



## Human Rights Watch, Women's Centre for Legal Aid and Counselling, and Equality Now, Joint Submission to the CEDAW Committee on the State of Palestine, 70th session

June 2018

We write in advance of the 70th Session of the Committee on the Elimination of Discrimination against Women and its review of the State of Palestine's compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This submission addresses articles 1, 2, 3, 5, 7, 10, 12, 15, and 16 of the convention.

This submission is based on information contained in publications by Human Rights Watch and the Women's Centre for Legal Aid and Counselling (WCLAC) and first-hand interviews with affected women, rights groups and other experts.<sup>1</sup>

### 1. Introduction

Palestine acceded to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in April 2014 without reservations or declarations, the only state in the Middle East and North Africa region to do so. Women's rights groups have called for the Palestinian Authority (PA) to publish CEDAW in its Official Gazette, which would make it binding as domestic law. The State of Palestine has not ratified the Optional Protocol to the CEDAW, an important accountability mechanism.

We note that this will be the first review of the State of Palestine by any UN human rights treaty body. With that in mind we urge the Committee to make clear that following ratification the CEDAW treaty applies throughout the territory of the State of Palestine. We also urge the Committee in its review to consider the current reality of governmental authority in this territory, including the Palestinian Authority (PA), Hamas in Gaza, and Israel as the occupying power, and apply the Convention in a way that maximizes its use to protect the rights of women throughout the territory of the State of Palestine. For the purposes of this submission in assessing the State of Palestine's compliance with obligations under the Convention, we review the record of the PA in parts of the West Bank under its control and the de facto Hamas-led government in Gaza.

In 1995, the Oslo Accords between Israel and the PA, divided the West Bank (excluding East Jerusalem) into three administrative areas – A, B, and C. The PA has civil and administrative control over Area A,

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<sup>1</sup> See Human Rights Watch reports, "Palestine: 'Marry-Your-rapist' law repealed," May 10, 2018, <https://www.hrw.org/news/2018/05/10/palestine-marry-your-rapist-law-repealed> and *A Question of Security: Violence against Palestinian Women and Girls*, November 2006, <https://www.hrw.org/report/2006/11/06/question-security/violence-against-palestinian-women-and-girls>.

and civil control over Area B. Israeli military retains exclusive control over Area C, constituting about 60 percent of the West Bank. Israel applies Israeli civil law in East Jerusalem, though it remains occupied territory under international law. In 2005, Israel unilaterally disengaged from the Gaza Strip. However, Israel still controls Gaza's borders, airspace and sea and access to resources, medical supplies, food, water and electricity. As such, Israel still retains effective control over Gaza.

We urge the Committee to carefully consider the severe impact of the ongoing Israeli occupation of Palestinian territory since 1967, including the illegal annexation of East Jerusalem and blockade of the Gaza Strip since 2007. Systematic abuses associated with Israel's 51-year occupation, fundamentally undermine the rights of Palestinian women in the West Bank and Gaza.<sup>2</sup> The UN Special Rapporteur on violence against women noted in her 2017 report that "the occupation is a real obstacle to the State's [of Palestine] due diligence obligation to prevent violence against women in areas where it does not have full jurisdiction, because of the fragmentation of the areas under different control and the political divide between the Gaza de facto authority and the Government of the State of Palestine."<sup>3</sup>

Laws in the West Bank and the Gaza include a combination of unified laws promulgated by the Palestinian Legislative Council (PLC) and ratified by the president. If no unified law has been issued, existing Jordanian, Egyptian, and former British Mandate laws still apply. The Jordanian Penal Code No. (16) of 1960 ("1960 Penal Code") and the Jordanian Personal Status Law ("JPSL") No. (16) of 1976 are enforced in the West Bank, while the British Mandate Criminal Code Ordinance No. (74) of 1936 and the Egyptian Family Rights Law ("EFRL") No. (303) of 1954 are enforced in Gaza. For Christians, there are a separate set of codified family laws as promulgated by the particular sect to which they belong.

Since the full PLC has not convened since 2006, the Palestinian president has issued presidential decrees in accordance with article 43 of the Basic Law until the PLC reconvenes and can review all such legislation. Some presidential decrees have included amendments to Gaza's laws, but Hamas, as the de facto authority there, has not applied them and instead issued separate decrees.

## **2. Discrimination in Marriage, Divorce, and Decisions Concerning Children (CEDAW articles 1, 2, 13, 15 and 16)**

Personal status laws in Palestine, pursuant to which religious courts adjudicate family law matters, discriminate against women in a range of matters. The two laws that apply to Muslims are the Jordanian Personal Status Law No. (16) of 1976 ("JPSL") enforced in the West Bank, and the Egyptian Family Rights Law ("EFRL") No. (303) of 1954 enforced in Gaza.

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<sup>2</sup> Human Rights Watch, "Human Rights Watch Submission to the CEDAW Committee of Israel's Periodic Report 68th Session," October 2017, <https://www.hrw.org/news/2017/10/10/human-rights-watch-submission-cedaw-committee-israels-periodic-report-68th-session>; UN Women, Technical Report, "International Accountability Mechanisms: Palestinian Women Living Under Occupation," 2016, <http://palestine.unwomen.org/en/digital-library/publications/2017/03/legal-accountability> (accessed June 5, 2018).

<sup>3</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, "Mission to the Occupied Palestinian Territory/State of Palestine," U.N.Doc. A/HRC/35/30/Add.2, June 2017, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A\\_HRC\\_35\\_30\\_Add\\_2\\_EN.docx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_30_Add_2_EN.docx) (accessed June 5, 2018).

Both Islamic family laws discriminate against women in marriage, divorce, decisions concerning children, and inheritance. Under these laws, men can have four wives, while women cannot marry without a male guardian's permission. Only women who have previously married or women who obtain court approval can marry without a male guardian's permission.<sup>4</sup> The laws also require women to obey their husbands—including where the husbands change their residence or forbid them from working—in return for their entitlements to maintenance and accommodation from their husbands.<sup>5</sup>

Men have a unilateral right to divorce, while women must either ask the husband to divorce them in return for a financial consideration (through a process known as *khul'*) or apply to the courts for divorce on specific grounds.<sup>6</sup> For instance, women may seek a divorce on the basis of “dispute and discord” (JPSL in the West Bank) or “harm” (EFRL in Gaza).<sup>7</sup> However, this requires that the spouses undergo a mandatory mediation process, where reconciliation is the preferred outcome. In the West Bank, even if a wife claims domestic violence, the court is required to attempt reconciliation, and should these attempts fail, turn the matter to arbiters in the Family Council Unit (FCU) who must likewise attempt reconciliation. If reconciliation is unsuccessful, then the judge will direct an arbitrator to review the case, where divorce may be recommended. This process can take around a year or longer to complete but can be faster depending on the judge.

Human Rights Watch spoke to “Aisha,” whose name was changed for security reasons, a 30-year-old woman in Nablus who filed for divorce in 2016 after years of alleged domestic violence. She said the judge had not yet approved the divorce at the time of the interview in April 2018, and has tried to reconcile her with her husband.<sup>8</sup>

Christian women also face discrimination in divorce under family law provisions of the various denominations of Christianity in Palestine, each of which has a separate court. The Greek Orthodox Church allows divorce but requires women to appear before its court in Jerusalem, and it can take three to four years which most women cannot afford. Women from other Christian denominations have no option but temporary or permanent separation. Christian women may seek an annulment of a marriage under limited circumstances, however this procedure in practice is also lengthy and costly.

The 2004 Law on the Palestinian Child provides that the state, including the courts, should take the best interests of the child into account in all its actions.<sup>9</sup> But the Islamic personal status laws do not make the best interests of the child the primary concern when determining which parent the child should live

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<sup>4</sup>Jordanian Personal Status Law No. (16) of 1976, arts. 6 and 13, available at [http://arabic.dci-palestine.org/sites/arabic.dci-palestine.org/files/qanwn\\_al-ahwal\\_al-shkhsyvh\\_lsnh\\_1976.pdf](http://arabic.dci-palestine.org/sites/arabic.dci-palestine.org/files/qanwn_al-ahwal_al-shkhsyvh_lsnh_1976.pdf) (accessed June 5, 2018); Egyptian Family Rights Law No. (303) of 1954, art. 9, available at

[http://www.plc.gov.ps/menu\\_plc/arab/files/sT%C2%BD%C3%9Fnd/%C6%92Tft%C6%92Pp%20%C6%92TsT%C2%BD%C3%9Fdn%C3%AD/o/t%C6%92dfd%20%C3%91ft%20%C6%92Tp%C6%92PT%C3%AD.htm](http://www.plc.gov.ps/menu_plc/arab/files/sT%C2%BD%C3%9Fnd/%C6%92Tft%C6%92Pp%20%C6%92TsT%C2%BD%C3%9Fdn%C3%AD/o/t%C6%92dfd%20%C3%91ft%20%C6%92Tp%C6%92PT%C3%AD.htm) (accessed June 5, 2018).

<sup>5</sup> Egyptian Family Rights Law No. (303) of 1954, arts. 40-41, and Jordanian Personal Status Law No. (16) of 1976, art. 37.

<sup>6</sup> On *khul'* see Jordanian Personal Status Law No. (16) of 1976, arts. 102-109. See also Norwegian Refugee Council, “The Shari’a 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> (accessed June 5, 2018).

<sup>7</sup>Jordanian Personal Status Law No. (16) of 1976, art. 132; Egyptian Family Rights Law No. (303) of 1954, art. 97.

<sup>8</sup> Human Rights Watch interview, Nablus, April 3, 2018.

<sup>9</sup> Palestinian Child Law No. (7) of 2004, art. 4, <http://muqtafi.birzeit.edu/pg/getleg.asp?id=14674> (accessed June 5, 2018).

with and which guardianship rights each parent should have. Such decisions also discriminate against women.

In cases of divorce, mothers are provided residency (custody) of children until they reach a certain age when custody reverts to the father, unless a judge extends it for the benefit of the child. In the West Bank, women retain custody of boys until they are 9, and girls until they are 11 years of age.<sup>10</sup> The child can be automatically removed from the custody of the mother if the mother remarries, but not the father.<sup>11</sup> In Gaza, women retain custody of girls until they reach nine, and boys until they reach seven years.<sup>12</sup> In some cases, when mothers claimed that the father had abused their child during custody hearings, judges have dismissed such claims rather than investigating them.

Under both laws, fathers solely retain all guardianship rights even when the child is officially living with the mother. Where the father is absent or passed away, then the guardianship of his children passes to the paternal grandfather, and then other male relatives in a prescribed order. In March 2018, the Council of Ministers in the West Bank issued a decision to allow women who have custody of their children to open bank accounts for their children, transfer their children to different schools, and apply for their passports.<sup>13</sup> However, as this decision did not change the rule that fathers retain guardianship rights, women who have custody of their children still face a number of obstacles. A woman is not allowed to manage her child's inheritance if her husband dies. Instead, a male relative from the deceased husband's family will take over the management of the child's inheritance which can impact child maintenance. As guardians, a father can withdraw money from a child's bank account opened by the mother even if the child lives with the mother, but a mother cannot do the same if the child lives with the father.<sup>14</sup> In the West Bank, a woman needs the permission of her child's guardian (usually the father) if she wishes to travel abroad with her child.<sup>15</sup>

### **3. Child Marriage (CEDAW Article 16(2))**

The Palestinian Child Law of 2004 sets the age of majority at 18.<sup>16</sup> However, in the West Bank, the JPSL provides that a girl may be married at 14.5 years old and a boy at 15.5. In Gaza, the EFRL sets the age of marriage at 18 for a male and 17 for a female. Sharia court judges in both the West Bank and Gaza also have the right to allow the marriage of a minor if they believe it is in the best interest of the child.

The government noted in its state report that there is legislation in force that penalizes anyone who marries or helps conduct a marriage ceremony for a girl under 15 years of age with imprisonment of up to

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<sup>10</sup> Jordanian Personal Status Law No. (16) of 1976, art. 161.

<sup>11</sup> Jordanian Personal Status Law No. (16) of 1976, art. 156.

<sup>12</sup> Article 118, Egyptian Family Rights Law ("EFRL") No. (303) of 1954

<sup>13</sup> "Video: Hamdallah announces a package of measure for women," *Maan News Agency*, March 5, 2018, <http://www.maannews.net/Content.aspx?id=941467> (accessed June 5, 2018).

<sup>14</sup> Human Rights Watch interview with Sabah Salameh, coordinator of the Muntada Forum to Combat Violence against Women—representing a coalition of 17 non-governmental organizations, Ramallah, April 11, 2018.

<sup>15</sup> Jordanian Personal Status Law No. (16) of 1976, art. 166.

<sup>16</sup> Palestinian Child Law No. (7) of 2004, art. 1.

2 years.<sup>17</sup> We are not aware of any cases where an individual has been prosecuted or convicted under this law. According to the Palestinian Central Bureau of Statistics (PCBS), in 2018, child marriage reached 20.5 percent among females and one percent among males of the total married population in Palestine. They further noted that by the end of 2016, 19.9 percent of the total married population in West Bank, and 21.6 percent of the total married population in Gaza had been married before the age of 18.<sup>18</sup>

Girls and women in many countries around the world have told Human Rights Watch that marrying early meant that they lost control over their lives, including the ability to decide whether and when to bear children, that it had cut short their education, and were subject to domestic violence.<sup>19</sup>

#### **4. Rape and Sexual violence (CEDAW articles 1, 2, 3, 12, 15, and 16)**

The 1960 Penal Code, which applies in the West Bank, defines rape in a limited way, as “forced sexual relations with a female who is not his wife,” thus explicitly excluding marital rape.<sup>20</sup>

Dareen Salhieh, chief prosecutor of the Family Protection Unit in the Public Prosecution, told Human Rights Watch that as the law excludes marital rape, they can only try and prosecute the physical violence that accompanies it where there are resulting visible injuries.<sup>21</sup> The penalties for physical assault that causes minor injuries are much lower than for rape.

In Gaza, Suheir al-Baba from the Women’s Affairs Center told Human Rights Watch that in most cases of sexual violence within marriage, the cases are resolved through “reconciliation or tribal committees,” because they are considered “secrets” between the husband and wife.<sup>22</sup>

The 1960 Penal Code also does not explicitly criminalize sexual violence in the family. It criminalizes incest, but imposes penalties on both members of the incestuous relationship failing to take into account the power dynamics such as when the case involves a child who may be unaware that they are a victim of sexual violence.<sup>23</sup> The provision also can be used to prosecute women and girl victims of sexual violence within the family. Moreover, only male family members up to the fourth degree of kinship, who may be the perpetrators of abuse, are granted the right to file incest charges on behalf of minors.<sup>24</sup>

Furthermore, women and men who have consensual sexual relations outside of marriage can face prosecution, which can deter rape or sexual violence victims from reporting such crimes. The 1960 Penal Code criminalizes consensual sexual relations and adultery. Prosecutions of adultery can only take place after a spouse files a complaint against their husband or wife. Unmarried women, but not men,

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<sup>17</sup> Report of State of Palestine, U.N.Doc. CEDAW/C/PSE/1, May 24, 2017, para 101, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fPSE%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fPSE%2f1&Lang=en) (accessed June 5, 2018).

<sup>18</sup> Palestinian Central Bureau of Statistics (PCBS) press release, “On the Eve of the International Women’s Day on Thursday,” March 8, 2018, <http://www.pcbs.gov.ps/site/512/default.aspx?lang=en&ItemID=3074> (accessed June 7, 2018).

<sup>19</sup> See <https://www.hrw.org/topic/womens-rights/child-marriage>

<sup>20</sup> Jordanian Penal Code No. (16) of 1960, art. 292.

<sup>21</sup> Human Rights Watch interview with Dareen Salhieh, the chief prosecutor in the West Bank, Ramallah, April 9, 2018.

<sup>22</sup> Human Rights Watch interview with Suheir al-Baba from the Women’s Affairs Center, Gaza, April 25, 2018.

<sup>23</sup> Jordanian Penal Code No. (16) of 1960, art. 285.

<sup>24</sup> Jordanian Penal Code No. (16) of 1960, art. 286.

also can also be prosecuted for having a consensual relationship outside of marriage if their guardian files a complaint.<sup>25</sup> Dareen Salhieh noted that the prosecution unit does investigate complaints of adultery to ensure that a husband does not file a complaint in bad faith to victimize his wife.<sup>26</sup>

Due to the stigma of sexual violence, women and girls who report rape or sexual violence within the family can be seen as “unmarriageable” and are at high risk of further abuse and even murder by family members. In some cases, marriage to their assaulter is considered a solution to cover up such abuses, as was provided for in article 308 of the 1960 Penal Code in the West Bank, which allowed alleged rapists to escape prosecution and convicted rapists to avoid imprisonment if they married their victims. For instance, in April 2001, following a decision by the Palestinian Appeal Court in Ramallah, the First Instance Court in Bethlehem applied article 308 and suspended their rape sentence, after the perpetrator produced a marriage certificate showing that he had married the victim.<sup>27</sup> It is not clear how many alleged or convicted rapists have been able to escape prosecution or imprisonment under article 308.

In a positive step, on March 14, 2018, the Palestinian president, Mahmoud Abbas, signed Law no. 5 of 2018, which repealed article 308 of the 1960 Penal Code enforced in the West Bank.

While no such law is in effect in Gaza, women’s rights activists noted that in some cases of alleged rape, families resolve it amongst themselves by agreeing to marry the alleged rapist and victim. Ghada Naeem, a lawyer at the Center’s for Women’s Legal Research, Consulting and Protection, told Human Rights Watch, that in some cases where the alleged rape is reported to the police, officials try to resolve the issue with the families instead of investigating and prosecuting.<sup>28</sup> Suheir al-Baba from the Women’s Affairs Center told Human Rights Watch that many women often do not report sexual violence to official institutions for fear of reprisal.<sup>29</sup> Unlike the West Bank, the civil police in Gaza do not have family protection units that deal with cases of gender-based violence.

While recognizing that the violence is often perpetrated by non-state actors, the State of Palestine bears legal obligations to act with due diligence to protect all women from violence, to abolish social attitudes and cultural practices based on stereotyped roles about men and women and to ensure non-discrimination based on gender.

##### **5. Children Born Out of Wedlock and Criminalization of Abortion (CEDAW articles 12 and 16)**

The 1960 Penal Code enforced in the West Bank and the 1936 Criminal Code enforced in Gaza both criminalize abortion. Under article 321 of the 1960 Penal Code, women can be imprisoned for 3-6 years for having an abortion. In addition, anyone who supports the abortion process, for example a doctor, may be imprisoned for 1-3 years under article 322. Abortion is criminalized regardless of the circumstances of the pregnancy, and there are no exceptions in cases of rape, incest or danger to the life

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<sup>25</sup> Jordanian Penal Code No. (16) of 1960, art. 284.

<sup>26</sup> Human Rights Watch interview with Dareen Salhieh, the chief prosecutor in the West Bank, Ramallah, April 9, 2018.

<sup>27</sup> WCLAC, “Report on the Obligations to Repeal Article 308 of Penal Code no.16 of 1960,” February 2018.

<sup>28</sup> Human Rights Watch interview with Ghada Naeem, in Gaza, April 29, 2018.

<sup>29</sup> Human Rights Watch interview with Suheir al-Baba from the Women’s Affairs Center, Gaza, April 25, 2018.

of the pregnant woman. Women can receive reduced sentences for an illegal abortion under the 1960 Penal Code if they cite “honor” as the reason.<sup>30</sup>

There are no policies or procedures that women can refer to in case of rape in order to obtain an abortion. In practice, in rare cases, the *mufti* in the West Bank may allow abortions in situations of rape or incest, or if the mother has a disability or her life is at risk. However, in the rare case that the *mufti* allows an abortion, a doctor cannot be forced to perform the procedure. Dareen Salhieh, the chief prosecutor in the West Bank, told Human Rights Watch that prosecutors obtained permission for seven women to have abortions in 2017, all in cases in which the women alleged that the pregnancy was a result of rape or incest and they were in the early stages of pregnancy.<sup>31</sup>

Palestinian authorities require a marriage certificate for women to give birth in a hospital and to register births. In the West Bank, where pregnant woman outside of wedlock approach the hospital, the hospital will refer the case to the Ministry of Social Development.<sup>32</sup> If the mother states that she wants to keep the child, then the Ministry assesses her social and economic capability, and the safety of both the child and the mother, before allowing her to keep the child. If she does not meet the criteria, then the child is sent to a state-run care institution from which they can be taken into foster care by a family.

Children born out of wedlock are provided names (first, middle, and surname) by the state but are not given a full family name. They are not allowed to take an existing family name including their mothers or of their foster family, and the mother’s name and ID number is noted in the child’s registration documents. The lack of a family name exposes the children, and the mothers who keep their children, to stigma, and has implications in terms of inheritance too. This affected 27 children in the Social Development Ministry’s care in the West Bank as of April 2018, according to WCLAC. In Gaza, authorities add the name *mawla* (meaning “in custody of”) to the child’s name before their given surname instead of “bin” (meaning ‘son of’ in Arabic). Adoption is not permitted in Palestine.

The head of one shelter for victims of violence in the West Bank told Human Rights Watch that a 22-year-old woman who came to the shelter six months pregnant married the father to help register the child under the father’s family name, only to divorce him a week later.

Unless authorities provide safe, legal abortions and the equal registration of children born outside of wedlock, families may continue to try to force women and girls to marry their alleged rapists or men with whom they have had extramarital sex.

## **6. Inadequate Protections for Domestic Violence (articles 2, 3 and 16)**

Palestine does not have a domestic violence law, which makes it difficult to adequately protect survivors or prosecute abusers. The Palestinian Central Bureau of Statistics 2011 national survey, which surveyed 5,811 households on gender-based violence, found that 30 percent of married women respondents in the West Bank and 51 percent in Gaza said they had been exposed to at least one form of violence—such

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<sup>30</sup> Jordanian Penal Code No. (16) of 1960, art. 324.

<sup>31</sup> Human Rights Watch interview with Dareen Salhieh, the chief prosecutor in the West Bank, Ramallah, April 9, 2018.

<sup>32</sup> Cabinet Decision No. 10 of 2015 on Foster Family Procedures.

as physical, sexual, psychological and/or economic violence-- by their husbands. Less than one percent said they sought police help.<sup>33</sup>

Women's rights groups have pushed for a domestic violence law since 2006. The Ministerial Harmonization Committee in the West Bank is reviewing a draft Family Protection Law. Women's rights groups in Palestine, including WCLAC (which specializes in protections for women victims of violence), have repeatedly commented on the bill, including the most recent draft, but are yet to hear whether their comments to the latest draft have been considered and incorporated.

The draft has a number of positive provisions, such as creating emergency protection orders (also known as restraining orders) to prohibit contact between the accused and the victim, including removing the accused from the home; criminalizing forms of violence such as forced marriage; increasing penalties for physical violence; and charging the police and family protection units with accepting complaints, investigating, and assisting and protecting survivors.

However, the bill does not explicitly set out the state's key obligations to prevent violence, protect survivors, and prosecute abusers. It does not explicitly criminalize marital rape, leaves the definition of sexual assault vague, and fails to include specific guidelines on the penalties for sexual assault. The draft bill also does not include unmarried partners within its definition of the "family," such as couples that are engaged to marry. The bill also does not specify the funding arrangements for enforcement of its protection provisions.

Palestinian authorities also have failed to provide sufficient shelters for victims of domestic violence. The government operates only one shelter in Gaza and one in the West Bank (in Bethlehem), though it provides limited funding to an NGO-run shelter in Nablus. WCLAC also set up an additional emergency shelter in the West Bank. The shelters do not accept all women and girls. The shelter in Gaza, for example, does not accept women and girls who may have transgressed social mores. Such women and girls whose families may perceive them as having committed "moral" transgressions are at heightened risk of "honor" violence by their families and are most in need for shelter to protect them.

Women who experience domestic violence in East Jerusalem, which Israel militarily occupies and annexed in 1967, but which no other country recognizes, face particular barriers. Oheila Shomar, director of Sawa Organization, a non-governmental organization that supports survivors of domestic and sexual violence, told Human Rights Watch that: "Many Palestinians don't want to cooperate [with the Israeli police] and fear what will happen to them and how the [Israeli] police will use their situation to harm the family if they file a complaint. If a woman tries to go to the [Israeli] police, the family and community stigmatize her for going to the occupation and harming her family."<sup>34</sup> Often WCLAC encourages women victims of violence to file their complaints to the family units of the Palestinian police in the suburbs of Jerusalem to refer those cases to shelters in the West Bank, or refer them directly to Palestinian NGO shelters inside Israel.

## **7. Reduced Sentences in So-Called 'Honor' Killings (articles 2, 3, and 16)**

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<sup>33</sup> Palestinian Central Bureau of Statistics, Violence Survey in the Palestinian Society, 2011, <http://www.pcbs.gov.ps/Downloads/book1864.pdf> (accessed June 5, 2018).

<sup>34</sup> Human Rights Watch interview with Oheila Shomar, director of Sawa Organization, Ramallah, April 10, 2018.



The West Bank's Public Prosecution 2017 annual report states that 11 out of 14 murders of women in 2017 in the West Bank—excluding Area C and East Jerusalem—were committed by a relative. WCLAC documented 23 killings of Palestinian women and girls in 2016, and 28 killings in 2017 across Palestinian territory, many in instances where the killer claimed the need to protect their family “honor” as a defense.<sup>35</sup> Women Media and Development (TAM) said in its 2016 report that many killings actually related to inheritance, revenge or other reasons, but that the killers claimed they related to family honor to receive a lighter sentence.<sup>36</sup>

Dareen Salhieh, chief prosecutor, told Human Rights Watch that while police and prosecutors in the West Bank investigated and referred cases of killings of women by their husbands or families to courts, the judges often reduced the sentences of defendants who had been found guilty. A 2014 Office of the UN High Commissioner for Human Rights study found, in a random sample of cases between 1993 and 2013, that judges in first instance courts reduced sentences on claims of “honor” killings in 29 out of 37 rulings.<sup>37</sup>

Several reforms in the past few years have attempted to tackle judges' use of various legal provisions to reduce sentences on the pretext of “honor.” However, according to WCLAC, there is still a notable increase in the occurrence of killings of women in the West Bank and Gaza.

In 2011, President Abbas issued a decree abolishing article 340 of the 1960 Penal Code, which allowed a sentence reduction for a man convicted of killing or attacking his wife or female relative if he alleged that he came upon her in the act of adultery or extra-marital sex. In 2014, the president issued a decree amending article 98 of the 1960 Penal Code, which allowed reduced sentences for those who committed a crime in a “state of great fury” [or “fit of fury”] resulting from an unlawful and dangerous act by the victim.” The amendment prohibited the use of this defense “against a female on the grounds of honor.” The decree similarly amended article 18 of the 1936 Penal Code, which applies to Gaza.

However, the term “honor” is not defined in the law, leaving wide discretion to judges and the possibility that discriminatory societal norms will influence court decisions. In addition, the usage of the term “honor” as is now referred to in the amended article 98 is problematic as, in contexts such as these, it is exclusively associated with women and women's sexual behavior and relations and is used to subjugate and control women.

Moreover, another loophole remained. Judges in the West Bank were often using article 99 of the 1960 Penal Code to reduce sentences by half in cases in which the victim's family—which can also be the

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<sup>35</sup> WCLAC, Equality Now, and Al-Muntada joint submission, “Pre-Session Report on Palestine for Consideration During the 68th Session of United Nation Committee on the Elimination of Discrimination Against Women,” October 2017, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fPSE%2f20167&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fPSE%2f20167&Lang=en) (accessed June 5, 2018).

<sup>36</sup> Chemonics International in partnership with Women Media and Development (TAM) “Comprehensive Analysis for Gender Based Violence and the Status of the National Referral System in the West Bank,” August 2016, <http://www.awrad.org/files/server/NRS%20report%20english%202016.pdf> (accessed June 5, 2018).

<sup>37</sup> Office of the UN High Commissioner for Human Rights, “Murder of Women in Palestine under the pretext of Honour Legislation and Jurisprudence Analytical Study,” April 2014, [http://www.ohchr.org/Documents/Issues/Women/WRGS/Executive\\_summary\\_study\\_called\\_honour\\_killings\\_Palestine.pdf](http://www.ohchr.org/Documents/Issues/Women/WRGS/Executive_summary_study_called_honour_killings_Palestine.pdf) (accessed June 7, 2018).

killer's family—waives its right to seek prosecution.<sup>38</sup> Article 99 provided reduced sentences for mitigating factors but does not set out what they are. In practice, courts consider that victims and their families have a right to waive the prosecution. A 2014 Office of the UN High Commissioner for Human Rights study found that in 14 out of 37 rulings from the random sample of cases between 1993 to 2013, judges in first instance courts invoked article 99 to reduce sentences for killings of women where families withdrew their right to seek prosecution.<sup>39</sup>

In a positive step, the President issued Law No. (5) of 2018 which essentially closes this loophole by amending article 99 in the 1960 Penal Code to prohibit judges from reducing sentences for serious crimes against women and children, such as murder. But, the new amendments do not apply to pending court cases of violence against women that occurred before the law was passed in March 2018.

The UN Special Rapporteur on violence against women said in her 2017 report that she was informed that perpetrators often also use article 62 of the 1960 Penal Code, which allows parents to “discipline” their children by general custom, as a defense against charges that they abused or killed their daughters.<sup>40</sup>

## **8. Sexual Orientation, Gender Identity (Articles 2 and 5)**

Palestinians who are lesbian, gay, bisexual, or transgender (LGBT) suffer widespread discrimination and abuse both in public and in family settings. Human Rights Watch interviewed 12 Palestinian women who self-identify as lesbian, bisexual or queer.<sup>41</sup>

Gaza's 1936 Criminal Code punishes “carnal knowledge” under section 152(2) - understood to apply to consensual same-sex conduct - by up to 10 years in prison.<sup>42</sup> Penal codes that criminalize consensual same-sex conduct using vague and undefined concepts such as “unnatural carnal knowledge” or “unnatural offences” violate the rights to privacy and non-discrimination.

While the 1960 Penal Code applicable in the West Bank does not prohibit adult consensual same-sex conduct, the 2003 Palestine draft penal code contains provisions that criminalize adult consensual same sex conduct.<sup>43</sup>

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<sup>38</sup> Public Prosecution Services, Attorney General Office, “Legislative and institutional measures to investigate, prosecute and adjudicate gender related killings of women and girls,” June 2014, [https://www.unodc.org/documents/justice-and-prison-reform/IEGM\\_GRK\\_BKK/Gender\\_related\\_killings\\_report\\_AGO\\_Palestine-June\\_2014.pdf](https://www.unodc.org/documents/justice-and-prison-reform/IEGM_GRK_BKK/Gender_related_killings_report_AGO_Palestine-June_2014.pdf) (accessed June 7, 2018).

<sup>39</sup> Office of the UN High Commissioner for Human Rights, “Murder of Women in Palestine under the pretext of Honour Legislation and Jurisprudence Analytical Study,” April 2014.

<sup>40</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, “Mission to the Occupied Palestinian Territory/State of Palestine,” U.N. Doc. A/HRC/35/30/Add.2, June 8, 2017.

<sup>41</sup> In February and April 2018, Human Rights Watch interviewed 40 individuals in total who self-identify as lesbian, gay, bisexual and transgender (LGBT), in Ramallah, Nablus, Bethlehem and East Jerusalem. This is an ongoing in-depth research conducted in collaboration with al-Qaws for Sexual and Gender Diversity in Palestinian Society.

<sup>42</sup> British Criminal Code Ordinance No.74 of 1936, section 152(2) on sexual and unnatural offences provides “Any person who – a) has carnal knowledge of any person against the order of nature; or b) has carnal knowledge of an animal; or c) or permits a male person to have carnal knowledge of him or her against the order of nature is guilty of a felony, and is liable to imprisonment for ten years,” available at [https://www.nevo.co.il/law\\_html/law21/PG-e-0633.pdf](https://www.nevo.co.il/law_html/law21/PG-e-0633.pdf) (accessed June 5, 2018).

<sup>43</sup> Draft Penal Code Palestine (2003), arts. 258 and 262, available at <http://site.iugaza.edu.ps/kshaath/files/2010/12/Criminal-Law-Draft-1.doc> (accessed June 5, 2018). International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), “State-

Nevertheless, lesbian, bisexual and queer Palestinian women told Human Rights Watch that the combination of the profoundly traditionalist and socially conservative Palestinian context has an insidious effect on their individual self-expression. All the interviewees said that they either felt they had little choice but to adopt self-censoring behavior, or worse, deny their sexual orientation or gender identity to avoid suspicion by family members and the communities in which they live. Lesbian, bisexual and queer women Human Rights Watch interviewed reported suffering from familial, community, and social refusal to allow them to make autonomous choices about their sexuality. They said they are all fearful of the impact of disclosure of their sexual orientation to the family's reputation and honor. In instances where a person has disclosed her sexual orientation to family members, interviewees said this has often been followed by violence.

For instance, a 24-year-old lesbian told Human Rights Watch described how when she disclosed her sexual orientation to her family, her father became angry. "He was yelling and beating me for hours, then decided to lock me up in the house for a month, with no access to the internet or phone," she said.<sup>44</sup> Several women also reported fear of being threatened or coerced to marry men or endure ostracization by family members and the community.

Several lesbian and queer women Human Rights Watch interviewed said they have experienced sexual violence or threats of sexual violence because of their sexual orientation. For instance, a 22-year-old lesbian from East Jerusalem said she disclosed her sexual orientation to a male friend, strongly believing that she was safe with him. However, she said he proceeded to rape her, with the aim of correcting her "deviant" lesbian sexual orientation.<sup>45</sup> She did not report the incident to the police because she believed that she would have to also disclose her sexual orientation and this would bring shame and dishonor to her family.<sup>46</sup>

As noted, the State of Palestine bears legal obligations to act with due diligence to protect women from violence, including from non-state actors, to abolish stereotypes and discriminatory attitudes surrounding sexual orientation and gender identity and expression.

## 9. Recommendations

We encourage the Committee to state clearly that the CEDAW treaty, as ratified by the State of Palestine without reservations, applies throughout the territory of the State of Palestine

We encourage the Committee to make the following recommendations to the Palestinian government:

- Publish the CEDAW text in the Official Gazette, which would make it binding as domestic law.
- Ratify the Optional Protocol to the CEDAW as an accountability tool under international human rights law.

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Sponsored Homophobia: A world survey of sexual orientation laws: criminalization, protection and recognition," May 2017, [https://ilga.org/downloads/2017/ILGA\\_State\\_Sponsored\\_Homophobia\\_2017\\_WEB.pdf](https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf) (accessed June 5, 2018).

<sup>44</sup> Human Rights Watch interview, February 9, 2018

<sup>45</sup> Human Rights Watch interview, February 13, 2018

<sup>46</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, "Mission to the Occupied Palestinian Territory/State of Palestine," UN Doc. A/HRC/35/30, June 8, 2017, para 26.

- Allow the CEDAW Committee to conduct an exceptional review after two years instead of the standard four-year periodic review, in order to allow for monitoring of the drafting and enactment of the Family Protection Law.
- Amend the Muslim and Christian personal status laws to ensure that women have equal rights with men in relation to marriage, divorce, residency (custody) and guardianship of children, and inheritance.
- Raise the minimum age of marriage to 18.
- Allow women to give birth in a hospital and register their children without requiring a marriage certificate, allow them to register their children under a family name of their choice, and ensure that children do not suffer discrimination due to the parents' marital status.
- Amend the 1960 Penal Code enforced in the West Bank and the 1936 Penal Code enforced in Gaza to decriminalize abortion and ensure safe, legal access to abortion.
- Amend the 1960 Penal Code to:
  - define rape as a physical invasion of a sexual nature of any part of the body of the victim with an object or sexual organ, without consent or under coercive circumstances and explicitly criminalize marital rape. Indicate that sexual assault includes non-penetrative forms of assault. Amend the entire chapter on sexual crimes as sexual offences against persons instead of “offences against public morals and ethics.”
  - Repeal the provision in article 62 that allows parents to “discipline” their children by general custom.
  - Repeal the provision in article 286 that grants only male family members the right to file incest charges on behalf of minors.
  - Criminalize sexual violence within the family.
  - Repeal article 284 prohibiting *zina* (sexual intercourse outside of marriage).
- Amend and expeditiously pass the draft Family Protection Law to ensure full protection of survivors including explicitly setting out the government's obligations to prevent violence, protect survivors, and prosecute abusers; revising the definition of the “family” in the draft law to include non-marital partners; defining marital rape, sexual violence and setting out penalties for it; and funding for enforcement.
- Monitor convictions and sentencing in cases of gender-based violence, including murders, to ensure that judges are not using legal provisions to reduce penalties in such cases.
- Invest in gender-sensitive training for judges, particularly regarding violence against women.
- Condemn publicly all threats and acts of violence against lesbian, bisexual and queer women, including violence perpetrated by family members.
- Adopt comprehensive legislation that prohibits all forms of discrimination and violence on the grounds of sexual orientation and gender identity.
- Repeal section 152(2) of the British Mandate Criminal Code Ordinance No. 74 of 1936 which criminalizes “carnal knowledge.”
- Take measures to abolish social attitudes and cultural practices based on stereotyped roles about men and women and to ensure non-discrimination on the basis of sexual orientation and gender identity and expression.