

MOROCCO

AMNESTY
INTERNATIONAL'S
SUBMISSION IN THE
CONTEXT OF THE
NATIONAL DEBATE ON
ABORTION

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INTRODUCTION

On 16 March 2015, King Mohammed VI asked the Ministers of Justice and Freedoms, and the Minister of Habous¹ and Islamic Affairs, along with the President of the National Human Right Council, to organize wide consultations and submit a draft bill within one month, reforming Morocco's legislation on abortion.² This royal intervention came in the wake of a series of conferences and debates on the issue of access to abortion at the beginning of March, both at the initiative of Moroccan civil society and official actors such as the Minister of Health and the National Human Right Council, responsible for promoting and protecting human rights in Morocco.

While Moroccan law significantly restricts abortion and criminalizes any activity outside of this legal framework, many women and girls resort to illegal and unsafe abortions under conditions that place their lives and health at risk.

The Moroccan Criminal Code currently prohibits abortion unless a doctor or surgeon considers that the mother's health is at risk and provided the consent of her spouse has been obtained (Article 453).³ In all other cases, a prison sentence or fine is prescribed for women who knowingly have or attempt to have an abortion (Article 454), as well as for anyone practising or inciting abortion outside of this legal framework (Articles 449-452). Anyone practising or attempting to practise abortion is also liable to be struck off the medical list (Articles 451, 452, 456-458). Speeches or writings that encourage abortion are also punishable with a prison sentence (Article 455).

A number of actors seem to share the view that current legislation is no longer in line with the reality of illegal abortion. The opinions and positions expressed by public personalities and actors from the voluntary and public sectors are diverse and reveal the differences that sometimes exist even within the same political grouping. For example, Saaddine El Otmani, a doctor and deputy leader of the Justice and Development Party (*Parti de la justice et du développement* / PJD) has stated his support for extending access to abortion in cases of

¹ The term *habous* refers to a type of legislation governing land ownership in the jurisprudence of the Malekite rite of Islam.

² Maghreb Arabe Presse, "HM the King receives the Ministers of Justice and Freedoms, Habous and Islamic Affairs and the President of the NHRC", 16 March 2015.

³ Article 453: "Abortion shall not be punished when it is necessary to safeguard the mother's health and it is openly practised by a doctor or surgeon with the husband's consent. If the practitioner considers that the mother's life is in danger, this consent is not necessary. Nonetheless, notice must be given to the Head Doctor of the prefecture or province; when the husband refuses or is unable to give his consent, the doctor or surgeon may not conduct the surgery or use a therapy likely to terminate the pregnancy until written notice is received from the Head Doctor of the prefecture or province stating that the mother's health can only be safeguarded by using such a treatment."

rape, incest and some foetal impairments, while other members of the same political party take a more restrictive view.

Nouzha Skalli, Member of Parliament for the Progress and Socialism Party (*Parti du progrès et du socialisme / PPS*), and Khadija Rouissi, Member of Parliament for the Authenticity and Modernity Party (*Parti authenticité et modernité / PAM*) have called for greater access to abortion as part of a wider reform that would include improved access to contraception and sexual health education in schools.⁴ Some people within civil society, such as Dr. Chafik Chraïbi,⁵ emphasize the deplorable public health consequences of illegal abortions and believe that the mental health of a pregnant woman, along with her socio-economic situation, should form criteria in determining access to abortion; others, such as the Spring Coalition of Dignity (*Coalition Printemps de la Dignité*) believe that the criminalization of abortion is a violation of a woman's right to have control over her own body.⁶

The severe restrictions placed on accessing abortions and information on abortions, along with criminalization, are a violation of the human rights of women and girls. These prohibitions and restrictions confine women and girls to the role of mother and child bearer, and are a violation of their rights, including the right to physical and mental health, particularly in relation to unwanted pregnancies resulting from rape or incest, or in the case of a severe or fatal foetal impairment.

Faced with these realities, several UN human rights treaty bodies (to which Morocco is a signatory) have called for the decriminalization of abortion, and for a guarantee that abortion will be available, in accordance with international human rights standards: when the life or physical or mental health of the pregnant woman is in danger; in cases of rape or incest; and in some cases of severe or fatal foetal impairment.

It is in this context, and in order to urge the Moroccan authorities to bring national legislation into line with the country's international commitments, that Amnesty International is contributing to the consultations on reforming the abortion law. Morocco is a party to the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child. In light of Morocco's international human rights obligations and the jurisprudence and recommendations of the UN treaty bodies and other UN human rights

⁴ Amanda Chapon, "Avortement: une réforme, oui mais laquelle?", *Tel Quel*, 17 March 2015.

⁵ Dr. Chafik Chraïbi is a lecturer in obstetric gynaecology, head of the Orangers Maternity Department at Rabat University Hospital Centre (C.H.U.) and President of the Moroccan Association to Combat Illegal Abortion (*Association Marocaine de Lutte contre l'Avortement Clandestin / AMLAC*).

⁶ Coalition Printemps de la Dignité, "Réformes nécessaires des dispositions du Code pénal sur l'avortement", 22 March 2015

defence mechanisms, Amnesty International hereby calls on the Moroccan authorities:

- To decriminalize the use of abortion by women and girls along with the practise of abortion by health care providers;
- To guarantee access to appropriate care for women suffering from medical complications following an abortion (whether legal or not);
- To guarantee, as a minimum, access to safe and legal abortion for unwanted pregnancies resulting from rape, sexual assault or incest; when the pregnancy poses a risk to the life or health of the woman; or in the case of severe or fatal foetal impairment, in accordance with the recommendations of the human rights treaty bodies;
- To remove the requirement for spousal consent;
- To take into account the recommendations of the UN bodies and experts with regard to gestational limits and other restrictions that may reasonably be imposed on access to abortion; and
- To ensure that all women and girls have access to information and services relating to contraception and, more generally, sexual and reproductive rights.

DECRIMINALIZING THE USE AND PRACTICE OF ABORTION

The criminalization of abortion violates a whole series of human rights. The UN human rights treaty bodies, including the Committee against Torture, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women (CEDAW Committee), the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC) have all concluded that States that criminalize abortion or that do not permit it in cases of rape, incest, when the pregnant woman's life or physical or mental health is at risk, or in the case of severe or fatal foetal impairment are violating the rights to life, health, a private life, freedom from discrimination, and torture and other ill-treatment.

The UN bodies have criticized a number of governments for failing to authorize abortion when the life or health of a woman or girl is at risk, in the case of severe or fatal foetal impairment or following rape or incest.⁷ According to these bodies, States are responsible for the death or disability of women and girls, and for violating the fundamental rights of those who are forced to resort to illegal abortions, putting their lives at risk due to restrictive abortion laws.

RESTRICTIVE ABORTION LAWS ARE A VIOLATION OF HUMAN RIGHTS

The UN human rights treaty bodies recognize that restrictive abortion laws contribute to unsafe abortions and high rates of maternal mortality. They have also commented on the link between the right to life and health and maternal mortality, and have recommended that the barriers preventing women from accessing health services, including safe abortions, should be removed in order to guarantee women's right to life.⁸

Abortion is a low-risk procedure when practised by skilled health care providers under appropriate sanitary conditions. However, abortions practised illegally are generally unsafe and can cause high rates of medical complications and mortality among women and girls.⁹

According to estimates from the World Health Organization (WHO), the legal status of abortion has no influence over the number of induced abortions as women will seek abortion regardless of its legal status and lawful availability. The WHO data reflects that, globally,

⁷ Human Rights Committee, *K.L. v Peru*, UN Doc. CCPR/C/85/D/1153/2003 (2005); CEDAW, *L.C. v Peru*, UN Doc. CEDAW/C/50/D/22/2009 (2011); Human Rights Committee, *L.M.R. v Argentina*, UN Doc. CCPR/C/101/D/1608/2007 (2011).

⁸ CEDAW Committee, General Recommendation 24: Women and Health (Art. 12) (1999), para. 14; Human Rights Committee, General Comment 28, Equality of rights between men and women (Art. 3) (2000) para. 3.

⁹ World Health Organization (WHO), *Safe abortion: technical and policy guidance for health systems*, 2012. <http://apps.who.int/iris/handle/10665/43054>

deaths and complications resulting from abortion are high in countries where abortion is legally restricted, and lower in countries where abortion is legally permitted in a wider range of situations.¹⁰

While maternal mortality cannot be completely eliminated, the deaths of women and girls who resort to unsafe abortions due to restrictive legal regimes can be avoided. According to the WHO, the first step in reducing maternal mortality is to ensure that women and girls have access to family planning services and safe abortions. This will reduce unwanted pregnancies and unsafe abortions.¹¹

According to the most recent conclusions of the CEDAW Committee on Morocco:

"The Committee is concerned about the high rate of infant and maternal mortality in the State party, limited access to health care services and family planning, and the incidence of clandestine abortions, which puts the women's health at great risk."¹²

The UN treaty bodies have also called for access to therapeutic abortions (i.e. for medical reasons) without, however, specifying what those medical reasons might be. For example, the Committee against Torture urged Nicaragua to *"consider the possibility of providing for exceptions to the general prohibition of abortion for cases of therapeutic abortion and pregnancy resulting from rape or incest."¹³*

The CEDAW Committee considers that restrictive laws are a form of discrimination against women.¹⁴ The Committee stated in its General Recommendation on Women and Health that: *"It is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women."* It also specified:

"The obligation to respect rights requires States parties to refrain from obstructing action taken by women in pursuit of their health goals. States parties should report on how public and private health-care providers meet their duties to respect women's rights to have access to health care. For example, States parties should not restrict women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women. Other barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women and that

¹⁰ WHO, *Unsafe abortion incidence and mortality, Global and regional levels in 2008, and trends during 1995–2008*, 2012

¹¹ WHO, *Safe abortion: technical and policy guidance for health systems*, 2012.

¹² CEDAW Committee, Concluding Comments: Morocco, UN Doc. CEDAW/C/MAR/CO/4 (2008), para. 30

¹³ Committee against Torture, Concluding Observations: Nicaragua, UN Doc. CAT/C/NIC/CO/1 (2009), para 16

¹⁴ CEDAW Committee, *L.C. v Peru*, UN Doc. CEDAW/C/50/D/22/2009 (2011)

*punish women who undergo those procedures.*¹⁵

The CEDAW Committee also raised this issue in its General Recommendation on Violence against Women by stating that:

*"States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control."*¹⁶

MOROCCO HAS AN OBLIGATION TO DECRIMINALIZE ABORTION

The UN treaty bodies have explicitly called on States to decriminalize abortion due to the high risk of maternal mortality during illegal abortions, which jeopardizes the right to life and health, along with the right to freedom from torture.

According to the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health:

*"Criminal laws penalizing and restricting induced abortion are the paradigmatic examples of impermissible barriers to the realization of women's right to health and must be eliminated. These laws infringe women's dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health. Moreover, such laws consistently generate poor physical health outcomes, resulting in deaths that could have been prevented, morbidity and ill-health, as well as negative mental health outcomes, not least because affected women risk being thrust into the criminal justice system. Creation or maintenance of criminal laws with respect to abortion may amount to violations of the obligations of States to respect, protect and fulfil the right to health."*¹⁷

The articles of Morocco's Criminal Code that allow for both the punishment of women and girls that undergo abortion as well as those who provide or facilitate such abortions are in violation of international human rights law.

The Human Rights Committee has recommended the removal of punitive measures for abortion.¹⁸ It has also criticized Morocco's restrictive abortion law, noting that it is inconsistent with Articles 6 and 7 of the ICCPR, which guarantee the right to life and the right to freedom from torture and other ill-treatment:

¹⁵ CEDAW Committee, General Recommendation 24: Women and health (Art. 12), 1999, para. 14

¹⁶ CEDAW Committee, General Recommendation 19: Violence against Women, 1992, para. 24 (m)

¹⁷ UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Interim Report, UN Doc. A/66/254 (2011) para. 21

¹⁸ Human Rights Committee, Concluding Observations: Ireland, UN Doc. CCPR/C/IRL/CO/4 (2014) para. 9; Concluding Observations: El Salvador, UN Doc. CCPR/C/SLV/CO/6 (2010) para. 10; Concluding Observations: Costa Rica, UN Doc. CCPR/C/79/Add.107 (1999) para. 11; Committee on the Rights of the Child, Concluding Observations: Nicaragua, UN Doc. CRC/C/NIC/CO/4 (2010) para. 59(b)

"The Committee notes with concern that abortion is still a criminal offence under Moroccan law unless it is carried out to save the mother's life. The State party should ensure that women are not forced to carry a pregnancy to full term where that would be incompatible with its obligations under the Covenant (arts. 6 and 7) and should relax the legislation relating to abortion."¹⁹

The Committee on the Rights of the Child has also raised serious concerns over the criminalization of abortion in Morocco and the risks this poses for teenage girls:

"It is also seriously concerned that the criminalization of abortion leads to dozens of teenage girls every year undergoing illegal unsafe abortions, at the risk of their lives."

The Committee on the Rights of the Child thus recommended that Morocco:

"Decriminalize abortion and review its legislation with a view to guaranteeing the best interests of pregnant teenage girls, and ensure, in law and in practice, that the views of the child are always heard and respected in abortion decisions";

and "Adopt a comprehensive sexual and reproductive health policy for adolescents and ensure that sexual and reproductive health education is part of the mandatory school curriculum, with special attention to preventing early pregnancy and sexually transmitted infections".²⁰

GUARANTEE ABORTION IN LAW AND IN PRACTICE

Moroccan legislation already permits abortion when the health of the pregnant woman is at risk. The Moroccan authorities must now also guarantee it in other cases stipulated by international human rights standards. Moroccan legislation should under no circumstances be more restrictive than it already is.

A total ban on abortion is a violation of human rights, as repeatedly noted by the relevant UN bodies. The Committee against Torture, for example, has criticized countries that have more restrictive legislation with regard to abortion or a total ban in this regard, and which criminalize women who undergo an abortion. Such criminalization results in serious consequences for the health of women, including their death, and is in violation of Articles 2

¹⁹ Human Rights Committee, Concluding Observations: Morocco, UN Doc. CCPR/CO/82/MAR (2004) para. 29

²⁰ Committee on the Rights of the Child, Concluding Observations: Morocco, UN Doc. CRC/C/MAR/CO/3-4 (2014) paras. 56-57

and 16 of the Convention against Torture.²¹ Article 2 states that: "*Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction*" and that "*an order from a superior officer or a public authority may not be invoked as a justification of torture*".

GUARANTEE ACCESS TO ABORTION WHEN THE LIFE OR PHYSICAL OR MENTAL HEALTH OF THE PREGNANT WOMAN OR GIRL IS IN DANGER

The UN human rights treaty bodies interpret the right to life, to health and to freedom from discrimination, as well as freedom from torture and other forms of ill-treatment, as meaning that States parties must ensure access to abortions in law and in practice in order to protect the life and physical and mental health of women and girls. These bodies have consistently recommended that States should amend their laws on abortion to guarantee access in these particular circumstances. Last year, the Human Rights Committee recommended that Ireland amend its abortion law, which only permits abortion when a woman's life is at risk, in order to include cases where the health of the woman is in danger, and cases of rape, incest and fatal foetal impairment.²²

The Human Rights Committee has established that denying an abortion when a woman's health is at risk is a violation of the most basic of women's rights. In *K.L. v Peru*, the Committee found that the State's refusal to allow the plaintiff a therapeutic abortion caused her depression and emotional distress, and amounted to a violation of Article 7 of the International Covenant on Civil and Political Rights (protection from torture and other forms of ill-treatment).²³ Article 7 of the Covenant thus requires States parties to guarantee access to legal and safe abortions when necessary to protect the physical or mental health of the woman.

ABORTION IN CASE OF PREGNANCY FOLLOWING RAPE OR INCEST

In cases of rape or sexual assault, women and girls who have already been the victims of their aggressors find themselves doubly victimized if the State prevents them from having an abortion and forces an unwanted pregnancy upon them.

The UN human rights bodies agree that abortion must be legally guaranteed when a pregnancy is the result of a rape or incest and urge States to amend their laws in this regard. They have recommended that the States parties take concrete measures to ensure access to, and the availability of, abortion in cases of rape or incest, and to adopt appropriate medical standards.²⁴

²¹ Committee against Torture, Concluding Observations: El Salvador; UN Doc. CAT/C/SLV/CO/2 (2009) para. 23; Concluding Observations: Poland, UN Doc. CAT/C/POL/CO/5-6 (2013) para. 23

²² Human Rights Committee, Concluding Observations: Ireland, UN Doc. CCPR/C/IRL/CO/4 (2014) para 9

²³ Human Rights Committee, *K.L. v Peru*, UN Doc. CCPR/C/85/D/1153/2003 (2005)

²⁴ CEDAW Committee, Concluding Observations: Kuwait, UN Doc. CEDAW/C/KWT/CO/3-4 (2011) para.

In 2011, the Committee against Torture expressed its concerns at the long-term psychological effects of banning abortion in cases of sexual violence, incest or when the foetus was not viable.²⁵ The Committee also stated in its observations in 2009 that legislation banning abortion in cases of sexual violence "*for the woman in question entails constant exposure to the violation committed against her and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression*" and recommended that the authorities amend the legislation to guarantee access to abortion in cases of sexual violence in order to reduce this trauma.²⁶

The Human Rights Committee also urged Argentina to amend its legislation on abortion in order to ensure access in all cases of rape – Argentina provides for abortion in rape cases only if the pregnant woman has a mental disability.²⁷ In 2011, the CEDAW Committee ruled on *L.C. v Peru*, in which a young woman, pregnant following a rape, was denied spinal surgery because of the risks it would pose to her pregnancy. Under Peru's abortion laws, abortion is only legal when the pregnancy poses a risk to the life or health of the woman or girl, and there is no exception for rape. The CEDAW Committee urged Peru to "*review its legislation with a view to decriminalizing abortion when the pregnancy results from rape or sexual abuse.*"²⁸

ABORTION IN CASE OF SEVERE OR FATAL FŒTAL IMPAIRMENT

Carrying a pregnancy to term when a foetus has a severe or fatal impairment is a deeply traumatizing experience for women and girls. If a State forces a pregnant woman or girl to carry such a pregnancy to term by denying access to a legal and safe abortion, this denial can be likened to an act of torture. Permitting abortions in cases of severe or fatal foetal impairment is a way of preserving the health of pregnant women and girls.

The UN human rights bodies have repeatedly stated that a ban on abortion in cases of severe or fatal foetal impairment is a violation of the fundamental rights of women, including their right to a private life, to health, and to freedom from torture or ill-treatment.

In *K.L. v. Peru*, a case decided by the Human Rights Committee, a young woman pregnant with an anencephalic foetus – a condition meaning the baby would live no more than a few hours or days beyond birth – was denied a therapeutic abortion. Instead, she was forced to carry the pregnancy to term until the baby's inevitable death four days later. She became severely depressed as a result of this experience. The Human Rights Committee held that the denial of a therapeutic abortion caused K.L. substantial and foreseeable mental suffering,

43(d); Committee against Torture

²⁵ Committee against Torture, Paraguay, UN Doc. CAT/C/PRY/CO/4-6 (2011)

²⁶ Committee against Torture, Concluding Observations: Nicaragua, UN Doc. CAT/C/NIC/CO/1 (2009)

²⁷ Human Rights Committee, Concluding Observations: Argentina, UN Doc. CCPR/CO/70/ARG (2000) para. 14

²⁸ CEDAW Committee, *L.C. v Peru*, UN Doc. CEDAW/C/50/D/22/2009 (2011) para. 9(b)(iii)

and amounted to a violation of Article 7, which prohibits torture and other ill-treatment.²⁹ The Committee also found that the State's failure to provide K.L. with a therapeutic abortion interfered arbitrarily with her private life.³⁰

The Human Rights Committee has stated its concern at the situation in Ireland, where abortion is a criminal offence in the case of fatal foetal impairment, and particularly the severe mental suffering this causes to women seeking abortions. The Committee recommended that Ireland amend its abortion law to provide an exception for cases of fatal foetal impairment, both in law and in practise.³¹

The human right bodies have gone further than calling for access to abortions only when foetal impairment is such that stillbirth or death immediately after birth is a virtual certainty. The CEDAW Committee has also called for access to abortions in cases of severe foetal impairment. In its Concluding Observations on Peru in July 2014, the Committee recommended that the country "*extend the grounds for legalization of abortion to cases of rape, incest and severe foetal impairment*".³²

GESTATIONAL LIMITS

A State's duty to make access to abortion legal also includes an obligation to ensure that such abortions can be obtained, and this involves removing all barriers, including low gestational limits.³³ The WHO has emphasized the negative consequences of a low gestational limit in its guidance on safe abortion:

*"Laws or policies that impose time limits on the length of pregnancy for which abortion can be performed may have negative consequences for women who have exceeded the limit. Such policies/laws force some women to seek services from unsafe providers, or self-induce with misoprostol or a less-safe method, or force them to seek services in other countries, which is costly, delays access (thus increasing health risk) and creates social inequities."*³⁴

Few States place gestational limits on abortion when the life or health of the pregnant woman or girl is at risk.

²⁹ Human Rights Committee, K.L. v Peru, UN Doc. CCPR/C/85/D/1153/2003 (2005) para. 6.3

³⁰ Human Rights Committee, K.L. v Peru, UN Doc. CCPR/C/85/D/1153/2003 (2005) para. 6.4

³¹ Human Rights Committee, Concluding Observations: Ireland, UN Doc. CCPR/C/IRL/CO/4 (2014) para. 9

³² CEDAW Committee, Concluding Observations: Peru, UN Doc. CEDAW/C/PER/CO/7-8 (2014) para 36(a)

³³ Committee against Torture, Concluding Observations: Poland, UN Doc. CAT/C/POL/CO/5-6 (2013) para. 23

³⁴ WHO, *Safe abortion: technical and policy guidance for health systems*, 2012, http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf?ua=1

SPOUSAL CONSENT

The requirement for spousal consent when accessing an abortion, as currently stipulated by Article 453 of the Criminal Code, is discriminatory and forms a barrier to women's autonomy. It may also pose a risk to the health of the woman or girl. If access to legal abortion is to be effective then the requirement for spousal consent must be removed.

The CEDAW Committee has urged States parties, in its General Recommendation on Women and Health, to remove the barriers facing women when accessing health services, including *"the requirement for preliminary authorization by spouse, parent or hospital authorities"*.³⁵ The Committee has recommended that States remove spousal consent from their abortion laws.³⁶ The Committee recognizes the inherent dangers in these provisions, their discriminatory nature and the fact that they may force women to undergo illegal and unsafe abortions. The requirement for spousal consent may lead to further delays in accessing an abortion and do not take into account the fact that a pregnancy may be the result of violence by a spouse. In its General Recommendation 21 on Equality in marriage and family relations, the Committee stated that *"decisions to have children or not, while preferably made in consultation with spouse or partner, must not nevertheless be limited by spouse, parent, partner or Government."*

The CEDAW Committee also emphasized that, when patient confidentiality is not assured: *"it may deter women from seeking advice and treatment and thereby adversely affect their health and well-being. Women will be less willing, for that reason, to seek medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence ... States parties should also report on measures taken to ensure access to quality health-care services, for example, by making them acceptable to women. Acceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives."*³⁷

The requirement for spousal consent when accessing a medical procedure is discriminatory since it deprives women of the right to take autonomous decisions regarding their bodies and hands major decision-making power for their health over to their spouse.

³⁵ CEDAW Committee, General Recommendation 24

³⁶ CEDAW Committee, Concluding Observations: Indonesia, UN Doc. CEDAW/C/IDN/CO/5 (2007) para 16; Concluding Observations: Turkey, UN Doc. A/52/38/Rev.1 (1997) para.196

³⁷ CEDAW Committee, General Recommendation 24

CONCLUSION AND RECOMMENDATIONS

Through the contributions of Moroccan civil society, health care providers and institutional actors, the debate on access to abortion in Morocco may well, in a few weeks' time, result in legislative improvements in the rights of women and girls.

International human rights standards in this regard converge around two broad principles: a duty to decriminalize abortion in order to preserve the right to life of women and girls; and a duty to guarantee access to abortion in four situations: unwanted pregnancy resulting from rape or sexual assault; unwanted pregnancy resulting from incest; a pregnancy that poses a risk to the physical or mental health of the pregnant woman or girl; and in cases of severe or fatal foetal impairment. In order to provide effective access to abortion in these four cases, barriers need to be removed, including the low gestational limit and the requirement for spousal consent, which is also discriminatory as it deprives women and girls of their autonomy.

As we approach the 20th anniversary of the adoption of the Beijing Declaration and Platform for Action on the rights of women and girls on the part of 189 UN Member States, Amnesty International urges the Moroccan authorities to:

1. Protect the rights of women and girls by decriminalizing abortion

- Abolish the provisions of the Criminal Code that criminalize abortion and which affect, on the one hand, women and girls seeking an abortion (Article 454), and on the other, any person, including health care providers, that promote or encourage access to abortion, practise or attempt to practise abortion, or are complicit in such acts (Articles 449-452; 455-458).
- Guarantee access to appropriate care for women and girls suffering medical complications following an abortion (whether legal or not).

2. Guarantee access to legal and safe abortions

- Guarantee access to legal and safe abortions, as a minimum, for unwanted pregnancies resulting from rape, sexual aggression or incest or when a pregnancy poses a risk to the life or health of the woman or girl, as well as in cases of severe or fatal foetal impairment, in accordance with the recommendations of the human rights treaty bodies.
- Remove the spousal consent that is stipulated in Article 453 of the Criminal Code.
- Ensure that all women and girls have access to information on legal and safe abortion.

3. Guarantee access to information and services relating to modern methods of contraception

- Ensure that all women and girls have access to information and services relating to modern methods of contraception, including emergency contraception.
- Offer comprehensive, accurate and non-discriminatory sexual and reproductive health education, both inside and outside the educational system.

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