

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 23/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the following situation.

According to the information received:

The current Indonesian Law No. 1 of 1974 on Marriage discriminates against women on a number of counts. Article 3 permits a husband to have more than one wife if the parties concerned agree. Article 7 provides that a marriage is only allowed when the male candidate has reached the age of 19 years and the female the age of 16 years. Article 11 stipulates that a waiting-period shall apply to women whose marriage has been dissolved but there is no corresponding provision for men whose marriage has been dissolved. The Regulation further specifying the waiting-period indicates that this period shall be of 130 days for widows; 3 times inter-menstruation periods with a minimum of 90 days for divorcees; when the woman is pregnant at the time of the marriage dissolution, the waiting period shall last until after childbirth. Article 31 stipulates that the husband is the head of the family, the wife is the mother of the household.

Furthermore, Article 14 of Regulation No.9 of 1975 on the Implementation of Law No.1 of 1974 provides only for a husband, married according to Islamic religion, and intending to divorce his wife, to submit a letter to the Court stating the intended divorce, which may hinder a request for divorce from a woman. Article 20 of the same regulation stipulates that a suit for divorce shall be submitted by the husband or the wife.

On 18 June 2015 the Constitutional Court released its decisions on two petitions for judicial review of Law N. 1 of 1974. In both cases the Court upheld the relevant provisions of the Marriage Law. One of these petitions concerned Article 7 of the law and argued that this provision was inconsistent with the Constitution and discriminated against girls due to the different minimum age of marriage for boys. The petition sought an increase in the legal age for marriage of girls to 18 years arguing that the Marriage Law is also inconsistent with Law N. 23 of 2002 on child protection which defines a child as anyone below the age of 18 years. The Constitutional Court rejected these arguments reportedly adducing that a change to the marriage age by the Court would not guarantee a reduction of divorce rates, health improvements and reduction of other social problems. It recommended that the petitioners seek a legislative review to determine a new minimum marriageable age.

In this regard, the Working Group wishes to recall CEDAW's Concluding Observations on Indonesia (CEDAW/C/IDN/CO/6-7), in which the CEDAW Committee recommended repealing all discriminatory laws against women, including those identified by the National Commission on Violence against Women and the Ministry of Law and Human Rights. In particular, recalling article 16 of the Convention, it urged Indonesia to repeal the discriminatory provisions of Marriage Law No. 1/1974 and ensure that the legal provisions prohibit polygamy, set the minimum age of marriage for both women and men at 18 years and exclude differences on the role of men and women in the household.

The Working Group would also like to recall the recommendations made in the context of the Universal Periodic Review of Indonesia, which are supported by the Government of Indonesia and which recommend to completely eliminate all legal and political provisions that discriminate on the basis of civil status of women, to continue to make efforts to promote and protect the rights of women and to ratify the Optional Protocol to the Convention on the Elimination of Discrimination against Women (see recommendations 108.64, 108.66 and 109.2 in A/HRC/21/7).

In order to clarify the measures being taken by your Excellency's Government to repeal the discriminatory legislative provisions on marital status in compliance with Indonesia's obligations under the Convention, the Working Group would be grateful if you could address the following matters:

1. Please provide any additional information on the current status of the Marriage Law and of the legislative review recommended by the Constitutional Court.
2. Please provide clarifications on child custody rights. Can a divorced woman lose custody of her child/children when she re-marries another man?
3. Please provide information on any measures that your Excellency's Government has taken or intend to take in order to implement the

recommendations by UN human rights mechanisms, referred to above, and to bring its legislation into compliance with international human rights law.

The Working Group would appreciate a response within 60 days and remains available for any type of technical advice on legislative reform that your Excellency's Government may require.

This communication and 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 my highest consideration.

Eleonora Zielinska
Chairperson-Rapporteur of the Working Group on the issue of discrimination against
women in law and in practice