



MOROCCO:
Challenges with addressing domestic violence in compliance with the
Convention Against Torture
47th Session of the Committee Against Torture (31 October – 25 November, 2011)

Joint Written Statement submitted pursuant to ECOSOC Res. 1996/31
by THE ADVOCATES FOR HUMAN RIGHTS¹ and GLOBAL RIGHTS²,
non-governmental organizations in special consultative status,
in collaboration with an alliance of Moroccan NGOs³

I. Introduction: Women in Morocco Face On-Going and Chronic Violence

While it is difficult to determine the exact prevalence of domestic violence throughout Morocco, statistics that are available demonstrate that domestic violence is a widespread problem. A 2011 national study on the prevalence of violence against women found that 62.8% of women in Morocco of ages 18-64 had been victims of some form of violence during the year preceding the study.⁴ This same study found that 55% of these acts of violence were committed by a victim's husband, and the violence was reported by the wife in only 3% of such cases.⁵ Another 2011 report identified that in cases of violence against women, the perpetrator is the husband in eight out of ten cases.⁶ Furthermore, there is an overall acceptance of domestic violence and a distrust of the justice system that make it unlikely that a victim will report domestic violence. One survey found that 33 percent of respondents believed that a man is sometimes justified to beat his wife.⁷ Another study found that of those women who have experienced domestic violence, 68 percent

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⁴ Moroccan *Haut Commissaire au Plan*, "Principaux résultats de l'Enquête Nationale sur la Prévalence de la Violence à l'Égard des Femmes (version française)", (January 2011), available at http://www.hcp.ma/Conference-debat-consacree-a-l-etude-de-la-violence-a-l-egard-de-femmes-au-Maroc_a66.html (last visited October 6, 2011); see also, UN Women, "Moroccan Government Release Extensive Gender-Based Violence Study", (10 January 2011), available at <http://www.unwomen.org/2011/01/moroccan-government-releases-extensive-gender-based-violence-study/> (last visited October 6, 2011).

⁵ Id.

⁶ U.S. Department of State, Country Reports on Human Rights Practices, "2010 Human Rights Practices: Morocco", (April 8, 2011), referencing the Democratic League for Women's Rights (LDDF), available at <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154468.htm>.

⁷ UN Women, "2011-2012 Progress of the World's Women, Factsheet: Middle East and North Africa", (2011-2012), available at <http://progress.unwomen.org/wp-content/uploads/2011/06/EN-Factsheet-MENA-Progress-of-the-Worlds-Women.pdf> (last visited October 6, 2011).

expressed a distrust of the justice system.⁸

II. NGO Network Formed to Address Violence Against Women

Since 2007, The Advocates for Human Rights (The Advocates) and Global Rights have worked in partnership with a network of local Moroccan NGOs to promote a law on violence against women, which would be the first of its kind in the Arab region. The Advocates has consulted on an NGO draft law on violence against women and conducted trainings on best practices in legislation to combat violence against women as well as on legislative advocacy skills. As part of this initiative, Global Rights and its local partner NGOs have conducted grassroots level awareness-raising and focus groups with women in remote and marginalized regions across Morocco and advocated with local and national decision-makers for the promulgation of specific violence against women legislation.

This submission addresses Morocco's compliance with its human rights obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "the Convention")⁹ in the context of addressing domestic violence. The Moroccan Government has taken positive steps to raise awareness about violence against women and set up cells for receiving women victims of violence in courts across the country. Additional efforts are necessary, however, for Morocco to fulfill its obligation to address domestic violence under the Convention. This report analyzes those efforts and remaining challenges and provides recommendations for further reform.

III. Morocco's Obligations under the Convention

Morocco ratified the Convention on June 21, 1993.¹⁰ The Convention defines torture in Article 1 as severe mental or physical pain or suffering that is intentionally inflicted either by a State actor or with the consent or acquiescence of a State actor for an unlawful purpose.¹¹ The Convention also obligates Morocco to protect victims from domestic violence and hold perpetrators accountable in: Article 2 (non-derogable requirement of effective legislative, administrative, judicial or other measures to prevent acts of torture, including acts by private actors; Article 4 (acts of torture must be identified as offenses under criminal law and receive the appropriate penalty); Article 7 (criminalized cases of torture should be submitted to authorities for prosecution); Article 12 (prompt investigation by impartial and competent authorities); Article 13 (victim's right to complain and to have their complaint examined by competent authorities, State's obligation to protect victim and witnesses); and Article 14 (victims' right to redress and compensation, including rehabilitation).

The Committee against Torture has clarified that domestic violence falls under the purview of the obligations set forth in the Convention.¹² Violence against women, such as domestic violence, contravenes the Convention when the government fails to prevent such violence from

⁸ Id.

⁹ The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), available at <http://www2.ohchr.org/english/law/cat.htm>, (last visited October 10, 2011).

¹⁰ Declarations and Reservations, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en#EndDec, The Government's one reservation to Article 30, paragraph 1 of the Convention is not relevant to the issue of meeting its obligations under the Convention with regards to domestic violence.

¹¹ The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), available at <http://www2.ohchr.org/english/law/cat.htm>, (last visited October 10, 2011).

¹² UN Committee Against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, paragraph 18, available at, <http://www.unhcr.org/refworld/docid/47ac78ce2.html> (last visited October 10, 2011).

taking place and does not prosecute or punish perpetrators of the violence.¹³ As stated in General Comment No. 2:

...where State authorities or others acting in official capacity or under color of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with this Convention, the State bears responsibility and its officials should be considered authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or *de facto* permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking¹⁴

Pursuant to Article 19 of the Convention, Morocco submitted its fourth periodic report to the Committee on April 27, 2009.¹⁵ In its State Report to the Committee, Morocco did not make a single reference to violence against women or domestic violence.¹⁶

In Paragraph 16 of its List of Issues, the Committee asked the Moroccan Government to explain the legal framework on violence against women, provide statistics on the phenomenon, and describe measures taken to eradicate it.¹⁷ The Moroccan Government issued a response to Paragraph 16 of the Committee's List of Issues (hereinafter "Government's Response to the Committee's LOI").¹⁸

The Government's Response to the Committee's LOI indicates some planned improvements to better address violence against women. In general, however, the written replies are vague and

¹³ The Advocates for Human Rights, StopVaw, *available at* http://www.stopvaw.org/Convention_against_Torture_and_Other_Cruel_Inhuman_or_Degrading_Treatment_or_Punishment_CAT.html (last visited October 9, 2011); see also, Amnesty International, "Broken bodies, shattered minds: Torture and ill-treatment of women", March 2001, *available at*, <http://www.amnesty.org/en/library/asset/ACT40/001/2001/en/b68fe481-dc5f-11dd-bce7-11be3666d687/act400012001en.pdf> (last visited October 9, 2011).

¹⁴ UN Committee Against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, paragraph 18, *available at*, <http://www.unhcr.org/refworld/docid/47ac78ce2.html> (last visited October 10, 2011).

¹⁵ Consideration of reports submitted by States parties under article 19 of the Convention (5 November 2009) U.N. Doc. CAT/C/MAR/4, *available at*, <http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT-C-MAR-4.pdf> (last visited October 10, 2011).

¹⁶ Consideration of reports submitted by States parties under article 19 of the Convention (5 November 2009) U.N. Doc. CAT/C/MAR/4, *available at*, <http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT-C-MAR-4.pdf> (last visited October 10, 2011).

¹⁷ UN Committee Against Torture (CAT), List of issues to be considered during the examination of the fourth periodic report of Morocco (20 June 2011) U.N. Doc. CAT/C/MAR/Q/4, at para. 16, *available at*, http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.MAR.Q.4_en.pdf (last visited October 10, 2011).

¹⁸ Replies from the Government of Morocco to the list of issues (CAT/C/MAR/Q/4) to be taken up in connection with the consideration of the fourth periodic report of Morocco (CAT/C/MAR/4) U.N.Doc. CAT/C/MAR/Q/4/Add.1 (19 September 2011), at paras. 70-80, *available at*, <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.MAR.Q.4.Add.1.pdf> (last visited October 11, 2011).

general. The responses are largely focused on a future bill reportedly under development at the Ministry of Justice to reform the Penal Code but do not explain current remedies for victims nor imminent forms of protection or accountability for perpetrators. In addition, the Government's Response to the Committee's LOI does not confirm or provide any clarification as to the Moroccan Government's intention to satisfy its obligation to promulgate a specific and effective violence against women law as set forth in its previous declarations and in recommendations by other treaty monitoring bodies.¹⁹ As such, the measures taken by the Moroccan Government and listed in the Government's Response to the Committee's LOI still fall short of fulfilling Morocco's obligations to protect women from domestic violence and hold perpetrators accountable under the Convention.

IV. Recent Developments Related to Addressing Domestic Violence in Morocco

Currently, no specific legislation addressing violence against women exists in Morocco. Instead, violence against women is covered under the outdated, generally applicable provisions of the 1962 Penal Code (most recently amended as concerns violence against women in 2003), and rarely enforced by the justice system in cases of gender-based violence, such as sexual harassment, rape, and domestic abuse. There are, however, some recent developments in Morocco's overall legal framework that relate to the Government's fulfillment of its obligations under the Convention to prevent domestic violence, protect victims, and hold perpetrators accountable.

A. Draft bills addressing violence against women

Since 2006, the Moroccan Government has made public declarations nationally and to international bodies of its intention to promulgate a violence against women law. Over the past three years, the Ministry of Social Development, Family and Solidarity has publicly announced on several occasions that a violence against women bill was imminent. While in early 2010, it was announced that the bill was submitted to the *Secretariat General du Gouvernement* (SGG), marking the first step in the legislative process, this bill was not made public and its current status is unclear.

In March of 2010, Global Rights, along with its partners, developed an NGO draft violence against women bill and has been using it to lobby Parliamentarians and national Ministry officials.

In April 2011, the Istiqlal Parliamentary group filed a draft domestic violence bill with the Justice, Legislation and Human Rights Committee in the House of Representatives.²⁰ This bill may or may not be still in consideration.

B. The new Moroccan Constitution

In July 2011, a new Moroccan Constitution was approved by referendum and promulgated.²¹ The new Constitution contains some provisions which, if effectively implemented, could support

¹⁹ See for example Paragraph 21 of the CEDAW Committee February 2008 Concluding Comments to the most recent Moroccan State party report (Combined 3rd and 4th periodic reports), available at http://olddoc.ishr.ch/hrm/tmb/treaty/cedaw/reports/cedaw%2040/cedaw_40_morocco.pdf.

²⁰ Available at http://www.parlement.ma/parlem/loi_detaille.php?&num=1232

²¹ The official French version of the 2011 Constitution is available at http://www.sgg.gov.ma/constitution_2011_Fr.pdf (last visited October 12, 2011).

a more pro-active and positive approach to addressing domestic violence in Morocco.²² Article 19 announces equal civil, political, economic, social, cultural, and environmental rights for men and women. Article 20 provides for the right to life, while Article 21 provides for the right to personal security. Of direct relevance is Article 22, which explicitly prohibits all violations of physical and moral integrity and dignity, as well as all cruel, inhuman, and degrading treatment, *under any circumstances, whether committed by State or private actors* (emphasis added).

The new constitution reinforces the importance of NGOs by proclaiming their freedom of activity (Article 12) and of assembly and association (Article 29), citizens' right to submit petitions to public authorities (Article 15), the right to actively participate in the legislative process by presenting bills to the Parliament (Article 14), and to freedom of information (Article 27).

The new constitution also creates institutions that could potentially play a role in moving a violence against women bill forward, including an Authority for Parity and the Fight against all Forms of Discrimination (Article 19), a Consultative Council on the Family and Childhood (Articles 32 and 169), an Economic, Social and Environmental Council (Article 151), and a National Human Rights Council (Article 161).

C. Reforms to the Penal Code

There have been some reforms in the 1962 Penal Code (with the most recent amendments concerning domestic violence in 2003) that affected women's legal status and provided for protections against violence and prosecutions of the perpetrator. As mentioned, there are no laws specifically criminalizing domestic violence in Morocco's Penal Code. However, the Penal Code does contain general prohibitions that may be applied to domestic violence, including provisions establishing that a spousal relationship is an aggravating circumstance for sentencing purposes in assault and battery cases.²³

D. Changes to Family Code

The 2004 Family Code made some amendments to woman's legal status. Importantly, the Family Code raises the minimum age of marriage of women from 15 to 18.²⁴ In addition, the Family Code codifies the right to seek divorce based on "irreconcilable differences".²⁵ Otherwise, a wife, in contrast to men, must petition for a fault-based divorce on one of the following grounds: non-respect by the husband of one of the conditions in the marriage contract; harm; non-maintenance; absence; latent defect; and abstinence and abandonment.²⁶

V. Barriers That Exist That Allow Domestic Violence in Morocco to Continue

While the Government's Response to the Committees List of Issues indicates it has effective legal instruments to protect women from violence, in fact, there is no specific legislation in Morocco addressing violence against women or providing effective protection or redress from such violence. Current provisions are outdated, generalized, and not effectively enforced by the justice system in cases of gender-based violence, such as sexual harassment, rape, and domestic

²² Id.

²³ Moroccan Penal Code, Articles 404 and 414; See Government's Response to the Committee's LOI, para. 72; see also, Freedom House Inc., Special Reports <http://www.freedomhouse.org/template.cfm?page=178>

²⁴ The Moroccan Family Code, Book 1, Title 2, Chapter I, Article 19.

²⁵ The Moroccan Family Code, Book 2: Articles 94-97

²⁶ Moroccan Family Code, Book 2: Article 98

violence. This is an issue that needs to be remedied immediately. As discussed below, further changes need to be made in order for the Moroccan Government to fully meet its obligations under the Convention.

No Violence Against Women Law Exists in Morocco. The fact that Morocco has not passed such a law is a violation of Articles 2 and 3 of the Convention, as well as hindrance to the fulfillment of other obligations under the Convention. It is imperative that the Moroccan Government pass a comprehensive and specific law against domestic violence with both criminal and civil provisions as soon as possible. It is just as vital that the law passed is effective and contains all the necessary elements to fully protect victims of domestic violence and hold perpetrators accountable. As one Moroccan NGO worker stated:

One could say that the best protection to provide to the women who are victims of violence, is the enactment of a specific law for the protection of the women from domestic violence, a law which should specify the necessary mechanisms, such as the issuance of protection orders, like keeping the husband, who is the perpetrator of violence from the victim's residence and her neighborhood.²⁷

The Protective Provisions of the New Moroccan Constitution Have Not Yet Been Implemented. The new Moroccan Constitution creates important opportunities for ensuring equality between men and women and the recognition of violence against women which exists in both the public and private spheres. While its provisions have the potential to guarantee women's right to freedom from violence, it is necessary that the supremacy of both international human rights conventions to which Morocco is a party and of the Constitution over national laws is clearly established. Appropriate interpretation of the Constitution will be necessary to ensure that the protective elements it provides do not get usurped by existing laws that are harmful to women and allow perpetrators to commit violence against women with impunity. It is necessary that the positive Constitutional provisions are appropriately translated from paper and into practice to ensure true reform.

Justice System Failures to Protect Women From Domestic Violence. Morocco's Penal Code does contain general prohibitions that may be applied to domestic violence. However, gender-based violence, including domestic violence, is treated leniently and provisions are generally not enforced by the justice system. NGOs report that the failure of the Moroccan justice system actors to protect victims of domestic violence reflects a general attitude that the victims are responsible for the circumstances of the domestic violence and/or that domestic violence is a private family matter.²⁸ As one Moroccan NGO reported:

The protection which the policemen provide the women who are victims of domestic violence is limited in time and in space - it does not go beyond the investigation period related to the physical violence that takes place in the police stations. Beyond this, the policemen do not intervene to provide the necessary protection to the women who are victims of violence within the marital household, as it remains the place where the husband is left with his wife on their own.²⁹

Law enforcement officials reportedly do not respond adequately to complaints of domestic

²⁷ Written Communications to The Advocates for Human Rights from Moroccan NGOs (26 September 2011).

²⁸ Id.

²⁹ Id.

violence and continue to view domestic violence as a private matter.³⁰ Moroccan NGOs report that women face significant challenges when reporting domestic violence to the police. In general, domestic violence cases are handled with “carelessness and the lack of seriousness and rigor.”³¹ Police reportedly often do not respond to telephone calls for assistance unless there is serious injury involved.³² There is no secure hotline for domestic violence victims so “the phone calls which are received by the police officers are received on the regular lines where all phone calls are received.”³³ Additional challenges in reporting domestic violence include difficulties in accessing the police station telephone numbers (particularly for illiterate women) and the money to make the telephone calls.³⁴

When women attempt to seek protection from the police, NGOs report that frequently women must wait for a long time and, when they are finally interviewed about the incidents of domestic violence, the police ask questions with “a great deal of sarcasm” and make comments that imply that the women provoked the violence directly or through misbehavior.³⁵ The result is that a woman who attempts to seek protection from domestic violence is made to feel that “...she’s accused somehow by the police officers.”³⁶ Women who do not speak Arabic face additional hurdles; one NGO reported that police “look down” on them.³⁷ Sometimes women are even asked to pay a bribe to have cases considered, encouraged to return home and make amends or to withdraw their complaints, or even chased from the police station.³⁸

Victims of domestic violence who do manage to bring their cases forward encounter similar challenges with judges and prosecutors. One NGO did report that the “positions of the judiciary representatives towards the domestic violence ... differ according to the degree of their conviction of women’s rights and issues and the extent to which they adhere to the international conventions and covenants, as well as their integrity in their performance.”³⁹ Most, however, reported that the reactions of prosecutors and judges “remain quite similar to those of the police officers, as the same questions are always formulated and asked in the same manner in order to accuse the victim of being the direct provoking cause of the violence she was subjected to.” In general, the attitude among women served by Moroccan NGOs is that judges do not listen to them and are unfairly biased in favor of the perpetrators.⁴⁰ In particular, judges avoid arresting the perpetrator because “they dislike breaking up a family.”⁴¹ Further, victims of domestic violence and NGOs report that “the public prosecutors and judges of privileging reconciliation attempts over criminal cases.”⁴²

One NGO reported that “more than 80% of the complaints are just archived.”⁴³ “The slowness of the procedures makes women lose confidence in the authorities and give up on filing any complaints.”⁴⁴ All of these factors create in victims of domestic violence a lack of faith in the

³⁰ Freedom House Inc., Special Reports <http://www.freedomhouse.org/template.cfm?page=178>

³¹ Written Communication to The Advocates for Human Rights from Moroccan NGOs (26 September 2011).

³² Id.

³³ Id.

³⁴ Id.

³⁵ Id. One NGO included examples from victims of questions asked by police, including “Have you provoked your husband, that’s why he beats you? What did you do to him? Because he cannot beat you without reason.”

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ Id.

entire justice system and explain why women frequently don't even bother to bring cases or drop them in the end. The fact that so few VAW cases reach the courts is because of the failures of the system.

As a result of lack of action by Government officials and fear of retribution, victims are hesitant to come forward. These issues, coupled with the fact that domestic violence is not specifically listed as a clear and individualized crime in and of itself, make it increasingly difficult to obtain clear information about the prevalence of domestic violence in Morocco. As seen by the statistics offered in the Government's Response to the Committee's LOI, domestic violence is not specifically included as a crime to be pursued and prosecuted.⁴⁵

Barriers to Prosecution of Domestic Violence Under the Penal Code Although the Government's Response to the Committee's LOI indicates that all acts of violence by a husband against his wife are severely penalized, most low-level injury acts of domestic violence are not penalized. When cases of domestic violence occur, they are categorized into high- and low-level misdemeanors, both of which require the victim to suffer "disabling" injury. High-level misdemeanors occur when the victim suffers injuries that result in more than 20 days of disability, whereas low-level misdemeanors occur for victims who suffer disability for 20 days or less.⁴⁶

The language of the Penal Code requires a victim to meet a high standard to prove the *result* of the act of violence, a physical injury, rather than the act of violence itself.⁴⁷ Police generally consider domestic violence as a private family matter and only respond to complaints of domestic abuse if there is a severe injury that will meet the standard of a high-level misdemeanor or, according to some NGOs, only if the abuse leads to murder.⁴⁸ Because police generally do not go to the scene of a domestic dispute, to file a complaint, a victim must go to the police station the next business day.⁴⁹ Perpetrators of violence are rarely arrested unless the victim files a complaint and can establish critically serious injuries.⁵⁰ To meet this high standard, a victim must obtain a medical certificate establishing the severity of the injuries and have eyewitness testimony.⁵¹

Furthermore, reports from NGOs indicate that unless there is an imminent danger of death or a case of *flagrant delit*, the police are limited in their ability to intervene immediately and must wait for the authorization from the public prosecutor, which considerably slows the system's response to domestic violence.⁵² One NGO worker reported:

I once called the police station, after one of the associations' neighbors came to notify a case of abuse where the victim's screams were heard from one of the houses asking for help because her husband was threatening to kill her and was, indeed, attempting to do so. The officer at the police station requested that we come personally to the police office to advise them of the mishap. When we did so, we found out that there was only one single police officer who has to undertake all the duties and handle everything at once, besides, he refused to follow us to intervene and do the necessary, for, as he said, he had no legal

⁴⁵ Moroccan Government's Response to the Committee's LOI, paragraph 75.

⁴⁶ Moroccan Penal Code, Articles 400 and 401.

⁴⁷ Written Communications to The Advocates for Human Rights from Moroccan NGOs (26 September 2011).

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

prerogatives to intervene, and he could possibly be prosecuted according to the provisions of the penal law, on the premise that he had no legal entitlement to get into these people's house.⁵³

Insufficient Protection for Rape and Sexual Assault. The Moroccan Penal Code provides insufficient protection against rape and sexual assault, which are often unreported and prosecutions not pursued. While the Government's Response to the Committee's LOI lists types of sexual abuse that have been criminalized under the Moroccan Penal Code,⁵⁴ spousal rape is not specifically considered a crime. The Government's Response to the Committee's LOI in paragraph 79 does not answer the question of whether spousal rape is considered a crime subject to the harsh penalties referenced.⁵⁵ Indeed, it is clear from the language of the law that spousal or conjugal rape is not considered a crime in the Penal Code nor is it prosecuted in practice.⁵⁶ Women are deemed to have consented to all sexual relations with their husband by the fact of marrying them. Women do not seek help when they are raped by their husbands because of the social stigma associated with rape, the difficulty in proving rape, and the futility in reporting an act that the Moroccan Government does not even recognize it as a crime.⁵⁷

The issue of marital rape in Morocco is trivialized by the officials and executives, and is considered as being unimportant, and therefore, it is not defined nor is it acknowledged by the Moroccan law.⁵⁸

Furthermore, the Penal Code language of 'authority' of a husband over a wife promotes discrimination against women and is in direct contradiction to 2004 Family Code reforms that removed the husband as head of household, removed the wife's duty of obedience to her husband, and placed the household under the joint authority of the two spouses.⁵⁹

Rape cases in general are difficult to prove, as actual physical injuries are required to prove non-consent. Under the Penal Code, rape is considered a crime against morality and not identified as a crime against persons.⁶⁰ Women are deterred from reporting rape cases because of the lack of response from law enforcement and the criminal justice system.⁶¹ Even when a rape case is investigated, the perpetrator is not always punished.⁶²

Furthermore, sexual relations outside of marriage are illegal, and penalties are increased if one or both people engaged in the affair are already married.⁶³ Thus, there is a strong disincentive for a woman to report a rape as she risks being prosecuted for illicit sexual relations if she does not prevail in proving her rape case and she is not married to her rapist.⁶⁴

⁵³ Id.

⁵⁴ Moroccan Government's Response to the Committee's LOI, paragraph 71.

⁵⁵ Moroccan Government's Response to the Committee's LOI, paragraph 79.

⁵⁶ Written Communications to The Advocates for Human Rights from Moroccan NGOs (26 September 2011). Case study of a young woman who has repeatedly been raped and subjected to domestic violence by her husband. The victim has sought a divorce but the husband continues to rape, beat, and has threatened to kill her. She has complained to the police but her husband has not been arrested or investigated.

⁵⁷ Written Communications to The Advocates for Human Rights from Moroccan NGOs (26 September 2011).

⁵⁸ Id.

⁵⁹ The Moroccan Family Code Article 51.

⁶⁰ Morocco Penal Code, Article 486-488.

⁶¹ Written Communications to The Advocates for Human Rights from Moroccan NGOs (26 September 2011).

⁶² Id. Case study where two daughters were raped by their father. One ran away and the other tried to commit suicide. After an investigation, the father was merely arrested and released with a fine.

⁶³ Morocco Penal Code, Articles 490 and 491.

⁶⁴ Written Communications to The Advocates for Human Rights from Moroccan NGOs (26 September 2011).

A perpetrator of rape on a minor is still allowed to escape punishment if he marries the victim.⁶⁵ While the Government's Response to the Committee's LOI, indicates that this is based on the consent of the victim and the provision may be revised, this is not an adequate remedy and violates the Government's obligations under the Convention. Victims are not often in a position to offer informed consent as they may be pressured into marriage as an alternative in order to preserve family honor.⁶⁶

Lack of Access to Safe Shelters for Victims of Domestic Violence. Under Moroccan law, it is illegal to hide, harbor, or abduct a married woman.⁶⁷ This law, however, does not take into account situations where the woman is choosing to hide from her husband for her own protection such as in cases of domestic violence. Accordingly, anyone who helps an abused woman to hide or leave her husband may face prosecution under this provision. Although the Government's Response to the Committee's LOI indicates that this and related provisions may be subject to revision, they currently remain the law of the land and, in effect, make shelters illegal under the Moroccan penal code. Until this provision is repealed, the Government's reference to providing women access to shelters in the Government's Response to the Committee's LOI is meaningless.⁶⁸ Such laws promote the subjugation of women and deny women access to legal remedies and protections as required under the Convention.

Further, the Family Code provides that if "either spouse evicts the other from the marital home without justification, the Public Prosecutor shall intervene to return the evicted person to the house immediately and shall take all necessary measures to guarantee his or her safety and protection."⁶⁹ Returning a woman who has been effectively evicted due to domestic violence back into the abusive situation is not, however, a solution when the justice system actors cannot or will not provide for her safety in the home.

The lack of access to shelters for victims of domestic violence results in additional pressure on women to remain in dangerous situations. There is generally no place for women to go other than to the homes of family members, friends, or neighbors. One NGO reported that "most of the time, the friends and the neighbors refuse to receive the victim, lest the abuser might attack and prosecute them on the premise of the abduction allegation."⁷⁰ Family members may refuse to take in the woman and "often try to intervene in order to reconcile both spouses and return the wife to her marital household if she has children."⁷¹ Even when they do provide safety, family members often "make them feel that they constitute a burden, and consequently, the woman who is a victim of domestic violence, becomes doubly victimized by her abuser first, and then by the contempt, denigration, and insults of her surrounding."⁷²

⁶⁵ Morocco Penal Code, Article 475; see also, U.S. Department of State, Country Reports on Human Rights Practices, "[2010 Human Rights Practices: Morocco](http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154468.htm)", (April 8, 2011), available at <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154468.htm> (last visited October 10, 2011).

⁶⁶ U.S. Department of State, Country Reports on Human Rights Practices, "[2010 Human Rights Practices: Morocco](http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154468.htm)", (April 8, 2011), available at <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154468.htm> (last visited October 10, 2011).

⁶⁷ Morocco Penal Code, Article 494- 496.

⁶⁸ Moroccan Government's Response to the Committee's LOI, paragraph 76.

⁶⁹ Morocco Family Code, Article 53.

⁷⁰ Written Communications with The Advocates for Human Rights (26 September 2011).

⁷¹ Id. "There is rather a preference not to go to the court, and wait instead for the husband to come seeking reconciliation, and then start all the pressures which are manifested on the victim for the latter to withdraw the complaint if there is any, and be persuaded to turn the page and become reconciled with her partner."

⁷² Id.

A few shelters do, however, exist in Morocco, although the capacity remains very limited and they are unable to meet the requests for accommodation.⁷³ There are also government shelters for women that provide housing for women with social and economic problems, although not specifically for victims of domestic violence. Reportedly, the limited number of shelters run by NGOs often have conditions placed on their use that limit their ability to effectively serve domestic violence victims. Stays are generally short-term, and women frequently may not bring their children, or more than a certain number of children, or male children over a certain age.⁷⁴ “When the woman who is victim of violence leaves the marital household, she often abandons the children to the husband who is the perpetrator of violence, for taking the children with her would mean an additional burden she sometimes can not assume.”⁷⁵

Cells Lack Resources to Provide Effective Assistance. The Cells referred to in the Government’s Response to the Committee’s LOI are multi-sector Committees of justice, health, and law enforcement personnel and local NGO members established at each Court of First Instance jurisdiction, with designated members in the local hospital, courthouse, and police station, and under the coordination of the local Public Prosecutor, charged with providing services for women victims of violence. Based on reports from local NGOs, these cells are often not effective or functioning. Reports indicate that these Cells are severely under-resourced and understaffed, as the Government has prioritized the number of such cells established in name rather than quality of services provided. In one courthouse in a major city, for example, the violence against women Cell has the same room space as the driver’s license staff. One NGO referred to these Cells as “just a sign on the door.” The overall effectiveness of these Cells is severely called into question as many cases are not followed up on, and women find it better to file the cases directly with the courthouse.⁷⁶

Provisions of the Family Code Related to Court-Mandated Reconciliation Remain Problematic. While the 2004 reforms to Morocco’s Family Code did make amendments to woman’s legal status, implementation of the new laws has been unsatisfactory and problematic provisions still remain.

Although the Family Code broadened a woman’s right to seek divorce, the right to do so is limited by court-mandated efforts at reconciliation.⁷⁷ This is a dangerous requirement for battered women and a violation of the right to effective remedies and protection under Article 2 of the Convention. In addition, local NGOs reports suggest that the rate of divorce for irreconcilable differences is on the rise because of the difficulty of proving harm to obtain a divorce for cause.⁷⁸ This effectively limits the access for women victims of violence to a fault-based divorce and corresponding compensation which is already very difficult for women to obtain.⁷⁹

These provisions, while seemingly protective, maintain discrimination against women, especially

⁷³ Written Communications with The Advocates for Human Rights (26 September 2011). One NGO reported that there is only one shelter in entire region of Taza, Al hoceima, Taounate and Guercif. This shelter was only recently inaugurated (on October 10, 2010) and its accommodation capacity remains very limited.

⁷⁴ Written Communications with The Advocates for Human Rights (26 September 2011).

⁷⁵ Id.

⁷⁶ Direct interviews and written communication from Moroccan partner NGOs.

⁷⁷ Moroccan Family Code, Book 2: Articles 94-97

⁷⁸ See the 2006 Annual Report, Ligue Démocratique des droits des femmes (LDDF); See also, Written Communications to The Advocates for Human Rights from Moroccan NGOs (26 September 2011), Case study of a woman whose husband is an abusive drug addict. Police have failed to arrest the husband and the woman has experienced incredible difficulties in trying to receive a divorce.

⁷⁹ Written Communications to The Advocates for Human Rights from Moroccan NGOs (26 September 2011).

considering social taboos against divorce and a society wherein many women are economically dependent on their husbands. These provisions are in violation of the Government's obligation to take necessary steps to prevent domestic violence under the Convention.

VI. Recommendations

The Advocates, along with Global Rights and their network of local partner NGOs, makes the following recommendations:

A. Changes to Domestic Legislation

1. Morocco should effectively implement its new Constitution

- Morocco should establish the supremacy of international human rights conventions to which Morocco is a party and of the Moroccan Constitution over national laws.

2. Morocco should pass a Violence Against Women Law

The Moroccan Government should promulgate without delay a specific violence against women law that contains both criminal and civil provisions. Care should be taken that the new law does not contain provisions that would, in effect, cause further harm to domestic violence victims. The Moroccan Government should collaborate with a wide range of NGOs and experts in the field to ensure that any draft law contains the essential elements of an effective domestic violence law to adequately protect victims and hold perpetrators accountable, while taking care to not cause further harm to victims.⁸⁰

Reforms creating a law combating violence against women should specifically:

- expand the definition of violence against women to include physical, sexual, psychological, and economic violence, as well as constraint and deprivation of liberty;
- ensure that there is effective mandatory police and judicial training on the issues of primary aggressors and correct interpretation of psychological and economic violence. Extreme care must be taken to ensure that these provisions are not used against victims for nominal acts and cause further harm;
- include a large scope of relationships covered by the law that are not limited to spouses in legal marriage, but includes others such as fiancés and ex-fiancés, and ex-husbands;
- clearly and specifically criminalize acts of domestic violence;
- eliminate the high threshold requirement of a 21-day incapacity certificate for women to be able to bring a complaint for violence;
- establish civil remedies including comprehensive protection orders that are part of the civil procedure code instead of integrated into the Penal Code;
- include an emergency or ex parte order for protection within a fully developed order for protection civil remedy;
- allow courts, in protection orders, to at least temporarily order child custody and

⁸⁰ Additional information on drafting legislation on domestic violence and other forms of violence against women can be found at UN Women's Global Knowledge Centre on Ending Violence Against Women and Girls, *available at*, <http://www.endvawnow.org/en/articles/393-core-elements-of-legislation-on-domestic-violence.html> (last visited October 9, 2011); see also, Drafting Domestic Violence Laws, StopVaw, The Advocates for Human Rights, *available at*, http://stopvaw.org/drafting_law_on_domestic_violence.html (last visited October 9, 2011).

support to the non-violent parent, and allow courts to enter a protection order as to the child;

- create a criminal offense for violation of the order for protection with a cross-reference to any relevant provisions of the criminal laws, such as punishment for various level of offenses;
- create enhanced penalties for multiple violations of the order for protection;
- prohibit perpetrators from possessing a firearm;
- provide for enhanced penalties for other domestic violence-related criminal offenses;
- include a statements of rights of complainant/survivors and services available to them;
- forbid the use of the newly created Family Mediation Centers in cases of violence against women;
- increase police resources to respond to violence against women, including an adequate number of and sufficiently trained personnel and facilities;
- increase police powers to intervene in violence against women cases, in particular allowing immediate response without the need for prior authorization from the Public Prosecutor and compelling the police to move to the scene of violence against women rather than requiring women to go to the police station to file a complaint;
- take into account the special needs of rural and Amazigh women and ensures access to government services and resources to provide intervention and protection in violence against women cases;
- modify evidence requirements in violence against women cases, including eliminating the need to show actual physical injury and the requirement of eyewitness testimony;
- include provisions on implementation of the law, including training of relevant professionals, monitoring and evaluation of the law, and funding of the implementation of the law;
- ensure that inter-agency task forces that create a coordinated community response to domestic violence are established and adequately funded to provide for effective services.

3. Morocco should amend the Penal and Family Codes

Reforms to the Penal and Family Codes should:

- amend the Penal Code to explicitly criminalize conjugal rape;
- abolish criminal prosecutions for illicit sexual relations;
- eliminate laws that criminalize those who assist or harbor married women;
- abolish all provisions that allow for polygamy;
- abolish provisions that allow a perpetrator of rape to escape prosecution for marrying his victim;
- eliminate discriminatory legal provisions that place the burden of proof solely on the victim of violence.

B. Justice and Legal Sectors

- Morocco should ensure that the State adequately and consistently supports and funds NGOs to continue regular trainings on women's human rights, domestic violence and implementation of the law for police, prosecutors, judges, social services, and child protection authorities.
- Morocco should continue working to increase the coordinated community response among NGOs, police, courts, the DSA, health care providers and the media.

C. Funding

- Morocco should continue to provide NGOs with sufficient and regular funding to realistically carry out their work on domestic violence and trainings.

D. Public Education and Prevention

- Morocco should support comprehensive prevention programs and educational programs in schools and other community organizations to change the public acceptance of domestic violence.

About the Organizations

The Advocates for Human Rights (The Advocates) is a non-profit non-governmental organization that seeks to implement international human rights standards to promote civil society and reinforce the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world. The Advocates' Women's Human Rights Program documents and reports on violence against women and partners with local non-governmental organizations (NGOs), women's rights advocates, and legal professionals to advance legal reform on this issue. The Advocates has worked extensively in and published 17 reports on violence against women in CEE/FSU and Morocco, as well as in Nepal, Mexico, Haiti, and the state of Minnesota in the U.S. Women's Program work has focused primarily on domestic violence, one of the most pervasive forms of violence and a violation of the fundamental human right to be free from violence. The Advocates' widely used Stop Violence Against Women website (www.stopvaw.org) is a forum for information, advocacy and change.

Founded in 1978, **Global Rights** is an international human rights capacity building organization that works side by side with local activists in Africa, Asia, and Latin America to promote and protect the rights of marginalized populations. Through broad-based technical assistance and training, Global Rights strengthens partners to document and expose human rights abuses, conduct community outreach and mobilization, advocate for legal and policy reform, and provide legal and paralegal services. At the core of our programming is a deep commitment to increase access to justice for poor and marginalized groups, promote women's rights and gender equality, and advance racial and ethnic equality. In addition to this, we have two special initiatives—lesbian, gay, bisexual, transgender, and intersex rights and natural resources and human rights. Global Rights has operated a Rabat-based Maghreb office that since 2000 has collaborated with local NGOs and lawyers in Morocco, Algeria and Tunisia to promote women's legal and human rights.