



**Submission by Kayan- Feminist Organization to the
Human Rights Committee – 134 Session
Israel’s fifth periodic review
Under the International Covenant on Civil and Political Rights –
ICCPR**

**Human rights violations with respect to the access to
justice in the Religious Courts**

**Kayan- Feminist Organization has Special Consultative Status with the
United Nations Economic and Social Council**

Submitted 25/01/2022

Contents

<u>About Kayan:</u>	3
<u>Introductory Comment: Ratification, Reservation and Reporting</u>	4
<u>Imposing Religious Law</u>	5
<u>Jurisdiction of Religious and Family Courts – An Overview:</u>	6
<u>Discrimination against women in religious courts</u>	7
<u>Sharia courts:</u>	8
<u>Ecclesiastical court:</u>	8
a. <u>High Fees</u>	8
b. <u>Lack of Transparency:</u>	9
c. <u>Partially published Court Rules on Fee Exemptions and Discounts</u>	9
<u>C.1. Insufficient Publication of laws and regulations governing the legal proceedings</u>	10
<u>C.2. Non-Publication of legal decisions and lack of accessibility</u>	11
<u>Conclusion and Recommendations:</u>	12

About Kayan:

Kayan is a grassroots Palestinian feminist organization, which works in the field of women's empowerment and promoting the rights of Palestinian women in Israel. Established in 1998 by Palestinian feminists in Haifa, Kayan takes a bottom-up approach to social change. We invest in the field by empowering women to become transformative leaders on local and national levels, protecting and promoting the human and civil rights of Palestinian women in Israel, and breaking down the social and institutional barriers to gender equality.

Kayan envisions a secure and just society free of gender-based discrimination, in which Arab Palestinian women in Israel enjoy full and equitable opportunities for self-actualization and take a leading and active part in society through realizing their individual and collective rights. Kayan's mission is to consolidate an active, systematic, nationwide Arab Palestinian feminist movement that actively effects social change through contesting the root causes of gender-based discrimination, defending and promoting the rights of women, and ensuring their integration in decision-making positions.

The organization's Legal Department focuses on increasing Palestinian women's¹ access to justice, advancing their legal status and ending rights violations against them within the legal and judiciary institutions by means of free legal aid,² the raising of awareness and advocacy. As such, Kayan's legal department has gained first-hand experience and knowledge about the religious courts in Israel, and the Ecclesiastical Courts in particular.³

Since 2018, Kayan has Special Consultative status with the United Nations Economic and Social Council- ECOSOC

¹ Palestinian women citizens of Israel.

² Kayan's legal department represents clients in religious courtrooms, civil courts and vis-à-vis employers and State institutions in the domains of personal status, sexual harassment and women's rights in the workplace.

³ For more information about Kayan's legal department, visit Kayan's website at

<http://www.kayanfeminist.org/legal-work> .

Introductory Comment: Ratification, Reservation and Reporting

In 1991, upon the ratification of the ICCPR⁴, Israel declared a reservation “With reference to Article 23 of the Covenant, and any other provision thereof to which the present reservation may be relevant, matters of personal status are governed in Israel by the religious law of the parties concerned.(...) To the extent that such law is inconsistent with its obligations under the Covenant, Israel reserves the right to apply that law”⁵.

The same reservation was made by the state of Israel, on Article 16, on the ratification of the Convention for Elimination of All of Discrimination against Women CEDAW in 1991. We believe that the impact of this reservation constitutes a violation of the right to justice and equality, and thus it contradicts Article 19 of Vienna Convention on the Law of Treaties-1969. (Formulation of reservations): “A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless: (c) in cases not failing under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.”

Current reports: In October 2019, Israel submitted its fifth report with two annexes; we would like to draw attention to the fact that the state report submitted by Israel does not follow the reporting guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (see HRI/GEN/2/Rev.6, chap. D). The state report in fact is the “state list of replies” to the “List of issues prior to submission of the 5th periodic report of Israel” issued by the Human Rights Committee after reviewing Israel’s fourth report⁶.

The two annexes (1+2) to the state of Israel’s report include a list of answers to “List of issues prior to submission of the fifth periodic report of Israel (CCPR/C/ISR/QPR/5) which were required by the Human rights committee after reviewing Israel’s 4th Report.

⁴ Israel signed the ICCPR on 19.12.1966 and ratified the convention on 3.10.1991. See: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en [ICCPR]

⁵ UN Treaty Collection, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en#EndDec

⁶ List of issues prior to submission of the 5th periodic report of Israel: Human Rights Committee, 123 Session, Geneva (CCPR/C/ISR/PR/5)

Imposing Religious Law

In the State of Israel, the legal issues of marriage and divorce are under the exclusive jurisdiction of the Religious Courts, whereas other legal issues pertaining to personal status such as distribution of property and child custody are under parallel jurisdiction of the Religious and Civil Family Courts.⁷ The Religious Courts apply religious law in their rulings and form a separate legal framework from that of the general court system of Israel.

Kayan believes that different laws and regulations apply to the parties in a dispute depending on their religion and denomination, which results in different rules and levels of protection in matters of personal status (ICCPR, arts. 2, 3 and 14). We also believe that imposing religion-based family law constitutes a violation of the right to freedom of conscience and freedom of religion. (Article 18 of ICCPR).

Article 2.1 of the Covenant – ICCPR: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3 of the covenant: “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Imposing Religious courts constitutes a breach of the right to freedom of conscience and the right to equality in marriage as in article 18 and 23.4:

Article 18.1 “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

Article 18.2 “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice”.

Article 23.4 “States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.”

⁷ Rabbinical Courts Jurisdiction Act (Marriage and Divorce) (1953); The Druze Religious Courts act (1962); The King’s Order-in-Council of 1922-1947, Article 54(1) and (2)

Jurisdiction of Religious and Family Courts – An Overview:

There are two parallel legal systems governing family law in Israel: a religious legal system that consists of independent courts for each of the 13 religious communities recognized by Israel, beside a civil legal system in the form of the Court of Family Matters (“The Family Court”) established by the Family Court Law of 1995.

The religious courts are given jurisdiction in matters of personal status of spouses of the same religious group, and currently hold exclusive jurisdiction in all matters of marriage and divorce. By definition this is a breach of the UN Human Rights Committee’s General Comment No. 19, “The right to freedom of thought, conscience and religion implies that the legislation of each State should provide for the possibility of both religious and civil marriages⁸.”

The Ecclesiastical courts have also been given exclusive jurisdiction in matters of wives’ alimony, while regarding matters related to personal status – like the distribution of property as mentioned above – they are given parallel jurisdiction to that given to Family Courts.

Religious courts have exclusive jurisdiction on issues relating to marriage and divorce, whereas the civil family courts have parallel jurisdiction on custody and alimony. In practice applying different laws and regulations to the parties in a dispute depending on their religion and denomination, results in different rules and levels of protection in matters of personal status.

Although the religious courts in Israel are subject to the judicial review of the Supreme Court in ultra vires cases, where the Religious Courts overstep their authority, or in cases where the decisions are wrongful, harm social norms and matters of justice, the involvement of the Supreme Court is minimal in real life, both because the Supreme Court in fact “respects the religious courts’ autonomy”, and because many people choose to forgo the long and arduous process of seeking justice through the Supreme Court even when they have a just claim.

Discrimination against women in religious courts

The legal framework currently in place in Israel regarding personal status goes back to the Ottoman Empire period and is applied to each litigant according to his or her religion. Religious courts have exclusive jurisdiction on every aspect concerning marriage and divorce while the civil family courts have a parallel jurisdiction that oversees looks into matters of custody and alimony. The religious courts system creates a division between women inside of the justice

⁸ Paragraph 4, General comment No. 19: Article 23 (The family), ICCPR 39th session (1990)

system since different laws and regulations apply to women depending on their religion and depending on their denominations, which amounts to disparities among women and discrimination against women.

Sharia courts:

1. Discrimination in rights and responsibilities in a marriage:

A- Obedience in Sharia Courts:

The issue of obedience is present in most religious law. For example, according to Islamic Sharia, a wife must obey her husband, who in return pays the dowry and the wife's expenses. Thus, the husband can file an obedience lawsuit against his wife. This experience can be humiliating for the wife, who often feels like her freedom and ability to make independent choices are withdrawn. Obedience lawsuits are often filed by husbands against wives who move out of the house, or those who file alimony lawsuits.

B- Discrimination in Sharia Courts: Child Custody:

The most important consideration in cases of child custody is the child's best interests, but this does not always fare well with religious law. For example, when a Sharia court considers a custody case, it does so according to religious law, which originates from the 1917 Ottoman law and the personal status law of the time. Even though Sharia court is subjected to some aspects of Israeli civil law, which specifies that the priority should always be given to the child's 'best interests', Sharia courts sometimes use two discriminatory caveats that, if fulfilled, effectively strip the mother of child custody:

- A. The case of mother marrying another man: if the mother marries another person after getting a divorce, she loses her right to custody. In these cases, it is incumbent on her to prove that she is more worthy of the custody, and it is up to the court to decide in the matter.
- B. The child's age: according to the Hanafi school of thought used in Sharia courts, a mother has custody over her child until they are 7 years old when it is a boy, and until 9 years old for girl.

Ecclesiastical court:

In addition to the minimal involvement of the Supreme Court, and in contrast to other religious courts that are subject to supervision by the State, the Ecclesiastical courts enjoy full independence. Thus, they set the rules of procedure that govern the legal proceedings, they set the fees for each and every legal proceeding, and make procedural and substantive decisions regarding the cases brought before them. However, most of these legal activities are unpublished and unreported. Not even the fees, the substantive laws and the addresses of each court are published in any organized way.

It is our claim that the Ecclesiastical courts abuse their autonomy in a way that violates basic human rights, while the State – through its non-involvement policy– violates those same human rights protected under the ICCPR, CEDAW, and many human rights charters, particularly the right to equal enjoyment of all civil and political rights⁹.

a. High Fees

Opening a case before the Courts, filing an appeal or an application - all involve the payment of litigation fees to the Court. The State has enacted regulations with respect to the manner and procedures in which such fees should be paid to other religious courts, such as the Sharia and Druze courts¹⁰ that operate under the auspices of the Ministry of Justice and are financed and monitored by it. However, the State has refrained from enacting similar regulations for the payments of fees in the Ecclesiastical Courts that continue to enjoy full autonomy concerning court fees.

The autonomy given to the Courts and the non-regulation policy of the State together lead to a flawed outcome, expressed mainly in unreasonably high fees compared with other religious and civil courts, and non-publication or insufficient publication of fees, discounts and exemption procedures of fees.

Deferent Fees: In addition, the fees in the Ecclesiastical courts are extremely high compared to the rest of the religious courts. To illustrate the gap; the fees for opening a divorce case in the Sharia court is around 236 NIS (about 76 US\$), in the Rabbinical court it's between 450-

⁹ The International Covenant on Civil and Political Rights, art 26 [ICCPR].

¹⁰ The Sharia court fees, see: <https://goo.gl/og59MK> , the Druze court fees, see: <https://goo.gl/vhrUhd>

750 NIS, (about 140-240 US\$) while in the Orthodox Ecclesiastical court the fee can be as high as 8000 NIS, (about 2,550 US\$). At the Catholic Ecclesiastical court, where there are no divorces, the cancellation of marriage fee is around 4000 NIS (about 1,275 US\$).

b. Lack of Transparency:

The Legal Department of Kayan has realised that only some of the Ecclesiastical courts publish, in writing and only within the court itself, their own procedures and policies regarding fees, while others have not established such procedures and do not publish the fees applicable for the different proceedings. The lack of transparency and uniformity results in collecting different fees for similar legal proceedings in similar Ecclesiastical instances, and forms fertile ground for discrimination.

It should be noted that the Sharia and Druze courts form part of the Ministry of Justice and both publish the cost of litigation fees on the Ministry of Justice's website.¹¹

c. Partially published Court Rules on Fee Exemptions and Discounts

Kayan's experience with representing women in divorce cases before the Ecclesiastical Courts shows that in certain circumstances the Courts accede to applications for discounts, or exemptions from payments of fees. However, the Courts have no written guidelines or regulations regarding the criteria for discounts and exemptions. Even if they do have such criteria, they don't publish it, or publish it only within the court itself, thereby denying the general public access to it. Thus, those who wish to bring a claim before the Court may be unaware of their right to submit an application for a discount or exemption from payment of the fees.

The high sums and the fact that there are no clear regulations regarding exemptions or discounts based on clear criteria, have negative implications on women, and Arab Christian women in particular. Their right to equality and fair trial are violated.¹²

¹¹ The ministry of justice website: (<http://www.justice.gov.il/Units/BetDinDroziLerorim/Pages/Hipush-Piski-Din.aspx>), (<http://www.justice.gov.il/UNITS/BATIDINHASHREIM/Pages/Hipush-Piski-Din.aspx>).

¹² The International Covenant on Civil and Political Rights, articles 2, 3 and 14 of [ICCPR].

C.1. Insufficient Publication of laws and regulations governing the legal proceedings

The majority of the Ecclesiastical Courts in Israel do not make public or accessible the laws, regulations and rules that they rely on in their judgments and opinions. These legal instruments are crucial not only to the parties (or potential parties) of the proceedings, but also to the attorneys who represent the parties in Court or wish to advise them before turning to the Court, in violation to their right to adequate legal representation¹³. In addition, the Orthodox Ecclesiastical courts (to whose jurisdiction the majority of the Palestinian Christian citizens of Israel are subject) not only keep the laws, regulations and rules unpublished and inaccessible, they also do not have a version of the all the relevant law and procedures translated to Arabic; rather, they are issued only in Greek. Thus, these laws are in fact not accessible to the vast majority of the population under their jurisdiction. It is hard to find a convincing explanation for the keeping of laws and regulations in the dark.

It is worth noting that keeping the regulations, laws and work rules of Ecclesiastical courts in Greek, a language that the vast majority of Palestinian Christian citizens of Israel do not read or use, contradicts the basic argument that Israel brings to justify having religious courts system i.e. “autonomy” for religious groups.

In contrast, the Druze religious court, for example, maintains a website under the Ministry of Justice’s website where it publishes the laws and the laws of procedures as well as the opinions of the court that reflect its legal rulings on the main legal issues (subject to the concealment of personally identifiable information).¹⁴ The fact that the Christian citizens of Israel do not have access to the same amount of information regarding the court procedures, constitutes a clear discrimination based on religion, and a violation of their right under the ICCPR, including the right to freedom of conscience and freedom of religion¹⁵. The impact of such a breach of both international and national law on marginalised and economically disadvantaged Christian women is great.

¹³ The International Covenant on Civil and Political Rights, article 14 of [ICCPR].

¹⁴ See the Druze Religious Court’s website under the Ministry of Justice at: <http://www.justice.gov.il/Units/BetDinDroziLerorim/Pages/Hipush-Piski-Din.aspx>

¹⁵ Article 18 of [ICCPR].

C.2. Non-Publication of legal decisions and lack of accessibility

The Ecclesiastical courts in Israel do not make their legal decisions public. In fact, the citizens subject to the jurisdiction of the Ecclesiastical Courts may be clueless: they have no access whatsoever not only to the laws applicable in the Courts but also to the legal history, literature or previous rulings of the Courts.

“The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large”¹⁶. This concept of accessibility and publicity of Court rulings, procedures, precedents etc. is one of the major pillars of democracy, due process and fair trial¹⁷. This principle is anchored in several international covenants, such as article 14 of ICCPR, Article 10 of the UDHR, which states, “Everyone is entitled in full equality to fair and public hearing”. The European Convention on Human Rights article 6 reaffirmed the same concept which is recognized as equally binding in criminal and civil proceedings. As an essential principle, the concept of accessibility and publicity of Court rulings, procedures, and precedents was endorsed in many countries’ constitutions and legal systems.

The Israeli Courts Act¹⁸ authorizes the Minister of Justice to determine the procedures of every hearing that takes place in the judicial system, including both the civil legal system and the religious legal system altogether. However, no such regulations have been legislated yet.

Regarding the civil legal system, the Knesset has enacted regulations about the proper procedures of the civil and criminal courts, among them regulations of the publication of judicial decisions¹⁹. However, in the religious legal system, there is only one law that has been enacted: “Regulations Regarding the Procedures of Jewish Courts in Israel”²⁰ that refers solely to the Jewish Religious Court. This law describes the proper course of litigation in court, but does not refer to publication of decisions at all. The discretion regarding when and how to report the Courts’ decisions or rationales is given solely to the Judges of the Jewish Courts, who should explicitly instruct to publish the decisions when they see fit to do so.

Regarding all other religious groups in Israel, there are no regulations whatsoever on publication or transparency. In practice, however, since 2014, the Druze Religious Courts as

¹⁶ Paragraph 24, General Comment No. 32. Article 14: Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32), 23 August 2007

¹⁷ Paragraph 9, General Comment No. 32, CCPR/C/GC/32, 23 August 2007

¹⁸ Israel, courts act 5744-1984 art. 21

¹⁹ Israel, courts act 5744-1984 art. 68(a)

²⁰ Family matters court act, *supra* art 6.

well as the Sharia Courts have been publishing their decisions, but they, like the Jewish Courts, do so sporadically and when they see fit to do so.

Conclusion and Recommendations:

In view of the aforementioned developments, Kayan respectfully requests the United Nations Human Rights Committee to:

- To request Israel to follow the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (see HRI/GEN/2/Rev.6, chap. I).
- To address the State of Israel on the reservation made upon the ratification, with reference to Article 23 of the ICCPR, which contradicts with Article 19 of “Vienna Convention on the Law of Treaties-1969”, (Formulation of reservations), and should be withdrawn.
- To publicly recognize the consequent violations of article 2 of the ICCPR by Israel. To remind the Israeli Government of its responsibility to ensure the full enjoyment of all rights set forth in the Covenant, equally and without distinction of any kind, to all persons under the jurisdiction.
- To recommend to the State of Israel to assess the current system of religious law governing personal status issues, with a view to harmonizing it with the provisions of the Covenant. Particularly to ensure the full implementation of the provisions on non-discrimination in the enjoyment of Covenant rights (art. 2.2), and on the equal enjoyment by women and men of the civil, political rights in the Covenant (art. 3).

We urge the Human Rights Committee to include in the Concluding Observation clear recommendations and to firmly request the State of Israel to take necessary acts regarding all physical and economic barriers that impede access to justice for women, in particular those belonging to Palestinian Arab Minority in Israel, including:

- Measures to guarantee transparency, equality, fairness and access to justice in the religious courts,
- Measures taken to guarantee that the fees paid to the Ecclesiastical courts are equal to or proportional to those paid in other religious and civil courts;

- Measures taken to guarantee that all religious courts make public: the laws, regulations, addresses, details of contacts, rulings and decisions (subject to the concealment of personally identifiable information of the parties).
- The state of Israel should be required to take clear and immediate steps to increase accessibility of all information and laws available, including translated to Arabic, and eliminate the obstacles preventing its citizens from gaining access to justice
- The State of Israel should be requested to provide the committee with steps taken to provide Christian families equal access to justice, including information on how the State deals with the high fees in the Ecclesiastical courts.

The current Israeli law does not provide for civil marriages, and even spouses who contract civil marriage outside the State party are still subject to the jurisdiction of religious courts in divorce cases;

- the state of Israel should be required to adopt laws and policies that provide the right to have civil marriage and to divorce in civil courts,
- In cases when civil marriages are contracted outside the State party, Israel should be required to provide the right to divorce in civil Courts too.
- Kayan urges the committee to request the State of Israel to publish statistics on cases in religious courts, including number of Obedience cases and number of cases where women lost child custody because of second marriage.