

## **In the Context the 60th session of the UN Commission on the Status of Women: 57 Organizations from the MENA Region are Demanding Legislative Reforms to Combat Sexual Violence against Women**

Violence against women and girls is considered the most widespread violation of human rights all over the world; where women are subjected to different kinds of physical, psychological, sexual, and economic violence by individuals, groups, or institutions in both the public and private spheres, despite their racial, religious, and socio-economic backgrounds. Responses to eliminate these crimes differ from context to another and only acknowledging the existence of these crimes is one big step towards changing the unbalanced power structures that govern our societies which enrich the root causes of the discrimination and violence against women. Legislation of strict laws is one of the most efficient mechanisms to combat violence crimes that entails punishing the perpetrators as well as protecting and supporting the survivors.

For that, efforts are exerted by the international community where treaties and conventions are adopted to eliminate these phenomena such as The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) which is ratified by most of the countries and reserved by some countries especially in the MENA region under the pretext of their religious and cultural particularity. Therefore, this paper discusses the main trends of sexual violence against women and girls in the region and the relevant constitutional and legal dilemmas. In addition, the paper addresses the suggested recommendations based on a regional meeting of the legal experts in the MENA region that was organized by Nazra for Feminist Studies in November 2015.

### **Patriarchy and the Culture of Sexual Violence**

Like the rest of the world, women and girls in the Middle East and North Africa are subjected to different forms of physical, psychological, sexual, and economic violence; where one out of three women experience sexual violence throughout her life. These violations include Female Genital Mutilation (FGM), child marriage, domestic violence, rape, and mass assaults in the public spaces. This violence is based on a systematic discrimination against women that is deeply rooted in male-dominated traditions and cultures of the region. These in turn create patriarchal societies with uneven power relations between women and men that govern all aspects of life inside the house and in public spaces. Cultures that condemn women challenging the expected stereotypical gender-based rules by the society and disapprove women's existence in the public sphere. This discrimination against women is

highly depicted in legislations where in many cases women are treated as second class citizens. For instance, unlike men, women in most of the countries of the region are still not granted the right to pass their citizenship to their husbands and children if married to foreigners. A culture of sexual violence and hostility against women is easily flourished in this kind of misogynist environment which justifies crimes, blaming the survivors instead of punishing the perpetrators by both state and non-state actors. Moreover, what is even worse than the wide spread of sexual violence is the passive reaction of the society towards these crimes, stigmatizing the survivors and threatening their lives when they try to break this silence.

Recently, violence against women has exacerbated given the unstable transitional period that most of the countries in the region are witnessing after the Arab revolutions. This accrued in reaction to the increase of women's participation in public matters in all life aspects. Mass rapes and sexual assaults in public spaces are the worst manifestations of sexual violence against women like the incidences that took place in Egypt during demonstrations and celebrations in Tahrir Square and its vicinity by both state and non-state actors. Thus, women and girls suffer from sexual violence and harassment, an epidemic on a daily basis which has a great impact on their physical and psychological sanity and restricts their freedom of movement and their right to participate in building their nations. On the other hand, it is important to shed the light on the different forms of sexual violations that take place in conflict zones and areas affected by conflicts such as displacement and refugee camps; where rape is used as a tool of war and sexual exploitation of displaced and refugee women and girls. These kinds of violations require special attention given the fact that they take place in total absence of any protective or supportive measures for the survivors, and the pitfall of the legislations to deal with such emergency situations, in addition to the failure of the states to do their duties or even their involvements in these crimes. Therefore, it was agreed in the regional meeting to divide the different trends of sexual violence into three categories based on where they take place.

**Sexual violence in private sphere:** Child marriage, FGM, familial rape including children and boys, marital rape, honor crimes, rape and sexual assaults of domestic workers.

**Sexual violence in public sphere:** sexual harassment, individual and mass rape and assaults, systemic sexual torture in detention places and prisons, and human trafficking and sexual slavery.

**Sexual violence in conflict zones:** mass rape as a tool of war, sexual assaults and exploitation during displacement and asylum seeking, sexual Jihad, women and girls' captivity and sex trade.

## **Sexual Violence and its Legal and Legislative Problematics**

In spite of the presence of laws and legislative articles that criminalize some patterns of sexual violence in the region, most of these laws are problematic in both nature and application. In the following are some common issues between countries in the MENA region in regards to laws of sexual violence.

**Islamic Religion as a Legislative Reference:** The majority of the constitutions in the region state that Islamic religion is the main reference or one of the references for legislation where all laws are subject to different religious interpretations according to the discretion of those in the justice system.

**Lack of a Law for Sexual Violence:** Laws and articles that deal with sexual violence are scattered and are placed under penalty and punishments laws or under personal status laws for each country and there are no laws specialized in sexual violence separately. The lack of a judicial system with a unified reference enhances discrimination against women where all laws are subject to judges' discretion according to the doctrine they follow. In addition, most of personal status laws enhance stereotypes of men and women and discrimination between them regarding rights and duties in marriage, divorce, inheritance, custody, guardianship and other issues. Moreover, personal status laws do not adhere to a unified system, and instead, adhere to sects' laws such as the case is in Lebanon where there are 18 sects.

**Non-Criminalization of Marital Rape:** All laws in the region do not recognize marital rape as a crime, and instead consider sexual relations between a married couple, whether consensual or not, a right of the husband and the wife has to fulfill this obligation according to the husband's needs, and laws regarding domestic abuse include physical violence only.

**Legalization of Child Marriage:** In spite of the specification of age of marriage ranges between 17 and 18 years of age in the region's countries, it is left to the judge to decide who should get married among minors, as is the case in Libya, Iraq, Sudan and Yemen, in addition to the possibility of conducting marriages through religious leaders and religious centers outside courts, especially in conflict countries such as Iraq and Syria.

**Rape and Lack of Accountability:** Although rape is a crime punished by law with the exception of marital rape, most laws in the region state that the rapist's willingness to marry the survivor may guarantee him not being punished or decrease the penalty, even if the survivor is a minor. In fact, the survivor is forced socially to agree to getting married to her perpetrator out of fear of being scandalized or being socially stigmatized, and in many cases the survivor is kept in a shelter to protect her from honor crimes as is the case in Jordan.

**Confusion between Criminalization and Prohibition and the Problem of Naming Crimes:**

Due to the religious reference of laws and legislations, consensual sexual relations outside marriage are criminalized (adultery) where it is a crime punishable by law, while rape is justified in case the perpetrator marries the survivor. Moreover, there is discrimination between men and women in proving adultery and punishment. For instance, adultery has to be proven on men for that committed inside the marital home, while for women, it is proven both inside and outside the marital home. The punishment for the wife is more severe if she kills the husband, while it is lessened on the husband if he kills the wife using the pretext that he was defending his honor. In Sudan for instance, stoning for the charge of adultery is applied on female survivors who resort to court and cannot prove that they have been raped.

**Lack of or inadequate definitions for Crimes of Rape and Sexual Harassment:** The definition of rape is limited to penile penetration of the vagina and does not include anal or oral rape, or that with fingers and objects, and instead, are placed under broad terms such as indecency or indecent violation or obscenity or flagrant act of indecency. With the exceptions of Egypt, Tunisia, Morocco and Algeria, there are no laws related to sexual harassment, where these crimes are placed under terms that connote morals like obscenity which enhance the concept of chastity and honor being limited to female's virginity, and leads to the lessening of the penalty as it is not considered rape.

**Criminalization of Abortion:** With the exception of Tunisian law that allows abortion unconditionally, all laws criminalize abortion no matter what the reason is with few exceptions; to save the mother's life or her health in the case of Jordan, or to avoid the birth of deformed infants, or in rape resulted pregnancy in the case of Morocco, under one condition that abortion must happen within the first four month of pregnancy. Abortion criminalization and restriction are considered violation of the basic right of women and deny their attainment of proper healthcare. Hence, subjecting women to exploitation and endangering their lives in case they go through unsafe abortions.

**Difficulty of Accessing Justice and Lack of Protection Mechanisms for Survivors of Sexual Violence:** It is not easy for survivors to report crimes of sexual violence due to the societal stigma they face and the culture of survivor blaming, in addition to endangering their lives by their families under the pretext of defending their honor. In fact, there is a lack of seriousness of laws enforcement due to the misogynist society that encourage the inaction and non-application of law by court officials and security officials. Moreover, survivors are subject to exploitation and sexual abuse once again by state actors, and most of the time survivors are subject to being threatened by the perpetrator and his family to drop the case with the lack of protection from the state.

**Lack of the Supremacy of International Laws over Domestic Laws:** Despite the ratification of some of the region's countries on most treaties and agreements, international law does not override the domestic law of each country. Even in case of adopting international laws as part of the local constitution as in the case of Sudan, domestic provisions are superior to international laws when there is a conflict between them.

**The reservation of some of the conventions and treaties:** Despite the ratification of some of the region's countries on most treaties and agreements, there are still some reservations on some of them like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) under the pretext of cultural relativism of these countries. In addition to the contradiction between these agreements and domestic laws especially that related to women's affairs. Even on the level of domestic laws, personal status laws, which are subject to the sects' system, prevail over penal codes and Child Laws which state that anyone under 18 is a minor, but personal status laws allow marriage of minors according to judges' discretion.

**The difficulty of proof and litigation in the sexual violation incidents committed by state actors in places of detention and prisons:** Women are exposed to wide range of sexual violations, from harassment to rape, when they resort to or are interrogated by security agents. Also, women's bodies are used as an instrument of pressure to extract confessions from relative detainees, where women are susceptible to sexual abuse, both in cases relating to them or their family members. For instance, according to the UN High Commissioner for Human Rights in Iraq, most of the sexual violations against women in Iraq are happening during investigation and detention, or when they get arrested due to the escape of one of their family members from justice. It is difficult to prove such violations committed by state actors due to the lack of witnesses in light of the complicity of the security apparatus to hide these crimes.

**Lack of Mechanisms Dealing with Crimes of Sexual Violence in Conflict:** All laws fall short in dealing with patterns of sexual violence that arise during conflict, including coercion into family rape (forcing fathers and brothers to rape family members in a systemic manner by different militias in Iraq), forcing women to have hymen replacement surgery to erase the shame and destroy evidence of mass systemic rape by armed militias; in addition to sexual assaults of displaced and refugee women and children, and the hardship that force families to marry off their minor girls.

From this standpoint, the following are a set of recommendations that have been agreed upon at the regional meeting to push for reforms at the level of legislation, laws and policies

in the Arab countries whether in peace or conflict states based on the Agreed Conclusion of the 57th Session of the Commission on the Status of Women (CSW) in 2013:

#### **In regards to the Constitutions:**

- Cancelling the article that states that Islam is a legislative reference.
- The ratification and enforcement of the international treaties and agreements for the countries that did not ratify yet, based on para. (a)
- Acknowledging the supremacy of the International conventions and embedding their articles in national laws, to be part of the constitution; ensuring their supremacy on domestic laws particularly in regards to rights and freedoms, in addition to having the Constitutional Court protect these rights, especially in the case of war.
- Stating the principle of non-discrimination between men and women in rights and duties (in front of and within the law) and define discrimination according to CEDAW, based on para. (h)
- State explicitly that men and women enjoy the same rights and freedoms in all civil, political, economic, social and cultural fields.
- Create a constitutional mechanism to combat violence and discrimination against women, and create a constitutional body to combat violence and discrimination against women, where it is based on equality between men and women.
- Create independent national bodies to protect women from violence especially in the case of war.
- Include an article in the constitution related to putting a law specialized in combating violence against women.
- State the reduction of the religious leader's authorities in the constitutions and refrain from invoking any custom, tradition or religious consideration to justify women rights violations, based on para. (14), (x)

#### **In regards to Legislative Reform and Laws:**

- Put in place a law related to combating violence against women which includes measures of prevention, protection, assistance, criminalization and accountability, in addition to rehabilitation of survivors, definition of violence and all its forms, violence against minor girls, international treaties' reference and a human rights approach.
- Create a section in the law related to combating violence in conflict that includes trends of sexual violence, such as systemic rape and its use as a tool of war and trafficking of women and girls, based on para. (5), (a), and (l) that deal with the necessity of recognizing sexual violence as a tool of war and the priority of those crimes in times of conflict.

- Amend personal status laws in each country in accordance to international standards, based on para. (q), (r), and (s)
- Amend articles that include discriminatory text or lack protection mechanisms in all laws (penal code, employment law, minor law, procedural law, etc.), based on para. (f) to ensure women's access to justice and to get legal assistance.
- Limit the authority of religion, religious leaders and power of tribes by sovereignty of law, based on para. (x)

### **In regards to Policies**

- Design national strategies to combat violence against women, based on para. (k) and Follow up the implementation of the strategies that have already been designed in some countries, through the formation of a monitoring committee includes representatives of civil society organizations.
- Take the necessary measures to prevent the exposure of discrimination, exploitation, sexual and economic violence in the workplace, health care and other public places, based on para. (d), (y), (zz), (aaa).
- Design national strategies to implement Resolution 1325 and those subsequent to it.
- Allocating a portion of the state budget as gender budgeting particularly with regard to sexual violence during conflicts, based on para. (i), which emphasize on integrating gender prospective into all policies, legislation, and programs and allocate the necessary financial and human resources.
- Design an emergency plan where criminal procedures and investigations are conducted to ensure accountability especially in conflict and incidents of war, based on para. (c), (n).
- Benefit from the experiences of countries that went through conflict such as Iraq's experience in designing an emergency plan.
- Create a transitional justice body/mechanism in accordance to the situation in each country.
- Benefit from the experiences of Tunisia and Morocco in the field of transitional justice.
- Push towards the ratification of all international agreements and lift all reservations for countries that have not yet ratified or lift reservations.

### **Advocacy Recommendations:**

- Pressure states to commit to their obligations to combat violence against women while opening the field for cooperation with civil society to carry out their work and monitor state's obligations especially in times of conflict and incidents of war.
- Address the International Community to pressure states in carrying out their duties in regards to protecting women from violence in accordance to international standards.

- Prepare reports on violations and submit them to concerned bodies, in addition to shadow reports and pressuring for states to abide by submitting reports according to Resolution 1325.
- Train on documentation of different types of violations and violence against women by civil society to put pressure on the states internationally.
- Build capacities on the use of international mechanisms and activate the cooperation and interaction with special procedures, such as the special rapporteur of violence, and the Working Group concerned to distinguish between fact and law and the human trafficking representative of the Secretary General of the United Nation.
- The necessity of observing and utilizing common aspects between countries on the regional level to facilitate advocacy regionally via the use of international tools of advocacy.
- Facilitate the conduction of parallel events in international mechanisms and multilateral fora such as the United Nation's Universal Periodic Review and the Commission on the Status of Women.

**The undersigned Organizations:**

1. Nazra for Feminist Studies
2. Al- Taqwa Association for Women's and Children's Rights
3. Al-Monqith Organization for Human Rights
4. Al-Thara Magazine- Syria
5. Annajdh Palestinian Women's Development Society
6. Anti- Racism Movement- Lebanon
7. Arab Institute for Human Rights
8. Awam Developmental and Cultural Foundation- Yemen
9. Awan Organization for awareness and capacity building.
10. Centre for Egyptian Women Legal Assistance
11. Civilian Association in Syria
12. Democracy and Civil Rights Center in Syria
13. Development Organization to support women and youth
14. El-Nadeem Center for Rehabilitation of Victims of Violence and Torture- Egypt
15. Equal Citizenship Center - Syria
16. Feminist Citizenship-Equality Movement- Syria
17. Freedom to support Democracy and Human Rights- Egypt
18. Hawa'a Organization for Relief and Development
19. International Federation for Human Rights
20. Iraqi Amal Association

21. Iraqi Center for Woman's and Child's Rights
22. Iraqi Dar Al- Salaam Center
23. Iraqi Network for 1325
24. Iraqi Organization for Academic Youth
25. KAFA- Enough Violence & Exploitation- Lebanon
26. Lebanese Women Democratic Gathering
27. Libyan Judges Organization
28. Libyan Women Platform
29. Maratous Organization for Citizenship and Human Rights
30. Mercy Hands for Humanitarian Aid
31. Musawa- Women's Studies Center
32. Observer for Human Rights Center
33. Organization of Friendship between Nations.
34. Peace Associates -Yemen
35. Sawh Organization for Human Rights
36. Syrian Association for Citizenship
37. Syrian Citizenship Center
38. Syrian Female Journalists Network
39. Syrian Feminist Lobby
40. Syrian Women's Association
41. Syrian Women's Organization
42. The Association of Women's Action- Palestine
43. The Collective for Research and Training on Development-Action
44. The Constitution Protects Me Network- Libya
45. The Union of Civil Society Organizations (UMM) - Yemen
46. To Be Organization - Yemen
47. Together Organization for Human Rights
48. Umal Yateem Institution for Development
49. Volunteers Coalition for Women's Rights- Yemen
50. Women Center for Legal Aid and Counseling
51. Women for Progress
52. Women Human Rights Defenders Regional Coalition in the MENA Region.
53. Women Leaders Institute
54. Women's Democratic Organization
55. Women's Initiative Organization- Syria
56. Women's International League for Peace and Freedom
57. Yazidi organization for Documentation

