MOROCCO/ WESTERN SAHARA

COMPREHENSIVE REFORMS TO END VIOLENCE AGAINST WOMEN LONG OVERDUE

AMNESTY INTERNATIONAL

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> **“We ask for a reform of all sections of the law that are detrimental to women's rights, such as the ones that favour the honour of the family at the expense of women’s dignity”**
>
> Khadija Ryadi, President of the Moroccan Association of Human Rights, speaking to Amnesty International

The suicide of Amina Filali, a 16-year-old girl coerced into marrying the man she said had raped her, led to a public outcry in Morocco and has prompted the authorities to change the law allowing a rapist to escape prosecution if he marries the victim.

Article 475 of the Penal Code was put under the spotlight in March 2012 when Amina Filali swallowed rat poison, having reportedly been mistreated by the man she had been forced to marry and his family, with whom she lived.

In January 2013 the Commission on Justice and Legislation within the upper house [the House of Counsellors] of Parliament unanimously adopted a proposal to remove the second paragraph of Article 475, a provision which effectively allows rapists to escape prosecution by marrying their victim.

However, amending Article 475 must be merely a first step to address longstanding shortcomings in legislation in Morocco, including the Penal Code, which discriminates against women and girls, and ensure their effective protection from violence.

Amina Filali’s death provoked outrage, yet her ordeal is far from being an isolated case, according to organizations working on women’s rights in North Africa. It exposed legal provisions in Morocco’s Penal Code but also elsewhere in North Africa where similar provisions exist[1].

BIAS AGAINST WOMEN IN THE PENAL CODE

Article 475 of the Penal Code provides that whoever abducts or corrupts a minor, without using violence or threats or deception, or attempts to do so, faces imprisonment of between one to five years. The second paragraph of the Article provides that if the minor marries her abductor, he can only be prosecuted following a complaint by those who have the right to request the annulment of the marriage and in that case he can only be convicted once the annulment has been pronounced.

According to women’s rights organizations in Morocco, this provision has been applied in cases of rape in order to preserve the so-called “honour” of the victim and her family.

Moroccan law as it currently stands fails to adequately protect women from violence or to provide them with effective remedies when violence does occur. Instead it reflects a societal emphasis on a woman's "honour" and "respectability" rather than on her rights as a survivor of violence.

Amnesty International urges the Morocco authorities to address the serious shortcomings in the Penal Code, and to adopt new provisions which criminalize sexual violence in all its forms. This should include sexual intercourse without consent (generally referred to as 'rape'), aggravated sexual assault, indecent assault, other acts of indecency (offences that generally involve inappropriate touching, including of genitals or other intimate areas or forcing a person to touch the genitals or intimate areas of another person), and sexual harassment. When doing so, the Parliament should engage in a meaningful consultation with civil society and in particular with women's rights organizations.

THE LEGISLATION ON RAPE MUST BE AMENDED TO PROTECT VICTIMS

Rape is defined by Article 486 of the Penal Code as the act by which "a man has sexual relations with a woman against her will", and is punished by five to ten years' imprisonment. If rape is committed against a girl under the age of 18, an incapacitated person, a disabled person, a person with mental disabilities or a pregnant woman it is punished by 10 to 20 years' imprisonment.

This provision should be amended to reflect international standards with regards to rape. The definition should be gender-neutral so that it protects all victims of rape regardless of their gender. It should adopt a definition of the crime beyond penetration of a vagina by a penis to better reflect the reality that rape is committed in different ways, and describe different coercive circumstances that do not necessarily require physical violence. The definition provided in the "Elements of Crimes" of the Rome Statute of the International Criminal Court provides guidance for drafting a new provision[2]. It defines rape as follows: "the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body" and "the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent." The "Elements of Crimes" add that "it is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity."[3]

While Article 487 of the Penal Code provides that if committed by ascendants of the victim, or those who "have authority" over her or are her tutors, rape is punished by 10 to 20 years' imprisonment, the Penal Code does not include marital rape as a specific offense. The Penal Code should be amended to specifically include marital rape and the punishment should not be less than that specified for defendants who are not married to the victim.

Amnesty International is also concerned that the provisions on rape are under a section of the Penal Code dealing with "decency" offences. This places the emphasis on "morality" and marital status rather than on the attack against the bodily integrity of the victim.

Punishments in the Penal Code which vary depending on the victim's marital status or whether or not she is a virgin should immediately be amended, and all victims treated equally regardless of whether or not they are virgins or married.

Article 488 provides for harsher sentences if rape and "indecent assault" (attentat à la pudeur) result in a woman losing her virginity. In the case of rape, the punishment is of 10 to 20 years, as opposed to five to 10 years if the woman has not lost her virginity as a result.

Amnesty International is concerned by reports that the proposed amendment to Article 475 maintains such a distinction by providing for harsher sentences if, as a consequence of her rape, the victim loses her virginity. Distinguishing between victims of rape on the basis of whether or not they were virgins is discriminatory and degrading.

Another provision which must be repealed is Article 496 of the Penal Code, which provides that hiding a married woman who is "evading the authority to which she is legally subjected" is punishable by one to five years' imprisonment and a fine. In addition to the discriminatory implication that a married woman is subjected to an authority other than her own, this provision means that shelters for women who are escaping from domestic violence may face criminal sanctions.

OTHER DISCRIMINATORY LEGISLATION MUST BE AMENDED

Amnesty International is concerned that under Article 494 of the Penal Code, whoever, "by deception, violence or threats", abducts a married woman or takes her away from a place where she has been placed by "those under whose authority or direction she had been subjected or entrusted" is punishable by between one and five years' imprisonment and a fine. This provision should be amended to reflect the principle that any adult, whatever their gender or marital status, should be protected from abduction, the emphasis being on their lack of consent and not about them being taken away from someone else's authority.

The Moroccan authorities should also remove Article 490 of the Penal Code, which criminalizes consensual sexual relations between unmarried people, and provides for a punishment of between one month and one year's imprisonment.

Criminalizing sexual relations between consenting adults -- regardless of their marital status -- violates the right to privacy and to free expression. This provision also deters victims of rape from filing a complaint, because they could find themselves prosecuted for sexual relations outside of marriage.

THE NEED TO COMBAT DISCRIMINATION AGAINST WOMEN IN MOROCCO

Legislative reforms to bring Moroccan law in line with international human rights law and standards are crucial in ensuring that women's rights are guaranteed and protected, but changing the law is not enough. In a society where women do not enjoy an equal status with men, it is not only the law but also deeply ingrained societal attitudes which lead to discrimination against women, as has been the case in the application of Article 475.

Amnesty International urges the Moroccan authorities to comply with their obligations under

Article 5 of the UN Convention on the Elimination of all forms of Discrimination Against Women (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 training of police and the judiciary on how to deal sensitively with complaints of violence against women and girls, and protect victims themselves, not their so-called "honour" or "morals".

MOROCCO'S COMMITMENTS UNDER DOMESTIC AND INTERNATIONAL HUMAN RIGHTS LAW

Article 19 of the new Constitution adopted in July 2011 guarantees equality between men and women. However, equality is guaranteed "within the provisions of the Constitution and of Moroccan law", provisions of which are discriminatory against women, such as in matters of inheritance.

While Morocco is a party to CEDAW, it qualifies its obligation to eliminate discrimination against women with the condition that this should not conflict with Shari'a law. The lifting of its reservations to Articles 9 and 16 of the CEDAW in April 2011, and the fact that in November 2012 the government began the process to enable Morocco to become party to the Optional Protocol to CEDAW are welcome steps. However, as long as Morocco continues to qualify its obligation to eliminate discrimination against women and to maintain discriminatory legislation, women will be treated unequally not only in practice but also in law. Amnesty International urges the Moroccan authorities to lift the remaining reservations to CEDAW and to amend all laws which continue to discriminate against women and constitute obstacles to combating gender-based violence.

When it reviewed Morocco's compliance with the CEDAW in 2008, the Committee for the Elimination of Discrimination Against Women urged Morocco to enact legislation on violence against women and girls, and called on Morocco to amend "without delay, the Penal Code to ensure that marital rape is criminalized and criminal proceedings against rapists are not terminated when they marry their victims". In December 2011 the UN Committee against Torture reiterated those recommendations.

Amina Filali was failed by the law and the Moroccan authorities. They must urgently overhaul the Penal Code to ensure that no discriminatory provision is maintained and that the victims of gender-based violence in Morocco know that the law is there to protect them rather further victimize them

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[1]Article 326 of the Algerian Penal Code provides that whoever, without violence, threats or deception, abducts or corrupts a minor or attempts to do so will be punished by one to five

years' imprisonment and a fine of between 500 and 2000 Algerian Dinars. The second paragraph of that article provides that when the abducted or corrupted minor marries her abductor, he can only be prosecuted upon a complaint by those who have the right to request the annulment of the marriage, and he can only be convicted once the annulment has been pronounced. Article 227 bis of the Tunisian Penal Code provides that subjecting a girl younger than 15 years to sexual relations without use of violence is punished by six years' imprisonment. The article also provides that the marriage of the culprit to the victim stops the prosecution of the effects of the conviction.

[2] Elements of Crimes (PCNICC/2000/1/Add.2), http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/724/27/PDF/N0072427.pdf?OpenElement

[3] See Amnesty International, "Rape and sexual violence: Human rights law and standards in the International Criminal Court", March 2011 (IOR 53/001/2011), http://www.amnesty.org/en/library/info/IOR53/001/2011/en

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