

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 Law No. 11/2004 issuing the Qatari Penal Code which seems to contravene international human rights norms and standards as outlined below.**

Article 1, paragraph 1 of Law No. 11/2004, which issues the Qatari Penal Code provides that Islamic Sharia provisions are applicable to several crimes, including adultery, if the suspect or the victim is a Muslim. As such, the crime of adultery carries a death penalty as hadd, which has been labelled as mandatory as the court (in theory) cannot determine to exercise discretion in sentencing the adulterer.

Under Article 281 of the Penal Code, it is a crime for a man to have sexual intercourse with a woman over 16 outside of marriage, the penalty for which is imprisonment up to seven years. The woman who gives her consent to that act is liable to the same penalty.

Under Article 288 of the Penal Code, a longer sentence of up to 10 years' imprisonment is imposed to "anyone who copulates with a person above sixteen" and to "the person accepting this deed".

Under article 298 of the Penal Code, a sentence of up to 10 years imprisonment is also imposed to "anyone who takes adultery (...) as a profession or a living (...)".

It is our firm belief that laws criminalizing adultery, such as the Law No. 11/2004 issuing the Qatari Penal 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 criminalization 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 Qatar on 29 Apr 2009), 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 (see our position paper in this regard available at <http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx>).

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.

We therefore call upon your Excellency's Government to comprehensively review the provisions of the Law No. 11/2004 issuing the Qatari 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 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)].

We would like to recall that the Committee on the Elimination of All Forms of Discrimination against Women in its Concluding observations of on the initial report of Qatar (CEDAW/C/QAT/CO/1) expressed concern regarding the fact that domestic and sexual violence are underreported, given that many women fear losing custody of their children; or women, particularly migrant domestic workers, face the risk of being accused of and charged with “illicit relations” and are subject to imprisonment” (CEDAW/C/QAT/CO/1, paragraph 23). Recalling its general recommendation No. 19 on violence against women, the Committee urged Qatar to, inter alia, amend the Penal Code to repeal the criminalization of consensual sexual relations outside marriage” [See: CEDAW/C/QAT/CO/1, paragraph 24(e)].

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.

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