

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

REFERENCE:  
OL JOR 2/2017

16 November 2017

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 Penal Code of 1960, which seems to contravene international human rights norms and standards as outlined below.**

The Penal Code of 1960 does not specifically define the crime of adultery, but it is penalised under articles 282 and 283. The punishments imposed by the Penal Code on women who are found to have committed adultery are more severe than those given to men. The penalties applicable to women are set out in Article 282(1) of the Penal Code. This article provides that a woman, whether married or not, who commits adultery voluntarily, whether in the marital home or not, shall be sentenced for a period of six months to two years in prison. The penalties applicable to men vary depending on the marital status of the man and the location of the act of adultery. Pursuant to Article 282(2), if a woman commits adultery with a married man, the same sentence as set out above applies to her accomplice. If the accomplice is not married, that man shall be sentenced to a shorter period of three months to one year in prison. Furthermore, Article 283 of the Penal Code states that a married man who has committed adultery in the marital home, or if he has publicly taken a mistress, shall be sentenced to a period of one month to a year in prison.

It is our firm belief that laws criminalising adultery, such as the Penal Code, 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 (acceded to by Jordan on 1 July 1992), 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 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) (ratified by Jordan on 28 May 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. (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 of provisions of the 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 this regard the Working Group has been informed that honour killings (namely homicide of a member of a family or social group by other members, due to the belief that the victim has brought dishonour upon the family or community (for example by engaging in adultery or *zina*)) are still taking place and that women are the majority of the victims. There is a widespread belief in Jordan that a woman is tainted if she has committed or is even suspected of committing adultery, leading to humiliation for her family which can lead to honour killings by male family members.

Provisions in the Penal Code fully exculpate a man for murdering his wife if she has committed adultery. Article 340 of the Penal Code specifies that "a husband who surprises his wife or a close female relative in the act of adultery with another person, and kills, injures or harms either of them, or both, shall benefit from a mitigating excuse. Article 98 allows for reduced punishment for offences committed out of rage (which can be as little as six months in prison and rarely more than two years).

With regard to honour killings, the Working Group would like to recall Concluding Observations addressed to Jordan by several UN treaty bodies. Specifically, in its Concluding observations on the second periodic report of Jordan dated 1 September 2000, the Committee on Economic, Social and Cultural Rights expressed its concern at "the fact that crimes against women perpetrated in the name of honour go unpunished" (E/C.12/1/Add.46, paragraph 17).

In its Concluding observations on the fourth periodic report of Jordan dated 18 November 2010, the Human Rights Committee welcomed the legislative and other

measures taken, including the amended Criminal Code, 2010, which ensures that perpetrators of so-called “honour” killings can no longer benefit from mitigating circumstances (CCPR/C/JOR/CO/4, paragraph 3 (b)). However, the Committee declared that it was concerned at the persistence of domestic violence against women in the State party and that it was further concerned at the policy of placing women who risk becoming victims of so-called “honour” crimes in a form of involuntary “protective” custody comparable to detention under the provisions of the Law on Crime Prevention (1954). The Committee recommended that the State party should strengthen the legal framework for the protection of women against domestic violence, sexual violence and other forms of violence to which they are subjected, take all appropriate measures to ensure that victims fleeing an abusive partner or husband have access to assistance and can take refuge in crisis centres and should immediately terminate its practice of placing women in “protective” custody and instead provide women at risk of violence with protection and support in a way that does not violate their rights (CCPR/C/JOR/CO/4, paragraph 8).

In its Concluding observations on the combined fourth and fifth periodic reports of Jordan dated 8 July 2014, the Committee on the Rights of the Child expressed its deepest concern that while dozens of girls continue to be killed every year in the name of so-called honour, article 345 bis of the Criminal Code, introduced by the State party through an amendment, only excludes perpetrators of such crimes from the benefit of mitigating circumstances, and therefore a reduced sentence, when the victim is less than 15 years old. The Committee added that it was also seriously concerned that girls at risk of becoming victims of those crimes have been, and continue to be, arbitrarily detained in correctional facilities for indefinite periods of time, supposedly for their protection (CRC/C/JOR/CO/4-5, paragraph 21). Therefore, the Committee strongly urged the State party to repeal without further delay all legal provisions condoning gender-based crimes, in particular articles 97 to 99, 340 and 345 bis of the Criminal Code, and ensure that all perpetrators of gender-based crimes, including those committed in the name of so-called honour, receive penalties commensurate with the gravity of their crimes. The Committee also urged the State party to immediately release women and girls arbitrarily placed in custody, to establish appropriate shelters and mechanisms for their protection throughout the country and to ensure that they participate and consent to any protection measure provided to them (CRC/C/JOR/CO/4-5, paragraph 22).

In its Concluding observations on the third periodic report of Jordan dated 29 January 2016, the Committee Against Torture stated that while noting the information provided by the delegation on the draft law on protection against domestic violence, it was seriously concerned that gender-based violence, including domestic violence and crimes committed in the name of “honour”, remained widespread in the State party. In addition to that, while noting the information concerning the ongoing legal reform carried out in the State party, the Committee stated it remained concerned about the continued existence of articles 98, 99, 308 and 340 of the Penal Code, which exempt rapists from criminal liability if they marry the victim, and allow for reduced sentences in certain circumstances for perpetrators of crimes committed under the pretext of family “honour”, thus allowing perpetrators to escape punishment. The Committee further regretted the lack of information on the outcome of court cases relating to gender-based violence,

including the sentences and punishments. (CAT/C/JOR/CO/3, paragraph 39). Therefore, the Committee recommended that the State party should: (a) Intensify its measures to combat all forms of violence against women and ensure that all such cases are thoroughly investigated, perpetrators are prosecuted, and victims provided with redress, including fair and adequate compensation; (b) Finalize the enactment of the draft law on protection against domestic violence and take effective measures to ensure its implementation in practice, including by issuing the necessary implementation mechanism and raising awareness among law enforcement personnel, the judiciary, prosecutors, lawyers and social workers about the new law; (c) Repeal without further delay any mitigating and exculpatory provisions in the Penal Code concerning rape and “honour” crimes and promptly take measures to end impunity for rape, so-called “honour” crimes and other gender-based violence; (d) Provide detailed information in its next periodic report on the number of complaints, investigations, prosecutions, convictions and sanctions in relation to cases of gender-based violence” (CAT/C/JOR/CO/3, paragraph 40).

The Working Group would like to recall that in her report on her mission to Jordan from 11 to 24 November 2011, the Special Rapporteur on violence against women, its causes and consequences expressed similar concerns at the persistence of honour crimes (A/HRC/20/16/Add.1, paragraphs 25 to 28 and 88 to 89). In light of her concerns, she recommended, inter alia, that the Government amend articles 98 and 99 of the Penal Code to ensure that such provisions are not applicable in cases of violence against women, in order to ensure adequate and fair sentences in cases of killings of women committed in the name of “honour” and that judges should also ensure that past histories of violence are taken into account before considering any mitigating circumstances for offender (A/HRC/20/16/Add.1, paragraph 88 (i)).

In its Concluding Observations on the sixth periodic report of Jordan dated 9 March 2017, the Committee on the Elimination of Discrimination against Women noted the information concerning the legal reform being carried out in the State party. Nevertheless, it stated that it remained concerned about the continued existence of articles 97 to 99, 308 and 340 of the Criminal Code, which exempt rapists from criminal liability if they marry the victim for at least five years, and provide for reduced sentences in certain circumstances for perpetrators of crimes committed in the name of so-called “honour.”

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, the Working Group would also like to recall the recommendations made in the context of the Universal Periodic Review of Jordan, which are under consideration or are supported by the Government of Jordan, which called for a number of measures to,

*inter alia*, strengthen its penal code regarding rape, in particular by removing article 308 and amending the Penal Code to remove the exemption of those accused of honour crimes from prosecution, and strengthen the enforcement of this legislation; Ensure proper and effective investigation of all crimes against women, including those with an “honour” element; Better protect women against all forms of violence, including honour killings, as required under the Criminal Code, the Law on Protection of the Family and the Law of Civil Status; Continue with the measures aimed at eradicating customs involving revenge practices and honour crimes; Remove extenuating circumstances for “honour” killings (A/HRC/25/9, paragraph 118.9, 118.51, 118.52, 118.53, and 119.7)

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