



Women's Human Rights and Justice

**MURDER OF WOMEN IN PALESTINE UNDER
THE PRETEXT OF HONOUR**
Legislation and Jurisprudence Analytical Study

Executive Summary

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Prelude:

Article 6, paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR) states: “*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life*”. Additionally, Article 3 of the Universal Declaration of Human Rights states: “*Everyone has the right to life, liberty and security of person*”. International human rights law therefore considers the right to life a fundamental right to be safeguarded, and national constitutions and legislation have also incorporated this right. In addition, so-called “honour killings” fall within the concept of gender based violence (GBV), which is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on basis of equality with men¹. Articles 2 of the Universal Declaration of Human Rights and 26 of the International Covenant on Civil and Political Rights (ICCPR), establish that all persons have the right to not be discriminated against. Article 26 adds that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. The Convention on the Elimination of Discrimination against Women (CEDAW) defines discrimination against women as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (article 1).

In Palestine, a UN non-member observer state, an alarming phenomenon relating to the right to life has recently increased. This is the phenomenon of killing women under the pretext of so-called family honour; in other words, so-called “honour killings”. Both terms are used indistinctively in this document. Despite the lack of official statistics on the number of women killed in Palestine under the pretext of so-called family honour, the killing of women under various pretexts has significantly increased in recent years. Statistics by the Women’s Center for Legal Aid and Counselling (WCLAC) show that 4 women were killed in 2011, while this number increased to 13 women in 2012 and doubled to 27 in 2013².

1 Committee on the Elimination of Discrimination against Women, General recommendation 19, para. 1.

2 Press release by WCLAC on the International woman’s Day <http://www.wclac.org/atemplate.php?id=340>

In her report on her visit to the occupied Palestinian territory, the Special Rapporteur on Violence against Women stated that so-called honour killings “are a manifestation of “culturally” inherited values that impose upon women socially expected behaviours deriving from prevailing patriarchal norms and standards. Women’s transgressions of these norms is said to violate the “honour” of men and the family, which legitimizes violence against women within the social context as a disciplinary measure to maintain or restore family honour”³. In this regard, the Committee on the Elimination of Discrimination against Women has determined that traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as so-called “honour killings”, deprive women of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. In other words, so-called “honour killings” not only violate women’s rights to life, but also their right to not be discriminated, as established in the international treaties mentioned above.

On 2 April 2014, The State of Palestine officially requested accession to 20 international treaties, including 8 human rights treaties such as the two international human rights covenants and CEDAW. Once the treaties enter into force, the State of Palestine will be legally bound by international law and is obligated to implement the rights enshrined in the treaties in national laws and practice.

³ E/CN.4/2005/72/Add.4, para. 56

Furthermore, the State of Palestine is also required to adhere to international human rights customary law, especially the articles of the Universal Declaration of Human Rights.⁴

While the right to life and the right to be free from discrimination are protected by the constitution and by international human rights law, the national judicial system is also obliged to provide judicial protection for that right through its processes. This requires reviewing the ability of the Palestinian judiciary to protect the right to life and the right to be free from discrimination through a review of the various judicial processes.

The phenomenon of killing women under the pretext of honour is directly connected to the social environment. Nevertheless, legislation in place contributes, to a large extent, to building a social awareness that killing under the pretext of honour is acceptable. Legal justifications and legal processes known as pardoning excuses and extenuating excuses and reasons contribute to that, as the majority of perpetrators benefit from these excuses based on Article 99 of the Penal Code of 1960⁵, or

⁴ Article 10 of the amended Palestinian Basic Law of 2003, states: “1. Human rights and basic liberties are obligatory and must be respected. 2. The Palestinian Authority acts without any delay on joining international and regional conventions and declarations that protect human rights”.

⁵ Article 99 of the Jordanian Penal Code No. 16 of 1960 stated: “If the case included extenuating reasons, the court rules: 1: Instead of the death penalty to life imprisonment or imprisonment with hard labor from ten years to twenty years. 2: Instead of hard labor for life, imprisonment with hard labor from five years to fifteen years and life imprisonment instead of temporary detention for a period not less than five years”.

Article 98 of the same code⁶.

The Palestinian President has issued a decree amending some provisions of the Penal Code No. 16 of 1960 in place in the West Bank and the Penal Code No. 74 of 1936 in place in Gaza, aimed at deterring so-called honour killings by eliminating pardoning excuses for the perpetrators of such crimes⁷. However, the phenomenon of killing women under the pretext of honour continues to take place in Palestine. The fact that these crimes continue to be committed after the issuance of the decree can be partially attributed to the fact that the amended provisions have not been used in judicial decisions. Therefore, their impact as

⁶ Article 98 of the Jordanian Penal Code No. 16 of 1960 stated “Perpetrators may take advantage of the extenuating excuse, in cases of having committed crimes in a fit of rage that were the result of an unlawful and dangerous act by the victim”.

⁷ The presidential decree cancelled article 340 of the Penal Code N. 16 of 1960 and modified the article 18 of the Penal Code N. 74 of 1936 by indicating that the excuses contained in such articles cannot be applied to so-called honour killings. Article 340 of the Jordanian Penal Code No. 16 of 1960 stated: “ 1. Any man who took by surprise his wife or any female relative while she was committing adultery with another person and killed, wounded or harmed both of them or either one of them is entitled to a pardoning excuse. 2. The perpetrator of murder, injury or harm shall benefit from the mitigating excuse if he surprises his wife or one of his ascendants or descendants in the crime of adultery or in an unlawful bed”. Article 18 of the Penal Code No. 74 of 1936 stated: “An excuse can be accepted in case of committing or refraining from actions, the committing of which is considered a crime, in order to avert consequences, which could cause irreparable damage to their honour, money, or the person or honour of others that those offenders are obliged to protect, or money placed in their possession; this is conditional in that when committing or not taking the action, they acted only within logical limits to achieve that end; and that the resulting harm caused by making or not making the act is proportionate with the damage they averted”. See p. 6 Supra.

a deterrent for crimes of killing women under the pretext of honour has been limited, and consideration should be given to what is needed to achieve better results.

This study analyzes 37 court rulings issued by the first instance courts regarding crimes of killing women on the ground of honour. Of these rulings, 32 were issued by West Bank courts and 5 by courts in the Gaza Strip. In addition, 31 rulings issued by appeal courts in the West Bank and Gaza Strip were also reviewed, with 4 other rulings issued by the Court of Cassation. These rulings were all issued in the period 1993-2013⁸ and are taken as a random sample taken from the central database of the Higher Judicial Council, and what was available at the archive of the Palestinian regular courts.

⁸ Judicial rulings in this study do not include all the sentences in the killing of women on grounds of honour, but rather represent a descriptive sample that can give a clear indication of the nature of the judicial treatment of these crimes.

I. The legislative framework for the crimes of killing women under the pretext of honour

The right to life naturally requires the highest degree of protection. The right must be safeguarded by the state's commitment to prevent its violation not only by agents of the state, but also by individuals, institutions and groups. Laws must be in place that provide effective protection and adequate penalties against any one violating the right must be enforced.

There are two forms of murder related to killing women under the pretext of honour that criminal courts usually deal with:

- 1- Intentional murder: Article 326 of the Penal Code No. 16 of 1960 in force in the West Bank stipulates that “the killing of a human being intentionally, is punishable with 15 years of hard labour.”
- 2- Premeditated murder: Premeditated murder is considered a more serious form of intentional murder Article 328/3 of the Penal Code No. 16 of 1960 states that: “if committed with pre-contemplation, and is recognized as premeditated murder, the crime is punishable by death”⁹.

II. Pardon, extenuating excuses and extenuating judicial reasons regarding the murder of women under the pretext of honour

The law has stipulated rules allowing the judiciary to pardon or extenuate punishment of crimes. These can be for either pardoning or mitigation of punishment, based either on a clearly stated legislative text which the judiciary is obliged to uphold if the circumstances are met; or based on extenuating reasons, the implementation of which is dependent on the discretion and convictions of the judge, who can infer them based on the conditions and circumstances of the case.

A) Pardoning excuses:

Legislators have adopted the approach of pardoning perpetrators in certain cases as stated in the Penal Code

⁹ It is worth noting that the regular Palestinian courts in the West Bank do not rule for death penalty, pursuant to the provisions of Article 3 of the Military Order No. 268 issued by the Israeli military governor dated 07/08/1968, which abolished the death penalty and stipulates for life imprisonment instead.

no. 16 of 1960, based on what is known as a pardoning excuse.

In case the court accepts the existence of an pardoning excuse, the court is obliged to pardon the criminal of every punishment, provided that it is possible to serve him, whenever necessary, precautionary measures such as precautionary bail, according to Article 96 of the Penal Code no.16 of 1960.

The pardoning excuse stems from the legislator's view that the community has a greater interest in pardoning the crime than in enforcing penalties. The grounds for pardoning are based on several reasons, such as in the case of Article 109/1 concerning pardoning of crimes against the state security, Article 172/1 concerning bribes and favours, or to protect family bonds as in the case of Article 425/1 concerning theft among relatives. Lawmakers also believed that there was a social interest in granting this excuse to a murderer by pardoning him of punishment if he had surprised his wife or immediate relatives red-handed in the course of adultery and killed or injured her or both of them. Article 340/1 stipulates: "Any man who took by surprise his wife or any female relative while she was committing adultery with another person and killed, wounded or harmed both of them or either one of them is entitled to a pardoning excuse".

As a result of the growing phenomenon of the killing of women with the pretext of honour in Palestine, the Palestinian President, based on the provisions of Article 43 of the Amended Basic Law of 2003, issued Decree Law No. (7), of 2011, on the amendment of

the Penal Code in force in the West Bank and the Penal Code in force in the Gaza Strip¹⁰. This intervention cancelled the text of Article 340 of the Penal Code No. 16 of 1960, and modified the text of Article No. (18), of the Penal Code No. (74), of 1936, with the addition of the sentence "not including the murder of women on the grounds of 'family honour" at the end of the text¹¹.

Despite the importance of this legislative intervention, many observers are of the view that this amendment has not been effective due to the fact that the text of Article 340 had in any case not been used in court rulings. This is due to the practical difficulties in showing "red handedness", and that the amendment to Article 18 of the Penal Code of 1936 has unjustifiably mixed the issue of killing of women under the pretext of honour with the legitimate right of self-defense.

¹⁰ See Prelude, page 5 *Infra*.

¹¹ Article 18, British Penal Ordinance No. 74 of 1936 states "Excuse may be accepted for the commission of an act or desisting doing what is considered an offense, except for having that excuse if the defendant is in a position to prove that he committed or desisted making that act to avoid results that are unavoidable otherwise, and if happened would have caused harm or caused irreparable damage to him, his property, honour or the honour or money of other people whom he is obliged to protect or is the subject of money in his custody: Provided that when making the act didn't take any action other than what is necessary within the limits of reasonable action to achieve that end, and that the damage caused by the action is proportional to the damage avoided". See: Essam Abdeen, a legal analyses paper on: A decree law on Women Murder Crimes on the grounds of honour, published by Al Haq, 2011, p.5

In this aspect, we notice by reviewing the sample provisions taken in this study, that the Palestinian judiciary did not resort to the application of Article 340 in any of the judicial rulings, while the focus of judicial use was on other legal texts, such as articles 97, 98 and 99 of the Penal Code No. 16 of 1960, which will be subject to review in subsequent sections of this study.

B) Punishment extenuation excuses:

The extenuating excuses in penal laws in Palestine that can be used for extenuating punishment against the perpetrators of the murder of women under the pretext of honour are as follows:

i) Extenuating excuses pursuant to Article 340/2 of the Penal Code No. 16 of 1960:

As mentioned above, legislators granted extenuating excuses for the murderer on the grounds of honour, in Article 340, paragraph 2 of the Penal Code No. 16 of 1960¹². This two-paragraph article has been canceled with Decree Law No. (7), of 2011, issued by the Palestinian President, as aforementioned. It is noted that this excuse has not been used in any of the judicial applications either before or after its cancellation.

The Penal Code No. 74 of 1936 did not give such an

¹² Article 340/2, Jordanian Penal Code No. 16 of 1960 stated: “The perpetrator of murder, injury or harm shall benefit from the mitigating excuse if he surprises his wife or one of his ascendants or descendents in the crime of adultery or in an unlawful bed”.

excuse, hence, it can be argued that the Palestinian legislation in this case does not include a particular excuse aimed at extenuating punishment served for the crimes of killing women, with the pretext of honour.

ii) Extenuating excuses pursuant to Article 98 of the Penal Code No. 16 of 1960 (rage):

The Penal Code No. 16 of 1960 provided for a general extenuating excuse applicable to all crimes, including crimes of murder with the pretext of honour. Article 98 of this law states: “Perpetrators may take advantage of the extenuating excuse, in cases of having committed crimes in a fit of rage that were the result of an unlawful and dangerous act by the victim”.

This is known as the “provocation excuse”, based on the idea of a psychological fit of rage that weakens the offender’s self control, making him lose command of his will. The legislator required three pre-conditions for this excuse to apply. The first is that there had been an unlawful and dangerous physical action committed by the victim; the second being the existence of extreme rage, while the third condition is that the crime had occurred during or right after the provocation. It is worth to mention that even if it were to be accepted that this excuse could be applied to so-called “honour killings”, the first condition would not be met, since the action by the victim would generally be a sexual act which does not put into risk peoples’ life or their integrity.

A review of a sample of court rulings of the Palestinian Appeal Courts when applying article 98, indicates that they do not address these three conditions in cases of so-called honour killings, in other words, the Appeal Courts do not analyse whether the three conditions were met or not. They just assume that the sexual act committed by the victim of the killing under the pretext of honour constitutes a dangerous and unlawful act without entering to analyse the legal reasons why this act should be considered as such. While in cases not involving so-called honour killings, the judges when applying article 98, do a detailed analysis of the nature of the victims' act in order to see if it was dangerous and unlawful, and analyse the fulfillment of the other two conditions¹³.

It is worth to mention that, the Jordanian Court of Cassation when applying the Law N. 16 of 1960, the Penal Code applicable in the West Bank, has stated that "Articles 97 and 98 cannot be applied to murder or harm incidents resulting from adultery

¹³ A review of a sample of 30 rulings issued by the Palestinian Appeal Courts in application of article 98, the judges granted the extenuating excuse established in this provision in 8 cases involving so-called honour killings. In these rulings, the judges considered the sexual act by the victim as a dangerous and unlawful act based on the perception of the Palestinian community of sexual acts outside marriage, without conducting any further analysis. While in 11 cases which did not involve so-called honour killings, the Appeal Courts analysed the fulfillment of the three conditions established by article 98 in detail, including the dangerous and unlawful nature of the victim's act. In the remaining 11 cases, which were cases involving so-called honour killings, the judges did not grant the extenuating excuse established in article 98, but applied the extenuating judicial reasons contained in article 99. See supra, p. 9. The sample of rulings was extracted from the Birzeit University database of jurisprudence, see <http://muqtafi.birzeit.edu/>

and aren't considered as dangerous or putting the life of perpetrator or any of his family members to risk"¹⁴

Article 97 contains reductions of penalties for those cases where article 98 is applied. Article 97 entitled, Crime penalties in case of extenuating excuses, establishes:

"When the law provides for extenuating excuses:

1. If the act is a felony punishable by death or hard labour for life or life imprisonment, the penalty is changed into at least one year of imprisonment.
2. If the act is another felony, imprisonment will be six months to two years.
3. If the act is a misdemeanor, the penalty will be imprisonment not exceeding six months or a fine of twenty-five dinars".

C) Extenuating judicial reasons:

These reasons are neither specified nor defined in law. Legislators have not specified the criteria for extenuating judicial reasons, and have not put controls obligating the judge to follow specific rules, but rather have left all of that to the judges' good judgment and discretion. Legislators have allowed judges to conclude based on any given factor in the case, and allowing them a wide margin of appreciation (insofar as limits drawn by the legislators are not crossed).

¹⁴ Jordanian Court of Cassation, penal case No. 59 of 1964 Gazette No. 2 volume 001036

Article 99 of the Penal Code 16 of 1960, entitled, Penalties for crimes in case of extenuating reason, establishes:

“In case of extenuating reasons, the court may rule:

1. Instead of death, a penalty of life imprisonment or imprisonment with hard labor from ten to twenty years.
2. Instead of hard labor for life imprisonment, a penalty of hard labor from five to fifteen years, and instead of life imprisonment, a penalty of temporary imprisonment for a period not less than five years.
3. The court can reduce every other criminal penalty to one of five years.
4. The court can also, except in the case of redundancy, reduce any penalty of a minimum of three years or less into a minimum of at least one year in imprisonment”.

Following are the most important extenuating reasons invoked by courts in extenuating punishment of offenders in so-called honour killings:

i) Waiving personal right:

It is noted that Palestinian courts will in general allow one of the heirs to the victim to waive their personal right to punishment of the perpetrator in cases of murder of women under the pretext of honour, as a cause for extenuating punishment. This

is what a majority of the judgments of the courts of first instance (Criminal) are based on, a matter that is explicitly expressed by the Court of Appeal held in Ramallah, in its judgment No. 54/2005, when it concluded “jurisprudence shows that when one of the heirs waives a personal right, this is a reason for extenuation”. Therefore, one of the heirs can waive their right and courts can extenuate the penalty for the offender. This is the result in the vast majority of the cases reviewed. Waiving the right was in most cases done by a single person, be it the father of the victim or her brother or mother.

In other words, the family that waives its right may be taking advantage of the fact that the criminal offense has been committed in defense of its own honour, as claimed by the defense in most of these cases. The courts have demonstrated no interest in looking into conflict of interests or deliberate complicity in cases where perpetrators had committed murder after incitement by the family, as in felony No. 18/97 at the Nablus first instance court, where the accused had killed his sister following the urging of his family.

Considering this waiver as a reason for extenuating punishment is generally aimed at realizing peace between two disputants - an interest that usually is not realized in cases of murder under the pretext of honour, in that those waiving their rights are usually representing both the family of the victim and that of the offender as well. Those giving up personal rights usually have a direct interest in extenuating the punishment of the offender, a matter that has not been dealt with by the Palestinian courts, in

spite of the decision of the Court of Appeal held in Ramallah in its judgment No. 31/2009 pointing to this contradiction.

In general, it can be said that the Palestinian judiciary has gone beyond the scope of its discretion in granting extenuation of punishment for the perpetrators of the murder of women under the pretext of honour, in cases of personal rights being waived.

ii) Young or old age of the accused or the circumstances of the case:

Some courts have considered the age (young or old) of the defendant or the circumstances of the case, or the fact that the offender was the brother or father of the murdered woman, as reasons for extenuation. This points to a general need to provide convincing reasons for granting extenuation to the defendant in each individual case. It is noted that these judgements do not do this, but only point to particular provisions in the Penal Code, although Article 100/3 of the Penal Code No. 16 of 1960 stipulates that rulings for extenuation be fully justified, in felonies or misdemeanors¹⁵.

iii) Compromising family honour and killing to defend honour:

Some courts followed the approach of explicitly considering compromising family honour a cause

¹⁵ Article 100/3, Jordanian Penal Code No. 16 of 1960 stated: “The decision allowing for extenuating reasons must be fully justified, both in case of misdemeanors or in felonies”

for extenuation, such as in felony No. 5/99 at the Bethlehem first instance court or felony No. 151/97 at the Nablus first instance court. In other words, judges use different reasonings to get to the same result: “honour” is used as an extenuating excuse or as an extenuating judicial reason.

Gaza Strip courts followed the approach of mitigating punishment for perpetrators of honour killings if it is proved that the murder was committed on the grounds of honour, such as in felony No. 14/98 major felonies/ Gaza and the felony No. 25/98 major felonies/ Gaza, and felony No. 31 /95 major felonies/ Gaza.

III. Analysis

A) Punishment:

The Palestinian judiciary has tended, in the vast majority of its judicial decisions, to mitigate punishment for the perpetrators of the killing of women under the pretext of honour, pursuant to the extenuating excuses and reasons set out in articles 97, 98 and 99 of the Penal Code No. 16 of 1960, Article 18 of the British Penal Code No. 74 of 1936. The number of cases where the courts invoked extenuating reasons or excuses were 29 out of the 37 judgements under review, which is 78.6 % of the total number of these judgments. This approach started at the first instance courts (courts of first instance as criminal courts) and has been endorsed by the Courts of Appeal and the Court of Cassation. The sample judgements under consideration indicate that the Palestinian judiciary adopted different ways to extenuate the punishment, sometimes on the basis of extenuating circumstances provided for in Article 98 of the Penal Code No. 16 of 1960, and at other times based on the text of Article 99 of the same law about extenuating judicial reasons, and sometimes on the basis that the murder was committed on honour grounds as in the courts of the Gaza Strip in particular.

The approach taken by the Palestinian judiciary in extenuating the punishment for the perpetrators, whether by using extenuating reasons or mitigating circumstances, has had a significant impact in reducing these penalties for the perpetrators of the killing of women, under the pretext of honour, to the extent that easing the punishment has contributed to the collective consciousness that killing women under the pretext of honour will only be punished by a limited sentence of a few months only or even only the pretrial detention period.

1- Extenuation of the punishment :

The Palestinian judiciary most notably invoked the waiving of personal rights in 14 of the reviewed judgements, a total of 37.8%, followed by the “fit of rage” justification in 6 provisions (16.2%), followed by the defense of honour in three provisions (8.1%), and the young age of the accused and the circumstances of the case in two judgments (5.4 %).

The Palestinian judiciary also used different descriptions in the same sentence to give the offender an excuse

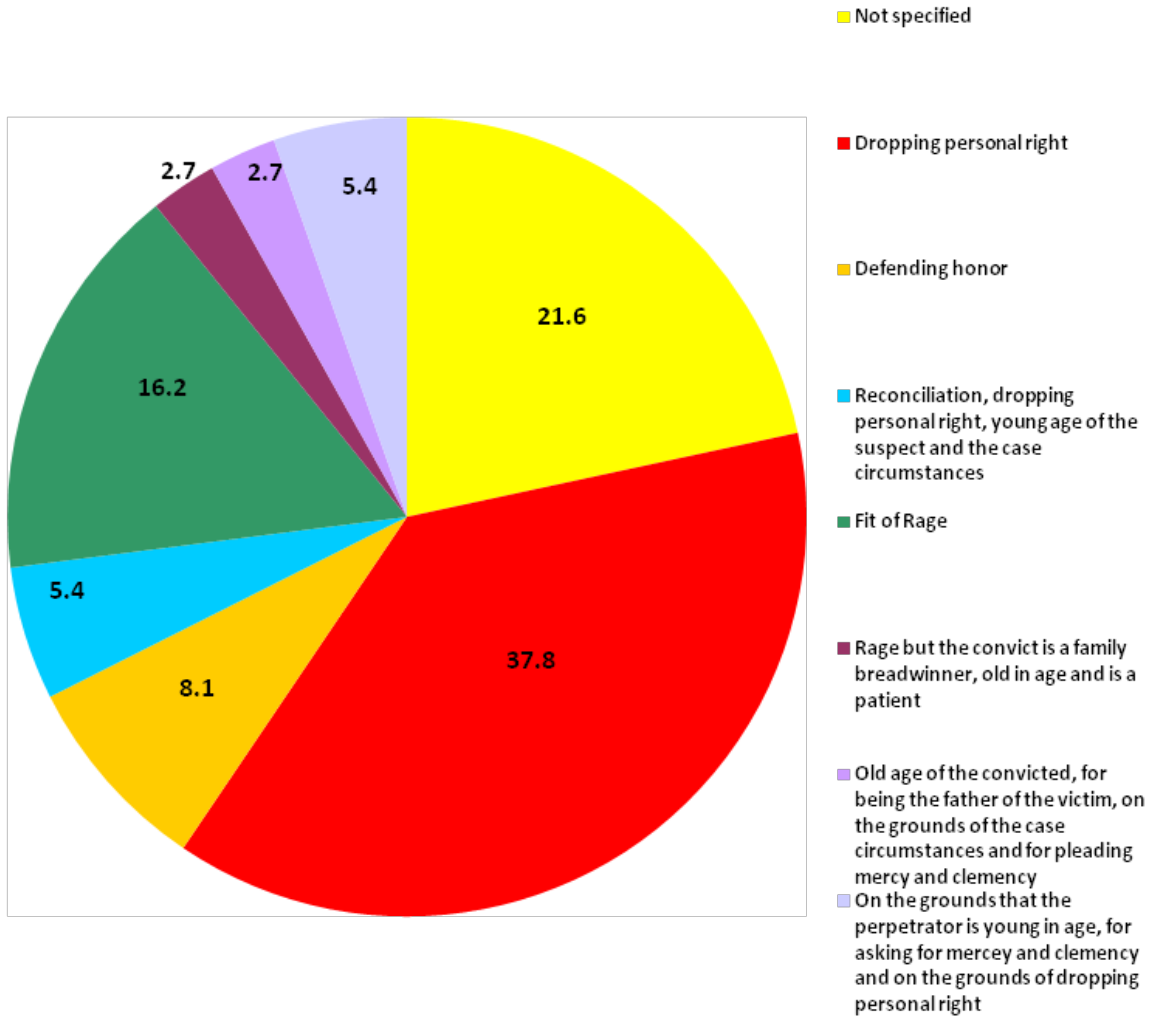
or reason for extenuation. This is found in one ruling mixing the rage excuse as an extenuating excuse with the extenuating reason of considering the convicted a breadwinner for a family, being of old age and also with health problems (2.7%). Another judgement invoked a number of different extenuating reasons, related to the old age of the perpetrator, him being the father of the murdered woman, in addition to the circumstances of the case, and his pleading for clemency and mercy (2.7 %). Only two rulings mixed between reasons that the offender was young in age and had pleaded for clemency and mercy on the one hand, and on the grounds of the heir of the victim having waived a personal right (5.4%).

Judges did not grant extenuating excuses or reasons in 8 cases, a total of 21.6% of the sample of cases. The review of these cases shows that the courts did not use any extenuating excuse or reason (neither article 98, nor article 99) because, even though the defendants had claimed that the killings were committed in a fit of rage to protect so-called family honour, the facts on the cases proved otherwise, and showed that the cases in fact were not so-called honour killings.

(A table showing the total percentages and reasons for the extenuating reasons and excuses in the study sample crimes of women murder, under the pretext of honour)

Extenuating reasons and excuses	Total	Percentage
Not granted	8	21.6
Waiving personal right	14	37.8
Defending honour	3	8.1
Young age of the defendant and the circumstances of the case	2	5.4
A fit of rage	6	16.2
Fit of rage and on the grounds that the convicted is the breadwinner of the family, old in age and has health problem.	1	2.7
Old age of the convicted, for being the father of the victim, on the grounds of the case circumstances and for pleading mercy and clemency	1	2.7
On the grounds that the perpetrator is young in age, has asked for mercy and clemency, and the heirs of the victims have waived their personal right	2	5.4
Total	37	100.0

(Illustration showing the proportion of mitigating circumstances in cases of murder of women, under the pretext of honour, in the sample study provisions)



2- Legal provisions invoked in extenuation:

In the majority of cases, the articles used to mitigate punishment were based on extenuating judicial reasons provided for in Article 99 of the Penal Code No. 16 of 1960 (47.1% of the total judgements reviewed), on Article 98 of the Penal Code No. 16 of 1960 (35.3%), and on Article 98 referring to punishments in Article 97 of the same law (17.6 %). The courts did not invoke article 340 of the Penal Code No. 16 of 1960 in any of the provisions of the study sample.

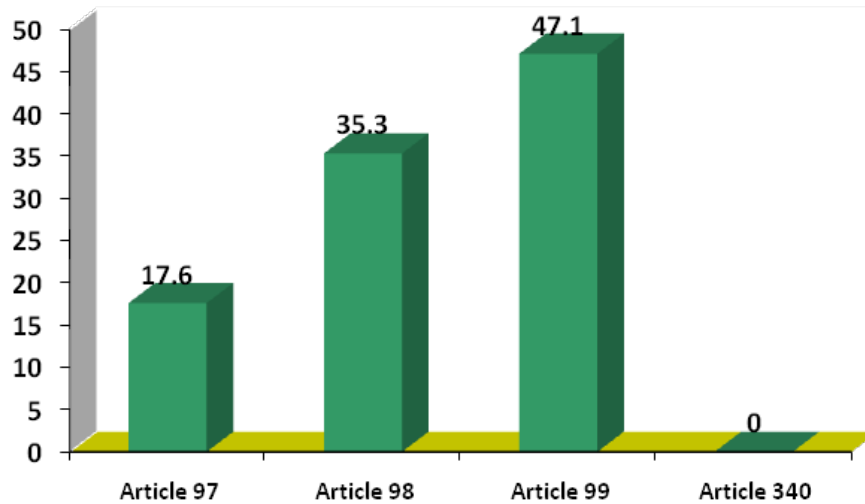
Therefore, the Palestinian judiciary referred to extenuating reasons more than extenuating excuses when mitigating punishment for the perpetrators of murder under the pretext of honour. This may

be due to the fact that the reduction of sentences for such crimes in the case of extenuating judicial reasons is based on the discretion of judges, not on legally binding texts (which would be the case with extenuating excuses). This is a clear reflection of the social context in Palestine. In addition, courts, even when they conclude that the extenuating excuses provided for in Article 98 were not met, still resort in the vast majority of cases to extenuating reasons (i.e. their own discretion) to reduce the punishment for the criminals. If the waiver of personal rights is not fulfilled, courts resort to other extenuating reasons, such as the case circumstances, old age or young age of the accused, defense of honour or any of such circumstances.

(A table showing the total percentages and legal texts invoked for extenuating punishment in women murder crimes, under the pretext of honour)

Percentage of legal texts invoked in extenuating punishment	Percentage
Article 97 of the Penal Code of 1960 “ extenuating excuses “	17.6
Article 98 of the Penal Code of 1960 « extenuating excuses»	35.3
Article 99 of the Penal Code of 1960 « extenuating reasons»	47.1
Article 340 of the Penal Code of 1960 «Pardoning or extenuating excuse»	0.0
Total	100%

(A figure showing the total percentages and legal texts invoked for extenuating punishment in women murder crimes, under the pretext of honour)



B) Interpretation of murder crimes and their application:

1 - Mitigation of punishment:

An in depth review to the study sample sentences reveals three attitudes relating to criminal interpretation of women murder cases, under the pretext of honour as follows; the first attitude tends to deal with the moral factor without focusing on the issue of premeditation, the second however, when the court explicitly discusses the materialization of premeditation aspect, in detail, while stressing basic rules that killing under the pretext of honour contradicts fit of rage, the third attitude is in extenuating or tightening interpretation of the charge, whereby, some courts tended to amend the interpretation of the of the charge from premeditated murder to intentional murder, leading to the reduction of the sentence.

2 - Interpretation of relevant criminal provisions:

The Palestinian courts in the West Bank tend to convict the accused with premeditated murder, in violation of the provisions of Article 328 of the Penal Code of 1960¹⁶, or to the conviction of the accused on charges

¹⁶ See Infra page 5

of intentional murder, contrary to the provisions of Articles 214¹⁷, 215¹⁸ and 216¹⁹ of the Penal Code of 1936 in the Gaza Strip.

17 Article 214 of the Penal Code No. 74 of 1936 states: “Intentional murder

Anyone who:

- A. Intentionally caused the death of his father or mother or grandfather or grandmother by illegal action or inaction, or
- B. Intentionally caused the death of any other person, or
- C. Intentionally caused the death of another person by preparing reasons to commit an offense or to facilitate the commission of that offense, or
- D. Caused, at the time of an offense, the death of a person intending thereby to evade or escape the punishment resulting from that offense, either to himself or to anyone else who is accomplice with him as a direct perpetrator or accomplice in the commission of that offense:

Is considered to have committed the felony of intentional murder”.

18 Article 215 of the Penal Code No. 74 of 1936 states: “Anyone who is convicted of the felony of intentional murder felony is punishable by death”.

19 Article 216 of the Penal Code No. 74 of 1936 states: “Pursuant to the intended purpose of Article 214 of this law, a person is considered to have killed another person intentionally:

- A. When he determined to kill that person or to kill any member of his family or any member of the clan to which he belongs, provided that it is not necessary to establish that he was determined to kill a particular individual member of that family or clan;
- B. When he kills that person with cold blood, without immediate provocation, in circumstances where he could think of and consider the result of his actions.;
- C. When he killed that person after he prepared by himself preparations to kill him or kill any member of his family or the race to which he belongs, or after preparing the device that was used to kill that person, if he had prepared such a device.;

To prove intent, it is not necessary to establish that the accused person was in a certain state of mind for a specific period of time or that he was in that state during a certain period of time before the actual commission of the crime, or to establish evidence that the device used in committing the crime, if any, had been prepared before a certain period before the actual commission of the crime”.

- The total judgments finding the accused guilty of premeditated murder in violation of the provisions of Article 328/1 of the Penal Code No. 16 of 60, in the West Bank courts are 24(65.7% of the total).
- The total number of judgments finding the accused guilty of intentional murder in violation of the provisions of Article 326 of the Penal Code No. 16 of 1960²⁰, in the courts of the West Bank, are only 8 (21.2%).
- The total number of judgments finding the accused guilty of intentional murder, in violation of the provisions of Articles 214, 215 and 216 of the Penal Code of 1936, by the courts in the Gaza Strip, is 5 (13.1%).

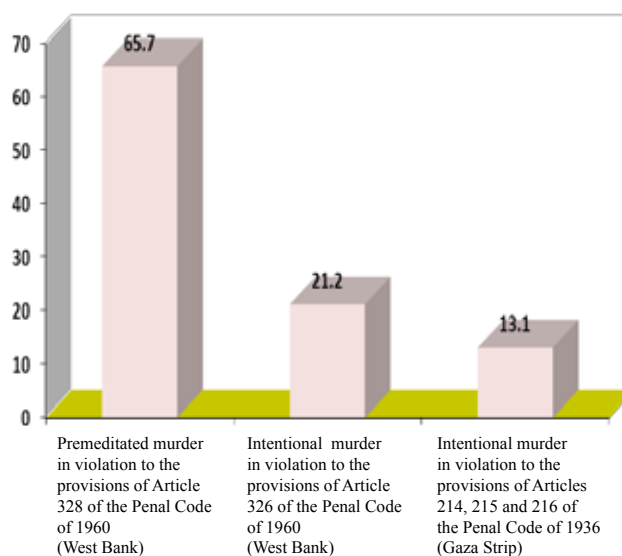
However, as explained above, the use of extenuation excuses and extenuation judicial reasons by judges makes any progress made in the qualification of the crime as premeditated murder meaningless, since perpetrators get very low penalties or in some cases they are not even punished, leading to impunity of so-called “honour killings” in Palestine.

²⁰ See infra page 5

(A table showing the numbers and proportions of the criminal interpretation to the women murder cases, honour killings, in the sample study)

Criminal interpretation	Total	Approximate percentage
Premeditated murder in violation to the provisions of Article 328 of the Penal Code of 1960 (the West Bank)	24	65.7
Intentional murder in violation to the provisions of Article 326 of the Penal Code of 1960 (the West Bank)	8	21.2
Intentional murder in violation to the provisions of Articles 214, 215 and 216 of the Penal Code of 1936 (Gaza Strip)	5	13.1
Total	37	100%

A Figure showing the numbers and proportions of the criminal interpretation to the women murder cases, honour killings, in the sample study



IV. Study conclusions

Generally, the Palestinian judiciary tends to convict the accused of premeditated murder, in violation of the provisions of Article 328/1 of the Penal Code No. 16 of 1960, followed by intentional murder in violation of the provisions of Article 326 of the same law, while courts in the Gaza Strip tend to convict the accused with intentional murder in violation to the provisions of Articles 214, 215 and 216 of the Penal Code of 1936, which is one of the toughened criminal interpretations. However, the use of extenuating excuses and extenuating judicial reasons by the Palestinian judiciary undermines this, leading to impunity of so-called “honour killings”.

The Palestinian judiciary tends to extenuate, to a large extent, the punishment of perpetrators of murder under the pretext of honour, based on extenuating excuses and reasons pursuant to articles 98 and 99 of the Penal Code No. 16 of 1960 and Article 18 of the British Penal Code No. 74 of 1936. The number of judgements, in which the Palestinian courts invoked extenuating reasons or excuses was 29 out of the total 37 sample judgments reviewed. The Courts of Appeal and the Court of Cassation endorsed this trend in the vast majority of its rulings.

The Palestinian courts tend to invoke extenuating judicial reasons pursuant to Article 99 of the Penal Code No. 16 of 1960 more than using extenuating excuses that are legally specified. This shows that extenuating punishment in cases of murder under the pretext of honour in Palestine is based on the discretion of the judge more than on binding legal texts.

The Palestinian courts generally accepted as an extenuating judicial reason the waiving of personal rights of one of the heirs, notwithstanding that the family that waived its right may be taking advantage of the fact that the criminal offense has been committed in the defense of its honour. The courts did not look into conflict of interest or complicity in these cases

Some courts accepted the young age or old age of the accused, or the the perpetrator being the brother or father of the victim as extenuating reasons without giving full explanations, though justifications must be given pursuant to Article 100/3 of the Penal Code No. 16 of 1960.

Some courts have even explicitly considered compromising family honour, or that the crime had been committed in defense of honour, as an extenuating reason. Therefore, judges use different reasonings to obtain the same result: “honour” is used as an extenuation excuse or as an extenuation judicial reason²¹. This indicates that the Palestinian judiciary has expanded its discretion.

The Palestinian courts did not apply the extenuating or pardoning excuse stipulated in Article 340 of the Penal Code No. 16 of 1960 in any of the study sample rulings, a matter that indicates a lack of effectiveness of the legislative amendment under Decree Law No. (7) of 2011.

The Palestinian courts invoked the extenuating excuse stipulated in Article 98 of the Penal Code No. 16 of 1960 in 35.3% of the sample judgments. The courts generally did not discuss this in a detailed way in its judgements, indicating a general attitude by the Palestinian judiciary that murder under the pretext of honour fulfills the conditions for the “fit of rage” criterion for this excuse.

21 See *Infra* p. 12

V. Recommendations

First: Possible legislative interventions:

It is clear that the Palestinian courts tend to ease punishment of perpetrators of murder of women for so-called “honour”, by invoking Articles 99 and 98 of the Penal Code No. 16 of 1960, and despite the legislative intervention by the Palestinian President under the Presidential Decree No. (7) of 2011. The phenomenon of so-called “honour killings” has increased dramatically in 2013 compared to the previous two years, requiring legislative intervention to amend the provisions used in judgements to extenuate punishment for the perpetrators of this crime.

A - Amendment to Article 99 of the Penal Code No. 16 of 1960:

As previously shown, the extenuation judicial reasons pointed out in this article are not specific, and are subject to the discretion of the judge. Legislative intervention is needed to allow for limiting discretion in this regard, and this can be achieved by adding a new paragraph which would state: “the extenuating judicial reasons in this Article will not apply to **the murder of women committed under the pretext of so-called honour**”.

B- Amending Article 98 of the Penal Code of 1960:

The findings of this study clearly show that the Palestinian judiciary widely invokes this article in crimes involving the killing of women under the pretext of honour; without addressing the conditions necessary for its application.

In order to avoid the excessive use by the courts of Article 98 and to avoid the ongoing controversy on the applicability of this article to the perpetrators of murder under the pretext of honour, it is recommended to exclude applying this article to the murder of women under the pretext of honour by adding a paragraph (b) to Article 98 to become as follows:

1. Perpetrators may take advantage of the extenuating excuse, in cases of having committed crimes in a fit of rage that were the result of an unlawful and dangerous act by the victim.
2. The extenuating excuse contained in this article will not apply to the murder of women committed under the pretext of so-called honour

C- Possibilities:

Preferably, the Palestinian Legislative Council should be the one making the amendments. However, since the Palestinian Legislative Council is currently unable to convene, these amendments could be done by the Palestinian President, with reference that the amendment would lose its legal force if not approved by the Legislative Council at its next session. Consultations could be conducted with the relevant Palestinian stakeholders on any draft amendment. These consultations should include the Palestinian Presidency, the Palestinian Legislative Council, the Palestinian Cabinet, the Higher Judicial Council, the Ministry of Justice, the Ministry of Women's Affairs, civil society organizations, and the Independent Commission for Human Rights.

Second: awareness raising of actors:

- **The Higher Judicial Council:**
 1. Hold discussions and brainstorming among the Palestinian judges of the courts of first instance

and appeal courts to discuss the outputs of the study, in order to devise a possible formula for ensuring effective judicial protection of women's right to life.

2. Hold discussions on the extenuating reasons and excuses in cases of murder under the pretext of honour, with the aim of limiting their use. These discussions and brainstorming sessions should include the following aspects:

- Judicial diligence in interpreting and applying Articles 98 and 99 of the Penal Code No. 16 of 1960.
- Standards and regulations in waiving personal rights in the cases of murder of women under the pretext of honour
- Sharia's view of killing of women under the pretext of honour

3. Participants in these discussions will issue a set of recommendations drawn from the discussions. Then, the High Judiciary Council can issue an explanatory memo containing these recommendations to be used as a reference by judges when reviewing a case of so-called honour killing.

- **The Public Prosecution:**

1. The Public Prosecution should expand investigation and indictment to include the instigators, accomplices and partners in the murder of women under the pretext of honour, especially members of the victim's family and

members of the community who contribute to the instigation of the murders.

2. The Public Prosecution should toughen the charges leveled against the accused in cases of murder under the pretext of honour, and request the competent court to issue the maximum punishment for the perpetrators.
3. The Public Prosecution should systematically appeal the judicial decisions that apply articles 97, 98, 99 of the Law 16 of 1960 and that reduce the penalties imposed to perpetrators of so-called honour killings

- **End** -

