

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 Shari'a law (as applied in Iran) and the Islamic Penal Code of Iran which seems to contravene international human rights norms and standards as outlined below.** The Working Group takes this opportunity to recall a joint communication of 29 October 2015 (IRN 20/2015) whereby several Special Procedures mandate holders raised concern regarding charges against two individuals, inter alia, for "illegitimate sexual relationship short of adultery" for shaking hands with a member of the opposite sex they were not related to and were sentenced for these handshakes to 99 lashes. The Working Group also takes this opportunity to recall its communication of 20 January 2016 (IRN 3/2016) whereby, jointly with other Special Procedures mandate holders, it raised concerns regarding the imminent execution by stoning or hanging of a woman who, on 15 October 2014 was convicted of adultery (zina-ye mohseneh) under article 225 of the Islamic Penal Code by the Provincial Court of Zanjan and sentenced to death by stoning. The Working Group takes note of your Excellency's Government's replies to the above-mentioned communications (References: 2050/8320, 2050/8385, and 2050/9170).

Adultery, known in Iran as zina, is criminalised under the Islamic Penal Code of Iran whose article 221 defines zina as "a sexual intercourse of a man and a woman who are not married to each other". Zina is one of the offenses punishable by Hadd, a concept defined under article 15 of the Islamic Penal Code of Iran as "a punishment for which the grounds for, type, amount and conditions of execution are specified in holy Shari'a". Pursuant to article 225 of the Islamic Penal Code of Iran, the Hadd punishments for zina range from 100 lashes to execution by stoning where the transgressor, whether male or female, is married.

It is our firm belief that laws criminalizing adultery, such as the Penal Code of Iran, 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. 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 Iran on 24 June 1975) 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, other provisions of Iran legislation exacerbate the criminalization of adultery. For instance, article 167 of the Constitution permits judges, in the absence of laws, to render a verdict on any matter in accordance with “reputable” or “authoritative” Islamic sources. The Islamic Penal Code of Iran defers heavily to the “knowledge of the judge” as reflected in articles 160 to 162, 175 to 176 and 211 to 213. For instance, article 162 of the Penal Code provides that “Where the relevant evidence does not meet the requirements provided in law and Shari’a, they can be used as judicial signs [hearsay evidence] provided that, together with other circumstantial and hearsay evidences, they result in the knowledge of the judge”. Article 176 provides that “if the witness does not meet the requirements provided for an admissible testimony under Shari’a rules, his/her statements shall be heard” and that “such statements shall be regarded as judicial signs (hearsay evidence) and the validity and weight given to them in the knowledge of the judge shall be decided by the court”. Article 212 even provide that “if the knowledge of the judge is contradictory to other legal evidence, if the knowledge remains manifest [untouched], such evidence shall not be admissible for the judge, and the judge, explaining the reasons for his knowledge and the grounds for rejecting other evidence, shall deliver the judgment (...)”. The law's deference to the “knowledge of the judge” permits judges to determine a person's guilt for a crime such as zina in the absence of direct evidence, but instead relying on their own understanding of the case and applying their own discretion. The law's deference to the “knowledge of the judge” and to judges' interpretation without requiring evidence may increases the possibility of women being subject to unequal treatment with regard to adultery and potentially convicted based on subjective views of what comprises appropriate female behaviour. This is especially pertinent in cases of rape as female victims may fail to report the crime, fearing being charged with zina instead if the victim cannot prove the rape. Reports suggest that patriarchal attitudes continue to persist in the state backed institutions of Iran, particularly in the courts, that judges and other authorities have a tendency to blame victims of rape, doubting whether the act was non-consensual, and that there have been instances of rape victims being convicted of zina and subjected to flogging or stoning. In this respect, we would like to recall that following her mission to the Islamic Republic of Iran from 29 January to 6 February 2005, the Special Rapporteur on violence against women, its causes and consequences noted, inter alia that “the rules of evidence discriminate against women (...)” and that “while rape is illegal, a rape victim must present four male

eyewitnesses or three male and two female witnesses in order to prove the crime". She stressed that "given that most violence against women takes place in the private sphere, it is extremely difficult for women to provide such eyewitnesses to acts of violence" and that "if the defendant is acquitted, the victim runs the risk of being charged and convicted for false accusation (qazf) or illicit sexual relations (zina)" (E/CN.4/2006/61/Add.3, paragraph 56). 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 Islamic Penal Code of Iran, 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, 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.

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)].

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. The Islamic Penal Code of Iran even considers honour killings committed by male perpetrators as an excusable offence. Article 630 of the Islamic Penal Code of Iran protects a male perpetrator of an honour killing by allowing a man who sees his wife committing *zina* with another man to kill both of them without suffering any form of punishment. However, this same right is not afforded to a woman who discovers her husband engaging in equivalent activities.

In addition and without in any way derogating from the state's obligation to entirely decriminalize adultery, regarding the punishments of stoning and flogging provided by the Islamic Penal Code of Iran, 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.

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