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Re: Domestic Violence Law Reforms

Your Excellencies,

We write concerning several law reform processes addressing violence against women—including domestic violence—in Morocco. These include a 2015 bill proposing reforms to the penal code (hereafter, the draft penal code), a 2015 bill concerning changes to the criminal procedure code (hereafter, the draft code of criminal procedure), and a 2013 bill on combatting violence against women (Bill 103-13, hereafter, the violence against women bill). We understand that the 2013 violence against women bill is being updated, but is not yet publicly available.

Human Rights Watch welcomes the Moroccan government's stated commitment to women's equality and freedom from violence. We would like to share our observations about the proposed reforms, and ways they could be strengthened. While the legal reform processes noted above cover a broad range of issues, this letter focuses specifically on domestic violence.

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. Our comments on the proposed reforms in Morocco are based on this experience, as well as on international human rights standards.

Our comments are also informed by interviews we conducted in Morocco in 2015 with 20 women and girls who have experienced domestic

violence, and 25 interviews with lawyers, women’s rights activists, representatives of nongovernmental organizations (NGOs) serving domestic violence survivors, social workers, and representatives of UN agencies.

Human Rights Watch wrote five letters to Moroccan officials in 2015 requesting meetings and information on domestic violence, but did not receive a response to those letters.¹

The commentary below addresses the essential elements for domestic violence legal reforms in Morocco. It also calls for meaningful civil society participation in the reform process. As an annex to this letter, we have included a list of resources on legislation and other state measures to combat violence against women.

Essential Elements for Domestic Violence Legal Reforms in Morocco

The past 30 years have seen a massive shift in how countries around the world address domestic violence in their laws. According to UN Women, some 125 countries have laws specifically addressing domestic violence (although this number includes several countries that provide for only minimal application of criminal law to domestic violence).²

Morocco is in an excellent position to pass and implement legislation on domestic violence. It has a track record of promoting women’s rights under law, such as through its family law reforms, and has experienced service providers and civil society leaders who can advise on the reforms. Indeed, Morocco is obligated to enact such legislation under international human rights treaties, including the UN Convention on the Elimination of All Forms of Discrimination against Women. UN human rights treaty bodies have repeatedly called on Morocco to enact such legislation.³

¹ Human Rights Watch letters sent to the Ministry for Solidarity, Women, Family and Social Development, Ministry of Justice and Freedoms, Ministry of Interior, Ministry of Health, and the Inter-Ministerial Delegation for Human Rights, on August 31, 2015.

² UN Women, “Progress of the World’s Women: In Pursuit of Justice,” 2011, <http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2011/progressoftheworldswomen-2011-en.pdf> (accessed February 1, 2016).

³ See, e.g., the 2015 concluding observations of the UN Committee on Economic, Social and Cultural Rights, UN Doc. E/C.12/MAR/CO/4, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fMAR%2fCO%2f4&Lang=en (accessed February 1, 2016) para. 38; the 2008 concluding observations of the UN Committee on the Elimination of Discrimination against Women, UN Doc. No. CEDAW/C/MAR/CO/4, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMAR%2fCO%2f4&Lang=en (accessed February 1, 2016) para. 21; and the 2014 concluding observations of the UN Committee on the Rights of the Child, UN Doc. No. CRC/C/MAR/CO/3-4, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMAR%2fCO%2f3-4&Lang=en (accessed February 2 2016) para. 39(b); the 2011 concluding observations of the Committee against Torture, UN Doc. No. CAT/C/MAR/CO/4,

The UN established key elements for legislation on violence against women, including domestic violence, in its 2012 “Handbook for Legislation on Violence against Women” (UN Handbook). Amid the broad range of topics covered in the UN Handbook, we view the following as essential elements for domestic violence legislation in Morocco:

- Definition and scope of application of domestic violence crimes
- Prevention measures
- Law enforcement and public prosecution responsibilities
- Justice system responsibilities
- Orders for protection
- Other services and assistance for survivors

Definition and Scope of Application of Domestic Violence Crimes

Governments around the world are recognizing that domestic violence involves more than physical violence, and the trend is toward comprehensive legal definitions of domestic violence crimes. The UN Handbook recommends that legal definitions of domestic violence include *physical, sexual, psychological, and economic violence*.⁴ The UN’s “EndVAWNOW” website provides examples of how countries have defined domestic violence.⁵

In defining psychological and economic violence, the UN recommends that laws focus on “coercive control,” i.e., how such violence links to a pattern of domination through intimidation, isolation, degradation, and deprivation, as well as physical assault.⁶ The UN Office on Drugs and Crime (UNODC) recommends that laws define “psychological violence” as controlling, coercive or threatening behavior or intentional conduct seriously impairing a person’s psychological integrity through coercion or threats.⁷

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMAR%2fCO%2f4&Lang=en, para. 23 (accessed February 1, 2016).

⁴ UN Women, “Handbook on Legislation on Violence against Women,” 2012, http://www2.unwomen.org/~media/headquarters/attachments/sections/library/publications/2012/12/unw_legislation-handbook%20pdf.pdf?v=1&d=20141013T121502 (accessed February 1, 2016).

⁵ UN Women, EndVAWNOW.org (virtual knowledge center), “Definition of Domestic Violence,” undated, <http://www.endvawnow.org/en/articles/398-definition-of-domestic-violence.html> (accessed February 1, 2016).

⁶ Ibid.

⁷ 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, (accessed February 1, 2016) p. 39.

The UN also recommends that laws explicitly state that *sexual violence against an intimate partner* (often referred to as “marital rape”) is considered a form of domestic violence.⁸

Many countries have also clarified the *scope* of who is covered by domestic laws, moving beyond just those who are married and cohabiting. The UN Handbook 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.*”⁹ Country-specific examples of scope of application are on the EndVAWN website.¹⁰

The UN is also concerned about so-called “honor” crimes, which can be an extreme form of domestic violence. The UN Handbook recommends that states remove penal code provisions allowing reduced penalties for perpetrators of honor crimes, and preclude “provocation” related to catching family members committing adultery as a defense to domestic violence crimes.¹¹

In Morocco, the existing penal code does not specifically define domestic violence. It does have a few provisions allowing increased penalties if the victim is a spouse or family member, including for the crimes of poisoning or assault.¹² Marital rape is not specifically criminalized. The minimal references to domestic violence under the penal code fall far short of international human rights law requirements.

The proposed violence against women bill would define the broad category of “violence against women,” but would *not* specifically define “domestic violence.” The bill would define “violence against women” to mean “any material or moral act or omission thereof based on gender discrimination that entails physical, psychological, sexual, or economic harm to a woman.”¹³ This is a good start, but Morocco should also have a clear legal definition of “domestic violence,” consistent with the UN recommendations above.

⁸ Ibid, and UN Handbook, section 3.4.3.1.

⁹ UN Handbook, section 3.4.2.2.

¹⁰ EndVAWN.org, “Scope of Persons Protected by Law,” <http://www.endvawn.org/en/articles/399-scope-of-persons-protected-by-law.html?next=400> (accessed February 1, 2016).

¹¹ UN Handbook, section 3.11.2 and UNODC, “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women,” p. 40.

¹² Penal code, arts. 413 and 414 (on poisoning) and 404 (on assault).

¹³ Bill 103-13 (the Violence against Women Bill). Article 1 further defines each of these categories, but not with the level of specificity recommended by the UN. Human Rights Watch reviewed the 2013 version of this bill. The government has not made public any updates to the bill, and civil society groups said this is the most recent version.

The violence against women bill includes amendments to the penal code, most of which are also in the separate draft penal code bill. They provide for additional penalties if the person convicted of specific crimes (such as assault, abduction, facilitating suicide, or threats of aggression) is a spouse, guardian, or person with custody or authority over the victim.¹⁴ The bill also introduces new crimes, such as forced marriage, squandering money to circumvent payment of maintenance or other dues arising from a divorce, and preventing a spouse from returning home.¹⁵ The bill clarifies that some existing offenses can apply to spouses, such as breach of trust, misappropriation of property, and fraud.¹⁶

But these provisions are inadequate in several ways. They are too narrow in terms of scope of application since they leave out former spouses (with the exception of one article relating to assault of a former wife in front of her children or parents), or non-married intimate partners.¹⁷ They are also too limited in terms of which crimes against spouses or family members could result in penalties, for example by leaving out marital rape.

Some proposed amendments to the penal code would make matters worse for women, including a change to penal code article 420 on reduced sentences for perpetrators in cases of violence against family members engaged in illicit sexual intercourse (such as adultery, non-marital sex, and sex between same-sex persons). The existing penal code already provides for reduced sentences for the “head of the household” if he commits murder or assault after catching a family member engaging in illicit sexual intercourse. The amendment would extend the possibility for reduced sentences for murder and assault to *any* family member who catches a family member engaged in such intercourse. Moreover, neither the violence against women bill nor the draft penal code would repeal Morocco’s criminalization of adult consensual sexual relations outside of marriage.¹⁸ This violates the right to privacy, and leaves victims at risk of prosecution on this charge should they report domestic violence by a partner who is not a spouse.

¹⁴ Violence against Women Bill, arts. 10, 12, and 13. Draft penal code bill, art. 404 (assault), art. 407 (assisted suicide), art. 436-1 (abduction), and art. 427-1 (threats of aggression). The draft penal code also does not define “domestic violence,” nor address marital rape.

¹⁵ Violence against Women Bill, art. 14. Draft penal code bill, art. 481-1 (preventing a spouse from returning home), art. 503-2-1 (forced marriage), art. 526-1 (squandering money).

¹⁶ Violence against Women Bill, art. 14. The draft penal code does not include the additional language on breach of trust, intentional misappropriation of property, and fraud.

¹⁷ Violence against Women Bill, art. 14 included an additional article to amend penal code art. 404-1 “Any person who intentionally beats or injures or perpetrates any other type of violence or harm against a pregnant woman, his wife, or *his former wife* in the presence of her children or parents.” However, the draft penal code does not include this additional article, nor does it include “a former spouse” in article 404 on assault.

¹⁸ Penal code art. 489 (concerning sexual relations between same-sex persons), art. 490 (concerning sexual relations between unmarried persons of the opposite sex), and art. 491 (concerning adultery).

We recommend:

- The violence against women bill and draft penal code should define “domestic violence” to include physical, sexual, psychological, and economic violence, and further define each of these terms in line with UN recommendations. They should state that marital rape is a crime.
- These bills should expand the scope of application of domestic violence crimes. They should, under certain circumstances, include: 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.
- The draft penal code should repeal the possibility of reduced sentences for perpetrators of crimes committed against family members because they were caught engaging in non-marital sex. It should also decriminalize consensual sexual relations between adults.

Prevention Measures

When countries first started addressing domestic violence under law, many focused solely on criminalization. Over time, many began to include *prevention* of domestic violence in legal frameworks.

The UN recommends that legislation on violence against women address prevention. 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.¹⁹ UN Women has also issued a “Handbook on National Action Plans on Violence against Women,” which elaborates additional prevention measures, and UNODC has published guidance on prevention as well.²⁰

In Morocco, civil society groups have led efforts to prevent violence against women, including domestic violence. For example, they have created public awareness campaigns and worked with the media to better address domestic violence. The government has also taken some steps to prevent violence against women. For example, in June 2015, it established an observatory to monitor the image of women in the media and combat

¹⁹ UN Handbook, section 3.5.1.

²⁰ 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> (accessed February 1, 2016). See also UNODC, “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women,” pp. 88-90.

stereotypes of women.²¹ In August 2014, the Ministry of Women re-established the National Observatory of Violence against Women, which will monitor and collect data on violence against women.²² It also adopted a national strategy on violence against women in 2002, which addressed the need for prevention measures such as education, awareness-raising, information, research, and training of authorities.²³

The proposed violence against women bill and the other relevant bills do not directly mention prevention. The violence against women bill does call for national, regional, and local committees on women and children, but does not refer to their role in prevention.²⁴

We recommend:

- The draft violence against women bill should include a section on prevention of domestic violence. It should assign responsibilities to government agencies to carry out prevention measures, including awareness-raising activities, development of educational curricula, and sensitizing the media regarding domestic violence.

Law Enforcement and Public Prosecution Responsibilities

Police and prosecutors (and in some countries, investigating judges) are central to the response to domestic violence. They are often the front line for receiving complaints, investigating cases, and making decisions about charges. Unfortunately, in research around the world, Human Rights Watch has found that police and prosecutors are often reluctant to address what they may consider “private family matters.” Far too often, they have sent women back to dangerous partners, and have failed to take action against abusers.

Recognizing this tendency, the UN 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 calls for police duties to include conducting a risk assessment; interviewing the parties and

²¹ “The observatory on the image of women in the media finally sees the light in Morocco,” *Hespress*, June 19, 2015, <http://www.hespress.com/femme/267385.html> (accessed February 1, 2016).

²² Ministry of Solidarity, Women, Family and Social Development, “National observatory on violence against women,” August 2014, <http://bit.ly/1OKu7kM> (accessed February 1, 2016).

²³ See reference to the 2002 national strategy on violence against women in Morocco’s combined state reports to the Committee on the Elimination of Discrimination against Women, September 18, 2006, CEDAW/C/MAR/4, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMAR%2f4&Lang=en (accessed February 1, 2016).

²⁴ Violence against Women Bill, arts. 2-9.

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 below regarding orders for protection).²⁵ The UN Office on Drugs and Crime recommends parallel measures.²⁶

In terms of prosecutors, the UN Handbook 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, including decisions about dropping cases.²⁷

Finally, the UN 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 some discretion with them. These policies should require a written report on the reasons when the policy is not followed.”²⁸ Under “pro-prosecution” policies, if there is probable cause to believe that a crime has occurred, prosecution is likely but not mandatory.²⁹

In Morocco, existing laws do not provide adequate guidance to police, prosecutors, or investigative judges about their duties in domestic violence cases. This contributes to inconsistent and problematic practices by some authorities.

Women and girl survivors of domestic violence told Human Rights Watch about instances in which police did little or nothing when they tried to report domestic violence. They said police told them to go back to abusive partners, said they could do nothing without eye-witnesses, or told them to go to a prosecutor without taking further action. For instance, one woman told Human Rights Watch that when she went to the police in Rabat after her brother beat her on her head and punched her eyes in July 2015, they told her, “We can do nothing, it is not our job.” They told her to go to the public prosecutor instead.³⁰

²⁵ UN Handbook, section 3.8.1

²⁶ UNODC, “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women,” p. 57.

²⁷ UN Handbook, section 3.8.2.

²⁸ UNODC, “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women,” p. 65.

²⁹ *Ibid.*, p. 76.

³⁰ Human Rights Watch interview with Sadiya (pseudonym), Rabat, September 17, 2015.

Six women we interviewed said that when they reported a complaint to a prosecutor, they were told to deliver a document back to the police instructing them to investigate domestic violence complaints, rather than the prosecutors communicating directly with the police. But even after delivering such documents, most of the women said police either did not act on the orders, or just phoned the abusers. For instance, one woman told Human Rights Watch that she reported her husband's beatings to the public prosecutor in Rabat, who gave her a document to give to the police instructing them to investigate. She gave the document to the police but, she said, the police did nothing. She went back to the prosecutor, who provided another such document. She said the police told her, "We already called him twice, but your husband doesn't want to come. We have done our job."³¹

Other women interviewed by Human Rights Watch also said that the police did not conduct further investigations, such as going to the scene of the crime to take evidence or interviewing neighbors who may have witnessed or heard the violence. Several women said that their neighbors had seen or heard the violence.

In some cases, women said the police demanded bribes before they would investigate domestic abuse. For example, one woman said she went to the police in 2014 with a document from a public prosecutor instructing the police to investigate her complaint that her husband and his brothers beat and stabbed her. But she said the police at Maarif police station in Casablanca said they would only help if she gave them money. The public prosecutor gave her another document instructing them to investigate, but she said the police told her "to get lost."³²

Women's rights activists and service providers in Morocco gave mixed reviews of the police's response to domestic violence. Some told Human Rights Watch that they have witnessed police being reluctant to investigate, make arrests, or even take survivors' statements in domestic violence cases. For example, the founder of Mobilizing Rights Associates said that some women had told her that when they called the police to report domestic violence, the police had asked the women whether "blood had been spilt." The women reported that the police told them that if there was no blood, they need a prosecutor's order to go to the home.³³ Najat Razi, a member of Oyoune Nissaiya (a women's rights coalition), said that she had seen cases in which police pressured women to go back to abusive husbands and drop complaints. "In most cases we receive, the police try to convince women not to file a complaint against her husband, if she insists,

³¹ Human Rights Watch interview with Shayma (pseudonym), Rabat, September 17, 2015.

³² Human Rights Watch interview with Safaa (pseudonym), Casablanca, September 16, 2015.

³³ Human Rights Watch email correspondence with Stephanie Willman-Bordat, co-founder of Mobilizing Rights Associates, January 8, 2016.

they insult her,” she said.³⁴ Najat Ikhich of the YTTTO Foundation (which provides social and legal assistance to domestic violence survivors) said that her organization received “many complaints from women who try to go to the cells at the police stations to complain about [domestic] violence but are instead subject to another form of violence.” She said police blame survivors for the violence instead.³⁵ On the other hand, several NGO representatives said some police do refer survivors to private shelters, though this is inconsistent.

With only one exception, the domestic violence survivors Human Rights Watch interviewed said that the police neither provided nor paid for transport to medical services or the public prosecutor. Several women and girls said that they felt they could not go to the prosecutor because they had no money for transport, and feared they could not lodge a complaint without identification documents, which were with their abusers.

We recommend:

- The draft violence against women bill should address police duties in cases of domestic violence, including granting adequate powers to enter premises and conduct arrests; 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.
- The bill should 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.
- The bill should require that police and public prosecutors (or investigative judges, as relevant) coordinate on domestic violence cases and directly communicate between offices. Authorities should not require that domestic violence survivors deliver instructions between offices.
- The bill should make clear that the responsibility for prosecuting domestic violence lies with prosecution authorities, not with survivors, and set minimum standards for what prosecutors must communicate to survivors.

Justice System Responsibilities

The justice system also plays a central role in responding to domestic violence. Countries have tried a variety of measures to improve how courts handle such cases, including policies promoting timely and fair proceedings, tailored evidentiary and procedural rules

³⁴ Human Rights Watch interview with Najat Razi, women’s rights activist and member of the Oyoune Nissaiya, Casablanca, September 11, 2015.

³⁵ Human Rights Watch interview with Najat Ikhich, Foundation Ytto, Casablanca, September 11, 2015.

(e.g., *in-camera* proceedings), training judges and prosecutors, and establishing specialized courts or units.

The UN Handbook addresses these issues, and also recommends that survivors have rights under law to free legal aid, interpretation, and court support.³⁶ It calls for legislation to provide for timely and expeditious legal proceedings, and for specialized courts or special court proceedings to handle cases of violence against women.³⁷

The UN Handbook also addresses medical and forensic evidence in court proceedings on violence against women. It states that “medical and forensic evidence are *not required in order to convict a perpetrator*,” and that prosecution and conviction of an offender can be “*based solely on the testimony of the complainant/survivor*.”³⁸ Likewise, medical and forensic evidence should not be required for authorities to proceed with arrest or prosecution.

The UNODC recommends that countries develop guidelines on evidence that should be admissible in court for domestic violence cases. 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.³⁹

In Morocco, lawyers who work on domestic violence cases told Human Rights Watch that prosecutions and convictions under the penal code for crimes related to domestic violence (e.g., assault) are exceedingly rare.⁴⁰ Lawyers who have worked on such cases said the judges have been inconsistent or unreasonable about what evidence they consider sufficient for a conviction. For example, one lawyer told Human Rights Watch that she has seen judges require domestic violence victims to produce eye witnesses even when they have a medical report and the survivor’s own testimony.⁴¹ Since these attacks tend to happen in homes behind closed doors, often there are no witnesses other than children, who typically cannot testify. A lawyer in Rabat said that he has seen defendants acquitted of domestic violence related charges because the courts considered the victim’s testimony

³⁶ UN Handbook, sections 3.9.2 and 3.9.3.

³⁷ *Ibid.*, section 3.9.2 (on timely and expedited proceedings) and 3.2.5 (on specialized courts).

³⁸ *Ibid.*, section 3.9.5.

³⁹ UNODC, “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women,” pp. 71-72.

⁴⁰ Human Rights Watch individual interviews with lawyers Zahia Amoumou, Fatima Zahra Chaoui, and Mohamed al-Mon, Rabat and Casablanca, September 2015 and 2014.

⁴¹ Human Rights Watch interview with Fatima Zohra Chaoui, lawyer and head of the Moroccan Association Combatting Violence Against Women (Association Marocaine de lutte contre la Violence à l’Egard des Femmes), Casablanca, September 18, 2015.

insufficient.⁴² While the standard should not be that victim testimony is *always* sufficient on its own for a conviction, it should be possible for courts to convict on the basis of credible victim testimony, consistent with due process standards under international human rights law and with the evidentiary threshold required under Moroccan law to reach a guilty verdict.

The violence against women bill would amend the criminal procedure code to clarify what evidence courts may consider in domestic violence cases. This includes reports of psychologists, medical evidence, expert statements, photographs, audio and visual recordings, and the victim's statements in hospital records.⁴³ This is a positive step forward, but the bill should also specify that a victim's testimony in court *maybe* sufficient evidence to reach a conviction.

With regard to possible sentences for the crime of assault, Morocco's penal code currently provides for sentencing based on incapacitation from physical injuries. If an assault causes no injuries or injuries that incapacitate the victim for up to 20 days, the offender can be sentenced to one month to one year imprisonment and/or a fine of 200-500 dirhams (approximately €18.5-€46).⁴⁴ When incapacitation lasts more than 20 days, the penalty increases to one to three years imprisonment and a fine of 200-1000 dirhams (approximately €18.5-€92).⁴⁵ The penalties further increase in cases resulting in loss of limb, bodily function, blindness, or permanent disability.⁴⁶

None of the pending bills related to domestic violence would fundamentally change this emphasis on incapacitation for purposes of sentencing. The draft penal code amendments would make slight changes to sentencing rules related to incapacitation, referring to 21 days rather than 20, and decreasing the possible length of imprisonment penalties. The bill provides that if the assault incapacitates the victim for up to 21 days, the offender can be sentenced to one month to six months imprisonment and/or a fine of 2,000-5,000 dirhams (approximately €185-€460).⁴⁷ When it lasts more than 21 days, the penalty increases to one to two years imprisonment and/or a fine of 2,000-20,000 dirhams (approximately €185-€1,850).⁴⁸

⁴² Human Rights Watch interview with lawyer Mohammed al-Mon, Rabat, September 2014.

⁴³ Violence against Women Bill, art. 17.

⁴⁴ Penal code, art. 400.

⁴⁵ Penal code, art. 401.

⁴⁶ Penal code, art. 402.

⁴⁷ Draft penal code, art. 400.

⁴⁸ Draft penal code, art. 401.

The focus in the law on incapacitation as a definitive criteria for sentencing has been problematic in several respects. The law says nothing about grounds for determining the period of incapacitation, and medical certificates on incapacity are used by courts to determine sentencing. 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 20 days, or other non-physical or less-visible harm.⁴⁹ Morocco's National Human Rights Council has complained that there is no national framework for determining the duration of incapacity, and no definition of permanent disability in the penal code.⁵⁰

Despite these problems, the incapacitation standard affects cases even beyond sentencing. Several lawyers and activists told Human Rights Watch that it also impacts arrest practices. One lawyer, for example, explained that judges may issue an order for arrest where victims have medical certificates indicating 21 days or more of incapacitation from domestic abuse, and the public prosecution may issue an arrest warrant if they believe the survivor is at risk of extreme violence.⁵¹ The lawyer said that she has only seen arrests when clients lost an eye or teeth, or became disabled from domestic violence. Of the 20 survivors Human Rights Watch interviewed, only one said that her abuser was arrested. She had a medical report indicating 21 days of incapacitation after her husband punched her and broke her nose while she was pregnant.⁵²

We recommend:

- The violence against women bill should maintain the provision on types of evidence that are admissible in court proceedings, but also state that a complainant's testimony may be sufficient evidence for a conviction. The draft criminal procedure code should have a parallel provision for assault crimes, including in the context of domestic violence.
- While severity of injury, as determined by doctors, should be one factor courts can consider in determining sentences for those convicted of crimes, the violence against women bill or the draft penal code should de-emphasize incapacitation as

⁴⁹ World Health Organization, "Understanding and addressing violence against women: Intimate Partner Violence," pp.5-6, http://apps.who.int/iris/bitstream/10665/77432/1/WHO_RHR_12.36_eng.pdf (accessed February 1, 2016) and Rolf Gainer, "Domestic violence, brain injury and psychological trauma," Neurological Rehabilitation Institute at Brookhaven hospital, December 30, 2015, (accessed February 1, 2016), <http://www.traumaticbraininjury.net/domestic-violence-brain-injury-and-psychological-trauma/>.

⁵⁰ National Human Rights Council, "Forensic activities in Morocco: Need for comprehensive reform," July 2013, <http://www.cndh.ma/an/node/20867> (accessed February 1, 2016).

⁵¹ Human Rights Watch interview with Zahia Amoumou, lawyer, Casablanca, September 18, 2015.

⁵² Human Rights Watch interview with Khadija (pseudonym), Oujda, September 21, 2015.

- the definitive factor. Other factors should reflect UNODC guidance on sentencing, including history of abuse, risk of repeat offending, rehabilitation needs, and aggravating factors.
- The violence against women bill should call for official protocols for forensic examinations in domestic violence cases. It should clarify that police are empowered to arrest regardless of whether a complainant has a medical certificate indicating incapacitation.

Orders for Protection

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.”⁵³

These orders go by a variety of names (e.g., restraining orders or protection orders), and can be issued by a variety of authorities. “Civil protection orders” are available in some countries, wholly apart from the criminal justice system, while others have “criminal protection orders” (or both). The UN Handbook recommends that they be available in both civil and criminal proceedings. The purpose is to prevent further violence and protect the victim. Domestic violence survivors may seek such orders without pursuing other legal proceedings, such as criminal trials or divorce. Violations of protection orders are typically considered criminal offenses.

Short-term emergency orders respond to situations of immediate danger, often by putting distance between the abuser and the victim. Rather than placing the burden on victims to seek shelter and safety elsewhere, removal of the respondent (the suspected perpetrator) for a limited time is appropriate. Laws designate competent authorities to issue such orders. As temporary emergency orders, they can be issued *ex parte* on the basis of a victim’s testimony. These often expire after several weeks.

Longer-term protection orders are typically issued by courts after notice to the respondent and an opportunity for a full hearing and a review of evidence. In many counties, these orders expire after several months, but the UN recommends that they be valid for one year.⁵⁴

⁵³ UN Handbook, section 3.10.1.

⁵⁴ EndVAWNow.org, “Time Limits on Protection Orders,” undated, <http://www.endvawnow.org/en/articles/416-time-limits-on-protection-orders.html?next=417> (accessed February 1, 2016).

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.⁵⁵ In many countries, authorities can order that the respondent pay for things such as child support, rent, and medical care for injuries from domestic violence. Examples of possible conditions under orders for protection are available on the UN Women website.⁵⁶

In Morocco, the code of criminal procedure provides for general “protection measures” for victims, but there is no system of protection orders specific to domestic violence.⁵⁷ Lawyers interviewed by Human Rights Watch said they had never seen a criminal court issue a protection measure in a domestic violence case. One lawyer mentioned that she knew of only one case involving domestic violence in which a family court judge ordered a man to stay away from the family home for 20 days.⁵⁸ None of the women and girls interviewed by Human Rights Watch had received court-ordered protection measures.

The violence against women bill proposes that the code of criminal procedure should include “protective measures” for victims of violence against women.⁵⁹ These measures could include removing the accused from the marital abode and prohibiting contact with the victim or the children; referring the victim to shelters, clinics, or psychological care; disarming the assailant; and prohibiting the accused from disposing of family’s joint assets. If a protection measure is breached, the offender would face monetary penalties or imprisonment. The bill says nothing about amendments to the civil procedure code, which would more clearly identify protection orders as civil remedies in addition to the possibility of criminal protection orders.

This bill’s language on protective measures could be a step toward establishing a protection order system. However, greater clarity is needed. It is advisable for the bill to allow for “civil” protection orders, which would be available without any criminal proceedings, rather than embedding this only within the criminal procedure code. The bill should also distinguish emergency (short-term) protection orders and longer-term orders, setting time limits for both. It should explain that emergency orders can be issued without

⁵⁵ See EndVAWNnow, “Content of post-hearing orders for protection,” undated, <http://www.endvawnow.org/en/articles/414-content-of-post-hearing-orders-for-protection.html?next=415> (accessed February 1, 2016) and UN Handbook, section 3.10.3.

⁵⁶ EndVAWNnow, “Content of post-hearing orders for protection.”

⁵⁷ Code of Criminal Procedures, arts. 82-4 to 82-10.

⁵⁸ Human Rights Watch interview with Fatima Zohra Chaoui, September 18, 2015.

⁵⁹ Violence against Women Bill, chapter III.

evidence beyond a victim's statement, whereas longer-term orders should require a full hearing and review of all evidence. It should clarify which authorities can issue orders.

We recommend:

- The draft violence against women bill should maintain the provision on protection measures but add clarifying information.
- The bill should address emergency and longer-term orders, clarify the restrictions or conditions they can impose, and explain the procedures for both types of orders. In line with the UN Handbook, it should allow for orders for protection in both civil and criminal proceedings.

Other Services and Assistance for Survivors

States have a human rights obligation to ensure that domestic violence survivors have timely access to shelter, health services, legal advice, hotlines, and other forms of support.⁶⁰ The UN recommends that such support and services be mandated by law and involve government agencies, rather than being left solely to NGOs. It recommends that laws oblige the state to fund these measures.

The UN Handbook recommends minimum standards of availability for some services for domestic violence survivors (e.g., at least one shelter/refuge place for every 10,000 inhabitants).⁶¹ It further recommends that survivors have access to financial assistance, such as through trust funds or social assistance programs.⁶² Finally, the UN emphasizes the importance of coordination and referrals between agencies responding to domestic violence, and recommends that legislation set out a coordination framework. The World

⁶⁰ UN General Assembly, Resolution A/RES/65/228, Strengthening crime prevention and criminal justice response to violence against women, 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 (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 (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.

⁶¹ UN Handbook, section 3.6.1.

⁶² Ibid., section 3.6.5.

Health Organization has also published guidance for the health system response to violence against women, including domestic violence.⁶³

In Morocco, NGO representatives that serve domestic violence survivors said many services are only offered by non-governmental organizations, not the government. Shelters, for example, are only operated by NGOs, and only a few shelters receive some government funding. Human Rights Watch knows of fewer than 10 shelters in the country that accept domestic violence survivors. Among the shelters Human Rights Watch visited, none had bed space for more than about 60 women and children. There are no government regulations establishing minimum standards for NGOs operating shelters.

Representatives of shelters and women's rights organizations told Human Rights Watch that many domestic violence survivors who came to them have returned to abusive partners because they had no means to support or house themselves. One domestic violence survivor who was staying in a shelter told Human Rights Watch that, since she has nowhere else to go and no financial means to support herself, she felt compelled to return to her abusive husband after the two-month limit at the shelter.⁶⁴

Although Morocco has some social assistance programs (e.g., financial assistance for indigent divorced women), none specifically target domestic violence survivors. Even court-ordered maintenance in connection with divorces ends after three months, and longer-term child support is often minimal, a lawyer told Human Rights Watch.⁶⁵

In terms of health services, domestic violence survivors and women's rights activists also described inconsistent practices. Women's organization representatives said that some doctors ask patients about family violence, but many do not, and few make referrals to other services. One survivor told Human Rights Watch that she went to the same hospital repeatedly over seven years as her husband beat her and she suffered depression. But the doctors never referred her to the shelter across the street, or told her about the possibility of filing a criminal complaint.⁶⁶ Other survivors recounted positive experiences, including one woman who said that hospital staff treated her well after her husband slashed her arm, and the doctor advised her to go to the police.⁶⁷

⁶³ See World Health Organization, "Responding to intimate partner violence and sexual violence against women, WHO clinical and policy guidelines," 2013, <http://www.who.int/reproductivehealth/publications/violence/9789241548595/en/> (accessed February 1, 2016).

⁶⁴ Human Rights Watch interview with Khadija (pseudonym), Oujda, September 21, 2015.

⁶⁵ Human Rights Watch interview with Fatima Zohra Chaoui, head of Association Marocaine de lutte contre la Violence à l'Égard des Femmes, September 2014.

⁶⁶ Human Rights Watch interview with Amina (pseudonym), Oujda, September 21, 2015.

⁶⁷ Human Rights Watch interview with Jihan (pseudonym), El Jadida province, September 15, 2015.

The head of a women's rights association said some hospitals have only one forensic doctor, and the hours for forensic medical examinations are quite limited. Domestic violence survivors sometimes have to wait days for such examinations, especially if they suffer injuries over a weekend.⁶⁸ One survivor said she went to get a medical certificate on a Saturday after her husband beat her, but the forensic doctor was not available until Monday.⁶⁹

Morocco has taken steps to strengthen and coordinate state agencies' response to violence against women and children across a variety of sectors. In 2006 and 2007, the ministries of justice and health, the General Directorate for National Security, and the Royal Gendarmerie, began to set up cells and units to assist women and children victims in courts, hospitals, and police stations. In 2010, the government also set up local and regional committees to coordinate the response to violence against women.⁷⁰

However, women's rights activists and lawyers told Human Rights Watch that some of the promised units or cells were never established, and some that exist are bureaucratic and ineffective. One NGO report noted that they are limited to completing paperwork rather than providing information, services, or protection to women victims of violence.⁷¹ Even a government official has publicly critiqued some of these units. The deputy public prosecutor in the Court of First Instance in Azilal noted that judicial cells for women and children lack clarity on their mandate, and have human resource problems and poor coordination.⁷²

In 2012, the Health Ministry said that it had set up 76 units in hospitals for women and child victims of violence, but only 23 were active at the time.⁷³ According to UNICEF,

⁶⁸ Human Rights Watch interview with Fatima Zohra Chaoui, September 18, 2015.

⁶⁹ Human rights Watch interview with Leila (pseudonym), Casablanca, September 16, 2015.

⁷⁰ Ministry of Solidarity, Women, Family and Social Development, "Report of the Kingdom of Morocco through its participation in the works of 57th session of the Commission on the Status of Women on the outcome and prospects of the Promotion of equality and combating violence against women in Morocco," March 2013,

<http://www.social.gov.ma/sites/default/files/Promoting%20gender%20equality%20and%20combating%20violenc%20against%20women.pdf> (accessed February 1, 2016).

⁷¹ See "Morocco's Implementation of Accepted UPR Recommendations on Women's Rights, Submitted by The Advocates for Human Rights and MRA Mobilising for Rights Associates," June 2014,

http://www.theadvocatesforhumanrights.org/uploads/morocco_human_rights_council_women_s_rights_june_2014_english.pdf (accessed February 1, 2016).

⁷² "The experience of cells providing for women and children victims of violence," *Legal Agenda*, Anas Saadoun, March 2015, <http://www.legal-agenda.com/article.php?id=1026&lang=ar> (accessed February 1, 2016).

⁷³ Ministry of Health, Ministry of Health 2012-16 Strategy, March 2012, pp.51-52, <http://www.sante.gov.ma/Docs/Documents/secteur%20sant%C3%A9.pdf> (accessed February 1, 2016).

doctors have not consistently referred women to these units.⁷⁴ The 2012-16 Health Ministry Strategy outlined action points for improving the health service's response to women and children victims of violence, including strengthening and expanding the assistance units; capacity-building of health professionals on gender-based violence; improving coordination of the units; publicizing information about the units more widely; continuous evaluation; and development of computerized information systems.⁷⁵

The violence against women bill has provisions on specialized units in agencies tasked with justice, health, youth, women, and children, and in the General Directorate for National Security and the Royal Gendarmerie. It also calls for local, regional, and national committees to coordinate on issues of women and children. Similarly, the draft amendments to the criminal procedure code provides for cells on women and children that should assist victims of violence.⁷⁶ These provisions are positive, but the bills should also include measures for training staff, monitoring the units, and holding authorities accountable if they fail to carry out their duties.

We recommend:

- The violence against women bill should more clearly define 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.
- The bill should establish a trust fund or other financial assistance for domestic violence survivors.
- The bill should maintain the provisions on coordination and on specialized units in government agencies to handle violence against women and children. It should add provisions on training staff, monitoring effectiveness, and accountability for these units.

Participation in the Reform Process

Nongovernmental organizations have long offered services and support to domestic violence survivors in Morocco. These civil society groups—and survivors themselves—are in an excellent position to help shape legal reforms on domestic violence. The UN Convention on the Elimination of All Forms of Discrimination against Women includes the obligation on states to ensure to women, on an equal basis with men, the right to participate in the formulation of government policy and the implementation thereof.⁷⁷

⁷⁴ Human Rights Watch interview with a representative from UNICEF, Rabat, September 10, 2015.

⁷⁵ Ministry of Health 2012-16 Strategy, pp.55-56.

⁷⁶ Draft Code of Criminal Procedure, art. 82-5-1.

⁷⁷ CEDAW, art. 7.

Representatives of civil society groups, including leading women’s rights organizations, informed Human Rights Watch that they were not involved in drafting the government’s 2013 violence against women bill. Since Human Rights Watch was unable to secure a meeting with the ministries of justice or women, we were not able to confirm whether the government sought civil society input. Many NGO representatives we interviewed said they had worked on a draft NGO bill on violence against women published in 2010, but the official government bill bears little resemblance to the draft prepared by some of these NGOs.⁷⁸ Women’s rights groups, including Spring Dignity (a coalition of women’s rights groups) also criticized the 2013 draft, and issued a memorandum about their concerns.⁷⁹

We urge you to take seriously the views and experience of domestic violence survivors and representative organizations in future deliberations on violence against women law reforms.

Thank you for your time and attention to this letter. We would greatly appreciate the opportunity to discuss this with you. We hope that our comments are useful in your deliberations, and that we can work together to promote women’s safety and rights.

Sincerely,



Liesl Gertholtz
Director, Women’s Rights Division
Human Rights Watch

⁷⁸ “Non-governmental organization propose a special law on gender-based family violence,” March 2010, http://www.mrawomen.ma/sites/default/files/ressources/Les_reformes_legislatives_nationales/Morocco_VAW_-_arabic_12.8.10.pdf (accessed February 1, 2016).

⁷⁹ Association Démocratique des Femmes du Maroc, “Press release from the women’s movement about Draft Law 103-13 on ‘Combating violence against women,’” Casablanca, November 2013, <http://www.adfm.ma/spip.php?article4670&lang=fr> (accessed February 1, 2016).

Appendix: Resources

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UN Office on Drugs and Crime (UNODC), “Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women,” 2014,
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- In French: [http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Effective police responses to violence against women-French.pdf](http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Effective_police_responses_to_violence_against_women-French.pdf)

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http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/228

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World Health Organization, “Responding to intimate partner violence and sexual violence against women, WHO clinical and policy guidelines,” 2013, <http://www.who.int/reproductivehealth/publications/violence/9789241548595/en/>

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