

Submission to the United Nations Universal Periodic Review of

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Background

Arab Women's Legal Network is a regional non-governmental and non-profit organization established in 2005, aiming at promoting Arab women working in legal professions through facilitating the meeting of Arab women legal practitioners, providing a platform to exchange expertise and experiences as well as to discuss common challenges and issues. In addition, the Network provides specialized trainings and professional development programs which aim at raising the legal awareness in general and enhancing the professional capacities of Arab legal women in a way that enables them to efficiently participate in their societies.

1. Women's Rights

Discrimination in Nationality Law

Despite several recommendations by UN and treaty bodies, up until the day of this submission there is no comprehensive legislation on gender equality. What illustrates the shortcomings of the law clearly is that in article 6 of the Constitution¹, sex and gender are not mentioned as grounds for discrimination.

As a result, several discriminatory laws still exist, most notably the Nationality Law No./1954. According to the existing nationality law women in Jordan are not equal citizens in the eyes of the law. Unlike their male counterparts, Jordanian women do not have the right to pass their citizenship to spouses or children.

The nationality law is very harmful to women for several reasons. First, it makes them second-class citizens in the eyes of the law and "underlies the fact that the direct relationship between the citizen and the state is based on the gender of the citizen, a male, rather than on a citizen per se. In addition to that, this law causes major human rights violations for women and their spouses. For example, foreign spouse and the children of a Jordanian woman cannot reside within the Kingdom unless they have secured a residence permit. Moreover, neither the spouses nor the children are eligible for employment, public education, or public healthcare services².

AWLN appeals to the member states of the Human Rights Council to strongly urge the Government of Jordan to:

- Adopt and effectively implement comprehensive legislation on gender equality, including a prohibition of discrimination against women, in line with Human Rights conventions ratified by Jordan, most notably articles 1 and 2 of CDEAW.
- Include gender and / or sex as a basis for unlawful discrimination in Article 6/1 of the Constitution.
- While taking into consideration practices of other State parties from the region that have successfully amended their nationality laws, we urge the State to review the Jordanian Nationality Law and that is to ensure equality between women and men and to enable Jordanian women to pass on their nationality to their children regardless of their husband's nationality.

¹ See for example CEDAW/C/JOR/CO/6, paragraph 20.

² Alba Amawi, Gender and Citizenship in Jordan, in GENDER AND CITIZENSHIP IN THE MIDDLE EAST 158, 164, (SAUD JOSEPH ed., 2000). See also James Emanuel, Discriminatory Nationality Laws in Jordan and Their Effect on Mixed Refugee Families, Gender Issues in International Law, Spring, 2012, University of Notre Dame Law School.

Discrimination in the Residence and Foreigners' Affairs Law

According to the Residence and Foreigners' Affairs Law Jordanian men can grant their non-Jordanian wives residency permits according to article 22/B³, but Jordanian women do not have the same right when married to non-Jordanians. Husbands of Jordanian women are treated as any other foreigners, and might be subject to deportation if they are not granted residency by the Ministry of Interior. In 2012, CEDAW committee voiced its concerns and urged the government to take measures to facilitate residence permits to foreign spouses of Jordanian women. Services facilitating residence permits to foreign spouses of Jordanian women are usually delayed and in many cases needs of these families fall out of Ministry of Interior services' ambit⁴.

AWLN appeals to the member states of the Human Rights Council to strongly urge the Government of Jordan to:

- Review the Residency and Foreign Affairs Law No.24/1973 to abolish all forms of gender discrimination.
- To accelerate its efforts in facilitating provision of residence permits to foreign spouses of Jordanian women, as a temporary special measure until the Residency and Foreign Affairs Law is amended accordingly.

2. Forced Labor and Trafficking

Article 13 of the Constitution stipulates that compulsory labor may not be imposed on any person, furthermore Article 8/2 clearly states that any infringement on the rights and public freedoms or sanctity of private life is a crime punishable by law. This indicates that forced labor should be considered as a serious crime under the Penal Law, but until present forced labor is not treated as a crime punishable by the law. Furthermore, Article 25 of the "Forced Labor Convention" of 1930, which Jordan had ratified, is under obligation to consider the illegal exaction of forced or compulsory labor to be punishable as a penal offence. It should be noted that the Labor Law considers forced labor as a labor violation, which is not sufficient. According to the constitution and international obligations forced labor is similar to abduction, assault and unlawful deprivation of freedom.

Enlisting forced labor as a crime is a constitutional and international obligation that will protect female workers in the agriculture sector, the informal sector, Syrian refugees, foreign domestic workers and foreign workers in the qualified industrial zones. It will also strengthen combating of trafficking in Jordan. Moreover, the U.S. State Department recommendations to Jordan in its 2017 *Trafficking in Persons* Report were to increase prescribed penalties for forced labor offenses and commensurate forced labor with other serious crimes.

³ Article 22 (b) of the Residence and Foreigners Affairs Law No. 24 of 1973 states that "The Minister (Minister of the Interior) may, by recommendation of the Director, grant a residence permit for a period of five years to a foreigner married to a Jordanian who has been legally residing in Jordan for the period of 10 years".

⁴ CEDAW/C/JOR/CO/5, paragraph 33.

It should be noted that Jordan enacted a law on the prevention of forced labor in 1934, however this law is not implemented by the courts as the fine of this crime is set in Palestinian pounds⁵.

In 2009, Jordan adopted an Anti-Human Trafficking Law that prohibits all forms of trafficking. Despite this law serving as an important step forward for Jordanian legislation, the rights of the victims of forced labor do not meet international standards such as the right to stay in the country where forced labor had taken place, have a recovery period and the right to seek asylum.

AWLN is concerned that victims of trafficking are not exempted from the residency law as most victims have no residency permits or work permits and fear approaching the authorities due to the fear of deportation.

AWLN appeals to the member states of the Human Rights Council and strongly urge the Government of Jordan to:

- Amend Prevention of Forced Labor of 1934 or enact a new law that meets international standards in its fulfillment of the constitutional and international obligations.
- Regularize the status of trafficking victims when they are in violation of Residency and Labor laws and facilitate their return to their countries.

⁵ Article 4 (a) of the Prevention of Forced Labor of 1934 states that "anyone who commits an act contrary to the provisions of this law shall be liable to imprisonment for a period not exceeding six months or a fine not exceeding fifty pounds or both penalties. "

Other Recommendations:

AWLN appeals to the member states of the Human Rights Council to strongly urge the GoJ to take the following recommendations into consideration as they have been raised before by treaty bodies and Special Rapporteurs after their visits to Jordan:

- Amend the Personal Status Law making it possible to prove paternity in a scientific manner in case of pregnancy outside the scope of marriage⁶.
- Amend the Public Health Law and Penal Law to legalize abortion and ensure its legal and practical availability in cases of rape and incest during the early stage of the pregnancy, which is between 2 weeks and 120 days⁷. In such cases of abortion the law has to exempt women from punishment/criminalization.
- Amend the Personal Status Law allowing the custodian mother to have joint guardianship over her child/children.
- Introduce legislation offering a civil alternative to the Personal Status Act implemented by civil judges, based on the principles of equality and non-discrimination. Also appoint women judges to sharia courts⁸.
- Adopt a unified law to govern Personal Status issues of all Jordanians regardless of their religion⁹.
- Abolish the Supreme Judge authority to allow marriage of females who have reached the age of 15, and not yet 18. Should the government insist on not abolishing this authority, then it should only be applied in extreme and exceptional cases, by ensuring that these cases are assigned to 3 Appeal Judges within the Department of Sharia Chief Judge, headed by a Judge from the Court of Cassation, exclusively for the purpose of dealing with such cases of marriage¹⁰.
- Unify the period of child custody for all mothers regardless of their religion and free of religious bias. It has to be pointed out that Muslim mothers are granted custody over her children until the age of 15, however non-Muslim mothers are granted custody of their children until the children reach age of 7¹¹.
- Enact, without further delay, the Children's Rights Law and ensure that it includes all of the rights and principles enshrined in Human Rights conventions¹².

⁶ It should be noted that the Personal Status Law is under revision by the parliament while drafting this report.

⁷ CEDAW/C/JOR/CO/6, 9 March 2017, Paragraph 48/b Amend its Public Health Act to legalize abortion and ensure its legal and practical availability in cases in which the life and/or health of the pregnant woman or girl is at risk and in cases of rape, incest and serious impairment of the fetus, and to decriminalize it in all other cases and increase women's access to safe abortion and to post-abortion care services

⁸ CEDAW/C/JOR/CO/6, 9 March 2017, Paragraph 56/f &g

⁹ IBID

¹⁰ CEDAW/C/JOR/CO/6, 9 March 2017, Paragraph 56/c

¹¹ CRC/C/JOR/CO/4-5, 8 July 2014, paragraph 37/c In cases of divorce, article 173 of the interim Personal Status Code Act grants the mother custody of her children until they reach the age of 15 but, if she is non-Muslim, only until they reach the age of 7. It should be noted that the Personal Status Law is under revision by parliament while drafting this report.

¹² CRC/C/JOR/CO/4-5, 8 July 2014, paragraph 12 The Committee urges the State party to enact without further delay the Children's Rights Bill and ensure that it includes all the rights and principles enshrined in the Convention.

- Establish a comprehensive legal system with supporting legal provisions to ensure the protection of victims and witnesses within national legislation.
- Establish a Legal and Judicial Aid system by enacting laws for this purpose, and create a national fund for legal aid.
- Petition the House of Representatives to request the Legislation and Opinion Bureau to prepare a draft law amending the Domestic Violence Law that adopts the justification of honor protection. The law should reduce the possibility of settlement especially for cases involving sexual, physical and psychological abuse. Moreover, the law has to adopt a comprehensive definition of “Domestic Violence”. In addition to that, the law has to facilitate fast track mechanisms that adequately protect victims of domestic violence with prompt and simple procedures¹³.
- Draft a special law for protection from domestic violence is a positive step by the government, allowing the society to be appeased by the power of the law regarding crimes and abuse that occurs within a family. The current Law of Protection from Domestic Violence has numerous shortcomings that have rendered it ineffective in terms of efficiency, and thus the law is unable to achieve the objectives for which it was drafted¹⁴.
- Adopt a Draft law to abolish the Prevention of Crimes Law, and the Prime Minister should issue a decree forbidding government officials from detaining any female who is a victim of sexual assault or domestic violence¹⁵.
- The Ministry of Social Development, the Family Protection Unit, and the National Council for Family Affairs, in partnership with the entities representing women’s movements, and Civil Society Organizations, should develop a comprehensive protection plan for the victims of domestic violence and sexual assault. The plan should include complete rehabilitation services, and guarantee total protection for those subjected to GBV.
- Draft a comprehensive definition for violence against women¹⁶.
- Amend the Penal Law and clearly stipulate sexual harassment article, in terms of defining sexual harassment and identifying the consequent punishment for it¹⁷.
- Amend the Labor Law, and instill penalties for harassment by colleagues, and not only by those in power, and clearly define this type of harassment¹⁸.
- Adopt a clear strategy, with specific objectives and measures to deal with sexual harassment, and increase awareness of sexual harassment among women, girls and children. In addition, facilitate access to justice,

¹³ CEDAW/C/JOR/CO/6, 9 March 2017, Paragraph 32

¹⁴ IBID

¹⁵ CAT/C/JOR/CO/3, 29 January 2016, paragraph 22

¹⁶ CEDAW/C/JOR/CO/6, 9 March 2017, Paragraph 32/b Enact legislation to specifically define and criminalize all forms of gender-based violence against women, including marital rape, and address the prevention of violence, protection of victims and prosecution and punishment of perpetrators.

¹⁷ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Mission to Jordan, 14 May 2012, paragraph 68.

¹⁸ IBID

and to centers that offer support services (like listening and guidance) for victims. Ameliorate easy access to legal aid, and engage men and youth in the fight against harassment.

- The media should highlight the problem of harassment, and the mental and physical impact it has on the victims. The media should instill positive moral and educational effect on perpetrators, the family and the society as a whole.
- Draft a clear definition for hate speech, since the definition stipulated in Article 10 of the draft amendment of the Electronic Crimes' Law is pervasive. The revised definition should precisely stipulate the actions that are considered hate speech. Review the law on prevention of terrorism in order to ensure that its definitions of terrorism and terrorist acts conform to International Human Rights Laws.
- Ensure the suggested amendment of the Electronic Crimes' Law forbids the detention of journalists for slander and defamation in their publications on electronic websites. Such detentions constitute violation of the provisions of the Press and Publication Law.
- Take the needed steps for the effective implementation of the Shelters for Endangered Women Bylaw No 171/2016. In Dec 2017, the House of Representatives issued Shelters for Endangered Women Bylaw No 171/2016. The bylaw replaces the previous practice of administrative detention of women subjected to violence in favor of placing at-risk women in rehabilitation centers to ensure their safety. Article 20 of the bylaw states that the Minister of Social Development should issue instructions for new Law's proper implementation. However, these instructions have not been issued yet which leaves the Shelters for Endangered Women Bylaw No 171/2016 as an ineffective tool of protection.

Sincerely,

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Arab women Legal Network