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Stephanie Chaban

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Promoting Gender-Sensitive Justice and Legal Reform in the Palestinian Territories: Perspectives of Palestinian Service Providers

By Stephanie Chaban

Abstract

Worldwide, gender-sensitive justice and legal reform has been acknowledged as an important component in improving the status and security of female citizens; in recent decades, such reform has begun in a number of states in the Middle East/North Africa region. In the Palestinian Territories, governmental and non-governmental organizations that render services to women and girls have acknowledged the need to address gender inequality in Palestinian legislation, primarily within the personal status and penal codes by way of reform. This paper presents some findings from working group sessions with Palestinian service providers conducted by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) in the West Bank between April and May 2010 for a project entitled “Palestinian Women and Security.” Service providers discussed the impact of the Palestinian legal framework on the (in)security of women and girls and their ability to render services. Working group sessions revealed gaps in current legislation addressing gender-based violence, as well as service providers’ views on women’s awareness of their rights and the obstacles to reform. Recommendations from service providers are also presented.

Keywords: Service provision; Palestinian women; legal reform; gender-based violence

Introduction

In recent years, a number of states in the Middle East/North Africa (MENA) region have addressed gender inequality in their legislation by way of reform. In the Palestinian Territories, governmental and non-governmental organizations (NGOs) that render services to Palestinian women and girls have acknowledged the need for such an effort locally in recent years. In fact, during 2009, the Palestinian Authority (PA) committed itself to “enable women’s participation in policy and decision-making processes,” and to “fight violence against women” through the Ministry of Women’s Affairs in its Program of the Thirteenth Government, however, legislative efforts have yet to occur. On International Women’s Day (8 March) of that same year, Palestinian President Mahmoud Abbas enacted Presidential Decree No. (19) Concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) that was viewed by many as a symbolic signing of CEDAW. During

1 Stephanie Chaban is an Independent Gender Consultant. She has an MA in Women's Studies.

2 This paper is based upon DCAF’s Spotlight No. 7 (August 2010) entitled “Palestinian Women and Security: The Legal and Regulatory Frameworks” and Spotlight No. 8 (August 2010) entitled “Palestinian Women and Girls and the Provision of Security.”

3 See: Palestinian National Authority. (2009). Ending the occupation, establishing the state - Program of the thirteenth government.

4 The Palestinian Territories are not an internationally recognized state and therefore are not able to sign international declarations or decrees. Despite this prohibition, the symbolic signing of CEDAW was seen by many women’s rights advocates as the Palestinian Authority’s commitment to abide by the principles of
the same period, the Ministry of Women’s Affairs advocated for an amendment to or repeal of Articles 340 and 98 of the Penal Code in the West Bank that justify the murder of a wife in the case of adultery and reduce the penalty for such murder if it is regarded as a ‘crime of passion.’ In a speech delivered later that year during the Campaign to Combat Violence against Women in Ramallah, Palestinian Prime Minister Salam Fayyad stated that, “Both official institutions and NGOs have the duty to work on an equal footing and jointly shoulder the responsibility to set forth all that is required to ensure protection and equity for women, by formulating a national strategy to combat violence against women,” and that,

“This requires radical developments and modifications in the structure of our legislations to sustain the principle of equality stipulated in the Basic Law, which should include the personal status law and the penal code, as well as issuing a code criminalizing violence against women in all its forms, to ensure justice and equality, including at the level of political participation in pursuance to the UN resolutions 1325 and 1889.”

These statements and gestures indicate a strong willingness on the part of the current West Bank-based PA government to address gender-based inadequacies in the current legal framework and to address violence against women and girls. However, many obstacles stand in the way of reform and the ability of governmental organizations and NGOs to render services to Palestinian women and girls affected by violence and insecurity.

This paper presents some findings from working group sessions with Palestinian service providers conducted by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) in the West Bank between April and May 2010 for a project entitled “Palestinian Women and Security.” Service providers discussed the impact of the Palestinian legal framework on the (in)security of women and girls and their ability to render protective services. Working group sessions revealed gaps in current legislation addressing gender-based violence (GBV), service providers’ views on women’s awareness of their rights, and also the obstacles to reform. Recommendations from service providers are also presented.

Gender-Sensitive Justice and Legal Reform in the Middle East/North Africa Region: Successes and Challenges

Gender-sensitive justice and legal reform is an important step taken by any state wishing to provide security and democracy for all of its citizens. While all citizens benefit from reform, the security and status of women and girls are especially impacted. This is because gender-sensitive justice and legal reform addresses gendered inequalities the Convention. Many also viewed the signing as an opportunity for further gender-sensitive justice and legal reform in the Palestinian Territories once statehood is achieved.

According to the UN Declaration on the Elimination of Violence against Women (1993), gender-based violence is “…any act […] that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”
within legislation and the socio-economic realm. Such reform specifically responds to the particular justice needs of women and girls, increases the state’s response to GBV, eliminates gender-based discriminatory laws and practices, and ensures the state’s responsibility to protect the human rights of women and girls under international law.6

During the last decade, a number of states in the MENA region have embarked on the reform of personal status laws and penal codes. In some cases, reform occurred due to donor agendas or international pressure. However, in many instances reform occurred due to the tireless advocacy and coalition building performed by women’s rights advocates and governmental organizations and NGOs seeking to acknowledge the human rights of women and girls while also bringing states in line with international standards and norms, like CEDAW (Moghadam, 2008).

According to Moghadam (2004), the late 1970s and early 1980s saw increasing growing regional conservatism in the MENA region with a number of countries (Algeria, Egypt, Iran and, eventually Yemen) revising their personal status laws to the detriment of women and girls. Personal status laws in Muslim majority countries inform all issues related to the family and, thus, disproportionately affect women and girls. According to a recent survey on women’s rights in the MENA region, women continue to experience significant disadvantages and discrimination within local legal systems, despite recent progress (Freedom House, 2010). Despite this observation, a domino affect of gender-sensitive justice and legal reform has captured the region with varying impact.

In the MENA region, legislation specifically addressing GBV or violence in the family is limited and is often not seen as part of the personal status and penal law reform. In the same survey examining women’s rights in the MENA region mentioned above, it was revealed that among 18 countries, only two (Tunisia and Jordan) outlined specific protection against domestic violence, while no country addressed spousal rape (Freedom House, 2010). Turkey, while not included in the survey, has also undertaken significant domestic violence reform, adopting a law for domestic violence protection orders and, in 2002, a civil code intended to “embody principals of gender equality in accordance with global human rights norms” (WWHR-NEW WAYS, 2005, p.3). In 2004, sexual-based crimes were also criminalized, including marital rape.

Tunisia was the first country in the region to reform much of its personal status law with the Tunisian Code of Personal Status of 1956; with reform, it managed to transform gender relations within the family. Through its passage, Tunisia banned polygamy, defined marriage as ‘consensual and equitable’ and divorce as a right of both partners. Furthermore, the legal age of marriage for males and females was raised to 18 years. Much of this progressive reform has been attributed to Tunisia’s first president in the post-colonial era, Habib Bourguiba, who emphasized the development of the country and the value of women’s participation. Women’s rights activists at this time were also responsible for drawing attention to the contributions of Tunisian women to the struggle for independence, thus encouraging the president to enshrine gender equality in the law (Freedom House, 2010). In a second wave of reform in the 1990s, legislation considered husbands and wives as equals in parenting and within the household and family responsibilities. Reform also extended to expanding citizenship, resulting in the Tunisian

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Code of Nationality (2002). Tunisia’s laws are considered some of the most liberal and secular in the MENA region.

Much has also been written in recent years of Tunisia’s western neighbor, Morocco. In 2004, a new family law was passed supporting women’s equality and granting them new rights within marriage and divorce. The Moroccan Family Law, or moudawana, now considers husbands and wives as equals in marriage and the family. Furthermore, the law raised the age of marriage to 18 years, granted women property rights, and limited polygamy. Feminists argue that the revised law improved women’s status not just in the private, but also the public sphere (Sadiqi, 2008). Primarily instigated by the king, Sadiqi and Ennaji (2006) note that the feminist movement was vital in bringing all actors together to implement change and reform. For many, Tunisia and Morocco serve as examples for Muslim-majority countries illustrating two different ways in which gender-based reform might take place. In Tunisia’s case, reform was mostly secular, while for Morocco it was done within an Islamic framework (Tamanna, 2008).

Also within North Africa, Egypt has reformed its laws related to personal status and family matters after a 15-year effort spearheaded by a coalition of legal professionals, NGO and government representatives, legislators, and academics. Law 1 (2000) now guarantees women the right to file for a no-fault divorce (khul’) and the right to file for divorce from an unregistered marriage. Law 10 (2004) created a family court system and Law 11 (2004) established a Family Insurance Fund for alimony and child support. While these efforts were welcomed, some argue that reform was essentially a hollow gesture that did not address the core deficiencies of the system, namely a husband’s right to unilateral and unconditional divorce, the limited number of female judges in the court system, women’s limited access to assets after divorce, and the hurdles women face while attempting to obtain child custody, child support, and alimony (Deif, 2005).

Similar to its North African counterparts, the Eastern Mediterranean has attempted gender-sensitive justice and legal reform with varying outcomes. In 2001, Jordan raised the age of marriage for both males and females to 18 years through Law No. 82, however, a judge may authorize the marriage of a younger person (male or female) provided that the person in question is at least 15 years of age. During the same year, Article 340 of the Penal Code was amended. This particular article related to crimes of honor7 and the resulting impunity for family members implicated in such crimes. The Jordanian monarchy, unable to cancel the Article completely due to public opinion, merely amended two portions of it so that 1) a male who finds his wife or female relative in the act of adultery or in an ‘unlawful bed’ may use honor as a defense in assaulting or killing her, and 2) a wife who finds her husband committing adultery in the marital home may also benefit from the same defense if she assaults or kills him immediately. In both scenarios, adultery is portrayed as the main crime, thus insinuating the victim as the wrongdoer (Warrick, 2009). In 2008, the Jordanian parliament enacted a Family Protection Law that was supported by both government and civil society, one of the first in the region. Lebanon also toyed with similar legislation that would outlaw domestic

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7 According to Shalhoub-Kevorkian, crimes of honor, which she refers to as femicides, are “…the criminal act taken by an individual (generally a male relative) in which the life of a female is taken as a means to cope with the perceived ‘ar (shame) her ‘suspected’ behavior wrought on the family” (2005, p.168).
violence but, in 2009, it was placed under review for further consideration (Freedom House, 2010).

In Iraq, gender-sensitive justice and legal reform has been lacking in recent years with a reversal of the many gains made by Iraqi women over the last 50 years. For example, at the urging of the occupying American forces, the progressive Personal Status Law (1959) was nearly nullified in 2005 through Decree 137 (Efrati, 2005). The Decree was eventually overturned but has been reincarnated in the form of Article 41 which does not seek to overturn the unified personal status law, but empowers each religious sect and its leaders to decide their own interpretation of the law, often putting women and girls at a disadvantage (Al-Ali & Pratt, 2008).

Recent reports from Yemen have highlighted the phenomenon of early and forced marriage among young girls. High profile cases of preteen girls demanding divorces from men decades their elder has prompted parliament to consider a minimum marriage age of 17 years though efforts may be challenged by more conservative elements of the government in the near future (Freedom House, 2010).

As the examples show, there is no monolithic type of gender-sensitive justice and legal reform within the MENA region. Some states have made serious efforts to amend their family laws and penal codes and some are struggling with conservative religious backlash and foreign intervention in their systems, others are just beginning to address gender inequalities in earnest. In the next section, the status of women will be examined under existing Palestinian law, highlighting the current legislative situation, the ongoing efforts at reform, and the difficulties that exist when reform is attempted.

Gender-Sensitive Justice and Legal Reform and Palestinian Law

There is assertion that a masculine/patriarchal gender bias permeates Palestinian legislation and that the limited scope of the legal system has caused many families to turn to the hamula, or clan, as an alternative to the legal process, an informal institution that is also perceived as biased (Shalhoub-Kevorkian, 2005). This observation is inline with the experiences of Palestinian women and girls who find little recourse in the current legal framework and voice frustration over the services offered by institutions tasked with their protection (Chaban, Daraghmeh & Stettler, 2010).

The current legal system in the Palestinian Territories is neither unified nor inherently Palestinian. While the PA has been responsible for some legislation since the Oslo Accords (1993), the bulk of laws on record draw from the Ottoman and British Mandate, as well as Egyptian (Gaza Strip) and Jordanian (West Bank) systems. East Jerusalem, having been annexed by Israel, falls under Israeli civil legislative jurisdiction. In non-PA controlled areas of the West Bank (Area C and occasionally Area B), Israeli military law is used. Furthermore, tribal and customary laws are frequently applied for resolving disputes at the local level or within families throughout the Palestinian Territories.

The religious code, commonly referred to as the personal status law, informs all issues related to the family and, thus, disproportionately affects women. The personal status law in the Palestinian Territories is comprised of two different laws. In the Gaza Strip the Egyptian Family Law (1954) and in the West Bank the Jordanian Personal
Status Law (1976) are applied. In interviews with Palestinian women and girls, many consider the personal status laws in use to be out-of-date, not context specific, and generally discriminatory against them (Chaban et al., 2010). The current penal codes in the West Bank and Gaza Strip are also not unified. They, too, reflect the previous legal systems of Egypt (Penal Code of 1936 applied in the Gaza Strip) and Jordan (Penal Code of 1960 applied in the West Bank). Both penal codes do not explicitly recognize or address GBV or violence within the family.

Gender-sensitive justice and legal reform has always been on the agenda of the Palestinian women’s movement (Johnson, 2004a). Since the establishment of the PA in 1993 with the Oslo Accords, women’s and human rights organizations have been directly working to improve the situation of women and girls and to combat gender-based discrimination within the legal system. However, the overall conditions for women in the Palestinian Territories have stagnated since the start of the second Intifada (2000). Much is due to the internal fighting between political factions coupled with the worsening effects of the Israeli Occupation. Additionally, growing conservatism and fundamentalism in certain areas of the Territories have impeded positive change for Palestinian women and girls. Palestinian women’s activism has also changed over recent years relying more and more upon international NGOs rather than on grassroots activism (ibid). Hammami and Johnson (1999) succinctly summarize gender-sensitive justice and legal reform and other gender equality efforts among the women’s movement in the post-Oslo era:

“The women's movement has been guided by an equality strategy, which has been the driving force in such important initiatives as the creation of a Women's Charter (1994), the campaign for women candidates and platforms for the Palestinian Legislative Council (1995, with elections in January 1996), reviews of existing legislation and campaigns against discriminatory legislation, and the model parliament (1998) ... and other campaigns in lobbying for a Basic Law or other legislation in the Palestinian Legislative Council” (p.325).

Through the efforts of the women’s movement, as outlined above, gender equality was addressed in a number of documents during this time period. The first of such documents, the Palestinian Declaration of Independence (1988), includes a passage believed to outline gender equality. The document confirms that:

“Governance will be based on principles of social justice, equality and non-discrimination in public rights of men or women, on grounds of race, religion, color or sex, under the aegis of a constitution which ensures the rule of law and an independent judiciary.”

Furthermore, the text also references the adoption of international standards and laws when it clarifies that,

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“The State of Palestine proclaims its commitment to the principles and purposes of the United Nations and to the Universal Declaration of Human Rights.”

Thus, many argue that the future Palestinian state should be founded on the principles of gender equality. Such statements encourage further commitments to gender equality within the law.

While there is a Declaration of Independence, the Palestinian Territories do not have an official constitution; the Amended Basic Law (2003) serves in this capacity. Despite much revision and debate over the specificities of gender equality in the first drafts of the Amended Basic Law\(^9\) (Johnson, 2004b), many human rights and women’s rights activists are keen to cite the text as an entry point for gender equality within the Palestinian legislative framework. In specific, the Amended Basic Law states that:

> “…all Palestinians are equal under the law and judiciary, without discrimination because of race, sex, color, religion, political views, or disability.” (Article 9)

> “The Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights.” (Article 10)

Aside from the Declaration of Independence, these articles within the Basic Law are the primary indicators of gender equality within Palestinian legislation.\(^10\) Yet, as previously stated, other forms of legislation strongly affect the security of women and girls, particularly in Muslim-majority contexts like the Palestinian Territories.

Therefore, where does this leave the Palestinian personal status laws and penal codes? As Hammami and Johnson (1999) noted above, the Palestinian women’s movement has been very active in lobbying for specific legislation, in some cases creating draft laws in cooperation with civil society. Recently, in 2006, a coalition was formed to specifically address the Palestinian personal status laws; redrafting began that same year. The coalition is comprised of members from women’s and human rights organizations, in addition to women’s rights activists and legal experts, all invested in crafting a draft Personal Status Law that is more gender-sensitive, as well as reflective of contemporary Palestinian social values. Once the law was redrafted, the coalition met with religious leaders and legal experts for feedback before submitting the document to the Palestinian President and Prime Minister for review in 2010.\(^11,12\)

\(^9\) According to Johnson (2004b), the original Article 10 of the Basic Law was to read: “Women and men shall have equal fundamental rights and freedoms without any discrimination.” However, this passage evoked tensions within the PLC and revisions were made resulting in the current Article 9.

\(^10\) It is worth noting that Article 5 of the National Election Law, No. 9 (2005, amended in 2007) guarantees women’s political participation in the form of a quota. This was obtained after the hard work of the women’s movement and the strong support of then-Minister of Women’s Affairs, Zahira Kamal.

\(^11\) The author wishes to thank the Palestinian Working Women’s Society for Development (PWWS), especially coordinator Nima Assaf, for sharing the process of creating the draft Personal Status Law.
The revision of the Palestinian penal codes goes back even further than that of the personal status laws. In the early 1990s, a prominent women’s organization, the Women’s Center for Legal Aid & Counselling (WCLAC), began raising awareness of Palestinian laws and their impact on women through legal literacy groups. During that same time, WCLAC drafted an inventory of all Palestinian laws in consultation with women and women’s organizations during workshops. After this process, they went to the government to outline the impact of the legal framework on women.

In 1996, after the first elections of the newly formed PA, WCLAC held even more workshops to discuss the legal inventory and reform. The penal codes were selected from the inventory and WCLAC proceeded to conduct a study of the codes, eventually proposing specific articles for revision. Later, a coalition headed by WCLAC formed in 2004 - 2005 to propose alternatives to these articles. WCLAC then began to communicate with Palestinian Legislative Council (PLC) members and other government officials about the revisions. It is from these meetings and revisions that a new draft Penal Code was written to fit with the current Palestinian situation. Like the draft Personal Status Law, the draft Penal Code is under review.13

Given the complex legal situation in the Palestinian Territories, how do women and girls fair when confronted with insecurity and violence? The following section examines the current causes of insecurity for Palestinian women and girls, specifically focusing on the forms of violence they encounter in the public and private spheres.

The Insecurity of Palestinian Women and Girls

Many argue that current Palestinian laws do not effectively prohibit or punish violence against women and girls. In fact no law exists to protect Palestinian women and girls from violence in the home and violence in the community. And, if certain laws do indirectly protect the rights of Palestinian women, religious and cultural constraints, such as a deep focus on the preservation of male/family honor, patriarchal tribal practices, and a desire to hold onto ‘authentic’ traditions, interfere with their implementation. A public opinion poll on the status of Palestinian women revealed that 77% of respondents believed that laws must be enacted to protect women from domestic violence. The same poll also revealed that 74% of the Palestinian population supports an amendment to the current law that allows for murder in the name of honor (AWRAD, 2008).

Various forms of violence threaten the security of Palestinian women and girls. As a conflict-affected population, women and girls experience insecurity due to the ongoing Israeli Occupation. Throughout the West Bank, women and girls are uniquely impacted by house demolitions, the Separation Wall and other militarized barriers, and exposure to violence in the public sphere. In the Gaza Strip, women have been living under a three-year economic blockade and, during the 23-day siege known as Operation Cast Lead, 111 women were killed and 860 were injured (PCHR, 2009). Women and

12 The Palestinian Legislative Council has been unable to convene and govern since 2007 due to the Israeli imprisonment of many of its representatives; the factional divide and the postponement of elections has further contributed to this paralysis. Draft legislation must now pass through the offices of the President and Prime Minister, though this is seen as a last resort.

13 The author wishes to thank the Women’s Center for Legal Aid & Counselling (WCLAC), especially Soraida Hussein, Head of the Research & Advocacy Unit, for sharing the process of creating the draft Penal Code and the draft Family Protection Law.
girls living in East Jerusalem experience the Occupation in different, but no less harmful ways.\textsuperscript{14} Additionally, the internal factional divide accentuates the vulnerability of women and girls; this is especially true for women and girls living in the Gaza Strip who experience the violence of factionalism within their homes and increasing control on their movements and self-expression (Chaban et al., 2010).

Within the Palestinian community, the security of women and girls is also compromised. The most recent domestic violence survey conducted by the Palestinian Central Bureau of Statistics (PCBS, 2006) revealed that 61.7% of ever-married women experienced psychological violence, 23.3% physical violence, and 10.9% sexual violence at least once during year 2005. As for violence against never-married women, 25% of never-married women were exposed to physical violence and 52.7% were exposed to psychological violence by a household member at least once during the same year. While no data was collected on instances of sexual violence against never-married women, many activists and researchers believe that the majority of sexual violence cases occur within the family (WCLAC, 2005). Other forms of violence persist but are lacking in concrete data to fully measure their scope. These include crimes in the name of honor which continue to go undocumented, early and forced marriage, insecurity surrounding divorce, polygamy and inheritance, harassment in the streets and other public spaces, and limitations on movement and access to the public sphere (Chaban et al., 2010).

Economic violence and insecurity have also been documented within the literature on violence against Palestinian women and girls. The first and second national domestic violence surveys (1994 and 1995) in the Palestinian Territories revealed that 41% and 40% of female respondents, respectively, indicated that their husbands prevented them from using the family’s money (Haj-Yahia, 1999; 2000). According to others, familial and societal pressures imposed upon Palestinian women to refuse their lawful inheritance often serve as a form of violence (Institute of Women’s Studies, 1999).

It is safe to say that the current overall legal framework appears unable to cope with the insecurities faced by Palestinian women and girls. Not just women’s rights activist and organizations confirm this assertion; a number of institutions, both governmental and non-governmental, view the current Palestinian legal framework as a barrier to promoting the security of women and girls. Confronting these forms of insecurity must involve the drafting of relevant laws. As highlighted, efforts are underway to address gender-based discrimination in the personal status law and the penal code and, a first-ever family protection law is also under consideration.\textsuperscript{15}

Security Sector Reform and Palestinian Women and Girls

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) has been working in the Palestinian Territories since 2005 on security sector reform (SSR) and good governance. In 2009, the Ramallah office embarked on a project entitled “Palestinian Women and Security.” The impetus for the project stemmed from a 2006


\textsuperscript{15} WCLAC has coordinated with civil society to draft a first-ever Family Protection Law in the Palestinian Territories. WCLAC’s draft law is expected to complement a referral system they are developing with the assistance of other civil society organizations and the Ministry of Social Affairs. Similar to the draft Personal Status Law and the draft Penal Code, the draft Family Protection Law is under review.
DCAF public perception survey that revealed that more than half of the Palestinian population (57%) was not satisfied with law enforcement’s response to violence against women. Subsequent meetings with other Palestinian actors revealed the need to further integrate Palestinian women and girls into SSR processes.

The baseline study for the “Palestinian Women and Security” project, “Palestinian Women and Security: Why Palestinian Women and Girls Do Not Feel Secure,” (Chaban, et al., 2010) (hereafter the Palestinian Women and Security Report) asked Palestinian women and girls to identify forms of insecurity in their lives and the service providers they utilize. The study revealed that Palestinian women and girls face multiple forms of insecurity due to the Occupation and internal fighting, in addition to violence in the public and private spheres. When women and girls were asked about their perceptions of the service providers available to them, respondents overwhelmingly indicated that they felt unable to turn to these support services for assistance.

The Palestinian Women and Security Report further revealed that women and girls were either unaware of the support services available to them or, if they were aware, hesitated in using them due to fear of scandals and family humiliation. In some instances, women and girls did not trust core service justice providers (i.e., the court system, the police), public services such as school counselors, hospital staff, or shelters, and the services offered by human rights and women’s organizations. Additionally, the legal framework was viewed as ineffective. Thus, DCAF embarked on a series of working group sessions with Palestinian service providers in order to learn more about the obstacles they face in their work with women and girls.

In April and May 2010, DCAF and its partner, the Palestinian Working Women Society for Development (PWWSD), organized six working group sessions to open up a greater dialogue between organizations that provide services to women and girls. The working group sessions built upon the findings of the Palestinian Women and Security Report. One of the working group sessions was entitled ‘Promoting Gender-Sensitive Justice and Legal Reform.’ This session brought service providers together to talk about the impact of the Palestinian legal framework on the (in)security of women and girls and the challenges they face in rendering services. Individual meetings were also held with service providers to gain further insight into the legal framework.

Participants in the working group sessions included individuals from local women’s and human rights organizations, representatives from the PLC, government ministries (Ministry of Education, Ministry of Labor, Ministry of Health, Ministry of Women’s Affairs, and the Prime Minister’s Office), governorate representatives, the media, and core security and justice providers (the civil police, National Security, Preventive Security, and the sharia’ court). While many service providers were based in Ramallah, their services or range of work engaged much of the West Bank and, in some cases, portions of the Gaza Strip and East Jerusalem. During the ‘Promoting Gender-Sensitive Justice and Legal Reform’ session, service providers addressed the following questions:

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1. What are the main laws affecting the (in)security of Palestinian women and girls?

2. Are Palestinian women and girls aware of their legal rights?

3. What gaps exist in the Palestinian legal framework related to the protection of women and girls?

4. What are the challenges for gender-sensitive justice and legal reform?

5. What are the recommendations for improving the legal framework that affects the (in)security of Palestinian women and girls?

The findings of the working group session are discussed below, in addition to the specific recommendations made by service providers.

Working Group Session: Promoting Gender-Sensitive Justice and Legal Reform

This section presents the findings of the working group session with Palestinian service providers entitled ‘Promoting Gender-Sensitive Justice and Legal Reform.’ As the discussion reveals, service providers face many obstacles in providing services to Palestinian women and girls that increase their security, the greatest one being the current legal framework.

1. What are the main laws affecting the (in)security of Palestinian women and girls?

When asked to reflect on the current legislation that most affects the (in)security of Palestinian women and girls, service providers listed the following laws:

- Jordanian Penal Code, No. 16 (1960)
- Egyptian Penal Code, No. 74 (1939)
- Jordanian Personal Status Law, No. 61 (1976)
- Egyptian Family Law (1954)
- Labor Law, No. 7 (2000)

2. Are Palestinian women and girls aware of their legal rights?

Despite the enormous amount of rights awareness-raising that exists in the Palestinian Territories provided by governmental organizations and NGOs, some service providers argued that Palestinian women and girls were unaware of their rights and the current body of legislation governing them. Given the dated complexity of Palestinian legislation in both the West Bank and the Gaza Strip, such an assertion is very possible.

“Most of the reasons that make women or girls vulnerable to violence and feel insecure are the result of their ignorance of the law and their rights.”
(Women’s Organization Representative, Ramallah)

“Some men think it is their right to beat their women. They believe religion says they can beat them, but not severely. Even women and girls do not know...
that it is violence they are subjected to.” (Human Rights Organization Representative, Ramallah)

What is also possible is that service providers are acknowledging that Palestinian women and girls are better versed in their rights at the international level, being familiar with the likes of CEDAW and UN Security Council Resolution 1325,\(^\text{17}\) rather than the Palestinian Penal Codes and Personal Status Laws.

The view that women and girls were unaware of their rights was not universal among service providers. Many service providers challenged this belief stating that, rather than lacking legal or rights knowledge, women were hesitant to use services because of their limited trust in security and justice providers, the legal system, and/or the application of the law.

“I don’t believe that women don’t know their rights. They are aware, even if they live in villages. Maybe they say they don’t know, but they do. Maybe they are just afraid to go to the police or the shelter.” (Sharia’ Judge, Ramallah)

The shame and social stigma attached to seeking assistance outside of the hamula often is too much for women to manage when also having to also contend with an abusive relationship and family alienation; this contributes greatly to their hesitancy when seeking out services. Whether women and girls are truly unaware of their rights or not, the above statements by service providers are clear that current legislation is not working in an optimal manner and is not serving the needs of Palestinian women and girls.

3. What gaps exist in the Palestinian legal framework related to the protection of women and girls?

Of all the legislation in place, service providers noted a clear absence of legislation addressing GBV in the Palestinian Territories. According to service providers, much of the current Palestinian legislation is not specific enough to protect women and girls from abuse or promote their human rights:

“We lack clear Palestinian laws to regulate women’s rights. There are many gaps in the law that undermine women’s rights.” (Security Sector Representative, Ramallah)

Indeed, the lack of laws to clearly target GBV stems from the fact that there is no clear definition of GBV within Palestinian society, making work difficult for service providers. The lack of an all-encompassing definition of GBV in the Palestinian vernacular means that the term is not integrated into Palestinian legislation (or other important institutions, like education and the security sector):

\(^{17}\) UNSCR 1325 (2000) calls for, among other things, the protection of women and girls during conflict, the prosecution of gender-based crimes during conflict, and the involvement of women in conflict resolution and peace negotiations.
“We need to work at the international level and define violence. There needs to be an introduction to violence in the school curriculum. We should work with the security forces and develop techniques to introduce the definition of violence.” (PLC Member, Hebron)

The creation of laws related to sexual violence and murder in the name of honor were of deep concern for many service providers. This is especially relevant given that both topics are taboo in nature in the Palestinian Territories and rarely discussed in the public sphere. Currently, sexual violence, especially with in 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. As for murder in the name of honor, Articles 340 and 98 of the Penal Code in the West Bank currently allow for various forms of impunity, primarily a mitigating excuse for the crime and/or a reduced sentence, despite attempts by the Ministry of Women’s Affairs to have them amended or annulled.

“There is no law on sexual violence. We can only advise the woman, but not intervene.” (Ministry of Health Representative, Nablus)

“What we really need here is a law to protect women, especially to protect them from honor killing crimes.” (Counselor, Ramallah)

Comprehensive legal protection was also a concern. Service providers recounted detailed stories from their professions highlighting the ways in which the women and girls they work with have not been properly protected within the current Palestinian legal framework. Turning to the police and other security and justice providers proved to be a very difficult decision for women because of the lack of a legal framework for the police to function.

“At the police we see girls denying they were beaten because they don’t want a divorce, or another beating. They don’t have any protection after leaving the police so they keep silent. There is no authority to go to for prosecution. There is no clear law on what to do before or after.” (Police Officer, Ramallah)

Often, turning to the police induced the ire of family members and was tantamount to social ostracism, filing for divorce, encouraging even more abuse, or signing one’s death warrant:

“Three days ago we had a client that was afraid of being killed in the name of honor. When the police arrived, she refused to leave the building. We even had a counselor with her. Finally she went out and the police spoke with her and took her away. She was very scared to deal with the police.” (Counselor, Ramallah)

“Let’s say a woman from a village goes to the hospital with bruises. The nurse and the doctor are not authorized to refer her to the police or a shelter. In one case I had, I told the woman to go to the police and she said, ‘Do you want me
to be killed.’ If it didn’t happen from her husband it would happen from her family.” (Ministry of Health Representative, Nablus)

The above statements outline a clear distrust in core security and justice providers, but also reveal a limited legal framework for service providers to render a semblance of security and fight for gender-based justice.

4. What are the challenges for gender-sensitive justice and legal reform?

For all service providers, the greatest hindrance to effective gender-sensitive justice and legal reform was the ever-pervasive Israeli Occupation that has impeded all coordination and the rendering of services:

“In Palestine, we have the Occupation that makes applying the law even more difficult.” (Women’s Organization Representative, Ramallah)

“The focus should be on exposing how the Occupation interrupts the services of service providers.” (Women’s Organization Representative, Ramallah)

Likewise, the political blockade and the resulting paralysis of the PLC have made it impossible to implement long-term reform:

“The PLC is absent due to the political system. There are no laws that protect women in all aspects of their lives. The PLC is not able to redraft the Personal Status Law. It is unable to change the Penal Code.” (Nablus Governorate Representative)

In addition to the Occupation and the paralysis of the PLC, service providers confirmed that the current legal system is not up-to-date or relevant to the situation at hand. They agreed that the Palestinian legal framework is not responding to the needs of women and girls or the needs of service providers.

“There is no law or there are no tools to apply the current law.” (Women’s Organization Representative, Ramallah)

“The problem is the absence of legislation. There is nothing to regulate the courts, NGOs, and the hospitals.” (Women’s Organization Representative, Ramallah)

Service providers also noted that specific Palestinian legislation actively discriminated against women and girls, in particular, the Personal Status Law. As is the case with other countries in the MENA region, there is clear acknowledgement that the Personal Status Law must be reformed and that the Penal Code must also promote the human rights of women and girls.

“While some laws support women, other laws are against women’s security, like the Personal Status Law.” (PLC Member, Hebron)
“It is very important to have a law for women’s rights. I agree there is a problem with the traditions and norms, but there is a problem in the laws. Honor killings are linked to norms in the Penal Law. As for rape, the offender is allowed to marry the victim. How can the victim marry her rapist?” (Women’s Organization Representative, Ramallah).

The above quote graphically illustrates that women’s human rights are severely compromised when the crime of sexual violence against unmarried women can be mitigated and the honor of the woman’s family ‘restored,’ if the accused rapist agrees to marry his victim. There are no statistics on the prevalence of this practice, but the current legal framework and tradition allow it to occur.

Rather than viewing the legal system as actively discriminatory, some service providers suggested that it was the limited application of current laws that promoted women’s insecurity and made it difficult for them to perform their duties.

“Women have rights; it is just the application of the law that is an issue. There is no explanation on applying the law.” (National Security Representative, Ramallah)

Whatever the case, service providers indicated that many laws are not clear enough in their application and that women and girls are paying the price for this. Furthermore, service providers were unable to understand or apply the laws appropriately so that women and girls might receive the greatest benefit of their legal rights.

5. What are the recommendations for improving the legal framework that affects the (in)security of Palestinian women and girls?

The following are recommendations offered by participants of the ‘Promoting Gender-Sensitive Justice and Legal Reform’ working group session as ways of improving the legal framework that affects the security of Palestinian women and girls:

- **Undertake a legal study outlining gender-based discriminations:** Service providers believed a legal study of current laws would be useful in further identifying forms of gender-based discrimination. This study should identify and list all provisions of the Palestinian legal framework that discriminate against women. Portions of this document could also serve as a legal literacy text for Palestinian women and girls.
- **Enact a law addressing violence against women:** Service providers preferred laws focused on the prevention of violence against women as a better option than amending general legislation. In their view, revision avoids vague definitions and generalizations and creates an indigenous and context-specific document.
- **Redraft the personal status law:** Service providers recommended redrafting the Personal Status Law (currently based on the Jordanian Personal Status Law, No. 61 of 1976 in the West Bank, and the Egyptian Family Law of 1954 in the Gaza
Strip. A new Personal Status Law should apply to the West Bank and Gaza Strip equally.

- **Redraft and align the penal code and the personal status law with the Palestinian Authority’s obligations under CEDAW:** Service providers recommended that the Penal Law (currently based on Jordanian Penal Code, No. 16 of 1960 and the Egyptian Penal Code, No. 74 of 1939) and the Personal Status Law be redrafted or amended in order to be in line with CEDAW. Similar to a new Personal Status Law, a new Penal Code should cover the West Bank and the Gaza Strip.

- **Improve legal literacy and raise awareness:** Service providers were keen to increase the legal literacy of all Palestinian women and girls. Some of the specific recommendations included involving the media, holding awareness-raising sessions, and drafting texts that illustrate legislation and women’s legal rights.

**Concluding Remarks**

As this paper reveals, work is currently underway to amend the Personal Status Law and the Penal Code and to draft the first-ever Family Protection Law in the Palestinian Territories. However, as those partaking in the processes have discussed, there have been a number of previous false starts that cause concern for current and future efforts. What is clear is that the Palestinian women’s movement and the affiliated civil society organizations have a significant role to play in gender-sensitive justice and legal reform. As other reform in the MENA region indicates, women’s organizations and civil society often provide governments with the impetus for drafting gender-sensitive legislation and bringing it inline with international law and standards, as well as conventions like CEDAW.

As Palestinian service providers share, the status of women and girls under the current legal framework in the Palestinian Territories is significantly unstable. A complex legal history coupled with a militarized occupation has conspired to increase the insecurity of Palestinian women and girls. Likewise, they share that their own work is compromised as they try to ensure the security and integrity of the female population.

While a commitment to gender-sensitive justice and legal reform from the PA and other governing structures has been made public in recent years, little is visible on the ground to ensure such action will take place. Because service providers are on the frontlines when it comes to protecting women and girls, their voices and perspectives are important barometers of the situation in the field. If the security of Palestinian women and girls is to be ensured, the observations and recommendations of service providers must be taken seriously.

The following quote sums up the majority of frustrations expressed by service providers during the working group sessions, as well and the reality facing the PA with regard to gender-sensitive justice and legal reform:

“The government focuses on reforming certain laws, but ignores the Personal Status Law and the Penal Code. It does not want to face society on personal issues. However, if the Palestinian Authority wants to survive, these laws need to be reformed.” (Sharia’ Judge, Ramallah)
References


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