

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

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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 Penal Code of 1949 which seems to contravene international human rights norms and standards as outlined below.**

Adultery is criminalised under the Syrian Penal Code. However, the crime of adultery is considered to have been committed by men and women in different circumstances. Therefore, the definition of adultery is not the same.

Under Articles 239-242 of the Penal Code, a married woman is considered to have committed adultery regardless of where the act took place. However, a married man can only be charged with adultery if the act occurred in the marital home. If a married man commits adultery with an unmarried woman outside of the married home, it is not a crime. As a consequence, women could be found guilty of adultery in a wider set of circumstances than men.

The Penal Code also provides for different penalties for men and women convicted of adultery. If convicted, a man faces sentences ranging from one month to one year in prison, while a woman faces three months to two years. There is also a different evidentiary burden for women than for men in cases of adultery. A man seeking to prove that his spouse has committed adultery may submit any form of evidence, while a woman seeking to make the same case is limited to the submission of written evidence.

In certain locations within the Syrian Arab Republic, individuals accused of having committed adultery have been punished by flogging or met with execution by stoning carried out by armed groups.

It is our firm belief that laws criminalising adultery, such as the Penal Code of 1949, 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 (acceded to by the Syrian Arab Republic on 28 March 2003), 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) (acceded to by the Syrian Arab Republic on 21 April 1969) 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 Penal Code of 1949, 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.

Furthermore, reduced penalties apply to men who kill their wife having found her in an adulterous act. The same reduced penalties do appear to not apply for equivalent circumstances for women. Under Article 548 of the Penal Code, as amended in 2009 and 2011, a man who murders or assaults his wife or other female relative because he witnessed her engaging in adultery is subject to a maximum prison sentence of seven years. This contrasts with the penalties of longterm imprisonment and capital punishment which would normally apply for murder and manslaughter. The Penal Code does not provide an equivalent mitigation for women in equivalent circumstances. A wife who finds her husband in the act of adultery in the marital home and kills him does not benefit from this mitigation; instead, she faces murder charges with a sentence of such duration as the judge considers necessary.

In this respect, we wish to recall the Concluding observations of the Committee on the Elimination of Discrimination against Women on the second periodic report of the Syrian Arab Republic in which the Committee urged the State party to repeal articles of the Penal Code providing for mitigated punishment in cases of so-called "honour" crimes

and to eliminate impunity in the case of crimes committed in the name of so-called “honour” by, inter alia, strengthening the identification and investigation of such crimes as well as the prosecution and punishment of perpetrators (CEDAW/C/SYR/CO/2, paragraph 25).

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 punishments of stoning and flogging carried out by armed groups within the Syrian Arab Republic, we wish to recall that although such punishments were committed by non-State actors, the Syrian Arab Republic has a due diligence requirement to protect its people from such human rights violations and to ensure the prosecution of perpetrators and the right to a remedy for victims. 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 on 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 criminalizs 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 finally wish to recall the Concluding observations of the Human Rights Committee on the third periodic report of the Syrian Arab Republic in which the Committee reiterated its concern regarding continuing discrimination against women in law and practice in matters related to marriage and in the criminal law and recommended that the State party should review its laws in order to ensure equality between men and women in matters of personal status, and to eliminate any discrimination against women in the Penal Code. [CCPR/CO/84/SYR, paragraph 16].

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