

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	569
Land:	Gaza-Vestbredden
Kilde:	Equality Now, Psycho-Social Counselling Center for Women, YWCA Palestine, YWCA Jerusalem og Stars of Hope
Titel:	Information on the State of Palestine for Consideration by the Human Rights Committee at its 138th session
Udgivet:	29. maj 2023
Optaget på baggrundsmaterialet:	25. september 2023



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Information on the State of Palestine for Consideration by the Human Rights Committee at its 138th session (26 June – 28 July)

May 29, 2023

Introduction

1. Equality Now, Psycho-Social Counselling Center for Women, YWCA Palestine, YWCA Jerusalem and Stars of Hope organization present the following submission in advance of the 138th session of the Human Rights Committee ('the Committee'), taking place between 26 June – July 28 2023, for consideration of the State Party Report for Palestine. In this submission, we express deep concern about the condition of women and girls in Palestine with regard to sexual and gender-based violence, discriminatory family laws, the low levels of women's political participation and lack of security for women human rights defenders, all of which constitute violations of Palestine's obligations under the International Covenant on Civil and Political Rights (ICCPR).
2. The legal provisions and practices detailed in this submission highlight the failure of the State of Palestine to comply with its obligations under the ICCPR, particularly **Articles 2, 20, and 26** (non-discrimination and equality before the law), **Articles 3, 6, and 7** (equality for men and women, violence against women), **Article 9** (Liberty and security of person) **Article 12, 17, and 26** (Right to freedom of movement), **Article 14** (Access to Justice), **Article 19 and 20** (Freedom of Expression), and **Article 25** (participation in public affairs).

The definitions of Rape and other sexual offenses are not in compliance with international standards and permit impunity for sexual violence

3. The Penal Code No. (16) of 1960, enacted during the Jordanian rule in the West Bank, exemplifies deeply rooted patriarchal cultures and mindsets. The crime of rape is classified under the section of crimes against public morals, and often there is a mix between rape and adultery. In marital relationships, where the use of additional force is not evident and lack of consent cannot be established, sexual violence would be



classified as adultery, as opposed to rape, and both parties are considered offenders.¹ Furthermore, the definition of rape in Article 292 is not comprehensive and permits impunity for sexual violence. It excludes several acts from the crime of rape that are then reduced to sexual assault and ultimately categorized as a misdemeanour according to the provisions of the law. In accordance with international human rights standards, any sexual assault perpetrated by one or more persons, carried out by physical force, under threat or manipulation, by impersonation, or with a person who is incapable of giving valid consent should be considered aggravating circumstances to rape. A definition of rape should be centred on lack of consent as its constituent element, not whether there was additional physical force, or real or perceived threats of violence.

4. Systemic discriminatory provisions under the Penal Code which inhibit the right of access to justice for survivors of gender-based violence also include the fact that female victims of incest are not permitted by law to report the perpetrator, even when she reaches the maturity age of 18 years. Rather, only a relative up to the fourth degree is allowed to file the case on her behalf. In addition, the penal code criminalizes adultery which has been used to target women and girls as a wife is usually discouraged to file a case against her husband for adultery. As per international human rights standards and principles, however, adultery should not be considered a crime.
5. Meanwhile, the Penal Code No. (74) of 1936 in force in the Gaza Strip contains several discriminatory provisions similar to those in the Jordanian Penal Code.² For example, the relevant legal provisions on sexual violence, including rape, include the phrase “everyone who has sex with a female (other than his wife),”³ meaning that the law views rape in the narrow sense of sexual intercourse and penetration, whereas, any sexual assault on a woman’s body, for example such as oral penetration, is considered a misdemeanor of “indecent assault.” Furthermore, this definition assumes rape is a crime inflicted only on women, and does not criminalize sexual violence perpetrated against married women such as marital rape, which is contrary to international human rights standards .
6. The penalty imposed for the crime of rape is imprisonment for ten years, which is not commensurate with the crime’s severity. It is recommended that this punishment be increased to 14 years, to suit such a criminal act, specifically when other aggravating circumstances are present. The law stipulates in Article (152) that the key element of the crime of rape is lack of consent. However, it is important for the law to determine the age of consent and the circumstances in which consent cannot be considered genuine or voluntary, such as where there is an unequal power relationship. Despite the fact that Article 152 refers to the lack of consent, the definition of rape still requires the

¹ Women’s Center for Legal and Counselling, paper entitled: “Legal Discrimination against Women and Girls” presented to a workshop entitled Legal Discrimination against Women and Girls in the Levant and the Arabian Gulf: Priorities and Future Action Mechanisms, Oman, 2020, p. 3.

² Multiple legal systems are applied in different parts of Palestine, including Jordanian Laws and the Jordanian Penal Code.

³ Article (292), Paragraph (1), states: “1- Whoever coerced sexual intercourse with a female (other than his wife) shall be punished with temporary hard labour for at least five years.



victim to prove a threat to kill or inflict severe bodily harm which is not in line with international human rights standards. (152) also stipulates that force must be used for the crime of rape to occur. This can include a threat to kill or inflict severe bodily harm. These conditions weaken the legislative text, especially when rape can occur without the use of force.

7. The Penal Code does not clearly define the penalty for sexual harassment. A comprehensive definition of sexual harassment should be adopted in compliance with the Committee on the Elimination of Discrimination against Women Committee's general recommendation No. 19 and the International Labour Organization Convention 190, which require the establishment of effective complaints procedures, remedies, and sanctions.
8. With respect to sexual and reproductive health, the Penal Code fails to provide any protections for women who are seeking safe abortions, and abortion is illegal regardless of the circumstances of the pregnancy.⁴

Gender Stereotyping, discriminatory Civil and Criminal Procedures, and Personal Status Laws

9. As per the Personal Status Laws in Palestine, a man's testimony is equal to that of two women, regardless of whether or not the woman has the legal capacity to testify.⁵ In other words, women's testimony is worth only half that of a man's. This statute entrusts testimonies in criminal cases to men, regardless of the circumstances, and hence, obstructs access to justice.
10. In addition, a woman cannot conclude her marriage contract by herself without a male guardian. A male guardian can contract conclude a marriage contract on behalf of a women, below the age of 18 years, without her consent. In the case of separation brought to court by women, they bear the burden of proof to justify their reasons for divorce. Meanwhile, men have the free will to finalize their divorce and in some instances can even pronounce the divorce (Talaq) without registering it with competent authorities.
11. In the event of the death of a father, guardianship is transferred to the grandfather and subsequently to the other male paternal relatives.⁶ A mother's guardianship is

⁴ Article 8 of the Public Health Law No 20 and Article 321 - 325 of the Jordanian Penal Code of 1960 applicable in the West Bank, criminalizes voluntary abortion.

⁵ Article (16) of the Personal Status Law No. (61) of 1976 stipulates: "For the validity of the marriage contract, it is required for the presence of two male witnesses, or one man and two Muslim women (if the spouses are Muslims), sane, adult, able to understand the contract of marriage.

⁶ Policy Brief: 'Workplace Sexual Harassment', prepared by Rawan Abu Gaza for the Young Women's Project for Awareness, Agency, Advocacy and Accountability (YW4A) program, supervised by Equality Now, September 2022, p.9



considered secondary and she must fulfill a set of requirements before being deemed fit by a judge to hold guardianship over her own children.⁷

12. A cabinet decision grants mothers the right to transfer their children to another school; however, discrimination is practiced and practically, women are not allowed to transfer their children to another school due to patriarchal practices adopted by schools.⁸
13. A mother who has custody of her children is not allowed to travel internationally without the written permission from the father,⁹ whereas a father is not required to present such written permission from the mother of the children.

Limitations on Women's Participation in Public Affairs and Civil Service

14. Discriminatory provisions in the Civil Service Law and the Military Security Forces Law hinder women's effective participation in public life. If the civil service employs both spouses, the law automatically assumes that the husband is the breadwinner and allocates social benefits and allowances without considering any family arrangement.¹⁰ The social benefit allowance is perceived to be given to employees on behalf of the 'wife' and children, giving male employees an advantage over female employees.

Lack of legislation on Domestic Violence and Family Protection

15. The absence of a mechanism for victims of domestic violence to access justice allows perpetrators and abusers to go unpunished. Recent years have witnessed increased rates of femicide and intimate partner violence, especially with the introduction of stay-at-home measures to curb the COVID 19 pandemic.¹¹ The Psycho-Social Counselling Center for Women (PSCCW) has documented domestic violence cases in the West Bank and Gaza Strip, and between 2019 - 2020, 58 cases of femicide had been documented. In their documentation, the PSCCW realized that these murders were perpetrated by a relative, and in 23% of these cases, the father was involved. In 27% of cases, the husband was a party to the murder.¹² In other cases, the involvement of

⁷ Article (321) of the Penal Code No. (16) of 1960 stipulates: "Any woman who has had an abortion using the means she used, or consented to someone else using these methods for her, shall be punished by imprisonment from six months to three years."

⁸ Article (183) of the Personal Status Law No. (16) for the year 1960 stipulates that in the event the law is silent on any matter, reference will be made to interpretations of Abu Hanifa school of thought, which indicates that guardianship is transferred and arranged as per the male paternal next of kin, without consideration to mother's custody.

⁹ Rawan Abu Gaza, paper titled: Discrimination towards Women in the Legislative and Practical Realities in Palestine: A Comparative Study" Master Thesis (College of Graduate Studies, Public Law, Birzeit University), Palestine, 2023, p. 49.

¹⁰ Article (53) of the Civil Service Law No. (4) of 1998, read together with Paragraph (1) of Article (86) of the Law of Service in the Palestinian Security Forces No. (8) of 2005 and Article (73) of the Law of Service in the Palestinian Security Forces No. (8) of 2005

¹¹ PSCCW Documentation of Violations of Girl's Right to Education

¹² Nabil Dwaikat, Cases of Femicide in 2020, a report prepared by the Women's Center for Legal and Social Aid, 2020, p.4.



siblings and other family members had been found. The absence of a law to deal with these gendered crimes presents a serious legal gap.

Protection of activists and restrictions on their right to movement and travel in and outside of Palestine

16. Despite the State of Palestine having obligations to ensure freedom of movement and travel, female activists in Palestine are confronted with substantial hurdles, including arbitrary imprisonment and travel restrictions that limit their capacity to exercise their right to freedom of movement. Female activists heroically pursuing the rights of their communities are caught in the clutches of arbitrary arrest by Israeli authorities.¹³ This heinous practice results in these women being seized unfairly, without adequate legal reason or the due process to which they are entitled. As a result, their basic liberties and security are flagrantly infringed. These constraints manifest as refused travel permits and tangled bureaucratic red tape that prevents them from attending international conferences and seminars or cultivating contacts with fellow activists worldwide.¹⁴ As a result, their capacity to effectively advocate for their causes and actively participate in non-violent protest is severely hampered, limiting their ability to exercise their rights and accomplish revolutionary change.
17. Female activists also experience travel limitations and arbitrary detentions as compared to their male counterparts. Such discriminatory practices not only violate core human rights principles, but they also contribute to the persistence of gender inequality, preventing women from participating meaningfully in public and political arenas.
18. It is critical that the Palestinian authorities take meaningful actions to remedy these transgressions, assuring the preservation of all citizens' rights and freedoms, regardless of gender or political activity. Maintaining these rights is critical for building a democratic society that values equality, justice, and human dignity.

Lack of Laws to Protect Women Human Rights Defenders

19. The Palestinian legal framework does not specifically protect Women Human Rights Defenders (WHRDs). WHRDs have experienced hate speech, insults, defamation, physical and online harassment, and intimidation from citizens and official representatives.¹⁵ An activist and lawyer from the PSCCW organization, Ms. Rowan Abu Aqla was intimidated while attempting to conduct an awareness session on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Several other activists also reported receiving threats and intimidation because of their views and work on promoting women's rights and reforming gender-

¹³ <https://www.theguardian.com/world/2021/feb/15/women-male-guardian-hamas-gaza-strip>

¹⁴ <https://www.gov.uk/foreign-travel-advice/the-occupied-palestinian-territories>
<https://www.hrw.org/report/2017/04/03/unwilling-or-unable/israeli-restrictions-access-and-gaza-human-rights-workers>

¹⁵ Statement testimony from a Lawyer, submitted to for PSCCW Organization and documented as part of violations on HRDs from 2019 to date.



discriminatory laws. As a result, several community activities were suspended, and lawsuits for apostasy before the Sharia Court were launched against several female activists.¹⁶

20. Women activists in Palestine continue to experience obstacles, including restrictions on movement within the Occupied Palestinian Territories by Israeli authorities, and others were put under a travel ban (where they could not leave the country), violating their rights to move freely within their country¹⁷. The Judiciary has also failed to protect the civil rights of women activists as guaranteed by the ICCPR. Ms. Ruba Odeh, an activist and WHRD in Palestine living in the city of Jerusalem, was banned entry into Occupied Palestinian territories for six months by Israeli authorities. The ban did not include any legal justification and affected her daily activities, including her work that provided essential services to women. Another ban on entering the West Bank was subsequently issued by the Israeli authorities, and the Palestinian Judiciary could not appeal this decision.
21. Palestinian civil society has been calling on the government to take serious steps to combat the intimidation and harassment of activists and demand the passing of a law protecting the rights of HRDs.¹⁸

Access to Justice and Independence of the Judiciary

22. Article 6 of the Palestinian Basic Law guarantees the right to access justice which illustrates the importance of the legal principle of the independence of the judiciary. Article 9 stipulates that all Palestinians are equal before the law without discrimination. The Palestinian Central Bureau of Statistics 2020 report on violence indicated that only 1 percent of women resorted to the police to access justice.¹⁹ The Family Protection Police Unit also experiences several challenges, including a lack of qualified cadres, gender stereotyping, where women's issues and complaints are considered unimportant.²⁰ The absence of adequate psychosocial support also further discourages women from approaching law enforcement for support.
23. The judiciary is plagued by a lack of independence, characterized by sexist employees, discrimination in administrative procedures and tribal interferences.²¹

¹⁶ Verbal testimony from female activists shared with Equality Now.

¹⁷ Statement testimony from Ms Ruba Odeh, submitted to YWCA Palestine documented as part of violation on HRDs and female activists.

¹⁸ https://www.state.gov/wp-content/uploads/2023/03/415610_WEST-BANK-AND-GAZA-2022-HUMAN-RIGHTS-REPORT.pdf

¹⁹ Palestinian Central Bureau of Statistics, State of Violence Report in Palestine, 2019, Ramallah, pp. 23-25

²⁰ Documentation of complaints submitted to PSCCW by women victims of gender based violence in different parts of the West Bank, documented in the case file.

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24. The issuance of Decree-Law No. (22) of 2022,²² regarding administrative court fees, and the decision of the Council of Ministers upon the recommendation of the Supreme Judicial Council on 6/20/2022 to increase the fees for the schedule of regular court by 50 percent, threatens the course of justice. This fee increase in lawsuit filing presents further hindrances for women to access justice since they are predominately financially disadvantaged. This leaves women with the option of seeking alternative justice systems (tribal structures) that are patriarchal in nature and do not conform to international human rights standards. In addition, the lengthy litigation procedures further obstruct women's access to justice, leading to loss of confidence in the criminal justice system as a means to access redress.

Freedom of Expression and Speech

25. The Palestinian Basic Law, which serves as the Constitution in Palestine, provides the legal provisions for the protection of freedom of expression. The Palestinian legislature recognizes freedom of opinion: "Freedom of opinion may not be prejudiced. Every person shall have the right to express his opinion and to circulate it orally, in writing, or any form of expression or art, with due consideration to the provisions of the law."²³ According to this article, any restrictions or censorship shall only be imposed by law pursuant to a judicial ruling.
26. Despite the legal framework, contrary regulations are currently in effect in the West Bank and Gaza Strip. Laws and regulations should clearly define what exactly amounts to freedom of speech and what is against public order. This ambiguity allows misinterpretations of the legal text and allows for abuse of power by law enforcement officials who arrest activists and journalists arbitrarily. Additionally, the penalties for violating these regulations are often harsh and disproportionate to the nature of the expression, regardless of whether or not the expression actually violates the relevant restrictions on free speech. The Penal Code has articles on libel and slander which are invoked by the authorities to criminalize activists and journalists when they are expressing their opinions on issues related to human rights, governance and general politics.²⁴
27. The Law No. (9) of 1995 on Printed Materials and Publication also emphasizes the freedoms of thought, conscience, and the press. With regard to procedural limitations on printing and publication, the law gives the Ministry of Information, an executive authority, extensive control over these matters. This method violates constitutional norms, as well as international standards, which require that any limitation or seizure be justified by a "judicial ruling". For example, in 2019, the Ramallah Magistrate Court

²² Decree-Law No. (22) of 2022 Concerning Administrative Court Fees, Palestinian Official Gazette, Issue (191), Publication Date: 05/25/2022.

²³ Article 19. Amended Basic Law (promulgated on August 13, 2005)

²⁴ Measures Taken by Al-Haq to Counter the Law by Decree on Cybercrimes, Dr. Isam Abdeen.2018



issued a decision based on a request submitted by the Public Prosecutor to block 59 websites in violation of article 39 of the Cybercrimes Decree no (10) of 2018.²⁵

28. Online free expression has become curtailed in the West Bank due to a Law enacted by Decree No. (10) of 2018 Concerning Cybercrime. Also, using ambiguous terminology such as “public order,” “public morals,” and “national security” permits authorities to limit the exercise of freedom of expression and severely fines online activists and journalists. Digital rights violations are part of a larger assault on the right to freedom of opinion and expression. Wide-ranging regulatory powers granted to the Ministry of Information, such as the right to undertake censorship, violate fundamental constitutional norms. Human rights organizations have documented several instances of arbitrary imprisonment, summons, and smear campaigns, particularly directed against women²⁶. These intimidations forces activists and journalists to fear harassment, violation of privacy, and cyber-blackmail.²⁷ The Law prescribes harsh penalties for media-related offences that are disproportionate to the offence itself. It also allows violations of privacy by giving powers to the Public Prosecution or the officers tasked with judicial duties to obtain the devices, tools, means, electronic data or information, traffic data, data relating to communication traffic or users, or relevant subscriber’s information with relevance to cybercrime, search persons, places and means of information technology, permit the seizure and restraint of the information system either wholly or partly.²⁸
29. WHRDs, activists and journalists are subject to violations and disruptions due to their professional activities. The rise in gender-based violence in the Palestinian digital space is attributed to Israeli colonial policies, political tensions, and the COVID-19 pandemic.²⁹ An example of this is the seizure of cell phones belonging to Palestinian female journalists and activists by the Palestinian authority, at a protest in Ramallah in June 2021 against the Palestinian Authority security forces’ murder of late Palestinian activist Nizar Banat.³⁰
30. Human rights organizations have documented numerous incidents of arbitrary imprisonment, summons issued by Israeli authorities to Palestinian citizens due to political engagement, and even defamation and extortion operations on similar grounds. Regarding privacy and data protection, the situation in the Occupied Palestinian Territories is still precarious because both Palestinian and Israeli authorities continue to violate users’ privacy, especially in the absence of laws enshrining the right to privacy and data protection.

²⁵ <https://www.swissinfo.ch/ara/afp/45322578>

²⁶ <https://www.alhaq.org/advocacy/16110.html>

²⁷ Middle East Eye. Palestinian women journalists speak out against deliberate attacks by PA forces

²⁸ Article 32, Law by Decree No. 10 of 2018 on Cybercrime

²⁹ UN OCHA, Specific risks facing women and girls in Palestine. Published on 08 Mar 2022

³⁰ Middle East Eye, Nizar Banat killing: Witnesses recount Palestinian Authoritys violent crackdown on protests. Published on 29 June 2021



31. Surveys have indicated that Palestinian women are extremely cautious while using social media due to concerns about blackmail, invasion of privacy, or harassment.³¹ This is because there is no legislation to protect victims and dissuade attackers. As a result of the lack of protection, many women do not upload their private photos or use their true identities on social media. Cases of cyber-blackmailing against women have also been reported.
32. Despite the issuance of a decree on cybercrime in the West Bank that authorizes the Palestinian Authority to close websites due to requests submitted to the Public Prosecutor because they conflict with the public interest or cause harm, the government is not using this law to shut down any websites; however, the existence of the law remains a threat and can be used anytime to close the websites of political opponents or activists.
33. The Psycho-Social Counselling Center for Women webpage has been the target of threats, hate speech, and cyberbullying following a publication to raise awareness of women's need for safe working environments. The messages and reports insisted that the organization's employees be punished for working against Islam and Islamic principles and incited to harm them.

Women's Participation in Public Life

34. The State of Palestine last had elections in 2006. Elections have been suspended for the last 18 years due to disagreements on the last election's result. Several reconciliation agreements were reached, but none were fully implemented, leading to abuse of power and claims relating to the legitimacy of the current government.³²
35. Despite the Elections Act of 2005 providing for a women's quota and determining a minimum quota for women at various levels, these quotas have yet to be realized. Additionally, the Tahrir (Liberation) Organization Central Council decreed that the representation of women should be at least 30 percent.³³ The Electoral Act was also amended to stipulate that women's representation in elections and the electoral process be at a minimum of 26 percent; however, Palestinian women's participation in public life is yet to meet the legal minimum representation, and therefore, attaining the quota for women will require a lot of effort.
36. According to the Palestinian Central Bureau of Statistics 2020, data showed that 11 percent of the members of the Palestinian National Council are women, and 12.5

³¹ YWCA Article on Digital Technologies Opportunities and Challenges and Gender-Based Violence against Palestinian Women in the Digital Space by Dr. Nijmeh Ali

³² Palestinian Central Council for Elections Report of the Second Legislative Elections that took place on January 25, 2006, Ramallah, 05/31/2006

³³ The decision of the Palestinian Central Council of the Palestine Liberation Organization in the thirty-first session - the course of developing and activating the PLO and protecting the national project and popular resistance - the course of the martyr, the national leader Jamal Muhaisen, Ramallah, 6-8/02/2022.



percent of the members of the Council of Ministers are women. At the judiciary, 19 percent of judges are women.³⁴

37. Patriarchal societal values and practices largely influence women's participation in elections and public life in Palestine. Women sometimes join politics and elections for family reasons and reflect the interest of their spouses or family members. Program aimed financially supporting femal candidates and electoral credit are inconsiderable.

Suggested Recommendations to the State Party

38. We respectfully urge the Committee to make recommendations and urge the following with the Government of Palestine:

- To expedite and take concrete steps to adopt robust legislation that allows women and girls who are subjected to domestic violence to access justice. To pass the proposed Family Protection Bill into law.
- To take coordinated steps, planning and strategizing, towards addressing challenges within the current plural legal system and ensure that laws do not further discriminate against women and girls.
- To amend article 152 of the Penal Code to ensure that consent is considered the sole constituent element of the crime of rape and not force or threats of bodily harm.
- To decriminalize adultery, considering that it is a gendered crime.
- To nullify the increase in court fees and simplify the judicial administrative procedures so that women and girls can access justice.
- To develop comprehensive laws and policies that ensure the safety and protection of women human rights defenders, activists, and members of civil society, including online.
- To allocate adequate resources to ensure the comprehensive implementation of Palestine's international obligations towards women and girls.
- To take tangible steps towards opening-up the shrinking civic space and ensure Palestinians fully enjoy civil and political rights.
- To legislate and implement laws and policies on data privacy that conform to international human rights standards and protect women and girls from online sexual exploitation and abuse.
- To develop and implement a robust campaign aimed at increasing the effective participation of women in politics and public life.
- To ensure that the quota for women is implemented and minimum requirements met and encourage young women to take up leadership positions.

³⁴<https://pcbs.gov.ps/site/512/default.aspx?lang=en&ItemID=4186#:~:text=As%20for%202020%2C%20data%20showed,Council%20of%20Ministers%20are%20women>