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## Human Rights Council

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**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

### **Written statement\* submitted by Human Rights Now, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 May 2017]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **The International Community must Help End the Globally Prevalent Practice of Discriminatory Punishment and Treatment of Women**

### **I. Introduction**

Article 2(g) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires state parties to repeal all national penal provisions which discriminate against women. However, many states, including CEDAW state parties, continue to administer more severe penal sanctions and punishments against women than men.

Human Rights Now (HRN), a Tokyo-based human rights NGO, has conducted research into discriminatory penal punishments against women, focusing on the legal systems of 17 countries which we have compiled into a forthcoming report.<sup>1</sup> Our research has identified several forms of criminal punishment targeting women and illustrates how these measures directly or indirectly affect women in a discriminatory and abusive manner. HRN documented more than 30 forms of judicial and extrajudicial punishments. Major areas of concern include prosecutions of women for adultery and fornication, for fleeing abuse, and due to discriminatory procedural protections; as well as non-legal traditional courts and practices which punish women based on patriarchal cultural norms. These laws and practices constitute serious violations of the fundamental human rights of women and girls as recognised in major international instruments.<sup>2</sup>

### **II. Background**

In the research, HRN uncovered punishments which included sanctions imposed by judicial authorities formally recognised by the state, as well as extrajudicial punishment adopted or executed non-officially by public authorities or under their auspices. Formal punishments included official norms and related penalties (e.g. as derived from criminal codes and judicial decisions), and informal penalties included those imposed by traditional adjudication bodies such as ‘jirga’ and ‘shura’<sup>3</sup> tribal councils in Afghanistan, or village councils enforcing customary norms in India<sup>4</sup>.

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<sup>1</sup> The countries investigated are: Afghanistan, Bahrain, Bangladesh, Democratic Republic of Congo, Ethiopia, India, Indonesia, Iran, Iraq, Kuwait, Malaysia, Maldives, Nigeria, Pakistan, Papua New Guinea, Uzbekistan, and Yemen.

<sup>2</sup> The majority of the countries involved have ratified the ‘International Covenant on Civil and Political Rights’ (ICCPR), the ‘Convention on the Elimination of all Forms of Discrimination Against Women’ (CEDAW) and the Convention on the Rights of the Child (CRC).

<sup>3</sup> Ali Wardak, *State and Non-state Justice Systems in Afghanistan: the Need for Synergy*, 32:5 U. Pa. J. Int’l L. 1305, 1315-1319 (2011), available at

[https://www.law.upenn.edu/journals/jil/articles/volume32/issue5/Wardak32U.Pa.J.Int'lL.1305\(2011\).pdf](https://www.law.upenn.edu/journals/jil/articles/volume32/issue5/Wardak32U.Pa.J.Int'lL.1305(2011).pdf).

<sup>4</sup> *India Village Council Orders Rape of Two Sisters*, Aljazeera, Aug. 30, 2015 (explaining that “several Indian provinces are notorious for village councils (locally called khap panchayats) that have no legal sanction, but yet adjudicate over personal matters”), available at <http://www.aljazeera.com/news/2015/08/india-village-council-orders-rapes-sisters-150829145847675.html>.

The research found a discriminatory character in state measures across different aspects of the punishing process. In certain cases, the criminal rule itself applies exclusively or more harshly to women. This is frequently the case for adultery-related and sex crimes in the states we investigated. In other instances, a lack of procedural guarantees in the criminal procedures induces discrimination against women. For each state's legal system, our research offered practical and legal recommendations directed to the respective state's government on actions to undertake to cease and prevent human rights violations caused by discriminatory criminal punishments against women.

### III. Major Types of Discriminatory Punishment against Women

#### 1. Discriminatory punishments for adultery

Adultery-related punishments (i.e. measures that punish sexual intercourse with someone other than a spouse) are present in the majority of the states we investigated, and they constitute the most recurring form of discriminatory punishment HRN documented.<sup>5</sup> Despite often being gender-neutral in their formulations, measures instituting adultery-related punishments discriminate against women in several ways. First, in some Islamic countries men are allowed to have several wives whereas women are bound to monogamy.<sup>6</sup> This logically leads to a disparity in the application of the norms amongst married persons, as the same conduct (sexual relations with a person other than one's first spouse) can be defined as criminal for women and legal for men to the extent they declare the conduct as part of an additional marriage.

Second, the crime of adultery is often broad enough to be applied to rape victims. For example, the laws in Malaysia are such that a woman that alleges rape de facto confesses to an extramarital affair, and if she is married and cannot prove her rape, she is subject to being charged with adultery. Judges also often blame women for their own rapes, as a case in Afghanistan demonstrates when a judge blamed a woman for her rape for going out at night when it's unsafe and for not screaming loud enough to be heard.<sup>7</sup> Attitudes like this see victims of rape more like perpetrators of adultery.

Third, punishments for adultery often include killings and inhuman treatments against women by other civilians, such as honor killings by family, but condoned and sometimes even assisted by police who see it as proper punishment. In Iran, for instance, husbands are often granted impunity for the murder of their wives and sexual partners if the latter are caught having an extramarital relationship,<sup>8</sup> and male family members are granted impunity for murdering females of their family who are considered to have brought dishonour to the family, which are unofficially condoned by

<sup>5</sup> In 14 of the 17 countries analysed the crime of adultery is punished.

<sup>6</sup> This is for example the case of Afghanistan and Iran: Art 36 of THE CIVIL CODE OF AFGHANISTAN; Iran Human Rights Documentation Center, *Gender Inequality and Discrimination: The Case of Iranian Women*, March 8, 2013, available at <http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html>.

<sup>7</sup> "I Had to Run Away" – *The Imprisonment of Women and Girls for "Moral Crimes" in Afghanistan*, Human Rights Watch (March 2012), 5, available at

[https://www.hrw.org/sites/default/files/reports/afghanistan0312webwcover\\_0.pdf](https://www.hrw.org/sites/default/files/reports/afghanistan0312webwcover_0.pdf).

<sup>8</sup> IRAN PENAL CODE, Art. 630.

authorities as proper punishment for the women's perceived violation.<sup>9</sup> The report also documented cases in Bangladesh of women sentenced to death or corporal punishment by traditional village councils with the tacit assent of the law enforcement agencies of the state.<sup>10</sup>

### *Violations of international human rights law*

In these examples, the states involved violated several international human rights provisions, such as articles 2(g) and 16 of the CEDAW which require that legislation and penal codes do not discriminate against women, and that women are not discriminated against in matters relating to marriage and family relations;<sup>11</sup> articles 2 and 3 International Covenant on Civil and Political Rights (ICCPR) which oblige states not to discriminate on the basis of sex and to ensure equal enjoyment of rights to men and women; ICCPR article 6, which imposes an obligation on states to observe due diligence in protecting the right to life of those within their jurisdictions from violations committed by third parties.<sup>12</sup>

## **2. Punishment for women fleeing situations of abuse**

HRN's report documented cases in which women are victimised for attempting to escape situations of danger and abuse. For instance, in Afghanistan, evidence indicates that women who escape situations of domestic violence in which their husband is involved can be punished for both 'running away' and 'attempted adultery' and regardless of her motives for escaping.<sup>13</sup> Statistics show that approximately 51 percent of female prisoners were incarcerated in Afghanistan for "moral crimes."<sup>14</sup>

### *Violations of international human rights law*

The states engaged in the measures illustrated in the previous examples have violated the non-discrimination provisions of CEDAW (articles 2(g) and 16), and ICCPR article 12 which guarantees the right to freedom of movement.

## **3. Lack of procedural guarantees**

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<sup>9</sup> Ibid, Art. 299.

<sup>10</sup> Habibur Haque Khondker, *Modern Law, Traditional 'Salish' and Civil Society Activism in Bangladesh*, Zayed University (2012), at 1, [ "Modern Law, Traditional 'Salish:", available at <http://www.isa-sociology.org/publ/E-symposium/E-symposium-vol-2-2-2012/EBul-Khondker-Jul2012.pdf>.

<sup>11</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Iraq*, CEDAW/C/IRQ/CO/4-6, at para. 15-6, (March. 10, 2014) [ "CEDAW Committee Concluding Observations"].

<sup>12</sup> Human Rights Committee, General Comment 36, para 28.

<sup>13</sup> United Nations Assistance Mission in Afghanistan, *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*, (Dec. 2012) at 22.

<sup>14</sup> United States Department of State, *2015 Human Rights Report: Afghanistan*, at 39 available at <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dldid=252957#wrapper>.

Several types of punishments documented in HRN's report originate from a lack of procedural guarantees offered to the accused. In Bangladesh, for example, a traditional, informal arbitration process called *salish* proceedings is used to adjudicate issues related to customary norms and interpersonal and familiar conflicts amongst which most concern alleged "infringements" of moral behavior by women.<sup>15</sup> Decisions are usually biased against women, who are punished "for perceived deviations from patriarchal norms," such as participation in public life or non-conformity with conventional norms of sexual behavior and subject to cruel punishment.

The report documented cases in Papua New Guinea, in which the crime of sorcery—a crime which predominantly targets only women—despite being abolished by formal legislation, was still implemented by village courts, whose magistrates, often with little education and legal knowledge, were not aware of its repeal and hence still applied it.<sup>16</sup> The inherent gender-discriminatory nature of sorcery<sup>17</sup> coupled with the incapacity of village courts to protect women who are designated as sorcerers, results in women being subjected to discriminatory punishments. Cases of women lynched by angry mobs have also been reported.<sup>18</sup>

#### *Violations of international human rights law*

The examples provided illustrate violations by states of several human rights such as the right to a fair trial enshrined in ICCPR article 14 and the right to liberty and security of persons under ICCPR article 9. They also violate the anti-discrimination guarantees contained in the CEDAW articles 2(g) and 16.

#### **IV. Recommendations**

Gender discriminatory laws and practices such as the above have deeply negative impacts on women's empowerment, human rights, and access to justice. They contribute to cultural norms which discriminate women more broadly and foster impunity for sexual violence against women.

<sup>15</sup> An informal arbitration process in this context refers to one that is not established by law, but whose decisions are commonly acknowledged by a community. A formal arbitration process refers to one that is established by law, such as a court of law. See Habibul Haque Khondker, *Modern Law, Traditional 'Salish' and Civil Society Activism in Bangladesh*, Zayed University (2012), at 1, [hereinafter "Modern Law, Traditional 'Salish'"], available at <http://www.isa-sociology.org/publ/E-symposium/E-symposium-vol-2-2-2012/EBul-Khondker-Jul2012.pdf>.

<sup>16</sup> Melissa Demian, *Sorcery Cases in Papua New Guinea's Village Courts: Legal Innovation Part IV, In Brief*, Australian National University (2015) [hereinafter "Sorcery Cases in PNG's Village Courts"], available at [http://ips.cpacpssgmips.cpacpssgm.bellschool.anu.edu.au/sites/default/files/publications/attachments/2015-12/IB-2015-27-Demian\\_0.pdf](http://ips.cpacpssgmips.cpacpssgm.bellschool.anu.edu.au/sites/default/files/publications/attachments/2015-12/IB-2015-27-Demian_0.pdf).

<sup>17</sup> Women are six times more likely to be accused of witchcraft than men: United Nations Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo (Mission to Papua New Guinea)*, A/HRC/23/49/Add.2, at 8 (March 18, 2013) [hereinafter "Manjoo Report"], available at <http://reliefweb.int/sites/reliefweb.int/files/resources/Mission%20to%20Papua%20New%20Guinea.pdf>.

<sup>18</sup> Helen Clark, *Sorcery and Sexism in Papua New Guinea*, *The Diplomat*, June 2, 2015 [hereinafter "Sorcery and Sexism"], available at <http://thediplomat.com/2015/06/sorcery-and-sexism-in-papua-new-guinea/>.

HRN urges all states to seriously review their legislation and agencies addressing penal punishment and repeal any law or practice which legally or de facto discriminates against women and girls.

States must also take concrete measures to ensure that even non-discriminatory laws are not practiced discriminatorily against women, ensure that informal tribunals and counsels cannot enforce discriminatory punishments whether legally or extra-judicially, and implement procedural reforms to protect women from discriminatory treatment.

HRN calls on the international community to play a more active role in facilitating the repeal and reform of discriminatory penal laws and practices against women and girls in all states.

HRN calls on the UN Working Group on discrimination against women in law and in practice and the Special Rapporteur on violence against women to conduct an investigation on this topic and offer effective recommendations.

HRN urges the Human Rights Council and General Assembly to pass resolutions calling on states to repeal gender discriminatory laws and practices and making other related calls.

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