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# **Palestinian Women: Their Struggle on Two Fronts**

LLM Paper

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## Abstract

The aim of this thesis is to raise awareness of women's rights in Palestine. In particular, I want to examine how Palestinian women have been affected both by Israeli policies as well as existing Palestinian laws. Two guiding questions serve the basis for this research work:

1. How have Israeli policies impacted on women's rights?
2. How have Palestinian women experienced inequality on account of Palestinian laws?

This thesis will be divided into three main parts. In the first part, I will provide an overview of the impact on women's rights as a result of the ongoing Israeli occupation from 1967-present. The main focus here will entail a close analysis of the ways in which Israeli security policies have been particularly detrimental to women.

Key issues that will be discussed in this part include the impact of the permit regime imposed by Israel and how this has restricted free movement. In examining this problem, I will highlight the denial of key rights such as the right to health and an adequate standard of living. Similarly, I will underline how particular aspects of the military occupation such as checkpoints have impeded women's access to medical services.

A detailed analysis will highlight how house demolitions have affected women in particular in terms of perpetuating violence and heightening insecurity. In particular, I will examine how such demolitions have violated women's economic and social rights in contravention of international law.

For the second part, I will examine gender inequality within Palestinian society. Here the main aim is to pinpoint difficulties with regard to participatory rights and women's involvement in politics. For instance, I will discuss how the election of the Hamas in 2006 has had an impact on the role of women.

Emphasis will be placed on analysing provisions such as Article 340 and 98 of the Jordanian Penal Code which deals with crimes committed on grounds of "family honour." In looking at such provisions, I seek to explore gender-based violence directed against Palestinian women in the Occupied Territories. By examining these provisions, I wish to highlight their incompatibility with the non-discrimination principle under the Palestinian Basic Law.

The overall purpose of this thesis is to demonstrate how core human rights have been violated on account of military occupation and discriminatory laws. In this manner, I wish to show how the security of women has been undermined as a result of violence and harassment both within the community and at border checks. Through this research, I hope to draw attention to the double dilemma facing women, namely human rights issues in relation to the occupation as well as the impact of patriarchal structures within Palestinian society.

The final part centres on a number of interviews I've carried out. These interviews provide a personal account of the security concerns of women and their experiences of violent behaviour or unequal treatment. Moreover, the aim was to provide interviewees with an opportunity to suggest ways of improving security conditions in order to safeguard human rights on the ground.

“The trials of colonialism and occupation, compounded by the difficulties of living in a deeply patriarchal society, make feminist endeavours twice as difficult but immeasurably more important.” (Susan Muaddi Darraj, 2004)<sup>1</sup>

## **Introduction**

The humanitarian and political situation in Palestine remains challenging and highly uncertain. In particular, the ongoing Israeli occupation of Palestine and violations of international law have resulted in a humanitarian crisis, hampering any development in women’s political, civil, economic and social rights. Palestinian women are confronted by numerous difficulties as a result of Israeli policies. For example, access restrictions, implemented by the Israeli authorities, such as checkpoints and roadblocks have impeded free movement and access to essential services and livelihoods.<sup>2</sup>

Without a doubt, clear challenges exist to ensuring female empowerment and equality in the Palestinian territories. In the first instance, it is noted that Palestinian women are faced by two primary obstacles to their rights, those imposed on account of occupation and civil unrest and those arising from within their own society and culture. Women have lived for decades under Israeli military occupation which controls every aspect of their lives. While this occupation has greatly curtailed development opportunities for the Palestinian population in general, it has increased violence and discrimination against Palestinian women in particular.<sup>3</sup>

As well as the restrictions arising from Palestinian laws, women are confronted by severe limitations due to the Israeli occupation. In particular, physical and administrative barriers erected by the Israeli authorities have increased both the general lack of security and severely

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<sup>1</sup> Hannah Rought, *Palestinian Women: Caught in the Cross Fire Between Occupation and Patriarchy, Feminist Formations*, Vol. 22 No.3, Fall 2010, p, 125

<sup>2</sup> Economic and Social Commission for Western Asia (ESCWA), *Social and Economic Situation of Palestinian Women and Girls*, 4 February 2015, 9-11, available;  
[http://www.escwa.un.org/information/publications/edit/upload/E\\_ESCWA\\_ECW\\_15-TP-2\\_E.pdf](http://www.escwa.un.org/information/publications/edit/upload/E_ESCWA_ECW_15-TP-2_E.pdf)

<sup>3</sup> Amnesty International, *Israel and the Occupied Territories: Conflict, Occupation and Patriarchy: Women Carry the Burden*, 30 March 2005, 4 available;  
<http://www.amnesty.ie/sites/default/files/report/2010/04/Israel%20and%20OPT%20-%20Conflict,%20occupation%20and%20patriarcy;%20women%20carry%20the%20burden.pdf>

damaged the local economy due to their strict curtailment of Palestinians' freedom of movement.<sup>4</sup>

The short war that resulted in Israel's occupation of the West Bank and the Gaza Strip in 1967 has resulted in lasting changes for the Palestinians in the Occupied Territories. It can be argued that the Israeli occupation has had a varying impact on the lives of Palestinian women. One can observe how this occupation has reinforced religious fundamentalism and cultural viewpoints, which in turn have pressured women to return to traditional roles. In some ways, however it gave women a political voice, as it strengthened their role in society as activists.<sup>5</sup>

During the two decades following the occupation of the West Bank and Gaza Strip, changes introduced by Israeli policies resulted in economic dependency on the Israeli market, as well as the destruction of the local social, political and economic infrastructure. In response to this situation, new organisations were established to expand the social base of the Palestinian national movement. Alongside students and workers women were also mobilised to participate in the resistance movement. As such, women's charitable societies, run by educated women of the upper classes, adopted a welfare strategy to meet the needs of families in crises during political upheavals.<sup>6</sup>

The struggle of the Palestinians against occupation laid the ground for Palestinian women's participation in society and politics. According to one writer, Mulla Asghar M.M. Jaffer: "The Palestinian Question provided the motive and platform propelling women into a new arena as visible actors."<sup>7</sup>

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<sup>4</sup> Suheir Azzouni: Palestinian Authority and Israeli-Occupied Territories in *Women's Rights in the Middle East and North Africa: Progress amid Resistance*, ed. Sanja Kelly Rowman and Littlefield Publishers, Plymouth, 2010, 360

<sup>5</sup> Tamar Mayer, *Women and the Israeli Occupation: The politics of Change* (London, Routledge, 1994), 1-2

<sup>6</sup> Eileen Kuttab, *The Women's Study Programme in Palestine: Between Criticism and New Vision* in Muslim in Women and the Politics of Participation, ed. Mahnaz Afkhami, (New York, 1997), 94

<sup>7</sup> Ebba Augustin, *Palestinian Women: Identity and Experience*, (London, Zed Books Ltd, 1993), 4

The situation in the Gaza Strip has been characterised by a “volatile political and economic nature”<sup>8</sup> for more than a decade. It is clear that the ongoing crisis has had an impact on the lives of all Gazans regardless of gender, status and age group. However, one can argue that the crisis has a “gendered impact” to it; meaning that it affects men, women, boys and girls in a different way. It is thus important to highlight how this persistent conflict combined with the patriarchal system and the ‘prevailing gender norms’<sup>9</sup> has affected the advancement of gender equality and women’s empowerment.<sup>10</sup>

Vivian Khamis explains how constant exposure to political violence has had severe health repercussions, including for instance a high prevalence of post-traumatic stress disorder (PTSD) among Palestinians. According to Khamis, 35 percent of families subjected to political violence qualify as having a history of PTSD. This high rate can be attributed “to living under conditions of constant political oppression, overwhelming experiences of death and destruction, and excessive demands.”<sup>11</sup>

The morale of Palestinian men has been lowered as a result of their inability to provide financial security for their family members. This in turn has increased women’s stress, who not only have to worry about keeping children out of harm's way, but who also have to deal with the frustrations of their husbands. Stress on women has also increased as a result of the absence of husbands, fathers, brothers, and sons. Deportations and arrests on unspecified charges have been part of Israel’s occupation policy since at least the mid-1980s.<sup>12</sup>

The increased number of checkpoints over the last number of years and the construction of a West Bank separation wall has worsened social and economic conditions for all Palestinians.

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<sup>8</sup> Heba Zayyan, *The Gazan Women’s Context: Challenges and Opportunities*, 22 October 2012, 2 available; <http://palthink.org/en/wp-content/uploads/2012/11/The-Gazan-Women%E2%80%99s.pdf>, 2

<sup>9</sup> Ibid, 10

<sup>10</sup> Ibid, 10

<sup>11</sup> Maha Mohammad Ayesh, *Occupied Families: A Study of Palestinian Families Living Under Israeli Occupation*, University of Tennessee, Knoxville available; <http://palthink.org/en/wp-content/uploads/2012/11/The-Gazan-Women%E2%80%99s.pdf>.

<sup>12</sup> Ayesh, *Occupied Families: A Study of Palestinian Families Living Under Israeli Occupation*, 11

Women in particular, now experience further separation from their families, farmlands, water resources, schools, and hospitals.<sup>13</sup>

Faced by multiple difficulties, Palestinian women have been forced to fight on two fronts, firstly for national liberation and secondly for social equality. However, in this traditional Palestinian society, women are in many cases ‘relegated’ to the private sphere, as they have further experienced a backlash from Islamic fundamentalist groups.<sup>14</sup>

On the domestic level, women live in a society governed by patriarchal customs as unequal members of society. They are further subjected to restrictive personal status laws which contain discriminatory provisions relating to marriage, divorce and child custody. It is further argued that discriminatory laws and traditions affect women’s employment opportunities, thereby reducing their economic autonomy.<sup>15</sup>

In this manner, the struggle for national and social liberation has resulted in an “internal identity conflict” for women, particularly in so far as the heightening of Palestinian nationalism has invoked traditional values. This desire to preserve a traditional way of life has therefore had a severe impact on women, as they are relegated to a secondary status.<sup>16</sup>

The hierarchical and patriarchal nature of Palestinian society in the West Bank and Gaza Strip has meant clearly defined roles and norms for men and women. On the one hand, the First Intifada or Palestinian Uprising (8 December 1987-13 September 1993) acted as a catalyst for social change, opening up new opportunities and ways of life for women. On the other hand however, other women felt threatened and looked for security in tradition and religion.<sup>17</sup>

It is further argued that living under Israeli occupation has in some cases reinforced patriarchal values and the traditional role of women, with Palestinians taking refuge in their

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<sup>13</sup> Azzouni: *Palestinian Authority and Israeli-Occupied Territories*, 360-361

<sup>14</sup> Mayer, *Women and the Israeli Occupation*, 6-7

<sup>15</sup> Suheir Azzouni: Palestinian Authority and Israeli-Occupied Territories in *Women's Rights in the Middle East and North Africa: Progress amid Resistance*, ed. Sanja Kelly Rowman and Littlefield Publishers, Plymouth, 2010, 360

<sup>16</sup> *Ibid*, 8

<sup>17</sup> Augustin, *Palestinian Women: Identity and Experience*, 4

own traditions in response to Israeli rule. In other cases however, traditional values have been transformed as a result of occupation, as both men and women have been forced to engage in a joint struggle for survival.<sup>18</sup>

In the West Bank, the activities and concerns of women are governed within the overall political framework of the struggle for national self-determination. In this manner, one can see the “inseparability”<sup>19</sup> between women’s issues and political concern, which are of fundamental importance to Palestinian women. From this perspective, these women have recognised the fact that their liberation as women can only take place within the context of social liberation and the empowerment of the Palestinians.<sup>20</sup>

## **SECTION I – ISRAELI POLICIES**

### **I. Restrictions on Free Movement**

The impact of the ongoing Israeli occupation on women’s rights was examined by the United Nations Economic and Social Commission for Western Asia (ESCWA). In a report which reviewed the period July 2012 - June 2014, ESCWA underlined that the right to free movement had been undermined in the Palestinian territories as a result of Israel’s restrictive policies. As this report notes, access and movement have been especially restricted in the “Seam Zones” (areas between the Separation Wall and the Green Line, where access is dependent on a permit and gate regime), in the Jordan Valley, in villages in the vicinity of Israeli settlements and within the Israeli controlled part of Hebron City.<sup>21</sup>

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<sup>18</sup> Judith E. Tucker, *Arab Women: Old Boundaries, New Frontiers* (Indianapolis, Indiana University Press, 1993), 106

<sup>19</sup> R. Ray, *Women's Movements in the Third World: Identity, Mobilization, and Autonomy Annual Review of Sociology*, Vol. 25 (1999), pp. 47-71

<sup>20</sup> Tucker, *Arab Women: Old Boundaries, New Frontiers*, 103

<sup>21</sup> ESCWA, *Social and Economic Situation of Palestinian Women and Girls*, 12

Israel's control of mobility is evidenced through its management of everything in the Occupied Palestinian Territories (OPT), including borders, land and water resources. This control can be seen not only to restrict mobility between the West Bank and Gaza, between Jerusalem and the rest of the West Bank and between Gaza and Jerusalem, but also through a "system of fixed and flying checkpoints" which divides the West Bank into four distinct zones that are isolated from each other. These restrictions have had a severe impact at both the national level in terms of inhibiting the formation of a unified Palestinian identity and also at the family level by separating members from each other.<sup>22</sup>

This Israeli policy of "closure" (seger in Hebrew, ighlaq in Arabic) involves a pass system first introduced in early 1991 which has evolved over the last decade in the Palestinian territories.<sup>23</sup> Palestinian women, men and children have been affected in various ways by the Separation Wall, which divides neighbourhoods and isolates communities from urban centres, impeding access to essential services and livelihoods. It is further argued that this Wall and checkpoint have led to the "fragmentation of the people and the land" thereby hindering the development of a Palestinian State. This situation which persists in the OPT has also interrupted the pursuit of gender equality for women.<sup>24</sup>

### **I.I Gendered Aspect of Movement Restrictions**

Women are said to have come under particular difficulties as a result of restrictions on free movement. As such, it is argued that the Separation Wall and other barriers to movement have had a "gender-specific impact" in the fact that they present specific risks for expectant mothers, female students and workers, resulting in the denial of their rights to health, education, decent work and an adequate standard of living.<sup>25</sup>

It is argued that restrictions on the mobility of Palestinian workers have had a disproportionately high impact on Palestinian women because they are more vulnerable the

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<sup>22</sup> Christine De Matos, *Gender, Power, and Military Occupations: Asia Pacific and the Middle East since 1945* (New York, Routledge, 2012), 198

<sup>23</sup> Ibid, 5

<sup>24</sup> De Matos, *Gender, Power, and Military Occupations*, 199

<sup>25</sup> ESCWA, *Social and Economic Situation of Palestinian Women and Girls*, 12

measures enforced at the checkpoints, but also to settler violence and long commutes to work locations.<sup>26</sup>

Palestinian women have faced other internal problems. Due to limited employment opportunities for both Palestinian men and women in the West Bank and Gaza Strip, many have entered the market economy. However, Hindiyeh-Mani highlights a key problem underlying this entry into the market economy as “bastat” or street peddlers. According to her, this work reinforces the values of traditional Palestinian society, since women only enter the “bastat” out of family economic necessity and often turn over their wages to male family members.<sup>27</sup>

In a 2014 report, the United Nations Conference on Trade and Development (UNCTAD) underlined key concerns regarding the marginalisation of Palestinian women in terms of high unemployment rates and low participation. The occupation can further be seen to have exacted a socioeconomic toll, reducing decent employment opportunities as women are mainly represented in professional and clerical public sector jobs, and at the lower end of the agricultural and informal sectors. The lack of opportunities has therefore left relatively young rural women, with only a high-school education or less, with limited employment prospects and a range of social disadvantages.<sup>28</sup>

In examining the situation in the Palestinian territories, it can be argued that Israel’s ‘closure regime’ consisting of checkpoints, roadblocks, segregated roads and walls has contributed to internal displacement. In particular, it is noted that the closure regime, when “combined with Israeli infrastructure and discriminatory policies, serves to limit Palestinian access to, and claims to, land and compel Palestinians to leave their homes.”<sup>29</sup>

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<sup>26</sup> United Nations Conference on Trade and Development, *Assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory*, 7 July 2014 available; [http://unctad.org/meetings/en/SessionalDocuments/tdb61d3\\_en.pdf](http://unctad.org/meetings/en/SessionalDocuments/tdb61d3_en.pdf)

<sup>27</sup> Ibid, 8

<sup>28</sup> Ibid, 6

<sup>29</sup> Dawn Chatty, *Dispossession and Displacement: forced Migration in the Middle East and North Africa* (Oxford, Oxford University Press, 2010), 82

In 2002, after a series of attacks on civilians inside Israel, the Wall was presented by the Israeli Government as a security measure. In contrast, a counter argument casts doubt on this declaration, underlining how construction of the Wall's route has demonstrated the Israeli political and territorial interests in the Occupied Palestinian Territories (OPT).<sup>30</sup>

According to the Palestinian Central Bureau of Statistics, the Wall has separated 30 localities from health services, 22 from schools, 8 from primary water sources and 3 from electricity networks. In his analysis of the situation in 2003, The Special Rapporteur of the United Nations Commission on Human Rights noted that "Palestinians between the Wall and Green Line will effectively be cut off from their land and workplaces, schools, health clinics and other social services."<sup>31</sup>

### **I.II 2004 International Court of Justice (ICJ) advisory opinion**

In its 2004 advisory opinion on the construction of this Wall, the ICJ noted that the route Israel had chosen, and the associated regime had gravely infringed a number of rights of Palestinians residing in the territory occupied by Israel. Thus it underlined that such infringements resulting from that route cannot be justified by military demands or by the requirements of national security or public order. As such, it is argued that such constructions accordingly constitute breaches by Israel of various obligations under international humanitarian law and human rights instruments.<sup>32</sup>

Additionally, the Wall has enhanced closure and restriction practices through the extension of a permit regime to newly enclosed areas in the seam zones. Such restrictions disproportionately affect Palestinians and further compound a grave humanitarian situation. In this manner the ICJ underlines that the construction of the Wall and its associated regime

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<sup>30</sup> Orna Ben-Naftal, *Illegal Occupation: Framing the Occupied Palestinian Territory*, Berkeley Journal of International Law Volume 23, Issue 3, 2005, 52

<sup>31</sup> Eugene Cotran, *Yearbook of Islamic and Middle Eastern Law*, Vol 10, 2003-2004, Brill Academic Publishers, Inc, 448

<sup>32</sup> *Advisory Opinion on the Construction of a Wall*, ICJ, 9 July 2004; p.119-120, para 137-138

impede the free movement of the inhabitants of the OPT in direct violation of Article 12, paragraph 1, of the International Covenant on Civil and Political Rights (ICCPR).<sup>33</sup>

“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”<sup>34</sup>

According to the International Court of Justice the construction of the wall and its associated regime, including checkpoints have obstructed the exercise of various rights such as the right to work, health, education and an adequate standard of living as enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>35</sup> The right to work is found under Article 6, which includes the safeguarding of ‘economic freedoms.’ According to Article 11 ‘education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.’<sup>36</sup>

### **I.III. Impact of restrictions on free movement**

One can pinpoint the severe impact that Israeli-imposed restrictions have on women’s daily lives, whereby they culminate in a systematic denial of their socioeconomic rights. For instance, checkpoints and other physical obstacles often cause long delays in reaching schools, jobs and farmland, and further complicate the situation for visiting family members. An investigation published by the World Health Organisation in 2005 revealed that sixty-one Palestinian women gave birth at Israeli army checkpoints between September 2000 and December 2004. Thirty-six of those babies died shortly after birth as a result of complications that could not be attended to on the sides of roads.<sup>37</sup>

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<sup>33</sup> Ibid

<sup>34</sup> See Article 12, paragraph 1 International Covenant on Civil and Political Rights, 23 March 1976

<sup>35</sup> *Advisory Opinion on the Construction of a Wall*, ICJ, 9 July 2004; p. 115-117, para 134

<sup>36</sup> See Article 13, paragraph 1 *International Covenant on Economic, Social and Cultural Rights*, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976

<sup>37</sup> Saree Makdissi, *Palestine Inside Out: An Everyday Occupation* (New York, WW. Norton and Company Ltd, 2008), 50

According to a report by Amnesty International, Palestinian women in particular have been adversely affected by the occupation. For instance, this report referred to their difficulties in caring for the tens of thousands of men and children who have been injured over recent years. This task has been made more difficult due to the limits of Palestinian medical facilities, given the blockades which impede access for Palestinians to hospitals in the Occupied Territories.<sup>38</sup>

Restriction on the movement of people can be seen as one of the indirect threats to human security in the occupied Palestinian territory. After the 1967 occupation, Palestinians from the West Bank and the Gaza Strip were able to cross through Israel for visits, study, or work. However, movement between the two regions is now virtually impossible. In this manner, it is noted how the Palestinian population is segregated, with the Israeli military controlling the movement of people, commercial goods, food, and medical supplies in and out of the West Bank and Gaza Strip. Since the middle of 2007, movement in and out of the Gaza Strip has been effectively prohibited, with only restricted numbers of religious pilgrims and medical referrals being allowed to leave the Gaza Strip.<sup>39</sup>

The economy has declined rapidly since 2000, as restrictions on the Palestinian economy and movement of goods has led to heightened poverty rates. The Amnesty International report further underlines how poverty rates in 2007 were 51.8% in Gaza and 19.1% in West Bank. The long-term exposure of Palestinians to security threats has led to a state of demoralisation and long-term insecurity. Palestinian women have in many cases borne the brunt of this insecurity as it has negatively disrupted “a sense of home and safety, family relationships and community cohesion.”<sup>40</sup>

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<sup>38</sup> Amnesty International, *Israel and the Occupied Territories*, 5

<sup>39</sup> Rajaie Batniji, *Health as human security in the occupied Palestinian territory*, March 5 2009, 6

<sup>40</sup> Batniji, *Health as human security in the occupied Palestinian territory*, 7-8

## **II. Family Reunification**

### **II.I Background**

Another major area of concern is the problem with family reunification. Until 1994, applications from Palestinian women resident in Jerusalem who married men from Gaza or the West Bank were denied family unification papers. The Israelis claimed that this was out of respect for Arab tradition, by which according to them, women follow their husbands. However, as Saree Makdisi states, this is not actually the case, as a woman's primary ties are always to the family in which she was born.<sup>41</sup>

Until 1997, the Ministry of the Interior automatically granted permanent resident status to the spouse from the occupied territories once a couple won its appeal for family unification. However in early 1997 the ministry announced that permanent residency status would be granted only after a further five-year waiting period following the initial five years already spent waiting for the application to be processed.<sup>42</sup>

### **II.II Citizenship and Entry into Israel Law**

The situation deteriorated even further in 2003, when the Israeli parliament enacted the Citizenship and Entry into Israel Law, which prohibits Palestinian residents of the occupied territories who are married to Israeli citizens or Jerusalem residents from acquiring permanent residency and Israeli citizenship. This process termed "family reunification" has had a serious impact on family life, as it denies such Palestinians the right to live with their spouses or children in Israel or Jerusalem. In her book 'Palestine Inside Out,' Saree Makdisi highlighted that up to 24,000 families have been affected by this law, which has 'threatened marriages and destroyed families by forcing them apart.'<sup>43</sup>

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<sup>41</sup> Makdisi, *Palestine Inside Out: An Everyday Occupation*, 110

<sup>42</sup> Ibid, 115-116

<sup>43</sup> Ibid, 116

Section 2 of this law specifically limits citizenship and stay in Israel: “the Minister of the Interior shall not grant the inhabitant of an area citizenship on the basis of the Citizenship law, and shall not give him a license to reside in Israel on the basis of the Entry into Israel Law, and the Area Commander shall not grant a said inhabitant, a permit to stay in Israel, on the basis with the security legislation in the area.” The law defines “area” as Judea, Samaria or the Gaza Strip; Judea and Samaria are more commonly known as the West Bank.<sup>44</sup>

This measure was taken due to the perception that the number of Palestinians involved in acts of terror had greatly increased as a result of unification. Therefore, the government decided to restrict the granting of the relevant permits. Recently, in January 2012, the Supreme Court rejected a petition for repeal in a 6-5 decision, further entrenching this controversial law.<sup>45</sup>

This law can be seen as a clear violation of international instruments, in particular the provisions relating to family rights enshrined in the International Covenant on Civil and Political Rights (ICCPR). Thus as stipulated under Article 17 of this Covenant: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”<sup>46</sup>

The law further raises serious concerns under the International Convention on the Elimination for All Forms of Racial Discrimination (ICERD) under which equality is seen to encompass civil rights guarantees, including “the right to marriage and choice of spouse.”<sup>47</sup>

A number of questions can be raised with regard to this law. Firstly one can ask what level of discretion a state has with regard to discriminating between persons of different nationalities in granting resident permits. The question of discrimination based on nationality has been dealt with in article 1(3) of the 1965 ICERD which provides that “nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning

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<sup>44</sup> Nationality and Entry into Israel (Provisional Measure) Law, 5763-2003, SH No.190

<sup>45</sup> Mossawa Centre, *Nationality and Entry Into Israel Law (Temporary Order)* available; [http://www.mossawacenter.org/my\\_documents/publication2/2012%20Citizenship%20and%20Entry%20into%20Israel%20Law.pdf](http://www.mossawacenter.org/my_documents/publication2/2012%20Citizenship%20and%20Entry%20into%20Israel%20Law.pdf)

<sup>46</sup> See Article 17, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), hereinafter ICCPR

<sup>47</sup> Bethany M. Nikfar, *Families Divided: An Analysis of Israel's Citizenship and Entry into Israel Law*, Northwestern Journal of International Human Rights, vol 3 Issue 1, Spring 2005

nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.”<sup>48</sup>

Thus while one can conclude that discrimination in matters of nationality is permitted, this is not the case when it involves discrimination against a particular nationality. Since the 2003 version of the Provisional Measure was aimed at one particular group, it clearly violated the Convention.<sup>49</sup>

Although this law was only meant to be a temporary measure, a 2006 Israeli High Court ruling declared that it was a necessary part of its ‘war on terror’ and of efforts to combat violent attacks in Israel. A 2011 report by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern over the discriminatory nature of this law. Particularly it noted that this law affected marriages of Israeli Arab women citizens and Palestinian women from the OPT. The Committee on the Elimination of Racial Discrimination (CERD) also called on Israel to revoke this law and ensure that restrictions on family reunification are strictly necessary and not applied on the “basis of nationality, residency or membership of a particular community.”<sup>50</sup>

Under the terms of this law, Palestinian residents of East Jerusalem or Israeli citizens, married to residents of the occupied territories (or vice versa) must now live apart from their spouses. In this manner an Israeli spouse would be breaking the law if he/she lived in parts of the West Bank or Gaza (Oslo’s Area A), due to the Israeli military orders that prohibit Israeli citizens from living in Area A.<sup>51</sup>

The debate surrounding the law also ascribed to it the aim of limiting Palestinian immigration to Israel for demographic reasons. Although most of the Supreme Court justices rejected this allegation; it is clear that such considerations were in the background of discussions,

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<sup>48</sup> See Article 1(3) of the Convention for the Elimination of all Forms of Racial Discrimination (adopted 1 December 1965, entry into force 4 January 1969)

<sup>49</sup> Ruth Lapidot & Ofra Friesel, *Some Reflections on Israel’s Temporary Legislation on Unification of Families*, 43 ISR. L. REV. 457 (2010), 462

<sup>50</sup> Joshua Castellino, *Minority Rights in the Middle East*, (Oxford, Oxford University Press, 2013), 145

<sup>51</sup> Makdisi, *Palestine Inside Out: An Everyday Occupation*, 117

especially given the state's view of the "potential danger" posed by Palestinians residing in Israel.<sup>52</sup>

Proponents of the law have argued that the right to establish a family can be legitimately breached for both security and demographic considerations. However, only security considerations can justify breaching that right collectively, for a specific sub-group of the citizenry, i.e., Palestinian citizens who choose to marry Palestinian residents of the Occupied Territories. Thus supporters of the law argue that Palestinian residents of the Occupied Territories can be viewed as a security risk to Israel due to the ongoing conflict.<sup>53</sup>

On the other hand, opponents of the law argue that every Israeli citizen has a fundamental right to establish a family with whomever he or she chooses in Israel. According to this stance, the right to establish a family can be breached for security considerations only if it is demonstrated that the particular individuals involved, not a whole sub-group of the population, poses a security risk to the state.<sup>54</sup>

A number of amendments were added to it on 27 July 2005. These revisions were designed to allow, in extremely limited circumstances, the temporary unification of the families of Israeli citizens and residents with their Palestinian spouses residing in the OPT, on the basis of temporary visit permits. In reality it is argued that the amendments are of no help to the vast majority of families affected by the law. This is the case due to the fact since in order to be eligible for a temporary permit, the spouse who is a resident of the OPT must meet an age requirement of 35 years and over for men and 25 years and over for women. However it is noted that only a minority of the families affected by the law meet these age-related criteria. Moreover, even those few families who meet the conditions are only eligible to receive at most a permit for a temporary visit, which does not allow for social benefits or permission to work in Israel.<sup>55</sup>

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<sup>52</sup> Daphne Barak-Erez, *Israel: Citizenship and immigration law in the vise of security, nationality, and human rights*, Oxford Journals, Volume 6, Number 1, 2008, pp. 184–192

<sup>53</sup> Yoav Peled, *Citizenship Betrayed: Israel's Emerging Immigration and Citizenship Regime*, *Theoretical Inquiries in Law*, Vol 8, No 2, July 2007, 610

<sup>54</sup> *Ibid*, 610

<sup>55</sup> Orna Kohn, *Initial Comments on the Supreme Court's Ruling on the Nationality and Entry into Israel Law*, *Adalah's Newsletter*, Volume 25, May 2006, 2

There is a clear conflict between the “right of the individual to marry the person of his choice and establish a family”, on the one hand, and “the right of the state to regulate immigration and entry into its territory and the need for security”<sup>56</sup>, on the other hand. Since international law has not established a right to family unification nor to immigration for the purpose of marriage, the right of the state prevails. Trans-border family unification is therefore a concession granted by the state according to its discretion and subject to conditions laid down by the state.<sup>57</sup>

On January 11, 2012, in the case of MK Zahava Galon v. Attorney General et al., the Supreme Court of Israel rejected all appeals against the Citizenship Law. The main controversy in the case centred on the question of properly balancing human rights and security concerns. According to Justice Cheshin, the right to family life does not include the right to unite with noncitizen family members on the territory of the state.<sup>58</sup> In contrast, the minority shared the view that the law infringed on both the right to family life and the right to equality and found that “the balance struck by the legislature was disproportionate because it had left no room for individual evaluation of immigration and citizenship applications.”<sup>59</sup>

In a statement made on February 26 2009, the UN Human Rights Council recommended that Israel revoke the law arguing that the closure regime had severely impeded women’s access to adequate prenatal, natal and post-natal medical care, thereby “impairing the fulfilment of the right of everyone to the highest attainable standard of physical and mental health.”<sup>60</sup>

Furthermore, as part of a 2012 resolution, the UN Commission on the Status of Women noted the long-lasting effect of the law on women: “The Israeli occupation remains the major obstacle for Palestinian women with regard to their advancement, self-reliance and

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<sup>56</sup> Lapidot, *Some Reflections on Israel’s Temporary Legislation on Unification of Families*, 457

<sup>57</sup> *Ibid*, 467

<sup>58</sup> Daphne-Barack Erez, *Israel: Citizenship and immigration law in the vise of security, nationality, and human rights*, Oxford Journals, Volume 6, Number 1, 2008, 188

<sup>59</sup> *Ibid*, 189

<sup>60</sup> Nadera Shalhoub-Kevorkian, *Security Theology, Surveillance and the Politics of Fear*, (Cambridge, Cambridge University Press, 2015), 51

integration in the development of their society.” Likewise the Commission emphasised the importance of efforts to increase women’s role in decision-making as a key criteria of ensuring equal participation.<sup>61</sup>

This Citizenship Law has had a clear effect on the Palestinian population’s right to security. Similarly, it has justified and increased surveillance over Palestinians, as it has had a clear impact over family relationships, bodily security, and everyday life. As Kevorkian underlined “dispossession of the right to family and home produces severe anxiety and an ongoing state of insecurity.”<sup>62</sup>

### **III. House Demolitions**

#### **III.I Background and Legal Basis**

Since the beginning of the Israeli occupation of the West Bank and the Gaza Strip in 1967, Israel has been carrying out a policy of either demolishing or sealing homes as a response to offenses committed in these territories. However, the use of demolitions as a punitive measure has been met with great opposition in the international community and among legal experts.<sup>63</sup> Whether, the threat of house demolitions, is viewed as a form of collective punishment or as collateral damage, it perpetuates a feeling of insecurity in the Occupied Territories.<sup>64</sup>

The legal basis for housing demolitions is Regulation 119 of the Defence (Emergency) Regulations of 1945 ("DER 119"), promulgated during the British mandate, which provides:

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<sup>61</sup> *Situation of and assistance to Palestinian women*, UN Commission on the Status of Women, 6 March 2012

<sup>62</sup> Kevorkian, *Security Theology, Surveillance and the Politics of Fear*, 64

<sup>63</sup> Brian Farrell, *Israeli Demolition of Palestinian Houses As A Punitive Measure: Application Of International law To Regulation*, 28 *Brooklyn Journal of International Law* 871, 2002-2003, 2

<sup>64</sup> Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Palestinian Women and Security: Why Palestinian Women and Girls do not feel secure*, 2010, 19 available; [www.dcaf.ch/content/download/.../Palest\\_Women\\_Security\\_ENG.pdf](http://www.dcaf.ch/content/download/.../Palest_Women_Security_ENG.pdf)

“A Military Commander may by order direct the forfeiture to the Government . . . of any house, structure or land situated in any area, town, village, quarter or street the inhabitants or some of the inhabitants of which he is satisfied have committed, or attempted to commit, or abetted the commission of, or been accessories after the fact to the commission of, any offence against these Regulations involving violence or intimidation or any Military Court offence.”<sup>65</sup>

There are a number of underlying problems with regard to this Regulation. Firstly, the burden of proof required to implement this measure is quite low and as such, the military commander must only have "reason to suspect" that the house has been used to “fire a weapon or throw explosives, or be satisfied that inhabitants of an area have committed a violent offense.” Moreover, there is no standard regarding the severity of the offense that must be met, which means that even relatively minor actions can fall under the scope of DER. Finally, there is a lack of judicial process or review; which leaves the decision within the discretion of the military commander.<sup>66</sup>

This policy of demolition has further been criticised on the grounds that it is an inappropriate penal sanction, and that it is carried out soon after an arrest, before a court has determined the validity of the charge. Moreover, there have been a number of instances in which the IDF later discovered, after demolishing a house that the house's inhabitant was not responsible for the act they were charged with.<sup>67</sup>

### **III.II Human Rights Situation of Women**

It is estimated that the Israeli civil and military authorities have destroyed more than 24,000 Palestinian homes in the OPT since 1967. The demolition of Palestinian homes has particularly affected women and children. A 2009 report conducted by Save the Children and

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<sup>65</sup> Defence (Emergency) Regulations, Regulation 119

<sup>66</sup> Farrell, *Israeli Demolition of Palestinian Houses As A Punitive Measure*, 17

<sup>67</sup> Farrell, *Israeli Demolition of Palestinian Houses As A Punitive Measure*, 20

the Palestinian Counselling Centre underlined the long-term instability and mental health disorder in both parents and children as result of house demolitions.<sup>68</sup>

The economic and financial repercussions of house demolitions can also have a serious impact on women's lives. For instance, women and their families have had to spend money on lawyers' fees, court fines and in some cases on new accommodations. This can be "crippling" for families who are already living on low incomes. In this respect, the lives of Palestinian women are seen to be devastated by such policies.<sup>69</sup>

In "Security Theology, Surveillance and the Politics of Fear" Palestinian women defined Israel's threats to their home spaces and its "securitised rationalisation" of demolishing homes to maintain Israel's borders as "the demolition before the demolition" (il hadem qabl il hadem).<sup>70</sup>

Shalhoub-Kevorkian explains how the attack on the home is an attack which in many cases brings women back to the 'Nakba' period, during which time family property and land was taken. The lack of safety and security and constant terror has therefore left no space to recover from the Nakba and the memory of loss. According to the Special Rapporteur on Violence against Women "women are particularly burdened in having to adjust to new conditions when their homes are destroyed."<sup>71</sup>

House demolitions also have long-term effects on women, such as limiting their access to educational opportunities, social services, medical services and economic resources.

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<sup>68</sup> Hannah Rought, *Palestinian Women: Caught in the Cross Fire Between Occupation and Patriarchy, Feminist Formations*, Vol. 22 No.3, Fall 2010, pp.124-145

<sup>69</sup> Hannah Rought, *Palestinian Women: Caught in the Cross Fire Between Occupation and Patriarchy, Feminist Formations*, Vol. 22 No.3, Fall 2010, pp.124-145

<sup>70</sup> Kevorkian, *Security Theology, Surveillance and the Politics of Fear*, 102

<sup>71</sup> Ibid, 104-105

In addition, “the policy of house demolitions provides a site where oppressive gender norms of femininity and masculinity can be further inscribed and the socioeconomic gap between men’s and women’s social status can be more firmly entrenched.”<sup>72</sup>

Palestinian women’s experiences show that as well as rendering inhabitants physically homeless, the loss of one’s home causes severe mental anguish because of the home’s intimate connection with a person’s identity. Since the home exists within the private sphere, it is crucial to the full development of the person, particularly for women, within a society. For Palestinian women living in the Occupied Territories, the home takes on even greater significance as the “epicentre” in the cultivation of a person’s identity and well-being.<sup>73</sup>

The lack of Israeli-issued building permits has placed over a third of all Palestinian homes and 90,000 residents in East Jerusalem, at potential risk of displacement, with adverse economic and psychological impact. In total, 663 structures were demolished in 2013, mainly in Area C. This represents an increase of approximately 10 per cent from 2012, when the annual number of structure demolitions reached 604.34 from 2012 to 2013, the number of persons displaced increased by almost 25 per cent, from 886 to 1,103.<sup>74</sup>

As underlined in a 2014 UN report, many women face a “double tragedy” of not only losing their domestic space but also risk increased domestic violence as a result. Moving temporarily into an overcrowded relative’s house often means that a woman has little control over the domestic sphere, further diminishing her role and status. In many cases this leads to great tension within families, including domestic violence, due to the wife’s demands for a home of her own, and the husband’s inability to provide it.<sup>75</sup>

Within this context of dependence and overcrowding, women are confronted by a situation of heightened insecurity. Moreover, as “primary caregivers”, women face the added difficulty of supporting their children, many of whom suffer psychosocial trauma as a consequence of

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<sup>72</sup> Ibid, 105

<sup>73</sup> Kevorkian, *Security Theology, Surveillance and the Politics of Fear*, 108

<sup>74</sup> ESCWA, *Social and Economic Situation of Palestinian Women and Girls*, 15-16

<sup>75</sup> Ibid, 16

witnessing their homes being destroyed and of having their lives disrupted by forced displacement.<sup>76</sup> It is argued therefore that demolitions have a particularly serious impact on women who in many cases spend a large part of their time in the private space. Thus in this manner women can be said to bear the “brunt of rebuilding family life” when homes are demolished and families are made homeless.<sup>77</sup>

In a 2004 report, Amnesty International noted that although the demolition of Palestinian homes was a long-standing Israeli policy, the scale of destruction reached particularly high levels during the second intifada. In its analysis, it noted how over 4,000 homes and hundreds of public buildings and private commercial properties were destroyed by the Israeli army in the Occupied Territories between 2000 and 2005. It was further noted by Amnesty that tens of thousands of people, most of them women and children, had been made homeless and destitute as a result.<sup>78</sup>

Women are confronted by multiple issues in this situation, as they feel less able to complain and seek redress for family violence, firstly because they feel that due to the loss of the family home their grievances are not seen as a priority and secondly because the added financial difficulties caused by the destruction of their home makes it more difficult to find a solution to their individual problem.<sup>79</sup>

### **III.III International Law regarding destruction of property**

Most commentators on the scope of the “military necessity” exception addressed the application of Article 53 of the Geneva Convention, which provides that “any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons is prohibited, except where such destruction is rendered absolutely necessary

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<sup>76</sup> Ibid, 16

<sup>77</sup> Amnesty International, *Israel and the Occupied Territories*, 20

<sup>78</sup> Ibid, 4

<sup>79</sup> Ibid, 20

by military operations.”<sup>80</sup> The prevailing view with regard to Article 53 supports a narrow reading of the “military necessity” exception, which precludes house demolitions for purposes of deterrence.<sup>81</sup>

Article 8(2) (a) (iv) of the Rome Statute stipulates that “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly,” as a war crime.<sup>82</sup>

House demolitions have also have an immense psychological impact on Palestinians, as it evokes the traumatic experiences associated with being a refugee. Such demolitions often occur suddenly and without prior notice. In a study on disasters and mental health, the World Psychiatric Association underlined that it was this “unpredictability which was understood to be the most traumatic factor for human beings.”<sup>83</sup>

It is clearly noted that almost all house demolitions adversely affect individuals, rather than the offender. Thus it is seen that the other residents lose their home, while the landlords lose their property. However, it is argued that the suffering of individuals other than the offender is not simply incidental to the offender’s punishment. Instead one can argue that such consequences and their deterrent effect are the immediate aim of the sanction." For this reason, the house demolitions practice has been criticized as a form of “collective punishment.”<sup>84</sup>

The legality of punitive demolitions can be questioned under international human rights law. In the first instance one can point to the International Covenant on Civil and Political Rights

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<sup>80</sup> Article 53 of Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949

<sup>81</sup> Ariel Zemach, *The Limits Of International Criminal Law: House Demolitions In An Occupied Territory*, Connecticut Journal of International Law, Vol. 20, 2004, 69

<sup>82</sup> See Article 8(2) (a) (iv) of the Rome Statute of the International Criminal Court , 2187 UNTS 90/37 ILM 1002 (1998)/[2002] ATS 15

<sup>83</sup> World Psychiatric Association, *Disasters and Mental Health*, (West Sussex, John Wiley and Sons Ltd, 2005), 244

<sup>84</sup> Zemach, *The Limits Of International Criminal Law: House Demolitions In An Occupied Territory*, 72

("ICCPR")," which is considered to be a strong statement of individual rights.<sup>85</sup> A strong argument against demolitions can be made under Article 7 of the ICCPR, which stipulates that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." This Article is considered one of the core rights protected under the human rights system and cannot be derogated from in any circumstances.<sup>86</sup>

It can be argued that the demolition of a person's home can be considered a form of cruel, inhuman or degrading punishment or treatment, since this practice leaves families without shelter, with personal possessions being destroyed in many incidents." Additionally, in over 90% of cases, demolitions are imposed on a homeowner who is not the offender.<sup>87</sup>

The harm is particularly acute if the family is unable to afford alternative housing, as is the case with the majority of Palestinian families deprived of their housing under Israel's demolition policy. The harm can also be seen as severe if the house demolished is one that has been the family's home for a long time and thus is important to the family's identity.<sup>88</sup>

According to the UN Relief and Works Agency 2370 housing units were destroyed in the Gaza Strip between September, 2000, and September, 2004, leaving about 22 800 people homeless. The Palestinian Central Bureau of Statistics further estimated that 7633 homes in the West Bank and Gaza Strip were completely destroyed between September 2000 and April 2005, with more than 65,000 houses partially damaged. It is clearly noted that the reconstruction of destroyed homes creates emotional stress and economic hardship. A clear source of physical and psychological insecurity for Palestinians is the threat of demolition to homes built on unregistered land.<sup>89</sup>

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<sup>85</sup> Farrell, *Israeli Demolition of Palestinian Houses As A Punitive Measure*, 34

<sup>86</sup> See Article 7 of the ICCPR

<sup>87</sup> Farrell, *Israeli Demolition of Palestinian Houses As A Punitive Measure*, 34

<sup>88</sup> John Quigley, *Punitive Demolition of Houses: A Study in International Rights Protection* (1992-1993) 5 St. Thomas Law Review 359

<sup>89</sup> Batniji, *Health as human security in the occupied Palestinian territory*, 4

An important right protected under international standards is the right to property. According to the Universal Declaration of Human Rights "no one shall be arbitrarily deprived of his property." However, this right is threatened by the punitive demolition practice. It can be argued that the destruction of a house as a penal sanction, particularly on the suspicion of a military commander, is "arbitrary."<sup>90</sup>

It is further noted that the major human rights instruments include explicit guarantees of privacy. For instance, the International Covenant on Civil and Political Rights states that "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence." The demolition of one's home can be seen as an example of privacy infringement, as the family suffers severe interference, and the sanctity of the home is violated.<sup>91</sup>

Critics of the policy of house demolition highlight the fact that demolition generally occurs in conjunction with other forms of punishment. In this way it is noted that offenders are still detained, convicted, and punished in the judicial system. Demolition therefore can be seen to represent an additional, extrajudicial punishment that is often not even borne by the offender, but rather by his family or neighbours.<sup>92</sup>

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<sup>90</sup> Quigley, *Punitive Demolition of Houses: A Study in International Rights Protection*

<sup>91</sup> Ibid

<sup>92</sup> Farrell, *Israeli Demolition of Palestinian Houses As A Punitive Measure*, 23

## **SECTION II: PALESTINIAN SYSTEM**

### **I. Customary Law**

Customary law in Palestine is known as the legal tradition “urf” (that which is known). Disputes falling outside of the civil or religious court system are handled according to urf. However, this dispute resolution process can be seen as “antidemocratic,” since younger people and women, among others, are unrepresented. Customary law affects women particularly in core areas: family law such as; education, honour killings, and domestic violence.<sup>93</sup>

The worst influence of customary law is exemplified by honour killings. Honour killings in Palestinian society usually occur as a result of “unacceptable, dishonourable behaviour” by Palestinian women, usually “involving their sexuality, considered socially and culturally taboo.”<sup>94</sup> Women are killed for a number of reasons, including failing to prove virginity on their wedding night or for dishonouring the family by “conversing with a man, coming home late, or engaging in a romantic relationship.”<sup>95</sup>

Honour killings have also been defined as “the killing of women for suspected deviation from sexual norms imposed by society.” They are characterised by extreme acts of violence against women when an honour code is thought to be broken perceived shame is therefore brought on the family. What marks such killings is the fact that not only the husband or partner can carry out the act, but rather the whole community and other family members, such as brothers and uncles can also be responsible.<sup>96</sup>

Three considerations are involved when analysing actions that violate honour. In the first place, it is noted that ‘safeguarding’ involves the man who is expected not only to protect the particular woman, but also to preserve the honour of all the women in society. The second

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<sup>93</sup> Adrien Katherine Wing, *Constitutionalism, Legal Reform, and the Economic Development of Palestinian Women*, 15 *Transnational Law. & Contemporary Problems*, 2005-2006, 5

<sup>94</sup> Shalhoub-Kevorkian, Nadera, *Femicide and the Palestinian Criminal Justice System: Seeds of Change in the Context of State Building?* *Law & Society Review*, Vol. 36, No. 3, January 1, 2002

<sup>95</sup> *Ibid*, 7

<sup>96</sup> Mohammad Mazhr, *Honour, Violence, Women and Islam* (New York, Routledge, 2011), 42

consideration is ‘protection’ which refers to the protection afforded to women if someone tries to harm them either physically or verbally. The final consideration is ‘punishment’ which calls for death in certain situations.<sup>97</sup>

Within patriarchal social groups, ‘honour-based violence’ is used to reinforce gender roles and expectations. In the first instance, it is noted that honour crimes are predominantly committed by men against women. This form of violence is a means of establishing boundaries between the “gendered cultural codes” of family and local community and the “gendered norms and values” of the dominant society. In many cases shame is associated with the transgression of personal honour and thus is an effective tool for curbing the behaviour of individuals.<sup>98</sup>

Social inequality and the subjugation of women which are enforced by the patriarchal gender structure encourage violence toward women. According to Parrot and Cummings, patriarchy impedes the advancement of women’s rights and further neutralises their potential within a society. They further asserted that “cultures with more patriarchal attitudes and more extreme condition of subordination generate more violence.”<sup>99</sup>

Gender inequality is prevalent both in the act of honour based killing and at the trial stage. Thus it can be said that both judges and prosecutors act in a discriminatory manner in prosecuting those responsible for honour killings. This is evident due to the fact that admissible evidence proving mitigating circumstances in these "honour killing" proceedings includes gossip (namima) and rumours.<sup>100</sup>

Furthermore, Palestinian women and girls who report abuse to the authorities are confronted with a system that prioritises the reputations of their families in the community over their own lives and well-being. Accordingly, police officers and clan leaders regularly “resolve”

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<sup>97</sup> Lynn Welchman, *Honour Crimes, Paradigms and Violence against Women* (London, Zed Books Ltd, 2005), 169

<sup>98</sup> Mazhr, *Honour, Violence, Women and Islam*, 219

<sup>99</sup> David Ghanim, *Gender and Violence in the Middle East* (Westport, Praeger Publishers, 2009), 55

<sup>100</sup> Wing, *Constitutionalism, Legal Reform, and the Economic Development of Palestinian Women*, 661

these cases by returning the abused women to her attacker, without ever referring the case to the courts or the woman to social services she might need. The (Palestinian Central Bureau of Statistics) PCBS noted that in 2004 the Palestinian Authority (PA) courts reportedly convicted only one person of rape in Gaza and convicted no one in the West Bank.<sup>101</sup>

However, very few cases of honour killings reach the trial stage due to the “social condoning” of these crimes. The rare cases that do result in conviction only receive token sentences. This leniency clearly renders the law insufficient in its protection of women’s rights, including their right to live. It can therefore be contended that cultural acceptance of honour killings has often resulted in inaction to stop it.<sup>102</sup>

Although violence against women is a multidimensional phenomenon, with psychological, social and economic factors, it is also linked to beliefs, values and social norms. The rise in fundamentalism has also led to interpretations of traditional beliefs and practices that are more oppressive towards women because of fundamentalist views about women’s “subservient roles” in relation to men.<sup>103</sup>

## **I.I Laws on Honour Crimes**

The treatment of women in the Palestinian territories is largely derived from Egyptian and Jordanian law. These codes clearly discriminate against women, with no specific laws criminalising domestic or sexual violence within the family. As such, judges apply relevant provisions of the penal law in order to try these crimes. This problem with discrimination can be clearly seen with Jordanian Law No.16 (1960) which classifies sexual violence (both rape and incest) under crimes “against public morals and ethics,” rather than as crimes against the physical integrity of the individual.<sup>104</sup>

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<sup>101</sup> Human Rights Watch, *A Question of Security: Violence against Palestinian Women and Girls*, Volume 18, No. 7(E), November 2006, 45-46

<sup>102</sup> Angela Browne Miller, *Violence and Abuse in Society: Understanding a Global Crisis*, (California, ABC-CLIO, LLC, 2012), 373

<sup>103</sup> Barrie Levy, *Women and Violence* (Californian, Seal Press, 2008), 53-54

<sup>104</sup> Human Rights Watch, *A Question of Security: Violence against Palestinian Women and Girls*, Volume 18, No. 7(E), November 2006, 24

In particular Article 340 of the Jordanian penal code applicable to residents of the West Bank, and Article 17 of the Egyptian penal code applicable to residents of Gaza, both offer reduced sentences for honour killings. Article 340 of the Jordanian code regulates honour killings stipulating that "any man who kills or attacks his wife or any of his female relatives while she is committing adultery is exempt from punishment."<sup>105</sup>

The leniency in the Jordanian code applies to a man who kills his wife or female relative and her partner immediately upon catching them committing adultery. The provision in the Egyptian code applies only to husbands who have murdered their wives and their wives' lovers. Both penal codes reduce the prison sentence to as little as six months; while in contrast the same exemption or reduced punishment is not afforded to a woman who murders her husband after seeing him commit adultery.<sup>106</sup>

Customary norms and traditional values have led to a societal acceptance of the physical abuse of women. A poll conducted regarding domestic violence against Palestinian women observed that 50 percent of the Palestinian men surveyed believed that "disobedience by a woman would justify battery."<sup>107</sup>

Another discriminatory element of this Jordanian Penal Code rests on the fact that a court has the authority to suspend a criminal proceeding if the offender agrees to marry the victim of a rape. Similarly, perpetrators of domestic violence can get away without punishment, because there is a "custom of non-interference in domestic disputes." Additionally, women are often reluctant to report cases of domestic violence, since they would rather "handle the situation within the family."<sup>108</sup>

Service providers clearly face many obstacles in providing services to Palestinian women and girls that increase their security, within the current legal framework. In a working group

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<sup>105</sup> Human Rights Watch, *A Question of Security*, 51

<sup>106</sup> Azzouni: *Palestinian Authority and Israeli-Occupied Territories*, 365

<sup>107</sup> Wing, *Constitutionalism, Legal Reform, and the Economic Development of Palestinian Women*, 661

<sup>108</sup> *Ibid.*, 662

session with Palestinian service providers entitled “Promoting Gender-Sensitive Justice and Legal Reform,” a number of key issues affecting Palestinian women were highlighted. In particular, service providers noted a clear absence of legislation addressing gender based violence (GBV) in the Palestinian Territories. According to service providers there are gaps in Palestinian laws which undermine women’s rights and fail to protect them from abuse.<sup>109</sup>

It was further underlined that the lack of laws to clearly target GBV stems from the fact that there is no clear definition of GBV within Palestinian society. This lack of a definition means that the term is not integrated into Palestinian legislation (or other important institutions, like education and the security sector. Consequently, sexual violence, especially within the family, is nearly impossible to address legally given the need for a male guardian to chaperone the victim to the police station in order to register a complaint.<sup>110</sup>

A 2006 report by Human Rights Watch (HRW) raises awareness of the unequal treatment of Palestinian women. In the first instance, it is noted that the Egyptian penal law in force in Gaza imposes harsher penalties for women than for men committing adultery. Thus a wife is penalised for two years, whereas a husband is penalised for no more than six months. Moreover while a wife can be penalised for committing adultery anywhere, a husband must do so in the marital home in order for such an act to be considered adulterous. According to these codes, the murder of a wife (but not a husband) in the act of committing adultery is categorised as an “extenuating circumstance”, thereby commuting the crime of murder to the level of a misdemeanour.<sup>111</sup>

The discriminatory practices against women have been reinforced by political and social pressures exerted on the judicial system. As such, it can be argued that military occupation and other political hardships have had an impact on the legal treatment of Palestinian women. As Abdullahi Ahmed argued, women’s social issues are often considered secondary when weighed against political concerns. This is illustrated by one judge who declared that, “there are more important issues to be discussed on the current Palestinian agenda than raising the

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<sup>109</sup> Stephanie Chaban, *Promoting Gender-Sensitive Justice and Legal Reform in the Palestinian Territories: Perspectives of Palestinian Service Providers*, *Journal of International Women's Studies*, Volume 12, Issue 3, March 2011, 151

<sup>110</sup> Chaban, *Promoting Gender-Sensitive Justice and Legal Reform in the Palestinian Territories*, 162

<sup>111</sup> Human Rights Watch, *A Question of Security: Violence against Palestinian Women and Girls*, 25

problem of the killing of women.”<sup>112</sup> In this manner, women’s rights are placed on the “backburner” in favour of promoting political rights.<sup>113</sup>

There is a clear bias in the legal system towards men, which reinforces the status quo and contributes to gender inequality. Judges further perpetuate this discrimination, as in many incidents they excuse the offender for committing homicide against a family member, while mukhtars (village heads) have been known to cover up such killings.<sup>114</sup>

In most cases honour killings are not effectively prosecuted but instead are almost encouraged. Although they are premeditated, planned murders, they are misconstrued as “crimes of passion”, and the overarching view in Palestinian society is that “men have the right to punish women for improper sexual behaviour.”<sup>115</sup> One can also see certain ambivalence on the part of the government to take action against honour crimes. Family honour in Palestinian society, as in many other traditional societies in the region is determined by the “respectability” of its women. A United Nations report underlined the problem, noting that the term “honour suicide” is used for “suicides that appeared to be ‘honour killings’ disguised as suicide or an accident.”<sup>116</sup>

Another troubling aspect of these legal codes is the fact they relieve rapists from any criminal prosecution in cases where they marry their victims. This is provided for under Article 308 of the Jordanian law which allows the court to cease legal action or suspend the sentence of a rapist if a “legal and correct marriage contract is forged” between him and the victim.” The rapist goes to trial only if he divorces the victim “without reason” within five years. Article

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<sup>112</sup> Nadera Shelhoub Kevorkian, Researching women’s victimisation in Palestine: A socio-legal analysis, in *'Honour': Crimes, Paradigms and Violence Against Women*, ed. Sara Hossain (London, Zed Books Ltd, 2005), 176

<sup>113</sup> Ibid, 176

<sup>114</sup> Lindsey N. Devers, *Interpreting Honour Crimes: The Institutional Disregard Towards Female Victims of Family Violence*, Middle East International Journal of Criminology and Sociological Theory, Vol. 3, No. 1, June 2010, 359

<sup>115</sup> Kathryn Christine Arnold, *Are the Perpetrators of Honor Killings Getting Away With Murder?* American University International Law Review Volume 16, Issue 5, 2001

<sup>116</sup> Nadim Al-Adil, *Deaths among Young, Single Women in 2000–2001 in the West Bank, Palestinian Occupied Territories*, Reproductive Health Matters 2008;16(31), 9

291 of the Egyptian penal code in force in Gaza provides a similar exoneration for rapists who agree to marry their victim.<sup>117</sup>

Such codes can be seen as ‘gendered’ whereby they exempt male offenders from responsibility, leaving women with no options to escape abuse or receive help. As a result honour crimes represent a serious fear for women and girls.<sup>118</sup>

The term ‘crimes of honour’ encompasses a range of manifestations of violence against women, including honour killings, assault, imprisonment or interference with choice of marriage. As such, these crimes violate a number of rights, such as the right to life, the prohibition on cruel, inhumane, or degrading treatment or punishment, the prohibition of slavery and the right to equality before the law. The Declaration on the Elimination of Violence Against Women reflects a shift in categorising violence in the family as a violation of women’s rights, as it further rejects the justification of violence against women on the basis of tradition or custom.<sup>119</sup>

As HRW noted, “honour crimes represent the most graphic illustration of deeply embedded, society-wide gender discrimination.” It is further argued that such crimes are the most extreme form of control imposed on women in patriarchal societies, such as Palestine. Disregard to perpetrators of honour crimes are firmly rooted in traditional values that are further justified by social norms.<sup>120</sup>

The principle of equality is enshrined in international law and as such marks a cornerstone of legal instruments, such as the 1945 United Nations Charter. Key elements of this Charter include the protection of women from violence and the prohibition of discrimination based on gender. Likewise Article 26 of the International Covenant on Civil and Political Rights

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<sup>117</sup> Human Rights Watch, *A Question of Security: Violence against Palestinian Women and Girls*, 45

<sup>118</sup> Devers, *Interpreting Honour Crimes: The Institutional Disregard Towards Female Victims of Family Violence*, 365

<sup>119</sup> Anand Kirti, *The Face of Honour Based Crimes: Global Concerns and Solutions*, International Journal of Criminal Justice Sciences Vol 6 Issue 1 & 2 January- June / July – December 2011, 349

<sup>120</sup> Human Rights Watch, *A Question of Security: Violence against Palestinian Women and Girls*, 49

(ICCPR) states: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”<sup>121</sup>

Violence against women prevents them from enjoying their rights as set out in human rights charters. With regard to domestic violence, it can be said that the purpose is to “intimidate or eliminate those who insult or challenge or are seen to undermine the regime.”<sup>122</sup> As stated in the Declaration on the Elimination of Violence against Women “violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men.”<sup>123</sup>

Article 2 of this Declaration underlines that violence encompasses various forms, such as physical, psychological and sexual. Domestic violence can further be seen as an impediment in the empowerment of women and promotion of their rights. Impunity can be seen to lie at the heart of violence against women who are left vulnerable on account of ineffective legal systems.<sup>124</sup>

Palestinian women face the double constraints of their culture and Israeli occupation, which consequently results in multiple forms of repression and social injustice within their society. The ongoing deterioration of the political and socio-economic situation in the country, especially in Gaza has further led to an increase in violence against women.<sup>125</sup>

In Palestinian society, the honour code specifies values and behaviour for both men and women. For men, this includes independence, assertiveness and family financial maintenance. A key element of male honour is “shoja’a,” which refers to the ability to resist domination through equal or greater strength. Moreover, this honour code values men who

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<sup>121</sup> See Article 26 of the ICCPR

<sup>122</sup> Carin Benniger, *Violence Against Women: A Report* (Geneva, World Organisation Against Torture, 1999)

<sup>123</sup> UN General Assembly, *Declaration on the Elimination of Violence against Women*, 20 December 1993, A/RES/48/104

<sup>124</sup> Benniger, *Violence Against Women: A Report*

<sup>125</sup> *Ibid*, 103

control their dependents and as such “male sovereignty over women by whatever means is culturally sanctioned.”<sup>126</sup>

For women, the honour code is encapsulated in modest behaviour, which entails “absolute sexual purity, self-restraint and obedience.” Adherence to this code regulates every aspect of women’s lives in Palestine, as it further defines what employment they can engage in, where they can go and how they should dress. In this respect, a woman working in a mixed environment, travelling alone, or riding in a mixed service (taxi) risks being labelled “shameful.”<sup>127</sup>

Silence is viewed as individual control as well as social control in West Bank camp and village society. The very nature of patriarchal relations prevents women from speaking ill of their husbands or discussing family problems beyond the confines of the family. Thus the principle of ‘agl’ (social sense/wisdom), an important norm in the honour code requires that no one ever speaks outside the family about family matters. This inevitably has a severe impact on Palestinian women, as family matters encompass many aspects of their lives.<sup>128</sup>

It is partly for this reason that domestic violence is said to be so widespread throughout Palestinian society. Due to the poverty and powerlessness of individuals in West Bank camps and villages men are no longer materially able to prove their honour through independence and adequate family maintenance. The conditions of occupation have further impeded their exercise of assertiveness or *shoja’a*. In this context, males’ ability to fulfil traditional honour requisites has been diminished, while women’s role in maintaining family honour has instead increased in importance.<sup>129</sup>

Honour in Palestinian society is not just seen as an attribute of an individual, rather it is seen as a designation given to a ‘*hamulah*’ or clan. Therefore every individual is responsible for

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<sup>126</sup> Cheryl A. Rubenberg, *Palestinian Women: Patriarchy and Resistance in the West Bank* (London, Lynne Rienner Publishers, Inc, 2001), 41

<sup>127</sup> Ibid, 42

<sup>128</sup> Rubenberg, *Palestinian Women: Patriarchy and Resistance in the West Bank*, 47

<sup>129</sup> Ibid, 41-42

the moral worth of the clan. In this way, the whole clan is said to be brought down in shame if one family member brings shame upon herself. Honour is seen not only to be at the basis of gender identity but also a major cause of gender oppression.<sup>130</sup>

Cultural norms dictate that female purity and chastity should be maintained to avoid disgrace to the family and clan. Additionally, the protection of “arad” (honour) is linked with the protection of “ard” (land). Therefore, loss of control over the public aspects of male lives, including land, is counterbalanced by the maintenance and strengthening of male control over the private aspects of their lives, including over the lives of women.<sup>131</sup>

Customary law in the Palestinian community is based upon patriarchy mentality which has consequently led to women's continued social and legal subordination. It is further noted how men govern the public and private lives of women, often limiting them to “nurturers and repositories of family honour.”<sup>132</sup>

According to the statistics of the Ministry of Women’s Affairs in the Palestinian territories, 20 girls and women were murdered in the name of family honour in 2004 alone. Another 15 women were victims of attempted murder and 50 women committed suicide. It is suspected that 70 percent of all murders in the West Bank and Gaza are the result of honour killings. The Women’s Centre for Legal Aid and Counselling underlined that 17 women were targeted for honour killings between January 2006 and March 7 2007, an increase in 10 percent between the years 2000 and 2005.<sup>133</sup>

However, it is difficult to accurately assess the exact level of honour crimes, since these crimes often go unreported. For instance in her analysis of honour killings, Shalhoub Kevorkian found that 86 percent of honour crimes were incorrectly classified as death due to

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<sup>130</sup> Ibid, 43

<sup>131</sup> Adrien Katherine Wing, *Custom, Religion, and Rights: The Future Legal Status of Palestinian Women*, Volume 35, Number 1, Winter 1994, 155

<sup>132</sup> Ibid, 157

<sup>133</sup> David Ghanim, *Gender and Violence in the Middle East* (Westport, Greenwood Publishing Group, Inc, 2009), 40

“fate and destiny.”<sup>134</sup> She added that there was a tendency to cover up the crime to reduce the damage that may be incurred on the family and community. Honour killing can therefore be seen as closely linked to patriarchal societies, where there is a correlation between the “honour of men and the community and the restriction of female relatives’ sexuality.”<sup>135</sup>

In her study of Palestinian society, Shalhoub Kevorkian argues that “the concept of ‘rujuleh’ (manhood) is incorporated into the perception of the family. Thus in this way one cannot remain a ‘rajul’ (man) if he does not act against perceived ‘sexual transgressions’ by his female relative.”<sup>136</sup>

Domestic violence is not prohibited by law, representing another major obstacle in the promotion of women’s rights in Palestine. In 2006, the PCBS reported that among unmarried women over the age of 18, about 25 percent had been physically abused and 52.7 percent had been psychologically abused. The level of abuse increased among married women, with 61.7 percent experiencing psychological abuse and 23.3 percent experiencing physical abuse.<sup>137</sup>

Although women have a right to press charges for ordinary assault and battery charges against their abusers, several factors keep domestic violence victims from doing this. Firstly one can observe how social norms in particular shame women who report abuse to the police, as they are encouraged to remain silent for the sake of their children. Similarly, women who are reluctant or unable to file domestic or sexual violence complaints on their own have little recourse, given the fact that the law allows only close relatives to file such complaints on their behalf, and most of these crimes are perpetrated by close relatives.<sup>138</sup>

Since there is no specific domestic violence legislation in the OPT, victims of violence must rely on general penal provisions on assault when they seek to press charges. However, as HRW indicated in their 2006 report, these laws provide little remedy to victims unless they

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<sup>134</sup> Devers, *Interpreting Honour Crimes*, 361

<sup>135</sup> Ghanim, *Gender and Violence in the Middle East*, 42

<sup>136</sup> Ibid, 43

<sup>137</sup> Azzouni: *Palestinian Authority and Israeli-Occupied Territories*, 371

<sup>138</sup> Ibid, 371

have suffered extreme forms of injury. Article 33 of the Jordanian penal code, applicable in the West Bank outlines the penalties for violence based on the number of days the victim is hospitalised.<sup>139</sup>

Thus, if the victim requires less than 10 days of hospitalisation, a judge has the authority to dismiss the case at his own discretion as a “minor offense.” The law permits a judge to impose a slightly higher sentence when the victim is hospitalised between 10 and 20 days. According to the law, mandatory prosecution is required only in cases where the victim is hospitalized for more than 20 days.<sup>140</sup>

Human Rights Watch further stressed a major concern with regard to this law since victims of domestic violence may go to the hospital several times to treat their injuries with no intention of pressing formal charges. For this reason, these women may have no medical records to support claims of long-term abuse should they later decide to press charges or seek a divorce.<sup>141</sup>

Public opinion polls highlight how Palestinian society largely condones violence against women and discourage women from reporting abuse. A poll of 1,133 women conducted in 2002 by the Palestinian Working Women’s Society for Development in conjunction with the Palestinian Centre for Public Opinion in Beit Sahour revealed that 53.7 percent of those polled felt that it was inappropriate for the police to interfere when a man assaults his wife.<sup>142</sup>

Despite the economic and political changes that have occurred in Arab society during the last three decades, the family is still viewed as the main unit in economic, social and religious life. Women in particular are expected to protect their family’s honour and reputation. Similarly, women’s success or failure in marriage, life choices and personal behaviour is considered a reflection upon the success or failure of the family.<sup>143</sup>

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<sup>139</sup> Human Rights Watch, *A Question of Security: Violence against Palestinian Women and Girls*, 36-37

<sup>140</sup> Ibid, 37

<sup>141</sup> Ibid, 37

<sup>142</sup> Ibid, 34

<sup>143</sup> Kevorkian, *Researching women’s victimisation in Palestine*, 163

Female vulnerability is aggravated by the “patriarchal power structure of Arab families,” which not only allows for gender inequality, but also facilitates male control. In this context, it is argued that women are trapped in such situations, where they may be pressured to remain silent about abuse or in other cases may refrain from marrying for fear of disclosing sexual abuse by some family member.<sup>144</sup>

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which provides legal standards governing women's rights is vital to promoting change in countries that enforce discriminatory laws. Despite barriers to implementation and enforcement of CEDAW, it represents “the most comprehensive legal instrument that broadly addresses women's international legal rights.”<sup>145</sup>

Under Article 1 of CEDAW, discrimination against women is defined as “any restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>146</sup>

This provision is significant since it recognises that women have equal rights with men in the private sphere, including family relations. By this definition, the Penal Codes relating to honour killing contravenes the right to equal status before the law, since they adversely affect the rights of women. Honour killing can further be seen as a form of restriction and exclusion on the basis of gender. A distinction is clearly made between the expectations of male and female members of the family, as women are further impeded in the exercise of choices in their daily lives.<sup>147</sup>

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<sup>144</sup> Ibid, 164

<sup>145</sup> Arnold, *Are the Perpetrators of Honor Killings Getting Away With Murder?* 1373

<sup>146</sup> See Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981

<sup>147</sup> Arnold, *Are the Perpetrators of Honor Killings Getting Away With Murder?* 1385

## I.II Attempts at Reform

Some measures have been put in place to address violence against women. For instance, the Palestinian President, Mahmoud Abbas issued Decree No. 7 of 2011 (annulling Article 340 of the 1960 Jordanian Penal Code, and Article 18 of the 1936 Egyptian Criminal Code) that enabled judges to consider “mitigating circumstances in murder cases where the victim was a female relative of the perpetrator.” Moreover in May 2014, the President issued a decree, whereby Article 98 of the Penal Code was amended to add the following provision: “The Perpetrator shall not benefit from mitigating excuse should the act be taken against a female under honour grounds”.<sup>148</sup>

However, a recent report by the UN Office for the High Commissioner of Human Rights (OHCHR) noted how this phenomenon of honour killing continues to take place in Palestine. According to this agency the fact that these crimes continue to be committed after the issuance of the decree can be “partially attributed to the fact that the amended provisions have not been used in judicial decisions.” It is therefore argued that “their impact as a deterrent for crimes of killing women under the pretext of honour has been limited.”<sup>149</sup> Moreover, the Public Prosecutions Services in Ramallah argued that such changes will not have a significant impact in the actual practices at courts, as many reduced sentence sin gender based killing cases are not issued referring to Article (340) but rather are issued in reference to Articles which gives discretion to judges to reduce sentences.<sup>150</sup>

For instance concerns have been raised in relation to article 99 of the 1960 Penal Law, which gives “broad discretionary power to judges in the application of mitigating factors.” It is

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<sup>148</sup> ESCWA, Social and Economic Situation of Palestinian Women and Girls, 4 February 2015, 26

<sup>149</sup> Ahmad Al Ashqar UN Office for the High Commissioner of Human Rights (OHCHR), *Murder of women in Palestine under the pretext of honour: Legislation and Jurisprudence analytical study executive summary*, April 2014 available; [http://www.ohchr.org/Documents/Issues/Women/WRGS/Executive\\_summary\\_study\\_called\\_honour\\_killings\\_Palestine.pdf](http://www.ohchr.org/Documents/Issues/Women/WRGS/Executive_summary_study_called_honour_killings_Palestine.pdf)

<sup>150</sup> Legislative and institutional measures to investigate, prosecute and adjudicate gender related killings of women and girls, Submitted by the Public Prosecution Services, Attorney General Office, Ramallah, West Bank, Palestine June 2014 available; [http://www.unodc.org/documents/justice-and-prison-reform/IEGM\\_GRK\\_BKK/Gender\\_related\\_killings\\_report\\_AGO\\_Palestine-June\\_2014.pdf](http://www.unodc.org/documents/justice-and-prison-reform/IEGM_GRK_BKK/Gender_related_killings_report_AGO_Palestine-June_2014.pdf)

therefore noted that of the 37 cases examined in the OHCHR study conducted between 1993 and 2013, judges used article 99 in 23 cases as a basis for allowing perpetrators of crimes of so-called “honour” to benefit from mitigating factors in sentencing.<sup>151</sup>

It is further noted that under Article 99, judges have the authority to halve a sentence if the victim’s family “waives” its right to file a complaint for murder. Due to the family’s complicity in crimes committed in the name of honour, the family nearly always “waives” the right to file a complaint. Thus, perpetrators of these attacks may receive sentences as short as six months in prison.<sup>152</sup>

## **II. Religious Law**

### **II.I Personal Status Laws**

All family law matters for Muslim residents of the West Bank and Gaza are governed by the Jordanian Law of Personal Status (1976) and the Egyptian Law of Family Rights (1954). Such laws however discriminate against women and fail to promote equality within the family. This is evidenced by the amount of control they impose over women’s lives. For instance, a Palestinian woman’s right to freely enter into marriage is limited by requirements under both sets of laws that she has the permission of a male guardian.<sup>153</sup>

Personal status, *Al-Ahwaal Ash-Shakhsiya* is a recent legal term in Arabic referring to “matters of the Shari’a.” It was first defined on 21 June 1934 by the Egyptian Court of Cassation as: “the sum total of the physical or family descriptions of a known person which distinguish him from the others, and give legal effects under the law in his social life, such as being male or female, married, widowed or divorced.”<sup>154</sup>

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<sup>151</sup> Report of the United Nations High Commissioner for Human Rights Implementation of Human Rights Council resolutions S-9/1 and S-12/1, A/HRC/28/80, 2 March 2015, para 50

<sup>152</sup> Al Ashqar, *Murder of women in Palestine under the pretext of honour*, 10

<sup>153</sup> Human Rights Watch, *A Question of Security: Violence against Palestinian Women and Girls*, 24

<sup>154</sup> Jamal J. Nasir, *The Islamic Law of Personal Status* (The Hague, Kluwer Law International, 2002), 34

Both family laws in the OPT differentiate in stipulating the age of marriage between males and females. According to the Jordanian Personal Status Law, the age of marriage for males is 16 years of age and 15 years of age for females. Article 5 of the Egyptian Family Law sets the age of marriage at 18 years of age for males and 17 years of age for females. However the age of marriage as it stands today clearly contradicts the Palestinian Child Law which sets the age of majority as eighteen years old.<sup>155</sup>

Personal status laws apply principles of Shari'a law to many social issues, including marriage, parental consent, divorce, polygamy, and child custody. The law sets gender-specific rights and duties for the spouses, which reflect the traditional 'gendered relations' and patriarchal structure of family relations in the Palestinian territories. This contravenes the right to equality which is enshrined in international treaties, such as the Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW), which was endorsed by the Palestinian Authority in 2009.<sup>156</sup>

The current Draft Personal Status Law under consideration of the executive branch is seeking to raise the age of marriage to 18 years of age for both males and females. Currently, a judge (qadi) has the authority to permit a minor to marry if he considers marriage to be in the minor's best interest; however this is more likely to happen with female minors than with male minors. It has been noted that female children as young as nine years and male children as young as 12 years of age may be wed with the consent of a judge.<sup>157</sup>

Moreover, Egyptian Family Law allows the judge to conduct a marriage contract for a minor if he assumes it is "suitable" for a girl. Such decisions are made without a lot of deliberation, where a mix of factors are allowed to play an influential role in what is considered the "best interest" of the child. However, by using general terms such as a "girl's interest" and by not specifying which restrictions might apply, the law leaves a lot to the judges' discretionary

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155 Zeina Jallad, *Palestinian Women and Security: A Legal Analysis*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2012

156 Women's Centre for Legal Aid and Counselling, *Palestinian Women and Personal Status Law*, May 2012, 1-2 available; [http://www.marsad.org/wp-content/uploads/publications-pdf/documenten\\_10117.pdf](http://www.marsad.org/wp-content/uploads/publications-pdf/documenten_10117.pdf)

157 Jallad, *Palestinian Women and Security: A Legal Analysis*, 11

powers.<sup>158</sup> This contradicts, Article 16 of CEDAW on the elimination of discrimination in relation to marriage, and Article 16 (2) of the Universal Declaration of Human Rights (UDHR), which states, “Marriage shall be entered into only with the free and full consent of the intending spouses.”<sup>159</sup>

## II.II Divorce under Palestinian Laws

Another discriminatory element with regard to both the Jordanian and Egyptian laws is the fact that they allow husbands to divorce their wives verbally while requiring that women obtain a judicial divorce through the court system. As Human Rights Watch stated, Palestinian women can only initiate a divorce on the basis of harm inflicted by her husband, i.e. a ‘fault-based divorce.’<sup>160</sup>

A core problem underlying these laws is the fact that a judge in the OPT will only grant a divorce on the basis of domestic violence (nizah wa ishqa’a) separation, literally “discord and strife.” However, according to existing family status laws, successful petitions require eyewitness testimony for, which is in many cases difficult, if not impossible, to obtain. The laws further require that a Palestinian woman produce a medical report from a public hospital to support her claims.<sup>161</sup>

This position has been criticised as discriminatory, since it may be difficult to establish injury occurring in the ‘private space’ shared by the spouses. Even if the wife has suffered serious physical injury, there is an initial requirement to attempt reconciliation and if these attempts fail, then the matter is turned over to arbiters who must similarly attempt reconciliation before recommending a divorce. It is argued therefore that the attitudes of the judiciary towards domestic violence and other forms of abuse short of assault convictions may impede a wife’s access to divorce on these grounds. Similarly, social attitudes to divorce and

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<sup>158</sup> Jallad, *Palestinian Women and Security: A Legal Analysis*, 11

<sup>159</sup> See Article 16 (2) of the Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)

<sup>160</sup> Human Rights Watch, *A Question of Security: Violence against Palestinian Women and Girls*, 24

<sup>161</sup> Human Rights Watch, *A Question of Security: Violence against Palestinian Women and Girls*, 37

domestic violence may complicate the remedies available to a woman wishing to leave her marriage.<sup>162</sup>

It is further noted that the husband is permitted to unilaterally divorce his wife without judicial action (talaq). While divorce starts as a revocable event it later becomes permanent. A husband can divorce his wife three times without fully terminating the marriage, just by the oral announcement, "I divorce you."<sup>163</sup>

Other concerns can be cited with regard to these laws. For instance, a divorced or widowed mother is not allowed to keep her children after remarriage to another man. Thus in the case, where a mother remarries, her children are placed in the custody of another lawful female (up to the age of 10 for a boy and 12 in the case of a girl). Thereafter, they are transferred to male custody.<sup>164</sup>

Women face additional problems in relation to divorce. For example, a wife has to leave the house each time a husband divorces her. Additionally she has to wait a three-month period (idda) before she can remarry. On the other hand if the husband changes his mind within the three months; she has to return to his house and resume the marriage. An added complication is the fact that the wife is entitled to alimony only to meet minimal needs. As a result, the divorced woman is in many cases in a 'financially precarious position', since, custom dictates that she return to her father's home in disgrace.<sup>165</sup>

It is clear that legal doctrines on "gendered roles and rights" were applied mainly in the context of relations within the family, such as discussions about marriage and divorce. In particular the "muftis" (Muslim religious scholars) and the courts agreed that the Muslim marital relationship was one of "complementarity, not of equality." For this reason, there is a

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<sup>162</sup> Lynn Welchman, *A comparative overview of textual Development and Advocacy* (Amsterdam, Amsterdam University Press, 2007), 111

<sup>163</sup> Azzouni: *Palestinian Authority and Israeli-Occupied Territories*, 369

<sup>164</sup> Azzouni: *Palestinian Authority and Israeli-Occupied Territories*, 370

<sup>165</sup> Adrien Katherine Wing, *Custom, Religion, and Rights: The Future Legal Status of Palestinian Women* 35 Harv. Int'l. L. J. 149 1994, 162

clear division of male and female roles within the household, which “legitimises the husband’s authority and insists on wifely obedience.”<sup>166</sup>

Fundamental to women’s status as “protected dependants” under Islamic law is the exchange of male maintenance (nafaqa) for female obedience (ta’a).<sup>167</sup> According to this principle, the wife must move wherever her husband specifies, and loses her maintenance rights if she disobeys. Similarly, she loses her maintenance if she leaves the house without permission, even to work.<sup>168</sup>

Insecurity and economic violence have also been documented within the literature on violence against Palestinian women and girls. Two national domestic violence surveys conducted in the Palestinian Territories in 1994 and 1995 indicated that 41% of female were prevented by their husband from using the family’s money. According to other accounts, “familial and societal pressures” imposed upon Palestinian women to refuse their lawful inheritance often serve as a form of violence.<sup>169</sup>

The Jordanian law reiterates the Koranic principle that Muslim women may not marry non-Muslim men. In contrast Muslim men may marry women of any religious denomination. From one perspective it is argued that the attachment accorded to the Islamic personal status laws reflects the ‘deeply in-grained traditions’ of patriarchal family structure. Accordingly, the Shari’a laws of personal status result in men exercising social control over women’s lives.<sup>170</sup>

According to the qawama concept of guardianship a woman must have a male guardian or wali to contract the marriage, whereas a man may contract the marriage for himself. If a

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<sup>166</sup> Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (California, University of California Press Ltd, 2000), 179-180

<sup>167</sup> Johnson, Agents for reform, 148

<sup>168</sup> Wing, Custom, *Religion, and Rights: The Future Legal Status of Palestinian Women*, 161

<sup>169</sup> Chaban, *Promoting Gender-Sensitive Justice and Legal Reform in the Palestinian Territories*, 158

<sup>170</sup> Ann Elizabeth Mayer, *Law and Religion in the Muslim Middle East*, *The American Journal of Comparative Law* Vol. 35, No. 1 (Winter, 1987), pp. 127-184

woman does not have a male relative, the shari'a judge may act as guardian.<sup>171</sup> The preservation of Shari'a rules of personal status has resulted in a "pattern of legal discrimination against women on religious grounds," thereby relegating women to secondary status which conflicts with human rights norms.<sup>172</sup>

One can further observe a "strong social stigma" attached to divorce in Palestinian society, which is further complicated by a lack of economic support open to divorced women. Additionally, there has been a lack of attention drawn to remedies available to a woman whose husband takes another wife and as a result no longer wishes to remain in the marriage. In the context of a claim for separation in this case, a woman must establish the "incidence of injury in order to institute the process of arbitration."<sup>173</sup>

However, there is a key problem with regard to this situation given the fact that there is no presumption in the law that polygamy causes injury. Thus as a result the arbiters may conclude that the wife was treated equally and received her full rights according to the law. Such a finding would cost her a large proportion of her remaining financial rights against her husband if the separation were effected.<sup>174</sup>

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<sup>171</sup> Ibid

<sup>172</sup> Wing, Custom, *Religion, and Rights: The Future Legal Status of Palestinian Women*, 161

<sup>173</sup> Lynn Welchman, *Beyond the Code: Muslim Family Law and the Shari'a Judiciary in the Palestinian West Bank* (The Hague, Kluwer Law International, 2000, 187

<sup>174</sup> Ibid, 216

### III. Political Participation of women in Palestine

#### III.I Women in the Palestinian Authority

According to Cheryl Rubenberg patriarchal mentality underscores Palestinian politics, as concepts about masculine and feminine practices relating to gender are central to the self-definition of all political groups. In a series of interviews, Rubenberg highlighted women's disillusionment with formal participation either on account of concerns relating to 'honour' and 'shame' or frustration with the priorities of existing organisations.<sup>175</sup>

With the establishment of the Palestinian Authority (PA) in May 1994, the women's groups in the West Bank villages and camps became completely irrelevant, mainly because they had no independent women's agenda. In this context, women in the villages and camps were left with no leadership or organisational structure, and no established programme around which to mobilise. It is further argued that the narrowing of the boundaries of 'permissible political debate' in Palestinian politics combined with the PA's 'reinstitution of kin relations' had an impact on women's participation, shifting their location from the public and back to the private space.<sup>176</sup>

It is further noted that traditional patriarchy within Palestinian political culture was consolidated under the PA. The reinvention of the "hamula" or clan system as a state mechanism to reaffirm political allegiance further constitutes a potential threat to women. For example, the entrenchment of the role of patriarchy inherent in the legitimisation of the "hamula" has consequences in relation to violence against women. Thus in this manner social workers and NGOs experience greater challenges in intervening in situations of domestic violence, when the male head of a family is seen as the guardian of the family's female members.<sup>177</sup>

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<sup>175</sup> Rubenberg, *Palestinian Women: Patriarchy and Resistance in the West Bank*, 214-217

<sup>176</sup> Ibid, 228

<sup>177</sup> Nahla Abdo, *Gender and Politics Under the Palestinian Authority*, *Journal of Palestine Studies*, Vol.28, No.2 9Winter, 1999), pp.38-51

One can further observe that appointments were usually made on the basis of affiliation to Fatah (one of the leading party's) or clan allegiance. In the case of women it is noted that in many cases their appointment to governmental positions is either due to their membership of the Fatah movement or through the assistance of their relatives or friends in the PA. In this way, one cannot say that the number of women in the government is as a sign of their qualifications or gender sensitivity on the part of the PA. Rather, as Yuval-Davis argues, 'familial ties' provide the major reason for pushing some women into the political hot seat.<sup>178</sup>

Although Fatah holds that women's participation in national struggles establishes the foundation for their eventual 'liberation' it fails to define the term. Moreover one sector of Fatah policy has consistently held that all struggles other than the national one, such as the one of women are of a 'secondary nature.' However, in the opinion of Jihan Helou, executive committee member of the Women's Union, these two struggles are 'intimately linked' in the sense that the national struggle will not succeed with only half of the population and that women cannot effectively participate unless they are freed from the 'restrictive practices' governing their lives.<sup>179</sup>

It was suggested that a women's mass organisation be set up within Fatah, separate from but linked to the main body. However, it was also proposed that it be supervised by a man. This attitude reflected the "gender power relations that prevailed in Palestinian society." It further demonstrates how a 'gendered culture' can affect the relations of power within resistance movements and politics structure. In this way, it can be argued that such separation of men and women within the same movement is discriminatory since it prioritized the masculine role. As Mai al-Sayeh states, this arrangement marginalised women's role and impeded their political potential to support the cause.<sup>180</sup>

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<sup>178</sup> Nahda Y. Sh'hada, *Gender And Politics In Palestine: Discourse Analysis of the Palestinian Authority & Islamists*, University of Miami International and Comparative Law Review, 38

<sup>179</sup> Julie Peteet, *Gender in Crisis: Women and the Palestinian Resistance Movement* (New York, Columbia University Press, 1991), 161-163

<sup>180</sup> Matos, *Gender, Power, and Military Occupations: Asia Pacific and the Middle East since 1945*, 201-202

### III.II Women under Hamas

The political split between Hamas and Fatah which began in 2006 can further be seen as a source of uncertainty for women, threatening family unity. This is reflected in a May 30 2006 brief from Al Quds Al Arabi which underlined how such divisions had torn apart families. This division between the PA-led government in the West Bank and the Hamas led government in the Gaza Strip has furthermore led to a worsening environment for the protection of fundamental freedoms in both areas.<sup>181</sup>

When the Hamas movement was created during the First Intifada in 1987, it considered itself to be the Palestinian wing of the Muslim brotherhood founded in Egypt in 1928. In its Covenant Hamas stressed its vision, including its view of how women could contribute to the cause. From their perspective a ‘crisis of faith’ was afflicting Palestinian society, leaving it ill-prepared to combat Israel’s forces. For this reason, they called for Palestinians to return to their faith. Linked to this was their view that men should exert their ‘rightful control’ over women as ordained in the faith.<sup>182</sup>

Many international accounts have suggested that the intifada enabled women to make great progress towards political and social liberation. This is based on the fact that large numbers of women were mobilised to confront the occupation in different ways than before. However although, positive developments occurred, the Intifada also became the setting for a campaign to impose the hijab on all women in Gaza. This so-called ‘hijab campaign’ included the threat and use of violence, as it further developed into a ‘social offensive.’ It is argued that political inaction and social acquiescence resulted in an ‘ideological transformation,’ for women in the sense that it became almost impossible for them to go around Gaza uncovered after December 1988.<sup>183</sup>

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<sup>181</sup> Amal Al-Malki, *Arab Women in Arab News: Old Stereotypes and New Media* (Bloomsbury Academic, 2012), 301

<sup>182</sup> Beverley Milton-Edwards, *Hamas: The Islamic Resistance Movement* (Cambridge, Polity Press, 2010), 230

<sup>183</sup> Hammami, *From Modesty to Collaboration: Hamas, the Women’s Movement*, 195

A core problem for women was the fact that social pressure was accompanied by an attempt to “nationalize” the hijab. In this context the hijab was not viewed just as an expression of Islamic faith, but instead was promoted as a symbol of nationalist identity. In contrast women who refused to wear the veil were denounced as ‘flimsy’ and even ‘anti-patriotic.’ In certain cases, Hamas activists even resorted to violence against such women.<sup>184</sup>

This policy had serious implications for the social order not only restricting women’s mobility, but also putting social pressure on women making ‘suspicious moves.’ As such the way women talked, walked and acted came under close scrutiny. In a survey on the living conditions in Palestine, 56% of women surveyed in Gaza and 47% surveyed in the West Bank said that they were unable to move around freely within their own communities.<sup>185</sup>

Hammami described the ‘hijab campaign’ as “fundamentally an instrument of oppression, a direct disciplining of women’s bodies for political ends.” Thus in her view it was used as a means of attacking secularism in relation to issues of women’s liberation. However, Nahla Abdo suggests that “the issue of hijab and Muslim fundamentalism may have been overplayed by the Israeli and Western media to divert attention from the major struggle against Israeli oppression.”<sup>186</sup>

Hamas’s agenda for women has different dimensions. During the First Intifada it entailed forcing women back to the homes (beit al ta’a) and marrying off girls as young as thirteen. One of the key reasons behind early marriage was the desire to accelerate the reproduction of the ‘living legacy’- a new generation of fighters. Moreover, the Hamas felt that if schools and universities were closed, women should stay away from public squares and markets in order to ‘preserve’ their honour.<sup>187</sup>

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<sup>184</sup> Meir Litvak, *The Islamization of the Palestinian-Israeli Conflict: The Case of Hamas*, Middle Eastern Studies, Vol. 34, No. 1 (Jan., 1998), pp. 148-163

<sup>185</sup> Firdous Azim, *Islam, Culture and Women in Asia: Complex Terrains* (New York, Routledge, 2013), 18-19

<sup>186</sup> Maria Holt, *Palestinian women, violence, and the peace process, Development in Practice*, Volume 13, Nos 2 and 3, May 2003, 232

<sup>187</sup> Ibid, 235

Compelling girls to marry at this age clearly contravenes international law, namely Article 23 (2) of the ICCPR, which stipulates that “the right of men and women of marriageable age to marry and to found a family shall be recognized.”<sup>188</sup>

The Islamic programme further aims to foster the ‘restoration of traditional networks and social relationships’ thereby acting as a counterpoint to the modernity of Israel. The role of women is stressed in the sense they are expected to instill their children with religious duties and values. From the very outset, Hamas has depicted women as the mothers of martyrs.<sup>189</sup> This view is enshrined under Article 17 of the Hamas Covenant, which stipulates that “The Muslim woman has a role no less important than that of the Muslim man in the battle of liberation. She is the maker of men. Her role in guiding and educating the new generations is great.”<sup>190</sup>

In particular, the Hamas’ traditional views concerning women is evident from certain sections dedicated to their role in the home and in society.<sup>191</sup> Thus according to Article 18: “Women in the home of the fighting family, whether she is a mother or a sister plays the most important role in looking after the family, rearing the children and imbuing them with moral values and thoughts derived from Islam. She has to teach them to perform the religious duties in preparation for the role of fighting awaiting them.”<sup>192</sup>

Palestinians and foreign expatriates have commonly referred to Gaza as ‘conservative’ (muhafiz), ‘traditional’ (taqlidi) or ‘religious’ (mutadayyin). The influence of the Hamas on women’s lives is apparent, as women are seen to cover up especially in the camps. The development in women’s lives is noted, as in some cases women wore no covering at all before the hijab campaign launched during the First Intifada. However by 1999-2000, this

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<sup>188</sup> See Article 23 (2) of the ICCPR

<sup>189</sup> Andrew Nusses, *Muslim Palestine: The Ideology of the Hamas* (Amsterdam, Overseas Publishers Association, 1998), 69-73

<sup>190</sup> See Article 17 of the Covenant of Hamas, the Islamic Resistance Movement, 18 August 1988 available; [http://avalon.law.yale.edu/20th\\_century/hamas.asp](http://avalon.law.yale.edu/20th_century/hamas.asp)

<sup>191</sup> Milton-Edwards, *Hamas: The Islamic Resistance Movement*, 300

<sup>192</sup> See Article 18 of the Covenant of Hamas, the Islamic Resistance Movement, 18 August 1988 available; [http://avalon.law.yale.edu/20th\\_century/hamas.asp](http://avalon.law.yale.edu/20th_century/hamas.asp)

had changed, as almost all women, urban and camp were conforming in one way or another to the Islamic dress code in public.<sup>193</sup>

Following the Hijab campaign and during the period of ‘national obsession with collaboration’ (1990-1992), most Gazans, particularly women lived in a state of fear. In this context, questions could be raised about any woman if she talked to men openly or acted differently. Morality was pushed, as women kept interactions with men to a minimum while in public.<sup>194</sup>

Although the Hamas’ energetic women’s movement drew domestic and international media attention since the election victory in 2006, its senior members noted that such high-profile activities have not changed how the movement is organised. Thus it can be noted that the Brotherhood continues to make decisions and monopolise control, while the Sisterhood has more of a supporting role. In particular, the Hamas can be seen to maintain conservative and patriarchal views and as such define the role for women in the movement.<sup>195</sup>

According to Fereshteh Nourai-Simone the link between gender ideology and religious fundamentalist movements is ‘inseparable’ in respect of the fundamentalists’ aim to build a “moral society based on the moral family.” The ‘Islamization’ of gender has furthermore been identified by various scholars. For instance Remi Hammami noted that the First Intifada was the first time “that an issue specifically veiling once relegated to the arena of religious behaviour had been mobilised as a nationalist issue.” Hammami further indicated that this campaign showed Hamas’s ability to link its social ideology with Palestinian nationalism, using the threat of violence against women to impose the veil.<sup>196</sup>

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<sup>193</sup> Loren D. Lybarger, *Identity and Religion in Palestine: The Struggle Between Islamism and Secularism in the Occupied Territories* (New Jersey, Princeton University Press, 2007), 180

<sup>194</sup> Remma Hammami, *From Modesty to Collaboration: Hamas, the Women’s Movement, and National Identity in the Intifada in Political Islam: Essays from Middle East Report*, ed. Joel Beinin (California, University of Californian Press, 1997), 204

<sup>195</sup> Milton-Edwards, *Hamas: The Islamic Resistance Movement*, 310

<sup>196</sup> Fereshteh Nourai-Simone, *On Shifting Ground: Middle Eastern Women in the Global Era* (New York, Feminist Press, 2005), 181

A clear contradiction can therefore be drawn between Hamas' claim on one hand to involve women at all levels and the opposing view that it is an inherently conservative organisation. These paradoxical developments are further evident in the fact that on the one hand, Hamas has fostered women's education and job training opportunities, but, on the other it has insisted on women's 'subordinate legal status.'<sup>197</sup>

Thus critics of Hamas point to its Covenant which defines women from a purely biological perspective as 'makers of men.' Moreover in the areas where it is strongest, most notably the Gaza Strip, the Hamas launched a campaign of 'Islamization' using social pressure and even intimidation to compel women to act and dress according to its interpretation of Islam. This drew both domestic and international criticism in the sense these measures were seen as restricting women's freedoms.<sup>198</sup>

Since Hamas took control of Gaza in June 2007, the geographical separation between Gaza and the West Bank has meant that there are essentially two different governments ruling Palestine geographical separation with neither in complete control over the borders, resources or mobility in the separate regions. Furthermore, the deterioration in the political situation has led to increased violence against women in the Gaza Strip. For instance, 5 cases of honour killings took place in Gaza at the beginning of July 2007, which is a huge number in comparison to other months.<sup>199</sup>

One can moreover observe a great inequality with regard to Palestinian women's participation in politics. This is clearly apparent in the 2006 Palestinian elections. Thus although Hamas listed 13 females out of 66 candidates, it only included one woman in the cabinet, Myriam Saleh when it formed a Palestinian government. Additionally, Saleh was assigned to the Ministry of Women's Affairs, a move which disappointed many Hamas

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<sup>197</sup> Fadwa Allabadi, *Controversy Secular and Islamist Women in Palestinian Society*, *European Journal of Women's Studies* August 2008 vol. 15 no. 3

<sup>198</sup> Milton-Edwards, *Hamas: The Islamic Resistance Movement*, 315

<sup>199</sup> Sanja Bahun-Radunović, *Violence and Gender in the Globalized World* (Hampshire, Ashgate Publishing Ltd, 2008), 67

supporters, since it appeared to perpetuate the traditional view that women's affairs are separate and should be administered by women.<sup>200</sup>

In addition to the effects of the freezing of international aid, Gaza also suffered from an interruption in water supplies and electricity after its power plant was bombarded by Israel in mid-2006. Another major concern for women is the fact that border crossings out of Gaza have only been opened sporadically since the Hamas takeover. This in turn has had an impact on their quality of life, as they have little access to basic resources.<sup>201</sup>

The most visible aspect of Hamas' government has been the imposition of more conservative cultural and moral codes, such as veiling as well as a gender division of labour or female restrictions in public life. However, the fact that 20 per cent of public servants working for Hamas are women, while Isra Al-Modallal, a 23 year-old UK-educated journalist, was also appointed as the organization's first spokeswoman in November 2013 have drawn attention to gender politics in the region and the possibilities for social change. This attempt to present a 'friendlier discourse' though is perceived in many cases as simply 'window dressing.'<sup>202</sup>

Islamist women are confronted with two paradoxical expectations: to live as 'good mothers and obedient wives,' while at the same time being model political activists. Although the biggest obstacle to female emancipation in Palestine continues to be the occupation, Hamas has still not quite proven itself capable of providing a 'truly progressive environment' for Palestinian women, in case a sustainable peace process is achieved. In this respect, the current status of the women in Gaza reveals the difficult task of "reconciling agency and social change, individual empowerment and structural transformation."<sup>203</sup>

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<sup>200</sup> Khaled Hroub. *Hamas* (London, Pluto Press, 2006), 77

<sup>201</sup> Azzouni: *Palestinian Authority and Israeli-Occupied Territories*, 361

<sup>202</sup> Filipa Pestana, *Gender ideology of Hamas and the women's movement in Palestine*, Lund University, Centre for Middle Eastern Studies

<sup>203</sup> *Ibid*

## IV. Campaigns on Women's Rights

### IV.I. Debates on reforming Islamic Law

The subject of Muslim Family Law in Palestine received a lot of public attention during the interim period that followed the conclusion of the Oslo Peace Accords and the establishment of the Palestinian Authority (PA) in 1994. Palestinian women believed that they would be able to focus on their internal 'social' problems including gender issues. It was in this context that the Palestinian women's movement took the lead in campaigning for family law reform as part of the state-building project anticipated after the signing of the Oslo agreements between the Palestinian Liberation Organisation (PLO) and Israel.<sup>204</sup>

In these debates over reform of Islamic law in the West Bank and Gaza, conflicting claims arose over the nature of Palestinian identity. On the one hand Islamist leaders emphasised the "Islamic nature of Palestinian society", while on the other hand, secularist political factions talked about "pluralism and democracy" as key elements of a collective identity. Underlying the different positions were competing claims about the social attitudes towards shari'a based on different interpretations of Palestinian society.<sup>205</sup>

As Rema Hemani underlines those representing Islamist views generally portrayed Palestinian society as unanimously committed to the current system of family law. In contrast the women's movement either argued for reform in the direction of civil law or called for the widening of women's rights within the current framework of shari'a based family law.<sup>206</sup>

While there are strong levels of support for women's political rights and rights to income, these coexist with a much lower level of support for women's rights within marriage and the family. In this context one can observe the low level of support for women's right to divorce which is clearly associated with the social stigma attached to divorce.<sup>207</sup>

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<sup>204</sup> Nahda Shehada, *Debating Islamic family law in Palestine: Citizenship, Gender and 'Islamic' Idioms*, ISS Staff Group 3: Human Resources and Local Development, 1-2

<sup>205</sup> Rema Hammani, Attitudes towards legal reform of personal status law in *Palestine in Women's Rights and Islamic Family Law*, ed. Lynn Welchman, Zed Books Ltd, NY, 2004, 125

<sup>206</sup> Ibid, 126

<sup>207</sup> Ibid, 133

Conflicting interests are prevalent with regard to moves to expand women's entitlements. For example "commitments to social equality and justice coexist with strong impulses towards preservation of the family and masculine authority within it." Thus, women's desire to expand their rights within family law is met by male resistance in certain areas, notably in relation to issues of property claims either in inheritance or divorce.<sup>208</sup>

Since the establishment of the Palestinian Authority, various human rights and women's organisations have been directly working to improve the situation of women and girls and to combat gender-based discrimination within the legal system.<sup>209</sup> However like in other Muslim countries, the debate on personal status in Palestine has proved divisive. For instance, when a project for family law reform was introduced in the Legislative Assembly in 1997, it provoked hostile reactions from the Islamist members. Similarly, the religious establishment, fearing to lose influence over shari'a courts, launched attacks on the women's movement activists, linking them with the 'West.'<sup>210</sup>

The political circumstances following the Oslo Peace Accords signed in 1993 and 1995 created a contradictory environment for the women's movement. On the one hand, nationalists continued to recognise the vital role of the women's movement. However, on the other hand, the Palestinian Authority as an administrative body lacked power and resources; as such the struggle for self-determination and independence remained the primary aim.<sup>211</sup>

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<sup>208</sup> Ibid, 143

<sup>209</sup> Chaban, *Promoting Gender-Sensitive Justice and Legal Reform in the Palestinian Territories*, 155

<sup>210</sup> Shehada, *Debating Islamic family law in Palestine: Citizenship, Gender and 'Islamic' Idioms*, 2

<sup>211</sup> Ibid, 4

## IV.II Model Parliament for Women and Legislation

The activities of the women's movement culminated in the campaign for family law reform known as the Model Parliament for Women and Legislation (MP) in 1997-1999. The MP project which was established in 1997 aimed to propose Palestinian legislation on the basis of equality and human rights. This campaign for family law reform was seen as the first major social debate in the history of Palestine.<sup>212</sup>

In the workshops leading up to the Model Parliament, men and women examined existing social welfare, personal status, criminal and public law legislation, using the principle of equality to reveal and address gender inequities. Key recommendations included the call for special provisions for women's rights, such as maternity leave and violence against women. However, as Penny Johnson notes there was a conflict between the call for equal citizenship and awareness of the social and economic conditions of Palestinian women.<sup>213</sup>

In a document prepared as a resource text for the parliament, 'the Law and the Future of Palestinian Women', attorney Asma Khader recommended amendments to existing shari'a law, with a general recommendation for a 'unified family law' to be applied in civil courts with jurisdiction over the whole population. According to Khader the law would not only treat all Palestinians as equal but would also respect the principles of religion and sources of Palestinian legislation (including shari'a). However, she argues that the current ecclesiastical and shari'a courts violate the principle of equality between citizens.<sup>214</sup>

Some of the reforms proposed by the Gaza MP included a call for women to be guaranteed their legally prescribed and religiously legitimate share of inheritance. In relation to the rights of the walī ("custodian"), the draft proposed to activate the already specified right of women, enabling them to initiate their marriage contract as stipulated in the Book of Personal Status Rulings. Additionally, the MP committee proposed to limit polygamy to exceptional cases,

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<sup>212</sup> Ibid, 7

<sup>213</sup> Penny Johnson, *Agents for reform: The women's movement, social politics and family law reform in Women's Rights and Islamic Family Law*, ed. Lynn Welchman (New York, Zed Books Ltd, 2004), 149

<sup>214</sup> Ibid, 151

and to include a requirement that both the first and the second wife be informed in advance.<sup>215</sup>

However certain religious leaders believed that their hold on the shari'a courts, and thus their interests, were threatened by the MP proposal to replace the shari'a with nizāmiyya (civil) courts. For instance, Qādī al-Jūjū firmly rejected certain changes suggested by the MP: "The voices that demand equality in inheritance and the cancellation of men's qiwāma (precedence) over women should be denied and denounced because they cause fitna (discord) and they declare an aggression against our religion and civilisation."<sup>216</sup>

An underlying contradiction can be found with the final declaration of the parliament. Thus although this declaration stressed the nationalist and democratic character of the forum it had created, the statement failed to answer key questions facing the women's movement, including what is a "viable platform for family law built on gender equality and what is the role of Islamic law in this initiative?"<sup>217</sup>

According to a 2002 study the majority of Palestinian women (85%) want Personal Status Laws to remain shari'a -based, yet 66% of the same respondents also find that the current Palestinian legal system is discriminatory against women. In this context, one can observe conflicting views, whereby both popular legitimacy for the shari'a and criticism of its gender-biased nature coexist. Changing gender stereotypes and 'traditional' cultural attitudes therefore is another factor in the struggle for women's rights in Palestine.<sup>218</sup>

With the outbreak of the second intifada in 2000 however, there was a decreased interest in reforming personal status laws, as priorities were drawn to the brutality of daily life. It is further noted that the vulnerability and overall conditions for women in the Palestinian

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<sup>215</sup> Shehada, *Debating Islamic family law in Palestine: Citizenship, Gender and 'Islamic' Idioms*, 8

<sup>216</sup> Ibid, 13

<sup>217</sup> Johnson, Agents for reform: The women's movement, social politics and family law, 154-155

<sup>218</sup> Sophie Richter-Devroe, *Gender Equality and Women's Rights In Palestinian territories*, October 2011 available; <http://www.europarl.europa.eu/studies>

Territories worsened following the start of this uprising.<sup>219</sup> It can be argued that this was largely due to the internal fighting between political factions coupled with the worsening effects of the Israeli Occupation. Furthermore, growing fundamentalism and conservatism in certain areas of the Territories have impeded positive change for Palestinian women.<sup>220</sup>

#### **IV.III Draft Basic Law**

In December 1993, the Palestinian Liberation Organisation (PLO) published a constitutional document known as the "Draft Basic Law for the National Authority in the Transitional Period. This Basic Law came into effect on May 4, 1994, the day when the interim agreement was signed in Cairo. Chapter 2 of this law addresses the topic of women's rights. This chapter is important because it explicitly talks of inalienable rights guaranteed to all Palestinians. Article 8 of chapter 2 endorses numerous international human rights documents, including, the UDHR, the ICCPR and the (IESCR). Article 10 underlines that "women and men are equal before the law" and reaffirms that "human dignity and basic rights are due to all individuals, male and female."<sup>221</sup>

However, Chapter 2 can be criticised in one respect, given the fact that it fails to endorse the Convention on the Elimination of All Forms of Discrimination Against Women. This is an unfortunate omission, as this Convention is very explicit about the rights of women in various spheres of a woman's life. Therefore, despite affirming some human rights, the Basic Law fails to discuss the full range of political, economic, and civil rights that many Palestinian women desire.<sup>222</sup>

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<sup>219</sup> Lynn Welchman, Family, Gender and Law in Jordan and Palestine in *Family, Gender, and Law in a Globalizing Middle East and South Asia*, ed. Kenneth M. Cuno (New York, Syracuse University Press, 2009), 132

<sup>220</sup> Chaban, *Promoting Gender-Sensitive Justice and Legal Reform in the Palestinian Territories*, 155

<sup>221</sup> Adrien Katherine Wing, *Palestinian Women: Beyond The Basic Law*, *Third World Legal Stud.* 141, 1994-1995, 153-156

<sup>222</sup> *Ibid*, 156-157

Although approved by PLC (the Legislature of the Palestinian National Authority) in October 1997, it was only signed into law on May 30, 2002.<sup>223</sup> One can observe an inherent tension between different clauses of the Basic Law. For instance, Article 9 states that there can be no “discrimination between Palestinians because of gender.” On the other hand, Article 4 states that Islam is the official religion, and Islamic shari'a is a ‘primary source of legislation.’ Furthermore, the Basic Law states that "Shari'a affairs and personal status shall be assumed by Shari'a and religious courts in accordance with law." Since Shari'a sanctions the differential treatment of women, there is a clear clash with the equality provisions. As such, the rights afforded to women could potentially be restricted.<sup>224</sup>

As well as the general human rights provisions applicable to both men and women, the Basic Law and Draft Constitution contain different sections affording certain rights and freedoms to Palestinian women. Unlike the Basic Law however, the Draft Constitution specifically addresses Palestinian women's rights to participate in political life. Article 8 of the Draft Constitution states: "The rights and liberties of all citizens shall be respected including the right to form political parties and engage in political activity without discrimination on the basis of political opinions, sex or religion.”<sup>225</sup>

In contrast, although Article 26 of the Basic Law lists certain political rights, including the right to establish political parties, it does not specifically include a non-discrimination provision. Additionally this Article allows for certain restrictions since many of the provisions in Article 26 state that the rights are afforded ‘in accordance with the requirements of the law.’ Therefore, the political rights underlined in the Basic Law are subject to limitations imposed by legislation.<sup>226</sup>

There is moreover underlying ambiguity with regard to certain provisions in the Draft Constitution. For example, Article 61 stipulates that "the state shall assume responsibility for

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<sup>223</sup> Palestinian Basic Law available; <http://www.mideastweb.org/basiclaw.htm>

<sup>224</sup> Adrien Katherine Wing, *Founding Mothers for a Palestinian Constitution* in *Constituting Equality: Gender Equality and Comparative Constitutional Law*, ed. Susan H. Williams, (New York, Cambridge University Press, 2005)

<sup>225</sup> Wing, *Founding Mothers for a Palestinian Constitution*, 306

<sup>226</sup> *Ibid*, 306

the safety of persons and property." It could be argued that protection of the 'safety of persons' may apply to domestic violence. Article 28 further stipulates that: "Every person has the right to freedom and personal safety. Such rights may not be violated, except in cases and in accordance with procedures stipulated by law."<sup>227</sup>

Although these articles may potentially be applicable to domestic violence, they are ambiguous and subject to different interpretations. Similarly the fact that shari'a, which specifically allows the beating of women, is a "major source of legislation" in the Draft Constitution may prevent the inclusion of these ambiguous sections into the private sphere.<sup>228</sup>

#### **IV.IV The Women's Charter**

In response to the inadequacy of the Basic Law, several women's committees, the PLO's General Union of Palestinian Women, and other advocates assembled in January, 1994, to draft a "Document of Principles of Women's Rights." The Women's Charter, otherwise known as a women's bill of rights, was published in August, 1994. Significantly, the Preamble emphasizes that minorities and women should be afforded protection and equal treatment. Unlike the Basic Law, this document bases its principles on international human rights documents, including the 1979 Convention on the Elimination of All Forms of Discrimination Against Women.<sup>229</sup>

The section termed "General Provisions" reiterates the need to "abolish all forms of discrimination and inequality against women which were propagated by the different forms of colonialism...and which were reinforced by the conglomeration of customs and traditions prejudiced against women embodied in a number of laws and legislation." According to the General Provision section on civil rights, the law should protect women from all practices and form of violence which infringe upon her rights by guaranteeing her the right to go to court.<sup>230</sup>

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<sup>227</sup> Ibid, 306-307

<sup>228</sup> Wing, *Constitutionalism, Legal Reform, and the Economic Development of Palestinian Women*, 681

<sup>229</sup> Ibid, 159-160

<sup>230</sup> Wing, *Palestinian Women: Beyond The Basic Law*, 160-161

Similarly, the provision on economic, social and cultural rights "affirms the importance of equality in social welfare ... and the guarantee of her full equality regarding issues pertaining to personal status."<sup>231</sup> This section also places an emphasis on equality of work opportunities, training and promotion, and women's right to maternity leave and other services that enable women to combine work and family duties.<sup>232</sup>

The General Provision stipulates that a woman, elected or appointed, to any governmental body "should be on equal footing with men." The drafters find that it is "the time to affirm that the issue of women's legal rights in all aspects is a cornerstone for building a democratic Palestine society." Unlike the Basic Law, the Women's Charter explicitly addresses the political, social, and other rights that need to be made available to women. Additionally this document recognises that Palestinian custom and tradition have contributed to the suppression of women.<sup>233</sup>

However, despite its many positive attributes, the Women's Charter may in certain circles be considered as being too 'drastic' or too 'bold.' Thus there is great difficulty in reconciling the views of the traditionalists with the views of the women's advocates. Moreover, there is continuing opposition by groups such as Hamas to changing the traditional roles of women.<sup>234</sup>

Another drawback of this Charter is its lack of enforcement procedures and mechanisms. Thus while it stipulates the political, civil, and other rights due to women, arguably, there is no purpose in such declarations without a means to enforce these rights. As such, although this Charter promotes equal rights, arguably this goal remains impossible to achieve if there are no means to enforce the rights given to the women by the Charter.<sup>235</sup>

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<sup>231</sup> Adrien Katherine Wing, *The Palestinian Basic Law: Embryonic Constitutionalism*, 31 Case W. Res. J. Int'l L. 383 1999, 425

<sup>232</sup> Suha Sabbagh, *Arab Women: Between Defiance and Restraint* (Massachusetts, Interlink Publishing Group, Inc. 2003), 249

<sup>233</sup> Wing, *Palestinian Women: Beyond The Basic Law*, 161-163

<sup>234</sup> *Ibid*, 163

<sup>235</sup> *Ibid*, 163

### **Section 3. Interviews**

#### **I. Interview with Anna\*\*\*\***

Women's rights are affected in many ways by the current occupation of Palestine. Not only do they face obstacles to free movement, but they also have to confront increased violence on account of military threats. This was highlighted by Anna who works with the Palestinian NGO Women's Centre for Legal Aid and Counselling (WCLAC).

In her analysis of violence against women, Anna noted that WCLAC had identified "a very clear link between the military situation and violence on the Palestinian people" and how consequently violence against women increased in society. "Men are under stress, they can't provide for their families, they're living in packed houses, they have no future, they've been humiliated by the Israeli occupation, there's a lot of factors."

The occupation has impeded women's access to rights both at the private level, but also in the public sphere, which is considered as dangerous, Anna said. "It also really hinders the national development towards gender equality; it's not just Palestinian factions becoming religious and more conservative it's also the fact that there cannot be a positive evolution with the occupation."

Family reunification and the associated problems of citizenship were further covered.. The "unsafe" and "unstable situation" of women on account of their specific identity status was particularly emphasised. For instance women from the West Bank encounter great difficulties when they marry an East Jerusalemite and move there but then cannot obtain an Israeli ID card.

According to Anna, family reunification is not really happening, as women are put in a precarious situation by different legislation and in certain instances can be forced to live in Jerusalem illegally. The stark situation faced by women in such situations was clearly highlighted:

"She's more exposed to any form of violence or discrimination by her family or by the Israelis, she cannot drive, she cannot have access to health care, she might be subject to violence because people know that she cannot complain.

She's more isolated as well, so we have a myriad of legislative issues regarding identity cards and jurisdictions because there are really strong political strategies from the Israelis to separate the families. Also we have a lot of separation between West Bank and Gaza, a lot of families are disconnected."

Housing demolitions, a particularly controversial Israeli policy, was also analysed during this interview. The tremendous impact and burden on women as a consequence of such demolitions was stressed. Such demolitions "are putting people on the street, you find a woman in a very precarious condition, they don't all have a place to go. We have cases of families living in tents for months and of course it will affect women tremendously, it's a very heavy psychological punishment.

Even when the demolition comes, it's been years they've lived under pressure that every night somebody would come put them out and demolish the house. Most of them are psychologically damaged as well and as mothers, they are very much impacted of course. Their basic needs are not going to be accessible."

In her reflections on Palestinian culture, Anna remarked that there were certain obstacles to empowering women and ensuring their rights. She referred to "the patriarchal culture of dividing the private issues and the public issues." The low participation of Palestinian women in the public sphere was further noted. In particular the conservative stance of the Hamas has impacted on women in Gaza and has led to a "huge backlash for women in terms of rights."

She added that there were no women on the table of any peace delegation or government. Thus in this way women are seen to be excluded from the process. However, Anna noted that one of WCLAC's core areas of work is to promote women's political participation in public life and involve them in decision-making processes. In terms of promoting political participation, WCLAC are currently working towards having a deal with the PA to have a certain quota of women in their parties.

The recent phenomenon of night raids in the West Bank was further detailed. In her description, Anna underlined how families were harassed in the middle of the night and children were arrested. This has had a tremendous psychological impact, she added.

In her final comments, Anna noted that there were two levels to ensuring the fulfilment of women's rights. Firstly she noted that the occupation needed to be stopped, but she countered

that there was also a need for legal reform, and non-discriminatory legislation at a national level.

“We would like to see more protection from the government towards women victims of violence. We are also hoping to change the mentality and fight conservative trends that take women backwards instead of involving them in the development of Palestinian society. We want social justice for all the citizens and an inclusive society that respects women’s rights and that they have a role to play in the future of Palestine.”

**\*\*\*\*Name was changed to protect the identity of the interviewee**

## II. Sigrid Vertommen

Although the Israeli occupation of Palestine has affected both men and women, there is a clear ‘gendered aspect’ which has been underlined in many academic works. As such it is noted that women have faced great hardship in terms of accessing medical care facilities. On account of barriers and checkpoints, their rights have been consistently violated.

In an interview, Sigrid Vertommen, Doctoral Researcher with the Middle East and North Africa Research Group (MENARG) at Gent University, underlined how many women were often stuck at the wall or checkpoints and as a result had to give birth there. Although the best hospital infrastructure for people in the West Bank is in Jerusalem, access is severely restricted on account of by-pass roads, curfews and through other infrastructural obstacles, she added.

The scholar Neil Atway emphasised the impact curfews have on women. In particular, he stated that in certain instances women had been forced to give birth without help from a doctor, as a result of such constraints.<sup>236</sup> In this manner curfews can be seen as another restrictive aspect governing Palestinian lives and are further understood to be one of the harshest forms of collective punishment in the manner they affect the entire Palestinian population. This can be explained by the fact that residents may be shot during curfews if they violate the restriction on leaving their houses. It is also noted how curfews cause deplorable health conditions because people are forced to accumulate garbage in their homes since they may not go outside.<sup>237</sup>

The colonial situation in Palestine has had a particular impact on women, Sigrid explained, as they “have been confined to very traditional roles, not only in terms of staying home but also they have been confined to very reproductive roles, as in they not only have to take care of the kids, but also give birth to a lot of kids. In particular women were considered to be the reproductive source of resistance; through this traditional reproductive care they were supposed to keep the Palestinian fabric alive.”

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<sup>236</sup> Neil Atway, *The Health and Welfare of the Palestinians under Israeli Occupation*, 6 *Journal of Law and Health* 89 1991-1992, Atway, *The Health and Welfare of the Palestinians under Israeli Occupation*, 103

<sup>237</sup> *Ibid*, 101

Women's vulnerability under occupation was emphasised, a vulnerability which has repercussions with regard to them accessing rights. For instance, women's right to education can be impeded by the 'military architecture of control towers, soldiers and checkpoints.' Thus the occupation can be seen to affect women more, because they are often more intimidated in a patriarchal society than men. The obstacles to education were stressed by Sigrid. From one perspective women are physically prevented from accessing education on account of the curfews or checkpoints. She further emphasised the 'gendered' aspect of attending college.

"People are much more restricted to their locality and I think for women it is very 'gendered' it would be considered normal to stay at home and not to look to engage in educational, professional activities anymore, so I think in this sense the occupation is very gendered. I think the fact that women are more inclined to stay home and take care of the kids and are very much restricted to the private space and don't engage in public life anymore because of the colonial situation."

Violence against Palestinian women occurs on different fronts, both at a domestic level, but also from colonial violence stemming from Israeli policies. According to Sigrid, the biggest source of violence in Israeli-Palestinian society comes from 'colonial oppression'. This can be seen to act as a catalyst, "where both psychologically and physically people are in such great trauma and stress that it leads to situations where there is a lot more domestic violence and anger."

### **III. Interview with S\*\*\***

The personal impact of the Israeli occupation has been immense, leaving no one unscathed. It affects every aspect of life, as freedom of movement is heavily restricted on account of the Separation Wall and numerous checkpoints. Such obstacles have impeded access to various rights, such as the right to education and health facilities. There are many accounts moreover of women having miscarriages because they are prevented from accessing medical facilities.

S explains that she was born in Jenin in the West Bank but that her family are internal refugees from 1948. Reflecting on the stress of living under occupation, she adds that it was very difficult to talk about it when she first arrived in Belgium. S raised awareness of the difficulties of studying during the Second Intifada. She notes that she lived in Jenin but studied in Nablus during this uprising. However “sometimes the classes were interrupted because of a big event at the university because there was an incursion, anything that was related to the uprising.”

She emphasises that all Palestinians have been affected by this occupation, as all families have either lost a loved one or had someone injured in the conflict. However although this occupation has affected all individuals in Palestine, women and children are particularly affected as they are the most “fragile sectors of any society.”

The hardship experienced by women is evident. For instance, women from East Jerusalem have a ‘unique status’, S notes, adding that they don’t have Israeli passports or nationality, rather they have Blue Identity Cards. In this manner, she notes that they are not allowed to marry Palestinians from West Bank or Gaza Strip, because these areas are viewed as ‘hostile entities.’

For this reason “family reunification is very difficult as some of them are forced to give up this identity in order to live with their family.” In other words they are forced to choose, either they have to give up their identity or they live with the family while violating Israeli rules, S adds.

Basic human rights are being violated, as freedom is taken away under occupation. “Literally you are in a big prison,” S notes fervently. The severe economic situation in the OPT was further examined during this interview, the dire consequences of which have led to men being killed, injured or handicapped during uprisings.

“This adds a social burden on women, so they become responsible for the whole family because the man is incapable of pursuing his duties for his family. Some of them have even faced jail in Israeli prisons for only peacefully demonstrating.”

S details how the housing demolition policy was introduced under the pretext of combatting threats to security, for instance killing a soldier or suicide bombing or building a house without permission. However, she clearly emphasises the difficulty for Palestinians in obtaining a housing permit. As a result, Palestinians are forced to either live illegally or live temporarily with relatives.

“It is a violation of human rights and the whole family is affected. They give you several hours, or a maximum of one day before your house is demolished at your own costs. In a second you will find that your dreams, your memories, everything is evaporating in a matter of seconds, this is very painful.”

The controversial Citizenship Law was further analysed, a law which has inspired great debate over the last number of years. S is highly critical of this law which was introduced in 2003. In her opinion the aim of this law is to “tear up the social fabric of Palestinian society,” even dividing the Palestinians. She adds that 1.5 million Palestinians living in Israel are being marginalised as a direct consequence of this law.

Domestic violence is another core issue faced by Palestinian women, threatening their very safety and security. In her explanation of such violence, S notes that those who are oppressed can in certain instances become the oppressor.

“The everyday scenes of humiliation you see at the checkpoints the maltreatment of the soldiers, this reflects your behaviour at home, so there’s domestic violence against women and children.”

Honour crimes, a particularly insidious form of violence against women can sometimes occur in patriarchal societies such as Palestine. The dangers of this crime are emphasised by S who explains that in certain situations the perpetrator can pretend that he killed the woman because of honour issues when it was perhaps for another reason. However men just get a minimum sentence of six months with these crimes and thus “it gives a justification for murder,” S notes.

The need to end the occupation and safeguard women's rights is interlinked S underlines. "When you talk about women's rights and Palestinian society, liberating women has to go side by side with liberating men under occupation and you cannot achieve the emancipation of women if you still have occupation, because getting rid of occupation is the main priority."

This occupation can be seen as a barrier to implementing reform, S adds as basic rights have been violated by this regime, including freedom of movement, freedom of expression and freedom of belief. "This occupation affects every single aspect of our lives. You cannot have a stable society if everybody doesn't have their rights."

\*\*\* I did not use the full name in order to protect the identity of the interviewee

#### **IV. Interview with M\*\*\***

Palestinian women have suffered many hardships living under occupation, whether it is due to physical barriers to their rights or it is on account of humiliation they experience at the checkpoints. In this way, women are sometimes targeted by Israeli forces in order to quell resistance in Palestine. M, a Palestinian woman from Nabi Saleh explains that women are sometimes targeted to punish the men. This targeting of women can be seen as a direct response to men's participation in protests against the occupation. Men think twice about participating if there is a risk that his wife will be arrested or injured as a result, M adds.

“Occupation is about stealing lives from human beings and it is not easy to live under occupation, especially if you are a woman because if you are a woman you have to suffer twice, firstly she has her husband's suffering to deal with when he's in jail or he's injured.

At the same time she has her own suffering because as a Palestinian she's being targeted the same way the man is targeted, injured, killed, humiliated, so that is why she has to be the strongest part of the family, because everybody is taking the strength of the woman of the house.”

After the Gaza wars, especially after the end of last year, there was an increase in the number of women who were arrested, injured or humiliated and stopped at the checkpoints. This humiliation has had repercussions on a domestic level, as women have in certain instances been forced to stay at home to ensure they are not stopped for hours at the checkpoints. These restrictions have caused particular problems in conservative areas, where sometimes women were prevented from working or going to study to avoid such humiliation, M explains.

Freedom of movement has been severely impeded by the Separation Wall and checkpoints. Such restrictions have resulted in long delays in travelling through different parts of the OPT. M describes the difficulties she has personally faced. “Sometime I reach home at 8 despite the fact that I leave work at 3 or 4 because they stop me at the checkpoint or sometimes there are 2 checkpoints between Ramallah and my village, so I have to stop at the first one for 2 or 3 hours and then I have to stop at the next one for another 2 hours.”

In her description of harassment at the checkpoint, M notes how once she was stopped alongside her husband and son at the entrance of the village. She recalls how a group of

soldiers separated and beat them. Following this, she explains how she was handcuffed and taken to an Israeli police station for an interrogation until 1 in the morning.

“Not everybody is willing to go through this experience because any minute anything can happen, you can’t plan for the next hour, so what about your future, you cannot plan anything under occupation.”

M stresses that the occupation has had a big impact not only on her life but also on the lives of her children who see her being humiliated. She mentions the time her leg was broken when she was shot by a sniper with live ammunition in her leg. In particular the impact on her children is stressed. “My children were standing next to me and they saw this and until now they have nightmares.”

She reflects on her feelings of guilt which sometimes arise as a result of the extreme circumstance of occupation. “Personally as a mother, I feel sometimes like I am guilty although I didn’t do anything wrong, I put my children in a very bad situation, they are traumatised for something I didn’t do, for a mistake I didn’t make. I tried to prevent this suffering but it’s not about what I am doing, it is about these soldiers’ mentality or mood at the moment I’m trying to enter the checkpoint.”

Women’s right to education has been heavily restricted because of the occupation due to the threat of settler violence and insecurity. As M explains the family often force women to stay at home rather than study in such places as Ramallah. This in turn has an impact on women who are “working and trying to improve themselves,” as they are sometimes forced to drop their studies.

“There is no free movement; there is no security, when you go out of your home you have to put many scenarios in your head of what could happen. You can be stopped, you can be arrested, and you can be humiliated. Also many times they stopped pregnant women while they are were in labour at the checkpoints and they delivered their babies at the checkpoints while soldiers were laughing and making fun of this woman who is screaming. After she delivers the baby, they then allow her to go to the hospital.”

Her vivid description of housing demolitions emphasise the suffering women feel. In many instances, women in Palestine just live in the domestic space and thus housing demolitions can be particularly difficult for them.

“A woman’s kingdom is her house and she puts everything, her dreams, her hopes, and her energy into the house. So in a minute when she sees everything just disappear in a minute, she sees her dreams go away, her hopes, her memories, her family memories, everything.

It is very difficult; it is like she lost a family member. She loses everything in a minute, I think that it is one of the worst experiences that a woman could live with. I think house demolition, it is one of the worst punishments given to Palestinians because it is not easy to rebuild it again and if you try to rebuild they will demolish it again.”

In M’s opinion, domestic violence is linked to the suffering experienced under occupation. She explains it as a ‘kind of circle’ whereby a man who is humiliated at the checkpoint releases his anger and stress out on his wife who in turn transfers this stress to her children.

“This occupation it affects the family and it kills everything inside the family. It’s not just killing the body; it is killing the soul, everything inside the woman just because of the soldier’s actions toward this family.”

In her analysis of the Palestinian legal system, M notes that there are some gaps in the law that give more rights to men than women. In particular she refers to the case of honour killing and the leniency reserved for men convicted of committing such crimes. As she notes men do not have to show pictures, provide evidence or have witnesses. She contrasts this to the situation faced by women: “if the woman killed a man for having an affair, she will have 15 years. They do not take into consideration that it is honour killing.”

The discussion moves on to an analysis of the difficulties experienced by women after the separation of Fatah and Hamas in 2006. M states that over one million people are living in a ‘big jail’ in Gaza with “limited opportunities” and “limited resources.” She adds that Hamas do not believe in many women’s rights, as they further try to limit women’s role in society.

“Hamas now control everything, so most of the women there are not allowed to do many things, for example if a woman wants to go with her fiancé, they have to bring a certification to show that they are married or they are engaged and they are not just a couple or they are not just friends. Hamas they put many limits and they control the whole life in Gaza, which limits the woman’s dreams, just because she is a woman.”

In her final comments, M made a number of key recommendations with regard to implementing reform and empowering women. For instance, she stressed that women's organisations and NGOs should help improve the lives of Palestinian women through women's projects that help them financially. She notes that this will provide them with a real income so they can support themselves as well as their family. "This income can have a beneficial impact, giving a woman more self-confidence, more self-respect and more control over her life," M adds.

The need to support women was emphasised as a key component in strengthening society as a whole. "When the woman is strong the whole society is strong and she's the main column of society, so they have to strengthen this column, they have to build it the best way so that it can confront all of the difficulties. If you have a weak column at the end it's going to collapse and the whole building, the whole family, the whole society at the end is going to collapse, so they should look at the women as a human being not just as a story or as a model for somebody suffering from occupation."

\*\*\* I did not use the full name in order to protect the identity of the interviewee

## Conclusion

One can observe multiple obstacles in securing the protection of women's rights in Palestine. As argued in the previous sections, Palestinian women face a double burden, that arising from the fear and insecurity of living under occupation as well as the discriminatory practices embedded in Palestinian laws which deny them full equality and prevent them from enjoying a complete range of rights. In this manner, it is noted that women not only experience violence and humiliation on account of Israeli security policies, but also from within their own society.<sup>238</sup>

Many writers have also discussed the 'gender impact of this occupation' and the particular difficulties it imposes on women. In particular Kevorkian speaks about the increased securitisation of Israeli policies and their consequent control of family life.<sup>239</sup> Human rights concerns have been voiced in relation to the Israeli's closure regime. The UN Commission on the Status of Women noted, as part of a 2012 joint resolution, that "the Israeli occupation remains the major obstacle for Palestinian women with regard to their advancement, self-reliance and integration in the development of their society."<sup>240</sup>

The 2014 report of the United Nations Conference on Trade and Development further analysed the dire consequences of occupation in terms of increased insecurity and violence for women. According to this report the Israeli constraints have had a disproportionately high impact on Palestinian women due to the prolonged commutes to work locations and their vulnerability at checkpoints.<sup>241</sup>

One can further argue that women and girls are particularly affected by house demolitions and the increased levels of violence often perpetrated against them as a result. Whether

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<sup>238</sup> Rought, *Palestinian Women: Caught in the Cross Fire Between Occupation and Patriarchy, Feminist Formations*, Vol. 22 No.3, Fall 2010, 124

<sup>239</sup> Kevorkian, *Security Theology, Surveillance and the Politics of Fear*, 68

<sup>240</sup> *Ibid*, 51

<sup>241</sup> United Nations Conference on Trade and Development, *Assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory*, 6

viewed as a form of collective punishment or as collateral damage, the threat of house demolitions perpetuates the feeling of insecurity.<sup>242</sup>

Another major area of concern is the Citizenship and Entry into Israel Law, which is particularly relevant for cases of unification of families and immigration for the purpose of marriage. On the one hand this law was presented as a security measure to combat Palestinians with Israeli identity cards who ‘exploited their freedom of movement to perpetrate attacks.’ On the other hand however, there was a clear opposition within the Knesset, which noted that the security concerns were inflated and that the measure was unnecessary.<sup>243</sup>

In particular this citizenship law has had an adverse effect on family life in contravention of article 17 of the International Covenant on Civil and Political Rights. Similarly, different UN organisations have drawn attention to the problems underlying this law. For instance the UN Human Rights Council in 2009 underlined how the closure regime had impacted on women’s access to medical care. It is further argued that denial of the right to family and home has resulted in an ongoing state of insecurity and anxiety, particularly among Palestinian women.<sup>244</sup>

There are clear obstacles to implementing reform in Palestine and ensuring women can access their rights on an equal basis. Thus despite the Basic Law’s guarantees, many laws currently in force do not penalise gender discrimination, while those that do are difficult to enforce on account of weak institutional mechanisms for handling such cases..<sup>245</sup>

The phenomenon of honour killing particularly affects women and is said to be “directly connected to the social environment.” Although the Palestinian President has issued decrees to reform the laws on honour killing, legislation still in place offers a justification known as

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<sup>242</sup> Chaban, *Promoting Gender-Sensitive Justice and Legal Reform in the Palestinian Territories*, 157

<sup>243</sup> Nikfar, *Families Divided: An Analysis of Israel’s Citizenship and Entry into Israel Law*, 6

<sup>244</sup> Kevorkian, *Security Theology, Surveillance and the Politics of Fear*,

<sup>245</sup> Azzouni: *Palestinian Authority and Israeli-Occupied Territories*, 21

“pardoning excuses and extenuating excuses” under Article 99 of the Penal Code of 1960. As a result the majority of perpetrators can still benefit from “mitigating factors.”<sup>246</sup>

One can observe how the campaign for women’s rights has arisen against the backdrop of “resistance against oppression” and “state-building politics”..<sup>247</sup> Palestinian service providers have further stressed that the status of women and girls under the current legal framework in the Palestinian Territories is very unstable. In the final analysis important reform needs to take place to combat barriers to empowering women. As the High Commissioner underlined in a series of key recommendations, so-called honour killings, should be “prosecuted and appropriately sentenced.” Finally, there is an argument to be made that article 99 of the Penal Code should be amended to prevent mitigating circumstances leading to impunity for such crimes.<sup>248</sup>

It is particularly important to advocate for better protection of women’s rights. This can include for instance developing a unified personal status law applicable to the West Bank and Gaza which recognises key principles, such as equal rights to divorce, child custody and inheritance.<sup>249</sup> Laws further need to be introduced to combat all forms of discrimination and training opportunities need to be provided for women and girls, especially for those from rural areas and camps. To help promote the social and cultural empowerment of women, their economic and political position needs to be strengthened.<sup>250</sup>

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<sup>246</sup> Ashqar UN Office for the High Commissioner of Human Rights (OHCHR), *Murder of women in Palestine under the pretext of honour: Legislation and Jurisprudence analytical study executive summary*, 5

<sup>247</sup> Chaban, *Promoting Gender-Sensitive Justice and Legal Reform in the Palestinian Territories*, 165

<sup>248</sup> Report of the United Nations High Commissioner for Human Rights Implementation of Human Rights Council resolutions S-9/1 and S-12/1, A/HRC/28/80, 2 March 2015, para 71

<sup>249</sup> ESCWA, *Social and Economic Situation of Palestinian Women and Girls*, 28-29

<sup>250</sup> Devroe, *Gender Equality and Women’s Rights In Palestinian territories*, October 2011 available; <http://www.europarl.europa.eu/studies> , 16

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### 3. Relevant Laws

Article 16 (2) of the Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)

Article 17, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

Article 23 (2) of the ICCPR

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Article 1(3) of the Convention for the Elimination of all Forms of Racial Discrimination (adopted 1 December 1965, entry into force 4 January 1969)

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Defence (Emergency) Regulations, Regulation 119

Article 53 of Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949

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## **Abbreviations**

CEDAW-Convention on the Elimination of Discrimination against Women

CERD- The Committee on the Elimination of Racial Discrimination

DER- Defence (Emergency) Regulations

ESCWA-Economic and Social Commission for Western Asia

GBV-Gender Based Violence

ICCPR-International Covenant on Civil and Political Rights

ICERD-International Convention on the Elimination for All Forms of Racial Discrimination

ICJ-International Court of Justice

IESCR- International Covenant on Economic, Social and Cultural Rights

MP- Model Parliament for Women and Legislation

OPT-Occupied Palestinian Territories

PA- Palestinian Authority

PCBS- the Palestinian Central Bureau of Statistics

PLC-The Legislature of the Palestinian National Authority

PLO- Palestinian Liberation Organisation

UDHR- Universal Declaration of Human Rights

UNCTAD- United Nations Conference on Trade and Development

WCLAC- Women's Centre for Legal Aid and Counselling