



منتدى المنظمات الأهلية الفلسطينية لمناهضة العنف ضد المرأة

Palestinian Non_ Governmental Organization Against Domestic
Violence Against Women (Al Muntada)

Position Paper by Violence against Women Organizations Forum on the Draft Decree on the Protection of Families from Violence Law 2016

Introduction

This paper comes in the context of the **Violence against Women Organizations Forum** follow up on policies and legislation on the prevention of violence against women and the prevention of violence within the family. This paper reflects the Forum's interest in the development of national strategies to prevent violence in the family through the development of a legal framework for protection of the family from the violence that conforms to international human rights standards and meets the national need arising from the legislative gap in addressing domestic violence.

This paper presents the position of the Violence Against Women Organizations Forum from the Draft Decree on the Protection of Families from Violence Law no. () 2016 to be as one of the lobbying and advocacy process supporting tools that the Forum is working on to urge the official institution to issue this law and to create awareness among several groups and institutions.

The Forum's position on a draft resolution on the Draft Decree for the Protection of Families from Violence Law is based on international human rights treaties, especially on domestic violence, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Declaration on the Elimination of Violence against Women. The Forum also considered the pioneering Arab legislative experiences that adopted legislative strategies as a means of preventing domestic violence, such as the Lebanon, Jordan and Tunisia, through the introduction of laws on domestic violence.

Overview of the Components of the Draft Law Decree



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The project consists of 51 articles, which dealt with the definition of the terms in the draft law, the scope of the objective application. It also defined the application of the provisions of the draft, the powers and measures of protection guides, the competent authorities to issue protection orders and content, preventive measures to protect the victim and her family, the protection of complainants. In addition, the draft defined the role of the Public Prosecution and the competent courts in dealing with domestic violence, the mechanisms to drop personal right case, and the penalties for perpetrators of domestic violence and penalties for breach of law enforcement “The High Judicial Council, Ministry of Justice, Public Prosecution and the Department of Family and Juvenile Protection.” The draft stressed on the confidentiality of investigation and trial files as well as on the importance of holding closed and private case hearing as a matter of urgency.

The Harmonization of the Legal Organization of the Draft Law with International Human Rights Conventions

The draft law is in line with the international human rights conventions and stated the State obligations to guarantee the rights and principles of equality, security, freedom, safety and dignity of all humansas contained in international conventions including: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, as well as paragraph 23 of the annex to Economic and Social Council resolution 1990/15 of 24 May 1990. These conventions indicated that violence against women, both in the family and in society, is a widespread phenomenon that transcends income, class and culture. It must be met with urgent and effective steps to prevent it.

CEDAW Convention considers that discrimination against women violates the principles of equal rights and respect for human dignity and is an obstacle to the equal participation of women in the political, social, economic and cultural life in their countries. It also hinders the prosperity of society and family, and increases the difficultiesto fully develop the women’s potential to servetheir country and the entire humanity. Recommendation No. 19 of CEDAW Convention, which considers that gender-based violence is a form of discrimination that inhibits women's ability to enjoy their rights and freedoms on an equal basis with men.



The Convention also recommends the elimination of discrimination against women through the States adoption of appropriate and effective measures to overcome all forms of gender-based violence, both in general and in specific context; through the introduction of laws that opposes violence and abuse in the family, rape, sexual abuse and other forms of gender based violence. And the Declaration on the Elimination of Violence against Women, which urges States to exercise due diligence in preventing, investigating and sentencing acts of violence against women, in accordance with national laws, whether committed by the State or by individuals within the family.

Legal Regulation of the Draft Law Decree

The draft law was consistent with the provisions of the Palestinian Basic Law; it affirmed on equality and non-discrimination before the law and the judiciary, and that no one is subject to coercion or torture by law enforcement officials.

The draft is the first legal organization of domestic violence, so it came with a philosophy and directions and legislative provisions based on human rights and women's rights, which is contrary to the philosophy of legislation in force. Considering the draft as a special law repeals the legislative provisions and laws that preceded by explicit text, to be implemented in relation to violence within the scope of the draft law.

The draft adopted international human rights conventions in terms of meeting the content of international conventions when defining its concepts and terms and its response to the legal indicators of the CEDAW. The texts and provisions of the draft are based on the criminal philosophy derived from the provisions of the privacy of the relationship that gathers family members and the trust among its members. It also based on the physiological, medical, psychological and social consequences that result from some crimes that occur within the family, which required the existence of sanctions differ from those imposed on the individual in case of an offense against another individual outside the family. It also included the respect for the right of the victim to self-determine her best interest by giving her



the right to drop the case in certain cases outside the framework of crimes and sexual assaults.

The draft took into account the social aspect of domestic violence cases, as this law went beyond the normal and prevalent in terms of the generality and impartiality of the laws, it took into account the mixture of legal and social nature of domestic violence cases. The draftlaw aimed to develop legally binding and socially flexible texts, including the right to protection from violence, such as preventive measures. The draft also included protecting all family members from violence, especially the most marginalized groups, including women and children, to meet the needs of abused women and children, and ensuring the essential privacy and confidentiality rules to save the family from the risk of disintegration that may result from the abstract legal intervention. The draft texts also adopted sanctions aimed at social deterrence, without neglecting the importance of reform and rehabilitation of the perpetrators and victims of violence, as part of a cumulative process to decisively reduce the phenomenon of violence in the long term.

Legal Organization of Concepts

The Definition of Family in Accordance with the Draft Law

The international conventions on national legislation allowed the determination of the definition of the family to be based on the social context and the cultural heritage of each region. In the Lebanese Law No. 293 on the protection of women and other family members from domestic violence issued in 2014, the definition of the family is limited to second-degree relatives only. The Jordanian Protection from Family Violence Law No. 15 of 2017 defined the family as: “husband, wife and relative to the third degree, relatives in the marriage to the second degree, relatives of the fourth degree, and relatives in relation to the marriage to the fourth degree as long as they live in the family home.

The draft considered to expand the definition of the family covered by its provisions, to ensure the protection of all individuals of relatives up to the fourth degree, as long as they live in the family house. The Palestinian draft defined the



family as: those who related by blood and marriage ties to the fourth degree, and those who reside with the family permanently, and everyone associated with the family on bail or adoption, domestic workers and care providers residing with the family, and the ones included in the custody of an alternative or foster family.

Forms of Domestic Violence in Accordance with the Draft Law

The draft included various forms of "physical, psychological and sexual" violence occurring within the family, whether or not the act was committed within or outside the family home, and whether the violence was direct or indirect. In its definitions of various forms of violence, the draft definitions were based on the provisions of international human rights conventions. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Declaration on the Elimination of Violence against Women, the World Health Organization conventions, and the Rome Statute of the International Criminal Court. The enforced family protection laws in Lebanon, Jordan and Tunisia all included the **Domestic Violence** forms that were included and cited in international conventions as forms of domestic violence, which the Palestinian draft law also included.

Legal Regulation to Prevent the Occurrence of Domestic Violence Crimes

The CEDAW convention emphasized the importance of the role of legislation in the prevention of crimes, especially domestic violence. Several indicators related to the State's obligations to prevent discrimination and violence against women were mentioned in the CEDAW convention where the State will be held accountable for its role in passing laws that prohibit violence against women and sentencing the perpetrators.

The prevention of violence against women and domestic violence requires many measures at the policy and national legislation levels. The adoption of laws is one of the legislative strategies that contribute to the prevention of violence against women and domestic violence. The draft guarantees that the State must commit itself to developing programs, policies and plans that contribute to the promotion of the community culture against it, and promote the response of public policies including education, health, legislative and media policies. The commitment of



official institutions and through cooperation with other institutions to monitor and evaluate the impact of such programs, policies and plans in the prevention / elimination of violence.

The legislation on combating violence against women and domestic violence in the Arab countries have recognized the importance of the State's commitment to providing legal, educational, health and media policies and strategies to prevent violence. It also recognized the need to provide an inclusive community environment in all aspects of life to change the culture of women's inferiority and the stereotyping of masculinity and femininity.

Legal Regulation for the Protection of Groups Threatened by Violence

The draft's main objective aimed at providing protection and compensation to those who were threatened by violence and to those who survived it. The draft assigned several institutions with the task of protecting the groups threatened by violence to include the ministry's protection supervisors, the Family and Juvenile Protection Police Department, the family prosecution and the competent courts.

Providing the protection and compensations will be through various tools, including a risk index report, protection orders etc.

Protection measures varied depending on the degree of risk and threat to the lives of the victims. The protection measures included one or more of the following measures:

- The removal of the suspect from the home, temporarily for a period determined by the competent authority, when any danger to the victim was felt.
- Obtain an order to constrain the suspect from contacting or interacting with the victim, or her family or any member of her family and not to commit incitement against her or her family.
- To detain the suspect for a period not to exceed 24 hours in the Department of Family and Juveniles Protection until the providing the protection for the victim and, or their family member.



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- The victim, her children of legal age and other children, if at risk, are transferred to a protection center of their choice, with restraining the suspect of approaching the victim's residence, whether it is the protection center or any place mentioned in the order of protection.
 - The prevention of harassment, whether through electronic communication or pursuit action.
 - Prevent the suspect from disposing of funds that are allocated for the family expenses or any joint funds.
 - Preventing the carrying of arms.
 - To enable the victim or the representative to enter the family home in the presence of the designated official to take personal belongings.
 - Organize how the suspect sees his children.

The draft did not limit the fact that the assault actually occurred to be sought for protection, but the victim has the right to request protection in the event of a threat of violence or a perceived risk. This is what Arab legislation has taken in consideration in Lebanon, Tunisia and Jordan.

As a complement to the criminal philosophy of this draft, and in line with the provisions of the Arab laws on combating violence against women and domestic violence, violence against women and domestic violence has been excluded from the scope of the private issue but as a public matter, because of its causes and effects. In order to extend the concept of protection, the draft obliged law enforcement to provide protection to complainants or complaints concerning domestic violence.

The project also specified the scope of the Department of Family and Juveniles Protection in preliminary investigations, the role of the family prosecution in the investigation and collection of evidence, and the use of various technical reports, including those with official and civil institutions responsible for providing services to victims of domestic violence. It ensured the convening of a competent court to hear cases of domestic violence and to order protection as a matter of urgency. The court may exempt the victim from attending her hearings on the issue of domestic violence; if she considers that her interests require so, the sessions of the competent court shall be confidential, and sessions may be attended only by



special permission of the head of court as long as it does not contradict with the victim's interests. It is not permissible to postpone the domestic violence case for more than one time for the same reason, and the duration of the postponement does not exceed one week.

Legal Regulation on Achieving Public Deterrence and privateDeterrence

The purpose of the sentence is to protect the rights and interests that the legislator has determined to be capable of criminal protection. The purpose of the sentence is twofold: achieving justice and public and private deterrence. Achieving justice derives from achieving a balance in society. The crime injures the sense of justice and motivates the souls to deprive the victim of his rights. The sentence aims to erase the aggression in both parts by restoring justice to the society to satisfy the general feeling and the victim's feeling in particular. Public deterrence is a warning to all people by means of the threat of sentencing with the poor consequences of criminality. Punishment is a deterrent. Private deterrence is to treat the criminal danger inherent in the person of the offender and to eradicate them to become a good citizen in society. Therefore, the private deterrence is of an individual nature, aimed at not returning the criminal to criminality again through rehabilitation.

The penalties and measures contained in the draft are consistent with the Arab laws on violence against women, domestic violence and international laws, such as the Spanish law, and are in line with the criminal philosophy of criminalization and sentence. The draft penalizes the perpetrators of acts of violence in the family as a protective unit for its members. Violations within the family are criminal offenses with no less than three years' imprisonment and may be as high as 20 years as in the case of human trafficking. The aggravated circumstances are considered factors affecting the quality of the estimated penalties. In the penalty of the rape crime, the perpetrator shall be sentenced for a period of not less than fifteen years and not more than eighteen years. While the penalty shall not be less than eighteen years and not more than twenty five years if the rape is committed jointly, if the rape resulted in pregnancy, or if the raped girl was a child or disabled.



The draft included taking certain actions as offenses where the sentence will be imprisonment and / or fine, as in the case of overhearing or transmitting by a device of any kind of private conversations in a private place and by telephone or any other device or in a public place, where the nature of the conversation was secret or private

Conclusion and Recommendations

By reviewing the draft law on the protection of the family from violence, the content of rights in international human rights conventions, and Arab pioneering experiences in the laws protecting women and families from violence. We recognize the importance of the adoption of the draft as it addresses many gaps related to the protection of victims and the compensation, specifically with regard to the protection of witnesses and the expansion of the framework of the draft law to include relatives up to the fourth degree. The draft law came with an integrated legislative philosophy that considers violence within the family as a crime and not a private matter.

The draft devoted to not to underestimate these acts by holding trials expeditiously and intensifying sentences, it cited numerous acts as punishable offenses in line with the definitions contained in international conventions on forms of violence, which were not included in any previous criminal legislation as crimes. In addition, the draft relied on the philosophy of rehabilitating the perpetrators as much as possible, and to devote the confidentiality of the procedures followed in dealing with domestic violence.

We also believe that the Judicial Council should be set up to form specialized judicial bodies to handle cases of domestic violence. This will allow for expeditious decision-making and the creation of specialized judges to handle with domestic violence cases, taking into account gender in the formation of family courts.