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## “Your Destiny is to Stay with Him”

State Response to Domestic Violence in Algeria



**“Your Destiny is to Stay with Him”**  
**State Response to Domestic Violence in Algeria**

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Printed in the United States of America

ISBN: 978-1-6231-34631

Cover design by Rafael Jimenez

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## State Response to Domestic Violence in Algeria

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## Summary

“Salwa” is a 39-year-old woman from Annaba with two children and a long history of abuse by her husband. She told Human Rights Watch that he started beating her from the early days of their marriage in 2006. She said she endured this treatment for years and never went to the police because she was too afraid of him. In September 2011, he hung her by the arms to a bar in the ceiling of their house with an iron wire and stripped her naked. He took a broom and beat her with it. He then lacerated her breasts with scissors, she said.

Bleeding and screaming, Salwa fainted. When she woke up, she discovered that her sister-in-law had come in. She freed Salwa from the wire, gave her something to wear, opened the door of the house, and told her to flee. She ran until she came to a hospital. The police guarding the hospital escorted her inside. At the emergency unit, they gave her first aid care but told her she could not stay. The police at the hospital took her to a police station. She had visible bruises, blood on her clothes, and her face was swollen from his beatings. She filed a complaint and accepted the police’s offer to take her to a shelter. They first took her to a state shelter for homeless people. Finding the shelter “overcrowded, not clean,” Salwa went to another in Annaba, one run by a nongovernmental organization.

When she felt physically able to leave the shelter, she went to the police to inquire about her complaint. They told her, “we called your husband, he said you fell and that is why you are bruised.” The police did not conduct any further investigation, such as summoning her husband for interrogation at the police station or arresting him, Salwa said.

With the help of the association running the shelter, she hired a lawyer and filed another complaint against her husband for assault. She said that a court eventually sentenced him to a fine and six months’ suspended imprisonment.

She filed for divorce twice, each time on the grounds of physical harm. The first time, in 2012, the court rejected her request for divorce and ordered her to return to the conjugal home. A year later, the court granted her request for divorce and ordered her husband to pay alimony. When he did not comply, she filed a complaint against him. She said the court sentenced him to six months in prison and a fine, but he went into hiding and the police said they could not find him.

As of April 2016, Salwa was still living in the shelter with no other place to go, bitter about the state's response to her ordeal.

Salwa's experience illustrates some of the ways that Algerian authorities fail to provide adequate support, protection, and remedies to survivors of domestic violence.

Lack of due diligence from the police in conducting initial investigations of the abuse, lack of enforcement of sentences, and economic dependence on the abusers combine to present domestic violence survivors in Algeria with an uphill struggle.

Human Rights Watch documented cases of both physical and psychological violence. Women told Human Rights Watch about instances in which perpetrators: shoved them; broke their teeth or limbs; caused concussions and skull fractures; beat them with belts and other objects; beat them while pregnant; threatened to kill them; and verbally humiliated them.

Police figures show that more than 8,000 cases of violence against women were recorded in 2016, 50 percent of which are domestic violence cases. The last survey by the State Ministry for the Family and the Status of Women, dating to 2006, revealed that 9.4 percent of Algerian women between the ages of 19 and 64 reported being victims of physical violence often or daily within the family.

Domestic violence survivors can find themselves trapped not only because of economic dependence on their abusers but also because of social barriers which include pressure to preserve the family at all costs, stigma, and shame for the family if women leave or report abuse.

Such barriers are compounded by the failures of the Algerian government to adequately prevent domestic violence, protect survivors, and create a comprehensive system for the prosecution of perpetrators. The shortcomings of the Algerian government's response to the problem include a lack of services for survivors of domestic violence, particularly shelters; a lack of measures for prevention of violence such as use of educational curricula to modify discriminatory social and cultural patterns of behavior as well as derogatory gender stereotypes; insufficient protection from abusers; and an inadequate response from law enforcement.



Service provision for survivors of domestic violence, including shelter, psychosocial care, and facilitation of access to justice, lies almost entirely in the hands of nongovernmental organizations (NGOs), most of which receive no state support.

There are also important gaps in Algeria's legal framework for responding to domestic violence. Until December 2015, domestic violence was not a specific criminal offense. Instead, physical violence could only be prosecuted under the general criminal provisions related to assault, categorized on the basis of the severity of the injuries. When the wounds healed within 15 days, as was often the case, the prosecutor's office treated the assaults as minor offenses.

In December 2015, parliament amended the penal code to address gaps on criminalization of violence against women by criminalizing some forms of domestic violence. Law no. 15-19 makes assault against a spouse or ex-spouse punishable by up to 20 years in prison, depending on the victim's injuries, and by a life sentence if the attack results in death. It also expanded the scope of sexual harassment, strengthened penalties for it, and criminalized harassment in public spaces.

While these amendments are an important step forward, the law contains several shortcomings, and comprehensive legislation is still needed for an effective and coordinated response to violence against women. The parliament should seek to address this through further legislation.

First, the 2015 law offers the possibility for the offender to escape punishment or benefit from a reduced sentence if the victim pardons the perpetrator. This increases the victim's vulnerability to social pressure to pardon her abuser and might dissuade her from seeking court remedies for domestic violence.

Second, the definition of domestic violence does not explicitly mention marital rape, a form of abuse that women across the world commonly face. In addition, the scope of the definition of domestic violence does not include all individuals. It considers spouses and ex-spouses as the only potential perpetrators, to the exclusion of other relatives and persons. For example, the provisions on assault, psychological, and economic violence do not apply to individuals in intimate non-marital relationships, individuals with familial ties to one another, or members of the same household.

Third, the law relies excessively on assessments of physical incapacitation to determine the level of sentencing, without offering guidelines for forensic doctors on how to determine incapacitation in domestic violence cases. In Algeria, as in many other countries, a doctor's report following examination of an injured patient includes a recommended number of days of partial or full rest, based on an assessment of the person's incapacitation and the time needed for recovery. The law also ignores that harm resulting from domestic violence may be the result of several incidents of beatings that cannot be assessed in a single forensic examination.

Human Rights Watch interviewed 20 victims who reported various injuries, ranging from concussions to permanent disabilities. Even in the most severe cases, where the victim had permanent injuries from the beatings, the forensic doctors gave a medical certificate of less than 15 days' convalescence, which ruled out the imposition of heavier sentences on the perpetrators.

"Hassiba" who suffers from paralysis of her left arm and leg, as a Human Rights Watch researcher observed, said her disability was due to a brain injury after her husband threw a chair at her head. However, the courts ruled only for a two-month prison sentence and a fine of 8,000 Algerian Dinars (US\$73) because they relied on the report by the forensic doctor who examined her injuries following the abuse and recorded only 13 days of incapacitation, rather than a sentence of 10-20 years for causing a permanent disability.

Fourth, the law lacks any provision for protective orders (also known as restraining orders), considered by the United Nations Entity for Gender Equality and the Empowerment of Women, or UN Women, to be among the most effective legal remedies for domestic violence survivors. Protective orders are measures aiming at protecting survivors of domestic violence from further abuse, for example by prohibiting the alleged abuser from calling the victim, ordering him to stay a certain distance from the victim, or requiring the alleged abuser to move out of a home shared with the victim.

Finally, the law lacks guidelines on how law enforcement should handle domestic violence cases. One of the major obstacles women encounter to filing complaints is the dismissive attitude police have towards victims of domestic violence. Of the 20 cases documented by Human Rights Watch, 15 women said that the police discouraged them, in various ways, from filing a complaint.

Some survivors said that even in cases where police registered their complaints, they felt there was inadequate or even no follow-up investigation by police or prosecutorial authorities, such as making an onsite visit and identifying and questioning witnesses.

There is a growing trend to combat domestic violence through legislation in the Middle East and North Africa. Several countries or autonomous regions in the Middle East and North Africa region have introduced some form of domestic violence legislation or regulation, including Bahrain, Kurdistan Region of Iraq, Israel, Jordan, Lebanon, and Saudi Arabia. These laws vary in the degree to which they comply with international standards.

Algeria's neighboring countries, Morocco and Tunisia, are also considering draft legislation on domestic violence that go further than Algeria's law on criminalizing forms of domestic violence such as by providing protection mechanisms and other services for survivors.

Algeria should ensure that its legislation on domestic violence is comprehensive and in line with international standards. Without such measures, Algeria will continue to put women and girls' safety, and their lives, at risk.

## **Key Recommendations**

### **To the Algerian Parliament**

- Amend Law 15-19 by removing explicit references that provide for termination of prosecution, cancellation, or reduction of any court-imposed punishment if the victim pardons the offender.
- Adopt comprehensive legislation fully criminalizing domestic violence, establishing services and other assistance for survivors, providing for prevention and protection measures, such as emergency and long-term protection orders, and setting out duties for law enforcement.
- Include rape and sexual violence between current and former intimate partners as a form of domestic violence.

### **To the Algerian Government**

- Establish a national database on violence against women which includes information on domestic violence showing the number of complaints received, investigations undertaken, prosecutions mounted, convictions obtained, and sentences imposed on perpetrators.

### **To the Ministry of Interior**

- Establish a police response protocol to domestic violence whereby police should be directed to accept and register domestic violence complaints and inform domestic violence survivors of their rights with regards to protection, prosecution, and redress.
- Ensure that specialized training on domestic violence is included in the curriculum of the police academy.

## **To the Ministry of National Solidarity, Family and Women’s Conditions**

- Conduct public awareness campaigns on the criminalization of domestic violence and combat social attitudes that involve normalizing domestic violence, blaming victims, and stigmatizing survivors.

## **To Algeria’s International Partners, including the European Union and its Member States**

- Raise violence against women and domestic violence in Algeria as a key area of concern in bilateral and multilateral dialogues with Algerian authorities and urge the government of Algeria to address such violence through reforms in the social service, law enforcement, and judicial sectors.
- Provide funding to support shelters for survivors of domestic violence, as well as for other key services, including psychosocial counseling and legal assistance.

## **Methodology**

This report documents the government of Algeria's response to domestic violence and the lack of adequate services, protection, and legal remedies for victims. It is based on Human Rights Watch's research conducted in June 2015 and April 2016. Efforts were made to interview survivors of domestic violence from different parts of the country and from different socioeconomic backgrounds. Human Rights Watch interviewed 20 survivors of domestic violence. In addition, we interviewed 20 other people, including representatives of nongovernmental organizations (NGOs) working on domestic violence cases or service providers for survivors, lawyers, psychologists, and European Union representatives.

Human Rights Watch identified survivors with the assistance of local service providers, NGOs, and women's rights activists.

Human Rights Watch informed all interviewees of the purpose of the interviews, as well as how information collected would be used, and received oral consent before conducting the interview. Survivors were also informed of their right to stop or pause the interview at any time.

We gathered additional information from published sources, including government data, United Nations documents, academic research, and news media.

Human Rights Watch wrote a letter, annexed to this report, to the head of government on May 25, 2016, requesting information for incorporation into this report and meetings with officials who could discuss relevant policies. No responses had been received at time of writing.

All survivors' names are pseudonyms and some identifying details have been withheld for their security and privacy.

# I. Background

“The laws and policies [of Algeria] have not been able to remove all obstacles to de jure and/or de facto discrimination and to fully transform entrenched attitudes and stereotypes that relegate women to a subordinate role. Patriarchal mentalities, challenges in the areas of the interpretation and implementation of the law, the use of mediation to solve incidents of violence, the absence of verifiable statistics on the prevalence of violence, and the absence of effective cooperative and collaborative partnerships between civil society and the state heighten women’s vulnerability to violence.”

- 2011 report of the United Nations Special Rapporteur on violence against women.<sup>1</sup>

## Data on Domestic Violence Prevalence

To Human Rights Watch’s knowledge, there are no recent national surveys about the prevalence of domestic violence in Algeria. The last survey by the State Ministry for the Family and the Status of Women,<sup>2</sup> dating to 2006, revealed that 9.4 percent of Algerian women aged between 19 and 64 years reported being victims of physical violence often or daily within the family.<sup>3</sup> The study also found that marital rape existed, and that 10.9 percent of women admitted having been subjected to forced sexual relationships by their intimate partners.

A 2013 study conducted by Balsam, a network of nongovernmental organizations (NGOs) working on domestic violence across Algeria, found that, among the 1,000 women who sought support from the various associations forming part of the Balsam network between 2011 and 2013, higher levels of violence were found among married women

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<sup>1</sup> United Nations General Assembly, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Mission to Algeria, A/HRC/17/26/Add.3, May 19, 2011, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-26-Add3.pdf> (accessed on January 6, 2017).

<sup>2</sup> The name of the ministry was changed to become Ministry of National Solidarity, Family, and Women’s Conditions, see: <http://www.msnfcf.gov.dz/fr/>

<sup>3</sup> Violence envers les femmes en Algérie : enquête nationale de prévalence, Ministère Déléguée Chargée de la Famille et de la Condition Féminine, February 2007, cited in Ministère Déléguée Chargée de la Famille et de la Condition Féminine publication, Stratégie Nationale de Lutte contre la Violence à l’égard des Femmes, <http://gbvaor.net/wp-content/uploads/2015/04/Strategie-Nationale-de-lutte-contre-la-violence-a-legard-des-femmes-Algeria.pdf>, (accessed April 13, 2017).

than among unmarried women, especially if they do not work outside of their homes. The report found that physical and psychological violence were the most widely reported forms of abuse. Twenty-seven percent of the 1,000 women said they were victims of sexual violence.<sup>4</sup> The same study showed that the perpetrators of domestic violence came from various social backgrounds.

In her 2011 report following a mission to Algeria, the United Nations Special Rapporteur on violence against women, its causes and consequences, referred to a General Directorate for National Security report, which recorded 6,748 cases of violence against women from January to September 2011. The Special Rapporteur called this a “very low figure compared to the prevalence rates found in the 2006 national survey and also recent studies by support centers operated by civil society organizations.”<sup>5</sup> The General Directorate for National Security reported 8,000 cases of violence against women in the first six months of 2016, 50 percent of which were domestic violence.<sup>6</sup>

The Department of Economic and Social Affairs of the UN Secretariat’s “Guidelines for Producing Statistics on Violence against Women” says: “Without a full understanding of the scope, dimensions and correlates of violence against women, it is not possible to design appropriate responses aimed at properly addressing or preventing such violence at any level of government or civil society.”<sup>7</sup>

## National Strategy

In 2003, authorities launched a three year-long consultation with civil society, governmental agencies, and UN bodies to develop a “National Strategy on Combatting

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<sup>4</sup> Réseau national des centres d’écoute sur les violences contre les femmes, Balsam, “Les violences faites aux femmes en Algérie”, Rapport N.5, Décembre 2013, <http://www.ciddef-dz.com/pdf/autres-publications/balsam2013.pdf>, (accessed January 6, 2017). It was created in 2008 and includes all of the associations that operate counseling centers for women.

<sup>5</sup> Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, May 19, 2011, A/HRC/17/26/Add.3, (accessed January 6, 2017).

<sup>6</sup> General Directorate of National Security press release, November 2016, <http://www.dgsn.dz/?%D9%85%D9%86%D8%AA%D8%AF%D9%89-%D8%A7%D9%84%D8%A3%D9%85%D9%86-%D8%A7%D9%84%D9%88%D8%B7%D9%86%D9%8A-%D9%8A%D8%AD%D9%8A%D9%8A-%D8%A7%D9%84%D8%AD%D8%AF%D8%AB-%D9%88%D9%8A%D8%B9%D9%84%D9%86-%D8%B9%D9%86>, (accessed on January 24, 2017).

<sup>7</sup> The Department of Economic and Social Affairs of the United Nations Secretariat, Statistics Division, “Guidelines for Producing Statistics on Violence against Women— Statistical Surveys,” ST/ESA/STAT/SER.F/110 (2014), [http://unstats.un.org/unsd/gender/docs/Guidelines\\_Statistics\\_VAW.pdf](http://unstats.un.org/unsd/gender/docs/Guidelines_Statistics_VAW.pdf), (accessed January 15, 2017).



Violence against Women.”<sup>8</sup> The strategy, adopted on 2007, brought together several stakeholders that deal with domestic violence survivors, including the Ministries of Justice, Health, National Solidarity, Family, and Women’s Conditions, as well as the police, the gendarmerie, and women’s rights groups.

The national strategy recommended, among other things, the establishment of centers for listening to and taking care of the victims of violence. It also called for the creation of new mechanisms for the registration of complaints by women. The document pressed the government to establish, within the police force and the Gendarmerie Nationale (the police force that operates mainly outside of urban areas), special units that can refer victims to longer-term shelters. It also stressed the need to develop, in a participatory process, a standard protocol outlining the manner in which various state institutions should receive, listen to, support, and orient victims of gender-based violence and the manner in which female officers should be trained to handle such violence. The strategy also recommended that authorities adopt a protocol for forensic doctors on documenting domestic violence. While welcoming these recommendations, Human Rights Watch is unable to confirm that the authorities implemented any such steps.<sup>9</sup>

The letter that Human Rights Watch sent on May 25, 2016 to Algeria’s head of government requested information about the existence of specialized domestic violence units, domestic violence personnel in the police force, and protocols on handling domestic violence cases. The head of government had not replied to Human Rights Watch’s letter at time of writing.

According to the Balsam 2013 report and to service providers who spoke to Human Rights Watch, the General Division of National Security (Direction Générale de la Sécurité Nationale, or DGSN) created a special bureau for the protection of children and women

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<sup>8</sup> Stratégie Nationale de Lutte contre la Violence à l’égard des Femmes, 2003, <http://gbvaor.net/wp-content/uploads/2015/04/Strategie-Nationale-de-lutte-contre-la-violence-a-legard-des-femmes-Algeria.pdf>, (accessed January 10, 2017).

<sup>9</sup> The Ministry of National Solidarity, Family and Women’s Conditions created, on November 25, 2013, the “National Committee in charge of implementing the National Strategy to combat violence against women.” According to the Ministerial decision, the Committee is composed of 23 members, including representatives from the ministries of interior, justice health, religious affairs, the National Guard, the police, and two members representing NGOs working on violence against women; Ministry of National Solidarity, Family, and Women’s Conditions, <http://www.msnfcf.gov.dz/fr/search>, (accessed on January 5, 2017).

victims of domestic violence.<sup>10</sup> Human Rights Watch was not able to verify this information, and the government did not respond to our questions about it.<sup>11</sup>

## Positive Legal Reforms

Algeria has undertaken a number of legal reforms that promote women’s rights. In 2005, following campaigning by women’s rights groups, the parliament passed two laws favorable to women’s rights. The first is the amended nationality code to allow Algerian women with foreign spouses to pass on their nationality to their children and to their foreign husbands.<sup>12</sup> The second is the amended family code by increasing women’s access to divorce and custody of children. While many of the family code’s provisions remain discriminatory, the authorities removed the provision that stated: “The duty of the wife is to obey her husband.”<sup>13</sup> (See chapter VI on Algeria’s Legal Framework Compared to International Legal Obligations).

Algeria’s constitution enshrines the principle of non-discrimination on the basis of sex and requires the state to take positive action to ensure equality of rights and duties of all citizens, men and women, “by removing the obstacles that hinder the progress of human beings and impede the effective participation of all in political, economic, social and cultural life.”<sup>14</sup> In March 2016, the parliament amended the constitution by adding an article stating “the state works to attain parity between women and men in the job market” and “encourages the promotion of women in positions of responsibility in public institutions and in businesses.”<sup>15</sup>

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<sup>10</sup> See Réseau Balsam, op.cit., <http://www.ciddef-dz.com/pdf/autres-publications/balsam2013.pdf>, (accessed on January 6, 2017).

<sup>11</sup> Human Rights Watch, letter to Algerian authorities, May 25, 2016. See Annex 1.

<sup>12</sup> Article 6 of the Algerian Nationality Code deems that “any child born to an Algerian father or Algerian mother shall be considered to be Algerian.” Ordonnance n. 70-86 du 15 décembre 1970 portant code de la nationalité, modifiée et complétée par l’ordonnance n.05-01 du 27 février 2005, <http://www.joradp.dz/TRV/FNat.pdf>, (accessed on January 6, 2017).

<sup>13</sup> Article 39 of the Algerian Family Code, before the 2005 reform, stated, “The wife shall obey her husband and respect him in his quality of head of the family.” Law no. 84-11 of June 9, 1984 relating to the family code, published in the Official Journal of the Algerian Republic on June 12, 1984.

<sup>14</sup> Articles 32 and 34 of the Algerian Constitution, adopted on December 8, 1996, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_125825.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_125825.pdf).

<sup>15</sup> Law no. 16-01 of March 6, 2016 relating to the constitutional reform, <http://www.joradp.dz/FTP/JO-FRANCAIS/2016/F2016014.pdf> (accessed January 10, 2017).

Algerian laws contained no specific provisions on domestic violence until December 10, 2015, when the parliament adopted several amendments to the penal code that criminalized some forms of domestic violence and stipulated heavy sentences for it. The law also criminalized harassment in public spaces and strengthened penalties for sexual harassment. The amendments, known as Law no.15-19, came into force on December 30, 2015.<sup>16</sup> While the law was a welcomed step in recognizing and criminalizing domestic violence in some forms, it failed to fully criminalize domestic violence, including by not specifically criminalizing marital rape. Additionally, Algeria's legal framework continues to lack the comprehensive legal measures needed to prevent domestic violence, assist survivors, and prosecute offenders (see chapter VI).

The following chapters show how women face barriers in accessing services and in ensuring that their abusers are held accountable. Various measures, including further legal reform, is needed to lift these barriers.

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<sup>16</sup> Law no.15-19 of 30 December 2015, Modifying and Completing Ordinance no.66-156 of 8 June 1966 on the penal code, <http://www.joradp.dz/FTP/JO-FRANCAIS/2015/F2015071.pdf><http://www.joradp.dz/FTP/JO-FRANCAIS/2015/F2015071.pdf>, (accessed January 10, 2017).

## II. Social Barriers to Accessing Help

Social and economic barriers that prevent survivors of domestic violence from seeking assistance, protection, and justice include pressure to maintain the family at all costs, economic dependence on husbands, and stigma and shame if a woman leaves her abusive spouse.

Yasmina Boumerdassi, an Algiers lawyer specializing in family affairs, told Human Rights Watch that she has handled about a hundred cases involving domestic violence. She said in 90 percent of these cases, women victims drop their complaints and the prosecutors usually don't pursue prosecutions after the women abandon their complaints.

She said: "They are afraid to be rejected by the family. They might ask for divorce, after long years of physical abuse, but they rarely go to court to file complaints against their husbands."<sup>17</sup>

Another Oran-based lawyer, Tata Benhamed, said that between the time when a woman files a complaint and the moment she receives a summons from the prosecutor for the first interview, a wait that can last several months, many women become discouraged and abandon their complaint. Family members might pressure them by saying the complaint risks breaking apart their families, sending the father of her children to prison, destabilizing them, and bringing shame on the extended families.

Benhamed said that in 90 percent of the cases she followed, women dropped their complaint after they filed one with the police, when the complaint reached the prosecutor.<sup>18</sup>

### Social Stigma and Family Rejection

Survivors, service providers, lawyers, and psychologists interviewed by Human Rights Watch spoke overwhelmingly of a social atmosphere that contributes to tolerance of domestic violence and silences victims. Authorities conducted a Multiple Indicator Cluster

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<sup>17</sup> Human Rights Watch interview with Yasmina Boumerdassi, Lawyer, Algiers, April 13, 2016.

<sup>18</sup> Human Rights Watch interview with Tata Benhamed, lawyer, Association Femmes Algeriennes revendiquant leurs droits, Oran, June 2015.

Survey (MICS) with the UN International Children’s Emergency Fund (UNICEF) and the UN Population Fund (UNFPA) in 2012-2013 to gauge attitudes towards domestic violence.<sup>19</sup> The survey, conducted in 2012-2013, of 38,547 women across the country aged 15 to 49 years, found that 59% of them believe that a husband has “the right to beat his wife” for one or more of various reasons, including: if she goes out without his permission; neglects the children; argues with him; burns the food; shows disrespect for his parents; or refuses to give him her salary or to quit her job.

Lamia, 18, fled her family house in Tizi Ouzou in January 2016 because her father was beating her. She said that he did the same to her mother for years, before her mother decided to leave him. Lamia blamed her mother for leaving the family house:

In the Kabylie region, it is a shame to leave the house. Whatever the man does, it is the woman who is to be blamed. It is the man’s right to beat his wife.<sup>20</sup>

A director of an NGO shelter in Algiers said, “it is typical that their families tell women, ‘Be patient with your husband, accept the violence and stay quiet.’” The majority of the women that her shelter hosts felt guilty because their families had rejected them, she said.<sup>21</sup>

Several women who attempted to leave abusive relationships told Human Rights Watch that their families and the family of their spouse had encouraged them to return and reconcile, even when they had suffered serious injury.

Hasna, now 31 years old and the mother of four children, married at the age of 21 and lived with her husband and his parents in Oran. She stopped working, and after a year of marriage, she gave birth to their first daughter. She said that her husband repeatedly grabbed and pulled her by her hair, shoved her to the ground and beat her on her arms and stomach, even when she was pregnant.<sup>22</sup>

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<sup>19</sup> Enquête nationale à indicateurs multiples: suivi de la situation des enfants et des femmes, MICS, December 2008, [www.childinfo.org/files/MICS3\\_Algeria\\_FinalReport\\_2006\\_Fr.pdf](http://www.childinfo.org/files/MICS3_Algeria_FinalReport_2006_Fr.pdf), (accessed on January 5, 2017).

<sup>20</sup> Human Rights Watch interview with Lamia (pseudonym), Femmes en détresse Shelter, Algiers, April 2, 2016.

<sup>21</sup> Human Rights Watch interview with Mariem Bellala, director of “SOS Femmes en detresse,” Algiers, April 5, 2016.

<sup>22</sup> Human Rights Watch interview with Hasna (pseudonym), Oran, April 9, 2016.

I felt alone. My father, each time I complained to him, said “*Ma’alesh* (it doesn’t matter), everything is *maktoub* (destiny), this is your husband, the father of your kids. Your destiny is to stay with him.”

She said she left him after ten years of abuse.

Hassiba, 55, with one daughter, comes from a poor family in Mascara, a town 100 km southeast of Oran. She dropped out of school at 12 and worked in a bakery in Oran. She married at the age of 40 to a man who forced her to quit her job. She said he started beating her two months after they married. He threw objects at her and slapped her on the face. When she told her father, he said, “Be patient with him, maybe he will change.”<sup>23</sup> After eight years of abuse, Hassiba left and divorced him.

## Economic Dependence on Abusers

Many victims told Human Rights Watch that they remained in violent relationships in part because of their reliance on their husbands or their families for food and shelter. At least five out of the 20 women we interviewed had jobs before marriage but quit them, either under pressure from the husband or because they had to take care of the children.

Isolation can reinforce dependence on abusers. Some women reported that their spouses or in-laws controlled their movement and refused to let them work outside the home or contact their own families.

Hanan, now 55, married when she was 22 years old. Her parents initially opposed the marriage but relented when she insisted. She used to work in a pharmacy in Oran. When she got married, she obeyed the demand of her husband, who she said was very religious, to quit her job and wear the hijab. She said he also started to slowly isolate her, at first not allowing her to see her extended family, then to attend weddings or even funerals of friends and family. Hanan said that her husband started beating her several months after they married, even when she was pregnant. He slapped her on the face several times. She said she didn’t tell her parents because she was too ashamed and wanted to hide her ordeal.<sup>24</sup>

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<sup>23</sup> Human Rights Watch interview with Hassiba (pseudonym), Oran, April 9, 2016.

<sup>24</sup> Human Rights Watch interview with Hanan (pseudonym), Oran, April 10, 2016.

Several of the women interviewed by Human Rights Watch described a long history of family violence. They said they had experienced abuse at the hands of their parents or stepparents and/or came from broken homes. This left them even more vulnerable and with fewer relatives to whom they could turn to.

Jamila, a 44-year-old mother of five, came from a working-class family. Her parents died when she was young. She stopped her studies and at 16 married a man she loved. She gave birth to a disabled boy and her husband developed tuberculosis. After recovering, he started drinking heavily. She said he then met another woman and started beating her to force her to allow him to marry a second wife. When she refused, he shoved her and kicked her. She did not go to the police. “I had nowhere to go,” she said. “My parents were dead, I don’t have a family. I didn’t want to lose my kids and break the family ties.”<sup>25</sup>

On January 4, 2015, the Algerian parliament adopted Law no.15-01 creating a maintenance fund for divorced women supporting children.<sup>26</sup> The law stipulates that authorities will pay maintenance for children when there is a total or partial incapacity or failure by the husband to pay it. The law puts the onus on the person having guardianship of the children to first to file a complaint with the family court judge, providing documentation to prove the nonpayment of maintenance. The judge shall rule within five days on the nonpayment and then notify both parties, who have two days to appeal. The judge makes the final decision in three days. The relevant authorities are then to implement the decision and send the maintenance payment through bank or postal transfer to the beneficiary within 25 days. The fund will be financed by the state budget. The 2015 budget law created a new account number (302-142) in the national treasury of the state dedicated to the maintenance fund. The Minister of National Solidarity, Family and Women’s Conditions is the chief authorizing officer for the fund; the director of social affairs and solidarity at the *wilayas* (governorates) is the secondary authorizing officer.<sup>27</sup>

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<sup>25</sup> Human Rights Watch interview with Jamila (pseudonym), Oran, April 9, 2016.

<sup>26</sup> Loi no. 15-01 du 4 janvier 2015 portant création d’un fonds de la pension alimentaire, Journal Officiel de la République Algérienne, 7 Janvier 2015, <http://www.joradp.dz/FTP/jo-francais/2015/F2015001.pdf>, (accessed January 16, 2017).

<sup>27</sup> Loi no. 14-10 du 30 décembre 2014, portant loi de finances pour 2015, <http://www.joradp.dz/FTP/JO-FRANCAIS/2014/F2014078.pdf>, (accessed January 17, 2017). The law states that the fund will be supported by the budgetary allocations of the state, the money recovered from the debtors, taxes, and private donations.

Human Rights Watch interviewed nine women victims of domestic violence who faced financial hardships after they finally decided to leave their husbands and the court gave them guardianship of their children. They said that they did not know about the maintenance fund. Others knew about it but had not yet attempted to file for assistance under its provisions.<sup>28</sup>

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<sup>28</sup> Human Rights Watch interviews with survivors of domestic violence, Algiers, Oran, Annaba.



### III. Lack of Shelter and Services for Domestic Violence Survivors

While women are left isolated and financially dependent on their abusers, many also said they did not know where to go for help, including shelters available to them.

#### Situation of State-Run Shelters

Human Rights Watch was not able to access state-run shelters in Algeria. The organization sent a letter on October 30, 2014 to the Algerian government, asking to meet to discuss domestic violence legislation and policies (see Annex I). Human Rights Watch sent another letter to the government on May 25, 2016, asking about the number of shelters available for domestic violence survivors and the level of funding they receive from the government (see Annex II). At time of writing, Human Rights Watch has received no answer to either letter.

The Special Rapporteur on violence against women, who visited Algeria in November 2010, noted that there are only two state-run shelters specialized for women victims of violence, in Bou Ismaïl in the governorate of Tipasa and Tlemcen, and that both had limited capacity.<sup>29</sup> She further reported that in the absence of sufficient shelters, police and social services officials direct women fleeing violence to Dar al-Rahma [charitable houses] institutions, which accommodate a wide range of persons in need of state support, including the homeless and mentally and physically disabled persons.<sup>30</sup> The Ministry of National Solidarity, Family and Women's Conditions published on its website a list of nine Dar al-Rahma [charitable house] institutions across the country.<sup>31</sup>

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<sup>29</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. Human Rights Council, seventeenth session, May 19, 2011, A/HRC/17/26/Add.3.

<sup>30</sup> Ibid. Dar al-Rahma means "charity houses" in Arabic.

<sup>31</sup> Dar al-Rahma de Birkhadem wilaya d'Alger; Annexe de Hadjout - Wilaya de Tipaza; Annexe de Naciria - Wilaya de Boumerdes ; Annexe de Tamanrasset - Wilaya de Tamanrasset ; Dar al-Rahma de Constantine ; Annexe d'El Eulma - Wilaya de Sétif ; Dar al-Rahma de Misserghine de la wilaya d'Oran ; Annexe d'El Bayadh - Wilaya d'El Bayadh ; Annexe de Tlemcen - Wilaya de Tlemcen. See: <http://www.msnfcf.gov.dz/fr/>, (accessed on January 5, 2017).

The state-run shelters for women victims of violence are regulated by a decree, dating back to 2004, which specifies their mandate, organization, and regulation.<sup>32</sup> The decree states that the shelters should provide for the temporary accommodation and medical-socio-psychological care of girls and women victims of violence and in distress. Admission to these centers depends on a decision from the governor or referral by security services.

According to the state's report to the UN Committee on the Elimination of Discrimination against Women, which monitors compliance with the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), the National Shelter for Women Victims of Violence and Women in Distress in Bou Ismail has a capacity of 40 beds, and "has been undergoing extensions to increase its capacity to 100. The project is nearing completion, and the establishment is currently being equipped."<sup>33</sup> The report states that in 2011, 15,280 women and girls went through the center and received psychological, legal, and social assistance. The report states that the total budget for the center in 2011 is 49,268.000 Algerian Dinars (US\$449,166).

Human Rights Watch did not interview women who stayed in the shelters dedicated to hosting women victims of violence. However, we did interview one woman, Manal, who stayed for weeks in one of the state-run Dar al-Rahma institutions in Algiers, which, as noted, are not tailored specifically for the needs of survivors of domestic violence. While there is no evidence that Manal's account necessarily represents conditions at such shelters nationwide, this interview provides a glimpse of the treatment that some women victims of violence face in such institutions.

Manal is 31 years old and lives in an NGO-run shelter in Algiers. She left her companion after he beat her on her abdomen when she was pregnant but went back to live with him because she had nowhere else to go, she said.<sup>34</sup> In June 2013, she left the house with her baby at night. She said she was walking along the street and did not know where to go, when a police car approached her. Police officials asked her what she was doing at night on the

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<sup>32</sup> Decrees no. 04-182 of 24 June 2004 on the "creation, organization and functioning of the national shelters for women and girl victims of violence", and Decree n. 10-96 of 17 mars 2010 completing the list of such shelters. The latter Decree created a new shelter for women, in the Wilaya of Mostaghanem.

<sup>33</sup> CEDAW 2012 List of Issues and questions with regard to the consideration of periodic reports: Algeria <http://repository.un.org/handle/11176/285484>, (accessed January 5, 2017).

<sup>34</sup> Human Rights Watch interview with Manal (pseudonym), Algiers, April 3, 2016.

street, and she told them she had nowhere to go. They took her to a Dar al-Rahma facility for women, in a commune in Algiers. She described the conditions in the center as “horrible”:

As soon as I entered the place, the shelter staff asked me to take off all my clothes, even my underwear, and they kept me naked in a room for one hour. I felt humiliated. Then they gave me a uniform. They took my cell phone. I didn’t have the right to leave the shelter, even during the day. I felt as if I was in a prison.

She said there were around 50 women staying in the shelter for various reasons. There was no separate section for victims of domestic violence. She said that she saw, several times, the shelter personnel beat residents, especially those who had mental health problems or physical disabilities. One time she saw a staff member slapping a woman with physical disabilities because she had urinated in her pants. The shelter staff were rude and would often scream at the residents, she said. She also said that she asked several times for a diaper for her baby but they gave it to her hours later, while her baby cried the entire time. She also said that the shelter provided its residents with no training, instruction, or other recreational activities. Instead they made the women spend their days cleaning the rooms.

## Situation of Private Shelters and Service Providers

Several service providers and women’s rights activists told Human Rights Watch that the government provides little in the way of services for survivors of domestic violence, relying on NGOs to fill the gap. They said that almost none of these services provided by NGOs receive government funding or material support and several said that these NGOs struggle to provide services.<sup>35</sup> While the UN Handbook for Legislation on Violence against Women advises that where possible, services should be “run by independent and experienced women’s non-governmental organizations providing gender-specific, empowering and comprehensive support to women survivors of violence, based on feminist principles,” it also notes the important role that the government can play in establishing and funding such services.<sup>36</sup>

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<sup>35</sup> Human Rights Watch interview with Mariem Bellala, director of “SOS Femmes en detresse”, Algiers, June 2015 and April 2016.

<sup>36</sup> The Division for the Advancement of Women in the Department of Social and Economic Affairs of the United Nations Secretariat, “The Handbook for Legislation on Violence against Women,” 2010, section 3.6.1 <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>, (accessed January 16, 2017).

Balsam, a network of NGOs working on domestic violence, listed in its 2013 report nine associations that have a counseling center, where women can obtain preliminary legal and psychological advice.<sup>37</sup> They listed three associations running private shelters, two in Algiers and one in Annaba.

Human Rights Watch visited shelters run by women's rights associations that accept victims of domestic violence in Algiers and in Annaba. Human Rights Watch also visited two centers providing legal and psychological support for women. Largely dependent on donor support, these centers are scarce, underfunded, and concentrated in urban areas. In all these centers, women are usually allowed to stay for several months, together with their children. The multi-service shelters provide legal advice, psychological counseling, and training and educational opportunities.<sup>38</sup> The NGOs running the shelters told Human Rights Watch that women reach the shelter by various means; some come on their own, while the police bring others when they find them wandering the streets or when women file a complaint of domestic violence and say they have nowhere to go. Some learned about the shelters from public awareness campaigns run by the NGOs on state television and radio. Human Rights Watch spoke with several survivors of domestic violence in these centers. Everyone praised the refuge, help, and support they received. Several told Human Rights Watch that their stay helped them to feel secure and confident enough to file a criminal complaint or apply for a divorce.

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<sup>37</sup> NGOs listed in the Balsam report: CIDDEF (Centre d'information et de documentation sur les droits des enfants et des femmes), created in 2002 in Algiers ; SOS femmes en detresse, created in 1992 in Algiers ; Maison Nedjma, created in 2003 in Constantine ; FARD (Femmes Algériennes revendiquant leurs droits), created in 1995 in Oran; AFAD (Association des Femmes Algériennes pour le développement), created in 1999 in Annaba; association Bnet el Kahina, created a counseling center in 1999 in Tebessa; SOS Nour, created in 1997 in Annaba; La Ligue de prevention et de sauvegarde de l'enfance, created in 2004 in Tizi Ouzou.

<sup>38</sup> Shelters visited: SOS femmes en détresse in Algiers. The shelter has the capacity to host 30 women, but they have a policy of not accepting more than 10, with exceptions. The women can be hosted with their children. They provide shelter, legal counseling, and psychological counseling either individually or through focus groups. They take the women to forensic doctors to obtain medical certificates and treatment and accompany the women in their court cases during the complaint or divorce process. SOS femmes en détresse does not get any financial or other support from the State, and are financed through international donor organizations. Human Rights Watch interview with Mariem Bellala, director of SOS Femmes en detresse, June 2015.

Shelter Darna (Our House) in Algiers can host up to 35 people, children included. It is intended to house women for up to 6 months, until they find a more permanent home. The center was created in 2000, initially for women victims of terrorism, and since 2003 has become a general shelter for women who face violence or difficult family situations. They receive donations from private individuals. Human Rights Watch interview with Rabiaa Aoui, Algiers, June 2015.

Shelter Dar al-Insania in Annaba was created in 1999. It has the capacity to host 20 women and their children. Human Rights Watch interview with Mounira Haddad, director of Dar al-Insania, April 2016.

Several UN bodies including UN Women, the UN General Assembly, CEDAW, and the UN Committee on Economic, Social and Cultural Rights (CESCR), have called on states parties to assist and protect domestic violence survivors, including by ensuring that they have timely access to shelter, health services, legal advice, hotlines, and other forms of support.<sup>39</sup>

The UN Handbook for Legislation on Violence against Women recommends that states introduce legal reform that mandates such support and services, and that states ensure funding for them. There are also minimum standards recommended by the UN on the level of some services, such as at least one shelter/refuge place for survivors of domestic violence for every 10,000 inhabitants, “providing safe emergency accommodation, qualified counselling and assistance in finding long-term accommodation.”<sup>40</sup> Algeria’s Law no. 15-19 does not detail any measures relating to shelter or other assistance for survivors of domestic violence.

Following her visit to Algeria in 2006, the then-UN Special Rapporteur on violence against women recommended that Algeria “strengthen institutional infrastructure for the effective protection of women from violence,” including by “ensuring adequate resources to improve existing infrastructure supporting a wide range of vulnerable persons, and creating new centers that provide similar specialized integrated services to victims of gender-based violence.”<sup>41</sup>

The UN Handbook for Legislation on Violence against Women recommends that survivors have access to financial assistance, such as through trust funds or social assistance programs.<sup>42</sup> Finally, the UN emphasizes the importance of coordination and referrals

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<sup>39</sup> UN General Assembly, Resolution A/RES/65/228, Strengthening crime prevention and criminal justice response to violence against women, 2011, and its annex, “Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice,” 2011, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/65/228](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/228) (accessed February 1, 2016); CEDAW Committee, General Recommendation No. 19, Violence Against Women, (Eleventh session, 1992), art. 24, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/INT\\_CEDAW\\_GEC\\_3731\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf) (accessed February 1, 2016); CESCR, General Comment No.16 (2005), Substantive issues arising in the Implementation of the International Covenant on Economic, Social, and Cultural rights: “The equal right of men and women to the enjoyment of all economic, social, and cultural rights” (art. 3 of the International Covenant on Economic, Social, and Cultural Rights), UN Doc E/C.12/2005/4 (August 11, 2005), para. 27, (accessed February 1, 2016). Algeria is acceded to the ICESCR in 1989).

<sup>40</sup> The UN Handbook for Legislation on Violence against Women, section 3.6.1, (accessed December 23, 2016).

<sup>41</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/17/26/Add.3, May 19, 2011, (accessed February 1, 2016).

<sup>42</sup> *Ibid.*, section 3.6.5.

between agencies responding to domestic violence, and recommends that legislation set out a coordination framework.

## IV. Police Response to Domestic Violence

The police are usually the first contact that the victims of domestic violence have with state institutions. Under the Algerian Code of Criminal Procedures, the judicial police, under the supervision of the public prosecutor, is in charge of establishing violations of the penal code, gathering evidence and identifying the culprits, until the decision to open an investigation into the case is made by the prosecutor or the investigative judge.<sup>43</sup> Once such an investigation has been opened, the police are required to act as the agent of the investigating jurisdictions and to comply with their instructions.<sup>44</sup>

In 15 of the 20 cases Human Rights Watch examined, the dismissive attitude of the police constituted an obstacle to filing complaints. In these cases, the women said that the police discouraged them, in various ways, from filing a complaint, or that they seemed to conduct little follow-up, if any, after registering their complaints. Neither the police nor prosecutors made onsite visits to identify and interview witnesses, including neighbors who in several cases intervened and helped the women. Such accounts suggest a need for legislation or policies that spell out the way such complaints should be handled.

Salwa, whose story appears at the start of this report, had endured years of mistreatment by her husband. She said following the last bout of violence in 2011, in which he lacerated her breasts, she ran to a hospital, where members of the police guarding the hospital took her inside. At the emergency unit, they gave her first aid but told her she could not stay at the hospital. They referred her to the hospital's forensic doctor, who wrote a medical certificate prescribing 14 days of rest for her injuries but did not advise her to go to the police, she said.

Not knowing where to go, Salwa returned to the police at the hospital, who took her to the police station downtown. She said she had visible bruises and her face was swollen from the beatings. The police downtown recorded her complaint and then took her to an NGO-run Dar al-Rahma.<sup>45</sup> She described the conditions there as “very bad” and said she left the

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<sup>43</sup> Algeria Code of Criminal Procedure, Article 12, <http://www.joradp.dz/trv/fppenal.pdf>, (accessed February 17, 2017).

<sup>44</sup> *Ibid.*, Articles 13 and 17.

<sup>45</sup> Human Rights Watch interview with Salwa, Annaba, April 7, 2016. Human Rights Watch also interviewed the director of the Center, and two workers at the shelter. One said that when Salwa arrived: “Her clothes were stained with blood, she had

shelter and returned to the police. They took her to another NGO-run shelter, Dar al-Insania [humanity house]. When she was well enough to go out again, she went to the police to ask about her complaint. They told her, “we called your husband, he said you fell and that is why you are bruised.” She said the police did not do anything more.<sup>46</sup>

Ramla is a 50-year-old mother of four from Blida. She used to work as a cleaner in a bank. Married in 1991, she got divorced in 2014. She said that her husband started beating her two weeks after they got married. He pulled her by her hair, and beat her on her arms and back with his belt. This often occurred when he came home drunk. She said he forced her to give him all of her salary.<sup>47</sup>

Ramla said she finally decided to divorce him after a particularly severe beating in February 2013. Her husband had asked her to go to the bank to withdraw money for him. When she returned, he insulted her for not withdrawing enough. She said he took an iron rod and beat her on her back, including near her kidneys. She said the neighbors intervened when they heard her cries and walked her to the police station of the third district in Blida. She said she was bleeding and could barely walk. When the policeman there saw her, he asked her who did this to her. She said it was her husband. She said the officer walked out of the commissariat, stopped a passing car, and asked the driver to take her to the hospital. She said the policeman did not do anything more. When she went to complain to the police station the following day, the same policeman took her statement. However, she never heard from the police again. She said the police did not go back to her house to investigate, interrogate her husband, or interview her neighbors. She said she filed a request for divorce in May 2013 based on a unilateral request procedure and got divorced almost a year later.

Mariem, from Blida, is 36 years old. She said she grew up in a poor family and got married at 26 years old, in 2005, to a man she loved. She said the problems started in June 2013 when she was pregnant for the third time. He wanted to throw her out of the house. When she resisted, he punched her in the face and pushed her out. She said she had no money or documents with her. A neighbor accompanied Mariem to the hospital. The forensic

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bruises all over her body.” The other recalled: “Her breasts were mutilated, disfigured.” They brought a doctor, and for a week there was a nurse coming to change her bandages, according to the two women working at the shelter.

<sup>46</sup> Human Rights Watch interview with Salwa (pseudonym), Annaba, April 8, 2016.

<sup>47</sup> Human Rights Watch interview with Ramla (pseudonym), Blida, April 5, 2016.



doctor gave her a medical certificate prescribing ten days of rest. She then went to the police station to file a complaint. She gave the policemen the certificate, and told them that her husband threw her out of the house. “One of the policeman there told me, ‘This is none of my business. It’s a private family matter. You should go to court,’” she recalled.<sup>48</sup>

She said she went to stay with her brother, who helped her find a lawyer. On May 31, 2015, she asked for a unilateral divorce for “damage,” as permitted in the family code. She obtained it on October 28, 2015 from the first instance court in Blida.

Hasna, is a 31-year-old mother of four from a middle-class family in Oran. She said she married ten years ago and stopped working shortly after getting married. When she became pregnant for the first time, her husband did not want the child. She said that on several occasions he grabbed her by her arms and shoved her. A year following their marriage she gave birth to their first daughter. The violence continued year after year.

In September 2014, he asked her to leave the house and go live with her parents. When she refused, he grabbed her and threw her against the wall, slapped her, and punched her in the face. She said she escaped the house and ran outside in her pajamas. She approached the first policeman she saw on the street, in tears. The policeman told her he could not do anything and that she had to go to the police station. He gave her money for a taxi, and she went to the police station.

At the Miramar police station, the policeman told me “This is a family affair. This is not our business. This is your husband. Maybe he was angry. He will come back to his senses. Go and find some elders who can calm things down. Otherwise, if you file a complaint, he will divorce you.” I thought: if a police officer says this, he must be right, I should go back. And I went back.

She said husband’s mistreatment and the beatings of her continued. In March 2015, they argued in the car parked in the parking lot in front of their house, in front of two of their older children. She said she was wearing sunglasses, he slapped her on the face and the sunglasses injured her in her temples. She was bleeding. When she told him that she will complain to the police, he told her, “Go to the police, in fact I will take you to the police.”

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<sup>48</sup> Human Rights Watch interview with Mariem (pseudonym), Blida, April 5, 2016.

They went to the Miramar police station with the children. The policemen told her that if she wants, she can file a complaint, but the children begged her not to. She didn't. She said after that she went back to live with him for several months. Then he pressed her to accept the divorce, and on September 13, 2015, they got divorced. He provided her the child maintenance and she was able to keep their apartment.

Hanan, who endured years of beating and humiliation from her husband said that one of the most severe episodes occurred during a visit to his parents' house on October 11, 2009.<sup>49</sup> That day, her husband slapped their eldest daughter on the face and ear during an argument. When Hanan screamed at him to stop, he turned to her and punched her in the face, breaking her nose. She went to the forensic doctor with her daughter. Human Rights Watch reviewed the forensic doctor's certificate, dated October 11, 2009. It stated that Hanan had suffered a broken nose and psychological shock, and prescribed 16 days of rest. Human Rights Watch also reviewed her daughter's medical certificate, prepared by the same doctor on the same day, which stated that she had a "tympanic membrane perforation" (ruptured eardrum).<sup>50</sup>

She said she tried with her two daughters to go back to his parents' house to retrieve their bags and personal documents, such as identity cards and passports, but he did not let them in or give them their belongings. They went to the sixth district police station to file a complaint against him.

The policeman there told me, "This is not our mandate, it's the prosecutor's mandate. We cannot interfere between a man and his wife." I had my nose broken, I had bruises on my face, and this is what he says.

Hanan said she went with her children to stay with her parents. She filed a request for recovery of their personal documents, with the prosecutor's office at the First Instance Court in Oran. Human Rights Watch reviewed three documents, dated November 3, 8, and

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<sup>49</sup> Human Rights Watch interview with Hanan (pseudonym), Oran, April 10, 2016.

<sup>50</sup> Certificat Centre Hospitalo-Universitaire d'Oran, Service de médecine légale, Unité de dommage corporel, dated October 11, 2009. On file with Human Rights Watch.

10, 2009, in which the prosecutor ordered the police station of the fifteenth district of Oran to intervene immediately in order to help her recover her documents.<sup>51</sup>

She said for each of these orders she had to go to the prosecutor's office, then to the police to deliver the requisition orders and then back again to the prosecutor to report about the lack of action from the police. On her follow-up visits, when she asked the police what they had done to recover her documents, they would say that they went to the house but did not find him. She said that they did not attempt to do anything else to help her.

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<sup>51</sup> Requisition orders from the prosecutor of the first instance court of Oran to the Oran 15<sup>th</sup> district police station. On file with Human Rights Watch.

## V. Judicial Response to Domestic Violence

There are no comprehensive statistics listing the number of prosecutions brought for violence against women and the number of convictions obtained. Consequently, it remains difficult to assess the extent to which the Algerian authorities comply with their obligations to investigate and punish crimes involving domestic violence. This lack of official data led the CEDAW Committee to recommend in 2012 that Algerian authorities establish a database of information on domestic and sexual violence showing the number of complaints received, investigations undertaken, prosecutions mounted, convictions obtained, and sentences imposed on perpetrators as a basis for the government's reporting to the Committee.<sup>52</sup>

On May 25, 2016, Human Rights Watch sent a letter to the Algerian government requesting data on domestic violence complaints and criminal cases but received no reply.

The Handbook for Legislation on Violence against Women recommends the creation of specialized prosecutor units on violence against women and to provide adequate funding for their work and specialized training of their staff.<sup>53</sup>

Law no. 15-19 does not envisage the creation of such specialized prosecutorial units, which means that the current Algerian Code of Criminal Procedure will apply to new cases of domestic violence.

Under this code, the public prosecutor's office instigates criminal proceedings and enforces the law.<sup>54</sup> He is in charge of directing the activities of the judicial police, receiving complaints and denunciations, and deciding whether to initiate a prosecution or to close the case without further action.<sup>55</sup> Under the code, once an investigation is opened by a decision of the prosecutor, the investigative judge takes the lead and is in charge of

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<sup>52</sup> CEDAW, "Concluding observations of the Committee on the Elimination of Discrimination against Women," March 2, 2012, CEDAW/C/DZA/CO/3-4, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-DZA-CO-3-4.pdf>, (accessed February 17, 2017).

<sup>53</sup> The UN Handbook for Legislation on Violence against Women, Section 3.2.4, (accessed February 17, 2017).

<sup>54</sup> Code of Criminal Procedure, Article 29, <http://www.joradp.dz/trv/fppenal.pdf>, (accessed February 17, 2017).

<sup>55</sup> *Ibid.*, Article 36.

judicial investigations.<sup>56</sup> The preliminary investigation led by the investigative judge is compulsory if the offense constitutes a crime and therefore punishable by over five years imprisonment. It is optional for minor offenses. It may also be initiated for petty offenses if requested by the prosecutor.<sup>57</sup>

## Evidentiary Requirements for Domestic Violence

Human Rights Watch received contrasting information about the judicial system's handling of evidence in domestic violence cases. Some lawyers said they have seen judges unreasonably insist on certain kinds of evidence, such as eyewitnesses, in domestic violence cases, often an impossibility since most abuse takes place behind closed doors. Lawyers have also said that the medical certificate or the victims' accounts are considered insufficient for conviction.<sup>58</sup>

The Code of Criminal Procedures allows the judge to establish an offense using “any kind of evidence” that is produced in court and examined by all parties in the trial.<sup>59</sup> Likewise, the 2015 amendment to the penal code, introducing article 266(bis) relating to domestic violence, provides that: “The State of domestic violence can be proved by any means.”<sup>60</sup>

Human Rights Watch spoke with several victims who had differing experiences with the way the judiciary handled their cases. In some instances, the victim said the judge accepted the medical certificate and her own account of the violence as evidence sufficient to convict the husband.

This was the case of Rabiaa, 46, a former nurse. She married in 2008 and moved with her husband to London, where she gave birth to two children. Her husband started beating her shortly after their relocation to London. They returned to Algiers in August 2014. She said

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<sup>56</sup> Ibid., Article 38.

<sup>57</sup> Ibid., Article 66.

<sup>58</sup> Human Rights Watch interview with Siham Hammache, lawyer in domestic violence cases, Algiers, April 3, 2016; Human Rights Watch interview with Tata Benhamed, lawyer, with the association Femmes Algériennes revendiquant leurs droits, Oran, April 11, 2016.

<sup>59</sup> Article 212 of the Code of Criminal Procedure: “Hors les cas où la loi en dispose autrement, les infractions peuvent être établies par tout mode de preuve et le juge décide d'après son intime conviction. Le juge ne peut fonder sa décision que sur des preuves qui sont apportées au cours des débats et contradictoirement discutées devant lui.” <http://www.joradp.dz/TRV/FPPenal.pdf>, (accessed February 10, 2017).

<sup>60</sup> Article 2 of Law no.15-19 of 30 December 2015 Modifying and Completing Ordinance no.66-156 of 8 June 1966 on the penal code, available at <http://www.joradp.dz/FTP/JO-FRANCAIS/2015/F2015071.pdf>, (accessed February 10, 2017).

that on October 27, 2014, her husband banged her head against a wall in their house in Algiers and beat her, injuring her right eye. Her brother took her to a hospital in Algiers. The forensic doctor gave her a medical certificate specifying the period of physical incapacity for 15 days. The following day she filed a complaint against her husband at the Rouiba police station in Algiers. On March 26, 2014, section for minor offenses at the court of first instance of Rouiba sentenced her husband to two months in prison and a fine of 16,000 Dinars (US\$145). She said the sitting judge based his decision on the forensic doctor's evaluation of her physical incapacitation and on her own accounts of the violence.<sup>61</sup> On appeal, the court suspended the two-month sentence.

Amira, 36, from Oran with two children, told Human Rights Watch that her husband, whom she married in 2004, beat her from the beginning of their marriage. In June 2013, while he was beating their daughter, she tried to stop him. She said he went to the kitchen, took a knife, and came back to the living room and grabbed her hair. When she raised her hand in self-defense, she sustained a slash wound between her thumb and index finger. She went to a nearby hospital, where she received first aid and a forensic doctor gave her period of physical incapacity for 15 days. Amira said that with help from a lawyer, she filed a complaint with the prosecutor's office at the first instance court of Oran. That court sentenced her husband to one year in prison. On appeal, her husband denied injuring her, saying her wound had resulted from her own negligence with kitchen appliances. Amira said the appeals judge asked her if she could prove the violence through witness testimonies other than her daughter. She could not. The appeals court ended up overturning the prison sentence against her husband.<sup>62</sup>

Human Rights Watch has long documented in several countries around the world how the absence of guidelines on evidentiary rules can affect women's ability to prove that domestic violence occurred. As such attacks tend to happen in homes behind closed doors, often there are no direct witnesses other than children, in some cases.

## **Lack of Standards on Forensic Expertise and Evaluation of Incapacitation**

The penal code links the severity of the punishment to the severity of the injury suffered by the victim, as determined by the physician who completes the medical certificate.

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<sup>61</sup> Human Rights Watch interview with Rabiaa (pseudonym), Algiers, April 10, 2016.

<sup>62</sup> Human Rights Watch interview with Amira (pseudonym), Oran, April 10, 2016.

Before the 2015 amendments to the penal code relating to domestic violence, most cases of domestic violence were prosecuted under the penal code provisions on the crime of assault, which relate the severity of the sentence to the extent of incapacitation occasioned by the physical injuries.

Article 264 provides for a prison term between two months and five years and a fine from 100,000 to 500,000 dinars (approximately \$911 to \$4,500) to anyone who intentionally inflicts injuries, beats, or commits other acts of violence against others, if the assault results in a physical incapacity of more than 15 days. The penalties increase to 10 years in prison in cases resulting in loss of limbs, bodily function, blindness, or permanent disability. It could reach up to 20 years if the assault results in unintentional death.<sup>63</sup>

If incapacity is judged to be 15 days or fewer, the offense is classified as a minor offense (“*contravention*”) under article 442 of the penal code and is punished by a prison term from 10 days to 2 months, in addition to a fine of between 8,000 to 16,000 dinars (\$72 to \$144).

Law no.15-19, the amendment that introduced heavier sentences where the victim of the assault is a current or ex-spouse to the penal code, continues the practice of tying the sentence to the extent of incapacitation caused by physical injuries. If an assault causes injuries that incapacitate the victim for up to and including 15 days, the offender can be sentenced from 1 to 3 years in prison. When incapacitation lasts more than 15 days, the penalty increases to between 2 and 5 years in prison. The penalties further increase to between 10 and 20 years in prison in cases resulting in loss of limb, bodily function, blindness, or permanent disability. It could reach life in prison if the assault results in death.

In her 2011 report, the UN Special Rapporteur on violence against women stated:

A further obstacle to reporting cases of physical violence is found in the requirement of injury as part of the necessary forensic evidence, failing which a complaint will not be pursued by law enforcement authorities. Consequently, the role of forensic doctors, who can grade the injuries based on criteria set forth in the Criminal Code, is of extreme importance in

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<sup>63</sup> The Algerian penal code, Article 264, <http://www.joradp.dz/TRV/FPenal.pdf>, (accessed January 1, 2016).

determining the charges that might be brought against the perpetrator. During discussions with the Special Rapporteur, civil society organizations and several victims expressed concern at the very small number of forensic doctors in Algeria, their limited working hours (usually morning shifts only) and their reluctance to issue medical certificates for injuries that automatically lead to criminal proceedings. This reluctance by doctors is allegedly due to the fact that they want to avoid subsequent participation as expert witnesses in court cases.

The focus in the law on incapacitation as a determinative criterion for sentencing is problematic in several respects. It assigns a key, though indirect, role to forensic doctors in determining sentences, by virtue of the medical reports they write indicating the number of days of incapacitation. Yet, Algeria's law is silent about the criteria and elements to be used by forensic doctors to determine the period of incapacitation. This lack of guidance leaves doctors with wide discretion and potentially arbitrary influence over sentencing in criminal cases. The approach also ignores the reality that domestic violence often results in cumulative smaller physical injuries, which may last fewer than 15 days of incapacitation, or other nonphysical or less-visible harm such as brain trauma.<sup>64</sup> The World Health Organization (WHO) noted that in addition to physical injury and "possibly far more common are ailments that often have no identifiable medical cause or are difficult to diagnose. These are sometimes referred to as "functional disorders" or "stress-related conditions" and include irritable bowel syndrome, gastrointestinal symptoms, fibromyalgia, various chronic pain syndromes, and exacerbation of asthma."<sup>65</sup>

Human Rights Watch interviewed 20 victims with various forms of injuries, ranging from concussions to permanent injuries. The doctor's determination of the physical injuries varied greatly. In some cases of what appeared to have been severe injuries, the forensic doctors gave a medical certificate of less than 15 days.

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<sup>64</sup> Rolf Gainer, "Domestic violence, brain injury and psychological trauma," Neurological Rehabilitation Institute at Brookhaven Hospital, December 30, 2015, <http://www.traumaticbraininjury.net/domestic-violence-brain-injury-and-psychological-trauma>, (accessed January 13, 2017). It describes how brain injury is often "not understood as the outcome of repeated blows to the head or strangulation attempts depriving the victim of oxygen during a violent attack by a domestic partner. The person who is agitated, depressed, forgetful, confused, having slurred speech, experiencing headaches, pain, vertigo and other physical symptoms that we associate with brain injury may be not appropriately diagnosed and treated."

<sup>65</sup> World Health Organization, "Understanding and addressing violence against women: Intimate Partner Violence," 2012, pp.5-6, [http://apps.who.int/iris/bitstream/10665/77432/1/WHO\\_RHR\\_12.36\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/77432/1/WHO_RHR_12.36_eng.pdf), (accessed January 13, 2017).



Salwa, from Annaba, suffered years of mistreatment from her husband. She said that, in January 2011, he hung her with wires on a bar in the ceiling of their bedroom and lacerated her breasts with scissors until she fainted. She was able to escape with the help of her sister-in-law and went to the Annaba hospital. After giving her superficial treatment, the healthcare providers told her to go to the police. The police sent her with a requisition order to the forensic doctor, who gave her 14 days of sick leave due to physical incapacitation. Human Rights Watch interviewed two service providers in the shelter that hosted Salwa at that time. They said that when she came to the shelter, she was still bleeding from the mutilations of her breasts. They called a doctor and a nurse who changed her bandages every day for more than a week.<sup>66</sup>

Hassiba said she has a permanent mobility problem as a result of her husband's beatings. On November 14, 2008, during a violent episode, her husband took a chair and threw it at her, hitting her head. She said she was in terrible pain and, after several minutes, felt that she could not move her left arm and leg. Hassiba went to a neighbor and asked her to call her father. Her father took her to the hospital, where they conducted medical exams. She said the exams showed that some nerves in her brain were damaged and that, as a result, she had been paralyzed in her left arm and leg. Human Rights Watch observed during an interview with her, in April 2016, that she could hardly move her left arm and was still limping. She said that, on the day of the attack, she went to the police of the eighteenth district in Oran with the results of the medical exams in order to file a complaint. They wrote her statement and sent her with a requisition order to the forensic doctor of the Oran hospital. The doctor gave her 13 days of sick leave due to physical incapacitation.<sup>67</sup> Human Rights Watch reviewed the Oran court's first instance and appeal judgments in this case. On April 8, 2009, the first instance court sentenced Hassiba's husband to pay fine of 8,000 DZD [US\$73] based on the characterization of the act as a minor offense under article 442 of the penal code. In its judgment on October 24, 2009, the appeals court maintained the fine and added a prison sentence of two months.<sup>68</sup>

The court handed down its sentence before the new law took effect. However, even under the new law, the court would rely on the forensic doctors' assessment of 13 days' incapacitation

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<sup>66</sup> Human Rights Watch interview with Salwa (pseudonym), Annaba, April 8, 2016.

<sup>67</sup> Human Rights Watch interview with Hassiba (pseudonym), Oran, April 9, 2016.

<sup>68</sup> First instance and appeals judgments. On file with Human Rights Watch.

in classifying the offense, resulting in one to three years' imprisonment rather than the 10 to 20 years if the doctor had determined her injuries to be permanent disability.

## VI. Algeria's Legal Framework Compared to International Legal Obligations

### Algeria's International Obligations on Violence Against Women

Failure to protect women and girls from domestic violence, provide adequate services, and ensure access to justice violates not only Algeria's national constitution, but also its binding international human rights obligations. The Algerian constitution, adopted in 1996, emphasizes equality, including between women and men. Amendments to the constitution that entered in force in March 2016 added that the "state works to attain parity between women and men in the job market" and "encourages the promotion of women in positions of responsibility in public institutions and in businesses."<sup>69</sup>

Algeria is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) since 1996. The convention calls on states to take a number of measures to eliminate all forms of discrimination on the basis of sex, including by private actors, so as to ensure women's full enjoyment of their human rights.<sup>70</sup> Algeria has also signed, but not ratified, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, otherwise known as the Maputo Protocol, which calls on states to take comprehensive measures and legislations to end violence against women.

The CEDAW Committee, the UN expert body that monitors implementation of CEDAW, in its General Recommendations No. 19 and No. 28 makes clear that gender-based violence is considered a form of discrimination and may be considered a violation of CEDAW, whether committed by state or private actors.<sup>71</sup> The committee explained that: "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of

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<sup>69</sup> Law no. 16-01 of March 6, 2016 relating to the constitutional reform, <http://www.joradp.dz/FTP/JO-FRANCAIS/2016/F2016014.pdf>.

<sup>70</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted Dec. 18, 1979, G.A. res. 34/180, 34 UN GAOR Supp. (no. 46) at 193, UN Doc. A/34/46, entered into force September 3, 1981, art. 1 <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>; Algeria acceded to the Convention in 1996.

<sup>71</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, Violence against Women, (Eleventh session, 1992), Compilation of General Recommendations and General Comments adopted (<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (accessed on January 5, 2017)); and CEDAW Committee, General Recommendation No. 28, on the core obligations of States parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN Doc CEDAW/C/GC/28 (December 16, 2010), para 19.

rights or to investigate and punish acts of violence.”<sup>72</sup> The Committee has stated in particular that “[f]amily violence is one of the most insidious forms of violence against women” and that such violence presents risks to women’s health and ability to fully participate in private and public life.<sup>73</sup>

The CEDAW Committee has identified key steps necessary to combat violence against women, among them: effective legal measures, including penal sanctions, civil remedies, and compensatory provisions; preventive measures, including public information and education programs to change attitudes about the roles and status of men and women; and protective measures, including shelters, counseling, rehabilitation, and support services.<sup>74</sup>

Similarly, the UN General Assembly has urged governments to take specific law enforcement measures to combat domestic violence through its Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women.<sup>75</sup> Violence prevents women from enjoying a host of other rights stipulated in other treaties ratified by Algeria. These rights include the right not to be subject to cruel, inhuman, or degrading treatment or punishment, security of person, and in extreme cases, the right to life.<sup>76</sup> Algeria has also ratified other treaties that contain provisions relevant to domestic violence, including the Convention on the Rights of the Child (CRC)<sup>77</sup>, the International Covenant on Civil and Political Rights (ICCPR)<sup>78</sup>, the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>79</sup>, and the Convention against Torture and Other Cruel,

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<sup>72</sup> United Nations Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against Women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 (1994), p. 84, para. 9, (accessed March 20, 2015).

<sup>73</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, Violence against Women, (Eleventh session, 1992), Compilation of General Recommendations and General Comments adopted (<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (accessed March 20, 2015)), art. 16.

<sup>74</sup> *Ibid.*, para. 24 (t).

<sup>75</sup> United Nations General Assembly Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women, UN Doc. A/RES/52/86, February 2, 1998, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N98/764/59/IMG/N9876459.pdf?OpenElement>, (accessed March 16, 2015).

<sup>76</sup> CEDAW Committee, General Recommendation 19, paras. 1 and 7.

<sup>77</sup> United Nations Human Rights Office of the High Commissioner, Convention on the Rights of the Child, 1990; Algeria ratified in 1993. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> (accessed March 20, 2015).

<sup>78</sup> United Nations Human Rights Office of the High Commissioner, International Covenant on Civil and Political Rights, 1976, Algeria ratified in 1989. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>, (accessed March 20, 2015).

<sup>79</sup> United Nations Human Rights Office of the High Commissioner, International Covenant on Economic, Social and Cultural Rights, 1976, Algeria ratified in 1989. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>, (accessed March 20, 2015).

Inhuman or Degrading Treatment or Punishment.<sup>80</sup> These include provisions on the rights to life, health, physical integrity, nondiscrimination, an adequate standard of living (including housing), a remedy, and freedom from cruel, inhuman, or degrading treatment or punishment.

In its last two reports on Algeria from 2005 and 2012, the CEDAW committee recalled the need to guarantee human rights to all women victims of violence and those in vulnerable situations, particularly the right to be represented by a lawyer and to receive medical and psychological care, as well as access to shelter with a view to their social and economic reintegration.”<sup>81</sup>

## Gaps in New Law on Domestic Violence Compared to International Standards

The Algerian Parliament passed Law no.15-19, on December 10, 2016, amending the penal code by specifying several forms of domestic violence as distinct offenses and imposing heavier sentences on them than other forms of violence.<sup>82</sup> The law also expanded the scope of sexual harassment and strengthened penalties for it, as well as criminalized harassment in public spaces.<sup>83</sup> While this is a step forward in recognizing domestic violence as a serious offense, it falls short of comprehensive legislation on domestic violence.

In UN Women’s Handbook for Legislation on Violence against Women, it is noted that “to date, many laws on violence against women have focused primarily on criminalization” and legal frameworks should move beyond this limited approach to make effective use of a range of areas of the law. They call for legislation that is “comprehensive and multidisciplinary, criminalizing all forms of violence against women and encompassing issues of prevention, protection, survivor empowerment and support (health, economic,

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<sup>80</sup> United Nations Human Rights Office of the High Commissioner, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987, Algeria ratified in 1989, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>, (accessed March 20, 2015).

<sup>81</sup> Committee on the Elimination of Discrimination against Women, Fifty-first session, 13 February – 2 March 2012, CEDAW/C/DZA/CO/3-4, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-DZA-CO-3-4.pdf> (accessed January 13, 2017), and the Committee on the Elimination of Discrimination against Women, at its 667th and 668th meetings, Second Periodic Report of Algeria, CEDAW/C/DZA/2, January 11, 2005, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f60%2f38\(SUPP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f60%2f38(SUPP)&Lang=en), (accessed January 13, 2017).

<sup>82</sup> Law no.15-19 of 30 December 2015 Modifying and Completing Ordinance no.66-156 of 8 June 1966 on the penal code, available at <http://www.joradp.dz/FTP/JO-FRANCAIS/2015/F2015071.pdf>, (accessed January 13, 2017).

<sup>83</sup> Articles 5 and 6 (amending and adding articles 333 bis/1, 333 bis/2, and 341 bis of the penal code), Law no.15-19 of 30 December 2015 Modifying and Completing Ordinance no.66-156 of 8 June 1966 on the penal code, (accessed January 17, 2017).

social, psychological), as well as adequate punishment of perpetrators and availability of remedies for survivors.”<sup>84</sup>

Algeria’s neighboring countries such as Morocco and Tunisia are considering draft legislation on violence against women including domestic violence, which while still weaker than international standards, go further than Algeria’s law on criminalizing forms of domestic violence, such as by establishing specialized committees or units to combat violence against women, protection measures, and other services for survivors.

The following analysis and recommendations reflect the gaps and key elements needed for legislation to better prevent domestic violence, protect survivors, and prosecute abusers.

### *Definition and Scope*

Before the new law was introduced, courts prosecuted acts of domestic violence under general assault and violence provisions of the penal code. Although the law criminalizes various forms of domestic violence, it contains no comprehensive definition of the term. UN Women’s Handbook for Legislation on Violence against Women calls for a comprehensive definition that can encompass physical, sexual, psychological, and economic violence.<sup>85</sup> Law no. 15-19 increases the penalties for assault to as much as 20 years in prison when the victim is a current or ex-spouse, depending on the victim’s injuries, or a life sentence where such attacks result in death.<sup>86</sup>

The law criminalizes other forms of domestic violence, including psychological and some economic violence. For instance, if a person repeatedly insults his spouse or ex-spouse or subjects her to psychological violence affecting her dignity or her physical or psychological wellbeing, he can face a prison sentence of between one and three years.<sup>87</sup> A person who

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<sup>84</sup> The UN Handbook for Legislation on Violence against Women, section 3.1.2, [http://www2.unwomen.org/~media/headquarters/attachments/sections/library/publications/2012/12/unw\\_legislation-handbook%20pdf.pdf?v=1&d=20141013T121502](http://www2.unwomen.org/~media/headquarters/attachments/sections/library/publications/2012/12/unw_legislation-handbook%20pdf.pdf?v=1&d=20141013T121502), (accessed January 13, 2017).

<sup>85</sup> The UN Handbook for Legislation on Violence against Women, section 3.4.2.1, (accessed January 10, 2017).

<sup>86</sup> Articles 3 and 4 of Law no.15-19 of 30 December 2015 Modifying and Completing Ordinance no.66-156 of 8 June 1966 on the penal code, <http://www.joradp.dz/FTP/JO-FRANCAIS/2015/F2015071.pdf>: “An assault against a spouse or an ex-spouse shall result in one to three years of prison if the beating did not provoke an injury or resulted in a physical incapacity of more than 15 days. Two to five years in prison if the beating resulted in more than 15 days of physical incapacity. Ten to twenty years in prison if the beating resulted in a mutilation, amputation, deprivation of the use of a limb, blindness, loss of an eye or other permanent disability. Life in prison if the beatings resulted in death,” (accessed January 13, 2017).

<sup>87</sup> Article 266 *bis*.1 of Law no.15-19 of 30 December 2015 modifying and completing ordinance n.66-156 of 8 June 1966 on the penal code, (accessed January 10, 2017).

coerces or intimidates his spouse by any means in order to use her financial resources can also be sentenced to up to two years in prison.<sup>88</sup> In addition, theft between spouses is also now an offense.<sup>89</sup>

While the law does criminalize forms of psychological and economic violence, it should be amended to ensure that “coercive control” is a key part of these acts. Coercive control includes a range of acts designed to make victims subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance, and escape, and regulating their everyday behavior.”<sup>90</sup>

UN Women have warned that there is a risk that violent abusers will manipulate the purpose of laws on psychological and economic violence “by claiming that they have been psychologically or economically abused by their victims. For example, an angry or disgruntled violent abuser may seek a protection order against his wife because she used his property. Another example is that an abuser may claim that physical violence is an appropriate response to his wife’s insults. Even when abusers do not turn claims of psychological and economic violence against their victims, these types of abuse may be very difficult to prove in legal proceedings.”<sup>91</sup>

As such the article on psychological violence should be amended in line with the UN Office on Drugs and Crime (UNODC) recommendation that such acts are defined “as controlling, coercive or threatening behavior or intentional conduct seriously impairing a person’s psychological integrity through coercion or threats.”<sup>92</sup> In terms of economic violence, the definition should be amended in line with UN guidance, including the UN Department of

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<sup>88</sup> Article 330*bis* of Law no.15-19 of 30 December 2015 modifying and completing ordinance n.66-156 of 8 June 1966 on the penal code, (accessed January 10, 2017).

<sup>89</sup> Article 6 (amending article 368 of the penal code to repeal the exemption from punishment in the case of theft between spouses), of Law no.15-19 of 30 December 2015 Modifying and Completing Ordinance no.66-156 of 8 June 1966 on the penal code. (accessed January 10, 2017).

<sup>90</sup> UN Women, EndVAWN.org (virtual knowledge center), “Definition of Domestic Violence,” last edited February 2, 2014, <http://www.endvawnow.org/en/articles/398-definition-of-domestic-violence.html>, (accessed January 8, 2017).

<sup>91</sup> UN Women, EndVAWN.org (virtual knowledge center), “Definition of Domestic Violence,” <http://www.endvawnow.org/en/articles/398-definition-of-domestic-violence.html> (accessed January 25, 2017).

<sup>92</sup> UN Office on Drugs and Crime (UNODC), “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women,” 2014, [https://www.unodc.org/documents/justice-and-prison-reform/Strengthening\\_Crime\\_Prevention\\_and\\_Criminal\\_Justice\\_Responses\\_to\\_Violence\\_against\\_Women.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf), p. 39, (accessed June 2016).

Economic and Social Affairs guidance on statistical surveys concerning violence against women.<sup>93</sup> The amended language should explain that economic violence includes: an individual's controlling, coercive, or threatening behavior or intentional conduct aimed at denying an intimate partner access to financial resources, property, and goods; deliberately failing to comply with economic responsibilities, such as alimony or financial support for the family; denying access to employment and education; and denying participation in economic decision-making.

The law provides for penalties of up to three years in prison for assault committed with violence, coercion or threat of violence violating the sexual integrity of the victim. The penalty increases to up to five years in prison if sexual violence is committed by an ascendant (e.g. parents or grandparents).<sup>94</sup> The law does not explicitly criminalize rape by an intimate partner, often referred to as marital rape.

The penal code criminalizes rape with to 10 years' imprisonment, and where the assault is committed against someone under 16, the penalty doubles to between 10 and 20 years' imprisonment. However, it does not define rape or sexual assault.

Algeria argued to the CEDAW Committee that its case law shows that it considers rape as an offense involving physical or psychological violence against a woman. The CEDAW Committee nonetheless expressed concern "at the absence in the Criminal Code of a definition of rape including marital rape and other sexual crimes, which should be interpreted as sexual offenses committed in the absence of one's consent."<sup>95</sup>

Furthermore, in the amendments to the penal code, the scope of the offenses related to domestic violence does not include all individuals. It considers spouses and ex-spouses as the only potential perpetrators, to the exclusion of other relatives and persons. For example, the provisions on assault, psychological, and economic violence do not apply to

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<sup>93</sup> UN Department of Economic and Social Affairs, Statistics Division, "Guidelines for Producing Statistics on Violence against Women— Statistical Surveys," ST/ESA/STAT/SER.F/110 (2014), [http://unstats.un.org/unsd/gender/docs/Guidelines\\_Statistics\\_VAW.pdf](http://unstats.un.org/unsd/gender/docs/Guidelines_Statistics_VAW.pdf), (accessed January 15, 2017).

<sup>94</sup> Article 5 of Law no.15-19 of 30 December 2015 modifying and completing ordinance n.66-156 of 8 June 1966 on the penal code, (accessed January 13, 2017).

<sup>95</sup> Committee on the Elimination of Discrimination against Women Fifty-first session 13 February – 2 March 2012, CEDAW/C/DZA/CO/3-4, para.29, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-DZA-CO-3-4.pdf>, (accessed January 13, 2017).



individuals in intimate non-marital relationships, individuals with familial ties to one another, or members of the same household. While the assault and psychological violence provisions do relate to spouses and former spouses, regardless of whether they live in the same residence as the victim, the economic violence provision relating to coercing or intimidating in order to use the victim's financial resources is limited to just spouses and does not provide for whether it applies to couples who do not cohabit.

The UN Handbook for Legislation on Violence against Women recommends that laws on domestic violence apply to “individuals who are or have been in an intimate relationship, including marital, non-marital, same sex and non-cohabiting relationships; individuals with family relationships to one another; and members of the same household.”<sup>96</sup> Many countries have amended their laws in light of these recommendations.<sup>97</sup>

Algerian law criminalizes adultery, which is a sexual relationship between two adults, if one of them or both are married. While consensual sexual relations between an unmarried man and an unmarried woman are not criminalized in Algeria, there are deeply rooted social attitudes that are hostile to sexual relationships outside marriage. This leads to the stigmatization of women living with their partner outside of marriage.

Human Rights Watch documented two cases of unmarried women who lived with abusive partners and who said that their status contributed to preventing them from reporting domestic violence.

Manal, 31, from Algiers, experienced violence since childhood. Her parents divorced when she was four months old, leaving her to be raised by her paternal grandmother and uncles. At the age of 16, she went to live with her father and his wife. She said that during the two years she stayed with them, they subjected her to daily mistreatment including her stepmother shackling her wrists and feet in order to quiet her, both of them locking her inside a room for days, and underfeeding her. She escaped from the house at 18 and briefly ended up in sex work. In 2003, she began a relationship with a man and lived with him in Algiers from 2003 to 2013. She said after a month of living together, he began to beat her. She said he regularly burned her with cigarettes and grabbed her by her hair

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<sup>96</sup> The UN Handbook for Legislation on Violence against Women, section 3.4.2.2, (accessed January 23, 2017).

<sup>97</sup> EndVAWN.org, “Scope of Persons Protected by Law,” last edited February 2, 2014,

<http://www.endvawnow.org/en/articles/399-scope-of-persons-protected-by-law.html?next=400>, (accessed January 25, 2017).

pulling her around the room. She said once he threw a picture frame at her head. She said she never filed a complaint against him because she didn't know where to turn for help. She said the fact that she was not married to him was a barrier to reporting violence to the police. She said she was afraid the police would even arrest her if she told them they were not married.<sup>98</sup>

Another woman, Nabila, 33, with a three-year-old daughter, lived with a man in Annaba, for one year, in 2012. They married by *fatiha*, a traditional form of marriage that is not registered with the authorities. She said he beat her regularly. When she was pregnant, he did not want the baby and he kicked her on her belly to provoke a miscarriage. He locked her inside the apartment for several days and gave her no food.

Nabila said she never went to the police to complain. "I'm not married to him. I have no rights. If I go to the police, they could even put me in prison."<sup>99</sup>

Nabila gave birth to her daughter in 2013 and was living in a shelter when Human Rights Watch interviewed her in April 2016.

### *Prevention*

Law no. 15-19 makes no mention of measures for prevention of domestic violence.

The UN Committee on Discrimination against Women, which oversees the implementation of the CEDAW, to which Algeria is a state party, states that "[t]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse."<sup>100</sup>

The CEDAW Committee says: "Effective measures should be taken to overcome these attitudes and practices," including education and public information programs to help eliminate prejudices which hinder women's equality. the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the Maputo

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<sup>98</sup> Human Rights Watch interview with Manal (pseudonym), Algiers, April 3, 2016.

<sup>99</sup> Human Rights Watch interview with Nabila (pseudonym), Annaba, April 8, 2016.

<sup>100</sup> UN Women, "General recommendations made by the Committee on the Elimination of discrimination against Women," General Recommendation No. 19, 1992, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>, (accessed February 2, 2016).

Protocol, which Algeria has signed in 2003 but not yet ratified, also calls on states to “actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of violence against women.”<sup>101</sup>

In its Handbook for Legislation on Violence against Women, UN Women recommends that legislation on violence against women address prevention.<sup>102</sup> This should include measures such as awareness-raising on women’s human rights, educational curricula to modify discriminatory patterns of behavior and gender stereotypes, and sensitizing the media regarding violence against women. UN Women has also issued a Handbook on National Action Plans on Violence against Women, which explains additional prevention measures.<sup>103</sup> The UNODC has published guidance on prevention as well.<sup>104</sup>

Algeria has not set out prevention measures on violence against women in its legislation.

### *Orders for Protection*

Law no. 15-19 falls short by failing to introduce protective measures for survivors seeking protection from domestic abuse. Such protective measures are not found elsewhere in Algerian legislation. The purpose of such measures, in countries where they are available, is to protect the victim from further violence. In many countries, domestic violence survivors can access emergency or longer-term “orders for protection.” UN Women describes protection orders as “among the most effective legal remedies available to complainants/survivors of violence against women.”<sup>105</sup> Such orders provide women with a measure of protection “while allowing them time to determine how to stay safe over the long term without immediately having to file for divorce or seek criminal sanctions.”<sup>106</sup>

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<sup>101</sup> African Commission on Human and People’s rights, Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol), adopted in July 11, 2003, [http://www.un.org/en/africa/osaa/pdf/au/protocol\\_rights\\_women\\_africa\\_2003.pdf](http://www.un.org/en/africa/osaa/pdf/au/protocol_rights_women_africa_2003.pdf).

<sup>102</sup> The UN Handbook for Legislation on Violence against Women, section 3.5.1, (accessed January 23, 2017).

<sup>103</sup> UN Women, Handbook for National Action Plans on Violence against Women, 2012, <http://www.un.org/womenwatch/daw/vaw/handbook-for-nap-on-vaw.pdf>. (accessed January 23, 2017).

<sup>104</sup> UN Office on Drugs and Crime (UNODC), “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women,” 2014.

<sup>105</sup> The UN Handbook for Legislation on Violence against Women, section 3.10.1, (accessed January 12, 2017).

<sup>106</sup> Ibid.

This is crucial for Algerian women, several of whom told Human Rights Watch that they had approached the authorities for protection from domestic violence but either did not pursue prosecution or dropped complaints due to pressure from their families. Lawyers told Human Rights Watch that in most cases involving allegations of domestic violence, women ended up dropping their criminal complaints (see chapter II on social barriers).

Protection orders go by a variety of names, such as restraining orders or protection orders, and can be issued by a variety of authorities. The UN Women’s Handbook for Legislation on Violence against Women recommends that they be available to survivors of domestic violence in both civil and criminal proceedings. Violations of protection orders are typically considered criminal offenses.<sup>107</sup>

Short-term emergency orders respond to situations of immediate danger, often by requiring that the suspected abuser maintain a distance from the victim. This is often an appropriate alternative to placing the burden on victims to seek shelter and safety elsewhere. Laws designate the authorities empowered to issue and enforce such orders. As temporary emergency orders, they can be issued on the basis of a victim’s testimony.

Longer-term protection orders are typically issued by courts after notifying the respondent of an opportunity for a full hearing and review of evidence. In many countries, these orders expire after several months. UN Women recommends that they be valid for one year.<sup>108</sup>

Both emergency and longer-term orders specify restrictions that can be placed on the respondent. For example, they may prohibit a respondent from: perpetrating or threatening further violence; contacting or going near the survivor and her dependents; accessing the family home; and possessing or purchasing a firearm.<sup>109</sup>

Such measures should also ensure appropriate respect for due process.

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<sup>107</sup> Ibid.

<sup>108</sup> EndVAWN.org, “Time Limits on Protection Orders,” last edited February 2, 2014, <http://www.endvawnow.org/en/articles/416-time-limits-on-protection-orders.html?next=417>. (accessed January 12, 2017).

<sup>109</sup> EndVAWN.org, “Content of post-hearing orders for protection,” last edited February 2, 2014, <http://www.endvawnow.org/en/articles/414-content-of-post-hearing-orders-for-protection.html?next=415>, (accessed on January 5, 2017); and the UN Handbook for Legislation on Violence against Women, section 3.10.3, (accessed January 13, 2017).

## *Prosecution*

### **Absence of Guidance for Law Enforcement**

Algerian law does not set out any concrete duties or guidance governing what the police or prosecutors should do in responding to domestic violence.

Police and prosecutors, as well as investigating judges, are central to responding to domestic violence. They are often the front line for receiving complaints, investigating cases, and referring survivors for services. Algeria is not the only country where police and prosecutors are often reluctant to address what they may consider “private family matters.” Far too often, they send women back to dangerous partners, and have failed to take action against abusers.<sup>110</sup>

Recognizing this tendency, UN Women recommends that domestic violence laws establish concrete duties for police, prosecutors, and other officials who play a role in law enforcement or investigations in cases of violence against women. The UN Handbook for Legislation on Violence against Women calls for police duties to include: conducting a risk assessment; interviewing the parties and witnesses; recording the complaint; advising the survivor of her rights; filing an official report; arranging for transport for medical treatment; and providing other protection (see above regarding orders for protection).<sup>111</sup>

Finally, UN Women recommends that governments adopt “pro-arrest” and “pro-prosecution” policies when there is probable cause to believe that a domestic violence crime has occurred. The UNODC explains that “pro-arrest” policies “highly encourage officers to make an arrest in cases of domestic violence while at the same time leaving them with some discretion. These policies should require a written report from the police on the reasons when they do not follow the policy.”<sup>112</sup>

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<sup>110</sup> Human Rights Watch, *Kyrgyzstan - “Call me when he tries to kill you:” State Response to Domestic Violence in Kyrgyzstan*, October 28, 2015 <https://www.hrw.org/report/2015/10/28/call-me-when-he-tries-kill-you/state-response-domestic-violence-kyrgyzstan>; Human Rights Watch, *Hungary - “Unless Blood Flows Lack of Protection from Domestic Violence in Hungary”*, November 6, 2013, <https://www.hrw.org/report/2013/11/06/unless-blood-flows/lack-protection-domestic-violence-hungary>; Human Rights Watch, *Turkey - “He Loves You, He Beats You:” Family Violence in Turkey and Access to Protection*, May 4, 2011, <https://www.hrw.org/report/2011/05/04/he-loves-you-he-beats-you/family-violence-turkey-and-access-protection>.

<sup>111</sup> UN Women, “UN Handbook for National Action Plans on Violence against Women,” 2012, <http://www.unwomen.org/~media/Headquarters/Attachments/Sections/Library/Publications/2012/7/HandbookNationalActionPlansOnVAW-en%20pdf.pdf>, section 3.8.1. (accessed January 20, 2017).

<sup>112</sup> UNODC, “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women,” p. 65, (accessed January 20, 2016).

### **Absence of Evidentiary Rules and Guidance for Forensic Doctors**

Law no.15-19 does not specify evidentiary rules that courts should apply, except in the case of “psychological violence,” where the law provides that any form of evidence can be used to prove such violence. (See chapter V on evidentiary requirements for domestic violence.)

The UN Handbook for legislation also states that legislation should state that “medical and forensic evidence are not required in order to convict a perpetrator” and should allow the possibility of prosecuting and convicting an offender “based solely on the testimony of the complainant/survivor.”<sup>113</sup> The authorities should develop guidelines on evidence that should be admissible in court for domestic violence cases in line with UNODC recommendations. This may include medical/forensic evidence, victim statements, photographic evidence, expert witnesses, physical evidence such as torn clothing and damaged property, and cell phone records, emergency call recordings, and other communications.<sup>114</sup>

Algerian law also lacks guidance on criteria or elements to be used by forensic doctors to determine the period of incapacitation.

Algeria’s penal code and its new amendments should be reformed to make the extent of incapacitation one, but not the definitive, factor in determining the sentence. The UNODC guidance on sentencing recommends that laws should specify other factors that judges can take into account, including history of abuse, risk of recidivism, rehabilitation needs, and aggravating factors.<sup>115</sup>

### **Pardoning Offenders**

Law no.15-19, while setting out penalties for some forms of domestic violence, also offers the possibility for the offender to escape punishment or benefit from a reduced sentence if the victim pardons the perpetrator.<sup>116</sup> In cases of psychological and economic violence and of physical violence that do not lead to permanent disabilities, a victim’s pardon of the offender terminates the prosecution.<sup>117</sup> Where the violence results in a permanent

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<sup>113</sup> The UN Handbook for Legislation on Violence against Women, section 3.9.5, (accessed January 20, 2017).

<sup>114</sup> UNODC, Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women, 2014, <https://www.unodc.org/documents/justice-and-prisonreform/>, pp. 71-72, (accessed February 1, 2016).

<sup>115</sup> *Ibid.*

<sup>116</sup> Articles 226 *bis*, 266 *bis*.1 and 330 *bis* of Law 15-19 of 30 December 2015 modifying and completing ordinance n.66-156 of 8 June 1966 on the penal code, (accessed February 13, 2016)

<sup>117</sup> Art. 226 *bis*.1 and 330 *bis* of Law no. 15-19 of 30 December 2015, (accessed February 13, 2016)

disability, a victim's pardon can halve the sentence from 20 to 10 years imprisonment.<sup>118</sup> In cases of theft between spouses, the criminal prosecution cannot take place without a complaint by the victim, and the withdrawal of the complaint terminates the prosecution.<sup>119</sup>

By including possibilities to pardon into such criminal provisions, the law encourages victims to pardon their offenders, and their abusers to know that such escape is possible. This indeed appears to have been the aim of the drafters. The preceding comments in the June 2014 draft of the law by the Ministry of Justice provided that: "To preserve the continuity of married life, the amendments provide for the possibility of pardon to terminate criminal prosecution in matters related to crimes, while also allowing for mitigating circumstances in matters related to felonies if the victim offers pardon."<sup>120</sup>

Women already face existing social pressure to drop complaints against their abusers, and while they can now press new charges under this law, they will face social pressure from their abusers and their families to pardon them throughout the legal process and even following conviction. The law provides for no use of "protection orders" which could prohibit perpetrators from contacting the victim and other relevant measures, leaving survivors at risk of further threats of violence or other harm if they don't pardon their offenders. By prioritizing the "continuity of married life" through the inclusion of such pardons, the law puts women's safety and even their lives at risk. If most women are pressured into pardoning their offenders, this may leave the law largely ineffective.

The UN Handbook for Legislation on Violence against Women recommends that domestic violence laws make clear that the responsibility for deciding whether to prosecute violence against women lies with prosecution authorities, not with survivors. It recommends that the law set minimum standards for what prosecutors must communicate to survivors at all stages of the legal process, including their rights and details of relevant legal proceedings, as well requiring prosecutors to explain why they dropped their cases.<sup>121</sup>

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<sup>118</sup> Article 2 of the Law no. 15-19, 30 December 2015, amending art. 266 *bis* of the penal code, (accessed February 13, 2016).

<sup>119</sup> Article 6 of Law no.15-19 of 30 December 2015, modifying article 368 repealing the exemption from punishment in the case of theft between spouses, of Law no.66-156, June 8, 1966 containing the penal code, (accessed February 13, 2016).

<sup>120</sup> June 2015 draft of Law no. 15-19 of 30 December 2015, modifying article 368 repealing the exemption from punishment in the case of theft between spouses. of Law no.66-156. June 8. 1966 containing the penal code. On file with Human Rights Watch.

<sup>121</sup> The UN Handbook for Legislation on Violence against Women, section 3.8.2, (accessed February 1, 2016).

## Other Discriminatory Laws for Women

CEDAW requires states to take “all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”<sup>122</sup> It also requires states to modify social and cultural patterns of behavior that are sources of many women’s rights abuses.<sup>123</sup> The UN Committee on the Elimination of All Forms of Discrimination, in its General Recommendation 19, stated that “traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse... Such prejudices and practices may justify gender-based violence as a form of protection or control of women.”<sup>124</sup>

During the examination of Algeria’s record in 2012, the CEDAW Committee stated that “[w]hile welcoming a number of legislative amendments aimed at eliminating discrimination against women [...], the Committee expressed its concern that many provisions remain in laws such as the Family Code and the Criminal Code contrary to the State party’s obligations under the Convention and other relevant international human rights instruments.”<sup>125</sup> In 2005, the Committee reminded the Algerian government that reservations to articles 2 and 16 of the CEDAW were contrary to the object and purpose of the Convention and urged it to withdraw its reservations within a finite time frame.<sup>126</sup>

In 2005, Algeria introduced significant amendments to the Family Code but did not eliminate all of its discriminatory provisions. The positive measures included the introduction of mutual consent by both spouses as a requirement of marriage, and the

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<sup>122</sup> CEDAW, article 2(f), (accessed February 3, 2016).

<sup>123</sup> CEDAW, art. 5(a), (accessed February 3, 2016).

<sup>124</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, Violence against Women, (Eleventh session, 1992), Compilation of General Recommendations and General Comments adopted (<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>), para. 11, (accessed January 25, 2017).

<sup>125</sup> Committee on the Elimination of Discrimination against Women Fifty-first session 13 February – 2 March 2012, CEDAW/C/DZA/CO/3-4, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-DZA-CO-3-4.pdf>, (accessed January 25, 2017).

<sup>126</sup> Article 2 of the CEDAW obliges states parties to eliminate discrimination against women, by, among other things, adopt appropriate legislation and other measures, prohibiting all discrimination against women and changing laws that discriminate against women. Article 16 requires states parties to ensure equality of men and women in entering marriage, the same rights and responsibilities to guardianship, divorce, acquisition, and management of property of the spouses, etc. CEDAW Committee, CEDAW/C/DZA/CC/2, (accessed January 12, 2017).



ability to contract a marriage on the basis of mutually agreed clauses.<sup>127</sup> The code removed the provision that said, “the duty of the wife is to obey her husband.” An adult woman however still requires a *wali* (guardian) to conclude her marriage contract, a requirement not imposed on men, though the amended code redefined *wali* to include any male of her choice.<sup>128</sup> In addition, the law also still allows for polygamy, though it introduced the wife’s approval as a prerequisite for her husband taking on a new wife.

The amended code also broadens the grounds on which a woman may sue for divorce.<sup>129</sup> But the code still gives only men the right to divorce without providing an acceptable motive.<sup>130</sup> For a woman to divorce without her husband’s consent and without providing an acceptable motive, she needs to repay her dowry, or an equivalent amount of money, to her husband in return for the divorce.

The amended code establishes a default position of preferring the mother when assigning responsibility for primary care of the child custody. It also allowed for the possibility that courts could award women guardianship of her children, giving her decision-making power over their children’s education.<sup>131</sup>

Significantly, the amended code provided that when the court has determined that children should live with their mother after divorce, the father is required to provide a decent dwelling to the mother and the children or, alternatively, to provide adequate financial support. Moreover, the code also provided that if the court orders that the

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<sup>127</sup> Article 19 of Ordinance no. 05-02 of February 27, 2005 modifying and completing Law no. 84-11 on the family code, (accessed January 12, 2017).

<sup>128</sup> Article 11 of the family code: “An adult woman concludes her marriage contract in the presence of her “wali” [guardian] who is her father or close male relative or any other male of her choice.” (accessed January 12, 2017).

<sup>129</sup> Article 48 of the family code: “Divorce is the dissolution of marriage... It arises from the will of the husband, mutual consent of the spouses, or the demand of the wife as provided in articles 53 and 54.” (accessed January 12, 2017).

<sup>130</sup> Article 53 of the family code. The wife can seek a divorce on the following grounds: (i) non-payment of the alimony; (ii) infirmities hindering realization of the objects of marriage; (iii) refusal of the husband to cohabit with his wife for more than four months; (iv) conviction of the husband which is of such a nature as to dishonour the family and render impossible leading of common life and conjugal relations; (v) absence of the husband for more than a year without a valid excuse or maintenance; (vi) violation of provisions of article 8 [referring to conditions for polygamy]; (vii) an immoral act which is severely reprehensible; (viii) for persistent disagreement between the spouses; (ix) for violation of the clauses stipulated in the marriage contract; and (x) for any recognized damage; Article 54 of the family code: the wife can separate from her spouse without his agreement, for the payment of an amount of money, (accessed January 23, 2017).

<sup>131</sup> Article 64 of the family code, (accessed January 23, 2017).

children should live with their mother, she can remain in the marital home until the execution of any judicial decision on housing arrangements.<sup>132</sup>

The family code disfavors divorce-seeking women who have no children from the marriage, in that they lose any right to the marital home, in contrast to men who seek divorce in the same circumstances. This is not only discriminatory on its face, it may also deter women survivors of sexual or other violence committed by their spouse from demanding a divorce that could result in their being made homeless.

Moreover, the family code does not recognize marital property. The absence of legal provisions that value a woman's non-monetary contributions to the marriage at the time of termination – including household and family care, lost economic opportunity and her contribution to her husband's career – contributes to discrimination against women. Several women told Human Rights Watch how they had to quit paid jobs either at their husband's insistence or to care for children, leaving them economically dependent on their abusers.

Some discriminatory provisions against women and girls in Algerian legislation also increase the risks of domestic violence. For instance, article 326 of the penal code provides that any person who “abducts or corrupts” a child under 18 years without using violence, threats, or deception or attempts to do so can be punished with imprisonment of between one to five years. However, the perpetrator can escape prosecution or conviction if he marries the child, unless the marriage is annulled. In effect, this can allow cases in which perpetrators who rape children escape prosecution by marrying their victims and use the forced marriage of girls to such men as a means of protecting honor.

Article 279 of the penal code provides that a spouse who comes upon their spouse in the act of adultery and kills, injures, harms their spouse or his/her partner can benefit from a mitigating excuse. This defense, while gender-neutral, disproportionately affects women who are more often the victims of violence, and as such can end up legitimizing gender-based violence.

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<sup>132</sup> Art. 72, family code, (accessed January 12, 2017).

Algeria's inheritance law provides that a daughter is entitled to the equivalent of half her brother's share of inheritance. When a woman has no brother, the share that would have gone to a brother is divided among other male relatives. Such inequality in inheritance further weakens women's ability to leave their abusive husbands. Several women told Human Rights Watch that they remained in violent relationships in part because of their reliance on their husbands or their families for food and shelter.

Algerian law permits abortion only if the life or health of the pregnant woman is threatened and when it is practiced by a medical doctor or surgeon who has given his or her medical opinion to the administrative authorities.<sup>133</sup> It does not permit abortion on grounds of rape or incest. A woman seeking or carrying out an abortion outside of the authorized cases faces up to two years in prison. Abortion is also permitted under Article 72 of the 1985 law on the promotion and protection of health if the pregnant woman's life is in danger or in order to protect her physical and mental health.<sup>134</sup>

Such a prohibition means that women who become pregnant as a result of marital rape can be forced into having unwanted pregnancies.

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<sup>133</sup> Article 308 of the penal code.

<sup>134</sup> Law no. 85-05 of February 16, 1985 on the protection and promotion of health, [http://www.oit.org/wcmstp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_125826.pdf](http://www.oit.org/wcmstp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_125826.pdf), (accessed on February 22, 2017).

# Recommendations

## To the Algerian Parliament

- Amend Law no. 15-19 on domestic violence to:
  - Remove explicit references that provide for termination of prosecution, cancellation, or reduction of any court-imposed punishment if the victim pardons the offender.
  - Make clear that the articles criminalizing forms of domestic violence applies to spouses, intimate partners, ex-spouses, and former intimate partners- regardless of whether the perpetrator and victim are cohabiting or have ever cohabited- as well as members of the family, extended family, and in-laws.
  - Ensure that “coercive control” is a key aspect of acts criminalized in the provisions relating to psychological and economic violence.
- Adopt additional comprehensive legislation on violence against women that:
  - Defines domestic violence to include physical, sexual violence, psychological, and economic violence. Ensure that the scope of individuals includes: individuals who are or have been in an intimate relationship, such as marital, non-marital, same sex, and non-cohabiting relationships; individuals with family relationships to one another; and members of the same household.
  - Establishes protection orders which can prohibit an alleged perpetrator of domestic violence from: perpetrating or threatening further violence; contacting or going near the survivor and her dependents; accessing the family home; and possessing or purchasing a firearm.
  - Distinguishes between emergency (short-term) protection orders and longer-term orders; set a time-limit for both, with a maximum of a year for long-term orders, and set out relevant authorities to issue such orders.
  - Stipulates appropriate levels of due process for both types of orders, taking into account the nature of emergency orders and the limited amount of evidence that is likely to be available.
  - Sets out concrete duties for the police, including carrying out risk assessments; interviewing the parties and witnesses; recording the complaint; advising the

- complainant of her rights; filing an official report; arranging for transport for medical treatment; and providing other protection.
- Sets out prevention measures of domestic violence, including assigning responsibilities to government agencies to carry out prevention measures, including awareness-raising activities, development of educational curricula, and sensitizing the media regarding domestic violence.
  - Defines the government's role in providing support and services to domestic violence survivors, including in terms of shelter, health services, psychosocial care, legal advice, and hotlines.
  - Establishes a trust fund or other financial assistance for domestic violence survivors, which should not be dependent on the criminal judicial process or the finding of guilt.
  - Adopt legislative guidelines on evidentiary rules for domestic violence cases:
    - Include the types of evidence that are admissible in court proceedings, such as medical/forensic evidence, victim statements, photographic evidence, expert witnesses, physical evidence such as torn clothing and damaged property, and cell phone records, emergency call recordings, and other communications. It should also state that a complainant's testimony may be sufficient evidence for a conviction.
    - While severity of injury, as determined by doctors, should be one factor courts can consider in determining sentences for those convicted of crimes, other factors should be considered, such as history of abuse, risk of recidivism, rehabilitation needs, and aggravating factors.
  - Amend the penal code to define rape as a form of sexual assault that is a physical invasion of a sexual nature without consent or under coercive circumstances. A physical invasion would include penetration, however slight, of any part of the body of the victim - or of the rapist by the victim - with a sexual organ or of the anal or genital opening of the victim with any object or any other part of the body. Provide that sexual violence against an intimate partner (marital rape) is a crime.
  - In the state budget, ensure adequate allocation of resources to facilitate development and implementation of national gender and domestic violence policies and to support services for survivors of domestic violence.

- Amend discriminatory provisions against women and girls in the family code and the penal code.
- Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

## To the Algerian Government

- Establish a national database on violence against women which includes information on domestic violence showing the number of complaints received, investigations undertaken, prosecutions mounted, convictions obtained, and sentences imposed on perpetrators.
- Gather statistical data at regular intervals on the causes, consequences, and frequency of all forms of violence against women.
- Statistical data should be disaggregated by sex, age, ethnicity, and other relevant characteristics.

## To the Ministries of Interior and Justice

- Support the development of specialized domestic violence units and specialized prosecution offices in all regions.
- Ensure that the police response to domestic violence respects a survivor-centered approach that empowers the survivor, refrains from victim-blaming or stigmatization, and prioritizes the survivor's safety, health, and wellbeing over family unity.
- Establish a police response protocol to domestic violence whereby police should be directed to:
  - Accept and register domestic violence complaints; and
  - Inform domestic violence survivors of their rights with regards to protection, prosecution, and redress.
- Require that female police or prosecutors are made available where a victim prefers to communicate with them.
- Direct relevant ministries to adopt "pro-arrest" and "pro-prosecution" policies in cases of domestic violence when there is probable cause to believe a crime has occurred.

- Enable individuals to open a procedure complaint against individual officers who violate their rights to increase accountability of officers who fail to uphold the law.
- Require the police and public prosecutors, as well as investigative judges, to coordinate on domestic violence cases and directly communicate between offices. Authorities should not leave it up to domestic violence survivors to deliver instructions between offices.
- Design and implement a mandatory core curriculum on domestic violence response in a gender-sensitive manner at the police training institute, as well as in police retraining and qualification courses, in accordance with the above protocols and United Nations Office on Drugs and Crime (UNODC) standards.
- Design and implement a mandatory core curriculum for training of prosecutors on domestic violence response in a gender-sensitive manner in accordance with national and international laws and UNODC standards. Train judges on national domestic violence legislation and international obligations and on responding to domestic violence in a gender-sensitive manner.
- Provide official protocols for forensic examinations in domestic violence cases, including guidance from the World Health Organization on understanding the health consequences of intimate partner violence on their physical, mental, and sexual and reproductive health.

### **To the Ministry of National Solidarity, Family, and Women's Conditions**

- Ensure availability of adequate shelter, psychosocial, legal, and other services for survivors of domestic violence, including in rural areas.
- Develop and disseminate best practice guidelines for domestic violence services in accordance with international standards.
- In conjunction with local NGOs and experts, develop and conduct awareness-raising campaigns to:
  - Combat social attitudes that involve seeing domestic violence as normal, blaming victims, and stigmatizing survivors; and
  - Increase public knowledge of available services.
- Conduct public awareness campaigns on the new laws adopted in Algeria regarding women's rights, especially the reform of the penal code introducing

specific criminalization of domestic violence and the creation of the maintenance fund for divorced women with children.

## **To Algeria's International Partners, including the European Union and its Member States**

- Raise violence against women and domestic violence in Algeria as a key area of concern in bilateral and multilateral dialogues with Algerian authorities, and urge the government of Algeria to address such violence through reforms in the social service, law enforcement, and judicial sectors.
- Provide funding to support shelter for survivors of domestic violence, as well as for other key services, including psychosocial counseling and legal assistance. Ensure that services meet the needs of women and girls in both urban and rural areas.
- Support and facilitate the establishment and regular gathering of national and regional networks to ensure information-sharing between agencies and individuals in different sectors of domestic violence prevention and response.



## Acknowledgments

This report was researched and written by a researcher from Human Rights Watch. Eric Goldstein, deputy director in the Middle East and North Africa division, and Rothna Begum, researcher in the Women Rights division, edited the report. Clive Baldwin, legal advisor, conducted legal review.

Tom Porteous, deputy Program director, conducted program review. Sarkis Balkhian, senior associate in the Middle East and North Africa division, provided production assistance.

We would like to thank all of the individuals and organizations that supported research and analysis for the report. Among others, these include: Fatma Boufenik, president of the association Femmes Algériennes Revendiquant leurs Droits (FARD) and director of its counseling center for women victims of violence; Mariem Bellala, director of the shelter SOS Femmes en détresse for women victims of violence in Algiers; Mounira Haddad, president of the association Association des Femmes Algériennes pour le Développement; and Cherifa Kheddar, director of the association Djazairouna in Blida. We wish to express our gratitude to all of those who spoke with us during this research, and particularly to the survivors of domestic violence who shared their stories and the service providers and activists dedicated to supporting them.

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# Appendix I: Letter to the Algerian Ministry of Foreign Affairs

October 30, 2014

Mrs. Taous Feroukhi  
Director-General for Political Affairs and International Security  
Ministry of Foreign Affairs  
Plateau des Annassers  
Kouba, Algiers, Algeria

Dear Madam,

First of all, I would like to thank you for receiving a delegation from Human Rights Watch, in October 2014, to discuss various topics of common interest. During this meeting, we expressed our desire to continue working with the Algerian authorities on the main human rights issues in your country. We are writing to you to detail the priority research areas we intend to work on next year.

As you know, HRW seeks to promote greater respect for human rights by publishing balanced reports based on credible sources, and sending specific recommendations to governments and other responsible authorities.

In 2015, we are going to continue our research into the exercise of freedom of expression, association and assembly in Algeria. To this end, we intend to continue working with Algerian civil society organisations on the conditions for implementing these rights in Algeria, communicate our first impressions and request comments and clarifications from the relevant authorities. Based on our conclusions, we will then make specific recommendations to the Algerian authorities

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regarding practical ways of addressing any issues, problems or impediments observed.

We have also followed with interest the progress achieved in the area of enhancing women's rights. In 2012, Algeria introduced a system of quotas for female representation in the legislative elections, enabling 147 women to take up seats in parliament. We are also delighted about the forthcoming introduction of amendments to the criminal code, including articles that will clamp down on violence against women. We would like further information about these amendments so that we can analyse them and determine their practical effect on the situation of women in Algeria. We would also like to explore the flaws in the legislation, which still contains discriminatory articles regarding marriage, divorce, child custody, and guardianship as well as inheritance.

We would also like your agreement to carry out inspections of prisons and detention centres in Algeria. The purpose of these inspections would be to investigate the treatment of prisoners and the overall conditions in which they are held. We are happy to discuss the terms and conditions of these inspections with you. As an example, we would like to draw your attention to the fact that we have entered into a similar agreement with the Tunisian authorities, which granted us the right to inspect detention facilities in 2013, and that we have published our conclusions in a report entitled "Cracks in the System," available here: <http://www.hrw.org/ar/reports/2013/12/05>.

As indicated during our meeting on 13 October 2014, we are enclosing herewith a copy of a letter sent to the Ministries of the Interior and Justice regarding the abuses alleged to have taken place in the Governorate of Ghardaia in November 2013. We shall refrain from publishing this information in any way until we have received your response, within the reasonable period indicated in the enclosed letter.

Thank you for your cooperation, and we look forward to receiving confirmation that our future official requests for inspections in Algeria will be given a favourable response.

Yours faithfully,

[Signature]

Sarah Leah Whitson  
Executive Director  
Middle East and North Africa Division  
Human Rights Watch

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TO STAY WITH HIM”

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# Appendix II: Letter to the Algerian Prime Minister

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May 25, 2016

Abdelmalek Sellal  
Prime Minister  
Algiers, Algeria

Dear Mr. Prime Minister,

Please accept my regards on behalf of Human Rights Watch.

I am writing to kindly request information from your government related to research we are conducting on domestic violence in Algeria. We will incorporate relevant information that you provide into any report that we publish on the subject, provided that it reaches us by 30 June. We would also be most pleased to accept an invitation to discuss this issue in person with relevant officials in Algiers, and incorporate information they provide into our report.

As you may know, Human Rights Watch is a nongovernmental organization that monitors human rights in more than 90 countries worldwide. Human Rights Watch has investigated domestic violence and the state response in all regions of the world for more than 20 years. We have collaborated with governments, international agencies, and civil society groups to promote strong domestic violence laws and programs.

Human Rights Watch commends the Algerian authorities for the adoption, on December 10, 2015, of law n.15-19 amending parts of the Penal Code, which criminalizes and provides penalties for some acts of violence against women including some forms of domestic violence.

Human Rights Watch is studying the issue of domestic violence in Algeria and assessing the effectiveness of Algeria's laws, policies, and practice, in combatting domestic violence and responding adequately to victims' needs, in conformity with international human rights standards.

We would be pleased to reflect in our report your timely answers to the following questions:

- 1) Are there any specialized domestic violence units or domestic violence personnel in the police force? If so, how are they positioned at the level of local police stations? If not, are there plans to put in place such units or personnel?
- 2) Could you kindly describe the training that members of the police are required to undergo with respect to recognizing domestic violence and responding to allegations of domestic violence? Is there a protocol that they are to follow when a person wishes to file a complaint?
- 3) Is the government planning to adopt additional legislation on domestic violence, such as a law providing for emergency and long-term protection orders in cases of domestic violence?
- 4) In cases where a survivor or a suspected survivor of domestic violence visits a hospital or other medical facility, what is the protocol for reporting domestic violence cases to the police by medical personnel? Please specify any directive, policy, or other official order that regulates the way medical personnel communicates with the police in such cases.
- 5) How many shelters has the government created in Algeria to host victims of domestic violence, and what is the location and capacity of each? Are they reserved for domestic violence victims or do they also take in other populations? How many domestic violence survivors have received assistance in such shelters in 2014-2015?
- 6) Could you kindly describe measures being taken by the Ministry of National Solidarity and Women's Conditions to ensure that survivors of domestic violence have access to adequate services and support, including shelter, health, psycho-social, and legal services?
- 7) Could you kindly describe what referral systems exist in Algeria to ensure that survivors of domestic violence are referred to shelter, health, psycho-social, and legal services, including in rural areas?  
Please also describe any action being taken by the Ministry to put such referral systems in place and ensure their implementation and effectiveness.

- 8) Could you kindly disclose the level of state funding allocated to services and support for survivors of domestic violence, including shelters, crisis centers, medical care, and legal aid?
- 9) The *Law n.01-15* published in the Official Journal of the Algerian Republic on February 4, 2015 created a fund from which the State would pay financial support to women and children in cases where the husband fails to do so in whole or in part. Is this fund operational? If so, can you specify how much money it has paid out since its creation and in how many cases?
- 10) Could you provide statistics about complaints filed with Algerian prosecutors for domestic violence, including, if available, breakdowns by type of violence, age of victim, location, and the judicial follow-up given the cases. We would particularly appreciate any information about the number of complaints that resulted in criminal charges, the number dismissed due to lack of evidence; number of complaints that resulted in the arrest of the perpetrator, and number of complaints withdrawn by the victim, for the period from 2010 to the present.

We reiterate our preference and readiness to come to Algeria to discuss these issues with you in person prior to the publication of our report.

Thank you for your consideration. We look forward to your response.

Yours truly,

[signature]

Sarah Leah Whitson  
Executive Director  
Middle East and North Africa  
Human Rights Watch

Cc: Minister of Interior, M. Nouredine BEDOUI  
Minister of Justice, M. Tayeb LOUH  
Minister of National Solidarity and Family Affairs, Mme. Mounia Meslem

# “Your Destiny is to Stay with Him”

## State Response to Domestic Violence in Algeria

In December 2015, Algeria’s parliament amended the penal code to criminalize some forms of domestic violence. However, authorities are failing to prevent violence, provide adequate protection and services to survivors of domestic violence, and prosecute their abusers.

Based on over 40 interviews, including 20 survivors of domestic violence, *“Your Destiny is to Stay with Him:” State Response to Domestic Violence in Algeria* documents how survivors face an uphill struggle to escape their plight, due to a lack of police response, economic dependence on their abusers, family pressure to reconcile, and a shortage of adequate shelter or assistance for them. Survivors described how their husbands or partners broke their teeth or limbs, caused concussions and skull fractures, and beat them while pregnant. They also described how their husbands threatened to kill them, stopped them from working, and prevented them from visiting friends or family.

While the amendments to the penal code are an important step forward, comprehensive legislation is still needed to prevent such violence by changing attitudes through education programs, protect victims and, ensure that acts of violence are effectively investigated and punished.



*A woman at Dar al-Insania, an NGO-run shelter in the eastern city of Annaba on March 3, 2010. Dar al-Insania provides women victims of domestic violence, among others, with shelter and services.*

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