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# PALESTINIAN WOMEN: BEYOND THE BASIC LAW

Adrien Katherine Wing\*  
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## I. Introduction

This article addresses the social and legal status of Palestinian women. Part II of the article discusses the socio-legal status of Palestinian women prior to the *intifada*. Part III explores the socio-legal status of women during the *intifada*. Part IV addresses their status as promulgated by the Draft Basic Law. Part V discusses the status of women, as proposed by the Women's Charter of August, 1994. Part VI concludes that there remains a sharp contrast between the status women desire and the one granted to them under the past and present law. It surmises that the socio-legal status of women can be improved by five alternative routes, each of which is not mutually exclusive.

On August 29, 1994, Israeli and Palestinian Liberation Organization (PLO) representatives signed the historic "early empowerment agreement."<sup>1</sup> This agreement gave Palestinians autonomy in the West Bank and Gaza over issues such as education, internal security, social welfare, tourism, taxation, and employment.<sup>2</sup> Whatever conflicts Palestinians may have among themselves concerning the value of self-rule under these circumstances, existence of this agreement has created even more Palestinian debate over the future. For example, antagonist factions, such as the Islamists and Women's rights advocates, continue to struggle over the nature of the society they will help shape.<sup>3</sup> As Palestinian women's activist Islah Jad put it, "the two parts of Palestinian society that reacted most realistically to Oslo were the Islamists and a section of the PLO women's

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<sup>1</sup>Graham Usher, *Women, Islam and the Law in Palestinian Society*, MIDDLE EAST INT'L 17 (Sept. 23, 1994).

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*

movement. Both are aware that what the self-rule's interim period portends is a relative diminishing of the national question in favor of cultural and legal questions."<sup>4</sup>

The Islamic Resistance Movement, *Hamas*, represents the position of the Islamists in an emerging Palestine. Since the September 13, 1993 decision of the Israeli and PLO forces to forge towards peaceful co-existence, *Hamas* has established itself as the largest opposition force in Palestine.<sup>5</sup> To achieve its end of creating an Islamist state and Islamic identity within the new Palestine, *Hamas* created numerous mosques, clinics, charities, sports clubs, and study groups.<sup>6</sup> Also, during the *intifada*, *Hamas* effectively reached out to the Palestinian community, especially the families of the prisoners and martyrs.<sup>7</sup> *Hamas* and other Islamists have not only gained support in the older conservative sectors, but also among the younger generations which proved to be a catalyst and an integral part of the *intifada* movement.<sup>8</sup>

Having established themselves as a powerful opposition force in the new Palestine, Islamists such as Nablus' Shaikh Jamal Salim seek a Palestine in which "freedom of expression in the mosques and the right to speak about the religious point of view not only in religion but in politics, social values, economics etc," exists.<sup>9</sup> If such an ideal state cannot be created, the Islamists, at the very least, want clear demarcation between the authority the justice ministry can exercise, and that which the Islamic courts can exercise. In other words, the Islamists want religious law to govern their private lives and in doing so hope to "guarantee Palestinians' human rights as Muslims."<sup>10</sup>

To most Palestinian women's rights advocates, the resurgence of Islam will set their struggle backward. The Palestinian women's movement started early in the century, and its modern component drew

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<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

<sup>7</sup>*Id.*

<sup>8</sup>For example, recent studies indicate that Palestinian women between the ages of 15 and 19 were more accepting and aware of the role of religion within their society when compared to Palestinian women between the ages of 20 and 29. *Id.*

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

strength from the early phases of the *intifada*.<sup>11</sup> It has been fostered by support from the PLO's principal factions, namely *Fatah* and the Marxist Popular and Democratic fronts.<sup>12</sup> While there continues to be debate over whether, when and how the women's movement should take precedence over the creation of a new Palestinian state, many women activists now want a state that treats women on an equal footing with men.

The paramount dilemmas confronting Palestinian women are: What can be done to secure equal rights, formally and factually? Should changes be immediate or gradual? Are there traditional practices that should be maintained? What safeguards are available to prevent a return to the pre-*intifada* period? What role will women play in a new Palestinian government? To answer any of these questions, we must first understand women's historical status within Palestinian society.

## II. Socio-Legal Status of Palestinian Women Before the Intifada

### A. Customary Law

Both customary and religious law have had an important impact on the social and legal status of Palestinian women. This section briefly discusses how both systems have curtailed and limited the role of Palestinian women to that of sustainers and symbols of family honor.

Customary law,<sup>13</sup> otherwise known as *urf*, dates back to ancient times. *Urf* promulgates that disputes be settled through mediation and conciliation.<sup>14</sup> According to traditional practices, the elderly respected

<sup>11</sup>PHILIPPA STRUM, *THE WOMEN ARE MARCHING* (1992).

<sup>12</sup>JOOST HILTERMANN, *BEHIND THE INTIFADA: LABOR AND WOMEN'S MOVEMENT IN THE OCCUPIED TERRITORIES* 134 (1991).

<sup>13</sup>The term 'customary law' is used in literature to connote any non-legislative law. LEOPOLD POSPOSIL, *ANTHROPOLOGY OF LAW: A COMPARATIVE THEORY* 194 (1971).

<sup>14</sup>See Adrien K. Wing, *Legal Decision-Making During the Palestinian Intifada: Embryonic Self Rule*, 18 *YALE J. INT'L L.* 95 (1993) and Adrien K. Wing, *Custom, Religion and Rights: The Future Legal Status of Palestinian Women*, 35 *HARV. INT'L L. J.* 153 (1994) and sources cited therein.

male members of the community have played the role of mediators.<sup>15</sup> The primary purpose of such mediation is to reach a *sulh* or settlement.<sup>16</sup> Customary law addresses disputes such as interfamilial feuds, property rights, and personal conflicts. During the Israeli Occupation, Palestinians used *urf* to resolve conflicts because of their distrust of the Israeli controlled courts.

*Urf* has had a substantial impact on the socio-legal status of Palestinian women. Historically, women have not enjoyed an equal status with men within Palestinian society. The following examples substantiate this point. One of the primary functions of women, traditionally, was to maintain family honor. Their chastity had to be maintained in order not to disgrace the family.<sup>17</sup> Women do not retain their father's lineage.<sup>18</sup> A married woman contributed to the family of her in-laws, and invariably the responsibility of caring for elderly parents fell on the shoulders of the sons.<sup>19</sup> Women were secluded which started as early as puberty. Once girls reached puberty, they were required to fully clothe their bodies and wear a head scarf, otherwise known as *hijab*.<sup>20</sup> During the first few decades of this century, women married at a later age, but, with increased economic prosperity, most women married at the age of thirteen or fourteen.<sup>21</sup> Umm Fawazz, a woman married in 1942, states:

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<sup>15</sup>Numerous anthropological studies indicate the important status of mediators, who also receive religious approval. GEORGE EMILE BISHARAT, *PALESTINIAN LAWYERS AND ISRAELI RULE* 187 n. 5 (1989); see also ABNER COHEN, *ARAB BORDER-VILLAGES IN ISRAEL: A STUDY OF CONTINUITY AND CHANGE IN SOCIAL ORGANIZATION* 82 (1965).

<sup>16</sup>Mediation was historically often conducted by reconciliation committees. For a committee's decision to be binding, the members of the committee had to be neutral, and opposing parties must agree to adhere to the judgment that is passed down. The committee members were invariably men, and most communities abided by the judgments. Enforcement of judgments was carried out by the *hamula* (clan), even where the use of physical force was necessary. Wing, *Legal Decision-Making*, *supra* note 14, at 142.

<sup>17</sup>An example of how *urf* influenced the legal system is seen in the "case of honor" (*qadiyah arad*) or a crime of sexual assault against a woman. In cases such as these, the family of an aggrieved woman, is awarded huge cash settlements, based on the physical or verbal nature of the assault. Wing, *Custom, Religion and Rights: The Future Legal Status of Palestinian Women*, *supra* note 14, at 155; BISHARAT, *supra* note 15, at 37.

<sup>18</sup>KITTY WARNOCK, *LAND BEFORE HONOUR* 27-28 (1990).

<sup>19</sup>*Id.* at 28.

<sup>20</sup>Wing, *Custom, Religion and Rights: The Future Legal Status of Palestinian Women*, *supra* note 14, at 155.

<sup>21</sup>WARNOCK, *supra* note 18, at 28.

"I'm ashamed to tell you how young I was when I married— four months short of fourteen. I hadn't started my periods. I was skinny and flat-chested, nothing up there at all."<sup>22</sup>

Another rural woman, Umm Jihad, talks of being more fortunate:

"My sister Miriam was only twelve when she was married. She was so immature that her husband left her at home with her mother for a year afterwards. He treated her like a baby, bringing her nuts and melon-seeds when he came to visit. My father saw that she was unhappy, and decided not to marry me until I was eighteen—unusually old at that time. I was much better prepared."<sup>23</sup>

Almost all marriages were arranged, and the western concept of dating did not exist.<sup>24</sup> Marriage was perceived as a contract and as a means of bringing the family together.<sup>25</sup> As a result, many marriages were interfamilial. Such marriages were encouraged because it was more likely that the woman would be better treated by her kin than those outside the family.<sup>26</sup> Another point favoring such a marriage was that the bride price (*mahr*)<sup>27</sup> would be lowered. The

<sup>22</sup>*Id.*

<sup>23</sup>*Id.*

<sup>24</sup>Wing, *Custom, Religion, and Rights: The Future Legal Status of Palestinian Women*, *supra* note 14, at 155.

<sup>25</sup>WARNOCK, *supra* note 18, at 28.

<sup>26</sup>*Id.*

<sup>27</sup>*Mahr* is an amount of money given by the bridegroom to his wife that she keeps for her use. The amount of the *mahr* depends on the socio-economic status of the families and the region they inhabit. Every community determines the amount based on factors such as the ties of the family, or the debt of gratitude owed to each other. The father, who receives the actual payment, passed a marginal amount to his daughter to help her in times of need. It often was conveyed in form of gold coins and clothes. In the event that the woman sought a divorce, she forfeited the sum she would have received had the husband sought a divorce. The importance of *mahr* to a Palestinian woman are best illustrated by the regret Umm Jihad, a village woman, expresses upon failing to receive any dowry:

My brother married a girl from the next village and her brother asked for me. My sisters had been given 130 dinars each when they married; our father kept 100 and gave the rest to buy gold coins. But because mine was an exchange marriage, our families reached an agreement that neither side would pay anything. It was a shameful thing to do to me, and dangerous too. A woman needs some money of her own. People say, 'Never mind, her husband can buy her some gold later', but it never works out like that. Once you have children, where's the extra money going to come from?

most sought after marriage was that between first cousins.<sup>28</sup> Few women had the choice to refuse marriage. A woman's legal right to refuse marriage was meaningless since her physical presence was unnecessary during the ceremony; her father could represent her.<sup>29</sup>

To maintain family honor, it was imperative that virginity be proven on the wedding night.<sup>30</sup> When a young wife entered the family, she had little or no status.<sup>31</sup> To improve her station in life, she needed to produce sons. She would be known as Umm or mother of her oldest son.<sup>32</sup> For instance, Umm Hatem's eldest son's name is Hatem and so follows her name.<sup>33</sup> The more sons a woman produced, the more her status in society and within the family increased.<sup>34</sup> Women did not live by themselves. A divorcee had to return to her father's house.<sup>35</sup> Therefore, no matter what the marital status of the woman, her life, her identity was dictated by a male and she was not treated as an equal.<sup>36</sup> In summation, customary law helped to create a community in which women are socially and legally unequal. Males dominated every aspect of a woman's life, primarily restricting them to the private sphere of family life.

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The statement made by Umm Jihad reflects the sense of security that the *mahr* represented. *Id.* at

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<sup>28</sup>*Id.* at 29.

<sup>29</sup>JOSEPH GINAT, *WOMEN IN MUSLIM RURAL SOCIETY* 170-71 (1982).

<sup>30</sup>*Id.* at 31.

<sup>31</sup>*Id.* at 32.

<sup>32</sup>Wing, *Custom, Religion, and Rights: The Future Legal Status of Palestinian Women*, *supra* note 14, at 155.

<sup>33</sup>*Id.*

<sup>34</sup>Umm Hate, another rural woman, recounts:

I started having babies - three girls first. People criticized me and I was ashamed...Then I had sons - eight of them.

WARNOCK, *supra* note 18, at 32.

<sup>35</sup>Wing, *Custom, Religion, and Rights: The Future Legal Status of Palestinian Women*, *supra* note 14, at 155.

<sup>36</sup>*Id.*

### B. Religious Law

Islamic law known as the *sharia* has also had an impact on the legal and social status of Palestinian women. The *sharia* governs personal status matters, including marriage, divorce, inheritance, and child custody. The *sharia* affords women more protection than customary law.<sup>37</sup> They are treated as individuals, who are proud and independent.<sup>38</sup> Islam recognizes women's autonomy; it allows her to own and inherit property as well as establish her own business.<sup>39</sup> Under *sharia* guidelines, a woman is permitted to bring a suit without the consent of her husband and she is considered competent to act as a legal guardian of minors.<sup>40</sup> The *sharia* limits polygamy to four wives and requires that a man wait for three months before initiating divorce.<sup>41</sup> In a contemporary context many of these rights may seem minimal. But under the *sharia* women had greater legal status than European women until the nineteenth century.<sup>42</sup>

Nevertheless, despite the fact that women were perceived as equals in the eyes of Allah, this perception faded when women were compared to men in the world.<sup>43</sup> Society governed by Islam remains patriarchal, and the Koran reaffirms the superiority of men:

Men have authority over women because Allah made the one superior to the other, and because they spend their wealth to maintain them. Good women are obedient. They guard their unseen parts because Allah has guarded them. As for those from whom you fear disobedience, admonish them and send them to beds apart and beat them. Then if they obey you, take no further action against them. Allah is high, supreme.<sup>44</sup>

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<sup>37</sup>For discussion of the rights of women under Islam, see e.g. ASGHAR ALI ENGINEER, *THE RIGHTS OF WOMEN IN ISLAM* 20 (1992).

<sup>38</sup>WARNOCK, *supra* note 18, at 26. In fact, Prophet Mohammed had so much admiration for his wife Aisha that he instructed his disciples to learn part of the religion from her. *Id.*

<sup>39</sup>Abdullahi A. An-Na'im, *Human Rights in the Muslim World Socio-Political Conditions and Scriptural Imperatives*, 3 HARV. HUM. RTS. J. 13, 39-40 (1990).

<sup>40</sup>WARNOCK, *supra* note 18, at 26.

<sup>41</sup>*Id.* at 26-27.

<sup>42</sup>*Id.*

<sup>43</sup>WARNOCK, *supra* note 18, at 27.

<sup>44</sup>THE KORAN (N. Dawood trans., 1974).



In the realm of sexual relations, women are also unequal. Polygamy<sup>45</sup> is sanctioned and a woman exists for the enjoyment of her husband. As the Koran reads: "Women are your fields: go, then, into your fields as you please."<sup>46</sup>

In Gaza and the West Bank, family law issues, such as marriage, divorce, custody, and alimony, are still heard by the *sharia* courts, which make decisions based on Islamic law.<sup>47</sup> After the parties appear before the court, with or without counsel, the court makes a decision and may award *diya* (blood money)<sup>48</sup> within a two-month period.<sup>49</sup> The Supreme Islamic Board (*al-Haya al-Islamiyya al-Uliya*) governs the *sharia* courts of the West Bank.<sup>50</sup> There is an appeals court for Gaza within Gaza city.<sup>51</sup> The *sharia* courts also make their

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<sup>45</sup>A man is allowed to have four wives whereas a woman can have only one husband. Due to the threat of polygamy, a woman is coerced to concur with her husband and his family. An-Na'im, *Human Rights in the Muslim World Socio-Political Conditions and Scriptural Imperatives*, *supra* note 39, at 39.

<sup>46</sup>THE KORAN (N. Dawood trans., 1974).

<sup>47</sup>For a history on *sharia* courts, see Lynn Welchman, *Family Law Under Occupation: Islamic Law and the Sharia Courts in the West Bank*, in ISLAMIC FAMILY LAW 93 (Chibli Mallat & Jane Connors eds., 1990).

<sup>48</sup>The *sharia* dictates that the amount of the *diya* awarded for an injury is less for a woman than a man. An-Na'im, *Human Rights in the Muslim World*, *supra* note 39, at 39 (quoting A. AUDA, AL-TASHIRI AL-JANA'IY AL-IAMIY paras. 155, 214 (Arabic)).

<sup>49</sup>BISHARAT, *supra* note 15, at 120-21.

<sup>50</sup>See generally, ANN M. LESCH, ARAB POLITICS IN PALESTINE 1917-1939: THE FRUSTRATION OF THE NATIONALIST MOVEMENT (1979).

<sup>51</sup>Wing, *Custom, Religion and Rights: Future Legal Status of Palestinian Women*, *supra* note 14, at 160.

decisions based on the 1976 Jordanian Law of Personal Status,<sup>52</sup> which is influenced by the Hanafite school of Islamic jurisprudence.<sup>53</sup>

In discussing the impact of Islamic law on Palestinian women, it is evident that the *sharia* provides women with limited freedoms in the contemporary global context. The next subsection of this article discusses the manner in which women have historically dealt with their subordination, both by their own men as well as by foreign occupiers.

### C. Women's Movement

Societal changes introduced by the *intifada* somewhat modified the social and legal status of Palestinian women in the Occupied Territories.<sup>54</sup> These changes must be considered within the context of the women's movement's historical fight for greater liberty and rights. However, it is important to note that the movement has primarily focused on achieving liberation from Israeli rule and less on securing rights for women within Palestinian society.

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<sup>52</sup>Jordanian Law of Personal Status, Temporary Law no. 61/1976, Official Gazette no. 2668 of Dec. 1976 (replacing the 1951 Code)[hereinafter Jordanian Personal Status Law]. For a discussion of the substance of the 1976 law, see Lynn Welchman, *The Development of Islamic Family Law in the Legal System of Jordan*, 37 INT'L & COMP.L.Q. 868 (1988) [hereinafter Welchman, *Islamic Family Law*]. Jordanian law governs issues such as marriage, husband-wife relations, and child custody. As far as marriage is concerned, a woman can legally get married at the age of fifteen and a man get married at the age of sixteen. Jordanian Personal Status Law, *supra*, art. 33. A woman is forbidden from marrying a non-muslim and for her first marriage must obtain consent from her closest male relative on the father's side of the family. *Id.* art. 13. A male guardian must contract a marriage for the woman, but the man does not need a guardian. *Id.* arts. 9-13.

In matters pertaining to husbands and wives, Jordanian law dictates that a husband must support his wife, with housing, food, and clothing, but in return she must obey him. *Id.* art. 36, 66, 67. If the wife disobeys her husband, she no longer is entitled to any maintenance rights. Welchman, *Islamic Family Law, supra*, at 876. Men can also divorce their wives without any judicial action. When a man declares three times, on three separate occasions, "I divorce you," then the marriage is terminated. JOHN L. ESPOSITO, *WOMEN IN MUSLIM FAMILY LAW* 116, 129 (1982). If a man changes his mind within a three-month period, then the wife must return and resume the marriage. In the event that the wife wants to remarry, she must wait for the three-month period. Welchman, *Islamic Family Law, supra*, at 873.

Under Jordanian custody law, children always remain with the family of the father. The former wife can have custody of the children until they reach puberty, but in the event of remarriage outside the her ex-husband's family, she could lose custody of the children as early as age nine. *Id.* at 874-877.

<sup>53</sup>Wing, *Custom, Religion, and Rights: The Future Legal Status of Palestinian Women, supra* note 14, at 157; Zeina Ghandour, *Religious Law in a Secular State: The Jurisdiction of the Sharia Courts of Palestine and Israel*, 5 ARAB L. Q. 25, 30 (1990).

<sup>54</sup>Wing, *Legal Decision-making, supra* note 14.

Palestinian women gained a voice in the Palestinian national movement after World War I. The national movement was a response to the British Mandate of establishing a Zionist nation within the boundaries of Palestine.<sup>55</sup> In 1929, Palestinian women held their first conference and formed the Arab Women's Committee. This committee was dedicated to "supporting any national body in any enterprise which may be beneficial to the country, whether economically, socially or politically."<sup>56</sup> With the onset of the national liberation movement, Palestinian women continued to participate as messengers and fighters against the British and Zionists.<sup>57</sup> This participation signified a break from the norm of being a nurturer and a repository of family honor.

Women demonstrated leadership, organization, and political activism after the Israeli victory in 1948,<sup>58</sup> and formed groups, such as the Arab Women's Society, in an attempt to care for the thousands of refugees. Women set up shelters and hospitals<sup>59</sup> and were in the forefront of running small communities.<sup>60</sup>

Once the Red Cross and the United Nations took over the provision of assistance to the refugees, the women's groups concentrated their efforts on long-term goals.<sup>61</sup> By the 1970's,

<sup>55</sup>Wing, *Custom Religion and Rights: The Future Legal Status of Palestinian Women*, *supra* note 14, at 183; WARNOCK, *LAND BEFORE HONOUR*, *supra* note 18, at 158-59.

<sup>56</sup>WARNOCK, *LAND BEFORE HONOUR*, *supra* note 18, at 159.

<sup>57</sup>*Id.*

<sup>58</sup>*Id.*

<sup>59</sup>Mrs. Hajjar, a founder of the Arab Women's Society, recollects:

We founded the society in 1947, when we knew there was going to be a war. The British had announced they would leave, there were some incidents, we could see that first aid was needed. We were just a group of women living in Bethlehem. We were not politically aware at all: Bethlehem was a small town, and not at the hub of national life like Jerusalem. We had been quite unthinking, I suppose, but once we saw we were needed, we worked very hard. First we invited all the principal ladies of Bethlehem, the educated ones, Christian and Muslim, to come to a meeting, and we started preparing ourselves to give first-aid assistance. Four doctors gave us training in first aid and how to give injections, and we started collecting things to establish a hospital.

*Id.*

<sup>60</sup>*Id.*

<sup>61</sup>*Id.* at 160. For example, during the Jordanian annexation of the West Bank in 1950, it was the women's groups that managed the numerous children's homes, clinics, and hospitals. As of the 1980's, around one-hundred women's societies were members of the Union Charitable Societies. Without a nation-state or a government, these societies played a critical role and had enormous responsibility in civil society. *Id.*

women's political participation dramatically increased because of the escalating confrontation between the Palestinians and the occupying Israelis.<sup>62</sup> In 1978, with a strong momentum for women's mobilization, numerous action committees were formed. One of the founding member of the Federation of Women's Action Committee explained:

Women had to join the struggle, one way or another. In 1978 a group of us decided to establish a new type of women's society to work alongside the old ones....By giving charitable handouts, the old societies confirm women in their feelings of weakness and dependence. We asked ourselves, 'How will women ever develop and take responsibility for themselves?'....We thought, 'Surely women in the occupied territories too can become a social and political force, a mass movement struggling for their rights?'<sup>63</sup>

This historical overview of the Palestinian women's movement leads us to the address the role of women during the *intifada*. The next part will discuss the contributions made by the women; it will illustrate the change in their status within their communities.

### III. Socio-Legal Status of Women During the Intifada

Women's extensive participation in the *intifada* altered traditional images of women. With the support of the Underground Leadership of the Uprising (UNLU),<sup>64</sup> women became involved in the emerging popular committees.<sup>65</sup> Women participated by passing out leaflets, acting as lookouts, running blood banks, and taking care of families of the arrested.<sup>66</sup> Some women were themselves arrested, wounded, and killed. Women also played a critical role in creating a Palestinian community that was self-sufficient and which could withstand a boycott of Israeli products.

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<sup>62</sup>*Id.* at 164.

<sup>63</sup>*Id.* at 165.

<sup>64</sup>Marwan Darweish, *The Intifada: Social Change*, RACE & CLASS, Oct-Dec. 1989, at 47, 58-60.

<sup>65</sup>Ziad Abu Amr, *The Palestinian Uprising in the West Bank and Gaza Strip*, 10 ARAB STUD. Q. 384, 399 (1988).

<sup>66</sup>ZE'EV SCHIFF & EHUD YA'ARI, INTIFADA: THE PALESTINIAN UPRISING-ISRAEL'S THIRD FRONT 247 (Ina Friedman ed. & trans., 1990).

A concrete, albeit atypical example, of the change in the traditional status of women was best demonstrated by the PLO's selection of Professor Hanan Mikhail Ashrawi, Birzeit University Dean of Faculty of Arts, as the spokesperson for the Palestinian negotiating team in 1991.<sup>67</sup> While her selection was historic, many individuals and groups such as *Hamas* criticized her ability as a female and a minority Christian to be a true voice for the Palestinian people.<sup>68</sup>

Despite questions raised about the public participation of women, they continued to play an active role in the *intifada*, and they won some gains. For instance, the decrease in the amount of dowry (*mahr*) paid during marriage was achieved in some cases as a result of the active participation of women's groups.<sup>69</sup> Some women even contended that *mahr* was an outdated custom, which was inconsistent with the goals of the national liberation movement and which impeded the improvement of women's status.

The role of women also changed as Palestinian women prepared to participate in the socio-economic and political playing fields of a new Palestine. During the *intifada*, resource centers, which educated women about their legal rights, were established.<sup>70</sup> These centers also initiated an informal legislative drafting process, whereby legislation pertaining to women's issues would be discussed among the various committees.<sup>71</sup>

Despite the advances made by women during the *intifada*, women were and are still subject to the oppressive practices dictated by customary and religious law. For example, Hamas's *hijab* campaign, which demanded that all women wear headscarves in Gaza, continued the traditional oppression of women.<sup>72</sup> Those women who did not follow this mandate were sanctioned in many forms, including but not limited to verbal attacks, stoning, acid pouring, and graffiti.<sup>73</sup>

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<sup>67</sup>JOHN WALLACH & JANET WALLACH, *THE NEW PALESTINIANS: THE EMERGING GENERATION OF LEADERS* 3 (1992).

<sup>68</sup>*Id.* at 20.

<sup>69</sup>WARNOCK, *supra* note 18, at 63.

<sup>70</sup>MARIA HOLT, *HALF THE PEOPLE: WOMEN'S HISTORY AND THE PALESTINIAN INTIFADA* 14 (1992).

<sup>71</sup>*Id.* at 43.

<sup>72</sup>Rema Hammani, *Women, the Hijab and the Intifada*, *MIDDLE E. REP.*, May-Aug. 1990, at 24, 25-26.

<sup>73</sup>*Id.*

In conclusion, women's participation in the *intifada* did challenge and change certain traditional norms. However, this participation did not secure women an equal footing with men. The next section will address the status of women as proposed under the transitional constitution, otherwise known as the Draft Basic Law.

#### IV. Basic Law and its Impact on the Status of Women

##### A. Defining the Basic Law

In December 1993, the PLO published a constitutional document known as the "Draft Basic Law for the National Authority in the Transitional Period."<sup>74</sup> Subsequent to this, various discussions were held and a third version was published in April, 1994.<sup>75</sup> This interim document is probationary as well as provisional.<sup>76</sup> It is probationary because its success rests on the completion of the five year interim period. It is provisional because it is subject to the political, social, and economic changes that affect Jericho, the rest of the West Bank, and Gaza Strip. This Basic Law came into effect on May 4, 1994, the day when the interim agreement was signed in Cairo.<sup>77</sup>

A fundamental problem with the Basic Law is the severe restrictions imposed on it by the Oslo Declaration of Principles (ODOP). These limitations are as follows: First, Palestinians only have the authority to make decisions pertaining to education, culture, social welfare, taxation, and tourism.<sup>78</sup> Second, the Palestinian local authority will not have any jurisdiction over Israelis residing or commuting within the formerly occupied territories.<sup>79</sup> Third, the Israeli government will make decisions pertaining to diplomacy, defense, and other unmentioned areas.<sup>80</sup> Fourth, the Israeli military will have use of other inexplicit residual powers.<sup>81</sup> The essence of the

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<sup>74</sup>Nasser H. Aruri & John J. Carroll, *A New Palestine Charter*, 4 JOURNAL OF PALESTINE STUD. 5 (Sum. 1994).

<sup>75</sup>*Id.*

<sup>76</sup>*Id.* at 6.

<sup>77</sup>*Id.* at 8.

<sup>78</sup>*Id.* at 6.

<sup>79</sup>*Id.*

<sup>80</sup>*Id.*

<sup>81</sup>*Id.*

document is stated by the advisor to the Israeli Foreign Ministry: "[Palestine] will not be Independent or sovereign in nature, but rather will be legally subordinate to the authority of the military government."<sup>82</sup>

Another limitation of the document is the uncertainty of its application to the number of Palestinians scattered around the world. Article 1 of the Basic Law fails to indicate whether the term "Palestinian People" includes only the residents of the Gaza Strip and Jericho. The Basic Law fails to delineate whether the term "Palestinian People" includes refugees from the 1948 and 1967 wars as well as their descendants. Further, it is unclear how much of West Bank territory is included in the term "Palestine."<sup>83</sup>

Despite the limitations of the Basic Law, it is an important document because it symbolizes an essential step towards the creation of a separate political entity that will hopefully lead to a true Palestinian state. Moreover, it is a historical document because it symbolizes the inception of some form of limited convergence of interests and limited trust between the Israelis and Palestinians, unimaginable just a few years ago. The next sub-part will briefly discuss the structural composition of the Basic Law.

### *B. Organization of the Basic Law*

The April 1994 Draft Basic Law<sup>84</sup> consists of seven chapters, each of which is comprised of numerous articles. The purpose of chapter 1 is to establish the policy and principles behind the document. Article 1 talks of the Palestinian people as "being the source of all authority."<sup>85</sup> Article 2 states that Palestine will be "based on

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<sup>82</sup>Joel Singer, *The Declaration of Principles on Interim Self-Government Arrangements*, JUSTICE, Feb. 1994.

<sup>83</sup>*Id.* at 7.

<sup>84</sup>Draft Basic Law for the National Authority in the Transitional Period, April, 1994, *reprinted in* 23 J. PALES. STUD. 137 (Sum. 1994) [hereinafter Draft Basic Law].

<sup>85</sup>*Id.* art. 1 states: "The Palestinian people are the source of all authority which shall be exercised, during the transitional period, through the legislative, executive and judicial authorities in the manner provided for this in Basic Law."

parliamentary democracy and a multi party system."<sup>86</sup> Article 3 states that Arabic will be the official language of the state.<sup>87</sup> Article 5 talks of Jerusalem being the capital of the new state. Article 6 states that the natural resources of Palestine shall be used in the interests of the people of Palestine.<sup>88</sup> Finally, Article 7 claims that this document is "supreme."<sup>89</sup>

Chapter 2 pertains to the declaration of "Fundamental Rights and Freedoms."<sup>90</sup> Chapter 3 delineates the "The Rule of Law' and otherwise discusses the principles and operations behind the legal system. Specifically, this chapter talks of principles such as presumption of innocence and due process rights for criminal defendants.<sup>91</sup> Chapters 4 through 6, generally, outline the framework of the executive, legislative, and judicial branches of government. For the interim period PLO Chairman, Yasser Arafat, is designated as the President, and the Council of National Authority is designated to conduct the work of the legislature. Chapter 7 attempts to sum up the principles behind the entire charter.<sup>92</sup> The next sub-part discusses the impact of the Basic Law on the rights of Palestinian women.

### *C. The Basic Law and Women's Rights*

Chapter 2 of the Basic Law addresses the topic of women's rights. This chapter is important because it explicitly talks of inalienable rights guaranteed to all Palestinians, rights for which thousands of Palestinians, male and female, have given their lives.

Article 8 of chapter 2 endorses numerous international human rights documents, including, but not limited to, the Universal Declaration of Human Rights, the International Covenant on Civil and

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<sup>86</sup>*Id.* art. 2 states: "The government of Palestine shall be based on parliamentary democracy and a multi party system, with consideration by the majority for the rights and interests of the minority and respect by the minority of the decisions of the majority."

<sup>87</sup>*Id.* art. 3 states: "The Arabic Language shall be the official language of Palestine."

<sup>88</sup>*Id.* art. 6 states: "Sovereignty over the national resources in Palestine is vested in the Palestinian people, and shall be exploited and disposed of in the interests of the Palestinian people according to law."

<sup>89</sup>*Id.* art. 7a states: "This law is the supreme law of Palestine in the transitional period and any law inconsistent with its provisions shall be null and void."

<sup>90</sup>*Id.*

<sup>91</sup>*Id.*

<sup>92</sup>*Id.*



Political Rights, the International Convention on Economic, Social and Economic Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>93</sup> Article 10 discusses women and men having equal rights and being equal before the law.<sup>94</sup> Articles 11 through 39 emphasize the importance of human dignity, the right to liberty and security, equality before the law, freedom of assembly, the right to work, freedom of association, the right to own property, the right to education, and the right to petition the government.<sup>95</sup> Article 33 recognizes the financial and emotional hardships Palestinians have withstood after being deported, displaced, and refused the right to travel. Accordingly, it guarantees the right to travel and the right to visit holy places.<sup>96</sup>

On its face, this chapter has several positive attributes. It reaffirms and acknowledges that human dignity and basic rights are due to all individuals, male and female. Significantly, Chapter 2 fails to endorse the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>97</sup> This is an unfortunate omission. The Women's

<sup>93</sup>*Id.* art. 8 states: "Palestine recognises and respects the fundamental human rights and freedoms prescribed in the universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and other Conventions and Covenants which secure such rights and freedoms. Palestinian authorities shall adhere to the said international agreements."

<sup>94</sup>*Id.* art. 10 states: "Women and men shall have equal fundamental rights and freedoms without any discrimination and shall be equal before the law."

<sup>95</sup>*Id.* art. 11 states: "All persons are equal in human dignity. No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no person shall be subjected without his free consent to medical or scientific experimentation. No effect shall be given to any statement obtained as a result or under the threat of torture, cruel, inhuman or degrading treatment."

<sup>96</sup>*Id.* art. 33 states: "Every person whose fundamental rights or freedoms, as provided in this Chapter and Chapter Three, have been violated shall have the right to challenge the violation before the courts of law and to demand compensation, where appropriate."

<sup>97</sup>G.A. Res. 34/180, 34 U.N. GAOR Supp. (no. 710.46) at 193, U.N. Doc. A/34/46 (1979) (entered into force Sept. 3, 1981). For sources on the topic of international women's rights, see Rebecca J. Cook, *International Human Rights Law Concerning Women: Case Notes and Comments*, 23 VAND. J. TRANSNAT'L L. 779 (1990); Ann Bayefsky, *The Principle of Equality or Non-Discrimination in International Law*, 11 HUM. RTS. L.J. 1 (1990); Bunch, *Women's Rights as Human Rights: Toward a Revision of Human Rights*, 12 Hum. Rts. Q. 486 (1990); Buqicchio-de Boer, *Sexual Discrimination and the Convention on Human Rights*, 6 Hum. Rts. L.J. 1 (1985); Noreen Burrows, *The 1979 Convention on the Elimination of All Forms of Discrimination Against Women*, 32 NETH. INT'L L. REV. 419 (1985); Noreen Burrows & Orucu, *The International Approach to Discrimination*, in THE LEGAL RELEVANCE OF GENDER: SOME ASPECTS OF SEX-BASED DISCRIMINATION 267 (Shiela McLean & Noreen Burrows eds., 1988); Rebecca J. Cook, *The International Right to Nondiscrimination on the Basis of Sex*, 14 YALE J. INT'L L. 161 (1989); Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms*

Convention is very explicit about the rights of women in various spheres of a woman's life. Article 1 of the Women's Convention defines discrimination as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.<sup>98</sup>

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*of Discrimination Against Women*, 30 VA. J. INT'L L. 643 (1990); Rebecca J. Cook, *Women's International Human Rights: A Bibliography*, 24 N.Y.U. J. INT'L L. & POL. 857 (1992); Sandra Colliver, *United Nations Machineries on Women's Rights: How They Better Help Women Whose Rights are Being Violated*, in NEW DIRECTIONS IN HUMAN RIGHTS 25-49 (Ellen Lutz, Hurst Hannum, and K. Burke eds., 1989); Freeman, *Measuring Equality: An International Perspective on Women's Capacity and Constitutional Rights*, 5 BERK. WOMEN'S L. J. 110 (1989-1990); Sarah C. Zearfoss, *Note, The Convention for the Elimination of All Forms of Discrimination Against Women: Radical, Reasonable, or Reactionary?*, 12 MICH. J. INT'L L. 903 (1991); Jack Greenberg, *Race, Sex, and Religious Discrimination in International Law*, in 2 HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES 307 (Theodor Meron ed. 1984); THEODOR MERON, *HUMAN RIGHTS LAW-MAKING IN THE UNITED NATIONS: A CRITIQUE OF INSTRUMENTS AND PROCESS* 60 (1986); WARWICK MCKEAN, *EQUALITY AND DISCRIMINATION UNDER INTERNATIONAL LAW* 166 (1983); Noreen Burrows, *International Law and Human Rights: The Case of Women's Rights*, in HUMAN RIGHTS: FROM RHETORIC TO REALITY 80 (Tom Campbell et al. eds., 1986); Andrew C. Byrnes, *The "Other" Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination Against Women*, 14 YALE J. INT'L L. 1 (1989); Andrew C. Byrnes, *Women, Feminism and International Human Rights Law – Methodological Myopia, Fundamental Flaws or Meaningful Marginalization?*, 12 AUSTL. Y.B. INT'L L. 205 (1992); MALVINA HALBERSTAM & ELIZABETH F. DEFEIS, *WOMEN'S LEGAL RIGHTS: INTERNATIONAL COVENANTS AN ALTERNATIVE TO ERA?* (1987); Rita F. Taubenfeld & Howard J. Taubenfeld, *Achieving the Human Rights of Women: The Base Line, The Challenge, The Search for a Strategy*, 4 HUM. RTS. 125 (1975); Theodor Meron, *Editorial Comments: Enhancing the Effectiveness of the Prohibition of Discrimination Against Women*, 84 AM. J. INT'L L. 213 (1990); Margaret E. Galey, *International Enforcement of Women's Rights*, 6 HUM. RTS. Q. 463 (1984); Laura Reanda, *Human Rights and Women's Rights: The United Nations Approach*, HUM. RTS. Q., Spring 1981, at 11; Fran P. Hosken, *Toward a Definition of Women's Human Rights*, HUM. RTS. Q., Spring 1981, at 7; Helen B. Holmes, *A Feminist Analysis of the Universal Declaration of Human Rights*, in BEYOND DOMINATION: NEW PERSPECTIVES ON WOMEN AND PHILOSOPHY 250 (Carol C. Gould ed., 1983); Marilyn Waring, *Gender and International Law: Women and the Right to Development*, 12 AUSTL. Y.B. INT'L L. 177 (1992); Shelly Wright, *Economic Rights and Social Justice: A Feminist Analysis of Some International Human Rights Conventions*, 12 AUSTL. Y.B. INT'L L. 241 (1992).

<sup>98</sup>*Id.*

The Convention contains fifteen articles detailing the fields where states must take "appropriate measures," including: education;<sup>99</sup> health care;<sup>100</sup> nationality;<sup>101</sup> cultural;<sup>102</sup> familial and personal;<sup>103</sup> legal and political activities;<sup>104</sup> employment;<sup>105</sup> recreation;<sup>106</sup> and

<sup>99</sup>*Id.* art. 10(c) and 10(h) states: to "take all appropriate measures...to ensure...[t]he elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education...and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods" as well as [a]ccess to specific educational information on family planning." It does not mandate coeducation, but merely encourages it. *Id.* art. 10(c).

<sup>100</sup>*Id.* art. 12(1) and (2) state: to "take all appropriate measures to eliminate discrimination...in health care...including [services] related to family planning" and to ensure access to services: in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation."

<sup>101</sup>*Id.* art. 9.

<sup>102</sup>*Id.* art. 5 states: to "take all appropriate measures...[t]o modify...social and cultural patterns of conduct...with a view to achieving the elimination of prejudices...which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles."

<sup>103</sup>*Id.* art. 5 also states: to "ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing...of their children." Art. 16(1)(d) and 16(1)(e) state: to "take all appropriate measures to eliminate discrimination...in...marriage," including to ensure "[t]he same rights and responsibilities as parents" and "[t]he same rights to decide...responsibly on the number and spacing of their children."

<sup>104</sup>*Id.* art.2(a) states: "to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation." Art. 6 states: to "take all appropriate measures...to suppress all forms of traffic in women and exploitation of [and] prostitution of women." Art.7(b) and 7(c) states: to ensure that women "participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government" as well as in "non-governmental organizations and associations concerned with the public and political life of the country."

<sup>105</sup>*Id.* arts. 11(1)(b), 11(1)(d), 11(2)(b), and 11(2)(c) state: to take all appropriate measures to eliminate employment discrimination against women, including ensuring (1) "[t]he right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;" (2) "[t]he right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value;" (3) "maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;" and (4) "the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities...in particular through...child-care facilities." Article 11 also includes providing "special protection to women during pregnancy in types of work proved to be harmful to them." Art. 11(1)(f). There is a caveat that such legislation "shall be reviewed periodically in light of scientific and technological knowledge and shall be revised, repealed or extended as necessary." Art. 11(3). Clearly there is great potential for abuse where states could draft protective legislation as a means of discriminating against women. The Convention does not prohibit discrimination in hiring or job assignment of pregnant women. For a United States case involving protective conditions for women, see International Union, UAW v. Johnson Controls, Inc., 111 S. Ct. 1196 (1991) where the Supreme Court held that a company sex-specific fetal protection policy is forbidden under Title VII of the Civil Rights Act as impermissible sex discrimination. Medical evidence showed that exposure to the lead used to manufacture batteries also hurt men's reproductive capabilities, but only women were banned from working, unless they could prove they were infertile.

<sup>106</sup>*Id.* art. 13(c).

mortgages and other forms of credit.<sup>107</sup> By ignoring the rights of Palestinian women in all these spheres, the transitional governing body assists in the perpetuation of traditional customs and practices, which dictate a subservient role for women.

An important reason for having an explicit bill of rights for Palestinian women is that such a document may avoid some of the types of legal controversies that have occurred in the United States. For example, not until 1965 in the *Griswold* case<sup>108</sup> did the U.S. Supreme Court make clear that there was a right to privacy in the U.S. Constitution. This right of privacy extended to permitting married couples to obtain birth control. A Palestinian Bill of Rights that would explicitly state that there is a right to privacy, and also whether that right or some other explicit right applied to birth control and other reproductive issues, might avoid some legal confusion.

Thus, despite affirming some human rights, the Basic Law fails explicitly to address several women's rights issues. It fails to discuss the full panoply of political, economic, and civil rights that many Palestinian women desire. In response to the inadequacy of the Basic Law, several women's committees, the PLO's General Union of Palestinian Women, and other advocates assembled in January, 1994, to draft a "Document of Principles of Women's Rights."<sup>109</sup> The next section describes the substance behind this Women's Charter and also addresses the advantages and disadvantages of implementing it.

## V. Document of Principles of Women's Rights

The Women's Charter, otherwise known as a women's bill of rights, was published in August, 1994. The brief document consists of a Preamble and General Provisions that specify the political, civil, economic, and cultural rights of Palestinian women. The Preamble says that the state of Palestine is for all Palestinians regardless of their present residence. It adds that "human dignity will be safeguarded by means of a parliamentary democratic system of governance, itself based

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<sup>107</sup>*Id.* art. 13(b).

<sup>108</sup>*Griswold et al. v. Connecticut*, 381 U.S. 479 (1965).

<sup>109</sup>It is interesting to note that South African women gathered together in February 1994 to discuss a Women's Charter that goes beyond the interim constitution. See Adrien K. Wing and Eunice deCarvalho, *South African Women: Towards Equal Rights*, 8 HARV. HUM. RTS J. 57 (1995).

on freedom of expression...."<sup>110</sup> More important, the Preamble emphasizes that minorities and women should be afforded protection and equal treatment.<sup>111</sup> Unlike the Basic Law, this document bases its principles on international human rights documents, including the 1979 Convention on the Elimination of All Forms of Discrimination Against Women.<sup>112</sup> Interestingly, the Preamble also mandates that this document be ratified and included in the constitution of a new Palestine state.

The section termed "General Provisions" reiterates the need to "abolish all forms of discrimination and inequality against women which were propagated by the different forms of colonialism...and which were reinforced by the conglomeration of customs and traditions prejudiced against women embodied in a number of laws and legislation."<sup>113</sup> Moreover, this section restates the importance of endorsing and following the 1979 Convention on the Elimination of All Forms of Discrimination Against Women.<sup>114</sup> Unlike the Basic Law, which is vague about even the framework of its government, this document consistently echoes the need to use legislative and administrative means to provide safeguards for women in all aspects of

<sup>110</sup>Draft Document of Principles of Women's Rights, Aug. 1994, reprinted in J. PALES. STUD. 137 (Aug. 1994). The Preamble states: "The State of Palestine is a state for all Palestinians wherever they may be. It is the state where individuals enjoy collective national and cultural identity, and pursue complete equality of rights. In this state, their political and religious convictions and their human dignity will be safeguarded by means of a parliamentary democratic system of governance, itself based on freedom of expression and freedom to form parties..." *Id.*

<sup>111</sup>*Id.*

<sup>112</sup>*Id.* The Preamble also states: "Based on the United Nations Conventions, Universal Declaration of Human Rights, and other international documents and conventions pertaining to political, civil, economic, social, and cultural rights, specifically the Conventions on the Elimination of All Forms of Discrimination Against Women...."

<sup>113</sup>*Id.* The General Provisions, para. 1 states: "We, the women of Palestine, from all social categories and the various faiths, including workers, farmers, housewives, students, professionals, and politicians promulgate our determination to proceed with our struggle to abolish all forms of discrimination and inequality against women, which were propagated by the different forms of colonialism on our land, ending with the Israeli occupation, and which were reinforced by the conglomeration of customs and traditions prejudiced against women, embodied in a number of existing laws and legislation. In order to build a democratic society which ensures equal opportunities for women in rights and obligations within the following principles...."

<sup>114</sup>*Id.* para. 2 states: "The future Palestinian state and the PNA must be committed, regardless of its jurisdiction, to the Declaration of Independence and to all international declarations and conventions pertaining to human rights, particularly the 1979 Convention on the Elimination of All Forms of Discrimination Against Women."

their lives. The General Provision states clearly that a woman, elected or appointed, to any governmental body "should be on equal footing with men" and in this regard the law should be "compel[ling], functional and executable."<sup>115</sup>

This document presents us with a vision of a Palestine that emphasizes the positive aspects of Palestinian and Arab culture; it also recognizes the pertinent role and definitive contributions made by women during the national liberation movement.<sup>116</sup> Particularly, the "General Provisions" section states that for decades women have promoted the struggle for a free Palestine instead of focusing on women's issues. In this respect, the drafters find, that it is "the time to affirm that the issue of women's legal rights in all aspects is a cornerstone for building a democratic Palestine society."<sup>117</sup>

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<sup>115</sup>*Id.*

<sup>116</sup>*Id.* The General Provisions, para. 5 states: "From the vision of the Palestinian women for a society of justice and equality, the general provisions stated above are basic guidelines from which we acquire support in order to:

\* Preserve a cohesive Palestinian society... \* Enhance Palestinian culture and uniqueness...and \* Reinforce the national social struggle of Palestinian women: The Palestinian women's struggle has been depicted over the decades of the Palestinian national struggle as an immeasurable contribution in all spheres: women were martyred and thousands imprisoned. Palestinian women also played a vital role in the preservation of the unity of the Palestinian family as a social base to support individuals in the absence of the Palestinian national authority. Palestinian women were forced to delay many tasks associated with their social position and instead focused all their attention toward issues of the national and political struggle. It is now the time to affirm that the issue of women's legal rights in all aspects is a cornerstone for building a democratic Palestinian society...."

<sup>117</sup>*Id.* Another vision conveyed by this document is that of a state in which women are emancipated. To ensure that this vision becomes a reality, the drafters ask that three measures be taken. First, a clear and unambiguous statement regarding equality should be promulgated. Second, the laws should be implemented. Third, Palestinian society should abide by the principle of law and human dignity. *Id.* para. 5 also states: "We, the women of Palestine, see equal rights between men and women in all spheres as a basic principle for the emancipation of women and men. This requires having legislative and administrative procedures to ensure its implementation. This demands that we unite our efforts to remove those social norms which prohibit women from success in society, in order to guarantee the respect of human rights and the principle of law."

The most germane portions of the General Provision are ones that assert the political, civil, economic, and cultural rights of women. Under political rights, the drafters required the following: (1) the right to vote, (2) involvement in public referenda, (3) the ability to hold office, (4) equality in non-governmental bodies, and, (5) participation in the diplomatic corps.<sup>118</sup>

Under civil rights, the drafters demanded the following: (1) the ability to preserve or change nationality, (2) the freedom to marry a non-Palestinian, (3) the freedom to travel, (4) the right to adequate housing, (5) protection from violence, (6) treatment of household chores as a social task, (7) the right to expression and assembly, and (8) the right to bring suit in court.<sup>119</sup> Under economic and, social, and cultural rights, the drafters asked the following: (1) equal pay for equal work, (2) equal job opportunities, (3) equality in making contracts, and (4) equality in social welfare.<sup>120</sup> The enunciation of these rights demonstrates the seriousness of Palestinian women about creating a state in which equality reigns.

A comparison of this document with the Draft Basic Law shows the many advantages to having such a Charter. First, in contrast to the

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<sup>118</sup>*Id.* The General Provisions, Political Rights states: "To guarantee the right of women in voting, running for office, involvement in public referendums, and the ability to hold political and public judicial posts on all levels. This is in addition to equal opportunity with men in political parties, non-governmental organizations concerned with political and public life in Palestine, and the representation of the state in international and regional organizations as well as in diplomatic corps."

<sup>119</sup>*Id.* The General Provisions, Section on Civil Rights states: "To grant the woman her right to acquire, preserve or change her nationality. Legislation must also guarantee that her marriage to a non-Palestinian, or a change of her husband's nationality, while married, will not necessarily change the citizenship of the wife. This includes freedom from imposition of her husband's citizenship. Women should also be granted the right to give citizenship to her husband and children, be guaranteed full freedom to move, travel, and choose her place of residency, have guaranteed her right to adequate housing. Motherhood should be looked upon as a social post. House chores should be regarded as a task of social and economic value. The law should stand next to the women to protect her family from violence and practices that infringe on any of her guaranteed rights, including her right to join any activity, assembly, or association by guaranteeing her right to go to court as a citizen with full rights."

<sup>120</sup>*Id.* The General Provisions, Section on Economic, Social and Cultural Rights: "The Constitution and Palestinian legislation must guarantee the equality of women at work ensuring equal pay with men working in the same work, providing equal opportunities in promotion, training, compensation, rewards, health insurance and maternity rights. Equality in making contracts, administering property, obtaining banking contracts and property mortgage in all procedures practiced in courts and judicial bodies must also be guaranteed. We also affirm the importance of equality in social welfare, the benefit of health, education, and training services, and the guarantee of her full equality regarding issues pertaining to personal status."

Basic Law, the Women's Charter explicitly addresses the political, social, and other rights that need to be made available to women. Second, this document unequivocally recognizes that Palestinian custom and tradition have contributed to the suppression of women. Third, the Women's Charter emphasizes the role and contributions of women during the national liberation period.

Despite its many positive attributes, the Women's Charter may be considered by some as being too drastic or too bold. In a society in which, until recently, women's major purpose was to act as repositories of family honor, it may be unrealistic to assume a readiness to grant women true equality. Also, in an era where Islamists such as *Hamas* are growing in strength and constitute a powerful political and cultural force, it may be naive to expect the provisions of the Charter to be adopted.

Another drawback of the Charter is its lack of enforcement procedures and mechanisms. It may be all well and good to declare the political, civil, and other rights due to women, but without a means to enforce these rights, arguably, there is no purpose in such declarations.

In considering the positive and negative attributes of the Women's Charter, one appreciates the difficulty of the task of reconciling the views of the traditionalists with the views of the burgeoning women's advocates. Clearly, the Women's Charter goes a step further than the Basic Law and traditional norms, to ask for an equity based state. However, there is and will continue to be massive opposition by groups such as *Hamas* to changing the traditional roles of women.

## **VI. Conclusion: Where Do We Go From Here?**

We have five proposals for enhancing the status of women. The first means by which the status of women can be enhanced is through further democratization of the constitution making process. The provisions of the Women's Charter need to be incorporated into the Draft Basic Law and any other later constitutions. This would ensure that women's concerns are integrated into the constitutional structure of the autonomous or independent Palestine. Leaving the delineation of women's issues to a side document tokenizes and marginalizes women's concerns. To create a new Basic Law that incorporates



women's concerns, Palestinians should create a broad based constitutional committee that would have a fair representation of women and other groups.<sup>121</sup> The committee will be significantly larger than the four person High Legal Commission that drafted the Basic Law. It could create a variety of discussion documents.<sup>122</sup> Another possibility is to have the new legislative body also set up as a constitutional assembly to draft a permanent constitution.<sup>123</sup>

In addition to democratization of the constitutional process, a second means to enhance change would be the creation of a women's affairs ministry or a Commission on Gender Equality. Many countries have utilized the ministry approach. The advantage is that it raises gender concerns to the highest level. The disadvantage is that the ministry may be seen as a token symbolic entity with no real power. Since many women's issues will come up in the work of the other ministries, ministerial heads may neglect women's issues, because they believe the women's ministry should handle those things.

Creating a Gender Commission outside of the framework of the ministries has some advantages. Article 80 of the Basic Law permits the formation of "Public Councils and Institutions." The article further provides that such councils "may be autonomous bodies enjoying juridical personality exercising activities entrusted to them under their respective resolutions."<sup>124</sup>

A third approach to enhance change in women's lives is legal reform. For instance, legal reform could be brought about by adding

<sup>121</sup>The African National Congress of South Africa created a constitutional committee that worked for more than 5 years on constitutional proposals. See Adrien K. Wing, *Communitarianism v. Individualism: Constitutionalism in Namibia & South Africa*, 11 WISCONSIN INT. L. J. 295 (1993). Professor Wing was involved as an adviser to the ANC on constitutional matters from 1990 to 1993.

<sup>122</sup>The discussion documents include African National Congress, *Constitutional Guidelines for a Democratic South Africa* (1989), reprinted in 21 COLUM. HUM. RTS. L. REV. 235 App. A (1989); ANC Constitutional Committee, *A Bill of Rights for a New South Africa* (1990) reprinted in 18 SOC. JUST. 49 (Spr.-Sum. 1991); ANC Constitutional Committee, *A Bill of Rights for a New South Africa* (1992); ANC, *What is a Constitution?* (1990); ANC, *Constitutional Principles and Structures for a Democratic South Africa* (1991).

<sup>123</sup>The new South African parliament is also set up as a constitutional assembly to draw up a permanent constitution. Wing, *Communitarianism*, *supra* note 129.

<sup>124</sup>Draft Basic Law, art. 80. We are indebted to Tad Vernon, University of Iowa Law student for this suggestion.

positive measures such as an affirmative action<sup>125</sup> clause [hereinafter the clause] to the Basic Law. The South African Constitution could serve as a guide. The clause in the South African Constitution provides that "the equal protection clause shall not preclude measures designated to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination in order to enable their full and equal enjoyment."<sup>126</sup> The purpose of this clause is to allow for the co-existence of affirmative action programs that provide relief to those oppressed under apartheid.<sup>127</sup> Similarly, by adding such a provision to the Palestinian Constitution, policy-makers would allow affirmative action programs to undo some of the traditional legal, social, and economic oppression Palestinian women face, while not threatening all traditional norms.

Legal reform, as any other process, is comprised of positive and negative points. A point favoring such an approach is that it would allow women to make in-roads in the "old boys" networks, and give women access to government in such a manner that constructive change can be brought about.<sup>128</sup>

On the other hand, employing this route may mean that a retrenchment of traditional norms could occur. Groups such as *Hamas* might use this opportunity to mobilize the masses in favor of an Islamic state. Women may be faced with even more of a traditionalist backlash. The likelihood of such harassment is not unimaginable. It has already occurred during the Palestinian *hijab* campaign, when women were forced to wear headscarves or risk being stoned or having

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<sup>125</sup>"Affirmative action is the name given to a number of policies designed to overcome past and present discrimination and provide opportunity for those traditionally denied." GERALD HORNE, *REVERSING DISCRIMINATION: THE CASE FOR AFFIRMATIVE ACTION 1* (1992). Palestinians may consider all the negatives and positives associated with implementing this type of program by reviewing the extensive experience of countries such as the United States. For a discussion of affirmative action programs in the United States, see e.g., DERRICK BELL, *RACE RACISM AND AMERICAN LAW* (1991); Morton, *Class-Based Affirmative-Action: Another Illustration of America Denying the Impact of Race*, 45 *RUTGERS L. REV.* 177 (1993); Christina Koggel, *A Feminist View of Equality and its Implications for Affirmative Action*, 7 *CANADIAN J. L. & JURISPRUDENCE* 43 (1994).

<sup>126</sup>SOUTH AFRICAN CONSTITUTION, Chapter 3.

<sup>127</sup>Etienne Mureinik, *A Bridge to Where: Introducing the Interim Bill of Rights*, 10 *S. AFR. J. HUM. RTS.* 31, 46 (1994).

<sup>128</sup>Political participation, more importantly, will insure that a Jordanian decree, which separated men and women within government, will never materialize in a new Palestine state.

acid thrown on them.<sup>129</sup> The caution urged by Professor An-Na'im is worth noting: "...it is irresponsible and inhumane to encourage these women to move too fast, too soon and to repudiate many of the established norms of their culture or religious law without due regard to the full implications of such action."<sup>130</sup> In other words, *de facto* equality can be achieved not only through *de jure* reforms but through a change in attitudes and perceptions of Palestinians.

If there is too much hostility to the idea of an affirmative action clause in the Basic Law or later constitution, there is an alternate approach. Affirmative measures could be legislated pursuant to the existing equality clause. The strength of this method is that it does not involve a frontal attack on traditional forces via the constitution. The negative aspect of passing a mere law is that it can easily be changed by a majority of the legislature. Constitutionally enshrining the affirmative action concept would make change or elimination of the concept much more difficult. If passage of legislation were even deemed too difficult, it would always be possible for specific government ministries to institutionalize affirmative action as part of their programs. This would enable the concept to be implemented without as much outside scrutiny. On the other hand, such an important issue should not be handled in a clandestine manner.

Given some of the drawbacks of legal reform, Palestinians might choose a fourth approach to improving women's status: reinterpreting the *sharia* laws. What does this entail? Palestinians could adhere to Islamic laws but interpret them in a manner that provides for women's equality. For example, the Koranic concept of *qawama* or male guardianship is premised on male physical superiority and financial support of women, a largely outdated premise.<sup>131</sup> This principle could be revised.

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<sup>129</sup>Wing, *Legal Decision-Making*, *supra* note 14, at 134-39.

<sup>130</sup>Abdullahi An-Na'im, *The Rights of Women and International Law in the Muslim Context*, 9 WHITTIER L. REV. 516 (1987).

<sup>131</sup>Modifications of Islamic law have taken place throughout the centuries. For example, during the 10th and 11th centuries Koranic verses were employed to justify enslavement, but this is not the case today. See Wing, *Custom, Religion, and Rights: The Future Legal Status of Palestinian Women*, *supra* note 14.

An example of Islamic reinterpretation can be gleaned from Tunisia. Tunisians wanted to abolish polygamy and they did so by employing Islamic justifications. The Koran states that men must treat their wives equally. Tunisians argued that since it was physically impossible to treat two individuals in a similar manner polygamy was inappropriate.<sup>132</sup>

In making their case for women's equality, Palestinian policy-makers could employ such progressive views as are held by conservatives or traditionalists. For example, the traditionalist scholar Muhammad al-Ghazali is of the opinion that the oppression of women is based on the misinterpretation of the *sharia*. While al-Ghazali does not purport that the sexes are "equal" in all spheres, he does acknowledge that women have a role to play in government.<sup>133</sup> And, since he is labelled a conservative, his views would be supported by a broader spectrum of the Palestinian society.<sup>134</sup>

Of course, as with any approach, Islamic reinterpretation has advantages and disadvantages. The positive attribute of this approach is that it allows tradition and custom to work alongside a changing world. The basic infra-structures are not threatened, but pertinent changes are implemented for future generations of Palestinian women.

A fifth route that Palestinians can employ to enhance women's status is that of political activism in civil society. As Sahar Khalifeh put it, the women's movement today "lacks the leverage and the clout to extract the concessions [the women] have long dreamt of..."<sup>135</sup> In order to realize this dream and gain leverage, women, whether in the home or the work place, must play an active role in emphasizing the necessity for change in the status of women. This grass-roots effort can be effective if during the interim period women play an active role

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<sup>132</sup>Elizabeth H. White, *Legal Reform as an Indicator of Women's Status in Muslim Nations*, in WOMEN IN THE MUSLIM WORLD 58 (Lois Beck & Nikki Keddie eds., 1978). For more on Tunisia, see ESCHEL M. RHOODIE, DISCRIMINATION AGAINST WOMEN: A GLOBAL SURVEY 363, 369 (1989).

<sup>133</sup>In another legal reform, Tunisia abolished *talaq* or a husband's right to divorce his wife without judicial intervention. Tunisians justified this move by emphasizing that the Koranic verses disapproved of divorce and instead promoted mediation between spouses. Tunisian jurists found that judicial intervention was pertinent because a husband's desire to seek divorce signified marital discord. *Id.* at 59.

<sup>134</sup>See Muhammad al-Ghazali, *Qadaya al-mar'ah: Bayna al-taqalid al-rakida wa al-wafida* (Women's Issues: Between Stagnant and Incoming Traditions) (1990), described in As'ad AbuKhalil, *A New Arab Ideology? The Rejuvenation of Arab Nationalism*, 46 MIDDLE EAST J. 22, 32-33 (1992).

<sup>135</sup>*Id.* at 33.

in creating the new Palestinian constitution and state: grass-roots women should be involved in round table meetings regarding the political, economic, and social changes that need to be brought about. The possibility of such debate is realistic as evidenced in South Africa, where the A.N.C. constitutional committee comprised of men and women, black and white, drafted discussion papers and organized international conferences, even before the release of Nelson Mandela.

Part of the political activism would also harness women's efforts outside of traditional organizational structures such as the Higher Women's Council and other women's committees. Palestinian women must lobby the newly emerging government to provide services that would train and equip women to make their case.<sup>136</sup>

In conclusion, in building a new Palestine, decision-makers must look to the future and long-term societal development. No change in the status of women will take place if attempts at change, moderate or radical, are not made. Whatever decisions are made, they must be made with the knowledge that Palestinian women have played an integral part in the national liberation movement and have much to offer to an emerging new state. Whatever decisions are made, must be made with the knowledge that Palestinians are on the verge of making history by attempting to create a democratic state in the Middle East.

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<sup>136</sup>Khalifeh, *supra* note 136.