

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

REFERENCE:
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14 November 2017

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 under the Sudan Criminal Act 1991, which seems to contravene international human rights norms and standards as outlined below.**

Article 145 of the Criminal Act 1991 defines the crime of adultery (zina) as being committed by:

(a) every man, who has sexual intercourse with a woman, without there being a lawful bond between them; and

(b) every woman, who permits a man to have sexual intercourse with her, without there being a lawful bond between them.

The penalties for adultery are defined by Article 146 of the Act, which states that anyone who commits the act of adultery shall be punished by:

(a) execution, by lapidation, where the offender is married; or

(b) one hundred lashes, where the offender is not married.

A non-married man who commits adultery can also be punished by expatriation for one year, in addition to the one hundred lashes.

Article 62 (proof of zina) of the 1994 Evidence Act sets out the rules of evidence applicable to the crime of adultery (zina), and requires the following:

(a) a confession before a court of law (not retracted before the verdict);

(b) four male witnesses;

(c) undoubted pregnancy (where the woman is unmarried); or

(d) Refusal of the accused spouse to deny the allegation in court.

It is our firm belief that laws criminalising adultery, such as the Criminal Act 1991 and the 1994 Evidence Act, are based on and result in discrimination against women. Our Group noted that the enforcement of such laws leads to discrimination and violence against women in law and in practice and 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, 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 Sudan on 18 March 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 Criminal Act 1991 and the 1994 Evidence 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 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)].

In addition and without in any way derogating from the state's obligation to entirely decriminalise adultery, regarding the punishment of stoning provided by the Criminal Act 1991, we would also like to recall that in the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment's view 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 that States repeal all laws that support the discriminatory and patriarchal oppression of women, inter alia laws that criminalise 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 the Concluding observations of the Human Rights Committee fourth periodic report of the Sudan in which the Committee stated it was gravely concerned at the State party's failure to amend Article 145 of the Criminal Act, which can deter women from reporting rape. Therefore, the Committee urged the State party to swiftly amend Article 145 (CCPR/C/SDN/CO/4, paragraph 12).

The Working Group would also like to recall the recommendations made in the context of the Universal Periodic Review of the Sudan, which are supported by the Government of the Sudan, which called for a number of measures to, inter alia, ratify the Convention on the Elimination of Discrimination Against Women (A/HRC/33/8, paragraphs 138.2-138.6), to ensure that women's equality is guaranteed in all spheres of life (A/HRC/33/8, paragraph 138.64), and to ensure effective criminal justice responses to all forms of sexual and gender-based violence, particularly domestic violence and female genital mutilations (A/HRC/33/8, paragraph 138.81).

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

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