

**Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on minority issues; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences**

REFERENCE: OL  
BRN 1/2014:

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Excellency,

We have the honour to address you in our capacity as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on freedom of religion or belief; Special Rapporteur on minority issues; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 26/5, 25/2, 22/20, 25/5, 26/12, 25/13, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **an Order relating to laws in respect of sharia crimes and any matter connected therewith, which is cited as the Syariah [sharia] Penal Code Order, 2013 (SPC)**. In light of the information received we urge your Excellency's Government to revoke implementation and repeal the SPC completely.

According to the information received:

On 22 October 2013, the SPC was adopted officially in Brunei Darussalam. The SPC is based on sharia law, which has been applied to the Muslim majority population in the sultanate since 1999, mainly for family matters such as marital and inheritance cases. Because the SPC has been enacted at the national level, all individuals in the country are liable for offenses defined by it, regardless of personal religious beliefs (article 3(1) of the SPC). According to article 3(4) of the SPC, if the case is within the jurisdiction of Syariah [sharia] Court, no court other than the Syariah Courts shall have jurisdiction to hear or determine any matter arising in the context of the implementation of the SPC.

According to article 3(1) of the 1959 Constitution, Islam is the official religion of Brunei Darussalam, provided that all other religions may be practiced in peace and harmony by the persons professing them. On 1 January 1984 Melayu Islam Beraja [Malay Islamic Monarchy] (MIB) was officially proclaimed as the national philosophy of Brunei Darussalam, providing that Islam is fully practiced in daily life.

The SPC's implementation will take place in three phases to ensure sufficient time to introduce it to the public and to allow for its proper and effective enforcement. The first phase became operational on 1 May 2014 and allegedly enacts the general offences derived from sharia law, which are considered to be of less serious nature, and which are punishable by fines and/or various terms of imprisonment.

The second phase, which is to come into force one year after the preparation of a draft of the Sharia Courts' Criminal Procedure Order, will introduce corporal punishment, such as amputation and public flogging for a range of offences under sharia law. The Criminal Procedure Order has not been drafted yet, so the exact date of the application of the second phase is still uncertain.

The third phase, which is to be implemented one year after the second phase, will allow the mandatory death penalty for the offences for which it is applicable under sharia law. Stoning as a method of execution will then be implemented for mainly sexual crimes under sharia law.

The SPC is said to provide for mandatory death penalty for several non-lethal acts, including for adultery, rape, same-sex relations, insulting Islam and its doctrines and witchcraft. Further, the SPC stipulates reliance only on the accused's confession in reaching a guilty verdict; discriminates against women and religious minorities; institutionalizes gender-based stereotypes of women regarding their social role and their responsibility to preserve the honour of the family; criminalizes blasphemy and imposes restrictions on the right to freedom of religion or belief as well as freedom of opinion and expression, including artistic expression and creativity.

Without prejudging the accuracy of the information made available to us, we wish to express our grave concern that a number of SPC provisions contravene international human rights standards as set forth in the 1948 Universal Declaration of Human Rights (UDHR) — in particular, as they relate to the right to life, the prohibition of torture, the right to physical and psychological integrity, the right to freedom of thought, conscience and religion, the right to freedom of opinion and expression, the right to privacy, equality between men and women, and the prohibition of discrimination, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which your Excellency's Government ratified on 24 May 2006, and the 1981 United Nations

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981 Declaration).

In particular, we would like to bring to your Excellency's Government's attention the following list of concerns:

*1. Concerns related to mandatory death penalty and reliance only on the accused's confession in reaching a guilty verdict.*

The SPC introduces the mandatory death penalty for several crimes punishable by death under the law of Islam. These crimes include: zina [adultery] (article 69); zina bil-jabar [rape] (article 76); liwat [anal sodomy: sexual intercourse through anus with a man or woman] (articles 82-85); declaring oneself as God, Rasul or Nabi, contempt of Nabi, irtidad [apostasy] deriding etc. verses of Al-Qur'an or hadith (articles 108-113 for Muslims and 221-223 for non-Muslims); qatlul-amd [murder] and krah tam [under duress] to commit qatlul-amd (articles 126(1) and 127(1)); qatl [homicide] by witchcraft (article 152(1)); qatl during sariqah [theft] and hirabah [robbery] (articles 58 and 63(1)(a)).

It appears that the SPC stipulates the imposition of an automatic death sentence upon conviction for these crimes, and that death sentences would be imposed regardless of any mitigating circumstances. Furthermore, in such cases, the SPC appears to allow courts to rely exclusively on either the accused's ikrar [confession] in order to reach a conviction, or on syahadah [testimony] of at least two syahid [credible witnesses]. According to the SPC the crime of qatl [homicide] by witchcraft (article 152(1)) can only be established by ikrar.

Mandatory death penalty is incompatible with the right to life stipulated by article 3 of the UDHR. The universal nature of enjoyment and protection of this right has been reiterated in numerous United Nations resolutions, thematic and country-specific reports by Special Rapporteurs and other experts, including by the United Nations Human Rights Committee. Furthermore, reliance only on the accused's confession in reaching a guilty verdict may violate obligation of the states under customary international law to prevent torture and other cruel, inhuman or degrading treatment or punishment.

*2. Concerns related to the imposition of the death penalty for offences that do not meet the threshold of the "most serious crimes" standard under international human rights law.*

Six crimes, for which the SPC provides the death penalty, are non-lethal acts, including: zina [adultery] (article 69); zina bil-jabar [rape] (article 76); liwat [anal sodomy: sexual intercourse through anus with a man or woman] (articles 82-85); declaring oneself as God, Rasul or Nabi, contempt of Nabi, irtidad [apostasy] deriding etc. verses of Al-Qur'an or hadith (articles 108-113 for Muslims and 221 – 223 for non-Muslims); qatl [homicide] by witchcraft (article 152 (1)). The latter crime appears to be supernatural belonging to the acts of fantasy, and thus cannot be considered lethal.

Imposition of the death penalty for non-lethal acts clearly does not meet the threshold of the “most serious crimes” standard under international human rights law.

*3. Concerns related to the method of execution through death by stoning.*

The SPC institutes stoning as a method of execution for sexual offences, including zina [adultery] (article 69); zina bil-jabar [rape] (article 76); and liwat [anal sodomy: sexual intercourse through anus with a man or woman] (articles 82-85). According to international human rights law, death by stoning is contrary to article 5 of the UDHR, and clearly constitutes torture, and is, beyond dispute, a violation of the prohibition of cruel, inhuman and degrading treatment. The prohibition of torture in international law is absolute and no circumstance whatsoever can be invoked to justify its practice.

*4. Concerns related to corporal punishment such as amputation and public flogging.*

The new penal code provides for the amputation of limbs or parts of limbs, such as the right hand amputation at the wrist, and the left foot amputation at the ankle in case of property related offences, including sariqah [theft] (article 55) and hirabah [armed robbery] (article 63). Such punishment can be imposed if the value of the stolen property equals or exceeds nisab [1 dinar], and guilt is proven by ikrar [confession] of the accused or by syahadah [testimony] of at least two syahid [credible] witnesses.

The SPC also provides for public flogging of 10 to 100 strokes for a wide range of offences, including hirabah [armed robbery] (article 63); zina [adultery] committed by ghairu muhsan [unmarried or married individuals who never had sexual intercourse in the marriage] (articles 69); lesser forms of zina, e.g. attempted or abetting commission of adultery (articles 71-74); zina bil-jabar [rape] (article 76) committed by ghairu muhsan; lesser forms of zina, e.g. attempted or abetting commission of rape (articles 77-81); musahabah [homosexuality between women] (article 92); qazaf [accusation of adultery, rape, or sodomy which cannot be proved by four syahid (credible) witnesses against a Muslim] (article 95); lesser forms of qazaf, e.g. attempted or abetting commission of qazaf (articles 102-103); consuming an intoxicating drink by Muslim (article 104); irtidad [apostasy], declaring oneself as God, Rasul or Nabi, contempt of Nabi, deriding etc. verses of Al-Qur'an or hadith, if evidence provided does not meet the requirements for death (articles 108–113 for Muslims and 221–223 for non-Muslims); declaring oneself or another as Imam Mahdi by a Muslim or claiming to know things beyond human understanding (article 206)

Any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in international law, as stipulated by article 5 of the UDHR, and as reiterated in numerous thematic and country-specific reports by Special Rapporteurs and other experts, including by the United Nations Human Rights Committee and the Committee against Torture.

*5. Concerns related to provisions restricting freedom of religion or belief and discriminating against religious minorities.*

The SPC penalizes Muslims for failure to follow and perform the prescribed religious duties in Islam, including consuming an intoxicating drink (article 104); irtidad [apostasy], declaring oneself as God, Rasul or Nabi, contempt of Nabi, deriding etc. verses of Al-Qur'an or hadith, declaring oneself as non-Muslim (articles 108–113); failure to perform Friday prayer (article 194); disrespecting the month of Ramadan (article 195); indecent behaviour (article 197); declaring oneself or another as Imam Mahdi (article 206); teaching of doctrines or practices contrary to Hukum Syara' [Islamic law] (article 207); worshipping contrary to Hukum Syara' (article 216); incitement to neglect religious duties (article 235); non-payment of zakat or fitrah (article 236); and payment of zakat or fitrah to an unauthorized person (article 238).

Disciplining Muslims through imposing criminal sanctions in order to force them to perform their religious duties is a violation of the right to freedom to practice or not practice any religion or belief under article 18 of the UDHR.

The SPC's evidentiary requirements violate clearly prohibited discrimination based on religion, because they do not confer the same legal force to the testimonies of Muslim and non-Muslim witnesses. Under the SPC, the means of proof are detrimental to the court for deciding whether a crime took place, as well as which punishment to apply. For example, generally most offences under the SPC must be proved either by ikrar [confession] or syahadah [testimony] of two or four syahid [credible witnesses]. According to the SPC, a syahid [credible] witness is a person who fulfills all the requirements according to Hukum Syara' [sharia law], which includes, among others, being of sound mind, having attained puberty, and being 'adil [a Muslim who performs the prescribed religious duties, abstains from committing capital sins and is not perpetually committing minor sins]. Non-Muslims are only allowed to become syahid witnesses to offences committed by non-Muslims if such person is credible according to his religion.

Furthermore, provisions of the SPC may further discriminate against non-Muslims and put them in a disadvantaged position, as it appears that some religious practices reserved for Muslims may now be compulsory for non-Muslims. For example, non-Muslims can be penalized for indecent behavior (article 197). According to SPC an act is deemed indecent if it tarnishes the image of Islam. It is unclear what exact behavior would constitute "indecent."

The SPC criminalizes conversion. According to articles 112 and 113, any Muslim who declares or attempts to declare oneself as non-Muslim is guilty of irtidad [apostasy] and is punished by death. The right to conversion and the right not to be forced to convert are unconditionally protected under international human rights law, in particular under article 18 of the UDHR. We would like to stress that any law regulating religious conversion would not be in conformity with international human rights law, as it would fundamentally violate the right to change one's religion freely, which is as an

indispensable part of the right to freedom of religion or belief. It is not within the State's purview to regulate matters that are enjoying absolute protection as part of the internal dimension, or "forum internum" of an individual's right guaranteed by freedom of thought, conscience and religion.

The SPC prohibits missionary activity (articles 206 and 207). This prohibition contravenes the right to try to persuade others in a non-coercive manner. Any restrictions on missionary activities deemed necessary by States must strictly abide by article 1(3) of the 1981 Declaration. According to the SPC, a Muslim who converts another Muslim away from Islam risks a fine of up to \$20,000 and up to five years imprisonment. Further, articles 209–215 provides that non-Muslims who share their faith—even if only by publication—with a Muslim or an atheist, are liable to an identical punishment.

#### *6. Concerns related to provisions discriminating against women.*

We express grave concern that the SPC seems to institutionalise discrimination against women on the basis of their sex under the guise of culture, custom, tradition or religion. These discriminatory provisions have the potential to strengthen pre-existing stereotypes and inequalities between men and women and to further perpetuate various forms of violence against them.

The SPC clearly discriminates between men and women with respect to their legal obligations or rights. For example, article 93 allows only men to do a li'an against their wife, i.e. accusing them of adultery on oath, whilst women on oath may only reject such accusation. Furthermore, article 203 of the SPC punishes women who leave the custody of their parents or guardian whereas such a prohibition does not exist for the men. This makes them second class citizens, undermines their autonomous decision-making and their freedom to choose to get or not get married. Moreover, laws that require female obedience or subservience often serve to maintain women's dependence on men and contribute to fostering environments, in which abuse and violence prevail.

Abortion is criminalized under article 158 of the SPC. This affects the right to the respect of privacy of life guaranteed by article 12 of the UDHR and women's rights over their own body and life. The criminalization of abortion under all circumstances means that women are condemned to continue pregnancies even those which are unwanted, resulting for instance from rape, incest or other adverse circumstances. This can lead women and girls to resort to unsafe and clandestine abortion practices, sometimes with fatal consequences.

Additionally, according to sharia law, women bear the burden of proof in adultery cases, and in cases of rape or adultery, four witnesses are required as sufficient evidence. These witnesses must be syahid [credible witnesses], which means that they must be men, thus discriminating against women.

While it is recognized that, in accordance with some traditions, customs or civil law systems, adultery may constitute a matrimonial offence bearing legal consequences

in divorce cases, including the custody of children or the denial of alimony, it should not be a criminal offence and must not be punishable by fine, imprisonment or death. Studies have shown that in countries where stoning is enforced, women are likely to be sentenced to death by stoning due to deep-rooted discriminatory attitudes and bias towards women suspected of adultery or engaging in extramarital relations.

Article 94 of the SPC stipulates that any Muslim woman who is pregnant or gives birth out of wedlock can be fined up to \$8,000 and imprisoned for up to two years. The provision states that being raped does not fall under the definition of “out-of-wedlock”; however, in such cases, the burden of proof falls upon the woman.

As mentioned above, article 197 of the SPC orders that both Muslims and non-Muslims are liable for acts of indecent behaviour. It is unclear what exact behaviour falls under this umbrella term. One possible example is that, while it was mandatory for all women who work in the government or who attend an official function to wear a hijab, the provision now criminalizes violation of such instruction.

Article 198 of the SPC stipulates that a man who poses as a woman and vice versa without a reasonable excuse can be fined up to \$1,000 and up to three months in prison. If the court also determines that the purpose of dressing as the opposite sex is for immoral purposes, the fine can reach \$4,000 and a prison term of one year.

In addition to direct discrimination, the SPC also indirectly discriminates against women through its rules. Although the rules do not seem to be discriminatory per se, their application seems to be institutionalizing gender-based stereotypes affecting women not only through individual acts but also in law and institutions.

*7. Concerns related to blasphemy and provisions restricting freedom of expression and opinion, including freedom of artistic expression and creativity.*

The idea of protecting the honour of religions themselves would clearly be at variance with the human rights approach. As described above, SPC provides a number of provisions that protect Islam and its pillars, in articles 109–113 for Muslims and 221–223 for non-Muslims and in article 206). Other provisions include offences related to printing, disseminating, importing, broadcasting, and distributing publications contrary to Hukum Syara’ [Islamic law] (article 213); delivering or giving publications relating to religions other than the religion of Islam to Muslims or persons having no religion (articles 214–215); prohibiting non-Muslims from using 19 specific words and 16 specific expressions related to the religion of Islam (article 217); and contempt Islam, its figures, texts or interpretation (articles 221–223 for non-Muslims). In doing so, the SPC criminalizes the legitimate exercises of the rights of freedom to religion or belief and freedom of opinion and expression. These contravene articles 18 and 19 of the UDHR.

In connection to the above alleged facts and concerns, please refer to the **Annex** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

In view of all of the aforementioned comments, we are respectfully calling on your Excellency's Government to revoke implementation and repeal the SPC completely as it would not be in conformity with international human rights law.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would particularly appreciate receiving information from your Excellency's Government on how it expects to uphold the aforementioned international norms and standards. We also urge your Excellency's Government to establish a formal moratorium on the use of the death penalty and to work towards abolishing the practice altogether.

We would appreciate a response within 60 days.

While awaiting a reply, we urge your Excellency's Government to conduct a comprehensive review of the current criminal legislation, to ensure that it is compliant with international human rights standards.

We are considering to publicly express our concerns in the near future in this regard as we deem the information in our possession on this important matter to be sufficiently reliable to do so. In this regard, we would welcome any information that Your Excellency's Government would wish to share with us. .

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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## **Annex: Reference to international human rights standards**

The following international human rights standards are the sources of international law, including customary law, or at least subsidiary means for the determination of rules of law which can be used as guidance by the Government of Brunei Darussalam to ensure that the rights to life, freedom from torture, freedom of religion or belief, freedom of expression, including freedom of artistic expression and creativity, and the right to due process of law, are fully protected in the country.

**Regarding the imposition of the death penalty and the reliance on the accused confession in establishing guilt,** Article 3 of the 1948 Universal Declaration of Human Rights (UDHR) guarantees everyone the right to life, liberty and the security of person (A/RES/ 217(III)A). The death penalty must not be mandatory for any crime. In its extensive jurisprudence on this matter, the United Nations Human Rights Committee reiterated that the imposition of the death penalty “constitutes an arbitrary deprivation of life...in circumstances where the death penalty is imposed without any possibility of taking into account the defendant’s personal circumstances or the circumstances of the particular offence” (Pagdayawon Rolando v. Philippines; communication No. 1110/2002, para. 5.2). Furthermore, the former United Nations Commission on Human Rights had “[u]rge[d] all States that still maintain the death penalty... [t]o ensure...that the death penalty is not imposed... as a mandatory sentence” (Resolution 2005/59, para. 7(f)). In his report to the General Assembly’s 67th session, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment held that the mandatory death penalty constitutes a violation of the prohibition of cruel, inhuman or degrading punishment (A/67/279, para. 59).

**Regarding the provisions of the SPC that allow reliance only on the accused’s confession in reaching guilty verdict,** the General Assembly has repeatedly recognized that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (A/RES/65/205, A/RES/66/150, A/RES/67/161 and A/RES/68/156). Furthermore, the Human Rights Council in its resolution 16/23 (para. 7(c)) called on States to ensure no statement established to have been made as a result of torture is invoked as evidence in any proceedings. This prohibition (“exclusionary rule”) extends to statements made as a result of cruel, inhuman or degrading treatment or punishment.

**Imposition of the death penalty for offences that do not meet the threshold of the “most serious crimes” under international human rights law:** although the death penalty (or capital punishment) is not prohibited under international law, **its imposition and execution are subject to strict conditions.** In this context the Human Rights Committee has noted, “[t]he deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities” (General comment No. 6, para.3). The death penalty has long been regarded as an extreme exception to the

fundamental right to life. Countries that have not abolished the death penalty may only impose it for the most serious crimes. This provision has consistently been interpreted by international experts to mean that the death sentence may only be imposed in respect of offences that resulted in the loss of life (A/HRC/4/20, para. 53).

**Regarding imposition of the death penalty for blasphemy, witchcraft, and apostasy,** in his report to the Human Rights Council the Special Rapporteur on extrajudicial, summary or arbitrary executions stressed that the death penalty may not extend to behaviours or practices that should not be criminalized, such as expression of conscience, sexual relations between consenting adults, or religious practice (A/HRC/4/20, para. 51).

**The criminalization of sexual relations between consenting adults,** should be regarded as an interference with the privacy of the individuals concerned in violation of article 12 of the UDHR, which provides that “[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.” Thus, offences such as Zina; Zina bil-jabar; Liwat; Contempt of Nabi or Derides; and mocks, mimics, ridicules or contempts of any verse of the Al-Qur’an or hadith of Nabi do not meet the threshold of “most serious crimes” under international human rights law. By consequence, any death sentence imposed for such crimes, as well as any legal provision providing for the death penalty for such crimes, are in contravention of international human rights law.

**Regarding stoning as method of execution,** the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in its report to the 67<sup>th</sup> session of the General Assembly (A/67/279) referred to the jurisprudence of regional human rights bodies and national judiciaries to conclude that there is no doubt that death by stoning constitutes torture and is, beyond dispute, a violation of the prohibition of cruel, inhuman and degrading treatment (para. 31). Similarly, the UN Commission on Human Rights described execution by stoning as a particularly cruel or inhuman means of execution (Commission on Human Rights resolutions 2003/67, para. 4(i); 2004/67, para. 4(i); and 2005/59, para. 7(i)).

**Corporal punishment such as amputation and public flogging:** such treatments may amount to torture or other cruel, inhumane, degrading treatment under international law. The prohibition against torture is well established under customary international law as *jus cogens*. It has the highest standing in customary law and is so fundamental as to supersede all other treaties and customary laws. In connection to this, the General Assembly reaffirmed that no one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. It recalled that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right under international law and that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments. The General Assembly repeatedly indicated in its resolutions that **the prohibition of torture is a peremptory norm of international law** and that international, regional and domestic courts have recognized the **prohibition of cruel, inhuman or degrading treatment or punishment as customary international law** (General Assembly resolutions

A/RES/60/148, A/RES/61/153, A/RES/62/148, A/RES/63/166, A/RES/64/153, A/RES/65/205, A/RES/66/150, A/RES/67/161 and A/RES/68/156).

In its Resolution 8/8 the Human Rights Council reminded Governments that “**corporal punishment**, including of children, can amount to cruel, inhuman or degrading punishment or even to torture.” (Para.7a). We would also like to draw your Government’s attention to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the 60th session of the General Assembly, in which he, with reference to the jurisprudence of UN treaty bodies, concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He also noted that “States cannot invoke provisions of domestic law to justify the violation of their human rights obligations under international law, including the **prohibition of corporal punishment**,” and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (A/60/316, para. 28). In this context, we would also like to recall that both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment (e.g. in paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment).

**Regarding provisions restricting freedom of religion or belief and discriminating against religious minorities** Article 18 of the UDHR provides that “[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

The 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55) provides that the right to freedom of religion or belief includes freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practices and teaching. It further provides that “[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.” The Declaration also states “[d]iscrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms (...) and as an obstacle to friendly and peaceful relations between nations.”

The 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities provides protections for persons belonging to national or ethnic, religious and linguistic minorities. Article 1.1 provides that States shall protect the existence and the national or ethnic, cultural, or religious identity of minorities within its respective territories and shall encourage conditions for the promotion of that identity. Article 2.1 provides that persons belonging to national or ethnic, religious and

linguistic minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without any interference or any form of discrimination. Article 3.1 provides that persons belonging to minorities may exercise their rights individually, as well as in community with other members of their group, without any discrimination. Article 4.1 requires that States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

The recommendations of the sixth session of the Forum on Minority Issues on “Guaranteeing the rights of religious minorities” (2013) state that “Existing legislation should be reviewed to ensure that no provisions exist in law that are discriminatory or have a directly or indirectly discriminatory impact on persons belonging to religious minorities. Furthermore, requirements and official procedures resulting from the application of laws — and their possible discriminatory impact on some individuals and groups — should be reviewed and amended” (Recommendation number 18).

**With regard to concerns that some religious practices reserved for Muslims may become compulsory under the new penal code for non-Muslims,** article 1(2) of the 1981 Declaration provides that “[n]o one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.” This provision bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to particular religious beliefs and congregations, to recant their religion or belief, or to convert.

**Regarding provisions of the SPC that prohibit conversion,** Article 18 of the UDHR explicitly guarantees the “freedom to change” one’s religion or belief as an inextricable component of the human right to freedom of religion or belief. While subsequent United Nations instruments use slightly different wording, the right to conversion remains fully protected. In this context, article 1 of the 1981 Declaration refers to everyone’s “freedom to have a religion or whatever belief of his choice.” Article 1(2) was included in the 1981 Declaration partly to reinforce the protection of the right to conversion, stating that “[n]o one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.”

The interim report to the General Assembly (A/67/303), in which the Special Rapporteur of freedom of religion or belief explains that right to conversion and the right not to be forced to convert have the status of unconditional protection under international human rights law. In its General Comment 22, the Human Rights Committee observes that “the freedom to ‘have or to adopt’ a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as to retain one’s religion or belief.” (CCPR/C/21/Rev.1/Add.4, para. 5).

In connection to this, the General Assembly has repeatedly and by consensus urged States to ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, and religion or belief to all without distinction, inter alia, by providing access to justice and effective remedies in cases where the right to freedom of thought, conscience, and religion or belief or the right to freely practise one's religion, including the right to change one's religion or belief, is violated (See General Assembly resolutions 60/166, 61/161, 62/157, 63/181, 64/164, 65/211, 66/168, 67/179 and 68/170).

**Regarding provisions of SPC that prohibit missionary activity:** in paragraph 68 of his interim report to the General Assembly (A/67/303), the Special Rapporteur on freedom of religion or belief calls upon States to consistently “respect, protect and promote the human right to freedom of religion or belief in the area of conversion.” He reiterates that freedom of religion or belief includes the right to try to persuade others in a non-coercive manner. Any restrictions on missionary activities deemed necessary by States must strictly abide by article 1(3) of the 1981 Declaration.

**Regarding provisions discriminating against women,** Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which your Excellency's Government ratified on 24 May 2006, States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.

**Adultery as a criminal offence** — even when, on the face of it, it applies to both women and men — means in practice that women will continue to face extreme vulnerabilities and violations of their human rights to dignity, privacy, and equality, given continuing discrimination and inequalities faced by women. Harmful practices inflicted on women or girls can never be justified in the name of freedom of religion or belief. In this regard, we would like to bring to your Excellency's Government's attention paragraph 30 of the 2013 interim report of the Special Rapporteur on freedom of religion or belief to the General Assembly (A/68/290), in which he emphasizes that “... as a human right,

freedom of religion or belief can never serve as a justification for violations of the human rights of women and girls.” Furthermore, in paragraph 69 of the 2011 interim report to the General Assembly (A/65/207), the Special Rapporteur on freedom of religion or belief stresses that “... the mandate needs to continue highlighting discriminatory practices that women have had to suffer over the centuries and continue to do so, sometimes in the name of religion or within their religious community. It can no longer be taboo to demand that women’s rights take priority over intolerant beliefs used to justify gender discrimination.”

The report of the Special Rapporteur on violence against women, its causes and consequences, (A/HRC/20/16), underlines that stoning as a method of capital punishment primarily used for crimes of adultery and other related offenses linked to honour, disproportionately affects women. She notes that punishment is a means of controlling women’s sexual choices and limiting their freedom of movement. She further notes the collective dimension and public in character of the punishment, which serves the social objective of influencing the conduct of other women. In this sense, the Special Rapporteur recalls the due diligence obligations of States to modify the social and cultural patterns of conduct of men and women and eliminate prejudices, customary practices and other practices based on the idea of the inferiority or superiority of either of the sexes, and on stereotyped roles for men and women.

**Regarding blasphemy and provisions restricting freedom of expression and opinion, including freedom of artistic expression and creativity** the Special Rapporteur on freedom of religion or belief in his report A/HRC/25/58 highlights that “The idea of protecting the honour of religions themselves would clearly be at variance with the human rights approach” (see also A/68/290). In this regard we would like to stress that the right to freedom of religion protects primarily the individual and, to some extent, the collective rights of the community concerned, but it does not protect religions or beliefs per se. Thus, blasphemy laws typically have intimidating effects on members of religious minorities, as well as on critics or dissenters.

In this regard, the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence provides: “At the national level, blasphemy laws are counter-productive, since they may result in de facto censure of all inter-religious or belief and intra-religious or belief dialogue, debate and criticism, most of which could be constructive, healthy and needed. In addition, many blasphemy laws afford different levels of protection to different religions and have often proved to be applied in a discriminatory manner.” (A/HRC/22/17/Add.4, para. 19). The Rabat Plan of Action therefore recommends that “States that have blasphemy laws should repeal them, as such laws have a stifling impact on the enjoyment of freedom of religion or belief, and healthy dialogue and debate about religion” (A/HRC/22/17/Add.4, para. 25). A useful alternative to blasphemy laws could be to fully implement the protection of individuals against advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

**Regarding concerns related to criminalizing distribution of religious literature across religious boundaries,** article 6(c) and (d) of the 1981 Declaration provides that the right to freedom of religion or belief includes the freedom “[t]o make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief . . . and to write, issue and disseminate relevant publications in these areas.”

**Regarding criminalization of oral, written or other visible expressions or representations,** which may cause contempt or bring into contempt, insults, makes fun of, mocks, mimics or ridicules religion of Islam and its doctrines, or any other religion for that matter, Article 19 of the UDHR provides that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” On this basis, the Special Rapporteur in the field of cultural rights, in her report related to the right to freedom of artistic expression and creativity, reminded that “[a]ll persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations.” She called upon States to “review critically their legislation and practices imposing restrictions on the right to freedom of artistic expression and creativity, taking into consideration relevant international human rights law provisions” (A/HRC/23/34m paras. 85 and 88).