

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

REFERENCE:
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14 November 2017

Excellency,

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

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **criminalisation of adultery under Royal Decree 7/74, the Omani Penal Code which seems to contravene international human rights norms and standards as outlined below.**

Articles 225 and 226 of the Penal Code criminalise adultery. Under Article 225 of the Penal Code, "Any man or woman who have a sexual intercourse without an authenticated marriage deed shall be sentenced to imprisonment for a period not less than three months and not exceeding one year." Article 226 of the Penal Code provides, "Any married person who commits adultery shall be sentenced to imprisonment for a period not less than one year and not exceeding three years. The partner in adultery shall be sentenced to the same penalty, provided the status of marriage is known to him unless proved otherwise."

It is our firm belief that laws criminalising adultery, such as the Penal Code, are based on and result in discrimination against women. Our Group has noted that the enforcement of such laws leads to discrimination and violence against women in law and in practice and has stressed that while criminal law definitions of adultery may be ostensibly gender neutral and prohibit adultery by both men and women, closer analysis reveals that the criminalisation of adultery is both in concept and practice overwhelmingly directed against women and girls. Criminalisation of adultery hence contravene article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (acceded to by Oman on 7 February 2006), in which States parties condemn discrimination against women in all its forms, and agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women. Our expert group considers that the offence of adultery, though it may constitute a matrimonial offence, should not be regarded as a criminal offence punishable by death, stoning or imprisonment.

It is also our view that criminalisation of sexual relations between consenting adults should be regarded as an interference with the privacy of the individuals concerned in violation of article 17 of the International Covenant on Civil and Political Rights (ICCPR) which provides that no one shall be subjected to arbitrary or unlawful

interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

We therefore call upon your Excellency's Government to comprehensively review the provisions of the Penal Code, and to remove all provisions that discriminate against, or have a discriminatory impact on women, including those regarding adultery.

In addition we would like to express our concerns that the criminalisation of adultery contravenes article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, by reinforcing social and cultural patterns that are based on prejudice and stereotyped roles for men and women. We are concerned that such discriminatory legislation may exacerbate gender-based violence, as women who are accused and/or convicted of adultery tend to be targets of violence and abuse, by members of family, community or law enforcement officers, due to a belief that they deserve to be punished for their moral crimes.

Furthermore, reduced penalties apply to men who kill their wife having found her in an adulterous act. The same reduced penalties do appear to not apply for equivalent circumstances for women. Under Article 252 of the Penal Code, a man who commits a crime against his wife or a female relative immediately after having surprised her in an act of adultery may receive a reduced penalty or be exempted from penalty altogether. The Penal Code does not provide an equivalent mitigation for women in equivalent circumstances. A wife who finds her husband in the act of adultery in the marital home and kills him does not benefit from this mitigation; instead, she faces murder charges with a sentence of such duration as the judge considers necessary.

In its General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 on violence against women, the CEDAW Committee recommends that Member States repeal all legal provisions that discriminate against women, and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence against them; including in customary, religious and indigenous laws, including legislation that criminalises adultery or any other criminal provisions that affects women disproportionately [CEDAW/C/GC/35, paragraph 31(a)].

We further wish to recall to your Excellency's Government the Concluding observations of the Committee on the Rights of the Child on the combined third and fourth periodic reports of Oman, in which the Committee recommended that the State party undertake a review of all relevant legislation in order to ensure that men and women, and boys and girls, have equal rights and responsibilities, and abolish all provisions that discriminate against women [CRC/C/OMN/CO/3-4, paragraph 44].

As it is our responsibility under the mandate 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 information on the impact of the criminalisation of adultery, including the number of prosecutions for adultery and the number instituted pursuant to a complaint of rape.
2. Please provide information on any measures that your Excellency's Government has taken or intends 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.

We would like to inform you that this communication will be made available to the public on the website page of the mandate of the Working Group and will be included in the periodic communications reports of the Special Procedures to the Human Rights Council. Any response of Your Excellency's Government will also be made public in the same manner.

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

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Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice