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The Future of Palestinian Women's Rights: Lessons from a Half-Century of Tunisian Progress

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The Future of Palestinian Women’s Rights: Lessons from a Half-Century of Tunisian Progress

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I. Introduction

As this piece goes to print, the Gaza Strip and West Bank Palestinian Territories are currently under the authority of two different Palestinian
governments. Gaza is under the control of the Islamist group Hamas, i.e. Harakat al-Muqawama al-Islamiya (Islamic Resistance Movement), which unexpectedly won the majority of seats for the Palestinian Legislative Council (PLC) in January 2006. The West Bank is under the jurisdiction of Palestinian Authority (PA) President Mahmoud Abbas, head of the mainstream Fatah party, who has appointed an alternative cabinet and receives support from the international community. Palestinian internecine political conflict and ongoing problems in the peace process with Israel prevent any focus by either Hamas or Fatah on the internal legal regime. At some point the situation may stabilize, and Palestine may be able to consider extensive legal reform. One area ripe for consideration is women's rights. As we have discussed in a prior article on Palestinian constitutionalism, if the government is Islamist in nature, women's rights are likely to become more based on traditionalist Islamic Shari'a principles.

This Article speculates on the future of Palestinian women's rights if the government in Palestine one day decides to take a more secular direction. If that possibility comes to fruition, we recommend that Palestinians explore the approach adopted by another Muslim country, Tunisia. Why Tunisia? Along with Turkey, Tunisia has taken the most secularized approach to women's rights in majority-Muslim countries. Additionally, many Palestinians are somewhat familiar with the Tunisian experience since the Palestinian Liberation Organization (PLO) was based there from 1982 to 1994, just prior to moving to the West Bank and Gaza to start the PA. Moreover, Palestinians

2. See Khaled Abu Toameh, One Year After Its Election Triumph a Defiant Hamas is Still Riding High, JERUSALEM POST, Jan. 26, 2007, at 3 (explaining that Fatah leaders were shocked and unprepared for Hamas's landslide victory).
4. See Adrien Katherine Wing & Hisham Kassim, Hamas, Constitutionalism, and Palestinian Women, 50 How. L.J. 479, 513 (2007) ("Unfortunately, the current political situation makes it unlikely that Palestinian women or men will be able to focus on constitutional questions or mundane legislative issues in the near future.").
5. See id. at 488–90 (stating that Islamist ideology involves Shari'a principles). Dean Adrien Katherine Wing was an advisor to the PLC on drafting the Palestinian Basic Law in 1996.
6. See Adrien Katherine Wing & Ozan Varol, Is Secularism Possible in a Majority-Muslim Country?: The Turkish Example, 42 TEX. INT'L L.J. 1, 53 (2007) (explaining that in Turkey, one of two secular countries in the Middle East, women stand on equal footing with men).
have also been considered one of the more secular groups in the Middle East, and might be amenable to secular approaches in the future. Dean Adrien Katherine Wing visited Tunisia several times to explore the implementation of women’s rights over the fifty-year period since its independence.

Part II of this Article will provide some background on the Palestinian legal system with respect to women’s rights. Subpart III.A will first provide an overview of the Tunisian legal system with respect to women’s rights. Subpart III.B will then compare the Tunisian legal system on selected women’s rights issues to the Palestinian system with suggestions to future Palestinian policymakers, including legislators and women’s rights advocates.

II. The Palestinian Legal System

Like many societies, Palestine has customary practices and religious law which endorse disparate treatment on the basis of gender. Customary law may be followed across class and geographic lines, and affects women in several areas. For example, in family law, women are clearly subordinate to male heads of households. In the educational sphere, sisters are less likely to

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8. See Wing & Kassim, supra note 4, at 511 (asserting that Palestinians have been considered one of the more secular groups in the Middle East, making the possibility of secular change more likely there than elsewhere in the region); see generally, Adrien Katherine Wing, Democracy, Constitutionalism and the Future State of Palestine (1994) [hereinafter Democracy] (evaluating the political and constitutional status of Palestine); Adrien Katherine Wing, Constitutionalism, Legal Reform, and the Economic Development of Palestinian Women, 15 Transnat’l L. & Contemp. Probs. 656, 658 (2006) [hereinafter Constitutionalism] (describing women’s reform in Palestine); Adrien Katherine Wing, Custom, Religion and Rights: The Future Legal Status of Palestinian Women, 35 Harv. Int’l L.J. 149 (1994) [hereinafter Custom] (describing the legal rights of women in light of custom and religion in Palestine).

9. Dean Wing visited Tunisia in June 2006, December 2006 to January 2007, and June to August 2007 and would like to thank a number of Tunisian lawyers and professors, as well as other men and women, for their insights and their assistance during these trips.

10. See Wing & Kassim, supra note 4, at 482 (detailing Palestinian women’s legal status and rights).

11. See Custom, supra note 8, at 150 (describing the legal status of women’s rights in Palestine).

12. See Constitutionalism, supra note 8, at 658 ("Customary law may be followed in rural areas or in less educated families, as well as in highly educated families.").

13. See id. at 658–59 (explaining that customary family law dictates adult women cannot live independently and must live subserviently either with their husbands or their father’s family).
get as much education as their brothers. Conceptions of family honor endorse honor killings in some circles, i.e. the murder of women who shame the family in perceived interactions with unrelated men. Domestic violence may not violate criminal law because it can be considered part of male prerogatives for control of female behavior.

The Islamic Shari‘a law that applies to 90% of Palestinians has certain benefits to women over customary practices. As will be shown in the next part of this Article, it still discriminates on the basis of gender. Shari‘a, which is found in the Qu‘ran and other sources, has intertwined itself with custom over the centuries. Palestinians follow the Hanafi jurisprudential school, one of the more liberal.

If reformers pass legislation on women’s rights, they will not only have to take into account the customary and religious law, but the existing constitutional framework as well. Even though the political turmoil has limited its effectiveness, there is a Basic Law that has theoretically been in effect since 2002, which has an equality clause including gender.

14. See id. at 660 (stating that if a family cannot educate all children, brothers will be educated rather than sisters because the brothers ultimately will be head of a household).
15. See Wing & Kassim, supra note 4, at 484–85 (describing the prevalence of honor killings in Palestinian custom).
18. See Custom, supra note 8, at 158 ("Under Shari‘a, women are given independent legal personality rather than being regarded as mere chattel of their husbands, and are allowed to own and inherit property. . . . The Shari‘a also restricts polygamy to four wives, permits women to obtain divorces on certain grounds, and provides for financial maintenance of wives.").
19. See Democracy, supra note 8, at 38–39 (describing the many ways in which the Shari‘a discriminates on the basis of gender).
20. See id. at 14–15 (asserting that ancient custom has been incorporated into Islamic laws).
21. See Wing & Kassim, supra note 4, at 482 (explaining that Majallah, the main source of Palestinian civil law, represents an attempt by the Ottoman government to codify the Hanafi jurisprudential school).
22. See Custom, supra note 8, at 157–58 ("Most Palestinians follow the Hanafi school, which is often considered the most liberal.").
24. Wing & Kassim, supra note 4, at 488.
25. For further discussion of this clause, see Constitutionalism, supra note 8, at 677.
Basic Law declares, "[a]ll Palestinians are equal under the law and judiciary, without discrimination because of race, sex, color, religion, political views or disability."26

The Basic Law potentially restricts the positive effects of the foregoing equality provision in several ways. It states that Shari'a will be "a major source" for legislation.27 It also says that "Shari'a affairs and personal status shall be assumed by Shari'a and religious courts in accordance with law."28 Furthermore, the Basic Law states that Islam is the official religion in Palestine.29 The meaning and effects of this latter clause are unclear.30 Most Arab countries have such a provision in their constitutions, and the implications depend on each country's cultural context.31

Several drafts of a Palestinian constitution have been completed,32 and a final version would presumably take effect after the independent state comes into being. Those seeking improvement of women's rights at that time would have to take the provisions of the final constitution into account as well as any international conventions that the new state becomes party to after independence.33


27. See Wing & Kassim, supra note 4, at 488 (explaining why the Amended Basic Law of Palestine Article 4(2) should be interpreted as "a major source" in contrast to the U.S. Agency for International Development interpretation of "the major source").


29. Id.

30. See Adrien Katherine Wing, Healing Spirit Injuries: Human Rights in the Palestinian Basic Law, 54 Rutgers L. Rev. 1087, 1096 (2002) ("The tension between clauses promoting an official religion yet allowing freedom to practice one's own religion are manifested in the fact that this freedom of religion is not absolute, and there exists one condition that it does not interfere with public order or public morals.").

31. See id. (stating that Arabic countries have a freedom of religion clause in their constitutions, but each interprets its grant of rights differently based on their cultural context). Lebanon does not have such a clause. LEB. CONST., http://www.servat.unibe.ch/law/icl/le00000_.html (Paul E. Salem trans., 1990) (last visited Nov. 11, 2007) (on file with the Washington and Lee Law Review).


33. For example, the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) may create increased obligations, although many countries make reservations that limit their responsibilities to that of existing national laws. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.
III. The Tunisian Legal System

A. Tunisia Overview

This subpart examines Tunisia’s experience in enhancing women’s rights. "Tunisia has been at the forefront of the Arab Islamic world with respect to family law." In 1956, Tunisia gained independence from France and deviated from the Islamic Maliki jurisprudential school when it adopted the Code of Personal Status (CPS), also known as the Majalla. The adoption of the CPS was part of a larger governmental reform program to build a modern centralized state and marginalize tribal communities, rather than a part of a feminist movement.

The then highly popular founding President Habib Bourguiba, who would rule thirty-one years, admired the modernist perspective of founding Turkish President Kemal Ataturk from the 1920s, and felt that Tunisia must also reform its laws. Unlike Ataturk, who abolished Ottoman Empire Shari'a based on purely secular principles, Tunisia regards its reforms as permissible Islamic reinterpretation known as ijtihad:

Tunisia’s deeply rooted Arabic and Islamic traditions in no way lessened its desire "to live in close communion with the modern world . . . [and] to open windows on other cultures, particularly Western culture, in order to come to

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37. See CHARRAD, supra note 36, at 224 (explaining that legal reform in Tunisia was part "of a larger project to build a modern nation-state by dismantling the foundation of kin-based solidarities" and not part of a feminist movement).

38. See JENNIFER NOYON, ISLAM, POLITICS AND PLURALISM: THEORY AND PRACTICE IN TURKEY, JORDAN, TUNISIA, AND ALGERIA 96 (2003) (describing President Bourguiba’s admiration for modernist Attaturk and desire to westernize Tunisia, as evidenced in his thirty-one year reign).

39. See CHARRAD, supra note 36, at 221 (stating that in contrast to Turkey’s abandonment of Islamic law altogether, law-makers in Tunisia emphasize reforms as continuing evolution and interpretation, ijtihad, of Islamic thought).
grips with reality. In this way, our country can remain faithful to its cultural past while forging the instruments for its future.\textsuperscript{40}

In addition to adopting the CPS, the Tunisian government eliminated religious courts and endowments as well as restricted the influence of the religious university, Zitouna.\textsuperscript{41} To further control the religious sector, the Religious Affairs Ministry supervised religious education, appointed imams, paid their salaries, and oversaw the building of mosques.\textsuperscript{42} Additionally, women received the right to vote in 1959, before other women in the region.\textsuperscript{43}

The government also banned headscarves in classrooms, an issue that has been prominent more recently in countries like France and Turkey.\textsuperscript{44} Bourguiba believed traditional clothing encouraged traditional thinking and even called the headscarf "an odious rag," not required by Islam.\textsuperscript{45} More recently, a 1981 decree forbids women to wear headscarves at educational institutions and when working in government service.\textsuperscript{46}

The CPS has continued to be modified under the leadership of current President Zine El Abidine Ben Ali, most notably in 1993.\textsuperscript{47} The changes have
continued up to the present with input from women and women's rights groups. 48

Other Tunisian laws have been modified as well. Whereas Article 1 of the Constitution does say Islam is the national religion, 49 Article 6 provides for equality before the law. 50 The Constitution was amended in 1997 to explicitly declare the inadmissibility of gender discrimination in certain respects. 51 Among other modifications, the labor law was amended in 1993 to refer to nondiscrimination, and the law provides some maternal protection as well. 52

What has been the result of the reforms? Have they made a difference over fifty years? According to the World Bank, Tunisia leads the Middle East/North African region in gender equity. 53 The gap between male and female educational levels is lessening in the younger population, and more than one half the university students are female. 54 Women are 32% of the labor force. 55 Women have made great gains in a number of professions and are now 34% of magistrates, 40% of university professors, and 22.7% of Chamber of Deputies. 56 At a conference attended by international experts held at the


49. See TUNISIA CONST. art. 1 ("Tunisia is a free, independent and sovereign state. Its religion is Islam.").

50. See id. art. 6 ("All citizens have the same rights and obligations. All are equal before the law.").

51. See V.M. Moghadam, Tunisia, in WOMEN'S RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA: CITIZENSHIP AND JUSTICE 295, 297 (Sameena Nazir & Leigh Tomppart eds., 2005) ("Following the amendments introduced pursuant to Constitutional Act No. 97-65 of October 27, 1997, the constitution strengthens the principle of equality of citizens by explicitly decreeing through an amendment to Article 8 and 21, the admissibility of discrimination between genders."); see also Act of Oct. 27, 1997, No. 97-65, art. 8 (Tunis.) ("[A] political party may not fundamentally base its principles, objectives, activities or programmes on any religion, language, race, sex or region"); id. art. 21 ("[A] ny voter of a Tunisian father or a Tunisian mother and having attained 23 years of age shall be eligible for the Chamber of Deputies.").

52. See Moghadam, supra note 51, at 297 ("The labor law was also amended in 1993 to refer explicitly to the principle of nondiscrimination. Additionally, some gender-specific benefits exist for women in the labor force, particularly in the form of maternal protections.").

53. See WORLD BANK, supra note 43, at 4–5 ("Tunisia leads the MNA [Middle East and North Africa Region] with regard to gender equity.").

54. See Moghadam, supra note 51, at 302 (explaining that although the overall female literacy rate is 63.1% and the male rate is 83.1%, the literacy rate has improved to 90.6% for females ages 15–24 with women comprising 56.4% of those at the university level).

55. WORLD BANK, supra note 43, at 5.

International Court of Justice (ICJ) to commemorate fifty years of the CPS, ICJ President Rosalyn Higgins noted that in Tunisia, "women's rights are now embedded as national values." After Tunisia became identified with women-friendly legislation, as compared to other countries in the Arab-Islamic world, Tunisia took national pride in the international recognition. According to a Freedom House publication, Tunisia scores very high in the region on indicators such as nondiscrimination and access to justice; autonomy, security and freedom of the person; economic rights and equal opportunity; and social and cultural rights. The only area where Tunisia scores relatively low is in the political rights and civic voice area.

Professor Charrad has compared Tunisia to other North African societies such as Morocco and Algeria, and found that Tunisian women have made major advances in part because male dominated patrilineages that emphasize traditional communitarian norms no longer hold sway, and there has been more emphasis on individual rights norms that benefit women's status. In the view of the authors, it seems quite evident that both Presidents Ataturk and Bourguiba, as highly popular founding Presidents, had considerable elite and grassroot support to engage in clearly revolutionary reforms from the top down. Such reforms probably would not be possible or acceptable coming from later leaders or in the current political climate of increasing Islamist trends globally. According to Noyon, two Tunisian societies have developed. Lower classes are more likely to have retained many traditional Islamic practices, whereas a more secularized western elite has absorbed the new changes. Like many other


57. Id.
58. See Mounira M. Charrad, Tunisia at the Forefront of the Arab World: Two Waves of Gender Legislation, 64 WASH. & LEE L. REV 1513, 1527 (2007) ("Once Tunisia became identified with woman friendly legislation, early on compared to other countries in the Arab-Islamic world, it became a matter of national pride and international recognition to continue on that path.").

59. See Moghadam, supra note 51, at 295 (indicating on a scale of 5, Tunisia earned a 3.6 for nondiscrimination and access to justice; 3.4 for autonomy, security and freedom of the person; 3.1 for economic rights and equal opportunity; and 3.3 for social and cultural rights).

60. See id. at 295–96 (indicating that on a scale of 5, Tunisia earned a 2.8 for political rights and civil rights). The reasons for the low score in the last category affect both men and women, and they are beyond the scope of this Article.

61. See Charrad, supra note 48, at 72 (arguing that because Tunisia's "kin-based formations" exert far less social and political influence, women have gained substantial individual rights). For why and how Tunisia has continued to make changes in the women's rights area, see generally Charrad, supra note 58.

62. See NOYON, supra note 38, at 97 (discussing how "the degree of Westernization increasingly became a socio-economic marker that divided society").
Muslim countries, there is also an Islamist tendency to reject western secularism, but the government has highly suppressed this segment of the population, which includes some of the highly educated.63

B. Suggestions for Palestine

This subpart discusses selected Tunisian rights that Palestine might consider in the future, and compares those rights to the Palestinian Personal Status Code (PPS), which is essentially the Personal Status Code Jordan promulgated in 1976.64 The discussion and comparison of the CPS and PPS will be largely limited to a few main areas concerning marriage, divorce, and child custody: parental consent before marriage; spousal maintenance; spousal discipline; polygamy; divorce; alimony; and child custody.65 This Article will also compare the treatment of domestic violence under the respective penal codes.

Regarding parental consent for marriage, under Article 3 of the CPS, the father's consent is not required for a woman who attains the age of majority to

63. See id. at 99–100 (explaining how the Tunisian Islamist movement was widely repressed and imprisoned after achieving measured success in the parliamentary election of 1989); see also Moghadam, supra note 51, at 306–07 (describing how the Ben Ali government of Tunisia suppressed and banned the Islamist an-Nahda movement in the late 1980s).

64. In Gaza, a personal status code based on Egyptian law is followed because this area was under Egyptian control prior to the 1967 Israeli Occupation. Moghadam, supra note 51, at 225. This Article will not discuss the Gaza code.

65. There are a number of areas that will not be included in this Article because both societies continue to restrict women. For example, both grant a female only half the inheritance share of a man related to the same degree. Charrad, supra note 36, at 230. Dean Wing asked many Tunisians about this governmental failure to change and could not get a satisfactory answer. Some Tunisians said that such a change is now impossible due to heightened pressure from Islamist forces, even though illegal. For an explanation of inheritance in Palestine, see Heather Jacobson, The Marriage Dower: Essential Guarantor of Women's Rights in the West Bank and Gaza Strip, 10 Mich. J. Gender & L. 143, 155–56 (2003). A woman’s ability to pass her nationality to a child or spouse is problematic in both societies as well. See generally Charrad, supra note 48 (explaining the qualifications of citizenship). Both societies still require dowries. See Carin Benninger-Budel & Joanna Bourke-Martignoni, Violence Against Women in Tunisia: Report Prepared for the Committee on the Elimination of Discrimination Against Women 14 (2002) (discussing CPS Art. 3) (on file with the Washington and Lee Law Review). It should be noted that Tunisia permits civil marriage. Charrad, supra note 36, at 224. We have suggested Palestine do the same, instead of only permitting religious marriage. See Wing & Kassim, supra note 4, at 511 (proposing the creation of a dual legal system for personal status matters in which a person could choose between Shari'a and civil law). One area ripe for comparison is that Tunisia now has a law on sexual harassment, but Palestine does not. See CREDIF, supra note 47, at 23 (stating the laws of sexual harassment in both countries).
However, Article 6 does stipulate that if the woman is a minor, the consent of both the father and mother is necessary. Adopting this policy would enhance Palestinian practices because under the PPS, the consent of the father is required in all cases even if the daughter is a legal adult. Article 13 of the PPS provides an exception to the general rule. The consent of the father is not required if the woman has attained the age of majority and has been married previously.

In 2007, Article 5 of the CPS was modified to create a uniform age of eighteen to marry unless a judge intervenes. Tunisian law before the promulgation of the CPS had set the marriage age for the woman at fifteen and the man at eighteen, and later increased the age to seventeen for women and twenty for men. By increasing the minimum age, the Tunisian government was trying to decrease the birth rate, produce more stable marriages, and reduce the amount of familial intervention in the marriage process. The government believed that couples who married later had fewer children and were generally more stable. Increasing the minimum age of legal marriage may have caused the birth rate to decline. In the early 1970s the birth rate in Tunisia was approximately five births per woman and by 2001 the birth rate had dropped to two births per woman. The birth rate in Palestine remains at a very high 6.1.

The PPS only requires that the husband be sixteen and the wife be fifteen to marry. However, Article 6 does stipulate that if the woman is a minor, the consent of both the father and mother is necessary. Adopting this policy would enhance Palestinian practices because under the PPS, the consent of the father is required in all cases even if the daughter is a legal adult. Article 13 of the PPS provides an exception to the general rule. The consent of the father is not required if the woman has attained the age of majority and has been married previously.

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67. See id. (explaining that under the Jordanian Personal Status Code, the father’s consent is required for the daughter to marry, even if the daughter has reached the age of majority).
68. See id. at 1103 (describing the exception to the age of majority found in Article 13 of the Jordanian Personal Status Code); see also PERSONAL STATUS CODE [PPS] No. 61, art. 13 (1976) (Palestine) (Hisham Kassim trans.) (stating the exception to the age of majority law). Due to the unavailability of foreign sources, the Washington and Lee Law Review was unable to verify this citation.
69. La Loi No. [Law No.] 2007-32, 14 mai 2007 (Tunis.).
70. CHARRAD, supra note 36, at 225.
71. CREDIF, supra note 47, at 5–6.
72. CHARRAD, supra note 36, at 225.
73. Id.; For a discussion of the problems associated with high fertility in Palestine, see Constitutionalism, supra note 8, at 699.
74. WORLD BANK, supra note 43, at 4.
75. For further discussion of fertility in Palestine, see Constitutionalism, supra note 8, at 699.
Palestine would benefit from following the Tunisian example of increasing the marriage age to eighteen.77

Concerning spousal maintenance, Tunisian law deviates from its overall reformist character by adopting a traditional view under CPS Article 23, which stipulates that the husband is the head of the household and therefore "is responsible for the maintenance of his wife and children."78 Article 23 contains some reformist notions in that it also stipulates that the wife is also partly responsible for the upkeep of the household, if she can afford to do so.79 Under Palestinian law, the wife has no such obligations, remaining solely under her husband's authority. PPS Article 35 states that if the marriage contract is valid, the husband has to support the wife.80 Article 36 then mandates that the husband must provide the wife with a dwelling according to his financial abilities.81 However, under Article 68 a wife loses her right of maintenance if she works outside the home without her husband's permission.82 If Palestine adopts more rights for women, it should also consider granting women some obligation to care for the household, if they are able, and dropping the spousal permission requirement as well. Tunisia has eliminated the traditional wifely duty to obey her husband.83 According to the PPS, the wife is to obey her husband, and the husband is to treat his wife with respect.84

Duties of obedience may be interlinked with domestic violence as well. In Tunisia, 1993 amendments to the Penal Code provide that a man accused of domestic violence faces a heavier punishment if the victim is his wife.85 Unfortunately, the spouse can withdraw the complaint, lessening the impact of the law.86 He can be imprisoned for two to three years and given a fine of

76. PPS No. 61, art. 5 (1976) (Palestine) (Hisham Kassim trans.). Due to the unavailability of foreign sources, the Washington and Lee Law Review was unable to verify this citation.
77. Constitutionalism, supra note 8, at 710 (explaining how the young marriage age in Palestine limits women's opportunities for a good education and financial success, as well as contributes to Palestine's high fertility rate).
78. Abu-Odeh, supra note 35, at 1104.
79. Id.
80. PPS, No. 61, art. 35.
81. Id. art. 36.
82. Id. art. 68.
84. PPS No. 61, art. 39 (1976) (Palestine) (Hisham Kassim trans.). Due to the unavailability of foreign sources, the Washington and Lee Law Review was unable to verify this citation.
85. Moghadam, supra note 51, at 298.
86. See id. (explaining the ability of the spouse to withdraw the complaint).
23,000 dinars. Unfortunately, the law does not recognize marital rape; however, the law holds men who kill their wives after seeing them in the act of adultery responsible for manslaughter, rather than a simple misdemeanor. Manslaughter can result in life imprisonment. Palestinian women in the West Bank face a much bleaker picture, and would greatly benefit from some of the Tunisian reforms. Complete exemption from murder is afforded under the Jordanian Penal Code if a man kills his wife after he sees her committing adultery. The same exemption or reduced punishment is not afforded to a woman who murders her husband after seeing him commit adultery.

The Jordanian Penal Code provides reduced punishments for sexual abuse, including rape, of females. In fact, under the Jordanian Penal Code, the law follows the ancient customary practice, and a court has the authority to suspend a criminal proceeding if the offender agrees to marry the victim of a rape. Likewise, perpetrators of domestic violence can go unpunished since there is a custom of noninterference in domestic disputes.

One of the most notable advancements of the CPS was outlawing polygamy under Article 18. A violation is punishable by imprisonment and/or fines of up to 240,000 francs. Many sources interviewed by Dean Wing indicated the practice has been eliminated, but de facto mistresses remain

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88. See Moghadam, supra note 51, at 298 (stating that marital rape is not crime).
89. Id. at 297.
90. See Benninger-Budel & Bourke-Martignon, supra note 65, at 13 (stating that the maximum punishment for manslaughter is life imprisonment).
92. Id.
93. Id. at 592.
94. Id.
95. See Wing, supra note 16, at 964 (explaining how the custom of noninterference contributes to spousal abuse).
96. For further explanation of Tunisian abolition of polygamy based upon Islamic justification of being unable to treat all wives equally as required, see Democracy, supra note 8, at 48 and Constitutionalism, supra note 8, at 667. For further explanation of polygamy in other contexts, see Adrien Katherine Wing, Polygamy from Southern Africa to Black Britannia to Black America: Global Critical Race Feminism as Legal Reform for the Twenty-First Century, 11 J. Contemp. Legal Issues 811 (2001) and Adrien Katherine Wing, Polygamy in Black America, in Critical Race Feminism: A Reader 186 (2d ed. 2003).
97. Article 18 states the amount in francs, even though francs are no longer in use. Abu-Odeh, supra note 35, at 1105.
as in most countries. Tropical law forbids a Tunisian woman from marrying a foreigner from a country where polygamy is allowed, unless there is a certificate stating that the man is free from all conjugal ties. Palestinian men follow traditional Shari‘a and still have the right to marry up to four women who can be Muslim, Christian, or Jewish, while Palestinian women can only marry one Muslim man. However, under PPS Article 19(1) a wife may limit the number of wives her husband may marry in the marriage contract. The PPS also stipulates that if the husband has more than one wife, he is to treat them equally and may not house them in the same dwelling without securing their consent first. Even though polygamy is not heavily practiced in Palestine, following the Tunisian example might face heavy societal opposition and the authors would not recommend abolishing it as a first line of action under current circumstances.

Concerning marital breakdown under Tunisian law, both spouses have the right to divorce. They may divorce by mutual consent or at the request of one. Because both may file, both may be held liable to compensate the other. The CPS also requires that a divorce may only be effectuated judicially. In doing so, the Tunisian government removed the divorce process from the private sphere, where a man under Shari‘a norms could normally effectuate a divorce simply by stating his intent to divorce his wife three times, to the public sphere regulated by the government. The policy reason was to make marriages more stable and divorce a less impulsive

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98. Interview by Dean Adrien Katherine Wing in Tunisia (Dec. 2006). Such mistresses cannot be held out as a wife and do not have the legal rights that would come with being a wife. Having children out of wedlock is severely frowned upon in Tunisia, thus such mistresses would not be likely to produce children as they would if they were a legal wife.

99. See CREDIF, supra note 47, at 25 (describing Article 46 of the Tunisian Code of private international law).

100. Custom, supra note 8, at 159.

101. PPS No. 61, art. 19(1) (1976) (Palestine) (Hisham Kassim trans.). Due to the unavailability of foreign sources, the Washington and Lee Law Review was unable to verify this citation.

102. Id. art. 40.

103. The polygamy rate may be as low as 4%. Constitutionalism, supra note 8, at 659 n.23.

104. CHARRAD, supra note 36, at 225.


106. CHARRAD, supra note 36, at 225.

107. Id.

108. Id. at 226.
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decision. 109 Charrad reports that Tunisian reforms "have increased women’s ability to terminate marriages in practice." 110

Regarding adultery as a ground for divorce, Tunisian men and women have equal rights. 111 Previously, only adultery committed by the wife was an offense, and a woman could not use the husband’s adultery as a ground for divorce. 112 In a law passed in 1968, adultery committed by either spouse is an offense that can be punished by fine or imprisonment. 113

Under Palestinian law, the general rule is that the wife does not have the right to divorce her husband. 114 The PPS has carved out a few exceptions, however, in which the wife may request a divorce from her husband. First, under Article 19(1), the spouses may stipulate in their marriage contract that the wife has a right to divorce her husband without his consent. 115 A wife may request a court to dissolve their marriage if the husband has an incurable disease 116 or becomes mentally challenged or insane. 117 Other examples include if the husband has been sentenced to imprisonment for a minimum of three years. 118 A wife may request a judicial dissolution of their marriage only after the husband has spent one year serving his sentence. 119 A wife may also request a divorce if the husband is absent and his whereabouts are unknown or if he abandons her without cause, 120 if he fails to maintain her, 121 or if he harms her. 122 Unlike the CPS, a husband under the PPS has the ability to effectuate the divorce orally or in writing. 123

109. Id.
110. Charrad, supra note 48, at 82.
111. See CHARRAD, supra note 36, at 226 (explaining how the CPS "gave men and women equal rights and responsibilities in regard to divorce").
112. Id.
113. Id.
114. Constitutionalism, supra note 8, at 448 (describing the very limited circumstances in which women may divorce).
115. PPS No. 61, art. 19(1) (1976) (Palestine) (Hisham Kassim trans.). Due to the unavailability of foreign sources, the Washington and Lee Law Review was unable to verify this citation.
116. Id. art. 115.
117. Id. art. 120.
118. Id. art. 130.
119. Id.
120. Id. art. 123.
121. Id. art. 127.
122. Id. art. 132.
123. Id. art. 86.
It is quite clear that Palestinian women would benefit greatly if Palestine adopted some of the Tunisian reforms, and if Palestinian women would have more ability to terminate bad marriages. The husband’s threat of a quick divorce with the woman having no similar right, the existence of the obedience norm, and the possibility of the husband taking additional wives puts substantial pressure on many wives to submit to horrific conditions.

The CPS and PPS differ greatly regarding alimony as well. Under the CPS, a woman is generally entitled to more support from her ex-husband. Article 31 of Tunisian law states that if the husband has harmed his wife, then she is entitled to compensation as well as a residence.\textsuperscript{124} A 1981 amendment grants women lifelong alimony instead of a lump sum, and there is now a fund for the guarantee of alimony to provide support if what the ex-husband provides is inadequate.\textsuperscript{125} Under Palestinian law, if a wife was divorced by her husband for no legitimate reason, then she is entitled to compensation for a period of one year.\textsuperscript{126} Clearly, Palestinian women would be better served by receiving enhanced support from ex-husbands. In the modern era, it is no longer possible to assume that the ex-wife’s natal family will reassume financial or physical custody as was the practice in the past.\textsuperscript{127}

Concerning control over children after divorce, there is a distinction among Muslims between custody and guardianship, much like the distinction in the United States between physical and legal custody. Whereas Muslim women may have custody for a certain period of time, ultimate guardianship rests with the father. In terms of custody rights, Palestinian law follows the traditional approach that grants guardianship to the father,\textsuperscript{128} but delineates custody between mother and father based on the gender of the child and the child’s age. Article 161 of the PPS stipulates that the mother maintains custody of the daughters until the age of eleven and the sons until the age of nine.\textsuperscript{129} However, it is possible for the mother to maintain custody of the son or daughter until they reach the age of majority if she does not remarry.\textsuperscript{130} This

\textsuperscript{124.} Abu-Odeh, supra note 35, at 1109.
\textsuperscript{125.} Moghadam, supra note 51, at 299–300.
\textsuperscript{126.} PPS No. 61, art. 134 (1976) (Palestine) (Hisham Kassim trans.). Due to the unavailability of foreign sources, the Washington and Lee Law Review was unable to verify this citation.
\textsuperscript{127.} See Custom, supra note 8, at 155 (explaining that a divorced woman was required to return to her father’s care in disgrace).
\textsuperscript{128.} PPS No. 61, art. 154.
\textsuperscript{129.} Id. art. 161.
\textsuperscript{130.} Id. art. 162.
custody is terminated, regardless of the age of the children, if the mother remarries a non-relative of the child.  

Palestinian women would benefit from guardianship of their children, and Tunisian law takes a step toward that direction. Under the CPS, mothers can gain actual guardianship if the father is deceased. In addition, custody of the children is awarded to the most suitable parent. Neither the mother nor father has priority based on the gender or age of the child. A court decides which parent should have custody based on the best interest of the child. Charrad found that approximately 90% of the custody cases in Tunisia awarded custody to the mother. Under CPS Article 67, if the mother is awarded custody, she is also actively involved in making guardianship decisions pertaining to the child's education, travel, and finances. If the guardian, i.e. the father, is prevented from exercising authority, has vanished, or is irresponsible, the judge may give the mother all guardianship responsibilities. As in Palestine, the Tunisian mother faces the horrific option of losing custody of her child if she remarries although, a judge has the ability to order otherwise. Both societies clearly need to eliminate this provision.

IV. Conclusion

The political and legal situation in Palestine remains in turmoil, and the future looks bleak in many respects. At some point, the area may stabilize such that Palestine can focus on its internal legal regime. In that case, this Article has offered some suggestions for potential reforms in the area of women's rights by Palestinian policymakers. These proposals are only useful if the legal system takes a more secular approach in the future, rather than an Islamist direction that might be favored by Hamas or a similarly oriented regime.

131. Id. art. 156.
133. See id. at 1109 (describing Article 67 of the CPS).
134. Id.
135. See Charrad, supra note 34, at 60 ("[S]everal of the lawyers whom I interviewed estimate that, in nine cases out of ten, the mother now gets custody of the children after divorce.").
137. See CREDIF, supra note 47, at 7 (describing Article 67 of the CPS).
138. See Abu-Odeh, supra note 35, at 1109 (describing Article 58 of the CPS).
139. Id.
The fiftieth anniversary of revolutionary Tunisian legislative reforms provides a suitable occasion for Palestine to explore those efforts in depth for any potential suitability in the Palestinian context. Following the Tunisian example and basing reform upon Islamic reinterpretation, rather than purely secular norms, may enhance the possibility of acceptance in some Palestinian quarters. While not uniformly progressive in all respects, Tunisia has gone further than any other Arab Muslim country in creating a foundation for women's progress on paper, and then implementing it in practice on the ground over a half century. Perhaps one day, Palestine will join Tunisia in the forefront of advancing women's rights in the Muslim world in the twenty-first century.