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Mandate of the Working Group on the issue of discrimination against women in law and in practice

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Excellency,

I have the honour to address you in my capacity as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice pursuant to Human Rights Council resolution 15/23.

The Working Group is entrusted with developing a dialogue with States and other stakeholders to inter alia, exchange views, including on best practice, on the elimination of laws that discriminate against women or are discriminatory to women in terms of implementation or impact and to make recommendations on improvement of legislation and implementation of the law.

The Working Group would like to bring to the attention of your Excellency's Government information it has received concerning **the final draft of the new Constitution which was approved by the Constituent Assembly on 30 November, and its concerns with regard to equality, non-discrimination and protection and promotion of women's human rights in the adopted text.**

According to the information received:

On 25 March 2012, a Constituent Assembly composed of 100 members, among which 6 women, was elected by both houses of Parliament with the commitment to draft and adopt a new Constitution for Egypt. On 10 April 2012, this Assembly was dissolved by a Supreme Administrative Court's decision and a new Assembly was formed on 12 June 2012. Out of its 100 members, only 7 were women. On 29 November 2012, the Assembly was called upon to finalize and vote on the draft Constitution, which it did one day later. During this process, many members of the Assembly resigned, reportedly in protest of the accelerated finalisation process of the draft. According to the information, only 1 woman participated in the Assembly's final deliberations on and approval of the draft Constitution. It was announced that this draft will be put forward on 15 December 2012 for approval by the people of Egypt through a national referendum. Parliamentary

elections are scheduled to take place one month after the Constitution is approved by the population.

The Working Group expresses concern at the meagre representation of women in the Constituent Assembly and the fact that women's perspectives were grossly under-represented during deliberations on and approval of the final draft Constitution.

While acknowledging that the final draft includes in its preamble a general principle which provides that "equality and equal opportunities are established for all citizens, men and women, without discrimination or nepotism or preferential treatment, in both rights and duties", the Working Group notes with concern that such formulation might prevent the adoption of temporary special measures aimed at accelerating *de facto* equality of women in relevant subsequent legislation, in accordance with article 4, paragraph 1, of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) which Egypt ratified on 18 September 1981. It further acknowledges a number of positive provisions for human rights protection in the final draft. However, it would like to highlight specific concerns in relation to the State's obligations to ensure non-discrimination on grounds of sex, gender equality and the protection and promotion of women's human rights in the final draft Constitution.

While noting that article 8 of the draft Constitution stipulates that the State guarantees the means to achieve equality, justice and freedom and that article 33 provides that all citizens are equal before the law and have equal public rights and duties without discrimination, the Working Group notes that the draft does not include in its substantive provisions the guarantee of non-discrimination based on sex necessary to give effect to the principle of equality between men and women in the preamble. This does not accord with Egypt's obligations under CEDAW and the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt on 14 January 1982. The Working Group takes this opportunity to draw the attention of your Excellency's Government to article 1 of CEDAW which defines discrimination as "any distinction, exclusion or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedoms" and to article 2 which places States parties under an obligation to respect, protect and fulfill the right to non-discrimination of women and to ensure the development and advancement of women in order to improve their position and implement their right of *de jure* and *de facto* equality with men. States parties shall ensure that there is neither direct, nor indirect discrimination against women.

The Working Group would also like to recall your Excellency's Government's obligations under articles 3 of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights (ICESCR) which require States parties to ensure the equal right of men and women to the enjoyment of all civil, cultural, economic, political and social rights set forth in the Covenants. It would also like to refer your Excellency's Government to article 26 of the ICCPR which notes that all persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons

equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The final draft Constitution provides in article 2 that Islam is the religion of the State and the principles of Islamic Sharia are the principal source of legislation. Although article 6 espouses democratic principles, including citizenship on an equal basis, political pluralism, separation of powers, and the rule of law, as well as respect for human rights and freedoms, the Working Group notes with concern the absence of a provision incorporating international law, including on women's human right to equality, into the domestic legal order and stipulating its primacy. It recalls that the Committee on the Elimination of Discrimination against Women regularly recommends that States guarantee women's human rights in the national Constitution and thus ensure that they prevail over inconsistent laws of lesser status and has urged States to take advantage of transitional situations to ensure that Constitutions and other laws includes guarantees of women's equality. Further, the principle of non-retrogression in the protection and promotion of all human rights is an established principle of international human rights law and must apply to the final draft Constitution and its implementation when approved, including in the promulgation of all subsequent laws. The State is obliged to ensure that men and women are equal in law and before the law.

Article 2 provides that Islam will be the principle source of legislation and article 3 provides that Egyptian Christians and Jews personal status will be regulated under their religious laws. There is no provision that women's right to equality in the family will be respected, protected and fulfilled by the State in accordance with international human rights standards, including the Universal Declaration of Human Rights (article 16), the ICCPR (article 23(4)), and CEDAW (article 16). Furthermore, article 10 provides, in its two first paragraphs that "the family is the basis of the society and is founded on religion, morality and patriotism. The State is keen to preserve the genuine character of the Egyptian family, its cohesion and stability, and to protect its moral values, all as regulated by law." In the 30 years since CEDAW was promulgated, the Committee on the Elimination of Discrimination against Women, the Human Rights Committee and the Human Rights Council and its predecessor have repeatedly clarified that violations of women's right to equality cannot be justified by reliance on religious or cultural tradition.

Article 4 provides that "Al-Azhar is an encompassing independent Islamic institution, with exclusive autonomy over its own affairs, responsible for preaching Islam, theology and the Arabic language in Egypt and the world. Al-Azhar Senior Scholars are to be consulted in matters pertaining to Islamic law." The Working Group notes that the last section of this provision extends the powers of this body in comparison with the 1971 Constitution, making it effectively in charge of interpreting all Sharia-related matters. It therefore would like to seek from your Excellency's Government clarifications in relation to measures to ensure that interpretations provided by this body to the executive, legislature and judiciary will be brought into line with the legally binding international instruments Egypt has ratified, including on women's human rights. It further seeks clarifications on how the independence of the judiciary, and in particular of the Supreme

Constitutional Court, an independent judicial body provided for by article 175 to exclusively exercise judicial control of the constitutionality of laws and regulations, will be guaranteed. It would further request information on plans to ensure gender balance in the Supreme Constitutional Court.

The Working Group is pleased to note that the first part of the third paragraph of article 10 is fully in accordance with international human rights law, including CEDAW, by ensuring maternal and child health services free of charge. However, in its continuation, this paragraph perpetuates stereotypes, undermines women's equal employment opportunity, limits women's economic potential and violates the requirement of equality in the family by providing that the State "shall enable the reconciliation between the duties of a woman toward her family and her work." This section assumes and provides that women exclusively have such duties towards their family and fails to establish, as required by article 5 of CEDAW, the common responsibility of men and women in the upbringing of their children.

Regarding article 43 and 45, the Working Group notes that the draft Constitution should provide protection for women of diverse beliefs and opinions, religious or other, against any form of discrimination and exclusion.

The Working Group would also like to avail itself of this opportunity to encourage the Government of Egypt to review and withdraw its reservations to articles 2 and 16 of CEDAW which are, according to the Committee on the Elimination of Discrimination against Women, incompatible with the object and purpose of the Convention.

The Working Group emphasises that political transitions producing new Constitutional and legislative foundations offer a unique opportunity to address inequalities of the past, advance women's human rights and ensure that equality between women and men is one of the cornerstones on which the new legal systems are built. Further, Constitutional reform must be undertaken in conformity with international human rights obligations undertaken by Egypt and must aim to advance equality between the sexes and the protection and promotion of women's human rights.

In view of the aforementioned, the Working Group would like to call on Your Excellency's Government to ensure women's full and equal participation in all processes related to the transition, that women are protected as they exercise their human rights and assisted to express their views and have those be incorporated and shape the Nation as it goes forward. Regarding the Constitution and its implementation, the Working Group is of the view that key opportunities have so far been missed and, going forward, calls on the Government to ensure conformity with the international human rights legal obligations to which it is party. It would appreciate receiving information from your Excellency's Government at its earliest convenience on how it expects to uphold the above-mentioned international norms and standards in the implementation of an eventual Constitution. The Working Group undertakes to ensure that the reply is accurately reflected in the report that it will submit to the Human Rights Council for its consideration.

Given the concerns identified above, I wish to inform you that the Working Group intends to publicly express its views in order to also notify the Egyptian public opinion.

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

Kamala Chandrakirana
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against women in law and in practice