

Mandate of the Working Group on discrimination against women and girls

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Excellency,

I have the honour to address you in my capacity as Chair of Working Group on discrimination against women and girls, pursuant to Human Rights Council resolution 41/6.

The Working Group would like to welcome the recent efforts made by the Transitional Government to launch the ratification process of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention) as a key instrument for advancing women's human rights and gender equality in the country. By starting the ratification process, Sudan is taking an important step towards a historic transition to equality between men and women.

The CEDAW Convention is the primary international human rights treaty devoted to the promotion and protection of women's human rights and it is one of the most ratified treaties in the world since its adoption in 1979. Its overarching object and purpose, as stated by the CEDAW Committee in its General Recommendation 25, is "to eliminate all forms of discrimination against women with a view to achieving women's de jure and de facto equality with men in the enjoyment of their human rights and fundamental freedoms". The Convention is therefore rooted in the principle of equality and non-discrimination and acknowledges culture and tradition as influential factors that shape gender roles and impact on women's rights.

Article 1 of the Convention defines "discrimination against women to mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Article 2 provides that States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. Article 2 (f) enjoins States Parties "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. In this regard, we commend major steps taken by the Transitional Government, notably the repeal of the Public Order Law, which was discriminatory towards women engaging in public spaces, in November 2019 (see A/HRC/45/53).

The Convention provides a legal framework for a long-sought review of customary or religious norms which influence family laws including but not limited to age of marriage, equality in the family, rights and responsibilities as parents, and combating sexual and gender-based violence.

The Working Group learnt of intentions expressed by the Government aiming at ratifying this Convention with reservations and it is in this regard that it wishes to provide the below analysis on the importance of ratifying the Convention with no reservations.

The Working Group attaches great importance to article 16 of the Convention. In line with the Convention's core objective of equality between men and women, article 16 establishes the obligation of States to ensure gender equality in all matters relating to marriage and family relations, including in respect of the decision whether to marry, the free choice of spouse, rights and responsibilities as parents, the decision on the number and spacing of children, and personal rights as husband and wife.

Throughout its work, the Working Group has demonstrated that discrimination against women and girls and the backlash against their rights all too often start in the family where, for example, women and girls are undervalued, may be limited to certain roles, experience harmful practices and patriarchal oppression, and suffer other human rights abuses, including domestic violence and sexual abuse. Discriminatory laws governing family life have been repealed in most countries. The Working Group regrets that some States have misused references to culture, religion and family in an effort to dilute their international obligations to fulfil women's rights and achieve gender equality. By making reservations to article 16, States deny women's and girls' right to equality in deference to religious norms and refute their accountability for the universal applicability of human rights, nullify the whole purpose of the Convention. Withdrawal of reservations to article 16 of the Convention, and also to article 2, represents good practice and a vital step towards the establishment of an effective legal framework to protect the rights of women in the family and in cultural life (see A/HRC/29/40 and A/HRC/38/46)

As affirmed in the Universal Declaration for Human Rights, family is the basic unit of society. It is a social and legal construction in which women and girls seek justice, dignity and equality and a place where they can thrive. However, when equality in the family is not guaranteed in the name of ideology, tradition, culture or religion, women can be oppressed and suffer discrimination not only in their family life, but in all other areas of life, including public and political life and social, economic and cultural life. A woman or a girl who is not treated equally in the family, will not be treated equally in other spheres of her life and may be at higher risk of violence and abuse. Moreover, the economic consequences for women of marriage, divorce, separation and death are also more serious than the consequences for men, and despite women's crucial contributions to the economic well-being of the family, they experience a substantial decline in household income after separation, divorce or death.

Inequality in the family is a direct consequence of harmful gender-based stereotypes and practices, often strengthened and legitimized in national constitutions, personal status laws and policies, which are justified in the name of cultural norms or religious beliefs.

In this regard, we welcome your Excellency's Government's plan to amend the Personal Status Act of 1991 which governs marriage, maintenance, divorce, custody, and inheritance. As noted by other UN human rights mechanisms

(CCPR/C/SDN/CO/4), this law contains several entrenched discriminatory provisions, such as article 25 (c), which provides that the contract of marriage for a woman shall be concluded by a male guardian and the articles 91-95 on obedience of the wife to the husband. We hope that any amendment brought to this law will be made in accordance with international human rights standards. Article 16 and the CEDAW Committee's General Recommendation n.21 should serve as a valuable guide to amend the Personal Status Act to ensure that the Act embodies the fundamental principle of equality between women and men, and is fully harmonized with the provisions of the Convention so as to eliminate discrimination against women in all matters relating to marriage and family relations and all harmful stereotypes on the role of women in society. Failure to eliminate these stereotypes will lead to the generalization of practices that are harmful to women and girls.

Reservations to article 16, if considered, would not only limit the impact of any meaningful amendment to the Personal Status Act, but would also indicate, as affirmed by the CEDAW Committee, a "State's unwillingness to comply with a universally recognized norm. It would also imply that women's inequality with men is entrenched at the national level and the promise given to [Sudanese]women when the State ratifies the Convention is not fulfilled. This not only affects women's ability to exercise and enjoy their rights, but also guarantees that they will remain inferior to men and have less access to the full range of civil, political, economic, social and cultural rights enjoyed by men. The ramifications for women are significant. They must compete with men on an unequal footing for such fundamental rights as equality of income (...) and equality of rights and responsibilities within the family. Reservations to (...) article 16 perpetuates the myth of women's inferiority and reinforce the inequalities in the lives of millions of women throughout the world. They continue to be treated in both public and private life as inferior to men, and to suffer greater violations of their rights in every sphere of their lives." (A/53/38/Rev.1).

More generally, any reservation to article 16 would jeopardize the efforts to fully promote women's equality in the family in line with international standards and would therefore undermine women and girls' rights in all other areas of their life.

We would like to remind your Excellency's Government that women's entitlement to equality within the family is a universally recognized principle. The Working Group, in its thematic report on family and cultural life (A/HRC/29/40), other special procedures mandate holders and UN treaty bodies have repeatedly affirmed that neither cultural diversity nor freedom of religion may justify discrimination against women. Discriminatory, repressive and violent practices against women should be eliminated, whatever their origins, including those founded in culture or religion (See A/68/290, A/67/287, A/HRC/26/22, para. 13, Human Rights Committee, general comment No. 28; Committee on Economic, Social and Cultural Rights, general comment No. 21).

The Working Group has affirmed that a State cannot disregard its obligation to respect women's equality and that "the State has an obligation to respect women's right to equality within the family and should eliminate any laws, including customary or religious laws, that discriminate against women and any discriminatory acts carried out by State authorities. The obligation not to discriminate against women is direct and absolute. A State will be in violation of this obligation if it has a law that discriminates

against women, regardless of whether its family law system is secular, religious or plural” (A/HRC/29/40).

Additionally, in its 1998 Statement on Reservations to the Convention, the CEDAW Committee expressed concern about the number and the nature of reservations. The Working Group shares the opinion of the CEDAW Committee to the effect that a reservation to article 16 is incompatible with the object and purpose of the Convention. It is the responsibility of States to respect their international commitments and the clear choices they have made regarding the primacy of international legal standards on gender equality over national secular, religious or customary legal standards (A/53/38/Rev.1).

Therefore, reservations to article 16 relate to the very purpose of the Convention to eliminate discrimination and protect women from it, including the nature of states parties’ obligations, and other core provisions of CEDAW related to equality. Such reservations will have a direct impact on ensuring that Sudanese women enjoy the rights that CEDAW Convention is meant to guarantee, including protection from violence and discrimination, and undermine their ability to access justice or obtain redress through national mechanisms.

The Beijing Declaration and Platform of Action of 1995 has also emphasized that it is necessary to avoid resorting to reservations, in order to protect the human rights of women. The document stresses that “Unless the human rights of women, as defined by international human rights instruments, are fully recognized and effectively protected, applied, implemented and enforced in national law as well as in national practice in family, civil, penal, labour and commercial codes and administrative rules and regulations, they will exist in name only.”

We would also like to shed light on other implications to enter a reservation to several core provisions of the CEDAW Convention, such as articles 2 and 16. In 2008, the CEDAW Committee adopted new guidelines for State party reports. With respect to reservations, the Committee specifically noted the requirement to explain reservations and that their “continued maintenance [should be] clarified.” In addition, the Committee specified Articles 2, 7, 9 and 16 as particularly important: “States parties that have entered general reservations which do not refer to a specific article, or which are directed at articles 2 and/or 7, 9 and 16 should report on the interpretation and the effect of those reservations. States parties should provide information on any reservations or declarations they may have lodged with regard to similar obligations in other human rights treaties.”(A/63/38). Therefore, if reservations to articles 2 and 16 are actually entered, Sudan will have a recurrent obligation to explain in its periodic report the interpretation and purpose of such reservation and indicate: (a) The stage that has been reached in the country’s progress to removal of all reservations to the Convention, in particular reservations to articles 2 and 16; and (b) Set out whether their laws comply with the principles of articles (...) 2 and 16 and where, by reason of religious or private law or custom, compliance with the law or with the Convention is impeded.

In light of all the above, we would like to emphasize the importance of ratifying the CEDAW Convention without any reservation in order to ensure the Convention’s core provisions guaranteeing the full respect of the principle of equality between men and women. We also encourage your Excellency’s Government to ratify, together with

the CEDAW Convention, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa as recommended by the African Commission on Human and Peoples' Rights in its Concluding Observations on the 4th and 5th State's Period Report.¹ At this important moment of transition towards a more democratic and equal society, we urge the Sudanese Government to fully adhere to the international and regional human rights standards, with no exception. Ratifying the CEDAW Convention with reservations to articles 2 and 16 would practically imply that the State would not fully commit to fulfilling its international obligations with regard to women and girls' human rights.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all situations 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 points;
2. Please provide information on the next steps of the ratification process, in particular with regard to re-considering the issue of reservations;
3. Please provide information on the extent to which civil society actors' views have been integrated into this important process.

This communication, as a comment on pending legislation and any response received from your Excellency's Government will be made public via the communications reporting website after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Elizabeth Broderick
Chair-Rapporteur of the Working Group on discrimination against women and girls