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Legal profession and authority of law in the Palestinian territories

It is very difficult to write about the legal profession and the authority of law in the Palestinian territories. Not only there is a lot of confusion when trying to identify the authority of law, but also there is a lot of confusion when talking about the legal profession itself.

Recently, the basic law has been published on July 7, 2002, with immediate effect. The law of independence of judiciary has been published in May 18th, 2002, and many laws have been drafted and passed by the legislative council, approved by the president, published in the Gazette and came onto force.

Many of these laws can be considered as a nice decoration of legal library's shelves with no implementation or effect on the day-to-day life.

I believe it is necessary to have a historical background of the legal situation in the Palestinian territories, to look at the process of law making mechanism and then to look into the general environment of the legal profession to be able to understand the very complicated difficulties of the legal profession and authority of law in the Palestinian territories.

Historical background

Palestine was part of the Ottoman Empire since 1516. Accordingly, all the Ottoman laws were implemented on Palestine, as it is well known in that era. The Ottoman laws were originated from the Islamic laws. In 1867 the Ottoman civil law has been codified in what so called, Al Magalla

(Civil code) and was enforce in Palestine till the Ottoman Empire was defeated and Palestine, as a result, was placed under the British mandate.

The British high commissioner had enacted many laws, which governed the different aspects of life of the Palestinians till 1948. When the mandate ended, Israel has been declared as a state after 1948 war. Accordingly, the historical Palestine was divided into 3 different regimes as follows:

- The Gaza Strip was placed under the administration of the Egyptian forces (1948)

- West Bank has been under the control of east Jordan Emirates (later on called the Hashemite kingdom of Jordan), which annexed West Bank to it in 1950.
- Israel (1967)

The legal Profession and the Authority of Law has been effected so much according to this division since all the Jordanian laws, which were enforced or passed afterwards were implemented and enforced in the west bank which, as I mentioned above, was considered part of the Jordanian Kingdom.

The situation in the Gaza Strip was completely different, since the Egyptian Government never claimed any rights over the Gaza Strip; a legislative council was formed with duty to suggest laws to the Egyptian governor, who can pass these laws. It is worth mentioning that the legislative council didn't pass many laws, accordingly, most of the laws and regulations of the British mandate were kept enforce.

In 1967, as a result of the war between Egypt, Syria and Jordan from one side and Israel on the other, the Israeli Forces occupied the whole West Bank and the Gaza Strip.

The growth of political violence occurs, in part, because under occupation there is no legal system to which individuals and groups can appeal. Despite the implementation of limited self-rule in both West bank and Gaza the law of the land remains Israeli military law, which is completely separate from and independent of Israeli civil law. Israel kept the laws, which were enforced in each region, in theory. But in practice the Israeli Military Governor in the West Bank issued one thousand and two hundred military orders. A similar number of military orders were issued in Gaza. Most military orders effected the legal profession dramatically. The Israeli system of military law in the West Bank and Gaza were self-contained and were not accountable or subject to review by any Israeli governmental body. It is worth mentioning that the military orders in the two regions were not similar. Accordingly the gap between the legal professions in both regions (Gaza and West Bank) increased.

In 1994, as a result of Oslo accords, the Palestinian Authority (PA) took over the whole Gaza Strip (apart from Israeli settlements) and gradually, West Bank (apart from the Israeli settlements) as well. The two regions, by 1994, had two different legal systems, judicial institutions, as well as, different background of legal professionals. In my opinion, the fatal mistake started when people started to call for immediate unification of the two legal systems.

Unification of the two legal systems and drafting of new laws

This process started when Palestinian Authority found itself facing the world with a weak judiciary, old laws and regulations. On the other hand, several committees were formed with lawyers and judges to draft the new laws of

Palestine. Most of those lawyers, judges and even law professors from different universities have no qualifications in drafting laws. Normally each committee was given the latest versions of the Egyptian, Jordanian and one of the Gulf countries' laws in question with a limited period of time, say

between 4-6 months, in which they should meet once or twice in a month for something like 6-8 hours to come out with a draft law. With a simple calculation one can find out that, the average time spent by those unskilled drafters was ten working days, to draft a law without having any kind of policy or direction, (whether the need to protect the economy or to have a market economy, whether the need to encourage foreign investment or to protect the local industry, etc.). So the outcome was a cut and paste drafting method. You will find one article from the Egyptian law; the next article might be from the Jordanian and the third article from, say, the Qatari law. Each article by itself is very good worded but, in my opinion, is not in line with the previous or next article. These draft laws were sent to the Palestinian legislative council for discussion and enactment. Again I believe, discussions were shallow and passing was so quick. Then, President Arafat used to sign and issue some of these laws; some were delayed for political reasons rather than legal.

It is worth mentioning that, these drafting committees were working at the same time without any kind of co-ordination between them. As a result one can find some procedural contradiction or confusion.

Legal Education

Until recently lawyers practicing in the West Bank and Gaza received their law training at universities located throughout the Middle East, including Jordan, Egypt, Morocco, and Syria. There are now three law schools in the West Bank and Gaza: Al Azhar in Gaza, established as a separate law faculty of the Islamic University in 1991; Al Quds, established in 1992 in East Jerusalem; and An Najah, established in 1994 in the West Bank. Law school graduates of these three schools can practice in either area as the legal system is considered as one.

The size of the student body, academic standard, curriculum, and facilities of the West Bank and Gaza law schools vary considerably. Bier Zeit University Law Center was established in 1993 as a graduate institute. A brief description of each of these institutions will illustrate the fact that there is a lot to be done in these institutions.

The law school in Gaza, Al Azhar, currently has 2,000 students and 12 full-time professors. The curriculum is traditional with some practical training afforded by teaching assistants. Because of the large number of students, classes are held until 8 p.m. There is no separate law library although a new library, financed by the French government, is planned which will have a separate law section. Neither faculty nor students have access to computer information technology, there is no ethics component, and skills training are inadequate. In the class of 1999, out of 150 fourth year students, only 15 actually graduate. The law school

is attempting to raise standards by increasing the passing grade. The quality of those graduating was strongly questioned by practicing lawyers in Gaza, one of whom established his own test working at his law firm. Of seven applicants, only one passed this test. The low graduation rate also reflected the part-time nature of a sizable portion of the student body on Gaza. Many are police or security forces personnel. Students generally take more than four years to complete the curriculum.

Al Quds University in East Jerusalem has 400 students, 15 full-time faculties, and six part-time faculties. It offers a day program and an evening program primarily for security or court personnel who wish to continue their education. It also offers a masters program primarily in Judicial Education and Public Law, for approximately 25 students. A decision was consciously made not to offer masters on commercial subjects because this was going to be offered at Bier Zeit Law Center. Al Quds has a forensic lab and a new building currently under construction, which will include a moot court room. The dean and faculty are involved in civic activities such as legislative review and community outreach, through outside lectures and workshops. It has a library of 8,000 volumes but no computer information technology.

At An Najah Law School there are 600 students in all, and 12 law professors although professors of other faculties teach some courses. There is no graduate program. The physical facilities are new and quite adequate. A new, very impressive library was opened recently. The library is for the university as a whole, but is quite large enough to house a law component. However there is a need for books and research materials. The university has approximately 400 personal computers, has full Internet access, and has the capability of providing in-house training, as it has a department of computer science. The computers are largely devoted to the scientific faculties, however, and the law school has only one. The curriculum includes some electives, but does not include any courses on ethics. Students stressed a need for additional specialized professors. The law school is eager for research materials, information technology, and International faculty exchanges.

Bier Zeit University Institute of Law is primarily a research center and offers a master's program for approximately 25 students. The library contains more than 8,000 volumes, along with microfiches, CD-ROMs, and access to the Internet and international legal databases. The holdings are entered into the computerized MINISIS library system, which can be accessed from the Institute of Law and the main university library. A major ROL contribution is the legal database, which includes references to all Gaza and West Bank laws. The database is in Arabic and English and is still being developed with images of all legislation to be added. Plans include placing the database on CDs and making the information available through the Bier Zeit Law Center Web site.

Each of the three law schools has critical needs, which should be addressed including: Information Technology/Library, Curriculum Development (with a focus on Ethics, Commercial Law, Clinical Education, and Human Rights), and Faculty Development (including skills training, English language training, and International faculty exchange program).

The Palestinian Bar Association

Before 1967, the lawyers of West Bank were considered members of the Jordanian Bar Association and were subject to the law number 11 of the 1966. After the Israeli occupation, many of the lawyers of the West Bank refrained from working before all courts under the occupation.

The other part formed a committee called the Arab lawyers Committee and started to appear before courts whether civil, criminal or military courts in West Bank. This situation continued to be the same till 1994.

In the Gaza Strip, lawyers formed a non-governmental organization called Gaza Bar Association to be the Umbrella under which lawyers started to practice the profession. In both Gaza and West Bank, Israeli military occupation rejected any kind of authorization or empower to the Bar Association or the lawyers' committee to act as a Bar Association. Accordingly, the attorney general, an employee of the Israeli military occupation, licensed lawyers in West bank and Gaza.

In 1994, the Gaza Bar Association and the Arab Lawyers Committee of West Bank unified themselves to form the Palestinian Bar Association. It took 5 years to issue the law, which organize the profession (law number 3 for the year 1999), which gives the Bar Association the authority to look after the interests of the members and to protect the profession.

Article number 40 of the law stated that a council consists of 15 members should be elected by the general assembly according to the by laws for two years.

The board, which was appointed by presidential decree in 1999, (5 months before this law comes into force) is still in place as no election was held since the law was passed.

The profession suffers from a lack of developed professional standards, as well as information technology and libraries.

After graduation from law school, a graduate wishing to practice law must pursue a two-year apprenticeship program, without pay, under the direction of a practicing lawyer. During this time, apprentices are required to attend some lectures, though there appear to be no written requirements regarding the subjects be covered or the number of hours. The apprenticeship itself is completely unsupervised, and there is no bar examination, though the Bar Association is considered developing one. The apprenticeship is required only for lawyers who will be active practicing private lawyers, and is not required for those who work in the government.

While some practicing lawyers were recently disbarred, there is no organized process for disbarment and no provision for other types of discipline.

There is also no requirement for, or even provision of, continuing legal education. Though lawyers may attend the lectures presented to the apprentices, they apparently do not avail because they are seen as demeaning.

The Judiciary

The court's system in the Gaza Strip was governed by law 31 for the year 1940 and the court's system in the West Bank was governed by law number 26 for the year 1952.

According to both systems a chief justice was appointed in the Gaza Strip while in West Bank a chief justice was set in Amman (capital of Jordan). In 1994, president Yasir Arafat appointed a chief justice and extended his authorities to include Gaza and West Bank.

The chief Justice who was appointed in 1994 passed away in 1998. Accordingly, the president appointed new chief Justice in the same year.

Instead of trying to have a thorough understanding of the problems behind the weakness of the judiciary and the best method of strengthening it, Palestinian Authority decided to go for cosmetic changes and quick solutions by appointing new judges without any kind of training and promoting those who were in offices without any kind of evaluation. The end result was an acceptable number of judges with lack of training and abilities.

Since 1994, the Palestinian Authority was under huge pressure from donors to pass a law (of independence of Judiciary). A lot of debate took place. Several drafts were discussed till 1998 when the legislative council passed the law and sent it to the president to issue it. It took 4 years for this law to be issued from the President's office. Finally, the law was passed on May 14, 2002. In my opinion, the law is very good and guarantees the independence of the Judiciary in general and the judges as individuals. According to the law, a high judicial council is to be formed and to be given the authority to promote judges and to suggest the names of the new judges to be appointed by the President. According to article 34, judges retire on the age of 70. It is worth mentioning that the Chief Justice and another two judges are over the age of 70 and they wrote to the president a petition requesting him to keep them in their positions. Of course the president approved the request. In my opinion, neither the petition nor the approval are legal or in accordance with the law.

The case of Ahmed Sa'adat:

Ahmad Sa'adat is the General Secretary of the Popular Front for Liberation of Palestine, the second stream of PLO. He was arrested by the Palestinian Authority on January 15, 2002. Mr. Sa'adat detention was due to pressure by the Israeli Government on the Palestinian Authority. Mr. Sa'adat's arrest has no legal base and violates all the legal procedures. There is no arrest warrant, he wasn't seen by a judge to extend his detention, wasn't accused of any accusation and there is no charge at all.

On May 8, the High Court instructed the Intelligence Apparatus, represented by the Attorney General to present the legal reasons for the detention of Mr. Sa'adat. The court gave the Attorney General one week to file his response. There was no response at all from the Attorney General.

On June 3, the Palestinian High Court issued its final decision to the executive authority to release Mr. Sa'adat. He wasn't released inspite of the High Court's decision. The arrest of Mr. Sa'adat violates:

- The constitutional order of 1962.
- The criminal procedure law No. 3 for the year 2001.
- The independence of Judiciary law No.1 for the year 2002
- And finally, the basic law of the Palestinian Authority.

The State security court:

On February 7 1995, President Arafat issued a decree forming the State Security Court with a jurisdiction over all crimes, which may affect the security of the Palestinian Authority whether internally or externally. This decree is clearly contradicting a previous decree issued in 1994, which states that the Palestinian Authority will be subject to all laws and regulations, which were enforce pre 5 June 1967.

Also, forming this state security court contradicts the Oslo agreement, which was signed between PLO and Israel on May 1994. On November 1st, 1999, President Arafat appointed Attorney General for the State Security Court. This court starts to deal with all type of cases, whether its criminal or civil, using the reason of the security and stability to enlarge the jurisdiction of such a court and starts to deal with cases of raping, drugs using, drugs dealing, murder, tax, and customs. This affected the normal judiciary, which became weaker than before.

Needless to say that such a court was not subject to any procedures simply, a phone call to the Attorney General of the state security court was enough for them to go and arrest anybody, interrogate him and bring him before court within less than 12 hours. The court would convene immediately issuing the verdict of death penalty to execute somebody within less than 6 hours, which means that there is no more than 18 hours between the phone call till the Capital Punishment of somebody. Only one of the three judges, sits in this court, should have a legal background.

The Interference of the security apparatus:

In the Palestinian Territories there were more than 12 military and security apparatus under different names with unlimited powers and authorities. Each one of these apparatus has a jail where they can imprison people without any kind of warrant arrest from the Attorney General. Sometimes they used to investigate people, interrogate them and keep them in jail for a very simple and minor misdemeanor that completely falls under the jurisdiction of the Attorney General.

People used to pay huge sum of money in order to be released from such prisons. Not only the security apparatus used to violate one of the basic rights of people (freedom), but also they used to use their authorities to interfere with the judges asking them to postpone or finalize cases, in addition to the dictating of the judiciary's decision in some cases. Moreover, these apparatus had formed what so called "Legal Department" appointing low graduated persons and giving them the authority to look into the dispute as if they became a court but with a final decision under no circumstances can be appealed. These so called legal departments used to look in all types of disputes as long as it can generate money to the apparatus.

Executing Judgment: -

Normally, the implementation of court's decisions or the execution of court's judgment has the same value of respect, comparing to the process of issuing the court decision itself. Lack of implementation or execution of court's decision and orders would weaken the judiciary leading to disrespect of law and legal professions.

Generally, people in the Palestinian Territories respect court orders but in many cases court orders need to be enforced by the executive authority.

The problem arises when the executive authority (Police Force) refuse to implement or enforce the court's order for many reasons, either because of personal reasons or financial reasons.

It is very depressing when you see that a court order from the high court of justice has been issued to the ministry of health to get a doctor back to his normal duties after being fired by an illegal decision from the general manager of the ministry.

This doctor returned to duty after more than 6 months of the court's decision because some people had talked to the superior and interfered on a personal level. So, there was no respect to the court order but for the personal interests. Another case, in the beginning of 1997 Gaza Municipality decided to demolish one house in Gaza city, the landlord filed an opposition in the high court of Justice objecting the Municipality's decision, on May 4th 1997, the High Court issued a court order canceling the decision of the Municipality of Gaza. On May 22 1997 the Municipality demolished the house inspite of the court order.

General prosecution and criminal investigation:

There were many articles and researches about the general prosecution office, which represent the public in any criminal proceeding and/or criminal case. The same problems, which have been mentioned about the appointment of judges, can be said about the prosecutors. The lack of training is one of the main problems, which this department faces. In addition, there are no forensic laboratories at all in the Palestinian Authority. This means there are no experts to match handwritings or fingerprints or to make tests for blood samples, skin tissues or even to determine the drugs' type testing weapons etc. In many cases the accused people were released because there was no official evidence proving whether the material which was caught with those people "heroin" or "baby powder". We still use the hand registration method without any use of computers or microfiche.

It is difficult to imagine the enforcement of Law, with the lack of proper equipment, forensic laboratory, experts and well-trained prosecutors.

Customs and tribal order:

There are a lot of effects for the customs, which has been inherited from the elder generations, on the legal profession and the authority of law in the Palestinian territories.

Without going into small details we can give the following examples:

The Crimes of Honor:

Although I disagree on calling these crimes of such a name, I am still using the name just to show how the customs can justify a crime and a court accepts such justification.

In summary, crimes of honor are the type of murders committed by a man from a certain family killing a woman from the same family because of what so called “honor of the family” accusing the victim that she had a relationship with a man from different family. It depends, normally, on the place where the victim lives to determine the excuse of the crime. For instance, in small villages the simple relationship between the victim and a man can be an excuse for the murder while in bigger villages or towns the relationship can be sorted as intimate relationship to justify the murder.

In such crimes the criminal, willingly confess that he committed the crime, within a short period the court will look into his case and in the majority of the cases he will not be sentenced for more than one to two years of imprisonment.

Murders of Revenge:

When a person is murdered, then the police start to investigate trying to arrest the murderer. If the murderer is known to the police or the public then his family starts what so called customary procedures by sending notables, Mukhtars and head of tribes to the family of the victim to prevent the revenge. There are procedures and actions normally to be taken by this group of notables (mediators). It is not the place to go on the details of the different procedures, but we can summarize by saying that it depends on the strength, the weight, and the financial abilities of a certain family to decide the course of action to be taken by those mediators and the response from the family of the victim.

Sometimes there are certain penalties to be imposed whether temporally or permanently on the family of the criminal. These penalties can be financial by paying huge sum of money and it can be limitation of freedom of movement like deporting the family of the criminal from the village or the zone in which they live, to a different distant place.

In the mean time, the legal procedures of the police are taken, the court’s decision may be affected by a letter of the mediators committee in which they ask the court either to speed up or to slow down the process in order to serve the goal of the committee in reaching the conciliation between the two families. Sometimes, the family of the victim refuses all kinds of conciliation and decides to revenge. So they kill one member of the criminal’s family. The strange thing, in this regard, is that the court normally gives a lighter penalty to the one who takes revenge than the original criminal. The issue here is how the criminal procedures are heavily affected by the customs in certain areas, which may end up being the secondary method of protecting the public order.

Attacks and assaults:

There are a lot of customs in this matter, which can be explained in this regard. For instance if somebody attacks another one causing wounds and even sometimes partial or permanent disabilities yet the penalties imposed by courts would depend so much on the customs.

A maximum penalty may be imposed if there is no reconciliation (solha) between the family of the victim and the family of the criminal. A very light penalty may be imposed if the reconciliation takes place. Normally, the attorney general office would not continue the investigation, thoroughly, if the parties reach conciliation. If we briefly try to look how the conciliation may take place we will find it constitutes another method of penalizing the criminal whether financially or socially by either imposing a fine to be paid by the criminal's family to the victim's family who normally would accept the money and in the same session donate it to the poor people whether through the Zakat Committee (the Islamic relief), or by some other social penalties like asking the family of the criminal to apologize in public using certain sentences which can be considered a humiliation for the family of the victim. In the vast majority of the assault cases people would not file a complain to the police and would complain to notables using the customs rather than the law, according to the Palestinian Penal Code, the Attorney General and/or the police can't investigate the matters of assaults unless an official complaint is filed. Again penalties may be imposed by the notables' committees similar to those penalties on attacks. As one can see the role of the courts is dependent on the outcome of these notable committees.

In the end I can say that, Palestine needs a lot of sincere efforts to get rid of the Israeli occupation and to start the long process of internal reform, which will lead to enhance the rule of law so that development can take place.