

**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 relating to the criminalisation of adultery under the 1969 Penal Code of Iraq and the Shari'a law which seems to contravene international human rights norms and standards as outlined below.**

Adultery is criminalized under the 1969 Penal Code of Iraq whose article 377(1) of the 1969 Penal Code of Iraq states that an adulteress and the man with whom she commits adultery are both liable to punishment by imprisonment. Article 377(2) of the Penal Code states that "the same penalty applies if a husband commits adultery in the conjugal home". In sum, while the criminalisation of adultery applies to both sexes, the husband will only commit the crime if he commits adultery in the conjugal home, whereas for a woman, this limitation does not apply. Under Shari'a law, married men or women who commit adultery may also face the punishment of stoning.

It is our firm belief that laws criminalizing adultery, such as the 1969 Penal Code of Iraq, 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 adultery hence contravenes article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (acceded to by Iraq on 13 August 1986), 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 punishable criminal offence and, *ex forte*, should not be punishable by death, stoning or imprisonment.

It is our view that criminalization 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 ICCPR (ratified by Iraq on 25 January 1971) which provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, not to unlawful attacks on his honour and reputation. Furthermore, domestic legislation should be brought into conformity with the

norms of the ICCPR, including its article 6 (2) on the imposition of the death penalty (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 1969 Penal Code of Iraq, 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 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, honour killings (namely homicide of a member of a family or social group by other members, due to the belief that a woman has brought dishonour upon the family or community (for example by engaging in adultery or *zina*) are still taking place. Further, the Penal Code provides for more lenient sentences for male perpetrators of honour killings. Article 409 of the Penal Code provides more lenient sentences for a man who “surprises his wife in the act of adultery or finds his girlfriend in bed with her lover and kills them immediately or one of them or assaults one of them so that he or she dies or is left permanently disabled”. Such sentences are set out in article 130 of the Penal Code, which provides for penalties to be as low as six months for such crimes and up to a maximum of three years. This is particularly lenient given that the usual sentence for murder is life imprisonment under article 405 of the Penal Code or even death under article 406 of the Penal Code. However, the same right is not afforded to a woman who discovers her husband or boyfriend engaging in equivalent activities.

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 punishments of stoning provided by Shari'a law, we would also like to recall that in the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment's views 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 repeal all laws that support the discriminatory and patriarchal oppression of women, inter alia laws that criminalize adultery (A/HRC/31/57).

We would like to recall that the Concluding Observations of the Committee on the Elimination of Discrimination against Women, in its Concluding Observations of the Committee on the Elimination of Discrimination against Women on the combined fourth to sixth periodic reports of Iraq expressed concern regarding the fact that women convicted of adultery are serving sentences ranging from 15 years to life (CEDAW/C/IRQ/CO/4-6, paragraph 48 (b)). The Committee also expressed concerns at the high prevalence of crimes committed in the name of “honour”; discriminatory provisions in the Penal Code (Act No. 111 (1969)) that allow perpetrators to invoke the defence of honour as a mitigating circumstance for such crimes (articles 128, 130 and 131); and the low number of criminal charges brought to court despite the enactment of legislation repealing legal concessions to perpetrators of crimes committed in the name of “honour”(Act No. 14 (2002)) in the Kurdistan Region, with the cause of death in cases involving killings of women commonly being recorded as unknown or suicide [(CEDAW/C/IRQ/CO/4-6, paragraph 25 (a), (b), (c)]. The Committee recommended that the State party, inter alia, repeal articles 128, 130 and 131 of the Penal Code to ensure that perpetrators of crimes committed in the name of “honour” cannot invoke the defence of honour as a mitigating circumstance for such crimes (CEDAW/C/IRQ/CO/4-6, paragraph 26).

Other treaty bodies have expressed similar concerns and formulated similar recommendations regarding the prevalence of honour killings. They include the Human Rights Committee in its Concluding Observations on the fifth periodic report of Iraq [CCPR/C/IRQ/CO/5, paragraphs 25 and 26 (b)]; the Committee on the Rights of the Child in its Concluding Observations on the combined second to fourth periodic reports of Iraq (CRC/C/IRQ/CO/2-4, paragraphs 25 (b) and (c) and 26); the Committee against Torture in its Concluding Observations on the initial report of Iraq [CAT/C/IRQ/CO/1, paragraph 24(e)]; and the Committee on Economic, Social and Cultural Rights in its Concluding Observations on the fourth periodic report of Iraq [E/C.12/IRQ/CO/4, paragraph 40 (d)].

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 data on the impact of the above-mentioned legislation, including prosecutions, convictions and punishment carried out under it.
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 my highest consideration.

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