



OCCUPIED PALESTINIAN TERRITORIES

# A Question of Security

Violence against Palestinian Women and Girls

HUMAN  
RIGHTS  
WATCH



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## Violence against Palestinian Women and Girls

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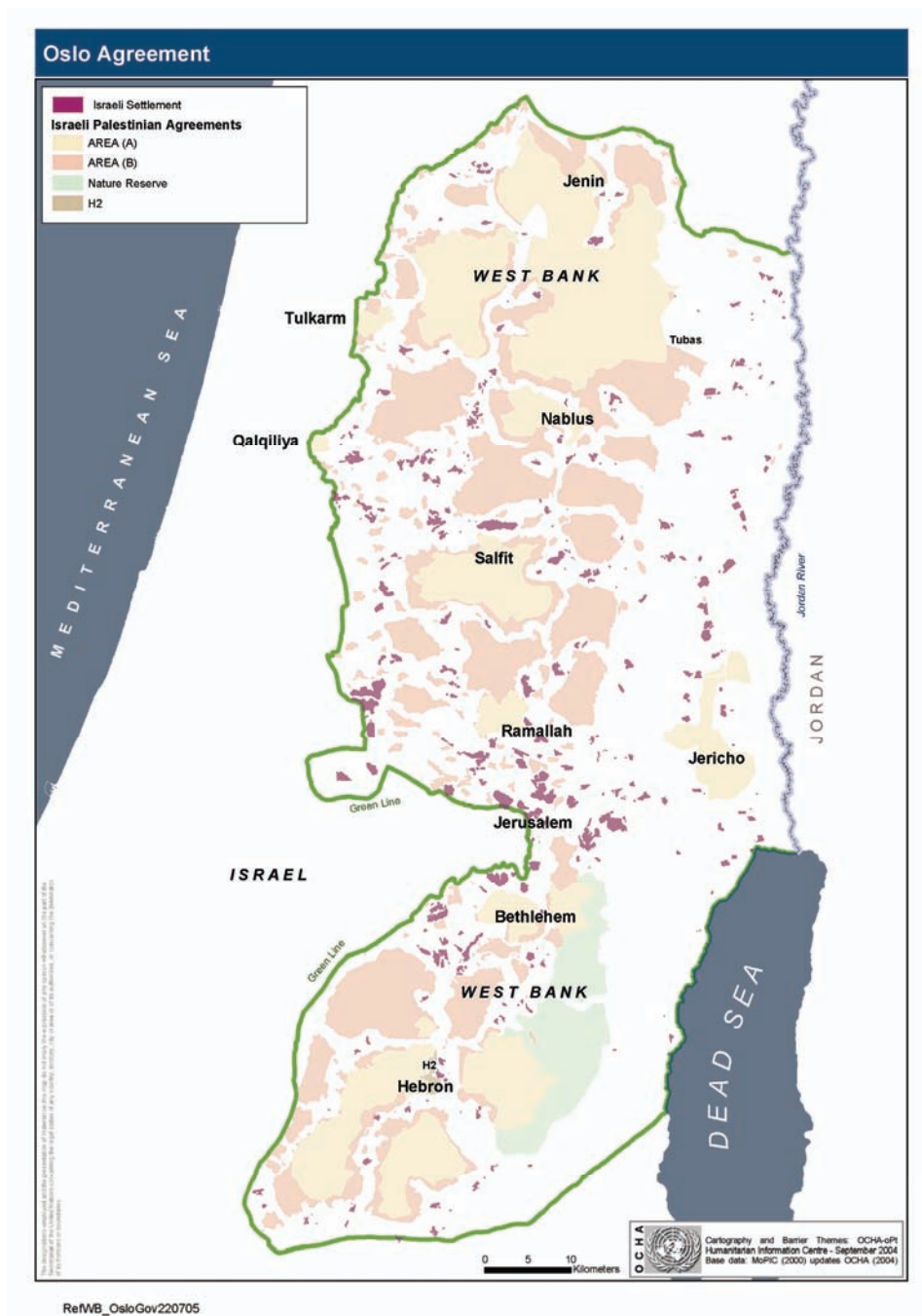
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# MAP 1



Geographic areas of the West Bank under the Oslo Agreement © 2005 OCHA-OPT

## MAP 2



West Bank and Gaza districts © 2005 OCHA-OPT



## I. Summary

A significant number of women and girls in the Occupied Palestinian Territories (OPT) are victims of violence perpetrated by family members and intimate partners. While there is increasing recognition of the problem and some Palestinian Authority (PA) officials have indicated their support for a more forceful response, little action has been taken to seriously address these abuses. Indeed, there is some evidence the level of violence is getting worse while the remedies available to victims are being further eroded.

Defenders of the status quo on this issue typically justify the PA's failure to take more decisive action by highlighting the many critical political, economic, and security matters facing the PA, a situation only exacerbated by events following the electoral victory of Hamas in January 2006. While it is true that Israeli actions since the outbreak of the current *intifada* in September 2000—including attacks on PA institutions and security services, and Israel's current refusal to remit tax revenues, among others—have significantly weakened PA capabilities, this is no excuse for inaction. There is much that PA officials could be but are not doing to end violence against women inside the family. This report offers concrete suggestions for change, some of which are highlighted in the key recommendations listed at the end of this section.

There is little comprehensive data on violence against women and girls in the OPT, but the basic contours of the problem are clear. Various studies and statistics gathered by the Palestinian Central Bureau of Statistics (PCBS) and Palestinian women's groups record high levels of violence perpetrated by family members and intimate partners, aggravated during times of political violence. Information obtained from social workers, academics, and police officials on the prevalence of domestic violence, incest, and actual or threatened "honor" crimes, also indicate that reported rates do not reflect the full extent of such violence. In preparing this report, Human Rights Watch spoke to dozens of women victims of violence in the OPT and their accounts confirm the seriousness and scope of the problem, on issues ranging from spousal and child abuse to rape, incest, and "honor" crimes.

Because it is already well established that violence against women and girls inside the family is a serious problem in the OPT, a primary objective of our research was to assess why this state of affairs is allowed to persist and examine the reasons for the PA's continuing failure to respond effectively to such violence. To that end, researchers also spoke to dozens of Palestinian government officials—including police officers, prison officials, civil and family court judges, public prosecutors, municipal governors, representatives of the ministries of health, justice and social affairs, and the former head of a Palestinian forensic institute—and nearly fifty lawyers, social workers, doctors, women's rights activists and non-governmental organization (NGO) staff, and UN agency personnel.

Based on these interviews and the other research described below, we found that two primary obstacles stand in the way of enhanced protection against domestic violence for Palestinian women and girls: discriminatory laws that condone and perpetuate such violence and the virtual absence of institutionalized policies to prevent violence, assist victims, and hold perpetrators accountable.

Jordanian and Egyptian criminal laws in force in the West Bank and Gaza, respectively, do not effectively prohibit or appropriately punish violence against women and girls. These laws include provisions that provide a reduction in penalty to men who kill or attack female relatives committing adultery; relieve rapists who agree to marry their victims from any criminal prosecution; and allow only male relatives to file incest charges on behalf of minors. Government and nongovernmental efforts aimed at overturning these inherited laws and developing unified Palestinian family and penal codes have been hindered by lawmakers' divisions over critical reforms and the slow pace of passing new legislation during the six years of *intifada*. The result is virtual impunity for perpetrators of domestic violence and continued obstacles in the way of victims who might otherwise report abuse.

Palestinian police officers lack specialized expertise to handle family violence complaints with the level of sensitivity and professionalism required of law enforcement personnel and often turn to informal measures rather than serious investigations and remedies. Human Rights Watch interviewed Palestinian police

officers, including chiefs of police, who downplayed the severity of violence against women in the OPT and questioned the need for their involvement in the dissemination of potentially life-saving information to victims. As one police officer put it, “It’s hard for us to advertise. We will look like we’re encouraging women to go to the police. It is the role of the Ministry of Social Affairs and the women’s organizations to say that violence against women is a crime.” Several Palestinian police officers also exhibited biased attitudes towards female victims of violence, did not believe victims who reported abuse, and were inclined to view sexual violence within the family as largely consensual.

The Ministry of Health has no medical procedures or protocols to guide medical professionals or ministry staff in their treatment of domestic violence cases. As a result, doctors lack specialized training and guidance on how to treat victims of violence, preserve evidence of the abuse, and maintain confidentiality. Palestinian social workers reported a number of cases of doctors disclosing without consent confidential patient information, putting the lives of victims of violence further at risk.

The protective mechanisms established or overseen by the PA to shelter victims of violence are also insufficient and often inaccessible. At the time of Human Rights Watch’s visit to the OPT, there were only two shelters for victims of violence in the OPT, one for adults and the other for girls. Local women’s NGOs criticized the adult shelter for lengthy and restrictive entry procedures imposed by the Ministry of Social Affairs that sometimes stand in the way of victims seeking urgent protection. However, plans were in place to open three additional shelters: one for girls, one emergency short-term facility, and one for women with children. At this writing, women’s NGOs told us that the emergency shelter was up and running, the family shelter was nearing completion and the girls’ shelter was ready but lacked governmental funding. In Gaza, there are no shelters for victims of violence, resulting in a serious vacuum in protection. However, local women’s rights activists were concerned that a shelter in Gaza would be hard to keep secret and thus secure.

Palestinian women and girls who report abuse to the authorities find themselves confronting a system that prioritizes the reputations of their families in the community over their own well-being and lives. Accordingly, police officers and clan



leaders regularly “mediate” and “resolve” these cases, typically by returning the abused women to the “care and protection” of her attacker, without ever referring the case to the courts or the woman to social or other services she might need. Essentially, victims of physical and sexual violence pay the price for the abuse they suffer, while the perpetrators usually get off scot-free. Few cases of sexual violence are ever prosecuted in the West Bank and Gaza. According to the PCBS, in 2004 the PA courts reportedly convicted only one person of rape in Gaza and convicted no one in the West Bank. These numbers are not consistent with reported levels of rape in the OPT.

Human Rights Watch acknowledges the severe constraints that the Israeli occupation imposes upon the PA. Israeli army attacks, checkpoints, and closures have wreaked tremendous physical and functional damage on the criminal justice system during the second *intifada*. As a result, the PA has a limited sphere in which it is able effectively to exercise governmental authority. Since the swearing in of a Hamas-led government in March 2006, Israel has severed all diplomatic ties with the PA, suspended the handover of tax revenues on which the PA monthly budget depends, repeatedly closed border crossings between Gaza and Israel, and detained a number of PA ministers, legislators, and other Hamas government officials. Many international donors have also cut all direct funding to the PA and the U.S. has severed all diplomatic contact with Hamas-affiliated officials.

Notwithstanding these limitations, the PA holds ultimate responsibility for protecting victims and holding perpetrators accountable. Human Rights Watch’s research in the OPT confirmed that the PA has failed to undertake many practical and achievable initiatives such as adequately surveying the rate of violence against women, setting up government-run hotlines and additional shelters, providing basic guidelines to police and service providers on how to handle gender-based violence complaints they receive, and initiating public education efforts aimed at reducing violence against women. Many Palestinian officials, holding office both before and after the January 2006 elections, appear to view security only within the context of the occupation, all but ignoring the very real security issues faced by women in their homes. In doing so, the PA is failing to act diligently to prevent, investigate, and punish violence against women, putting women’s health and lives in jeopardy.

Ultimately, the PA is denying victims their rights under international human rights law to non-discrimination and an effective judicial remedy for abuse.

The manner in which the PA addresses violence against women and girls affects the very fabric of Palestinian society and significantly impairs respect for, and belief in, law enforcement. It is crucial that the PA consider violence against women and girls a priority issue within its security agenda and actively implement remedies to women's rights abuses now, as an integral part of this response *during* this state-building period. There is an urgent need for not only legal reform but also for policies at all levels of government and throughout the criminal justice system that will address violence against women and girls.

### **Key Recommendations**

Human Rights Watch urges the PA to commit, as a matter of urgent priority, to preventing violence against women and girls and pursuing these crimes through effective investigations and prosecutions. The PA should enact laws criminalizing all forms of family violence and repeal legal provisions that in intent or effect perpetuate or condone violence against women and girls.

The PA should also train all government employees (including police officers, doctors, governors, and forensic experts) who come into contact with victims of physical and sexual violence on how to deal with such cases appropriately and establish clear and explicit guidelines of intervention in line with international standards. Many of these training materials have already been developed and pioneered by Palestinian NGOs and should be considered by the governmental and supported with any available funding.

There is also a need for long-term work on transforming attitudes and beliefs about the acceptability of violence against women and girls, whether stemming from tribal customs or interpretations of religious norms, or other sources. These efforts are best led by local advocates for women's rights who live and work in the community, but deserve public support and promotion by the PA and international support.

## **Note on Methodology**

This report is based on more than one hundred interviews conducted in Jerusalem, Ramallah, Bethlehem, Nablus, Hebron, Tulkarem, Jericho, and Gaza in November and December 2005; follow up communications with many of the same individuals by telephone and email as well as a handful of new interviews in June and July 2006; and examination of relevant laws, academic literature, policy analyses, surveys, and other published materials. All of the names of the women and girls whose cases are discussed have been changed to protect their privacy and ensure their safety. Other identifying information has been withheld in some cases for the same reason.

## **II. Background**

This section provides a detailed background on the unique setting in which this report was researched and written as well as on the contribution that the Palestinian women's movement has made to the development of civil society and the Palestinian Authority (PA).

The Occupied Palestinian Territories (OPT) do not constitute a sovereign state, nor does the PA represent a fully sovereign government, yet the PA has managed to develop a criminal justice system over the past decade. The development, makeup, and shortcomings of this system are examined in this section. While all Palestinians suffer from the deficiencies of the existing criminal justice system in the OPT, women pay a particularly heavy price for a system that is often unable or unwilling to respond adequately to gender-based violence. While a responsive criminal justice system is not the only element necessary for an effective response to violence against women, it is one essential factor in a wider effort to stop abuse and hold offenders accountable. Later sections of this report will also examine the role of the informal justice system in addressing cases of violence against women.

### **The Political and Legal Status of the Occupied Palestinian Territories**

The 1949 Arab-Israeli War and the 1949 Armistice Agreements between Israel and the neighboring Arab countries of Syria, Lebanon, Egypt, and Jordan divided the territory of former Mandate Palestine into the areas of Israel, the West Bank, and the Gaza Strip. From 1948-1967, Jordan ruled over the West Bank and East Jerusalem, formally annexing these areas in 1950, while Egypt placed the Gaza Strip under military administration. Both Egypt and Jordan extended their respective laws to the areas they occupied.

As a result of the 1967 War, Israel captured and occupied the West Bank, East Jerusalem, and the Gaza Strip (hereinafter referred to as the Occupied Palestinian Territories or OPT). In 1980 Israel annexed East Jerusalem, declared it the eternal, undivided capital of Israel under a Basic Law entitled "Jerusalem," and extended Israeli laws to Palestinian residents of East Jerusalem. The international community

has not recognized East Jerusalem as part of Israel. After 1967 Israel established a military administration to govern Palestinian residents of the West Bank and Gaza Strip. The cornerstone of the Israeli military administration was a system of over 2,500 Israeli military orders that governed and severely restricted all aspects of civilian life, including freedom of expression, freedom of the press, and freedom of association.<sup>1</sup> This system added yet another layer of legislation to the already complex conglomeration of Ottoman, British, Egyptian, and Jordanian laws in place.<sup>2</sup>

In December 1987, the Palestinian population in the OPT mounted a mass popular uprising against the Israeli occupation, known as the first *intifada*.<sup>3</sup> In 1993, after failed peace talks in Madrid and Washington, Israel and the Palestine Liberation Organization (PLO)<sup>4</sup> began secret negotiations in Oslo that resulted in the signing of the Declaration of Principles (DOP) on the White House lawn in September 1993. The DOP and subsequent Israeli-Palestinian agreements, collectively known as the Oslo Accords,<sup>5</sup> were based on the principal of mutual recognition of Israel and the PLO. The Oslo Accords established a five year interim period during which Israel would withdraw from parts of the West Bank and Gaza Strip and the Palestinians would gain self-rule over these areas, including policing the local population. The interim period was supposed to lead to “final status” negotiations in 1999 on issues such as Palestinian refugees, Israeli settlements in the OPT, the status of Jerusalem, drawing of final borders, and sharing of water resources.

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<sup>1</sup> For more information, see Lisa Hajjar, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza* (Berkeley: University of California Press, 2005) and Raja Shehadeh, *Occupier's Law: Israel and the West Bank* (Washington, D.C.: Institute for Palestine Studies, 1988).

<sup>2</sup> From 1517-1917, the Turks ruled the modern day areas of Israel and the OPT as part of the Ottoman Empire. The British defeated the Turkish army in 1917 as part of World War I and controlled the modern day areas of Israel and the OPT until 1948. Some Ottoman laws and acts, as well as some orders and orders-in-council from the British Mandate, remain in place.

<sup>3</sup> *Intifada* literally means "shaking off" in Arabic. The first *intifada* was chiefly characterized by nonviolent Palestinian demonstrations, strikes and boycotts against the Israeli administration in the OPT and by Palestinian youths, armed mostly with stones, confronting the Israeli army. See Middle East Research and Information Project, "Palestine, Israel and the Arab-Israeli Conflict: A Primer," [http://www.merip.org/palestine-israel\\_primer/toc-pal-isr-primer.html](http://www.merip.org/palestine-israel_primer/toc-pal-isr-primer.html) (accessed May 23, 2006).

<sup>4</sup> The Arab League founded the PLO in 1964 as the "sole legitimate representative of the Palestinian people." The PLO has a legislative body, the Palestinian National Council (PNC), and an Executive Committee elected by the PNC. The PLO holds a permanent observer seat in the UN General Assembly.

<sup>5</sup> The various agreements include the Gaza Jericho Agreement in 1994, the Interim Agreement on the West Bank and Gaza Strip in 1995, and the Hebron Agreement in 1997.

Since failed negotiations on final status issues in Camp David<sup>6</sup> and the outbreak of the second *intifada*,<sup>7</sup> both in 2000, the Oslo process has become moribund. Israel subsequently has engaged in several unilateral measures such as the withdrawal of Israeli troops and settlers from the Gaza Strip in 2005 and the building of a concrete and metal barrier – hereinafter the “wall” – primarily in West Bank territory, which is expected to lead to the *de facto* annexation of approximately 10 percent of the West Bank, including major Israeli settlements.<sup>8</sup>

As a result of the Oslo Accords, the PLO formed a Palestinian Authority, made up of a President, cabinet of ministers, and legislative body. In January 1996, it organized elections for the 88-seat legislature (the Palestinian Legislative Council or PLC) and for the presidency of the PA Yasser Arafat, head of the Fatah party and the PLO, won the presidential elections and his party swept the majority of the PLC seats, presaging 10 years of single party rule. Women represented 3.7 percent of the candidates and won five seats (5.6 percent) in the first PLC.<sup>9</sup> Most Palestinian political factions refused to run in the 1996 elections in protest of the Oslo Accords, which they rejected on various grounds, including the fact that the Accords did not end the Israeli occupation, or stop the building of illegal Israeli settlements in the OPT. Hamas, or the Islamic Resistance Movement, the militant group founded as a branch of the Muslim Brotherhood in Gaza in 1987, and responsible for many of the targeted attacks against Israeli civilians since 1993, was one of the organizations that boycotted the elections. Hamas subsequently challenged Fatah’s political monopoly by mobilizing grassroots support through educational, cultural, and social activities.<sup>10</sup>

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<sup>6</sup> U.S. President Bill Clinton invited Israeli Prime Minister Ehud Barak and Palestinian Authority President Yasser Arafat to Camp David in the United States in July 2000 to continue stalled peace talks. The summit lasted for two weeks but ended without an agreement.

<sup>7</sup> The second *intifada* erupted at the end of September 2000. The immediate trigger was the visit of then-opposition leader, Ariel Sharon, to a site in East Jerusalem known to Jews as the Temple Mount and to Muslims as the Haram al-Sharif, the holiest Muslim site in Israel/OPT.

<sup>8</sup> Office for the Coordination of Humanitarian Affairs, “Preliminary Analysis: The Humanitarian Implications of the February 2005 Projected West Bank Barrier Route,” February 2005, [http://www.humanitarianinfo.org/opt/docs/UN/OCHA/BarrierProjections\\_Feb05\\_En.pdf](http://www.humanitarianinfo.org/opt/docs/UN/OCHA/BarrierProjections_Feb05_En.pdf) (accessed May 23, 2006).

<sup>9</sup> Birzeit University Development Studies Programme, *Palestine Human Development Report 2004*, <http://home.birzeit.edu/dsp/pdhr/2004/> (accessed May 23, 2006).

<sup>10</sup> In 1992 Hamas created a military wing known as the *Izz al-Din al-Qassam Brigades*. Hamas carried out its first suicide bombing on April 16, 1993. The number peaked during the second *intifada*, when such attacks killed hundreds of Israeli civilians. These targeted attacks against civilians are crimes against humanity and were documented by Human Rights Watch



The Oslo Accords divided the OPT into three areas (see map on p. 1). It gave the PA security and civilian control in A areas (comprising the largest Palestinian urban centers but only 17 percent of West Bank land) and civilian control in B areas (smaller Palestinian population centers outside the urban areas). Israel retained security control in B areas and full civilian and security control in C areas, the remainder of the OPT (including some small Palestinian population centers), Israeli settlements, Israeli military bases, bypass roads connecting the settlements to Israel proper, and large land reserves. Area C, over which Israel retains exclusive control, comprises 60 percent of the West Bank. Due to the non-contiguous geographical nature of the A, B, and C areas, the C areas physically disconnect the territory under PA jurisdiction.<sup>11</sup> This limited and fractured autonomy has made it very difficult for the PA to govern effectively, even more so since the beginning of the second *intifada*.

Perhaps most significantly for present purposes, the Palestinian criminal justice system has limited legal jurisdiction in the West Bank. Palestinian courts can only hear cases arising in A and B areas and the Palestinian police cannot implement court orders in Area C. According to Maha Abu-Dayyeh Shamas, head of the Women's Center for Legal Aid and Counseling, this fractured legal jurisdiction is the most serious impediment to the effective administration of justice in the OPT.<sup>12</sup>

During the second *intifada*, the Israeli army re-occupied the A areas of the West Bank, placed the Palestinian civilian population under curfew and closure for extended periods of time, and carried out sustained military operations in heavily populated areas. While these operations ostensibly targeted Palestinian militants who stepped up attacks against Israeli civilians and military during the second *intifada*, the actual target of the attacks was often PA institutions and personnel, including Palestinian

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in the report *Erased in a Moment: Suicide Bombing Attacks against Israeli Civilians* (New York: Human Rights Watch, 2001), <http://www.hrw.org/reports/2002/isrl-pa/>. Israel has assassinated many Hamas leaders and operatives, most notably the organization's founder Ahmad Yassin on March 22, 2004 and Dr. `Abd al-`Aziz al-Rantissi on April 17, 2004. On March 17, 2005 Hamas officially endorsed the Cairo Agreement, brokered by the PA and Israel at a summit in Sharm el-Sheikh in February 2005, signaling its desire to enter mainstream politics. By signing on they agreed to a 'period of calm' (*Tahdija*).

<sup>11</sup> See map on page 1.

<sup>12</sup> Human Rights Watch interview with Maha Abu-Dayyeh Shamas, director of Women's Center for Legal Aid and Counseling, East Jerusalem, June 14, 2006.

security services, because Israel claimed that the PA was not doing enough to stop the militants.<sup>13</sup>

During the height of the second *intifada* in 2001-2003, Israeli re-occupation, movement restrictions and military operations affected all branches of Palestinian government. The PLC was unable to meet except by video teleconferencing. Courts functioned only sporadically, as judges, lawyers, plaintiffs, and defendants were unable to cross checkpoints and reach courthouses and people could no longer afford to pay court fees. There was no one to enforce court decisions, since the Palestinian police largely stopped functioning due to the Israeli destruction of police stations and prisons and targeting of personnel. In December 2001, Israel placed then-President Yasser Arafat under virtual house arrest in his partially destroyed and besieged Ramallah headquarters. He remained there until his hospitalization and death in Paris in November 2004.

Israel and the PA agreed to a loose ceasefire in February 2005, marking an end to the most militarized period of the *intifada*. Israel began transferring security control over some A areas back to the PA. Since then, the Palestinian police have begun to operate more openly and regularly, but frequent Israeli army incursions continue to limit police movement, and thus effectiveness.

After President Arafat's death, the PA organized new elections in January 2005. Mahmoud Abbas, a former Palestinian Prime Minister and Fatah member, became the second Palestinian president. He ran on a platform of ending Palestinian militant attacks against Israel and instituting governmental reform. While he made some important changes (including in the areas of finance and security services), it was not sufficient to shore up waning popular support and confidence in Fatah and the institutions of the PA.

On January 25, 2006 the PLC held its second-ever elections for the national parliament. Hamas, which had decided to end its boycott of the elections and had

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<sup>13</sup> Strategic Assessments Initiative, "Planning Considerations for International Involvement in the Palestinian Security Sector, an operational assessment prepared by the International Transition Assistance Group," July 2005, [http://www.strategicassessments.org/ontherecord/sai\\_publications/SAI-Planning\\_Considerations\\_for\\_International\\_Involvement\\_July\\_2005.pdf](http://www.strategicassessments.org/ontherecord/sai_publications/SAI-Planning_Considerations_for_International_Involvement_July_2005.pdf) (accessed May 23, 2006).

been priming itself as an opposition party in the lead up, won a decisive victory. It won 44 percent of the popular vote and 56 percent of the PLC seats, or 74 out of 132 seats.<sup>14</sup> Women's representation in the new PLC rose to 17 seats, or 13 percent (representing Fatah, Hamas, and independent parties), thanks in part to a new women's quota.<sup>15</sup> On February 29, 2006 the new Hamas-led Palestinian government was sworn in. In protest of Hamas' longstanding and continuing refusal to recognize Israel or renounce violence, Israel and much of the international community cut all ties with the PA.<sup>16</sup> Israel also stopped transferring Palestinian tax revenues totaling U.S. \$50-60 million per month. In addition, the United States (U.S.), the European Union (EU) and Japan cut all direct aid to the PA. As of September 2006, the PA has been unable to pay the salaries of its 165,000 civil servants (including 70,000 members of the security services) for six months. Many employees have stopped showing up for work, some can no longer afford the transportation costs of commuting, many teachers and health workers have launched an open-ended strike as of September 2 and UN agencies and other international sources are reporting that the OPT appeared on the verge of economic collapse and humanitarian crisis.<sup>17</sup>

After coming to power in 1996, the Fatah-led PA lost significant domestic support due to rampant corruption and mismanagement, its inability to protect Palestinian civilians from the Israeli army and to enforce law and order in the OPT, and its failure to deliver any tangible socio-economic improvements as a result of the peace process. In 1999, after the date for final status negotiations expired, Palestinian dissatisfaction with their leadership grew. As one assessment put it:

[A]s public frustration with the continued occupation increased, Palestinians began paying more attention to the inadequacies of their

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<sup>14</sup> In 2005 the PLC changed the election law and increased the number of PLC seats from 88 to 132, half of which are elected by proportional representation on national party lists and half by regional constituencies.

<sup>15</sup> This quota is explained in footnote 70, below.

<sup>16</sup> Hamas is listed as a terrorist organization by both the United States and the European Union.

<sup>17</sup> According to World Bank estimates, growth per capita in the OPT will fall by 27 percent in 2006 with personal income declining by 30 percent and unemployment nearly doubling from 23 percent in 2005 to 40 percent in 2006. See "World Bank sees worst year for Palestinian economy," Reuters, September 13, 2006. According to the United Nations World Food Programme (WFP), 70 percent of Palestinians in Gaza are reliant on food aid; a reported 30 percent increase in the number in just over a year. See "70 per cent of Palestinians in Gaza need international food aid to survive," United Nations News Service, September 19, 2006.

own administering institutions. It was one thing to brush off the lack of an independent judiciary when you believed independence was just around the corner, but another when it was no longer certain when freedom would come and the system in place was beginning to restrict your rights in addition to the already substantial restrictions on personal freedoms placed by the Israeli occupation. Palestinians began to place more scrutiny on the conduct of their institutions.<sup>18</sup>

Even during the height of the *intifada*, while Palestinians rallied once more behind their ailing and imprisoned president, there were many internal calls for reform. In May 2002 the PLC produced “A Statement issued by the Palestinian Legislative Council towards development and reform of the PNA [PA] Institutions.” The document called for the separation of the three branches of government; increased transparency and accountability; implementation of all laws and resolutions passed by the PLC; financial reform; reducing the number of security services, unifying them under fewer branches, and bringing them under the authority of the Ministry of Interior and monitoring of the PLC; building the human and material resources of the judiciary; completing legislation to ensure judicial independence; and abolishing the Higher State Security Court.<sup>19</sup>

One manifestation of the failure of the PA has been the increased lawlessness and chaos on the streets of the OPT. The PA has never enjoyed a monopoly on the use of force in the OPT. This is due on the one hand to the continued Israeli occupation, frequent Israeli military incursions and limited PA jurisdiction over security matters; on the other, it is due to violence by armed groups (or militias) associated with various political factions who are more heavily armed than the Palestinian security forces.<sup>20</sup> In addition, many of the Palestinian security forces, of which there are 10

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<sup>18</sup> Ibid., p.12, n 13.

<sup>19</sup> The Statement can be found at <http://www.jmcc.org/politics/pna/plc/plcreform.htm> (accessed May 23, 2006).

<sup>20</sup> Most Palestinian political factions in the OPT have armed groups or military wings affiliated with them. Hamas: `Izz al-Din al-Qassam Brigades; Fatah: al-Aqsa Martyrs Brigade and the Tanzim; Islamic Jihad: Saraya al-Quds; PFLP: Martyr Abu `Ali Mustafa Brigades. Others armed groups, such as the Popular Resistance Committees, are comprised of ex-members of several political factions and their associated militias. In addition, some previously unknown groups claim responsibility for isolated incidents, such as the `Umar bin al-Khattab Brigades or the Popular Army.

branches,<sup>21</sup> do not have a clear chain of command; some have overlapping functions. Arafat designed a system whereby security chiefs reported directly to him. His patronage depended on their loyalty, the various branches constantly competed with one another, and no one commander could become powerful enough to challenge Arafat's rule.

As a result of the breakdown of official policing since the beginning of the current *intifada* in September 2000, Palestinians increasingly have turned to vigilante methods to settle disputes in recent years. Members of the security forces and armed groups have clashed in the streets, injuring or killing bystanders, stormed government buildings, murdered opponents or public officials, and kidnapped foreigners working in the OPT.<sup>22</sup> This situation has led to a further deterioration in public confidence in the Palestinian security forces and increased the appropriation of security functions by heads of powerful clans<sup>23</sup> and armed groups. After the creation of a Hamas-led government in March 2006, and with the creation of a new Hamas-led security force in May, clashes between the various security forces have increased, especially on the streets of Gaza, with several casualties a week as of September 2006.

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<sup>21</sup> The security forces are comprised of Military Forces (National Security Forces, Military Intelligence, Military Liaison Force, Force 17, and Maritime Force/Coastal Police); Security Forces (General Intelligence, Preventive Security Organization, Special Forces, and Special Security); Civil Agencies (Civil Police and Civil Defense) and other offices (External Security Office and Office of the National Security Advisor). *Ibid.*, pp. 62-76, n. 13.

<sup>22</sup> See field updates and press releases of the Palestinian Center for Human Rights on the "Security Chaos and Misuse of Weapons" section of the website at <http://www.pchrgaza.org/files/weapon/english/weapon.htm> such as "PCHR Strongly Condemns Attacks on International Institutions and Citizens," March 15, 2006 and "Attacks on Public Institutions and Officials Continue," May 28, 2006 (accessed May 30, 2006).

<sup>23</sup> In Palestinian society, as in much of the Arab world, social status is based on belonging to a powerful extended family or patrilineal clan (*hamula*) comprising several extended families with the same last name and originating from a common ancestor. Heads of important clans are often more powerful than elected and appointed officials, security force commanders and high ranking civil servants and sometimes supplant the authority of these officials. See Palestinian National Authority, "Palestinian Society," [http://www.pna.gov.ps/subject\\_details2.asp?DocId=161](http://www.pna.gov.ps/subject_details2.asp?DocId=161) (accessed May 23, 2006) and Celia E. Rothenberg, "A Review of Anthropological Literature on the Palestinian Hamula and the Status of Women," *Journal of Arabic and Islamic Studies*, Volume 2, 1998-1999, <http://www.uib.no/jais/v002/rothen.pdf> (accessed May 23, 2006).

## The Palestinian Criminal Justice System

*We have no law, and no respect for any law. We are not only asking for a change in law and criminal process but change in the entire judicial system.*

– Attorney Halima Abu-Sulb, Women’s Center for Legal Aid and Counseling, Ramallah, November 14, 2005

### *The Palestinian Police*

The Oslo Accords mandated the creation of a Palestinian Civil Police in A and B areas to keep public order, enforce the law, and carry out criminal investigations. The police received international donor aid and training and were well-respected during the 1990s. During the height of the second *intifada*, the Israeli army damaged or destroyed numerous Palestinian police stations as well as many vehicles, communications equipment and networks, weapons supplies, and detention centers in the West Bank and Gaza, including the West Bank police headquarters in 2002. The police became virtually non-operational during this period, and while they generally continued to be paid by the PA, some joined the armed groups openly fighting Israeli forces. The situation improved after the ceasefire of 2005 but since March 2006, when the new Hamas-led government was sworn in, Israel ceased all security coordination with the PA and Palestinian police and prosecutors can no longer receive the needed Israeli permission to enter C areas.<sup>24</sup>

According to a security forces assessment in 2005 by the Strategic Assessments Initiative, the police lack technical capacity; their operational capacity is moderate in Gaza and weak in the West Bank. The police are often unable to pursue or arrest fugitives and have weak judicial capacity, which has led to the emergence of an alternative justice system whereby families and clans replace Civil Police in many respects. There are currently 6,800 Civil Police in the West Bank and 12,000 in Gaza, even though the population of the West Bank is twice that of Gaza.<sup>25</sup>

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<sup>24</sup> Strategic Assessments Initiative report, *Ibid.*, n. 13.

<sup>25</sup> *Ibid.* According to the Central Intelligence Agency World Factbook, the population of the West Bank is almost 2.5 million and the population of Gaza is almost 1.5 million, [www.cia.gov/cia/publications/factbook](http://www.cia.gov/cia/publications/factbook) (accessed May 23, 2006).



One of the greatest technical weaknesses of the Palestinian police is in criminal investigations. One police instructor at the Jericho police academy who received investigative training in India told Human Rights Watch:

The Palestinian police have almost no investigative capacity. There are very few properly trained investigators and even those of us who do have training don't end up assigned to criminal investigations for some reason. Additionally, we have almost no equipment or technology — no fingerprinting kits, no ballistics laboratories, and very poor forensic capabilities. This is why investigators depend so heavily on confessions, rather than physical evidence from the crime scene. Once I tried to teach my students about fingerprinting. Since I had no kit, I had to improvise with my wife's camel haired make-up brush and some of her face powder. I know it sounds silly, but what choice do we have?<sup>26</sup>

While there is a female police unit at national police headquarters in Gaza City, women's NGOs told Human Rights Watch that the unit is largely inactive at the moment.<sup>27</sup> There are a small number of female police officers in the Civil Police, usually several at each police station, but they are often non-uniformed and fulfill administrative rather than policing functions. The head of the Jericho police academy told Human Rights Watch that it is very difficult to recruit and train women police due to social and family constraints upon women.<sup>28</sup>

### *The Attorney General and Public Prosecutors*

According to Palestinian law, the public prosecutor's office can initiate and supervise investigations into criminal matters and, if it gathers sufficient evidence, prosecute these cases in court. The Attorney General, assisted by four deputy attorney generals (two in the West Bank and two in Gaza) head the prosecutor's office. Members of the public prosecutor's office supervise investigations that law enforcement officers

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<sup>26</sup> Human Rights Watch interview with Palestinian police officer [name withheld], Jericho, November 14, 2005.

<sup>27</sup> Human Rights Watch interview with Manal Awad, head of the Women's Empowerment Program, GCMHP, Gaza, November 28, 2005.

<sup>28</sup> Human Rights Watch interview with Mahmud Rahal, director of the Jericho Police College, Jericho, November 14, 2005.

generally carry out. There are 105 head prosecutors, prosecutors and prosecutors' assistants in the OPT; 69 are in Gaza and 36 in the West Bank (even though the population of the West Bank is greater than that in Gaza). The public prosecutors have suffered from conflicts between the Ministry of Justice and the Attorney General based on unclear regulations and procedures governing the division of labor between the two bodies.<sup>29</sup>

The Palestinian Independent Commission for Citizen's Rights (PICCR) has routinely criticized the public prosecutor's office for failing to investigate numerous cases of Palestinians killed by fellow Palestinians on the suspicion of collaborating with Israeli authorities. PICCR has also criticized the public prosecutors office for not conducting regular prison and detention center visits and for failing to secure the release of detainees held unlawfully.<sup>30</sup>

### *The Palestinian Judiciary*

After coming to power in 1994, the PA inherited a barely functioning, disjointed judicial system neglected during almost 30 years of Israeli occupation.<sup>31</sup> The system retains elements of the various foreign legal systems imposed on the OPT over the past several centuries, including the Ottoman, British, Egyptian, Jordanian, and Israeli systems. It suffers from the fragmented legal and territorial jurisdiction established under the Oslo Accords whereby Palestinian courts can hear civil and criminal matters arising only in A and B areas, not C. In addition, under the Oslo Accords, Palestinian courts have no jurisdiction over Israeli civilians (including Israeli settlers living in the OPT) or Israeli security forces operating in the OPT.

A 2001 Human Rights Watch report outlined the PA's failure to build an effective and independent judiciary during the 1990s. As we reported then: "The PA [failed] to give sufficient authority, respect, and financial and other resources to the judiciary. The

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<sup>29</sup> See the Palestinian Independent Commission for Citizens' Rights, "The Status of Palestinian Citizens' Rights During 2004, The Tenth Annual Report," p. 73-74, [www.piccr.org/report/annual04e.html](http://www.piccr.org/report/annual04e.html) (accessed May 23, 2006).

<sup>30</sup> *Ibid.*

<sup>31</sup> See Glenn E. Robinson, "The Politics of Legal Reform in Palestine," *Journal of Palestine Studies*, Vol. 27, No. 1 (Autumn 1997), pp. 51-60.

system is plagued by an insufficient number of judges, the lack of properly qualified judges, and a lack of trained judges, prosecutors, lawyers, and court officials.”<sup>32</sup>

The report also detailed instances of interference by the executive authority in hiring and firing judges and the fact that security forces systematically ignore orders of the High Court to release detainees whom they held arbitrarily. The situation has improved somewhat in recent years, after the PLC passed new legislation establishing a Higher Judicial Council.<sup>33</sup> In addition, the notorious Higher State Security Court<sup>34</sup> has been inactive for several years, although the president has not issued the necessary presidential decree to formally disband the court.<sup>35</sup> As documented by Human Rights Watch, the court was known for trials lasting only a few hours where most defendants were convicted solely or principally on the basis of confessions they made while in incommunicado detention.<sup>36</sup>

The judicial system came to a virtual standstill during the height of the second *intifada*. It was just beginning to recover in 2005. One attorney told Human Rights Watch, “The courts are now a bit better, but the Ramallah court still has too few judges covering so many residents that they can’t possibly hear all the cases. I often arrive at the courtroom at 8:30 in the morning for a hearing in one of my cases and find out that the session has been postponed for another six months.”<sup>37</sup> In late 2005, Human Rights Watch attended an initial hearing in a Ramallah rape case that had been frozen for five years.

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<sup>32</sup> Human Rights Watch, *Israel-OPT – Justice Undermined: Balancing Security and Human Rights in the Palestinian Justice System*, vol.13, no.4 (E), November 30, 2001, <http://www.hrw.org/reports/2001/pa/>.

<sup>33</sup> The Higher Judicial Council was established by Presidential Decree Number 29 of 2000.

<sup>34</sup> The Higher State Security Court was established by presidential decree in 1995 in Gaza to try crimes relating to the internal and external security of the state.

<sup>35</sup> On July 27, 2003, the former Minister of Justice issued a written decision ending the use of the state security courts, including the Higher State Security Court, and moving the cases of the state security courts to the ordinary courts. Nevertheless, the ministerial decision was not fully applied. For example, none of those condemned by the Higher State Security Court were re-tried in regular courts and on June 12, 2005, President Mahmoud Abbas approved the execution of four people on death row; one of whom was convicted by the Higher State Security Court in Gaza on September 11, 2000. This information is taken from Asem Khalil, “Legal Framework for Palestinian Security Governance,” Palestinian Security Sector Reform, Geneva Centre for the Democratic Control of Armed Forces, 2006.

<sup>36</sup> *Ibid.*, n. 32.

<sup>37</sup> Human Rights Watch interview with Halima Abu-Sulb, attorney, Women’s Center for Legal Aid and Counseling (WCLAC), Ramallah, November 14, 2005.

The Palestinian judicial system comprises the regular courts (which hear both civil and criminal cases) and *shari`a* religious courts for matters of personal status (the *shari`a* courts for Muslims and religious courts for recognized non-Muslim communities).<sup>38</sup>

The regular courts are structured in a two tier system plus a Court of Cassation. The first level comprises the Magistrates Courts, which hear civil and criminal cases below a certain penalty or damage value. The 20 Magistrates Courts (six in Gaza and 14 in the West Bank) have a total of 35 judges and a chronic problem of backlog.<sup>39</sup> For example, in November 2004, 1,591 cases and complaints were awaiting adjudication at the Qalqilya Magistrates Court by one judge.<sup>40</sup>

Courts of First Instance act either as second tier courts for cases appealed from the Magistrates level or first tier courts for civil and criminal cases above a certain value. There are 12 courts of First Instance (three in Gaza and nine in the West Bank) with 50 judges. These courts suffer the same backlog as the Magistrates Courts.<sup>41</sup> Cases heard initially by the first instance courts can be appealed to the Courts of Appeal (appealed cases from the Courts of First Instance) and there are two appellate courts, one in the West Bank and one in Gaza, with a total of 15 judges.<sup>42</sup>

The Supreme Court acts as either a Court of Cassation (final court of appeal for cases on civil, criminal, and commercial matters) or a High Court of Justice to deal with administrative cases. In addition, the Supreme Court currently acts as a Constitutional Court until one is established, as stipulated by the Palestinian Basic

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<sup>38</sup> Information on the court system is taken from annual reports of the Palestinian Centre for Human Rights, available at [www.pchrgaza.org](http://www.pchrgaza.org) and the Palestinian Independent Commission for Citizens Rights available at [www.piccr.org](http://www.piccr.org) and Nathan Brown, "Arab Judicial Structures, A Study Presented to the United Nations Development Program," <http://www.pogar.org/publications/nbrown/palestine.html> (accessed May 23, 2006).

<sup>39</sup> The Palestinian Independent Commission for Citizens' Rights, "Report on the Current Situation of Judicial Power and the Justice System in 2005," March 2006, p. 47 [on file with Human Rights Watch].

<sup>40</sup> *Ibid.*, p. 65, n. 29.

<sup>41</sup> *Ibid.*, n. 39.

<sup>42</sup> *Ibid.*

Law.<sup>43</sup> The Constitutional Court has the authority to review legislation and determine its constitutionality, although it has only assumed this role once to date, while reviewing an amended judiciary law in 2005. The Supreme Court is officially based in Jerusalem but it temporarily convenes in two locations: Gaza City and Ramallah. Twenty-two judges sit on the Supreme Court. All of the courts, including the High Court of Justice, face problems in implementing court decisions against governmental bodies, especially the security services. According to the Palestinian Independent Commission for Citizens' Rights, which has sent numerous letters regarding this matter to the Ministry of Justice and the PLC, "some security agencies, especially the Military Intelligence, still refrain from implementing some of the High Court of Justice's rulings."<sup>44</sup>

The PA has also established special courts including military courts, state security courts, and courts for issues such as taxes and elections. All of these courts are supposed to be established by law, according to the Palestinian Basic Law, but most of them have been established by presidential decree.<sup>45</sup>

While the Basic Law (2002) and the Law on the Independence of the Judiciary (2002) provide for independence of the judiciary and the establishment of a Higher Judicial Council to oversee the appointment, supervision, training, transfer, and dismissal of judges, there are continued power struggles between the Ministry of Justice and the Higher Judicial Council, due at least in part to a lack of specific procedures and regulations governing the bodies' respective functions.

With increased chaos and lawlessness in the OPT, members of the judiciary have become more vulnerable to attacks and intimidation by armed groups and powerful clans. On February 21, 2005, Judge Zuhair Bashtawi, a former deputy head of the Court of Appeals in the West Bank, sent a letter to President Abbas with 12 recommendations for improving the judiciary's performance. His main criticisms

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<sup>43</sup> While President Abbas endorsed a law to establish the Constitutional Court (Law number 3 of 2006) in early 2006, controversy erupted over the way the law was promulgated and as a result its legal status remains unclear and the court has yet to be formed.

<sup>44</sup> *Ibid.*, p. 71, n. 42.

<sup>45</sup> Email from Asem Khalil, Associate Researcher at Birzeit University and head of research at the Institute of Law, June 24, 2006.

included the lack of security, the appointment of incompetent people, a lack of real monitoring and oversight of the judiciary, and politicization of the judiciary. He said:

Lawyers are subjected to threats and judges are blackmailed. People cross the line with judges and lawyers, and the police do nothing. Our work environment is no longer safe because of the interference of armed groups who enter the courtrooms in order to influence deliberations. This has become commonplace in more than one Palestinian courtroom. Many people have lost faith in the judicial system and its ability to deal with legal disputes. Instead, they turn to gang members.<sup>46</sup>

In April 2005 three people, one armed with a pistol, raided Bashtawi's law office and demanded that the judge and his assistant recuse themselves from a particular case. Several months later, the Palestinian Bar Association called a one-day lawyers strike and released a statement criticizing the unsafe working environment for legal professionals, increased vigilantism, and the failure of the PA's legislative and executive branches to protect the judicial system.<sup>47</sup>

If actually prosecuted, all cases of gender-based violence, such as domestic abuse, incest, rape, or murder of girls and women in the name of "family honor," are brought as criminal cases in the regular courts. A woman may also allege domestic abuse against her husband in the *shari`a* (Muslim religious or personal status) court system, but only in order to prove that she has grounds for divorce based on harm, not in order to bring criminal charges against her husband.

### *Applicable Laws*

The laws in force in the West Bank and Gaza Strip today are a combination of unified laws that the PLC promulgated since 1996<sup>48</sup> and the President ratified, and existing Jordanian and Egyptian laws that continue to apply in the West Bank and Gaza,

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<sup>46</sup> Quoted in Atef Saad, "Warning Bells are Ringing," Palestine Report, Volume 11, Number 50, 19 June 2005, <http://www.palstinereport.org/art.php?article=806> (accessed September 22, 2006).

<sup>47</sup> Ibid.

<sup>48</sup> The predecessor to the PLC, the Palestinian National Council, also passed 21 "laws" which are in force today.



respectively, where no unified Palestinian law has been finalized. In the two areas most relevant to this report, penal and family law, the original Jordanian and Egyptian laws are still applicable, although drafts of a unified Palestinian penal code and unified family law exist and have been widely debated in civil society circles, as detailed in later sections. A number of provisions in both the family and penal law maintain and perpetuate Palestinian women's unequal status.

The Jordanian Law of Personal Status (1976) and the Egyptian Law of Family Rights (1954) govern all family law matters for Muslim residents of the West Bank and Gaza, respectively. These laws discriminate with regard to men's and women's rights in the family. A Palestinian woman's ability to enter freely into marriage is limited by requirements under both sets of laws that she has the permission of a male guardian (*wali*). Both the Jordanian and Egyptian laws allow husbands to divorce their wives verbally while requiring that women obtain a judicial divorce through the court system. Palestinian women can only initiate a divorce on the basis of harm inflicted by her husband (a fault-based divorce). Divorced women are entitled to custody of their children only until the children reach puberty.

Provisions of the penal codes in force in the West Bank and Gaza also discriminate against women.<sup>49</sup> There are no specific laws criminalizing domestic or sexual violence within the family and thus, in order to try these crimes, judges apply relevant provisions of the penal law. Jordanian Law No.16 (1960) classifies sexual violence (both rape and incest) under crimes "against public morals and ethics," rather than as crimes against the physical integrity of the individual. Rape laws in force in the OPT distinguish between virgin and non-virgin victims of sexual violence, with harsher penalties when the victims are thought to have been virgins. These laws also criminalize abortion in cases of rape or incest, forcing victims of sexual violence to carry their pregnancy to term. Even more disturbingly, laws in force in the West Bank and Gaza relieve rapists who marry their victims from any criminal prosecution. Neither the Jordanian nor the Egyptian penal codes in force in the OPT recognize sexual violence committed within marriage. Article 340 of the Jordanian Penal Law No. 16 (1960), in force in the West Bank, provides for reduced penalties for "honor"

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<sup>49</sup> The Jordanian Penal Law No.16 (1960) and Egyptian Penal Law No. 58 (1937) are still applied in the West Bank and Gaza, respectively.

crimes. Under article 340, any man who kills or attacks his wife or any of his female relatives while she is committing adultery is exempt from punishment. Men who kill women whom they find in an “unlawful bed” may receive a reduced sentence.

Egyptian penal law in force in Gaza also imposes harsher penalties for women committing adultery. A wife is penalized for two years,<sup>50</sup> whereas a husband is penalized for no more than six months.<sup>51</sup> For adultery, the evidentiary standards are different for women and men. While a wife is penalized for committing adultery anywhere, a husband must do so in the marital home in order for such an act to be considered adulterous.<sup>52</sup> The murder of a wife (but not a husband) in the act of committing adultery is categorized as an extenuating circumstance, thereby commuting the crime of murder to the level of a misdemeanor.<sup>53</sup>

While the Palestinian Legislative Council (PLC) submitted a new draft penal code for a first reading on April 14, 2003, lawmakers could not agree upon the text, and the draft has been in limbo ever since. Palestinian lawyers and activists have critiqued the draft code for failing to incorporate international standards and for including many of the most problematic, outdated provisions in the currently applied Egyptian penal code of 1937.<sup>54</sup> As with current law in effect in the OPT, the proposed law contains reduced sentences for perpetrators of “honor” crimes and arbitrarily differentiates between the rape of children below the age of 15 and the rape of children between the ages of 15 and 18, and even the harsher penalties for rape of younger children are lower than those imposed by the current Jordanian penal code.<sup>55</sup> The PLC’s draft also includes an ambiguous and general provision in article

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<sup>50</sup> Egyptian Penal Law No. 58 (1937), article 274.

<sup>51</sup> Egyptian Penal Law No. 58 (1937), article 277.

<sup>52</sup> *Ibid.*

<sup>53</sup> Article 237 of the Egyptian Penal Code reads “Whoever surprises his wife in the act of adultery and kills her on the spot together with her adulterer-partner shall be punished with detention instead of the penalties prescribed in articles 234 [permanent or temporary hard labor] and 236 [hard labor or imprisonment for a period of three to seven years].”

<sup>54</sup> See Al Haq report, “Notes of the Legal Civil Society on the Palestinian Penal Draft Code,” on file with Human Rights Watch.

<sup>55</sup> The draft imposes a three year sentence for these crimes as opposed to the minimum seven year sentence with hard labor included in Jordanian Law No. 16 (1960).

58 that de-criminalizes otherwise illegal acts committed “in accordance with *shari`a*.”<sup>56</sup> It is unclear how this provision would be interpreted and applied.

## The Status of Palestinian Women

Despite some improvements in their status over the past few decades, Palestinian women remain worse off than men by just about every measure. Women still have very few employment opportunities in the formal labor sector. In 2005, 14.1 percent of women aged 15 and older were formally employed, versus 67.8 percent of men in the same age group.<sup>57</sup> Of those women employed, almost half worked in the low-paying service sector.<sup>58</sup> Palestinian women receive lower wages for the same jobs in all areas. A Palestinian man’s average daily wage is 78.1 NIS (\$17.35), compared to 63.1 NIS (\$14) for a Palestinian woman.<sup>59</sup>

The Palestinian Labor Law, which took effect in 2000, bars women from “dangerous and rough activities, designated by the minister; overtime hours during pregnancy and six months after delivery; and night shifts, except works identified by the cabinet.”<sup>60</sup> While Palestinian women have the legal right to own land and property and to exercise control over their property, they rarely exercise these rights. A 2005 study by Freedom House, quoting a 1999 Palestinian Central Bureau of Statistics study, found that only 7.7 percent of Palestinian women owned a house or real estate and that only 1 percent of Palestinian women owned a private car.<sup>61</sup> The survey also showed that only 20 percent of women claimed their legal right to a share of the

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<sup>56</sup> Al Haq, “Notes of the Legal Civil Society on the Palestinian Penal Draft Code,” on file with Human Rights Watch.

<sup>57</sup> Palestinian Central Bureau of Statistics, “Women & Men in Palestine – Issues & Statistics, 2005,” p. 41, <http://www.pcbs.gov.ps/DesktopModules/books/booksView.aspx?tabID=0&lang=en&ItemID=1&mid=11239> (accessed May 23, 2006).

<sup>58</sup> *Ibid.*, p. 43.

<sup>59</sup> *Ibid.*, n. 9.

<sup>60</sup> Article 10, Palestinian Labor Law No. (4) issued on 29/03/2000, [www.aida-jer.org/law/law17.html](http://www.aida-jer.org/law/law17.html) (accessed May 23, 2006).

<sup>61</sup> Freedom House, “Women’s Rights in the Middle East and North Africa: Citizenship and Justice - Palestine (Palestinian Authority and Israeli-Occupied Territories),” <http://www.freedomhouse.org/template.cfm?page=180> (accessed August 22, 2006).

family inheritance.<sup>62</sup> In 2002, poverty rates among female-headed families reached 30 percent, as opposed to 20 percent in the population at large.<sup>63</sup>

The criminal justice system only marginally employs women, with women constituting 9 percent of all judges and 12.2 percent of all prosecutors.<sup>64</sup> There are no women judges in the *shari`a* court system or acting as informal judges in the informal justice system. Women make up 31.2 percent of all lawyers in the OPT.<sup>65</sup>

According to the Palestinian Central Bureau of Statistics (PCBS), while more Palestinian women are illiterate than men (12 percent versus 3.5 percent<sup>66</sup>), this trend seems poised to change with the current generation, since more girls than boys are now enrolled in the formal education system at both the elementary (93.6 percent of girls versus 92.8 percent of boys) and secondary (75.7 percent of girls versus 67.6 percent of boys) levels.<sup>67</sup> While girls sometimes drop out of school in order to get married in their teenage years, boys are more likely to leave school early in order to become income-generators for their families, especially during periods of increased poverty and unemployment, such as during the second *intifada*.<sup>68</sup> Women and men are roughly equal in their representation in institutions of higher education, but as noted in the *Palestine Human Development Report of 2004*, this has not translated into more women in professional positions.<sup>69</sup>

One of the positive developments for women in the OPT is the increase in women serving in elected positions. This achievement is due in large part to women activists lobbying for an election quota that was included in the electoral laws the PLC

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<sup>62</sup> Ibid.

<sup>63</sup> Ibid., n. 9.

<sup>64</sup> Ibid., pp. 51-52, n. 57.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid., p. 23, n. 57.

<sup>67</sup> Ibid., pp. 26-27, n. 57.

<sup>68</sup> The dropout rate for boys is 3.6 percent and the rate for girls is 2.3 percent. Ibid., p. 29, n. 57.

<sup>69</sup> Ibid., n. 9.

enacted in 2004 (for local elections) and 2005 (for national legislative elections).<sup>70</sup> Since that time, the PA has held four out of five rounds of municipal elections across the West Bank and Gaza, the first such elections in 28 years, in which women won an impressive number of seats. In the first municipal elections in December 2004, 139 women ran and 52 won seats on local councils, representing nearly 17 percent of those elected.<sup>71</sup> Women achieved similar results in the subsequent rounds of municipal elections. Since 1994 the Palestinian Authority has appointed local councils, and women never exceeded five percent of the total appointees.<sup>72</sup> As mentioned above, women's representation increased in the second Palestinian Legislative Council, with women now holding 17 seats, or 13 percent of council seats.

Women continue to be marginally represented in the PA cabinet, with only one out of 24 ministries currently headed by a woman. Dr. Mariam Salih, a newly-elected Hamas PLC member from Ramallah, is the new Minister of Women's Affairs. The greatest number of female ministers in any PA cabinet was in the two years after the first government was formed in 1996, when women served as Minister of Higher Education and Minister of Social Affairs.

Women's second-class status in economic, social and political life translates into a lack of decision-making power in the family, even on the most intimate aspects of their lives. Male relatives (usually their fathers) often arrange marriages for Palestinian girls, even before adulthood. In a survey of 1,446 Palestinian women in the West Bank and Gaza, the PCBS found that only 56.5 percent had chosen their

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<sup>70</sup> Local Election Law Number 5 of December 2004 stipulates that all election lists for local council elections must give women two slots. The law also reserves two places for women in the local councils (made up of nine to 13 members). Local Election Law Number 9 of 2005 states that political parties must have at least one woman among the first three names on the national list, at least one woman among the next four names, and one woman among every five names for the rest of the list, guaranteeing about 20 percent women among the candidates. Half of the members of parliament are elected through proportional representation on a national list system, while the other half are elected in single candidate district lists. In the 2006 election, all 17 women were elected to parliament via the national lists, which were subject to the legal quota, while none of the women candidates in the single member districts were elected. See "Global Database of Quotas for Women," <http://www.quotaproject.org/displayCountry.cfm?CountryCode=PS> (accessed May 23, 2006). For a detailed history of women's lobbying to introduce election quotas see Amira Hass, "Arafat's Feminist Legacy," *Ha'aretz* [English online edition], April 12, 2005, [www.haaretzdaily.com/hasen/pages/ShArt.jhtml?itemNo=563770](http://www.haaretzdaily.com/hasen/pages/ShArt.jhtml?itemNo=563770) (accessed May 15, 2006).

<sup>71</sup> *Ibid.*, n. 9.

<sup>72</sup> *Ibid.* For more information on the history of local council election and appointment in the West Bank and Gaza, especially since the beginning of the Israeli occupation in 1967, see Abdul Nasser Makky, "The Electoral Dimension in Local Government in Palestine," [www.mofa.gov.ps/articals/pdf\\_files/electoral.pdf](http://www.mofa.gov.ps/articals/pdf_files/electoral.pdf) (accessed May 23, 2006).

spouse.<sup>73</sup> In rural areas, only 36 percent of the 460 women polled had chosen their spouses themselves.<sup>74</sup>

## The Palestinian Women's Rights Movement

The Palestinian women's movement has a long history and has played an important role in the quest for Palestinian self-determination in the OPT.<sup>75</sup> The movement has often faced tough strategic choices on how to balance their dual commitment to the national struggle and to the feminist struggle.<sup>76</sup> Political factions and Islamist groups have attacked the Palestinian women's movement at various junctures, accusing it of being part of a Western conspiracy to destroy Islamic family and social values and questioning its commitment to the national cause.<sup>77</sup> Several women NGO activists interviewed by Human Rights Watch related incidents of confrontation, harassment, and intimidation during the course of their work.<sup>78</sup>

In the 1990s, after the first *intifada* and the signing of the Oslo Accords, women activists focused on gender equality in the emerging institutions and laws of the new PA.<sup>79</sup> In 1994, Palestinian women drafted a "Memorandum of Women's Rights" and submitted it to the PA.<sup>80</sup> The document endorsed the international Convention on the

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<sup>73</sup>See Palestinian Central Bureau of Statistics table on "Percentage Distribution of Married Females (Aged 18 Years and Above) According to the Person Who Took the Decision for their Marriage, by Region and Type of Locality," [http://www.pcbs.gov.ps/Portals/\\_pcbs/gender/oship\\_3b.aspx](http://www.pcbs.gov.ps/Portals/_pcbs/gender/oship_3b.aspx) (accessed April 21, 2006).

<sup>74</sup> See Palestinian Central Bureau of Statistics table on "Percentage Distribution of Married Females (Aged 18 Years and Above) According to the Person Who Took the Decision for their Marriage, by Region and Type of Locality," [http://www.pcbs.gov.ps/Portals/\\_pcbs/gender/oship\\_3b.aspx](http://www.pcbs.gov.ps/Portals/_pcbs/gender/oship_3b.aspx) (accessed April 21, 2006)

<sup>75</sup> Nahla Abdo, "Women and the Intifada: Gender, Class and National Liberation," *Race and Class* 32, 4 (1991), p. 19-34; Rita Giacaman and Penny Johnson, "Palestinian Women: Building Barricades and Breaking Barriers," in *Intifada: The Palestinian Uprising Against Israeli Occupation*, edited by Zachary Lockman and Joel Beinin (Boston: South End Press, 1989) and Islah Jad, "From Salons to the Popular Committees: Palestinian Women, 1919-1989" in *Intifada: Palestine at the Crossroads*, edited by Jamal R. Nassr and Roger Heacock (New York: Praeger Publishers, 1990).

<sup>76</sup> See Soraya Antonius, "Fighting on Two Fronts: Conversations with Palestinian Women," *Journal of Palestine Studies* 9, 3 (Spring 1979), pp. 26-45 and Souad Dajani, "Between National and Social Liberation: The Palestinian Women's movement in the Israeli Occupied West Bank and Gaza Strip," in *Women and the Israeli Occupation: The Politics of Change*, edited by Tamar Mayer (New York: Routledge, 1994).

<sup>77</sup> See Rema Hammami, "The Women's Model Parliament and Reform of Personal Status Law," September 2000, pp. 5-6, [www.ids.ac.uk/ids/civsoc/final/palestine/pal1.html](http://www.ids.ac.uk/ids/civsoc/final/palestine/pal1.html) (accessed May 23, 2006).

<sup>78</sup> For more information, see Chapter III.

<sup>79</sup> *Ibid.*, n. 77.

<sup>80</sup> The Palestinian National Authority Inter-Ministerial Committee for the Advancement of Women, "The Status of the Palestinian Women five years after Beijing 1995-2000," 2002, p. 31,

Elimination of All Forms of Discrimination against Women and stressed the need for justice, democracy, and gender equality in the nascent Palestinian state structures.<sup>81</sup>

In 1994, women's organizations and their allies launched an ambitious five-year process called the "Model Parliament" to debate the inherited Jordanian and Egyptian family laws still in place in the OPT and suggest changes based on gender equity. They then used the final recommendations of the Model Parliament to lobby individual members of the PLC.<sup>82</sup> However, the women's movement was divided between those who called for a civil family law and those who felt that their best chance to influence the provisions of a new unified Palestinian family law was to push for a more progressive interpretation of *shari`a*.

Women's NGO activists told Human Rights Watch that they had convinced the Chief Islamic Justice of the OPT (*Qadi al-Quda*) to incorporate important safeguards in his draft,<sup>83</sup> including: a minimum marriage age of 18 for men and women; curtailing (though not abolishing) men's right to polygamy; easier access to divorce for women through *khula* (no-fault divorce); additional grounds for divorce including "irrevocable differences"; sterility as grounds for divorce for both parties; equal division of wealth acquired during marriage; compensation for women who can prove their husbands arbitrarily divorced them; and a state fund to pay maintenance for women and children after divorce. The *Qadi al-Quda* presented the draft family law to the Palestinian Ministry of Justice in 2002, but the Ministry of Justice is yet to introduce the bill to the PLC for a first reading.

Palestinian women have also been active in networks at the regional and international level. In 1995, a Palestinian delegation participated in the Fourth World Conference on Women in Beijing. Based on the standards set by UN Security Council

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<http://home.birzeit.edu/wsi/All%20Publicaitons/files/Gov%20Report%20on%20Women%20Status.pdf> (accessed May 23, 2006).

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> In 1998, then-President Arafat tasked Taysir al-Tamimi, the Chief Islamic Justice of the OPT (*Qadi al-Quda*), with drafting a unified Palestinian family law.



Resolution 1325 for the inclusion of women in peace processes,<sup>84</sup> women's NGOs launched an International Women's Commission in July 2005 that aims to include Palestinian, Israeli, and international women in all future peace negotiations.<sup>85</sup> At the beginning of 2005, a network of five women's organizations in Lebanon, Egypt, Jordan, the West Bank, and Gaza created a group called *Salma* to launch a campaign to criminalize domestic violence.<sup>86</sup> The group has drafted a family protection law and has begun trainings and public education on the issue of family violence.<sup>87</sup>

In addition, women's NGOs launched a Palestinian Violence against Women Forum in 2002, a network of 13 NGOs working collectively to combat gender-based violence. Many of these NGOs already run hotlines and provide legal and social work services for victims of violence. Through the Forum, they have set up an informal referral service so that victims can get specialized advice and services. The Forum is pressing the PA to set up an official governmental referral system. Forum members have also participated in demonstrations, public service announcements, awareness-raising activities, and evaluations of draft legislation concerning violence against women.<sup>88</sup>

Other achievements of the Palestinian women's movement are the creation of the Ministry of Women's Affairs (MOWA) in 2003, headed until recently by a leading women's activist, Zahira Kamal, and the creation of gender desks within various ministries. The MOWA's mandate includes monitoring the government's compliance with the terms of gender equality laid out in the Basic Law through "capacity building at the governmental level, improving the government's policies, laws and legislations, adopting the necessary plans for ensuring the government's

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<sup>84</sup> United Nations Security Council, Resolution 1325 (2000), S/RES/1325 (2000) <http://www.unhcr.ch/Huridocda/Huridoca.nsf/o/7f162999f97c0a8c1256a0900302211?Opendocument> (accessed May 23, 2006).

<sup>85</sup> "International Women's Commission Established by Palestinian, Israeli and International Women for a Just and Sustainable Peace," UNIFEM press release, July 28 2005 [www.peacewomen.org/resources/OPT/IWC2005.html](http://www.peacewomen.org/resources/OPT/IWC2005.html) (accessed May 23, 2006).

<sup>86</sup> Human Rights Watch Interview with Manal Awad, head of the Women's Empowerment Project, Gaza Community Mental Health Program, Gaza, November 28, 2005. The participating Palestinian organizations are the Women's Center for Legal Aid and Counseling in the West Bank and the Women's Empowerment Program, Gaza Community Mental Health Program.

<sup>87</sup> Ibid.

<sup>88</sup> Human Rights Watch interview with Ohayla Shomar, director of Sawa, East Jerusalem, November 9, 2005.

commitment to the integration of gender in its development plans, and to the adoption and implementation of positive discrimination policies towards women.”<sup>89</sup>

The Ministry has the authority to review draft laws and propose new ones. However, Ministry staff and women’s NGOs complain that the PA often dismisses the Ministry’s recommendations and that they receive little financial support.<sup>90</sup> For example, the MOWA received only 0.02 percent of the ministerial budget in 2005.<sup>91</sup>

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<sup>89</sup> Ministry of Women’s Affairs Action Plan for 2005-07, issued September 2004, on file with Human Rights Watch.

<sup>90</sup> Human Rights Watch interview with Rose Shamali, WATC, Ramallah, November 10, 2006.

<sup>91</sup> See introductory editorial in the Women’s Affairs Technical Committee newsletter, “The Voice of Women” (*Sawt al-Nissa*), No. 227, October 27, 2005, p. 1 [on file with Human Rights Watch]. Editorial in the Women’s Affairs Newsletter.

### **III. Social and Legal Obstacles to Reporting Violence and Seeking Redress**

Palestinian women and girls rarely report violence to the authorities. This is true regardless of whether the crime is spousal abuse, child abuse, rape, incest, or “honor” crimes. The low rate at which women and girls report such crimes is a symptom of the significant social and legal obstacles still in the way of meaningful gender-based violence prevention and response in the OPT.

According to a Palestinian Central Bureau of Statistics (PCBS) survey of 4,212 households in the OPT conducted in December 2005 and January 2006, only a small number of victims of violence sought any form of redress with Palestinian institutions.<sup>92</sup> Twenty-three percent of the women surveyed had experienced physical violence, 61.7 percent psychological violence, and 10.5 percent sexual violence at the hands of their husbands. Just 1.2 percent of the women polled who had experienced domestic violence had filed a formal complaint against their husbands with the police; less than 1 percent had sought counseling and protection at the police station.

Women’s NGOs attribute the underreporting of violence to a variety of factors, including: the perceived futility of seeking justice; societal stigma associated with reporting family violence to the authorities; potentially life-threatening consequences of reporting the abuse; and the fact that the perpetrator is often the only breadwinner in the family.<sup>93</sup>

Women of course are not the only victims of domestic abuse, but even when a male relative is the victim, women feel powerless to act. Abir Khair (pseudonym), 20, described the combination of fear, societal pressures, and stigma that prevented her from reporting her abusive father and uncles to the authorities:

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<sup>92</sup> Palestinian National Authority, Palestinian Central Bureau of Statistics, Domestic Violence Survey 2005, February 2006, p. 24. On file with Human Rights Watch.

<sup>93</sup> Human Rights Watch interview with Attadal Al-Jariri, head of social work, Palestinian Working Women’s Society for Development (PWWSD), Ramallah, November 7, 2005.

Once during the *Eid* holiday, my father beat my brother in the knees with a [window] shutter. I thought my brother was going to have a heart attack from the pain; he was hallucinating. The doctors wanted to report the incident to the police, but my family wouldn't let them. I feel guilty because maybe I should have gone to the police that time. Maybe things would be better if I had. Lots of times, I thought about going to the police, but he is still my father and what would people say that a daughter reported on her own father? He is my flesh and blood. I hope that he'll go and get treatment by himself, not because the police force him. There is nothing shameful in getting help for your problems, but it would be shameful if the police got involved. I will try to convince my mother to call the police next time he has a violent episode, for my mother's sake, for the sake of the family, and for my father's sake too. When my father makes problems at home, I can't sleep. I stay awake all night.<sup>94</sup>

Public opinion polls also reveal that Palestinian society largely condones violence against women and discourages women from reporting abuse. A poll of 1,133 women conducted in 2002 by the Palestinian Working Women's Society for Development in cooperation with the Palestinian Center for Public Opinion in Beit Sahour found that 53.7 percent of those polled thought that it was inappropriate for the police to interfere when a man assaults his wife; 55.5 percent felt that a wife beaten by her husband should not talk about it to anyone except her parents.<sup>95</sup> When those who experienced violence were asked why they did not leave their abusive marriages, more than 70 percent reported that they refused to leave home because of fear of losing custody of their children. Close to 50 percent felt that divorce was too stigmatizing, and 21.9 percent reported that they would have no place to go if they left their homes.

The West Bank town of Hebron poses particular problems to police officers and victims seeking to report abuse. Hebron is considered one of the most traditional

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<sup>94</sup> Human Rights Watch interview with Abir Khair (pseudonym), Gaza, November 28, 2005.

<sup>95</sup> "Violence against women in Palestine: A public opinion poll," September 2002, as quoted in "Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women," from Erturk report (see footnote 74).

and conservative towns in the OPT and external intervention into “family problems” is largely deemed unacceptable. The chief of police told Human Rights Watch that “a woman in Hebron could get her eye gouged out but be too afraid of society to report the abuse.”<sup>96</sup> The difficulties women face in Hebron are exacerbated by the fact that part of the city, called H2, is still controlled by the Israeli army and Palestinian police cannot enter without permission.<sup>97</sup> According to `Awni Samari, the chief of police in Hebron, the police face a particular problem apprehending perpetrators of crime since “all those fleeing from Palestinian law go into these [off-limit] areas.”<sup>98</sup> In addition, it is difficult for women from the H2 area to reach the Palestinian police station, which is located outside of H2.

There have also been reports from other towns where the Israeli military has control over security matters that Palestinian women and girls are particularly reluctant to report abuse to the occupying power.<sup>99</sup> In such towns, the Israeli army has not provided or even attempted to provide a protective policing function, contrary to its obligations as the occupying power.

To add to these legal and social barriers, discriminatory legislation in force in the West Bank and Gaza, described in the subsections below, does not act as a deterrent to violence, nor does it provide victims with adequate redress for the abuse they have suffered. In fact, the penal laws in particular and the way in which they have been interpreted and applied in practice have led to virtual impunity for perpetrators of violence against Palestinian women and girls.<sup>100</sup>

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<sup>96</sup> Ibid.

<sup>97</sup> Roughly 150,000 Palestinians live in Hebron, of whom 35,000 live in H-2. Also living in H-2 are about five hundred settlers, the only settlers to live in the heart of a Palestinian city. This is the reason that Israel did not re-deploy from all of Hebron and according to the Hebron Agreement of 1997 maintains a security presence and control over H-2.

<sup>98</sup> Human Rights Watch interview with `Awni Samari, head of Hebron police, Hebron, November 16, 2005.

<sup>99</sup> Human Rights Watch interview with Maha Abu-Dayyeh, director of the Women’s Center for Legal Aid and Counseling (WCLAC), East Jerusalem, November 7, 2005.

<sup>100</sup> Jordanian Penal Law No.16 (1960) and Egyptian Penal Law No. 58 (1937) are applied in the West Bank and Gaza, respectively.

## Spousal Abuse

As noted at the start of this chapter, a Palestinian Central Bureau of Statistics survey published in early 2006 found that 23.3 percent of married women in the West Bank and Gaza said that they had been victims of domestic violence in 2005 while 61.7 percent reported that they were victims of psychological violence during the same year.<sup>101</sup> Several Palestinian women's organizations have also reported a rise in already high levels of violence against women following the second *intifada*. According to a 2002 poll by the Refugee Women's Resource Project, close to 90 percent of respondents stated that violence against women had "significantly or somewhat increased as a result of changing political, economic, and social conditions in the Palestinian Territories."<sup>102</sup> There is also evidence that marital rape is prevalent in the OPT. A survey on violence against women in Gaza conducted by the Women's Affairs Center in 2001 revealed that 46.7 percent of the 670 women interviewed reported that their husbands used "force and brutality" during sexual intercourse; 17.4 percent reported that their husbands beat them to have sex; and 35.9 percent said that their husbands threatened and intimidated them into submission.<sup>103</sup>

Palestinian women in violent or life-threatening marriages have two legal options available to them: pressing charges for spousal abuse or initiating a divorce on the basis of physical harm. Both require evidence of extreme violence and impose a high evidentiary burden on the victim. Neither the Jordanian nor the Egyptian penal codes in force in the OPT recognize sexual violence committed within marriage.

Because there is no specific domestic violence legislation in the OPT, adult victims of violence must rely on general penal provisions on assault when they seek to press charges. These laws provide little remedy to victims unless they have suffered the

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<sup>101</sup> *Ibid.*

<sup>102</sup> "Domestic Violence against Palestinian Women Rises," *Middle East Times*, September 20, 2002.

<sup>103</sup> Commentators have linked a variety of factors to these increases in violence. Some Palestinian women's groups point to recent increases in poverty and unemployment that have stripped men of their traditional breadwinning role; the humiliation and frustration that Palestinian men experience at the hands of the Israeli army at checkpoints and during arrest and detention; and the fact that this frustration and anger is often taken out on family members, especially as unemployed men spend more time at home and families have been stranded together in the home for days and weeks during Israeli imposed curfews. See Kamel Al-Mansi, *Family Violence against Women in the Gaza Strip: Prevalence, Causes and Interventions* (Gaza: Women's Affairs Center, 2001). The study surveyed 750 families in Gaza interviewing 670 women between the ages of 15-49.

most extreme forms of injury. Article 33 of the Jordanian penal code (applied in the West Bank) outlines the penalties for violence based on the number of days the victim is hospitalized.<sup>104</sup> As is the situation with all assault cases, if the victim requires less than 10 days of hospitalization, a judge has the authority to dismiss the case at his own discretion as a “minor offense.”<sup>105</sup> In such cases, public prosecutors also try to reconcile the parties rather than pressing charges.<sup>106</sup> The law permits a judge to impose a slightly higher sentence when the victim is hospitalized between 10 and 20 days. According to the law, mandatory prosecution is required only in cases where the victim is hospitalized for more than 20 days.<sup>107</sup> Since victims of domestic violence may go to the hospital several times to treat their injuries with no intention of pressing formal charges, they may have no medical records to support claims of long-term abuse should they later decide to press charges or seek a divorce.

A woman also may seek a divorce based on spousal abuse. However, the existing family status laws require eyewitness testimony for successful petitions, which is often difficult, if not impossible, to obtain. In order for a judge in the OPT to grant a divorce on the basis of domestic violence (*nizah wa ishqa’a* separation, literally “discord and strife”), the law requires a Palestinian woman to produce two eyewitnesses and a medical report from a public hospital to support her claims.<sup>108</sup>

Attorneys told Human Rights Watch that the need for eyewitnesses is a major impediment to filing for divorce on the basis of physical harm. “When a woman is beaten in her home, who can be her witness?” said one lawyer.<sup>109</sup> To add to this difficulty, the law does not permit these witnesses to be related to the petitioner.<sup>110</sup> Typically, the judge will also order a woman’s husband to testify. According to

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<sup>104</sup> Article 33, Law No. 16 (1960), on file with Human Rights Watch.

<sup>105</sup> Ibid.

<sup>106</sup> Human Rights Watch interview with Nashat Ayush, chief prosecutor for Hebron, Bethlehem, May 15, 2006.

<sup>107</sup> Article 33, Law No. 16 (1960), on file with Human Rights Watch.

<sup>108</sup> Human Rights Watch interview with Ghadir al-Shaikh, attorney, Palestinian Working Women’s Society for Development (PWWSD), Tulkaram, November 16, 2005.

<sup>109</sup> Human Rights Watch interview with Ghadir al-Shaikh, attorney, Palestinian Working Women’s Society for Development (PWWSD), Tulkaram, November 16, 2005.

<sup>110</sup> Ibid.



attorney `Ala'a al-Bakri, if a woman is unable to provide sufficient evidence of harm to the court, the husband can simply deny the abuse under oath and the judge will drop the charges.<sup>111</sup> “Sometime her sister sees the abuse, which is not enough. We need two people, and if he swears he didn’t do it, that’s it, the case is closed.”<sup>112</sup> According to judge Yusif al-Dais, chief of the appeals court within the PA’s *shari`a* court system, judges reject 50 percent of divorce cases initiated by women due to a lack of supporting evidence.<sup>113</sup>

Only Palestinian women suffering severe levels of abuse pursue legal action. One lawyer told Human Rights Watch that, “A woman [victim of violence] thinks a hundred times before going to court. She thinks it will only result in scandalizing herself. Anyway, the abuse needs to be repeated to convince the judge. One time is simply not enough.”<sup>114</sup>

In addition to the legal hurdles, nearly insurmountable financial and social obstacles often prevent Palestinian women from leaving abusive marriages. A number of social workers said that many of their clients stay in violent marriages because their parents are unwilling or unable to financially absorb the cost of supporting the victim’s children. With such low labor force participation, most women are unable to support themselves and their children on their own. The women do not want to leave the children behind and feel that they have no other option than to remain in a violent marriage. One woman described to Human Rights Watch the agonizing decision between remaining in a physically and sexually abusive marriage or losing her children:

I had four daughters and one son. I continued to live in that terrible situation because I was afraid of going to my parents and losing my children. I decided to suffer and to wait because I had no other options.

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<sup>111</sup> Human Rights Watch interview with `Ala'a al-Bakri, attorney, Ramallah, November 19, 2005.

<sup>112</sup> Ibid.

<sup>113</sup> Human Rights Watch interview with Shaikh Yusif al-Dais, chief of *shari`a* appeals court, Ramallah, November 19, 2005.

<sup>114</sup> Human Rights Watch interview with Randa Hamad, attorney, PWWSD, Tulkaram, November 16, 2005.

She later described how her husband reminded her of her predicament. “My husband threatened me not to ask for a divorce. He said you’ll lose the children and your father won’t accept you.”<sup>115</sup>

Desperation has led some Palestinian women to kill their abusive husbands. Human Rights Watch spoke to several women who felt that there was no other way to end the abuse they suffered other than to kill their husbands. One such woman, Mariam Isma`il (pseudonym), 35, told Human Rights Watch that she was driven to doing so after enduring years of physical and sexual abuse:

He used to beat me everywhere. I never went to the hospital, and I didn’t even tell my parents. I was just thankful to be alive. But the violence became more and more physical and sexual. He brought other people to have sex with me and to abuse me. He held me while other people abused me... If I thought that I had even a 1 percent chance of changing the situation any other way, I would never have done it.

The police asked me why I didn’t just go to my family, but I said that my family would probably try to kill me because I had slept with others. Until now, my family doesn’t believe me. The police showed my family the police report that documented how I was forced to have sex with other men. Even the police said that they didn’t blame me for killing him after that. My family was surprised by the report and didn’t believe it.<sup>116</sup>

At the time of Human Rights Watch’s visit, she was awaiting trial in the Nablus prison on murder charges.

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<sup>115</sup> Human Rights Watch interview with Mariam Isma`il (pseudonym), Nablus, November 27, 2005.

<sup>116</sup> Human Rights Watch interview with Mariam Isma`il (pseudonym), Nablus, November 27, 2005.

## Child Abuse

Like children everywhere, Palestinian children, particularly girls, are vulnerable to physical and sexual abuse within the family and appropriate laws are needed to protect them. In a survey published in 2005, the PCBS found that 51.4 percent of Palestinian mothers believed that at least one of their children (aged five to 17) was exposed to violence, with the vast majority of such abuse (93.3 percent) being inflicted by family members.<sup>117</sup> In another study, close to 80 percent of Palestinian girls aged five to 17 reported that they were exposed to violence in the home.<sup>118</sup>

One young woman in Gaza told Human Rights Watch how her father's abuse had affected the family since the beginning of the *intifada*:

The situation has been like this for the past five years. Before that it was okay. He was working in Israel and earning money. He was still a violent person but back then he was out of the house most of the time and his fights were with others. But since the beginning of the *intifada* he has been unemployed and at home. Whenever he spends too much time at home, he makes problems here.<sup>119</sup>

Another woman, Karima Ahmad (pseudonym), 19, fled to a shelter at the age of 17 in order to escape abuse by her father and stepmother. She tried to commit suicide several times while she was in the shelter. She told Human Rights Watch:

My father married 40 days after my mother's death. She [my stepmother] used to hit me and my sister and treat us badly. My father tried to abuse me [sexually] when I was around six. He did it to me and then to my sister. She's 18 years old now. I wanted to go in front of everybody and scream. Why do they do this to us?<sup>120</sup>

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<sup>117</sup> PCBS 2005 Domestic Violence Survey: Preliminary Findings [on file with Human Rights Watch].

<sup>118</sup> PCBS "Child Psychological Health Survey 2004," p. 82-83 [on file with Human Rights Watch]. same

<sup>119</sup> Human Rights Watch interview with a victim of domestic violence [name withheld], Gaza, November 28, 2005.

<sup>120</sup> Human Rights Watch interview with Karima Ahmad, location withheld, November 29, 2005.

While Karima never reported the abuse to the police, and her father and stepmother were never prosecuted, it is unclear whether they would have been held accountable for their actions given the serious shortcomings in Palestinian law with regard to child abuse. While the draft Palestinian constitution, or Basic Law, prohibits violence against children,<sup>121</sup> Jordanian Law No. 16 applied in the West Bank allows parents to discipline their children through the use of physical force. Article 62 of the law states that, “Any act authorized by law is not considered an offence. The law permits disciplinary beating of children by their parents, just as applicable in common law.”<sup>122</sup> Article 286 of the same law also denies children who are victims of incest the right to file sexual abuse charges. Only male family members, who may be the perpetrators of abuse, are granted the right to file incest charges on behalf of minors.<sup>123</sup> As recently as 2004, Defense for Children International/Palestine Section noted that “the current legal system, which is an amalgamation of at least five different legal systems, not only lacks unity and falls short of international standards, but also seriously fails to act in the best interest of the child.”<sup>124</sup>

The PA enacted a Child Law in January 2005,<sup>125</sup> a step towards creating a culture of intolerance of child abuse in the OPT. The law describes the basic social, cultural, and health rights guaranteed to Palestinian children within the family and Palestinian society, while outlining the protective measures and mechanisms available to them. One of the most notable features of the law is the establishment of a reporting mechanism through the creation of a Childhood Protection Department within the Ministry of Social Affairs. This department is responsible for “ensuring that children are not exposed to violence in the public and private domains and for overseeing the care of children who have been exposed to violence.”<sup>126</sup> The Child

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<sup>121</sup> Article 29 (4) of the Palestinian Amended Basic Law promulgated on March 18, 2003. A complete copy of the law can be found at <http://213.244.124.245/mainleg/14138.htm> (accessed May 3, 2006).

<sup>122</sup> Article 62, Law No. 16 (1960), on file with Human Rights Watch.

<sup>123</sup> Article 286 specifically states that “incestuous actions shall only be pursued upon the complaint of a male relative or an in-law, up to the fourth degree of kinship.” See sub-section on Incest in Chapter IV of this report for more information.

<sup>124</sup> Defense for Children International/Palestine Section, “Use of Children in the Occupied Palestinian Territories: Perspective on Child Soldiers,” July 2004), p. 13, <http://www.dci-pal.org/english/Display.cfm?DocId=277&CategoryId=8> (accessed April 28, 2006).

<sup>125</sup> See Secretariat of the National Plan of Action for Palestinian Children, “Child Protection in the Occupied Palestinian Territory: A National Position Paper,” June 2005, p. 14.

<sup>126</sup> *Ibid.*, p.85.

Law also contains a general provision stating that children “shall have the right to protection from all forms of violence, physical, psychological, or sexual harm or injury, negligence, homelessness, and any other form of ill-treatment or exploitation.” However, without the repeal of penal code provisions permitting only male relatives to file incest charges on behalf of minors, the protections guaranteed in the Child Law are seriously undermined. NGOs also have critiqued the law’s restrictive definition of “hardship cases” eligible for special protection,<sup>127</sup> its failure to specify exactly which government body is responsible for enforcing the protective measures outlined in the law, and the fact that it did not specify a commitment to the UN Convention on the Rights of the Child.<sup>128</sup>

## Sexual Violence

An unknown number of Palestinian women and girls are victims of sexual abuse every year in the OPT. According to Palestinian social workers, few ever report this violence to their families or the authorities. Fewer still ever make it to the prosecutor’s office due to mediation that sometimes occurs between the victim, the rapist, and their respective families.<sup>129</sup> One prosecutor who has worked in Hebron and Bethlehem for more than six years told Human Rights Watch that he has only prosecuted two cases of sexual violence in that time.<sup>130</sup>

In addition to the fear of being blamed or harmed by family members as a result of the attack,<sup>131</sup> a number of legal obstacles stand in the way of victims seeking justice for sexual violence in the Palestinian courts. These obstacles include discriminatory and abusive laws that prohibit minors from pressing charges for incest and allow the courts to suspend the sentences of rapists who agree to marry their victim. The lack of the necessary expertise and tools to carry out criminal investigations in sexual violence cases is another obstacle. According to the same prosecutor, “the first

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<sup>127</sup> In these cases, the Department has the authority to remove a child from their home.

<sup>128</sup> Secretariat of the National Plan of Action for Palestinian Children, “Child Protection in the Occupied Palestinian Territory: A National Position Paper,” June 2005, p.12.

<sup>129</sup> Human Rights Watch interview with Nashat Ayush, chief prosecutor for Hebron, Bethlehem, May 15, 2006.

<sup>130</sup> Ibid.

<sup>131</sup> For more information, see sub-section on the Murder of Women under the Guise of “Honor.”

problem in Palestine is that it's very hard to carry out these kinds of investigations since we don't have the technical capacity to do lab work or to collect evidence."<sup>132</sup>

Victims of sexual violence are particularly stigmatized in Palestinian society. Women and girls who report rape or incest are at high risk of further abuse and even murder by family members seeking to wipe out this "stain" on their family's reputation. According to one social worker, in incest cases "...victims' voices are often lost or muted beyond hearing within the myriad of other concerns that come into play culturally."<sup>133</sup> Family members routinely blame rape and incest victims for the abuse, interrogating them on their behavior, dress, and demeanor, each of which is thought to have enticed the attacker. In the experience of one women's rights activist, "in rape and sexual harassment cases, everyone will look at it as though it's her fault. They'll say 'if you didn't accept it, he wouldn't have tried.'"<sup>134</sup>

According to one social worker, family members prevent many girls who are victims of rape and incest from continuing their education and force them into early marriages to cover up the abuse.<sup>135</sup> Such marriages often further cement the cycle of violence and abuse. Indeed, as described below, marriage absolves a rapist of prosecution for the rape. One women's rights activist explained:

Rape cases are dealt with at the police station as special cases. Most of the time the result is that they [the rapist and the victim] get married under the carpet to avoid scandal. Rape cases rarely go to courts...In all of these cases, the police want to solve it within the family without documentation.<sup>136</sup>

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<sup>132</sup> Human Rights Watch interview with Nashat Ayush, chief prosecutor for Hebron, Bethlehem, May 15, 2006.

<sup>133</sup> Nadera Shalhoub-Kevorkian, "Imposition of Virginity Testing: A Life-Saver or a License to Kill?," *Social Science and Medicine*, Vol.60 (2005), p. 1192.

<sup>134</sup> Human Rights Watch interview with Manal Awad, head of the Women's Empowerment Program, GCMHP, Gaza, November 28, 2005.

<sup>135</sup> Human Rights Watch interview with Maha Sabbagh, social worker, Ramallah, November 19, 2005.

<sup>136</sup> Human Rights Watch interview with Manal Awad, head of the women's empowerment program, Gaza Community Mental Health Program (GCMHP), Gaza, November 28, 2005.

Judges admit that this is a problem. According to Judge Hani al-Natur, “there are lots of rape cases, but the percentage that comes to the courts are limited. People are worried about scandal, so it’s very limited. Incest cases are also very low. Only those who are courageous enough and have legal awareness come to report it.”<sup>137</sup>

The classification of sexual crimes in penal codes in the West Bank is also problematic. Jordanian Law No.16 (1960) classifies sexual violence (both rape and incest) under crimes “against public morals and ethics,” which does not appropriately reflect the nature of the crime.<sup>138</sup> All forms of sexual assault should be considered fundamentally as a crime against the individual apart from a crime against specific norms or values.

### *Rape*

The PA has failed to create a legal environment that protects women from rape, encourages victims to report attacks, or deters rapists. Rape laws in force in the OPT distinguish between virgin and non-virgin victims of sexual violence, with harsher penalties when the victims are thought to have been virgins. They include legal loopholes that ultimately absolve rapists of punishment and fail to recognize sexual violence committed within a marriage. These laws also criminalize abortion in cases of rape or incest, forcing victims of sexual violence to carry their pregnancies to term.

The legal treatment of rape reflects a societal preoccupation with female virginity. Article 301 of Jordanian Law No. 16 (1960), applied in the West Bank, provides for an increase in the sentence for rape “by one third or one half” if the victim lost her virginity as a result of the rape.<sup>139</sup> By considering the rape of a virgin as an aggravating circumstance of assault, the law sends the message that the degree of punishment of the perpetrator should be determined by the sexual experience of the victim.

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<sup>137</sup> Human Rights Watch interview with Judge Hani al-Natur, Court of Appeals, Ramallah, December 1, 2005

<sup>138</sup> Law No.16 (1960), Chapter VII, Criminal Acts that Offend Public Morals and Ethics (on file with Human Rights Watch).

<sup>139</sup> *Ibid.*, Article 301.



Even more disturbingly, laws in force in the West Bank and Gaza relieve rapists who marry their victims from any criminal prosecution. Article 308 of the Jordanian law allows the court to cease legal action or suspend the sentence of a rapist if a “legal and correct marriage contract is forged” between him and the victim.”<sup>140</sup> The rapist goes to trial only if he divorces the victim “without reason” within five years.<sup>141</sup> Article 291 in the Egyptian penal code in force in Gaza provides a similar exoneration for rapists who agree to marry their victims.<sup>142</sup>

Laws in force in the OPT deny victims of sexual violence the right to a legal abortion by prohibiting abortion in almost all cases.<sup>143</sup> The criminalization of abortion without exception for victims of sexual violence has led some observers to conclude that “Such women are left with one of two difficult options: to abort the foetus on her own, which carries serious risks to her life and safety, or to continue with the pregnancy and bear the social and psychological burdens of an ‘illegitimate’ pregnancy and childbirth.”<sup>144</sup>

There is a wide discrepancy between the number of rape cases reported to the Palestinian police and the number of convictions. According to the PCBS, in 2004 PA courts convicted only one person of rape in Gaza and convicted no one in the West Bank.<sup>145</sup> Only 27 individuals were serving sentences for rape in 2005.<sup>146</sup> These numbers are not consistent with reported levels of rape in the OPT. For example, the PCBS recorded a total of 85 reported cases of rape and attempted rape in 2003 (60

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<sup>140</sup> Ibid., Article 308. See also Women’s Center for Legal Aid and Counseling, “A Gap Analysis Report on the Status of Palestinian Women in the Context of the Convention on the Elimination of All Forms of Discrimination against Women: Summary Report,” [http://www.mediterraneas.org/article.php?id\\_article=278](http://www.mediterraneas.org/article.php?id_article=278) (accessed April 21, 2006).

<sup>141</sup> Ibid., Article 308.

<sup>142</sup> Despite the fact that this law was repealed by the Egyptian People’s Assembly in 1999, Gaza continues to apply the non-amended law. See also Women’s Center for Legal Aid and Counseling, “A Gap Analysis Report.”

<sup>143</sup> Article 321 of Jordanian Penal Law No.16 (1960) reads: “A woman who through any means performs an abortion on herself or consents to another person applying such means shall be punished with six months to three years’ imprisonment.” A legal exception is made in the West Bank if the health or life of the pregnant woman is at risk. The Egyptian Penal Code of 1937 (sections 260-264) applicable in Gaza prohibits abortion without exception.

<sup>144</sup> See Women’s Center for Legal Aid and Counseling, “A Gap Analysis Report.”

<sup>145</sup> See Palestinian Central Bureau of Statistics table on “Convicted Offenders in Prisons in the West Bank by Type of Criminal Offense and Month 2004,” [http://www.pcbs.gov.ps/Portals/\\_pcbs/victimz/crvdo4.aspx](http://www.pcbs.gov.ps/Portals/_pcbs/victimz/crvdo4.aspx) and “Convicted Offenders in Prisons in Gaza Strip by Type of Criminal Offense and Month 2004,” [http://www.pcbs.gov.ps/Portals/\\_pcbs/victimz/crvdo5.aspx](http://www.pcbs.gov.ps/Portals/_pcbs/victimz/crvdo5.aspx) (accessed April 21, 2006).

<sup>146</sup> See Palestinian Central Bureau of Statistics table on “Persons in Custody in the Palestinian Territory by Type of Criminal Offense and Month 2004,” [http://www.pcbs.gov.ps/Portals/\\_pcbs/victimz/crvdo3.aspx](http://www.pcbs.gov.ps/Portals/_pcbs/victimz/crvdo3.aspx) (accessed April 21, 2006).

cases in the West Bank and 25 in Gaza),<sup>147</sup> while only one person was convicted of rape that year.<sup>148</sup>

Finally, the OPT laws do not recognize the possibility of rape in marriage. Article 292 of the Jordanian penal code, in force in the West Bank, explicitly carves out an exception from criminal penalties for nonconsensual sex within marriage, providing penalties only for a man who “has sex with a female (other than his wife) without her consent.”<sup>149</sup> Existing laws also criminalize abortion in cases of rape or incest, forcing all victims of sexual violence to carry their pregnancies to term.<sup>150</sup>

### *Incest*

*When a girl’s honor is trampled, everyone spits on her.*

– Reem Hamad (pseudonym), a victim of incest, Nablus, November 23, 2005.

The Palestinian legal system places procedural and evidentiary burdens on victims of incest, virtually foreclosing the possibility of filing a complaint. Under the Jordanian penal law in force in the West Bank, only male family members can file incest charges on behalf of minors.<sup>151</sup> Neither female relatives nor social service providers can file charges on their behalf. Article 286 specifically states that “incestuous actions shall only be pursued upon the complaint of a male relative or an in-law, up to the fourth degree of kinship.”<sup>152</sup> This means that only people of the first (father and grandfather), second (brothers and paternal uncles), third (maternal uncles), and fourth degrees (brothers in law) of kinship are able to file such

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<sup>147</sup> See Palestinian Central Bureau of Statistics table on “Reported Criminal Offenses in the Palestinian Territory by Type of Criminal Offense and Region 1996-2003,” [http://www.pcbs.gov.ps/Portals/\\_pcbs/victimz/crvo1.aspx](http://www.pcbs.gov.ps/Portals/_pcbs/victimz/crvo1.aspx) (accessed April 21, 2006).

<sup>148</sup> See Palestinian Central Bureau of Statistics table on “Convicted Offenders in Prisons in the Palestinian Territory by Type of Criminal Offense and Region 1996 – 2003,” [http://www.pcbs.gov.ps/Portals/\\_pcbs/victimz/crvo4.aspx](http://www.pcbs.gov.ps/Portals/_pcbs/victimz/crvo4.aspx) (accessed April 21, 2006).

<sup>149</sup> Article 292, Chapter VII “Criminal Acts that Offend Public Morals and Ethics. Article 292 reads: “He who has sex with a female (other than his wife) without her consent, by force, or fraudulently is sentenced to not less than 10 years in prison with hard labor.”

<sup>150</sup> See article 321 of Jordanian Penal Law No.16 (1960) and sections 260-264 of the Egyptian Penal Code of 1937.

<sup>151</sup> Article 286, Chapter VII on Criminal Acts that Offend Public Morals and Ethics, Law No.16 (1960).

<sup>152</sup> *Ibid.*

complaints.<sup>153</sup> No such provisions exist in the Egyptian penal code in force in Gaza. Attorney Halima Abu-Sulb described the absurdity of this situation: “Who attacks women? It’s men. But only they can file the petition!”<sup>154</sup>

The chief public prosecutor for Hebron confirmed that incest cases rarely make it to the prosecutor’s office. He told Human Rights Watch:

When minors are sexually assaulted the family covers it up due to traditional reasons. In the past five months in my job in Hebron, I’ve heard that there are a lot of such practices but since it happens before the cases reach the prosecutor we do not know much about it...The family and the police will achieve some type of reconciliation.<sup>155</sup>

Some incest victims who disclose their experiences to others in the hope of finding support may become susceptible to further manipulation and abuse. Hanan Sharif (pseudonym), 20, was 17 when her father first tried to rape her. “My mother was cooking downstairs. No one could do anything to help me. My mother tried to stop it, but he hit her too, she couldn’t do anything.” Hanan’s father molested her several times over three years. “When I got older, I realized he was using me... I thought this was tenderness before.” Hanan eventually ran away from home. She went to live with her older brother, but that did not end the abuse.

I went to my brother. He helped me a bit, but then he also tried to rape me. It happened so many times. He’d hit me and then sleep with me. He wouldn’t let me see anyone. He would take off my clothes. He said, “you’re not worth anything. None of your [other] brothers can help you. Where will you go? If you go back home, our father will beat you even more because you left the house without his permission.”

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<sup>153</sup> Human Rights Watch interview with Halima Abu-Sulb, attorney, Women’s Center for Legal Aid and Counseling (WCLAC), November 14, 2005.

<sup>154</sup> Ibid.

<sup>155</sup> Human Rights Watch interview with Nashat Ayush, chief prosecutor for Hebron, Bethlehem, May 15, 2006.

Hanan spent a year and a half with her brother before she reported the abuse to the police. The police officers she approached did not believe her at first. “They said ‘it’s impossible that a father would do that to his daughter.’ They didn’t believe me. The social worker [at the police station] didn’t even believe me.”<sup>156</sup>

Nada `Umar (pseudonym), 30, described her situation to Human Rights Watch:

My problem started with my family. When I was 12, my brother attacked me, attacked me sexually...My brother was 24. He’d hit me. Everyone in my family knew. My father died when I was small, so there was no one to protect me. My brother would even hit my mother. I didn’t report it since there was no one to protect me. I couldn’t tell the police. I was not allowed to even leave the house. I met a young man in 2002, and I loved him. We got engaged. I told him that my brother attacked me. I couldn’t hide it from him. He said “no problem, I’ll pretend you’re a divorcee.” But during the engagement, he started to treat me badly. He said that if I don’t sleep with him, he’ll tell my family that I had sex not with my brother but with other people. After that, we had sex and I became pregnant.<sup>157</sup>

### **Murder of Women under the Guise of “Honor”**

*An 18-year-old female died as a result of manual strangulation and smothering, which were carried out by her family members. The assailants claimed that the victim committed suicide by drinking a poisonous liquid (a bottle containing “organophosphorous pesticide” was brought to the morgue with the cadaver).*

-An abstract of an autopsy report of an “honor” killing by Al-Quds University’s Legal Medicine Institute<sup>158</sup>

The killing of female relatives under the guise of family “honor” is a serious physical threat to Palestinian women in the West Bank and Gaza. A Palestinian woman’s life

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<sup>156</sup> Human Rights Watch interview with Hanan Sharif (pseudonym), Nablus, November 23, 2006.

<sup>157</sup> Human Rights Watch interview with Nada `Umar (pseudonym), Nablus, November 27, 2005.

<sup>158</sup> A copy of the autopsy report is on file with Human Rights Watch.

is at risk if she is suspected of engaging in behavior her family or community considers taboo, such as talking with a man who is not her husband or a blood relative (even in a public place), refusing to tell a close male relative where she has been and with whom, or marrying someone without the approval of her family: in short for doing or being suspected to have done anything that is perceived to bring dishonor on herself and on her family.

These murders are the most tragic consequence and graphic illustration of deeply embedded, society-wide gender discrimination. While there are no concrete figures on these crimes since no government agency collects this information, Palestinian women's rights groups report that they are regularly confronted with cases of women and girls who are threatened by family members, some of whom have been subsequently killed by family members. Local advocates claim that incidents of such murders are drastically underreported and that the full scope of the problem is hard to gauge.<sup>159</sup> Some Palestinian women's rights activists have described these murders as "femicide" rather than "honor killings" in order to convey the gravity of the abuse, the continuum of violence affecting women's lives, and to disassociate these crimes from any conception of honor.<sup>160</sup>

In some cases, families target women for "honor" killings not because they have voluntarily transgressed the moral code, but merely because they have been a victim of sexual violence, itself a "shame" to the family.<sup>161</sup> Some perpetrators are rapists who kill the victim to avoid being identified as the culprit, especially if the victim becomes pregnant. In other cases, family members kill a girl or woman who has been a victim of sexual violence rather than seeking a judicial remedy to hold the perpetrator to account.

Effective response is difficult because publicity itself can lead a family to take the life of a girl or woman. One women's rights activist told Human Rights Watch, "it is social pressure that causes families to kill [their daughters]. Cases that remain private

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<sup>159</sup> Human Rights Watch interview with Su`ad Abu Dayya, Head of Social Work Unit, Women's Center for Legal Aid and Counseling (WCLAC), East Jerusalem, November 9, 2005.

<sup>160</sup> See Nadera Shalhoub-Kevorkin, *Mapping and Analyzing the Landscape of Femicide in Palestinian Society* (Jerusalem: Women's Center for Legal Aid and Counseling, 2004).

<sup>161</sup> *Ibid.*

within the nuclear family can save women.”<sup>162</sup> In one case, a 16 year-old girl from Ramallah became pregnant after repeated rape by her two brothers.<sup>163</sup> The pregnancy and her brother’s subsequent imprisonment for incest was thought to have shamed the family to such an extent that the governor asked the family to promise him they would not harm her.<sup>164</sup> The mother of the girl eventually killed her.

In this case, Palestinian police reportedly had prior notice that the girl might be in jeopardy but were unable to get to the scene in time. Amnesty International and press reports claim that the Palestinian police were held by Israeli soldiers for hours at an Israeli military checkpoint between the city of Ramallah and the village of Abu Qash where the family lived.<sup>165</sup> The staff of the Women’s Center for Legal Aid and Counseling said that they were not able to reach her house in time to try to save her life due to movement restrictions between Jerusalem and the West Bank.<sup>166</sup> Maha Abu-Dayyeh Shamas of WCLAC told Human Rights Watch:

The area was under curfew and as we all know, curfews during the intifada were enforced by shoot to kill policies for anyone caught moving about. By that point in the intifada the police had stopped operating in uniform for fear of being shot at by the Israeli army. The police still functioned as police to the best of their ability and they still had the moral authority to carry out law enforcement duties but they had to move around in civilian clothes. On that occasion the police tried to enter the village, in civilian clothes, when it was under curfew, and Israelis shot at them.<sup>167</sup>

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<sup>162</sup> Human Rights Watch interview with Maha Abu-Dayyeh, director of the Women’s Center for Legal Aid and Counseling (WCLAC), East Jerusalem, November 7, 2005.

<sup>163</sup> Human Rights Watch interview with Su`ad Abu Dayya, Head of Social Work Unit, Women’s Center for Legal Aid and Counseling (WCLAC), East Jerusalem, November 9, 2005.

<sup>164</sup> Ibid.

<sup>165</sup> See Soraya Sarhaddi Nelson, “Mother kills raped daughter to restore honor,” *Knight Ridder Newspapers*, November 17, 2003 and Amnesty International, “Conflict, Occupation and Patriarchy: Women Carry the Burden, March 2005.

<sup>166</sup> Ibid.

<sup>167</sup> Human Rights Watch interview with Maha Abu-Dayyeh Shamas, director of the Women’s Center for Legal Aid and Counseling, East Jerusalem, June 14, 2006.

Certain laws in the West Bank and Gaza facilitate “honor” crimes. These include laws that provide lenient sentences and exemptions from punishment to men who attack female relatives committing adultery<sup>168</sup> and laws that allow judges to halve a perpetrator’s sentence if the family of a victim chooses not to file a complaint.

Article 340 of Jordanian Penal Law No. 16 (1960), in force in the West Bank, provides that any man who kills or attacks his wife or any of his female relatives while she is committing adultery is exempt from punishment. Men who kill women who are caught in an “unlawful bed” may receive a reduced sentence.<sup>169</sup> Article 98 of the same law mandates reduction of penalty for a perpetrator (of either gender) who commits a crime in a “state of great fury [or “fit of fury”] resulting from an unlawful and dangerous act on the part of the victim.”<sup>170</sup> It does not require *in flagrante* discovery or any other standard of evidence of female indiscretion. In Gaza, the Egyptian penal code also provides for a reduction in penalty for murder of a woman by her husband in circumstances of adultery. It categorizes the murder of a wife (but not a husband) in the act of committing adultery as an extenuating circumstance, thereby reducing the crime of murder to the level of a misdemeanor.<sup>171</sup>

One prosecutor explained to Human Rights Watch that the law authorizes Palestinian judges to reduce sentences by anywhere between one third and two thirds for men

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<sup>168</sup> The roots of these statutes can be found in the Napoleonic Code’s conception of “crimes of passion” brought to the region via the Ottoman Empire. See Lama abu-Odeh, “Crimes of Passion and Construction in Arab Societies” in Pinar Ilkkaracan, ed., *Women and Sexuality in the Muslim Societies* (Istanbul: Women for Women’s Human Rights – New Ways, 2000), p. 363-380. For more information on reduced sentences for “fit of fury” crimes and the misapplication of these laws in “honor” crimes cases, see Human Rights Watch, *Honoring the Killers: Justice Denied for “Honor” Crimes in Jordan*, vol. 16, no.1(E), April 2004, <http://www.hrw.org/reports/2004/jordano404/>.

<sup>169</sup> Article 340 of Law No. 16 (1960) states:

He who surprises his wife or one of his females [*mahrms*] committing adultery with somebody, and kills, wounds, or injures one or both of them, shall be exempt from liability [*udhr muhill*].

He who surprises his wife, or one of his female antecedents or descendents or sisters with another in an unlawful bed, and he kills or wounds or injures one or both of them, shall be liable to a lesser penalty in view of extenuating circumstances [*udhr mukhaffaf*].

In an effort to make this law gender-neutral in Jordan, a second clause was added in 2001 granting female attackers the same reduction in penalty. This amendment does not apply in the West Bank.

<sup>170</sup> The statute may be translated as follows: “He who commits a crime in a state of great fury resulting from an unlawful and dangerous act on the part of the victim shall benefit from the extenuating excuse.” Article 98 of Law No. 16 (1960).

<sup>171</sup> Article 237 of the Egyptian Penal Code reads:

Whoever surprises his wife in the act of adultery and kills her on the spot together with her adulterer-partner shall be punished with detention instead of the penalties prescribed in articles 234 [permanent or temporary hard labor] and 236 [hard labor or imprisonment for a period of three to seven years].



who murder their spouses or female relatives who they find in “an unlawful bed.”<sup>172</sup> “Of course, the judge has the right to give full punishment if he wants. It’s all at his discretion,” he added.<sup>173</sup> However, Palestinian prosecutors report that family members and individuals in the community sometimes intimidate judges to provide reduced sentencing in cases that would otherwise not benefit from mitigating circumstances. According to one prosecutor, in such cases:

The family, the clan, and society will all come together and allege it was a “crime of honor” and that he should get a reduced sentence and there are mitigating circumstances. And, in the end, the judges also cave under the pressure and may release the suspect on bail before the trial or find some article in the penal code that can be applied in order to give him a lesser sentence... Sometimes the families collect signatures from the whole village and prominent individuals that say that the village does not want to press charges against the perpetrator and that they are not opposed to him receiving minimal punishment.<sup>174</sup>

According to one judge who wished to remain anonymous, in some cases, “if the crime was committed in a fit of fury, he gets released right away.” He said that “this encourages crimes.” These provisions have led one observer to argue that “femicide is tolerated, if not encouraged, by the existing legal code.”<sup>175</sup>

As in most criminal cases, judges have the authority to halve a sentence if the victim’s family “waives” its right to file a complaint for murder.<sup>176</sup> In murders for “honor,” given the family’s complicity in the crime, the family nearly always “waives” the right to file a complaint. Thus, perpetrators of these attacks may receive sentences as short as six months in prison. If a killer has served that much time

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<sup>172</sup> Human Rights Watch interview with Nashat Ayush, chief prosecutor for Hebron, Bethlehem, May 15, 2006.

<sup>173</sup> *Ibid.*

<sup>174</sup> *Ibid.*

<sup>175</sup> Nadera Shalhoub-Kevorkian, “Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?,” *Law and Society Review*, vol. 36, No. 3 (2002), p. 592.

<sup>176</sup> See Article 99, Law No. 16 (1960).

awaiting trial, the judge may commute his sentence to reflect time already served. In her review of these cases, Dr. Nadera Shalhoub-Kevorkian found:

Evidence based on gossip and rumors played a key role in court decisions regarding most of the six femicide cases. Such methods were justified by cultural and traditional values related to female purity and sexuality, which consider alleged behavior to be as “dishonorable” as actual behavior, and which do not take circumstances into consideration (e.g. that a pregnant victim may have been raped; that women who ran away from home were trying to escape an abusive father or husband.)<sup>177</sup>

In May 2005, roughly 300 Palestinian women held a demonstration in Ramallah’s main square calling for legislative amendments to protect women from “honor” crimes after three women were murdered within a week.<sup>178</sup> According to the article, a brother killed his two sisters in East Jerusalem in an apparent “honor” killing, and a Christian father in Ramallah admitted to killing his 23 year old daughter because she tried to marry a Muslim man without his consent.<sup>179</sup> The protesters called for legislation to protect women from such killings.<sup>180</sup>

The 23 year old woman, Fatin Habash, quickly became a symbol of the PA’s failure to protect women from murder. Her case highlighted that all Palestinian women and girls, irrespective of religion, are at risk. According to a number of news reports,<sup>181</sup> after her father refused to consent to her marriage, Fatin tried to go to Jordan twice to elope. However, the family priest, Father Ibrahim Hijazin, contacted Palestinian security forces, who prevented Fatin from crossing the border and returned her to her home. The police did not provide her with any protection upon her return home.

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<sup>177</sup> Ibid., p. 593, n. 175.

<sup>178</sup> “Palestinians Decry ‘Honour’ Killings,” May 7, 2005, <http://english.aljazeera.net/NR/exeres/256BB72C-78DA-4DBE-B80B-63452062E7Co.htm> (accessed April 15, 2006).

<sup>179</sup> Ibid.

<sup>180</sup> Ibid.

<sup>181</sup> See, for example, Chris McGreal, “Murdered in name of family honour,” *The Guardian*, June 23, 2005 <http://www.guardian.co.uk/israel/Story/0,2763,1512394,00.html?gusrc=rss> (accessed May 5, 2006); Lara Sukhtian, “‘Honor killing’ underlies growing divide Palestinian Muslims, Christians worry about rise in sectarianism,” *Charleston Gazette*, September 6, 2005, p. 3A; Carolynne Wheeler, “The price a woman must pay for defiance,” *The Globe and Mail*, May 16, 2005.

Shortly after her return home, her uncle beat her. Her pelvis was broken after she was allegedly either thrown out of the window or jumped trying to escape. The police also denied women's organizations the opportunity to visit her in the hospital. While recovering in the hospital, her fiancé sought help from the Dawahik Bedouin tribe, who agreed to mediate between her and her father in coordination with the governor of Ramallah. Fatin returned home from the hospital after her father promised the Bedouin tribe that he would not harm her. A week later, her father beat her to death with an iron bar. While Palestinian authorities subsequently arrested him, he was released on bail and a year later, is still awaiting trial. None of the official or tribal authorities who brokered Fatin's return home have been investigated or even reprimanded for their failure to protect her.

Non-family members also have murdered Palestinian women for allegedly engaging in "immoral behavior." In April 2005, for example, five armed gunmen reportedly linked to Hamas killed 20 year old Yusra `Azzami while she was taking a walk with her fiancé.<sup>182</sup> Following the murder, Hamas distributed leaflets in the town of Beit Lahia calling the killing a mistake and vowing to punish the perpetrators.<sup>183</sup> They condemned the act of killing the woman only insofar as it was a mistake, not because it is a crime to kill someone for allegedly immoral behavior. A Hamas spokesperson told reporters that "The brothers who did this made a mistake. There was suspicion of immoral behavior."<sup>184</sup>

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<sup>182</sup> Donald Macintyre, "Hamas Admits Gunman Shot Woman in Honour Killing," *The Independent*, April 14, 2005.

<sup>183</sup> Ibid.

<sup>184</sup> Ibid.

## **IV. Failings in Institutional Responses to Violence against Women and Girls**

*I think society and institutions are becoming more and more aware of violence against women and some ministries are now trying to cooperate...But there are no procedures on how to implement the basic protections that exist.*

— Su`ad Abu Daya, director of the social welfare department at the Women's Center for Legal Aid and Counseling, East Jerusalem, November 9, 2005

The Palestinian Authority has failed to create an effective institutional framework to prevent violence against women and girls, punish these abuses when they occur, encourage victims to report acts of violence and protect them from further violence. The Palestinian police force lacks the expertise, and apparently the will, to deal with cases of violence against women in a manner that is effective, sensitive to the needs of victims, and respectful of their privacy. Meanwhile, the absence of medical guidelines for doctors also seriously affects the quality of treatment afforded to female victims of violence.

The few Palestinian women and girls who make the decision to report abuse to the authorities find themselves confronting a series of institutional obstacles that prioritize the reputation of their families in the community over their own health and lives. Human Rights Watch learned that one of the aims of the Palestinian criminal justice system with regard to cases of family violence is to avoid “public scandal” at all cost. While it is true that unwanted publicity can deepen the shame families feel, possibly fueling further family violence, an appropriate response would allow the victim to press charges while respecting the confidential nature of their cases. Instead, police officers often “mediate” and “resolve” these cases in the police station, sometimes proposing marriage as a solution to a rape. The belief supporting this practice is that there is no “harm” or “shame” in rape if the rapist restores the “honor” of his victim and her family by marrying her. The number of rape and incest cases that the police “resolve” through marriage every year in the OPT is unknown.

One women's rights activists told Human Rights Watch that the police never register these cases or report them to the courts.<sup>185</sup>

Victims of sexual violence in particular routinely pay the price for the abuse they have suffered. In the ultimate reversal of justice, women who report abuse to their families or the authorities may be forced or coerced to marry their rapist or a stranger to "erase" the abuse before it is revealed to the wider community. As one observer noted, these forced marriages "absolve society of the responsibility of dealing with such crimes."<sup>186</sup> At every level of Palestinian government, even when the state is acting as guardian of a minor, as in the case of the Bethlehem Home for Girls (described in detail below), marriage is pushed as the answer to rape.<sup>187</sup>

Social service providers working in NGOs are also at risk of violence. According to several NGO social workers who did not wish to be identified, family members of their clients sometimes subject them to threats, intimidation, and violence. These professionals assume great personal risks when they help women and girls escape from abusive families and confront perpetrators of abuse. Several women's rights activists spoke to Human Rights Watch about the failure of the PA to protect not only their clients, but also themselves, as service providers. One social worker said, "There is no law to protect women victims of violence or protect us as social workers. They [perpetrators of violence] intimidate and threaten us and yet there is no law to protect us."<sup>188</sup> Another social worker described how the family of one of her clients, a victim of family violence, intimidated her for intervening: "They [the family of the victim] called me and came to my house. They said they would light my house on fire. They said they would kidnap me and my children... I was so afraid. They called themselves the murder brigade." When she reported these threats to the police, they monitored her cell phone but provided little more assistance. "The police were cold.

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<sup>185</sup> Human Rights Watch interview with Manal Awad, head of the women's empowerment program, Gaza Community Mental Health Program (GCMHP), Gaza, November 28, 2005.

<sup>186</sup> Nadera Shalhoub-Kevorkian, "Towards a Cultural Definition of Rape: Dilemmas in Dealing with Rape Victims in Palestinian Society," *Women's Studies International Forum*, Vol. 22, No.2 (1999), p.167.

<sup>187</sup> See Chapter IV's sub-section on the Bethlehem Home for Girls for more details.

<sup>188</sup> Human Rights Watch interview with Attadal Al-Jariri, head of social work, Palestinian Working Women's Society for Development (PWWSD), Ramallah, November 7, 2005.

They played with my feelings. They said, ‘you’re a social worker; you have no right to be afraid.’ I didn’t feel like they were protecting me.”<sup>189</sup>

## The Role of the Police

*Some police officers are really working with us. But the problem is that we don’t work with the police as a whole, just individuals. We don’t have specialized people to deal with victims of [gender-based] violence or special units. Everyone might know [of a case] since there is no [specific] area where privacy is ensured.*

– Su`ad Abu Dayya, director of the social welfare department of WCLAC, East Jerusalem, November 9, 2005

The Palestinian police have proven to be unable or unwilling to deal effectively with cases of violence against women. While the Ministry of Interior has instituted basic procedures to ensure that women who report violence to the police do so in the presence of a female police officer, specialized expertise to adequately handle family violence complaints is entirely absent. As a result, Palestinian police officers often resort to mediation among the parties (sometimes in coordination with the informal justice system, governors, and powerful clan and tribal leaders) to “resolve” the problem. In several instances, Palestinian police officers have returned women to their families even when there is a substantial threat of further harm.<sup>190</sup> It is unclear how much decision-making power, if any, women hold in this process.

Police bias against victims of gender-based violence and their lack of expertise on how to handle these cases drives many social workers to accompany their clients to the police station to see that the police file the report correctly. Su`ad Abu Dayya of WCLAC told Human Rights Watch: “They are not trained [to deal with violence against women]. They don’t have any procedures, so they tend to go into tribalism [coordinate with tribal leaders] since this is the only resource that they have. So if we’re not there, that’s what they will do.”<sup>191</sup>

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<sup>189</sup> Human Rights Watch interview with a social worker [name withheld], Nablus, November 13, 2005.

<sup>190</sup> Human Rights Watch interview with a social worker [name withheld], Nablus, November 13, 2005.

<sup>191</sup> Human Rights Watch interview with Su`ad Abu Dayya, Head of Social Work Unit, Women’s Center for Legal Aid and Counseling (WCLAC), East Jerusalem, November 9, 2005

Several of the service providers Human Rights Watch interviewed asserted that the police have a reputation for failing to respect the privacy of women and girls. One social worker told Human Rights Watch, “We know that when we go to the police, a scandal will happen. There is a crisis of trust with the police. There is no confidentiality at the [police] station. Fifteen people will hear her case.”<sup>192</sup> According to another social worker, a 35-year-old woman who became pregnant outside of marriage was forced to flee to Jordan after a police officer spoke publicly about her case. “When she went to the Rafidi hospital [in Nablus] to try to get an abortion, the doctors contacted the police right away because they were afraid. One of the police officers there to protect her told everybody in town [about her case].”<sup>193</sup> Another woman, Mariam Isma`il (pseudonym), experienced this lack of confidentiality firsthand. She told Human Rights Watch:

I never wanted to go to the police because I didn’t want my family to know about the sexual abuse. I hoped that the police would keep the situation confidential after the interrogation, but the next day the story was out and everyone knew that my husband had forced me to have sex with others.<sup>194</sup>

The day after Mariam reported the abuse to the police, the press documented her case in a manner which revealed her identity.

The head of police for the West Bank and Gaza admitted that confidentiality is a problem. “In the present conditions, it’s hard to keep control of the situation, to keep cases private.”<sup>195</sup> However, the authorities have reprimanded only a handful of police officers for disclosing confidential information. The head of the Jericho Police Training College knows of only six or seven police officers who were disciplined and

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<sup>192</sup> Human Rights Watch interview with a social worker [name withheld], Nablus, November 13, 2005.

<sup>193</sup> Human Rights Watch interview with Su`ad Shitwi, social worker, Family Defense Society, Nablus, November 13, 2005. Jordanian and Egyptian laws in force in the West Bank and Gaza, respectively, criminalize abortion in all cases except when the mother’s health or life is at risk. Abortion is illegal in rape and incest cases.

<sup>194</sup> Human Rights Watch interview with Mariam Isma`il (pseudonym), Nablus, November 27, 2005.

<sup>195</sup> Human Rights Watch interview with `Ala’a Hussni, head of police, Ramallah, December 1, 2005.

only one who was fired in the past nine years for publicly disclosing confidential information about a case.<sup>196</sup>

Social workers and lawyers also noted that powerful clan leaders, members of the political elite or highly ranked members of the various Palestinian security services are “above the law” and are able to close police files implicating them in culpable conduct. One lawyer told Human Rights Watch that “when a person from an important family commits a crime, the police think a hundred times of the consequences for themselves before pursuing the case.”<sup>197</sup> In a case where an influential man repeatedly raped his daughter, a university student, a social worker told us she felt she could do nothing but encourage the woman’s grandmother to sleep in the same room as the daughter to prevent her politically-connected father from further abusing her.<sup>198</sup>

Police officers, including senior members of the Civil Police, downplayed the importance of violence against women. The head of the Police Training College of Jericho told Human Rights Watch:

More important than violence against women is law and justice. If a patient has cancer but also has a wart, you are not going to look at the wart, there are more important things... But if we tackle these issues and solve them, we will move on to the issues that are easier and lighter to tackle.<sup>199</sup>

He also questioned the need for the police to disseminate information to assist victims of violence seeking to report abuse. “We can’t advertise. It’s hard for us to advertise. We will look like we’re encouraging women to go to the police. It is the role of the Ministry of Social Affairs and the women’s organizations to say that violence against women is a crime.”<sup>200</sup>

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<sup>196</sup> Human Rights Watch interview with Mahmud Rahal, director of the Jericho Police College, Jericho, November 16, 2005.

<sup>197</sup> Human Rights Watch interview with a Palestinian lawyer [name withheld], Ramallah, November 8, 2005.

<sup>198</sup> Human Rights Watch interview with a social worker [name withheld], Nablus, November 13, 2005.

<sup>199</sup> Human Rights Watch interview with Mahmud Rahal, director of the Jericho Police College, Jericho, November 16, 2005.

<sup>200</sup> Ibid.



Police officers were equally unapologetic about their efforts to mediate and encourage marriage in rape cases. According to `Ala'a Hussni, the head of police for the West Bank and Gaza:

Lots of cases are solved in a way that maintains the best interest of the individual and to protect the girls. I can get her rights but I don't want to kill her to protect her. Going to court kills her socially. [Instead] we can take disciplinary actions against the man; we can limit the problem through the family.... If she insists to go to the courts, we will send her, but if she wants to end the case in the police station, we will....If she wants, we can put pressure on him and his family to marry her with guarantees that he won't divorce her. Our goal is to guarantee the woman's interest so that she can get out of the situation with the least problems.<sup>201</sup>

The head of Ramallah police, Taysir Mansur (Abu al-`Aiz), echoed these views:

If we find out that a man has had relations with a woman, most cases end in marriage. We try to minimize the situation...Rape happened. The important thing is that it happened. This is the girl in the society. Who will marry her? To protect her reputation and her family's reputation, they [both families] tell us that they've agreed to reconciliation... It's better to secure her future than for her to become a victim. Say for example a girl was raped and we imprison the man for 10 years. In a city like Cairo where no one knows the girl, the situation ends this way. But here, a girl can't escape. What if she's not a virgin? She can't escape this situation on her wedding night.<sup>202</sup>

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<sup>201</sup> Human Rights Watch interview with `Ala'a Hussni, head of police, Ramallah, December 1, 2005.

<sup>202</sup> Human Rights Watch interview with Taysir Mansur (Abu al-`Aiz), head of Ramallah police, Ramallah, November 25, 2005.

Interviews with Palestinian police officers also revealed an inclination to view sexual violence within the family as consensual. The head of the Ramallah police told Human Rights Watch:

It's not rape. It's confinement (*kabt*), suffocation, and ignorance. The occupation affected this. I'm not going to blame everything on the occupation but it played a role. A father goes to work in Israel, an open society. He's exposed to pornographic films, while his wife from the village is not used to it. Maybe he goes to work, and leaves the film in the house. Then brothers and sisters and cousins see the film and get ideas. Of course it's consensual once they see the films. Is there any brother who would want to sleep with his sister?<sup>203</sup>

The head of the Nablus prison, Tawfiq Mansur (Abu Muhammad), echoed these views. He spoke to Human Rights Watch about an inmate, a 30 year old woman, who was transferred to the prison a day before our meeting. She had become pregnant after her father had engaged her in what Mansur assumed was a consensual sexual relationship. He said, "If it was rape, why didn't she report it? If someone rapes his family, they [the community] kill him and that's it." He also spoke of another case that he assumed was not rape. "I had a case of a mother who killed her husband for allegedly molesting their daughter. But I saw them, the girl looked stronger than him."<sup>204</sup>

Several women told Human Rights Watch about incidents of degrading treatment at police stations. When Human Rights Watch spoke to Reem Hamad (pseudonym), she had been in Nablus at the only shelter for women in the OPT for five months.<sup>205</sup> She told Human Rights Watch that her father used to beat her and attempted to rape her on several occasions. After one of these attempts, she went to a police station in Nablus to seek help. She told Human Rights Watch that police officers mocked her

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<sup>203</sup> Human Rights Watch interview with Taysir Mansur (Abu al-`Aiz), head of Ramallah police, Ramallah, November 25, 2005.

<sup>204</sup> Human Rights Watch interview with Tawfiq Mansur (Abu Muhammad), head of the Nablus prison, Nablus, November 27, 2005.

<sup>205</sup> For more information on shelters in the OPT, see subsection on "Inadequate Shelters for Victims of Violence" in chapter V.

because of her dark complexion. “When I went to the police, one of them said ‘do you think you’re so beautiful that your father would do that to you?’”<sup>206</sup>

The Women’s Center for Legal Aid and Counseling has been working since early 2005 to provide specialized training to the police, including two sessions of an 80-hour training on how to deal with domestic violence cases. They have also helped to train personnel in the police to work with the new shelter that has been created in an unnamed West Bank city and claim that the cooperation is working well and is essential to the success of the shelter. However, WCLAC is frustrated that a 2005 NGO recommendation supported by a core group of police officers trained by WCLAC, and adopted by the Palestinian Ministry of Interior, to form a specialized unit in every police station to handle domestic violence complaints, has still not been implemented.<sup>207</sup>

## **The Role of Medical Professionals**

The health care system is typically the first and sometimes the only government-run institution with which women victims of violence come into contact. Regrettably, it is ill-equipped to deal with such cases with the level of professionalism and sensitivity required. Survey findings indicate widespread misinformation and prejudicial attitudes among Palestinian doctors towards violence against women. These biased attitudes combined with the absence of medical guidelines and the lack of sufficient training on how to treat victims of violence have left victims with little support from the health care sector.

### *The Absence of Medical Guidelines and Breaches of Confidentiality*

There are no ministerial procedures or protocols to deal with family violence cases. Most doctors lack specialized training on how to treat victims of violence and the importance of keeping cases confidential. The PA lacks a medical ethics law or code governing the conduct of physicians.

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<sup>206</sup> Human Rights Watch interview with Reem Hamad (pseudonym), Nablus, November 23, 2006.

<sup>207</sup> Human Rights Watch interview with Maha Abu-Dayyeh Shamas, Women’s Center for Legal Aid and Counseling, East Jerusalem, June 14, 2006.

Ohayla Shomar, director of Sawa, a Jerusalem-based organization combating sexual violence, has experienced the manner in which the absence of such medical protocols affects the quality of care afforded to women victims of domestic violence. “In the emergency room, people [doctors and nurses] don’t know how to deal with them, so they give them pills to calm their nerves and then send them home. Some women get traumatized again at the hospital,” she said.<sup>208</sup>

The Bisan Center for Research and Development, a capacity-building organization based in Ramallah, has held four workshops for health care professionals on how to handle cases of violence against women. They trained 20 doctors through this program in Nablus, Ramallah, and Bethlehem and 44 doctors from Gaza. Rahma Mansur, a program advisor at Bisan, noted that these medical professionals displayed a sense of disbelief about the levels of violence against women.<sup>209</sup> They also did not know how to identify victims of domestic violence and how to deal with their cases. She told Human Rights Watch, “When we started talking about it, it was clear that they didn’t have the skills or knowledge about how to deal with victims. We needed to train them that even though no physical signs of violence exist, there may still be violence.”<sup>210</sup>

These workshops prompted the Bisan Center to publish a report entitled, “The Approach of Palestinian Physicians towards Wife Abuse” in 2003.<sup>211</sup> To carry out the study, researchers conducted interviews and distributed questionnaires to 396 Palestinian doctors between September 2001 and April 2002.<sup>212</sup> The results were startling. Close to half of physicians surveyed, 44 percent, agreed with the statement that “a very small percentage of Palestinian women are abused by their husbands.”<sup>213</sup> Approximately 63 percent of the physicians interviewed considered only severe and persistent abuse to be domestic violence, while 47 percent

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<sup>208</sup> Human Rights Watch interview with Ohayla Shomar, director of Sawa, East Jerusalem, November 9, 2005.

<sup>209</sup> Human Rights Watch interview with Rahma Mansur, director of communications development, Bisan Center for Research and Development, Ramallah, November 14, 2005.

<sup>210</sup> Ibid.

<sup>211</sup> See Muhammad M. Haj-Yahia, *The Approach of Palestinian Physicians Toward Wife Abuse* (Ramallah: Bisan Center for Research and Development, 2003).

<sup>212</sup> Ibid.

<sup>213</sup> Ibid, p. 79, n. 211.

“qualified their definitions in a way that that might be taken as implicitly or explicitly blaming the woman for her husband’s violent behavior....”<sup>214</sup> The doctors showed a considerable amount of empathy for the perpetrators of violence and very little for the victims: 38 percent felt that “if the abused wife understood her husband’s life conditions, he certainly would not have abused her”; 29 percent agreed that “wives are abused because of the abnormal way they treat their husbands”; 16 percent agreed that “most abused wives deserve to be treated violently by their husbands”; and 10 percent thought that “most abused wives feel relieved after their husbands batter them.”<sup>215</sup>

Many doctors do not record cases of violence against women and girls brought to their attention. The head of the Ramallah public hospital told Human Rights Watch:

We receive two to three criminal cases a day involving car accidents or injuries on the job. We have less than 10 cases of domestic violence per year. I don’t have specialized statistics. We don’t classify these cases. We will just note that the woman was hit by others in the report....If we talk about car accidents, we have this information.<sup>216</sup>

The hospital lacks any specialized expertise on treating and assisting victims of violence. “We have one social worker doing clerical work since she’s not qualified to monitor cases,” said the head of the hospital.

Palestinian women’s rights organizations have documented cases of doctors in Palestinian hospitals disclosing confidential patient information without the consent of the patients, thus deterring women from reporting abuse and potentially costing women their lives if their cases become widely known. Halima Abu-Sulb, an attorney with WCLAC, described one such case in 2002 involving a 16-year-old girl from Ramallah who went to the hospital with her mother to treat a leg injury.<sup>217</sup> After

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<sup>214</sup> *Ibid.*, p. 72, n. 211.

<sup>215</sup> *Ibid.*, p. 79, n. 211.

<sup>216</sup> Human Rights Watch interview with Dr. Hussni Atari, head of Ramallah hospital, Ramallah, November 22, 2005.

<sup>217</sup> Human Rights Watch interview with Halima Abu-Sulb, attorney, Women’s Center for Legal Aid and Counseling (WCLAC), November 14, 2005.

examining the girl, the doctor came out to the waiting room filled with patients and said to her mother, “how can I give her an X-ray? Your daughter is 8-months pregnant.”<sup>218</sup> The pregnancy was the result of repeated rape by her two brothers, aged 16 and 21.<sup>219</sup> Her mother later killed her, claiming that the social pressure to kill her daughter was overwhelming following the incident in the waiting room.<sup>220</sup> While her brothers are serving sentences for the rapes, a court imprisoned the mother for only one month for the murder and the father for only one week for his involvement in the death.<sup>221</sup>

The head of the Ramallah hospital told Human Rights Watch that if doctors suspect that a patient has been the victim of any type of crime, they are required to report the case with or without the woman’s consent to a police outpost next to the hospital. “Some doctors have some awareness. They speak to the women and give them referrals. These are mostly private doctors. In the public hospitals, they all contact the police directly. They don’t want to take on this responsibility.”<sup>222</sup> Private doctors in the OPT generally have far better access to financial and technical resources as well as more institutional distance from the authorities, which may explain these differences in approach.

The International Federation of Gynecology and Obstetrics (FIGO), a global organization representing obstetricians and gynecologists in over 100 countries, has provided clear guidelines to health professionals treating victims of violence. In a resolution on violence against women adopted in 1997, FIGO noted that physicians are ethically obligated to: “educate themselves, other health professionals and community workers about the extent, types, and negative consequences of violence against women; increase their ability to identify women who are experiencing violence and to provide supportive counseling and appropriate treatment and referral; work with others to better the understanding of the problem by documenting the determinants of violence against women and its harmful consequences; assist in

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<sup>218</sup> Ibid.

<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

<sup>221</sup> Ibid.

<sup>222</sup> Human Rights Watch interview with a social worker [name withheld], Nablus, November 13, 2005.

the legal prosecution of cases of sexual abuse and rape by careful and sensitive documentation of the evidence; and support those who are working to end violence against women in their families and in communities.”<sup>223</sup> These ethical obligations, among others, should be incorporated into health protocols devised by the Palestinian Ministry of Health.

## Forensic Doctors and Forced Virginitv Testing

*An intact hymen meant that the abuse could be silenced, hidden, and denied.*

– Dr. Nadera Shalhoub-Kevorkian<sup>224</sup>

In the West Bank and Gaza, the police and public prosecutors usually require that unmarried women and girl victims of sexual abuse undergo virginitv examinations by predominantly male forensic doctors.<sup>225</sup> These tests attempt to determine whether or not the victims are virgins by examining the status of the hymen, and if it is not “intact,” to establish whether it was broken as a result of sexual intercourse and when it was broken. According to one public prosecutor in Hebron, “not all sexual assault cases are sent for virginitv testing. It depends on the allegations. If they come and say there was no intercourse, then there is no need. If she alleges rape or is a minor, we do the test since she might not really know if she was penetrated or not.”<sup>226</sup> According to another prosecutor in Ramallah, forensic doctors (at the request of public prosecutors) usually order these tests in all sexual violence cases, while women and girls who allege that they have been raped will undergo an additional DNA test.<sup>227</sup> Prosecutors sometimes administer these tests without the victim’s consent. A prosecutor told Human Rights Watch that “if it is important for a case and we really need it, we’ll do it even without consent. For example, in a case of alleged

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<sup>223</sup> The Resolution was approved by the FIGO General Assembly at the XV FIGO World Congress of Gynecology and Obstetrics, Copenhagen, Denmark, 3-8 August 1997. See <http://web.amnesty.org/pages/health-ethicsfigovaw-eng> (accessed May 17, 2006)

<sup>224</sup> Nadera Shalhoub-Kevorkian, “The Politics of Disclosing Female Sexual Abuse: A Case Study of Palestinian Society,” *Child Abuse and Neglect*, Vol.23, No.12, p. 1282.

<sup>225</sup> Human Rights Watch interview with Nashat Ayush, chief prosecutor for Hebron, Bethlehem, May 15, 2006.

<sup>226</sup> *Ibid.*

<sup>227</sup> Human Rights Watch interview with Yusif Nasrallah, former head of prosecutions for the West Bank, Ramallah, May 22, 2006.

rape, we would need to do virginity test to check...We only impose absolutely necessary tests.”<sup>228</sup>

Prosecutors ask forensic doctors to administer virginity test on the corpses of women and girls who are believed to be victims of “honor” crimes in order to verify whether or not they were virgins prior to their death. Courts can use this information to determine whether the perpetrator(s) should benefit from mitigating circumstances. If a forensic doctor deems the woman or girl to be a non-virgin, even if the loss of her virginity can be attributed to rape or incest, a judge presumably may reduce the killer’s sentence. A public prosecutor told Human Rights Watch:

In an autopsy they check the entire body, head to toe, including virginity and pregnancy tests. The full report, including the findings of these tests, will be reported. Again, this is part of a general autopsy and all the findings are given to us by the coroner. But yes, the main item of interest in the investigation of an honor killing would be the virginity test. For us, the prosecution, it does not make a difference if she is a virgin or not because we deal with it as a murder case. But the problem is in the courts because of the clause of mitigating circumstances. The court considers everything including motives, circumstances, etc.

Virginity testing is intrinsically linked to “honor” crimes against Palestinian women and girls. Family members sometimes force victims of sexual abuse and women and girls suspected of having extra-marital sex to undergo virginity examinations.<sup>229</sup> The results of these exams are a matter of life and death, since family members have perpetrated “honor” crimes against Palestinian women and girls after the disclosure of this information.<sup>230</sup> In addition, Palestinian advocates who did not wish to be identified report that public doctors often cover up the cause of injury or death when

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<sup>228</sup> Ibid.

<sup>229</sup> Human Rights Watch interview with Dr. Jalal `Abd al-Jabar, former head of the Abu Dis Forensic Institute, Bethlehem, November 15, 2005.

<sup>230</sup> Ibid.



confronted with cases of family violence and record erroneous causes on death certificates in cases of “honor” killings.

Families also pressure doctors to record a woman as a non-virgin to help support a murder defense based on “honor” killing. The former head of the Abu Dis Forensic Institute, Dr. Jalal `Abd al-Jabar, told Human Rights Watch that he regularly conducted virginity exams on victims of alleged “honor” crimes or victims of sexual abuse.<sup>231</sup> He also administered these exams on the bodies of women and girls who were murdered by their families. In cases where the tests suggested that a woman or girl was a virgin, undermining a family’s allegations of sexual promiscuity, he told Human Rights Watch that family members had often intimidated him to change the results and report that she was not a virgin, so that the perpetrators of the murder might receive a reduced sentence:

When we examine a woman that died of an honor killing and it turns out that she’s a virgin, people intimidate us and push us to say that she was not a virgin. They know they will get 17 years if she’s a virgin instead of a reduced sentence due to mitigating circumstances.<sup>232</sup>

According to Dr. `Abd al-Jabar, public prosecutors send only a minority of cases to the Institute since family members will sometimes secretly bury women and girls whom they murdered.<sup>233</sup> He also told Human Rights Watch that when he was at the Institute, they administered all virginity tests with the consent of the woman and always conducted them in the presence of either the Institute’s secretary or a nurse (both female):

I’m always on the side of the woman. I would like to help the community. If she’s not a virgin, it doesn’t mean that she’s a bad woman. She could be born without a hymen.... You can never know

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<sup>231</sup> Human Rights Watch interview with Dr. Jalal `Abd al-Jabar, former head of the Abu Dis Forensic Institute, Bethlehem, November 15, 2005.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid.

with complete certainty whether the hymen was broken from intercourse. I'm not here to give permission for murder.<sup>234</sup>

For some victims of violence, having to undergo a painful, humiliating, and invasive virginity test was as abusive as the violence itself. Some women and girls are traumatized by this experience. The police forced Reem Hamad (pseudonym) to undergo a virginity test when she reported her father's attempted rapes to the police.

That's when I knew that the police are not in the service of the people. They're all dirty. They examined me and didn't find anything, that's why they said that I lied. It was the first time that someone took a look inside me. I was humiliated. Having someone examine me was the biggest crime my father committed.<sup>235</sup>

Human Rights Watch maintains that such examinations are unjustified, that the emphasis on female virginity is itself inherently discriminatory, and that, in any case, virginity is irrelevant as evidence of sexual assault. A voluntary gynecological examination might be legitimate, for example, in order to collect evidence relating to a rape charge. However, there is no legitimate rationale for virginity examinations. Instead, such exams reflect a misplaced preoccupation with the victim's ostensible virginity and popular misconceptions about the medical verifiability of virginity. Experts have confirmed that the state of a woman's hymen is not a reliable indicator of recent sexual intercourse or the nature, consensual or otherwise, of any such intercourse.<sup>236</sup> The degree of elasticity, resilience, and thickness of the hymen, its location in the vaginal canal, and consequently its susceptibility to tearing and bruising, vary from person to person.<sup>237</sup>

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<sup>234</sup> Ibid.

<sup>235</sup> Human Rights Watch interview with Reem Hamad (pseudonym), Nablus, November 23, 2005.

<sup>236</sup> Dr. Greg Larkin, Professor of Emergency Medicine at the University of Texas Southwestern Medical Center and an expert in the field of forensic documentation of intimate partner abuse, states that there is no reliable test for virginity. Hymens can be torn by a range of common activities, and the presence of an intact hymen does not signify abstention from sexual intercourse. E-mail message from Dr. Greg Larkin to Human Rights Watch, February 14, 2006.

<sup>237</sup> Ibid.

## The Informal Justice System

As Palestinians have lost faith in reform of the judicial system, they have turned increasingly to “traditional” means of settling disputes through the informal justice system.<sup>238</sup> The informal justice system runs parallel to the formal system and seeks reconciliation between parties rather than a judicial or penal remedy. The system is run by “informal judges” who usually inherit their positions from fathers or grandfathers and who must be well-respected, powerful members of the community. The informal judges call a series of public hearings to address a variety of disputes (such as cases of assault or financial or land disputes) between members of the community with the goal of formulating a reconciliation agreement or contract that must be signed by the involved parties. If either of the parties violates the terms of the contract, they are punished, usually through a monetary fine payable to the other party.

Du`a Mansur, the research coordinator of a forthcoming Birzeit University study on the informal justice system, told Human Rights Watch that:

[I]nformal judges do not work according to any body of law, set of procedures or precedents from similar cases. Thus the format of the public hearings and the formula applied in each case depend very much on the views and experience of the informal judge involved. There are no typical solutions to any type of case.<sup>239</sup>

Another study on informal justice describes a type of unwritten tribal (customary) law which is used as a frame of reference in the informal justice system.<sup>240</sup> Decisions of the informal justice system are not legally binding, they are “enforced” through

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<sup>238</sup> Information in this section is based on the findings of a study carried out by Birzeit University Institute of Law in the West Bank in 2005, unless otherwise noted. The forthcoming publication is entitled: "Informal Justice: the Rule of Law and Dispute Settlement in Palestine" and will be available from Birzeit University Institute of Law. The findings were related to Human Rights Watch during an interview with the research coordinator, Du`a Mansur, Ramallah, December 7, 2005.

<sup>239</sup> Human Rights Watch interview with Du`a Mansur, Law and Society Unit, Birzeit University, Ramallah, December 7, 2005.

<sup>240</sup> The sources of tribal law according to several tribal notables include ancient (pre-Islamic) customs, Islamic law (*shari`a*), and civil law. See Nadera Shalhoub-Kevorkian, *Mapping and Analyzing the Landscape of Femicide in Palestinian Society* (Jerusalem: Women's Center for Legal Aid and Counseling, 2004), p. 49.

community pressure and respect of the parties for the stature and decisions of the community's informal judges.

The informal justice system is not part of the official, law-based justice system in the OPT. However, sometimes elected and appointed officials and members of the regular criminal justice system are *also* the informal judges in their home districts.<sup>241</sup> The Birzeit study asserts that Palestinians turn to the informal justice system more than to the regular justice system, and that Yasser Arafat supported the informal justice system by sending high ranking officials to adjudicate in particularly difficult cases and by contributing financially to the monetary fine to be paid in some cases.<sup>242</sup>

Since informal judges rarely intervene in domestic conflicts, the system often does not address cases of violence against women inside the family. In cases of potential "honor" crimes where the woman's life is at stake, however, there is frequent recourse to informal justice mechanisms. According to one observer, "the most respected, powerful, and renowned tribal heads are entrusted to deal with the most difficult of social problems (e.g. femicides and killings)."<sup>243</sup> Tribal notables often view social disputes involving alleged violations of the "sexual purity of females (*ard*)" as the most serious offenses.<sup>244</sup> Informal justices may attempt to broker a deal in which the family promises not to harm the girl or woman or to search for a member of the clan or extended family who can shelter the girl or woman in their home. However, a study carried out by the Women's Center for Legal Aid and Counseling noted that informal judges, who are always male, often sympathize with the male offenders, even in cases of honor killings. One judge interviewed for the study said:

Whenever a woman is suspected of anything, it is a sign that she has done something grievous. I question the woman to determine the validity of what she says to me. I have the ability to determine if a woman is lying or telling the truth. My experience has shown me that I

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<sup>241</sup> Human Rights Watch interview with Du`a Mansur, Law and Society Unit, Birzeit University, Ramallah, December 7, 2005.

<sup>242</sup> *Ibid.*

<sup>243</sup> *Ibid.*, p. 48, n. 241.

<sup>244</sup> *Ibid.*

can tell the truth by looking in her eye. In the absolute majority of cases involving women, the woman's deviant behavior is the reason for her death. A man does not punish or kill a woman without a reason.<sup>245</sup>

Police officers told Human Rights Watch that they regularly coordinate with the tribal and clan leaders in a town or village in which an incident took place.<sup>246</sup> A Palestinian women's rights activist also noted that police officers have told several of her clients to refer their cases to their clan leaders for mediation.<sup>247</sup> As this system is non-judicial and non-regulated, there is no way to ensure that a woman's legal rights will be upheld.

A social worker told Human Rights Watch that in her experience, clan leaders often approach the police when cases involving a member of their clan reach the police station: "If they don't get the answer they want, they contact the higher ups in the police. There is a lot of power and space opened to them, much more than even the Palestinian Authority...The [Palestinian] Authority allowed these influential clans to become more powerful than they are...And no efforts have been made to restrict their role."<sup>248</sup>

### *The Role of Governors in the Informal Justice System*

*I'm against this system; all cases should go to the courts. But this is the result of the difficult judicial situation. People want quick solutions, so they go to governors. This is the result of the failure of the criminal court system. If you have a case, even a minor one, that takes five years, what do you do?*

– Suha Allaya, legal affairs assistant, Ministry of Justice, Ramallah, November 26, 2005

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<sup>245</sup> Ibid., p. 53.

<sup>246</sup> Human Rights Watch interview with Taysir Mansur (Abu al-'Aiz), head of Ramallah police, Ramallah, November 25, 2005.

<sup>247</sup> Human Rights Watch phone interview with Manal Awwad, director of the Women's Empowerment Project of the Gaza Community Mental Health Program, October 12, 2005.

<sup>248</sup> Human Rights Watch interview with a social worker [name withheld], Ramallah, November 7, 2005.

Governors of OPT governorates, who are appointed by the executive branch and serve as the representative of the president for indefinite terms, also play a role in the informal justice system. Their status, and thus ability to intervene in disputes, varies according to their closeness to the president.<sup>249</sup> During the intifada, when the regular courts were functioning poorly, Palestinians often turned to the governor's office for a quick resolution to disputes. Researchers at the Institute of Law at Birzeit University confirmed to Human Rights Watch that governors do not have formal judicial powers enshrined in law but rather are actors in the informal justice system.<sup>250</sup> Another observer of the role of governors in resolving disputes claims that governors have tried to justify their interference in the judicial system based on provisions in various outdated laws and regulations.<sup>251</sup> These laws include Jordanian legislation such as the Administrative Divisions Regulation No. 1 of 1966 and the 1954 Law to Prohibit Crimes that gives local Governors some emergency power to prevent crimes.<sup>252</sup>

Governors have been involved in "resolving" cases of violence against women and girls. Victims of violence sometimes report to the governor's office in their town in order to avoid the stigma of going to the police station.<sup>253</sup> Rape and incest victims, unmarried pregnant women and others threatened by their families will come to the governor's office seeking protection.<sup>254</sup> Governors have on occasion provided shelter for these women.<sup>255</sup>

According to Lina `Abd al-Hadi, the legal advisor to the governor of Nablus, the governorate has received hundreds of reports of incest. She told Human Rights Watch:

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<sup>249</sup> Human Rights Watch interview with Ghassan Faramond and Asem Khalil, Institute of Law, Birzeit University, Ramallah, July 28, 2006.

<sup>250</sup> Human Rights Watch interview with Ghassan Faramond and Asem Khalil, Institute of Law, Birzeit University, Ramallah, July 28, 2006.

<sup>251</sup> See Tobias Kelly, "Working Paper No. 41 Access to Justice: The Palestinian Legal System and the Fragmentation of Coercive Power," Development Research Centre, London School of Economics, March 2004.

<sup>252</sup> Ibid. Original Arabic laws on file with Human Rights Watch.

<sup>253</sup> Human Rights Watch interview with Lina `Abd al-Hadi, legal advisor to the governor of Nablus, Nablus, November 27, 2005.

<sup>254</sup> Ibid.

<sup>255</sup> Human Rights Watch interview with Attadal Al-Jariri, head of social work, Palestinian Working Women's Society for Development (PWWSD), Ramallah, November 7, 2005.

In the past two years, there's been an increase in incest cases because of shared living quarters and the inability of men to marry... We get six to seven rape cases a year and lots of incest cases...When I bring the fathers in, they don't deny it. They say 'I have a right to her body over others' or 'I want her to go to her husband experienced.'<sup>256</sup>

While Lina `Abd al-Hadi claims that their office has the authority to detain perpetrators for up to one year, Human Rights Watch could not find any reference in legislation to confirm this assertion. She said "we use the provision that allows us to imprison people for one year especially in moral cases. In the [regular] courts, it could take years...I would prefer that these cases go to court since it's a longer sentence."<sup>257</sup>

While some governors are helpful to women who report abuse to them, others have shown bias against women in their handling of cases of violence against women. Manal Awad, the head of the women's empowerment program at the Gaza Community Mental Health Program, spoke to Human Rights Watch about her experiences interacting with governors. "The police just call the *mukhtar* [governor], and he solves the problem. They blame her for the problem. We have some problems talking to them. Some of them think that women are always wrong."<sup>258</sup> As another analyst of the governor's system noted, "The Governor's office often interpreted the law with what might be called a nationalist' attitude....The emphasis on 'unity' often favored the stronger party in the dispute."<sup>259</sup>

In some cases of threatened honor crimes, governors broker deals with family members who promise not to harm the women and girls if they return home. These deals have resulted in the deaths of several women and girls. While governor's offices and district courts penalized some family members who committed these

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<sup>256</sup> Human Rights Watch interview with Lina `Abd al-Hadi, legal advisor to the governor of Nablus, Nablus, November 27, 2005.

<sup>257</sup> Ibid.

<sup>258</sup> Human Rights Watch interview with Manal Awad, Women's Empowerment Program, Gaza Community Mental Health Program, Gaza, November 28, 2005.

<sup>259</sup> Ibid. n. 253

murders (although most received reduced sentences), the police and attorney general's office have never investigated governors and others who may hold some responsibility for these deaths. In fact, there are no mechanisms to monitor the conduct of these informal government officials or to hold them accountable for their actions.

The Ministry of Justice and members of the judiciary were critical of the use of mechanisms other than the regular courts to resolve legal disputes. Then-minister of justice Farid al-Jalad told Human Rights Watch in November 2005: "I don't think this is the right way to solve problems. There has to be respect for the judiciary. The police should transfer every case except simple ones based on minor personal claims to the courts."<sup>260</sup> According to one judge who wished to remain anonymous, "before [the *intifada*], all cases were going to the courts. But now they're solved by 'mediation' at the police station. Lots of cases don't reach the courts. The governor also 'solves' a lot of these cases. There's a police force, there are courts, they [the governors] shouldn't be doing this." Despite these views, the minister of justice told Human Rights Watch that no action has been taken to curb the quasi-judicial activities of governors.<sup>261</sup>

## **Inaccessible Shelters for Victims of Violence**

*Why does murder happen? Because there's no place to protect women.*

– Court of Appeals judge Hani al-Natur, Ramallah, December 1, 2005

The PA has failed to establish sufficient protective mechanisms to shelter victims of violence. Despite the systemic nature of violence against women in the OPT, there was only one shelter solely devoted to women victims of violence operating in the West Bank during the period of research for this report in November and December 2005.<sup>262</sup> It is located in the West Bank town of Nablus and can house only 25 women for periods of six months. It cannot accommodate their children. A home for girls in Bethlehem (*Bayt al-Fatayat*) shelters some victims of physical and sexual violence,

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<sup>260</sup> Human Rights Watch interview with Farid al-Jalad, former minister of justice, Ramallah, November 26, 2005.

<sup>261</sup> *Ibid.*

<sup>262</sup> Since that time WCLAC reported to Human Rights Watch that a second shelter has opened and is running successfully in 2006.



although its mandate is much broader and includes housing girls whose parents can no longer care for them physically or financially. The lack of shelters has forced women's organizations and the police to come up with creative but often dangerous solutions for victims of violence, including sheltering them in police stations, governors' offices, private homes, and institutions such as schools for the blind and orphanages.

The police have held some women and girls they deem to be at risk of violence, particularly prior to the second *intifada*, in "protective" custody in women's sections of Palestinian prisons. They largely phased this practice out due to Israeli military attacks on jails during the *intifada* and new insistence on the part of the Ministry of Interior that the police hold all detainees only under court order. However, when Human Rights Watch visited the Nablus prison in November 2005, two of the 14 women incarcerated appeared to be there primarily to protect them against family violence. According to the head of the women's section of the prison, the police suspected one of these prisoners of having an extra-marital affair and harming her husband. While she wishes to leave and claims that her family would never harm her, the head of the prison services, the chief of police, and the judge who heard her case all believe that she must remain behind bars until they are assured her family will not try to kill her. The state decided to move her, and the man with whom she is accused of having the extra-marital affair, who is also incarcerated, from the West Bank to Gaza after her family allegedly opened fire on the Ramallah governor's office where they were being held. Another young woman in the Nablus jail is purportedly there because she left home without her family's permission and is at risk of being harmed by the family.<sup>263</sup>

Movement restrictions within and between the West Bank and Gaza make it virtually impossible for some victims of violence to reach the shelters in Nablus or Bethlehem, leaving them without a refuge from violence.<sup>264</sup> In emergency situations, NGOs and the police have illegally sent women and girls at risk of violence to Israel or Jordan

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<sup>263</sup> All the facts in this paragraph are based on information provided by Tawfiq Mansur, head of the women's section of the Nablus prison, Nablus, November 27, 2005.

<sup>264</sup> Human Rights Watch interview with Manal Awad, head of the women's empowerment program, Gaza Community Mental Health Program (GCMHP), Gaza, November 28, 2005.

for safety, although increased security at the borders and the separation wall has made this option increasingly difficult. Ghadir al-Shaikh, an attorney in the West Bank town of Tulkaram told Human Rights Watch, “There is no shelter to protect women in Tulkaram, so even if you empower her, there’s nowhere to protect her. And she sees that all the other cases like hers end up dead.”<sup>265</sup>

Israeli military incursions and movement restrictions have also isolated some Palestinian women in ever-more localized spaces, especially in rural areas where women have tremendous difficulty accessing extended family networks or social and protective services. This trend is reflected in the small number of girls housed in Bethlehem’s Home for Girls (*Bayt al-Fatayat*) and the women’s shelter in Nablus. The director of the Bethlehem home told Human Rights Watch that in 1999 they housed 49 girls at one time, but that, at least in part due to girls’ difficulties in accessing the facility, there were only 12 cases when Human Rights Watch visited in November 2005.<sup>266</sup>

Victims of family violence in Gaza are in a particularly bad position since it is virtually impossible for residents of Gaza to reach the West Bank, and no shelters exist in Gaza. The absence of a refuge for victims of violence in Gaza forces women’s organizations to resort to solutions to which they are ideologically opposed. Manal Awad, head of the nongovernmental Women’s Empowerment Program, told Human Rights Watch, “Sometimes the police call to say that a woman has been raped and there’s no place to protect her. We have to look for a governor to help, even though we’re against this system which is generally against women. They will usually ask her to marry him [the rapist] if they know who he is.”<sup>267</sup>

With respect to the two shelters that exist in the West Bank, women’s rights organizations have voiced concerns that the lengthy entry procedures set by the Ministry of Social Affairs prevent victims from receiving urgent assistance. Some social workers and lawyers have also complained that once they refer a client to the

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<sup>265</sup> Human Rights Watch interview with Ghadir al-Shaikh, attorney, PWWSO, Tulkaram, November 16, 2005.

<sup>266</sup> Human Rights Watch interview with Jihad Abu al-`Ain, director of the Bethlehem Home for Girls, Bethlehem, November 29, 2005.

<sup>267</sup> Human Rights Watch interview with Manal Awad, head of the women’s empowerment program, Gaza Community Mental Health Program, Gaza, November 28, 2005.

Ministry of Social Affairs, the ministry does not allow them to follow-up on the case or meet their client again because the cases would now come under the ministry's jurisdiction.

Representatives of the MOSA admitted that there are weaknesses in its responses to violence against women. One senior ministry employee told Human Rights Watch, "We deal with these cases and protect many women from being killed, but we don't deal with these cases in a professional way since there are no specialist social workers and there's no time to deal with these cases."<sup>268</sup>

A combination of financial and bureaucratic obstacles has stalled efforts to establish new shelters in the West Bank and Gaza in coordination with the Ministry of Social Affairs. WCLAC has secured funding and built a shelter for women and their children in Bethlehem, which is not yet operating. In early 2006, after the field research for this report had been completed, WCLAC also signed a Memorandum of Understanding (MOU) with MOSA and started operating an emergency shelter in a West Bank city, the identity of which was not revealed so as to provide added protection for women or girls who seek to use it. This emergency shelter is a place where women seeking refuge from violence can go quickly without onerous bureaucratic procedures. After two years of difficult negotiations with MOSA on the terms of admittance and the regulations for running the shelter, WCLAC reported to Human Rights Watch in June 2006 that the MOU they negotiated ultimately contained all the provisions they had fought for and that they were very satisfied with the relationship between the shelter, the local police and the local MOSA.<sup>269</sup> The Ministry has also built and equipped a shelter for girls under the age of 18 in Jenin and has been planning to open it for the past three years.<sup>270</sup> Ministry officials could not give Human Rights Watch a clear reason why the shelter is not operating yet but WCLAC said that it was due to financial and political constraints.<sup>271</sup>

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<sup>268</sup> Human Rights Watch interview with Diane Mbarak, Ministry of Social Affairs, Azaria, November 25, 2005.

<sup>269</sup> Human Rights Watch interview with Maha Abu-Dayyeh Shamas, Women's Center for Legal Aid and Counseling, East Jerusalem, June 14, 2006.

<sup>270</sup> Human Rights Watch interview with Diane Mbarak, Ministry of Social Affairs, Azaria, November 25, 2005.

<sup>271</sup> Human Rights Watch interview with Su'ad Abu Dayya, Head of Social Work Unit, Women's Center for Legal Aid and Counseling (WCLAC), East Jerusalem, November 9, 2005.

### *The Nablus Shelter*

*The shelter in Nablus works in a secret way. We don't want to deal with it in a secret way. The individual cases should be secret, yes, but not the issue. The issue of violence - we have to raise it. Some people in the ministry [of social affairs] are against us since they want it [violence against women] to be kept underground.*

– Diane Mbarak, Ministry of Social Affairs, Azaria, November 25, 2005

The Family Defense Society (FDS), an NGO that receives limited financial support from MOSA, runs the shelter for victims of violence in Nablus. At the time of Human Rights Watch's visit in November 2005, four women lived in the shelter, which has a capacity of 25. Residents can stay for up to six months, although a committee made up of the FDS and the MOSA has the discretion to renew this term.<sup>272</sup> MOSA approves each applicant and transfers cases to the facility; it is also responsible for the basic regulations of the shelter.<sup>273</sup> Before the establishment of the Nablus shelter, victims of violence and women threatened with "honor" crimes would regularly sleep at the police station or within Ministries or be detained in "protective" custody in prisons.<sup>274</sup>

In order to be eligible to stay in a shelter, a woman must meet a set of strict criteria established by the MOSA. The shelter does not accept women suspected of being drug addicts, mentally ill, prostitutes, and those who are deemed to be a physical danger to others.<sup>275</sup> Social workers at leading women's rights organizations told us that they often hesitate before referring victims to the Nablus shelter because of the sometimes lengthy entry procedures imposed by the Ministry. One social worker told us that she had to house a woman threatened by her family in her office for several days with serious potential risks to the woman and the NGO staff, while the Nablus shelter reviewed her file.<sup>276</sup> As a condition to entering the facility, the center tests women for HIV/AIDS and pregnancy, and administers virginity examinations to

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<sup>272</sup> Human Rights Watch interview with Amal al-Ahmad, director of Nablus shelter, Nablus, November 13, 2005.

<sup>273</sup> Human Rights Watch interview with Amal al-Ahmad, director of Nablus shelter, Nablus, November 13, 2005.

<sup>274</sup> Human Rights Watch interview with Amal al-Ahmad, director of Nablus shelter, Nablus, November 13, 2005.

<sup>275</sup> Ibid.

<sup>276</sup> Human Rights Watch interview with Attadal Al-Jariri, head of social work, Palestinian Working Women's Society for Development, Ramallah, November 7, 2005.

determine the status of the hymen.<sup>277</sup> The shelter admits both virgins and non-virgins. The women and girls we spoke to considered this testing mandatory and thus thought there was no way to opt out. One woman told Human Rights Watch, “They have a law that any girl who comes here has to do the test.”<sup>278</sup> The shelter did not provide any counseling in connection with these tests.

### *The Bethlehem Home for Girls*

MOSA established the Bethlehem Home for Girls (*Bayt al-Fataya*) in 1985 in order to “protect and rehabilitate” girls between the ages of 12 and 18. The home receives victims of incest, unmarried pregnant girls threatened by their families, and girls whose parents are imprisoned or cannot afford to financially support them. MOSA coordinates the transfer of girls to the Bethlehem home. The girls go to school during the day if the staff deems it safe for them to do so; girls threatened by families who live in the Bethlehem area or nearby do not go to school but attend in-house training in sewing and hairdressing. The director of the home stated explicitly that she does not allow the girls to leave the facility even when they reach the age of majority (18) unless their families agree to take custody of them or they marry.<sup>279</sup> She said that under no circumstances would she allow adult women to live on their own.<sup>280</sup> When we verified this information with then Minister of Social Affairs Hassan Abu Libda, he appeared extremely surprised and said this was not MOSA policy.<sup>281</sup>

When the facility receives an unmarried girl who is pregnant, as a result of a rape, staff generally try to mediate between the rapist and the girl’s family. The director of the facility told Human Rights Watch that marriage is the optimum solution to rape cases.<sup>282</sup> When asked what would happen if the woman or girl did not want to marry her rapist but rather wanted to press charges, she deemed this unthinkable. In cases

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<sup>277</sup> Human Rights Watch interview with Amal al-Ahmad, director of Nablus shelter, Nablus, November 13, 2005.

<sup>278</sup> Human Rights Watch interview with a woman residing in the Nablus Shelter [name withheld], November 23, 2005.

<sup>279</sup> Human Rights Watch interview with Jihad Abu al-`Ain, director of the Bethlehem Girls Institution, Bethlehem, November 29, 2005.

<sup>280</sup> *Ibid.*

<sup>281</sup> Human Rights Watch interview with Hassan Abu Libda, then Minister of Social Affairs, Ramallah, December 1, 2005.

<sup>282</sup> Human Rights Watch interview with Jihad Abu al-`Ain, director of the Bethlehem Girls Institution, Bethlehem, November 29, 2005.

where the victim becomes pregnant due to the rape, MOSA considers it imperative that she marry because otherwise the child will be an “illegal child” who does not have rights to a birth certificate, and the ministry will immediately take the baby from the mother and put him or her up for adoption.<sup>283</sup> The head of the home told Human Rights Watch that:

She says who it is. If three men raped her, we do DNA tests. We force her to marry. He’s not allowed to divorce her for five years...He’s imprisoned if he doesn’t marry her. If the police couldn’t force him to marry her, they sometimes predate the wedding certificate before the birth of the child. The majority do not want to marry him [the rapist]. But screw her [*toz feeha*], the baby is what’s important.<sup>284</sup>

In the six years Jihad Abu al-`Ain has headed the Bethlehem home, she has pressured five girls to marry their rapists.<sup>285</sup> A social worker, who has worked there for 15 years, said she has seen countless such cases.<sup>286</sup>

The staff of the Bethlehem home call girls they deem to be non-virgins, following a forced virginity test, “special cases.” According to Jihad Abu al-`Ain:

We don’t talk about them. Not all the social workers know of these cases. Special cases don’t return to their family. We play the role of their family. She continues her education or we find her a marriage...We don’t throw the girls on the street. We don’t let her rent a house. She needs to be under a legitimate situation with decent people.<sup>287</sup>

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<sup>283</sup> *Ibid.*

<sup>284</sup> *Ibid.*

<sup>285</sup> *Ibid.*

<sup>286</sup> Human Rights Watch interview with a social worker at the Bethlehem Girls Institution, Bethlehem, November 29, 2005.

<sup>287</sup> Human Rights Watch interview with Jihad Abu al-`Ain, director of the Bethlehem Girls Institution, Bethlehem, November 29, 2005.

A social worker at the home told Human Rights Watch, “marriage is the most successful rehabilitation. She will stay here if she doesn’t want to get married.”<sup>288</sup>

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<sup>288</sup> Human Rights Watch interview with a social worker at the Bethlehem Girls Institution, Bethlehem, November 29, 2005.

## V. Obligations under International Human Rights Law

While the Palestinian Authority is not an independent sovereign state able to sign and ratify international human rights treaties, it has unilaterally committed itself to abide by international law. PA leaders have pledged repeatedly in meetings with international human rights organizations and in radio broadcasts, as well as in the Oslo Accords, that they intend to abide by internationally recognized human rights standards.

Article 10 of the draft Palestinian constitution (“Basic Law”<sup>289</sup>) states that: “Basic human rights and liberties shall be protected and respected” and that “the Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights.” Moreover, article 9 of the Basic Law stipulates that: “Palestinians shall be equal before the law and the judiciary, without distinction based upon race, sex, color, religion, political views or disability.” Under the Protocol Concerning Redeployment of the Interim Agreement of September 28, 1995, the PA also committed that its police would exercise powers and responsibilities to implement the memorandum with due regard to internationally accepted norms of human rights and the rule of law, and will be guided by the need to protect the public, respect human dignity, and avoid harassment. Article 9 of the law creates an important foundation for equality and non-discrimination in the Palestinian legal system. However, if this commitment is not translated into tangible legal protection for all members of Palestinian society, including women, it will ring hollow.

Israel also retains responsibilities for the implementation of international human rights treaties that it has ratified in areas under its control such as the Occupied Palestinian Territories, as reaffirmed by the International Court of Justice in its Advisory Opinion. In areas where competence for implementing the rights in the Covenants has been transferred to the PA, Israel remains “under an obligation not to

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<sup>289</sup> The Palestinian Amended Basic Law was promulgated on March 18, 2003. A complete copy of the law can be found at <http://213.244.124.245/mainleg/14138.htm> (accessed May 3, 2006).



raise any obstacle to the exercise of such rights.”<sup>290</sup> Thus, for example, Israel should not undermine the ability of Palestinian judges, police officers, forensic doctors, lawyers, and social service providers to move within and between the West Bank, Gaza and Israel in order to carry out their job or undertake additional training.

## **The Right to Non-Discrimination and Equality before the Law**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires that states “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”<sup>291</sup> It obliges states to “refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation” and to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.” CEDAW requires governments:

To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.<sup>292</sup>

In violation of the PA’s commitments, a host of discriminatory laws and practices persist in the West Bank and Gaza. These laws deny Palestinian women their right to equality before the law enshrined in a series of international conventions, including the International Covenant on Civil and Political Rights (ICCPR). The ICCPR specifically states that men and women should enjoy equal access to all the civil and political rights set forth in the covenant. In particular, article 26 states:

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<sup>290</sup> See the International Court of Justice’s Advisory Opinion, “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,” <http://www.icj-cij.org/icjwww/idocket/imwp/imwframe.htm> (accessed August 22, 2006), para. 112.

<sup>291</sup> Article 2, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 UN GAOR Supp. (No. 46) at 193, UN Doc. A/34/46, entered into force September 3, 1981.

<sup>292</sup> *Ibid.*, article 5(a).

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Contrary to all these provisions, legislation in force in the OPT is explicitly discriminatory on the grounds of sex with women facing serious disadvantages both in law and in practice as illustrated in this report. While some of these laws are gender neutral on their face, in reality they affect Palestinian women almost exclusively. They include legal loopholes that ultimately absolve rapists of punishment and fail to recognize sexual violence committed within a marriage. The law also denies children who are victims of incest the right to file sexual abuse charges. Only male family members, who may be the perpetrators of abuse, are granted this right. These laws also criminalize abortion in cases of rape or incest, forcing victims of sexual violence to carry their pregnancy to term.

CEDAW provides that states “shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.”<sup>293</sup> In particular, states are required to afford to women the right to enter into marriage only with their free and full consent.<sup>294</sup> When Palestinian police officers and ministry of social affairs staff at the Bethlehem Home for Girls opt for mediation and encourage marriage between a rapist and his victim, they place Palestinian women and girls in a coercive situation denying them the right to enter into marriage with free and full consent.

The CEDAW Committee, which monitors the implementation of CEDAW convention, has explicitly noted that states also have an obligation to enact “legislation to remove the defence of honour in regard to the assault or murder of a female family member.”<sup>295</sup> Echoing these views, the Committee on the Rights of the Child noted

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<sup>293</sup> Ibid., art. 16(1).

<sup>294</sup> Ibid., art. 16(1)(b).

<sup>295</sup> CEDAW Committee, General Recommendation 19, para. 24 (r)(ii).

that “States parties should take all effective measures to eliminate all acts and activities which threaten the right to life of adolescents, including honour killings.”<sup>296</sup> By failing to deter, investigate, prosecute, or punish the murder of women under the guise of honor, the PA is allowing a practice that is discriminatory and violates a woman’s right to life to persist.

The involvement of Palestinian prosecutors and forensic doctors in the forcible infliction of virginity exams violates guarantees of freedom from discrimination found in CEDAW and the ICCPR. Such exams also violate provisions of the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>297</sup> When conducted against the will of the girl or woman and with no medical justification, the examinations are themselves a form of sexual abuse. They are degrading and intimidating, both as a physical violation and for the threatened consequence of loss of family honor.

### **State Responsibility for Abuses by Third Parties**

International human rights law recognizes state accountability for abuses by private actors and requires states to show due diligence in preventing and responding to human rights violations. In General Recommendation 19, the CEDAW Committee emphasized: “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence.”<sup>298</sup> A state’s consistent failure to do so when women are disproportionately the victims amounts to unequal and discriminatory treatment, and constitutes a violation of the state’s obligation to guarantee women equal protection of the law.

The CEDAW Committee identified key steps necessary to combat violence against women, all of which the PA should strive to undertake under its authority:

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<sup>296</sup> CRC General Comment 4 (Thirty-third session, 2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child, A/59/41 (2004), para. 24.

<sup>297</sup> See Convention on the Elimination of All Forms of Discrimination against Women, article 2 and ICCPR, articles 3 and 26. See also Universal Declaration of Human Rights, article 7.

<sup>298</sup> CEDAW Committee, General Recommendation 19, Violence against Women, UN Doc.A/47/38. para. 9.

- a) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including inter alia violence and abuse in the family, sexual assault and sexual harassment in the workplace;
- b) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
- c) Protective measures, including refuges, counseling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence.<sup>299</sup>

As the findings of this report demonstrate, the PA is failing to take all necessary measures to safeguard the rights of Palestinian women and girls from violations by third parties. On the contrary, laws in force in the West Bank and Gaza have led to virtual impunity for perpetrators of such violence and have deterred victims from reporting abuse. They deny victims their rights to protection, non-discrimination and an effective judicial remedy for abuse, and fail to provide any real deterrent or punishment to perpetrators of violence against women and girls. The PA's failure to establish a comprehensive and institutionalized mechanism to address violence against women has also left Palestinian women and girls with little protection from sexual violence.

Beyond its status as sex-based discrimination under international human rights law, sexual violence infringes upon sexual rights and the right to bodily integrity. The International Covenant on Civil and Political Rights (ICCPR) guarantees the right to bodily integrity through its protections for security of person.<sup>300</sup>

Human Rights protections against sexual violence also apply to persons under 18. The Convention on the Rights of the Child (CRC) states that children must be protected from "all forms of physical or mental violence, injury or abuse, neglect or

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<sup>299</sup> CEDAW Committee, General Recommendation 19, Violence against Women, UN Doc. A/47/38, para. 24 (t).

<sup>300</sup> ICCPR, art. 9. The CEDAW Committee's General Recommendation 19 on gender-based violence invokes the right to liberty and security of person. CEDAW Committee, General Recommendation 19, para. 7.

negligent treatment, maltreatment or exploitation including sexual abuse” and ensure that victims of such acts receive legal and psycho-social redress.<sup>301</sup>

Violence prevents women from exercising a host of other rights. These rights include the right not to be subject to cruel, inhuman or degrading treatment or punishment,<sup>302</sup> security of person,<sup>303</sup> and in extreme cases, the right to life.<sup>304</sup> The CEDAW Committee also noted that “gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men,” including the right to the highest attainable standard of physical and mental health.<sup>305</sup>

The Palestinian Authority has failed to create an effective institutional framework to prevent violence against women and girls, sanction these abuses when they occur, encourage victims to report acts of violence and protect them from further violence. The Palestinian police force lacks the expertise, and apparently the will, to deal with cases of violence against women in a manner that is effective, sensitive to the needs of victims, and respectful of their privacy. Meanwhile, the absence of medical guidelines for doctors also seriously affects the quality of medical treatment afforded to female victims of violence.

The PA has not taken the necessary steps to ensure access to justice for victims of sexual violence. In violation of international law, Palestinian women and girls who report abuse to their families or the authorities may be forced or coerced to marry their rapist or a stranger to “erase” the abuse before the case ever reaches the

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<sup>301</sup> Convention on the Rights of the Child, article 19. Late President Yasser Arafat pledged his commitment to the Convention on the Rights of the Child on April 5, 1995. See Secretariat of the National Plan of Action for Palestinian Children, “Child Protection in the Occupied Palestinian Territory: A National Position Paper,” June 2005.

<sup>302</sup> The right to be free from torture and cruel, inhuman or degrading treatment is provided for in article 7 of the International Covenant on Civil and Political Rights (ICCPR), 999 UNT.S. 171, entered into force March 23, 1976.

<sup>303</sup> UDHR, art.3, ICCPR, art.6.

<sup>304</sup> Article 6 (1) of the ICCPR states that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

<sup>305</sup> CEDAW Committee, General Recommendation 19, paras. 1, 7. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) also provides for the right of everyone to the enjoyment of “the highest attainable standard of physical and mental health. G.A. res. 2200A (XXI), 21 UN GAOR Supp. (no. 16) at 49, UN Doc. A/6316 (1966), 993 UNT.S. 3, entered into force January 3, 1976.

prosecutor's office or the courts.<sup>306</sup> These forced marriages have been condemned as a harmful traditional practice and a form of gender-based violence.<sup>307</sup>

According to the CEDAW committee, gender-sensitive training of judicial and law enforcement officials is essential for the effective implementation of the Convention. The implementation of the UN General Assembly's Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women could greatly improve the Palestinian police's response to violence against women and girls. The resolution, among other things, urges governments to: "ensure that the applicable provisions of law, codes, and procedures related to violence against women are consistently enforced...;" "develop investigative techniques that do not degrade women subjected to violence and minimize intrusion...;" "ensure that police procedures, including decisions on the arrest, detention and terms of any form of release of the perpetrator, take into account the need for the safety of the victim... and that these procedures also prevent further acts of violence;" and "empower the police to respond promptly to incidents of violence against women."<sup>308</sup>

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<sup>306</sup> The International Covenant on Civil and Political Rights (ICCPR) states that marriage should be entered into only with "the free and full consent of the intending spouses." ICCPR, Article 23(3). In addition, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, UN Doc. 521 UNT.S. 231, which entered into force Dec 9, 1964, obliges states to:

"take all appropriate measures with a view to abolishing such customs, ancient laws and practices by ensuring, inter alia, complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary and establishing a civil or other register in which all marriages will be recorded."

<sup>307</sup> See Committee on the Rights of the Child, General Comment 3, para.11 and CEDAW Committee, General Recommendation 19, para.11.

<sup>308</sup> See United Nations General Assembly Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women, UN Doc. A/RES/52/86, February 2, 1998.

## **VI. Conclusion**

The current Palestinian Legislative Council and PA ministers should reiterate the promises and commitments of their predecessors to ensure that the PA's laws and policies conform to international human rights standards, and should go one step further than its predecessors to ensure that these standards are reflected in laws and respected in practice. Adhering to these norms, even while they are not internationally binding on the PA, will bring it into conformity with international best practices and fulfill Palestinians' long-held aspirations for governmental reform and personal security. Failing to offer women and all members of Palestinian society the highest protection of the law will further erode public support for Palestinian security forces and the judiciary.

The development of an effective judiciary and law enforcement capable of addressing violence against women in all its forms should be one of the top priorities of the new government. Despite the severe constraints placed on the PA by the continued Israeli occupation, there are simple and concrete measures that the Palestinian Authority can take immediately to create institutional structures to address gender-based violence. At a minimum the PA should train all government employees (including police officers, doctors, governors, forensic experts, etc.) who come into contact with victims of physical and sexual violence on how to deal with such cases appropriately and establish clear and explicit guidelines of intervention in line with international standards and best practices. The PA should also repeal the applicability of the most discriminatory and abusive provisions of Jordanian and Egyptian law in force in the West Bank and Gaza that hinder efforts to tackle gender-based violence.

While violence against women, a global problem, is certainly not unique to the OPT, the PA does have a unique opportunity to enshrine protections for women's human rights in new drafts of criminal and family laws. Although societal attitudes condoning violence against women and girls may be slow to change, a policy of zero-tolerance for violence against women would represent a significant accomplishment that could serve as a catalyst for a broader societal endorsement of women's rights.

## VII. Recommendations

*We have to ensure that the response to discrimination and violence is timely, adequate, and efficient. What is needed is a holistic system.*

– Hassan Abu Libda, former minister of social affairs, Ramallah, December 1, 2005.

Human Rights Watch makes the following recommendations to assist the PA in reforming its laws and practices to comply with international standards in order to ensure that Palestinian women and girls are able to exercise their full range of human rights free from violence. Some of the recommendations are more resource intensive than others and would depend upon the availability of international donor assistance. The less resource intensive recommendations listed below can and should be undertaken immediately.

### To the Palestinian Authority

#### *To President Mahmoud Abbas*

- Develop a five-year plan for the prevention, punishment, and eradication of violence against women and girls, which specifically includes steps to be taken to ensure access to justice for victims of physical and sexual abuse. This plan should involve coordination between the Ministry of Social Affairs, the police, public prosecutors, and judges with the participation of Palestinian women's rights organizations throughout every phase of plan design. This plan should also build in a systematic effort to conduct research and evaluation on violence against women and programmatic responses to ensure that the best possible response is designed in the difficult social and criminal justice setting of the OPT.
- Launch a comprehensive public awareness campaign on violence against women and girls. The campaign should include public service announcements issued on television and radio and provide the public with hotline numbers of crisis centers and information about other victim services.



- Provide directives to all tribal leaders and governors to refer all gender-based crimes to the appropriate legal authorities and ensure that they are held accountable for failing to do so. The president should also examine the role of informal justice actors in mediating non-criminal community disputes to ensure that the current system does not discriminate between community members.
- Ensure that all individuals in positions of de facto authority, including tribal leaders and governors who endorse or tolerate violence against women and girls, are investigated and held politically responsible and, where appropriate, criminally responsible for their actions.
- Publicize, through radio, print, and other media, the government's support for women's and girls' rights to equality in all aspects of their public and private lives, including freedom from cruel, inhuman, or degrading treatment.

*To the Palestinian Legislative Council*

- Enact a family protection law that effectively prohibits and appropriately punishes all forms of violence against women and girls in line with international standards.
- In the interim, repeal provisions of the penal laws currently in force in the West Bank and Gaza that condone or perpetuate violence against women and girls, including:

the following provisions of Jordanian Law No.16 (1960):

- Article 340 providing a reduced sentence for a male who kills a female relative engaged in adultery.
- Article 301 that considers the rape of a virgin as an aggravating circumstance of assault.
- Article 308 allowing courts to cease legal action or suspend the sentence of rapists who agree to marry their victims.
- Article 286 granting only male family members the right to file incest charges on behalf of minors.

the following provisions of Egyptian Law No. 58 (1937):

- Article 237 providing extenuating circumstances for the murder of a wife (but not a husband) in the act of committing adultery.
- Article 291 exonerating rapists who agree to marry their victims.

### **To the Attorney General**

- Encourage women and girls to report domestic and sexual violence to the police and the public prosecutors through swift and respectful investigation and prosecution, the provision of adequate victim and witness protection programs, and the establishment of accessible specialized services for victims of domestic and sexual violence.
- Systematically collect and analyze data and provide regular public updates on the number of complaints filed for domestic and sexual violence, and the outcomes of legal proceedings.
- Apply penal code article 98 of Law No. 16 (providing a reduced sentence for someone committing a crime in a “fit of fury”) in a manner that is gender-neutral and that does not presume “fury” or “bad acts” in cases involving alleged “honor” crimes.
- Explore the feasibility of establishing specialized centers, linked to the attorney general’s office, for legal accompaniment and psychological support services to victims of domestic and sexual violence. These centers should be accessible and adequately staffed and funded to assist all victims in a timely manner.
- Eliminate the use of virginity tests for abused women and girls, and direct all doctors and health workers not to perform these exams.

## To the Ministry of Interior

- Establish, from the top down, a commitment to pursue violence against women and girls on a par with all other violent crimes—that is, to eliminate discrimination in the prevention, investigation, and prosecution of these cases.
- Establish clear and explicit guidelines for police intervention in cases of domestic violence, including standardized arrest policies for perpetrators, the separate categorization of domestic violence in police records, and protocols for referring victims of domestic violence to social, legal and health services. These guidelines should be in line with the UN General Assembly’s Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women.
- Establish mandatory police training on violence against women and girls and commission experts in this area to work towards eliminating gender bias in the handling of these cases. This training program should include, at a minimum, procedures for efficient intake of all domestic violence complaints, legal training on laws against domestic violence (once enacted), creation of a protocol for handling domestic violence complaints, and training on the dynamics of domestic violence. Training should be conducted in investigative methodology applicable to cases of domestic violence, including techniques for interviewing victims who have been traumatized, methods for protecting victims and witnesses from harassment, and methods for collecting and preserving evidence.
- Implement the previous government’s decision to form domestic violence units in each police station.
- Provide directives to all police officers to keep all cases of violence against women and girls strictly confidential, except in the proper course of police duty. Reprimand and discipline any police officers who violate the confidentiality of those reporting abuse.

- Instruct police to open a formal file anytime they receive a complaint of violence against a woman or girl.
- Prohibit police officers from proposing that perpetrators marry their victims as a solution to rape cases.
- Institute a system of restraining orders that can be pursued separate from criminal prosecutions to protect women and girls from threats of violence.
- Prohibit police officers from conducting or threatening to conduct virginity exams of women without their informed consent or referring them to forensic doctors for this purpose.
- Collect and disseminate reliable data on the number of cases of violence against women and girls reported to the police in each jurisdiction monthly.

### **To the Ministry of Social Affairs**

- Establish a specialized department within the ministry to deal with family violence. This department should establish policies and internal regulations, which currently do not exist, to guide the ministry's work on all aspects of family violence.
- Provide additional training for ministry staff who deal with issues of family violence. The training should be implemented with relevant women's organizations that have provided professional training to government agencies.
- Establish quality shelters or other safe spaces for women and girl survivors of violence that function as refuges without compromising women's privacy, personal autonomy, and freedom of movement.
- Establish a fund to run the Jenin shelter, which is ready to operate but not yet open due to lack of funding.

- Ensure that shelter staff do not have the discretion to turn away women seeking a refuge from violence based on any arbitrary or subjective criteria.
- Create telephone hotlines for victims of domestic violence throughout the West Bank and Gaza. These hotlines should be widely publicized and be operated by well-trained staff that can offer basic counseling and provide non-judgmental referrals to specialized service providers and shelters.

### **To the Ministry of Health**

- Draft protocols for all medical professionals who may come in contact with victims of physical and sexual violence that ensure respect for victim's confidentiality but that provide appropriate medical, psychological, protective and criminal justice referrals for actual or suspected victims.
- Undertake training of medical personnel to recognize and respond appropriately to cases of domestic battery and rape. The Ministry of Health should consider adopting the training manual for health professionals on treating victims of violence that has been developed and used by NGOs in the OPT allowing experienced NGO staff to be involved in the training.
- Hire and train social workers who can counsel, and advocate for, victims of violence who are identified by doctors in the health care system.
- Require a training program on domestic violence as part of the curriculum at medical schools and institutes. Such curricula should include training on how to document injuries related to battering and sexual violence and how best to serve patients who exhibit such injuries.
- Arrange for 24-hour security trained in averting harassment of victims by perpetrators at local hospitals.
- Ensure that all doctors and medical professionals do not disclose confidential information about their patients. Reprimand those who disclose confidential information without the informed consent of those reporting abuse.

- Develop a system throughout hospitals in the West Bank and Gaza to track the number of victims of family violence who seek medical attention.

### **To the Government of Israel**

The Government of Israel, as the occupying power in the OPT, has international humanitarian law obligations for the security and well-being of the protected Palestinian population. These obligations should extend to protecting the most vulnerable members of Palestinian society. Human Rights Watch urges the government of Israel to:

- Provide travel permits valid for use in times of closure to judges and other persons essential to the functioning of the Palestinian justice system. Instruct Israeli security personnel to honor such permits at checkpoints and facilitate passage.
- Allow emergency workers to move swiftly through checkpoints within and between the West Bank and Gaza in order to transport actual or potential victims of violence to safety. Develop a category of permits for Palestinians in life threatening situations, including victims of gender-based violence, allowing them to enter Israel, or to cross Israeli border crossings to surrounding countries, for safety.
- Ensure that Palestinian victims of gender-based violence can access protective institutions inside Israel where necessary, including the shelter for victims of violence in Nazareth, used by Palestinian citizens of Israel.
- Facilitate the movement of Palestinian judges, police officers, forensic doctors, lawyers, and social service providers within and between the West Bank, Gaza and Israel in order to access training aimed at improving the capacity of the Palestinian criminal justice system, including training on gender-based violence. Facilitate the movement of these professionals so they can access clients throughout the West Bank and Gaza.

## To the International Donor Community

- Encourage the PA to adopt the recommendations outlined above. Raise the issue of the PA's inadequate response to the problem of violence against women at any high level meetings that take place with the relevant ministries addressed in this section.
- Donors supporting women's projects in the OPT should create mechanisms to coordinate their gender assistance in order to enhance the impact of these efforts and avoid duplication.
- Support programs providing services for victims of violence. These services should include women's shelters, medical care, counseling, literacy classes, job/skills training, and legal aid.
- Provide capacity building for local professionals and enhance the use of local experts as much as possible in all donor-funded training and projects. Local experts should be consulted and included in all aspects of program design and implementation to ensure that donor funded interventions will be appropriate and effective.
- Assist the PA and local NGOs toward the better training of police officers, public prosecutors, doctors, and judges in handling cases of violence against women.
- Support programs that seek to review and reform existing laws to ensure that they are consistent with the PA's commitments to uphold human rights principles outlined in the CEDAW convention and other international human rights treaties, do not discriminate on the basis of sex or gender, and afford women and girls equality of access and opportunity.
- Support the development of academic and training programs to develop more experienced and certified psychologists.

- Support the hiring of qualified psycho-social counselors at universities and schools, where students can report family violence.
- Include domestic violence education as a part of the training activities for all income-generation programs targeted at women, in order to inform program participants about the currently available forms of relief from and redress for domestic abuse.



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## A Question of Security

### Violence against Palestinian Women and Girls

All too often, Palestinian women and girls who suffer from family violence pay the price for their abuse. The criminal justice system and health care providers largely ignore these abuses, leaving Palestinian women and girls with little protection. Inadequate and discriminatory laws condone the violence and perpetuate a situation of virtual impunity for perpetrators. Most women and girls consider it futile to pursue justice for family violence. Those who do report abuse confront authorities that prioritize the need to avoid public “scandal” and maintain the reputation of the victim’s family over her own health and life.

*A Question of Security* reveals, through survivors’ testimony, serious shortcomings in the Palestinian Authority’s response to family violence. There is no legislation outlawing domestic violence. Marital rape is not a crime under penal codes in force in the West Bank and Gaza. Only male relatives can file incest charges on behalf of minors. Rapists who agree to marry their victim are exonerated from punishment. Courts apply laws providing a reduction in sentence for murders committed in a “fit of fury” even in clearly premeditated cases involving “honor” crimes. The government poorly enforces laws that do penalize violence, due in part to police and doctors lacking the training, expertise and will to take family violence seriously. While the West Bank has a few small domestic violence shelters, they are not accessible to all women. Gaza lacks any women’s shelter for victims of violence.

There is no question that the Palestinian Authority faces daunting economic, political and security challenges, at this particular juncture, that hinder its response to all social and criminal justice problems. Yet despite these challenges, the Palestinian Authority has built important new institutions and reformed and unified some laws, such as those governing the justice system and children’s rights. Now the same must be done to protect women and girls from family violence.

There are measures—even in this difficult climate—that the Palestinian Authority can take to combat family violence. This report calls on the Palestinian Authority to establish guidelines and policies for responding to family violence, in line with international standards, and to train government employees to respond appropriately to violence. The Palestinian Authority should also enact a specific law on domestic violence and repeal the discriminatory laws that hinder efforts to tackle family violence.

*Ramallah. Palestinian women hold up banners reading “Killing women, till when?” and “Stop killing the woman, the mother, the sister, the wife, the daughter...” as they protest ongoing violence against women.*

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