

## West Bank and Gaza Strip

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

Religious marriages are widely performed in the West Bank and Gaza Strip. All forms of such partnership are regulated by personal status laws, including the 1976 Jordanian Personal Status Law and 1954 Egyptian Law of Family Rights for Muslims in the West Bank and Gaza Strip respectively (dominant religious group), and the 1938 Personal Status Law of the Coptic Orthodox Church for Palestinian Christians (largest non-Muslim population) (Rowberry and Khalil, 2010).

Under Sharia law applicable in the West Bank and Gaza Strip, women do not have the same rights as men to enter into the first marriage as they need the consent of a *wali* (guardian) or male relative on the father's side, regardless of their age (UNDP, 2011). Moreover, Sharia law forbids Muslim women from marrying non-Muslim men, contrarily to Muslim men who may marry women of any religion (McKenna, 2014). Sharia law also allows men to marry up to four wives concurrently (UNDP, 2011), whilst in East Jerusalem polygamous marriage is prohibited under the Israeli law<sup>1</sup> (An-Na'im, website).

Forced marriages are reportedly performed to protect family dignity and reduce financial strain (MoWA, 2010), including through intra-family marriages designed to ensure that the family's wealth does not leave the extended family (Tahirih Justice Center, website).

#### b) Child marriage

Girls in the West Bank and Gaza Strip can get married before turning 15 and a year earlier than boys if judicial consent is obtained (UNDP, 2011). The Jordanian Code (applicable to the West Bank) allows girls and boys to get married at 15 and 16 lunar years respectively – which equates to 14 years and six months for girls, and 15 years and six months for boys. The Chief Sharia Judge interpreted Egyptian personal status law (applied in the Gaza Strip) as allowing girls to marry at 14 years and seven months, and boys at 15 years and seven months (UNDP, 2011). Egyptian law applied in the Gaza Strip also grants judges the power to marry a girl at nine years old if they consider it to be in her best interest. These personal status laws violate the Palestinian Child Law (No. 7/2004), the Jordanian Juvenile Law (No. 16/1954) and other laws that specify a minimum age of 18 (UNDP, 2011).

The 2011-2019 strategy of the Palestinian Authority (PA) on violence against women aims to prevent early marriages. Planned measures include increasing the minimum legal age of marriage to 18 years and drafting a penal code with specific provisions criminalising child marriage (Ministry of Women's Affairs (MoWA), 2010).

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<sup>1</sup> The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

### c) Household responsibilities

Sharia law also discriminates against women's rights and responsibilities within the household, as wives owe full '*ta'aw*' (obedience) to their husbands in exchange of '*nafaqa*' (financial support). Wives lose such maintenance rights if they disobey their husbands, leave the house without permission, even to work or refuse to move where their husbands specify (Tabet, 2005). Sharia law further specifies that the father is the head of the family, and the customary belief is that men are in charge of the financial decisions, incomes and assets of their female family members (Wi'am, 2013; McKenna, 2014; Tabet, 2005).

Male dominance in Christian marriages is less pronounced as the Church allows women to handle their own finances and does not require wives to merge their financial gains with those of their husbands (Rowberry and Khalil, 2010). That said, wives owe obedience to their husbands and are entrusted with household responsibilities unless temporary arrangements are made (Rowberry and Khalil, 2010).

### d) Divorce

Sharia law applied in the West Bank and Gaza Strip also discriminates against women's right to divorce as they can only file for divorce if such a clause was included in the marriage contract and if they go through the Sharia court system, contrarily to men who have a statutory right to divorce and can do so verbally (UNDP, 2011; McKenna, 2014). Moreover, while husbands can unilaterally divorce their wives without justification, a faults-based divorce system applies to women whereby they must prove the harm that their husband has inflicted upon them in order to obtain a judicial separation based on abandonment, discord or conflict between spouses. In addition, the wife must absolve her husband of his contractual financial obligations in order to obtain a judicial separation based on mutual agreement (UNDP, 2011).

In practice however, judges reportedly tend to interpret Sharia law so as to provide for fairer divorce settlements (UNDP, 2011), and the Alimony Fund Law provides divorced women living in the West Bank with financial assistance if their husbands are abroad (Al-Monitor website). Women's rights and human rights advocates are calling for changes to Sharia Law provisions on divorce, namely to include polygamous marriage as grounds for divorce and to ensure that divorces can only be recognised through court (UNDP, 2011).

For Muslim Palestinian families, child custody is determined according to the age or sex of the child. Accordingly, mothers in the West Bank are awarded child custody until the child reaches puberty, while in the Gaza Strip the sex of the child determines custody rights (mothers are awarded custody of girls until they reach 11 years of age, and custody of boys until they reach 7 years of age). Unmarried widows are also granted child custody in the Gaza Strip (until boys reach 15 years of age, and until girls reach 18 years of age). However, if a divorced mother remarries, her right to child custody is automatically withdrawn (UNDP, 2011).

Muslim women in the West Bank and Gaza Strip are required to leave the family home each time the husband divorces and obliged to wait three months before remarrying, meaning that in the meantime the husband can change his mind, thereby obliging the woman to return to his house and resume the marriage (McKenna, 2014).

Divorce proceedings are different for Christians in the West Bank and Gaza Strip, as the Church only allows divorce in two cases: if a spouse leaves the Christian faith or is unfaithful, in which case the 'innocent' spouse must file for divorce (Rowberry and Khalil, 2010). The 'guilty' party is not allowed child custody but must uphold his/her parental responsibilities (Rowberry and Khalil, 2010).

### **e) Inheritance**

Inheritance rights for Muslims and Christians residing in the West Bank are regulated by Sharia law (Azzouni, 2010). Sharia law does not operate a distinction between land and non-land assets for inheritance rights. Accordingly, sons receive twice the share of daughters after the death of a parent. If a woman dies without leaving children and is survived only by her parents and husband, the surviving mother receives twice as much as the surviving father (Tabet, 2005).

In practice, many women are prevented from taking their legal share of inheritance through the customary practice of forfeiting their share to male family members (Wi'am, 2013). This discrimination against women spurred civil society organisations to activate the National Committee for the Personal Status Law in 2011 and 2012, in order to adopt more gender-equitable legislation. As a result, three administrative orders were passed by the Chief Justice of the Sharia Court to reduce the vulnerability of women in relation to inheritance, and to promote their knowledge of inheritance rights. In particular, the decree passed on 15 May 2011 defines the conditions for inheritance renunciation and imposes transparency in the inheritance process (inventory and evaluation of the inherited property, definition of each heir's rights) (El Sherif et al., 2016).

## **2. Restricted physical integrity**

### **a) Violence against women and girls**

In the absence of a Penal Code, three criminal codes addressing violence against women are applied in the West Bank and Gaza Strip: the Israeli Penal Law 5737-1977 applies in Jerusalem, the Jordanian Penal Code of 1960 in the West Bank, and the British Penal Code of 1936 in the Gaza Strip (MoWA, 2010).

Violence against women (VAW) is reportedly widespread in the West Bank and Gaza Strip, with the United Nations referring to a 'system of violence emanating from the culture, the norms and traditions, in a context of prolonged occupation' (UN Special Rapporteur on VAW, 2016). In this context, the absence of a proper legal system and the discriminatory mechanisms perpetuated by the tribal/family judicial systems do not offer adequate protection or redress to female victims (MoWA, 2010).

Women are subject to 'honour killings' (28 cases occurred in 2013, up from 12 in 2011) (UN Women, website) and perpetrators of such violence can receive mitigating sentences (UN Special Rapporteur on VAW, 2016) or be absolved of their responsibility by tribal/family rulings (MoWA, 2010).

Fixing this void and creating specialised courts to deal with VAW are among the objectives of the 2011-2019 national strategy on VAW – an integrated strategy developed by the Palestinian Authority inter-ministerial committee on VAW, which is spearheaded by the Palestinian Authority Ministry of Women's Affairs (MoWA). This strategy focuses on domestic violence and on VAW in the workplace, adopting a broad definition of VAW encompassing all forms of discrimination against women, even in

the absence of violence. The strategy mandates relevant government departments to develop work plans with appropriate indicators and budgets to implement the strategy through medium-term implementation plans (2011-2013, 2014-2016) (MoWa, 2010).

Other government initiatives to address VAW include the establishment of a technical committee to review femicides, the creation of 10 specialised Family Protection Units within the Public Prosecutor Unit to prosecute cases of VAW, and the establishment of a national consultative committee for shelter centres (UN Women, website; UN Special Rapporteur on VAW, 2016).

## **b) Domestic violence**

Israeli Penal Law 5737-1977 and the British Penal Code, respectively applied in East Jerusalem and the Gaza Strip, both criminalise domestic violence. Israeli law contains a specific article on family violence (art. 86) and provisions on sex offenses (rape, sodomy) in the family (art. 351). These articles define family in a broad sense by including foster relations, relatives, spouses and de facto partners. As such marital rape constitutes a crime and penalties extend to 20 years' imprisonment if the victim was a minor. The British Penal Code, however, only contains one provision on domestic violence referring to the murder of a family member (art. 214), which is sanctioned by the death penalty, unless the perpetrator is a pregnant woman, in which case she will be sentenced to life imprisonment (art. 215).

A law on domestic violence has been drafted and submitted to the Council of Ministers by the Ministry of Women's Affairs, but is still pending adoption (EuroMed Rights, 2015; UN Special Rapporteur on VAW, 2016). The text reportedly criminalises marital rape and provides for increased penalties for offenders (Italian Development Cooperation, 2015). Moreover, the Jordanian Penal Code was amended in 2011 to remove mitigated sentences for 'honour crimes'

Tribes and 'hamula' (extended family) often intervene to solve cases of domestic violence, including rape by a family member, due to the sensitivity of the issues. These interventions often end up favouring the offender (MoWA, 2010). Adding to the pressure exerted on female survivors to stay silent, those in East Jerusalem are said to report fewer cases of violence to the police due for political reasons (UN Special Rapporteur on VAW, 2016). There are reports that when cases do make it to court, some judges still hold traditional views on VAW and therefore render unfavourable decisions for women (EuroMed Rights, 2015).

According to data from 2015, sexual abuse, neglect and rape constitute the main forms of domestic violence, accounting for respectively 18%, 15% and 12% of cases (Italian Development Cooperation, 2015). The highest rates of abuse occur in the governorates of Gaza and Hebron (Italian Development Cooperation, 2015). The United Nations has raised concerns about the prevalence of honour killings (UN Special Rapporteur on VAW, 2016), despite the issuing of a presidential decree removing pardoning excuses from the Jordanian and British Penal Codes (OHCHR, 2014). The continued prevalence of these crimes against women is linked to the fact that the amended provisions of these codes have not been applied in court rulings (OHCHR, 2014).

At the time of the writing, four shelters for victims of domestic violence are open (one in Gaza and three in the West Bank) (UN Special Rapporteur on VAW, 2016). Two of the three shelters in the West Bank provide long-term services including psychological, social and legal counselling, and programmes on socio-economic empowerment (Italian Development Cooperation, 2015).

### **c) Rape**

Rape is criminalised under Israeli, Jordanian and British law applied in East Jerusalem, the West Bank and Gaza Strip, respectively (art. 435 of Israeli Penal Law 5735-1977, Jordanian Penal Code art. 292-295, British Penal Code art. 152-154). Under Israeli law, rape requires lack of consent, unless the victim is a minor under 14 years of age (art. 345 a) (3)). Lack of consent is also required for rape to be characterised under Jordanian and British law (art. 292 and 152, respectively). Marital rape is recognised under Israeli Penal Law (art. 351), but not under the 1960 Jordanian and 1936 British Penal Codes.

Rapists in East Jerusalem face 16-20 years' imprisonment depending on the age of the victim and the circumstances of the act. In the West Bank penalties range from 10 years' imprisonment to the death penalty if the victim had not yet reached 15 years of age (art. 292), but rapists are relieved of their criminal responsibility if they marry the victim (art. 308 para. 1). In the Gaza Strip, rapists face up to 14 years' imprisonment (art. 152).

Victims of sexual violence are heavily stigmatised in society (UN Special Rapporteur on VAW, 2016), with tribal/family rulings going so far as to require the rapist to marry the victim or the victim's family to leave the area (if the perpetrator was not a family member), even authorising the killing of the victim if the perpetrator was a family member (MoWA, 2010).

### **d) Sexual harassment**

Sexual harassment is addressed under Arts. 305 and 306 of the Criminal Code of 1960. However, the Code does not specifically cover sexual harassment case at the workplace, educational establishments, sporting establishments, public places or cyber harassment. Sexual harassment is recognised as form of violence in the 2011-2019 national strategy on VAW.

### **e) Female genital mutilation**

No evidence suggests that female genital mutilation is widely practiced in West Bank and Gaza Strip (UNICEF, 2016).

### **f) Abortion**

Abortion is authorised in Jerusalem under certain circumstances (Israeli Penal Law, art. 316-317) but not in the West Bank (Jordanian Penal Code of 1960, art. 321-325) nor in Gaza (British Penal Code of 1936, art. 175-177), although mitigated sentences apply in the West Bank if the abortion was carried out to protect the honour of the woman (art. 324).

Under Israeli law, abortions can be administered to save the woman's life or to prevent grave irreparable injury to her, providing that the doctor who performed the procedure notifies the Ministry of Health within five days of the act (art. 317). The procedure can also be performed at the request of the woman and with the approval of a committee (two qualified doctors and a social worker) if she is above 40 years of age or under the legal age of marriage (18 years), if the birth poses a risk to her health, if her pregnancy resulted from a criminal offence or from an incestuous or extramarital relation, or if her child is likely to have a physical or mental defect (art. 316 para. a). In these cases the

woman must consent in writing after being informed about the physical and mental risks of the procedure.

### **3. Restricted Access to productive and financial resources**

#### **a) Secure access to land and assets**

Land grabbing is criminalised under the British Penal Code applied in the Gaza Strip (art. 97) and under the Jordanian Penal Code applied in the West Bank (art. 448).

Access to land is very problematic for in the West Bank and Gaza Strip in general due to the current political situation, although women face additional discrimination as Sharia law does not recognise the concept of shared marital property and the customary belief is that the husband is in charge of all household assets (land and non-land).

These issues are linked to the issue of inheritance and multiples reasons preventing women from claiming their inheritance rights. In view of this, and as described in the section on inheritance (section I, paragraph iv), gender-equitable administrative orders were passed by the Chief Justice of the Sharia court in 2011-2012 to reduce the number of women renouncing their inheritance rights (land and non-land assets). The implementation of these orders has been supported through awareness raising and media campaigns, as well as through land mediation procedures (El Sherif et al., 2016).

Other mechanisms which compensate for lesser inheritance include the 'hiba' custom, which consists in the lifetime transfer of money, land ownership/interests, or other non-land assets, and the 'mahr' (dowry) custom, according to which the groom must pay a contractual amount to the bride in the form of money, assets or land (El Sherif et al., 2016).

With the support of UN agencies in particular, female farmers and members of women's associations have been trained in various aspects of agricultural production and linked with rural finance institutions, thereby strengthening value chains in the key industries of honey, olives, sesame seeds and za'atar (FAO, 2011).

#### **b) Secure access to formal financial resources**

Under the 2002 Banking Law, women have the same rights as men to receive banking services, as the law uses the term 'customers' without distinguishing between both sexes.

Women's access to financial resources remains weak (PMA, 2016). Moreover, women tend to lack control over financial resources due to the customary belief that men should be in charge of financial decisions (Wi'am, 2013).

Two independent authorities play a key role in expanding access to finance in the West Bank and Gaza Strip: the Palestine Monetary Authority (PMA), which regulates the micro-finance sector since 2012, and the Palestine Capital Market Authority (PCMA), which supervises non-banking financial institutions. Both committed in 2014 to developing a joint National Financial Inclusion Strategy and consulted civil society last year to accelerate the drafting process. Among other efforts undertaken to strengthen financial inclusion, targeted trainings were carried out for women to help them understand banking institutions, and a public campaign targeting poorer segments of society was launched to

provide all citizens with basic bank services free-of-charge or at a minimum cost (PMA, 2016). Moreover, the Palestinian Authority was the first in the MENA region to commit to setting measurable financial inclusion targets under the 2011 'Maya Declaration' (Center for financial inclusion, website).

### c) Workplace rights

Labour Law No. 7/2000 regulates workplace rights and contains several provisions protecting women's rights, namely non-discrimination at work on the basis of sex (art. 100), 10 weeks of paid maternity leave (art. 103), parental leave (art. 105), the right to resume work after giving birth (art. 103), the right to breastfeed during work hours for up to one hour per day in the year following the delivery (art. 104), protection against long work hours both during pregnancy and in the six months following the delivery (art. 101), and the prohibition from exercising 'dangerous or hard works' (art. 101).

However, the law stays silent on the percentage of wages paid to women during maternity leave and on paternity leave altogether. Parental leave is not paid nor granted to fathers. Other caveats to the law include the lack of referral to specific forms of sex-based discrimination, the absence of a provision stipulating equal remuneration for work of equal value, and the fact that domestic workers and individuals working for family members (mostly women) are excluded from the provisions of this law (art. 3) (UNDP, 2011).

Although the law mandates labour inspectors to receive workplace complaints and other bodies to settle collective labour disputes (art. 61-63 and 107-115), the Labour Law reportedly has little impact owing to the weak human and financial resources of the Ministry of Labour which hinder its ability to monitor compliance with the law. Backlogs in labour dispute hearings are also reported (UNDP, 2011).

Women and men's right to work is also adversely affected by the current political situation (HRC, 2016), although women suffer from additional social restrictions (e.g. village heads not accepting that women own shops; extra constraints for divorced women; limited access to professional training and vocational education) (Qazzaz H. et al.). Women accounted for only 19.1% of the labour force in 2015 (PCBS, database). In this context, the lack of policies providing incentives for female participation in the economy is problematic, as is the lack of policies tackling the structural barriers for women's effective participation in the labour force (Qazzaz H. et al.).

## 4. Restricted civil liberties

### a) Citizenship rights

Palestinian citizenship rights do not formally exist in the current political context. The Palestinian Authority (PA) can however issue passports with the approval of Israel, but these are travel documents and are only entitled to people living in the West Bank and Gaza Strip with Israeli ID cards. Arab and Jewish Palestinians who have remained in Israel are entitled to Israeli citizenship (Khalil, 2007).

Despite the issuing of PA passports, Palestinians suffer from travel restrictions. Israeli permits are required to travel between the West Bank and Gaza Strip and they are currently only being issued to those needing to visit a gravely ill first-degree relative or to attend the wedding or the funeral of a first-degree relative. Israeli permits are also required for residents of the West Bank and Gaza Strip

wishing to enter Israel or East Jerusalem, and they contain specific minimum age requirements (25 years for women and 35 years for men) as set out in the 2005 amendment to the Law on Citizenship and Entry into Israel. Family reunification in East Jerusalem is impossible for Palestinians, and only possible in the West Bank under very limited circumstances (minors under the age of 16 who have lost a parent in Gaza, elderly people in need of nursing care who have no first-degree relative to care for them and chronically ill patients) (HRC, 2016). Under current provisions, refugees in the diaspora cannot visit or return to their homeland and they remain stateless (Khalil, 2007).

The nationality of those living in the West Bank and Gaza Strip is covered by the Jordanian law on nationality No. 6/1954 (for those living in the West Bank) and the Egyptian law on nationality No. 26/1975 (for those living in Gaza) (Azzouni, 2010). Accordingly, Jordanian and Egyptian nationality are conferred through fatherhood, except in very restricted cases, and by marrying a Jordanian/Egyptian male. There is no gender discrimination however in relation to the right to change nationality or to retain nationality, with both laws stating that Jordanian/Egyptian nationality is retained by women who marry foreigners.

Egyptian law applied in Gaza stipulates that a mother must prove her marital status to register her child's birth. If she fails to do so, a person who witnessed the birth must testify for her (World Bank, 2016).

### **b) Voting**

Women enjoy the same rights as men to vote in national and local (municipal) elections organised by the PA, regardless of their marital status or belonging to a specific group (PA Law on the general elections, art. 27 para. 1 and art. 30; 2005 PA Law on Local Elections, art. 7-8). These laws cover executive and legislative functions (Presidency, ministerial Council, local councils, PLC), although it is important to highlight again the paralysis of the PLC. Palestinian residents of East Jerusalem may vote under certain conditions (only for the Jerusalem municipal council) (Khalil, 2007; Tabet, 2005). The Central Elections Commission is mandated to exercise public educational campaigns on voting rights.

### **c) Political participation**

Women also enjoy the same rights as men to stand for public office at the national and local level (Presidency, ministerial Council, local councils). Moreover, their participation is promoted through the establishment of legal quotas: each political party list must include at least one female candidate in the first three names, in the following four names and in each set of five names that follow; and a minimum of two seats must be attributed to women in local councils comprising 13 seats or more. The PA law on local elections goes further by stipulating that a local council seat vacated by a woman must be replaced by a woman. Non-compliance with these provisions is sanctioned by the Central Elections Commission who will reject the list.

Despite these legal provisions female participation in political life remains low for several reasons, including the stereotypical view that women must be housewives (Al-Monitor, website), limited opportunities for women to obtain required qualifications, scarcity of childcare options, and the male-dominated militarised environment (UNDP, 2011).



#### d) Access to justice

The law provides women with the same rights as men to bring cases to civil and criminal courts (Civil and commercial procedural law No. 2/2001, Palestinian Criminal procedure law No. 3/2001). Moreover, their testimonies carry the same weight as those delivered by men, regardless of their marital status. This contrasts with the Sharia court system which deals with personal matters and under which a woman's testimony holds less weight than a man's (UNDP, 2011).

The Palestinian Authority 2014-2016 National Strategy for Justice and Rule of Law aims to enhance access to justice, especially for women and other marginalised groups, by removing barriers such as weak knowledge of gender issues by justice officials and the non-harmonisation of judicial procedures with international standards (strategic objective 1.9). The strategy highlights the need for institutional capacity building in order to provide gender-sensitive justice services, particularly in Sharia courts.

The General Statistics Law No. 4 of 2000 governs the production/dissemination of gender statistics. In 2012, a gender statistics programme for the Palestinian Central Bureau of Statistics was established (PCBS, 2012).

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