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Morocco/Western Sahara: Comprehensive legal reform needed to address gender-based violence

Legislative proposals currently under consideration to combat gender-based violence fail to respond adequately to the long-standing demands of Moroccan civil society for effective measures to prevent violence against women and girls and ensure justice and remedies to survivors of violence, said Amnesty International today, as it concluded a 16-day international campaign to raise awareness about gender-based violence as a human rights issue. The Moroccan authorities need to undertake comprehensive legal reform, within a broader shift of approach, to address this issue.

Shared outrage, fragmented approach

Sixteen-year old Amina Filali killed herself by swallowing rat poison in March 2012, after being coerced into marrying the man who reportedly raped her. In the wake of her suicide, public outrage prompted initiatives to amend Moroccan legislation to protect survivors of gender-based violence. For more information, see Amnesty International, *Morocco/Western Sahara: Comprehensive reforms to end violence against women long overdue* (Index: MDE 29/001/2013).

Legislative reforms were urgently needed, as existing laws facilitate the further victimization of individuals who have been exposed to gender violence. In July 2013, legislators voted for the annulment of Articles 494, 495 and 496 of the Penal Code, which previously put women's shelters at risk of prosecution by criminalizing the "hiding" or transfer of a married woman away from the "authority by which she is legally bound".

However, this positive step is the only legislative amendment concluded so far. While the upper house of parliament voted in January 2013 to change Article 475 of the Penal Code, which allows rapists to escape prosecution by marrying their victims, almost one year later the lower house has still not voted on a proposal to do so.

Efforts to reform legislation have been fragmented between the government-sponsored draft Law 103.13 "on combating violence against women" and several different proposals by opposition parliamentarians to amend the Penal Code and Family Code. The proposed amendments have also tended to be piecemeal, targeting specific articles or sections of Moroccan legislation, but failing to shift the approach towards gender violence, including sexual violence, from one driven by "decency" and social "honour" to one focused on survivors and their right to protection, justice and rehabilitation.

Women's rights organizations in Morocco and Western Sahara have valuable expertise and experience in combating gender-based violence after years of advocating on the issue and supporting survivors and their families. However, the key organizations that have been active on the issue were excluded from the drafting process. This exclusion unfortunately continues as a government committee led by Prime Minister Abdelilah Benkirane revises the draft law behind closed doors.

The government must include women's groups in its efforts for legislative change, as well as policy-making. Their contributions are essential given the urgent need for action to change attitudes in order to prevent gender-based violence.

Inadequate definition of rape

Those proposing legislative change from both the government and opposition alike have left out a crucial measure to address gender violence: amending the legal definition of rape, included in Article 486 of the Penal Code. The government-sponsored draft law defines gender violence in general terms without specifically defining rape. Meanwhile, a proposal by opposition parliamentarians to amend articles in the Penal Code

dealing with sexual violence fails to deal with the definition of rape.

Article 486 defines rape in a manner that is too narrow and falls far short of international human rights standards. It defines rape as when “a man has sexual relations with a woman against her will”. This requirement that the perpetrator be male and the victim female excludes many other victims from protection. The definition should be immediately amended to be gender-neutral and to explicitly describe different coercive circumstances that do not necessarily require physical violence, thereby reflecting the reality that rape is committed in different ways. Rape can also take place within marriage, and this should be explicitly recognized by Moroccan legislation.

Both existing Moroccan legislation and proposed legislative changes contain varying punishments depending on the victim’s marital status or whether or not she is a virgin. These provisions, included in Article 488 of the Penal Code and amendments to Articles 400-404 proposed in the government draft law, should be immediately amended to ensure that all victims are treated equally. Women and girls have intrinsic human rights and their value should not be defined by their virginity, marital status or family situation.

Rape survivors continue to be deterred from filing complaints for fear of prosecution under Articles 490 and 491, which criminalize sexual relations outside marriage, and Article 489, which criminalizes same-sex relations. These articles remain unchanged in the government’s draft law and amendments proposed by opposition parliamentarians. The criminalization of sexual relations between consenting adults violates the rights to privacy and free expression. These articles should be annulled.

Recognizing violence, ensuring protection

Ensuring justice for survivors of gender violence involves equipping the judiciary with adequate tools to recognize violence in its various forms. Legislative amendments currently under consideration fail to do this. The Code of Criminal Procedure must be amended to enable victims to access a sensitive examination by medical professionals with particular competence in this area, including a forensic examination in line with the World Health Organization (WHO) protocol on the collection of forensic evidence in cases of sexual and gender-based violence. In addition, specific provisions must be incorporated into the processes of filing complaints, questioning by judicial police and court hearings to ensure gender-sensitivity and avoid re-traumatizing survivors of violence, and sexual violence in particular, and to ensure that the testimony of victims is given due weight as evidence.

Rather than focus almost exclusively on harsher punishments – as the proposals by both the government and opposition do – a more integrated approach is needed to effectively tackle sexual and gender-based violence. This must begin with bringing Morocco’s legal framework in line with international law and standards. Morocco is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and, in a welcome step, has announced its intention to ratify the Optional Protocol to it. However, Morocco’s limiting reservations to its obligations under CEDAW, which it says are based on concern that not conflict with Shari’a law, undermine the object and purpose of the treaty itself. Unless Morocco withdraws these reservations and implements fully its obligations under CEDAW, women in Morocco will continue to suffer discrimination and inequality in law and in practice.

Legal changes alone will not resolve gender-based violence but they are a crucial component of a broader struggle. Authorities need to implement a policy of preventing gender-based violence, as well as ensuring that survivors have access to redress and reparations. Political leaders must lead the way in shifting attitudes by publicly condemning acts of sexual and gender-based violence, and sending a clear and unambiguous message that women and girls are not responsible for sexual violence. Such statements by influential public figures are necessary to change the attitudes of law-enforcement and judicial authorities who, too often, continue to blame women and girls for the sexual violence they are subjected to. Ensuring that women are better represented within law enforcement agencies and the judiciary, as well as providing adequate and effective gender-sensitive training for law-enforcement officials and judges is also important and likely to have a tangible impact. Finally, maintaining accurate official statistics on the extent of gender-based violence and the response to it by the authorities is crucial to understand its prevalence, the contexts in which it occurs and help focus government action.

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