

# ‘Statehood, Democracy and Women’s economic, social and cultural rights in Palestine: The Same Means for the Same End?’



**Dr. Sanaa Alsarghali-**

**Lecturer of Constitutional Law An-Najah  
University-Palestine**

**Chairwoman of Women Media and Development –  
TAM.**



*“It is vitally important that all structures of Government, including the President himself, should understand this fully that freedom cannot be achieved unless the women have been emancipated from all forms of oppression.”*  
*(State of the nation address by the President of South Africa, Nelson Mandela, Houses of Parliament, Cape Town, 24 May 1994)*

“If a political system neglects women’s participation, if it evades accountability for women’s rights, it fails half of its citizens. Indeed, true democracy is based on the realization of human rights and gender equality. If one of these falters, so do the others.”

Vivien Hart, “Democratic Constitution Making”, United States Institute for Peace, Special Report No. 107, July 2003, p. 11.

# Palestine

- The Palestinian women's movement, which includes several women's rights organizations, began to draw attention to issues related to women, gender and the law even before the establishment of the PNA, in the context of examining its role in building the Palestinian state. From the outset, the principle of equality underpinned many of the movement's demands.

- An important early initiative, a human rights study based on the principle of equality entitled *On the Law and the Future of Palestinian Women*, was presented at the 'Model Parliament', an initiative launched by several women's organizations. Through the 'Model Parliament', various branches of the law were reviewed from social justice and gender equality perspectives, and reform proposals were put forward.

- In accordance with these understandings, the following programmatic priorities have been set by a majority of women's organizations in Palestine:
- To bring domestic legislation in line with international standards;
- To advocate for the enforcement of women's rights;
- To ensure adequate protection mechanisms are in place;
- To raise awareness of women's rights;

- To provide legal assistance for women; and
- To provide training on gender-related issues.

# Palestine

- Five branches of law are usually examined: constitutional law, personal status legislation, criminal law, labour legislation and the laws that regulate political participation.
- Constitutional Law

# Background:

- A Proper constitution will try its best to provide equality. There can be no full democracy without the equal participation of women in all aspects of public life and this extends to the constitution. At present, women are underrepresented in democratic decision making throughout the world:

- Only one in five members of parliaments are women;
- Only 19 heads of State or government were women in 2015;
- Only 18% of cabinet ministers are women, and they are most often assigned social issues portfolios rather than portfolios such as economy, finance, defense or justice;
- In 50% of countries, men outnumber women as judges and magistrates, and women's representation declines drastically higher up the judicial hierarchy;

- Only 19% of supreme courts have a female President; and Women are severely underrepresented in positions of leadership in political parties and local government.

(United Nations, The World's Women 2015: Trends and Statistics, Chapter 5 “Power and Decision-making”, 2015, <http://unstats.un.org/unsd/gender/worldswomen.html>)

# Palestine

On paper, the Palestinian Basic Law – the main constitutional document in Palestine – largely adheres to human rights standards (although it fails to establish important social rights which are of particular relevance to women and the eradication of gender inequality). However, the rights it does establish – including the rights to equality and non-discrimination – are not being litigated; nor do they appear to form more than a negligible component of day-to-day legal practice.

- Legislative Reform, Women's Rights and Israeli Occupation
- Occupation issues: Palestinian institutions have been granted the authority to enact new laws, they are denied the power to give them meaning.

# Example:

- The PNA can pass legislation aimed at protecting the victims of domestic violence, it cannot enforce this legislation in the district of Jerusalem, which has been illegally annexed by Israel; neither can it send its police force to most of the West Bank to respond to an emergency call from a potential victim of violence without obtaining the prior permission of the occupier.

- Constitutional guarantees of equality and non-discrimination are important avenues through which the rights of women can be defended. The main constitutional document in Palestine is the Palestinian Basic Law of 2002, as amended in 2003.
- The Basic Law regulates rights and freedoms, outlines the organisation of the executive, legislative and judicial authorities, and governs their interrelations.

- Article 94 of the Basic Law calls for the creation of an independent Supreme Constitutional Court to adjudicate disputes related to the Basic Law. The Law on the Supreme Constitutional Court, drafted and approved in 2006, governs the Court's composition, jurisdiction, procedures, and financial and administrative matters. The court has been established in 2016, but the right to individual to access the court for any type of case is provided but not clearly organized.

- The Palestinian Basic Law establishes important rights which are to be enjoyed on the basis of equality and non-discrimination. These rights include, *inter alia*, equality before the law without distinction based upon race, sex, colour, religion, political views or disability; the right to be free from duress or torture; freedom of belief and worship; freedom of opinion; freedom of movement; the right to education; and the right to political participation.

- However, with respect to the rights of women specifically, the Palestinian Basic Law has several limitations.
- First, it fails to expressly establish important social rights which are of particular significance to women and the eradication of gender inequality. For example, it fails to require the establishment of a system of social insurance, stipulating only that a social insurance system 'be regulated by law.'
- Second, the requirement that 'the principles of Islamic Shari'a shall be a principal source of legislation', can be interpreted in a manner which could be problematic in the time that the MENA is facing.

# Work environment

- The majority of women work in the service sector (health, education and public sector)

Services and agriculture sectors comprise the main employer (job absorber) of women, accounting for 62.9 percent and 13.1 percent of the total number of employed women respectively.

- Palestinian women in public life

In 2014, 15.6 percent of judges were females whereas 84.4 percent were males and 25.0 percent of journalists were females against 75.0 percent males in Palestine.

Moreover, the women ambassadors accounted for only 5.8 percent compared to 94.2 percent for males ambassadors; 41.8 percent of employees in the public sector (civil servants) were females against 58.2 percent males, 3.4 percent of women in police while 96.6 percent were male in Palestine.

# Recommendation

- Reforms in terms of the BL?
- Language of the Constitution
- The number of women's participation in the drafting .
- The international standards that should be taken into consideration.

