



*Empowered lives.  
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# A REVIEW OF PALESTINIAN LEGISLATION FROM A WOMEN'S RIGHTS PERSPECTIVE

March 2012





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# Acronyms

BPA	Beijing Platform for Action
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CWLRC	Centre for Women's Legal Research and Consulting
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICSECR	International Covenant on Social, Economic and Cultural Rights
IIED	International Institute for the Environment and Development
MAS	The Palestine Economic Policy Research Institute
oPt	occupied Palestinian territory
PAPP	Programme of Assistance to the Palestinian People (UNDP)
PBA	Palestinian Bar Association
PCBS	Palestinian Central Bureau of Statistics
PCHR	Palestinian Centre for Human Rights
PLC	Palestinian Legislative Council
PLO	The Palestine Liberation Organization
PNA	Palestinian National Authority
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
US	United States
WCLAC	Women's Centre for Legal Aid and Counselling

## Executive Summary and Recommendations

Women and girls face entrenched institutional, legal, and social discrimination in the occupied Palestinian territory (oPt) as a result not only of the Israeli occupation, but also because of an outdated, un-harmonised legal system. Women's rights advocates in the oPt have been pressing for law reform since the establishment of the Palestinian National Authority (PNA) in 1994. While progress has been made, important pieces of legislation fail to meet the basic requirements of international human rights law. In order to support national partners working on law reform and women's rights, the United Nations Development Programme/Programme of Assistance to the Palestinian People (UNDP/PAPP) has commissioned this legislative review which examines Palestinian legislation from a women's rights perspective. The review, *inter alia*, assesses national legislation for conformity with international human rights standards, discusses the applicability of those standards to the PNA, and analyzes the trajectory of law reform in the oPt as it relates to the rights of women. By drawing on studies from the field of socio-legal studies, the review hopes to offer fresh insights into the interplay between legal reform and socio-economic conditions. It also aims to spark debate on how law reform can most effectively promote women's rights in the oPt, both while the occupation endures and in the hoped-for independent Palestinian state.

International human rights law establishes minimum standards for the protection of women's rights. These standards are laid out, *inter alia*, in the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The PNA has committed itself to abide by international human rights law; however, as it is not recognized as constituting a state, it cannot be held to account at the international level through international mechanisms. Nonetheless, treaty-based human rights obligations can and should be incorporated into the domestic Palestinian legal framework where they can be upheld by national courts.

As a result of centuries of foreign domination, the Palestinian legal system comprises a patchwork of historical laws originating from several different legal systems, as well as new laws that were enacted by the PNA. In recent years, legislative reform has been impeded by, *inter alia*, the ongoing Israeli occupation, internal inter-factional conflict and a lack of consensus on the direction of reform. Consequently, in areas as important as criminal and family law, outdated British, Jordanian and Egyptian laws remain applicable. Moreover, due to inadequate capacities in the areas of legislative planning and legislative policy formulation, some of the new Palestinian laws lack internal coherence and have failed to achieve their intended objectives.

The gendered impacts of the Israeli occupation on the Palestinian legislative reform process cannot be overstated. Israeli policies and practices seriously hamper Palestinian efforts to put in place a legislative and judicial framework which is capable of protecting the rights of women. For example, while the Palestinian Legislative Council has the authority to enact a domestic violence law, the Palestinian civil police cannot implement its provisions in Areas B and C in the West Bank without Israeli consent. Victims of domestic violence in East Jerusalem also remain unprotected. The laws in the oPt will eventually lose their meaning if the Palestinian authorities are repeatedly prevented from translating them into tangible benefits for people on the ground.

The five branches of the law reviewed in this report conform to international standards to varying degrees. On paper, the Palestinian Basic Law – the main constitutional document in the oPt – largely adheres to human rights standards (although it fails to establish important social rights which are of particular relevance to women and the eradication of gender inequality). However, the rights it does establish – including the rights to equality and non-discrimination – are not being litigated; nor do they appear to form more than a negligible component of day-to-day legal practice. The reasons for the Palestinian Basic Law's apparent irrelevance to the domestic legal system should be urgently identified.

Personal status (family) legislation in force in the oPt departs from international standards in a number of respects. For example, in contravention to international law, girls over the age of 14 are permitted to marry; a woman but not a man is required to obtain the consent of a guardian (*wali*) in order to marry; a man can obtain a divorce more easily than a woman; and a man but not a woman can marry up to four spouses concurrently. A review of the positions held by key stakeholders on reform requirements in the family law sphere indicates that consensus on the direction of reform in a number of areas has not been achieved. Therefore, bringing Palestinian family law in line with international standards in the short-term will not be an easy endeavour. On a positive note, however, socio-legal studies have found that the *sharia* courts are legally and socially dynamic, and that judges, lawyers and litigants are able to achieve positive outcomes for women even in the absence of human rights-compliant legislation.

Criminal law in the oPt also fails to conform to international standards. For example, the perpetrators of murder who claim to have acted in order to 'maintain family honour' can be exempted from judicial sanction; marital rape has not been criminalised; and there are no specialised procedures for dealing with cases of suspected sexual abuse. Criminal law reform has been on the legislative agenda for years; most recently, in 2010-2011, a national commission prepared a draft penal code for consultation. The draft, while not flawless, received a warm reception from the oPt's human rights community and it is deemed to represent an important step forward for women's rights. However, the Hamas-led government in Gaza was not involved in the consultation process and with the announcement of a national reconciliation agreement in April 2011 the consultation process has been suspended.

In the main, labour legislation and the laws governing political participation, including the electoral laws, conform to international standards. Both sets of laws establish the rights to equality and non-discrimination. Palestinian labour legislation in particular has been regarded as positive for women as it establishes important maternity rights for the first time. However, in practice, women's labour force participation remains low, women continue to be paid less than men, and men are appointed to a vast majority of elected posts at local and national levels. The limited impact of law reform in these areas on the reality for women on the ground highlights the importance of ensuring that structural adjustments and socio-economic programs accompany and support law reform endeavours. Legal reform must take place hand-in-hand with broader initiatives for change if it is to be an effective tool for tackling gender inequality.

# Recommendations

## 1. General Recommendations

- Recommence the process of unifying and harmonising legislation in the West Bank and the Gaza Strip as soon as political realities allow and continue to promote broad civil society consultation in these processes.
- Build legislative policy-making capacities across PNA institutions. Ensure that the likely impact of proposed legislation is explored in detail prior to its enactment, with an eye to the particular social, economic and political context within which the law is expected to operate.
- Strengthen legislative planning capacities across PNA institutions.
- Expand legal scholarship in law schools to include socio-legal studies, with an emphasis on creating capacity in feminist legal scholarship.

## 2. International Law

- Strengthen the capacities of Palestinian law schools to teach and carry out research into international law including feminist legal scholarship.
- Formulate public policy on the appropriate relationship between international law and the Palestinian domestic legal system, including in relation to the incorporation of international human rights obligations into domestic legislation.
- Ensure that draft legislation is reviewed for conformity with international human rights law, especially CEDAW, as a matter of course.

## 3. Constitutional Law

- Examine the extent to which constitutional principles feature in contemporary legal practice.
- Identify the reasons why the rights to equality and non-discrimination established by the Palestinian Basic Law (amended 2003) are not being litigated in order to advance women's rights.
- Review the compatibility of Palestinian legislation with the Palestinian Basic Law, especially legislation that was enacted prior to the promulgation of the Palestinian Basic Law.
- Strengthen the capacities of the legal profession in the areas of constitutional law, public interest law and strategic litigation, as these areas relate to defending women's rights.

## 4. Personal Status Legislation

Harmonize Palestinian personal status legislation and bring it into line with international standards including, *inter alia*, by:

- Raising the minimum age of marriage to 18 and implementing socio-economic reforms that will deter early marriage.
- Revoking the requirement that a woman obtain the consent of a wali (male relative on the father's side) to marry.
- Granting the testimony of a woman in the sharia courts equal weight to that of a man.
- Restricting the practice of polygamy in a manner which protects women's rights.
- Ensuring that the best interest of the child is paramount in custody cases.
- Ensuring that women have equal rights to men with respect to child custody and access.
- Expanding the grounds on which women can sue for divorce and restricting men's absolute right to do so.
- Ensuring that legislation on the division of common marital property upon the dissolution of a marriage accounts for women's contributions to the accumulation of those assets through work carried-out inside or outside of the home.
- Conducting socio-legal research on sharia law in practice in order to gain a better understanding of how women litigants seek and obtain justice; and how these efforts can be supported and reinforced.

## 5. Criminal Law

- Enact a new unified penal code that conforms to international human rights standards, protects women from all forms of violence and appropriately punishes the perpetrators of violence against women.
- Review and challenge the restrictions imposed on individual liberty in the draft penal code prepared by a national commission in 2010-2011.
- Examine the ways in which women utilise the criminal justice system and how they calculate the losses and gains of doing so, and make it more responsive to women's needs.
- Study the ways in which the courts produce knowledge about violence against women and how this counters or reinforces harmful gender stereotypes.

## 6. Labour Legislation

- Extend the protections of the Labour Law (2000) to domestic workers and individuals who work for relatives, many of whom are women.
- Establish a minimum wage for both women and men, as required by law.
- Establish specialised, women-friendly employment tribunals to expedite the resolution of labour disputes.
- Support the Ministry of Labour to strengthen its labour law inspection mechanisms and strengthen inter-Ministerial relationships to ensure coherent responses to women's legal needs.
- Institute a social security system which will distribute the costs associated with women working outside of the home across society as a whole. This should include the establishment of a network of accessible childcare facilities.

## 7. Political Participation

- Develop legislation to regulate trade unions and political parties, and to promote women's empowerment and gender equality in political participation.
- Explore the reasons why women's participation in political life in the oPt is constrained in order to formulate a comprehensive policy response.
- Ensure higher numbers of capable women are appointed to senior governmental positions and ensure that women have equal opportunities to gain the training and work experience they require to compete for positions at all levels.

## Methodological Note

This legislative review is based on an examination of domestic and international laws, academic literature, policy analyses, surveys and other published materials. In addition, interviews were conducted with senior representatives of women's groups and human rights organizations based in the West Bank and the Gaza Strip; and government ministries and religious institutions based in the West Bank.<sup>1</sup> Relevant case law was also reviewed and analyzed.

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<sup>1</sup> The West Bank includes East Jerusalem. However, as the state of Israel has illegally annexed East Jerusalem, the district's Palestinian residents fall *de facto* under the jurisdiction of the Israeli legislative framework.

# 1 Introduction

Since the advent of the international human rights system in 1948, the same year that the state of Israel was established and the dispossession of the indigenous Palestinian population began, women's rights advocates across the world have been calling for domestic legislation to be brought into line with international standards. In the occupied Palestinian territory (oPt), these efforts have been vital to the advancement of women's rights and the eradication of entrenched gender inequality that results not only from a system of patriarchal control within Palestinian society, but also from the culture of militarized violence resulting from the prolonged Israeli occupation.

While progress has been made in recent years, important laws in force in the oPt still fail to meet the requirements of international human rights law. In order to support national partners working on law reform and women's rights, the United Nations Development Programme/Programme of Assistance to the Palestinian People (UNDP/PAPP), has commissioned this legislative review which examines five branches of Palestinian law from a women's rights perspective: constitutional law, personal status legislation, criminal law, labour law and the laws that regulate political participation.

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“Ensure the full development and advancement of women to exercise human rights and fundamental freedoms on a basis of equality with men”

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More specifically, the review assesses Palestinian legislation for conformity with international human rights law – especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted in 1979 – as well as the extent to which it meets the demands of the Palestinian human rights and women's rights community. In this regard, the author emphasizes the importance of clarifying the relationship between international law and the domestic legal system. The report also analyses the trajectory of the law reform process in the oPt since the establishment of the Palestinian National Authority (PNA), the direction of current law reform initiatives, and the prospects for bringing domestic law into line with international standards on women's rights.

By drawing on socio-legal theory – which emphasizes the importance of understanding the law in the context of the social, cultural, political and economic factors that affect the way it operates in practice – the review hopes to offer fresh insights to legal practitioners working within government, the private sector and civil society. It is hoped that these insights will spark debate and discussion on how law reform can most effectively advance the rights of women in the oPt.

The report proceeds in five sections. Section 2 outlines the report's conceptual framework which draws on socio-legal theory and emphasizes the complex nature of the interplay between law and society. Section 3 provides a brief overview of the international human rights instruments most relevant to women's rights and discusses the applicability of these instruments to the Palestinian National Authority in light of its international legal status as a non-state actor. Section 4.1 provides an overview of the Palestinian women's movement and the Palestinian legal system, noting the various approaches taken by women's organisations as well as consequences of occupation on legislative reform and women's rights. Section 4.2 examines the Palestinian constitutional framework and notes the importance of constitutional law to the realization of gender equality. Section 4.3 reviews Palestinian personal status legislation which regulates family-related matters such as marriage, divorce and child custody. Section 4.4 explores violence against women in the context of criminal law. Section 4.5 evaluates Palestinian labour legislation and section 4.6 appraises the laws that govern political participation. In section 5, some brief concluding remarks are provided. A list of specific recommendations derived from the findings of this report is presented above.

## 2 Conceptual Framework

This study draws on insights gained from the field of socio-legal studies. Legal practitioners working within the field of women's rights – including advocates, human rights organisations and lawyers – often conceive of the law, first and foremost, as a tool with which women's rights and interests can be promoted and protected.<sup>2</sup> Many also tend to view the difficulties and problems of women through the lens of the legal system.<sup>3</sup> For example, they attribute the persistence of violence against women to the legal system's inability to effectively deter abuse and punish the abusers; or they ascribe women's low participation in the labour force to *sharia* rules which require women to obtain the consent of their husbands in order to work outside of the home.<sup>4</sup> Accordingly, legislative reform and legal advocacy play key roles – although not the only ones – in the strategies of women's rights advocates.<sup>5</sup>

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### “ Right to life, right to education, right to an adequate standard of living ”

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Socio-legal theory contends that this conceptualisation of the law, while valid, can underplay the complexity of the relationship between law reform and socio-economic conditions. By highlighting scholarly work from this field conducted in a number of contexts, this study hopes to offer fresh insights and provide a new basis for debate and discussion on law reform, women's rights and gender justice in the oPt.

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2 Interviews with human rights organisations and women's organisations, March 2011, Ramallah and Gaza City. Please see Annex I for a full list of interviewees.

3 *Idem*.

4 Interview with Ms. Zeinab Al-Ghunami, Director of the Centre for Women's Legal Research and Consulting, 24 March 2011, Gaza City.

5 Interviews with human rights organisations and women's organisations, March 2011, Ramallah and Gaza City.

## International Law and the Palestinian National Authority

This legislative review assesses Palestinian legislation for conformity with international human rights standards, as these relate to the rights of women. It also examines the extent to which Palestinian legislation meets the demands of the Palestinian women's rights and human rights community. First, this section provides a brief overview of the international human rights instruments most relevant to the rights of women. It then discusses their applicability to the PNA in light of its international legal status as a non-state actor. Finally, the relevance of international law to the domestic Palestinian legal system is discussed.

The Universal Declaration of Human Rights (UDHR) – the first global expression of human rights – was proclaimed by the UN General Assembly in 1948. It affirms the entitlement of all to equality before the law and to the enjoyment of human rights and fundamental freedoms without distinction of any kind, including sex.<sup>6</sup> Throughout the subsequent decades, an array of human rights instruments setting out the moral and legal obligations of states *vis-à-vis* women, as men's equals, have come into being; important among them are the International Covenant on Civil and Political Rights (ICCPR),<sup>7</sup> and the International Covenant on Social, Economic and Cultural Rights (ICSECR),<sup>8</sup> both of which were adopted by the General Assembly in 1966. These covenants translated the principles of the UDHR into legally binding treaties; ratifying states have an obligation to undertake to ensure that women and men have equal rights to all the rights that they establish, from the right to life, to the right to education, to the right to an adequate standard of living.<sup>9</sup>

The next major step forward in the promotion and protection of international women's rights was the adoption of CEDAW by the General Assembly in 1979.<sup>10</sup> CEDAW establishes an international bill of rights for women and lays special emphasis on the principles of gender equality and non-discrimination. These two principles have been embraced by the oPt's women's rights and human rights community and have come to underpin much of their work.<sup>11</sup>

CEDAW also spells out the meaning of gender equality and how it can be achieved, and recognises that discrimination violates the principle of equality of rights.<sup>12</sup> Accordingly, it requires states parties, *inter alia*, to take:

'All appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.'<sup>13</sup>

With 187 states parties as of June 2011, CEDAW is now one of the most ratified international human rights treaties.<sup>14</sup>

Almost a decade and a half later, in 1993, the General Assembly adopted the Declaration on the Elimination of Violence Against Women.<sup>15</sup> While not legally binding, this document reflects international consensus on the importance of eliminating violence against women.

6 UDHR (1948) Article 2.

7 ICCPR (1966).

8 ICSECR (1966).

9 ICCPR (1966) Article 2 and ICSECR (1966) Article 2.

10 CEDAW (1979).

11 Interview with Mr. Sha'wan Jabarin, Director of Al-Haq, 28 March 2011, Ramallah.

12 Introduction to CEDAW: [www.un.org/womenwatch/daw/cedaw/text/econvention.htm](http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm) (accessed 10 June 2011).

13 CEDAW (1979) Article 3.

14 United Nations Treaty Collection at: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) (accessed 10 June 2011).

15 Declaration on the Elimination of Violence Against Women (adopted 1993).

The Declaration calls on member states, *inter alia*, to:

- Develop sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence;
- Provide women who are subjected to violence with access to mechanisms of justice and to just and effective remedies for the harm that they have suffered; and
- Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to women's needs.<sup>16</sup>

Two additional women's rights instruments of particular importance are the Beijing Platform for Action (1995)<sup>17</sup> and UN Security Council Resolution 1325 (2000).<sup>18</sup> Both of these instruments have special resonance for Palestinian women as they address women's rights from a peace and security perspective.

## “ Ensure women's access to justice and bring domestic legislation into line with international human rights standards ”

*The Beijing Platform for Action (BPA)*

The Beijing Platform for Action (BPA) is the principal international action plan on women's rights. It was adopted at the Fourth World Conference on Women held in 1995 and it sets out an ambitious agenda for achieving gender equality. The BPA calls on states, *inter alia*, to ensure women's access to justice and to bring domestic legislation into line with international human rights standards, including by revoking laws that discriminate on the basis of sex.<sup>19</sup> Furthermore, it significantly advances global thinking on women in armed conflict.

UN Security Council Resolution (UNSCR) 1325, adopted unanimously in 2000, advances the BPA's intention to ensure that women's rights are not forgotten in times of war. It also reaffirms the important role of women in the prevention and resolution of conflicts and:

'Emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes, especially those related to sexual and other violence against women and girls.'<sup>20</sup>

This brief review illustrates the central place that women's rights, gender equality and gender justice have come to occupy in the international human rights system, including in human security discourses. The treaties and declarations described above represent important tools by means of which states can be held to account for violations of women's rights. In theory, states can be held to account at two levels: at the international level through international mechanisms such as the International Criminal Court (ICC), the International Court of Justice (ICJ) and treaty mechanisms; and at the domestic level through national courts, if the international rules in question have been incorporated into national legislation.<sup>21</sup>

The Palestine Liberation Organization (PLO) was granted observer status by the United Nations in 1974.<sup>22</sup> This implies a commitment by the PLO to respect the UN Charter and subsequent treaties and declarations.<sup>23</sup> The PNA was established in 1994 pursuant to the Oslo Accords signed between the

16 *Idem*.

17 The full text of the Beijing Platform for Action is available at <http://www.un.org/womenwatch/daw/beijing/platform> (accessed 10 June 2011).

18 UN Security Council Resolution 1325: s/RES/1325 (2000).

19 The Beijing Platform for Action.

20 UN Security Council Resolution 1325: s/RES/1325 (2000).

21 Please see the following Amnesty International webpage for a brief overview of the various international justice mechanisms: [www.amnesty.org/en/international-justice/issues](http://www.amnesty.org/en/international-justice/issues) (accessed 10 June 2011).

22 UN General Assembly Resolution 3237 (29-D) 1974.

23 Al-Rayyis, N., Women's Studies Centre, *The Compatibility of Women and Female Children's Rights Legislation Enforced in the oPt with International Covenants 10*, [Arabic] 2009.

PLO and the state of Israel. It is not recognized by the international community as constituting a state; for the purposes of international law, it is a non-state actor. While non-state actors are capable of bearing human rights obligations and can be bound by international law, they cannot sign or become party to international treaties.<sup>24</sup> Therefore, many international accountability mechanisms are not open to women in the oPt. In addition, the international human rights obligations of the PNA are affected by the Israeli occupation which constrains the freedom of action of the PNA and its agents. In this regard, it is important to note that Israel, as the occupying power, also retains human rights responsibilities in the oPt as affirmed by the ICJ in its 2004 advisory opinion.<sup>25</sup> As well as refraining from perpetrating human rights violations itself, it should not, according to Human Rights Watch, restrict the PNA's ability to enforce human rights by:

'undermin[ing] the ability of Palestinian judges, police officers, forensic doctors, lawyers, and social service providers to move within and between the West Bank, Gaza and Israel in order to carry out their job or undertake additional training.'<sup>26</sup>

Israel systematically breaches its duty to refrain from restricting the PNA's ability to uphold human rights. For example, it has instituted a virtual blanket ban on travel between the Gaza Strip and the West Bank and it seriously restricts movement within the West Bank.<sup>27</sup>

In 2009, the President's Office issued Presidential Decree No. 19 which purports to 'unilaterally ratify' CEDAW. However, the exact nature of the relationship between international law and the Palestinian legal system is unclear. Therefore, it is unclear as to whether or not CEDAW has been incorporated into the Palestinian legal system as a result of this 'unilateral ratification'. This issue needs to be examined further in the light of Palestinian legal practice. In the absence of clarity around this issue, the question of whether international treaties that have been ratified<sup>28</sup> by the PNA can be invoked in Palestinian courts remains open. This issue – as well as the relevance of international law to the domestic legal system more generally – should be explored and debated at a national level as part of a comprehensive public policy-making process.

In addition to the unilateral ratification of CEDAW, the PNA has affirmed its commitment to international law in several other ways. The Palestinian Basic Law (amended 2003) – which is commonly seen as an interim constitution – notes that:

'The Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights.'<sup>29</sup>

The PNA has also stated its commitment to human rights norms in several important policy documents. For instance, the 2009-2011 government plan entitled *Ending the Occupation: Establishing the State* notes that:

'...human rights and fundamental freedoms are binding and must be respected. The State guarantees the religious, civil, political, economic, social and cultural rights and freedoms of all its citizens. It also ensures their enjoyment of these rights and freedoms on the basis of equality and equal opportunities.'<sup>30</sup>

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24 Clapham, A., *Human Rights Obligations of Non-State Actors*, Oxford: Oxford University Press, 2006.

25 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2004 at: [www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4](http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4) (accessed 10 June 2011).

26 Human Rights Watch, *A Question of Security: Violence Against Palestinian Women and Girls, 2006* <http://www.hrw.org/en/node/11130/section/6> (accessed 10 June 2011).

27 *Idem*.

28 The ratification does not have to be recognized by the UN or the international community to be recognized by the domestic legal system.

29 Palestinian Basic Law (amended 2003) Article 10.

30 Palestinian National Authority, *Ending the Occupation: Establishing the State (2009)* [http://www.mop-gov.ps/web\\_files/issues\\_file/090825%20Ending%20Occupation,%20Establishing%20the%20State%20-%20Program%20of%20the%2013%20government.pdf](http://www.mop-gov.ps/web_files/issues_file/090825%20Ending%20Occupation,%20Establishing%20the%20State%20-%20Program%20of%20the%2013%20government.pdf) (accessed 10 June 2011).

In interviews with the author, senior officials confirmed the PNA's continued commitment to international human rights standards. The Minister of Women's Affairs, Ms. Rabiha Thiab, explained that the Ministry is seeking to bring criminal law, personal status legislation, tax law and the laws regulating public service in line with international standards, with a particular focus on the repeal of discriminatory provisions.<sup>31</sup> The Deputy Minister of Justice, Mr. Khalil Karaja Al-Rifai, explained that for the Ministry of Justice, advancing human rights including women's rights is standing policy.<sup>32</sup> Similarly, Mr. Ali Abu Al-Dyak, Head of the *Diwan Al Fatwa wa Al Tashrii*, explained that the *Diwan* (the institution in charge of legislative reform) is responsible for ensuring that Palestinian legislation is compatible with international law.<sup>33</sup>

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“ human rights and fundamental freedoms are binding and must be respected. The State guarantees the religious, civil, political, economic, social and cultural rights and freedoms of all its citizens. It also ensures their enjoyment of these rights and freedoms on the basis of equality and equal opportunities ”

*Ending the Occupation: Establishing the State 2009 - 2011 Government Plan*

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Finally, with respect to the PLO, the Palestinian Declaration of Independence (1988) declares the commitment of the Palestinian 'state' to abide by the rules of the UN Charter and the principles of the Universal Declaration of Human Rights.

As CEDAW constitutes the most detailed statement of women's rights at the international level and the PNA has 'unilaterally ratified' it, this review assesses Palestinian legislation for conformity with its provisions wherever possible. Other human rights instruments are referred to as relevant.

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31 Interview with Ms. Rabiha Thiab, Minister of Women's Affairs, 30 March 2011 (Ramallah).

32 Interview with Mr. Khalil Al Rifai', Deputy Minister of Justice, 21 March 2011 (Ramallah).

33 Interview with Mr. Ali Abu Al-Dyak, Assistant Deputy Minister of Justice, 21 March 2011 (Ramallah).

## 4

## The Domestic Legal Framework and Women's Rights

This section reviews Palestinian legislation from a women's rights perspective, assessing it against the requirements of international human rights law and the demands of the Palestinian human rights community. The following five branches of law are examined: constitutional law, personal status legislation, criminal law, labour legislation and the laws that regulate political participation. This section also charts the trajectory of legislative reform – as it relates to women's rights – since the establishment of the PNA, and details contemporary law reform plans and proposals. By examining the positions held by different stakeholders – including women's groups, human rights organizations and members of religious institutions – this section also provides a tentative assessment of the prospects for human rights-compliant law reform in the short-term. Finally, for each of the five branches of law reviewed, the implications of the findings of recent socio-legal studies are discussed.

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“ Ottoman and British Mandate laws remain in force in the West Bank and the Gaza Strip, Jordanian laws are still applicable in the West Bank, and Egyptian laws are still applied in the Gaza Strip ”

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The section proceeds in six subsections. Section 4.1 provides a brief overview of the demands of the Palestinian women's movement and its main approaches to law reform. It also introduces the Palestinian legal system and notes the implications of Israeli military occupation on legislative reform and women's rights. Section 4.2 examines the Palestinian constitutional framework. In section 4.3, personal status legislation is reviewed. Section 4.4 explores the issue of violence against women in the context of criminal law and the criminal justice system. Section 4.5 looks at Palestinian labour legislation. Finally, section 4.6 evaluates the laws governing political participation.

### 4.1. Introduction

#### 4.1.1. The Women's Movement

The Palestinian women's movement, which includes several women's rights organizations, began to draw attention to issues related to women, gender and the law even before the establishment of the PNA, in the context of examining its role in building the Palestinian state.<sup>34</sup> From the outset, the principle of equality underpinned many of the movement's demands.<sup>35</sup> An important early initiative, a human rights study based on the principle of equality entitled *On the Law and the Future of Palestinian Women*<sup>36</sup>, was presented at the 'Model Parliament',<sup>37</sup> an initiative launched by several women's organizations. Through the 'Model Parliament', various branches of the law were reviewed from social justice and gender equality perspectives, and reform proposals were put forward.<sup>38</sup>

In many areas, however, the PLC failed to back the call for women's rights, especially in the areas of criminal law and personal status legislation. Reform was also impeded by, *inter alia*, political disputes between various political and social forces including between the Islamic Movement (Hamas) and the PNA. These disputes led to the incorporation of the issue of women's rights into broader ideological divisions.<sup>39</sup> A later initiative, entitled the Charter of Women's Rights, is also underpinned by the

34 Hamami, R., and Johnson, P., *Equality with a Difference: Gender and Citizenship in Transitional the oPt*, Social Politics 314 – 343 (1999).

35 *Idem*.

36 Prepared by Advocate Asma Khader.

37 *Idem*.

38 Jad, I., et al, *Gender and Citizenship under the Palestinian Authority*, Gender and Citizenship in the Middle East, 2003.

39 Sh'hada, N., *Gender and Politics in the oPt: Discourse Analysis of the Palestinian Authority & Islamists*, Institute of Social Studies Working Paper 307, 1999.

principle of equality. The Charter, issued in 2008 by a coalition of civil society organizations and the Ministry of Women's Affairs, sees equality and gender as being at the core of the project to build a democratic society.<sup>40</sup> It calls for the establishment of important economic, political and social rights, and demands, albeit in general terms, that the principle of gender equality is applied in personal status matters.<sup>41</sup>

The law has played a central role in the strategies of the women's movement. It is seen as a framework through which women's issues can be understood as well as a tool with which women's rights can be advanced.<sup>42</sup> Some women's organizations also attribute women's problems to the presence of patriarchal values and norms which see women as subordinate to men and link the concept of male and family honour to women's behavior.<sup>43</sup>

In accordance with these understandings, the following programmatic priorities have been set by a majority of women's organizations in the oPt:

- To bring domestic legislation in line with international standards;
- To advocate for the enforcement of women's rights;
- To ensure adequate protection mechanisms are in place;
- To raise awareness of women's rights;
- To provide legal assistance for women; and
- To provide training on gender-related issues.

With respect to law reform, women's rights organizations tend to focus on personal status legislation and criminal law, seeing these areas as particularly important for women's rights and key to bringing about changes in spheres of life.<sup>44</sup>

The central focus placed on law reform by many women's organizations is based upon a procedural understanding of the law which emphasizes its technical efficiency.<sup>45</sup> This approach is based on an assumption that if the courts and laws operate in a more technically-efficient manner, people will be able to realize their rights.<sup>46</sup> Advocates of this approach focus on strengthening the administrative capacities of the judiciary and the legal profession, and enacting rights-compliant legislation. In contrast, women's rights advocates that focus on the impact of patriarchal values, tend to emphasize the importance of awareness-raising and training on human rights and women's issues.<sup>47</sup>

While strengthening the technical efficiency of the courts and challenging traditional values are important, these approaches fail to place sufficient emphasis on examining the political, economic, social and institutional factors that give meaning to the law.<sup>48</sup> For example, expanding women's labour force participation depends on the availability of jobs in the labour market and changes in the modes of production and reproduction within the family, society and the market, as well as on altering the concept of 'women's obedience'. This in turn requires greater economic value to be given to women's work outside of and within the home as well as governmental intervention to distribute the burden of women's increased participation in paid employment across society.

In order to ensure that new legislation is effective, reformers must look beyond legal jurisprudence to consider the compatibility of the proposed rules with other legal, political, economic and social factors and the enactment of new laws should be understood as part of a process, rather than as the entire process.<sup>49</sup> Moreover, the legislative and regulatory impact of the legal texts should be taken into consideration.

40 *Idem.*

41 *Idem.*

42 Interviews with human rights organisations and women's organisations, March 2011, Ramallah and Gaza City.

43 *Idem.*

44 *Idem.*

45 Kelly, T., *Law, Culture and Access to Justice under the Palestinian National Authority*, Development and Change 36(5), 2005.

46 *Idem.*

47 *Idem.*

48 *Idem.*

49 Faundez, J. *Legal Reform in Developing and Transition Countries - Making Haste Slowly*, Law, Social Justice and Global Development, 2000.

### 4.1.2. The Palestinian Legal System

As a result of centuries of foreign occupation, domination and control, the Palestinian legal framework comprises a patchwork of laws which originate from several different legal systems. Ottoman and British Mandate laws remain in force in the West Bank and the Gaza Strip, Jordanian laws are still applicable in the West Bank, and Egyptian laws are still applied in the Gaza Strip.<sup>50</sup>

Following the establishment of the PNA, the PLC commenced the process of unifying and harmonising the legislative framework by enacting new Palestinian laws to be applied throughout the country. This process has been impeded by the internal political situation as well as the reality of occupation. For example, with the onset of the second *Intifada* (uprising against Israeli military occupation) in 2000 the legislative process was suspended before being resumed in 2003. The parliamentary reform process was suspended again in 2007 as a result of internal conflict between the Hamas and Fatah movements, the arbitrary detention of dozens of parliamentarians by the state of Israel and the complete military closure of the Gaza Strip.<sup>51</sup> The internal conflict ultimately led to the existence of two branches of government – one in the West Bank and one in the Gaza Strip – subsequent to which the development of legislation in the two areas has differed.

The combination of these interruptions and the difficulties inherent in achieving consensus on key issues has meant that important legal areas, including criminal law and family law, have yet to be harmonised; the historic laws remain applicable. In addition, many of the laws that the PLC was able to enact in the period up to 2007 were enacted in a fragmented and *ad hoc* manner as a result of inadequate legislative planning.<sup>52</sup> Moreover, due to inadequate legislative policy-making capacities, many of these laws were internally incoherent and proved difficult to implement.<sup>53</sup>

With the announcement of a reconciliation agreement in April 2011, it is hoped that a new unified government will be appointed and the process of harmonising Palestinian legislation – including legislation passed between 2007 and 2011 – can recommence. It is important to note that because of access issues and time constraints, it was not possible to examine the legislative reform initiatives launched by the government in Gaza since the internal division.

### 4.1.3. Legislative Reform, Women's Rights and Israeli Occupation

The implications of Israeli military occupation on the rights of women in the oPt and the Palestinian legislative reform process cannot be overstated. First, the state of Israel and its agents routinely violate the rights of Palestinian women with impunity by, *inter alia*, carrying out unlawful military attacks,<sup>54</sup> obstructing access to health and educational facilities,<sup>55</sup> and forcibly evicting women and their families from their homes.<sup>56</sup> Second, national debates on human rights, equality and citizenship in the oPt take place in the context of the constraints imposed upon the PNA by the Oslo Accords, which restrict the PNA's ability to define Palestinian citizenship. For example, while it is within the power of the PNA to enact legislation which confers upon women an equal right to apply for custody of their children, it cannot ensure the implementation of a custody ruling that involves movement between the West Bank and the Gaza Strip. This would require an Israeli permit and these are almost never granted for the purposes of family reunification.<sup>57</sup> Equally, while the PNA can pass legislation aimed at protecting the victims of domestic violence, it cannot enforce this legislation in the district

50 For an overview of this historical evolution, please see the following webpage prepared by the Institute of Law at Birzeit University: [http://lawcenter.birzeit.edu/iol/en/index.php?action\\_id=210](http://lawcenter.birzeit.edu/iol/en/index.php?action_id=210) (accessed 11 June 2011).

51 International Crisis Group, *Ruling the oPt II: The West Bank Model*, Middle East Report No. 78, 2008 [www.crisisgroup.org/en/regions/middle-east-north-africa/israel-the-oPt.aspx](http://www.crisisgroup.org/en/regions/middle-east-north-africa/israel-the-oPt.aspx) (accessed 12 June 2011).

52 Birzeit University: Institute of Law, *Legal Reform in the oPt: Decolonisation and State-building*, [Arabic], 2009.

53 Bkeirat, F., Birzeit University: Institute of Law, *The Problematic of Legislative Harmony in the oPt: Preliminary Survey* [Arabic], 2005.

54 PCHR, *Through Women's Eyes: A PCHR Report on the Gender-Specific Consequences of Operation Cast Lead*, 2009. [www.pchrgaza.org/files/Reports/English/pdf\\_spec/through-women's%20eyes.pdf](http://www.pchrgaza.org/files/Reports/English/pdf_spec/through-women's%20eyes.pdf) (accessed 15 June 2011).

55 WCLAC, *Behind the Wall: Voices of Women from the Seam Zone*, 2011 [www.wclac.org/ihl/userfiles/file/life-behind-the-wall.pdf](http://www.wclac.org/ihl/userfiles/file/life-behind-the-wall.pdf) (accessed 15 June 2011).

56 WCLAC, *Forced Evictions: Assessing the Impact on Palestinian Women in East Jerusalem*, 2010 [www.wclac.org/english/etemplate.php?id=25](http://www.wclac.org/english/etemplate.php?id=25) (accessed 15 June 2011).

57 Please see the following factsheet produced by Miftah for further information: <http://www.miftah.org/Display.cfm?DocId=14464&CategoryId=4> (accessed 15 June 2011).

of Jerusalem, which has been illegally annexed by Israel; neither can it send its police force to most of the West Bank to respond to an emergency call from a potential victim of violence without obtaining the prior permission of the occupier.<sup>58</sup>

Similarly, the institution of a social security system able to distribute the costs of women working outside of the home across society, is difficult if not impossible in the context of entrenched economic dependency caused by decades of occupation and current restrictions on freedom of movement.<sup>59</sup> Yet both are vital for the advancement of women's rights and the establishment of, for example, job creation schemes for young women.

Thus, while Palestinian institutions have been granted the authority to enact new laws, they are denied the power to give them meaning.<sup>60</sup> Without the power to translate the law into tangible benefits for people on the ground, the legislative framework and the entire concept of Palestinian citizenship will eventually lose their meaning.

## 4.2. The Palestinian Constitution

Constitutional guarantees of equality and non-discrimination are important avenues through which the rights of women can be defended. The main constitutional document in the oPt is the Palestinian Basic Law of 2002, as amended in 2003. The Basic Law regulates rights and freedoms, outlines the organisation of the executive, legislative and judicial authorities, and governs their interrelations. Article 94 of the Basic Law calls for the creation of an independent Supreme Constitutional Court to adjudicate disputes related to the Basic Law. The Law on the Supreme Constitutional Court, drafted and approved in 2006, governs the Court's composition, jurisdiction, procedures, and financial and administrative matters. Although it was promulgated in 2006, it has not yet been implemented and the Court has never been established.<sup>61</sup> In the absence of a constitutional court, its duties have been temporarily assumed by the High Court, according to the transitional provision (Article 104) of the Amended Basic Law.<sup>62</sup>

The Palestinian Basic Law establishes important rights which are to be enjoyed on the basis of equality and non-discrimination. These rights include, *inter alia*, equality before the law without distinction based upon race, sex, colour, religion, political views or disability; the right to be free from duress or torture; freedom of belief and worship; freedom of opinion; freedom of movement; the right to education; and the right to political participation.<sup>63</sup>

However, with respect to the rights of women specifically, the Palestinian Basic Law has several limitations. First, it fails to expressly establish important social rights which are of particular significance to women and the eradication of gender inequality. For example, it fails to require the establishment of a system of social insurance, stipulating only that a social insurance system 'be regulated by law.'<sup>64</sup> Second, the requirement that 'the principles of Islamic Shari'a shall be a principal source of legislation',<sup>65</sup> can be interpreted in a manner which undermines the rights of women in the family sphere in particular.

58 There are three areas in terms of the PA's authority: Area A (17.2 percent of the West Bank), the PA has sole civil jurisdiction and security control while Israel retains authority over movement in and out of the area; Area B (23.8 percent), the PA has civil authority and responsibility for public order, while Israel maintains security presence and overriding security responsibility; Area C (59 percent), the PA has restricted civil authorities in the fields of education and welfare. Most civil authorities and all security authorities have remained within the hands of the IDF (Diakonia Easy Guide to Humanitarian Law in the oPt - <http://www.diakonia.se/sa/node.asp?node=1125> Accessed 4 Dec 2008).

59 UNDP, *Palestinian Human Development Report: Investing in Human Security for a Future State*, 2010. <http://www.undp.ps/en/newsroom/publications/pdf/other/phdreng.pdf> (accessed 12 June 2011).

60 Kelly, T., *Law, Culture and Access to Justice under the Palestinian National Authority*, Development and Change 36(5), 2005.

61 It would be inadvisable to press for establishment of a Constitutional Court until the internal division has come to an end and an elected government is in place as this may irreparably undermine its legitimacy.

62 International Bar Association: Human Rights Institute, *A Comparative Analysis of the Law on the Supreme Constitutional Court of the Palestinian National Authority*, 2009 [www.musawa.ps/uploads/File/Comparative.pdf](http://www.musawa.ps/uploads/File/Comparative.pdf) (accessed 12 June 2011).

63 Palestinian Basic Law (amended 2003) Articles 9 – 33.

64 *Idem*. Article 22.

65 *Idem*. Article 4.

The significance of the Palestinian Basic Law for women's rights in the oPt is twofold: it empowers the High Court to strike down unconstitutional legislation, including discriminatory legislation.<sup>66</sup> In addition, although judges in the lower courts cannot decide upon the constitutionality of the law, they are obligated to take the principles of the Palestinian Basic Law – including the principles of equality and non-discrimination – into account when interpreting legislation.<sup>67</sup> In practice, however, these judicial powers – which have potentially wide-ranging implications for human rights in the oPt – are not being employed to take women's rights forward. An initial database search of recent court judgments carried out by the author found that the principles of equality and non-discrimination established by the Palestinian Basic Law do not feature extensively in legal practice, either in the pleadings of lawyers or in the judgments of the courts.<sup>68</sup> The often-heard claim that the Basic Law is the ultimately guarantor of equality between men and women in the oPt is therefore open to question.

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### ““ Laws in the West Bank allow for the marriage of a female at the age of 14 years and six months ””

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The reasons why the rights to equality and non-discrimination do not yet form part of Palestinian legal practice should be investigated. Palestinian human rights advocates must endeavour to give meaning to constitutional principles through their litigation. By doing so, human rights claims based on international standards will be translated into legal claims based on citizenship which can be enforced by national courts. Training on public interest and constitutional law for the oPt's legal practitioners may be helpful in facilitating this process. Initiatives in this area must avoid undermining the importance of the Palestinian Basic Law and existing constitutional practice.

## 4.3. Personal Status Law

In the oPt, family-related matters such as marriage, divorce, child custody and alimony are regulated by personal status laws.<sup>69</sup> As in many other parts of the world, the affairs of each religious group are governed by denomination-specific legislation, underpinned by religious principles. Hence, the family affairs of Christians are governed by, *inter alia*, the Personal Status Law for Orthodox Christians and the Personal Status Law of the Coptic Orthodox Church of 1938 whereas the family affairs of Muslims are governed by the Jordanian Personal Status Law of 1976 (in force in the West Bank) and the Egyptian Law of Family Rights of 1954 (in force in the Gaza Strip). Due to space constraints, this study restricts its analysis to the Jordanian Personal Status Law and the Egyptian Law of Family Rights. Although these two laws are inspired by Islamic jurisprudential principles associated with the Hanafi school of jurisprudence, it is important to note that they are formal laws, enacted by state authorities and adjudicated in state-administered *sharia* courts. These courts are presided over by the Chief Justice of the Higher *Sharia* Court (hereinafter 'Chief Justice').

Discrimination against women in personal status legislation is proscribed by international law.<sup>70</sup> As explained below, Palestinian personal status laws depart from international human rights norms in several areas. Unfortunately, however, the reform trajectory since the establishment of the PNA indicates that bringing these laws into line with international standards will not be an easy task. Although personal status law reform has been on the legislative agenda for many years, and consensus over the need for reform has been reached, fundamental differences over the shape that it should take have hindered progress.

The history of law reform on gender-related issues indicates that there are three main positions. The first holds that personal status law reform must take place within the framework of the Islamic *sharia* and that women's problems are caused, in the main, by inadequate observance of the *sharia*

66 The Formation of the Regular Courts Law No. 5 of 2002, Article 37.

67 Naser-Hussein, K., Palestinian Women's Centre for Research and Documentation, *Review of Gender in Palestinian Legislation on Women's Political Participation* [in Arabic], 2009.

68 The database search was carried-out on the Al Muqtafi website, hosted by Birzeit University's Institute of Law with the support of UNDP. Please see: <http://muqtafi.birzeit.edu/> (accessed 15 June 2011).

69 A separate body of law regulates inheritance and endowments. At current, women's and human rights organisations in the oPt concentrate their advocacy efforts in this sphere on right of women to claim their inheritance as in many cases, prevailing norms and traditions prohibit women from claiming these rights. Therefore, efforts to realise equality in inheritance rights are limited at this stage.

70 CEDAW (1979) Article 16.

combined with a lack of knowledge about *sharia* rights among women. This stance, which is far from unpopular nation-wide, is common among affiliates of the Hamas movement, the cadres of religious institutions and some parliamentarians. The second position supports the application of the *sharia* while endorsing its further development through *ijtihad* (interpretation). Various members of religious institutions and numerous women's and human rights organisations support this position. Adherents of the third position call for the full implementation of the principle of gender equality as envisioned in the Palestinian Basic Law and international human rights law. Proponents of this position call for the enactment of a civil family law to replace the current faith-based laws. Many women's groups and human rights organizations back this position.<sup>71</sup>

## “Laws in the Gaza Strip allow for the marriage of a female at 14 years and seven months if judicial consent has been obtained”

In the West Bank<sup>72</sup>, there are three contemporary personal status law reform proposals:

- The Office of the Chief Justice drafted a proposed new personal status law for consultation several years ago;
- The Family Law Coalition, which is composed of human rights organisations, women's groups working on personal status issues and representatives from the Ministry of Women's Affairs and the Office of the Chief Justice, has proposed a new personal status which remains under development; and
- In 2008, a coalition of civil society organizations and the Ministry of Women's Affairs issued a new document which lays out the standards for reform; the document is entitled the 'Women's Rights Charter'.

### 4.3.1. Marriage

CEDAW expressly confers upon women equal rights to enter into or leave a marriage, and equal rights and responsibilities during a marriage and at its dissolution.<sup>73</sup> CEDAW also disallows the marriage of a child,<sup>74</sup> defined by the Child Rights Convention as a person under the age of 18<sup>75</sup>, and insists on the compulsory registration of marriages in an official registry.<sup>76</sup> Additionally, polygamy – the maintaining of matrimonial relations with more than one spouse concurrently – while not explicitly proscribed by CEDAW, is widely considered to constitute a departure from the principle of equality.<sup>77</sup>

Palestinian personal status laws depart from these norms in several respects. First, Palestinian personal status laws set the minimum age of marriage at less than 18: the laws in force in the West Bank allow for the marriage of a female at the age of 14 years and six months and the laws in force in the Gaza Strip allow for the marriage of a female at 14 years and seven months if judicial consent has been obtained.<sup>78</sup> As well as violating CEDAW, these two laws contradict new Palestinian legislation such as the Palestinian Child Law No. 7 of 2004 which specifies a minimum age of 18.<sup>79</sup> Second, polygamy is permissible under the personal status laws: in both the West Bank and the Gaza Strip

71 Please see: Jad, I., et al, *Gender and Citizenship under the Palestinian Authority*, Gender and Citizenship in the Middle East, 2003.

72 As noted above, this review did not examine policy and legislative developments carried-out by the Hamas-led government in the Gaza Strip. All policy discussions pertaining to post-June 2007 developments refer exclusively to policy developments associated with the Fatah-led government in the West Bank.

73 CEDAW (1979), Article 16.

74 *Idem*.

75 Child Rights Convention (1989) Article 1.

76 CEDAW (1979), Article 16.

77 Recommendation No. 21 on Equality in Marriage and Family Relations, Committee on the Elimination of Discrimination against Women, Session 13, 1992.

78 The Law of Family Rights of 1954, applicable in the Gaza Strip, requires a female to be 17 years of age and a male to be 18 years of age in order to marry. However, according to a directive issued by Chief *Sharia* Judge Mohammed Abu Sardana in 1996, a female can marry at the age of 14 years and seven months and a male at the age of 15 years and seven months. The Jordanian Personal Status Law of 1976 stipulates that a female must be 15 years of age and a male must be 16 years of age in order to marry. However, Article 185 of the same law defines 'year' as the lunar Hijri year, meaning that in Gregorian years the minimum age of marriage for a female is 14 years and six months.

79 Article 2.

men are permitted to marry up to four women concurrently, in the event of which they are required to ensure justice and equality between spouses. Third, the requirement in the personal status laws that a woman but not a man obtain the consent of a *wali* (guardian), a male relative on the father's side, in order to marry violates the principle of non-discrimination as well as the right of a woman to enter into marriage (this issue is addressed below).<sup>80</sup>

National consensus has been reached on number of issues including on the need to raise the age of marriage; a vast majority of stakeholders agree that it should be increased to 18. However, agreement has not yet been reached as to whether and under which circumstances an exception to the minimum age rule can be made.<sup>81</sup>

On the issue of polygamy, the drafters of the Women's Rights Charter are calling for the practice to be restricted to exceptional circumstances. Both the drafters of the Charter and the Family Law Coalition are also calling for prior judicial consent to a polygamous marriage to be made compulsory, and for current and potential additional wives to have the right to be informed about the existence of the other in advance of a polygamous marriage.<sup>82</sup> In this respect, the Family Law Coalition goes one step further by calling for the consent of existing wives to a polygamous marriage to be made mandatory. The coalition also supports the inclusion of polygamous marriage as automatic grounds for divorce with all financial rights reserved.<sup>83</sup> At present, the taking of an additional wife is only grounds for divorce if an additional clause to that effect has been inserted into the marriage contract.<sup>84</sup>

The reform proposals of the Office of the Chief Justice are more limited in scope; the draft law proposed by his office merely confers upon existing and potential additional wives the right to be informed about the existence of the other in advance of the polygamous marriage. The Chief Justice issued an interim decision to this effect on 25 March 2011.<sup>85</sup>

### 4.3.2. Divorce

As noted above, CEDAW guarantees women and men equal rights to enter into marriage and to leave it. In contravention of these standards, Palestinian personal status laws discriminate on the basis of gender with respect to the ease with which divorce can be obtained. While a man has a statutory right to unilaterally divorce his wife, a woman can only secure this right by inserting a clause to that effect into the marriage contract.<sup>86</sup> Similarly, while a man has an absolute right to divorce, a woman can only seek an *Ibraa* (a judicial separation based on mutual agreement) or judicial separation on the basis of abandonment, discord or conflict between the spouses. Moreover, in order to secure an *Ibraa*, a woman has to absolve her husband of his contractual financial obligations.

In relation to the issues of divorce and judicial separation, women's groups and human rights advocates focus in the main on the need to revoke discriminatory provisions and to deter the arbitrary divorce of women by their husbands.<sup>87</sup> In relation to the latter, a number of organisations are calling for fair compensation to be granted to the victims of arbitrary divorce; in relation to the former, women's rights advocates are seeking to expand the grounds upon which a woman can sue for divorce; for instance, by including polygamous marriage.<sup>88</sup>

Women's rights advocates are also calling for divorce to have legal effect only when it is carried-out under judicial supervision.<sup>89</sup> In this respect, the Chief Justice has issued a decision to fine individuals who perform a divorce outside of court.<sup>90</sup> Such divorces will still have legal effect, however.

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80 See Articles 11 and 12 of the Egyptian Law of Family Rights (1954).

81 Interviews with human rights organisations and women's organisations, March 2011, Ramallah and Gaza City.

82 *Idem*.

83 Interviews with human rights organisations and women's organisations, March 2011, Ramallah and Gaza City. These included organisations that are involved with the Women's Rights Charter and the Family Law Coalition.

84 Article 19 of the law enforced in the West Bank and Article 42 of the law enforced in Gaza.

85 Interview with Sheikh Yousuf Id'eis, Chief Justice of the *Sharia* Court, 29 March 2011, Ramallah.

86 Article 19 of the law enforced in the West Bank and Article 42 of the law enforced in Gaza.

87 Interviews with human rights organisations and women's organisations, March 2011, Ramallah and Gaza City.

88 *Idem*.

89 *Idem*.

90 Interview with Sheikh Yousuf Id'eis, Chief Justice of the *Sharia* Court, 29 March 2011, Ramallah.

### 4.3.3. Child Custody

CEDAW requires states parties to ensure, on a basis of equality between men and women, the 'same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children,' emphasizing that in all cases the interest of the child shall be paramount.<sup>91</sup> The Palestinian Basic Law and the Palestinian Child Law similarly seek to ensure the best interests of the child.<sup>92</sup> The personal status laws in force in the oPt lack this focus.

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“ The Gaza Strip allows unmarried widows custody of boys until the age of 15 and girls until adulthood ”

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Instead, custody and guardianship matters are conceived of in terms of the rights of adults. In the West Bank, the mother is awarded the custody of male and female children until they reach the age of puberty after which custody is granted to the father.<sup>93</sup> In the Gaza Strip, the mother is awarded custody of girls under the age of 11, after which the father is granted custody. With respect to boys, the mother is granted custody until they reach the age of seven; a judge is required to decide upon custody arrangements for boys between the ages of seven and nine, in their best interests; and the custody of boys over the age of nine is awarded to the father.<sup>94</sup> However, a law issued by Hamas PLC members in 2009 in the Gaza Strip allows unmarried widows custody of boys until the age of 15 and girls until adulthood.<sup>95</sup> In both the West Bank and the Gaza Strip, a divorced mother who remarries automatically loses custody of her children, in clear violation of the right to non-discrimination.<sup>96</sup>

Women's groups are calling for sizeable reform in this area. The Family Law Coalition's proposed draft sees custody awarded to the mother in the first instance and then to the father, unless this is not in the best interest of the child.<sup>97</sup> The reform proposals of the Office of the Chief Justice are more modest; they merely involve granting the mother the right to make a request for custody in court, provided that this is in the best interest of the child. Neither the Jordanian Personal Status Law nor the Egyptian Law of Family rights makes provision for parental access and visitation rights subsequent to separation. In practice, a judge usually issues a decision on this matter.<sup>98</sup>

### 4.3.4. Marital Property

The concept of shared marital property does not exist in Palestinian law. Husbands and wives are seen as maintaining distinct and separate financial identities throughout the marriage, with the husband bearing responsibility for meeting the basic needs of the wife. Thus, upon the end of a marriage following death or divorce, a wife's contribution to the accumulation of marital assets through work carried-out within or outside of the home is not recognised unless this documented. The Family Law Coalition is seeking a change to the law which would grant women the right to assets to which they had made a contribution during the course of a marriage, including through work carried-out inside the home.<sup>99</sup>

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91 CEDAW (1979) Article 16.

92 Article 4 of the Child Law.

93 Article 162 of the Law of Personal Status.

94 Egyptian Law of Family Rights (1954), Article 118.

95 The law of 2009, Article 1.

96 Article 156.

97 Please see the Personal Status Law drafted by the Family Law Coalition, Article 79.

98 PCHR, *The Legal Status of Women in the Personal Status Law System*, [Arabic], 2003.

99 Interviews with human rights organisations and women's organisations, March 2011, Ramallah and Gaza City.

### 4.3.5. Legal Status

CEDAW deals with the legal status of women in some detail. It draws attention to the fact that women's legal status is often linked to marriage, making them dependent on their husband's nationality rather than individuals in their own right.<sup>100</sup> In addition, CEDAW asserts the full equality of women in all civil and business matters, demanding that instruments directed at restricting women's legal capacity 'shall be deemed null and void,'<sup>101</sup> and asserts the equal rights of women and men with regard to choice of spouse, parenthood, personal rights and command over property.<sup>102</sup>

In some other areas, such as with respect to legislation governing political participation (please see below), Palestinian law conforms to these standards; however, in others – including in relation to personal status law – clear discrimination remains in place. For example, in order to marry, women but not men require the consent of a *wali* (guardian).<sup>103</sup> The inferior legal status of women is also evident with respect to the treatment of witness testimony within the *sharia* court system where a woman's testimony is seen as holding less weight than that of a man's.<sup>104</sup>

The draft personal status laws prepared by the Office of the Chief Justice and the Family Law Coalition respectively reflect the national disagreement surrounding women's legal status. The former retains the requirement that a *wali* consent to the marriage of a woman while the latter recognises the right of all adults – male or female – to marry freely.<sup>105</sup> According to the Chief Justice, 'guardianship' is required by the *sharia*.<sup>106</sup> However, many women's organisations believe that this is a hard-line position and that Hanafi jurisprudence does not require adult women to obtain consent to marry.<sup>107</sup>

### 4.3.6. Personal Status Law in Practice

The above review highlights some of the areas in which Palestinian personal status laws regulating marriage, divorce, child custody and the division of marital property contravene international human rights law. As national consensus has yet to be reached on the need to bring the contravening provisions into line with international standards, this goal may not be realizable in the short-term.

A number of socio-legal scholars contend that *sharia* courts in the oPt are socially and legally dynamic in the sense that judges interpret the law and seek to reach their judgments with a close eye on the social, economic and political contexts within which they are operating.<sup>108</sup> Therefore, despite the presence of discriminatory provisions, judges and women litigants are – more often than not – able to achieve positive outcomes by utilizing legal loopholes and textual ambiguities.<sup>109</sup> This enables women in many instances to achieve justice.

Judges, for example, have found ways to interpret the law in a manner which enables them to avoid the implementation of the 'house of obedience' rules which require a wife to obey her husband.<sup>110</sup> Equally, women have been able to use the rules on alimony to obtain other objectives, such as a fairer divorce settlement or better living conditions; as a husband's failure to pay due maintenance to his wife is a ground for divorce, women can use an infringement to bring a range of other demands into the public sphere.<sup>111</sup> An enhanced understanding of these processes and the various ways in which the *sharia* courts are able to respond to women's needs may enable women to better defend their rights, even while law reform is ongoing.

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100 CEDAW (1979) Articles 1 and 2.

101 *Idem.* Article 15.

102 *Idem.* Article 16.

103 The Law of Family Rights (1954), Articles 11 and 12. Under these provisions, women can seek permission from the court to marry if the *wali* has exercised his guardianship rights arbitrarily.

104 Al-Rayyis, N., *The Compatibility of Women's and Female' Children's Rights Legislation Enforced in the oPt with International Covenants*, Women's Studies Centre, [Arabic], 2009.

105 Please see the draft Personal Status Law under preparation by the Family Law Coalition, Article 13.

106 Interview with Sheikh Yousuf Iðeis, Chief Justice of *Sharia* Court, 29 March 2011, Ramallah.

107 Interviews with human rights organisations and women's organisations, March 2011, Ramallah and Gaza City.

108 Welshman, L., *Islamic Family Law: Text and Practice in the oPt*, Women's Centre for Legal Aid and Counselling (WCLAC), [Arabic], 2003.

109 Shahada, N., *Women, the Judiciary and the Law: An Anthropological Study of the Shari'a Courts in Gaza*, [Arabic], The the oPt Institute for the Study of Democracy (MUWATIN), 2009.

110 *Idem.*

111 *Idem.*

The trajectory of law reform on particular issues such as early marriage in other contexts illustrates the limitations of legislative reform. In India, for example, child marriage was banned in 1929; yet it is still practiced today.<sup>112</sup> This particular issue highlights the importance of ensuring that legislative reform is supported by socio-economic interventions. In the oPt, where early marriage has been linked to a number of interrelated factors, including men's lack of education and insufficient job opportunities for young women,<sup>113</sup> legislative reform alone is unlikely to halt the practice. Legislators and policy-makers need to integrate socio-economic programming, such as job creation schemes for young women with law reform. They should also explore how breaches of new legislation can be deterred, for example, through criminalisation.

## 4.4. Criminal Law

While acknowledging that the relationship between criminal law and women's rights is broad and multifaceted, this review restricts its analysis to criminal law as it relates to the eradication of gender-based violence. In the oPt, the most important pieces of criminal legislation are: the Jordanian Penal Code No. 16 of 1960 (in force in the West Bank); the Mandate Penal Code No. 74 of 1936 (in force in the Gaza Strip); and the Criminal Procedure Law No. 3 of 2001 (applicable throughout the country). The need to enact a unified Palestinian penal code to replace the Jordanian and Egyptian laws has been evident for many years. However, as with personal status law reform, attempts to enact a new penal code have stalled several times.

Several drafts debated in the PLC in 2003 were criticised by women's groups and human rights organisations for failing to adequately protect women from violence, failing to conform to international standards as well retaining discriminatory provisions.<sup>114</sup> The most recent draft – prepared in 2010-2011 under the auspices of a national commission composed of representatives of, *inter alia*, the Ministry of Justice, the Ministry of Women's Affairs, the Attorney-General's Office, and women's and human rights organisations – while not flawless, has received a warm reception from the human rights community. Women's rights advocates have expended enormous energy campaigning for criminal law reform since the establishment of the PNA and the protections present in the latest draft code are testament to their efforts. Indeed, many see the new draft as a critical step forward for women's rights in the oPt.<sup>115</sup>

### 4.4.1. Violence Against Women

The Declaration on the Elimination of Violence Against Women recognizes that violence against women is a manifestation of historically unequal power relations between women and men which have 'led to the prevention of the full advancement of women.'<sup>116</sup>

The Declaration defines violence against women as:

'Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.'<sup>117</sup>

It further specifies that violence against women includes, *inter alia*, physical, sexual and psychological violence:

- occurring in the family, including marital rape and the sexual abuse of female children;
- occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work; and
- perpetrated or condoned by the State, wherever it occurs.<sup>118</sup>

112 Article by UNICEF on the trajectory of law reform on early marriage in India at: [http://www.unicef.org/india/child\\_protection\\_1536.htm](http://www.unicef.org/india/child_protection_1536.htm) (accessed 16 June 2011).

113 Shahada, N., *Le paradoxe du mariage précoce à Gaza*, [French] in B. Botiveau and É. Conte, eds., the oPt, *Études rurales* 173-174, Paris, Éditions de l'École des Hautes Études en Sciences Sociales, pp. 153-182, 2005.

114 WCLAC, *The Status of Palestinian Women in the Draft Penal Code*, [Arabic], 2005.

115 Interviews with human rights organisations and women's organisations, March 2011, Ramallah and Gaza City.

116 Declaration on the Elimination of Violence Against Women (1993) Preamble.

117 *Idem*. Article 1.

118 *Idem*. Article 2.

The Declaration calls on states to implement a host of measures to address violence against women, from educational campaigns, to data collection, to the criminalisation of acts of violence. *Inter alia*, these measures include:

- Investigating and punishing acts of violence against women, whether perpetrated by the state or private persons;
- Developing penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; and
- Providing women who are subjected to violence with access to justice and to just and effective remedies for the harm they have suffered.<sup>119</sup>

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“Violence against women is a manifestation of historically unequal power relations between women and men which have ‘led to the prevention of the full advancement of women.’”

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As noted by the Declaration, the eradication of violence against women requires cross-sectoral action spanning, *inter alia*, the educational, health, social protection and justice fields. Given space constraints, however, this review restricts its analysis to the requirements made by the Declaration and related standards of criminal legislation.

Women’s groups and human rights advocates in the oPt have long called for fundamental changes to be made to criminal law in order that women and girls are adequately protected from all forms of violence. The following specific demands, which conform to international standards, have been put forward:<sup>120</sup>

- To annul provisions which allow for individuals who claim to have perpetrated a murder ‘in the name of family honour’ to be exempted from judicial penalty or to receive a reduced sentence and to ensure that the perpetrators of murder receive appropriate judicial sanction;
- To increase the sentences of individuals convicted of rape and sexual assault in order to strengthen deterrence;
- To criminalise marital rape;
- To put in place specialized procedures to deal with cases of suspected sexual abuse;<sup>121</sup>
- To create a new offense of ‘violence in a domestic context’ and/or to enact a specific domestic violence law which takes into account the unique nature of violence perpetrated within the family; at current, domestic violence can only be prosecuted under the general rules on assault;<sup>122</sup>
- To create a new offense of sexual harassment;
- To revoke the requirement that a minor under the age of 15 obtain the consent of a guardian in order to file a complaint; and
- To increase the penalties for forced abortions.<sup>123</sup>

The draft penal code, prepared by the national commission in 2010-2011, incorporates many of these demands. It criminalizes sexual harassment<sup>124</sup> and domestic violence;<sup>125</sup> creates new rules to protect women from violence, including rape and sexual assault<sup>126</sup>; creates special procedures to address crimes perpetrated against children, including sexual abuse<sup>127</sup>; institutes penalties for marrying an individual under the age of 18 unless the consent of a judge and the minor’s guardian has been

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119 *Idem*. Article 4.

120 Interviews with human rights organisations and women’s organisations, March 2011, Ramallah and Gaza City.

121 According to the following report, justice sector officials themselves have found existing procedures inadequate and incapable of addressing the crime of sexual abuse: Naseffr Hussein, K., *Women Police and Their Role in Protecting Women from Violence*, [Arabic], Women’s Centre for Research and Documentation, 2009.

122 WCLAC has developed a draft law to this effect.

123 The Women’s Rights Charter also calls for greater legal flexibility with regard to women who seek to voluntarily terminate a pregnancy.

124 Article 465.

125 Article 347.

126 Article 461.

127 Articles 462-436.

obtained;<sup>128</sup> and makes no provision for exempting persons convicted of murder and who claim to have acted in order to preserve 'family honour', from judicial punishment. It also institutes a minimum five-year sentence for murder.<sup>129</sup>

Regrettably, however, the draft penal code does allow for a murderer to benefit from a reduced penalty if the murder was carried out subsequent to discovering the victim committing adultery.<sup>130</sup> It even expands the list of individuals who can benefit from 'mitigating circumstances' in this context to include fathers, brothers and sons.<sup>131</sup>

“Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”

*Declaration on the Elimination of Violence Against Women*

Moreover, the draft penal code appears to constitute a step backwards with respect to individual freedoms. It criminalises, for the first time since the Ottoman era, sexual relations between consenting non-married adults.<sup>132</sup> As well as restricting individual liberties, this provision may facilitate or even encourage arbitrary police interference in private life.

#### 4.4.2. Criminal Law in Practice

A preliminary analysis of four murder-case verdicts carried out by the author, in which the crime was perpetrated against a woman by a member of her family, highlights the importance of documenting and analysing legal practice in order to inform the legislative reform process. The analysis found that the perpetrators were able to exploit seemingly neutral legal provisions in order to benefit from a reduced sentence. These provisions related to, *inter alia*, the 'fit of anger' defence and the 'waiving of personal claims' provision. If the courts are not prevented from allowing the murderers of women to escape full judicial sanction in this way, law reform initiatives detailed are likely to have little impact.

This issue highlights the fact that the criminal justice system is not a neutral provider of criminal justice services; judges understand and interpret legal texts in the context of prevailing social and cultural values under which a seemingly 'neutral' law can take on new meaning.<sup>133</sup> Studies pertaining to women's credibility in the criminal justice system are illustrative in this regard. A recent Australian study, for example, found that prosecutors drew on gender stereotypes about 'appropriate victim behaviour' in sexual assault cases, viewing women who appeared 'nonaggressive,' 'not too smart', and 'confident' as more credible than women who did not.<sup>134</sup>

Furthermore, in light of evidence which shows that violent assaults are rarely reported to the authorities, it may also be helpful to examine how women in the oPt perceive the criminal justice system and how they calculate the advantages and disadvantages of filing a legal complaint. This should facilitate reforms which will make the criminal justice system more responsive to women's real needs.

128 Article 420.

129 Article 435.

130 Article 437-441.

131 Article 435.

132 Article 462.

133 Hilal., et al, *The System of Criminal Justice: A Legal and Social Study*, [Arabic], Birzeit University: Institute of Law, 2005

134 Lievore, D., *Victim credibility in adult sexual assault cases. Trends and issues in crime and criminal justice*, No 288. Canberra: Australian Institute of Criminology, 2004.

## 4.5. Labour Law

CEDAW requires states parties to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure – on the basis of equality between men and women – the right to work; the right to employment opportunities; the right to a free choice of profession and employment; the right to equal remuneration, including benefits; and the right to equal treatment in respect of work of equal value. CEDAW also affirms the right to social security, particularly in cases of retirement, unemployment, sickness, old age and other incapacity to work.<sup>135</sup>

CEDAW lays particular emphasis on the prevention of discrimination against women on the grounds of marriage or maternity with States parties required to, *inter alia*, prohibit dismissal on the grounds of pregnancy, maternity leave or marital status; introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; and encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.<sup>136</sup>

Labour rights in the oPt are set out in three key pieces of legislation, all of which were enacted by the Palestinian Legislative Council in the years 1998-2005. The Civil Service Law No. 4 of 1998 governs the rights and duties of public sector employees. The Labour Law No. 7 of 2000 (hereafter 'The Labour Law') regulates the rights and duties of private sector employees, making specific provision for women and minors. It also contains health and safety provisions, provides for vocational training and regulates collective labour relations. Unfortunately, the Social Insurance Law No. 3, enacted in 2003, never came into effect, in part because of the cost of implementation and in part because of ambiguity surrounding the modalities of implementation.<sup>137</sup> This provides a clear example of the consequences of inadequate legislative planning and policy formulation. The law was repealed in 2007 and the provisions of the Public Pension Law No. 7 of 2005, the third key piece of labour legislation in the oPt, were extended to private sector workers.<sup>138</sup>

Broadly speaking, the Labour Law conforms to international human rights standards. It establishes a set of basic rights for women including, *inter alia*, non-discrimination in working conditions<sup>139</sup>; 10 weeks paid maternity leave<sup>140</sup>; a right to resume employment after giving birth<sup>141</sup>; and a right to breastfeed at work.<sup>142</sup> Protections against long working hours during pregnancy and for six months after giving birth are also in place.<sup>143</sup>

While Palestinian labour legislation is in many respects advanced, there are a number of noteworthy protection gaps. The exclusion of domestic workers and individuals who work for relatives – a large proportion of whom are women – from the protections of the Labour Law seriously undermines its ability to advance gender justice for women in the workplace.<sup>144</sup> These omissions also reinforce harmful stereotypes which perpetuate the myth that women's work within the home is of lesser value than work outside the home.

Arguably, the Labour Law's effectiveness in protecting women's rights in the workforce is also undermined by its failure to specify a minimum wage, as women constitute a large proportion of low-paid workers. Article 87 requires the Cabinet to establish a committee to review salary levels nation-wide and to propose a minimum wage for consideration by the Cabinet. The committee has been established, but progress has been stalled by a lack of national consensus around the feasibility

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135 CEDAW, Articles 11 and 13.

136 *Idem*. Articles 4, 5, and 11.

137 Naser-Hussein K, Palestinian Institute for the Study of Democracy (Muwatin), *Equality and Gender in Labour Legislation* [in Arabic], 2009.

138 *Idem*.

139 Article 100.

140 Article 103.

141 Article 103.

142 Article 104.

143 Article 101.

144 Article 3.

of the establishment of a minimum wage. According to a number of recent studies and the Women's Rights Charter, the setting of a minimum wage is key to the elimination of discrimination in the work place.<sup>145</sup>

#### 4.5.1. Labour Legislation in Practice

While the Labour Law conforms to international standards in many respects, it has not led to equal pay for women, nor has it resulted in an increase in women's participation in the labour market. The Survey of the Workforce (2010) carried-out by the Palestinian Central Bureau of Statistics puts the rate of women's labour force participation at just 14.7 percent<sup>146</sup>; other studies have found that women's employment is concentrated in large organisations and that over 80 percent of small and medium enterprises employ no women.<sup>147</sup> The head of the Ministry of Labour's Legal Department, in an interview with the author, expressed the view that overall, labour legislation in the oPt has been unable to promote employment, increase women's labour-force participation, protect employees or meet the needs of employers.<sup>148</sup>

The limited impact of the Palestinian Labour Law, despite its conformity to many human rights norms, has been attributed to several factors. According to a recent study conducted by Birzeit University's Institute of Law, the Labour Law was not built upon clear legislative policy that factored into its analysis a thorough understanding of the context within which the law would be applied.<sup>149</sup> Rigorous legislative policy should have been based upon a comprehensive examination of the various sets of relationships that the law would be required to organise on the ground, the impact of these relationships on the enforcement of the law, and the likely ways in which the new law would encourage or impede social and institutional change.<sup>150</sup>

The limited impact of the Labour Law has also been ascribed to the absence of an effective inspection and enforcement regime.<sup>151</sup> The Labour Law stipulates that the Ministry of Labour shall monitor compliance with labour legislation. However, the Ministry lacks the human and material resources required to carry-out this function.<sup>152</sup> In addition, a lack of access to fair and prompt adjudication mechanisms with which to resolve labour disputes has been identified as problematic. While the High Judicial Council has assigned particular courts to hear labour disputes, these are often backlogged and the enforcement of rulings is weak.<sup>153</sup> These barriers to the effective implementation of the Labour Law should have been identified and taken into account at the legislative drafting stage and not after the law's enactment.

The author's review of these studies on labour legislation in the oPt highlighted a number of other factors which indicate that gender equality in a labour context requires far more than the establishment of formal equal rules. For example, there is a clear correlation between women's labour force participation and the development of social citizenship, a relationship which requires, *inter alia*, the establishment of a system of social insurance which will distribute the burden of ensuring equal labour rights for women across society. The prospects for developing such a system of social citizenship in the oPt are, however, seriously undermined by the Israeli military occupation as discussed in the introduction to this section.

145 Al-Mu'awqat, F., and Dir'awi, D., *A Review of the Palestinian Labour Law in Light of Gender and International Labour Standards*, International Labour Organisation/Millennium Development Goal Fund/United Nations Development Programme, 2010.

146 Please see:  
[www.pcbs.gov.ps/DesktopModules/Articles/ArticlesView.aspx?tabID=0&lang=en&ItemID=1706&mid=12235](http://www.pcbs.gov.ps/DesktopModules/Articles/ArticlesView.aspx?tabID=0&lang=en&ItemID=1706&mid=12235)  
(accessed 1 March 2011).

147 Birzeit University: Institute of Law, *Small and Medium Enterprises: Between Text and Application – Selected Topics* [in Arabic], 2010.

148 Interview with Ms Buthaina Salem, Head of the Legal Department in the Ministry of Labour, 31 March 2011 (Ramallah).

149 Birzeit University: Institute of Law, *Small and Medium Enterprises: Between Text and Application – Selected Topics* [in Arabic], 2010.

150 Naser-Hussein K, Palestinian Institute for the Study of Democracy (Muwatin), *Equality and Gender in Labour Legislation* [in Arabic], 2009.

151 Abu Hantash, I., and Salah, O., the oPt Economic Policy Research Institute (MAS), *Assessment of the Enforcement of the Palestinian Labour Law*, undated.

152 *Idem*.

153 Naser-Hussein K, Palestinian Institute for the Study of Democracy (Muwatin), *Equality and Gender in Labour Legislation* [in Arabic], 2009.

## 4.6. Political Participation

Throughout the world, the power relations that shape social, political, economic and cultural practices prevent women from participating fully in all areas of their lives, whether in the home or in the public sphere. The opportunity to participate equally with men at all levels and in all aspects of public and political life is both a right in itself and a vital means through which to realize other rights. This is particularly true in situations of protracted armed conflict.

CEDAW calls on States parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and ensure to women, on equal terms with men, the right:

- To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; and
- To participate in non-governmental organizations and associations concerned with the public and political life of the country.<sup>154</sup>

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“ Over 80 percent of small and medium enterprises employ no women ”

*Birzeit University*

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CEDAW also requires States parties to take all appropriate measures to ensure to women, on equal terms with men, the opportunity to represent their governments at the international level and to participate in the work of international organizations.<sup>155</sup>

Broadly speaking, Palestinian law conforms to international standards pertaining to women's participation in public affairs. The political rights of women to vote and stand for election are guaranteed by the General Elections Law No. 9 of 2005 which regulates parliamentary and presidential elections and the Local Councils Election Law No. 10 of 2005.

The General Elections Law of 2005 superseded an earlier elections law enacted in 1995, prior to the PNA's first general elections. It was passed subsequent to in depth debate about the most appropriate electoral system for the Palestinian context. Part of this discussion centred on women's political participation. The new law aimed to promote the role of political parties as opposed to traditional structures in Palestinian political life and intended to expand women's political participation. It put in place a mixed electoral system which combines party lists with constituency voting. It also created a minimum quota of 12 percent for women's participation: each political party must include at least one woman in the first three names in the list, the following four names, and each set of five names that follow.<sup>156</sup> Women's groups have criticized the quota for being too low; many are calling for a minimum quota of 20 percent.<sup>157</sup>

The Local Councils Election Law adopted a list system and it also put in place a minimum quota for women. It provided that the electoral list of each political party must include at least one woman in the first five names in the list and in the next five names that follow. The law also requires small councils to have at least two women representatives and larger councils to have at least three.

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154 CEDAW (1979) Article 7.

155 *Idem.* Article 8.

156 Naser-Hussein, K., Palestinian Women's Centre for Research and Documentation, *Review of Gender in Palestinian Legislation on Women's Political Participation* [Arabic], 2010.

157 Interviews with human rights organisations and women's organisations, March 2011, Ramallah and Gaza City, the oPt.

### 4.6.1. Participation in Practice

The level of women's participation in political life depends on a multitude of factors. The low percentage of women appointed to senior political positions is sometimes attributed to a lack of political will and discrimination at the level of practice, as these appointments are usually made by the President of the PNA upon the recommendation of the Cabinet<sup>158</sup>; according to the Palestinian Central Bureau of Statistics, women occupy just three percent of the most senior positions.<sup>159</sup> Low participation is also attributed to an absence of opportunities for women to obtain the qualifications and experience they need to compete at the highest levels. Other commentators point to the restrictions imposed on women as a result of the scarcity of childcare options.<sup>160</sup> From a conflict analysis perspective, the exclusion of women from political leadership is also a typical product of a male-dominated militarised environment, in which women's contributions to determining the nature of peace and security are routinely undermined and under-valued. This a problem UNSCR 1325 specifically tries to address.

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“14.7 percent is the rate of women's labour force participation”

*Palestinian Central Bureau of Statistics 2010*

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These various hypotheses need to be studied in order to enable the development of evidence-based public policy aimed at strengthening women's participation in all aspects of public life. The establishment of formal equal rules alone is wholly inadequate. This is particularly critical given that many important laws required to regulate political life in the oPt, such as a political parties' law and a trade unions law, have yet to be promulgated. This legislative vacuum represents an important forum within which the issue of women's participation in public life in the oPt can be debated at a national level.

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158 Naser-Hussein, K., Palestinian Women's Centre for Research and Documentation, *Review of Gender in Palestinian Legislation on Women's Political Participation* [Arabic], 2010.

159 *Idem.*

160 *Idem.*

## 5 Concluding Remarks

This legislative review is intended, first and foremost, to open up fresh avenues for debate and discussion on how law reform in the oPt can most effectively advance women's rights. It urges lawmakers to use socio-legal research to inform legislative planning and policy-making processes while simultaneously strengthening general capacities in these spheres.

In a number of important legal areas, Palestinian legislation needs to be harmonized and brought in line with international standards. International human rights obligations should also be incorporated into the domestic legal framework. However, as the review makes clear, legal reform can be ineffective and even harmful if done badly, as well as empowering and transformative if done well; law reform that is carried out in isolation from its social, political or cultural context will rarely achieve its objectives.

Moreover, the promulgation of human rights-compliant legislation is only part of the story. Law reform efforts should be accompanied and reinforced by socio-economic programming. Where law reform is stalled, legal practice should be documented and analyzed, and the attempts of lawyers and judges to realize justice within the existing framework should be explored and supported.

## Annex I: List of Interviews

1. Mr. Khalil Karaja Al-Rifai, Deputy Minister of Justice, Ramallah, Ministry of Justice, 21 March 2011.
2. Mr. Ali Abu Diak, Head of the *Diwan Al Fatwa wal Tashrii*, Ramallah, Ministry of Justice, 21 March 2011.
3. Ms. Iman Abed Al-Hamid, Researcher, *Diwan Al Fatwa wal Tashrii*, Ramallah, Ministry of Justice, 21 March 2011.
4. Ms. Kholoud Abed al Khaleq, Head of the Legal Department, Ramallah, Ministry of Social Affairs, 21 March 2011.
5. Ms. Zeinab Al-Ghuniaini, Director of the Centre for Women's Legal Research & Consulting, Gaza, 24 March 2011.
6. Mr. Sameer Husnieh, Researcher in the Women's Advocacy Unit, the oPt Centre for Human Rights, Gaza, 27 March 2011.
7. Mr. Karem Rashwan, Coordinator, The Democracy and Workers' Rights Centre, Gaza, 27 March 2011.
8. Ms. Hanan Siam, Director of the Society for Working Woman for Development, Gaza, 27 March 2011.
9. Ms. Nima Assaf, Researcher, Society for Working Woman for Development, Ramallah, 27 March 2011.
10. Mr. Sha'wan Jabareen, Director of Al Haq, Ramallah, 28 March 2011.
11. Mr. Yousef Dua'is, Chief Justice, Chief Justice's Office - *Sharia* Court, Ramallah, 29 March 2011.
12. Ms. Amal Siam, Director of the Women's Affairs Centre, Gaza, 29 March 2011.
13. Ms. Rabiha Biab, Minister of Women's Affairs, Ministry of Women's Affairs, Ramallah, 30 March 2011.
14. Ms. Mervat Nahal, Head of the Legal Aid Unit, Al-Mezan Center for Human Rights, Gaza, 30 March 2011.
15. Mr. Nasser Al Rayyes, Advocate, Al-Haq, Ramallah, 30 March 2011.
16. Ms. Zahira Kamal, Director of the Palestinian Women's Research and Documentation Centre/ UNESCO, Ramallah, 30 March 2011.
17. Ms. Maha Abu Daieh, Director of the Women's Centre for Legal Aid and Counselling, Ramallah, 30 March 2011.
18. Mr. Amjad Zaiadat, Head of the Legal Department, Ministry of Women's Affairs, Ramallah, 31 March 2011.
19. Ms. Buthina Salem, Head of the Legal Department, Ministry of Labour, Ramallah, 31 March 2011.