

Flygtningenævnets baggrundsmateriale

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I. Executive Summary

1. This submission was completed by Pan Africa ILGA. Pan Africa ILGA (PAI) is the African regional organization of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA). Pan Africa ILGA is a regional non-profit organization, registered in Johannesburg, South Africa. PAI's mission is to unify and strengthen LGBTIQ+ organizing in Africa to challenge state legislation that impedes sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) related work. Pan Africa ILGA works throughout the African region by devising advocacy strategy plans to hold governments accountable, provides a forum to respond to members' needs through collaboration and collaboration as well as promotes research and documentation of human rights violations against LGBTIQ+ persons, among other activities.
2. During the third universal periodic review in 2017, the Kingdom of Morocco received eleven recommendations directly relating to SOGIESC:
 - 144.72 Prohibit discrimination and criminalize violence against persons on the basis of their sexual orientation or gender identity (Canada)ⁱ
 - 44.76 Apply and adopt a comprehensive anti-discrimination law containing a general prohibition of all forms of direct and indirect discrimination (Hungary)ⁱⁱ
 - 144.78 Adopt a comprehensive anti-discrimination law (South Africa)ⁱⁱⁱ
 - 144.79 Take urgent measures to repeal the norms that criminalize and stigmatize lesbian, gay, bisexual, transgender and intersex persons and investigate and punish the perpetrators of acts of discrimination and violence against them (Argentina)^{iv}
 - 144.34 Adopt and apply a comprehensive anti-discrimination law (Ukraine)^v
 - 144.73 Put an end to forms of discrimination (including legal ones) faced by lesbian, gay, bisexual, transgender and intersex persons (France)^{vi}

- 144.70 Decriminalize consensual homosexual relations and release those who have been detained for that reason (Uruguay)^{vii}
 - 44.74 Decriminalize consensual relations between same-sex adults (Mexico)^{viii}
 - 144.75 Ensure the same rights to all citizens, including those of the lesbian, gay, bisexual, transgender and intersex collective, decriminalizing same-sex relationships and eliminating all discriminatory legislation on the basis of sexual orientation (Spain)^{ix}
 - 144.77 Decriminalize consensual sexual relations, including by repealing the provisions in articles 489 to 493 of the Criminal Code prohibiting same-sex sexual relations, sexual relations outside marriage and adultery (Netherlands)^x
 - 144.80 Repeal legislation, in particular article 489 of the Criminal Code, criminalizing consensual sexual conduct between same-sex adults (Iceland)^{xi}
3. Slow progress has been made following the promise made by the Kingdom of Morocco in the previous UPR cycle. The government should take active steps in ensuring the protection and emancipation of LGBTIQ+ in accordance with international human rights standards.
 4. This report focusses on protection from homophobic and transphobic violence; torture and cruelty, inhumane and degrading treatment of LGBTIQ+ persons, the criminalization of same-sex relations and transgender persons, discrimination based on sexual orientation and gender identity, and freedom of expression, association and peaceful assembly for LGBTIQ+ persons.

II. Content

5. Many of the political and human rights transformations that have occurred in Morocco since 2011 have contributed to continued societal discussions about basic rights, including SOGIESC related rights. These discussions have inspired the establishment of registered and unregistered LGBTIQ+ human rights organizations and groups, which work on issues of sexual orientation and gender identity rights as well as intersectional feminism. However, discriminatory laws- specifically Article 489 of the Moroccan Criminal Code that criminalize homosexuality and transgenderism- have prevented the fulfillment of several demands related to the rights of gender and sexual diverse persons in Morocco. This has exacerbated many incidents of hatred, discrimination and violence.
6. In 2022, local associations documented that: an LGBTIQ+ person was detained in the year of 2021 when discovered with another man. He was found guilty with reference to article 489 by a court. The court based their judgement on sexual health products and make up as evidence.
7. In 2018, a man aged 33 was detained by the police in Marrakesh after a minor traffic incident. When the police reached the car, they discovered that the driver was wearing a dress and a wig. The police took his photo and confiscated his driving license. Photos of the individual whilst in police custody as well as a photo of their ID card has been widely circulated on social media.^{xii}
8. In 2016 in the case of Guelmim: Two men were found guilty with reference to article 489 by a court. They had been arrested on the 26th of May 2016 after they were found by police in a car parked in a deserted area on the outskirts of the town of Guelmim. The Court of Guelmim sentenced the two men to six months of imprisonment.^{xiii}
9. In 2016, in the case of Beni-Mellal: On the 15th of March 2016, one man was found guilty of violating article 489 by a court in the city of Beni-Mellal. Two men had been assaulted in a private home in Beni-Mellal by four men who forced entry and pushed them out into the street, naked. They were beaten up and filmed by an angry mob in the street as people shouted homosexual slurs. The videos were later shared on Facebook and YouTube. One of the two men had been sentenced to four months of imprisonment and a fine of 500 dirhams for 'sexual acts against nature' and for 'public

drunkenness'. Two of the attackers were also brought to trial and they were found guilty of assault and sentenced to two months suspended sentences. Journalists from Le Petit Journal were arrested in Beni-Mellal after attempting to investigate the case in the neighborhood where the two victims were living. These journalists were arrested after being 'denounced' by members of the local community.^{xiv}

➤ **Lack of protection from homophobic and transphobic violence**

10. Criminalization and a lack of legal protection leave LGBTIQ+ persons highly vulnerable and without access to proper recourse or redress. Oppressive laws also serve to perpetuate societal prejudice against them, fueling harassment, discrimination and violence. These violations are often underreported and rarely investigated or prosecuted, leading to widespread impunity and a lack of justice and support for victims.
11. Several sources concurred that Moroccans of LGBTIQ+ orientation face widespread marginalization. They are a vulnerable group because they are exposed to the additional risks of social rejection and aggression in the public sphere compared to heterosexual Moroccans.^{xv}
12. In addition, another form of violence has occurred over the past years: internet-based abuse. In several cases, videos of LGBTIQ+ persons in humiliating and abusive situations have been widely shared via social media (Facebook and YouTube). Photos of victims have also been published online by the media: e.g., a photo of an individual dressed in a skirt being detained by the police for questioning was published on the 31st of December 2018- along with their ID card. This practice, and in particular the incident which took place on the 31st of December 2018 has led to discussions among lawyers and within the media about the rights to privacy and the dire consequences for people's reputation if it becomes publically known that they are being accused of homosexuality or other offences. According to the media, the government has reacted to this discussion by initiating an administrative investigation into the distribution of images of the person who was questioned by the police on the 31st of December 2018 in

13. A number of economic and socio-cultural factors influence to which extent a person who has been 'outed' as homosexual is vulnerable. While some individuals who are wealthy and financially independent from their family sometimes have the resources to avoid certain types of abuses, individuals who experience poverty and other economic and socio-cultural inequalities are usually frequent targets in social settings and private life.^{xvii2}
14. Moroccan policies do not consider trans women as women therefore in a case where a trans women has been violated, she will be considered a man by the law which puts trans women in further danger.

➤ **Torture and cruelty, inhumane and degrading treatment of LGBTIQ+ persons**

15. Moroccan authorities carry out campaigns of mass arrests, targeting vulnerable women and LGBTIQ+ person who come from low-income backgrounds with the purpose of extortion. Instead of providing protection regarding their social status, LGBTIQ+ persons and women are mostly targeted by the police and detained for a number of days. In some cases, they are detained by the police for charges like prostitution, homelessness, homosexuality or public indecency. They are oftentimes subjected to different forms of torture, which include extremely humiliating examinations that supposedly "prove" that they have engaged in same-sex sexual acts.
16. Given the context of extreme violence and prejudice towards women and LGBTIQ+ persons in Morocco, and the existence of legislation that criminalizes same-sex intimacy in Morocco- arbitrary arrests with purposes of extortion fall under the definition of torture, cruelty and inhumane or degrading treatment. Women and LGBTIQ+ persons are threatened with criminal prosecution, without real proof or evidence, and the threat that their sexuality or identity will be exposed to their community and family.

➤ **Criminalizing of same sex relations and transgender persons**

17. Article 489 of the Penal Code of Morocco criminalizes "lewd or unnatural acts with an individual of the same sex".^{xviii} Same-sex sexual activity is illegal in Morocco and is punishable by three to five years' imprisonment and a fine of 1,200 dirham.^{xix}
18. The difficult process of legal gender recognition, including the prohibition of necessary gender affirming surgeries for transgender women and men, leads to transgender persons facing heightened vulnerability to harassment, discrimination and violence.
19. Transgender persons face legal obstacles regarding name changes and gender markers. Legal obstacles prohibit transgender men and women from possessing identity documents that reflects their gender identity and chosen name.

➤ **Discrimination based on sexual orientation and gender identity**

20. LGBTIQ+ persons in Morocco face stigma, discrimination and violence because of their real or perceived SOGIESC. Human rights violations against LGBTIQ+ persons include killings, arbitrary detentions, sexual and gender-based violence, forced marriages and harassment by state authorities. These happen in both the private and the public domain and are perpetrated by both state and non-state actors, including family members, community or religious leaders, healthcare professionals, employers and co-workers, school boards, classmates, landlords and police officers.
21. This violence is often rooted in existing perceptions regarding gender norms, roles and stereotypes in society, including heteronormativity, patriarchal power structures and binarism. These norms are often institutionalized in government policies and laws, customs, and cultural or religious practices. This leads to inequality and power asymmetries at the expense of those who do not conform to them.

➤ **Safeguarding the freedoms of expression, association and peaceful assembly for LGBTIQ+ persons**

22. Human-rights defenders combating human rights violations are frequently persecuted and face restrictions on their activities. LGBTIQ+ community-based organizations (CBOs) are denied registration, blocked from receiving funding, monitored, intimidated, raided and forced to work underground. They risk persecution when speaking out in regional or international human-rights bodies to hold their government to international human-rights obligations.

III. Recommendations

Considering the information presented in this report, we respectfully present the following recommendations to the Kingdom of Morocco to fulfill its obligations to respect and protect the rights of LGBTIQ+ persons. Morocco should:

- Repeal Articles 489 and 490, 497-503, of the Penal Code that criminalize same-sex conducts between consenting adults. In the interim, adopt a formal moratorium on its enforcement.
- Stop targeting women and LGBTIQ+ persons who experience socio-economic inequalities in arrest campaigns.
- Adopt and apply a comprehensive non-discrimination law that prohibits anal examination.
- Adopt and apply a comprehensive non-discrimination law that prohibits any arbitrary arrests of any persons.
- Adopt and apply a comprehensive non-discrimination law that prohibits the use of media and/or religious institution for publishing a hate speech against women and LGBTIQ+ people.
- Adopt and apply a comprehensive non-discrimination law that prohibits homophobia and transphobia.
- Adopt and apply a comprehensive non-discrimination law that protects the sanctity of homes and grants full respect of all the forms of familial unions.
- Adopt and apply a comprehensive non-discrimination law that prohibits the interferences of neighborhoods in the businesses of women and LGBTIQ+ persons in the community.
- Adopt and apply a comprehensive non-discrimination law that prohibits taking action and/or inaction from government agencies and the private sector where the result is deprivation of constitutional rights for women and/or LGBTIQ+ persons.

- Adopt and apply a comprehensive non-discrimination law that defines a dynamic participatory public administrative procedure.
- Adopt and apply a comprehensive anti-discrimination law that allows legal gender recognition for transgender women and men where requests for name changes and gender marker changes on identity documents must be accepted and managed in a pre-determined amount of time.
- Allow for gender affirming surgery and hormone therapy for transgender and nonbinary persons.
- Include transgender women in all policies related to women.
- Include transgender women in all implemented non-discriminatory laws related to violence against women and girls.

ⁱ Source of position: A/HRC/36/6/Add.1 - Para. 14

ⁱⁱ A/HRC/36/6/Add.1 - Para. 14

ⁱⁱⁱ A/HRC/36/6/Add.1 - Para. 14

^{iv} A/HRC/36/6/Add.1 - Para. 14

^v A/HRC/36/6/Add.1 - Para. 14

^{vi} A/HRC/36/6/Add.1 - Para. 14

^{vii} A/HRC/36/6/Add.1 - Para. 28

^{viii} A/HRC/36/6/Add.1 - Para. 28

^{ix} A/HRC/36/6/Add.1 - Para. 23

^x A/HRC/36/6/Add.1 - Para. 28

^{xi} A/HRC/36/6/Add.1 - Para. 28

^{xii} Après la diffusion des images du "travesti", les avocats mettent en garde contre les risques encourus, 3 janvier 2019; Le Monde, Abdellah Taïa « Gay et bientôt libre au Maroc », 27 juillet 2019,

^{xiii} AMDH: 14

^{xiv} 1 AMDH : 14, Dialmy 47, Aswat : 28, Nouaydi : 38, Têtu, « Les agressions

^{xv} 8 CNDH : 3 ; AMDH : 11 ; Aswat : 26 ; Dialmy : 42

^{xvi} HuffPost, Abdellatif Hammouchi demande une enquête après la diffusion des photos du "travesti" arrêté pour délit de fuite à Marrakech, 3 janvier 2019,

^{xvii} MOROCCO - SITUATION OF LGBT PERSONS page 12, 2.0 Dynamique Trans*: 154, url:

www.justice.gov/eoir/page/file/1309556/download

^{xviii} www.gaywired.com. Archived from the original on 10 November 2017. Retrieved 2 January 2008.

^{xix} United Nations High Commissioner for Refugees, "Refworld | Morocco: The treatment of homosexuals, including protection offered by the state and the attitude of the population". UNHCR. Archived from the original on 10 October 2012. Retrieved 24 July 2012