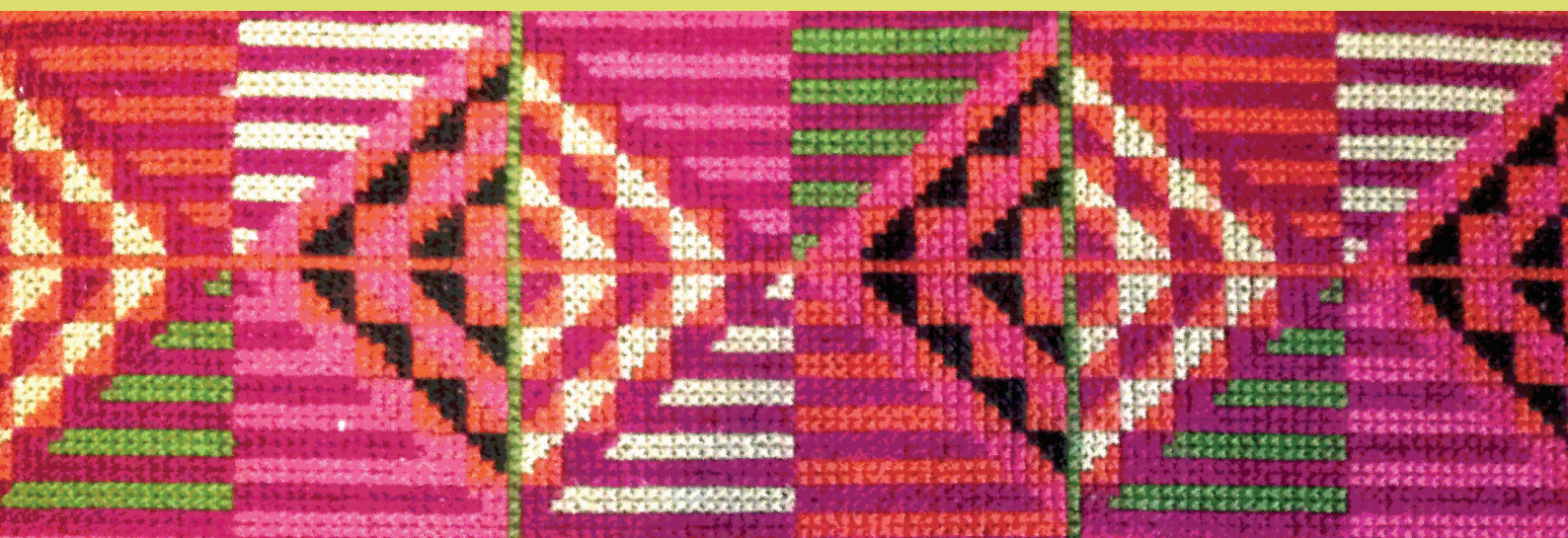


Change & Conservation

Family Law Reform in Court Practice and Public Perceptions in the Occupied Palestinian Territory

Summary and Report of 2013 Family Law Survey Findings

Penny Johnson & Rema Hammami



Institute of Women's Studies, Birzeit University in collaboration with AWRAD with support from UNDP



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December 2013

**Change & Conservation: Family Law Reform in Court Practice and Public Perceptions
in the Occupied Palestinian Territory**

Summary and Report of 2013 Family Law Survey Findings

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Acronyms

AWRAD	Arab World for Research and Development
IWS	Institute for Women's Studies
JMCC	Jerusalem Media and Communications Center
OPT	Occupied Palestinian Territory
PCBS	Palestinian Central Bureau of Statistics
PLC	Palestinian Legislative Council



Terminology

<i>diya</i>	compensation in conflict
<i>waqf/awqaf</i>	endowment/s, usually a building or land used for charitable or religious purposes
<i>Fateh</i>	the main nationalist Palestinian faction
<i>fatwa/fatawa</i>	shari'a interpretation/s issued by an expert in Islamic law
<i>fiqh</i>	Islamic jurisprudence
<i>Hamas</i>	main Islamist Palestinian faction
<i>khul'</i>	divorce requested by the woman and implemented by the husband for a financial consideration, usually the return of the dower
<i>ma'dhun</i>	the marriage registrar
<i>nafaqa</i>	women and child maintenance/alimony rights
<i>qadi/qudah</i>	judge/s
<i>rijaal islah</i>	literally, "men of reconciliation," or respected males chosen to negotiate in customary law cases
<i>shari'a</i>	Islamic law
<i>talaq</i>	unilateral divorce by the husband
<i>tafriq</i>	divorce where the agent of separation is the shari'a court judge
<i>ta'mim</i>	judicial decree in the Islamic court system



Summary

Birzeit University's Institute of Women's Studies (IWS) 2013 Family Law Survey aimed to analyze changes in attitudes towards various aspects of family law that have emerged in Palestinian society in the Occupied Palestinian Territory (OPT) over the past decade. As such, the survey asked many of the same questions as a smaller 2000 family law survey undertaken by the IWS, while also posing an array of new questions. These were designed to further probe women and men's experiences in family court, their needs and interests in marriage, divorce, child custody and in material claims such as inheritance and maintenance, as well as their attitudes and aspirations for change or conservation of existing family law. The original year 2000 survey of 1,200 people over the age of eighteen revealed a high level of support for reform of the prevailing law in ways that represented an expansion of women's rights and protections—as long as the overall framework (for the 99% of respondents who were Muslim) remained situated in Islamic *shari'a*. Conducted a tumultuous decade later, the 2013 survey of 4,028 women and men age eighteen and over¹ was undertaken in a vastly changed physical and political landscape of Palestine where human insecurity has escalated, and political solidarities and social ties have shifted or are under severe strain from new realities.

Clear support for reform when linked to concrete injustices; strong support for equality but increased polarization

A fundamental question of this project was whether Palestinian women and men still supported reform of family law in 2013, and if so, in what ways and with what views of their rights, needs and interests. The results of the 2013 survey clearly reveal such support—with important variations by gender, region and other factors—that pose multiple avenues for reform. This finding is significant as there is sometimes an assumption that the highly insecure and fragmented conditions of the last “dangerous decade” have rendered Palestinian society uniformly more conservative. And importantly, support for reform emerged most clearly when respondents addressed real-life dilemmas and concrete needs and injustices, whether the possibility of divorce for a woman with an abusive husband or a widow and children in need of more economic support.

At the same time, the 2013 findings reveal more polarization than was evident in the 2000 survey, with an increased minority of respondents indeed more conservative on some issues than in the 2000 survey. An important example is found in the responses to two new questions on equality, where a strong majority of respondents felt women and men should have equal rights to choose a spouse and to divorce, but with a substantial minority of respondents (across regions) in opposition. The impulse for equality in divorce is quite interesting and requires further exploration, since it stands uneasily alongside the legal principles on divorce underlying Islamic family law, which are not based on gender equality; at the other end of the spectrum, however, the “no divorce” choice also contradicts these legal principles, since some forms of divorce are clearly allowed in Islamic *shari'a*.

Who should reform the law? More trust in judges in absence of political unity

Between 2000 and 2013 there has been a shift regarding respondents' choice of a preferred agent to reform the law. The shift has seen a decline in support for society's democratic role in deciding

¹ The fieldwork for the 2013 Family Law survey was conducted between March 13-17, 2013 by Arab World for Research and Development (AWRAD) for the Institute of Women's Studies. A stratified random sample of 4,028 people age eighteen and over were interviewed face to face throughout the West Bank and Gaza Strip. The total margin of error was ± 1.5 percent. The margin of error for each gender/region group was three percent

(from 33% in 2000 to 27% in 2013), as well as a decline in support for presidential decrees (from 12% to 7%), accompanied by a rise in support for *Shari'a* Court judges (from 26% in 2000 to 35% in 2013) and for the Palestinian Legislative Council (or PLC, from 17% to 20%). The highest rise has been for the position that *Shari'a* Court judges are the legitimate authorities for reform of family law, although this remains a minority position. Rather than assuming that this is a shift towards religious conservatism (as the common public assumption goes), one may also see this as a preferred practical solution: given that the PLC has not been functioning as a unified body (or at all in the West Bank) and that there are two contending presidents, the choice places reform in the hands of *Shari'a* Court judges, who have proven themselves at times responsive to emerging crises and needs in society. In addition, it could also be seen as a practical “interim” solution to the crisis of political and legislative legitimacy facing Palestinian society.

Most respondents want family law to change to meet new needs; more than half of women want reform to expand women’s rights in a decline since 2000

Indeed, over 80% of male and female respondents in both 2000 and 2013 believe that family law should change to meet new needs in Palestinian society. A similarly large majority (83%) supports a new unified family law in 2013, although support is significantly lower in Gaza (76%) than the West Bank (87%). More than half of women and a quarter of men want reform to expand women’s rights, but this proportion constitutes a decline from the numbers who responded so in 2000 (from two-thirds of women in 2000 to only half of them in 2013 and from one-third of men in 2000 to one-quarter in 2013).

The relative decline in support for expanding women’s rights through legal reform in 2013 is due to an increase in responses that the current level of rights for women should stay the same (from 52% to 65% among males and from 35% to 43% among females between the two periods). As such there has been a greater move among men and women towards keeping the status quo in terms of women’s rights in the law in 2013, rather than a move towards further limiting them.

At the same time (as we will see below), there is much greater support for expanding women’s rights in the law when it is related to concrete inequalities and injustices rather than when treated (as above) in terms of general abstract principles.

General context: Changes in gender roles

A review of changes in the economic, political and social landscape in Palestine and procedural changes in the *shari'a* family court system itself provide important background for understanding

Over 80% of male and female respondents in both 2000 and 2013 believe that family law should change to meet new needs in Palestinian society. A similarly large majority (83%) supports a new unified family law in 2013, although support is significantly lower in Gaza (76%) than the West Bank (87%).

survey results highlighted in this report. These changes help to explain both the openness to reform, and the majority's assertion that the existing family court system is fair. In particular, the ongoing economic hardships of the past decade have resulted in some fundamental changes in gender roles and priorities across households in the OPT. Numerous studies have shown a marked increase in support among men and women of all ages for young women's higher education, as well as their engagement in paid employment. Our comparative statistical review shows a clear rise in investment in female education and a decline in both fertility rates and early marriage.

Legal context: Interim measures signal change from normative to procedural justice

In the legal context, we note a key shift in local legal reform strategies from a focus on normative justice in the Oslo-era interim years (1995-2000) to procedural and cultural issues since the period ushered in by the eruption of the Second Intifada and the crises in the Palestinian political field. Our review of procedural changes instituted by the Islamic family court system (primarily in the West Bank) show that, in the absence of legislative legal reform, the court has had the occasion to respond in particular to the problems of women—most clearly through 2012 changes in procedures for women-initiated divorce (*khul'*) and judicial separation, which reflected public outrage over the murder of a Bethlehem woman who had been attempting judicial divorce from her abusive husband. A change in inheritance procedure, instituting a three-month waiting period before women can give up their inheritance share, also speaks to court sensitivity to the dilemmas and pressures upon women. While these “interim measures” may not substitute for more comprehensive or integrated legal reforms, they are important as the courts serve as a primary address for women seeking protection or claiming rights.

Court practices and satisfaction: High usage, high satisfaction

One-fifth of respondents interacted with the family court system; 80% were satisfied with court treatment. Almost half of the women and men widowed or divorced resorted to the court. Gendered reasons for dissatisfaction were higher than in 2000.

As both 2000 and 2013 data shows, the use of *shari'a* courts by almost one-fifth of the adult population, whether in a year or a more extended period, suggest the court's imbrication in the daily affairs of a substantial part of the population. (Because only 1% of our sample identified as Christians, we are unable to properly address use of the ecclesiastical courts.) And in the 2013 survey, it is clear that more females resort to the courts in certain kinds of cases, such as child custody, maintenance and judicial divorce—in other words, in cases where there are claims to be contested, rather than matters such as marriage registration where men predominate. Significantly, our 2013 data also shows that almost half of respondents who were widowed or divorced had resorted to the court in the past five years, compared to slightly over one-quarter of the married respondents and a much lower 7% of the single respondents.

Satisfaction with the court rose between 2000 and 2013, to over 80% of court users. Among the minority not satisfied, about 40% said either that the court was not professional or didn't reach a decision. What was most striking is the rise of perceived gender bias for dissatisfaction in 2013, with about 35% of dissatisfied Gazan men finding the court unfair to men and 42% of dissatisfied women finding the court unfair to women, as opposed to about 13% of West Bank men finding the court unfair to men and about a third of West Bank women finding the court unfair to women. Jerusalem women were an exception to their West Bank counterparts with two-thirds of dissatisfied women finding the court unfair to women.

Two-thirds of all respondents say the court supports women, men and children's rights, with gender and regional variations.

Whether court users or not, over two-thirds of our respondents answered yes to questions on whether the court supports women's, men's and children's rights, but there were significant gender and regional differences: Gaza men, in particular, as was true of Gazan male dissatisfied court users, were more likely to think that the court did not support men's rights, while 72% of Gazan women felt the court supported women's rights. A "Jerusalem exception," which runs through much of our findings, emerges here. Almost three-quarters of Jerusalem women said that the court supports women's rights as opposed to about two-thirds of women in the rest of the West Bank.

Among court-users, a lower proportion of Jerusalem respondents were registering marriages and a higher proportion of Jerusalem males had marriage contract problems.

In reviewing the reasons our respondents resorted to family court, it was no surprise that a majority of respondents used the court for marriage registration. What is interesting, however, is that only about a third of Jerusalem court-users used the court for marriage registration purposes—and an almost equivalent percentage of Jerusalem men used the court for problems in the marriage contract. We surmise that problems of under-age marriage may lay at the heart of this "Jerusalem exception," as prevailing Israeli law applicable in Jerusalem sets a higher age for female marriage at seventeen (at time of survey) than the 1976 Jordanian Law of Personal Status which sets the age at fifteen.

Marriage and divorce: Openness to change

Men and women's responses to questions on marriage and divorce demonstrate our overall finding, noted above, that attitudes toward family law and reform challenge the prevailing view that the years since the outbreak of the Second Intifada have witnessed a sharp increase in social conservatism among Palestinian women and men. While the danger and insecurity during these years have certainly had a palpable effect on family life—including, for example, restrictions on girls' mobility in some settings, our survey reveals a continued openness to change towards more equality in the rights of women and men, although sometimes unevenly and with increased social and regional polarization.

Marriage age: There is overwhelming support to raise the age to eighteen, but differences on when one is mature enough to choose spouse and marry.

Ninety percent of our female respondents and 86% of our male respondents supported raising the minimum age of marriage to eighteen—mirroring Palestinian public sentiment in a number of polls. However, there are significant changes in views on who is "mature enough to choose their spouse," or "mature enough to marry." For example, about 18% of Gazan women thought that women under seventeen were mature enough to choose their spouse as opposed to only 6% of Gazan females in 2000. The proportion of West Bank women who thought so remained at 8% in both polls. An explanation here must be tentative: there may be a contradiction between raising the age of marriage as a public good—widely accepted—and conditions on the ground. Indeed, recent harsh conditions, especially in Gaza, may have increased trust in the maturity of young women.

Marriage choice responses show a vote for equality.

Almost two-thirds (62%) believed that women and men should have equal levels of freedom in choosing a spouse, while about 8% thought women should have more freedom, 11% thought men should have more freedom and 18% that freedom should be limited for both sexes. This proportion of equality versus limits is similar to responses on the question of equality in divorce (below).

Civil marriage is supported by half of all Jerusalemites and one-fifth of those aged 18-35.

There was a very slight decline in support for civil marriage (posed as an option alongside and not affecting the existing religious courts) from 2000 but support was high among both Jerusalem males and females (and over half for the latter). One-fifth of younger cohorts also supported a civil marriage option.

Divorce: Rights and reasons for divorce rise

Surveys prior to our 2000 survey consistently found an overwhelmingly negative stance towards women's right to divorce. In the 2000 survey, however, by posing specific reasons for divorce, we found that about 70% of both women and men agreed that a woman had a right to a divorce if her husband was a collaborator and a majority agreed to divorce on conditions of abandonment, mental illness or physical abuse. The proportion of respondents agreeing to these reasons for divorce was significantly higher in 2013—95% agreed that collaboration was a reason to grant women divorce; over three-quarters said that abandonment was a reason; and three-quarters of women and 68% of men stated that physical abuse was a reason.

Support for women-initiated divorce (*khul'*) also rose among our 2013 respondents; about 43% of females and 36% of men supported this right. Equally significant among those opposed to *khul'* was that a majority of women and 28% of men were opposed because they did not believe women should give up their financial rights.

Most striking in the 2013 responses was the strong majority supporting equality in divorce. At the same time, there was also a significant increase among both women and men of respondents who thought that “women should not be allowed to divorce under any circumstances”—from roughly 4% to 15%. Again, data thus indicates both a trend towards greater openness to women's rights, but also an increase in polarization with a substantial polarized minority of 15% in opposition.

Child custody: In whose interest?

The laws regarding child custody are perceived as not in the interests of fathers or children by a majority of our participants.

Although, as noted above, two-thirds of our respondents thought the court protected women, men and children's rights, child custody laws were widely perceived—by both women and men—as not in the interests of fathers and children. Only about a quarter of men and women in the West Bank (excluding Jerusalem) agreed that custody arrangements were fair to fathers. (Jerusalem was once again an exception, where almost two-thirds of women and men thought the laws were fair to men.) On the face of it, this is a surprising finding given that women lose custody of their children in the event of re-marriage. The most plausible explanation is that the gendered nature of custody arrangements may strike respondents as unfair to fathers—with the mother generally taking custody and the father's access to children limited in his role as guardian although he has financial responsibility and decision-making power. Perceptions of unfair financial burdens on fathers may also play a part in these responses. Children's interests are not centered on the letter of the law, although judges often take them into account in practice.

Inheritance rights

Between 1999 and 2013, there has been a highly significant rise in the numbers of women choosing to take or pursue inheritance claims. In 1999, 64% of women with an inheritance claim did not take or pursue it, while in 2013, this had dropped to 38%.

Although the 2000 survey did not assess either attitudes to or actual access of women to inheritance, comparisons with a 1999 PCBS survey show that there has been a substantial growth in both the numbers of women choosing to claim their inheritance rights between the two periods and in the numbers of women actually receiving them. There is evidence from other studies that the increase in women claiming their inheritance is linked to the ongoing economic hardship faced by households (especially in Gaza) that leads to greater household nucleation and wives having to prioritize the needs of the marital family over relationships to their natal one. At the same time, there has been both a series of campaigns promoting women taking their legally-sanctioned inheritance rights, and—another outcome of long-term economic hardship—both an increased role for, and a heightened sense of, women as economic actors and providers.

Although an overwhelming majority of men and women (89%) continue to support the gender inequality principles of *shari'a*-based inheritance, a high majority of both sexes (60% of men and 72% of women) also want the addition of special provisions that would ensure the well-being of the vulnerable (including minor children, persons with disabilities, aged and ill). Again, this suggests that men and women do not want to step outside the religious basis of the law, but at the same time perceive the need for supplementary ways to secure justice for the society's most vulnerable groups. In addition, 50% of men and 56% of women support the right of individuals to make wills as they see fit.

Maintenance and material claims

On average, more than 60% of men and women do not feel the current financial rights of divorced wives and young widows are adequate.

A majority of men and women in 2013 feel that the current levels of financial support offered by the law to wives, divorcees, young widows and their children are inadequate. Only 40% of men and 35% of women believe the current law gives wives enough support in case of divorce, and only 38% of men and 37% of women believe the current laws give young widows and their children enough economic support and protection. In addition, a majority of men and women in 2013 support divorced wives having some level of access to assets built up in marriage: 40% of men and 45% of women support divorced wives having rights to marital assets they directly contributed to, and another 14% of males and 25% of females support wives having rights to marital assets that they contributed to through non-financial means.

While the majorities supporting the various extensions of women's financial rights on dissolution of a marriage are small, they are nonetheless majorities. Women express stronger sentiment than men in favor of enlarging financial support to divorced and young widowed women. They also show extremely strong support for the notion that courts should ensure that husbands spend their income for family welfare.

Again, it is likely that the past decade, with high male unemployment, greater potential for widowhood and the extreme stresses put on households by both economic crisis and military violence have led to a strong consciousness of the economic vulnerability of women in marriage and even more so in cases of its dissolution. It is especially in relation to the finding that a majority of men and women believe that divorced women should have some right to the assets built up through the marriage that the changes in the traditional male breadwinner/ economically dependent wife model can be seen since this suggests that marital assets are increasingly perceived as also the product of wives' labor rather than solely that of bread-winning husbands.



I. Introduction: Why a Family Law Survey?

In March 2000, the Institute of Women's Studies (IWS) at Birzeit University undertook a public opinion poll across the West Bank and Gaza to assess attitudes towards varying proposals for reform of prevailing Islamic family law in the OPT. In March 2013—over a tumultuous decade later—we launched a new and expanded survey, asking both the same questions for comparative purposes and new questions to further probe women and men's experiences in family court, their needs and interests in marriage, divorce, child custody and immaterial claims such as inheritance and maintenance, as well as their attitudes and aspirations for change or conservation of existing family law.

In the initial 2000 survey, the immediate context was that reform of family law had emerged on the public agenda in the late 1990s when a vigorous women's movement campaign held a "model parliament" with sessions throughout the West Bank and Gaza that discussed proposals to reform all aspects of the law (family, criminal, civil, and constitutional) to expand women's rights. Family law proposals emerged as the most contentious, whether situated within the framework of prevailing Islamic (*shari'a*) law or through reframing within the terms of civil law. The "reform agenda" quickly became the center of a acrimonious national debate² that centered not only on the issues, but on who had the authority to discuss them: at its most heated, women's capacity to even discuss the law was questioned. Opponents of the parliament, some from Islamist political movements, mobilized a counter-campaign attempting to delegitimize the Palestinian women's movement as "Western" and thus non-authentic, while nationalist political parties defended women's democratic right to debate, at the same time generally affirming the need for family law to stay within a religious framework.

Ultimately, the issue of reforming existing family law became hostage to these larger political and ideological conflicts and largely taken out of the hands of the women's movement. As has been pointed out elsewhere, across the modern Middle East, Islamic family law has become a powerful marker of national and religious identities.³ As such it is a highly emotional issue seen as defining national and religious selves and not simply perceived as pertaining to rights and duties between men and women. The atmosphere of near hysteria surrounding the public debates in the mid-1990s eclipsed any attempt to get an understanding of where and under what circumstances men and women rationally sought changes in the division of rights and duties in the prevailing Palestinian law.

Also striking in these public debates over reform of personal status law was the lack of a basis in systematically measured public opinion. Instead, various actors claimed their position represented the interests or priorities of either "the society", "women" or "our norms and values." The absence of objective data on where various sectors of the society stood helped feed into the ideological nature of the debates and enabled the actors involved to marginalize from the discussion the actual needs and priorities of the population they were claiming to represent.

The poll undertaken by the IWS in 2000 attempted to fill in this critical gap by assessing more carefully specific attitudes and perceptions towards various issues in prevailing family law. Although a number of previous polls had included questions about family law, they had tended to be either very general or poorly constructed in the way they posed the issues. In contrast, IWS' approach was to construct questions by carefully disaggregating the issues and addressing the different circumstances in which

2 For a review of those debates see: Hammami R, and P Johnson. 1999. "Equality with a difference: gender and citizenship in transitional Palestine". *Social Politics*. 6 (3): 314-43, and Johnson P 2004, "Agents for Reform: the women's movement, social politics and family law reform", in Welchman ed. 2994

3 Kandiyoti, D. (1991). *Women, Islam, and the State*. Philadelphia: Temple University Press.

women and men might seek to have their needs and interests addressed by reforms to the existing law.

As we will elaborate below, many important findings emerged from the poll that showed that both women and men had a much more nuanced attitude towards family law than was evident in either previous polls or public debate.⁴ In general, there was high support for reform of the prevailing law in ways that represented an expansion of women's rights and protections—as long as the overall framework remained situated in Islamic *shari'a*. At the same time, there was an overall preference that changes in the law should be undertaken through democratic processes (with the PLC seen as the most appropriate body to do so).

Thirteen years later, the physical and political landscape of Palestine has changed in dramatic and drastic ways, human insecurity has escalated, and political solidarities and social ties have shifted or are under severe strain from new realities. A fundamental question in this project then is whether Palestinian women and men still supported reform of family law—and if so in what ways and with what views of their rights and interests. How do they use and view the *shari'a* based family courts? What do they value and what do they wish to change? How do their attitudes diverge—not just along gender lines, but perhaps by other variables, such as location, education or age? To ask these questions properly required both a larger sample and a longer questionnaire, which we will describe in the methodology section below, after a discussion of the contexts in which we are exploring these questions.

Many important findings emerged from the poll that showed that both women and men had a much more nuanced attitude towards family law than was evident in either previous polls or public debate. In general, there was high support for reform of the prevailing law in ways that represented an expansion of women's rights and protections—as long as the overall framework remained situated in Islamic *shari'a*.

⁴ See the analysis and findings from the 1999 Poll, "Rema Hammami. 2004. "Attitudes Towards Legal Reform of Personal Status Law in Palestine". In Lynn Welchman (ed) *Women's Rights and Islamic Family Law: Perspectives on Reform*. Zed Press: London.



II. Political, Economic & Social Contexts

More than a decade lies between the current (2013) IWS poll and its 2000 predecessor. Over that period, Palestinian society in the West Bank and Gaza has been through a devastating period of crisis, conflict and violent repression during the Second Intifada, which took immense tolls in terms of human life and wellbeing. Equally significant are the profound changes to the lived world of Palestinians over the period, including to their spatial environment, political institutions, social structure, and economy, as well as to their traditional nationalist ideological references. The most critical change in nationalist politics is that of political division: while in 2000 the West Bank and Gaza were one polity with a unified set of political institutions (the Palestine Liberation Organization and Palestinian Authority), by 2013 the growing physical separation that Israel imposed on the OPT had translated into a divided and competing polity with a Hamas-led government in Gaza and a Fateh-led government in the West Bank. By 2013, physically and politically Palestinians in the OPT were no longer unified but were living internally divided and separate from each other. An outcome of this is that long-term disparities in social and economic indicators between the West Bank and Gaza have over the period become much more pronounced (see Table I below).

As salient is the collapse of a unified ideological field that was once dominated by Palestinian nationalism. Social and ideological visions (especially among youth) are increasingly becoming marked by hybrid sensibilities which defy easy division into conservative versus liberal or religious versus secular. These divided and sometimes polarized sensibilities are clearly evident in our 2013 poll. What is emerging in place of the older nationalist symbols and consensus and of earlier social visions, remains unclear, but importantly, cannot be grasped as a simple reflection of the polarized political field between Fateh (assumed to be secular) and Hamas (assumed as religious).

At the same time, various studies by the IWS have shown that the economic hardships of the past decade have resulted in some fundamental changes in gender roles and priorities across households in the OPT.⁵ For instance, there is a marked increase in support among men and women of all ages for young women's higher education, as well as their engagement in paid employment.⁶ While this support is motivated by the loss of the economic capabilities that had previously underpinned the preferred family model of male breadwinners and their dependent wives, IWS has analyzed the impact of these shifts among young women in terms of their demands to expand gender rights commensurate with their greater economic responsibilities.⁷ The table below suggests some of the significant changes that have taken place in relation to gender roles and relations in Palestinian society over the period as reflected in a number of important statistical indicators.

⁵ See the chapters in Institute of Women's Studies. 2012. *A Dangerous Decade: The 2nd Gender Profile of the Occupied West Bank and Gaza (2000 – 2010)*, Accessed March 19, 2014. http://sites.birzeit.edu/wsi/index.php?option=com_content&view=article&id=46%3Areporta-dangerous-decade&catid=9&Itemid=23.

⁶ See World Bank. 2010. *Checkpoints and Barriers: Searching for Livelihoods in the West Bank and Gaza Gender Dimensions of Economic Collapse*. Accessed March 19, 2014. <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/WESTBANKGAZAEXTN/0,,contentMDK:22469813~pagePK:1497618~piPK:217854~theSitePK:294365,00.html>

⁷ Also see UNWOMEN. 2011. *Who Answers to Gaza Women?* Available March 19, 2014. www.lacs.ps/documentsSh-how.aspx?ATT_ID=4613

Table 1: Changes in Major Gender Indicators Between Two Survey Periods (2000-2013), in Percentages

	1st Survey (reference year)	2nd Survey (reference year)	Comments
Poverty Rate	20.3 (1998)	25.8 (2011)	Gaza: Rose from 33% to 38% WB: Rose from 14.5% to 18.3%
Female Labor Force Participation	12.9% (2000)	15% (2010)	WB: Rose from 14.1 to 17.2 Gaza: Dropped from 10.6 to 10.2
Female Unemployment	12.4% (2000)	26.8% (2010)	WB: Rose from 9.9 to 19.7 Gaza: Rose from 18.7 to 47.8
Male Unemployment	14.3% (2000)	23.7% (2010)	WB: Rose from 12.6 to 16.6 Gaza: Rose from 18.9 to 36.2
Fertility Rates	5.9 (1999)	4.2 (2010)	WB: 1.6 point decline Gaza: 2.0 point decline
Female median age at 1st marriage	18 (1998)	20 (2011)	WB: Rose by 2.2 years Gaza: Rose by 1.8 years
Male median age at 1st marriage	23 (1998)	24.6 (2011)	WB: Rose by 2.3 years Gaza: Rose by 1.8 years
Female as % of enrollment in higher education	45.9 (99-2000)	57.2 (2009/10)	11.3% rise in favor of females

Major changes in gender roles reflected by the above indicators are the significant drops in fertility rates across West Bank and Gaza as well as the rise in marriage ages of both sexes. A drop of an average of 1.7 children per/married female within a decade is an extremely significant decrease in fertility rates within a short period. Part of the decrease in fertility rates can be accounted for by the decline in early marriage during the same period, with a rise of two years in the median age at first marriage among females. This drop in early marriage is more apparent in the declining numbers of 15- to 19-year-old married females in the population: in 2000 19.4% of females aged 15 to 19 years were married, but by 2009 marriage among this young female age group had dropped by half to 9.1%.⁸ Male median age at first marriage also rose by 1.6 years during this period. Declines in fertility as well as rise in first age of marriage are also linked to another indicator—increased enrollments in higher education among females.

Female and male enrollments in higher education increased for both sexes between 2000 and 2013, but females' share of higher education enrollments ultimately out-paced males—by 2009/2010, females made up 57% of the students at universities (an 11% growth of the share of student enrollments from 2000). Ultimately, all of these changes can be linked to the decline in the economic wellbeing of households with one-fifth of households under the poverty line in 1998 rising to a quarter of households across the OPT in 2011 (at its worst in 2007, the rate was 31% of households). Male unemployment almost doubled during this period and significantly, more women tried to enter the labor force but their unemployment rates grew dramatically (almost doubling and outstripping those of males between 2000 and 2010). All of the above point to changes in the gender role priorities of households due to ongoing economic crisis. In general, the trend has been towards investing in females' higher education so they can enter the workplace and thus provide a secondary income to compensate for the increasing impossibility that a single male breadwinner income will ensure a basic standard of wellbeing to families. Fertility decline is a logical extension of this problem, with young families unable to bear the economic costs of large families in relation to their parents' generation.

Social and ideological visions (especially among youth) are increasingly becoming marked by hybrid sensibilities that defy easy division into conservative versus liberal or religious versus secular.



III. Legal Contexts: Prevailing Law, Interim Measures & Avenues for Change

From Legal Reform to Procedural Change

Anne Marie Goetz has made a useful distinction among three types of changes in gendered access to justice: the normative (changes in constitution and legal framework), procedural (implementation of changes and more equitable and fair procedures of judiciary, police and other state authority), and cultural (changes in attitudes of those responsible for protecting women from arbitrary exercises of power) (UNIFEM 2008: 72-73). If we expand the notion of the “cultural” to include community and societal attitudes, this framework can illuminate the prospects and problems of access to justice in Palestine. Women’s organizations, most prominently the Women’s Center for Legal Aid and Counseling, have worked for change on all three levels, but one notes a shift from a focus on normative justice in the Oslo-era interim years (1995-2000) to procedural and cultural issues in the Second Intifada period. Very broadly and with exceptions, international donors have tended to consider legal reform (normative justice) a priority, to the detriment of the other two forms of change.

Palestinian women’s organizations began the interim period by adopting the South African model of a women’s charter (1994), an important initiative that nonetheless foundered as the interim agreements and the post-Oslo political realities splintered the women’s movement. A 1998 initiative for a women’s model parliament, noted in our introduction, was a major initiative to examine existing legislation with a gender lens and propose new laws through public meetings throughout the West Bank and Gaza. Attacks on the parliament (largely over family law issues and punishments for adultery) led to a spirited defense of Palestinian democracy, but also exposed competing paradigms of women’s citizenships and rights and political and social fault lines in Palestinian society (Hammami and Johnson 1999). Since that time, women’s organizations have pursued less public initiatives focusing on advocacy and lobbying with legal professionals, police and parliamentarians, as well as advice and counseling for women. An integrated public campaign that tackles the three types of changes probably awaits a re-visioning of the Palestinian women’s movement (or movements, as Islamic women’s organizations are also active) and depends as well on the re-unifying of the Palestinian national project.

Procedural Family Law Reforms Post-2000

In the post-2000 era, a handful of significant “interim” changes have been made to various aspects of the law by legal and political authorities, primarily in the West Bank but also in Gaza. Rather than the normative changes that dominated campaigns for reform in the Oslo era, these are procedural changes that, along with their interim nature, perhaps reflect the political uncertainties caused by the ongoing split in national governance. However, as our examples below clearly demonstrate, procedural changes to the law in both geographic regions have shown that legal authorities can be responsive to needs for change, either as a result of specific incidents or as expressed by society.

On August 30, 2012, the chief justice of the Islamic *shari’a* courts to the Palestinian Authority, Sheikh Yousef al-Dais, held a rare press conference in Ramallah, with a row of other judges from the court sitting in attendance. He announced changes in the court’s treatment of woman-initiated divorce (*khul’*) and judicial separation (*tafriq*) proceedings. These changes included giving judges the discretion to decide whether the marriage is harmful for the wife rather than the woman having to submit evidence in cases of judicial separation; establishing that divorce proceedings must be completed in three months; banning husbands for seeking unreasonable sums of money beyond the return of the dower (and wedding gifts) in *khul’* divorce; and allowing women to initiate divorce without the hus-

band's consent in cases where the marriage was not consummated. Under prevailing Islamic law, women, unlike men, cannot divorce unilaterally, but must ask the husband to divorce them in return for a financial consideration (*khul'*). In judicial separation, or *tafriq*, it is usually the woman who petitions the court for divorce upon specific grounds, but the agent of divorce is the judge.

Limiting the financial consideration in *khul'* divorce to the dower, Al-Dais criticized men for often asking for much more, saying "These women are investment projects for men, open to extortion at any time." In the case of judicial separation, proving harm "often entangled women in years of court hearings as they struggled to provide tangible evidence," which could be impossible in many cases of domestic abuse. Al-Dais made a particularly strong statement of principle when he said:

"In Islamic law, the relationship between spouses should be based on tenderness, love and understanding. If there's hatred between them, should we force them to stay together?" (Hadid 2012, 1)

Sheikh Yousef's words recall a Quranic injunction in the sura on divorce that Nahda Shehada (2005) found judges using in the Gaza City court nearly a decade ago: that a wife should either "be retained in honor or released with kindness." (2:229), and indeed, this phrase is quoted in the official decree (*ta'mim* 2012/09) issued by the office of the chief justice. As this discussion will show, judges applying codified family law in Palestine (and elsewhere) draw on non-statutory sources, whether the Quran itself, compilations of Islamic jurisprudence (*fiqh*), or general principles of the *shari'a*, whether they are ruling in the public interest or in defense of the weaker party in a conflict.

The 2012 new and positive changes in divorce proceedings were clearly triggered by a public event and the public's reaction to it: the horrific murder of a woman in Bethlehem in August 2012. Her abusive husband, a man she had struggled to be divorced from for a number of years, slashed her throat as she was shopping in a Bethlehem market.

The importance of Sheikh Yousef's decree was both its immediate effect on women's lives and its demonstration of flexibility and paths to change within the *shari'a* system. Observers in West Bank courts say that judges are trying to implement the new divorce reform, with some problems of interpretation. Also significant in a negative sense is that the new proceedings are not yet implemented in Gaza, reflecting the adverse effects of the split in Palestinian governance. However, the head of the Gaza court notes that the amendment is under consideration, pending approval by the Gaza Palestinian Legislative Council (Ayyoub 2013).

It is particularly telling that the first case under the new regulation—prominently reported in the Palestinian press—was the

In the post-2000 era, a handful of significant "interim" changes have been made to various aspects of the law by legal and political authorities, primarily in the West Bank but also in Gaza. Procedural changes to the law in both geographic regions have shown that legal authorities can be responsive to needs for change, either as a result of specific incidents or as expressed by society.

khul' divorce of a freed Palestinian political prisoner, Kefah Kayyal from her husband Samir Quntar, a political prisoner from Lebanon (Kawasmeh 2013). They were married when he was still in prison and Quntar was then freed during a prisoner exchange and returned to Lebanon. Kayyal raised her case in November 2012 after the issuance of the new regulation and it was decided in the Ramallah court in April 2013, although she is a resident of Acre inside Israel. Hers was a case of a marriage without consummation, and the positive publicity surrounding it clearly derived from the public's sympathy for an ex-prisoner and her impossible situation, as the two would have found it very difficult to be in the same place for any length of time.

The responsiveness of the court to public events and concerns does have a Gaza counterpart, although it occurred not in the court, but in 2009 in the rump Gaza Palestinian legislature, which extended the custody age for unmarried widows to 15 for boys and into adulthood for girls. This was widely seen as a response to the situation of Gaza war widows after Israel's 2008-2009 war on Gaza.

Another significant press conference occurred in February 2013 and featured not *shari'a* judges but four women, wives of Palestinian political prisoners, gathered at a Nablus infertility clinic to announce that they had been impregnated by their husbands via sperm smuggled out of Israeli prisons (Khalil 2013). Previously, on August 13, 2012, a baby boy had been born to Dalal al-Zaiban from her husband's smuggled sperm. What is significant for our purposes is that both the women and the doctor involved drew legitimacy from fatwas (*fatawa*) issued four years ago by the then-mufti Ikrima Sabri and a religious leader affiliated with Hamas, Hamed Bitawi, in a clear response to the situation of wives of long-term Palestinian political prisoners.⁹

These examples illustrate three mechanisms for legal reform: a judicial decree (*tamim*), a fatwa, and a "law," although one that is not statutory in the sense that it is only applicable in Gaza and did not emerge from a PLC with all its members. Indeed, one can add another relevant mechanism, the presidential executive order, although the example is problematic. In May 2011, in response to public outrage over the "honor killing" of a university student from Surif village by her uncle, President Mahmoud Abbas suspended the penal code's article 340 (which provides leniency for husbands who kill when finding their wives in flagrante delicto), a ruling widely regarded as cosmetic since that article had not been used in Palestinian courts since 1960 and does not address the situations of most crimes of "honor."

It should be noted that all these mechanisms are "interim"—some explicitly so, as in another "interim decision" by Sheikh Yousef on May 25, 2011 that a wife must be informed of her husband's intent to marry another wife. These interim strategies may seem distant from the calls for comprehensive legal reform that marked the post-Oslo period, although they are marked by the debates and initiatives of that period. While it is true that initiatives for a new and unified Palestinian family law have failed to date—despite much sustained work by the women's movement and by the *shari'a* judiciary itself—discussions on legal reforms have had palpable effects. One of these perhaps is the important development of the 2009 appointment of two women to the *shari'a* court system in the West Bank, one in Ramallah and one in Hebron. Speaking at a seminar at the Harvard Divinity School in March 2013, Judge Khaloud Al-Faqih, who sits in the Ramallah *shari'a* court, said she saw her role as "finding solutions through closed doors," and affirmed that, "There is no difference between this human being as a woman and a man in this world and together we can succeed." (Walsh, 2013, 1).

***Shari'a* in Context**

The intervention of the chief justice in regulating divorce—and his response to the social world around him—also recalls lost dimensions in the history of *shari'a* courts that may be fruitful to note.

⁹ In September 2013, the Israeli Prison Service ruled that a baby born to political prisoner Abdul Kareem al-Ramawi and his wife Lida through artificial insemination could not visit his father as al-Ramawi had no children registered when he was imprisoned (Maan 2013).

In the centuries of what the prominent scholar Wael Hallaq terms, in an important new book (Hallaq 2013), *Islamic Governance*, there were no lawyers and “litigants appeared before the *qadi* [judge] and presented their cases without professional mediation.” Muftis dispensed legal knowledge free of charge. And perhaps most important for our purposes, “judges invariably sought to understand the wider social context of the litigating parties, often attempting to resolve conflicts with full consideration of the set of present and future social relationships of disputants. Like arbitrators but unlike modern judges, the *qadi* tried hard, wherever possible, to prevent the collapse of relationships so as to maintain a social reality... The Muslim court thus was not only a legal forum but an anthropological, social and moral site.” (57-8). While our survey material has limits in capturing whether this dimension is still salient in the Palestinian *shari’a* court system, the cases noted above suggest that it is a dimension well worth exploring and presents an avenue for change when statutory legislation is blocked.

Prevailing Legal Frameworks

The prevailing family law for Muslims in the West Bank is the Jordanian Law of Personal Status (1976), while in Gaza, it is the Law of Family Rights (1954), issued when Gaza was under Egyptian administration. The *shari’a* courts that administer the law are responsible for matters of marriage, divorce, child custody, inheritance, certain matters of compensation in conflict (*diya*) and endowments (*awqaf*). There are differences between the two laws in some matters such as “age of capacity for marriage, ages of custody for children, some judicial divorce matters, certain succession provisions, and maintenance rights for a divorced woman” (Welchman 2009, 130). Recognized Christian sects have their own family codes and courts, for example, the Personal Status Laws for Orthodox Christians. However, Islamic laws of inheritance are applicable to Christians as well since 1980; only in Jerusalem may an individual make out a will if she or he so wishes.

Unlike other courts operating under the Israeli military occupation, the *shari’a* courts in the West Bank, including Jerusalem, applied new Jordanian legislation—the 1976 Jordanian Law of Personal Status. For other civil and criminal courts, the law was “frozen” in 1967 with “Israeli military orders taking the place of legislation” (Welchman 1999, 18). With the coming of the Palestinian Authority, the Palestinian *shari’a* court has not applied more recent amendments to Jordanian family law (in 2001 and 2010), although it is an interesting question whether amendments on divorce and other matters¹⁰ may have influenced successive chief justices in instituting new procedures, such as the interim decisions discussed above. While this study will not detail all the administrative changes in the *shari’a* court system in the post-Oslo period (see Welchman 2004 for more), the chief justices have been quite active both in defending the *shari’a* court system against actual and perceived encroachments, and in making procedural changes to adapt to new conditions.

There is sometimes a tendency to analyze family law in the Arab world in isolation from the state and legal frameworks in which it resides, so it is worth noting here the complex legal situation (amounting to legal pluralism) in which Palestinian family law and the courts operate. There are three overlapping normative legal frameworks operating in the Palestinian context: statutory law (which includes *shari’a*-based family law), non-statutory Islamic law and various forms of customary law (see Welchman 2009b). Non-statutory Islamic law (where *shari’a* rulings are issued) and customary law have the greatest overlap, but officials of the regular court system, as well as government officials and police, sometimes play a part in customary proceedings. In the latter two, authority is almost entirely invested in males. This analysis focuses on family law, but family law is of course related to these other frameworks.

¹⁰ The 2001 amendment allowed women-initiated divorce (*khul’*) without the husband’s consent (then revoked in 2010, although grounds for judicial separation were extended). In addition, the age of capacity for marriage was raised to 18, but the 2010 amendment has many exceptions (Welchman 2009, Rana Hussein 2010).

In theory, those operating in all three legal frameworks should respect the provisions of the amended 2003 Basic Law. Two of its articles are particularly relevant to our analysis. Article 9 reads:

Palestinians are equal before the law and the judiciary without distinction based upon race, sex, color, religion, political views or disability.

While there is no constitutional court to enforce this broad equality provision, and indeed discussions of a constitution have been halted due to the split in Palestinian governance, the article speaks to a vision of equality among citizens. Another key article to be considered is Article 4, which echoes provisions in the constitutions of a number of Arab states. It reads: “The principles of Islamic *shari’a* shall be a principal source of legislation.” The rights provisions of the Basic Law could perhaps be dismissed as pro-forma declarations and the article on *shari’a* could be called lip service, but neither assertion helps to portray the interplay of concerns that these two articles express.¹¹

Shari’a Courts: Codified Law and “Beyond the Code”

Shari’a courts are most utilized by women and, in surveys over the years, have the highest level of trust of both women and men. One 2006 survey reported 90% of its respondents trusted the *shari’a* courts, while regular courts were trusted by 79% (Bocco et al 2006) and customary law 81%. A later Fafo survey found a near-equal level of trust in the civil courts and customary law, but registered lower figures of trust than found in the earlier survey (Fafo 2012).

As this study will show, women are active claimants in *shari’a* court, particularly in child custody and divorce cases, as well as material claims of maintenance and dower. As Nahda Yunis Shehada’s work in courts in Gaza illustrates, women strategize to use the law to their advantage and a gap exists between codified law and social practice (Shehada 2005). Shehada also finds judges prioritizing their ethical duty to protect the weak over the letter of the law, particularly in child custody cases. As noted above, *shari’a* courts have jurisdiction over *awqaf* (endowment, usually a building or land used for charitable or religious purposes), a range of personal status matters (inheritance, marriage, custody), and *diya* (compensation) although *diya* is often decided through customary law. Despite operating under two sets of laws, some court officials have made efforts to apply more unified provisions until a unified family law is enacted. Shehada notes that Gazan judges also utilize the Book of Personal Status Rulings (Islamic jurisprudence from the Hanafi school) and makes an important observation (2005, 70):

In many settings in the West Bank and Gaza, customary law is utilized in resolving disputes (and crimes) and contains principles and practices of compensation, exchange and collective mediation, which generally exclude women as participants, although addressing them as victims. Customary law is often used in cases of murder, as well as in attacks on “honor,” including rape, where the respected men of the community (*rijaal islah*, or men of reconciliation) may persuade the rapist to marry his victim to stave off family and community conflict.

¹¹ The importance of constitutional articles is highlighted by the current debate in Egypt over a new draft constitution.

“When the codified law, namely the 1954 Law of Family Rights is ‘deaf,’ the qudah (judges) in a quite subtle way, shift their framework back to the principles of the shari’a, which appreciate and accommodate people’s practices. Ultimately, they arrive at a solution in keeping with the spirit of the shari’a, protect the weak and preserve community welfare.”

While we cannot assume that all judges are immune to the pressures of the powerful, her direct observation of practices in Gaza City Court highlights the importance of judges (and enlightened judges) for social change, as well as legal reform of codified law.

A Note on Customary Law

In many settings in the West Bank and Gaza, customary law is utilized in resolving disputes (and crimes) and contains principles and practices of compensation, exchange and collective mediation, which generally exclude women as participants, although addressing them as victims. Of particular relevance to our subject, customary law is often used in cases of murder, as well as in attacks on “honor,” including rape, where the respected men of the community (*rijaal islah*, or men of reconciliation) may persuade the rapist to marry his victim to stave off family and community conflict. Murder cases are often resolved through compensation and the subsequent reconciliation of families, with obvious implications for justice in the case of “honor” killings.

An important study of the informal justice system in the OPT (Institute of Law, 2006) found that the informal “system” was probably as extensive as the formal one, although this study was based on interviews, rather than a survey, and fieldwork was undertaken in 2004, before Palestinian police were reintroduced into West Bank towns. The informal justice system can sometimes involve members of the formal legislative and court system, including *shari’a* court judges, despite the fact that some of the penalties exacted—such as the exile of a whole family from a village—could contradict the Basic Law. The institute’s study also noted that people turn to informal justice in part due to the delay and backlog in the formal court system. The positive features of customary law, including its ability to mediate conflict, are another reason for recourse and are significant for family disputes. This notwithstanding, the gendered impact of customary law remains highly problematic and its increased use in resolving disputes and crimes may not offer fair and equal protection and voice to women. Women interviewed for the Institute of Law study, whether parties to the twelve cases studies or NGO activists, voiced concern on these issues.



IV. Methodology

The fieldwork for the 2000 Family Law Survey was conducted on March 23-24, 2000 as an addendum to a regular public opinion poll undertaken by the Jerusalem Media and Communications Center (JMCC). A stratified random sample of 1,200 people over the age of eighteen were interviewed face-to-face throughout the West Bank and Gaza Strip. Fifty-nine sampling units in the two regions were selected, and from these, researchers randomly selected households. Using Kish Tables, interviewers then randomly selected individuals to be interviewed within the household.

Table 2 : Sample Distribution, 2013 Survey

Sample Distribution					
Region (%)		Residence (%)		Refugee status (%)	
West Bank	50.0	City	51.4	Refugee	49.3
Gaza	50.0	Village\Town	29.3	Non-refugee	50.7
District (%)		Camp	19.2	Work Sector (%)	
Jenin	5.4	Gender (%)		Government	30.2
Tulkarem	3.3	Male	49.9	Private	61.0
Qalqilya	2.2	Female	50.1	Ahli	3.3
Nablus	6.9	Age (%)		Other	5.5
Salfit	1.3	18-35	49.3	Occupation (%)	
Tubas	1.0	36-50	31.8	Laborer	12.4
Ramallah	6.0	More than 50	18.9	Employee	15.7
Jerusalem	8.2	Marital status (%)		Farmer	1.3
Jericho	1.0	Single	21.3	Merchant	4.9
Bethlehem	3.1	Married	73.5	Professional	1.0
Hebron	11.7	Other	5.2	Craftsman	4.2
Jabalya	9.8	Are you the head of the family? (%)		Student	8.8
Gaza	17.5	Yes	42.2	Housewife	38.2
Deir Balah	7.2	No	57.8	Does not work	11.9
Khan Yunis	9.6	Income (%)		Retired	1.7
Rafah	5.9	Good	15.6	Do you use the internet? (%)	
Education (%)		Average	58.2	Yes	44.6
Less than 9 years	27.4	Weak	26.2	No	55.4
9-12 years	39.9	Religion (%)		Do you use Facebook? (%)	
More than 12 years	32.7	Muslim	98.6	Yes	80.9
		Christian	1.4	No	19.1

The outcome of the sample distribution was as follows:

- Region: West Bank (58%) Gaza (36%) East Jerusalem (6%)
- Residence: Towns (44%) Villages (39%) Refugee Camps (16%)
- Gender: Male (47%) Female (54%)
- Marital Status: Married (65%) Single (29%) Widowed (4%) Divorced (1%)
- The average age of the respondents was 35 years of age and the survey had a margin of error of 3% with a confidence level of 95.

The fieldwork for the 2013 Family Law survey was conducted between March 13-17, 2013 by Arab World for Research and Development (AWRAD) for the Institute of Women's Studies. A stratified random sample of 4,028 people age eighteen and over were interviewed face-to face throughout the West Bank and Gaza Strip. The total margin of error was $\pm 1.5\%$. The margin of error for each gender/region group was 3%.

V. Use of Courts, User Satisfaction & Courts' Support for Rights

Table 3: Percentage of Respondents Using *Shari'a* or Ecclesiastical Court in Preceding Year (2000) or Preceding Five Years (2013)

	Total	Gaza	West Bank*	Gaza Female	Gaza Male	RWB* Female	RWB* Male	Jerusalem Female	Jerusalem Male
2000 (1 year)	18.8%	24.9%	15.2%						
2013 (5 years)	19.5%	21.6%	18.2%	17.8%	25.5%	16%	21.1%	20.2%	12.4%

*West Bank including Jerusalem. RWB is Remaining West Bank without Jerusalem. Source: IWS/AWRAD 2013, IWS/JMCC 2000

The figures above primarily represent the use of the *shari'a* court. The authors had hoped to capture ecclesiastical court usage in the 2013 survey, given the relatively large sample of 4,028, but only 1.4% of the sample identified themselves as Christian. Of these 59 individuals, 12% had used the courts—presumably the ecclesiastical courts although Christians can appear in *shari'a* court in several capacities—in the past five years. The absolute number is thus too small to discern patterns. The analysis will sometimes note Christian-Muslim comparisons when questions are addressed to the whole population, rather than just court users; indeed, it is of interest that Christian and Muslim respondents do not have wide differences on a number of significant questions of rights and legal reform.

The usage of the courts by Gazans versus West Bankers is decidedly greater in the 2000 survey (at almost a quarter of Gazans as opposed to only 15% of West Bankers), and remains salient in 2013. Overall court usage did not significantly change between 2000 and 2013, according to respondents, despite that respondents were asked about a longer period (five years instead of one) in the 2013 survey. Whether this is because the same individuals are involved in court cases over time, a decrease in court usage in the 2008-2013 period, or simply problems of recall over five years cannot be determined. It is true that the 2000 survey occurred before the outbreak of the Palestinian intifada when everyday life and movement were easier and courts more accessible. Nonetheless, the use of *shari'a* courts by almost a fifth of the adult population, whether in a year or a more extended period, suggests the court's imbrication in the daily affairs of a substantial part of the population.

In 2013, it was possible to disaggregate the data by gender, as well as marital status, residence and region (in the West Bank). Above, we see that males generally resort to the court at a higher level than females, although this pattern is reversed in Jerusalem. Throughout, this analysis will examine what can be termed the "Jerusalem exception," where Jerusalem women and men often differ in their responses from their counterparts in the remaining West Bank. The highest court usage in 2013 was among Gazan males, with slightly over a quarter of Gazan males surveyed making use of the courts in this period. However, this is at least partly due to a higher percentage of them registering marriages (with about 82% of Gaza males who used the courts using them for this purpose, as opposed to about 72% of Gazan females). As illustrated below (Table 8), females resort to the courts more often in certain kinds of cases, such as child custody, maintenance and judicial divorce cases.

The 2013 data also shows that almost half of respondents who were widowed or divorced, as opposed to 26.8% of our married respondents and 7.2% of our single respondents, had resorted to the court in the past five years—although absolute numbers are small as only 5.2% of our sample were in this category, while the bulk of respondents (73.5%) were married. As shown below, a higher proportion of widowed and divorced respondents were involved in cases of child custody, maintenance, and of course divorce than other respondents.

Age seems to be a more complicated factor although the overall pattern is that court use by males somewhat increases with age, and court use by females decreases with age.

Table 4: Use of Court in Past Five Years by Gender and Age, 2013

Use of court	M 18-35	M 36-50	M over 50	F 18-35	F 36-50	F over 50
Yes	20.5%	21.0%	26.9%	21.3%	13.9%	11.8%
No	79.5%	79.0%	73.1%	78.7%	86.1%	88.2%

Source: IWS/AWRAD 2013

The most striking difference in court usage is between men and women over 50, with 32.5% of Gazan men over 50 using the court in the last five years and only 9.7% of females in the same age group, while about a quarter (24.6%) of West Bank men over 50 (excluding Jerusalem) used the court as opposed to 12.5% of women. Jerusalem does not conform to this pattern, however, with about 17% of women over 50 using the court and 14% of men over 50 doing so. Absolute numbers are quite small here, however, so more investigation would be needed.

Aside from the West Bank-Gaza-Jerusalem comparison noted above, other regional divisions showed differences in court usage in the 2013 data. Interestingly, in the West Bank, both male and female respondents in the southern West Bank used the courts at a lesser rate (around 12% of respondents) than elsewhere, with the highest usage among males in the northern West Bank at around a quarter of respondents there (24.1%), again in contrast with the lower proportion of males in Jerusalem using the courts.

Table 5: Satisfaction with Court by Respondents Using Court, 2000 and 2013

	Total	Gaza	West Bank	Gaza F	Gaza M	WB F	WB M
2000	71.3%	77%	65.5%	71% (plus 11% semi-satisfied)	74% (plus 22% semi-satisfied)	44% (plus 25% semi-satisfied)	65% (plus 18% semi-satisfied)
2013 (primary case)	82.8%	84.1%	81.8%	84.9%	83.6%	85.7%	78.5%

Source: IWS/AWRAD 2013, IWS/JMCC 2000

Satisfaction with the court's treatment of a respondent's case rose significantly in the 2013 survey, although West Bank males reported less satisfaction than any of the other respondents—also a change from 2000. In the 2000 survey, Hammami (2004, 136) observed that in 2000 “West Bank females overall expressed the most displeasure, with 31% of them unequivocally expressing their lack of approval of the courts, in compared to only 18% of the men in the same region.”

In 2000, a little under three-quarters of respondents who expressed dissatisfaction with the treatment of their case said it was because the court did not reach a decision or was unprofessional. In 2013, what is most striking is the rise of gendered reasons for dissatisfaction. While, as we see above, most respondents using the courts in this period were satisfied, about 40% of both Gaza and West Bank dissatisfied women said their reason was unfair treatment of women, and 35% of dissatisfied Gazan men said the court was not fair to men. In Jerusalem, although absolute numbers are small, two-thirds of women said it was because the court was unfair to women.

Table 6: Reasons for Dissatisfaction with Court, 2000 and 2013

	Total	Gaza	West Bank	Gaza F	Gaza M	WB F	WB M	Jslm F	Jslm M
2000									
Not professional, no decision	71.3%	73.4%	70%						
Not fair to women	7.5%	6.8%	8%						
Not fair to men	3.8%	---	6%						
2013									
Not professional, no decision	41.8%	45%	41.2%	37.5%	45.9%	39.1%	42.5%	34%	33%
Not fair to women	20.9%	21.3%	20.6%	41.7%	8.1%	34.8%	12.5%	67%	
Not fair to men	13.5%	23.0%	7.9%	4.2%	35.1%		12.5%		33%*

*Another one third of dissatisfied Jerusalem males did not answer the question. Source: IWS/AWRAD 2013, IWS/JMCC 2000

Does the Court Support Women, Men and Children's Rights?

Whether users of the court or not, respondents were asked “according to their direct or indirect knowledge” whether the courts protect and support women's men's and children's rights. As Table 7 shows, there was a slight overall rise in perceptions that the court supports women's rights, a small but significant decline in perceptions that the court supports men's rights, and an insubstantial rise in perceptions of support for children's rights.

Table 7: Perceptions of Support of Sharia/Ecclesiastical Courts for Rights

	Total	Gaza	West Bank	Gaza F	Gaza M	WB F	WB M
Support women's rights							
2000	66.9%	69.%	65.4%				
2013	70.3%	73.8%	68.2%	72.7%	75.0%	64.7%	71.8%
Support men's rights							
2000	72.8%	69.6%	74.5%				
2013	68.3%	68.2%	68.4%	73.8%	62.6%	69.8%	67.1%
Support children's rights							
2000	66.1%	65.1%	67.8%				
2013	68.6%	69.5%	68.1%	70.3%	68.6%	65.3%	70.9%

Source: IWS/AWRAD 2013, IWS/JMCC 2000

A substantial number of respondents in 2013 replied “don’t know,” particularly in regard to children’s rights (11%). This leaves about one-fifth of respondents believing that the court does not sufficiently support children’s rights, as a result the most neglected by the court of all three groups. When examining responses by West Bank region, the proportion of males in the southern West Bank affirming the court’s support for all three rights was slightly but consistently lower than their northern or central counterparts, with only 68.3% affirming the court’s support for children’s rights as opposed to 74% of males in the central West Bank.

On women’s rights, the lowest proportion of assent for the court’s support came from West Bank females. Interestingly, when we look at Jerusalem versus the remaining West Bank, Jerusalem women consistently have higher rates of belief in the court’s support of women’s, men’s and children’s rights than women in the rest of the West Bank. For example, 73.3% of women in Jerusalem believe the court supports women’s rights, as opposed to 62.8% of women in the rest of the West Bank.



VI. The Ties That Bind: Marriage

This section explores respondents' replies to questions about marriage and its dissolution, whether in actual court use or in attitudes towards change in the law on questions of marriage age, civil marriage, women-initiated divorce and equality in divorce, as well as child custody and guardianship. The disposition of marital property after divorce will be explored in the section on material claims.

When comparisons are possible with the 2000 survey, there is an interesting overall finding that challenges prevailing views that the years since the outbreak of the second intifada have witnessed a sharp increase in social conservatism among Palestinian women and men. While the many times of danger and insecurity during these years have certainly had a palpable effect on family life—including, for example, restrictions on girls' mobility in some settings—our survey reveals a continued openness to change, especially when respondents are asked about concrete injustices or unmet needs. Respondents also voice openness towards more equality in the rights of women and men, although sometimes unevenly and with increased social and regional polarization.

Marriage

Marriage Registration

Over two-thirds (65.9%) of our respondents who used the court in the last five years used it to register a marriage, (with equivalent proportions for Muslims and Christians) and with Gazan males (at 81%) using the courts the most this way. However, only about a fifth (18%) of court-using respondents said that this was their most important interaction with the court. We can thus infer that a significant number of respondents went to the court on more than one matter. Still, the use of the court to register marriage is substantially higher than in the 2000 data (at 45.8%), presumably because that survey asked for the period of only one year. An observation in the analysis of the 2000 data (Ham-mami 2004) was that respondents' high satisfaction with the court may be related to their interaction with the court on matters of registration, rather than litigation. While the point is still valid, a longer view shows us that respondents that register marriage often have been in the court for more contentious matters, and still frequently show satisfaction with the court's performance.

The most interesting finding is that only about a third of Jerusalem court-users used the court for marriage registration purposes—and for men, an almost equivalent number used the court for problems in the marriage contract. The table below illustrates the pronounced "Jerusalem exception" in much of the data.

Table 8: Purpose of Court Use, Marriage and Divorce, 2013

	Males			Females		
	West Bank	Gaza	Jerusalem	West Bank	Gaza	Jerusalem
Registration of Marriage	62.9%	81.7%	35.0%	58.5%	71.5%	38.2%
Problems in Marriage Contract	7.3%	4.3%	25.0%	7.4%	4.5%	
Divorce, <i>Talaq</i>	13.5%	13.2%	15.0%	7.4%	15.6%	29.4%
Divorce, <i>Khul'</i>			10.0%		1.1%	8.8%
Separation	3.9%	1.9%	15.0%	5.9%	2.8%	17.6%
Child Custody	10.7%	3.9%	15.0%	13.3%	5.0%	17.6%
Child Guardianship	2.8%	5.8%	15.0%	2.2%	5.6%	20.6%
House of Obedience	0.6%	2.3%	10.0%	0.7%	1.7%	8.8%

Source: IWS/AWRAD 2013

Particularly since the institution of the Palestinian Authority, the *shari'a* court system has made substantial efforts to ensure that marriages are registered with the court. Under Islam, marriages do not have to be registered—or indeed be contracted through a religious functionary—to be valid, but registration of marriage generally has accompanied the development of the state. As Moors points out, “Prior to the emergence of the modern nation state, unregistered (*urfi*) marriages, widely known in the community through various rituals and customs, were the norm.” (Moors 2013, 144)

During Ottoman rule, few contracts were registered at the *shari'a* court. The British mandatory authorities, and later the Jordanians, introduced specific marriage forms. According to prevailing Jordanian law, a contract of marriage is carried out by the *ma'dhun* (the marriage registrar) on behalf of the *qadi*. Whereas many marriage contracts are concluded in the *shari'a* court itself, it is also possible to do so elsewhere, usually at the home of the bride. In troubled times in Palestine, marriages may also be registered after the fact due to problems reaching the court (Moors 1995). In a discussion of marriages during the first Palestinian intifada, a dramatic version of an out-of-court contract is recounted when two political activists wrote their marriage contract in the sheikh's house, as it was an intifada strike day. (Johnson, Abu Nahleh and Moors 2009, 12)

There are penal sanctions for not registering a marriage with the *shari'a* court, but, as long as the *shari'a* conditions are met (e.g. two witnesses and “publicity”), the marriage itself is valid: the marriage is termed irregular but not invalid. With the increased need people have for written evidence of marriage in their dealings with state bureaucracies, nowadays virtually all people register their marriages at the *shari'a* courts (or with a recognized *ma'dhun*), although registration after the fact may be used

to conceal under-age marriages. On November 11, 2000, the Deputy Qadi al-Quda Sheikh Tamimi issued an administrative directive that included stricter instructions about the procedure *qadis* were to follow when registering a deed of ‘acknowledgement of marriage,’ the confirmation of an out-of-court marriage. It required, for instance, detailed information about the circumstances and procedure of the marriage. According to Welchman (2000, 375), the growing unease about underage marriages may have been an impetus for issuing such a directive. As the decade progressed, an unease over new forms of unregistered *urfi* marriages—secret marriages—emerged, demonstrated through warnings from Sheikh Tamimi and then mufti Ikrama Sabri (see Johnson and Moors, forthcoming).

Problems with Marriage Contract

Overall, only about 6% of our court-using respondents in 2013 went to court over problems in the marriage contract, with more West Bankers than Gazans resorting to the court over these problems. (We did not ask about contract problems in 2000 and so cannot compare.) Most strikingly (although absolute numbers are small), a quarter of male Jerusalem court-users appeared in court with problems in the marriage contract, although no females from Jerusalem did so. For the remaining West Bank and for Gaza, the proportions of male and female court-users citing this issue were roughly equivalent.

We can only speculate on the reason Jerusalem males might disproportionately have problems with marriage contracts, but one possible reason is the age of the bride: the prevailing Jordanian law used in the West Bank allows marriage at fifteen (lunar) years for females and sixteen (lunar) years for males. Israeli law, which operates in East Jerusalem, sets the minimum marriage age for females at seventeen, with legislation currently in the last stages of Knesset approval raising it to eighteen, with amid considerable opposition from ultra-Orthodox Jewish religious figures. Interestingly, the president of the *Shari’a* court inside Israel, Sheikh Ahmed Natour, had previously issued a fatwa supporting a minimum marriage age of eighteen (Reiter 2009).

In a 2012 interview, Sheikh Ahmed Natour explained that Israel does not recognize the decisions of the East Jerusalem court and as a technicality, marriages are thus confirmed in his West Jerusalem offices:

For the sharia court, marriage is a private act, a contract. It does not need the state, only two witnesses. Some people want to avoid the law; Jerusalem is under Israeli law so minor marriages are forbidden. So people marry and come to the court to confirm in order to register birth and get social security and health. We recognize the marriage retroactively but the court confirms marriages (rather than making them) and sees that the contract is *halal* [lawful]. We avoid penal sanctions.

As shown below, his explanation is helpful in analyzing the results of our data on attitudes towards marriage age.

Marriage Age

The prevailing 1976 Jordanian Law of Personal Status, provides, in its Article 5 that, “Competence for marriage requires that the fiancés be sane and the fiancé has completed his 16th year and the fiancée her 15th year.”

Although the Gaza Law of Family Rights sets earlier ages for women and men to marry, the first Palestinian chief justice after the establishment of the Palestinian Authority, Sheikh Abu Sardane issued a 1995 administrative decision bringing the minimum age of capacity for marriage in Gaza into conformity with the West Bank (Welchman 2004, 109). The 2010 amendments to the law in Jordan set the minimum age at eighteen – however, with quite a few exceptions. The existing drafts of a new personal status law in Palestine—whether from the women’s movement or the *shari’a* judiciary in

2006—also agree on raising the age to eighteen; public support for this is evident through a number of public opinion polls throughout the years. Thus, this study's finding of continued support for raising the marriage age is hardly surprising, with female support remaining constant at 90% and male support at 86% in both surveys.

Respondents' attitudes towards who is mature enough to marry and who is mature enough to independently choose their spouse reveal more complexity, however, as well as displaying some shifts from 2000 to 2013. Both surveys tried to indirectly invoke the contradiction between the minimum legal marriage age and decision-making power in the marriage process. In specific, did respondents feel that a person may be mature enough to get married but simultaneously not mature enough to decide on whom they marry?

In comparing the data, there are significant changes over time in views on who is "mature enough to choose their spouse," with 18.1% of Gazan women in 2013 believing that women under seventeen are mature enough to choose their spouse—and a higher percentage of 21.8% believing they are mature enough to marry, as opposed to only 6% of Gazan females in 2000. All other respondents—with the important exception of West Bank females—also showing an increase, albeit to a lesser degree.

Table 9: Are Women 17 Years of Age and Under and Men 18 Years and Under Mature Enough to Choose their Spouse? (Yeses Only), 2000

	West Bank		Gaza		Jerusalem		Total	
	Male	Female	Male	Female	Male	Female	Male	Female
Yes Women under 17	12%	8%	10%	6%	12%	7%	11%	7%
Yes Men under 18	13%	11%	19%	15%	21%	6%	15%	12%
Yes Marriage age raised to 18	85%	89%	87%	88%	79%	97%	86%	90%

Source: IWS/JMCC 2000

Table 10: Are Women 17 Years of Age and Under and Men 18 Years and Under Mature Enough to (Independently) Chose their Spouse? (Yeses Only), 2013

	Males			Females			Total Male	Total Female
	WB	Gaza	Jslm	WB	Gaza	Jslm		
YES Young men under 18	6.3%	17.8%	8.7%	8.7%	12.6%	8.3%	12.3%	9.0%
YES Young women under 17	13.4%	19.0%	8.1%	8.1%	18.1%	11.3%	15.8%	15.3%

Source: IWS/AWRAD 2013

Table 11: Are Women 17 Years of Age and Under and Men 18 Years and Under Mature Enough to Marry? (Yeses Only), 2013

	Males			Females			TOTAL Male	TOTAL Female
	WB	Gaza	Jslm	WB	Gaza	Jslm		
YES Young men under 18	6.3%	16.5%	17.4%	4.5%	12.4%	13.1%	12.3%	9.2%
YES Young women under 17	15.5%	15.5%	13.7%	15.7%	21.8%	8.9%	18.3%	18.2%
YES Marriage age raised to 18 for both	88.8%	86.9%	86.9%	91.2%	89.9%	76.8%	86.0%	89.9%

Source: IWS/AWRAD 2013

How do we explain the unchanged support for raising the age of marriage to eighteen and the seemingly contradictory (although still minority) shift towards younger ages for maturity to marry or choose spouses? One possible explanation is that a future legal reform to raise the age of marriage to eighteen—supported by major figures in the *shari'a* establishment—has become an accepted public good, while practices in the insecure present are more complex: in the last family health survey, 9% of women 15-19 were already married (PCBS, 2007). However, as we note in our review of indicators, marriage age is in fact rising. An alternate explanation is that belief in the maturity of young women and men has risen, perhaps forged in the challenges of the last period.¹²

When we asked respondents in the 2013 survey about the level of freedom that young men and women eighteen and over should have in choosing their spouses, almost two-thirds (62%) believed that women and men should have equal levels of freedom in choosing a spouse, while about 8% thought women should have more freedom, 11% men should have more freedom and 18% that freedom should be limited for both sexes. Like here, a “vote” for equality among a strong majority of respondents is found in responses on divorce and other topics in the survey, and therefore represents a strong social/political value.

While women consistently chose equality slightly more than men (with the largest gender gap between Jerusalem males and females), West Bank males show the greatest polarization between equality (at 63%) and limited freedom for both (at 22%). The overall ratio of equality versus limits (two-thirds to 18%) was quite similar to responses to our question analyzed below on equality in divorce (equality versus no divorce allowed), suggesting social polarization. Gazan females, at about 15%, were the strongest advocates of more freedom for females, while Jerusalem males at almost a quarter (followed by 18% of Gazan males) were the strongest advocates of more freedom for males.

¹² The Arabic word used in the questionnaire for maturity was *ndhouj* (maturity), rather than the term for coming of age used in legal terminology (*bulugh*).

Table 12: Level of Freedom for Males and Females Over 18 in Choosing Spouse

	Males			Females		
	WB	Gaza	Jslm	WB	Gaza	Jslm
Females more	4.5%	8.8%	2.5%	5.5%	14.8%	7.7%
Males more	9.4%	18.2%	24.2%	6.3%	11.1%	6.5%
Equal freedom	63.1%	58.1%	54.7%	65.9%	59.4%	70.2%
Limits for both	22.4%	14.1%	16.1%	21.8%	21.8%	11.9%

Source: IWS/AWRAD 2013

There were not significant differences in responses to this question by age or education, which is quite interesting as it indicates that the value of equality, for example, is embraced by Palestinians of all ages and educational backgrounds. This is important since the freedom to choose spouses for young people over eighteen is less a question of legal reform than one of family and societal attitudes. These attitudes expressed in surveys may well differ from current practices, but do offer avenues for change.

Civil Marriage

There is no civil marriage either in the Occupied Palestinian Territory or inside Israel, where marriage is also regulated by religious courts. There was a slight drop between 2000 and 2013 in support for a choice for civil marriage (if the choice does not affect others' rights to the *shari'a* courts). Nonetheless, the fact that about 18% of West Bankers and 15% of Gazans support a choice is not insubstantial given that civil marriage is not familiar in any of the surrounding Arab countries.

But what is most striking is that about half of Jerusalem respondents—about 53% of women and 48% of men—support this choice, although not necessarily for themselves. This probably represents the dilemma of Jerusalemites caught between legal and administrative orders, but may also be influenced by the struggle for civil marriage inside Israel.

Table 13: Support for Civil Marriage as Option Without Affecting Others' Rights to Shari'a Courts, 2000 and 2013, by Region and Gender

				Males			Females		
	Total	WB	Gaza	WB	Gaza	Jslm	WB	Gaza	Jslm
2000 Yes									
	18.1%	18.5%	16.7%						
2013 Yes									
	16.7%	17.9%	14.8%	15.3%	10.8%	48.1%	14.3%	12.4%	52.7%

Source: IWS/AWRAD 2013, IWS/JMCC 2000

Respondents aged 18-35 were the greatest supporters of a civil marriage choice, with about one-fifth of both young women and men in this age category giving their support. Older respondents (over 50) were the least likely to support an option for civil marriage, with only 9% of men and a higher 12% of older women giving their support. Education made a clear difference for women with 14% of women with nine years or less of education supporting a civil marriage choice, rising to 21% of women with higher education supporting the same. The pattern for men was somewhat different, with the highest proportion (19%) choosing a civil marriage choice having a high school education (9-12 years of school) and a slightly small proportion (17%) of men with a higher education making this choice. Residence (urban, rural, or refugee camp) did not make a significant difference, although male camp residents were slightly more in favor of this choice than their urban or rural counterparts. Christian respondents were also somewhat more in favor of a civil marriage choice, but numbers again are quite small.



VII. The Ties That Bind: Divorce

A few months after the new divorce proceedings were announced by Sheikh al-Dais easing women-initiated divorce before consummation and procedures for judicial separation (as described in our legal contexts section), a headline in *Gulf News* blared: “Divorce rate high in Palestinian territories: Big numbers of Khole [sic] cases are filed at the Sharia court.” The text alleged that “The Palestinian Supreme Sharia Council has announced that almost half of the marriages in the West Bank have broken up before the wedding night... thanks to the newly introduced Khole law...” Without noting the contradiction, the same article quotes al-Dais as saying that the divorce level in the West Bank is “the lowest in recent history” (Nazaal 2012).

This text is a good illustration of how the issue of divorce is both easily sensationalized and layered with ideology, emotion and a small dose of (mis-read) statistics, and is thus helpful to consider when analyzing survey respondents’ attitudes towards this most contentious issue. Indeed, divorce in earlier periods in Palestine and throughout the region was much more common and much less stigmatized.

A word about the Palestine divorce rate is in order before beginning this analysis. In the 2006 Family Health Survey, 0.3% of males fifteen years and older were divorced, and 1.2% of females (PCBS 2007, 44), indicating that more males than females re-marry after divorce. The *Gulf News* report, however, drew its statistics from registered marriages and divorces in the West Bank *shari’a* court for a particular year (2012), a different matter than divorce levels in the general population. The writer misread the annual statistics published by the *shari’a* court, citing court records to show 23,391 marriages in 2012 and 3,827 divorces in the West Bank (Office of the Chief Justice 2012). In 2010, the Palestinian Central Bureau of Statistics (PCBS), using court records from both the *shari’a* and ecclesiastical courts, found 20,185 marriages and 3,273 divorces in the West Bank: thus both registered marriages and divorces were lower in that year, although Jerusalem figures were only recorded for a portion of the year. Still, we can see that there has been neither a sharp increase or decline in divorce—and we can be assured that half of all marriages do not end before consummation. If we use a common indicator of divorces/ per 100 marriages, Palestine’s rate in 2012 was 16.4 (given as 16% in the 2012 statistical report), which is in the lower range of global divorce rates, where the high is Sweden at 54.9 (a high for the Arab world is Kuwait at 33.8) and the lower range, often in Catholic countries, is 6-7. For neighboring countries (and occupiers), Jordan’s divorce rate is given at 13.5 (although this is a 1999 figure) and Israel at 14.8.

The statistical report is also very revealing on regional differences in the West Bank that are helpful for this analysis. For example, the Azzariyya (Jerusalem) court had the highest ratio of divorce to marriage at thirty-two divorces per one hundred marriages, while Dhayriyya in the southern West Bank was the lowest at seven to one hundred. The Ramallah court also registered a high proportion of twenty-nine divorces per one hundred marriages.

The report also explained that, of the 3,827 divorces registered in 2013 in the West Bank, 1,607, or 42%, of them were what was termed divorce (*talaq*) before consummation (*dukhl*) or *shari’a khul’*. Although a strong majority of these cases would obviously have occurred before the new divorce degree, this is the figure that caused the *Gulf News* to announce an epidemic of divorce. In fact, this is not a new pattern. Looking at four West Bank and two Gaza courts in the 1980s, Welchman found “26% of all the deeds of *talaq* or *khul’* recorded a termination of the marriage before the marriage had been consummated” with a high of 40% in the Nablus court (Welchman 199, 151). Quite simply, couples who have signed a marriage contract enter a period of getting to know each other—before the wedding celebration and of course before sexual relations, setting up house and having children—and in these cases, one or both parties did not wish to move ahead. Judges are more favorable to marriage dissolution at this point for obvious reasons, as is society as well.

Court Use for Divorce: *Talaq*, *Khul'*, Judicial Separation

This study's 2013 findings on court use for respondents who went to the court for *talaq*, *khul'* or judicial divorce need some explanation. In 2000, respondents were asked to report "all kinds of divorce," and 8% of respondents used the court for this purpose: with West Bankers (10.3%) twice as likely to use the court as Gazans (at 5.5%). In 2013, the survey asked three separate questions about *talaq* (unilateral divorce by the husband), *khul'* (divorce requested by the woman and implemented by the husband for a financial consideration, usually the return of the dower), and judicial separation (divorce on a number of grounds, including strife and discord and abandonment). In 2013, a substantial proportion of court users went to the court for all three forms of divorce, including a majority of Jerusalem women court-users (55.8%) and almost a third of West Bank women (30%). However, on the face of it, hardly any Gazans or West Bankers went for *khul'* divorce; Jerusalem is the exception with 10% of men and almost 9% of court users reporting a *khul'* case. But it seems likely that this is due to overlapping terminology (and perhaps stigma). *Khul'* (like judicial separation) is a form of *talaq* – the husband divorces the wife in exchange for a financial consideration. (In judicial separation, the judge divorces the couple.) Thus respondents may well report *talaq* when the proceedings have been *khul'*—and statistics on the predominance of *khul'* suggest exactly this. There may also be an element of avoiding stigma in reporting *talaq* rather than *khul'*, particularly for men.

Surveys prior to our 2000 survey have consistently found an overwhelmingly negative stance towards women's right to divorce. On closer scrutiny, however, it is not clear whether the findings are about women's rights to do so or represent a larger taboo towards divorce as such. The 2000 survey attempted to clarify the difference by asking under what specific circumstances women should have the right to request a divorce. Posed in this way, only 4% of men and women came out against women's right to divorce under any circumstances.

Significantly, in the 2013 survey, there was an increase among both women and men in acceptable reasons for women to divorce, but there was also a significant increase in the proportion who opposed divorce under any circumstances—from the 4% in 2000 to 15-16% of women and men in 2000. On the other hand, in a new question in the 2013 survey, about two-thirds (69.6% of women and 56.6% of men) thought that women and men should have "equal rights in divorce." This may represent a polarization in attitudes that is worth taking into account.

Table 12: Acceptable Reason for Divorce by Gender, 2000 and 2013

Acceptable Reason for divorce	Women 2000	Men 2000	Women 2013	Men 2013
Husband is a collaborator	69.1%	69.2%	95.7%	94.8%
Husband is mentally ill	63.3%	68.7%	71.9%	75.9%
Husband physically abuses wife	57.8%	52%	74.1%	68.9%
Husband has abandoned family	58.8%	50.7%	79.2%	77.8%
Husband has a sexual disease	41.5%	43.6%	68.1%	73.0%
Husband physically abuses children	35.4%	31.6%	59.3%	49.7%
Husband marries a second wife	23.7%	15.6%	36.1%	18.3%
Women shouldn't be allowed to divorce in any circumstances	4.0%	4.5%	15.7%	15.4%

Source: IWSI/ AWRAD 2013, IWSI/JMCC 2000

Significantly in both surveys, a “nationalist” justification in the Palestinian context, when a husband is a “political collaborator” came out as the most acceptable reason, supported by 69% of respondents and an overwhelming 95% of respondents in 2013. The increase from 2000 (before the Second Intifada) to 2013 here is probably generated by the conditions of the uprising, where collaborators identifying other Palestinians for targeted assassination was (and remains) a live issue. In 2013, the second most-cited justifiable reason was the husband’s mental illness (63.3% for women and 68.7% for men), and the third reason spousal physical abuse (at 57.8% for women and a lower 52% for men). These last two rankings are reversed in 2013 when almost three-quarters of women viewed spousal abuse as a legitimate reason, as did a lower (but substantially higher than 2000) 68.9% of men. There was also a marked increase among both women and men in viewing husband’s physical abuse of children as a valid reason. There is certainly a wide perception that domestic violence has increased in the conditions of the second intifada; indeed, women in Gaza identified it as the major problem to be addressed in the wake of Israel’s Operation Cast Lead (Hammami 2010), although national statistics are not as clearcut. However, the change in response is a strong indication that Palestinians are deeply concerned with this issue.

Also of interest is the marked rise for women—and the slight decline for men—in viewing a husband’s marriage to a second wife as a valid reason for divorce. Even though this view is still a minority, if a substantial one among women, it is significant that there is even this amount of support for divorce on grounds not recognized by prevailing personal status law. It is worth noting that the 2012 statistical report from the Office of the Chief Justice recorded 1,447 cases of polygamous marriage in the West Bank, or 1% of the total marriages. A 2011 decree (ta’mim) from the Islamic court—another instance of positive change through procedure—required the notification of a first wife and the wife-to-be if a man is taking a second wife (JMCC 2011).

Overall, women and men in 2013 were significantly more responsive to women’s need to divorce under the varying circumstances than our 2000 respondents. However, there was also a significant increase among both women and men in those who thought that “women should not be allowed to divorce under any circumstances—from roughly 4% to 15%. Again, a trend towards greater openness to women’s rights, but with a polarized minority.

There was a consistent 5% gender gap between men and women in 2000 on all of the possible responses, with the latter slightly more responsive to women’s need to divorce under the varying circumstances posed in the questions. However, in the case of polygamy there was the most dramatic gap between men’s and women’s responses, with 24% of women and only 16% of men citing this as a justifiable cause for women to divorce. This gender gap increased in 2013 where women (at 36%) were twice as likely to see this as a reason for divorce than men (at 19%).

Significantly, in the 2013 survey, there was an increase among both women and men in acceptable reasons for women to divorce, but there was also a significant increase in the proportion who opposed divorce under any circumstances—from the 4% in 2000 to 15-16% of women and men in 2000.

In the list of acceptable reasons for divorce, the 2013 survey included the response “women and men have equal rights to divorce.” The resulting responses, where a strong majority supported this statement, might seem surprising. However, the proportion favoring equality is quite similar to those who favored an equal level of freedom for men and women over 18 in choosing a spouse, strongly suggesting that the value of equality has a strong pull for our respondents. On the face of it, equal rights for women and men to divorce contradicts the *shari’a*-based legal system that is also a strong social (and religious) value.

Table 13: “Women and Men Equal Rights to Divorce” Versus “Women Allowed No Divorce Under Any Circumstances,” 2013

	Males			Females		
	WB	Gaza	Jerusalem	WB	Gaza	Jslm
Equal Rights	61.4%	52.4%	57.5%	57.5%	65.6%	69.6%
No Divorce	11.8%	17.3%	22.4%	11.9%	18.1%	18.1%

Source: IWSI/ AWRAD 2013

As noted above, what is also important is the increased proportion of respondents who feel women should not be able to initiate divorce under any circumstances—again in contradiction to prevailing family law for Muslims. Interestingly, Jerusalem males (at 22.4%) are the strongest opponents of women-initiated divorce, while Gazan men and women and Jerusalem women are equally opposed at approximately 17-18%. West Bank women and men are less opposed than these groups at around 12% for both. Interestingly, neither age nor education makes a significant difference when considered among those who favor the “no divorce” position. Region in the West Bank does make a difference, however: respondents in the northern West Bank are significantly less in favor of no women-initiated divorce at only 8% of men and 9% of women than the rest of respondents.

Also of interest is that the proportion of respondents who support women-initiated divorce if a woman waives her financial rights is smaller than the proportion of respondents who support equality in divorce (although elevated from 2000, when 32% of males and 37% of females supported this right). In 2013, about 36% of men and 43% of females supported this right. Further investigation helps explain any perceived contradiction, however. When respondents were asked in 2013 why they were opposed to women-initiated divorce, over half of women and a substantial proportion (28.7%) of men (one-third in the West Bank and Jerusalem) opposed because they did not believe that women should give up their financial rights, rather than because they were opposed to women-initiated divorce.

Table 14: Do You Support or Oppose Women's Right to Divorce (Khul') if She Waives Her Financial Right?

	West Bank		Jerusalem		Gaza		Total	
2000	M	F	M	F	M	F	M	F
Yes	34	41	30	48	25	30	32	37
No	66	59	50	52	75	70	68	63
2013								
Yes	37.5	45.9	39.1	57.1	33.4	43.1	35.6	43.1
No	60.8	53.4	59.6	53.4	66.3	55.9	66.3	51.5

Source: IWS/AWRAD 2013, JMCC/IWS 2000

Table 15: Why Do You Oppose Women's Right to Divorce (Khul') if She Waives Her Financial Rights?, 2000 and 2013

	2000	2013		
	Total	Total	Males	Females
Women should not give up financial rights	11.2%	40%	28.7%	55.1%
Enables women to divorce	84%	54.1%	54.8%	43.8%

Source: IWS/AWRAD 2013

Although the rise in support for women-initiated divorce (and among those opposed, for women not giving up their financial rights) is striking, a word of caution is in order. The survey in 2000 came shortly after Egypt had instituted new divorce laws allowing women to initiate *khul'* divorce without the husband's consent, although still giving up their financial rights. The 2013 survey did not ask this question with an explicit reference to the husband's consent, although a subsequent question found that among supporters of *khul'* divorce, 41.5% preferred the current arrangements in Palestine (husband's consent and waiver of financial rights), 21.8% preferred the arrangements in Egypt (waiver of financial rights but no need for husband's consent), and a substantial third (34.2%) supported *khul'* without any conditions.

Marriage and Divorce: Equality with Polarization?

Both surveys show that women and men often have varying opinions on matters of marriage and divorce, and that region (West Bank, Jerusalem, Gaza) can also be a significant factor in the opinions of men and women. There are obviously many remaining questions about attitudes on Palestinian marriage and divorce and avenues for change that need further exploration. Yet the findings here allow a tentative conclusion that respondents in 2013 are more open to the rights of women in divorce and to acceptable reasons for women to initiate divorce than respondents in 2000. The strong responses to two questions on equality (in level of freedom in choosing a spouse and on equal rights to divorce) is particularly evident in the 2013 survey, but is accompanied by increased polarization with a substantial minority in opposition. And as shown in the final and subsequent section, openness to change is significantly higher when concrete issues of marriage and divorce are considered, rather than abstract notions of "women's rights."



VIII. Child Custody: In Whose Interest?

Under Islamic family law, there are “two distinct functions” (Welchman 1999: 201) in the care of children. Guardianship (*wilaya*) is the authority to manage and supervise a child and his or her property and to decide on such matters as education, travel and marriage. The guardian has a responsibility to meet the financial needs of the child, as well, if the child does not have his or her own property. Another key responsibility is to pay the custodian of the child a fee, noted in more detail below. Custody (*hadana*) is physical care and nurture. It is not surprising that the first is usually relegated to the husband or male relatives and the latter to the wife or other female relatives, although there have been some significant changes in Arab state legislation (in Morocco and Tunisia, for example) to place the mandate of care on both parents during marriage. In the case of divorce, however, the distinctions are generally much starker. Widows, on the other hand, may find their children under the guardianship of a male agnate of the husband, such as a brother, whose interest in her and her children’s welfare can be problematic.

Under the Jordan Law of Personal Status (Article 154), when marriages are dissolved and there are children, the husband is the guardian of the children, but the wife, if she does not re-marry a “stranger” and fulfills certain other conditions, has custody “until they reach puberty” (Article 162). The Gaza Law of Family Rights gives custody to the mother “over a boy from the age of seven to nine” and a girl “aged nine until 11” if the interest of the children so require (Article 118). These conditions are the same for widows, with the guardian usually, but not always, a male relative of the deceased. As noted previously, Gaza legislators in 2009 extended the age of custody to 15 for boys, and marriage for girls, presumably in response to the situation of Gaza war widows after Israel’s 2008-9 incursions. These widows, who receive an allowance from the Ministry of Social Affairs as do other widows of martyrs (generally, Palestinians killed by Israeli forces), are vulnerable to pressure from family members seeking control of these funds. Unfortunately, there is no available current research in the Gaza courts to explore if and how the new provision is enforced.

The mother’s custody of her children, whether as a divorcee or a widow, can be compromised by an inability to meet their and her financial needs, as well as by forms of social pressure. The common pattern of moving back into the home of her family—whether a brother’s or father’s home—is often due to lack of financial resources and causes its own set of pressures and conflicts. Thus, the guardian’s responsibility under law to provide a fee as stated in Article 159 of the Jordanian Law of Personal Status is important:

The fee of custody is due from the person charged with the child’s maintenance, and shall be assessed by the custodian’s peers, provided that it shall not exceed the capacities of the maintainer.

This study will discuss further the question of economic support for divorced and widowed women and their children in the section on economic issues, but suffice it to say that fees granted are generally too low to accommodate independent living—and indeed, may be renounced as part of a *khul’* divorce. Hopefully, the 2012 decree on divorce, which restricts financial compensation in a *khul’* divorce largely to the dower payment, will permit the court to disallow such renunciations.

The end of custody is not automatic; the husband or other male agnates must claim custody and this may not be in their interests. When it is, as Shehadeh (2005) vividly shows in her earlier work on Gaza courts, there may well be a financial reason. Wives who have entered claims for *nafaqa* (maintenance) may be met with counter claims for custody. In these painful conflicts, the judge, as Shehadeh

observes, may move outside codified law to protect the interests of the child or children. In one complicated case, she finds “the protection of the child’s best interest stood in conflict with codified law and therefore the *qadi* had to ignore the latter in order to meet his duty as a ‘provider of justice’ (p. 260). Relevant to legal reform and further legal research, she also notes that none of this “daily jurisprudence” made its way into the court record, which records only the final judgment; only on-the-spot observation could capture this important dimension of court practice.

Shehadeh’s observations on how judges consider the interests of children (as well as women) resonate with more formal developments in Islamic family law and debates around it. Of interest to our research, the August 2013 judicial degree (*ta’mim*) from the *qadi al-qada*, discussed earlier in terms of changes in divorce, also stresses the “interest of the child” in interpreting Jordanian Law of Personal Status’ Article 163, which gives the non-custodial parent access to the child once a week. The ruling goes on to discuss more detailed questions of access and travel, but the important point for us is its explicit recognition of the interests of children in guiding court decisions. This recognition is also clear in earlier judgments by the president of the *Shari’a* Appeals Court in Israel, Sheikh Ahmed Natour, that the interests of the child should be paramount in matters of custody (see Abu Ramadan 2009, for an analysis of child custody decisions in this period). In an interview with one of the authors, Natour stated that “the interest of the child is the interest of the *umma* (the Islamic community or the public).” In correspondence, Islamic family law scholar Lynn Welchman remarked that the 2013 judicial degree’s “consistent stress on the best interest of the child is interesting and resonates with texts elsewhere.”¹³ It also resonates, as shown below, with our respondents’ concerns that current law does not fully address the interests of children.

Before analyzing these results, we should note that the notion of the interest of the child is not at all new to Islamic jurisprudence; rather jurists and others advocating child welfare are using an existing concept to address contemporary concerns. Historically, Islamic law and jurisprudence have a long-standing focus on protecting the economic rights and interests of children, particularly orphans (usually meaning fatherless children). As Meriwether notes in her study of late eighteenth and early nineteenth century Aleppo, “the concern with the legal rights of children were seen most clearly in the detailed arrangements for the custody and maintenance of children” (Meriwether 1996, 226). indeed, the distribution of inheritance did not have to be registered in court except when children were involved. Also relevant in Meriwether’s study is her finding that, contrary to the premise that men are usually guardians, women (usually mothers) were appointed as executors (guardians) for minor children who had lost their fathers.

Child Custody and Women, Men and Children’s Rights and Interests

There is a significant and interesting difference between perceptions of the *shari’a* court’s protection of women, men and children’s rights in general and the protection of these interests in child custody cases, particular for fathers and children. For example, in our analysis above (Table 7), 70.3% of our respondents think the court generally protects women’s rights, 68.6% think the courts protect children’s rights and 68.3% think the court protects men’s rights. These findings are roughly similar to the responses in the 2000 survey, although a slightly higher 72% thought the courts protect men’s rights.

However, when asked specifically if child custody laws were in the interest of each of these parties (a question not asked in 2000), 59.5% of respondents say such laws are in the interest of the mother, most closely mirroring a similar proportion on whose rights (women’s) the court protects. Only 37.2% thought custody law was in the interest of fathers and less than half thought it was in the interest of children: 44.8% for male children and 43.8% for female children. About a quarter of respon-

¹³ Email correspondence to the authors from Professor Lynn Welchman, School of Oriental and African Studies, August 2013.

dents said custody laws were in the interest of no one. Thus, while over two-thirds of respondents believe the court protects rights of women, men and children, child custody is perceived as unfair to fathers and children by a majority of our participants. We will explore why while looking at responses in more detail.

Of our family court users in the five years preceding the survey, 7% of men and 9% of women went to court over matters of child custody, although we do not know what proportion of these cases involved contested custody, economic arrangements and conflicts, or more routine matters. (In 2000, a much lower 1.2% of court users went to court for both “divorce and custody” in a period of a year.) In this current survey, a lower proportion of about 6% of female court-users and 5% of males went to court over matters of guardianship. Christian respondents who used the ecclesiastical courts are too few for significant results; of the eight court users, two went to court over custody matters and one for guardianship.

As shown in Table 6 above, a higher proportion of Jerusalem residents—15% of men and almost 18% of women—went to court over matters of child custody, as opposed to a still fairly high 11% of men and 13% of women in the remaining West Bank, and a significantly lower 4% of men and 5% of women in Gaza. Cases of child guardianship followed the same pattern with a high of 21% of Jerusalem women court users going to court over matters of guardianship. It is possible that some of these Jerusalem respondents had recourse to the *shari’a* court system inside Israel, rather than the East Jerusalem court, a matter that requires more investigation. But what is clear is that there is more conflict over child custody in Jerusalem than in the OPT.

Interestingly, when respondents who had more than one case during the period were asked which was the most important, one-fifth cited child custody cases, second only to marriage registration. While it is obvious that mothers and fathers generally have strong interests and emotions in relation to their children, the significance of child custody cases suggests the legal disposition of custody matters is of real concern and not simply automatic.

All respondents, not only court users, were asked if current laws in place were in the best interests of various parties. As noted above, it is interesting that respondents, both male and female, felt the law least protected the rights of fathers, with only about 37% of male and female respondents affirming that the law adequately served the interests of fathers, while 60% (58% females and 61%) thought the law served mother’s interests. The most plausible explanation is that the gendered nature of custody arrangements—with the mother generally with custody and the father’s access to children limited—strikes many as unfair to fathers. Perceptions of unfair financial burdens on fathers may also play a part in these responses.

Again, Jerusalem provides us with an exception. Almost two-thirds of Jerusalem males think the current law protects the interests of

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both mothers and fathers. Jerusalem females agree in about equal proportion that the law protects fathers but only about 45%—lower not only than Jerusalem males but all other respondents—think it protects mothers. For Gazans and West Bankers not resident in Jerusalem, almost two-thirds of men and a strong majority of women perceive current custody law as favoring the interests of women, while only around 30% of West Bankers and 40% of Gazans perceive it in the interests of men. Thus, Jerusalem men think the law protects the interests of both mothers and fathers, while Jerusalem women think that fathers are significantly more protected than mothers. The question is, why? Women may be influenced by the more equal provisions for child custody provided for under Israeli family law since 1995, even though they might hesitate to use Israeli family court themselves. (This is, then, another subject that needs further research.) Other factors that need to be explored include the financial predicaments of Jerusalem (higher costs in housing and taxes, for example), divided families leading to reduced family support, and indeed, women with West Bank identity cards living in Jerusalem but ineligible for state child allowances and other benefits.

Jerusalem residents are also more skeptical about the law protecting children's interests, with only roughly a third saying it protects female children's interests, and slightly more saying the same for male children. A near majority of males and females in the remaining West Bank think it protects female and male children's interests, with Gazan males and females slightly more skeptical at about 40%.

Table 16: Treatment of Child Custody, Best Interests (Yeses Only) by Gender and Region

Best Interests of...	Males			Females		
	WB	Gaza	Jerusalem	WB	Gaza	Jslm
Father	28.6%	39.9%	65.2%	30.3%	39.6%	70.1%
Mother	62.6%	61.2%	61.2%	61.7%	56.7%	45.5%
Female Child	50.1%	41.2%	34.2%	50.5%	39.7%	31.7%
Male Child	47.9%	40.9%	37.9%	47.9%	39.0%	36.5%
No One	20.0%	69.8%	17.1%	17.0%	72.1%	14.0%

Source: IWSI/ AWRAD 2013

Educational level does not make a great difference when respondents consider whether the law is in the interest of fathers and mothers, with the most highly educated only slightly less affirmative that the current law protects these interests. The largest gap related to education occurs when respondents considered whether the law protects the interests of female and male children: in both cases, about 48% of male and female respondents with an education less than nine years thought that it did, while, among those with over twelve years of education, only 42% of men and 39% of women thought the law offered children enough protection.

Whether respondents lived in cities, villages or refugee camps did make a difference on this issue, with villagers more positive about the law's protection of female and male children's rights (at about

48% of males believing the court protected male and female children and 53% of females thinking the court protected the interests of male and female children). Only about a third of camp residents (38% for men and 35% for women) thought the law protected those interests. Urban dwellers thought the court protected children's interests at rates of approximately 44% among men and 40% among women. A majority of camp residents (54% of men and 49% of women) also believed the law protected no one's interests in custody cases as opposed to less than a fifth of village residents.

Looking at regions in the West Bank, respondents in the southern West Bank were the most positive in affirming the law's protection of the interests of mothers, with slightly over two-thirds of both men and women agreeing that the best interests of women are served by current law. Only about a quarter of males in the northern West Bank think the law protects fathers, and the higher proportion in the center is probably influenced by the Jerusalem sample. It is an important question for further research whether male conservatism is at work here, or other factors related to both the economic realities of Palestinian life today and current family dynamics, where divorced fathers would prefer more access and involvement with their children.

Table 17: Best Interests (Yeses Only) by Gender and West Bank Region

	Males	Females				
Best Interests Of...	North	Center	South	North	Center	South
Father	27.1%	47.7%	31.1%	32.0%	48.2%	31.9%
Mother	60.2%	53.3%	68.9%	55.9%	54.7%	67.8%
Female Child	53.5%	36.3%	50.8%	50.2%	39.4%	51.9%
Male Child	51.7%	38.0%	47.2%	47.5%	41.5%	48.5%
No One	35.1%	56.0%	47.8%	38.9%	55.4%	55.4%

Source: IWSI AWRAD 2013

The custody of children in divided families (divided by divorce or death) can be a painful and complicated matter anywhere on the globe. Prevailing Islamic family law divides the rights and responsibilities between the mother (or other female relatives) for custody and the father (or mother male agnates) for guardianship. The court in Palestine and elsewhere articulate in practice (and sometimes in judgment) the centrality of children's interests, and are often sympathetic to women's interests and predicaments in practice. A surprising finding of our research is that a majority of both women and men perceive that fathers are not well served by the law.

The economic and social context in which the law operates perhaps provides us with a key to this discontent, as well as the problems women face in maintaining custody of their children. A majority of our respondents, as the section on maintenance and marriage assets will explore, believe that there is not enough support for women and children after divorce or widowhood.

IX. Material Claims: Inheritance & Use of the Courts

Given their low labor force participation, the majority of women in the OPT are unable to access independent assets through their own income. As such, for the majority of women inheritance is not only the main, but often the only and most critical, mechanism for them to access high value assets (including immovable property). Prevailing Islamic family law in both the West Bank and Gaza provides women with inheritance rights under the law, albeit based on the gender principle that women are entitled to shares equal to half the amount of that accrued by males. However, it has been well-documented that traditional norms in Palestinian society have historically deterred women from claiming these rights, particularly among rural women when land is at issue (Moors 1995). As such, the major gap in women's inheritance rights historically is not due to religious law but to local custom, which is in fact counter to religious doctrine. There is evidence, however, that over the past decade women have been increasingly challenging custom and pursuing their inheritance rights (UNWomen 2011).

The original IWS 2000 survey did not ask explicitly about women's inheritance rights, given that the PCBS had conducted a survey on the issue the previous year. The 2013 IWS survey, on the other hand, asked a range of questions about inheritance.¹⁴ As such, comparisons for the two periods will use the 1999 PCBS survey in comparison to the IWS 2013 poll.

Overall, the data shows that since 1999 there has been a significant increase in women pursuing their inheritance shares, as well as in the numbers of women actually receiving their full claim or a portion of them.

As the table below shows, between the two periods covered by the surveys the numbers of women who *did not demand* their inheritance claim has dropped immensely—from 64% in 1999 to only 38% in 2013. Another important administrative decree from the head of the court in the West Bank, Sheikh al-Dais, is a possible contributing factor in this drop. In 2011, he issued a decree that forbade women from renouncing their inheritance share until four months have passed from the death of the bequeather of the inheritance. In a radio interview posted on the court's website, Sheikh Yusef explained the logic: a woman in mourning for a husband (or father) was vulnerable to pressure and would be better able to decide after some time had passed.

Table 18: Women and Inheritance: Major Indicators 1999 and 2013

Women only	1999	2013
Total % women who had possible inheritance claim*	25%	13%
Total % women who did not pursue their claim	64%	38%

(Source: PCBS 1999; Birzeit Institute of Women's Studies 2013) *The 1999 survey asked women if they ever had a possible inheritance; while the 2013 survey asked them about the past five years.

Nonetheless, although a greater number of women received or pursued their share in 2013 compared to 1999, the majority continued to face a range of obstacles in the process. And although both women and men faced a series of obstacles in accessing their inheritance rights, women faced greater disadvantage at every stage of the process involved. For instance, although the same percent of men

¹⁴ Due to a data collection error in parts of the inheritance section of the 2013 questionnaire, the final sample size on these questions only allows for a comparison between males and females (rather than being able to compare by region or other variables).

and women claimed to have an inheritance over the past five years (13%), there was a significant gap between them in terms of basic knowledge about the size of their shares, with 12% more men than women who had a claim knowing how much their share should be. A basic first step in getting an inheritance claim is knowing what it amounts to; thus access to this knowledge seems to be an impediment for both genders but more so for women than men.

Table 19: Had Inheritance and Knew Share, by Gender

	Men	Women
Had an inheritance over the past five years	13%	13%
Of these knew approximately how much their share should be	67%	55%

Source: IWS/ AWRAD 2013

There are further impediments confronting women apparent when examining the process of accessing inheritance shares. While almost half of men with a claim received their share automatically, only a third of women received their share automatically.

Table 20: Male and Female with Potential Inheritance Share by Main Outcome, 2013

	Men	Women
Received share automatically (had no need to pursue it)	46%	33%
Claimed and had to pursue	30%	28%
Did not pursue their claim	24%	38%
Total	100%	100%

Source: IWS/ AWRAD 2013

The percent of men and women who had to actively pursue their claim was almost equal (30% of males versus 28% of females). But the 38% of women who in 2013 decided not to pursue their claim at all—though much lower than in 1999 (when 64% of women declined their share)—is still higher than the number of men (24%) who in 2013 declined their share.

Also telling are the reasons why women versus men declined or did not actively seek their inheritance claim. Although the possible responses were different in the 1999 PCBS survey versus the 2013 IWS survey, some basic comparisons can be made. In 1999, the highest response among women was simply that they did not ask for their share; the second highest response was that the amount was not worth the trouble. In 2013, both men and women responded most often that “multiple reasons” prevented them from claiming their inheritance, but among women, “not needing it”, “it not being worth the trouble” or it “not being appropriate to claim it all” all came in second at 13% each. Still, among women, family considerations continued to play a significant role in 2013 with twice as many women than men deciding not to pursue their claim because they considered it either inappropriate or in order to avoid family conflict.

Table 21: Main Reasons Did Not Try to Claim or Pursue Their Right (by Gender), 2013

	Men	Women
I didn't need it	11%	13%
Amount was not worth the trouble	20%	13%
To avoid family conflict	3%	8%
I considered it inappropriate	6%	13%
To protect family property	9%	5%
There was no opportunity to claim my share	6%	5%
Multiple reasons	46%	42%

Source: IWS/ AWRAD 2013

Of the 30% of men and 28% of women who pursued their claim in 2013 (i.e. excluding those who did not get it automatically or didn't pursue it) the majority of both sexes (52% of men and 60% of women) did not face an obstacle or conflict in doing so. The meaning of "pursue my claim" is vague and could involve having to follow up with family members and/or having to follow up on necessary procedures in court, or ultimately having to raise a court case.

But at least it can be assumed that those who did not face obstacles in pursuing their claim did not face a conflict with any of these parties. In fact, more males (at 48%) than females (at 40%) claimed they did face obstacles in pursuing their inheritance. For both sexes, "male relatives" were the most oft cited obstacle (at 57% for males and 71% among females). Together with "spouse's relatives" (at 19%), these responses constitute 90% of the total obstacles cited by women. Among women, the "male relatives" are most likely brothers and uncles, if the inheritance was from their father; most likely it would be fathers-in-law or brothers-in-law for women who faced conflict with their spouse's relatives (when inheriting from a deceased spouse). But given that spouses are often relatives, there is a great possibility that in many cases "male relatives" and "spouse's relatives" are overlapping categories.

Table 22: Percent Who Had to Pursue Inheritance and Faced Obstacles by Source of Conflict, 2013

	Male	Female
Yes, I experienced obstacles in pursuing my claim	48%	40%
Who was the main source of conflict?		
My male relatives	57%	71%
My female relatives	11%	3%
The shari'a court	7%	4%
My spouse's relatives	8%	19%
Multiple sources	16%	3%

Source: IWS/ AWRAD 2013

While male relatives (at 59%) were also the primary source of conflict for men, conflict from female relatives (at 11%) was the second highest response. In the former, like among women, brothers or paternal uncles are the most likely sources of conflict; while in the latter, it is most likely that sisters are the "female relatives" creating conflict, suggesting these may be cases where brothers tried to deny

their female siblings their rightful shares of inheritance. This latter issue is also borne out by the fact that a small but higher percent of males (7% versus 4% of females) said that the *shari'a* courts were the main obstacle confronting them in claiming their inheritance.

In terms of the portion of their total share that women received, the comparisons with 1999 need to be made on the basis that a much larger portion of women in 2013 pursued or received any of their inheritance. As such, although the majority of women who received anything in 1999 got their full share (at 57%) they represented only a small portion of all women with any inheritance claim (i.e. only 18% of the total number of women with any inheritance claim in 1999 received their full share). In 1999, another 34% of women (who got or pursued their share) got only part of that share and 9% of them got none of their share.¹⁵ The questions in 2013 were posed differently, and while much greater numbers of women received or pursued their share, only 51% received it in full. A significant number of women (14%) got less than half their share and a full 18% who did pursue it got none of their share.

Table 23: Amount Received Among Those Who Pursued or Received Their Share

	Male	Female
None of my share	13%	18%
Less than half my share	7%	14%
More than half my share	3%	5%
All my share	58%	51%
The case is still pending	18%	10%
	100%	100%

Source: IWS/AWRAD 2013

Men who received or pursued their share were more likely to get it in full (at 58%), with the second most common scenario that their “case” was still pending.

Inheritance and Use of the *Shari'a* Courts

In 2000, only 19% of those surveyed had used the courts in the past year (versus the 2013 survey that asked about its use in the past five years). Court use in 2000 was greater in Gaza (at 25%) versus 15% in the West Bank. In that survey, out of all the possible explanations for court use, “inheritance” was the second most important reason for using them (after marriage). Of those who used the courts in that year in the West Bank, 39% of men (versus 33% of women), and in Gaza, 17% of men (versus 11% of women) used the courts for inheritance issues.¹⁶ However, the 2000 survey did not differentiate between simply registering an inheritance deed, versus using the courts to deal with inheritance problems. In the 2013 survey, approximately 20% of men and 17% of women surveyed had used the courts in the past five years—i.e. at a similar level that they used the courts in the year 2000. In contrast, the 2013 survey *did* differentiate between use of the courts to register an inheritance deed versus use of it to deal with an inheritance problem. The outcome in 2013 was that in the West Bank approximately one quarter of males and females who used the courts did so to register an inheritance deed. In Gaza, the proportion of respondents who did so was closer to 12%, and in Jerusalem, the proportion was the highest of all (with 45% of male court users registering a deed and 32% of female court users do-

¹⁵ This distribution is based on re-calculations from the 1999 data.

¹⁶ These 2000 figures include those who used the courts for a single purpose (85% of respondents) and multiple purposes (15% of respondents). And the data for 2000 could not be disaggregated for Jerusalem.

ing so). In contrast, while fewer men and women used the courts to solve an inheritance problem, in both the West Bank and Jerusalem there were more women than men using it for this purpose (and in Jerusalem significantly so).

Table 24: Court Use by Gender and Region, 2013

	Males			Females		
	West Bank	Gaza	Jerusalem	West Bank	Gaza	Jerusalem
Total % who used shari'a courts last 5 years	21%	25%	12%	16.0%	18%	20%
% of those used them to register inheritance deed	25%	11%	45%	23.0%	13%	32%
% of those who used them for problems related to inheritance	11%	8%	15%	13%	8%	23%

Source: IWS/ AWRAD 2013

The 2013 survey went on to specifically ask respondents who had an inheritance over the past five years about the role of the *shari'a* courts in attaining it. An almost equal quarter of men and women (who had an inheritance over the previous five years) claimed the court played some role in the process. Given that the *shari'a* courts must issue a “Certificate of Inheritance” (*Hasr Irth*) outlining the assets of the deceased, the number of heirs and their shares, all inheritance cases in principle do pass through the *shari'a* courts. Therefore it is likely that the low numbers reporting that the court played a role in their case has to do with respondents’ perceptions and/or experiences: either they themselves did not interact directly with the court (since only a family representative is necessary to get the Certificate of Inheritance) or respondents assumed that the question was alluding to the court’s role in adjudicating legal claims and conflicts (rather than simple bureaucratic procedure).

Of those who did claim the courts had a role in their inheritance, 7% of males and 12% of females claimed simultaneously that the courts played “no role” —perhaps alluding to situations where there was conflict but the court was not involved in resolving it. Another one-fourth of both sexes said the court’s role was limited to bureaucratic procedure.

Table 25: Role of Shari'a Courts in Pursuit of Inheritance

	Male	Female
Yes, the <i>shari'a</i> court played a role in my inheritance	25%	26%
Its role was limited to bureaucratic procedure	26%	25%
It did <u>not</u> support me in attaining my rights	13%	17%
It supported me in attaining some of my rights	26%	20%
It supported me in pursuing my full rights	21%	25%
It played no role	7%	12%
Other	6%	1%

Source: IWS/ AWRAD 2013

In terms of positive assessments, 45% of women and 47% of men stated that the courts supported them in gaining most or all of their rights (with 4% more women than men stating it helped them receive their full rights). In terms of a clear negative assessment, a much lower 13% of men and 17% of women claimed it did not support them in attaining their inheritance.

Attitudes Towards Changing the Law of Inheritance

There is little support for changing the overall religiously-sanctioned gender principle regarding inheritance (where females receive shares equivalent to half that of males), with almost 90% of both sexes stating the laws of inheritance should remain based on this principle. However, respondents also offered a series of possible responses that were not mutually exclusive, thus enabling a more complex and nuanced set of preferences to emerge. For instance, 17% of men and 25% of women preferred that the law be amended on the basis of gender equality, meaning that there were 6% of men and 13% of women who wanted both to maintain the overall unequal principle, as well as reform it in favor of gender equality (seemingly contradictory views). It is also surprising that a majority of respondents favor allowing wills where the benefactor can choose how to divide his or her assets, a measure that contradicts *shari'a* principles of inheritance.

Table 26: Preferences in Terms of Reform to Inheritance Law

	Male	Female
Keep the law as is where women get half what a man gets	89%	88%
Amend the law so men and women get equal shares	17%	25%
Make more provisions for those with special needs (the elderly, illness, or young children)	60%	72%
Allow men and women to bestow inheritance as they wish (wills)	50%	56%

Source: IWSI/AWRAD 2013

In addition, while respondents affirm the overall principle on which the current law is based, there is much more support for reforms that could be viewed as special provisions within the overall framework or in addition to it. For instance, 60% of men and 72% of women support making provisions to support the needs of vulnerable members of society such as the elderly, young children or the infirm.

X. Material Claims: Maintenance & Marriage Assets

The husband's responsibility to maintain his wife is mandated by law (Jordanian Law of Personal Status, Article 167) and is also "part of the fundamental balance of the rights and duties of spouses, which places financial responsibilities, including the maintenance (*nafaqa*) of his wife, entirely with the husband and entails for the wife the corresponding duties of 'obedience' to her husband" (Welchman 1999:101). In cases of divorce, the husband is responsible for the wife's maintenance for a "waiting period" of three months, and, in *talaq* divorce although not in *khul'*, the husband must give the deferred dower to his divorced wife. (Indeed, in the marriage contract, the deferred dower is often set at quite a considerable sum as a deterrence to divorce.) The custodial fee the ex-husband pays his divorced wife for his children's maintenance is termed *nafaqa* as well, and the wife may go to court for non-payment.

In 2000, 5% of women who used the courts over the previous year used them for issues of maintenance; in 2013, 9% of women who used the courts over the previous five years used it for this purpose, with no significant difference between the West Bank and Gaza.

The most significant development relating to women and child maintenance/alimony rights (*nafaqa*) between the two periods under study is institutional rather than legal: the creation of an independent unit (the Palestine Maintenance Fund) that was brought into being by presidential decree in 2005 and has been operating since 2007. The fund was an answer to one of the most critical obstacles facing women and their children in receiving their maintenance payments —the problem of enforcing court-ordered payments by husbands, ex-husbands and fathers. As of 2013, the fund claims to have supported a quarter of a million individuals.

While the creation of the fund has helped deal with the implementation of court decisions concerning maintenance rights, an ongoing critical issue is the amount of maintenance payments, which is decided by the judge according to the financial abilities of the spouse/father rather than according to the actual needs of the wife and children in her custody. Currently, the fund pays a flat rate of 200 Jordanian Dinars per/month to women and 150 JD to each child.¹⁷

The 2013 poll asked a number of questions related to the issue of woman and child maintenance rights both in marriage and in circumstances of divorce and dissolution of marriage. On almost every issue, there was a clear patterning of belief among men and women that the current levels of economic support and security afforded to women and children through marriage (and as mandated by the law) are inadequate.

Table 27: Attitudes towards Maintenance and Spousal Economic Support under the Current Law (Yes Only) 2013

West Bank		Gaza		Total	
Male	Female	Male	Female	Male	Female
Yes, the law should enforce that husband's income is spent for family welfare					
69%	80%	68%	82%	68%	81%
Yes, the current law gives wives enough economic support in cases of divorce					
30%	26%	51%	45%	41%	35%
Yes, current laws give young widows and their children enough economic support and protection					
28%	28%	48%	47%	38%	37%

Source: IWS/ AWRAD 2013

¹⁷ At this writing, one JD was equivalent to \$1.4.

A strong majority of respondents across region and gender assert that the law should enforce spousal economic support of family members (a position expressed by 81% of females and 68% of males). However, while there is no regional difference, there is a consistent gender gap, with 12% more women in the West Bank and 14% more women in Gaza than their male counterparts in each region asserting this position. In comparison to 2000, there was a relatively drop in support for this position by region, especially in the West Bank where there was a 14% drop in the number of respondents claiming the courts should ensure husband's income is spent on family welfare (from 86% in 2000 to 74% in 2013) while in Gaza the drop was a much smaller at 3% (from 78% to 75% in 2013).

In relation to economic support for women in cases of divorce, a small majority of both sexes feel that the current laws do not give women enough economic support (with only 41% of men and 35% of women claiming the current levels of economic support to divorced women are adequate). However, attitudes differ dramatically when analyzed by region. Gazans are much less critical of the current level of economic support afforded divorcees than are their West Bank counterparts (with 48% of Gazans and only 28% of West Bankers claiming the current levels of support are adequate). This regional gap (of 20%) is much larger than the gender gap in each region with 4% less women in West Bank and 6% less women than men in Gaza claiming that current levels of economic support to divorced women and their children are adequate.

While there is slightly more criticism of the support the law provides for young widows and their children across gender and region (except among West Bank women) when compared with attitudes towards law and divorce, the general regional and gender pattern is similar. A stronger majority of males and females feel that the current laws' support for young widows and their children is inadequate compared to its support for divorcees (with only 38% of men and 37% of women saying the current level of support to young widows is enough). There is a strong consensus in attitudes among women and men on this issue, with barely a 1% gender gap in responses. But again, by region there is a much larger gap in attitudes with 20% more West Bankers than Gazans being critical of the laws' current support for young widows and their children.

Marital Property as Material Claims

In addition to assessing attitudes towards women's economic rights within the current system of family law (be it in terms of inheritance or maintenance), the 2013 survey also tried to assess attitudes towards mechanisms for women's material claims outside the current *shari'a*-based system. In specific, the survey asked whether in cases of divorce wives should be able to receive a

The 2013 poll asked a number of questions related to the issue of woman and child maintenance rights both in marriage and in circumstances of divorce and dissolution of marriage. On almost every issue, there was a clear patterning of belief among men and women that the current levels of economic support and security afforded to women and children through marriage (and as mandated by the law) are inadequate.

share of household assets built up by both spouses over the course of the marriage and under what circumstances.

Not surprisingly, there was a significant gender gap in responses to this question, with many more women supporting women's rights to marital assets to some degree (at 70% of women) versus men (56%). The greatest negative response was among Gazan men (51% responding negatively). However, those who felt that the current financial rights that women have are fair were an overall minority (although a large minority among men at 36%, versus a low one among women at 17%).

Table 28: In Cases of Divorce, Should Wives be Able to Receive a Share of Household Assets Built up by Both Spouses over the Course of the Marriage?

	West Bank		Gaza		Total	
	Male	Female	Male	Female	Male	Female
NEGATIVE RESPONSES						
No, her current financial rights are fair	30%	14%	41%	21%	36%	17%
No, but the current law needs change so she has better financial rights	7%	7%	10%	13%	8%	10%
POSITIVE RESPONSES						
Yes, but only assets that she has directly contributed to acquiring	47%	44%	39%	47%	40%	45%
Yes, the law should recognize the non-financial contributions of wives and mothers in building family wealth	16%	33%	8%	16%	14%	25%
Total	100%	100%	100%	100%	100%	100%

Source: IWSI/AWRAD 2013

The highest single response (among possible positive and negative attitudes) was that divorcees should have rights to those assets that they directly contributed to, with 40% of men and 45% of women supporting this position. Again the greatest reticence towards this position was among Gaza men (at 39%) while the greatest support for it was among West Bank men and Gaza women (at an equal 47%).

In contrast, there was much less support among both genders (14% of men and 25% of women) for divorced wives having rights to marital assets on the basis of their non-material contributions (i.e.

those women have brought to the marriage indirectly, rather than through their own income or inheritance). Again, Gaza males were the least supportive of this position (at 8%), while West Bank women were the most supportive of it (at 33%).

Taken together with the data on attitudes towards financial maintenance in the previous section, it is clear that there is a majority opinion among both men and women across Palestinian society that the current level of financial rights afforded married, divorced and widowed women under the current law are inadequate if not unjust. That 54% of men and 70% of women support divorced women's rights to some level of marital assets further shows the existence of strong opportunities to promote laws that broaden women's rights to material claims in cases of dissolution of marriage.

XI. Choosing Change: Attitudes Towards Reforming Family Law

Overall attitudes that Palestinian family law should respond to changes in society have not significantly changed by gender between 2000 and 2013 (with an overwhelming 84% of males and 87-88% of females supporting this view in both periods). However when broken down by region, there are some interesting differences, with the greatest change in attitudes over the two periods happening among West Bank females (a drop of 5% in support of this view) and among Jerusalem females (an 8% rise in support of this position). And as noted earlier in views towards marriage and divorce, there is now a greater polarization of views.

Table 29: Comparison Between 2000 and 2013: Should Family Law Respond to Changes and New Needs in Palestinian Society? (Yes Responses only)

	West Bank		Gaza		Jerusalem		Total	
	Male	Female	Male	Female	Male	Female	Male	Female
2000	81%	90%	88%	86%	89%	84%	84%	88%
2013	84%	85%	87%	88%	89%	92%	84%	87%

Source: IWS/AWRAD 2013, IWS/JMCC 2000

However, when asked specifically in what direction reform of family law should take (expanding women's rights, leaving them the same, or limiting them further), there has been substantial change over the two periods by gender and region. Overall, there has been a decline among both men and women in 2013 from 2000 in favoring more women's rights than are given in the existing family law (a 14% drop among males and an 11% drop among females). The shift has not been towards limiting women's rights in law but towards keeping the level of rights women have in the current family law (a 13% rise among males and an 8% rise among females in this position from 2000).

Table 30: Comparison between 2000 and 2013: Do You Favor More, Fewer or the Same Rights Given to Women in the Family Law Currently Existing in Your Place of Residence?

All Regions	Male		Female	
	2000	2013	2000	2013
More	41%	25%	62%	51%
Fewer	8%	5%	3%	2%
Same	52%	65%	35%	43%
Total	100%	100%	100%	100%

Source: IWS/AWRAD 2013, IWS/JMCC 2000.

Given that there have been a number of procedural reforms instituted by the court over the period that have relatively expanded women's rights in some areas, a more favorable view of existing law may account for the decline between the two periods in the numbers of male and female respondents wanting the law to provide even more rights to women. Nevertheless, a quarter of males and half of

females in 2013 still see the need for reforms that expand women's rights. This represents a major gender gap, with 25% more women than men wanting an expansion of their rights within the law.

When looked at regionally, some clear patterns emerge. In 2013, West Bank males remain the most supportive of reforms that expand women's rights in comparison to males in the other two regions (at 27% compared to 22% of Gaza and Jerusalem males). At the same time, they represent the greatest drop in support for this position among males in all three regions in comparison to 2000 (a drop of 19% compared to 13% in Gaza and only 2% in Jerusalem). West Bank females in 2013 show the least support for reforms that expand women's rights in comparison to women in the other two regions, though still at a high of 49%. This represents a drop of 18% in support among West Bank females for expanding women's rights in the law since 2000 (also the highest drop in this position among females of all three regions).

Table 31: Comparison between 2000 and 2013: Do You Favor More, Fewer or the Same Rights Given to Women in the Family Law Currently Existing in Your Place of Residence? In West Bank

West Bank	Male		Female	
	2000	2013	2000	2013
More	46%	27%	67%	49%
Fewer	6%	3%	2%	1%
Same	48%	64%	31%	47%
Total	100%	100%	100%	100%

Source: IWS/AWRAD 2013, IWS/JMCC 2000.

The gender gap in the 2013 responses to expanding women's rights in the law are highest in Gaza and Jerusalem (with a 30% greater number of female respondents wanting an expansion of rights in comparison to males in both regions). Gaza is also where we find the highest overall male preference for limiting women's rights in the law (at 11%) and where we find the highest percent of women wanting an expansion in their rights vis-a-vis the law (at 53%). Rising levels of education meant rising support for an expansion of women's rights, but more so for women, where 59% of women with a secondary education or over supported expansion. Age also was a factor, especially for women, with 55% of women aged 18-35 favoring an expansion of women's rights.

Table 32: Comparison between 2000 and 2013: Do You Favor More, Fewer or the Same Rights Given to Women in the Family Law Currently Existing in Your Place of Residence? in Gaza

Gaza	Male		Female	
	2000	2013	2000	2013
More	35%	22%	57%	53%
Fewer	11%	6%	5%	2%
Same	54%	66%	38%	40%
Total	100%	100%	100%	100%

Finally, in Jerusalem, males in both 2000 and 2013 were the least likely to support an expansion of women's rights in the law (at 24% in 2000 and similar to Gaza males in 2013 at 22%). Again, the dual

system of law in Jerusalem may influence those who do not support an expansion of women's rights. Also similar to Gaza, women in Jerusalem reflect the smallest drop in support for the expansion of women's rights between the two periods (from 55% in 2000 to 52% in 2013).

Comparison between 2000 and 2013: Do You Favor More, Fewer or the Same Rights Given to Women in the Family Law Currently Existing in Your Place of Residence? in Jerusalem

Jerusalem	Male		Female	
	2000	2013	2000	2013
More	24%	22%	55%	52%
Fewer	6%	3%	2%	1%
Same	71%	63%	43%	38%
Total	100	100%	100	100%

In contrast to the decline in support for an expansion of women's rights between the two periods, there has been an overall increase in support for a unified Family law between West Bank and Gaza among males and females. Support for unifying the law in 2000 was higher in the West Bank than Gaza, but over the passage of time, greater increased support for such a policy is found in Gaza (growing 9% among males and 12% among females there in 2013). The exception to the overall trend is in Jerusalem where there has been a decline in support for a unified law between the two periods, particularly among males (from 97% to 89%), probably reflecting political disaffection. The educational level of respondents did not make a significant difference in support for unification.

Table 34: Comparison between 2000 and 2013: Should the Existing Family Law in West Bank and Gaza be Unified? (Yes Only)

	West Bank		Gaza		Jerusalem		Total	
	Male	Female	Male	Female	Male	Female	Male	Female
2000	87%	88%	76%	76%	97%	94%	84%	83%
2013	90%	91%	87%	88%	89%	92%	89%	90%

Who Should Reform the Law?

In 2000, the survey sought to find out who respondents thought was the legitimate body to decide on reform. The most support was expressed for the statement that, "the society should vote" at 33%. This response was followed by *shari'a* court judges at 26%; the Palestinian Legislative Council at 17%; and the president at 12%. In sum, in 2000, secular state institutions and democratic vote accounted for 59% of responses. If responses for presidential decree were added to this total, 72% of respondents put the decision of reform of personal status law in the realm of secular authority.

In 2013, given the dramatically changed political context, it is no surprise that the responses were different. Respondents' first choice for change was "*shari'a* court judges" at 35%, followed by "the society should vote" at 27% and the Palestinian Legislative Council at 20%. The president as the address for reform garnered only 7%, while an additional 5% of respondents stated that the law should not be changed. What the data points to is a decline in attitudes that reform of family law should be undertaken through democratic process or by secular authorities, although – combining the society, PLC and the president – it remains the choice of a narrow majority. However, in contrast to 2000, in 2013

the choice of “society should vote” and the Palestinian Legislative Council taken together declined by 12% as the preferred address for undertaking reform. Rather, support has shifted to religious authorities (*shari’a* court judges) as agents of change by 8% over the two periods.

Table 35: Agent of Reform, 2013, by region and gender

	West Bank		Gaza		Jerusalem		Total	
	Male	Female	Male	Female	Male	Female	Male	Female
Sharia judges	33.3%	35.5%	35.7%	37%	24.8%	35.9%	33.8%	36.3%
Society	24.9%	29.6%	25.7%	26.9%	29.8%	29.9%	25.7%	28.3%
PLC	24.2%	16.4%	23.8%	20.7%	12.4%	12.0%	23.1%	18.2%
President	7.7%	9.0%	4.4%	6.1%	4.3%	6.6%	5.8%	7.3%
No change	5.5%	3.7%	6.2%	5.0%	13.0%	4.8%	6.4%	4.4%
Don't know/no answer	3.4%	5.9%	4.2%	4.4%	13.0%	10.8%	5.2%	5.5%

Regional differences on this issue were not pronounced between Gaza and the West Bank (excluding Jerusalem). Rather, Jerusalem respondents, particularly males, had significantly different responses. Both Jerusalem females and males had a much lower faith in the Palestinian Legislative Council as an agent of reform (at only 12%), and twice as many Jerusalem males as males in Gaza or the rest of the West Bank didn't want the law to change at all (at 13%). Jerusalem respondents were about three times more likely to say that they didn't know, perhaps reflecting the alienation of Jerusalemites from the political processes in the divided Palestinian Authority.

Educational level was significant for both men and women in choosing the agent of reform in varying ways. Men with secondary education or higher were less confident in judges as an agent of reform (at 31% as opposed to 37% at the lowest level of education), while for women, education made no significant difference in their preference for judges as an agent of reform (at 35% overall). But rising levels of education made a substantial difference for women in preferring that “the society” should vote, with 32% making this choice as opposed to 23% of women at the lowest level of education. For both women and men, less education meant greater preference for the president as an agent of reform. The youngest (aged 18-35) of both males and females were more likely to choose “the society should vote” at 30% for both.

What could not be captured in the survey is a preference for partnership among possible agents of reform. The overwhelming support for unifying family law suggests that unity and partnership might be important goals when normative issues of legal reform can once more be addressed. In the interim, the 2013 survey shows that Palestinians in the OPT hope the institutions of the law can address concrete injustices and unmet needs. At the same time, more abstract notions untied to concrete issues—such as an expansion of women's rights—had declining support, although a majority of women endorsed such an expansion. While there is increased polarization, questions of equality were answered positively by a majority of respondents. The 2013 survey and its background analyses of the economic, social, political and legal contexts reveal both multiple openings for change and reform and the complicated and crisis-ridden settings in which Palestinian women and men operate and address the law for protection, rights and interests.



References

- Abou Ramadan, Moussa. 2002. "The Transition from Tradition to Reform: the *Shari'a* Appeals Court Rulings on Child Custody (1992-2001)." *Fordham International Law Journal*, Volume 26, Issue 3.
- Ayyoub, Abeer. 2013. "Palestinian Women Hope to Gain Divorce Rights," *Middle East Monitor*, September 3, 2013.
- Bocco, Ricardo, et. al. November 2006. *Politics, Security and the Barrier: Palestinian Public Perceptions*. IUED and DCAF.
- Botmeh, Reem. 2011. *A Review of Palestinian Legislation from a Women's Rights Perspective*. Jerusalem: UNDP.
- Hadid, Dia. 2012. "Palestinians chip away at male divorce monopoly." Ramallah: Associated Press, August 31, 2012.
- Hallaq, Wael. 2013. *The Impossible State: Islam, Politics and Modernity's Moral Predicament*. New York: Columbia University Press.
- Hammami, Rema. 2004. "Attitudes Towards Legal Reform of Personal Status Law in Palestine," in ed. Lynn Welchman, *Women's Rights and Islamic Family Law: Perspectives on Reform*. London and New York: Zed Press.
- JMCC 2011. "Sharia courts must notify women of polygamy in new ruling." Jerusalem: Jerusalem Media and Communications, April 25, 2011.
- Johnson, Penny. 2004. "Agents for Reform: The Women's Movement, Social Politics, and Family Law Reform" in ed. Lynn Welchman, *Women's Rights and Islamic Family Law: Perspectives on Reform*. London and New York: Zed Press.
- Kawasmeh, Mona. 2013. "The Palestinian court issues its first *khul'a* decision," Jerusalem: Al Quds daily newspaper, 22 April 2013, in Arabic.
- Khalil, Naela. 2013. "Fatwas Allow Artificial Insemination For Wives of Palestinian Prisoners," London: Al Monitor Palestine Pulse, posted on 11 February, 2013.
- Meriwether, Margaret. 1996. "The Rights of Children and the Responsibilities of Women: Women as Wasis in Ottoman Aleppo, 1770-1840." In *Women, Family and Divorce Laws in Islamic History*, edited by Amira El Azhary Sobol, Syracuse: Syracuse University Press.
- Moors, Annelies. 2012. "Unregistered Islamic Marriages: Anxieties About Sexuality in the Netherlands." _____ 1995. *Women, Property and Islam: Palestinian Experiences 1920-1990*. Cambridge: Cambridge University Press.
- Nazzal, Nazouh. 2012. "Divorce rate high in Palestinian Territories," Gulf News, December 24, 2012.
- Office of the Chief Justice (Higher Council for Sharia Judiciary), Statistical Report 2012, in Arabic.
- PCBS 2011, "Palestine in Figures," Ramallah: Palestinian Central Bureau of Statistics.

_____. 2007. Palestinian Family Health Survey, 2006: Final Report. Ramallah: Palestinian Central Bureau of Statistics.

Reiter, Yitzhak. 2009. "Judge reform: facilitating divorce by *Shari'a* courts in Israel." *Journal of Islamic Law and Culture*, Vol. 11, No. 1, March 2009, 13-37.

Shehada, Nahda. 2005. *Justice without Drama: Enacting Family Law in Gaza City Shari'a Court*. Maastricht: Shaker Publishing.

UNIFEM. 2008. *Who Answers to Women?: Gender and Accountability*. New York: UNIFEM.

UNWomen. 2011. *Who Answers to Gaza Women? An Economic, Security and Rights Research*. Jerusalem: UNWomen.

Walsh, Coleen. 2013. "Finding a Solution to Closed Doors." *Harvard Gazette*, March 5, 2013.

Welchman, Lynn. 2009a. "Family, Gender and Law in Jordan and Palestine," in *Family, Gender and Law in a Globalizing Middle East and South Asia* ed. Kenneth Cuno and Manisha Desai. Syracuse: Syracuse University Press.

_____. 2009b. "Sharia, Tribal and PA Statutory Law: Competing Legal Regimes in the Occupied Palestinian Territories." *Journal of Palestine Studies*, Volume 36, No. 2, Winter 2009.

_____. 2004. "Legal context: *shari'a* courts and Muslim family law in the transitional period." in ed. Lynn Welchman, *Women's Rights and Islamic Family Law: Perspectives on Reform*. London and New York: Zed Press.

_____. 2000. *Beyond the Code: Muslim Family Law and the Shari' Judiciary in the Palestinian West Bank*. The Hague: Kluwer International.

_____. 1999. *Islamic Family Law: Text and Practice in Palestine*. Jerusalem: Women's Center for Legal Aid and Counseling.