



EXECUTIVE SUMMARY

Evidence-based need assessment on Sharia Courts' judicial administration of Violence Against Women's & Girls' cases in Palestine

Terre des hommes – Lausanne Foundation (Tdh)
& Women's Affairs Technical Committee (WATC)

Project UN Trust Fund to End Violence Against Women:
"Gender Justice to End Violence Against Women and Girls"
(2019-2021)

September 2019



Acknowledgements

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We want to express our sincere appreciation to the women and girls who provide with their valuable inputs as well as to the different Sharia Judges and Court personnel, in particular to Judge Sumoud Aldameery, who generously helped out to organize the process and provide with very interesting insights.

This publication has made possible with the funds of the United National Trust Fund to End Violence Against Women. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the funder.

Design: Creative|ad design and print co.

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Introduction

In Palestine, women and girls experience multiple layers of violence and discrimination and face conditions of oppression on two fronts: they live under occupation and within a society governed by patriarchal norms and attitudes. This implies the establishment of a generalized concept of gender inferiority that develops from early stages of life and solidifies through the social constructs and stereotypes that perpetuate the cycle of violence, their participation in the spheres of public life and decision-making in private life. Ultimately, this severely limits the exercise of women's and girls' rights. Violence Against Women and Girls (VAWG) is a socio-culturally rooted problem exacerbated by the footprint of the prolonged conflict, the impact on community/family structures and the difficulty of accessing to services, and deeply particular when tackling access to justice for women's and girls' survivors of violence.

In order to contribute towards enhancing the female role within the justice system, the overall goal of the Project "Gender Justice to End Violence Against Women and Girls" is to activate a solid responsive gender justice to address violence against women and girls in Palestine. The project's rationale works comprehensively and complementarily on: (ii) reinforcing the supply of justice collaborating with key justice stakeholders relevant to VAWG cases, aiming to have higher relevance to the security of women and girls in their communities and favourable ruling for VAWG cases (specifically: Sharia Judiciary), but also enhancing the capacities and agency of female justice actors to progressively play a more visible and recognized role in settling VAWG cases along with active participation and empowerment of the women and girls survivors within the justice system.

The first expected result (R1): "Access to Justice is improved for women and girls against VAWG from the community to the formal levels of justice" is intended, among others, to generate the following impacts: (i) improved recognition of VAWG survivors' rights in justice proceedings (evidence generated on the administration of VAWG cases, increased rate of fair cases for VAWG, cases correctly charged in courts which in turns will enhance their reporting, and (ii) raising up the voices of female survivors vis a vis the formal and informal justice representatives to uncover their needs and challenges.

In particular, the set of activities foreseen in the project to work with Sharia Judiciary within Result 1 will look deeply at analyzing VAWG cases and proceedings adjudicated taking into consideration gender-responsive and child-centered approaches (what works, challenges and gaps, alignment with standards, organizational structure and needs, capacity building demands, etc.).

To this end the Evidence-based needs assessment regarding Sharia Court's judicial proceedings related to VAWG cases have been developed.



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Methodology

The following methodological steps were followed:

- Extensive legal and desk literature review.
- Legal analysis of VAWG cases adjudicated by the Sharia Judiciary.
- In-depth interview with 12 Sharia judges and 10 with court personnel in different areas of the West Bank (North, Central and South).
- Direct observation of the services provided to women and girls survivors of violence that are accessing the Sharia Judiciary.
- Review of Sharia Judiciary internal reports on accomplishment, challenges and needs pertaining to VAWG cases.
- 10 Women's and girls' survivors of violence who have accessed Sharia Judiciary were interviewed.



Brief description of the Sharia Judiciary structure

The institutional framework of the Sharia Judiciary has undergone many changes in recent years with the aim of adapting its mandate and functioning to the reality of the justice users as well as to “modernize” its approaches within gender pro-positive and human-rights based focus when applying and interpreting the Personal Status Law regulations which given its judicial work.

Currently this is the Sharia Judiciary main organogram:

The **Office of the Chief Justice** is directly linked to the President of the Palestinian Authority and is responsible for overseeing all courts and their judges in administrative aspects: financial and administrative audits, capacity-building needs, provision of material and human resources, collection of statistics received from courts, as well as other logistics matters. The Office of the Chief Justice counts with 6 Departments and 3 Units:

- Judicial Inspection Authority Department.
- Family Guidance and Reform Department, established by a presidential decree in 2003. It began its work in 2004, and at present, the family counseling and reform function is practiced in all Sharia courts. Although some courts do not have independent counseling sections, the task of counseling is itself active in all courts. It is important to note the vital role played by counseling departments in reducing family disputes, settling disputes as they occur and not turning the dispute to litigation. They offer services of family mediation in VAWG cases, especially when involving divorce of child custody.
- Personal Status Prosecution Department, which is key in VAWG cases. This Department is the representative of the legitimate public right. It investigates and initiates lawsuits of public right and accountability in matters of Personal Status Law. They are in direct contact women and girls survivors of violence who take judicial action.
- General Administration for Administrative and Financial Affairs Department.
- Judicial Planning and Development Department with an Internal Control Unit.
- Judicial and Legal Research Department with two Units: (i) Public Relations and Media and (ii) Legal Department.

In addition, the Office of the Chief Justice supervises the **Supreme Council of Sharia** (under Decree Law 3 of 2012). The Council is composed of 7 members: the President of the Supreme Islamic Court (President), the Deputy Chief Justice (Vice-President), the Senior Judge of the Islamic Supreme Court in the West Bank, his counterpart in Gaza, the oldest President of the Court of Appeal in the West Bank, and his counterpart in Gaza and the Chairman of the Judicial Inspection Board. The functions of the Council

are related to the appointment, promotion, specialization, transfer, disciplinary measures, resignations, retirement and removal of Sharia Judges.

The third important component of the Sharia Judiciary is the **Sharia Courts**. Types:

- Courts of First Instance, the first instance divided in two sections: (i) Court of Cases, which it is specialized in marriage, divorce, alimony, custody, inheritance; (ii) Court of Transactions, which is competent to record and help the administrative work of the Court of Cases.
- Courts of Appeal, the second instance. It is formally a trial court which verifies legal proceedings of the Court of Cases.
- The Supreme Sharia Court: its task is to monitor the contested judgment of the decisions of the Court of Appeal in terms of the validity of the legal provisions only, without reconsidering the facts or the subject of the case in which the judgment was issued. This court does not summon the case’s parties. VAWG cases seldom reach this instance.

Capacity building needs raised by Sharia Judges and court personnel

- The different types and consequences of violence against women and girls. In particular, the issues related to girls are required of in-depth review, including their specific rights and access to justice standards and aftercare.
- Multidisciplinary approaches in judicial institutions when dealing with VAWG cases.
- Minimum standards on the judicial investigation and ruling of VAWG cases.
- Best regional judicial practices taken by Sharia Judiciary in the Arab countries.

It is worth mentioning that extensive efforts have been made since few years on the level of institutionalization of training in Sharia Judiciary through the establishment of a Training Institute within the Sharia Judiciary and the establishment of a Training Committee including a Supreme Court Judge, the Secretary General of the Supreme Judge Department as well as one representative of the Public Relations and Planning Unit. It is also important to point out the sustainable institutional effort in conducting training of trainers’ courses for participants selected using the expertise of qualified trainers to transfer their experiences to peers.

The Palestinian Judicial Training works regularly with the Sharia Judiciary. An annual work plan is standardized with concrete training themes and targeted professionals. An agreement has been signed between the Sharia Judiciary and the Jordanian Training Institute for Sharia Judiciary to exchange experiences in judicial training topics including VAWG-related topic.

Legislation: Personal Status Law required amendments to combat VAWG

- Raise the age of marriage to 18 years old for boys and girls in all cases.
- Equality legal standards for men and women when providing testimony.
- VAWG cases specialized jurisdiction.
- Child custody: avoid distinctions between girls and boys. In intimate partner violence's cases, child custody should remain automatically with the mother.
- Legally forbid polygamy.
- Concrete legal criteria to properly assess the best interest of the children and justification minimum standards within the judicial rulings in VAWG cases.

The Sharia Judiciary Law Unification Committee analyses legal loopholes and cooperates with the National Committee for Harmonizing Legislations, specially looking at the international conventions ratified by the State of Palestine in addition to review regional regulations for neighboring Arab countries. However, the aforementioned Committee are in need of advisors and regional and international experts to support its work. The following are the highest priority laws of the Committee: (i) Personal Status Law, (ii) Code of Sharia Procedure, (iii) Sharia Judiciary Law and (iv) Sharia Lawyers Code.

Increased coordination with Palestinian civil society organizations is required, particularly those that working on VAWG cases.

Infrastructure needs

Infrastructure and all its various components (buildings, facilities, physical and logistical equipment) constitute important elements of courts' efficiency of courts their ability to carry out judges' mandated tasks. Environment and proper conditions of courts are a pressing demand not only by the judicial staff, but visitors and users of the services provided by the Sharia courts, especially women and girls survivors of violence who need privacy and confidentiality at a minimum. In particular, the following was highlighted throughout the assessment process conducted:

- In order to contribute to mitigating the crowdedness among employees, alleviate justice users suffering in the waiting halls, provision of better and more safe and confidential services to employees and justice users equally, especially women and girls, there is a need to remove barriers for people with disabilities, locate the courts near public transportation routes for accessibility, separate health facilities for men and women and breastfeeding booths, separate counseling rooms and

legal aid offices, separation of waiting rooms for women and girls, video equipment for the provision of testimony without physical presence in VAWG cases specifically, child-friendly rooms.

- Independent offices for the staff of the Judicial Inspection Commission.
- Electronic system for notifications, online case management and statistics (automatization of judicial processes) and e-archiving.

Human resources and Sharia Judiciary: the specialization for VAWG cases

Specific gaps on the shortage of key Sharia Judiciary personnel with direct relation with VAWG cases were identified. Particularly important: lack of specialized legal counsellors and lawyers, need of bridging the balance between male and female personnel at all levels, lack of enough administrative assistants to move forward the proceedings in a speedy manner, particularly in cases with high risk for the survivors, flying workers at the level of the Prosecution Department who are able to follow-up VAWG cases before, during and after the proceedings at the justice users' locations, increase reception desks per court and clerks in charge who are able to provide sufficient information on the paperwork required to file and pursue a legal action

The establishment of Gender Units per Department was highlighted as a need and a good practice to precisely comply with the survivors-center approach in VAWG cases before, while and after the judicial action takes place.

Finally, it is worth mentioning that the regular transfer of Sharia Judges among different courts prevents the specialization of judicial professionals specifically in charge to deal with VAWG cases. The recommendation is to set up a specific jurisdiction within the Sharia Judiciary to deal with these types of cases given its importance, prevalence and significant number of them every year.

Specific recommendations to enhance the judicial pathways for VAWG cases at the Sharia Judiciary

The following recommendations have been assessed with the interviewed participants:

Women and Children Justice Committee in Sharia Judiciary

Should include Sharia Judges, Sharia Prosecutors, social counselors within the Sharia Judiciary with the objectives to: follow-up VAWG cases (accomplishments and challenges), analysis of legal barriers and law enforcement limitations, VAWG

litigation strategies and monitor the implementation and alignment with international standards, particularly the CEDAW Committee recommendations. This Committee would liaise with other relevant parties such as the Family and Protection Unit at the Police, Ministry of Social Development and relevant civil society organizations working with survivors.

Institutionalization and minimum standards for legal aid in VAWG cases including of Sharia lawyers

A recurrent topic in country is the lack of specialized of legal aid, particularly when dealing with VAWG cases and more specifically if the violence is perpetrated against children who require extra legal protection thresholds. In addition, it is required to find effective ways of institutionalizing the legal aid provided by establishing minimum standards per judicial stage and coordinating the legal services that are provided by independent lawyers, lawyers working in civil society organizations and Sharia lawyers for VAWG cases in specific.

Complaint system in Sharia Courts

For the purpose of increasing accountability towards justice users and improving judicial proceedings when need be. To be monitored by the Judicial Inspection Commission at Sharia Judiciary.

Violence survivors' rights discourse in Sharia Judiciary

For the general public to understand and embrace the Sharia approach when investigation and adjudicating VAWG cases. In turn this will make the Sharia Judiciary more accountable towards justice users and will send powerful message to perpetrators of VAWG while will reflect the zero tolerance in Sharia Judiciary towards VAWG. Cooperation with Universities and schools for awareness should be pursued.

Setting up a Family Mediation system in Sharia Judiciary with well-trained and impartial mediators

The governing rules, deontological principles, protection standards, criteria for mediators, training to be followed, types of VAWG cases in which mediation can be suitable, free consent of the survivors, etc. should be comprised in a responsive system of mediation at the Sharia Judiciary. A solid monitoring system of the mediation agreements and follow-up would have to be designed and activated.

Annual Statistic book on Sharia Courts judicial decisions on VAWG cases

To be compiled and issues by the Gender Units and the Sharia Judiciary. For the purpose of having available comprehensive and systematized information, tackling the existing gaps and being accountable towards the justice users, in addition to serve as a tool for specialized awareness toll for Sharia Judges. To be publish on Al-Muktafi web page (e-legal library used by judges, lawyers and researchers).



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