

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 Penal Code of the Maldives (Act 9/2014) and the Sexual Offences Act (Act 17/2014) which seems to contravene international human rights norms and standards as outlined below.**

Adultery is criminalized both under the Penal Code of the Maldives (Act 9/2014) which came into force in July 2015 and the Sexual Offences Act (Act 17/2014). Under section 411 of the Penal Code (Act 9/2014), the term “unlawful sexual intercourse” refers to both “adultery” and “fornication”.

Pursuant to Section 411 of the Penal Code of the Maldives (Act 9/2014), the penalties for adultery are a maximum of 6 months imprisonment if the person is unmarried and has intercourse with an unmarried person; a maximum of one year imprisonment if the person is unmarried and has intercourse with a married person; and a maximum of two years imprisonment if the person is married and has extramarital intercourse. Section 411 also provides for an additional punishment of one hundred lashes for the offense of “unlawful sexual intercourse” based on Islamic Sharia. Article 27(a) of the Sexual Offences Act (Act 17/2014) provides that it shall be an offence for a person to commit fornication and that a person guilty of fornication shall be sentenced to one hundred lashes and house arrest for a period of one to three years.

It is our firm belief that laws criminalizing adultery, such as the Penal Code of the Maldives (Act 9/2014) which came into force in July 2015 and the Sexual Offences Act (Act 17/2014), 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 the Maldives on 01 July 1993), 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, flogging 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 (acceded to by the Maldives on 19 September 2006) 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, reportedly, the prosecution of adultery crimes and the enforcement of related punishments are conducted in a manner that is discriminatory against women, since authorities more readily accuse women of adultery. This is in part because for women, the evidence of pregnancy outside of wedlock is sufficient to establish a claim of fornication. Reportedly, even in situations where a male adulterer has been witnessed, they are not always prosecuted alongside the female; that the majority of fornication cases are brought against females; and that punishments imposed by the Maldives for breach of adultery laws are imposed overwhelmingly on women.

We therefore call upon your Excellency's Government to comprehensively review the provisions of the Penal Code of the Maldives (Act 9/2014) and the Sexual Offences Act (Act 17/2014), 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, laws criminalizing adultery and fornication outside marriage are seen to act as a deterrent for females to report rape because they fear being prosecuted for adultery if they do not succeed in proving the allegation.

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 flogging provided by both the Penal Code of the Maldives (Act 9/2014) and the Sexual Offences Act (Act 17/2014),

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 of 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).

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.

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 our highest consideration.

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