مركز المرأة للارشاد القانوني والاجتماعي

Women's Centre for Legal Aid and Counselling

Parallel Report to the Initial Report Submitted by the State of Palestine in Accordance with Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Ramallah - 2022

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30 years & beyond: WCLAC Continues to forward Women's Human Rights

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30 نواصل العمل برؤية تسوية حقوقية

This report is submitted by the Women's Centre for Legal Aid and Counselling (WCLAC)

Executive Summary

This NGO parallel report is submitted by the Women's Centre for Legal Aid and Counselling (WCLAC) which has a special consultative status with the UN Economic and Social Council (ECOSOC) since 2005.

WCLAC appreciates the accession of the State of Palestine to CAT without reservations in April 2014, and the ratification of the OPCAT in December 2017. Palestine became the fifth State party in the MENA region to ratify the Convention. However, we demand that the State Party clarify the reason for not publishing the CAT and all other treaties to which it has acceded since 2014 in the Official Gazette.

WCLAC affirms that Palestine's legal commitment to the CAT does not absolve Israel, the occupying power, of its responsibilities towards the 1967 Occupied Palestinian territory (OPt). Israel, as the occupying power, has effective control over the OPt and therefore, human rights treaties and conventions are legally binding on all persons under its jurisdiction, including those in the OPt. Thus, we agree with the State of Palestine's initial report (paragraphs 10 and 11) and stress the need for the occupying power not to evade its legal obligations in accordance with the provisions of International Humanitarian Law (IHL) and International Human Rights Law (HRL).

This parallel report will focus on the following issues from a gendered-perspective:

I. Attributive Component: State Responsibilities and Due Diligence in Accordance with CAT

I.1 State responsibility and due diligence
I.2 Attributive component of torture
I.3 State Party's accession to the Optional Protocol (OPCAT)

II. Substantive Component: Domestic Violence as Torture

II.1 Violence against women in the private sphere
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I. Attributive Component: State Responsibilities and Due Diligence in Accordance with CAT

I.1 State responsibility and due diligence

1. The Committee against Torture stated in its General Comment (No. 2. F. 22.) that State reports often lack specific and sufficient information on the implementation of the Convention with regard to women. The 2019 Note by the UN General Secretary based on the report of the Special Rapporteur (SR) on Torture, Ms. Nils Melzer, states that "domestic violence amounts to torture and ill-treatment within the generic meaning of those terms under international law and the attributive analysis into the way the State may be held responsible for its involvement in, including its failure to take appropriate action against, domestic violence."

2. The report also emphasized that "domestic violence therefore always amounts to cruel, inhuman or degrading treatment or punishment and very often to physical or psychological torture." Women have key characteristics that expose them to different forms of violence and ill-treatment, especially patriarchal norms, gaps in national legislation, and limited political will to comply with international conventions and treaties. Therefore, women and women victims of gender-based violence (GBV) are at risk in this context through deprivation of their liberty, particularly when it intersects with discrimination and deprivation of other rights, including reproductive rights and violence by private non-state actors in communities and at home.

3. The State Party has a legal obligation under Article 16 paragraph 1 of the CAT and in compliance with Article 2, to take all necessary measures, including legislative, judicial and administrative measures, to prevent all acts of cruel, inhuman or degrading treatment or punishment which do not necessarily amount to torture as defined by Article 1. Such obligation is even described in General Comment No.2 (2007) as "indivisible, interdependent and interrelated". It correlates directly with Articles 10-14 of CAT, which highlight, among other things, the responsibility of the State Party and

the competent authorities to carry out impartial investigations, provide compensation, and the right to complain. Accordingly, prevention of GBV is a legal obligation specified by the Convention and further elaborated on in the SR's report.

4. The initial report submitted in June 2019 by the State of Palestine under Article 19 of the Convention failed to include any information or sections on violence against women (VAW) and girls. The State Party has the responsibility to "prevent acts of torture and ill-treatment within its jurisdiction, including at the hands of private actors (Articles 2 and 16 of CAT)."

5. With reference to CAT paragraphs 18 and 19 of General Comment No. 2 (2007) on the implementation of Article 2 by State Parties, the Committee Against Torture confirmed the due diligence obligations of States to prevent, investigate, prosecute and punish acts of torture or other cruel, inhuman or degrading treatment by non-State actors, including GBV such as rape, domestic violence, female genital mutilation and trafficking.

6. WCLAC stresses the failure of the State Party to define torture as a crime in the existing legislation, as clarified in paragraph 17 of the initial State Party report, which classified torture only as a "misdemeanour" and not even a felony. The State Party has taken no measures to provide a comprehensive definition of torture in national legislation or to amend existing legislation to criminalize torture, inhuman and degrading treatment

7. As a consequence, the State Party fails to exercise due diligence to prevent, investigate, prosecute and redress torture and ill-treatment committed by both government officials and private perpetrators, including in the context of domestic violence. This amounts to consent or acquiescence in torture or ill-treatment (Committee against Torture, General Comment No.2, para.18).

8. Following the accession to CEDAW, the State Party failed to adopt measures necessary to eliminate discrimination, gender inequalities or to combat GBV. The State Party failed to respond to the concluding remarks of the CEDAW Committee in 2018, in particular regarding the adoption of the Palestinian Penal Law and the Family Protection Bill. While the State Party committed to a follow-up report, which was submitted in a timely manner (2020), no meaningful progress has been seen on the ground.

9. As such, the Palestinian government has shown no political will to confront counter campaigns by right-wing and radical conservative political and religious groups against the State Party's accession to CEDAW, and campaigns against feminist advocacy campaigns advocating adoption of the draft Family Protection Bill. These conservative groups have conducted smear campaigns against feminist and women's rights organizations advocating for gender equality and for national legislation to comply with the international conventions and human rights treaties to which Palestine has acceded.

10. Inaction by the State Party against counter campaigns is a violation of their legal obligations by "omission". According to the due diligence in combating VAW stipulated in customary international law, for example, the State Party is obliged to enact and enforce these standards. We call on the CAT Committee to question the State Party on the measures taken to enact its due diligence obligations under CAT.

Recommendations

We call on the State Party to address the latent and root causes of VAW by changing public perceptions, eliminating the root causes of GBV, adopting laws, offering comprehensive constitutional guarantees, collecting data and designing programmes to combat VAW.

- A comprehensive rights-based definition of discrimination and GBV, alongside monitoring tools, should be adopted to ensure better documentation at the national level, and hence ensure women's access to justice

- The State Party should also take preventive measures to combat VAW by designing plans and programs that meet the needs and priorities of GBV victims, with specific responsibilities and accountability assumed by line ministries, namely the Ministry of Social Development (MOSD), Ministry of Health (MOH) and other official service providers.

- We call on the State Party to provide psychological and protection support services for women victims of GBV to reintegrate them into society. Protection and distance orders to keep the perpetrators of VAW away from victims should be issued by law to protect victims of GBV. The State should also support protection for government officials and service providers while carrying out their duty, and enhance awareness and positive attitudes through continuous training and capacity-building activities.

- The State Party has legal obligations to secure a prompt and positive response by the police and the public prosecutor in favour of GBV victims. It should also ensure the investigation and prosecution of perpetrators, and enhance police and judicial reliability by appointing specialist public prosecutors, and establishing dedicated family courts.

- The State Party is also responsible for ensuring that victims of domestic violence are compensated adequately through reparation as stated in international human rights standards. Victims should also receive indemnification for the harm and violence sustained since in some cases, despite the penalty imposed on the perpetrator, the victim continues to suffer from the effects of the violence to which they were exposed.

I.2 Attributive component of torture

1. From the attributive perspective of State responsibility, the State Party has positive obligations that require States to take "effective measures", both general and individualized, to prevent, protect against, respond to and provide redress for torture and ill-treatment. The State Party is required to establish legal provisions, mechanisms and processes that effectively protect people from torture and ill-treatment, including in the context of domestic violence. The State Party must implement general, operational, investigative and procedural duties for redress, reparation and non-recurrence, as the Special Rapporteur's report on torture attested.

2. The State Party must adopt effective measures to protect individuals from the particular risks of torture or ill-treatment of which they know or ought to know. This requires the State Party, in accordance with Article 13 of the CAT, to establish avenues and mechanisms for receiving, recording and responding effectively to complaints of torture or ill-treatment, including domestic violence and to establish services and institutions capable of initiating and implementing protective measures in a prompt and effective manner. Article 13 further calls for the protection of complainants and witnesses against ill-treatment or intimidation as a consequence of their complaint or any evidence given.

Recommendations

From an attributive perspective, the State Party must adopt effective legislative, administrative, judicial or other measures to prevent acts of torture or ill-treatment in any territory under their jurisdiction (Arts. 2 and 16 of the Convention against Torture). Thus, we call on the CAT Committee to question the State Party on what measures have been taken to enact its due diligence obligations under CAT and other human rights treaties to which Palestine has acceded.

- We call on the State Party to adopt a specific law to combat torture, inhuman or degrading treatment or punishment, and to criminalize such acts. A comprehensive definition of torture in line with Article 1 of CAT should be included in this law. The draft Penal Code of 2011 should also criminalize all acts of torture, abuse, inhuman and/or degrading treatment.

- We also call on the State Party to ensure regular monitoring and inspection of the conditions and operation of penitentiaries and rehabilitation centres by the executive and judicial branches, and by intergovernmental organizations such as the Independent Commission for Human Rights (ICHR) as the Palestinian national institution, and human rights civil society organizations. These inspections should be gender-sensitive, transparent and independent.

- The State Party has legal obligations to hold offenders accountable and to ensure their prosecution as commensurate with the offense while achieving the aims intended by such punishment.

- The State is also obliged to broaden the scope of the existing penal system beyond that of imprisonment, where appropriate, and to enact punishments based on the protection of human rights as stated in international treaties and human rights standards.

I.3 State Party's accession to the Optional Protocol (OPCAT)

1. According to Article 17 of the Optional Protocol to the Convention against Torture (OPCAT), States should designate or maintain a national preventive mechanism within one year of ratification. Since the State of Palestine acceded to OPCAT in 2017, WCLAC highly commends Palestinian human rights groups and civil society organisations which have followed up on the establishment of the National Preventive Mechanism against Torture (NPM). There was consensus between CSOs and the government that the NPM would be impartial, independent of the executive branch of government, and autonomous both financially and institutionally. However, Law by Decree No. 25 of May 2022 on the establishment of the National Commission against Torture was published in the Official Gazette, which contradicts the key principles agreed upon during the dialogue between civil society organizations and the government taskforce mandated to develop a draft NPM law.

2. Law by Decree No. 25 contravenes the State of Palestine's obligations under the OPCAT and the guidelines on NPMs. It treats the NPM as a state institution and government agency to which all laws and regulations in official institutions are applicable. This is in line with the executive's approach of taking over and dominating national commissions, rendering them unable to deliver assigned tasks independently and impartially. Under this Law by Decree, the NPM will fail the test of independence and impartiality, and will simply become an additional formal body at the expense of the agony and suffering of victims of torture and ill-treatment.

3. The Law by Decree was passed just two months prior to the CAT Committee's review of the initial report submitted by the State of Palestine to the Committee. WCLAC and CSOs consider that this timing was an attempt to raise the image of Palestine before the CAT Committee while the report is under consideration. In fact, by violating international standards and the State of Palestine's obligations, the Law by Decree will have a negative impact on the standing of Palestine before the CAT and other treaty bodies and international agencies.

Recommendations

WCLAC and human rights CSOs call on the State Party to freeze Law by Decree No. 25 of 2022 on the National Commission against Torture, and resume consultation with human rights groups and CSOs.

- Call on the State Party to consider the earlier draft law of the NPM drawn up in consultation with relevant CSOs to ensure consensus among all stakeholders that the NPM is impartial, independent of the executive branch of government, and autonomous both financially and institutionally.

II. Substantive Component: Domestic Violence as Torture

II.1 Violence against women in the private sphere (domestic violence)

1. The State of Palestine drafted the Penal Code in 2011 to abrogate the previous Penal Code No.16 of 1960, and Penal Code No.74 of 1936 in force in the Gaza Strip. However, this has not created effective progress in addressing sexual offences.

2. According to the official CEDAW Follow-up Report, the State of Palestine had planned to host meetings of specialist reviewers on the draft Penal Code at the start of 2020 but the meetings were postponed due to the Covid-19 pandemic in Palestine and the declaration of a state of emergency. However, problematic provisions exist in the draft Penal Code of 2011 and further delays in its review cannot be justified under any circumstances.

3. According to the 2019 national violence survey conducted by the Palestinian Central Bureau of Statistics (PCBS), at least 29% of married women had been subjected to one form of violence during the previous twelve months (three out of 10 women). However, the survey does not reflect the reality of GBV in its temporal context and the circumstances of the period. The sensitivity of the topic has not been considered as field information is collected from women in home visits where family members, including the perpetrator, may be present. This setting in which victims are required to talk about domestic violence, and sexual violence in particular, is not conducive for women to open up to field researchers in just one interview. In practice, women need time to decide on the sharing of information about the violence of sexual abuse to which they are exposed.

II.2 Femicide: a breach of the right to life

1. As referred to above, the Secretary-General's Note on the Interim Report of the Special Rapporteur on Torture, point 10, states that "from a substantive perspective under international law, domestic violence always amounts to cruel, inhuman or degrading treatment or punishment and very often to physical or psychological torture."

2. Femicide constitutes capital punishment, a breach of the right to life, and a direct outcome of the State Party's "failure to combat GBV".

3. At the national level, the Palestinian Ministry of Women's Affairs established the National Observatory for Violence against Women. This officially comprises 18 NGOs and governmental institutions with the aim of providing data on GBV to aid policy formulation, identify patterns and causes of GBV, and unite national efforts in combatting GBV. However, the pace of operation is slow and the National Observatory needs to work more efficiently to provide official statistics on GBV and femicide.

4. Since Palestine's accession to international conventions and treaties, especially the Convention on Torture and CEDAW, the Palestinian Authority has taken few steps to comply with the legal provisions. There has been limited progress on measures adopted to prevent or reduce the number of femicide cases in Palestine.

5. There is a strong body of discriminatory and outdated legislation inherited from previous laws applied to the occupied Palestinian territory (oPt), such as the current Penal Law and the Personal Status Law, while a Family Protection Bill and a comprehensive protection system for victims of GBV and femicide are absent.

6. In breach of the State Party's responsibility under Article 2 (1) of the CAT, and in spite of all efforts made by Palestinian human rights and women's rights organizations to pressure and influence decision makers and legislators, the Family Protection Bill - drafted 16 years ago - is yet to be adopted.

7. Existing legislation includes the Jordanian Penal Code No.16 of 1960 and the Palestinian Penal Code No.74 of 1936 in the Gaza Strip. The Palestinian President issued a series of Presidential decrees amending and/or suspending some articles of legislation relevant to sexual crimes and femicide. Decree Law No.10 of 2014 amended Article 98 of the Penal Code by removing the use of mitigating excuses in honour killings, and Decree Law No. 5 of 2018 amended Article 99 of the Penal Code regarding the use of mitigating excuses in honour killings.

8. Court rulings in cases of femicide and sexual crimes do not reflect the implementation of these amendments. Judicial rulings are governed by a restricted definition of the law, and by the mentality of the judges who lack gender-sensitivity and often espouse traditional social and cultural gender stereotypes within society. We stress the inadequacy of judicial enforcement of these amendments and the resulting steady increase in femicide rates. WCLAC documented 37 cases of femicide during 2020 and 24 cases in 2019.[1]

9. In 2020, WCLAC monitored and reviewed legal proceedings in 22 cases of GBV crimes (e.g. minor or serious abuse, indecent assault, rape, threats and attempted murder) to test the feasibility of women's access to justice in the Palestinian judicial system. The analysis concluded that women were mainly discriminated against in the Palestinian criminal justice system. Women victims encountered several challenges when they decided to break their silence and pursue their cases in court. In most of the cases reviewed, women were forced to withdraw their cases from courts at an early stage of the litigation process due to social pressures and loss of confidence in the judicial system as a whole.

1 https://www.wclac.org/files/library/21/11/oadcm6raannp1oehgzhtpw.pdf

10. Analysis of 61 femicide cases in 2019 and 2020 documented by WCLAC showed that 27% of these murders were committed by the brother of the victim, 23% by the husband, and 23% by the father. The remaining cases were committed by others such as the stepfather or brother in-law.[2] Of the 29 cases of femicide documented in 2021 (17 cases in the West Bank and 12 in Gaza Strip), the killings were performed by a male family member, usually sharing the same living space as the female victim.

11. The Palestinian Authority failed to adopt a comprehensive protection system as part of its emergency plan during the pandemic, or to ensure the provision of services to prevent gender-based violence and maintain referral mechanisms.

12. According to a study conducted by Juzoor for Health and Social Development, 19.5% of respondents reported an increase in domestic violence during the lockdown and 70.8% reported that they anticipate an increase in GBV as lockdown and movement restrictions continue to be enforced.[3]

13. So-called "honour killings" are no longer the key reason for femicide. A broader definition of femicide by feminist organizations includes cases of suicide in which women and girls resort to death when faced with closed avenues of hope for a better life and the absence of an institutionalized national protection system. Often, women are forced to commit suicide by their families (fathers, brothers, etc.), especially in light of the minor amendments to existing penal codes. Analysis of femicide cases by WCLAC revealed that following the legal amendments, perpetrators forced female victims to commit suicide so they could avoid prosecution or punishment for murder.

14. This can explain the contradictions in the overall number of cases of femicide between official statistics and those of human rights NGOs and feminist organizations. Official statistics of femicide are far lower than those documented by NGOs, while official statistics of suicide or attempted

2 Ibid.

3 https://gaps-uk.org/wp-content/uploads/2021/01/Now-and-the-Future-Gender-Equality-Peace-and-Security-in-a-COVID-19-World-Palestine.pdf WCLAC, Now and the Future Gender Equality, Peace and Security in a COVID-19 World Palestine, p.7 (2020).

suicide are much higher. In 2018, of 196 cases of suicide or attempted suicide among "adults" and 37 children, the percentage of females was more than double that of males (71% females vs. 29% males), with numbers being considerably higher for girls than boys (95% females vs. 5% males). [4]

II.3 Early marriage

1. The Secretary-General's Note to the SR on Torture in 2019 emphasized that "child, early and forced marriage is a human rights violation and a harmful practice that disproportionately affects women and girls globally, preventing them from living their lives free from all forms of violence." Early marriage "can inflict lasting harm, including severe psychological, emotional and physical suffering, marital rape and other forms of sexual abuse, servitude and life-threatening early pregnancies or unwanted pregnancies. These consequences being predictable given the children's young age, the resulting infliction of suffering must be regarded as intentional and is generally rooted in profoundly discriminatory views of women and girls."

2. Personal Status Laws (PSL) within the State Party's jurisdiction reinforce the principles of inequality and discrimination against women. Palestine lacks a unified, modern and just Palestinian legislative system for personal status issues that ensures equal relations between spouses within the marriage institution, and this further exacerbates disparities and gender inequalities within the family.

3. The first Article of Decree Law No.21 of 2019, issued by Presidential decree, stipulates that marriage eligibility requires that the parties to the contract be sane and adult (each aged at least eighteen years). However, according to paragraph 1, the competent court may, in special cases if the marriage is a necessity dictated by the interests of both parties, authorize the marriage of a person who has not completed eighteen solar years of age. This is done with the approval of the Chief Judge of the Palestinian Sharia Court or the religious authorities of other Christian sects. These exceptions were left vague and the intention of the legislator in making this exception has not been clarified. What is now happening on the ground is that an exception request is submitted to the Chief Justice to approve the marriage contract and upon approval, the contract is made for those under the age of eighteen.

4 https://www.wclac.org/files/library/21/11/oadcm6raannp1oehgzhtpw.pdf

4. Another method that violates the legal provisions for underage marriage is when a marriage contract is organized by an individual, maybe a marriage officer or any other person, who does not appear directly in the contract. The contract and marriage are performed. If a pregnancy results, the marriage contract is taken to the court judge in the presence of a personal status attorney. In one or two sessions, the marriage contract can be approved with the payment of symbolic fines by all those who participated in writing the contract, except for the authorized officer or individual who wrote the contract since he did so without appearing in it directly.

5. It is the responsibility of the legislative and competent authorities to implement a law to restrict the phenomenon of child marriage in Palestinian society. The authorities are responsible for monitoring exceptions and who may perform a marriage contract for underage persons In the absence of such legislation, there is a risk of violations and disregard for the application of the law.

Recommendations

- Urge the State Party to expedite enactment of the Family Protection Bill. We highlight the need for five obligations to be imposed on the State Party based on the standard of due diligence in customary international law: prevent violence against women; protect women from violence; prosecute and punish the perpetrators of violence; and provide redress to victims of violence.

- Urge the State Party to adopt all measures vital for the protection of women. This includes the State fulfilling its responsibilities in promoting change to traditional, societal and cultural practices and perceptions that give femicide "legitimacy".

- Ensure that Palestinian courts overcome all obstacles to women's access to justice. Palestinian family units within the police and public prosecution office must be more responsive to women's complaints.

- Reform the administration of the justice sector and adopt gender-sensitive approaches within the judiciary for women victims of GBV. Provide quality services and free legal aid services to women victims of GBV accessing the system.

- Expedite the review and approval of the draft Palestinian Penal Code in line with international conventions and references that guarantee human rights, particularly women's rights.

- Urge the State Party to take preventive measures to combat VAW by designing programmes that meet the needs and priorities of GBV victims, with specific responsibilities and accountability to line ministries.

II.4 Violence against women in the public sphere

1. No protection has been given to women activists in Palestine. They have experienced physical and verbal abuse during their participation in peaceful protests and demonstrations against the policies of the Palestinian government in the West Bank and against the de facto authority in the Gaza Strip. These protests were against the internal political division, the adoption of legal decisions detrimental to women's interests, or against the behaviour of the Palestinian government in violating public freedom to peaceful protest and its practice of arbitrary arrest on political grounds.

2. WCLAC condemns the repression and abuse practiced by some security services against male and female protesters in June 2021 with the use of employees in civilian clothing. Women protesting in peaceful demonstrations and journalists working to cover the events have increasingly been targeted in violent attacks that include physical assaults, verbal harassment, and the confiscation of personal belongings or breaking of phones and cameras. The Palestinian government, its ministers and the security services must be held responsible for this failure to protect protestors and should be held accountable for the continuation of abuse thereafter.

3. In a dangerous and unprecedented act of blackmail and defamation, some security services violated women's privacy and personal safety by confiscating and hacking their phones, and then posting photos and personal conversations on the social media accounts of members of the security services.

4. Article 2 (para.3) of the Security Forces Service Act stipulates that any member of the security forces who, in the discharge of their duties, acts in a manner that is incompatible with their functions or whose conduct or comportment brings disrepute to the office is liable to be punished. There are no exemptions, except where it is established that the official acted on the orders of a superior who insisted that the orders be carried out, despite having been warned by the official that such orders contravened the law. In such cases, the superior alone shall be liable in accordance with Articles 173 and 194 of the Act.

5. The targeting of women and girls, in addition to the sexual harassment they have been subjected to during peaceful vigils or during detention, constitutes an abuse of power by law enforcement officials. The reinforcement of patriarchal stereotypes is an invitation to violence and a threat to civil peace as it promotes negative cultural perceptions about the presence and active participation of women in the public sphere and the stereotyping of their roles.

Recommendation

- Demand that the Committee hold the State Party accountable for the 'complex violence' practiced against women demonstrators and the absence of protection in order to introduce responsibility, reparation and non-recurrence. This is especially important because these practices reinforce a negative cultural perception about the roles of women and girls and their exclusion from the public sphere.

VI. **Indirect victims of torture**

1. Criticism of Israeli violations of international human rights in the arrest and torture of Palestinian men and women is essential in and of itself, especially given that Palestinian men account for the bulk of politically detained prisoners. However, WCLAC believes it is of equal importance to consider the systematic repercussions of Palestinian men's imprisonment and torture on Palestinian women.

2. WCLAC recognizes Palestinian men's resilience and sacrifice, and does not overlook their heroism in the struggle for justice and freedom. However, it is crucial to consider the trickle-down effects of abuse rooted in the military detention inflicted on men and manifested in deep-rooted gender-based violence.

3. According to the UN Population Fund, the historic societal and patriarchal predicament in Palestine is exacerbated by the long-standing military occupation's violence and hostility. This is supported by a survey carried out by the United Nations Women on the relationship between occupation violence and GBV. It found domestic violence in Palestine to be complex and multi-layered, with occupation restrictions feeding into a more conservative society based on insecurity and protectionist behaviour. According to the survey, communities subjected to violence inflicted by the occupation are more likely to become trapped in a cycle of domestic abuse. Hence, the repercussions of Israeli imprisonment and violence against Palestinians is reflected in GBV in Palestine, reported by the PCBS as 24.3% in the West Bank and 37.5% in Gaza Strip.

VII. **Direct victims of torture Torture and ill-treatment of women in Palestinian correctional and rehabilitation centres**

1. As established by the Bangkok Rules, women in conflict with the law, as a vulnerable group, have specific needs and requirements that should be met in the operational regulations of correction and rehabilitation centres, which globally are primarily designed for male offenders. In this legal framework, the UN recognized the need for gender-sensitive protective measures as offenses committed by women are usually "a direct and indirect outcome of discrimination and deprivation of rights", including GBV. It also recognizes that women usually commit minor crimes and thus, we call for the introduction of alternatives to imprisonment.

2. Referring to CEDAW Recommendation 35 on the need of the State Parties to adopt as part of their assessment mechanisms, "a gender-sensitive approach is required to understand the level of pain and suffering experienced by women and that the purpose and intent requirement of torture are satisfied when acts or omissions are gender specific or

perpetrated against a person on the basis of sex."[5] In reality, there are reports of inhuman treatment and routine psychological abuse of a sexual nature. Prolonged isolation, sleep deprivation, denial of access to sanitation, stress positions, beatings, and sexual harassment are all commonplace for Palestinian female prisoners.[6]

3. The Independent Commission for Human Rights (ICHR) received 1658 complaints related to allegations of torture and ill-treatment between 2018-2021 in the West Bank and Gaza Strip. Women's complaints numbered 168 or 10% of the total number of complaints. The Commission received 80 complaints in the West Bank and 88 in the Gaza Strip.

4. The number of complaints received in 2020 and 2021 reportedly fell by 12% compared with previous years, mainly due to the pandemic and measures taken by decision-makers to reduce the number of detainees in correction and rehabilitation centres by giving them home leave. However, preventive measures against torture and ill-treatment have not been adopted and the State Party still has legal obligations to be fulfilled.

5. Allegations of torture reported to the ICHR were as follows: 1) 50 reports of torture and threats by law enforcement officials, making up 29.7% and distributed as 11 violations in the West Bank and 39 in the Gaza Strip; 2) 51 reports of cruel and inhuman treatment by law enforcement officials, making up 30% and distributed as 17 violations in the West Bank and 34 in the Gaza Strip; 3) 67 reports of physical or moral assault making up 39.8% and distributed as 30 violations in the West Bank and 37 in the Gaza Strip.

6. The Amended Basic Law (2003) stipulates in Article 13 that no one may be subjected to any coercion or torture, and any statement or confession issued under such circumstances is invalid. In addition, the Correction and Rehabilitation Centres Law No.6 of 1998 prohibits the administration of detention centres from any act of torture or the use of force against an inmate. Furthermore, torture and ill-treatment are prohibited under customary international law and are considered jus cogens i.e. an overriding principle which must be adhered to.

5 CEDAW Committee, "General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19" (2017) CEDAW/C/GC/35, Para. 17.

6 Addameer, 'Imprisonment of Women and Girls', December 2017. Available at: http://www.addameer.org/the_prisoners/women

7. We commend paragraphs 109-120 of the State Party's initial report which highlight the regulations introduced by the Ministry of Health and the Ministry of Social Development for social protection and the health sector, including mental health services and field visits offering psycho-social counselling services. However, we call on the State Party to provide more elaboration on additional steps and considerations adopted to ensure a gender-sensitive framework of operation.

8. We also commend paragraphs 44 and 45 of the State Party's initial report with regard to the rights of female prison inmates under Article 24 of the Correctional and Rehabilitation Centres Act, and Article 27 which allows special treatment for pregnant inmates. However, we request that structured alternatives to imprisonment be considered, including attempts by prisons to integrate female prisoners by providing psychosocial support from relevant and feminist CSOs alongside rehabilitation programs.

Recommendations

- Women and girls should not be imprisoned without a detention order, and if they are legally detained, their dignity and safety should be maintained. WCLAC views this as the responsibility of the State Party, and officials in charge should be held accountable and sanctioned if any incidents occur.

- Establish a gender-sensitive monitoring system with participatory observations inside the civil court system and the District Attorney's office. The judicial system, including judges, prosecutors and lawyers, should receive gender-sensitive training to enable them to efficiently use the monitoring tools.

- The entire chain of justice should be assessed on a regular basis to ensure that women seeking justice and/or in conflict with the law are not subjected to any hurdles, intimidation or punitive repercussions.

- Ensure that medical and psychological care is provided on a regular basis to women detainees or inmates in correction and rehabilitation centres, and that specialized medical testing mechanisms are established within those locations to detect cases of torture and ill-treatment.

- Preventive gender-sensitive protection measures need to be adopted for women detainees in line with United Nations rules on the treatment of female prisoners and non-custodial measures for female offenders (Bangkok Rules) to protect women's right to physical integrity and to reduce violations.

- Equip actors in the judicial system and staff in detention facilities with the UNODC Handbook for Prison Managers and Policymakers on Women and Imprisonment to ensure gender-sensitive treatment methods.

- Raise awareness of actors in the court system and social protection agencies of the needs of women who endure violence inflicted by the state. Improved rehabilitation and prevention of the harmful impact on women's lives and destinies can be achieved by providing psychosocial support. Specialized CSOs should be granted access to provide such support when needed.

- The State Party has an obligation to ensure regular monitoring and inspection of the conditions and operation of prisons and rehabilitation centres by the executive and judiciary, and by intergovernmental organizations such as the ICHR and human rights civil society organizations. These inspections should be gender-sensitive, transparent and independent.

XVII. **Legal Gaps in Relevant Laws**

1. The amended Basic Law of 2003 expressly prohibits torture and ill-treatment. Article 13, paragraph 1 states: "No person shall be subject to any duress or torture, and all persons deprived of their freedom shall receive proper treatment." Paragraph 2 of the same Article states: "All statements or confessions obtained through violation of the provisions contained in paragraph 1 of this Article shall be considered null and void." This is consistent in principle with the Convention Against Torture in prohibiting the practice of torture. However, the Law does not impose any criminal punishment as a deterrent to the practice of torture and ill-treatment, and does not comply with Article II of the CAT regarding the State responsibility to take "effective" measures, including legislative measures. Therefore,

we request that the State Party add an article criminalizing torture in the Palestinian Basic Law and defining it as a felony.

2. Article 13 of the Palestinian Basic Law did not clarify whether the prohibition of torture applies to crimes of domestic violence. This Article does not define the responsibility of the State in implementing measures that protect against torture and that protect women from domestic violence and femicide. In this regard and based on standards of due diligence, the State has a responsibility to protect women in both the domestic and public spheres.

3. Articles 440 and 441 of the draft Palestinian Penal Code (which the State Party refers to repeatedly in its initial report) fail to define the crime of incest as a sexual crime. The provisions of the draft Penal Code also fail to distinguish between "consent" and "acquiescence", ignoring the imbalance of power between males and females within the family, and deep-rooted patriarchal structures which force women and girls to engage in incest. Thus, such relations are not criminalized under the pretext that they take place with the "consent" of both parties.

4. Article 459 of the draft Penal Code of 2011 still excludes marital rape. Article 480 states that the victim's age as an aggravating circumstance, and in the event that the offender is unaware of the victim's age, (in case of rape crime apart of spouses) the offender is exempt from the aggravating circumstance. Article 466 imposes a special penalty related to the different nature of martial intercourse but this Article disregards the psychological status of the victim and the physical consequences of the act on her.