



**NGO Parallel Report to the Initial Report of the State of Palestine
Submitted to the Committee on Civil and Political Rights
In accordance to Article (40) of the UN International Covenant on Civil and Political Rights**

May 2022

The Women's Centre for Legal Aid and Counselling (WCLAC) has a special consultative status with the UN ECOSOC) and developed this report jointly with The Civil Commission for the Independence of Judiciary (Istiqlal) and AL-Muntada.¹

¹Palestinian Non-Governmental Organizations Forum to Combat Violence Against Women (Al Muntada); Bisan Center for Research & Development, Palestinian Working Women Society for Development, Women's Centre for Legal Aid and Counselling (WCLAC), , 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.

Introduction:

Organizations involved in preparing this report affirm that Palestine's legal commitment to the ICCPR does not absolve Israel, the occupying power, of its responsibilities towards the 1967 occupied Palestinian territory (OPT). Your esteemed Committee and all other human rights treaty-bodies have affirmed that 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 State of Palestine's initial report, paragraph (4), and stress the need not to allow the occupying power to evade its legal obligations in accordance with the provisions of International Humanitarian Law (IHL) and International Human Rights Law (HRL).

This report will focus on some provisions of the ICCPR from a gender perspective. It also highlights and verifies some paragraphs of the official State Party's Report with a gender lens including the following issues; the right to self-determination, equality and non-discrimination, state obligations and due diligence to ICCPR with focus on violence against women (VAW) and gender based violence (GBV), the right to life, women's participation in political and public life, legal personality, public rights and freedoms and personal status laws.

Article (1) Exercising the Right to Self-Determination

1. Institutions participating in this report emphasize the centrality of the right to self-determination, which will remain restricted as long as Palestinians, including Palestinian women, live under Israeli military occupation. The occupying power controls all Palestinian natural resources and systematically violates civil, political, social, economic and cultural rights. These are major obstacles to the realization of Palestinians to their right to self-determination.²
2. Despite that, the State Party has legal obligations to undertake all necessary measures and procedures in order to achieve the right to self-determination for the Palestinian people, thus provide them with the opportunity to dispose their natural resources. This was expressed by the State Party's Report to the United Nations Sustainable Development Goals (2030), and its commitment to The Rio Declaration and Principles on the Rights of Peoples under Foreign Occupation to Self-Determination and the Right to Development.
3. The right of return to Palestinian refugees is a condition for the full realization of the right to self-determination; a right that cannot be exercised by refugee women while they are far from their homeland. Exercising the right to self-determination directly affects the protection owed to refugee women and young women, most of whom are considered stateless, which affects, in fact, their enjoyment of protection provided to those with a legal status. The situation of Palestinian refugees and refugee women is considered one of the thorny and complex situations due to the multiplicity of duty-bearers, namely: the Palestinian state, hosting countries, UNRWA, and the Israeli occupation authority. Despite the fact that the State of Palestine guarantees the right of self-determination for all Palestinians in the amended 1993 Palestinian Basic Law in Articles 2, 5 and 26, Palestinians in general, and Palestinian refugee women and young women in particular, still face obstacles related to the exercise of this right. The international system considers this as a "*jus cogens*" that may not be disrupted or impeded in its exercise for all humans wherever they are, and should be compromised.

Article (2) Measures of Due Diligence

4. Paragraph 27 of the State Party's report highlighted that the Palestinian Constitutional Court Decision No. (4) issued in November 2017 came to clarify the legal value of the international conventions to which Palestine has acceded, as the court ruling stated that national legislation

² As the Human Rights Committee has reiterated, "self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights."

is unconstitutional in the event it violates international conventions, confirming the primacy of international treaties over national legislation. However, the Court constrained its decision by noting that international treaties and conventions would not be enforced if they opposed the Palestinian national, religious and cultural heritage. In other words, the decision established the principle of "cultural relativism," a principle that constitutes a stumbling block to the implementation of the provisions of this Covenant and other international human rights treaties to which Palestine has acceded.³ Under Article 2 of the ICCPR, the State Party has legal obligations to take all necessary legislative, constitutional and administrative measures to abide by its legal obligations, but it has failed to meet its due diligence obligations as of today.

5. Similarly, following the accession to CEDAW the State Party also failed to take necessary measures to eliminate discrimination, gender inequalities and to combat Gender Based Violence (GBV). The State Party showed no political will to confront counter campaigns of right-wing and radical conservative political and religious groups who objected the accession, and took advantage of this step to carry out smear campaigns against women's rights organizations advocating for gender equality and the compliance of national legislation with CEDAW, ICCPR and other human rights treaties to which Palestine has acceded.
6. Inaction by the State Party against these counter campaigns is a violation of their legal obligations by "omission". According to the due diligence standards in combating VAW that are stipulated in customary international law for example, the State Party is obliged to pass and enforce these standards. We call on the ICCPR Committee to question the State Party on measures taken to enact its due diligence obligations under CEDAW and article 2 of the ICCPR.

Due Diligence towards for Protection from VAW:

7. We call on the State Party to address the latent and root causes of VAW through changing perceptions, eliminating root causes of Gender Based Violence (GBV), adopting laws, offering comprehensive constitutional guarantees, collecting data, and designing programs to combat VAW. A broader and more comprehensive rights based definition to discrimination and GBV should be adopted to ensure better documentation at the national level.

8. The State Party should also take preventive measures to combat VAW through designing programs to meet needs and priorities of the victims of GBV, with specific responsibilities and accountability to line ministries. State Party should also develop necessary programs and measures to respond to the needs of victims of GBV.

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

11. The State Party has legal obligations to secure a prompt and positive response by the police and the public prosecutor in favor of the victims of GBV. It should also ensure investigating and prosecuting the perpetrators as well as to enhance the police and the judiciary's reliability by appointing specialized public prosecutors, and establishing specialized family courts.

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

³ See pages 1, 2 of the NGO Parallel Report to the Initial Report of the State of Palestine submitted to the CESCR, August 2021. [https://www.wclac.org/Library/212/NGO Parallel Report to the Initial Report of the State of Palestine](https://www.wclac.org/Library/212/NGO%20Parallel%20Report%20to%20the%20Initial%20Report%20of%20the%20State%20of%20Palestine)

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

Article 3: Equality and Non-Discrimination

14. The State Report highlighted in paragraphs 59 and 60 gender initiatives at the governmental institutions through establishing gender units within local ministries. The problem however lies in the implementation of these strategic plans on the ground especially that, inequalities still prevail and the gender units are not mainstreamed within the overall planning and developmental strategies of the respective ministries. Gender discrimination is still persisting, and there are no laws, legislation, or policies in place to address gender discrimination. To the contrary, current penal, personal status laws and all other legislation, are outdated and discriminatory.
15. In accordance with paragraph 62 of the State Party's report, women are permitted to obtain a passport and open a bank account for their children. However, women still face prejudice as it is not permissible for a mother to travel with her minor children without a document of "no-objection" from the husband, particularly in cases of divorce.
16. Although there is an explicit provision prohibiting discrimination in the Palestinian Basic Law, many other legal texts in force in Palestine include clear explicit discrimination against persons with disabilities, including Women with Disabilities (WWD) in particular, for example, Article (24) of the Civil Service Law, within the terms of employment it states "free from diseases and physical and mental impairments." The law on the Rights of Persons with Disabilities of 1999 is devoid of any provisions prohibiting discrimination against WWD, and any provisions that take into account gender sensitivity of women and girls with disabilities, which makes it insufficient to fulfill their rights.
17. It has been noticed that in the State Report's reference has been made in more than a paragraph to the Palestinian Penal Code, which is still in draft form and pending since 2011. The State Party is required to seriously address discriminatory provisions in current penal codes and endorse the Palestinian Penal Law after national consultations with civil society organizations (CSOs) to ensure a balance between criminalizing human acts but also ensuring respect to all rights and freedoms enshrined in the ICCPR and other human rights treaties.
18. Paragraph 84 of the State Report highlights the decision of the Palestinian Cabinet in 2017 to establish an Observatory on VAW. Work on the establishment of the Observatory however was slow and took until 2020 to be finally set in place. Selected specialized NGOs were invited and contributed to the process, despite their reservations to the privacy, confidentiality of the system, and the accessibility of many officials and civil servants to the system. Currently, the Observatory remains inactive, with no trained staff to use it, although CSOs providing psycho-social and legal services to women and girls victims of GBV were required from the Ministry of Women's Affairs to provide data of their cases for registration on the Observatory.
19. Paragraphs 85-87 of State Report addresses Protection centers and service provision for women victims of GBV, the Ministry of Social Development (MOSD) receives women victims of violence and only provide social counselling. When referring them to a protection shelter, they receive psychological and legal counselling as needed. However, we have recently noticed a decline in the number of referred cases. This is due to the reluctance of the Family Protection Units (FPU) at the Police to uphold their responsibilities to refer the cases to the relevant shelters.
20. There is no full commitment to the principles and protocols of the National Referral System for victims of GBV even by the relevant service providers. The exclusion of some categories from shelters' services (i.e. WWD, sex workers, drug addicts, girls under 18 etc.), remain without specialized shelters and protection if they are exposed to violence and threats to life in light of

the difficulty of integration in the existing protection centers. The Girls' Care Home for girls in conflict with the law in Bethlehem is under the responsibility of the MOSD, but suffers from lack of resources and numerous obstacles. The fire incident that occurred in 2021, which led to the death of one of the girls is an example of lack of safety measures within the girls' home. This Care House was closed and cases were referred in an unorganized manner, which did not take into consideration the best interest of the girls.

21. In response to Paragraphs 89-88-91 of State Party's Report, we would like to highlight challenges that women's rights organizations face in working with family protection departments at the Ministry of Health, particularly those related to privacy and confidentiality. The proposed solutions are mostly traditional and depend on engaging tribal leaders and key social figures in resolving arising problems. Sometimes, women themselves request tribal leaders' intervention due to the ineffectiveness of the protection system interventions, which consequently exposes them to much risk in light of the fact that tribal solutions are not gender sensitive to women's rights.
22. A Family Protection Prosecution was established in 2016 as a specialized Unit within the Prosecution Office. Nonetheless, in light of the outdated Penal Code, which has many gaps related to the protection of women, the role of this specialized prosecution remains limited. There is understaffing among prosecutors and shortage of competent staff within the family prosecution unit. Added to the above challenges, the patriarchal culture is still deeply rooted in the work mechanisms of the prosecutors in dealing with cases of VAW and hence adversely impacting women and girls' victims of GBV.
23. In response to Paragraph 92 of the State Party's report, organizations participating in this report confirm that the latest national violence survey conducted by the Palestinian Central Bureau of Statistics (PCBS) did not reflect the reality of GBV in its temporal stages and the circumstances related to that period. Sensitivity of the subject when collecting field information from women has not been considered, especially as it is collected in the context of home visits where family members, including the perpetrator, may be present. This setting requires victims to talk about domestic violence, sexual violence in particular, which will not be easy for women in a first interview to discuss with the field researcher. In practice, women take time to make the decision to share information about the violence of sexual abuse to which they are exposed.

National Mechanisms, Paragraph 83 of State Party's Report:

24. The "National Committee to Combat VAW" was formed in accordance with the Cabinet Resolution of 2008 to develop a strategy to combat VAW for the years (2011-2019). Following the strategy' evaluation results, a strategy for the years (2020-2030) was developed in line with the SDGs and CEDAW. The committee also adopted a system of "review of cases at risk" for women victims of violence in 2014.
25. Despite having national protocols for the referral of women victims of violence and the availability of trained staff among the service providers, this has not resulted in reducing or eliminating GBV. This is particularly due the limited financial and human resources for governmental institutions. Further, often, complaints of women victims of GBV are not taken seriously, despite the existence of protocols and policies that guide work with these cases. In most cases the front-line civil servants and officials resort to the customary law and tribal leaders to resolve issues which often oppress the victims due to patriarchal structures.
26. **Paragraph No. 86 of State Report on national mechanisms to combat VAW:** The Palestinian legislative and legal texts deal timidly with issues of VAW in general. Not all forms of violence are dealt with in a detailed-manner such as psychological and verbal violence which is not criminalized in relevant penal codes leaving victims without national legal mechanisms and means for accessing justice.

27. The National Referral System for women victims of violence established in 2013, does not explicitly refer to WWD, nor to the specific privacy measures needed, which has led to the absence of WWD from the procedural and practical application. No procedural manuals, took into account the situation of WWD and their needs, which completely prevents them from accessing protection services in a systematic manner through an institutionalized process.
28. Existing protection shelters are still unable to provide services to WWD who are victims of violence, as this exclusion takes a legal cover represented in the Protection Shelters System issued by the MOSD of 2011. This System does not require, in any of its articles regarding the place and equipment specification, any alignment to the access of all battered women, regardless of their disability status, to receive the service. Article 29 of the NRS stipulates excluding women with mental, psychological and movement disabilities from receiving the protection services. This text carries serious discriminatory measures against specific types of disabilities although these types of disabilities are the most vulnerable to GBV and need protection.

Participation of Women in Political and Public life (Article 25): Paragraphs 72 – 81 of State Party's Report,

29. The 2007 General Elections Law No. 1 was amended administratively to include quota to women in electoral lists, guaranteeing 26%. However, this amendment does not guarantee that women would reach this percentage in the Palestinian Legislative Council (PLC). Despite the recommendation by the Palestinian National Council (PNC) of the Palestinian Liberation Organization (PLO) in March 2015 to implement a minimum women's quota of 30% in all state institutions, the President cancelled the 2021 legislative elections, which had 405 women candidates on electoral lists, (29 % of candidates). The PNC confirmed this in its session on January 16, 2018, but the essential measures to secure this increase in women's representation in electoral commissions were never put in place.
30. In comparison to men, women's participation in decision-making positions is still limited. Women account for about 25% of Central Council members of the PLO in 2022, compared to 11% of PNC members and 12.5% of Cabinet members in 2020. Meanwhile, there are no women on the PLO Executive Committee, despite the fact that women make up 11% of the diplomatic corps.
31. In Palestine, there is just one woman governor out of 16 governors, and only 2% of local council heads are women. Furthermore, women make up only 1% of boards of chambers of commerce, industry, and agriculture, and only about 19% of judges and 20% of public prosecutors are women.⁴
32. The local governance elections took place through two phases with more than three months separating between them. The elections were arranged based on the applied law without considering the demands of the civil society to amend these laws and increase women's quota. The applied electoral law includes a women's quota of 20% that was achieved thanks to the lobbying and advocacy activities by the CSOs during the previous years. However, the PNC issued a decision to raise women's quota to 30% and the Central Council also issued a similar decision. Nevertheless, the two decisions were ignored by the executive authority and elections took place based on the existing law that limits women quota to 20%. There was no respect for the right to commence the local governance elections on one unified day in all the localities. There were demands to lower the age for nomination to enable youth to nominate for elections, but this demand was not considered by the executive authority.

⁴ <https://pcbs.gov.ps/postar.aspx?lang=ar&ItemID=4187>

33. Women's right to participate as candidates in the local governance elections was subject to several violations including electoral violence. In some areas, women's photos were camouflaged and substituted with some kind of symbols while the law remained handcuffed in front of that. Although the law states that all candidates have equal rights through various electoral processes, yet, women candidates' rights were violated noticeably and nothing was done. In some lists, women's names were hidden totally and substituted with the term "female", and the Central Elections Commission (CEC) as a reference for the elections, did nothing.
34. The CEC accredited several CSOs as observatory bodies to monitor the electoral process and these organizations submitted their reports with the violations they documented. However, it was noticed that the same violations were recorded during the two rounds of elections (December 11, 2021 and March 26, 2022), which indicate that the executive authority did nothing to treat the violations.
35. The local governance elections were organized based on a decision from the government as the PLC has not convened since 2007. It indicates that there is no respect for periodic parliamentary elections as stipulated by the Basic Law and 1988 Declaration of Independence. The absence of the PLC makes elections under the control of the executive authority in clear violation of the constitutional rule to separate authorities.
36. Women face discriminatory practices within the electoral process from the dominant powers where in many cases, women are not given a role within the electoral campaign and they are selected by the powers that form the lists just for the sake of legalizing the lists in accordance with the quota system. Women do not participate in the negotiations to form the lists. Women members in the local governance bodies, face a systematic tendency to exclude them; sometimes through assigning the sessions at late hours where women in the conservative localities cannot attend. The law is silent in front of these practices where there is no article within the law, which obligates the local governance bodies to convey their sessions during the day light. Likewise, the interested ministry does not monitor the performance of the local governance bodies to ensure that women rights are taken into consideration.
37. Political and election violence due to repeated incitement, hate speech, attacks and pressure on candidates, especially women candidates, in general and local council elections, on women's lists and lists headed by women was observed. The CEC issued a code of conduct against infringement on women's rights in local elections. The CEC issued a circular on the need for electoral lists to commit to the visibility of women candidates in election campaigns, whether on posters, participation or appearances.
38. No monitoring is imposed on funding the electoral campaigns and so, those who fund the campaign control the performance of the local authority later on. The campaigns are funded sometimes by political parties that are based on patriarchal structures which exclude women. In other cases, tribal powers and family business owners fund the electoral campaign and those control the structure of the list and decide the future of the locality indirectly.
- 39. Gender-sensitive budgets:** Expenditures of the Women's Affairs Ministry in 2019-2021 was as follows: 2019 0.058%, 2020 0.050%, 2021 0.053%. Salaries for female employees in public services was 26% in comparison to 74% for male civil servants' salaries. ⁵
40. The MOSDs' share from the General budget have not exceeded 5% of the general budget over the years; in 2021 its share of the general budget was only 4.7%. Moreover, the estimated budget for protection programs for marginalized and poor sectors has always been low and did not meet needs of the most vulnerable groups.

⁵http://www.miftah.org/Publications/Books/CitizenBudget2021_General_Budget_for_the_Fiscal_Year2021.pdf

41. In 2021, the budget allocated for the poor and most needy was only 5.77% of the overall budget of MOSD, with an estimated 230 women receiving protection and care services. In the West Bank and Gaza Strip, 115,683 Palestinian households benefited from the Ministry's cash assistance programs, which are the backbone of the empowerment and poverty-combat initiatives. Of them, 43,113 are households headed by women, accounting for 40% of beneficiary families.
42. **Civil Servants Law:** A study carried out by WCLAC concluded that although the Civil Service Law does not contain any discriminatory texts against women and includes texts that emphasize equality between men and women in the public office, the law's outputs however indicate the existence of discrimination against women holding public office.
43. While females account for more than 45% of all employees (about 85,000) , the percentage of females declines from top to bottom of the hierarchy, with females in higher job categories accounting for fewer than 15%. Nearly 69% of government employees work in the health and education sectors, which are typically considered to be female-dominated fields. This explains the high percentage of females among total civil servants, despite the fact that women's participation in the Palestinian labor market is often less than 18%, where the conditions and terms of their work are still characterized by gender discrimination and double oppression.
44. During the legal review of the draft law being discussed in the Palestinian Cabinet to amend the Civil Service Law, WCLAC submitted proposals to make (19) amendments in various texts to emphasize its sensitivity to gender issues. The amendments include: positive discrimination in favor of women in the field of appointment and promotion in public office, taking into account reproductive health and the interests of children on vacations, legalizing the prohibition of harassment of female employees as a breach of conduct, legalizing the role of gender units, gender-responsive language, masculinizing and feminizing, ensuring women's representation in committees are all gaps that the amendments addressed.

School Enrollment of girls: Paragraphs 97 and 98 of State Party's Report

45. The Ministry of Education (MOE) does not have a comprehensive database and has a clear defect in the concept, definitions, diagnosis and classification of disability, which means the absence of clear data on the enrollment of girls with disabilities in schools. The MOE does not adopt the disability indicators in its approved databases, which makes its reports fall short of monitoring Issues of male and female students with disabilities, including school dropout rates, enrollment rates, and others.
46. The majority of male and female students with disabilities who are enrolled in educational institutions receive education in special education schools until the fourth, sixth or tenth grade according to the policies of those private centers, where they move to public schools if they are able to access them.
47. Around 37.6% of persons with disabilities have never been enrolled in education, while 33.8% were enrolled but dropped out from school and did not finish their secondary education. In addition, 50% of PWD are illiterate, and 87.3% are unemployed as indicated by the 2011 data of the PCBS.

Violation of Women's Rights to Freedom of Expression and Media Freedoms in Public Sphere:

48. There has been no protection for women activists in Palestine. Physical and verbal violence has been practiced against them 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 when peacefully demonstrating against governments' policies and the state of internal political divide. Opposing governments' policies and violations of rights and freedoms were met with violence. During peaceful protests after the extra-judicial killing of Palestinian activists Nizar Banat in June 2021, Palestinian security personnel attacked women young activists and female journalists in the West Bank, WCLAC and organizations submitting this report condemn the repression and abuse practiced by some security services against the male and female protesters by security personnel in civilian clothes.

49. They specifically targeted women activists and journalist covering the events who were beaten and verbally assaulted and harassed. The security personnel intended to confiscate their mobile phones, cameras and disseminated their private photos and chats on social media, thereby violating their right to privacy in an attempt to force women indirectly from participating in strikes and peaceful demonstration. The Palestinian government and its security apparatuses should be made accountable for committing such violations to freedom of speech, expression, privacy and media freedoms. In a dangerous unprecedented act of blackmail and defamation, some security services this time violated women's right to privacy and personal safety, as they confiscated and hacked their phones and posted their photos and personal conversations on members of some Security Services' social media accounts. Such acts have actually endangered the lives of women who could possibly be abused and potentially killed after the dissemination of their personal information. Such serious violations by law enforcement officials has been a reinforcement of patriarchy and an indirect invitation to violence and encourage negative social and cultural practices as well refrain women from active participation in the public sphere leading to further stereotyping their traditional roles in family and society.

Violence against Women in the Private Sphere

50. The Penal Codes that are in force in the West Bank and the Gaza Strip are outdated and clearly discriminate against women. The Penal Codes do not criminalize marital rape. This contradicts with the right of women to personal and bodily freedom. According to the Jordanian Penal Code No. 16 of 1960, which is in effect in the West Bank, Article 292, paragraph1, stipulates that: "Whoever is subjected to coercion to a woman who is not married and not by her husband shall be punished with temporary hard labor for at least five years," thereby legitimizing marital rape and not imposing any penalty on it.
51. We commend the efforts of the State of Palestine in repealing Article (308) of the 1960 Penal Code No. (16) by a Presidential Decree in 2018. The provision of this article provided lenient penalties if the perpetrator of rape marries his victim, and also allowed for lenient penalties in 13 different sexual crimes. However, the execution of this legal amendment should be followed by following measures including inter-alia, the legalization of safe abortions for victims of rape and victims of VAW.
52. Articles (440) and (441) of the draft Palestinian Penal Code (which the State Party keep referring to in its initial report) failed to define the crimes of incest as sexual crimes. The legal texts in the draft penal code also failed to distinguish between "consent" and "acquiescence", ignoring the fact of imbalance of power within the family, and deep-rooted patriarchal structures which force women and girls to incest relations within the family due to the imbalance of power between males and females within the family, and hence criminalizing such relations under the pretext that they take place with the "consent" of both parties.

Article (6) Right to Life

Femicide Cases:

53. The State Party's report mentions legislative efforts to prevent so-called "honor killings" of women and girls. This was done by highlighting the legal amendments made since 2010, both in regard to the amendments of Article (340) of the Penal Code and subsequent adjustments made to Articles (98) and (99) of the Jordanian Penal Code.
54. It is true that the legal amendments removed lenient penalties and excuses for killing of women, but those amendments have proven ineffective in combatting incidents of femicide. To the contrary, there has been an increase in the number of women killed in the West Bank and Gaza Strip over the course of recent years, and has even intensified with global wide-spread of COVID-19, due to increase of domestic violence during lock-downs and the locking in of women with their perpetrators. WCLAC documented 37 cases of femicide in 2020 compared to 21 cases in 2019. Between the years 2016-2018, WCLAC documented 76 femicide cases in the West Bank and Gaza Strip.
55. WCLAC has emphasized the need of taking all essential precautions to protect women on numerous occasions. This includes the state fulfilling its responsibilities in working to change the traditional and societal and culture practices and perceptions that still gives femicide societal "legitimacy". Calls of CSOs especially women's organizations for the passage of the Family Protection Bill, Personal Status Laws, and the Palestinian Penal Law come at the forefront as priorities.
56. The so called "honor killings" are no longer the fundamental reason in the phenomenon of femicide. A broader definition of femicide is given by feminist organizations to include cases of suicide, which sometimes women and girls resort to when they are in trouble with closed avenues of hope for a better life or path, and the absence of an institutionalized national protection system. Often women are also forced to commit suicide by their families (fathers, brothers...etc.) to evade punishment for the crime of murder especially after the slight amendments to penal codes currently in force. Analysis of femicide cases reveal that after the legal amendments made, perpetrators forced women and girls to commit suicide in order to avoid any prosecution or punishment to the murder.
57. This explains the contravening overall number of cases of femicide between official statistics and NGO human rights and feminist organizations. While official statistics of femicide cases is by far lower than those documented by NGOs, the official statistics of suicidal cases and attempts of suicide are much higher. In 2018 for example out of 196 occurrences of suicide or attempted suicide among "adults," (37) of 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).

Abortion, Paragraph 138 of State Party's Report:

57. Women's access to the right to safe abortion is restricted by laws and legislation. Abortion is criminalized by law and only permitted in severe cases of physical risk to the mother's life or in cases of life-threatening congenital anomalies. The Family Protection Prosecution can in few limited and exceptional cases allow for abortion especially for girls and women victims of GBV, and/or at serious threats to life and possible murder.

59. The Jordanian Penal Code No. 16 of 61, enforced in the West Bank contravenes with the CEDAW. In particular, with State Party's legal obligations under Article (2) of the CEDAW, which condemns all forms of discrimination against women, especially paragraph (e), (f), (g), which emphasize the need to take all measures to abolish all national penal laws that discriminate against women. So far, no measures are in place to protect women, but there are clear legal texts that criminalize women who perform abortion because of rape incest. Legal texts consider abortion a crime punishable by law in accordance with the Jordanian Penal Code on Abortion, Articles 321-322-324 that criminalize and punish anyone who performs abortion

or assists in abortion. The legal provisions make particular emphasis on doctors and nurses assisting in the abortion. Criminalization of abortion includes case of women and girls who are victims of incest and might endanger their safety and lives by often resorting to traditional and unsafe means of abortion.

60. It was mentioned in the State's report that abortion can be performed on a limited basis, however, abortion, in the context of pregnancy outside marriage or sexual assaults and incest cases, remain criminalized. There are no measures and policies to provide safe abortion for women. In fact, based on the cases that have been documented, there is a great difficulty in providing safe abortion services under medical supervision.

Article (14) The Judiciary and Access of Women to Justice

61. Access to justice for women is the basis for gender equality and women's empowerment. The process of facilitating women's access to justice in Palestine must be comprehensive, as the obstacles that prevent this can range from civil inequalities to institutional weaknesses, and the inability of the justice system to accommodate legislative developments. This also includes the obligations of the State Party under international treaties to which it acceded including CEDAW, ICCPR, ICESCR, among many others. The State Party has to harmonize national legislation with all conventions it had ratified to ensure women's access to justice.

62. Women often face community rejection in their pursuit of justice, especially in issues related to domestic violence. This societal rejection resulting from the prevailing culture may extend to influence the justice system and thus affect redress for women victims of violence in various forms. In the event that a woman decides to pursue a case, she may suffer pressure from her family members to withdraw her complaint, and in similar cases, there are no clear procedures to ensure the victim's free consent to waive her personal right and drop the case.

63. In a recent report conducted by the WCLAC and based on Palestinian court rulings in 22 cases of GBV and murder attempts, we concluded that the discriminatory legislation, combined with the high level of discretion given to the judges and the privileges that men enjoy through patriarchal structures that are deeply rooted in customs and traditions and the attitudes of the judges and some obstacles before women accessing the justice system. These factors discourage women from resorting to courts to lodge their complaints and also reduce their expectations of accessing justice through the law and judiciary. In almost all instances it seems that women were pressured by family and society to drop their cases and seek traditional means of reconciliation. Perpetrators were given lenient sentences and some cases were even dropped after waving personal rights, while the public prosecution did not pursue public interest rights in most of the cases. Women breaking the silence by lodging complaints or filing cases learned from their experience that the judicial system would not support their access to justice. Consequently, they would be reluctant in the future incidents to report cases of violence. The report found two levels of obstacles in criminal laws that hinder an effective investigation of cases of violence against women. The first concerns gaps and deficiencies in the laws, and the existence of discriminatory concepts that render women at a disadvantage. The second type of impediment is the failure of the judicial authorities to properly enforce or apply the legal rules in the Penal Code.⁶

64. With regard to loopholes in the law, the report found that the criminal laws applied in Palestine do not yet provide for the various manifestations of violence against women - physical, psychological and sexual - nor do they provide for contexts in which forms of violence occur outside the family (social, urban, institutional, and job-related). Laws focus mainly on the concept of harm in its traditional form, excluding other contexts in which violence against women may occur. This leaves women without protection against other manifestations of violence that go beyond the scope of legal texts.

65. Public Prosecution Office also does not inform assaulted women of their rights. It is evident that women lack legal awareness of their guaranteed rights in the cases reviewed. This is evident through

⁶ Access to Justice for Women victims of violence In Palestine, Women's Centre for Legal Aid and Counselling, 2021

their attempts to reconcile and drop the personal right, which leads to the perpetuation of the suffering of the abused women under the influence of physical and psychological violence for a long time in the absence of effective psychological treatment programs or social counselling.

65. Many cases of VAW at Palestinian courts in the West Bank and Gaza Strip are still taking place within a slow process without any consideration for women, whether they are victims or outlaws. More than 53% of these cases have been pending for more than two years, which prevents the imposition of a deterrent force on these crimes. Most of the courts lack a protective environment for women or protect their privacy when they attend court buildings, which enables them to present without fear of societal stigma as women victims or witnesses to a crime. Although, judges keep these sessions confidential in cases related to violence, especially sexual violence against women.

66. Social and economic obstacles still prevent women victims of domestic violence from seeking help, protection and justice, in addition to the pressure exerted on them to keep the family at all costs. The economic dependency of women on their husbands, combined with stigmatization and shaming of women who resort to the police and the judiciary to complain against domestic violence, prevent women victims from accessing the justice system. Hence, the provision of free legal aid by human rights and women's organizations contributes in eliminating financial obstacles facing women in accessing the justice system. It also empowers the victims to confront negative social attitudes and practices and empower them by making them aware of their rights. This is however not a substitute to the State Party's responsibility to provide free legal aid and counselling in cases of GBV to most vulnerable groups including cases of VAW.

67. In reference to paragraphs 267-271 of the State Party's report, we wish to emphasize that Articles 97 and 98 of the Basic Law are not in force in practice. There are hundreds of judicial decisions suspended, although they are final with a conclusive Ruling. Their implementation relies on approvals from certain security agencies such as Preventive Security and Intelligence.

Article (16) Legal Personality

Joint Property/ Matrimonial Funds

75. Wealth formulated in the context of the marital relationship, whether through spouses earning from their work, or through their cooperation in the framework of a social division of labor is known as the "financial system of spouses". This system is a common legal space that should be organized, and codified based on a modern and democratic legal understanding that recognizes the principle of equality. Further, a definition of joint property and that of each spouse within the marital relationship should be specified.

76. The main problem of joint property between spouses appears in the use, or the right to dispose of this property, more than it is in determining the owner of this wealth, since there are legal texts that grant spouses the right to own property. The Palestinian law grants the husband and wife, without discrimination, the right of independent property, and to joint property, including common partnership.

77. The Palestinian law does not contain legislation on the independence of the financial liability of the spouses. The absence of provisions of the law, whether in civil law or personal status law, deprives the husband or wife of protection, and does not prevent one from taking over the other's right to joint ownership or separate financial disclosure. The custom is the independence of this financial liability based on Islamic law. There is an absence of legal rules, which would otherwise allow the wife to preserve and protect her rights in her contributions to the joint property.

78. Although the Sharia' law calls for the independence of the financial entities of each of the spouses, and commands financial guardianship of the husband over his wife's property. It does not include any rules regulating or determining how to deal with the joint wealth formed after marriage in the event of divorce. The matter becomes more complicated in case of the husband's death, since the Sharia law

in force divides the joint property between the wife and the relatives of the deceased husband and specifies detailed percentages for all those who have the right to inheritance.

79. This invites resorting to ruling systems unbound by laws, namely, social customs, to govern the financial and economic matters of the spouses. Despite the Palestinian legislation on inheritance, social practices and customs stand as a solid obstacle to the practical application of these legislations.

80. The law in force deprives the husband or wife of protection and does not prevent one from acquiring the other's right to joint property, which unfairly affects both parties. The absence of law reinforces the rules of custom and social customs, which are used as a mechanism for resolving joint property disputes, a mechanism marked by blatant bias against the wife.

81. The adoption of a law regulating joint property between spouses would not only regulate the ownership, but would also contribute as a basis for achieving equality for women in the fields of family and social life, pursuant to Palestine's commitments to relevant international conventions.

82. In practice, the study conducted by WCLAC showed that the sharing methods for this ownership should not necessarily mean equal sharing, but rather respond to the need for a specific system of sharing that deals with the different forms in which the common wealth was formed.

Article (23)

- Personal Status law : Marriage age, Paragraph 385

83. Personal Status Laws (PSL) within 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, which further exacerbates disparities and gender inequalities within the family.

84. The first article of Decree-Law No. 21 of 2019 which was issued by a Presidential Decree, stipulates that the marriage eligibility requires that the parties to the contract be sane, and adults (each of whom is eighteen years of age), as mentioned in the second paragraph of the aforementioned article. 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 Palestine Chief Judge of Sharia Court or the religious authorities of other Christian sects. These exceptions were left roughly, as it has not been determined what the legislator intended in having this exception. What is happening now 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.

85. Another method used, to violate the legal text for the sake of marriage under the legal age, a marriage contract is organized by a person who could be a marriage officer or any person without directly appearing in the contract. The contract and marriage are performed. In case of pregnancy, 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 the person who wrote the contract, as he did so without appearing directly.

86. As for the southern governorates (Gaza Strip), the competent courts apply the Egyptian Family Rights Law No. 303 of 1954, which states in Article (5) on the eligibility for marriage that the fiancé's age is eighteen years or more and the age of the fiancée is seventeen years old or more. The law has a serious exception to this rule, which is to allow the judge to marry off a girl over the age of nine and a boy over the age of twelve, which is stipulated in Articles 6, 7, and 8 of the Family Rights Law. Article (6) states, "If the adolescent who has not reached the age of eighteen claims puberty, the judge may authorize him to marry if he seems mature." Article 7 states that "If a female adolescent who has not completed 17 years of age claimed puberty, the judge can marry her off if she seems mature." As for Article (8), it states that "no one may marry a young child who has not yet reached the age of twelve, nor a young girl who has not yet reached the age of nine."

87. It is the responsibility of the legislative and competent authorities to legislate the law to preserve and limit the phenomenon of child marriage in the Palestinian society. It is their responsibility not to leave exceptions and to strictly specify and monitor who performs a marriage contract for under-aged persons. Otherwise, the matter remains open to more violators and indifferent to the application of the law.

Rights and duties of spouses and divorce, Paragraphs 386-388

88. The rights and duties of spouses in the PSL are unequal. This is in violation of some provisions of Article 16 of CEDAW. The Convention guarantees that it must include equality in all matters related to marriage and family relations and the relevant responsibilities based on equality between men and women during and after the termination of the marriage contract.

89. All matters concerning children are still in the hands of their father, as he is the custodian, while the mothers cannot take any measure in regards to her children without the father's consent, even if she wants to transfer them from one school to another. The husband even decides on the place of residency of his wife, unless specified differently in their marriage contract.

90. According to the Jordanian Personal Status Law of 1976(PSL) in force in the West Bank, divorce takes place at the unilateral will of the husband whenever and how he wants and that he registers it with the competent authority. This was stipulated in articles (83-101). As for consensual khulo' divorce, it was stipulated in the law in articles (102 - 112), where it addressed consensual divorce only in cases where marriage contract was made but no actual marriage occurred. The consent of the husband for divorce is required without which, divorce would not take place regardless of the concessions made by the wife. The wife, however, can resort to court asking for divorce in accordance with the provision of the law on the basis of disputes (Niza' w shiqaq).

91. It was stipulated in articles (113 - 132) of the PSL and for the reasons mentioned in the law, including conflict and discord, the husband can also file them to deprive the wife her marital rights. The case is filed before the competent court to obtain a divorce, which takes a period of time not less than six months in order to obtain a divorce. The lawsuit can continue before the court for a period of one year or more, as Article 133 stipulates on the subject of compensation for arbitrary divorce. Monthly alimni for not less than six months and not more than a year, regardless of the years of marriage, and regardless of the property that was owned after marriage.

Custody, Paragraphs 389-392

92. With regard to custody, the PSL did not take into account the best interests of the child, neither in text nor in practice. Through the legal reality, we find that custody is one of the thorny issues in Sharia courts, which do not have any consideration for the humane aspect or the child's interest. There are four legal issues; each constitutes a case, namely, custody, hosting, seeing, and inclusion, so, the mother waits until the child reaches puberty, whether male or female.

93. The Circular No. 34/2018 issued by the Shari'a Judicial Council has resolved the legal age of puberty, which is 15 lunar years, whether for male or female. While if the custody was to go to someone other than the mother, 9 becomes the legal age of puberty for the male child and 11 for the young girl. In both cases, the custodian, after children reach the specified age, may request the custody of the young boy and girl. If they are in the custody of someone other than the mother, there is no choice for either of the children. While if they were in the custody of the mother, only the boy is given the choice to stay with the mother of the father (which constitutes a gendered-based discrimination).

94. As for child visitation, it is three hours, once a week for the one requesting it. The problem in child seeing is in determining its location, which could be subject to differences between the litigating parties. Thus this is left to the discretion of the judge to implement. Unfortunately, child visitation could be held at police stations in light of not having a court-appointed visitation place.

95. Visitation, which was approved under Circular 59/2012, which became in force since 9/2012, is once a week for a period of 24 hours. A problem arises when the youngster has grown up without knowing or have ever met the custodian requesting the hosting/visitation. The law allows the custodian to request child visitation, while the child cannot reject that. And in case of rejection the custodian can get a detention order against the mother on the grounds of refraining from executing the judicial ruling.

96. In sum, the law's addressing of the issue of custody is against the best interests of the child and contradicts the provisions of international covenants.

Israeli Family Reunification Policies: Paragraphs 93 + 392

97. Israeli policies on Family Reunification are racist and discriminatory against the Palestinians people. They are disproportionately impacting women and intersect with patriarchal structures and the imbalanced power relations between males and females within society. The policies also result in dispersal of Palestinian families and increase the sufferings of women and children. The procedures followed in obtaining rights differ according to the identities of the spouses preventing women with Palestinian identity cards from the West Bank specifically who are married to Jerusalemites with Israeli identities from accessing the Israeli legal system. The sufferings are further exacerbated when the marriage does not work out and is dissolved. Often women are forced remain with an abusive husband and endure domestic violence to maintain her residency permit, child custody, and other rights within the marriage contract. This is due to conflicting legislation between the illegally annexed Jerusalem and other parts of the OPT. Court rulings cannot be implemented between the two dualistic systems. Of 250 cases of social and legal counselling cases by WCLAC in 2021, 70% of the cases were of West Bank women married to Jerusalemites.

Polygamy and Forced Marriage, Paragraphs 393-295

98. Polygamy according to the PSL in force is allowed up to four wives at one time thereby violating women's and her personal dignity and causes harm to her, her children and the family as a whole. In the West Bank courts, a circular was issued requiring informing the first wife of the husband's intention to marry a second wife prior to registering the new marriage contract but without making it conditional to obtain the consent of the first wife. This circular helped to reduce polygamy, but unfortunately this circular was suspended by Chief Justice of Sharia Courts and is no more mandatory by courts.

99. Women can resort to setting specific stipulations in the marriage contract, including a condition for example, of divorcing her husband if he decides to take a second wife. She cannot however stipulate not to marry another wife. In practice, only 2% of women put stipulations in their marriage contract although women have this right legally.

100. Marriage of Underage Girls: There is a circular by the Chief Justice in the West Bank prohibiting marriage under the age of 18, except in exceptional cases, and based on the circular, the age is calculated according to the Gregorian year and not the Hijri year. There are many unreal exceptions that are only claimed to circumvent the circular and to judges and courts. According to statistics of PCBS, there is a decline in the rate of early marriage for those under the age of 18 for both sexes. The %age of females who married in 2019 was 19.9% of the total females who married in the West Bank, compared to 24% in 2010. This reflects the importance of adhering to the aforementioned circular, which will contribute to reducing the rate of early marriage for females.

101. It is worth noting that many families are turning to the Jordanian courts in Jerusalem for the purpose of contracting the marriage, as these courts deal with the age of the marriage contract according to the Hijri year, not the Gregorian one, which is 14 years, six months and 21 days. This is a legal way out for circumvention and evading the courts in the West Bank, which now has to abide with the Presidential Decree of 2019 in raising marriage to 18 for both sexes.

*** Recommendations to ICCPR during Review of State Party's Report:**

1. To Call on State Party to accelerate the process of the passage of the Family Protection Bill which includes a comprehensive definition of VAW to include sexual, psychological and economic violence.
2. To ensure that Palestinian courts overcome all obstacles for women's access to justice. The Palestinian family units within the Police and Public Prosecution Office more responsive to their complaints. Also to take all necessary reforms in the administration of justice sector towards more gender sensitive approaches within the judiciary to women victims of GBV and/or women victims of GBV. Also provide quality services and free legal aid services to women victims of GBV accessing the system.
3. To adopt comprehensive national legislation to prohibit gender discrimination, including a comprehensive definition of discrimination on the basis of gender to be harmonized with all international conventions and treaties to which the State Party has already acceded.
4. To call on the State Party to specifically meet its legal obligations under article 2 of the ICCPR and take concrete measures at all levels to that effect. The state party should give special attention towards due diligence responsibilities to combat discriminatory attitudes and prejudice against women and girls on the basis of their sex and VAW as highlighted in our NGO joint parallel report above. (Paragraphs 7-13 of this report),
5. To promote gender equality in relation to the adoption of a gender-sensitive budgets by the Palestinian Government.
6. To adopt measures and procedures by the State Party to guarantee equality in marriage, during marriage, or in the event of its dissolution, and the mechanism of providing protection for children and women with disabilities of their rights to a decent life.
7. We demand the Committee to bring the State Party to accountability regarding the 'complex violence' practiced against women while peacefully demonstrating, and the reason behind the absence of protection for them in a way that guarantees accountability, reparation and ensuring non-recurrence; especially that these practices reinforced a negative cultural perception about the roles of women and girls by using them as a tool of "war", thus exclude them from the public sphere.
8. Require tangible progress in harmonizing Personal Status Laws, Penal Laws and all other national legislation with the provisions of international conventions and specifically the ICCPR, and to take into account the concluding recommendations of the CEDAW Committee to the initial report of the State Party. Also call on State Party to make greater effort to harmonize national laws and legislation with international treaties and conventions including ICCPR to which it has acceded.
9. We demand that marriage age exceptions be immediately abolished . We also demand to expedite the formation of a national committee to oversee and monitor the application of lawful marriage age, criminalize child marriages and prosecute perpetrators who circumvent the law and do not register those informal marriages in the Sharia courts.
10. Have a legislation or amend the law that commensurate with the rights of the child and ensure the best interests of the child, and raise the age of custody to 18 years, after which the child becomes free to choose.
11. We demand a law that regulates the ownership of joint funds between spouses, and legally regulate all matrimonial funds equally between the spouses.
12. We demand the state of Palestine to adopt concrete measures to guarantee the right to safe abortion to protect women's lives from the serious complications of abortion first, and the risk of murder in cases of pregnancy outside marriage.