



The Experience of Personal Status Law in the Occupied Palestinian Territory

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Preface

The legal system in Palestine is one of the most complex legal systems in the world due to the fact that Palestine has been ruled by various nations and political regimes including the Ottoman empire, Britain, Jordan, Egypt, Israel – as an occupying power- and partially the Palestinian Authority.

Palestine was part of the Ottoman empire for the period of approximately 400 years starting from 1516. During that era the Ottomans imposed their law which was primarily based on the principles of the Islamic Shari'a on Palestine. When the Ottoman rule ended in 1917 Palestine came under the British Mandate and remained as such until 1948. The British authorities reformed the legal system in Palestine by adding the principles of the Anglo-Saxon system (which is based on judicial precedents or case law) to the already existing system that was in force. In 1948 the State of Israel was established over the biggest portion of Mandate Palestine (78%). The remaining part of Mandate Palestine known as the West Bank and Gaza Strip (22%)¹ came under the Jordanian Rule and the Egyptian Administration accordingly. The Jordanian legal system, which was influenced by the Latin system, prevailed in the West Bank while the common law that prevailed during the British Mandate period remained in force in the Gaza Strip. In 1967 Israel occupied the remaining part of Mandate Palestine (the West Bank and Gaza Strip). Israel imposed military law over the occupied territory. With the exception of East Jerusalem which was annexed by Israel in 1980 and subjected to Israeli law, this territory became governed by military orders issued by military commanders as well as the body of laws that were in force.

In the early 1990s the PLO and the State of Israel, the occupying power, embarked on peace negotiations. Parallel to the public negotiations other secret negotiations were taking place. The secret negotiations resulted in concluding a declaration of principles in 1993 in accordance with which a Palestinian authority was established and the Palestinians were given limited autonomy over parts of the occupied territory. As the Palestinian Authority was established new laws were passed, others were revoked while some remained in force adding up more complexity to the already complicated legal system. With the Palestinian Authority having limited powers and control over this territory and has not developed into a fully fledged independent sovereign state multiple legal systems remain in effect in the Palestinian occupied territory. One issue is dealt with differently in the East Jerusalem, than in other cities of the West Bank and Gaza Strip. For example, there are two Personal Status Laws that are in force in the occupied Palestinian territory. The Jordanian Personal Status Law of 1976 is still in force in the West Bank while the Egyptian Family Rights Law of 1954 is still in force in the Gaza Strip. These two laws have not been replaced with a Palestinian law.

¹ . The West Bank encompasses the territory between Israeli proper in the west and Jordanian borders in the east. It acquired this name as it is located West of River Jordan. It came under the Jordanian Rule when the British Mandate on Palestine terminated in 1948 and remained as such until 1967 when Israel occupied it together with other parts of the surrounding Arab states. In spite of the establishment of a Palestinian Authority, the West Bank – in legal terms- is still viewed as an occupied territory. The Gaza Strip is a narrow coastal strip that is squeezed between Israel, the Mediterranean Sea and Egypt. It is named after its biggest city, ie, Gaza. In 1948, the Strip came under the Egyptian Administration and remained as such until 1967 when Israel occupied it. In 1994 powers in the Gaza Strip were transferred to the newly established Palestinian Authority. In spite of Israel's claims that it withdrew from the Strip, legal experts conclude that the Strip is still an occupied territory according to International law as Israel is exercising effective control over it.

This report sheds light on the Palestinians' experience with the Personal Status Law and Palestinian women's and WCLAC's contribution and struggle to amend or change the law as part of their work in defending women's rights in the occupied Palestinian territory. The report traces the recent history of women's activism in the field of defending their rights and their contribution in the efforts that aim at the passage of a modern personal status law that meets the international human rights standards. It also sheds light on the obstacles that have faced women and other activists during their work to amend the law or change it.

Women's Mobilization

Palestinian women have contributed greatly to the development of a unified modern personal status law that meets the international human rights standards. They have succeeded throughout the various stages of their work in making some progress in spite of all the social and political obstacles they have faced. They have been active in defending their rights through various means including advocacy work to pass laws that take their rights into consideration and educating the public on women's rights and issues. Women's activism at this level can be traced back to the 1980s when they started to become more involved in political activism and national struggle for freedom. Through their active political and social participation women became more aware of their issues. The eruption of the Palestinian first *Intifada*² in 1987 was a landmark in the Palestinian women's struggle for their rights. The *Intifada* provided an opportunity for women to contribute to the national struggle against occupation and gave them a chance to be in direct contact with other women throughout the occupied Palestinian territory. This enabled them to listen to other women's personal stories and sense their concerns. This was done through field visits that active women organized to areas that were more vulnerable to Israeli repressive practices and settler violence.

As the *Intifada* started to get stronger momentum Israeli occupying forces intensified their illegal repressive measures against Palestinians and their properties causing more suffering to the people. Many families had their houses demolished by Israeli occupying forces. Tens of thousands of Palestinian men and children were imprisoned. Women were not exception. They were vulnerable to detention due to their political activism. In certain instances women were detained to pressure their sons or husbands to hand themselves over to the Israeli occupying forces. Different forms of collective punishment like prolonged curfews were common. In certain instances curfew lasted for over 40 successive days without the inhabitants being allowed to leave their houses leading to shortage of food and medicine and creating difficult economic and social conditions. This provoked more constant presence of women in the field and required greater contact with other women who were living under extremely difficult economic and social conditions.

With the passage of time women's participation started to take more organized shape. They started to organize within political parties as committees that dealt with women's issues. In addition to their regular political, social and cultural activities within parties, women formed some sort of committees within parties to deal with women's issues and concerns. In this sense these women's committees were viewed as the women wing inside each party. Women, as consequence, became vulnerable to detention and other Israeli repressive measures as mentioned above. By virtue of their presence in the field and direct contact with other women

² . The Palestinian uprising that erupted in 1987 to protest and stop the ongoing Israeli occupation of the West Bank and Gaza Strip. The uprising came to be known as Intifadat al-Hejarah (stones uprising) as rocks were the main struggle tool against occupying forces. The *Intifada* erupted on 9 September 1987 and started to fade away in 1991.

these women committees started to sense which of the women's issues needed more attention. These issues were related to women's social and economic rights as well as other rights. Women Committees had to work hard to change ordinary's women's perception of their rights. Ordinary average women's understanding of their rights was confined to what society gives. Further, they gave priority to the national concerns over their rights as women. This is not to underestimate the importance of the role that women played in the national struggle against occupation. It is rather to say that women could be active at the level of struggle for freedom and defend their rights as women regardless of the offender whether it was occupation or the Palestinian society.

New Era in the History of the Palestine Question

In the early 1990s the first *Intifada* started to fade away and the parties to the conflict embarked on "peace" negotiations to reach peaceful solution to the conflict. At that stage women had to shift part of their attention towards concrete issues that concern women. Key issues that needed more attention were identified by Women Committees during their field work. They believed that more attention was to be given to women's rights especially the rights that are related to the Personal Status Law. As women were increasingly in need of support to their rights, efforts had to be organized through specialized organization that would defend these rights as well as other women's rights. Therefore, practical steps were taken to establish such an organization. After taking the necessary legal procedures related to registration, Women's Centre for Legal Aid and Counselling (WCLAC) came into being in 1991.

In 1993 the PLO and Israel, the occupying power, reached a peace agreement that came to be known as the "Oslo Accords".³ Under the agreement, a Palestinian authority was established and the Palestinians were given limited autonomy over certain parts of the occupied Palestinian territory after an Israeli forces' redeployment. A special council was set up to prepare for elections in the West Bank and Gaza Strip. In 1996 the first Palestinian legislative council and the first President of the Palestinian Authority were elected directly by inhabitants of the occupied territory. The election of the Legislative Council contributed in shifting the focus of the Palestinian society into more civil issues in spite of the continuing Israeli occupation. WCLAC and other women's groups made use of that change and started to focus more on women's issues. Through the legal aid and the cases that were taken to Palestinian Shari'a courts, WCLAC was able to see how the personal status laws and other laws that are in force in the occupied Palestinian territory discriminate against women. The Centre became more convinced that a modern Palestinian personal status law that meets international human rights standards must be passed.

After the Palestinian Legislative Council became functional, WCLAC -together with other human rights and women's organizations as well as national dignitaries- carried out some studies on the conditions of the Palestinian women in the occupied Palestinian territory and the laws the were in force. The goal of the studies was to shed light on the rights that Palestinian women enjoy/do not enjoy under the laws that are in force in the occupied Palestinian territory and examine the extent to which these laws meet international human rights standards. WCLAC, for example, published a study under the title of "Towards Equality: An Examination of the Status of Palestinian Women". The study examined a number of the laws that deal with social and economic rights. The Centre conducted another study entitled " Law and the Future of

³ . Peace agreement that was signed by the PLO and the State of Israel in Washington on 13 September 1993. The Agreement acquired the name of "Oslo Accords" as the secret negotiations that lead to its conclusion took place in Oslo, Norway.

Palestinian Women”. This study explored the legal provisions that discriminate against women especially in the Personal Status Laws that are in force. The study suggested amendments to those legal provisions. WCLAC conducted another study under the title of “ Examination of the Status of Palestinian Women according the Convention of the Elimination of all forms of Discrimination Against Women”. The Centre prepared other studies and reports and was the first organization that conducted such studies. All the studies concluded that the laws that are in effect discriminate against women and recommended their amendment or revocation.

Palestinian Model Parliament: Women and Legislation

Efforts to defend women’s rights and advocate the passage of laws that respect women’s rights continued during the years that followed. In 1998 WCLAC, together with other women’s organizations and national dignitaries, organized a model parliament that imitated the Palestinian Legislative Council. Half of the 88 members of the Model Parliament were women and the rest of the members were men. Laws that discriminate against women were reviewed and were finally either amended or revoked to convey a symbolic message on the necessity of such a step. The Parliament was based on ideas and suggestions presented by women who participated in workshops that WCLAC organized earlier on women’s rights. In a sense, the Parliament was viewed as an additional step towards promoting women’s rights and advocating laws that take women’s rights into consideration. Thus, the Parliament was meant to gain support for such laws by women, PLC members, politicians, journalists, religious leaders and decision makers in the Palestinian Authority. Additionally, the Parliament aimed at promoting human rights, democracy, justice, equality, and the rule of law and encouraging public dialogue with respect to laws.

Preparation for the Model Parliament project went through various stages. Stage one involved comprehensive mapping of the laws that were in force in the West Bank and Gaza Strip. In stage two a preparatory committee was set up to coordinate and supervise work in the West Bank and Gaza Strip. The preparatory committee took the lead in preparing for the project. It did all the coordination and lobbying with human rights organizations, women’s organizations and dignitaries. Secondary committees were then set up in the various governorates of the West Bank and Gaza. Members of these committees received training on advocacy and lobbying skills to use these skills in their work. Since elections and lobbying were new experiences in the Palestinian context at the time, a training manual “Demanding our Rights: A Guide to Lobbying and Advocacy” was produced so the local committees could use. The role of these committees was to organize discussion groups and workshops in each district to discuss potential amendments on laws that discriminate against women and violate their rights. The Personal Status Law was given special attention. In the process, district model parliaments were organized in preparation for the central model parliament (in the West Bank and Gaza Strip). Promotion campaign under the slogan of “Towards Laws that Guarantee Women’s Rights” was launched. Media materials and releases like stickers, posters, banners and flyers were produced. A special song was also produced to convey the message of the Parliament to the public. Local media outlets, including TV and radio were made use of effectively. Spots and features were produced also to be transmitted.

The organization of the Model Parliament was faced with some obstacles. Organizers of the Parliament were the subject of harsh criticism by unknown persons and bodies. Persons using pseudonyms wrote against the project and tried to incite the public and religious leaders against the organizers. Disrespectful words were used to attack the organizers. The Parliament itself was depicted as a forum to spread foreign values that are not in harmony with the Palestinian

society's values its culture and religion. Further, it was seen as a project that encouraged socially unacceptable behaviors. Another obstacle that faced the organization of the Parliament was the unstable and tensed political situation in the occupied Palestinian territory especially with the difficulties that the peace process between the PA and Israel was experiencing and the ensuing closure of the oPt by the Israeli occupying forces. The latter obstacles reinforced a feeling that this was not the most suitable timing for the project as priority had to be given to the struggle to end the Israeli occupation.

Establishment of the Presidential Committee and a National Coalition for Personal Status Law

In 1998 the late president Yasser Arafat established a committee presided over by the head of the High Council of Shari'a Judiciary to draft a new personal status law. The establishment of the Committee came as a result of the debate that the Model Parliament project created in the Palestinian society over the law. Membership of the Committee included Shari'a courts judges, academics and professors of Islamic Shari'a law and lawyers. Women were, however, absent. A personal status law that still has discriminatory provisions against women was drafted. The draft was not submitted to the Legislative Council for approval as the oPt was already entering into the second *Intifada in 2000*. Under those circumstances most of the PA institutions became paralyzed and most of the social issues that needed consideration were postponed.

Parallel to the Committee that was established by the President, a National Coalition on Family Law was set up by various civil society organizations. This coalition is coordinated by WCLAC. Members of the Coalition included women's rights organizations, human rights organizations as well as national dignitaries and political figures. The Coalition stood firm in challenging the draft law which was prepared by the presidential Committee in the context of the strong social debate over its suitability for the Palestinian society. Learning from the Model Parliament project experience that caused turbulence with the Islamists, the National Coalition followed a new strategy in dealing with the law to avoid any friction with parties that opposed its amendment in its totality or its revocation. Rather than drafting a whole new law, it was agreed to suggest amendments to certain provisions of the law that were viewed as top priority. Six issues were classified as such, and the Coalition believed that they should be dealt with urgently. These issues included the following: raising marriage age for girls to 18 instead of 15, revoking the guardianship clause for girls who are above 18 years old, granting equal witness status on marriage contracts, granting women the right to divorce their husbands on equal footing with men before courts, connecting child custody to the best interest of the child, imposing restrictions on polygamy to make it extremely difficult. Finally the issue of sharing commonwealth equally (especially the properties and monies that couples gain and save after marriage).

Ongoing Challenges

From 2000- 2006 the Centre's work progressed very slowly due to the second *Intifada*. During that period the Centre focused on conducting studies on the personal status laws that are in force in the West Bank and Gaza Strip. The studies provided legal analysis that should be relied on to amend specific clauses in the laws. In 2006 the second legislative council elections took place in the occupied Palestinian territory. The newly elected Council, however, did not convene as the Israeli occupying forces arrested many of its members and also there became a political split in the occupied Palestinian territory.

The absence of the PLC created a case of legislative vacuum. Not a single law has been passed by the Council since 2006. Amidst the absence of a functioning PLC, the President of the Palestinian Authority used a provision in the Basic Law that empowers him to issue decrees that have the power of the law when the PLC is not in session due to long standing emergencies.⁴ Some laws have been passed by presidential decrees awaiting the PLC to reconvene to discuss them. Civil society institutions in principle oppose the passage of laws by presidential decrees unless the subject of the law is urgent and cannot be delayed. In a sense, misusing this clause may be seen as an assault on the legislative power by the executive. It gives more powers to the President at the expense of the legislative power, which threatens power division and the rule of law in the occupied Palestinian territory. Under these circumstances there has been a debate among civil society organizations as to whether the Personal Status Law should be passed by a presidential decree (given the urgency of certain women's issues) or wait until the Council reconvenes. This has been a controversial issue among civil society organizations.

In 2007 the Ministry of Women's Affairs together with the Head of the High Council of the Shari'a Judiciary forwarded the law that was prepared by the Presidential Committee to the President to get his approval. This urged the National Coalition on Family Law to intervene to stop the expected approval of the law. Memos and a letter were sent to the Minister of Women's Affairs and the legal advisor to the President's Office to protest and object to the move. In their letters the members of the National Coalition noted that if the Law was to be passed by a presidential decree, civil society organizations represented by the National Coalition on Family Law must have the chance to comment on the draft, and have those comments appropriately discussed and incorporated. The Ministry of Women's Affairs and the Presidential Committee rejected the proposition of the National Coalition. As consequence of this the National Coalition requested to meet with President Mahmoud Abbas. The request was accepted. In the meeting the President promised the members of the National Coalition not to pass this law as long as there is no consensus on it between major members of civil society and governmental bodies.

Working at the Regional Level

At the beginning of 2008 WCLAC received an invitation from the Jordanian Women's Union to participate in a regional project that would initiate social dialogue at the regional level on the personal status laws in the participating countries. This was the first time in which the personal status law is discussed at a regional level. The project lasted for three years from 2007- 2010. Several meetings were held in every participating state. In addition to this, three regional conferences were held in Egypt, Jordan and Lebanon. The conferences resulted partially in sending memos to decision makers in these countries to amend the Law. Besides, the project was a unique opportunity for women and other supporters in these countries to work together for a better personal status law in each country.

In 2010 a group of women activists met with Prime Minister Salam Fayyad to discuss the issue of the Personal Status Law. The Prime Minister asked them to provide him with a memo

⁴ . Article 43 of the Basic Law reads "[T]he President of the National Authority shall have the right, in cases of necessity that cannot be delayed, and when the Legislative Council is not in session, to issue decrees that have the power of law. These decrees shall be presented to the Legislative Council in the first session convened after their issuance; otherwise they will cease to have the power of law. If these decrees are presented to the Legislative Council, as mentioned above, but are not approved by the latter, then they shall cease to have the power of law."

mentioning the articles that they think should be amended. As of yet the memo has not been sent.

Modest Achievements

During 2011 some new development have taken place. The High Council for Shari'a Judiciary circulated memos banning divorce without the approval of the Shari'a courts and imposing fine on any man who divorces his wife outside the Shari'a courts. Another memo requested all men wishing to marry a second woman to inform the first wife of this and if they refrain from this the Court would inform her. According to the same memo they should also inform the women they wish to marry that they have another wife otherwise the Court would inform her. Another memo was related to inheritance rights of women. Since most Palestinian women are pressured to give up their inheritance rights to their brothers after the death of a parent, the memo banned determination of heirs prior to four months after the death of the person who leaves properties.

At another level the public debate over the Personal Status Law has become more mature. Despite the fact that some articles of the law are still the subject of controversy in the society, however, there is a consensus on the necessity of passing a new Palestinian personal status law that meets the rights and needs of Palestinian women. The new law would – of course- be in force in the West Bank and Gaza Strip.

In conclusion, it might be said that the efforts to reach a modern personal status law have resulted in some progress. Albeit little, the progress is acceptable especially that WCALC and other organizations are still working to achieve an important goal, ie, the passage of a new modern Palestinian personal status law that would be in force all over the occupied Palestinian territory.