

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 under Law No. 12 of the Year 1994, Yemen's Criminal Code, which seems to contravene international human rights norms and standards as outlined below.**

Article 12 of the Criminal Code includes adultery as one of seven crimes to be punished according to the punishments prescribed by religious jurisdiction.

Article 263 of the Criminal Code defines the crime of adultery, providing that an unmarried man or woman convicted of adultery will be sentenced to one hundred lashes or up to a year in prison, while a married man or woman is subject to a sentence of death by stoning. Under Article 267 of the Criminal Code, those accused of adultery can be sentenced to up to three years imprisonment even if the evidence provided does not meet the legal standard for a conviction.

It is our firm belief that laws criminalising adultery, such as the Criminal 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 (acceded to by Yemen on 30 May 1984), 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 punishable criminal offence and, *ex forte*, should not be 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 Yemen on 9 February 1987) 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 would therefore call upon your Excellency's Government to comprehensively review the provisions of the Criminal 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, we are aware that 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. Article 232 of the Criminal Code provides for the possibility of a maximum sentence of one year or a fine in cases of homicide or assault resulting from a husband catching his wife in the act of adultery. This contrasts with the penalties of longterm imprisonment and capital punishment, which would normally apply for murder and manslaughter. The Criminal 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.

We wish to recall the Concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW Committee) on the sixth periodic report of Yemen in which the Committee urged the State party to repeal articles of the Criminal Code that discriminate against women, particularly Article 232 (CEDAW/C/YEM/CO/6, paragraph 19).

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 decriminalize adultery, regarding the punishment of stoning provided by the Criminal Code, 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 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.

The Working Group wishes to recall the Concluding observations of the Human Rights Committee on the fifth periodic report of Yemen in which the Committee stated that it was concerned, inter alia, the use of tortuous execution methods and methods of corporal punishment, including flogging and stoning, and recommended that the State party abolish execution by stoning and take steps to end all corporal punishment. [CCPR/C/YEM/CO/5, paragraphs 14, 20].

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