

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 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 in Saudi Arabia which seems to contravene international human rights norms and standards as outlined below.**

Saudi Arabia does not have a formal penal code. Crimes and punishments are determined by judges interpreting traditional Sharia law. Under the judgments meted out according to these interpretations, married men and women convicted of adultery are subject to sentences of capital punishment by stoning, while unmarried men and women typically receive a sentence of one hundred lashes. Sentences of imprisonment are also sometimes given in adultery cases. Generally a spouse making an accusation of adultery must produce four witnesses who can testify to the act, or the accused must confess four times in court.

It is our firm belief that laws criminalising adultery, such as the interpretation of Sharia law enforced by Saudi courts, 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 contravenes article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (acceded to by Saudi Arabia on 7 September 2000), 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. (See our position paper in this regard available at <http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx>).

We therefore call upon your Excellency's Government to comprehensively review the judgments of Saudi courts interpreting Sharia law, and to end interpretations that discriminate against, or have a discriminatory impact on women, including those regarding adultery. We would also encourage your Excellency's Government to

promulgate a formal, written Penal Code which conforms to international human rights norms and standards including the prohibition of discrimination against women.

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 judicial rulings 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.

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)].

In addition and without in any way derogating from the state's obligation to entirely decriminalize adultery, regarding the punishment of stoning ordered by the Saudi courts, we would also like to recall that in the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment's view stoning as a method of execution violates the prohibition of torture and is, beyond dispute, a violation of the prohibition of cruel, inhuman and degrading treatment or punishment. The Special Rapporteur recommended that States repeal all laws that support the discriminatory and patriarchal oppression of women, inter alia laws that criminalize adultery (A/HRC/31/57).

Similarly, with regard to flogging, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment. 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, including excessive chastisement ordered as punishment for a crime.

The Working Group would also like to recall the recommendations made in the context of the Universal Periodic Review of Saudi Arabia, which are under consideration or are supported by the Government of Saudi Arabia, which called on the State to, inter alia, adopt a penal code, consistent with international human rights standards [A/HRC/25/3, paragraph 138.38] and to abolish, modify or introduce legislation, measures and practices to ensure the effective elimination of all forms of legal

discrimination against women and to allow for their full participation in society on an equal basis with men [A/HRC/25/3, paragraph 138.34].

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