

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 **penalisation and de facto criminalisation of adultery under the Adultery and Enticement Act of 1988 and the rulings of village courts which seem to contravene international human rights norms and standards as outlined below.**

The Adultery and Enticement Act of 1988 allows a person whose spouse has committed an act of adultery, defined as "voluntary sexual intercourse with a person other than [ones] spouse, to bring an action seeking damages against either their spouse or the person with whom their spouse has committed the act of adultery, or both. The claimant in such cases can seek damages of up to K1,000.00.

Despite the fact that the Act provides only for a civil action and a fine in adultery cases, village courts applying customary family law as authorized under the Papua New Guinean Constitution engage in a de facto criminalisation of adultery, imposing prison sentences on those found guilty.

Village courts are much more likely to sentence women to serve jail terms for the crime of adultery than to sentence men who commit similar acts. The law and judicial actions against adultery in Papua New Guinea have contributed to perpetuating a culture of discriminatory attitudes, an understanding of women as "property" of their husbands and an acceptance of violence and sexual harassment against women.

The requirement of compensation for the civil offense of adultery may also have a discriminatory effect on women given gender disparities in ability to bring claims and ability to pay compensation that is ordered.

It is our firm belief that laws and judicial actions punishing and criminalising adultery, such as the Adultery and Enticement Act and the rulings of village courts, 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. The criminalisation of adultery hence contravenes article 2 of the Convention on the Elimination of All Forms of

Discrimination against Women (acceded to by Papua New Guinea on 12 January 1995), 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 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 Papua New Guinea on 21 July 2008) 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 Adultery and Enticement Act and the rulings of village courts, and to remove all provisions and end all judgments 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 and judicial practice 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)].

Finally, we would like to call to the attention of your Excellency's Government Articles 15 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women, which require that States parties accord women equality with men before the law and that they take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. In this regard we would also like to recall the CEDAW Committee's 2010 concluding observations regarding the combined initial, second and third reports of Papua New Guinea, in which the Committee urged your Excellency's Government "to harmonize its civil, religious and customary law with article 16 of the Convention and to accelerate reform in respect of the laws relating to marriage and family relations in order to bring its legislative framework into

compliance with articles 15 and 16 of the Convention.” [CEDAW/C/PNG/CO/3, paragraph 50].

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