

Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE:
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Excellency,

We have the honour to address you in our capacity as Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on the human rights of migrants; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 15/23, 26/19, 26/12, and 32/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged unfair trial and sentencing to death of Ms. Jennifer Dalquez**.

According to the information received:

Ms. Jennifer Dalquez is a national of the Philippines, aged 30, and a single mother of two children aged 8 and 5. She resided in Abu Dhabi, United Arab Emirates, where she was employed as a domestic worker. With her earnings, she intended to support her children and her parents. Ms. Dalquez was due to return home in January 2015.

Allegedly, on 14 December 2014, Ms. Dalquez was confronted by her Emirati employer who attempted to rape her at knife point. Ms. Dalquez fought back to save her life. She managed to turn the knife back on to her assailant during the struggle. As a consequence of her actions, her assailant was fatally wounded and eventually passed away. Ms. Dalquez maintains her actions were in self-defence.

It has been reported that prior to this incident and since the early days of her employment as a domestic worker in the home of her Emirati employer, Ms. Dalquez had been subjected to daily intimidation, harassment, physical assault and molestation. Ms. Dalquez lived in constant fear and was frightened to be left alone with him. Medical evidence obtained at the time of Ms. Dalquez's arrest indicates that she had bruises and cigarette burns on her arms which were inflicted by her employer.

Allegedly, in May 2015, Ms. Dalquez was convicted by the Al Ain Criminal Court of murdering her employer and subsequently sentenced to death, despite her plea of self-defence. Ms. Dalquez's family has lodged an appeal against her

conviction and sentence, scheduled to be heard in court on **27 March 2017**. The appeal process reportedly entails the Judge asking the children of the deceased to swear 50 times, before the Court and in the name of Allah, that Ms. Dalquez is the only person they know who killed their father and not any other person. Ms. Dalquez will reportedly not be allowed to plead in her defence. If the children of the deceased proceed to swear before the Judge in the above-mentioned manner, the Court will sentence Ms. Dalquez to death. However, if the children refuse to swear in Court, she will be ordered to pay “blood money” to the family, in addition to serving a prison sentence, which will be decided and determined by the Court.

While we do not wish to prejudge the accuracy of the information made available to us, we voice strong concern over the conviction and sentencing to death of Ms. Dalquez by the Al Ain Criminal Court following judicial proceedings that do not appear to have fulfilled the most stringent guarantees of fair trial and due process, in particular the principle of equality of arms meaning the right to defend oneself in person or through legal representation of own choosing.

More specifically, grave concerns are raised at the reported lack of opportunity provided to Ms. Dalquez during the court proceedings to have her claim of self-defence heard and duly considered as an exculpatory ground and at the conviction and imposition of the death penalty against her solely on the basis of statements provided by family members without due examination of the circumstances of the events. Similar concerns are raised that Ms. Dalquez appears not to have the right to be heard and present her defense in the appeals procedure.

The above allegations appear to be in contravention of the rights of every individual to life, liberty and security, and not to be arbitrarily deprived of life, as well as the right to fair proceedings before an independent and impartial tribunal and to an effective defense as guaranteed by articles 3, 10 and 11 of the Universal Declaration of Human Rights and articles 5, 6, 13, 14 and 16 of the Arab Charter on Human Rights, to which the United Arab Emirates are a State Party.

As regards the imposition of the death penalty, we wish to draw your Excellency’s Government’s attention to the fact that the right to life is part of customary international law and that, although there is not an absolute prohibition of the death penalty to be found in international law, it nonetheless provides that it must be regarded as an exception to the fundamental right to life, and must as such be applied in the most restrictive manner in the countries which have not yet abolished it.

Concerning the allegations of unfair trial, we wish to recall article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty (adopted by ECOSOC resolution 1984/50) which provides that capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, including the right to adequate legal assistance at all stages of the proceedings. Safeguard 4 in addition requires

that “capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts”. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution.

We call on your Excellency’s Government to take all necessary measures to take fully into account, in relation to Ms. Dalquez claim of self-defence against sexual harassment, physical abuse and attempted rape by her employer, her right to be free from any gender-based violence, discrimination and abuse. To that end, we would like to draw your Excellency’s attention to the Declaration on the Elimination of Violence against Women, which was adopted by the United Nations General Assembly and states that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia, (a) the right to life; (b) the right to equality; (c) the right to liberty and security of person; and (d) the right to equal protection under the law (Art.3).

In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (acceded to your Excellency’s Government on 6 October 2004), whether perpetrated by a State official or a private citizen, in public or private life. General Recommendation No. 26 of CEDAW, on women migrant workers, emphasizes that all categories of women migrants must be protected against discrimination. General Recommendation No. 33 on women’s access to justice recommends States to , inter alia, exercise due diligence to prevent, investigate, punish and provide reparation for all crimes committed against women, whether by State or non State actors and to review rules of evidence and their implementation, especially in cases of violence against women, and adopt measures with due regard to the fair trial rights of victims and defendants in criminal proceedings, to ensure that the evidentiary requirements are not overly restrictive, inflexible or influenced by gender stereotypes.

We also wish to recall that CEDAW, in its Concluding Observations on the combined second and third periodic reports of the United Arab Emirates (CEDAW/C/ARE/CO/2-3), expressed concern about the discriminatory treatment of women in courts, especially foreign women, the lack of interpretation services and legal aid provided to them and the disproportionately severe sentences imposed on foreign women in criminal court proceedings and recommended that the United Arab Emirates abide by its commitment to ensuring that women have full access to justice, obtain equal legal capacity and are treated equally in courts (see [A/HRC/23/13](#), para. 128.81), remove any barriers to women’s access to justice and develop comprehensive gender-sensitive policies, strategies and programmes aimed at facilitating women’s access to justice, including for foreign women and women migrant domestic workers, while ensuring fair trial guarantees.

Further, we would like to refer to the report of the Working Group on discrimination against women (A/HRC/26/30) stressing that domestic workers are a highly vulnerable category of employees, often in the informal sector who often encounter deplorable working conditions; labour exploitation; extortionate recruitment fees resulting in debt; confiscation of passports; long, unregulated hours of work; lack of privacy; exposure to physical and sexual abuse; and separation from their own families and children. The experts recommended States to provide protection against discrimination and abuse of migrant workers and domestic workers, and to ratify and implement the ILO Domestic Workers Convention (No. 189).

Furthermore, we would also like to recall to Your Excellency's Government the thematic report of the Special Rapporteur on the human rights of migrants on labour exploitation of migrants (ref. A/HRC/26/35).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Ms. Dalquez in compliance with international instruments.

As 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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on any measures taken to ensure the physical and psychological integrity of Ms. Dalquez during her imprisonment
3. Please provide any information on measures that can and will be taken to ensure that Ms. Dalquez's judicial process duly complies with existing international standards and that her right to claim and prove self-defence be guaranteed.
4. Please indicate the ways and means your government intends to undertake in order to assure domestic workers that they will not be subjected to criminal punishment where they act to defend themselves against sexual harassment, rape or other forms of gender-based violence.
5. Please explain measures in place in order to combat discrimination and violence against migrant workers, including sexual violence, beatings, threats, psychological abuse and denial of access to medical care? Please explain your Excellency's Government's intention to adopt and implement legislation prohibiting such acts, effectively investigating cases of discrimination and

violence, prosecuting and punishing those responsible, as well as providing reparations to victims.

6. Please explain what measures have been put in place to ensure that migrants, including migrant domestic workers, have access to complaint mechanisms and legal assistance?
7. Please indicate if your Government intends to develop legal safeguards, as it was done by another country in the region, to ensure the promotion and protection of women migrant domestic workers as well as appropriate monitoring and implementation mechanisms in order to avoid violations of their rights, including to avoid their subjection to violence by members of the families in which they work.
8. What measure are been put in place to ensure that migrants, including those in an irregular situation, can access human rights institutions, courts and tribunals, without fear of being deported. Please explain whether legal aid and interpreters are been provided as required and what measure are taken to ensure that Courts effectively apply the international human rights law and international labour law in providing appropriate redress.
9. Please explain how your Government intends to strengthen labour inspection services, with respect to monitoring, as well as receiving, investigating and addressing complaints.
10. When does your Government intend to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the ILO Convention No. 189 concerning decent work for domestic workers and the fundamental conventions Nos. 87 and 98 on workers' right to organize?

While awaiting a reply, and in view of the irreversibility of the punishment of the death penalty, **we urge your Excellency's Government to take all steps necessary to prevent the execution of Ms. Dalquez**, which if carried out, would violate international human rights law and principles. **We further appeal to the United Arab Emirates to annul the death sentence against the aforementioned individual and to ensure a re-trial in compliance with international law and standards.** We also appeal to the United Arab Emirates to extend the moratorium on death penalty, and to consider its complete abolition.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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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