



# A Study

## The Experience of the “Family Protection from Violence” Law in the Palestinian Territories and the “Due Diligence” Standard

*Prepared by Researcher:*

**Rawan Obeid**

Women’s Centre for Legal Aid and Counselling

2021





## Acknowledgment

Women's Center for Legal and Social Counselling extends sincere gratitude and appreciation to all individuals and formal and informal institutions, who have had an important and fruitful contribution in preparing this study, which had a significant impact on enriching the study and bringing it to light, regardless if this contribution was through interviews or through focus groups.

**We also would like to extend our sincere appreciation to:**

**Colleague Nabil Dweikat**

Research and advocacy officer in WCLAC. He has conducted the individual interviews in this study, and has contributed to revising it and providing notes.

**Colleague Rania Salah Aldine**

Protection and Empowerment Officer in WCLAC. We are grateful for her contribution in preparing the guiding questions for focus groups and has contributed to the implementation of the focus group meeting in Jericho.

Our gratitude extends to all the colleagues who have participated in reviewing the initial version of the study and have placed the appropriate notes for it to be released in its final version.





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## Preface

Ever since its establishment in 1991, Women's Center for Legal Aid and Counselling (WCLAC) has been keen on rendering legal and social services to women and girls who had fallen victim to violence. The greatest challenge we face is the limitations of procedures and laws to provide legal protection for women who have fallen victim to violence. In 2004, the Center, in collaboration with the Mental Health Program/the Women's Mental Health Project/Gaza, initiated an invitation to the official and community-based organizations, to require the Legislative Council to adopt the Family Protection Law. Ever since then, and up till now (by 2020), our demand to adopt the law is constant and ongoing. Our work remains ceaseless as we lead lobbying and advocacy campaigns in collaboration with other women's and human rights organizations on the necessity for the Palestinian legislator to pay serious attention to these issues. This is not achieved through a general and abstract text that criminalizes such issues, but rather by dedicating a Palestinian legislation that addresses and regulates the various aspects relevant to the protection of the family from violence.

The family is the social nucleus on which social development is built. It is the main factor in shaping and building an individual's personality. Hence, paying special attention to the protection of the members of the family, in particular the weaker links thereof, obliges any decision maker in any state to prioritize the matter and include it in the state's political and legislative agendas. It is mandatory to establish adequate legislative interventions that respond to the issues and needs of the victims of violence, discrimination and exclusion, in particular those that occur within the family.

Adopting and enforcing national laws that combat all forms of violence within the family is a form of alignment and harmonization with international and regional standards, as well as local references, towards the protection of human rights which represent a priority for the legislator. These laws need to identify the legal, social and medical interventions that need to be considered by the state when adopting such laws towards combating domestic violence, where in most cases the victim is of a less fortunate and more vulnerable member of the family, in particular women and children. Hence, although this study deals with the issue of domestic violence, it will more broadly focus on

the violence targeted at women, since they are the most vulnerable to all forms of violence within the family.

Issuing comprehensive legislations is essential towards the effective and coordinated combating of violence against women. The states have clear obligations under international law to enact legislations that combat all forms of violence against women, as well as to enforce and monitor these legislations. During the last two decades, many states adopted and/or modified legislations concerned with acts of violence against women. However, there remain significant lacunae, for many states have legislative provisions that focus in particular on the violence exercised against women. Yet, even where such legislations exist, they often remain restricted in scope and coverage, or are not enforced.<sup>1</sup>

This study was prepared in 2020, the year of challenges for the Palestinian women, as well as the feminist and human rights movements, at all social, economic, legal and health levels. Although all the countries of the world faced great challenges due to the COVID-19 pandemic, this pandemic had a multiplying effect on the Palestinian society, due to the Israeli Occupation and the economic sanctions that Israel imposes on the Palestinian society. These become manifest in the policy of land annexation to Israel. As is the case in all other countries of the world, the pandemic also impacted upon the Palestinian social situation, whether directly or indirectly, through the rising number of cases of violence in the society in general and against women in particular. Women remain the most vulnerable and the most exposed to such violence due to the power relations within the family. We observed much of this in our capacity as a center specialized in providing legal and social services to women who fall victim to violence, for the cases of violence increased, in particular during the periods of lockdown imposed by the State of Palestine in the first half of the year.

Despite the escalating rates of domestic violence in the Palestinian society, as seen in the various figures and statistics, which all affect the women, the continuing pressing and urgent need to enact a legislation that focuses on the protection from violence and ensures a serious handling of the issue of violence, and despite the great efforts exerted towards limiting the phenomenon, yet we always stumble on

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<sup>1</sup> The Guide to Legislations on Violence against Women, the Directorate of Economic and Social Affairs, Division of the Advancement of Women, UN, 2020, p.1.

a set of obstacles. The most prominent of these is the social legacies and the patriarchal concepts which have a major impact on the laws enforced and the Palestinian legislator's attitude.

The most prominent campaign we faced this year as a Palestinian feminist and human rights movement, that advocates the necessity of issuing fair penal laws towards the protection of the family and the Palestinian society from violence, was that of the media and the fierce attack by some bodies opposed to the adoption of the law. These resorted to "demonization" as opposed to "polarization". Indeed, these groups sought to distort and demonize any calls for the adoption of the Family Protection Law. In turn, they will polarize as many proponents as possible by using a religious and emotional discourse that targets the Palestinian citizen. To attain support at the political level, they are pushing towards the "politicization" of the social issues, in particular women's issues, to serve their own interests. This requires us all to undertake a serious and explicit intervention to counteract this outcry and push towards the adoption of the law.

## **Randa Siniora**

Director General

Women's Center for Legal Aid and Counselling





## Objectives of the Study

The study addresses the experience of the “Family Protection from Violence” law in the State of Palestine, with special focus on domestic violence against women. The law constitutes an essential element in the State’s response towards combating violence. It further demonstrates the extent to which the State of Palestine upholds good practices, in particular the “due diligence standard”. Such practices contribute in altering prevalent beliefs that it is not the responsibility of the State to intervene upon the occurrence of violations in people’s private lives. The Standard or such commitment obliges the State to prevent its subsidiaries and other bodies from committing violence, to offer protection therefrom, to prosecute and punish the perpetrators, as well as to provide equity for those affected by this form of violence.

The study also reviews the most prominent international and regional terms of reference and frameworks that have adopted the Standard, and conduct a comparison with the extent to which the State of Palestine is committed to the consolidation of the Standard in its domestic legislations, in particular the “Family Protection from Violence” law. The aim is to present a number of recommendations and strategies to relevant bodies and decision-makers, to cast light on the importance of observing the “Principle of Due Diligence” in the Law for the “Family Protection from Violence” law. The study will also illustrate the idea and the philosophy underlying the proposed law, as well as the legal and social reasons and justifications for passing the bill, and the obstacles and challenges faced by women and human rights organizations towards its adoption.



## Methodology

Various methods and tools were used to cast light on the social, legal and political reality relevant to the “Family Protection from Violence” law, with the aim of establishing a number of recommendations, strategies and interventions in the cases women victims of domestic violence in the Palestinian society.

### **The following instruments were used in the study:**

- Reviewing international agreements and conventions relevant to combating violence against women.
- Reviewing the experience of the Arab Model Law and the Arab Agreement for Combating Violence against Women.
- Conducting in-depth interviews with human rights advocates and activists.
- Holding a meeting with organizations actively engaged with the Palestinian NGOs Forum for Combating Violence against Women.
- Holding two seminars for legal, social and health services providers for women victims of violence in the Palestinian society.



## The Current State of Domestic Violence in Palestine: An Introduction

The General Assembly of the United Nations defined violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

The Arab region and the Palestinian society are not spared to these forms of violence. Women confront diverse forms of compounded violence inherited from a patriarchal culture. Such acts occur through prevalent social customs and traditions, which are confirmed by legislative texts that do not offer the minimum basis for combating violence against women and other family members. This continues despite the progress achieved in these societies, and although many have ratified relevant international agreements and conventions, as demonstrated in a number of studies that cast light on the social and legislative reality, and the response to combat violence against women in these societies.

In addition to societal violence, women in the Palestinian society face another kind of violence, namely the violence of the Israeli occupation. The adverse effects caused by the Occupation’s violence impact upon the social reality, the psychological stability and the economic status, all of which cause the deterioration of the Palestinian women’s reality.

Although there is increasing interest in the concept of “violence against women”, it remains difficult to find a unanimously agreed upon definition of the concept. There are many terms used in various parts of the world, as well as in diverse social, economic and psychological theories and fields. The most prevalent paradigm is the term “domestic violence”. There is, however, growing global consent that “violence against women” needs to be recognized as gender-based violence, regardless of whether it occurs within the family or outside it. Indeed, it is the outcome of the inferior position of women in the family and the society compared to the superior status of men (Mohamed Al Haj Yehia, 2013).

In the Palestinian context, despite the disparities in the definition of violence, and despite the different issues focused upon in the light of such disparities and the objective of the definition, women activists, agents, advocates, human rights activists and service providers, there remains – at the theoretical level – a near consensus. This agreement follows the definition adopted by the Palestinian Central Bureau of Statistics (PCBS) in a survey of violence in the Palestinian society in 2011. The survey was conducted under the supervision of the General National Committee, which consists of 17 representatives of official, non-official, national and international organizations and authorities. The definition stipulates that “Violence against Women: It is all forms of physical, mental, sexual and verbal violence and social and economic deprivation; threats of such acts; coercion and other deprivations of liberty that are directed against a woman because she is a woman, whether directly or indirectly, inflicting physical, psychological, sexual, mental, social or economic harm or suffering, and whether occurring in public or in private life.”<sup>2</sup>

This definition has also been adopted by the National Committee for Combating Violence against Women, which was formed by an official decree issued by the Palestinian Council of Ministers in 2008. It is made up of the Ministries of Women’s Affairs, Social Affairs (later renamed as the Ministry of Social Development), Justice, Interior, Education and Higher Education, Health, Labor, Media, and Religious Endowments and Affairs, in addition to the Office of the Chief Justice, the Palestinian Fatwa House, the Governorate Affairs Unit at the President’s Office, the General Secretary of the General Union of Palestinian Women (GUPW), and the Palestinian NGOs Forum for Combating Violence against Women (Al Muntada). The Committee was assigned to implement the National Strategy for Combating Violence in the Palestinian society (2011-2019) (Ministry of Women’s Affairs, Palestine).

In 2019, the Palestinian Central Bureau of Statistics publicized the findings of the new survey, which indicated a general decline in violence from 37% in 2011 to 29% in 2019. The Bureau found that, although the drop is by only eight points from the previous survey, it remains a high rate. These indicators should be perceived as serious and as requiring careful attention and rectification.

One of the most prominent findings of the survey is the continuance of the colonialist violence exercised by the Occupation as one of the

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<sup>2</sup> The Palestinian Central Bureau of Statistics, 2012, Survey of Violence in the Palestinian Society, 2011. The Main Results. Ramallah, Palestine, p.39.

factors and constant sources impacting the rise of social violence. The reports of 60% of the women who are married or had been married previously show that they or a member of their families were exposed to the violence of the Occupation forces, at 53% in the West Bank and 70% in Gaza. It is the vicious circle that connects social violence, oppression, and national violence.

Through a detailed database, the survey indicated the violence exercised against women, youth, children, the elderly and people with special needs, in addition to the various forms of mental, physical, sexual, economic, social and electronic violence committed in public places, spaces and spheres. These include the street, educational institutions, market places, means of transportation and homes. The victims belong to all age groups of childhood, youth and old age.

The figures and percentages analyzed by the Palestinian Bureau invite us to halt and analyze some disturbing indicators. Although the survey demonstrated a 40% increase in the percentage of players in the organizations actively engaged in combating violence in comparison with the results of the 2011 survey, it remains a worrying fact that the percentage of the victims who seek help is limited to 2% in the West Bank and 1% in Gaza.

In comparison with 2011, there is a decline in the rate of prevalence of violence affecting currently or previously married women at the hands of their partner from 37% in 2011 to 27% in 2019. Over half the women in Palestine who have been exposed to violence preferred to remain silent: 61% of the women subjected to violence by their husbands preferred to remain silent; 48% spoke with their husbands requesting them to cease their abuse; 24% sought refuge in their parents' or siblings' homes; 20% did not leave their houses, but spoke with a parent or a relative; 6% spoke with a colleague at work or a neighbor, eliciting help or guidance, or even protection; only 3% sought a lawyer to file a lawsuit.

With the publication of the findings of the survey conducted by the PCBS starts the responsibility of the duty-bearers, the responsibility of the governmental organizations, of the NGOs and of the civil society in combating all forms of violence that occur in the Palestinian society.



## Part One:

# The International and Regional Framework Regulating the Legislations Relevant to Domestic violence

This part of the study focuses on the State's commitment to provide protection for the victims of domestic violence, and reviews the references, frameworks and conventions at the regional and international levels which inform such commitment. Focus will also be on the "Due Diligence" Standard adopted in addressing all forms of violence that occur within the family. In the first section, we will review the most prominent relevant international references, such as the Convention to Eradicate all Forms of Violence against Women and its recommendations; the Declaration on Eliminating Violence against Women; and the Council of Europe Convention on Protection from Violence against Women and Domestic Violence (Istanbul Convention). On the regional Arab level, focus will be on the draft for an Arab convention/agreement to combat violence against women, girls, domestic violence and the ideal law needed to combat violence against women and girls in the Arab countries. This section will also review the extent of the responsiveness of these references to the "Due Diligence" Standard as the instrument to eradicate violence against women and as a means to monitor the implementation of human rights conventions. The section also covers the extent to which the State is committed to the implementation of these at the local level.

### **First: The References for the Regulation of Combating Domestic Violence at the International Level within the Due Diligence Standard.**

The UN plays a major and essential role in providing studies, making decisions, as well as setting recommendations and general guidelines for the States to implement these in their respective local policies and legislations that respect and uphold human rights. In many incidents, these have offered reliable frameworks for the legislations adopted by States in their local communities. The most prominent of these efforts

become manifest in international declarations and conventions which set acceptable frameworks for the emerging responsibility towards combating violence, the means for protection and the principles regulating international interactions in this domain. The reiteration of these principles at the international level and the ratification of States of the texts and conventions issued by the UN necessitates the inclusion of these principles within national legislations. These are often considered the highest local reference, and the assurance that these countries observe the Due Diligence Standard in their local legislations.

Establishing and implementing the Due Diligence Standard towards combating violence against women helped in changing the prevalent conception that it is not the duty of the State to intervene in the violations that occur in people's private lives. The implementation of the standard in the cases of violence committed against women as part of the State responsibility varies from preventing relevant and non-relevant parties from committing acts of violence and protecting against these, to the prosecution and punishment of culprits, to providing compensation for the afflicted. The implementation of the Due Diligence Standard also acquires great importance as it eliminates the separation between the public and the private spheres, which is enhanced under international and local laws. The Standard stresses the need to protect and provide means towards effective equity. It stipulates that the countries should address the root causes of violence against women, while it represents a means towards combating such violence. It complements the other principles and frameworks for human rights.<sup>3</sup>

The above definition of the Due Diligence Standard demonstrates that some countries implemented the Standard within their local legislations, while other countries introduced it as part of their internal mechanisms towards combating violence. This remained a partial and slow process requiring a dedicated activation on more than one level. This requires, in particular, implementation decrees, financial resources and a political will to be put into action, else it would remain a dead letter. To set application procedures and mechanisms is essential towards the active implementation of all these achievements to make them beneficial to the society and a tangible aspect of

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<sup>3</sup> Policy Brief on the "Due Diligence" Standard, violence against women and protection orders in the Arab Region – The Economic and Social Commission for West Asia (ESCWA), Beirut, 2018

women's real lives. Otherwise, they will remain unfulfilled headlines that lack any enforceability.

Hence, this section casts light on the violence committed against women and the Due Diligence Standard under international frameworks and conventions.

## 1. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

In April 2014, the State of Palestine signed the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), presenting its first report to the Commission concerned with following up on the implementation of the Convention articles in July 2017. Various other organizations, as well as women's and human rights' coalitions, with the General Union for Palestinian Women at the forefront, submitted their reports under the title "Shadow Reports". These came in parallel with the official State report. The Commission of CEDAW itself followed up on these reports with a set of recommendations to the State of Palestine, to be taken into consideration during the following years towards enhancing women's equality and combating any discrimination against them. Most prominent among these recommendations included in the closing remarks was the definition of discrimination in the following terms: "The Commission takes note that the partner State has dedicated itself, upon ratifying various human rights conventions, to a comprehensive review of its legislations, with the aim to align these with international human rights standards. It further takes note of the prohibition of discrimination under Article 9 of the Basic Modified Law, and the aim of Article 546 of the Penal Law Bill of 2011, to establish a definition for discrimination. However, the Commission expresses its concerns as to the absence of any comprehensive definition of discrimination against women that would be in agreement with Article 1 of the Convention."<sup>4</sup>

11. In accordance with Articles 1 and 2 of the Convention, the Commission recommends that the partner State undertakes the following:

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<sup>4</sup> Closing Remarks on the preliminary report of the State of Palestine, issued by the committee concerned with the elimination of violence against women. 2018, p. 4 & 4.

- a) To accelerate the adoption of a national legislature that includes a comprehensive definition of discrimination against women, taking into consideration all causes of prohibited discrimination, including direct and indirect forms of discrimination in the public and private domains; and
- b) To review the draft Penal Code of 2011, which aims at prohibiting and punishing discrimination, to bring it into alignment with the Convention, and to insert such provisions as to stipulate the enforcement mechanisms and adequate punishments.

The recommendations endorsed by the committee on the alignment of legislations and the elimination of discriminatory laws<sup>5</sup> also included:

14. The Commission commended the establishment of a committee by the partner State for the alignment of legislatures and the review of all laws, to ensure – among other things – their alignment with human rights conventions ratified by the partner State, such as the Convention. However, the Commission expresses concern over the lack of a timeframe for the completion of such review, and expresses concern in particular on the following:

- a) Lack of unified legal systems, since a number of diverse sets of laws apply to the women and girls in Gaza and their peers in the West Bank which are discrepant in terms of the levels of protection they provide, since some of these laws confirm the practices and customary traditions which discriminate against women;
- b) Application of different outdated laws, including those legislated under the Ottoman rule, the Personal Status Code, including the Egyptian Family Rights Law of 1954 and the Jordanian Personal Status Law of 1976 which apply in both Gaza and the West Bank, all of which allow the continuous violation of women’s rights in terms of marriage, divorce, child custody and inheritance;
- c) Lack of a timeframe for the revision and adoption of legislative drafts such as the Penal Code, the Personal Status Law and the Law for Family Protection.

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<sup>5</sup> Ibid., p. 5

15. The Commission recommends that the partner State undertakes the following:

- a) To unify the legal systems applicable in Gaza and the West Bank to ensure that all women and girls in the partner State receive equal protection under the law, in accordance with the Convention;
- b) To adopt a clear timeframe to review outdated laws conducted by the Committee for the alignment of legislations in collaboration with concerned partners, including the civil society organizations. It is also recommended, during the review process, to conduct an in-depth analysis of the gender impact for a better understanding of all customary and religious laws that contradict the Convention; and
- c) To accelerate the review of legislative drafts to ensure their compliance with the Convention, including the Penal Law, the Personal Status Law and the Family Protection Law, and subsequently adopt these.

The Convention on the Elimination of all Forms of Discrimination against Women has indirectly indicated the commitment to the Due Diligence Standard. What was observed later, however, is the reiteration of the necessity to implement this standard as one of the recommendations issued afterwards.

In the following we review some of the most significant relevant articles, whether those Stated in the Convention or in subsequent recommendations.

Article (2) of the Convention States that “Partner States denounce all forms of discrimination against women, while they agree to adopt swiftly and with all means possible, a policy that will eradicate discrimination against women. In fulfillment of this, the States undertake to:

- a) Integrate the principle of gender equality in their national constitutions or other appropriate legislatures, if such principle has not been integrated yet, as well as safeguard the practical realization of this principle through legislation and other suitable means;
- b) Take the necessary legislative and non-legislative measures, including penalties towards the prohibition of all forms of discrimination against women;

- c) Impose the legal protection of women's rights from any discriminatory act, on equal terms with men, while guaranteeing effective protection of women, through specialized courts and other public institutions in the country;
- d) Abstain from any discriminatory act or discriminatory practice against women, while guaranteeing the action of the authorities and public institutions in agreement with such commitment;
- e) Take all necessary measures towards the elimination of discrimination against women by any person, institution, or organization;
- f) Take all necessary measures, including legislative measures, to change or overturn existing laws, rules, customs and practices which constitute an act of discrimination against women; and
- g) Repeal all national penal provisions that constitute an act of discrimination against women.

▪ General Recommendation Nr. (19), General Comments:

8. The Convention applies to the violence practiced by the public authorities, which kind of violence may constitute a violation of the countries' commitments under the International Human Rights Law and under other agreements. In addition, it constitutes a breach of the provisions of this Convention.

9. It is worth noting that discrimination in the Convention is not limited to the actions of governments or in their name – see Articles (2E), (2F) and (5). A case in point is Article (2E) of the Convention, which requires the partner States to take all possible measures to eradicate discrimination against women by a person, an organization or an institution. The General International Law, as well as specific human rights treaties, stipulate the accountability of States, too, for private actions, if the States do not take due serious measures to prevent violation of rights, or to investigate crimes of violence to punish the perpetrator and compensate the victim.

Recommendation Nr. (35) concerning gender-based violence against women, issues as an update of Recommendation Nr. (19).

### III. The Commitment of Member States concerning Gender-based Violence against Women

## B. Responsibility for actions and shortcomings by agents other than the States

24. Under the General International Law, as well as under international treaties, the actions or the omissions by active bodies may lead to the emergence on the international responsibility of States, in particular in cases that include:

2. The due diligence obligations for the actions or omissions by active bodies other than the States (b) entail that Article (2E) of the Convention requires the partner States explicitly to undertake all necessary measures towards the eradication of discrimination against women by any person, organization or institution. Such obligation, often referred to as an obligation towards the exertion of due diligence, constitutes the core of the agreement as a whole. Based on this, the partner States are deemed responsible if not all necessary measures are taken to prevent the actions or omissions resulting in gender-based violence against women, which may be committed by parties other than the States, as well as to investigate these, prosecute and punish the perpetrators thereof, and compensate the victims. These include actions taken by companies working outside the regional borders. The partner States ought, in particular, to take the necessary steps towards preventing human rights violations committed abroad by companies under their jurisdiction. This is achieved by adopting regulatory means or using incentives, including economic incentives.

Under the due diligence obligation, partner States should adopt and enforce various measures to combat physical violence committed against women by active bodies other than States. Among these measures are the issuance of laws and the establishment of institutions and rules that combat such violence, while ensuring their effectiveness and efficiency. They should also be supported by all State employees who work hard on the enforcement of these laws. If the State does not take all necessary measures to prevent acts of physical violence against women in the cases when the authorities are aware or supposed to be aware of the dangers of such violence, failing to investigate such acts, persecuting and punishing the perpetrators and compensate the victims, it is deemed in tacit assent or encouragement of such physical acts of violence against women. If the State does not or fails to take such measures, it is deemed to be in violation of human rights.

## 2. The Declaration on Eliminating Violence against Women:

The Declaration deals with the State responsibilities and obligations towards issues of violence in Article (4). The States ought to condemn violence against women, and must not invoke any customs, traditions or religious considerations to evade its obligations to eliminate it. The State, with all available means and without delaying, ought to adopt a policy that aims at eliminating violence against women. Towards this end it ought to:

c. Exert all due efforts to avert acts of violence against women, to investigate these, and make them punishable under national laws, whether such acts are committed by the State or by individuals.

## 3. The Council of Europe Convention on Protection from Violence against Women and Domestic Violence (Istanbul Convention)

The Council of Europe Convention on Protection from Violence against Women and Domestic Violence, which is also known as the “Istanbul Convention”<sup>6</sup> added to the definition of the concept of violence against women the concept of domestic violence. In Article (3), Paragraph (a) States that the concept of violence against women is “a violation of human rights, and a form of discrimination against women. It encompasses all acts of gender-based violence, that cause women physical, sexual, mental or economic harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”. Paragraph (b) States the concept of domestic violence as “all forms of physical, sexual, mental or economic acts of violence that occur in the family or in the house, between the married couple or previous or current partners, regardless of whether the perpetrator lives with the victim or not”.<sup>7</sup>

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<sup>6</sup> The Convention was concluded by the Council of Europe and ratification was opened on 11<sup>th</sup> May 2011 in Istanbul. It aimed at preventing violence, protecting the victims, and putting an end to the impunity of the perpetrators. By mid-2017, 45 States had signed the Convention, in addition to the European Union.

<sup>7</sup> See the study by the Women’s Center of Legal and Social Guidance, “Violence against Women and the Services Rendered to Abused Women in Hebron Governorate”, 2019.

Article (5) deals with the issue of the States' obligations and the due diligence.

1. All parties will abstain from any act of violence against women, ensuring that the State authorities, officers, agents, institutions and other actors comply with this duty.
2. The partner States shall take the legislative and other crisis management measures to exercise due diligence towards the prevention of all acts of violence Stated in this Convention or committed by actors other than the State, with the aim to investigate and punish such acts, and compensate the victims.

## **Second: The Regulatory Frameworks and References to Combat Domestic Violence at the Regional and Arab Levels within the Due Diligence Standard**

1. An Arab Draft Charter/Convention on Combating Violence against Women, Girls and Domestic Violence

The Coalition of Arab Women Parliamentarians against Violence against Women, via the Administration for Women, Family and Childhood Affairs, proposed a draft for an Arab convention on combating violence against women, girls and domestic violence. The Coalition's initiative is part of the efforts exerted by the Arab League to enforce the Regional Strategy and the Executive Action Plan on "the Protection of Arab Women: Peace and Security". The Strategy was adopted by the Arab League at the Ministerial level in DG / 144 / September 2015.

The draft was launched as a first draft at the regional conference held in Cairo in December 2016 under the auspices of the Arab League/the Administration of Women, Family and Childhood. The conference was attended by a large number of delegates, decision-makers, national and international bodies, and representatives of the civil society. In its last meeting in Bahrain, the Women's Committee adopted a decree to circulate the draft convention to all member States of the Arab League to offer their observations and suggestions.

## General Goals:

The proposed convention aims at:

- **Unifying the Arab States around a comprehensive integral legal system** while supporting the efforts exerted by the Arab countries to adopt similar national system capable of putting an end to violence against women and girls, a phenomenon that prevails in Arab societies;
- **Incorporating the culture of non-violence and non-discrimination** to promote human development and to progress of Arab societies;
- Regarding this convention as the main reference for international law on combating violence, as well as empowering the Arab League to play a pioneering role in this domain;
- **Criminalizing all forms of violence** against women, girls and domestic violence;
- Safeguarding the security and protection of Arab women and girls from **all forms of violence** they are exposed to, while ensuring their safeguarding from this violence, as well as **put an end to impunity** by ensuring that perpetrators shall be punished in accordance with the graveness of the offence they've committed and the seriousness of the violation of the human rights and dignity of the Arab women and girls committed by cracking down on them, for it is possible to pursue and prosecute them wherever they may be found for the crimes committed and as stated in the Convention;
- Ensuring the **protection of the family members from all forms of domestic violence**, which affect females in particular, while guaranteeing that perpetrators shall be prosecuted;
- Providing **comprehensive frameworks, policies, measures and mechanisms** for securing protection, safety and help, for victims of gender-based violence and those of domestic violence;
- Stating the **specific obligations of the States**, and identify the duties and responsibilities of State apparatuses and other **civilian and military** pertinent personnel towards securing protection and safety for the victims of violence against women;
- Introducing regional **mechanisms to support the efforts exerted by the States in this domain**, and establish accountability to ensure that all the different parties involved shoulder their responsibilities and fulfill their obligations in this domain.

## The convention draft distinguishes itself through a comprehensive approach to gender-based violence and domestic violence in that it:

- addresses all forms of violence against women and girls, in addition to the direct, underlying and root causes of this phenomenon;
- emphasizes the importance of disseminating a culture of respect for human rights and women's rights in particular on the one hand, while eliminating all gender-based discrimination on the other hand, specifically as the Arab League considers discrimination in itself violence and a fertile ground to justify violence against women and girls.
- states in details all the measures and mechanics for protection and safety, such as policies, programs, budgets, laws, cultures and punitive mechanisms.
- states the necessity to follow up on these policies, programs and measures, as well as set measurement indicators for evaluation.

The draft achieved a number of additions which are bound to enrich the international effort and make the content of the convention draft closer to and more harmonious with reality, as well as the attendant circumstances of the acts of violence included in the scope of the convention. This makes the convention more responsive to the challenges faced by women, in particular in the light of armed conflicts.

**The convention qualifies to be a prominent international reference.** In addition to times of peace, it includes times of armed conflicts and lack of security, as it stipulates specific measures that include both civilians and the military, as well as all the parties involved in the conflict. Thus, it provides heightened protection for the victims by reiterating the responsibility of the States to exercise due diligence towards the elimination of violence and the prevention of all acts of violence covered within the scope of this convention which may be committed during armed conflicts by non-formal armed groups, or members of foreign military units. Such acts are to be investigated, punished and compensated for.

**The draft adopted the expanded international definition of violence against women and girls in its various forms.** It constitutes the totality of previous international definitions. *“For the purposes of this convention, the term violence against women and girls should be understood as a violation of human rights and a form of discrimination against women and girls. It includes all acts of gender-based violence, which cause or may cause physical, sexual, mental, economic or social harm and*

*suffering to women and girls, including threats to commit such acts, by coercion, arbitrary deprivation from rights and freedoms, whether in public or private life.”*

**The draft also addresses the issue of policies, supportive measures and protection**, as it deals with the relationship between the victims, the perpetrators, and children, to ensure that there is no impunity for the offender. The provision of support services is to be considered a public right that is not subject to the victim’s will. It also includes the establishment and securing of hot-lines and emergency help centers for the victims which are geographically distributed in a way to facilitate access. It also deals with the measures needed for the enforcement of the law, for criminalization, and the measures that need to be adopted. These include, for example, ensuring the right to litigation and to attaining appropriate civil compensations, the right to visit and custody without endangering the safety of the victim and the children.

**Among the other topics covered in the draft are the follow-up and protection measures.** The convention emphasizes the necessity of follow-up measures and the protection measures required from the partner States, while detailing the duties of State institutions and personnel in handling cases of violence and estimating the danger which the victim is exposed to. There is further also a necessity to secure the required means of protection and to provide measures for protection in the case of residents, refugees, the displaced, immigrants and asylum seekers, while respecting the principle of non-refoulement in accordance with international obligations.

**“International Collaboration”**: the draft reiterates the necessity and importance of collaboration among the partner States to implement the articles of the convention within the framework of relevant international and regional agreements concerning international collaboration in the civil and criminal fields.

The mechanisms for monitoring and following up on the implementation of the convention is covered in chapter 8 of the draft. It becomes manifest through the establishment of a team of experts, explaining how they are selected, their methodology of work, and establishing the “Partner Committee” which includes the partner States of the convention. The committee submits its report on the implementation of the Convention to the Secretary General of the Arab League.

Chapter 9 of the draft deals with the relationship between this agreement and other international agreements signed by the partner States. The chapter states that this Convention does not breach the provisions of other internal codes of law and is binding in terms of international agreements which are in force or may come into force, by which further positive rights are acknowledged or may be acknowledged in the field of preventing and combating violence against women and domestic violence.

Chapter 10 of the draft illustrates the means to modify the Convention. Any partner State is entitled to submit a written application for modifications to the Secretary General of the Arab League.

The final chapter of the draft includes final provisions relevant to the resolution of any conflict that may arise from the implementation or interpretation of the Convention articles, the procedures towards its ratification, its coming into force, and the right to express reservations as to the Convention's provisions, conditions and the limits to exercising this right.

The adoption of the Arab Convention on Combating Violence against Women, Girls and Domestic Violence, if achieved, is bound to represent a significant step in the history of the Arab League that may greatly contribute towards paving the way for the establishment of firm foundations for human development and sustainable development in the Arab Region, as well as report the Arab voice and vision towards combating violence against women. By securing the basic natural and human rights of women, and by confirming a culture of protection for every person on the territories of this State, and for all male and female Arab citizens, to empower them to assume the role of actor in the building of the society and the nation, while achieving peace, security, progress and prosperity for all. The importance of the Arab agreement can be seen in the fact that it spreads the idea adopted by the Arab League as to the dire need for a law that protects the family from violence at the level of the Arab countries, regardless of the texts that should be general texts. Governments should adopt these, making them quasi-obligatory for States by passing laws as happened with the social security law, in addition to the laws that can constitute a general reference.<sup>8</sup>

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<sup>8</sup> Magda El Masry, member of the Political Bureau of the Democratic Front for the Liberation of Palestine. Interview, 3/10/2020.

## II. The Model Code for Combating Violence against Women and Girls in the Arab States

This Model Code emerges as the result of joint two-year efforts exerted by women's and human rights organizations and societies, as well as advocates of human rights from 14 Arab countries, upon an initiative by the Lebanese society of Kafa (Enough Violence and Exploitation), which works on combating violence against women. This comes after the realization that legislations in a number of Arab countries ignores gender-based violence, by dedicating these laws to women and generalizing them to apply to all family members. It was also observed that there is a lack of seriousness in combating this kind of violence, seen in the lack of procedures and executive mechanisms for the laws. In addition, there are no modifications introduced to the penal code and the personal status code which imply many aspects of violence practices against women. Thus, this step is a true step forward in the Arab World to bridge the lacunae in many laws that are deemed unjust to women.

The law was launched at the closing of the 16 international days for combating violence against women held in 2017. Kafa, Enough Violence and Exploitation, organized a first of its kind regional conference at which the Model Law for Combating Violence against Women and Girls in the Arab States was launched. The law is intended as an instrument that would help in developing the strategies of national civil societies and as a reference to help in the drafting or development of local laws as part of the long battle towards fighting violence against women and girls in our Arab societies.

Although some actual and tangible outcomes have been achieved in Arab countries at more than one level, what was reiterated in the interventions of the countries participating in the drafting of this law was that gender-based violence continued to prevail in these countries. This necessitated a serious endeavor to criminalize such actions through legislative texts. It became essential to translate these efforts into dedicated attitudes, binding texts and the development of a framework of principles and provisions capable of providing full legal protection. The aim is to ensure the full success of these efforts so that they may bear fruit, rather than being limited to mere talk. In its preamble, the law deals with an explanatory Statement of the reasons for its adoption. These focus upon the fact that what the UN human rights system has achieved in this domain lacked the localization thereof in the concerned States. Feminist and human rights bodies

found it adamant to partake in this activity to bridge existing shortcomings. Several meetings and seminars were held with the assistance of a number of human rights and legal experts to draft the Model Law with the aim to make it a scientific and legal reference that helps the States in formulating enforceable laws within their borders.<sup>9</sup>

These societies relied in their work on such references as the provisions of the International Human Rights Law, the International Humanitarian Law and the International Penal Code, with special reference to the following:

1. The Universal Declaration for Human Rights
2. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others
3. The International Covenants on Political, Civil, Economic, Social and Cultural Rights
4. The Convention on the Rights of the Child
5. The Convention on the Elimination of all Forms of Discrimination against Women
6. The Declaration on the Elimination of Violence against Women
7. Security Council Resolution 1325 and relevant resolutions
8. The Istanbul Convention issued by the Council of Europe (2000)

In addition to the recent international, regional and national bills and legislations, such as the Tunisian Law.

The men and women assembled discussed the various views presented, and an agreement was reached as to the provisions stated in this Law, since they meet the requirements of international standards relevant to the provision of the protection and safeguards for all age groups in the face of all forms of violence against women and girls, in the hope that the law will be adopted or approved as a reference when setting any relevant internal national positive legislation.<sup>10</sup>

What distinguishes this law is the content that reaffirms the aim to protect women and girls from all forms of gender-based violence, as

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<sup>9</sup> The Model Law for Combating Violence against Women and Girls in the Arab States, Kafa (Enough Violence and Exploitation) – Lebanon, 2017.

<sup>10</sup> The Model Law for Combating Violence against Women and Girls in the Arab States, Kafa (Enough Violence and Exploitation) – Lebanon, 2017.

well as prevent it, prosecute the perpetrators and compensate for it. It also aims to safeguard women's rights to a dignified life safe from violence, both in the public and private domains, while protecting such rights and providing the necessary mechanisms needed. The law also includes a number of definitions that had not been adopted in previous legislations that deal with domestic violence in the Arab countries. Some of the most prominent definitions include:

- **Discrimination against Women:** any distinction, exclusion, restriction or exploitation exercised based on gender, which may entail in terms of effect or aim to detract from the recognition of women's equal human rights and freedoms in civil, political, economic, social and cultural domains. Further, it is any invalidation of the recognition of women's entitlement, enjoyment or exercising of these rights, regardless of color, race, religion, intellect, age, nationality, economic and social circumstances, their civil or health status, language or disability.
- **Violence against Women:** this law focuses on violence against women and girls, including any act or omission of action based on gender, that causes, or may cause, women physical, sexual, mental or economic harm or suffering, including threats to undertake such acts, coercion, or arbitrary deprivation of rights and freedoms, whether in private or public life.
- The law also deals with a number of definitions, such as physical violence, moral violence, sexual violence, and economic violence, while specifying the jurisdictions of the police, the public prosecution, and the competent courts which have the jurisdiction to litigate cases of violence against women.

Moreover, the law is distinguished by adopting the principle of providing protection, prevention, rehabilitation and punishment with reference to cases of violence against women. Article (6) deals with the prevention of violence, stipulating that "the State, regularly and at all levels, conducts campaigns and awareness programs, in collaboration with bodies competent in the field of equality and human rights, as well as the civil society, in particular women's organizations. The aim is to raise the awareness of public opinion on the various forms of violence included in this law, their impact upon the society and the need to prevent them". Article (7) dealt with the State's obligation to take the necessary measures towards preventing

violence; “all ministries concerned with education, culture, social affairs, health, youth, sports, women, media, justice and interior, are required to take all measures needed to prevent and combat violence against women.”

Part III of the law focuses on the topic of protection from violence by establishing centers for the protection of victims of violence, and creating a fund within the State’s budget, which enjoys the status of abstract personality and financial as well as administrative autonomy. The fund assists victims of violence, provides care, offers immediate advance payment deducted from the compensation due to the victim until the court returns a verdict for compensation, as well as providing the means conducive towards the reduction and prevention of crimes of violence.

Part IV of the law deals with the mechanisms for investigation and litigation, through the establishment of a specialized unit within the police precinct. This unit undertakes tasks of search and investigation of complaints of violence against women, in accordance with the provisions of this law. The unit needs to include women officers trained in cases of violence against women. Recorded investigations are to be adopted, and should not be conducted except with the presence of the victim’s lawyer and a social worker.

Violence against women during armed conflict is dealt with by the law in particular in the wake of the political situation and circumstances witnessed recently by the Arab countries, and the escalating number of cases of violence women suffer from in these countries. The law reiterates this as follows: “The acts below are deemed acts of violence against women during armed conflicts which are considered aggravating circumstances, if such acts are committed as part of a wider armed attack, or any systematic attack aimed at women or a group of civilians, as subsumed under the description of crimes against humanity, genocide and war crimes. These include enslavement, enforced pregnancies, enforced disappearances, torture, rape, confinement, forced sterilization and forced circumcision.

The law was consulted for a number of similar laws in the Arab region, in particular in similar contexts. During all the formulation phases, we reviewed the Jordanian experience, since the social and ethnic structure overlaps with ours. Also, a number of other Arab countries in the region were reviewed, and most of the laws were consulted when drafting the law, including the literature and the policy maturity,

reaching other places in the West or at the global level where societies exhibit an advanced feminist and social mindset. Being open to these does not mean that we issue the same law, since – in the last analysis – it is essential to take the specificity of the Palestinian context into consideration. It is possible to align oneself to the general outlook, to standardize the idea and frame it according to local references, rather than importing, since no one imports violence, which was indeed produced locally.<sup>11</sup>

The Arab countries that participated in the development of this law have experiences different from the Palestinian experience. These countries have parliaments and committees that examine the laws. Our case is different, in particular since now laws are passed except through a legal decree by the President of the State. We are in full support of the existence of an elected legislative council, where laws are drafted. Some Arab countries, such as Tunisia and Morocco have highly progressive laws since their circumstances are different. However, it is adamant that our Arab concerns be unified, and it is important that we speak one language, since – generally speaking – we follow the Islamic Sharia in the Arab World, and enjoy the same culture, language, customs and traditions in these countries.<sup>12</sup>

Upon reviewing the regional references Stated above, we observe that the due diligence standard – though mentioned indirectly – is adopted in these references. However, most articles address the necessity of the States to commit to a set of measures and procedures, shouldering their responsibilities towards combating domestic violence.

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11 Dawood El Deek, Deputy of the Ministry of Social Development. Interview on 13/10/2020.

12 Saeda Al Atrash, Director of Mehwar Center. Interview on 7/10/2020.

## Part Two:

# The Family Protection from Violence Law Experience in the Palestinian Context

Following the revision of women status and the various forms of violence they suffer from in the Palestinian society, and identifying the legislations falling short of fulfilling the need for handling violence, in terms of prevention, prosecution, protection, criminalization, the provision of necessary services, and reparation, as a full circle without which no justice can be achieved. The State of Palestine needs to shoulder its responsibilities in terms of the due diligence required in handling special cases such as domestic violence, in particular since Palestine joined a number of international agreements and treaties relevant to the protection of women's rights from all forms of violence they may be exposed to.

This section will conclude the exposition of the work experience, the historical context and the instruments adopted towards the passing of this law. Focus will be on a set of social and legal justifications towards the passing of the law, the aim and philosophy for passing it, and the new reality that the law will create, in addition to the most important obstacles and difficulties faced by the civil society institutions in passing the law and offering suggestions to overcome these obstacles. The section will also review the observations made by feminist organizations on the final draft of the law, reiterating the necessity of obliging the State to observe its commitments and apply the due diligence principle in any legislation to be drafted.

### First: The Historical Background<sup>13</sup>:

Since its foundation in 1991, the Women's Center for Legal Aid and Counselling has offered legal and social services to abused women in the Palestinian society. In the light of rendering services to women, whether by representing them in legal courts or providing protection

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<sup>13</sup> A policy paper prepared by Women's Center for Legal and Social Counselling on the Family Protection from Violence Law, 2018

for those whose lives are endangered, and in the light of the recent legislative experience of the National Palestinian Authority, the Center – in cooperation with the Mental Health Program/Women’s Mental Health Project/Gaza – deemed it essential for official and grassroots organizations to launch a dialogue and make their voice heard. The aim was to require the Legislative Council to set legal texts that secure mechanisms and procedures capable of providing urgent protection for women who fall victim to domestic violence, by passing the “Family Protection from Violence” law.

This idea was put into action in 2004, by making use of the expertise and experience of Palestinian women on cases of domestic violence prior to the advent of the National Palestinian Authority. Work on cases of violence was achieved through cooperation with legal persons of social and political status, where laws and procedures were not enforced despite their limitations. Work was also through an appropriation of the prevailing social and cultural reality on the one hand, and the laws and procedures relevant to the issue of violence against women on the other. In addition, there was a monitoring of the problematics that face the providers of legal and social services when intervening in cases of domestic violence in both the governmental and the non-governmental sectors. The phases of working on the draft of the law were as follows:

### Searching and Preparing:

This phase relied upon a discussion and dialogue with the service providers in legal and social aspects. Further, all laws and regulations applicable under the National Palestinian Authority were reviewed, identifying how they deal with abused women, in particular those exposed to violence within the family. In addition, the international agreements on women’s rights were reviewed, and it was discovered that there are shortcomings in these laws and regulations, in addition to a gap between the applicable laws and international agreements that deal with the issue of violence against women and the need to provide protection. This enhanced a need to establish laws and procedures that guarantee the provision of protection for women as soon as possible, in particular those women whose lives have been threatened.

Once the search, review and discussion with specialists was concluded, the Center managed to draft a number of justifications in support of a special law for the protection of the family from violence.

A preliminary draft of the bill was prepared founded on a new philosophy within the Palestinian legislative system, namely that of protection and rehabilitation rather than a philosophy of punishment, in particular in the case of actions that do not amount to crimes.

## Working with the Civil Society

With the completion of the preparation of the preliminary material, namely the justifications, and the draft for the bill, the Center sought in 2006 to join forces with the various sectors of the civil society, be it the organizations actively engaged in the field of women's rights or human rights, in addition to the media, and feminist frameworks. The Center organized a large number of workshops that aimed at discussing the bill and its justifications, receiving any recommendations towards its development, by involving the largest number possible in these discussion around the bill. In 2007, the Palestinian NGOs Forum to Combat Violence against Women, as a CBO engaged with the advocacy of women's rights issues, adopted the bill with the aim of supporting the adoption of the bill at the official level.

## Working with the governmental sector:

At the same time as work with the civil society began, work with the governmental sector – represented in the Ministry of Women's Affairs and the Ministry of Social Affairs – as well as the police and public prosecutor sectors began. A number of meetings and specialized workshops were held with the concerned personnel at these governmental bodies, extending from 2006 till 2008. Further, a set of meetings were held with the decision-makers in these sectors. The efforts, whether community-based or governmental, culminated in a conference organized in 2008 under the auspices of the Ministry of Women's Affairs. The most important recommendations issued Stated the pressing need and necessity for passing a law dedicated to the protection of women from violence.

By the end of 2011, the dossier of the "Family Protection from Violence" law was officially submitted to the Ministry of Social Affairs and the Ministry of Women's Affairs. A committee was formed for the discussion of the draft in its final version, consisting of representative of the partners, namely the Women's Center for Legal Aid and Counselling, the Ministry of Women's Affairs and the Ministry of Social Affairs. Various meetings were held for in-depth discussions of all

observations around the draft from the perspective of a social protection strategy, the rules for legislative formulation, the review of texts and the articles of the law, based on relevant applicable laws and legislations, in particular the Palestinian Child Law, the Law of Juveniles, and the bill for the elderly. The articles that suggested a contradiction between the bill and the hierarchical structure of the Ministry of Social Affairs were discussed, and a new agreed upon formulation was reached of all the observations presented. It was agreed that the Ministry of Social Affairs should superintend and follow up with the concerned bodies, to follow up on the submission of the law in its final formulation to the Cabinet to undertake the necessary legal imperatives. In 2012, the bill was included on the Cabinet table, which in turn referred the bill to the Ministry of Justice. A legal committee was formed at the Ministry of Justice to discuss and pass the law. In 2015, the law was referred to the diverse ministries to review the law and offer observations.

This was followed by three drafts in the period from 2017 till 2020. In this study, we will cast light on the observations that discussed the final draft issued by the government in 2020, the most prominent observation in which were **the observations of the Women's Center for Legal Aid and Counselling** submitted in the name of the **Palestinian NGOs Forum to Combat Violence against Women in the West Bank and the Amal Alliance in Gaza**. These reiterated that based on the positive step taken by the State of Palestine towards joining international covenants and treaties, such as CEDAW. The topic of issuing legislations that adopt a comprehensive approach based on human rights a basic issue towards the effective combating of domestic violence. This entails clear obligations for the State under the international law to enact laws and legislations towards all forms of violence against the family, and implement and monitor such legislations to attain the desired objectives of a violence-free family. Consequently, it is essential to adopt the Model Framework for legislations relevant to violence against women as reiterated by the United Nations.

For as long as applicable laws in Palestine focus on the issue of punishment and penalty for the act committed in the wake of violence occurs, feminist demands, upon reviewing the last version of the "Family Protection from Violence" law prepared by the National Committee, affirmed the necessity of bestowing the aspect of **prevention and protection** of the first degree on the law prior to the reiteration of the issue of addressing violence after its occurrence. This

comes in accordance with what international references and practices affirm, most prominent of which is the Convention on Eliminating all Forms of Discrimination against Women, and the recommendations of the convention committee (in particular recommendations 19 and 35), the Istanbul Convention issued by the Council of Europe for the Protection from Violence against Women and Domestic Violence in 2011, the Declaration on Eliminating Violence against Women, and the recommendations issued by the rapporteur concerned with violence against women, its causes and outcomes, as well as Palestinian local references, most prominently the Declaration of Independence, the Basic Palestinian Law, the Magna Carta of Women, and the Strategic Plan to Combat Violence against Women 2011-2019, which reiterates amongst its strategic objectives the necessity to pass a Palestinian law for combating domestic violence. Further, the five obligations of the State are provided under the due diligence standard, which are stipulated by the customary international law. Passing and enforcing this helped in combating violence against women, obliging the State to take the following procedures:

## 1. Preventing Violence against Women:

By addressing the latent causes of violence against women and changing the mentalities, modifying behaviors, eliminating the factors that cause violence against women, broadening the scope of anti-violence programs, formulating laws, offering comprehensive constitutional guarantees, collecting data, and designing programs to combat violence against women, through the following:

- Taking preventive measures to prevent violence and its occurrence through preventive programs by assigning specific responsibilities to concerned ministries;
- Adopting broader definitions of violence against women and other family members, as such definitions will guarantee its documentation and identifying its spread, hence the ability to provide a greater variety of services for the victims. In reverse, the absence of a clear definition of domestic violence will adversely affect the implementation of effective national legislations.
- The necessity for the legislation to include a comprehensive approach based on human rights, and to acknowledge and recognize the following:

- Violence against women is a form of discrimination and an aspect of historically inequitable power relationships between men and women, and is deemed a violation of a woman's human rights.
- Defining discrimination against women as Stated in the Convention for the Elimination of all Forms of Discrimination against Women.
- Explicitly stating that customs, traditions or religious considerations may not be invoked as justifications for committing violence against women.

## 2. Protecting Women from Violence:

The State has to provide psychological support services for women and ensure their accessibility, while making protection orders available for women and ensuring that they may draw upon them. The State should also support protection officers while carrying out their duty, as well as enhance awareness and positive attitudes through continuous training activities. The State further provides a multi-sectorial approach and coordinated services through:

- Adopting protection orders which are deemed the most successful means of legal redress accessible to survivors of violence. These orders form part of a comprehensive approach to combating violence, strengthen the safety of victims and their autonomy, as they have the power to deter perpetrators from committing acts of violence in the future. They further empower survivors to take additional steps that secure their safety. A protection order is more like “a public declaration” of the State's commitment to combat violence against women, which is an important step in changing the prevailing social and legal culture pertaining to gender-based violence.
- The necessity to develop intensive training programs on providing legal, social and health services in accordance with human rights standards to service providers according to their respective specialization and the nature of their work.
- Forming a supreme national committee joint among institutions to monitor the implementation of the Family Protection Law consisting of members from the government and the civil society such as feminist organizations active in the field. The committee assumes task of preparing a report of evaluating the effectiveness of the law three years after entering into effect to monitor the effectiveness of this law.

### 3. Prosecuting Perpetrators of Violence against Women:

By fulfilling the needs of victims, responding to their fears, setting policies to put an end to the dropping of cases, securing a prompt and positive response by the police and the public prosecutor in favor of the victims, establishing the obligation of investigating violence against women, establishing the obligation to prosecute perpetrators of violence, enhancing confidence in the police and the judiciary, appointing specialized public prosecutors, establishing specialized courts, exploring possible alternative means to settle disputes, and ensuring that plural legal systems are in sync with the empowerment and strengthening of women through:

- Mediation Process – although this process provides further flexibility, and reduces expenses and delays for the women seeking justice, it also leads to further violations of their rights and the impunity of the perpetrator. Such mechanisms often work based on patriarchal values, and hence have a negative impact on women’s access to means of judicial reviews and remedy.” Thus, it is necessary to ensure that:
- Mediation applies only on misdemeanors and minor offences. We further reiterate the necessity to inform the victim of her rights, in terms of her right to resort to mediation, while ensuring that such mediation does not lead to restricting the victim’s access to the means of judicial remedies.
- Reiterating the inapplicability of mediation in the cases were the abused is a child, an elderly or a disabled person, due to the absence of equality in the power relations between the two parties.
- Reiterating that mediation may be resorted to once only, and may not be used in the case of recurrent assaults.

### 4. Punishing the Perpetrators of Violence against the Family;

The State is obliged to hold the offenders accountable and ensure their punishment as commensurate with the offence while achieving the aims intended by such punishment. The State is also obliged to broaden the scope of the existing penal system, so that it is not restricted to imprisonment where appropriate, and to establish punishments based on the standards of protecting human rights as

Stated in international agreements and standards as well as local references. This is achieved through:

- The inadmissibility of assigning some of the criminal penalties Stated in the draft to the current laws of the criminal code in force (the Jordanian Penal Code Nr. 16 of 1960, which is in force in the West Bank, and the Mandate Penal Code Nr. 74 of 1936, which is in force in Gaza), and to increase the penalty since these laws have become outdated and do not fulfill the need of the current times. These laws do not include specific definitions of a variety of crimes that occur within the family. Hence, we deem it necessary to redefine the crimes Stated in the Penal Code to become aligned with the international human rights standards which Palestine has committed itself to uphold by joining many international human rights treaties. There is no doubt, “*lex specialis derogat generali*”.
- The draft of the law has to establish deterrent penalties for such actions in the section on the sanctions, instead of doubling the penalties Stated in the current applicable penal code, which – as Stated above – have become outdated and no longer provide the desired deterrence.
- Reiterating the necessity of increasing the penalties if the victim is a disabled person, an elderly or a child. The trial hearings should be held in urgency while observing the confidentiality and privacy of the victim.

## 5. Providing Means of Remedy for Victims of Domestic Violence:

By adopting a victim-based perspective and the obligation to deal with domestic violence in a manner proportionate to the seriousness of the harm or loss sustained, the State is also held responsible for ensuring that the perpetrators compensate the victims adequately through reparation as stated in international references and frameworks. The victims should also receive indemnification for the harm and violence sustained, since in some cases, and despite the penalty against the perpetrator, the victim continues to suffer from the effects of the violence exposed to. A case in point is to examine the possibility of providing material compensation through the Palestinian Alimony Fund, where these funds are earmarked from the fines paid by the abuser.

Consultations around the preparation of this law started in 2004, thanks to the efforts of the feminist organizations and the General Union of Palestinian Women. We launched work on this law even before the declaration of the State of Palestine and prior to joining the international agreements and treaties on violence that preoccupied us. In 2004, violence evolved and we now had also cyber violence. Since a law is the product of intellect and politics, it matures as these mature. The drafts of the law developed in comparison with the final draft, and we received several observations, some of which were substantive, useful and respectable, while others were detrimental to the law, and based on disinformation, misunderstanding and connecting the law with Western agendas. This projection on CEDAW is one thing and the law is another thing, for it is a Palestinian local national law. There is certainly a connection between discrimination and violence, since the main driving motive for violence is discrimination, in particular discrimination against women. The law is open to development and this is what we are currently working on. The final version will be produced and we will resubmit it to the partners, since we do not work on the sly.<sup>14</sup>

## **Second: The Social and Legal Justifications and the Objective of the Family Protection Law**

Since the launching of the Women's Center for Legal Aid and Counselling, it has lobbied at the local level for the passing of the Family Protection Law. Since 2004, it has used various instruments of advocacy and lobbying, whether in targeting decision makers, or at the level of local advocacy campaigns targeting the public (political parties, activists, university students, clerics ...) and other groups as well. Throughout, the Center based its strategy, literature and discourse in the social and legal awareness programs on a set of legal and social justifications for the adoption of the law. In this part of the study, we review these justifications, in addition to the outcomes that emerged from the focus groups and interviews held around these justifications and the objective for passing the law.

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14 Dawood El Deek, Deputy of the Ministry of Social Development, Interview on 13/10/2020.

## Social Justifications:

One of the most prominent social justifications is the societal culture and concepts which solidify discrimination against women and other vulnerable groups in the Palestinian family, in addition to raising awareness since domestic violence issues are relegated to the private sphere and no party or body – no matter how powerful – is allowed to intervene in these issues. Among the other things that enhance a culture of violence inside the family is the issue of silence about such violence. There are no procedures at official institutions on how to deal with it; in fact, it all happens with the blessing of legislative texts void of any criminalization of such actions. In addition to all of the above, there are two significant and substantial justifications, namely the economic status of the Palestinian family, and the impact of poverty on this phenomenon, as well as the political situation, in particular the Israeli occupation which plays a substantial role in aggravating the unstable socio-economic conditions of the Palestinian families.

Societal violence prevails and our internal issues need to be addressed if we hope for this society to show further resilience. The slogan of enhancing people's resilience towards the completion of the national project needs to be credible. How can this society continue, if it is eroded on the inside? Domestic Violence must be acknowledged, and we need to acknowledge that it is everybody's duty to combat and eliminate such violence. There is a need to develop the system for combating violence. The law is not "a magic wand" to address violence. Even in the case that it is not adopted, efforts to address the drives to violence in their multi-dimensionality of socio-economic aspects need to continue as before. There is a cultural heritage of classical customs, traditions and upbringing which promotes discrimination. This needs to be addressed through a deterrent legal text. We need to raise the level of deterrence to prevent the ease with which violence is exercised. The law is a national and social demand, and has nothing to do with any non-Palestinian agendas. The need for this law arises with the growth of violence and the development of the institutions. It is a pressing need and this social and national benefit needs to be achieved, for it sets limits for the society as a whole, not merely the family. It is a law for the protection of the family from violence, not a law for the protection of women. It addresses the various forms and types of violence that occur within the family, whether against children, the elderly or the disabled. It is true that women are the most vulnerable to such violence due to the social structure and within power relations they are the weaker party;

however, the law addresses the violence that affects all the members of the family. The abused may as well be a woman.<sup>15</sup>

The changes to be reflected by the law in the reality of protecting the family and women, and in the issue of violence which is part of the inherited value system in our society, is the penetration of the law into the people's consciousness and temporal space. This is an extremely important issue, for raising awareness is essential for the penetration of the family consciousness on the articles relevant to protection, prevention and penalties, as it will also impact and reveal the silence.<sup>16</sup>

"We are in dire need of passing the law. In our capacity as ecclesiastical courts and as part of the Palestinian society, we observe an increase in the cases of violence in the Palestinian society both in number and in form. Vulnerable groups, in particular, such as children, girls and women are affected, and we face major challenges as a result of the inadequacies of the legal system which deals with domestic violence in the Palestinian society."<sup>17</sup>

## The Legal Justifications for the Adoption of the Family Protection Law

The Palestinian territories remain under the jurisdiction of the Palestinian Penal Code "The British Mandate Law" Nr. 74 of 1936, which is applicable in Gaza, as well as the Jordanian Penal Code Nr. 16 of 1960, applicable in the West Bank.

Given the outdatedness of the provisions in these legislations, they have become unable to live up to many of the current developments which have swept through the texture of the Palestinian society. They do not consider nor take into account the steps taken by human societies and civilized nations, building it in accordance with the enhancement of human rights and public freedoms. It is time for us to realize that every legislation that does not integrate with the spatiality and temporality of the current times.

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15 Dawood El Deek, Deputy of the Ministry of Social Development. Interview on 13/10/2020.

16 Mrs. Magda El Masry, member of the Political Bureau of the Democratic Front for the Liberation of Palestine. Interview on 3/10/2020.

17 Mrs. Scarlet Bshara, Judge at the Lutheran Evangelical Ecclesiastical Church in Jordan and the Holy Lands. Interview on 7/10/2020.

In fact, it is about to collapse and crumble within the boundaries it established for itself in previous times.<sup>18</sup>

Based upon the international standards for the protection of human rights, as Stated in international charters and treaties, and based on the qualitative step taken by the State of Palestine to join international charters and treaties, such as the Convention for Combating all Forms of Discrimination against Women (CEDAW), without any further reservations on any articles of the agreements. Thus, it is no longer only the obligation of the State of Palestine to adapt its legislations to relevant international standards, but it is also obliged to take all measures while securing all the necessary means needed to application on the ground. It is also obliged to enact a Palestinian law for the protection of families from violence. This includes texts that are legally binding and socially flexible to observe the privacy of the Palestinian family within the rules for confidentially and privacy needed to preserve the family, its unity and its protection from disintegration which may result from abstract penal legal intervention. It is a modern Palestinian law which includes penalties that aim at social deterrence through a process of reform and rehabilitation that targets both the perpetrators and the victims; a law that is suited for the time and place of the present times.<sup>19</sup>

The following justifications necessarily require a Palestinian legislation for the protection of the family from violence:<sup>20</sup>

1. Legislative schools in various countries of the world over tend to adopt the philosophy of domestic legislations at the expense of general legislations for a number of considerations. Most importantly is the inability of general legislations to address and cover the various details and specificities that may arise with some topics. This may negatively affect the groups targeted by these rights due to the focus of general legislations on generalities, and the avoidance of delving into detailed issues which is considered an important and basic backbone of some topics. Thus, the treatment and regulation of some important topics requires by necessity the allocation of special legislation to ensure that such

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18 Policy paper on the Family Protection from Violence Law. Women's Center for Legal Aid and Counselling. 2017.

19 Ibid.

20 Ibid

legislation covers the diverse issues and details that arise with these topics.

2. Knowledge of the rights and obligations granted to the person concerned is of utmost importance and necessity. Indeed, it is the first step to defend a right no doubt lies in such knowledge. This is why many countries have resorted to the simplification of these rights to ensure that the target groups are of full awareness thereof, as well as to the adoption of the policy of special legislations, whether relevant to certain groups (the elderly, the disabled, women, children) or relevant to the allocation of specific topics to be addressed and dealt with (labor, violence, harassment, elections, health, education). The aim is to facilitate for the addressed to access knowledge of these legislations or for the concerned with these topics to know the rights they have been granted.
3. Some topics, due to their specificity, require special procedures, whether in terms of complaints or in terms of the mechanisms of litigation. Indeed, some special topics require a departure from some of the principles adopted towards the integrity and transparency of the judiciary, such as the principle of public hearings, the principle of public records, the right of others to review the provisions, and other general principles related to the right to access information, and the right of the public to access information. Based on this, due to the specificity of some topics, the legislator is forced to formulate and develop special procedural rules that are different from universally acknowledged ones, to ensure their confidentiality, thus avoiding and rectifying what negative effects the publicity may have on individuals. This is also the case with procedural legislations of juvenile cases or crimes committed inside the family. Thus, the specificity of the crimes occurring inside the family, in particular those concerned with violence, whether physical, sexual or verbal, require the codification of procedures that observe the privacy and confidentiality of these crimes. This cannot be accomplished without a special legislation that safeguards such privacy.
4. The topics concerned with violence inside the family are various and diverse, since violence extends in its concept to include not only violence, but all forms of behavior based on threats of physical or moral assault or harm, sexual violence, arbitrary deprivation of rights, and other forms of abuse, including insults, humiliation and other similar forms of illegal exploitation of the husband's authority

in coercing and influencing the spouse or descendants. This signification extends to include the crimes that affect the ascendants on the descendants, or the descendants on the ascendants. It is worth noting that dealing and addressing these issues in the general law, such as the penal code, is bound to lead to the omission of various important details in this aspect, which may no doubt cause a negative impact inside the Palestinian families. This results from the immunity granted to numerous actions and crimes emerging from violence in the face of accountability and penalty of such practices.

The Palestinian laws which are currently in force in the Palestinian territories are of Ottoman, British, Jordanian and Egyptian origins and references, and are largely outdated. They are no longer commensurate with the Palestinian society in particular, nor the Arab and international ones in general. So far, no unified Palestinian penal code has been passed, and what is currently available does not address the topic of violence inside the family. It is also void of any penal procedures, and if there are any, the penalties are light and do not fulfill their purpose in deterring cases of violence inside the family.<sup>21</sup>

There are developments relevant to the State of Palestine signing a series of international treaties and charters that require the alignment of its legislations accordingly. The law is essential and fundamental in the Palestinian case; if a modernized progressive civilized penal code, that is based on international references and ratified agreements, had been adopted, the Family Protection Law may have been postponed, had there been an alternative law. However, due to the precarious legal status of the current phase, there is a necessity to adopt the law as soon as possible, since the existence of the “Family Protection from Violence” Law will fill gaps and lacunae in the policy legislative framework in dealing with violence, as it offers integral interventions. The law provides a role for mediation, to the exclusion of the aggressor not the victim. The family is given the utmost opportunity to remedy the violence prior to seeking legal intervention, since the basic idea and objective of the law is not to disrupt the family, but rather to strengthen family cohesion and protect the family from disintegration and collapse.<sup>22</sup>

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21 Mrs. Magda El Masry, member of the Political Bureau of the Democratic Front for the Liberation of Palestine. Interview on 3/10/2020.

22 Mrs. Lina Abdel Hadi, Head of the Legal Unit, Governorate of Nablus. Interview on 8/10/2020.

The current draft of the law continues to uphold the existence of the judge's discretion and fear thereof. If the family judge, family court and the domestic violence prosecution are not formed, the judges' discretion – in accordance with their intellectual references – and the culture that does not change with this law prevail. Hence, it is essential to establish a family court with judges, specialized and trained in working on cases of domestic violence. In addition, the draft of the law needs to be in harmony with the system of transference to a safe house, as well as the need for executive programs. The law needs to include executive regulations which explicate on all the procedures Stated in the law. We are in need of powerful executive regulations.<sup>23</sup>

### Third: Changes that the Family Protection Law will bring to the Palestinian Legal Situation

The changes to be affected by the proposed Family Protection Law lies in establishing a culture, for as soon as the law comes into existence and into force at the public prosecutor, the social development, the judiciary, and feminist and human rights organizations, and as soon as cases are received from the society that may have some fears of its adoption, was expressed in the recent outcry, voicing the society's fear of interference in the family's privacy. The matter will take time due to the discussions we get into every day in workshops and lectures for the community. However, there remains a perception that this law will limit the domestic violence that occurs, and create a stigma for the families that exercise violence. Hence, there is an outcry about it, since it will interfere in the privacy of the Palestinian society. There is fear of the disappearance of the traditional culture. The importance of the law lies also in the documentation of the cases and the figures that end up with the police and the prosecution because of the adoption of the law. By the end of each year, at least, we will attain clear official statistics on all forms of violence that are Stated in the law in a documented and coded manner.<sup>24</sup>

The penal code and the family status law can at times be unfair to women. We need a modern law that covers all the lacunae in the current legal system and that does justice to women and less fortunate members of the family. Our aim, in the end, is a cohesive Palestinian

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<sup>23</sup> Ibid.

<sup>24</sup> Mrs. Lina Abdel Hadi, Head of the Legal Unit, Governorate of Nablus. Interview on 8/10/2020.

family free of violence. This will only be achieved through a law that aims for deterrence. The Ministry of Social Development is open to all observations on the law, and this is a very healthy attitude. The problematic emerges when there is a conflict based on unscientific, unobjective or misinformed matters, and when it is a rejection for the sake of rejection. The objectives of the law are good, for it is a deterrent law, with articles that deal with prevention, mediation, and the law enforcement authorities' tasks clearly Stated as part of the law. It is important that the law should include articles on the protection of the service providers, since this law will burden them with great work and responsibilities, with no privileges or articles in support in return.<sup>25</sup>

The most important things the law should focus on are the responsibilities of the governmental institutions, in particular the Ministry of Social Development and the judiciary, as well as the accountability, and the importance of establishing a family court. The responsibility of the media in raising awareness of the law is also very important, in particular the official and non-official media.<sup>26</sup>

The changes effected by the law will be great, in particular the preventive and the curative aspects. The law will provide immediate assistance through precautionary procedures and urgency that the law should enjoy. We need precautionary procedures in addition to offering help to the victims of violence, while rehabilitating the abusers so that they may once again become good citizens in the society. To achieve this, we need integrated services which are supposed to be provided by this law.<sup>27</sup>

## Fourth: The Practical Significance of the Law for the Service Providers Themselves

Two focus groups were held for service providers in Jericho Governorate and Tubas Governorate. The groups consisted of a number of representatives of the official and the non-official sectors,

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25 Saeda Al Atrash. Director of Mehwar Center. Interview on 7/10/2020

26 Magda El Masry. Member of the Political Bureau of the Democratic Front for the Liberation of Palestine. Interview on 3/10/2020

27 Mrs. Scarlet Bshara, Judge at the Lutheran Evangelical Ecclesiastic Church in Jordan and the Holy Lands. Interview on 7/10/2020.

which are in direct contact with the women and families that are exposed to violence, and thus offer a set of social, legal, psychological and health services. The aim for holding these meetings was to verify the extent of the group's knowledge of the current draft of the law, and whether they have been informed and trained on the articles of the law, as they represent the competent party that will implement the law. The focus group meetings also aimed at determining how they view this law, its objective, and the philosophy informing its adoption, and to establish whether the law was an enhancement of their work or an alternative, to determine the extent to which the law needs to be adopted in the current phase. They were also asked if they believed this law to be in agreement with prevailing customs, traditions and religion. The participants confirmed that:

- They are aware that the Family Protection Law is being drafted, and that it will focus on addressing cases of domestic violence to bridge existing lacunae. However, they had not reviewed the law, and it was unclear to them; for example, the participation of the Palestinian police force in the group affirmed that “we’ve heard that the law requires lots of obligations that we have to meet as the police force. Unfortunately, our resources are very limited and will not cover the expenses for the implementation of this law.”
- It is necessary for the law to include articles that specify the nature of the roles and jurisdiction of each ministry as well as the tasks to be undertaken by the Directorates of Health, Social Development and the Justice Sector towards its implementation. These differ in terms of competence and interventions in dealing with cases of domestic violence.
- Among the issues that were focused on by the focus group was that the protection advisor does not enjoy the powers of judicial control as does the police. When applying the law, they will enjoy this competence which will grant them power and legitimacy to intervene in cases of domestic violence.
- Service providers feared the absence of the Family Protection Law, believing that the adoption of the law in the current phase would provide them with a sense of security when rendering services due to the presence of a binding and deterrent legal text that would primarily protect them when rendering the service and protect the victims of violence.
- There is a need to receive specialized training to raise their awareness of the texts of the law and the nature of the services

they are expected to provide to persons who fall victim to domestic violence, as well as to train them in modern and developed mechanisms for the delivery of these services.

- Financial resources were the most prominent obstacles pointed out by the focus groups. They represent a major challenge since the law will introduce new protection procedures. A case in point are the protection orders which will require financial resources and personnel from the justice sector to be implemented.
- Finally, it was reiterated that the articles of the law do not stand in contradiction with customs, traditions and religion. One of the female participants from the Palestinian police force affirmed this by quoting, "Religion has always existed, and customs and traditions have always existed. But since they have not protected women, we need a law to do so."

### **Fifth: The Challenges and Obstacles Encountered in the Passing of the Family Protection Law and the Mechanisms to Overcome them:**

The Palestinian arena has recently witnessed a vicious attack in rejection of the Family Protection Law by some bodies that consider themselves keen on preserving the societal cohesion and the Palestinian family. These bodies demonized the principle of the law and all those advocating its adoption. This was one of the most prominent challenges that confronted the adoption of the law in recent times, and was emphasized in the interviews during the preparation of this study. There were also other challenges that will be listed in this part of the study, in addition to some suggestions and solutions to overcome these obstacles and push for the adoption of the law.

- At times, the idea of deliberating and adopting the law was not taken seriously despite its significance. It went back and forth between workshops and consultations which deliberated various versions of the law and held discussions in committees.
- More than one government was changed, while the law was being deliberated at the level of partner ministries, but at times it was not dealt with and didn't top the government's priorities. No doubt all governments addressed it, but then dealt with it as currently not pressing nor necessary, and in fact **as posing a headache**. In

reference to the law's journey, not a specific ministerial period. Also, there is the setback that affected the society at the political and the social levels, and the coup with its subsequent political division and the disabling of the Legislative Council which was a fatal blow for the law.<sup>28</sup>

- The poor societal awareness and consciousness on the issue of violence within the family, and the negative impact of such violence on all the family members, the familial cohesiveness and the adverse social and economic effects that may result.<sup>29</sup>
- The environment that is conducive to violence, in terms of the Occupation, poverty and unemployment. This is an economic aspect that has a social impact, and for as long as these drives exist and continue, they will sustainably reproduce violence.<sup>30</sup>
- Among the challenges that may face the law upon its adoption are the budgets and available financial resources which are deemed as insufficient for combating violence. Accordingly, how can services be provided with the lack of minimal funding, and the qualification of service providers, whether the justice sector or the social researchers and the advisors on women's protection. For example, the Governorate of Hebron is one of the largest governorates in the West Bank. In the Social Development Directorate there is only one female protection advisor and the Directorate has only one car that works for all groups targeted by the Ministry, such as the poor, children, the disabled and abused women. This is applicable to all the governorates of the West Bank. Such challenges exist even before the adoption of the law, and will continue upon the adoption thereof.<sup>31</sup>
- The political will is another obstacle as it is not willing to adopt such laws currently. The issue of the rotation of power is far more important than these laws for some decision-makers. A number of compromises will be made at the expense of some of the marginalized groups in the society. Further, the Palestinian society suffers from a societal culture that is conducive to the abuse of women and prevents them from accessing their rights. The movements in opposition of the adoption of the law, which have

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28 Dawood El Deek. Deputy of the Ministry of Social Development. Interview on 13/10/2020.

29 Dawood El Deek. Deputy of the Ministry of Social Development. Interview on 13/10/2020.

30 Ibid.

31 Dawood El Deek. Deputy of the Ministry of Social Development. Interview on 13/10/2020.

proliferated in the Palestinian society, argue in the name of Sharia and religion – unfortunately without any true basis.<sup>32</sup> .

## How to Overcome the Challenges and Obstacles?

1. The necessary institutional arrangements, such as the financial resources and personnel trained for the implementation of the law, require costs that need to be earmarked in the general budget as the law is adopted. If a good law is adopted, it cannot be enforced like the other laws that were previously adopted but remain unenforced due to the financial situation and the lack of the allocation of sufficient funds.
2. The momentum of dealing with the Family Protection Law needs to be maintained socially, and the law needs to be passed in its capacity as a ministry's or government's agenda. This is their role and obligation in combating domestic violence, while emphasizing that this law is of social and political national interest.
3. All the members of the society need to be engaged in the law. It needs to attain horizontal outreach through raising awareness of the law, since the counter-campaigns are not easy to deal with and are backed by political agendas. There are also campaigns based on social thought rather than political thought; these are not easy either, for such social thought does not want such issues to be channeled and eliminated since this would disrupt the social power hierarchy. The adoption of the law would affect their interests, for there are groups that benefit from domestic violence cases that are not handled in official civil courts, but rather in religious courts.<sup>33</sup>
4. It is essential to refer to the references, laws and agreements that are in alignment with human rights, and not the spiritual and religious references, since the use of religion towards political, social and religious interests affects the adoption of the law.<sup>34</sup>
5. There needs to be formulations agreed upon by all the political powers and parties, which are tolerant of the other, advocate an enlightened society, and work towards a systematic and civilized dialogue. There needs to be cooperation towards the establishment of a policy of tolerance to attain a consensus formula. Feminist

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32 Mrs. Lina Abdel. Head of the Legal Unit at the Governorate of Nablus. Interview on 8/10/2020.

33 Dawood El Deek. Deputy of the Ministry of Social Development. Interview on 13/10/2020.

34 Mrs. Lina Abdel. Head of the Legal Unit at the Governorate of Nablus. Interview on 8/10/2020.

organizations need to take radical procedures, for women need to take a stand and to boycott elections if the issues and rights raised by the feminist movement are not adopted. There needs to be concrete steps taken by the feminist movement similar to the experience of the feminist movement in Tunisia when adopting the law. They organized a sit-in in the streets for 21 days to call for the adoption of their demands. The feminist movement needs to be autonomous, not associated with any political parties. It needs to break free of the mold, for as long as we are tied up with political organizations, there is a big problem.<sup>35</sup>

6. Broadening the circle of lobbying and advocacy towards the adoption of the law, and the formation of an alliance under the umbrella of the NGOs Forum, and with the participation of other parties in the alliance. This alliance will include prominent political persons who are open to all. It lies outside the circle of sensitivities, for the battle is immense and is in need of a major coalition.<sup>36</sup>
7. It is fundamental to reiterate the need for a clear political will to adopt the law. There should be no need for negotiations or compromises. Rather, there should be national consultations to adopt the law, and there should be a clear will by the decision-makers of the State.
8. The service providers and personnel working in this field should be protected. There should be a system for the protection of the service providers at the same time as we work on protecting women and the family from violence. Service providers should also receive the necessary training and qualification to be able to enforce the law.

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<sup>35</sup> Mrs. Lina Abdel. Head of the Legal Unit at the Governorate of Nablus. Interview on 8/10/2020.

<sup>36</sup> Magda El Masry. Member of the Political Bureau of the Democratic Front for the Liberation of Palestine. Interview on 3/10/2020





## Conclusions

### **General conclusions from the theoretical framework of the study:**

- The passing of comprehensive legislations is very essential for an effective and coordinated response to confronting violence against women. States have clear obligations under International Law to enact legislations that shall address all forms of violence against women.
- The adoption and implementation of national laws to encounter all forms of violence that occur within the family, shall be in line with and consistent with the international and regional standards, and local references to protect human rights. Such laws must specify the legal, social and medical interventions that countries should take into consideration when adopting them to address the phenomenon of domestic violence.
- The most prominent international references related to the issue of protecting the family from violence, is the Convention on the Elimination of All Forms of Discrimination against Women, the pertinent recommendations, the Declaration on the Elimination of Violence against Women, and the Council of Europe Convention on the Prevention and Combating of Violence against Women and Domestic Violence "Istanbul".
- On the regional level, the draft Arab charter / convention to combat violence against women and girls and domestic violence and the Model Law against Violence against Women and Girls in Arab Countries addressed the issue of addressing the phenomenon of domestic violence. Human rights treaties and the extent of the state's obligations to implementing them at the local level.
- The role of the United Nations in preparing and submitting studies, making decisions, setting recommendations and general obligations for the states to be implemented within the local policies and legislations that take into account and respect human rights, is an important and essential role, which have often formed binding frameworks for the legislations enacted by the States in their local communities.

- Setting and implementing the due diligence standard to address violence against women has helped in changing the prevailing perception that it is not the state's duty to intervene in violations that occur in people's private lives. The application of this standard to cases of violence against women is namely the state's duty to prevent affiliated and non-affiliated actors to commit violence and protect it from being subject to it, to prosecute and punish the perpetrators, and to deliver compensations to women or girls affected by it.
- The application of the due diligence standard in addressing violence against women is of great importance because it eliminates the separation between the public and private spheres established by international and domestic laws. It focuses on prevention and effective remedies, and requests countries to tackle the root causes of violence against women, forms a means to address it, and complements the principles and other frameworks pertaining to human rights.
- The principle of due diligence: Some countries have applied this standard within their domestic legislations, while others have incorporated it in their internal mechanisms to address the issue of violence in a partial and slow manner. There is a serious need for its activation on more than one level, especially as it needs implementation decrees, financial resources and political will to be implemented, so that it does not remain ink on paper.
- One of the most protruding social justifications is the social culture and concepts that perpetuate discrimination against women and the less vulnerable groups within the Palestinian family. Therefore, awareness should be raised, since domestic violence issues befalls within the private sphere and it is not permissible for anybody or entity, to intervene in these cases at all regardless of their importance; and what encourages the culture of violence within the family is that culture of silence, especially that there are no official procedures in to be followed in the different institutions on how to tackle it.

## Conclusions of the Interviews and Focal Groups:

- It must be recognized that domestic violence is there, and we do acknowledge that it is everyone's duty to address and eliminate this it. There is a need to develop the system of confronting violence, for the law is not the "magic recipe" to encountering violence even if it is passed. The law is one of the most important pillars, however, after its endorsement, work must continue to address the multidimensional engines of violence from both economic and social aspects.
- The issue of domestic violence must be dealt addressed with a deterrent legal text so that the practice of violence will not be trivial.
- The law is a national and social demand that has nothing to do with any non-Palestinian agendas. The need for it has evolved with the increase of violence and the advancement of the work of institutions. It is an urgent requirement and this national and social entitlement which restricts the whole society, must be fulfilled.
- The phenomenon of violence is increasing and accumulating and it is taking different forms and dimensions, and there's even articulation in the forms of violence to be in line with the fragile legal reality.
- The law is fundamental and necessary in light of the Palestinian situation. If a modern, progressive civilized penal code had been adopted based on international references and ratified conventions, the passing of this law could then have been postponed.
- The law will fill gaps and breaches in the legislative policy framework through encountering violence and providing integrated interventions. The law paves the way for mediation, keeps the perpetrator away and not the victim, and gives the family the maximum chance to revert to a remedial approach to overcome the reality of violence before resorting to legal approach, because the basic idea and purpose of the law is not to break up the family but rather, to strengthen the family's cohesion and to protect it from disintegration and downfall.
- The change that the law will bring will establish a culture of its own. The mere existence of this law and its application in the Public Prosecution and Ministry of Social Development, the judiciary and women's and human rights institutions is the agent for enabling this culture.

- When documented cases and figures are monitored as a result of the passing of this law, they will reach the police and prosecutors, and at least by the end of each year, there will be clear and official statistics on all forms of violence that were stipulated in the law in a systematic and programmed manner.
- The change that the law will bring is significant, especially the preventive and remedial aspect; it will provide immediate assistance through precautionary measures and the urgency manner a law should have.
- The protection counsellor does not enjoy the status of judicial control as the police does. However, when this law is implemented, he will have the capacity and legitimacy to intervene in cases of domestic violence.
- The most noticeable constraints against the adoption of this law, is that its whole idea was never taken seriously despite its importance. It only kept on reciprocating between workshops, consultations and discussions within committees.
- A challenge that invalidated the activation of the law was the setback that has befallen on the Palestinian society at the political and social levels, the subsequent political division and the disruption of the Legislative Council.
- Another challenge that led to the non-adoption of the law was the insufficient financial resources.
- The use of religion for political, social and religious interests is very hampering to the process of passing the law.
- The political will is not ready to adopt such laws, which poses challenges at the current stage, especially that the Palestinian Authority has other priorities and concerns rather than dwelling on such a law or the likes, which means that concessions will be made at the expense of some marginalized groups in the society.
- The absence of a legislative council is one of the biggest obstacles to the passing of this law and other ones.
- Other challenges include interests, especially for clans and the judiciary; for clans have direct legal, moral or financial interests. Moreover, there are the political intellectuals who may consider this issue as part of their identity.

## Recommendations

- Focus should be on the theme of the state's obligations to provide protection to victims of domestic violence and to review regional and international references, frameworks and charters for this obligation by focusing on the standard of "due diligence" to address all forms of violence within the family.
- There should be a firm discussion with Palestinian decision-makers and political parties on the necessity to pass the law.
- We should learn how to formulate our coalitions; with human rights and civil society organizations, particularly women's organizations and political parties, as well as academics, experts, and competencies. We should also learn and how to form a broad front to defend women's rights, how to draft our human rights discourse, and to learn how to live in dignity within the family.
- The need to take into account the necessary institutional arrangements such as financial resources and qualified human resources. The law has a cost, and if this cost is not pumped within the approval stages of the law and is not reflected in the general budget, then the good law cannot be implemented.
- The momentum must be maintained in dealing with the Family Protection law on a social level. The law must be passed as an agenda of a ministry or a government which should confirm that this is its role and duty, however, awareness of its importance should be raised, as passing and implementing it, is in the best interest of every individual and every family as it is a first class national, social and political interest.
- All spectrums of the society must be involved in this law, which should spread horizontally through raising awareness of its importance, because the anti-law campaigns are not to be undermined as they stem from political agendas.
- It is important that the law includes special articles to protect service providers because this law will place a very large workload and responsibilities upon their shoulders, yet on the other hand, there are no merits or substances that should support their work.



## Appendix (1)

### Questions of the Focus Group

1. What do you know about the Family Protection Law?
2. In your belief, how can this Law help in the protection of the family and women from violence?
3. How do you see the idea of the Law, the philosophy it is based on, and its objective? Is it acceptable to you or not?
4. As far as you know, do you believe that the Family Protection Law is an alternative for the current protection procedures? Or does it rather enhance and support these?
5. How far do we need the adoption of the Law in the current phase?
6. As far as you understand the Law, do you believe it is in agreement with religion, customs and traditions?
7. Recommendation and suggestions.

## Appendix (2)

### Questions of the Interviews

1. Do you believe that there is a societal and legal need for the adoption of the Family Protection Law? Why?
2. What changes will this Law effect in the protection of the Palestinian women's and family rights?
3. What are the most prominent matters that you believe should be included in the Law?
4. What are the most prominent difficulties and obstacles faced by the Law or that may be faced in the future?

5. What are your suggestions and views to overcome these difficulties and to push towards the adoption of the Law?
6. What knowledge do you have of the Unified Arab Model Law?

## Appendix (3)

### The Schedule of Interviews

	Name	Position/Title	Date of Interview	Place of Interview
1	Majida Al Masri	Member of the Political Bureau of the Democratic Front, member of the General Union of the Palestinian Woman, and the Palestinian National Council, a feminist, and the ex-Minister of Social Development.	3/10/2020	Nablus – The Society of Al Umahat School
2	Dawood El Deek	Deputy at the Ministry of Social Development	13/10/2020	Ministry of Social Development - Ramallah
3	Lina Abdel Hadi	Head of the Legal Unit at the Nablus Governorate	8/10/2020	Nablus
4	Saeda Al Atrash	Director of the Center for the Protection and Empowerment of Women and their Families “Mehwar”	2020/10/7	Mehwar Center – Beir Sahour
5	Scarlet Bshara	Judge in the Court of First Instance for the Evangelical Lutheran Church in Jordan and the Holy Land	7/10/2020	Mehwar Center – Beir Sahour