

# How Israeli Occupation Hinders Palestinian Rule of Law



By Nizam Salahat

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ince the establishment of the Palestinian Authority (PA) in 1995 as an interim self-rule entity, one of its main objectives has been to maintain internal security and public order in the West Bank and Gaza. Now, a

quarter century since the establishment of PA security forces, community safety and rule of law in the West Bank areas are still in question.

In the criminal justice domain, murders, drug dealing, theft crimes, and tribal quarrels are on the rise. In addition, the phenomenon of outlawed arms has become normal in the West Bank areas; individuals and tribes obtain guns for their own safety, particularly in rural areas or areas outside of full PA control, and in some refugee camps and neighborhoods where outlaw armed gunmen impose their own authority, taking advantage of their affiliation with specific power centers in the PA.

Against this unusual situation marked by disorder, the PA criminal justice system functions at minimum capacity despite ongoing modernization and capacity-building policies that are funded mostly by Western programs.

Parallel to these disorderly conditions, civil society criticism of human rights violations and curtailment of public freedoms are mounting, especially after the death of the political activist Nizar Banat during his violent arrest by PA security last June. Many believe that the security's performance has proven inefficient and marred with nepotism and political bias. Criticism of the Palestinian security sector focuses on the legal and structural framework of the PA security apparatus. In this respect, it is suggested that the absence of the Palestinian Legislative Council (PLC) since 2007 has left the security apparatus without proper civilian control or oversight mechanisms; consequently, security performance has suffered from lack of accountability and transparency. In this domain, questions are being asked about allocating large budgets for security and maintaining larger

numbers of security personnel at the expense of other vital sectors such as health and education.

Despite partial agreement on the noted shortcomings in PA security, the official view represented by PA spokesmen holds that much of these criticisms exaggerate reality regarding PA security or they are – at least – politically oriented by various rivals, particularly Hamas. According to this view, the PA security has a strong commitment to the rule of law and communal peace within the Palestinian community. In addition, they note that security forces are performing according to a clear mandate and in compliance with the law. Official accounts attribute the weakness of rule of law to the Israeli occupation on one side, and to the internal political crises in the Palestinian political system on the other.

It is true that part of the PA's inability to maintain the rule of law inside the Palestinian community is attributed to subjective factors inside the PA system, such as an authoritarian shift in the PA political system in the aftermath of the Hamas takeover

of the Strip in June 2007 and the disruption of the PLC. However, as this article argues, the Palestinian justice and rule of law crisis is mainly attributed to the Israeli factor; the function of the PA as a limited self-rule authority under foreign occupation hinders its authority to maintain order and rule of law.

Establishment of the PA and its security apparatus is attributed to the Oslo Accords (1993–1995) which provided for an interim self-rule government with limited rule, particularly in the security domain. Later Israeli implementation of the agreement sought to manipulate the Palestinian security system in favor of Israeli security needs as opposed to providing security and justice to the Palestinian people. In this respect, the Oslo agreements allowed the PA police to exercise control over less than 17 percent of the total area of the West Bank (categorized as area A and refers to urban populated towns). On the other hand, Israel maintained full security control over areas B and C, which represent more than 80 percent of West Bank. Now

■ Police special forces on duty.





■ A police barrier to maintain law and order near the Muqata'a in Ramallah.

more than 3 million Palestinians live outside areas A, distributed in several hundred noncontiguous enclaves around the West Bank, surrounded by about a million settlers, numerous military bases, and bypass roads that are designed to connect the Jewish settlement system with Israel.

Needless to mention, the Israeli security system outside areas A operates in service of the Jewish settlers and not the Palestinian communities. In this apartheid system, Palestinians are totally excluded from Israeli protection, rather they are regarded as a potential threat to Israel. As Israeli authorities excluded Palestinians from their protection, they allow limited intervention of the PA security in these areas by applying strict coordination procedures. As witnessed on various occasions, Palestinian police and security can carry out raids after the passing on of the security incident in question.

Poor security control over areas C is becoming more feeble in the so called “adjacent areas” that refer to isolated areas of Jerusalem, east of the separation wall, such as Al-Ram, Kufr Aqab, Shufat Refugee Camp, and parts of Qalandia. A survey conducted by the Palestinian Center for Policy and Survey Research in 2016 reveals that Palestinians in these areas suffer from lack of security and law enforcement compared to those residing in areas A of the West Bank. An updated report about security in these neighborhoods demonstrates that security conditions are worse than ever before; now it is affirmed that the area has become a haven for drug dealers, murderers, and street gangs. The same is true of the so-called H2 area in Hebron, an area subject to direct Israeli control that compromises about 20 percent of the city. In addition to settler violence in this area, Palestinians who live in this area suffer internal disorder and lack of rule of law.

Besides the state of chaos and disorder in areas C, the PA faces disorder inside some areas under its own control caused by outlaw armed men affiliated mainly with Fatah, the ruling party in the PA. The phenomenon of gunmen is traced back to the second Intifada (2000–2007), when irregular military groups exercised their authority inside the Palestinian community, especially after Israel paralyzed the Palestinian police during its military campaign in West Bank. Instead of maintaining order, these irregular groups and individuals have themselves become a security threat and a source of disorder. After 2007, and in the framework of the roadmap, all militias were dissolved, and regular security forces were allowed redeployment along areas A. Nonetheless, the gunmen reappeared, first in refugee camps such Balata and Am'ari, and then spreading to other refugee camps and in the cities as well, albeit somewhat less.

It is argued that the desire for outlawed arms is motivated by various internal social, economic, or political factors that do not relate to the occupation; for example, some attribute the phenomenon to dire economic conditions in the refugee camps while others believe that outlawed militants are backed by certain influential centers inside the PA itself that rely on them to sustain their power inside the political system. Regardless of the role of internal mechanisms in producing outlawed gunmen, however, the occupation still stands as the main motivation for arms proliferation. It is true that not many of the weapons in the

hands of Palestinians are intended to resist the Israeli occupation as much as they are used for internal purposes, with the best being for ceremonial shows and the worst for criminal acts. Despite this, the existence of a foreign military occupation, the aggression of the Jewish settlers, and the absence of a peace framework are all reasons that make criminalizing Palestinian weapons a crime in itself.

PA legislation, including the Basic Law, considers the PA security and police as “the only armed force in the country,” hinting to delegitimize any other armed group or individual, especially since the right to private gun ownership is not mandated by law. Meanwhile arms proliferation continues despite official efforts to curb it. Considering the fact that “Palestinian arms” is regarded as a reality in the ongoing struggle, regulating arms proves to be against reality even if such



■ Armed men parade through the streets of the West Bank.



■ Weapons collected by the security forces in Jenin.



■ Maintaining restraint while confronting protesters.

regulations serve the security needs of the Palestinian community. In fact, if establishing a national authority under occupation is described as a paradox, then the issue of Palestinian arms is at the heart of this paradox. On one hand, the issue of rule of law and arms regulation is a necessity for any authority that seeks to maintain order and lay the foundations of the future independent state. On the other hand, regulating arms for a people who are under the military oppression of their occupiers is against reality.

Actually, Palestinian legislation, including security legislation, was designated to operate in a context of an independent and sovereign state; a deliberate reading of the Basic Law demonstrates that the Palestinian legislator was reluctant not to admit the status quo imposed by the Israeli occupation concerning the status of the Palestinian self-rule and its limited mandate. For the optimistic perceptions of Palestinians, self-rule would have ended in five years (i.e., around 1999), then to be transformed

into an independent state, a perception that proved to be an illusion by 2003 when the Palestinian leadership of President Arafat was obligated at the time to implement legislation for the PA political system. But by ignoring reality, the Basic Law has become, in many articles, irrelevant and inapplicable. The outcome of such an illusion is reflected by the current situation in which the issue of security and rule of law is as problematic as the Palestinian issue itself.

*Article photos courtesy of the author.*

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