



European  
University  
Institute

Robert Schuman Centre for Advanced Studies

# Gender and Migration in Palestine

*Asem Khalil*

---

---

**CARIM Analytic and Synthetic Notes 2010/68**

---

---

**Gender and Migration Series**  
*Legal Module*



**CARIM**  
**Consortium for Applied Research on International Migration**

**Analytic and Synthetic Notes – Gender and Migration Series**  
**Legal Module**

**CARIM-AS 2010/68**

**Gender and Migration in Palestine**

**Asem Khalil**

Director of Ibrahim Abu-Lughod Institute of International Studies, Birzeit University

This publication is part of a series of papers on Gender and Migration written in the framework of the CARIM project and presented at a meeting organised in Florence: “Gender and migration in Southern and Eastern Mediterranean and Sub-Sahara African countries” (18-19 October 2010).

These papers will be discussed in two meetings between Policy Makers and Experts on the same topic in winter 2011. The results of these discussions will also be published.

The entire set of papers on Gender and Migration are available at <http://www.carim.org/ql/GenderAndMigration>

© 2010, European University Institute  
Robert Schuman Centre for Advanced Studies

This text may be downloaded only for personal research purposes. Any additional reproduction for other purposes, whether in hard copies or electronically, requires the consent of the Robert Schuman Centre for Advanced Studies.

Requests should be addressed to [carim@eui.eu](mailto:carim@eui.eu)

If cited or quoted, reference should be made as follows:

[Full name of the author(s)], [title], CARIM AS [series number], Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, [year of publication].

THE VIEWS EXPRESSED IN THIS PUBLICATION CANNOT IN ANY CIRCUMSTANCES BE REGARDED AS THE OFFICIAL POSITION OF THE EUROPEAN UNION

European University Institute  
Badia Fiesolana  
I – 50014 San Domenico di Fiesole (FI)  
Italy

<http://www.eui.eu/RSCAS/Publications/>  
<http://www.carim.org/Publications/>  
<http://cadmus.eui.eu>

## **CARIM**

The Consortium for Applied Research on International Migration (CARIM) was created at the European University Institute (EUI, Florence), in February 2004 and co-financed by the European Commission, DG AidCo, currently under the Thematic programme for the cooperation with third countries in the areas of migration and asylum.

Within this framework, CARIM aims, in an academic perspective, to observe, analyse, and forecast migration in Southern & Eastern Mediterranean and Sub-Saharan Countries (hereafter Region).

CARIM is composed of a coordinating unit established at the Robert Schuman Centre for Advanced Studies (RSCAS) of the European University Institute (EUI, Florence), and a network of scientific correspondents based in the 17 countries observed by CARIM: Algeria, Chad, Egypt, Israel, Jordan, Lebanon, Libya, Mali, Mauritania, Morocco, Niger, Palestine, Senegal, Sudan, Syria, Tunisia, and Turkey.

All are studied as origin, transit and immigration countries. External experts from the European Union and countries of the Region also contribute to CARIM activities.

CARIM carries out the following activities:

- Mediterranean and Sub-Saharan migration database;
- Research and publications;
- Meetings of academics and between experts and policy makers;
- Migration Summer School;
- Outreach.

The activities of CARIM cover three aspects of international migration in the Region: economic and demographic, legal, and socio-political.

Results of the above activities are made available for public consultation through the website of the project: [www.carim.org](http://www.carim.org)

*For more information:*

Euro-Mediterranean Consortium for Applied Research on International Migration

Robert Schuman Centre for Advanced Studies (EUI)

Convento

Via delle Fontanelle 19

50014 San Domenico di Fiesole

Italy

Tel: +39 055 46 85 878

Fax: + 39 055 46 85 755

Email: [carim@eui.eu](mailto:carim@eui.eu)

**Robert Schuman Centre for Advanced Studies**

<http://www.eui.eu/RSCAS/>

## **Abstract**

This paper is concerned with legal rules and institutions in Palestine directly or indirectly affecting migrant women. In particular, this paper sheds light on family reunification, personal status, and nationality laws.

Despite the Palestinian Authority's apparent commitment to rejecting sex discrimination and in combating violence directed against women, there are still social and legal obstacles that hinder full equality. In fact, legal rules and institutions have not always been – and, indeed, are still not – gender-neutral.

It is not evident if and how such legal rules and institutions hinder or encourage female migration. It is nonetheless fair to say that this legal context is an important factor in determining women's decisions to emigrate from, and may affect women's willingness to immigrate to, Palestine. This is particularly true given that such legal provisions are accompanied by social norms that are often discriminatory towards women.

The Palestinian Authority's lack of sovereign control over borders in the occupied Palestinian territory as much as its population register hinders the adoption of rules, and the implementation of policies, related to migration, including those that target female migrants.

## **Résumé**

Cet article porte sur les règles et institutions, en Palestine, qui affectent directement ou indirectement les femmes migrantes. Il met particulièrement en lumière le cadre juridique régissant le regroupement familial, le statut personnel et la nationalité. En dépit d'un engagement apparent de l'Autorité palestinienne à l'encontre de toute discrimination fondée sur le sexe et pour combattre la violence faite aux femmes, des obstacles sociaux et juridiques empêchent toujours une pleine égalité.

En réalité, les règles et institutions ne sont toujours pas neutres en matière de genre, mais il n'est pas évident d'en conclure qu'elles entravent ou encouragent la migration féminine. Il paraît néanmoins juste de penser qu'un tel contexte est un facteur déterminant dans les décisions des femmes d'émigrer de la Palestine, ou de venir immigrer en Palestine. Ceci est particulièrement vrai du fait que ces règles s'accompagnent de normes sociales qui sont souvent discriminantes à l'égard des femmes.

Enfin, le manque de contrôle souverain de l'Autorité palestinienne sur les frontières du territoire palestinien occupé ainsi que sur l'enregistrement de sa population freinent l'adoption de règles et l'application de politiques concernant la migration, y compris celles qui viseraient les femmes en particulier.

## **I. Introduction**

This paper is concerned with legal rules and institutions in Palestine that directly or indirectly affect migrant women. In particular, this paper sheds light on family reunification (section II), personal status (section III), and nationality laws (IV).

Despite the Palestinian Authority's apparent commitment to rejecting sex discrimination and in combating violence directed against women, there are still social and legal obstacles that hinder full equality. In fact, legal rules and institutions have not always been – and indeed are still not – gender-neutral.

It is not clear whether and, if so, to what extent, such legal rules and institutions hinder or encourage female migration. It is nonetheless fair to conclude that this kind of a legal context would be an important factor that determines women's decisions to emigrate from, and may affect women's willingness to immigrate to Palestine. This is particularly true given that such legal provisions are accompanied by social norms that are often discriminatory towards women (section V).

The Palestinian Authority's lack of sovereign control over the borders of the occupied Palestinian territory as much as of its population register hinders the adoption of rules, and the implementation of policies, related to migration, including those that target female migrants (sections VI & VII).

## **II. Family reunification**

### **II.1 Legal consequences of family reunification's rules**

For the Palestinian Authority, there are no specific legal consequences for women who have obtained family reunification in a third country. The only difference is when host countries have migration-related regulations that constitute obstacles towards family reunification (e.g. family reunification in cases of polygamy).<sup>1</sup>

Israel – having full control of borders of the occupied Palestinian territory – does not have any specific regulation either. Historically speaking, however, there were different military orders that have regulated entry to the 'areas' under Israeli control since the 1967 occupation and that have restricted access to Palestinian nationals – males and females – whenever conditions imposed by Israel are not respected (such as return within a certain time or the registration of new-born children within certain deadlines).

For Palestinian refugees in host countries things are even more complicated than this. Their legal status is fragile, it depends on the national regulation of the host country, and is subject to continuous changes in regulations. In particular Palestinian refugees in Lebanon and Egypt (as much as Gazans in Jordan) often risk being denied re-entry to the host country if they leave because their legal status as refugees does not guarantee their automatic right to be readmitted to the country of first refuge.

### **II.2 Cooperation between institutions**

The Palestinian Expatriates Affairs Department (PEAD) – established by President Abbas only in 2007 – is the body responsible for Palestinian communities in the Diaspora (with the exception of the five areas of operation of the UNRWA) and has the special task of working together with and coordinating host countries.

---

<sup>1</sup> See below section 1.3

The PEAD participates in the Arab-League meetings related to migrants and expatriates in the name of Palestine.<sup>2</sup> In 2008 for example, Arab Ministers responsible for migration and expatriates met in Cairo. The recommendations of the meeting included a call for all (Arab states) national institutions working on migration to coordinate their efforts in combating illegal migration, while, at the same time, receiving countries of Arab immigrants were to adopt consistent policies that facilitated Arab immigrants' requests.<sup>3</sup> There is no reference to family reunification or to women in general.

### II.3 Family Reunification in Case of Polygamy

Palestinian penal codes consider polygamy a crime, whenever committed by a Palestinian whose personal status law does not permit multiple marriages.<sup>4</sup> Muslim personal status laws permit a man to be married to up to four women at one time,<sup>5</sup> subject to certain constraints.<sup>6</sup> Christian personal status laws do not.

According to Muslim personal status laws, the wife has the obligation of obedience and also must reside in her husband's house.<sup>7</sup> A man married with more than one wife cannot oblige them to reside together and needs to provide autonomous accommodation for each wife, and treat them equally. Personal status laws also oblige the wives to obey their husbands whenever they decide to change their residence. They are obliged by law to follow their husband even when he decides to reside outside the country.<sup>8</sup>

When receiving countries do not accept reunification with more than one wife, there is a dilemma. Polygamy is permitted only if women are treated equally. If one of the wives is abandoned by her husband who immigrates and if she is unable to join him, it is possible for the judge to decide to end the marriage.<sup>9</sup> There are no rules involving the Palestinian Authority with regards to the coordination for a choice of one of the wives for the simple reason that this would be against the law - and most importantly against the *shari'a* that obliges common residence between husband and wife or wives. Deciding which wife to be considered for the purposes of family reunification is a choice that individuals make. Such choices means in practice giving other wives - who are not able to reach their husband in their place of residence - the possibility of legally-approved divorce.

### II.4 Supporting women before or during the migration procedure

The fact that host countries require long-term visas from the origin country before entering the host country is particularly damaging for Palestinians. The legal status of Palestinian refugees in host Arab countries such as Lebanon and Egypt does not constitute a guarantee to re-enter the host country (they are often required to have a return visa); at the same time, they are denied return to Palestine or even to the West Bank and Gaza Strip. On a different note, it should be noted that the Palestinian Authority does not have specific rules or mechanisms to support women before or during the migration process.

---

<sup>2</sup> Khalil, *Dealing with Highly-Skilled Migration: The Case of the Palestinian Authority* 2010, 4

<sup>3</sup> <http://www.pead.ps/news.php?action=show&id=91>

<sup>4</sup> See art 280 / 1 of Art. (Jordanian) Penal Code Law no.16 of 1960 (in force in WB) and art.181 of (British) Penal Code Ordinance no.74 of 1936 (in force in GS).

<sup>5</sup> See article 28 of (Jordanian) Personal Status Law No.61 of 1976 (applicable in the West Bank) and article 14 of Family Rights Law (Order No.303 of 1954) (applicable in Gaza Strip)

<sup>6</sup> For more, see (Welchman 1999, 81).

<sup>7</sup> See article 37 of Personal Status Law No.61 of 1976

<sup>8</sup> See article 37 of Personal Status Law No.61 of 1976

<sup>9</sup> See article 123 and 124 of Personal Status Law No.61 of 1976.

## II.5 Family Re-unification Regulation

The transfer of powers related to the population registry and documentation from the Israeli military government and its Civil Administration to the Palestinian side was regulated by article 28 of the Protocol Concerning Civil Affairs.<sup>10</sup> The General Authority of Civil Affairs is the body responsible on the Palestinian side for family unification.

Such powers, however, are constrained by the *de facto* Israeli presence in the occupied Palestinian territory, and Israeli control over the Palestinian borders. As a result, family unification was – and still is – completely dependent on Israeli military commanders rather than on the Palestinian Authority itself. In other words, the Palestinian Authority has served as a “broker between the Palestinians and the Israeli authorities.”<sup>11</sup>

Israel dealt with family unification as a benevolent act, not as a right that individuals are entitled to. Requests of family unification did not even depend on the satisfaction of objective conditions imposed by the law, but depended instead on changing Israeli policies – often used as a tool of political pressure.<sup>12</sup>

Family unification is possible for first degree relative/relatives. The applicant must be a resident (holding an ID number) and provide a copy of a valid marriage certificate.<sup>13</sup> Theoretically speaking, there are no restrictions on applying for family reunification for wives in case of polygamy – they are all first-degree relatives. The applicant can equally be male or female.<sup>14</sup>

Family reunification procedure is often applied in cases where spouses are from different ‘areas’ under Israeli control (e.g. the West Bank and Gaza Strip). In the early years of the Palestinian Authority, such a change was often made without difficulties. Following the 2005 unilateral disengagement plan and Hamas taking control of the Gaza Strip in 2007, changing address in the West Bank has become a complicated process.

Family unification where one of the spouses is from East Jerusalem is even more complicated, almost impossible to manage, especially after the adoption of the Nationality and Entry into Israel (Temporary Order) Law, 5762 of 2003.<sup>15</sup> The law was amended by the Knesset in 2005 but its restrictions are maintained.<sup>16</sup>

## II.6 Rights of the new comers

Palestinian Labor Law distinguishes between Palestinians and non-Palestinians for the purposes of the right to work. Only non-Palestinians need request a permit to work legally in the West Bank and on the Gaza Strip. However, the criterion for distinguishing between a Palestinian and a foreign national is problematic.

Many Palestinian nationals who are present in the occupied Palestinian territory do not hold a valid document for stay (largely a result of restrictive Israeli policies towards them). For Israel they are illegally residing in the areas. These include hundreds of spouses of Palestinian nationals who were

---

<sup>10</sup> Annex 1 to the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip signed on September 28, 1995 (*hereafter* Interim Agreement)

<sup>11</sup> B'Tselem 2006, 12

<sup>12</sup> Khalil, Family Unification in the Occupied Palestinian Territory 2009

<sup>13</sup> See conditions as published by the General Authority of Civil Affairs: <http://www.mca.gov.ps/comprising.asp>

<sup>14</sup> This was not always the case. For a historical sketch of the way family unification was regulated by subsequent Israeli military orders, *see* (Khalil, Family Unification in the Occupied Palestinian Territory 2009)

<sup>15</sup> *See* (Khalil, Family Unification in the Occupied Palestinian Territory 2009, 10)

<sup>16</sup> *See* (B'Tselem 2005)



denied family reunification (by Israel) for years. Those who obtain an ID number as a result of a family-unification procedure (the newcomers) have similar rights as other Palestinians, including, of course, the right to work.

### III. Personal status

#### III.1 Personal Status Laws and Female Emigration

Personal status law hinders female emigration in that it adds the obligation of obedience to husbands at work, in residing in the marital house and in moving and travelling. Obedience as a duty imposed on women is explicitly linked to the right to maintenance.<sup>17</sup>

Historically speaking, *ta'a* rulings were forcibly executed (with police escorting disobedient women to the marital home). Currently, however, forcible execution came to an end in both applicable personal status laws.<sup>18</sup> Nothing in the legislation or in the practice suggests that a *ta'a* ruling can be used as a pretext to justify forbidding a woman from travelling abroad.

For civil matters, indeed, women are autonomous in their application for a Palestinian Authority travel document. This is not, however, a right that is codified and protected by law, but only a decision undertaken by the Palestinian Authority seemingly after pressure on the part of civil society organizations.<sup>19</sup>

Currently, there are no special restrictions whatsoever for females applying for travel document, since females – as much as males – are assigned an ID number upon birth and can apply for an ID card when they reach 16 years old.<sup>20</sup> Those who do not have a Travel Document need a permit, valid for one trip alone. The permit is issued for both males and females.

Females can apply individually for visas and there are no restrictions upon their entry to and movement from the West Bank and Gaza Strip autonomously.

#### III.2 Evolution in Personal Status Law

There is a draft unified Personal Status Law that has been in circulation for many years.<sup>21</sup> The draft does not include substantive changes when it comes to issues related to ‘house of obedience’, obligation of residence in the marital house, and the obligation to follow the husband wherever he decides to reside.

---

<sup>17</sup> Welchman 1999, 122

<sup>18</sup> This occurred in Jordanian Personal Status Law of 1976 by changing in the words of the legislation. *See* (Welchman 1999, 124-5). In the Gaza Strip, this was explicitly excluded as in article 219 of the Law of Procedures in Shari'a Courts (No. 12) of 1965.

<sup>19</sup> For more, *see* (Bullata 2006, 113-114). The author talks about a Presidential Decree guaranteeing women's right to apply individually and autonomously for a Travel Document. This author could not find this Presidential Decree in the official journal.

<sup>20</sup> The Palestinian Police official website indicates that any citizen holding an ID number can apply for a Palestinian Travel Document, regardless of the age (and, of course, of sex). *See* <http://www.palpolice.ps/wp-content/themes/police/Print.php?p=391>

<sup>21</sup> For a discussion on reform in personal status law, *see, generally*, (Sh'hada 2003, 44ff).

### III.3 Mixed and Temporary Marriages

Personal status laws (for Muslims) forbid the marriage of a Muslim female to a non-Muslim male,<sup>22</sup> and a Muslim male to a female from outside *'Ahl al-Kitāb* (literarily: 'People of the Book', referring to those whose religion is Judaism or Christianity).<sup>23</sup> Both personal status laws reject marriage of convenience and temporary marriages.<sup>24</sup>

## IV. Nationality Laws

### IV.1 Transmitting Nationality

The Palestinian Authority has not adopted a nationality law yet. Historically-speaking, nationality laws were discriminatory against women. Under British Mandate, only Palestinian males could transmit their nationality to their children since females followed the nationality of their husbands.<sup>25</sup> Similar provisions were present in Jordanian Nationality Law No. 6 of 1954 (applicable on the Palestinians of the West Bank),<sup>26</sup> while the Gaza Strip under Egyptian rule maintained the British mandate nationality law.<sup>27</sup>

Palestinians under Israeli occupation were subjected to changing regulation related to registration of children. Most relevant change occurred in 1987 that linked the registration of children to females holding an ID number resulting in children with parents whose mother does not hold an ID number being denied registration. This order remained in force until 1995.<sup>28</sup>

It should be noted that Arab states forbid dual Arab nationalities in line with Arab League resolutions.<sup>29</sup> Palestinian refugees in host Arab countries automatically lose their right to a travel document for refugees if they obtain a nationality of a third state. In Jordan, there are cases of the withdrawal of Jordanian nationality even for those who obtained a Palestinian Authority Travel Document<sup>30</sup> - as if they have acquired a new Arab nationality! But the Palestinian Authority is not a state; as such, an ID number like the Palestinian Authority Travel Document is not indicative of nationality.<sup>31</sup>

There are no consequences whatsoever for Palestinian females who obtain a legal title of stay or even nationality in a third country. They maintain their ID number. The ID number is indicative of a legal status similar to permanent residency in the 'areas' (a term indicating areas that fell under Israeli occupation in 1967 and that cover the current West Bank, East Jerusalem, and the Gaza Strip) rather than citizenship. Once duly registered, children of ID Cards holders (both males and females) obtain an ID number.

---

<sup>22</sup> Article 33 of Personal Status Law No. 61 of 1976 and article 37 of Family Rights Law (Order No.303 of 1954)

<sup>23</sup> Article 33 of Personal Status Law No. 61 of 1976

<sup>24</sup> Article 34 of Personal Status Law No. 61 of 1976 and article 34 of Family Rights Law (Order No.303 of 1954).

<sup>25</sup> See article 6 and 12 of Palestinian Citizenship Order.

<sup>26</sup> See article 8.

<sup>27</sup> For more about historical development of nationality laws, see (Khalil, Palestinian Nationality and Citizenship: Current challenges and Future Perspectives 2007, 20-25).

<sup>28</sup> For more about Israeli military orders for the registration of children born to parents where at least one does not hold an ID number, see (Khalil, Family Unification in the Occupied Palestinian Territory 2009, 6-7).

<sup>29</sup> Badil 2007, 126

<sup>30</sup> Said 2005, 350

<sup>31</sup> For more about Palestinian refugees in host Arab countries, see (Khalil, Palestinian Refugees in Arab States: A Rights-Based Approach 2009).

## IV.2 Female Emigration and Nationality

Palestinian women used to lose their nationality upon marriage to a foreign national. They could be reintegrated, however, by a special naturalization process. Currently this is no longer the case because Palestinian women do not lose their ID card upon marriage to a foreign national. On the contrary, their spouse can apply for an ID number through family unification and her children can be registered and obtain an ID number upon birth. The process is not guaranteed. In many cases requests are simply rejected. In others they are granted a special visit permit that needs to be renewed. Even when the requests are accepted, the process itself is long and financially exhausting to the point that many Palestinian simply give up on family reunification all together.

## IV.3 Integrating Female Immigrants

There is no gender difference when it comes to obtaining an ID number through family unification for spouses. Both males and females are, however, subject to changing and restrictive Israeli policies and family reunification is not considered by Israel as a right.

## V. Discrimination

### V.1 Incentive or Hindrances of Female Emigration

Labor Law states expressly that it is wrong to discriminate on the basis of the circumstances and conditions of work in Palestine.<sup>32</sup> More specifically, the law forbids discrimination between men and women.<sup>33</sup> The fact that the Labor Law does not apply to domestic staff<sup>34</sup> is particularly problematic since these kinds of jobs often involves women.

Civil Service Law does not refer to equal treatment or the prohibition of discrimination expressly but, rather, defines a functionary (covered by the law) as being “a male or female employee being a person appointed by decision of a competent authority to fulfil a function listed in the civil functional categories regulations and funded by a government department, whatever the nature or title of the function.”<sup>35</sup>

Accordingly, there are no reasons to believe that work conditions encourage female emigration. At the same time, however, there are no legal hindrances preventing women from exiting the country. They can leave the country without authorization and can leave with their children. There are though certain provisions in Palestinian personal status laws as much as in penal codes that are not gender-neutral.

In personal status laws, women are still treated differently when it comes to hereditary rules (two women for one man), the right to form a family (Muslim women can marry only Muslims, while a Muslim man can marry non-Muslims), the right to a monogamous marriage (a woman can have only a single husband, while men can have up to four at the same time), the right to put an end to marriage (women can divorced by the decision of the husband while they cannot divorce except through a court decision).

---

<sup>32</sup> Art.16 of the Labour Law no.7 of 2000

<sup>33</sup> Art.100

<sup>34</sup> Article 3, par.2.

<sup>35</sup> Art.1 of the Law Relating to Promulgation of the Civil Service Law no.4 of 1998.

In the penal code, women are disadvantaged by discriminatory provisions related to adultery<sup>36</sup> and rape.<sup>37</sup> A common experience relates to what is often referred to as ‘honor crimes’. The penal code, indeed, provides that a man who kills or injures his wife, sister, daughter, or mother,<sup>38</sup> and their partner, when surprising them committing adultery, enjoys excusable circumstances. A man enjoys, instead, attenuated circumstances, whenever he surprises them illegitimately in bed, even without them necessarily having sexual relations.<sup>39</sup>

It is perhaps naïve to think that such discriminatory legal provisions constitute a push factor for women. It is fair, however, to consider that this legal framework is not irrelevant for women’s decisions to leave the country, especially when such provisions are coupled with social norms, that are often discriminatory towards women.

## V.2 Female Emigration Opportunities

The Higher Education Law No.11 of 1998 has established that higher education is a right for all citizens.<sup>40</sup> This includes study abroad.<sup>41</sup> Accordingly, female students have the same opportunities for study abroad as male students, legally speaking. Socially speaking, things may be different, of course. The available literature suggests that they suffer marginalization when it comes to educational opportunities.<sup>42</sup>

The Palestinian Authority does not have any bilateral agreement dealing specifically with female temporary migration. The Palestinian Authority does not have any specific incentives aiming at encouraging female return after migration. Finally, there are no special national rules that affect women abroad in particular.

## V.3 Rules targeting female Immigration

The Palestinian Authority has no powers of control over the occupied Palestinian territory. The Palestinian Authority has not concluded any bilateral agreement regarding female temporary immigration and does not have special rules or mechanisms targeting immigration in general, and female immigration in particular.

---

<sup>36</sup> 36 In case of adultery, females are punished with 6 months to two years, while the partner is punished with the same punishment if married, or 3 months to a year if he is not (Art.282/1 of (Jordanian) Penal Code Law no.16 of 1960). While a married man is punished with only 1 month to a year if he commits adultery in his same house (Art.283 of (Jordanian) Penal Code Law no.16 of 1960). Complaints for adultery can be made against females by the husband, while married and until 4 months after divorce or by her tutor if not married, while only a wife can file against a husband’s adultery (Art.284 of (Jordanian) Penal Code Law no.16 of 1960).

<sup>37</sup> Rape, on the other hand, is within what can be called honor crimes. In this sense, the penal code is no different from many penal codes all over the world which perceives rape, not as directed against the life and body of a female, but for what she represents to society, i.e. the honor, not hers necessarily but that of her family. In that same direction, the penal code provides that one of the aggravated circumstances is rape of a virgin, causing the loss of virginity! (Art.301/1 of (Jordanian) Penal Code Law no.16 of 1960, *see also* art.304). Penal code distinguishes between adultery and rape with a non-consenting female. However, what is shocking about the law is that it excludes the sexual relationship with the wife without her consent from cases to be considered as rape (Art.292/1 of (Jordanian) Penal Code Law no.16 of 1960). More shocking still is the provision that ends prosecution if the rapist marries his victim (Art.308 of (Jordanian) Penal Code Law no.16 of 1960).

<sup>38</sup> The law refers to (maharem), which refers to all females, a male is forbidden from having a sexual relationship with, such as mother, grandmother, daughter and grand-daughter, niece and her daughter, sister, and aunt.

<sup>39</sup> Art.340 of (Jordanian) Penal Code Law no.16 of 1960.

<sup>40</sup> Art. 2.

<sup>41</sup> Art. 4, par.1.

<sup>42</sup> *See, e.g.,* (Abdo 2000).

Female immigrants have equal opportunities and discrimination based on sex is expressly banned by law. There are no gender-oriented jobs, but there are some limitations imposed by Labor Law No. 7 of 2000 aiming at protecting women from dangerous jobs and forbidding night jobs, unless expressly permitted by the Council of Ministers.<sup>43</sup> Other than that, the Palestinian Labor Law forbids discrimination and demands that employers ensure certain facilities necessary for women, especially pregnant women.<sup>44</sup>

## VI. Asylum right

### VI.1 Refugee Definition and Female Emigration

Nothing indicates that the recognition of women as a ‘social group’ has had a special impact on the Palestinian Authority as a country of origin. The Palestinian Authority, however, engaged itself through various unilateral declarations to respect human rights in general. Such an obligation was even codified in the Interim Agreement.<sup>45</sup>

In particular, the Euro-Mediterranean Interim Association Agreement on Trade and Cooperation between the European Community, on the one hand, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, on the other made an explicit reference to human-rights protection and the “promotion of the equality of women and a balanced participation in the decision-making process in the economic and social sphere, notably through education and the media.”<sup>46</sup>

Despite certain gaps,<sup>47</sup> the Basic Law codified equality between men and women. The Palestinian Authority also adopted legislation aiming at bringing this about. President Abbas, interestingly, ‘ratified’ the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).<sup>48</sup> Much earlier than that, the Council of Ministers issued a decision to promote the protection of women.<sup>49</sup>

Presidential Decree No.24 of 2005 even made reference to the notorious UN Security Council Resolution No. 1325 of 2000 to promote the participation of women in all efforts towards peace and security. It should be noted that the task of empowering women and enhancing their full participation in the public sphere and decision making is considered part of the mandate of the Ministry of Planning.<sup>50</sup>

---

<sup>43</sup> Article 101

<sup>44</sup> Articles 100-106.

<sup>45</sup> Article XIX: Israel and the Council shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law.

<sup>46</sup> Available at: <http://www.paltrade.org/en/about-palestine/agreements/EU.pdf>

<sup>47</sup> For a discussion about the role and place of “*shari’a* as source of legislation” as codified in the Basic Law and the impact on gender equality, *see, generally*, (Jad, Johnson and Giacaman 2000).

<sup>48</sup> (Presidential) Decree no.19 of 2009 concerning the Ratification of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

<sup>49</sup> Art. 1 of the Decision of the Council of Ministers no.366 of 2005 concerning the Promotion of the Protection of Cruelly Treated Women.

<sup>50</sup> *See* the Council of Ministers Decision No. 288 of 2004 Concerning the Structural and Functional Organization of the Ministry of Planning.

## VI.2 Gendering Refugee Status

UNHCR is not operative in the occupied Palestinian territory. The West Bank and Gaza Strip are within the five areas of operation of UNRWA.

The UNRWA operational definition of a Palestinian refugee for the purposes of receiving its services (work and relief only, not protection) does not make gender distinctions.<sup>51</sup> Until very recently, however, UNRWA practiced gender-based discrimination when it accepted that refugee fathers married to non-refugees could pass their status to their children, while refugee mothers, married to non-refugees could not.<sup>52</sup> Not only that; by getting married to a non-refugee, refugee females automatically lose their status.

In 2006, however, UNRWA changed its policy and a decision was finally adopted to deal with refugee women married to non-refugees, making it possible to extend UNRWA services to these women and their children.<sup>53</sup>

## VI.3 Special Protection of Female Refugees

Female refugees do not encounter specific legal difficulties. They suffer – as much as male refugees – from the lack of legal protection mechanisms in international law and international organizations.

## VII. Protection of vulnerable persons

### VII.1 Special Protection of Female Immigrants

Palestinian Labor Law No.7 of 2000 imposes restrictions when it comes to employing non-Palestinians.<sup>54</sup> The Palestinian Council of Ministers No.45 of 2004 regulated the way permits for non-Palestinians are granted.

It should be noted that having a legal title of stay in the areas under Palestinian Authority control does not result in the conditions for obtaining a work permit. As a matter of fact the Palestinian Authority is not in control of the borders of the West Bank and the Gaza Strip. Non ID holders, who are willing to enter the occupied Palestinian territory, need to obtain a short-visit permit from the Israeli authorities.

In any case, there is nothing in Palestinian Authority law that targets female immigrants in particular. There is also nothing that deals with gender-oriented crimes targeting female immigrants, nor are there special rules dealing with female migrant trafficking.

### VII.2 Special Protection of Illegal Female Immigrants

For Israel, any person who does not hold a legal title of stay in ‘the areas’ is deemed an illegal under Israeli military orders. An ID card is considered a legal document of stay in the areas under Israeli control. The problem is that the legality depends on the satisfaction of restrictive conditions imposed by those orders.

---

<sup>51</sup> “Palestine refugees are people whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict.” See <http://www.unrwa.org/etemplate.php?id=86>

<sup>52</sup> See (Berg 2008, 166), (Cervenak 1994).

<sup>53</sup> UNRWA 2008-2009, 18

<sup>54</sup> See article 14-15.

Many Palestinians were in fact denied registration in the population register. Others were expelled and their ID withdrawn. Many others were denied a legal title of stay through family unification. For Israel, all those are deemed illegally residing in the areas. As such they are subject to deportation procedures. For the Palestinian Authority and Palestinian law, they are Palestinians, not foreign nationals.

Most of these ‘illegal persons’ are women (often of Palestinian origin) married to Palestinians. As such they risk being separated from their husbands and children. The intervention of the Israeli High Court upon petition of Israeli human-rights organizations (such as B’Tselem and the Association of Civil Rights in Israel) froze deportation decisions and brought about partial changes in Israeli policies towards family unification requests and short-term visit.<sup>55</sup>

The deportation policy did not come to an end, though. It intensified during the Second *Intifada*. In recent years, Israel started to apply a deportation policy on Palestinians from the West Bank and East Jerusalem to Gaza Strip.

In 2010, a new military order entered into force: Order no. 1650 regarding the Prevention of Infiltration. The order contains changes that will enable the Israeli military commander to deport any person illegally present in the West Bank, including those Palestinians who are from Gaza Strip. The order also made it easier to deport any person illegally residing in the area.<sup>56</sup>

## VIII. Conclusion

Whenever dealing with migration, the natural tendency is to divide the world into dichotomies that are presented as only possible basis of analysis and judgment. Such dichotomies include – but are not limited to: citizen/foreign nationals, legal/social rules, males/females, and voluntary/forced migration. The various examples provided in this paper shows clearly that such dichotomies are misleading and cannot capture the focal elements necessary for the understanding the reasons, routes and the consequences of the migration of women.

It is often the case, indeed, that the nationality of the concerned person determines whether he/she is part of one of either two possible groups: citizens or foreign national. Such determination is followed by building legal categories, with rights and duties, corresponding to each group. In the case of the migration of women, the transnational dimension of migration becomes simply inevitable because women are often treated differently in many Arab countries, with regards to access to and the maintenance of residence and/or nationality. The transnational dimension renders the dichotomy citizen/foreign national unsatisfactory.

Besides, any consideration of the legal aspects of migration tends to start by distancing legal/formal/state rules from social/informal/non-state rules. In the case of female migration, the legal and social hindrances to migration of women are often entrenched with the religious and cultural norms that are dispersed within both domains: legal/social, formal/informal, and state/non-state.

As for the roots and routes of migration, the tendency is to separate the world based on the sex of the concerned person. Accordingly, outputs of any analysis are dependent largely on whether migrants are males or females. In the case of the migration of women, the patriarchal dimension of families of origin renders the migration of women particularly challenging and the fact that women are often accompanied by children renders familial aspects of migration particularly stressful.

As for the reasons behind migration, there is usually a distinction between forced or voluntary migration. In the case of the migration of women, limiting the analysis to how migration is voluntary or forced is misleading, since the central issue is not whether the choice is free or forced, but, rather, whether there was a choice in the first place. In other words, the central point when dealing with the migration of women is in the recognition of women as agents, capable of deciding their own destiny, by taking their own decisions.

---

<sup>55</sup> See, i.e., (B’Tselem 1991).

<sup>56</sup> Khalil, Impact of Israeli Military Order No.1650 of 2009 on Palestinians’ Rights to Legally Reside in their own Country 2010.

## Bibliography

- Abdo, Nahla. "Engendering Compensation: Making Refugee Women Count!" *www.CRDI.ca*. March 2000. [http://www.crdi.ca/uploads/user-S/12075906071Engendering\\_Compensation\\_N\\_Abdo.doc](http://www.crdi.ca/uploads/user-S/12075906071Engendering_Compensation_N_Abdo.doc).
- Badil. *Survey of Palestinian Refugees and Internally Displaced Persons 2006-2007*. Bethlehem, Palestine: Badil Resource Center for Palestinian Residency and Refugee Rights, 2007.
- Berg, Kjersti G. "Gendering Refugees: United Nations Relief and Works Agency (UNRWA) and the Politics of Relief." In *Interpreting Welfare and Relief in the Middle East*, by Nefissa Naguib and Inger Marie Okkenhaug, 149-174. Netherlands: Brill, 2008.
- B'Tselem. "Knesset Enacts Racist Law." *B'Tselem*. 2005. [http://www.btselem.org/English/Special/2005804\\_Racism\\_Law.asp](http://www.btselem.org/English/Special/2005804_Racism_Law.asp).
- "Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories." 2006. [http://www.btselem.org/Download/200607\\_Perpetual\\_Limbo\\_Eng.doc](http://www.btselem.org/Download/200607_Perpetual_Limbo_Eng.doc).
- "Renewal of Deportation of Women and Children from the West Bank on Account of "Illegal Residency" ." October 1991. [http://www.btselem.org/Download/199110\\_Renewal\\_of\\_Deportation\\_Eng.doc](http://www.btselem.org/Download/199110_Renewal_of_Deportation_Eng.doc) (accessed April 16, 2010).
- Bullata, Terry. "Civics, Government, and Citizenship - Case Studies: Citizens as an Influential Tool of Change." In *Civic Education in Palestine: Citizenship, Human Rights, and Community Development*, 111-116. Ramallah: Passia, 2006.
- Cervenak, Christine M. "Promoting Inequality: Gender-Based Discrimination in UNRWA's Approach to Palestine Refugee Status." *Human Rights Quarterly* 16 (1994): 300-374.
- Jad, Islah, Penny Johnson, and Rita Giacaman. "Transit Citizens: Gender and Citizenship under the Palestinian Authority." In *Gender and Citizenship in the Middle East*, edited by Suad Joseph, 137-157. Syracuse, New York: Syracuse University Press, 2000.
- Khalil, Asem. *Dealing with Highly-Skilled Migration: The Case of the Palestinian Authority*. Analytic and Synthetic Notes - Highly Skilled Migration Series: Legal Module CARIM - AS 2010/09, Florence: CARIM - Consortium for Applied Research on International Migration - European University Institute, 2010.
- Khalil, Asem. *Family Unification in the Occupied Palestinian Territory*. CARIM AS 2009/19. , San Domenico di Fiesole: Robert Schuman Center for Advances Studies, European University Institute, 2009.
- Khalil, Asem. *Impact of Israeli Military Order No.1650 of 2009 on Palestinians' Rights to Legally Reside in their own Country*. CARIM Analytic and Synthetic Notes – Legal Module: CARIM-AS 2010/46, San Domenico di Fiesole: Robert Schuman Center for Advances Studies - European University Institute, 2010.
- Khalil, Asem. *Palestinian Nationality and Citizenship: Current challenges and Future Perspectives*. Research Report 2007/08, European University Institute, Florence: CARIM, 2007.
- Khalil, Asem. *Palestinian Refugees in Arab States: A Rights-Based Approach*. CARIM Research Report 2009/08, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole : European University Institute, 2009.
- Said, Wadie. "Facts, Rights and Remedies." *Hastings Int'l & Comp. L. Rev.* 28 (2005): 349-367.
- Sh'hada, Nahda Y. "Gender and Politics in Palestine: Discourse Analysis of the Palestinian Authority & Islamists." *U. Miami Int'l & Comp. L. Rev.* 11 (2003): 3-73.



UNRWA. "General Fund Appeal." [http://unispal.un.org/pdfs/GF2008\\_2009.pdf](http://unispal.un.org/pdfs/GF2008_2009.pdf), 2008-2009.

Welchman, Lynn. *Islamic Family Law: Text and Practice in Palestine*. Jweusalem: Women's Centre for Legal Aid and Counselling, 1999.