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Morocco: Unprecedented legal reforms must uphold human rights

Amnesty International welcomes the Moroccan authorities' stated intention to amend the Code of Criminal Procedure and the Penal Code as part of unprecedented plans to reform the country's justice system, with the hope that it will lead to a better protection of human rights. Unveiled by Morocco's Minister of Justice and Liberties in September 2013, the Charter for the reform of the judiciary notably aims at strengthening the judiciary's independence as well as harmonizing national laws with the Constitution and the international human rights treaties to which Morocco is a state party.

The Moroccan authorities have taken a series of human rights initiatives in recent years, including the adoption of a new Constitution in 2011 that enshrines key human rights guarantees, the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance in 2013 and the accession to the Optional Protocol to the Convention against Torture in 2014. In a crucial step towards protecting women and girls from violence, the Moroccan Parliament voted in 2014 to amend the law so that rapists can no longer escape prosecution by marrying their victims if they are aged under 18. In March 2015, King Mohammed VI announced a draft bill aimed at reforming the abortion law in Morocco.

Yet despite these positive developments, Amnesty International continues to document reports of human rights violations as a result of shortcomings in Moroccan legislation and practice, including cases of arbitrary detention, torture and other ill-treatment in detention; unfair trials; inadequate protection of women against all forms of violence, including sexual violence; as well as restrictions on the right to freedom of expression and on the right to privacy which go beyond those permitted under international law. Undue restrictions on the right to freedom of religion are also imposed. Although Morocco maintains a longstanding moratorium on executions it retains the death penalty, which Amnesty International considers to be a violation of the right to life.

OPPORTUNITY FOR CHANGE

Current reforms provide the Moroccan Parliament with an unprecedented opportunity to launch a complete overhaul of the Penal Code and the Code of Criminal Procedure to ensure that they are consistent with Morocco's human rights obligations, in particular the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) as well as others, to which Morocco is a state party.

As an elected parliamentarian, you can play a key role as a guardian of human rights. Amnesty International calls on you to press for the adoption of the following legal reforms set out below.

ENSHRINE SAFEGUARDS AGAINST TORTURE AND OTHER ILL-TREATMENT

Existing safeguards against torture and other ill-treatment in Moroccan law are routinely flouted. Despite legal requirements to notify families immediately upon arrest and to allow contact with lawyers, in practice families are rarely notified and defendants are seldom able to access legal counsel before the end of *garde à vue* detention. Reports of torture and other ill-treatment in detention by the security forces continue to emerge and are rarely investigated, while coerced statements obtained as a result of torture or other ill-treatment continue to be used in courts in spite of a legal ban on the use of forced confessions in legal proceedings. Amnesty International is also concerned at emerging reports of several individuals being arrested and convicted on charges of false reporting, slander and insulting the police, thus deterring victims of torture or other ill-treatment or other abuses at the hands of the police from reporting such violations for fear of finding themselves prosecuted.

Amnesty International calls on you to:

- Amend the definition of the crime of torture (Article 231 of the Penal Code) to ensure that it contains all elements of Article 1(1) of the CAT;

- Amend the Code of Criminal Procedure to ensure that statements or confessions made by a person deprived of liberty other than those made in the presence of a judge and with the assistance of a lawyer have no probative value in proceedings against that person;
- Amend the Code of Criminal Procedure to ensure that reports prepared by the judicial police during the investigative phase remain inadmissible in trial court until the prosecution meets the burden of proving their veracity and legal validity according to the Code of Criminal Procedure;
- At any point in the proceedings if a defendant or his or her representative alleges torture or other ill-treatment, there must be an independent, impartial investigation, including medical examination in line with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). Legal proceedings should be postponed pending the outcome of the investigation;
- As per existing Article 293 of the Code of Criminal Procedure, any statement obtained under coercion including torture shall not be invoked as evidence in any proceedings, except against the person accused of torture as evidence that the statement was made; the burden of proof lies with the prosecution to prove beyond a reasonable doubt that contested statements were freely given;
- Repeal or amend the criminalization of “false reporting” and “slandering denunciation” (Articles 264 and 445 of the Penal Code) to ensure that such charges cannot be brought against people making complaints of torture and other violations. If retained, such provisions should criminalize only false statements made with malicious intent and resulting in harm over and above harm to reputation, which should be a matter for civil litigation. Any offence of making a false statement to a judicial authority, as currently included in Article 264, would be more appropriately dealt with under provisions of the Penal Code dealing with perjury;
- Amend the Code of Criminal Procedure to include provisions against incommunicado detention. Ensure that individuals taken into custody are held only in officially recognized places of detention and are registered in a centralized register of detainees accessible to their lawyers and families at all times upon request and without delay;
- Ensure that all detainees are immediately informed of their rights and have a legally enforceable right to legal counsel of their choice promptly after arrest and to have a lawyer present at all times during interrogation (Article 66 of the Code of Criminal Procedure);
- Amend the Code of Criminal Procedure to institute transparent rules for interrogation of suspects in *garde à vue* and to ensure that the authorities responsible for detention are separate from those in charge of interrogation;
- Amend the Code of Criminal Procedure so as to explicitly require that all police interrogations are video recorded;
- Amend the Code of Criminal Procedure so as to explicitly require that all detainees are promptly offered medical examinations upon being taken into custody, at entry, exit, during transfers, and periodically during detention, and that the records of such examinations are made accessible to detainees and representatives of their choice;
- Ensure that national legislation, including Law no. 03-03 on Combating Terrorism as integrated in the Penal Code and Code of Criminal Procedure, is amended and put in conformity with Morocco’s obligations under international human rights law. In particular, the length of time that a person can be held in police custody before being brought before a judge (*garde à vue*) should be reduced to no more than 48 hours (Article 66 of the Code of Criminal Procedure).

RESPECT AND PROTECT THE RIGHT TO FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY

Defamation and insult charges have been brought against journalists and activists deemed to have insulted public figures or state institutions, in violation of the right to freedom of expression guaranteed in the Constitution as well as international human rights treaties to which Morocco is a state party.

Amnesty International calls on you to:

- Repeal all legal provisions which could be used to criminalize activities amounting to the peaceful exercise of freedoms of expression, association and peaceful assembly, permitting only such limitations that are necessary and proportionate for a legitimate purpose as set out in international human rights law;

- End the use of criminal law, including provisions of both the Penal Code and the Press Code, in regard to defamation, which should be treated as a matter for civil litigation, in regard to protection of the reputations of both public figures and private individuals. Any laws providing special protection for the reputations of the monarchy, public institutions, government officials, or national flags or symbols should be repealed (Articles 263-267-4 of the Penal Code);
- Reject draft legislation aimed at reforming the Penal Code that would criminalize the criticism of religious beliefs and ensure that the Penal Code fully respects the right to freedom of expression;
- Amend the vaguely-defined offence of “apology of acts which constitute terrorism offences” (Article 218-2 of the Penal Code) to limit it to criminalizing only the making of public statements with the intent to incite the commission of terrorist offences and causing a danger that such offences may be committed, in line with the recommendations of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

REFORM THE JUSTICE SYSTEM

- Guarantee the independence of the judiciary from the Executive by enshrining in law judges' security of tenure, with effective safeguards against political interference, including by ensuring that judges are not subject to arbitrary disciplinary measures or have their judicial immunity revoked, for their legitimate activities as judges. Ensure that the High Council for the Judiciary (*Conseil Supérieur du Pouvoir Judiciaire*, the body that oversees the independence, appointment, promotion, retirement and discipline of judges) functions as an independent body and adopts clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them, in line with international standards.

END DISCRIMINATION AND END VIOLENCE AGAINST WOMEN

Moroccan law fails to adequately protect women from all forms of violence and provides inadequate protection against sexual violence. The definition of rape falls short of international standards. Moreover, women who fall pregnant as a result of rape do not have access to abortion. Although international law requires that states ensure access to abortion when a woman's life and physical and mental health is in danger and in cases of rape or incest, abortion in Moroccan law is still criminalized, unless the health of the mother is at risk, and is subject to spousal consent, thereby impeding women's autonomous decision making. Sexual relations between unmarried consenting adults are also a criminal offence, in violation of the right to privacy. The Moroccan authorities must adopt a comprehensive law on gender-based violence, in compliance with Morocco's obligations under international human rights law, and ensure full consultation with civil society in developing this legislation. The authorities must also take measures to ensure that national legislation outlaws discrimination.

Amnesty International calls on you to:

- Repeal or amend all provisions of the Penal Code that discriminate on the basis of race; colour; religion; ethnicity; birth; sex; sexual orientation; gender identity; political or other opinion; national or social origin; property; or other status;
- Criminalize all forms of violence against women and girls, including by introducing legal provisions prohibiting domestic violence, including marital rape, as well as sexual harassment, assault and rape, consistent with international law and standards;
- Ensure that the definition of rape in Moroccan legislation (Article 486 of the Penal Code) is gender neutral and defined in such a way as to address and criminalize all forms of forced and coercive sexual invasion, including penetration by objects, in line with the highest international human rights law and standards;
- Provide for marital rape as a specific criminal offense;
- Repeal the provision providing for harsher sentences if rape and “indecent assault” (*attentat à la pudeur*) result in a woman losing her virginity, which legislates for differential penalties depending on whether a victim is a virgin or not (Article 488 of the Penal Code);
- Decriminalize consensual sexual relations between adults by repealing articles 490, 491, 492 and 493 of the Penal Code; such criminalization violates the right to privacy and can impede victims from reporting sexual assault and rape;

- Decriminalize abortion and ensure women and girls have access to safe and legal abortion when their life and physical and mental health is at risk as well as in cases of rape or incest, and remove the requirement for spousal consent (Articles 449-452 and 454-458 of the Penal Code);
- Repeal provisions which provide reduced sentences for crimes of violence where the perpetrator claims mitigation based on the victim's alleged adultery or other perceived sexual misconduct (Articles 418 and 420 of the Penal Code);
- Ensure that sexual harassment is defined in Moroccan law in line with international standards – that is, any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment - and is subject to criminal or other legal sanctions. Article 503-1 of the Penal Code should focus on such conduct which is of a clearly criminal nature and be defined with sufficient precision and clarity that the individual can know what conduct is prohibited. Outside the context of the reform of the Penal Code, the Moroccan parliament should give urgent consideration to legislative or other measures to give effect to the Moroccan authorities' obligation to eliminate prejudices and gender stereotyping, as set out in Article 5a of CEDAW.

RESPECT AND PROTECT THE RIGHT TO FREEDOM OF RELIGION

- Repeal provisions which violate the right to freedom of religion, including provisions which criminalize proselytizing (Article 220 of the Penal Code) and which provide prison terms for Muslims breaking Ramadan fast in the public sphere (Article 222 of the Penal Code), to ensure that the law complies with Morocco's obligations under Article 18 of the ICCPR which guarantees freedom of thought, conscience and religion.

UPHOLD THE RIGHT TO LIFE

- Review all provisions in Moroccan law which provide for the imposition of the death penalty, in order to reduce the number of capital offences, with a view to abolishing capital punishment, in line with Article 20 of the Constitution which enshrines the right to life.