



The Independent Commission for Human Rights

I C H R

ICHR's Written Intervention on the Initial report by the State of Palestine to CEDAW

I. The Common Core Document

1. The State of Palestine has failed to include the Common Core Document (CCD) with its initial report to CEDAW though it was the first report it would submit to one of the United Nations' treaty committees. It is worth noting that Palestine joined most of the United Nations' human rights treaties in April 2014. ICHR has no information of the Palestinian government's efforts to prepare the aforementioned document.

2. Moreover, the information given in Palestine's initial report has failed to cover all relevant issues necessary to be included in compliance with the guidelines for submission of the CCD. Following is an outline of the most outstanding issues in the CCD that have not been covered by the State's initial report.

1.1. Implementation of the Human Rights Treaties (including CEDAW) in the Gaza Strip (GS) and Area C

3. In para 50, entitled "Challenges," the state's report said that one of the "challenges facing the Palestinian women is Hamas Movement's continuation to issue a series of illegal legislations, which are not consistent with the commitments stated in the treaty, and implement them in GS." Despite this terse reference to the status of the treaty in GS, the report does not explain the extent of the Palestinian government's ability to implement the human right treaties in GS that has been under the *de facto* authority of Hamas since 2007. The formation of the national consensus government in August 2013 and its subsequent amendments have not led to the new government's control and run of GS. Virtually, this has hindered the possibility of enforcing the international treaties that the Palestinian government is committed to in GS. The same thing goes for the extent of implementing the aforementioned treaties in Area C in the West Bank that is under the control of the Israeli military occupation.

4. Furthermore, the report has failed to refer to the presence of measures and actions that demonstrate the Palestinian government's efforts to ensure enforcement of the provisions of the human rights treaties, including CEDAW, in the Gaza Strip and Area C.

1.2. Legal Value of the Human Rights Treaties (including CEDAW) in the Palestinian Legal System

5. In Para 52, entitled “Challenges,” the state's report points out that “There is also the fact that the legal status of international agreements acceded to by Palestine, including the CEDAW, is not defined. Nor are there any constitutional procedures specifying the hierarchy of different types of legislation or regulating the incorporation of the provisions of international agreements into national legislation”. This means, the report has ignored to make explicit reference to the non-obligatory nature of the human rights treaties, including CEDAW, for all official and non-official bodies in the State of Palestine due to the non-existence of a legal framework that would regulate the merger of these treaties in the national legal system. They have not also been published in Palestine’s *Official Gazette* of and have been officially disseminated.

6. Failure to determine the legal status of CEDAW leads to non-commitment of judiciary bodies (courts and public prosecution) to enforce those treaties in cases before them. In addition, they would not accept the arguments in these treaties in defense or charge. To prove this inference, the judiciary bodies have not enforced directly any of the provisions of this treaty in their rulings or legal proceedings. On the contrary, it seems that these bodies are not at all interested in the provisions of human rights treaties. For example, in a recorded speech, broadcasted on Radio 24 FM, from Ramallah, on April 11, 2017, Ms. Amneh Hamarsheh, a judge in Jerusalem Appeal Court, said, “CEDAW treaty is non-obligatory and cannot be implemented by the Palestinian judiciary, for it has not gone through legal procedures to become enforced, like its publication in the *Official Gazette* or its issuance in law by decree... CEDAW treaty is but ‘ink on paper,’ for the judiciary implements only the legal rules. These treaties, however, are neither implemented nor officially adopted.” Judge Hamarsheh added, “I personally have not perused this treaty and do not have to read it at all.” Judge Hamarsheh's remarks don't reflect her personal opinion. Rather, they reflect a legal analysis that Palestine's judiciary bodies embrace. The High Judiciary Council, for instance, has neither denied nor commented on her statements.

7. In this respect, ICHR would like to point out that the Palestinian judiciary has elicited some texts of the United Nations' treaties in very few cases in its judicial rulings and decisions. However, these were limited to texts that didn't run into conflict with the Palestinian laws. Therefore, this does not mean and/or lead to acceptance of argument or their mandatory status of international treaties for human rights before the judiciary bodies in Palestine.

8. Moreover, the state's report has failed to spell out if the government has taken any measures or actions, through which the government and/or the judiciary bodies would implement these treaties or the possibility of invocation of the provisions at the national level. Through its follow up, ICHR has found the official position hazy pertaining to taking action to enforce international treaties for human rights at the domestic level of the Palestinian judiciary system.

1.3. Exceptions/Restrictions Set out on Exercise of Rights and Basic Freedoms

9. In more than one context, the state's report referred to the presence of constitutional and legal texts that include the principle of equality and non-discrimination. It also has numerous references to laws relevant to right and freedoms pertinent to implementation of CEDAW.

10. The report, however, has omitted restriction of the rights and freedoms with a number of restrictions and exceptions. The Amended Palestinian Basic Law of 2003 and its amendments include the most important rights and basic freedoms guaranteed by the human rights treaties. However, the law has subjected them to general restrictions and exceptions that are difficult to identify or control. These include, for example, phrases like "within the law" and "Taking into account the provisions of the law". This has been reflected subsequently on issued laws regulating rights. The articles of these laws came with unnecessary and inappropriate restrictions, which would prejudice the substance of rights, and freedoms of all individuals in the society. The recent Decree-law (16) of 2017 on Cybercrimes is a case in point.

11. Furthermore, the law-making bodies in the State of Palestine have failed to draft legislations that reconcile with the content of the international treaties. A number of laws inherited from previous political regimes that ruled Palestine are still effective despite contravening the provisions of the Amended Basic Law and their imposition of unjustified restrictions on exercise of some rights and freedoms. A case in point is the Jordanian Anti-Crime Law of 1954 effective in the West Bank. This law allows the administrative governors to detain persons and hold them without the need for issuance of a court order against them.

12. If these laws continued to be effective and no action was taken to tune the restrictions and exceptions imposed on them, this would affect the status of human rights in Palestine in general and would definitely affect women's exercise of their rights and freedoms given the absence of a clear-cut methodology to draft legislations in accordance with international standards for human rights.

2. Violence Against Women

13. ICHR's stand on violence against women is that it's the outcome of imbalances in power relations existing between women and men and in lack of equality in the Palestinian society. The commission reaffirms that violence is one of the decisive social mechanisms that are imposed on women and their subordinating status to men. This necessitates that the State of Palestine take comprehensive measures at all levels to dismantle the patriarchal system and all collective control. The commission has found that the stat report did not make a link between discrimination against women in all mundane aspects of life and its impact on violence practiced against them.

14. The State of Palestine has failed to introduce an integrated legal system that could reduce discrimination between the two sexes as a means to eliminate all violence

practiced against women. The state has failed to define the concepts of "violence against women" and "discrimination against women" in any legislation it has issued. To effect a change in family-related laws, the commission's follow-ups report no signs of the presence of an official will to change these laws in the foreseeable future. This shows that the imbalance in power relations in the basic structure of the Palestinian society will continue, thus leading to continuation of control of women's life. The family-regulating laws which perpetuate women's subordinate status/position and discrimination have been in force since the advent of the Palestinian National Authority. The Jordanian Law of Personal Status # 61 of 1960, effective in the West Bank, and the Law of Family Rights, issued by Decree # 303 of 1954, effective in the Gaza Strip, allow marriage of children. They have also constituted the concept of custodianship and have given the man the right to divorce his wife without any conditions or restrictions. They have also given the man the right to practice polygamy and to prevent his wife from work and force her to stay at home "conjugal home," on condition he spend on her. This is in addition to her inability to work unless she has her husband's consent in case of not being a condition prior to marriage.

15. In another context, the government's report says the Penal Draft Law of 2011 was a significant progress. The commission stresses the government's lack of will to give its approval of the draft. More than six years have passed, since its drafting, but there are still no signs of its adoption soon. Despite forwarding the draft to the Legislation Harmonization Committee, set up in 2017 to study and analyze the draft, no specific time frame was set for approval and no official statement or announcement was issued to approve of the amended draft submitted by the committee. To continue to implement the penal laws in force means providing protection to perpetrators and to those who commit sexual assaults in the context of dropping personal right in sexual assault crimes on females or what is termed "family honor killing" and drop of penalty against rapists in case of marrying their victims. This is in addition to suspension of girls' complaints except through fourth degree of kinship in the Penal Procedures Law in force as well as the light penal sanctions against those who commit sexual assaults within the family.

16. Though the Palestinian Central Bureau of Statistics has provided some statistical data on family violence, the government has failed to conduct necessary studies to analyze the phenomenon of violence against women and to find out its causes, scope and mechanisms of reducing it. It has also failed to check effectiveness of measures taken to prevent and address this violence.

3. Violence Practiced by the State

17. Since the political rift in 2007, ICHR has received many complaints about prejudice of the physical safety of women at the hands of law-enforcement personnel. In 2016, ICHR received 56 complaints from women who claimed of violation of their right to physical safety. Of these, 15 were in the West Bank and 41 in the Gaza Strip. The complaints in question included 61 claims of violation of women's physical safety: 17 were in the West Bank and 44 in the Gaza Strip. These violations varied between

physical and mental torture. Twenty-four cases were reported outside centers of detention; 29 cases included threats and torture during detention and 8 cases of cruel, inhuman and degrading treatment. ICHR, however, has no sufficient information regarding measures of accountability taken to do justice to the victims and provide reparation to them. The commission has found lack of any information in the State's initial report regarding the number of complaints the official institutions have received about practice of violence against women and the status of the investigation and accountability.

4. Role of the State in Changing Negative Social and Cultural Stereotypes to Eliminate Bias and Traditional Practices

18. ICHR has no sufficient information regarding the policies and measures the state has taken to effect a change in traditional attitude and modify social and cultural patterns of conduct of men and women. It has not taken any action to remove gender-based bias and traditional practices and all other practices based on inferiority or superiority of either sex or based on stereotypes (pertaining to the role of men and women) which consider the women as subordinate to men. For instance, the Ministry of Religious Affairs, which has wide influence and popularity, does not target women's right in outreach platforms. Furthermore, despite the modern reforms in school curricula, there is still a need to change the stereotypes towards women and persons with disabilities and present images and models that depend on the principle of equality of rights between the two sexes.

19. The report, in para 79, said the social traditions remain a challenge for the state to enforce the principle of equality though the treaty stipulates that the state should not use customs or traditions or religious considerations to shirk its obligations to enforce real equality and eliminate all forms of discrimination. This requires that the state take without delay all means possible and adopt a policy that would put an end to discrimination.

5. Budgets Allocated for Women

20. The state's report, in paras 37, 59 and 90, referred to the government's interest in women development and social gender and in preparing development and anti-violence plans. ¹However, the report has failed to refer to a serious problem in preparation of these development plans and breakdown of items for public budget expenditure after the stalling of the Palestinian Legislative Council functions. The planning process has been alienated from the budget preparation process. This has led to change of the plans to mere documents that have no link with the realization of goals of the public budget. The public budget reflects the poor allocations and development expenditures pertinent

¹ "Strategic Plan for Anti-Violence Against Women 2011-2019; Cross Sectoral Strategic Plan for Consolidation of Equality between the Sexes and Women Empowerment 2014-2016; National Development Plan 2014 and National Policies Agenda 2017-2022".

to equality between the sexes and women's benefit from these public allocations. The Ministry of Women's budget is the lowest, in comparison with other ministries, and its running costs take the lion's share.

21. on the other hand, the funding gap, in the Decree-Law () in the matter of Public Budget of 2017, amounted to \$ 771 million. In its session of Dec. 27, 2016, the Palestinian cabinet expressed its intent to take austerity measures "thus compelling the government to take austerity measures to cover its funding gap through reduction of monthly expenditures of amounts proportionate with the gap itself." This government's action worries the commission because this would affect the rights of marginalized groups. The commission is also concerned because the government has not disclosed any of its proposed austerity plans.

6. Marginalized Groups of Women

22. The state's report has failed to provide information about the conditions of minorities' women. These include the women of the Samaritan Community², women in refugee camps, women living in rural or remote communities, the needy women, occupants/inmates in rehabilitation institutions and prisons, and the elderly women. These groups are too weak to stand against violence in all its forms. This is in addition to their weak economic and political participation. ICHR has no sufficient information about the conditions of some of these groups.

7. Women's Health

23. The ICHR's 2017 report on rights of beneficiaries of mental health services in Palestine revealed that the Palestinian Mental Health Draft Law has no provisions pertinent to female beneficiaries of health. In the same context, the draft law has failed to refer to official measures devoted to mental health services provided to women in need of them.

24. Fatalities among women, due to medical negligence, continued annually. However, the authorities did not taken any measures to control them. In 2015, the commission documented two fatalities as opposed to six fatalities in 2013 and 4 in 2016. These figures don't reveal all fatalities resulting from medical negligence. They also don't include women who were hurt in the wake of medical treatment but didn't lead to death.

25. The report failed to refer to any measures taken by the government against violators of women's health rights. The report did not say whether the authorities had taken any action against those held accountable for causing women fatalities or harming them in

2 The Samaritans is a small ethno-religious sect of around 850 people, follow a faith that contradicts mainstream Judaism. Some of them live atop Mount Gerizim, Nablus - Palestine while the others live in Holon in Israel. The community has its own religious rituals and traditions and runs its own social affairs.

the wake of their treatment. ICHR's previous report³ referred to the weakness of accountability in medical negligence incidents. Despite the commission's continuous follow up on a number of women fatalities, due to medical negligence, between 2013-2017, and its recommendations to official bodies, no measures have been taken to correct the current policies.

26. The story of the late Fa'idah Al-Atrash is one example of failure to take corrective measures in existing policies pertinent to medical negligence. Ms. Al-Atrash died on Oct. 10, 2016 while undergoing a dialysis operation at Beit Jala Government Hospital. In the wake of that incident, no serious measures were taken to reduce medical negligence. The authorities also failed to conduct a professional investigation and hold those accountable and compensate her family. A government investigation committee was established to examine the circumstances of her death. The committee took a decision not to hold the doctor the responsibility for her death. When her family asked for a copy of the committee's report, the Ministry of Health refused to give it unless it signed an undertaking not to publish the forensic report because the story had become a public issue.

27. The report, in paras 240-244, referred to the government's provision of sufficient health treatment for women. However, the ICHR's follow up revealed that health care provided to women was restricted to the birth delivery only. ICHR's 2015 Annual Report found a downturn in interest in women's health after delivery. It was found that only 33.2% of women received healthcare services, during maternity, at the hands of a qualified medical staff. Moreover, around 59% of women did not get vaccines against tetanus. The report also said there was a drop in interest in providing health care services to women in rural localities in contrast to towns. The report recommended more interest in education of women in these areas about importance of safe birth delivery, and facilitation of women's access to healthcare centers in towns. The report also had no reference to policies and measures taken for healthcare to women independent of being pregnant women, mothers or breast feeding mothers.

28. The report has failed to detail the measures the government has taken to publish and disseminate accurate and complete information and data periodically. However, a quick review of the Ministry of Health's website shows how old and limited the information is. Some information has not been updated for more than 2 years.

8. Women Labor

29. Women labor dropped in 2017 in comparison with 2015. The report, in para 221, said that the women's participation in the workforce in Palestine in 2015 was 19.1% as opposed to 71.9% for men. According to the Palestinian Central Bureau of Statistics 2017 April-June data, women's participation in the workforce was 18.5% while for men it was 71.6%. This shows that the government has not taken the necessary measures to

³ Report on "Towards Legal Balance of Protection of Parties of Medical Errors" ICHR – 2012.

raise women's participation in the labor market. It also shows lack of its interest in achieving equality. Consequently the market has become labor pushing for women.

30. The commission has no sufficient information about government measures and actions to ensure that working women, in the non-organized labor markets, enjoy their rights according to the law particularly when it comes to minimum wages and social insurance. For example, the commission's available information shows that the working women in some economic sectors and in the light manufacturing plants and in the services and agriculture sectors in particular did not receive the minimum wage and did not have any kind of insurance as stipulated by the relevant laws.

31. Through its follow up on monitoring mechanisms of working conditions and terms, since 2009, the commission has seen continuation of problems pertinent to monitoring of establishments. There have been neither financial nor human resources available for the Ministry of Labor to play its monitoring role.

32. According to para 224 of the report, unemployment among women in 2015 was about 34.2% while among men it was 22.5%. However, in April-June 2017, unemployment among women rose to 50% and to 23.7% among men (Palestinian Central Bureau of Statistics). These figures show the government has not taken the necessary measures to reduce unemployment among women.

9. Temporary Special Measures

33. In 2017 local elections, 21.2% of women won their seats by acclaim or through election on competitive lists. This was a 0.6% increase over 2012. Pertaining to lists which won by endorsement, the number was 181 councils and the number of seats was 1,683. Women winners represented 22.4% as opposed to 77.6% of men. Through its observation of the election process environment, which prevailed in the last elections, ICHR found a real problem in dealing with the women's registration during list registration stage. Though some politicians and representatives of factions expressed their full support of women's right and issues, and though the political parties signed a covenant in 2010 to consolidate Palestinian women's participation in political decision making by at least 30%, increase number of women on electoral lists of legislative and local councils of winning, and forward them on electoral lists to increase their chance of winning, they have kept status of women according to law arrangement and nothing has changed in that regard. Furthermore, some of these factions and parties have failed to cooperate with women in forming lists or in preparation of programs in

some areas. All this reveals weakness of communication behavior between the grass roots and the public and the gap between theory and practice.

34. The aforementioned statistics necessitate that the state go beyond the same quota and mechanism stipulated in the Local Council Authorities Law # 10 of 2005 and the Decree-Law 8 of 2012 as a temporary special measure to increase women's participation in elections and speed up a real equality. The government should have assessed the impact of its temporary special measures to find out how appropriate they were to speed up a real equality in the political, social and economic context of the Palestinian society and the Palestinian women in particular. It should conduct a study of the factors which create opportunities or hindrances for Palestine women.

35. Adoption of the quota mechanism in the general elections and in local council elections is a temporary measure. The government was supposed to set up a timeframe for its implementation and accompany it with other actions and procedures to achieve a real equality between the sexes in election participation.

Annex 1

ICHR Profile

A Palestinian national human rights organization, the Independent Commission for Human Rights (ICHR) enjoys full membership in the Global Alliance of National Human Rights Institutions (GANHRI). It was established in 1993 upon a presidential decree issued by the late President Yasser Arafat on September 30, 1993 in compliance with Article 3 of the Palestinian Basic Law (1993). The Presidential decree was subsequently published in the *Official Gazette* of the Palestinian National Authority in 1995 (No. 59/1995). In accordance with the decree, the duties and responsibilities of ICHR are as follows: "to follow up and ensure that the Palestinian laws, by-laws and regulations, and the work of various departments, agencies and institutions of the State of Palestine and the Palestine Liberation Organization meet the requirements for safeguarding human rights."

The presidential decree, however, left it to the commission to write its own articles of association in a way that would ensure its independence and effectiveness. The commission began its work at the outset of 1994.

Dr. Hanan Ashrawi was ICHR's first Commissioner General. Its current commissioner is Dr. Varsen Shaheen. The commission was the brainchild of Dr. Ashrawi; she was also the first driving force behind it. Years later, Article 31 of the Palestinian Basic Law, ratified by the Palestinian Legislative Council in 1997, and published in the Palestinian *Official Gazette* in 2002, stipulated, "An independent commission for human rights shall be established by law, which will specify its formation, duties and jurisdiction. The commission shall submit its annual reports to the President of the Palestinian National Authority, and to the Palestinian Legislative Council."

Despite failure to issue and enact the law in question till now, the commission works, clearly, in compliance with the presidential decree until approval of the commission's law.

Moreover, the commission, in its capacity as the national organization for human rights and a grievances office, follows up on complaints directly from citizens and ensures that the Palestinian laws and regulations, and the work of the various departments, agencies, and institutions of the State of Palestine meet the requirements for safeguarding human rights. The commission's scope of work includes handling human rights violations, receiving Palestinian citizens' complaints, pertained to the violations of human rights by the executive authority, and following up on them with the government authorities concerned. Its mandate allows it to engage with the international human rights system and conduct public education and awareness campaigns. In addition to documentation, monitoring and reporting violations of human

rights, ICHR monitors national legislations and policies and checks extent of their harmony with the international standards pertained to human rights.