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The Day After: paper # 7



The Effects of the PNA's Dissolution or Collapse on the Judiciary and the Functioning of the Courts

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The Effects of the PNA's Dissolution or Collapse on the Judiciary and the Functioning of the Courts

This paper is one amongst ten such papers prepared within the Palestinian center for policy and survey research's initiative titled, "The day after". The initiative aims to study the circumstances that would face Palestinian politics and society in a situation in which the PA becomes unable to carry out its role. These papers examine the consequences of the dissolution or collapse of the PA on a number of central issues that concern the Palestinians, which include: security, economy, education, health, judiciary, telecommunications, basic services such as water and power, local government, political and civil conditions, as well as the future of the two-state solution.

These papers examine the significance and implications of PA's absence as well as possible options that could be adopted to mitigate the negative effects of such an absence and develop specific recommendations for the sector in question. Two experts have commented on each of these prepared papers. Each paper was presented and discussed in a workshop attended by policy makers, parliamentarians, experts, and academics.

This initiative has been organized in cooperation with the U.S./Middle East Project and the Norwegian Peacebuilding Resource Centre.

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Summary:

Despite the success of the PNA in establishing a judiciary including judges and a public prosecutor, there are many issues concerning the formation of this power and its independence and performance.

With this in mind, the dissolution or collapse of the PNA is tied to many scenarios, each with its own effects on the Palestinian judiciary, which can be explained as follows:

First: Return of the Israeli Military Occupation.

In this scenario Israel would gradually exert control over the judiciary until the judicial status returns to that existing prior to the establishment of the PA. In this context, Israel is expected to dissolve the Higher Judicial Council and all its departments and also dissolve the Supreme Court and some specialized courts, such as the customs court, the corruption crimes court and the appeals court for income tax cases. Israel could issue a large number of military orders, and exercise a security cleansing policy in the Palestinian civil judiciary to exclude judges perceived as opposing its policies. This could lead to a situation resembling civil disobedience and strikes which could paralyze the judiciary.

Second: Unilateral Israeli Disengagement.

This scenario could have two forms: first, success by Palestinian political and social groups in establishing a unified national command to fill the political and administrative vacuum. In this situation, the Palestinian judiciary would remain unchanged and would function, at least in relation to personal disputes, or it would reform itself to enhance its reputation and public confidence.

The second form would be widespread chaos. The Palestinian judiciary would be retained, but as an ineffective body. The courts could be deserted due to lack of financial revenues to cover expenses and salaries. There could cause a return to tribal and armed group justice, which would threaten community cohesion and national unity, leading to extremism or emigration, as well as political and social destabilization.

Third: Creation of an Alternative Leadership to Replace the PNA

In this case, Israel would make use of its past experience and resort to a modern village league option. A new judicial administration would be set up, and it would be granted powers to make changes to the judiciary as it deemed appropriate and in accordance with its interests, while security coordination would remain intact.

Under this scenario, a state of instability is expected to prevail in which the judiciary loses credibility and alternative means of settling disputes would evolve. Tribal justice could assume an active role in reducing the influence of armed groups.

Fourth: Engagement with Jordan and Egypt.

Despite the improbability of this option, the situation of the judiciary would take one of two forms: First, the judicial status in the West Bank and Gaza Strip would revert to the form that existed prior to the Israeli occupation in 1967. Second, the judiciary in the West Bank would not change but it would be tied to the Jordanian Central High Judicial Council. In Gaza, the judiciary would remain under Egyptian administrative control.

Fifth: Creation of a Palestinian Entity in the Gaza Strip.

This scenario is based on the fact that Hamas, is expected to reject the idea of the dissolution of the PNA. Under this scenario, the judiciary in Gaza is expected to remain as it is at present. The judiciary in the West Bank would take the form of one of the previous scenarios until Hamas assumes power in the West Bank in place of the dissolved PNA and could then restructure the judiciary in the manner that it did in the Gaza Strip.

Sixth: Establishment of an Independent Palestinian State.

This scenario is based on the establishment of an independent Palestinian state upon the success of negotiations and Israeli withdrawal from all Palestinian territories occupied in 1967. This scenario would have an impact on the judicial administration and the judges themselves. i.e. the changes would affect the persons rather than the structure and specialties. There is also the possibility of the gradual formation of administrative courts and a constitutional court following ratification of the constitution.

Seventh: Annexation of the West Bank to Israel and Establishment of a Bi-national State.

Despite the improbability of this option, the Palestinian judiciary would cease to exist and would be replaced by a special judiciary for the bi-national state. Most probably, the Palestinian judicial structure and administration would be dissolved and Palestinian courts would adopt the Israeli judiciary and its administration and structure.

Eighth: International Supervision.

This scenario is based on the fact that the PLO would transfer the case of Palestine to the UN. In this scenario, no core changes would occur in the Palestinian judiciary, which would be placed under the direct supervision of a UN mission. The military judiciary would probably be dissolved, while the Sharia and ecclesiastical judiciary would remain unaltered.

Ninth: Renewal or Restructuring of the PNA.

Despite Palestinian refusal when it comes to a temporary state or economic peace, such a scenario is possible in the foreseeable future. Economic support to the PNA would be linked to international demands for reformation. This would push the PNA to take decisions to reform and develop the performance of the justice system in a manner that meets the demands of the donor countries, while maintaining the current judiciary situation.

Recommendations:

- Ending the trial of civilians before military courts.
- Ending all interference in the affairs of Judges.
- Reconsidering the structure of the judiciary.
- Speed in the elimination of problematic aspects of the Sharia judiciary, regarding legislature and administration and speed in dealing with the situation of the administrative judiciary, because it is a control mechanism for the performance of the executive.
- Speed in signing the Rome protocol regarding the International Criminal Court and other international agreements. Submittal of Palestinian membership applications to international organizations and agencies.
- Promotion of a culture of respect towards the law, and maintaining the requirements for societal unity and national cohesion, as well as the embodiment of the rule of law erga omnes.
- Cessation of the issuance of any new legislature in the West Bank and the Gaza Strip.

Preface:

The discussion regarding the dissolution of the PNA has taken two dimensions: The first, demanding the dissolution of the PNA under the reasoning that the PNA's presence and role have deviated from the Palestinian national standards. According to the holders of this opinion, this deviation has become a long term self rule, and an obstacle in the way of completing the national liberation program. The second dimension is represented in the view that the dissolution of the PNA would be an escape from the impasse in the Palestinian-Israeli negotiations.

Discussions regarding the dissolution of the PNA have been taking place since 2002, in the light of the Israeli incursions into Palestinian territories, in an operation which was dubbed "Operation Defensive Shield". This operation led to the reoccupation of all Palestinian territories classified as areas "A" which were, according to the Oslo accords, under complete PNA control. These discussions were resurrected in 2006 in light of the Israeli aggression on the Gaza Strip following the capture of the Israeli soldier, Gilad Shalit. This repeated itself once more in late 2008 and early 2009 during the renewal of aggression on the Gaza strip, known as Operation Cast Lead, as well as its aggression during the end of 2012 which resulted in an agreement between Israel and Hamas, with Egyptian mediation. Such discussions still persist today, through articles and statements and discussions in closed sessions featuring political leaders from within the PNA and without. As well as in studies and research prepared by both students and professors in universities such as Birzeit university and the Islamic university of Gaza.

All of the above called for the dissolution of the PNA, most prominent of which was from Yasser Abd Rabbo, who did not rule out the dissolution of the PNA as a response to Ariel Sharon's unilateral policies, as well as an article from Dr. Ali Jarbawi, a professor of political science at the time –and who later became minister of higher education- which stated that *"In order to end the occupation, and establish a sovereign state on the basis of the 1967 borders, the Palestinian side must solidify its position, and present a comprehensive Palestinian initiative aimed at reaching a settlement for the Palestine-Israel conflict on the basis of the two state solution. This initiative would grant Israel 6 months to decide on whether it is interested in ending the conflict or not. If not, this would necessitate that the Palestinian side put an end to the idea of a two state solution, and resort to the alternative of the one state solution. This is achieved through disbanding the PNA after the 6 month deadline, and handing Israel all responsibilities and consequences of its occupation. This would deprive us of an official public Palestinian continuum, meaning we must propose the one state solution to reach a two state solution. And for this one state solution to be serious, the dissolution of the PNA must be a realistic and believable possibility."*

This is next to the statements made by Fateh member Dr. Nabil Shaath, which hinted that President Mahmoud Abbas' letter to Netanyahu and world leaders holds many options, including the dissolution of the PNA, and the end of security coordination. Professor of political science and economics Hany Omar Al-Basous, in research published by the Islamic University of Gaza in its economics and administration magazine in January 2013, pointed to the fact that the Israeli newspaper Maariv reported that the PNA informed many states, including the USA and Israel, that it intends to dissolve itself in 2012, and start transferring its powers gradually to the Israeli side, beginning with civil services such as health, education and agriculture. It also pointed out that Palestinian media sources reported on President Mahmoud Abbas' formation of a special committee from the PLO and Fateh's central committee to come up with new Palestinian strategies. These strategies concern the future relationship with Israel and the PNA's future function, taking into consideration all local, regional and international developments.

The statements and calls for the dissolution of the PNA do not end there, even the president of the PLO's executive committee, and co-signer of the Oslo accords and all agreements which followed it, did not rule out the possibility. He has made many public statements in PLO and PNA leadership meetings that he might be forced to hand in the keys of the PNA to Netanyahu in case Israel continues with its settlement activity and its policy of deceit and non fulfillment of its obligations towards the

peace process.

The possibility of the PNA's dissolution affects every facet of Palestinian life. This paper inspects the effects such a dissolution would have on the Palestinian judiciary. This necessitates looking into different scenarios of dissolution, and their effects on the judiciary and its performance, taking into consideration that this decision would without a doubt, require the approval of Hamas.

The Status of the Judiciary under the PNA:

The PNA has been able to build a judicial authority (Judiciary and public prosecution) despite its many problems, such as its lack of compositional legitimacy and its lack of independence. As well as its subordination to political parties such as the case in the Gaza Strip, or the high levels of interference with its activities due to considerations that have nothing to do with the law, such as the case in the West Bank. In addition to the tendency of those working within the system in leaning towards rigid and absolute separation of powers, and the intentional lack of a flexible separation of powers, based on cooperation as it is stated in the Palestinian constitutional project. Whereas this concept is interpreted according to different interests. There is also a lack of international standards and proper application of quality checks and conditions for those who work within the judiciary. These are clearly stipulated in the Journal of judicial provisions (Palestinian civil law). As well as the intensification of the conflict regarding the powers of the Higher Judicial Council and the Ministry of Justice, and between the Public Prosecution and both, the Higher Judicial Council and the Ministry of Justice, on the question of its subordination to either of them, to the extent that some people were pushed to consider it as a fourth independent power, headed by the Attorney General, as it was successful in separating its budget from that of the Ministry of Justice and the Higher Judicial Council. There is also a persistence of executive interference in judicial affairs, and its non-compliance with some judicial decisions as well as the long period of judicial processes, and the lack of professionalism and knowledge. All of this has weakened public confidence in the judiciary, and its competence and impartiality and its ability to impose the rule of law erga omnes. (See second legal monitor report issued by the Palestinian Center for the independence of the legal profession and the judiciary, "MUSAWA" in 2012).

It is noteworthy to mention that the Israeli civil administration is still present, and carries out all responsibilities that have not yet been transferred to the PNA (state of Palestine). It also still manages all files regarding Palestinian territories classified as "C". The planning and construction committees in the civil administration still retain the power to grant or refuse construction permits in these areas. Israeli occupation forces are still responsible for external and settlement security, pursuant to the provisions of Article 4/10 of the Oslo agreement (Advisor Khalil Rifai Qrajh, previous source).

The Status of the Military Judiciary

The military judiciary deals with specific cases: it is specialized in trials for members and officers of the armed forces, police and security agencies. The military judiciary applies the Revolutionary Penal Code and the Law of Revolutionary Penal Procedure of 1979, which were issued by the Palestine Liberation Organization. According to a ruling by the Supreme Court – which has the jurisdiction to examine and rule on constitutional appeals pending the formation of the Supreme Constitutional Court (although we are not convinced that this ruling is correct for reasons outside the scope of this paper) - the aforementioned code and law are constitutional. However, they have been applied incorrectly to civilians according to a ruling by the General Assembly of the Court of Cassation, as discussed below. (See the Justice and Law Journal of the Palestinian Center for the Independence of the Judiciary and the Legal Profession -MUSAWA, edition 19, page 86, and ruling no. 1/2011 of January 31, 2012.) The military judiciary is also based on the Jordanian Penal Code No. 16 of 1960, taking into consideration that part of the military judiciary is a military prosecution that investigates crimes committed by military personnel.

The second clause of Article 101 of the Palestinian Amended Basic Law of 2003 (the Basic Law of

2005 amended some provisions of the Amended Basic Law of 2004) stipulated that “military courts are established according to laws and these courts have no jurisdiction outside the military arena”. However, in practice, serious disagreements have arisen regarding the jurisdiction of the military prosecution and judiciary during the trial of civilians. This led to the signing of a protocol of cooperation and understanding between the public prosecution (civil or regular) and the military prosecution to define the authorities of each in relation to the trial of civilians. (For more details see the Palestinian Center for the Independence of the Judiciary and the Legal Profession -MUSAWA, *Eye on Justice*, fifth edition, December 2006, pages 1 and 8, and *Eye on Justice*, tenth edition December 2009, page 87).

Following the internal split that led Hamas to assume power in Gaza and the ramifications in terms of the detention of Hamas and Fatah members in both the West Bank and Gaza Strip, there were occasions when the military prosecution and judiciary assumed the authorities of the civil prosecution and judiciary. Such events still occur from time to time despite presidential decrees, in particular a letter from President Mahmoud Abbas to the directors of the security agencies – Preventive Security and Intelligence – issued on October 16, 2008, prohibiting the trial of civilians before military judiciary except in certain cases “which were not specified in the letter”. Also, several rulings were issued by the Supreme Court of Justice and the Supreme Court – which assumes the role of a Supreme Constitutional Court pending the formation of such a court – including a ruling by the General Assembly of the Court of Cassation banning the use of military judiciary in civilian cases. (See the rulings of the General Assembly of the Supreme Court issued by the technical office of the Supreme Court No. 7/2010 on September 15, 2011, page 101.)

If the Palestinian Authority was dissolved, the annulment of the military judiciary could be anticipated regardless of the consequences of such a step (with the exception of the scenario where an independent Palestinian state is established) because of the direct connections between the military and the security agencies under the Palestinian Authority. These would not exist in the absence of the PA.

The Status of the Sharia and Ecclesiastical Judiciary

On January 2, 1995, Presidential Decree No. 6/1995 stipulated the formation of a Sharia Appeals Court in the Sharia judicial apparatus of the Palestinian Authority with its headquarters in Jerusalem. This court may hold its sessions in one of the Palestinian cities with the Sharia judge of Tulkarem as its head. The decree also stipulated that the Chief Justice appoint two judges of the Sharia Court of First Instance as court members in the West Bank, on condition that neither of them hears an appeal in a case they previously tried at the Court of First Instance. On September 19, 2003, Presidential Decree No. 16/2003 was issued regarding the formation of the Higher Council for Sharia Judiciary, consisting of a head of the Council and eight members. In its second article, the decree stipulated the formation of the Sharia Supreme Court, to be led by the head of the Higher Council for Sharia Judiciary with two members from the Council. On April 26, 2005, the PA issued the Alimony Fund Law No. 6 of 2005 and on October 8, 2007 issued regulations pertaining to the law under No. 2/2007.

It is not anticipated that the Sharia judiciary would be affected if the PA was dissolved. The most probable changes that might affect the Sharia judiciary would be limited to the annulment of the Higher Council for Sharia Judiciary, the Sharia Supreme Court, and the Alimony Fund Law and its regulations. This would not affect the apparatus of the Sharia judiciary and the laws organizing it since these existed prior to the establishment of the PA, and even prior to the occupation of the Palestinian Territories in 1967. It is a religious judiciary concerned with family and religious affairs. This type of judiciary has never been seriously affected by the political and security crises that have affected Palestinian territories, including the Israeli occupation, the two Palestinian Intifadas in 1987 and 2000, the Israeli military incursion into PA territories in 2002, or the internal split between Gaza and the West Bank in 2007. Therefore, this judiciary is expected to remain intact regardless of the potential scenarios resulting from the dissolution of the PA.

The ecclesiastical judiciary has not undergone any noticeable change in its status or jurisdictions to those that existed prior to the establishment of the PA and it is not anticipated that changes would occur to the ecclesiastical courts and their regulations if the PA was dissolved. These courts would remain as

they were prior to the Israel occupation of the Palestinian territories in 1967 due to their religious nature, which is the same as the Sharia judiciary. The ecclesiastical judiciary, just like the Sharia judiciary, has not been affected by the political changes that have taken place in the Palestinian territories since they were occupied.

The Status of the Regular Judiciary

The regular judicial authority may be affected directly in terms of its structure and jurisdictions regardless of the scenarios resulting from dissolution of the PA (with the exception of the case in which an independent Palestinian state is established). Since Palestine won membership at the UN as a non-member observer state under Resolution 19/67 on November 29, 2012, dissolution of the PA would not imply removal of the state in its legal concept, but only changes to the people in charge of the political system.

A total of 215 judges work in the magistrate's courts, appeals courts, supreme courts and courts of first instance, including 35 judges in the Gaza Strip (currently not working) and 180 judges in the West Bank. There are 33 female judges. There are 847 court employees in the West Bank (700 permanent employees, 139 employees working on the basis of annual contracts and eight employees on daily work contracts). There are 219 employees in the judicial authority in Gaza (not working). There are 115 members of the public prosecution in the West Bank and 73 members in the Gaza Strip (not working). There are 113 employees working in the public prosecution in the West Bank and 112 employees in the Gaza Strip (not working). (These figures were provided by the General Secretariat of the Higher Judicial Council and Court Administration and former Supreme Court judge, Ahmad al-Mghanni.) The Higher Judicial Council is responsible for ten departments: Court Administration, General Secretariat, the Technical Office, the Center for Judicial Research and Studies, Public Relations and Media Department, Planning and Project Management Department, Judicial Training Department, Judicial Inspection Department, IT Department, Monitoring, Quality Control and Follow Up Department, in addition to personnel of the notary public and the Execution and Notification Departments. (See the annual report issued by the Higher Judicial Council 2012.)

The West Bank has the Supreme Court, which consists of the Court of Cassation (two bodies) and the Supreme Court of Justice (two bodies) with headquarters in Ramallah: there are two appeals courts in Jerusalem and Ramallah. There is also the Customs Court of First Instance and the Customs Appeals Court with headquarters in Ramallah. There is an appeals court to deal with income tax with its headquarters in Ramallah. There are eight courts of first instance in Jericho, Hebron, Bethlehem, Jenin, Ramallah, Tulkarem, Qalqilia and Nablus. The corruption crimes court is based in Ramallah. There are 12 magistrate's courts in Jericho, Hebron, Bethlehem, Jenin, Halhoul, Doura, Ramallah, Salfeet, Toubas, Tulkarem, Qalqilia and Nablus. (See the annual report issued by the Higher Judicial Council 2012.)

The Supreme Court convenes in its capacity to examine challenges against judges and other issues within its jurisdiction according to Article 25 of the Law of Formation of Regular Courts of 2001; it also convenes to examine constitutional appeals.

Judicial jurisdiction over the Palestinian territories is far from comprehensive. The Palestinian judiciary has no jurisdiction over Arab residents of Jerusalem, Palestinians who are accused of collaboration with the occupation authority, or those who hold Israeli citizenship. Moreover, the Palestinian judiciary has no authority over the areas designated as Area C and faces several problems that impede its work there, including the process of serving notice of cases, executing court orders, bringing defendants to court, or arresting convicted defendants. This confirms the fact that the Palestinian territories are subjected to two judicial systems: a Palestinian system and an Israeli system (Nasir Faleh Taha, Master's Thesis, Birzeit University, 2008).

The Palestinian Civil Judiciary During the Israeli Occupation:

During the occupation, the judiciary and the public prosecution formed one body under the administration and supervision of judicial affairs in the Israeli Civil Administration. The magistrate's court judge assumed the role of the public prosecution. When the Israeli occupation imposed its control over the West Bank and Gaza Strip in 1967, it issued Order No. 2 regarding the authority and judicial system in the West Bank stipulating that the laws that existed in the West Bank prior to June 7, 1967 should remain effective, provided that they did not contradict with any order issued by the Chief Commander of the Israeli army in the West Bank region. Clause A of Article 3 of the Order stipulated that all authorities related to governance, legislation, appointment and administration in relation to the West Bank or its residents would be exercised by the Commander or whoever he appointed on his behalf as of the date of publication of the Order. The same provisions were also applied to the Gaza Strip. In 1985, the Chief Commander of the Israeli army issued Order No. 947 of 1981 establishing a civil administration to which he transferred the majority of the authorities related to legislation, appointments and administration; this civil administration was run by officers appointed by the Chief Commander of the Israeli army. The same provisions were applied in the Gaza Strip.

From the start of the Israeli occupation, the Israeli courts and military committees formed by the occupation maintained full jurisdiction over all disputes related to lands, taxes, natural resources and alleged security issues. On February 16, 1969, the Chief Commander of the Israeli army issued Order No. 310 regarding Jordanian Law No. 19 of 1955 on the independence of the judiciary prior to the occupation. The Order annulled the authorities of the Justice Minister and transferred these authorities to an official appointed by the Commander. The Order also stipulated the formation of a committee to appoint judges and public prosecutors, which would be answerable to a committee appointed by the Commander. The Israeli Order also canceled appeals before the Jordanian Court of Cassation; the occupation authorities did not appoint a cassation court (Palestinian civil court) in its place. The occupation authorities also decided to dissolve the appeals court in Jerusalem and transfer it to Ramallah.

The Palestinian civil courts in operation under the occupation consisted of eight magistrate's courts in Jericho, Bethlehem, Ramallah, Nablus, Hebron, Jenin, Salfeet and Qalqilia, in addition to three courts of first instance in Ramallah, Nablus and Hebron and one appeals court in Ramallah. The judges of the magistrate's courts combined the post of magistrate's court judge and public prosecutor. The public prosecution consisted of one civil attorney general with an assistant and two public prosecutors (five full members of the public prosecution), one for each court of first instance. There were only 32 Palestinian civil judges in the West Bank (Shokri Al-Nashashibi, attorney and former appeal court judge). There were 130 court employees and the judicial affairs officer employed trainee attorneys to work in the courts. There were between 10 and 15 trainee attorneys who received a monthly bonus equal to half of the salary of an employee (Imad Al-Husseini, financial manager in the courts during the occupation).

The work of the civil courts was limited to examining and ruling on disputes arising between Palestinian citizens and crimes committed by Palestinians where the victims were Palestinian. The role of the appeals court was also limited to hearing appeals against rulings issued on such disputes and administrative appeals against decisions issued by Palestinian municipalities. The civil courts had no authorities in any matters related to Israelis or land disputes to which an Israeli was a party, or to administrative decisions issued by the Civil Administration or any of its departments, or security cases. The civil courts had to answer to the judicial affairs officer in the Israeli Civil Administration, including matters relating to the appointment or transfer of judges and public prosecutors, holding them accountable or terminating their services.

In the Gaza Strip, there were two magistrate's courts: one in Gaza and another in Khan Yunis. There were also two central courts, one in Gaza and another in Khan Yunis, in addition to a major criminal court in Gaza and a supreme appeals court in Gaza. The rulings of the magistrate's courts were

appealed before the central court, while the rulings of the central court were appealed before the supreme appeals court, which also heard administrative appeals subject to the restrictions described above. In Gaza, there were 29 judges, including eight magistrate's court judges, seven central court judges, seven major criminal court judges and seven supreme appeals court judges. There were 11 members of the public prosecution in Gaza plus one attorney general and 10 deputy public prosecutors. The public prosecution in Gaza consisted of a central prosecution in Gaza and a public prosecution office in Rafah. There were no more than 50 employees working in the public prosecution and courts according to Judge Abdul Qader Jaradeh.

Potential Scenarios Following Dissolution of the PA:

In light of the information above, we will examine the most important scenarios that could follow the dissolution of the PA and the impact of each scenario on the status of the Palestinian judiciary. Dissolution of the PA implies the annulment of its jurisdictions and the authorities of its institutions, including its jurisdiction over the territories and its function and personal status under the Oslo Accords. This would lead to two things: first, annulment of the obligatory nature of the Oslo Accords and the resulting agreements and an end to the political commitments of the PA. Second, as a result of the first point, all PA institutions would be annulled, including the Presidency, the Cabinet, the Legislative Council, the Higher Judicial Council, and the security and police agencies. When we talk of the collapse of the PA, it means that the administration and services of the PA become incapable of performing their duties or offering normal services to the public. The impact of the dissolution of the PA or its collapse is the same on the judiciary. However, the dissolution of the PA would have a long term impact on the judiciary in terms of administration and work, while a collapse would only affect its work.

First: Return of the Israeli Military Occupation

This scenario could take one of two forms. First, the return of direct Israeli military occupation over all the Palestinian territories occupied in 1967. Second, a direct Israeli military presence limited to Area C and areas where there are Israeli settlements, military installations, detention centers and other institutions or land where the occupation army is present. Populated areas or Areas A and B would be under a civil administration of the occupation authority with no direct permanent military presence.

The former is the classic scenario where Israel gradually exerts control over the judiciary until the judicial status returns to that existing prior to the establishment of the PA. In this context, Israel is expected to dissolve the Higher Judicial Council and all its departments and also dissolve the Supreme Court and some specialized courts, such as the customs court, the corruption crimes court and the appeals court for income tax cases. There would eventually be a return to the formula of civil courts with reduced authorities and jurisdictions, while Israeli military courts and military petitions committees would have overall jurisdiction, taking into consideration the changes that might take place in terms of needs, population growth and the number of cases. Israel would maintain an adequate number of judges, employees and public prosecutors to perform the work of the courts within the new authorities and jurisdictions (which were granted to them during the occupation in 1967).

The second scenario could be a possibility since Israel may feel incapable of facing the world and justifying full military occupation in light of international recognition of the State of Palestine. Also, Israel may need to share with the international community the expenses of maintaining the daily lives of citizens and the safety of its army. Under this scenario, the judiciary is expected to be operated as described in the first form.

Either of these forms may result in Israel being considered as an occupier under international agreements (Geneva and Hague Conventions and relevant UN resolutions), but such a situation is not the focus of this paper.

It should be noted that: “The occupation authorities would be forced to issue a large number of military orders after dissolving the Legislative Council and the Palestinian Basic Law in order to re-organize the judiciary as it existed prior to the establishment of the PA. In this context, Israel would exercise a security cleansing policy in the Palestinian civil judiciary to exclude judges perceived as opposing its policies. This could lead to a situation resembling civil disobedience and strikes, as occurred immediately after the occupation of the Palestinian territories in 1967. This could paralyze the judiciary and the community would lose confidence in it as a body capable of resolving disputes.”

The return of direct Israeli occupation could also occur if Israel dissolved the PA. This scenario might result if the PA succeeded in resolving the internal political split and reframed its political strategy towards Israel, such as ending security coordination. Or if the State of Palestine were to resort to the International Criminal Court after signing the Rome Convention. Or if the PA succeeded in holding general elections that united Palestinians in the territories, allowing for the rebuilding of the PLO and a powerful Palestinian political position; such a turn of events might force Israel to agree to peace based on international consensus and will with the establishment of a sovereign Palestinian state next to that of Israel. If Israel takes a decision to dissolve the PA as an attempt to evade its international commitments, this would leave Israel isolated internationally and portray it as a permanent occupation state with an apartheid racist culture that conflicts with all human values and modern international principles. As a result, the judiciary would face the same situation as the two forms described earlier.

Second: Unilateral Israeli Disengagement

This scenario assumes that after Israel dissolves the PA, it would withdraw unilaterally from the regions located outside the borders of the Apartheid Wall that it erected. This step would be justified in the same way as the Israeli unilateral withdrawal from Gaza in 2005.

The core of this scenario is that Israel would claim that there is no Palestinian partner and would implement this scenario through arrangements and understandings reached with the US to obtain its official approval and recognition of the new borders of Israel. This would also provide international, political and financial support for Israel (Nasir Faleh, previous source). This scenario was outlined by the Israeli government formed following the 2006 Israeli elections under Olmert, who stated then that “Israel wants to accelerate the process of disengagement from the Palestinians: Israel cannot wait for 20 years until Hamas matures. If there is no Palestinian partner, we will take an initiative with the US and the Europeans”. On May 5, 2006, the Israeli government ratified its political program, which stressed Israeli efforts to formulate the final borders of Israel as a “Jewish state”. Israel stated that if agreements were not reached via negotiations with the Palestinians, the Israeli government would define its final borders before 2010 (Nasir Faleh, previous source, page 114).

However, Olmert’s popularity faded as the failure of the Israeli offensive on Hezbollah and Lebanon in the summer of 2006 gave rise to a growing conviction that the 2000 withdrawal from South Lebanon had increased the power of Hezbollah and the resistance and Israel feared a repetition of such a scenario in the West Bank. The Israeli committee that considered unilateral withdrawal as an option in a report in August 2006 stated that Israel would be unable to win international recognition for ending the occupation because it would be retaining parts of the West Bank, and there would be dangers of rocket launching from the West Bank. This pushed the Israeli government to delay the unilateral withdrawal process, with the approval of Sharon. Dov Weisglass, one of Sharon’s advisors, then argued that unilateral withdrawal from Gaza would sideline the political process with the Palestinians and prevent the establishment of a Palestinian state and negotiations on the return of Palestinian refugees to their homes and properties, the issue of borders, and the final status of Jerusalem (Nasir Faleh, previous source, pages 115-116).

If a unilateral Israeli withdrawal were to take place, we could face two situations: first, success by Palestinian political and social groups in establishing a unified national command to fill the political and administrative vacuum and win temporary support from the PLO and the Arab world. The second possibility is the spread of anarchy in which people try to obtain their rights by their own means, along with the return of sectarian armed groups, or groups named after security forces which have been dissolved in the official context.

In the first situation, the Palestinian judiciary would remain unchanged and would function, at least in relation to personal disputes or – under pressure from the community – would rebuild and reform itself to enhance its reputation and public confidence, as demanded by the public since 2003 but not achieved by the PA. In fact, there is still an ongoing and unresolved debate on reform and whether it should come from within the judiciary or externally.

In the second situation, the Palestinian judiciary would be retained, but as an ineffective body. The courts could be deserted due to lack of financial revenues to cover expenses and salaries. In an atmosphere of anarchy, influential people do not want a judicial apparatus and the phenomenon of tribal justice, armed groups or use of personal power to resolve disputes would return. This would threaten community cohesion and national unity, leading to extremism or emigration. It could also lead to the political and social destabilization of the Palestinian territories and could impact the entire Arab region.

Third: Creation of an Alternative Leadership to Replace the PA and Perform its Duties

This scenario could occur in the wake of a period of chaos, internal tribal and sectarian disputes, anarchy and personal vendettas and a deterioration in human rights, a diminishing role of the judiciary and a rise in a parallel tribal justice system and reconciliation committees (Daoud Der'awi, previous source). This could force the public to seek the intervention of Israel or Israel may feel pushed to intervene if it feels that the anarchy might turn into resistance. This would have a direct impact on Israeli security, especially if extremist fundamentalist factions (from the Israeli perspective) started to appear and execute direct military action against the Israeli army and citizens.

In this case, Israel would make use of its past experience and resort to a modern village league option; it would open dialogue with social figures accepted by the community but discontented with the PA and its performance. Under this scenario, a new judicial administration would be set up in the context of a new political leadership to succeed that of the current PA. The judiciary would remain unchanged under the laws and regulations that existed prior to the dissolution of the PA. The new leadership would be granted powers to make changes to the judiciary as it deemed appropriate and in accordance with its interests, while security coordination would remain intact.

Under this scenario, a state of instability is expected to prevail in which the judiciary loses credibility and alternative means of settling disputes would evolve, some of them in legal forms such as mediation and arbitration. Tribal justice would assume an active role in reducing the influence of armed groups that may attempt to take the law into their own hands (Khalil Qarajeh al-Rifai, previous source) until the alternative leadership became capable of imposing its influence and control.

If the first or third scenario, or the second form of the second scenario, took place, Israel would be forced to abide by the Fourth Geneva Convention, especially Article 47 which stipulates: “Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory”. This would permit civil society organizations to conduct their role of oversight and use their international connections to exert pressure on the occupation government to abide by the Geneva and the Hague Conventions in its capacity as an occupation state.

Fourth: Engagement with Jordan and Egypt

The annexation of the West Bank to Jordan, as in the pre-1967 period, is excluded as an option as a result of international recognition of the State of Palestine. There are also serious Jordanian fears regarding the resettlement of refugees; these pushed the late King Hussein to declare disengagement in 1988 and his son, Abdullah, also refused to talk or retract the disengagement pending the establishment of an independent Palestinian state. King Abdullah also refused to respond to statements by Netanyahu in a CNN interview on June 21, 2007, following the assumption of control by Hamas over Gaza on

June 15, 2007, calling for Egypt to intervene in the Gaza Strip and a Jordanian role in the West Bank on the basis that President Abbas was weak and not in control and a solution to the Palestinian cause required Jordanian and Egyptian intervention (Nasir Faleh, previous source, page 135).

Engagement between Gaza and Egypt can also be excluded due to the official Egyptian position expressed by the new leadership: that the separation of Gaza from the West Bank or a return to the pre-1967 situation would harm Egyptian national security. Egypt has expressed its readiness to participate in a peace process that takes into consideration the unity of the West Bank and Gaza Strip.

While there is no need to discuss the potential impact of such a scenario on the judiciary, for the sake of argument we can state that the situation of the judiciary would take one of two forms: first, the judicial status in the West Bank and Gaza Strip would revert to the form that existed prior to the Israeli occupation in 1967 when the West Bank judiciary was part of the Jordanian system and the judiciary in Gaza was under the Egyptian administration or the Egyptian general governor. In the second form, which could result from the formation of a federation or co-federation with Jordan, the judiciary in the West Bank would not change but the Higher Judicial Council would be dissolved and its role taken over by the Jordanian Central High Judicial Council. The jurisdiction of the Supreme Court would be transferred to the Jordanian Central Supreme Court. In Gaza, the judiciary would remain under Egyptian administrative control.

Fifth: Creation of a Palestinian Entity in the Gaza Strip

This scenario is based on the fact that Hamas, which holds power in Gaza, is expected to reject the idea of the dissolution of the PA because it is convinced that the PA still has a presence in Gaza and will continue to try and expand its control over the West Bank. Hamas is happy to consider the Gaza Strip as liberated territory on which it has succeeded in establishing a Palestinian Islamic state. It does not reject the idea of engaging in indirect negotiations with Israel through Egyptian, Turkish or Islamic mediation – or even direct negotiations according to statements by the head of the Hamas Politburo, Khaled Mashal, broadcast on the al-Falastinia satellite station on May 18, 2013. He stated that Hamas was ready in principle to hold negotiations with Israel regarding the future of the West Bank and did not reject the idea of reaching a long-term truce agreement. This would allow Hamas an opportunity to obtain international and regional recognition as an elected Palestinian leadership that has not renounced the option of resistance. It has proven – under its vision – that it can combine resistance and negotiations.

Under this scenario, the judiciary in Gaza is expected to remain as it is at present. The judiciary in the West Bank would take the form of one of the previous scenarios until Hamas assumes power in the West Bank in place of the dissolved PA and could then restructure the judiciary in the manner that it did in the Gaza Strip.

Sixth: Establishment of an Independent Palestinian State

This scenario assumes the dissolution of the PA and the “transformation of its institutions into state institutions” (Khalil Qarajeh al-Rifai, previous source) due to the establishment of an independent Palestinian state. The state would be established upon the success of negotiations and Israeli withdrawal from all Palestinian territories occupied in 1967, or the majority of them, and postponement of all outstanding final status issues such as water, settlements and refugees, or the continuation of negotiations on these issues.

Under this scenario, the state would declare that the PA institutions should become state institutions and the Palestinian leadership heading the PA would remain in charge during an interim phase pending the formulation of a new state constitution. It would be natural for the judicial jurisdiction to cover all the territories of the State of Palestine from which the occupation authorities, its troops and departments would withdraw.

This scenario would have an impact on the judicial administration and the judges themselves because of the current political split and the need to resolve the current state of affairs in the interests of the independent state, i.e. the change would allow those without a judicial structure or jurisdiction the

possibility of transferring the Supreme Court, appeals court and the administration of the Higher Judicial Council to Jerusalem. There is also the possibility of the gradual formation of administrative courts and a constitutional court following ratification of the constitution.

Seventh: Annexation of the West Bank to Israel and Establishment of a Bi-national State

The likelihood of this scenario is very remote in light of the Israeli government position and direct US support for the concept of a pure Jewish state. Israel believes that this is a precondition for the success of negotiations and the establishment of an independent Palestinian state. Moreover, there is overwhelming support and consensus among the Israeli parties, which fear demographic changes and their impact on the Jewish presence if a bi-national state formula were to be adopted. The majority of Palestinians, including Fatah leaders, support this option, including some Israeli intellectuals like Ilan Pappé who stated in a 2007 interview with al-Jazeera English TV, “the sole solution to the Palestinian-Israeli conflict is to find one state where Jews and Arabs and others live together and share; two independent states in Palestine cannot coexist” (Nasir Faleh, previous source, page 36).

However, the Israeli government is clearly highlighting statistics and guidelines aimed at raising awareness among Jews of the demographic danger from Palestinians living in the 1948 territories. The Israeli Knesset is currently discussing the Jewish State Draft Law. Israel is also demanding land exchange as part of any potential settlement with the Palestinians. This aims to transfer some areas inside Israel with large Palestinian populations, such as Um Al-Fahm, to the Palestinian entity or state in exchange for the annexation of major settlement blocs to Israel and retaining large parts of Jerusalem and al-Khan al-Ahmar under Israeli sovereignty.

Since this scenario has little real chance of survival, the judiciary would not be affected. For the sake of argument, the Palestinian judiciary would cease to exist and would be replaced by a special judiciary for the bi-national state. Most probably, the Palestinian judicial structure and administration would be dissolved and Palestinian courts would adopt the Israeli judiciary and its administration and structure.

Eighth: International Supervision

This scenario is based on the fact that the PLO in its capacity as the legitimate representative of the Palestinian people, as recognized by the international community and Israel, would dissolve the PA, transfer the case of Palestine to the UN and seek international supervision of the State of Palestine and its people until independence is achieved. This would be similar to UN Security Council Resolution 1244 issued on June 10, 1999, which authorized a special UN mission to supervise Kosovo and its executive and legislative authorities, administer the judiciary, supervise the basic civil administration, reinforce the foundations required to achieve independence, and supervise international assistance to maintain the basic structure of Kosovo. The Palestinian people would rely on international resolutions that secured the right of self-determination for the Palestinian people, based on the international vision approved by the Middle East Quartet. This scenario would be based on the principle of the establishment of a sovereign state of Palestine next to the state of Israel and would have support from the UN resolution that recognized the State of Palestine.

In this scenario, no core changes would occur in the Palestinian judiciary, which would be placed under the direct supervision of a UN mission (direct international supervision). The military judiciary would probably be dissolved in the absence of PA institutions, while the Sharia and ecclesiastical judiciary would remain unaltered.

Ninth: PA Renewal or Restructuring (Khalil Qarajeh al-Rifai, previous source)

At the end of May, the US administration announced the Kerry plan to implement economic support to the PA. The core of this plan is similar to the Peres Scheme for Economic Revival in its aim to replace a political solution to the Palestinian cause with an economic solution. It attempts to provide a convenient alternative to the US administration’s failure to force Israel to honor its commitments in the context of the two state solution and reflects US desire to maintain political and security stability in the

Middle East via a policy of conflict management rather than resolution. The US administration aims to stall the negotiations process and consolidate the concept of long term self-rule by providing the means to maintain PA rule in its current manner.

Some influential figures have welcomed this option (with top Israeli military leaders even making public statements calling for the annexation of more than 58% of West Bank land to Israel) rather than see Israel forced to annex the population on Palestinian land and give rise to greater economic, financial and other responsibilities that Israel does not want to bear to maintain a purely Jewish state; the geographical borders of Israel might expand to include Palestinian land without any population. President Abbas affirmed that Palestinians reject both the economic solution and the temporary state. He also opposed the deferral of the political solution as this means that land of the Palestinian state remains under direct Israeli occupation and the Palestinian people are unable to exercise their right to self-determination and the establishment of an independent state based on international legitimacy. Such a scenario might take place in the foreseeable future. Economic support to the PA would be linked to international demands to fight corruption, guarantees of fair trials and the enhancement of public confidence in the justice system. This would push the PA (State of Palestine) to take political and executive decisions to reform and develop the performance of the justice system in a manner that meets the demands of donor countries: judicial authority in terms of structure and powers would remain unchanged under this scenario.

The Role of Civil Society Organizations:

Before outlining any conclusions, the role of civil society organizations (community organizations) should be considered as these have played an important role in development and services and the defense of human rights since the occupation of Palestinian territories in 1967. These organizations exploited the legal loopholes available to form private organizations under Israeli law. Many people working in this field established private and community organizations that offer health and economic services. They also worked to monitor Israeli military rule and human rights violations; these organizations established contacts with several international counterpart organizations to expose the practices of the Israeli occupation and recruit international support and solidarity for the rights of the Palestinian people. This also helped to obstruct the Israeli settlement program and increase the steadfastness of the Palestinian people on their land. Civil society organizations have been involved in economic, social and legal development and in providing the minimum needs for sound governance; they continue to play an important role of oversight of the performance of the various Palestinian authorities.

Regardless of any of the nine scenarios described above, civil society organizations will continue to build on their rich experience and broad network of contacts in the international community to maintain their vital role in Palestinian society.

Civil society organizations are expected to play the same role that they assumed before the establishment of the PA (State of Palestine) in the scenario in which the Israeli occupation is resumed or an alternative leadership is created. These organizations would focus on raising the awareness of the community, monitoring human rights violations and intensifying contacts with international organizations to protect human rights if the option of unilateral Israeli withdrawal materialized.

Civil society organizations are expected to continue their work in raising awareness, providing services and monitoring the status of human rights under the following scenarios: engagement with Jordan and Egypt, the creation of a Palestinian entity in the Gaza Strip, the establishment of an independent Palestinian state, international supervision, or the restructuring of the PA. The role of Palestinian civil society organizations would be similar to that of Israeli civil society organizations if Palestinian state land was annexed to Israel or a bi-national state established.

Results:

The option of dissolution of the PA is always a possibility in the world of politics. In light of the current political developments in the Arab region, one of the scenarios described above could be imposed as a political solution to the Palestinian cause. It is also acknowledged that any solution that does not recognize the Palestinian national identity will not achieve long term stability. Throughout ancient and contemporary history, international experience has proven that it is impossible to eradicate the national identity of a people. The collapse of the so-called socialist bloc and the ensuing national conflicts, as took place in Kosovo, Bosnia and Herzegovina, are proof that any political solution that excludes the national dimension will not survive for long.

As authority is not a goal in itself but a tool and means to express the national dimension, the PA falls into this category. Since the establishment of the PA, the Palestinian people have viewed it as a means to achieve the right of self-determination as recognized by the international community.

The implications of the dissolution of the PA are the creation of a political, social, economic, administrative and security vacuum that would have a direct impact on the Palestinian judiciary, especially the military and regular judiciary (with the exception of the scenario where an independent Palestinian state is established). It would affect the work, administration and authorities of the judiciary to the point where the judiciary was absent and anarchy prevailed. At that point other alternative means to settle disputes would arise, including tribal justice as the weakest form and violent means as the strongest form. This situation would also lead to the rise of dispute settlement committees belonging to armed movements or groups and would have a destructive effect on the social fabric of Palestinian society, threatening the stability of the entire region and leading the Palestinian people into a vicious cycle of violence, killing and destruction, forcing more Palestinians to emigrate.

Recommendations:

To avoid negative and dangerous consequences resulting from the dissolution of the PNA in the case of the majority of these scenarios, we recommend that the Palestinian leadership, along with all political and civil forces, work on two levels:

Before the dissolution, to provide the needed atmosphere and strength for society to deal with the negatives of such a dissolution, the following must be done:

- 1- Ending the trial of civilians before military courts.
- 2- Ending all interference in the affairs of Judges.
- 3- Respect and execution of all court decisions.
- 4- Reconsidering the structure of the judiciary, in the direction of rebuilding it after evaluating the performance of all workers in the judiciary and the prosecution, and placing the appropriate judges in the appropriate positions, and transferring any employee who does not meet these standards to any other public office, or even to early retirement, while maintaining their full rights. There is also a need for a review of the legislature governing the judiciary, and the removal of any overlap or conflict in the functions and specialties between the judiciary and the ministry of justice. As well as finding a resolution in the relationship between the public prosecutor, the executive and the judiciary in the direction of designating it as a part of the judiciary. There needs to be a clear statement on the conditions of occupancy of judicial functions in accordance with the provisions of the Palestinian civil Law (Journal of Judicial Provisions) and international standards. This is to guarantee that only those who are impartial, competent, qualified and non-partisan can occupy such a function. This is to distance the judiciary from any political, partisan or factional interference in its work, and removing it

from the clutches of partisan nepotism. This would reinforce the public's faith in the judiciary and its abilities, impartiality and competence, until it is seen as the best way to achieve justice in all disputes.

5- Speed in the elimination of problematic aspects of the Sharia judiciary, regarding legislature and administration.

6- Ending the political, administrative, judicial and legal division between the West Bank and the Gaza Strip. This should be the number one priority for the Palestinian leadership. The culture of division must be buried, along with any of its effects on the judiciary. In addition to the revitalization of the PLO's organizations and agreeing on a political program that provides the minimum requirements for Palestinian unity, and reinforces the position and legitimacy of the PLO as the sole internationally accepted representative of the Palestinian people.

7- Speed in dealing with the situation of the administrative judiciary, because it has to do with legitimacy and is a control mechanism for the performance of the executive. (See the proposal by the Palestinian Center for the independence of the legal profession and the judiciary, "MUSAWA" on the administrative judiciary.).

8- Preparation of the requirements needed to refer the Palestinian case to the United Nations, to find a resolution to the entirety of the Palestine-Israel conflict.

9- Speed in signing the Rome protocol regarding the International Criminal Court and other international agreements, in compliance with the provisions of Article X of the Palestinian basic law.

10- Submittal of Palestinian membership applications to international organizations and agencies, and an investment of the international recognition of the Palestinian state, which qualifies it for membership in these organizations. As well as following up on the implementation of the recommendations of the International Court of Justice on the illegality of the apartheid wall, and declaring all occupied territories as belonging to the Palestinians and that Israel is an occupier.

11- Promotion of a culture of respect towards the law, and maintaining the requirements for societal unity and national cohesion, as well as the embodiment of the rule of law erga omnes, and referring to the judiciary as the sole source of dispute resolution.

12- Cessation of the issuance of any new legislature, whether in the West Bank in the form of Presidential Decrees, or in the Gaza Strip from the Gazan Legislative Council. This is until the end of the division, and the return of the situation to how it was before.

After the dissolution:

1- Not compromising civil, Sharia and ecclesiastical courts in the case of the first scenario, and inspecting the abilities of Palestinian civil judges, represented by their ability to refuse Israeli military orders if they go beyond both the Geneva and the Hague agreements. It is worth mentioning that Palestinian civil courts have already refused the application of military orders, this has been since the beginning of the occupation up until now. In this context we note the recommendation of the Palestinian court of Cassation number 2006/156 published on 2007/7/4.

2- In the case of the first scenario, not compromising Palestinian legislature, regardless of how (un)modern or (un)just they are.

3- Strengthening of Palestinian political and social unity on both the official and popular levels.

4- Reconsidering national strategies and development plans, and linking them with the requirements of societal unity, and the goal of national independence.

5- Reconsidering civil society's institutions, plans, programs and activities. This can be achieved through spreading a culture of respect for the law, and the abandonment of violence, as a guarantee for the unity of the land and the people.

6- Development of coalitions between civil society institutions, and their cooperative efforts towards reinforcing a culture of respect for the law, and increasing consciousness in society, and the renunciation of violence, this would reinforce society's trust in these institutions and their performance.

7- Rebuilding the institutions of civil society in its broadest sense, especially unions, parties and different societal bodies, such as those dealing with women, workers and youth. This would enable them to carry out their cultural services and functions, which would lessen the burden on the citizens, and reinforce cooperation and joint work as well as societal unity. This is to help the Palestinian people in confronting the occupation on one hand, and lawlessness and violence on the other one. All of this is

to face the negative effects of the dissolution of the PNA, and the occurrence of one of the previous scenarios, except the one regarding an independent Palestinian state.

Comments and Discussion

Counselor Khalil Rifai (Justice Ministry Undersecretary; has held several posts in the PNA, including legal advisor to the Cabinet; holds Master's degree in Law from Birzeit University):

Anticipated scenarios following dissolution of the PNA

Dissolution of the PNA, whether by the Palestinians or the Israelis, would bring about the termination of all mutual contractual commitments resulting from the signing of the Oslo Accords. This would mean the dissolution of all PNA executive, legislative and judicial institutions, the annulment of all legal bodies established, the redeployment of the Israeli military in the West Bank and Gaza Strip, and the provisions of the Vienna Convention on the Law of Treaties of 1969 would become applicable in terms of the ramifications resulting from the termination of international treaties. It would also mean the return of full Israeli military occupation of the Palestinian territories occupied in 1967 and the application of the Fourth Geneva Convention.

The difference between the PNA dissolving itself or being dissolved by Israel lies in two aspects:

First aspect: If the PNA dissolves itself, then all executive, legislative and judicial institutions of the PNA would be dissolved and would leave a legal vacuum. This does not necessarily mean that the PNA could make Israel, as the occupying state, responsible for the results on the Palestinian people because the PNA would have to deal with the international ramifications of this decision from the international community, which has supported the financial survival of the PNA for almost twenty years.

Second aspect: If Israel dissolved the PNA, this would require Israel to invade PNA territories in the West Bank and Gaza Strip, or the West Bank alone. Israel would have to justify this military aggression to the international community, and also justify the unilateral termination of an incomplete, unequal international treaty. Israel would be held entirely responsible with the immediate application of the Fourth Geneva Convention on the Palestinian population. It must be emphasized that the Fourth Geneva Convention still applies to the Palestinian population in the Palestinian territories occupied in 1967, including East Jerusalem.

With regard to the scenarios discussed in this paper vis-à-vis the dissolution of the PNA and its impact on the judiciary, I do not believe that there are additional scenarios to those included in this paper, but some scenarios are more probable than others according to their impact politically and from a security aspect where regional and international interests might overlap to impact on the legal status.

Scenario of the return of the Israeli military occupation

The Israeli civil administration remained in existence following the signing of the Oslo Accords. In fact, the Israeli civil administration continues to exercise all authorities and responsibilities that were not transferred to the PNA; it manages lands located in Zone C and the zoning and construction committees of the civil administration are still in charge of granting construction licenses in those areas. The Israeli military holds responsibility for external security and the security of the settlements (see Article 10, clause 4, of the Interim Agreement) and it would be easy for Israel to re-administer the occupied Palestinian territories if the PNA

were to be dissolved. Israel might also issue a military order to re-appoint an officer for justice affairs, as was the case before these powers were transferred to the PNA, to take over the task of managing the courts, judiciary, public prosecution and matters relating to attorneys. Under the authorities granted to him, this officer could issue an order to cancel or retain all legislation that existed under the PNA. We envisage that the officer might retain some legislation and annul other legislation inconsistent with his authorities. He may annul the Law of Judicial Authority, but may keep the Law of Criminal Procedures, albeit annulling various clauses.

Scenario of unilateral Israeli disengagement

We do not believe that Israel would take this step in light of events in the Gaza Strip because of ideological differences among Israelis regarding the West Bank and Gaza Strip. Moreover, settlement is intensive in the West Bank and there are Israeli military zones, in addition to the strategic importance of the Jordan Valley from the Israeli perspective and the security considerations related to the borders with Jordan. Israel has sabotaged the two-state solution as a result of its actions on the ground in the West Bank.

Scenario of creating an alternative leadership to assume PNA authorities

This is the worst scenario that can be envisioned if the PNA were to be dissolved because the alternative leadership would not be a national leadership that cares for the interests of the Palestinian people; it would work only to serve its own interests and those of Israel since that would be the purpose of its creation. The Village Leagues, which were referred to in the paper on the judiciary and the courts, are an example of the conditions that would prevail under such a scenario and the impact on the judicial system. We believe that this would create a lack of stability because the tasks of the judiciary and court administration would be assumed by personnel without professionalism and a national sense of responsibility. Alternative means of resolving disputes would emerge, some taking legal forms such as arbitration and mediation, but most prominently, tribal justice and the rise of gangs and thugs who take the law into their own hands. Israeli adoption of this model would lead inevitably to the conclusion that Israel does not want to reach a political solution with the PLO and wants to return to the conditions prevailing prior to the Oslo Accords. This would lead to the return of Palestinian popular and armed resistance and the emergence of revolutionary factions as Palestinians engage in a cycle of resistance against the Israeli occupation and those figures that replaced the legitimate leadership of the Palestinian people.

Scenario of engagement with Jordan and Egypt

We agree completely with the comments in the paper on the judiciary and the courts which excluded this option as it conflicts with the political and security interests of Jordan and Egypt. They would not take steps to impose their political or judicial authorities on the Palestinian people, especially in light of the international recognition of Palestine as a non-member state at the UN.

Scenario of establishment of a Palestinian entity in Gaza Strip

This scenario appears to be the most dangerous as it fits with the political vision and aspirations of Hamas, which was transformed from a movement that opposed the Oslo Accords and the PNA to a movement that adopts aggression to secure authority and expand the scope of its influence into the West Bank. We believe that Hamas would take any action and use any means to repeat its achievements in the Gaza Strip. We wonder whether it would be possible for Hamas to reach an understanding with Israel to take control of the West Bank. An answer to this question would save much time and effort in analyzing the future of the PNA. We do not believe that any changes would take place in the Gaza Strip with regard to the judiciary and courts, but if Hamas assumed control of the West Bank, it may amend legislation in the West Bank to match that in the Gaza Strip.

Establishment of an independent Palestinian state

The establishment of an independent Palestinian state would represent the success of the Palestinian national project and translation of the UN resolution recognizing the State of Palestine into reality on the ground. If a state were to be established, this would not mean the dissolution of the PNA, but the transformation of PNA institutions, which are part of the apparatus of the PLO, into state institutions. Dissolution of the PNA would annul all legal PNA bodies, destroy its accomplishments and terminate the work of its employees, including the judiciary and courts. Establishment of the state would mean continuation of the same work by the judiciary and courts, but the scope of jurisdiction would include all Palestinian land in Zone C, in addition to East Jerusalem and the Gaza Strip, which would eventually return to the legitimate context of the Palestinian state.

Finally, we need to explain a decisive position: the PNA does not believe that dissolution is an option as it conflicts with the new political line of President Abbas. The new strategic line of President Abbas goes beyond the Israeli and international political imagination, as was made clear by the American and Israeli reactions to the UN bid. The President has chosen an option other than negotiations or a military solution to achieve a democratic state for his people in accordance with international norms.

Mr. Daoud Der'awi (attorney and former judge, holds a Master's degree in Law):

According to the paper and the comments, three main scenarios would be prominent if the PNA were to be dissolved. The impact would be on judicial institutions, which would not fulfill their true role and the Palestinian public would lack access to justice. The three scenarios would be: 1. reoccupation of the PNA territories; 2. creation of an alternative leadership; 3. Unilateral Israeli withdrawal from the West Bank.

First: Israeli reoccupation of PNA territories

We agree with the author that this scenario would return the judiciary to the situation that existed prior to the establishment of the PNA in relation to the annulment of the Palestinian military judiciary and several courts, including the Corruption Crimes Court, the Customs Court and the Higher Court. All powers related to the courts would revert to the Israeli military courts and the petitions committees. The occupation authorities would be obliged to issue a large number of military orders (after dissolving the Legislative Council) to reorganize the work of the judiciary and its jurisdictions in light of the military and administrative powers of the occupation. This would conflict with the commitments of the occupier according to the provisions of the Hague and Geneva Conventions and would affect existing legislation, mainly the Basic Law. Moreover, Israel would conduct a policy of security cleansing of judicial institutions of any personnel with a history of resistance to the occupier. It raises the question of the possibility of civil disobedience, with some judges refusing to work under the occupation umbrella and the impact of this on reducing human resources within the judicial apparatus, combined with a growing number of cases awaiting trial before the courts. The judicial system would pass through a state of total paralysis the day after the dissolution of the PNA until gradually resuming work. This period could last for several months and the backlog of cases in courts would create a real crisis.

Second: creation of an alternative leadership

This scenario would be preceded by Israeli steps to instigate organized and controlled chaos and internal and tribal disputes. As anarchy spreads, people would take the law into their own hands to the point where an alternative leadership would become acceptable at popular and local level. The judicial system would be fundamental to the restoration of public order and security, particularly as Israel would encourage the total collapse of the judicial system in its efforts to promote anarchy and an alternative leadership. Judges would be forced to stop work due to the non-payment of salaries and absence of security. We believe that the occupation authorities would issue a series of military orders that would induce the judiciary to respond to an

alternative leadership. The judicial system would become one of the arms to reinforce the rule of the alternative leadership. This awakens memories of political trials, the legitimization of human rights violations and the crimes of the ruling authority and would be met by civil disobedience. There would also be a regression in performance, judicial professionalism and the national movement towards justice. Under such a scenario, new initiatives would arise to encourage a parallel judiciary with national popular support to resolve disputes as an alternative to the official judicial system. We can recall the experience of the national command during the first Intifada when they created reconciliation committees to limit and reduce the role of the judiciary and executive, which were under the civil administration of the occupier; these committees played a role in achieving civil peace with national and popular tools.

Third: unilateral Israeli disengagement

This scenario follows that of the Israeli withdrawal from the Gaza Strip in 2005 in which the dissolution of the PNA would lead to a legal vacuum without any executive tools for a temporary period until the vacuum is resolved. We believe that under such a scenario, the most probable option is that Hamas would prepare itself, especially in light of the recent developments of the Arab Spring and the rise of the Muslim Brotherhood, to play the role of political representative of the Palestinian people and express readiness to engage in direct or indirect negotiations, reach political understandings and achieve international and American recognition in return for Hamas concessions towards Israel and political solutions. Within this context, Hamas would rebuild the judiciary as an institution belonging to Hamas as it has done in the Gaza Strip, with structural changes to the judiciary in terms of forming a Higher Judicial Council and new appointments, including the public prosecution. This would exacerbate the stagnation of the political split and regression in national unity and make it impossible to restructure the PLO. Moreover, the judicial system would face a crisis of confidence because it would not be independent. The crisis of confidence would be deeper than that currently facing the two judicial systems in the West Bank and Gaza Strip because neither is independent from the executive authority in either location. Within this scenario, Hamas would reformulate the High Judicial Council in the West Bank as part of a reform process and cleansing of the judicial apparatus; this would focus on settling accounts to a large extent and would lead to major structural changes, especially in the executive departments of the High Judicial Council such as court administration and judicial inspection; the same would apply to the Sharia judiciary. Reappointments would take place in the same way as occurred in Gaza after Hamas assumed control by force in 2007.

The direct ramifications of the scenarios detailed would be a serious reduction in the number of judges as a result of these considerations (security, partisan, political and national). The judicial crisis would deepen in terms of cases awaiting sentences and decisions by judges and there would be delays in the litigation process, giving rise to a parallel judiciary. To give an example based on a 2011 study analyzing the justice sector (Daoud Der'awi and Naser al-Rayyes), the average number of judges per population in the West Bank is one judge per 14,882 of population; in Gaza, the ratio (according to the number of judges working and appointed by Hamas) is one judge per 37,272 of population. This figure is very low compared with the Arab world. In Jordan, there is one judge for every 7,576 of population; in Egypt, there is one judge for every 6,227 of population. In Tunis, there is one judge for every 5,883 of population. Compared with wealthy countries such as the United Arab Emirates, the ratio is one judge for every 2,704 of population. A reduction in the number of judges, anarchy and civil disobedience would lead to the paralysis of the judicial system and a crisis due to the backlog of cases.

This raises the question of the role of civil society organizations in relation to the justice sector. How will these organizations restructure their priorities and goals to meet the threats that would face this sector as an inevitable result of any scenario, especially the three previous scenarios? Do these organizations possess a future vision on this aspect and what are the factors affecting this vision? It would have been very useful if

the paper had included such answers.

Finally, we agree with the author in his description of the current status of the judicial system and his recommendations for the future in order to limit challenges that might arise as a result of the scenarios. Subjective factors inside the judicial system would have a decisive impact vis-à-vis maintaining the independence and role of this sector and preventing its rapid collapse. The judicial system must be maintained as a neutral body and not become a tool to strengthen future political phases at the expense of real and effective justice. Despite our conviction regarding the current status of the judicial system and in light of the absence of a political will to enhance the judiciary and strengthen its independence, the existing weaknesses will make it fragile and prone to collapse and dependency to a greater extent than other national institutions such as health and education.

Mr. Ibrahim Al-Barghouthi:

The scenario of the dissolution of the PNA remains a possibility because of the dual responsibilities of the PNA (administrative and services; political responsibilities). If the PNA fails to fulfill the task for which it was created, social dialogue must take place on the future feasibility of the PNA's existence.

This study covered eight scenarios of the dissolution or collapse of the PNA:

1- Return of Israeli military occupation. This scenario might take one of two forms: a- return of direct military occupation of all Palestinian territories occupied in 1967. The Israeli occupation would gradually exert an impact on the judicial system until it reverted to the situation that existed during the occupation when it had no jurisdictions as authorities and jurisdictions were in the hands of the military governor and the military petitions committees; b- direct military presence in Zone C, areas where there are Israeli settlements and military camps, and other areas. Under this scenario, the judiciary would be managed by the civil administration. There is almost consensus that the Israelis would not dissolve the PNA in a direct manner, but would take this step if Palestinians approached international organizations to achieve a two-state solution.

2- Unilateral disengagement: the core of this scenario is the absence of the Palestinian partner in the peace process. This scenario might result in: a- return of anarchy; b- PLO success in establishing a united command to run Palestinian affairs. In the first context, the judiciary would remain in form but without content. In the second context, the judiciary would continue to perform its tasks.

3- Creation of an alternative leadership to take the place of the PNA. In this case, the impact on the judiciary would not be direct, but would evolve to meet the needs of the emerging leadership.

4- Engagement with Jordan and Egypt. This option is highly improbable because Jordan views this option as damaging to the socio-demographic structure in Jordan and it would also imply the eviction of Palestinians to Jordan. The same applies to Egypt, which believes that the formula that existed prior to 1967 threatens its national security. In this case, the judiciary would revert to the status that existed prior to 1967, whether in the West Bank or Gaza Strip.

5- Establishment of an independent Palestinian entity in the Gaza Strip; this scenario is based on the assumption that Hamas would refuse to dissolve the authority in Gaza on the grounds that it exists and Hamas would seek to liberate the West Bank. The judiciary in the Gaza Strip would remain unchanged, while in the West Bank the situation would be as laid out in previous scenarios.

6- Establishment of an independent Palestinian state. This scenario would have an impact on the judiciary and judges; a constitutional court would be established and other measures would be taken.

7- Annexation of the West Bank to Israel and the establishment of a bi-national state. This option is ruled out, although some figures and leaders have proposed this option. In this case, the Palestinian judiciary

would be replaced by a special judiciary for the bi-national state.

8- International supervision. This is based on the scenario where the PLO takes the Palestinian cause to the UN while dissolving the PNA. There would be no core changes that would affect the Palestinian judiciary.

9- Renewal of the PNA. Under this scenario, the PNA would revitalize itself following its failure to win public confidence and to manage and resolve the crisis. The revitalization would include human resources and administrative and legal restructuring along with judicial restructuring.

Discussion:

What is the role of civil society on ‘the day after’ in relation to the judiciary?

The collapse of security would have a major impact on the judicial system as a body for the enforcement of the law.

Can the High Judicial Council administer the judicial sector in the case of the collapse and regression of the role of the PLO?

No one can foresee the amount of time that might elapse in the interim period and this would affect the judicial sector by reducing public confidence in the powers of the judiciary. As a result, the role of a parallel judiciary would assume greater importance and inspire greater trust in the public.

With regard to international supervision, the situation is different from Kosovo because our problem is with the international organization whose decisions are controlled by the United States of America.

The PNA might revitalize itself in order to strengthen state institutions.

Attempts to interfere in the work of the judicial authority must be stopped; the judicial authority must enjoy full independence.

Day After - Workshops' Participants

#	Name	Organization
1	Mr. Abd Alnaser Masoud	National Sec. Forces - NSF
2	Dr. Abd Alrahman Altamimi	Head of Palestinian Hydrology Group
3	Dr. Abdelnaser Makky	JICA/Birzeit University
4	Ms. Abeer Albatma	PENGON
5	Mr. Abulmajeed Melhem	PALTEL
6	Mr. Ahmad Hindi	PWA
7	Mr. Ahmad Qurei "Abu Alaa"	Adisory Board/Fatah
8	Mr. Ahmad Surghally	PALTEL
9	Mr. Alaa Lahlouh	PSR
10	Mr. Alaa Yaghi	PLC
11	Mr. Ali Hamoudeh	JDECO
12	Dr. Ali Jarbawi	Minister of Higher Education
13	Mr. Ali Nazzal	President office
14	Mr. Ali Omar	National Sec. Forces - NSF
15	Mr. Amin Maqboul	Sec. General, Fateh Revol. Council
16	Mr. Ammar Dwaik	Birzeit University
17	Mr. Anwar Abu Ammash	Welfare Association
18	Dr. Ayman Daraghme	PLC
19	Mr. Aziz Kayed	PSR
20	Dr. Azmi Shuaibi	AMAN
21	Mr. Basem Tamimi	Popular Committes
22	Mr. Basri Saleh	Ministry of Education
23	Mr. Bassam Alaqtash	National Sec. Forces - NSF
24	Ms. Buthaina Hamdan	Ministry of TLC
25	Ms. Covadonga Bertrand	UNDP
26	Mr. Daoud Darawi	Adala law
27	Mr. Eyad Zeitawi	PMA
28	Mr. Fadel Hamdan	PLC Member
29	Mr. Fadi Qura'an	Alhaq
30	Ms. Fadwa Barghouthi	Revolutaionary Council/Fatah
31	Dr. Faisal Awartani	Researcher
32	Mr. Fajr Harb	Carter Center
33	Mr. Faris Sabaneh	Supreme Judicial Council
34	Dr. Fathi Abumoghli	former minister of Health
35	Ms. Florence Mandelik	NOREF
36	Mr. Florid Zurba	Ministry of TLC
37	Dr. Ghassan Khatib	Birzeit University
38	Dr. Hanan Ashrawi	PLO
39	Dr. Hanna Abdalnour	Alquds University
40	Mr. Hasan Abushalbak	Ramallah Municipality
41	Mr. Hazem Gheith	Egyptian Embassy

42	Mr. Henry Siegman	US/ MIDDLE EAST PROJECT
43	Mr. Ibrahim Barghouthi	head of MUSAWA
44	Mr. Ihab Shihadeh	Ministry of Justice
45	Mr. Jacob Hoigilt	NOREF
46	Mr. Jamal Zakout	FIDA
47	Mr. Jamil Rabah	Negotiations Support Unit - NSU
48	Dr. Jehad Albadawi	MOH
49	Mr. Jehad Alwazer	PMA Governor
50	Mr. Jehad Harb	PSR
51	Dr. Jehad Mashal	Expert
52	Mr. Jihad Shomali	UNDP
53	Mr. Khaled Alosaily	Business man
54	Mr. Khaled Shtayeh	UNDP
55	Mr. Khalil Rifai	Deputy Ministry of Justice
56	Dr. Khalil Shikaki	PSR
57	Mr. Mahmoud Haroun	Military Intelligence
58	Mr. Mariano Aguirre	NOREF
59	Dr. Mashhour Abu Daka	Former Minister of Communication
60	Mr. Mazen Sinokrot	Private Sector
61	Mr. Mohammad Alfaqih	PNC
62	Mr. Mohammad Aref	PMA
63	Mr. Mohammad Attoun	Wassel co.
64	Mr. Mohammad Daraghme	Journalist
65	Mr. Mohammad Hadieh	Ministry of Justice
66	Dr. Mohammad Odeh	MOH
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68	Mr. Munib Masri	Private Sector
69	Mr. Munir Barghouthi	Ministry of Education
70	Dr. Munther Alsharif	NAS
71	Mr. Musa Haj Hasan	QIF
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80	Mr. Nayef Swetat	Revolutaionary Council/Fatah
81	Mr. Omar Assaf	Return right committee
82	Mr. Peter Krause	Boston University
83	Mr. Qaddora Fares	Prisoner's Affairs
84	Mr. Qais Abdelkarim	PLC

85	Mr. Radi Jarai	Alquds University
86	Mr. Reda Awadallah	PPP
87	Mr. Roland Friedrich	DCAF
88	Dr. Sabri Saidam	President consultant
89	Mr. Sadam Omar	National Security Forces
90	Dr. Safa Nseraldin	Minister of TLC
91	Mr. Said Alhmouz	PMC
92	Mr. Said Zaid	PLC
93	Mr. Salam Zagha	NEDCO
94	Mr. Saleh Ra'afat	Former Head of FIDA
95	Mr. Samer Farah	Welfare Association
96	Mr. Sami Alsaedi	AI Bank
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108	Dr. Ummaya Khammash	UNRWA
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111	Dr. Walid Aburas	HWC
112	Mr. Walid Hodali	JWU
113	Mr. Wisam Atwan	National Security Forces
114	Mr. Yousef Adwan	UNDP
115	Mr. Zafer Milhem	PERC

The Day After: How Palestinians Can Cope if the PA Ceases to Function

January-October 2013

PSR, in cooperation with the USMEP and NOREF, has initiated in January 2013 a policy research project that aims at exploring Palestinian conditions and options in the day after the PA ceases to function. The initiative seeks to produce a series of expert papers focusing on 10 main challenging areas of “the day after” in Palestinian political, social, financial, economic, and security life.

The initiative’s point of departure is that the PA may collapse or may decide to dissolve itself in the near future under the heavy weight of various financial and political pressures. Three scenarios are conceivable: (1) Israel and the US may impose on the PA severe or crippling financial and political sanctions; (2) the PLO leadership may conclude that the two-state solution is no longer practical and may begin to search for other means to gain Palestinian rights leading it to dissolve the PA; and (3) a series of economic, financial and political crises may lead to popular demands for change expressed in mass demonstrations against the PA and a widespread demand for regime change leading to chaos and eventual collapse.

The initiative goals are three: (1) explore the implications of such a development on various critical dimensions of Palestinian life and government, elaborating on the magnitude of the problems and challenges that might arise as a result of PA demise; (2) debate various policy options to respond to such a development, to contain the damage, and to capitalize on potential benefits, if any; and, (3) recommend a course of action for Palestinians to pursue in response to the expected complications.

PSR has gathered a team of 30 experts in the areas of finance and economics, internal security and law enforcement, health, education, communication, justice system, local government, water and electricity, civil and domestic political affairs, and the future of the two-state solution. Experts have been asked to write 10 papers in their various areas of expertise examining the implications, policy options, and recommendations. Each paper has been reviewed and critiqued by two experts. Drafts of the expert papers have been discussed in small specialized workshops attended by policy makers, parliamentarians, experts, and academics.

A final report will be prepared based on the expert papers, workshops/focus groups, interviews, and background research. The report will summarize the main findings, examine the overall policy implications for the PA and the international community, and provide policy recommendations for the various relevant parties.

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