

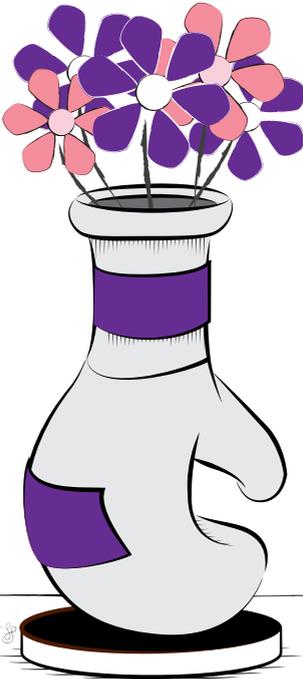


المجلس الوطني لحقوق الإنسان
Conseil national des droits de l'Homme

المملكة المغربية
Kingdom of Morocco

Fighting violence against women

Opinion of the Council on Bill No. 103-13



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FIGHTING VIOLENCE AGAINST WOMEN OPINION OF THE COUNCIL ON BILL NO. 103-13

Following the notice of request for opinion from the President of the Chamber of Deputies dated April 21, 2016, the National Council for Human Rights (The Council) sent on Monday, May 23, 2016 its opinion on the bill No. 103.13 related to the fight to end violence against women.

The Council's opinion is based on many constitutional references and on international human rights law, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as commented on by the General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women entitled «Violence Against Women», as well as the Convention on the Rights of the Child.

The Council's opinion also referred to a number of declarative documents, including the Declaration on the Elimination of Violence against Women adopted by the General Assembly of the United Nations, the Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women, as well as relevant resolutions of the General Assembly and the United Nations Human Rights Council.

The Council also recalled the relevant concluding observations and recommendations on the efforts to combat violence against women sent to our country by the Committee on the Elimination of Discrimination against Women, the Human Rights Council, the Committee against Torture, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Working Group on the Issue of Discrimination against Women in Law and in Practice, and the relevant recommendations to our country in the framework of the Universal Periodic Review.

The Council also took into consideration other factors, including the Convention of the Council of Europe on Preventing and Combating Violence against Women and Domestic Violence, which the Council recommends that it be ratified; the jurisprudence of the Committee on the Elimination of Discrimination against Women in its review of communications from individuals claiming to be victims of a violation of rights protected by the CEDAW Convention; the reports of the Special Rapporteur on Violence against Women, its causes and Consequences and the jurisprudence of the European Court of Human Rights in the field of the fight to end violence against women.

Moreover, the Council has undergone the study of several comparative experiences, legislations and policies dealing with the fight to end violence against women, adopted by Spain, France, Belgium, Portugal, Finland, Sweden, Namibia, Kenya, South Africa, Denmark, Austria and Germany.

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In this opinion, the Council has reiterated the recommendations it had already asked to be taken into consideration in the development of Bill No. 103.13 on the fight to end violence against women.

These recommendations mainly concern, on the one hand, the recognition that gender-based violence is a form of discrimination, and on the other, the adoption of the concept of «due diligence» as an organizing principle of the legal system relating to the fight to end violence against women. The Council considers that in order to comply with the constitutional provisions and treaty commitments of Morocco, the legal framework must include provisions that would at the same time, prevent and protect against violence, investigate all its manifestations, punish the perpetrators, and offer reparations to the victims of violence.

In the same context, the Council recalled the various scales of implementation of the concept of due diligence (at the level of individuals and that of the public authorities), the requirements of harmonization of legislation and public policies regarding the fight to combat violence against women, arrangements for victims' access to justice, including adequate procedural measures for access to compensation for damages suffered and the fight to end violence against women in specific contexts.

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The proposals and recommendations of the Council have the following objectives:

- The effective implementation of the prohibition of discrimination on grounds of sex (preamble of the Constitution) and the prohibition of harm to the physical or moral integrity of persons (Article 22);
- The implementation of commitments under the Convention on the Elimination of All Forms of Discrimination against Women, and the concluding observations and recommendations to our country by international bodies in the fight to end violence against women;
- The legal implementation of the concept of «due diligence» in the field of the fight to end violence against women;
- Strengthening the definitions relating to the fight to end violence against women;
- Ensuring the accuracy of certain definitions and provisions of the bill in order to harmonize them with its purpose, the fight to end violence against women;
- The submission of proposals for the revision of certain provisions of the Penal Code and the Criminal Procedure Code directly related to the fight to end violence against women, given the complexity and multiplicity of actions and types of violence against women as violations of human rights;
- Presentation of proposals for the reconciliation of the bill with the provisions of

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«The Handbook for Legislation on Violence against Women» produced in 2010 by the Department of Economic and Social Affairs of the United Nations, with resolution 52/86 of the General Assembly of the United Nations adopted on February 2, 1998 on «Crime prevention and Criminal Justice Measures to Eliminate Violence against Women» and its annex «Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice».

The most important recommendations made by the Council in the formulation of Bill 103.13 are the following:

- 1.** To Define violence against women as one of the forms of gender based discrimination, and to include in the definition of violence against women all acts of violence based on gender that harm women, or that are likely to cause them physical, sexual, psychological or economic harm, the threat to use such acts, abstention, coercion or arbitrary deprivation of liberty, whether in the public or private sphere.
- 2.** To criminalize the various acts of violence against women, whether they are «isolated acts» or a «pattern of behavior»;
- 3.** To include a provision that the term «women» includes girls under 18 years old and include the phrase «and girls» in the title of the bill;
- 4.** To include a provision defining the scope of this Act which includes victims (women and girls), the perpetrators of acts of violence and the various institutions, including judicial and administrative subject to the observance of due diligence;
- 5.** To incorporate a new Article requiring the government to develop a national plan for the prevention of violence against women within a year from the entry into force of Law 103.13. This plan should include such measures and actions to be taken by various public authorities, each within its field of competence, in the fight against stereotypes and prejudices related to social gender, and against the inferiority-based practices against women or a stereotypical role assigned to women and men. Whether this is built on the second axis of the government's Plan for Equality 2012- 2016 (devoted to the fight against all forms of discrimination and violence against women) or on the development of a specific national plan for the prevention of violence against women (including in particular training and education programs, and media dedicated to the fight against violence), the National council for Human Rights recommends the strengthening of the legal status of the decision adopted by including it in Bill 103.13.
- 6.** With respect to the proposal of the bill stipulating the revision and the supplementing of Article 431 of the Penal Code, the CNDH recommends the elimination of the requirement «that the pregnancy is obvious or known to the perpetrator;» the addition of

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the commission of an act of violence against a current or former fiancé as a circumstance leading to double punishment, the elimination of the condition that makes the commission of violence in the presence of a parent as a circumstance doubling the sentence, and the preservation of the condition that makes the commission of violence in the presence of a child a special circumstance leading to the doubling of the sentence.

7. With respect to the provision of the bill, which stipulates to revise and supplement Article 431 of the Penal Code, the Council recommends adding the current or former fiancé to the list of persons whose sentence is doubled in case of willful failure to provide assistance to a person in danger as provided by paragraph 1 of the article in question;

8. To redefine rape prescribed in Article 486 of the Penal Code while maintaining its qualification as a crime, and transfer the article in question, after renumbering, to Chapter VII of the Code entitled «Crimes and Offenses against Persons». The Council proposes the following definition of rape: «Rape is considered sexual penetration of whatever nature and purpose, committed against another person by the use of violence, coercion, threat or surprise, regardless of the nature of the relationship between the victim and the perpetrator. « The proposed definition allows to include marital rape;

9. To remove defilement as an aggravating circumstance, and repeal Article 488 of the Penal Code and Article 490 because they constitute objective obstacles to the filing of rape related complaints;

10. To redefine elements of sexual harassment by replacing the words «injunctions, threats or coercion means» by «any verbal, non-verbal or physical behavior of sexual nature.»

11. To consolidate the definition of sexual harassment by stating that this behavior creates in the victim a feeling of objectification, intimidation, hostility or degradation;»

12. To criminalize complicity and support for all violent crimes against women;

13. With respect to the proposition of bill that stipulates to supplement Article 61 of the Penal Code, the Council recommends clarifying the personal security measure No. 10, which concerns «prohibiting the convicted person from contacting the victim» so as that the measure includes a ban on access to the victim's home, the ability to reside in a defined area around the home of the victim, to attend places where the victim usually goes or knowingly provoke encounters with the victim

14. To add the current or former fiancé to the list of individuals whose punishment will be doubled in case of commission of the acts under Article 407 of the Criminal Code;

15. To enact additional measures at the end of sentences imposed for violent crimes committed against women, including enrollment in an internship programs within an administration, or a training program from a health facility, a social or professional organization, or from an association specialized in the fight to end violence against women,

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for a period not exceeding three months within less than eighteen months from the date of the end of the incarceration sentence, or the date of the judicial pronouncement of the decision when the sentence is suspended or the sentence was limited to a monetary fine. However, the Council recommends, in order to take reality into full consideration, that these measures be accompanied by all the organizational and institutional arrangements so as to make them applicable;

16. To add the current or former fiancé and divorcee to the list of persons whose sentences will be doubled in case of commission of offenses under Articles 425, 426, 427 and 429 of the Penal Code, or whose sentence will be increased in the case of offenses under Article 436 of the Penal Code;

17. To add the divorcee to the list of those persons whose sentences will be doubled in case of commission of offenses under new articles 448-1 and 448-2 of Bill. 103.13;

18. To establish as autonomous offense and not as a form of sexual harassment all acts that fall within the concept of Stalking as repeated and deliberate harassment, recourse to a third party for this purpose, the use of the victim's personal data to propose goods or services, as well as any other act likely to seriously violate the lifestyle of the victim. Doing so will ensure that these offenses will not be reduced to «sexual advances» and allow to extend the scope of protection for women victims of violence. the Council proposes that the spouse, the divorcee and the fiancé be added to the list of individuals whose sentences will be doubled in these offenses;

19. To repeal Articles 20 and 21 of Law 70.03 establishing the Family Code (as amended and supplemented) governing the marriage of a boy and a girl before the age of capacity, which will allow the removal of any exception to the provisions of Article 19 of the family Code, which stipulates that «legal capacity is acquired for the boy and girl enjoying their mental faculties to eighteen Gregorian years gone by;»

20- To enact, in cases of forced marriages, the principle of triggering prosecutions not only on the basis of a complaint by the victim, but also by conferring responsibility for the initiation of public action to the Public Ministry (State initiated legal action) if a minor (that is to say less than eighteen years old) is forced into marriage;

21. To repeal Article 418 of the Penal Code, which states that «Murder, assault and battery are excusable if committed by a spouse on the person of other spouse, as well as on the accomplice, at the moment when he catches them in the flagrant act of adultery;»

22. To include in Article 400 of the Criminal Code the prosecution of battery and deliberate assault in case of violence against women, whether or not they resulted in a personal physical inability to work for a period exceeding twenty days;

23. To criminalize acts provided for in Articles 3 and 5 of the Bill, regardless of the relationship between the victim and perpetrator;

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24. To aggravate systematically the sentence in the following cases: when the author of the offense is the current or former spouse, current or former fiancé, a family member, a person living with the victim, a person abusing his authority, if recurrence, if the offense is committed against a person in a precarious situation, or on the person of a child or in his presence, or committed by several authors, when the offense is preceded by serious violence or related to it, when the offense is committed with the use of weapons or under their threat or when it causes a serious physical or psychological harm to the victim;

25. To include a new Article 82-9-1 in the Code of Criminal Procedure giving the officers and agents of the judicial police and the relevant public authorities the responsibility to inform by any means necessary, the victims that are provided protection under Law 103.13, of their right to: seek reparation for pain and suffering; of their right to a civil action if public action was initiated by the prosecutor or as the result of a direct complaint about acts of violence covered by this law; of their right to be assisted by a lawyer if they are party to a civil action or to receive legal assistance; to benefit from the assistance and support mechanisms for women victims of violence and a specialized association supporting women victims of violence; and finally of their right to seek a protection order. Victims also have the right to be informed of the penalties imposed on the perpetrator or perpetrators of violence and the conditions of enforcement of sentences against them;

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26. To revise paragraph 2 of Article 302 of the Criminal Procedure Code by including the possibility for victims in cases of violence against women, to be heard, if necessary through appropriate communication technologies, in particular in order to avoid any attempt to intimidate them, and to benefit from the support of specialists in the fields of health and psychological support during their hearing;

27. To insert a new provision in Article 304 of the Criminal Procedure Code that will allow the hearing of witnesses by means of appropriate communication technologies;

28. To insert a new provision in Article 304 of the Criminal Procedure Code enacting necessary provisions to protect the rights of child witnesses of all forms of violence: determination of custody, visitation rights, denial of the right of visitation when it is contrary to the will of the child, psycho-social counseling appropriate to the age of child witnesses;

29. To include a new Article 296-1 in the Criminal Procedure Code that will stipulate that the burden of proof (evidence of non-harassment) in cases of sexual harassment referred to in Article 503-1 of the Criminal Code, shall be borne by the accused when the accused has authority over the victim in professional or academic spheres;

30. In the proposed action to supplement Article 7 of the Code of Criminal Procedure, allow all legally constituted associations and those specialized in the field, not just those recognized as associations of public interest, to be party to a civil action in the field of their activities determined by their statutes, in any civil recourse seeking reparation for the damage suffered because of a crime, a misdemeanor or a contravention;

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31. To add the following protective measures to be taken immediately by the judicial police or the public prosecutor's office, as deemed appropriate, in cases of violence against women: orientation of the victim to a support center specialized in helping victims of violence against women; allowing the victim to choose to be domiciled in the office of the lawyer representing her; or at the home of a legal person authorized to accompany her during the period of the protection order; and allowing the victims to access a list of legal persons who are empowered and who can accompany him throughout the period of the protection order (for instance, specialized associations). It is possible, with the agreement of the victim, to bring the real address of the victim to the knowledge of the authorized legal person to come in contact with her;

32. To add a new section to the Criminal Procedure Code relating to legal settlements in the case of embezzlement of property between spouses, fraud relating to the provisions of the Family Code concerning the pension, housing, money owed following the end of the marital relationship or the division of property. The Council stresses the fact that a legal settlement is an alternative criminal punishment, and not a form of mediation or conciliation;

33. To review the first article of Law No. 04.00 amending and supplementing Dahir 1.63.071 of 13 November 1963 on the obligation of basic education, to include a provision guaranteeing the children of women victims of violence, who have moved under the protection order or as a protection measure, to enroll immediately in the nearest academic institution near their new home;

34. To enter into Law Number 65.99 of the Labor Code, the right of the female worker victim of acts of violence as prescribed by Law Number 03.13 to benefit – in return of the order of protection issued for her- from a reduction to or adjustment of her working hours or to be eligible for a transfer to another workplace location. In the same context, it is proposed that the Labor Code contains a provision considering any work delay and or any absence from work resulting from cases of violence as described by Law Number 103.13 to be considered as legitimate reason for absence or delay;

35. The Council urges local authorities to participate, in partnership with the state, in the creation of social centers to shelter women victims of violence, which will ensure greater proximity and availability in the field of the protection of women victims of violence;

36. To add a provision in the first paragraph of Article 10 of Bill Number 103.13 to enact the creation of support and host cells for women victims of violence within the sheltering social centers created within the local communities, and if necessary within the social protection institutions established by Law Number 14.05 on the conditions for the opening and administration of social welfare institutions;

37. To revise paragraph 2 of Article 10 of the bill by adding the security measures including the right to a safe stay for the victims and for their children within the shelter and support

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centers for women victims of violence;

38. To insert a provision under which it will be possible to resort to the help of members of associations working in the field of the fight to end violence against women to assist the support cells of women victims of violence, and on the basis of multi-year partnerships with specific goals established between the government authority responsible for justice and associations working in the field of the fight to end violence against women;

39. Concerning the National Commission for the Assistance of Women Victims of Violence, the Council proposes the involvement of the government authority responsible for justice in the process of the selection of the President (male or female) of the National Commission. The Council also proposes as members of the commission a representative of the Authority for Parity and the Fight against all Forms of Discrimination and the Advisory Council of Family and Children upon recommendation of the presidents of the two respective bodies; a representative of the office of the King's Public Prosecutor of Supreme Court proposed by the latter; and three representatives of the regional councils, prefectural, provincial and local authorities, upon recommendations of the authority in charge of the Ministry of the Interior;

40. To appoint representatives of associations working in the field of the fight to end violence against women as full members of the National Commission for the Assistance of Women Victims of Violence, according to criteria determined by the regulatory text;

41. To designate associations working in the field of the fight to end violence against women as members of regional and local commissions for the care and assistance of abused women.

It is important to recall that the National Council for Human Rights had issued a memorandum on the fight to end violence against women in 201

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