

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 Chair 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 information I have received concerning the **criminalisation of adultery in the Philippines under the Philippine Revised Penal Code, which seems to contravene international human rights norms and standards as outlined below.**

Having carnal relations, when one is married, with a person who is not one's spouse, is criminalised under the Revised Penal Code. However, women who engage in such acts are considered to have committed the crime of adultery, while men who engage in such acts are considered to have committed the crime of concubinage.

Under Article 333 of the Revised Penal Code, adultery is defined as a carnal relation between a married woman and a man who is not her husband, the latter knowing her to be married, even if the marriage be subsequently declared void. If a married man believes that his wife has committed adultery, he can bring a criminal action against both his wife and the man she is alleged to have committed adultery with.

Article 334 of the Revised Penal Code defines certain instances of male marital infidelity as the crime of concubinage, but limits the definition of the crime to instances where a married man: 1) keeps a woman who is not his wife in his home; 2) has sexual intercourse with a woman who is not his wife "under scandalous circumstances"; or 3) cohabits with a woman who is not his wife in a place outside of the marital home.

The Revised Penal Code of also provides for different penalties for the crimes of concubinage and adultery. Under Article 333, a woman and her sexual partner found guilty of adultery face a minimum prison sentence of 2 years, 4 months, and 1 day and a maximum sentence of 6 years. Under Article 334, however, a man convicted of concubinage faces a sentence of between 6 months and 1 day and 4 years and 2 months. A woman who participates in the crime of concubinage is subject to the penalty of "destierro," by which she is banished from within 25 kilometers of the residence of the man with whom she is accused.

Further, pursuant to Article 2219 of the Civil Code, compensation for moral damages (which, pursuant to Article 2217 include, inter alia, mental anguish, besmirched reputation, wounded feelings, and social humiliation) can also be recovered in cases of

adultery or concubinage. Given the disparity in the operation of the Penal Code provisions as between the sexes, women may be more exposed to suffering economically if their husbands pursue them for moral damages.

It is our firm belief that laws criminalising adultery, such as the Revised 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 criminalisation 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 (accessed to by the Philippines on 5 August 1981), 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 criminal offence punishable by death, stoning or imprisonment.

It is also our view that criminalisation 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 International Covenant on Civil and Political Rights (ICCPR) (accessed to by the Philippines on 23 October 1986) which provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. (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 Revised 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 the criminalisation of adultery contravenes article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, by reinforcing social and cultural patterns that are based on prejudice and stereotyped roles for men and women. We are concerned 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 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)].

Finally, with regard to the discrimination against women transpiring inter alia from the fact that the Revised Penal Code of 1937 provides for different crimes of and different penalties for men and women convicted of marital infidelity and punishes women with harsher penalties, further concern is expressed that the above legislation discriminates against women and appears to be contrary to the Philippines' Republic Act 9710, the Magna Carta of Women, which provides in Section 19 for equal rights in all matters relating to marriage and family relations. This legislation also appears to be in contravention of several provisions of the 1987 Philippine Constitution, which provides in Article II that the State "shall ensure the fundamental equality before the law of women and men."

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 information on the impact of the criminalisation of adultery, including the number of prosecutions for adultery and the number instituted pursuant to a complaint of rape.
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