

Morocco: Ensuring the Effective Investigation and Prosecution of Sexual and Gender-Based Violence Against Women and Girls

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Introduction

Global estimates show that violence against women remains a devastating phenomenon of epidemic proportions. The World Health Organization has observed that sexual and gender-based violence (SGBV)¹ “pervades all corners of the globe, puts women’s health at risk, limits their participation in society and causes great human suffering.”²

Justice sector actors ought to be well-versed in all aspects related to SGBV against women and girls, including about the biases that abound about the victims’ backgrounds and behaviours, whether real or, more often than not, attributed to them as a result prevalent discriminatory attitudes worldwide.

In Morocco, a number of obstacles linked to such discriminatory attitudes undermine women’s effective access to justice for offences of SGBV. Such barriers impede the effective investigation and prosecution of crimes of this nature in the country. The absence of a specialized criminal court or chambers dealing with this type of criminal offences, in particular, constitutes a major hindrance for women and girls seeking effective redress and reparation for these crimes.

The present Memorandum seeks to palliate the absence of specific guidance currently available to justice sector actors tasked with investigating and prosecuting offences of SGBV against women and girls in Morocco. Furthermore, the present document aims to assist the victims of SGBV offences by highlighting their rights and entitlements, including, in particular, their right to access justice and effective remedy and reparation for the harm inflicted against them.

As underscored by the UN Economic and Social Council, “information on rights, remedies and victim support services and on how to obtain them, in addition to information about their role and opportunities for participating in criminal proceedings”³ are of critical importance in securing effective access to justice for women and girls victims of SGBV offences. The International Commission of Jurist’s (ICJ) aspiration is that the present Memorandum and, in particular, its recommendations, will contribute to an increase in the detection of SGBV offences in Morocco and assist in their successful prosecution.

This memorandum is primarily concerned with the various challenges associated with investigating and prosecuting SGBV offences in Morocco. Specifically, it endeavours to describe the practical challenges that justice actors face in investigating and prosecuting SGBV offences. Furthermore, it aims to furnish justice sector actors with specific guidance to enhance the effectiveness of the investigation and prosecution of SGBV offences in Morocco.

In drafting this memorandum, the ICJ has examined several offences provided in the Moroccan Penal Code that are pertinent to SGBV, in a context in which, however, there is widespread recognition for the fact that the Moroccan legal framework does not sufficiently legislate against sexual violence.⁴ Additionally, the ICJ has reviewed 75 judgments concerned

¹ World Health Organization, “Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner violence” (Geneva, World Health Organization, 2013), p. 38.

² *Ibid*, p. 35. Sexual and gender-based violence (SGBV) refers to any act that is perpetrated against a person’s will and is based on gender norms and unequal power relationships. It encompasses threats of violence and coercion. It can be physical, emotional, psychological, or sexual in nature, and can take the form of a denial of resources or access to services. It inflicts harm on women, girls, men and boys; see UNHCR at <http://www.unhcr.org/sexual-and-gender-based-violence.html>

³ General Assembly Resolution 65/228, 31 March 2011, “Strengthening crime prevention and criminal justice responses to violence against women”, para. 18 (a).

⁴ The Moroccan government has endeavoured to legislate against SGBV through Draft law 103/13. The legislative proposals, however, remain a matter of contention, drawing criticism from across the political spectrum.

with SGBV-related offences, handed down by both the Courts of First Instance and the Courts of Appeal in Morocco. The organization has also conducted a number of interviews with legal practitioners and judges in Morocco who have been involved in investigating and prosecuting SGBV offences. In light of an overall analysis of this material, the ICJ has formulated the recommendations contained in this memorandum.

Two final introductory considerations: first, while the ICJ considers that the classification and characterization of some crimes in the Moroccan Penal Code is inconsistent with relevant international law and standards with respect to offences of SGBV, the organization's primary purpose with this memorandum is to make recommendations that investigators and prosecutors can implement in the context of the investigation and prosecution of offences of this nature within the domestic legal framework existing today in Morocco. Therefore, this memorandum focuses exclusively on actions that investigators, prosecutors and judges can take within the existing Moroccan legal framework to assist women victims of SGBV in obtaining effective access to justice, redress and reparations for these crimes.

Second, throughout this document, unless specified otherwise, the term woman or women should be understood to include girl/s.

Introducing the actors in the Memorandum

This Memorandum frequently refers to several actors who are involved at different stages of the criminal investigation, prosecution and trial phases of offences of SGBV in the Moroccan criminal justice system. They are briefly described below.

Judicial Police

The preliminary phase of a criminal investigation in Morocco is conducted by a body referred to as the Judicial Police. Falling under the authority of investigating judges and prosecutors, the Judicial Police comprises officers of the Judicial Police,⁵ Judicial Police officers for juveniles, Judicial Police assistants, and officers and assistants assigned to conduct some of the Judicial Police mandate.⁶

Allegations of misconduct filed against officers of Judicial Police are handled by the misdemeanours chamber of the Court of Appeal.⁷

Prosecution

The two main ranks for prosecutors are the King's Prosecutor, who prosecute misdemeanours before the Court of First Instance, and the King's Public Prosecutor, who prosecute felonies before the Court of Appeal (see below for a definition of misdemeanours and felonies in Moroccan criminal law).

The principal duties of the prosecution include: leading the prosecution of the accused in public proceedings in open court; processing police records and criminal complaints; taking necessary steps to identify and apprehend perpetrators; and supervising the work of officers of the Judicial Police.⁸

Investigating judge

Investigating judges are appointed to the First Instance Courts and the Courts of Appeal.⁹ They conduct criminal investigations either upon referral of cases from a prosecutor or by acting directly on the basis of a criminal complaint filed by a civil party (see below).¹⁰ Investigating judges may issue subpoenas, arrest and detention orders.¹¹

Civil party

Any person claiming remedy for an alleged felony or misdemeanour may file a complaint as a civil party before the competent investigation judge.¹² The latter subsequently refers the case to the prosecution.¹³

Specialized units for women and children

These specialized units exist within the 86 jurisdictions of the First instance and Appeal Courts in Morocco. Each one is composed of a representative from the Prosecutor-General, an investigating judge, a trial judge, a juvenile court judge, a registrar and a social worker. These units are the first point of access to the judiciary by the victims and/or complainants. The specialized units provide free administrative and health assistance to the victims, and legal assistance in order to expedite the processing of their complaints.

⁵ These include, among others, National Security officers, who fall under the authority of the Ministry for the Interior, and officers of the Royal Guard, who fall under the authority of the Royal Moroccan Army.

⁶ Articles 16 et seq. of the Moroccan Criminal Procedure code.

⁷ Article 29 et seq. of the Criminal Procedure Code.

⁸ Articles 40 and 49 of the Criminal Procedure Code.

⁹ Article 52 of the Criminal Procedure Code.

¹⁰ Articles 54 and 85 of the Criminal Procedure Code.

¹¹ Article 142 of the Criminal Procedure Code.

¹² Article 92 of the Criminal Procedure Code.

¹³ Article 93 of the Criminal Procedure Code.

Prosecution of offences of SGBV

The Moroccan penal code categorizes criminal offences into felonies or misdemeanours depending on their gravity/severity.¹⁴ Felonies are all crimes punishable upon conviction by a minimum of five years' imprisonment, while misdemeanours attract less severe sentences. Thus, pursuant to the Moroccan penal code, SGBV-related offences may be classified as either felonies or misdemeanours. Felonies and misdemeanours fall, respectively, under the jurisdictions of the Court of Appeal and the Court of First Instance.

Investigation by an investigating judge is compulsory in three cases:

- 1) Felonies punishable by death sentence, or life sentence or a maximum sentence of 30 years' imprisonment;
- 2) Felonies committed by minors;
- 3) Certain misdemeanours specified in law.

The prosecutor may optionally refer the case to an investigating judge when it concerns felonies and misdemeanours committed by a minor, and misdemeanours punishable by a sentence of five years' imprisonment or higher.¹⁵ In all other situations, the prosecutor shall either close the case or conduct the investigation and refer the case immediately to the trial judge.

According to international standards on the elimination of violence against women, "the primary responsibility for initiating investigations and prosecutions lies with the police and prosecution authorities and does not rest with women subjected to violence, regardless of the level or form of violence."¹⁶

Prior to deciding whether to prosecute or not, the prosecuting authorities must take all relevant evidence into consideration, and make all the necessary efforts to ensure that evidential gaps are filled whenever possible. This may in turn entail further investigative efforts. Evidence that must be assessed may include, for example, DNA evidence, which, in turn, requires appropriate testing equipment, such as "rape kits". An adequate prosecution strategy may entail resorting to toxicology reports, medico-legal evidence and the criminal history of the offender.¹⁷

¹⁴ Articles 16 and 111 of the Penal Code.

¹⁵ Articles 83-86 of the Criminal Procedure Code.

¹⁶ Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, adopted under General Assembly resolution 65/228 (2010), para. 15(b). Hereinafter, "Updated Model Strategies and Practical Measures"; See also: International Commission of Jurists, Practitioner's Guide No. 12, "Women's Access to Justice for Gender-Based Violence" (Geneva: International Commission of Jurists: 2016), p. 224, URL: <https://www.icj.org/wp-content/uploads/2016/03/Universal-Womens-accesss-to-justice-Publications-Practitioners-Guide-Series-2016-ENG.pdf> . Hereinafter, "ICJPG No. 12".

¹⁷ United Nations, Criminal Justice Handbook Series, "Handbook on Effective Prosecution Responses to Violence Against Women and Girls", (Vienna: United Nations Office on Drugs and Crime, 2014) p. 76. Hereinafter, "UNODC Handbook".

1. Offences under Moroccan criminal law

Criminal Offence	Penal Code Article	Sentence¹⁸	Classification of the offence	Increase of sentence if committed against spouse Article 404¹⁹	Classification after application of Article 404
Premeditated homicide	393	Death penalty ²⁰	Felony	Not applicable	Not applicable
Intentional assault, without causing harm or causing incapacitation not exceeding 20 days.	400 (1)	One month to one year's imprisonment and fine from 200 to 500 Dirhams, ²¹ or one of the two sentences	Misdemeanour	Two months to two years' imprisonment and 400 to 1000 Dirhams, or one of the two sentences	Misdemeanour
Intentional assault (as above) with premeditation or a use of weapon	400 (2)	Six months to two years' imprisonment and fine from 200 to 1000 Dirhams	Misdemeanour	One year to four years' imprisonment and 400 to 2000 Dirhams fine, or one of the two sentences	Misdemeanour
Causing harm resulting in incapacitation exceeding 20 days	401	One year to three years' imprisonment and fine from 200 to 1000 Dirhams	Misdemeanour	Two to six years' imprisonment and 400 to 2000 Dirhams	Felony
Causing harm (as above) with premeditation or use of a weapon	401 (2)	Two to five years' imprisonment and fine from 250 to 2000 Dirhams	Misdemeanour	Four to 10 years' imprisonment and fine from 500 to 4000 Dirhams	Felony
Harm causing permanent disability	402	Five to 10 years' imprisonment	Felony	10 to 20 years' imprisonment	Felony
Harm causing permanent disability with premeditation or use of a weapon	402 (2)	10 to 20 years' imprisonment	Felony	20 to 30 years' imprisonment	Felony
Harm causing death	403	10 to 20 years' imprisonment	Felony	20 to 30 years' imprisonment	Felony

¹⁸ Article 146 of the Penal Code provides that if the court finds that the sentence provided for in the penal code is too harsh when measured against the relative seriousness of the offence or the defendant's criminal record, it may apply mitigating circumstances, unless provided otherwise. Mitigating circumstances are provided with the discretion of the judge. Decisions must be justified, specific and personalized to the situation of the convicted person.

¹⁹ Aggravating circumstances when assault – provided for in articles 400-403 – is committed against an ascendant (i.e. living ancestors) or guardian or wife.

²⁰ Sentences, including the death penalty, may be reduced at the discretion of the judge.

²¹ 100 Moroccan Dirhams = 9 Euros. The Minimum salary in public and private sectors are set at 4000 Moroccan Dirhams as of November 2017.

Harm causing death with premeditation or use of a weapon	403 (2)	Life sentence	Felony	Life sentence	Felony
Kidnapping or detaining	436	Five to 10 years' imprisonment	Felony	Not applicable	Not applicable

Criminal Offence	Penal Code Article	Sentence	Classification of the offence	Increase of sentence under Articles 487 and 488.²²	Classification after application of Articles 487 and/or 488
"Sexual abuse" ²³ without use of violence against a minor ²⁴ or an individual with a physical or intellectual disability.	484	Two to five years' imprisonment	Misdemeanour	Five to 10 years' imprisonment	Felony
"Sexual abuse" of any person with the use of violence	485	Five to 10 years' imprisonment	Felony	10 to 20 years' imprisonment	Felony
"Sexual abuse" of a minor or an individual with a physical or intellectual disability	485 (2)	10 to 20 years' imprisonment	Felony	20 to 30 years' imprisonment	Felony
Rape ²⁵	486	Five to 10 years' imprisonment	Felony	10 to 20 years' imprisonment	Felony
Rape committed against a minor or an individual with a physical or intellectual disability	486 (2)	10 to 20 years' imprisonment	Felony	20 to 30 years' imprisonment	Felony

²² These are aggravated sentences if the perpetrator is a parent or exercises authority over the victim (Article 487) or if the crime causes "perforation of hymen".

²³ Literal translation from the Arabic version of the Moroccan Penal Code, describing the "violation of the chastity" of another person, including all sexual acts other than penile-vaginal penetration.

²⁴ This includes any person under the age of 18, as defined by article 19 of the Family Code.

²⁵ Article 486 of the Penal Code defines rape as sexual intercourse (i.e., penile-vaginal penetration) carried out by a man against a woman without her consent; thus, other types of rape are not characterized as such, e.g., anal rape is not characterized as rape under the Moroccan Penal Code: however, it qualifies as "sexual abuse", punishable with the same sentencing range as that of rape.

Stalking

Stalking is a particular type of behaviour that amounts to harassment. While it might encompass a conduct that, in isolation, appears innocent, when committed as a course of conduct, it affects the victim's freedom and leaves the victim in a state of fear or distress.

Acts constituting stalking may include: "sending offensive emails, texts letters or cards; making offensive, threatening or silent telephone calls; making offensive comments about the victim on the internet; sharing intimate photographs or video footage without permission; loitering/waiting by the victim's home, school or workplace; following the victim around; and interfering with or damaging the victim's property."²⁶

The ICJ has reviewed 75 judgments and orders handed down in cases of offences of SGBV in Morocco. One of the key findings emerging from this analysis is that stalking is one of the most common forms of harassment committed against women and girls in the country. However, despite its prevalence and gravity in terms of its impact on the victims, and the fact that it frequently precedes the commission of offences of SGBV, stalking is not criminalized under Morocco's Penal Code.

There are, however, several ways in which it could be combatted, including by ensuring that the victims may benefit from adequate protection measures (see below for further details). While stalking is not a criminal offence in Morocco, it should nonetheless be taken seriously during the investigation and trial phases. Studies illustrate that there is a direct link between femicide²⁷ cases and stalking, especially in those where the perpetrator was the victim's current or former intimate partner.²⁸ Even in cases that may initially appear as an isolated incident, e.g. a physical assault, the investigation should be conducted so as to identify whether there were any acts building up and related to the actual incident in question. This will assist in the risk assessment process, with the identification and qualification of certain factors as aggravating circumstances, and in more effective charging decisions.

²⁶ European Agency for Fundamental Rights Report, "Violence against women: an EU-wide survey. Main results" (Luxembourg: Publications Office of the European Union, 2014), p. 93. See: ICJPG No. 12, *supra* note 16, pp. 191-192.

²⁷ World Health Organization Information Sheet, Understanding and addressing violence against women: "Femicide is generally understood to involve intentional murder of women because they are women, but broader definitions include any killings of women or girls".

²⁸ UNODC Handbook, *supra* note 17, pp. 53-54.

2. Procedure for processing complaints of offences of SGBV

Investigators and prosecutors should adopt an approach sensitive to the trauma that the victims of SGBV offences have endured.²⁹ Furthermore, they should promote a coordinated and integrated approach with the Specialized Unit for Women and Children in order to ensure the effectiveness of the investigation and prosecution process. The Guidelines on Combatting Sexual Violence and its Consequences in Africa, issued by the African Commission on Human and Peoples' Rights (ACHPR), are premised on the notion that strengthened coordination with such units will serve to improve the quality of services, and encourage victims and witnesses to testify and/or file complaints in a climate of trust and confidence.³⁰

a. Initial complaint

In Morocco, victims and witnesses may lodge criminal complaints concerning offences of SGBV in three ways: before an officer of the Judicial Police,³¹ before the prosecutor;³² or directly before an investigating judge, bringing a criminal complaint jointly with a civil action, as a civil party.³³ As mentioned above, a criminal investigation is only compulsory for offences of SGBV amounting to felonies.

The primary responsibility for the investigation and prosecution of SGBV offences should rest with law enforcement officials, not on the victims, regardless of the level or form or violence.

An officer of the Judicial Police intervening in a case of "flagrante delicto"³⁴ of a SGBV offence must inform a prosecutor immediately.³⁵ In cases of complaints, officers of the Judicial Police shall conduct the preliminary investigations either *proprio motu* or under an instruction to do so from the prosecutor.³⁶ Officers of the Judicial Police must always document their preliminary investigations, inform the prosecution of all relevant information, and refer the investigation immediately to the Prosecution once the preliminary phase is concluded.³⁷

The Criminal Procedure code provides a broad discretion for the Prosecution over the conduct of this stage of the procedure. The Prosecution, following receipt of the complaint from a Judicial Police officer, or directly from the victim, shall follow the procedure that they deem most appropriate, and either file a request to open an investigation before the investigating judge, or refer the case directly to trial, or close the case.³⁸ As highlighted above, prosecutors are only required to refer cases to investigating judges exclusively for a specific type of serious offences.³⁹ Cases are then referred to the trial judge in an order containing the identity of the accused, the charges against him and any mitigating or aggravating circumstances.⁴⁰

²⁹ *Ibid*, pp. 50-52.

³⁰ African Commission on Human and Peoples' Rights, "Guidelines on combatting sexual violence and its consequences in Africa", adopted by the Commission during its 60th Ordinary Session held in Niamey, Niger, 8-22 May 2017, Principle 40.2, p.31. Hereinafter, "ACHPR Guidelines".

³¹ Article 78 of the Criminal Procedure Code: "officers of the Judicial Police may conduct preliminary fact-finding, either by instruction from the prosecution or *proprio motu*."

³² Articles 39-51.

³³ Article 92 of the Criminal Procedure Code.

³⁴ According to Article 56 of the Criminal Procedure Code *flagrante delicto* applies on defendant caught while committing a crime or are about to do so, or while fleeing from a crime scene, or if found shortly after a crime has been committed while in the possession of a weapon or objects that indicate that he committed the crime.

³⁵ Article 57 of the Criminal Procedure Code.

³⁶ Article 78 of the Criminal Procedure Code.

³⁷ Article 23 of the Criminal Procedure Code.

³⁸ Articles 39 and 49 of the Criminal Procedure Code.

³⁹ See p. 5.

⁴⁰ Articles 217 and 218 of the Criminal Procedure Code.

b. Initiation of a criminal investigation of an offence of SGBV

Investigations are initiated pursuant to a request from the prosecution to the investigating judge, against a specific or an unknown individual.⁴¹ In turn, in order to establish the truth, the investigating judge exercises his/her powers of investigation, subpoena and arrest.⁴² The investigating judge may order the following measures: inspecting/searching; seizing property; and interception/surveillance of communication.⁴³

Witness interviews and suspect interrogations may constitute part of the preliminary investigation carried out by the prosecution,⁴⁴ and are an integral part of the investigation conducted by the investigating judge.⁴⁵

If necessary, the investigating judge may seek, *proprio motu* or following a request from the prosecution, the opinion of an expert.⁴⁶

c. Protection of victims and witnesses

Victims and witnesses may benefit from protective measures, such as being provided with a "hotline number",⁴⁷ personal protection,⁴⁸ change of residence and medical assistance.⁴⁹ The Prosecution or the investigating judge may order these measures, and if they consider these steps to be insufficient, they may, pursuant to a reasoned order, take any measure they deem appropriate in favour of the protected individual.⁵⁰

In addition, under Articles 161 and 162 of the criminal procedure code, a number of measures may also be taken directly against the suspect. Such steps may include: residential and travel restrictions; summonses; suspension of driving licence/permit; no-contact orders; rehabilitation; medical treatment; conditional bail; confiscation of weapons; among other restrictions.

d. Termination of the investigation phase

The investigative phase of any criminal procedure arising from an offence of SGBV terminates either due to lack of jurisdiction, or because of insufficiency of evidence to proceed to making a charging decision,⁵¹ or when the investigating judge issues a judicial order, which is referred to a criminal chamber for trial,⁵² containing a set of criminal charges, along with the identification of any mitigating or aggravating circumstances. Should the investigating judges decide to close the investigation, they are encouraged to discuss the decision with the victims and inform them of alternative legal action, including review mechanisms under Article 222 of the Criminal Procedure Code, and civil legal action against the suspect.⁵³

⁴¹ Article 84 of the Criminal Procedure Code.

⁴² Articles 84-85 of the Criminal Procedure Code.

⁴³ Articles 99-116 of the Criminal Procedure Code.

⁴⁴ Article 40 of the Criminal Procedure Code.

⁴⁵ Articles 117-141 of the Criminal Procedure Code.

⁴⁶ Articles 194-209 of the Criminal Procedure Code.

⁴⁷ Article 82-5 of the Criminal Procedure Code: "a phone number for the Judicial Police or the security forces to be provided to the victim to contact at any time in order to request protection."

⁴⁸ Article 82-5 of the Criminal Procedure Code: "physical protection to the victim and her/his family or relatives by the public forces."

⁴⁹ Article 82-5 of the Criminal Procedure Code considers that one of the protection measures, if necessary, is to provide the victim with a medical examination by a specialized doctor in order to assess the need for medical assistance.

⁵⁰ Article 82-5 of the Criminal Procedure Code.

⁵¹ Pursuant to Article 216 of the Criminal Procedure Code, the investigating judge may decide to close the investigation if the acts do not fall under criminal law, or for lack of sufficient evidence or if the perpetrator remains unknown.

⁵² Articles 214-221 of the Criminal Procedure Code.

⁵³ UNODC Handbook, *supra* note 17, p. 81.

The prosecutor and the suspect may challenge the judicial orders issued by the investigating judge before the Misdemeanours Chamber of the relevant court.⁵⁴ A civil party may only challenge decisions not to investigate or prosecute, and orders that affect their civil interests.⁵⁵

e. Challenges associated with victims' access to the investigating authorities

In Morocco, several challenges arising during the initial phase of the investigation of SGBV-related offences detrimentally affect the effective access to justice of the victims' of these crimes. Human Rights Watch has documented, for example, several instances where complaints of domestic violence, disclosing evidence of criminal offences, were neither acted upon, nor followed up, either because of a lack of eye-witnesses, or because the police decided not to take any action and instructed the survivor to go to seek the assistance of the prosecution instead.⁵⁶

Letter from Human Rights Watch to the Government of Morocco on Domestic Violence Law Reforms⁵⁷

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

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

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

Additionally, a number of SGBV-related judgments that the ICJ has analysed, and specifically those concerning domestic violence, illustrate the flaws affecting the evidence-gathering process in the investigative phase. In Morocco, this process centres almost exclusively on the recording of the respective statements of the victim and the defendant, without any effort being made to look for, obtain and examine other, potentially indispensable, pieces and sources of evidence, such as medico-legal evidence or the use of evidence from witnesses, e.g. the victims' neighbours, other family members, work colleagues, friends, acquaintances, etc.

⁵⁴ Articles 222-223 of the Criminal Procedure Code.

⁵⁵ Article 224 of the Criminal Procedure Code.

⁵⁶ "One woman told Human Rights Watch that when she went to the police in Rabat after her brother beat her and punched her eyes in July 2015, they told her, "We can do nothing, it is not our job." They told her to go the public prosecutor instead." Letter from Human Rights Watch to the Government of Morocco on Domestic Violence Law Reforms, <https://www.hrw.org/news/2016/02/15/letter-human-rights-watch-government-morocco-domestic-violence-law-reforms>

⁵⁷ Available at: <https://www.hrw.org/news/2016/02/15/letter-human-rights-watch-government-morocco-domestic-violence-law-reforms>

The ICJ considers that these challenges are directly linked to the lack of adequate guidance available to justice sector actors, which, in turn, results in inconsistent practices, and leaves victims confused and unaware of the necessary procedure they are required to follow by domestic law.

As mentioned briefly above, evidentially speaking, the investigation and prosecution of cases of SGBV in Morocco often rely solely on the complainants' statements and the defendants' versions of events in their statements to the authorities. This overdependence on what is essentially the exclusive juxtaposition of the victim's testimony with that of the alleged perpetrator's, is often not considered sufficient by Moroccan courts to secure the effective and successful investigation and prosecution of offenders in cases of SGBV.⁵⁸

There are two main reasons for this. First, in circumstances where no efforts have been made to secure additional evidence corroborating the victim's statement, and the accused denies the charges, it is unlikely, and indeed quite rare, that the prosecution will be successful, resulting in the conviction of the defendant as charged as a result of criminal proceedings that comply with international fair trial standards.⁵⁹

Second, and *a fortiori* in SGBV cases, the trauma that victims of SGBV often experience in the aftermath of the offence/s, and specifically during the investigation phase, can lead to "inconsistencies" in their statements, difficulties in recollecting and relaying events, omissions and recanting – all of which may, in turn, result in the decision not to bring charges or, when charges are brought, in the accused's acquittal.⁶⁰ In light these challenges, genuine cases of SGBV in Morocco have often gone unpunished, with perpetrators going scot-free, perpetuating a climate of impunity for offences of SGBV in the country.

Thus, in pursuit of truth, justice, redress and reparation for victims of SGBV, it should be incumbent upon justice sector actors to consolidate and supplement the victims' testimony with corroborating evidence, and specifically, medico-legal and forensic reporting, which focuses on physical and psychological injuries sustained by victims as a result of the SGBV incidents. Indeed, strengthening medico-legal responses to SGBV in Morocco, including by enhancing the capacity of forensic and medico-legal personnel to ensure that relevant evidence is adequately detected, identified, collected and stored, would likely enhance the effectiveness of investigating practices of SGBV offences. Furthermore, the deployment of such evidence could support a greater number of successful prosecutions of perpetrators in cases of SGBV, while ensuring respect for their right to a fair trial.⁶¹

In addition, as a result of its research on this topic, the ICJ has identified several issues of misconduct on the part of law enforcement officers arising in the context of domestic violence incidents, as another major challenge faced by victims of SGBV offences. Furthermore, in several cases of which the ICJ is aware, victims often faced a strong reluctance on the part of police officers to proceed with the investigation of their complaints, even when the office of the prosecutor had already officially sanctioned one.⁶²

Human Rights Watch has documented additional forms of misconduct by law enforcement officials that involved their attempt to convince victims of domestic abuse to return to their

⁵⁸ ICJPG No.12, *supra* note 16, p. 216.

⁵⁹ Tamara Court of First Instance, Case No. 15/2103/130, 1 July 2015; Taza Court of Appeal, Case No. 10/31, 20 June 2010; Nazur Court of Appeal, Case No. 12/42, 25 December 2013; Nazur Court of Appeal, Case. No. 13/41, 5 February 2014; Nazur Court of Appeal, Case. No. 13/06, 25 December 2013; Al-Qnaitra Court of Appeal, Case No. 12/53, 8 January 2014.

⁶⁰ Taza Court of Appeal, Case No. 10/31, 20 June 2010. In this case, the victim, who was a minor, complained that she had been kidnapped, physically assaulted, and subsequently raped in the passenger seat of the defendant's car. In a later statement, she recanted, saying instead that the defendant pulled her out of the car and pushed her on to the back seat to rape her. The "inconsistencies" of these statements, coupled with the lack of eye-witness testimony, led the court to find the defendant not guilty.

⁶¹ UN Secretary-General, "In-depth study on all forms of violence against women", UN Doc A/61/122/Add.1 (2006), p. 323.

⁶² Letter from Human Rights Watch to the Government of Morocco on Domestic Violence Law Reforms, 16 February 2016.

abusive spouse. In many other cases, following the submission of complaints of domestic violence to the prosecutor, survivors themselves were requested to deliver a document to the police, which, in turn, instructed the police to investigate the victims' complaint.⁶³

⁶³ *Ibid.*

3. Medico-legal evidence

Medico-legal evidence can play an indispensable role in investigating and prosecuting cases of SGBV. Indeed, the effective investigation and prosecution of SGBV offences necessitates a holistic approach to evidence-gathering. This has been reinforced by the UN Secretary-General's *In-depth study on all forms of violence against women*, which noted that victims require medico-legal examinations for any resulting legal case.⁶⁴

Before proceeding with any discussion concerning medico-legal and forensic evidence, one important misapprehension about SGBV offences must be addressed. Physical injury is not necessarily required for the perpetration of this kind of crimes. In many cases, the threat of physical violence and the coercive circumstances will suffice for the victim to submit herself to a sexual assault, including a rape, for example, without putting up any physical resistance against the perpetrator. Indeed, it is often the case that victims are too frightened to resist and fight off their perpetrator, thus they do not necessarily sustain physical offences as a result of being attacked. In such cases, the assault may leave non-detectable physical injuries as such. In those cases, the harm sustained may be exclusively psychological in nature. Misguidedly however, the absence of signs of physical injury may be construed as evidence of "consent" on the part of the victim to the particular sexual practice that characterised the crime. This, in turn, may lead to the eventual abandonment of the prosecution of the perpetrator, and his complete impunity for the crimes he committed.

The medical and forensic measures that should be taken in Morocco in connection with the fight against offences of SGBV, coupled with the good practice approaches to comprehensive care, are discussed in the following paragraphs.

a. Preliminary considerations

When conducting a physical examination of a victim of SGBV, medical practitioners should ensure that the setting in which the examination takes place is responsive to the needs of the potentially agitated and frightened survivor.⁶⁵ Medical practitioners should record the victim's medical history; gynaecological history; and the victim's account of the assault, always ensuring that any questions be phrased in a sensitive manner. Ultimately, the aim of collecting medico-legal evidence is to provide "an objective service without sacrificing sensitivity or compassion."⁶⁶ As soon as the survivors are capable of providing their consent, it is incumbent upon medical practitioners to obtain their full, genuine, free and prior informed consent for the documentation and collection of medico-legal evidence.

Medical practitioners tasked with the reporting of violence are strongly encouraged to refer to both the Istanbul Protocol – the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment –⁶⁷ and the WHO Guidelines for medico-legal care for victims of sexual violence,⁶⁸ both of which delineate in detail how to approach and carry out medico-legal reporting in cases of SGBV.

b. Documentation of physical injuries

It is fundamental for the investigation, prosecution and trial of SGBV offences that medical practitioners record in detail the victims' appearance and demeanour before proceeding with their physical examination. The main objective of the physical examination of the victim is to detect, and subsequently treat, any injuries the victim sustained during the assault.

⁶⁴ *In-depth study on all forms of violence against women*, *supra* note 61, p. 323.

⁶⁵ World Health Organization, *Guidelines for medico-legal care for victims of sexual violence* (Geneva: World Health Organization, 2003), p. 34. Hereinafter, "WHO Guidelines".

⁶⁶ *Ibid*, p. 20.

⁶⁷ Office of the United Nations High Commissioner for Human Rights, "Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment", UN Doc. HR/P/PT/8Rev.1 (2004).

⁶⁸ WHO Guidelines, *supra* note 65.

It is recommended that medical practitioners perform what the World Health Organization refers to as a “top-to-toe examination.”⁶⁹ This entails taking the victim’s vital signs; inspecting the victim’s hands, wrists and forearms for injuries and ligature marks; inspecting the body for defensive wounds, such as bruising, abrasions or lacerations; inspecting the face, paying particular attention to the mouth; inspecting the neck; inspecting the breasts; inspecting the legs; and conducting an abdominal examination and palpation in order to detect pregnancy. It is advisable that practitioners take photographic evidence of any physical injuries sustained by the victim as a result of the assault.

In order to determine the nature of the assault, record and classify injuries, the WHO has deemed it necessary to recommend that a genito-anal examination be conducted, in order to assess whether there was:

- vaginal penetration of the victim by the offender’s penis, fingers or through objects;
- rectal penetration of the victim by the offender’s penis, fingers or through objects;
- oral penetration of the victim’s mouth by the offender’s penis, fingers or through objects;
- oral contact of the offender’s mouth with victim’s face, body or genito-anal area;
- forced oral contact of victim’s mouth with the offender’s face, body or genito-anal area;
- ejaculation in victim’s vagina or elsewhere on the victim’s body or at the scene.⁷⁰

It must be noted that genito-anal examinations can be a traumatic and painful experience for a woman who has just experienced a sexual assault, and it is therefore of the utmost importance that the victim is made to feel as comfortable and secure as possible in the circumstances. Furthermore, as previously stated, it is essential that the victim provide her full, genuine, free and prior informed consent to such an examination. Where a victim has washed herself following assault, or otherwise rendered the collection of such evidence impossible, it may be pointless for her to subject herself to this form of examination and she should therefore be informed that it is unlikely to assist in the prosecution of the perpetrator.

The detection and documentation of symptoms that may have developed since the assault, and as a result of it, can be equally important. The WHO has noted that these may include genital bleeding; discharge; itching; sores; pain; urinary symptoms; anal pain or bleeding; and abdominal pain.⁷¹

Furthermore, victims of sexual violence may be at risk of contracting a number of sexually transmitted infections (STIs), including, chlamydia, gonorrhoea, trichomoniasis, syphilis, HIV and hepatitis. Accordingly, it is crucial that STI testing be offered to survivors in the aftermath of the assault. These tests should be repeated months after the sexual assault has occurred as STIs can take between three days and three months to incubate.⁷² Preventative or prophylactic treatment, however, should be administered on a case-by-case basis after the physical examination of the victim.⁷³ Medical practitioners responsible for treating victims of sexual assault are advised to refer to the latest edition of the WHO *Guidelines for the Management of Sexually Transmitted Infections*.⁷⁴

c. Collection of forensic evidence

The WHO maintains, “the objective of forensic evidence is to prove or exclude a physical connection between individuals and objects or places.”⁷⁵ In Morocco, the field of forensic medicine is underdeveloped, with only two accredited hospitals equipped to provide forensic-testing services.⁷⁶ Furthermore, there are just four qualified, practicing forensic doctors in

⁶⁹ *Ibid*, p. 39.

⁷⁰ *Ibid*, p. 37.

⁷¹ *Ibid*, p. 37.

⁷² *Ibid*, p. 67.

⁷³ *Ibid*, p. 67.

⁷⁴ Available at: http://apps.who.int/iris/bitstream/10665/42782/1/9241546263_eng.pdf.

⁷⁵ WHO Guidelines, *supra* note 65, p. 57.

⁷⁶ ICJ interview with Moroccan prosecutor on 13 October 2017.

Morocco.⁷⁷ In the long-term, the Moroccan authorities should endeavour to increase the number of hospitals and doctors offering forensic-testing services through, for example, training programmes. However, in the meantime, forensic doctors should seek to comply with the guidance and standards featured in the Istanbul Protocol and WHO Guidelines, which set out various methodologies and approaches for the careful collection of forensic specimens. If forensic-testing practices and services for cases of SGBV are to be bolstered in Morocco, then it is crucial that at least the specimen collection criteria articulated in Istanbul Protocol and WHO Guidelines be adhered to strictly.⁷⁸

d. Follow-up care

Being subjected to SGBV can result in a multiplicity of health consequences for the survivor. Accordingly, comprehensive medical treatment must include: tending to physical injuries; testing for pregnancy, STIs, such as HIV/AIDs; and counselling.⁷⁹

Effective access to safe and legal abortion and post-abortion care, as well as being provided with emergency contraception, are part and parcel of the right to an effective remedy and reparation to which women and girls victims of sexual violence are entitled, if they so wish. Thus, when women and girls survivors of SGBV seek medical attention a few hours and up to five days post assault, they should be offered emergency contraception. Moreover, should a pregnancy test prove positive, women and girls victims of sexual violence should be offered effective access to safe and legal abortion and post-abortion care, if they so wish. Therefore, justice sector actors must assist survivors in securing effective access to safe abortion and post-abortion care and emergency contraception whenever they need either.

In Morocco abortion is permitted only when the mother's life is at risk. If adopted by the two Chambers of the Parliament, amendments to the Criminal Code would authorize abortion in cases rape or incest.

e. Psychological support and counselling

SGBV can lead to serious psychological health impairment.⁸⁰ Possible psychological health problems that may occur as a consequence of sexual violence include: rape trauma syndrome; post-traumatic stress disorder; depression; social phobias; anxiety; and suicidal behaviour.⁸¹ The long-term and at times permanent nature of some of the afore-mentioned mental health problems render their recording and documentation as important as that of physical injuries for the effective investigation and prosecution of offences of SGBV, and to ensure that victims have access to adequate rehabilitation.

The absence of specialized courts in Morocco for cases of SGBV makes it even more imperative that prosecutors be familiar with the guidance featured in the Istanbul Protocol and WHO Guidelines and the standards required for the medico-legal documentation of SGBV. The training of prosecutors and judges in medico-legal reporting and forensic science would improve their respective awareness and understanding of what is generally a technical, science-oriented discipline and may, in turn, lead to a greater success rate in the prosecution of offences of SGBV.

4. Challenges during the investigative stage

Investigation of SGBV must ensure effective evidence-gathering, victims' empowerment and the avoidance of their secondary victimization (see below), including by retraumatizing them. Those in charge of investigations and prosecutions must minimize the burden on the victims as much as possible by recording their full statement once, and by taking an "evidence

⁷⁷ *Ibid.*

⁷⁸ WHO Guidelines, *supra* note 65, pp. 55-62.

⁷⁹ *Ibid.*, p. 63-74.

⁸⁰ ICJPG No.12, *supra* note 16, p. 220; UN Handbook for Legislation on Violence against Women (New York: Department of Economic and Social Affairs, 2010), p. 24.

⁸¹ WHO Guidelines, *supra* note 65, pp. 13-16.

based/absent-victim” approach throughout the prosecution.⁸² Such an approach helps reducing the pressure on the victim, reduces the risk of retaliation by the offender, and increases the chances of a successful prosecution,⁸³ while still being consistent with the defendant’s right to a fair trial.

a. Reducing the pressures of the investigation and prosecution on the victim

Requiring the victims to recount their statement repeatedly throughout the investigation phase contributes heavily to what is known as secondary victimization. As the *Handbook on effective prosecution responses to violence against women and girls* of the UN Office on Drugs and Crime explains, “secondary victimization” occurs not as a direct result of a criminal act but through the inadequate response of institutions and individuals to the victim.⁸⁴ Indeed, the manner in which justice sector actors “initially respond to victims is critical in determining whether a victim chooses to participate in further legal action, or abandons it because she has experienced secondary victimization or harsh treatment by the criminal justice system”.⁸⁵

There are several methods that could assist justice sector actors in searching for and gathering evidence that corroborates and supplements the victim’s own evidence. They include, for example, the photographic documentation of injuries and taking video footage of the victim as early as possible.⁸⁶ Needless to say, victims must give their free, full, informed and genuine prior consent to their being physically examined and/or photographed, particularly where the information regarding their case will be shared with third parties.⁸⁷

In cases of domestic violence, the effective gathering of evidence may also include: the recording of emergency calls to the police; taking photographs of any objects destroyed or damaged during the incident/s; and obtaining statements from doctors or social workers. All of this, in turn, may corroborate a victim’s statement even in the absence of additional eye-witness testimony of the actual offence/s, other than that of the victims themselves.⁸⁸

According to articles 194-209 of the Criminal Procedure Code, the investigating or trial judges may appoint an expert at any stage of the investigation and prosecution, either *proprio motu* or at the request of one the parties. These experts could provide valuable testimony, bolstering the prosecution’s strategy and efforts. In the context of the investigation and prosecution of offences of SGBV, justice sector actors are encouraged to consider seeking the assistance of all relevant experts, including social workers and psychologists, so as to enhance their own, as well as the Court’s awareness and understanding of SGBV and its effect on women, and thus increase the chances that offences of this nature be properly investigated and effectively prosecuted,⁸⁹ while simultaneously upholding the defendant’s right to a fair trial.

b. Victim-centred considerations

Understanding and acknowledging the singularly distinct nature of SGBV offences from the victims’ perspective, in terms of the level of harm, impact and the consequences of these crimes for survivors – as opposed to the effect of other types of crimes on their victims – are critical to bolstering the effectiveness of the investigation and prosecution of such crimes. This is because such an awareness and understanding, in turn, influence the justice sector actors’ perception of victims of SGBV offences, as well as the way in which those actors treat the survivors.

⁸² UNODC Handbook, *supra* note 17, pp. 80-81.

⁸³ *Ibid*, p. 81.

⁸⁴ *Ibid*, p. 1.

⁸⁵ *Ibid*.

⁸⁶ ICJPG No. 12, *supra* note 16, p. 216.

⁸⁷ ACHPR Guidelines, *supra* note 30, Principle 40.5, pp. 33-34.

⁸⁸ CEDAW General Recommendation on women’s access to justice, CEDAW/C/GC/33, para.51(i).

⁸⁹ ICJPG No. 12, *supra* note 16, p. 222.

Both the psychological impact of SGBV on the victims and the way they are treated by justice sector actors directly affect the survivors' trust in those actors, as well as their capacity to ultimately cooperate effectively in efforts to bring perpetrators to justice. For example, as mentioned above, SGBV may have an impact on the survivors' capacity to recollect events; it may also explain their reluctance to cooperate or delayed reporting. Survivors of SGBV often suffer from trauma, post-traumatic stress disorder, depression, anxiety, a sense of shame and emotional numbness. Additionally, a lack of protection for victims throughout the investigation and prosecution phases may increase their fear of retaliation, and consequently lead to an increased reluctance on their part to report the assault and/or cooperate with justice sector actors.

International guidance, including from practitioners, has identified a series of good practice measures when processing an initial complaint by the victim. In this context, Morocco's Ministry for Justice has issued a handbook that centres on comprehensive care for women and children, and partially covers various stages of the prosecution of SGBV. The handbook recommends that the victim is heard first by a social worker from the women's care unit, and then by the prosecution, who should be accompanied by a social worker.⁹⁰ Furthermore, the interview should take place in a therapeutic and comfortable environment.⁹¹

The UNODC Handbook on effective prosecution responses to violence against women and girls details a victim-centred approach to trial preparation for survivors of SGBV offences.⁹² Some of the UNODC Handbook recommendations include familiarizing victims with the criminal justice process and the role of the prosecutor; familiarizing victims with the courtroom; explaining their roles and rights; and explaining basic logistics about hearings.

c. Biased Misperceptions about victims' behaviour or their relationship with the perpetrator

"Sexual violence has often been addressed in the problematic [legal] framework of morality, public decency and honour, and as a crime against the family or society, rather than a violation of an individual's bodily integrity."⁹³ This approach wrongly asserts that SGBV is only subject to prosecution if the woman's behaviour satisfies the socially acceptable norms, such as remaining sexually abstinent until marriage or refraining from being in the company of a man outside the marriage context.⁹⁴

"The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences."⁹⁵

Several flawed, discriminatory and wrongful assumptions besetting the investigation and prosecution of SGBV offences in Morocco often concern the notion of consent to sexual activity. The case summary featured below in this section illustrate some of these problematic assumptions.

⁹⁰ Ministry for Justice, "A Practical Guide to Best Practices for the Judicial Enforcement for the Protection of Women and Children", pp.42-43.

⁹¹ *Ibid.*

⁹² UNODC Handbook, *supra* note 17, pp.60-61.

⁹³ Handbook for Legislation on Violence against Women, *supra* note 80, p.26.

⁹⁴ ICJPG No.12, *supra* note 16, p. 196.

⁹⁵ Beijing Declaration and Platform for Action, Report of the Fourth World Conference on Women, UN Doc A/CONF.177/20/Add.1 (1995), para. 96.

Bani Mlal Court of Appeal, Investigation file No. 207/10, 10 February 2011

Investigating judge, order

The victim and two suspects went together to Takzirt in a car. After being joined but other individuals, they drove outside of Takzirt, and stopped at a narrow street. The victim started crying and asking why they stopped there. Subsequently one of the suspects threw a strong punch at her face that caused her to bleed. They then took her to a cement cabin and when she tried to leave one of the suspects threatened her with a knife until he had sexual intercourse with her. When she asked again to leave he refused, locked her up in the cabin and left. Another person that she did not know, came to the house later and asked her to have sexual intercourse. When she withheld consent, he hit her until she fell on the ground and he then had sexual intercourse with her using violence.

While the victim stated that they had intercourse with her without her consent and with the use of force, the circumstances here show that the victim agreed to go with the suspects, and since she has withdrawn her complaint, this proves that the intercourse was consensual – making the incident on that qualifies as a crime under Article 490 of the penal code, that is, extra-marital sex.

While detention means holding an individual in a closed place, having assessed the circumstances, it appears that, in fact, the victim had agreed to be in that location, in order to engage in intercourse with the suspects.

All the suspects were subsequently charged with extra-marital sex and public intoxication.

Prosecution authorities must refrain from making groundless assumptions regarding the victim's consent to sexual activity based on her purported "risk-taking" behaviour, such as walking alone at night, or willingly accompanying the suspect to his house.⁹⁶

In circumstances where the perpetrator has used or threatened to use force or has otherwise coerced the victim into submitting to sexual activity, including by taking advantage of a coercive environment, consent should be found to be absent.⁹⁷

Consent v. marital rape.

Through its review of 75 judgments handed down in cases of SGBV, the ICJ has identified cases where victims testified that their husband or intimate partner had raped or otherwise subjected them to other forms of sexual abuse. In these cases, however, notwithstanding compelling evidence of rape or other forms of sexual abuse, and the defendant facing rape charges, the court failed to properly assess and reach a verdict on this evidence, choosing instead to convict the perpetrator with physical violence against his wife. Such cases reinforce the impression that rape is not taken seriously when committed in the context of an intimate relationship, which, by and large, is very often the context in which rape is actually perpetrated. It also encourages the false belief that the marriage bond implies *per se*, by definition, the wife's permanent consent to a sexual activity with her husband. Within marriage, as much as outside the marital context, free, informed, full and genuine prior consent to a sexual act should always require evidence of agreement by the individuals involved to the said act, and must never be inferred from the circumstances, such as the victim's agreement to accompany the perpetrator to his home.

d. Risk assessment

Another important consideration – which those in charge of investigations and prosecutions often overlook – is the extent to which the opening of such investigations and the unfolding of actual prosecutions of offences of SGBV may, in turn, give rise to retaliation risks for the

⁹⁶ UNODC Handbook, *supra* note 17, p. 78.

⁹⁷ See, for example: Rule 70 of the International Criminal Court's Rule of Procedure and Evidence.

survivors of such offences and, in some cases, the potential for such risks to affect others, including, for example, children.

The ICJ considers that an assessment of the risks faced by the victims and their protection needs must be conducted as early as possible, and it should then be systematically reviewed during the various phases of the investigation and prosecution. When assessing the risk, the victims' engagement with the prosecuting authorities is critical in order to establish a complete understanding of their personal context. It is also crucial to separate the risk of retaliation from the gravity of the offence, "perpetrators charged with minor offences are as likely to be as dangerous as those charged with more serious offences."⁹⁸

The authorities have an obligation to take all necessary measures to ensure the protection of victims. Effective protection measures contribute to the empowerment of the victim; ensuring survivors' privacy, safety and physical integrity, in turn, helps build faith in the criminal justice system, thereby encouraging them to maintain the most effective cooperation throughout the investigation and prosecution phases with the authorities, ultimately enabling survivors to provide the best possible evidence in court.⁹⁹

Therefore, a significant part of the preliminary investigation must involve engaging and liaising with victims in order to identify their protection needs, and to assess the prospective risk of retaliation they may face, including by analysing patterns of behaviour that may indicate lethality.

The UNODC Handbook sets out a non-exhaustive list of elements that may be taken into consideration while assessing risk:

Standard risk and danger assessment (including assessment of the lethality risk and risk of repeated violence) ¹⁰⁰	
Prior victimization	<ul style="list-style-type: none"> • Type, severity and frequency of assault • Date of most recent assault • Severity of this incident: strangulation, burning, permanent physical damage, head injuries, weapons involved, sexual aggression and coercion, drugging, poisoning, confinement • Serious injury in prior assaults • History and nature of past violence towards this victim • Is there a pattern of ongoing intimidation, coercion and violence • Who is perpetrating such a pattern, and against whom? • What is the severity of the violence? • Who has been injured and how? • Who is afraid and in what ways? (include non-physical fears such as losing children, home, job, etc.) • Was the victim assaulted during pregnancy or shortly after giving birth? • Current or past orders for protection • Previous domestic violence charges dismissed, previous domestic violence contacts with police or prosecutor's office
Perpetrator's drug and alcohol problems	<ul style="list-style-type: none"> • Alcohol or drug use
Perpetrator's obsessive/possessive behaviour and excessive jealousy	<ul style="list-style-type: none"> • Jealous or controlling behaviours • Intimidation of victim if she seeks help • Nature of controlling behaviour: threats of future injury or death (the more specific the threat, the greater the risk), threats to use a weapon, threats of child abduction or denial of visitation rights, threats made openly and in presence of others

⁹⁸ UNODC Handbook, *supra* note 17, p. 54.

⁹⁹ *Ibid*, pp. 53-54.

¹⁰⁰ *Ibid*, Table 5, pp. 54-57.

	<ul style="list-style-type: none"> • What kind of threats or coercion have been used to dissuade the victim from participating in the prosecution? • Who is most vulnerable to ongoing threats and coercion?
Perpetrator's mental health history (i.e. suicidal ideations, plans, threats and past attempts)	<ul style="list-style-type: none"> • Threats of homicide or suicide • Evidence of depression • Evidence of paranoid thinking • History of mental health or emotional problems
Perpetrator's threats to kill the victim or her children	<ul style="list-style-type: none"> • Threat to harm victim or children • Has the perpetrator harmed the children, in what ways? • Has the perpetrator threatened to harm the children? In what ways? • Does the victim fear that the abuser will take the children in retaliation for the cooperation with prosecutors? • Did the children witness offence or other violence or threats?
Perpetrator's use of violence in settings outside the home	<ul style="list-style-type: none"> • Prior criminal history, and whether there are other pending charges • History and nature of past violence towards others (i.e. history of violence in prior relationships)
Evidence of escalating violence or intimidation	<ul style="list-style-type: none"> • Stalking behaviour; use of weapon; sexual abuse; animal abuse; property damage or threats of future property damage; hostage taking; victim's increased vulnerability due to age, disability, pregnancy
Perpetrator's possession of, access to, familiarity with and degree of fascination with guns	<ul style="list-style-type: none"> • Access to firearms/availability of weapons
Perpetrator's proclivity to respect court rules	<ul style="list-style-type: none"> • Record of violation of court orders • Record of failure to follow pretrial release or probation rules • Previous participation in batterer treatment programme
The status of the relationship	<ul style="list-style-type: none"> • Are the victim and perpetrator separated or separating, estranged? • Is the victim in the process of fleeing? • What is the status of any family or other court case? • Imminent break-up, separation or divorce initiated by victim; imminent change in child custody and/or imminent change in victim's residence
Obtain information regarding these factors through all appropriate and available sources	<ul style="list-style-type: none"> • IMPORTANT: prosecutors must insist that law enforcement officers and investigators provide them with appropriate information about prior activities especially those associated with increased risk for lethality. • Police reports of the current offence • Additional information obtained from officers/investigators • Emergency calls, past police reports involving the same perpetrator • Prior arrests and convictions of the same perpetrator • Input from victim advocate if the victim has given the advocate permission • Petitions for civil protection orders and any supporting documents, prior pre-sentence investigation reports • Any probation status and/or compliance

e. Protective measures

Generally speaking, there are several protective measures that can be deployed – with a view to ensuring the safety of victims and witnesses of crimes – that are provided in Morocco's

criminal procedure code. These measures, however, are unfortunately not implemented in practice for cases of SGBV.¹⁰¹

Moreover, through its review of 75 judgments arising from cases involving SGBV, the ICJ has observed that, particularly instances of domestic violence, irrespective of the severity of harm, do not seem to lead to the implementation of provisional detention or non-custodial measures directed at the defendant that, to some extent, would protect the victims against retaliation risks.

However, there are several effective protection measures that may be taken in this kind of cases. While the criminal procedure code touches upon the issue of protection only briefly, providing for physical protection or relocation,¹⁰² prosecutors and investigating judges may use their discretion to take any additional measures they deem appropriate, and are thus empowered to actively devise a personalised safety plan suitable for the victim depending on the individual circumstances of the case. In order to be more effective, the safety plan should involve the victim in the first place and should also, as appropriate, seek the support of the community, family and friends, and ensure that all aspects of the victim's life, such as home, school, work and online presence and activity, have been taken into consideration. In particular the plan must be realistic, recognizing that a victim may cohabit with her abuser and/or raise children with him.¹⁰³

Measures under Articles 161 and 162 of the criminal procedure code include residential and travel restrictions, summonses, suspension of driving licence/permit, no-contact orders, rehabilitation, medical treatment, conditional bail, confiscation of weapons, among other restrictions.

In addition, while the powers of the Court to impose orders, which are provided for in Morocco's criminal procedure code, are mainly aimed at ensuring the suspect's appearance at trial and reduce the risk of absconding, they can also serve to seek to guarantee the victim's safety against retaliation. These measures are also useful for monitoring of and gathering evidence on the offender's behaviour in order to establish the pattern of violence against the victim. This is particularly relevant for acts such as stalking that are not criminally sanctioned. A stalker would in this case be held responsible for violating a no-contact order.¹⁰⁴

f. Prosecuting victims for other "crimes"

The threat of being charged themselves with criminal offences, for example, assault, also deters victims from filing a complaint following an incident of SGBV, particularly in circumstances when they had tried to defend themselves against their assailant.

"Illegal immigration" charges may also deter victims from lodging a complaint with the authorities. Indeed, it is well-established that fear of arrest, deportation and dire detention conditions deter migrant women from complaining to the authorities when they are subjected to SGBV, and expose them to additional risks such as further sexual exploitation and human-trafficking.¹⁰⁵

Offence	Article (Penal code)	Sentence	Category
"Extra-marital sex"	490	One month to one year' imprisonment	Misdemeanour

¹⁰¹ Letter from Human Rights Watch to the Government of Morocco on Domestic Violence Law Reforms, <https://www.hrw.org/news/2016/02/15/letter-human-rights-watch-government-morocco-domestic-violence-law-reforms>

¹⁰² Article 82-5 of the Criminal Procedure Code.

¹⁰³ UNODC Handbook, *supra* note 17, p. 57.

¹⁰⁴ No-contact orders are amongst other protective measures that may be imposed against the perpetrator under article 161 and 162 of the Criminal Procedure Code.

¹⁰⁵ UNODC Handbook, *supra* note 17, p. 43.

"Adultery"	491 (when triggered by aggrieved spouse)	One to two years' imprisonment	Misdemeanour
"Homosexual acts" ¹⁰⁶	489	Six months to three years' imprisonment and a fine ranging from 200 to 1000 Dirhams	Misdemeanour
"Prostitution"-related offences	497 to 503	Imprisonment ranging from one month to life sentence; fines up 3 Million Dirhams	Misdemeanours and felonies.

The threat of exposing themselves to the above-mentioned criminal charges, among others, operates as a powerful disincentive for the victims to approaching the investigating authorities to lodge complaints of SGBV. The instances where the force used by the victim to defend herself against her assailant was disproportionate, thus possibly warranting an investigation, are ordinarily extremely rare. In the vast majority of cases, including those in which the victims have used violence in self-defence, the investigating authorities should not investigate, let alone threaten to charge the victims with additional "crimes".

¹⁰⁶ Article 489 of the Penal Code defines homosexuality as, "sexual acts performed between members of the same sex."

5. Trial and sentencing

a. Reducing the pressure on the victims at trial

Some trial practices, such as the confrontation of the victims with the alleged perpetrator, and lengthy trials may have a particular negative impact on victims, including by enhancing the risk of retaliation, intimidation, and more generally result in the victim's loss of trust in the justice system. However, such a detrimental effect on the victims may be mitigated by informing the victims of their rights, and explaining to them what to expect at trial.

In this context, for example, the UN General Assembly has underlined the importance of granting women access to "information on rights, remedies and victim support services and on how to obtain them, in addition to information about their role and opportunities for participating in criminal proceedings."¹⁰⁷

Pursuant to the Moroccan Penal Code, the presiding judge shall take control of the conduct of proceedings, while respecting the rights of the defendant, including by declining any motion that would unnecessarily delay the defendant's trial.¹⁰⁸

In terms of the measures that can be taken to ease the pressure on the victims at trial, ordinarily, they revolve around steps that may be taken to ensure that the identity of the victim is not disclosed to the media and/or the general public; or measures that are designed to limit abusive or gratuitous questioning of the victims during trial; or steps aimed at ensuring that the victims are able to give the best possible evidence at trial, reducing the pressure of the trial on them, while ensuring compliance with the defendant's right to a fair trial. In particular, Prosecutors must observe utmost vigilance during trial and raise objections to any inappropriate question or comment vis-à-vis the victim that may arise from the defence.¹⁰⁹

The UNODC has developed a table featuring a series of protection measures that may ease the victim's trial experience.¹¹⁰

Confidentiality measures	Privacy measures	Victim support measures
<i>Measures designed to protect the identity of the victim from the press and public</i>	<i>Special evidentiary rules designed to limit the questions that can be posed to a victim during her trial</i>	<i>Measures designed to ease victim's experience during their testimony</i>
<ul style="list-style-type: none"> • Removing any identifying information such as names and addresses from the court's public records and preventing media access to such information • Using a pseudonym for the victim • Prohibiting disclosure of the identity of the victim 	<ul style="list-style-type: none"> • Prohibiting questions about the victim's prior or subsequent sexual conduct • Not requiring corroboration of the victims' testimony (according to national laws)¹¹¹ 	<ul style="list-style-type: none"> • Permitting victims to testify in a manner that allows her to avoid seeing the accused (i.e. closed circuit TV or screens) • Limiting the frequency, manner and length of questioning¹¹² • Permitting a support person, such as a family member or friend, to

¹⁰⁷ Updated Model Strategies and Practical Measures, *supra* note 16, para. 18(a).

¹⁰⁸ Article 298 of the Criminal Procedure Code.

¹⁰⁹ UNODC Handbook, *supra* note 17, p. 119.

¹¹⁰ *Ibid.*

¹¹¹ See above, Chapter 4, Section (a.).

¹¹² Furthermore, Provision 15 (e) of the Updated Model Strategies and Practical Measures, *supra* note 16, observes, "the complainant's sexual history in both civil and criminal proceedings should be prohibited where it is unrelated to the case." The UNODC Handbook at p. 100 notes that this prohibition deters the commonly held belief that a woman who has previously engaged in sexual activity has likely consented to the incident in question.

<ul style="list-style-type: none"> • or identifying information to a third party • Permitting victims to testify behind screens or through electronic or other special methods • Allowing in camera proceedings or closed sessions during all or part of the trial, i.e. during victim's testimony (excluding public) 		<ul style="list-style-type: none"> • attend the trial with the victim • A video-recorded interview with a vulnerable or intimidated witness before the trial may be admitted by the court as the witness's evidence-in-chief
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b. Sentencing

Prosecutors play an important role in recommending an appropriate sentence to the court, commensurate with the gravity of the offence. Hence, their sentencing strategy must bear in mind that one of the aims of seeking to redress SGBV through criminal justice is to take into account the victims' interests, as well as ensuring accountability and deterrence for violence against women.¹¹³

There are several elements that may be taken into consideration when building a sentencing strategy. They include: requesting a sentencing hearing; considering a risk-assessment of the offender; hearing from the victim if she wishes to give live evidence on the impact that the offences have had on her and her loved ones; considering the nature and gravity of the offence; the perpetrator's antecedents, if any, including in respect of offences of sexual and physical abuse; and being alert to arguments about mitigation.¹¹⁴

Prosecutors must provide the court with all the relevant elements that must be taken into consideration, such as a risk-assessment of the offender's dangerousness for the victim and the public, coupled with the offender's antecedents, including any prior history of sexual and physical abuse. It is the role of the prosecutorial authorities to provide the court with all the relevant elements to consider at the sentencing stage with a view to ensuring that the sentence is commensurate with the severity of the offence of which the defendant has been convicted. Aggravating circumstances, if any were present, as well as the impact of the crime on the victim are key elements to consider at sentencing.

Prosecutors must also recommend that court seek to obtain the victim's input before the sentencing takes place so as to ensure that the Court is aware of the impact that the defendant's offending has had on the victim. By ensuring that the Court is properly informed about the consequences of the offences on the victim, as well as on others who may have also been indirectly affected, e.g. her children, the Court is assured to have all the relevant elements before proceeding to sentence the perpetrator.

Sentences must be commensurate with the severity of the offence, they must hold the perpetrator accountable and must be seen to do so. Whenever they are present in any particular case, aggravating, as much as mitigating circumstances, must be an integral part of the sentencing stage.

Prosecuting authorities must challenge, by way of appeal, disproportionately lenient sentences, taking care to identify, for example, the lack of thorough assessment of the evidence presented at trial, including evidence attesting to the presence of aggravating circumstances, as well as any other shortcomings in the Court's reasoning disclosed during sentencing.

¹¹³ *Ibid*, Provision 17(a). See also: UNODC Handbook, *supra* note 17, pp. 121-122.

¹¹⁴ UNODC Handbook, *supra* note 17, p. 122.

c. Arguments in mitigation

According to article 146 of the Penal Code, if the court finds that the sentence provided for in the penal code is too harsh when measured against the relative seriousness of the offence or the defendant's criminal record, it may apply mitigating circumstances, unless provided otherwise. The judge has a discretionary power to make such a decision, provided that it is specifically justified and relevant to the circumstances of the defendant.

In the overwhelming majority of judgments analysed by the ICJ, convicted individuals benefitted from a reduction in their sentence due to the existence of mitigating circumstances with justification as vague as the "social situation of the defendant", "the defendant married the victim", and "sentence is too harsh considering the relative seriousness of the acts that were committed".

In this context, it is incumbent upon prosecutors to be particularly vigilant vis-à-vis submissions made by the defence in mitigation. While there is a consistent jurisprudence and a culture of mitigation as far as perpetrators of SGBV offences are concerned, prosecutors must be proactive in challenging certain mitigation pleas, factually, by pointing out any inconsistency with the evidence heard by the Court.

Prosecutors should insist on a proper assessment of the offender, on a case-by-case basis, which, while duly taking into account any mitigating circumstances present, gives appropriate consideration to the seriousness of the offence, and to any aggravating circumstances, if present, as well as to the impact of the offences on the victim.

d. Examples of lenient sentences in Morocco

Tamara First Instance Court, Case no. 1022/14/2105, 27 October 2014

Two victims filed a complaint against the same man.

The first stated that he threatened to rape her daughters, and that he hit her and injured her. Her statement was accompanied by a medical certificate of incapacitation for 23 days.

The second victim was the man's wife. She complained that he severely beat her and expelled her from their home.

With regard to the first victim, during the preliminary investigation, the defendant confessed that he hit her on the forehead using a wooden stick after she tried to hold him.

Concerning the second victim, his wife, he confessed that he had slapped her as a response to her phoning one of his friends, and that he expelled her from their home at 8 pm after she insulted him.

→ Applicable provisions and possible sentencing range:

- Regarding the first victim: article 401 (2), use of weapon causing incapacitation exceeding 20 days, two to five years' imprisonment and a fine of 250 to 2000 Dirhams.
- Regarding the second victim (the wife): article 404, twice the length of imprisonment provided in Article 400 (1),¹¹⁵ i.e., two months to two years and a fine of 400 to 1000 Dirhams.

Verdict: guilty

Sentence: eight months' imprisonment and 500 Dirhams fine.

"Due to the defendant's social situation, withdrawal of the complaint by the complainant, and in the interest of maintaining family ties, the court has found that in this case mitigating circumstances are applicable."

¹¹⁵ Physical assault not causing incapacitation exceeding 20 days – one month to one year's imprisonment and a fine of 200 to 500 Dirhams, or one of the two penalties.

Tamara First Instance Court, Case No. 14/2105/1217, 15 December 2014

The victim filed a complaint against her husband, stating that he had come home inebriated, carrying a bag full of alcohol bottles. He asked her to give him 100 dirhams and when she said that this money was not in her possession, he kicked her with his foot and assaulted her with the handle of a large knife.

He was still inebriated, in possession of a large knife and hallucinogenics, when the police arrested him.

The defendant confessed to having assaulted his wife by kicking her and pulling her hair but denied using any knife during the assault.

He was charged with the following offences under the Penal Code: causing a threat to public peace and security by possessing a weapon, under article 303bis; physical assault not causing incapacitation exceeding 20 days, under article 400; and, pursuant to article 404, the fact that he had committed the said offences against his wife was an aggravating circumstance. He was found guilty as charged.

"The court finds that, due to the social situation of the defendant and the withdrawal of the complaint by the complainant, mitigating circumstances are applicable in this case, pursuant to articles 146, 147, and 150 of the Penal Code."

The court sentenced him to two months imprisonment and a fine of 1200 Dirhams.

Applicable sentences:

- Article 303bis: causing threat to public peace and security while in the possession of a dangerous object – one month to one year's imprisonment and a fine of 1200 to 5000 Dirhams, or one of the two sentences.
- Article 400 (1): Physical assault not causing incapacitation that exceeds 20 days – one month to one year's imprisonment and a fine of 200 to 500 Dirhams, or one the two penalties.
- Article 404: double of 400(1), because committed against wife (i.e. two months to two years" imprisonment and 400 to 1000 Dirhams fine, or one of the two sentences.

Qnaitara Court of Appeal, Case No. 13/2610/70, 1 April 2013

The victim filed a complaint against the defendant, who, she claimed, had misled her. In her account of events, she stated that the defendant had phoned her to inform her that her fiancée had been arrested. Subsequent to this phone call, she met the defendant at the police station where she visited her fiancée.

The complainant and the defendant shared a taxi once they left the police station. As the complainant instructed the taxi driver to take her to a specific location, the defendant insisted that driver head to a different location.

Upon arrival at the location desired by the defendant, the defendant, who was inebriated, escorted the complainant to a dark alley. Frightened by the inebriated state of the defendant, she stayed with him for approximately three hours. At 23.00 he threatened her into staying with him until 3 am.

They were then joined by a third person who accompanied them to the house of the defendant. The defendant asked her to have intercourse with him. When she refused, he pulled her hair and threatened to hit her. She begged him to stop but he ripped her clothes off and started placing his penis on her face and neck until he ejaculated. Then he repeated the assault by penetrating her [vagina] with his penis. The victim provided a medical

certificate, which verified that she was incapacitated for 21 days and was suffering from psychological impairment [as a result of her ordeal].

Following the defendant's confession to the charges, the court found him guilty of rape, kidnapping and sexual abuse through the use of violence, while under the influence of intoxicants.

The court found that the sentences provided in the penal code are "too harsh considering the [relative] seriousness of the acts that were committed", and hence decided to use its discretionary powers to take into account the mitigating circumstances, sentencing him to four years' imprisonment.

Applicable sentences:

- Article 436: Kidnapping, five to ten years' imprisonment.
- Article 485: Sexual abuse or attempt to sexually abuse a person, five to ten years' imprisonment.
- Article 486: Rape, five to ten years' imprisonment.

Qnaitara Court of Appeal, Case No. 13/26120/280, 24 July 2013

At the time of the offence, the victim was a minor, under the age of 18.¹¹⁶ She filed a complaint stating that the perpetrator "seduced" her into beginning a relationship with him. They spoke over the phone for three months. He asked her to join him in Tangiers, which she did, without informing her mother. They stayed in a house in Mertil, where they spent the night. Later that evening, the defendant removed the victim's clothes and expressed his wish to have intercourse with her, and when she withheld consent, he hit her repeatedly. Despite her screams and calls for help "she submitted to his will", which caused the "perforation of her hymen". In order to reassure the victim, the defendant promised to propose to her and accordingly asked her to remain in the house until his return.

The victim confirmed that she resided with the accused in his house for a period of four months, and that during that time they had sexual intercourse frequently.

The defendant admitted to being in a relationship with the minor, arguing that their relationship was of a consensual nature. He stated that he was the first person with whom she had ever had sexual intercourse. In the preliminary investigation, the defendant also admitted that he sent money to the victim and promised to marry her as an inducement to persuade her to meet him.

The court found him guilty of "seducing a minor", that is someone under the age of 18, and of "sexual abuse causing perforation of hymen", pursuant to Articles 475, 484 and 488 of the penal code.

The court considered that "the sentence provided by the law is too harsh considering the [relative] seriousness of the acts that were committed". The court also found that the defendant benefits from mitigating circumstances due to his social situation, clean criminal record, marrying the victim and the withdrawal of the complaint by the victim and her guardian.

The court sentenced the defendant to a suspended sentence of [imprisonment of] one year.

Applicable sentences:

- Article 475 – "seducing a minor" without the use of violence – one to five years' imprisonment and 200 to 500 Dirhams fine.

¹¹⁶ Article 19 of the Family Code sets the age of marriage in Morocco at 18. However, according to article 20 of the Family Code, a judge of Family Court may approve the marriage of minors in certain circumstances.

- Article 484 – Sexual abuse of a minor without the use of violence – two to five years' imprisonment.
- Article 488 – if sexual abuse causes perforation of hymen – five to 10 years' imprisonment.

Court of Appeal of Riyadh-Rabat, Case 1343/2011/22, 28 January 2015

The offender was engaged in an extra-marital relationship with the victim who is a minor. The victim stated that they engaged in acts of a sexual nature over a period of time "without causing perforation of hymen". After a while they engaged in sexual intercourse and he "caused perforation of her hymen". The defendant confirmed the victim's statement adding that they are now legally married.

The court decided that there were certain mitigating circumstances given the defendant's social situation.

Additionally, due to lack of criminal record of the offender and his marriage to the victim, the court decided to suspend the sentence partially.

The Court sentenced him to a suspended sentence of two years' imprisonment.

Applicable sentences:

- Article 485: Sexual abuse or attempt to sexually abuse a minor – ten to twenty years' imprisonment.
- Article 488: If sexual abuse causes perforation of hymen – twenty to thirty years' imprisonment.
- Article 471: Luring a minor five to ten years

Court of Appeal of Al-Nadhur, Case no. 13.25, 18 December 2013

The victim was a minor, below the age of 18. She filed a complaint, which stated that the defendant "sexually abused" her by violently inserting his penis into her mouth. The victim's uncle, who witnessed the sexual incident, corroborated her statement; in addition, officers of the Judicial Police who had investigated the crime scene found additional corroborating evidence.

The defendant denied all charges brought against him but the Court disbelieved him.

The Court however decided that there were certain mitigating circumstances, due to the offender's "social and personal situation," and also decided to suspend the sentence due to lack of prior criminal conviction and withdrawal of complaint. He was subsequently sentenced to a suspended sentence of four years' imprisonment.

Applicable sentence:

- Article 485: Sexual abuse or attempt to sexually abuse a minor – 10 to 20 years' imprisonment.

6. Recommendations

The ICJ calls on the Moroccan authorities, including the Government, the Parliament, the Conseil Supérieur du Pouvoir Judiciaire, and the Office of the Public Prosecutor, to ensure that:

- i. **Clear, detailed Guidelines on investigating SGBV crimes are developed, enforced and fully complied with by law enforcement officers;**
- ii. **These Guidelines provide for clear procedures and protocols on, among others, the initial receipt and evaluation of information on a reported SGBV offense; the preliminary investigative procedures; and the documentation, collection, and proper preservation of evidence;**
- iii. **Professional health services are available and affordable for all victims of SGBV, including through increasing the number of hospitals and doctors offering forensic-testing services;**
- iv. **A national protocol for SGBV medical forensic examinations is developed consistent with international standards, and fully complied with by doctors and other health professionals;**
- v. **Until such a notional protocol is enforced, health professionals strictly adhere to, and comply with the Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment – and the WHO Guidelines for medico-legal care for victims of sexual violence;**
- vi. **The legal framework on SGBV offences is fully amended to ensure full compliance with international law and standards. To this end, ensure that the definitions of existing offences, including rape (article 486) and sexual abuse (articles 484-485), are brought in line with international standards; that other SGBV offences are established in the Moroccan Penal Code, including stalking and sexual harassment; and that the sentences provided for by the law are commensurate with the gravity of the SGBV offences;**
- vii. **Specialized SGBV prosecution units and chambers are established within the Tribunals of First Instance and Courts of Appeal;**
- viii. **Guidelines on the effective prosecution of SGBV offenses are developed and complied with by prosecutors;**
- ix. **Effective and ongoing training programmes are provided for judges and other actors of the justice system actors on relevant international law and standards on the prohibition and the effective adjudication of SGBV;**
- x. **Effective training and awareness programmes are provided for to counter judicial stereotyping, victims' blaming and other harmful practices that impede the effective investigation, prosecution and adjudication of SGBV offences in Morocco**

Until such reforms are introduced and implemented, the ICJ believes that it's the responsibility of the actors of the Moroccan justice system, in particular law enforcement officers, prosecutors, investigative judges, and judges to effectively use all the available tools provided for by the Moroccan legal framework, including the Criminal Code and the Code of Criminal Procedure, to effectively adjudicate SGBV offences, including by ensuring the rights of SGBV victims to effective remedies and reparation; by holding the perpetrators to account, and by combatting the impunity that often prevails over such offences. In so doing, these actors can find inspiration in the following General Guiding Principles:

Investigation

When they receive initial reports of SGBV offences and when they conduct preliminary investigations, law enforcement officers must:

- Gather the pertinent facts about the reported offence, including by arriving to the potential crime scene, assessing the danger to the victim and the continued risk to her physical/emotional well-being, determining the need for medical attention and coordinating with the relevant health services;
- Interview the reporting party, the victim, the suspect and all potential witnesses;
- Collect and properly preserve all evidence in support of SGBV allegations, including, but not limited to, photographic/video documentation of the injuries of the victim, the suspect and the crime scene, including any damaged property;
- Inform the victim of the steps and progress of the preliminary investigation and of alternative legal action where an investigation is not pursued, including review mechanisms under Article 222 of the Criminal Procedure Code and civil legal action;
- Strengthen, consolidate and supplement the victims' testimony with corroborating evidence, in particular medico-legal and forensic evidence on physical and psychological injuries sustained by victims as a result of the SGBV incidents;
- Appoint experts pursuant to articles 194-209 of the Criminal Procedure Code in order to assist with complex medical questions;
- Provide victims with effective access to safe and legal abortion and post-abortion care;
- Seek guidance from all relevant experts, including social workers and psychologists;

Prosecution

When they investigate and prosecute cases of SGBV, investigating judges and prosecutors must:

- Refrain from making groundless assumptions regarding the victim's behaviour or their relationship with the perpetrator;
- Refrain from prosecuting victims of SGBV for other "crimes", such as extra-marital sex, adultery, homosexual acts and prostitution, which, in turn, assuage the victim's fear to seek justice;
- Conduct risk assessment of the victims consistently throughout the investigation and prosecution phases with a view to preventing retaliation by the offender;
- Minimize the burden on the victims as much as possible by recording their full statement once, and by taking an "evidence based/absent-victim" approach throughout the prosecution;
- Implement the protection measures provided for in the Criminal Procedure Code (Articles 82-5, 161 and 162), and, to this end:
 - Provide the victim with a hotline number and personal protection;
 - Assist the victim to change residence if necessary;
 - Provide the victim with the necessary medical assistance;
 - Ensure that assessment and protection are personalized to the situation of the victim;
 - Take measures directly against the suspect such as imposing residential and travel restrictions; summonses; suspension of driving licence/permit; no-contact orders; detention and conditional bail;
 - Charging the suspect with obstruction of justice or breach of court orders if protection measures are not respected;

- Provide the court with all the relevant elements that must be taken into consideration, such as a risk-assessment of the offender's dangerousness for the victim and the public, coupled with the offender's antecedents, including any prior history of sexual and physical abuse;
- Recommend that court seek to obtain the victim's input before the sentencing takes place so as to ensure that the Court is aware of the impact that the defendant's offending has had on the victim;
- Challenge, by way of appeal, disproportionately lenient sentences.

Trial

When adjudicating cases of SGBV, judges must:

- Refrain from judicial stereotyping, victims' blaming and other harmful practices that undermine the rights of the victims of SGBV to an effective remedy and to reparation;
- Adopt a victim-centred approach to trial preparation for victims of SGBV offences, as detailed in the UNODC Handbook on effective prosecution responses to violence against women and girls;
- Ease the pressure on the victims at trial, including by ensuring that the identity of the victim is not disclosed to the media and/or the general public; by limiting and rejecting abusive or gratuitous questioning of the victims during trial, including any inappropriate questions asked or comments made by the defence or the prosecution vis-à-vis the victim, especially baseless assumptions regarding consent (e.g. purported "risk-taking" behaviour or sexual history of the victim); and by ensuring that the victims are able to give the best possible evidence at trial;
- Ensure that sentences are commensurate with the severity of the SGBV offences and ensure accountability and deterrence for violence against women;
- In determining the existence of mitigating circumstances, ensure that such a decision is particularly reasoned and justified on a case-by-case basis,
- Reject any justifications of mitigating circumstances as vague as the "social situation of the defendant", and "sentence is too harsh considering the relative seriousness of the acts that were committed;"
- Properly assess and take into account the impact of the offences on the victim, as well as any aggravating circumstances, including the offender's antecedents.