

**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 the Chairperson 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, we would like to bring to the attention of your Excellency's Government **concerns regarding the criminalisation of adultery under the Penal Code (Act. N°16 of 1960), which seems to contravene international human rights norms and standards as outlined below.** The Working Group recalls that these concerns have already been raised in the report on our official visit to Kuwait (A/HRC/35/29/Add.2).

Under the Penal Code (Act. N°16 of 1960), extramarital relationships (art.194) and adultery (arts. 195-196) are criminal offences punishable by prison sentences of 6 months to 15 years. According to article 194, "any person who copulates with a woman attaining the age of twenty-one, with her consent [...] shall be penalized by incarceration for a period not exceeding three years and not less than six months. The same penalty should be inflicted on the woman who accepts this act". According to article 195, "any married person, whether a man or a woman, who has sexual intercourse with another person other than his spouse, with his consent, and is caught red-handed, shall be incarcerated for a period not exceeding five years and a fine not exceeding five thousand Rupees or either of both penalties". Article 196 provides that "the accomplice of the adulteress wife and the accomplice of the adulterer husband, if he/she knows or is able to know that the adulteress or adulterer is married, shall be penalized by incarceration for a period not exceeding three years and a fine not exceeding three thousand Rupees or either of both penalties".

It is our firm belief that laws criminalizing adultery 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 criminalization of adultery is both in concept and practice overwhelmingly directed against women and girls. Criminalisation of abortion hence contravenes article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (ratified by Kuwait on 2 September 1994), in which State 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 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) (ratified by Kuwait on 21 May 1996) 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 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.

In this regard we are concerned at the mitigating circumstances and exculpatory provisions set out in article 153 of the Penal Code regarding so-called "honour" crimes when they are voluntarily carried out by a man against his wife or another female relative surprised in the act of adultery or sexual intercourse. Indeed, article 153 of the Penal Code provides that "any person who surprises his wife in the act of adultery or surprises his daughter, mother or sister in the act of copulation with a man, and instantly kills her or the adulterer or kills both of them, shall be penalized by incarceration for a period not exceeding three years and a fine not exceeding three thousand Rupees or either of both penalties".

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 would also like to recall the CEDAW Committee's concluding observations in 2011 (CEDAW/C/KWT/CO/3-4) in which concerns were expressed about the so-called "honour crimes" and the extremely lenient penalties those acts attract under article 153 of the Criminal Code. Therefore, the Committee urged the State party to, inter alia,

amend article 153 of the Criminal Code in order to remove diminished criminal liability and provide more stringent penalties for men who commit so-called “honour crimes”.

Similarly, in its 2013 Concluding observations (CRC/C/KWT/CO/2, the Committee on Rights of the Child stated that it was deeply concerned about the extremely low sanctions pronounced against a man who sees his wife, daughter, mother or sister in the “act of adultery” and immediately kills her”. Therefore, the Committee recommended that the State party should repeal without delay all provisions under which perpetrators of crimes committed in the name of so-called honour receive attenuated sanctions and ensure that they receive sanctions commensurate with the gravity of their crime.

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