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Algeria: Revise draft law on health

Algeria's new draft law on health bring some welcome changes, but falls short of adequately protecting the right to health, Amnesty International said today. The government must amend the draft to respect, protect and fulfil all aspects of the right to health before it is slated for parliamentary debate in coming weeks.

The UN Special Rapporteur the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Special Rapporteur on the right to health) is also expected to release the report of his 2016 visit to Algeria on 6 June at the UN Human Rights Council.

On 4 October 2016, Algeria's government council approved a draft law on health more than 26 years after legislation on health was last overhauled. The Ministry of Health, Population and Hospital Reform announced in May that the newly-elected National Popular Assembly will likely debate the draft during its current session that began in late May, after several delays.

The right to health and access to healthcare are currently regulated by Law 85-05 of 16 February 1985 on the protection and promotion of health (Law on health), amended in 1990. This law has not been amended since then and the government has for some time declared its intention to revise the existing legal framework. The Minister of Health, Population and Hospital Reform Abdelmalek Boudiaf said the purpose of the draft was to modernise the country's health infrastructure.

The draft law seeks to make improvements with regards to the principle of equal access to healthcare, non-discrimination, informed consent for medical procedures, prevention of disease and adolescent health, and grounds for legal abortion. While proposed amendments are improvements in several regards, in other cases they perpetuate flaws in the current law on health, or leave gaps unaddressed. Amnesty International is concerned that these amendments are insufficient, and that some aspects of the draft law are inconsistent with Algeria's human rights obligations.

The draft law introduces the principles of equal access to healthcare, as well as non-discrimination in access to healthcare. However, it provides an incomplete list of grounds for non-discrimination and fails to protect some marginalized groups, including migrants, refugees, and people who face discrimination based on their sexual orientation or gender identity.

Proposed amendments makes a significant improvement by requiring free, informed consent for all medical treatments and procedures. They also extend doctors' duty to record and report medical evidence of violence against women, older persons, people living with disabilities, in addition to children and detainees already protected in the current law. Yet, the draft law does not require informed consent for such reporting, in spite of the risk of reprisals against survivors of violence.

The draft law also changes the grounds for legal abortion, by adding threats to pregnant woman or girl's health and severe foetal impairment, to currently authorized grounds of threats to the life of a pregnant woman or girl, or serious threats to their "physiological and mental equilibrium". Abortion in all other circumstances remains criminalized, with punishment of up to five years for doctors and two years for women and girls. As a result, women and girls often resort to unsafe clandestine abortions, and are therefore at high risk of death and grave injury. Furthermore, the requirement of spousal consent for abortions creates barriers to accessing health services for all women and girls, and effectively denies access to safe abortion services for unmarried women and girls. In spite of many provisions on prevention of disease and adolescent health, the draft law also falls short of ensuring much-needed sexual and reproductive health for adolescents.

Amnesty International calls on Algeria's lawmakers to revise the draft law to:

- Explicitly prevent discrimination in access to health care on all relevant grounds, including on grounds of migrant or refugee status, and sexual orientation and gender identity;
- Builds on the new provisions on informed consent by extending them to cases where medical professionals have to report on cases of suspected violence;
- Repeal laws that criminalize abortion and, at a minimum, guarantee access to abortion in all cases where pregnancy poses a risk to the life or to the physical or mental health of the woman or girl, in cases of severe and fatal foetal impairment, and in cases where the pregnancy is the result of rape or incest, as well as ensure that all women and girls have access to quality post-abortion care in all circumstances;
- Ensure that all women have access to comprehensive sexual and reproductive health information and services, including modern and good quality contraception.
- Develop and implement a programme of evidence-based, age appropriate comprehensive sexuality education to enable young people to take informed decisions about their sexuality and health, including information to help prevent sexually transmitted diseases and early or unwanted pregnancy.

The draft law was released five months after the Special Rapporteur on the right to health visited Algeria. He is expected to present his report on the visit on 6 June 2017. During Algeria's recent Universal Periodic Review on 8 May 2017, eight states made recommendations to improve the right to health, including Kenya, Saudi Arabia, Brunei Darussalam, Sri Lanka, Iraq, Bahrain, Serbia and Botswana. Algerian authorities took all recommendations under consideration. Algeria has been party to the International Covenant on Economic, Social and Cultural Rights (ICESR) since 1989.

Equal access to healthcare

While current legislation provides free access to healthcare and medicines, the draft law introduces a shift towards paying access to healthcare, in the context of falling state revenues. This shift was preceded by an amendment to the article guaranteeing the right to health in Algeria's [Constitution](#) in 2016, which added a duty on state authorities to provide healthcare for people living in poverty, but not the population at large. Amnesty International reminds the Algerian authorities of their obligation to ensure that health facilities, goods and services remain affordable for all persons, particularly all vulnerable or marginalized groups.

Article 348 of the draft law provides that patients may be requested to contribute towards healthcare expenses, but may not be denied access to emergency medical care if they fail to do so. Article 275 of the Draft Law also maintains the principle of equal access to healthcare, in line with Algeria's obligations under Article 12 of the ICESCR. Meanwhile, Article 20 prohibits discrimination on grounds origin, religion, age, sex, social or family situation, health situation or disability, as well as obstacles to "citizen's" access to healthcare in state hospitals, and especially emergency medical care.

Amnesty International welcomes the inclusion of the principle of equal access to healthcare in the draft law. To protect against all prohibited grounds of discrimination, Algerian lawmakers should amend Article 20 to add nationality, language, political or other opinion, sexual orientation or gender identity, place of residence, or other status. The UN Committee on Economic, Social and Cultural Rights (CESCR) has stressed the importance of the category of "other status" to ensure that prohibited grounds for discrimination are not exhaustive, in order to reflect the evolving nature of discrimination over time and across different contexts.

Similarly, the draft law only guarantees aspects of the right to health to "citizens" – not all persons - in multiple instances. The Committee on Economic, Social and Cultural rights has stated that rights under the ICESCR – which would include the right to health - apply to everyone, including non-nationals, such as refugees, asylum-seekers, stateless persons, and migrant workers. The draft law must be revised to ensure that all persons have access to the minimum, essential levels of the right to health and that there is no discrimination in access to healthcare.

Protection from violence

The existing Law on health required medical practitioners to report any violence on children and persons deprived of their liberty (Article 206-3). The draft law extends this compulsory requirement to women, older persons, and people living with disabilities (Article 207). The draft law also adds a specific requirement for doctors to make a descriptive record of injuries in cases of violence and states that any suspicious injury must be declared (Article 208).

Given the rights to autonomy and privacy, Amnesty International urges lawmakers to introduce the need for medical practitioners to obtain informed consent from adult patients, and adolescents in line with their evolving capacities, before reporting any violence or suspected crimes, as well as introduce a mechanism to ensure protective measures in cooperation with judicial authorities where needed, in order to ensure that survivors of violence fearful of reprisals are not deterred from seeking health care. Furthermore, healthcare providers should be given training in how to respond to such cases.

The draft law also explicitly mentions the role of forensic doctors in evaluating the extent of injuries and incapacitation in cases of violence, which is already the case in practice (Article 208). Amnesty International recommends that legislators amend these provisions, and corresponding regulatory texts, to include a reference to international standards regarding the documentation of violence or to reflect such standards in the draft law, and specifically to the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). Similarly, the organization recommends that the draft bill amend Article 210 on autopsies, or corresponding regulatory texts, to include a reference to international standards regarding autopsies, and especially the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol), or reflect such standards in the draft law.

Continued criminalization of abortion, with narrow exceptions

Algerian law currently prohibits abortion with the exception of threats to the life of the pregnant woman or girl, or a serious threat to their “physiological and mental equilibrium”. Legal abortion in such cases is subject to spousal consent and notification of “administrative authorities”. This restricts women and girls’ autonomous decision-making, and exposes them to the risk of delays that could put their health and life at risk. Medical or other practitioners who facilitate abortions risk from one to ten years’ imprisonment, fines and other penalties including the prohibition to exercise their profession, and refusal of the right to stay in Algeria for foreign nationals, under Articles 304, 305 and 306 of the Penal Code. Women who seek abortions are similarly at risk of imprisonment for six months to two years and fines under Article 309 of the Penal Code. Anyone who “provokes” abortions by sharing information about abortion including through speeches, texts or images risks between two months and three years’ imprisonment and fines under Article 310 of the Penal Code.

Article 308 of the Penal Code provides an exception to this ban in case of threats to the life of the pregnant woman or girl when an abortion is practised “openly” by a doctor and following notification of “the administrative authority”. This provision is more restrictive, and inconsistent with Article 72 of the current Law on health, which also permits abortions that are “vital” in case of a “serious threat to the physiological and mental equilibrium” of a pregnant woman. It also provides for a joint decision by a doctor and a specialized doctor, without imposing the need to notify an “administrative authority”.

In this regard, Article 81 of the draft law maintains an explicit exception to the ban on abortion in case pregnancy threatens the life of a woman or girl. However, the doctor may undertake “any therapeutic medical measure dictated by the circumstances” in case of fatal foetal impairment with the consent of the pregnant woman and her spouse (Article 81), or “serious threat to the physiological and mental equilibrium” of a pregnant woman with the consent of the woman only (Article 82). The consent of parents or the legal guardian is required for pregnant girls under Article 22 of the draft law. Similarly, Article 80 states that a doctor, with the consent of the pregnant woman and spouse, may “consider therapeutic medical measures which he deems necessary” in case pregnancy threatens the health or life of a woman or girl, or if there is a “high likelihood of severe disability” of the foetus. In addition, Article 83 restricts legal abortions in the exceptional cases outlined above to state hospitals only.

Amnesty International welcomes the potential in the various articles of the draft law to extend permissible grounds for access to safe and legal abortions, while calling on lawmakers to clarify these provisions in order to explicitly provide for legal abortions in case of threat to maternal health including mental health, and severe foetal impairment. Following his visit to Algeria in April and May 2016, the Special Rapporteur on the Right to Health [noted](#) that the fact that rape and incest are not considered grounds for legal abortion may drive women and girls towards unsafe clandestine abortions. Amnesty International calls on lawmakers to extend grounds for legal abortion also to cases of rape and incest as required by the international law and standards.

The organization further calls Algeria's lawmakers to decriminalize abortion under all circumstances. No woman or girl, or health worker, should be subjected to penalties of any kind for seeking, having, or providing an abortion. The UN [Committee on Economic, Social and Cultural Rights](#) and the [Committee on the Elimination of all Forms of Discrimination against Women](#), amongst other expert committees, have urged that states to decriminalise abortion in all circumstances in order to comply with their treaty obligations. Unless abortion is decriminalised, Amnesty International also fears that the health and lives of women and girls will continue to be at risk due to unsafe and clandestine abortions which lead to maternal deaths and injuries.

Lawmakers must also revise the draft law to guarantee, at a minimum, access to abortion in all cases where pregnancy poses a risk to the life or to the physical or mental health of the woman or girl, in cases of severe and fatal foetal impairment, and in cases where the pregnancy is the result of rape or incest. They should also ensure that all women and girls have access to quality post-abortion care in all circumstances.

The organization also calls on lawmakers to remove all barriers to accessing safe and legal abortion, including parental and spousal consent, and burdensome administrative processes such as notification, as they could jeopardize access to safe and legal abortions in practice. Delays associated with securing third-party consent may also threaten women's health given the particularly time-sensitive nature of abortion services. Third-party consent and approval requirements are discriminatory because they deprive women and girls of the right to take autonomous decisions regarding their bodies and their health.

Lawmakers must also ensure that all women and girls have equal access to abortion and other health services, irrespective of marital status. In particular, married women and girls who fit into the narrow exceptions allowing legal abortions may be denied such abortions in the absence of spousal consent, while unmarried women and girls are denied such necessary health care. The draft should also be amended to ensure that all women have access to comprehensive sexual and reproductive health information and services, including modern and good quality contraception;

Sexual health: continuing need for education

In 2012, the UN Committee on the Rights of the Child [recommended](#) to Algeria that it ensure sexual and reproductive health services for adolescents, including comprehensive age-sensitive sexual and reproductive health education and information. While the draft law includes several provisions on the prevention of disease, and in particular smoking, alcoholism and drug use, and features a specific section on adolescent health, it still does not require the provision of comprehensive sexual and reproductive health education.

The organization recommends that lawmakers amend the draft law to include such provisions, in line with recommendations by the Special Rapporteur on Health following his 2016 visit to Algeria. He stressed "the need to design and implement an inter-sectoral public policy for sexual and reproductive health rights aimed at adolescents within and outside the educational system. This policy should take into account sexual and reproductive health rights, healthy sexuality, prevention of unplanned pregnancies, use of all forms of contraceptives, and sexually transmitted diseases, including HIV/AIDS".

Lawmakers should also explicitly provide for access to modern contraception, and public education in this regard. In its General Comment 22 on the right to sexual and reproductive health, the UN Committee on Economic, Social and Cultural Rights [stated](#) that denying access to contraception, including emergency contraception, breaches the obligation to respect the human rights of women and girls. Emergency contraception is currently available in Algeria, although not explicitly provided by the draft law on health.

Amnesty International calls on Algeria's lawmakers to revise the draft law to develop and implement a

programme of evidence-based, age appropriate comprehensive sexuality education to enable young people to take informed decisions about their sexuality and health, including information to help prevent sexually transmitted diseases and early or unwanted pregnancy.

Informed consent

The draft law significantly improves on current legislation with regard to respecting the rights to privacy and bodily autonomy. Law 85-05 of 1985 requires a patient's consent for medical care, with several exceptions in case of emergency or risk to the population. The draft law, by way of contrast, introduces the requirement to obtain "free, informed consent" for all medical acts (Article 357).

The Special Rapporteur on the Right to Health has [emphasized](#) the fundamental importance of free and informed consent to ensure individual autonomy and human dignity in healthcare, and has specifically stressed the importance of guaranteeing informed consent for vulnerable groups including women and persons deprived of liberty, among other groups.

Public document

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