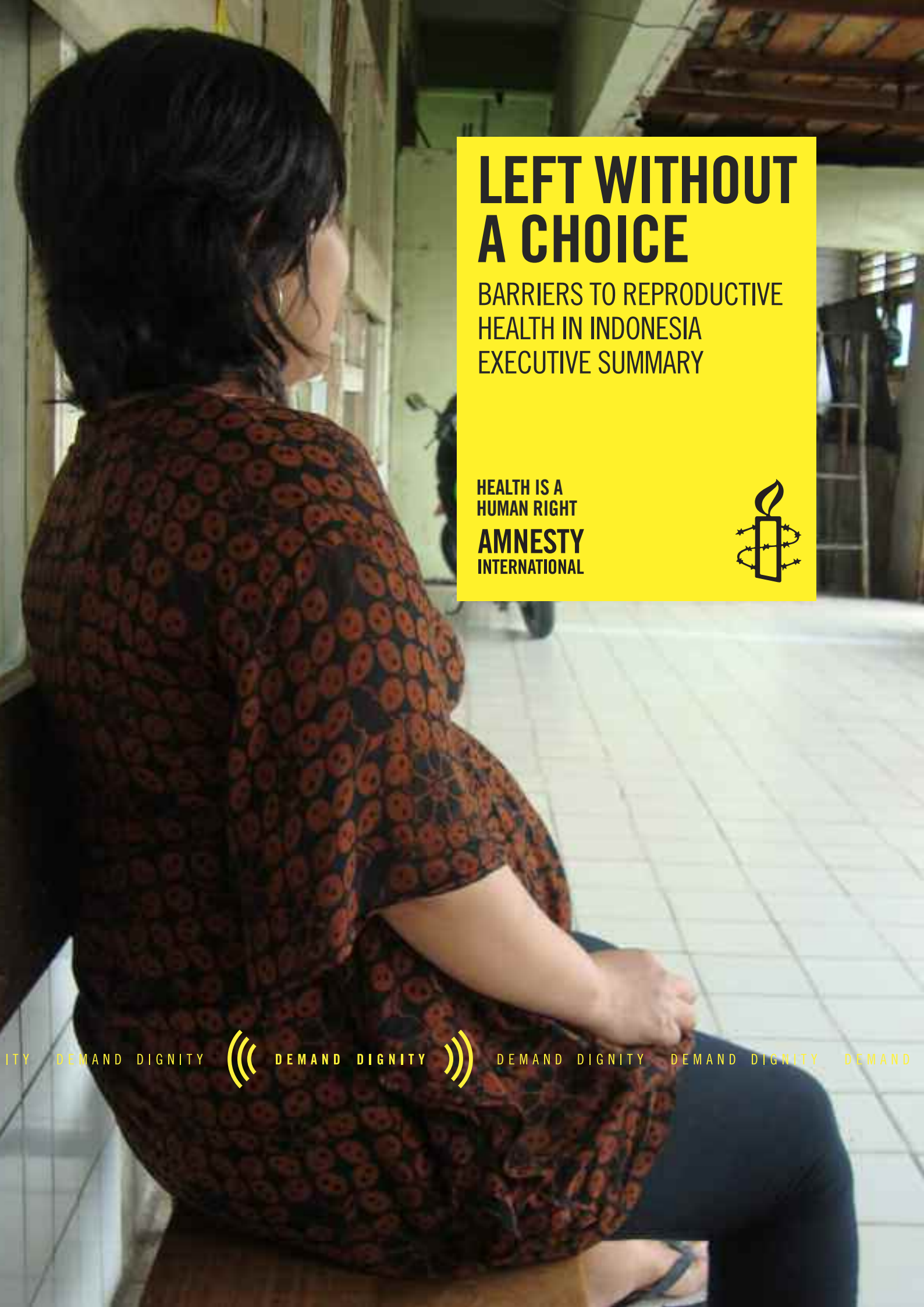
LEFT WITHOUT A CHOICE
BARRIERS TO REPRODUCTIVE HEALTH IN INDONESIA
EXECUTIVE SUMMARY
HEALTH IS A HUMAN RIGHT
AMNESTY INTERNATIONAL
ITY DEMAND DIGNITY
DEMAND DIGNITY
DEMAND DIGNITY DEMAND DIGNITY DEMAND

Amnesty International is a global movement of 2.8 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

AMNESTY
INTERNATIONAL

Amnesty International Publications

First published in 2010 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

Index: ASA 21/024/2010
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

Cover photo: A pregnant woman sits outside a community health centre in Jakarta, Indonesia, March 2010.

CONTENTS

EXECUTIVE SUMMARY

Many women and girls from poor and marginalized communities in Indonesia face significant challenges in accessing sexual and reproductive health information and services. Some of the barriers they face result directly from laws and policies implemented by the state that discriminate against women and girls. Other barriers arise from discriminatory attitudes and practices amongst health workers and other members of the community, which the state is failing to challenge.

In the report *Left without a choice: Barriers to reproductive health in Indonesia* (Index: ASA 21/013/2010), Amnesty International highlights the multiple barriers women and girls face in realizing their sexual and reproductive rights. The barriers that are described in this report constitute violations of Indonesia's international human rights obligations to protect women and girls from discrimination, as well as violations of the right to health, in particular reproductive health.

The failure to ensure that women and girls can realize their sexual and reproductive rights free from discrimination, coercion and criminalization is undermining Indonesia's ability to achieve the UN Millennium Development Goals (MDGs), and in particular MDG 3 on gender equality and MDG 5 on improving maternal health.

METHODOLOGY

The findings of this report are based primarily on a March 2010 visit to Indonesia when Amnesty International delegates visited Java (West Java, Banten, Jakarta, Yogyakarta and East Java); Sumatra (Aceh and North Sumatra); Bali; and Lombok in West Nusa Tanggara (Eastern Indonesia). Delegates interviewed over a hundred former and current Indonesian women and girl domestic workers on issues pertaining to sexuality and reproduction. Delegates also interviewed an additional 33 women and girls on sexual and reproductive rights issues in Lombok and Aceh. Over the course of the research, Amnesty International met health workers, traditional birth attendants, local government officials, women's rights activists, non-governmental organizations (NGOs), lawyers, police officials, UN officials, donor agencies' representatives, and academics on issues pertaining to gender-based violence, sexuality and reproduction.

GENDER STEREOTYPING AND ITS CONSEQUENCES

Gender stereotyping in the area of family relations is prevalent in Indonesia and women and girls are under pressure to adopt attitudes which reflect narrow and restrictive views of a woman's sexuality. This situation exposes women and girls to discrimination and abuses of their human rights. It also impairs women's and girls' ability to make decisions freely about their lives. By failing to challenge gender stereotypes, the state is failing to respect its international human rights obligations, in particular provisions in the Convention on the

Elimination of All Forms of Discrimination against Women (CEDAW).

Although the prevalence is decreasing, marriage at a young age is still relatively widespread in Indonesia, especially in rural areas and slums. Amnesty International met many women and girls in March 2010 who married when they were still children, sometimes as young as 13. Despite their young age, many had their first child shortly after being married, even though early pregnancy can greatly increase girls' risk of dying during pregnancy and childbirth.

The Marriage Law (No. 1/1974) provides that men are the head of the household while women are responsible for taking care of the household. It also provides that the legal age of marriage in Indonesia is 16 for women, and 19 for men. It further authorizes polygamy. One of the conditions which allow a man to seek another wife is if his wife cannot have children. This condition supports a stereotypical view that women's primary function is to bear children, and stigmatizes married women and girls who cannot have children, or who have no children and want to delay pregnancy.

There has been an increase in the enactment of laws that restrict sexual and privacy rights, particularly since the decentralization process from 1999-2000, including laws that criminalize consensual sex between adults or punish unmarried adult men and women who are alone together, unless they are close relatives (for example *khalwat*). Women and girls are often disproportionately affected by these laws, due to gender stereotyped views on sexuality. Because they can become pregnant, pregnancy outside marriage can be interpreted as proof of a crime.

Although the legal protections available to victims and witnesses of domestic violence have considerably increased, women and girls who are victims of sexual violence continue to face a range of obstacles in law and practice when they report abuse to the police. Furthermore, although Female Genital Mutilation (FGM) remains prevalent in Indonesia and constitutes a form of violence against women, there are currently no laws in Indonesia that specifically ban the practice.

BARRIERS TO REPRODUCTIVE HEALTH

The overall context of gender stereotyping with regard to sexuality, marriage, and childbearing is supported by discriminatory laws, policies and practices which constitute barriers to the reproductive health of women and girls in Indonesia.

UNMARRIED WOMEN AND GIRLS

Both the Population and Family Development Law (No. 52/2009) and the Health Law (No. 36/2009) provide that access to sexual and reproductive health services may only be given to legally married couples, thus excluding all unmarried people from these services. Government midwives and doctors interviewed in March 2010 confirmed that they normally do not provide reproductive health services, including contraception and family planning, to unmarried women and girls. District health officers and other government officials told Amnesty International in March 2010 that contraception and family planning services are intended solely for married people in accordance with laws and policies.

By denying unmarried women and girls access to family planning methods such as

contraceptives, the state is perpetuating discrimination on two grounds. First there is discrimination on the grounds of marital status. Second, the denial of contraceptive services to unmarried women and men has a disproportionate impact on women and girls because they can become pregnant, meaning that there is also discrimination – in practice – on the grounds of gender.

This situation leaves unmarried women and girls at risk of unwanted pregnancies, sexually transmitted diseases, and human rights abuses. For example, unmarried adolescents who become pregnant are often forced to stop schooling. Instead of risking rejection by the wider community, some women and girls may decide – or be forced – to marry when they become pregnant, or else to seek an unsafe abortion which puts them at risk of serious health problems and maternal mortality.

For unmarried women and girls who want to keep the baby, it remains unclear how they can access reproductive health services during pregnancy and at the time of the birth, without getting married first. Amnesty International's research suggests that the fear of stigmatization can discourage pregnant unmarried women and girls, especially if they are from poor and marginalized communities, from seeking antenatal and postnatal care.

Unmarried women and girls who are rape victims may also not receive access to reproductive health services, either because they do not know they are entitled to these services or due to the fear of stigmatization.

MARRIED WOMEN AND GIRLS

According to the 2007 Indonesian Demographic and Health Survey, levels of unmet need for family planning and contraception information and services among married women and girls remain high, especially among those living in poverty. There are significant restrictions on married women's and girls' access to family planning services and information. This was in part due to the requirement for the husband's consent. In the Population and Family Development Law, the choice over contraception is not up to the individual alone. Interviews with health workers confirmed that the husband's consent was necessary to access some methods of contraception.

Beyond the interpretation of the Population and Family Development Law which requires the husband's consent, Amnesty International's research also found that health workers often restricted access to contraceptives for married women and girls if they had not yet had children. Amnesty International's interviews with health workers suggest that they fear that they would be held responsible if a woman does not have children after having been given a contraceptive method. A midwife interviewed in Aceh explained that although she did not think contraception devices could cause infertility, she preferred not to provide childless married women access to modern contraception methods. She explained that she did not want to challenge the communities' cultural beliefs and be held accountable for this.

OTHER IMPEDIMENTS TO SEXUAL AND REPRODUCTIVE RIGHTS

Indonesia's laws, including the Criminal Code, contain a number of provisions which restrict access to sexual and reproductive rights, or have a chilling effect on the provision of sexual

and reproductive health information and services. Indonesia's Criminal Code contains legal provisions which criminalize supplying information to people relating to the prevention and interruption of pregnancy (see Articles 534, 535 and also 283). Punishments range from between two and nine months' imprisonment. Furthermore, Article 299 of the Criminal Code provides for up to four years' imprisonment for any person who gives treatment to a woman which contributes to the termination of her pregnancy or which makes her believe that it is intended to induce termination of pregnancy (for example emergency contraception).

Although Amnesty International is not aware of individuals being sentenced to terms of imprisonment for having violated these legal provisions, the fact that they remain part of Indonesian law has a chilling effect on information providers. Some of the sexual and reproductive rights activists interviewed in March 2010 told Amnesty International that they felt at particular risk of being arrested for providing information on modern contraceptives such as condoms. They also expressed concerns about the new Pornography Law (No. 44/2008) which has recently been passed and which they said could prevent them from disseminating information on sex education free from the threat of criminalization.

UNSAFE ABORTIONS AND THE THREAT OF CRIMINALIZATION

Abortion is criminalized in most cases in Indonesia. A woman or girl seeking an abortion (the legal age for criminal responsibility in Indonesia is eight), or a health worker providing one, may be sentenced to up to four and 10 years' imprisonment respectively. This has meant that abortions in Indonesia are often performed clandestinely in unsafe conditions. According to official government figures, unsafe abortions account for between five and 11 per cent of maternal mortality in Indonesia. A 2001 study conducted by the University of Indonesia estimated that there may be up to two million induced abortion cases per year in Indonesia – 30 per cent of them among unmarried women.

Under the new Health Law passed in 2009, abortion is legal in cases where the health of the mother or foetus is endangered, or in the case of rape victims. However, a woman who is pregnant as a result of rape, or a woman experiencing life-threatening complications as a result of pregnancy, has to pass several selection criteria to access abortion services. Some of these criteria can be very difficult to meet in practice, especially for women and girls who live in remote areas or who have limited access to health care services generally due to distance and/or other socio-economic and cultural factors.

To access legal abortion services in the event of pregnancies that are life-threatening for the mother or the foetus, the Health Law requires the consent of the husband (Article 76(d)). In other words, a woman is not allowed under law in these particular circumstances to access legal abortion services unless she has a husband, and her husband consents. Provisions pertaining to husbands' consent discriminate on the grounds of marriage and sex as they legally exclude unmarried women and girls from safe legal abortion services. Furthermore, requirements pertaining to a husband's consent in cases that are life-threatening to a woman may put her life at risk.

Legal abortion provisions for rape victims are only permitted within the first six weeks of pregnancy. This limited timeframe means that most rape victims may not be able to access

safe abortion provisions within the required timeframe as they may not even know they are pregnant by then. Rape victims may take more time to acknowledge and report the rape to the authorities, especially in a context where premarital and extramarital sex is stigmatized, and in some cases criminalized.

There is a lack of awareness among women and girls from poor and marginalized communities of the new provisions pertaining to rape in the Health Law, and of legal exceptions generally. Moreover health workers interviewed by Amnesty International in March 2010 were only aware of one abortion exception, that is, legal abortion services could be made available to women and girls if there were complications related to the woman's or the foetus' health. They were generally not aware of the exception with respect to legal abortion services for victims of rape. Most local government officials interviewed by Amnesty International were also unaware of this new provision.

There appears to be reluctance amongst some health workers to provide women and girls with access to safe abortion services, due to their own moral or religious convictions. Amnesty International's interviews with health workers, traditional birth attendants and NGOs also suggest that the threat of criminalization has a strong deterrent effect on the health profession. To Amnesty International's knowledge, prosecutions of people performing abortions are rare. However, there have been some arrests on abortion charges in recent months.

Decriminalizing abortion in Indonesia would ensure that neither women nor health workers would face criminal prosecutions simply for seeking an abortion or providing appropriate medical assistance. When women and doctors no longer face the threat of criminalization, safe abortion services are more likely to be accessible to a larger number of women – thus limiting the number of unsafe abortions which pose a risk to women's health, and in some cases lead to death or injury. Doctors in Indonesia may be more likely to provide abortion services in the circumstances in which they are meant to provide them, but do not due to the threat of criminalization. The decriminalization of abortion does not mean that Indonesian authorities would provide abortion services in all circumstances – it simply means that abortion would not be treated as a crime in law.

DOMESTIC WORKERS AS A VULNERABLE GROUP

Women and girl domestic workers in Indonesia, an estimated 2.6 million people, typically leave school early and so have limited access to information on sexuality and reproduction. Amnesty International met many adolescent domestic workers in March 2010 who stopped schooling when they were under 15. Access to government programmes on sex education is made more difficult for adolescents who have left the education system, although there are also limits to the information provided to adolescents within the education system. In the case of adolescent domestic workers, their access to public sources of information on sexual and reproductive issues may also be restricted because they live at their employers' houses, and are often not married. They may not be able to move freely outside the house, or be able to freely access sources of public information within the house.

In 2007 Amnesty International highlighted the extent to which domestic workers in Indonesia

– the vast majority of whom are women and girls – are vulnerable to gender-based violence and other violations of their rights, in part because they are not fully legally recognized as workers and their work generally takes place out of the public eye. This lack of adequate protection impacts domestic workers' enjoyment of their sexual and reproductive rights. For example, they risk losing their job as a result of their pregnancy, without any form of compensation. They may also be forced to work in situations that are dangerous to themselves and their unborn children.

In a positive development, draft legislation pertaining to the protection of domestic workers was being discussed this year in the Parliamentary Committee on Health, Manpower and Population Affairs (Committee IX) at the House of People's Representatives. However, the draft obtained by Amnesty International in April 2010 did not meet international human rights law and standards, in particular with regard to the protection of female workers prior to and after pregnancy. The draft did not contain any provisions concerning the specific needs of women, although the overwhelming majority of domestic workers in Indonesia are women and girls.

RECOMMENDATIONS

In order to combat gender discrimination, and address barriers to reproductive health which, amongst other factors, contribute to high levels of maternal mortality, Amnesty International recommends that the authorities take the following steps as a matter of priority:

- Repeal all laws and regulations, at both the central and local levels, that violate sexual and reproductive rights, and ensure women and girls can realize their rights free from coercion, discrimination and the threat of criminalization. Legal and policy provisions on matters related to sexual and reproductive health that discriminate on the grounds of marital status should be removed, as they constitute particular obstacles to ensuring that women and girls who are not married can access the reproductive health information and services they need;

- Decriminalize abortion in all circumstances in order to combat the high number of clandestine unsafe abortions. In cases where women and girls have an unwanted pregnancy as a result of rape or where a pregnancy poses a threat to the woman's life or health, ensure they have access to safe abortion services; and

- Enact a Domestic Workers' Law in line with international standards, to ensure that women and girl domestic workers are afforded the same level of protection as other workers in Indonesia. The law should include provisions pertaining to women's special needs, including maternity provisions.

I WANT TO HELP

WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

WHAT CAN YOU DO?

Activists around the world have shown that it is possible to resist the dangerous forces that are undermining human rights. Be part of this movement. Combat those who peddle fear and hate.

- Join Amnesty International and become part of a worldwide movement campaigning for an end to human rights violations. Help us make a difference.
- Make a donation to support Amnesty International's work.

Together we can make our voices heard.

☐ I am interested in receiving further information on becoming a member of Amnesty International

name

address

country

email

☐ I wish to make a donation to Amnesty International (donations will be taken in UK£, US$ or €)

amount

please debit my Visa ☐ Mastercard ☐

number

expiry date

signature

Please return this form to the Amnesty International office in your country.

For Amnesty International offices worldwide: www.amnesty.org/en/worldwide-sites
If there is not an Amnesty International office in your country, please return this form to:

Amnesty International, International Secretariat, Peter Benenson House,
1 Easton Street, London WC1X 0DW, United Kingdom

www.amnesty.org

LEFT WITHOUT A CHOICE
BARRIERS TO REPRODUCTIVE HEALTH IN INDONESIA
EXECUTIVE SUMMARY

Women and girls face multiple barriers in fulfilling their sexual and reproductive rights in Indonesia – barriers which are rooted in gender discrimination.

A range of laws, policies and practices are discriminatory and reinforce gender stereotyping. Unmarried women and girls are denied full access to reproductive health services, while those who are married must seek their husband's consent to access some of these services. Such restrictions expose women and girls to unwanted pregnancies and other health risks.

These laws, policies and practices restrict women and girls from making decisions freely about their lives. And they can leave women and girls from poor and marginalized communities at an even greater disadvantage. Such barriers violate Indonesia's international human rights obligations to protect women and girls from discrimination. They also block the realization of the right to health, in particular sexual, reproductive and maternal health.

The Indonesian government has pledged to uphold the UN Millennium Development Goals. But if it is going to reduce gender inequality and improve maternal health in the country, then it must ensure that women and girls can enjoy their sexual and reproductive rights free from coercion, discrimination and the threat of criminalization.

Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

www.amnesty.org

Index: ASA 21/024/2010
English
November 2010

HEALTH IS A
HUMAN RIGHT
AMNESTY
INTERNATIONAL