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SEPTEMBER 2019

Morocco

Situation of LGBT persons
version 2.0

Ministry of Immigration
and Integration

The Danish
Immigration Service

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Disclaimer

This report is written in alignment with the European Asylum Support Office (EASO) Country of Origin Information report methodology.[1] The report is based on carefully selected sources and on approved interview notes. Statements from all interviewed sources are used in the report, and all statements in the report are referenced.

This report is not, and does not purport to be, a detailed or comprehensive survey of all aspects of the issues addressed in the report. It should be weighed against other available country of origin information (COI) about the situation of LGBT persons in Morocco with regard to the legislative framework, the possibility for obtaining protection by the authorities, exposure to violence in the public and private sphere and conditions in prison. The report does not include policy recommendations or analysis. The information in the report does not necessarily reflect the opinion of the Danish Immigration Service (DIS).

Furthermore, this report is not conclusive as to the determination or merit of any particular claim to refugee status or asylum. Terminology used should not be regarded as indicative of a particular legal position.

[1] EASO, EASO Country of Origin Information Report Methodology, June 2019, url

Abbreviations

AMDH – Association Marocaine de Droits Humains

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women

CNDH – Conseil national des droits de l'Homme / National Human Rights Council

COI – Country of Origin Information

CSO – Civil society organisation

DIS – Danish Immigration Service

EASO – European Asylum Support Office

FLDF – Fédération des Ligues des Droits des Femmes

LGBT – Lesbian, Gay, Bisexual and Transgender

LGBTIQ – Lesbian, Gay, Bisexual, Transgender, Intersex and Queer

NGO – Non-governmental organisation

SOGIE / OSIEG – Sexual orientation, identity and gender expression / Orientation sexuelle, identité et expression de genre

UFL – Union Féministe Libre

USAID – United States Agency for International Development

Executive summary

Morocco's Penal Code remains categorical in its criminalisation of homosexual acts: According to article 489 homosexual acts are a criminal offence punishable with six months to three years of imprisonment and a fine ranging from 200 to 1,000 Moroccan dirhams. In 2018, the office of the Public prosecutor decided to prosecute 170 individuals under accusation of homosexuality based on 147 registered cases according to figures made public by the *Ministère Public*. In 2017, the official number of prosecutions was 197. The level of convictions in previous cases (2015-16) ranged from four months to one year of imprisonment with fines of 500 dirhams. However, convictions above four months were given for more than one violations of the Penal Code, e.g. homosexual act and illegal sale of alcohol. Sources noted that the Appeals Courts chose not to apply maximum penalties, often in spite of aggressive demonstrations by the public calling for severe punishments.

According to interviewed sources, it is almost impossible for an LGBT person fearing for his or her safety to obtain efficient protection by the police. An LGBT person would avoid showing up at a local police station out of fear of being arrested for homosexuality or being met with stereotyped questions and prejudice. However, several sources noted that in cases of public assaults by a mob, the police forces had intervened and saved the victims from extreme danger by bringing the homophobic attacks to an end.

A part of the population in Morocco is fiercely hostile towards LGBT persons and there have been public demonstrations against homosexuals, violent intrusions in private homes as well as public denunciations of presumed homosexual or transgender individuals. LGBT persons in Morocco are exposed to additional risk of social rejection, prejudice and violence compared to heterosexual Moroccans. This marginalisation permeates the public and the private sphere. Homosexual men, especially those who are perceived as effeminate, and transgender persons are particularly exposed of being victims of physical assaults and eviction from the family home. Unmarried lesbians are exposed to forced marriage or to confinement in the home. LGBT persons belonging to the intellectual elite, and who are financially independent, are to some extent protected from violence in the public and private sphere. LGBT persons from a working class or middle class background are by comparison exposed to violent assaults. The tactics employed by members of the LGBT community to avoid threats of homophobic violence include self-censorship and caution about how to walk, talk and behave in public areas.

The government stated that it tolerates NGOs working in favour of LGBT rights. Existing LGBT activist groups operate as unregistered organisations to avoid being visible to the authorities and the public.

The conditions in Moroccan prisons are precarious in general. LGBT persons constitute a vulnerable group while imprisoned.

Methodology

The present report focuses on the situation of LGBT persons in Morocco, including the legislative framework, the different types of violence that LGBT persons can be at risk of in Morocco, their possibility for seeking help from the authorities, organisations of the LGBT community, and examples of trials as well as conditions in prisons. It is based on terms of reference which have been developed by DIS in consultation with the Secretariat of the Danish Refugee Appeals Board as well as a Danish advisory group on COI.[2] The terms of reference are included as an appendix to this report. The report draws on methodological inspiration from the EASO report on researching the situation of LGBT people in countries of origin.[3]

This report is an updated version of a Danish Immigration Service (DIS) report published in 2017 about the situation of LGBT-persons in Morocco.[4] Both reports are based on interviews with sources in Morocco; for the first report, the Country of Origin Information Division DIS conducted a mission to Rabat to meet with sources whereas for the present report sources have been interviewed via e-mail and over the phone in June 2019. The purpose of the interviews was to collect up to date information on issues recurring in cases regarding Moroccan asylum seekers in Denmark with regard to the situation of LGBT persons. Furthermore, a legal expert with experience in migration and human rights law has been contracted to compile information on the legal framework as well as on application of the law. Finally, a variety of academic texts, COI-reports and media articles have been included in this report.

All the interviewed sources were carefully selected by DIS based on their position in the field, their knowledge of the situation as well as on their availability. In 2016, six sources were interviewed, comprising representatives from the Moroccan authorities, international organisations, academics and non-governmental organisations (NGOs). For background information, the delegation also talked with employees from western embassies. In 2019, six sources (four new and two from 2016) were interviewed; all of the interviewees were from civil society. As mentioned above, a legal expert was commissioned by DIS in 2019. This lawyer, based in Morocco and with extended experience from its legal system, was asked to examine the situation of LGBT persons in 2019 seen from a legal perspective and to describe the juridical system in Morocco in terms of available state protection for different vulnerable groups.

The sources consulted are listed in Appendix C. The interviews were conducted in either French or English according to the convenience of the interlocutors. Meeting notes, which were originally in French, have been translated into English. All the notes are provided in English in Appendix A. Notes for those interviews which were originally conducted in French are provided in Appendix B. A brief description of the source is included in the meeting notes in all cases where an introduction would not reveal the identity of the source. In terms of language, it has been the intention to avoid confusion in terminology, but at the same time respecting the variety of terms used by different interlocutors. Therefore, in the notes LGBT (Lesbian,

[2] The group consists of Danish Refugee Council, Amnesty International in Denmark, Danish Institute for Human Rights, Dignity, representatives of two Christian organisations (Danish European Mission and Open Doors), the National Commissioner of Police and the Danish Bar and Law Society (representing asylum lawyers).

[3] European Union: EASO, *Researching the situation of lesbian, gay and bisexual persons (LGB) in countries of origin. EASO Practical Guides Series*, April 2015 url

[4] Denmark, DIS, *Morocco - Situation of LGBT Persons*, 21 March 2017 url

gay, bisexual and transgender) is sometimes being used sometimes LGBTIQ (Lesbian, gay, bisexual, transgender, intersex and queer) and sometimes homosexuals to refer to the social group which is in focus in this report.

The sources consulted were informed about the purpose of the interview and the fact that their statements would be included in a report to be made publically available. The interlocutors were asked how they wished to be introduced and quoted, and all sources are introduced and quoted according to their own wishes. According to their wishes, some sources are referred to by their name and/or the name of their organisation; several are anonymous, for the sake of discretion and upholding tolerable working conditions, as well as for personal safety, in accordance with their own request.

The meeting notes were validated by the sources. All notes were forwarded to the interlocutors for their approval and amendment, allowing the opportunity to offer corrections or make comment on their statements. Most sources approved their statements. The Ministry of Foreign Affairs and Cooperation (2016) and the lawyer (second interview in 2019) were contacted by email and informed that the delegation would include the note in the report if no response was received by the deadline. DIS never received any response.

The report is a synthesis of the sources' statements and does not include all details from the interview notes. In the report, care has been taken to present the views of the interlocutors as accurately and transparently as possible and reference is made by number to the specific paragraphs in the English version of the notes in foot notes in the present report. All sources' statements are found in their full extent in Appendix A and B of this report.

The report was finalised in August 2019.

The report is available on the websites of DIS www.newtodenmark and thus is available to all stakeholders in the refugee status determination process as well as to the general public.

1. Background: changes over time in norms and values

Morocco is a constitutional monarchy and a Muslim country following Islamic law and social norms.[5] The government, which operates under the authority of King Mohammed VI, seeks to appease existing tensions between different but co-existing parts of society: on the one hand religious, conservative groups and on the other hand modern, progressive groups. Those with a more progressive attitude towards homosexuals belong to the urban elite and represent a small fraction of society without influence at the political level.[6] In the cities, books by the internationally celebrated writer and film maker Abdella Taïa, known for the sexual and provocative content, are sold despite the fact that Taïa left for Paris pointing at the animosity towards homosexual men that he was confronted with in Rabat.[7] The King has on several occasions demonstrated a certain tolerance towards cultural manifestations in the cities which introduced gay performers regardless of vivid opposition by Islamic political parties[8].

Those sources which were interviewed in 2019 agreed that people in Morocco had not changed their attitudes vis-à-vis homosexuals over the past few years.[9] One source, a lawyer, stated that whereas judges might have shown a more tolerant attitude towards homosexuals in their verdicts, the population in general seemed increasingly negative towards homosexuals.[10] In 2016, the same lawyer noted that the Moroccan society is influenced by two tendencies: one part of the population remains rather neutral and indifferent in their views of same-sex practices and therefore refrains from engaging in opposition to or defense of homosexuals' rights; another part of the population finds that homosexuality is an abomination. Confronted with these conflicting movements, the government continuously strives for finding a fine balance between a discourse praising traditional Muslim values and at the same time tolerating that a group of citizens are homosexual or transsexual.[11]

In spite of the fact that Morocco is a society influenced by Sharia law and Islamic norms where conservative values still permeate the dominant religious discourse,[12] the sexual culture of the country is far from static.[13] According to a Moroccan researcher, who had studied gender relations and sexual culture in Morocco for the past three decades, conservative religious values used to dominate sexual practices, but over the past years secular values have increasingly gained influence.[14] The dynamic aspects of social life in

[5] USDOS, *2018 Report on International Religious Freedom: Morocco*, 21 June 2019 url , USDOS, *Country Report on Human Rights Practices 2018 - Morocco*, 13 March 2019, url
[6] Nouaydi: 34
[7] The Guardian, Abdellah Taïa: *In Arab countries, homosexuality is a crime. This has to change*, 3 October 2014 url
[8] E.g. by not disallowing British singer Elton John to perform at a national music festival according to Figueredo MA, *An Examination of Factors that Catalyze LGBTQ Movements in Middle Eastern and North African Authoritarian Regimes*, 2015, url, pp 35-36
[9] A social worker: 57; A civil society organisation: 97; Dynamique Trans*: 130
[10] Nouaydi: 66
[11] Ministry of Foreign Affairs and Cooperation: 1, 2
[12] Baily, Samantha, *Sexuality and Development in the Maghreb: Origins of Institutionalized Homophobia and the Disruption of Development*, 2013, pp. 5-16, url
[13] Dialmy: 52
[14] Dialmy: 51, 52

modern Morocco was also emphasised by the Moroccan National Human Rights Council (*Conseil national des droits de l'Homme* – CNDH). However, CNDH recognised that a fraction of society strongly defends traditional religious values and are vividly – and at times violently – opposed to any recognition of civic rights to homosexuals.[15] This fraction includes public officials, e.g. the Minister of Human Rights, who has been quoted for voicing condescending remarks on homosexuals in 2017.[16]

2. Situation of LGBT persons in Morocco

2.1 The legislative framework relating to sexuality

Morocco's Penal Code remains categorical in its criminalisation of homosexual acts despite several calls for a reform process[17]: in 2015 more than 40,000 Moroccans signed a petition for the abolishment of article 489.[18] Article 489 of the Penal Code reads:

> '*any person who commits lewd acts or acts against the nature together with an individual of the same sex is liable to a penalty of imprisonment ranging from six months to three years and a fine ranging from 200 to 1,000 Moroccan dirhams*[19] *unless the circumstances of the offence do not constitute an aggravating factor*.'[20]

All sources pointed to national legislation with reference to article 489.[21]

Three sources, a legal expert, an independent researcher, and an NGO added that article 489 should be seen in the context of the two subsequent articles of the Penal Code which also explicitly address human sexuality, namely article 490, which criminalises sexual relations between two unmarried persons; and article 491 which criminalises adultery.[22] For the first category of infraction, the punishment is from one month to one year of imprisonment, for the second the punishment is between one and two years of imprisonment.[23]

The law does not protect LGBT persons against discrimination or hate crimes.[24] LGBT persons are not protected against illicit employee termination.[25]

Article 489 of the Penal Code prohibits homosexual acts and not homosexual identity or expression in itself. According to the source representing transgender people, the Penal Code can also be used to accuse

[15] CNDH: 3
[16] Dynamique Trans*: 152; Mendos et al. 2019, url, p 353 ; Conseil civil de lutte contre toutes les formes de discrimination, *Etat des lieux des discriminations au Maroc*, 2018, url, p. 49
[17] Dialmy: 43, Nouaydi: 34
[18] Conseil civil de lutte contre toutes les formes de discrimination, *Etat des lieux des discriminations au Maroc*, 2018, url, pp. 47-48
[19] Corresponding to approximately 20 and 100 USD
[20] Maroc: Code Penal, url; Aswat: 8; Dialmy: 42
[21] Ministry of Foreign Affairs: 1; CNDH:17; AMDH: 13; Aswat : 8; Nouaydi: 33; Dialmy 42; social worker: 54; Dynamique Trans*: 128; Nouaydi: 64; legal expert: 75; a civil society organisation: 100
[22] Nouaydi: 33 ; Dialmy: 42 ; AMDH: 13
[23] Maroc: Code Pénal, url
[24] USDOS, *Country Report on Human Rights Practices 2018 - Morocco*, 13 March 2019, url
[25] Dynamique Trans*: 149

people who dress in ways which are deemed inappropriate of disturbing public order. This occurs in spite of the fact that the Moroccan Constitution guarantees the right to privacy.[26]

The interviewed researcher noted that article 489 is formulated so that it indirectly hinders any formalised collective action carried out by organisations supporting LGBT persons' human rights. According to the observations of this source, this article serves as a platform which turns denunciations of suspected homosexual practices into a citizen duty.[27]

2.2 Exposure to violence by subgroups of LGBT persons

Several sources concurred that Moroccans of LGBT orientation face societal marginalisation; they are a vulnerable group because they are exposed to additional risk of social rejection and aggression in the public sphere compared to heterosexual Moroccans.[28]

Several sources noted that there are no scientific studies or official documentation of the nature of violence against LGBT persons in Morocco or studies on the national prevalence of violence.[29] However, in 2018 a number of organisations under the umbrella of the Civil Society Council (*Conseil civil de lutte contre toutes les formes de discrimination*) published an extensive report, which included first-hand accounts by LGBT persons in Morocco about the different kinds of abuse they had been exposed to.[30]

The interviewed researcher suggested dividing the violence that LGBT persons are exposed to into three different forms: physical, societal, and institutional violence.[31] This was based on his observations of the situation of LGBT persons over a period of three decades. Physical violence includes intrusions in the homes of assumed gay couples, assaults and other forms of physical humiliation such as being stripped naked and video filmed. For LGBT people in prison, physical violence could also include the risk of rape by fellow inmates (please refer to section *2.5 Trials involving homosexuality*).[32]

Societal violence comprises a variety of reactions by people in the public as well as in the private sphere and is enacted by neighbours, employers and landlords, and by close family members, in particular the father as head of household, as well as by the family-in-law. The reactions from an employer could be that a person who has been revealed as homosexual would be fired from his or her job. A landlord would be unlikely to accept a homosexual tenant and could end the lease agreement. Reactions from family members vary depending on the internal dynamics within each household. However, sources stated that there could be severe repercussions if family members discovered a member of the family in a sexual act with a person of the same sex or in another kind of situation which alluded to homosexuality. The repercussions could be eviction from the family home, forced marriage, forced divorce or confinement in the home. The sanctions could also take the form of sustained withdrawal of the small amount of pocket

[26] Dynamique Trans*: 132
[27] Dialmy: 43, 45
[28] CNDH: 3; AMDH: 11; Aswat: 26; Dialmy: 42
[29] Dialmy: 50; Nouaydi: 35; Ministry of Foreign Affairs and Cooperation: 1
[30] Conseil civil de lutte contre toutes les formes de discrimination, *Etat des lieux des discriminations au Maroc*, 2018, url, pp. 44-56
[31] Dialmy: 50
[32] Dialmy: 50

money that most young adults who live with their families receive from their parents or rejection and psychological pressure by close family members, in particular the mother.[33]

Institutional violence, according to the interviewed researcher, is an impersonal form of violence which is expressed in the Penal Code of Morocco and its intention to control sexual relations between consenting adults by legal means.[34] According to the source, this form of violence affects the poorest citizens disproportionally hard compared to the elite.[35] According to the interviewed legal expert, this desire to control human sexuality is in conflict with the individual citizen's right to protection of their private life as stipulated in article 24 of the Moroccan Constitution of 2011 as well as with international human rights standards.[36]

In addition to these three forms of violence, another form of violence has occurred over the past years: internet based abuse. In several cases, videos of an LGBT person in humiliating and abusive situations have been widely shared via social media (Facebook and YouTube).[37] Photos of victims have also been published online by the media, e.g. of a male person dressed in a skirt being detained by the police for questioning on 31 December 2018 in Marrakesh, as well as, in that particular case, a photo of the victim's ID card.[38] This practice and in particular the incident which took place on 31 December 2018 has led to discussion among lawyers and within the media about the rights to privacy and the dire consequences for people's reputation if it becomes publically known that they are being accused of homosexuality or of cross-dressing.[39] According to the media, the government has reacted to this discussion by initiating an administrative investigation into the diffusion of images of the person who was questioned by the police on 31 December 2018 in Marrakesh.[40]

The different subgroups of LGBT people are exposed to differentiated risks. The most vulnerable are homosexual men who are perceived as effeminate and male-to-female transgender persons.[41] They are in particular risk of being thrown out of the family home. In one case where a man was discovered in a sexual situation with another man, he was forced to divorce his wife upon request by the family, regardless of the fact that the wife did not state any wish for a divorce.[42] By contrast, young unmarried women who live in the family home and are revealed as lesbians are more likely to be forced into marriage against their will or confined within the family home.[43] Transgender persons are particularly vulnerable if they engage in a transitioning process (hormone therapy and/or medical procedures). During this period of time they are

[33] Dialmy: 50; Aswat: 25-26; Nouaydi: 39
[34] Dialmy: 50
[35] Dialmy: 42
[36] Nouaydi: 33
[37] Nouaydi: 36, 67; Dialymy: 47
[38] For further information on this and other cases, please refer to section 2.5 Trials involving homosexuality
[39] HuffPost, *Après la diffusion des images du "travesti", les avocats mettent en garde contre les risques encourus*, 3 janvier 2019, url
[40] HuffPost, *Abdellatif Hammouchi demande une enquête après la diffusion des photos du "travesti" arrêté pour délit de fuite à Marrakech*, 3 janvier 2019, url
[41] Aswat: 25 ; AMDH: 16
[42] Dialmy: 50
[43] Aswat: 25

likely to be subject to verbal abuse in the public sphere, or according to one source, to lynching.[44] The source did not elaborate further on this topic.

A number of economic and socio-cultural factors influence to which extent a person who has been 'outed' as homosexual is vulnerable. People who are wealthy and financially independent from their family are to a large extent protected from homophobic aggression in the street as well as in their private life.[45] Belonging to a liberal milieu, e.g. the universities enable LGBT persons to express their gender identity more freely. Even if they are arrested by the police, they are likely to be able to be released without any further sanctions.[46] Finally, residence in a city, in particularly Rabat or Casablanca, offers some level of anonymity and a heterogeneous landscape that contributes to protecting LGBT persons according to one source.[47] However, the same source argued, those persons with an open and visible gender expression still experience abuse (such as harassment, physical aggression and verbal abuse). On the other hand, in medium-sized or small towns and in rural areas, the risk of violence is higher than in the large cities.[48] By contrast, people with a middle class or working class background are more likely to be exposed to violence by groups or individuals in the public sphere. People with less economic freedom, especially young adults who are financially dependent on support from their family, are vulnerable to loss of employment or eviction from home which might follow an 'outing' as an homosexual. They are therefore likely to seek to conceal any sexual orientation that does not follow social acceptable norms.[49]

2.3 LGBT communities and safe spaces

Four of the sources, most vividly the LGBT activist group, noted that LGBT persons' participation in public life is restrained because they, as LGBT persons, need to hide the sexual orientation part of their identity to avoid being threatened with violence.[50]

There are few places in the public sphere where an LGBT person could be and still walk, act and dress the way he or she desires. This practice of self-imposed restraint in the public sphere includes showing caution about with whom to talk.[51] There are no restaurants or cafés with an open or explicit 'gay identity' in Rabat and there has been none for an extended period of time.[52] There are certain cafés in Rabat which are known for tolerating the presence of homosexual clients.[53]

To compensate for the absence of safe public spaces, many LGBT people prefer to meet in private homes or in groups at cafés known for tolerating LGBT people as clients.[54]

The internet has to some extent come to form an alternative, unregulated and safe space for LGBT persons or 'a space of freedom', according to one source.[55] This was confirmed by the president of *Fédération des*

[44] Dynamique Trans*: 136
[45] Dynamique Trans*: 154
[46] Aswat: 23
[47] Social worker: 57
[48] Social worker: 57
[49] Aswat: 23
[50] Aswat: 24, 31 ; Dialmy: 45; a civil society organisation: 99; Dynamique Trans*: 148, 156
[51] Aswat: 22, 31
[52] Aswat: 31
[53] Aswat: 31
[54] Aswat: 31

*Ligues des Droits des Femme*s (FLDF) noting that LGBT organisations are 'isolated' compared to other civil society organisations. Because of this isolation they operate via the internet, rather than in the public sphere.[56] Access to the internet is free in Morocco and without interruptions by the government although the government does apply laws which regulate public speech on the internet.[57] Whereas the state apparatus is perceived by the sources to have a good level of control over any form of collective action such as public demonstrations, it is much less efficient in controlling the virtual space and social media. The online LGBT magazine *Akaliyat* (meaning 'minority') is an expression of LGBT outreach activities on the internet.[58] Similarly, since 2013, Aswat has used its online 'Aswat Magazine' as a forum for communication and interaction within the LGBT community. In addition to these online forums, Moroccan LGBT people make use of certain apps on their smart phones to connect with other people, to organise meetings as well as to find a date.[59] According to the interviewed researcher, the government chooses to tolerate the existence of pro-homosexual social media.[60]

The first known gay rights advocacy organisation *Kif Kif* (meaning 'same same') was founded in 2005.[61] From its headquarter in Spain, Kif Kif had among other activities initiated Morocco's first gay magazine *Mithly* (meaning 'the same as me'). According to one source, Kif Kif is no longer active in Morocco. Today there are few LGBT organisations in Morocco, and those that exist are informally rather than formally organised. One example is Dynamique Trans* which is not an organisation but rather a loosely connected collective of people discussing gender diversity, transition issues and the situation of people who do not identify with their assigned gender.[62] The informal organisation is explained as a strategic choice in order to avoid attention by the authorities and has been the case of *Aswat* (meaning 'voices'). Aswat is a well-known collective of individuals who since 2012 have worked together on an ad hoc basis for the rights of LGBTIQ persons in Morocco.[63] One of the goals of Aswat's activities is to promote a reform of the law which penalises homosexuality and to abolish Act no 489. Aswat operates anonymously according to the source, and has deliberately chosen not to be an officially registered NGO and not to have a formal office out of fear of being persecuted by the authorities.[64] The constitution provides for freedom of association but the government may prohibit or simply fail to recognise the registration of groups which the government finds unworthy.[65]

Not being an official NGO, Aswat cannot ask for permission to organise demonstrations or campaigns in the public sphere. However, one source noted that to compensate for that Aswat used to seize the opportunity

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[55] Aswat: 32
[56] FLDF: 121
[57] USDOS, *Country Report on Human Rights Practices 2018 - Morocco*, 13 March 2019, url
[58] Aswat: 32, Figueredo MA, *An Examination of Factors that Catalyze LGBTQ Movements in Middle Eastern and North African Authoritarian Regimes*, 2015, url, pp. 35-39
[59] Aswat: 20
[60] Dialmy : 49
[61] Figueredo MA, *An Examination of Factors that Catalyze LGBTQ Movements in Middle Eastern and North African Authoritarian Regimes*, 2015, url; Hirsch K, *A Critical Analysis of the Public Sphere: How the LGBTQ Movement Utilizes and Occupies Space in Morocco*, url
[62] The introduction in the Dynamique Trans* interview note, Appendix A
[63] Aswat: 20, Dialmy 53, Conseil civil de lutte contre toutes les formes de discrimination, *Etat des lieux des discriminations au Maroc*, 2018, url, p. 47
[64] Aswat: 20; Hirsch K, *A Critical Analysis of the Public Sphere: How the LGBTQ Movement Utilizes and Occupies Space in Morocco*, url; Dialmy: 53
[65] USDOS, *Country Report on Human Rights Practices 2018 - Morocco*, 13 March 2019, url

of other demonstrations organised by registered NGOs to carve out a space for their collective in the margin of the official demonstrations to promote their own cause without the police interfering. The source noted that when Aswat used the space of other organisations to insert their own demonstration, they toned down their slogans to avoid provocations.[66]

2.4 State protection availability

The sources interviewed in 2019 concurred that it is difficult for an LGBT person who fears for his or her safety to ask for and obtain protection by the authorities at the local police station.[67] The independent human rights organisation AMDH stated that it was not possible for LGBT persons to obtain protection by the authorities; Aswat stated that it was almost impossible to obtain protection from the authorities; according to the legal expert and the researcher, homosexuals prefer facing homophobic assaults rather than showing up at a police station and ask for protection where they might risk being arrested for homosexuality.[68] The Aswat member supported this statement with an example of a fruitless attempt to report repeated homophobic acts of physical violence to the local police.[69] The Aswat member had accompanied a transperson to the police station without revealing any connection to an LGBT organisation to the police officer who received them and described in detail how the police officer on duty interacted with the transperson. According to the observations of the Aswat member, the gendarme asked questions in a stereotyped way, expressed prejudice and deliberately sought to lure the transperson into revealing a homosexual identity in a manner which our interlocutor retrospectively found was an attempt to use that to prosecute the person by invoking article 489. Although the police officer did not dismiss the complaint but accepted the file of it, no further investigation was processed. The explanation offered by the police, according to the source, was a pretext alluding to the investigation being complicated. Further to that, the source stated that although a police officer cannot dismiss a complaint by a citizen, the police can effectively hinder the complaint from being processed by letting the case drag for an extended period of time until the point where the victim is tired out from what seems to be endless administrative procedures.[70]

These statements about the difficulties in filing a complaint and in obtaining efficient protection were corroborated with interviews in 2019. The legal expert noted that the authorities did not 'take seriously' citizens, who fear being victim of an assault, and added that even if they did, the authorities would not have the required means to offer protection to a person who fear an assault.[71] In line with this, sources were asked in 2019 whether an LGBT person, who had already been victim of an assault, would be likely to file a complaint with the authorities. Several sources stated that LGBT persons would refrain from filing a complaint: the social worker noted that LGBT persons would stay away from the legal system because even as a victim of a criminal offense they could still be charged under article 489; [72] the representative of the transgender group, noted that trans people or non-binary people would not access the legal system

[66] Dialmy: 53
[67] A social worker: 60; a civil society organisation: 104; Dynamique Trans*: 131
[68] AMDH: 17; Aswat: 30; Nouaydi: 40; Dialmy: 46
[69] Aswat: 30
[70] Aswat: 30
[71] Legal expert: 90
[72] A social worker: 60

because of their 'criminalised' identity;[73] the representative of a civil society organisation advised that seeking protection for an LGBT person from the authorities would in itself be seen as admitting to a crime because of the Penal Code's article 489.[74]

By contrast, the National Council on Human Right (CNDH), which was interviewed in 2016, stated that, as a general rule, it is possible for an LGBT person to obtain protection by the authorities.[75] If he or she experienced police abuse, it would be as a result of the individual police officer's misconduct rather than the expression of a generalised conduct being sanctioned at a higher level within the police.[76]

Sources from the AMDH stated that to their knowledge, the risk related to engaging with topics concerning homosexuality did not only apply to LGBT people but also to lawyers who accepted to defend people accused of homosexuality: a lawyer who agrees to represent a person accused of breaching article 489 would be at risk of verbal abuse.[77]

The interviewed lawyer noted that the wider consequences of the existing barriers to state protection for LGBT persons were that they also avoided seeking help from the legal system in cases of domestic violence or unfair dismissal from their place of work.[78] This observation was shared by the interviewed researcher who noted that a homosexual person would avoid showing up at a police station out of fear of having his or her homosexuality used as a reason to arrest him or her.[79]

Two sources stated that in light of the fact that the hostility and the rage against homosexuals in Moroccan society is strong within large groups of the population, risk of being victim of rough mob violence was in reality higher than that of being abused by the police forces.[80] These two sources found that in the public sphere the police often ended up protecting homosexuals who were being assaulted by groups of people from much danger and even death through their interventions to control the situation.

According to the interviewed civil society sources, there are no protection centers for LGBT persons in Morocco.[81] The legal experts advised that a person who considers himself at risk of violence can go directly to the police station or to the Royal Gendarmerie to seek protection. However, in practice, the authorities are reluctant to take threats of violence against people seriously according to the same source. Furthermore, the authorities would not have the means to offer protection in the absence of social protection centers or shelters which can provide accommodation to victims at risk of violence.[82]

A minor may contact the authorities alone to seek protection, but the authorities often require the presence of their legal guardian.[83]

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[73] Dynamique Trans*: 138
[74] A civil society organisation: 104
[75] CNDH: 5
[76] CNDH: 5
[77] AMDH: 18
[78] Nouaydi: 40
[79] Dialmy: 46
[80] CNDH: 5; Dialmy: 46, 49
[81] A social worker: 61; a civil society organisation: 105; Dynamique Trans*: 134
[82] Legal expert: 90
[83] Legal expert: 91

Legal procedures

According to the legal expert, a Moroccan citizen, who has been victim of a crime, can go directly to the local police station in town and ask to file a complaint. A citizen living in a rural area can go to the Royal gendarmerie.[84] A citizen may also file a complaint directly with the office of the Public prosecutor.[85] This is the procedure regardless of whether the complainant is a legal minor or an adult. However, sometimes the officer in charge may request the presence of the minor's legal guardian.[86] A complaint may be submitted orally without written support; except if it is submitted to the office of the office of the Public prosecutor, then it must be in writing.[87] All of these steps are free of charge.[88]

In principle, the Code of Criminal Procedure[89] does not contain any provision obliging judicial police officers to systematically register a complaint, so it may happen that judicial police officers refuse to register the victim's complaint. By contrast, any complaint with the office of the Public prosecutor must – as they are submitted in writing – be systematically recorded in a register with a serial number, and the victim must be informed of the follow-up given to his or her complaint.[90]

2.5 Trials involving homosexuality

According to the legal expert, the official number of trials involving accusations of homosexuality has as a novelty been made publically available by the *Ministère Public* (the office of the Public prosecutor).[91] The report published shows that in 2018, the official number of registered cases was 147. Based on these cases, the office of the Public prosecutor decided to prosecute 170 individuals under accusation of homosexuality. In 2017, the official number of prosecutions was 197.[92] By contrast, the legal expert estimated that the number of prosecutions in reality was much higher, depending on how the calculations were made.[93]

In 2016, the National Human Rights Council (CNDH) had knowledge of four to five cases involving LGBT persons which were heard by courts of first instance during 2015.[94] By contrast, the lawyer who was interviewed in 2016 listed ten cases which were taken to court in 2015 and twenty cases in 2016.[95] It has not been possible to verify the exact number of trials at courts of first instance against official statistics. According to the legal expert contacted in 2019, human rights organisations in Morocco would only have knowledge of cases that had been reported in the media. Since most of those who found themselves being

[84] Legal expert: 85
[85] Legal expert: 86
[86] Legal expert: 84
[87] Legal expert: 83
[88] Legal expert: 89
[89] Maroc, *Code de procédure pénale*, 2011, url
[90] Legal expert: 86
[91] Ministère Public, *Rapport sur l'implémentation du Code Pénal 2018*, url
[92] Legal expert: 77
[93] Legal expert: 78
[94] CNDH: 4
[95] Nouaydi: 35

accused of homosexuality would do everything they could to avoid the media attention it would only be a small fraction of existing cases that would be captured by media and by human rights organisations.[96]

In 2016, the interviewed lawyer noted that judges chose not to apply maximum sentences despite the public view on homosexuality as an abomination and in favour of maximum sentences.[97] With regard to a specific case, the researcher took note that the court decided not to uphold maximum punishment.[98]

The interviewed sources were asked to mention specific cases involving accusations based on sexual orientation or identity. The following cases which all represent highly mediatised cases were mentioned:

1. 2018, the case of Marrakesh: On 31 December 2018, a man aged 33 was detained by the police in Marrakesh after a minor traffic incident. When the police reached the car, they discovered that the driver was wearing a dress and a wig. The police took his photo and confiscated his driving license. Photos of the person taken while he was in the custody of the police as well as a photo of his ID card, also seized by the police, had been widely circulated on social media.[99]
2. 2016, the case of Guelmim: Two men were found guilty with reference to article 489 by a court of first instance. They had been arrested on 26 May 2016 after they were found by police officers in a car parked in a deserted place on the outskirts of the town of Guelmim. The Court of Guelmim sentenced the two men to six months of imprisonment.[100]
3. 2016, the Beni-Mellal case: On 15 March 2016, one man was found guilty in violating article 489 by a court of first instance in the city of Beni-Mellal. Two men had been assaulted in a private home in Beni-Mellal by four men who forced their entry and pushed them naked out into the street. In the streets they were beaten up and filmed by an angry mob; people were crying anti-homosexual utterances. The videos were later shared on Facebook and YouTube. One of the two men had been sentenced to four months of imprisonment and a fine of 500 dirhams for *'sexual acts against nature'* and for *'public drunkenness'*. Two of the attackers were also brought to trial and they were found guilty in assault and sentenced two month suspended sentences. Journalists from *Le Petit Journal* were arrested in Beni-Mellal after attempting to investigate the case in the neighbourhood where the two victims were living. These journalists were arrested after being *'denounced'* by members of the local community.[101]
4. 2015, the case of Tour Hassan: On 19 June 2015, two men were sentenced for violating article 489. The two men were assaulted on 9 March outside the Mosque at the Hassan tower, a historic building and a famous tourist site in Rabat, where they posed for a photo, standing close together. They were arrested on 5 June and presented before a judge who sentenced both of the defendants to four months of imprisonment and a fine of 500 dirhams. This trial has been linked to the widely reported and highly sensitive episode where two French women, members of the feminist

[96] Legal expert: 80
[97] Nouaydi: 34, 37
[98] Dialmy: 47
[99] Social worker: 62 ; Noyadi: 67; HuffPost, *Après la diffusion des images du "travesti", les avocats mettent en garde contre les risques encourus*, 3 janvier2019, url ; Le Monde, *Abdellah Taïa « Gay et bientôt libre au Maroc »*, 27 juillet 2019, url
[100] AMDH: 14
[101] AMDH : 14, Dialmy 47, Aswat : 28, Nouaydi : 38, Têtu, « *Les agressions homophobes sont le quotidien de la population LGBTI au Maroc » selon Aswat,* 2016, url

collective FEMEN, were arrested and deported from Morocco after having kissed, topless, in front of the same Hassan tower.[102]

5. 2014, the case of Al-Hoceima: On 30 December 2014, two men were convicted of homosexual acts (Act no 489) and 'outrage of public decency' (Act no 483) by the Court of Appeal in the city of Al-Hoceima. The two men were arrested in December and presented before a judge at a court of first instance only five days hereafter. They were found guilty based on a confession obtained while detained; a confession which they withdrew in court. The court opted to consider the confessions regardless hereof. No eyewitness was called. The Court of Appeal upheld the convictions but reduced the sentences so that one defendant was sentenced to one year of imprisonment as a combined conviction for homosexual acts and attempted bribery (Act no 251) and the other defendant was convicted to six months of imprisonment.[103]
6. 2007, the case of Ksar El Kébir: On 10 December 2007, six men were convicted of homosexual acts (Act no 489) in a trial held in the town of Ksar El Kébir. The men were arrested in November after a denunciation of a presumed 'gay party' held in a private house. Video footage of this party was shared online in Morocco and shown at court. The Court of Appeal upheld the sentences but lowered them so that one defendant was sentenced to ten months of imprisonment as a combined conviction for homosexual acts and illegal sale of alcohol, whereas three others were sentenced to six months of imprisonment and two defendants to four months of imprisonment.[104]

In one case (the case of Ksar El Kébir) the lawyer found that the defendants were in reality being convicted for being homosexuals rather than for committing any homosexual acts. Although the conviction reads that the accused were found guilty of practicing homosexuality, the lawyer emphasised that since no technical evidence of sexual acts had been presented at court (the video footage showed scenes from a private party among men), the case was not sustained.[105]

This point to the nature of the evidence which is required to prove a case raised under article 489. Two sources, the lawyer and the researcher, concurred that either four eye witnesses willing to testify that the sexual act took place or a confession by the accused would constitute formal evidence in court.[106] However, as this kind of technical evidence, which requires that someone catches individuals in the actual act, is difficult to obtain, these two sources found that many cases which were presented before a judge were based on confession by the accused. However, according to the experience of the lawyer from defending people being accused of homosexual acts, the decisive piece of evidence for judges are police reports which he found often happened to be false and produced at the police station. The detained person had often been forced to sign the police report without the presence of a lawyer. Furthermore, the police report was often not presented to the lawyer and that made it difficult to prepare a robust line of defense.

[102] AMDH: 14, Aswat: 26, Dialmy: 48 Le Monde, *Maroc: Quatre mois de prison pour deux hommes accusés de s'être embrassés en public*, 19 juin 205, url The Guardian, *Moroccan gay men to serve four months for posing close together for photograph*, 22 June 2015, url
[103] AMDH: 14, HRW, *Morocco: Two Sentenced on Homosexuality Charge*, 4 March 2015, url
[104] Nouaydi: 36-38; AI, *Morocco/ Western Sahara: Drop charges of homosexuality against six men and ensure their safety*, 16 January 2008, url
[105] Nouaydi: 36
[106] Nouaydi: 35; Dialmy: 44

Therefore, the source concluded, the risk of being sentenced to a punishment was 'real' for anyone who was brought before the judge: once in the courtroom the defendant was very likely to be found guilty based on their presumed sexual orientation.[107]

According to the observations of the interviewed lawyer, the judges tend to apply minimum sentences of imprisonment and minimum fines in spite of a public opinion and angry demonstrations calling for heavier punishments.[108]

However, two sources emphasised that the consequences of having been detained accused of homosexuality could have as many negative repercussions as the conviction itself. Even if a case never was presented before a judge, the social shame could be devastating in terms of social stigmatisation if it came to the knowledge of family and neighbours.[109]

2.6 Conditions in prisons for incarcerated LGBT persons

In Morocco, lawyers are allowed to visit their clients in prison and so are persons affiliated with the National Human Rights Council (CNDH), whereas other civil society organisations, such as the Moroccan Association of Human Rights (AMDH), are not allowed by the authorities to visit prisons.[110]

The sources concurred that LGBT persons constitute a vulnerable group in prisons (like women, minors, people with disabilities, foreigners and people who use drugs).[111] However, one source added that LGBT prisoners often face additional hardship compared to heterosexual prisoners because of their sexual orientation and that they might risk rape by other inmates.[112] LGBT persons use tactics such as concealing their sexual orientation and gender identity to avoid insults and harassment while imprisoned.[113] Because of the risk of physical abuse, LGBT prisoners might wish for an individual cell. The CNDH stated that in general, the prison management was responsive to such requests.[114]

According to a report published by CNDH, prisons in Morocco are in a state of 'crisis'.[115] Congestion rates are estimated to 200-300 % and the infrastructure as well as the operation of the prisons need to be improved to conform to international standards.[116] Another source added that the conditions for prisoners are precarious because they have limited access to basic health care; the food is served in insufficient quantities and access to recreational activities is insufficient.[117] The same source found that prison managers fail to live up to their duty to inform prisoners about existing rules and regulations so that prisoners have a chance to adapt their conduct and to know their rights and obligations[118].

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[107] Nouaydi: 35
[108] Nouaydi: 37
[109] Nouaydi: 39; Dialmy: 44
[110] CNDH : 4, AMDH : 19, Nouaydi: 41
[111] CNDH : 8, Dialmy : 50
[112] Dialmy: 50
[113] CNDH : 8
[114] CNDH: 8
[115] CNDH, *La crise des prisons: Une responsabilité partagée*, octobre 2012, url
[116] CNDH: 7
[117] Nouaydi : 41
[118] Nouaydi : 41

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Appendix A: Notes, 2016 (English version)

1. Ministry of Foreign Affairs and Cooperation

Interview with Mustapha El Bouazaoui, Consular and Social Affairs

10 October 2016, Rabat

The conversation with Mustapha El Bouazaoui began with a survey of the socio-political situation in the Moroccan society. The Director of the Department of Consular and Social Affairs gave a statement about the three issues submitted by the Danish Mission in the following order: the situation of unaccompanied minors, the situation of LGBT persons and double punishment. He emphasised the need for subsequent consulting the ministries and associations specializing in each field in order to provide further information.

The situation for homosexuals

1. As far as sexual orientation is concerned, the Moroccan Government recognises that homosexuality is a modern phenomenon that exists in every society across the world. In Morocco, Article 489 of the Penal Code states, 'any person who commits lewd acts or acts against the nature together with an individual of the same sex is liable to a penalty of imprisonment ranging from six months to three years and a fine ranging from 200 to 1,000 Moroccan dirhams unless the circumstances of the offence do not constitute an aggravating factor'. At present, the Government does not have sufficient data regarding the extent of this phenomenon in Morocco. The Government has stated that there are a number of organisations promoting the rights of LGBT persons in Morocco and that a number of media agencies contribute to the debate on homosexual issues. The Government cooperates in particular with the National Human Rights Council (*Conseil national des droits de l'Homme* - CNDH) in order to promote human rights and a citizenship culture, including persons of homosexual and lesbian orientation.

2. It is important for the Moroccan Government to avoid any provocation of the public view, which is currently rather conservative as far as social values and conduct are concerned. The issue of homosexuality must necessarily be analysed from several perspectives: on one hand, the necessity to maintain a balance and to protect public order and on the other hand, to respect human rights. At present, Moroccan politicians are confronted with the necessity to adapt the religious factor to existing international human rights conventions.

2. National Council of Human Rights (Conseil national des droits de l'Homme - CNDH)

Interview with Abderrafie Hamdi, Director, Khalid Hanefioui, Project Manager, Abdelhak Eddouk, Programme Manager, Aminata Pagni, Programme Manager, Ayoub El Karoubi, Programme Manager

Rabat, 17 October 2016

*The National Council of Human Rights (*Conseil national des droits de l'Homme - *CNDH) is a national institution mandated to monitor the human rights situation on a national and regional level in Morocco. The National Council of Human Rights consists of regional commissions and monitors, together with the relevant authorities, the protection of human rights in Morocco.*

3. According to the Council, the issue of homosexuality and transsexuality must be seen in the context of individual liberty and must be examined with a point of departure in today's context of profound socio-political changes and the current change of value systems. According to the delegation from the Council, the current opposition to LGBT persons and their human rights is primarily driven by a fraction of the population, those who are vividly engaged in the defence of traditional values. It is neither the courts or tribunals nor the Government that are driving this opposition. In contemporary society, LGBT people constitute a vulnerable group. LGBT people keep a low profile and resort to self-censorship to avoid problems.

4. To the best knowledge of the Council, there have been four or five cases where a person has been brought to court accused of a homosexual criminal offence in 2015. The Council followed the development of those cases. The Council has visited the families of persons who had been accused of a homosexual offence as well as the persons under accusation at the facility where they were being detained.

Protection by the authorities

5. According to the Council, a LGBT person who fears for his or her security can request for and obtain police protection. If the person in question is experiencing abuse at a police station, it is rather due to the lack of discipline and respect for the law on the part of the individual police officer than a direct consequence of the person's sexual orientation. According to the representatives of the Council, a homosexual individual who fears for his or her life is more likely to be actively protected against harassment and violence by the police than by people in the streets.

Situation for LGBT persons in detention

6. The Council has been able to carry out visits in prisons in Morocco. The Council has established a working group whose assignment is to monitor the situation in prison facilities in Morocco. This

group has elaborated a consulting report about the conditions for detainees in prison which was published in 2012.[119]

7. The representatives of the Council emphasised that the normative framework, policies and regulations as far as the physical facilities and space within prisons are concerned should be developed furthermore to be brought into compliance with international standards. For the time being, prison congestion is estimated to vary from 200 to 300 percent. To address the capacity problems of prison facilities, 10 new prisons are now under construction and planned to open in 2016.

8. In prisons, in Morocco as well as elsewhere, power struggles influence every social relation between the prisoners. According to the observations made by the representatives of the Council's, LGBT prisoners seek to conceal their sexual orientation in order to avoid harassment. At present, it is difficult to assess the exact number of prisoners having committed an offence of section 489 of the Penal Code. This is also the case with the number of prisoners of LGBT orientation. LGBT persons are a vulnerable group in the prisons (just like women, children, people living with disabilities persons, foreigners, people who use drugs and prisoners suffering from chronic diseases). During his visits in the prisons, a representative of the Council have been discreetly approached by prisoners and asked about an individual cell. The wish for individual cells is frequently justified by the fear of being victims of sexual harassment. In the experience of this Council representative, prison managers are responsive to such requests.

9. The Council has received more than 1,200 complaints either from prisoners or from their families over the past years. The complaints are, among other things, about the treatment of the prisoners, however, none of the complaints have referred to homosexuality.

[119] CNDH, *La crise des prisons: Une responsabilité partagée*, october 2012, url

3. Moroccan Association of Human Rights (Association Marocaine de Droits Humains - AMDH)

Interview with Khadija Ainani, Vice President and Said Tbel, member of the central board

12 October 2016, Rabat

The Moroccan Association for Human Rights (Association Marocaine de Droits Humain - AMDH) is a non-governmental organisation making efforts to raise awareness on the topic of human rights and to draw attention to any violation of those rights in Moroccan society. AMDH has a national network of 10 regional sections divided into 97 local sections. AMDH is associated with the United Nations Economic and Social Council (ECOSOC). AMDH is publishing reports on the status of human rights in Morocco on a regular basis.

The human rights situation of LGBT persons in Morocco

10. The AMDH stated that the current situation is characterised by a stigmatising and conservative politico-religious discourse attempting to discredit LGBT persons. Although the Government on the one hand tolerates the existence of a homosexual community, on the other hand, it offers quasi-impunity to persons and groups who have been harassing homosexuals or even lynching homosexuals, in the public space. This tolerance towards harassment in the streets actually increases the risk of being exposed to violence for persons who are perceived to be of LGBT orientation. In addition to this, they often face intimidation within the family where homosexuality is only rarely tolerated. The only safe public space in the Moroccan society is the university milieu where intellectuals are known for being rather tolerant.

11. According to observations made by the AMDH, the current situation for LGBT persons in Morocco is characterised by a strategy of self-censorship in which homosexuals seek to avoid any attention. It is necessary to downplay one's homosexual identity in the public space as well as within the family. Aggressions may be caused by if a person dresses that is considered to incompatible with prevailing norms, due to the fact that two persons of the same sex live together or simply being seen in a situation with a person of the same sex.

12. As a consequence of such self-censorship, LGBT persons are reluctant to approach existing health care services when they suspect to suffer from a sexual health related problem out of fear of being exposed to prejudices by the health workers when they discover their LGBT identity. According to AMDH, this reluctance has a negative impact on the effective access to HIV/AIDS prevention services, as there are no medical services targeting LGBT persons. Stigmatisation is also a common practice within in the health sector.

13. The two AMDH representatives stated that AMDH, being an organisation for the defense of human rights, including individual rights, makes efforts to abolish Article 489 of the Penal Code, which criminalises same-sex relations. Moreover, AMDH notes that it is not only Article 489 which

constitutes an infringement of individual liberties, but also Articles 490 and 491 (addressing sexual relations both related to adultery as well as between unmarried persons) of the same Penal Code with also criminalises sexual relations between consenting heterosexual adults.

Violence against LGBT persons

14. The AMDH representatives emphasised that the AMDH is thoroughly monitoring the situation of violence against LGBT persons. According to their sources, several cases concerning violation of Article 489 have been on trial, which resulted in convictions:

- In July 2015, a man was assaulted in Fes where by a crowd who pointed him out as being homosexual. The man, who was naked, was violently attacked, and later video footage of the attempted lynching was shared on social media.[120]

- On 9 March 2016, two men were attacked by the crowd in Beni-Mellal[121]. Four young men forced their way into their apartment and dragged them outside to a public street. They were physically assaulted by a mob and were filmed naked and bleeding. On 15 March 2016, one of the two men had been sentenced to 4 months of imprisonment by a court of first instance for *'sexual acts against nature'(*a synonym for *'homosexuality'* in Morocco) whereas the other man was awaiting trial. On 11 April 2016, after having spent 26 days behind bars, the two men who had been subject to the public assault and filmed were sentenced by the court of appeal to 4 months of imprisonment on probation. Journalists from *Le Petit Journal* were arrested in Beni-Mellal after attempting to investigate the case in the neighbourhood where the two victims were living. These journalists were arrested after being *'denounced'* by members of the local community.

- On 13 December 2014, two men were arrested, charged with sodomy and then, after a very short trial, found guilty of this offence by the City Court of Al-Hoceima. The trial took place only five days after they had been arrested. They were found guilty on the basis of their own *'confession'* which according to the police occurred while they were held in detention. However, when brought before the judge, they withdrew their confession. The court failed to call for any witnesses to testify. On 30 December 2014, the appeals court maintained the sentence under the existing legislation of an *'indecent act or an act against nature with an individual of the same sex'* (Article 489 of the Penal Code)[122] and of an *'outrage of public decency'* (Article 483). However, instead of three years of imprisonment and a fine, the court now sentenced one of the two men to six months of imprisonment whereas the other man's

[120] Libération, *Agression homophobe au Maroc: quatre mois ferme pour la victime,* 29 mars 2016, url
[121] Têtu (website associated with the French gay magazine 'Têtu'): *Les agressions homophobes sont le quotidien de la population LGBTI au Maroc selon Aswat,* 8 avril 2016, url
[122] Maroc, Code Pénal: Dahir [Decree] no. 1-59-413 (28 joumada II 1382) containing the approval of the text of the Penal Code (Bulletin Officiel, 5 June 1963), url

penalty was one year of imprisonment as he was also found guilty in attempted corruption (Article 251).

- On 26 May 2016, a homosexual couple in a car parked in a deserted place on the outskirts of the town of Guelmim were arrested by gendarmes and taken into custody. The prosecutor decided that they should remain in custody while waiting for their trial to take place at the City Court of Guelmim. The court of first instance sentenced the two men to six months of imprisonment.

- In its annual report for 2015[123] AMDH refers to a case which was known by the media where two men were arrested in front of the '*Tour Hassan II*' in Rabat accused of homosexuality. The two men were found guilty and sentenced to four months of imprisonment and a fine of 500 Moroccan dirhams. The court also decided that the two men should pay for the costs of the trial.

15. AMDH finds that the Government shows a certain level of tolerance towards persons assaulting homosexuals. As an example of this relative impunity that the Government, according to AMDH, ensures the perpetrators of such assaults, the interlocutors mentioned that one of the victims of the violent abuse in Béni Mellal was sentenced to four months of imprisonment for *'sexual acts against nature with relapse into crime and drunkenness'.* On the other hand, the identified perpetrators were sentenced on the same day and got a suspended two-month prison sentence. According to AMDH, there have been 'many' new cases against presumed homosexuals in 2015 followed by 'several' convictions and imprisonments in 2016.

16. In general, AMDH notes that homosexual men more frequently become victims of assaults in the public space than lesbians do.

Possible authority protection

17. According to AMDH's analysis, it is not possible for LGBT persons to ask for and obtain efficient protection from the police, neither when an LGBT person fears for his or her security nor when a person has already been a victim of unfair treatment either at home or in the public space, due to Article 489 of the Penal Code which criminalises homosexuality.

18. In addition to this, lawyers defending the accused in cases regarding the violation of Article 489 are liable to verbal abuses.

Situation for imprisoned LGBT persons

19. The AMDH representatives note that currently, AMDH does not have the right to visit prisons, for which reasons the organisation is not in a position to see imprisoned LGBT persons.

[123] Published in Arabic and entitled *Status of human rights in Morocco in 2015*, April 2016.

4. The Aswat group (Le Collectif Aswat)

Interview with a member

12 October 2016, Rabat

Aswat ('Voices' in Arabic) *is an independent non-profit organisation fighting for gender and sexuality issues and against any discrimination based on sexual orientation, identity and gender.*

20. The conversation with a female member of the Aswat group began with an outline of the history of this group of activists. Aswat's activities began in April 2012 with the launching of the online 'Aswat Magazine'. The magasine deals with issues regarding sexual health, contemporary culture and issues specifically linked to gays, lesbians, bisexuals, transgender, transsexuals, intersexuals and queers (LGBTIQ) through, for example, testimonies and life stories. In December 2013, the action became more concrete and lead to the creation of an organisation fighting for the rights of LGBTIQ persons in Morocco. According to the interlocutor, Aswat has chosen not to attempt to become registered as a legal association in order to avoid being visible to the authorities and the public since public exposure may lead to social stigmatisation for homosexual activists. Hence, the organisational status of Aswat is that of an informal organisation without official offices at its disposal. In order to protect the anonymity of the activists, the members of the organisation prefer to meet, either in the virtual space on the internet or in secure surroundings.

21. The approach of Aswat is to work in favour of a reform of the law criminalizing homosexual activities and against practices that tolerate assaults committed by other persons against homosexuals and transpersons. This is done in relation to cases of arrest or violence through communication and social mobilisation campaigns either through social media or classic media channels.

The rights of LGBT persons in Morocco

22. Article 489 of the Penal Code prohibits *'all* lewd or unnatural acts with an individual of the same sex' and stipulates that the penalty may range from six months to three years of imprisonment with a fine ranging from 200 to 1,000 dirhams. According to the Aswat member, individuals who are associated with the LGBT community are exposed to physical violence or psychological harassment. A person may be judged by his or her physical appearance based on stereotypical norms (the way a person dresses and walks in the street, etc.) or by the choices of the way a person lives his or her private life (being surprised in an emotional or sexual act).

23. The Aswat member distinguished between three groups constituting the LGBT community in Morocco: First, people who are wealthy and thereby benefit from a certain financial independence or who have power that *de facto* protect them against homophobic aggression and contempt or, at least, they benefit by protection in case they are arrested by the police. Secondly, people from the middle class and the working class attempting to conceal their sexual orientation and who are

victims of contempt and aggression enacted by individuals or groups. Within the middle class, those who express their gender identity the most are also those who are the most exposed to violence. The interlocutor emphasized that persons with a 'homo' identity who belong to the two last groups run the risk of limited access to employment, housing and sexual health services whereas persons belonging to the first group are protected by their elitist status.

24. Most people who are engaged in LGBT issues belong to the middle or the working class and are aware of the risk that they might run due to their activities. They hide their personal identity as anonymity constitutes a survival strategy in an environment which is hostile to anyone who transgresses gender and sexuality taboos.

The rights of LGBT persons by subgroup

25. All homosexual acts are criminalised in Morocco, but not all LGBTIQ subgroups are perceived in the same way by society. According to the Aswat member, the most stigmatised groups are people who express a gender identity which is not aligned with prevailing heterosexual norms and transpersons. The interlocutor emphasised that violence against persons based on stereotyped appearances differ: lesbian females and male transpersons are frequently subject to domestic structural violence as well as are women or persons who are considered women. This type of violence ranges from confinement at home to forced marriage. Homosexual men who are considered effeminate or male to female transpersons are more frequently exposed to humiliation and physical violence and even expulsion from the family home.

Violence against LGBT persons

26. According to Aswat, LGBTIQ individuals run the risk of being subject to homophobic assaults in the public space or within the family. As an example, the interlocutor referred to an assault which occurred on 9 March 2015 in Rabat against two men who were accused of kissing each other in public (the so-called 'Tour Hasssan' case called so after the mosque in front of which where they had kissed each other or the 'Lachen and Mohsine' case after the two involved men).[124] The two men were sentenced on 19 June 2015 to 4 months of imprisonment and a 500 dirhams fine under article 489 of the Penal Code. This was seen as an act of revenge by the authorities in response to an action carried out by two French women, members of the activist group FEMEN that stripped to the waist in front of the same mosque and kissed each other. They were subsequently expelled by the Moroccan authorities because of 'an unacceptable outrage against the entire Moroccan society'.[125] Lahcen and Mohen were used as scapegoats for this.

[124] Le Monde, *Maroc: Quatre mois de prison pour deux hommes accusés de s'être embrassés en public*, 19 juin 3015, url
[125] Le Monde, *Deux militantes Femen arrêtées puis expulsées du Maroc*, 2 juin 2015, url

27. According to Aswat, this violence against LGBTIQ persons is an everyday occurrence and it serves as an example of the impunity that the authorities frequently grant the assaulters.

28. Another example of violence against LGBTIQ persons referred to by the interlocutor is the so-called 'Beni Mellal case' named so after the town where the incident took place.[126] What happened was that a group of men entered an apartment where there were two men: before the police was able to intervene the group insulted and beat up both of them; the group of men threw them outside naked and filmed the incident. Subsequently, the assaulters were sentenced to two months of imprisonment for the breach of public order whereas the victims were sentenced to four months of imprisonment. As evidence in support of the general homophobic approach in society, the member of Aswat referred to the fact that the population of Beni Mellal demonstrated in the streets in order to have the assaulters released and the victims convicted. Moreover, conservative 'moral associations' had approached the families of the victims in Beni Mellal in order to show them their contempt. That was also the case close to Lahcen and Mohcine's place of residence where a group organized a homophobic demonstration and benefitted from impunity as in both towns the authorities did not arrest the demonstrators who were promoting hate against homosexuals.

29. In the families, LGBTIQ persons are frequently exposed to harassment. As an example, the interlocutor stated that they are sometimes confined at home. Many LGBTIQ persons who are financially dependent on their family are not given pocket money. If they obtain an economic autonomy, they are capable of detaching from the family. However, this is not always the case as there is often a certain alienation within the family which prevents the persons in question from detaching him or herself from the family.

Possible protection by the authorities

30. According to the member of the Aswat group, it is almost impossible to obtain protection with the authorities because of the law that criminalises homosexuality. As an example of the limited access to justice, the interlocutor mentioned the case of a transperson who had been repeatedly exposed to violence and wanted to report it to the local police. The member of Aswat had accompanied the person in an anonymous manner. Once she entered the police station, the interlocutor realized that the police officer was mocking the transperson who had reported the physical abuse. He was answering in a vulgar manner; he began to ask questions in order to make the victim admit her homosexuality which would make her become a victim of prosecution due to charges for homosexuality. The police did not proceed with her complaint under the pretext that the investigation procedure was complicated. The interlocutor found that although for formal reasons the police cannot reject a complaint that is submitted to them, they can still effectively drag on the case until the person will be tired of endless and fruitless administrative wrangling.

[126] Tetu, *Les agressions homophobes sont le quotidien de la population LGBTI au Maroc selon Aswat,* 8 avril 2016, url

Social organisation of the LGBT community

31. According to our interlocutor, the LGBT 'scene' in Morocco is organising itself discreetly in order to protect the physical security of its members. For example, people control the way they are walking in the streets, they are careful with how they dress and they avoid showing emotional gestures in public in order not to attract other people's attention. LGBT persons prefer to meet in private homes or in certain cafés that are known to tolerate the presence of homosexuals. There are no cafés or restaurants in Rabat with an open 'gay' identity.

32. Due to the lack of a secure public space for homo and transpersons, the internet is perceived as a space of freedom. As an example of such a secure space, the interlocutor referred to apps, such as *Grindr,* which is used to organize meetings between homosexuals or the *Akaliyat* magazine ('Minority') which is currently in the process of being transformed into an association that cooperates with Aswat in order to reveal cases of violence due to homosexuality.

5. Abdelaziz Nouaydi, lawyer

Interview with Abdelaziz Nouaydi

17 October 2016, Rabat

Abdelaziz Nouaydi is a lawyer and a university teacher based in Rabat. From 1998 to 2002, he served as an adviser for the then Prime Minister Abderrahmane Youssofi in the field of human rights and social dialogue (trade unions and NGOs) and he is an expert in the field of human rights worldwide and founder of the non-governmental association Adala ('Justice'). *He has served as a defence lawyer for instance in cases where persons were accused of homosexuality.*

Current situation of LGBT persons in Morocco

33. According to the analysis carried out by Nouaydi, the current situation of LGBT persons in Morocco must be understood in relation to the legal context, which determines their space of freedom in the public and private spheres. The Moroccan Penal Code contains three articles dealing directly with sexuality, i.e. section 489 which criminalises sexual relations between two same sex persons; section 490 which criminalises sexual relations between two persons who are not married; and section 491 which criminalises adultery. These articles are criticised by human rights defenders in Morocco and elsewhere (for example Human Rights Watch and Amnesty International) Nouaydi emphasised that the existence of legal provisions banning sexual relations between consenting adults is in conflict with the right to a private life, a right which is stipulated in article 24 of the Moroccan Constitution of 2011. Moreover, Nouaydi referred to the case of Lawrence v. Texas from 2003 in which the US Federal Supreme Court found that the right to a private life takes precedence over the existing anti-sodomy law.

34. Nevertheless, for the time being there is no political willingness to harmonise the procedures of the Penal Code with the Constitution. According to Nouaydi's analysis, this reluctance on the part of the political authorities is explained by a fear of provoking the part of the Moroccan population which is fiercely against homosexuality. Nouaydi estimated that Moroccan society is divided into two tendencies: one part of the population which is rather neutral as to the issue of homosexuality and another part which in the light of a conservative interpretation of Islam finds that homosexuality is an abomination. Apart from those two tendencies, there is an intellectual elite sharing rather liberal values, but which has no major influence. The political class which navigates between those two tendencies is more interested in maintaining an equilibrium in society than in engaging in a reform of the Penal Code which might lead to the repeal of articles 489 and 490 and thus run the risk of challenging the ideological and religious foundation of the Kingdom of Morocco (the King is 'Amir Almouminine', i.e. the Commander of the Faithful) and of the PJD (the ruling party).

The Moroccan legal system and LGBT persons

35. According to Nouaydi's estimates, there have been between 10 and 20 cases of homosexuality charges, which have been brought before Moroccan courts of justice in 2015 and 2016. Nouaydi emphasized that he is not in possession of any statistical data describing the extent of these cases. When describing in general terms the risk faced by persons on trial before the judge due to charges with an offence of article 489, Nouaydi characterised the risk as 'real' because once on trial, the accused is very likely to be sentenced even in the absence of formal evidence or eyewitnesses to the sexual act. This is due to the fact that police reports issued at the police stations are frequently false; the accused may for example be forced to sign the reports under pressure without their lawyer being present. As it is often the police reports that constitute the decisive element during the trial and as the judge attaches a major importance to them, it is difficult for the accused to build up an effective defence. If the police report is submitted to the judge, the accused is likely to be convicted.

36. As an example of the cases which were taken to court without the existence of any *flagrante delicto* evidence, he mentioned the case of Ksar El Kébir in which he was a part of the defence of some of the men who were accused of homosexuality. The incident had taken place in November 2007 in Ksar El Kébir where a group of men participated in an evening party in a private house. Based on an amateur video which was shared on the internet, six men were subsequently accused of a violation of article 489. They were sentenced by the City Court of Ksar El Kébir to imprisonment in spite of the lack of evidence of sexual acts. The penalties for homosexuality ranged from 4 to 6 months of imprisonment. Nouaydi emphasized that the accused were actually sentenced for the mere fact that they are homosexual, although it is only the homosexual act that is criminalised by the Penal Code.

37. Nouaydi emphasised that currently the judges choose to apply minimum sentences of imprisonment and frequently apply minimum fines in spite of an audience sometimes being aggressive.

38. The Penal Code contains penalties ranging from 6 months to 3 years of imprisonment with fines ranging from 200 to 1,000 dirhams. However, in the case of Béni Mellal, which took place in March 2016, the judge sentenced the accused to 4 months of imprisonment, i.e. less than the minimum penalty stipulated by the Penal Code. As far as Nouaydi knew, the maximum penalty passed in the case of homosexuality in Ksar Lakbir against one individual was 10 months of imprisonment, but it happened on the basis of a supplementary offence, namely illegal sale of alcohol, which was added to the penalty for homosexuality.

39. However, Nouaydi stated that the consequences for an individual who has been brought before a judge and who has been detained are considerable as the shame is immense if the detention comes to the knowledge of family and the people in the community. The consequences may involve difficulties in finding a job (because a clean criminal record is required to be employable),

the risk of being expelled from the family home if the person in question is young and dependent on the family, etc.

Possible protection by the authorities

40. According to Nouaydi, homosexuals prefer to face homophobic assaults rather than to show up at a police station and ask for protection where they might risk being arrested for homosexuality. This considerably limits their access to justice, also in cases regarding domestic violence, unfair dismissal, etc.

Situation for detained LGBT persons

41. In general, the detainment conditions in prison are precarious (the prisons suffer from overcrowding, insufficient amounts of food, limited access to medical care, poor leisure activities). As a lawyer Nouaydi has been allowed to enter prisons, and he found that the prison governors fail systematically to live up to their duty to inform each prisoner about internal regulations so that the detainee is aware of his or her rights and obligations.

6. Abdessamad Dialmy, Professor

Interview with Abdessamad Dialmy

Rabat 13 October 2016

Professor Abdessamad Dialmy is an independent researcher who for the past 30 years has published more than 40 academic books and articles within the field of gender, sexuality and Islam in Morocco. In addition to his work as professor with universities in Morocco and France, he is also an active blogger with his own blog on gender, sexual and reproductive health in a post-colonial context.

Legal situation of LGBT persons in contemporary Morocco

42. According to Professor Dialmy, people who self-identify as homo- or transsexuals face a difficult and often precarious situation in contemporary Morocco. Article 489 of the Penal Code states that same-sex practices constitute a '*unnatural act*' and the professor advised that violations of this article could be punished with anywhere from a term of six months to three years of imprisonment as well as a fine of 200 to 1,000 dirhams. Professor Dialmy noted that the effects of article 489 must be seen in connection with the articles 490 and 491 which prohibit sexual relations between individuals who are either not married (sex before marriage) or not married to each other (sex outside of marriage). According to Professor Dialmy, combined these articles articulate a wish by the Moroccan state to control the sexuality of its citizens (especially the poor) through the means of power available to the authorities (in the name of sexual Islamic morals).

43. Asked about the consequences of the way the procedures of the Moroccan Code Penal are structured, Professor Dialmy pointed out that the structure of the code arguably makes it a citizen duty to report any suspected cases of homosexuality (and any other offense or crime) despite the fact that article 24 under the 2011 Constitution guarantees citizens a right to a private life. Referring to his own engagement, Professor Dialmy narrated how he in 2007, publicly had called for the abrogation of the articles in the Code Penal which seeks to regulate sexuality in a patriarchal way, a statement which led to threats against his person. For the same reasons, he left the country at 2003-2004 for one year (as a visiting Professor at Rennes 2 university in France) after which he returned to take up his academic work in Rabat again.

44. Asked what constitutes evidence in a case of alleged homosexuality, Professor Dialmy explained that proof of homosexuality or same-sex practices requires either a confession by the person under accusation or a statement by the police. The statement by four witnesses who are willing to testify that they had directly observed an explicit homosexual act refers to the Divine Law (*Shari'a*). It is practically impossible to obtain this sort of evidence. So it is not maintained as evidence by the Moroccan Penal Code. Professor Dialmy added that the fact of being arrested and/or subsequently taken to court can in itself have negative repercussions on the person even if the charges are not sustained. These repercussions include, but are not restricted to, intense social stigmatisation, loss of job, loss of housing and targeted assaults.

45. According to Professor Dialmy, article 489 under the Penal Code does not only specifically prohibit any act of homosexuality in Morocco, and tactically also any form of collective and organized action in favour of LGBT rights, but it also effectively offers a platform for public denunciation and different forms of violence against persons identified as belonging to the group of LGBT. As a consequence, LGBT individuals including, their organisations, have a rather restrained room of maneuver in the public sphere.

Possible protection by authorities

46. Asked about to which extent a homosexual or transsexual individual can ask for protection by the authorities, Professor Dialmy noted that any individual who self-identifies as an LGBT person would, knowing that same-sex practice is prohibited, be reluctant to show up at a local police. This will be very compromising for him because his arguments will be recognition of his homosexuality. His recognition/complaint will be exploited against him; it is evident that the police officers could legally use to arrest him as homosexual. Consequently, he will not seek the protection of the police. However, Professor Dialmy noted that the authorities' concern with upholding public order means that the police forces would effectively protect individuals who are being attacked by a mob in the public sphere.

47. As an example Professor Dialmy referred to the events in Beni Mellal which took place on March 9, 2015. Here, two men, who were suspected of being in a same-sex relationship, were pulled out of their private home and then humiliated and subject to mob violence. The police force intervened and effectively took control of the situation and protected the two men from what would likely have ended up in a lynching. The events are documented in an amateur video which has been circulated on the social media. Professor Dialmy noted that the police arrested both perpetrators and victims. He also noted the asymmetry in the convictions in that the court sentenced one of the victims to four months of imprisonment with a fine of 500 dirhams for public drunkenness and 'sexual deviancy' and two of the perpetrators to a two-month suspended sentence. In relation to the prison terms for the victim, Professor Dialmy took note of the fact that the court decided not to uphold the maximum punishment within article 489 of the procedures of the Penal Code.

48. He also referred to the case of Fes in which a presumed homosexual individual was subject to gay-bashing by a crowd of young men in the streets. This event took place in July 2015 and was documented on a video shared on the social media.[127] In this case, the police also intervened to stop the mob violence and thereby presumably saved the life of the person under attack.

49. Professor Dialmy explained that the authorities react in multiple ways to homosexual citizens in Morocco. On the one hand, the authorities tolerate the existence of a homosexual and transsexual community, a community that uses websites and apps to organise social interaction, thus allowing it some space. On the other hand, the authorities engage in a strict conservative discourse which

[127] The New Arab, *Morocco mob beat 'gay' man on Fes street*, 1 July 2015, url

condemns any attempts to take issue with moral and religious values underpinning the Moroccan society.

Violence against LGBT persons in contemporary Morocco

50. Professor Dialmy noted that to his best knowledge, there has been conducted no studies on the nature and prevalence of violence against LGBT persons in Morocco. He distinguished between three forms of violence which infuse the situation of LGBT persons in contemporary Morocco. First, institutional violence as expressed in in the Penal Code and its desire to regulate human sexuality by legal means. Secondly, social violence in the forms of perceived and enacted stigmatization of non-heterosexual citizens and finally as physical violence. Asked about examples of physical violence, Professor Dialmy mentioned the risk of rape in prison by other inmates as well the case of Beni Mellal and the case of Fes. Asked about examples of social violence he referred to a recent case that he had knowledge of which took place in June 2016, in which a young man who had been accused of homosexuality by his sister-in-law. Subsequently he was forced by his father-in-law to divorce his wife. The case also ad societal repercussions as he was fired from his job and he finally left the country.

Origins of discrimination against LGBT persons

51. The Moroccan Penal Code is partly inspired by anti-sodomy laws formulated by the French colonial authorities. However, the historical background for the discrimination against same-sex practices is rooted in the religious and moral fabric of the Moroccan society. Professor Dialmy noted that the Sharia law arguably condemns homosexuality harder than the secular Penal Code, but that there are no pronouncements on fixed punishment in the Koran. According to a saying of the Prophet Mohammed, homosexuality is a sin which is punishable by death. However, Professor Dialmy underlined that Islamic scholars maintain death for the married homosexual but sentenced only flogging for the single homosexual. According to Professor Dialmy, Muslim Societies are particularly concerned with upholding the prohibition against the male body being penetrated and are therefore more tolerant towards men who play the active role in a same-sex act compared to the male person being the recipient partner in a same-sex act. This contributes to explaining why the discrimination in the public sphere, according to Professor Dialmy, is much more severe towards gay men being perceived as feminine and transsexuals male-to-female.

52. Professor Dialmy underlined that the sexual culture is not static in Morocco. He noted that it had changed from being characterized by a strict religious discourse, combined with sexual practices strongly influenced by conservative values, to one where conservative Islamic values still permeate the official discourse on sexuality but where sexual practices are increasingly being influenced by secular values. The third stage which is coming is the secularization of both sexual norms and practices. These three stages constitute the theory of « sexual transition » that Professor Dialmy built since 2012.

Organisation of an LGBT community

53. Professor Dialmy mentioned the former organisation Kif Kif where the Moroccan LGBT people could meet and organise themselves; however, Kik Kif, which was based in Spain, no longer exists. A different example is 'Aswat', a group of people involved in LGBT issues and LGBT rights. Most of Aswat's activities are organized around internet-based platforms and takes place in the virtual space, but Aswat also organises collective actions in the public sphere such as protests in favor of the LGBT rights in front of the parliament at Rabat. In fact, those actions are not organised in the name and by Aswat itself. Since Aswat is not a legal NGO, it cannot be authorised to organise public actions. So some Aswat members participate as individuals in demonstrations organised by feminist or human rights NGOs. Because these demonstrations are legal and authorised, police forces do not intervene and do not repress them. So Moroccan LGBT individuals exploit these demonstrations to be in the public space as militants and to express themselves through some politically correct slogans like 'Love is not a crime'.

Notes: 2019 (English version)

7. Social worker

E-mail interview with a social worker in Morocco

24 May 2019

Situation of lesbians, gays, bisexuals or transgender (LGBT) persons in Morocco

54. Overall, the interlocutor noted that the situation of LGBT persons in Morocco has remained the same compared to the situation in 2016 insofar as Article 489 of the Penal Code is still applied. In 2019, there is no group that documents arrests of LGBT persons. This is due to the crackdowns on activists who were undertaking this kind of documentation and this has weakened the energy of these people. As the result, the extent of violence against LGBT persons has become more invisible.
55. Today, a number of civil society organisation (CSO) initiatives are emerging, including a certain willingness among these groups to integrate gender and sexuality issues into their agenda. These groups communicate about LGBT issues and show less fear of being arrested. These initiatives are not subject to significant pressure since they are not perceived to question existing repression of LGBT-persons by the authorities (such as artistic workshops involving queers).
56. The Civil Council against All Forms of Discrimination[128] was set up by a number of civil society organisations, including the Aswat collective. This council drafted an overview of discrimination which was published in May 2018 with a significant section on LGBT discrimination.
57. The interlocutor explained that in general, there is still no change of mentality compared to 2016: Today, large cities offer some level of anonymity and offers a heterogeneous landscape that contributes to protecting LGBT persons. However, those persons with an open and visible gender expression still experience abuse (such as harassment, physical aggression and verbal abuse). On the other hand, in medium-sized or small towns and in rural areas, the risk of violence is higher than in the large cities.

The law

58. The interlocutor confirmed that Article 489 of the Moroccan Code of Criminal Procedure of 1962 is still in force. Likewise, the interlocutor confirmed that the act of homosexuality is still punishable by 6 months to 3 years imprisonment and a fine of 200 to 1000 dirhams.

Application of the law

59. Regarding the number of cases of indictment for homosexual offenses (Article 489) that has been brought to the tribunals in Moroccan Courts since 2016, the interlocutor did not have access to

[128] Conseil civil de lutte contre toutes les formes de discrimination, *Etat des lieux des discriminations au Maroc*, 2018, url

relevant accurate information because such statistical data are not made directly accessible to the public. Likewise, the interlocutor did not know which penalties had been applied in cases of verdicts of homosexuality since 2016.

Treatment by the authorities of LGBT persons

60. According to the social worker, the Moroccan authorities have not changed their attitude towards LGBT persons since 2016. LGBT persons, who are assaulted and who fear being a victim of a crime, do not seek help through the legal system. This is due to the fact that there is a dual procedure which implies that if a person is guilty of a crime, even if she is a victim herself, that person is also indicted.
61. According to the interlocutor's knowledge, there are no protection centers which are open to LGBT persons. There is one association, UFL (*L'Union Féministe Libre*), which at the time of its establishment had advised that there was a legal service for LGBT persons but the social worker's milieu have not had any information about the activities of this service for the past two years
62. The social worker was aware of the 'Marrakech case' in which a young man was subject to a humiliating experience on December 31, 2018. The social worker did not know more about the progress of the investigation.
63. From 2014 to 2016 it was the Aswat collective which was the only organisation in Morocco that compiled legal documentation of cases of arrest or violence against LGBT persons. Today the *Akaliyate* association communicates the cases of arrests and mob justice (lynching) against LGBT persons; cases which have been circulated in the media. However, the interlocutor opined that there seems to be no energy left among the activists to carry on with continuous and thorough documentation efforts. This contributes to make, the extent of the violence invisible.

8. Abdelaziz Nouaydi, lawyer

Telephone interview with Abdelaziz Nouaydi

9 May, 2019

*Abdelaziz Nouaydi is Professor of Law and Political Science and a lawyer at the Bar of Rabat. Former adviser to the Prime Minister (Abderrahmane Youssofi 1998-2002) in the fields of Human Rights and social dialogue (trade unions and NGOs), Abdelaziz Nouaydi is a specialist in human rights and founder of the non-governmental association Adala (*Justice*). It is coupled with the Association called "L'Union Féministe libre", an association for women victims of violence based on gender and sexuality*[129]*. He served as a defense lawyer, among other cases, in cases where people were accused of homosexuality.*

Legal framework

64. According to Mr. Nouaydi, article 489 of the Moroccan Penal Code of 1962 is still in force.
65. The act of homosexuality remains punishable by 6 months to 3 years of imprisonment and a fine of 200 to 1000 dirhams.

Application of the law

66. According to the interlocutor, the current tendency among judges is one of more tolerance towards LGBT persons in Morocco. By contrast, the population is increasingly less tolerant towards LGBT persons.
67. Mr. Nouaydi described a case of violence against an LGBT person; this case has become known in the media as 'the Marrakech case'[130]. It is about a young man aged 33 years who according to the press experienced a humiliating situation on the evening of December 31, 2018. He was in his car, dressed as a woman, on New Year's Eve when he was arrested by the police. The police took him out of the car and took his picture and seized his driver's license. Then the photos taken by the police and the young man's personal data circulated on social media. Mr. Nouaydi has followed the case from a distance. According to his knowledge the case remained at the office of the Public prosecutor.
68. The interlocutor was not aware of the exact number of cases involving article 489 of the Penal Code.

The situation of the atheists and persons who convert to Islam

69. In general, Mr. Nouaydi noted that the protection of religious minorities is not high in contemporary Moroccan society. Endowed with a state religion, the Muslim faith is predominant in

[129] L'Union Feminste Libre, http://unionfemlibre.org/
[130] France Soir, *Au Maroc, s'habiller en femme peut faire basculer la vie d'un homme*, 25 janvier 2019, url

Morocco and the state is hostile vis-à-vis Moroccan Muslims who convert to Christianity. According to Mr. Nouaydi's observations, Moroccan society is generally rather intolerant towards people choosing to leave the Muslim faith. Moroccans who convert to Christianity and who openly show to the public their new faith are particularly badly perceived by the population.

70. Christians and Jews, who are born with their religion, are a priori tolerated. On the other hand, Baha'is and Shiites are not tolerated.
71. Mr. Nouaydi was not aware of any current cases against people who have converted.
72. There exists the Association for the Protection of Religious Minorities[131]. This association is active but its work is difficult because of the lack for protection of religious minorities in Morocco.

Legal system

Procedures to follow when filing a complaint

73. A person who feels that he or she has been the victim of an offense can contact the justice through the local police station. However, at the police station the person is likely to be received by a policeman who is already imbued with conservative ideas and therefore less open to complaints lodged by an LGBT person. Apart from the police station, it is also possible to address the Attorney General of the King at the Court of Appeal in the nearest city.

To seek protection

74. A person belonging to a vulnerable social group or a woman who fears repercussions by her family-in-law may seek protection from the authorities at the local police station. However, Mr. Nouaydi took notice of the fact that these persons often would seek help from a human rights association rather than from the authorities. Personally, Mr. Nouaydi knew of such cases through his commitment with the association *Union feministe libre*, an association for women who are victims of gender based violence, and the Association for the protection of religious minorities.

[131] Association for the Protection of Religious Minorities, https://www.liberte-religieuse.org/maroc/

9. Legal expert

Lawyer, expert in migration law and human rights law

4 July 2019

Situation of lesbians, gays, bisexuals and transgender (LGBT) persons in Morocco

Legal framework

75. According to the legal expert, article 489 of the Moroccan Penal Code is still in force.
76. The act of homosexuality is still punishable by 6 months to 3 years of imprisonment and a fine of 200 to 1000 dirhams.

Application of the law

77. Concerning the number of homosexuality indictment cases that has been brought to court in Morocco since 2016, the *Ministère Public* (the office of the Public Prosecutor) has published official statistics showing that the number of homosexuality charges in 2018 were 170 individual charges based on 147 registered cases[132]. In 2017 it was 197 trials.
78. These numbers are all categorised under lawsuits violating the family due to non-respect of moral values. In total this category accounts for more than 32,000 lawsuits related to violations such as adultery, prostitution, abandonment of a newborn and homosexuality.
79. The legal expert estimated that the number of verdicts related to homosexuality – where the person is sentenced to imprisonment or suspended imprisonment – would be approximately 800 which largely exceed the official number of 170 which is published in the 2018 activity report of the *Ministère Public*[133]. To sustain his argument, the legal expert noted that the 70 Moroccan courts of first instance had heard 2,455,457 cases during that year. This means that 800 verdicts represent a small proportion of all verdicts or the equivalent to 0,0325 % of all cases heard by the court of first instance. The legal expert added that it is explicitly stated at the website of the *Ministère Public* that the numbers are approximate numbers. However, the legal expert emphasised that the Ministry should be congratulated for the efforts made for sharing these numbers because previously there would have been no figures to comment on at all.
80. It must be emphasised that the cases which have been reported in the media or which have been documented by civil society organisations represent only a tiny minority of cases judged because most of the persons who have been prosecuted for acts of homosexuality prefer to remain unknown to the public and to keep a low profile. They rarely challenge decisions that condemn them. Furthermore, a number of criminal convictions for various crimes such as theft, homicide etc., are prosecuted and associated with a homosexual offense.

[132] Ministère Public, *Rapport sur l'implémentation du Code Pénal 2018*, url
[133] Ministère Public, *Rapport sur l'implémentation du Code Pénal 2018*, url

Penalties applied in cases of verdicts of homosexuality

81. All sentences relating to of acts of homosexuality are applied. Any efforts of putting pressure on the courts made by civil society have remained without impact on the enforcement of sentences. It should be noted that under pressure from foreign countries, nationals of these countries convicted of homosexuality are sometimes released on bail and have been returned to their countries of origin, while their Moroccan partners remains imprisoned.

Legal system

How to report a crime

83. A person who has been victim of a crime can go directly to the local police station and ask to file a complaint or for people living the rural areas to the Royal Gendarmerie. It is also possible to file a written complaint with the office of the Public prosecutor.

Persons, including minors, who can file a complaint

84. The presence of a parent or legal guardian is not mandatory in order to file a complaint by a minor. However the officers of the judicial police sometimes do not accept the complaints of a minor in the absence of a legal guardian.

Procedures to follow when filing a complaint

85. It is possible to file a complaint directly and orally at the police stations and the brigades of the Royal Gendarmerie without written support. However, complaints filed with the Public prosecutor must be written.

Whether the police or the gendarmerie can dismiss a complaint

86. The Code of Criminal Procedure does not contain any provision obliging judicial police officers to systematically register a complaint, so it may happen that judicial police officers refuse to register the victim's complaint. However, the victim may file a written complaint with the Public prosecutor; this complaint is systematically recorded in a register with a serial number, and the victim must be informed of the follow-up given to his complaint.

Limitations periods

87. The limitation periods for criminal offenses are:

- 1 year for contraventions
- 4 years for offenses
- 15 years for crimes

These periods of time begin from the date of the commission of the offense, and are interrupted by any investigation launched by the Office of the Public prosecutor or by the investigating judge. The limitation periods for criminal offenses committed against minors begin from the date on which the minor reaches the legal age of majority.

Institution to which the complaint will be transmitted after receipt

88. Upon reception of a complaint, the judicial police must investigate the case and write a report containing a record of the victim's statements and the statements of the perpetrator who must be summoned; then the report must be transferred to the Public prosecutor who decides on the follow-up. The Public prosecutor can either dismiss the complaint without further action or can decide to prosecute the offender by bringing him to the criminal court.

Fee structure

89. The filing of a complaint is free of charge.

Available protection offered by the authorities

90. A person who considers himself at risk of violence (physical threats) could go directly to the police station or at the Royal Gendarmerie to seek protection. However, in practice, the authorities do not take threats of violence against people seriously. Furthermore, the authorities do not have the means to offer protection in the absence of social protection centers or shelters which can provide accommodation to victims at risk of acts of violence.
91. A minor may contact the authorities alone to seek protection, but the authorities often require the presence of their legal guardian.

Whether a person who has committed a crime seek protection in case of risk of another offense

92. There is no legal instrument that offers this protection. It is very difficult for a person who has committed a crime to convince the police to protect him, except in the case of crimes committed as part of a self-defense.

Whether the authorities have the right to dismiss the request

93. The authorities usually simply refer the victim to a social protection center or a shelter. Authorities may also advise women to return to the family home or to the marital home in cases of gender based violence. There is no legal instrument which obliges police officers to accept a request for protection.

Available protection offered by the authorities to a person who feels at risk of an act of violence

94. In the absence of social protection centers, the authorities do not have proper protection mechanisms. The police may also follow a specific procedure in which the aggressor is summoned

and demanded to not approach the victim any more. It is a preliminary procedure in which matters are dealt with 'informally'. It is undertaken by women's support units within the Ministère Public and at the police stations. They may intervene in order to remind the violent spouse about the legal consequences that he might be subject to should he continue with this behaviour. This procedure is applied in order to avoid that conflicts within marriage are turned into legal affairs and the outcome is that in most cases the victim of violence will abandon the case due to pressure by her family. So it is a sort of reminder of the law intended to support victims of violence. In case that the aggressor refuses to abandon this behaviour, the spouse will face legal consequences following existing procedures.

95. It is not a mechanism which will be applied automatically; it depends on the willingness of both the spouses in the conflict to engage in this mediation process and to accept the intervention of the indicated units. Law 103-13 against violence against women, which entered into force on September 12, 2018, provides for the establishment of a unit dedicated to the fight against violence against women within the Directorate-General for National Security and within the courts.[134]

The law also provides protection[135] for women who are victims of gender based violence, namely:

- Notify the offender in case of threats against the victim
- Internment of the victim in a hospital or in a social protection center

96. In practice these legal provisions are not actively being used. The insufficient capacity of hospitals and social protection centers is a major obstacle.

The extent to which the authorities offer protection to a person who feels that he or she is at risk of a crime

97. The Moroccan authorities do not automatically offer protection to a person at risk of an offense. The authorities usually react only after an offense has been committed and rarely before. The Moroccan legislator has not provided for legal provisions relating to the protection of the victim that would for example allow assigning police to monitor the home of a victim like in Western countries.

[134] Article 10 de la loi 103.13
[135] Article 8 de la loi 103.13

10. Civil society organisation

Email interview with an NGO activist

1 July 2019

This regional organisation fights for human rights in the Middle East and in Northern Africa.

The general situation of LGBT persons in Morocco

97. According to the interlocutor, the situation of LGBTQI persons has not changed since 2016. Homosexuality remains a crime in the Penal Code and society is still stigmatising and repressing this population group.

98. According to the interlocutor, the general opinion about homosexuals has not changed at all. The statements of officials, media and the population in general are still of a stigmatising and repressive character.

99. According to the interlocutor, the only way to fully live out one's homosexuality, bisexuality or one's identity and expression of a different gender is to live in hiding. As long as activities are acted out in secret, there are no problems, except in some cases when houses are being searched with the purpose of assaulting homosexuals. Rural areas are quite obviously even more difficult and cruel than the cities, since everybody knows everybody in the countryside. Generally speaking, it is quite simply not possible to live peacefully in accordance with one's gender orientation and identity if they do not comply with the cis heteronormativity.

Legal framework

100. Article 489 of the Moroccan Penal Code dated 1962 is still in force. The interviewed organisation has not involved itself in the process regarding Article 489 for two years; however, they still receive information about the regular application of this article from the prosecutor by the prosecution. The interlocutor quoted an article which was published on 26 June 2019 giving some indications about the number of persons who have been prosecuted due to homosexuality[136].

101. The interlocutor stated that a homosexual act is always a criminal offence punishable by imprisonment from 6 months until 3 years and by a fine ranging from 200 to 1,000 dirhams.

102. According to the organisation, in terms of courts, the judges have not changed their approach since 2016 to LGBT persons who have been brought before a judge.

Authority attitude towards LGBT persons

103. The authorities have not changed their attitude to LGBT persons since 2016. Activists or members of the LGBTQI+ community are obliged to hide and to be discreet in order not to be subject to the hostility of the authorities. A queer person was arrested in June 2019 because the

[136] Le Desk, *Au Maroc, 3 000 personnes poursuivies pour adultère et 170 pour homosexualité en 2018*, 26 juin 2019, url

person in question was carrying a rainbow flag during a public musical show in the capital city. Fortunately, the person was released because the individual got rid of the flag before being arrested.

104. For an LGBT person who fears being victim of a criminal offence it is still very difficult to report an act of violence or an assault to the police. It is so for two reasons:

- to declare that one is a victim of homophobia is the same as to recognise that one is a criminal because the Penal Code criminalises this identity.

- The police do not treat LGBT persons who are victims of aggression well for one simple reason, namely that the Penal Code which they enforce is homophobic itself.

105. Asked about the existence of protection centres able to receive LGBT persons, the interlocutor answered that there are some LGBT organisations which are operating more or less clandestinely, but their situation does unfortunately not make it possible for them to offer assistance to victims of homophobia and transphobia in a comprehensive manner. Thus, such a centre of does not exist.

11. Federation of the Leagues of Women's Rights (FLDF)

Telephone interview with Latifa Bouchoua, president

2 July 2019

The interlocutor, Latifa Bouchoua, is the President of Fédération des Ligues des Droits des Femmes *(the Federation of the Leagues of Women's Rights) (FLDF). FLDF has the status of an NGO in the field of women's rights and was legally registered on April 18 1993 and consists of eight regional sections. It coordinates* Réseau des Femmes Solidaires *(RFS) (Network of Solidary Women) which consists of approximately 100 local associations. The task of FLDF is to protect and promote women's rights through socio-educational activities and through advocacy.*

The legislation and law application regarding vulnerable groups in Morocco

106. The situation of vulnerable groups in Morocco has improved since the 1990s thanks to the dynamic development of the feminist and human rights movement and to the fact that Morocco opened itself to and accepted human rights standards and mechanisms. Morocco has ratified the majority of international conventions and agreements in this field with certain reservations (e.g. CEDAW – Convention on the Elimination of All Forms of Discrimination against Women) which were partially revised and repealed. As a result of this process and considering a certain evolution of the Moroccan society and its players, the domestic legislation has also been subject to some progress within various fields, especially in terms of human rights and equality. In general, Mrs Bouchoua noted that the legislation has progressed since the 1990s.

107. Morocco has experienced some level of progress in terms of legislation concerning women's rights, especially regarding the Family Act (*Code de la Famille*). Its 2004 version is very advanced compared to the former Personal Status Act (*Code du Statut Personnel*) which used to be almost untouchable: According to the 2004 version, the principle of equality within the family between women and men is now mentioned in the preamble, and some provisions have been subject to reforms in order to enhance the protection of women's rights. At that time, this was a step forward, and now, due to the changes in the society and of the Constitution, the Family Act requires an overall amendment. Other Acts have been amended and have brought about the emancipation of women and their participation and involvement in public affairs (The Nationality Act (*Code de la nationalité*), The Labour Act (*Code de Travail*) which prohibits discrimination and sexual harassment, the electoral laws with the introduction of quotas in order to improve the political representation of women, etc.).

108. In 2011, the Constitution introduced the principle of equality between women and men within economic, cultural, environmental, civil and political rights. It was an enormous step forward: the principle of equality was incorporated in the Constitution together with the Authority in favour of Parity and the Fight against Discrimination (*Autorité pour la Parité et la Lutte contre toutes les formes de Discriminations*) (APALD). This primary mechanism (APALD) whose status was passed in July 2017 is, however, still insufficient and has not yet been implemented.

109. Mrs Bouchoua emphasised that there have been some delays and insufficiencies as to the implementation of the Acts in accordance with the principle of equality of the new Constitution, e.g. the implementation of the Parity institution. In 2017 and 2018, the introduction of laws resulting from the Constitution finally took place. Some of the positive steps in the field of the protection of women's rights are as follows: Act no. 103.13 concerning violence against women (the Act came into force in September 2018), Act no. 19.12 concerning male and female domestic workers, and Act no. 27/14 concerning the fight against trafficking in human beings. FLDF has launched a follow-up on the application of those Acts and especially of the Act concerning violence against women.

Protection given by the authorities

110. According to Mrs Bouchoua, it is positive that new legislation is being introduced even if the laws are inadequate in terms of responsibility of the State as to the protection of and the assistance to victims. She also emphasised that in practice, the laws are still applied in an insufficient manner.

111. The promotion of the awareness of citizens of their rights is not continuous or sustainable, and remains occasional. FLDF has welcomed government circulars concerning the diffusion and explanation of the provisions of those new Acts and the guidelines regarding their proper application and the follow-up and elaboration of annual reports by judges in competent courts of justice.

112. Regarding women who risk becoming victim of violence, in accordance with the new Act no. 103/13, they may approach the authorities and report the case to the police. However, Mrs Bouchoua emphasised that the percentage of Moroccan women who took such steps in 2018 did not exceed 6 %. One has to be courageous and make use of organisations in order to understand all the procedures. There are many cultural difficulties and other challenges which prevent women from exercising their rights and which do not let them pursue the procedure to the very end.

113. It is possible for women to file a complaint, and usually one has to do it through the police of the neighbourhood which subsequently submit the case to the prosecutor. According to the latest survey on violence against women published in May 2019 by the Ministry of Family, Solidarity, Equality and Social Development, only 6 % of women (for example victims of violence) report their case to the police, and the number of women who have followed the procedure is much lower. In fact, it does not exceed 3 %. In general, resistance prevails, and the institutions do not really always pave the way for a permanent awareness enabling women to file a complaint while being safe.

114. According to FLDF's experience, it is necessary to protect a woman who chooses to report a case and who follows the criminal procedure from protection centres (shelters). This is an assignment that the government and the relevant sectors must ensure within the framework of their responsibility.

115. The women in the centres are usually involved in a conflict with their husband. Sometimes they have family conflicts (father, brother, fiancé, boyfriend or others). Marital and family violence

is typically of a physical or sexual character. There are also examples of economic abuse carried out by the husband or a family member of the female victim. Moreover, the women who approach the centres are victims of sexual harassment in public spaces and of rape, and they may be victims of legal abuse which involves persistent discrimination in relation to the legislation. In several cases, they are victims of multiple types of abuse.

Protection centres

116. There are centres in every region of Morocco. FLDF has 10 dialogue and information centres for female victims of violence and one accommodation centre named TILILA. Moreover, there are 26 centres run by local organisations under the umbrella of *Réseau des Femmes Solidaires* (RFS) (Network of Solidary Women), which cover almost all regions and towns in Morocco, and other centres run by women's organizations in Morocco (UAF and AMVEF and others).

117. In general, the centres are financed by international partners. Government funding, mainly from the Ministry of Family, Solidarity, Equality and Social Development, is very limited, complicated and short-term. The framework of the funding granted by the European Union to the Moroccan government has been established recently (since 2012). The dialogue and information centres have been established and supported by organisations since the end of the 1980s, however, those centres still offer a minimum number of services owing to very modest means, and foreign funding has decreased and does not cover the operating costs.

118. There are 44 state run centres for women in a difficult situation (women and girls living on the street, elderly women), but most of these centres are not yet functional. None of the centres are specifically dedicated to abused women although this group of women requires special care according to international standards to fight gender-based violence.

119. Until now, in dangerous cases regarding female victims which require urgent intervention and protection, in general, it is centres run by organisations which accommodate these women. Several cases are referred by the authorities (police, gendarmes, health service) to the FLDF centres. The victims depend on their families and their destiny.

120. The capacity of the centres run by organisations is inadequate, especially in terms of accommodation. The demand is much higher than the number of places available. As to the state run centres, we are not in possession of information, especially because most of those 44 centres are still not functional.

121. The situation of LGBT persons in the Moroccan society is difficult. The organisations fighting for the rights of LGBT persons are mostly operating in the shadow and most activists and activities are carried out through civil social networks outside of the official system. The group of LGBT persons is isolated and cannot exercise their rights in public.

122. The LGBT groups do not approach the state run centres known by FLDF. There are young people without a family in some centres, and normally associations like *Bayti* offer them assistance. The persons in question are typically juvenile offenders.

123. Mrs Bouchoua stated that FLDF is not in possession of any information about young men who are victims of human trafficking. On the other hand, FLDF confirms the existence of „*les petites bonnes*" (young girls working as house servants and who are victims of trafficking in the larger cities in Morocco). For example, in the centres there are "*petites bonnes*" (young maids) who have run away. There exists a law about trafficking in human beings, and a national mechanism has been established in May 2019.

Other vulnerable groups: protection granted by the authorities and treatment by society

124. In Morocco, and according to the Penal Code, it is an offence publicly to declare oneself an atheist or a convert. In such cases there is no protection available. There is an article in the Constitution concerning the right to the freedom of thought, however, according to the Penal Code, it is an offence to broadcast publicly or to influence persons by religious thoughts in order to make them convert from Islam.

125. Religious minorities like Moroccan Jews and non-Moroccan Christians (e.g. sub-Saharan immigrants) are assured freedom of worship. This group practices their religion in churches and synagogues and its members are free to organise their religious manifestations and festivals (e.g. Jewish celebrations in various regions in Morocco).

126. The majority of the members of Moroccan society is against atheists and converts although some differ from this opinion and new forms of spiritual expression do exist. In the society, it may lead to violence. Mrs Bouchoua brought forward certain cases where persons had been beaten (e.g. in universities). This violence was mainly committed by extremist groups.

127. To the best of Mrs Bouchoua's knowledge, there are no organisations that are specialised in trafficked Moroccans in Morocco, except those who offer assistance to the young maids.

12. Dynamique Trans*

Interview by telephone and email with a representative of Dynamique Trans* Maroc

17 June 2019

Dynamique Trans is an independent movement and not an association in Morocco. Dynamique Trans* is organised in a horizontal way, it is self-managed, not registered and works as a non-profit movement.*

Dynamique Trans combats all forms of structural and systemic oppression that Trans* and/or non-binary persons are subject to, through collective strengthening, participating work involving Trans* persons, but primarily research in the Darija language (the local dialect in Morocco) and setting up of mechanisms in terms of alliance and coordination.*

Legislation

128. The interlocutor confirmed that Article 489 of the Moroccan Penal Code from 1962 is still in force, and that this Penal Code inherited from French colonialism still criminalises all forms of sexualities, non-cisgender heteronormative identities and trans identities. According to this article, an act of homosexuality remains: '…punishable by imprisonment from six months until three years and a fine from 200 to 1,000 dirhams'.

Application of law

129. As to the number of cases where Trans* and/or non-binary persons have been accused, the interlocutor did not have access to the required information.

Approach by the authorities to Trans* and/or non-binary persons

130. According to the interlocutor, the Moroccan authorities have not changed their attitude to Trans* and/or non-binary persons over the past recent years (since 2016). In general, the interlocutor finds that the Moroccan police employs a humiliating approach to Trans* persons.

Possibility of seeking protection for Trans* and/or non-binary persons

131. Because of penalties for persons who are not heterosexual and/or cisgender, those individuals are afraid of reporting violence and harassment that is motivated by perception of sexual orientation and gender identity (SOGIE). Trans* and/or non-binary persons are unable to seek protection with the police because they will be subject to arbitrary arrest and prosecution.

132. Although Article 24 of the Moroccan Constitution guarantees the right to privacy, persons who are not heterosexual and/or cisgender are still being arrested and sentenced according to Articles 489, 483, 490 and 491 of the Moroccan Penal Code.

133. Persons who are not heterosexual and/or cisgender persons are victims of various sorts of torture inflicted on them by the police. Their rights are frequently violated while in detention, e.g. they are beaten violently while being detained. According to the interlocutor, the police have also threatened the persons in question to reveal their identity to their parents/family members, their

colleagues, friends, etc. Moreover, they will sign police reports under duress and do not have the right to remain silent or to contact a lawyer.

134. The authorities furthermore contribute to the public defamation of the accused persons by disclosing information about their private life. On several occasions, the police have pursued a Trans* person in a humiliating way in their neighbourhood in order to expose them. According to the interpretation of the interlocutor, this practice aims to send a message to the public and to frighten Trans* persons. On a regular basis, they are subject to unfair trials based on confessions extracted under duress. To the best knowledge of the interlocutor, there are no protection centers available to Trans* and/or non-binary persons in Morocco.

Legal situation for Trans* and/or non-binary persons in Morocco

135. The interlocutor emphasised that Moroccan law criminalises transgender identity and diversity issues by placing them in the same category as the violation of morality and moral norms and/or Article 489 of the Moroccan Penal Code inherited from the French colonialism: 'licentious acts or acts against nature with a person of the same sex' which are criminalised. Of course, Article 489 applies vague terms which may be applicable to all gender identities and non-cis hetero normative sexual orientations.

136. Furthermore, the interlocutor explained that transgender persons who have started a process involving hormone replacement therapy and/or sex reassignment surgery are exposed to constant danger. For example socially they are always subject to harassment and moral and psychological violence in public spaces due to their anatomy and/or their way of dressing and/or their morphology and/or their transgressive expression. They also always run the risk of being lynched in public spaces and being subject to institutional threats of being arrested and prosecuted under the Article 489 of the Moroccan Penal Code. The Article states: 'who commits an immodest act or an act against nature with an individual of the same sex is punishable by imprisonment from 6 months until 3 years and by a fine ranging from 200 to 1,000 dirhams unless the act does not constitute a more serious offence.'

137. And Article 490 states: 'Any persons of different sex who are not united by the bonds of marriage and who have mutual sexual relations are punishable by imprisonment from one month to one year' which criminalizes sexual relations outside marriage. Article 483: 'Who by virtue of his or her voluntary nudity or obscenity of his or her gestures or acts commits a public outrage is punishable by imprisonment from one month to two years and by a fine ranging from 200 to 500 dirhams. The outrage is considered public in case the act in question has been carried out in the presence of one or several involuntary witnesses or minors or in a place accessible to the public'. This Article is applied to criminalise the expression of non-normative genders in the use of vague terms which may lead to judicial prosecution according to the interpretation and thus the mercy of public servants.

138. In the light of this, the interlocutor explained that it is difficult for Trans* and/or non-binary persons to resort to justice in order to report cases of assault or ask for assistance. This can be in terms of their hormone replacement therapy and/or sex reassignment surgery or their civil status as any criminal investigation may disclose their criminalised gender identity. Hence Trans* and/or non-binary persons, including those who have not yet begun hormone replacement therapy and/or who do not wish to begin on hormone replacement therapy and/or sex reassignment surgery, are still subject to harassment and moral, psychological and physical violence in public spaces. This may occur in the health care system, in the public administration, in the education system, and at the work place due to their physical appearance and/or their way of dressing and/or their morphology and/or gender expression. These are circumstances which may deprive them of their fundamental rights.

139. Trans* and/or non-binary persons in Morocco do not have any access to information about their gender identity. They are on a daily basis facing an inner conflict between what they feel and what society imposes on them in terms of established rules and norms. This inner conflict may have an impact on their mental health. Trans* persons cannot obtain hormone therapy in the process of their transition although there are specialists in endocrinology in Morocco. Replacement surgeons are not allowed either.

140. Due to the above-mentioned prohibitions, Trans* and/or non-binary persons sometimes resort to hormone therapy without getting any medical advice which poses a major risk to their health. Likewise, replacement surgeries are carried out outside of the regulations of the health care system. One thing is that certain health professionals get financial gain from this, but Trans* and/or non-binary persons who resort to surgeries in this way do not have any guarantee of further medical assistance or responsibility.

141. Health professionals do not make any efforts to change the predominant stereotypes and to spread the knowledge of the fight of Trans* and non-binary persons, and they are sometimes behind the medical abuse and stigmatisation which is contrary to the Hippocratic Oath. Thus, patient confidentiality is not always respected. Certain doctors do not comply with medical deontological guidelines and medical ethics by disclosing the identity of their patients and thus make them targets of violence. This medical abuse together with the risk of being reported to the police and exposed to the moral judgment of society reduces the trust in medical staff and limits equal access to health care.

Personal status

142. Morocco still has a cis-heteronormative definition of personal status and marital life. Hence, Trans* and intersex persons cannot officially modify their gender identity. The mention of gender in connection with new born babies is compulsory in birth certificates under Article 11: 'The Registrar of birth and death is under an obligation to sign the certificates and the marginal notes which are inserted in connection with their issue…'

143. Dahir no. 1-02-239 dated 25 Rejeb 1423 (3rd October 2002) enacting Act no. 37-99 concerning civil status: 'The birth certificate comprises the number of the certificate and the date of the birth specified as regards the day, the month and the year according to the Hajri and the Gregorian calendars and the hour and minute when the birth took place and where the birth took place and the sex and nationality of the new born'; Article 18 of Decree 2.99.665 dated 2nd Chaabane 1423 (9 October 2002) implemented by Act 37.99 concerning Civil Status.

144. The mention of the sex of the newborn is compulsory in all personal papers, i.e. national identity cards and passports, things which always make Trans* and non-binary persons vulnerable to discrimination and persecution: at work, in the administration, in the health care system, in the education system, in the airport, and they always face the risk of being arrested and prosecuted in connection with police controls.

145. According to the interlocutor, the consequence of the circumstances above is that Trans* and/or non-binary persons always live in terror and fear of being detected.

Access to employment

146. According to the interlocutor, Trans* and/or non-binary persons are frequently excluded from employment. On the labour market, persons who are not heterosexual and/or cisgender are facing various sorts of discrimination, especially Trans* and/or non-binary persons, and mainly those who have launched a hormone replacement therapy and/or a sex reassignment surgery and those whose gender expression is visible (clothing, attitude, language, etc.). Persons who are not heterosexual and/or cisgender are victims of discrimination when applying for a job because of their gender identity and expression and their sexual orientation (SOGIE) which are either displayed or supposed. The recruiters do not respect the fundamental right to equal opportunities and treatment.

147. Persons who are assigned female at birth are subject to double discrimination. They are at the same time victims of sexist violence and violence based on their SOGIE.

148. At work, several persons are obliged to hide their gender identity in order to avoid stigmatisation. Persons who are revealed are often verbally and physically assaulted by their colleagues. They may sometimes even be victims of violence which is just as serious as rape. Such behaviour, which is largely unpunished, represents a real threat to their physical and mental integrity.

149. Trans* and/or non-binary persons are not protected against unfair dismissal. They may be dismissed without being capable of asking for an explanation or to lodge a complaint because when doing so, they would be prosecuted.

Access to health care

150. According to the interlocutor, health care staff are insufficiently informed or misinformed about issues concerning Trans* persons. Due to their fear of being badly received or running the risk of being reported to the police, numerous Trans* persons do not approach the health care system.

Attitude towards Trans* and/or non-binary persons

151. According to the interlocutor, statements given by some politicians in power aggravate the stigmatisation and discrimination of persons who are not heterosexual and/or cisgender, and they even incite hatred towards them. In fact, those politicians find that the rights of SOGIE persons to fall within the scope of individual liberties which ought to be practiced discreetly and in an understated way. However, the principle of indivisibility of human rights commits Morocco to respect fundamental rights of SOGIE persons and not to reduce them into secrecy and its consequences.

152. When asked about the depenalisation of homosexuality, the Minister of Human Rights, Mr. Mustapha Ramid, declared that it is impossible to do it in Morocco: 'All political parties and all governments are against it. We are a Muslim country governed by the commander of the believers. To decriminalize homosexuality would be the same as to mock the mere essence of the State and its institutions' the Minister of Human Rights added.[137]

153. Besides, no political parties have made a statement against this unfavourable reaction which confirms the existence of a supposed consent. In addition to this, no amendment of Articles 489, 490 and 491, which might draw the attention to the discrimination that persons who are not heterosexual and/or cisgender in Morocco are subject to, has been proposed by any groups of MPs in order to launch a debate about this issue.

Possibility of living one's life

154. According to the interlocutor, the possibility for a Trans* person of living one's life depends on their socio-economic situation and especially on economic independence. Persons who have financial means are more free, and, in general, there is more freedom in the big cities of Rabat and Casablanca.

155. The various sorts of discrimination faced by individuals due to their SOGIE in Morocco are not the only result of a moral injunction, but also of a normative politico-economic context. Several provisions of the Moroccan Penal Code (483, 490 and 491) criminalise individuals on the basis of their SOGIE. Especially Article 489 of the Penal Code which provides for a prison sentence ranging from 'six months until three years and a fine ranging from 200 until 1,000 dirhams if the person in

[137] cf. Conseil civil de lutte contre toutes les formes de discrimination, *Etat des lieux des discriminations au Maroc*, 2018, url

question commits an immodest act or an act against nature with an individual of the same sex, unless the act does not constitute a more serious offence". Article 431-1 of the Penal Code does not itself include SOGIE among the above-mentioned discrimination criteria for which reason there is an absence of protection measures towards a considerable part of the society. Besides, Moroccan legislation associates any gender expression that is considered non-normative with a threat against public order. This concept opens the field for a free interpretation on the part of the persons who enforce the law. For example, the clothing aspect of an individual may bring about prosecution based on a threat against public order. In this case, the legislation is an obstacle to the access to fundamental rights of all persons whose SOGIE are considered non-normative.

156. Trans* and non-binary persons are the most vulnerable individuals to discrimination and persecution at work, within the administration, in the health care system, in the education system, in the airport, and they always face the risk of being arrested and prosecuted in connection with police controls. Hence, according to the interlocutor, in consequence, Trans* and/or binary persons always live in terror and fear of being detected.

Appendix B: notes, 2016 (French version)

1. Ministère des Affaires Etrangères et de la Coopération

Entretien avec Mustapha El Bouazaoui, Affaires Consulaires et Sociales,

10 octobre 2016, Rabat

L'entretien avec Mustapha El Baouazaoui a commencé avec un tour d'horizon de la situation socio-politique de la société marocaine. Le Directeur des Affaires Consulaires et Sociales s'est exprimé sur les trois thèmes de la mission danoise dans l'ordre suivant : la situation des mineurs non-accompagnés, la situation des personne d'orientation LGBT et la double peine. Il a souligné le besoin de consulter par la suite les ministères et les associations spécialisées dans chaque domaine pour plus de renseignements.

Situation pour les personnes d'orientation homosexuelles

1. En ce qui concerne l'orientation sexuelle, le Gouvernement marocain reconnait que l'homosexualité est un phénomène contemporain qui existe dans tous les sociétés au monde. Au Maroc, l'article 489 du Code pénal établit que « toute personne qui commet des actes obscènes ou contre nature avec une personne du même sexe sera punie d'une peine d'emprisonnement comprise entre 6 mois et 3 ans et d'une amende de 120 à 1000 dirhams à moins à moins que les circonstances de la commission des faits ne constituent un facteur aggravant ». Actuellement, le Gouvernement ne possède pas de données sur l'ampleur de ce phénomène au Maroc. Le Gouvernement constate qu'un nombre d'organisations militants œuvrent en faveur des droits des personnes LGBT au territoire marocain et qu'un bon nombre de media débattent de la cause homosexuelle. Concrètement, le Gouvernement collabore avec le Conseil national des droits de l'Homme (CNDH) pour promouvoir la culture des droits de l'Homme et de citoyenneté y compris pour les personnes d'orientation homosexuelle et lesbienne.

2. Pour le Gouvernement du Maroc, il est important de ne pas provoquer l'opinion publique qui est actuellement plutôt conservateur en ce qui concerne les mœurs. La question de l'homosexualité doit nécessairement être analysée en prenant en compte plusieurs éléments : d'un côté la nécessité de maintenir l'équilibre et l'ordre public et d'un autre côté le respect pour les droits de l'Homme. Actuellement, les politiques marocaines sont confrontées à la nécessité de conjuguer le constant religieux avec les conventions internationales des droits de l'Homme.

2. Conseil national de droits de l'Homme (CNDH)

Entretien avec le Conseil national de droits de l'Homme (CNDH), Abderrafie Hamdi, Directeur de la protection des droits de l'hommes et monitoring, Khalid Hanefioui, chargé de projet 'droits de l'enfant', Abdelhak Eddouk, Chargé de la protection des droits de l'homme dans les lieux de privation de liberté, Aminata Pagni, Chargée de projet, protection des migrants, Ayoub El Karoubi, chargé des INDs et réseaux au sein de la Direction de la coopération et des relations internationales

Rabat, 17 octobre 2016

Le Conseil national de droits de l'Homme (CNDH) est une institution nationale chargée de veiller à la situation des droits de l'Homme au niveau national et régional au Maroc. Doté de commissions régionales, le CNDH assure la surveillance de suivi de la protection des droits de l'Homme en concertation avec les autorités indiquées.

1. Selon le Conseil, la question d'homosexualité et de transsexualité se pose dans un contexte des libertés individuelles et doit être examinée avec une prise en compte du contexte actuel qui marque des changements sociopolitiques profonds et des mutations systèmes de valeurs. Selon la délégation du CNDH, c'est une partie de la population, très engagé dans la défense de valeurs traditionnelles, qui s'opposent activement à la défense des droits des personnes LGBT plutôt que la justice ou le Gouvernement. Dans la société contemporaine, les personnes LGBT constituent un groupe vulnérable qui cherche à se cacher et qui exerce de l'autocensure pour éviter des problèmes.

2. D'après les connaissances du Conseil, il y a eu quatre à cinq cas d'accusation pour délit d'homosexualité en 2015 et le Conseil a suivi de près l'évolution de ces cas. Le Conseil a rendu visite aux familles des personnes accusées et a également rendu visite aux accusés pendant leur arrestation.

La protection possible auprès des autorités

3. D'après le Conseil, c'est possible pour une personne d'orientation LGBT qui craint pour sa sécurité de demander et d'obtenir la protection par la police. S'il arrive que la personne soit maltraitée dans les commissariats de police, cela est plutôt lié au manque de discipline et de respect pour la loi de la part de la police et non pas directement lié à son identité homosexuelle. D'après les membres du Conseil, une personne homosexuelle craignant pour sa vie est mieux protégée contre tout risque éventuel par la police que par les gens dans la rue.

La situation pour les personnes LGBT incarcérées

4. Le Conseil a pu effectuer des visites aux institutions pénitentiaires au Maroc. Le Conseil a formé un groupe de travail chargé au monitoring de la situation dans les prisons et ce groupe a rédigé un rapport consultatif sur les conditions de détention, publié en 2012.[138]

[138] CNDH, *La crise des prisons: Une responsabilité partagée*, octobre 2012, url

5. Expliquant, de manière générale, la situation actuelle dans les prisons, le Conseil a souligné que le cadre normatif en ce qui concerne l'espace physique devrait être développé davantage pour une conformité avec les normes internationales. Actuellement, l'encombrement dans les prisons est estimé de 2-300 %. Pour répondre aux problèmes de capacités par rapport au nombre de détenus, 10 nouvelles prisons sont présentement sous construction et l'ouverture est prévue en 2016.

6. Dans les prisons, au Maroc comme ailleurs, c'est le rapport de forces qui domine entre prisonniers. Selon les observations du Conseil, les personnes détenues d'orientation LGBT font de manière à cacher leur identité sexuelle pour éviter des problèmes. Aujourd'hui, le nombre exact des prisonniers détenus pour violation de l'article 489 du Code Pénal est difficile à identifier. De même pour le nombre des prisonniers d'orientation LGBT. D'après le Conseil, les personnes LGBT font partie des groupes vulnérables dans les prisons (ainsi que les femmes, les mineurs, les personnes vivant avec un handicap, les étrangers, les toxicomanes et les détenus atteints des maladies chroniques). Pendant les visites effectuées dans les prisons, des détenus se sont parfois rapproché de façon discrète au représentant du Conseil pour demander une cellule individuelle. Le souhait d'une cellule individuelle est souvent justifié par peur d'harcèlement sexuel. Selon les impressions de ce membre du Conseil, les directions des prisons sont à l'écoute de ces demandes.

7. Le Conseil a reçu plus de 1200 plaintes déposé par des détenus ou par l'intermédiaire de leurs familles au cours des années concernant, entre autre, le traitement réservé aux détenus mais aucun de cela n'a fait référence à l'homosexualité.

3. Association Marocaine de Droits Humains (AMDH)

Entretien avec Khadija Ainani, vice-présidente, et Said Tbel, membre du bureau central, Association Marocaine de Droits Humains (AMDH)

12. octobre 2016, Rabat

Association Marocaine de Droits Humains (AMDH) est une ONG qui œuvre pour faire connaître les droits humains et pour relever toute violation de ces droits dans la société marocaine. L'AMDH a un réseau national de 10 sections régionales qui consiste en 97 sections locales. AMDH est associé au Conseil économique et social (ECOSOC) des Nations Unies. L'AMDH publie régulièrement des rapports sur le statut des droits de l'homme au Maroc.

La situation des droits des personnes LGBT au Maroc

8. L'AMDH constate que la situation actuelle est caractérisée par un discours politico-religieux stigmatisant et conservateur qui cherche à discréditer les personnes d'orientation LGBT. Bien que le Gouvernement d'un côté tolère l'existence d'une communauté homosexuelle, de l'autre côté il accorde une quasi impunité aux personnes et groupes qui harcellent les homosexuels, voire lynchent les homosexuels, dans l'espace public. Cette tolérance vis-à-vis du harcèlement dans la rue augmente effectivement le risque pour les personnes qui sont perçue comme LGBT de souffrir des violences. A cela s'ajoute le mépris au sein de la famille où l'homosexualité est peu tolérée. Le seul espace sécurisée au sein de la société marocaine est le milieu universitaire ou un climat plutôt tolérant règne parmi les intellectuels.

9. Selon les observations de l'AMDH la situation des personnes LGBT au Maroc d'aujourd'hui est caractérisée par un état d'autocensure dans lequel les homosexuels cherchent à se cacher. Il faut éviter à dévoiler son identité homosexuelle dans l'espace public aussi bien qu'au sein de la famille. L'agression peut être la suite d'un vêtement qui est perçu comme non-conforme aux normes, du fait de vivre deux personnes du même sexe ensemble ou tout simplement d'être aperçu dans une situation avec une autre personne du même sexe.

10. Ce climat d'autocensure a comme conséquence que les personnes LGBT sont réticents à s'adresser aux services de santé, quand ils souffrent d'un problème de l'ordre de santé sexuelle par peur de subir une humiliation au moment où les agents de santé découvrent leur identité LGBT. Cela a, selon l'AMDH, des implications négatives pour l'accès réel aux services de prévention du VIH/SIDA, car il n'y a pas de services médicaux visant les personnes LGBT particulier pour les personnes LGBT. La stigmatisation s'applique aussi dans le système de santé.

11. Les deux représentants ont commencé par souligner que l'AMDH, en tant qu'organisation de défense des droits humains y compris les libertés individuelles, cherche à abroger l'article 489 des procédures du Code Pénal, criminalisant les rapports homosexuels. En outre, l'AMDH note que ce n'est pas seulement l'article 489 qui pose un atteint aux libertés individuelles mais également les

articles 490 et 491 (traitant des rapports sexuels soit adultères soit entre personnes non-mariées) du même code pénal qui pénalise les rapports entre adultes consentants hétérosexuels.

La violence faites aux personnes d'orientation LGBT

12. Les représentants de l'AMDH ont souligné que l'AMDH suit la situation des violences faites aux personnes d'orientation LGBT de près. Selon leurs sources, plusieurs cas de violation de l'article 489 ont été présentés devant le juge avec condamnation :

- Les interlocuteurs ont cité le cas de Fès où, en juillet 2015, un homme a été attaqué par la foule en lui dénonçant pour homosexualité. L'homme, a été agressé violement, corps nu, après quoi un vidéo amateur du lynchage a été diffusé sur les réseaux sociaux.[139]

- En outre, référence a été faite au cas dite de Beni Mellal du 9 mars 2016 dans lequel deux hommes se sont fait agressé par la foule.[140] Quatre jeunes gens pénètrent dans l'appartement de deux citoyens de la ville de Béni-Mellal, les agressent violemment avant de les filmer, nus, ensanglantés et de les traîner sur la voie publique, Le couple dont le lynchage public avait fait l'objet d'une vidéo, été jugés le 11 avril par la cour d'appel à 4 mois avec sursis, après avoir passé 26 jours à l'ombre. L'un d'eux avait été condamné à quatre mois de prison ferme, le 15 mars par le tribunal de 1ère instance, pour *"actes sexuels contre-nature"* (synonyme *"d'homosexualité"* au Maroc), tandis que l'autre était dans l'attente de son jugement.

  Des journalistes du *Petit Journal* étaient arrêtés à Beni-Mellal. Après avoir tenté de tourner un sujet dans le quartier où résidaient les deux victimes. Ils auraient été interpelés après une *"dénonciation"* des habitants du quartier.

- Le Tribunal d'instance de la ville d'Al-Hoceima a déclaré deux accusés coupables de sodomie, à l'issue d'un procès très court qui s'est tenu cinq jours seulement après leur arrestation le 13 décembre 2014. Ils ont été jugés coupables sur la base d'« *aveux* » faits, selon la police, lors de leur détention mais qu'ils ont ensuite rétractés devant le juge. Le tribunal n'a appelé aucun témoin à la barre. Une Cour d'appel a confirmé le verdict le 30 décembre. Le verdict de culpabilité pour commission d'un «*acte impudique ou contre nature avec un individu de son sexe* » (article 489 du Code Pénal[141]) et «*outrage public à la pudeur* » (article 483), mais a réduit les peines des deux hommes, de trois ans de prison et une amende à six mois pour l'un et à un an pour l'autre, ce dernier ayant été également reconnu coupable de tentative de corruption (article 251).

[139] Libération, *Agression homophobe au Maroc : quatre mois ferme pour la victime*, 29 mars 2016, url
[140] Têtu, *Les agressions homophobes sont le quotidien de la population LGBTI au Maroc* selon Aswat, 8 avril 2016, url
[141] Code Pénal : Dahir n° 1-59-413 (28 joumada II 1382) portant approbation du texte du Code pénal (B.O. 5 juin 1963).

- Les gendarmes ont arrêté le 26 Mai 2016, un couple d'homosexuels, dans une voiture garée dans un endroit désert en périphérie de la ville de Guelmim, Les deux homosexuels ont été placés en garde à vue et le procureur a décidé de les mettre en détention en attendant leur passage devant le tribunal de première instance de Guelmim. Le tribunal de 1ere instance les a jugés à 6 mois de prison ferme.

- Dans leur rapport annuel 2015 (écrit en langue arabe. Le titre en français : Statut des droit de l'homme au Maroc pendant l'année 2015, imprimé en Avril 2016), AMDH fait référence à un cas connu dans les médias où deux hommes ont été arrêtés à côté de la «Tour Hassan II « à Rabat pour homosexualité. Les deux hommes ont été condamnés à 4 mois de prison ferme et une amande à 500 dirhams plus les frais de procédure.

13. L'AMDH trouve que le Gouvernement fait preuve d'une certaine tolérance vis-à-vis des personnes qui perpètrent des agressions contre les homosexuel(le)s. Comme exemple de cette impunité relative que le Gouvernement, selon l'AMDH, accorde aux agresseurs, les interlocuteur ont noté que l'une des victime de violence de Beni Mellal a été condamnée à quatre mois de prison *«actes sexuels contre-nature avec récidive et ivresse»* tandis que les agresseurs identifiés ont été condamné le même jour à deux mois de prison avec sursis. Selon l'AMDH, il y a eu 'beaucoup' d'ouverture d'enquêtes contre des homosexuels présumés en 2015, suivi par jugement et incarcération 'plusieurs' cas en 2016.

14. De manière générale, l'AMDH observe que les hommes homosexuels sont plus souvent victimes des agressions faites dans l'espace public que les lesbiennes.

La protection possible auprès des autorités

15. Selon l'analyse de l'AMDH les personnes d'orientation LGBT sont dans l'impossibilité de demander et d'obtenir une protection efficace auprès de la police et dans les cas où une personne d'orientation LGBT craint pour sa sécurité et dans les cas où une personne a déjà été victime d'une injustice soit à domicile, soit dans l'espace public à cause de l'article 489 du Code Pénal qui criminalise l'homosexualité.

16. En outre, les avocats des accusés d'une violence de l'article 489 risquent les insultes.

La situation pour les personnes LGBT incarcérées

17. Les représentants de l'AMDH notent qu'actuellement l'AMDH n'a pas le droit de se rendre dans les prisons, donc l'association est dans l'impossibilité de rendre visite aux personnes LGBT incarcérées.[142]

4. Le Collectif Aswat

Entretien avec une membre

12 octobre 2016, Rabat

Aswat ('Voix' en arabe) *est un collectif indépendant à but non lucratif, luttant sur les questions de genre, de la sexualité et contre toute discrimination basée sur l'orientation sexuelle, l'identité et l'expression de genre.*

20. L'entretien avec la membre du collectif Aswat a commencé par une esquisse de l'histoire de ce groupe militant. Son engagement a débuté en avril 2012 avec le lancement de 'Aswat Magazine' sur le web. Ce magazine traite des questions de santé sexuelle, de culture contemporaine et des questions spécifiquement liées aux personnes d'orientation gays, lesbiennes, bisexuels, transgenres, transsexuels et intersexe (LGBTIQ) à travers des témoignages et histoires de vie entre autres. En décembre 2013 l'action s'est concrétisée en la création d'un collectif de lutte pour les droits des personnes LGBTIQ au Maroc. Selon l'interlocutrice, Aswat a fait le choix de ne pas tenter de se faire enregistrer comme une association pour ne pas être visibles aux autorités et au public, car la visibilité peut être préjudiciable pour les militant(e)s homosexuel(le)s. Par conséquent, Aswat a un statut organisationnel non-formel et ne dispose pas de bureaux officiels. Pour protéger l'anonymat des militants, les membres du collectif préfèrent se rencontrer soit dans le monde virtuel à travers l'internet, soit dans des espaces sécurisés.

21. L'approche de Aswat est de travailler sur une réforme de la loi qui criminalise les pratiques homosexuelles ainsi que sur les pratiques qui tolèrent les agressions faites par les gens contre les homosexuels et les personnes trans à travers des campagnes de médiatisations et de mobilisation autour des affaires d'arrestations ou de violences dans les réseaux sociaux ou via les médias classiques.

La situation des droits des personnes d'orientation LGBT au Maroc

22. L'article 489 du Code Pénal interdit « *tout acte impudique ou contre-nature avec un individu de même sexe*« en stipulant que la sanction peut aller de six mois à trois ans de prison avec une amende de 200 à 1,000 dirhams. Selon la membre d'Aswat les personnes qui sont perçue comme faisant partie de la communauté LGBT sont exposées à la violence physique et au harcèlement moral. On est jugé sur son apparence physique selon des normes stéréotypées (la façon de s'habiller et de marcher dans la rue, etc.) ou sur des choix de vie privée (être surpris pendant une pratique affective ou sexuelle).

23. La membre d'Aswat a fait la distinction entre trois groupes imbriqués dans la communauté LGBT au Maroc: les riches qui jouissent d'une indépendance financière ou qui ont du pouvoir et qui par cela sont *de facto* à l'abri de l'agression et du mépris homophobe ou du moins ils bénéficient d'une protection en cas d'arrestation policière; la classe moyenne ou populaire qui cherche à cacher son orientation sexuelle et qui est victime du mépris et de l'agression des personnes et des groupes,

chez la classe moyenne les personnes les plus visibles dans leur expression de genre sont les plus exposées aux violences. L'interlocutrice a souligné que les personnes avec une identité 'homo' et appartenant aux deux derniers groupes risquent à être confrontés à un accès limité à l'emploi, au logement et aux services de santé sexuelle tandis que les personnes appartenant au premier groupe sont protéger par leur statut d'élite.

24. Les personnes qui militent sont pour la plus part issues de la classe moyenne/populaire et sont conscientes des risques qu'ils peuvent confronter par leur activisme. Ils et elles restent dans l'invisibilité concernant leur identité personne car l'anonymat est une stratégie de survie dans un contexte hostile à la transgression des tabous de genre et de sexualité.

La situation des droits des personnes d'orientation LGBT par sous-groupe

25. Tout acte homosexuel est criminalisé au Maroc mais tout sous-groupe LGBTIQ n'est pas indexé de la même manière par la société. D'après le représentant de l'Aswat, les groupes les plus stigmatisés sont les et les personnes trans. L'interlocutrice a souligné que les violences faites aux personnes basées sur une apparence stéréotypée diffèrent. Les femmes lesbiennes ou hommes trans sont souvent violentés dans l'espace familial ce qui est structurel comme violences faites aux femmes ou perçues comme femmes à travers l'enfermement dans le domicile familial jusqu'au mariage forcé, tandis que les hommes homosexuels qui sont perçu comme efféminés ou les femmes trans subissent plus souvent des humiliations et des violences physiques jusqu'au rejet du domicile familial.

La violence faites aux personnes d'orientation LGBT

26. Selon Aswat, les personnes de l'orientation LGBTIQ sont à risque d'agression homophobe dans l'espace public et au sein de la famille. Comme exemple l'interlocutrice a cité l'agression faite le 9 mars 2015 à Rabat contre deux hommes qui ont été accusés de s'être embrassés en public (dite l'affaire Tour Hasssan' d'après le lieu de l'échange de ce baiser ou l'affaire 'Lachen et Mohsine').[143] Les deux hommes ont été condamnés le 19 juin 2015 à 4 mois de prison et à 500 dirhams d'amende selon l'article 489 du Code Pénal. Cette affaire est survenue en représailles des autorités contre une action de deux françaises, membres du collectif militante FEMEN, qui se sont embrassées, seins nus, au même lieu et ont par la suite été expulsées par les autorités marocaines pour « une offense inacceptable pour l'ensemble de la société marocaine ».[144] Lahcen et Mohcen en ont été les bouc-émissaires.

27. Cette violence faite aux personnes LGBTIQ est un fait quotidien, selon Aswat, donnant l'exemple de l'impunité que les autorités accordent souvent aux agresseurs.

[143] Le Monde, *Maroc: Quatre mois de prison pour deux hommes accusés de s'être embrassés en public*, 19 juin 2015, url

[144] Le Monde, *Deux militantes Femen arrêtées puis expulsées du Maroc*, 2 juin 2015, url

28. Un autre exemple de la violence faite au personne LGBTIQ donné par l'interlocutrice est celui dite 'l'affaire Beni Mellal' d'après la ville dans laquelle l'évènement s'est déroulé.[145] Il s'agit d'un groupe d'hommes qui se sont introduit dans un appartement où se trouvaient deux hommes : le groupe a insulté et frappé les deux, les ont jeté dehors, nus, et ont filmé la scène avant que la police ait pu intervenir. Par la suite, les agresseurs ont été condamnés de deux mois de prison pour infraction avec l'ordre public, tandis que les victimes ont été condamnées à quatre mois de prison. Comme preuve du sentiment homophone généralisé dans la société, Aswat a cité le fait que les habitants de Beni Mellal ont manifesté dans les rues pour la libération des agresseurs et pour la condamnation des victimes. En outre, des 'associations morales' conservateurs se sont rapproché aux familles des victimes de Beni Mellal pour leur transmettre leur mépris. Le même cas s'est passé près du domicile de Lahcen et Mohcine ou un groupe a organisé une manifestation homophobe en toute impunité car dans les deux villes, les autorités n'ont pas arrêtés les manifestants incitant à la haine contre les homosexuels.

29. Au sein de la famille les personnes LGBTIQ subissent souvent des tracasseries. L'interlocutrice a donné comme exemple qu'ils sont parfois enfermées à la maison. Beaucoup de personnes LGBTQI, qui dépendent économiquement de leur famille, se voient privé de l'argent de poche. S'ils arrivent à une autonomie économique ils peuvent se détacher de la famille, mais ce n'est pas toujours le cas, car il y a une aliénation aux familles qui empêchent les personnes de s'en détacher.

La protection possible auprès des autorités

30. Selon le membre du collectif Aswat, il est quasi-impossible d'obtenir la protection auprès des autorités à cause de la loi qui pénalise l'homosexualité. L'interlocutrice a cité comme exemple de l'accès limité à la justice le cas d'une personne trans qui avait été violentée de façon répétée et souhaitant porter plainte auprès de la police locale. Le membre Aswat l'avait accompagnée de façon anonyme. Une fois entré au commissariat, l'interlocutrice a pu constater que l'agent de police s'est moqué de la personne trans portant plainte pour agression, il a répondu de façon vulgaire, il a commencé à poser des questions de sorte à obtenir des aveux de la victime reconnaissant son homosexualité, ce qui lui vaudrait de passer de victime à des poursuites pour motif d'homosexualité. La police n'a pas donné suite à sa plainte, sous prétexte que la procédure d'enquête était compliquée. L'interlocutrice a jugé que bien que la police ne puisse pas formellement refuser une plainte qui est porté à son attention, elle peut effectivement laisser trainer le dossier jusqu'à ce que la personne se fatigue de faire des allers-retours administratifs sans aboutissement.

L'organisation sociale de la communauté LGBT

31. Selon notre interlocutrice, 'la scène' LGBT au Maroc s'organise en toute discrétion pour protéger la sécurité physique de ses membres. Par exemple, on contrôle sa façon de marcher dans la rue, on fait attention à ses vêtements et on évite de manifester des gestes affectifs en public pour ne pas attirer l'attention. De préférence, les personnes LGBT se retrouvent chez eux à domicile, ou, en

[145] Têtu, *Les agressions homophobes sont le quotidien de la population LGBTI au Maroc selon Aswat*, 8 avril 2016, url

sortant en groupe, dans certains cafés qui sont connu pour tolérer la présence des homosexuels. Il n'y a pas des cafés ou des restaurants à Rabat avec une identité ouvertement 'gay'.

32. En défaut d'un espace publique sécurisé pour les homo- et trans, l'internet est perçu comme un espace libre. L'interlocutrice a cité comme exemple de cette espace sécurisé des apps tels que *Grindr* qui est utilisé pour organiser des rencontres entre homosexuels ou le magazine *Akaliyat* ('Minorité') actuellement en cours de transformation en association qui collabore avec Aswat pour dénoncer des affaires de violences pour motif d'homosexualité.

5. Abdelaziz Nouaydi, avocat

17 octobre 2016, Rabat

Abdelaziz Nouaydi est un avocat et universitaire, basé à Rabat. Ancien conseiller du premier ministre (Abderrahmane Youssofi 1998-2002) dans les domaines droits humains et dialogue social (syndicats et ONG), il est spécialiste en matière de droits humains international et fondateur de l'association non-gouvernementale Adala ['Justice']. *Il a servi comme avocat de défense, entre autre cas, dans des cas où des personnes ont été accusées pour homosexualité.*

Situation actuelle des personnes d'orientation LGBT au Maroc

33. Selon l'analyse faite par Nouaydi il faut comprendre la situation actuelle des personnes LGBT au Maroc par rapport au cadre juridique qui conditionne leur espace de liberté dans la sphère publique et privée. Dans le Code Pénal du Maroc il y a trois articles critiqués par les défenseurs des droits humains au Maroc et ailleurs (Human Rights Watch et Amnesty International par exemple), qui traitent directement de la sexualité : l'article 489 criminalisant les relations sexuelles entre deux personne du même sexe ; l'article 490 criminalisant les rapports sexuels entre deux personnes qui ne sont pas mariés ; et l'article 491 criminalisant l'adultère. Nouaydi a souligné que l'existence des articles qui interdisent des rapports consensuels entre adultes est en conflit avec le droit à la vie privée telle qu'elle est stipulée dans l'article 24 de la Constitution du Maroc de 2011. Nouaydi a également fait référence au cas de Lawrence v. Texas dans laquelle la Cour suprême fédérale des Etats-Unis, en 2003, a stipulée que le droit à la vie privée prime sur l'existence d'une loi anti-sodomie.

34. Toutefois, il n'y a pas actuellement une volonté politique à harmoniser les procédures du Code Pénal avec la Constitution. Selon l'analyse de Nouaydi cette réticence de la part des autorités politiques s'explique par la peur de ne pas provoquer la partie de la population marocaine qui est férocement contre l'homosexualité. Nouaydi estime que la société marocaine est partagée entre deux tendances : Une partie de la population, plutôt neutre vis-à-vis la question de l'homosexualité et une autre partie qui trouve que l'homosexualité constitue une abomination sur la base d'une interprétation conservatrice de l'Islam. En dehors de ces deux tendances se trouve une élite intellectuelle avec des valeurs plutôt libérales mais qui est sans grande influence. La classe politique qui navigue entre ces tendances est plutôt intéressée à maintenir une équilibre sociétale et non pas à s'investir dans un réforme du Code Pénal qui pourrait mener à l'abolition de l'article 489 et l'article 290 ce qui risque de mettre en question l'assise idéologique- religieuse tant de la monarchie (le Roi est "Amir Almouminine" commandeur des croyants) que du PJD (le parti qui dirige le gouvernement).

Système judicaire Marocain face vis-à-vis des personnes d'orientation LGBT

35. D'après les estimations de Nouaydi, il y a eu entre 10 et 20 cas d'accusation d'homosexualité qui ont été portées devant les tribunaux dans les cours marocaines pendant les années 2015 et 2016.

Nouaydi a souligné qu'il n'a pas de statistique sur l'ampleur des cas. Décrivant, d'une manière générale, le risque pour les personnes qui se trouvent en audience devant le juge, accusé pour violation de l'article 489, il a qualifié ce risque comme 'réel' ; car une fois en procès il y a une très haute probabilité de recevoir un jugement même en absence des preuves formelles ou des témoins oculaires de l'acte sexuel. Cela s'explique par le fait que les PV (procès verbale) produits dans les commissariats sont souvent faux ; les accusés peuvent, par exemple, être mené à signer le PV sous pression sans la présence de leur avocat. Etant donné que ce sont les PV qui constituent l'élément décisifs aux procès et que le juge y attache une grande importance, c'est difficile pour l'accusé de se défendre. Si le PV est porté devant le juge, il y aura un grand risque pour l'accusé d'être condamné.

36. Comme exemple des cas porté devant les tribunaux sans preuve de délit flagrant il a cité le cas de Ksar El Kébir, où il a fait partie de la défense des hommes accusés pour homosexualité. L'incident a eu lieu au mois de Novembre 2007 à Ksar El Kébir où un groupe d'hommes ont participé dans une soirée festive dans une maison privée. A la suite d'un vidéo amateur qui a circulé sur les sites internet, six hommes ont par la suite été accusés pour violation de l'article 489. Ils ont reçu par le tribunal de première instance à Ksal El Kébir des verdicts de peine de prison même en défaut des preuves d'acte sexuels. Les peines pour homosexualité allaient de quatre à six mois. Nouaydi a souligné qu'en réalité on est condamné pour le fait d'être homosexuel même si c'est seul l'acte homosexuel qui est pénalisé dans le Code.

37. Nouaydi a souligné qu'actuellement les jugent font le choix d'appliquer des peines minimales avec souvent des amendes infimes en dépit d'un public parfois agressif.

38. Le Code pénal prévoit des peines de 6 mois à trois ans d'emprisonnement avec amende de 200 à 1.000 dirhams mais dans une affaire Béni Mellal qui a eu lieu au mois de mars 2016, le juge a appliqué une peine de quatre mois, donc bien en dessous de la peine minimale prévue dans le Code. D'après les connaissances de Nouaydi, la peine maximale qui a été appliquée dans le cas d'homosexualité de Ksar Lakbir à un accusé a été dix mois de prison mais cela a été sur la base d'un élément supplémentaire de vente illicite d'alcool qui s'est ajouté à la peine pour homosexualité.

39. Toutefois, Nouaydi a remarqué que les conséquences pour une personne qui a comparé devant le juge et qui a été incarcérée sont importantes car aux yeux des gens du quartier et de sa famille la honte est énorme si l'arrestation est connu dans la communauté. Les conséquences peuvent inclure difficulté de trouver un emploi (car le casier judiciaire "vierge" est exigé), risque d'expulsion de domicile si c'est un jeune dépendant, etc.

La protection possible auprès des autorités

40. D'après Nouaydi les personnes homosexuelles préfèrent subir les agressions homophobes plutôt que de se présenter au commissariat demandant protection, pour éviter de se faire arrêter pour

homosexualité. Cela limite de façon considérable leur accès à la justice y compris au cas de violence domestique, licenciement abusif, etc.

Situation pour les individus LGBT incarcérés

41. De manière générale, les conditions de détention sont précaires (surpopulation, nourriture insuffisante, accès aux services de santé limité, manque de récréation digne). En tant qu'avocat, Nouaydi a pu accéder aux prisons, et il y a fait le constat que les responsables des prisons manquent de façon systémique dans leur devoir à faire connaitre à chaque détenu les règles intérieures pour que la personne incarcérée connaisse ses droits et devoirs.

Notes: 2019 (French version)

6. Intervenante sociale

Entretien par email avec une intervenante sociale au Maroc

24 Mai 2019

La situation en 2019 des personnes lesbiennes, gays, bisexuels ou transgenres (LGBT) au Maroc

De façon globale, l'interlocutrice a noté que la situation des personnes d'orientation LGBT au Maroc est toujours la même par rapport à la situation au 2016 dans la mesure que l'article 489 du code pénal continue à être appliqué. Sauf que en 2019 aucun groupe ne fait de la documentation des arrestations, compte tenus des répressions sur les activistes qui ont affaibli l'énergie des personnes qui faisaient ce travail, ce qui a eu pour conséquence de rendre invisible l'ampleur des violences LGBT.

Aujourd'hui, quelques initiatives des OSC (organisations de la société civile) apparaissent, une volonté de groupes voulant intégrer les questions de genre et de sexualité dans leurs programmes avec plus de communication dessus et moins d'inquiétude à être arrêtés. Ces initiatives ne sont pas soumises à de grandes pressions car elles ne mettent pas en cause les répressions des autorités (par exemple. Des ateliers artistiques intégrant les personnes queers).

Le conseil civil contre toutes les formes de discrimination a été mis en place par un nombre d'organisation dont le collectif Aswat. Ce conseil a dressé un état des lieux des discriminations en mai 2018 avec une partie importante sur les discriminations LGBT.

L'interlocutrice a expliqué que de façon générale, il n'y a toujours pas de changement de mentalités depuis 2016 : Aujourd'hui les grandes villes garantissent plus l'anonymat et offre un paysage hétérogène qui protège davantage les personnes LGBT. Cela dit, les personnes les plus visibles dans leur expression de genre continuent à être violentées (harcèlement, agression physique, verbale). Par contre, dans les villes de taille moyenne, voire petites ou dans les zones rurales, le risque de violences est plus haut.

La loi

L'interlocutrice a confirmé que l'article 489 du Code de procédure pénale marocain de 1962 est toujours en vigueur.

L'interlocutrice a également confirmé que l'acte d'homosexualité est toujours punissable de 6 mois à 3 ans d'emprisonnement et d'une amende de 200 à 1000 dirhams.

Application de la loi

En ce qui concerne le nombre de cas d'accusation pour délit homosexualité (article 489) qui a été portée devant les tribunaux dans les cours marocaines depuis 2016, l'interlocutrice en possédait par d'information exacte, car les données statistiques ne sont pas directement accessible pour le public.

Pareillement, pour ce qui concerne les peines qui ont été appliquées dans les cas de verdict d'acte d'homosexualité depuis 2016.

Attitudes des autorités vis- à-vis des personnes LGBT

D'après l'intervenante sociale, les autorités marocaines n'ont pas changé d'attitude vis-à-vis les personnes LGBT depuis 2016.

Selon les connaissances de l'interlocutrice, les personnes LGBT qui sont agressées et qui craignent être victime d'un acte criminel ne recourent à la justice, car il est connu que la double procédure implique que lorsqu'une personne est coupable d'un délit et même lorsqu'elle est victime, elle est également inculpée.

D'après la connaissance de l'interlocutrice, il existe aucun centre de protection ouvert aux personnes LGBT. Il existe une association appelée l'UFL qui a communiqué lors de sa création sur l'existence d'une permanence juridique pour les personnes LGBT mais on n'a pas eu aucune information sur leurs actions à ce sujet depuis deux ans.

L'intervenante sociale a eu connaissance du 'cas de Marrakech' où un jeune homme a vécu une situation humiliante le 31 Décembre 2018 mais ignore le déroulement de l'enquête.

Au Maroc, seul le collectif Aswat faisait de la documentation juridique des cas d'arrestation et de violence entre 2014 et 2016 selon l'interlocutrice. Aujourd'hui l'association Akaliyate dénonce des arrestations et des lynchages contre les personnes LGBT qui sont portés par les médias mais il semble qu'il n'y a pas d'énergie chez les activistes pour faire un travail de documentation continu et approfondi, ce qui rend invisible l'ampleur des violences.

7. Abdelaziz Nouaydi, avocat

Abdelaziz Nouaydi, avocat, entretien par téléphone

Le 9 mai 2019

*Abdelaziz Nouaydi est Professeur de Droit et sciences politiques et avocat au barreau de Rabat. Ancien conseiller du premier ministre (Abderrahmane Youssofi 1998-2002) dans les domaines droits humains et dialogue social (syndicats et ONG), il est spécialiste en matière de droits humains et fondateur de l'association non-gouvernementale Adala (*Justice*). Il est associé avec l'association l'Union Féministe Libre, une association pour les femmes victimes de violence basée sur le genre et la sexualité.*[146] *Il a servi comme avocat de défense, entre autre cas, dans des cas où des personnes ont été accusées pour homosexualité.*

Cadre juridique

D'après M Nouaydi, l'article 489 du Code Pénal marocain de 1962 est toujours en vigueur.

L'acte d'homosexualité est toujours punissable de 6 mois à 3 ans d'emprisonnement et d'une amende de 200 à 1000 dirhams.

Application de la loi

D'après M Nouaydi, on voit actuellement parmi les juges une tendance de plus de tolérance envers les personnes d'orientation LGBT au Maroc; par contre on constate que la population est de moins en moins tolérante envers les personnes d'orientation LGBT.

M Nouaydi a décrit un cas de violence envers une personne d'orientation LGBT ; un cas qui a été connu dans la presse comme 'le cas de Marrakech'.[147] Il s'agit d'un jeune homme, âgé de 33 ans selon la presse, qui a vécu une situation humiliante le soir du 31 décembre 2018. Il se trouvant dans sa voiture habillé en femme le soir de nouvel an quand il a été interpelé par la police. La police lui a retiré de la voiture et a pris sa photo et a saisi son permis de conduire. Ensuite les photos pris par la police ainsi que les données personnelles du jeune homme ont circulé sur les media sociaux. M Nouaydi a suivi le cas sans être directement impliqué ; d'après sa connaissance le cas est resté au parquet.

M Nouaydi n'est pas au courant du nombre exact de cas impliquant l'article 489 du Code Pénal.

La situation générale des personnes athées ou converti de l'Islam

D'une manière générale, M Nouaydi a noté que la protection des minorités religieuse n'est pas très développée dans la société marocaine contemporaine. Doté d'une religion d'Etat, la foi Musulmane est centrale au Maroc et l'Etat est hostile vis-à-vis des musulmans marocains convertis au christianisme. D'après les observations de M Nouaydi, la société marocaine est en générale très peu tolérant vis-à-vis des personnes choisissant de quitter la foi Musulmane. C'est surtout les convertis en Christianisme qui montrent ouvertement au public leur nouvelle foi qui sont mal perçu par la population.

Les Chrétiens et les juifs qui sont nés avec cette religion sont à priori tolérés. Par contre, les bahaïs et les shiites ne sont pas tolérés.

[146] L'Union feministe libre, http://unionfemlibre.org/
[147] France Soir, *Au Maroc, s'habiller en femme peut faire basculer la vie d'un homme*, 25 janvier 2019, url

M Nouaydi n'est pas au courant des cas contre les convertis actuellement.

Il existe une association au nom de l'Association de protection des minorités religieuses[148]. Cette association est active mais son travail est difficile à cause du manque de protection des minorités religieuse au Maroc.

Système judicaire

Porter plainte

Une personne qui s'estime victime d'une infraction peut en informer la justice à travers le commissariat du quartier. Toutefois, au commissariat la personne risque d'être reçu par un policer déjà imprégnée des idées conservatrices er par conséquent peu moins ouvert aux plaintes déposées par une personne LGBT. À part du commissariat, c'est également possible de s'adresser au procureur général du Roi près la Cour d'appel dans la ville le plus près.

Solliciter la protection

Une personne d'un groupe social vulnérable ou une femme qui craint des répercussions par sa belle-famille peut demander protection par les autorités auprès du commissariat. Toutefois, M Nouaydi suggère que la personne s'adresse plutôt à une association des droits de l'homme pour assistance. Personnellement, il connait de par son engagement l'association l'Union Féministe Libre (UFL), une association pour les femmes victimes de violence basée sur le genre et la sexualité, et l'Association de protection des minorités religieuses.

[148] L'Observatoire de la liberté religieuse, https://www.liberte-religieuse.org/maroc/

8. Expert en matière de droits

Avocat, expert en matière de droits d'immigration et des droits de l'homme

4 juillet 2019

Situation des personnes lesbiennes, gays, bisexuelles et transgenres (LGBT) au Maroc

Cadre juridique

Selon l'avocat, l'article 489 du Code pénal marocain de 1962 est-il toujours en vigueur.

L'acte d'homosexualité est-il toujours punissable de 6 mois à 3 ans d'emprisonnement et d'une amende de 200 à 1000 dirhams.

Application de la loi

En ce qui concerne le nombre de cas d'accusation pour délit homosexualité qui a été portée devant les tribunaux dans les cours marocaines, le Ministère Public a précisé que le parquet a engagé 170 poursuites pour 147 affaires enregistrées. En 2017, cela était 197 poursuites.[149]

Ces chiffres sont inclus dans la rubriques des poursuites relatives à l'atteinte à la famille au non-respect des bon mœurs qui comptabilisent plus de 32.000 poursuites relatives à des infractions comme : adultère, prostitution, abandon d'un nouveau-né, homosexualité.

L'avocat estime que le nombre de condamnations liés au délit d'homosexualité - prison ferme ou sursis- seront aux alentours de 800 ce qui nettement supérieur aux 170 condamnations figurant dans le rapport d'activité du ministère public de 2018[150], pour étayer sa thèse, l'avocat souligne que les 70 tribunaux marocains de première instance ont jugé 2.455.457 affaires lors de cette même année, ce qui veut dire que 800 affaires représentent seulement 0,0325% de l'ensemble des affaires jugés. L'avocat ajoute que le ministère public déclare expressivement dans le rapport que ces chiffres sont "approximatifs". Toutefois, selon cet expert en matière de droits, ça reste un effort très louable du Ministère Public puisque auparavant on n'avait pas même pas de chiffres à commenter.

Ce qu'il faut préciser c'est que les affaires qui sont médiatisées ou recensées par les associations de protection des droits de l'homme représentent une infime minorité des affaires jugés car la plupart des personnes poursuivis pour actes d'homosexualité préfèrent être discrets et passer inaperçus et contestent rarement les décisions les condamnant. En plus un certain nombre de condamnations pénales pour délits divers : vol, homicide sont poursuivis sont associés à un délit homosexualité, lorsque des signes d'appartenance sont ostentatoirement visibles.

Toutes les peines relatives aux verdicts d'actes d'homosexualité sont appliquées. Les pressions de la société civile n'ont aucun impact sur l'application des peines, il y a eu lieu de noter que sous la pression de pays étrangers, les ressortissants de ces pays condamnés pour délit d'homosexualité sont parfois libérés sous caution où vont être renvoyés à leur pays d'origine, tandis que leur partenaire marocain reste emprisonné.

[149] Ministère Public, *Rapport sur l'implémentation du Code Pénal 2018*, url
[150] Ministère Public, *Rapport sur l'implémentation du Code Pénal 2018*, url

Système judicaire

Porter plainte

Où s'adresser pour une personne qui s'estime victime d'une infraction en informer la justice

Toute personne qui s'estime victime d'une infraction peut déposer une plainte devant le commissariat de police pour les habitants des zones urbaines, et devant la gendarmerie royale pour les habitants des zones rurales

La victime peut également saisir le procureur du roi directement en déposant une plainte écrite auprès du ministère publique.

Qui peut porter plainte

La présence d'un parent n'est pas obligatoire pour porter plainte par un mineur, toutefois les officiers de la police judiciaire refusent parfois d'accepter les plaintes d'un mineur en l'absence de son tuteur légal.

Possibilité de porter plainte par écrit

Il est possible de porter plainte directement et oralement devant les commissariats de police et les brigades de gendarmerie royale sans support écrit.

Par contre les plaintes déposées devant le procureur du roi doivent être écrites.

Possibilité pour la police ou la gendarmerie de refuser la réception de la plainte

Le code de procédure pénale ne comporte aucune disposition obligeant les officiers de la police judicaire à enregistrer systématiquement une plainte, par conséquent il arrive parfois que les officiers de police judiciaire refusent d'enregistrer la plainte de la victime.

Toutefois la victime peut déposer une plainte écrite devant le procureur du roi, cette plainte est inscrite systématiquement dans un registre avec un numéro de série, et la victime doit être informée obligatoirement de la suite donnée à sa plainte.

Les délais pour porter plainte

Les délais de prescription des infractions pénales sont de :

- 1 an pour les contraventions
- 4 ans pour les délits
- 15 ans pour les crimes

Ces délais commencent à courir à partir de la date de la commission de l'infraction, et sont interrompus par toute action d'investigation lancée par le ministère publique où par le juge d'instruction.

Les délais de prescription des infractions pénales commises sur les mineurs commencent à courir à partir de la date à laquelle la victime mineure atteint l'âge de majorité légale.

Après réception, vers quelle institution est la plainte ensuite transmise (le procureur ?)

Après réception de la plainte, la police judiciaire doit établir un procès-verbal comportant les déclarations de la victime et les déclarations de l'agresseur qui doit être convoqué puis le

transmettre au procureur du roi qui décide de la suite à donner à l'infraction : soit classer la plainte sans suite où poursuivre pénalement l'agresseur et le traduire devant le tribunal correctionnel.

Frais pour le dépôt d'une plainte simple

Oui le dépôt de la plainte est totalement gratuit

La protection mise en disposition par les autorités

Où s'adresser pour une personne qui s'estime en risque d'un acte de violence (coups, blessure ou autre) en vue de demander protection par les autorités ?

Une personne qui s'estime en risque de violence pourrait s'adresser au commissariat de police ou à la gendarmerie royale pour demander protection, en pratique les autorités ne prennent pas au sérieux les menaces de violences contre les personnes. En plus les autorités n'ont pas les moyens pour offrir un dispositif de protection en l'absence de centres de protection sociale pouvant héberger les victimes en risque d'actes de violence.

Qui peut demander protection:

a. Est-ce qu'un mineur peut-il s'adresser aux autorités en vue de demander protection seul?

Oui un mineur peut s'adresser aux autorités tout seul en vue de demander protection, mais les autorités requièrent souvent la présence de son tuteur légal.

b. Est-ce qu'une personne qui a commis un délit peut-elle demander protection en cas de risque d'un autre délit ?
Il y aucun dispositif légal qui propose cette protection, une personne ayant commis un délit va trouver beaucoup de difficultés à convaincre la police à la protéger, sauf dans les cas des délits commis dans le cadre d'une autodéfense.

Est-ce que les autorités peuvent-elles refuser la réception de la demande ?

Les autorités se contentent généralement de rediriger la victime vers un centre de protection sociale ou lui proposer de rejoindre la maison familiale où le domicile conjugal pour les cas de violences contre les femmes. Aucune disposition légale n'oblige les officiers de police à accepter une demande de protection.

Protection disponible de la part des autorités pour une personne qui qui s'estime en risque d'une acte de violence

En l'absence de centres de protection sociale, les autorités n'ont pas de dispositifs de protection en bonne et due forme, la police convoque parfois la personne ayant menacé la victime pour le mettre en demeure et lui demander de ne pas s'approcher de la victime. 'Mettre en demeure' est une procédure précontentieuse 'à l'amiable' effectuée par les cellules de soutien des femmes, créées auprès du ministère public et les commissariats de police qui interviennent pour rappeler au conjoint violent les conséquences juridiques qu'il peut encourir s'il continue à menacer où essaie de violenter sa conjointe. Cette procédure

est utilisée afin d'éviter de transformer toutes les disputes conjugales en affaires pénales qui se terminent dans la plupart de cas par un désistement de la victime sous la pression des familles.

Donc il s'agit d'une sorte de rappel à l'ordre dans le cadre de l'accompagnement de victimes de violences conjugales. En cas de refus d'obtempérer le conjoint violent va être poursuivi pénalement selon les dispositions en vigueur.

Ce dispositif n'est pas automatique, et il dépend de la bonne volonté des conjoints en conflit pour accepter l'intervention des cellules concernées.

La loi 103-13 relative à la lutte contre la violence envers les femmes qui est entrée en vigueur le 12 septembre 2018, prévoit la création d'une cellule consacrée aux violences contre les femmes au niveau de la direction générale de la sureté nationale et auprès des tribunaux.[151]

La loi prévoit également des dispositifs de protection[152] pour les femmes victimes de violence à savoir :

- Mettre en demeure l'agresseur en cas de menaces contre la victime.
- Internement de la victime dans un hôpital où un centre de protection sociale.

Dans la pratique ces dispositifs restent inactivés. La capacité des hôpitaux et des centres de protection sociale constitue un obstacle de taille.

Dans quelle mesure est-ce que les autorités offrent la protection à une personne qui qui s'estime en risque d'un délit ?

Les autorités marocaines n'offrent pas automatiquement la protection à une personne en risque de délit, les autorités ne bougent généralement qu'après la commission de l'infraction et rarement avant. Le législateur marocain n'a pas prévu des dispositions légales relatives à la protection de la victime qui permettraient par exemple d'affecter des policiers pour surveiller le domicile d'une victime à l'instar d'autres pays occidentaux.

[151] Article 10 de la loi 103.13
[152] Article 8 de la loi 103.13

9. Organisation de la société civile

Cette organisation régionale lutte pour les droits de l'homme et couvre la région du Moyen Orient et l'Afrique du Nord.

Le 2 juin 2019

La situation générale des personnes LGBT au Maroc

Selon l'interlocuteur, la situation des personnes LGBTQI n'a pas changé depuis 2016. L'homosexualité reste criminalisée par le code pénal et la société continue à stigmatiser et réprimer cette population.

D'après l'interlocuteur l'opinion générale vis-à-vis des homosexuels n'a pas du tout changé. Les propos des officiels, des médias et de la population en général continuent à être dans la stigmatisation et la répression.

Selon l'interlocuteur, la seule façon de vivre pleinement son homosexualité, bisexualité ou son identité et expression du genre différentes est de se cacher. Tant que les choses se font dans le secret, il n'y a pas de problèmes à part dans certains cas ou des violations de domiciles ayant pour but d'agresser des homosexuels ont eu lieu. Le monde rural est bien évidement encore plus difficile et cruel que celui de la ville car tout le monde connait tout le monde. De manière général, il n'est tout simplement pas possible de vivre paisiblement en conformité avec son orientation et identité de genre si celles-ci ne sont pas conforme à la règle cis-hétéro-normative.

La loi

L'article 489 du Code pénal marocain de 1962 est toujours en vigueur. L'organisation ne s'est pas impliquée dans les procès concernant l'article 489 depuis deux ans mais nous continuons à recevoir des informations quant à l'utilisation régulière de cet article par l'accusation. L'interlocuteur a cité un article publié le 26 juin 2019 qui offre quelques indications sur le nombre de personnes poursuivies pour homosexualité.[153]

L'interlocuteur a affirmé que l'acte d'homosexualité est toujours punissable de 6 mois à 3 ans d'emprisonnement et d'une amende de 200 à 1000 dirhams.

D'après les connaissances de l'organisation au niveau de magistrat, les juges n'ont pas changé d'attitude vis-à-vis des personnes LGBT qui sont présentés devant un juge depuis 2016.

Attitudes des autorités vis- à-vis des personnes LGBT

Les autorités n'ont pas changé de position vis-à-vis les personnes LGBT depuis 2016. Les militants ou les membres de la communauté LGBTQI+ sont obligés de se cacher et être discret pour ne pas s'attirer les hostilités des autorités. Une personne QUEER a été arrêté durant ce mois de juin 2019 parce qu'elle portait, durant un spectacle musical publique à la capitale, le drapeau arc en ciel. Elle a heureusement été relâchée car elle s'était débarrassée du drapeau avant son arrestation.

[153] Le Desk, *Au Maroc, 3 000 personnes poursuivies pour adultère et 170 pour homosexualité en 2018*, 26 juin 2019, url

Pour une personne LGBT qui craint être victime d'un acte criminel, il reste très difficile de déposer plainte pour violence ou agression auprès de la police. Pour ces deux raisons :

- Se déclarer victime d'homophobie est une reconnaissance d'être un criminel car le code pénal criminalise cette identité.
- La police ne traite pas bien des personnes LGBT victimes d'agression pour la simple raison que le code pénal qu'ils appliquent est lui-même homophobe.

Au sujet de l'existence des centres de protection, l'interlocuteur a noté qu'il y a quelques organisations LGBT qui travaillent plus ou moins clandestinement mais leur condition ne leur permet pas malheureusement de prendre en charge de manière complète les victimes d'homophobie et transphobie. Un centre de ce genre n'existe donc pas.

10. FLDF

La Fédération des Ligues des Droits des Femmes (FLDF), entretien par téléphone 24 juin 2019

L'interlocutrice, Latifa Bouchoua, est présidente de la Fédération des Ligues des Droits des Femmes (FLDF). FDLF a le statut d'ONG dans le domaine des droits des femmes. Enregistrée légalement le 18 avril 1993, elle regroupe 8 sections régionales et coordonne le Réseau Femmes Solidaires (RFS) qui est composé d'une centaine d'associations locales. La FLDF a pour mission la protection et la promotion des droits de la femme à travers des activités socio-éducatifs et des activités relatifs au lobbying et au plaidoyer.

La législation et l'application de la loi autour des groupes vulnérables au Maroc

La situation des groupes vulnérables au Maroc s'est améliorée depuis les années 1990s, grâce au dynamisme du mouvement féministe et droits humains, et à l'ouverture et l'adhésion du Maroc aux normes et mécanismes internationales des droits humains. Le Maroc a ratifié la plus part des conventions et pactes internationaux dans le domaine, avec des réserves (ex : CEDAW - Convention pour l'élimination de de la discrimination à l'égard des femmes) qui ont été partiellement révisées et abrogées. Suite à ce processus et vue certaines évolutions de la société Marocaine et ses acteurs, la législation interne a elle aussi a connu une nette avancée dans plusieurs domaines notamment celui des droits humains et de l'égalité. Généralement, Mme Bouchoua note que la législation est avancée depuis les années 1990s.

Le Maroc a connu des avancées dans le cadre législatif concernant les droits des femmes, notamment avec la Code de la Famille. La version de 2004 est très avancée par rapport à l'ancienne Code du Statut Personnel qui était presque intouchable auparavant : dans la version de 2004 le principe de l'égalité entre les femmes et les hommes dans la famille est inscrit au préambule et quelques dispositions ont connu des reformes pour la protection des droits des femmes. Cela a représenté un pas d'avancement en son temps, maintenant vue les changements sociétaux et constitutionnel ; ce même code nécessite une révision globale. D'autres lois ont connu des changements et ont permis l'émancipation des femmes et leur participation et gestion des affaires publiques (code de la nationalité, code de travail qui a interdit la discrimination et harcèlement sexuel, les lois électorales avec l'instauration du quota pour améliorer la représentativité politique des femmes, etc.).

En 2011, la Constitution a instaurée le principe de l'égalité entre les femmes et les hommes dans tous les droits économiques, culturelles, environnementales, civiles et politiques. Cela est une énorme avancée : le principe de l'égalité est instauré dans la Constitution, ainsi que l'Autorité pour la Parité et la Lutte contre toutes les formes de Discriminations (APALD), ce mécanisme primordial (APALD) dont le statut a été adopté en juillet 2017; mais reste insuffisant, et n'est pas encore mis en place.

Mme Bouchoua a souligné qu'il y avait les retards et les insuffisances d'implémentation des lois en accords avec le principe d'égalité de la nouvelle Constitution, par exemple la mise en place de l'instance de la Parité. Pendant les années 2017 et 2018 on a enfin connu l'adoption des lois émanant de l'application de la Constitution. Des pas positifs dans la protection des droits des femmes sont les suivantes : la loi 103.13 relative à la violence contre les femmes (entrée en vigueur en septembre 2018), la loi 19.12 relative aux travailleurs et aux travailleuses domestiques ; et la loi 27/14 relative à la lutte contre la traite des êtres

humains. La FLDF entame un suivi sur l'application de ces lois surtout celle de la violence à l'égard des femmes.

Protection par les autorités

Selon Mme Bouchoua, c'est positif que les lois soient instaurées même s'ils sont incomplets en matière de la responsabilité de l'état dans la protection et la prise en charge totale des victimes. Elle a aussi souligné que les lois restent insuffisamment appliquées en pratique.

La sensibilisation des citoyens et citoyennes sur leurs droits n'est pas continue et pérenne et reste occasionnelle. La FLDF a salué les circulaires du Ministère Public concernant la divulgation et l'explication des dispositions de ces nouvelles lois et les instructions pour leur bonne l'application et pour le suivi et l'édition des rapports annuels par les juges dans les tribunaux compétents.

Pour une femme qui se sent en risque d'être victime de la violence, selon la nouvelle loi 103/13 elle peut s'adresser aux autorités et déposer plainte à la police. Toutefois, Mme Bouchoua a souligné que les pourcentages des femmes marocaines ayant fait cette démarche en 2018 ne dépasse pas 6 %. Il faut avoir du courage et utiliser les associations pour comprendre toutes les procédures. Il y a beaucoup de difficultés culturelles et autres défis qui empêchent les femmes à exercer leurs droits et qui ne les laissent pas à suivre la procédure jusqu'au bout.

C'est possible de porter plainte pour les femmes, et normalement cela se passe par la police du quartier qui par la suite fait parvenir le cas au procureur. Selon la dernière enquête sur la violence à l'égard des femmes, publié en mai 2019 par le Ministère de la Famille, de la Solidarité, de l'Égalité et du Développement Social, il n'y a que 6 % des femmes (victimes de violence par exemple) qui posent plainte et le nombre qui a suivi la procédure est beaucoup plus bas ; il ne dépasse pas 3 %. En général, il y a une résistance, et les institutions ne font pas toujours une vraie et permanente sensibilisation pour que les femmes puissent entamer les procédures de porter plainte en sécurité.

Selon les expériences de FLDF, c'est nécessaire de protéger la femme qui s'engage à porter plainte et qui suit la procédure judiciaire dans des centres de protection. C'est une tâche que le gouvernement et les secteurs concernés doivent assurer dans le cadre de leur responsabilité.

Les femmes dans les centres ont typiquement un conflit avec leur mari, parfois elles ont des conflits familiaux (père, frère, fiancé, copain et autres). La violence conjugale et familiale est typiquement de nature physique ou sexuelle. On voit aussi la violence économique par le mari ou l'un de proche de la femme victime. En plus, les femmes qui s'adressent aux centres sont victimes de harcèlement sexuel dans les espaces publics et du viol, ainsi que la violence juridique qui engendre la discrimination persistante dans les lois ; et dans plusieurs cas on assiste à plusieurs types de violences.

Les centres de protection

Il y a des centres dans chaque région du Maroc. La FLDF a 10 centres d'écoutes et d'orientation des femmes victimes de la violence et un centre hébergement, qui s'appelle TILILA. Il y a 26 centres des associations locales du Réseau des Femmes Solidaires (RFS) qui couvrent presque toutes les régions et localités du Maroc, ainsi que d'autres centres d'associations de féminines marocaines (UAF et AMVEF et autres).

Généralement les centres sont financés par les partenaires internationales. Le financement du gouvernent, surtout celui du Ministère de la Famille, de la Solidarité, de l'Égalité et du Développement Social, est très limité, compliqué et non-permanent. Le cadre du financement octroyé par l'Union Européenne au gouvernement marocain est nouvellement établi (depuis 2012). Alors que les centres d'écoutes sont constitués et pris en charge par les associations depuis la fin des années 80s ; ces centres continuent à présenter un minimum de services avec des moyens très modestes, les financements étrangers ont régressé et ne couvrent pas les frais des fonctionnements.

Pour les centres de l'état, il s'agit de 44 centres de femmes en situation difficile (femmes et filles des rues ; femmes âgées), mais la plupart de ces centres ne sont pas encore opérationnels. Nul de ces centres sont spécifiquement dédiées aux les femmes violentées ; alors que ces dernières nécessitent une spécialisation selon les normes internationaux de lutte contre la violence basée sur le genre.

Jusqu'à présent et pour les cas dangereux de femmes victimes qui nécessitent une intervention et protection urgente, ce sont généralement les centres des associations qui les hébergent. Plusieurs cas sont orientés de la part des autorités (police, gendarmerie, santé) vers les centres de FLDF. Les victimes se laissent à leurs familles et leur sort.

En concernant la capacité des centres des associations, il y un grand déficit, surtout concernant l'hébergement. La demande des places dans les centres est très supérieure à la disponibilité des places réelles. Pour les centres de l'état nous n'avons pas d'informations concernant ce qui se passe dedans les centres surtout que la plus part des 44 centres ne sont pas toujours opérationnels.

Dans la société marocaine la situation des personnes LGBT est difficile. Les organisations qui luttent pour les droits des personnes LGBT travaillent dans la plus part dans l'ombre, la plus part des activistes et activités sont exercées à travers les réseaux sociaux civils. Le groupe des personnes LGBT est isolé et ne peut exercer ses droits d'une façon publique.

Le groupe LGBT ne se rend pas du tout dans les centres de l'état que connaît la FLDF. Il y a des jeunes sans famille dans des centres – c'est normalement les associations comme Bayti qui s'occupe d'eux. Il s'agit typiquement des jeunes délinquants.

Mme Bouchoua informe que FLDF ne dispose pas d'information sur les jeunes hommes victimes de traite. Par contre, FLDF voit 'les petites bonnes' (jeunes filles victimes de la traite au Maroc qui se trouvent dans les grandes villes). On trouve par exemple les petites bonnes échappées, dans les centres. Maintenant il y a la loi sur la traite, et un mécanisme national a été instauré a cet égard en mai 2019.

D'autres groupes vulnérables : protection par les autorités et traitement dans la société

Au Maroc et selon le Code pénal, il est criminel de se déclarer publiquement athée ou convertis ; il n'y a pas de protection possible dans ces cas. Dans la Constitution, il y a un article qui évoque le droit de la liberté de pensée, mais c'est interdit selon la Code Pénal de diffuser publiquement ou d'influencer des personnes par des pensées religieuses à se convertir de l'Islam.

Le droit de culte est assuré aux minorités religieuses pour les juifs marocains et chrétiens non-marocains (par exemple les immigrés subsahariens). Ce groupe pratique leur culte dans des églises et des

synagogues et ils sont libres à organiser leurs manifestations et festivals (par exemple mousmés des Juifs dans plusieurs régions du Maroc).

Culturellement, la plupart dans la société marocaine est contre les athées et les convertis même si il y a des divergences et de nouvelles formes d'expressions spirituelles. Dans la société, cela peut engendrer de la violence. Mme Bouchoua a informé sur certains cas qui étaient battus (dans les universités par exemple). Cette violence était surtout exercée par des groupes extrémistes.

Selon les connaissances de Mme Bouchoua, il n'existe pas des organisations qui sont spécialisées dans la traite humaine des marocains au Maroc ; sauf celles qui s'occupent des petites bonnes.

11. Dynamique Trans*

Entretien par téléphone et email avec un représentant/e du Dynamique Trans* Maroc

17 Juin 2019

Dynamique Trans* *est une dynamique indépendante et non pas une association au Maroc. Dynamique Trans* est organisée de façon horizontale, autogérée, non enregistrée et fonctionne à but non lucratif.*

Dynamique Trans* *lutte contre toutes les formes d'oppressions structurelles et systémiques subies par les personnes Trans* et/ou non-binaires à travers le renforcement collectif, le travail participatif des personnes Trans, mais surtout la production du savoir en Darija (le dialecte local au Maroc), ainsi que la mise en place de mécanismes d'alliance et de coordination.*

La loi

L'interlocuteur a confirmé que l'article 489 du Code pénal marocain de 1962 est toujours en vigueur et que ce Code pénal, hérité du colonialisme français, criminalise toujours toutes les sexualités, les identités de genre non cis-hétéronormative, et les transidentités. Selon cet article l'acte d'homosexualité est toujours :

"…puni de l'emprisonnement de six mois à trois ans et d'une amende de 200 à 1.000 dirhams..."

L'application de la loi

En ce qui concerne le nombre de cas d'accusation contre les personnes trans et/ou non-binaire l'interlocuteur n'avait pas eu accès à ces informations

Attitudes des autorités vis- à-vis des personnes Trans* et/ou non-binaires

Selon l'interlocuteur, les autorités marocaines n'ont pas changé d'attitude vis-à-vis les personnes Trans* et/ou non-binaires dans les années récentes (depuis 2016).

D'une façon générale, l'interlocuteur trouve que la police marocaine fait preuve d'une approche d'humiliation vis-à-vis des personnes Trans*.

Possibilité de chercher protection pour les personnes Trans* et/ou non-binaires

A cause des sanctions encourues par les personnes qui ne sont pas hétérosexuelles et/ou cisgenre, celles-ci ont peur de déposer plainte pour agression ou harcèlement basée sur orientation sexuelle et identité en matière de genre (OSIEG). Les personnes Trans et/ou non-binaire ne peuvent pas chercher protection auprès de la police car iels seront arrêter et poursuivis arbitrairement.

Bien que l'article 24 de la Constitution marocaine garantisse le droit à la protection de la vie privée, les personnes qui ne sont pas hétérosexuelles et/ou cisgenre continuent d'être arrêtées et condamnées en vertu des articles 489, 483, 490 et 491 du Code pénal marocain.

Ces personnes sont victimes de plusieurs formes de torture infligées par la police. Leurs droits sont souvent bafoués lors des détentions, par exemple en frappant violement une personne en garde de vue. Selon les informations de l'interlocuteur, la police a également menacé de dévoiler leur identité à leurs parents, à leurs collègues, amis, etc. Ensuite, iels signent les procès-verbaux sous la pression et n'ont pas le droit de garder le silence ou de prendre contact avec un avocat.

Les autorités jouent également un rôle dans la diffamation publique de ces personnes en divulguant des informations sur la vie privée des accusés. La police a à plusieurs reprises fait tourner de façon humiliante une personne Trans dans son quartier de manière à l'exposer devant les voisins. Selon l'interprétation de l'interlocuteur, cette pratique a comme but de faire passer un message au public et de faire peur aux personnes Trans*.

Iels font régulièrement l'objet de procès inéquitables sur la base d'aveux extorqués sous la contrainte.

Selon les connaissances de l'interlocuteur, il n'existe aucun centres de protection ouverte aux personnes Trans* et/ou non-binaires au Maroc.

Situation légale pour les personnes Trans* et/ou non-binaires au Maroc

L'interlocuteur a souligné que la loi marocaine criminalise les questions des transidentités et des diversités de genre, en les plaçant dans la catégorie des violations de la morale et des mœurs et/ou par l'article 489 du Code Pénal marocain hérité du colonialisme français: «les actes licencieux ou contre nature avec un individu du même sexe » qui est criminalisé. L'article 489 utilise bien sûr des termes vagues pouvant s'appliquer à toutes les identités de genre et les orientations sexuelles non cis-hétéronormatives.

Ensuite, l'interlocuteur a expliqué que les personnes transgenres, qui ont entamées des parcours de transitions hormonales et/ou chirurgicales, sont exposées à des dangers constants, tant au niveau social parce qu'iels sont toujours soumis.e.s aux harcèlements et à des violences morales et psychologiques dans les espaces publics à cause de leurs anatomies et/ou leurs aspects vestimentaires, et/ou leurs morphologies, et/ou leurs expressions transgressives, iels sont toujours sous le risque d'être lynché.e.s dans les espaces publics, ainsi que les menaces institutionnelles d'arrestation et la poursuite sous le même article 489 du Code pénal marocain qui est en défaveur de cette frange de la société. Selon cet article : "Est puni de l'emprisonnement de six mois à trois ans et d'une amende de 200 à 1.000 dirhams, à moins que le fait ne constitue une infraction plus grave, quiconque commet un acte impudique ou contre nature avec un individu de son sexe".

Ainsi que l'article 490 : "Sont punies de l'emprisonnement d'un mois à un an, toutes personnes de sexe différent qui, n'étant pas unies par les liens du mariage, ont entre elles des relations sexuelles", qui criminalise les rapports sexuels hors mariage et aussi l'article 483 : "Quiconque, par son état de nudité volontaire ou par l'obscénité de ses gestes ou de ses actes, commet un outrage public à la pudeur est puni de l'emprisonnement d'un mois à deux ans et d'une amende de 200 à 500 dirhams. L'outrage est considéré comme public dès que le fait qui le constitue a été commis en présence d'un ou plusieurs témoins involontaires ou mineurs de dix-huit ans, ou dans un lieu accessible aux regards du public." qui est utilisé pour criminaliser les expressions de genre non-normatif à travers l'utilisation de termes vagues pouvant aboutir à une poursuite judiciaire selon l'interprétation et par ceci à la merci des agents de l'Etat.

Sur cette base, l'interlocuteur a expliqué qu'il est difficile pour les personnes Trans* et/ou non-binaires de recourir à la justice pour porter plainte en cas d'agressions ou demander des services relatifs à leurs transitions hormonales et/ou chirurgicales et à leurs statuts civils, car toute enquête judiciaire peut révéler

leurs identités de genre criminalisées. Aussi les personnes Trans* et/ou non-binaires y compris celleux qui n'ont pas encore entamé et/ou qui ne souhaitent pas entamer une transition hormonale et/ou chirurgicale sont toujours soumis.e.s aux harcèlements et à la violence morale, psychologique, et physique dans les espaces publics, les services médicaux, les administrations, l'éducation, le travail à cause de leurs anatomies et/ou aspect vestimentaire et/ou morphologies et/ou expressions de genre, chose qui les prive de leurs droits fondamentaux.

Les personnes Trans* et/ou non binaires au Maroc, n'ont pas accès à l'information sur leurs identités de genre. Ces personnes vivent au quotidien un conflit intérieur entre ce qu'elles ressentent et ce que leur impose la société comme règles et normes établies. Ce conflit intérieur peut avoir un impact sur la santé psychique des personnes. Les personnes trans* ne peuvent pas suivre un traitement hormonal au cours de leur transition bien qu'il existe des spécialistes en endocrinologie au Maroc. Les chirurgies de transition sont également interdites.

En raison de ces interdictions, les personnes Trans* et/ou non-binaires ont parfois recours à des traitements hormonaux sans être suivis médicalement ce qui est fortement à risque pour leur santé. De même, des opérations de transition sont pratiquées en dehors du cadre légal. Outre le fait que certains professionnels de santé en tirent profit financièrement, les personnes trans* et/ou non-binaires qui ont recours à ces opérations n'ont aucune garantie de suivi et de responsabilité des médecins.

Les professionnels de la santé ne fournissent pas d'efforts pour changer les stéréotypes dominants ainsi que pour faire connaître la lutte des personnes non Trans* et non-binaires et sont parfois à l'origine de maltraitances et stigmatisations médicales qui sont contraires au serment d'Hippocrate. Ainsi, le secret médical n'est pas toujours de mise. Certains médecins ne respectent pas la déontologie et l'éthique médicale en divulguant les identités de leurs patients et les transforment ainsi en cible de violence. Ces maltraitances médicales, auxquelles s'ajoutent le risque de dénonciation à la police et le jugement moral réduit la confiance envers le personnel médical et limite l'accès aux soins de ces personnes.

Statut personnel

Le Maroc adopte toujours une définition cis-hétéro-normative du statut personnel et de la vie conjugale. Les personnes trans et intersexes ne peuvent donc pas modifier officiellement leur identité de genre.

La mention du sexe des nouveaux nés est obligatoire dans l'acte de naissance, Article 11: "L'officier de l'état civil est tenu de signer les actes de l'état civil et les mentions marginales qui y sont portées dès qu'ils sont établis..."

Dahir n° 1-02-239 du 25 rejeb 1423 (3»octobre 2002) portant promulgation de la loi n° 37-99 relative à l'état civil, "L'acte de naissance comprend le numéro du L'acte et la date de la naissance spécifiés pour le jour, le mois et l'année en hajri et Gregoria n e t l'heure et la minute dans lesquelles la naissance a eu lieu

et où elle s'est produite et le sexe et la nationalité du nouveaux né ..." article 18 du Décret 2.99.665 du 2 chaabane 1423 (9 octobre 2002) pris en application de la loi 37.99 relative à l'Etat civil.

La mentions du sexe est obligatoires sur tous les papiers personnel: carte d'identité nationale, passeport, chose qui rend toujours les personnes Trans* et non-binaires vulnérables à la discrimination et à la persécutions: au travail, au service administratif, au service médical, l'éducation, à l'aéroport..., et toujours sous le risque d'arrestations et de suivi judiciaire en cas des contrôles policier.

Selon l'interlocuteur cela a comme conséquence que les personnes Trans* et/ou non-binaires vivent toujours dans la terreur et la crainte d'être découvert.

Accès au travail

Selon l'interlocuteur, les personnes Trans* et/ou non-binaires sont souvent exclues de l'emploi.

Sur le marché de l'emploi, les personnes qui ne sont pas hétérosexuelles et/ou cisgenre font face à plusieurs discriminations, en particulier les personnes trans* et/ou non-binaires, surtout celleux qui y ont entamé une transmission hormonale et/ou chirurgicales, et celles dont l'expression de genre est visible (vêtements, attitude, langage, etc.).

Les personnes qui ne sont pas hétérosexuelles et/ou cisgenre sont victimes de discriminations à l'embauche à cause de leur identité et expression de genre et de leur orientation sexuelle, affichées ou supposées. Les recruteurs ne respectent pas le droit fondamental à l'égalité de chances et de traitement.

Les personnes assignées femmes à la naissance sont sous le coup d'une double discrimination. Elles sont à la fois victimes de violence sexiste et de violence fondée sur leur identité et expression de genre et leur orientation sexuelle.

Au travail, plusieurs personnes sont contraintes à cacher leur identité de genre pour rester à l'abri de la stigmatisation. Celles qui sont démasquées sont souvent agressées verbalement et physiquement par leurs collègues. Elles peuvent même être parfois victimes d'une violence aussi grave que le viol. Ces comportements, qui restent largement impunis, sont une vraie atteinte à leur intégrité physique et mentale.

Les personnes Trans* et/ou non-binaires ne sont pas protégées contre le licenciement abusif. Elles peuvent être congédiées sans pouvoir demander des clarifications et porter plainte car elles se retrouveraient sur le banc des accusés.

Accès à la santé

Selon l'interlocuteur, les agents de santé sont peu ou mal informé sur les questions relatives aux personnes Trans*. Par peur d'être mal reçues ou de risquer d'être dénoncé, nombreuses de personnes Trans* ne se rendent pas aux services de santé.

Attitude vis-à-vis des personnes Trans* et/ou non-binaires

Les propos de quelques responsables politiques renforcent, selon l'interlocuteur, la stigmatisation et les discriminations envers les personnes qui ne sont pas hétérosexuelles et/ou cisgenre et même incitent à la haine à leur égard. De fait, ces derniers considèrent que les droits des personnes OSIEG entrent dans le champ des libertés individuelles qui devraient être pratiquées discrètement et non affirmées. Or le principe d'indivisibilité des droits humains engage le Maroc à respecter les droits fondamentaux des personnes OSIEG et non à les réduire à la clandestinité et ses conséquences.

Interrogé sur la pénalisation de l'homosexualité, le ministre des droits de l'Homme, Mustapha Ramid, a déclaré qu'il est impossible de le faire au Maroc : « Tous les partis politiques et quel que soit le gouvernement, s'y opposent. Nous sommes un pays musulman dirigé par le commandeur des croyants. Dépénaliser l'homosexualité revient à bafouer l'essence même de l'État et ses institutions » a ajouté le ministre des droits de l'Homme[154].

Par ailleurs, aucun parti politique ne s'est exprimé contre cette réaction défavorable, preuve d'un consentement présumé. De plus, aucune proposition d'amendement des articles 489, 490, 491, susceptible d'attirer l'attention sur les discriminations que subissent les personnes qui ne sont pas hétérosexuelles et/ou cisgenre au Maroc, n'a été formulée de la part des groupes parlementaires en vue de lancer le débat sur cette question.

Possibilité de vivre sa vie

Selon l'interlocuteur la possibilité de vivre sa vie pour une personne Trans dépend de sa situation socio-économique, et surtout de son indépendance financière. Les personnes ayant des moyens sont plus libres, et de façon générale il y a plus de liberté dans les grandes villes de Rabat et de Casablanca.

Les discriminations rencontrées par les personnes sur la base de leur OSIEG au Maroc ne sont pas le seul résultat d'une injonction morale mais également celui d'un contexte normatif politico-économique. Plusieurs dispositions du code pénal marocain (483, 490, 491) criminalisent les personnes sur la base de leur OSIEG. Notamment l'article 489 du code pénal qui prévoit une peine d'emprisonnement « de six mois à trois ans et d'une amende de 200 à 1.000 dirhams, à moins que le fait ne constitue une infraction plus grave, quiconque commet un acte impudique ou contre nature avec un individu de son sexe ». L'article 431-1 du code pénal n'inclut pas quant à lui l'orientation sexuelle et l'identité et l'expression de genre parmi les critères de discrimination signalés, donc il y a absence de mesures de protection d'une frange importante de la société. Par ailleurs, la législation marocaine associe toute expression de genre considérée comme non-normative à la menace à l'ordre public. Ce concept ouvre le champ à une interprétation libre de la part des exécuteurs de la loi. Par exemple, l'aspect vestimentaire d'une personne peut entraîner une poursuite pénale sur la base de la menace à l'ordre public. La législation est dans ce cas-là une entrave à l'accès aux droits fondamentaux de toutes les personnes ayant une orientation sexuelle et/ou une identité et expression de genre (OSIEG) perçues comme non-normative.

Les personnes Trans* et non-binaires sont les plus vulnérables à la discrimination et à la persécutions au travail, au service administratif, au service médical, l'éducation, à l'aéroport, et toujours sous le risque d'arrestations et de suivi judiciaire en cas des contrôles policier. Par conséquent, selon l'interlocuteur, cela

[154] Voir Conseil civil de lutte contre toutes les formes de discrimination, *Etat des lieux des discriminations au Maroc*, 2018, url

fait en sorte que les personnes Trans* et/ou non-binaires vivent toujours dans la terreur et la crainte d'être découvert.

Appendix C: Sources consulted

2016

1. Ministry of Foreign Affairs and Cooperation
2. National Council of Human Rights (Conseil National des Droits de l'Homme - CNDH)
3. Moroccan Association of Human Rights (Association Marocaine de Droits Humains – AMDH),
4. The Aswat group (le collectif Aswat),
5. Abdelaziz Nouaydi, lawyer
6. Abdessamad Dialmy, Professor

2019

7. Social worker
8. Dynamique Trans*
9. Abdelaziz Nouaydi, lawyer
10. Legal expert
11. Civil society organisation
12. FLDF

Appendix E: Terms of reference

2016 LGBT

Situation of Lesbian, Gay, Bi-sexual and Transgender persons, including LGBT jurisdiction,

a. Which laws under the Penal Code criminalize homosexual acts?
    i. To which extent are charges of homosexual practices brought to court?
    ii. If so, what were the sentences?
b. To what extent are persons identified as victims of acts of violence and open hostility as a consequence of being perceived as an LGBT person?
    i. To what extent do the authorities provide protection to LGBT persons against violence?
c. Do open LGBT communities such as local associations exist in Morocco?

2019 LGBT

State of the enforcement of article 489 of the Penal Code