

**Legislative and institutional measures to investigate, prosecute and adjudicate gender related killings of women and girls.**

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**Background information:**

**a. The role of public prosecution in Palestine**

The Palestinian Criminal Procedure Law grants the Public Prosecution a wide authority to initiate, investigate cases, prosecute offenders in the courts of law and supervise the enforcement of the judgments.<sup>2</sup>The Law gives the Public Prosecution the exclusive right of filing and conducting a penal action, except in those cases where the law provides otherwise<sup>3</sup>. Additionally it grants the Public Prosecution the responsibility of undertaking investigations and gathering the evidences for the Judicial Officers<sup>4</sup>.However the Public Prosecution faces numerous obstacles in investigating crimes, attending crime scene, arresting offenders and operating in area C which is under the full control of the Israeli military and police and any operation need prior coordination, which may take a long time.<sup>5</sup>

**b. The legal frame work- a general overview:**

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<sup>1</sup> This report covers only the West Bank

<sup>2</sup>The Palestinian Criminal Procedures Law # 3 was issued in 2001

<sup>3</sup> Article (1) of The Palestinian Criminal Procedures Law

<sup>4</sup> Article (19) of The above mentioned law

<sup>5</sup>The Oslo accord between Israel and the Palestine Liberation Organization (PLO) divided the West Bank to three areas, Area A, B and C. Area A includes the major Palestinian cities, and is under Palestinian civil and security authority. Area B comprises most Palestinian rural communities, and civil authority is under the Palestinian Authority, while security responsibilities are shared by both the Israeli and Palestinian authorities. Area C makes up approximately 62 percent of the area of the West Bank, where Israel retains authority over law enforcement and control over the building and planning sphere; The Office for Coordination of Humanitarian Affairs(OCHA), <http://unispal.un.org/UNISPAL.NSF/0/59AE27FDECB034BD85257793004D5541>

The Palestinian Declaration of Independence (1988) includes a section that implies gender equality, stating that “Governance will be based on principles of social justice, equality and non-discrimination in public rights of men or women, on grounds of race, religion, color or sex, under the aegis of a constitution which ensures the rule of law and an independent judiciary.” The declaration also asserts the commitment of the State of Palestine to “the aims and the principles of the United Nations and to the Universal Declaration of Human Rights”<sup>6</sup>.

The Palestinian Basic Law includes articles that convey equality, human rights and personal freedom. Article (9) states that "all Palestinians are equal under the law and judiciary, without discrimination on the basis of race, sex, color, religion, political views, or disability". Article (11) of the Basic Law, states that "personal freedom is a natural right, and shall be guaranteed and protected". Article (10) asserts the Palestinian Authority's commitment to regional and international deceleration and treaties. In April 2014 the Palestinian President- in accordance with general assembly recognition of Palestine as an observer state in the United Nations in 2012- signed a request to join 15 international bodies and conventions including CEDAW.

The Declaration of Principles on Palestinian Women`s Rights, issued in Jerusalem in 1993 following the establishment of the Palestinian National Authority (PNA) and signed by the former president of the PNA Yasser Arafat, emphasized the need to establish equality between men and women and take the necessary measures to implement this, including the need to amend existing legislations. The Declaration was issued by the Public Union of Palestinian Women and other women's organizations and aimed at protecting the rights of Palestinian women from discrimination. The declaration included a number of rights that reflects women`s demands particularly in the fields of political, civil, economic, social and cultural rights. It also focused on a number of health related rights and the legal eligibility of Palestinian Women. Let alone, their demands concerning the Personal Status Laws.<sup>7</sup>

Despite those guarantees, studies conducted on the field of gender and law in Palestine affirmed that the laws applied in West Bank and Gaza are not unified and does not reflect those principles<sup>8</sup>. Laws in Palestine, particularly the Jordanian Penal Code of 1960, applied in the West Bank, remain one of the

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<sup>6</sup>The Palestinian Declaration of Independence, The Palestinian National Council, Algeria, The website of the Palestinian National Information Center, Wafa, <http://www.wafainfo.ps/atemplate.aspx?id=3741>

<sup>7</sup> Declaration of Women`s rights, Institute of Law, Birzeit University ,2006, Birzeit, Palestine

<sup>8</sup> See for example UNDP Report 2011, A review of Palestinian Legislation from a Women`s Rights Perspective, <http://www.undp.ps/en/newsroom/publications/pdf/other/womenrreview.pdf>

main obstacles faced by the Public Prosecution and the judiciary to prosecute cases of gender based violence and hold offenders accountable.

In May 2011, President Mahmoud Abbas signed a Presidential Decree that annulled **Article (340) of the Jordanian Penal Code for 1960** which addressed the exempting and mitigating excuses should the husband surprises his wife or one of his female decedents or ancestors or sisters in the act of adultery or in illegitimate bed, the Article stipulates:

1. A husband who surprises his wife or a close female relative in the act of adultery with another person, and kills, injures or harms either of them, or both, shall benefit from an “exemption excuse”.
2. The perpetrator of a killing or an injury shall benefit from a “mitigating excuse” if he surprises a spouse, ascendant, descendent, or sibling with another person in an unlawful bed.<sup>9</sup>

Based on the public prosecutions’ experience litigating gender based killing cases at courts and based on studies led in this field in the West Bank, those changes will not have significant impacts in the actual practices at courts, as many reduced sentences in gender based killing cases are not issued referring to Article (340) but are issued in reference to Articles which gives discretion to judges to reduce sentences as they wish (**Article 79, 98, 99 and 100 of the Jordanian Penal Code 1960**). As a result reduced sentences are issued which do not serve general and private deterrence<sup>10</sup>.

Article (98) of the penal code states that “ Whoever commits a crime while in a state of rage which is the result of an unjustifiable and dangerous act committed by the victim, benefits from a mitigating excuse”. However, the actual practices at courts indicate that such provisions are applied in cases where the accused claims that his “honor” has been assailed.

One of the most important developments that took place during the writing of this report was that President Mahmoud Abbas issued a Presidential Decree on 11<sup>th</sup> May 2014 amending Article (98) of the Penal Law where the decree adds the following provision to this Article “The Perpetrator shall not benefit from mitigating excuse should the act be taken against a female under honor grounds”.

However, actual practices shows that in most gender based killing cases the court uses “relinquishing personal rights” as a reason for “mitigating circumstances” when deciding the penalty in reference to

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<sup>9</sup> See [http://muqtafi.birzeit.edu/Legislation/getLegPart.aspx?pid=A06581\\_2#A06581\\_2](http://muqtafi.birzeit.edu/Legislation/getLegPart.aspx?pid=A06581_2#A06581_2)  
(Arabic- my translation)

<sup>10</sup> See also the study of WCLAC “Analyzing Court Decisions in Gender Based Murders”, 2011, Ramallah, Palestine

Article (99) of the Penal Code. Article (99) gives the judge the discretion to reduce sentences in all cases using “mitigating circumstances”. “Relinquishing personal rights” falls under the discretion of the Judge which should be, according to Article (100) of the Penal Code, well-reasoned when mitigating and/or aggravating the sentence.

The indictment presented to court by public prosecutors on gender based killing cases, including on the ground of the so called “honor”, are “intentional” murder in reference to Article (326) or “premeditation” murder in reference to Article (328)<sup>11</sup>, however reduced sentences are issued by court in reference to Articles (79-100) of the Penal Code. Even when the court affirms the legal characterization presented by the prosecution (murder in reference to Article (326) or Article (328), the court applies Article (99) where the sentence is reduced from Life imprisonment with hard labor (in “premeditation” murder cases according to Article (328)) to become temporary hard labor from five years to fifteen years imprisonment, and the court rules the minimum sentence of five years. The court applies Paragraph 3 of Article (99) which stipulates that each penalty is reduced by half, where the sentence for “intentional” murder is reduced from fifteen years (according to Article (326)) to seven years and a half.<sup>12</sup>

The Public Prosecution do appeal court decisions which gives reduced sentences in reference to Article (99), however both the Court of Appeal and the Court of Cassation rejects the Public Prosecution appeals and affirms these decisions and sentences. It is important to note that there is a legal stability of judicial decisions in the Court of Cassation regarding gender based killing cases, as the court affirms that “relinquishing personal rights” falls under the discretion of the judge as a ground for “mitigating circumstances”. The decisions of the Cassation Court in gender based killing cases compose one of the main challenges that face public prosecutors when litigating those cases at the different levels of court<sup>13</sup>.

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<sup>11</sup> According to Article (326) of the Jordanian Penal Code, anyone who kills a person ‘willfully’ (Arabic: “qasdan,” meaning “intentionally, purposefully, advisedly”) is punished with 15 years of hard labor. According to Article (328), anyone who kills a person with premeditation (Arabic: “al-israr al-sabq” meaning “premeditated persistence, perseverance, insistence”) is punished with death sentence.

<sup>12</sup> Article (99): “If mitigating factors existed in a case the court shall rule as follows:

1. Life imprisonment with hard labor or ten to twenty years of temporary imprisonment instead of the death penalty.
2. Temporary imprisonment for no less than eight years instead of life imprisonment with hard labor, temporary detention for a period no less than eight years and instead of life detention.
3. The court has the power to reduce any other criminal sentence by half.
4. Except in case of repetition, the court may also reduce any penalty that has a minimum limit of three years imprisonment to a sentence of at least one year imprisonment.”

<sup>13</sup> Litigation before court of first instance as “a first level court” whose decisions are appealed before Court of Appeal as both “a court of subject matter and a second level court”. The decisions are challenged before the Cassation Court as a Court of Law.

### **Number of women murder cases received by the Public Prosecution in 2013 and 2014<sup>14</sup>:**

In 2013, 12 cases<sup>15</sup> of murder were received by the Public Prosecution where the victim was a woman<sup>16</sup>. In 2014 (until 22<sup>nd</sup> May 2014) the Public Prosecution received 7 murder cases where the victim was a woman<sup>17</sup>. The motive behind these murders was either to commit other crimes (such as robbery in two of the cases received in 2013 or rape in one of the cases received in 2014), or revenge killing in one of the cases received in 2013, manslaughter in one of the cases received in 2013, or on “honor” grounds as the accused themselves claimed (but the prosecution did not accept these claims). The murderer is yet to be identified in one of the cases received in 2013.

### **Best Practices in investigating and prosecuting gender based killing cases:**

Here are few examples of best practices in investigating and prosecuting gender based killing by the Palestinian Public Prosecution:

1. The prosecution appeals more than 90% of first instance court and appeal court decisions on gender based killing cases in accordance with legal procedures, mostly in the two following cases:
  - a. When the court changes the legal characterization of the charges based on Article (98) of the Penal Law but fails to establish that the act was committed in a "state of rage".
  - b. When the court gives reduced sentences to perpetrators based on “relinquishing personal rights” or any other “mitigating excuses” which is not well reasoned or supported. In those cases the prosecution argues that the decision regarding the sentence is not legal as the application of “relinquishing personal rights” based on the request of victim’s family, dismisses the victim’s rights because there is a conflict of interest between the victim and her family.

According to the guidelines issued by the Attorney General (AG) in 2009, the AG should be informed of all the court decisions on serious cases including murder cases, and those decisions should be appealed if needed in accordance with legal procedures.

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<sup>14</sup> These numbers don’t include suicide cases.

<sup>15</sup> One murder victim was killed along with her four year old son and five year old daughter by her husband’s brother. Investigations revealed that the motive behind the crime was a theft.

<sup>16</sup> Initial statistics issued by WCLAC show that there were fifteen incidents of murder where the victim was a woman during 2013, four of these cases weren’t documented in the cases mentioned in this report since two of them were followed up by the Israeli Police while the Public Prosecution investigations showed that one was a suicide and another was death from a disease.

<sup>17</sup> Initial statistics issued by WCLAC show that there were eight incidents of murder where the victim was a woman during 2014, two of these cases weren’t documented in the cases mentioned in this report since two of them were followed up by the Israeli Police while the Public Prosecution investigations showed that another two cases of the eight were suicide.

2. The prosecution does expand in investigating suicide cases or death under suspicious circumstances. Many of investigations of the suicide or death under suspicious circumstances cases revealed that those cases were murders. In certain instances and when new evidences are revealed, the investigations were reopened and in certain instances, the prosecution ordered for exhumation for further investigations to reveal the truth especially when the death was initially considered of natural reasons without any criminal suspicions, or when a body is buried without burial clearance. For example, the Attorney General issued instructions for the exhumation of an elderly woman from Mazare' al-Nobani in April 2014, the body was then referred to the forensic institute to identify the immediate reason of the death through a judicial medical report after new evidence was revealed while investigating another criminal case, especially since the victim was buried by the family without informing the Public Prosecution or the police<sup>18</sup>. Autopsy showed that the death was due to criminal reasons. Another similar instructions from the Attorney General was the exhumation of a woman from Al-Samou' village in Hebron district in 2012, she was buried after her father obtained a report from a doctor saying that the death was because of epilepsy, after the exhumation of the body and autopsy, the death turned out to be of criminal reasons.

3. The Attorney General proceeds with investigations himself in special cases and cases of public interest and he directly supervises all the investigation procedures.

### **Legislative and institutional measures to investigate, prosecute and adjudicate gender related killings of women and girls.**

#### **Legislative measures:**

In last five years two main legal initiatives took place to enact new laws that provide greater protection for women victims of violence and hold perpetrators of such crimes accountable, national commissions were formed to draft special legislations and the following two draft legislations were submitted to the Council of Ministers for ratification<sup>19</sup>, when enacted, the new draft legislations will have a positive implication for the protection of women victims of violence and holding perpetrators accountable;

1. The Penal Code Draft Law, which guarantees a greater protection of women victims of violence and that perpetrators are held accountable including in gender based killings cases.

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<sup>18</sup><http://pgp.ps/ar/NC/LN/Pages/النياية-العامة-تأمر-بإستخراج-جثة-المواطنة-فاطمة-مصفر.aspx>

<sup>19</sup> Draft law proposals can be enact by a presidential decree (meaning - decision by law), due to the fact that the Palestinian Legislative Council has been unable to meet and govern since 2007. However, the need to pass laws by a presidential decree (decision by law) is contested and had caused delays in enacting such law proposals

2. The Protecting Family from Violence Draft Law which introduces new mechanisms that provide greater protection to women victims of domestic violence

It is important to note that the draft law had not been ratified and they remain in draft form and are open for discussion.

Additionally, prosecutors received trainings on the National Referral System for women victims of violence which was ratified by the Council of Minister in Dec 2013. Despite not having a clear role for the Public Prosecution in the procedures of the National Referral System, the Public Prosecution is working on adopting it through developing special referral procedures for the Public Prosecution in accordance with the National Referral System.

The Public Prosecution Services played an active role in enhancing the protection of women in the national legislative initiatives by actively participating in the following legislative initiatives and taking part in drafting laws<sup>20</sup>:

- a. The Public Prosecution Services is a member of the National Commission of the Penal Code Draft Law and it took part in the drafting process of the Penal Code Draft Law. The commission is composed, in addition to the Attorney General Office, of representatives of the Ministry of Women Affairs, the Ministry of Justice and women's and human rights organizations.
- b. The Public Prosecution Services is a member of the National Commission that drafted the Protecting Family from Violence Draft Law and took part in the drafting process of the new draft law. The commission is composed, in addition to the Attorney General Office, of representatives of the Ministry of Women Affairs (MoWA), the Ministry of Justice (MoJ), the Ministry of Social Affairs (MoSA) and women's and human rights organizations.

### **National Plans and Policies:**

In January 2011, the Palestinian Authority (PA) passed a National Strategy to Combat Violence against Women for the period 2011-2019. The strategy aims at enhancing social and legal protection for women victims of violence and at enhancing prevention mechanisms and legal reforms to end violence against women.

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The public prosecution service participated in the discussion groups that reviewed the strategy and is currently a member of the three committees that resulted from the national strategy; the Security Committee, the Social Protection Committee and the Legislation Committee.

**Institutional measures:**

1. In Nov 2012 the Attorney General Office approved a gender work plan for 2013-2014 “Integrating Gender in the Work of the Public Prosecution Services”. The plan aims at enhancing the role of Public Prosecution in protecting the rights of Palestinian men and women, in particular, women victims of violence and hold perpetrators accountable. The work plan adopted key recommendations of the national strategy to combat violence against women (detailed below).
2. The Public Prosecution Services implemented a series of specialized trainings on gender aimed at enhancing the capacity of the public prosecutors in investigating and prosecuting cases of violence against women including gender based killing.
3. In Nov 2013, the Public Prosecution Services signed a Memorandum of Understanding (MoU) with the Ministry of Women Affairs that included assigning specialized public prosecutors to work on issues of violence against women in district offices. As a result, the Attorney General assigned specialized prosecutors to investigate and litigate domestic violence and violence against women and children cases in all district offices in the West Bank, emphasizing the sensitivity of such cases, as well as the need for confidentiality when dealing with such cases and acceleration in processing them.
4. The Public Prosecution Services developed specific measures that should be taken into consideration when designing and constructing the new public prosecution buildings. The measures aimed at ensuring that the physical infrastructure of public prosecution buildings meet the needs of women, especially when accompanied by their children, and guarantee the protection of their human dignity and enhance the need for confidentiality. These measures were implemented in the new Public Prosecution building in Bethlehem and Toulkarem, and will be implemented in the upcoming year in other cities in the West Bank.
5. The Attorney General Office (AGO) is currently working on developing gender segregated data on violence against women (VAW) cases received by the Public Prosecution and on the cases prosecuted. We are hoping this data will help governmental and nongovernmental organization in forming meaningful policies and strategies to combat violence against women including gender based killings.



## Recommendations:

- There is need for holistic approach among the justice sector institutions, MoWA and MoSA and civil society groups to work on preventing violence against women, provide legal and social protection to women victims and hold perpetrators accountable.
- As a result of the shortcomings existing in the 1960's Jordanian Penal Code applied in the West Bank and the increasing number of crimes, a very up to date Penal Law is needed. This requires the introduction of a new penal code or amending the provisions of the existing penal code until a new penal code is in place.
- There is a need to immediately pass the new draft law of "Protecting Family from Violence" which is currently at the agenda of the Council of Ministers. The Draft law guarantees a greater protection to women victims of domestic violence.<sup>21</sup>
- There is a need to enhance the capacity of legal professionals (including lawyers and public prosecutors) in the area of constitutional tools as those are related to convicting gender based killings.
- There is a need to work toward the development of specialized judiciary and Family Courts along the line to what has been done in the Public Prosecution and the Police.
- "Relinquishing Personal Rights" by the family of the victim should never be taken into consideration in cases involving gender based killings due to the conflict of interests between the victim and her family.
- There is a need to develop a national mechanism of "serious cases reviews" that would look at shortfalls and lessons learned on key gender based killing cases and present lessons learned and recommendations for improvement.

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