it. DOCTRINE & CASE LAW	

Two axes of application: the temporal rules govern which law applies as statutes change over time; the spatial rules govern which legal order applies across territory and nationality.

V. Judicial review and the control of norms

The separation of powers enshrined in the 2011 Constitution entails a correlative judicial function: ensuring that each level of the normative hierarchy conforms to those above it. Moroccan courts exercise three forms of review.

Constitutionality review

The Constitutional Court (formerly the Constitutional Council, renamed and restructured by the 2011 Constitution) is the arbiter of the conformity of legislation with the Constitution. Its role is **mandatory** for organic laws and the internal regulations of the two parliamentary chambers (which must be submitted before entering into force) and **optional** for ordinary laws, which may be referred before promulgation by his majesty the King, the Head of Government, the Presidents of either chamber, or one-quarter of the members of either chamber (Article 133).

The 2011 Constitution introduced, for the first time in Moroccan law, a mechanism of *exception d'inconstitutionnalité* — a plea of unconstitutionality — analogous, though not identical, to the French *question prioritaire de constitutionnalité*. Under it, a party to proceedings before any court may raise the unconstitutionality of a legislative provision on which the outcome depends (Article 133). The conditions of transmission to the Constitutional Court, and the consequences of a declaration of unconstitutionality, were settled by organic law in January 2026.

Legality review

Administrative courts — created by Law 41-90 and organized in a two-tier structure with the Administrative Court of Appeal above them and the Court of Cassation at the apex — review the legality of administrative acts. The principal vehicle is the *recours pour excès de pouvoir* — the action to annul an unlawful administrative act — which may be brought on grounds of incompetence, procedural irregularity, misuse of power, or violation of law. This review ensures that

decrees, ministerial orders, and other administrative decisions conform to the statutes and regulations that govern them.

Conventionality review

Any Moroccan court may give precedence to a duly ratified international convention over a conflicting domestic statute — the review of conventionality

(*contrôle de conventionnalité*). This power, grounded in the Preamble to the 2011 Constitution, allows ordinary judges to apply international instruments directly, without waiting for constitutional review. In practice it provides an additional layer of norm control alongside constitutionality review.

"Any court may set aside a domestic statute that conflicts with a duly ratified international convention — conventional review operates independently of constitutional review."

KEY TAKEAWAYS

- Moroccan law rests on a **pyramid of norms** anchored in the 2011 Constitution: organic laws, ordinary laws, decree-laws, dahirs, decrees, and ministerial orders must each conform to those above them.
- The **dahir** is his majesty the King's principal legal instrument; it covers both the promulgation of parliamentary legislation and autonomous royal acts, including the religious domain where the King acts as *Amir Al Mouminine*.
- Duly ratified and published **international conventions** rank above domestic legislation, making conventionality review by ordinary courts an important practical control.
- **Non-retroactivity** is constitutionally guaranteed, subject to the more favorable criminal law (*rétroactivité in mitius*); in civil matters, contracts remain governed by the law under which they were concluded.
- The framework is in **active evolution**: a new Code of Criminal Procedure (Law 03-23) is in force; a new Code of Civil Procedure (Law 58.25) takes effect 24 August 2026; the January 2026 organic law operationalizes the *exception d'inconstitutionnalité*; and a *Moudawana* reform is expected in 2026.



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