

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

REFERENCE:  
OL LBY 5/2017

17 November 2017

Mr. Shaltut,

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 Government **concerns relating to the criminalisation of adultery under Law No. 70 of 1973 establishing the punishment for adultery and amending the Penal Code which seems to contravene international human rights norms and standards as outlined below.**

Adultery is criminalised under the Law No. 70 of 1973) establishing the punishment for adultery and amending the Penal Code which criminalises extra-marital sexual intercourse for both sexes. Article 407(4) of the Libyan Penal Code provides that “if anyone has sexual intercourse with a person with that person's consent, both he and his partner shall be punished by imprisonment for a period not exceeding five years”.

It is our firm belief that laws criminalizing adultery, such as the Law No. 70 of 1973 establishing the punishment for adultery and amending the Libyan 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 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 Libya on 16 May 1989), 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 should not be punishable by 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 (acceded to by Libya on 15 May 1970) 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> ).

Furthermore, the Libyan Penal Code exacerbates the criminalization of adultery because of the blurred line between consensual sex and rape in the definition of adultery. The same article 407, according to its heading, deals with “sexual intercourse by force” but covers both rape (paragraph 1) and extramarital consensual sex (paragraph 4). Similarly, the same article 408, according to its heading, deals with “indecent assault” but includes punishments for both the perpetrator of “indecent assault” (paragraph 1) and for the victim of the act by stipulating in its paragraph 2). This second paragraph provides that “if anyone who commits indecent assault upon a person with that person's consent, both he and his partner shall be punished by detention”. A discriminatory consequence of such provisions and of the criminalization of adultery is that women would be discouraged from seeking justice in relation to rape or sexual assault because of the fear that a court may view such a complaint as an admission on their part of engaging in unlawful sex. The woman would have to prove that she was raped/or otherwise sexually assaulted and if she did not satisfy the evidentiary burden she may be liable to criminal charges herself. We would be grateful to receive information regarding the numbers of women charged with and convicted of adultery, following failure to prove allegations of rape.

We therefore call upon your Government to comprehensively review the provisions of the Libyan 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 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 Libyan Penal Code provides for more lenient sentences for male perpetrators of honour killings. Pursuant to article 375 of the Libyan Penal Code entitled “Homicide or Injury to Preserve Honour”, a man who “surprises his wife, daughter, or sister in the act of sexual intercourse outside of wedlock or in any unlawful sexual intercourse and thereupon kills her, her associate, or both together, in response to the attack upon his honour or that of his family” is only subject to “detention”, with no specification of length, but limited to a maximum of two years “if the act results in gross or serious harm”. This ambiguity implies potential for leniency and discretion on behalf of a judge. In contrast, the penalty for “Intentional Homicide without Premeditation or Lying in Wait” which is not committed in order “to preserve honour” is life imprisonment or non-defined “imprisonment” (article 372 of the Libyan Penal Code). Additionally, pursuant to article 375, a serious or aggravated assault, which could include mutilation or another

serious injury, committed to preserve a man's family honour only carries a sentence of a maximum of two years “if the act results in gross or serious harm”. In comparison, the same type of violence would attract a maximum prison sentence of five years if results in “serious injury” but was not honour motivated (article 381). Article 375 does not deter, and may in fact appear to encourage, a man assaulting his wife in such circumstances given that it provides that “merely beating or causing simple harm in such circumstance shall not be subject to punishment”. This not only denies a woman the inalienable right of freedom from oppression and physical harm, but also denies her the right to seek justice. Instead, it places the husband/father/son in the place of judge/juror and discipliner. Further, article 375 is very much one-sided. There is no mention of a women's rights or access to reduced punishment if she finds her husband, son or brother having extra-marital sex and decides to inflict violence on that person.

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)].

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 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 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 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