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GAZA, GENDER AND THE AGE OF OBAMA

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One of the major foreign policy issues facing President Obama concerns the Israeli/Palestinian quagmire. The events in Gaza that occurred in late 2008 and early 2009 were a recent example where the confrontation between the two societies made international headlines. Over a period of twenty-two days, the Israeli Defense Force (“IDF”) bombed many sites within the Gaza Strip in an effort to destroy the Islamic fundamentalist group Hamas, and prevent it from firing rockets into Israel.³ The IDF demolished numerous buildings, contributing to more than 1300 Palestinian deaths, whereas thirteen Israelis died during the offensive.⁴ Yet, as soon as the IDF withdrew on President Obama's inauguration day, Hamas reasserted its role in Gaza as the popularly-elected representatives of the Palestinian people.⁵ Hamas has moved to rebuild the area it has singularly controlled since its June 2007 military defeat and expulsion of Fatah, its historically dominant and more secular rival.⁶ One might query whether this was a victory for Hamas, Israel, both, or

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2 Samuel Nielson will graduate from the University of Iowa College of Law in 2010.

3 Sabrina Tavernise, *Skies Silent Over Gaza, but the Wait to hear the Rumble of Rebuilding Lingers*, N.Y. TIMES, Jan. 26, 2009, at A6. Israel arguably intended to continue to bomb Gaza during the window between President Obama's election and his taking office as Israel knew that President Bush would likely do nothing to stop Israel's attack, thus making it more politically palatable to act in the sixty-day window. See Michael Freund, *Fundamentally Freund: Israel's Window of Opportunity*, JERUSALEM POST ONLINE, Nov. 18, 2008, <http://www.jpost.com/servlet/Satellite?cid=1226404769723&pagename=JPost%2FJPArticle%2FPrinter>.

4 See Steven Erlanger, *Israel Declares Cease-fire, Hamas says it will Fight On*, N.Y. TIMES, Jan. 17, 2009, at A1.

5 Hamas's control arises from its popular election victory in January 2006 and its physical eradication of Fatah fighters in June 2007. See Steven Erlanger, *For Obama, Choice is Unified Palestinian Government or an Isolated Hamas*, N.Y. TIMES, Jan. 22, 2009, at A6 [hereinafter *For Obama*] (discussing Hamas's role of Gaza).

6 For example, Hamas offered up to \$5,000 to persons whose homes were destroyed in the conflict. See Tavernise, *supra* note 3.

neither. Meanwhile, Fatah, the acknowledged U.S. ally, remained powerless to affect the situation – in *de facto* control only over parts of the West Bank.

This article presents suggestions as to how the Obama administration might direct American foreign policy with respect to one aspect of the situation in Gaza. Specifically, we wish to address how the United States can implement changes that might improve the dire plight of Palestinian women.⁷ We are not saying that gender issues should be prioritized at the expense of other concerns. Rather, we call for gender issues not to be left out of whatever developments do occur. In other words, when a general project is being planned, emphasis on female needs as well as male needs should be conceptualized and implemented. The United States must be very careful not to be perceived as advantaging women over men, or as implementing western “feminist” principles in this Muslim nation.

Part I proposes that the United States engage in diplomatic relations with Hamas, despite our serious reservations about much of its behavior. This democratically elected group has operated under blockaded and isolated conditions. If supported to a certain extent by more of the western nations, and permitted to actually govern Gaza, Hamas may be able to rule in a way that permits alleviation of the dire conditions that affect women and men. Part II examines economic development and education, looking at what the United States has done regarding these areas and suggests actions the Obama administration should take concerning the status of women in Gaza. In addition to these nonlegal areas, there is the need for attention to the legal regime. While legal reforms are needed in many areas, Part III discusses constitutionalism in Palestine, specifically addressing the Basic Law of 2002 and the Draft Constitution. This Part examines selected language pertaining to gender in these documents and provides suggestions as to what the Obama administration might do within this current legal framework. Part IV concludes the piece.

I. Diplomacy

Despite its distaste for Hamas, the United States should engage diplomatically with it for a number of reasons, including the fact that it will likely continue to be in power in Gaza for an extended period. During this time, the plight of Palestinian women will continue to be very grim. The United States could alleviate some of these conditions if it engages in a dialogue with the Hamas government that permits the funding of certain targeted programs.

The Obama administration might even consider taking up the President's campaign promise of exploring negotiations with “no preconditions.”⁸ One such condition, for

7 Author Wing has written extensively about the plight of Palestinian women for many years. See, e.g., Adrien Katherine Wing, *Constitutionalism, Legal Reform, and the Economic Development of Palestinian Women*, 15 *TRANSNAT'L L. & CONTEMP. PROBS.* 655, 700 (2006) [hereinafter *TLCP*]; Adrien Katherine Wing & Hisham Kassim, *The Future of Palestinian Women's Rights: Lessons From a Half-Century of Tunisian Progress*, 64 *WASH. & LEE L. REV.* 1551 (2007); Adrien Katherine Wing & Hisham Kassim, *Hamas, Constitutionalism, and Palestinian Women*, 50 *HOW. L.J.* 479 (2007) [hereinafter *Constitutionalism*].

8 Early in his campaign for president, Barack Obama often made a point of saying that he would meet with foreign powers—friend or foe—without preconditions. See Kate Phillips, *Obama and the Preconditions Meme*, *N.Y. TIMES*, May 23, 2008, <http://thecaucus.blogs.nytimes.com/2008/05/23/obama-and-the-preconditions-meme/>. The full context of the original statement stems from a YouTube debate in which the following exchange took place:

Moderator: Would you be willing to meet separately, without precondition, during the first year of your administration, in Washington or anywhere else, with the leaders of Iran, Syria, Venezuela, Cuba and North Korea, in order to bridge the gap that divides our countries?

example, is forcing Hamas to recognize Israel's right to exist when Israel does not recognize Hamas's right to exist.⁹

The United States has been an ally of Fatah for many years now, and clearly would have preferred that group to have won the democratically-run 2006 elections over Hamas. The situation was made worse when the 2007 internecine warfare led Hamas to expel Fatah from Gaza.

Parliamentary elections are scheduled to be held in 2010, but given the continued dysfunction between Fatah and Hamas, and the stalemate in political talks with Israel prior to and after the 2009 election of right-wing Likud prime minister Benjamin Netanyahu, those elections are unlikely to take place on a timely basis.

Moreover, democratic elections might result in another win for Hamas, as occurred in 2006. Fatah has not gotten its own political house in order to present a viable alternative to Hamas. According to American University Beirut director Rami Khouri, Hamas has maintained legitimacy because of:

- Its legacy of providing basic social services to families in need.
- Its opposition to the corrupt and inefficient national stewardship of Fatah.
- Its victory in the 2006 parliamentary elections.
- Its recent armed resistance against Israel, which admittedly came at a heavy cost to Gaza society as a whole.¹⁰

Some Palestinians may view the Hamas-Israel 2008-2009 confrontation as a victory for Hamas, since it was not dislodged from power.

A number of highly regarded former government officials also support the notion of substantive dialogue with Hamas, as the United States is beginning to do with Iran and other nations. Nine such individuals from both political parties, including former national security advisers Brent Scowcroft and Zbigniew Brzezinski, have encouraged the Obama administration in this regard.¹¹

In late April 2009, the administration moved forward when it requested funding that would go to Hamas if that group became part of a coalition government with Fatah. This latter party accepted U.S. conditions a long time ago on recognizing Israel, renouncing violence, and honoring past Israeli-Palestinian agreements.¹² Many may argue that the

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Mr. Obama: I would. And the reason is this, that the notion that somehow not talking to countries is punishment to them — which has been the guiding diplomatic principle of this administration — is ridiculous.

Id.

9 This often seems to be a stumbling block for any negotiations with Hamas. See *Olmert: Israel Won't Negotiate With Hamas*, MSNBC, Jan. 26, 2006, <http://www.msnbc.msn.com/id/11009552/> (describing Israel's refusal to speak with Hamas because, in part, of Hamas's refusal to recognize Israel).

10 Rami Khouri, *George Mitchell and Hamas*, AGENCE GLOBAL, Jan. 31, 2009, available at http://belfercenter.ksg.harvard.edu/publication/18803/george_mitchell_and_hamas.html.

11 See Bryan Bender and Farah Stockman, *Top officials urge dialogue with Hamas*, BOSTON GLOBE, Mar. 14, 2009, http://www.boston.com/news/nation/washington/articles/2009/03/14/top_officials_urge_dialogue_wit_h_hamas.

12 See Paul Richter, *Obama Move Alarms Israel Supporters*, LOS ANGELES TIMES, Apr. 27, 2009,

United States should take a principled position that we should not engage in dialogue with terrorists. Similar arguments against engagement have been made with respect to many groups or nations that ultimately have become accepted or at least tolerated by our country or other countries. The same view was once held with respect to the “terrorist” Fatah and the Palestinian Liberation Organization (“PLO”).¹³ Now Fatah is an American ally and is viewed by Israel and the United States alike as the moderate party in the situation.

How does a group shift from terrorist to ally? Political progress occurs when like-minded people on each side of an impasse are simultaneously willing to take political and physical risks to end the impasse. In the case of the PLO, with pressure from the Clinton administration, Yitzhak Rabin's Israeli government became willing to deal with “terrorist” Fatah, led by Yasser Arafat, who was also willing to move forward. Rabin, Arafat and former Israeli Prime Minister Shimon Peres jointly won the Nobel Prize for the resulting Oslo Accords.¹⁴ Rabin would later pay with his life, just as Egyptian President Anwar Sadat did in 1981 after he made peace with Israel.¹⁵

People once thought that it was impossible to negotiate with the Irish Republican Army (“IRA”) in Northern Ireland, but that conflict was not resolved until such talks happened.¹⁶ Likewise, some people viewed the African National Congress (“ANC”) of South Africa as terrorists, yet peaceful transition to majority rule took place only after the apartheid government negotiated with the ANC and its imprisoned leader Nelson Mandela.¹⁷

Great Britain recently provided a good example of working with “terrorist” forces when it chose to re-establish contacts with Lebanese-based Hezbollah.¹⁸ A Foreign Office spokesman called Hezbollah a “political phenomenon and part and parcel of the national fabric in Lebanon. We have to admit this.”¹⁹ Hamas has a similar status in Gaza,²⁰ and the Obama administration has to acknowledge this fact so that progress in many areas, including gender, can more fully be achieved now and in the future. Indeed, Hamas encouraged the Obama administration to engage in dialogue in February 2009.²¹ By doing so, the administration would likewise move away from an image of the United States as the enemy of Islam.²²

<http://www.latimes.com/news/nationworld/world/la-fg-obama-hamas27-2009apr27,0,4563512.story>.

13 Some Israeli Defense officials say that Fatah has even resumed terrorist activities in the West Bank. See Amos Harel, *Security sources: Fatah has resumed terrorist activities*, HAARETZ, April 6, 2009, <http://www.haaretz.com/hasen/pages/1076398.html>.

14 Timeline: Yasser Arafat, FOX News, Feb. 8, 2005, <http://www.foxnews.com/story/0,2933,136880,00.html>.

15 Gayle Young, *Rabin's assassination has parallels with Sadat's*, CNN, Nov. 6, 1995, <http://www.cnn.com/WORLD/9511/rabin/11-06/index.html>.

16 See generally THOMAS HENNESSEY, *THE NORTHERN IRELAND PEACE PROCESS: ENDING THE TROUBLES?* (2001) (describing negotiating with the IRA).

17 See generally NELSON MANDELA, *LONG WALK TO FREEDOM* (1995) (describing the life of Mandela).

18 Roger Cohen, Op-Ed., *Middle East Reality Check*, N.Y. TIMES, Mar. 8, 2009, <http://www.nytimes.com/2009/03/09/opinion/09cohen.html> (describing Great Britain's efforts to recognize Hezbollah as an integral part of Lebanese society).

19 *Id.*

20 *Id.*

21 See Ethan Bronner & Taghreed El-Khodary, *In a Letter, a Leader of Hamas Makes an Appeal to Obama*, N.Y. TIMES, Feb. 21, 2009, at A7.

22 See Alan Cowell, *U.S. Is 'Not Your Enemy,' Obama Tells Islamic World*, N.Y. TIMES, Jan. 28, 2009, at A8. President “Obama said that it was his job ‘to communicate to the Muslim world that the Americans are not your enemy.’” *Id.*

If the United States recognized Hamas, then it would be in a better position to engage in the programs mentioned in the remaining parts of this article. Moreover, it would be in a situation to act as an honest broker between Hamas and Fatah. One major issue between the two groups is that Fatah-affiliated Palestinian President Mahmoud Abbas' term can be interpreted as having ended in January 2009, so that he is technically no longer the President of the Palestinian Authority.²³ Elections for the Presidency should be synchronized with the 2010 parliamentary elections. If both parties agree to that, then maybe the United States could convince Hamas to accept the continuation of Abbas' status until then.

If the major Palestinian parties can overcome their differences and are then prepared to engage together in diplomatic relations with the United States, then it would be possible for the United States to laser in on the last hold out to the two-state solution – the new Israeli Likud party government. While progress towards Palestinian independence may not be very likely with Likud in power, it is impossible if Hamas and Fatah remain in the internecine battles that have characterized the last few years.

II. Economic Development and Education

While there are many issues affecting Palestinian women in Gaza, this Part details two - economic development and education. These concerns are fields in which the Obama administration could act fairly quickly if it engages with Hamas to act immediately to affect change in spite of the currently fractured Palestinian government.

a. Economic Development

The Gaza Strip has one of the world's most impoverished economies.²⁴ Virtually non-existent economic development leaves both men and women facing high unemployment and dire financial straits.²⁵ Additionally, cultural and religious preferences to employ men in available jobs²⁶ mean that many women, especially widows or women whose husbands are in Israeli prisons, are unable to adequately provide for their families.²⁷ One

23 See Erlanger, *For Obama, supra* note 5.

24 According to the World Bank, the Gaza Strip's poverty rate lies at 79.4 percent. Ramzy Baroud, *From bad to wretched*, AL-AHRAM WEEKLY ONLINE, Sept. 25, 2008, <http://weekly.ahram.org.eg/2008/916/op13.htm>.

Further, "98 per cent [sic] of Gaza's factories are no longer functioning" and 80 percent of the people receive food assistance. *Id.*

25 Unemployment in Gaza is estimated at 35 percent. The average real GDP per capita is estimated to be over 40 percent below its 1999 level. Int'l Monetary Fund, Ad Hoc Comm. Meeting, MACROECONOMIC AND FISCAL DEVELOPMENTS IN THE WEST BANK AND GAZA (Sept. 24, 2007), available at <http://imf.org/external/np/wbg/2007/eng/092407.pdf>. At the same time, Israel's per capita GDP rose by almost 10 percent during the same period. *Id.* Further, 98 percent of Gaza's factories are no longer functioning. Ramzy Baroud, *From Bad to Wretched*, AL-AHRAM WEEKLY ONLINE, Sept. 25, 2008, <http://weekly.ahram.org.eg/2008/916/op13.htm>.

26 See generally Adrien Katherine Wing, *Custom, Religion, and Rights: The Future Legal Status of Palestinian Women*, 35 HARV. INT'L L.J. 149 (1994) (discussing custom and religion's role in affecting treatment on the basis of gender). This reasoning follows from customary and religious preference to educate men over women because men are seen as being the primary breadwinners while women are generally considered to work only in the home. Indeed, women cannot often work outside of the home without a man's permission. *Id.* at 161.

27 Rory McCarthy, *Everyone is Thinking for Themselves*, THE GUARDIAN, May 15, 2008, available at <http://www.guardian.co.uk/world/2008/may/15/gaza> (discussing the situation of a woman whose husband was killed by the Israeli military and who struggles to make ends meet). "When close relatives, like the heads of a household or the breadwinners of the home, die or are imprisoned, women have to bear the increased burden of providing economic support for the family . . ." TLCP, *supra* note 7, at 669.

such woman, Etedal Zanati, voted for Hamas in 2006, hoping that it could change things.²⁸ She found, however, that Israel's response to Hamas's victory in blockading Gaza made the economic situation worse.²⁹ Likewise, scores of women voted for Hamas,³⁰ some for related reasons, only to be similarly disappointed by the inability of Hamas or any other Palestinian faction to improve the situation.³¹

Economic difficulties also lead to other issues adversely affecting gender progress. The inability to have economic control in the Gaza Strip leaves many men frustrated with their situation and with few outlets to channel their anger.³² Consequently, according to a Gaza psychiatrist, some men “use women to ventilate [their frustration].”³³ Unfortunately, patriarchal customs and religious practices may be interpreted to condone physical chastisement of women.³⁴ Thus, poor development may harm not only women's economic well-being, but also their corporal well-being, further inhibiting gender progress.

b. Education

Overall, Palestinians in Gaza are well-educated on the primary and secondary levels. The average “school life expectancy” — the total number of years of schooling that a child can expect to receive — is fourteen years.³⁵ The average literacy rate — the percentage of the population over fifteen years old that can read and write — is 92.4 percent.³⁶ However, women achieve nearly 9 percent lower literacy than men at only 88 percent,³⁷ potentially due to customary emphasis on the preference to educate males as future breadwinners and heads of households. Additionally, women may be less likely than men to have access to advice and information regarding curriculum selection.³⁸

c. Past United States Policy

The United States has made various efforts to better economic and education conditions in the Occupied Territories. Concerning economic development, the United States, mainly through the United States Agency for International Development (“USAID”), has worked to improve Palestinians' economic status. USAID is one of the largest contributors of foreign aid to the Gaza Strip and it has an annual budget of approximately

28 McCarthy, *supra* note 27.

29 *Id.* The blockade nonetheless continues with only some relief. See Neil MacFarquhar, *U.N. Chief Says Israel is Blocking Most Gaza Aid*, N.Y. TIMES, Feb. 11, 2009, at A13; Isabel Kershner, *Israel Opens the Gaza Border for 25,000 Carnations, Bound for Europe*, N.Y. TIMES, Feb. 13, 2009, at A6.

30 See Ian Fisher, *Women, Secret Hamas Strength, Win Votes at Polls and New Role*, N.Y. TIMES, Feb. 3, 2006, at A1.

31 See McCarthy, *supra* note 27 (discussing one woman's view that Hamas has not been given the chance to effectively govern and also her frustration with the various Palestinian factions).

32 See *id.* According to Egyptian feminist Dr. Nawal el Saadawi, the “loss of control” felt by Palestinian men results in the increased male dominance over women. See ADRIEN KATHERINE WING, DEMOCRACY, CONSTITUTIONALISM AND THE FUTURE STATE OF PALESTINE 34 (1994).

33 Adrien Katherine Wing, *A Critical Race Feminist Conceptualization of Violence: South African and Palestinian Women*, 60 ALB. L. REV. 943, 964 (1997) (citation omitted).

34 See TLCP, *supra* note 7, at 690.

35 *Gaza Strip Education Statistics*, NATIONMASTER.COM, http://www.nationmaster.com/red/country/gz-gaza-strip/edu-education&b_cite=1&b_define=1 [hereinafter Gaza Education] (last visited August 31, 2009). The school life expectancy in the United States, by comparison, is sixteen years. School Life Expectancy, Primary to Tertiary (most recent) *By Country*, NATIONMASTER.COM, http://www.nationmaster.com/graph/edu_sch_lif_exp_pri_to_ter-school-life-expectancy-primary-tertiary (last visited August 31, 2009).

36 *Id.*

37 *Id.* The male population averages almost 97 percent.

38 TLCP, *supra* note 7, at 708.

\$75 million.³⁹ Since 1994, approximately \$2.3 billion has passed to the Palestinians through USAID.⁴⁰

United States involvement with economic development in Gaza hit a high point in May 2005 when President George W. Bush promised an additional \$50 million in direct aid for “new housing and infrastructure projects in Gaza, where poverty and unemployment are very high.”⁴¹ Unfortunately, with Hamas's electoral victory, President Bush reneged on the promise and stated that the United States “would not give direct aid to a government that includes terrorists.”⁴²

In 2009, the Obama administration promised \$900 million in relief to Gaza.⁴³ The difference with this pledge compared to past aid, however, is that the amount is aimed at rebuilding Gaza from the recent conflict, rather than expanding development.⁴⁴

USAID has created a combination of both economic development and educational enrichment with its efforts to provide Palestinian women with vocational training and employment generation programs in Palestine.⁴⁵ The assistance has included 60,000 microcredit loans worth over \$27 million⁴⁶ to help “Palestinian women transform their subsistence labor into sustainable, income-generating enterprises.”⁴⁷ USAID asserts that the micro-credit projects have been very successful, as exemplified by the over 90 percent repayment rate and the increase in the acceptance of female loan applicants by Palestinian banks.⁴⁸

USAID constructed eighty-nine women's and community centers in the Occupied Territories to provide courses to Palestinian women to “increase business, computer, literacy, management and other skills . . .”⁴⁹ USAID also provided educational support to Palestinian women, including workshops to develop leadership skills and training “to increase women's awareness of their rights.”⁵⁰

Finally, the United States has funded scholarships for Palestinians to study at both local universities and American universities alike. For example, the State Department's Bureau of Educational and Cultural Affairs sponsors the Fulbright Program to furnish support.⁵¹ Almost one-half - 125 out of 280 - of all Palestinian participants since 1999 have

39 U.S. STATE DEPT., U.S. SUPPORT AND ASSISTANCE FOR PALESTINIAN WOMEN (2003),

<http://www.america.gov/st/washfile-english/2003/August/20030826131325namfuaks0.7212793.html> (last visited August 31, 2009) [hereinafter USAID Support].

40 USAID, West Bank/Gaza, http://www.usaid.gov/locations/asia_near_east/countries/wbgaza/ (last visited August 31, 2009).

41 *Bush Pledges \$50 Million to Palestinian Authority*, CNN, May 26, 2005,

<http://www.cnn.com/2005/WORLD/meast/05/26/abbas.bush/index.html> (internal citations omitted).

42 Anne Gearan, *US Gains Support for Aid Cutoff to Hamas*, ASSOCIATED PRESS, Jan. 30, 2006, available at

http://www.redorbit.com/news/general/374767/us_gains_support_for_aid_cutoff_to_hamas/index.html.

43 *See Lawmakers Worry Whether U.S. Can Keep Gaza Aid Away From Hamas*, FOX NEWS, Mar. 2, 2009,

<http://www.foxnews.com/politics/first100days/2009/03/02/lawmakers-worry-gaza-aid-away-hamas/>.

44 *See Helene Cooper, U.S. to Give \$900 Million in Gaza Aid, Officials Say*, N.Y. TIMES, Feb. 24, 2009, at A7.

45 U.S. STATE DEPT., NUMEROUS U.S. PROGRAMS BACK PALESTINIAN WOMEN'S DEVELOPMENT (2005) [hereinafter

“Feb. 22 Fact Sheet”], available at <http://www.america.gov/st/washfile-english/2005/February/20050222165547cpataruk0.7308313.html>.

46 USAID Support, *supra* note 39.

47 Feb. 22 Fact Sheet, *supra* note 45.

48 *Id.*

49 *Id.*

50 *Id.*

51 *Id.* “The Fulbright Program with the West Bank and Gaza is one of the largest in the Middle East.” *Id.*

been women.⁵² Further, as part of the Fulbright Program, the United States brings mid-career professionals to the United States for one academic year.⁵³ In 2003 and 2004, for example, two Palestinian women received these grants.⁵⁴ USAID also started a master's degree scholarship program in May 2000 "to provide competitive scholarships to Palestinians for graduate-level education in the [United States] for potential private and public sector leaders and managers."⁵⁵ Other efforts include the Presidential Scholarship Program, which began in September 2003, with the purpose of "provid[ing] 70 master's degree scholarships in the United States to Palestinians from the West Bank and Gaza in priority fields of study that are critical to the development of the Palestinian economy and society and to the fostering of future leadership and reform."⁵⁶ The majority of those scholars selected—36 out of 70—were women.⁵⁷ Finally, USAID grants full-tuition undergraduate scholarships to study at local universities.⁵⁸ Here too, a majority of the recipients—232 out of 430 (54 percent)—have been women.⁵⁹

d. Future Obama Administration Policy

The United States needs to take drastic action in the economic and educational spheres in order to assist Palestinian women.⁶⁰ The programs must be culturally appropriate in order to achieve the desired results.⁶¹

The first suggestion is for the United States to massively expand the scholarships for Palestinian women at American universities. The U.S. Embassy, which screens visa applicants, is always concerned with admitting potential terrorists. Since females may be far less likely to fall into this category, it should be easier for Gazan women to pass security

52 *Id.*

53 *Id.*

54 *Id.*

55 *Id.* According to USAID:

The purpose of the program is to address the current shortage of qualified managers in sectors that are critical to the Palestinian economy, such as business administration, information technology, economics, banking and finance, and health administration. To date, the number of scholarships and breakdown per field stands at: 32 in Business (MBA or related), 11 in Public Administration, 15 in Information Technology, 9 in Urban Planning, 7 in Water Resources, 9 in Public Health, 2 in Law, and 5 in other fields (Economics, Educational Administration, Commercial Diplomacy, Political Economy, International Economics). Fifty-eight scholars from the West Bank and 32 from Gaza (a total 57 men and 33 women) were awarded scholarships. Of the 77 scholars who have completed their studies, 53 (86 percent) have returned home eager to contribute to their communities. Fifty of them have already found meaningful jobs: one is chief of electoral affairs at the Palestinian Central Election Commission; another is a trade specialist at the Ministry of National Economy; and a third works as an engineer for a major public works program.

Id.

56 *Id.*

57 *Id.*

58 *Id.*

59 *Id.*

60 See generally Sara Roy, *The Palestinian-Israeli Conflict and Palestinian Socioeconomic Decline: A Place Denied*, 17 INT'L. J. OF POL., CULTURE, & SOC'Y 365 (2004) (discussing the slow "dismemberment" of the Palestinian economy and society that "seriously constrain Palestinian socioeconomic recovery and development").

61 See generally ANNE FADIMAN, *THE SPIRIT CATCHES YOU AND YOU FALL DOWN* (1998) (describing the importance of culturally appropriate programs in promoting effective change in Laotian refugee camps).

screening. Thus, more female students will be able to escape their “open-air prison,”⁶² and acquire necessary skills to be valuable contributors to their society. Hamas may not object to increased U.S. support in this area because some of its members are foreign educated.⁶³ Further, Hamas already encourages, and in some cases funds, women's higher education in fields such as chemistry and computers.⁶⁴

Education can have the effect of increasing understanding and moderating the views of those participating, thereby potentially helping to achieve the long-term goal of peace and development of the region.⁶⁵ At the same time, it must be acknowledged that education can radicalize students as well, whether they study science or religion.

Granting more student visas for women will not be sufficient. Most importantly, the administration must pressure Israel to permit more exit visas, as the Israeli government has blocked Palestinian students from leaving Gaza to pursue education in the United States.⁶⁶ Presumably, it should be possible for more female students to pass the Israeli screening measures as well. Alternatively, U.S. Embassy officials could come to Gaza to process students who are not allowed to exit by Israel. The last alternative would be for the United States to fund the students to go to Egypt to be processed for visas there.

An obstacle that this initiative could face with respect to women is that some Gazans may not feel that it is culturally or religiously appropriate for females to leave their homes alone, much less travel abroad.⁶⁷ The Obama administration could combat this view by providing scholarships for clusters of women from the same community to study together in the United States and to be roommates; or for male-female siblings to be granted visas for the same university, where they could live together.

62 Turkish Prime Minister Recep Tayyip Erdogan used this phrase when discussing Gaza in January 2009. See John Daniszewski and Matt Moore, *Turkish Premier, Israeli President Clash at Davos*, WASH. POST, Jan. 30, 2009, at A13.

63 See *Constitutionalism*, *supra* note 7, at 494.

64 See Fisher, *supra* note 30 (discussing the relationship between Hamas and women in education and politics).

65 Author Nielson studied at Brigham Young University in Provo, Utah, with Hani Almadhoun, cousin to Ismael Haniyah, one of Hamas's major political leaders. Perhaps as a result of studying in America, Hani has moderate views regarding the Israel/Palestine conflict. He currently shares his views as a contributor to *The Huffington Post* at <http://www.huffingtonpost.com/hani-almadhoun/>.

66 In 2008 the Israeli military prohibited seven Palestinians in Gaza from leaving Gaza to travel to Jerusalem so that they could obtain visas to study in the United States. See Barak Ravid, *Why Did the U.S. Turn Away Gaza Fulbright Scholars?*, HAARETZ, Aug. 6, 2008, <http://www.haaretz.com/hasen/spages/1008866.html>. This occurred even though the U.S. State Department previously awarded each of the seven Fulbright Scholarships. *Id.* Because of the military's refusal to let the students obtain exit visas from Gaza, the United States rescinded the scholarships. *Id.* However, then-Secretary of State Condoleezza Rice put intense pressure on Israel to permit the students to leave and on the United States to reinstate the grants, which the United States ultimately did. Ethan Bronner, *Israel to Loosen Limits on Gaza Scholars*, N.Y. TIMES, Jun. 6, 2008, at A6. The military finally relented and allowed four of the seven—including three women—to leave Gaza and obtain the visas. *Id.* The remaining three were interviewed by U.S. diplomats at the Gaza border. *Gaza Fulbright Three' Lose Visas*, BBC NEWS, Aug. 5, 2008, http://news.bbc.co.uk/2/hi/middle_east/7542838.stm. Finally, after almost two months the United States granted visas but then rescinded them two days later based on “additional information” provided by Israel to the State Department. *Id.* Thus, none of the students from Gaza ended up being able to study in the United States. *Id.* Still, as former Secretary of State Condoleezza Rice said, “If you cannot engage young people and give complete horizons to their expectations and their dreams, I don't know that there would be any future for Palestine.” *Id.* For the perspective of one of the scholars, see Osama Dawoud, *Israelis Hinder Academic Pursuits*, DISSIDENT VOICE, Sept. 4, 2008, <http://dissidentvoice.org/2008/09/israelis-hinder-academic-pursuits/>.

67 TLCP, *supra* note 7, at 694.

Further, if there is some resistance by Hamas or American lawmakers to the idea of sending more students to the United States, then the administration can pay for the students to study at private American-oriented universities in the Middle East, including, for example, American University Beirut, American University Cairo, Boston University's dental school, the University of Atlanta, and the American University in Dubai.⁶⁸

The second suggestion is a dramatic expansion of microcredit loans. This program gives women the chance to pursue projects that can be consistent with traditional norms. Such efforts are therefore “less likely to be seen as Western intrusions into Palestinian society.”⁶⁹ As custom dictates that women do not work outside of the home,⁷⁰ microcredit enterprises afford women the chance to buy supplies to pursue projects that they can do from home such as purchasing sewing machines to work as seamstresses, computers to do online work, or seeds for agricultural development.

Further, projects such as these could also partially remedy the child-care issues that affect women around the world when they work. Home based projects may enable women to rotate child care duties between themselves while others work on the project.

The third suggestion is for President Obama to pressure Israel to end its Gaza blockade. In addition to the severe restrictions on people, the blockade prevents necessary items such as food, clothing, and medicine from entering the area and essential export goods from leaving, contributing to the strangled economy.⁷¹ If Israel refuses, the administration should consider transporting items to and from Gaza directly by sea or by air, or by pressuring the Egyptians to open the Rafah border in order to alleviate the dire economic conditions facing the populace, including the women.⁷²

III. Constitutionalism⁷³

The Palestinian legal system is in need of massive reform in many areas. This Part limits itself to the area of constitutionalism, an area about which Author Wing has written for many years.⁷⁴ The West Bank and Gaza are presently governed by the Basic Law of 2002.⁷⁵ Additionally, there is the Draft Constitution of 2003, the final iteration of which would take effect once an independent Palestine exists.⁷⁶ As discussed below, both of these documents contain provisions regarding gender equality.⁷⁷ Here, after briefly discussing these documents, we will spell out some things for the President to consider and what we believe the administration's approach should be concerning these issues.

68 See American University in Dubai, <http://www.aud.edu/> (last visited August 31, 2009).

69 TLCP, *supra* note 7, at 697.

70 *Id.* at 703.

71 See Michael Slackman, *At a Border Crossing, Drivers and Truckloads of Aid for Gaza Go Nowhere*, N.Y. TIMES, Jan. 28, 2009, at A5 (discussing Israel's refusal to allow essential humanitarian aid items to cross the border into Gaza and Egypt's refusal to let items pass by its Rafah border crossing).

72 The border with Egypt has been closed from the Egyptian side as well since June 2007. *Hamas urges Egypt to open border with Gaza*, XINHUANET, Apr. 29, 2009, http://en.ce.cn/World/Middleeast/200904/29/t20090429_18950790.shtml.

73 Parts of this subsection are derived from TLCP, *supra* note 7, at 676-77.

74 *Id.*

75 See The Palestinian Basic Law, <http://www.palestinianbasiclaw.org>.

76 See TLCP, *supra* note 7, at 676-77.

77 See *infra* notes 87-88.

The framers of the Basic Law of Palestine, which took several years to evolve, intended it to be an interim constitution in effect until the State of Palestine was formed.⁷⁸ The Palestinian Legislative Council (“PLC”) ratified the Basic Law in 1997, and the late President of the Palestinian Authority, Yasser Arafat, signed it five years later in May 2002.⁷⁹

After the Basic Law was written, efforts were made toward developing a permanent constitution for the post-independence period.⁸⁰ In 1999, the PLO established a Constitution Committee with the task of preparing the Constitution of the State of Palestine.⁸¹ After several hundred meetings, workshops and discussions, the first draft of the Constitution was published in February 2001.⁸² Several revisions to the Constitution were made after receiving suggestions from “Palestinian, Arab[,] and international legal experts.”⁸³ The most current version of the Draft Constitution, the third draft, was submitted to the Palestinian Central Committee on March 9, 2003.⁸⁴ This body approved the third draft Constitution and “advised the [Constitution] committee to pursue its work . . . in view of its final discussion and approval at the next Central Committee meeting.”⁸⁵ The draft has languished ever since, and emphasis has been placed on amending the Basic Law slightly instead.⁸⁶ Presumably, if independence were looming, the third draft would be dusted off to use as a basis for discussion of the final Constitution.

Both the Basic Law and Draft Constitution have equality clauses that can form the legal basis for gender progress. Article 9 of the Basic Law declares “Palestinians shall be equal before the law and judiciary, without distinction based upon race, sex, color, religion, political views, or disability.”⁸⁷ The Draft Constitution Article 19 states “Palestinians are equal before the law. They enjoy civil and political rights and bear public duties without discrimination.”⁸⁸

On their face, the above provisions seem to give Palestinian women equal status to men, both in the private and public spheres. Nevertheless, another provision that appears in both the Basic Law and the Draft Constitution severely restricts the potential positive effects of the foregoing equality provisions. Both documents state that the Islamic law known as *Shari'a* will be “a major source” for legislation.⁸⁹ *Shari'a* endorses disparate treatment of women in a number of ways, including permitting polygamy for men, guaranteeing women one-half the inheritance share of males in the same degree of relationship to the deceased, requiring guardians for adult women, and requiring women to obey their husbands.⁹⁰ The provisions designating *Shari'a* as a source of legislation create a potential conflict with the

78 See Adrien K. Wing, *The Palestinian Basic Law*, PALESTINE CTR. INFORMATION BRIEF NO. 96, July 30, 2002, available at <http://www.thejerusalemfund.org/ht/d/ContentDetails/i/2089>. Author Wing served as an U.S.

Agency for International Development (USAID) consultant in 1996 during the drafting of the Basic Law.
79 *Id.*

80 See NUSHKA MIN AL DUSTOOR [Constitution of the State of Palestine, Third Draft] (Palestinian Nat'l Auth.), available at <http://www.ipcri.org/files/palcon.html>.

81 *Id.* at preface.

82 *Id.*

83 *Id.*

84 *Id.*

85 *Id.*

86 The Basic Law was amended in 2003 and 2005. See *The Palestinian Basic Law*, *supra* note 75.

87 PALESTINIAN BASIC LAW art. 9, available at <http://www.palestinianbasiclaw.org/2003-amended-basic-law>.

88 NUSHKA MIN AL DUSTOOR, *supra* note 80, art. 19.

89 *Id.* art. 7.

90 See generally TLCP, *supra* note 7.

equality provisions. Further, both the Basic Law and the Draft Constitution state that Islam is the official religion in Palestine.⁹¹ The clause has the theoretical potential to provide the authority to enforce Islamic law on all Palestinians, which may lead to discriminatory treatment of women. Thus, this clause could also conflict with the equality provisions and restrict the rights afforded to Palestinian women.

The Basic Law has occasionally been implemented in periods of relative tranquility. If Hamas had adequate resources for governance⁹² as well as development, it might be able to focus on implementation of the rule of law, including the Basic Law. It would be possible to see how the three branches of government and the legal system as a whole would interpret these clauses, including how they would affect women.

Hamas has stated that Islam is “[its] frame of reference . . . and [its] way of life.”⁹³ Even though Hamas may believe that *Shari'a* should be “the principal source” of law, it does not foreclose the possibility of other sources of law, such as customary, civil, and criminal laws. Their nascent approach can be seen by the two-year *de facto* rule of the Gaza Strip in which Hamas has not enforced Islamic law. Even though the Hamas Charter principles reserve the right of armed struggle, Hamas has shown a willingness to use other means.⁹⁴ For example, it participated in free and fair democratic elections in January 2006. Hamas has stated that it believes in the peaceful rotation of power and political pluralism.⁹⁵

A recent example of Hamas's ability to invoke the rule of law and constitutionalism is the position it has taken concerning the end of the presidential term of Mahmoud Abbas. Through a plausible legal analysis of the Basic Law, its amendments, and other documents, Hamas has alleged that his term ended in January 2009. Fatah has contested this view and taken the position that Abbas's term ends in January 2010, when the parliamentary terms end.⁹⁶ The Gaza-based PLC members held a session in the bombed headquarters on May 15, 2009 in which they called West Bank-only Palestinian Authority operations unconstitutional and called for internal dialogue and reconciliation.⁹⁷

The Obama administration could help in the development of interim constitutionalism and other rule of law projects by increasing investments in funding democratization projects, much as has been done in the past. Author Wing's assistance with the Basic Law, for example, was funded through USAID. Additionally, she attended U.S. funded conferences where international experts were brought in to discuss governance. USAID funded a modernization and administration of justice program from 1999 until 2004 through DPK Consulting, which developed a framework for judicial reform, improved legal

91 NUSHKA MIN AL DUSTOOR, *supra* note 80, art. 5; PALESTINIAN BASIC LAW, *supra* note 87, art. 4, § 1.

92 For example, the Oslo Accords stipulate that Israel and the Palestinian Authority pay each other for certain services. See *Israel Halts Tax Payments to PA*, BBC NEWS, Feb. 1, 2006, http://news.bbc.co.uk/2/hi/middle_east/4669266.stm (describing how, after Hamas's victory in parliamentary elections, Israel refused to follow international agreements to provide money to the PA, preferring instead to hold it “in trust”). However, Israel refuses to provide Hamas the agreed-upon funds. *Id.*

93 Khaled Hroub, *A “New Hamas” Through Its New Documents*, 35(4) J. PALESTINIAN STUD. 6, 9 (2006).

94 *Id.*

95 *Id.*

96 Nathan Brown, *Palestinian Presidential Elections Factsheet*, <http://www.palestinianbasiclaw.org/palestinian-elections-fact-sheet-by-nathan-j-brown> (last visited August 31, 2009).

97 Saed Bannoura, *PLC holds session in its shelled Gaza headquarters*, IMEMC, May 14, 2009, <http://www.imemc.org/article/60397>.

education, and introduced alternative dispute resolution in selected communities.⁹⁸ DPK has been implementing a four year USAID-funded \$13 million program since 2005 called Netham (order in Arabic) that has been strengthening the Supreme Judicial Council and Ministry of Justice.⁹⁹ While seemingly mundane to many Americans, Netham benefited the rule of law greatly when it hired recent college grads as judicial interns to help automate and archive thousands of files in three of the major court houses.¹⁰⁰

Working in tandem with the European Union, which has undertaken many projects, the United States could greatly enhance the potentiality for constitutionalism and democratization in the next four years, and not assume that it cannot exist within a Hamas regime.

The United States needs to work on these issues with Hamas executive branch officials as well as with the Hamas representatives in the PLC. All projects can incorporate an emphasis on women in various capacities. Thus, projects in law schools can be sure to include women. Interns hired to assist in democratization projects should include females. Judicial training should not forget the empowerment of female judges. Locally hired staff to assist groups like DPK should include women, and not only on the secretarial level, but in skilled jobs such as translators, accountants, and project managers.

U.S. policy can also provide support for Gaza academics specifically interested in constitutionalism, democratization, and gender issues. While a few may apply for our existing Fulbrights and other opportunities to study in the United States, most will need and want to stay in Gaza. There is a need to fund opportunities to augment the numbers of female academics, some of whom may be interested in these issues. Additionally, research support could assist Gaza academics of both genders who wish to explore these questions in other societies, including Muslim nations. Such academics have probably had little ability to focus on research when their universities have been disrupted, and they are faced with a lack of resources. Translation assistance would be invaluable for Gaza academics who may only read in Arabic, and might want to see materials in English, French and other languages. The research done by Gaza professors also needs to be translated and disseminated into the English speaking world to help rectify the massive ignorance the United States has about viewpoints from Gaza.

IV. Conclusion

The situation for all Gazans remains dire. Potential solutions should not neglect the women of the area. The Obama administration should decisively act in the next few months to improve conditions in Gaza in light of Israel's recent crushing offensive. The first step is to end Bush-era policies and engage in direct negotiations with the Hamas government. Efforts to help women that try to sidestep Hamas are probably doomed to failure. Second, among the priorities must be improving economic conditions and educational opportunities for women. Finally, constitutionalism and the rule of law in Gaza should be supported as well. Women's rights may be able to be enhanced within a Hamas administration. Hopefully, if things in Gaza improve, President Obama will not have to repeat a refrain he

98 See DPK Consulting, *Modernization of the Administration of Justice West Bank Gaza 1999-2004*, http://www.dpkconsulting.com/core/_media/template_1.php?show=experience&id=9&multi=no (last visited August 31, 2009).

99 See USAID West Bank/Gaza, *Democracy and Governance Fact Sheet*, http://www.usaid.gov/wbg/FS_DGO_7.html (last visited August 31, 2009).

100 *Id.*

mentioned during his presidential campaign: “Nobody is suffering more than the Palestinian people.”¹⁰¹

¹⁰¹ President Obama made this comment to a group of Iowans while on the campaign trail in 2007. Patrick Healy, *Clinton and Obama Court Jewish Vote*, N.Y. TIMES, Mar. 14, 2007, at A20, available at <http://www.nytimes.com/2007/03/14/us/14aipac.html>.