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Women's Rights and the Palestinian Authority**

حقوق النساء في أجندة سياسات السلطة الفلسطينية الحقوقية

Abstract: This study analyses the Palestinian Authority's (PA) policy on women's rights by tracing their historical development under both the Palestinian Liberation Organization (PLO) and the PA. It argues that the PLO and the PA have dealt with women's rights as a matter of means, not ends. The limited rights gained by women under the PLO were a result of the latter's attempt to win popular support for the national struggle. The PA inherited this habit of using women's rights to secure political gains, but its main priority has been to use the international diplomatic process to convince the world of the need to recognize a Palestinian state. Instead of popular support, it is now focused on winning international support for the state-building process. This has led to the marginalization of women's rights gained during the period of national struggle. This study argues that this move away from securing popular support has been fuelled by a national approach to rights similar to that of many postcolonial third world countries, exacerbating the marginalization of women's rights.

Keywords: Women's rights in Palestine; Palestinian Authority; National Struggle; Palestinian Liberation Organization; State-building Process.

ملخص: تسعى هذه الدراسة لفهم ماهية سياسات السلطة الفلسطينية تجاه حقوق النساء عن طريق تتبع المسار التاريخي لتطور هذه الحقوق في عهد منظمة التحرير الفلسطينية، ثم السلطة الفلسطينية؛ إذ تجادل بأن النهج الحقوقي لكل منهما قائم على توظيف فكرة الحقوق بصفاتها وسيلة لا غاية، فحصول النساء على بعض الحقوق والحريات الجزئية في عهد المنظمة يعزى إلى رغبة الأخيرة في كسب التعاطف الشعبي في عملية النضال الوطني. وتجادل الدراسة بأن السلطة ورثت عن المنظمة نهج توظيف الحقوق لتحقيق مكاسب سياسية، لكن اختلاف أولويات السلطة عن أولويات المنظمة أدى إلى قيامها باستخدام المسار الدبلوماسي الدولي لإقناع العالم بضرورة الإسراع في الاعتراف بدولة فلسطينية؛ ما أدى إلى انصراف الأخيرة عن كسب التعاطف الشعبي والتوجه إلى كسب التعاطف الدولي لتجنيده في عملية بناء الدولة، ما أسهم في تهميش مكتسبات النساء الجزئية التي حصلن عليها في مرحلة النضال الوطني. وأخيراً تجادل الدراسة بأن حدة انصراف السلطة عن كسب التعاطف الشعبي قد تفاقمت باتباعها نهجاً حقوقياً شبيهاً بنهج دول العالم الثالث في مرحلة ما بعد الاستعمار على المستوى الوطني؛ ما أسهم في مزيد من التهميش لحقوق النساء الفلسطينيات.

كلمات مفتاحية: حقوق النساء في فلسطين؛ منظمة التحرير الفلسطينية؛ النضال الوطني؛ السلطة الفلسطينية؛ بناء الدولة.

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Introduction

The question of women's rights in Palestine has often been a source of controversy, not least with the heated debate on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) that has swept across Palestinian society since the Palestinian Authority's decision to adopt it without entering any reservations.¹ Those who support its full implementation – the apparent preference of the PA – have engaged in an increasingly fierce dispute with those who reject some of its provisions as contrary to Islamic law and the traditions of conservative Arab societies.² The PA itself has remained silent on the issue.³ Where, then, do women's rights actually rank on the PA's policy agenda? Does its decision to sign up to various human rights treaties, CEDAW included, really signal the existence of a political will to bring about a serious improvement in the rights of women?

The PA's engagement with international agreements began in 2012, when it was granted non-member observer state status by the United Nations. This allowed it to become a signatory to many such agreements, which it duly did in April 2014, entering no reservations in respect of any of them; CEDAW was at the top of the list.⁴ At the time, this was considered a great victory for human rights activists. But in subsequent years, it has become evident how little effect these agreements have had on domestic human rights, as the regular reports submitted by the PA to international committees responsible for monitoring the agreements' implementation indicate limited progress. Therefore, this paper asks: what position does human rights policy really occupy on the PA agenda, and how does it affect the reality of Palestinian women's rights?

To outline the position of women's rights on the PA's broader rights agenda, the peculiarity of the Palestinian situation must first be addressed: the makeup of the PA, its continuing coexistence with the PLO, their different values, and the dialectical relationship between them. This requires first an investigation of the trajectory of women's rights under the PLO to identify the contours of PA policy in this regard and to understand how this policy influences women's rights today.⁵

A review of the literature on women's rights under Arab national liberation movements suggests that the struggle against the colonizer broke down many of the restrictions put in place by patriarchal social structures, with feminists often forming part of the broader movement to end foreign rule.⁶ Feminist movements generally arose alongside national movements as a reaction to western colonialism.⁷ However, following independence and during the state-building process, this cooperation broke down. Some feminist elites withdrew from political life in protest, especially when it became clear that the policies implemented during the state-building period often fell short of the ambitions of the feminist movement's leadership.⁸

This split can be attributed to the desire of national liberation leaders – now the leaders of the state-building process – to align themselves more closely with their societies, balancing the concerns of modernity

¹ Khalil Musa, "Jadal Filasṭīnī Ḥawl Taṭbīq Sīdāw," *Independent Arabic*, 23/12/2019, accessed on 30/6/2021, at: <https://bit.ly/3MuTuya>

² Ibid.

³ "Jadal Taṭbīq Sīdāw Yablughu Dhirwatahu fī Filasṭīn," *Rasif* 22, 24/12/2019, accessed on 30/6/2021, at: <https://bit.ly/3yDRaza>

⁴ Mahmoud al-Fatāṭfa, "Inḍīmām Filasṭīn ilā al-Mu'āhadāt al-Duwalīyya: Nāfidha Kānat Mughlaqa Nahw al-Ḥuqūq," *al-Ḥadath*, 14/4/2014, accessed on 30/6/2021, at: <https://bit.ly/3EEFobJ>

⁵ Lori Handrahan, "Conflict, Gender, Ethnicity and Post-Conflict Reconstruction," *Security Dialogue*, vol. 35, no. 4 (2004), pp. 429-442; Azmi al-Shuaibi & Abdulrahim Taha, "al-'Alāqa al-Jadaliyya Mā Bayn Munazzamat al-Tahrīr wa-l-Sulṭa al-Filasṭīniyya wa Athar Dhālik 'alā al-Tadāwul al-Silmī li-l-Sulṭa," in: George Giacaman et al., *Awraq fī al-Nizām al-Siyāsī al-Filasṭīnī wa Intiqāl al-Sulṭa* (Ramallah: Muwatin Institute for Democracy and Human Rights, 2013), pp. 162-163; Palestinian Authority, *al-Qānūn al-Asāsī al-Mu'addal li-Sanat 2003*; Mamduh Nawfal, "Ishkālāt al-'Alāqa Bayn al-Sulṭa al-Waṭaniyya al-Filasṭīniyya wa-Munazzamat al-Tahrīr al-Filasṭīniyya wa-Subul Ḥulūliḥā," *al-Dirāsāt al-Filasṭīniyya*, vol. 22, no. 6 (1995), pp. 1-3.

⁶ Eileen S. Kuttāb, "Palestinian Women in the Intifada: Fighting on Two Fronts," *Arab Studies Quarterly*, vol. 15, no. 2 (1993), p. 72.

⁷ Nawar Al-Hassan Golley, "Is Feminism Relevant to Arab World?," *Third World Quarterly*, vol. 25, no. 3 (2004), p. 532; Nadera Shalhoub-Kevorkian, "Researching Women's Victimization in Palestine: A Socio-Legal Analysis," in: Lynn Welchman & Sara Hossain (eds.), *Honour: Crimes, Paradigms and Violence against Women* (New York: Zed Books, 2005), pp. 162-163; Cheryal Rubenberg, *Palestinian Women: Patriarchy and Resistance in the West Bank* (Colorado: Lynne Rinner Publisher, 2001), p. 65.

⁸ Handrahan, pp. 429-442.

against local tradition in order to secure the legitimacy necessary to construct new institutions.⁹ The distinct experience of the Algerian feminist movement during the national struggle and after independence provides stark evidence for this attribution.¹⁰ But the question that presents itself here is: How can women's rights in Palestine be assessed, given the peculiar conditions where the PLO – its marginalization notwithstanding – and *the national struggle* that it represents continue to exist alongside the PA and its own *state-building* project?

To understand the various aspects of the women's rights issue within the agenda of the PA while taking into account Palestinian peculiarity, we must begin with a study of the relationship between national liberation movements and human rights in the post-independence period. This will allow us to identify the general contours of the PA's human rights agenda and its effects on the rights of Palestinian women. Some writers have found a strong relationship between human rights principles and anticolonial projects, arguing that human rights values have been key to national liberation due to their association with the right of self-determination. The establishment of this latter principle by the 28th US President, Woodrow Wilson (1856-1924), was closely tied to the emergence of national liberation movements, and effected an unprecedented change in the makeup of the international community.¹¹ The supporters of this view thus maintain that the concept of human rights provided the stamp of legitimacy for national liberation movements in general.¹² Others, however, maintain that in practice the relationship has been more complicated than it first appears. They note that human rights were neither overwhelmingly prominent nor entirely absent during the national liberation period and suggest that it is impossible to generalize.¹³

Historical studies show that it was quite unusual for national liberation movements to refer explicitly to human rights principles as set out by the United Nations. During the Nigerian struggle for independence, Nnamdi Azikiwe (1904-1996) drew up a "Freedom Charter" explicitly mentioning, among others, the rights to life, education, health, and self-determination.¹⁴ But other national movements maintained that the idea of "human rights" in this sense was irreconcilable with the essence of the anti-colonial struggle, since it was itself a tool of western colonialism, as the Ghanaian leader Kwame Nkruma (1909-1972) argued.¹⁵ While there are scattered references to human rights principles in the literature produced by national movements worldwide, they are still few in number when compared to the great volume of documents.¹⁶ It has been noted that they were particularly common in addresses to international gatherings or UN bodies, to the point that it might be said that some movements evoked these principles strategically in order to further particular political aims and not as an end in themselves.¹⁷

The post-independence states of the Third World, on the other hand, had quite a different relationship with human rights. Emerging in force onto the international stage and becoming a majority in the UN Assembly during the 1950s and 1960s, these states played a key role in the development of international human rights law.¹⁸ This relationship began to recede following the rise of authoritarian regimes in these countries and their failure to participate as effectively in the international community as they had hoped. At the 1968 UN Human Rights Conference in Tehran, they began to oppose the emphasis on political and

⁹ Lama Abu Odeh, "Crimes of Honor and the Construction of Gender in Arab Societies," *Comparative Law Review*, no. 2 (2010), pp. 29-30.

¹⁰ Sherna Berger Gluck, "Palestinian Women: Gender Politics and Nationalism," *Journal of Palestinian Studies*, vol. 24, no. 3 (1995), p. 5.

¹¹ Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2004), p. 196.

¹² Roland Burke, *Decolonization and the Evolution of International Human Rights* (Philadelphia: University of Pennsylvania Press, 2010), pp. 1-10.

¹³ Jan Eckel, "Human Rights and Decolonization: New Perspectives and Open Questions," *International Journal of Human Rights, Humanitarianism and Development*, vol. 1, no. 1 (2010), p. 113.

¹⁴ *Ibid.*, p. 116.

¹⁵ *Ibid.*

¹⁶ George M. Houser, "Human Rights and the Liberation Struggle," *Africa Today*, vol. 39, no. 4 (1992), p. 9.

¹⁷ Eckel, pp. 117, 121.

¹⁸ *Ibid.*, p. 119.

civil rights, instead prioritizing economic development.¹⁹ The rise of "cultural relativism" in the 1970s signalled these states' growing wariness of human rights *tout court*.²⁰

In the Palestinian context, the PLO made very few references to human rights. In fact, the concept does not appear anywhere in the many documents produced by the organization, least of all the Palestinian National Charter,²¹ except for the Declaration of Independence published in Algeria on 15 November 1988.²² Despite this absence, Palestinian women were able to secure some partial rights. They were able to enter the public sphere and participate in political action and in the national struggle as part of an effort to mobilize the whole of society in a broad-based popular resistance.²³ Here we can clearly see how the PLO made use of the rights-based approach to make political gains at the popular level and how that in turn resulted in partial gains for women during the national struggle.

When the Palestinian Authority was established, it was not at all obvious whether the national liberation project was still ongoing or whether it had been redirected into a fully-fledged Palestinian state-building project.²⁴ The self-governing PA was supposed to oversee a five-year transitional period during which Palestinian and Israeli negotiators would agree on a final settlement. But with the collapse of the second Camp David summit (July 2000) and the failure of all subsequent negotiations,²⁵ the transitional period was extended indefinitely.

The PA's readiness to cite the exigencies of the (extended) transitional period and the need to focus on state-building and securing international recognition has pushed human rights discourse onto the side-lines.²⁶ Some theorists see a similarity between the PA's domestic rights policies and those of other post-independence state-building projects, noting that they share a certain wariness of the concept.²⁷ Internationally, however, the PA has evinced a greater openness to the idea, firstly in order to preserve foreign funding,²⁸ and then – following the breakdown of negotiations with the Israelis – it began to use human rights discourse to make political gains and win sympathy, an approach also taken by other national liberation movements. This has produced a duality of policy between the domestic and international spheres over time.

Based on this duality, this paper argues that the PA's confused relationship with human rights, rooted in its oscillation between the approach of a national movement and that of a state-building project, has produced a deep ambiguity in its human rights policy, with negative consequences for the rights of Palestinian women.

The main question, then, is as follows: what is the relationship between this dual policy adopted by the PA and the deteriorating rights of women today? To answer this question, I analyse primary sources, including the PA's own reports to the Committee on the Elimination of Discrimination against Women (CEDAW) and the reports of various relevant organizations, as well as the rulings of the Palestinian Constitutional Court on the legal standing of international treaties within the Palestinian legal system. In the first section, I use these documents to test the dual policy hypothesis. In the second, I provide a theoretical account of the backsliding of women's rights under the PA, assessing the effects of this duality on Palestinian women.

¹⁹ Anghie, pp. 204-207.

²⁰ Eckel, p. 122.

²¹ "al-Mithāq al-Waṭānī al-Filasṭīnī," *Wafa*, accessed on 30/6/2021, at: <https://bit.ly/3g5TliW>

²² "Wathīqat I'lān al-Istiqlāl al-Filasṭīnī," *Wafa*, accessed on 14/11/2020, at: <https://bit.ly/3T1wCsD>

²³ Gluck, p. 7; Islah Jad, "Feminism between Secularism and Islamism: The Case of Palestine, West Bank and Gaza," *Conflicts Forum Monograph*, (2010), p. 5; Deniz Kandiyoti, "Bargaining with Patriarchy," *Gender and Society*, vol. 2, no. 3 (1988), p. 282.

²⁴ Lisa Hajjar, "Law against Order: Human Rights Organizations and (versus) the Palestinian Authority," *University of Miami Law Review*, vol. 56, no.1 (October 2001), p. 61.

²⁵ Michael Dumper, "Constructive Ambiguities? Jerusalem, International Law and the Peace Process," in: Susan M. Akram et al. (eds.), *International Law and the Israeli-Palestinian Conflict: A Right-based Approach to the Middle East Peace* (London: Routledge, 2011), p. 113.

²⁶ Hajjar, pp. 63-65.

²⁷ *Ibid.*, p. 61.

²⁸ *Ibid.*, p. 68.

Dual Policy on the PA Human Rights Agenda

At the international level, the PA has signed up to numerous human rights conventions without entering any reservations, which means that these conventions are supposed to have full legal force. It has done so even with respect to certain controversial agreements that do not enjoy broad consensus in Arab and Islamic countries (as is the case with some of the provisions of CEDAW, for example), contrary to many surrounding countries, which registered both specific and general reservations when becoming signatories to these agreements. Domestically, however, the decisions of the Constitutional Court on the status of international treaties within the national legal system, the official response to popular attacks on CEDAW, and the limited government efforts to bring domestic legislation in line with international agreements reveal quite a different agenda.

1. The PA's Approach to Rights on the International Stage

The PA has long sought to win international sympathy as part of its efforts to move forward with its state-building project. Securing full membership of the United Nations – widely considered to be a fundamental marker of statehood²⁹ – has been one of the most important means of achieving this goal. The PA has fought a fierce diplomatic battle to this end, hoping to complete the work of the PLO,³⁰ which received non-state observer status on 22 November 1974.³¹ After its attempts to win full membership failed, the PA applied instead for non-member observer state status, which it was accorded on 29 November 2012,³² thus qualifying it to become a signatory to various international agreements.³³ In April 2014, the PA endorsed fifteen such agreements all in one go, registering no reservations either general or specific. CEDAW was one of these agreements.³⁴ The PA has subsequently become a signatory to many more agreements, some 98 as of November 2020.³⁵

Adopting CEDAW with no reservations is supposed to mean bringing domestic legislation into line with its provisions to ensure that women enjoy full legal capacity. This would entail women having the ability to marry without a guardian's consent, give testimony in court and have it be equal to a man's testimony, and inherit property on an equal basis with male coinheritors. It would also mean abolishing polygamy and establishing equal rights of guardianship.³⁶ In general, it would mean accepting the controversial provisions set out in Articles 2, 9, 15, 16 and 29 of CEDAW, in respect of which most Arab and Islamic countries have entered reservations.³⁷

Becoming a signatory with no reservations has served two different purposes. The first was to bolster the independent legal status of the PA on the international stage by demonstrating its ability to secure its citizens' rights and to meet obligations, two of the most important indicators of legal personality under

²⁹ Malcolm N. Shaw, *International Law*, 8th ed. (Cambridge: Cambridge University Press, 2017), p. 345.

³⁰ Joel Peters & David Newman, *The Routledge Handbook on the Israeli Palestinian Conflict* (London: Routledge, 2013), p. 3.

³¹ Muhammad Izz al-Din Hamadan, "Arba'at A'wām 'Alā Ḥuṣūl Filasṭīn 'Alā Dawla Murāqib fī al-Umam al-Muttaḥida," *Situation Assessment, Masarat – Palestinian Center for Policy Research and Strategic Studies*, 27/10/2016, accessed on 12/1/2021, at: <https://bit.ly/3rQRzdB>; Muhammad Fahhad Sabri al-Shalaldehy, "'al-Sulṭa al-Filasṭīniyya' wa-Mutaṭallibāt al-Taḥawwul min Ḥarakat Taḥarrur ilā Dawla," *PLO Center for Studies*, accessed on 15/12/2021, at: <https://bit.ly/3g8mqjz>; Virginia Tilley (ed.), *Beyond Occupation: Apartheid, Colonialism and International Law in the Occupied Palestinian Territories* (London: Pluto Press, 2012), p. 28.

³² Hamadan, *ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ "al-Ittifāqiyyāt al-Duwalīyya Allafī Inḍammat Ilayhā Dawlat Filasṭīn," *Palestinian Ministry of Foreign Affairs and Expatriates*, accessed on 10/2/2020, at: <https://bit.ly/3CCU6xk>

³⁶ Rola Sarhan, "Dūna Taḥaffuzāt," *al-Ḥadath*, 10/3/2015, accessed on 30/6/2021, at: <https://bit.ly/3g4XN7g>

³⁷ Amnesty International, *al-Taḥaffuzāt 'Alā Mu'āhadat Ilghā' Kāffat Ashkāl al-Tamyīz Diḡḡ al-Mar'a: Taqwīd Ḥimāyat al-Mar'a Min al-'Unf fī al-Sharq al-Awsaṭ wa-Shamāl Afrīqiyyā* (3 November 2004), pp. 7-12.

international law.³⁸ The second was to use the PA's new position to achieve political gains on the international stage, such as seeking prosecution of Israel via the International Criminal Court under the 1998 Rome Statute, the Geneva Conventions, and the Convention Against Torture.³⁹

Despite the popular movement that swept across Palestine in December 2019 protesting the joining of CEDAW without registering any reservations against its controversial provisions, PA officials have rejected the possibility of withdrawing from the agreement and then re-joining with reservations – a possibility provided by Articles 54-56 of the 1969 Vienna Convention on the Law of Treaties. This indicates the importance of the international political gains that the PA has sought through its unconditional accession to agreements.

2. The PA's Approach to Rights on the Domestic Stage

This section of the paper will look at the rulings of the Constitutional Court on the application of international treaties within the framework of Palestinian national law. Although constitutions generally set out the basic contours of the relationship between domestic law and international treaties to which a state is a signatory, there are no such provisions in the Palestinian Basic Law.⁴⁰ As such, the Supreme Constitutional Court has issued two rulings to clarify this relationship: Constitutional Appeal No. 4 of 2017 and a subsequent interpretive ruling in March 2018.

a. The Relationship Between International Agreements and the Domestic Legal System

In November 2017, some time after the PA first became a signatory to various international agreements, the Constitutional Court issued its ruling on Constitutional Appeal 4/2017. In this ruling, the Court set out the status of international treaties in Palestinian law, indicating that they take precedence over domestic law insofar as they conform with the religious, national, and cultural identity of the Palestinian people.

The irony in this ruling is that it actually narrows the scope for application of international treaty provisions, restricting it to cases where they do not conflict with religious, national, or cultural identity. Many human rights activists found this evocation of religious, national, and cultural identity very concerning, considering it a serious regression of the PA's international human rights commitments and an embodiment of cultural relativism, a long-standing obstacle to the implementation of human rights principles in many Arab countries.⁴¹

On 12 March 2018, the Constitutional Court issued a second ruling on the subject, giving the constitution precedence over international treaties. This ruling marked another step back for human rights at the domestic level, with many human rights activists describing it as a flagrant breach of the PA's international commitments in this regard. Article 27 of the Vienna Convention makes it clear that domestic law, of which these activists believe the constitution to be an inseparable part, cannot be used to justify breaking international law.⁴²

The Constitutional Court's interpretation, apart from being subject to scrutiny by human rights activists, represents a common practice internationally. States use the principle of constitutional precedence as a pretext to insulate the domestic political system from international treaties. For instance, American states wishing to avoid implementing international agreements that the federal government has ratified employ what is known as "constitutional conservatism", claiming these treaties violate state constitutions.⁴³

³⁸ Shaw, pp. 155-156.

³⁹ Al-Fatatfa.

⁴⁰ Shaw, pp. 97-105.

⁴¹ Committee on the Elimination of Discrimination against Women, *Concluding observations on the initial report of the State of Palestine*, 25/7/2018, p. 4, accessed on 5/3/2021, at: <https://bit.ly/3FoLr3J>

⁴² Mu'tazz Qafisheh, "Ta'liq 'Alā Qarār al-Mahkama al-Dastūriyya al-Filastīniyya al-'Ulyā," *Ma'an*, 24/3/2018, accessed on 5/3/2021, at: <https://bit.ly/3g8SIQV>

⁴³ Shaw, p. 119.

The common denominator in both rulings is that the Constitutional Court has introduced domestic reservations in respect of international treaties on behalf of the political leadership: first when it cited religious and cultural patrimony (the principle of cultural relativism) and then, more decisively, when it invoked the constitution in its interpretive ruling. The great divergence between the PA's international approach to human rights and how it operates domestically comes out clearly here. Acting at the behest of the political leadership, the Constitutional Court has greatly restricted the application of an international treaty that the same political leadership has accepted in full.

b. The PA's Attitude to the Popular Attack on CEDAW

The PA's tendency towards restricting the domestic application of international treaties is also visible in its response to the popular attack on CEDAW. In late 2019, a campaign was launched in the West Bank against integration of CEDAW into Palestinian law, led by local politicians and tribal forces who considered human rights treaties in general (and CEDAW in particular) instruments of western colonial thinking incompatible with the religious and social particularities of Palestinian society. The PA itself took no steps to confront or contain this crisis. Moreover, some elements within the PA were keen to defend and justify the campaign.⁴⁴

c. The Limited Progress in Implementation of CEDAW

To track the PA's implementation of the provisions of CEDAW, it is necessary to look at its official reports and at the Concluding Observations made by the CEDAW Committee, as well as the shadow reports provided by some human rights organizations in this respect.⁴⁵

The PA's preliminary report was submitted on 8 March 2017⁴⁶ and discussed before the CEDAW Committee in July 2018, with the Committee publishing its Concluding Observations on 25 July.⁴⁷ The report, which was produced in accordance with Article 18 of CEDAW, highlighted various areas in which the PA had been able to make progress.⁴⁸ In its Observations, however, the Committee pointed to areas in which the PA needed to improve implementation and asked it to submit a follow-up report within two years so that the Committee could reassess progress on the issues it considered major priorities.⁴⁹ Unlike the preliminary report, the Committee's remarks emphasized the need for far-reaching reform – legislative, judicial and political – in order to improve women's rights in the Palestinian territories.⁵⁰ Article 53 set out a number of issues on which the PA was expected to make progress as soon as possible.⁵¹

The PA submitted its follow-up report on 27 July 2020,⁵² detailing the progress made in the areas specified by the Committee. Ironically, this report unwittingly revealed the PA's unwillingness to make far-reaching reforms on these issues, despite its attempts to play up its success in implementation. In order to illustrate this unwillingness, some of the PA's claims will be refuted by pointing out some of the problem areas left unaddressed by legal reform during the period covered by the report.

⁴⁴ Olivier De Schutter, *International Human Rights Law*, 2nd ed. (Cambridge: Cambridge University Press, 2014), pp. 871-877.

⁴⁵ Al Mar'a Center for Legal and Social Guidance, *Taqrīr al-Zill al-Muqaddam min Muntadā al-Munazzamāt al-Ahliyya li-Munāhaḍat al-'Unf Didd al-Mar'a 'Alā Taqrīr al-Mutāba'a al-Rasmī* (Ramallah: 25 August 2020), p. 2.

⁴⁶ Foreign Ministry in the Palestinian National Authority, *al-Taqrīr al-Rasmī al-Awwalī li-Dawlat Filasṭīn Ḥawla Mu'āhadat al-Qaḍā' 'Alā Kāffat Ashkāl al-Tamyīz Didd al-Mar'a* (Ramallah: 8 March 2017), p. 1.

⁴⁷ Committee on the Elimination of Discrimination against Women, *Concluding observations on the initial report of the State of Palestine*, p. 1.

⁴⁸ *al-Taqrīr al-Rasmī al-Awwalī li-Dawlat Filasṭīn Ḥawla Mu'āhadat al-Qaḍā' 'Alā Kāffat Ashkāl al-Tamyīz Didd al-Mar'a* (Ramallah: 8 March 2017), pp. 4, 7-77; *Taqrīr Mu'assasat al-Haqq al-Muqaddam 'ilā'l-Lajna al-Ma'niyya li al-Qaḍā' 'Alā al-Tamyīz Didd al-Mar'a* (Ramallah, 7 July 2018), pp. 1-24.

⁴⁹ De Schutter, p. 909.

⁵⁰ Committee on the Elimination of Discrimination against Women, *Concluding observations on the initial report of the State of Palestine*, pp. 1-18.

⁵¹ *Ibid*, p. 18.

⁵² Foreign Ministry in the Palestinian National Authority, *Taqrīr al-Mutāba'a al-Rasmī li-Dawlat Filasṭīn Ḥawl Mu'āhadat al-Qaḍā' 'alā Kāffat Ashkāl al-Tamyīz Didd al-Mar'a* (Ramallah: 27 July 2020), p. 1.

- Paragraph 11a: Adopt, without delay, national legislation that includes a comprehensive definition of discrimination against women covering all prohibited grounds of discrimination and encompassing direct and indirect discrimination in both the public and private spheres.

The official follow-up report indicated that a "comprehensive definition of discrimination against women" had been included in the Law on the Protection of Women from Violence. But this is not sufficient. The Law has never been promulgated; it remains a draft with no legal force. Indeed, Article 9 of the 2003 Palestinian Basic Law already alludes to the principle of non-discrimination on the basis of sex, colour, religion, or political belief. But over the last ten years, this principle has never been translated into substantive legislation. The definition of discrimination needs to be incorporated into the Basic Law as a constitutional principle. Simply including it as one provision of a dubious draft law beset by numerous problems – as will be shown later – is not enough.⁵³

- Paragraph 13c: Take concrete steps to accede to the Optional Protocol and publish the Convention in the Official Gazette.

- **Acceding to the Optional Protocol**

On 10 April 2019, the PA acceded to the Optional Protocol, which grants the CEDAW Committee the right to receive individual complaints from women who have been subjected to CEDAW violations and who have exhausted all domestic means of securing restitution. While this is an important step inasmuch as it implies that the PA recognizes the importance of the package of rights set out in CEDAW itself, it is unlikely to bear fruit given the very limited progress made in implementation of the Convention in the Palestinian Territories. Accession to the Optional Protocol should be accompanied by rapid government action to incorporate CEDAW into domestic legislation.

- **Publishing the Convention in the Official Gazette**

Here, the PA is instructed to publish the Convention in the Official Gazette, thereby making it part of domestic law.⁵⁴ The official follow-up report, however, shows that this step has not yet been taken. In order to mask this failure, the follow-up report focuses on various procedural points, such as the existing level of CEDAW compliance at the Public Prosecutor's Office and in Shari'a Courts without publication.⁵⁵

This sort of partial compliance is not an alternative to official publication. The ongoing failure to publish CEDAW in the Official Gazette is important evidence of the broader failure of the PA to make any meaningful progress in its implementation. Prior to publication, the Convention is not part of domestic law, and complainants cannot use its provisions as the basis for litigation. So long as it has not been published, any attempt to use CEDAW will be vulnerable to an appeal on the basis of non-constitutionality.

- Paragraph 15c: Expedite the review of draft laws to ensure their compliance with the Convention, including the draft penal code, the draft personal status code and the draft family protection law, and their adoption.

The PA drew up its own draft Penal Code in 2011 with the intention of replacing the Jordanian Penal Code (16/1960) used in the West Bank and the mandate-era Code (74/1936) used in the Gaza Strip. Close attention to the draft reveals that no substantial progress has been made on crimes displaying major gender disparities compared to the old codes that it would overturn. Article 486, for example, makes it legal to

⁵³ *Taqrīr al-Zill al-Muqaddam min Muntadā al-Munazzamāt al-Ahliyya*, p. 3.

⁵⁴ Under Jordanian Constitutional Law, publishing a treaty in the Official Gazette is one means of incorporating it into domestic legislation. Publication of any legislation makes it definitive (*hujja 'alā al-kāffa*), meaning there is no longer any need to make use of normal legislative channels as in the case of secondary legislation. See: Kamil Sa'id, *al-Naḏariyya al-'Amma li'l-Qaḏā' al-Dustūrī* (Amman: Dar al-Thaqafa Publishing, 2017), p. 159.

⁵⁵ *Taqrīr al-Mutāba'a al-Rasmī li-Dawlat Filasṭīn*.

murder women in cases where the family has been dishonoured, similar to Article 340 of the Jordanian Code; rather than trying to extirpate honour killing, it thus enshrines it in law.⁵⁶

- **Draft Family Protection Law**

The Ministry of Social Development first submitted the draft Family Protection Law for promulgation as a decree on 11 May 2020, but in the absence of agreement on the final version, it has been trapped in legislative limbo ever since.⁵⁷ The draft suffers from various loopholes affecting both its content and its basic aims (i.e., penetrating and regulating the private sphere of the family). It leaves undefined a number of essential terms that would have enhanced its ability to produce a more balanced relationship between the sexes within the framework of the family. For example, it does not define violence as "a form of discrimination and one symptom of the historically unequal power relations between men and women", nor does it provide a sufficient definition of discrimination.⁵⁸ Overall, the draft is not sensitive to gender, adopting a "neutral" tone towards women and overlooking the reality that women are far more vulnerable to gender-based violence.⁵⁹

- **Personal Status Code**

The 1976 Jordanian Personal Status Code used in the West Bank and the Rights of the Family Law used in Gaza are of great importance. Taken together, they provide the sole basis for the regulation of the private sphere,⁶⁰ and they both contain various discriminatory provisions.⁶¹ The PA has made no progress in updating its Personal Status Code and has failed even to develop a clear idea of what this law should look like. The only meaningful change that has occurred in this area is the decision to raise the marriage age by amending Article 5 of the 1976 Code (Law 21/2019).⁶²

The Effect of the Dual Agenda on Palestinian Women's Rights

This section sheds light on the effect of the PA's dual agenda on women's rights by tracing their historical development, looking at the situation under the PLO to compare it with the situation today. The PA's dual rights agenda has contributed to a deteriorating in the rights of Palestinian women compared with their situation under the PLO. Some feminists believe that in order to re-establish balance between the sexes, we are obliged to penetrate the private sphere by means of legal regulation, while also strengthening women's participation in the public sphere in such a way that positive law is capable of regulating this sphere.⁶³ The situation of Palestinian women in the public and private spheres in each period will be analysed to make this comparison.⁶⁴

⁵⁶ Aya Omran, "Incorporating the Principles of Gender Equality into the Penal Code of Palestine to Combat Honour-based Violence," PhD dissertation, Faculty of Law, University of New South Wales, Sydney, Australia, 2018, pp. 190-192.

⁵⁷ Al-Mar'a Centre for Legal and Social Guidance, *Tajribat Qānūn Ḥimāyat al-Usra min al-'Unf fi'l-Arāḍi al-Filasṭīniyya wa-Mi'yār al-'Ināya al-Wājiba* (Ramallah: 16 March 2021), pp. 22-27.

⁵⁸ Ibid.

⁵⁹ Aisha K. Gill, "Introduction: 'Honour' and 'Honour'-based Violence: Challenging Common Assumptions," in: Aisha K. Gill, Carolyn Strange & Karl Roberts (eds.), *Honour Killing and Violence: Theory, Policy, and Practice* (London: Palgrave Macmillan, 2014), p. 7.

⁶⁰ Ellen McLarney, "The Private is Political: Women and Family in Intellectual Islam," *Feminist Theory*, vol. 11, no. 2 (2010), pp. 131, 145; *Tajribat Qānūn Ḥimāyat al-Usra min al-'Unf*, pp. 22-27.

⁶¹ Al-Mar'a Centre for Legal and Social Guidance, *al-Tamyiz al-Qānūni Didd al-Nisā' wa'l-Fatayāt* (Ramallah, 3 February 2020), pp. 3-4.

⁶² Palestinian National Authority, *Qarār bi-Qānūn Raqm 21 li-Sanat 2019m li'l-Tashrī'āt al-Nāzima li'l-Aḥwāl al-Shakhsīyya bi-Shān Taḥdīd Sinn al-Zawāj fi Dawlat Filasṭīn*, 28/11/2019; *Taqrīr al-Zill al-Muqaddam min Muntadā al-Munazzamāt al-Ahliyya*, pp. 9-10.

⁶³ Aysan Server & Gökeçeçek Yurdakul, "Culture of Honour, Culture of Change: A Feminist Analysis of Honour Killing in Rural Turkey," *Violence against Women*, vol. 7, no. 9 (2001), p. 980; Susan Moller Okin, *Justice, Gender and the Family* (New York: Basic Publisher, 1989), p. 8.

⁶⁴ Sandra Walklate, *Gender, Crime and Criminal Justice* (London: Willan Publishing, 2004), p. 45; Rosemarie Tong, *Feminist Thought: A Comprehensive Introduction* (Washington: West View Press, 1989), p. 114.

1. Women's Rights Under the PLO

The Palestinian National Charter that comprises the basic constitutional framework of the PLO has essentially no content concerning rights. Nonetheless, the fight against occupation destabilized traditional Palestinian society and brought about a great shift in the pre-existing social, economic, and political structures.⁶⁵ Moreover, it helped create a sense of shared interests capable of bringing together the many parts of Palestinian society: women (for example) were directly harmed by the occupation and its practices, and they thus became an indispensable part of the popular revolution, another constituency that had to be mobilized.⁶⁶ This brought about what some have called a "democratization of the national struggle" between 1976-1981,⁶⁷ characterized by "the incorporation of new social forces, particularly the less advantaged sectors of society, into Palestinian institutional life" to gain public sympathy and to encourage all of society to take part in the struggle against the occupier.⁶⁸

As a result of this process, the hegemony of traditional social structures – particularly those based on gender, such as sex-based division of labour and restriction of women's labour to the private sphere of the family – diminished, unable to accommodate to the new reality imposed by the occupation.⁶⁹ The national struggle thus played a part in the removal of the many different social obstacles produced by a patriarchal authority that blocked women's participation in the public sphere, in order to facilitate their participation in the national struggle.⁷⁰ As a result, Palestinian women enjoyed many significant freedoms during the 1970s and 1980s.⁷¹

The increased participation of women in the national liberation movement – their involvement in the military, activist, and political aspects of the movement, including party activity, union organizing, and the creation of the Palestinian Women's Union in 1965 – led to important changes in women's rights. Issues such as improving women's working conditions, reforming personal status law, and providing adequate healthcare were discussed publicly and at major events.⁷² This great shift did not result in similar achievements at the political level, and they continued to be underrepresented on the PLO Executive Committee. But this can be attributed to the reluctance of the feminist movement to demand these rights despite a more propitious environment for such demands than there had ever been before.⁷³

At the beginning of the state-building period, the feminist movement made efforts to reorganize the private sphere. The feminist movement realized early on that women's entry into the public sphere had to be followed directly by attempts to legally regulate the private sphere and narrow the gap between the sexes.⁷⁴ Feminists thus attempted to reform the Personal Status and Penal Codes, aware that if such discriminatory laws were allowed to continue existing, they would threaten all the achievements that women had made thanks to their participation in the national movement.

2. Women's Rights Under the PA

The relationship between the PLO and the PA has always been characterized by ambiguity. It has never been clear whether the project of national liberation is still ongoing or whether it has become a matter of

⁶⁵ Kuttab, p. 69.

⁶⁶ Ibid.; Arlene Eisen, *Women and Revolution in Vietnam* (London: Zed Press, 1984), p. 96.

⁶⁷ Lisa Taraki, "The Development of Political Consciousness Among Palestinians in the Occupied Territories in 1967-1987," in: Jamal Nasser & Roger Heacock (eds.), *Intifada: Palestine at the Crossroads* (New York: Praeger, 1990), p. 60.

⁶⁸ Ibid.

⁶⁹ Kuttab, p. 72.

⁷⁰ Gluck, p. 8; Nahla A. Abdo, "Women of Intifada: Gender, Class and National Liberation," *Race and Class*, vol. 32, no. 4 (1991), p. 26.

⁷¹ Rubenberg, p. 65.

⁷² Rosemary Sayigh, "Palestinian Women and Politics in Lebanon," in: Judith Tucker (ed.), *Arab Women: Old Boundaries, New Frontiers* (Bloomington: Indiana University Press, 1993), p. 186; Holt, p. 111.

⁷³ Kuttab, p. 74.

⁷⁴ Gluck, p. 12.

building a future Palestinian state – or, for that matter, whether the PA is a state-building project in itself, particularly given the indefinite extension of the transitional period.⁷⁵ Nonetheless, during the establishment of the PA the feminist movement made efforts to regulate the private sphere by legal means, drafting a proposed new Personal Status Code in order to cement the gains made in the previous phase.⁷⁶ But when only four women were appointed to the Special Committees formed after the Madrid Conference to establish the foundations of the new state (out of a total of some 300 members), feminist activists' anxieties about the political initiative falling into the hands of a group of traditional politicians were intensified.⁷⁷

Similar developments occurred across the Third World during the state-building process. The PA's human rights policies are very similar to those pursued by neighbouring postcolonial countries: women are typically excluded from the state-building project⁷⁸ as part of efforts to create a balance between modernity and societal tradition, producing very conservative rights policies.⁷⁹ Comparing these policies to the practice of the PA in the period immediately before its establishment shows clear signs of the dualism that has brought about a marked reversal in women's rights compared to the pre-PA period.

Domestically there were major efforts to force women back out of the public sphere and into the private sphere, and to undermine the gains made in the previous period. At first, this centred on the PA's refusal to take the final steps necessary to consolidate women's entry into the public sphere. The PA made no effective attempts to pierce the private sphere and regulate it by legal means, either by amending the old Personal Status Code or by introducing a Family Protection Law capable of checking the unbalance between the sexes, as we have already seen.

The PA also undermined women's gains by weakening civil society, which had provided the most fertile ground for their public action. A sphere that had been supported by a broad range of political parties in the era prior to the Oslo Accords was now reduced to total dependency on foreign funding.⁸⁰ This process has been characterized as the "NGOization" of the Arab Women's Movement, or the "transformation of issues of collective importance into projects isolated from the broader context in which they emerge, with no attention paid to the economic, social and political factors that influence them".⁸¹

At the international level, the desire of funders to improve women's situation was initially influential on the PA, which hoped to retain its sources of foreign funding. This was the origin of the women's quota incorporated in the electoral law. A Ministry of Women's Affairs was set up in 2003, whose priorities have changed steadily over the last few years along with those of funders: while its original strategy relied on national liberation and women's role in the struggle against occupation, it then shifted its focus onto women's role in state-building and ultimately onto education, girls' professional and technical training, and economic and political empowerment.⁸²

Comparing the approaches of the PA and the PLO, we find that both have treated rights questions more as a means than as an end. Women's success in securing partial rights and freedoms under the PLO was a product of that organization's desire to win popular support for its mobilization of society as a

⁷⁵ Nawfal, pp. 1-3; Hajjar, p. 61.

⁷⁶ Gluck, p. 11.

⁷⁷ Ibid.

⁷⁸ Maria Holt, "Palestinian Women, Violence and the Peace Process," *Development in Practice*, vol. 13, no. 2 (2003), p. 128.

⁷⁹ Floya Anthias & Nira Yuval-Davis, "Introduction," in: Nira Yuval-Davis & Floya Anthias (eds.), *Women-Nation-State* (London: Macmillan Press, 1989), p. 10.

⁸⁰ Yara Hawari, "Tahmīsh al-Mar'a Siyāsiyyan fī'l-Ḍiffa al-Gharbiyya," *Palestinian Policy Network*, 28/7/2019, accessed on 20/06/2021, at: <https://bit.ly/3CttT49>

⁸¹ Islah Jad, "The NGOisation of the Arab Women's Movement," in: Andrea Cornwall, Elizabeth Harrison & Ann Whitehead (eds.), *Feminism in Development: Contradiction, Contestations and Challenges* (London: Zed Books, 2007), p. 177; Islah Jad, "al-Ḥaraka al-Niswiyya al-Filastīniyya Ba'd Uslō: Ḥiṣād Murr fī Tamkīn al-Dhāt wa-fī Tahrīr al-Waṭan," *Jadaliyya*, 24/3/2014, accessed on 30/6/2021, at: <https://bit.ly/3g6sYPy>

⁸² Ibid.

whole in the name of the national struggle. The PA inherited this instrumental approach to rights, but its differing priorities have meant that it has used international diplomacy, much like other national liberation movements, to try and convince the world of the need to grant prompt recognition to a Palestinian state. The turn in its attention away from winning *popular* sympathy and towards winning *international* sympathy in order to use it in the state-building process contributed to the side-lining of women's partial gains. The PA's adoption of an approach to rights similar to those followed in postcolonial Third World countries only exacerbated this development.

This duality has led to an indecisiveness in the PA's approach to human rights issues in general and women's rights in particular, with negative consequences for the rights situation overall. Although the PA has repeatedly promised to improve the rights situation at home, its achievements on the ground have remained very limited. In the private sphere, there have been no substantive changes to the Personal Status Code or the Penal Code, despite long years of effort by feminist activists to this end.⁸³

With regard to the public sphere and women's participation in decision-making, meanwhile, the 2020-2021 data of the Central Bureau of Statistics show that women continue to play little part in public life – the quota, the establishment of a Ministry of Women's Affairs and the creation of Gender Units aiming to reintegrate women into these areas notwithstanding. Women account for only 5% of Central Council members and 11% of National Council members. Only one of the sixteen provincial governors is a woman, and not a single municipality within Areas A and B has a female mayor. Similarly, only 14% of General Directors in the civilian sector are women,⁸⁴ a disparity which only widens in the military sector (the biggest employer in the PA), where they account for only 6% of workers. Even fewer hold decision-making positions.⁸⁵

These figures – which some may consider evidence of an improvement – are not positive at all. Indeed, they represent a *reversal* for women's rights. Despite having contributed actively to the national struggle, which might have been expected to represent a major step towards their liberation, women now find themselves back at square one, pushed back into a deeply unbalanced private sphere. Their participation in the public sphere is now marginal, driven entirely by foreign funding.

Conclusion

All Arab countries have acceded to various human rights conventions, often entering reservations reflecting their desire to strike a balance between modernity and societal traditions. The Palestinian Authority has followed its neighbours in becoming a signatory to many of these conventions but has diverged in other aspects. While the PA has sought to build a state similar to those in its immediate geographical environment, its more complicated political project has meant that it has needed to demonstrate its ability to build a modern state, especially since the breakdown of Israeli-Palestinian negotiations. The political leadership has used rights discourse to convince the world of the maturity of the Palestinian project, in order to demonstrate that the creation of a state is an urgent priority and to expedite UN recognition. As a result, rights issues have become no more than a means of easing Palestine out of the bottleneck, the political deadlock that has kept it stuck in place for decades. By pursuing this path, the PA has essentially adopted a strategy followed

⁸³ Independent Commission on Human Rights, *al-Taqārīr al-Sanawīyya li'l-Hay'a Ḥawl Huqūq al-Insān fī'l-Arāḍ al-Filasṭīniyya li'l-A'wām 2012-2020* (Ramallah: 2012-2019), section on right to life.

⁸⁴ "Mushāraka Mutawāḍi'a li'l-Nisā' al-Filasṭīniyyāt fī Mawāqī' Ṣan' al-Qarār," *Alaraby Aljadeed*, 7/3/2021, accessed on 10/3/2021, at: <https://bit.ly/3S55cR3>

⁸⁵ Al-Mar'a Centre for Legal and Social Guidance, *Mu'īqāt Wuṣūl al-Nisā' al-Muntasibāt li-Qiṭā' al-Amn ilā Mawāqī' Ṣan' al-Qarār* (Ramallah, April 2020), p. 3.

by various national liberation movements before it, instrumentalizing rights for political gains. Its rights agenda has, hence, been marred by a duality of approach.

An investigation of the rights situation in the Palestinian Territories in general and the rights of women in particular shows how this duality has affected the PA's rights practices. This dual practice began with the establishment of the PA, which has made consistent efforts ever since to push women back into the private sphere by undermining civil society (the foundation of women's public activity) and disregarding any attempt to regulate the private sphere through legislation that might have addressed the gender imbalance within the family. At the same time, the PA has promised the international community that it will carry out major reforms to improve the situation of Palestinian women. This has resulted in some superficial changes that have benefited only a small number of elite women. Quite the contrary: this duality has only worsened their marginalization. Various examples to support this argument have been presented, and ultimately concluded that duality has reversed many of the gains made by the Palestinian feminist movement during the national struggle.

The nature of this approach has only become clearer with the decision to accede to various international treaties, including CEDAW. It is writ large in the gulf between the PA's practices at home and on the international stage. For this reason, becoming a signatory of CEDAW without any reservations has not produced any genuine reforms that might improve the situation of Palestinian women.

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