

Position Paper

The Interplay Between Customary Law and Formal Legal Systems in Affecting Women's Rights in the Gaza Strip

Submitted by:

The Palestinian Group for Advocates and Legal Consultants

Kanan Moutaz Alsourani Law Office



المجموعة الفلسطينية للمحاماة والإستشارات القانونية

Date: July 17th, 2023

The Palestinian Group for Advocates and Legal Consultants

Kanan Moutaz Alsourani Law Office

Position Paper:

The Interplay Between Customary Law and Formal Legal Systems in Affecting Women's Rights in the Gaza Strip

The Legal System in the Gaza Strip: An Overview and Analysis

The Gaza Strip, an integral part of the Palestinian Territories, is governed by a complex legal system that blends various laws imposed on the region throughout history¹. This legal system, an aspect of the broader Palestinian legal framework, encompasses institutions such as the Attorney General's Office, the Bar Association, and a comprehensive court system regulated by the High Judicial Council².

The courts in the Palestinian judicial system are structured into regular, religious, and special courts. It also includes the Supreme Court of Justice, which is responsible for examining administrative disputes³. This hierarchical structure provides a robust platform for the administration of justice, even amid the political instability that often characterizes the region.

Throughout history, the Palestinian legal system, including that of the Gaza Strip, has largely been under foreign occupation. However, in recent years, Palestinians have been asserting their autonomy and seeking to shape their own legal heritage¹. This represents a significant shift towards the self-determination and sovereignty desired by the Palestinian people.

The debate over the emerging Palestinian state's capability to oversee a system of rule of law is a major topic of discussion in both political and legal circles. The establishment of a functional and reliable legal system is a critical factor in determining the viability of a state¹. This is a critical area of focus for Palestine as it aspires to attain statehood and international recognition.

Historically, the Gaza Strip was administered by Egyptian forces, while the West Bank was governed by Jordanian forces until its unification with Jordan⁴. This has introduced an additional layer of complexity to the legal frameworks operating within these regions.

Notably, Israel has maintained a dual criminal system in the occupied territories. This system has been criticized for disproportionately favoring the settler population, who are alleged to have broad latitude to dispossess Palestinians of their land⁵. This disparity in the administration of justice remains a contentious issue and a significant challenge to the rule of law in the region.

In conclusion, the legal system in the Gaza Strip, as part of the broader Palestinian legal system, is a complex mix of historical and contemporary influences. It remains a central topic in the discourse surrounding Palestinian self-determination and statehood.

The Role of Customary Law in the Gaza Strip

Customary law plays a pivotal role in the legal system of the Gaza Strip. These indigenous legal traditions, often referred to as customary dispute resolution mechanisms, serve a complementary function with the formal courts. They provide a means to fill gaps in legal protection and offer a more accessible and culturally appropriate platform for dispute resolution¹.

The significance of customary law in Gaza cannot be understated, especially considering the diverse influences that have shaped the formal legal system in the region. The Gaza Strip's legal framework reflects a blend of Ottoman, British, Egyptian, Israeli, and Palestinian legal traditions².

The primary source of law in the Gaza Strip is predominantly Egyptian, drawing heavily from Islamic law. Notably, Common Law established during the British Mandate period remains effective in the region³. These diverse influences have resulted in a unique legal environment, where customary and formal laws often intersect and interact.

The legal system in Palestine, including the Gaza Strip, includes the Attorney General's Office, the Bar Association, and a court system regulated by the High Judicial Council⁵. The court system is divided into regular, religious, and special courts, with the Supreme Court of Justice serving as the highest authority for resolving administrative disputes³.

The continued relevance of customary law in the Gaza Strip underlines its importance in the societal fabric of the region. These traditions provide avenues for dispute resolution that are often viewed as more accessible and culturally appropriate, particularly in areas where the formal legal system may be perceived as distant or unresponsive.

In conclusion, customary law in the Gaza Strip complements the formal legal system, bridging gaps in legal protection and providing an accessible platform for dispute resolution. The intertwined relationship between customary law and formal legal institutions underpins the complexity and dynamism of the Gaza Strip's legal landscape.

Position: Customary Law and Its Limitations

While customary dispute resolution mechanisms may serve a complementary role in the legal system of the Gaza Strip and provide a more culturally embedded means of resolving disputes, it is crucial to note the limitations of such systems⁴. Our position posits that reliance on customary law can potentially undermine the broader objective of establishing a robust, standardized legal system. The interweaving of customary law and formal legal systems can lead to inconsistencies, ambiguity, and potential inequities in the interpretation and application of the law⁶.

Customary law is often non-codified, making it susceptible to individual interpretations, which can lead to bias and unequal treatment. Furthermore, customary law may not always align with international human rights norms and standards. In particular, it may

perpetuate discrimination against vulnerable groups, such as women, and reinforce harmful traditional practices^[4].

The hybridity of Gaza's legal system, which is a mixture of Ottoman, British, Egyptian, Israeli, and Palestinian influences^[1], is already a complex phenomenon. Adding a layer of customary law, which is fluid and varies across communities, can further complicate the legal landscape. Therefore, it is argued that a focus on strengthening the formal legal system would be more conducive to ensuring justice, transparency, and accountability^{[2][3]}.

In the case of the Gaza Strip, the formal legal system should reflect the diverse historical and cultural influences while prioritizing a rights-based approach, compliant with international standards. It is important to ensure that legal principles established under the Attorney General's Office, the Bar Association, and the court system, including regular, religious, and special courts, as well as the Supreme Court of Justice, are universally applied and accessible to all citizens^{[3][5]}.

Finally, the tragic cases of "honor killings," violent crimes often justified by customary laws that uphold patriarchal societal norms, illustrate the potentially harmful influence of customary law. Despite decrees intended to deter such crimes, they persist, underscoring the importance of ensuring that the formal legal system overrides harmful customary practices when human rights are at stake.

Weaknesses and Shortcomings of Customary Law in the Gaza Strip

While customary law has deep cultural roots in the Gaza Strip and plays a significant role in conflict resolution, it carries inherent shortcomings that hinder the achievement of comprehensive justice, especially when it comes to women and girls.

Firstly, customary law often stands in contradiction to formal legal provisions. Despite formal laws advocating for gender equality, customary norms and practices can perpetuate discrimination, particularly against women^[7]. This contradiction is especially stark in matters such as marriage, divorce, and child custody, where women often find themselves at a disadvantage^[2]. Customary law, upholding patriarchal norms, grants men the authority to dominate these areas of family life, which can result in abuses like early marriage, marital rape, and unequal treatment during divorce proceedings^{[2][11]}.

Secondly, the application of customary law in the Gaza Strip is inconsistent, resulting in varying interpretations and outcomes. Unlike the codified and uniformly applied formal law, customary law changes based on local customs, practices, and interpretations by community leaders. This lack of uniformity introduces a high degree of subjectivity to rulings, making them susceptible to patriarchal biases^[4].

Thirdly, customary law often lacks procedural safeguards that ensure a fair and equitable resolution of disputes. Formal law systems are marked by established procedures that ensure due process and protect individual rights. In contrast, customary law, often

negotiated informally, lacks these safeguards^[7]. This lack of procedural protection can lead to decisions that disproportionately impact marginalized groups, especially women, who may lack the resources or societal support to advocate for their rights effectively.

Lastly, the influence of customary law on formal law can hinder progressive legal reform. The continuation of discriminatory customs and practices can obstruct the adoption of progressive legal reforms aimed at promoting gender equality and women's rights^[5].

In cases such as honor killings, the interplay between customary and formal law becomes deadly. Despite a decree intended to deter so-called honor killings by eliminating pardons for perpetrators, these crimes persist. This continuation can be partially attributed to the lack of implementation of the revised provisions and the continued influence of customary laws^[4]. The tragic case of Israa Ghrayeb illustrates the urgent need for change. Ghrayeb, a 21-year-old Muslim make-up artist from the West Bank, was reportedly beaten to death in a so-called "honor killing" for posting a selfie with her fiancé a day before their engagement. Her family denied the accusation, but an investigation concluded otherwise^[3].

Al Mezan Center for Human Rights condemned the so-called "honor killing" of a woman in the Gaza Strip. Authorities cited the protection of family honor as the motive for the killing^[18]. Al Mezan has called for all cases of honor killings to be treated as murder crimes, without seeking extenuating circumstances, and for the prosecution of all perpetrators involved^[18]. They have also urged the Palestinian authorities to fulfill their obligations under International Human Rights Law, particularly the United Nations Convention on the Elimination of all Forms of Discrimination Against Women^[18].

It is vital to emphasize that "honor killings" are a form of violence against women and are not condoned by any religion or culture. Such acts are a flagrant violation of human rights and must be vehemently condemned and rigorously punished by law.

In conclusion, while customary law is an integral part of the legal system in the Gaza Strip, it presents numerous challenges to achieving justice, particularly for women. To address these issues, there's an urgent need for legal reforms that reconcile customary practices with the principles of human rights and gender equality. This involves consistent implementation and enforcement of formal legal provisions that protect women's rights, as well as a concerted effort to challenge and change discriminatory customary practices.

Honor Killings and the Role of Customary Law

Honor killings present a grave issue in the Palestinian territories, including the Gaza Strip. These are violent crimes perpetrated with the intention to restore honor to a family, often justified by customary laws that uphold patriarchal societal norms ^[8]. A particularly tragic case that caught global attention was that of Israa Ghrayeb, a 21-year-old Muslim make-up artist from the West Bank. It was reported that Ghrayeb was beaten to death in a so-called "honor killing" for merely posting a selfie with her fiancé a day before their engagement ^[3]. While her family denied these allegations, claiming that she died of a

heart attack, an official investigation concluded that Ghrayeb's death resulted from respiratory complications due to repeated beatings, and three family members were subsequently charged ^[3].

The Palestinian nongovernmental organization, Women's Centre for Legal Aid and Counselling (WCLAC), recorded a total of 23 such killings of women in the West Bank and Gaza in 2018, with 10 occurring in Gaza and 13 in the West Bank ^{[1][2]}. These cases highlight the persistent influence of customary law, and underscore the need for systemic legal reform.

In response to public outrage following these alleged honor killings, the Palestinian Authority's Ministry of Women's Affairs announced that it would introduce a new family protection law by the end of 2019. This law was intended to amend the penal code, establish a minimum age for marriage, enhance legal protections for victims of domestic violence, impose stricter penalties on perpetrators, and train the police force in assisting victims. Importantly, it also aimed to confront the customary laws that often provide a framework within which such crimes are justified ^[2].

However, the phenomenon of women being killed under the guise of preserving family honor continues unabated in Palestine, despite the issuance of a decree intended to deter so-called honor killings by eliminating pardons for the perpetrators ^[4]. The fact that these crimes persist even after the decree's issuance is partially attributable to the lack of implementation of the revised provisions and the continued influence of customary laws ^[4].

Al Mezan Center for Human Rights recently condemned a so-called "honor killing" in the Gaza Strip, with the authorities citing the protection of family honor as the motive for the murder ^[14]. Al Mezan has called on all such killings to be treated as murders, without citing extenuating circumstances, and demanded the prosecution of all those involved^[14]. They have also urged the Palestinian authorities to uphold their obligations under International Human Rights Law, especially the United Nations Convention on the Elimination of all Forms of Discrimination Against Women^[14].

In summary, honor killings remain a severe problem in Palestinian territories, including the Gaza Strip. The Palestinian Authority has attempted to respond by introducing new legal protections. However, these efforts have not yet resulted in a significant reduction in these crimes, underscoring the urgent need for effective implementation and enforcement of these provisions, as well as confronting the role of customary laws in perpetuating such practices.

Recommendations/Solutions for Improving Women's Rights in the Gaza Strip

1. Legal Reforms: Prioritize gender equality in legal reforms and dismantle discriminatory provisions in current laws. Amend the Personal Status Law to provide equal divorce rights to women and allow children to express their views in

custody matters. Further, laws that specifically criminalize "honor killings" and promote harsher penalties should be enacted and properly enforced.

2. **Education and Awareness:** Develop and promote education programs that create awareness about women's rights and the importance of gender equality, as well as the harm caused by gender-based violence and discrimination. These campaigns should target both women and men.
3. **Strengthening Local Women's Rights Groups:** Provide additional resources and international support to local groups that advocate for women's rights, address gender disparities, and highlight the negative impact of customary law on the formal legal system. Also, promote the work of Human Rights organizations that actively work to improve the status of women in society.
4. **International Pressure:** The international community should exert pressure on the Palestinian Legislative Council to enact reforms and improve women's rights, particularly in response to violence against women.
5. **Support for Victims of Violence:** Allocate more resources for women and girls who experience violence, including "honor killings", domestic violence, and sexual harassment. This could include establishing additional shelters, providing legal and psychological support to survivors, and ensuring justice is served in such cases.
6. **Promotion of Gender-Responsive Services:** Prioritize the provision of gender-responsive services, such as health and education, which would require capacity building for service providers and integrating a gender perspective in planning and delivering services.
7. **Collaboration with the UN and Other International Bodies:** Expand collaborations with bodies like the United Nations Development Programme (UNDP) to bring in additional resources and expertise, and to ensure adherence to international human rights standards.
8. **Political Solutions:** Strive towards a peaceful resolution to the Israeli occupation, which has had significant implications for women's rights in the Gaza Strip. Ending the occupation could potentially improve women's access to services and justice.
9. **Monitoring and Reporting:** Establish mechanisms for regular monitoring and reporting of all forms of violence against women and gender-based discrimination. Transparency in reporting these issues can help in advocating for improved laws and practices.

Conclusion

The situation of women's rights in the Gaza Strip remains complex and challenging, deeply rooted in traditional societal norms, legal disparities, and the ongoing Israeli-Palestinian conflict. Instances of violence against women, gender discrimination, and lack

of adequate legal protections persist. These ongoing issues reflect a deeply ingrained disregard for women's rights and underscore the urgent need for systemic change.

While strides have been made in some areas, women in Gaza continue to face significant challenges regarding their rights, social status, and safety. The lack of gender equality is further exacerbated by the broader political instability and economic hardships faced by the region.

Nevertheless, the potential for change exists. Legal reforms aimed at ensuring gender equality, the promotion of education and awareness about gender disparities, the strengthening of local women's rights groups, international pressure, and focused diplomatic efforts can contribute substantially to improving the status of women in the Gaza Strip. It is essential that women are included in these processes and have a voice in decisions affecting their lives.

Achieving gender equality in the Gaza Strip will require long-term, sustained efforts from both local and international actors. Such an endeavor's positive impact would be far-reaching, uplifting half the population and profoundly affecting societal health, economic development, and overall peace and stability in the region. As such, improving women's rights in the Gaza Strip is not merely an issue of justice for women but a cornerstone of the broader peacebuilding and development process in Palestine.

The world cannot afford to overlook the situation of women in the Gaza Strip. Their plight is a stark reminder of the work still needed to ensure gender equality globally, and their resilience is a testament to the strength of women under even the most challenging circumstances. The potential for a brighter, more equal future for women in the Gaza Strip is within reach, but achieving this requires unwavering commitment, focused action, and a resolute dedication to the principles of human rights and gender equality.

Prepared by:

Kanan Moutaz Alsourani

Chief Executive Officer and Attorney at Law

The Palestinian Group for Advocates and Legal Consultants

July 17th, 2023

Annex:

Citation

Section 1:

1. [Palestinian Law - Wikipedia](#)
2. [Justice System - ECFR](#)
3. [Legal Status in Palestine - Birzeit University](#)
4. [Situation of the Gaza Strip - Inter-American Court of Human Rights](#)
5. [Israel's Dual Criminal System - Palestine-Israel Journal](#)

Section 2

1. [Customary Dispute Resolution Mechanisms in the Gaza Strip - Norwegian Refugee Council](#)
2. [Customary Dispute Resolution Mechanisms in the Gaza Strip - Norwegian Refugee Council](#)
3. [United Nations Information System on the Question of Palestine](#)
4. [Legal Status in Palestine - Birzeit University](#)
5. [Situation of the Gaza Strip - Inter-American Court of Human Rights](#)

Section 3

[1] <https://www.nrc.no/resources/reports/customary-dispute-resolution-mechanisms-in-the-gaza-strip/>

[2] <https://www.corteidh.or.cr/tablas/r36236.pdf>

[3] <https://www.un.org/unispal/document/auto-insert-206942/>

[4] <https://www.flyktinghjelpen.no/globalassets/pdf/reports/customary-dispute-resolution-mechanisms-in-the-gaza-strip.pdf>

[5] <http://lawcenter.birzeit.edu/lawcenter/en/homepage/legal-status-in-palestine>

[6] <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/palestinepalestinian-territories-of-west-bank-and-gaza-strip/>

Section 4

[1] <https://www.unwomen.org/sites/default/files/2022-01/Shaping-the-law-for-women-and-girls-en.pdf>

[2] <https://www.refworld.org/docid/47387b6e2f.html>

[3] https://en.wikipedia.org/wiki/Death_of_Israa_Ghrayeb

[4] <https://journals.openedition.org/etudesrurales/10550>

[5] <https://www.refworld.org/docid/4b99011fb.html>

[6] <https://www.idf.il/en/mini-sites/hamas/the-status-of-women-in-gaza/>

[7] https://www.ohchr.org/sites/default/files/WA2J_Module1.pdf

[8] <https://www.nrc.no/globalassets/pdf/fact-sheets/womens-hlp-rights-icla-fact-sheet-gaza.pdf>

- [9] <https://www.hrw.org/news/2018/06/11/human-rights-watch-womens-centre-legal-aid-and-counselling-and-equality-now-joint>
- [10] https://www.fao.org/gender-landrights-database/country-profiles/countries-list/customary-law/en/?country_iso3=MOZ
- [11] <https://www.nrc.no/globalassets/pdf/reports/the-sharia-courts-and-personal-status-laws-in-the-gaza-strip.pdf>
- [12] <https://www.ohchr.org/sites/default/files/2022-03/Center-palestine.pdf>
- [13] <https://www.nrc.no/globalassets/pdf/reports/a-guide-to-protection-and-promotion-of-womens-hlp-rights-in-the-gaza-strip/a-guide-to-protection-and-promotion-of-womens-hlp-rights-in-the-gaza-strip>
- [14] <https://www.europarl.europa.eu/document/activities/cont/201110/20111027ATT30536/20111027ATT30536EN.pdf>
- [15] <https://www.ohchr.org/en/press-releases/2022/07/experts-committee-against-torture-praise-state-palestine-supporting-female>
- [16] <https://www.nature.com/articles/s41599-023-01591-4>
- [17] <https://palestine.unwomen.org/en/what-we-do/ending-violence-against-women-3>
- [18] <https://mezan.org/en/post/24414/Al-Mezan-Condemns-%E2%80%9CHonor-Killing%E2%80%9D-in-the-Gaza-Strip-and-Calls-for-Justice>

Section 5

- [1] <https://www.hrw.org/news/2019/09/19/deadly-toll-palestinian-women>
- [2] <https://www.loc.gov/item/global-legal-monitor/2019-11-13/west-bank-palestinian-authority-announces-planned-changes-to-penal-code-in-response-to-case-of-honor-killing/>
- [3] https://en.wikipedia.org/wiki/Death_of_Israa_Ghrayeb
- [4] https://www.ohchr.org/Documents/Issues/Women/WRGS/Executive_summary_study_called_honour_killings_Palestine.pdf
- [5] <https://www.reuters.com/article/us-palestinians-women-killings/palestinian-women-demand-legal-protection-after-suspected-honor-killing-idUSKCN1VP2AW> [6] <https://www.aljazeera.com/features/2014/3/25/upsurge-in-palestinian-honour-killings>
- [7] <https://www.aljazeera.com/features/2021/11/29/palestinefemicide>
- [8] <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9819454/>
- [9] <https://magazine.zenith.me/en/society/femicide-palestine>
- [10] <https://reutersinstitute.politics.ox.ac.uk/theres-no-honour-honour-killing-paradox-femicide-palestinian-media>
- [11] <https://merip.org/1998/06/commodifying-honor-in-female-sexuality/>
- [12] <https://www.dw.com/en/palestinian-honor-killing-sparks-outrage-calls-for-womens-protection/a-50265088>
- [13] <https://www.investigativeproject.org/8276/who-is-responsible-for-palestinian-honor-killing>

Section 6

- [1] <https://www.unwomen.org/sites/default/files/2022-01/Shaping-the-law-for-women-and-girls-en.pdf>
- [2] <https://www.refworld.org/docid/47387b6e2f.html>
- [3] <https://palestine.unfpa.org/sites/default/files/pub-pdf/Gender%20Justice%20and%20The%20Law.pdf>
- [4] <https://journals.openedition.org/etudesrurales/10550>
- [5] <https://www.refworld.org/docid/4b99011fb.html>
- [6] <https://www.idf.il/en/mini-sites/hamas/the-status-of-women-in-gaza/>

- [7] https://www.ohchr.org/sites/default/files/WA2J_Module1.pdf
- [8] <https://www.nrc.no/globalassets/pdf/fact-sheets/womens-hlp-rights-icla-fact-sheet-gaza.pdf>
- [9] <https://www.hrw.org/news/2018/06/11/human-rights-watch-womens-centre-legal-aid-and-counselling-and-equality-now-joint>
- [10] https://www.fao.org/gender-landrights-database/country-profiles/countries-list/customary-law/en/?country_iso3=MOZ
- [11] <https://www.nrc.no/globalassets/pdf/reports/the-sharia-courts-and-personal-status-laws-in-the-gaza-strip.pdf>
- [12] <https://www.ohchr.org/sites/default/files/2022-03/Center-palestine.pdf>
- [13] <https://www.nrc.no/globalassets/pdf/reports/a-guide-to-protection-and-promotion-of-womens-hlp-rights-in-the-gaza-strip/a-guide-to-protection-and-promotion-of-womens-hlp-rights-in-the-gaza-strip>
- [14] <https://www.europarl.europa.eu/document/activities/cont/201110/20111027ATT30536/20111027ATT30536EN.pdf>
- [15] <https://www.ohchr.org/en/press-releases/2022/07/experts-committee-against-torture-praise-state-palestine-supporting-female>
- [16] <https://www.nature.com/articles/s41599-023-01591-4>
- [17] <https://palestine.unwomen.org/en/what-we-do/ending-violence-against-women-3>