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General situation of LGBTI people

Because of societal discrimination based on cultural and religious traditions and norms, Palestinian LGBTI persons face a social non-friendly and violent reality living in the West Bank, East Jerusalem and Gaza, as well as in Israel. The occupation leading to separation and restrictions on physical mobility has a direct impact on the ability of LGBTI persons to come together, organise and build formal and informal networks. The occupation and the reoccurring emergency situations also make the work to develop anti-discrimination or other legislation that could support LGBTI persons more difficult.

A main challenge that prevents Palestinian LGBTI persons to express their sexual orientation or gender identity is a general taboo about sexuality in Palestinian society. The absence of discussions about sexuality in general leaves a narrow window to raise LGBTI topics as part of social conversations. LGBTI issues are often considered to be either of less importance or an illegitimate social issue. This leads to an inability to raise issues about LGBTI rights, sexual minorities or sexual and gender diversity in Palestine and it often will be regarded as a "controversial" topic. The Palestinian societal refusal to deal with LGBTI issues and to accept LGBTI persons has a wide social legitimacy among different groups, civil society organisations, and families. An interconnected challenge is the perception, within the Palestinian society, that LGBTI rights, is something western and linked to Israel. The campaigns for LGBTI rights by the Israeli Government are experienced by Palestinian LGBTI organisations to enforce a "homophobic" image of the Palestinian society. The connection of LGBTI rights to Israeli values creates divisions instead of unity among LGBTI activists and diverts the international attention from the reality of LGBTI persons under occupation.

The situation for transgender persons have not been widely recognised, but the organisation Al-Qaws has in the past few years reached out to this group. The

major problems transgender persons report on is their gender visibility, the direct violence they face and how to live with and get support from their families.

Legal and human rights instruments

Constitutional provisions and legal framework

The legal situation for LGBTI persons differs between the West Bank including East Jerusalem and the Gaza strip. The rule of law is absent in both territories due to the Israeli occupation. There is no legislation that protects LGBTI individuals from discrimination or harassment, and no progress has been possible as the Palestinian legislative council in reality has not functioned since 2006. Proposals of sharpened crime code regarding same sex sexual relations were developed already in 2010 in both the West Bank including East Jerusalem (prison sentences) and Gaza (death penalty), but these have not yet been adopted. These proposals have not been commented or opposed by Human Rights organisations and institutions, mirroring the difficulties of human rights organisations to acknowledge and address LGBTI rights.

In the West Bank including East Jerusalem, the Jordanian Penal Code of 1951 is in force, largely modified in 1960. It has no prohibition on sexual acts between persons of the same sex. In the West Bank, including East Jerusalem, there is no official persecution from the Palestinian authority and its different segments. However, there are some cases reported of harassment of LGBTI persons by the police force, operating outside any legal legitimacy to do so in the West Bank including East Jerusalem.

In Gaza, same-sex sexual relations between men are prohibited with a penalty of up to 10 years following the British Mandate Criminal Code of 1936, Section 152(2) of the Code. The Criminal Code still continues to outlaw same-sex acts between men in Gaza. Lesbian women are not subjects of the code, which means that sexual relationship with the same sex is not illegal for them. Section 152 (2) of the criminal

Code Ordinance covers the following; “*Anyone who: (a) commits sexual intercourse with another person against the order of nature, or (b) commits sexual intercourse with an animal, or (c) permits or allows the above mentioned acts is considered to have committed a felony punishable by imprisonment for a term of ten years.*” In Gaza, some Human Rights organisations have reported that Hamas has harassed and detained LGBTI individuals due to their sexual orientation.

There are no official documentations of violations beside some personal cases that make it to the media. There is an Independent Commission for Human Rights (ICHR) in Palestine, which is supported by Sweden and other international donors, and it produces both monthly and annual human rights reports. It has so far never monitored or reported on LGBTI rights violations, nor reacted against the proposed Criminal Codes prohibiting homosexuality.

LGBTI organisations regard the social and family homophobia as a bigger problem for LGBTI persons in Palestine than the government and the judiciary system. There are even examples of official agencies (including the police) playing a mediator role between LGBTI individuals and their families.

So far no one from the Palestinian LGBTI community has ever been granted asylum in Israel. UN agencies based in Israel cannot handle LGBTI Palestinian cases because of the political status of Palestinians in Israel and Palestinian LGBTI persons are prohibited from filling asylum applications, because of their nationality. This is backed by legislation preventing any Palestinians from living, getting married or work in Israel. The majority of Palestinian LGBTI persons that have eluded the Palestinian territories are mostly from the West Bank and fled to Israel before the closure on the West Bank by the separation wall, mainly during the Oslo Accords (1993-2002). In recent years, illegal flees to Israel are happening in small numbers due to the closure of West Bank. Very few manage to flee from Gaza because of the blockade.

Regional or international human rights instruments

There are a number of international instruments that could pose opportunities for advocacy and accounta-

bility, however at the moment there are not much mentioning of LGBTI rights in these instruments.

1. The European Neighbourhood Policy, accepted by the Palestine authorities by the adoption of an Action Plan to implement it. Some of its priorities, other than the establishment of a Palestinian state, that could be relevant for securing LGBTI rights are:
 - Deepened bilateral relations in preparation for establishing a fully-fledged Association Agreement between the EU and the future State of Palestine.
 - A Palestinian state based on the rule of law and respect for human rights within a functioning deep democracy and with accountable institutions
 - Step up efforts to significantly reduce poverty and social exclusion, in particular among the most vulnerable groups
 - Enhanced quality of education, research and innovation, information society in Palestine
 - Support the rights of the Palestinian people in East Jerusalem
2. Palestine has an Observer State to the UN since November 2012. It has not yet been the subject of Universal Periodic Review. On 1 April 2014, Palestine submitted letters of accession to 15 multilateral treaties. They include the following human rights core conventions: ICCPR, ICESCR, CAT, CERD, CEDAW, CPD, CRC and CRC Optional Protocol on the Involvement of Children in Armed Conflict. Palestine became a State party to these conventions by May 2, 2014. It has yet to accede to CMW, CPED and the other Optional Protocols to these conventions. In regards to LGBTI rights, generally the ICCPR, CEDAW, and ICESCR are of special interest when addressing LGBTI rights.
3. In 2011, The Human Rights Council adopted a resolution (A/HRC/27/L.27/Rev.1), on sexual orientation and gender identity and has since addressed LGBTI rights in different forums. *The Special Rapporteur of the Human Rights Council on the situation of human rights in the occupied Palestinian territories* reports annually, but has so far not included LGBTI rights.

4. The High Commissioner for Human Rights (OHCHR): Since 2008, under a High Commissioner mandate, four reports have been submitted by the High Commissioner on the situation in the occupied Palestinian territories. None of these have touched on LGBTI rights - despite the commitment and mandate of the OHCHR to work with States, national human rights institutions and civil society to achieve progress towards the worldwide decriminalisation of homosexuality and further measures to protect people from violence and discrimination on grounds of their sexual orientation or gender identity.

Sexual and Reproductive Health and Rights, HIV/AIDS and gender based violence

Even though there is no official data from Palestine, available epidemiological data from UNAIDS and UNDP shows that MSM (Men who have Sex with Men) in Arab countries bear a disproportionate burden of HIV infection and are 50 to 130 times more likely to be exposed to HIV than the general population. In its 2013 report, UNAIDS notes that there are no programmes that address MSM in Palestine, but the National Strategic Plan does include MSM. In 2003 UNFPA (United Nation Population Fund) recommended the establishment of a UN HIV/AIDS Theme Group in Palestine, which led to the founding the National AIDS Council (NAC). In 2008 UNFPA were in process of introducing a five-year plan to further educate Palestinians about AIDS. The five-year plan involved more research of high risk groups such as Men who have Sex with Men, MSM.

In 2011 the Palestinian authority Ministry of Health reported a cumulative total of 19 cases of asymptomatic HIV and 47 cases of AIDS since 1986, which seems rather unrealistic. Diagnosis methods for HIV in Palestine, is impeded by stigma towards groups at high risk, which may lead to the underestimation of their prevalence. Furthermore, the lack of trained medical staff and social workers for counselling and psychological support in the field of HIV/AIDS also stands as a grave constraint.

Violence against LGBTI persons is often based on non-conforming gender identity or sexuality. Violence toward LGBTI persons is directly linked to the grow-

ing visibility of both individuals and LGBTI organisations in Palestine. Until now the violence was limited to closed circles and took place inside (extended) families. Local groups suspect that the more they bring LGBTI issues to the public spaces, the more violence LGBTI persons will face. This dialectic between visibility and violence is going to affect the texture of Palestinian society and the strategies applied by local LGBTI groups.

Civil society organisations and institutions active in LGBTI field

There are a few organisations working with LGBTI rights in Palestine, doing outreach activities towards organisations and individuals. They recognise the importance to develop an awareness connected to the local culture and context, with communities and allies inside Palestine. Despite the challenges, this is crucial in order to challenge the notion of LGBTI rights as something western or Israeli.

Al-Qaws for Sexual and Gender Diversity in Palestinian Society is a national LGBTQ Palestinian organisation working since 2001 with individuals and communities in both sides of the green line. Al-Qaws work is taking place in four main cities: East Jerusalem, Ramallah, Haifa and Yaffa – working directly with local leadership groups in these different locations. Al-Qaws has built a support network for transpersons in the West Bank and included trans issues in the strategic plan for 2015-2017. They provide information, counselling, mediate between transpersons and health agencies and advocates among Palestinian NGOs in both sides of the green line by providing networking opportunities and training for HR, Youth and Women organisations.

www.alqaws.org/about-us

Aswat is a group of LGBTI, questioning and queer Palestinian women in Israel. The group established a home in 2002 for Palestinian LGBTI women to allow safe, supportive and empowering spaces to express and address personal, social and political struggles as a national indigenous minority living inside Israel. <http://www.aswatgroup.org/en/content/who-we-are>

Muntada Al Jinsanieh - The Arab Forum for Sexuality, Education and Health, is addressing sexuality and

reproductive health in Palestine and building connections with Arab and international networks in this field, working closely also with Al-Qaws. It is a good basis for further regional work in SRHR (sexual and reproductive human rights).

<http://www.jensaneya.org/en>

The newly launched online resource centre, [The Gender and Sexuality Resource Center \(GSRC\)](#) aims at becoming an information hub that brings together activists and academics, and addresses the knowledge gaps and creates an alternative site of production in Arabic. Few other resources on SRHR and LGBTI are published in Arabic.

What Sweden can do – questions for discussion

The Swedish strategy 2015-19, that recognises the Palestinian State, includes support to democracy, increased respect human rights and gender equality in Palestine. Recognised as a reliable partner with long time engagement, Sweden has an opportunity to include issues related to the rights of LGBTI persons and their access to justice.

When addressing LGBTI rights in non-supportive contexts, it is important to consult LGBTI organisations in how to address issues to make sure not to overrule their agenda. In addition to consulting with local LGBTI organisations and other LGBTI friendly human and/or women's rights organisations, regional organisations and or organisations in neighbouring countries can be approached. Questions to discuss:

- Could Sweden do more to establish contacts with the LGBTI organisations to keep updated on the legal and security situation of LGBTI persons and when needed contribute to protection of organisations and activists at risk?
- Could Sweden do more to monitor development of the future Criminal Code, and identify allies that could support Swedish standpoints in case of new proposals of sharpened legislation?
- Could Sweden do more to include LGBTI organisations in social, cultural and professional events and networks, when possible to offer them as

much space as they are ready and willing to take?

- Could Sweden do more to include LGBTI organisations in civil society capacity development programmes so that they can improve their effectiveness, networking and outreach in the West Bank and East Jerusalem (as a start)? To investigate how to support and strengthen LGBTI organisations under safe circumstances?
- Could Sweden do more to encourage and support cooperation and synergies between LGBTI organisations and mainstream Human Rights organisations, HR institutions and HR reporting processes supported? Identify allies or potential partners in the HR network?
- Could Sweden do more to seek strategic alliances with likeminded donors and bringing up LGBTI rights in the dialogue with the government, e.g. in connection with support to basic health care, SRHR, legal reform programmes, human rights implementation mechanisms or with reference to the HIV/AIDS national plan.
- Could Sweden do more to encourage OHCHR, to include LGBTI rights in its annual reports and address LGBTI rights within other frameworks, e.g. the work with the European Neighbouring Policy?
- Could Sweden do more to promote inclusion of the LGBTI population in gender equality and gender based violence initiatives?
- Could Sweden do more to encourage the discussions about LGBTI rights within the Swedish team, to raise and secure the knowledge and how Sweden can support and carry out a dialogue in a safe and progressive way?

For further advice on dialogue regarding LGBT issues, download the [Sida 'Human Rights of Lesbian, Gay, Bisexual and Transgender persons - Conducting a Dialogue](#) and the Ministry of Foreign Affairs [Dialogue brief](#). Also refer to the [EU tools](#) and guidelines in the reference list.

References

General references

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Sida 'Human Rights of Lesbian, Gay, Bisexual and Transgender persons - Conducting a Dialogue' and the Ministry of Foreign Affairs [Dialogue brief](#)

EU news, tools and guidelines: http://eeas.europa.eu/human_rights/lgbt/index_en.htm

EU Guidelines (2013): [Guidelines for supporting LGBTI persons' human rights](#)

Specific references

Al-Qaws for Sexual & Gender Diversity in Palestinian Society, <http://www.alqaws.org>

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The human rights of LGBTI persons have been a Swedish government priority since 2009. As a service to staff, guidance notes have been prepared to provide basic information about the situation of this (often forgotten) group and inspire discussions on what Sweden could do to better include LGBTI rights in diplomacy and programming.