

# The rule of law in Palestinian evolution

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To understand the current 'rule of law' developing in the nascent state of Palestine, the constitutional and legal developments of historic Palestine should be kept in mind.

Under the British Mandate, the Palestinians were deprived of the political rights they enjoyed as citizens of the Ottoman empire. While British rule became increasingly challenged by the rise of Arab Palestinian nationalism and Jewish immigration into Palestine, it cannot be denied that the British Mandate did introduce at least the spirit of the rule of law and good government to Palestine in the form of the common law system.

After the partition of Palestine and the creation of the state of Israel in 1948, especially between 1967 and 1988, the rule of law in Palestine became non-existent.

The formation of the Palestinian Liberation Organisation in 1964 was perhaps the first serious attempt not just at creating a political organisation but at drafting legal constitutional documents which provided the framework for governance in a future Palestinian state.

Under the leadership of Dr Anis Al-Qasein and others, the Palestinian National Covenant and the PLO Basic Law were drafted. They created three main institutions – an Executive Committee, the Palestinian National Council (PNC), the Central Committee – and ten other committees including a legal committee which Dr Qasein chairs.

In 1988, the PNC proclaimed an independent state of Palestine and called for a solution based on Security Council Resolution 242 and for withdrawal of Israel from the West Bank, Gaza and East Jerusalem. The PNC further authorised a provisional government for the state to be formed in the future, leaving the Executive Committee to act as Provisional Government in the meantime. Thereafter, Chairman Arafat was appointed president and in December of 1988, the UN General Assembly affirmed the proclamation of the state and the need for the Palestinian people to exercise sovereignty over the territory.

From that point in time, the PLO appeared to be transforming from an 'organisation' into a Government in Exile, with a president and provisional government (the Executive Committee). Politically, the PLO was then looked upon as a true representative of the Palestinian people capable of making peace with Israel. The process resulted in the Oslo talks and the Washington Declaration of Principles (DOP) in September of 1993, pursuant to which the PNA arrived in Gaza in May of 1994.

Given its recognised authority, what has the PLO or the PNA done legally and factually on the question of the rule of law, human rights, the independence of the judiciary, control of the executive, matters which are paramount for the rule of law?

The DOP clearly envisioned a democratic government for Palestine. However, treaties are not immediately enforceable as law and the principles outlined in such treaties had to be somehow incorporated into the law of Palestine. Although the Basic Law was ready for presentation and approval to the Central Council before the PNA arrived in Gaza in May 1994, no action was taken then or even as of today by the PNA. It has remained a draft.

Only a few days after the DOP was signed, Arafat decreed a formation of an independent Palestinian Commission on Human Rights ('The Commission'). Shortly after issuing the decree, Arafat spoke about his wholehearted approval for the Commission and how law

would reign in Palestine under his leadership.

For the first few months, the Commission, under the headship of Hanan Ashrawi, received complaints and the PNA was cooperative in giving the Commissioner General and her staff every facility to investigate. But this did not last long as complaints multiplied. Thereafter, the PNA ignored the Commission but this attitude soon became one of hostility and resulting in the arrest and imprisonment of the new Commissioner General Dr Iyad El Sarraj, who had replaced Mrs Ashrawi.

Things got progressively worse. The elections of the Legislative Council were widely welcomed and seen as the right path for the Palestinians in establishing democracy. However, as the Council was new, it needed time to familiarise itself with the responsibilities and such challenges were immense.

Although the Legislative Council meets frequently, it has not passed one law, and there appears to be a continuing and unresolved battle between Yasser Arafat (now the ra'ees or president) and the Council.

Perhaps the weakest area of government in new Palestine is the judiciary. Although the DOP (1993), the Cairo (1994) and Taba (1995) Agreements, as well as the National Authority Policy Statement, all speak of creating a system of independent courts and judiciary, the reality is different.

In February of 1995 a High State Security Court was established by presidential decree. It is composed of military judges, and the law creating it did not set out its jurisdiction or procedure. Local and international objections to such court were ignored.

The courts became known as 'moonlight courts', as they function mostly in the night and hearings before them rarely last more than a few minutes, while complaints of torture, 'disappearings' for days or weeks before the families were told of the 'disappeared' whereabouts, abound and remain ignored.

In May 1996, the Commissioner General made some highly critical remarks of the PNA in an interview. He was subsequently arrested, tortured and kept in solitary confinement for 17 days despite international pleas for his release. He was brought before a court on false charges but the case was dismissed for lack of evidence.

This episode left a deep mark not only on the relationship between the Commission and the PNA but also on the standing of the PNA in the eyes of the Palestinians and the international community. After the election of the hard Likud government in Israel and the consequential violence, questions remain about the future of the peace process, the effects of the future on the PNA and its character, the role of the council and that of PCCR.

For the rule of law to have a future in Palestine, the ideals contained in the DOP, the Interim Agreement, the Policy Statement of 1994 and in the 1988 Declaration of Independence – of a democratic society where the rule of law reigns supreme, with fundamental equal rights for all and an independent judiciary – should be put into law.

The Basic Law is a priority which can wait no longer. The powers of the ra'ees and the powers of the council must be clearly defined; An independent judiciary must be created as a matter of priority and the various institutions, including the Council, the PCCR and the courts, made effective as well as accountable.

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