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**BRIEFING FOR THE HUMAN RIGHTS
COMMITTEE, COUNTRY REPORT TASK FORCE,
138TH SESSION (26 JUNE 2023 - 28 JULY 2023),
WITH RESPECT TO VIOLENCE AGAINST
WOMEN IN: PALESTINE**

*Submitted by Strategic Advocacy for Human Rights (SAHR),
May 2023*



Strategic Advocacy
Human Rights

This thematic report¹ considers the de jure and de facto state of violence against women in Palestine, in particular in relation to sexual violence.

It is our hope that the Committee will:

- **raise the issue of violence against women in its List of Issues Prior to Reporting for Palestine, in particular asking what progress is being made on drafting and enacting legislation to prohibit all violence against women in all settings, in particular by reference to the UN Model Rape Law; and**
- **in its concluding observations on Palestine's State Party Report, recommend that legislation is drafted and enacted as a matter of priority to prohibit all violence against women in all settings, in particular by reference to the UN Model Rape Law.**

¹ This report was compiled based on information that was publicly available in the English language only. It may not be complete and does not constitute legal advice.

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1. INTRODUCTION

Strategic Advocacy for Human Rights (SAHR)² is a peer-led non-governmental organization by and for human right defenders working to equip a movement of human rights defenders with the knowledge and tools to end gender-based violence through litigation, policy and law reform.

We submit this written contribution for State parties under review for consideration by the Committee, reporting before the 138th Session (26 June 2023 - 28 July 2023).

This report highlights key legal inequalities that women face in Palestine in relation to violence against women, along with suggested questions to be posed to the State party. Our analysis benchmarks the legislation and practices in Palestine against the UN Model Law on Rape³, published by the former UN Special Rapporteur on Violence Against Women, Ms. Dubravka Šimonović, to harmonise national criminal justice responses with accepted international standards.

2. KEY ISSUES OF CONCERN

2.1 Insufficient Legislative Protection Against Sexual and Domestic Violence

(a) *Background Context*

- (i) On an international level, rape is recognized as a human rights violation and an international crime of atrocity, in respect of genocide, war crime, crime against humanity and torture and inhuman, cruel, and degrading treatment and punishment.⁴
- (ii) In Palestine, rape is criminalized by Article 152 of the Criminal Code of 1936 in the Gaza Strip ("**Criminal Code**") and Article 292 of the Jordanian Penal Code of 1960 ("**Penal Code**") in the West Bank.⁵
- (iii) The Committee on the Elimination of Discrimination Against Women noted that there were also various legislative gaps that needed to be filled, such as:
 - (A) Not including **marital rape** in the definition of rape under the Penal Code

² Website: <https://www.sa-hr.org/>. Email: connect@sa-hr.org

³ United Nations General Assembly, *A framework for legislation on rape (model rape law)*, 15 June 2021, available at <https://digitallibrary.un.org/record/3929055?ln=en> [accessed 5 May 2023] [A/HRC/47/26/Add.1](#)

⁴ United Nations Human Rights, *Rape as a grave and systematic human rights violation and gender-based violence against women*, 5 August 2020, available at <https://www.ohchr.org/en/calls-for-input/rape-grave-and-systematic-human-rights-violation-and-gender-based-violence-against> [accessed on 5 May 2023]

⁵ United Nations Development Programme, *State of Palestine Gender Justice & The Law*, 2018, available at https://arabstates.unfpa.org/sites/default/files/pub-pdf/Palestine.Country.Assessment.Eng_.pdf [accessed on 6 May 2023]

- (B) The delay in the adoption of the draft family protection law, which is aimed to establish **minimum marriage ages** and **protect women from domestic violence**⁶
 - (C) The absence of legislation on **protection orders**.
 - (iv) Palestine’s initial report submitted under article 40 of the Covenant received in 16 November 2020 (“**Current Report**”) did not address these legislative gaps raised above.
- (b) *Gaps in Palestine’s Current Laws:*
- (i) The definition of rape under Palestinian law is too narrow and does not cover many of the recommendations presented under the UN Model Rape Law.⁷
 - (A) **Marital rape is not prohibited:** Under the UN Model Rape Law, criminal law provisions should cover and protect all persons and should apply to rape between spouses and intimate partners, whether current or former. Palestinian law does not include marital rape under its definition of rape. In fact, the Penal Code carves out marital rape, by stating that “Any person who has forced sexual intercourse with a female, other than his wife, shall be sentenced to at least five years of temporary hard labour.”
 - (B) **Rape is punishable by community sentencing:** Under Article 7 of the UN Model Rape Law, States should not allow conditional sentences and/or community service or fines alone as sanctions.⁸ Article 292 and 293 of the Penal Code of 1960 which applies in the West Bank imposes only five years of temporary hard labour as a penalty for rape and the rape of a vulnerable female.⁹
 - (C) **Not all types of penetration have been criminalised as rape:** Palestinian law does not explicitly include all types of penetration of a sexual nature (vaginal, anal, or oral), however, slight, by any bodily part or an object, as recommended under the UN Model Law. Instead, Palestinian law penalizes only sexual intercourse under Article 152 of the Criminal Code and Article 292 of the Penal Code, which is not defined to further detail. Palestinian law does, however, penalize indecent acts under Article 157 of the Criminal Code and unwanted

⁶ Library of Congress, *West Bank: Palestinian Authority Announces Planned Changes to Penal Code in Response to Case of Honor Killing*, 13 November 2019, available at <https://www.loc.gov/item/global-legal-monitor/2019-11-13/west-bank-palestinian-authority-announces-planned-changes-to-penal-code-in-response-to-case-of-honor-killing/> [accessed on 8 May 2023]

⁷ United Nations Development Programme, *State of Palestine Gender Justice & The Law*, 2018, available at https://arabstates.unfpa.org/sites/default/files/pub-pdf/Palestine.Country.Assessment.Eng_.pdf [accessed on 7 May 2023]

⁸ United Nations General Assembly, *A framework for legislation on rape (model rape law)*, 15 June 2021, available at <https://digitallibrary.un.org/record/3929055?ln=en> [accessed 14 May 2023]

⁹ The State of Palestine, *The Penal Code for the Year 1960*, available at [http://legal.pipa.ps/files/server/ENG%20Panel%20Law%20No_%20\(16\)%20of%201960.pdf](http://legal.pipa.ps/files/server/ENG%20Panel%20Law%20No_%20(16)%20of%201960.pdf) [accessed on 14 May 2023].

sexual conduct under Article 305 of the Penal Code. While the term “indecent acts” is not defined under the Criminal Code, unwanted sexual conduct is defined as “fondling” or “unwanted sexual contact” with any person under the age of 15, male or female, or females above the age of 15 but without their consent.¹⁰

- (D) **Rape is not defined as a lack of consent:** While Palestinian law address rape by deception and rape while a woman is incapable of resisting under Article 152 and 153 of the Criminal Code, there is no consistent definition of consent within the law and there is no prevention of the inference of consent from silence, non-resistance, the victim’s past sexual behavior or the victim’s status, occupation or relationship to the accused.
 - (E) **Other aggravating factors have not been considered:** There is a lack of comprehensiveness regarding aggravating circumstances that increase the gravity and severity of rape as a crime in Palestine. While Palestinian law does point out age and family relationships between the victim and the perpetrator to be aggravating factors,¹¹ there is no mention of imprisonment, conditions of vulnerability, relationships with a power imbalance, crimes committed against older people, other discriminatory motives, crimes committed against pregnant persons, whether the offence was committed by two or more people and so on, all of which are recommended under Article 8 of the UN Model Rape Law.¹²
- (ii) There are no domestic violence laws in Palestine. While the draft Family Protection Law was submitted for ratification in November 2020, which if passed, would criminalize domestic violence, expand access to justice for victims, and create relevant centres to educate the public about domestic justice, the bill still has not been enacted.

¹⁰ United Nations Development Programme, *State of Palestine Gender Justice & The Law*, 2018, available at https://arabstates.unfpa.org/sites/default/files/pub-pdf/Palestine.Country.Assessment.Eng_.pdf [accessed on 10 May 2023]; The State of Palestine, *The Penal Code for the Year 1960*, available at [http://legal.pipa.ps/files/server/ENG%20Panel%20Law%20No_%20\(16\)%20of%201960.pdf](http://legal.pipa.ps/files/server/ENG%20Panel%20Law%20No_%20(16)%20of%201960.pdf) [accessed on 5 May 2023]

¹¹ Please see Annex A for the complete language of the UN Model Rape Law and the complete language of the Penal Code and the Criminal Code. The State of Palestine, *The Penal Code for the Year 1960*, available at [http://legal.pipa.ps/files/server/ENG%20Panel%20Law%20No_%20\(16\)%20of%201960.pdf](http://legal.pipa.ps/files/server/ENG%20Panel%20Law%20No_%20(16)%20of%201960.pdf) [accessed on 7 May 2023] ; The State of Palestine, *The Gaza Criminal Code of 1936*, available at <https://learningpartnership.org/sites/default/files/resources/pdfs/Palestine-Penal-Code-Gaza-1936-English.pdf> [accessed 6 May 2023]

¹² United Nations General Assembly, *A framework for legislation on rape (model rape law)*, 15 June 2021, available at <https://digitallibrary.un.org/record/3929055?ln=en> [accessed 5 May 2023]

(c) *Current Situation:*

- (i) Palestinian women still frequently experience violence of all forms. According to the Palestine Central Bureau of Statistics¹³, there were 399 cases of rape and sexual assault reported in Palestine in 2020. Studies from 2022 have also found that 11.8% of women in Palestine are exposed to sexual violence, 58.6% exposed to psychological violence, 23.5% to physical violence, and 54.8% to social violence.¹⁴

Suggested List of Questions for the State Party

- Please specify whether there are bills or efforts to expand the definitions of rape to include marital rape and to further define consent in the context of rape.
- Are there any legislative provisions preventing mandatory reconciliation in rape cases? If not, are there any efforts to implement such legislation?
- Similarly, are there any legislative provisions outlining aggravating circumstances that can increase the gravity and severity of rape as a crime in Palestine aside from age and incest? If not, are there any efforts to expand the list of aggravating circumstances?
- Please report on the steps the State party is taking to enact and pass the Family Protection Law. What is the proposed timeline? Please comment on the pushback and barriers that the State party has experienced in its efforts to enact this bill.
- Are there any reforms in relation to adding protection orders into the national legislation regarding rape in the Penal Code in the West Bank or the Criminal Code in the Gaza Strip?
- What protection and empowerment mechanisms for women violated by the Israeli occupation exist?

2.2 Insufficient Procedural Access to Justice for Victims of Sexual Violence

(a) *Background Context*

- (i) According to the Current Report and the General Comments by the SAHR, criminal legislation in Palestine makes rape and other sexual acts imposed upon a woman by coercion – such as indecent assault, inappropriate advances, abduction and indecent acts or comments – a criminal offence. It

¹³ Palestine Central Bureau of Statistics, 2021, *Crime Statistics in the Palestinian Territory, 2020*, available at http://www.pcbs.gov.ps/site/lang_en/881/default.aspx#Rape_and_Sexual_Assault [accessed on 8 May 2023]

¹⁴ Fayeze Mahamid, Guido Vernoses and Dana Bdier, *Gender-based violence experiences among Palestinian women during the COVID-19 pandemic: mental health professionals' perceptions and concern*, 4 April 2022, available at <https://conflictandhealth.biomedcentral.com/articles/10.1186/s13031-022-00444-2> [accessed 12 May 2023]

does not, however, impose deterrent penalties commensurate with the severity of the offence.

- (ii) A report by the Palestinian Independent Commission for Human Rights¹⁵ found that there are significant obstacles to justice for victims of sexual violence in Palestine, including inadequate protection and support services, a lack of specialized judges and prosecutors, and inconsistent and inadequate sentencing.

(b) *Gaps in Procedural Access to Justice and Current Situation*

- (i) The existing legal framework in Palestine also does not provide adequate safeguards for victims of sexual violence to ensure they receive a fair trial. Some procedural obstructions to justice include:¹⁶

(A) **Short statute of limitation:** In Palestine, a victim of sexual assault must file complaint within 3 months of the incident. This is not in line with Article 17 of the UN Model Rape Law, which states that the prosecution of rape should not be subject to any period of limitation in any circumstances, whether carried out in times of peace or conflict.¹⁷

(B) **Requirement of physical injury:** In order for an assault case to be prosecuted without a formal complaint from the survivor, the period of physical injury caused to the woman by violence perpetrated against her must endure for at least ten days. This is not in line with Article 16 of the UN Model Rape Law, which states that there should be no absolute requirement for any specific piece of evidence for the prosecution to go ahead, and that the lack of evidence of resistance such as physical injuries to the body should never be taken as proof of consent.¹⁸

(C) **Public prosecutors cannot initiate a case without the victim's complaint or complaint of close family members.** Victims of sexual abuse in Palestine rarely report violence to the authorities, and the narrow scope of people allowed to launch a prosecution of incest will only exacerbate the problem and further dampen prosecutions of perpetrators.¹⁹

(D) The guardian of a female survivor of gender-based violence may seek to drop charges to avoid social stigma, particularly in cases of sexual

¹⁵ Palestinian Independent Commission for Human Rights, 2019, *Situation of Women's Human Rights in Palestine*, available at <https://www.ichr.ps/en>. [accessed on 8 May 2023]

¹⁶ United Nations Development Programme, *State of Palestine Gender Justice & The Law*, 2018, available at https://arabstates.unfpa.org/sites/default/files/pub-pdf/Palestine.Country.Assessment.Eng_.pdf [accessed on 9 May 2023]

¹⁷ Please refer to Annex A for the complete language of the UN Model Rape Law.

¹⁸ Please refer to Annex A for the complete language of the UN Model Rape Law.

¹⁹ Human Rights Watch, *Social and Legal Obstacles to Reporting Violence and Seeking Redress*, 6 November 2006, available at <https://archive.hrw.org/reports/2006/opt1106/5.htm> [accessed on 8 May 2023]

assault and rape. Women often end up dropping their claim due to social pressure or fear of stigma.

- (ii) **Absence of legislation on victim support:** There is a lack of legislative provision for victim support. Article 11 of the UN Model Rape Law provides that investigation, prosecution, and trial should take a victim-centred approach for the protection and support of victims, such as measures to protect their privacy and ensure their safety during legal proceedings. However, Palestine's law does not have adequate provisions for victim support.
- (iii) **Lack of timely investigations:** Article 13 and 15 of the UN Model Rape Law also provide that law enforcement officers should conduct investigations in a prompt and timely manner and shall not unduly delay investigations. Palestine's law does not have adequate provisions to ensure timely investigation. Studies by the UN Entity for Gender Equality and the Empowerment of Women also have found that Palestinian courts delay cases without any notification to the plaintiffs, despite their tremendous efforts to arrive at the courts to file complaints of sexual assault.²⁰
- (iv) **Lack of gender-sensitive assessment of evidence:** Article 16 of the UN Model Rape Law also urges State parties to ensure an objective, gender-sensitive assessment of the evidence in rape cases. However, there is insufficient information regarding the treatment of evidence in rape cases in Palestine.

Suggested List of Questions for the State Party

- Please indicate what procedures are in place to protect victims of sexual violence. More specifically, please describe if police procedures when asking victims to identify the perpetrator, procedures in witness interviews, protection of children and witnesses of rape, and investigation are in compliance with the UN Model Rape Law and whether these procedures take a victim-centered approach.
- Are there any reforms in the pipeline or statistics regarding the improvement of procedural access to justice? In particular, what are the guidelines for evidentiary evaluation in rape cases?
- Are there any reforms towards national guidelines on the management of sexual violence cases which addresses how the government and related agencies should address the medical, psychosocial, protection and legal needs survivors of sexual violence in both stable and humanitarian contexts.
- What gender-sensitive early warning system has been established to increase women's capacities to monitor and respond to the impact of occupation and conflict on women's lives.

²⁰ United Nations Entity for Gender Equality and the Empowerment of Women, *Access Denied: Palestinian Women's Access to Justice in the West Bank of the occupied Palestinian territory*, March 2014, available at https://palestine.unwomen.org/sites/default/files/Field%20Office%20Palestine/Attachments/Publications/2014/Access%20Denied_EN.pdf [accessed on 7 May 2023]

- What reports have been produced on the impact of the Israeli occupation against Palestinian women and girls?
- Please report on the availability of quality and gender-responsive social, psychosocial, health and legal protection services for women and girls subject to gender-based and sexual violence in Palestine, including the West Bank (including East Jerusalem) and the Gaza Strip, based on the indicators of the national strategy.

2.3 Insufficient Institutional Protection for Victims of Sexual Violence

(a) Background Context

- (i) General Comments²¹ from the Human Rights Committee notes that States should take measures to ensure that victims have access to justice and that perpetrators are punished. Additionally, states should take measures to prevent gender-based violence, including through education and awareness-raising campaigns. The UN Model Rape Law also urges State parties to take steps to implement rape crisis or sexual violence one stop service centres and to mandate education and training for law enforcement officials, medical, judicial, and social service professionals to ensure that gender-sensitive, trauma-informed, and victim-centred approaches are taken when dealing with victims of sexual assault.
- (ii) According to the Current Report,²² Palestine established a national anti-violence committee under a 2008 decree of the Council of Ministers. The committee drafted a strategy to combat violence against women for the period 2011–2019 and, on the basis of an evaluation of that strategy, produced another for the period 2020– 2030, consistent with the Sustainable Development Goals and the Convention on the Elimination of All Forms of Discrimination against Women.²³ Moreover, in 2014, the committee adopted a “risk situation review system” for “female victims of violence.”
- (iii) The Ministry of Social Development in Palestine provides female victims of violence with social, legal, and psychological counselling services free of charge, and refers them to centres that provide shelter and protection. The Ministry of Social Development also incorporates female victims of violence into its relief and development programmes as urgent special cases, and it organizes joint programmes with non-governmental organizations (NGOs).

²¹ United Nations Human Rights Treaty Bodies, *General Comment*, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11 [accessed on 8 May 2023]

²² The State of Palestine, *Initial report submitted by the State of Palestine under article 40 of the Covenant, due in 2015*, 16 November 2020, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F1&Lang=en [accessed on 8 May 2023]

²³ OHCHR, *Convention on the Elimination of All Forms of Discrimination against Women*, ratified 18 December 1979 and entry into force 3 September 1981, available at <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf> [accessed on 8 May 2023]

(b) *Current Situation*

- (i) According to the Current Report, surveys conducted show that in 2019, moreover, 61% of women preferred to remain silent about violence they might have suffered at the hands of their husbands. Of the victims, only 1.4% sought assistance from a psychological, social or legal aid centre.²⁴
- (ii) Women have also reported difficulties in finding police stations close to their homes and are often unable to afford the transportation costs to the police station.²⁵
- (iii) For a country with a 2.63 million female population,²⁶ there are too few protection centres for women. According to the Current Report, there are four protection centres providing services to victims of sexual assault in the West Bank – the Mehwar Centre, the Girls’ Welfare Home, the Safe House and the Women’s Emergency Protection Home – and two in the Gaza Strip – the Safe House and the Hayat Centre. Of the latter, only one provides shelter.²⁷
- (iv) There are too few governmental and non-governmental organizations that provide social and legal services to victims of sexual violence. Some of the few are the Ministry of Social Development and the Women’s Centre for Legal Aid and Counselling,²⁸ which provides legal aid and support services to survivors of gender-based violence in Palestine.
- (v) Palestine does not have a legal aid system. Civil society organizations have provided legal aid services, but few organizations are sufficiently funded to provide free legal assistance to victims of sexual violence.

Suggested List of Questions for the State Party

- What initiatives are being undertaken to make governmental and non-governmental organizations providing social and legal services to victims of sexual

²⁴ Human Rights Committee, *Initial report submitted by the State of Palestine under article 40 of the Covenant, due in 2015, 26 August 2021*, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F1&Lang=en [accessed 8 May 2023]

²⁵ Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to the Occupied Palestinian Territory/State of Palestine*, 8 June 2017, available at https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FHRC%2FRegularSessions%2FSession35%2FDocuments%2FA_HRC_35_30_Add_2_EN.docx&wdOrigin=BROWSELINK [accessed 10 May 2023]

²⁶ Palestinian Central Bureau of Statistics, *Palestinian Central Bureau of Statistics (PCBS) Presents the Conditions of Palestinian Populations on the Occasion of the International Population Day*, 11 July 2022, available at <https://pcbs.gov.ps/post.aspx?lang=en&ItemID=4279> [accessed 9 May 2023]

²⁷ Human Rights Committee, *Initial report submitted by the State of Palestine under article 40 of the Covenant, due in 2015, 26 August 2021*, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F1&Lang=en [accessed 5 May 2023]

²⁸ Women's Centre for Legal Aid and Counselling. (n.d.). *Our Work*, available at <https://www.wclac.org/en>, [accessed on 8 May 2023]

victims more accessible? In particular, how accessible is the Ministry of Social Development to Palestinian women and what are some metrics of evaluating its accessibility?

- What initiatives are being undertaken to ensure the sustainability of police training?
- Please report on the progress on the draft of the legal aid bill.
- What nongovernmental organizations is the State party working with to address the protection of victims of sexual violence, and is there any governmental funding provided to these organizations?
- Are there any efforts to increase the number of FPU's and to protect the confidentiality of victims when they file complaints with and seek the services of the FPU's?
- What policies and procedures for justice service providers to guarantee that victims and survivors of violence - particularly of sexual violence - receive quality services that respect the privacy and dignity of survivors, and integrate needs of women with disabilities?

2.4 Lack of Access to Abortion

(a) Background Context

- (i) **Abortion is prohibited without medical reason and in the case of a West Bank, a ruling from religious leader:** Abortion is prohibited under Palestine's current law, with the only exception being if there was an urgent reason to save the pregnant woman's life, under the condition that it must be witnessed by two specialized physicians.²⁹ The Palestinian Penal Code criminalises abortion without a medical reason³⁰, and the Jordanian Penal Code of 1960, which applies in Occupied Palestine, applies criminal penalties to the woman seeking the abortion and all individuals and health care professionals who assist her in terminating the pregnancy.³¹
- (ii) Palestine notes in its initial report to the Committee that abortions for pregnancies that were procured unlawfully (rape or incest) are carried out very limitedly.³² The initiative is taken by the Office of the Public Prosecution, which seeks a legal opinion from the Palestinian Fatwa Board before

²⁹ The State of Palestine, *Public Health Act No. 20 of 2004*, available at <http://www.hdip.org/public%20health%20law%20English.pdf> [accessed May 7 2023].

³⁰ The State of Palestine, *The Gaza Criminal Code of 1936*, available at <https://learningpartnership.org/sites/default/files/resources/pdfs/Palestine-Penal-Code-Gaza-1936-English.pdf> [accessed 6 May 2023]

³¹ The State of Palestine, *The Penal Code for the Year 1960*, available at [http://legal.pipa.ps/files/server/ENG%20Panel%20Law%20No_%20\(16\)%20of%201960.pdf](http://legal.pipa.ps/files/server/ENG%20Panel%20Law%20No_%20(16)%20of%201960.pdf) [accessed on 5 May 2023]

³² Human Rights Committee, *Initial report submitted by the State of Palestine under article 40 of the Covenant, due in 2015, 26 August 2021*, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F1960%2F1&Lang=en [accessed 6 May 2023]

authorizing an abortion for a pregnancy resulting from rape or incest.³³ Under the Jordanian Penal Code, penalties for abortion are decreased for the woman and her family members if the reason for the abortion is “honour” related.³⁴

(b) *Current Situation*

- (i) **Unsafe abortions:** Due to the restrictive abortion laws and policies in Palestine, many women turn to unsafe abortions and back-alley methods.³⁵ In practice, authorities may allow abortions in the first four months of pregnancy in situations of rape or incest, or if the mother has a disability or her life is at risk.³⁶ However, it seems that it is difficult to receive approval to obtain an abortion, as the mufti (religious jurist), hospital and court all have to agree to allow the abortion.³⁷

Suggested List of Questions for the State Party

- How many abortions are approved each year? Please provide disaggregated data about how many abortion requests are received, the reasons why the abortion was sought, and the basis on which the abortion approval was granted.
- Please provide statistics on the number of persons who have been prosecuted or received penalties for abortion per year, including the breakdown of whether such persons are the pregnant woman or family members or medical professionals, and the average quantum of penalties imposed.
- Please report on the steps that the State Party has taken to help women prevent unwanted pregnancies, educate women on their abortion rights and facilitate access to safe abortion.

2.5 Sexual Slavery and Trafficking

(a) *Background Context*

- (i) Article 8 of the Covenant recognizes that no one shall be held in slavery, that slavery and the slave-trade in all forms shall be prohibited and that no one shall be held in servitude. Article 6 of the Convention on the Elimination of All

³³ Human Rights Committee, *Initial report submitted by the State of Palestine under article 40 of the Covenant, due in 2015*, 26 August 2021, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR%2FC%2F1983%2F1&Lang=en [accessed 6 May 2023]

³⁴ State of Palestine, *The Penal Code for the Year 1960*, available at [http://legal.pipa.ps/files/server/ENG%20Panel%20Law%20No_%20\(16\)%20of%201960.pdf](http://legal.pipa.ps/files/server/ENG%20Panel%20Law%20No_%20(16)%20of%201960.pdf) [accessed on 5 May 2023].

³⁵ Yardena Schwartz: *Palestine’s Abortion Problem*. Available online at <https://foreignpolicy.com/2015/12/04/palestines-abortion-problem/> [accessed 6 May 2023]

³⁶ Human Rights Watch, *Palestine: “Marry-Your-Rapist” Law Repealed*, 10 May 2018, available at: <https://www.hrw.org/news/2018/05/10/palestine-marry-your-rapist-law-repealed> [accessed 6 May 2023]

³⁷ Human Rights Watch, *Palestine: “Marry-Your-Rapist” Law Repealed*, 10 May 2018, available at <https://www.hrw.org/news/2018/05/10/palestine-marry-your-rapist-law-repealed> [accessed 6 May 2023]

Forms of Discrimination Against Women also requires that Palestine, as an acceding party, to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.³⁸

- (ii) **Lack of comprehensive legislation on human trafficking and sexual slavery:** In Palestine, sex work and prostitution are penalized, but there is no comprehensive legislation on human trafficking and sexual slavery.³⁹ For instance, 2015 Decree-Law on combating money-laundering and the financing of terrorism deems all monies obtained from human trafficking and the sexual exploitation of women and children's illegal assets, with offenders becoming liable to imprisonment and a fine.
- (iii) According to the Current Report, Palestine's efforts to address this issue has included setting up a national team to work on drafting law on human trafficking to include into its criminal code and creating a database to monitor and document trafficking offenses. At the same time, the Ministry of Social Development also runs programs to protect and aid with the social rehabilitation of female victims of exploitation and trafficking.
- (iv) According to Article 42 of the Children's Act, children must be protected from all forms of exploitation including sexual exploitation. Article 44 (5) states that the sexual or economic exploitation of children constitutes a threat to children's well-being, one to which they must not be exposed. Article 47 dictates that a child is at risk of delinquency if he or she is found, lives or works in an environment related to prostitution, debauchery or immorality or similar illicit actions. One task of child counsellors under Article 52 is to undertake preventive and therapeutic intervention in all cases where the well-being of children is threatened.⁴⁰

Suggested List of Questions for the State Party

- Please provide official statistics on the number of victims of human trafficking and sexual exploitation. How many safe houses are there for victims of trafficking? What is the procedure of treating victims of forced prostitution after taking them in? Do police officers undergo gender sensitive training prior to dealing with these victims of trafficking?
- Please report on whether there have been steps taken to implement a more comprehensive anti-trafficking legislation, specifically to treat victims of forced

³⁸ OHCHR, *Convention on the Elimination of All Forms of Discrimination against Women*, ratified 18 December 1979 and entry into force 3 September 1981, available at <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf> [accessed on 8 May 2023]

³⁹ United Nations Development Programme, *State of Palestine Gender Justice & The Law*, 2018, available at https://arabstates.unfpa.org/sites/default/files/pub-pdf/Palestine.Country.Assessment.Eng_.pdf [accessed on 7 May 2023]

⁴⁰ Human Rights Committee, *Initial report submitted by the State of Palestine under article 40 of the Covenant, due in 2015*, 26 August 2021, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F1983%2F1&Lang=en [accessed 7 May 2023]

prostitution as victims rather than offenders. What is the current status on the draft law on human trafficking, and other efforts in addressing human trafficking and sexual exploitation issues?

- Please confirm if there have been efforts to strengthen the security at sea to prevent human trafficking organizations from hijacking ships to Europe.

In addition to the above observations, we annex a table comparing the State's law on rape and sexual violence with the UN Model Law on Rape. This table demonstrates the extent to which the State's law complies with internationally accepted standards and the articles of the ICCPR as above-mentioned.

| UN Model Rape Law | Corresponding Legislative Provisions of State | Comments |
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| A. Criminalization of rape | | |
| <p>Article 1. Definition of rape</p> <p>16. A person (the perpetrator) commits rape when they:</p> <p>(a) engage in non-consensual vaginal, anal or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by any bodily part or object; or</p> <p>(b) cause non-consensual vaginal, anal or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by a third person; or</p> <p>(c) cause the victim to engage in the non-consensual vaginal, anal or oral penetration of a sexual nature, however slight, of the body of the perpetrator or another person.</p> | <p>Article 292 of the Penal Code⁴¹</p> <p>a) Any person who has forced sexual intercourse with a female, other than his wife, shall be sentenced to at least five years of temporary hard labour. The sentence shall not be less than seven years if the victim is less than 15 years of age.</p> <p>b) Whoever rapes a girl who did not reach fifteen years of age shall be punished by the death penalty.</p> <p>Article 152 of the Criminal Code⁴²</p> <p>Any person who has:</p> <p>a) unlawful sexual intercourse with a female gains her will by the use of force or threats of death or severe bodily harm, or when she in a state of unconsciousness or otherwise incapable of resisting [...]</p> <p>is guilty of a felony and is liable to imprisonment for fourteen years.</p> | <p>The Criminal Code defines rape to be “unlawful sexual intercourse” and the Penal Code defines rape as “sexual intercourse with a female against her will by the use of force or threats or trick or deception.”</p> <p>Palestinian law does not address the different types of sexual penetration and sexual contact that can constitute rape.</p> |

⁴¹ The State of Palestine, *The Penal Code for the Year 1960*, available at [http://legal.pipa.ps/files/server/ENG%20Panel%20Law%20No_%20\(16\)%20of%201960.pdf](http://legal.pipa.ps/files/server/ENG%20Panel%20Law%20No_%20(16)%20of%201960.pdf) [accessed on 5 May 2023].

⁴² The State of Palestine, *The Gaza Criminal Code of 1936*, available at <https://learningpartnership.org/sites/default/files/resources/pdfs/Palestine-Penal-Code-Gaza-1936-English.pdf> [accessed 6 May 2023].

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| <p>Article 2. On consent</p> <p>17. Consent must be given voluntarily and must be genuine and result from the person’s free will, assessed in the context of the surrounding circumstances, and can be withdrawn at any moment. While consent need not be explicit in all cases, it cannot be inferred from:</p> <p>(a) silence by the victim;</p> <p>(b) non-resistance, verbal or physical, by the victim;</p> <p>(c) the victim’s past sexual behavior; or</p> <p>(d) the victim’s status, occupation or relationship to the accused.</p> | | <p>There is no definition of consent in Palestinian law.</p> |
| <p>Article 3. Age of consent</p> <p>(a) A person is considered incapable of giving genuine consent when they are a person below the age of 16.</p> <p>(b) Consensual sexual relations between children younger than 16, or between a child younger than 18 years old and a child older than 14 and younger than 16 should not be criminalized.</p> | <p>Article 292 of the Penal Code</p> <p>a) Any person who has forced sexual intercourse with a female, other than his wife, shall be sentenced to at least five years of temporary hard labour. The sentence shall not be less than seven years if the victim is less than 15 years of age.</p> <p>b) Whoever rapes a girl who did not reach fifteen years of age shall be punished by the death penalty.</p> <p>Article 152 of the Criminal Code</p> <p>Any person who has:</p> <p>c) unlawful sexual intercourse or commits an act of sodomy with a child under the age of sixteen years</p> <p>is guilty of a felony and is liable to imprisonment for fourteen years.</p> | <p>The Penal Code under the deems 15 years to be the age of consent. The Criminal Code deems the age of consent to be 16.</p> <p>According to Article 294 of the Penal Code, it appears that any individual who has sexual intercourse with a female between the ages of 15 and 18 is punished. There is no carve out for consensual relationships between minors.</p> |

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| | <p>Article 294 of the Penal Code</p> <p>Whoever has sexual intercourse with a female – other than his wife - who reached fifteen years of age and under eighteen years, he shall be punished by temporary imprisonment for a period not less than five years.</p> | |
| <p>Article 4. On the incapability of giving genuine consent</p> <p>A person is considered incapable of giving genuine consent:</p> <p>(a) when they are unconscious, asleep, or seriously intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily or unknowingly;</p> <p>(b) when the perpetrator is an adult, 18 years old or older and the victim is a child related to the perpetrator by blood, marriage, adoption, fostering or other analogous familial affiliation.</p> | <p>Article 293 of the Penal Code</p> <p>Whoever has sexual intercourse with a woman –other than his wife - who could not resist because of a physical or emotional or mental limitation, he shall be punished by temporary imprisonment with hard labour for a period not less than ten years.</p> <p>Article 297 of the Penal Code</p> <p>Whoever commits an indecent act upon a person who is incapable of resisting because of a physical or mental impediment or through the use of deception; or compels such a person to commit an indecent act, he / she shall be punished by temporary imprisonment with hard labour.</p> <p>Article 157 of the Criminal Code</p> <p>Any person who commits or attempts to commit an indecent act upon the person of another against his will by the use of force or threats, or when he is in a state of unconsciousness or otherwise incapable of resisting, or by use of force or threats compels a person to commit or to submit to any indecent act, is guilty of a felony and is liable to imprisonment for five years.</p> | <p>The Penal Code defines incapability of consent as those who have a physical or mental impediment or those who were deceived. There is no address of the use of alcohol or other forms of intoxication.</p> <p>The Criminal Code defines incapability as those in a state of unconsciousness or otherwise incapable of resisting.</p> |
| <p>Article 5. Use of force, threat or coercion</p> <p>Lack of consent is presumed where penetration was committed by force, or by threat of force or coercion. There is</p> | <p>Article 297 of the Penal Code</p> <p>Whoever commits an indecent act upon a person who is incapable of resisting because of a physical or mental impediment or through the use of deception; or compels such</p> | <p>Generally, in line with the UN Model Rape Law.</p> |

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| <p>a broad range of coercive circumstances, including, but not limited to, circumstances in which:</p> <p>(a) the victim was subject to abuse, violence, duress, deceit, detention or psychological oppression or intimidation that contributed to the victim’s subjugation or acquiescence; or</p> <p>(b) the victim was subject to a threat (expressed or implied) of present or future physical or non-physical harm to the victim or a third person.</p> | <p>a person to commit an indecent act, he / she shall be punished by temporary imprisonment with hard labour.</p> <p>Article 157 of the Criminal Code</p> <p>Any person who commits or attempts to commit an indecent act upon the person of another against his will by the use of force or threats, or when he is in a state of unconsciousness or otherwise incapable of resisting, or by use of force or threats compels a person to commit or to submit to any indecent act, is guilty of a felony and is liable to imprisonment for five years.</p> | |
| <p>Article 6. On presumed lack of consent</p> <p>Lack of consent is presumed when:</p> <p>(a) The victim was intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily or unknowingly;</p> <p>(b) When an illness, bodily injury, or other particular vulnerability has an impact of the victim’s ability to consent; or</p> <p>(c) When the perpetrator is in a position of power, trust, influence or dependency over the victim and may have taken advantage of that position to force participation.</p> <p>Lack of consent is also presumed when the perpetrator abuses a relationship or position of power or authority over the victim. The positions and relationships listed below include, but are not limited to, situations in which the perpetrator is in a position of power or authority, influence or dominance over the victim:</p> <p>(a) in a school, hospital, religious, correctional or care facility setting;</p> | | <p>Not addressed in Palestinian law.</p> |

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| <p>(b) in a professional or occupational setting;</p> <p>(c) in a residential care facility, community home, voluntary home, children’s home or orphanage;</p> <p>(d) in the context of providing the victim medical, psychological or psycho-social support or treatment;</p> <p>(e) in a guardian-ward relationship;</p> <p>(f) by acting as a member of law enforcement, worker, probation officer, sports coach, instructor, minister of religion, babysitter, child-minder or in any other position of welfare in relation to the victim; or</p> <p>(g) by otherwise being generally involved and responsible for the care, training or supervision of the victim.</p> | | |
| <p>B. Sentencing, aggravating and mitigating circumstances</p> | | |
| <p>Article 7. Sentencing</p> <p>(a) States should ensure that sanctions for offences of rape are effective, proportionate, dissuasive and commensurate with the gravity of the crimes.</p> <p>(b) States should develop sentencing guidelines to ensure consistency in sentencing outcomes.</p> <p>(c) States should not allow conditional sentences and/or community service or fines alone as sanctions.</p> <p>(d) The death penalty should never be imposed for rape.</p> | <p>Article 292 of the Penal Code</p> <p>a) Any person who has forced sexual intercourse with a female, other than his wife, shall be sentenced to at least five years of temporary hard labour. The sentence shall not be less than seven years if the victim is less than 15 years of age.</p> <p>b) Whoever rapes a girl who did not reach fifteen years of age shall be punished by the death penalty.</p> <p>Article 294 of the Penal Code</p> <p>Whoever has sexual intercourse with a female – other than his wife - who reached fifteen years of age and under eighteen years, he shall be punished by temporary imprisonment for a period not less than five years.</p> | <p>The Penal Code imposes the death penalty on individuals who rapes a girl under the age of 15.</p> <p>The Penal Code deviates from the UN Model Rape Law by imposing only temporary hard labour.</p> |

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| | <p>Article 153 of the Criminal Code</p> <p>Rape of a woman by deception is punishable with imprisonment for ten years.</p> | |
| <p>Article 8. Aggravating circumstances</p> <p>The presence of aggravating factors increase the gravity and severity of rape and States should ensure that aggravating circumstances are taken into account and factored into penalties.</p> <p>The following non-exhaustive list of circumstances should be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offence of rape:</p> <p>(a) the relationship between victim and perpetrator, when there is a power imbalance that makes the victim particularly vulnerable:</p> <ul style="list-style-type: none"> (i.) the offence was committed against a former or current spouse or partner; (ii.) the offence was committed by a member of the family or a person cohabiting with the victim; (iii.) the perpetrator took advantage of any kind of relationship of trust, kinship, authority, or other unequal power relationship with the victim; (iv.) the perpetrator is an agent or contractor of the State, or has authorization, support, or acquiescence from one or more agents or contractors of the State; | <p>Article 292 of the Penal Code</p> <p>a) Any person who has forced sexual intercourse with a female, other than his wife, shall be sentenced to at least five years of temporary hard labour. The sentence shall not be less than seven years if the victim is less than 15 years of age.</p> <p>b) Whoever rapes a girl who did not reach fifteen years of age shall be punished by the death penalty.</p> <p>Article 293 of the Penal Code</p> <p>Whoever has sexual intercourse with a woman –other than his wife - who could not resist because of a physical or emotional or mental limitation, he shall be punished by temporary imprisonment with hard labour for a period not less than ten years.</p> <p>Article 294 of the Penal Code</p> <p>Whoever has sexual intercourse with a female – other than his wife - who reached fifteen years of age and under eighteen years, he shall be punished by temporary imprisonment for a period not less than five years.</p> | <p>There is insufficient comprehensiveness regarding aggravating circumstances in Palestine’s rape laws.</p> |

(b) conditions of the victim or context that make them particularly vulnerable to sexual violence:

(i.) the offence was committed against a victim who for any reason is imprisoned or detained;

(ii.) the offence was committed against a child or against an older person;

(iii.) the offence was committed against or in the presence of relatives of the victim or any child;

(iv.) the perpetrator took advantage of a person in a position of particular vulnerability, including but not limited to in times of armed conflict, political violence, or other social disturbance, during human trafficking or migration, labour exploitation, sexual exploitation, or natural disasters;

(v.) the offence was committed with an additional discriminatory motive against a victim because of their race, caste, ethnicity, sexual orientation, gender identity, disability, age, migrant or refugee or other status;

(vi.) the offence was committed against a pregnant person;

(c) the ways in which the offence is carried out:

(i.) the offence was committed by two or more people acting together;

(ii.) the offence, or related offences, were committed repeatedly;

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| <p>(iii.) the offence was preceded or accompanied by extreme levels of violence or threats of or attempts to cause extreme levels of violence;</p> <p>(iv.) the offence was committed with the use or threat of use of a weapon;</p> <p>(v.) the offence was committed including by causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances to maintain control over the victim;</p> <p>(vi.) the perpetrator had previously been convicted of offences of a similar nature;</p> <p>(vii.) the offense was filmed or photographed by the perpetrator;</p> <p>(d) the consequences of rape to the victim:</p> <p>(i.) the offence resulted in severe physical or psychological harm or disability for the victim;</p> <p>(ii.) the offence resulted in death, pregnancy or the communication of a sexually transmitted infection or disease.</p> | | |
| <p>Article 9. Mitigating circumstances</p> <p>States should not permit in rape cases the use of extenuating and mitigating circumstances that are based on culture, religion, customs, traditions or so-called honour that are contrary to international human rights law in cases of rape.</p> | <p>Decree-Law No. 5 of 2018, issued to repeal Article 308 of the Penal Code.⁴³</p> <p>(Previously Article 308 of the Penal Code)</p> <p>(a) If a correct marriage contract is concluded between the perpetrator of one of the crimes stipulated in this section and</p> | <p>Perpetrators can no longer suspend investigations and criminal proceedings or seek impunity by marrying the victim.</p> |

⁴³ The State of Palestine, *Initial report submitted by the State of Palestine under article 40 of the Covenant, due in 2015*, 16 November 2020, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FPSE%2F1&Lang=en [accessed on 8 May 2023]

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| <p>(a) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment by reaching any form of settlement (financial or otherwise) with the victim or the victim’s family;</p> <p>(b) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment for subsequently marrying the victim and the law should not provide that the perpetrator is required to marry the victim.</p> <p>Mitigating circumstances that should be prohibited include, but are not limited to:</p> <p>(a) if the perpetrator marries or desires to or attempts to reconcile with the victim.</p> <p>(b) the wish of the perpetrator, or the perpetrator’s family or community, to compensate for the harm.</p> <p>© character or reputation of the perpetrator;</p> <p>(d) prior history of behaviour to insinuate blame on the part of the victim.</p> | <p>the victim, any pursuit shall be stopped; if a judgment was issued in the case, execution of penalty shall be suspended.</p> <p>(b) The Public Prosecution shall regain its right to reinstate the legal action and implement the penalty if, before the passage of three years of committing the misdemeanour; or five years of committing the felony, such marriage ended by divorcing the woman without a legitimate cause</p> <p>Article 154 of the Criminal Code</p> <p>Any person attempting to commit an offense under either of the two preceding sections is guilty of a felony and is liable to imprisonment for seven years.</p> | <p>The mere attempt and not completion of the offense is a mitigating circumstance.</p> |
| <p>Article 10. Withdrawal of parental rights</p> <p>States should take legislative measures to allow for the withdrawal of parental rights of perpetrators in relation to the children conceived as a result of rape, taking into consideration their best interests:</p> <p>(a) Where a person is subject to a criminal proceeding for the crime of rape, parental rights to the child conceived as a result of the alleged rape will be suspended until a final decision is determined in the criminal process.</p> | | |

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| <p>(b) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to a child conceived as a result of rape, taking into consideration the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. Incidents of violence against women should be taken into account when deciding on parental rights.</p> <p>(c) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to any child conceived by that person, taking into consideration the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. These provisions are without prejudice to the child's right to enjoy any benefit accruing from their paternity.</p> | | |
| <p>C. Investigation, prosecution and trial</p> | | |
| <p>Article 11. Victim-centred approach</p> <p>(a) A victim-centred approach places the victim at the centre of all responses, including by ensuring that they are kept informed about their rights, the legal process and progress of the case and are supported throughout the process, and free legal aid is available where appropriate;</p> <p>(b) The number of interviews of the victim should be kept to a minimum and interviews carried out only where strictly necessary for the purposes of the criminal investigation;</p> <p>(c) Examinations to collect medico-legal evidence are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings;</p> | | <p>No legislative provisions available but see above regarding FPU's and the Ministry of Social Development as well as the training of the police in victim-centered approaches.</p> |

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| <p>(d) Victims should be able to be accompanied by their legal representative(s) and support persons of their choice, unless a reasoned decision has been made to the contrary.</p> | | |
| <p>Article 12 – Child victims and witnesses of rape</p> <p>(a) Every child victim or witness of rape has the right to have his or her best interests given primary consideration.</p> <p>(b) Every child victim or witness of rape shall be treated according to the following general principles:</p> <p>(i.) A child victim or witness of crime shall be treated in a caring and sensitive manner that is respectful of his or her dignity throughout the legal proceedings, taking into account his or her personal situation and immediate and special needs, age, gender, disabilities if any and level of maturity.</p> <p>(ii.) Interference in the child’s private life shall be limited to the minimum necessary as defined by law in order to ensure high standards of evidence and a fair and equitable outcome of the proceedings.</p> <p>(iii.) The privacy of a child victim or witness shall be protected.</p> <p>(iv.) Information that would tend to identify a child as a witness or victim shall not be published without the express permission of the court.</p> <p>(v.) A child victim or witness shall have the right to express his or her views, opinions and beliefs freely, in his or her own words, and shall have the right to contribute to decisions affecting his or her life,</p> | <p>Article 298 of the Penal Code</p> <p>(a) Whoever commits an indecent act without the use of force or threat against a person – male or female- who did not reach fifteen years of age or compels such a person to commit such an act, he / she shall be punished by temporary imprisonment.</p> <p>(b) The penalty shall not be less than five years if the adolescent – male or female - did not reach ten years of age.</p> | <p>There are no legislative provisions found regarding the witness of rape.</p> <p>There is also a severe lack of legislation regarding child victims and the treatment of child victims.</p> |

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| <p>including those taken in the course of the justice process.</p> <p>(c) A child victim or witness shall be assigned a lawyer by the State free of charge throughout the justice process in the following instances:</p> <ul style="list-style-type: none">(i.) At his or her request;(ii.) At the request of his or her parents or guardian;(iii.) At the request of the support person, if one has been designated;(iv.) Pursuant to an order of the court on its own motion, if the court considers the assignment of a lawyer to be in the best interests of the child. <p>(d) If at any stage in the justice process the safety of a child victim or witness is deemed to be at risk, the competent authority shall arrange to have protective measures put in place for the child. Those measures may include the following:</p> <ul style="list-style-type: none">(i.) Avoiding direct contact between a child victim or witness and the accused at any point in the justice process;(ii.) Requesting restraining orders from a competent court;(iii.) Requesting a pretrial detention order for the accused from a competent court, with “no contact” bail conditions;(iv.) Requesting an order from a competent court to place the accused under house arrest; | | |
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| <p>(v.) Requesting protection for a child victim or witness by the police or other relevant agencies:</p> <p>(vi.) Making or requesting from competent authorities' other protective measures that may be deemed appropriate</p> | | |
| <p>Article 13. Investigation</p> <p>(a) Investigators/police officers should not delay investigation nor refuse to record the crime or initiate an investigation solely based on delayed reporting of the crime;</p> <p>(b) Investigators/police officers should promptly give the victim written acknowledgement of receipt of their complaint;</p> <p>(c) Investigators/police officers should promptly and effectively record and investigate all allegations/reports made by the victim or other witnesses/organizations and ensure that the official report of the complaint is filed in all cases;</p> <p>(d) Investigators/police officers should promptly respond to requests for assistance and protection, advise the victim of their rights, and support the victim in filing a complaint and in accessing relevant services;</p> <p>(e) Investigators/police officers should conduct initial interviews in a gender-sensitive and trauma-informed manner and with due respect for the right to privacy.</p> <p>(f) Investigators/police officers should conduct interviews of victims without unjustified delay after the rape complaint has been made to the competent investigative authority, in a language understood by the victim and with the support of an interpreter, if necessary;</p> <p>(g) Investigators should conduct risk assessments, considering the seriousness of the situation and the risk of repeated rape</p> | | |

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| <p>or lethal violence, including possession of firearms by the perpetrator and issue effective protection orders including ex parte protection orders or other measures to protect the victim and their family as necessary;</p> <p>(h) There should be a complaint mechanism accessible to victims who were mistreated by the police or if their case was mishandled.</p> | | |
| <p>Article 14. Ex officio prosecution</p> <p>(a) The investigation and prosecution of rape should be conducted ex officio. The State has the obligation to carry out an effective investigation and prosecute the crime, which should not be wholly dependent on a report or accusation made by the victim and may continue even if the victim has withdrawn their statement;</p> <p>(b) Any prosecutor who discontinues a rape case should provide a formal and timely written explanation to the victim of the reasons why the case was dropped.</p> | | |
| <p>Article 15. Timely and without undue delay</p> <p>(a) Investigations and judicial proceedings should be carried out in a timely manner without undue delay, while taking into consideration the rights of the victim during all stages of the criminal proceedings;</p> <p>(b) All reports of rape should be taken seriously and investigated promptly, thoroughly and impartially;</p> <p>(c) All evidence properly collected and decision on cases that should be prosecuted without any prejudicial stereotypical views of the victim or any other reason which would deny effective access to justice to victims.</p> | | |

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| <p>Article 16. Evidentiary requirements, rape shield provisions</p> <p>States should ensure an objective, gender-sensitive assessment of the evidence in rape cases:</p> <p>(a) Introduction of evidence regarding the victim’s past sexual history or behaviour should be generally prohibited at all stages of the legal process, including cross-examination; and should be permitted only when relevant and necessary;</p> <p>(b) There should never be an absolute requirement that any specific piece of evidence be available for a prosecution to go ahead, such as medical evidence, which may not be available, particularly after a delay in reporting, or if there is a delay in starting the investigation;</p> <p>(c) There should be no requirement for the testimony of the victim to be otherwise corroborated in order for that testimony to be considered credible, reliable and sufficient as a basis for conviction, considered in the context of the particular case;</p> <p>(d) Lack of evidence of resistance such as physical injuries to the body must never, in and of itself, be taken as proof of consent to the sexual act.</p> <p>(e) No adverse inference shall be drawn from a delay of any length between the alleged commission of rape and the reporting thereof.</p> | | |
| <p>Article 17. Statutory Limitations</p> <p>(a) The prosecution of rape should not be subject to any period of limitation in any circumstances, whether carried out in times of peace or conflict;</p> | | <p>There is no statute of limitations found in the codes, but studies have found that complaints of sexual violence must</p> |

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| <p>(b) If statutes of limitation are in place, in the case of child victims, statutes should allow sufficient time for the initiation of proceedings after the victim has reached the age of majority.</p> | | <p>be filed within 3 months of the incident.⁴⁴</p> |
| <p>Article 18. Jurisdiction and Cooperation between States</p> <p>States should:</p> <ul style="list-style-type: none"> i. Establish jurisdiction over offences of rape, when the offence is committed: ii. in their territory; or iii. on board a ship flying their flag; or iv. on board an aircraft registered under their laws; or v. by one of their nationals. <p>(a) Ensure that their jurisdiction is not subordinated to the condition that the acts of rape are criminalised in the territory where they were committed.</p> <p>(b) Establish jurisdiction over offences of rape when the offence is committed in the context of conflict, war crimes, crimes against humanity, genocide, widespread or systematic attack, national disturbances or humanitarian crises.</p> <p>(c) States should endeavour to co-operate with each other, to the widest extent possible, for the purpose of preventing, investigating and prosecuting all rape cases, protecting and providing assistance to victims and providing mutual legal and other necessary assistance in criminal matters, extradition and</p> | | |

⁴⁴ https://arabstates.unfpa.org/sites/default/files/pub-pdf/Palestine.Country.Assessment.Eng_.pdf, p.17

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| <p>enforcement of relevant civil and criminal judgments by judicial authorities of other States, including protection orders.</p> | | |
| <p>Article 19. Prohibition of mandatory reconciliation or mediation</p> <p>The law should expressly prohibit any form of mandatory conciliation or mediation in cases of rape, both before and during legal proceedings.</p> <p>(a) Cases of violence against women, and particularly of rape and sexual violence, should not be referred to mandatory alternative dispute resolution procedures.</p> <p>(b) Plea bargains should be strongly discouraged in cases of rape and especially when the offence was committed against a victim who was a child at the time of the crime.</p> | | |
| <p>Article 20. Victim-centred protection measures</p> <p>States should take all necessary legislative measures to ensure that the rights and interests of victims are protected at all stages of the investigation and judicial proceedings, in particular by:</p> <p>(a) Providing for the protection of victims, their family members and witnesses from intimidation, retaliation and secondary victimization, including through physical protection of victims and their family members where necessary;</p> <p>(b) Ensuring avoidance of contact between a victim and the alleged perpetrator(s) within premises where criminal investigations or trials are conducted, including by providing separate waiting areas, entrances and exits and staggered arrival and departure times; by permitting victims to give evidence remotely or through the use of communication technology in a place the victim deems safe; or by utilizing</p> | | |

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| <p>witness protection boxes or screens in courtrooms to avoid visual contact between the victim and the alleged perpetrator(s);</p> <p>(c) Protecting the privacy of victims and preventing public dissemination of any information that could lead to the identification of the victim including by prohibiting the media from identifying victims of rape before conclusion of the trial and without the victims' consent afterwards, privacy when reporting to the police, closure of the courtroom during proceedings and the like;</p> <p>(d) Providing victims with adequate and timely information, in a language they understand throughout the criminal justice process, on their rights and available support services, the progress of the investigation and legal proceedings, their role therein and the outcome of the case;</p> <p>(e) Enabling victims to exercise their right to legal aid, interpretation and court support, including the right to be accompanied and represented in court by a specialized service or by any other independent support persons chosen by the victim.</p> <p>(f) Assessing the victim's specific needs to enable their effective participation in the criminal proceedings; and ensuring that child victims and victims with specific needs are afforded special support and protection measures to ensure they are able to participate as fully as possible in the proceedings at the same time as protecting their best interests. Such special measures may include but are not limited to:</p> <p style="padding-left: 40px;">(i.) ensuring that interviews with the victim are conducted in their home or residence or in premises</p> | | |
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| <p>specially designed or adapted for that purpose by an interviewer of the same sex without undue delay;</p> <p>(ii.) ensuring the presence of parents or a person trusted by the child while recording a child's testimony, which could include representatives from specialist civil society organizations working to address or support victims of rape; and</p> <p>(iii.) in the case of victims with physical, psychological, mental or intellectual impairment or disabilities, obtaining the assistance of a special educator, psychologist or other person familiar with appropriate communication techniques for example braille, sign language or other electronic and information technology accessible to people with specific needs, before interviewing or recording the statement of the victim;</p> <p>(iv.) ensuring that interviews with the victim are carried out by or through professionals trained for that purpose;</p> <p>(v) ensuring interpretation and or translation services;</p> <p>(vi) ensuring psycho-social and legal support, and covering travel expenses incurred.</p> <p>(g) Ensuring that protection orders are efficient, available and easily accessible, could be issued ex parte and that victims are not subjected to undue delays in their applications for protection orders and other protective measures and that all allegations of rape are heard in a timely and impartial manner.</p> | | |
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