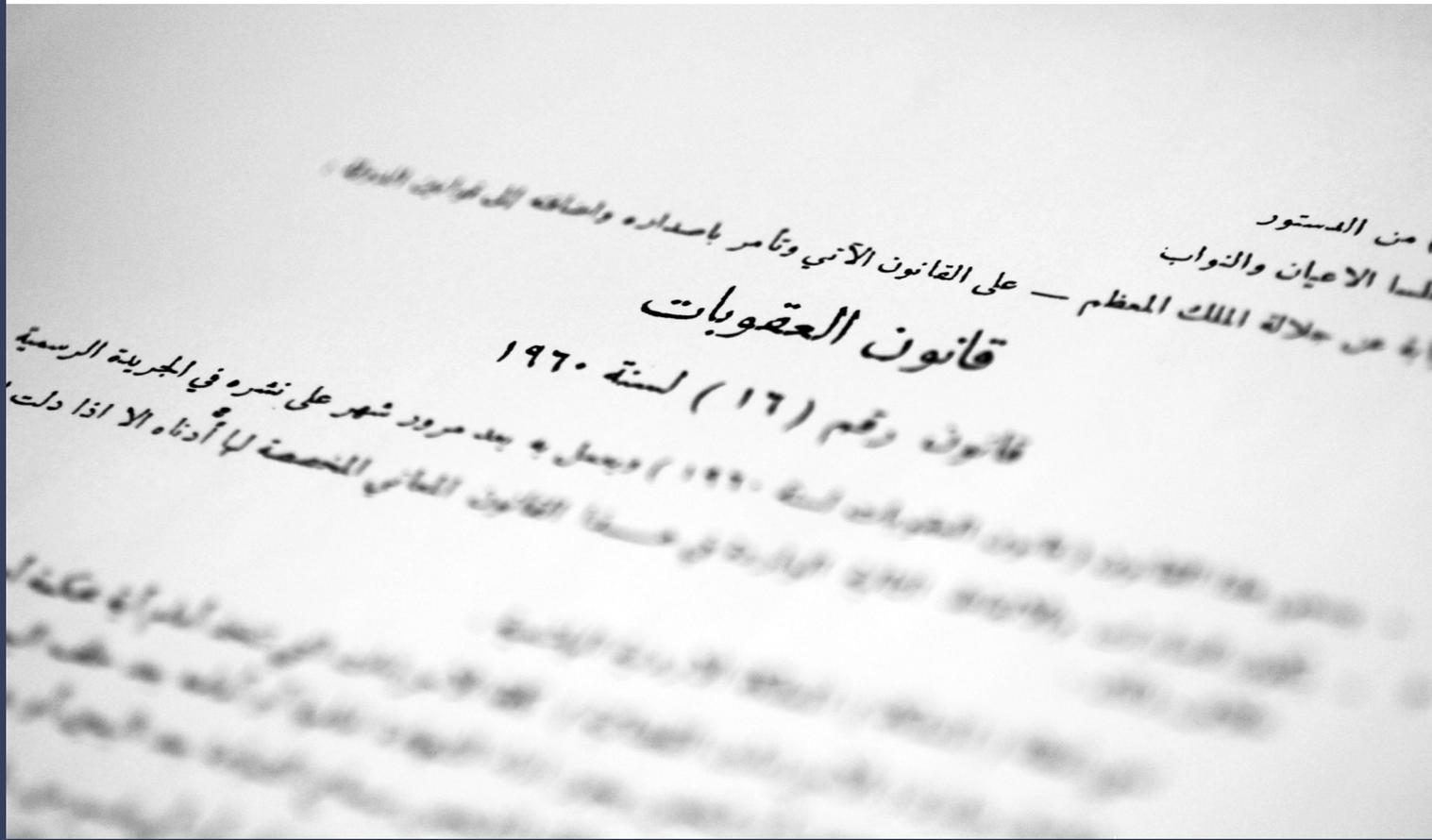


# Palestinian Women and Penal Law

## Policy Brief

Ramallah and Geneva, May 2012



## **Women's Centre for Legal Aid and Counselling (WCLAC)**

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## **The Geneva Centre for the Democratic Control of Armed Forces (DCAF)**

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## **Disclaimer**

The views expressed in this paper are those of participants and do not necessarily reflect those of DCAF and WCLAC.

## **Note**

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# Palestinian Women and Penal Law

## Problem Statement

The current legal framework in the occupied Palestinian territory is a mixture of Jordanian, Egyptian, Palestinian, Ottoman and British laws, as well as Israeli military orders, many of which were inherited from the colonial period. Furthermore, different laws apply to the West Bank and the Gaza Strip. This lack of a unified legal framework is the root of many inconsistencies and gaps in the current legislation. This is also the case for penal law.

Many Palestinians believe that the applicable penal laws in the occupied Palestinian territory do not provide sufficient protection to women and girls, especially in cases of gender-based violence. In their view, the problem stems from outdated laws that fail to take into account the needs and rights of Palestinian women and girls. These needs and rights have been acknowledged in more recent laws and decisions of the Palestinian National Authority (PNA), such as the endorsement of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) by President Mahmoud Abbas in 2009. However, the gaps and contradictions in the current penal legislation constitute an obstacle to the administration of justice, and to the principle of equality before the law, which is enshrined in the Palestinian Basic Law.

## Response

In May 2011, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Women's Centre for Legal Aid and Counselling (WCLAC) decided to gather a taskforce of experts to examine the current legislation affecting women's security and to submit recommendations to decision-makers in the Palestinian National Authority (PNA) and Palestinian Legislative Council (PLC). Taskforce meetings gathered legal experts from PNA Ministries, the PLC, the police, civil society and academia.

The present policy brief summarises the recommendations made by participants in the fourth Taskforce meeting held on 9 June 2011 under the title 'Palestinian Women and Penal Law'. This meeting gathered representatives of the Human Rights Law Clinic at Al Quds University, the Supreme Judicial Council, Al-Haq, the Palestinian Independent Commission for Human Rights, the Mehwar shelter, the Shari'a Courts, and academia. A list of laws examined during the meeting is provided at the end of the present paper<sup>1</sup>.

Although most Taskforce members agreed on the need to provide more substantial protection to women and girls, they suggested different solutions to that effect. The views expressed in this paper do not necessarily reflect the position of DCAF and WCLAC, who only facilitated Taskforce meetings, and did not act as advisors.

## Main Findings

Taskforce members have highlighted the gaps and contradictions in the current penal laws. Many of them have also noted the contrast between old laws that do not provide women and girls with protection against violence, and more progressive decisions recently taken by the PNA. Contradictions exist not only between international standards and Palestinian legislation, but also within Palestinian laws.

<sup>1</sup> This policy brief part of a series of three policy briefs and a working paper published by WCLAC and DCAF to present the findings and recommendations of the taskforce. The other two policy briefs focus on women and economic security, and women and personal status law, respectively. For more details about the process and a full list of taskforce members, please see the WCLAC-DCAF working paper, *Palestinian Women and Security: Promoting the Rights of Palestinian Women and Girls through Legislation*, available at: <http://www.dcaf.ch/Publications/Working-Paper-Palestinian-Women-and-Security-Promoting-the-Rights-of-Palestinian-Women-and-Girls-through-Legislation>

### *Contradictions in the legal framework*

Taskforce members mentioned that the Jordanian Penal Code No. 16 of 1960, applicable in the West Bank, and the British Penal Code No. 47 of 1936, applicable in the Gaza Strip, both contradict the most recent decisions of the Palestinian National Authority (PNA), as well as international agreements endorsed by the PNA, such as the Council of Ministers Resolution to Improve the Protection of Women Subjected to Violence (2005), and the Presidential Decree ratifying CEDAW in 2009. In addition, both the Jordanian and the 1936 penal codes contain articles providing mitigating circumstances to perpetrators of violent acts against women, which is at odds with the PNA's Strategic Plan for Combating Violence Against Women.

Three main points were made regarding articles in the currently applicable 1960 and 1936 penal codes:

- Some articles can be used to provide mitigating circumstances to murder in the name of “honour”;
- The treatment of rape in these two penal codes allows rapists to escape punishment if they agree to marrying their victim;
- The most problematic articles in both penal codes have only been suspended, and not repealed.

On 15 May 2011, a presidential decree suspended Article 340 of the Jordanian Penal Code and Article 18 of the 1936 Penal Code. These articles stipulate that perpetrators of murder in the name of “honour” can obtain a reduced sentence based on a set of mitigating circumstances. While the suspension of these two articles is a positive step towards gender justice, the 2011 presidential decree did not suspend other articles of the same laws that also provide mitigating circumstances for murder in the name of honour. This is the case of Article 62 of the 1960 Jordanian Penal Code related to “disciplining children”. It allows Palestinian courts to rule in favour of a father who kills his child based on the notion of “local customs”. Mitigating circumstances are also provided by Article 98 of the same Penal Code, which grants reduced sentences to perpetrators of murder in the name of “honour” found unable to “control their anger”.

Taskforce members pointed out that both the 1960 Penal Code and the 1936 Penal Code are inconsistent with the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was endorsed by President Mahmoud Abbas in 2009.<sup>2</sup> Indeed, some articles of the 1960 and 1936 penal codes provide mitigating circumstances to murder in the name of honour. In addition, Article 308 of the Jordanian Penal Code makes it possible for rapists to escape punishment if they marry their victim and stay married for a minimum period of three years (if the crime committed is considered a misdemeanour) or five years (for a felony). In case of a divorce between the perpetrator and the victim “without legitimate reason” before the end of the period stipulated in the law (three or five years), the legal proceedings shall continue and the perpetrator shall be sentenced.

Taskforce members also noted that Article 340 of the 1960 Penal Code and Article 18 of the 1936 Penal Code were not repealed, but only suspended by a presidential decree, which means they could be reinstated in the future.

### *Legislative gaps*

According to many Taskforce members, the current penal codes applicable in the West Bank and Gaza would need to be thoroughly revised in order to offer substantial protection to Palestinian women and girls. For instance, Taskforce participants underlined that the current legislation does not protect women against spousal rape, sexual harassment and verbal violence. The 1960 Jordanian Penal Code does not classify incest as a type of sexual assault and considers both the victim and perpetrator as offenders. In addition, some Taskforce members noted that psychological (harassment) and verbal violence are not currently criminalised.

Participants also noted that the Law of Penal Procedure No. 3 of 2001 fails to take into consideration the specific needs of women during trials and investigations. In particular, this law does not guarantee the confidentiality of trials and investigations involving cases of domestic violence. Article 47 of this law provides that only females

<sup>2</sup> See Office of the United Nations High Commissioner for Human Rights, Convention on the Elimination of all Forms of Discrimination against Women: <http://www2.ohchr.org/english/law/cedaw.htm>. Article 1 of CEDAW defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” Article 15 of the Convention explicitly states that “States Parties shall accord to women equality with men before the law.”

can perform body searches on women and girls. However, the legislator did not make this point in other articles related to body search.

### *Women: unequal treatment before the law*

Taskforce Members also mentioned that some articles of the two applicable penal codes discriminate against women by punishing them more severely than men for the same offences. For instance, Article 282 of the 1960 Jordanian Penal Code stipulates that a woman who commits adultery should be sentenced from six months to two years in prison; whereas Article 283 of the same law stipulates that a man who does the same should be sentenced from one month to a year in prison.

## **Recommendations from the Taskforce**

Based on the gaps and contradictions in the current penal law they identified, Taskforce members recommend the following to PNA and PLC decision-makers:

### *Enact a new Penal Code*

To draft and endorse a gender-sensitive Penal Code in order to ensure that:

- Articles 97, 98, 99, 100 of the 1960 Penal Code cannot be used to provide mitigating circumstances to crimes committed in the name of “honour”;
- Article 308 of the 1960 Jordanian Penal Code, which makes it possible for rapists to escape punishment by marrying their victim, is repealed;
- Article 340 of the 1960 Penal Code and Article 18 of the 1936 Penal Code, which provide mitigating circumstances to perpetrators of murder in so called “honour crimes”, are repealed;
- Persons convicted of a crime involving violence against women are sentenced to prison without the possibility of parole;
- Incest is classified as a type of sexual assault, regardless of the circumstances, and the notion of consent is not applicable to incest;
- Criminalise sexual harassment in the private, public and professional spheres; and
- Criminalise verbal violence.

### *Amend the Law of Penal Procedure No. 3 of 2001*

To amend the Law of Penal Procedure to enhance the protection of women and girls against violence during law enforcement operations, notably by:

- Amending Article 6 in order for the Public Prosecution to be able to press charges on behalf of the victim of a crime, without having to rely on a complaint from the victim or one of her/ his relatives;
- Amending Article 99 to guarantee that only female staff perform physical examinations on women;
- Amending Article 100 to guarantee that women victims of violence have access to female medical staff; and
- Adding articles guaranteeing the confidentiality of trials and investigations dealing with cases of violence against women, with particular attention to minors.

## **Recommendations from WCLAC and DCAF**

Based on the review of existing legislation as well as recommendations of the Taskforce, WCLAC and DCAF recommend to PNA and PLC decision makers as well as human rights organisations to promote gender-sensitive legal reform. This should include the following elements:

- Support the establishment of a working group of PLC members and civil servants working in parliamentary committees as well as representatives of the Council of Ministers to examine the laws affecting women’s security and propose amendments to guarantee that women’s specific needs are taken into account;
- Raise Palestinian citizens’ awareness of gender-sensitive legal reforms; and
- Encourage donor support to the PNA and PLC in enacting gender-sensitive legal reform.

## **Laws and resolutions examined by the Taskforce in relation to Palestinian women and penal law:**

### 1. Basic Law

Amended Basic Law of 2003 (Article 10, Paragraph 2)

### 2. Laws

- Jordanian Penal Code No. 16 of 1960 (Articles 97, 98, 99, 340 and 285)
- Penal Code No. 47 of 1936 (Articles 18 and 155)
- Palestinian Law of Penal Procedure No. 3 of 2001 (from Article 55 onwards)

### 3. Resolutions

Presidential Decree of 15 May 2011 that suspends Article 340 of the 1960 Jordanian Penal Code and Article 18 of the 1936 Penal Code

### 4. Bills

Draft Penal Code of 2011



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