مركز المرأة للارشاد القانوني والاجتماعي
Women's Centre for Legal Aid and Counselling

منتدى المنظمات الأهلية الفلسطينية لمناهضة العنف ضد المرأة
Palestinian Non-Governmental Organization Against Domestic Violence Against Women (Al Muntada)

Parallel Follow-up Report Prepared by the Women's Center for Legal Aid and Counselling (WCLAC) and the Palestinian Non-Governmental Organizations Forum to Combat Violence Against Women (Al Muntada)[1]

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Introduction:

1. On April 10th, 2014, The State of Palestine acceded to the CEDAW Convention in a move considered to be a promising step towards attaining gender-equality; something that the Palestinian feminist movement had been struggling to achieve for decades. The outcomes of this accession were formulated through a treaty-based obligation to submit an accomplishment report to the CEDAW Committee[2].

2. CEDAW Committee commended the response of the State of Palestine to commit to submitting a Follow-up Report within two years. However, on the date of writing, no tangible progress has been made on this follow-up since the submission of the initial report.

3. Al Muntada and WCLAC welcome the accession of the State of Palestine to the CEDAW without reservation and stress the need for the State party to take necessary measures and procedures to enforce the provisions of this Convention as legally binding. The State of Palestine accession to the Convention should not be only a political move to enhance Palestinian sovereignty at the international level.

[1] Al Muntada is Palestinian coalition of seventeen women's and human rights organizations combating violence Against Women including the following organizations: Bisan Center for Research & Development, Palestinian Working Women Society for Development, Women's Centre for Legal Aid and Counselling (WCLAC), Women's Affairs Technical Committee (WATC), Palestinian Counseling Center, Family Defense Society, Women's Studies Center, Sawa Organization, Young Women's Christian Association of Palestine (YWCA), Palestinian Family Planning and Protection Association, Rural Women's Development Society, Psycho-Social Counselling Center for Women (PSCCW), Health Work Committees, The Palestinian Initiative for the Promotion of Global Dialogue and Democracy (Miftah), Stars of Hope Society, QADER for Community Development, Mother's School Society

[2] The State of Palestine discussed its first report on July 11th, 2018, before the aforementioned committee and then issued its concluding observations on July 25th, 2018

4. The limited progress made by the State of Palestine thus far in implementing the provisions of CEDAW is exemplified by their failure to publish it in the Official Gazette. Consequently, the Convention will not have a binding legal force within Palestine law. In addition, the State of Palestine has failed to enact the Family Protection Bill (FPB), which will enhance the legal system to positively intervene in Palestinian family life that is largely governed by social norms and discriminatory laws. The process of harmonizing the current legislation with the provisions of the Convention had been delayed, given that the system of statutes and legislations applied in both the West Bank (WB) and the Gaza Strip (GS) is mostly outdated. It can be recognised that discrimination against women in Palestine is a well-founded practice in both the legislative and judicial processes threatening women's access to justice.

5. The State of Palestine has witnessed a counter-campaign against the incorporation of (CEDAW) in the Palestinian National Laws led by some conservative leaders of certain clans and political Islamic parties. Such forces have portrayed human rights conventions, CEDAW in particular, as imported western instruments and an "intellectual luxury" that conflict with the values of Palestinian society. It was clear that the Palestinian Government had not employed measures to counter this attack which was aimed at discouraging the State of Palestine from fulfilling its obligations to enforce the international treaties it had ratified.

6. Despite the specific situation in Palestine in regard to occupation, political division, the blockade of the Gaza, and the spread of Covid-19, there is no justification to delay the implementation of the Convention's provisions. Ultimately, such circumstances should be a driving force to push the State party to expedite the adoption of the provisions and incorporate them into Palestinian National Law, based on the appropriate "due diligence" obligations.

The information required to be provided within two years of receiving the concluding observations are based on Article (53):

Article (53) Paragraph 11 (a):

Article (1) of CEDAW explicitly defines Discrimination against Women and the Follow-up Report of the State of Palestine indicates that the State has adopted a definition of discrimination in the Family Protection Bill (draft law). However, the draft law is suffused with many problems; the imbalance of power pertaining to gender-based discrimination is evident and as it is being drafted it cannot be enacted as law through the official legislation channels.

7. In order to ensure the definition of Discrimination in all legislations endorsed by the State of Palestine, it is necessary to adopt it as one of the constitutional principles on which the Basic Law of the State of Palestine.

8. The official Follow-up Report indicated the Public Prosecutor's Office ongoing efforts to combat GBV. This, however, is not a substitute for codifying the definition of "Discrimination against Women" in Palestinian legislation. Without this, any procedures and policies appropriated to eliminate discrimination against women cannot be in form of genuine practice and shall remain ungoverned by the regulatory legal framework.

9. The official Follow-up Report also indicates the role of the Shari'a Judiciary in adjudicating cases based on discrimination. In reality, the Shari'a Judiciary is not a competent authority to consider cases of discrimination against women due to the legal framework which governs them discriminating against women and girls, as laid out in the Personal Status Laws (PSL) currently in force. These provisions must be amended in accordance with the provisions of CEDAW.

10. The follow up report indicates that the establishment of family protection units at the Public Prosecutor's Office in 2016[3] created a rapid development in the way cases of violence against women were being adjudicated. Despite this, the Public Prosecutor's Office continues to come up against a judicial system incapable of prioritizing gender-equality. Despite a Gender Unit in the judiciary being formed, the judges who work within it are a minority compared to the number of judges overall who continue to adhere to conventional perceptions of gender norms and hierarchy. Cases of violence against women are not always considered by judges who specialise in gender issues, leaving the door open to discriminatory practises. The Public Prosecutor's Office pointed out that women may also be subject to criminal charge when seeking justice for an incident in which they were the victim; for example the case of a woman convicted of adultery in response to her complaint of being sexually harassed.

Paragraph 13 (c):

a. Accede to the Optional Protocol:

11. The State of Palestine accession to the Optional Protocol on April 10th 2019, was perhaps the only progress made since the submission of the initial report. It is not however, accompanied with concrete measures on the ground to ensure the existence of legal and protection frameworks that allow for domestic legal remedies to women victims of discrimination and violations of women's rights.

12. Accession to the Optional Protocol was not accompanied with awareness campaigns to utilize this mechanism and means available for local remedies, if any, and how to exhaust them, prior to filing their individual campaigns to CEDAW Committee. Thus, women's lack of knowledge of their ability to file individual complaints, undermines the value and significance of this step.

[3] The Family Protection Unit at Public Prosecution Office were established in 2016 and not in 2012 as stated in the official report

13. Little progress has been made in enforcing the provisions of CEDAW and its legal merits, such as the incorporation of the Convention into the Palestinian national laws and legislation to ensure harmonising these legislation in accordance with CEDAW provisions.

B- Publication of the Convention in the Official Gazette

14. Article (10) of the Basic Law stipulates that it is the responsibility of the State of Palestine to expedite its accession to International Conventions, including human rights conventions. However, the Palestinian Basic Law does not specify the legal value of international treaties and conventions within the Palestinian National Legal system.

15. Despite the lack this clarity in the Palestinian constitution, Decision No. (4) of the Palestinian Constitutional Court[4] clarified this legal value. It stated that national legislation is unconstitutional in the event it violates the international convention, meaning that the decision reaffirms the primacy of the international treaty over national legislation. However, the Court overturned its decision by noting that international treaties and conventions would not be enforced if they opposed the Palestinian religious and cultural heritage.

16. A successive decision by the Constitutional Court[5], indicated that the legal value of international conventions and treaties is ranked lower than the Palestinian Basic Law. This comparison is legally fallacious as all Palestinian legal rules, in their varying hierarchies, are considered a homogenous unit of national law. The Constitutional Court's decision also clarified the official approach to law enforcement tools within the national law, cogitating that the State of Palestine is a "dual system[6].

17. Palestinian Constitutional Court's decision created an unusual method on the Dual System, which is the conditionality of publishing any convention to which Palestine acceded in the Official Gazette. It should be noted that the publication of conventions in the Official Gazette is not a condition for the implementation of the convention at the national level and the conventions are legally binding on the State Party in all situations.

18. With this, it is constitutional practice to instruct a binding legal power to international treaties within the rules of national law, and despite the acceptance of this tool by the CEDAW Committee, in order to avoid the complexities of the Palestinian situation pertaining to the inactiveness of the Legislative Council, the State of Palestine is still unable to publish the convention in the Official Gazette, until the date of writing this report.

19. It is feared that even if CEDAW is published in the Official Gazette, obstacles will still be faced in the publication in light of the Constitutional Court's aforementioned decision that the treaties and conventions will not be “enforced within the Framework of the Palestinian

[4] Issued on November 2017

[5] Issued on March 12th, 2018

[6] Constitutional practices in many “Dual System” countries imply that an international convention must pass through the official legislative channels of the acceding country through the issuance of legislation, stipulating the need to incorporate the convention within the provisions of domestic law.

National Legal System if they contradict with cultural and religious heritage and with Palestinian Basic Law". From this standpoint, we affirm the concluding observations in paragraph (12) and call on the State of Palestine to abide by its stated obligations.

20. In its official Follow-up Report, the government highlighted that the prosecutors' often refer to the provisions of the Convention while conducting their investigations and preparing the accusations. The official report also indicated that the Shari'a Judiciary's approach also based on the Convention's provisions. In light of the slow progress made in implementing the provisions of the Convention at the national level, these measures undertaken by the Public Prosecution and the Sharia' courts, if true, constitute individual ad-hoc measures that do not live up to the State's obligation to enforce the provisions of the Convention. In the sense that individual practices cannot be relied upon to enforce obligations to the size of the State's obligations under the Convention.

21. Furthermore, decisions can be appealed based on the provisions stemming from the Constitutional court's decision[7], which indicated that the Convention does not acquire binding legal power within the framework of the national law unless it passed the formal stages required to issue a specific domestic law. This means that Palestinian Courts cannot apply the provisions of the Convention, if the government failed to publish it in the Official Gazette, and that any rulings issued based on the Convention at this time can be challenged under penalisation of unconstitutionality.

Paragraph 15 (a):

22. The State of Palestine underwent different legal systems in the WB and the GS due to the fact that both territories were and still are governed by different external powers, which led each of them to being subject to a distinct legislative process from the other.

23. Stalled reconciliation efforts and the failure to hold legislative and presidential elections are a major obstacle in concluding the process of unifying the laws between Gaza Strip and West Bank legislation, thus delaying enforcement of the provisions of the Convention.

Paragraph 15 (c):

Penal Code Draft 2011:

24. The State of Palestine drafted a Penal Code in 2011[8], however, this has not made much progress in addressing sexual offences.

[7] Issued on March 12, 2018

[8] To replace the 1960 Penal Code No. (16) in force and the 1936 Penal Code No. (74) in force in the Gaza Strip.

25. Article (486) of the draft Penal Code still authorises the killing of women for 'desecration of family honour' and is almost identical to Article (340) of the Penal Code No. (16) by legitimising "honor-related crimes" instead of criminalizing it.

26. Articles (440) and (441) of the draft Penal Code fail to define incest offences where its legal provisions do not distinguish between consent and compliance without taking into account the imbalance of power in family structures. Article (286) of the 1960 Penal Code No. (16) contained the same dearth of distinction.

27. Article (459) of the Penal Code still excludes women from legal protection for marital rape. Article (480) of the draft Penal Code asserts that if a perpetrator is not aware that the victim is underage then they will be exempt from the charge of rape of a minor.

28. The draft Penal Code has introduced a penalty for sodomy in its Article (466). However, it failed to mention considerations of the victim's psychological and physical condition, while the only penalty is a fine.

29. According to the official Follow-up Report, the State of Palestine had the intention to host numerous meetings of specialist reviewers on the draft Penal Code at the start of 2020 (in itself astoundingly delayed), but the meetings were postponed due to the Covid-19 epidemic in Palestine and its declaration of a State of Emergency.

30. According to the official Follow-up Report, the State of Palestine's prosecution requirements are consistent with provisions of CEDAW despite the current outdated penal codes. We strongly believe that it is only when a regulatory and binding legal framework is set in place, measures taken here or there remain sporadic and will not ensure systematic and legally binding conditions.

31. The State of Palestine has amended the provisions of Article (98) in Resolution No. (10) in 2014, which removes the ability for mitigating excuses to be used in cases of "honour killings". Despite this, we stress the inadequacy of the judicial enforcement of these amendments which has recently led to a steady increase in the rate of femicide[9].

32. We commend the efforts of the State of Palestine in repealing Article (308) of the 1960 Penal Code No. (16)[10]. However, the execution of this legislative amendment requires the legalization of safe abortion for victims of rape and domestic abuse to avoid social stigmatization of victims and finding ways of maneuvering around the law. We strongly believe that the Penal Code shall allow safe legal abortions for victims of rape.

Family Protection Bill:

33. In February 2020, the Ministry of Social Development introduced (MOSD) The Family Protection Bill (FPB)[11]. The draft law was submitted to the Council of Ministers on April 20th, 2020 and was approved by the first reading. Efforts of CSOs were regularly focused on

[9] Despite that cases of femicide were still rising. WCLAC has documented 22 cases of femicide in the first half of 2020, and 24 such cases in 2019.

[10] Article 308 of the Penal Code gives lenient sentence to the rapist who marries his victim

[11] A new draft containing numerous differences to a draft bill of 2017 agreed upon by CSOs in previous consultations

reviewing drafts and proposing amendments to ensure compliance with CEDAW and human rights standards.

34. The FPB has since been submitted to the MOSD, the Ministry of Women's Affairs and the Ministry of Justice for study by a technical committee including Al Muntada, on behalf of CSOs involved in the drafting of the 2017 edition.

35. The most valuable comments by CSOs highlighted the necessity for the FPB to include essential definitions missing from the current edition[12]. The definition of 'family' should be extended to include fourth-degree relatives, without requiring that they are a resident of the matrimonial home. 'Discrimination' should be defined in accordance with international conventions, and 'sexual offenses' should be defined as a crime within itself. The law must be gender-sensitive and not resort to a language of neutrality by speaking about victims within the household, without explicitly referring to violence against women and girls, and without taking into account the imbalance of power within the family.

36. CSOs also indicated that there was a need to cease using norms and tradition to invoke the protection of the family unit at the expense of the victims of domestic violence. It is essential that the provisions of the law include effective mechanisms to protect victims and reintegrate them into the society, as well as postulate effective mechanisms to protect service providers and provide rehabilitation for perpetrators.

37. The law should include an article that explicitly details the due "diligences obligations" of all State actors in combatting domestic violence. An item should be allocated in the State's budget to implement this law across all ministries.

38. The law shall grant women and girls with disabilities special protection from gender-based violence due to the multiple levels of marginalisation and discrimination which they endure.

39. The law must include all criminal acts and punishments therefrom including the redefinition of familial or marital sexual abuse crimes to recognise the power imbalance in the family, while it must remove the ceiling of punishment for domestic violence that has stemmed from outdated and historical legislation unaligned to contemporary society.

40. Despite the growing role of the CSOs in pressuring the government to enact the FPB, these efforts occasionally clash with the political will of the government. CSOs have noted the growing influence of conservative traditional elements within Palestinian society on the Government and policies, thereby becoming a major constraint in approving the FPB.

41. Finally, many of the documents that were referred to in the government's Follow-up Report as "accomplishments" in protecting the family from violence[13] are merely incomplete drafts and have not yet been made public. In this regard, the Public

[12] CSOs recommendations heavily depended on CEDAW Committee Recommendations 19 and 35.

[13] (i.e. the Standard Operating Procedures Manual vis-à-vis investigations and pleas in cases of violence against women and the Standard Operating Procedures Manual on Cybercrime)

Prosecution itself has confirmed that the final issuance of these documents is contingent on the issuance of the FPB.

The Personal Status Law:

42. The Jordanian Personal Status Law (PSL) of 1976 applied in the WB and the Family Rights Law of 1954 applied in the GS fall into the same crucible, as the two laws comprise a fertile discriminatory environment between genders, especially since they are the only two laws that govern the private sphere. PSLs governing the lives of Palestinian Christian sects are also outdated and clearly discriminatory against women[14].

43. Although the provisions of the PSL in force comprise a violation to article (16) of the Convention; still, the State of Palestine neither has been able to make tangible progress in harmonizing the current PSLs with the provisions of the Convention, nor has it been able to formulate a vision of the future structure and form of the PSL.

44. The only amendment inputted to the PSL was raising the age of marriage. This was reflected in the amendment to the provision of Article (5) of the law by decree (21) of 2019. The provision prior to the amendment stipulated that the minimum age to be engaged was 16 years for males and 15 for females. The amended provision postulates that the minimum permissible age of the male and female to be engaged shall not be less than18 solar years with exceptions under the discretion of Sharia' judges.

45. These exceptions, however, have become the general rule, as the Shari'a judges and marriage registrars have expanded the definition of "exceptions" and have defended them on flimsy foundations; such as the financial capability of the groom, or his consent to the bride-to-be to complete her studies, or the date of the wedding ceremony being already scheduled, or the consent of the bride-to-be to conclude the marriage formalities and relevant rituals.

46. Official statistics indicate that 800 marriages were registered in the first six months of 2020 in the WB, 260 out of 800 were for girls under 18; which means that 33% of the marriages registered in the Shari'a Courts in the West Bank were for minor girls.[15]

[14] In terms of testimony, the Personal Status Law deems a single man's testimony equal to that of two women! Although a rational adult woman acquires the legal capacity to perform, and is entitled to state into all legal proceedings and conclude contracts, yet she does not possess the legal power to conclude her marriage contract herself and solely without a male guardian. In turn, the law also granted the man a superlative right to unilaterally divorce a wife without reverting to her. In cases of custody and after the end of the legal age for custody with the mother, the boy is given the freedom of choice to stay either with his mother or his father, while the girl is forced to be transferred to her father's custody when she turns eleven. This looks just as bleak, if we look at women's diminished inheritance rights. Personal status laws are also devoid of provisions that regulate the joint matrimonial property which the spouses obtained after marriage.

[15] This legal regression, which took place after the amendment of article (5) of the PSL, was reflected in the statistical data issued by the Palestinian Central Bureau of Statistics, which indicated that the percentage of marriages for underage girls in 2019, was estimated to cover 20% of the arranged marriage contracts in that year.

47. Ironically, the minimum age of a girl to be engaged was at least 15 years of age before the legislative amendment took place, however, after the amendment of this provision, exceptional powers have been granted to Shari'a judges and marriage registrars to marry those who are under 15 years of age.

Recommendations:

48. Ensure that the definition of discrimination against women is adopted and interpreted into all legislations in the State of Palestine to guarantee the rights of marginalized groups, especially women with disabilities. It is fundamental that this principle be adopted as one of the constitutional principles underlying the Basic Law of the State of Palestine.

49. Publish the CEDAW Convention in the Official Gazette, to give the Convention a binding legal status that shall be in line within the framework of the Palestinian National Law.

50. Support Civil Society Organizations in responding to the counter-campaigns led by reactionary fundamentalist forces against the Convention and the Family Protection Bill.

51. Halt immediately the "exceptional" measures in underage marriages for the grave and serious harm they have caused; such as the accentuated escalation in the number of marriages of underage girls (Minors). Thus, it's an obligation to adhere to the stipulated lawful age of marriage and expedite the formation of a national committee to oversee and monitor the age of marriage.

52. Expedite the review and adoption of the draft Penal Code in accordance with the provisions of the Convention to ensure that such a general sovereign law will support and complement the more specialized Family Protection Bill.

53. Pass a Personal Status Law in accordance with the provisions of Article (16) of the Convention.

54. Pass a Family Protection Bill in accordance with the vision of Civil Society Organizations which scope of work has strived relentlessly for the past three decades towards the elimination of violence against women and girls, and the continuing increase in cases of domestic violence especially with the latest Covid-19 crisis.

55. Accelerate the holding of the Palestinian presidential and legislative elections to speed up the process of unifying the legislation and harmonizing them to the provisions of the CEDAW.