

The Separation of Palestinian Families

In 2011, the Center for Women’s Legal Research and Consulting in the Gaza Strip (CWLRC), the Jerusalem Center for Women (JCW) and the Women’s Center for Legal Aid and Counseling (WCLAC), in collaboration with the United Nations Development Program (UNDP) and FOSI (Open Society Foundation) implemented a joint advocacy project to support Palestinian women whose rights are violated due to legislation imposed by the Israeli occupation. The project will assist them to deal with infringements of their rights, mainly related to family issues such as a woman’s right to divorce or obtain assets as documented in the marriage contract, child custody, as well as rights relating to residency, housing, freedom of movement, access to health services, and the right to education and work.

Introduction

Since the Israeli occupation of Palestine in 1948 until today, Palestine has been divided geographically and the Palestinian people are therefore divided into citizens with different identities: Palestinians who live in Jerusalem hold a Jerusalem identity (ID) card that enables them to reside inside the Jerusalem municipal borders, as defined by the Israeli occupation - or inside the Green Line; this allows them access to education, health care and other services. Palestinians living in the West Bank or the Gaza Strip are under the control of the Palestinian Authority, or the “Palestinian administrative authorities” as defined in the Oslo Accords.¹ They hold Palestinian identity documents usually issued by the Palestinian Authority. According to these documents, citizens residing in the Gaza Strip have no right to move between the West Bank, the Gaza Strip, Jerusalem, or the Green Line areas, while Palestinians living in the West Bank are denied the right to move between Jerusalem and the Gaza Strip. According to the Israeli law of infiltration,² any person holding a Palestinian identity document found inside the Green Line may be arrested and detained.

The Israeli occupation imposes a variety of laws and regulations on Palestinians. In the Gaza Strip for instance, Palestinians are subject to mandatory legislation put in place by

1 The Oslo Accords are an agreement signed by Israel and the PLO in September 1993 as the first direct official agreement between the two parties. The agreement provided for the establishment of Palestinian interim self-government (known later as the Palestinian National Authority) for a transitional period. The main issues of Jerusalem, refugees, settlers, security arrangements and borders were left for later negotiations.

2 Military orders 1649 and 1650 on infiltration defined infiltrators as all those entering the area illegally or those present in the area without a legal permit.



the Egyptian authorities during their rule of the Gaza Strip after 1948. Palestinians in the West Bank are still governed by Jordanian laws, while citizens of occupied Jerusalem are controlled by Israeli laws and the Jordanian Personal Status Law.

Many Palestinian families are separated as a result of the different identity documents and Israeli laws and policies that restrict the movement of Palestinians and limit the reunification of families. The suffering of families is exacerbated by the different judicial systems and laws in force in the Palestinian territories and Israel; it is primarily family issues that end up in courts such as divorce, alimony and child custody.

Israeli Violations of International Law

Israel imposes laws that are contrary to international conventions on human rights and refrains from applying international agreements related to Palestine in flagrant violation of international law. Palestinian citizens who reside in the Palestinian territories under the Israeli occupation are therefore subjected to infringements of their rights or access to humanitarian services.

Palestinian women are not only denied residency rights as Palestinians, but also as women in breach of UN Security Council Resolution 1325 which protects women during armed conflict and endorses their role and status, in addition to other international commitments to protect women and children the ravages of armed conflict.

Article 13 of the Universal Declaration of Human Rights stipulates that “Everyone has the right to freedom of movement and residence within the borders of each state”. Israel has disregarded this right by imposing restrictions on the movement of Palestinian citizens by a variety of means, including checkpoints established by the Israeli army to both divide the West Bank internally and separate it from Jerusalem and the Gaza Strip. This is a clear violation and infringement of all civil and political rights.

Palestinian families continue to suffer as their rights are violated

The different identity documents³ held by Palestinians depending on their place of residence may give rise to confusion within the same family, primarily in the case of marriages when a couple hold two different ‘identities’. However, Palestinians continue to marry despite this obstacle.

The Citizenship Act of 2003 is an Israeli law that prohibits the granting of residency rights

3 An identity card is proof of the holder’s geographical place of residence and therefore identifies the rights of the holder in relation to access to health, educational and other services or defines the jurisdiction of a court.



or citizenship to any person from the Palestinian territories occupied in 1967 if they marry Israeli citizen, whether the latter holds an Israeli passport or a Jerusalem identity card. Israel also imposes restrictions and strict regulations on applications for family reunification and many such applications have been rejected. This prevents applicants from entering Jerusalem or areas inside the Green Line to visit their relatives. Families face the decision of having to choose between either residing in the location where the application was submitted and not visit their relatives until approval of reunification is granted, although there is no guarantee that an application will be approved, or choosing not to apply for reunification and move with their partners to an area in Jerusalem or inside the Green Line where their status is at risk. If they choose to stay with their families with an expired permit, they are vulnerable to deportation or re-entry may be denied if they are arrested.⁴

Women pay the price

A woman who wishes to marry faces two options: either to proceed with legal residency procedures and apply for reunification, or not apply for reunification and reside outside Jerusalem and the Green Line areas. If she holds a Jerusalem ID card and decides to live with her husband who holds a Palestinian ID card, she puts her ID card at risk as the Israeli authorities can deny her access to many services, including social insurance, health and education.

A woman who holds a Jerusalem ID or Israeli citizenship may lose her right to residency or citizenship when she marries a non-Jerusalemite or a Palestinian not residing inside the Green Line. If she moves to reside with her husband and children there are many bureaucratic procedures to be overcome and the rights of the children may be put at risk, mainly their right to citizenship. They may lose access to health and education as their mother will be denied health insurance for her children or the right to register them in schools due to changing her place of residence.

- A woman from the West Bank or Gaza Strip who marries someone holding a Jerusalem ID cannot seek a divorce from her husband as she would be subject to incarceration and eventually deportation as it would be illegal for her to remain in Jerusalem under Israeli law.
- There are procedures that limit access to child custody imposed on women with Palestinian ID documents. Israeli courts demand a report from the Israeli Ministry of Social Affairs on the welfare of the children; if a woman lives in the West Bank, the Ministry's report will deny her the right to child custody regardless of her legal eligibility.

4 MIFTAH, «Family Reunification», 6 August 2007. Available at <http://www.miftah.org/Display.cfm?DocId=14464&Category=4> (visited 20 September 2011.)



- A Palestinian woman residing in the West Bank and Gaza Strip would lose her right to see her children as she cannot enter Israel without an Israeli permit.
- A woman without a Palestinian ID document cannot have access to health services even in an emergency as she does not hold the same ID as her husband. She cannot travel between the West Bank and Jerusalem or the Gaza Strip to gain access to such services because of the threat of deportation, nor can she return to her place of residence if she leaves Jerusalem or an area inside the Green Line.
- A woman who wins a ruling in her favor in an Israeli court cannot have the ruling enforced in either Jerusalem or the Palestinian territories; the Israeli authorities will not intervene if the husband holds Palestinian ID and the PA will not intervene if the husband holds a Jerusalem ID card.

Recommendations

The difficulties facing women due to the complex laws and procedures and the Israeli occupation of the Palestinian territories, leads to the separation of families. The failure of the international community to intervene to resolve these issues means that the bitter reality of racial discrimination and human rights violations will continue.

The situation of Palestinian women is a special case that cannot be ignored. It is not merely a social issue, but also a political and economic problem as women face three circles of discrimination: first, gender-based discrimination by an occupying military power that denies her participation in the decision-making process. Secondly, a Palestinian woman living in Israel faces discrimination on the basis of race – as do both men and women. Thirdly, the impact of a variety of social values and traditions. Therefore, it is imperative that all concerned parties assume responsibility towards the Palestinian people under occupation and implement measures to restore their dignity and humanity. Thus, we recommend and call for the following:

Internationally:

We call on the United Nations, the UN Security Council and all international and Arab institutions to:

- Denounce Israeli discriminatory policies and failure to abide by international laws and conventions.
- Compel Israel to respect and abide by the provisions of international law, treaties on human rights and international humanitarian law with respect to Palestinians. Also, to halt existing policies and implement the instruments that provide protection to



Palestinians and respect for their basic rights and freedoms: primarily the Fourth Geneva Convention on the protection of civilians under occupation, on all land occupied in 1967 (the Gaza Strip, the West Bank and East Jerusalem) that are under military occupation. Israel must implement all international agreements related to human rights and women's rights, especially UN Security Council resolutions pertinent to the Palestinian cause.

- The UN special rapporteurs must play their role of monitoring and inspecting infringements committed by Israel as an occupier against Palestinian citizens and submit them to the UN Secretary General to take the necessary action.
- The Human Rights Council and special committees related to the application of international human rights conventions must uphold their obligations towards Palestinians by holding the occupying state accountable for violations of these conventions.
- The contracting states must compel Israel to apply the law of belligerent occupation, which, according to the Fourth Geneva Convention on the Protection of Civilians in Time of War of 1949, states that laws and regulations relating to the lives of civilians under occupation shall not be changed. They must also obligate Israel to assume its responsibilities, fulfill its obligations towards these conventions, and respect and apply measures provided for in international agreements and conventions on human rights.
- As the agency that issued Resolution 1325, the United Nations must assume its international responsibilities and obligations to protect women and children from the ravages of armed conflict.
- Urge the UN and its agencies to exert immediate pressure on Israel to annul all discriminatory laws and regulations, including military orders against Palestinians in the occupied Palestinian territories, to guarantee Palestinians freedom of movement in the occupied territories and the right to residency, and to force Israel to abolish the Law of Citizenship, which consolidates racial discrimination against all Palestinians: this will enable every Palestinian to exercise their right to residency.
- To force Israel to abide by its responsibility as an occupying state and in accordance with international law to permit women to obtain marriage documents of the same status as those of their husbands and vice-versa once a marriage contract is undertaken without legal obstacles, without the requirement of an application by the husband and without relevance to the age of the applicant.
- To oblige the Israeli authorities to allow women the right to see their children or



assume custody of them regardless of their place of residence. They should also guarantee women freedom of movement between all geographical areas without restrictions.

- To oblige the Israeli authorities to enforce all rulings obtained by women throughout the territories without restrictions and to remove all obstructions faced by women in the application of such provisions.

Locally:

On a national level, we call on the Palestinian National Authority (PNA) and the legitimate government to take the following actions:

- The PNA and the legitimate government must assume their responsibilities towards Palestinian women by implementing clear strategies to deal with the separation of families resulting from the different laws.
- Unify laws in the Palestinian Authority's territories, comprising the West Bank and the Gaza Strip, by ending the division between Palestinians that only cause greater fragmentation and disintegration of the Palestinian social and political structure and do not promote the national cause, while taking into account the geographical reality imposed by the Israeli occupation.
- Document, survey and monitor Israeli violations against Palestinians and provide aid to the victims of these violations.
- Adopt special measures and health policies for women, especially those residing in Jerusalem without any health insurance, by forming contracts with hospitals in Jerusalem that can offer them access to the health services they are deprived of by virtue of the regulations and policies of the Israeli occupation.
- Implement all rulings obtained by women holding a Jerusalem ID throughout the territories without any impediments and assist them to overcome all obstacles necessary to enable the application of rulings.



We urge all human rights organizations to intensify their efforts at every level to support the case of women against the separation of Palestinian families resulting from the different laws and procedures imposed by the Israeli occupation authorities. We also call upon partner institutions to continue their documentation of Israeli violations of women's rights and to provide them with every possible support.

To learn more about work relating to the separation of Palestinian families, please communicate with the following partner institutions:

Women's Center for Legal Aid and Counseling

Ramallah - Palestine
Batn al-Hawa - Wadi'a Shatara St.
Tel: + 0970 2 - 2956147
Fax: + 0970 2 - 2956148
Email: info@wclac.org / www.wclac.org

Jerusalem Center for Women

Jerusalem - Palestine
Beit Hanina- Sbeih building
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www.j-c-w.org/brokenfamilies



