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**Civil Society in Palestine "Case Studies"**

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and  
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**ROBERT SCHUMAN CENTRE  
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**Civil Society in Palestine "Case Studies"**

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## Abstract

The process of incipient state formation began in this country in 1994 immediately after the signing of the Oslo Agreement (signed in 1993 between the PLO and the state of Israel) started a process of devolution of Israeli control over the occupied territories in the West Bank and Gaza. The process of decolonisation was protracted and complex. Palestinian society (as we have already indicated) had developed a strong fabric of mass organisation, which undertook the role of surrogate national institutions in the absence of a state. The new authority however was not friendly to these formations (NGOs, mass organisations, radical parties, etc..). Instead the new state-in-formation under Arafat entered in a series of confrontations with the pre-state groups that were at times strained, conflictual and occasionally displacing. Sometimes overlapping programs were undertaken (such as with the voluntary health associations and the ministry of public health) to mutual benefit. Below we have analysed six cases that illustrate and magnify the nature of this new dynamism between Palestinian civil society and the emerging national authority on the eve of declaration of statehood (to be declared in September 2000):

1. NGOs and State in Palestine: Negotiating Boundaries
2. The Legislative Assembly versus the Government Executive
3. Mobilisation of Camp Refugees and local municipal authorities
4. The Women's Model Parliament and Reform of Personal Status Law
5. The Government (PNA) versus the Islamic Movement Hamas.
6. Governance and Control of Urban Space in Jerusalem



## Case One:

### NGOs and State in Palestine: Negotiating Boundaries

A publication of a report by the Office of the United Nations Special Coordinator (UNSCO) in the Occupied Territories in May 1999, triggered a new confrontation (some commentators used the term war) between the PNA government, and Palestinian NGOs<sup>1</sup>. The confrontation was initiated by the minister of justice, using data of funds transferred, since the establishment of the PNA, to Palestinian NGOs working in the field of human rights, as the rationale for the attack. The report purports to assess “progress in the rule of law development in the West Bank and Gaza Strip” presents data available as of the end of February 1999. It concludes that “the total amount of donor and agency funds thus far committed to the rule of law sector, including completed, ongoing, and pending projects, is US\$100,725,612”. Of the total committed for the support of the sector, “24.8% is in the form of technical assistance, 16.8% as financial assistance, 13.7% in training and education, and 5.6% in the form of provision of equipment, furniture and material. The remaining 39.1% in the form of multiple types of assistance”.

The report points out that “donors commitments to date have been allocated to the following: non-governmental organisations (16.7%); the Palestinian Legislative Council (15.0%); law enforcement (14.4%); the judiciary (14.0%); electoral system development (10.2%); human rights education and public information development (7.5%); and professional and legal education (5.1%)”. This shows that a sizeable amount of the assistance mentioned went, directly or indirectly, to PNA bodies (including the PLC)<sup>2</sup>. This fact was deliberately ignored in the campaign against the NGOs. It also ignored the rationale given by the report for the donors’ interest in developing the Palestinian legal system. This is articulated as follows: “overcoming the decades of institutional neglect arising from Israeli occupation; rendering some consistency to outdated and often conflicting laws; providing comprehensive and standardised training (including human rights training) to law enforcement officials, legislative staff, members of the judiciary, prosecutors, and others in

<sup>1</sup>UNSCO, *Rule of Law Development in the West Bank and Gaza Strip*, Gaza, May 1999.

<sup>2</sup> It is difficult to disentangle the amount allocated directly to NGOs working in the field of human rights during the period surveyed by the UNSCO report, but a rudimentary calculation suggests a figure of some US\$21million. This does not include assistance allocated the Palestinian Independent Commission for Citizens’ Rights (about US\$1.7 million), to Birzeit University Institute of Law (about US\$5 million), and about US\$1.8 million to Women’s Affairs Technical Committee. Some US\$11.6 million is allocated to the PLC. It is not easy to determine assistance allocated indirectly to NGOs working in this sector, and even more difficult to evaluate the effectiveness of this assistance on improving human rights situation in Palestine.

the legal profession; and creating a physical infrastructure for the legal system”<sup>3</sup>.

Three aspects are of special interest in understanding the dynamics of the confrontation. These are:

- a. The time dynamics of the confrontation;
- b. The ethnography of actors directly involved in the confrontation and their various stances;
- c. The topography of the outcome of the confrontation that surfaced during the summer of 1999.

### **A. Timing the Confrontation**

The timing of confrontation between the government and the NGOs (to use the current phraseology rejected by some in this sector, preferring the term “civic associations”) is significant. The tension between the government and NGOs can be traced to 1995 when the newly established PNA proposed a law (based largely on the law applied in Egypt) which would restrict, substantively, the autonomy of the NGOs and puts them under the control of the Palestinian government. A sector of the NGOs, (Palestinian NGO Network or PNGO Network), rejected the proposed law, and waged a campaign that led to its shelving. In this campaign PNGO Network<sup>4</sup> used its various connections with the PNA, and with donors to suspend legislating its version of the law. Moreover it proposed an alternative formulation of the law that it thought to be more apt to the Palestinian situation. In 1996, following the election of the Palestine Legislative it began to canvass for the legislation of a law that meets the vision embodied in its formulation. It also involved the Federation of Charitable Organisations in the process of formulation and lobbying for a modern and liberal conception of a law governing NGOs. It was this formulation of the PNGO Network that had the most positive influence on the law adopted by the PLC in its third (and final) reading in December 1998. However the PLC law could not become law before being approved by the president of the PNA. The later returned it, in March 1999, asking the amendment of the article specifying the ministry responsible for registering civil and charitable institutions to be changed to the Ministry of Interior instead of the Ministry of Justice. The PLC rejected the amendment, but in a session that did not have the necessary quorum of its members (i.e., a simple majority)

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<sup>3</sup> Ibid. p. 12.

<sup>4</sup> PNGO-Palestine Network has 85 organizations affiliated to it, and The Federation of Charitable Organizations has some 500 organizations affiliated.

according to the legal committee of the Council, so the decision of the Council remains unclear concerning this point.

It was at this conjecture that the UNSCO report (May 1999) was published. The report was, almost immediately, seized upon, by some in the PNA (including minister of justice), to launch an attack on NGOs charging them with malpractice, corruption, and executing a foreign agenda aimed at discrediting the PNA. The fact that the UNSCO report dealt with foreign assistance provided to law development and human rights organisations explains why the campaign was particularly vehement against NGOs working in the field of human rights. Most of these have been vocal in publicising violations of human rights by the PNA security forces. However the campaign soon engulfed, other NGOs.

It also transpired that the timing of the confrontation is not unconnected to a dispute that flared between the Egyptian government and Egyptian NGOs regarding the impending intention of the government to pass a law that restricts further the activity and funding of the NGOs. It turned out that some of these used, in their objection of the Egyptian government intention, the law passed by the PLC as an example of a modern and progressive law that should be emulated in Egypt. This did not seem to have been persuasive enough as the government's proposed law was passed by the Egyptian parliament. But it is more than likely that this episode had the effect of stiffening attitudes of some in the Palestinian government towards its NGOs as the Palestinian government maintains good relations with its Egyptian counterpart.

The above narrative argues that the timing of the confrontation between the two major contenders (government and the NGOs) was not fortuitous. It was some government representatives who initiated the new confrontation. This initiation, as the narrative suggests, was informed by a specific set of episodes, and guided by a political focus. The episodes, were, to summarize; the dispute existing between the PLC and the government on aspects of the law to regulate the relationship between the government and the NGOs; the dispute flaring, at the time, between the government, and NGOs in Egypt; and, the report by was published UNSCO on the foreign assistance granted to law development in Palestine. The political focus that guided the presidency remained the bringing of NGOs under its control.

## B. An Ethnography of the Players

The two main contenders in the confrontation, i.e. the government; and the NGOs, are conversant with the views and stances of each other. They are also aware of the issues involved, and conscious that central issue revolves round defining the internal boundary of the emerging state structures in relation to that of civil society. They are also cognizant of local, regional and international context of the confrontation. The earlier part of the study has viewed the major changes that impacted the situation governing CVOs in the West Bank and Gaza Strip, following the Oslo accords and the acknowledgement by the Israel and the PLO of each other. As was mentioned the PLO and its constituents political groups promoted and supported (financially and organizationally), in the 1980s, the formation of Palestinian CVOs. This was propelled by the need, in a situation of a national struggle, to establish structures that can act as fronts for political action, in addition to providing services to communities in WBGS whose infrastructure and public institutions were strangled by the colonial settler state. This was necessary as the PLO and its political components were banned and demonized as terrorist by Israel.

The accords ended the PLO commitment to armed struggle and instituted, instead, a commitment to negotiations. This allowed open political activity by PLO factions that did not practice armed resistance once the PNA was established. This meant that the need for CVOs to act as fronts for political parties became less insistent. This is not however the only factor for the change of perspective towards CVOs. Following the Gulf War, much of the financial aid earmarked (mostly by the oil Gulf states) to the PLO was stopped. This impaired the Organization's capacity to provide financial support to existing, CVOs in WBGS, or promote the creation of new CVOs. This was replaced by foreign funding. But foreign funders, unlike Palestinian political parties, were, and are, not interested in strengthening the organizational popular base of the CVOs. A base that began to shrink, anyway, as the *intifada* lost in its dynamism, began to disintegrate and became distant from achieving its aims.

Thus PNA appeared at a juncture when Palestinian communities in the WBGS were exhausted, and political parties and movements were facing a novel milieu, and new force, (*Hamas*) has emerged on the Palestinian political field, to challenge the PLO. It was expected that the PNA would view the NGOs as part and parcel of the national movement, and expected them to view the PNA as representing the national movement. However NGOs, particularly the more dynamic and dynamic sector, the situation differently. They saw the PNA as an emerging state that could threaten their autonomy, and that of civil

society. This was the outlook that urged a group of NGOs to form their own network.

The financial independence of a large group of NGOs from the political parties, and the shrinking social base of the latter (especially the left-wing parties) facilitated a desire among NGOs to take a critical stance towards the PNA. Their rationale for insisting on their autonomy, however, tended to stress their history of struggle against the occupation, and their record in providing services to the Palestinian community. Their discourse emphasized the centrality of civil society in the process of democratization, development, and the building of a modern state. The fears of NGOs were animated, in 1995, when the PNA proposed, in 1995, a constraining law to regulate NGOs. The proposed law drew heavily on an Egyptian law, which the NGOs considered as meddlesome and too restrictive. A similar law was proposed for political parties, but it was found unacceptable and incongruent with the experience of the PLO and the complexities of the Palestinian situation, by most political parties. Hence it was not presented to the PLC.

The confrontation that flared up, in the summer of 1999 involved other actors. Three are of special significance; the PLC, political parties, and the mass media (especially the press). The position of the PLC appears as the more intriguing. As an institution it was elected, early in 1996, in accordance with the Oslo agreement. For various reasons, including the boycott of opposition of the election, a large majority was from the party that dominated the PNA (*Fateh*). However, it soon found itself, as an institution, in conflict with the government (more specifically with the president of the PNA), and felt that it is being marginalised at a moment when it was eager to empower itself as a legislator, and as an overseer of the government. This seems to have motivated the zealot members of the PLC to assert its independence relying on the legitimacy it acquired through democratic elections, and strengthened their commitment to democratic practices. Hence their sympathy to the position expressed by NGOs on their prospective relation with the government. This explains why the NGOs were effective in influencing the PLC in legislating a law more friendly to their view than with that of the government. Thus the demand by the president of the PNA to amend the law so that the Ministry of Interior replaces the Ministry of Justice as the body responsible for the registration of NGOs appeared as an attempt to restrict the relative autonomy of the NGOs guaranteed by the PLC law.

The second party to be drawn in the confrontation was political parties. As the campaign, waged in the mass media discrediting the NGOs intensified, the PNGOs Network approached the political parties for support. They succeeded in persuading almost all the active PLO factions (including the ruling faction) to issue, the 16<sup>th</sup> of June 1999, a press release in their support<sup>5</sup>. The statement articulated the stance of the signatories as follows<sup>6</sup>:

1. “National factions and forces were shocked by an orchestrated and systematic media campaign against Palestinian non-governmental organisations (NGOs).

This campaign denies the national role of NGOs against the occupation, their support for the steadfastness of the people of Palestine in their country, their prevention of the uprooting of the Palestinian people, and their determination to make clear the oppressive practices of the Israeli occupation forces”.

2. The “campaign is carried out at a time when a large number of NGOs are participating with our people and national political forces in the developmental and national activities against settlements and the judaization of all of the Occupied Territories, especially Jerusalem”

3. Palestinian NGOs “are also participating in recruiting world-wide public opinion in support of the Palestinian cause”.

4. Stressed the repeated demand of Palestinian NGOs “for the ratification of the law that governs their activities and their relations with the Palestinian Authority”. The statement emphasised the fact that the PLC has ratified the law on its third reading, yet the law remains without the necessary endorsement by the president of the PNA.

5. The law passed by the PLC law “guarantees the commitment of all NGOs to the principles of transparency and accountability”. The statement emphasised that what is needed now was “to implement the law passed by the PLC”, otherwise the NGOs will be dealt with “in an arbitrary or subjective way”.

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<sup>5</sup> The political parties that signed the statement are; 1.The Palestinian National Liberation Movement – Fateh; 2. The Popular Front for the Liberation of Palestine (PFLP); 3. The Democratic Front for the Liberation of Palestine (DFLP); 4. The Palestinian People’s Party (PPP); 5. The Democratic-Building Movement; 6. The Popular Struggle Front. FIDA (another PLO faction) issued a separate statement, two days later, emphasising more or less the same points, but giving more stress on the need for transparency and accountability of NGOs.

<sup>6</sup>From a press release published in the local press. On the 17<sup>th</sup> of June, 1999.

6. The political parties “share the NGOs’ demands to implement the law while we also demand the ratification, publication, and implementation of all other laws passed by the PLC”. The statement draws attention to the fact that “the majority of these laws have not yet been implemented”.

7. The statement emphasised “the importance of the national and developmental role of Palestinian NGOs as well as their role in promoting democracy in Palestinian society and people’s participation in the decision-making process”. It expressed the political parties’ insistence “on the right of Palestinian NGOs to work freely in a democratic environment adhering to the rule of law.

8. Political groups stressed that they recognise “the democratic and national role of this important sector and call for safeguarding the independence of NGOs and strengthening internal democracy and transparency within these organisations”. Political parties also stated that they considered the NGOs “as people’s organisations, serving their interests and goals in the struggle for liberation and the building of the Palestinian independent state with Jerusalem as its capital”.

It is worth noting that Islamic parties did not sign the statement, nor did they issue a public statement on the issue. This is despite the fact that the government in recent years closed a number of NGOs supported by Islamic radical movement. It is likely that this position of Islamic groups is related to the secular and left-wing leanings of a large number of NGOs, including those working in the human rights’ and development field. However some articles supportive of the NGOs and critical of the government position did appear in the local Islamic press<sup>7</sup>.

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<sup>7</sup>For example, *Al-Risala*, a weekly journal supportive of the Islamic Salvation Party (very near to Hamas), carried articles attacking the campaign aimed at discrediting NGOs, and called for: the enacting of the PLC law on NGOs, and for the government to acknowledge the autonomy of these institutions, as part of the “living tissue of society”, to enlarge the “democratic space”, and to stop its campaign of accusations against Palestinian NGOs whose situation is different from that which exists in Egypt. It advocated a relationship between NGOs and the government that is based on openness, and trust, instead of “containment, hegemony, and confiscation of rights”. (*AL-Risalya*, 8/7/1999, article by Bassam Aql-Aqra’). In an interview (in August 1999) with a West Bank leader from the Islamic Jihad, he thought that the attack of NGOs aims at increasing central control of PNA, and that corruption in NGOs is highly exaggerated, and is very much less prevalent than that which exists in PNA ministries.

Despite the absence of public support of the Islamic movement to NGOs in their confrontation with the government, it can be said that they succeeded in winning the open support of all other political parties, including the party that dominates the government (Fateh). However the latter's support appears somewhat critical, if we look at a pamphlet on the issue directed to their cadre. It considers the aim of the campaign against the NGOs to be the discrediting the Palestinian national project by shaking the confidence in the PLC that passed a law governing the activities of these and their relationship with the government. It also aims at stirring conflict and strife between the government and the NGOs. The pamphlet acknowledges the important role of "civic institutions" in Palestinian society before the establishment of the PNA, and their necessity during the interim period (as they can reach areas that are beyond the jurisdiction of the PNA). It goes on, then, to suggest that the establishment of PNA oblige the NGOs to adopt more complimentary roles to that of the former. But it goes on to suggest that the number of NGOs has multiplied, in a disordered way, since the establishment of the PNA, because of the absence of law, and the multiplicity of sources of funding. It divides doners into two main groups; one funds NGOs so as to support the PNA, and requires co-ordination with it, others fund organisations working in the field of democracy and human rights so as to "magnify the mistakes of the PNA, in way that no authority can allow". It suggest that NGOs work for "normalisation" with Israel (before a final settlement is reached), and thus receive financial support from donors whose agenda is to encourage normalisation. This it contrast with organisations which look "towards building a democratic and autonomous civil society within the framework of national sovereignty" where a g civil society completes a government of an independent national state<sup>8</sup>. The *Fateh* pamphlet concludes by enumerating the necessary attributes of 'civic organisations' that qualify to be part of civil society. These include: implementing the (proposed) law; co-ordination with the respective ministry; possessing a clear internal constitution that defines aims, tasks, membership, structures, and procedures and activities; finances specifying publicly the source, and the aims of funders; autonomy within the limits of the law; accountability and transparency; possessing an effective administration; dependence on voluntary work: and co-ordination with bodies working in the same field (ministries, other NGOs, mass organisations, etc). Most of these specifications are not more than a reading of the PLC law regulating the activities of NGOs. The danger in the *Fateh's* (as a ruling party) position, however, does not lie in such reading of the PLC law, but in dividing NGOs arbitrarily into good and bad, and making the relationship with the government, the deciding criteria. The position taken by the ruling party calls

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<sup>8</sup> *Fateh*, No.12, the second half of June 1999. Civil society is defined, in the pamphlet as composed of political parties and movements, mass, professional organisations and syndicates, and NGOs.



for an explanation. As a political party it is anxious to keep a distance for the government and its agencies, but without appearing to be side uncritically with NGOs. The stance it took does both; supporting the PLC law, and avoid having to actively lobby the president of the PNA (who is also the leader of the party) to endorse the PLC law.

The stance taken by political parties is of special significance, because they are an important constituent of CVOs and have an interest in affecting the political system in which they operate. This explains their support for enacting the PLC law, accepted by NGOs. It explains their support for the autonomy of CVOs from government arbitrary interference. Nevertheless their stance draws, rightly, the attention of the NGOs to the need for more transparency and accountability, and to be weary of the agenda of funders, and focus on agendas that are more in tune with the needs of the Palestinian society and the detrimental and oppressive presence of colonial settler state.

No discussion of the confrontation over the NGOs can be complete without reference to the involvement of the local mass media particularly the local press. The intensity of the debate on the issue that was conducted publicly<sup>9</sup>, makes such a task necessary. We think that it is necessary to outline the thrust of the various views that were expressed on the issue in the local press. These can be organised in terms of hostility and friendliness to NGOs, or in terms of the profiles they portray of the NGOs.

### *The Heroic Profile of NGOs*

The advocate, par excellence, of this view has been human rights organisations. These, together with PNGO-Palestinian NGO Network, issued on June the 16<sup>th</sup>, 1999, a statement that denounced the campaign to discredit them<sup>10</sup>. The statement registered the following points:

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<sup>9</sup> Tens of articles, commentaries, reports and interviews appeared in the local press during the months of June and July, 1999. Many seminars and workshops were held during the period in the WB, and Gaza Strip, as well as television and radio discussions.

<sup>10</sup> The signatories to the statement were: Addameer Association for Human Rights-Gaza; Addameer Prisoners' Support Association-West Bank; Al Haq; Centre for the Treatment and Rehabilitation of Torture Victims; Freedom's Defence Centre; Gaza Community Mental Health Programme; Jerusalem Centre for Social and Economic Rights; Jerusalem Legal Aid Centre; LAW: The Palestinian Society for the Protection of Human Rights and the Environment; Palestinian Centre for Human Rights – Gaza; Palestinian Counselling Centre; Palestinian Independent Commission for Citizens' Rights; Physicians for Human Rights-Palestine; PNGO-Palestinian NGO Network; Workers Rights Centre – Jerusalem.

1. That human Rights Organisations, “being part of the Palestinian civil society, have for long been at the forefront of activities defending human rights. They “have undertaken campaigns to challenge threats to the legal status of the occupied territories”. They have been active in the international public opinion to “ensure the application of international humanitarian law, in particular Fourth Geneva Convention, in the Occupied Territories”.

2. That a counter-campaign has been waged against human rights organisations “seeking to undermine their credibility and slander the reputation of those involved in these organisations”. The statement mentions, by name, the Minister of Justice, as leading the campaign with the aim of “diverting attention from important concerns affecting Palestinian human rights”. It further undermines the passage of the Law of Charitable Associations and Community Organisations in Palestine (the NGO law). Human rights organisations view this law as an achievement since it provides “legal protection to NGOs, while ensuring their accountability and ensuring the integrity of the development process”.

3. That the campaign “coincides with the President Arafat's suggestion to keep the NGOs under the jurisdiction of the Ministry of Interior”<sup>11</sup>. This proposal was “rejected by the legislature, which accepted that NGOs could act with greater independence if the regulating of NGOs were with the Ministry of Justice”. The statement viewed the Ministry of the Interior as concerned with security and recalled that “a department of the Interior Ministry has undertaken a number of raids on NGOs”.

4. That human rights organisations “has strongly advocated for a democratic pluralist society, where human rights and the rule of law are respected by all, and that there is independence and separation between the arms of State (the executive, judiciary and legislature) to ensure this”. The signatories consider that these “efforts have succeeded in bringing

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<sup>11</sup> A press release issued by the director of the Gaza Community Mental Health Programme viewed, on the 14<sup>th</sup>, June, 1999 states: “Since the return of the Palestinian National Authority (PNA), the non-governmental organisations (NGOs) have been targeted by systematic campaigns aimed at tarnishing their image and undermining their achievements... In the past few days, the anti-NGO campaigns resurfaced after the publication of the UNSCO report on funding the “Rule of Law” sector over the past five years. This sector includes the Ministry of Justice, courts, Attorney General's Office, Police, Forensic Lab, Palestinian Legislative Council, Palestinian Independent Commission for Citizens' Rights, and relevant NGOs. The report states that the funding for the NGOs under that sector for the past five years did not exceed 16% of the total amount”.

attention to this and have encouraged others, including legislators and judges, to demand greater executive respect for the function of Palestinian institutions. The counter-campaign may be aimed at undermining these efforts”.

5. That, the Minister of Justice “has failed, as is the duty of his office, to support the independence of the judiciary and the legal process”. The signatories point out that “the Minister of Justice, on occasion, has intentionally interfered with the work of the courts and the officials of the court. In doing so, he may have breached domestic and international law”. They consider that the campaign has deflected attention away from “the crucial role of NGOs and human rights groups in promoting the development process and the basic rights of Palestinians wherever these are challenged. Instead, Palestinian civil society is obliged to defend itself against attacks made without foundation or justification”.

6. The statement end by requesting the president of PNA to:

- “Issue the Law of Charitable Associations and Community Organisations as passed by the Palestinian Legislative Council on its third reading,
- Promptly appoint an Attorney General to undertake the responsibilities incumbent on that office, particularly those responsibilities guaranteeing basic rights and democracy,
- Disclose the actual reasons that led to the failure of the Ministry of Justice to perform its duties in preparing the necessary legislature to consolidate judicial independence, ensuring guarantees for the judicial authority, and enforcing respect of the courts and its decisions,
- Challenge illegal approaches and claims voiced by a number of Palestinian officials and ministers and confirm the commitment to democracy and the institutions, including NGOs, that promote these principles, the rule of law and respect for human rights”.

It is interesting that the signatories to the document ended by appealing the president of the PNA who not only delayed responding to the law passed by the PLC, but asked for changes that make the Ministry of Interior responsible for registration. It is worth noting that president of the PNA have been acting as the minister of interior since the establishment of the PNA. In other words many

NGOs do not realise that the real issue of the confrontation concerns the drawing the boundary of the central authority in relation to "civil society"<sup>12</sup>.

### *The Villain Profile of NGOs*

It was the Palestinian Minister of Justice who gave the latest confrontation its impact following the publication of the above-mentioned UNSCO report. He used the report to accuse Palestinian human rights organisations of politicisation and mismanagement. Apart from the data provided by the report on funds allocated to NGOS working in the human rights and democratisation field, on specific evidence was given to substantiate the accusation of mismanagement, and no other governmental institution has provided evidence for these accusations<sup>13</sup>.

The timing of the confrontation made some NGOs link it with concerns about the legal system that came to the fore with the publication of a report by the UN Special Co-ordinator in the Occupied Territories (UNSCO). Although the report was intended to assist the development of Palestinian institutions, including civil society, it found that "the rule of law related policies and the equally important to assist mechanisms to implement them remain substantially underdeveloped". It was this, many NGOs believed, that prompted the Minister of Justice take the opportunity, using the issue of funds to human rights organisations, to silence his human rights critics.

Some of human rights groups had voiced criticism of the management by the minister of Justice of his Ministry<sup>14</sup>. It is widely held that such criticism led

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<sup>12</sup> In a special issue of the news letter that PNGO-Palestine Network publishes, the Network tabulates a whole page on the services the NGOs provide in the fields of employment, health, training, agriculture, water and environment, Jerusalem, human rights, and that fact that funding to NGOs does not come from sources that aid the PNA (*Al-Amel Al-Ahli*, 5<sup>th</sup>, July 1999). Much less attention was given to the fact that as part of civil society, their autonomy and diversity is necessary for a dynamic, and lively society and polity, and necessary for the mobilisation of various sectors of society for both development and achieving political independence.

<sup>13</sup> Some NGOs, but by no means all, have taken measures to have their financial accounts scrutinised and published in the local newspapers, and have independent experts' assessments of these accounts.

<sup>14</sup> As an example, LAW, an NGO working on the field of human rights, published a report on 1 June 1999 disclosing the Minister's personal and unlawful interference in judicial affairs. For instance, the report found that the Minister of Justice was instrumental in the dismissal of the Chief Justice, and that this dismissal seems to be connected with the Chief Justice's complaints of executive interference and lack of investment in the judicial system.

the Minister of Justice to complain that human rights groups are not working according to their mandated goals but preparing "faulty reports that will harm our people".

In interview with a local newspaper<sup>15</sup>, the Justice minister reported that his ministry is working to amend the law on NGOs in accordance with the amendments requested by the president of the PNA. He estimated the number of these organisations to exceed 700. The thrust of his remarks can be summarised as follows:

1. Many NGOs, especially those working in the human rights field have "become political bodies, mixing between political and human rights issues, and this is not acceptable at all"<sup>16</sup>. Adding that any one who want to engage in political action should join one of the many political parties than exist in Palestine since NGOs are barred from political activity".
2. Millions of dollars from donors have been spent on NGOs, "as the UNSCO report shows". This situation calls for a law to regulate the activity of NGOs, since being a "civil" institution does not imply "having absolute freedom, but demands limitations as elsewhere in the world". The minister was careful to single out some NGOs, especially those "engaged in agricultural, health, and disability relief work", as examples of NGOs that the PNA acknowledges, and values their role during the *intifada*. It is the NGOs that emerged after the establishment of the PNA that raise questions in the minister's mind about their role in fighting the occupation.
3. It is clear that there are those in the leadership of the PNA who feel that donors are more forthcoming to NGOs than to the PNA. Figures are quoted that reveal that while donor countries committed themselves US\$ 779 in aid to the PNA for the year 1998, only US\$ 351 was actually transferred. In comparison, US\$ 59 were committed, for the same year, to NGOs of which US\$ 43 was actually transferred<sup>17</sup>.

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<sup>15</sup> *Al-Ayyam*, 26/6/1999.

<sup>16</sup> The director of LAW rejected the accusation that human rights organisations engage in political activities. He responded to the accusation by explaining that 'human rights activities have political dimensions... and part of the tasks of human rights organisations is to initiate change in policies to improve human rights conditions, and work with parliamentarians to pass legislation guarantying conditions, and this is the secret of the relationship between the political and civil' (ibid.).

<sup>17</sup> NGOs were quick to point out to the PNA that transferring less to Palestinian NGOs does not mean transferring more to the PNA.

As we explained earlier the new confrontation with the NGOs, is related to attempts to change the law that the PLC passed. This is clear from the editorial of a journal published by the Union of national Non-governmental Organisations. This Union was established in 1995, as a body to counter to the PNGO - Palestinian Network, and is linked to the president's office. The editorial dwells on the followings themes<sup>18</sup>:

1. The proposed changes in the PLC law threaten the interests of those who stand at the top of NGOs. Those who lead NGOs have turned these into monopolies that no one is allowed to challenge. Hence their campaign to prevent changes requested by the president of the PNA.
2. Some members of the PLC have enriched themselves from their positions in NGOs and, and their "multi-national companies", and their parliamentary immunity are allied with NGOs. The implication here, is that the PLC law on NGOs has been passed because such a law serves the interest of some members of the PLC who have positions in the NGOs.
3. NGOs have become to form a "shadow government", and centres of power, and many are extensions of political parties that use the discourse of development, human rights, civil society, women and children rights, *zakat* (alms giving), religion and charity as cover for political activity. These groups have used the diversity of laws in the West Ban, Jerusalem, and Gaza Strip to register these NGOs. The main implication here is that many of these NGOs have left-wing agendas and connections, or act on behalf of Islamist political groups.
4. The Ministry of Interior is the only body that is entitled and capable of granting permits to NGOs, political parties, clubs and all that comes under "civil society", since it is the body that can oversee, supervise, and follow up retrospectively.
5. In previous editorials and articles the same journal accused some NGOs of acting as foreign agents. This accusation has appeared in various forms in many of the articles that appeared in the local press. The most frequent form is the labelling of NGOs as donor driven.

*The Ambivalent Profile of NGOs*

One of the striking features of that new confrontation between the government (and more precisely sectors of the government) and the NGOs, is its openness. Tens of editorials, articles, reportage, and comments appeared in the local

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<sup>18</sup>*Al-Neshra*, Number 5, May 1999. The editor is the general co-ordinator of the Council of the Union of No-governmental Organisations in the Gaza Strip. The journal serialised a book published recently in Egypt on NGOs accusing them of acting to implement foreign agendas with dubious and untrustworthy aims.

newspapers, and journals on the issue. Local television and radio stations (in the WB), as well as the official television and radio, ran programmes on the issue. So apart from those views which portray untarnished profile of NGOs, and those that portray a sinister profile of NGOs, a third view can be detected which examined the NGOs from a critical and somewhat sceptical perspective<sup>19</sup>.

This is a perspective that rejects the portrait of NGOs as a source of evil, alienation, corruption, and as an instrument of foreign domination. Simultaneously it questions the self-portrait of the NGOs as the moral conscience of society. It submits a profile, with varied accents, that accommodates the existence of “errors and ills” among NGOs. Some find the roots of these in the social structure, and the present “lack of a vision concerning the shape and mechanisms of the desired political system, as well as in the limited steps taken to actualise the rule of law”. It acknowledges “the vital role that the NGOs have, and are playing, as providers of various kinds of services aimed at improving the standard of living of citizens”. But goes on to calls for a review of “non-existent NGOs, the practice of favouritism, concentration of powers in the hands of directors of these organisations, waste, and corruption that take place in some of these”. Some, in this category, goes on to label some NGOs as taking over the role of “political parties”, at a time when some political parties “have turned themselves into NGOs”. It is perspective that calls for autonomy of NGOs not only in relation to the government, but also to foreign donors. It demands their subjection to transparency and inspection. It sees the present confrontation as rooted in the intolerance on the part of the government towards some NGOs, and its inability to understand their situation, or see their achievements. It acknowledges that some in government seeks to make NGOs appear no better than the government in terms of transparency, accountability, and performance, with the aim of controlling these. It includes government functionaries, and their families as involved in NGOs and not just members of the PLC. References can be find that find explanations to the confrontation in the “exile mentality” which seeks hegemony on civil organisations as it had known no other experience.

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<sup>19</sup> Examples of this narrative can found in a number of articles that appeared in the local press, such as: Hani Al-Alma’ri, *Al-Ayyam*, 26/6/1999; George Gaicaman, *Al-Ayyam*, 28/6/1999; Talal Oukel., *Al-Ayyam*, 21/6/1999; Sameeh Shibeab, *Al-Ayyam*, 21/6/1999; Ahmed Harb, *Al-Ayyam*, 19/6/1999; Ashraf Al’ajrami, *Al-Ayyam*, 22/6/1999; interview with leaders of political parties which included Fateh, Peoples Party, Democratic Front, Fida, *Al-Hayyat Al-Jadida*, 6/7/1999; interview with Raja Shihada, *Al-Hayyat Al-Jadida*, 11/7/1999; *Al-Baydar*, news letter published by the Development Study Programme- Birzeit University, issue Number 12, 5/7/1999; Khalida Gerrar, *Al-Hayyat Al-Jadida*, 20/7/1999), Maher Farraj, *AL-Massar*, 2/7/1999, and Rabah Muhena, *Al-Ayyam*, 23/6/1999.

This perspective suggest that the answer to the confrontation and the issues it raised lies in developing a political system that guarantee the rule of law, separation of powers, the peaceful transfer of power, freedom of expression, and political pluralism. It call for a clear delineation of responsibilities of the various ministries, and government agencies. It calls for applying the “principles” of accountability, transparency, and participation, in society and government. It short it adopts a discourse of democracy and good governance. Some stress the bureaucratisation of the NGOs and the alienation from their social base, and the need to reform their administrative and salary structures. A demand to scrutinise the agendas of donors “as some are driven by political and security aims”.

### C. An Inconclusive Outcome of the Confrontation

It is not easy to determine all the ramifications of the confrontation between the government, and Palestinian NGOs. However a number of observations can be made on the process as revealed in this confrontation:

1. On the 12<sup>th</sup> of August 1999, the PLC accepted the amendment to NGO law demanded by the president<sup>20</sup>. This opens the way to promulgation of the law. It should be pointed out, here, that the amendment made does not affect the bulk of the law, but are confined to the governmental body entrusted with registration, and it remains an issue of registration and not licensing. It does however make intervention in the work and funding of NGOs more likely depending on the by-laws that will regulate the application of the law. It also must be noted, here, that the government does not have a united position on the autonomy or otherwise of NGOs. Many ministries have competed for registration (including the ministry of social affairs, ministry of planning, ministry of labour, ministry of interior, ministry of justice, and the newly established ministry of civil action). This is also reflected in the recommendations (not published) of the ministerial committee on NGOs which, according to its chairman, came out in favour of most NGOs<sup>21</sup>. The committee recommended the

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<sup>20</sup>This was done in the following manner: As the members of the PLC were leaving the hall where they were discussing the public budget, the Speaker read the following statement: “The Council having consulted all legal bodies, arrived at the conclusion, that the objection of the president regarding the NGOs law is a correct one”. He concluded that the NGOs law is, therefore, promulgated, and the Ministry of Interior is the legal body for registration of NGOs (Al-Ayyam, 13/8/1999, p.5).

<sup>21</sup>A ministerial committee was appointed to study the situation of NGOs and make recommendations to the cabinet. The committee did convene, and consulted with NGOs and it presented a report with recommendations. He report was not published.



approval of the NGOs law, attributing the main cause of the confrontation to the absence of a unified law<sup>22</sup>. This lack of unity within executive power on the issue of NGOs (some ministries have established cooperative relations with NGOs active in the same field such as health and agriculture) is a factor, among others, in hindering the imposition of a repressive legislation similar those operating in Egypt or Jordan. Other factors include the very recent militant history of NGOs against the Israeli occupation. In addition the affiliations that many NGOs had (and some still have) with political parties is another factor, as well as the fact that many donors of NGOs are also donors of the PNA<sup>23</sup>. The fact that NGOs provide employment to many thousands of individuals in a situation characterised by relatively high unemployment rates and economic precariousness, is relevant here. To this should be added the fact that many NGOs are service providers that are not, or could not be, adequately covered by the PNA.

2. It is likely that the campaign did have some impact on the sphere of public opinion. It has tarnished, to some extent, the image of NGOs, but not to a very significant extent. In a public opinion poll, conducted during the heat of campaign some 43% of those surveyed thought corruption exists in NGOs, compared to 31% who thought that it did not exist and, 26% who had no opinion<sup>24</sup>. On the other hand some 59% of those interviewed evaluated the performance of NGOs positively, compared to 40% of those who did the same regarding the performance of the PLC, 47% regarding the performance of the cabinet, 58% regarding the performance of the presidency, and 32% regarding the performance of opposition parties<sup>25</sup>. In other words NGOs received a higher positive evaluation than all PNA structures and opposition parties (which form part of civil society).

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<sup>22</sup>Reported in Al-Hayat Al-Jadida, 6/7/1999.

<sup>23</sup>The World Bank and European donors (governments and NGOs) give special importance to civic institutions.

<sup>24</sup>Centre for Palestine Research and studies (CPRS), poll Number 42, 15-17 July, 1999. The sample size of the poll was 1330 of Palestinians aged 18 years and above (824 in WB and 506 in GS). The margin of error is put at 3%. This is the first time that a question of this kind was concerning NGOs, which makes it difficult to make comparison with pre-campaign attitudes towards these organisations.

<sup>25</sup>No significant differences existed in the evaluation of the performance by political affiliation. Some 65% of the supporters of *Fateh* and 68% of the supporters of *Hamas* evaluated the performance of NGOs positively. However difference appeared by region (a higher percentage evaluated the performance of NGOs positively in Gaza Strip than the WB), age (a higher percentage of the young evaluated positively the performance of NGOs), occupations (a higher percentage of students, workers, and farmers evaluated positively the performance of NGOs).

3. The role of the press and mass media is very relevant here, as the main newspapers were divided in terms of their attitude to the issue. The closest newspaper to the government tended to give prominence to attacks on the NGOs, while more independent newspapers gave more prominence to the positive role of the NGOs and to more “objective” analytic views. This applies to television stations; the private ones (exist in West Bank only) tended to be more favourable to NGOs than the PNA financed station.

4. The confrontation was conducted with discourse that used the language of democracy (separation of power, rule of law, pluralism, freedom of expression and association) and good governance (transparency, accountability, and participation). All the players in the field (government, political parties, NGOs, PLC, and the press), used this discourse. This reflects, to some degree, the influence of CVOs in the formulation of civil/political discourse. What is particular about this confrontation is the application of the civil discourse of democracy on NGOs themselves in attempt to discredit them and bring them under state supervision. This points to the need to situate civil discourse in the context of power relations. Hence the “hegemony” of a democratic civil discourse is not necessarily reflect the actual workings of the political system. A system that remains, in many aspects autocratic. Not does it necessarily reflect the actual workings of CSOs. Most CSOs still lack a credible level of transparency and accountability and the necessary democratic structures (internally and in relation with their target group or beneficiaries). A majority of NGOs lacks the necessary autonomous resources to be self-sustaining, and this leaves them open to the charge of being donor-driven. This explains why NGOs did not mobilise their social base (beneficiaries) in the confrontation with the government, nor did they win support from trade unions or professional associations.

5. One outcome of the confrontation was the decision of the president of PNA to create a ministry of ‘civic action’. The mandate of the ministry remains, up to the moment of writing, unclear. The appointed minister has declared that he favours the presidential amendment regarding the ministry for registering NGOs, and that he seeks “to support the NGOs sector, not to suppress it”. He reiterated the necessity for NGOs not to engage in political activities (without defining what qualifies as political activity), and his intention to formulate a memorandum of understanding between NGOs and ministries working in the same field. He also expressed interest in reviving voluntary work that declined in the 1990s, and an interest in encouraging NGOs to do more work in rural areas<sup>26</sup>.

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<sup>26</sup> See the coverage of the briefing held by the new appointed minister for “civic action” in *Al-Ayyam*, 20/7/1999.

6. The confrontation suggests a need for most NGOs, to operate more effectively in their varied fields of activity. The fact that the “beneficiaries” of these organisations did form a lobby in support of their “benefactors” is indicative of the relationship between the two. This calls for a much higher degree of transparency, more assertiveness of autonomous agendas, the overcoming of the anti-democratic tendencies of organisational hierarchies, and a more active participatory approach towards targeted groups. NGOs also need to establish more structured relations with other sectors of civil society (especially political parties, trade unions, women organisations, and professional organisations). But they need, sooner than later, to acquire financial autonomy without which they remain susceptible, to the reproach of being donor-driven.

### **Case Two: Presidency versus Parliament**

The confrontation between the president of the Palestinian National Authority (PNA), and the Palestinian Legislative Council (PLC) over the role of the latter does not involve, directly, a state-society narrative. But it needs addressing nevertheless. It is significant for such narrative, because of its historical context. It is a context where a central authority on a territory without clear boundaries is trying to form a state under conditions of adversity. It is situation where self-government is entangled in a colonial situation. The PNA encased in a situation where it is committed to a long process of negotiation, which carries no real prospect of delivering statehood with sovereignty. Thus the confrontation between the centre of the newly established authority (the presidency) and the similarly newly elected legislative council (parliament), although it does not connect directly with civil society, has, nevertheless, direct ramifications on the latter’s relations with the state, and to the establishment of good governance. It so because it connects to the issue of power distribution that shapes the political system, and determines whether civil institutions can function with the necessary autonomy; and whether citizenship rights are enshrined as constitutional rights.

This case study will focus on attempts by a newly elected legislative council to exercise enforceable oversight and decision-making powers on broad policy and budgetary issues. That is to exercise oversight over executive power. Two attempts are illustrative of this: 1. Drafting and passing a Basic Law, and 2. Acting on the audit findings of the statutorily established General Control Institute.

*The Basic Law; the PLC Approves, the President does not promulgate*

The general election law that was approved, in 1995, by the president of the PNA stated in its preamble that one of the main tasks of the Legislative Council (PLC) to be elected is to draft and approve a basic law for the interim period. The Interim Agreement between the PLO and Israel allows, as was specified in the PLC Standing Orders, legislative and oversight powers to the Council. These include; drafting and adopting of legislation, voting or withholding confidence from the Ministerial Council, approving, or otherwise, the General Budget and the general development plan of the PNA, and addressing questions and inquiries to ministers concerning issues within their jurisdiction. In short the Council has the right to legislate in all matters excepts on issues excluded by the interim agreements between the PLO and Israel. The proposed Basic Law, approved by the Council but not ratified by the President, gives the Council the power to approve agreements.

The interim agreement specified the interim period to last five years starting from the date of the establishment of the PNA in May 1994. Constitutions of a number of Arab countries were consulted in drafting the law, as well as the legal committee of the PNC, and the Law Faculty at Birzeit University. The PLC approved the Basic Law (third reading) on the 2nd of October 1997, and submitted to the PNA president on the 4<sup>th</sup> of October 1997<sup>27</sup>, for promulgation. Two years have passed since and the president has not promulgated the Basic law. In fact the interim period was supposed to have ended in May 1999, but was extended by the PCC (Palestinian Central Council) with the intention of declaring a Palestinian state in some unspecified future date. The PCC decided, at the same time, to have a constitution drafted for the coming state. This means that the Basic Law will remain, at a best, a document to be consulted by those who are entrusted to draw the constitution of the future state.

The question that is being asked; is why the Basic Law has not been promulgated? The question becomes more pertinent once the political composition of the PLC is revealed. Supporters of *Fateh* (the ruling party) form 77% of the members of the PLC, a very wide majority by any standards. The PLC has acquired this composition mostly because *Fateh* remains the largest political party, because both the secular and the Islamic opposition boycotted the elections of 1966, as a gesture against the Oslo agreement, and as a result of the election law which local bases, and majoritarian rather than representational.

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<sup>27</sup> A general discussion of the law took place on the 10<sup>th</sup> of July 1996, and the first and second reading on the 1st of September of the same year. The third reading and final reading took place a year later.

So a Council dominated by the party of the president approved the basic law. In other words the president has not withheld promulgating the basic law because it was passed by a parliament controlled by a majority of opposition parties. Hence the answer to the above question must be sought elsewhere. It can not be found in features related to the interim period, either. The Basic Law was drafted to take account of the specifications of Oslo II concerning arrangements for the interim period. We need to look in the restructuring of power relations that is implicated in the Basic Law. Particularly in that it establishes basic constitutional principles that govern the relationship between the executive, and legislative powers, and asserts the independence of the judiciary, and spells out citizens' rights. Among the things it stipulates are the following:

1. The separation of powers (legislative, executive, and judiciary”, and the independence of the judiciary;
2. The system of government in Palestine is defined as “a democratic parliamentary system that is based on political and party pluralism, where the president of the PNA is elected directly by the people, and the government is accountable to the president and the PLC”;
3. Freedom from arrest, search, imprisonment, and restriction without a court order; as well as from being subject to torture or duress. The accused is considered innocent until his guilt is proven in a proper court of law that guarantees the right to self-defence;
4. Freedom of expression is guaranteed as well as the right to form and join political parties, to form and join trade unions, associations, clubs, solidarities, and popular institutions. It guarantees the right to establish newspapers, and other mass media. Censorship of mass media, in its various forms, is illegal.
4. The legislative Council has the right to propose laws, to question ministers, to withdraw confidence from the government or any minister, to approve the general development plan, to approve, and change the budget.
5. In case the position of the president becomes vacant, the speaker of the PLC assumes the responsibilities of the president for a period that does not exceed 60 days, during which general democratic and free elections will be held to elect a new president.
6. If the president returns, for amendments, a proposed law passed by the PLC, the latter will review the law again, and if a two-thirds majority approves it, it becomes law, and will be published without delay in the official gazette. The president has to return a proposed law to the PLC within one month from the day it is sent to him, otherwise it is becomes law, and has to be published in the official gazette without delay.

It is clear from the above provisions of the Basic Law, that it restricts the powers of the presidency by devolving some of these to the PLC, and to the judiciary. It also grants the PLC powers to oversee and censor the government. This explains why a number of the members of the PLC interviewed could not find any explanation for the president withholding approval of the basic law other than it limits and defines his powers and that of the government. The proposed basic law specifies the basic constitutional requirements of a democratic political system through institutionalising the separation of powers and of citizen's rights, and a multiparty electoral system. It furthermore lays the basis, for the legislative council, to unify and modernise the system of law operating in the West Bank and Gaza Strip.

It is the existing distribution of power that the Basic Law disturbs, and this is the explanation why it was ignored by the president of the PNA. In an interview on the issue with one PLC member, he had the following explanation for why the president has not promulgated the basic law:

"the real reasons why the president has objected to the basic law resides in the fact that the idea of the rule of law is not any idea congenial to the Palestinian political leadership. The leadership thinks that the existence of laws and legislation will restrict its movements at this stage. It wants to have a high degree of freedom in decision making. Secondly, the operation of a basic law involves a separation of powers, and this means division of powers. Thirdly, I do not think that the political leadership is ready to share power with others, not with the legislative power, nor with the judicial power. Furthermore, the Basic law defines a democratic mechanism for transfer of power at the presidential level, and this does not seem to appeal to the president, and this is in harmony with the long history of political leader"<sup>28</sup>.

Another PLC member explained the reasons that led the president of the PNA to ignore the Basic Law, as follows:

"The president wants a constitution for the Palestinian people and a Palestinian state, and therefore he wants the PLO, being the representative of the Palestinians everywhere to participate in the drafting the constitution. Secondly he thinks that the time is not appropriate for having a Basic Law, because of the inability to define the borders, and nationality and the capital as these issues are not finally defined and agreed upon. However we (PLC) specifies the Basic Law for the interim period only"<sup>29</sup>.

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<sup>28</sup>From an interview with Azmi Al-Shu'abi, PLC member, on 3/8/1999 (The interview for a study by the Palestine Economic Policy Research Institute (MAS) on the relation between NOGs and the PA, and supervised by J.Hilal).

<sup>29</sup>From an interview (as *ibid*) with Hasen Khouraiasha, PLC member, 14 /7/1999.

Another PLC member thought that the Basic Law is necessary for “transporting Palestinian society from revolutionary legitimacy to constitutional legitimacy”. He could not accept any of the reasons for the delay in signing the Basic Law by the president, as this was specified in the election law signed by the president. He thought, as a lawyer, that the Basic Law is necessary for unifying the legal system in Palestine, and providing the constitutional nucleus of the impending Palestinian State<sup>30</sup>.

Thus instead of having a Basic Law providing a unified constitutional framework for the Palestinian Authority, a mixture of inherited laws and codes exit. This has helped in the emergence of system of government with an excessive concentration of presidential power, rule by decree, selective use of legal codes, and disrespect for democratic procedure.

### *The PLC Disembodied*

The disempowering of the PLC by denying it the role of furnishing the PNA with a constitutional document was coupled with frustrating its attempts to exercise effective oversight over executive authority. This failure is clearest in the PLC attempt to censor the executive on evidence of corruption and mismanagement. The General Control Institute (GCI), which was established by a presidential decree in 1995, published, in the Spring of 1997, its first annual report for 1966<sup>31</sup>. The report implicated a number ministers and public high official in various forms of corruption, waste and mismanagement.

The report had a strong impact on various sections of Palestinian civil society<sup>32</sup>, and caught the attention of international donors. The PLC reacted by forming, in May 1997, a special committee to study the report and present recommendations to the Council. This it did a month later. The committee was critical of some aspects of the GCI report, particularly for its lack of methodological rigour, numerical exactness, enough specificity and selectivity as it did not covers all public institutions, and excluded security agencies and state owned companies<sup>33</sup>. Nevertheless the GCI report provided the material and

<sup>30</sup> From an interview(as ibid) with Abd A-Karim Abu Salah, PLC member, 4/8/ 1999.

<sup>31</sup> The report, parts of which were published in May 1997, indicated that some US\$ 323 of public money were misused or wasted during 1996 by the government.

<sup>32</sup> The report had an impact on public opinion. Thus while 49% of the public believed, in September 1996 (that is before the report), thought that ‘corruption’ exists in PNA institutions, in June 1997 (after the content of the report became known) the percentage rose to 63%. Among the educated (who are more likely had read was leaked from the report) the percentage reached 78%.

<sup>33</sup> Security agencies come under the direct control of the president, and some public companies are connected to the president’s office.

the opportunity for the committee to provide recommendations to question and censor the performance of the government.

The report included recommendations to initiate investigations into the affairs of a number of ministries, and for the prosecutor general to start legal proceedings against a number of ministers and high official. The PLC special committee report emphasised the absence of a role the Ministerial Council in drafting and implementing regulations specifying the functions and responsibilities of each ministry, and public body. It recorded the continuation of conflict over responsibilities among the ministries and the overlapping of these. A matter that contributed to the inflation of employment in the public sector, and the mushrooming of duplicate public institutions. It emphasised the absence of a plan of action for the ministerial body. The report concluded by calling on the president of the PNA dissolve the ministerial council and to form a new council 'from technocrats and specialists', and to make sure than none of the ministers implicated and convicted are returned to the council. It called for implementing a comprehensive administrative and organisational reform of all the public institutions and bodies. It call form the separation of the meetings of the ministerial council from those of 'the Palestinian leaderships' which combines PLO institutions with PNA institutions, as this obliterates lines of responsibilities and accountability<sup>34</sup>.

The Council approved the above recommendations, and waited for the president to act. However the president took no action. The president did not accept the resignation of a large number of ministers following the decisions of the PLC. In short everything continued as before, despite the continued demand by the PLC for action on its decisions.

Not only the PLC failed to initiate reform, and to pressure the president to act to combat mismanagement, corruption, and inefficiency. The Council was manipulated to change its tune a year later when a majority gave a vote of confidence to an enlarged ministerial council which contained almost all the members of the older council<sup>35</sup>, particularly the ministers that draw most criticism of corruption and mismanagement from the PLC.

In August 1998, after months of delay and in an obvious challenge to the PLC, the president announced his new cabinet to the Legislative Council. All the ministers who draw the harshest criticism from the PLC for corruption and

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<sup>34</sup> The PLC special committee report was published in Palestine Policy, Volume 4, Numbers 15&16, 1997.

<sup>35</sup> The new cabinet had all the ministers of the older cabinet, except for the minister of labour who resigned some months previously in protest to the president interference in the ministry, and the minister of education who asked to be relieved for personal reasons.



mismanagement were retained in the new and enlarged cabinet. Instead of a majority giving vote of no confidence to the new cabinet, 55, out of the total of 88 members, granted it confidence. Only 28 gave a vote of no confidence, with 3 abstaining<sup>36</sup>. The new 32-member cabinet had 22 from the PLC (i.e., a quarter of the total membership of the Council)<sup>37</sup>. Some of the loudest critics of the government (all from the ruling party) were given ministerial posts. Furthermore *Fateh* (the ruling party) members of the Council were lobbied to give a vote of confidence to the new cabinet.

One member of the PLC considered the new cabinet as “reflecting an indifference to the PLC and all the committees that were formed to examine the GCI report all of which implicated ministers of the old cabinet and who have been reinstated in the new cabinet”. He considered the new cabinet as an attempt to preempt the PLC and to create a ministerial block inside it<sup>38</sup>.

### *The Outcome*

What we see here is the success of the president in marginalising the PLC. But this success cannot be isolated from the political composition of the latter. As mentioned earlier three quarters of the PLC are supporters of *Fateh*, the ruling party. One need to notice the method of co-option used, by the president, where a quarter of the PLC occupy posts in the latest cabinet. The absence of a Basic Law (or a constitutional framework) that defines citizenship, the technologies of rule, and the limits of central power are other factors which created space for manipulation by the president<sup>39</sup>. This unprincipled behaviour of the PLC increased the its negative image among the Palestinian public. The percentage of those who evaluated the performance of the PLC as positive (good or very good) dropped from 49% in March 1998 (before the vote of confidence), to 29% in October 1998 (after the vote of confidence). Those who evaluated the performance negatively (bad and very bad) increased from 13% to 22% in the period<sup>40</sup>.

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<sup>36</sup> Two members of the Council were absent.

<sup>37</sup> The new cabinet was enlarged by ten ministers. Only one of the member cabinet members declined, and another two from the older cabinet whose posts were changed ( one from minister of higher education to minister of tourism, the other from minister of agriculture to a minister without portfolio).

<sup>38</sup> Jawad Al-Tibi, *Palestine Policy*, Volume 5, number 20, 1998.

<sup>39</sup> On this and other related issues, see: The Palestinian Independent Commission for Citizen's Rights, Third Annual Report, Ramallah, February 1998.

<sup>40</sup> CPRS, public opinion polls, no. 32 and 36.

Special attention needs to be given to the emerging political system that is dominated by one political party. This party (*Fateh*) not only dominates the PLC, but also the executive bodies of the PNA (ministries, the security apparatuses, governors, and the local government's offices through appointments). The Speaker of the PLC, and his two Deputies, The Secretary General (i.e. the Office of the Council which is an elected body), and well as the majority of the members of the PLC committees are from same party. This could not have been avoided given the electoral law adopted, and the boycott of PLC elections by the opposition parties. But one cannot ignore the implications this has on the ability of the PLC to perform some of its basic functions. Thus despite the fact that the PLC has acquired a noticeable degree of institutional dynamism as a legislative body, it cannot isolate itself from the political composition of its members<sup>41</sup>. An electoral system of proportional representation would guard, to some extent, against an easy mobilisation of the Council by the ruling party.

The weakening of the role legislative body in overseeing the executive, the absence of an independent judiciary, the absence of a unified constitutional document, as well as the deadlock in the political negotiations with Israel has left a general sense of apathy and disillusionment. It no doubt encouraged the presidential office to attempt<sup>42</sup>, as happened later, and is documented in one of the case studies, to control NGOs as part of civil society. The case discussed here shows the vital importance of an effective legislative body, and the separation of powers for the protection of citizen's rights, for good governance, and for the existence of viable civil institutions. It shows too that a legislative body dominated by one political party, is liable to manipulated and turned into a rubber stamp for the policy those at the top of the executive power, particularly if these are from the same party as it is the case in Palestine.

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<sup>41</sup> PLC did, however, develop a perceptible degree of institutional dynamism of its own since it was established. This has manifested itself in a number of ways: It has its own rules (Standing Orders), and it has procedure for debate, questions and agenda setting. A Chief Clerk, who oversees the record-keeping system, including the preparation of minutes, journal and Hansard for each session assists the Office of the Council, during the meetings. Its members are organised into various committees with different agendas.

<sup>42</sup> The fact that the President of the PNA, is also the chairman of the Executive Committee of the PLO, and the leader of *Fateh*, cannot be ignored as sources of his excessive powers.

### Case Three:

#### Refugee Mobilisation and the Political Legitimacy of the PNA

The status of Palestinian refugees inside the Palestinian territories and in their refugee camps the three main Arab host countries (Jordan, Syria, and Lebanon) continue to be a primary source of tension between the attempts of the PNA at state building, and the unfulfilled aspirations of the refugees to achieve their political rights. The tension has several sources: (a) the presence of a large camp population constituting a considerable segment of the urban poor posits a potential pool for popular mobilisation against social and political grievances, which could undermine the autocratic character of the nascent Palestinian authority; (b) it exposes the limited ability of the Palestinian leadership in negotiating a reasonable agreement with the Israelis that will guarantee minimal rights of the refugees who chose to return to their homeland; (c) it continues to undermine the legitimacy of the whole peace process since the Palestinian problem has been presenting itself, and is seen by the Arab world, as a refugee issue; (d) within the Arab countries--particularly in Lebanon the absence of a deal which will realise--at least partially--the right of Palestinians in Lebanon to return will be attacked severely since the Lebanese authorities refuse to 'solve' the problem of refugees through naturalisation on their own soul, since this is likely to upset the delicate confessional political set-up the triggered the civil war in 1976, and in which the Palestinian military involvement was a primary factor in prolonging that war.

In this case study we will address only the first and second feature of this problem. In short we will address the manner in which the transformation of the Palestinian issue *from a struggle for the right of return of the refugees*, to *one of state building* by a limited number of returnees (some 80,000 PLO cadres who were repatriated to Palestine in 1994-1996) continues to act as a source of unrest in the camps--both inside and outside Palestine.

#### *Current refugee mobilisation as residue of the intifada*

The civil insurrection against Israeli colonial rule (known as the *intifada*-1987-1993) was a rebellion that was primarily instigated and sustained by refugee camps (first in Jabalyah and neighbouring Gaza camps, and then in Balata [Nablus] where it spread to other West Bank townships and villages). Refugee camp youth were a primary target for the Israeli army during the rebellion and they constituted a substantial component of the number of youth organisers, prisoners, and martyrs during the intifada. With the fifth year of the rebellion the toll of strikes, unemployment, imprisonment and killing ushered an atmosphere of battle fatigue in the camps, which was immediately followed by

the beginning of political negotiations between the Palestinians and Israelis. With the signing of the Oslo Agreement (1993) and the return of the PLO cadres to the West Bank and Gaza a process of youth demobilisation began. Many of the refugee camp militants were incorporated in the Palestinian security apparatus and the new civilian bureaucracy of the PNA. Few of those militants (like Dalal Salameh and Jamal Shati) were eventually elected to the Palestinian Assembly in 1996 and became spokespersons for the refugee camps that sent them to the Parliament. However the vast expectations ushered by the peace agreement were far from fulfilling refugee expectations:

\* Conditions of daily life in the camps did not improve. Because of the severe closure against the entry of Israeli workers to Israel the peace agreement was followed by severe rise in unemployment and drop in the standard of living--although here distinction should be made between Gaza camps and West Bank camps, since in the former areas the hermetic sealing of borders creates a considerably worse possibilities for labour mobility.

\* Very few refugees from Jordan, Lebanon and Syria were able to come back to Palestine even for a visit. And the 80,000 cadres who did come back with the PLO were a one-time agreement that was not followed by a relaxation of border control on returning expatriates or even visitors.

\* The four-country committee (known as the quadripartite group) , which was established by the Oslo agreement to deal with the displaced persons from refugee camps, was unable to prevail on the Israeli to allow even a limited number of refugees to come home. Only a limited number of 2,000 cases of family reunification were granted. (Since mid-1999 these cases were raised to 3,000).

The consequence of these failures was that many refugee camp youth who fought street and alley battles during the *intifada* - then in their teens, now in their mid-twenties - were now frustrated and unable to claim a sense of achievement for their struggles. In Lebanon, Syria and Jordan, camp refugees felt forsaken and betrayed by the Oslo agreement since it delayed their status to final status negotiations (beginning in 1999-2000).

#### *Post Oslo Refugee Popular Committees*

In 1995 several young camp militants began to form Youth Activities Centres in several refugee camps in anticipation of the Oslo Agreement not realising any change in their status. The centre of these movements was Balata camps in

Nablus (where Fateh had the upper hand) and in Dheisheh camp in Bethlehem (where the communists and Popular Front activists predominated). The thrusts of these youth centres were to emphasise two objectives: asserting the right of return enshrined in UN resolution 194, and improving the conditions of living in the camp. By September of 1996, around the same time that national elections were taking place for the first Palestinian legislative assembly, a new camp leadership was emerging in which all political factions were represented (including *Hamas* and Jihad, as well as the left parties and Fateh). These groups took the same format and name of *intifada* groups: the Popular Committees--but unlike the former popular committees these ones had limited objectives: affirming refugee political rights, and warning the PNA from making a deal which will write off their right of return. They also proposed a platform for improving daily living conditions of camp dwellers (health, sewage and education committees) in co-ordination with UNRWA. Although some of the political groups had internal elections in choosing camp representatives the actual representation was factional<sup>43</sup>. Popular Committees in each camp (ranging in number from 20-35 members) became a main focus of debate and mobilisation for refugee rights and against 'concessions' anticipated by the final status negotiations.

One major arena of these debates was the participation of refugees in the forthcoming elections for municipal councils in urban and rural communities of Palestine. For the duration of Israeli occupation of these communities (1967-1995) refugee camp population had been excluded from both the electoral role and candidacy for municipal elections. The rationale for this exclusion (so far largely accepted by the refugees themselves) was that political enfranchisement of camps into the urban constituencies would signal their resettlement and civic integration into the host societies, thereby forsaking their struggle for return and repatriation to their original homes. With the passage of decades this conscious act of disenfranchisement became a political anomaly, since it entailed withdrawal from urban local political and non-participation in decision-making that affected the provision of services, allocation of tax revenue, and zoning laws, and so on. In partial compensation for this denial of municipal rights refugee camp population established local committee which collaborated with UNRWA in the daily administration of camp life. In Lebanon and Syria (but not in Jordan), political factions undertook this role of local administration, with the concurrence of the host governments who continued to deny citizenship to refugee residents. This logic however was abandoned in the Palestinian parliamentary elections of 1996 when camp refugees participated as electors and candidates with few of them carrying several refugee constituencies in

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<sup>43</sup> Interview with As'ad Abdul Rahman, head of Refugee Affairs Committee July 22, 1997

Nablus, Ramallah, and Gaza. The rationale here was that these were national and not local elections.

Nevertheless with the establishment of the new National Authority several refugee activists began to question this 'strategy' of voluntary disenfranchisement. Dalal Salameh, Parliament deputy from Balata camp, and a Fateh activist, spearhead a campaign among refugees calling for improvement of housing and infrastructural conditions in camps. She also called for re-considering the exclusion of camp residents from the planned municipal elections. Although there was a substantial support for this position, there was also a strong counter-move. During the 1997-98 period the announced cut in UNRWA budget and the reduction of welfare services led many refugee leaders to feel that this was a step aimed at the liquidation of UNRWA and a prelude to a scheme of resettlement. A country wide conference of refugee faction leaders met in Jericho in September 1998 and issued a proclamation supporting local camp elections to establish autonomous administrative councils that are independent from municipal councils. This formula was seen as a compromise between the advocates of municipal representation and its opponents, assuring the creation of an enhanced constituency in camps.

But the debate over municipal representation continues and has taken a much wider political dimension. Under initiative from Abdallah Hourani, who held the Culture portfolio in the PLO executive committee, mass meetings took place in a number of Gaza camps in the spring of 1996 calling for the implementation of G.A. resolution 194 and against accepting a package of compensation without ensuring the right of return. Hourani - a leading critic of the Oslo Agreement-- voted against the amendment of the Palestinian Charter in the PNC meeting in April of 1966. With the mushrooming of popular committees in camps, and their adoption of stances critical of the authority, Hourani was removed from the Executive Committee and replaced by As'ad Abdul Rahman as the head of the Refugee Committee. The immediate cause of the replacement was Hourani's call for a national conference of refugee committees in order to establish a national refugee leadership in the country. As'ad, a leftist figure associated in the past with the Popular Front, was now in charge of co-ordinating the work of refugee committee in camps, and liaising between the PNA and the refugee leadership. When the national conference did take place in September (in Gaza) it ushered the co-optation of this oppositional movement under the aegis of the PLO. The political agenda of the popular committees was institutionalised and they were transformed into pressure groups (vs. UNRWA and the Palestinian authority) to improve services in the camps.

On the eve of the convening of committees for final status negotiations on the future of refugee between Israel and the Palestinians (late 1999) the popular committees in the camps remain - despite their institutionalisation - major sources of popular mobilisation. Some - like deputy Marwan Barghouti from Fateh - believe that it is foolhardy to reach an agreement on refugees that does not ensure the right of return in one form or another, and believe that an interim agreement that will improve the daily lives of refugees is better than a final agreement that abandons their historical claims<sup>44</sup>. In the event the authority reaches an agreement that is short of ensuring these minimal rights it is most likely that the committees will be activated to protest such an agreement. But they are also a two-edged sword, since they may also be mobilised by the authority to ensure support for an agreement that is likely to be opposed by the radical opposition. At this juncture one can only say that no final status agreement will be stable if it does not address the legitimate claims of the refugees, and that alternatively, the lack of solution for the refugee issues will remain a source of instability undermining the legitimacy of the Palestinian authority in Palestinian and the refugee camps of Lebanon, Syria and Jordan.

#### **Case Four:**

#### **Women NGOs and the Campaign to Reform Personal Status Law (The Case of the "Women's Model Parliament")**

Superficially, this case study could be seen as an example of positive cooperation between women's organizations and the Palestinian Authority working in alliance to change highly oppressive and discriminatory family legislation and working together to confront the social and ideological domination of the Islamic fundamentalist movement. This positive view, however, does not take into account the more problematic aspects of the political environment in which the women's movement- PNA "alliance" took place. The case is exemplary of the extent to which the majority of pro-democracy and reform Palestinian cso's during the "post-Oslo transition" are in fact caught in a dilemma -- that of being trapped between a highly authoritarian and undemocratic government structure and its main and most powerful opposition -- the Islamist movement. The case ultimately shows the limitations of Palestinian cso's organizing for progressive social and political change in this context while only having an extremely limited popular mandate.

In the case of the "Women's model parliament" -- the outcome was that the women's movement was unable to be bring forth real social change because its allies (secular political groups) were both politically weak and ambivalent

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<sup>44</sup> Interview with Graham Usher, the Economist correspondent, September 20, 1999.

about the implications of gender equality.<sup>45</sup> This weakness, led the women's movement into a situation of being patronized by the government (the Palestinian Authority) which accomplished to "manage" the conflict. Its prime concern was not to let the Islamists gain more ground in the society by making the Authority seem to be in collusion with the women's movement. At the same time the PA, saw that suppressing the parliament would only lead to a greater alienation among the mainstay of its largely secular supporters. In this highly contested political field in which the women's movement was largely powerless, the actual goals of the campaign -- the reform of legislation -- was completely frozen.

At the same time, the campaign very importantly opened up a vociferous public debate about fundamental aspects of citizens rights and the role of law in society. This crucial debate had been largely absent in the post-Oslo transition in which there has been a growing clamp-down on rights of free speech, the press and human rights organizations and where existent political parties have failed to develop the necessary structures and visions that would make them a viable political alternative to the state and the Islamists. The fact that social issues are viewed by the government as relatively "benign" allowed an opening for this discussion to begin. However, once it developed into a full-fledged clash of political and ideological wills -- the PNA stepped-in as both protector of women's organizations and as arbitrator between different sectors of civil society. The result being that, the authoritarian role and nature of the government was not challenged but strengthened as it simply absorbed and subdued the public debate.

### *Background: The Women's movement and the Post-Oslo Era*

Since the declaration of the Oslo Accords in late 1993, Palestinian women rights cso's have organized a variety of initiatives and activities aimed at reforming existing civil, criminal and Shari'a legislation from within a gender equality perspective. Women's rights cso's have seen the transitional period with its creation of a Palestinian governing body and legislature (the Palestine National Authority and the Legislative Council) as a crucial opportunity to impact the development of government policy and legislation while these are still in formation. Based on a longstanding history of women's contribution to and integration in the struggle for national liberation, the women's movement has a relatively high amount of popular legitimacy in Palestine in comparison to other Middle Eastern and Islamic contexts. In addition, the Palestinian women's movement made up of a broad coalition of women from political parties,

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<sup>45</sup> This case study is based on an article co-written by the author with Penny Johnson. The author would like to recognize Ms. Johnson's pivotal contribution to it.



factionally-based women's "committees", Charitable Association members, PLO women's Unions, and the slew of more recently emerged women NGO's has been perhaps the most active and mobilized social movement during the transitional period. Its strength is due to a number of factors: the pluralistic nature of its constituent parts, the autonomy acquired from political parties during the early 1990s which allowed many women's activists and organizations formerly associated with parties to survive the political crisis the parties have been undergoing; the availability and ability to exploit donor money for gender issues; and finally a clear articulated and shared agenda for women's equality. At the same time, the professionalization of many women's rights cso's has led to a de-linking of it from its former popular base. As such, although the movement enjoys a wide support among women in different sectors of society -- it no longer has an on-going organizational system in which to link with or mobilize them.

*Background on Legislative Reform:*

The tangled and contradictory nature of the legal situation in Palestine is another legacy of the various foreign powers that have ruled or occupied the remaining areas of historic Palestine (the West Bank and Gaza Strip) since 1948. Original Ottoman legislation in place in Palestine in 1922 was overlain with an array of Emergency Regulations (Military laws) by the British Mandate authorities who ruled the country until 1948. Following this period, Gaza came under Egyptian rule which reformed some sectors of law in line with those existent in Egypt while also expanding the jurisdiction of military laws. The West Bank, which was annexed by Jordan was brought under the Jordanian legal system. Following 1967, Israel left the existing civil and Shari'a systems in place in the two areas but massively expanded the use of military regulations -- which became the cornerstone of their strategy to colonize the land and expropriate the natural resources of the occupied territories. Under Israel rule, the regular criminal and civil court system went into near-collapse. Most Judges and public prosecutors from the pre-67 period remained on strike throughout the period of the occupation, while those who took their place were viewed as untrustworthy due to being appointed by the military government. Court buildings, files and registration systems were in a state of chaos -- and the population turned to versions of the indigenous system of customary law to deal with their internal legal disputes.

Akin to many other Middle Eastern contexts, only personal status law in Palestine remains under ecclesiastical courts up to the present. As such, marriage, divorce, inheritance and most areas dealing with men and women in the private sphere remain under religious legislation (Christian ecclesiastical

courts for the Christian minority, and Islamic Shari'a courts for the Muslim majority). While both Egyptian and Jordanian authorities made adjustments to Shari'a in the West Bank and Gaza Strip (in line with changes there) -- the Israeli authorities generally did not intercede in the working of the courts. As such, the Shari'a courts are one of the few areas of the legal system that was utilized by the population under occupation. However, the courts were seen as extremely conservative in their judgements and very lax in their application of the law when it would favor women.

The Palestinian Authority stepped into this context of the deeply de-developed nature of the legal system as a whole but has largely been seen as making it worse rather than better. To date, the Executive Authority has refused to pass the principle piece of legislation mandated to it under the Oslo Accords - the Basic Law. The draft Basic Law was passed by the democratically elected Legislative Council after its fourth reading but the President of the National Authority has refused to sign it into law. Similarly, the Legislative Council has reviewed and passed a variety of legislation only to have the final passage of the majority of them blocked by the President. The Authority continues to by-pass the existing legal system and is viewed as consistently attempting to thwart its re-organization and development. Instead, it has developed its own "military courts" and various actions and policies by the intelligence and military infrastructure suggests that it prefers "political arbitration" to the rule of law. One outcome of this is that issues such as human rights, legislative development and reform or unifying the legal system have largely fallen to cso's to deal with. In May 1999, a report by the United Nations Special Coordinators Office on international donor contributions towards the development of rule of law in the West Bank and Gaza caused a public outcry. An analysis of the report suggested that of the more \$100 million (US) given or pledged by donors to the law and human rights sectors since 1994 -- only \$3 million had gone to the Ministry of Justice while the rest had gone to NGOs.

#### *The Model parliament:*

Despite this the virtual paralysis of legislative activity in the Palestinian Legislative Council, the women's movement's most visible activity since Oslo was a shadow or model parliament that in fact passed a wide range of suggested amendments to existing law, after a series of activities reviewing a wide range of legislation in areas of criminal, civil and personal status law.

The model parliament was a culmination of a series of related activities which began in 1994. A major conference on Women, Justice and the Law (coordinated by the Palestinian human rights organization Al Haq) in September 1994 was followed by regional workshops on gender and legislation

in 1995, and a series of regional and national activities in 1996 and 1997 culminating in the elected model parliament (coordinated by the Women's Center for Legal Aid and Counseling (WCLAC) and a steering committee of women's organizations.

The activities of the model parliament were initially conceived of as an "exercise," where arguments for women's rights and legal reform could be tested and refined in a participatory and public manner. As such various regional groups (composed of a broad spectrum of community activists and leaders -- not only the cadre and supporters of the women's movement) reviewed existing legislation in three main areas of law; criminal, civil and personal status law. Regional groups were supposed to develop basic principles on which specific laws should be reformed and then in the final "parliament" these principles would put into effect and the specifics of language would be voted upon. Thus, in a series of regional workshops, women and men considered labor, social welfare and education, criminal and public law, among others, and effectively used the principle of equality to discover gender inequities that should be addressed, as well as recommending special provisions for women's rights in such issues as maternity leave and violence against women. The stated aim was, "to pass Palestinian legislation that ensures equality and women's human rights for Palestinian women, as well as their participation in building a civil society based on justice, equality, respect for human rights and rule of law".

In general, regional groups working on issues of labor law, criminal law and civil law were able to easily reach consensus over changes in line with the principle of equality. Applying the principle of equality in personal status laws, however, was much more difficult for participants in these fora, given that the Shari'a has a legally--defined model of family and gender relations based on complementarity between male and female roles, rather than equality. Rights and obligations are seen as equivalent, rather than equal: the husband's responsibility for "maintenance" of his wife is exchanged for female "obedience" in the exercise of her marital and child raising duties in the home. More problematical, Shari'a law in the Palestinian context, as elsewhere in the Middle East has become seen among many social groups as "the preferential symbol" for Islamic identity (Helie-Lucas 1994, 391). As such it is an extremely charged political symbol.

Within the various regional groups, contesting approaches to Shari'a quickly emerged. Where religious or socially conservative groups had no difficulty in applying the principle of equality to other areas of law, the consensus quickly broke down on using the principle when dealing with

personal status. Several different approaches emerged to the question of reform of existing personal status law. A number of women activists consistently advocated applying the principles of gender equality in the Palestinian Declaration of Independence and United Nations resolutions and pushed for a civil family law applied in civil courts. They additionally invoked the PLO's signing of the 1979 CEDAW as a legal justification for this position (Othman 1989, 67). A second trend responded with an almost blanket endorsement of Shari'a without further interpretation and reform, except by religious authorities. Their claim was that Shari'a is basically "God's Law", is not open to human intervention and in any case its spirit is based on principles of Islamic justice and equality (Othman 1998, 66). A third position essentially compromised between the two, by advocating reform within Shari'a law and affirming that Islamic law is responsive to change that reflects the needs of contemporary women and society. They argued that Shari'a legislation in every Arab country is the product of interpretation by various schools of Islamic jurisprudence and that current Palestinian legislation was not only woefully out of date with current social and economic life, but was imposed on Palestinians by various foreign powers (Othman 1998, 66-67).

The debate however, tapped into a set of deeper issues about Palestinian nationalism, political culture and identity. First of all it raised questions about the right of individuals (especially secular ones) outside the religious hierarchy to debate fundamental aspects of religion and law. This arose through the attack by Islamists (as well as religious jurists) who framed their arguments around the illegitimacy of the parliament and its members to even discuss Shari'a. The "right" to debate was made even more critical by the fact that, an attack on the regional workshop in the northern city of Nablus posed the illegitimacy with reference to the fact that the speaker presenting the case for unified civil law to replace Shari'a was a Christian. The attempt to exclude Christian Palestinians from having a say on the issue deeply contradicted the nationalist consensus -- which has always prided itself on bridging the Muslim Christian divide in the community. The right to speak, although becoming the focus of the extended public debate about the parliament, was in some ways secondary to a more critical issue which confronted the women's movement itself. This was over what to do with Shari'a legislation as existed -- reform it within existing parameters, push for a unified civil family law and courts in line with the equality argument; or a compromise proposal akin to what had evolved in the 1994 al Haq workshops -- a parallel system of civil and religious courts which individuals could choose between. This debate was a West Bank based one, given that the workshops in Gaza (whose sole focus was on personal status law) had from the outset decided on the internal reform framework and had successfully gotten most of the local religious hierarchy on their side.

The Islamist attack on the model parliament was also West Bank-based reflecting internal divisions within the Islamic movement as well as, the different approaches taken by the women's movement in the two dis-connected regions of PNA rule. The Islamists mounted a well -organized campaign whose aim was to de-legitimize the women's movement in order to thwart the nascent debate on reform of Shari'a. The larger political goal of the attack was to mobilize popular support for the Islamists through positing themselves as protectors of the nation's social and moral values. This should be understood in a context of declining political support among the population at large for the movement.

The movement's campaign began with the wide-spread distribution of a pamphlet entitled "The Arab Woman and the Conspiracy of the Secular Women". The booklet defames the women's movement as tools of Western conspiracies whose goal is to destroy the Islamic family and Palestinian social and religious values. The booklet sketches out the various ways in which reforms of Shari'a suggested by the model parliament would lead to the moral breakdown of society. Soon Imam's associated with the movement took up the call and preached against the model parliamentarians in Friday sermons. At Universities and other venues, the Islamists organized rallies in which "spokes-shaykhs" of the movement offered doomsday scenarios of the implications of the parliamentarians' recommendations. Various women's movement activists attempted to speak at these rallies but largely found that their pleas for calm reason and logic were buried under the populist rhetoric of the shaykhs to their followers. Overwhelmingly, the tone of the attack was political and aimed at popular consciousness about morality. Religious argument, or jurisprudence was not involved in the Islamist discourse (although within the parliament it was invoked by local Islamic jurists).

Instead, their focus remained a political attack on the parties behind the idea of legislative reform and essentially never addressed the very real problems of the current legislation that exists -- problems that are perceived by the society at large and not simply, the women's movement. Instructive in this regard, is the fact that divisions between the male leadership of HAMAS and some of their younger female constituency (a number of whom were participants in the parliament workshops) began to emerge.<sup>46</sup> Maysun al Rahmeh, from the

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<sup>46</sup>. In a conference held by the Islamic Block in Ramallah on March 13 entitled "The Women's technical Committee and the Conspiracy Against Palestinian Women" in which they were able to round up 300 public schoolteachers, clear signs of an emerging split between Islamist women who supported elements of the parliaments recommendations and the extremely conservative focus of the (male) leadership who refused to acknowledge that current Shari'a legislation needed reform.

HAMAS associated, Al -Khanisa Society for Women, made the clear statement in the local papers that she was not in principle against the parliament, but felt that she and other Islamist women were excluded from it -- or in her own case, were only included near the end and as an after-thought.<sup>47</sup>

However, the formal religious hierarchy were not supportive of the attack -- but seemed more concerned that they were not being consulted. The head of the Shari'a high court of appeals in the West Bank, Shaykh Hamad Bitawi (who participated in the last parliament session in the West bank) in a series of public statements made clear that, "...in the shari'a courts, we are for women's rights, if what is meant are their rights given to them in Islam...the problem is that some groups have started to incite against the personal status law...".<sup>48</sup> He and the Mufti of Jerusalem (Akrama Sabri) both publicly supported the change and reform of current Shari'a legislation, but emphasized it should be undertaken by specialists, "Shari'a judges, muftis and professors of Shari'a in the Palestinian Colleges".

Because the model parliament became the focus of such a public attack -- the PNA and political parties who had barely noticed it, were forced to react. A leading Democratic Front (FIDA) legislative council member was one of the first to come out, publicly against the Islamist campaign and in defense of the parliament. In one of the main local newspapers he charged that the attack on the parliament was an attack on free speech and freedom of thought. He also explicitly suggested that the attack was an organized political campaign by "the Muslim Brotherhood" who had felt themselves marginalized over the past period, and who tried to frighten the populace back into their arms. The Palestinian Authority, then intervened and in a rather uncomfortable situation the final session held in the West Bank town of Ramallah, had to wait until the PA military governor of the region arrived to open the session with a speech containing a message from President Yasser Arafat. Here the right to freedom of thought and expression was invoked, by the governor, at the same time that it was made clear albeit (in ambiguous terms) that the president supported legislative reform and women's rights..."as long as they do not contradict Shari'a".

As the final national session moved to Gaza, the parliament assumed more and more the stature of a nationalist (rather than simply "women's") event. The proceedings began with solidarity speeches given by representatives of every political faction (including Islamic Jihad) and only excluding HAMAS. Almost every speaker included in their speech, an affirmation of the important

<sup>47</sup>. Al-Ayam March 14, 1998

<sup>48</sup>.ibid

role of Palestinian women in the national struggle and an affirmation of the right to free speech as being part of the national consensus. Typically, women's rights were linked to the modernist and nationalist project of state building. When it came to the issue of Shari'a, there was also consensus that it should be reformed -- and again, nationalism was invoked as a justification for its reform. The laws on the books (including Shari'a) were repeatedly described as "foreign" and the creation of various occupying governments -- changing the laws was invoked as part of what states do -- i.e. by changing the laws, Palestine and its institutions would be coming closer to statehood.

However, in terms of the specifics of legal reform most of the political leaders in their speeches were quite conservative in their focus and recommendations. A leading member of Fateh in the PNA focussed on women's lack of inheritance and linked it to "backward" practices such as intermarriage - - clearly suggesting that the problem was not the laws but their lack of implementation. The Communists Party speaker said it was necessary to "control" polygamy and that the Parliament should not allow divorce to become rampant. The Islamic Jihad speaker affirmed that Islam is no obstacle in the way of women and then excused himself from not making any specific suggestions around the law because he had not seen the documents.

Despite the reticence in the speeches by representatives of the nationalist factions, the final session of the model parliament did go on to pass a number of quite radical recommendations in terms of legislative reform. At the same time, the recommendations themselves had no political weight or legal standing. They did not represent the outcome of a democratically elected body charged with the purpose of legislative reform. Nor did the parliament represent a political movement with political weight that would be able to effect change through the political system. The participatory process that the women's movement used to try and get various sectors of society represented willy-nilly in the model sessions was no substitute for either. The main model parliament organizers (The Women's Center for Legal Aid and Counseling) has decided that the next phase of the campaign is to lobby individual members of the democratically elected (but largely powerless) Palestinian Legislative Council to work towards enacting gender-equitable legal reform. The organizers say that they are now going "all-out" for civil law but will not do another public campaign given the political spotlight they found themselves in with model parliament. As such, they are not taking the main recommendations of the model parliament to the legislative council -- and have narrowed participation as opposed to opening it up. At the same time, President Yasser Arafat has appointed three different committees of religious clerics to propose changes to existent Shari'a law -- there are no women nor any women's movement supporters on these

committees. The women's movement's repeated requests to have their own representatives on these committees have been refused.

### **Case 5**

#### **The PNA versus Hamas; the Situation of Dual Power in a Context of State Building without Sovereignty**

This case study reviews and analyzes the ongoing political conflict between the Palestine National Authority (PNA) and its main opposition, the Islamist movement HAMAS during various stages of the state formation process. It raises a number of issues of importance to understanding conflicts between state and civil society in an incomplete post-liberation situation. At various times, the nascent government has been under enormous pressure to actively suppress sectors of civil society at the behest of powerful external players (in this case Israel and the United States). One of the crucial components of the negotiated agreement between the PLO and Israel, was that the former would not only forego armed struggle against continued Israeli hegemony, but would also suppress political groups in Palestinian society who continued an armed struggle against the occupier. Foremost amongst these was the Islamic Resistance Movement (HAMAS).

HAMAS is an important case which challenges our understandings of civil organizations. In its strategies and structure it mimics the classic form of many leftist liberation movements. That is to say it has had both a state-building/service delivery component, as well as an armed wing. It initially arose as a quietist movement -- and built a base of support through the provision of a wide-array of civil society organizations (educational, charitable, and service oriented). Its armed wing developed much later -- in 1988 following the outbreak of the mass uprising (Intifada) when it was perceived that the movement was losing its constituency to the nationalist struggle against the occupation dominated by secular PLO-affiliated factions. At various times, one or the other component of the movement (the militarist versus the service-oriented) has been more dominant in terms of it mobilizing support from the population and there have also been conflicts and contradictions between the two.

Since Oslo the PNA's main strategy for dealing with HAMAS has been to attempt to co-opt it into the ruling authority -- despite the ongoing demands by Israel and the U.S. that the PNA simply use brute force to crush it. This is because the PNA sees that the movement has a large and popular constituency - a constituency that was largely built through its service and educational infrastructure rather than simply its military wing. At the same time, not



suppressing HAMAS has put the very existence of the PNA at risk -- as its creation and sustainability is profoundly dependent on Israel acquiescence and U.S. support.

### **Periodization of the Conflict Between HAMAS and the PNA:**

#### *Phase 1: May - November 1994 Period of Dual Power in Gaza*

Polls throughout the early 1990s, showed that HAMAS garnered a high level of popular support with approximately 35% of the population supporting HAMAS over secular political factions and political independents. The strength of support in Gaza for HAMAS was higher -- since Gaza was the movements home-ground. Moreover, in Gaza in the later stages of the Intifada HAMAS had come to dominate the politics and cultural life of the population at the level of the everyday.

The Oslo Accords called for a phased withdrawal of the Israeli military and ruling bureaucracy from Palestinian population areas, with the first areas that withdrawal would take place being Gaza and Jericho. Simultaneous with this would be a hand-over to Palestinian police (the majority of them made up of PLO military forces who would be brought in from various exile contexts). This first withdrawal and hand-over took place in May 1994. Palestine police took over all Israeli military installations, as well as the civil bureaucracy within a few short days in Gaza. At the same time, the political leadership of the PLO remained outside until July 1994 -- meaning that a full political transition was incomplete. This period and even prior to it when the IDF knew they would be withdrawing was one of relative anarchy -- with a growth in militarization of the population, as well as various vigilante-style groups based in political factions trying to assert their strength and power prior to the coming of the political leadership. HAMAS, was the movement most vociferous in rejecting the Oslo Accords and continued not only to try and rule the streets but continued to engage in armed military attacks against Israeli installations in Gaza -- which had remained to protect Israeli settlements.

With the coming of the political leadership to Gaza in July 1994 the conflict between HAMAS and the PNA became even more critical. HAMAS's leadership at various public rallies refused to recognize the legitimacy of the PNA, military operations both within Gaza and in the West Bank seemed designed to specifically embarrass the PNA and show its lack of power and authority. Israel also showed the weakness of the PNA by undertaking the assassination in Gaza of Hani Abed, an Islamic Jihad activist, right under the

nose of the PA -- suggesting also that the nascent authority had no power (and no right under Oslo) to stop Israeli incursions into the self-rule areas.

To this point in time, the PNA felt itself too weak to openly confront HAMAS. Instead, it tried to use the usual mechanisms of patronage to co-opt them -- most specifically HAMAS was offered a number of seats on the PLO executive -- a strategy that failed when the HAMAS leadership demanded 40% of the total seats available. At the funeral in Gaza of Hani Abed, the PNA chairman (Yasser Arafat) came to pay his condolences and was publicly booed and humiliated. An internal debate within the PNA took place during this period with military officials who had come from exile pushing for a military crack-down on HAMAS, while the political leadership from within Gaza knowingly calling for caution and continued negotiations.

*Phase II: Military Repression Versus Political Repression (November 1994 to February 1996)*

The next phase of the confrontation between the PNA and HAMAS was the period when there was an attempt by the PNA to make a split between the military wing of HAMAS on the one hand and its political wing and civil society infrastructure on the other. The specific event that represented this change in strategy took place on November 18th 1994, when the Palestine Authority police opened fire on a rally of Islamist worshippers outside Palestine mosque in Gaza -- killing 14 of them and wounding another 250 -- a worse number of fatalities in one day than had ever taken place under Israeli occupation. This confrontation, set the stage for an increasingly authoritarian regime willing to wield violence against political forces that might threaten its hegemony. In addition to the growing conflict outlined in period I above, the background to this incident also included an explicit threat by then Israeli Prime Minister Yitzhak Rabin in early November 1994 that he would re-enter Gaza and crush HAMAS militarily if the PNA didn't. Rabin's threat if carried out would clearly result in the end of the PNA and the Peace Process.

The rally at the Palestine Mosque had been organized by HAMAS in defiance of a ban imposed by Chairman Yasser Arafat on the holding of a public funeral for an Islamist suicide bomber who had attempted to carry out an operation on an Israeli settlement in Gaza in early November 1994. More than 2,000 worshippers rallied at Palestine mosque in defiance of the ban -- and it was alleged that a number of them were armed. The rally posed a frontal challenge to the authority of the PNA as a government with the legitimacy and power to impose public order and its political will. As the worshippers came out of the mosque they were confronted by Palestine police -- many of them

probably trigger happy due to the ongoing sense of powerlessness and humiliation they had been feeling both vis a vis HAMAS as well as Israel. Following angry verbal confrontations -- the police began to open fire with the fatal results already mentioned. It seems clear that there was not an explicit order to fire but that the situation spiraled out of control. The incident clearly brought home to the head of the PNA -- that the Police -- largely from his Fateh movement had been wanting a military confrontation with HAMAS and that he might be losing control over them if he did not support their action. In the immediate aftermath of the massacre, Arafat confined the police to barracks and set up a series of mediating committees in an attempt to resolve the conflict with HAMAS politically. However, the next day the streets of Gaza were witness to the first ever military parade held by the PNA followed by a major Fateh/PNA political rally -- in a huge show of strength.

As mentioned, the massacre and its aftermath represented a major turning point -- in how the nascent governing authority chose to deal with its main opposition. As challenges to its legitimacy turned into perceived challenges to its very survival given the extremely constrained parameters (both political and geographic) of the peace process it weighed in on the side of militarily crushing HAMAS into political submission. This tactic clearly worked for a period -- the HAMAS political leadership began to face the reality that in a military confrontation they would lose to Fateh. Thus, the following period was one of a relative political "cease-fire" between the two sides.

The basic contours of this "cease-fire" was that any military actions by HAMAS within PNA territory would be met with mass arrests. In September 1995, an agreement was worked out by the PNA and the HAMAS political leadership that the former would use all its influence to stop Israeli pursuit of wanted Islamist activists in PNA territory. In return, the political leadership of HAMAS would try to stop any actions that might de-rail the peace process -- or that would put the PNA in a vulnerable position vis a vis Israel and the United States. Throughout the period between September 1995 until February 1996, the agreement actually worked. What then led to its unraveling was ironically the assassination of Israeli premiere Yitzhak Rabin in November 1995.

### *Phase III: The End of Political Cease-fire; Islamist Civil Society Organizations Held Hostage (January 1996-1998).*

In January 1996, a bomb hidden in a cell-phone killed HAMAS bomb engineer, Yahya Ayyash, in the Gaza refugee camp of Jabaliya. Although wanted by Israel for being the technician behind a number of suicide attacks on Israeli civilians, the PNA had been until then able to get Israeli compliance for its



cease-fire agreement with HAMAS. The Israeli security establishment understood, that as long as it did not assassinate HAMAS activists, the HAMAS political leadership could prevail on the military wing not to undertake vengeance attacks. What led to the changed Israeli policy was the assassination of Yitzhak Rabin. The Israeli Shin Bet (internal security apparatus) had come under severe public criticism for failing to properly protect the prime minister. The assassination of Ayyash was an attempt by the Shin Bet to publicly rehabilitate their battered image among the Israeli public.

Ayyash's funeral was attended by more than 100,000 people in Gaza -- suggesting not so much actual support for his role, but immense public anger at Israel and a chance to express the great disappointment towards what the peace process had become at the level of everyday life. HAMAS's military wing was swift to act. Between February and March 1996 four major suicide operations were undertaken against Israeli civilians within Israel -- resulting in enormous carnage. This put the PNA under immense pressure by Israel and the United States. Until this point, the PNA had been able to persuade them that co-optation of HAMAS rather than the use of brute force was the best strategy to domesticate the movement. After the series of bus bombings, however, Israeli public opinion towards the peace process became the sole priority for Israel and the United States. Thus, the PNA was under immense pressure to finally move to "crush" HAMAS -- and specifically its military wing. Given the underground nature of the military wing, as well as the tenuous links between it and the above-ground leadership-- this was no easy task.

Here it is important to mention that until this point, the PNA had in its various conflicts with HAMAS, never moved against the movement's social service infrastructure. As mentioned earlier, HAMAS and its affiliated organizations had a large and sophisticated social service, charitable and educational infrastructure -- especially in Gaza. These civil society organizations run by the movement included a university, a network of clinics, an array of charitable organizations, tithes committees, daycare centers, football clubs, schools, two human rights organizations, a newspaper and very importantly a huge network of mosques through which movement delivered its message and many of its services. After March 1996 -- the PNA no longer left this infrastructure out of its campaign. The University was raided, 20 organizations were closed, and the newspaper was shut-down. More threateningly for HAMAS's political leadership -- the PNA undertook a series of take overs of their institutions. As many as 459 mosques in Gaza were taken under the auspices of the PNA - and this was followed by a steady campaign of undermining, HAMAS football clubs so that youth would join Fateh sponsored ones instead. This took place within the context of a massive and ferocious

crackdown on HAMAS activists -- with more than 1,200 activists, former activists and family members rounded up and imprisoned within an eight week period immediately following March 1996. The wide-spread use of torture during this period (in two cases resulting in death) has been well-documented by both local and international human rights groups.

What is clear, especially given the quiescence of HAMAS following this period, is that the use of the islamist civil society organizations as a bargaining chip was able to finally bring the political leadership of HAMAS, and thus the movement as a whole under the government's hegemony. Although most of the armed cells of HAMAS have been destroyed by the PNA and Israel over the past two years – what is perhaps of more significance is the fact that the main political leadership has come to distance itself politically from armed actions. Holding the civil society institutions of the movement hostage seems to have been the main strategy that was able to achieve this outcome.<sup>49</sup>

## **Case Six**

### **Governance and Control of Urban Space in Jerusalem**

#### **1. An Atomized City**

A significant feature of Jerusalem is its segmented, communal character. Jerusalem, unlike Hebron and Nablus, has no urban centre. Its old neighbourhoods continue to display a confessional, 'closed' character. Only in the outer areas of Sheikh Jarrah, Shu'fat, and Beit Hanina do we see a pattern of bourgeois modernity that emerged in the 1950s. These patterns were preceded by the emergence of new middle class neighbourhoods in Baq'a, Katamon, and Talbieh—West of the old city—in the 1930s, but were soon destroyed in the war of 48, and their inhabitants exiled to the Eastern part and the rest of the diaspora.

There is a substantial degree of communalism, one is tempted to say ghettoization, also in the Jewish part of the city—particularly among the haredei and ultra orthodox communities, in Mia She'arim, the Bukharan Quarter, etc...where urban consciousness is subordinated to an internal religious normative ethos. In the rest of the Jewish city however, both in workingclass sephardic communities, as well as in Europeanized ashkinazi quarters we witness an urban culture which resonates with issues common to European cities: tenancy and property battles, campaigns for the fate of local taxes, the

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<sup>49</sup> The author would like to thank Graham Usher for information as well as insights that were extremely useful in developing this case study.

citizen as a consumer, neighbourhood struggles which are integrated into national politics, and so on.

This is not the case in Arab Jerusalem. In the old city the neighbourhoods are isolated and confessional in character. There is widespread desertion of the middle and professional strata to the suburbs. While the Muslim, Christian and Armenian quarters are becoming pauperized, the Jewish quarter—by virtue of its expansion and reconstruction—was transformed into a millionaires ghetto. Outside the old city the adjacent communities are also segmented, and exhibit a high degree of localized consciousness. Rural communities, such as Silwan, Tur, and Izariyyeh, have become fully urbanized, but without urban consciousness. Like Shufat, Beit Hanina, and Ras al Umud they are virtual dormitory communities, where people commute to work elsewhere. All of these communities outside the old city have two social features in common:

- they have no centre around which communal life can be organized, which enhances the role of family dwellings and local clubs as social nodes for gathering and visitation.
- they are completely lacking in an internal economy which typifies traditional urban communities (crafts, or food processing), as well as in substantial shopping centres which feature in modern urban developments. In effect they are local 'grocery store' communities.

Politically Jerusalem lost its hegemonic political elite, the class of notables, which in the Mandate constituted a national elite. The war of 48, migration, and the loss of the trade networks with the coastal region all contributed to the demise of this class. During the fifties and sixties the remnants of this elites (members of the Nashashibi, Nusseibi, and Khatib clans) were incorporated into the Jordanian governing class. Others maintained powerful positions in the Awqaf administration—now shared with Hebron families.

With Israeli occupation (1967 to the present) these elites were reduced to merchant families that continue to maintain family property and interests, but they no longer constitute a component of a national elite, which was completely submerged by the emergence of the PLO. The fusion of the PLO bureaucracy into the West Bank and Gaza locale elites after 1994 did little to revive the demise of these notables. What replaced them was not a new rising strata of professionals, party apparatchiks, and returnees—as we witnessed in Gaza, Nablus and Hebron—but the gradual atomization of power. The results of the legislative elections of 1996 to the national assembly were illustrative. The winners were either members of provincial Jerusalem families, from the rural

outskirts, or outsiders. Very few members of the old notable families contested the elections. Those who did, lost.

## 2. Features of Exclusion

The disempowerment and disenfranchisement of the Palestinian population of Jerusalem was achieved through a series of exclusivist policies. The extension of Israeli services and social benefits of the welfare state (National Insurance and health benefits) was the compensatory price for disenfranchisement.

The process of exclusion and subordination was executed through four mechanisms: (a) annexation, (b) zoning regulations, (c) residency and access restrictions, and (d) demographic control.

The extension of Israeli law (“Jerusalem Law”) in 1968 and 1981 the area(s) of East Jerusalem ended the status of Jerusalem as a capital of the West Bank, and centre of the Governorate of Jerusalem. New areas to the north, south and west of the city were added to the Municipal borders of the Israeli city, and other neighbourhoods, were excluded. The net effect was to break economic and demographic continuity between Jerusalem and its Arab hinterland.

No new suburbs of neighbourhood were allowed inside the municipal boundaries; one neighbourhood—the Mughrabi quarter, inside the old city was completely demolished—while 31 Jewish neighbourhood were added since 1967. Restrictions on Arab housing took the form of draconian municipal measures, which withheld permits for new or expanded construction, and demolished illegal building. [Amira Haas wrote recently in Haaretz that although both Arabs and Jews receive warnings about illegal buildings, Jewish violators never face actual demolition]. Since 1967 around 12% of all new construction took place in the Arab sector, which represents one-third of the total population. The annual rate of building is 2,200 apartments for Israeli Jews, against around 230 for Arabs (about 10 to 1). In Jewish neighbourhoods recent changes in the regulations allow contractors to build up to 8 stories in height—compared to two stories in Arab neighbourhoods. Since 1967 over 70,000 Jewish settler families have received subsidized housing in East Jerusalem, while only 550 Arab families received such subsidies .

### *Ethnic Residency Rights and Denial of Access*

By separating the (newly constructed) boundaries of Jerusalem from the West Bank, access to the city was denied from Palestinians living in the greater Jerusalem area (as well as those in the West Bank and Gaza). Residency rights were restricted to those who were registered in the census of September 1967. Movement into the city, as well as benefits and property rights were effectively

barred to all Palestinians, including those who were born in the city but who failed to be present there when the census took place.

Since the Gulf War (1990) restrictions of entry into and transit from the city became, requiring special permits. New border checkpoints were established separating the city from its Arab hinterland. These restrictions became very severe after the signing of the Oslo Accords in 1993. Less than 5% of the population (mostly workers) received such permits in the 1993-1998 period.

The effective result of this separation has been to rupture the city from its natural geographic environment, and to undermine the city as a market and service sector for West Bank Palestinians. It has also served to disconnect the continuity of the emerging regional conurbation connecting Jerusalem with Bethlehem in the South and Ramallah in the North.<sup>a</sup> Instead a new conurbation emerged linking the core of the city with Jewish satellite settlements in the South West, North East, and North West.

The ostensible purpose for this denial of access is to protect the security of the Jewish population from terrorist activity that originates in the West Bank. However the latent, but hardly disguised objective, seems to aim at preempting final status negotiations over sovereignty in the city, by creating a defacto separation from the city and many of its Arab neighbourhoods. It has also encouraged the evolution of Ramallah and Bethlehem as surrogate capitals for the Palestine Authority.

### *Demographic Encirclement*

A hypothetical figure of 29:71% has been suggested as determining the higher ceiling for Arab demographic growth in the Jerusalem municipal area. In order to maintain Jewish demographic hegemony a number of incentives cater primarily for incoming Jewish residents (many of them in conjunction with religious institutions—like Ateret Cohanim—which target Jewish settlement in Arab neighbourhoods: housing loans, employment or study opportunities, and security in residence. Unlike most Palestinian residents of the city, Jewish residents, by virtue of being Israelis, can move in and out of the city without losing their residence rights. An Arab resident is faced with the threat of becoming an absentee if he/she moves temporarily abroad or, indeed, even for few kilometers outside the boundaries of the municipality.<sup>b</sup> Since many Jerusalemites have been compelled to re-locate to the suburbs as a result of the housing crises, few thousands are now facing losing their rights of residency in the city.



This combination of demographic-political planning, combined with an ethnic definition of citizenship, has had a critical effect on long-term devolution of Palestinian relationship to their city. In particular it has restricted population growth through internal migration to the city, and encouraged existing residence to relocate outside the city. Occasionally this policy has boomeranged—during the years 1996-1997 net positive relocation by Palestinian ID holders from the suburban communities to the city was recorded in response to the threat of losing their IDs. For the first time in over a decade the number of Arabs superseded that of Jews in the Eastern part of the city. But it is difficult to draw a long term trend from this .

### **3. Jerusalem is No Longer an Arab Metropole**

The general impact of these policy decisions on the part of Israelis that Jerusalem has lost its status as a metropolitan centre for the Palestinian population of the central West Bank.

Before and after Israeli occupation of 1967, up to the mid 1980s, Jerusalem was the major urban centre for the West Bank as a whole and served as a combination of market town, a centre for banking and credit, an employment centre, a religious centre, a service centre, as well as an educational and cultural magnet for the country as a whole. Jerusalem contained the major specialized and general hospitals, the major shopping centres, educational and research centres, and religious services for both Muslims and Christians of all denominations.

Religion provides a major economic services for both Arabs and Israelis: Welfare endowments; pilgrimage networks; hotels, restaurants, and tourist industries; and many ancillary services that serve religious visitors to the city. By restricting access to the city Israel contributed effectively to the strangulation of these social networks and the economy that sustained them. Furthermore North/South trade routes linking the regional economies of Hebron and Bethlehem to that of Ramallah and Nablus have been severely disrupted by severing direct transportation arteries that go through the city without creating alternative by-passes<sup>1</sup>.

Since the mid-1980s Jerusalem has ceased to be the major Palestinian town in economic and social terms. It has lost its service and market status to Ramallah, Nablus and Hebron. Its economy has been strangulated and become subject to West Jerusalem as a supplier of cheap labour and a minor market for Israeli commodities. It continues to invoke a considerable passion as a centre for Christian and Muslim worship, and as a contested future capital for

Palestine, but these claims contrast radically with its reduced status as a provincial and encircled Arab town. At the beginning of the year 2000 (Arab) Jerusalem is the third city in the country in terms of its population size (after Gaza and Nablus), and—if present trends continue—will be overtaken by Hebron and Ramallah-Bireh within the next decade.

### *Passive Reaction to Subordination*

Palestinian reaction to these measures of unilateral annexation have been dominated by passivity. The political bravado of Palestinian nationalist discourse camouflages a significant absence of a strategy of resistance. This passivity is due in part to the absence of a city-wide urban consciousness, described above, as well as to the recognition by the old Jerusalem elites, that a very substantial portion of the Palestinian population is of migrant origins, and therefore—‘does not belong’. It is also due to the successful Israeli campaign in coopting Arab Jerusalemites into the Israeli welfare system, and the granting of concrete privileges of residency (such as free mobility and access to the labour market( which are denied to the rest of the occupied territories .

Nevertheless Jerusalemites did respond to these forms of subordination, both collectively and individually. One can discern here three forms of responses to these impositions:

#### a. Non-violent resistance to the imposition of 'taxation without representation.'

The most successful episode of such collective action were the vigorous merchant strikes during the early years of the Intifada (1988-1990). Shopkeepers refused to pay arnona (municipal property tax) as well income tax in unison with their compatriots in the West Bank. This movement was crushed, as it was in the case of the tax boycott in Beit Sahour, by massive Israeli punitive measures. <sup>c</sup>

#### b. Political mobilization:

During the first decade of Israeli rule Jerusalem activists led the national mobilization through the network of underground political parties and professional syndicates based in the city. The forum which undertook this mobilization was the National Front and the Association of Professional Unions. Another vehicle for confrontation was the Higher Islamic Committee, also based in Jerusalem, which utilized religious sentiments and the spiritual status of the city to galvanize public opinion.<sup>1</sup> After the invasion of Lebanon ,

the leadership of these two movements shifted from Jerusalem to the other West Bank towns—particularly Nablus and Ramallah.

Jerusalem politics receded into dormancy until the signing of the Oslo Agreement, which succeeded in including Jerusalem as an electoral constituency for the Legislative Assembly. The election of six candidates (1996) from the city allowed for the integration of the city again into national Palestinian politics albeit in a more subdued and institutional manner. One of the Jerusalem deputies—Ahmad Qurai’—became the speaker of the Parliament. Another spur of mobilization began in 1996 as final status talks over the future of the city seemed impending, when two Jerusalem groups began to document Arab properties in West Jerusalem that belonged to refugees from the war of 1948, in preparation to advance claims on their behalf.

c. Survival strategies:

This refers to spontaneous acts of circumvention of Israeli measures by ‘individual cunning’ in the manner James Scott attributed to peasant responses to oppressive rule. The most visible feature of these responses are the mushrooming of illegal building activities, especially in the last decade, inside Jerusalem and in its outskirts, in reaction the denial of building permits, and the increasing congestion of limited space. Increasing demolition of non-licensed building did not lead to curtailing this phenomenon.<sup>1</sup> Within the city boundaries a variety of these tactics became more sophisticated and more difficult to combat, such as the subtle additions of new rooms for married sons and daughters, the addition of another floor to the house, etc...

During the years 1997/1998 many Jerusalemite Arabs who deserted the city began to trickle back within a variety of tenancy arrangements—mostly with members of their resident extended families—in reaction to the withdrawal of non-resident IDS by the Ministry of Interior.<sup>d</sup>

In general however the Palestinian community in Jerusalem has displayed a considerable degree of atomization and apathy in reaction to their fate. Short spurts of mass demonstrations against specific measures of Judaization (the Tunnel Affair, Har Homa, Silwan and Ras al Amud settlements—and most recently, Ateret Cohanim attempts to establish a Jewish neighbourhood in Bab ezZahira, inside the old city). Those were followed by ‘return to normal’ after dubious compromises were made with the Likud government. At the heart of these vacillations is the absence of a coherent Palestinian strategy for the future of the city.

## Endnotes

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<sup>a</sup> *The Wadi enNar by-pass which connects Bethlehem and the southern region to the North via the Jericho road is long and too dangerous for heavy hauling.*

<sup>b</sup> *Arab citizens of Israel have the same right, but naturalization into Israeli citizenship is denied to former Jerusalmites who were born in the city, or indeed to any Palestinian who is not already an Israeli resident.*

<sup>c</sup> *For a discussion of these activities see, Ann Latendresse, Jerusalem: Resistance and Urban Change, 1967-1994, Passia Publications, Jerusalem 1995*

<sup>d</sup> *Amira Haas, "Criminal Houses", Haaretz, July 15th, 1998*



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