

PALESTINE¹

OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES (Updated as at 31 May 2017)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p>Equality of spouses in marriage</p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncoded? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncoded, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly</i></p>	<p>Article 9 of the Basic Law provides that Palestinians are equal before the law and the judiciary without distinction on several basis, including sex.²</p> <p>Article 29 of the Basic Law provides that maternal and childhood welfare are national duties.³</p> <p>Matters regarding marriage and family relations of the Muslim majority population in Palestine are mainly governed by the following codified laws:⁴</p> <ul style="list-style-type: none"> • West Bank: The Personal Status Law of 1976 ('PSL'), which is the Jordanian Personal Status Law No. 61/1976⁵ and amended and supplemented from time-to-time by the rele- 		<p>Palestine acceded to CEDAW without reservations.¹³</p>		<p>According to the 2016 UNDP Human Development Report, Palestine ranked 114 on the UNDP Human Development Index and is not ranked on the UNDP Gender Inequality Index.¹⁴</p> <p>According to 2015 statistics released by the Palestinian Central Bureau of Statistics (PCBS), about 11% of households in Palestine are headed by women (12% on West Bank; 9% in Gaza Strip).¹⁵</p>

¹ This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Palestine country table, we would also like to thank Katherine Gonzalez and Alyssa Oravec from Harvard Law School, and Hanadi Ehmidat, Inas Margieh and Lynn Welchman for their inputs in its preparation.

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

⁵ Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

<p><i>state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>vant Palestinian authorities. 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;⁶ and</p> <ul style="list-style-type: none"> • Gaza Strip: The Family Rights Law ('FRL'), which is the 1917 Ottoman Law of Family Rights as adopted by Gaza Strip's then-Egyptian Administrator by Order No. 303/1954⁷ and amended and supplemented by the relevant Palestinian authorities. Similarly, 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.⁸ <p>Despite the equality guarantee of Article 9 of the Basic Law, the PSL and the FRL provide for a</p>				
---	---	--	--	--	--

¹³ United Nations Treaty Collection Website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en

¹⁴ UNDP, "Human Development Report 2016", Table 5, pp. 214-217, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

¹⁵ Palestinian Central Bureau of Statistics, "On the Eve of the International Population Day", 11 July 2016, <http://www.pcbs.gov.ps/site/512/default.aspx?tabID=512&lang=en&ItemID=1701&mid=3171&wvversion=Staging>

⁶ Article 183 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁷ Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁸ 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'a 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>

	<p>marital framework based on 'reciprocal' or 'complementary' rights (as opposed to 'equal' rights) between the two spouses,⁹ whereby in return for maintenance and protection from her husband, a wife is expected to obey him. Thus:</p> <ul style="list-style-type: none"> • West Bank: (i) 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"; (ii) 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; (ii) In return for her entitlements, Article 37 obligates the wife to obey her husband as well as to reside in the marital home and move to any place the husband wants provided he is being trustworthy to her and the contract document does not entail a stipulation requiring otherwise. Should the wife refrain from obedience, her 				
--	---	--	--	--	--

⁹ Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 331, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>right to maintenance will be revoked;¹⁰ and</p> <ul style="list-style-type: none"> • Gaza Strip: (i) Article 20 of the FRL refers to marriage as a contract; (ii) 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; (ii) In return for her entitlements, Article 40 obligates the wife to reside in the marital home and to travel with her husband where he wishes to go. She must also obey her husband in lawful matters, albeit the husband is obligated to consort with his wife in kindness; (iii) Article 66 provides that a wife loses her financial maintenance if she is recalcitrant (<i>nusynouuz</i>).¹¹ <p>Marriage and family relations of Palestine's non-Muslim minority communities (e.g. Christians) are governed by their own ecclesias-</p>				
--	--	--	--	--	--

¹⁰ Articles 2, 35, 36, 37 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

¹¹ Articles 20, 38, 39, 66 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

	tical courts in matters of personal status. ¹²				
<p>Minimum and equal legal age for marriage</p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Does the minimum age of marriage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</p>	<p>There is a divergence in the law with regard to the minimum age for marriage (stated in lunar years) in the West Bank and Gaza Strip.</p> <p>West Bank</p> <p>The minimum legal age for marriage is 15 for females and 16 for males as per Article 5 of the PSL.¹⁶</p> <p>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.¹⁷</p> <p>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 15.¹⁸</p>		<p>National consensus has been reached on the need to raise the minimum age for marriage with a vast majority of stakeholders agreeing that it should be increased to 18. However, agreement has not yet been reached as to whether and under what circumstances an exception to the minimum age rule can be made.²⁵</p>	<p>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 their proof of their identity (which includes age) to the authorised marriage officer.²⁶</p>	<p>Official 2014 statistics indicate that 92% of all marriages registered in Palestine (West Bank and Gaza) are for brides aged 15-29.²⁷</p> <p>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 15.²⁸</p> <p>According to 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</p>

¹² Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 323, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹⁶ Article 5 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>; Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 328, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

¹⁷ Article 7 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

¹⁸ Article 279(2) of the Penal Code (1960), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>. 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

	<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.¹⁹</p> <p>Gaza Strip</p> <p>The minimum legal age for marriage is 17 for females and 18 for males as per Article 5 of the FRL.²⁰</p> <p>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 addi-</p>				<p>27.8 during the same period.²⁹</p>
--	--	--	--	--	--

²⁵ the Palestinian National Authority; see full text and explanatory notes, <http://lawcenter.birzeit.edu/lawcenter/files/54.pdf>

²⁶ 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

²⁷ Article 17 of the Personal Status Law (1976), Article 279(1) of the Penal Code (1960), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>; 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>

²⁸ Palestine News and Information Agency, "Marriage and Divorce in Palestine", <http://info.wafa.ps/atemplate.aspx?id=3183>

¹⁹ UNICEF, "The State of the World's Children 2016", Table 9, pp. 150-153, https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf

²⁰ Articles 1, 44 of the Palestinian Childhood Law (2004), <http://www.sawa.ps/ar/Views/PageView.aspx?pid=715>

Article 5 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>; Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 328, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>tion, a minor girl's guardian must agree to the marriage.²¹</p> <p>Article 8 sets an absolute minimum marriage age of 9 for a girl and 12 for a boy, below which no marriage may be authorised.²²</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.²³</p> <p>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 15.²⁴</p>				
<p>Women's consent to marriage</p> <p><i>Is a marriage valid without the woman's consent? Is the practice of forcing women to marry against their will (ijbar) prohibited? Is</i></p>	<p>Both in the West Bank and Gaza Strip:</p> <ul style="list-style-type: none"> Regardless of their age, both prospective brides and 			<p>Both in the West Bank and Gaza Strip:</p> <ul style="list-style-type: none"> Marriages must be 	

²⁹ [United Nations Population Division, "World Marriage Data 2015", https://esa.un.org/ffps/Index.html#/maritalStatusData](https://esa.un.org/ffps/Index.html#/maritalStatusData)

²¹ Articles 6, 7 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

²² Article 8 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

²³ Lynn Welchman, "Beyond the Code: Muslim Family Law and the Shar'ia 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>

²⁴ Article 182 of the Penal Code (1936), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>. This was originally the British Penal Code see for further information, <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

<p><i>there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>	<p>grooms must consent to the marriage.³⁰ Consequently, <i>ijbar</i> marriages are prohibited.</p> <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,³¹ • 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,³² • The registration of marriages is mandatory.³³ 			<p>registered by an authorised marriage officer. Failure to register a marriage contract is punishable by imprisonment but does not invalidate the marriage;³⁴</p> <ul style="list-style-type: none"> • There is a standardised marriage contract.³⁵ 	
--	---	--	--	---	--

³⁰ Articles 14, 15 of the Personal Status Law (1976); Articles 21, 22 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>; 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>

³¹ Articles 34(c), 42-43 of the Personal Status Law (1976); Articles 36, 43-44 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

³² Article 279(1) of the Penal Code (1960); Article 182(a) of the Penal Code (1936), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

³³ Article 17 of the Personal Status Law (1976); Article 23 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>; Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 325, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<p>Women’s capacity to enter into marriage</p> <p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(a), 16(1)(b) Paras. 15-16 GR21 Para. 34 GR29</p>	<p>There is a divergence in the law regarding a women’s capacity to enter into marriage in the West Bank and the Gaza Strip.</p> <p>West Bank</p> <p>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, paternal grandfather brother, uncle, etc.).³⁶</p> <p>A judge can act as guardian in the absence of a guardian.³⁷ In addition, a judge may authorise the marriage of.³⁸</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; 				<p>According to an OECD datasheet, while Muslim women can make provisions for various matters to protect their rights in their marriage contracts, in practice, it is rare because societal pressure generally discourages these arrangements.⁴⁸</p>
--	---	--	--	--	---

³⁴ Article 17 of the Personal Status Law (1976), Article 279(1) of the Penal Code (1960), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>; 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

³⁵ Information obtained from Palestinian Advocate, February 2017; Lynn Welchman, “Beyond the Code: Muslim Family Law and the Shar’ia Judiciary in the Palestinian West Bank,” (Pre-publication text), (The Hague: Kluwer Law International, 2000), p. 243, <https://core.ac.uk/download/pdf/2786162.pdf>

³⁶ Articles 9-11 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

³⁷ Article 12 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

³⁸ Articles 6 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁴⁸ OECD Development Centre, “Palestinian Authority”, *Social Institutions and Gender Index*, 2013, p. 3, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>

	<ul style="list-style-type: none"> • 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>A prospective bride who has been previously married and is over 18 does not require the consent of a guardian to re-marry.³⁹</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.⁴⁰</p> <p>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. Specific examples provided by Article 19(1) regarding the conditions that a wife may stipulate in the marriage contract include: (i) her husband cannot remove her from her country of origin; (ii) her husband can-</p>				
--	--	--	--	--	--

³⁹ Article 13 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁴⁰ Article 279(3) of the Penal Code (1960), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

	<p>not 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.⁴¹</p> <p>Gaza Strip</p> <p>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 (father followed by the paternal grandfather, etc.).⁴²</p> <p>A judge can act as guardian in the absence of a guardian.⁴³ 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.⁴⁴</p> <p>In the event an adult woman denies that a guardian exists for</p>				
--	---	--	--	--	--

⁴¹ Article 19 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>
⁴² Articles 11, 12 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>
⁴³ Article 11 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>
⁴⁴ Article 9 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

	<p>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. If she married herself to an unfit man, 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.⁴⁵</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.⁴⁶</p> <p>Pursuant to the FRL, both spouses may stipulate conditions in their marriage contract. Specific conditions that a wife stipulate include: (i) her husband cannot take another wife during their marriage (Article 24); or (ii) her husband cannot relocate her without her consent (Article 40).⁴⁷</p>				
<p>Polygamous marriages <i>Does the law prohibit polygamy or</i></p>	<p>Both in the West Bank and Gaza Strip a Muslim man can marry up to four wives at a time.⁴⁹</p>				<p>According to Palestine's 2014 Multiple Cluster</p>

⁴⁵ Articles 27, 30 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁴⁶ Article 182(c) of the Penal Code (1936), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁴⁷ Articles 24, 40 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁴⁹ Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 332, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

<p><i>impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the marriage contract that her intended husband cannot enter into a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Para. 14 GR21 Para. 34 GR29</p>	<p>West Bank</p> <p>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</i>) expires.⁵⁰</p> <p>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) that the husband intends to marry another woman.⁵¹</p> <p>Article 40 of the PSL states that a husband who has more than one wife has to treat them equally and fairly and cannot have accommodate the wives in a single house unless they agree to it.⁵²</p> <p>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</p>				<p>Indicator Survey, about 4% of marriages in Palestine are polygamous (3% in West Bank and 6% in Gaza Strip).⁶¹</p> <p>According to civil society and media reports:⁶²</p> <ul style="list-style-type: none"> • 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; • Although women in the West Bank and Gaza Strip are allowed to include conditions
--	---	--	--	--	---

⁵⁰ Article 28 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁵¹ Supreme Judge Department Directive No. 48/2011, Upper Council of Sharia Jurisdiction (West Bank), <http://www.kudah.pna.ps/userfiles/image/20%الزوجة%20%ابلاغ.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

⁵² Article 40 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

	<p>between the spouses and entitles the wife to petition a judge to dissolve a marriage if the husband violates the condition.⁵³</p> <p>Temporary marriages are prohibited as per Article 34(f) of the PSL.⁵⁴ A temporary marriage contract is considered void. If not consummated, it is automatically invalidated if not consummated. 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.⁵⁵</p> <p>Gaza Strip</p> <p>Article 14 of the FRL permits a Muslim man to marry up to four wives at one time.⁵⁶</p>				<p>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.⁶³</p>
--	--	--	--	--	---

⁶¹ 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

⁶² 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, <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Analysis>

⁵³ Article 19 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁵⁴ Article 34(f) of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁵⁵ Article 34(f), 42-43 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁵⁶ Article 14 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁶³ Information provided by Palestinian advocate, May 2017

	<p>Article 42 of the FRL provides that each man with more than one wife must treat each of his wives equally and fairly.⁵⁷</p> <p>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.⁵⁸</p> <p>Temporary marriages are prohibited as per Article 34 of the FRL.⁵⁹ A temporary marriage contract is considered void. If not consummated, it is automatically invalidated if not consummated. 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.⁶⁰</p>				
<p>Divorce rights <i>Is there equal right to divorce be-</i></p>	<p>The PSL and the FRL provide for two different mechanisms for divorce: (i) unilateral repudiation</p>			<p>In 2004, an Administrative Directive institutionalised a fam-</p>	<p>According to 2015 statistics released by the PCBS, the</p>

⁵⁷ Article 42 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>
⁵⁸ Article 24 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>
⁵⁹ Article 34 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>
⁶⁰ Articles 34, 43-44 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

<p>tween women and men? Can the husband divorce without reason and without having to go to court? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (<i>talāq</i>) prohibited? If unilateral divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need to go to court, is the divorced spouse informed of the divorce? Is the unilateral right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c)</p>	<p>(<i>talāq</i>); and (ii) judicial divorce. The PSL also specifically provide for redemptive divorce (<i>khul'</i>); the FRL is silent on <i>khul'</i> divorce.</p> <p>Under both the PSL and FRL, a husband may unilaterally repudiate without much restrictions.⁶⁴ However, Article 101 of the PSL and Article 77 of the FRL require a husband to inform a judge of the repudiation.⁶⁵</p> <ul style="list-style-type: none"> 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 			<p>ily 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>	<p>divorce rate (indicated by the divorce-to-marriage ratio) in Palestine was 16%; (West Bank: 17%; Gaza Strip: 16%).⁷⁹</p> <p>Feminist groups are advocating for all forms of divorce to be conducted under judicial supervision to have legal effect. In this regard, the Chief Justice (West Bank) has issued a decision to fine individuals who perform a divorce outside of court. Such divorces still have legal effect.⁸⁰</p> <p>With regard to <i>khul'</i></p>
---	---	--	--	---	---

⁶⁴ Articles 83-101 of the Personal Status Law (1976); Articles 67-77 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁶⁵ Article 101 of the Personal Status Law (1976); Article 77 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁶⁶ Article 281 of the Penal Code (1960), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

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://oopen.org/search?identifier=340144;keyword=Muslim%20and%20family%20%20laws%20in%20arab%20states>

⁷⁸ Information obtained from Palestinian Advocate, February 2017

⁷⁹ 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

<p>Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<p>notify the wife who is absent within one week from its registration;</p> <ul style="list-style-type: none"> Article 77 of the FRL provides that a husband who has divorced his wife must inform the judge. <p>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</p> <p>Under the PSL and the FRL, valid grounds for seeking a judicial divorce by a wife include a husband's: (i) impotence or inability to consummate a marriage; (ii) incurable or contagious and dan-</p>				<p>divorce in the Gaza Strip, according to media reports and information on the ground.⁸¹</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
--	---	--	--	--	--

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

⁶⁷ Article 19 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁶⁸ Article 87 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

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

⁸¹ 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>gerous disease, madness (a wife may obtain a divorce after one year of the husband 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 In addition, a wife may seek divorce on the basis of “dispute and discord” (Article 132 of the PSL) or “harm” (Article 97 of the FRL) provided the spouses undergo a mandatory mediation process.⁷¹</p> <p>A Directive was issued by the Gaza Higher <i>Shari’ah</i> Court Council interpreting Article 97 of the FRL on judicial divorce on the basis of harm. The Directive clarified 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</p>				<p>that hundreds of women reportedly obtaining divorce by <i>khul’</i> annually;</p> <ul style="list-style-type: none"> • A proposed law has been drafted but not yet passed by the Judicial Authority in Gaza to legalise judicial <i>khul’</i>. The proposal delegates to a judge the power to rule for <i>khul’</i> notwithstanding a husband’s objection, upon determination of a reasonable sum and confirming (after a mandatory reconciliation process) that reconciliation between the couple is not possible. <p>According to media</p>
--	--	--	--	--	---

⁷⁰ Articles 113-131 of the Personal Status Law (1976); Articles 84-102 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁷¹ Article 132 of the Personal Status Law (1976); Article 97 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

	<p>natural, or verbal insults to her or her father.⁷²</p> <p>In 2012, the Chief Islamic Justice directed that:⁷³</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; • Divorce proceedings must be completed in three months. <p>Under the PSL, a wife to seek redemptive divorce (<i>mukhala'ah</i> or <i>khul'</i>), whereby the wife is granted a divorce in exchange for a mutually-agreed compensation to be paid to the husband. 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 negoti-</p>				<p>reports, challenges that women face with regard to divorce include:⁸²</p> <ul style="list-style-type: none"> • Women often being dissuaded from divorcing their husbands because they fear losing custody of their children; • Long delays in court processing of judicial divorce cases; • <i>Khul'</i> divorce being particularly expensive and available only to wealthy women.
--	--	--	--	--	---

⁷² 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

⁷³ 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

	<p>ated as part of a <i>khul'</i> agreement.⁷⁴ In 2012:</p> <ul style="list-style-type: none"> • The Supreme Judge Department issued Directive No. 59/2012 empowering judges to rule for a <i>khul'</i> divorce using their discretionary powers. Judicial <i>khul'</i> may be granted at the judge's discretion without a husband's consent, but only if the wife petitions for <i>khul'</i> prior to consummation of the marriage,⁷⁵ and • The Chief Islamic Justice limited the financial consideration in a judicial <i>khul'</i> divorce to the maximum amount of the <i>mahr</i>.⁷⁶ 				
<p>Women's financial rights after divorce</p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon</i></p>	<p>There is divergence in the law with regard to a woman's financial rights after divorce in the West Bank and the Gaza Strip.</p> <p>Generally, both in the West Bank</p>				<p>According to an OECD datasheet, while it is legally possible for women to include stipulation in their marriage</p>

⁸² 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, "Palestinian religious authorities make it easier for women to divorce husbands," CBS News, 31 August 2012, <http://www.al-monitor.com/pulse/originals/2015/04/gaza-women-divorce-children-custody-alimony.html>

⁷⁴ Articles 102-109 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁷⁵ Upper Council of Sharia Jurisdictions (West Bank), "Directive No. 59/2012", *Supreme Judge Department*, <http://www.kudah.pna.ps/userfiles/file/1/الخبعة.jpg>; Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 339, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; Laha OnINE, "Falastin Tuqi Qanun Al-Khul' Li-Inha' Mu'anat Mi'at Al-Mu'alaqat," *Laha OnINE*, 18 September 2012, <http://www.lahaonline.com/articles/view/41584.htm>

⁷⁶ 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

<p><i>dissolution of the marriage? Is the woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut'ah)? Who is responsible for the financial maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h) Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>	<p>and Gaza Strip, upon divorce, a woman may be entitled to:</p> <ul style="list-style-type: none"> Financial maintenance during the waiting period after the divorce (<i>iddah</i>).⁸³ 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.⁸⁴ A woman loses her right to financial maintenance if she is deemed disobedient,⁸⁵ 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> 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.⁸⁶ 				<p>contract regarding divorce and custody, in practice, it is rare for women to include such provisions as it is contrary to social norms.⁹⁵</p> <p>According to information on the ground, the Alimony Fund is constraint by insufficient funds particularly in the Gaza Strip.⁹⁶</p>
---	--	--	--	--	--

⁸³ Article 79 of the Personal Status Law (1976); Articles 57, 112 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁸⁴ Article 80 of the Personal Status Law (1976), Articles 103-110 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁸⁵ Article 81 of the Personal Status Law (1976); Articles 113 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁸⁶ Article 55 of the Personal Status Law (1976); Article 50 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁹⁵ OECD Development Centre, "Palestinian Authority", *Social Institutions and Gender Index*, 2013, p. 3, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>

	<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.⁸⁷ The FRL does not provide for compensation for unreasonable divorce.</p> <p>There is no legal concept of matrimonial 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.⁸⁸ Article 160 of the PSL specifically provide that a mother is not entitled to a wage for</p>				
--	--	--	--	--	--

⁹⁶ Information obtained for Palestinian advocate, May 2017

⁸⁷ Article 134 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁸⁸ OECD Development Centre, "Palestinian Authority", *Social Institutions and Gender Index*, 2013, p. 8, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>

	<p>custodianship during the marriage and thereafter.⁸⁹</p> <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. A father, who is financially able of doing so, must maintain his children until they obtain a first university certificate subject to their academic capabilities.⁹⁰</p> <p>The Alimony Fund Law No. 6 of 2005 establishes an Alimony Fund ('Alimony Fund Law') that aims to guarantee the execution of court-ordered maintenance to specified persons, including wives, former wives, children and parents.⁹¹ The law is applicable</p>				
--	---	--	--	--	--

⁸⁹ Article 160 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁹⁰ Articles 112, 168-169 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>; Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 334, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁹¹ Alimony Fund Law No. 6/2005, <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

	<p>both in West Bank and Gaza Strip.⁹²</p> <p>Under Article 8 of the Alimony Fund Law, payment of court-ordered maintenance shall be made within 15 days from the date of submission of a legitimate application by the specified person.⁹³</p> <p>Under Article 10 of the Alimony Fund Law, the Fund is to be financed through: (i) registration fees of marriage and divorce; (ii) monies recovered from the person (e.g. former husbands or fathers) responsible for the payment of the court-ordered maintenance; (iii) grants, donations, etc.; (iv) a budget allocation from the Palestinian government.⁹⁴</p>				
<p>Custody of Children</p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best inter-</i></p>	<p>Both in the West Bank and Gaza Strip, a mother has priority right over the custody of her children until a certain age when custody reverts to the father⁹⁷ unless a judge determines otherwise in the interest of the child:</p>				<p>According to an OECD datasheet, there are reports that in Gaza, in cases where wives lost their husbands in conflict, widows</p>

⁹² Information obtained from Palestinian advocate, May 2017

⁹³ Article 8 of the Alimony Fund Law No. 6/2005, <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁹⁴ Article 10 of the Alimony Fund Law No. 6/2005, <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁹⁷ 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'a 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>

<p><i>est of the child? Do mothers automatically lose custody upon re-marriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<ul style="list-style-type: none"> • West Bank: A mother has priority right over her daughter until she reaches 11 and her son until he reaches nine.⁹⁸ 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;⁹⁹ • Gaza Strip: A mother has priority right over her daughter until she reaches nine and her son until he reaches seven. 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.¹⁰⁰ <p>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</p>				<p>were threatened with losing custody of their children (and being thrown out of their houses) if they refused to marry their late husbands' brothers.¹⁰³</p>
---	--	--	--	--	---

⁹⁸ Articles 154, 161 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

⁹⁹ Article 162 of the Personal Status Law (1976) as amended by Article 1 of Law No. 1/2009 amending the Personal Status Law, <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

¹⁰⁰ Article 118 of the Family Rights Law (1954) as amended by Article 1 of Law No. 1/2009 amending the Personal Status Law, <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

	<p>inspection of the paternal relatives.¹⁰¹</p> <p>In the West Bank, under the PSL:¹⁰²</p> <ul style="list-style-type: none"> • 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 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>); • A custodian mother may not travel with the child without the consent of the guardian and confirming that the child's interests are safeguarded. 				
<p>Guardianship of Children</p> <p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is</i></p>	<p>Both in 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.¹⁰⁴</p>			<p>A custodian mother is not able to obtain a passport or any official documents for the children in her custody; the</p>	<p>According to a media report, as custodian mothers are unable to apply for any official documentation for their</p>

¹⁰³ OECD Development Centre, "Palestinian Authority", *Social Institutions and Gender Index*, 2013, p. 2, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>

¹⁰¹ Article 1 of Law No. 1/2009 amending the Personal Status Law, <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

¹⁰² Articles 155-156, 166 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

¹⁰⁴ OECD Development Centre, "Palestinian Authority", *Social Institutions and Gender Index*, 2013, p. 2, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>;

<p><i>guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>In the West Bank, under Article 165 of the PSL, a guardian who is a close relative (<i>mahram</i>) 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 40.¹⁰⁵</p>			<p>guardian's signature or written agency letter is required.¹⁰⁶</p>	<p>children, in some cases, this prevents children from being able to travel and enjoy certain rights such as studying outside Palestinian territories.¹⁰⁷</p>
<p>Family Planning</p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in practice?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(e), 12 Paras. 21-23 GR21</p>	<p>Both in the West Bank and Gaza Strip, abortion is strictly prohibited by law, except when it is necessary to save the pregnant woman's life.¹⁰⁸</p>				<p>According to Palestine's 2014 Multiple Cluster Indicator Survey, the total fertility rate among women aged 15-49 was 4.1 (West Bank: 3.7; Gaza: 4.5). The Survey also found that:¹⁰⁹</p>

Zeina Jallad, "Palestinian Women and Security: A Legal Analysis" (Geneva Centre for the Democratic Control of Armed Forces, 2012), pp. 13-14, <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Analysis>; Norwegian Refugee Council, "The Shari'a 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-Equality-Profile-2011.pdf>

¹⁰⁵ Article 166 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

¹⁰⁶ 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>

¹⁰⁷ 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>

¹⁰⁸ Articles 321-324 of the Penal Code (1960), Articles 175-177 of the Penal Code (1936), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>; OECD Development Centre, "Palestinian Authority", *Social Institutions and Gender Index*, 2013, p. 6, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>

¹⁰⁹ Palestinian Central Bureau of Statistics & UNICEF, "Palestinian Multiple indicator Cluster Survey 2014", Tables RH.1, RH. 5, RH.6, pp. 96, 102, 106, 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

				<ul style="list-style-type: none"> • 11% of Palestinian women aged 15-49 have an unmet need for family planning services, with 6% having an unmet need for spacing and 5% an unmet need for limiting of children; and • 57% of Palestinian women are using a method of contraception, with 44% women using a modern method. <p>According to an OECD datasheet, women may face social and familial pressure to give birth to a large number of children, making it difficult to make decisions regarding contraception. Access to reproductive care in Gaza is limited. The Palestinian Authority</p>
--	--	--	--	--

					Ministry of Health reported in 2012 that there were at least 147 family planning centres in the West Bank and at least 20 in Gaza. ¹¹⁰
<p>Personal rights of spouses</p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(g) Para. 24 GR21 Para. 34 GR29</p>	<p>Article 10 of the Basic Law guarantees the protection and respect of basic human rights and liberties.¹¹¹</p> <p>Article 11 of the Basic Law guarantees personal freedom as a natural right.¹¹²</p> <p>Article 21 of the Basic Law guarantees freedom of residence and movement within the limits of the law.¹¹³</p> <p>Article 23 of the Basic Law provides that every Palestinian shall have the right to education and makes basic level education compulsory.¹¹⁴</p> <p>Article 25 of the Basic Law provides that every Palestinian has</p>			<p>A wife may stipulate in the marriage contract that she has the right to work, travel, study, etc. If the marriage contract is explicit in this manner, her husband cannot legally stop her from exercising the stipulated rights.¹²¹</p> <p>Married women in the Palestine may opt to retain their maiden names or adopt their husband's family name.¹²²</p>	<p>According to the PCBS, the female labour force participation rate increased from 10% in 2001 to 19% in 2014. During the same period, the male labour force participation rate increased from 67% to 72%.¹²³</p> <p>According to the 2016 UNDP Human Development Report:¹²⁴</p> <ul style="list-style-type: none"> • 56% of women over 25 have at least some secondary education

¹¹⁰ OECD Development Centre, "Palestinian Authority", *Social Institutions and Gender Index*, 2013, p. 6, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>

¹¹¹ Article 10 of Palestine's Basic Law (2003), <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>

¹¹² Article 11 of Palestine's Basic Law (2003), <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>

¹¹³ Article 21 of Palestine's Basic Law (2003), <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>

¹¹⁴ Article 23 of Palestine's Basic Law (2003), <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>

	<p>the right to work, which is a duty and honour.¹¹⁵</p> <p>Despite the constitutional provisions stating otherwise, both the PSL and FRL potentially restrict the personal rights of married women in the West Bank and Gaza Strip, respectively, as a result of the maintenance-for-obedience legal framework provided for under both laws. Thus:</p> <p>In the West Bank:</p> <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.¹¹⁶</p>				<p>as compared to 61% of men of the same age group;</p> <ul style="list-style-type: none"> • 99% of females and males aged 15-24 are able to read and write a short simple sentence; and • 52% of women are satisfied with their freedom of choice as compared to 58% of men. <p>According to reports by multilateral organisations (OECD, UNICEF), civil society and the media:</p> <ul style="list-style-type: none"> • Husbands do
--	--	--	--	--	--

¹²¹ Article 19 of the Personal Status Law (1976), Articles 24, 40 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

¹²² 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), p. 6, [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); Dunya Al-Watan, "Changing the Wife's Family Name to That of the Husband After Marriage. A Point of Difference", *Alwatanvoice*, 30 December 2016, <https://www.alwatanvoice.com/arabic/news/2016/12/30/1004637.html>

¹²³ Palestinian Central Bureau of Statistics, "Press Release for International Women's Day 2015", 3 May 2015, http://www.pcbs.gov.ps/portals/_pcbs/PressRelease/WomenDy2015E.pdf

¹²⁴ UNDP, "Human Development Report 2016", Tables 5, 9, 14, pp. 214-217, 230-233, 250-253, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

¹¹⁵ Article 23 of Palestine's Basic Law (2003), <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>

¹¹⁶ Article 37 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

	<p>Article 68 provides that wife forfeits her right to financial maintenance if she takes a job outside the home without permission of her husband.¹¹⁷</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 (unless the husband has inflicted harm upon her).¹¹⁸</p> <p>In the Gaza Strip:</p> <p>Article 40 of the FLR obligates a wife is 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.¹¹⁹</p> <p>Article 66 provides that a wife is considered recalcitrant (<i>nashiz</i>) and therefore forfeits her right to financial maintenance if she</p>				<p>seek to restrict the movement of their wives. In a 2011 PCBS survey, 11.1% of married women reported that their husbands tried to prohibit them from meeting their friends in the past 12 months;¹²⁵</p> <ul style="list-style-type: none"> • While women are not legally obligated to change their last names after marriage, in practice, Palestinian women's family names are automatically changed at marriage on her identity card and passport to her husband's family name;¹²⁶ • Although there is no such legal requirement (it was removed in 1996),
--	--	--	--	--	--

¹¹⁷ Article 68 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

¹¹⁸ Article 69 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

¹¹⁹ Article 40 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

	leaves her husband's home or prevents him from entering the home without asking his permission. ¹²⁰				government officials often require women to show proof of permission from their male guardian before they can obtain a passport. ¹²⁷
<p>Inheritance rights</p> <p><i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon the death of their father?</i></p>	<p>Generally, inheritance rights between women and men are unequal both in the West Bank and Gaza Strip.</p> <p>Inheritance matters are governed by a combination of the principles of <i>Shari'ah</i> on inheritance and codified laws that are based on <i>Shari'ah</i> 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.¹²⁸</p>			<p>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.¹³⁰</p>	<p>Numerous reports by civil society groups (including legal aid centres) and the media, indicate that Palestinian women are often deprived of their inheritance rights:¹³¹</p> <ul style="list-style-type: none"> • According to the 2013 Family Law Survey conducted by the Institute of Women's Studies,

¹²⁵ OECD Development Centre, "Palestinian Authority", *Social Institutions and Gender Index*, 2013, p. 6, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>

¹²⁶ 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), p. 6, [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); Dunya Al-Watan, "Changing the Wife's Family Name to That of the Husband After Marriage. A Point of Difference", *Alwatanvoice*, 30 December 2016, <https://www.alwatanvoice.com/arabic/news/2016/12/30/1004637.html>

¹²⁰ Article 66 of the Family Rights Law (1954), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

¹²⁷ UNICEF, "Occupied Palestinian Territory", *MENA Gender Equality Profile*, 2011, p. 2, <http://www.unicef.org/gender/files/oPT-Gender-Eqaulity-Profile-2011.pdf>

¹²⁸ 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-Eqaulity-Profile-2011.pdf>; Suheir Azzouni, "Palestine", in *Women's Rights in the Middle East and North*

<p><u>Applicable CEDAW Provision</u> Paras. 34-35 GR21 Paras. 49-53 GR29</p>	<p>Article 182 of the PSL provides that in the event a grandfather died and he had grandchildren and his son died before or with him, a bequest shall be incumbent for his grandchildren in one third of his legal estate.¹²⁹</p>				<p>Birzeit University in collaboration with Arab World for Research & Development (AWRAD) and the UNDP, (i) 38% of women surveyed did not pursue their inheritance claim (1999: 64%); (ii) 33% of women received their inheritance share automatically (men: 46%); (iv) 40% of women who had pursued their inheritance faced obstacles in doing</p>
--	--	--	--	--	---

Africa: Progress Amid Resistance, eds. Sanja Kelly and Julia Breslin (New York, NY: Freedom House; Lanham, MD: 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%20Palestinian%20Authority%20and%20Israeli%20Occupied%20Territories.pdf)

¹³⁰ 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

¹³¹ Counselling, "Palestinian Women and Inheritance", 2014, p. 65, <http://www.wclac.org/english/userfiles/Translated%20Inheritance%20Study%20English.pdf>

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-](http://iws.birzeit.edu/sites/default/files/2016-12/Family%20Law%20Survey%20FINAL%20WEB_Penny%20and%20Rema_0.pdf)

[12/Family%20Law%20Survey%20FINAL%20WEB_Penny%20and%20Rema_0.pdf](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%20(Palestinian%20Authority%20and%20Israeli%20Occupied%20Territories).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-](http://www.al-monitor.com/pulse/originals/2015/08/palestine-gaza-women-rights-inheritance-denied-charity.html)

[denied-charity.html](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>

¹²⁹ Article 182 of the Personal Status Law (1976), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

					<p>so (men: 48%), with 71% citing male relatives as the source of conflict (for men, 57% cited other male relatives as the source of conflict);¹³²</p> <ul style="list-style-type: none"> • According to a report by the Women’s Centre for Legal Aid and Counselling:¹³³ <ul style="list-style-type: none"> - 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 (<i>Thakaruj</i>) applications are filed by women
--	--	--	--	--	---

¹³² 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

¹³³ 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>

					<p>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;</p> <p>- A 2010/13 survey among women who claimed and waived their inheritance rights found that: (i) among women who claimed their inheritance, 65% were married, 25% widowed, 5% divorced and 5% were single; (ii) among women who abandoned their inheritance, 70% were married, 24% widowed, 5% divorced and 2% were single; (iii)</p>
--	--	--	--	--	---

					<p>Among women who demanded their inheritance, 40% were educated, 49% held a high school certificate or less, and 11% had a BA degree; (iv) Among women who waived their rights, 38% were uneducated compared to 54% with a high school certificate or lower, 8% with a BA degree and 1% held a MA degree; (v) Among women who claimed their inheritance, 80% were claimed against a father's estate, 11% a mother's, 8% a husband's, and 1% a brother's; (vi) Among women who abandoned their inheritance, 84% were related to a father's</p>
--	--	--	--	--	--

					<p>estate, 9% a mother's, 6% a husband's and 1% a son's.</p> <ul style="list-style-type: none"> • 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.¹³⁴ <p>Among the reasons cited for Palestinian women's deprivation of their inheritance rights include:¹³⁵</p> <ul style="list-style-type: none"> • Patriarchal nature of Palestinian society that prefers male over fe-
--	--	--	--	--	--

¹³⁴ Rachelle Kliger, Gaza Women Denied their Inheritance Rights, *Jerusalem Post*, 11 March 2010, <http://www.jpost.com/Middle-East/Gaza-Women-Denied-Inheritance-Rights-170738>

¹³⁵ 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)

					<p>males that in turn has led to:</p> <ul style="list-style-type: none"> - 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 de-
--	--	--	--	--	---

					<p>mand her inheritance share, thus inhibiting women from demanding their rights;</p> <ul style="list-style-type: none"> • Women's ignorance of their inheritances rights under the resulting from poverty, lack of education, complex legal system, etc.; • Lack of support and enforcement mechanism that facilitate women's ability to exercise their inheritance rights, including lengthy court proceedings exorbitant, court fees, etc.; and • Historical problem of land fragmentation. <p>The 2011 circular by the Chief Islamic Justice has been attributed to have caused a "remarka-</p>
--	--	--	--	--	--

					ble decrease in <i>Thakaruj</i> transactions in 2012 and 2013” and a higher percentage of women claiming their inheritance rights. ¹³⁶
<p>Violence against women in the family</p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman’s mental health which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are there support services for women who are the victims of aggression or abuses?</i></p>	<p>Article 13 of the Basic Law provides that no person shall be subject to any duress or torture.¹³⁷</p> <p>Palestine has not adopted specific legislation to criminalise acts of domestic violence.¹³⁸</p> <p>The respective Penal Codes applicable in the West Bank and the Gaza Strip contain some general prohibitions that may be applicable to domestic violence. For instance, both in the West Bank and Gaza Strip, the applicable Penal Codes criminalise murder, assault and battery as well as various forms of sexual and indecent assault.¹³⁹</p>		<p>Palestine has a strategic plan to combat violence against women in territories under the Palestinian National Authority for the period 2011-2019.¹⁴³</p> <p>Three critical steps are underway to address the issue of violence against women, including domestic violence:¹⁴⁴</p> <ul style="list-style-type: none"> • The Palestinian Civil Police has established and 	<p>Penal Procedure Law No. 3 (2001) does not guarantee the confidentiality of trials and investigations involving cases of domestic violence.¹⁴⁶</p>	<p>According to 2011 statistics released by the PCBS:¹⁴⁷</p> <ul style="list-style-type: none"> • 37% of Palestinian women who have ever been married were exposed to one form of violence by their husbands (West Bank 30%; Gaza Strip: 51%); • The majority of women suffered psychological violence by their husbands (59%), followed by eco-

¹³⁶ Women’s Center for Legal Aid and Counselling, “Palestinian Women and Inheritance”, 2014, p. 7, <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, p. 48, http://iws.birzeit.edu/sites/default/files/2016-12/Family%20Law%20Survey%20FINAL%20WEB_Penny%20and%20Rema_0.pdf

¹³⁷ Article 13 of Palestine’s Basic Law (2003), <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>

¹³⁸ OECD Development Centre, “Palestinian Authority”, *Social Institutions and Gender Index*, 2013, p. 3, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>

¹³⁹ Articles 292-293, 301-203, 306 of the Penal Code (1960), Articles 152-154, 156-159 of the Penal Code (1936), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

<p><u>Applicable CEDAW Provision</u> GRs 12 & 19 Para. 40 GR21</p>	<p>Palestinian law does not specifically criminalise marital rape:¹⁴⁰</p> <ul style="list-style-type: none"> • The West Bank Penal Code of 1960 exempts sexual intercourse with a wife from being a crime unless she is below 15;¹⁴¹ • Both the West Bank and Gaza Penal Code relieves the rapist of criminal responsibility if he marries the victim.¹⁴² 		<p>trained 11 specialised Family and Juvenile Protection Units (FJPUs) in the West Bank to receive women victims of violence and file their cases;</p> <ul style="list-style-type: none"> • The Attorney General's Office established a unit of 15 specialised public prosecutors (SPPs) to investigate and prosecute cases of violence against women; and • The General Secretariat of the Council of Ministers is in the final stages of drafting 		<p>conomic and social violence (55%), physical violence (24%) and sexual violence (12%);</p> <ul style="list-style-type: none"> • 65% of married women who were exposed to violence by their husbands preferred to stay silent and not tell anybody about it while 30% left the martial and sought refuge with their fathers, brothers or other relatives. Only 1% went to a women's organisation or center for counselling. <p>According to a me-</p>
--	--	--	---	--	---

¹⁴³ Ministry of Women's Affairs, "National Strategy to Combat Violence against Women", 2011, <http://www.unwomen.org/~media/Headquarters/Media/Stories/en/PalestinianAuthorityNationalStrategytoCombatpdf.pdf>

¹⁴⁴ Ana Lukatela, "The Path to Justice for Palestinian Women", *This Week in Palestine*, March 2016, <http://palestine.unwomen.org/en/news-and-events/stories/2016/03/path-to-justice>

¹⁴⁶ OECD Development Centre, "Palestinian Authority", *Social Institutions and Gender Index*, 2013, p. 4, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>

¹⁴⁷ Palestinian Central Bureau of Statistics, "Main Findings of Violence Survey in the Palestinian Society, 2011", *Press Release*, pp. 17-18, http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/el3onf2011_E.pdf

¹⁴⁰ OECD Development Centre, "Palestinian Authority", *Social Institutions and Gender Index*, 2013, p. 4, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>

¹⁴¹ Articles 292-294 of the Penal Code (1960), <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

¹⁴² Article 308 of the Penal Code (1960); Article 291 of the Penal Code (1936) OECD Development Centre, "Palestinian Authority", *Social Institutions and Gender Index*, 2013, p. 4, <http://www.genderindex.org/sites/default/files/datasheets/PS.pdf>

			<p>a Family Protection Act that would for the first time provide women with important legal-protection measures against violence.</p> <p>The Council of Ministers announced in 2011 that they will establish protection centers for battered women.¹⁴⁵</p>		<p>dia report, advocates have established a national referral system for victims of gender based violence.¹⁴⁸</p>
<p>Nationality rights</p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the nationality of an adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p>Applicable CEDAW Provision</p>	<p>Article 7 of the Basic Law provides that citizenship shall be regulated by law. However, no citizenship law has been adopted to date.¹⁴⁹</p> <p>There are multiple laws that govern Palestinian nationality and residence in the occupied territories.¹⁵⁰</p>				

¹⁴⁵ Council of Ministers Decision No. 9 of 2011, Concerning the Establishment of Protection Centers for Battered Women, <http://muqtafi.birzeit.edu/pg/getleg.asp?id=16309>
¹⁴⁸ Maan News, "Participants Recommend the Removal of Obstacles Facing Institution in Order to Address the Problems Facing Battered Women," Maan News, 25 September 2016, <http://www.maannews.net/Content.aspx?id=868295>
¹⁴⁹ Article 7 of Palestine's Basic Law, <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law> ; Palestine State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 146, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>
¹⁵⁰ State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 146, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; Norwegian Refugee Council, "Gaza: The Impact of Conflict on Women", 2015, p. 18, <https://www.nrc.no/globalassets/pdf/reports/gaza---the-impact-of-conflict-on-women.pdf>

<p>Article 9 Para. 6 GR21</p>	<ul style="list-style-type: none"> • West Bank: The Jordanian Nationality Law¹⁵¹ and its amendments are generally applied together with any amendments or supplementary provisions made by the relevant Palestinian authorities; • Gaza Strip: The Palestinian Citizenship Orders 1925 to 1941 (Consolidated),¹⁵² which were promulgated during the British mandate era are generally applied together with any amendments or supplementary provisions made by the relevant Palestinian authorities. <p>Under both these laws only men are allowed to pass their nationality to their spouses and children.¹⁵³ However, the Palestinian Ministry of Interior Order No. 42/2010 amended the laws to allow both fathers and mothers to transfer citizenship to their children regardless of where they are born.¹⁵⁴</p>				
-----------------------------------	---	--	--	--	--

¹⁵¹ Jordanian National Law No. 6/1954, <http://www.refworld.org/docid/3ae6b4ea13.html>

¹⁵² Palestinian Citizenship Orders 1925 to 1941 <http://www.dcaf.ch/Publications/Palestinian-Women-and-Security-A-Legal-Collection>

¹⁵³ State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 146, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>; Norwegian Refugee Council, "Gaza: The Impact of Conflict on Women", 2015, p. 18, <https://www.nrc.no/globalassets/pdf/reports/gaza---the-impact-of-conflict-on-women.pdf>

¹⁵⁴ State party report, U.N. Doc. CEDAW/C/PSE/1 (2017), para. 147, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>