

musawah

For Equality in the Family

**THEMATIC REPORT ON MUSLIM FAMILY LAW AND
MUSLIM WOMEN'S RIGHTS IN
PALESTINE**

70th CEDAW Session

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A. INTRODUCTION

Musawah, the global movement for equality and justice in the Muslim family, submits this Thematic Report on concerns related to women's legal equality, personal status, and relevant matters for consideration by the CEDAW Committee in its review of the State of Palestine, reporting before the 70th Session of the CEDAW Committee in July 2018.

This is the CEDAW Committee's first engagement with Palestine, which acceded to CEDAW on April 2nd 2014, without reservations.

This report examines Palestine's legal frameworks and practices that enforce *de jure* and *de facto* discrimination against women in the following areas: the application of multiple personal status laws; reciprocity of rights in marriage; women's consent and capacity to enter marriage; child and forced marriage; divorce rights; polygamy; custody and guardianship of children; women's financial rights after divorce; and inheritance.

The report also contains sections on Positive Developments in Muslim Family Laws, with examples of good and better practices from other Muslim contexts based on Musawah's research and comparative analysis of Muslim family laws and practices in 31 countries.

Musawah hopes that the research, analysis, and recommendations in this report will provide critical information in:

- (1) Highlighting key concerns and identifying gaps in the State party report and the State party's response to the list of issues;
- (2) Providing alternative arguments within Muslim legal theory that challenge the ways the State party uses religion to justify discrimination, including non-implementation of its international human rights treaty obligations; and
- (3) Suggesting recommendations for reform based on good practices in Muslim contexts.

Musawah would like to acknowledge and appreciate the important input and feedback from national advocates and activists into this report.

We hope that the CEDAW Committee will utilise this report as a key resource during its constructive engagement with the State party and identifying follow-up issues in the Concluding Observations.

B. LEGAL FRAMEWORK

Basic Law of Governance

According to the Palestinian National Authority (PNA), the Palestinian Basic Law functions as a temporary constitution until such time when an independent state and a permanent constitution can be achieved.¹

Article 9 of the Basic Law provides that Palestinians are equal before the law and the judiciary without distinction on several basis, including sex², and Article 29 of the Basic Law provides that maternal and childhood welfare are national duties.³

Meanwhile, Article 4 of the Basic Law stipulates that, 'The principles of Islamic *Shari'ah* shall be a principal source of legislation.' However, in the State party's Replies to the List of Issues and Questions - Islamic *Shari'ah* constitutes just one of other primary sources of legislation.

'Palestinian law also draws on other sources. Accordingly, the legislation based on the Islamic Shari'ah has the same status as civil law, and does not have priority. In the absence of a legal provision, the courts apply the prevailing rule from the school of Abu Hanifah, which is the most moderate interpretation of the Shari'ah.'⁴

Personal Status Laws for Muslims

With regard to personal status matters of marriage and family relations of the Muslim majority population in Palestine, there are two main codified laws that apply for West Bank and the Gaza Strip:⁵

	West Bank	Gaza Strip:
Application of personal status law	<p>The Personal Status Law of 1976 ('PSL'), which is the Jordanian Personal Status Law No. 61/1976⁶.</p> <p>The law has been amended and supplemented by the relevant Palestinian authorities.</p>	<p>The (Egyptian) Family Rights Law ('FRL') 1954, which is the based on the 1917 Ottoman Law of Family Rights as adopted by Gaza Strip's then-Egyptian Administrator by Order No. 303/1954⁷.</p> <p>The law has been amended and supplemented by the relevant Palestinian authorities.</p>
School of jurisprudence on which personal status law	<p>Based on Article 183 of the PSL, in the absence of codified laws that sufficiently address a particular matter of personal status of Muslims, the rules of Hanafi jurisprudence (<i>fiqh</i>) apply.⁸</p>	<p>In the absence of codified laws that sufficiently address a particular matter of personal status of Muslims, the rules of Hanafi <i>fiqh</i> apply.⁹</p>

¹ The Palestinian Basic Law <https://www.palestinianbasiclaw.org/>

² Article 9 of Palestine's Basic Law (2003), <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>

³ Article 29 of Palestine's Basic Law (2003), <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>

⁴ List of issues and questions in relation to the initial report of the State of Palestine, 19 February 2018. Replies of the State of Palestine CEDAW/C/PSE/Q/1/Add.1

⁵ Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 323, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁶ Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁷ Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁸ Article 183 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁹ Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 323, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; Norwegian Refugee Council, "The Shari'ah Courts and Personal Status Law in the Gaza Strip", 2011, p. 17, <https://www.nrc.no/globalassets/pdf/reports/the-sharia-courts-and-personal-status-laws-in-the-gaza-strip.pdf>

C. KEY ISSUES, LIVED REALITIES, ISLAMIC JURISPRUDENCE AND REFORM

1. APPLICATION OF MULTIPLE PERSONAL STATUS LAWS

CRITICAL INFORMATION

As per the State party report

324. *In general, these various codes regulate matters pertaining to marriage and family relations, including betrothal, children, divorce, guardianship and inheritance. Their provisions are based on the Islamic Shari'ah, that is to say, the Holy Quran, the Sunnah of the Prophet, and certain schools of Islamic jurisprudence, primarily the Hanafi school. Certain of those codes defer to what is predominant practice in the Hanafi school where there is no explicit text. The Office of the Chief Qadi has jurisdiction over personal status matters pertaining to Muslims. The Shari'ah courts hear and rule on personal status cases among Muslims. The Christian communities have their own personal status codes, which are enforced by their ecclesiastical courts.*

CEDAW/C/PSE/1

As different personal status laws apply for the West Bank and the Gaza Strip, legal provisions and court procedures pertaining to marriage, divorce, custody and guardianship of children do not apply uniformly to all Palestinians. Both the Personal Status Law (PSL) applicable to the West Bank and the Family Rights Law (FRL) applicable to the Gaza Strip, contain discriminatory provisions against women. The lack of uniformity of these laws further exacerbate the inequalities faced by women across Palestinian territories.

Process of harmonizing and reforming personal status laws

It is encouraging to note that as per the State party report as well as State party's Replies to List of Issues and Questions (LOIQ), there is acknowledgement and understanding by the PNA of the need to harmonize personal status laws currently in force in the West Bank (including occupied Jerusalem) and the Gaza Strip. This includes consensus on the need to raise the minimum age of marriage and address the provisions on custody, alimony and other issues.

Furthremore the report mentions that a judicial committee was formed in 2015 to review legislation regarding the *Shari'ah*-based justice system and drafts of laws were prepared on regulating work of *Shari'ah* courts. According to Section 116 of the replies to LOIQ's on matters pertaining to marriage and family relations – **'All legal provisions that are discriminatory against women will be reviewed and brought into line with the (CEDAW) Convention.'**¹⁰

In-terms of the timeline of reforms, according to the government:

'13. Once the reconciliation is complete, the priority step will be to hold legislative elections for the Palestinian Legislative Council with a view to working towards harmonizing the legislation in force in the West Bank, including occupied Jerusalem, and the Gaza Strip, and to adopting legislation for the State of Palestine that is consistent with international conventions.'¹¹

The State party's Replies to LOIQ's also mention a multidimensional needs analysis conducted in 2017 on *Shari'ah* courts in the West Bank, including occupied Jerusalem, and the Gaza Strip, which will feed into action towards improvement of services.

¹⁰ List of issues and questions in relation to the initial report of the State of Palestine, 19 February 2018. Replies of the State of Palestine CEDAW/C/PSE/Q/1/Add.1

¹¹ List of issues and questions in relation to the initial report of the State of Palestine, 19 February 2018. Replies of the State of Palestine CEDAW/C/PSE/Q/1/Add.1

MUSAWAH VISION FOR THE FAMILY

Musawah asserts that in the 21st century, there cannot be justice without equality. Many provisions in Muslim family laws, as defined by classical jurists and as reproduced in modern legal codes, are neither tenable in contemporary circumstances nor defensible on Islamic grounds. Not only do these family laws fail to fulfill the *Shari'ah* requirements of justice, but they are being used to deny women rights and dignified choices in life.

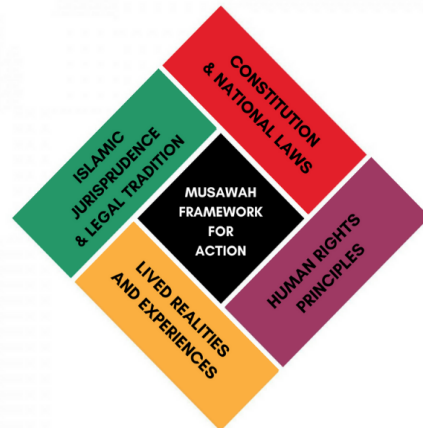
These elements lie at the root of marital disharmony and the breakdown of the family.

Musawah believes that Qur'anic principles and the richness of the Islamic juristic tradition enable us to formulate Muslim family laws today that are egalitarian and reflect the needs of contemporary societies. Islamic teachings and universal human rights standards, including the CEDAW Convention, are **fully compatible** and are **dynamic and constantly evolving**, based on changing times and circumstances.

Inspired by the Qur'anic vision of justice and gender relations, Musawah contends that gender equality and non-discrimination can only be achieved with laws that transform power relations in the family and in society in the direction of just outcomes.

Musawah recommends the CEDAW Committee to encourage the government of Palestine to:

- **Recognize the diversity of opinions, laws and practices in the Muslim world and the growing scholarship in Islam that recognizes equality and justice and the possibility and necessity for reform of Muslim family law in Palestine;**
- **Promote human rights standards as intrinsic to the teachings of Islam, national guarantees of equality and non-discrimination, and the lived realities of men and women today;**
- **Pursue open and inclusive public debate regarding diversity of opinion and interpretations in Muslim laws and principles relating to family laws and practices.**



TOOLS FOR REFORMING MUSLIM FAMILY LAW

In addition to human rights instruments, juristic tools and concepts exist within Islamic legal theory that can be used to reform discriminatory Muslim laws:

First, there is a distinction between what the State party calls *Shari'ah*, the revealed way, and *fiqh* - jurisprudence and human understanding of the *Shari'ah*. Much of what is deemed to be 'Islamic law' by the State party, and what is practiced in its family courts today are in fact, *fiqh* - jurisprudence. **It is not divine law. It is human-made, fallible and changeable.**

Second, Muslim jurists have always considered legal rulings related to marriage and family as social and contractual matters, not spiritual or devotional matters. As such these rulings have always been open to reform, **given changing times and circumstances.**

Third, diversity of opinion has always been accepted and celebrated in the Muslim legal tradition. This led to multiple schools of law, with Kuwait following a particularly school of jurisprudence. Principles such as *maslahah* (public interest), and *istihsan* (choosing the best opinion among many) must be used to meet the demands of equality and justice today.

Fourth, laws or amendments introduced in the name of *Shari'ah* and Islam must reflect the values of **equality, justice, love, compassion and mutual respect** among all human beings. These values exist in the Qur'an and the Muslim legal tradition, and they correspond with contemporary human rights principles.

2. EQUALITY AND RECIPROCITY OF RIGHTS IN MARRIAGE

CRITICAL INFORMATION

Despite the fact that Article 10 of the Basic Law guarantees the protection and respect of basic human rights and liberties¹² and Article 11 of the Basic Law guarantees personal freedom as a natural right¹³, both the PSL and FRL are based on the concept of 'maintenance-for-obedience'.

This provides for a marital framework based on 'reciprocal' or 'complementary' rights (as opposed to 'equal' rights) between the two spouses¹⁴, whereby in return for maintenance and protection from her husband, a wife is expected to 'obey' him. **Thus personal rights of married women in the West Bank and Gaza Strip are significantly restricted and women lose their rights in situations where they are considered to be 'disobedient' (*nusyuz*).**

¹² Article 10 of Palestine's Basic Law (2003), <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>

¹³ Article 11 of Palestine's Basic Law (2003), <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>

¹⁴ Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 331, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

According to the State party report:

331. *Personal status laws in force enshrine traditional roles for the various members of a family. While the man is the head of the family and has guardianship and decision-making authority, the women are supposed to be obedient and take care of the home. The marital relationship is based on reciprocity of rights and obligations rather than equality.*

The woman has rights that correspond to the man's duties and the man has rights that correspond to the woman's duties. Personal status laws require a man to maintain a good relationship with his wife and treat her with kindness, while a woman is required to obey her husband in all legally permitted matters.

If the wife disobeys her husband by abandoning the marital home without just cause — which under the Shari'ah would be if the husband harms his wife by beating or mistreating her — or by refusing to allow her husband to enter her home without having requested to be moved to another home, she loses her right to marital upkeep for as long as her disobedience persists. If she ends up being divorced for reason of that disobedience, she also loses her right to alimony.

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	West Bank	Gaza Strip
Provisions pertaining to spousal rights	<p>Article 2 of the PSL defines marriage as “a contract between a man and woman, who is legally permissible to him, for the constitution of a family and production of progeny between them”;</p> <p>Article 35 provides that a wife will be entitled to a dower (<i>mahr</i>), financial maintenance and inheritance. In addition, Article 36 obligates the husband to provide the marital home;</p>	<p>Article 20 of the FRL refers to marriage as a contract;</p> <p>Articles 38 provide that a wife is entitled to the marriage dower (<i>mahr</i>), financial maintenance and inheritance as soon as the marriage is concluded in a rightful manner. In addition, Article 39 obligates the husband to provide a marital home;</p>
Limited freedom of women to choose their place of residence	<p>Article 37 of the PSL obligates the wife to take residence in her husband's home and to travel and move with him to any place he chooses even if outside the country, unless there was a condition in the marriage contract that states otherwise. If the wife refuses, she forfeits her right to financial maintenance.¹⁵</p>	<p>Article 40 of the FLR obligates a wife to take residence in her husband's home and to travel with him wherever he goes (unless there was a reason to prevent her travel), and that she should obey her husband in permissible matters. A husband is instructed to treat his wife well.¹⁶</p>
Situations under which women lose their right to financial maintenance	<p>Article 68 provides that a wife forfeits her right to financial maintenance if she takes a job outside the home without permission of her husband.¹⁷</p> <p>Article 69 states that a wife is considered recalcitrant (<i>nashez</i>), and therefore not entitled to maintenance, if she leaves the home without permission of her husband or prevents the husband from entering the home</p>	<p>Article 66 provides that a wife loses her financial maintenance if she is recalcitrant (<i>nashez</i>)¹⁹ i.e.: if she leaves her husband's home or prevents him from entering the home without asking his permission.²⁰</p>

¹⁵ Article 37 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

¹⁶ Article 40 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

¹⁷ Article 68 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

	(unless the husband has inflicted harm upon her). ¹⁸	
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CHALLENGING THE MAINTENANCE-FOR-OBEDIENCE FRAMEWORK

This idea of ‘complementarity of rights’ is a manifestation of male authority (*qiwamah*) and guardianship (*wilayah*) over women. It does not in practice lead to equality in rights and responsibilities between the husband and wife. Men who fail to provide do not lose their authority over women, and women who financially provide for the family do not enjoy corollary rights and privileges.

QUR'ANIC PRINCIPLES PROMOTE EQUALITY BETWEEN SEXES	<ul style="list-style-type: none"> The concept of male authority (<i>qiwamah</i>) and male guardianship (<i>wilayah</i>) over women play a central role in institutionalizing, justifying, and sustaining a patriarchal model of families in Muslim contexts, and must be challenged. The very notion of male authority and guardianship over women is not in line with Qur’anic principles. The hierarchical understandings of <i>qiwamah</i> and <i>wilayah</i> are juristic (fiqh) constructs that belong to the time and context where patriarchy was part of the social and economic fabric of life, and where men’s superiority and authority over women was theoretically a given. We can and must reconsider these concepts in line with the Qur’anic principles of justice and fairness, to build egalitarian family laws and practices that are based on social justice and enable families and their individual members to reach their full potential.
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CONTEMPORARY LIVED REALITIES	<ul style="list-style-type: none"> Women’s lives and stories reveal that laws based on male authority and guardianship over women are untenable, unjust and discriminatory. Far from creating harmony in marriage, these laws are the main causes of marital breakdown and violence against women and thus there is urgent need for reforms.
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In keeping with Islamic principles of justice and equality, as well as international human rights standards, any proposed legislation on personal status laws in Palestine should guarantee that Muslim women and men have equal rights with regard to marriage and family relations.

¹⁹ Articles 20, 38, 39, 66 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf
²⁰ Article 66 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf
¹⁸ Article 69 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- Enact a unified personal status law which that grants husband and wife equal rights and responsibilities in marriage, within a legal framework that recognizes marriage as a partnership of equals;
- Involve all stakeholders in the law reform process including women's rights organizations;
- Consider progressive personal status laws/family codes in other Muslim contexts such as Morocco, Algeria and Turkey as examples for a personal status law in Palestine, which promotes equality in the Muslim and other families;
- Combat all forms of gender stereotypical images and portrayals of the roles of women and men in the society.

EQUALITY OF SPOUSES IN MARRIAGE

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

ALGERIA

Under the Constitution and the Civil Code, the family is based on equality between spouses

TURKEY

The Family Code requires each spouse to cohabit in harmony, mutual respect and kindness, contribute jointly to the preservation of the family's interests, the protection of their children and the provision of a sound education for them and mutually agree in the management of the family's affairs, including the spacing of births.

MOROCCO

The Family Code (Moudawana) recognises marriage as a partnership of equals and specifies the 'mutual rights and duties' between spouses which includes: (i) cohabitation, mutual respect, affection and the preservation of the family interest; (ii) both spouses assuming the responsibility of managing and protecting household affairs and the children's education; and (iii) consultation on decisions concerning the management of family affairs.

3. WOMEN'S CONSENT & CAPACITY TO ENTER INTO MARRIAGE

CRITICAL INFORMATION

In both the West Bank and the Gaza Strip, consent of prospective brides and grooms to marriage is mandatory, but women and men do not have equal capacity to enter into marriages, as women still require permission of male guardians to get married, whereas men do not.

According to women's rights groups "A Palestinian woman can be a judge, a representative in the PLC, a businesswoman, or assume other high-level decision-making positions, but she cannot stand for herself when it comes to the right to enter into marriage."²¹

Furthermore male guardianship extends beyond entering into marriage. Article 165 of the PSL permits a male guardian (*mahram*) to decide whether or not a female virgin under the age of 40 of whom he is a guardian, should live with him, if she is not considered to be "safe" on her own, thereby eliminating her choice on the matter.

²¹ Jallad, Zeina (2010). *Palestinian Women and Security: A Legal Analysis*
https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

According to the State party's replies to List of Issues and Questions of the CEDAW Committee:

330. There are several respects in which the Muslim personal status codes in force restrict women's freedom to choose a husband. The guardian of a legally adult woman has the right to protest and sue before a judge for annulment if she marries a man without enough money for her — that is, who is unable to pay her advance dowry and afford her upkeep. However, the right of a guardian to lodge such a protest is revoked if the wife has become pregnant by her husband, or if her husband has acquired sufficient money by the time the suit is heard.

Additionally, a Muslim man has the right to marry an adherent of one of the other recognized religions even if she continues to adhere to that religion, whereas a marriage between a Muslim woman with a non-Muslim man — even if he is an adherent of one of the recognized religions — is considered null and void. The rules for parentage, alimony, the post-marital waiting period, forbidden relationships and inheritance do not apply in such a case.

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CRITICAL INFORMATION

	West Bank	Gaza Strip
Requirement of bride's consent	Under both the PSL and the FRL, regardless of their age, both prospective brides and grooms must consent to the marriage ²² and the full and free consent of both the man and the woman is an essential condition for a valid marriage. Consequently, forced marriages (<i>ijbar</i>) are prohibited. The registration of marriages is mandatory. Failure to register a marriage contract is punishable by imprisonment but does not invalidate the marriage; ²³	
Forced marriages	<ul style="list-style-type: none"> • A forced marriage contract is considered void. If not consummated, it is automatically invalidated. Upon consummation, the parties are required to end the marriage and if they do not, a judge must issue a divorce order. The wife's rights to the marriage dower (<i>mahr</i>) and children's legitimacy are not impacted, but the rules of inheritance and maintenance do not apply to void marriages;²⁴ • The applicable Penal Codes provides for a prison sentence for conducting a marriage ceremony in violation of the PSL or the FRL as the case may be;²⁵ 	
Women's capacity to enter into marriage	Regardless of her age, a prospective bride getting married for the first time requires the consent of a marital guardian (<i>wali</i>) to enter into marriage. The guardian must be Muslim and a male relative of the bride (father,	Regardless of her age, a prospective bride requires the consent of a marital guardian (<i>wali</i>) to enter into marriage. The guardian must be Muslim and a male relative of the prospective bride

²² Articles 14, 15 of the Personal Status Law (1976); Articles 21, 22 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf; Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), paras. 325-326, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

²³ Article 17 of the Personal Status Law (1976), Article 279(1) of the Penal Code (1960), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf Palestine Cabinet Website (West Bank), "Issuance of Marriage Contract", <http://palestinecabinet.gov.ps/GovService/ViewService?ID=567>; Gaza Council of Ministers Order No. 4/269/11 of 2012, <http://www.ljc.gov.ps/images/stories/pdf/mazon.pdf>; State of Palestine Judicial Authority in Gaza, Higher *Shari'ah* Court Council, "Authorized Immigrants," State of Palestine Judicial Authority in Gaza, http://www.ljc.gov.ps/index.php?option=com_content&view=article&id=90&Itemid=71

²⁴ Articles 34(c), 42-43 of the Personal Status Law (1976); Articles 36, 43-44 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

²⁵ Article 279(1) of the Penal Code (1960); Article 182(a) of the Penal Code (1936), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

	<p>paternal grandfather brother, uncle, etc.).²⁶</p> <p>Article 279(3) of the Penal Code of 1960 provides for a prison penalty of one to six months for conducting or assisting in concluding a marriage of a girl below 18 without consent of her guardian.²⁷</p> <p>A judge can act as guardian in the absence of a guardian.²⁸ In addition, a judge may authorise the marriage of:²⁹</p> <ul style="list-style-type: none"> • A previously unmarried woman over 18 upon her request, if the guardian's withholding of consent was without a legitimate reason; • A girl over 15 upon her request if her guardian withholds approval without a legitimate reason, but only if the guardian was not her father or grandfather. 	<p>(father followed by the paternal grandfather, etc.).³⁰</p> <p>Article 182(c) of the Penal Code of 1936 provides for a prison penalty of six months for conducting or assisting in concluding a marriage of a girl below 18 without the consent of her guardians.³¹</p> <p>A judge can act as guardian in the absence of a guardian.³² In addition, if the guardian opposes the marriage, the prospective bride may seek the authorisation of a judge to get married. The judge may authorise the marriage provided she is over 17 and the guardian has opposed the marriage without a legitimate reason.³³</p> <p>In the event an adult woman denies that a guardian exists for her and she initiates marriage to a man by herself, the matter shall be examined as follows: (i) If she married herself to a fit man, the contract shall be incumbent.</p> <p>If she married herself to a man deemed 'unfit' for her, the guardian shall be entitled to report to the judge and dissolve the marriage. A judge cannot dissolve the marriage after a wife gets pregnant.³⁴</p>
Requirement of male guardian's consent when remarrying	A prospective bride who has been previously married and is over 18 does not require the consent of a guardian to re-marry. ³⁵	There is no corresponding provision under the FRL.
Stipulations of conditions in marriage contract	Pursuant to Article 19 of the PSL, both spouses may stipulate any conditions in their marriage contract so long as the conditions are not contrary to the purpose of marriage and not legally prohibited. The failure to meet these conditions allows either spouse to seek divorce.	Pursuant to the FRL, both spouses may stipulate conditions in their marriage contract. Specific conditions that a wife stipulate include: <ul style="list-style-type: none"> (i) her husband cannot take another wife during their marriage (Article 24); or (ii) or her husband cannot relocate her without her consent (Article 40).³⁷

²⁶ Articles 9-11 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

²⁷ Article 279(3) of the Penal Code (1960), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

²⁸ Article 12 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

²⁹ Articles 6 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

³⁰ Articles 11, 12 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

³¹ Article 182(c) of the Penal Code (1936), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

³² Article 11 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

³³ Article 9 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

³⁴ Articles 27, 30 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

³⁵ Article 13 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

³⁷ Articles 24, 40 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

	<p>Specific examples provided by Article 19(1) regarding the conditions that a wife may stipulate in the marriage contract include:</p> <ul style="list-style-type: none"> (i) her husband cannot remove her from her country of origin; (ii) her husband cannot take another wife during their marriage; (iii) her husband shall delegate to her the power to divorce if she desires; and (iv) her husband shall settle her in a certain country.³⁶ 	
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RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

1. Eliminate clauses that enable 'wali' / guardian to nullify marriage contracts against the will of the bride;
2. Ensure women across Palestinian territories have an equal right and capacity to enter marriage without permission of a male guardian or a judge;
3. Amend all provisions that respond to a maintenance-for-obedience legal framework and repeal provisions concerning nusyuz (disobedience) of a wife;
4. Eliminate court's practices that prevent women from benefiting from their right to stipulate conditions in marriage contract;
5. Enhance societal awareness and promote social norms that are supportive to equality in marriage, and challenge traditional discriminatory social norms that prevent women from fulfilling their full rights in entering marriage and in divorce, particularly in remote and underserved communities.

CAPACITY TO ENTER MARRIAGE	POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY
WOMEN'S EQUAL CAPACITY TO ENTER INTO MARRIAGES	<p>AFGHANISTAN, BAHRAIN (Shia), EGYPT, IRAQ, MOROCCO, TUNISIA, TURKEY: The consent of a marital guardian (<i>wali</i>) is not required for adult brides and grooms.</p> <p>BANGLADESH, PAKISTAN, SRI LANKA: The consent of a <i>wali</i> is not required for Hanafi women who have reached puberty.</p>

³⁶

Article 19 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

4. CHILD AND FORCED MARRIAGE

According to the Palestine State Party report:

328. *Personal status laws in force discriminate between women and men with respect to marriage age. The minimum marriage age in the West Bank is 16 Islamic calendar years for males and 15 Islamic calendar years for females. In the Gaza Strip, the marriage age is 18 for males and 17 for females.*

However, a judge may allow a girl over 9 years of age to get married if she is ruled to be sufficiently mature and her physical constitution is equal to it. The same applies to a boy over 12 years of age if he is ruled to be sufficiently mature and his physical constitution is equal to it, even if his guardian does not give permission for him to get married. The bride and groom must both have reached the aforementioned marriage ages in order to conclude a valid marriage contract. Otherwise, the marriage is considered invalid.

CEDAW/C/PSE/1

CRITICAL INFORMATION

Child marriage is still permitted in Palestine. Official statistics by the Palestinian National Information Center indicates that in 2014 - 92% of all marriages registered in Palestine (West Bank and Gaza) were for brides aged 15-29.³⁸ According to UNICEF's State of the World's Children 2016 report, 15% of women aged 20- 24 in Palestine were first married by 18 and 1% were first married by 15.³⁹ As per the UN World Marriage Data 2015, the average of first marriage among Palestinian females rose from 22.9 in 2007 to 23.5 in 2011 and among males, from 26.6 to 27.8 during the same period.⁴⁰

As noted in the State party report, there is a divergence in the personal status laws with regard to the minimum age for marriage in the West Bank and Gaza Strip:

	West Bank	Gaza Strip
Minimum age of marriage	<p>As per Article 5 of the PSL⁴¹, the minimum age of marriage is 15 for females and 16 for males.</p> <p>Article 1 of the Palestinian Childhood Law No. 7/2004, issued by the Palestinian Authority in the West Bank, defines a child as anyone below 18. The law, however, does not explicitly prohibit child marriage. Article 44(8) of the Law only prohibits subjecting a child to forced marriage.⁴²</p>	<p>As per Article 5 of the FRL⁴³, the minimum legal age for marriage is 17 for females and 18 for males.</p> <p>Although the FRL sets the absolute minimum age of marriage at 9 and 12, a 1996 directive from the Chief Islamic Justice (<i>Qadi-Al-Quda</i>) raises the absolute minimum legal age to 15 for girls and 16 for boys.⁴⁴</p>

³⁸ Palestine News and Information Agency, "Marriage and Divorce in Palestine", <http://info.wafa.ps/atemplate.aspx?id=3183>

³⁹ UNICEF, "The State of the World's Children 2016", Table 9, pp. 150-153, https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf

⁴⁰ United Nations Population Division, "World Marriage Data 2015", <https://esa.un.org/ffps/Index.html#/maritalStatusData>

⁴¹ Article 5 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf; Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 328, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁴² Articles 1, 44 of the Palestinian Childhood Law (2004), <http://www.sawa.ps/ar/Views/PageView.aspx?pid=715>

⁴³ Article 5 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf; Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 328, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

How age and consent is verified	Both in the West Bank and Gaza Strip, the minimum age verification is conducted by the authorised marriage officer before whom the marriage is concluded. Both parties are required to present the marriage officer with proof of their identity (which includes age) to the authorised marriage officer. ⁴⁵	
Marriage of minor with judge's permission	Article 7 of the PSL prohibits contracting the marriage of a minor girl below 18 if the prospective husband was more than 20 years her senior, except by permission of a judge who must confirm her free choice and consent and that the marriage is in her interest. ⁴⁶	Articles 6 and 7 permit a judge to authorise the marriage of a girl below 17 or a boy below 18, if the boy or girl claim they have reached puberty and they appear to be physically mature; in addition, a minor girl's guardian must agree to the marriage. ⁴⁷
Penalties for colluding to marriage of minor(s)	Article 279(2) of the Penal Code of 1960 provides for a prison penalty of one to six months for conducting or assisting in concluding a marriage of a girl below 15. ⁴⁸	Article 182 of the Penal Code of 1936 provides for a prison penalty of 6 months for conducting or assisting in concluding a marriage of a girl below 15. ⁴⁹

Consensus on raising minimum age of marriage

According to national level civil society and UN organizations⁵⁰ - a national consensus has been reached on the need to raise the minimum age for marriage to 18, noting that the Palestinian child law 2004 defines childhood up to the age of 18 years. However, agreement has not yet been reached as to whether and under what circumstances an exception to the minimum age rule can be made.

The Palestine government's replies to LOIQ's (Section 123) also indicates that there is governmental consensus regarding the need to raise the age of marriage in accordance with the international conventions to which the State of Palestine has acceded. According to the report, such a provision is being included in the relevant draft laws with a view to eliminating the different legislations on the issue. **However, it is unclear at this time, whether the proposed legislative change will raise the age of marriage to 18 years without exceptions.**

⁴⁴ Lynn Welchman, "Beyond the Code: Muslim Family Law and the Shari'ah Judiciary in the Palestinian West Bank," (Pre-publication text), (The Hague: Kluwer Law International, 2000), pp. 149-150, <https://core.ac.uk/download/pdf/2786162.pdf>

⁴⁵ Article 17 of the Personal Status Law (1976), Article 279(1) of the Penal Code (1960), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf; Palestine Cabinet Website (West Bank), "Issuance of Marriage Contract", <http://palestinecabinet.gov.ps/GovService/ViewService?ID=567>; Gaza Council of Ministers Order No. 4/269/11 of 2012, <http://www.ljc.gov.ps/images/stories/pdf/mazon.pdf>

⁴⁶ Article 7 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁴⁷ Articles 6, 7 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁴⁸ Article 279(2) of the Penal Code (1960), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf. This was originally the Jordanian Penal Code No. 16/1960 which has been adopted into West Bank legislation and published in the Official Gazette on 10 April 1960. The law later amended several times by the Palestinian National Authority; see full text and explanatory notes, <http://lawcenter.birzeit.edu/lawcenter/files/54.pdf>

⁴⁹ Article 182 of the Penal Code (1936), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf. This was originally the British Penal Code see for further information, https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁵⁰ UNDP, "A Review of Palestinian Legislation from a Women's Rights Perspective", 2012, p. 24, http://www.ps.undp.org/content/dam/papp/docs/Publications/UNDP-papp-research-Legislative_english.pdf

MUSAWAH JUSTIFICATION FOR REFORM

CHILD & EARLY MARRIAGE

Attempts to set and strictly enforce the minimum age of marriage at 18 for both men and women are often met with resistance from conservative religious authorities, who claim that this is 'un-Islamic.'

QUR'AN SETS CONDITIONS OF PERSONS FIT FOR MARRIAGE

While the Qur'an does not provide any specification for the age of marriage, Surah an-Nisa' 4:6 requires that orphans should be of sound judgment before they marry. This indicates that a person must have sufficient judgment and maturity to marry.

Equating the age of majority with the age of puberty and/or rationality (*baligh*), as is traditionally done, forces adulthood on children under 18, even onto those who start menstruating at the age of nine.

The onset of puberty is no indication of sufficient maturity for marriage.

NEW HISTORICAL EVIDENCE

Commonly, the example of the Prophet Muhammad's marriage to Aishah is used to justify child marriage. The marriage was supposedly consummated when Aishah was nine years old.

However, there are new studies asserting that Aishah was likely to have been 19 at the time of her marriage.**

The question arises as to why the Prophet's marriage to Aishah is used as a model, while his marriage to Khadijah, a widow 15 years older than him, or his marriage to other widows and divorcees, are ignored as exemplary practices.

**Source: <http://www.sistersinislam.org.my/news.php?item.997.41>

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- Raise the age of compulsory education up to 18 years old;
- Codify and enforce 18 years of age as an absolute minimum age of marriage for both girls and boys in the West Bank and the Gaza Strip and remove all legal loopholes that allow for exceptions to this rule;
- Enact strict legislation to criminalize child marriage, ensure a mechanism is in place for raising complaints and codify penalties for planning, conducting, and failing to prevent child marriage;
- Operate a referral mechanism in schools to alert authorities on the occurrence of girls dropping out of school due to child marriage.

MINIMUM AGE OF MARRIAGE

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

MINIMUM AGE OF MARRIAGE 18 WITH NO EXCEPTIONS

EGYPT

The minimum age for marriage is 18 for both females and males. The registration of the marriage of a person below 18 is prohibited and penalised.

KENYA

The minimum age for marriage is 18 for both females and males. Any person who marries or knowingly celebrates or witnesses the marriage of a person below 18 commits an offence and will be liable to a penalty (imprisonment, fine or both).

PAKISTAN (Sindh Province):

The minimum age for marriage is 18 for both females and males. The law criminalises and penalises the following: (i) males over 18 who contracts a child marriage; (ii) whoever performs, conducts or directs a child marriage; and (iii) parents or guardians who promote a child marriage, permit it to be solemnised or negligently fail to prevent it from being solemnised.

5. POLYGAMY

According to the Palestine State Party report:

330. A man can have up to four wives, on condition that he provides them with fair and equal treatment, upkeep and living conditions. He may not house them all under the same roof unless they agree. A wife does have the right to stipulate in the marriage contract that her husband may not marry anyone else and that if he does, the marriage contract may be annulled at her request without prejudice to any of her marital rights. The first wife must be informed that the husband intends to marry a second wife prior to concluding that second marriage contract, and the second wife must be informed that he is already married. Polygamy is prohibited by all of the Christian denominations.

CFDAW/C/PSF/1

CRITICAL INFORMATION

Polygamy is still permitted in both the West Bank and the Gaza Strip, where a Muslim man can marry up to four wives at a time.⁵¹ As per Palestine's 2014 Multiple Cluster Indicator Survey, about 4% of marriages in Palestine are polygamous (3% % in West Bank and 6% in Gaza Strip).⁵²

	West Bank	Gaza Strip
Polygamy permitted under the personal status law	Article 28 of the PSL prohibits a Muslim man who has four existing wives to marry another one before he divorces one of his wives and her waiting period after the divorce (<i>iddah period usually 3 months</i>) expires. ⁵³	Article 14 of the FRL permits a Muslim man to marry up to four wives at one time. ⁵⁴
Conditions for polygamy	Article 40 of the PSL states that a husband who has more than one wife has to treat them equally and fairly and cannot accommodate all wives in a single house unless they agree to it. ⁵⁵ However, there is no process of verification via Shari'ah courts to ensure financial and emotional capacity to treat all wives equally and fairly and no criteria specified in law.	Article 42 of the FRL provides that each man with more than one wife must treat each of his wives equally and fairly. ⁵⁶ However, there is no process of verification via Shari'ah courts to ensure financial and emotional capacity to treat all wives equally and fairly.
Consent of existing and potential wife / wives	Consent of wives / potential wives are not required. However, an authorised marriage officer (judge or his deputy) must inform a prospective bride that her prospective husband is married and inform the first wife (or existing wives)	Consent of wives / potential wives are not required.

⁵¹ Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 332, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁵² Palestinian Central Bureau of Statistics & UNICEF, "Palestinian Multiple indicator Cluster Survey 2014", p. xx, https://mics-surveys-prod.s3.amazonaws.com/MICS5/Middle%20East%20and%20North%20Africa/State%20of%20Palestine/2014/Final/State%20of%20Palestine%202014%20MICS_English.pdf

⁵³ Article 28 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁵⁴ Article 14 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁵⁵ Article 40 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁵⁶ Article 42 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

	that the husband intends to marry another woman. ⁵⁷	
Divorce as a condition for polygamy	Article 19 of the PSL specifically provides that a wife can prohibit her husband from entering into a polygamous marriage as an example of a condition that may be stipulated in the marriage contract between the spouses and entitles the wife to petition a judge to dissolve a marriage if the husband violates the condition. ⁵⁸	Article 24 of the FRL provides that in the event the wife stipulates that her husband cannot take another wife and the latter does so, the wife or her fellow wife may seek for a divorce. ⁵⁹

According to civil society and media reports:

- Although informing the existing wife about the husband's intention to marry another woman is a must- nevertheless in reality, women are most probably not able to get a divorce if husband takes another wife without consent;
- The deteriorating economic situation in the West Bank and Gaza means that men have difficulty maintaining more than one wife, but with the number of widows on the rise, men are encouraged to enter into polygamous marriages;⁶⁰
- Although women in the West Bank and Gaza Strip are allowed to include conditions in their marriage contract such as restrictions to polygamy under the law, in practice, it is difficult for women to exercise this right for various reasons including: (i) Such inclusion is frowned upon by society-at-large, especially men; and (ii) Palestinian judges and other relevant authorities often refuse women this right.⁶¹

In Palestine's replies to List of Issues and Questions (Section 125), the government acknowledges that women's organizations have been "**discussing a prohibition on polygamy**", however no amendments have so far being made and it is unclear at this time that the proposed draft law will address the practice of polygamy and its impacts on Palestinian women and children.

⁵⁷ Supreme Judge Department Directive No. 48/2011, Upper Council of Sharia Jurisdiction (West Bank), <http://www.kudah.pna.ps/userfiles/image/20%اﺑﻼﻍ%ﺍﻟﺰﻭﺟﺔ%20.jpg>; Penny Johnson and Rema Hammami, "Change and Conservation: Family Law reform in Court Practice and Public Perceptions in the Occupied Palestinian Territory", 2013, p. 40, http://iws.birzeit.edu/sites/default/files/2016-12/Family%20Law%20Survey%20FINAL%20WEB_Penny%20and%20Rema_0.pdf

⁵⁸ Article 19 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁵⁹ Article 24 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁶⁰ Asmaa Al-Ghoul, "Gaza's unhappy sister wives", *ALMONITOR*, 18 March 2015, <http://www.al-monitor.com/pulse/originals/2015/03/gaza-hamas-conservative-rise-of-polygamy.html>; Zeina Jallad, "Palestinian Women and Security: A Legal Analysis" (Geneva Centre for the Democratic Control of Armed Forces, 2012), Footnote 22, p. 12, https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁶¹ Information provided by Palestinian advocate, May 2017

MUSAWAH JUSTIFICATION FOR REFORM

Musawah believes Islam promotes monogamy and only permits polygamy as an alternative in exceptional circumstances. *Surah an-Nisa' 4:3* in the Qur'an states: *'If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if you fear that you shall not be able to deal justly [with your wives] then marry only one.... That will be more suitable, to prevent you from doing injustice'.*

QUR'AN PROMOTES MONOGAMY

- When the Qur'an was revealed, it imposed limitations upon the pre-Islamic practice of polygamy.
- The verse in Surah an-Nisa' that allows polygamy if a man can treat all his wives justly was revealed after a battle which had resulted in many men being killed, leaving behind war widows and orphans.
- As men were breadwinners in that society, the widows found it difficult to provide for their children. It was in this context that polygamy was tolerated in Islam: to provide for the welfare of widows and the orphaned children.

CHALLENGING POLYGAMY

- Polygamy is not an intrinsically 'Islamic' practice, as some Muslims believe.
- Polygamy was a practice that existed in various civilizations, religions, and cultures in many parts of the world until it was abolished by law as governments acknowledged the injustices it inflicted on women and children.
- Tunisia has forbidden polygamy on the ground that it is impossible for a man to deal justly with more than one wife. Thus, the continuum of reform suggests that polygamy should be even more restricted than it was in the situation discussed in the Qur'an.

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- Abolish the practice of polygamy;
- In absence of a prohibition of polygamy, introduce additional conditions to minimize harm and injustice— including requiring the written consent of existing and future wife/wives and specific criteria and evidence to prove the husband can treat all wives and equally and fairly;
- Criminalize and/or take actions against husbands for deprivation, neglect and abuse of any of the wives and their children due to polygamy;
- Raise awareness of public on social and psychological implications of polygamy on families;
- Codify legal provisions to ensure that a woman has recourse to court if the husband enters into subsequent marriages without her consent;
- Ensure mechanisms exist for a wife to raise complaints of harm that occurs as a result of a polygamous marriage and obtain financial resources and protection of her rights.

**POLYGAMY
PROHIBITED****KYRGYZSTAN, TAJIKISTAN, TUNISIA,
TURKEY, UZBEKISTAN****COURT AUTHORIZATION AND CONSENT OF EXISTING WIVES NEEDED:****ALGERIA**

Polygamous marriages must be authorized by the court and may only be concluded with the agreement of existing wives.

Court permission is only granted if the husband is able to provide justification for entering into multiple marriages as well as proof of his ability to be fair to all wives and meet the necessary conditions of married life with regard to all his marriages.

INDONESIA

Polygamous marriages must be authorized by the court and may only be concluded with the agreement of existing wives.

Court permission is only be granted if the husband's existing wife:

- (i) is unable to perform her conjugal duties;
- (ii) suffers from a physical infirmity or an incurable disease; or
- (iii) cannot bear children.

IRAQ (KURDISTAN REGION):

Polygamous marriages must be authorized by the court and may only be concluded with the agreement of the existing wives. Court permission is only granted if certain conditions are met:

- (i) the first wife has to agree before the court to her husband marrying a second wife;
- (ii) if the wife is diagnosed with an incurable disease that prevents sexual intercourse or if the wife is infertile;
- (iii) the man has the financial capacity to support more than one wife;
- (iv) the husband signs a contract promising to deal with both wives fairly and equally in terms of sexual intercourse and other marriage relations;
- (v) the first wife does not have a condition in the marriage contract that the husband will not take a second wife.

A man who concludes a polygamous marriage without the authorization of a judge will be subject to a penalty of imprisonment and fine and judges are prohibited from suspending the penalties.

5. DIVORCE RIGHTS**CRITICAL INFORMATION**

Women do not have an equal right to divorce as men in both the West Bank and the Gaza Strip. According to 2015 statistics released by the PCBS, the divorce rate (indicated by the divorce-to-marriage ratio) in Palestine was 16%; (West Bank: 17%; Gaza Strip: 16%).⁶²

As per the statistics obtained via the Norwegian Refugee Council, the period between 2000 and 2010 saw a sharp increases in divorce rates, particularly among newly married couples, owing to the social and political instability in Gaza. Particularly from 2007 to 2008, the divorce rate increased significantly by 46%, and outpaced the percentage of increase at which marriages were taking place (28% for the same period).⁶³

⁶² Palestinian Central Bureau of Statistics, "Registered Marriages Cases in Palestine by Governorate (1997-2015)", http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/MARRIAGES%20-2015-02e.htm; Palestinian Central Bureau of Statistics, "Registered Divorces Cases in Palestine by Governorate (1997-2015)", http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/DIVORCESES-2015-06e.htm

⁶³ Norwegian Refugee Council, *The Shari'ah Courts and Personal Status Laws in the Gaza Strip* (Page 19-20) <https://www.nrc.no/globalassets/pdf/reports/the-sharia-courts-and-personal-status-laws-in-the-gaza-strip.pdf>

According to the State party report:

On divorce initiated by husband -

338. *A man has the right to divorce his wife of his own free will for any reason, even without her consent. He also has the right to delegate another person to divorce his wife for him and register the divorce with the Shari'ah court. The court then notifies the wife of the in-absentia divorce within a week of the registration.*

339. *There are two types of divorce. One is revocable divorce, which does not dissolve the marriage immediately. During the waiting period, the husband has the right to reinstate his wife by word or deed, even without her permission, and no new dowry is required. The second is irrevocable divorce. That dissolves the marriage on the spot. There are two types of irrevocable divorce. One is irrevocable divorce with minor separation, which occurs without three declarations of divorce, where the husband is allowed to remarry the divorced wife with a new marriage contract and dowry, with her consent. The second type is irrevocable divorce with major separation. In that case, the man may only remarry the divorced wife after she has married someone else in the meantime and then become divorced or widowed and completed the post-marital waiting period.*

On divorce initiated by wife -

340. *In principle, women may not divorce themselves on their own. However, there are a number of ways to seek an end to the marital relationship. They include the following:*

- *A woman may insert a clause in the marriage contract stating that she retains the right to divorce herself.*
- *A woman may seek annulment of the marriage contract on the grounds that the husband is not fulfilling his matrimonial duties under the law and under the marriage contract. She may sue for separation before a Shari'ah court, but only through a long process with difficult requirements and in very specific cases. Those cases include the following: harm stemming from ongoing fighting between the spouses; harm stemming from the husband emigrating or abandoning her; insanity; illness or defect; failure to pay upkeep or the advance dowry; incarceration of the husband; failure by the husband to fulfil one of the conditions of the marriage contract.*
- *A woman may seek divorce by mutual consent, in which she requests a divorce in exchange for total or partial waiver of her financial rights.*
- *A wife may seek a court-ordered dissolution of the marriage if she has not yet consummated the marriage or been alone in complete seclusion with her husband. She may do so even without his consent by suing for dissolution of the marriage before a Shari'ah court, on condition that she feels a revulsion against her husband that prevents her from consummating the marriage and embarking on married life, and that she pay a sum of money that she herself guarantees. That is in accordance with Circular No. 59 (2012) issued by the Office of the Chief Qadi.*

CEDAW/C/PSE/1

The mechanisms for divorce are also different under the PSL and the FRL as indicated below. While both personal status laws provide for unilateral repudiation (*talāq*) by husbands and judicial divorce by wives, other forms of divorce such as redemptive divorce (*khul'*) by wife is recognized in the PSL, while the FRL is silent on the matter.

	West Bank	Gaza Strip
1. Talaq – Unilateral repudiation by husband	Under both the PSL and FRL, a husband may unilaterally repudiate without much restrictions. ⁶⁴ Article 101 of the PSL and Article 77 of the FRL require a husband to inform a judge of the repudiation. ⁶⁵	
<i>Process of talaq divorce</i>	Article 101 of the PSL provides that the husband must register his repudiation of the marriage before a judge. In case he divorced his wife outside the court and did not register it, he must report to the religious court for the registration of the divorce within 15 days. Failure to register the repudiation is penalised. ⁶⁶ The court must notify the wife who is absent within one week from its registration.	Article 77 of the FRL provides that a husband who has divorced his wife must inform the judge.
<i>Recognition of 'Isma' divorce (whereby husbands can delegate unilateral right to divorce to wives)</i>	Under the PSL, a husband may delegate his unilateral right to divorce to his wife (<i>isma'</i>) through a stipulation in the marriage contract, ⁶⁷ thus permitting her to pronounce <i>talāq</i> upon herself (<i>talāq -i-tafwid</i>). ⁶⁸	The FRL is silent on the ability of a husband to delegate his right to divorce to his wife. However, Sunni <i>fiqh</i> , including the Hanafi School, permits this delegation to the wife. ⁶⁹
2. Fasakh - Judicial divorce by wives	Under the PSL and the FRL, valid grounds for seeking a judicial divorce by a wife include a husband's: <ul style="list-style-type: none"> (i) impotence or inability to consummate a marriage; (ii) incurable or contagious and dangerous disease, madness (a wife may obtain a divorce after one year of the husband's diagnosis); (iii) failure to provide maintenance; (iv) prolonged and unjustified absence of more than one year; and (v) receiving a prison sentence of over three years (wife may seek divorce after one year).⁷⁰ 	
<i>Additional grounds for judicial divorce</i>	Under Article 132 of the PSL, a wife may seek divorce on the basis of "dispute and discord" provided the spouses undergo a mandatory mediation process. ⁷¹	Under Article 97 of the FLR a wife may seek divorce on the basis of "harm" provided the spouses undergo a mandatory mediation process. ⁷²

⁶⁴ Articles 83-101 of the Personal Status Law (1976); Articles 67-77 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁶⁵ Article 101 of the Personal Status Law (1976); Article 77 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁶⁶ Article 281 of the Penal Code (1960), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁶⁷ Article 19 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁶⁸ Article 87 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁶⁹ *al-Fatawi al-Mu'asira fi al-Talaq*, <http://arabicmegalibrary.com/pages-5582-10-1359-0.html>

⁷⁰ Articles 113-131 of the Personal Status Law (1976); Articles 84-102 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁷¹ Article 132 of the Personal Status Law (1976); Article 97 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁷² Article 132 of the Personal Status Law (1976); Article 97 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

<p><i>Additional clarifications</i></p>		<p>A Directive was issued by the Gaza Higher <i>Shari'ah</i> Court Council clarifying that Article 97 covers any harm inflicted by words or actions, where a man's treatment of his wife is contrary to acceptable custom in a manner that a wife cannot endure. Examples provided include <i>painful</i> beating, abandonment without reason, penetration that is not natural, or verbal insults to her or her father.⁷³</p> <p>In 2012, the Chief Islamic Justice directed that:⁷⁴</p> <ul style="list-style-type: none"> Judges have the discretion to decide whether the marriage is harmful for the wife rather than the woman having to submit evidence in cases of judicial separation; <p>Divorce proceedings must be completed in three months.</p>
<p>3. <i>Khul'</i> – Redemptive divorce by wife</p>	<p>Under the PSL, a wife can seek and obtain a redemptive divorce (<i>mukhala'ah</i> or <i>khul'</i>), in exchange for a mutually-agreed compensation to be paid to the husband.</p> <p>Generally, a <i>khul'</i> divorce requires the consent of both parties and is not subject to a court ruling. In addition: (i) a wife's entitlement to financial maintenance during the waiting period after the divorce (<i>iddah</i>) is not forfeited unless the <i>khul'</i> agreement clearly states so; and (ii) Child custody, support and maintenance may not be negotiated as part of a <i>khul'</i> agreement.⁷⁵</p>	<p>With regard to <i>khul'</i> divorce in the Gaza Strip, according to media reports and information on the ground:⁷⁶</p> <ul style="list-style-type: none"> While <i>khul'</i> divorce is not specifically recognised under the FRL, in practice, where a woman petitions a judge for divorce, a judge may rule for judicial divorce if both parties agree to a specific sum of money that a wife pays to the husband in exchange for his consent to divorce; A 2015 report on judicial divorce in Gaza suggests that hundreds of women reportedly obtain divorce by <i>khul'</i> annually.
<p>Mandatory counselling</p>	<ul style="list-style-type: none"> In 2004, an Administrative Directive institutionalised a family 	<p>-</p>

⁷³ Higher Shari'ah Court Council (Gaza), "Cases of *Tarfiq* Between Reality and Hope," *State of Palestine Judicial Authority*, http://www.ljc.gov.ps/index.php?option=com_content&view=article&id=670

⁷⁴ Penny Johnson and Rema Hammami, "Change and Conservation: Family Law reform in Court Practice and Public Perceptions in the Occupied Palestinian Territory", 2013, pp. 19-20, http://iws.birzeit.edu/sites/default/files/2016-12/Family%20Law%20Survey%20FINAL%20WEB_Penny%20and%20Rema_0.pdf

⁷⁵ Articles 102-109 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁷⁶ Information obtained from Palestinian Advocate, February 2017; Al-Hayat Al-Jadida, "*Khul'* in Gaza Between Personal Freedom and Societal and Legal Complications", *Al-Hayat Al-Jadida*, 10 May 2016, http://www.alhaya.ps/ar_page.php?id=14bbd0by21740811Y14bbd0b; Mohammed Othman, "*Khul'* in Gaza: By Mutual Consent in Courts and Judicial on Paper," *Al-Monitor*, 13 April 2015, <http://www.al-monitor.com/pulse/ar/originals/2015/04/gaza-divorce-sharia-courts-khul-wealthy-women.html>

	<p>counselling service in the West Bank. Families are required to attend counselling sessions to try to resolve differences before being referred to the court for a divorce.⁷⁷ The reports prepared by these family counselling centres have become the basis of the judge's decision in a court ruling.⁷⁸</p>	
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According to women’s rights groups, some of the main issues and challenges faced by women with regard to divorce include:

- Although legally women are also able to divorce their husbands, they face multiple challenges. For instance women are often being dissuaded from divorcing their husbands because of the fear of losing custody of their children;⁷⁹
- Women experience long delays in court processing of judicial divorce cases as women often have to show evidence);
- While women’s groups have been advocating for all forms of divorce to be conducted under judicial supervision to have legal effect and while the Chief Justice (West Bank) issued a decision to fine individuals who perform a divorce outside of court, such divorces still have legal effect,⁸⁰
- Local activists also report, negative social reaction to women divorcing their husbands and related negative stereotyping of divorced women.

MUSAWAH JUSTIFICATION FOR REFORM	
<p>It is cruel and unjust to continue to allow men the right to divorce their wives at will. Given today's realities and contemporary conceptions of justice, the urgent necessity to provide equal and just grounds for divorce to both men and women must be undertaken.</p>	
<p>QU'RAN PROMOTES JUST & FAIR DIVORCE</p>	<ul style="list-style-type: none"> • The man’s unilateral right to divorce his wife at will contradicts Qur’anic teachings, and specifically the message of kindness, justice, fairness and to do what is right and good. • The Qur’an calls on parties to the marriage to ‘either hold together on equitable terms (<i>ma’ruf</i>), or separate with kindness (<i>ihsan</i>)’ (<i>Surah al-Baqarah</i> 2:229). • The proceedings for arbitration and mediation in <i>Surah an-Nisa</i>’ 4:35 place both spouses on an equal footing: ‘<i>If you fear a breach between a married couple appoint (two) arbiters, one from among his people, and the other from among her people.</i>’

⁷⁷ Lynn Welchman, “Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy”, (Amsterdam University Press, 2007), p. 52, <https://open.org/search?identifier=340144;keyword=Muslim%20and%20family%20%20laws%20in%20arab%20states>

⁷⁸ Information obtained from Palestinian Advocate, February 2017
⁷⁹ Mohammed Othman, “*Khul*’ in Gaza: By Mutual Consent in Courts and Judicial on Paper,” *Al-Monitor*, 13 April 2015, <http://www.al-monitor.com/pulse/ar/originals/2015/04/gaza-divorce-sharia-courts-khul-wealthy-women.html>; CBS News, “Divorced women in Gaza denied child custody, April 27 2015, <https://www.marsad.ps/en/2015/04/27/divorced-women-in-gaza-denied-custody-rights/>

⁸⁰ UNDP, “A Review of Palestinian Legislation from a Women’s Rights Perspective,” 2012, p. 24, http://www.ps.undp.org/content/dam/papp/docs/Publications/UNDP-papp-research-Legislative_english.pdf

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- Ensure that men and women have equal access to divorce rights;
- Abolish the husband's right to unilateral divorce, and require both the husband and wife to be present at the time of divorce and to sign the divorce papers;
- Take all measures at the national, district and local levels to ensure that all forms of divorce strictly takes place in courts;
- Ensure clarity on procedures and timeline for divorce proceedings;
- Establish guidelines for *khul'* to ensure that judges expediently grant *khul'* based on request by the wife and payment of a reasonable sum that considers her financial situation.

DIVORCE		POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY
EQUAL RIGHT TO DIVORCE	TUNISIA, TURKEY: All divorces must go through the court. The grounds for divorce are equally available to both spouses. Divorce through unilateral repudiation (<i>talaq</i>) by husband is not recognized.	
TALAQ DIVORCE	ALGERIA, MAURITANIA: A divorce by way of repudiation by the husband can only be effectuated through the court.	
	BANGLADESH, PAKISTAN The standard marriage form includes a provision on the curtailment of a husband's right to divorce.	
	MOROCCO: Divorce by <i>talaq</i> can only be effectuated under judicial supervision. The wife and children must have received all vested rights before it is authorized.	

6. WOMEN'S FINANCIAL RIGHTS AFTER DIVORCE

According to State party report

341. A woman may go before a judge to seek compensation for being divorced by her husband arbitrarily for no acceptable reason. Such compensation is calculated in accordance with what the judge deems suitable, up to the equivalent of one year of upkeep. An award of compensation does not prejudice the other marital rights of the divorcee, including the right to alimony.

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Similarly to other family matters, there is also a divergence in the law with regard to a woman's financial rights after divorce in the West Bank and the Gaza Strip. Generally, both in the West Bank and Gaza Strip, upon divorce, a woman may be entitled to:

	West Bank	Gaza Strip
Financial maintenance during 'iddah	Financial maintenance during the waiting period after the divorce (<i>iddah</i>). ⁸¹ The <i>iddah</i> period is between three months to one year and depends on the woman's situation e.g. whether she is menstruating or pregnant. ⁸² A woman losses her	

⁸¹ Article 79 of the Personal Status Law (1976); Articles 57, 112 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁸² Article 80 of the Personal Status Law (1976), Articles 103-110 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

period' (three month / three menstrual cycles after divorce)	<p>right to financial maintenance if she is deemed disobedient,⁸³</p> <ul style="list-style-type: none"> A consolatory gift or compensation (<i>mut'ah</i>). Article 55 of the PSL and Article 50 of the FRL provide that if a divorce occurs before a <i>mahr</i> (matrimonial gift given from husband to wife at time of marriage) is specified and before consummation of a marriage, the wife is entitled to a <i>mut'ah</i> compensation to be determined in accordance with custom and not to exceed half of what a <i>mahr</i> would be.⁸⁴ 	
Compensation for harm endured by wife	<p>In the West Bank, pursuant to Article 134 of the PSL, a woman may be entitled to compensation if her husband divorces her in an abusive manner e.g. he divorced her without reasonable cause. Upon a request for compensation made by the wife, a judge may award her a compensation amount of up to a maximum of one year's worth of financial maintenance in addition to her <i>iddah</i> maintenance. Such compensation may be paid in bulk or by instalments and subject to the solvency or insolvency of her husband.⁸⁵</p>	<p>The FRL does not provide for compensation for unreasonable divorce.</p>
Matrimonial assets	<p>There is no legal concept of matrimonial assets in both the West Bank and the Gaza Strip. As such, a woman's contribution to the accumulation of marital assets as wife and mother are not recognised unless documented.⁸⁶</p>	
Maintenance of children	<p>Following a divorce, according to the PSL, a father is responsible for the financial maintenance of his children, and if the mother is the custodian, he is obligated to pay her maintenance to cover the expenses of his children. A daughter is entitled to maintenance until she is married unless she is already earning a living prior to her marriage, and a son is entitled to maintenance until he reaches an age where he would be expected to earn a living unless he is a student.</p> <p>A father, who is financially able to do so, must maintain his children until they obtain a first university certificate subject to their academic capabilities.⁸⁷</p>	<p>The FRL does not provide for compensation for unreasonable divorce.</p>

MATRIMONIAL PROPERTY / ASSETS

As indicated above there is no provision for division of matrimonial property upon divorce. Furthermore, provisions in the personal status laws impose financial constraints on a woman's property, should her husband file for bankruptcy or be involved in crimes pertaining to public funds.

⁸³ Article 81 of the Personal Status Law (1976); Articles 113 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁸⁴ Article 55 of the Personal Status Law (1976); Article 50 of the Family Rights Law (1954), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁸⁵ Article 134 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁸⁶ OECD Development Centre, "Palestinian Authority", *Social Institutions and Gender Index*, 2013, p. 8, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>

⁸⁷ Articles 112, 168-169 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf; Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 334, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

According to Palestine State party report:

117. At base, a woman's financial assets are independent of those of her husband, unless it is shown that her assets come from her husband's earnings. In that case, her assets are counted as part of his once he files for bankruptcy, or if his earnings were the proceeds of a crime he committed involving public funds. This should not be seen as discriminatory against women. Rather, it is a mechanism to prevent funds from being smuggled, to safeguard the rights of others and to prevent impunity.

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Furthermore the State party's replies to List of Issues and Questions⁸⁸ states that:

312. The matrimonial property system used in Palestine is a separate property regime. Each spouse retains ownership of property previously owned or accumulated during married life. The wife's property is separate from that of the husband. She has the right to dispose of it independently without her husband's authorization. There are two cases in which legislation places restrictions on a wife's assets because of a husband's actions. The first is if he declares bankruptcy. In such cases, the wife is considered subsidiary to the husband under the Commercial Code. It is assumed that property acquired during the marriage was purchased with the husband's money and is included among assets to be liquidated unless the wife proves otherwise.

The second case is if her husband is a fugitive accused of an offence related to public funds under the Code of Criminal Procedures. In such a case, the wife's assets and property may be considered, on the basis of evidence, to be the proceeds of the crime under investigation and may be confiscated.

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- Codify guidelines for the determination of financial support granted to a woman after a divorce, and enforce payments in order to protect women and children's rights.
- The financial security of the children should be considered in the division of matrimonial assets;
- Establish a matrimonial regime that recognizes wife's right to share of assets based on her financial and non-financial contributions (provide equal value to women's non-wage contributions, such as childcare and housework, and their financial contributions in determining the division of marital property).

⁸⁸ List of issues and questions in relation to the initial report of the State of Palestine, 19 February 2018. Replies of the State of Palestine CEDAW/C/PSE/Q/1/Add.1

Division of matrimonial assets after divorce:

Malaysia



The court may order the division of matrimonial assets (*harta sepencarian*) acquired through the parties' joint efforts, having regard to the extent of contributions made by each party towards acquiring the assets, debts owed by the parties and the needs of minor children to the marriage.

For assets acquired by the sole efforts of a party, the court may order division of the assets having regard to the other party's contributions towards looking after the home or caring for the family, though the party by whose efforts they were acquired shall receive a greater proportion.

Even though a woman may not have contributed financially to the acquisition of the marital assets, her role as wife and mother are considered as indirect contributions and she is usually granted at least a third of the share of assets.

Brunei



Similar to Malaysia:

Where the assets were acquired by the joint efforts of the parties, the court must have regard to:

- (i) the extent of the contributions made by each party by way of money, property or labour towards acquiring the assets;
- (ii) any debts owed by either party that were contracted for their joint benefit; and
- (iii) the needs of any minor children of the marriage. Subject to these considerations, the Court will order equal division;

Where the assets were acquired by the sole efforts of one party to the marriage, the court must have regard to:

- (i) the extent of the contributions made by the party who did not acquire the assets, to the welfare of the family by looking after the home or family; and
- (ii) the needs of any minor children of the marriage.

6. CUSTODY AND GUARDIANSHIP OF CHILDREN

CRITICAL INFORMATION

6.1. CUSTODY OF CHILDREN

Both in the West Bank and Gaza Strip, a father has guardianship over his children, including overseeing child's assets, however a mother has priority right over the custody of her children until a certain age when custody reverts to the father or father's relatives⁸⁹ unless a judge determines otherwise in the interest of the child. However the age until which a mother has custody differs for the West Bank and the Gaza Strip according to the sex of the child as indicated below:

⁸⁹ Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 346, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; Norwegian Refugee Council, "The Shari'ah Courts and Personal Status Law in the Gaza Strip", 2011, p. 22, <https://www.nrc.no/globalassets/pdf/reports/the-sharia-courts-and-personal-status-laws-in-the-gaza-strip.pdf>

	West Bank	Gaza Strip
Ages until which mother has custody over children	A mother has priority right over her daughter until she reaches 11 and her son until he reaches nine. ⁹⁰ A mother's right to custody over her children may be extended by a judge if it is deemed to be in the best interest of the children; ⁹¹	A mother has priority right over her daughter until she reaches nine and her son until he reaches seven. A judge may extend a mother's right to custody over her children if it is deemed to be in the best interest of the children. ⁹²
Conditions under which right of custody can be extended	Both in the West Bank and Gaza Strip, a judge may order the continuation of the custody by a mother, whose husband has died and who has brought up and looked after the children, if such custody is deemed to be in the best interest of the children, and subject to the right of access and inspection of the paternal relatives. ⁹³	
Conditions under which mother can lose custody of child/children	In the West Bank, under the PSL. ⁹⁴ A mother loses custody of her children if: (i) she is deemed of unsound mind, untrustworthy, or incapable of upbringing or maintaining her children; (ii) she is an apostate; (iii) she is housing her children where there are persons who are malicious to the children; or (iv) she remarries and her new husband is not a close blood relative of the child (<i>mahram</i>);	If a woman remarries, she will generally lose her custody of the children.
Additional information	As per the PSL, a custodian mother may not travel with the child without the consent of the guardian and confirming that the child's interests are safeguarded.	According to an OECD datasheet, there are reports from Gaza, where widows who lost their husbands in conflict, were threatened with losing custody of their children (and being thrown out of their houses) if they refused to marry their late husbands' brothers. ⁹⁵

⁹⁰ Articles 154, 161 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁹¹ Article 162 of the Personal Status Law (1976) as amended by Article 1 of Law No. 1/2009 amending the Personal Status Law, https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁹² Article 118 of the Family Rights Law (1954) as amended by Article 1 of Law No. 1/2009 amending the Personal Status Law, https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁹³ Article 1 of Law No. 1/2009 amending the Personal Status Law, https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁹⁴ Articles 155-156, 166 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

⁹⁵ OECD Development Centre, "Palestinian Authority", *Social Institutions and Gender Index*, 2013, p. 2, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>

According to the Palestinian State party report:

345. *The right to custody is invalidated (for the mother or anyone else) if mother marries a man who is not a close relative of the child. She can regain her right to custody if she gets divorced or the new husband dies, after the mandatory waiting period.*

346. *When the period of custody ends, the female with custody hands the children over to the father. If the father is dead or does not have the capacity to assume custody, they are handed over to the grandfather, uncle or brother, and so on. If the father (or one of his close relatives) requests a female child to live with him after the custodial period is over and she rejects the request without justification, he may cut off support for her on the ground that she is rebellious. If a male child chooses between the mother and father when deciding where to live, his upkeep is not cut off if he chooses to stay with the mother.*

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According to women's rights groups and international organization, some of the main issues and challenges faced by women include:

- As statistical review and interviews conducted by NRC there is increase in child custody disputes in Gaza since 2008:
 - *In the wake of the conflict, the primary access to justice issues cited by women in Gaza were domestic violence (26 percent), divorce (26 percent), and legal custody (18 percent).*
 - *For female heads of household, the access to justice concerns with regard to child custody were even higher, at 29 percent.*⁹⁶
- Divorced women in the Gaza Strip are particularly vulnerable and often face social stigmatisation, financial instability, and risk losing custody of their children. According to women's groups - upon divorce, a woman is typically expected to return to her father's home until she is able to remarry. Since a woman is expected to rely financially either on her husband or her father, women gain little financial support through the divorce mechanisms that are currently in place.⁹⁷
- Widows often face manipulation and intimidation from their husband's families, including threats to their custody of the children; this may be exacerbated during and after military offensive where widows and orphans may receive (or may be perceived as receiving) increased international aid and martyr's payments from the de facto authorities.⁹⁸
- According to a CWLRC study, findings obtained through focus groups indicated that significant numbers of women were forced to abandon their custodial rights in order for their husbands to consent to divorce.⁹⁹ Custody disputes may often become a means of leverage by which husbands may attempt to coerce women into forfeiting their rights to maintenance.¹⁰⁰

⁹⁶ Norwegian Refugee Council (NRC), January 2011. *The Shari'ah Courts and Personal Status Laws in the Gaza Strip* <https://www.nrc.no/globalassets/pdf/reports/the-sharia-courts-and-personal-status-laws-in-the-gaza-strip.pdf>

⁹⁷ Norwegian Refugee Council (NRC), January 2011. *The Shari'ah Courts and Personal Status Laws in the Gaza Strip* <https://www.nrc.no/globalassets/pdf/reports/the-sharia-courts-and-personal-status-laws-in-the-gaza-strip.pdf>

⁹⁸ Towards gender equality in humanitarian response: Addressing the needs of women & men in Gaza, UNIFEM (now known as UN Women), 2009 at 54-55.

⁹⁹ Study on the Reality and the Needs of Divorced Women in the Gaza Strip, CENTER FOR WOMEN'S LEGAL RESEARCH AND CONSULTING (CWLRC), December 2009 (translated from Arabic).

¹⁰⁰ Towards gender equality in humanitarian response: Addressing the needs of women & men in Gaza, UNIFEM (2009), Page 54.

6.2. GUARDIANSHIP OF CHILDREN & TRUSTEESHIP OF THEIR ASSETS

Women do not have equal guardianship rights as men or trusteeship of their assets, even in the best interest of the child/children. In both the West Bank and Gaza Strip, a father has priority right over the guardianship of his children followed by the paternal grandfather, and then other male relatives in a prescribed order.¹⁰¹

According to the Palestinian State part report:

336. *The rights and responsibilities of parents include the obligations to educate children and manage their assets under they reach the age of majority. That is to say, they have guardianship of the children and their assets. Both responsibilities fall primarily on the father, even where the mother or other relatives have custody of the children in question.*

Trusteeship of assets belongs only to the father, then to a trustee chosen by the father, then the trustee of that trustee, and then to the grandfather. If the father dies intestate, trusteeship of the children's assets reverts to the grandfather, then to a trustee chosen by him and then the trustee of that trustee. If there is no grandfather or trustee, then trusteeship goes to the court or a court-appointed trustee. A father may choose his wife as trustee for his children's assets after his death. The court may also appoint the mother as trustee for her children under rules and conditions specified by law.

Guardianship over a person operates in the same was as guardianship for marriage. It reverts to the closest male relatives of the boy or girl, in accordance with the predominant practice in the Hanafi school.

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According to women's rights organizations, some of the main issues and challenges faced by women are as follows:

- A custodian mother is not able to obtain a passport or any official documents for the children in her custody; the guardian's signature or written agency letter is required.¹⁰²
- According to a media report, as custodian mothers are unable to apply for any official documentation for their children, in some cases, this prevents children from being able to travel and enjoy certain rights such as studying outside Palestinian territories.¹⁰³
- In the West Bank, under Article 165 of the PSL, a guardian who is a close relative (*mahram*) has the power to take custody of a female under his guardianship. This power extends over both previously married as well as unmarried female relatives below the age of 40.¹⁰⁴ Hence as stipulated in Section 2, women do not have full autonomy to enter marriages without permission of male guardians.

¹⁰¹ OECD Development Centre, "Palestinian Authority", *Social Institutions and Gender Index*, 2013, p. 2, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>; Zeina Jallad, "Palestinian Women and Security: A Legal Analysis" (Geneva Centre for the Democratic Control of Armed Forces, 2012), pp. 13-14, https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf; Norwegian Refugee Council, "The Shari'ah Courts and Personal Status Law in the Gaza Strip", 2011, p. 22, <https://www.nrc.no/globalassets/pdf/reports/the-sharia-courts-and-personal-status-laws-in-the-gaza-strip.pdf>; UNICEF, "Occupied Palestinian Territory", *MENA Gender Equality Profile*, 2011, p. 2, <http://www.unicef.org/gender/files/oPT-Gender-Eqaulity-Profile-2011.pdf>

¹⁰² Farah Al-Masri, "The Right of Guardianship: The Mother is a Danger to Her Son", *Ultra Palestine*, 8 December 2016, <https://ultrapal.ultrasawt.com/حق%20الوصاية%20الأم%20خطر%20على%20ابنها/فرح%20المصري/مجتمع>

¹⁰³ Farah Al-Masri, "The Right of Guardianship: The Mother is a Danger to Her Son", *Ultra Palestine*, 8 December 2016, <https://ultrapal.ultrasawt.com/حق%20الوصاية%20الأم%20خطر%20على%20ابنها/فرح%20المصري/مجتمع>

¹⁰⁴ Article 166 of the Personal Status Law (1976), https://www.files.ethz.ch/isn/152932/Legal_Analysis_EN.pdf

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- Reform personal status law(s) to grant women the equal right to guardianship of children of children and to grant full guardianship right to the mother if she has been granted custody of the child;
- Clarify the rules and procedures for deciding custody cases, and establish guidelines for granting custody based on the best interests of the child;
- Increase the age of custody to 18 years old for both girls and boy;
- Ensure mothers who have the custody also has the guardianship rights based on the best interest of children;
- Grant daughters the same right as sons to continuous alimony if she selects the custody of her mother.

GUARDIANSHIP OF CHILD	POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY
EQUAL RIGHT TO GUARDIANSHIP	INDONESIA, KENYA, SINGAPORE, TURKEY Ultimately, guardianship of children is determined by the courts on the basis of the best interest of the child.
CUSTODIAN'S GUARDIANSHIP RIGHTS	ALGERIA Upon divorce, a mother can be appointed as guardian of her child if she has been granted custody of the child.
	BRUNEI A court is mandated to grant the custodian the right to decide all questions relating to the welfare, guidance, upbringing and education of the child subject to what-ever conditions that the court thinks fit to impose.
	TUNISIA Mothers who have custody of their children also has guardianship rights as regards travel, schooling, and management of finances. The mother has an equal right to supervise the child's affairs.

8. INHERITANCE

CRITICAL INFORMATION

Inheritance rights of women and men are unequal both in the West Bank and Gaza Strip. Inheritance matters are governed by a combination of the principles of *Shari'ah* on inheritance and codified laws that are based on *Shari'ah* such as the Law of Inheritance of 1923 as amended by Law No. 19/1944 that is applicable in the West Bank. In many instances, for example in the case of siblings, a woman is entitled to half the share of a man.¹⁰⁵

¹⁰⁵ Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 351, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; Women's Center for Legal Aid and Counselling, "Palestinian Women and Inheritance", 2014, pp. 23-25, <http://www.wclac.org/english/userfiles/Translated%20Inheritance%20Study%20English.pdf>; UNICEF, "Occupied Palestinian Territory", *MENA Gender Equality Profile*, 2011, p. 2, <http://www.unicef.org/gender/files/oPT-Gender-Equality-Profile-2011.pdf>; Suheir Azzouni, "Palestine", in *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, eds. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD:

In 2011, the Chief Islamic Justice issued a circular: (i) forbidding women from renouncing their inheritance until four months after the death of the estate holder; and (ii) makes provisions for all heirs to receive a detailed statement of the estate left by the deceased signed by all of them.¹⁰⁶

According to the State party report

No amendment has been made with regard to inheritance. However, the transfer of assets must take place four months after the death in order to ensure that nobody takes advantage of the woman's grief.

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Issues and challenges faced by women:

Numerous reports by civil society groups (including legal aid centers) and the media, indicate that Palestinian women are often deprived of their inheritance rights.¹⁰⁷

According to a 2009 survey conducted by the Women's Affairs Centre, among women in Gaza surveyed, 88% claimed they have been denied their inheritance.¹⁰⁸ Among the reasons cited for Palestinian women's deprivation of their inheritance rights include:¹⁰⁹

- (i) Patriarchal nature of Palestinian society that prefers male over females that in turn has led to:
 - Prevailing traditions and customs that encourage women to give up their share of inheritance to male family members;
 - Women being pressured by men to abandon their inheritance shares and in most instances they do either out of love or just to avoid conflict and discord with male relatives. Reports have found some occurrences of women killed when attempting to assert their inheritance rights; and
 - Common societal view that it is shameful for a woman to demand her inheritance share, thus inhibiting women from demanding their rights;
- (ii) Women's ignorance of their inheritances rights resulting from poverty, lack of education, complex legal system, etc.;
- (iii) Lack of support and enforcement mechanism that facilitate women's ability to exercise their

Rowman & Littlefield, 2010), p. 16, [https://www.freedomhouse.org/sites/default/files/inline_images/Palestine Palestinian Authority and Israeli Occupied Territories\).pdf](https://www.freedomhouse.org/sites/default/files/inline_images/Palestine_Palestinian_Authority_and_Israeli_Occupied_Territories).pdf)

¹⁰⁶ Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 352, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; Penny Johnson and Rema Hammami, "Change and Conservation: Family Law reform in Court Practice and Public Perceptions in the Occupied Palestinian Territory", 2013, p. 48, http://iws.birzeit.edu/sites/default/files/2016-12/Family%20Law%20Survey%20FINAL%20WEB_Penny%20and%20Rema_0.pdf; Women's Center for Legal Aid and Counselling, "Palestinian Women and Inheritance", 2014, p. 65, <http://www.wclac.org/english/userfiles/Translated%20Inheritance%20Study%20English.pdf>

¹⁰⁷ Women's Center for Legal Aid and Counselling, "Palestinian Women and Inheritance", 2014, pp. 6-11, <http://www.wclac.org/english/userfiles/Translated%20Inheritance%20Study%20English.pdf>; Penny Johnson and Rema Hammami, "Change and Conservation: Family Law reform in Court Practice and Public Perceptions in the Occupied Palestinian Territory", 2013, pp. 46-51, http://iws.birzeit.edu/sites/default/files/2016-12/Family%20Law%20Survey%20FINAL%20WEB_Penny%20and%20Rema_0.pdf; Suheir Azzouni, "Palestine", in *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, eds. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010), pp. 13, 16, 33-34, [https://www.freedomhouse.org/sites/default/files/inline_images/Palestine \(Palestinian Authority and Israeli Occupied Territories\).pdf](https://www.freedomhouse.org/sites/default/files/inline_images/Palestine_(Palestinian_Authority_and_Israeli_Occupied_Territories).pdf); Mohammed Othman, "Family members deny Gaza women their inheritance, *Al-Monitor*, 8 August 2015, <http://www.al-monitor.com/pulse/originals/2015/08/palestine-gaza-women-rights-inheritance-denied-charity.html>; Palestine Press News Agency, "An Increase in the Rates of Deprivation of Inheritance", *Palestine Press News Agency*, 9 March 2013, <http://www.palpress.co.uk/arabic/?Action=Details&ID=78776>

¹⁰⁸ Rachele Kliger, Gaza Women Denied their Inheritance Rights, *Jerusalem Post*, 11 March 2010, <http://www.jpost.com/Middle-East/Gaza-Women-Denied-Inheritance-Rights-170738>

¹⁰⁹ Women's Center for Legal Aid and Counselling, "Palestinian Women and Inheritance", 2014, pp. 6-11, <http://www.wclac.org/english/userfiles/Translated%20Inheritance%20Study%20English.pdf>; Penny Johnson and Rema Hammami, "Change and Conservation: Family Law reform in Court Practice and Public Perceptions in the Occupied Palestinian Territory", 2013, pp. 46-51, http://iws.birzeit.edu/sites/default/files/2016-12/Family%20Law%20Survey%20FINAL%20WEB_Penny%20and%20Rema_0.pdf; Palestine Press News Agency, "An Increase in the Rates of Deprivation of Inheritance", *Palestine Press News Agency*, 9 March 2013, <http://www.palpress.co.uk/arabic/?Action=Details&ID=78776>; OECD Development Centre, "Palestinian Authority", *Social Institutions and Gender Index*, 2013, p. 2, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>; Suheir Azzouni, "Palestine", in *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, eds. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: Rowman & Littlefield, 2010), pp. 13, 16, 33-34 (Endnote 64), [https://www.freedomhouse.org/sites/default/files/inline_images/Palestine \(Palestinian Authority and Israeli Occupied Territories\).pdf](https://www.freedomhouse.org/sites/default/files/inline_images/Palestine_(Palestinian_Authority_and_Israeli_Occupied_Territories).pdf)

inheritance rights, including lengthy court proceedings, exorbitant court fees, etc.; and
(iv) Historical problem of land fragmentation.

According to the 2013 Family Law Survey conducted by the Institute of Women's Studies, Birzeit University in collaboration with Arab World for Research & Development (AWRAD) and the UNDP:

- 38% of women surveyed did not pursue their inheritance claim;
 - 33% of women received their inheritance share automatically;
 - 40% of women who had pursued their inheritance faced obstacles in doing so, with 71% citing male relatives as the source of conflict;¹¹⁰
- According to a report by the Women's Centre for Legal Aid and Counseling:¹¹¹
 - Men form the majority of the applicants who apply for and pursue certificates of succession at the relevant official department and courts. Conversely, the majority waiver of inheritance rights (*Thakaruj*) applications are filed by women who later regret doing so because they had compromised their shares of inheritance. They would have preferred to have received their portions in line with their legally prescribed shares.

RECOMMENDATIONS

We recommend that the CEDAW committee urge the State party to:

- Ensure that legislative changes being proposed by legislative committee has provisions to ensure that inheritance law does not discriminate on the basis of gender;
- To look into other concepts that are not prohibited under Islamic law, including of testamentary bequests and that of trusteeship of property allowed under the Islamic system of *waqf* (inheritance);
- Ensure that implementation mechanisms are put into place to effectively implement inheritance rights of women.

¹¹⁰ Penny Johnson and Rema Hammami, "Change and Conservation: Family Law reform in Court Practice and Public Perceptions in the Occupied Palestinian Territory", 2013, Tables 18, 20, 22, pp. 48, 50, http://iws.birzeit.edu/sites/default/files/2016-12/Family%20Law%20Survey%20FINAL%20WEB_Penny%20and%20Rema_0.pdf

¹¹¹ Women's Center for Legal Aid and Counselling, "Palestinian Women and Inheritance", 2014, pp. 7, 32, <http://www.wclac.org/english/userfiles/Translated%20Inheritance%20Study%20English.pdf>

Equal right to inheritance



Turkey

Inheritance law does not discriminate on the basis of gender.
Equal division of property and assets acquired during the marriage is the default property regime.

Divisions of property through bequests, agreement etc.

Jordan, Tunisia:

Bequests can be made in favour of an heir and beyond the one-third limit if other heirs agree to it.

Malaysia:

Division of the deceased's property can be changed in whatever manner if all heirs agree to such division.

Singapore:

The Islamic Religious Council of Singapore has issued the following three religious rulings (*fatwas*) to protect the financial welfare of Muslim women and their dependants:

- The 2008 *fatwa* on joint tenancy recognises the surviving spouse (or co-owner) as the legal owner of a jointly held property upon the death of the other spouse (or co-owner);
- The 2010 *fatwa* on CPF nominations recognises that when Muslim CPF account holders make a nomination of their CPF savings in favour of their spouse or children upon their death, it is considered a valid gift;
- The 2012 *fatwa* on revocable insurance nominations allows Muslim policy holders to nominate their spouse or dependants to receive the full payout from the insurance company as a valid gift.