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COI QUERY

Country of Origin	Palestine/Gaza
Question(s)	1) What is the punishment for sentenced debtors in Gaza under the Palestinian law; is the law enforced in practice? Were there, in the period of 2010 - 2016, any reported cases of female debtors in Gaza that have been sentenced to imprisonment due to their inability to pay their debts? 2) In case of sentenced female debtors, in what kind of detention facility are they incarcerated (mixed prison, female prison, detention facility at a police station)? 3) If a divorced woman with minor children, of whom she has the custody, is sentenced to confinement in Gaza, are the minor children incarcerated with her? 4) List of female prisons/detention centres run by Hamas in Gaza, and prison conditions and treatment in such facilities.
Date of completion	28 March 2019
Query Code	Q9-2019
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The information provided in this response has been researched, evaluated and processed with utmost care within a limited time frame. All sources used are referenced. A quality review has been performed in line with the above mentioned methodology. This document does not claim to be exhaustive neither conclusive as to the merit of any particular claim to international protection. If a certain event, person or organisation is not mentioned in the report, this does not mean that the event has not taken place or that the person or organisation does not exist. Terminology used should not be regarded as indicative of a particular legal position.

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The target audience is caseworkers, COI researchers, policy makers, and decision making authorities. The answer was finalised on 28 March 2019. Any event taking place after this date is not included in this answer.

COI QUERY RESPONSE

1) What is the punishment for sentenced debtors in Gaza under the Palestinian law; is the law enforced in practice? Were there, in the period of 2010 - 2016, any reported cases of female debtors in Gaza that have been sentenced to imprisonment due to their inability to pay their debts?

Background on legal system

Lifos notes that the legal system in Palestine is known for its complexity, combining elements from several former administrations and legal traditions and consisting of codified law, Sharia, and customary law.¹

The Palestinian legal system consists of a combination of British, Jordanian, Egyptian, Ottoman, and Palestinian laws (including Sharia personal status laws), as well as Israeli military orders. Some of these laws were not amended for over 70 years. In the Gaza Strip, Hamas has passed its own laws and has refused to adopt the presidential decrees that apply in the West Bank.² Officially, Hamas acknowledges the Palestinian Basic Law³, which serves as a temporary constitution until the establishment of an independent state, and the legal treaties signed up by the Palestinian Authority. However, it does not always apply them in practice.⁴ Although Palestinian Authority laws apply in Gaza, it does not have the authority to enforce them, and in practice, Gaza is governed by a combination of Palestinian Authority laws and Hamas decrees.⁵ In Gaza, Hamas maintains an ad hoc judicial system which is politically controlled and separate from the one used by the Palestinian Authority.⁶

Regarding the criminal justice in Palestine and in case of female offenders in Gaza, British penal code from the 1936⁷ is in force, whereas in the West Bank, it is the Jordanian penal code from 1960 (with Israeli penal code being used in East Jerusalem). Both these codes are thus not based on the

¹ Sweden: Lifos, Palestina - Vårdnad av barn, 4 December 2018, [url](#)

² UNDP, UN Women, UNFPA, ESCWA, Gender Justice & The Law, 2018, [url](#), p. 10

³ For more information, see: The Palestinian Basic Law [website], [url](#)

⁴ UK Home Office, CPIN, Occupied Palestinian Territories: Background information, including actors of protection, and internal relocation, Version 1.0, December 2018, [url](#), p. 40

⁵ USDOS, Country Report on Human Rights Practices 2018 - Israel, Golan Heights, West Bank, and Gaza - West Bank and Gaza, 13 March 2019, [url](#)

⁶ Freedom House, Freedom in the World 2019 - Gaza Strip, 4 February 2019, [url](#)

⁷ Available at: [url](#). Also called Mandate-era Penal Code. See: CEDAW, Consideration of reports submitted by States parties under article 18 of the Convention pursuant to the simplified reporting procedure, State of Palestine, 24 May 2017, [url](#), p. 10

Palestinian Basic Law, adopted in 2003.⁸ CEDAW notes that the legislation in force discriminates between men and women by providing for different penalties for the same crime.⁹

However, consulted and listed sources have not indicated that being a debtor would be regarded as a criminal offence in Gaza, but rather a matter of civil law and enforcement of judgements, as illustrated below.

Legal treatment of debtors

In 2015, the Law on Execution No. 23/2015 was promulgated. Under this law (secs. 155-158), an inquiry is made by the judge of execution into a debtor's financial position, in order to ascertain his or her ability to comply with the judgment. After receiving the notice of execution, the debtor must present a settlement in order to pay the due amounts of the debts he or she owns. If the debtor does not do so, the judge of execution must summon both creditor and debtor for a session in order to hear their statements. In this session, the judge shall assess debtors financial situation and identify his or her properties.¹⁰

According to an article 156 of the law, the debtor may be confined in the following cases:

‘1. In case he or she does not report to the Department of Execution and present a settlement to satisfy his or her debt within the period thus defined in the notice mentioned under the previous Article.

2. In case it is proved to the Judge of Execution based upon verbal or written evidence and as a result of the interrogations which he has commenced in accordance with Article (155):

A) That the debtor had owned or possessed since the issuance of the judgement sufficient [amounts] that enable him or her to pay his or her judgement debt amounts or the amounts remaining to be paid or to pay an instalment of a payable debt in accordance with his or her pledge in the proceeding and that he refused or neglected the payment.

B) That the debtor had donated or transferred or delivered to a third party some of his or her properties or allowed a third party to conduct it or posited some of his or her properties as insurance for a debt or hidden it, thereby leading to the preventing of the creditor from the obtaining of the amounts judged for him or her wholly or partly.

⁸ DCAF, WCLAC, Palestinian Women and Penal Law, May 2012, [url](#); MoWA, National Strategy to Combat Violence Against women 2011-2019, [url](#), p. 21; OECD, Social Institutions and Gender Index SIGI, Palestinian Authority, undated, [url](#)

⁹ CEDAW, Consideration of reports submitted by States parties under article 18 of the Convention pursuant to the simplified reporting procedure, State of Palestine, 24 May 2017, [url](#), p. 11

¹⁰ Palestinian National Authority, The Law of Execution No. (23) of 2005, [url](#)



C) That the debtor intends to escape while he or she had not revealed the properties that belong to him or her which fall within the jurisdiction of the courts of the country and which suffice for the satisfaction of the judgement debt or had not given a guarantee to pay it'.¹¹

In such case, debtor may be confined for a period not exceeding 91 days per year. If the judgement debt amount does not exceed five hundred Dinars, the period of confinement may not exceed 21 days. It is further provided that a debtor who has served the term of confinement ordered against him or her may not be confined again in respect of the same debt.¹²

The abovementioned law on execution makes also a reference to the Palestinian Law of Debts (The Confinement of the Debtor), promulgated on 31 October 1931. No further information on this law could be found amongst consulted and listed sources.

Practice

In 2018, the unemployment rate in Gaza remained among the highest in the world.¹³ Nearly 40 % of Gazans are reported to live below the poverty line, half of them in extreme poverty. Many households have reportedly been forced into debt to secure basic needs such as food, shelter and education.¹⁴ Islamic Relief Palestine notes that '92% of the families went into debts to secure their basic needs of food and other daily needs'.¹⁵

Sources indicates that Gaza continues to imprison people unable to pay their debts.¹⁶ According to Hamas police, some 42,500 people were arrested in 2017 for failing to pay debtors and at least 600 were in jail on similar charges in March 2018.¹⁷

In 2016, over 350 debt-related prisoners in the Gaza Strip's Shajaiyya police center were released in order to be able to spend the holy month of Ramadan with their families. Hamas-run Ministry of Endowment, local police and various charities, such as Sanabil al-Kheir, have raised money to pay of their debts, reportedly up to 7 000 Shekels, whereas debts up to 6 000 Shekels were promised to be forgiven. A week before, Gaza's interior ministry released 156 prisoners in relation to Ramadan.¹⁸

¹¹ Palestinian National Authority, The Law of Execution No. (23) of 2005, [url](#)

¹² Palestinian National Authority, The Law of Execution No. (23) of 2005, [url](#)

¹³ Freedom House, Freedom in the World 2019 - Gaza Strip, 4 February 2019, [url](#)

¹⁴ UNHCR, Country of Origin Information on the Situation in the Gaza Strip, Including on Restrictions on Exit and Return, 23 February 2018, [url](#), p. 10

¹⁵ Islamic Relief Palestine, Poor Families in Focus, Gaza Strip, 2017, 8 July 2017, [url](#), p. 7

¹⁶ Economist (The), Why Hamas jails people who can't pay their debts, 2 August 2018, [url](#); Washington Post, Behind bloody Gaza clashes, economic misery and piles of debt, 23 April 2018, [url](#); Times of Israel, Debt lands hundreds of Gazans in jail as economy tanks, 8 March 2018, [url](#); Straits Times (The), Israelis fear the tinderbox in the Gaza Strip, 18 February 2018, [url](#)

¹⁷ Times of Israel, Debt lands hundreds of Gazans in jail as economy tanks, 8 March 2018, [url](#)

¹⁸ Marsad, Government-run project in Gaza pays off prisoners' debts, 350 set to be released, 11 June 2016, [url](#)



Consulted and listed sources have specifically mentioned only male debtors being imprisoned and no information on the female debtors being imprisoned in the period of 2010-2016 could be found.¹⁹

In this regard CEDAW notes that, in case of married women, under Muslim personal status laws in force in Gaza, a husband must provide for his wife with upkeep regardless of his income. A woman is not required to support even herself with her own money. If the husband refuses to pay, a wife may have him imprisoned by a sharia court.²⁰

2) In case of sentenced female debtors, in what kind of detention facility are they incarcerated (mixed prison, female prison, detention facility at a police station)?

Within the time constraints of this query, no information could be found on a specific type of facility in which sentenced female debtors would be incarcerated.

3) If a divorced woman with minor children, of whom she has the custody, is sentenced to confinement in Gaza, are the minor children incarcerated with her?

In May 1998, a law called Concerning the Reform and Rehabilitation Centers 'Prisons' was adopted by the Palestinian National Authority.²¹

According to the abovementioned law (secs. 27-29), children under two years old are allowed to accompany their mothers serving prison sentences. It was reported (citing 2015 sources) that mothers with children share the cells with other inmates and that there is a lack of amenities such as hot water, clothes or toys for children.²² Another source reported in 2015 that children can stay with their imprisoned mothers until three years, afterwards they are put into relatives care or to a Rafah based aid organization.²³

Article 29 of the law stipulates:

'1- If the inmate does not wish to keep her child with her after his delivery or if he reaches the age of two, he shall be delivered to the person who is legally entitled after the mother unless the physician decides that the health condition of the child does not permit same.

¹⁹ See: Gulf News, Gaza families pushed deeper into poverty amid aid cuts, 17 June 2018, [url](#); Economist (The), Why Hamas jails people who can't pay their debts, 2 August 2018, [url](#)

²⁰ CEDAW, Consideration of reports submitted by States parties under article 18 of the Convention pursuant to the simplified reporting procedure, State of Palestine, 24 May 2017, [url](#), p. 68

²¹ Palestine National Authority, Concerning The Reform and Rehabilitation Centers "Prisons", 28th May 1998, [url](#)

²² Paurus, M., International Report on the Conditions of Children of Incarcerated Parents, The University of Minnesota, n.d., [url](#)

²³ Al Jazeera, Life inside Gaza's only women's prison, 31 July 2015, [url](#), accessed 20 March 2019



2- If there is no one who has the lawful right of the child's custody, he shall be placed in one of children care institutions provided the mother is notified of the place where her child was placed and she shall be permitted to see him periodically'.²⁴

No further information on the situation of children older than 2 years old could be retrieved from consulted and listed sources. However, information below on the custody in Gaza could be of relevance.

Human rights organisations state that women face a high risk of legal discrimination.²⁵ The legal system in Gaza reportedly favors fathers for custody of children.²⁶ In case of a dispute, Sharia courts have the authority to decide about child support on the basis of personal status codes.²⁷ During the marriage, fathers are the sole guardians of children.²⁸

However, a report by the CEDAW finds that:

'Personal status laws in force among Muslims grant a woman the right to custody of her children, provided she is capable and regardless whether the woman is married or divorced and or whether the children are male or female. After the mother, custody reverts to the next woman in the line of succession provided for in the Hanafi school, meaning the maternal grandmother, then the paternal grandmother, then the child's adult sister, and so on'.²⁹

In the Gaza Strip, the custody of both a mother and other relatives lasts until the age of 7 for a boy and until the age of 9 for a girl, which can be extended by a judge to the age of 9 for a boy and the age of 11 for a girl.³⁰ After puberty, only boys can choose which parent they will live with, while girls are automatically placed in their father's custody. A divorced mother in Gaza who remarries automatically loses custody of her children.³¹

4) List of female prisons/detention centres run by Hamas in Gaza, and prison conditions and treatment in such facilities.

²⁴ Palestine National Authority, Law Concerning The Reform and Rehabilitation Centers "Prisons", 28th May 1998, [url](#)

²⁵ AI, Human rights in the Middle East and North Africa: Review of 2018 - Palestine (State of), 26 February 2019; CEDAW, Consideration of reports submitted by States parties under article 18 of the Convention pursuant to the simplified reporting procedure, State of Palestine, 24 May 2017, [url](#), p. 11

²⁶ USA Today, Divorced In Gaza Because of Reality, 22 May 2017, [url](#)

²⁷ CEDAW, Consideration of reports submitted by States parties under article 18 of the Convention pursuant to the simplified reporting procedure, State of Palestine, 24 May 2017, [url](#), p. 8

²⁸ UNDP, UN Women, UNFPA, ESCWA, Gender Justice & The Law, 2018, [url](#), p. 9

²⁹ CEDAW, Consideration of reports submitted by States parties under article 18 of the Convention pursuant to the simplified reporting procedure, State of Palestine, 24 May 2017, [url](#), pp. 69-70

³⁰ CEDAW, Consideration of reports submitted by States parties under article 18 of the Convention pursuant to the simplified reporting procedure, State of Palestine, 24 May 2017, [url](#), p. 69

³¹ UNDP, UN Women, UNFPA, ESCWA, Gender Justice & The Law, 2018, [url](#), p. 20

Consulted sources indicate that the law governing the prison conditions in Gaza is called Concerning the Reform and Rehabilitation Centers 'Prisons' Act No. 6 of 1998³², cited also in answer No. 3.

Article 24 of this law stipulates:

'The male inmates shall be placed in a section separate from the females whereby it would not be possible for them to talk, contact or see each other. The juveniles shall be placed in special centers for them'.³³

An article speaking of a 'Gaza's only all-female prison located in the central city' described it as 'high-security, one-story facility'. Reportedly, the number of residents changes frequently as the most of them 'are detained and not sentenced'. The inmates are divided into three categories based on the character of the committed crimes: thefts, security offences such as alleged collaboration with Israel or moral crimes, while the third category are women charged with crimes such as prostitution. In the prison, the focus is at providing training like handicrafts and embroidery, as well as teaching Islamic values.³⁴

The Reform and Rehabilitation Center for Women in Gaza City, also called in 2015 'Gaza's only prison for female offenders', houses offenders separated according to the type of the committed crime: homicide, use of drugs or moral offences.³⁵ The number of inmates can reportedly vary from 40 to 70. Minor children are allowed to stay incarcerated with their mothers until they reach the age of 2. The centre focuses on teaching skills such as cooking and sewing, as well as providing Islamic education.³⁶ The centre has also organized exhibitions displaying products hand-crafted by the inmates.³⁷ For example, on 4 March 2019, the centre organised an exhibition of traditional artefacts and sweets produced by the inmates in Gaza City.³⁸ According to an article by Al-Monitor, imprisonment in Gaza 'is aimed to reform and rehabilitate and not punish', doing so through implementation of educational and employment programs.³⁹

Ansar prison, located west of the Gaza City, has been known also for having female offenders being imprisoned - for example, on charges of prostitution - with their children until they reach 2 years of age.⁴⁰ The prison has been called 'the only facility to house women in the Gaza strip' as well.⁴¹

³² PCHR, Detainee Died in Ambiguous Circumstances Requiring Serious Action to Reform Detention Facilities and Prisons, 26 April 2017, [url](#); Al Mezan Center for Human Rights, Fact Sheet, Juvenile Justice in the Gaza Strip 2012 to 2016, 2016, [url](#), p. 3

³³ Palestine National Authority, Concerning The Reform and Rehabilitation Centers "Prisons", 28th May 1998, [url](#)

³⁴ Al-Monitor, Women's Prison in Gaza Swells With 'Moral' Criminals, 16 March 2013, [url](#)

³⁵ Marsad, Gaza inmates get second chance, 20 June 2016, [url](#); Al-Monitor, Women's Prison in Gaza Swells With 'Moral' Criminals, 16 March 2013, [url](#)

³⁶ Al Jazeera, Life inside Gaza's only women's prison, 31 July 2015, [url](#), accessed 20 March 2019

³⁷ Marsad, How palestinian female inmates are getting a second chance, 9 April 2017, [url](#); Alamy, 4 March 2019, [url](#)

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⁴⁰ Al-Monitor, Born behind bars: What it's like to raise a baby in Gaza's prisons, 26 August 2015, [url](#)

⁴¹ Paurus, M., International Report on the Conditions of Children of Incarcerated Parents, The University of Minnesota, undated, [url](#)

However, other sources indicate that also male prisoners are being held in the Ansar facility⁴² and, on the other hand, cases of female prisoners were reported in various ‘police detention centers’ throughout Gaza.⁴³

It could not be corroborated with other consulted sources whether the abovementioned Ansar prison and the Reform and Rehabilitation Center for Women in Gaza City are, in fact, two different facilities.

In 2014, PCHR reports on 22 ‘arrest and detention centres’ in Gaza, including 10 in the Gaza City, without specifying whether some of them accommodate exclusively female prisoners. Among those in the Gaza city, also ‘Internal Security Agency Headquarters (Ansar) detention center’ and ‘Gaza prison, Ansar’ are mentioned.⁴⁴ In another report, the same source speaks of a women's section in ‘the central prison in Gaza City’.⁴⁵

Article 37 of the law Concerning the Reform and Rehabilitation Centers ‘Prisons’ stipulates the conditions in the centers as follows:

- ‘1- It is prohibited to put the inmate to work at the houses or in the private matters.
- 2- It is prohibited to torture the inmate or to use force with him.
- 3- It is prohibited to address the inmate in nasty language or in degrading names.
- 4- It is prohibited for the members in the Center to eat with the inmate, his visitor or joke with him.
- 5- It is prohibited to enter into the inmate’s room during the night unless it is necessary and in presence of the Director or whoever acts for him.
- 6- The inmate shall be afforded complete freedom to perform his religious rites and duties.
- 7- The inmate shall take a bath at least twice a week during the summer and at least once a week during the winter.
- 8- The inmate shall wash his face and extremities twice a day in the morning and evening.
- 9- The inmate shall wash his clothes at least once a week.
- 10- The inmate’s hair shall be cut once a month.
- 11- The inmate’s hair who is convicted by imprisonment for three months or more shall be removed.
- 12- The inmate shall shave his beard at least twice per week
- 13- The Center’s management shall provide the inmate’s room with the means of heating during the cold days.
- 14- The inmate’s bed shall be comprised of a sponge mattress and five woolen blankets.

⁴² PCHR, PCHR Calls for Investigation into the Circumstances of Man’s Death in Ansar Prison in Gaza, 27 December 2012, [url](#); HRW, Palestine: Crackdown on Journalists, Activists, 29 August 2016, [url](#)

⁴³ Al Monitor, What’s happening in Gaza’s detention centers?, 1 November 2015, [url](#)

⁴⁴ PCHR, Report on Crimes of Torture in Palestinian Prisons and Detention Centers, May 2013 – June 2014, undated, [url](#), p. 41

⁴⁵ PCHR, Annual Report 2017, 2018, [url](#), p. 193

15- The meals shall be distributed to the inmate in the place provided for this purpose in his room at the specified times.

16- The dinner meal shall be distributed at sunset'.⁴⁶

According to article 43, '[t]he female inmate may not be put to work outside the Center'.⁴⁷

In general, prison conditions in the Palestinian Territories have been assessed as poor and a lack of transparency about prison conditions has been indicated. Despite little publicly available information, credible civil society organisations that have visited prisons in Gaza described them as worse than the West Bank, as reported by DFAT.⁴⁸

USDOS writes that in 2018: 'The basic conditions of Hamas-run prisons in Gaza were reportedly poor, prison cells were overcrowded, and there were many reports of abuses. There were an estimated 4,000 detainees in Gaza prisons with about 50 percent held in correctional facilities and 50 percent in temporary police detention, according to the United Nations. Approximately 100 detainees were held by Hamas' Internal Security Agency. There were approximately 60 women and 60 minor detainees, each held in separate facilities'.⁴⁹

Reportedly, the Hamas authorities commit a wide range of human rights violations towards civilians, including 'harassment, arbitrary arrests and detentions, including incommunicado detentions and prolonged pre-trial detention torture and other forms of ill-treatment, and trials that fall short of international fair trial standards'.⁵⁰ In 2018, Independent Commission for Human Rights documented 285 allegations of torture and other ill-treatment of detainees held in the West Bank and Gaza.⁵¹ Al Monitor documented cases of 'female prisoners beaten and tortured in police detention centers throughout Gaza's governorates' in 2015.⁵²

In 2018, as in previous years, the International Committee of the Red Cross were allowed by Hamas to continue their regular visits to detention facilities to assess treatment and conditions.⁵³ In 2017, PCHR's Women's Rights Unit⁵⁴ visited 'women's prison in the central prison in Gaza City', providing

⁴⁶ Palestine Liberation Organization/Palestine National Authority, Law Concerning The Reform and Rehabilitation Centers "Prisons", 28th May 1998, [url](#)

⁴⁷ Palestine National Authority, Concerning The Reform and Rehabilitation Centers "Prisons", 28th May 1998, [url](#)

⁴⁸ Australia: DFAT, DFAT thematic report Palestinian territories, 15 March 2017, [url](#), p. 28

⁴⁹ USDOS, Country Report on Human Rights Practices 2018 - Israel, Golan Heights, West Bank, and Gaza - West Bank and Gaza, 13 March 2019, [url](#)

⁵⁰ UNHCR, Country of Origin Information on the Situation in the Gaza Strip, Including on Restrictions on Exit and Return, 23 February 2018, [url](#), p. 17

⁵¹ AI, Human rights in the Middle East and North Africa: Review of 2018 - Palestine (State of), 26 February 2019, [url](#)

⁵² Al Monitor, What's happening in Gaza's detention centers?, 1 November 2015, [url](#)

⁵³ USDOS, Country Report on Human Rights Practices 2018 - Israel, Golan Heights, West Bank, and Gaza - West Bank and Gaza, 13 March 2019, [url](#)

⁵⁴ This Unit was established as a pilot project in May of 1997 for one year, renewable upon assessment of its accomplishments. The initial project was established after a thorough and comprehensive study of the conditions of Palestinian women and the work of women's institutions in the Gaza Strip. The Unit aims to provide legal aid for women and women's organizations. Intervention on behalf of women in Shari'a courts is included in its mandate. The Unit further aims to raise awareness of women's rights established by international human rights conventions and to raise the awareness of



legal aid to 5 of totally 45 to 50 female prisoners.⁵⁵ Women in detention in Gaza could qualify for free legal representation by the Palestinian Bar Association under a UNDP program which ended in April 2017.⁵⁶

Palestinian women in regard to their rights under local law. Finally, the Unit is carrying out studies on Palestinian women and the law, while supporting the amendment of local laws inconsistent with women's rights. See: PCHR, Annual Report 2017, 2018, [url](#), p. 3

⁵⁵ PCHR, Annual Report 2017, 2018, [url](#), p. 193

⁵⁶ UNDP, Programme of Assistance to the Palestinian People, Building a Sustainable Legal Aid System in the State of Palestine, Brief Description, undated, [url](#)



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