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The Danish
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Situation of LGBT Persons

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Danish Immigration Service

Ryesgade 53

2100 Copenhagen Ø

Phone: 00 45 35 36 66 00

Web: www.newtodenmark.dk

E-mail: us@us.dk

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Disclaimer

This report was written according to the European Asylum Support Office (EASO) Country of Origin Information report methodology.¹ The report is based on approved notes from meetings with carefully selected sources. Statements from all sources are used in the report, and all statements 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 on the situation of LGBT persons in Morocco with regard to the legislative framework, their possibility for obtaining protection by the authorities, their exposure to violence in the public and private sphere and their 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 European Union: European Asylum Support Office (EASO), EASO Country of Origin Information report methodology, 10 July 2012. Available at <http://www.refworld.org/docid/4ffc33d32.html>

Abbreviations

AMDH – Association Marocaine de Droits Humains

CNDH – *Conseil national des droits de l’Homme* – in English: National Human Rights Council

EASO – European Asylum Support Office

LGBT – Lesbian, Gay, Bisexual and Transgender

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

NGO – Non-governmental organisation – in French: *ONG – Organisation non gouvernementale*

Executive summary

According to article 489 of the Moroccan Penal Code, 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.² A part of the population is fiercely hostile towards LGBT people and there have been public demonstrations against homosexuals, violent intrusions in private homes as well as public denunciations of presumed homosexual 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, but not all subgroups of the LGBT community are exposed to the same type of threats of violence. Homosexual men, especially those who are perceived as effeminate and male-to-female transgender persons are particularly exposed of being victims of physical assaults and eviction from the family home if they still live with their parents. Young unmarried lesbians are more exposed to forced marriage or to confinement in the home. LGBT persons belonging to the intellectual and cultural elite, and who are financially independent from their parents, are to some extent protected from violence in the public and private sphere. LGBT persons from a working class or middle class background are more 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.

According to four interviewed sources, it is almost impossible for an LGBT person fearing for his or her safety to obtain efficient protection by the police. Two of these sources further explained that 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. One source claimed that it is possible to obtain police protection.

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.

There have been a number of cases brought to trial in 2015 and 2016 invoking article 489 where men have been found guilty of committing homosexual acts, some based on confessions of the defendants obtained at the police station and signed without the presence of a lawyer. The level of convictions range 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. Although article 489 of the Penal Code does not criminalise homosexual identity or expression, it was the opinion of some sources that the fact that most convictions were not sustained by the required technical evidence (eyewitnesses of actual sexual acts or true confessions), people were being convicted for being homosexual.

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.

² Corresponding to approximately 20 and 100 USD.

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

Methodology

This report is based on interviews with sources in Morocco conducted by the Country of Origin Information Division, Danish Immigration Service (DIS) in Rabat, from 9 - 18 October 2016. The purpose of the mission was to collect up to date information on issues recurring in cases regarding Moroccan asylum seekers in Denmark with regard to the situation of unaccompanied minors, the situation of LGBT people and double jeopardy. The findings regarding unaccompanied minors and double jeopardy are reported in separate reports.

The present report focuses on the situation of minors 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.

The terms of reference for the mission were drawn up by DIS in consultation with the Danish Refugee Appeals Board as well as a Danish advisory group on COI.³ The terms of reference are included at Appendix E to this report. The report draws on methodological inspiration from the EASO report on researching the situation of LGBT people in countries of origin.⁴

In the process of compiling the report, the delegation interviewed six sources, 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. The Danish Embassy in Rabat provided valuable assistance in identifying some of the interlocutors relevant to the terms of reference. The Danish Embassy also provided logistical assistance during the mission. The sources interviewed were selected by the delegation based on their expertise, merit and experience relevant to the mission. In addition to the empirical data material gathered from the interviews, the report is also based on available reports as well as academic articles of relevance for the terms of reference. Since cases of violence against LGBT people are widely reported in the media, press articles have also been included as sources.

The sources consulted during the mission to Morocco are listed in Appendix C. The interviews were conducted in either French or English according to the convenience of the interlocutors. Meeting notes, originally recorded in French, have been translated into English. All the notes of meetings 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 terms of language, it has been the intention to avoid confusion in terminology, but at the same time respecting the variety of terms

³ 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).

⁴ European Union: European Asylum Support Office (EASO) (2015). Researching the situation of lesbian, gay and bisexual persons (LGB) in countries of origin. EASO Practical Guides Series. April 2015. Available at:

<https://www.easo.europa.eu/sites/default/files/public/Researching-the-situation-of-LGB-in-countries-of-origin-FINAL-080515.pdf>

used by different interlocutors. Therefore, in the notes LGBT is sometimes being used LGBT (Lesbian, gay, bisexual and transgender), 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 interlocutors were asked how they wished to be introduced and quoted, and all sources are introduced and quoted according to their own wishes. Six sources are referred to by their name and/or the name of their organisation; in accordance with their own request on this matter. One source, the representative from the Aswat group, requested not to be mentioned by name.

The sources consulted were informed about the purpose of the mission and the fact that their statements would be included in a report to be made publically available.

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. All sources but the Ministry of Foreign Affairs and Cooperation approved their statements. This source was contacted by email and informed that the delegation would include the note in the report if no response was received by the deadline. The delegation never received any response.

The report is a synthesis of the sources' statements and does not include all details from the meeting 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 meeting notes in foot notes in the report. All sources' approved statements are found in their full extent in Appendix A and B of this report.

The report was finalised in January 2017.

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

1. Background

Morocco is a constitutional monarchy and a Muslim country which follows Islamic law and social norms.⁵ The government, which operates under the authority of King Mohammed VI, seeks to appease existing tensions between religious conservative groups and modern and progressive groups. The government seeks to find a fine balance between a discourse praising traditional Muslim values and at the same time tolerating that a group of citizens are homosexual.⁶ The government is concerned with on the one hand maintaining public order, and on the other hand respecting international human rights standards. The King has on several occasions demonstrated a certain tolerance towards cultural manifestations which introduced gay performers regardless of vivid opposition by Islamic political parties, e.g. by not disallowing British singer Elton John to perform at a national music festival.⁷ Books by the internationally celebrated writer and film maker Abdella Taia, known for the sexual and provocative content, are also released in Morocco despite the fact that Taia has left Rabat for Paris with reference to the hostile atmosphere towards homosexual men.⁸

Whereas the Sharia law is severe in its condemnation of homosexuality⁹ and Morocco's Penal Code remains categorical in its criminalisation of homosexual acts despite several calls for a reform process,¹⁰ the sexual culture in Morocco is far from static.¹¹ According to a researcher, who had studied gender relations and sexual culture in Morocco for the past 30 years, sexual culture has evolved in a more secularised direction.¹² The Moroccan National Human Rights Council (CNDH – *Conseil national des droits de l'Homme*) added that Morocco has gone through profound changes in the socio-cultural fabric of society.¹³ Previously, conservative, religious values strongly influenced sexual practices whereas these practices now are increasingly being influenced by secular values, regardless of the fact that conservative values still permeate the dominant religious discourse.¹⁴ According to the Moroccan National Council of Human Rights (CNDH), a fraction of Moroccans are strongly advocating the protection of traditional religious values and are vividly and at times violently opposed to any recognition of civic rights to homosexuals.¹⁵ A legal expert said that the Moroccan society is influenced by two tendencies: one part of the population is rather neutral in their views of same-sex practices and not engaged in neither opposition to nor defense of homosexuals'

⁵ US Department of State (2015). International Religious Freedom Report for 2015: Morocco. Available at: <http://www.refworld.org/docid/57add84c6d.html> [accessed 30 January 2017]

US Department of State (2015). *Morocco 2015 Human Rights Report*, updated 5/23/2016: Available at: <https://www.state.gov/documents/organization/253151.pdf>

⁶ Ministry of Foreign Affairs and Cooperation: 1, 2

⁷ Figueredo MA (2015). An Examination of Factors that Catalyze LGBTQ Movements in Middle Eastern and North African Authoritarian Regimes:35-36. *Dissertations and Theses*. Paper 2478. Available at: http://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=3483&context=open_access_etds

⁸ The Guardian (2014). Abdallah Taïa: 'In Arab countries, homosexuality is a crime. This has to change'. 3 October 2014. Available at: <https://www.theguardian.com/film/2014/oct/03/abdallah-taia-salvation-army-interview-armee-du-salut-homosexuality-morocco>

⁹ Baily S (2013). Sexuality and Development in the Maghreb: Origins of Institutionalized Homophobia and the Disruption of Development : 5-16. Master Thesis. Brandis University. Available at: <http://bir.brandeis.edu/handle/10192/24711>

¹⁰ Dialmy: 43, Noyadi: 34

¹¹ Dialmy: 52

¹² Dialmy: 51, 52

¹³ CNDH: 3

¹⁴ Dialmy: 51, 52

¹⁵ CNDH: 3

rights; another part which in the light of a conservative interpretation of Islam finds that homosexuality is an abomination. Apart from these two tendencies, there is an intellectual elite in favour of a formal and practical recognition of homosexuals' civil rights but that does not have without any formal or real influence at the political level.¹⁶

¹⁶ Nouaydi:34

2. Situation of LGBT persons in Morocco

2.1 The legislative framework relating to sexuality

According to article 489 of the Moroccan Penal Code, written in 1962, homosexual acts are a criminal offence. This article 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 dirhams¹⁷ unless the circumstances of the offence do not constitute an aggravating factor'.¹⁸ All six interviewed sources pointed to national legislation with reference to article 489.¹⁹

Three sources, a legal expert, an independent researcher, and an NGO added that this article 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.²⁰ 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.²¹

Article 489 of the Penal Code prohibits homosexual acts and not homosexual identity or expression. However, the interviewed researcher noted that the article is formulated so that it indirectly hinders any form of formalised collective action carried out by organisations supporting homosexuals' human rights. According to the observations of this source, article 489 serves as a platform which turns denunciations of suspected homosexual practices into a citizen duty.²²

2.2 Exposure to violence by subgroups of LGBT persons

Sources concurred that Moroccans of LGBT sexual orientation face societal marginalisation. Four sources explicitly noted that LGBT persons are a vulnerable group which is exposed to additional risk of social rejection and aggression in the public sphere compared to heterosexual Moroccans.²³

Several sources noted that there are no scientific studies on the nature of violence that LGBT persons in Morocco are victims of or studies on the national prevalence of violence.²⁴ Based on the interviewed researcher's observations gathered over a period of three decades and widely published, he suggested dividing the violence that LGBT persons are exposed to into three different forms: physical; societal; and institutional violence.²⁵

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. In several cases these videos have been widely shared via social media (Facebook and YouTube) and released online. For LGBT people in prison,

¹⁷ Corresponding approximately to 20 and 100 USD.

¹⁸ Penal Code : Dahir n° 1-59-413 du 28 jourmada II 1382 (26 novembre 1962). Available in French at <http://adala.justice.gov.ma/production/legislation/fr/penal/Code%20Penal.htm> Aswat : 8, Dialmy 42

¹⁹ Ministry of Foreign Affairs: 1, CNDH:17, AMDH: 13, Aswat : 8, Nouaydi: 33, Dialmy 42

²⁰ Nouaydi: 33, Dialmy: 42, AMDH : 13

²¹ Penal Code : Dahir n° 1-59-413 du 28 jourmada II 1382 (26 novembre 1962). Available in French at <http://adala.justice.gov.ma/production/legislation/fr/penal/Code%20Penal.htm>

²² Dialmy: 43, 45.

²³ CNDH: 3, AMDH: 11, Aswat: 26, Dialmy: 42

²⁴ Dialmy: 50, Nouaydi: 35, Ministry of Foreign Affairs and Cooperation: 1

²⁵ Dialmy: 50

physical violence could also include the risk of rape by fellow inmates (please refer to section 2.5 Examples of trials involving homosexuality).²⁶

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 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 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.²⁷

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.²⁸ According to the source, this form of violence affects the poorest citizens disproportionately hard compared to the elite.²⁹ 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.³⁰

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.³¹ 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.³² 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.³³

Class also influences to which extent a person who has been 'outed' as homosexual is vulnerable. People who are wealthy, financially independent from their family and who belong to a liberal milieu, e.g. the universities, are to a large extent protected from homophobic aggression in the street as well as in their private life. They are in a position which allows them 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.³⁴ By contrast, people from the middle class or the working class are more exposed to violence by groups or

²⁶ Dialmy: 50

²⁷ Dialmy : 50, Aswat: 25-26, Nouaydi: 39

²⁸ Dialmy : 50

²⁹ Dialmy: 42

³⁰ Nouaydi: 33

³¹ Aswat: 25, AMDH: 16

³² Dialmy: 50

³³ Aswat: 25

³⁴ Aswat: 23

individuals in the public sphere. Those groups, especially young adults, are financially dependent on support from their family and therefore vulnerable to loss of employment or eviction from home. This group is likely to seek to conceal any sexual orientation that does not follow social acceptable norms.³⁵

2.3 LGBT communities and safe spaces in Moroccan society

Two 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.³⁶

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 to.³⁷ There are no restaurants or cafés with an open or explicit 'gay identity' in Rabat, the capital of Morocco, and there has been none for an extended period of time.³⁸ There are certain cafés in Rabat which are known for tolerating the presence of homosexual clients.³⁹

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.⁴⁰

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.⁴¹ 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.⁴² 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 (software programs used on smart phones) to connect and to organise meetings as well as dates.⁴³ According to the interviewed researcher, the Government chooses to tolerate the existence of pro-homosexual social media.⁴⁴

There are some known LGBT organisations in Morocco, but they are informally rather than formally organised. The first known gay rights advocacy organisation was *Kif Kif* (meaning 'same same') founded in

³⁵ Aswat: 23

³⁶ Aswat: 24, 31, Dialmy : 45

³⁷ Aswat: 22, 31

³⁸ Aswat: 31, Canada: Immigration and Refugee Board of Canada, *Morocco: Situation of lesbians; treatment by the authorities and society; state protection available; assistance or other organizations for the homosexual community in Morocco, including bars, restaurants, etc.*, 3 June 2004, MAR42699.FE. Available at <http://www.refworld.org/docid/41501c301f.html>

³⁹ Aswat: 31

⁴⁰ Aswat: 31

⁴¹ Aswat: 32

⁴² Aswat: 32, Figueredo MA (2015). An Examination of Factors that Catalyze LGBTQ Movements in Middle Eastern and North African Authoritarian Regimes: 37. *Dissertations and Theses*. Paper 2478. Available at: http://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=3483&context=open_access_etds

⁴³ Aswat: 20

⁴⁴ Dialmy : 49

2005.⁴⁵ 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.⁴⁶

Another organisation is *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.⁴⁷ 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.⁴⁸

Not being an official NGO, *Aswat* cannot ask for permission to organise demonstrations or campaigns in the public sphere. However, one source noted that *Aswat* has diligently used the opportunity 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.⁴⁹

2.4 State protection available

The sources disagreed on whether or not it is possible 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.

One source, the National Council on Human Right (CNDH), stated that, as a general rule, it is possible for an LGBT person to obtain protection by the authorities.⁵⁰ 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.⁵¹ By contrast, 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.⁵² One source, 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.⁵³ The *Aswat* member had accompanied a transperson to the police station without revealing any

⁴⁵ Figueredo MA (2015). An Examination of Factors that Catalyze LGBTQ Movements in Middle Eastern and North African Authoritarian Regimes: 37. *Dissertations and Theses*. Paper 2478. Available at:

http://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=3483&context=open_access_etds

Hirsch K (2016). A Critical Analysis of the Public Sphere: How the LGBTQ Movement Utilizes and Occupies Space in Morocco pp 23 - 25. Independent Study Project (ISP) Collection. 2380. Available at

http://digitalcollections.sit.edu/isp_collection/2380/

⁴⁶ Dialmy : 53

⁴⁷ *Aswat*: 20, Dialmy 53

⁴⁸ *Aswat*: 20, Hirsch K (2016). A Critical Analysis of the Public Sphere: How the LGBTQ Movement Utilizes and Occupies Space in Morocco pp 27 - 30. Independent Study Project (ISP) Collection. 2380. Available at

http://digitalcollections.sit.edu/isp_collection/2380/

⁴⁹ Dialmy : 53

⁵⁰ CNDH: 5

⁵¹ CNDH: 5

⁵² AMDH: 17, *Aswat*: 30, Noyadi: 40, Dialmy: 46

⁵³ *Aswat*: 30

belonging to an LGBT organisation to the police officer who received them. The source described in detail how the gendarme 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 gendarme accepted to receive the file of complaints, 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 decline to receive a complaint by a citizen, the police can effectively hinder the file 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 stands out as endless administrative procedures.⁵⁴

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.⁵⁵

The interviewed legal expert 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.⁵⁶ 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.⁵⁷

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 by a was in reality higher than that of being abused by the police forces.⁵⁸ 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.

Further to the topic of the role played by state representatives vis-à-vis the public animosity against homosexuals, the interviewed legal expert noted that currently judges chose not to apply maximum sentences despite the public view on homosexuality as an abomination and in favour of maximum sentences.⁵⁹ With regard to a specific case, the researcher took note that the court decided not to uphold maximum punishment.⁶⁰

2.5 Examples of trials involving homosexuality

The sources disagreed on the numbers of charges referring to article 489 of Morocco's Penal Code. According to the National Human Rights Council (CNDH), there had been four to five cases at courts of first instance in 2015⁶¹ whereas the legal expert stated there had been between ten and twenty cases in 2015

⁵⁴ Aswat: 30

⁵⁵ AMDH: 18

⁵⁶ Nouaydi: 40

⁵⁷ Dialmy: 46

⁵⁸ CNDH: 5, Dialmy: 46, 49

⁵⁹ Nouaydi: 34, 37

⁶⁰ Dialmy: 47

⁶¹ CNDH: 4

and 2016.⁶² It has not been possible to verify the exact number of trials at courts of first instance with other sources.

The interviewed sources were asked to mention specific cases which had been brought to trial. The following cases which cover the period from 2014 to 2016, except for one case which took place in 2007, are listed below in chronological order:

1. 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.⁶³
2. 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.⁶⁴
3. 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 collective FEMEN, were arrested and deported from Morocco after having kissed, topless, in front of the same Hassan tower.⁶⁵

⁶² Nouaydi: 35

⁶³ Nouaydi : 36-38, Amnesty International (2008). Morocco/ Western Sahara: Drop charges of homosexuality against six men and ensure their safety. 16 January 2008. Available at: <https://www.amnesty.org/en/press-releases/2008/01/morocco-western-sahara-drop-charges-homosexuality-against-six-men-and-en/>

⁶⁴ AMDH: 14, Human Rights Watch (2015). Morocco: Two Sentenced on Homosexuality Charge. March 4, 2015. Available at: www.hrw.org/news/2015/03/04/morocco-two-sentenced-homosexuality-charge

⁶⁵ AMDH: 14, Aswat: 26, Dialmy: 48 Le Monde (2015). Maroc: Quatre mois de prison pour deux hommes accusés de s'être embrassés en public. 19 June 2015. http://www.lemonde.fr/afrique/article/2015/06/19/maroc-quatre-mois-de-prison-pour-deux-hommes-accuses-de-s-etre-embrasses-en-public_4658281_3212.html The Guardian (2015). Moroccan gay men to serve four months for posing close together for photograph. 22 June 2015. Available at: <https://www.theguardian.com/world/2015/jun/22/moroccan-gay-men-four-months-prison-photograph>

4. 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-Mella by four men who forced their entry and pushed them naked out into the street where they were beaten up and filmed by an angry mob was 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 Dirham 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.⁶⁶

5. 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 gendarmes in a car parked in a deserted place on the outskirts of the town of Guelmim. The City Court of Guelmim sentenced the two men to six months of imprisonment.⁶⁷

In one case (the case of Ksar El Kébir) the legal expert 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 guilty of practicing homosexuality, the source found 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.⁶⁸

This points to the nature of the evidence which is required to prove a case raised under article 489. Two sources, the legal expert 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.⁶⁹ 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 legal expert 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 which made it difficult to prepare a robust line of defense. 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.⁷⁰

⁶⁶ AMDH : 14, Dialmy 47, Aswat : 28, Nouyadi : 38, Têtu (website associated with the French gay magazine 'Têtu'): *Les agressions homophobes sont le quotidien de la population LGBTI au Maroc selon Aswat*, by Jérémie Lacroix – 8 April 2016. Available at : <http://tetu.com/2016/04/08/entretien-collectif-aswat-maroc/>

⁶⁷ AMDH: 14

⁶⁸ Nouaydi: 36

⁶⁹ Nouaydi: 35, Dialmy: 44

⁷⁰ Noyadi: 35

According to the observations of the interviewed legal expert, 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.⁷¹

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.⁷²

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.⁷³

The sources concurred that LGBT persons constitute a vulnerable group in prisons (like women, minors, people with disabilities, foreigners and people who use drugs).⁷⁴ 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.⁷⁵ LGBT persons use tactics such as concealing their sexual orientation and gender identity to avoid insults and harassment while imprisoned.⁷⁶ 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.⁷⁷

According to a report published by CNDH, prisons in Morocco are in a state of 'crisis'.⁷⁸ Congestion rates are estimated to 200 – 300 percent and the infrastructure as well as the operation of the prisons need to be improved to conform to international standards.⁷⁹ Another source added that the conditions for inmates are precarious in that prisoners have limited access to basic health care; the food is served in insufficient quantities and access to recreational activities is insufficient.⁸⁰ 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.

⁷¹ Nouaydi: 37

⁷² Nouaydi: 39. Dialmy : 44

⁷³ CNDH : 4, AMDH : 19, Noaydi : 41

⁷⁴ CNDH : 8, Dialmy : 50

⁷⁵ Dialmy : 50

⁷⁶ CNDH : 8

⁷⁷ CNDH : 8

⁷⁸ CNDH (2012) La crise des prisons: Une responsabilité partagée. Rapport sur la situation dans les prisons et les droits des détenus. Octobre 2012. Available at http://cndh.ma/sites/default/files/crise_des_prisons_-rapport_integral.pdf

⁷⁹ CNDH : 7

⁸⁰ Nouaydi : 41

Appendix A: meeting notes (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.
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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 2012.⁸¹

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.

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.

⁸¹ CNDH (2012). La crise des prisons: Une responsabilité partagée. Rapport sur la situation dans les prisons et les droits des détenus. October 2012. Available at http://cndh.ma/sites/default/files/crise_des_prisons_-rapport_integral.pdf

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.⁸²

⁸² Libération, *Agression homophobe au Maroc: quatre mois ferme pour la victime, 29 March 2016*

- On 9 March 2016, two men were attacked by the crowd in Beni-Mellal⁸³. 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)⁸⁴ 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 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 2015⁸⁵ 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 500.00 Moroccan Dirham. The court also decided that the two men should pay for the costs of the trial.

<http://www.liberation.fr/planete/2016/03/29/agression-homophobe-au-maroc-quatre-mois-ferme-pour-la-victime-1442579>

⁸³ Têtu (website associated with the French gay magazine 'Têtu'): *Les agressions homophobes sont le quotidien de la population LGBTI au Maroc selon Aswat*, by Jérémie Lacroix – 8 April 2016

<http://tetu.com/2016/04/08/entretien-collectif-aswat-maroc/>

⁸⁴ Penal Code: Dahir [Decree] no. 1-59-413 (28 jourmada II 1382) containing the approval of the text of the Penal Code (Bulletin Officiel, 5 June 1963).

<http://adala.justice.gov.ma/production/legislation/fr/Nouveautes/code%20penal.pdf>

⁸⁵ Published in Arabic and entitled Status of human rights in Morocco in 2015, April 2016.

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.

4. The Aswat group (le collectif Aswat)

Interview with a member

12 October 2016, Rabat

Aswat ('Voices' in Arabic) is an independent nonprofit 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 magazine 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 led 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 Hassan' 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).⁸⁶ 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'.⁸⁷ Lahcen and Mohen were used as scapegoats for this.
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.⁸⁸ 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 Mallal 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 Mallal 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.

⁸⁶ Le Monde (2015). Maroc: Quatre mois de prison pour deux hommes accusés de s'être embrassés en public. 19 June 2015. http://www.lemonde.fr/afrique/article/2015/06/19/maroc-quatre-mois-de-prison-pour-deux-hommes-accuses-de-s-etre-embrasses-en-public_4658281_3212.html

⁸⁷ Le Monde, 02.06.2015 Deux militantes Femen arrêtées puis expulsées du Maroc
Available at: http://www.lemonde.fr/afrique/article/2015/06/02/deux-militantes-femen-arretees-puis-expulsees-du-maroc_4646034_3212.html#tfhGZTiba8XMUdVq.99

⁸⁸ Tetu, 08/04/2016, *Les agressions homophobes sont le quotidien de la population LGBTI au Maroc selon Aswat*.
Available at : <http://tetu.com/2016/04/08/entretien-collectif-aswat-maroc/>

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.

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, the members 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

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 Youssef 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

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 favor 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 a recognition of his homosexuality. His recognition/complaint will be exploited against him; it is an evidence 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-months 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.⁸⁹ 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 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 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 had 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

⁸⁹ The New Arab, 1 July, 2015. Morocco mob beat 'gay' man on Fes street
<https://www.alaraby.co.uk/english/news/2015/7/1/morocco-mob-beat-man-in-dress>

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 ».

Appendix B: meeting notes (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 Baouzaoui 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 personnes 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 reconnaît 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'homme 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.

3. 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.
4. 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

5. 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

6. 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 2012.⁹⁰
7. 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.

⁹⁰ CNDH (2012). La crise des prisons: Une responsabilité partagée. Rapport sur la situation dans les prisons et les droits des détenus. Octobre 2012. http://cndh.ma/sites/default/files/crise_des_prisons_-rapport_integral.pdf

8. 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.
 9. Le Conseil a reçu plus de 1200 plaintes déposées 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.
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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

10. 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 perçues 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.
11. 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.

12. 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.
13. 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

14. 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 violemment, corps nu, après quoi un vidéo amateur du lynchage a été diffusé sur les réseaux sociaux.⁹¹
 - 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.⁹² 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.

⁹¹ Libération, *Agression homophobe au Maroc : quatre mois ferme pour la victime*, 29 mars 2016
http://www.liberation.fr/planete/2016/03/29/agression-homophobe-au-maroc-quatre-mois-ferme-pour-la-victime_1442579

⁹² Têtu (Le site internet associé au magazine gay français « Têtu ».) : *Les agressions homophobes sont le quotidien de la population LGBTI au Maroc* selon Aswat, Par Jérémie Lacroix - 8 avril, 2016
<http://tetu.com/2016/04/08/entretien-collectif-aswat-maroc/>

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 interpellés 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 Pénal⁹³) 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).
 - 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 1^{ere} 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 MAD plus les frais de procédure.
15. 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 interlocuteurs ont noté que l'une des victimes 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.
16. De manière générale, l'AMDH observe que les hommes homosexuels sont plus souvent victimes des agressions faites dans l'espace public que les lesbiennes.

⁹³ Code Penal : Dahir n° 1-59-413 (28 jourmada II 1382) portant approbation du texte du Code pénal (B.O. 5 juin 1963).

<http://www.cabinetbassamat.com/fileadmin/Codes%20et%20lois/Droit%20pénal%20et%20procéture%20pénale/codepenal.pdf>

La protection possible auprès des autorités

17. 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.
18. En outre, les avocats des accusés d'une violence de l'article 489 risquent les insultes.

La situation pour les personnes LGBT incarcérées

19. 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.⁹⁴

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 protégées 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 perçus 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 Hassan' d'après le lieu de l'échange de ce baiser ou l'affaire 'Lachen et Mohsine').⁹⁵ 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 ». ⁹⁶ 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.
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.⁹⁷ 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 homophobe 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 enfermés à la maison. Beaucoup de personnes LGBTIQ, 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

⁹⁵ Le Monde (2015). Maroc: Quatre mois de prison pour deux hommes accusés de s'être embrassés en public. 19 June 2015. Available at: http://www.lemonde.fr/afrique/article/2015/06/19/maroc-quatre-mois-de-prison-pour-deux-hommes-accuses-de-s-etre-embrasses-en-public_4658281_3212.html

⁹⁶ Le Monde, 02.06.2015 Deux militantes Femen arrêtées puis expulsées du Maroc Available at: http://www.lemonde.fr/afrique/article/2015/06/02/deux-militantes-femen-arretees-puis-expulsees-du-maroc_4646034_3212.html#tfhGZTlba8XMUdVq.99

⁹⁷ Têtu (2016): *Les agressions homophobes sont le quotidien de la population LGBTI au Maroc selon Aswat*, by Jérémie Lacroix – 8 April 2016 Available at : <http://tetu.com/2016/04/08/entretien-collectif-aswat-maroc/>

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 entrée 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 portée 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 sortant en groupe, dans certains cafés qui sont connus 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 public 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 Youssoufi 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 personnes 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 stipulé 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 féroce 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 un équilibre sociétale et non pas à s'investir dans une 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 judiciaire 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. Décivant, 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 Ksar 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 juges ont 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 connue 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 connaître à chaque détenu les règles intérieures pour que la personne incarcérée connaisse ses droits et devoirs.

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Appendix E: Terms of reference

LGBT

1. 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?