

“Factsheets on sexual violence in the Palestinian context”

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Introduction:

As part of its program “Women Protection from GBV”, implemented in cooperation with UNFPA, MIFTAH held a central dialogue workshop on October 19 in order to produce a public policy paper on “Sexual violence in the Palestinian context” with focus on rape and sexual assault inside the family and sexual harassment in public and private spaces. The session was based on factsheets previously written on the three aforementioned topics and which was preceded by area-specific discussion sessions with official, private and women’s organizations related to the field, which were held in Hebron, Jenin and Nablus. The central dialogue workshop was aimed at highlighting the scope and magnitude of sexual violence, its impacts, legislations and gaps that still remain in them, in addition to highlighting the current and achieved efforts in the field of policies and services, how efficient they are and how much they have contributed to limiting sexual violence and to responding to victims’ needs and produce recommendations to promote bolstering capacities in limiting the problem, empowering the victims, achieving protection for them and achieving justice.

Discussion:

The discussion revolved around the topic of sexual violence, in three directions:

First: Information and statistics

After showcasing and discussing global and local statistics on rape, sexual assault and harassment inside the family and pointing to the difficulty in obtaining accurate and sufficient information and statistics at the Palestinian level to reflect the scope of the problem, the participants agreed on the following:

- There is a problem in the low percentage of reporting on violence, including all forms of sexual violence in spite of official and civil efforts to promote women’s access to

channels of justice, protection and services. They noted that this was a global and also a local problem.

- The process of monitoring cases of violence, including the various forms of sexual violence; the case could be recorded in more than one place given that there isn't a unified national system of classification which could be fed information by all parties and therefore obtain categorized and accurate reports according to agreed upon standards. There are attempts to set up such a system (a unified national information monitoring system) by the Ministry for Women's Affairs, but has yet to be completed.
- The majority of reports published from the various official sectors and which were used do not differentiate between rape inside the family or outside of it; neither do they categorize cases of sexual harassment. Most of the published reports offer no demographic, age-sector or regional statistics for the issues dealt with, including in reports from the Palestinian police and the Attorney General. The most accurate reports were from the Ministry of Social Development.

Second: Enacted legislations and laws

Here, the participants discussed the enacted laws in Palestine, which are used to deal with the various forms of sexual violence, namely: the Jordanian Penal Code, No. 16 of 1960, which is applied in the West Bank, and the Egyptian law applied in the Gaza Strip; the draft Family Protection Law; the Palestinian draft Penal Code and some recently approved decisions pertaining to rape. After introducing and discussing legal definitions and the materials pertaining to security violence in their forms of rape, sexual violence within the family and sexual harassment, in addition to the punishments for these crimes, the participants confirmed there were legal discriminatory gaps and insufficient laws to cover the various aspects of sexual violence. Following are the points agreed on by the group:

- The development of the Jordanian Penal Code No. 16 of 1960 in Jordan but which was not applied in the West Bank in addition to the multitude of laws applied including Jordanian in the West Bank, Egyptian in Gaza, amended Jordanian and Israeli laws in Jerusalem.
- The group commended the amendment to the penal law, which took place on March 14, 2018. President Mahmoud Abbas signed Law No. 5 for 2018 which stipulates the cancellation of Article 308 of the 1960 Penal Code enacted in the West Bank and which allows convicted rapists to avoid prison if they marry their victims.
- The legal definition for rape found in the Jordanian Penal Code No. 16 of 1960, which is applied in Palestine, limits the crime of rape and the punishment for it on females only whereby global and Palestinian definitions include both sexes in the rape case. The Jordanian Penal Code considers any sexual assault on males as defilement which is a lesser crime than rape and with a lesser punishment.

- One of the more jarring gaps is that the Jordanian Penal Code does not recognize marital rape in contradiction to the definitions in the National Strategy to Combat Violence against Women (2011-2019) and also in the Palestinian draft Penal Code and the Family Protection Draft Law. These laws do not determine the marital status and conditions violence (rape) with coercion or force by various methods and ways which could happen within the context of marriage.
- The 1960 Jordanian Penal Code No. 16 deals with the issue of incest as a crime of consensual adultery, which is a misdemeanor punishable by imprisonment from between two to three years and contingent upon a complaint filed by relatives or in-laws up to the fourth-degree. The Egyptian law, No. 74 of 1936, in effect in the Gaza Strip, considers incest a crime. It is mentioned in Chapter 17 of crimes that fall within public morals and is punishable of up to five years in prison.
- The absence of a clear article on sexual harassment in the Jordanian Penal Code and neutrality in the enacted articles in terms of sexual harassment acts; putting the burden of proving these acts on the woman or girl who was harassed; adaptation of cases of sexual harassment either by immoral acts or defilement if parts of a woman's body are touched, in accordance with the Jordanian Penal Code in effect. The participants realized the importance of a law combatting sexual harassment as a preventative approach against the development of violence related to sexual harassment before it reaches worse forms of sexual exploitation or rape.

Third: policies and services

In terms of the policies and services in place to combat violence, including sexual violence, and meeting the needs of victims, a discussion was held about the achievements made at the level of policies and services, including:

Policies

- The launching of a National Strategy to Combat Violence against Women for 2011-2019 and including an exclusive objective in the National Policy Agenda (2017-2022) to promote gender equality and justice and to combat violence. Based on this, a cross-sectoral strategy was formulated for this purpose and national protocols were achieved on the mechanisms in dealing with battered women in the health, social and police sectors, which approved a law for a national referral system for battered women, No. 18 in 2013.
- Palestine updated a national committee to align with the CEDAW agreement for national legislations. The committee began reviewing and adapting the Draft Palestinian Penal Code and the Family Protection Law.
- In its report to the CEDAW committee in Geneva on the status of women, Palestine promised to eliminate all forms of discrimination against women and to work towards

publishing signed international agreements in official Palestinian newspapers after a mechanism is agreed on by the relevant parties. After they are published, any judge can base their rulings on it, which of course includes cases of sexual violence.

- The Palestinian Central Bureau of Statistics adoption of conducting surveys on family violence. A survey was conducted in 2005 and another in 2011. A third is being prepared for in 2018.
- In 2017, the Palestinian Ministry of Health exempted battered women from paying for medical reports that reflect their health status as a result of violence.

Services

There are concerted efforts by official and civil society institutions to provide legal, social, mental and health services to victims of violence, to promote their access to justice, to encourage them to inform about violence, to provide protection, rehabilitation, social reintegration and economic empowerment services in addition to raising social awareness on violence, its forms, impacts and the importance of combatting it. The most prominent of these service efforts are the establishment and development of family and juvenile protection units, the formation of a family prosecution that deals with cases of violence, creating safe houses (three in all) to handle battered women at the emergency, mid and long-term level; launching empowerment projects for survivors of violence including economic empowerment by the Ministry of Social Development; increasing the readiness of the Ministry of Health in monitoring, uncovering, informing and receiving battered women, providing them with the necessary services and referring them to other relevant sectors according to the national referral system.

In spite of the efforts made in terms of policies and services, the participants still had criticisms in terms of the efficiency of these services, the quantity of financial and human resources and the extent of response by these services to all the needs of victims of sexual violence, whether social, mental, legal, rehabilitation or judicial services. They expressed their concern over the weakness of monitoring and follow up mechanisms for the services by the relevant parties and pointed to the lack of rehabilitation services for the perpetrators of violence. They confirmed that all the efforts made in the field of awareness and training did not help to improve the level of informing disclosing about violence or changing social behaviors and positions towards violence.

Fourth: Recommendations

- Nationally unifying the definitions regarding sexual violence and its forms so these definitions can be adopted in enacted laws in addition to harmonizing legislations with international agreements including the Draft Penal Code and the Family Protection Law.
- Encouraging qualitative and quantitative studies on the phenomenon of sexual violence and its different types including analyses studies an evaluation on the effectivity of

prevention programs and their response to issues of sexual violence in places that provide health, mental, social, rehabilitative, legal and judicial services.

- Developing a national database and urging the Ministry of Women's Affairs to complete a national observatory to monitor incidents of violence, including sexual violence through adopting accurate categorizations of the types of attacks, mechanisms for informing about them, sex and age criteria and other demographic indicators.
- Urging ministries and service sectors that work with victims of sexual violence to issue reports based on accurate categorization indicators.
- Relevant parties to start a dialogue on developing a draft for a law to combat crimes of sexual harassment.
- Increasing efforts to approve a bill for family protection from violence.
- Exerting efforts towards making amendments on enacted laws, specifically the Jordanian Penal Code, to recognize marital rape and remove marital status from the definition of rape; to look into reviving complaints in cases of incest and expand it to include the victims, counselors, doctors and other professionals and to consider incest a felony and not a misdemeanor and to eliminate the suggestion that it is a consensual crime; to consider the rape of males as a rape crime and an infringement on honor.
- To assume all institutional, awareness and media means of promoting services that support rehabilitate and empower victims of sexual violence and also to continuously encourage through all possible means to file complaints and report on assault.
- Taking the appropriate measures, especially in the field of education, to change social and cultural patterns to violence and discrimination against women and girls. This will contribute to eliminating the bias of discriminatory practices and all practices that encourages women's inferiority and power and control relationships prevalent in society.
- Adopting a comprehensive and periodical evaluation approach for the current response mechanisms for victims of sexual violence, whether social, mental, health, rehabilitation or legal mechanisms and develop them according to needs and requirements, in addition to developing follow-up and evaluation tools for the aforementioned services.