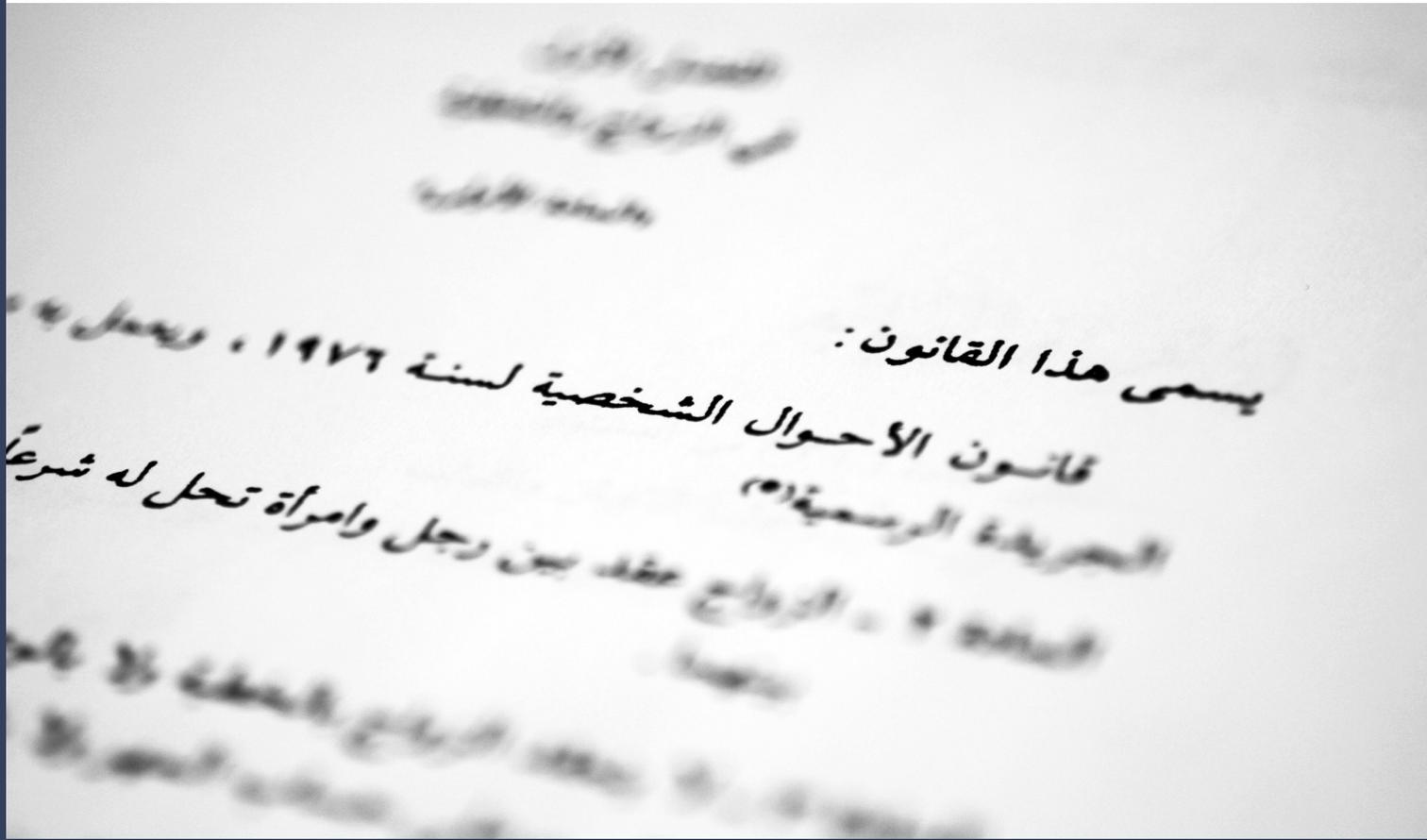


Palestinian Women and Personal Status Law

Policy Brief

Ramallah and Geneva, May 2012



Women's Centre for Legal Aid and Counselling (WCLAC)

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The Geneva Centre for the Democratic Control of Armed Forces (DCAF)

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Disclaimer

The views expressed in this paper are those of participants and do not necessarily reflect those of DCAF and WCLAC.

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Problem Statement

The current legal framework in the occupied Palestinian territory is a mixture of Jordanian, Egyptian, Palestinian, Ottoman and British laws, as well as Israeli military orders, many of which were inherited from the colonial period. Furthermore, different laws apply to the West Bank and the Gaza Strip. This lack of a unified legal framework is the root of many inconsistencies and gaps in the current legislation. This is also the case for personal status laws.

Many Palestinians believe that the personal status laws applicable in the occupied Palestinian territory do not offer fair treatment and sufficient protection to women and girls¹. For Muslims, the Jordanian Personal Status Law No. 61 of 1976 is applied in the West Bank and the Egyptian Law of Family Rights of 1954 in the Gaza Strip. Many articles of these two laws contradict more recent Palestinian laws and decisions of the Palestinian National Authority (PNA), including the Presidential Decree endorsing the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2009.

Response

In May 2011, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Women's Centre for Legal Aid and Counselling (WCLAC) decided to gather a Taskforce of experts to examine the current legislation affecting women's security and to submit recommendations to decision-makers in the PNA and Palestinian Legislative Council (PLC). Taskforce meetings, which were held between May and October 2011, gathered legal experts from PNA Ministries, the PLC, the police, civil society and academia. The views and recommendations presented in this working paper are those of the Taskforce members, and do not necessarily reflect the views of DCAF and WCLAC. The role of both organisations was to facilitate the Taskforce process, not to act as advisors.

The present paper summarises the recommendations made by participants in the sixth Taskforce meeting held on 21 July 2011 under the title 'Palestinian Women and Personal Status Law'². Although most Taskforce members agreed on the need to provide more substantial protection to women and girls, they suggested different solutions to that effect.

Main Findings

Taskforce members noted inconsistencies between Muslim personal status laws applicable in the West Bank and Gaza, and other laws currently applicable in the Palestinian Territory.

Personal status laws apply principles of Shari'a law to many social issues, such as marriage, parental consent, polygamy, divorce, alimony, and child custody. The law sets sex-specific rights and duties for the spouses, which reflect the traditional gendered relations and patriarchal structure of family relations in the oPt. These provisions are not consistent with the constitutional right to equality granted by Article 9 of the Amended Basic Law of 2003. The right to equality is also enshrined in international treaties, such as the Convention on the

1 It should be noted that different personal status laws are applicable depending on each individual's religion. For instance, each Christian denomination has its own set of personal status laws in the Palestinian Territories. For the purpose of this brief, only the Jordanian Personal Status Law and the Egyptian Family Rights Law will be examined.

2 The present policy brief is part of a series of three policy briefs and a working paper published by WCLAC and DCAF to present the findings and recommendations of the Taskforce. The other two policy briefs focus on women and the penal law, and women and economic security, respectively. For more details about the process and a full list of Taskforce members, please see the WCLAC-DCAF working paper, *Palestinian Women and Security: Promoting the Rights of Palestinian Women and Girls through Legislation*, available at: <http://www.dcaf.ch/Publications/Working-Paper-Palestinian-Women-and-Security-Promoting-the-Rights-of-Palestinian-Women-and-Girls-through-Legislation>

Elimination of All Forms of Discriminations Against Women (CEDAW), which was endorsed by the Palestinian Authority in 2009³.

Age of marriage

Participants highlighted that, according to the Jordanian Personal Status Law of 1976 (Article 5), the legal age of consent for marriage is fifteen years for girls and sixteen years for boys⁴. The idea that people under eighteen years are able to fully understand the consequences of their commitment and consent to marriage is inconsistent with other laws applicable in the Palestinian Territory, which treat individuals under eighteen years as minors and protects them as such. In particular, Article 1 of the Palestinian Child Law No. 7 of 2004 considers people under eighteen years old as minors, irrespectively of their sex. So does the Jordanian Juvenile Law No. 16 of 1954, and other applicable laws in a variety of fields (civil, commercial, labor and political laws).

Guardianship

According to the Jordanian Personal Status Law of 1976 and the Egyptian Family Rights Law of 1954, women need the consent of a male guardian in order to get married for the first time, regardless of their age. However, men are not subjected to the same obligation. This difference of treatment contradicts the principle of equality enshrined in the Palestinian Basic Law, as well as CEDAW. Some Taskforce members noted it also infringes on women's right to choose their spouse.

Testimonies

Moreover, Taskforce members highlighted inconsistencies between the personal status laws on the one hand, and the Palestinian Evidence Act No. 4 of 2001, and the Palestinian Law of Penal Procedures No. 3 of 2001 on the other hand. The Law of Penal Procedures and the Evidence Act set the rules for testifying in civil, commercial and criminal courts. The former grants equal weight to women and men's testimonies, whereas the personal status laws give more weight to men's testimonies. This difference of treatment contradicts the principle of equality enshrined in the Palestinian Basic Law, as well as CEDAW.

Divorce and child custody

Taskforce members underlined that current personal status laws applicable for Muslims do not grant women the same rights as men in filing for divorce. Women are also disadvantaged in terms of custody rights (Articles 154 to 166 of the Jordanian Personal Status Law). As a consequence, children's best interests are often overlooked when courts rule on custody issues.

Property rights

Personal status laws do not clearly define how the common property of spouses is to be used after the marriage is dissolved. This legal gap constitutes a threat to women's economic security.

Recommendations from the Taskforce

Based on the gaps and contradictions they identified in the current personal status laws, Taskforce members recommend the following to PNA and PLC decision-makers:

- To raise the legal age of marriage to eighteen years, in line with the Convention on the Rights of the Child (1989)⁵. As a first step to improve the current practice, some Taskforce members suggested giving a judge or a committee comprised of judges and doctors, the power to decide to marry persons under eighteen years and only under strict conditions;
- To grant women's testimonies the same weight as that of men in personal status issues;
- To set legal limitations to polygamy;
- To take children's best interest into account when ruling on custody cases, and to grant men and women equal custody rights, regardless of their children's age;

³ See the Convention on the Elimination of All Forms of Discrimination Against Women, Art. 16.

⁴ For girls and women who marry for the first time, their guardian's consent is also required.

⁵ Shari'a experts have also signalled that the age of marriage in Shari'a law is based on the age of puberty, and that whether this is set at eighteen years or younger is subject to interpretation. According to many experts, raising the legal age of marriage to eighteen years is thus not in contradiction with religious principles.

- To give girls the right to choose the custody of their father or mother (the current practice based on the Hanafi School is that, after puberty⁶, only boys choose, while girls are automatically placed in their father's custody);
- To state that only courts are competent to pronounce divorces, and to give women the same rights as men in filing for divorce; and
- To regulate the use of property jointly acquired by spouses during their marriage, and adopt a system of joint funds between the spouses. This would mean that all goods and funds that have been acquired after the marriage are considered joint property of the spouses. In case of a divorce, the funds would be divided on an equal basis between the spouses. Taskforce members recommend making this system mandatory⁷.

Recommendations from WCLAC and DCAF

Based on the review of existing legislation as well as recommendations of the Taskforce, WCLAC and DCAF recommend to PNA and PLC decision makers as well as human rights organisations to promote gender-sensitive legal reform. This should include the following elements:

- Support the establishment of a working group of PLC members and civil servants working in parliamentary committees as well as representatives of the Council of Ministers to examine the laws affecting women's security and propose amendments to guarantee that women's specific needs are taken into account;
- Raise Palestinian citizens' awareness of gender-sensitive legal reforms; and
- Encourage donor support to the PNA and PLC in enacting gender-sensitive legal reform.

Legislation examined by the Taskforce with respect to Palestinian women and the personal status law:

- Amended Basic Law of 2003 (Articles 9 and 10).
- Jordanian Personal Status Law No. 61 of 1976 (Articles 5, 9, 11, 101 and 154).
- Egyptian Family Rights Law No. 303 of 1954 (Articles 5, 8, 9 and 11).

⁶ According to Article 162 of the Jordanian Personal Status law, divorced mothers or widows who do not remarry have custody of their children until they reach puberty.

⁷ In other Muslim countries where such a system already exists, it is only optional.

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