

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

REFERENCE:  
OL ARE 8/2017

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 Federal Law no. 3 of 1987, the United Arab Emirates Penal Code, which seems to contravene international human rights norms and standards as outlined below.**

Article 356 of the Penal Code criminalises adultery, saying, "the crime of indecent assault with mutual consent shall be punished by detention for at least one year." Article 121 of the Penal Code requires that any foreigner convicted of adultery also be sentenced to deportation upon the completion of his or her prison sentence.

Article 334 of the Penal Code provides for the possibility of a reduced sentence in cases of homicide or assault resulting from one spouse catching another in the act of adultery.

In addition to the sentence prescribed for adultery in the Penal Code, Sharia courts in the United Arab Emirates have also imposed sentences of whipping and capital punishment by stoning on individuals found guilty of adultery.

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 contravenes article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (acceded to by the United Arab Emirates on 6 October 2004), 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. (See our position paper in this regard available at <http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx> ).

We would therefore call upon your Excellency's Government to comprehensively review the provisions of the Penal Code, as well as sentencing practices of judges in Sharia courts, and to remove all provisions and practices 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 and judicial practices 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 imposed by Sharia 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 cruel, inhuman and degrading treatment or punishment. The Special Rapporteur recommended States to 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 also wishes to recall the concluding observations of the Committee on the Elimination of All Forms of Discrimination against Women on the combined second third periodic reports of the United Arab Emirates in which the Committee stated that it was concerned, inter alia, about violence against women resulting from the criminalization of consensual sexual relations between adults outside marriage, under article 356 of the Penal Code and the fact that in such cases women face harsh sentences, such as prison sentences, torture and the death penalty, including inhuman, cruel or degrading punishment in the form of stoning or flogging. [CEDAW/C/ARE/CO/2-3, paragraph 29].

Finally, the Working Group would like to recall the recommendations made in the context of the Universal Periodic Review of the United Arab Emirates, which are under consideration or are supported by the Government of the United Arab Emirates, which called on the State to, inter alia, withdraw its reservation to article 16 of CEDAW and introduce legislative reforms to give women equal rights in marriage, divorce, property relations, child custody and inheritance [A/HRC/23/13/Add.1, paragraph 5(b)]; enshrine full equality between women and men in the Constitution and enact specific legislation to protect women, including foreign domestic workers from sexual and domestic violence [A/HRC/23/13/Add.1, paragraph 5(c)]; and continue to make efforts to further promote women's rights and eliminate discrimination [A/HRC/23/13/Add.1, paragraph 5(c)].

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.

Alda Facio

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