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# Palestine Gender Justice & The Law

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# Palestine

## Gender Justice

Assessment of laws affecting gender equality and protection against gender-based violence

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# ACRONYMS

<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CEDAW Committee</b>	UN Committee on the Elimination of Discrimination against Women
<b>ESCWA</b>	Economic and Social Commission for West Asia
<b>FGM/C</b>	female genital mutilation / cutting
<b>GBV</b>	Gender-based violence
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>NGO</b>	Non-government organization
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>SDGs</b>	Sustainable Development Goals
<b>UNDP</b>	United Nations Development Programme
<b>UNESCWA</b>	United Nations Economic and Social Commission for West Asia
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNFPA</b>	United Nations Population Fund
<b>UNHCR</b>	United Nations High Commission for Refugees (UN Refugee Agency)
<b>UNICEF</b>	United Nations Children's Fund
<b>UN Women</b>	United Nations Entity for Gender Equality and the Empowerment of Women
<b>WHO</b>	World Health Organization
<b>Arabic terms</b>	
<b>fatwa</b>	Ruling or pronouncement on a point of Islamic law
<b>'idda</b>	The period a woman must observe after the death of her spouse or after a divorce during which she may not remarry
<b>khalwa</b>	Social mingling of men and women who are unrelated
<b>khul'a</b>	Divorce process initiated by the wife requiring return of her mahr
<b>mahr</b>	Mandatory payment by the groom or his father to the bride which then becomes her property
<b>talaq</b>	Repudiation; divorce process whereby the husband repudiates his wife
<b>'urf</b>	Custom
<b>wali</b>	Guardian
<b>wilaya</b>	Guardianship
<b>zina</b>	Unlawful sex, including adultery and sex between two persons neither of whom are married

# INTRODUCTION

## Scope

UNDP, in partnership with UN Women, UNFPA, and ESCWA, has conducted a study on Gender Justice and the Law to provide a comprehensive assessment of laws and policies affecting gender equality and protection against gender-based violence in the Arab states region.

The study is composed of an introductory piece that describes the background, rationale, analytical framework and methodology, and a total of 18 country profiles. Each country profile maps the country's key legislative and policy developments regarding gender justice.

This country profile presents the findings of the study relating to Algeria. It provides an analysis of whether the country's laws and policies promote or impede equality between women and men before the law, and whether they provide protection against gender-based violence.

This country profile includes analysis of the following areas of the law:

- Constitutional guarantees of gender equality and constitutional protections against gender-based violence
- Status of penal codes and whether the country has domestic violence laws that address gender-based violence
- Status of personal status codes and how they impact gender equality
- Status of nationality laws and whether they ensure that women and men enjoy equal rights in relation to citizenship
- Status of labour laws and whether they provide protection from discrimination and gender-based violence in the workplace

## Methodology and acknowledgements

The study was conducted in two phases:

1. A literature review was conducted between January 2016 and June 2017 of the various laws, regulations, policies, and law enforcement practices related to gender justice in each of the 18 countries, which then formed the basis of draft country profiles.
2. Realizing the limitations of desk-based literature reviews, country validation processes for each of the draft country profiles were led by UN Country Teams and national consultants. Country validation processes took place between September 2017 and August 2018 to ensure the accuracy of each country profile. These sought the views of government partners and other key national stakeholders.

The Palestine country profile is an edited version of a report prepared by a national consultant, Ms. Zeina Jallad, whose contributions are gratefully acknowledged. It includes inputs from two Stakeholder Consultation Workshops on the National Gender Justice Assessment convened by the UN Development Programme (UNDP), UN Women, and the UN Population Fund (UNFPA) in Ramallah and Gaza, 10–11 January 2018. Workshop participants included civil society organizations, judges, academics, independent lawyers, representatives of donor communities, justice sector institutions, and government representatives (including the Palestinian Civil Police, Public Prosecution, Ministry of Justice, Ministry of Local Government, Palestinian Maintenance Fund, and gender units in governorates).

The literature reviews that formed the basis of the country assessment were authored by consultants John Godwin and Nadya Khalife. They also edited the final drafts for publication after feedback from national counterparts. Their insights and hard work are recognized with gratitude. Nadya Khalife and Amr Khairy translated the outputs of the study into Arabic and English. Gratitude is also extended to John Tessitore for assistance with copyediting in English.

# PALESTINE



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## Gender Justice & The Law

DOES THE LAW ENSURE GENDER EQUALITY AND PROTECTION FROM VIOLENCE?

The colour-coded representation below provides a comparison of the laws identified in the country profile with international human rights standards, the recommendations of the UN Committee on the Elimination of Violence against Women and country recommendations under the country's respective Universal Periodic Reviews.

### YES

The law provides for gender equality and/or protection from gender-based violence and is substantially compliant with international standards. A green category does not indicate that the law is perfect or that gender justice in the relevant topic area has been fully achieved.

### NO

The law does not provide for gender equality and/or there is no or minimal protection from gender-based violence.

### Partly

Some gender justice aspects of the law have been addressed, but important gender inequalities remain.

No available data or inadequate information.

## Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Palestine unilaterally ratified CEDAW by Presidential Decree No. 19 of 2009. After UN recognition of Palestine as a State, Palestine acceded to CEDAW in 2014. Palestine has entered no reservations to CEDAW.

## Constitution

Article 9 of the Basic Law provides that Palestinians shall be equal before the law and the judiciary, without distinction based upon race, sex, colour, religion, political views, or disability.

## NATIONALITY LAW

### NATIONALITY

There is no Palestinian nationality law.



# PALESTINE

## CRIMINAL LAWS

### Domestic violence

Palestine has no domestic violence legislation.

### Marital rape

Marital rape is not criminalized.

### Rape (other than of a spouse)

Rape is criminalized by Article 152 of the Criminal Code of 1936 in Gaza Strip and Article 292 of the Penal Code of 1960 in the West Bank.

### Exoneration by marriage

In the West Bank, Article 308 of the Penal Code previously exonerated a rapist of criminal responsibility if he married the rape survivor. Law No. 5 of 2018 repealed Article 308 of the Penal Code.

### Abortion for rape survivors

Abortion is prohibited in the West Bank by the Jordan Penal Code (Articles 321–325) and in Gaza by the Criminal Code of 1936 (Articles 175–177).

### Sexual harassment

Sexual harassment is not criminalized by the Labour Code. Article 305 of the Penal Code criminalizes unwanted sexual conduct, which covers some types of sexual harassment.

### Honour crimes: Mitigation of penalty

Laws allowing mitigation of penalties for 'honour' crimes were repealed in 2011 and 2018 in the West Bank. However, the government in Gaza has not applied the reforms.

### Adultery

Adultery is an offence in Gaza and the West Bank. In the West Bank, Article 282 of the Penal Code criminalizes adultery.

### Female Genital Mutilation / Cutting (FGM/C)

There is no legal prohibition. FGM/C is not reported.

### Human trafficking

Palestine does not have comprehensive anti-trafficking legislation. Some provisions of the Penal Code of Jordan apply to trafficking in the West Bank.

### Sex work and anti-prostitution laws

Prostitution is prohibited by Articles 309–318 of the Penal Code in the West Bank and Articles 161–166 of the Criminal Code of 1936 in Gaza.

### Sexual orientation

Homosexual conduct between consenting adults is criminalized by the Criminal Code of 1936 in Gaza, with a penalty of up to ten years of imprisonment. The Penal Code 1960 in the West Bank has no similar prohibition.

## PERSONAL STATUS LAWS

### Minimum age of marriage

The Muslim personal status laws set the minimum legal age of marriage as 15 years for girls and 16 years for boys in the West Bank, and 17 years for girls and 18 for boys in the Gaza Strip. The ages can be lower if a judge allows it (with a guardian's approval in the case of the girl).

### Male guardianship over women

Muslim women require consent of a wali (male guardian) to marry. There are some weak legal protections for women under guardianship. Women can seek permission from the court to marry if the guardian withholds consent without a legitimate reason.

### Marriage and divorce

The personal status laws for Muslims require the husband to maintain the wife. A wife owes obedience to her husband. A husband can divorce by repudiation (talaq). A wife has the right to divorce on specified grounds. She can also apply for a khul'a divorce without grounds if she forgoes financial rights.

### Polygamy

Polygamy is permitted.

### Guardianship of children

Fathers are the sole guardians of children.

### Custody of children

After divorce the mother has custody up to a certain age, but automatically loses custody of her children if she remarries.

### Inheritance

Sharia rules of inheritance apply to Muslims. Women have a right to inheritance, but in many cases receive less than men. Daughters receive half the share that sons receive.

## LABOUR LAWS

### Right to equal pay for the same work as men

Under the Labour Law of 2000, discrimination in the workplace between men and women is prohibited.

### Dismissal for pregnancy

Under the Labour Law of 2000, employers are prohibited from dismissing a woman because she takes maternity leave.

### Paid maternity leave

The Labour Law allows for maternity leave of 12 weeks, which is less than the ILO standard of 14 weeks.

### Legal restrictions on women's work

Some legal restrictions exist on women's employment in certain industries that do not apply to men, such as mining.

### Domestic workers

The Labour Law does not apply to domestic workers. The President's Decree No. 2 of 2013 provides some protections for domestic workers relating to the number of working hours, the right to rest, remuneration, post-contract rights, and compensation.

# OVERVIEW

Almost 5 million Palestinians were living in the West Bank and the Gaza Strip in 2017, of whom 49.2 per cent were females.<sup>1</sup> This excludes the Palestinian population in Jerusalem and the Palestinian diaspora. Almost half of all Palestinians are refugees.<sup>2</sup> The hardships associated with the Israeli occupation affect all aspects of life, disproportionately affect women and girls, and create obstacles to access to justice for all Palestinians. Systematic abuses, including restrictions on movement and demolition of homes, impose a range of burdens on Palestinian women and girls.

## Legal framework

The operating legal system of the State of Palestine implements a combination of British, Jordanian, Egyptian, Ottoman, and Palestinian laws (including Sharia personal status laws) as well as Israeli military orders. Some of these laws are un-amended since before 1948. The imposition of the Israeli blockade on the Gaza strip and the separate de facto governance of the West Bank and the Gaza strip has led to the unilateral passing of laws that are often inconsistent. Overall, revisions of laws under the Palestinian Authority have been held back by the failure to convene the Palestinian Legislative Council.

A patchwork of presidential decrees applies in the West Bank. President Mahmoud Abbas has issued over 174 decree laws, including on the establishment of the Social Security System and amendment of the Alimony Fund Law, Penal Code, Civil Service Law, and Elections Law. The West Bank is fragmented into three areas, each with a distinct governance and administration status. This complexity makes access to justice highly fraught. Area A falls under the administration of the Palestinian Authority, which manages most internal civilian affairs and internal security; Area B is jointly administered by the Palestinian Authority and Israel; and Area C, which contains the Israeli settlements, is under Israeli administrative and military control. In addition, Palestinians in East Jerusalem, the H2 Zone in Hebron, the Seam Zone, Bedouin communities, and refugee camps are challenged by a web of laws, military orders, and policies. Due to the occupation, the Palestinian Authority is unable to enforce its laws in Area C, which the Israeli military controls, or in East Jerusalem.

In the Gaza Strip, Hamas has passed its own laws and has declined to adopt the presidential decrees that apply in the West Bank. The split between these governments and the isolation of the Gaza Strip has had profoundly harmful effects on the population. Accessing justice in this political landscape is extremely challenging, especially for women and girls who struggle to assert respect for basic human rights. The Hamas Government has passed conservative Islamized legislation that constrains the lives of women and girls who survive in an ongoing humanitarian crisis. Since 2006, Hamas has passed over 67 laws, including the Civil Law, Education Law, law amending the Personal Status Law, law amending Criminal Code, and law amending the Penal Procedures Law.

In relation to personal status matters, Palestinians living in Jerusalem are subject to Israeli civil regulations and Jordanian family law, while for Muslims in the West Bank and Gaza Strip, two different sets of laws apply, both of which derive from the Hanafi School of Islamic jurisprudence.

## International Law

The Palestinian Declaration of Independence (1988) affirms the Palestinian State's commitment to the rules of the UN Charter and the principles of the Universal Declaration of Human Rights. In 2007, Palestine was one of the first states to ratify the Arab Charter on Human Rights, which came into force in 2008.

In 2012, the UN General Assembly upgraded the status of Palestine to a UN Non-member Observer State. In 2014, Palestine acceded to over 20 treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);<sup>3</sup> Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict; Convention on the Rights of Persons with Disabilities; International Convention on the Elimination of all Forms of Racial Discrimination; International Covenant on Civil and Political Rights; and International Covenant on Economic, Social and Cultural Rights. No reservations have been entered by Palestine to these treaties.

In 2014, Palestine became a party to the Geneva Conventions of 1949 and the Additional Protocol of 1977. In 2015, it signed the Convention on the Political Rights of Women and the Rome Statute of the International Criminal Court.

1 Palestinian Central Bureau of Statistics, *Women and Men in Palestine: Issues and Statistics, 2017* (Ramallah: 2017).

2 As of 2016, 5.6 million refugees were registered with United Nations Relief and Works Agency for Palestine Refugees in the Near East.

3 Palestine also unilaterally ratified CEDAW by Presidential Decree No. 19 of 2009.

## Domestic Laws

The following laws are relevant to gender justice and equality for Palestinian women and girls:

British Mandate Criminal Code of 1936 in the Gaza Strip
British Law No. 2 of 1937 in the Gaza Strip
Crime Prevention Law No. 7 of 1954 in the Gaza Strip
Law of Family Rights of 1954 in the Gaza Strip
Penal Code No.16 of 1960 in the West Bank
Personal Status Law of 1976 in the West Bank
Law No. 13 of 1995 Concerning Elections
Civil Service Law No.4 of 1998
Labour Law No. 7 of 2000
Penal Procedure Law No. 3 of 2001
Palestinian Basic Law (amended 2003)
Child Law No. 7 of 2004 <sup>1</sup>
Presidential Decree No. 3 of 2004 Concerning the Formation the Higher Council of Care of the Disabled
Law of Service in the Palestinian Security Forces No. 8 of 2005
Local Elections Law of 2005
Alimony Fund Law No. 6 of 2005
Decision No. 50 of 2006 Concerning the Establishment of the Disabled Fund for Lending and Employment at the Ministry of Social Affairs
Law by Decree No. 1 of 2007 on the representation of women in general elections
Law of Education of 2013 in the Gaza Strip
Law by Decree No. 1 of 2013 on Amendment of Law No 19 of 2004 on Prisoners and Released Prisoners
Decree-Law No. 4 of 2016 on Juvenile Protection in the West Bank
Law by Decree of 2016 establishing Palestinian High Constitutional Court
Law by Decree No. 19 of 2016 on Social Security
Law by Decree No. 17 of 2016 on Shari'a Execution
Law by Decree No. 4 of 2016 on Juvenile Protection

## Basic Law

The following articles of the Basic Law have an impact on women and gender justice:

Islam is the official religion of Palestine; respect for the sanctity of all other divine religions shall be maintained; and the principles of Islamic *Sharia* shall be a principal source of legislation. (Article 4)

Palestinians shall be equal before the law and the judiciary, without distinction based upon race, sex, colour, religion, political views, or disability. (Article 9)

Basic human rights and liberties shall be protected and respected. (Article 10)

Maternal and childhood welfare are national duties. Children have the right to:

1. Comprehensive protection and welfare.
2. Not to be exploited for any purpose whatsoever, and not to be permitted to perform work that might damage their safety, health, or education.
3. Protection from harmful and cruel treatment.
4. Not to be subjected to beating or cruel treatment by their relatives.
5. To be segregated from adults if they are sentenced to a penalty that deprives them of their freedom, and to be treated in a manner that is appropriate to their age and aims at their rehabilitation (Article 29).

Every Palestinian has the right to education, and education is compulsory until at least the end of the basic level. Education shall be free in public schools and institutions. (Article 24)

The right to work is considered as both a duty and an honour. The Palestinian National Authority shall strive to provide work for any individual capable of performing it. (Article 25)

The right to participate in political life is guaranteed. The right to hold public office and positions is enshrined in accordance with the principle of equal opportunities. (Article 26)

Access to justice is a fundamental right. All people have the right and the protection to submit a case to court and to seek redress in the judicial system. (Article 30)

Any violation of personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by law or by the Basic Law is considered a crime. (Article 32)

## Policy framework

Palestine's *National Policy Agenda: Putting Citizens First 2017–2022*, endorsed by the Council of Ministers, affirms the government's commitment to empowering women to live and work free from discrimination, promoting equality between women and men, eliminating all forms of discrimination against women and girls, and institutionalizing gender mainstreaming in policy making, planning, and budgeting.<sup>4</sup> It acknowledges the need to eliminate barriers to recruitment, promotion, and retention to provide women with opportunity to reach their potential. It asserts the importance of utilizing gender mainstreaming tools to ensure that the principles of gender equality are integrated into public policy, legislation, planning, and budgeting processes.

The Ministry of Women's Affairs (MoWA) was established in 2003. It aims at ensuring that the specific needs of women are reflected in national policy, and monitors government action on the development and implementation of national policies affecting women. A Charter of Women's Rights was issued in 2008 by MoWA and a coalition of civil society organizations (CSOs). The National Committee to Combat Violence Against Women (NCCVAW) is led by MoWA. Established in 2008 by the Council of Ministers, the NCCVAW is the official body responsible for monitoring the implementation of the National Strategy on Combating Violence Against Women.<sup>5</sup> Members of the Committee include governmental and non-governmental institutions represented by the Al Muntada Coalition – NGO Forum to Combat Violence against Women.

Two specialized committees have been formed at the Ministry of Justice: the Legal Harmonization Committee and the Gender Legislative Committee, a branch of the National Committee on Combating Violence Against Women. The committees shape policies, laws, and regulations concerning women and human rights in Palestine. Their legislative harmonization plan for 2018 includes reviewing and amending the Penal Procedures Law, Penal Code, Personal Status Law, and Elections Law to ensure their compatibility with international standards.

Gender Units or Departments in other governmental institutions develop gender policies, promote gender mainstreaming in various sectors, and coordinate with other actors, including CSOs.<sup>6</sup> Palestine has a *Medium-Term Cross-Sectoral National Strategy to Combat Violence against Women, (2011–2019)*, which includes two action plans.<sup>7</sup> This strategy focuses on GBV, including prevention, protection, and the effective implementation of laws.<sup>8</sup>

The *Cross-Sectoral National Gender Strategy, 2014–2016* promotes gender mainstreaming across all sectors and aims to place gender equality and women's empowerment at the core of successive sectoral strategies and Palestinian National Plans. It was followed by the *2017–2022 Cross-Sectoral National Gender Strategy*, which feeds into the sectoral strategies and the National Development Plan and addresses UN Security Council Resolution 1325.

Palestine launched a National Action Plan in 2016 for the implementation of Security Council Resolution 1325 for the period 2017–2019. The Plan seeks to increase the participation of women in peacekeeping and conflict resolution, integrate the perspectives of women into peace agreements, address the impact of conflict on women, and protect women from sexual violation while criminalizing sexual violence. It has been incorporated into the Public Budget of 2018.

The *2017–2022 National Health Strategy* endorses the need for cross-sectoral cooperation to support gender and youth health, including sexual awareness; adolescents and youth health; sexually transmitted diseases; women's empowerment; and health care for women and men at different stages of life. It also strives to implement a national referral system for women victims of violence.<sup>9</sup>

4 *National Policy Agenda: Putting Citizens First, 2017–2022*, <http://www.palestinecabinet.gov.ps/WebSite/Upload/Documents/GOVPLAN/NPA%20English.pdf>.

5 *National Strategy on Combating Violence Against Women, 2011–2019*, p. 6.

6 *Gender Profile: Palestinian Territories Final Report*, (Japan International Cooperation Agency, 2016), [http://open\\_jicareport.jica.go.jp/pdf/1000026844.pdf](http://open_jicareport.jica.go.jp/pdf/1000026844.pdf).

7 Ministry of Women's Affairs, *National Strategy to Combat Violence against Women (2011–2019)*, <http://mowa.pna.ps/English%20Part.pdf>.

8 Ministry of Women's Affairs, *Beijing Platform for Action After 20 Years* (April 2014), p. 7, [https://www.unescwa.org/sites/www.unescwa.org/files/page\\_attachments/palestinear.pdf](https://www.unescwa.org/sites/www.unescwa.org/files/page_attachments/palestinear.pdf).

9 Ministry of Health, *National Health Strategy* (2016), [http://www.lacs.ps/documentsShow.aspx?ATT\\_ID=29996](http://www.lacs.ps/documentsShow.aspx?ATT_ID=29996).

In its 2017–2022 strategy, the Ministry of Social Development adopted a new approach that recognizes social change to be at the core of social empowerment. The strategy strives to improve the quality of life for all, and to provide social protection and basic services for the vulnerable and poor households so as to enable them to enjoy a dignified life. It seeks to strengthen political, social, and economic integration of marginalized groups,<sup>10</sup> with special attention to the conditions of women and empowerment of poor women and victims of GBV, women with disabilities, single and divorced women, women deprived of inheritance, and those in need of social services. Elimination of all forms of violence, marginalization, and social exclusion is a strategic objective.

The Ministry of Education Strategic Plan for 2017–2022 recognizes that the education of women and girls is key to enhancing their abilities, improving their participation skills, and increasing their life opportunities. It advocates empowering women in vocational training and education, university and other higher education, as well as adult education and training. The Ministry seeks to ensure safe, inclusive, and equitable access to quality education at all levels. It commits to achieving inclusion and equality by focusing on health education, awareness on sexual and reproductive health, and issues relating to combating child marriages, discrimination, violence, and inequality.<sup>11</sup>

The government's priorities for implementation of the UN Sustainable Development Goals include reducing inequalities experienced by women, young people, children, and the disabled.<sup>12</sup> In 2016, the Palestinian Authority commissioned the Palestinian Central Bureau of Statistics to lead the monitoring and reporting on the Sustainable Development Goals. It plans to develop a national database to inform national policies and strategies.

The 2014 Gender Charter for the Aid Coordination Structure in Palestine<sup>13</sup> is one of the main documents on mainstreaming gender issues into aid coordinating mechanisms. It strives to ensure the effective promotion of foreign aid, social justice, and equality.

Regarding women's participation in the public sphere, in 2015 the Palestinian Liberation Organization (PLO) Central Council formally decided to endorse women's representation in all PLO and State of Palestine institutions and in electoral lists at a minimum of 30 per cent.

The work of the Palestinian Civil Police Family Protection Unit (FPU) is guided by a Strategy and FPU Regulation that provides operational guidance on preventing and responding to GBV.<sup>14</sup> In 2017, the police launched a five-year gender strategy aimed at integrating a gender perspective in their services, especially for vulnerable populations, and to increase the number of women in the police force.<sup>15</sup> The FPUs adopt a human rights-based approach and focus on domestic and family violence, including cases involving children, the elderly, and women. They deal with GBV cases such as femicide, incest, and sexual harassment. A Juvenile Unit focuses on child protection.

In accordance with the Public Prosecution Service (PPS) strategic plan, the Attorney General established the Gender Unit at the PPS, which aims at integrating gender standards and developing specialized services on violence against women in the PPS. In 2016, a Chief Specialized Public Prosecutor on violence against women was appointed and two units specializing in protecting family members from violence were established.

The GBV Sub-Cluster Strategy 2018–2020 guides organizational efforts for Sub-Cluster partners within the areas of legal and policy framework, information management, coordination, prevention, and response.

## Legal and support services

The Palestinian Bar Association and the Ministry of Justice, civil society actors, and legal clinics of faculties of law provide women and girls with access to legal services. Under the auspices of the joint UNDP/UN Women Programme "Strengthening the Rule of Law in the Occupied Palestinian Territory: Justice and Security for the Palestinian People Sawasya Programme," professional groups such as the Palestinian Bar Association, institutions such as the Faculty of Law at An-Najah University in Nablus, and the legal clinic at Al-Azhar University in Gaza provide legal assistance in criminal cases for those who cannot afford a lawyer, with special focus on juveniles and women.<sup>16</sup>

In coordination with the Ministry of Social Development and the MoWA, several CSOs provide counselling, legal aid, psychological support, capacity-building, and empowerment services for women survivors of violence. For example, the Women's Centre for Legal Aid and Counselling (WCLAC) provides counselling support, emergency shelter, legal advice, and representation in

<sup>10</sup> Ministry of Social Development, document related to changing the name of the Ministry to the Ministry of Social Development: evidence and application (2016).

<sup>11</sup> Ministry of Education and Higher Education, *Education Sector Strategic Plan, 2017–2022*, [https://www.mohe.pna.ps/Portals/0/MOEHE\\_Re-sources/EDUCATION%20SECTOR%20STRATEGIC%20PLAN%20%20%202017-2022.pdf?ver=2017-12-19-022932-367](https://www.mohe.pna.ps/Portals/0/MOEHE_Re-sources/EDUCATION%20SECTOR%20STRATEGIC%20PLAN%20%20%202017-2022.pdf?ver=2017-12-19-022932-367).

<sup>12</sup> UN General Assembly, Committee on the Inalienable Rights of the Palestinian People, *Seminar on Assistance to the Palestinian People* (19 May 2016), GA/Pal/1370, <https://www.un.org/Press/En/Un-Bodies/General-Assembly>.

<sup>13</sup> The Gender Charter for the Aid Coordination Structure in Palestine (2014), [http://www.lacs.ps/documentsShow.aspx?ATT\\_ID=15512](http://www.lacs.ps/documentsShow.aspx?ATT_ID=15512).

<sup>14</sup> European Union Coordinating Office for Palestine Police Support (EUPOLCOPPS), "Palestine Civil Police Strengthens its Capacity to Fight against Domestic Violence" (2013), <http://eupolcopps.eu/en/content/palestinian-civil-police-strengthens-its-capacity-fight-against-domestic-violence-0>.

<sup>15</sup> EUPOLCOPPS, "Palestinian police launch its gender strategy" (2017), <http://eupolcopps.eu/en/node/5118>.

<sup>16</sup> UNDP, "Programme of Assistance to the Palestinian People, Building a Sustainable Legal Aid System in the State of Palestine, Brief Description," [http://www.ps.undp.org/content/papp/en/home/operations/projects/democratic\\_governance/building-a-sustainable-legal-aid-system-in-the-state-of-palestin.html](http://www.ps.undp.org/content/papp/en/home/operations/projects/democratic_governance/building-a-sustainable-legal-aid-system-in-the-state-of-palestin.html).

mediations, civil courts, and Sharia courts. WCLAC has teams of lawyers and social workers working in centres in Ramallah, East Jerusalem, Hebron, and Beit Jala.

There are three anti-violence centres/shelters that serve women in need for immediate intervention and protection in the West Bank (Mehwar Centre in Bethlehem, the Family Defence Society shelter in Nablus, and the Women's Centre for Legal Aid and Counselling emergency shelter in Jericho) and one in the Gaza Strip (Al-Hayat Centre in Gaza).<sup>17</sup> The Council of Ministers Decision No. 9 of 2011 regulates the work of shelters and protection centres for women victims of violence.

In 2017, as part of a joint UN Women, UNDP, and UNICEF programme, the first One Stop Centre opened in Ramallah. Housed in the same building as the Family and Juvenile Protection Unit of the Palestinian Civil Police, the Centre provides services for women and child survivors of GBV, such as health services, legal advice, referral to long-term shelters, and police protection.<sup>18</sup>

SAWA is a nongovernmental organization dedicated to the protection of women and children from violence and to the empowerment of women. SAWA works with the Palestinian Authority by advocating for improved laws to protect women and children against GBV and human trafficking.<sup>19</sup> The Women's Support Hotline Programme provides counselling and psychological support to Palestinian women survivors of sexual, physical, and psychological violence.<sup>20</sup> SAWA provides hotline services to Gaza, East Jerusalem, and the West Bank; and it facilitates women empowerment groups in local communities, including in East Jerusalem, to support women to hold meetings about their rights and roles in society.

The AISHA Association for Woman and Child Protection in Gaza is prominent in the field of women and children's human rights, with a special focus on gender-sensitive psychosocial support for women and girls affected by the humanitarian crisis, including internally displaced people and survivors of GBV.

The Palestinian Non-Governmental Organization Against Domestic Violence Against Women (Al Muntada) is a platform for civil society actors working to combating GBV and empower women. They have launched several campaigns and lobbied to advocate for advancing women's rights.

The National Referral System for Battered Women (TAKAMOL) is a legal-health-social service referral system. Due to financial and logistical complications, this system does not yet function smoothly. The Ministry of Social Development is committed to a functioning referral system by 2022.<sup>21</sup> In 2016, MoWA formed a national team to support implementation of the referral system. The team is headed by MoWA and composed of members from the Ministry of Social Development, Attorney General's Office, Palestinian Civil Police, Ministry of Health, Shari'a Supreme Council, and Civil Society Forum for combating Violence Against Women.

The Palestinian Businesswomen's Association utilizes micro financing to improve gender justice and equality for marginalized women, and organizes advocacy campaigns to promote the inclusion of women in national institutions, the recognition of their contributions to economic development, and access to resources.

The Palestinian Working Woman Society for Development was established in 1981 as the Union of Palestinian Working Women Committees.<sup>22</sup> It is active in the West Bank and Gaza Strip.

Palestinian women who lack access to legal and social protection and empowerment services include those who are vulnerable because of involvement with drugs, selling sex, or collaboration with Israeli authorities; disabled women; and women accused of murder or other offences.

## Access to justice

Discriminatory attitudes of people working in the justice system impede women's access to justice. Prosecutors, police, and the judiciary often lack sensitivity in addressing GBV. Some refuse to address domestic violence or to classify certain crimes as GBV cases because they claim that addressing violence within family contexts might damage the fabric of society or harm the reputation of the Palestinian family. Many judges have very traditional views on violence against women, show leniency towards perpetrators, or refuse to address violence within family contexts. While family law allows women to stipulate certain conditions in the marriage contract, such as the right to travel solely or the unilateral right to divorce, some judges deny women their legal right to include conditions in the contract, claiming that such conditions are in conflict with tradition. As a result of such attitudes, many women lack confidence in the justice system.

The lengthiness and cost of litigation have an adverse impact on women's ability to access the legal system. Women often opt to use customary justice systems as a more affordable, less complex, and faster alternative to resolving conflict than the courts. Although the informal justice system provides an alternative, it lacks monitoring or oversight mechanisms by the formal justice

<sup>17</sup> UN Women, *Facts and Figures: Ending Violence against Women*, <http://palestine.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>.

<sup>18</sup> UN Women, *Access denied, Palestinian Women's Access to Justice in the West Bank of the occupied Palestinian Territory*, (2014).

<sup>19</sup> Protection Project, *A Human Rights Report on Trafficking in Persons, Especially Women and Children, Occupied Palestinian Territory* (2012).

<sup>20</sup> Ibid.

<sup>21</sup> Council of Ministers, *Decision No. 18 of 2013 on the National Referral System for Women Victims and Survivors of Violence*.

<sup>22</sup> The Palestinian Working Woman Society for Development, "About Us," <https://www.pwwsd.org/item-1496747507>.

sector.

Women are underrepresented in the judiciary and public administration, and their participation in top-tier public sector positions is still marginal. In 2016, women constituted only 11.7 per cent of public sector employees in senior positions,<sup>23</sup> and only 17.2 per cent of judges are women (18.6 per cent in the West Bank; 10.5 per cent in Gaza).

The following initiatives have been taken to improve access to justice for women:

- In 2017, the Council of Ministers established a permanent committee to monitor and follow-up reports of violence against women (VAW Observatory) composed of government representatives (MoWA, Ministry of Social Development, President's Office, National Cabinet, Civil Police, Sharia Supreme Council), Independent Commission for Human Rights, WCLAC, SAWA, and Safe Home shelter.
- The Women's Access to Justice Observatory has operated since 2012 within the Independent Commission for Human Rights. UN Women supports the Observatory to monitor judicial processes and outcomes in cases of violence against women and to document any violation of women's rights due to discriminatory laws or procedures, or gaps within the judicial system.
- Family and Juvenile Protection Units within the police service focus on domestic and family violence and sexual assault cases. UN Women works with the police and Attorney General Office to improve access to justice. The Police Academy has a specialized curriculum on the protection of women's rights.
- In 2013, the PPS signed a Memorandum of Understanding with MoWA assigning specialized public prosecutors in district offices to work on cases of violence against women. As a result, they investigated domestic violence cases in all district offices in the West Bank.<sup>24</sup> In 2016, the Attorney General issued a resolution to establish a specialized public prosecution to protect families from violence. Its mandate includes violence against women; cases of women in conflict with the law for cases such as adultery and prostitution; child victims of family violence; people with disabilities; and the elderly. The PPS has qualified personnel who work in all phases of investigation and prosecution.
- The High Judicial Council assigns specialized judges to work on cases related to violence against women and GBV. Capacity-building programmes for judges provide training and continuous education on gender justice standards.
- Sharia courts adopted new measures to strengthen women's rights. In cases of polygamy, for example, the court stipulated that a man must inform his first wife of an impending second marriage.

## Law reform proposals

A Protection from Family Violence Bill proposes a comprehensive law providing protection to women and young girls and criminalizing domestic and sexual violence. A technical committee to support finalization of the draft Bill was established in 2015 by the Council of Ministers. The draft proposes criminalizing marital rape, definitions of terms such as GBV, penalties for perpetrators, and other measures relating to incest and family related sexual violence. It adopts the definition of discrimination in accordance with CEDAW Article 1. The draft is being reviewed to ensure compatibility with international standards.

A unified Penal Code for Palestine was drafted in 2003 with some improved protections for women, but it has not yet been adopted.<sup>25</sup> In 2013, Hamas proposed a new Penal Code for Gaza based on Sharia principles, but it was met with widespread opposition.<sup>26</sup> The draft law includes a list of punishments, such as flogging or lashing, hand amputation, and the death penalty, that breach fundamental human rights.<sup>27</sup> In the West Bank, several versions of a new Penal Code have been drafted, none of which is fully compatible with international human rights law. The more recent drafts criminalize homosexuality and introduce new crimes that were not part of the Penal Code of 1960.

A draft legal aid law was prepared in 2014, but has not yet been approved. It proposes establishment of a legal aid fund to provide access to justice for disadvantaged populations in criminal cases.

<sup>23</sup> Palestinian Central Bureau of Statistics, *Women and men in Palestine Issues and Statistics* (2016), p. 54, <http://www.pcbs.gov.ps/Downloads/book2237.pdf>.

<sup>24</sup> Public Prosecution Services, Attorney General Office, Ramallah, *Legislative and institutional measures to investigate, prosecute and adjudicate gender related killings of women and girls* (2014).

<sup>25</sup> Geneva Centre for Democratic Control of Armed Forces, *Palestinian Women and Security: A Legal Collection* (2012).

<sup>26</sup> "PPP: Hamas plans to impose new penal code on Gaza" (29 March 2014), *Ma'an News Agency*, <http://www.maannews.com/Content.aspx?id=685656>.

<sup>27</sup> The Institute of Law, Birzeit University, held a meeting on this draft Penal Code in 2014; see "Legal meeting on reading the Draft Penal Code in Gaza," *Shasha* (12 April 2014), <https://www.shasha.ps/news/100697.html>.

# PROTECTION FROM DOMESTIC VIOLENCE AND SEXUAL VIOLENCE

No laws specifically criminalize domestic violence or provide protection and redress to survivors of violence. Marital rape is not criminalized under current laws.

Criminal laws that can be used to prosecute some acts of violence against women are the Jordanian Penal Code of 1960 (applicable in the West Bank) and the Criminal Code of 1936 (applicable in the Gaza Strip).

## Rape and sexual assault

In the Gaza Strip, the Criminal Code of 1936 provides the following offences:

Article 152(1): Sexual intercourse with a female against her will by the use of force or threats of death or severe bodily harm, or when she is in a state of unconsciousness or otherwise incapable of resisting, is punishable with imprisonment for 14 years.

Article 153: Rape of a woman by deception is punishable with imprisonment for ten years.

Article 157: Any person who commits or attempts to commit an indecent act upon the person of another against his will by the use of force or threats, or when he is in a state of unconsciousness or otherwise incapable of resisting, or by use of force or threats compels a person to commit or to submit to any indecent act, is guilty of a felony and is liable to imprisonment for five years.

The Penal Code of 1960 provides for the following offences that apply in the West Bank:

Article 292: Rape

Any person who has forced sexual intercourse with a female, other than his wife, shall be sentenced to at least five years of temporary hard labour. The sentence shall not be less than seven years if the victim is less than 15 years of age.

Article 293: Rape of a Vulnerable Female

Any person who has forced sexual intercourse with a female, other than his wife, who cannot defend herself due to a physical disability, a cognitive impairment, or as a result of any form of deception, shall be sentenced to temporary hard labour.

Article 294: Sexual Intercourse with a Female under 15 or 12 Years of Age

Any person who has sexual intercourse with a female who is under 15 years of age shall be sentenced to temporary hard labour. The sentence shall not be less than five years if the victim is less than 12 years of age.

Article 295: Sexual Intercourse with a Female between 15 and 18 Years of Age

(1). Any person who has sexual intercourse with a female who has reached 15 years of age, but is less than 18 years of age, and is an ascendant, whether legitimate or not, step-father, the husband of the paternal grandmother, or the caregiver of the girl, shall be sentenced to temporary hard labour.

(2). The same penalty shall be imposed if the perpetrator of the act is a clergyman, or a director of a public office, or an employee therein, who commits such an act by abusing the power or privileges granted to him.

Article 304: Seduction

Unless a harsher sentence is deserved, a prison sentence for a period of three months to one year shall be imposed upon any person who deflowers a virgin who has reached 15 years of age after promising to marry her. The perpetrator shall also guarantee her virginity.

Article 305: Unwanted Sexual Contact

A prison sentence for a period not exceeding one year shall be imposed upon any person who engages in unwanted sexual contact with:

- Another person, male or female, under 15 years of age; or,
- A woman or a girl who has reached 15 years of age, but without their consent.

Article 308 previously exonerated a rapist of criminal responsibility if he married the rape survivor.<sup>28</sup> Law No. 5 of 2018 repealed

<sup>28</sup> Jordan, Penal Code, Art. 308; Article 291 of the Egyptian Penal Code of 1937, applicable in Gaza, includes a similar provision that was repealed by the Egyptian People's Assembly in 1999.



## Incest

In addition to being socially and religiously taboo, incest is illegal. In the case of incest between ascendants and descendants, Articles 285 and 286 of the Jordanian Penal Code of 1960 provide for a punishment of a minimum seven years of temporary hard labour imprisonment. If one of the offenders has legal or de facto authority over the other, a prison sentence of at least five years of temporary hard labour imprisonment shall be imposed. The prosecution of incest can only be launched based on a complaint filed by a relative or a relative by marriage of one of the offenders up to the fourth degree.

The law in Gaza imposes a punishment of five years of imprisonment on any person who has unlawful sexual intercourse, or aids or abets another to have an intercourse, with an unmarried girl who is above the age of 16 years and is his descendant from his wife, or is his ward, or has been entrusted to him for the purpose of education or supervision.<sup>30</sup> The law of Gaza does not provide any protection for girls under the age of 16 and limits the punishment on those who have unlawful sexual intercourse with an unmarried woman. The law deals with unlawful intercourse, but does not cover other forms of sexual abuse or exploitation.

## Procedural obstacles

Procedural obstacles that women face in reporting violence include:

- A person must file a complaint within three months of the incident.<sup>31</sup>
- In order for an assault case to be prosecuted without a formal complaint from the survivor, the period of physical injury caused to the woman by violence perpetrated against her must endure for at least ten days.<sup>32</sup>
- Women who are reluctant or unable to file violence complaints on their own have little recourse, since the law only allows close relatives to file such complaints on their behalf if the survivor does not do so herself, and most of these crimes are perpetrated by close relatives.<sup>33</sup> The guardian of a female survivor of GBV may seek to drop charges to avoid social stigma, particularly in cases of sexual assault and rape. Women often end up dropping their claim due to social pressure or fear of stigma.

# HONOUR CRIMES

The UN Special Rapporteur on Violence against Women has reported that the number of Palestinian women killed under the pretext of protecting 'honour' has dramatically increased in recent years. The Special Rapporteur observed:

Crimes in the name of 'honour' are defined as violent crimes committed against women for 'tarnishing the name and the honour of the family'. In the Palestinian context, they constitute a manifestation of culturally inherited values of inequality that impose upon women socially expected behaviours deriving from patriarchal norms and standards. Women's transgressions of these social norms are considered a violation of the honour of the family and men, and legitimize violence against women as a disciplinary measure to maintain or restore the family honour. Women are therefore discouraged from reporting abuses by social norms and family members who fear for their reputation.<sup>34</sup>

The penal laws reaffirm social norms by providing reduced punishments and pardons for male perpetrators of honour crimes. There was an attempt to reform these laws in 2011, when the President issued a decree<sup>35</sup> annulling Article 340 of the Jordanian Penal Code of 1960 that applies in West Bank,<sup>36</sup> and amending Article 18 of the Criminal Code of 1936 that applies in Gaza. However, the government in Gaza has not applied the presidential decree. Article 18 of the Criminal Code of 1936 states:

An excuse can be accepted in case of committing or refraining from actions, the committing of which is considered a crime, in order to avert consequences, which could cause irreparable damage to their honour, money, or the person or honour of others that those offenders are obliged to protect, or money placed in their possession; this is conditional in that when committing or not taking the action, they acted only within logical limits to achieve that end; and that the

<sup>29</sup> Human Rights Watch, "Palestine: Marry-your-rapist law repealed" (10 May 2018).

<sup>30</sup> Criminal Code of 1936, Article 155.

<sup>31</sup> UN Women, *Access denied: Palestinian Women's Access to Justice in the West Bank of the occupied Palestinian Territory*.

<sup>32</sup> Jordan, Penal Code, Art. 334.

<sup>33</sup> Freedom House, *Women's Rights in the Middle East, Palestine Authority and Israeli Occupied Territories* (2010).

<sup>34</sup> Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to the Occupied Palestinian Territory/State of Palestine* (8 June 2017), A/HRC/35/30/Add.2.

<sup>35</sup> Palestine, Decision on Law No. 71 of 2011 (Official Gazette no. 91 of 10 October 2011).

<sup>36</sup> Article 340 of the Jordanian Penal Code No. 16 of 1960 stated: "(a). Any man who took by surprise his wife or any female relative while she was committing adultery with another person and killed, wounded or harmed both of them or either one of them is entitled to a pardoning excuse. (b). The perpetrator of murder, injury or harm shall benefit from the mitigating excuse if he surprises his wife or one of his ascendants or descendants in the crime of adultery or in an unlawful bed."

resulting harm caused by making or not making the act is proportionate with the damage they averted.

In the West Bank, although Article 340 has been repealed, other provisions still allow for reduced punishments for honour crimes. Judges can utilize Articles 99<sup>37</sup> and 100 of the Jordanian Penal Code, which allow the court to reduce penalties based on extenuating excuses. Under Palestinian law, the victim or the victim's family (where the victim is deceased) may offer a personal pardon to the perpetrator by "relinquishing personal rights" in the prosecution. Where this occurs, the penalty may be reduced by the court under Article 99. Law No. 5 of 2018 amended Article 99 of the Penal Code to prohibit judges from using it to reduce sentences for serious crimes, such as the murder of women and children.

## ADULTERY AND SEX OUTSIDE OF MARRIAGE

The existence of the adultery offence may deter women from reporting a rape or sexual assault for fear they may be prosecuted for adultery. The laws that criminalize adultery also discriminate against women by punishing them more severely than men.

In the West Bank, Article 282 of the Jordanian Penal Code stipulates that a woman who commits adultery should be sentenced from six months to two years of imprisonment, whereas Article 283 stipulates that a man who commits adultery should be sentenced from one month to a year.<sup>38</sup> The disparity in penalty assumes that a woman brings greater dishonour to her family by committing adultery than a man. A complaint for the crime of adultery can only be filed by male relatives.

In practice, many cases of adultery are malicious and are brought to court by husbands as a tactic to blackmail or exploit women. For example, when women seek divorce, some husbands file adultery claims as a tactic to deter her or force her to waive all her marital rights. The accusation puts women's security and reputations at risk and renders them financially vulnerable.

It is not a criminal offence in the West Bank for an adult man and woman who are not married to engage in consensual sex.

## ABORTION FOR RAPE SURVIVORS

Abortion is prohibited in the West Bank by the Jordan Penal Code (Articles 321–325) and in Gaza by the Criminal Code of 1936 (Articles 175–177).

Under the Jordanian law, any person performing an abortion is subject to one to three years' imprisonment. If that person is a medical professional, the sentence is increased by one third. A woman inducing her own miscarriage or allowing it to be induced is liable to six months' to three years' imprisonment. Penalties are decreased if the abortion is performed by the woman or a descendant or relative to the third degree for the purpose of saving her honour (Article 324).

According to Human Rights Watch, authorities may allow abortions in the first four months of pregnancy in situations of rape or incest, or if the mother has a disability or her life is at risk.<sup>39</sup>

Some families utilize genetics and IVF technologies to determine the sex of the embryo. Sex selection of embryos reflects discriminatory attitudes regarding their preference for male babies.<sup>40</sup> Legal frameworks do not tackle this issue.

37 Article 99 states: "If the case included extenuating reasons, the court rules: 1: Instead of the death penalty, life imprisonment with hard labour or imprisonment with hard labour from ten years to twenty years. 2: Instead of life imprisonment with hard labour, imprisonment with hard labour from five years to fifteen years; and instead of life imprisonment, temporary detention for a period not less than five years." Article 98 states: "Perpetrators may take advantage of the extenuating excuse in cases of crimes committed in a fit of rage." Presidential Decree of 11 May 2014 amended Article 98 by adding: "The perpetrator shall not benefit from mitigating excuse should the act be taken against a female under honour grounds."

38 WCLAC and Geneva Centre for the Democratic Control of Armed Forces, *Palestinian Women and Penal Law* (Ramallah and Geneva, May 2012), [http://www.dcaf.ch/content/download/94172/1450842/file/Policy\\_Brief\\_Penal\\_EN\\_Final.pdf](http://www.dcaf.ch/content/download/94172/1450842/file/Policy_Brief_Penal_EN_Final.pdf)%20penal%20laws%20palestine.

39 Human Rights Watch, "Palestine: Marry-your-rapist law repealed" (10 May 2018).

40 Dr. Shukri Odeh, "Female or Male, Sex Determination Operations Are Spreading in Palestine Since 2009" Palestine Network for Dialogue (2012), <https://www.paldf.net/forum/showthread.php?t=942145>.

# FEMALE GENITAL MUTILATION/CUTTING (FGM/C)

There is no evidence that female genital mutilation/circumcision is practiced in Palestine.<sup>41</sup> Some believe that incidents occur in certain communities<sup>42</sup> such as in the southern parts of the Gaza Strip, where there is an Egyptian influence. However, laws and policies do not specifically prohibit these practices.

## FAMILY MATTERS

Different religious groups are governed by different laws on family matters. There are Personal Status Laws for Catholic Christians, Episcopal Anglican Christians, Orthodox Christians, and Coptic Orthodox Christians.<sup>43</sup> The Samaritan minority in Nablus is also governed by its own family law, which is based on their Torah.

For Muslims, the Jordanian Personal Status Law No. 61 of 1976 is applied in the West Bank and the Egyptian Law of Family Rights of 1954 applies in Gaza. These laws are drafted according to Islamic principles of the Hanafi School of jurisprudence. Although Jordan and Egypt have reformed their personal status laws in recent decades, the laws applied in Palestine remain in their original form.

Women's inequality is institutionalized by personal status laws. The application of these laws often results in disadvantages to women and therefore contradicts decisions of the Palestinian National Authority, including the Presidential Decree endorsing CEDAW issued in 2009.

### Marriage

The personal status laws set the minimum legal age of marriage as 15 years for girls and 16 years for boys in the West Bank,<sup>44</sup> and 17 years for girls and 18 for boys in the Gaza Strip.<sup>45</sup> However, a girl can marry at the age of 14 years if a judge approves the marriage as being in the child's interests. These provisions are difficult to reconcile with Palestinian Child Law No. 7 of 2004, Article 1, which sets the upper age of childhood at 18 years.

Polygamy is permissible under Sharia law. Although there is no article in the personal status laws addressing polygamy, Muslim men in the West Bank and Gaza are permitted to marry up to four women concurrently, provided that they can ensure justice and equality between spouses. The husband must prove financial ability to support more than one wife. Recently, the Sharia Supreme Council issued a circular on polygamy stating that a man must inform the first wife or previous wives about his intention to take another wife before he does so, and preferably through the court.

The personal status laws require a Muslim woman to obtain consent of a *wali* (male guardian) in order to marry. They also allow the guardian or the husband to prevent women from working or travelling if it is perceived that doing so would harm the family's unity. A woman can only object to her husband's decision if she stipulates in the marriage contract that her husband cannot prevent her from working. Women can request stipulations within their marital contracts, such as the right to finish their education or work outside the home. As a practical matter, however, prevailing customs discourage women from taking advantage of this right.<sup>46</sup>

Men have obligations to provide materially and financially for their wives, and the wife owes obedience to her husband. The term 'obedience' includes restrictions, such as a woman must live with her husband and must obtain permission to work or study outside the home. It further entails the right of men to discipline their wives and ensure their good conduct.

41 UNFPA, *Evaluation of UNFPA Support to the Prevention, Response to and Elimination of Gender-Based Violence, and Harmful Practices* (2017), p. 13.

42 Organisation for Economic Co-operation and Development, *Social Institutions and Gender Index, Palestinian Authority* (2014).

43 Laws regulating non-Muslims family affairs are: the Constitution of the Judiciary in the Legal Right or Ecclesiastical Procedure, the Code of Canon Law, the Body of the Laws of the Eastern Churches, the Law of the Personal Status of the Catholic Communities, the Law of the Personal Status and Endowments of the Arab Anglican Community of 1954, the Body of the Byzantine Law of Family, the Law of the Personal Status in the Jerusalem-Latin Patriarchate, and the Law of Personal Status Concerning the Syriac Orthodox.

44 Jordan, Personal Status Law, Art. 5.

45 Egypt, Law of Family Rights, Art. 6.

46 Freedom House, *Women's Rights*.

## Divorce

A Muslim husband may unilaterally divorce his wife (*talaq*) without needing to show grounds and without judicial certification.

However, a Muslim woman has more restricted options. She can request a judicial divorce if she is able to establish harm based on authorized grounds, such as disease or desertion. The occurrence of domestic violence in itself is not sufficient grounds for a divorce. Alternatively, women can request a *khul'a* divorce, whereby a couple agrees to divorce and the woman surrenders her dowry and any claim to financial maintenance. Generally speaking, judicial divorce based on specific grounds is rare, and most women attempt to gain their husbands' consent to a *khul'a* divorce by forfeiting their financial rights.<sup>47</sup> However, a woman is unable to secure a *khul'a* divorce if her husband does not consent.<sup>48</sup> As such, a woman's freedom from an abusive marriage may require her to abandon all claims to financial security.

Alternatively, a woman may request that the marriage contract include a unilateral right for her to request a divorce, but this is uncommon, and judges sometime refuse to allow a woman to make such a stipulation.

## Guardianship and child custody

The father is the sole guardian of his minor children. In the West Bank, divorced women are entitled to custody over their children until girls reach the age of 12 and boys reach the age of 10,<sup>49</sup> after which custody is granted to the father unless a court orders otherwise. In the Gaza Strip, the mother is awarded custody of girls until they are 11 and boys until they are 9.<sup>50</sup> The practice based on the Hanafi School is that, after puberty, only boys can choose which parent they will live with, while girls are automatically placed in their father's custody. In both the West Bank and the Gaza Strip, a divorced mother who remarries automatically loses custody of her children.<sup>51</sup>

In 2018, the Palestinian Authority announced that women who have custody of their children will be allowed to open bank accounts for them, transfer children to different schools, and apply for passports.

The concept of shared marital property does not exist in Palestinian law. Throughout the marriage, the husband bears responsibility for meeting the financial needs of the wife. Upon divorce, a wife's non-financial contributions to the marriage such as childcare and maintaining the family home are not recognized.<sup>52</sup> According to the Ottoman Manual, any movable or immovable property the wife gives or delivers to her husband while the marriage stands is considered a gift and cannot be retrieved.<sup>53</sup>

## INHERITANCE

In relation to inheritance, the Jordanian Personal Status Law of 1976 is applied in the West Bank and the Family Law of 1954 in the Gaza Strip, both based on Sharia law. Sharia rules regarding inheritance generally provide that women receive half the amount given to a male sibling. For example, a daughter receives a share of the estate of her father that is half of her brother's share.

In practice, women often do not even receive their legal entitlement of inheritance and may be pressured by male relatives to waive their rights entirely.<sup>54</sup> In certain cases, women have been killed for asking for their inheritance, and families have pretended that the murders were due to the women's misconduct and were required to preserve honour. Some non-Muslim communities resort to Sharia rules on inheritance when their own religious law is ambiguous or not sufficiently explicit.

47 Sarah Adamczyk, *The Shari'a Courts and Personal Status Laws in the Gaza Strip* (Norwegian Refugee Council, 2011).

48 Freedom House, *Women's Rights*.

49 Jordan, Personal Status Law, Arts. 154–166.

50 Adamczyk, *The Shari'a Courts*.

51 Freedom House, *Women's Rights*.

52 UNDP, *A Review of Palestinian Legislation from a Women's Rights Perspective* (2011).

53 Article 867 of Al Majalla, Ottoman Court Manual (Hanafi) reads: If the husband or wife, while the marriage stands, gives and delivers something to the other, he or she can no longer go back from it." See [http://legal.pipa.ps/files/server/ENG%20Ottoman%20Majalle%20\(Civil%20Law\).pdf](http://legal.pipa.ps/files/server/ENG%20Ottoman%20Majalle%20(Civil%20Law).pdf).

54 Adamczyk, *The Shari'a Courts*.

# NATIONALITY

There is no Palestinian nationality law. In 1995 the Palestinian Authority prepared a draft law, but it was not passed. In 2011, the PLO prepared a draft law proposing that anyone who holds a Palestinian identity card from the Palestinian Authority would become a citizen of Palestine.<sup>55</sup> The draft law proposed that Palestinians from East Jerusalem, refugees from the 1967 war and the 1948 war, and Palestinian citizens of Israel would also enjoy the right to nationality.<sup>56</sup>

Since the Oslo Accords of 1993 and 1995, those living under the Palestinian Authority in the West Bank and Gaza Strip hold travel documents, but they do not provide proof of nationality. Palestinians in diaspora, refugees living outside of Palestine, and Palestinians in Israel and Jerusalem are ineligible for travel documents. The lack of nationality laws creates complications for Palestinians, especially those travelling and living overseas. Some countries do not recognize the Palestinian travel documents as a proof of nationality and therefore refuse to issue birth, death, or marriage certificates.<sup>57</sup>

In 2010, the Ministry of Interior issued an ordinance giving Palestinian women who are married to non-Palestinians the right to extend their citizenship to their children under the age of 16.<sup>58</sup> However, in practice the population registry is controlled by Israel.

# LABOUR LAWS

Under the Labour Law of 2000, discrimination in the workplace between men and women is prohibited.<sup>59</sup> The Labour Law does not include any specific prohibition on sexual harassment or other forms of gender-based violence in the workplace. Some legal restrictions exist on women's employment in certain industries that do not apply to men (e.g., mining).<sup>60</sup>

The Labour Law provides that a worker has the right to resign from an employment after notifying the employer, while keeping her or his legal rights, including the end of service bonus, if the worker is assaulted or slandered by the employer or his/her representative during work.

The President issued a decree on the Social Security Law, No. 19 of 2016, regulating the social security system for private sector workers and their family members. Women's organizations voiced their discontent with this law,<sup>61</sup> which failed to reflect the aspirations of CSOs.<sup>62</sup> It contains discriminatory provisions and does not embody equality principles. For example, Article 66 treats women contributors to the social welfare fund unequally to men. In the case of death, the children of a woman contributor to the fund do not benefit equally to the children of a male contributor.

The law allows for a shorter maternity leave period than the ILO standard (12 weeks instead of 14 weeks). Moreover, the law does not include any measures to positively empower women or ensure their representation. For example, it does not provide for a quota for women representatives in the fund committee, which makes it likely that no women will be included at all.<sup>63</sup>

## Domestic workers

The Labour Law does not apply to domestic workers.<sup>64</sup> The President issued Decree No. 2 of 2013 concerning domestic workers, which consists of 13 articles that determine the rights and duties of domestic workers, such as number of working hours, the right to rest, remuneration, post contract rights, and compensation.

55 See Mutaz Qafisheh, "Can a Citizenship Law Address Palestinian Statelessness?" (Nakba Files, Columbia University), <http://nakbafiles.org/2016/08/17/can-a-citizenship-law-address-palestinian-statelessness/>.

56 Ibid.

57 Ibid.

58 Ordinance No. 42 of 2010.

59 Labour Law of 2000, Art. 100.

60 World Bank Group, *Women, Business and the Law 2016: Getting to Equal* (Washington, DC: World Bank, 2015).

61 WCLAC, "8 March 2016 Statement," <http://www.wclac.org/english/etemplate.php?id=1691>.

62 Firas Jaber, "The Social Security Law of Palestine: A Seek for Justice" (Rosa Luxemburg Stiftung, 2017), <http://www.rosaluxemburg.ps/wp-content/uploads/2017/01/Rosa-Luxemburg-Articles-English-Firas-Jaber-Paper.pdf>.

63 Ibid.

64 Labour Law of 2000, Art. 3.

# SEX WORK AND ANTI-PROSTITUTION LAWS

Many Palestinians prefer not to openly discuss issues related to prostitution or sex work, which exists clandestinely despite legal prohibition. In 2009, with the support of the United Nations Development Fund for Women (UNIFEM),<sup>65</sup> a report was prepared by the SAWA organization that described how poverty, unemployment, and socio-economic inequality force women into prostitution and sex work.

The language of the current laws in the West Bank and Gaza Strip fail to provide protection to this vulnerable segment of women. The laws prohibit forcing women into any illegal sexual intercourse, provided that “such a woman is not a prostitute and is not known for her immoral character.” This ambiguous language leaves much room for interpretation and excludes those who are perceived as possessing an “immoral character.” As such, it contributes to further disadvantaging women. In practice, sex workers are denied access to protection, legal aid, and health and support services. It is reported that shelters in Palestine refuse to provide assistance to sex workers.

While the Penal Code of Jordan does not provide an explicit definition for prostitution, Articles 309–318 penalize prostitution as a breach of public ethics and morality.<sup>66</sup> The Penal Code also criminalizes the incitement to debauchery;<sup>67</sup> the establishment, management, and ownership of a brothel;<sup>68</sup> and obliging a woman to engage or continue engaging in prostitution.<sup>69</sup> Earnings generated by prostitution are prohibited. Article 315 imposes a prison sentence of six months to two years on any male who totally or partly bases his livelihood on income that a female earns from engaging in prostitution.<sup>70</sup>

In Gaza, the Criminal Code of 1936 classifies prostitution under indecent acts and offences against morality. According to this law, the procurement of females to become prostitutes within or outside Palestine is considered a misdemeanour.<sup>71</sup> It further punishes defilement of females by threats, fraud, or administering drugs.<sup>72</sup> Keeping a brothel,<sup>73</sup> permitting children to reside in a brothel,<sup>74</sup> and living on earnings of a prostitute are also prohibited by law.<sup>75</sup> The law punishes a woman who for the purpose of gain controls, directs, or influences the movements of a prostitute.<sup>76</sup>

## HUMAN TRAFFICKING

Palestine does not have comprehensive anti-trafficking legislation. Some provisions of the Penal Code of Jordan apply to trafficking in the West Bank. The Penal Code also prohibits using duress, threat, or deceit to procure a person for prostitution, with punishment of imprisonment from one to three years.<sup>77</sup> Holding a woman against her will in a brothel or other place to have sex with a man is punishable with two months to two years’ imprisonment.<sup>78</sup> Additionally, the law criminalizes acts of abduction. Punishment for the crime of abduction is aggravated if the victim is a child or a girl and if the victim is raped or sexually assaulted.<sup>79</sup>

Socio-economic hardships contribute to the increasing number of girls and women subject to trafficking. In many cases, they are trafficked inside the 1948 borders, with no way to escape. Some women and young girls are required to marry much older men. Women from the West Bank have been trafficked to the Al Naqab desert.<sup>80</sup> Some trafficked women are subject to violence or threats of violence by their families and forced into marriages to men who abuse them.<sup>81</sup> They lack protection, are unfamiliar with avenues to seek help, and fear being caught by the Israeli authorities and rejected by their families. To protect family ‘honour’, families sometimes kill daughters who try to escape marriages, viewing the attempt as tarnishing the family reputation. Trafficked women often stay hidden due to fear of interception by the authorities while enduring a coerced marriage.

65 UNIFEM is now called UN Women.

66 Penal Code of 1960, Chapter II, Incitement to Debauchery and Breach of Public Ethics and Morality.

67 Ibid, Art. 311.

68 Ibid, Art. 312.

69 Ibid, Arts. 317–318.

70 Ibid, Art. 315.

71 Criminal Code of 1936, Art. 161.

72 Ibid, Art. 162.

73 Ibid, Art. 163.

74 Ibid, Art. 165.

75 Ibid, Art. 166.

76 Ibid, Art. 173.

77 Penal Code of 1960, Art. 311.

78 Ibid., Art. 317.

79 Ibid., Art. 302.

80 UN Women, ongoing research project.

81 SAWA, *Trafficking and Forced Prostitution of Palestinian Women and Girls: Forms of Modern Day Slavery, A Briefing Paper* (SAWA, 2008), <http://www.sawa.ps/Upload/Reports/english.pdf>.

# SEXUAL ORIENTATION, GENDER IDENTITY, AND RELATED ISSUES

Transgender, lesbian, gay, and bisexual Palestinians live with the fear of violence and discrimination, including from family members. In addition to targeted violence, they are at risk for honour crimes because they do not conform to traditional norms regarding gender and sexuality.

In some cities, such as Ramallah, transgender, lesbian, gay, and bisexual people have their own organizations. Al-Qaws (Haifa) and Aswat (based inside the 1948 borders of Israel) provide a safe space to engage issues related to sexuality, gender identity, and sexual diversity. These organisations try to change the perspectives of mainstream Palestinian society on sexual orientation and gender identity.<sup>82</sup>

The Criminal Code of 1936 that applies in Gaza criminalizes sexual acts between men (“carnal knowledge against the order of nature”) with a penalty of up to ten years’ imprisonment.<sup>83</sup> The Penal Code 1960 (Jordan), which applies in the West Bank, has no prohibition on consensual sex between adults of the same sex. The current draft of the Unified Penal Code of Palestine criminalizes all acts of homosexuality and acts “against nature.”

There are no specific laws protecting transgender, lesbian, gay, and bisexual people from hate crimes, GBV, or discrimination. There are no legal protections for, or legal recognition of, transgender people.

Sex reassignment surgery for transgender or intersex people is not common in Palestine. Under restricted conditions, a few reassignment surgeries have been performed.

## PALESTINE: KEY RESOURCES

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