



A Review of Palestinian Legislation from a Women's Rights Perspective

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Executive Summary and Recommendations

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in the occupied Palestinian territory (oPt) as a result not only of the Israeli occupation, but also because of an outdated, un-harmonised legal system.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

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

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

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

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

Personal status (family) legislation in force in the oPt departs from international standards in a number of respects. For example, in contravention to international law, girls over the age of 14 are permitted to marry; a woman but not a man is required to obtain the consent of a guardian (*wali*) in order to marry; a man can obtain a divorce more easily than a woman; and a man but not a woman can marry up to four spouses concurrently. A review of the positions held by key stakeholders on

reform requirements in the family law sphere indicates that consensus on the direction of reform in a number of areas has not been achieved. Therefore, bringing Palestinian family law in line with international standards in the short-term will not be an easy endeavour. On a positive note, however, socio-legal studies have found that the *sharia* courts are legally and socially dynamic, and that judges, lawyers and litigants are able to achieve positive outcomes for women even in the absence of human rights-compliant legislation.

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

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

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