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Morocco: Violence against women bill needs stronger safeguards

As Morocco's lawmakers are poised to debate and vote on Draft law 103-13 on combating violence against women, Amnesty International calls on the Moroccan authorities to seize this opportunity by enacting the highest international human rights law and standards. In particular, they must provide for comprehensive definitions of acts of violence, ensure access to justice, guarantee provision of support services for survivors of violence and effectively combat prejudices and discriminatory stereotypes both in law and practice.

Prepared jointly by the Ministry of Solidarity, Women, Family and Social Development and the Ministry of Justice and Liberties, it is the first draft law on violence against women successfully approved by the council of government. Legislators are expected to vote on it in coming weeks. If adopted, the bill would amend Morocco's Penal Code and Code of Criminal Procedure, also under review in the context of broader [judicial reforms](#).

A 2009 study by Morocco's High Commission for Planning, a government body, found that 62.8% of women reported experiencing psychological, physical, sexual or economic violence in the year leading up to the survey. The study, which remains the only such survey to date, drew on interviews of 8,300 Moroccan women across the country. Moroccan civil society groups, and women's rights groups in particular, have been calling for a law on violence against women for years. Yet most said they were insufficiently consulted during the drafting process in spite of their invaluable experience and expertise in combating gender-based violence.

In a welcome move, the draft law introduces new offences and increases existing penalties in cases of spousal or family violence. It also proposes new measures to protect survivors of violence during and after judicial proceedings and establishes new bodies to coordinate and complement judicial and governmental efforts to combat violence against women.

Nonetheless, the draft law requires substantial amendments in order to effectively protect women and girls from violence and discrimination, and to meet Morocco's international human rights obligations, in addition to its own constitutional guarantees. Of particular concern to Amnesty International are the lack of comprehensive definitions of forms of violence, the perpetuation of derogatory gender stereotypes as well as the failure to address obstacles to accessing justice and services for survivors. The organization calls on the Moroccan authorities to adopt legislative and other measures set out below.

Entrenching harmful stereotypes

The draft law defines violence against women as "any act caused by sex-based discrimination that results in physical, psychological or sexual or economic harm to women". While this definition is relatively similar to Article 1 of the 1993 UN Declaration on the Elimination of Violence against Women, it does not provide the precision and detail included in Article 2 of the Declaration, which complements the definition with a non-exhaustive list of forms of violence against women occurring in the family, the general community and perpetrated or condoned by state agents. A definition of what discrimination against women entails, in line with Article 1 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), is also missing.

The draft law starts with an introductory note framing the rights of women and girls within the context of "the tolerant principles" of Moroccan society's "religion" and "civilizational values" but lacks a

preamble stating its underlying fundamental concepts. In particular, the draft law fails to recognize that gender is socially constructed, and instead conflates women and girls with their stereotyped gender roles as wives and mothers, particularly with regard to violence. This bias is reflected in the insufficient protection to women and girls who fall outside stereotyped gender roles.

Most newly-introduced offences focus on protecting married or divorced women. These include the prohibition on forced marriage (Article 503-2-1), an offence punishable with prison terms ranging from six months to one year and fines ranging from 10,000 to 30,000 Moroccan dirhams (about 1,030 to 3,100 US dollars). They also include a ban on the deliberate squandering of funds intended for the spouse, children or divorce-related payments or arrangements (Article 526-1), punished with prison terms between one and six months and fines between 2,000 and 10,000 Moroccan dirhams (about 200 and 1,030 US dollars). Evicting a spouse from the marital home is another new offence in the same vein (Article 480-1), punished with fines ranging from 2,000 and 5,000 Moroccan dirhams (about 200 and 500 US dollars).

While these are welcome steps, no new offences are defined for other categories of women who are disproportionately vulnerable to violence, including migrant women and girls, women and girls with children out of wedlock, and women and girls with disabilities.

Sexual assault and rape

The draft law fails to amend Morocco's rape laws to bring them in line with international law. The definition of rape should be gender neutral and defined in such a way as to address and criminalize all forms of forced and coercive sexual invasion into any part of the victim's body, including penetration by objects, in line with international human rights law and standards. Yet the draft does not amend Article 486 which currently defines rape as when "a man has sexual relations with a woman against her will" and does not provide for marital rape as a specific criminal offense. As a result, rape is understood as forcible sexual relations with a female and excludes the possibility of rape of men and boys. It also allows the downgrading of some cases of rape as sexual assault, currently defined in Articles 484 and 485 of the Penal Code.

The prohibition on rape is currently included in Article 486 of the Penal Code and punished by five to 10 years' imprisonment. Prison terms can reach 30 years under Articles 486, 487 and 488 when there are aggravating circumstances including when the victim is a child, a disabled woman or a pregnant woman, when the victim loses her virginity, or when the perpetrator uses authority, including authority from public or religious office. A separate preliminary draft law to [amend the Penal Code](#) unveiled in April 2015 proposes to add substantial fines in the cases described above.

In addition, the draft law should specify that rape by state agents constitutes torture. Rape by state officials, including police officers, has been unequivocally defined as torture by international criminal tribunals, as well as by UN and regional human rights bodies. Threats of rape by a state official, regardless of whether they are carried out, also constitute torture and other ill-treatment, as the UN Committee against Torture has recognized.

The draft law also fails to remove discriminatory provisions that make the severity of sanctions for sexual assault dependent on the victim's marital or virginity status, from existing legislation which focus on the "honour", "morals", and "respectability" of women and girls, and implicitly that of their families, at the expense of their individual dignity and right to bodily integrity. Article 488 of the Penal Code, which currently provides for harsher sentences if rape and "indecent assault" result in a woman losing her virginity, remains unchanged in the bill.

Defining sexual violence as an attack on one's "honour", "reputation" or "virginity" perpetuates stereotypes, is discriminatory and encourages victim-blaming. Women and girls have intrinsic human rights and acts of violence against them must be defined as crimes against the person and violations of bodily integrity and not by reference to their virginity, marital status or family situation. Existing and proposed provisions that discriminate between victims on such bases should be amended to ensure that all victims are treated equally.

Sexual harassment

Article 503-1 of the Penal Code currently defines sexual harassment as the abusive use of authority to “harass a person through orders, threats, coercion or any other means, in order to obtain sexual favours”. Penalties include one to two years’ imprisonment and fines ranging from 5,000 to 50,000 Moroccan dirhams (about 500 to 5,180 US dollars).

This article is highly problematic as it describes coerced sexual contact as “favours”, a vague and ambiguous term clouding the issue of consent. Coerced sexual invasion, including coercion through orders or threats, amounts to rape according to international human rights standards. In addition, the article refers to perpetrators with authority, including public officers, while failing to specify that rape by state agents constitutes torture.

The draft law currently leaves this article unchanged, except for increasing the prison penalty to a maximum of three years compared to two currently. The article should be clarified or abrogated to ensure that cases of rape are not prosecuted under this lesser provision of sexual harassment, and that rape or threats of rape by state agents are explicitly recognized as torture.

The draft law extends the definition of sexual harassment to “anyone who perseveres in harassing another person in the following situations: 1 – in public or other spaces, through acts, words or signs of a sexual nature, or for sexual purposes; 2 – through written or electronic messages or recordings or photographs of a sexual nature or for sexual purposes. The penalty is heavier if the perpetrator is a work colleague or an individual entrusted with preserving security and order in public or other spaces.” It increases the prison penalty to a maximum of three years compared to two currently.

This definition of sexual harassment is too vague and should be amended 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. The prohibition on sexual harassment in the Penal Code should be amended in line with this definition and meet requirements of clarity and precision required in criminal law.

Adultery laws and “honour” crimes

In its current form, the bill perpetuates marriage, rather than consent, as the central criterion for lawful sexual relations by preserving the ban on consensual sexual relations outside marriage in Articles 489, 490 and 491 of the Penal Code. Article 489 punishes same-sex relations with prison terms ranging from six months to three years, and fines ranging from 120 to 1000 Moroccan dirhams (about 12 to 100 US dollars), which a separate preliminary draft law to [amend the Penal Code](#) unveiled in April 2015 proposes to increase to 2,000 and 20,000 Moroccan dirhams (about 200 and 2,270 US dollars).

Article 490 of the Penal Code punishes consensual sexual relations outside marriage with between one month and one year’s imprisonment. The April 2015 preliminary draft law to amend the Penal Code seeks to expand the prohibition from sexual relations to “unlawful sexual contact”. It also reduce the maximum prison term to three months, and introduces fines of 2,000 to 20,000 Moroccan dirhams (about 200 and 2,270 US dollars) which may be imposed as an alternative, or in addition, to imprisonment.

In addition, Article 491 of the Penal Code punishes adulterous spouses, men and women alike, with one to two years’ imprisonment. The April 2015 preliminary draft law to amend the Penal Code proposes to add fines of 2,000 to 20,000 Moroccan dirhams (about 200 and 2,270 US dollars). Because prosecution requires a complaint by the spouse of the adulterer, husbands committing adultery with unmarried women may escape prosecution under Article 491, while women remain liable under Article 490.

In 2015, the Committee on Economic, Social and Cultural Rights called on the Moroccan authorities to decriminalize consensual sexual relations outside marriage, including same-sex relations. Women's groups in Morocco have told Amnesty International that the criminalization of consensual sexual relations, including adultery laws, deter rape survivors from filing complaints for fear of finding themselves prosecuted if the authorities do not believe the rape allegation. Such criminalisation also violates the rights to privacy and free expression and should be abrogated. Amnesty International further believes that adultery laws disproportionately impact women in practice and reinforce harmful gender stereotypes.

The draft law also fails to repeal existing provisions which condone so-called "honour" crimes by allowing for reduced sentences for those assaulting adulterous spouses or family members engaged in perceived sexual misconduct. Article 418 of the Penal Code states that assault is "excusable" if committed against a spouse caught in the act of adultery, while Article 420 likewise states that assault and manslaughter by a (male) "head of family" who discovers "unlawful carnal business" in the home is "excusable". A separate preliminary draft law to amend the Penal Code proposes to extend Article 420 from the "head of family" to any member of the family. Amnesty International calls for these provisions, which encourage violence and vigilantism and provide impunity for perpetrators of violence, to be abrogated.

Forced marriage and child marriage

The draft law introduces a prohibition on forced marriage (Article 503-2-1), punishable with prison terms ranging from six months to one year and fines ranging from 10,000 to 30,000 Moroccan dirhams (about 1,030 to 3,100 US dollars). The article doubles the penalty if the victim is a minor or a woman targeted "because of her sex". However, it makes the prosecution dependant on a complaint from the victim, and states that the victim's withdrawal of her complaint ends the prosecution. Amnesty International fears that this provision increases the victim's vulnerability to reprisals and pressure from her husband and family to drop the complaint. It is particularly problematic in cases of child marriage as girls are particularly vulnerable to such pressure. Amnesty International therefore recommends that the provision on the conditionality of prosecution on complaints from the victim be removed from the bill. The ban on forced marriage is an important protection for women and girls because it emphasises the importance of consent.

The draft law, however, does not prohibit child marriage. Article 19 of Morocco's Family Code sets the age of marriage at 18, but derogations are possible under Articles 20 and 21 that allow judges to authorize child marriage, with or without the consent of the child's guardian. The draft law leaves these provisions unchanged. Articles 20 and 21 of the Family Code make no mention of the child's meaningful consent to marriage, leaving broad discretion to the judge. The UN Committee on the Rights of the Child has established that 18 should be the general minimum age for marriage, though the law may allow for exceptions with appropriate safeguards to ensure meaningful consent.

Obstacles to justice and inadequate services for survivors

The draft law fails to address existing obstacles faced by women and girls when attempting to report violence to law enforcement officials and judiciary authorities. It should explicitly prohibit mediation between the survivor and alleged perpetrator in all cases of violence against women and girls, both before and during legal proceedings. Women's groups in Morocco have particularly highlighted the police's reluctance to record and take action regarding allegation of violence between spouses, seeing their role as to promote mediation and reconciliation to preserve the family unit. The draft law further makes prosecution contingent on complaints from the victim and halts proceedings upon the withdrawal of such complaints for a number of offences, including forced marriage. Where there is sufficient admissible evidence, law enforcement officials must prosecute those suspected of responsibility in proceedings meeting international standards of fair trial. Questioning by judicial police and court hearings must be gender-sensitive and avoid re-traumatizing survivors of violence.

Another obstacle to accountability stressed by women's groups in Morocco has been police and courts' attitudes towards evidence, making unreasonable demands not required by law such as requesting

eyewitness testimony in cases of rape. If adopted, the draft law would compel medical professionals to testify in cases of violence against women and girls (Article 446). In addition to violating medical ethics, this provision could discourage women and girls not wishing to file complaints to seek medical treatment for fear of disclosure against their consent by treating doctors or other medical staff.

Protection, support and assistance

Protection orders, if granted appropriately and effectively enforced, can provide safety for survivors of violence against women. In a welcome move, the draft law introduces new protection measures from the start of judicial proceedings for cases of violence against women (Article 82-5-1). It also imposes a duty for prosecutors to order suspects not to contact victims or approaching their whereabouts (Article 88-3). It builds on existing provisions in the Penal Code to prohibit alleged perpetrators from contacting survivors and to subject perpetrators to appropriate psychological treatment (Article 61). The bill also proposes for court hearings to be held behind closed doors at the survivor's request in cases of assault or violence against women or children. If adopted, this important measure could help avoid further victimisation in court (Article 302).

However, some important provisions relating to access to health care and support services are missing from the bill. In particular, survivors of rape and other forms of sexual violence should have free and immediate access to healthcare to mitigate the consequences of the crime they have suffered. For survivors of rape, this includes access to emergency contraception, testing and treatment for sexually transmitted diseases, a forensic examination carried out in accordance with the Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the World Health Organization (WHO) Guidelines for medico-legal care for victims of sexual violence, and access to safe and legal abortion in accordance with WHO guidance (Safe abortion: technical and policy guidance for health systems).

Although international law requires that states ensure access to safe and legal abortion when a woman's life and physical and mental health is in danger and in cases of rape or incest, abortion is still criminalized under Moroccan law. It is only permitted in cases where the mother's health is at risk. Abortion is also subject to spousal consent, thereby impeding women's autonomous decision making. Outside the exception of danger to maternal health, women and girls seeking abortion risk up to two years' imprisonment, while medical professionals may be jailed for up to 30 years (Articles 449-452 and 454-458 of the Penal Code). One year ago, the Moroccan authorities said that access to abortion would be extended to cases of severe foetal impairment or pregnancies resulting from rape or incest, but the government has yet to unveil draft amendments to the Penal Code in this regard.

Amnesty International [calls on the Moroccan authorities](#) to 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.

The draft law provides a legal framework for support structures for women and children survivors of violence. These structures, which include members of the judiciary, law-enforcement officers, social workers and other public officials, provide support and accompaniment to women and children wishing to access justice. They are already in place in some courts, police and gendarmerie stations, and other public administration throughout the country. The Moroccan authorities should guarantee adequate funding and specialized training for staff, given the different needs of women and children exposed to different kinds of violence. The draft law also establishes a National committee for violence against women, as well as regional and local committees, to coordinate judicial and government action on the issue and address obstacles to survivors' access to justice. Since women's groups have deployed extensive efforts to provide support, care and counsel to women survivors of violence for a number of years, including by providing listening and legal advice services, helplines, and even shelters, the Moroccan authorities should provide them with an explicit role in these committees.

Morocco's international human rights obligations

Morocco is a state party to key international human rights treaties which guarantee the rights of women and girls, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and CEDAW. It is also in the process of adopting the Optional Protocol to CEDAW.

Legislative reforms are crucial in ensuring that women's rights are guaranteed and protected, but changing the law is not enough. Amnesty International urges the Moroccan authorities to comply with their obligations under Article 5 of CEDAW by taking the necessary measures to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". These measures should include regularly informing and educating the general public, including media professionals and social service providers, about issues related to gender and to sexual and gender-based violence.

Public document

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