

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 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, I would like to bring to the attention of your Excellency's Government **concerns relating to the criminalisation of adultery under the Offence of Zina (Enforcement of *Hudood*) Ordinance, (1979) which seems to contravene international human rights norms and standards as outlined below.** The Working Group takes this opportunity to recall its communication of 3 November 2014 (PAK 12/2014) whereby, jointly with other Special Procedures mandate holders, it raised concern regarding the persistence of legislation in Pakistan that directly or indirectly discriminates against women, particularly in relation to discriminatory provisions in the Child Marriage Restraint Act. The Working Group regrets that no reply to the communication was received from Your Excellency's Government.

Adultery, known in Pakistan as *zina*, is criminalised under the Offence of Zina (Enforcement of *Hudood*) Ordinance, 1979 (the "Ordinance"), which states that a man and a woman are said to commit *zina* if they wilfully have sexual intercourse without being married to each other. Pursuant to the Ordinance, *zina* is liable to *Hadd*: punishment of stoning to death, or 100 lashes.

It is our firm belief that laws criminalizing adultery, such as the Offence of Zina Ordinance, 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 Pakistan on 12 March 1996), in which States 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>).

Furthermore, under the Offence of Zina Ordinance, women who accuse men of rape require evidence from four males as eyewitnesses for a conviction. Under the 1984 Law of Evidence, a woman's testimony alone does not count. If a woman therefore brings a rape charge against a man and cannot substantiate that charge with four male eye-witness testimonies, she will face the possibility of being punished for having sex outside of marriage under the Ordinance, as her bringing forward the rape charge is likely to be treated as a confession to committing *zina*. 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 Excellency's Government to comprehensively review the provisions of the Offence of Zina Ordinance, the 1984 Law of Evidence and the 1990 Retribution and Compensation Act, 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. In this regard, we are aware of the adoption of the Protection of Women Act (2006), the Anti-Rape Laws (Criminal Amendment Bill, 2016) amending the Penal Code. However, no information is available on the impact of the legislation.

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, honour killings are pardonable under the Qisas and Diyat Ordinance (1990, Retribution and Compensation Act). The above law allows shifting the emphasis of an honour killing from the act of homicide as a general crime to a private offence against the victim. This allows the victim's legal heir (*wali*) the power to close the criminal investigation, accept monetary compensation (*diyat*) and to pardon the accused at any stage of the prosecution. Therefore, if such a case reaches a court of law, the victim's family may "pardon" the murder notwithstanding that in the case of an honour killing the perpetrators would likely also be the victim's family. We are aware of the adoption of the Anti-Honour Killing Law (Criminal Amendment Bill). In this regard, we would be grateful to receive data on the numbers of perpetrators prosecuted under this law

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 the Zina Ordinance, 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).

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.

We would like to recall that the Committee against Torture, in its latest concluding observations (CAT/C/PAK/CO/1), expressed concern regarding the very low conviction rates for honour killings, about reports that parallel justice systems (known as panchayats or jirgas), have sentenced women to violent punishment or even death, including stoning and have provided lenient punishments for perpetrators of honour crimes and other cases of serious gender based violence. The Committee was also concerned that provisions in the State party's laws allow for the imposition of corporal punishment including whipping, amputation and stoning contravene with article 16 of the Convention against Torture (ratified by Pakistan on 23 June 2010) and recommended taking necessary legislative measures to eradicate and explicitly prohibit all forms of corporal punishment in all settings, as they amount to torture and cruel, inhuman or degrading treatment or punishment, in violation of the Convention.

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
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law and in practice