

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

REFERENCE:
OL EGY 18/2017

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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 in Egypt under the Egyptian Penal Code of 1937 which seems to contravene international human rights norms and standards as outlined below.**

The Egyptian Penal Code of 1937 criminalises adultery and provides for different penalties for men and women convicted, allowing harsher prison sentences to be imposed on women than on men.

Under article 274 of the Penal Code, a married woman is considered to have committed adultery regardless of where the act took place. Under this article, the penalty for a married woman whose adultery is established (regardless of where the act took place) is a maximum of two years' imprisonment. The woman's husband can request the staying of the ruling by his consent to the adultery.

Under article 277 of the Penal Code, 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. If a married man commits adultery with a married woman outside of the marital home, he is regarded as an accomplice rather than a principal in the crime. As a consequence, women could be found guilty of adultery in a wider set of circumstances than men. Under article 277, a married man whose adultery is established (occurring in the marital home only) is liable to a punishment of a maximum of six months imprisonment. The woman has no right to request the staying of the ruling by her consent to the adultery. Under article 275, a married man who commits adultery outside of the marital home with a married woman will be punished with the same maximum two-year penalty as the woman who committed adultery.

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 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 (ratified by Egypt on 18 September 1981), 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 Egypt on 14 January 1982) 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 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, article 237 of the Penal Code provides for reduced sentences for honour crimes by men who find their wife in an adulterous act. This approach, minimizing such gender-based killings is a clear violation of women's rights.

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 wish to recall the Concluding observations of the Committee on the Elimination of Discrimination against Women on the combined sixth and seventh report of Egypt in which the Committee urged the State party to give priority attention to combating violence against women and girls and to adopting comprehensive measures to

address such violence, in accordance with its general recommendation No. 19 and added that such measures should include the expeditious adoption of a comprehensive law criminalizing all forms of violence against women, including crimes committed in the name of honour (CEDAW/C/EGY/CO/7, paragraph 24).

We also wish to recall the Concluding observations of the Human Rights Committee on the third and fourth periodic reports of Egypt in which the Committee noted the discriminatory nature of some provisions in the Penal Code, which do not treat men and women equally in matters of adultery (articles 3 and 26 of the Covenant) and recommended that the State party should review its discriminatory penal provisions in order to conform to articles 3 and 26 of the Covenant (CCPR/CO/76/EGY, paragraph 9).

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 any 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
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law and in practice