

Morocco at the Crossroads: Religious Freedom and the Law

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ABSTRACT

Nearly all Moroccans are Muslims, and the King, identified as “commander of the faithful” in the constitution, has ultimate authority over religious affairs. According to the Moroccan Constitution, Islam is the religion of the state, and the state guarantees freedom of thought, expression, and assembly. This article considers the ways in which Morocco regulates religious practice, and seeks to demonstrate how interference with manifestations of religion often leads to restrictions on related rights and freedoms. It draws on a number of related court decisions, relevant legal frameworks, as well as the role played by the Ulama Supreme Council against the country context.

Keywords: *Morocco, religious freedom, international human rights, constitutional rights.*

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INTRODUCTION

Claims by Morocco that it respects the fundamental right to religious freedom of their citizens may appear misaligned when one looks at evidence.¹ In the case of religious freedom, Morocco is capitalizing on the distinction made in international human rights documents between internal beliefs and the external realm or manifestation of those beliefs.² According to this distinction, while the right to hold a particular belief is generally considered to be absolute, outward manifestations of religion may be subject to legitimate restrictions.³

In the following analysis, using a wide-ranging set of examples of court decisions, I provide some background on the emerging discussion on manifestations of limitations to religious freedom in Morocco, as enshrined in the constitution and legal framework. My general objectives are to consider the ways in which Morocco regulates religious practice, and to demonstrate how interference with manifestations of religion often leads to restrictions on related rights and freedoms. The analysis also covers relevant legal frameworks, as well as, importantly, the role played by the Ulama Supreme Council against the country context.

This Morocco-specific analysis specifically draws on court decisions adopted between 2012-2019, and places the selected decisions within the jurisdictional development and context of interpretation of constitutional rights in Morocco. The analysis focuses on how the courts balance the constitutional right concerning freedom of religion with other rights, namely freedom of expression.

Note: In the context of Morocco, public access to decisions of the Constitutional Court or other high courts that address equality rights, personal freedom, and religious law are not accessible to the public and require court approval for research purposes. The same applies to any public access to court records. Law 31-13 on the protection of the right of access to information was passed in January 2018.⁴ The law comes with limitations, including restricting the right to access publicly held information pertaining to the deliberations of the Government.⁵

¹ U.S. Department of State Annual Reports on International Religious Freedom, 2014-2018. Morocco, Annual country-by-country reports.

² While the preferred language is “freedom of religion or belief,” reflecting the inclusion of all belief systems (theistic, non-theistic, and atheistic), I am using here “religious freedom” as my working terminology. This eliminates confusion regarding the distinctions I am making between “belief” and “practice.” It also reflects the prevailing usage in this study.

³ US Bureau of Democracy, Human Rights and Labor (2014-2018) *International Religious Freedom Report*.

⁴ Morocco, *Dahir (Decree)*. *N1-18-15. Projet de Loi. 31-13 relative au droit d'accès à l'information* (access to information). Feb. 22, 2018.

⁵ *Id.* Art. 7.

This has proven to be the main research limitation, particularly regarding the ability to publish court decisions and the judicial outcomes of relevant cases. Consequently, the focus on the target samples was determined by the author's ability to acquire case data through own contacts. Given the sensitivities around the topic, in addition to Moroccan legal restrictions on accessing court decisions and sharing them, I cannot provide a transcript translation of the court decisions under discussion in this Morocco case study. My focus has been, rather, to distill the court orders into an analysis format that covers the decisions amply instead of reproducing them verbatim, which is not permitted. Generally, these cases have been addressed at the level of courts of first instance and courts of appeals, not beyond.

Legal recognition is difficult to achieve in the absence of social recognition, and in a conservative country such as Morocco, tolerance of religious pluralism is highly dependent on a number of determinants, which shall be explored below.

Under international law, any limitation to a right or freedom must be "prescribed by law," and must be pursuant to one of five purposes: protection of public safety, order, health or morals,⁶ or the fundamental rights and freedoms of others; and finally, the limitations must be necessary in a democratic society. At the international human rights level, in response to progress made in the implementation of the recommendations issued at the second cycle of the Universal Periodic Review, Morocco affirmed the constitutional guarantees of freedom of worship for all, with no exclusion for religious minorities.

Confirming its commitment to the provisions of Article 3 of the constitution, which stipulates that the state guarantees the right of everyone to worship, the country signed the Human Rights Council Resolution on freedom of religion in March 2014.⁷

Although Article 3 of the Moroccan Constitution, adopted in 2011, guarantees, 'free practice of religion for everyone,' the Law prohibits conversion to religions other than Islam. Moreover, Article 220 of the Penal Code punishes any activity that 'undermines the faith of a Muslim,' and stipulates that 'whoever uses violence or threats to coerce a person or persons to practice or attend a certain religious practice, or prevent them from that, shall be punished...' The article, associated as it is to 'undermining the faith of a

⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms, "Art." 9(2), Nov. 4, 1950, 213 U.N.T.S. 221.

⁷ Human Rights Council Resolution N° A/HRC/25/L.19, 25th session, March 3-28th, 2014, on the freedom of religion or belief. Morocco is signatory to the resolution on freedom of religion.

Muslim,’ makes the change of religious belief *from* Islam synonymous with this crime.⁸ Hence, the majority of Moroccans who have converted to Christianity live in what has been described as a ‘virtual world’.⁹

LEGAL FRAMEWORK AND RELIGIOUS FREEDOM

Morocco, officially the Kingdom of Morocco, is a country with a predominantly Sunni Muslim population, and a small number of Christians, Jews, Shiites, and Baha’is. The Moroccan Constitution defines Morocco as a Muslim state in its preamble and states that Islam is the state religion in Article 3, which also guarantees freedom of religious practices to all faiths.¹⁰ Article 106 of the constitution states that the constitutional provisions related to the place of Islam cannot be changed.¹¹ The constitution also stipulates that the king is “commander of believers” and “defender of the faith” in the country.¹² The constitution guarantees freedom of thought, expression, and assembly, and says the state guarantees every individual the freedom to practice his religious affairs.

The country is a party to the International Covenant on Civil and Political Rights (ICCPR).¹³ It is also a member of the League of Arab States (LAS), as well as the Organization of Islamic Cooperation (OIC).

The government plays an active role in determining religious practice for Muslims, and disrespecting Islam in public can carry punishments in the forms of fines and imprisonment.¹⁴ To that effect, the constitution prohibits the enactment of laws or constitutional amendments infringing upon its provisions relating to Islam. The constitution and the law governing the media prohibit any individual, including members of parliament normally immune from arrest, from criticizing Islam on public platforms, such as print or

⁸ Ministry of Justice, Morocco. Penal Code, *Code pénal (promulgué par Dahir n° 1-59-413 du 26 novembre 1962 (28 jourmada II 1382))*. Art. 220. Available at: adala.justice.gov.ma/production/legislation/ar/.../مجموعة%20القانون%20الجناي.docx

⁹ El Rouidi, A. (2014) *Waiting for the Implementation of the Constitution: Morocco’s Christians Migrate to the Virtual World*. Report dated April 23, 2014.

¹⁰ Morocco Constitution. Art. 3 Secretariat of the Government, Morocco (2011). The Constitution. Sherifyan Dahir (Royal Edict) n° 1.11.91 issued on 27 chaabane 1432 (July 29, 2011)

¹¹ Constitution. Art. 106

¹² Id. Art. 41

¹³ International human rights law recognises a spectrum of expressions, ranging from those forms that must be protected to those that must be punished. Article 19 of both the UDHR and the ICCPR establishes the freedom of opinion and expression.

¹⁴ Ahed, S. & Kheirat, M.) 17/05/2014) ‘The History of the Religious Formation in Morocco’, *the weekly Ittihad Ichtiraki*, Issue 10706

online media, or in public speeches. Such expressions are punishable by imprisonment for two years and a fine of 200,000 dirhams.¹⁵

Against the reaffirmation of the apostasy condemnation by the Ulama Supreme Council in 2012, six members of the same council issued in 2016 a document titled *Sabil al-'Ulama* (The Way to scholars).¹⁶ They focused on the difference between political apostasy (according to Muslim tradition, always punishable by the death penalty) and “intellectual apostasy”, the expression of individual choice in religious matters, recalling the verses of the Qur'an that assert that freedom.¹⁷

The law penalizes anyone who “provides for enticements to undermine the faith” or convert a Muslim to another faith, and provides for punishments of six months to three years' imprisonment and a fine of 200 to 500 dirhams. It also provides for the right to a court trial for anyone accused of such an offense. Voluntary conversion is not a crime under the law. The law permits the government to expel summarily any noncitizen resident it determines to be “a threat to public order,” and the government has used this clause on occasion to expel foreigners suspected of proselytizing. By law, impeding or preventing one or more persons from worshipping or from attending worship services of any religion is punishable by six months to three years' imprisonment and a fine of 200 to 500 dirhams.

Sunni Muslims and Jews are the only religious groups recognized in the constitution as native to the country. A separate set of laws and special courts govern personal status matters for Jews, including functions such as marriage, inheritance, and other personal status matters. Rabbinical authorities, who are also court officials, administer Jewish family courts. Muslim judges trained in the country's *Maliki-Ashari Sunni* interpretation of the relevant aspects of Sharia administer the courts for personal status matters for all other religious groups. According to the law, a Muslim man may marry a Christian or Jewish woman; a Muslim woman may not marry a man of another religion unless he converts to Islam.

¹⁵ Morocco, Press Law. Art. 72. Dahir n° 1-16-122 du 6 kaada 1437 (10 août 2016) portant promulgation de la loi n° 88-13 relative à la presse et à l'édition < http://www.mincom.gov.ma/wp-content/uploads/2017/05/Code_Presse2016_FR-1.pdf >.

¹⁶ In 2012, the council issued a Fatwa ratifying the Sharia ruling according to which any Muslim who abandons Islam should be executed, stipulating that Islamic Law considers anyone born from Muslim parents, or a Muslim father, as a Muslim, and prohibits apostasy and disbelief, and upon refusal of return to Islam, the Islamic sentence for apostasy must be applied.

¹⁷ It is worthy to note that in January 2016 in Marrakech, a conference of Muslim scholars to promote the rights of religious minorities took place, under the auspices of the Moroccan Minister of Habous¹⁷. These developments could suggest that Morocco, in spite of its hesitation, is moving toward the recognition of freedom of religion.

Legal provisions outlined in the general Tax Code provide tax benefits, land and building grants, subsidies, and customs exemptions for imports necessary for the religious activities of recognized religious groups (Sunni Muslims and Jews) and religious groups registered as associations (some foreign Christian churches).¹⁸ The constitution guarantees civil society associations and nongovernmental organizations the right to organize themselves and exercise their activities freely within the scope of the constitution. The law on associations prohibits organizations that pursue activities the government regards as “illegal, contrary to good morals, or aimed at undermining the Islamic religion, the integrity of the national territory, or the monarchical regime, or which call for discrimination.”¹⁹

The law does not require religious groups to register to worship privately, but a non-recognized religious group must register as an association to conduct business on behalf of the group or to hold public gatherings. Associations must register with local Ministry of Interior (MOI) officials in the jurisdiction of the association’s headquarters in order to conduct financial transactions, hold bank accounts, rent property, and address the government in the name of the group. An individual representative of a religious group neither recognized nor registered as an association may be held liable for any of the group’s public gatherings, transactions, bank accounts, property rentals, and/or petitions to the government. The registration application must contain the name and purpose of the association; the name, nationality, age, profession, and residential address of each founder; and the address of the association’s headquarters.

Many foreign-resident Christian churches are registered as associations. The Roman Catholic, Russian Orthodox, Greek Orthodox, Protestant, and Anglican Churches have different forms of official status. The Russian Orthodox and Anglican Churches are registered as branches of international associations through the Embassies of Russia and the United Kingdom, respectively.

¹⁸ Morocco, 2020. Code General des Impots (*General Tax Code*). Institué par l’article 5 de la loi de finances n° 43-06 pour l’année budgétaire 2007, promulguée par le Dahir n° 1-06-232 du 10 Hija 1427 (31 décembre 2006).

Available from: <https://www.finances.gov.ma/Publication/dgi/2020/cgi2020-fr.pdf>

¹⁹ See Law regulating the right to establish civic associations in Morocco. Available at:

http://www.sgg.gov.ma/Portals/1/association_pdf/lib_pubM_ar.pdf?ver=2012-01-30-144138-000

SELECTED CASES RELATING TO APOSTASY IN MOROCCAN LAW

“Apostasy” and non-religion under the law

Non-Muslims are prohibited by the Penal Code to proselytize and to “shake the faith” of Muslims.²⁰ Proselytizing can be punished with a sentence of 3 to 6 months’ imprisonment and a fine. Article 222 of the Penal Code states that “a person commonly known to be Muslim who violates the fast in a public place during Ramadan, without having one of the justifications allowed by Islam [such as travelling, sickness or menstruation], shall be punished by one to six months in prison,” as well as a fine.

In 2016, Morocco’s Ulama Supreme Council issued a *Fatwa*²¹ declaring that leaving Islam no longer merited the death penalty and redefined apostasy not as a religious issue but as a political stand more closely aligned with “high treason.”²² This was progress from its 2012 position, but also draws attention to the kinds of harsh measures that prevailed heretofore. This council, the Highest Religious Committee in charge of issuing *Fatwas*, had released a book in 2012 in which it articulated its position on apostasy and argued that a Muslim who changes his or her religion should be punished with death, drawing on a widespread jurisprudential tradition.

Although apostasy is not a crime under civil or criminal law, there is plenty of scope under blasphemy laws (see below) for apostates to be punished. This is exhibited in cases related to freedom of expression. One prime example is that of caricaturists who are still struggling to coexist with red lines that are either imposed by society’s conservative nature or by the political system.

Casablanca, Court of First Instance 2012-2015, Case of Khalid Gueddar

In 2012, Khalid Gueddar, an editorial cartoonist was detained by the police after publishing a caricature on his website that was deemed as insulting Islam. Gueddar’s caricatures were subjected to harsh criticism because they brought down religious taboos. He was summoned by the judicial police in 2012 over caricatures that were deemed offensive to Islam, published on the satirical website Baboubi that he had created. The cartoonist said he was he was summoned by the judicial police and interrogated for six hours over his caricatures. Caricatures of Islam or the royal family are illegal in Morocco. He ultimately

²⁰ Penal Code. Art. 220

²¹ Islamic ruling

²² Morocco, Ministry of Habous and Islamic Affairs. Official website: <http://www.habous.gov.ma/fr/conseil-supérieur-des-oulémas/531-conseil-supérieur-des-oulémas-2>

received a suspended sentence from Casablanca's Court of First Instance and a fine of 320,000 Moroccan dirhams. His lawyer said if charged and convicted, Gueddar could face a harsh sentence and he compared the questioning to an inquisition on religion. The Minister of Justice at the time, Mustapha Ramid, said he would not intervene in what he described as a normal judicial process.

A stream of jurists seemed confident that the conviction of Gueddar in court was based on political grounds. In a public statement in 2015, Gueddar, noted that he was sentenced in absentia, and neither he nor his lawyer were notified of the trial date. He had attended several court sessions, and the case had been postponed several times. The case did not follow due process and the court system was a tool to harass the defendant. Gueddar challenged the court and said he would not appeal the ruling because he did not trust the independence of the Moroccan judiciary from the instructions of the political authorities in Morocco.²³

The Moroccan Ministry of Human Rights clarified the interpretation of apostasy in Moroccan law publicly in April 2019 through former minister Ramid.²⁴ Morocco's Minister of Human Rights Mustapha Ramid said that Morocco does not criminalize apostasy. The minister noted that the Penal Code especially focuses on proselytizing that exploits people's "fragility" and "needs." He explained that the law criminalizes those who target minors or poor people and talk them into leaving Islam for another religion. Ramid further argued that if one converted to another religion from Islam out of conviction, the law does not prevent them from professing another faith. He said the law has its basis on the Qur'anic verse 18:29: *"The truth is from your Lord, so whoever wills – let him believe; and whoever wills – let him disbelieve."*²⁵

This followed 2016, when Morocco's religious authorities had ruled that people who leave Islam should not be punished with the death penalty, reversing their previous ruling on apostasy. Morocco's High Religious Committee retracted its Islamic ruling stating that apostasy is punishable by death and decided to permit Muslims to change their religion. The reasons behind Morocco's High Religious Committee's change in position were expressed in a publicly released statement:

²³Al Monitor News. "Moroccan cartoonists fight for their right to express themselves", Edition 8, 2015: <https://www.al-monitor.com/pulse/fa/originals/2015/08/morocco-caricature-freedom-expression-media-press-rights.html#ixzz6NFFaNRzJ>

²⁴ 2M TV. Interview with Minister Mustapha Ramid, *Hadith maa Sahafa* (Discussion with the Press), April 14, 2019. Available at: <https://www.youtube.com/watch?v=IN1yCo2XKyg>

²⁵ Quran Verse 18:29. Available at: <https://quran.com/18/29?translations=20>

“The most accurate understanding, and the most consistent with Islamic legislation and the practical way of the Prophet, peace be upon him, is that the killing of the apostate is meant for the traitor of the group, the one disclosing secrets, [...] the equivalent of treason in international law.”²⁶

The High Religious Committee interpreted the Prophet’s statement that “whoever changes his religion, kill him” in the light of his explanation referring to “the one who leaves his religion and abandons his people.” The statement further explained that, at the time of continuous wars against the Islamic revolution in Arabia, apostates represented the threat of disclosing the secrets of the new Ummah to its many enemies.

Resorting to Islam’s primary source of legislation, the High Religious Committee stated that the Quran talks in many instances about apostasy and its punishment in the hereafter, without mentioning any punishment in this life, as in Chapter 2 verse, 217 that says: “And whoever of you reverts from his religion [to disbelief] and dies while he is a disbeliever – for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire, they will abide therein eternally.”²⁷

Case Taza, Court of Appeals November 2018-Case of man accused of proselytizing

This case reflects a positive development in judicial outcomes towards greater freedom of religion in the country. The Court of Appeals in Taza ruled in favor of an individual accused of “shaking the faith of a Muslim,” according to Article 220 of the Penal Code. The Moroccan defendant, Y.G., gave "books of the Gospel," to a friend and fellow Moroccan. His friend, a Muslim, filed a complaint, "considering this act an attempt to incite him to convert to Christianity." The Court unveiled its decision in a statement, explaining that the Bible is one of the holy books that Muslims believe in and declared the defendant “innocent” of any offences.

The details of the case date back to 2018, when the plaintiff filed a complaint against the defendant, accusing him of proselytizing, and attempting to convert him to Christianity. The defendant denied the accusation and pleaded not guilty.

On March 28, 2018, the Court of First Instance in Taza upheld a preliminary ruling that the defendant was not guilty. At the request of the King’s General Prosecutor to explain its decision, the Court of Appeals

²⁶ Morocco, Ministry of Habous and Islamic Affairs. *Id.*

²⁷ Quran. Chapter 2, verse 217

aligned itself with the decision of the Court of First Instance, thus acquitting the accused on November 22, 2018. The Moroccan authorities cited this case as a primary example of religious freedom in Morocco.

Casablanca, Court of First Instance. February 2014 Salafist Sheikh suspended jail sentence for apostasy

The Casablanca Court of First Instance gave *Salafist sheikh* Abdelhamid Abounaim a suspended one-month jail sentence in February 2014 for accusing opposition politician Driss Lachgar of apostasy following his calls to revise discriminatory laws against women.

Abounaim, 58, was found guilty of “defamation” and “undermining an organized institution,” and was also given a 500 dirham fine. The lawyers for the defendant, who was absent when the order was issued, did not express an intention to appeal. Abounaim had expressed his views on social media through two videos over December 2013 and January 2014, in which he accused Driss Lachgar, the head of the opposition socialist party USFP²⁸, of apostasy. Several days earlier Lachgar had called for polygamy to be outlawed and urged a debate on the inheritance rights of women during the opening statement at the Socialist Party Women’s Forum on December 20, 2013.²⁹

²⁸ The Socialist Union of Popular Forces (*Al-Ittihad Al-Ishtirakiy Lilqawat Al-Sha'abiyah*) was established in 1975. The USFP (French acronym) was formed as a breakaway from the National Union of Popular Forces (UNFP), a Socialist opposition party which had itself split from the Istiqlal Party in 1959. USFP Official website: <http://www.usfp.ma>

²⁹ The 2004 Family Law did impose conditions to restrict polygamy, i.e. the consent of other spouses and the permission of a court needed for a man to take another wife. See *Al Ittihad Al Ichtiraki* Newspaper, December 23, 2013.

CONCLUSION

The right to freedom of expression is fundamental to holding religious beliefs and the practice of one's religion. Some civil society activist voices argue that the freedom of expression in Morocco has been hedged in by a number of limitations and restrictions, dealing with the expression of sentiments contrary to prevailing institutions or religious, or political beliefs.

In a memorandum published on October 28, 2019, the National Human Rights Council (established by the constitution to provide guidance on human rights matters to Moroccan institutions) recommended repealing Penal Code Article 220, which criminalizes proselytizing, when done to lure people away from Islam. This is an indication of the country's openness to reviewing its legal framework and debate issues at the juncture of freedom of expression and freedom of religion. Beyond conceptual clarity, it is important to understand that religious freedom manifests itself in different formats and in the case of Morocco the state is cognizant that the guarantees of freedom of religion are closely related to other substantive rights. Hence, the focus of this analysis has been on the complexity of case-law before national courts.

On the question of Islamic identity and oscillating between tradition and modernity, one could argue that Morocco could be the epitome of a third space where Islamic tradition is in constant evaluation to align, as relevant, to internationally acclaimed human rights and liberties. The next few years, however, will be key in building, and maintaining, the level of religious freedom and coexistence laid out by Morocco's leadership.

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