



**Kayan- Feminist Organization: Submission to the UN Human Rights  
Council's**

**Universal Periodic Review of Israel**

**April / May 2023**

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**Human rights violations with respect to women's access to justice  
in the religious courts and femicide in Palestinian society in Israel**

Kayan- Feminist Organization ("Kayan") is a grassroots feminist organization that works to promote human and women's rights for Palestinian women in Israel. Established in 1998, it takes a bottom-up approach to social change and invests in the field by empowering women to become transformative leaders on local and national levels, protecting and promoting the human and civil rights of Palestinian women in Israel, and breaking down social and institutional barriers to gender equality. Kayan has held Special Consultative Status with ECOSOC since 2018.

## Kayan's Submission to the UN Human Rights Council's Universal Periodic Review of Israel in April/May 2023

Kayan wishes to raise two key concerns for the UPR of Israel:

- (I) **Human rights violations and discrimination against women, with respect to the right to equal access to justice (in the religious courts); and**
  - (II) **The need to combat gender-based violence and femicide (in Palestinian society in Israel).**
- (I) **Human rights violations and discrimination against women, with respect to the right to equal access to justice in the religious courts;**

During its UPR session in 2018, Israel accepted the following recommendations relating to equal access to justice and combatting all forms of discrimination against women:

**118.49** Continue efforts to promote equal rights and **access to justice**, education, energy and health services for all people in Israel (Angola);

**118.105** Continue to work to **reduce discrimination against women** (Portugal);

**The following recommendation was also noted by Israel:**

**118.112** Take necessary steps towards harmonizing its religious laws governing marriage and divorce with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women and amend its legislation to allow for civil marriages without discrimination on the ground of religion or belief (Slovakia);

Jurisdiction of Religious and Family Courts:

Despite accepting and noting these recommendations, Israel has continued to impose religious law on **personal status issues**. In the State of Israel, two parallel legal systems govern family law. The legal issues of marriage and divorce continue to be under the exclusive jurisdiction of the religious courts, whereas other legal issues pertaining to personal status such as distribution of property, alimony, and child custody are under parallel jurisdiction of both the religious and civil family courts.<sup>1</sup> In practice, applying different laws and regulations to the parties in a dispute depending on their religious denomination results in different rules and levels of protection in matters of personal status.

According to Israeli law, the Supreme Court has the authority to judicially review religious courts if they exceed their authority, but its involvement in actual practice is minimal. Imposing religion-based family law constitutes a violation of the right to freedom of conscience, freedom of religion, and equality in marriage.

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<sup>1</sup> Rabbinical Courts Jurisdiction Act (Marriage and Divorce) (1953); The Druze Religious Courts act (1962); The King's Order-in-Council of 1922-1947, Article 54(1) and (2).

## Discrimination against women in religious courts

### 1. Sharia Courts:

#### A- Obedience in Sharia Courts:

Obedience lawsuits are present in most religious laws. According to Islamic Sharia, a wife must obey her husband, who in return pays the dowry and the wife's expenses. In this lawsuit the husband demands his wife obey him. This experience is humiliating for the wife, exhausting, painful and expensive. Obedience lawsuits are often filed by husbands against wives who move out of the house, or those who file alimony lawsuits.

Obedience lawsuit procedure is still running. According the 2021 annual report of Sharia courts, 194 cases of obedience were running in 2019, 141 cases in 2020, and 162 cases in 2021.<sup>2</sup>

#### B- Child Custody in Sharia Courts:

The most important consideration in cases of child custody is **the child's best interests**, but this does not always fare well with religious law. Even though Sharia court is subject to some aspects of Israeli civil law, which specifies that the priority should always be given to the **child's 'best interests'**, Sharia courts use two discriminatory caveats that, if fulfilled, effectively strip the mother of child custody:

- A. In the case of mother marrying another man after getting a divorce, she might lose her right to custody.<sup>3</sup>
- B. The child's age: according to the Hanafi school of thought used in Sharia courts, a mother has custody over her child until 7 years old if a boy; 9 years old if a girl.

### 2- Ecclesiastical court:

Ecclesiastical courts enjoy full independence. Thus, they set the rules of procedure that govern legal proceedings, set the fees for every legal proceeding, and make procedural and substantive decisions. However, most of these legal activities are unpublished and unreported. Ecclesiastical courts also abuse their autonomy in a way that violates basic human rights, while the State – through its non-involvement policy– violates those same human rights that are supposed to be protected under international instruments<sup>4</sup>.

#### a. Discriminatory High Fees

The autonomy given to the Ecclesiastical courts combined with the non-regulation policy of the State lead to a flawed outcome, expressed mainly in unreasonably high fees compared with other religious and civil courts, and non-publication or insufficient publication of fees,

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2 Submission by Kayan to the Human Rights Committee, 134 Session Israel's fifth periodic review Under ICCPR: <https://www.kayanfeminist.org/sites/default/files/publications/Submission%20by%20Kayan%20to%20the%20ICCPR%20134%20Session-Fainal.pdf>

3 Kayan Possession Paper: CHILD CUSTODY AND SECOND MARRIAGE LAWS: <https://www.kayanfeminist.org/category/personal-status?page=2>

<sup>4</sup> The International Covenant on Civil and Political Rights, art 26 [ICCPR].

discounts, and exemption procedures<sup>5</sup>. The fees in the Ecclesiastical courts are extremely high compared to the other religious courts. To illustrate the gap; the fee for opening a divorce case in the Sharia court is around 359 NIS (about \$105 US) and in the Rabbinical court around 396 NIS (about \$116 US), while in the Catholic Ecclesiastical court the fee is around 6000 NIS (about \$1,689 US). This situation has negative implications on Arab women and their right to equality and fair trial.

#### **b. Limited access to information**

The majority of the Ecclesiastical courts in Israel do not make publicly accessible the laws, regulations and rules that they rely on in their judgments and opinions. These legal instruments are crucial not only to the parties (or potential parties) of the proceedings, but also to the attorneys who represent the parties or wish to advise them before turning to the court, in violation to their right to adequate legal representation<sup>6</sup>. The fact that the Christian citizens of Israel do not have access to information regarding court procedures constitutes clear discrimination based on religion, and a violation of their right to freedom of conscience and freedom of religion.

The Knesset has enacted regulations about the proper procedures of the civil and criminal courts, among them regulations of the publication of judicial decisions<sup>7</sup>. However, in the religious legal systems, there is only one law that has been enacted: “Regulations Regarding the Procedures of Jewish Courts in Israel”<sup>8</sup> that refers solely to the Jewish religious court. Regarding all other religious courts in Israel, there are no regulations whatsoever on publication or transparency. In practice, however, since 2014, the Druze religious courts as well as the Sharia courts have been publishing their decisions, but they, like the Jewish courts, do so sporadically and when they see fit to do so.

### **(II) Combatting domestic gender-based violence and femicide**

During its UPR session in 2018, the Israeli Ambassador “noted efforts to host rapporteurs on an annual basis, underlining the recent visit of the Special Rapporteur on violence against women and girls, its causes and consequences”. Israel also accepted the following recommendations:

**118.113** Continue its efforts to combat domestic and gender-based violence against women (Nepal);

**118.115** Take note of the reports of pervasive and serious domestic and sexual violence against women by the Special Rapporteur on violence against women, and redouble its efforts to address this issue (Japan);

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<sup>5</sup> It should be noted that the Sharia and Druze courts form part of the Ministry of Justice and both publish the cost of litigation fees on the Ministry of Justice’s website:

(<http://www.justice.gov.il/Units/BetDinDroziLerorim/Pages/Hipush-Piski-Din.aspx>),

(<http://www.justice.gov.il/UNITS/BATIDINHASHREIM/Pages/Hipush-Piski-Din.aspx>)

<sup>6</sup> The International Covenant on Civil and Political Rights, article 14 of [ICCPR].

<sup>7</sup> Israel, courts act 5744-1984 art. 68(a).

<sup>8</sup> Family matters court act, *supra* art 6.

**118.116** Strengthen measures to combat gender-based violence, including through the implementation of relevant laws to ensure justice for victims (Rwanda);

**Israel also examined the following recommendations, and committed to provide responses to the Human Rights Council:**

**118.104** Step up efforts in terms of advancing women's rights inclusive to combat trafficking of **and violence against women** (Indonesia);

**118.106** Continue their laudable efforts in promoting gender-based equality, including women's participation in public and private life and **combating gender-based violence** (Greece);

However, as documented extensively by Kayan, criminal complaints about violence have been increasing in past years, and the police continue to fail to protect women<sup>9</sup>. A total of 73 Palestinian women in Israel were killed between 2015 and 2020, according to data requested from the Israeli police.

According to a research study by Kayan<sup>10</sup>, the problem of femicide has recently increased among Palestinians in Israel. During **2015-2020, a yearly average of 12 Palestinian women were killed by men.**<sup>11</sup> From January 2021 to October 2022, 25 Palestinian women from Israel were killed. Most of the perpetrators were their partners, former partners, or other male relatives.<sup>12</sup> The State Comptroller in Israel issued a report accusing the authorities of failing to prevent domestic violence and femicide. According to the report, Palestinian women in Israel comprise 40% of the total women who stay in shelters for battered women and 39% of femicide cases, double of their percentage of the overall Israeli population. Despite these data, there is a lack of available places for Arabic speakers in shelters. Data also indicates a sharp rise in homicide cases in Palestinian society in Israel. From 2000 to 2017, the 1,180 Palestinian homicide victims comprised 67% of the total murder victims in Israel, and 85% of these cases (as of 2017) had not been resolved.<sup>13</sup>

### **Public institutions' role: Systemic negligence, inaction, and high bureaucracy**

Victims' families confirmed in Kayan's research the pattern of **systemic negligence** by the Israeli police when it comes to addressing violence against Palestinian women. They observe that the police do not do their job of combating crimes against women, such as providing precautionary protection for women, holding perpetrators accountable, prosecuting offenders, and bringing them to justice. The police failed to act even in cases when complaints were filed long before the murder took place. Families also spoke of a lack of seriousness when police investigated crimes after they occurred, which allowed the criminals to remain free.

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<sup>9</sup> According to police data that was provided to Kayan.

<sup>10</sup> The study, published in April 2021, was titled "Femicide: A Grim Reality and Possibilities for Resistance". A summary in English starts on page 86 and is available here: <https://bit.ly/3vu41T3>

<sup>11</sup> According to the study linked above (<https://bit.ly/3vu41T3>)

<sup>12</sup> Police data that were provided to Kayan. For further information see the link: <https://bit.ly/3OMqktl>

<sup>13</sup> Abu Al-Halawa, L. (2017). Al-O'nf fi al-mojtama' Al-Falastini fi ad-dakhel: fi darourat a'n yahmi al-mojtama' nafsahu men al-qanoun la bel-qanoun. [Violence in Palestinian society inside the green line: the need for society to protect itself from the law, not by the law]. Mada al-Carmel, Haifa. <https://bit.ly/3MyCEho>

Testimonies in Kayan's research indicated the existence of a pattern of **systemic discrimination based on nationality** within the police department, which stems from the idea that violence and crimes against women are part of Palestinian culture and traditions. Other testimonies addressed the social welfare office's role in addressing violence. Most accounts confirmed that, in most femicide cases, **the victims were known to social welfare offices prior to the murder**. In some instances, battered women's complaints were not taken seriously and no protection was provided. Some social workers confirmed that their offices often experienced professional blunders when attempting to support and protect women due to bureaucratic barriers.

The information that the police were legally obliged to disclose to Kayan through a freedom of information request showed that more than a third of the women killed from 2015 to 2018 had submitted a complaint to the police about violence before their murders. Increased complaints were documented, reaching 50% of cases in 2019 and 60% in 2020,<sup>14</sup> but this did not save women from femicide. It highlights the failure of the police in offering protection.

#### **Absence of the legal role of victimised women's families:**

Over the last two decades, and since the enactment of the Crime Victims' Rights Law (2001), the "victim of the crime" also has a role in the proceedings (beside the state, represented by the general prosecution, and the defendant, represented by an attorney). In the case the victim is dead, this law theoretically gives the victim's family the right to obtain information about the case and express their position on issues related to the case, such as on any plea deals, early releases, or pardons. Despite this, no information is made available about legal cases against perpetrators of femicides.

This lack of transparency led Kayan to use legal methods to demand the disclosure of information related to femicide cases in recent years. The police and the Public Prosecutor refused, based on two central justifications: (1) the victim's right to privacy; and (2) the human resources and time needed to search for the required information. This response proved that, in reality, the claim of combating violence against Palestinian women has not translated into any serious practical steps, not even collecting information related to murder cases, let alone drawing the necessary lessons to improve responses. This lack of transparency prevents civil society institutions from investigating the exacerbation of the phenomenon of femicide and from analyzing the underlying causes of law enforcement's failure to deter crime.

#### **Lack of confidence in Israeli police**

In Kayan's research, families highlighted the political context, especially when it comes to the lack of confidence that Palestinians have in Israeli police, when explaining their fear of confronting violent men. This fear is based on the reality that the police often fail to investigate leads and leave criminal offenders at large. Between 2015-2020, only 34 indictments were made in 73 cases of femicide in Palestinian society<sup>15</sup>. A survey conducted

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<sup>14</sup> The information is derived from the Public Prosecution's response to the petition of Kayan against the Police (administrative petition 20-12-56305), which was submitted to the court on April 20, 2021.

<sup>15</sup> According to data that Kayan received from the police. More information is available in the press release: <https://bit.ly/3zkSVAL>

in 2021 indicated that only 13% of Arabs surveyed trust police institutions as opposed to 42% of the Jewish people surveyed<sup>16</sup>. These results are consistent with Kayan's conclusions, based on correspondence with the Israeli police, that the police do not have information about protection orders and therefore are not able to protect women for whom protection orders have been issued. The police only react when after a murder has occurred. As stated above, over the past three years around 50%-60% of the victims had filed a complaint with the police before they were killed.

### **Recommendations:**

Kayan respectfully calls on the UN Human Rights Council to urge Israel to:

- Withdraw the reservations made upon the ratification of **ICCPR and CEDAW**, with reference to Article 19 of "Vienna Convention on the Law of Treaties-1969", (Formulation of reservations).
- Take steps towards harmonizing its religious laws governing marriage and divorce with the provisions of CEDAW.
- Provide statistics on cases in religious courts, including number of obedience cases that women have lost, and cases where women have lost child custody because of remarriage.

Israeli law doesn't provide for civil marriages, and even spouses who contract civil marriage outside the State are still subject to the jurisdiction of religious courts in divorce cases. We strongly feel the State of Israel should be required to:

- Amend its legislation to allow for civil marriages without discrimination on the ground of religion or belief.
- Document all cases of violence and provide proper information to civil society, including regularly publishing statistics.
- Develop a properly financed national plan to increase shelters and support services for battered women.
- Develop a proper structure to organise coordination between all service-providing bodies in order to increase and develop better services to battered women.

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<sup>16</sup> A research conducted by the Institute for Zionist Strategies shows that between 2003-2017, public trust in police institution among Palestinian citizens has been declining, and in 2017, 61% of them were not satisfied with the police activity in their towns as opposed to 54% of Jewish citizens. The research reviewed surveys about public trust in Israeli police among Palestinians over 15 years. A summary in English available in the link: <https://www.izs.org.il/2019/01/law-enforcement-in-the-arab-sector/>. For the full report (Hebrew) see the link: <https://bit.ly/3SbMubT>