



المجلس الوطني لحقوق الإنسان
ⵎⴰⵔⴻⵎ ⵏ ⵎⴰⵔⴻⵎ ⵏ ⵙⵉⵔ ⵏ ⵙⵉⵔ ⵏ ⵙⵉⵔ
Conseil national des droits de l'Homme

FIGHTING VIOLENCE AGAINST WOMEN

CONTRIBUTION TO PUBLIC DEBATE - Issue # 4

FIGHTING VIOLENCE **AGAINST WOMEN**

Contribution to public debate - issue # 4

INTRODUCTION

1. For the last four years, the world has come to see violence against women as a human rights violation, a gender-based discrimination and an assault on the freedom and dignity of women and girls.

2. Morocco has progressed over the years in empowering women and girls and promoting their situations and rights, which were further consolidated by the 2011 Constitution, which prohibits discrimination, particularly gender based discrimination and discrimination on grounds of personal circumstances. Article 22 of the Constitution stipulates that everyone shall have the right to physical and moral integrity, which shall not be undermined under any circumstances by any person, private or public; that no one shall inflict upon another, under any pretext whatsoever, any cruel, inhuman or degrading treatment which undermines their dignity.

3. However, violence against women and girls prevents them from enjoying the rights they have under the Constitution, the Family Code and other relevant legislations. Fighting violence against women and girls is a long-term project, given the impunity of perpetrators and the large social acceptance of gender-based violence that is a manifestation of *"historically unequal power relations between men and women ... [and] one of the crucial social mechanisms by which women are forced into a subordinate position compared with men"*¹.

4. Indeed, the national survey on the prevalence of violence against women aged between 18 and 64, conducted in 2009 by the Office of the High Commissioner for Planning, gives an indication of the magnitude of this phenomenon. Nearly 6 million Moroccan women had experienced, at one time or another in their lifetime, a form of violence: psychological violence (4.6 million women), physical violence (3.4 million), sexual violence (2.1 million), violations to women's individual freedoms (3 million) and economic violence (178,000). If such violence occurs at all ages and in all areas, urban women however are more victims of violence in public spaces while rural women are more exposed to domestic and family violence. In all cases, the survey shows that women usually wearing short modern outfits are subject to violence more than women who wear *djellabas* or similar traditional outfits.

5. The fight against impunity is now a priority for international and regional organizations which see the fight against violence as a State responsibility. As part of the international campaign to eliminate violence against women, led by the United Nations Secretary General (2008-2015)², the UN has urged States, in its resolution 63/155 of 2008³, to adopt a systematic, comprehensive, multi-sectoral and sustained approach to end impunity for

perpetrators of violence against women. The same resolution requires States to establish a national strategy and an action plan to abolish all discriminatory provisions in their domestic law and penalize all types and acts of violence against women.

6. Morocco, a country which has a pioneering institutional and civil society experience in Arab countries in terms of community mobilization, awareness-raising and training, must implement specific legislation of violence against women commensurate with its ambitions and efforts and proportionate to the magnitude and specificity of the phenomenon in order to make Morocco's recent achievements a reality.

7. Fulfilling its mandate and missions, and as part of contributing to the current debate on the Violence against Women Bill, submitted by the Ministry of Solidarity, Women, Family and Social Development, the National Human Rights Council (CNDH) recommends that the forthcoming Violence against Women Act should take into account the following observations and recommendations.

I. ADOPTING THE INTERNATIONALLY-RECOGNIZED REFERENCE FRAMEWORK AND DEFINITION OF VIOLENCE AGAINST WOMEN

2

8. The abovementioned act must define violence based on the following standards and concepts:

a. The World Conference on Human Rights (Vienna, 1993), which recognized, in the Vienna Declaration and Programme of Action, that violence against women constitutes a violation of fundamental human rights, and called for the appointment of a Special Rapporteur on Violence against Women.

b. Article 1 of the Declaration on the Elimination of Violence against Women, adopted by the UN General Assembly in 1993, which defines violence against women as "*any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life*". Violence against women should be understood to encompass, but not be limited to: "*physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs*".

c. General Recommendation No. 19 of the Committee on the Elimination of All Forms of Discrimination against Women that states that gender-based violence is directed against a woman “because she is a woman”. As such, “gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention [Convention on the Elimination of All Forms of Discrimination against Women]”.

d. The Istanbul Convention (2011)⁴ of the Council of Europe, in which State parties recognize that the realization of equality between women and men is a key element in the prevention of violence against women, which defines domestic violence as “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.

e. The Preamble to the UN Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006, which recognizes that “women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation”.

f. The “Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice” Annex of resolution 52/86 dated 12 December 1997, in which the UN General Assembly urges Member States “(a) To periodically review, evaluate and revise their laws, codes and procedures, especially their criminal laws, to ensure their value and effectiveness in eliminating violence against women and remove provisions that allow for or condone violence against women; (b) To review, evaluate and revise their criminal and civil laws, within the framework of their national legal systems, in order to ensure that all acts of violence against women are prohibited and, if not, to adopt measures to do so.”⁵

g. UN General Assembly resolution 52/86 on “Crime prevention and criminal justice measures to eliminate violence against women” which calls on States “(a) To review, evaluate and revise sentencing policies and procedures in order to ensure that they meet the goals of: (i) Holding offenders accountable for their acts related to violence against women; (...) iv) Promoting sanctions that are comparable to those for other violent crimes; (...) (c) To take into account in the sentencing process the severity of the physical and psychological harm and the impact of victimization, including through victim impact statements where such practices are permitted by law; (d) To make available to the courts through legislation a full range of sentencing dispositions to protect the victim, other affected persons and society from further violence; (e) To ensure that the sentencing judge is encouraged to recommend treatment of the offender at the time of sentencing; (...) (h) To protect the safety of victims and witnesses before, during and after criminal proceedings.”⁶

h. The Beijing Declaration and Platform for Action, adopted in 1995, which considers violence against women among the twelve critical areas of concern requiring priority action, as well as the “Agreed conclusions on the elimination and prevention of all forms of violence against women and girls”, adopted by governments at the 57th session of the Commission on the Status of Women (CSW, 2013).

i. Resolutions of the UN General Assembly on the intensification of efforts to eliminate all forms of violence against women (2012) and trafficking in women and girls (2012)

9. Therefore, given its structural nature, violence against women must be considered as a human rights violation and gender-based discrimination. This violence concern all ages and can take place in all places -home, family, workplace, educational settings, training places, places of detention and public spaces- and can be perpetrated by a natural person, a legal person or State officials.

II. OUTLINING THE OBJECTIVES OF THE ACT: STATE RESPONSIBILITY IN COMBATING GENDER-BASED VIOLENCE (DUE DILIGENCE)

4

10. Under international human rights law, as it is laid down by international standards and declarations, particularly the Declaration on the Elimination of Violence against Women, States should “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”⁷. A law criminalizing violence against women and punishing acts perpetrated by private persons is not sufficient, in itself. Governments have a duty to make their functions more efficient in order to effectively ensure that acts of domestic violence are investigated and punished de facto.

11. In its General Comment No. 31, the Human Rights Committee has recognized that “there may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities”⁸.

12. In its General Recommendation No. 19, the CEDAW Committee notes that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation” for the victims.

13. In its *Şahide Goekce v. Austria* Communication, the CEDAW Committee states that *“Although (...) it is necessary in each case to determine whether detention would amount to a disproportionate interference in the basic rights and fundamental freedoms of a perpetrator of domestic violence, such as the right to freedom of movement and to a fair trial, the Committee is of the view, as expressed in its views on another communication on domestic violence, that the perpetrator’s rights cannot supersede women’s human rights to life and to physical and mental integrity”*⁹.

14. In its judgment of the case of *Bevacqua and S. v. Bulgaria*, the European Court of Human Rights (ECHR) held that there was a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights because the Bulgarian authorities fail to take the necessary measures to punish and control the applicant’s husband. The behavior of the authorities, who refused to institute criminal proceedings against the applicant’s husband for his continuing violence claiming that that it was open to the applicant to bring private prosecution proceedings, was sanctioned by the Court which stressed that the authorities’ view that the dispute between the applicant and her husband concerned a *“private matter”* was incompatible with their positive obligations to secure the applicant’s secure the enjoyment of the applicants’ Article 8 rights¹⁰.

In the case of *Opuz v. Turkey*, the ECHR held -for the first time in a case of domestic violence- that that there has been a violation of Article 14 of the European Convention read in conjunction with Articles 2 and 3. Bearing in mind its findings *“that the general and discriminatory judicial passivity in Turkey, albeit unintentional, mainly affected women, the Court considers that the violence suffered by the applicant and her mother may be regarded as gender-based violence which is a form of discrimination against women. Despite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors, as found in the instant case, indicated that there was insufficient commitment to take appropriate action to address domestic violence”*¹¹.

15. Article 16 of the Convention on the Rights of Persons with Disabilities calls on States to *“take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive”*.

16. These responsibilities and obligations are incumbent on all perpetrators of violence, namely state actors, private or legal persons, and encompass all types and forms of violence against women and girls.

III. COMBATING GENDER-BASED VIOLENCE AND DISCRIMINATION

17. Taking into consideration the national and international standards and Morocco's national and international commitments, the Council recommends taking all necessary measures, including by legislations, regulations or public policies, to:

- a. Recognize that violence against women is a gender-based violence because it is a form of gender based discrimination, a manifestation of historically unequal power relations between men and women and affirm that it constitutes a violation of the rights and fundamental freedoms of women and girls;
- b. Refrain from engaging in violence against women and girls and exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence perpetrated by the State or private persons and ensure that authorities, officials and state institutions as well as other actors acting on behalf of the State behave in accordance with this obligation;
- c. Adopt or amend laws to criminalize violence against women and girls and, for this purpose, take measures to ensure protection immediately for the victims, investigate, prosecute and adequately punish perpetrators, in order to put an end to impunity;
- d. Take into account the preamble and Article 19 of the Constitution to repeal all legislations, regulations and public policies that directly or indirectly discriminate against women and take necessary legislative, regulatory and public policy measures to promote gender equality and parity between men and women in all areas;
- e. Setting fighting against domestic violence/spousal abuse as a priority and adopt, reinforce, and implement legislations to prohibit and punish this form of violence and provide for appropriate legal protection and prevention measures.

IV. COORDINATION, MONITORING AND EVALUATION

18. The future Violence against Women Act should provide for the establishment of monitoring and coordination mechanisms that involve all institutional and non-institutional stakeholders, particularly by:

- a. Giving the yet-to-be created Authority for Parity and the Fight against All Forms of Discrimination against Women, referred to under Articles 19 and 164 of the Constitution, a mandate to receive and investigate, if need be, complaints from the victims and monitor and assess the implementation of the Act and public policies aiming at combating violence against women and girls;

- b. Encouraging inter-institutional coordination and cooperation to ensure coordinated, thorough and appropriate response against cases of violence and ensure effective cooperation between all national government agencies and all other institutions and stakeholders;
- c. Incorporating provisions to ensure the systematic and coordinated collection and dissemination of data and information on the prevalence, causes and consequences of gender-based violence acts. Data must be collected and established in accordance with the definition of gender-based violence and disaggregated by sex, age, relationship between the perpetrator and the victim, where the violence act is perpetrated, personal circumstances of the victim and other relevant factors;
- d. Involving, in accordance with the provisions of the Constitution, local and national civil society organizations working against gender-based violence in monitoring and assessing the implementation of the Violence against Women Act and in all mechanisms to be established for such purposes;
- e. Introducing provisions to ensure full and sustained funding for law enforcement and mandatory training on the fundamental human rights of women and girls and violence against them for law enforcement officials, including police, prosecutors, lawyers, court staff, health professionals and social workers;
- f. providing in the law for the assessment of public policies aiming at fighting against violence and the presentation of an annual report by the Government to the Parliament.

V. SUPPRESSING AND PUNISHING INTENTIONAL VIOLENCE AGAINST WOMEN

- 19.** Expressly considering, in the law, intentional acts of violence against women and girls, including those committed by spouses, as crimes, mainly the acts that are not criminalized and/or the acts that are not clearly defined in the current penal legislation, by:
- a. Redefining rape as a non-consensual sexual intercourse that involves forced vaginal, anal or oral penetration, with any part of the body or an object, and providing for severe penalties for the rape of minors, persons with disabilities, persons with weak mental faculties and pregnant women as well as for marital rape;
 - b. Criminalizing forcing a woman or a girl to have a non-consensual sexual intercourse with a third person;
 - c. Amending the provisions of the Family Code to prohibit child marriage under 18 years of age, criminalizing any act aiming at forcing an adult woman or a girl (less than 18 years

of age) to enter into marriage, and providing for the civil liability of accomplices who help plan and/or conclude such marriage;

d. criminalizing and punishing any unwanted verbal, non-verbal or physical sexual act, aiming at or violating woman's dignity, particularly when such behavior creates an intimidating, hostile, degrading, or humiliating environment;

e. Considering as misdemeanors or petty offenses, as appropriate, some forms of psychological or moral violence, including the act of subjecting a woman or a girl in public, private or professional spaces to repeated acts or verbal abuses that aim at or lead to the degradation of their living conditions and may affect their rights and dignity or their physical or mental health;

f. Considering as misdemeanors or petty offenses, as appropriate, any threatening behavior directed against a woman/girl causing her to fear for her safety or freedom of movement;

g. Criminalizing trafficking in persons, especially women and girls, for sexual and economic exploitation purposes, in order to better protect the rights of women and girls, prosecuting and convicting the perpetrators and intermediaries and ensuring to the victims the protection given to witnesses and the possibility of voluntary repatriation, regardless of their involvement in any other judicial proceedings;

h. Criminalizing any behavior aiming to circumvent the provisions of the Family Code relating to the right of the custodial mother to the marital home;

i. Criminalizing aiding or abetting in the above-mentioned offenses;

j. Considering as misdemeanors some forms of violence in the workplace, mainly refusing, in violation of the law, to hire the victim by contract, cancelling her post or breaching the general terms of employment, including underestimating her work, threatening, intimidating or humiliating her at the workplace.

The above offenses should apply regardless of the nature of the relationship between the victim and the offender.

20. Ensuring that the offenses established in accordance with the Act are punishable by effective, proportionate and dissuasive penalties, taking into account their severity and the harm done to victims and survivors

a. Prohibiting, as regards all forms of violence falling under the Act, alternative dispute resolution, including mediation and conciliation;

b. Taking into account, when ordering the payment of a fine, the ability of the offender to meet his financial obligations toward the victim;

- c. Considering rape and other sexual violence acts as aggravating circumstances when they are intentionally perpetrated against a woman or a girl by a civil servant or any other person acting in an official capacity or at his instigation or with his consent or acquiescence;
- d. Considering the following acts as aggravating circumstances: transforming, concealing, destroying, withholding or misappropriating objects, personal documents, assets and securities, property rights or economic resources intended to cover the needs of the victim and any damage to the victim's jointly or separately owned property;
- e. Imposing by law heavier sentences in the following cases of violence: when the offender (1) is the current or ex husband, (2) a family member, (3) a person living with the victim, (4) a person who abused his authority, (5) recidivism, (6) when the act is perpetrated against a person made vulnerable by particular circumstances, (7) when the act is perpetrated against a child or in the presence of a child, (8) when the act is perpetrated by many offenders, (9) when the offense is preceded or accompanied by extreme levels of violence, (10) when an arm is used or when there is a threat to use one, (11) when the act causes serious physical or psychological harm to the victim, (12) and when the offender has previously been convicted of similar acts.

21. Guaranteeing the rights of victims and witnesses in the investigation and prosecution procedures:

- a. Encouraging any person who witnesses an act of violence falling under this Act or has reasonable grounds to believe that such an act could be committed or that further violence is expected to report the act to the competent organizations or authorities;
- b. Waiving the obligation of confidentiality for some professionals in order to enable them to report to the competent authorities or to call them as witnesses of any serious act of violence that is committed or likely to be committed;
- c. Starting without undue delay police investigations and judicial proceedings relating to all forms of violence covered by the scope of this Act, taking into account the fundamental principles of human rights, the specificities of gender-based violence and the rights of the victim in the all stages of penal procedure;
- d. Ensuring rapid and appropriate response of law enforcement officials to all forms of violence covered by the scope of this Act, by taking quick and appropriate prevention and protection measures, including the preventive operational measures, the collection of evidence and the assessment of the gravity of the situation and the risk of recidivism so as to ensure, if necessary, coordinated security and support for the victims and survivors;
- e. Setting the limitation period for the prosecution of the offenses referred to in the Act to run for a sufficient period of time proportional to the seriousness of the offenses, in

order to allow the efficient initiation of proceedings when the victim comes of age if she was a minor when the act was committed.

VI. PROTECTING THE RIGHTS OF VICTIMS AND SURVIVORS

22. Providing for legislative or other necessary measures to protect the rights and interests of the victims at all stages of the investigations and judicial proceedings, in particular by:

- a. Giving the office of the public prosecutor the power to institute criminal proceedings (ex officio) and not necessarily at the request of the victim, immediately after filing the complaint by the victim or, if necessary, by a victim care unit, the Authority for Parity and the Fight against All Forms of Discrimination, centers counseling and supporting women victims of violence or private individuals;
- b. Ensuring the safety of the victims, their families and the witnesses against intimidation, retaliation or being victims again;
- c. Informing the victim when the perpetrator escapes or is temporarily or definitely released, at least in cases where the victims and their family might be in danger;
- d. Informing the victims of their rights, the available services, the measures taken to address their complaints, the charges against the perpetrators, the general progress of the investigations or proceedings, their role in the procedure and the decision made concerning their cases;
- e. Giving the victims the opportunity to be heard, to supply evidence and to give their views and express their needs and concerns, directly or through an intermediary, and taking them into account;
- f. Providing for measures to protect the victim's privacy and reputation and prevent contact between victims and offenders in the court and the judicial police premises;
- g. Taking special measures to protect children when they are victims of or witnesses to violence against women and domestic violence, taking into account the best interests of the child;
- h. Taking necessary legislative or other necessary measures to protect the rights and the needs of children who witness any form of violence: deciding custody and visitation rights, denying visitation rights if contrary to the will of the child, and providing psychosocial and social support tailored to the age of the child.

VII. CIVIL ACTION, REPARATION, ACCESS TO JUSTICE AND CARE SERVICES FOR VICTIMS/SURVIVORS

23. Taking legislative and other necessary measures to ensure that victims/survivors have easy and timely access to reparation for the damages suffered, particularly by:

- a. Setting up specialized units within the judicial police and in each public prosecutor's office to investigate violence against women and prosecute the alleged perpetrators in accordance with relevant international standards;
- b. Establishing specialized divisions within each court of first instance and each court of appeal, giving them exclusive jurisdiction, both in criminal and civil cases, to deal with all acts and cases that fall within the scope of the Violence against Women Act;
- c. Giving victims the right to adequate civil remedies against the perpetrator and the rights appropriate reparation, and ensuring they are implemented quickly and effectively. When the offender is unknown or insolvent, the State should award adequate compensation to victims/survivors with serious bodily injury or health impairment, when no other sources are available;
- d. Taking the necessary legislative or other necessary measures, in accordance with the general principles of international law, to give the victims the right to sue the perpetrator, and give them the right to go for adequate civil remedies against the State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers;
- e. Making sure culture, custom/tradition or religion is not used, in all stages of court proceedings, to justify any acts of violence punishable by this Act;
- f. Introducing a provision in the Family Code to also ensure social assistance for children under the parental authority or the custody of a person that was victim of an act of violence, in accordance with terms to be defined by regulation;
- g. Introducing, in the Law No. 04-00 on compulsory basic education, a provision allowing school immediate enrollment for children who change residence following a gender-based violence act;
- h. Providing in the Labor Code for the right of women, victim of gender based violence, to have their working hours reduced or rescheduled or the right to job relocation, when they have a protection order. The Council also suggests that the Labor Code should include a provision to consider absence from work or lateness following physical or psychological violence as justified.

24. Making sure victims/survivors of gender based violence receive adequately support and information services supervised by trained professionals, by:

a. Giving judicial police officers and public prosecutors the mandate to inform victims, by any means, of their right to be protected by law as well as their right to seek compensation for damages, to be plaintiff an action initiated by the office of the public prosecutor; or to initiate an action against him in civil courts;

b. Giving judicial police officers and public prosecutors the mandate to inform victims of their right to a protection order; under the conditions defined by the Act;

c. Providing victims wishing to take civil action with legal assistance, free legal aid or the assistance of a public facility or a victim assistance civil society organization;

d. Implementing and providing care and support services for the victims and survivors, mainly:

- Information on support services, complaint and appeal national and local mechanisms, available legal measures, with easy and accessible language;

- Legal advice and psychological support;

- Helplines (round-the-clock, 24/7) in police and gendarmerie stations;

- Supporting victims in filing their complaints, financial assistance, and access to social, health and education services;

- Immediate and short/long-term specialist support services, such as appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for victims, especially women and their children;

- Appropriate and easily accessible centers for rape and sexual violence, in sufficient numbers, in medical and hospital units to provide victims with medical and forensic examination and trauma support services.

VIII. PROTECTIVE MEASURES

25. Taking all legislative or other necessary measures to give the “*juge déferé*” (the interim relief judge) the power to take measures to protect women and girls against violence, particularly by:

a. Issuing appropriate and immediate orders to protect women victim of violence acts punishable in the Act, without undue financial or administrative burdens. These orders should be issued for a specified period or until modified or discharged; where necessary, issued on an *ex parte* basis with immediate effect; available irrespective of, or in addition to, other judicial proceedings; allowed to be introduced in subsequent judicial proceedings;

b. Considering as sufficient evidence, to issue a protection order, the testimony of a third party or the complainant, after taking the legal oath. No independent evidence (police, medical or otherwise) shall be required to issue a protection order when the complainant testifies in person or submit an oral/written statement, after taking the legal oath;

c. Proceeding with the investigation or prosecution of offenses established in accordance with the Act even if the victim retracts her statement or withdraws her complaint;

d. And giving specialized governmental and nongovernmental organizations and domestic violence counselors the chance to assist and/or support the victims, upon their request, during investigations and judicial proceedings.

26. In cases of domestic/spousal violence, all legislative or other necessary measures should be taken to give the competent authorities the power to:

a. Order, in situations of immediate danger, the perpetrator to vacate the residence where the victim or the person at risk lives for a sufficient period of time and to prohibit and warn the perpetrator against entering the residence or contacting the victim or the person at risk;

b. Refrain from issuing any mutual protection orders;

c. Add in Book I of the Family Code a specific chapter on victim protection procedure in order to give the family judge a central role in the protection of the victims of spousal/domestic violence;

d. Incorporate an article in the Penal Procedure Code to give the family judge the mandate to rule on the measures proposed to be added in the Family Code and act as the the “juge délégué” interim relief judge;

e. Any breaches of the restraining or protection orders shall be punishable by proportionate and dissuasive criminal or other legal sanctions.

IX. PREVENTION MEASURES

27. Gender related stereotypes and prejudices can “legitimize” discrimination and violence against women. The State has thus the responsibility to take all repressive measures, incentives and support measures to eradicate prejudices and all other practices based on the idea of the inferiority of women and/or on stereotyped roles for women and men.

28. Promoting the culture of equality and human rights at all levels of education, through the following:

- a. Including in both formal and informal curricula and textbooks, at all levels of education, teaching material adapted to the learners evolving capacity and to teach them the constitutional principles relating to nondiscrimination, gender equality and parity between men and women in all areas, the equal right of women and girls to dignity, and nonviolent conflict resolution and effective inter-personal communication;
- b. Implementing awareness-raising, training and in-service training programs for the educational staff: teachers, inspectors (largely involved in putting together programs and textbooks), school counselors and heads of educational institutions on the abovementioned principles and values, and strengthening their capacities to early detect domestic and family violence;
- c. Institutionalizing the gender-based approach mainstreaming at all education levels, taking into account the real meaning of this approach deeply-rooted in the principles of women's human rights. The crosscutting nature of the gender-based approach can help make the culture of equality and human rights in general the structuring frame of the education system.

29. Including in the missions of audiovisual media, at all levels, the fight against gender stereotypes and the promotion of constitutional principles of gender equality and parity, by:

- a. Adding to the missions of the High Authority of Audiovisual Communication (HACA) the mandate to monitor and ensure that all audiovisual operators abide by the constitutional principles of gender equality, parity and women's dignity. This mission should be implemented through the program monitoring mechanisms;
- b. Introducing in the Audiovisual Communication Act of 2005¹², expected to be reviewed or amended in 2014, an explicit reference to "*respect for the equal rights of men and women, as guaranteed by the Constitution*" as well as the obligation of audiovisual communication operators to fight gender stereotypes, violence and direct or indirect gender-based discrimination;
- c. putting emphasis in the gender violence act, without prejudice to the penalties provided by the laws in force, that programs and entirely or partly rebroadcasts should not glorify violence, incite to gender based discrimination or any other discrimination, and/or include content perpetuating gender stereotypes on roles and spaces, or inciting to behavior that is harmful to women's integrity and physical and psychological safety;
- d. Making it compulsory for state-owned media companies, through their legal terms and specifications, to guarantee and ensure -in all their programs and in their criteria for awarding production contracts or acquisition and broadcasting of programs- respect for

women's dignity and their human rights. These terms and specifications should clearly indicate these obligations in order to ensure: (i) the diversity of opinions and situations, including those of men and women; (ii) respect for equal access of men and women to a fair representation of their views, roles, expertise and concerns; (iii) the gradual respect for the principle of parity between men and women, expressly guaranteed by the Constitution, in the broadcaster's functions, processes, responsibilities, programs and services;

e. Ensuring, in concert with operators, that the High Authority of Audiovisual Communication includes in the terms and specifications of private operators similar principles and provisions (same as state-owned media outlets). This HACA is also required to support the operators in the implementation of obligations relating to combating discrimination and violence against women;

f. Developing a separate administrative system to regulate advertising to ensure respect for women's rights and fight gender-based violence and discrimination in all media outlets;

g. Establishing a self-regulatory body to identify commercial communications containing gender-based discrimination or negative stereotypes about women;

h. making sure respect for gender equality and fight against gender-based violence and discrimination are included in other texts regulations, particularly Law # 20-99 on film industry organization, as amended (in 1987) and completed (in 2005); Law # 2-00 on copyright and neighboring rights as amended and completed by Law # 34-05; Law # 17-94 on production, editing, importing, distribution, reproduction and exploitation of video recordings; Law # 71-99 on the status of artists; the Press Code and other laws regulating media professions; laws regulating media trade unions; and the founding laws of public training institutes like the Higher Institute of Information and Communication (ISIC), the Higher Institute of Audiovisual and Film Professions (ISMAC), the Higher Institute of Drama and Cultural Animation (ISADAC) and private institutions of training and continuing education;

i. Establishing mechanisms to fight against the use of information and communication technology and social media to commit criminal offenses or to affect the dignity and psychological integrity of women and girls.

30. Ensuring support, capacity-building and awareness of professionals and other relevant actors in monitoring, prevention and fight against violence against women and girls, by:

a. Developing and implementing systematic and mandatory training programs for law enforcement officers, judicial staff, forensic pathologists, psychologists in the area of victim assistance, and programs for actors working in the areas of prevention and punishment of violence against women, in accordance with the relevant international standards. These

programs should focus, inter alia, on the implementation of the Violence against Women Act and the related public policies, the rights of victims of such violence to an effective remedy and reparation, and the best practices in investigation techniques and prosecution in cases of violence against women;

b. Adopting encouraging and mandatory measures to support local authorities, the private sector, religious stakeholders, and security and judicial officials and to support developing policies, guidelines and standards for self-regulation to prevent violence against women and promoting respect for their dignity;

c. Ensure systematic training for professionals in direct contact with the victims or the perpetrators on the prevention and monitoring of violence, gender equality, and the needs of victims and their rights;

d. Implementing, regularly and at all levels, awareness-raising campaigns or programs, including in cooperation with all relevant institutions and organizations, in order to increase public awareness and understanding of the various manifestations of all forms of gender-based violence and the need to prevent them.

NOTES

- 1- Preamble of the Declaration on the Elimination of Violence against Women, UN Doc. A/RES/48/104.
- 1- United Nations Campaign 2008-2015 "UNITE to End Violence against Women". More information in <http://endviolence.un.org/>
- 1- <https://cms.unov.org/documentrepository/indexer/MultiLanguageAlignment%20%20bitext%20?%20DocumentID%20=%206c4e5b15%20-%201b32%20-%204ed4%20-%20a6bc%20-%20858de0f46fe7%20&%20DocumentID%20=%2024d12514%20-%20f982%20-%2047e5%20-%20bfe3%20-%2080179bc77381>
- 1- Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)
- 1- General Assembly Resolution no. 52/86 on "Crime prevention and criminal justice measures to eliminate violence against women", A/RES/52/86, 2 February 1998, Annex: Model strategies and practical measures on the elimination of violence against women in the field of crime prevention and criminal justice, paragraph. 6.
- 1- General Assembly Resolution no. 52/86 on "Crime prevention and criminal justice measures to eliminate violence against women", A/RES/52/86, 2 February 1998, Annex: Model strategies and practical measures on the elimination of violence against women in the field of crime prevention and criminal justice, paragraph. 6.
- 1- Declaration on the Elimination of Violence against Women (DEVAW, 1993), Article 4.
- 1- Human Rights Committee, General Comment No. 31, "Nature of the General Legal Obligation Imposed on States Parties to the Covenant", HRI/GEN/1/Rev.7 (2004), paragraph. 8.
- 1- Committee on the Elimination of Discrimination against Women, Communication No. 5/2005, Şahide Goekce v. Austria, August 6, 2007, paragraph. 12.1.5.
- 1- European Court of Human Rights, Bevacqua and S. v. Bulgaria, Judgment, June 12, 2008, paragraph. 83.
- 1- European Court of Human Rights, Opuz v. Turkey, Judgment, June 9, 2009, paragraph. 200.
- 1- Audiovisual Communication Act No. 03-77, Official Gazette of February 3, 2005



المجلس الوطني لحقوق الإنسان
ⵎⴰⵔⴻⵎ ⵏ ⵙⵉⵎⵓⵎ ⵏ ⵉⵎⵓⵔ ⵏ ⵉⵎⵓⵔ
Conseil national des droits de l'Homme

FIGHTING VIOLENCE AGAINST WOMEN

Contribution to public debate - issue # 4 - 2014

Boulevard Erriad

B.P 21527, N° 22, Hay Ryad, Rabat - Maroc

tel : +212(0) 5 37 54 00 00

fax : +212(0) 5 37 54 00 01

cndh@cndh.org.ma

شارع الرياض

ص ب 21527، حي الرياض، الرباط - المغرب

الطائف : +212(0) 5 37 54 00 00

الفاكس : +212(0) 5 37 54 00 01

cndh@cndh.org.ma