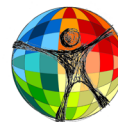


Moroccan Penal Code: To Fast or Not to Fast?

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ABSTRACT

The act of breaking the fast in public by a Muslim during the month of Ramadan is currently criminalized and punished in Morocco under section 222 of the Moroccan Penal code. Although section 222 is positively acclaimed by a certain segment of the Moroccan population, it remains a polarizing subject given three notable problems that stem from the contemporary application of the provision in the Moroccan context. First, the vague wording of the provision can lead to its inconsistent application and therefore obstruct the rule of law. Second, section 222 can be detrimental to the freedom of thought, conscience and religion of individuals in Morocco. Third, the provision can be instrumentalized to assert and to serve any forms of racism, racial discrimination, xenophobia and related intolerance in a country where the issue of discrimination is compelling and historically rooted. The complexity of the Moroccan context regarding section 222 effectively requires legal and extralegal solutions in order to move forward. While legal solutions via international instruments can generate legal shifts, extralegal solutions are required to set a fertile ground for welcoming a legal shift and insuring its long-term sustainability. Extralegal solutions include both social activism and an evolution from within Islam. Such solutions are also required to address issues that are not simply legal and therefore not within the scope of action of legal solutions. Even with the repeal of section 222, numerous Moroccans who do not observe the fast during Ramadan would still be socially punished through stigmatisation, marginalisation and exclusion. Thus, extralegal solutions are required to induce a sociocultural transformation within the Moroccan society with respect to the observance of the fast during the sacred month of Ramadan.

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Acknowledgements

In May 2019, on a Sunday afternoon during the month of Ramadan, I was discreetly eating McDonald's with my Moroccan friend Badr. He does not genuinely identify as Muslim but is still considered as such by his family and community. We were comfortably seated in his car parked in a low-traffic area of the city of Tanger, in the north of Morocco. We had two burgers, two fries and two drinks. We were prudent and often looking in the mirrors. A median strip was separating our lane from the other going in the opposite way.

Suddenly, Badr saw four men in an old black car driving slowly in the other lane, coming in our direction. They were all strangely staring at us. Too strangely. Badr realized that they were four under-covered police officers and rapidly threw his food on me. He did not want to get caught for breaking the fast during the fasting hours of Ramadan. The old black car made a U-turn at the stop sign, drove next to us and parked.

At this moment, I started devouring all the food in the car. I hoped to correspond to the stereotypical North American man who eats tremendous quantities of junk food without any manners. On the spot, it appeared to me as the sole plausible explanation for the suspect presence of two burgers, two fries and two drinks in the car during Ramadan.

The four officers immediately surrounded our car, looked through every window and asked for our IDs. Badr had already got rid of the food and my cheeks were full. We opened our respective windows and Badr started arguing in Arabic with the police officers. They claimed that they saw him eating. He claimed that he never touched the food, that he cannot because of religion, and that all the food was for me, his Canadian (allowed to eat) friend. After a hostile conversation, the police officers had no evidence against Badr. They decided to leave but before doing so, they threatened him, advised him to be very careful and told him that he will be watched. After this traumatizing episode, Badr and I returned home.

The next Monday, I told what happened to my colleagues at the National Human Rights Council (NHRC) of Morocco, in Rabat. They explained to me that a provision of the Penal code explicitly punishes Muslims who break the fast in public during

Ramadan. Moreover, in October 2019, the NHRC published a memorandum recommending to the Moroccan parliament the decriminalization of the act of breaking the fast in public during Ramadan.¹ The NHRC recommended to repeal section 222 from the Penal code. After concretely experiencing this provision, I decided to write my essay on this subject.

Section 222 punishes with a prison sentence from one to six months and a fine from 200 to 500 dirhams (approximately \$28 to \$72 CAD) for: “[c]elui qui, notoirement connu pour son appartenance à la religion musulmane, rompt ostensiblement le jeûne dans un lieu public pendant le temps du ramadan, sans motif admis par cette religion.”²

Introduction

The objective of this essay is to provide a descriptive and analytical perspective of section 222 of the Penal code in Morocco. It is divided into three different parts. The first part of this essay presents how section 222 came to be. It begins with an overview of the religious context in Morocco and sheds light on the pre-eminent presence of Islam in the country while describing the month of Ramadan. Then, the background and the legitimacy of section 222 are presented. The objective hereby is to highlight the social acceptability of the provision among a certain segment of the Moroccan population. After, an overview of the contemporary application of section 222 and its functional equivalents in other jurisdictions is provided.

The second part of this essay analyzes three major issues arising from the interpretation and the application of section 222 in Morocco. The objective hereby is to demonstrate why this provision can be problematic nowadays. Although this essay does not constitute an advocacy work, the reasoning and the analysis provided hereafter can certainly share argumentative tools, research findings and inspiration with determined Moroccans who

¹ Human Rights Watch, News Release, “Morocco: Landmark Proposals on Individual Freedoms” (4 December 2019), online: <www.hrw.org>.

² *Version consolidée en date du 4 juin 2015 du Code pénal*, s 222, online (pdf): <<https://www.ilo.org/dyn/natlex/docs/SERIAL/69975/69182/F1186528577/MAR-69975.pdf>> [Penal code].

are advocating against the validity and the existence of section 222.

The third part of this essay presents how to move forward. Moving forward essentially refers to the adoption of solutions to solve the issues raised in the second part of this essay. Two different paths are provided, which jointly followed could be highly effective to generate social changes, cultural transformations and legal shifts.

Religious Context in Morocco

Islam in Morocco

Islam is predominant in Morocco. More than 99 percent of Moroccans are Muslims³. The Constitution asserts that Islam is the religion of the State⁴ and that Morocco is a sovereign Muslim state⁵. It is said that “Muslims do not separate the religion of Islam from the law of Islam”⁶ and “are obligated to live in accordance with Islamic law.”⁷ Thus, Morocco provides an example of legal pluralism⁸ where, on the one hand, Muslims simultaneously abide by State law and the Qurʾān and, on the other hand, State enacts laws influenced by the Qurʾān.

Section 222 is essentially the result of a religious obligation⁹ translated into a criminal law provision which provides a prison sentence and a fine if it is not respected¹⁰. Thus, the religious obligation is enforced by an enacted law and the State’s coercive power. Although fasting is mandatory from sunrise to

³ Aida Alami, “Pope Francis’ Visit to Morocco Raises Hopes for Its Christians”, *The New York Times* (29 March 2019), online: <www.nytimes.com> [Alami].

⁴ *Constitution du 1^{er} juillet 2011*, s 3, BO, 17 June 2011, n° 5952 bis, 1765, online: <<https://mjp.univ-perp.fr/constit/ma2011.htm>> [Constitution].

⁵ Constitution, *supra* note 4 at preamble.

⁶ Abdullahi An-Na’im, “Islamic Law, International Relations and Human Rights: Challenge and Response” in Mashood A. Baderin, ed, *Islam and Human Rights* (New York: Routledge, 2016) 13 at 14.

⁷ *Ibid* at 16.

⁸ See generally Abdou Filali-Ansary & Sikeena Karmali Ahmed, *The Challenge of Pluralism: Paradigms from Muslim Contexts* (Edinburgh: Edinburgh Scholarship Online, 2012) at 10.

⁹ Anis Ahmad, “Ramadan” in *The Oxford Encyclopedia of the Islamic World* (Oxford Islamic Studies Online).

¹⁰ Abdelali El Hourri, “Dé-jeûneurs du Ramadan, ce que dit le code pénal”, *Médias24* (4 June 2016), online: <www.medias24.com> [El Hourri].

sunset for all Muslims under the Qurʾān¹¹, section 222 only prohibits Muslims to break the fast *in a public place* during fasting hours. In that sense, section 222 seems to be less restrictive. However, as discussed in the section of this essay entitled “Wording of Section 222,” section 222 might arguably be more restrictive because of its scope of application that would extend further than solely to individuals genuinely Muslim. This point will be addressed further in the essay. Overall, it does not seem to be any considerable incongruency within this circumscribed legal pluralism, i.e. between two sets of legal order regarding the observance of the fast during Ramadan. Muslims can simultaneously comply with both the Qurʾān and section 222.

Ramadan

This section provides an overview of the sacred month of Ramadan. To observe the fast during the month of Ramadan is a religious obligation under the Qurʾān (2:185) which states that “whoever among the believers witnesses the month should fast.”¹² During this period, from sunrise to sunset, all adults Muslims who are physically able are required to abstain from eating, drinking, smoking and having sexual activities.¹³ There are, however, provided exceptions to this obligation.¹⁴ Observing the fast is said to improve a Muslim’s awareness and appreciation of God’s presence and blessings in his life.¹⁵ The observance of the fast during Ramadan is also one of the five main pillars of Islam.¹⁶

¹¹ “Ramadan” in John L. Esposito, ed, *The Islamic World: Past and Present* (Oxford Islamic Studies Online).

¹² Ahmad, *supra* note 9.

¹³ *Supra* note 11.

¹⁴ *Ibid* (indicating that “[a]mong them are children, those whose health would be harmed by fasting (such as elderly or ill people), those who are traveling, and women who are nursing. Adults who are exempt from fasting must either make up the days they have missed at a later time or perform other obligations instead. For example, those who are too old or ill to fast must feed at least one poor person for every day of the fasting period that they miss during Ramadan.”).

¹⁵ *Ibid*.

¹⁶ *Ibid*; Peter Von Sivers et al., “Islam” in *The Oxford Encyclopedia of the Islamic World* (Oxford Islamic Studies Online) (indicating that the first pillar of Islam is “Profession of Faith. A Muslim is one who proclaims (*shahādah*, witness or testimony), ‘There is no God but the God, and Muḥammad is the messenger of God.’ This brief yet profound testimony marks a person’s entry into the Islamic community.” The second pillar is “Worship or Prayer. Five times

The beginning and the end of the month of Ramadan, including its duration, are related to the lunar cycle.¹⁷ It begins at the first sighting of the crescent moon and concludes, 29 or 30 days later, at the next sighting.¹⁸ Ramadan is the ninth month of the *hijrah* calendar¹⁹, the Islamic lunar calendar that coincides with the phases of the moon²⁰. Thus, every year, Ramadan begins 10 or 11 days earlier than the previous year.²¹ In the last three years, Ramadan in Morocco was from May 6th to June 4th in 2019; May 16th to June 14th in 2018; and May 26th to June 24th in 2017. In 2020, Ramadan will begin in late April.

Ramadan is described as a period of intensive discipline of the body and the mind in ethical behavior.²² While fasting, Muslims are motivated by politeness, kindness, truthfulness, honesty, fairness and dutifulness.²³ To fast during Ramadan not only requires Muslims to abstain from enjoying food, water and sex, but also from acting disrespectfully, unfairly and disloyally.²⁴ During this period, Muslims must shun negative thoughts and adopt a positive and proactive approach for the betterment of society.²⁵

Numerous advantages to fasting during Ramadan are contemporarily put forward. From an individual perspective, fasting is said to improve patience, discipline, and physical and mental health.²⁶ It is also said to enhance the purification of the soul and to provide a greater appreciation of (and compassion

each day Muslims throughout the world are called to worship (*ṣalāt*, worship or prayer) God.” The third is “a religious tithe (or almsgiving) on accumulated wealth and assets, not simply income.” The fourth is fasting. The fifth is “Pilgrimage. Ramadan is followed by the beginning of the pilgrimage season. Every adult Muslim who is physically and financially able is expected to perform the pilgrimage (*ḥajj*) to Mecca at least once in his or her lifetime.”).

¹⁷ Ahmad, *supra* note 9.

¹⁸ *Supra* note 11.

¹⁹ Ahmad, *supra* note 9.

²⁰ *Supra* note 11.

²¹ Ahmad, *supra* note 9.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid* (indicating that “[s]everal *aḥādīth* (sing. *ḥadīth*) of the Prophet mention that Allāh has no interest in asking a person to abstain from enjoying fresh water, food, or sex if the person does not stop shouting at others, is unfair to his family and friends, or betrays the trust of his business partner.”).

²⁵ *Ibid.*

²⁶ *Supra* note 11.

for) the suffering of others.²⁷ From a communal perspective, fasting is said to unite faithful Muslims and strengthen the sense of community through shared customs, traditions and practices.²⁸ It inculcates and reinforces a sense of belonging, social cohesion and togetherness among the community.²⁹

Fasting during Ramadan is also highly significant to the spiritual journey of a Muslim. Allāh-consciousness and spirituality are at the core of this period. The month of Ramadan is devoted to the development of a Muslim's relation and interaction with Allāh's revelation and the Qur'ān.³⁰ This devotion notably takes the form of numerous prayers and recitations of the Qur'ān. The objective of the religious prescription to fast during Ramadan, as stated by the Qur'ān (2:183), is to achieve Allāh-consciousness.³¹

In sum, the month of Ramadan is a sacred period of containment and abstention from, notably, eating, drinking, smoking, sexual activities, and immoral behaviours and thoughts. This period also contributes to the building of a greater sense of community and togetherness. Moreover, this month is dedicated to the observance of charity, gratitude, compassion, brotherhood and forgiveness.³² Finally, Ramadan plays a significant role in a Muslim's spiritual journey.

Background and Legitimacy Behind Section 222

The purpose of the present section of this essay is to draw up an accurate portrait of the background and the legitimacy of section 222 in Morocco nowadays. The provision was promulgated in November 1962 and came into effect in June 1963, at the same time as the Moroccan Penal code.³³

The objective of section 222 is inherently connected to the preservation and the protection of public order in Morocco. It is notably indicated in the Annotated Moroccan Penal code. The

²⁷ *Supra* note 11.

²⁸ *Ibid.*

²⁹ Ahmad, *supra* note 9.

³⁰ Ahmad, *supra* note 9.

³¹ *Ibid.*

³² *Ibid.*

³³ Mohieddine Amzazi, *Essai sur le système pénal marocain* (Rabat: Centre Jacques-Berque, 2013), online: <books.openedition.org> [Amzazi].

annotation states that the objective of the provision is to prevent serious disorder caused by the indignation that is likely to arise in the public following the inobservance of the fast by an individual.³⁴ Some argue that section 222's objective is, more precisely, to preserve and to protect the *religious* component of public order.³⁵

The following paragraphs illustrate the sources of legitimacy of section 222. Firstly, the provision may find a source of legitimacy in section 3³⁶ of the Moroccan constitution. This section states that Islam is the religion of the State. Therefore, it could be legitimate for a religious and sovereign State to enact laws that are promoting its religion through the valorisation and the prescription of certain religious practices.

Secondly, section 222 may find a source of legitimacy in the fact that it promotes a religious practice supposedly observed by the wide majority of Moroccans. More than 99 percent of Moroccans are Muslims.³⁷ Moroccans are predominantly Sunni Muslims.³⁸ Islam is not only the religion of the State, but also of the people. Plus, Ramadan is one of the five main pillars of Islam and a religious obligation. The quasi totality of Moroccans is theoretically (and assumed to be) fasting. Through section 222, the State then simply regulates and monitors a religiously prescribed practice assumed to (or should theoretically) be already observed. Thus, the provision promotes respect towards Ramadan. The State could, therefore, be said to have a legitimate objective by enacting section 222.

³⁴ Adolf Ruolt, *Code pénal annoté* (1990) at 216, online: <archive.org/details/CodePenalAnnoteMaroc> (indicating that “[c]e texte réprime une infraction grave aux prescriptions de la religion musulmane qui peut être l’occasion de désordre sérieux en raison de l’indignation qu’elle est susceptible de soulever dans le public.”).

³⁵ Amzazi, *supra* note 33 (arguing that “[l]’interdiction pour « une personne notoirement connue pour son appartenance à la religion musulmane de rompre ostensiblement le jeûne dans un lieu public pendant le temps du ramadan » que pose l’article 222 du Code pénal est présentée comme une liberté, alors qu’elle répond manifestement au souci de préservation de la composante religieuse de l’ordre public.”).

³⁶ Constitution, *supra* note 4.

³⁷ Alami, *supra* note 3.

³⁸ *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, UNHRCOR, 41st Sess, UN Doc A/HRC/41/54/Add.1 (2019) at 3 [Special Rapporteur].

Thirdly, the enactment of section 222 may find legitimacy in the fact that numerous Moroccans are intolerant in front of the inobservance of the fast in a public place. It is often deemed to hurt the sensibility of fasting people and to cause emotional pain to Moroccans.³⁹ Moreover, fasting is a physically and mentally difficult practice to observe. Breaking the fast in public could be perceived as provocative. Section 222 therefore promotes respect towards the quasi totality of Moroccans (supposedly observing the fast). Many publications reported aggressive behaviors and assaults by fasters against individuals who broke the fast in public during the month of Ramadan.⁴⁰ It is, thus, asserted that section 222 protects non-fasting people.⁴¹ Through this provision, the State acquires the monopoly of violence⁴² against individuals who break the fast in public during the period of Ramadan. The provision sends a public message asserting that the State, itself, will punish those who break the fast with its coercive power. It may, thus, deter affected and hurt Moroccans from resorting to violence, thereby preventing disorder and violence between citizens.

Fourthly, Ramadan reinforces the sense of social cohesion and togetherness within a community.⁴³ Section 222 can be seen as essential to achieve this communal destination. The sacred month results in generous exchanges of visits and sharing of meals in a festive manner among members of a community.⁴⁴ To observe

³⁹ "Morocco: Two People Arrested for Eating in Public in Ramadan", *The Moroccan Times* (12 June 2016), online: <themoroccantimes.com> [*The Moroccan Times*]; "Islam – L'observance obligatoire en public du jeûne pendant le Ramadan relance la polémique", *Article19.ma* (12 May 2019), online: <article19.ma>.

⁴⁰ US, Bureau of Democracy, Human Rights, and Labor, *Report on International Religious Freedom for 2017: Morocco* (United States Department of State), online <www.state.gov> at p 2, 10; US, Bureau of Democracy, Human Rights, and Labor, *Report on International Religious Freedom for 2016: Morocco* (United States Department of State), online <www.state.gov> at p 10 [US 2016]; El Hourri, *supra* note 10.

⁴¹ *The Moroccan Times*, *supra* note 39.

⁴² André Munro, "State monopoly on violence" in *Encyclopaedia Britannica* (Encyclopaedia Britannica, inc., 2013), online: <www.britannica.com> (defining the state monopoly on violence as "the concept that the state alone has the right to use or authorize the use of physical force."); Amzazi, *supra* note 33.

⁴³ Ahmad, *supra* note 9.

⁴⁴ *Ibid.*

the fast together brings solidarity and a sense of belonging. It also raises compassion and forgiveness.⁴⁵ It may therefore be legitimate for the State to enact a provision promoting the observance of Ramadan. Section 222 can be understood as promoting social cohesion and unity through shared traditions and practices.⁴⁶ Moreover, literature tends to demonstrate that, at the individual level, religiosity and religious engagement are associated with a higher level of subjective well-being.⁴⁷ It has also been evidenced that the requirement to fast longer, for religious reasons, makes Muslims happier although it reduces their productivity and, consequently, makes them relatively poorer.⁴⁸ In sum, there is a purpose and a destination to Ramadan tightly related to the community. The sacred month has an inherent communal dimension; it encompasses sharing, prayers, visits and celebrations. The protection of this communal dimension appears to be essential to the plain fulfilment and realization of this religious practice. Thus, section 222 may find its legitimacy in the fact that it promotes (at least a perception of) solidarity and a community-oriented dimension of Ramadan.

In sum, this section asserted that the objective of section 222 is to preserve and to protect public order in Morocco. Four reasons were mentioned in order to illustrate the legitimacy of section 222. Firstly, there is a constitutional source of legitimacy. Section 3 states that Islam is the religion of the State. It could potentially give legitimacy to the State to enact laws influenced by religious obligations. Secondly, section 222 promotes respect towards Ramadan. The quasi totality of Moroccans is deemed Muslim. They are assumed to already observe the fast. Thirdly, State explicitly acquires the monopoly of violence and, thus, acknowledges the fasters' intolerance while preventing citizens to take justice into their own hands. It promotes respect towards fasters. Fourthly, Ramadan has an essential and inherent communal component. Section 222 contributes to the achievement of this communal destination by prohibiting the break

⁴⁵ Ahmad, *supra* note 9.

⁴⁶ *Supra* note 11.

⁴⁷ Filipe Campante & David Yanagizawa-Drott, "Does Religion Affect Economic Growth and Happiness? Evidence from Ramadan" (2015) 130:2 The Quarterly Journal of Economics 615 at 619.

⁴⁸ *Ibid* at 617.

of the fast; thus contributing to the realization – or, at least, the perception – of a sense of solidarity and togetherness.

Contemporary Application of Section 222 and its Equivalents

The Case of Morocco

Section 222 is still enforceable and enforced nowadays. Every year as the period of Ramadan approaches, and during this period, similar questionings and discussions arise regarding its application. Similar debates take place in the public sphere. Similar reactions of consternation emerge. Similar acts of rebellion are coordinated. Every year, section 222 becomes a polarizing subject in Morocco.⁴⁹

In July 2014, at least six individuals were arrested and sentenced for breaking the fast in public during the fasting hours of Ramadan in Souk El Arbaa⁵⁰ and Tiznit⁵¹. In July 2015, at least seven individuals in Marrakech⁵² and al-Hoceima⁵³. In 2016, at least seven individuals in Tinghir⁵⁴, Zagora⁵⁵ and Rabat⁵⁶. Presumably, other similar cases were not covered by the media. In sum, dozens of individuals were arrested and sentenced.

⁴⁹ *Supra* note 39; El Hourri, *supra* note 10; Wissal Hadraoui, “L’article 222 du code pénal concernant les déjeûneurs pendant Ramadan, une loi ambiguë ?”, *Welovebuzz* (23 May 2018), online: <www.welovebuzz.com> [Hadraoui]; Soukaina Abbou, “Morocco’s Penal Code and Public Eating in Ramadan”, *Morocco World News* (6 June 2016), online: <www.moroccoworldnews.com> [Abbou].

⁵⁰ US, Bureau of Democracy, Human Rights, and Labor, *Report on International Religious Freedom for 2014: Morocco* (United States Department of State), online <2009-2017.state.gov> at p 5.

⁵¹ *Ibid*; “Morocco: Five Months in Jail for a Person who Ate in Public during Ramadan”, *The Moroccan Times* (17 July 2014), online: <themoroccantimes.com>.

⁵² US, Bureau of Democracy, Human Rights, and Labor, *Report on International Religious Freedom for 2015: Morocco* (United States Department of State), online <2009-2017.state.gov>.

⁵³ *Ibid*; “Moroccans convicted for eating in public during Ramadan”, *Al Arabiya News* (19 July 2015), online: <english.alarabiya.net> [Al Arabiya].

⁵⁴ *The Moroccan Times*, *supra* note 39.

⁵⁵ US 2016, *supra* note 40; Saad Guerraoui, “Ramadan in Morocco: Intolerance in the month of compassion”, *Middle East Eye* (1 July 2016), online: <www.middleeasteye.net> [Guerraoui].

⁵⁶ US 2016, *supra* note 40.

Following the arrestations, many people were outraged and protested while many others applauded the intervention of the authorities. Thus, it demonstrates the magnitude of the polarization within the country around section 222.

The Case of Algeria

The Algerian Penal code does not explicitly punish the individuals who break the fast in public during the month of Ramadan.⁵⁷ Section 222 thus does not have an immediate Algerian counterpart. However, the Algerian authorities still found a way to punish these individuals through the interpretation of another article of the Algerian Penal code. Section 222 therefore has a functional equivalent in the Algerian context: section 144 bis 2. This provision punishes by a fine and (or) a prison sentence whoever “offense le prophète (paix et salut soient sur lui) et les envoyés de Dieu ou dénigre le dogme ou les préceptes de l’Islam, que ce soit par voie d’écrit, de dessin, de déclaration ou tout autre moyen” [emphasis added].⁵⁸

Section 144 bis 2 has an extensive interpretation and a broad application. On one hand, in February 2006, an Algerian court sentenced the directors of two weekly newspapers to prison for having reproduced caricatures of the Prophet published in 2005 in a Danish daily newspaper.⁵⁹ On the other hand, section 144 bis 2 aimed at individuals who broke the fast in public during Ramadan – a very different set of so-called wrongdoers. The latter behaviour was interpreted as blasphemous, i.e. as disparaging the dogma or precepts of Islam and, therefore, as punishable under section 144 bis 2. Thus, this provision has been interpreted as a functional equivalent of section 222. It was reported that between 2008 and 2010, eleven individuals were sentenced to years in prison and to pay fines.⁶⁰ Although the Algerian legislation is not explicit on the matter, it did not prevent the courts

⁵⁷ Jacques Pezet, “Que dit la loi en Algérie, Maroc et Tunisie pour les personnes qui ne veulent pas faire ramadan ?”, *Libération* (6 June 2018), online: <www.liberation.fr> [Pezet].

⁵⁸ Code pénal de la République Algérienne Démocratique et Populaire, s 144 bis 2, online (pdf): <<https://www.joradp.dz/trv/fpenal.pdf>>.

⁵⁹ Stéphane Papi, “Les *fattara* du ramadhân au Maghreb ou l’hétéropraxie religieuse au prisme des normes sociales et juridiques” (2016) 14 L’Année du Maghreb 99, online: <journals.openedition.org> [Papi].

⁶⁰ *Ibid.*

from sentencing the individuals who broke the fast in public during the month of Ramadan.

Since 2010, however, Algerian courts seem to have relaxed this sentencing. Two conclusions may stem from this moving stance. First, it generates incoherent precedents. Second, and most importantly, it highlights the difficulty and the discomfort of some courts to find strong legal grounds for imprisoning and imposing of a fine.⁶¹ Nonetheless, the door remains open to courts for the sentencing of individuals who break the fast in public during Ramadan. Intolerance seems to already be embedded in the Algerian jurisprudence.

The Case of Tunisia

Tunisia is in a relatively similar situation to Algeria.⁶² In both countries, authorities punish individuals who break the fast in public during the month of Ramadan by using a section of their respective penal code that does not explicitly prohibit the behaviour. Section 226 of the Tunisian Penal code is the functional equivalent of section 222. The provision punishes by a prison sentence and a fine whoever “se sera, sciemment, rendu coupable d'outrage public à la pudeur.”⁶³

The Tunisian authorities interpret extensively a section that aims at preserving public decency. Eating, smoking or drinking in public during the sacred month is thus perceived as indecent and an offense to public morals. Amnesty International reported that in June 2017, five men were sentenced by the same court to one month in prison for “public indecency” after being caught breaking the fast in public during the month of Ramadan.⁶⁴

Similarities and Differences

Contrary to the Moroccan provision, the Tunisian and Algerian provisions provide no explicit legal grounds for the

⁶¹ *Supra* note 59.

⁶² Pezet, *supra* note 57.

⁶³ Code pénal de la Tunisie, s 226, online (pdf): <http://www.e-justice.tn/fileadmin/fichiers_site_francais/codes_juridiques/Code_penal_12_07_2010_fr.pdf>.

⁶⁴ Amnesty International, News Release, “Tunisia: Fifth man facing jail term for breaking fast during Ramadan” (13 June 2017), online: <www.amnesty.org>.

sentencing of fast breakers. In both countries, authorities interpret extensively another section of their respective Penal code to serve a common objective. The two countries, however, use different rationales to achieve this common objective.

In the case of Algeria, the rationale seems to be religion-oriented and, therefore, to explicitly protect the religion through prohibition. Section 144 bis 2 punishes blasphemy – i.e. the disparagement of the dogma or precepts of Islam. This section seems to focus on protecting the religion from being brought into disrepute. It imposes a standard of utmost respect towards Islam.

In the case of Tunisia, the rationale seems to rather be propriety oriented. Section 226 punishes offences to public decency. The focus is rather on public morals, relationships between individuals and good behaviours in a predominantly Muslim society, which seems to implicitly encompass the observance of religious practices and beliefs in public.

Hence, two different rationales, from two different countries, lead to one common interpretation: the prohibition to break the fast publicly during Ramadan. The differences in rationales may notably be explained by the restrictive wording of both sections that did not allow the courts to interpret them outside their respective language.

Contrary to Moroccan courts bound by an explicit provision, Algerian and Tunisian courts had, and still have, much more flexibility regarding the sentencing of fast breakers. The Algerian and Tunisian courts are theoretically free not to sentence these individuals. They were enabled not to create the precedents discussed above. However, they decided to do so. They did so through an extensive interpretation of sections that, *prima facie*, do not contemplate the observance of the fast in public during Ramadan. It manifestly demonstrates the desire of Algerian and Tunisian authorities to condemn such behaviours by any available mean. Intolerance towards these behaviours thus appears to be embedded in the countries' social norms – it is frowned upon to eat in public during Ramadan.

Contemporary Problematics Arising from the Interpretation and the Application of Section 222

Wording of Section 222

The wording of section 222 of the Moroccan Penal code can certainly lead to issues of statutory construction and, consequently, to issues stemming from its application. Section 222 punishes “[c]elui qui, notoirement connu pour son appartenance à la religion musulmane, rompt ostensiblement le jeûne dans un lieu public pendant le temps du ramadan, sans motif admis par cette religion”⁶⁵ [Emphasis added].

The following analysis is separated in two segments. The first segment focuses on “ostensiblement.” The second focuses on “notoirement.” Both segments focus on words that can be dangerous in practice because of their vague wording⁶⁶ and, consequently, their potential variable-geometry and inconsistent application.

1. “Ostensiblement”

The use of “rompt ostensiblement le jeûne dans un lieu public” is problematic. The interpretation to give to the act of breaking the fast is not disputed. One can notably break the fast in public by eating, drinking or smoking. The issue however arises with the use of the word “ostensiblement.” It introduces vagueness and uncertainty to the statutory construction of section 222.

An act committed “de manière ostensible” is not hidden, but rather made in a more obvious way. Two elements are required: (1) an intention to be seen or noticed, and (2) to be effectively seen or noticed.⁶⁷ Following the assumptions that the legislator carefully chooses his words and, therefore, does not gratuitously speak⁶⁸, one can reasonably argue that the legislator

⁶⁵ Penal code, *supra* note 2.

⁶⁶ El Hourri, *supra* note 10.

⁶⁷ *Dictionnaire Larousse*, sub verbo “ostensible”, online: <www.larousse.fr>.

⁶⁸ This interpretation principle exists in the Canadian context. However, it can be foreign and inapplicable in a Moroccan jurisdiction. See *Schreiber v Canada (Attorney General)*, [2002] 3 SCR 269 at para 73.

purposely required a certain intention to be seen or noticed for meeting the threshold of section 222.⁶⁹

As mentioned, the main objective of section 222 is to protect public order. To “ostentiblement” break the fast in a public place is, therefore, seen as a voluntary attempt to disrupt public order. The use of “ostensiblement” can also potentially aim at preventing provocation.⁷⁰ The legislator presumably deemed that holding such mental element (or malice aforethought), i.e. an intent to be seen or noticed, was sufficiently blameworthy to sentence the wrongdoer to prison and to pay a fine in order to punish the wrongful act.

The question to be asked concerns the assessment of this intention: when does one cross the fine line? According to the wording of section 222, it is not a matter of strict liability. There must be an intention to be seen in a public place while breaking the fast.⁷¹

Two hypothetical situations can be considered. Suppose Khalid and Iliass are both Muslim. In the first situation, Khalid purposely taunts a fasting person in a public place by eating or drinking or smoking in his midst. Khalid is purposely noticed by numerous people. In the second situation, Iliass eats discreetly some olives in the street on his way to work. He is accidentally noticed by few people. Comparatively, Khalid appears to be much more blameworthy than Iliass. While Khalid unequivocally disrupts public order, it seems to be a grey area for Iliass. To break the fast in public does not necessarily equate to break it “ostensiblement.”⁷² However, both situations could potentially lead to an arrestation. The outcome essentially relies on the authorities’ interpretation.

There is a reasonable expectation to be seen or noticed as soon as one enters a public place. However, it would be unfair for Iliass to imply his intention to be seen or noticed based on this expectation. By being discreet, Iliass takes reasonable measures

⁶⁹ El Hourri, *supra* note 10.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

to be unseen or unnoticed. There is effectively no intention to disrupt social order on his part.

Moreover, there are limits to the counterargument according to which “it is out of respect” for fasting persons that the act of breaking the fast in public during Ramadan should be punished in any situation. Respect goes both ways; it encompasses a bilateral relationship between individuals. One could maintain that this reasoning should not be dismissed by the Moroccan religious social context. With respect to Iliass’ hypothetical situation, he made reasonable efforts to be as subtle as possible. He wanted to avoid offending fasting Muslims. He acknowledged their will to pursue their personal beliefs as well as the difficulties of fasting. He was respectful. Conversely, Iliass should be respected in his decision not to observe the fast during Ramadan, while showing utmost consideration and respect towards fasting Muslims. It is certainly harder for a fasting Muslim to fast when he or she sees someone else breaking the fast. His or her desire to be exclusively surrounded by fasting Muslims is understandable. However, Iliass’ liberty should not be subordinated to the desire of fasting Muslims when he is actively acting with courtesy and civility.

The wording of section 222 leads to uncertainty concerning its application. As mentioned, the outcome essentially relies on the authorities’ interpretation.⁷³ On one hand, the fair statutory interpretation of “rompt ostensiblement le jeûne dans un lieu public” would require a mental element (or malice aforethought). Section 222 would, therefore, be permissive in situations where the so-called wrongdoer demonstrated utmost respect by taking reasonable steps to remain unseen or unnoticed in a public place while breaking the fast. On the other hand, however, Moroccan police officers and judges could certainly adopt a more restrictive and depriving of liberty interpretation. This interpretation amounts to a strict liability approach where the mere fact of getting caught while breaking the fast in a public place leads to an arrestation and sentencing. This latter approach emphasizes the conception that a reasonable expectation of being seen or noticed in a public place necessarily amounts to an intention of being effectively seen or noticed.

⁷³ El Hourri, *supra* note 10.

2. “Notoirement connu”

The use of “notoirement connu pour son appartenance à la religion musulmane” is problematic. The word “notoirement” from the official French version of section 222 refers to what is “notoire”, i.e. to what is known to a very large number of people and is not contested.⁷⁴

In practice, the word “notoirement” puts considerable weight on the shoulders of the community.⁷⁵ It ultimately diminishes the individuals’ self-determination. According to its wording, section 222 does not only aim at individuals who are genuinely Muslim. It has a significantly broader scope. It aims at every individual who is Muslim in the eyes of their surroundings.⁷⁶ In other words, section 222 not only applies to Muslims but also to anyone deemed Muslim by the community.⁷⁷ The community, rather than the individual himself, has the power to ultimately decide an individual’s religious belief or practice. It erodes the personal and intimate dimension of Islam.⁷⁸ Following the implementation of section 222, one should carefully live his religious beliefs *in relation to others* at the risk of being notably⁷⁹ sentenced to prison.

Lastly, the word “notoirement” grants considerable flexibility and discretion to Moroccan authorities regarding the application of section 222.⁸⁰ In practice, it is virtually impossible to know (or hold an updated registry of) who is “notoirement” considered Muslim, i.e. in the eyes of others. It is also virtually impossible to accurately assess the opinion of the community. Who is the *community*? Who are the *others*? These open-ended questions have undeterminable answers. Consequently, an individual will, in practice, be deemed “notoirement connu pour son appartenance à la religion musulmane” to the satisfaction of

⁷⁴ *Dictionnaire Larousse*, sub verbo “notoire”, online: <www.larousse.fr>.

⁷⁵ El Hourri, *supra* note 10.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ The word “notably” is employed because the punishment can also be social and moral. However, social and moral sanctions go out the scope of application of section 222. This provision only provides a legal sanction. Nonetheless, social and moral sanctions are addressed further in this essay.

⁸⁰ El Hourri, *supra* note 10.

a police officer for an arrestation and to the satisfaction of a judge for sentencing.⁸¹ Thus, the application of section 222 substantially relies on the Moroccan authorities' personal judgement and perception.⁸² Furthermore, discrimination and racism tend to exacerbate this problematic. The issues related to discrimination will be further discussed in the section of this essay entitled "*Policing and Racial Discrimination*."

Freedom of Thought, Conscience and Religion

The issues related to freedom of thought, conscience and religion (FTCR) are central to the analysis of section 222. These issues have been briefly tackled in the precedent section entitled "*Wording of Section 222*." The latter section highlighted the diminishment of one's self-determination and the erosion of the personal dimension of religion. The present section of this essay is wholly dedicated to the analysis of the effects of section 222 on the FTCR. The essence of the problematic stems from the imposition of a religious practice on individuals. In this section, two distinct categories of individuals are considered. First, the focus is on individuals who are genuinely⁸³ Muslim. Second, on those who are not genuinely Muslim. To circumscribe the scope of the analysis and understand the extent of the FTCR, it is useful to rely on the General comment No. 22.⁸⁴

Firstly, individuals who are genuinely Muslims can be adversely affected by section 222. It is reasonable to assume that

⁸¹ El Hourri, *supra* note 10.

⁸² *Ibid.*

⁸³ In this essay, the word "genuinely" refers to the personal and sincere affiliation to the religion of Islam.

⁸⁴ Morocco duly ratified the *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976, accession by Morocco 1979) [ICCPR]. The General comment No. 22, UNHRCOR, 48th Sess, UN Doc CCPR/C/21/Rev.1/Add.4 (1993) [General comment No. 22] provides background for the interpretation of article 18 ICCPR. It states that article 18 "is far-reaching and profound; it encompasses freedom of thoughts on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others." Moreover, the article "protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed." Furthermore, the article "distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief." Also, "the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief."

most of them are undoubtedly well known for their affiliation to the Muslim religion and, therefore, subject to section 222. Under the right to FCTR, an individual is free not only to adopt the religion or belief of his choice, but also to accept or reject the dogmas of his choice, even within the religion to which he identifies more broadly.⁸⁵ Therefore, it is up to the individual to define his religious identity and corollary practice(s). It is not up to the State to regulate the modalities of a religious manifestation and to punish the deviations from the orthodoxy it prescribes. Section 222 imposes the adoption of a practice, if not a dogma. Consequently, a Muslim does not have the freedom to manifest his religion or belief because he cannot choose to adopt or reject a particular practice or observance. He must observe the fast in public during Ramadan. Therefore, section 222 arguably constitutes a limitation on the freedom to manifest religion or belief and, more broadly, on the FCTR of individuals genuinely Muslim.

Secondly, individuals who are not genuinely Muslims can be adversely affected by section 222. An analysis of the Moroccan social context is essential to fully understand the interests at stake. Considering that (a) more than 99 percent of Moroccans are Muslims⁸⁶ and (b) an individual born from Muslim parents is automatically considered Muslim⁸⁷, the quasi totality of Moroccans is considered Muslim in the eyes of the society. Therefore, Moroccans have tremendously high chances of being “notoirement connu[s] pour [leur] appartenance à la religion musulmane” and, therefore, subject to section 222.

Moroccans who are not genuinely Muslim are theoretically left with three options. First, not to observe the fast in

⁸⁵ General comment No. 22, *supra* note 84.

⁸⁶ Alami, *supra* note 3.

⁸⁷ Ahmad S. Dallal, “Ummah” in John L. Esposito, ed, *The Oxford Encyclopedia of the Modern Islamic World* (Oxford Islamic Studies Online) (indicating that “[t]here were no formal conditions or ritual requirements for joining the *ummah* [often translated as “Muslim community,”] aside from being born to Muslim parents or freely choosing to become a Muslim.”); A. Kevin Reinhart & Earle H. Waugh, “Birth Rites” in *The Oxford Encyclopedia of the Islamic World* (Oxford Islamic Studies Online) (indicating that “[s]tructurally, this may be accounted for by the Muslim belief that Islam is the natural religion (*din al-fiṭrah*). As the ḥadīth says, “the child is born according to its nature; it is his parents who make him a Jew or Christian” (Ṣaḥīḥ Muslim, Kitāb al-qadr). Because humans are born Muslim, it makes sense that there is no need for a rite of initiation such as baptism or circumcision.”).

public during Ramadan. These individuals would, however, run the risk to be arrested and completely deprived from their liberty. Second, to observe the fast in public during Ramadan. These individuals may deliberately choose to fast to respect the customs of their community. However, their choice may also be motivated by a sort of climate of fear of non-compliance imposed by the punishment provided by section 222. Thus, fasting during the sacred month becomes preferred (to respect the customs) or preferable (under fear) although this practice does not correspond to one's personal beliefs. Third, to voluntarily and publicly apostatize.⁸⁸ A Moroccan would then theoretically escape from the application of section 222. However, although apostasy is not illegal under Moroccan laws, it leads to detrimental marginalisation and stigmatisation.⁸⁹ In sum, these three options are, each in their own way and to a certain extent, undesirable.

Moreover, the social pressure in Morocco considerably erodes one's perception of effectively holding options. The heavy social pressure leads individuals to feel forced to fast. Like apostasy, the inobservance of the fast leads to stigmatisation and withdrawal.⁹⁰ The punishment effectively goes way beyond a potential prison sentence and a fine. It was reported that non-fasters felt lonely, humiliated and guilty.⁹¹ Ultimately, the social pressure demonstrates that fasting has such a communal dimension that its inobservance exposes any Moroccan to social exclusion.⁹² While being religiously prescribed, fasting is also imposed by the community to which one belongs.⁹³ Thus, fasting

⁸⁸ *Cambridge Dictionary*, online: <dictionary.cambridge.org>, defines "apostasy" as "the act of giving up your religious or political beliefs and leaving a religion or a political party".

⁸⁹ Ghali Kadiri, "Au Maroc, la vie cachée des convertis au protestantisme évangélique", *Le Monde* (29 March 2019), online: <www.lemonde.fr>; Alami, *supra* note 3; Papi, *supra* note 59; Humanists International, "The Freedom of Thought Report: Morocco", online: <fot.humanists.international>.

⁹⁰ Mohammed Ababou et al., "Le jeûne du Ramadan au Maroc : un dilemme pour les patients diabétiques et les soignants" (2008) 26:2 *Sciences Sociales et Santé* 79, online: <www.cairn.info> [Ababou].

⁹¹ Ababou, *supra* note 90.

⁹² *Ibid.*

⁹³ *Ibid.*

is neither just a social convention nor just a simple conformism.⁹⁴ Fasting is a social constraint in Morocco.⁹⁵

Policing and Racial Discrimination

Issues of targeting can certainly arise from the implementation of section 222 by police officers. The phenomenon of targeting stems from the “disproportionate policing”⁹⁶ of certain communities, groups or people. With an intense police scrutiny, targeted groups inevitably have considerably greater risk of being caught while breaking the fast in public during Ramadan.⁹⁷ Moreover, Moroccan police officers are significantly less inclined to tolerate or to close their eyes on violations of section 222 when the violation is committed by members of targeted and discriminated groups. Moroccan police officers are also less inclined to accept bribes⁹⁸ from these groups.

Targeting aims at individuals deemed “of interest” by police officers.⁹⁹ The choice of target can notably be based on the perceived crime rate within a community or the perceived crime affiliation of a certain group.¹⁰⁰ It can also be based on the socioeconomic status, the visible appearances or the personal beliefs (e.g. religious practices and affiliation) prevailing within a community.¹⁰¹ Furthermore, targeting may be a mean to demonstrate control over a location to the local residents.¹⁰² Unquestionably, the practice of targeting – and the choice of target it encompasses – can be informed and motivated by conscious and unconscious considerations (e.g. prejudices, biases

⁹⁴ Ababou, *supra* note 90.

⁹⁵ *Ibid.*

⁹⁶ *R v Le*, [2019] SCC 34 at para 97 [Le].

⁹⁷ National Council of Welfare, “Justice and the Poor” (2000), online (pdf): <http://www.oaith.ca/assets/files/Publications/justice_andthe_poor.pdf> at 15 [NCW].

⁹⁸ Transparency International, “Global Corruption Barometer Africa 2019” (2019), online (pdf): <https://www.transparency.org/files/content/pages/2019_GCB_Africa.pdf> at 14-16.

⁹⁹ *Le*, *supra* note 96 at para 94.

¹⁰⁰ NCW, *supra* note 97.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

and stereotypes). These considerations tend to consequently generalize the issues of discrimination in a country.

The problem of racial discrimination is historically rooted and compelling in the country of Morocco.¹⁰³ This discrimination “prevents some segments of the population [...] from enjoying their human rights on an equal and non-discriminatory basis” and the victims are particularly the Amazigh, the Sahraoui, black Africans and non-nationals.¹⁰⁴ These segments of the population are subject to adverse prejudices, biases and stereotypes. Consequently, they are victims of frequent targeting, over-policing and other State abuses such as “harassment, arbitrary arrest and detention, excessive use of force, and forced relocation.”¹⁰⁵ While targeting stems from disproportionate policing, disproportionate policing itself stems from the phenomenon of (systemic) discrimination. Thus, section 222 can certainly be a systemic mean, among others, to perpetuate discrimination.

In Morocco, a wide discretion is granted to police officers. The combination of (a) the powers conferred to State agents (e.g. the power to arrest someone) and (b) the vague wording of section 222 is dangerous in practice. It allows a Moroccan police officer to (wrongfully) deem Muslim a black African or non-national eating in public during fasting hours and, thus, arrest him. His prosecution would then follow. Moreover, if Amazigh, Sahraoui, black Africans and non-nationals are targeted and over-policed, they will inevitably have more chances to be caught.¹⁰⁶

The discretion granted to police officers through section 222 appears to be too wide. This section can be instrumentalized so as to assert and serve any forms of racism, racial discrimination, xenophobia and related intolerance. It is one additional apparatus that can be discretionarily used by a police officer to arrest an individual. Most worryingly, it includes the most depriving sentence: imprisonment. If implemented incoherently and so as to target certain segments of the population, section 222 will seriously affect negatively the rule of

¹⁰³ Special Rapporteur, *supra* note 38 at 4.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid* at 14.

¹⁰⁶ NCW, *supra* note 97.

law in Morocco and enhance the problem of discrimination. From this perspective, section 222 can potentially act as a weapon rather than as a tool promoting any so-called public order. Over-policing is in this case more than mere inconvenience; it “contributes to the continuing social exclusion of racial minorities, encourages a loss of trust in the fairness of our criminal justice system, and perpetuates criminalization.”¹⁰⁷

Additionally, it appears that contemporary migrations will exacerbate the problem. It is mainly due to the country’s geographic position. Morocco is “a country of origin and transit, as well as of destination, for migrants.”¹⁰⁸ It is one of the main countries of transit for numerous Africans who hope to, one day, reach Europe to settle on European grounds. Entry refusals to African migration flows at the European borders consequently generate *refoulement* on the Moroccan territory. Thus, must be anticipated the increasing presence of individuals “notoirement connu pour [leur] appartenance à la religion musulmane” on Moroccan grounds originating from numerous African countries. Morocco will, therefore, face additional challenges relating to racial inequality and xenophobia with changing migration patterns.¹⁰⁹ Plus, the combination of international trends, the reintegration of Morocco into the African Union and a possible membership of the Economic Community of West African States can have an impact on migration to Morocco and amplify these challenges.¹¹⁰ The potential upcoming exacerbation of problems of racial discrimination, inequality and xenophobia urges the country to look for solutions regarding the potential instrumentalization of section 222 as an available mean to assert discrimination.

Paths to Move Forward

Legal solutions to move forward

Litigation and recourse to courts can be one important and advantageous way to move forward. First, the issue goes through court proceedings where claims are articulated, rulings are

¹⁰⁷ Le, *supra* note 96 at para 95.

¹⁰⁸ Special Rapporteur, *supra* note 38 at 4.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

secured, and decisions are reasoned based on evidence and transparency.¹¹¹ Second, litigation leads to a critical examination of the application of codified human rights to real life.¹¹² Third, it generates precedents that are often difficult to overturn or ignore.¹¹³ Fourth, litigation helps to seize upon and give a meaning to binding human rights standards.¹¹⁴ Fifth, it contributes to public discourse by showcasing the capacities of the rule of law in the vindication of right and dispute resolution.¹¹⁵ Sixth, it leads unheard voice to be heard and to directly confront the State.¹¹⁶ Lastly, rights-based litigation is not an isolated activity from social and political struggle.¹¹⁷ To be more effective, it must be complementary to the search for meaningful recognition and implementation of rights.¹¹⁸ Nonetheless, the weaknesses of litigation must still be borne in mind.¹¹⁹

Human rights litigation based on international instruments duly ratified by Morocco can potentially be one way to move forward and, perhaps, invalidate section 222. There are, however, arguments for and against the resort to these instruments to solve the issue.

¹¹¹ Open Society Justice Initiative, “Strategic Litigation Impacts: Insights from Global Experience” (2018), online (pdf):

<<https://www.justiceinitiative.org/uploads/fd7809e2-bd2b-4f5b-964f-522c7c70e747/strategic-litigation-impacts-insights-20181023.pdf>> at 34 [OSJI].

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.* at 35.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.* at 36.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.* at 34 (explaining that “[l]itigation is among the least well understood, and simultaneously most challenging, methods available to promote and protect rights. Some lawyers in particular are too susceptible to what Stuart A. Scheingold, in his classic work on the subject, called ‘the politics of rights’— ‘[t]he assumption ... that litigation can evoke a declaration of rights from courts; that it can, further, be used to assure the realization of these rights; and, finally, that realization is tantamount to meaningful change. The myth of rights is, in other words, premised on a direct linking of litigation, rights, and remedies with social change.’ Even in countries where judicial power is at its most expansive, courts cannot, and should not be asked to, govern. They can check the executive and legislative branches, but not replace them. All too often, the limited contribution, the real costs, and the potentially negative consequences of litigation are given insufficient consideration.”).

One argument for states that, by virtue of the Moroccan constitution, international treaties duly ratified by the country have primacy over domestic law.¹²⁰ This primacy is granted by the preamble, an integral and legally binding part of the constitution.¹²¹ Following this reasoning, if section 222 is found to infringe an international covenant duly ratified by Morocco, such as the ICCPR, section 222 should consequently be invalidated.

One argument *against* calls to relativize, if not to mitigate, the value of international instruments in Morocco. It questions the lack of representativity and inclusivity of these instruments, considering that their drafting processes do not include all states equally.¹²² These instruments are essentially the results of consensus and are “lacking the spices of regional, subregional and domestic specificity.”¹²³ Thus, it questions the extent of, first, the participation of Morocco in their elaboration and, second, its obligation to respect these instruments. Moreover, the argument questions the cultural legitimacy of international instruments in Islamic societies, especially when they universalize a culturally specific model reflecting Western liberal perspectives of civil and political rights.¹²⁴ International standards can be alien and (or) at variance from domestic values and institutions, therefore potentially compromising an Islamic society’s ability and or will to comply with them.¹²⁵

Nonetheless, articles 7 and 18 of the ICCPR provides available and interesting grounds to advocate for the invalidation of section 222. First, the right not to be subject to cruel, inhuman or degrading treatment or punishment will be addressed. Second, the right to freedom of thought, conscience and religion will be addressed.

¹²⁰ Special Rapporteur, *supra* note 38 at 6.

¹²¹ *Ibid.*

¹²² Frans Viljoen, “Human rights in Africa: normative, institutional and functional complementarity and distinctiveness” (2011) 18:2 South African Journal of International Affairs 191 at 193 [Viljoen].

¹²³ *Ibid.*

¹²⁴ Abdullahi An-Na’im, “What do We Mean by Universal?” in Mashood A. Baderin, ed, *Islam and Human Rights* (New York: Routledge, 2016) 3 at 4, 11.

¹²⁵ Abdullahi An-Na’im, “Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives” in Mashood A. Baderin, ed, *Islam and Human Rights* (New York: Routledge, 2016) 67 at 69.

Article 7: Violation of Human Dignity

From a purely objective perspective, an individual can be sentenced under section 222 *solely* for having been caught while eating or drinking or smoking in public during Ramadan. However, as discussed in the section entitled “*Background and Legitimacy Behind Section 222*,” it goes way beyond such an objective perspective. This objective perspective tends to minimize and belittle a morally blameworthy act. It ignores the context in which the act takes place. Consequently, such perspective does not account for the complexity of the Moroccan sociocultural context. It leads to a profound misunderstanding of the issues around section 222.

In the Moroccan context, Islam is predominant. One does not *only* break the fast in public during Ramadan. This act hurts the sensibility of numerous Muslims and can be considered as disrespectful towards religion and fasters. It is also said to potentially disrupt public order. Thus, a certain degree of blameworthiness is attached to the act of breaking the fast in public.

Nonetheless, does this act *deserve* a prison sentence and a fine? Individuals sentenced under section 222 that are firmly believing that the answer is *no* may challenge this provision under article 7 of the *ICCPR*. The present section of this essay seeks to put forward certain arguments to be made under this article.

Morocco duly ratified the *ICCPR*. Is therefore binding and has primacy over domestic laws. It can thus be invoked by individuals in the country. Article 7 states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹²⁶ In its General comment No. 20, in 1992, the Human Rights Committee asserted the aim of article 7 “to protect both the dignity and the physical and mental integrity of the individual.”¹²⁷ This provision is interpreted as protecting dignity and integrity. It can provide a solid ground for individuals who hope to challenge section 222.

¹²⁶ *ICCPR*, *supra* note 84 s 7.

¹²⁷ *General comment No. 20*, UNHRCOR, 16th Sess, UN Doc CCPR/GEC/6621 (1992) [*General comment No. 20*]

Section 222 provides a combined mandatory minimum sentence. Individuals are effectively punished with a prison sentence and a fine. The lowest combined sentence an individual can receive is one month in prison and a fine of 200 dirhams (approximately 28\$ CAD). An individual arrested and sentenced under section 222 can argue that a prison sentence and a fine, as a mandatory minimum punishment for an infringement, constitutes a violation of human dignity. Consequently, a violation of article 7 of the ICCPR.

To illustrate the cruel, inhuman or degrading character of a punishment, one should notably put forward its gross disproportionality. It can be argued that a prison sentence and a fine correspond to a grossly disproportionate sentence, in terms of excessiveness and severity, compared to the level of blameworthiness and seriousness of the offense. One could argue that a prison sentence is unnecessary, if not extreme, to achieve the State's social aim of promoting and protecting public order. To be sentenced to prison – a complete deprivation of liberty – for eating, drinking or smoking, even within a religious society, could be considered as cruel, abhorrent and incompatible with human dignity. Such mandatory prison sentence arguably undermines the dignity and the worth of human beings.¹²⁸ Moreover, according to numerous newspaper articles, the application of section 222 shocks the communal conscience and outrages the standards of decency of numerous Moroccans.¹²⁹ This public perception of the application of section 222 strengthens the argumentation. Many are unfavourable to it. In sum, the mandatory minimum punishment provided by section 222 can be considered as a cruel, inhuman or degrading punishment that violates human dignity and, therefore, infringes article 7 of the ICCPR.

¹²⁸ This paragraph is inspired by the language and the reasoning of the Supreme Court of Canada in two Canadian cases dealing with cruel and unusual punishments within the Canadian jurisdiction: *R v Boudreault*, [2018] 3 SCR 599 and *R v Smith*, [1987] 1 SCR 1045. It can be of less relevance in a Moroccan jurisdiction.

¹²⁹ *Supra* note 49.

Article 18: Violation of Freedom of Thought, Conscience and Religion

Article 18 of the ICCPR can also be invoked by individuals who hope to challenge section 222. As mentioned, the ICCPR is legally binding under the Moroccan constitution and article 18 protects the right to FTCT.¹³⁰ The relevant analysis regarding the limitations to this right was provided in the section of this essay entitled "*Freedom of Thought, Conscience and Religion*" and can, thus, serve to argue that section 222 infringes article 18. To complete the analysis, one could argue that the State, through its coercion and penal sanction, impairs the right to have or to adopt a religion or belief by compelling believers and non-believers to adhere to the observance of the fast during Ramadan.¹³¹ Additionally, one should put forward that, as asserted by General comment No. 22, an impairment of the enjoyment of FTCT is not justified by the fact that Islam is the religion of the State and predominantly followed by Moroccans.¹³²

However, contrary to article 7¹³³, the use of article 18 has its limitations. When (a) necessary to protect public safety, order or morals and (b) prescribed by law, a restriction on the freedom to manifest religion or belief can be permitted.¹³⁴ One could argue that it is the case for section 222. This counterargument must be anticipated and can be informed by the arguments raised in the section of this essay entitled "*Background and Legitimacy Behind Section 222.*"

Extralegal Solutions to Move Forward

Besides recourses to courts, extralegal avenues must be considered as a solution to move forward. Extralegal solutions are important to consider because, as mentioned in the sections of this essay entitled "*Background and Legitimacy Behind Section 222*"

¹³⁰ ICCPR, *supra* note 84 s 18.

¹³¹ General comment No. 22, *supra* note 84.

¹³² *Ibid.*

¹³³ General comment No. 20, *supra* note 127 (asserting that "[t]he text of article 7 allows of no limitation. [...] The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.").

¹³⁴ General comment No. 22, *supra* note 84.

and “Freedom of Thought, Conscience and Religion,” the obligation to observe the fast during the period of Ramadan has an indivisible communal component and acts as a social constraint. With or without section 222, there is a heavy social pressure to fast. The issue is broader than simply legal. Violations of one’s right to FCTR does not only stem from the legislation, but also from the society. As noted by Professor Lucie Lamarche, “a Court cannot solve all issues” because “[t]he ‘issues’ are so big, and often beyond the legal system.”¹³⁵ The problematic therefore requires extralegal solutions. In practice, social exclusion, intolerance and stigmatisation can remain even after the removal of section 222. Beyond a mere legal shift, a sociocultural shift is required. The first extralegal avenue relates to social activism. The second relates to an evolution from within Islam.

Social Activism

The first avenue considers social activism, arising from the civil society, as an alternative and transformative path for social change.¹³⁶ This extralegal activism hopefully results in sociocultural transformations and legal changes in Morocco. Extralegal strategies can “include grassroots mobilization, community organizing, community action initiatives, alliance building, shaming, public campaigning, and active protest.”¹³⁷

The *Mouvement alternatif pour les libertés individuelles*, a Moroccan advocacy group is an example of social activism. Since 2009, the group publicly advocates for civil liberties and the abrogation of section 222. In September 2009, it organized a picnic in a discrete location during Ramadan’s fasting hours in order to protest against section 222.¹³⁸ At least four individuals

¹³⁵ Mauro Cristeche, “Reclaiming Universal Human Rights in a Plural Global Order for Critical and Comprehensive Activism” (25 November 2019), online: Centre for Human Rights & Legal Pluralism <mcgill.ca/humanrights/article/universal-human-rights/reclaiming-universal-human-rights-plural-global-order-critical-and-comprehensive-activism>.

¹³⁶ Orly Lobel, “The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics” (2007) 120:4 Harvard Law Review 937 at 963-964.

¹³⁷ *Ibid* at 964.

¹³⁸ Human Rights Watch, News Release, “Morocco: End Police Actions Against Persons Accused of Breaking Ramadan Fast” (19 September 2009), online: <www.hrw.org>.

who had come for the event were arrested and held in custody.¹³⁹ The *Massayminch* ("we do not fast") group is another example. In May 2019, it launched an anti-fasting campaign in Morocco and invited Moroccans to gather publicly and break the fast together during fasting hours.¹⁴⁰ In Algeria, a breakfast was also organized in 2013 during fasting hours where hundreds of Algerians gathered to eat, drink and smoke in public.¹⁴¹ In sum, this social activism gathers hundreds of voices through mobilization to strengthen their common message and will to change mentalities. Behind activism, there is hope for solidarity and awareness, legal changes, and a sociocultural transformation.

Evolution from within Islam

The second avenue contemplates the evolution of Islamic law in order to support a sociocultural evolution and to justify the removal of section 222.¹⁴² Professor An-Na'im posits that the "legitimate and lasting constitutional and legal order that can address modern international relations and domestic human rights must develop from within Islam."¹⁴³ He proposes to apply a modern version of Islamic law to reconcile *Shari'a* (the positive law of historical Islam) with civil liberties and realities of the modern world.¹⁴⁴ Legitimate and viable norms in Islamic states

¹³⁹ *Supra* note 138.

¹⁴⁰ "Les déjeûneurs du Ramadan font déjà polémique au Maroc", *Le Site Info* (7 May 2019), online: <www.lesiteinfo.com>.

¹⁴¹ "En Algérie, un déjeuner "contre l'islamisation" en plein ramadan", *Le Monde* (5 August 2013), online: <www.lemonde.fr>.

¹⁴² *Supra* note 6 at 14-16.

¹⁴³ *Ibid* at 29 (also asserting that "[t]herefore, the benefits of western secularism in the Muslim world are temporary. Islamic states lack native support for western governmental institutions because these institutions are perceived as purely secular and un-Islamic. Furthermore, despite western-style constitutional safeguards and international obligations regarding human rights, massive violations continue to occur in the region.").

¹⁴⁴ *Ibid* at 15-16 (asserting that "although Muslims will not accept secular reforms to their religious law and practice, they have made some concessions to the demands of constitutionalism and the rule of law in national and international relations. Clearly, they are sensitive to tensions between inherited wisdom and the realities of the modern world. However, such concessions are limited and temporary because the division of loyalty between tradition, on the one hand, and a pressing sense of fairness and practicability, on the other hand, creates a dangerous ambivalence in Muslim attitudes and policies.

cannot passively ignore the assertion of *Shari'a*'s norms.¹⁴⁵ The solution must stem from within Islam. For this approach to be successful, it must nonetheless be commonly accepted that "Islam suits all ages and places by providing a flexible framework from which the right answers may be developed according to the demands of the times."¹⁴⁶ Modern Islamic law can notably evolve in two directions: (a) towards a reduction of the normative force of the obligation to fast during the month of Ramadan or (b) towards the promotion of acknowledgement, acceptance and openness regarding those who do not fast. These two evolutions would notably enhance the social acceptability of removing section 222 and, most importantly, support a sociocultural shift.

Conclusion

This essay puts forward the complexity of the situation regarding the application of section 222 of the Penal code in Morocco—a provision which is essentially the result of a religious obligation translated into an enacted law. Implemented within a country where the pre-eminence of Islam is asserted

To resolve this paradox and secure modern advances, modern Muslims must settle these tensions with reference to resources available within their own traditions. Otherwise, they will continue an unstable situation of subscribing to an unrealistic ideal of *Shari'a* while attempting to conduct their affairs in accordance with secular norms and institutions.

To summarize, this Article argues that, for Islamic states, smooth and successful transition to complete secularism is neither likely nor desirable because Muslims are obligated to live in accordance with Islamic law. Fulfilling that obligation by re-introducing historical *Shari'a* would be disastrous for international relations and human rights. This Article proposes that the Muslims' religious duty may be satisfied by applying a *modern* version of Islamic law that is consistent with peaceful international relations and respect for human rights. This modern version will be Islamic *Shari'a* because it will be derived from the fundamental sources of Islam, without being identical in every respect to historical *Shari'a*.").

¹⁴⁵ *Supra* note 6 at 15 (asserting that "because *Shari'a* signifies the positive law of historical Islam, its general principles continue to bind and motivate Muslims. Therefore, passive non-assertion of *Shari'a*'s norms is unworkable because a significant number of Muslims advocate the immediate application of historical *Shari'a*. The appeal of this movement makes it imperative that *Shari'a* be authoritatively reformed from within the Islamic traditions and in ways acceptable to Muslims themselves. Otherwise, such reform would lack legitimacy and practical viability").

¹⁴⁶ *Ibid* at 30.

constitutionally¹⁴⁷ and culturally by the population's beliefs and practices, section 222 certainly has legitimacy and social acceptability among a certain segment of the Moroccan society. This provision also seems to be reflective of the intolerance of a certain segment of the society towards Moroccans who break the fast in public during Ramadan. However, section 222 remains a polarizing topic that divides people, notably because of the major issues raised in this essay that are stemming from the interpretation and application of the provision. The analyses of these issues can certainly inform the advocacy work of Moroccans who hope to challenge the validity of section 222.

Although one can potentially challenge the validity of section 222 through relevant court proceedings (e.g. with the *ICCPR*), a path relying exclusively on legal solutions to move forward has its limitations. Moving forward essentially means to find long-term solutions to the issues raised in this essay. Considering that these issues are broader than simply *legal*, a sociocultural shift must necessarily accompany the legal shift in order to allow this movement forward. A sociocultural shift sets up a fertile ground for welcoming a legal shift (i.e. the removal of section 222 from the Moroccan Penal code) and for insuring the sustainability and the social acceptability of such change. It would also ensure that Moroccans who decide not to fast during Ramadan are considerably less victims of stigmatisation and social exclusion. Issues of social pressure and social constraint around the observance of the fast necessarily require extralegal solutions. The complexity of the situation regarding the interpretation and the application of section 222 in Morocco illustrates the strong connection between law, human rights and society.

Morocco can also learn from the experience of its Algerian and Tunisian neighbors. If sociocultural changes do not accompany the removal of section 222, Moroccan courts could presumably find another way to punish individuals who break the fast in public during Ramadan such as through the extensive

¹⁴⁷ Constitution, *supra* note 4 at preamble (indicating that Morocco is a Muslim sovereign State and that "[l]a prééminence accordée à la religion musulmane dans ce référentiel national va de pair avec l'attachement du peuple marocain aux valeurs d'ouverture, de modération, de tolérance et de dialogue pour la compréhension mutuelle entre toutes les cultures et les civilisations du monde.").

interpretation of other sections of the Penal code.¹⁴⁸ Thus, it confirms the importance of ensuring sustainability following the removal of section 222. In a similar vein, the extralegal solutions mentioned in this essay can find application in the Algerian and Tunisian contexts. First, such solutions can lead the courts to abstain from interpreting extensively other sections of their respective penal code (that do not explicitly contemplate the observance of the fast in a public place during Ramadan). Second, extralegal solutions can reduce or limit the stigmatisation and the social exclusion of individuals who do not observe the fast during Ramadan in Algeria and Tunisia.

¹⁴⁸ Penal code, *supra* note 2, s 221 states that “[q]uiconque entrave volontairement l'exercice d'un culte ou d'une cérémonie religieuse, ou occasionne volontairement un désordre de nature à en troubler la sérénité, est puni d'un emprisonnement de six mois à trois ans et d'une amende de 200 à 500 dirhams.”).

Bibliography

LEGISLATION: MOROCCO

Constitution du 1^{er} juillet 2011, s 3, BO, 17 June 2011, n° 5952 bis, 1765 (Constitution du Royaume du Maroc), online: <<https://mjp.univ-perp.fr/constit/ma2011.htm>>.

Version consolidée en date du 4 juin 2015 du Code pénal (Code pénal du Royaume du Maroc), online (pdf): <<https://www.ilo.org/dyn/natlex/docs/SERIAL/69975/69182/F1186528577/MAR-69975.pdf>>.

LEGISLATION: ALGERIA

Code pénal de la République Algérienne Démocratique et Populaire, online (pdf): <<http://www.joradp.dz/trv/fpenal.pdf>>.

LEGISLATION: TUNISIA

Code pénal de la Tunisie, online (pdf): <http://www.e-justice.tn/fileadmin/fichiers_site_francais/codes_juridiques/Code_penal_12_07_2010_fr.pdf>.

JURISPRUDENCE

R v Boudreault, [2018] 3 SCR 599.

R v Le, [2019] SCC 34.

R v Smith, [1987] 1 SCR 1045.

Schreiber v Canada (Attorney General), [2002] 3 SCR 269.

SECONDARY MATERIAL: NEWS RELEASES

Amnesty International, News Release, “Tunisia: Fifth man facing jail term for breaking fast during Ramadan” (13 June 2017).

Human Rights Watch, News Release, “Morocco: End Police Actions Against Persons Accused of Breaking Ramadan Fast” (19 September 2009).

Human Rights Watch, News Release, "Morocco: Landmark Proposals on Individual Freedoms" (4 December 2019).

SECONDARY MATERIAL: JOURNALS

Ababou, Mohammed et al., "Le jeûne du Ramadan au Maroc : un dilemme pour les patients diabétiques et les soignants" (2008) 26:2 Sciences Sociales et Santé 79.

Campante, Filipe & David Yanagizawa-Drott, "Does Religion Affect Economic Growth and Happiness? Evidence from Ramadan" (2015) 130:2 The Quarterly Journal of Economics 615.

Lobel, Orly, "The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics" (2007) 120:4 Harvard Law Review 937.

Papi, Stéphane, "Les *fattara* du ramadhân au Maghreb ou l'hétéropraxie religieuse au prisme des normes sociales et juridiques" (2016) 14 L'Année du Maghreb 99.

Viljoen, Frans, "Human rights in Africa: normative, institutional and functional complementarity and distinctiveness" (2011) 18:2 South African Journal of International Affairs 191.

SECONDARY MATERIAL: NEWSPAPERS

"En Algérie, un déjeuner "contre l'islamisation" en plein ramadan", *Le Monde* (5 August 2013).

"Islam - L'observance obligatoire en public du jeûne pendant le Ramadan relance la polémique", *Article19.ma* (12 May 2019).

"Les déjeûneurs du Ramadan font déjà polémique au Maroc", *Le Site Info* (7 May 2019).

"Moroccans convicted for eating in public during Ramadan", *Al Arabiya News* (19 July 2015).

"Morocco: Five Months in Jail for a Person who Ate in Public during Ramadan", *The Moroccan Times* (17 July 2014).

"Morocco: Two People Arrested for Eating in Public in Ramadan", *The Moroccan Times* (12 June 2016).

Abbou, Soukaina, "Morocco's Penal Code and Public Eating in Ramadan", *Morocco World News* (6 June 2016).

Alami, Aida, "Pope Francis' Visit to Morocco Raises Hopes for Its Christians", *The New York Times* (29 March 2019).

El Hourri, Abdelali, "Dé-jeûneurs du Ramadan, ce que dit le code pénal", *Médias24* (4 June 2016).

Guerraoui, Saad, "Ramadan in Morocco: Intolerance in the month of compassion", *Middle East Eye* (1 July 2016).

Hadraoui, Wissal, "L'article 222 du code pénal concernant les déjeûneurs pendant Ramadan, une loi ambiguë ?", *Welovebuzz* (23 May 2018).

Kadiri, Ghalia, "Au Maroc, la vie cachée des convertis au protestantisme évangélique", *Le Monde* (29 March 2019).

Pezet, Jacques, "Que dit la loi en Algérie, Maroc et Tunisie pour les personnes qui ne veulent pas faire ramadan ?", *Libération* (6 June 2018).

SECONDARY MATERIAL: COLLECTION OF ESSAYS

An-Na'im, Abdullahi, "Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives" in Mashood A. Baderin, ed, *Islam and Human Rights* (New York: Routledge, 2016) 67.

An-Na'im, Abdullahi, "Islamic Law, International Relations and Human Rights: Challenge and Response" in Mashood A. Baderin, ed, *Islam and Human Rights* (New York: Routledge, 2016) 13.

An-Na'im, Abdullahi, "What do We Mean by Universal?" in Mashood A. Baderin, ed, *Islam and Human Rights* (New York: Routledge, 2016) 3.

SECONDARY MATERIAL: BOOKS

Amzazi, Mohieddine, *Essai sur le système pénal marocain* (Rabat: Centre Jacques-Berque, 2013).

Filali-Ansary, Abdou & Sikeena Karmali Ahmed, *The Challenge of Pluralism: Paradigms from Muslim Contexts* (Edinburgh: Edinburgh Scholarship Online, 2012).

Ruolt, Adolf, *Code pénal annoté* (1990).

SECONDARY MATERIAL: ENCYCLOPEDIA

"Ramadan" in John L. Esposito, ed, *The Islamic World: Past and Present* (Oxford Islamic Studies Online).

Ahmad, Anis, "Ramadan" in *The Oxford Encyclopedia of the Islamic World* (Oxford Islamic Studies Online).

Dallal, Ahmad S., "Ummah" in John L. Esposito, ed, *The Oxford Encyclopedia of the Modern Islamic World* (Oxford Islamic Studies Online).

Munro, André, "State monopoly on violence" in *Encyclopaedia Britannica* (Encyclopaedia Britannica, inc., 2013).

Reinhart, A. Kevin & Earle H. Waugh, "Birth Rites" in *The Oxford Encyclopedia of the Islamic World* (Oxford Islamic Studies Online).

Von Sivers, Peter et al., "Islam" in *The Oxford Encyclopedia of the Islamic World* (Oxford Islamic Studies Online).

SECONDARY MATERIAL: DICTIONNARIES

Cambridge Dictionary, online: <dictionary.cambridge.org>.

Dictionnaire Larousse, online <www.larousse.fr>.

INTERNATIONAL MATERIALS

General comment No. 20, UNHRCOR, 16th Sess, UN Doc CCPR/GEC/6621 (1992).

General comment No. 22, UNHRCOR, 48th Sess, UN Doc CCPR/C/21/Rev.1/Add.4 (1993).

International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976, accession by Morocco 1979).

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, UNHRCOR, 41st Sess, UN Doc A/HRC/41/54/Add.1 (2019).

FOREIGN SOURCES

US, Bureau of Democracy, Human Rights, and Labor, *Report on International Religious Freedom for 2014: Morocco* (United States Department of State).

US, Bureau of Democracy, Human Rights, and Labor, *Report on International Religious Freedom for 2015: Morocco* (United States Department of State).

US, Bureau of Democracy, Human Rights, and Labor, *Report on International Religious Freedom for 2016: Morocco* (United States Department of State).

US, Bureau of Democracy, Human Rights, and Labor, *Report on International Religious Freedom for 2017: Morocco* (United States Department of State).

SECONDARY MATERIAL: ELECTRONIC SOURCES

Cristeche, Mauro, "Reclaiming Universal Human Rights in a Plural Global Order for Critical and Comprehensive Activism" (25 November 2019), online: *Centre for Human Rights & Legal Pluralism* <mcgill.ca/humanrights/article/universal-human-rights/reclaiming-universal-human-rights-plural-global-order-critical-and-comprehensive-activism>.

Humanists International, "The Freedom of Thought Report: Morocco", online: <fot.humanists.international>.

National Council of Welfare, "Justice and the Poor" (2000), online (pdf): <http://www.oaith.ca/assets/files/Publications/justice_andthe_poor.pdf>.

Open Society Justice Initiative, "Strategic Litigation Impacts: Insights from Global Experience" (2018), online (pdf): <<https://www.justiceinitiative.org/uploads/fd7809e2-bd2b-4f5b-964f-522c7c70e747/strategic-litigation-impacts-insights-20181023.pdf>>.

Transparency International, "Global Corruption Barometer Africa 2019" (2019), online (pdf): <https://www.transparency.org/files/content/pages/2019_GC_B_Africa.pdf>.