



Arab American University
Faculty of Graduate Studies

**Alternative Dispute Resolution between Theory
and Practice: Mediation and Negotiation in Resolving
Palestinian Social Conflicts**

By
Etizaz Mohammad Ibrahim Salman

Supervisor
Professor: Sami Adwan

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Thesis Approval

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By

Etizaz Mohammad Ibrahim Salman

This thesis was defended successfully on 12\6\2022,

And approved by:

Committee members

Signature

- 1. Dr. Sami Adwan/ Supervisor**
- 2. Dr. Ayman Yousef/ Internal Examiner**
- 3. Dr. Manar Faraj/ External Examiner**



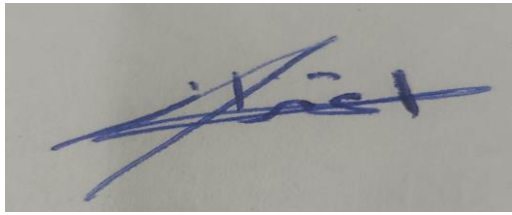
Manar Faraj



Declaration

I, Etizaz Mohammad Ibrahim Salman, confirm that this manuscript is presented to Arab American University to obtain the master's degree in Conflict Resolution. I also confirm that it is the result of my own research, except for what is cited from other sources. This study was not presented to any other university or institute to get any high degree. Moreover, I authorize Arab American University to supply copies of my manuscript to libraries, establishments, or individuals on request, and according to the regulations of Arab American University.

Name: Etizaz Mohammad Ibrahim Salman

A photograph of a handwritten signature in blue ink on a light-colored surface. The signature is stylized and appears to be 'Etizaz'.

Signature:

Date: 31\8\2022

Dedication

It is with sincere gratitude and heartfelt regard that I dedicate this thesis to my family, professors and friends. My special dedication goes to my beloved mother who has always encouraged me to pursue further education, to my dear father who has always been by my side and encouraged me to succeed both academically and socially, and to my loving sisters, whose words of support continue to ring in my ears.

I would also like to dedicate this work wholeheartedly to my darling husband, who, for years past, has supported and encouraged me with his truest attention and patience to accomplish my work, and to my lovely children whom I hope that they will one day make great academic achievements.

Lots of thanks go to all my wonderfully supportive friends, and all appreciation is due to my humble and highly knowledgeable professors who have not spared me any professional assistance or support, without which this research would not have been completed, not even started.

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Abstract

This study aims to investigate the social conflicts that necessitate the employment of alternative dispute resolution (ADR) techniques, namely Mediation and Negotiation, in the Palestinian social context. It seeks to examine the challenges involved in using these ADR techniques, and to assess the degree of similarity and difference between the theoretical framework for ADR techniques and their practice in the Palestinian social context in order to assess their cultural fit. The present study also intends to look into the ADR techniques as a prerequisite step before resorting to the courts.

The study population consisted of all reconciliation experts who work under the supervision of the Civil Peace Departments of the Palestinian governorates. The sample comprised fifteen professional, well-known Reconciliation Men from different governorates of the West Bank.

The study used narrative interviews and the descriptive qualitative approach to collect and analyze the data respectively.

The study has come up with some results, the most important of which is that the Palestinian culture requires using a new ADR technique, called Medigotiation. The term or the noun “Medigotiation,” a blend of two ADR techniques, Mediation and Negotiation, is designed as such by the researcher in order to emphasize the significant role of these two ADR techniques when attempting to resolve Palestinian social conflicts. By using this new tool, it is going to be possible to achieve an adequate level of compatibility between the ADR theory and its practice or application in the Palestinian society. This technique involves the intervention of a third party, either voluntarily or as requested by the conflicting parties, to stop the

ongoing conflict. This third party, who should be neutral and impartial, shall consider the conflict thoroughly and negotiate with the conflicting parties until a satisfactory solution or agreement is concluded. The characteristics and skills that the Medigotiator should have are those of Mediation and Negotiation. This new ADR technique or tool chimes with Mediation and Negotiation in certain aspects and differs in others.

Finally, the study is concluded with some recommendations, mainly:

1. Considering and implementing all the recommendations proposed by the Reconciliation Men.
2. Adopting the Mediation Law as a mandatory proactive step before resorting to the court.
3. Incorporating the Medigotiation tool into the ADR theory as a new technique that might be appropriate for some societies and cultures similar to the Palestinian one.
4. Conducting further research or studies regarding this new technique, Medigotiation.
5. Providing Reconciliation Men with more training on how to best make use of this new tool in achieving civil peace.

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List of Abbreviations

| Abbreviation | Meaning |
|---------------------|--|
| ADR | Alternative Dispute Resolution |
| M | Mediation |
| N | Negotiation |
| PLO | Palestinian Liberation Organization |
| WB | West Bank |

List of Terms:

1. **Atwa or Hudna (Truce):** It is the time given to the criminal's family by the victim's family directly after the crime is committed. It is a truce whereby the disputing families agree not to assault each other for a certain time. It is guaranteed by the Reconciliation Men, and it is mainly taken in issues of blood (violence involving bloodshed) and honor crimes.
 - a) **Atwa Naqisa (Incomplete Atwa):** It is an atwa that includes everyone but the criminal. In this case the criminal's family roils the criminal's blood because he did a crime that is against morals and customs.
 - b) **Atwa Taftesh (Inspection Atwa):** It is a period of time that is taken to uncover the truth, whereabouts of the crime, and the real criminal.
 - c) **Inkar Atwa (Denial Atwa):** It is an atwa that is taken to prevent assaults between conflicting parties. It happens when a party denies the accusations of the other party. Eventually, the case is referred to the clan judge. Each party presents their evidence and the denying party swears on the holy Qur'an that they did not commit the crime accused of.
 - d) **Iqbal Atwa:** It is an atwa that is taken for a year, but in the end, the criminal comes to the house of the victim with a huge jaha to achieve justice and reconciliation. It is often happens in the cases of murder or intentional killing, so that the criminal's family are permitted to go back to their places from which they were expelled.
2. **Beit Malam:** It is a house that gathers the conflicting parties. Each party would present their evidence in front of the householder. Then the householder tries to reconcile parties. If he was not able to do so, he would refer the case to

Reconciliation Men after appointing a kafeel for each party. The party who fails to meet with the Reconciliation Man for three times shall lose the case.

3. **Elwajh: (Lit. *The Face*, meaning: *Notable Man*):** He also acts as *Kafeel* (guarantor). He is the one who guarantees that all conditions requested from the *Jaha* will be fulfilled. In the case the conditions are not fulfilled, the Face will bear the consequences.
4. **Firash Atwa (Initial Payment in the Conflict Settlement Procedure):** It is an amount of money paid by the criminal's family through the Reconciliation Men to the victim's family. This amount of money is a symbol of the starting step toward reconciliation. It is paid in the issues of blood and honor.
5. **Islah:** it is the process of reaching reconciliation.
6. **Jaha (Peace Delegation):** It is a group of honorable people who intervene to resolve conflicts between people. It can be sent from one party to the other or it can be formed by wise men to stop the conflict between parties.
7. **Kafal or Kafeel (Guarantor):** Kafeel is the one who guarantees fulfilling certain conditions or duties required from the criminal or his family. There are many types of Kafals or Kafeels:
 - a) **Kafeel Dafe' (Guarantor for Payment):** One who pays whatever needed for the victim's family.
 - b) **Kafeel Dafa (Defensive Guarantor):** One who defends the criminal against any assaults from the victim or the victim's family.
 - c) **Kafeel Haq (Guarantor of the Right):** One who guarantees the rights of both the criminal and the victim.
 - d) **Kafeel Mane' (Preventive/ Protective Guarantor):** One who protects the criminal and brings him to the clan sessions as required.

8. **Labbas Ehtob (Lit. *the cloak wearer*):** He is one of the Reconciliation Men who represent the criminal and his/her family. His mission is to pay the money that was requested from the Sulha Jaha.
9. **Manha Dam:** This refers to the judge who looks into the issues of injuries and cases of blood.
10. **Manshad Atwa:** It is an atwa that is taken in cases of blood and honor crimes. It is the highest point of the clan norms. It is similar to the High Court of Justice in the legal system. The criminal and his family have to pay a large amount of money that would deter anyone who thinks of committing such crimes.
11. **Manshad (Supreme Tribal/Bedouin Judiciary):** The manshad consists of three prominent judges. The conflicting parties meet with the first judge and provide him with their proofs. If one of the parties was not convinced with the judgment of the first judge, they would go to the second judge. If they also were not convinced with the judgment of the second judge, they would go to the third judge. If they are still not convinced with the judgment, they can go to a fourth judge, who acts as a preponderant or superior judge. He shall decree whose judgment of the three judges is to be conducted, and his verdict is binding.
12. **Medigotiation:** a process that combines Mediation and Negotiation together in the sense that a third party intervene to stop an ongoing conflict voluntarily or even upon the request of the parties. This third party who is neutral and impartial examines the conflict from all its sides and negotiates with disputing parties until they reach a suitable solution or agreement.

13. **Qada' asha'iri (Clan Session):** It is a way or a method that is used in resolving conflicts based on an inherited rules and customs.
14. **Sahib Beit/ Ra'i Albeit (householder):** This refers to a wise man who gathers conflicting parties in his house and tries to reconcile them.
15. **Tanaba/Dakhala (to request /to enter under the protection of):** This verb refers to a helpless person requesting (Tanaba/ talaba) and entering under (Dakhala) the protection of a respectable Reconciliation Man who in turn would start the reconciliation procedures.
16. **Taneeb /Dakheel:** This noun refers to a helpless person who has no jah (power, influence, money, etc.), and who upon being victimized requests help and granted protection from a strong Reconciliation Man who in turn would provide protection to the Taneeb /Dakheel and help him regain his/her rights.

Chapter One: General Framework

1. Introduction

Since the beginning of creation, conflicts have existed in various forms and at various times, beginning with Adam and Eve, who were created to live in heaven until they were seduced by Satan to eat from the forbidden tree. They were punished by Allah and descended to live on earth. Since then, an eternal conflict has erupted between Satan and humans, as well as between humans themselves. In the narrative of Cain and Abel, when they submitted their offerings to Allah, Allah accepted Abel's offering and rejected Cain's. So, the two brothers fought and Cain killed Abel. Our world is currently awash in many sorts and shapes of conflict, and because conflict is inevitable, it is necessary to establish new approaches and strategies for coexisting and resolving disputes. A tremendous advancement in the science of resolving conflicts has evolved in parallel with the development of the concept of conflict. To elaborate on this topic, it would make sense to begin with a definition of the concept of *conflict*.

The term **conflict** comes from the Latin verb *confligere* which means “hit each other.” Conflict is a multilevel, multidimensional and dynamic social phenomenon that has been discussed in a number of disciplines such as psychology, sociology, anthropology, political and cultural studies, philosophy, history, management, public relations, etc.¹ It is defined as “*a state of discomfort or psychological pressure that is resulted from the inconsistency or incompatibility between two or more needs or*

¹ Alyeksyeyeva, Iryna. *Conflict in Interpersonal And Corporate Communication: Strategies and Tactics*. KYIV, 2018.

desires of two or more people.”² Moreover, conflict is also defined as “*an obvious competition between two or more people.*”³

1.1 Types of Conflict

Conflicts are manifested in many types including: *intrapersonal conflict* which is defined as a conflict that happens between the person and himself; *interpersonal conflict* happens between two or more individuals; *intra-group conflict* happens between people of the same group, and *intergroup conflict* happens between two or more groups⁴.

1.2 Conflict Resolution Techniques

Conflicts can be dealt with through violence or through peaceful means. When it comes to the latter technique, i.e. dealing with a conflict peacefully, there are four techniques to consider: 1. To resolve the conflict. 2. To manage the conflict. 3. To transform it. 4. To prevent it.

² Sakhri, Mohamed. “ مفهوم الصراع : دراسة فى الأصول النظرية للأسباب والأنواع.” الموسوعة الجزائرية للدراسات السياسية والاستراتيجية, June 11, 2019. <https://www.politics-dz.com/%D9%85%D9%81%D9%87%D9%88%D9%85-%D8%A7%D9%84%D8%B5%D8%B1%D8%A7%D8%B9-%D8%AF%D8%B1%D8%A7%D8%B3%D8%A9-%D9%81%D9%89-%D8%A7%D9%84%D8%A3%D8%B5%D9%88%D9%84-%D8%A7%D9%84%D9%86%D8%B8%D8%B1%D9%8A%D8%A9-%D9%84/>.

³ Ibid

⁴ Hussein, Abdulfattah, and Yasser Al_Mamary. “Conflicts: Their Types, and Their Negative and Positive Effects on Organizations.” *International journal of scientific study in science and technology* 8, no. 8 (August 2019): 10–13. <https://doi.org/10.32628/ijrst>.

Conflict resolution is defined as a mechanism where the conflicting parties come together and sort out their incompatibilities and conflicts by peaceful means.⁵

Conflict management refers to the process of using preferred strategies to handle a conflict with goals of limiting negative impact and enhancing positive impact. The most influential theory around conflict management is based on the managerial grid model developed by Robert R. Blake and Jane S. Mouton. There are five main strategies of conflict management: *integration* (win-win strategy that seeks mutual benefit), *accommodation* (win-lose strategy that gives up one's needs to the benefit of the other), *domination* (lose-win strategy that maximizes one's needs and neglecting the other's), *avoidance* (lose-lose strategy by withdrawal), and *compromise* (give-and-take strategy to meet mutual needs in the middle).⁶

The difference between conflict resolution and conflict management is that conflict resolution is concerned with reducing or eliminating conflict, while conflict management is focused on strategic implementation for positive outcomes.⁷

On the other hand, *conflict transformation* is defined as “a process of engaging with and transforming the relationships, interests, discourses, and, if necessary, the very constitution of the society that supports the continuation of violent conflicts.”⁸

⁵ Wani, Hilal. “Understanding Conflict Resolution - Studygate.net.” Reseachgate, 2011. https://www.studygate.net/profile/Hilal-Wani-2/publication/312146921_Understanding_Conflict_Resolution/links/5872074208ae6eb871c412dc/Understanding-Conflict-Resolution.pdf.

⁶ Wang, Qi. “Conflict Management.” *Center for intercultural dialogue* 53 (2015). <https://doi.org/https://www.google.com/url?sa=t&source=web&rct=j&url=https://Centerforinterculturaldialogue.files.wordpress.com/2015/02/key-concept-conflict-management.pdf&ved=2ahUKEwjI9vK9trzAhUhSfEDHOGpCa0QFnoECAUQBg&sqi=2&usg=AOvVaw0VFtjZ7teflnZTXrMKq3kP>.

⁷ Ibid.

The definition of *conflict prevention* varies depending on the goal of prevention, which might range from reducing violence to resolving incompatibility. It also varies in terms of time and means, particularly when it comes to their coerciveness, concepts, etc. It is defined as “*the measures that can be undertaken by a third party to stop the conflict from developing to a violent level. Those measures are not coercive in nature.*”⁹

The present study focuses on social conflicts (particularly the interpersonal and intergroup conflicts) in the Palestinian society in the West Bank. Fink (1968) defines the *social conflict* as “*any social situation or process in which two or more social entities are linked by at least one form of antagonistic psychological relation or at least one form of antagonistic interaction.*”¹⁰ The nature of conflicts within societies has evolved in tandem with the development of these societies. For example, when society was organized into tribes, conflicts were centered on tribal issues such as resources, sheep, and camels, or on honor and marriage. Intertribal conflicts were also about issues like resources, herds or intermarriages. Conflicts developed as societies progressed, taking on various forms.

In order to be able to understand social conflicts and relate them to a certain society, there is a need to study its culture first. Nevertheless, as the world has progressed, the definition of culture has evolved as well. Here are a few definitions

⁸ Miall, Hugh. “Conflict Transformation: A Multi-Dimensional Task.” *Transforming Ethnopolitical Conflict*, 2004, 67–89. https://doi.org/10.1007/978-3-663-05642-3_4.

⁹ Svanstrom & Weissmann, 2005, p:9.

¹⁰ Van der, Dennen. “On Conflict.” Introduction. In *The Sociology of Conflict*, 1–19. London, UK: Chapman & Hall, 1990.

for the term “culture”: “*a way of life, the social legacy the individual acquires from his/her group, a way of thinking, feeling, and behaving.*”¹¹

Culture is also defined as “*the way of living that differentiates a certain society from the other. The way people behave and act in their lives in the normal days.*”¹²

One of the most essential characteristics of culture is that it is “socially inherited,” meaning that it is passed down through generations.¹³

1.3 Types of Culture

According to Kana’neh, culture can be divided into two main types: the official culture and the public culture. The *official culture*, aka the *high culture*, is inherited from one generation to another through official institutions and agencies like the ministry of education, universities, the official religious institutions, the official laws, literature, and high arts. All of those cultural symbols are maintained through state institutions such as courts, ministries, and governmental departments. *Public culture*, however, is the result of spontaneous public lives that generally express people's feelings, emotions, needs, and conscious. It is not related to the elite but to the public. It is inherited from one generation to another spontaneously by observation, imitation, simulation, or even oral transmission.¹⁴

¹¹ Johnson, Matthew. “What Is Culture? What Does It Do? What Should It Do?” Essay. In *Evaluating Culture*, 97–119. Lanchester, UK: Lanchester University, 2013.

¹² كناعنة شريف, كناعنة شريف, and كناعنة مصلح. “الثقافة: وسيلة الانسان للتأقلم مع بيئته.” Essay. In *دراسات في الثقافة والتراث والهوية*, ٣٣-٦٣. رام الله, فلسطين: المؤسسة الفلسطينية لدراسة الديمقراطية, 2011.

¹³ Ibid (p:46).

¹⁴ Ibid (p:48-49).

2. Statement of the Problem

Since the Palestinian judicial system is overwhelmed with cases and slow in processing them, Palestinians frequently turn to ADR tools to resolve their social conflicts. The study investigates the use of two of these ADR tools, namely Negotiation (N) and Mediation (M) in resolving social conflicts in the Palestinian society from the Reconciliation Men's perspective. Moreover, the present study will highlight similarities and differences between the ADR theory and its practice, or application, in the Palestinian society.

3. Research Questions

The study sought to answer the following questions:

- 1) What are the reasons behind using ADR tools (Mediation and Negotiation) in resolving social conflicts in Palestine?
- 2) What are the steps/approaches used in implementing Mediation and Negotiation in resolving social conflicts in Palestine?
- 3) What are the challenges encountered in using Mediation and Negotiation in resolving social conflicts in Palestine?
- 4) How success is measured in using Mediation and Negotiation in resolving social conflicts in Palestine?
- 5) What are the similarities and the differences between ADR theory (Mediation and Negotiation) and its practice in the Palestinian social context?
- 6) How can we draw the lines between Mediation and Negotiation procedures in the process of resolving social conflicts?

- 7) What motivates Reconciliation Men to play the role of Mediation and Negotiation at the same time in a certain situation?

4. Research Objectives

The study aims to achieve the following objectives:

- 1) To determine the factors that lead Palestinians to seek Alternative Dispute Resolution (ADR) rather than going to court.
- 2) To investigate the situations in which Alternative Dispute Resolution (ADR) techniques (especially Mediation and Negotiation) are required, as opposed to the techniques that are employed in real-life situations.
- 3) To identify challenges involved in using Mediation and Negotiation in the Palestinian social context.
- 4) To learn how to measure success in resolving social conflicts in Palestine.
- 5) To identify similarities and differences between the theory of those techniques or tools and their practice in the Palestinian social context.
- 6) To know how to separate or merge the two ADR tools which are Mediation and Negotiation.
- 7) To study Alternative Dispute Resolution (ADR) as an obligatory step for Palestinians before going to court. This will reduce pressure on the legal system.

5. Significance of the Study

The importance of this study is manifested in the following points:

1. The continual presence and increase of the social conflicts in Palestinian society.

2. The very long time that the court/legal system takes to resolving the big numbers of social conflicts; not enough judges, complicated and costly processes. Moreover, results are mainly win-lose.
3. Low level of the legal system's sensitivity to customs, traditions, norms...etc.
4. Lack of studies in the area of resolving social conflict in Palestinian society.
5. The development of a model of using M & N in resolving social conflict effectively and is suitable to the Palestinian context and culture.

6. Definition of Terms

This part of the study contains the definition of conflict, social conflict, conflict resolution, Alternative Dispute Resolution, Negotiation, Mediation, Arbitration, Clan Reconciliation, Tribal Judiciary, and Reconciliation Men.

1. **Conflict:** *“An activity that occurs when individuals or groups wish to carry out mutually inconsistent acts concerning their wants, needs, or obligations.”*¹⁵
2. **Social Conflict:** *“Any social situation or process in which two or more social entities are linked by at least one form of antagonistic psychological relation or at least one form of antagonistic interaction.”*¹⁶
3. **Conflict Resolution:** *“A mechanism where conflicting parties come together*

¹⁵ Nicholson, Michael. “CONCEPTS OF CONFLICT.” Chapter. In *Rationality and the Analysis of International Conflict*, 11–24. Cambridge Studies in International Relations. Cambridge: Cambridge University Press, 1992. doi:10.1017/CBO9780511598739.004.

¹⁶ Van der, Dennen. “On Conflict.” Introduction. In *The Sociology of Conflict*, 1–19. London, UK: Chapman & Hall, 1990.

*and settle their incompatibilities and conflicts by peaceful means.*¹⁷

4. **ADR:** *“A set of practices and techniques aimed at permitting the resolution of legal disputes outside the court.”*¹⁸
5. **Negotiation:** *“The process through which two or more parties who are in conflict over outcomes attempt to reach an agreement. It is the constructive, positive alternative to haggling or arguing. It is aimed at building an agreement rather than winning a battle.”*¹⁹
6. **Mediation:** *“A process by which an impartial third party helps two or more disputants work out or resolve a conflict.”*²⁰
7. **Arbitration:** *“A process used by agreement of the parties to resolve conflicts. In Arbitration conflicts are resolved with binding effect by a person or persons acting in a judicial manner in private rather than a national court of law.”*²¹
8. **Clan Reconciliation (aka “Clan Sulha”):** *“ A technique or method for*

¹⁷ Wani, Hilal. “Understanding Conflict Resolution.” StudyGate. Studygate, January 2011.

https://www.studygate.net/publication/312146921_Understanding_Conflict_Resolution.

¹⁸ Mnookin, Robert. “ADR.” StudyGate. Studygate, March 1998. https://www.studygate.net/publication/30504345_Alternative_Dispute_Resolution.

¹⁹ Pillutla, Madan M. Negotiation How to Make Deals and Reach Agreement in Business. Edited by N Nicolson. Norwich, London: Format, 2004.

²⁰ Moss, Bernard. “Mediation in Context.” Edited by Marian Liebmann. The british journal of social work, 509-511, 31, no. 3 (2001): 1–10. https://doi.org/https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.blaney.com/sites/default/files/other/adr_introduction.pdf&ved=2ahUKewi nvtvB2MLyAhXv_rslHRTwCeMQFnoECAQQBg&usg=AOvVaw29bMjYlI2Gbx3HuFOdB5-7.

²¹ CROWTER, HAROLD *Introduction to Arbitration* .INFORMA LAW, 2015 .

resolving conflicts and disagreements amongst clans based on inherited bases, bridges, systems, and norms passed down from generation to generation to resolve conflicts and disagreements accompanied by habits, customs, and traditions. Clan reconciliation has the following features: speed in resolving conflicts through Mediation; moreover, it is characterized by reconciliation; it is frequently used in a criminal environment; it is binding by the power of the clan and mutual interests between parties without having executive power; it is powered by family connections; and finally, it is a binding contract between the parties that cannot be reversed.”²²

9. **Tribal Judiciary:** *“A style, an approach, or a method that is used to resolve conflicts or disagreements based on a group of agreed upon concepts and values, which are accepted by the Bedouin tribes and considered binding.”²³*

10. **Reconciliation Men:** *“Men that work as mediators or negotiators in the social conflicts, following the tribal traditional system of resolving conflicts.”*

7. Research Limitations

The limitations of the study include concepts, population, instrument, time, and place. These are explained below.

Concepts: This study covers only a bunch of concepts: Conflict, Conflict Resolution, ADR, Mediation, Negotiation, Arbitration, Clan Reconciliation, Tribal Judiciary, and Reconciliation Men.

Population: The target population of this study includes all Reconciliation Men who deal with the cases of social conflicts. Those people work under the umbrella, or

²² ادريس محمد جرادات: الصلح العشائري وحل النزاعات، جامعة النجاح الوطنية، نابلس، 2014-ص29.
²³ ثابت محمود سالم. “نشأة العرف والعادة في فلسطين.” In *Essay. القضاء العشائري عند قبائل بئر السبع/فلسطين*, ص21، غزة، فلسطين: ام الكتاب للابحاث والدراسات الالكترونية.

supervision, of the Civil Peace Departments of the Palestinian governorates.

Instrument: The instrument or tool used is the narrative interview, which is a data collection technique that is used in qualitative study. It yields rich and complex data and leaves the subjects to take the control of the interview. This kind of interviews is used in biographical or oral history types of study.²⁴

Time: The study was conducted in the Fall Semester of 2021, and the defense is expected in the Spring Semester of 2022.

Place: This study is limited to the West Bank governorates only.

²⁴ Domnisoru, Florentina. "Narrative Technique of Interviewing." StudyGate. Studygate, January 2013.
https://www.studygate.net/publication/311576991_NARRATIVE_TECHNIQUE_OF_INTERVIEWING.

Chapter Two: Palestine and the Palestinian Society

This chapter provides background information related to the geography and demography of Palestine, as this information is essential to understanding the main aspects of the study context, problem and solution. Therefore, Palestine location, history, population, family, poverty, social characteristics, covid-19, economy, unemployment, crime, legal system, and clan reconciliation will be all briefly discussed in the following sections.

1. Location

Palestine is situated in the south-western part of Asia, on the eastern coast of the Mediterranean Sea. It is considered as an overland bridge that connects Asia and Africa. It also connects the Mediterranean Sea with the red Sea and the Atlantic Ocean with Indian Ocean. It lies between the meridians of 15, 34 and 14, 35 to the east of Greenwich, and between the latitudes of 29, 30 and 15, 33 to the North of the equator. This astronomical site has an impact on the local weather; it causes the weather in northern Palestine to differ from that in southern Palestine. The historical Palestine covers a total area of 27.027 km². The West Bank, with its portion of the Dead Sea, has a total size of 5842 km², and Gaze Strip is 365 km² in size. Palestine is bordered on the west by the Mediterranean Sea, which has a 240-km-long coastline, and on the east by Syria, which has a 76-km-long border, and Jordan, which has a 360-km-long border. Lebanon is bordered to the north of Palestine by a 79-km border line, and the Sinai Peninsula is bordered to the south by a 240-km border line.

2. History

History of Palestine is full of events that have shaped the present and future of the

Palestinians. Throughout its long history, Palestine has been subjected to a series of occupations.. For the purpose of this study, the history of Palestine shall be divided into periods as follows:

2.1 Palestine During the British Mandate (1920-1947)

The British Government's memorandum to the United Nations Committee²⁵ on Palestine in 1947 is about Palestine's modern history, which started when it was subjected to the British mandate (1920-1947) after it was captured from the Ottoman Empire in 1917. In January 1919, the Paris Peace Conference opted to use the mandate system outlined in Article 22 of the League of Nations Covenant. The current boundaries for territories captured by the Allies in World War I, including Palestine, were established at the San Remo Conference on April 25, 1920. Not long after that date, the military administration was replaced by civil administration. The northern boundaries of Palestine were set by a British-French agreement on December 23, 1920, while the eastern boundaries were determined in 1923 to declare an independent state (known today as Jordan) in the region to the east of the Jordan River. The League of Nations approved the British mandate over Palestine, requiring the mandate state to prepare suitable political, administrative, and economic conditions to ensure the establishment of a national homeland for Jews in Palestine, the establishment of self-ruling institutions, and the maintenance of civil and religious rights for all Palestinians, regardless of their religion or race. Balfour Declaration stated in 1917 that the Jews would be granted a national homeland in Palestine. The Arabs launched various attacks on the Jews in 1921. In 1922, the British mandate

²⁵ حسين فاضل, trans. تاريخ فلسطين السياسي تحت الادارة البريطانية. بغداد, العراق: مطبعة الرابطة, 1956.

issued the White Book which explains the Balfour declaration, stating that the goal of the declaration is not to create a Jewish state in Palestine, but to allow Jews to establish their own nation by allowing migration of Jews from all over the world, as well as to explain that the Jews have a historical right to this land. Many attempts to construct a self-governing organization, such as a legislature council, were made, but all of them failed. As of 1920, Palestine started to flourish after the poverty that had existed during the Ottoman Empire. The civil administration aided in the development of transportation networks. It also supported peasants and farmers to develop the agricultural field. Public health services were also improved, and in 1925 Malaria was controlled and contained particularly in large cities. Similarly, education was improved by increasing the number of schools and teachers. As a result, the economic system was developed as well. Nonetheless, emigration increased the number of Jews in Palestine throughout this period. As a result, the size and number of estates specifically dedicated to Jews grew. The following years saw a flurry of reactions based on a religious belief that the Jews wanted to take control of one of the holiest Islamic sites on the planet, Al-Aqsa Mosque, particularly after the Jews claimed that Al-Buraq wall (also known for them as the Wailing Wall) was built over the remains of the so-called Solomon's Temple. As a result, various attacks and protests against Jews and the British mandate were organized. Another White Book was published in 1930 to explain the situation in Palestine, limit Jewish immigration, and keep the situation stable.

The period between 1930 and 1935 witnessed a huge economic development in Palestine. The Palestinian Electricity Company was established in the Jordan Valley in 1932; Haifa Port was accomplished in 1933, and the project of Oil Pipelines from Iraq was completed in 1935. Palestinian Arab Leadership accepted the British High

Commissioner's proposal for a Legislative Assembly, but the British House of Commons rejected it the following year. However, Jewish immigration continued and intensified during this period. As a result, Palestinians protested the mandate, saying that it discriminated against Arabs.

The Arab revolt, which lasted from 1936 to 1939, was marked by numerous strikes. A royal committee was formed to look into the causes of the revolution and assess the British mandate. Another White Book was released in 1939 to ensure the Balfour Declaration paved the way for the end of the British mandate, and the establishment of self-rule. The British administration developed a system of selling lands in 1940, dividing Palestine into three areas and prohibiting the sale of lands to non-Arabs in the big areas unless a license from the high commissioner is obtained. In the second area, Arab Palestinians were prohibited from selling their lands to anyone except other Arab Palestinians. However, there were no restrictions on selling lands in the third area. World War II increased the number of illegal Jewish immigrants. In 1946, the high commissioner decreed that Jews should emigrate at a rate of 1500 per month. World War II ended in 1945, and the British mandate was unable to implement out the policies outlined in the White Book. In addition, the League of Nations was disbanded in 1939. The United States requested that the number of Jews allowed to immigrate be increased to 100,000 in order to assist European Jews who were without homes. The British government did not agree with this proposal, so a British-American committee was set up to investigate the issue. This committee provided the following recommendations concerning Palestine's future: 1. The Arabs and the Jews should not have sovereignty on each other. 2. Palestine should be neither an Arab state nor a Jewish state. 3. The state system that will be established should be under international guarantees. After the British Mandate expired in 1947, the United

Nations advised partition of Palestine into separate Jewish and Arab states, with international sovereignty over Jerusalem and its environs. However, the Arab High Committee voted against partition.

2.2 UN Partition Plan for Palestine (1947-1977); Wars of 1948, 1967, 1973; Inalienable Rights

According to the United Nations official website,²⁶ the United Nations issued Resolution 181 in 1947, ending the British mandate and partitioning Palestine into two independent states: one Arab Palestinian state and the other a Jewish state, with Jerusalem placed under international supervision.

²⁶ المتحدة الامم. "موجز لتاريخ القضية الفلسطينية - لجنة الأمم المتحدة المعنية بممارسة الشعب الفلسطيني لحقوقه غير القابلة للتصرف." United Nations. United Nations. Accessed April 22, 2022. [/history/https://www.un.org/unispal/ar](https://www.un.org/unispal/ar/history)

The following map shows the UN Partition Plan for Palestine as per Resolution 181.



Figure 1.2 Map of UN Partition Plan for Palestine as per Resolution 181²⁷

²⁷ Bahmed, Amira. "The 1947 UN Partition Plan for Palestine." CJPME, 2013. https://www.cjpme.org/fs_173.

In 1948, Israel declared independence and launched wars against its Arab neighbors. It now encompasses 77 percent of Palestinian territory, including the bulk of Jerusalem. As a result, over half of the Palestinian Arabs were forcibly displaced. Jordan and Egypt were in charge of the Arab lands at the time of the partition resolution. The rest of Palestine (the West Bank and Gaza Strip), including eastern Jerusalem, was occupied by Israel in 1967. As a result, 500,000 Palestinians were forced to flee their homes. The Security Council Enacted Resolution 242 to establish lasting and just peace principles, including Israel's withdrawal from occupied territories in 1967 and a just solution to the refugee issue. The Security Council issued Resolution 338 in 1973, which calls for Negotiations between the parties concerned. In 1974, the United Nations General Assembly reaffirmed the Palestinians' inalienable rights to self-determination, national independence, sovereignty, and repatriation. In 1975, the United Nations General Assembly formed a committee to ensure that the Palestinian people exercise their inalienable rights, as well as giving the PLO the position of supervisor in the Assembly and at UN sessions.

2.3 The International Conference on the Question of Palestine and Intifada (1977-1990)

In 1982, Israel launched an attack on Lebanon in order to destroy the PLO. The PLO withdrew from Beirut to other neighboring states when the war stopped. Despite assurances to the Palestinian refugees' safety, a massacre occurred in the Sabra and Shatilla camps in 1983. The following principles were established by the **International Conference on the Question of Palestine**: 1. To reject Israeli settlements and Israeli procedures aimed at changing Jerusalem's status quo. 2. To ensure that all regional states have the right to exist within safe, international, and

declared borders.. 3. To ensure the Palestinian people's inalienable rights. In 1987, a public Palestinian intifada broke out in the occupied Palestinian territories against Israeli control. As a result, Israel utilized weaponry that resulted in massive casualties.

1. To oppose the Israeli settlements and the Israeli procedures to change the position of Jerusalem. 2. To assure the rights of all the area states of existing inside safe, international, declared borders. 3. Assure the nonnegotiable rights of the Palestinian people. In 1987, a popular Palestinian intifada broke out in the occupied Palestinian territories against Israeli occupation. As a result, Israel utilized weaponry that resulted in massive civilian casualties among Palestinians. In Algeria, the Palestinian National Council declared in 1988 the foundation of the Palestinian state over the 1967 borders, and divided the Palestinian territories into 16 governorates, 11 of which were in the West Bank, called the Northern Governorates, and 5 were in Gaza Strip, called the Southern Governorates. The West Bank governorates are Jerusalem, Bethlehem, Hebron, Ramallah and al-Bireh, Nablus, Sulfites, Qalqilya, Tulkarm, Tubas, Jenin, Jericho and the Jordan Valley. The Gaza Strip governorates are the North of Gaza Governorate, Gaza Governorate, the Middle of Gaza Governorate (Deir El-Balah), Khan Younes Governorate, and Rafah Governorate.²⁸

²⁸ وفا. "التقسيمات الإدارية لدولة فلسطين (المحافظات الفلسطينية)". وكالة الأنباء والمعلومات الفلسطينية - وفا .

Accessed August 21, 2021. https://info.wafa.ps/ar_page.aspx?id=2414.

The following map defines these divisions.

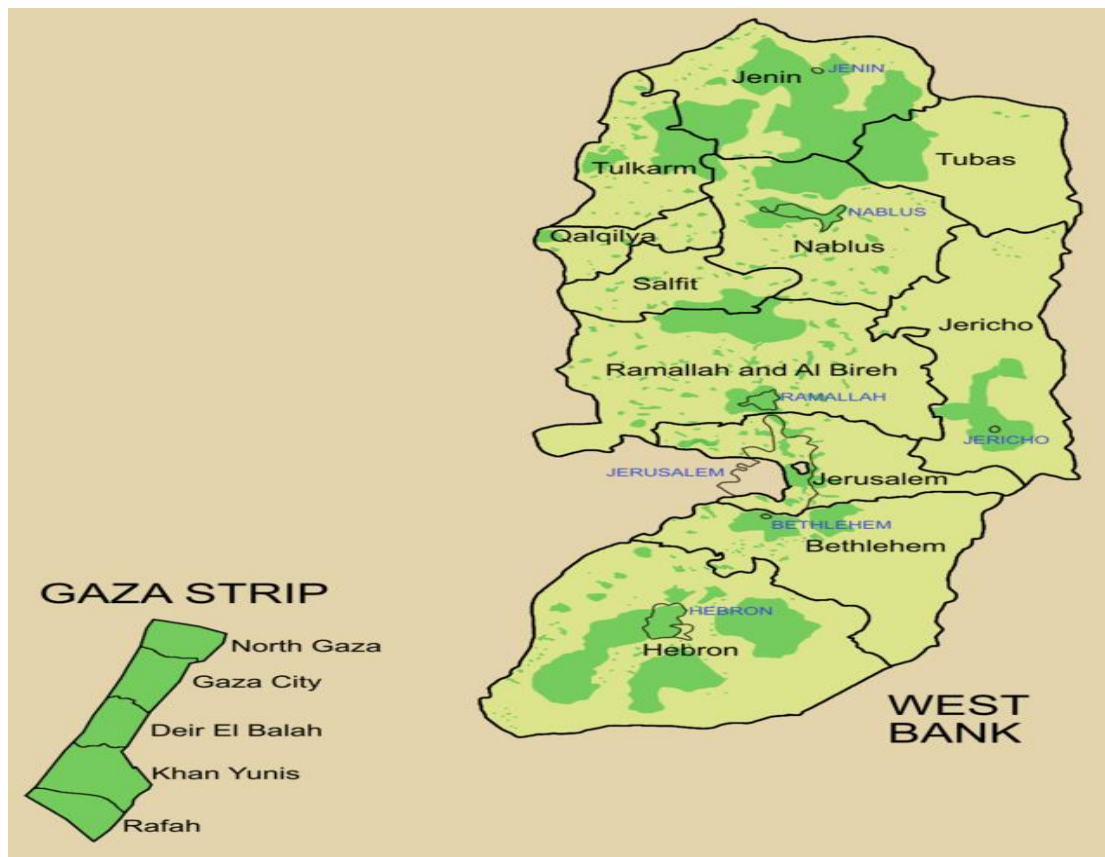


Figure 2.2 Map of Governorates of Palestine²⁹ .

2.4 The Peace Process of the 1990s

The Madrid Peace Conference was held in 1991 with the goal of establishing a peaceful resolution to the Palestinian issue through direct Negotiations between Israel and Arab states, as well as between Israel and Palestinians, based on Security Council resolutions (242) and (243). (338). It was decided that the topics of discussion would include the environment, weaponry, refugees, water, and the economy. In 1993, Israel

” <https://www.wikiwand.com/ar/%D9%85%D8%AD%D8%A7%D9%81%D8%B8%D8%A7%D8%AA%D8%A7%D9%84%D8%B3%D9%84%D8%B7%D8%A9%D8%A7%D9%84%D9%88%D8%B7%D9%86%D9%8A%D8%A9%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D8%A9>. Accessed August 21, 2021. ²⁹

and the PLO (as the sole legitimate representative of the Palestinian people) signed the Declaration of Principles which included arrangements regarding the interim period of Palestinian self-rule (according to the Oslo Accords), the partial withdrawal of the Israeli forces from Palestinian cities, the elections of the Palestinian Council and the president of the Palestinian authority, and the partial release of prisoners. The United Nations' involvement was critical since it serves as the guardian of international legitimacy and disseminates international help. The 1993 conference postponed some issues to the final Negotiations, which took place in 2000 in Camp David and 2001 in Taba, but they proved to be inconclusive.

2.5 The Second Intifada, the Apartheid Wall, and the Roadmap (2000-2016)

The second Intifada erupted throughout occupied Palestinian territories when Ariel Sharon made a visit to the sacred Aqsa Mosque in Jerusalem in 2000. Then Israel started to build the apartheid wall on the occupied Palestinian property in the West Bank, but the wall was later declared by the International Court of Justice to be illegal. The United Nations Security Council confirmed in 2002 that there are two states: Israel and Palestine. In addition, the Arab League ratified a peace initiative in 2002, called the Arab Peace Initiative, which presented principles for an agreement in the Israeli-Arab conflict, and included reference to the Palestinian refugee problem. The Quartet Committee - comprising the United Nations, United States, Russian Federation, and European Union - released its Roadmap for a permanent solution to the Middle East conflict. In the same context, the Geneva Initiative, a draft Permanent Status Agreement to end the Israeli-Palestinian conflict, was presented to the public in 2003. Israel evacuated its settlements and military from Gaza in 2005, but kept

control of its borders, coastline, and airspace. In 2006, the Quartet's donor members worked toward the restoration of international assistance to the Palestinian Authority since they are committed to nonviolence, recognizing Israel, and accepting the previous agreements. In 2007, Hamas seized Gaza Strip by force. As a result, Israel besieged Gaza Strip. When Israel attacked Gaza in 2008, the Security Council passed Resolution 1860, and the UN opened an investigation into the attack's violation of international law. In 2009, the program of building the state's institutions gained wide support from the international community. In 2011, President Mahmoud Abbas requested to join the United Nations, and UNESCO recognized Palestine as a member in 2012. In 2012, Palestine was also awarded the position of observer in the United Nations. The United Nations General Assembly declared 2014 to be a year of solidarity with the Palestinian people. In 2016, the United Nations Security Council passed Resolution 2334 on settlements.

Geography from 1946-2000

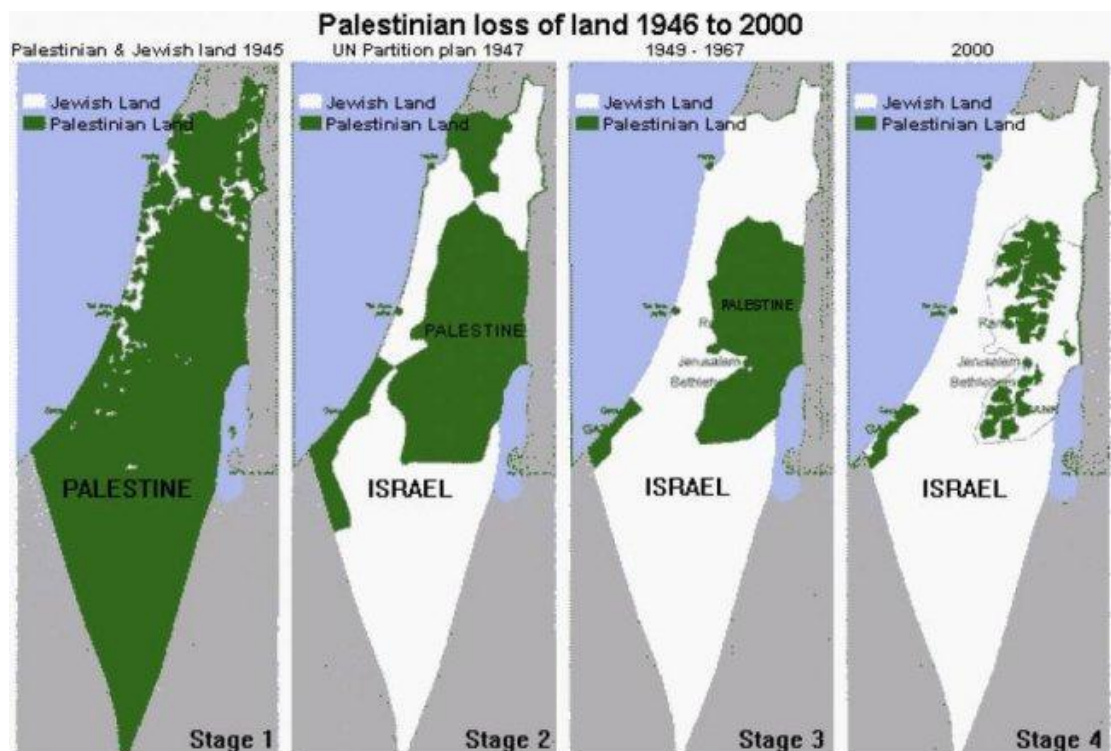


Figure 3.2 Map of Geography of Palestine: Historical Development³⁰.

3. Population

As per a report from the Palestinian Central Bureau of Statistics, the total population was 5.10 million as of December 1, 2017. This number is split between 3.05 million people in the West Bank and 2.05 million people in Gaza.³¹

The overall number of males in the West Bank and Gaza is 2.593.641, with 1.555.741 in the West Bank and 1.037.900 in Gaza, while there are 2.507.511 females in total, with 1.497.442 in the West Bank and 1.010.069 in Gaza.³²

In terms of age, 38.0 % of the population is between the ages of 0 and 14. There were also 3.3% over the age of 65.³³

4. Family

The following diagram shows the average size of the family in Palestine by region.³⁴

News, Wattan. "70 عاماً على قرار تقسيم فلسطين." وكالة وطن للأخبار. وكالة وطن للأخبار, 29 November 2017. <https://www.wattan.net/ar/news/226631.html>

³¹ الجهاز المركزي للإحصاء الفلسطيني, 2020. كتاب فلسطين الإحصائي السنوي 2020, رقم "21", رام الله - فلسطين.

³² Ibid

³³ Ibid

³⁴ Ibid

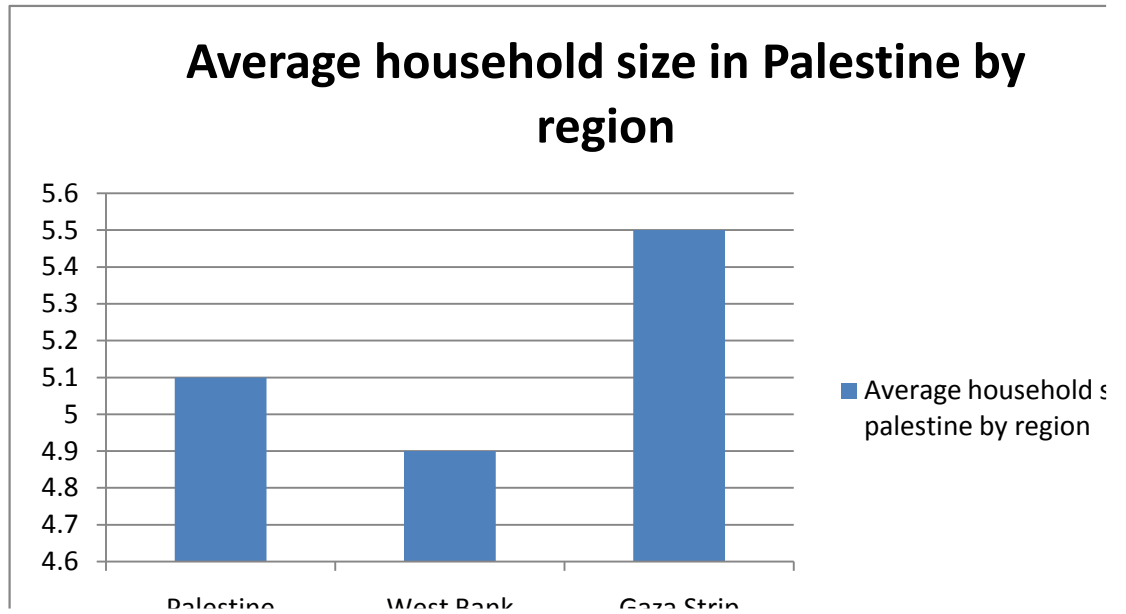


Figure 4.2 The Average Household Size in Palestine by Region

The *nuclear family* is defined as “a social unit that consists of parents and children.”³⁵

The *extended family* is defined as: “a social unit that consists of parents, grandparents, aunts, uncles, cousins, adult children, and dependent children. Often they live together in a multigenerational house or in close proximity.”³⁶

The following diagram shows the average housing density in Palestine by governorate.³⁷

³⁵“ Nuclear Family and Extended Family.” GRAMMARIST, January 16, 2020 .<https://grammarist.com/phrase/nuclear-family-and-extended-family> .!

³⁶ Ibid

³⁷ Ibid

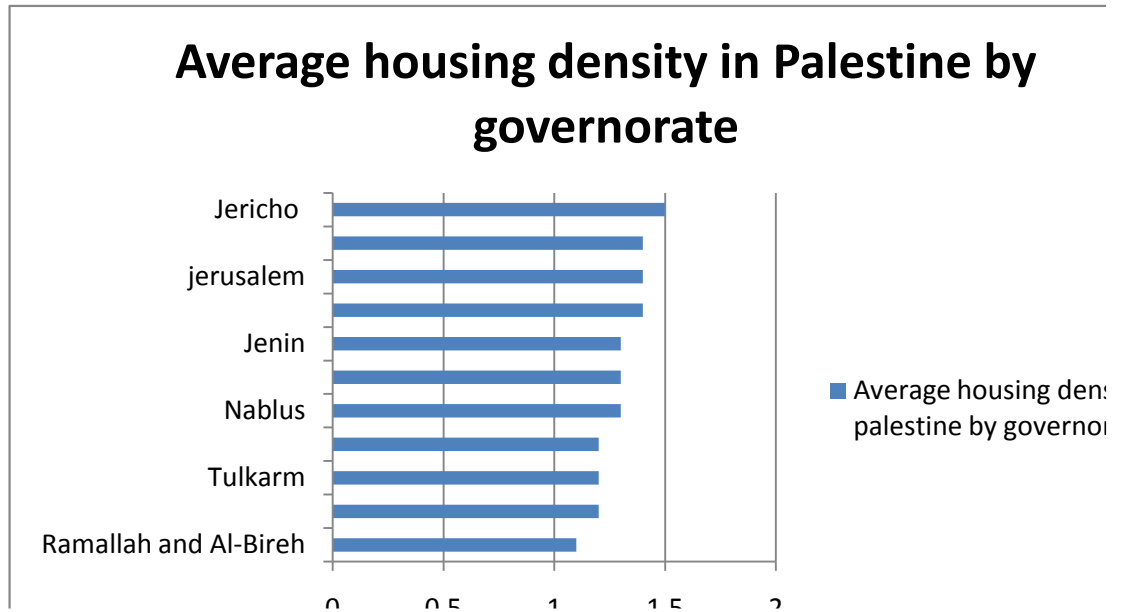
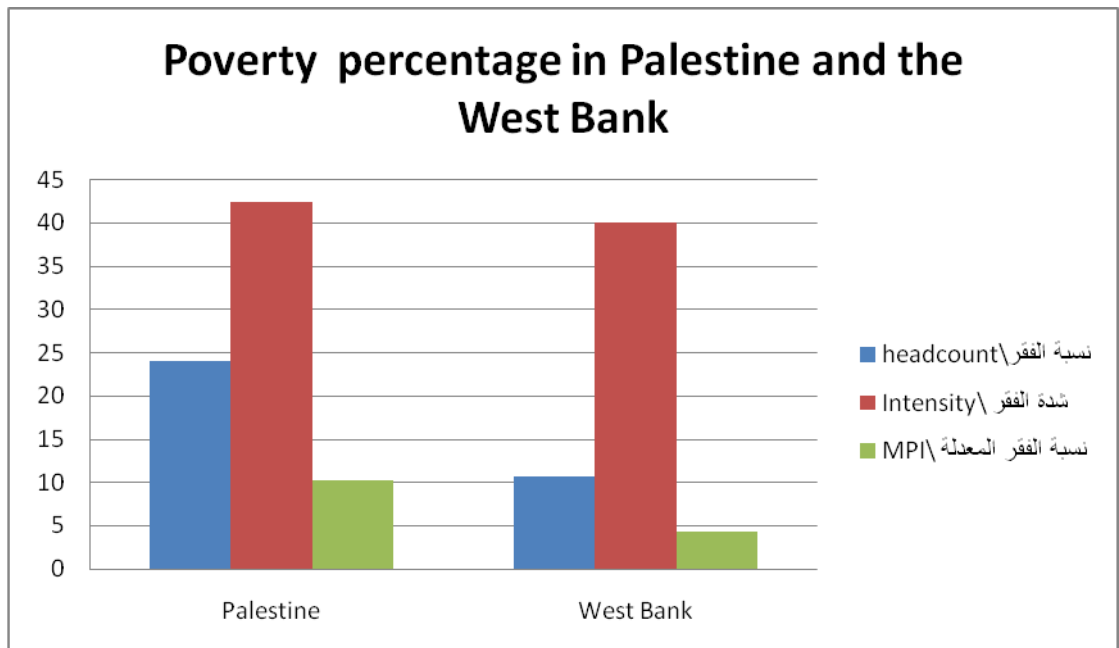


Figure 5.2 The Average Housing Density in Palestine by Governorate

5. Poverty

The following diagram shows the multi-dimensional indicator (MDI) by region.³⁸



³⁸ Ibid

Figure 6.2 Poverty Percentages in Palestine and the West Bank**6. Characteristics of the Palestinian Society**

The Palestinian society is largely homogenous ethnically, linguistically, and religiously. People are all Arabic language speakers, and they are Sunni Muslims with Christians who form the largest minority. The Palestinian society is an agricultural-based society. Moreover, traditions and customs differ according to region. Nevertheless, for Palestinians, family is the most important component of life. The person's family comprises his extended and nuclear family. The family represents the entrenched connection to one's ancestors, heritage, and identity. Family solidarity is, among others, a strong cultural feature that has endured through all times. Relationships between family members are very close. Relatives usually live, work, and socialize together. The extended family members are valuable because they provide emotional, social, and financial support. Families are typically large, with up to 10 members. Nevertheless, the Palestinian society is predominantly patriarchal and conservative. It is worth mentioning that tribalism exists to a great extent in the Palestinian society. Those tribes have their traditions that affect and are affected by the society as a whole. Nevertheless, the Israeli occupation has played a huge role in shaping the culture of the Palestinian people and determining the way of their behaviors.³⁹

After studying the culture of the Palestinian society, it is obvious that the conflicts that occur are either related to families, women's honor, religious issues, or

³⁹ "Palestinian Culture ." Cultural Atlas. Accessed July 31, 2021. <https://culturalatlas.sbs.com.au/palestinian-culture/palestinian-culture-family#palestinian-culture-family>.

issues caused by the Israeli occupation. Conflicts that arise within the Palestinian society are resolved in two major ways. The first is to resort to court and pursue the legal procedures, which takes a long time and costs a lot of money because each case takes at least 5-7 years to resolve. The second way is to use Alternative Dispute Resolution (ADR). It is defined as “*the procedure of settling disputes and conflicts without litigation. It has many methods like Arbitration, Mediation, Negotiation, etc.*”

⁴⁰. The latter method is less expensive and saves time.

7. Covid-19

The corona virus pandemic (Covid-19) swept the world in 2019. The pandemic resulted in losses in all industries. According to the World Health Organization, this is an infectious disease caused by the most recently discovered corona virus.

8. Economy

According to a report by the Palestinian Central Bureau of Statistics, “The Palestinian economy lost 2.5 billion dollars in 2020 compared to 2019. The GDP per capita fell by 15.6% in 2020 compared to 2019 to reach 2840.3 American dollars.”⁴¹

“The GDP decreased in 2020 by 14% compared to 2019. As a result, the total general

⁴⁰ “What Is Alternative Dispute Resolution?” Findlaw, October 8, 2020. <https://www.findlaw.com/hirealawyer/choosing-the-right-lawyer/alternative-dispute-resolution.html>.

⁴¹ الأليكترونية قسم الصفحة. “الجهاز المركزي للإحصاء الفلسطيني: د. عوض، تستعرض أبرز المؤشرات الإحصائية في دولة فلسطين للعام 2020، بمناسبة اليوم العالمي للإحصاء 2020/10/20 رب.”
 الجهاز المركزي للإحصاء الفلسطيني | د. عوض، تستعرض أبرز المؤشرات الإحصائية في دولة فلسطين للعام 2020، بمناسبة اليوم العالمي للإحصاء 2020/10/20, October 20, 2020
<https://www.pcbs.gov.ps/ItemID=3832;amp&postar.aspx?lang=ar>

consumption fell to 1.3 billion dollars, the investment to 2.1 billion dollars, and the income fell to \$1 billion.”⁴²

A. Trade

Trade, like other sectors of the Palestinian economy, was hit hard by the covid-19 outbreak. As a result of the quarantine, “the losses in the trade sector reached 689 million dollars.”⁴³

B. Tourism

“Tourism in Palestine had witnessed a significant growth in the years before covid-19. The investment in this sector and its contribution to the GDP had increased especially in religious tourism. In 2018, the total value added to the touristic activities (the value for any unit that practices a productive touristic activity) in Palestine reached 408 million dollars, accounting for 2.5% of GDP. In this industry, there are 10706 organizations. The total expenditure on tourism in Palestine is 9% of GDP, which equals 1.5 billion dollars distributed as 89% of the expenses of inbound tourism and 11% of the local tourism. As a result of the sharp decrease in inbound and local tourism during the first 10 months of 2020, losses in inbound and local tourism were

⁴² الاليكترونية قسم الصفحة. “الجهاز المركزي للإحصاء الفلسطيني: الإحصاء الفلسطيني يعلن التنبؤات الاقتصادية لعام 2020 جراء جائحة كورونا.” الجهاز المركزي للإحصاء الفلسطيني | الإحصاء الفلسطيني يعلن التنبؤات الاقتصادية لعام 2020 جراء جائحة كورونا,

<https://www.pcbs.gov.ps/ItemID=3723;amp&postar.aspx?lang=ar>

⁴³ Ibid

significant (nearly 1.15 billion dollars). The expenditure on inbound tourism retreated to reach 68% (466 million dollars) compared to 2019.”⁴⁴

C. Industry

The pandemic had a significant impact on Palestinian industry. “Industry losses totaled 362 million dollars.”⁴⁵ This will have a long-term impact on the future of this industry.

D. Agriculture

“The losses in agriculture and fishery reached \$200 million.”⁴⁶ Since Palestinian society is dependent on agriculture, it will take a long time for this sector to recover and revive.

E. Construction Sector

The construction industry, like other sections of the economy, was severely impacted by the corona pandemic. “The building industry's losses totaled \$220

⁴⁴ الاليكترونية قسم الصفحة. “الجهاز المركزي للإحصاء الفلسطيني: الإحصاء الفلسطيني ووزارة السياحة والآثار يصدرا بياناً صحفياً بمناسبة يوم السياحة العالمي، 2020/09/27. ” الجهاز المركزي للإحصاء الفلسطيني | الإحصاء الفلسطيني ووزارة السياحة والآثار يصدرا بياناً صحفياً بمناسبة يوم السياحة العالمي، September 2020/09/27 , 27, 2020. <https://www.pcbs.gov.ps/postar.aspx?lang=ar&ItemID=3816>.

⁴⁵ الاليكترونية قسم الصفحة. “الجهاز المركزي للإحصاء الفلسطيني: الإحصاء الفلسطيني يعلن التنبؤات الاقتصادية لعام 2020 جراء جائحة كورونا.” الجهاز المركزي للإحصاء الفلسطيني | الإحصاء الفلسطيني يعلن التنبؤات الاقتصادية لعام 2020 جراء جائحة كورونا، 2020 . <https://www.pcbs.gov.ps/postar.aspx?lang=ar&ItemID=3723>.

⁴⁶ Ibid

million.”⁴⁷ To retrieve such large sums of money, it will take a long time and a lot of effort.

F. Services

The pandemic had a significant impact on the services sector as well. Since the Palestinian society is a service provider society, “The losses in the services sector reached 1175 million dollars.”⁴⁸

9. Unemployment

The number of employees fell from one million in the first quarter of 2020 to 889 thousand in the second. In Palestine, the number of unemployed people climbed by 27% in the second quarter. In the West Bank, unemployment reached 15%, while in Gaza, it was 49%. In terms of numbers, Palestine's unemployed totaled 321400 people distributed between Gaza Strip (203200 people) and the West Bank (118200 people). Furthermore, 1 in every 6 workers (17%) stopped working during the covid-19 closure period. Because of the state of emergency caused by Covid-19, 77% of the main workers did not report to work. 52% of salaried main workers did not receive their pay during the period. 23% of the main workers received their regular pay, while 25% received only a portion of their pay.⁴⁹

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ الاليكترونية قسم الصفحة. “الجهاز المركزي للإحصاء الفلسطيني: د. عوض، تستعرض أبرز المؤشرات الإحصائية في دولة فلسطين للعام 2020، بمناسبة اليوم العالمي للإحصاء 2020/10/20. ” الجهاز المركزي للإحصاء الفلسطيني | د. عوض، تستعرض أبرز المؤشرات الإحصائية في دولة فلسطين للعام 2020، بمناسبة اليوم العالمي للإحصاء 2020/10/20. October 20, 2020.

<https://www.pcbs.gov.ps/postar.aspx?lang=ar&itemID=3832>.

10. Crimes

This pandemic hit Palestine hard, affecting many sectors of the country. The crime sector is one of the most important sectors that is likely to be affected by all other sectors. Crime is defined as “a behavior, either by the act or omission, defined by statutory or common law as deserving of punishment.”⁵⁰ According to the World Health Organization, there is a relationship between psychological health and emergency situations, whether they are caused by a pandemic, a war, a conflict, or a struggle. As a result, there is a proven connection between covid-19 and Palestinian psychological health, and this type of health can determine whether a person is a good citizen or a criminal.

Nevertheless, the Palestinian police issue reports on the criminal situation in Palestine every month, six months, and year. Although 2019 witnessed a significant decrease in the crime rate compared to the previous years, Covid-19 had a negative impact on almost all aspects of life, and, accordingly, on citizens' psychological health. In 2019, there was an increase in the unemployment rate as explained above; employees were paid half or less of their salaries due to the financial issues Palestine encountered. The quarantine also had an impact on people's social lives in many dimensions, some of which are listed below. All of these reasons contributed to the development of a criminal justice system that reflects these circumstances.

According to 2019 annual report on crimes in Palestine, the Palestinian police had to deal with 31560 offences. Among these crimes are murder, public decency, reputation, burglary, public trust, molestation, crimes against public and private

⁵⁰ “Crime.” Legal Information Institute. Legal Information Institute. Accessed September 21, 2021. <https://www.law.cornell.edu/wex/crime>.

property, crimes against state personnel, obstruction of justice, and crimes against public order.

However, there was a significant number of crimes involving drugs and smuggling in 2019. The relatively high number of drug-related cases (1948 cases) can be attributed mainly to the lack of border control as well as Israel's underlying intention of drowning the Palestinian society with such drugs. Drug planting on Palestinian territory turned out to be linked with Israeli drug dealers. This is an essential indicator of the threat this practice poses to the security of the Palestinian society.

Similarly, the number of cases of domestic violence increased to reach 20576 in 2019. According to a report by the Palestinian Central Bureau of Statistics in 2019, one in every three women has been subjected to some sort of domestic violence. This phenomenon is exacerbated by the lack of procedures for dealing with such cases.

In 2019, the police dealt with 13165 smuggling cases. This is due to a rise in the number of illegal cars smuggled from Israel and extensively used in areas C and parts of B that are not under Palestinian security control. This phenomenon forms a threat to the safety and security of the Palestinian society and causes havoc to the Palestinian economy.

In terms of economic security, 418 cases of customs and tax evasion, as well as smuggling of items that do not meet specifications, were reported in 2019. Furthermore, there were 297230 liters of smuggled oil in various cases of unlicensed oil importing.⁵¹

⁵¹ Palestinian police accomplishment report 2019.

According to the Palestinian Police Achievement Report of 2020,⁵² The following table shows the types, numbers, and percentages of these crimes:

Table 1.2 Types, Numbers, and Percentage of Crimes in 2020

| <u>Crime Type</u> | <u>Crime Number</u> | <u>Crime Percentage</u> |
|--|---------------------|-------------------------|
| Crimes against persons | 9980 | 39.4 |
| Financial crimes | 3591 | 14.2 |
| Crimes against public and private properties | 3265 | 12.9 |
| Crimes against public order | 2678 | 10.6 |
| Crimes against people's freedoms or reputation | 2544 | 10 |
| Crimes against state's employees and justice | 1497 | 5.9 |
| Crimes against public morals and norms | 927 | 3.6 |
| Crimes against privacy | 854 | 3.4 |

The crime number was 88 offenses per 10,000 people in 2020. One offense was committed every 20 minutes and 44 seconds. Despite this number, the crime rate in 2020 dropped to 19.7%, compared to the previous year.

The table above includes information about the types, numbers, and percentages of the crimes committed in the Palestinian society in 2020. These crimes are arranged in descending order according to the number/percentage of their occurrence, starting with crimes against persons and ending with crimes against privacy.

In 2019, there were 35 murders, compared to 44 murders in 2020, a 26% increase.

⁵² Palestinian police accomplishment report 2020

A. Types of Homicide

- 1) **Premeditated Murder:** *An offense which involves a pre-planned act or a prior intent, insisting on killing someone. It is a murder thought out or planned beforehand after deep and quiet thinking away from excitement and emotions in a state of self-stability. This state requires enough time according to the murderer's personality, circumstances, and psychological status.*⁵³
- 2) **Murder:** *An intention of killing followed directly by the execution of the act of killing. For example, a fight between two people that pushes one of them to shoot the other without having an advance intention to kill.*⁵⁴
- 3) **Manslaughter:** *The act of killing someone without intending to, often in an accidental way.*⁵⁵

Nevertheless, the highest percentage of murder was registered in the governorates of Nablus and Jenin (41%), Hebron 18%, and Ramallah 16%, respectively. Jericho, Salfit, and Tubas did not register any murder during this year.

The motives behind committing these murders are fights which accounts for 20.5%, followed by prior disagreements (18.2%), and finally blunders (18.2%).

Shooting weapons and sharp tools were the most commonly used tools in those murders, accounting for 47.7% and 27.3%, respectively.

قانون العقوبات الأردني رقم 16 لسنة 1960 وتعديلاته رقم 8 لسنة 2011، وزارة العدل،⁵³ المملكة الاردنية الهاشمية، تم استرجاع المعلومات في 2021/11/9.

⁵⁴ibid

⁵⁵ "القتل غير العمد. 2019. Steingfixer.com." <https://stringfixer.com/ar/Manslaughter>.

Criminal offenses involving money are the second most common type of crimes in Palestine. For example, robbery accounted for 2193 offenses in 2020, compared with a decrease of 21% in 2019.

In the event of a conflict between two or more parties in Palestine, they have two options for resolving the conflict. The first is the legal system and courts, which are the formal channel for resolving issues. The other is the clan reconciliation approach, which is an informal method of resolving problems.

11. The Legal System of the State of Palestine

Starting with the formal channel and based on the Judicial Authority Law No. 1 of 2002,⁵⁶ the General Principles and Provisions of the Palestinian legal system are as follows:

- 1) The Judicial Authority shall be independent.
- 2) Judges shall be independent.
- 3) The Judicial Authority shall have its own budget, which shall appear as an independent title in the annual General Budget of the National Authority.
- 4) Arabic shall be the official language used in the courts.
- 5) Judgments shall be issued and executed in the name of the Arab Palestinian people. Judgments shall specify the reasons upon which they are based.

A. Types of Courts

The Palestinian judicial system includes a variety of courts that operate in tandem:

- I. *Shari'a* and Religious Courts.

⁵⁶ قانون السلطة القضائية رقم (1) لسنة 2002م .

II. A High Constitutional Court.

III. Regular Courts, which consists of:

- 1) A High Court, which consists of: A) The Court of Cassation. B) The High Court of Justice.
- 2) Court of Appeal.
- 3) Courts of First Instance.
- 4) Magistrate Court.

Each of the courts mentioned above has its own jurisdiction and structure. It is noteworthy that in shari'a courts, there are Reconciliation Men and women who deal with family disputes. They try to bring husband and wife back together and keep them from divorcing. Unlike the social system, which imposes masculine conventions on the reconciliation field and restricts reconciliation to men, courts allow women to participate in the process. In the courts, men and women who work in reconciliation are specialized in social science or psychology.

12. Clan Reconciliation

The informal channel of resolving conflicts in Palestine is called *clan reconciliation*. It is defined as “*an informal way of resolving conflicts between people done by people who have specific characteristics called “Reconciliation Men.” They do their work through converging views between conflicting parties to reach a resolution that satisfies both parties. They do that based on religion, law, customs, and traditions.*”⁵⁷

⁵⁷ جاموس عمار ياسر Rep. Edited by ابو شمالة عبد الرحمن. *الإصلاح العشائري من منظور حقوقي وقيمي ودستوري*. رام الله، فلسطين: نيرد دايمنتشن للتصميم والطباعة، 2019.

Here we should differentiate between Clan Reconciliation defined above and Clan Judicature. *Clan Judicature* is defined as “an informal way of resolving conflicts, based on a group of rules, principles, and bases that aim to issue a final decision in the conflict presented to the “clan judge,” and this judgment is based on customs and traditions of a specific clan area in the state. It is worth mentioning that each clan area has its traditions and customs, and the clan judge looks at cases in his area only.”⁵⁸

Since the majority of the palestinian society are muslims, the clan reconciliation system is mainly dependent over the islamic traditions. Nevertheless, the biggest minority in Palestine is christianity. As a result, christians also have clan reconciliation system that is dependent over their religion. Since the church is the referendom of christians, most of the conflicts that occur between christians are refered to the church and the priest to resolve. Christian verses are used also to calm conflicting parties and urge them to resolve their conflicts.

⁵⁸ Ibid

Chapter Three: Literature Review and Previous Studies

Mahatma Gandhi once said: “*An eye for an eye will only make the whole world blind.*” The first time I heard this saying, a feeling inflamed my soul. I was curious as to how Gandhi would react if someone physically or emotionally harmed him, and what kind of peace he would experience if he allowed his mind to take control of the situation and opt not to respond to the abuse. Then I began to consider the connotations of this statement, and I discovered that it had a wide range of meanings and implications. It is true that if we respond to abuse every time, we will never achieve peace, not even any type of peace. This incident made me realize that I needed to read more and more. I was desperate for information on such topics, so I began to research disputes and how to overcome them in hopes of achieving peace.

In this section of the study, the science of Alternative Dispute Resolution (ADR) and some of its methods, such as Negotiation, Mediation, and arbitration, will be discussed.

One: ADR

ADR is defined as “*any method of resolving disputes without litigation and settling them away from the courtroom. It includes Neutral Evaluation, Negotiation, Conciliation, Mediation, and Arbitration.*”⁵⁹

1. Historical Development of ADR:

Humans have always had a tendency towards fighting to resolve their disputes. They have also realized the advantages of settling disputes peacefully through the use

⁵⁹ Gilkis, Krystyna, ed. “Alternative Dispute Resolution,” June 8, 2017. https://www.law.cornell.edu/wex/alternative_dispute_resolution.

of a coin toss or other methods. The present study is about ADR, and it aims to look at new alternative techniques for resolving disputes in the Palestinian society.⁶⁰

The field of ADR has a long and rich history. Using ADR techniques dates back to the dawn of mankind, but it has evolved over time to the ultimate form that we use today. ADR has a long history that dates back to 1800 B.C., and included major events that led to what is known today as ADR techniques as shown in the following ADR timeline:

- In 1800 B.C., Mary Kingdom (located in modern Syria) used Mediation and arbitration to settle disputes with other kingdoms.
- In 1400 B.C., the ancient Egyptian Amarna system of international relations used diplomacy.
- In 500 B.C., arbitration, which was called Panchayat, was used in India.
- In 452 A.D. as Attila the Hun destroyed city after city in his sweep across Europe, Pope Leo the great successfully negotiated to separate the city of Ravenna, Rome's western capital.
- In 1400, Venice established its first overseas diplomatic offices.
- In 1632, the Irish Arbitration Law provided a statutory basis for arbitration.
- From 1664 to 1776, during the British colonial period, commercial arbitration use used..
- In 1770, George Washington included an arbitration clause in his will.
- From 1776 to 1785, Benjamin Franklin, John Adams, and Thomas Jefferson negotiated in Europe on behalf of the United States, establishing a diplomatic history for the young nation.

⁶⁰ Barrett, Jerome T., and Joseph P. Barrett. "The Roots of ADR." Essay. In *A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement*, 1–18. Jossey-Bass, 2004 .

- In 1974, the Federal Mediation and Conciliation service expanded its mission statement beyond labor management.
- In 1975, the American Arbitration Association committed to new areas of ADR by moving experimental programs handled by the National Center for Dispute Settlement into the American Arbitration Association proper.
- In 1987, Camp David accords resulted in the Israeli-Palestinian agreement, with president Carter using a Single-text Negotiation Process.
- In 1979, the Judicial Arbitration and Mediation Services were established.
- In 1981, “Getting to Yes: Negotiating Agreement without Giving In” was published, popularizing interest-based Negotiation.
- In 1990, the Administrative Dispute Resolution Act (ADRA) established a statutory framework for federal agency use of ADR.⁶¹

For more information about ADR timeline, see (appendix III). Nevertheless, and after this long history of development, “*ADR spread around the whole world and was used in both developed and developing countries.*”⁶².

ADR has been implemented to suit a number of social, commercial, and legal goals. As a result, “its tools can be used directly or by mixing them together in a way that meets the needs”⁶³.

2. Characteristics of ADR

The ADR tools and approaches have three special characteristics, as follows:

⁶¹ Ibid

⁶² Brown, S., Cervenak, C& ,amp; Fairman, D. (1998). *Alternative Dispute Resolution practitioners guide*. Center for Democracy and Government .

⁶³ Ibid

- a. **Informality:** ADR tools are less formal than the judicial processes and have more flexible rules.
- b. **Application of Equity:** ADR tools are a way of achieving equity rather than the rule of law.
- c. **Direct Participation & Communication between Participants:** The disputants participate directly in the process and in designing the settlement. Moreover, they may reconcile, and they have a higher level of secrecy.”⁶⁴

3. Conditions for ADR Success

There are a number of conditions that must be met in order for ADR techniques to be successful. The absence of any of those conditions could jeopardize their outcomes. These are the conditions:

- 1) Adequate political support.
- 2) Supportive cultural norms.
- 3) Adequate human resources.
- 4) Financial resources.
- 5) Equality in the power of the disputants.⁶⁵

Two: Mediation

Moore defines *Mediation* as “*the intervention of an acceptable third party in a standard Negotiation or a conflict. This third party has limited or no authoritative*

⁶⁴ Ibid

⁶⁵ Ibid

decision-making power, but he assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute.”⁶⁶

Mediation is defined by Merriam Webster’s Dictionary as “*a means of resolving disputes outside of the judicial system by voluntary participation in Negotiation structured by agreement of the parties and usually conducted under the guidance and supervision of a trained intermediary.*”⁶⁷

Mediation was also defined by “JAMS” -which is a company that resolves and manages the business and legal disputes- as “*a process wherein the parties meet with a mutually selected impartial and neutral person who assists in the Negotiation of their differences.*”⁶⁸

The word “Mediation” is taken from the Latin root “*mediare*” which has different meanings in different languages. In Chinese, it means to step between two parties and solve their problem; in Arabic “*وساطة أو واسطة*” means manipulation; in the west, it means a procedure that is used for conflict resolution.⁶⁹

1. The Mediator

⁶⁶ Moore, C. W. (2014). *The Mediation process: Practical strategies for resolving conflict*. Jossey-Bass, A Wiley Brand .

⁶⁷ Webster, Merriam. “Mediation.” Merriam-Webster. Merriam-Webster. Accessed February 9, 2021. <https://www.merriam-webster.com/dictionary/Mediation>.

⁶⁸ JAMS. “What Is Mediation? What Happens in a Mediation?” Mediation Defined: What is Mediation? | JAMS Mediation, Arbitration, ADR Services. Accessed February 9, 2021. <https://www.jamsadr.com/Mediation-defined/>.

⁶⁹ Wall, James A., and Ann Lynn. “Mediation: a Current Review.” *Journal of Conflict Resolution* 37, no. 1 (1993): 160–94. <https://doi.org/10.1177/0022002793037001007/>

A mediator is defined as: “a third party that intervenes to help the conflicting parties to come up with an acceptable solution that breaks the stalemate.”⁷⁰

2. The Mediator’s Characteristics

The mediator has certain characteristics other than those mentioned in the definition. He “leaves the decision power totally to the parties, does not decide what is “fair” or “right”, does not assess, blame, nor render an opinion on the merits or chances of success if the case was litigated, plays the role of catalyst between opposing interests attempting to bring them to communicate, moderates and guides the process to avoid confrontation and ill will, and finally, seeks concessions from each side during the Mediation process.”⁷¹

3. The Mediator’s Skills

The mediator has to have special skills to survive the Mediation process. Among these skills are “active listening skills, questioning and clarifying skills, emotional intelligence, summarizing skills, and empathy.”⁷²

4. The Mediation Processes

To achieve a successful Mediation, the following procedures must be followed:

⁷⁰ Merrills, John Graham, ed. “Mediation.” Essay. In *International Dispute Settlement*, 4th ed., 28–44. Cambridge, England: Cambridge University Press, 2005 .

⁷¹ JAMS. “What Is Mediation? What Happens in a Mediation?” *Mediation Defined: What is Mediation? | JAMS Mediation, Arbitration, ADR Services*. Accessed February 9, 2021. <https://www.jamsadr.com/Mediation-defined/>.

⁷² “Mediation Skills.” *SkillsYouNeed*, 2011. <https://www.skillsyouneed.com/ips/Mediation-skills.html>.

- a. Assessing the Conflict:** The conflict can be assessed by understanding the conflict; analyzing its history and causes; assessing positions and interests; understanding the actors who are the parties of the conflict, the civil society, the international actors along with any other players in the conflict; understanding the larger context of the conflict by identifying indigenous and international institutions for managing conflict; identifying and addressing the intractability, and understanding sources of power and leverage by identifying material resources and parties' control over them; and finally assessing the relative strength of parties and how it is changing.
- b. Mediator Readiness:** Readiness of Mediators can be ensured by determining what role is appropriate and what strategy is the best for this conflict; enhancing the ability to engage effectively by building credibility and developing skills and recognizing cultural differences; ensuring adequate authority and resources by obtaining clear mandate, building and sustaining political support, obtaining the necessary resources; and staying power. Another important step is to know when NOT to mediate when one of the parties lacks commitment, resources, or credibility when the conflict is not ripe for resolution, and knowing when to withdraw from the Mediation process, and finally, by managing multiple mediators by communicating, coordinating, and cooperating with other mediators, and by assessing the roles played by other mediators.
- c. Conflict Ripeness:** Conflict ripeness can be ensured by assessing parties' beliefs that complete victory is not achievable and by

confirming that parties can deliver on agreements and confirming that there is internal and public support for peace; enhancing ripeness by helping elites understand costs and benefits, increasing pressure on elites through accountability, cultivating leaders who can assume responsibility for Negotiation, creating a balance between parties, and changing the costs and benefits of the conflict; and finally, by taking into consideration the previous Mediation attempts by assessing positive and negative results of past efforts and considering new sequencing of decisions, new settlement formulas, and new actors.

- d. Conducting Track-1 Mediation:** This can be achieved by using consultation and pre-Negotiations to lay the groundwork by building trust and building sustainable political support; determining participants by working with viable partners, managing spoilers, and including marginalized groups, arranging logistics by providing a safe, effective, and well-resourced working environment and managing information effectively; by developing and executing strategies for advancing Negotiations; by increasing parties' trust and confidence, using multiple tactics to facilitate agreement, introducing fresh frameworks, encouraging communication with constituencies, and using different types of leverage to encourage compromise, and finally, by engaging the public and media in a way that serves the conflict resolution.
- e. Track-II Dialogue:** Track-II dialogue can be encouraged by identifying and track II efforts and focusing on activities that build parties' capacity and foster wider support for the process; by promoting

cooperation between tracks, sharing information, clarifying roles, rewarding track-2 efforts that promote the track-1 process; and by maintaining the independence of track-2 initiatives.

- f. Peace Agreement Construction:** This can be achieved by developing a declaration of principles; obtaining an agreement on basic principles and crafting broad outlines of an agreement; assembling a peace agreement by determining a drafting process, translating principles into a legally binding language, and incorporating strategies for implementation and monitoring; by planning the implementation; by choosing the local population stakeholders and guarantors of the agreement; by using rubrics to assess the progress, designing dispute resolution mechanisms, and finally using external parties to support the implementation.⁷³

5. Mediation Styles

Mediation, which was developed through time, took different styles that had different names. Each style was suitable for certain cases under certain circumstances. The most common and used styles are the “*evaluative and facilitative*” proposed by Leonard Riskin as well as the “*transformative*” proposed by Robert Baruch Bush and Joseph Folger. A mediator can use the evaluative style in an employment case and the facilitative in a neighborhood dispute. Moreover, a mediator may start with facilitative techniques and at the end of the day urge the participants toward settlement using evaluative techniques. A mediator may combine both styles by

⁷³ Smith, Amy, and David R. Smock. *Managing a Mediation Process*. Washington D.C., United states of America: United States Institute of Peace, 2008 .

proposing several alternatives in an evaluative style and then fostering communication in a facilitative matter so that participants may discuss the proposal. Nevertheless, the facilitative style emphasizes party interests and may be referred to as interest-based Mediation. The facilitative mediator is viewed as a third-party educator or facilitator who emphasizes that parties must solve their problems themselves, be creative in solving their problems, and have personal evaluation. The role of the mediator in this style lies in: encouraging party attendance, facilitating communication, posing questions to uncover the parties' hidden needs and interests, helping in educating parties by making them understand the other's needs and interests, and finally, attempting to provide a comfortable forum in which the parties can develop their own creative solution to a problem. A productive facilitative mediator may have more expertise in the general process of Mediation rather than the subject matter. The mediator may also encourage the participants to brainstorm possible solutions. The facilitative mediator's goal is to avoid a directive approach while concentrating on party empowerment and self-determination. A facilitative mediator may act in a direct capacity in deciding which question to pose, which solutions to emphasize, and how to engage the participants. Nevertheless, the facilitative mediator should be capable of maintaining neutrality and impartiality.

According to the *evaluative style*, the mediator evaluates each case by itself, asks questions to determine the strengths and weaknesses of the case, provides information, offers procedural advice, predicts possible outcomes by a court, and finally suggests ways to resolve the conflict by recommending a range of fair outcomes. Nevertheless, since the mediator may attempt to influence the parties to adopt a certain solution, the mediator compromises his/her neutrality and impartiality.

While all Mediation styles focus on the problem-solving outcomes, the *transformative style* offers a different approach which is focused on the parties' relationship through their conflict interaction. The shift is away from a problem-solving outcome and toward a more open communicative style. The transformative mediator encourages parties to define issues and decide the terms of settlement themselves by helping them understand the other party's perspective. This style of Mediation helps the parties to grow, develop, and change their perspectives to become better human beings. This Mediation can transform the character of the disputants as well as the society in general. Parties may solve their problem while transforming their relationship.

A less common style of Mediation called *Trickster* was proposed by Robert Benjamin aims to manage and survive the conflict rather than stop it. The *Trickster* mediator achieves this goal by offering a third perspective that shares the traits of both sides of the dichotomy. The mediator reframes the conflict into an impartial third perspective.⁷⁴

Narrative Mediation is another type of Mediation that is highly helpful in high conflict situations where there is an ongoing relationship between the parties including healthcare, divorce, and employment conflicts. This type of Mediation focuses on the stories that the parties tell about themselves and helps the parties in creating a new story to resolve conflict and move forward into a new relationship. The mediator in this type of Mediation should use the following techniques: curiosity,

⁷⁴ Exon, Suzan Nauss. "The Effects That Mediator Styles Impose on Neutrality and Impartiality Requirements of Mediation." *University of San Fransisco law review* 42 (2008).

developing the externalizing conversations, relative influence questioning, and story retelling practices.⁷⁵

James Freund refers to mediators as “*prime negotiators*” because he believes that “*mediators become an integral part of the Negotiations that transpire during Mediation.*”⁷⁶

6. Mediation Principles and Ethics

Mediation has its principles and ethics which are most common in the whole world with certain cultural specifications. In his article, “Ten Principles of Mediation Ethics,”⁷⁷ David Hoffman, who is a mediator, arbitrator, and attorney at the Boston Law Collaborative, discusses the most common principles of Mediation:

- a. **Conflict of Interest Avoidance:** Conflict of Interest should be avoided where the mediator has a direct personal, professional, or financial interest in the outcome of the conflict.
- b. **Knowing the Boundaries of the Competence:** The mediator should know the boundaries of his abilities and competencies so that he/she does not take a case that they can't handle. Moreover, mediators should communicate with the parties about their expertise and backgrounds.

⁷⁵ Arnold&Porter, Paul. In *Mediation Styles and Techniques*, 27–29. America, USA: Paul porter conference Center, 2004 .

⁷⁶ Exon, Suzan Nauss. “The Effects That Mediator Styles Impose on Neutrality and Impartiality Requirements of Mediation.” *University of San Fransisco law review* 42 (2008).

⁷⁷ Hoffman, David A. “Ten Principles of Mediation Ethics.” *Alternatives to the High Cost of Litigation* 18, no. 8 (2000): 147–69 .<https://doi.org/10.1002/alt.3810180803>.

- c. **Impartiality:** The mediator's words, body language, manner, and process management should always reflect an even-handed approach. Even if the mediator developed a feeling toward any of the parties, this feeling must be kept to himself. If the mediator feels that he takes the side of any of the parties, he must withdraw at once.
- d. **Voluntariness:** Parties are free to leave and quit the Mediation process whenever they want and at any stage. Moreover, any agreement that results from the Mediation process must be of their free will.
- e. **Confidentiality:** It has two aspects; the first one is to maintain the privacy of the Mediation process from anyone other than the parties. The second one is to keep the confidentiality of anything said in the private sessions and the party does not want the other party/parties to know.
- f. **Do not Harm:** The mediators should avoid conducting the Mediation process in a way that harms the parties or worsens the conflict.
- g. **Self-determination:** The mediator should encourage the parties to make their own decisions about the resolution of the conflict rather than imposing the ideas of the mediator or anyone else. Mediators should also prevent one of the parties from controlling the other parties in a way that prevents them from making their own decisions.
- h. **Informed Consent:** The mediator should have the responsibility to inform and educate each party of any conflict about their position in the conflict, their choices, their options for settlement, and their alternatives.
- i. **Duties to Third Parties:** The mediator should make sure that the proposed settlement or resolution of the conflict does not harm any third party that is not

in the Mediation process. For example, children in conflicts between husband and wife.

- j. **Honesty:** The mediator should be honest with the parties when he tells them about his/her qualifications and experiences. Moreover, he/she should tell them about any fees they will be charged for the Mediation process. He/she should be honest about any aspect of the Mediation that may affect their willingness to participate in the Mediation process.

7. Mediation Steps

Having examined all this information about Mediation, there is an important question to be asked here: *How is Mediation conducted?* The answer to this question lies in four steps:

- a. **Opening Statement:** The mediator should begin with an opening statement, the purpose of which is to gain the parties' trust and urge them to talk to the mediator freely. Moreover, it is intended to ensure the mediator's neutrality and impartiality. It is also meant to clarify that Mediation is voluntary, and they are not forced to agree upon anything that they do not want. The opening statement also seeks to tell the parties about the mediator's experiences and skills to encourage them to engage in this Mediation process, as well as, to explain the advantages of the negotiated settlement and the disadvantages of going to court.
- b. **Joint Sessions:** The aim of such sessions is to make the parties talk about their side of the story about the conflict. This is very beneficial for all parties in the sense that it allows the mediator to hear and understand the conflict in a better way; moreover, it allows the conflicting parties to understand each other's

thoughts and ideas about the conflict. Moreover, it allows the parties to feel and know the sorrows and grieves of the parties.

- c. **Private and Separate Sessions:** Those sessions have many aims which are: accessing classified information that one party does not want to mention in front of the other. Moreover, it helps the mediator and the party to understand the strengths and weaknesses of their case. It also helps the mediator to identify the resolutions that can't be applicable in their case. In this step the mediator assesses the situation, guides the parties to a better understanding of their situation, needs, and interests, and persuades the parties of things that were misunderstood or things for their own good.
- d. **Final Solution:** The mediator encourages the parties to reach a settlement that suits all the parties and all the parties agree upon.
- e. **Agreement Endorsement:** The approved conditions should be written and signed upon by all the parties in the presence of the mediator who shall also sign the agreement.⁷⁸

Three: Negotiation

Negotiation is the other ADR technique discussed in this study. It is defined as “a strategic discussion that resolves an issue in a way that parties find acceptable.”⁷⁹

It is also defined as “a back and forth communication designed to reach agreement when you and the other side have some interests that are shared and others that are opposed.”⁸⁰

⁷⁸ Raveendran, R. V. “Mediation - An Introduction .” In *Mediation - An Introduction*, 16–17. India, India: Supreme court of india, n.d.

⁷⁹ Kenton, Will. “How Negotiations Work.” Investopedia. Investopedia, November 11, 2020. <https://www.investopedia.com/terms/n/Negotiation.asp>.

1. Elements of Negotiation

In order for a Negotiation to be effective, seven elements⁸¹ must be present:

a. **Relationship:** The negotiator should separate people from issues, have a good Negotiation relationship, plan a good working relationship, and be respectful, trustworthy, and constructive.

b. **Communication:** The negotiator should have good communication skills such as active listening, acknowledgement of what has been said and felt, speaking about yourself, speaking for a purpose, and finally, speaking to be understood and listening to understand. Nevertheless, the negotiator should have communication skills like clarifying skills and paraphrasing and summarizing skills.

c. **Interests:** The negotiator should be aware of all parties' interests, needs, fears, and concerns before identifying and communicating common interests as a foundation for developing solutions.

d. **Options:** The negotiator should provide choices, not positions, that meet the needs of all parties while also looking for methods to maximize their mutual gains.

e. **Alternatives:** The negotiator should identify the best alternative to a negotiated agreement (BATNA) and understand its implications, consequences, risks, and costs of your and their BATNA, and finally identify the other party's best and worst BATNA.

f. **Legitimacy:** The negotiator should use an external criteria and objective standards as a basis to legitimize the preferred options and as a shield against

⁸⁰ Fisher, Roger, and William Ury .Getting to Yes: The Strategy of Successful Negotiation .Boston, USA: Houghton Mifflin, 1981 .

⁸¹ Ibid

unreasonable proposals from the other party. Moreover, use demonstrable “fairness” of the process and the outcome to persuade the other party of the merits of a proposal.

g. **Commitment:** The negotiator should identify all the implementation issues to be included in the agreement and plan the timeframe and steps of implementing the agreement. Nevertheless, commitment is got at the end of the Negotiation, not at the beginning.

2. Styles and Strategies of Negotiation

There are five styles and strategies of Negotiation,⁸² as follows:

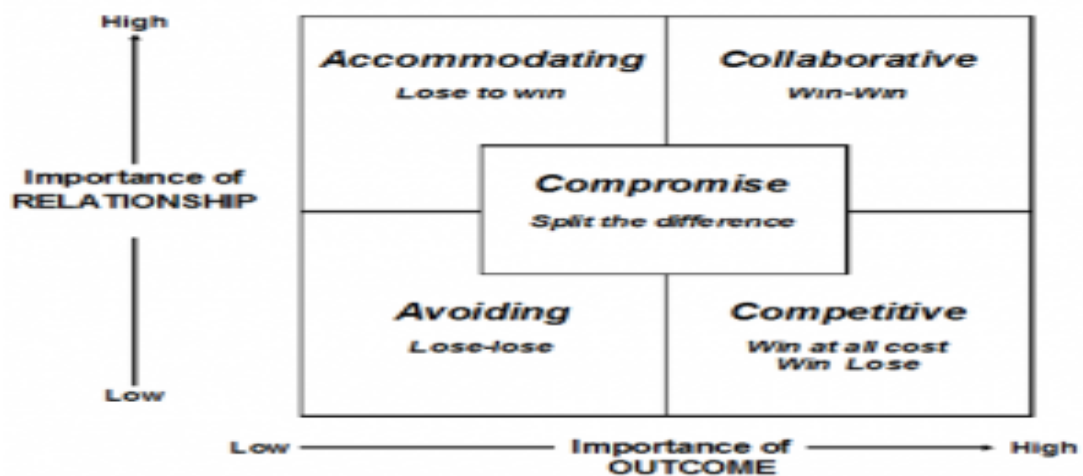


Figure 1.3 Styles and Strategies of Negotiation

- a. *Competing* is assertive and uncooperative—an individual pursues his own concerns at the other person’s expense. This is a power-oriented mode in which you use whatever power seems appropriate to win your own position—your ability to argue, your rank, or economic sanctions. Competing means “standing up

⁸² Kilmann, Thomas. “Take the Thomas-Kilman Instrument: Improve How You Resolve Conflict.” Kilmann Diagnostics, December 24, 2020. <https://kilmandiagnostics.com/overview-thomas-kilman-conflict-mode-instrument-tki>

for your rights,” defending a position which you believe is correct, or simply trying to win.

- b. *Accommodating* is unassertive and cooperative—the complete opposite of competing. When accommodating, the individual neglects his own concerns to satisfy the concerns of the other person; there is an element of self-sacrifice in this mode. Accommodating might take the form of selfless generosity or charity, obeying another person’s order when you would prefer not to, or yielding to another’s point of view.
- c. *Avoiding* is unassertive and uncooperative—the person neither pursues his own concerns nor those of the other individual. Thus he does not deal with the conflict. Avoiding might take the form of diplomatically sidestepping an issue, postponing an issue until a better time, or simply withdrawing from a threatening situation.
- d. *Collaborating* is both assertive and cooperative—the complete opposite of avoiding. Collaborating involves an attempt to work with others to find some solution that fully satisfies their concerns. It means digging into an issue to pinpoint the underlying needs and wants of the two individuals. Collaborating between two persons might take the form of exploring a disagreement to learn from each other’s insights or trying to find a creative solution to an interpersonal problem.
- e. *Compromising* is moderate in both assertiveness and cooperativeness. The objective is to find some expedient, mutually acceptable solution that partially satisfies both parties. It falls intermediate between competing and accommodating. Compromising gives up more than competing but less than accommodating. Likewise, it addresses an issue more directly than avoiding it, but does not explore it in as much depth as collaborating. In some situations,

compromising might mean splitting the difference between the two positions, exchanging concessions, or seeking a quick middle-ground solution.

Each of us is capable of using all five conflict-handling modes or styles. None of us can be characterized as having a single style of dealing with conflict. But certain people use some modes better than others and, therefore, tend to rely on those modes or styles more heavily than others—whether because of temperament or practice.

3. Characteristics of Negotiation

Negotiation characteristics⁸³ are:

- a. There are at least two parties in the Negotiation process.
- b. All parties decide the goals they want to achieve.
- c. Some of the pre-determined goals are not shared by all parties.
- d. There is an expectation of outcome by all parties in any Negotiation.
- e. All the parties believe that the outcome will be satisfactory.
- f. All parties are willing to compromise and change their positions.
- g. The incompatibility of goals may make the modification of positions difficult
- h. All parties understand the goal of Negotiation.

4. Process of Negotiation

The Negotiation process consists of four steps,⁸⁴ which are as follows:

⁸³ KukrejaI, Sonia. “Characteristics of Negotiation and Steps of Negotiation Process.” Management Study HQ, January 14, 2020 .<https://www.managementstudyhq.com/characteristics-and-steps-of-Negotiation-process.html> .

⁸⁴ Ibid

a. Preparation: This is the most important step in Negotiation since it gives the negotiator more confidence. Nevertheless, it involves the following stages:

- *Gathering Information:* The negotiator should gather as much information as much he/she can about the conflict, issues of the conflict, parties of the conflict, environment, etc.
- *Power Evaluation:* Evaluating the power of the other side is important to improve one's power or limit the other side's power.
- *Understand People Involved:* Knowing people involved, their aims, roles, and issues will help the negotiator to better control the situation during the Negotiation process.
- *Relationship:* It is important to build a relationship with the opponent to know to what extent he/she is cooperative.
- *Know Your Aims:* Your objectives have to be clear and every argument and justification should be ready.
- *Type of Negotiation:* The negotiator should expect the type and strategy of the Negotiation, whether it will be face to face or via the internet, direct or through a mediator, etc.
- *Plan:* The negotiator should decide on the Negotiation approach and plan accordingly.

b. Opening Phase: In this phase, the parties are presenting their cases to each other. Each party tries to influence and affect the other party's thinking.

- c. **Bargaining Phase:** In this phase, the main strategy is convincing the other side of your demands and persuading them to give up theirs. In this phase, you get close to your intended goals.
- d. **Closure Phase:** This phase combines all the effort that has been exerted in the previous three steps crowned with a formal agreement like a written contract or a letter of intent.

5. Approaches of Negotiation

There are “four approaches/types of Negotiation”⁸⁵ on which the outcome of the Negotiation is dependent; these approaches are as follows:

a. *Distributive Negotiation or Win-Lose Approach*

This is also called the competitive, zero-sum, or claiming value approach. This approach is based on the premise that one person can win only at the expense of the other. It has the following characteristics:

- One side ‘wins’ and one side ‘loses’.
- There are fixed resources to be divided so that the more one gets, the less the other gets.
- One person’s interests oppose the other’s.
- The dominant concern in this type of bargaining is usually to maximize one’s own interests.
- The dominant strategies in this mode include manipulation, forcing, and withholding information.

⁸⁵ Kukreja, Sonia. “4 Different Approaches to Negotiation.” Management Study HQ, December 24, 2018. <https://www.managementstudyhq.com/approaches-to-Negotiation.html> .

Strategy to be used: In this mode, one seeks to gain an advantage through concealing information, misleading, or using manipulative actions. Of course, these methods have serious potential for negative consequences. Yet even in this type of Negotiation, both sides must feel that in the end, the outcome was the best that they could achieve and that it is worth accepting and supporting.

The following are the basic techniques available to the negotiator in this approach:

- Influence the other person's belief in what is possible.
- Learn as much as possible about the other person's position, especially with regard to resistance points.
- Try to convince the other to change his/her mind about their ability to achieve their own goals.
- Promote your own objectives as desirable, necessary, ethical, or even inevitable.

b. *Lose-Lose Approach*

This Negotiation approach is adopted when one negotiating partner feels that his own interests are threatened and he does all he can to ensure that the outcome of the Negotiation is not suitable for the interests of the other party as well. In the bargain, both the parties end up being the loser. This type of situation arises when the negotiating partners ignore one another's needs and the need to hurt each other outweighs the need to find some kind of an acceptable solution. This is the most undesirable type of outcome and hence this Negotiation approach is best avoided.

c. *Compromise Approach*

This approach provides an outcome that is slightly better than the outcome of the lose-lose strategy. To avoid a lose-lose situation, both parties give up a part of what

they had originally sought and settle for something less than that. A compromise is the best way out when it is impossible for both parties to convince each other or when the disputed resources are limited.

d. *Integrative Negotiation or Win-Win Approach*

This Negotiation approach is also called a collaborative or creating value approach. It is superior to all Negotiation approaches. It results in both the parties feeling that they are achieving what they wanted. It results in satisfaction for both parties. It has the following characteristics.

- There is a sufficient amount of resources to be divided and both sides can ‘win’
- The dominant concern here is to maximize joint outcomes.
- The dominant strategies include cooperation, sharing information, and mutual problem-solving. This type is also called ‘creating value’ since the goal here is to have both sides leave the negotiating feeling they had greater value than before.

Since the integrative approach is most desirable, some of the guidelines to integrative bargaining are listed below:

- Orient yourself towards a win-win approach. Your attitude while going into Negotiation plays a huge role in the outcome.
- Plan and have a concrete strategy. Be clear on what is important to you and why it is important.
- Know your Best Alternative to a Negotiated Alternative (BATNA).
- Separate people from the problem.
- Focus on interests, not positions; consider the other party’s situation.
- Create options for mutual gain.

- Generate a variety of possibilities before deciding what to do.
- Aim for an outcome based on some objective standard.
- Pay a lot of attention to the flow of Negotiation.
- Take the intangibles into account, and communicate carefully.
- Use active listening skills, rephrase and ask questions.

6. The Negotiator's Skills

Many skills are required to be a good negotiator. Most importantly, effective Communication skills, active listening, reducing misunderstandings, rapport building, problem-solving, persuasion skills, decision making, assertiveness, dealing with difficult situations, patience, and knowing when to stop negotiating.⁸⁶

Four: Contact Hypothesis Theory

Since Mediation and Negotiation require conducting contact between conflicting parties, the most referential theory of this issue is the Contact Hypothesis Theory. This theory was developed by “Gordon Allport in his book *the nature of prejudice*.”⁸⁷ In this book, Allport reviewed previous studies on intergroup contact and prejudice. He found that contact reduced prejudice in some instances, but it was not a remedy. There were cases that contact made prejudice and conflict worse. As a result, he put four conditions to make the contact effective and successful. Firstly, Members of each group should have equal status. Secondly, members of each group should have

⁸⁶ “What Is Negotiation?” SkillsYouNeed, 2011.
<https://www.skillsyouneed.com/ips/Negotiation.html>.

⁸⁷ Allport, Gordon W., Kenneth Clark, and Thomas F. Pettigrew. *The Nature of Prejudice*. New York, USA: Basic Books, 2015 .

common goals. Thirdly, members of each group should work cooperatively. Finally, parties should have institutional support.⁸⁸

Five: Dialogue

The previously mentioned conditions are very similar to the conditions of the third ADR tool, dialogue. *Dialogue* is defined in Merriam Webster's Dictionary as "a written composition in which two or more characters are represented as conversing." In dialogue, the conflicting parties take into consideration the above-mentioned conditions: sitting together, listening to each other's suffering and tragedy, allowing themselves to sympathize with the other party, putting themselves in the other party's shoes, feeling with them, and then reaching to a written agreement that solves the issue between them. These are the same goals of the Contact Hypothesis Theory which states that contact reduces prejudice because it reduces anxiety by expressing feelings toward the other party and against the issue itself. Moreover, it increases empathy since it allows people to see things from another perspective. It allows people to see how the other group feel. Additionally, it helps in de-categorization of people and accepting them as humans not just as members of the opponent group.⁸⁹

Six: Arbitration

The other ADR method that should be defined is Arbitration. *Arbitration* is defined as "a device whereby the settlement of a question, which is of interest for two

⁸⁸ Hopper, Elizabeth. "What Is the Contact Hypothesis in Psychology?" ThoughtCo, October 26, 2019. <https://www.thoughtco.com/contact-hypostudy-4772161>.

⁸⁹ Ibid

or more persons, is entrusted to one or more other persons – the arbitrator or arbitrators – who derive their powers from a private agreement, not from the authorities of a State, and who are to proceed and decide the case on the basis of such an agreement.”⁹⁰

Arbitration is also defined as “the process by which a dispute or difference between two or more parties as to their mutual legal rights and liabilities is referred to and determined judicially and with binding effect by the application of the law by one or more persons (the arbitral tribunal) instead of by a court of law.”⁹¹

1. Arbitration Features

According to the above-mentioned definitions, arbitration has many characteristics, including: it alternates court, it is private while trials may be public, parties select the arbitrators where judges cannot, and it is binding by an agreement reached between the parties and the arbitrators.

2. Stages of Arbitration

Arbitration is divided into several stages,⁹² which are as follows:

- The case initiation stage.
- Arbitrator invitation stage.
- Arbitrator appointment stage.
- Preliminary hearing and information exchange stage.

⁹⁰ David, *Arbitration in International Trade*, 5.

⁹¹ Halsbury's *Laws of England* (4th ed, Butterworths 1991), para 601, 332.

⁹² International Center for dispute resolution. (n.d.). Stages of the arbitration process . American arbitration association. Retrieved February 9, 2022, from https://www.adr.org/sites/default/files/document_repository/AAA_Stages_of_the_Arbitration_Process.pdf

- Hearing stage.
- Award stage.

Seven: Sulha

Each culture typically adapts one or more of the aforementioned Alternative Dispute Resolution techniques to meet its specific needs. The Palestinians use the word “*Sulha*” as a conflict resolution tool to reestablish normal relations in communities following an injury or insult to honor, ranging in intensity from minor offences to murder cases. Sulha, when implemented right, restores social harmony by boosting personal dignity. It is generally preferable over going to court or going to arbitration.⁹³

The term *Sulha* is usually defined as “*a tool for avoiding or ending a terrible hatred.*”⁹⁴

1. Processes of Sulha

Sulha has a certain procedure for success, which is shown in the following steps:

- a. The aggressor shows the intention to reconcile with the victim.
- b. The formulation of *Jaha* to negotiate a truce.
- c. In the case of murder, this step involves collecting a certain amount of money to be paid for the victim (through the Atwa).

⁹³ Abu-Nimer, M. (2003). *Nonviolence and peace building in Islam: Theory and practice*. University Press of Florida .

⁹⁴ Albrecht Hans-Jörg. *Conflicts and Conflict Resolution in Middle Eastern Societies: Between Tradition and Modernity*. Freiburg im Breisgau, Germany: Duncker& amp; Humblot, 2006 .

- d. Renew the truce period to be able to negotiate upon an acceptable solution.
- e. *Sulha* which includes a public reconciliation ceremony that declares the restoration of good relationships accompanied with signing *Sulha* document that includes all the conditions of *Sulha*. In the case of murder, an amount of money should be paid for the victim's family.⁹⁵

Eight: Jaha

Jaha is defined as a “notable and recognized delegation that intervenes in conflict resolution.”⁹⁶

Nine: Atwa

Atwa is defined as a “temporary truce between the conflicting parties. Atwa’s duration ranges from 3 days to a year or more. It might sometimes be extended till the case is resolved and the conflicting parties reconcile. It is taken in murder and honor crimes only. While in cases related to rights or theft, there is no Atwa.”⁹⁷

1. Types of Atwa

⁹⁵ Abu-Nimer, Mohammad. “Conflict Resolution Approaches.” Wiley Online Library. John Wiley & Sons, Ltd, July 3, 2006. <https://onlinelibrary.wiley.com/doi/10.1111/j.1536-7150.1996.tb02706.x> .

⁹⁶ Saxon, Erin Dyer. “Culture and Conflict Resolution.” Essay. In *Peacemaking and Transformative Mediation: Sulha Practices in Palestine and the Middle East*, p:36. Basingstoke, England: Palgrave Macmillan, 2017 .

⁹⁷ ابن هذال فهد. “أنواع العطاوات العشائرية.” وكالة عمون الاخبارية, [.mobile/article/64752/https://www.ammonnews.net](https://www.ammonnews.net/mobile/article/64752) .2011

Atwa comes in a variety of forms, some of which are listed below:

- a. **Security Atwa (Foret el-Dam):** It lasts for three days and a third. It is called as such because the security personnel intervene to maintain security and prevent the attack on the offender's family or property.
- b. **Right Atwa or Inspection Atwa ('atwat taftesh):** This Atwa is applied when the offender is not known or the suspect denies the accusations. The purpose of this Atwa is to find out the truth and identity of the perpetrator/the guilty party.
- c. **Honor Atwa ('atwat sharaf):** It is applied in honor cases.
- d. **Alive-dead Atwa ('atwat hay-mayyet):** It is used when the victim is in peril, has gone missing, or his or her destiny is unknown.
- e. **Incomplete Atwa ('atwa naqsa):** It does not include the offender, but rather his or her family and relatives.
- f. **Confession Atwa ('atwat 'iqraq):** It is applied when the offender admits or confesses his/her offense and demonstrates his/her preparedness to fulfill his duties.
- g. **Respite Atwa ('atwat imhal):** It intends to allow the opponent or offender some time to come to terms or reconciliation.
- h. **Acceptance Atwa ('atwat qabool):** It is used when the victim or his/her family accepts reconciliation.⁹⁸

The Reconciliation Men can negotiate with the conflicting parties in a variety of ways:

- Providing advice to the conflicting parties and reminding them of the virtue of tolerance, forgiveness, and reconciliation, using Quran verses and Hadith.

⁹⁸ Ibid

- Conducting individual meetings with each party and proposing an appropriate solution to achieve reconciliation.
- Finding someone who has an influence on the party may aid in convincing him/her.
- Praising the party.
- Discussing the terms and conditions of reconciliation and ranking them in order of importance.
- Negotiating the party's position and warning him/her of the repercussions of taking the case to court.⁹⁹

Previous Studies:

There are numerous topics that can be researched and explored in the realm of ADR. Many studies have been conducted on this topic, some of which are reviewed below:

1. In her article, Wilcox (2020)¹⁰⁰ investigates the differences and similarities between formal and informal justice systems. The findings show that formal

⁹⁹ البلوي فهد. "فن الإصلاح بين الناس توجيهات وآداب وقواعد وخطوات." كتاب بديا.

Accessed March 20,

<https://ketabpedia.com/%D8%AA%D9%86-%81D8%AD%D9%85%D9%8A%D9%84/%D9%D8%A7%D9%84%D8%A5%D8%B5%D9%84%D8%A7%D8%AD-%D8%A8%D9%8A%D9%86-%D8%A7%D9%84%D9%86%D8%A7%D8%B3-D8%AC%D9%8A%D9%87%D8%A7%D8%AA-%88%D8%AA%D9%D9%88%D8%A2%D8%AF%D8%A7%D8%A8-./%D9%88%D9%82%D9%88>

¹⁰⁰ Wilcox, Manon. "What Is the Difference between Formal and Informal Justice Systems?" Colors, May 11, 2020. <https://colors-newyork.com/what-is-the-difference-between-formal-and-informal-justice-systems> ./

crime control relies on the law and the official government agencies to deter criminal actions and to respond to criminal activity, while informal crime control relies on moral and social institutions (like family, peers, neighborhood) to promote lawful behavior. In a formal justice system laws are enforced and punishments are given by legal criminal justice agencies such as courts and prisons. In an informal justice system, people take justice into their own hands, especially in situations where the law can't dole out proper justice.

2. In their study, Oreiqat and Tarawneh (2019)¹⁰¹ investigate the challenges that limit the role of clan notables from imposing social control in the southern West Bank villages. The qualitative analysis approach was applied in this study. The findings show that clan notables have different perspectives on the involvement of political groups and Palestinian police in resolving conflicts between people, and that people do not turn to courts unless the case is extremely sensitive, such as murder; however, the perspectives differ between people of formal and informal clans. This study concludes with numerous recommendations, the most essential of which is that Reconciliation Men should work independently of the legal system.
3. In a study entitled “*Legal pluralism as a way to understand legal phenomena in Palestine: The tribal law as a case study*,” Asem (2019)¹⁰² argues that the

¹⁰¹ عريقات إياد عبدالله, and الطراونة محمد فايز. “المعيقات التي تحد من دور وجهاء العشائر في الضبط الاجتماعي في قرى جنوب الضفة الغربية.” مجلة الجامعة الإسلامية للبحوث الإنسانية, 2019, .247 <https://doi.org/10.33976/1442.010-003-027>

¹⁰² خليل عاصم. “التعددية القانونية كمدخل لفهم الظاهر القانونية في فلسطين: القانون العشائري كحالة دراسية.” مجلة الحقوق, 2019, 1-28. https://papers.ssrn.com/sol3/papers/:https://doi.org/https.cfm?abstract_id=3472378

state law and the customary law can coexist within society in many ways and aspects. This study discusses the advantages and inconveniences of the coexistence of the formal and informal justice systems in the territories under the Palestinian authority's control, as well as the influence of each system on the other. Accepting legal pluralism and advocating its use as a tool for understanding the normative orders in contemporary Palestine means simply that measures of reform are likely to achieve their aims only by careful calculations that take into consideration the content and functions of existing not-state laws. Ignoring the legal map or mosaic would give only an obscure idea of the legal reality in Palestine. Legal reform aiming at building democratic institutions and at enhancing the rule of law in Palestine that does not consider non-state law would hence be insufficient and would necessarily fail.

4. A study entitled "*The role of clan custom in reducing murders in southern West Bank from experts' perspectives,*" by Jamal Dar'awi (2018)¹⁰³ aims to identify the role of the clan customs in reducing and limiting murders in the South of the West Bank. The researcher used the descriptive method. The sample consisted of 246 lawyers and Reconciliation Men based in the southern West Bank. The study used the questionnaire to collect data and the (SPSS) to analyze the collected data. The results show that the easy procedures of the clan custom, the fastness of the clan custom in resolving conflicts, and the trust that people give to the clan custom are the major reasons behind turning to the clan system. Moreover, The biggest challenges

¹⁰³ درعاوي جمال. "دور العرف العشائري في الحد من جريمة القتل في جنوب الضفة الغربية من وجهة نظر ذوي الاختصاص", "2018.

that the clan custom faces are the involvement of unqualified persons, their ignorance of its regulations, and their eagerness to obtain money from the conflicting parties. Moreover, the coordination between Reconciliation Men and the state, and the determination of the standards of choosing the Reconciliation Men are the most important mechanisms to develop the clan system. The sample preferred clan reconciliation and arbitration over clan judiciary. The research concludes with many recommendations which are Reconciliation Men and the clan system should be supervised by the society and the state, and the role of the Clan Affairs Departments in the Governorates and the Ministry of the Interior should be activated.

5. In the same context, Zakarneh (2017), in his study "*The role of clan custom in conflict resolution in the northern Governorates of the West Bank*," investigates the reasons why people resort to the clan system, the challenges facing this system, and the characteristics of the clan reconciliation. The researcher used the comparative descriptive method. The tools that the researcher used are the questionnaire and the interview. The sample consisted of 206 lawyers and Reconciliation Men from the North of the West Bank. The results show a high level of trust by citizens in the Reconciliation Men. Moreover, people turn to those men due to the sensitivity of some problems that people wish to keep confidential. What pushes people to resort to the clan system is that some honor and murder cases cannot be considered by the regular courts, due to a lack of witnesses and evidence. Nevertheless, one of the important results of this study is that, unlike the regular court, the clan system is a system that is based on reconciliation not only on deciding and judging in conflicts. The study recommends the efforts of reconciliation and

conflict resolution between the legal system and the clan system should be consolidated and the clan reconciliation committees should be supported by the state.

6. In his study entitled “*Does the clan reconciliation system conflict with the regular judiciary in Palestine?*” Abu Sheeha (2016)¹⁰⁴ found that the clan reconciliation system provides high level of protection and security for the conflicting parties. Because of the kafeel, the conflicting parties can choose their own judge. Additionally, the clan reconciliation system saves time and effort in settling conflicts. When conventional courts are unable to resolve some problems, people turn to Reconciliation Men, who are capable of resolving such cases fast. Furthermore, when dealing with murder cases, the clan reconciliation method is more successful and far less expensive because it can present a solution that satisfies all parties in a very short time, as opposed to the court, which keeps prolonging key cases for years.
7. In his study “*Formal and informal justice in Palestine: Dealing with the legacy of tribal law*” Khalil (2016)¹⁰⁵ explores both the formal and informal systems in Palestine to demonstrate how they can coexist and complement one another. This research also looks at legal pluralism in the West Bank and Gaza Strip to better understand legal phenomena and the state's attitude toward non-state normative orderings.

¹⁰⁴ ابو شيحة فارس. “هل يتعارض القضاء العشائري مع القضاء النظامي الفلسطيني؟” نون بوست, 2016. <https://www.noonpost.com/content/11402>

¹⁰⁵ Khalil, Asem. “Formal and Informal Justice in Palestine: Dealing with the Legacy of Tribal Law.” *Études rurales*. EHESS, December 7, 2016. <https://doi.org/10.4000/etudesrurales.10550> .

8. Abu baker (2015), in his study entitled “*Human rights under the tribal judiciary: Palestine as a model*,”¹⁰⁶ argues that in territories under the control of the Palestinian Authority, the justice system is divided into two parts: the formal judiciary system and the clan judiciary system. Furthermore, he feels that the reasons why citizens turn to clan reconciliation are a lack of trust in the court and its delay in making decisions in cases.
9. In his study entitled “*The role of clans and Reconciliation Men in enhancing the social civil peace*,” Jaradat (2015)¹⁰⁷ aims to study the role that the clans and Reconciliation Men play in achieving civil peace and security. This study concluded that the role of Reconciliation Men and clans in preserving security and stability in the local society complements that of the security institution; additionally, there is cooperation between Reconciliation Men and the security institution in preserving security, social stability, and civil peace.
10. In his study “*Clan judiciary in Palestine: Interference and reconciliation*” Ahmed Barrak (2014)¹⁰⁸ aims to identify the reality of the clan judiciary system in Palestine, its mechanisms, and its structure; additionally, it investigates its compliance with human rights and the Palestinian authority's constitutional and legal principles; and finally, it envisions the future of the clan system, how it will be dealt with by Palestinian authority institutions, and how it will be organized. Using the descriptive technique, the

¹⁰⁶ ابو بكر فادي. “حقوق الإنسان في ظل القضاء العشائري : فلسطين نموذجاً .” دنيا الرأي,

August 27, 2015. <https://pulpit.alwatanvoice.com/articles/2015/08/27.html.376383>

¹⁰⁷ جرادات سليمان. “دور رجال الاصلاح والعشائر في تعزيز السلم الاهلي الاجتماعي.” وكالة معا الاخبارية, 2015. <https://www.maannews.net/articles/771280.html>

¹⁰⁸ براك أحمد. “القضاء العشائري في فلسطين التدخل والإصلاح.” 2014.

research distributed 180 questionnaires across the West Bank and Gaza Strip, as well as conducted interviews with clan judges, court judges, and lawyers. This study found that 85.3 % believed that settling disagreements through the clan system promotes the value of tolerance and maintains social relationships in Palestinian society. Reconstructing the clan judiciary system and reconciliation committees into a single unified entity is seen as an urgent requirement by 47 %. While 19.7 % believe that this is a national need, 19.7 % believe that uniting them in one body is beneficial to law sovereignty.

11. In his study “*Informal justice systems: Challenges and perspectives*,” Roder (2012)¹⁰⁹ intends to investigate the challenges that informal justice encounters, and perspectives on the institutions of informal justice. This study was conducted all around the world, and despite cultural differences, informal justice instruments play a significant role in resolving conflicts between people. These institutions are regarded as legitimate by the public. As a result, modern strategies aimed at improving justice and law sovereignty took informal justice techniques into account. The law sovereignty is strengthened by taking informal justice institutions into account.

12. In his study “*The clan judiciary and its effect over the Palestinian people*,” Ishtayeh (2012)¹¹⁰ investigates the effect of the clan system and its capability of resolving conflicts, the acceptability of individuals to clan judgments, and the effect of the clan system on the Palestinian people. This study yielded numerous findings, the most notable of which are that the clan judicial system

¹⁰⁹ Roder, Tilmann J. “Informal Justice Systems: Challenges and Perspectives,” 2012 .

¹¹⁰ اشتية جبر. “القضاء العشائري وأثره على الشعب الفلسطيني.” دورة كبار الضباط الحادية عشر. Reading presented at the دورة كبار الضباط الحادية عشر, 2012.

complements the court system rather than replacing it, and that the clan judiciary system is not based on law. The most important recommendations of this study are as follows: to allow clan judiciary institutions to play a role in Palestinian society, to coordinate between security institutions and the clan judiciary system in Palestinian society, and to document clan judiciary customs to prevent them from being lost.

13. In his study entitled “*The clan reconciliation custom compared to the Islamic doctrine*,” Abu Oreiban (2010)¹¹¹ intends to investigate the compatibility of clan customs and Islamic religion in resolving interpersonal conflicts, as well as the disparities between people. The comparative and analytical method was applied in this study. The findings of the study confirm that the clan system takes Islamic Shari'a into consideration and does not issue judgments that are incompatible with it.
14. In his book “Clan Custom in Reconciliation,” Hajjeh (2008) discusses the notion of clan custom and its origins, the reasons for adopting it, and its role in justice and security. He also discusses murder and honor cases, and the clan judiciary system.
15. In the same context, Beirzeit University Institute of Law conducted a study in 2007 entitled “Informal Justice in Palestine: Law Sovereignty and Conflict Resolution.”¹¹² The purpose of this study is to investigate informal justice in Palestine and its relationship to formal justice in order to be able to provide suggestions and recommendations about the role of informal justice in current

¹¹¹ ابو عريبان عبد الرحمن محمد. “الاصلاح العرفي العشائري مقارنة بالفقه الاسلامي,” 2010.

¹¹² الحقوق معهد. “القضاء غير النظامي : سيادة القانون وحل النزاعات في فلسطين.” معهد الحقوق جامعة بيرزيت, 2007. [http://176.119.250.240](http://176.119.250.240/2006-730/04-lawCenter/ar/2015-06-18-07-00/http://176.119.250.240)

and future formal justice in Palestine. The field research method was used to investigate the procedures and mechanisms of informal justice, as well as to discover the real relationship between this system and formal justice, reaching an approximation toward informal justice in light of Palestinian political and social reality by determining the accomplishments of the two systems that are involved in resolving conflicts.

16. In his paper “The clan judiciary in Beersheba between Shari'a and custom: A comparative study,”¹¹³ Elmuzni (2006) attempts to analyze the clan court system in Beersheba by comparing Islamic laws and custom. The comparative method was used in this investigation. This study yielded numerous findings, the most noteworthy of which is that there is a relationship between the Islamic Shari'a law and the clan justice system; additionally, there are some inconsistencies between the provisions of clan custom and the Islamic Shari'a regarding clan judiciary. The study suggested that a compatible form of clan customs and Islamic shari'a be developed for the clan judiciary system.

17. Beirzeit University Institute of Law conducted a study entitled “The Clan Reconciliation and Judgment and their Impact on Formal Justice in Palestine”¹¹⁴ in 2003. This study intends to investigate the impact of duality of justice in Palestinian society on law sovereignty, particularly in light of the significant role that the clan judiciary system plays in many areas during the

¹¹³ المزني سامي. “القضاء العشائري في بئر السبع بين العرف والشرع: دراسة مقارنة.” المكتبة المركزية - الجامعة الإسلامية بغزة،

2006. https://library.iugaza.edu.ps/book_details.aspx?edition_no=75198

¹¹⁴ شلهوب نادرة، عبد الباقي مصطفى and بكيرات فايز. القضاء والصلح العشائري واثرها على القضاء النظامي في فلسطين. بئر زيت، فلسطين: معهد الحقوق جامعة بيرزيت، 2003.

intifada, when formal justice was unable to fulfill its mission. Furthermore, the research focuses on the relationship between the clan judiciary system and executive power. Additionally, the paper discusses the integrity guarantees of the clan judges.

Finally, it should be noted that the present study is very similar to the studies reviewed above in terms of methodology and qualitative analysis approach, but it differs in that all previous related studies have discussed reconciliation and Reconciliation Men as a tool of informal justice, but none of them have focused on the theory of ADR and its practice in the Palestinian society.

Chapter Four: Methodology and Procedures.

It is important to choose a research method that suits the study and serves its purposes. There are many types of research methods that can be used in a scientific study, including descriptive methodology, historical methodology, empirical, methodology, analytical methodology, philosophical methodology, etc. Each type of study has a methodology that is best suited to its objectives. For example, if we are conducting a chemical investigation, we should employ empirical methodology. If we are conducting a historical study, we should employ historical and descriptive methodologies, etc. The present research necessitates the use of the methodology described in the following section.

Methodology

The study employs the qualitative descriptive approach because it is the most appropriate method for such studies. It assists the researcher in describing Palestinian social realities, such as culture, traditions, society structure, family types, and social relationships. Moreover, it explains Palestine's legal system and its role in resolving social conflicts. The interviews will then assist the researcher in developing a description of resolving social conflicts utilizing ADR, as well as the cultural specificity in following particular procedures while attempting to resolve social conflicts. As a result, it is the most appropriate method to use in such a study.

Population

The population of this study includes all Reconciliation Men who participate in and practice tribal method of resolving social conflicts. The number of people who work in this field is unlimited. Nevertheless, some of them work independently

without being attached to a specific governmental organization, while others work in governmental departments that are subservient to governorates and the Ministry of Interior. This study will exclusively communicate with government employees.

Sample

Following the declaration of the Palestinian National Council in Algeria in 1988 of the establishment of the Palestinian State on the pre-1967 borders with East Jerusalem as its capital, “the Palestinian National Authority divided the Palestinian lands into administrative divisions of 16 governorates, including eleven in the West Bank known as the Northern Governorates and five in the Gaza Strip known as the Southern Governorates. The governorates of the West Bank are as follows: Jerusalem, Bethlehem, Hebron, Ramallah & al-Bireh, Nablus, Salfit, Qalqilya, Tulkarm, Tubas, Jenin, and Jericho & the valleys.”¹¹⁵ **Figure 1.4** illustrates these divisions into governorates.

¹¹⁵ وفا. “التقسيمات الإدارية لدولة فلسطين (المحافظات الفلسطينية).” وكالة الأنباء والمعلومات الفلسطينية - وفا. https://info.wafa.ps/ar_page.aspx?id=2414. Accessed August 21, 2021

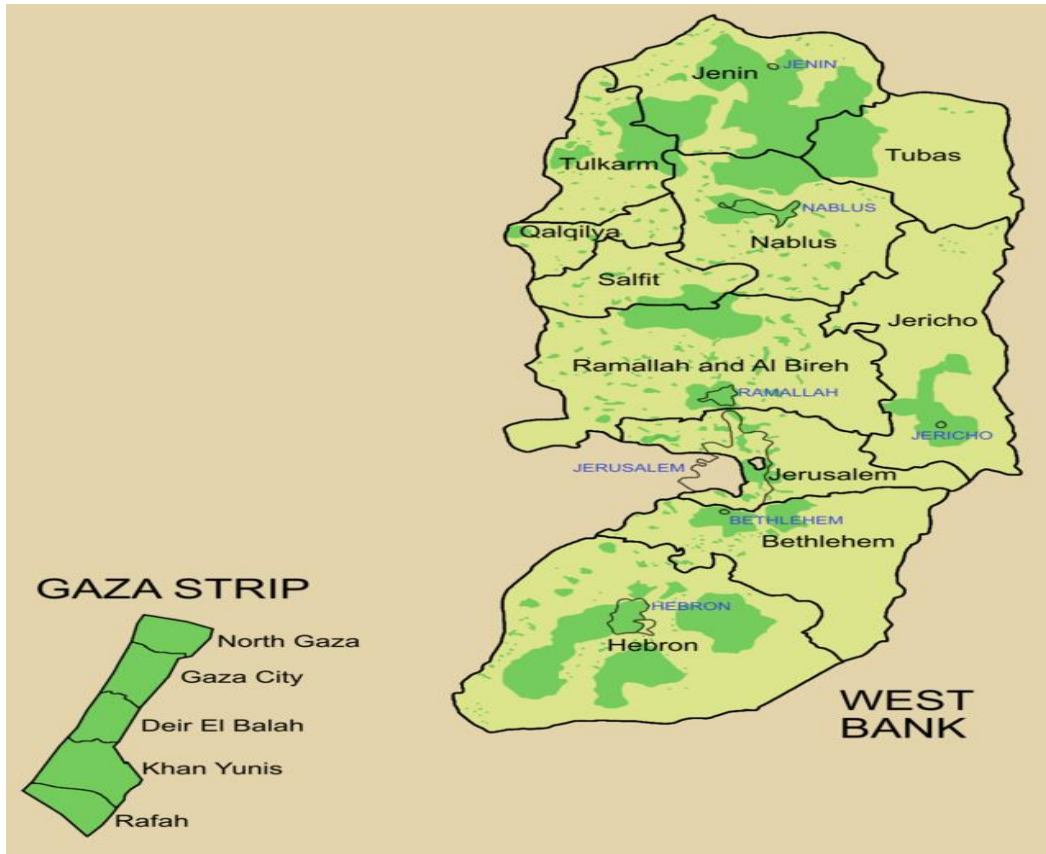


Figure 1.4 Map of Governorates of Palestine¹¹⁶

For the purpose of this study, the researcher groups the West Bank governorates (the Northern Governorates) into three prefectures (major zones, similar to a state in the USA): The North Prefecture (comprising Tulkarm, Jenin, Tubas, Qalqilya, and Nablus), the Central Prefecture (comprising Salfit, Jericho & Valleys, Ramallah & Al-Bireh, and Jerusalem), and the South Prefecture (comprising Bethlehem and Hebron). The sample used in this study is a representative sample of 15 Reconciliation Men from the North, Central, and South prefectures. This new grouping or classification of the eleven West Bank Governorates into three prefectures is shown in the table below:

” محافظات السلطة الوطنية الفلسطينية “¹¹⁶ Wikiwand. Accessed August 21, 2021. <https://www.wikiwand.com/ar/%D9%85%D8%AD%D8%A7%D9%81%D8%B8%D8%A7%D8%AA%D8%A7%D9%84%D8%B3%D9%84%D8%B7%D8%A9%D8%A7%D9%84%D9%88%D8%B7%D9%86%D9%8A%D8%A9%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D8%A9>.

Table 1.4 Grouping of the West Bank Governorates into Three Prefectures

| North Prefecture (North WB) | Central Prefecture (Central WB) | South Prefecture (South WB) |
|--|--|--|
| Tulkarm | Salfit | Bethlehem |
| Jenin | Jericho & the Valleys | Hebron |
| Tubas | Ramallah & al-Bireh | |
| Qalqilya | Jerusalem | |
| Nablus | | |

Instruments

The narrative interviews were employed in the study, and open-ended questions were asked to allow participants to respond freely. There were 15 interviews, 13 of which were conducted face to face, and the remaining two were conducted through Zoom and phone due to Israeli occupation restrictions on entry to Jerusalem. The researcher displayed the Interviewee's Consent form, but the majority of respondents refused to sign it, stating that they trusted the researcher and her objectives. The interview consists of 12 questions related to the subject of the study and the study questions (see Appendix II). Each interview took between 1.5 and 2 hours.

Procedures

In order to conduct this study, the following procedures were followed:

1. The researcher chose the title of the study, its problem, and determined the questions.
2. The researcher started reading literature, previous studies and researches about the subject.

3. The researcher chose the suitable methodology for the study and designed the interview questions.
4. The researcher determined the target population and sample size.
5. The researcher interviewed the randomly selected sample (15 Reconciliation Men). They were recorded on the phone. The researcher obtained the sample's permission to use their names in the study.
6. The researcher wrote the interviews in Arabic, then they were sent to three of the interviewees who were randomly selected to ensure that the researcher understood what they wanted to say. They three approved of the written interviews and testified that they agreed with what they said.
7. Interviews were translated into English and then back into Arabic to ensure proper translation.
8. Data was collected and analyzed using the qualitative analytical approach.
9. The researcher arrived at findings that answer the study questions.
10. During the course of this study, the researcher encountered numerous challenges. Some interviews, for example, went substantially longer than planned due to delays caused by some interviewees. Every time the researcher scheduled an interview with an interviewee, they had to reschedule it because they were too busy. Moreover, the limitation of previous studies on the same subject posed a significant challenge.

Chapter Five: Data Presentation and Analysis

As mentioned above, the study involved 15 interviews with Reconciliation Men from various governorates in the West Bank, the majority of which were conducted face to face, with the exception of those in Jerusalem, which were conducted by Zoom and phone calls due to the researcher's inability to travel there. The interviews were conducted in Arabic and recorded by the mobile phone. For the purposes of this study, the West Bank was divided into three primary divisions: North Prefecture (hereafter North WB), Central Prefecture (hereafter Central WB), and South Prefecture (hereafter South WB). Consequently, the collected data (i.e. the interviews) will be presented and analyzed below in line with these primary divisions.

The researcher met with the majority of the Reconciliation Men in Ramallah and Nablus. In general, all of the Reconciliation Men with whom the researcher met welcomed and praised the researcher's attempts to investigate the reconciliation of the Palestinian social conflicts. Furthermore, they were impressed with the idea of examining and adapting ADR tools to the Palestinian culture and society. It should be noted that when the researcher explained to the Reconciliation Men that this study grouped West Bank governorates into three prefectures (North WB, Central WB, and South WB), a few of them were not pleased with the idea. Furthermore, when some of them questioned why the researcher did not include Gaza Strip in this study, the researcher explained that it was due to a lack of data and time, differences in political regimes and social systems, and physical access restrictions to these Southern Governorates, as it would be impossible to examine the reality in that besieged enclave without visiting it. All of these reasons compelled the researcher to exclude Gaza Strip.

5.1 Interview Questions and Responses

As previously stated, the researcher designed the interview questions. There are 12 sets of questions, covering various aspects of the interviewees' work, or rather service of the Reconciliation Men. The interviews, conducted in Arabic, were recorded on a mobile phone, then transcribed, then translated into English and finally a sample of the interviews were back translated into Arabic to ensure the validity of translation. Each interview took between 1.5 and 2 hours.

Fifteen Reconciliation Men from three West Bank divisions, called *prefectures*, were purposefully selected to be interviewed, as follows: six Reconciliation Men from North West Bank (*North Prefecture*), four Reconciliation Men from Central West Bank (*Central Prefecture*), and five Reconciliation Men from South West Bank (*South Prefecture*). The responses to the interview questions were linked to the research questions.

The researcher started all interviews by thanking the interviewees for their time, introducing herself and explaining briefly the topic and objectives of her thesis. Then she asked them to introduce themselves before asking them the interview questions. For more information about the interviewees' background, see appendix IV.

Reconciliation Men interviewed by the researcher began the session by mentioning Allah's name and saying a prayer for His Messenger Mohammad, peace be upon Him. They employed rhetorical language and were animated when they responded to the questions. The researcher found that they were all enthusiastic about their work and satisfied with it.

To facilitate reading of the following part of the study, which includes the interview questions and Reconciliation Men's responses, it is divided into 12 sections, and is presented in line with the interview questions/ sets of questions. Results are

presented according to the study set of questions using the real names of the Reconciliation Men as they approved that as follows:

(1) Set One: How many years have you spent as a Reconciliation Man? How many times have you participated in resolving conflicts? What types are those conflicts?

Responses of North WB Reconciliation Men:

Jaber Ishtayeh: I have been working in this field since the first intifada in 1987. I have participated in resolving hundreds of all types of conflicts, including settling disagreements, fights, murder, honor issues, disputes over lands, borders, and issues related to money and checks.

Mazen Dweikat: I have worked in the reconciliation field for 41 years. I have participated in resolving tens of thousands of conflicts between husbands and wives, numerous cases of family disputes, and hundreds of cases of murder, vengeance, and honor. I have also engaged in several “*Tanaba* (طنابة)” cases (*Tanaba* refers to someone who requests your help and protection from another party’s harm or vengeance. As a true Arab, you must do your best to help anyone who seeks your protection. You can’t tell them that you can’t defend them since that would be considered mean and vicious. *Tanaba* as a concept is included in the Holy Quran. Allah says to Prophet Mohammad peace be upon him,

”وَإِنْ أَحَدٌ مِّنَ الْمُشْرِكِينَ اسْتَجَارَكَ فَأَجِرْهُ حَتَّىٰ يَسْمَعَ كَلِمَ اللَّهِ ثُمَّ ابْلِغْهُ مَأْمَنَهُ ذَلِكَ بِأَنَّهُمْ قَوْمٌ لَا يَعْلَمُونَ“¹¹⁷

which means: “*And if anyone from the polytheists asks for your protection ‘O Prophet’, grant it to them so they may hear the Word of Allah, then escort them to a place of safety, for they are a people who have no knowledge.*” <https://quran.com/>

¹¹⁷ سورة التوبة. الآية 6.

Othman Dweikat: I have been working in this field since 1987. I have participated in solving around 400 issues of various types, including issues amongst family members due to inheritance.

Nafe' Kelani: I have been working in this industry since 1985. More than 400 issues have been resolved as a result of my involvement. I have been involved in a variety of conflicts, the majority of them have involved murder.

Mohammad Gharaba: I have been working in this field since the first intifada. I have settled tens of conflicts, especially those involving disagreements between husbands and wives.

Saleh Yousef Taqateq: I have been working in this field since the first intifada in 1987. I was involved in the resolution of various forms of conflicts. The number of conflicts exceeds a thousand.

Responses of Central WB Reconciliation Men:

Saleem Abdulrahman: I have been working as a Reconciliation Man for 10 years. The number of cases that I have participated in is 1350 case. I have participated in resolving all types of conflict.

Mohammad Hadieh: I began working in this field in 2017. The number of cases I utilized Mediation to resolve is limited since the Palestinian people still do not understand the value of dialogue and prefer to have a judge decide for them, hence the majority of the cases I worked on were arbitration cases. The majority of the issues I work on are commercial or family disputes.

Ismael Sleiman Elkharabsha: I have nearly 23 years of expertise resolving issues. Hundreds of conflicts have been resolved with my assistance. I do not know an exact number, but it's in the hundreds. Conflicts over territory, borders, ownership,

and so on are examples of these types of conflicts. Moreover, I am involved in social issues in my community, such as those between families, between husband and wife, and conflicts involving schools and students.

Hussein Alnajada: Since 1997, I have been carrying on my uncle's legacy of reconciliation. We settle disputes peacefully rather than going to court. Hundreds of instances have been resolved by me. We have a police station in Al-Auja, Jericho that refers cases to me before they get to court or are prosecuted. 90% of the cases that come to our police station are referred to me, and I handle them without going to court. Some matters involving women, theft, honor, and so on are resolved in private. Cases range from honor, murder, theft, and simple misunderstandings between people.

Responses of South WB Reconciliation Men:

Nawwaf Sarhan Zagharnah: My tribal experience dates back to the early 1980s. My father was a “sheikh,” so after I finished my work, I would go to the Diwan and learn a lot from him. This type of stuff I learned through practice and experience. This gift was passed down to me from my father and grandfather. I have been involved in the resolution of hundreds of conflicts in various parts of Palestine. Actually, I have been retired for ten years and spend my days addressing issues. So, I hope that my efforts will be reflected in my good deeds, and that we can contribute to achieving civil peace. Murder and honor have been the most common topics in which I was involved.

Talal Ibrahim Elhureini: My experience in this field dates back to 1987. Following my father's death, I accepted this mission. I have taken part in hundreds of

conflicts. In addition to resolving conflicts between families, I have involved in conflicts concerning blood, murder, lands, and honor.

Nayef Abdullah Elbasaytah: I began working in this field in 1996, when I was 35 years old. I have engaged in resolving hundreds of cases. Those instances were of various types, such as those involving lands, personal issues, honor, murder, and so on.

Mousa Ka'abna: Since the loss of my father in 1994 till today, I have been in this mission. I have been involved in dozens of conflicts. Murder, honor, and money-related issues are examples of such conflicts.

Jamal Dar'awi: I have been in the field as a Reconciliation Man for 28-30 years. The number of conflicts in Palestinian society is increasing; 20-25 years ago, the average number of conflicts in which I intervened was one per day; however, during the past 5-6 years, the average has increased to 3/4 conflicts per day. I have been involved in solving thousands of disputes over various issues such as murder, money, land, and other property.

(2) Set Two: Who requests from you to participate in resolving those conflicts (the conflicting parties themselves or a governmental party)? Do you work on those cases alone or as part of a team?

Responses of North WB Reconciliation Men:

Jaber Ishtayeh: From 2007 until 2011, I was the manager of the Office of Clan and Reconciliation Affairs in Nablus Governorate; therefore, it was my responsibility to intervene and solve issues between people. Furthermore, people used to ask me to intervene in their issues and help resolving their disputes. I also worked as a

Reconciliation Man in the Ministry of Interior from 2011 to 2017 to help resolving disputes in the North of the West Bank. I'd like also to explain something essential here: whenever people ask me to intervene in a case, I inquire if there are any Reconciliation Men working on it. If there is, I will not intervene because I do not want to intervene with my colleagues' work out of respect for myself and my colleagues. Nonetheless, I never work on cases alone and am always part of a team. For each case, a different team is formed. Depending on the case, a team is composed of 3-5 Reconciliation Men.

Mazen Dweikat: The disputing parties, a governmental party, the Ministry of Interior, or even the President's Office usually ask me to intervene. Nevertheless, religious, national, and human obligations always compel me to intervene, even if I am very busy. Working alone or in groups depends on the case; if the case must be kept secret, for example, cases of honor that could result in consequences if revealed, I do not trust anybody and work alone. If it's a normal instance and it wouldn't hurt if people knew, I'll ask for help. I'd like to tell you that there are some circumstances that necessitate confidentiality, and in those cases, confidentiality is the key to success. Nonetheless, I have requested that the governorates assign me cases involving personal status, such as marriage, divorce, and inheritance, because I have a rich expertise in these areas. I also deal with murder instances. However, I do not have the experience or time to handle cases involving money and checks.

Othman Dweikat: usually, the conflicting parties ask me to intervene in their cases, Because I am a member of the Nablus Governorate's Office of Clan and Reconciliation Affairs. The disputing parties come to the Governorate and ask me to intervene. Furthermore, I never work alone; I always collaborate with groups of Reconciliation Men.

Nafe' Kelani: Because I feel myself to be a respectable person, the majority of these respectable persons are not designated by a formal party to intervene in interpersonal disagreements. However, folks come to me and urge me to intervene and handle their issues. For example, if someone asked me to intervene in a problem that occurred between his relatives and him, or even in a case of murder, or in a vehicle accident, and I told them, "I am sorry I am busy," this would not be acceptable by the society. So, in any culture, there are distinctive individuals who distinguish themselves via their good deeds and talents, and people recognize them as having a respectable and honorable character. I believe that two heads are better than one. We have a divine and religious constitution that guides us, and if we follow it, we will never make mistakes; yet, we are people who make mistakes; however, if we work together, and one was about to make a mistake, another member of the reconciliation group would immediately intervene. If I were alone, I might get confused and make mistakes.

Mohammad Gharaba: The parties of the conflict or some friends ask me to intervene in the issues of their families. Actually, I am new to the field of reconciliation, and I hope to be permitted by a formal side to intervene in conflicts in an official and authorized manner. This is because I want my decisions to be respected and followed through on. I typically work on my cases by myself, without the assistance of others.

Saleh Taqateq: The concerned party is the one who contacts the well-known Reconciliation Men and tell them about their issue. Those Men would contact people who may be able to help find a solution. I'd like to tell you that I am certified as a Reconciliation Man by the Ministry of Interior and a member of the Office of Clan and Reconciliation Affairs (the Clan Reconciliation Committee), and as a member of

this Committee, I am authorized to intervene in any conflict resolution. The Clan Reconciliation Committee conducts a meeting every month in Ramallah; Reconciliation Men from all around the West Bank who are members of this committee attend this meeting. We discuss recent and urgent conflicts and assist one another in finding solutions. Unfortunately, the meetings have come to an end recently since the Palestinian National Authority prefers to impose legislation and judicial authorities, ignoring the role of clans and Reconciliation Men, Despite the fact that Reconciliation Men make every effort to resolve the problems in which they intervene. Reconciliation Men are no longer supported by authorities as they were. If I can tackle the issue on my own, I work alone. But, if other Reconciliation Men are required, I have acquaintances that can assist me in finding a solution. Everything is dependent on the circumstances.

Responses of Central WB Reconciliation Men:

Saleem Abdulrahman: The conflicting parties visit the Governorate's Office of Clan and Reconciliation Affairs (the Clan Reconciliation Committee). Members of the Clan Reconciliation Committee are also members of the Civil Peace Department in the governorate. These members are assigned to governorates based on where they live. Those members intervene immediately in conflicts, coordinating with the Governorate's Civil Peace Department to cool down and control the situation, particularly in murder cases. Since we are a tribal society that has its own customs and habits, most people cling to these traditions. Parties should select the Reconciliation Man/Men they wish to be their representatives in the process of resolving the dispute. Nevertheless, I mostly work in groups, but it also depends on the case. There is an unofficial tendency toward specializations. This is because each case is different from

another. For example, a Reconciliation Man can resolve a murder in a certain district but cannot in another.

Mohammad Hadieh: I run a Conflict Resolution Center in east Jerusalem, so normally people will seek my assistance in resolving their disputes. The work of the center is based on Israeli law, and some cases are referred to me by the Israeli courts. The attitude of the Palestinian society toward ADR instruments is still limited. Furthermore, people prefer Arbitration to Mediation as an ADR technique because they want someone to judge between them. Actually, Mediation and Negotiation take place in the offices of lawyers, engineers, and contractors in ways that differ from the theoretical procedures and particular definitions. The engineering conflicts are organized by the FEDEK system, which is a system that exists in the United Nations and provides specialized ways to address these types of conflicts. There is a clause in all engineering contracts that refers those contracts to the Palestinian Arbitration Chamber, which was established by a presidential decree, in the event of any disagreement in interpreting or executing any of their articles.

People do not fully comprehend the distinction between arbitration and Mediation. They are also unaware of the significance of win-win outcomes. Rather than engaging in dialogue, our society tends to pass judgment or make a conclusion. When we have a case that requires Mediation, we make a concerted effort to persuade the opposing party to join in the Mediation process and even to educate them on the differences between Mediation, Arbitration, Clans, and Court. They must also understand that Mediation is a voluntary instrument; even if the parties signed a Mediation agreement, they have the right to withdraw at any time.

Most issues resolved by Mediation are issues referred to us from the court; the court decides to resolve this issue by Mediation. Because we are subject to Israeli law,

there is a Mediation law that is specialized in commercial disputes. These statutes lead commercial conflicts toward Mediation by directing them to a Mediation judge through litigation. Nonetheless, in family disputes, the parties should seek Mediation before resorting to court and litigation. Sometimes in family issues, we begin with Mediation, but after confirming the disagreement and conflict occurrence, we forward the issue file to a genuine judge to be addressed through arbitration. So, in this scenario, we also use Mediation and Arbitration.

Ismael Elkharabsheh: The parties themselves approach me and request that I intervene in their disputes. I work in a team. I occasionally get counsel from friends, as well as ideas and proposals, to help me handle situations.

Hussein Elnajada: The parties have asked me to intervene in their cases. Sometimes a party approaches me and asks for my assistance in restoring their right. I usually work alone, although in rare cases I seek the advice of other colleagues.

Responses of South WB Reconciliation Men:

Nawwaf Elzagharnah: I receive cases from both formal channels and parties who request me to intervene and resolve issues. Nonetheless, if someone asks you to intervene, he asks you alone, but we (the Reconciliation Men) consult each other to ensure that the opinion or answer is correct. The goal is to find the right solution.

Talal Elhuraini: In the event of a disagreement, all of the Reconciliation Men and notables from the area travel to the scene without being asked. The most crucial thing at this point is to halt the assault and begin the clan process. Furthermore, at the start of the fight, the number of Jaha reaches 50 or more. I'd like to distinguish between the Reconciliation Man and Ra'i Albeit (householder). A Reconciliation Man is someone who has the desire, efficiency, and time to intervene and try to resolve a

dispute. By contrast, the householder is a tribal judge who receives people at his house to resolve their disputes.

Nayef Elbasaytahh: I am asked to intervene in disputes by the parties themselves, and I operate in groups rather than alone.

Mousa Ka'abneh: The parties usually ask me to intervene in their disputes. I either work alone or in groups, depending on the case.

Jamal Dar'awi: During the combat/ongoing conflicts, it is a personal initiative to stop the offensive. The parties also approach me. Other Reconciliation Men also contact me and ask me to assist them in their cases. The Criminal Justice Institutions, such as police, prosecutors, or the governor's office may ask me to intervene . Working alone or in groups depends on the situation, but working in groups is more common. In general, more than one person is called (situation witnesses) who witness all occurrences to prevent any party from retreating. Nonetheless, I occasionally have to go to Negotiations alone because large numbers induce the opposite party not to respond to Negotiation.

(3) Set Three: Do all parties have to agree to your participation in resolving their conflict?

Responses of North WB Reconciliation Men:

Jaber Ishtayeh: In cases transferred to me by the governorate, the parties' agreement on my participation is unimportant.

Mazen Dweikat: if it is an Arbitration process, parties should agree on me and sign an Arbitration contract. But, in other conflicts, the agreement of the parties is not required. We, as Reconciliation Men, clarify the dangers of the conflict and its

consequences. It never happened that we intervene in a conflict and we were kicked out or asked not to intervene. In some cases, like murder, people argue that clans should not be involved. We, as Reconciliation Men, sit in the cemetery after the burial of the victim, or stay at the doors of the victim's family, and we do not leave the area regardless of all conditions until we are accepted by the victim's family. We do this to absorb the anger and disorder. We impose ourselves in respectfully and politely.

Othman Dweikat: I need the agreement of both parties. Furthermore, I request that they sign a commitment document stating that I am a member of the governorate's Clan Reconciliation Committee, and that all parties must commit to my decision/decisions.

Nafe' Kelani: The parties' agreement on the Reconciliation Man is critical. If I believe that one of the parties does not want me to intervene in their dispute, I withdraw immediately. There are other men who can carry out this mission. In the case of the refusal of clan solution, we summon all Reconciliation Men from all governorates and march as a massive Jaha to impose ourselves in order to achieve the goal of civil peace.

Mohammad Gharaba: Even if you were delegated from an official side like the governorate or the public prosecutor, all parties must agree on the Reconciliation Man. Most significantly, before the official recognition, the Reconciliation Man must have public and civil acceptance.

Saleh Taqateq: In the case of arbitration, all parties involved must sign an Arbitration Contract, which signifies their commitment to accept the arbitrator's decision, whatever it may be. Furthermore, parties must bring someone (Kafeel) to guarantee that they will carry out the arbitrator's ruling. The Kafeel is a person who is responsible for ensuring that a specific party will complete the requirements of

carrying out the arbitrator's solution or decision. Furthermore, in the clan system, everything in life has a judgment.

Responses of Central WB Reconciliation Men:

Saleem Abdulrahman: Each party in a disagreement, such as murder, must select Reconciliation Man/men to represent them. This Reconciliation Man/men is known as *Elwajh*: (Lit. *The Face*) or *Labbas Ehtob* (Lit. *One who wears the cloak*). The other party is not required to agree on the first party's Reconciliation Man/men. Reconciliation Men from both parties confer to find a solution.

Mohammad Hadieh: Even if the tools differ, it is critical that both parties agree on an arbitrator or a mediator. They must sign an Arbitration Contract in Arbitration, but in Mediation, even if both parties agreed on a mediator, they might withdraw at any stage because it is optional. (Here, the researcher asked if he sees the line between the two tools is so thin) His answer: In the Palestinian context, we adapt ADR tools to fit the culture in personal status situations/conflicts. We developed a tool that combines Mediation and Arbitration (hereafter *med-arb*). We begin by mediating between the parties, and if we are unable to achieve an agreement, we proceed to arbitration. The challenge stems from the structural differences between these tools as well as the distinct mentalities of the arbitrator and the mediator. In these instruments, we focus on various things; in Mediation, we focus on needs and interests, while in Arbitration, we apply the law. The mediator assists parties in reaching an agreement without forcing or advocating a solution. The arbitrator is the one who provides the solution or the verdict in arbitration. Also, while Mediation is voluntary, med-arb requires the parties to sign an agreement committing the parties to proceeding to arbitration if Mediation fails to produce a solution. Nevertheless, an important

difficulty that we face is that the Palestinian mentality thinks either win/lose or lose/lose. They do not have the level of consciousness that allows them to think in the win/win situations. Moreover, our society suffers from the lack of experienced mediators. Sometimes they have the theoretical background, but they do not have enough experience in the field.

Ismael Elkharabsheh: Because I am an arbitrator, the parties' agreement is essential, and they have to sign an Arbitration Contract.

Hussein Elnajada: The parties' agreement is critical, and I do not impose myself. In some circumstances, I step in as *ELwajh* (a face) to keep things quiet until the parties' designated Reconciliation Men arrive. Intervening as *Elwajh* signifies that a respected, well-known Reconciliation Man with a good reputation, descended from a large and powerful clan, has arrived to prevent the disputing parties from fighting one other. Nonetheless, the parties are aware that any action taken by any of them during the Elwajh's presence will result in them bearing the repercussions, as their problem will now be with the Elwajh's clan. This would deter those people from doing anything bad with him.

Responses of South WB Reconciliation Men:

Nawwaf Elzagharneh: It is not necessary to have both parties agree. For example, if I am assigned to a murder case by the murderer's family, I am not required to be approved by the victim's family because in this scenario I represent a party. In the case of clan judgment, the parties must accept this clan judgment.

Talal Elhuraini: While the conflict is ongoing, we impose ourselves in scene without the consent of the parties. Because we have respect and status among the clans, our presence in the area would greatly improve the situation.

Nayef Elbasaytahh: The approval of the parties is very crucial.

Mousa Ka'abna: The approval of the parties is very important.

Jamal Dar'awi: The parties' agreement is crucial. However, we impose ourselves while the conflict is still happening and the parties are extremely furious in order to prevent further escalation of the conflict or attacks on one another. So, as Elwajh, we intervene to prevent the consequences of the clash. If any party decides to continue abusing the other, it is assaulting and insulting Elwajah. As a result, Elwajah acts as a moral shield against the parties' continuous attacks. However, Dakhala, which is very similar to the previously stated Tanaba, is a disaster. This is because when someone seeks my protection as Dakheel, I am obligated to defend him/her and intervene to resolve the conflict. Furthermore, Dakhala forces me to impose myself on the other party and begin negotiating with them. I might warn the other party that resolving the conflict is essential. You can recover your rights by Negotiation or by appearing before a clan judge. Respect, strength, dignity, integrity, and fidelity should be attributes of the Dakheel's guardian. Nonetheless, the researcher inquired about the distinction between Taneeb and Dakheel. The Taneeb, according to Jamal, is utilized in murder cases to protect the murderer's family from retaliation by the victim's family. The Dakhala is a broader term that is utilized in other situations and criminal proceedings.

(4) Set Four: What tools do you use to convince the parties to come up with a solution or accept a solution? What do you do to avoid failure in resolving conflicts?

Responses of North WB Reconciliation Men:

Jaber Ishtayeh: I am an excellent listener. The expert Reconciliation Man's good listening to the parties enables him to find the ways that he may use to persuade the parties to resolve their issue. Lying to parties is sometimes permitted to avoid escalation of the conflict. Nonetheless, despite Reconciliation Men's best efforts, some instances remain unresolved for a variety of reasons, including stubbornness and ignorance. Furthermore, parties do not always intend to resolve and reconcile their disputes. Reconciliation Men look for someone who can affect them and convince them, but they always fail. People will occasionally choose the law over the clans to settle their disputes. However, in my judgment, the law needs a long time to resolve a case, and it does not really heal the wound.

Mazen Dweikat: Most people want public civil peace, so we can persuade them to sit down and work out a solution using good words. There are some that intervene to corrupt, but they quickly vanish. I always pray to Allah to guide me to appropriate solutions. There are cases that fail, but we keep on trying to make them succeed.

Othman Dweikat: The main skills used to persuade the parties to sit down and find a solution to the conflict are experience and convincing skills. Furthermore, I use similar previous cases, as examples, to persuade the conflicting parties. In order to avoid failure, I follow up on cases.

Nafe' Kelani: Religion is the most powerful tool for persuading parties to reach an agreement. Furthermore, effective use of words and speech is crucial since "Words are stronger than arrows," (meaning: Eloquent speech persuades people better than military force). Nonetheless, I am not concerned if I fail in a case since another reconciling man will succeed.

Mohammad Gharabe: To persuade the parties, I primarily utilize my tongue. Furthermore, my style of communication is another weapon for persuading parties to

sit down and work out a solution to the problem. Nonetheless, I prevent failure by persuading parties using religion and Sunnah. Even though we observe our teenagers acting in ways that contradict religion, we live in a religious culture. After all, I use Allah in whatever I do. As a result, employing the religious speech will help me avoid failing.

Saleh Taqateq: I convince parties by alleviating their psychological, sociological, and religious aspects by: 1. Using religious language by stating that we are Muslims and that Islam has urged us to reconcile. Furthermore, the Quran states that if two individuals disagree, strive to reconcile them (الأنفال: آية 1). 2. Using customs and habits in the sense that we must reconcile in order to live in peace. 3. We use the Mediation approach, which entails locating someone who may have an impact on the disputing parties and convince them to sit together and work out a solution. Nonetheless, as a mediator, if I am unable to resolve a problem, I advise the party that assigned me to seek a solution outside of the clan method. If he insists on using clans and I realize I will fail, I retreat by informing him I am unable to resolve this conflict. The reason for my withdrawal is because sometimes the Reconciliation Man turns to be a hindrance to resolution. So, to avoid this, I withdraw immediately.

Responses of Central WB Reconciliation Men:

Saleem Abdulrahman: I use my experience, academic degree, good reputation, and popularity to earn the parties' trust in assigning me to resolve their conflict. Nonetheless, in order to prevent failure, I look for alternatives, through finding out those who have an impact on the conflicting parties and persuade them to agree to a resolution.

Mohammad Hadieh: I have a unique perspective because I work for a Conflict Resolution Organization. I do not have to persuade parties because they come to

me to settle their disputes. Furthermore, cases are moved to me from the court, thus parties are required to come to me as a mediator or arbitrator. Nonetheless, I persuade them using my own experiences, abilities, and accomplishments in this profession. However, in Mediation instances, failure occurs when one of the parties decides to withdraw from the Mediation process for any reason.

Ismael Elkharabsheh: I persuade the parties by warning them about the consequences of not resolving the conflict and by demonstrating the benefits of finding a quick solution to the disagreement. Nonetheless, I avoid failure by utilizing a mediator who has an impact on the parties and can persuade them of the solution. Furthermore, I utilize language and speech to try to resolve the conflict.

Hussein Elnajada: I utilize my words, honesty, and fidelity to persuade others to find a solution. Furthermore, I use my clan's influence to compel parties to reach an agreement. Nonetheless, if I believe I am going to fail in resolving a disagreement, I do not stand in the way of a solution. I withdraw, make a truce till other Reconciliation Men arrive and try to find a solution, and then I leave.

Responses of South WB Reconciliation Men:

Nawwaf Elzagharnah: I do not have any real tools to force parties to commit to a settlement, but I use language to persuade and warn them about the repercussions of the conflict. I prevent failure by demonstrating the facts and persuading parties that a solution can be found.

Talal Elhuraini: Convergence of viewpoints is a form of art that minimizes the impact of a problem. As a result of experience, I think the persuasive style is good to persuade parties to participate in the dialogue. I prevent failure by identifying persons who have an impact on the conflicting parties and convince them to find a solution.

Nayef Elbasaytahh: I encourage parties to reach an agreement by forewarning them of the consequences of the disagreement. I avoid failure by employing persuasive language and speech. Furthermore, when working with the parties, I rely on my reputation and honesty. Most crucial, I find people who can persuade the parties to reach an agreement.

Mousa Ka'abna: I use effective diplomatic language to persuade parties to sit down and work out a solution. I avoid failure by thoroughly researching the case.

Jamal Dar'awi: I use my experience and skills to persuade the parties to reach an agreement. I also employ Quran and Sunnah texts, past stories, and logic. Furthermore, I find persons who can influence the parties and persuade them to find a solution to the problem. I avoid failure by expecting success, having a good aim to reconcile between parties, having a strong will, and believing in the religious, moral, and national duty of ending conflicts and maintaining social cohesion. I employ novel approaches to dispute resolution. I also use the security institution's and governorate's roles as a pressure toward a solution. I also seek assistance from competent friends, relatives, and government officials. I use all available and permissible tools.

(5) Set Five: What are the procedures followed in most cases? How long does it take to find a solution in most cases? Please provide examples.

Responses of North WB Reconciliation Men:

Jaber Ishtayeh: The procedures vary depending on the circumstances. In murder, for example, we initially take *'atwat dafn* (Burial Atwa) for three and one-third days. Then, like Jaha, the Reconciliation Men go to the victim's family, asking for *'atwat Haqq wa Iqarar* (confession [of committing the crime] and judgment [by

the Court] Atwa) in the case the perpetrators were known. However, if they were anonymous, the *Jaha* would conduct an '*atwat Taftteesh* (Inspection Atwa) to determine who the murderer is. However, in the case of a traffic accident, the Atwa varies depending on the circumstances. There is no fixed duration; it varies depending on the case.

Mazen Dweikat: The procedures vary depending on the case. For example, in a murder, there is '*atwat dafin* (Burial Atwa) for three and one-third days to allow burying the dead body of the victim. Those are known as *escape days* because Reconciliation Men would push the murderer's family to go to a safe location to avoid further vengeance like killing or burning houses. If this Atwa is rejected, the police enforces security till the Reconciliation Men accept the Atwa and take '*atwat Haqq wa Qarar* (confession & judgment Atwa). Once the reconciliation process begins a peace Atwa, called the white Atwa is made. Finally, a joint Atwa for the injured persons is made until they recover. Concerning the *Deyyah* "blood money" (an amount of money paid by the murderer's family and relatives to the victim's family in exchange for forgiving the murderer and not killing him/her), I adhere to the Islamic system of *Deyyah*, which is derived from five sources: gold, silver, camels, cows, and sheep. In the instance of murder (deliberate killing), the murderer's family must pay a severe *Deyyah* of four and a quarter kgs of gold or 37.5 kgs of silver. By contrast, the *Deyyah* paid in silver for manslaughter (accidental killing). *Dalikha*, *manshad*, *slashing the face*, and *manqa' dam*, in my opinion, violate Islamic Sharia. In this case, the term of Atwa is one year, but it can be renewed to mitigate the impacts of the situation, and then reconciliation Atwa is conducted.

Othman Dweikat: The procedures depend on the case. The duration also depends on the case. For example, murder cases take longer time, cuts and wounds depend on the time needed for the wound to recover.

Nafe' Kelani: The procedures differ according to the case, but the most important is to achieve the public interest by maintaining civil peace and stability in the society. The duration depends upon the issue.

Mohammad Gharaba: In all cases, the procedure is to reconcile parties and restore their rights. The duration depends on the case and the parties. Parties sometimes play a major role in determining the duration of a case. For example, if they really intend to resolve the conflict, it will not take a long time, but if they are stubborn and do not want to reconcile then the case will take a longer time.

Saleh Taqateq: I need to hear everyone's side of the tale. I analyze what I have learned from them and decide what to do. This could take six months, a year, or two. The deeper I dive into the case, the more facts I uncover, so I must follow things up to get a satisfying resolution.

Responses of Central WB Reconciliation Men:

Saleem Abdulrahman: There are cases that referred to the clans by the courts. This is an acknowledgement of their significance, especially given their recent success in many cases. In this work, there is a form of integration between the legal system and the clan system. Nonetheless, the techniques vary depending on the circumstances. The length of the litigation is also determined by the parties.

Mohammad Hadieh: We hold a preliminary or opening meeting with the parties to inform them that Mediation is optional, confidential, and neutral, and that they have the right to determine what they want. Then we define the several degrees of Mediation, which are solo meetings and collaborative meetings. We also discuss

the procedures we will take, the questions we may ask, the notes we will write, and how we will initiate a conversation between them in the joint sessions. Finally, we inquire if they understand the procedures completely. If one of the parties understood well but still rejected Mediation, we engage him/her by clarifying that the parties are the ones who determine whether or not to resolve. We stress that no solution will be imposed on anyone. But, we will also warn them that if they reject Mediation and move to Arbitration, the arbitrator has the ability to decide and provide a solution without the parties' permission. We also state that if they go to court, the same thing will happen. If they agree, we sign a Mediation contract outlining my fees as a mediator, who will pay them, and how. Then we write the mission document, which organizes my role as a mediator and my relationship with the parties. Then I ask them to hold individual or group meetings. In the case of solo meetings, I request permission from the other person to inform them of the contents of the meeting. Since Mediation is confidential, I do not disclose any information without the consent of the other party. Typically, the claimant begins with individual meetings. There are procedures that must be followed during solo meetings.

The opening statement covers Mediation concepts and levels, as well as what the mediator is permitted and prohibited from doing. I encourage them to speak up more. The goals of those sessions are to create confidence with the party and obtain as much information as possible, as this information will aid me in better evaluating the issue. In the solo meeting, the mediator must exercise all of his skills, including concentration, active listening, questioning, summarizing, rephrasing, writing notes, seizing chances, and utilizing appropriate body language. I also need to stress that I will take notes, which goes against the notion of confidentiality. However, in order to gain their trust, I must clarify that the notes obtained will be used to draft an

agreement if they decide to reach an agreement. If they do not reach an agreement, I may dispose all of these notes. None of the notes will be used outside of the procedure. Even if I am called to testify in court, I will not utilize them. Then I carefully listen to the parties and summarize everything. Summarizing demonstrates to the parties how dedicated and considerate I am. It also helps in minimizing misunderstandings. Then I summarize everything and ask if they want to add anything further. Following that, I must ask open and effective questions about the issue. I also need to inquire about the other party's position and requests. Finally, I request permission to share those details with the other party.

After that, I plan for a joint meeting of all the disputing parties. This meeting has a process as well. It begins with an introductory statement. The meeting's rules are then discussed. Then I discuss the significance of mutual respect. After that, I encourage the parties to focus on their common interests and avoid disagreements. Then I initiate a dialogue between the parties, but I must keep control of the conversation. I also have to explain that it is my responsibility to moderate their discussion and that they must stop when I ask them to. Before the joint meeting, I need to know the following: the parties' requests, fears, requirements, and mutual interests. Nonetheless, I begin by tackling the simplest concerns and then progress to the more difficult ones.

The researcher asked Mr. Hadieh if he could gather information about the parties and the conflict from other sources. He responded yes, but in a way that does not jeopardize the parties' trust in him. Furthermore, the information acquired is limited to the conflict and the case.

The atmosphere in which the Mediation meetings take place is critical. It creates a certain image or impression in the minds of the parties, for example, the shape of the

table, the amount of windows and lights, and so on. Furthermore, the mediator's facial expressions and body language are crucial. Unlike the arbitrator, who functions similarly to a judge, the mediator should be humble.

The procedures of Arbitration are totally different. If there is a signed contract between two parties that contain a clause that says: "In the case of misunderstanding or a defect in executing this agreement, the parties shall go to Mediation first. If they could not find a solution in Mediation, parties shall go to Arbitration. In this case, if any of the parties refused to go to Mediation and they decided to go to Arbitration, the arbitrator would not be obliged to explain the Arbitration process to the parties. Moreover, Arbitration is a binding tool in which parties sign an Arbitration contract. The claimant's statement of claim is presented during the arbitration procedure. The arbitrator then asks the other party to present a defendant statement by the defendant after 30 days. Parties are given additional 30 days to present their evidence and witnesses. After a month, the arbitrator ceases to accept evidence and witnesses and begins final pleadings. The arbitrator renders his decision within 15 days. Arbitration proceedings are the same as court procedures.

In terms of duration, those meetings can last a day, a week, or a month. Mediation is fast. The maximum duration of Mediation cases is three months, whereas the minimum period of Arbitration proceedings is six months.

Ismail Elkharabsha: I follow the following procedures:

- 1) Signing an Arbitration agreement takes place in the presence of witnesses.
- 2) Presenting papers, evidence, and witnesses.
- 3) I engage experts, surveyors, and engineers. I also utilize the Inheritance Distribution Deed to determine whether or not there is a will.
- 4) If I am unable to achieve an agreement, I refer the case to the court.

Nevertheless, the duration depends on the case.

Hussein Elnajada: The most critical step is to end the conflict by appointing a face (Notable Man) and taking Atwa. Depending on the circumstances, several Atwa forms are used; for example, a face is sometimes appointed even if the Atwa is approved or not for three days. Nonetheless, the duration is determined by the case, and there is no time limit.

Responses of South WB Reconciliation Men:

Nawwaf Elzagharneh: The most crucial technique is to intervene during the conflict to bring it to a halt by taking Atwa. This is done to prevent the conflict from escalating. We assign *kafeel* to each party to ensure their commitment. Nonetheless, there is no time restriction; it is determined by the case and the efforts of the mediator.

Talal Elhreini: Each dispute is distinctive. For example, in a murder case, the most important procedure is to halt all bloodshed, killing, home burning, and assaults for three days. Then we resume the Atwa, *Kafal*, and harm prevention routines. The time it takes to resolve any issue is dependent on the case and the parties involved. If the parties are respectful and courteous, and they regret what they did, the dispute will be settled in a few of days.

Nayef Elbasaytahh: The procedures differ depending on whether the case is one of reconciliation or one of rights. If it is a reconciliation case, the parties go to (*bait malam*, which is a *gathering house*), that is a house that gathers the parties and has a clan judge who listens to the parties, identifies their points of contention, and prepares their papers before going to another house with another clan judge who is more experienced to decide and judge in their case. The time required to resolve the conflict is determined by the nature of the conflict.

Mousa Ka'abna: Stopping the conflict by taking Atwa, stopping the risk, paying money, and then reconciling are the procedures in all cases. However, the time varies depends on the circumstances. For example, in murder, the average period of time is two years, and in wounds until they heal.

Jamal Dar'awi: Clans have procedures in place to ensure civil peace, social fabric, and good relationships among members of the society. However, the methods vary depending on the nature of the conflict. For example, in murder, we take three and one-third days to the burial Atwa, which is regarded a truce between the opposing parties. Then we appoint a brave face (notable man) to control the victim's family's reactions. The more powerful the face, the more control we have. This Atwa is provided to the murderer's family in order for them to leave their homes if they were living close to the victim's family. This is to avoid provocations that could escalate the confrontation. Those days are known by several names (*msrbat mhrbat*, which means leak and escape) (*fal* and *shal* which means disperse and paralyze). They are so-called because they were once used to disperse and paralyze the murderer's family before attacking them. Any assault, burning, damaging, wounds were not counted from the *Deyyah*. Nowadays, the *kafal* moves immediately to absorb the victim's family's rage and prevent their reactions. Because of the victim's family's outburst of rage, those days were also known as (*foret eldam*, which means the outburst of rage). However, there is now an honor oath that criminalizes and forbids *foret eldam*, but this pledge requires the power of legislation and executive authority to be effective. Despite this, we cannot always control the reactions of the victim's family. This can be accomplished by the authority's strength and the speed with which they arrive at the scene of the fight to establish security and prevent the victim's family from retaliating violently.

In These days we are also used to appoint *labbas ehtob* (a cloak wearer) who serves as a *kafeel* (guarantor) for each party. *Labbas ehtob* represents a party and negotiates on their behalf. Furthermore, every agreement signed by *labbas ehtob* binds the party he represents. During those three days, Negotiations about the *deyyah* (blood money) and other requirements take place. These Negotiations either succeed completely or partially, or they fail entirely due to rage and stubbornness. However, appointing someone to negotiate and represent the parties improves the Negotiation process because those impacted by anger and sorrow will not reach an agreement with those who caused their anger and sorrow.

The second step involves maintaining a confession and judgment *Atwa* for at least six months to a year. The goal of this period is to diminish anger and hatred. Furthermore, time plays a role in settling the situation. Everything that was not agreed upon in the first *Atwa* is now agreed upon in this *Atwa*. The *Jaha* of at least 5 to 10 people (it may reach 1000 people in some situations) would go to the victim's family's house, where another *Jaha* of the victim's family (called the receiving *Jaha*) would greet them and both *Jahas* would begin negotiating. Naturally, Negotiations begin with reproaching and denouncing the crime. Then they discuss the positive relationships that unite the two families and the Palestinian people in general. Then they use Quranic and Sunnah texts to encourage people to reconcile. Then they demonstrate their willingness to satisfy the victim's family. Then they begin negotiating until they reach an agreement that is binding on all parties. However, money which is paid in this *Atwa* is counted from the *Deyyah*. The entire *Deyyah* sum is decided by the type of murder, whether intentional or accidental. There is no set sum of money for each case. This *Atwa* can be renewed for another six to twelve months.

After the initial Atwa, another Atwa called *'atwat qabool* (approval/ acceptance Atwa) would be taken for three to six months. The goal of this Atwa is to gain the satisfaction and approval of the victim's family for conciliation. At the end of this Atwa is the reconciliation with no possibility of extension.

The Day of Reconciliation is the final step. On this day, they all come up with an agreement that satisfies all parties, write it down, and have all parties sign it.

However, the time required to find a solution is determined by the case and the success of Mediation and Negotiation in that case. Apart from murder, the minimum period for any case, in my opinion, is one month. Conflicts with no murdered or wounded persons require between a month and six months, with murdered persons for at least a year, and wounded persons until they heal (reconciliation comes after going to the doctor and recover).

(6) Set Six: When parties reach an agreement, do they have to sign such an agreement? Is this agreement binding on both parties?

Responses of North WB Reconciliation Men:

Jaber Ishtayeh: Both Arbitration and the clan method of reconciling people have an agreement that the parties are required to sign. In arbitration, it is referred to as an arbitration contract, and in clan reconciliation, it is referred to as a reconciliation instrument. Nonetheless, the reconciliation text is reached through agreement and consensus. As a result, the parties agree to carry it out.

Mazen Dweikat: Parties to a conflict must sign a reconciliation document, which arrives in a set form from the governorate, at the completion of the clan way of reconciliation. Nonetheless, the distinction between civil courts and clan ways of

reconciliation is that the court is legally binding, whereas the clan way is by concord, making it stronger than the court. Parties agree to stick to their agreements and satisfy their demands and interests.

Othman Dweikat: There is a document that parties of any conflict have to sign which is called reconciliation document. This agreement is morally binding for the parties.

Nafe' Kelani: The disputing parties have to sign a reconciliation document that contains their conditions. This document is binding and accepted by courts.

Mohammad Gharaba: The parties have to sign a reconciliation document that contains all articles of the agreement. This is to prevent any party from changing their mind regarding any condition which has been agreed upon. Nevertheless, since parties agreed upon all articles of this agreement, then they will commit to it.

Saleh Taqateq: Parties must sign an Arbitration contract in order to agree on the arbitrator's judgment, whatever it may be. As a result, the Arbitration ruling is binding on all parties. Nonetheless, in the case of Mediation, reconciliation agreements are morally binding because no executive power exists to compel parties to commit to the agreement. On the other side, in crimes such as murder, reconciliation documents are critical for the court to lessen the sentence.

Responses of Central WB Reconciliation Men:

Saleem Abdulrahman: The parties have to sign a reconciliation document when they reach an agreement. This agreement is legally binding for all parties since it is signed by them.

Mohammad Hadih: There are contracts that parties have to sign. In Arbitration it is called an Arbitration contract. And in Mediation it is called Mediation contract. In both cases, the contracts are legally binding.

Ismael Elkharabsheh: The parties have to sign a reconciliation document that is binding for all parties.

Hussein Elnajada: The parties must sign a legally enforceable reconciliation document. Furthermore, there are faces (Notable Men) who guarantee the implementation of this agreement and incur the consequences if it is not carried out. Those faces commit to pressuring parties and forcing them to honor the agreement they signed.

Responses of South WB Reconciliation Men:

Nawwaf Elzagharna: The parties have to sign a reconciliation agreement. This agreement is not legally binding, but it is clan binding.

Talal Elhureini: The parties have to sign a reconciliation agreement. Moreover, in the South this agreement is considered as a constitution since parties reach this agreement by conviction. So, it is binding and there are *faces* and *kafeels* who guarantee its execution.

Nayef Elbasaytahh: The parties have to sign a reconciliation agreement and it is binding since it is guaranteed by *faces* and *kafeels*.

Mousa k'abneh: The parties must sign a reconciliation agreement, which is binding because they consented to it and signed it.

Jamal Dar'awi: A reconciliation agreement must be signed by the parties. It is morally and customarily binding. As long as the party restored their personal material right, they must commit to dropping the case in court.

(7) Set Seven: Do you consider your role with the parties as a negotiator or as a mediator or both? Why?

Responses of North WB Reconciliation Men:

Jaber Ishtayeh: It is dependent on the circumstances. He alternates between the two roles at times. In the case of murder, for example, I act as a mediator between the two parties while also negotiating with the murderer's family. If the conflict is between two parties that have a solution in mind, I act as a mediator. However, if the issue is between parties that do not have a solution, I will talk with them to find an agreement.

Mazen Dweikat: I switch between the two roles. In the case of murder, I act as a mediator while also negotiating with the victim's family and forcing the murderer's family to commit to the result of the Negotiation.

Othman Dweikat: I play the role of negotiator because I negotiate between the two parties impartially.

Nafe' Kelani: We start as mediators, and after they accept us, we turn to be negotiators.

Mohammad Gharaba: I am originally a mediator, but I can negotiate with the parties to reach to a solution.

Saleh Taqateq: The components that decide the role I will play in that conflict are the sort of conflict, its nature, the parties, their culture, and mentality. I occasionally act as a mediator, sometimes as a negotiator, and sometimes as both.

Responses of Central WB Reconciliation Men:

Saleem Abdulrahman: I play both roles together. I mediate and negotiate parties at the same time.

Mohammad Hadih: It depends upon the type of Mediation I am following with the parties. If it is a *facilitative Mediation*, then I have no authority to intervene between parties. My role is to facilitate communication between parties. I, as a

mediator, agree with the parties upon a way to administrate the Mediation process. I do not suggest solutions; I do not negotiate parties; I do not say any opinion; I just adhere to neutrality and open questions, while the *evaluative Mediation* allows me to give opinions and consultation and to negotiate with parties. But in spite of all that, I am not responsible for reaching a solution or having an outcome. My job as an evaluative mediator is to approximate views between parties. As an evaluative mediator, I also have to be an expert in the field of the conflict. For example, if it is a business conflict, I have to be an expert in business and law to be able to give them advice in the same field.

If you start with one type of Mediation you have to continue with it.

Negotiation is a kind of Mediation. Moreover, it is a skill that the mediator should have.

The Reconciliation Men do Mediation in the Palestinian society. Those who have power either through money or a strong and large clan, I believe they lack professionalism since they impose the solution, so they are not exactly mediators.

Ismael Elkharabsheh: I play both roles together.

Hussein Elnajada: I play the role of Mediation. Some cases are referred to Arbitration in order to merge Mediation and Arbitration in a single conflict.

Responses of South WB Reconciliation Men:

Nawwaf Elzagharneh: I play both roles together. I mediate and negotiate with the parties at the same time.

Talal Elhureini: The nature of the conflict determines the tool I will employ. For example, in disputes, I act as a mediator, but in murder cases, I become a cloak wearer, thus I become a negotiator.

Nayef Elbasaytahh: The parties determine my role in the conflict, either a mediator or an arbitrator, depending upon the case.

Mousa Ka'abna: I play the role of Mediation.

Jamal Dar'awi: My role is determined by the circumstances of the case. If I am designated to represent a party, I am a negotiator who works with both parties to reach an agreement. However, if I am a member of Jaha, I am a mediator who aids in the convergence of points of view. Nonetheless, these roles do not all come together in one case.

(8) Set Eight: What do you do to prepare yourself to the Mediation or Negotiation process? When do you quit and withdraw from resolving a conflict? What motivates you to exert more efforts in resolving a conflict?

Responses of North WB Reconciliation Men:

Jaber Ishtayeh: The preparation depends on the case. If it is written, I read it well, but if it is a running event, I stop the conflict, and then I study the case well. Nevertheless, I never felt that I should withdraw from any conflict unless parties do not want me to intervene in their conflict. I exert more efforts for Allah's sake to acquire his blessings.

Mazen Dweikat: I am always prepared, but before any conflict, I pray to Allah to inspire me with ways that allow me to resolve the conflict. I never quit a case because if I quit a case like murder or honor, things will get worse.

(مَنْ أَجَلَ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ

جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا)¹¹⁸

¹¹⁸ سورة المائدة آية 32.

(That was why We wrote for the Children of Israel that whoever killed a soul, except for a soul slain, or for sedition in the earth, it should be considered as though he had killed all mankind; and that whoever saved it should be regarded as though he had saved all mankind.) <http://www.parsquran.com/>

I exert more efforts for many reasons: to maintain the civil peace and security, and to protect people from being killed or burned. I also exert more effort for the sake of Allah. This is a privilege that Allah gave me to award me the heaven. There is a Prophetic Hadith:

(إِنَّ اللَّهَ تَعَالَى عِبَادًا أَحْتَصَّهُمْ بِحَوَائِجِ النَّاسِ، يَفْرَعُ النَّاسُ إِلَيْهِمْ فِي حَوَائِجِهِمْ، أَوْلَيْكَ الْأَمْنُونَ مِنْ عَذَابِ اللَّهِ يَوْمَ الْقِيَامَةِ.)

It means *(God Almighty has servants that He singles out for people's needs; people seek them for their needs; those are the ones who are safe from God's punishment on the Day of Resurrection.)*

The motivations are religious, humanitarian, and national. Moreover, there is a verse in Quran says ¹¹⁹“ومما رزقناهم ينفقون” which means that those who spend from what we gave them. I spend my time and effort. A lot of people who work in this field take a lot of money, but I believe, whoever takes money does not work well because money is their aim. But whose aim is Allah's blessings is ready to exert everything to resolve the conflict.

Othman Dweikat: In a not clear case, for example, I prepare by looking for facts and interviewing witnesses. However, I withdraw when a case reaches a dead end and the parties are unresponsive. The incentive for putting in extra effort is religious.

Nafe' Kelani: I prepare for the case by praying to Allah and contacting other Reconciliation Men who can assist. I withdraw from the case if there is injustice or an assault on any of Allah's sanctities. My motivations are achievement and social standing.

Mohammad Gharaba: I prepare by carefully listening to all parties in order to comprehend all aspects of the problem. When one of the parties is obstinate and refuses to resolve the disagreement, I retreat. My motives are to foster an environment of intimacy and respect in our society.

Saleh Tqateq: I get prepared by studying the case well. Nevertheless, I can't withdraw since Arbitration is binding by the Arbitration contract. My motivations are many: to gain Allah's blessings since He has chosen me to fulfill the needs of people, to gain the award of good deeds, and finally, to fulfill a social duty.

Responses of Central WB Reconciliation Men:

Saleem Abdulrahman: I prepare by holding a meeting with the team that will intervene in the conflict to define the problem, potential solutions, and the strengths of each option. I would withdraw if he was not accepted by the parties or if I believed that the court would be more appropriate in this case than clan reconciliation. Civil peace, moral and national obligation are my motives behind exerting extra effort.

Mohammad Hadih: I prepare myself by making a checklist of what the mediator will do, beginning with contacting the parties to arrange an appropriate appointment in an appropriate location, arranging the schedule, determining the number of sessions, determining the number of private sessions, preparing the opening speech, arranging all levels of Mediation, and thinking of open and effective questions that serve the Mediation process. Nonetheless, the mediator may withdraw from the Mediation process for a variety of reasons, including having a blood or

commercial relationship with one of the parties, and believing that the Mediation procedure is ineffective. The mediator is motivated by a variety of factors that urge him to work more. The most crucial is the humanitarian and happy sensation that comes over me when I successfully reconcile people. If a person does not like to have such a humanitarian sentiment, he or she should serve as an arbitrator rather than as a mediator. Above all, the mediator should be human. Other motives include a high profile, a good reputation, and, of course, some money.

Ismael Elkharabsheh: I am always prepared for every case, but as a preliminary step, I can review some previous instances that are similar to the one in which I will intervene. If I was unable to approximate points of view, I would withdraw from the conflict resolution process. My incentives for increasing my efforts include religious reasons to avoid future murders and family reasons to maintain family relationships, whether the murderer's or the victim's.

Hussein Elnajada: I am always ready to intervene in any conflict. If I felt that I would not be able to resolve the conflict, I would appoint a face (Notable Man) make a truce and withdraw to leave the space for other Reconciliation Men to intervene. My motivations are religious, moral, and good reputation.

Responses of South WB Reconciliation Men:

Nawwaf Elzagharnah: I prepare by writing certain procedures pertaining to Mediation. There are some cases where the victim's family must be compensated. In such circumstances, I make certain that the murderer's family has the necessary funds. I also do not easily withdraw from any conflict unless it has reached a dead end. I'll keep going as long as there's a light at the end of the tunnel. My motives include a desire for security, civil peace, and social standing.

Talal Elhureini: People's reconciliation has been a way of life for me, so I am always prepared for any issue. I withdraw from any case where I believe my presence will be unwelcome by the parties and may aggravate the issue. In terms of incentives, I inherited this reconciliation home from my forefathers, thus it is my job to uphold the house's reputation. So, the goal is to maintain the house's social standing.

Nayyef Elbasayta: There is no need for preparation, and I am always prepared. If my words are not considered, I withdraw from any conflict. My motivation is human—to find a solution to the conflict between people.

Mousa Ka'abna: I prepare myself by learning about the conflict from persons who witnessed the incident or from the parties' relatives. When there is an injustice, I withdraw. When I believe that my withdrawal may endanger any party, I make extra efforts.

Jamal Dar'awi: The Reconciliation Man should always be ready for any conflict, but because we cannot have all types of information and sciences, I can prepare myself by consulting with experts in the field of the conflict. Furthermore, I discuss the issue with other Reconciliation Men. "Consultation prevents inadequacy." I withdraw when one of the parties fails to adhere to the terms of the agreement, traditions, and customs, or if my presence complicates or obstructs the procedure. In terms of motivations, Reconciliation Men have different motivations. Some are motivated by money, while others are motivated by religion, patriotism, reputation, or social standing. Whatever reason the Reconciliation Man has, it must not contradict the interests of the people. Everyone wants to be successful, but not at the expense of other people's rights.

(9) Set Nine: What are the skills and characteristics required to be a good mediator or negotiator in the social conflicts?

Responses of North WB Reconciliation Men:

Jaber Ishtayeh: High morals, religion, honor, a high financial standing, an active listener, and a skilled speaker are the talents and attributes required for someone to be a Reconciliation Man, mediator, or negotiator in social problems. The scholar questioned why the Reconciliation Man should be wealthy. The solution was to avoid being enticed by money from any source. If someone is so impoverished that he requires money to meet his and his family's fundamental requirements, he may be tempted to be unjust and unfair.

Mazen Dweikat: The mediator or negotiator should be afraid of Allah. He should have a good reputation, as well as courage and bravery. Furthermore, his hand should be clean. This means that he refuses to accept money from anyone in order to avoid influencing his judgment.

Othman Dweikat: The Reconciliation Man should have integrity, culture, knowledge, and experience.

Nafe' Kelani: The Reconciliation Man should be calm, patient, and well-versed in Quranic passages and Hadith, moral stories, and proverbs.

Mohammad Gharaba: Many traits of a mediator or negotiator include social acceptance, strong morality, high culture, decent education, and religion. Furthermore, he should be able to converse and be knowledgeable about the law and human rights.

Saleh Taqateq: The Reconciliation Man must have a good reputation, intelligence, culture, morals, and experience, as well as be socially accepted.

Responses of Central WB Reconciliation Men:

Saleem Abdulrahman: The Reconciliation Man should have an excellent reputation, high morals, and self-assurance.

Mohammad Hadih: The mediator should have many skills, including active listening, high focus, asking productive questions, the ability to control body language, seizing opportunities, which means concentrating on and transferring good words from one party to the other, conversation skills, Negotiation, rephrasing, and summarizing.

Ismael Elkharabsheh: The Reconciliation Man should be religious and fear Allah. Furthermore, he should be knowledgeable about the clan system and the field of conflict in which he is operating. For example, if I work as an arbitrator in the real estate, I should have knowledge and expertise in this field.

Hussein Elnajada: The Reconciliation Man should be experienced, a competent public speaker, and knowledgeable about clan laws.

Responses of South WB Reconciliation Men:

Nawwaf Elzagharneh: The Reconciliation Man should be credible, intelligent, experienced, trustworthy, secretive, and a good role model.

Talal Elhureini: The man in charge of reconciliation should be patient and experienced.

Nayyef Elbasayta: The Reconciliation Man should be well-educated, experienced, and have a solid reputation.

Mousa Ka'abna: The Reconciliation Man must fear Allah, be unbiased, diplomatic in dealing with people, and make sound decisions.

Jamal Dar'awi: The mediator should be educated and trained, as well as have experience, expertise, integrity, honesty, tactfulness, a strong personality and charm, and confidence.

(10) Set Ten: What did you learn from these experiences? Do you regret engaging in resolving Palestinian social conflicts?

Responses of North WB Reconciliation Men:

Jaber Ishtayeh: I have learned patience and to fear Allah while dealing with people's issues. Moreover, I learned to ask Allah to help me in the mission that I do. I do not regret being a Reconciliation Man and I consider it as a way of worship.

Mazen Dweikat: Every day, humans learn new things. With a wide variety of situations, different areas, different individuals, and different challenges, all of these aspects contribute to educating me a lot. Despite the fact that reconciliation is difficult, costly, and time, health, and family time are all consumed, I do not regret being a Reconciliation Man.

Othman Dweikat: I can tell that the Palestinian people are compassionate and good-hearted; therefore, pleasing them with good words is simple. I have no regrets about being a reconciler.

Nafe' Kelani: I have realized that I'm not a superman, and that I make mistakes. Furthermore, there is no absolute right, but rather something relative. I have no regrets about being a reconciler because I have accomplished my life's goal.

Mohammad Gharaba: I have realized that the Palestinian society's cultural and environmental diversion causes a lot of problems, making the Reconciliation Man's work more difficult. I do not regret becoming a Reconciliation Man since I am so delighted and gratified when I interfere in a situation and solve it.

Saleh Taqateq: I have learned a lot:

- People despise the right and try to avoid it. They simply care about their own needs and interests.
- Not all of the Reconciliation Men are trained to work in this capacity. Sometimes the Reconciliation Man becomes an obstacle to dispute resolution.
- When higher authorities, such as government officials, refuse to assist with the Reconciliation Men in specific cases, the situation worsens.

Nevertheless, I do not regret being a Reconciliation Man. In fact I feel proud and happy.

Responses of Central WB Reconciliation Men:

Saleem Abdulrahman: I have realized that civil peace is a critical issue in Palestine. It is as important as, if not more important than, the legal system. I have no regrets about being a Reconciliation Man since my father was a Reconciliation Man who educated me about social responsibility.

Mohammad Hadieh: In dealing with people's problems, I have learnt to be human. I never regret working in this sector, especially when it benefits Palestinians in Jerusalem.

Ismael Elkharabsheh:

The importance of Mediation comes from religion. Prophet Mohammad (PBUH) said to his companions:

(ألا أخبركم بأفضل من درجة الصيام والصلاة والصدقة، قالوا: بلى يا رسول الله، قال: إصلاح ذات البين، ...)

(Would you like me to inform you of something better than fasting, prayer, and almsgiving? They said: Yes, O Messenger of Allah. He said: Reconciling differences between people...)

I have no regrets about becoming a reconciler, and I intend to continue doing so until the day I die.

Hussein Elnajada: I have learnt to fear Allah in all I do, to consider all sides of a situation to avoid unfairness, and to judge fairly. I have no regrets about being a reconciler because I work for Allah's pleasure.

Responses of South WB Reconciliation Men:

Nawwaf Elzagharnah: I have discovered that people's satisfaction is an unattainable goal. Furthermore, honesty in dealing with others builds trust. This trust will aid the Reconciliation Man in resolving the problem. Despite the tremendous expense of reconciliation and the psychological hardship that the Reconciliation Man experiences, I never regret being a Reconciliation Man. When a case is resolved, I am overjoyed, and when it is not, I am devastated.

Talal Elhureini: I have discovered that patience in the face of rage helps people avoid disasters. Patience and tolerance should always be the masters of any situation, because clashes and conflicts tear families apart and have a major impact on property and other people. I have no regrets, but I am extremely proud of myself for upholding the reputation of my forefathers and working for Allah's pleasure.

Nayyef Elbasayta: I have learned how to maintain the bare minimum of rights, how to persuade others, and how to resolve problems. I have no regrets about working as a reconciler.

Mousa Ka'abna: I have learned the value of perseverance. Furthermore, I have honed my ability to recognize honest people with a single glance. I have no regrets about being a reconciler.

Jamal Dar'awi: Understanding the society and its structure, knowing how to treat social issues, knowledge, patience, calmness, Negotiation and conversation skills, being persuasive, honesty and integrity, cooperation, volunteering, controlling the self, observing the self, and having good manners are just a few of the things I

have learned. Among other things, I have learned to maintain proper manners. As poet Abu Elaswad Eldu'ali puts it:

(لا تنه عن خلقٍ وتأتي مثله عارٌ عليك إذا فعلت عظيم.)

(Do not ask someone to stop a bad habit, and then you engage in it yourself. If you do so, you should be ashamed of yourself.)

Despite the fact that being a reconciling man takes up a lot of my time, life, and health, I do not regret it. This is a moral, national, and religious responsibility. I recognize that pleasing people is an unattainable goal, and that some disputes arise that are directly with me, but in the end, I do what pleases Allah and what I am convinced to do. I do not go against my conscience. Furthermore, it is one of my excellent deeds in life; it offers me a high reputation and social standing among people.

(11) Set Eleven: Do you recommend using Alternative Dispute Resolution in resolving the social conflicts in Palestine (the tribal/clan way), or do you recommend leaving that to the court and the legal system? Why?

Responses of North WB Reconciliation Men:

Jaber Ishtayeh: I advocate taking social disputes to court and using the law to resolve them. Despite the fact that our society is a clan society, the legal path is more just and equitable in terms of rights. The clan system may be entirely successful if the reconciliation committees are united and we restrict anyone from entering this field. Under the current conditions, the clan system should round out the legal system, but it should be overseen by the Palestinian Authority.

Mazen Dweikat: Omar Bin Elkhattab (One of the four Muslim rightly guided Caliphs) said:

(أحيلوا الخصوم إلى الإصلاح ولا تحيلوهم إلى القضاء فان القضاء يورث البغضاء.)

(Refer opponents to reconciliation, for judgment breeds hatred.)

The clan system, in my opinion, should complete the legal system. Each system contains flaws. Because it takes so long, the court, for example, is known as the "cemetery of rights." Furthermore, the laws are relatively ancient, and the legal system is weak. However, many people who are unaware of the clan system enter this industry to make money and create reputation. Those individuals tainted the clan system.

Othman Dweikat: I support the clan system because it is the fastest way to resolve disagreements and achieve justice. The mediator, on the other hand, should be neutral and impartial.

Nafe' Kelani: I endorse the law and the court. The judicial system should be improved and reformed. Furthermore, executive committees should be more powerful than clans in order to establish justice. This is because the weak party is repressed and abused in the clan system.

Mohammad Gharaba: Society is evolving and changing. Each level has its own set of requirements, and this level necessitates the use of Alternative Dispute Resolution. Nonetheless, because our society is a clan society, I do not recommend leaving everything to the law. The clan system helps to resolve many issues that the court cannot.

Saleh Taqateq: Police and court refer some cases to the clan system. This is an evidence about the importance of the clan system in the Palestinian society. The legal system and the clan system are two parallel lines. Each system does not cancel the other but completes it. People turn to the clan system because it is faster and ends with reconciliation.

Responses of Central WB Reconciliation Men:

Saleem Abdulrahman: I recommend the clan system for several reasons: it is faster, it ends with reconciliation, and there is direct contact between the mediator and the parties, whereas in the judicial system, you need a lawyer to represent you in court; the mediator is chosen by the parties, so there is a state of trust built between the parties and the mediator; and the judge cannot be chosen in court or the judicial system.

Mohammad Hadieh: I strongly advocate Mediation, especially in a city like Jerusalem, which is subject to Israeli law. As a result, Palestinians in the area prefer Mediation over going to Israeli courts. Furthermore, the Israeli court plans to prolong the Palestinians' cases in order to exacerbate the tension between them.

Ismael Elkharabsheh: Before going to court, I advocate using Mediation and Arbitration as a first step. Furthermore, I believe that the mediator and arbitrator should be legally supported.

Hussein Elnajada: I support the clan system for a variety of reasons, including the fact that we live in a clan society, the legal system is ineffective, the law does not meet the psychological needs of the parties, and the country is riddled with corruption. Despite this, the clan system is not a substitute for the legal system. It was revealed when there was no law. We must connect the two systems until a social culture that supports the legal system develops.

Responses of South WB Reconciliation Men:

Nawwaf Elzagharneh: For a variety of reasons, including the fact that we live in a clan society, the legal system is ineffective, the law does not suit the psychological needs of the parties, and the country is riddled with corruption, I favor the clan system. Regardless, the clan system is not a replacement for the legal system. It came

to light while there was no law. We must connect the two systems until a social culture supportive of the legal system develops.

Talal Elhureini: I suggest that the Palestinian Authority support the clan system. The clan system does not replace the legal system, but rather completes it. Because the Palestinian Authority does not have legal dominion over all regions in the current situation, the clan system is the ideal answer. There are cases that are referred to us from the courts because the courts are unable to handle them for a variety of reasons. For example, one of the conflicting parties lives in a territory that is not formally subjected to Palestinian authority; therefore, those lawsuits can drag on for years.

Nayef Elbasaytahh: I advocate the clan system since the courts and legal system are incapable of handling such a large number of cases.

Mousa Ka'abna: I recommend the clan system because it is faster than the court and has more similar points of view. Reconciliation Men live with people and understand them; they listen to them personally rather than through their representatives.

Jamal Dar'awi: Since the Ottoman Empire, Palestine has been subjected to occupation after occupation. As a result, we do not have an independent legal system. The clan custom is a social heritage associated with habits, rituals, and lovely values. As a result of the occupation, the limited Palestinian authority over some areas, and the occupation's ban on the Palestinian Authority's institutions playing a role in such areas, establishing an alternative, which is the clan system, becomes necessary. This option restores rights in less time and at a lower cost.

For various reasons, clan reconciliation plays a sacred and significant role:

- 1) The deficient judicial system
- 2) The lack of authority

- 3) The judicial system's inability to resolve conflicts
- 4) The length of time it takes the courts to resolve cases.
- 5) The corruption of judicial system
- 6) The limited access to all areas.
- 7) The hefty fees charged by lawyers and courts.

Even if the clan system were evil, it is indispensable. It is sometimes evil because it is associated with those who may misrepresent or exploit the image of the clan system. Those folks are either looking for money or fame. Those individuals should be avoided.

Until we create an independent state with power and jurisdiction over all of its territories, we will need the Reconciliation Men and the clan system.

(12) Set Twelve: What are your recommendations to improve the use of Alternative Dispute Resolution tools in resolving the social conflicts in Palestine?

Responses of North WB Reconciliation Men:

Jaber Ishtayeh:

- Unification of reconciliation committees in all governorates.
- Considering these committees as a support for judiciary system not as an substitute.

Mazen Dweikat:

- The mediator should fear Allah in everything he does.
- The mediator should stand beside the right and should not fear anyone.

- The mediator should do this mission without taking money and for Allah's sake only.
- The mediator should be committed to following up on the conflicts and keep trying to resolve them.

Othman Dweikat:

- The clan system should be subjected to and supported by an official side in order to facilitate and accelerate its procedures.

Nafe' kelani:

- The executive committees must be reinforced in order to be more powerful than the clan system and more just in their actions.

Mohammad Gharaba:

- The clan reconciliation should be subjected to an official party.
- The Reconciliation Man should be wise and knowledgeable. It is not the number of Reconciliation Men that matters, but their mentality.
- The Reconciliation Man should be trustworthy and well-to-do. Some Reconciliation Men accept money for reconciliation in some disputes.

Saleh Taqateq:

- Establishing an office for clan and reconciliation affairs in each governorate.
- This office shall be responsible for selecting small clan reconciliation committees or councils in the cities and villages of each governorate.
- Each governorate shall be liable for providing financial support for its Reconciliation Men.

Responses of Central WB Reconciliation Men:

Saleem Abdulrahman:

- The government should organize the work of the Reconciliation Men by establishing Civil Peace Councils in all governorates.
- The government should show more respect and appreciation to the Reconciliation Men and their role in the society.

Mohammad Hadieh:

- Palestinian people who live in Jerusalem and all areas that are subjected to the Israeli law should resort to Reconciliation Men and Conflict Resolution Centers because the Israeli legal system is unfair when the issue is for Palestinians.

Ismael Elkharabsheh:

- The role of Reconciliation Men should be formalized in society.
- The clan judicial system and Reconciliation Men should be institutionalized.
- The government should provide financial support for the Reconciliation Men.

Hussein Elnajada:

- Creating cooperation between the prosecution and the Reconciliation Men.

Responses of South WB Reconciliation Men:

Nawwaf Elzagharneh:

- The number of Reconciliation Men should be reduced.
- Enacting legislation to oversee the clan judiciary system.
- Obtaining government protection and assistance.
- The government should provide financial and health assistance to the Reconciliation Men.

Talal Elhureinin:

- Reducing the large number of Reconciliation Men, especially those who do not have sufficient knowledge of the clan judicial system as their intervention in conflicts creates disasters.

Nayef Elbasaytah:

- Reducing the number of Reconciliation Men, especially those who do not have enough knowledge and experience in this field.

Mousa Ka'abna:

- Reducing the number of Reconciliation Men who charge large amounts of money when they intervene in a conflict.

Jamal Dar'awi:

- Creating a framework for all Palestinian mediators and Reconciliation Men.
- Creating a reference for all those Reconciliation Men who have a relationship with the justice institutions, the governorate, or the prosecutor.
- Raising Reconciliation Men's awareness, knowledge, and education by training them and supervising their performance.
- Penalizing and disciplining the Reconciliation Men for misbehaving or breaking the regulations.

5.2 Discussion of Results:

This chapter will review and analyze the answers to the interview questions that were presented in the previous chapter.

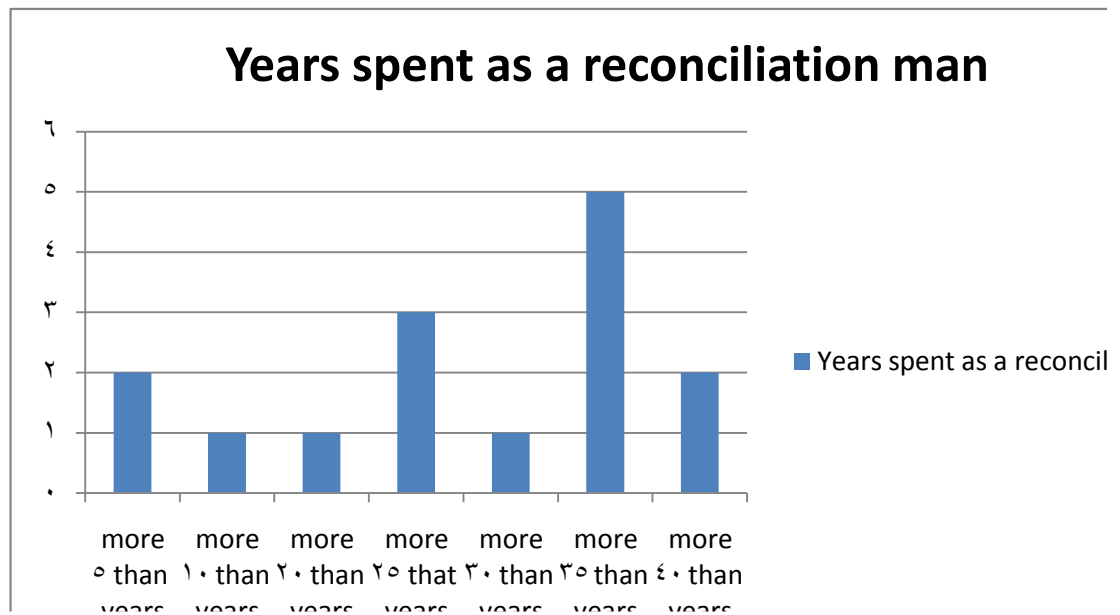


Figure 1.5 Years Spent as a Reconciliation Man

Since 1987, the year of the first intifada, one-third of the selected sample has been working in this field. This was caused by the problems caused by the intifada, which increased the frequency of disputes between people. According to Jaber Ishtayeh, “Because of the intifada's chaotic conditions, we began working on reconciliation during the first intifada. As a result, the number of conflicts has grown.” Moreover, Mazen Dweikat stated that “the first intifada was the culmination of conflict, thus our role in reconciliation became more crucial in maintaining the integrity and security of Palestinian society.”

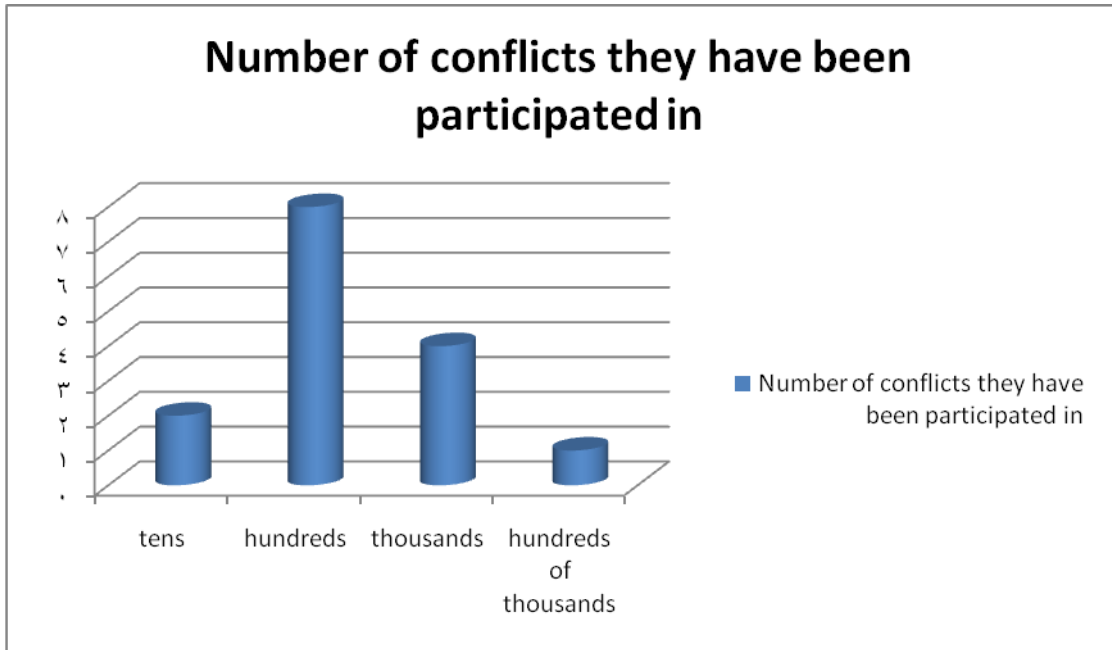


Figure 2.5 Number of Involvements in Conflict Resolution by Reconciliation
Men

Nawwaf Elzagharnah: I devote all of my time to settling issues, and I hope that my efforts will be rewarded by Allah. Furthermore, I hope we can contribute to civil peace. According to Jamal Dar'awi, “The number of conflicts in Palestinian society is rapidly growing. I used to intervene in one conflict per day approximately 20 years ago, but now I intervene in three or four disputes per day.”

Saleem Abdulrahman: “I have been engaged in 1350 conflicts. I remember this number since every conflict of those is registered in my office at the Governorate.”

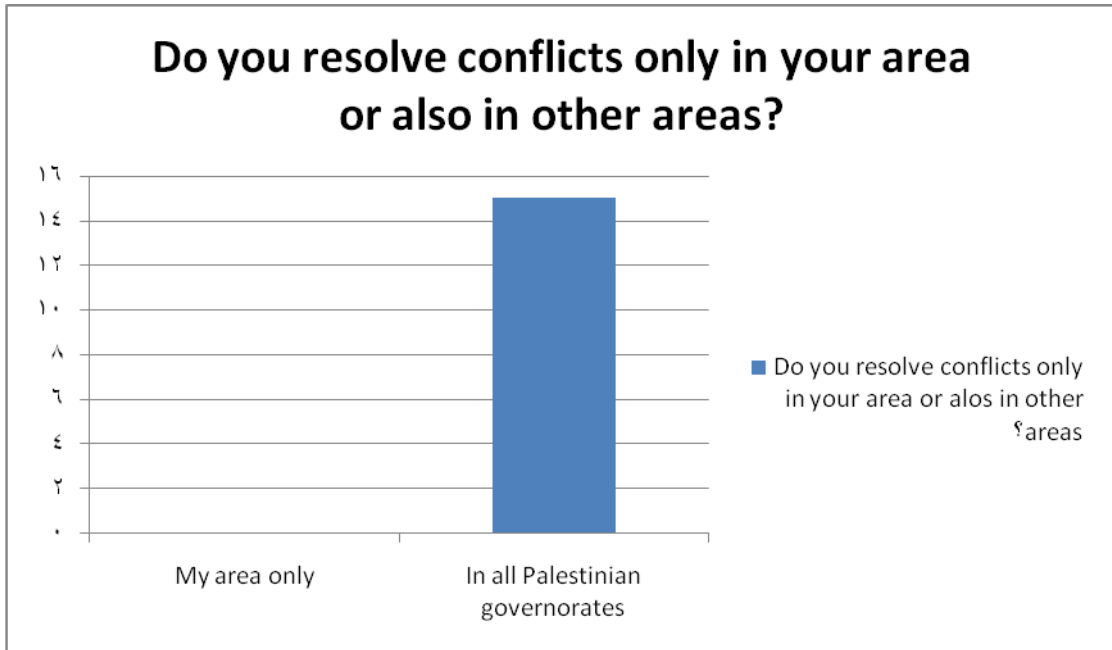


Figure 3.5 Do You Resolve Conflicts Only in Your Area or in Other Areas?

Mazen Dweikat: “I travel to all governorates to settle disputes. I even travel to the occupied territories of 1948 to intervene in conflicts at the request of the parties involved.”

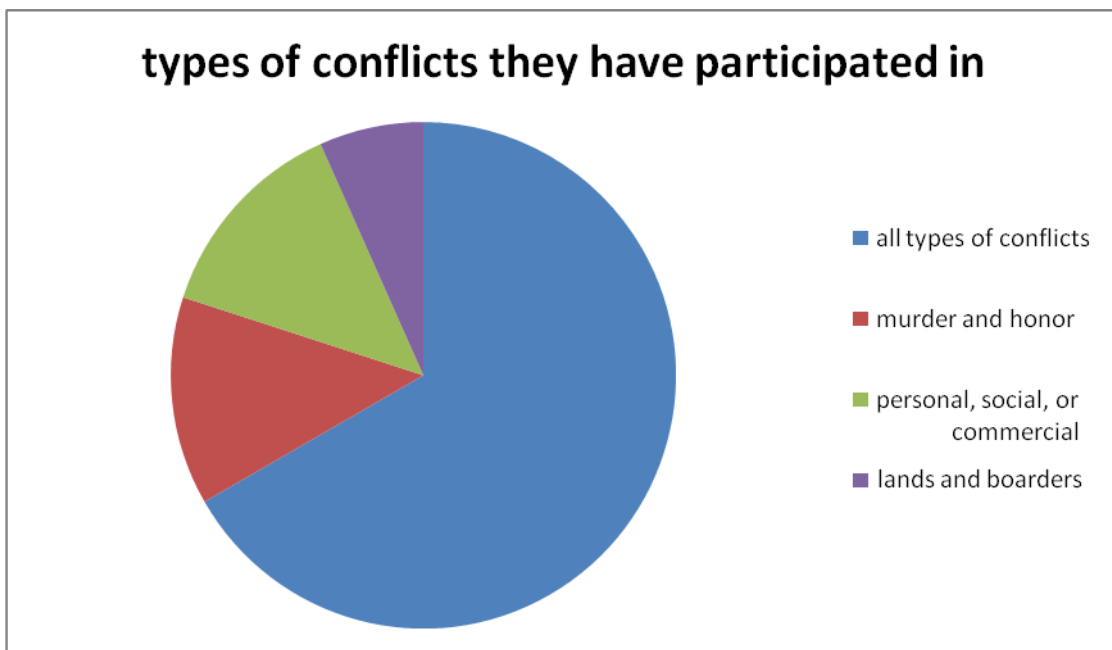


Figure 4.5 Types of Conflicts in which Reconciliation Men have Participated
in

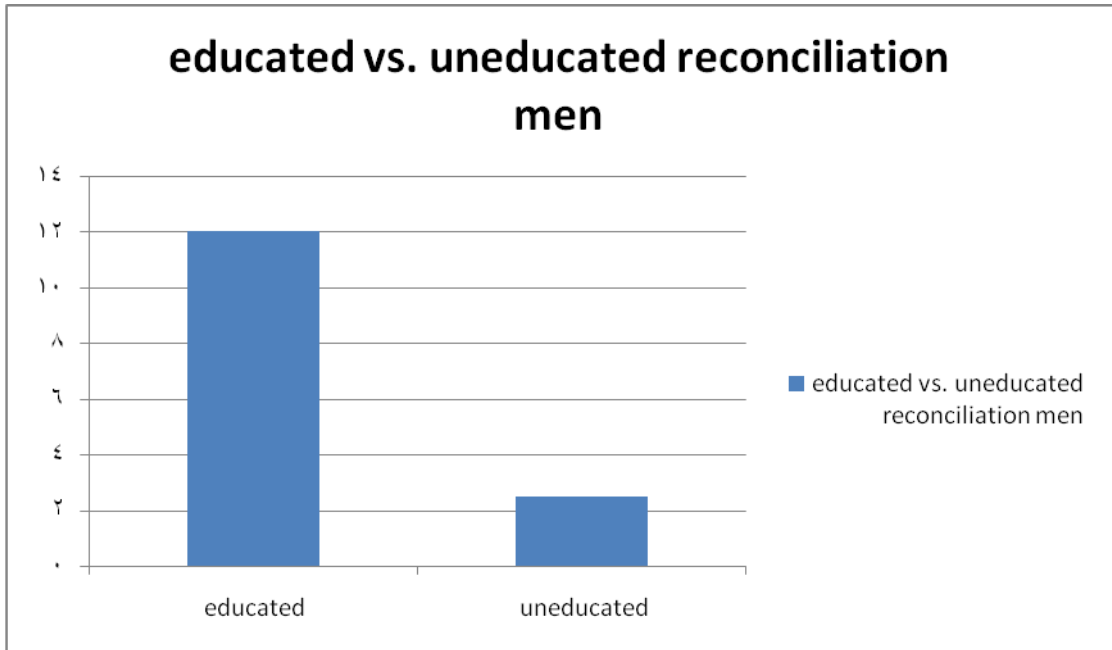


Figure 5.5 Number of Educated vs. Uneducated Reconciliation Men

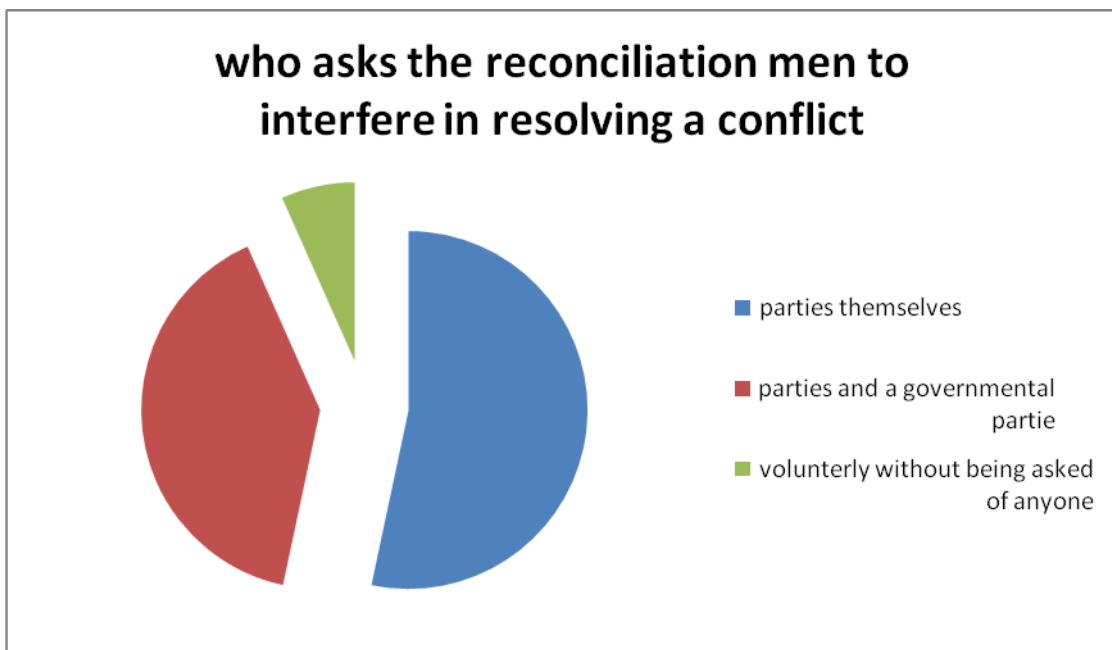


Figure 6.5 Who Asks Reconciliation Men to Intervene in Resolving a Conflict

Jaber Ishtayeh: “When parties ask me to intervene in resolving a conflict, I ask if there is any other Reconciliation Man who is already intervening. If there is, I will not intervene with my colleagues' job.”

Mazen Dweikat: “The president's office sometimes contacts me and requests that I intervene in particular issues. I then contact a friend with a car to drive me to the scene of the conflict.”

Othman Dweikat: “I am a member of the Clan Reconciliation Committee in the Governorate. People come to the Governorate to ask for a Reconciliation Man to intervene and resolve their conflict.”

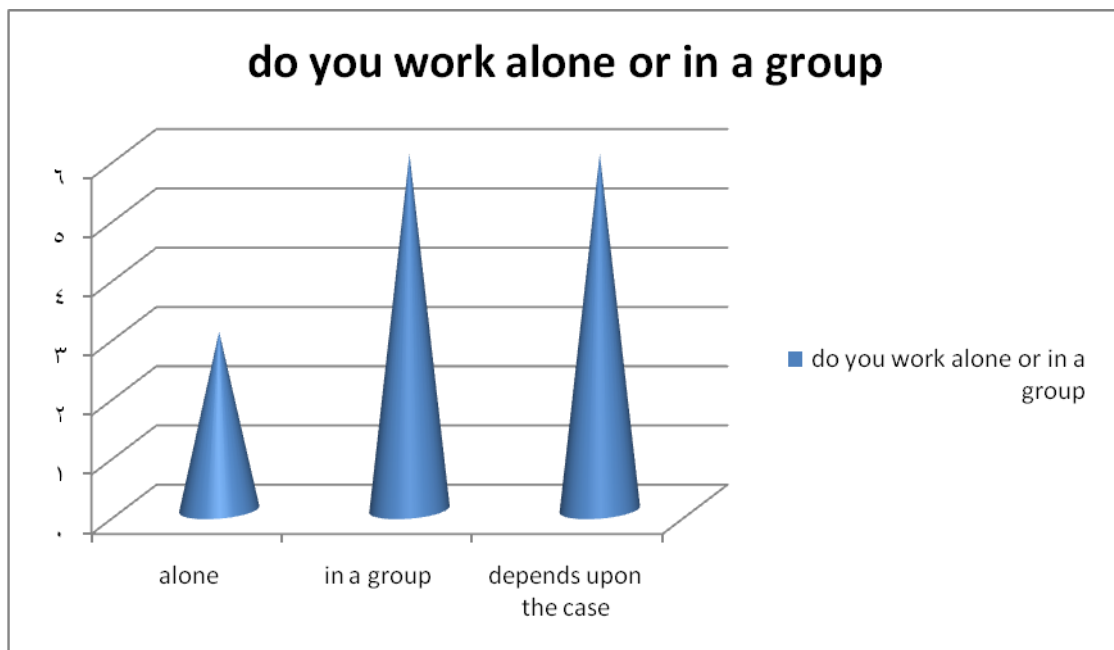


Figure 7.5 Do you Work Alone or in a Group?

Mazen Dweikat: “Certain cases necessitate confidentiality. Their success is based on their confidentiality.”

Nafe' kelani: “When we work together, we will have a better chance of solving a problem. Two heads are better than one”

Nawwaf Elzagharnah: “If someone asks you to intervene in his/her conflict, he/she asks you alone, but you must consult other Reconciliation Men to ensure that your decision is correct.”

Jamal Dar’awi: “Because of the vast number of Reconciliation Men, I sometimes have to negotiate alone because the other party would not respond to Negotiation.”

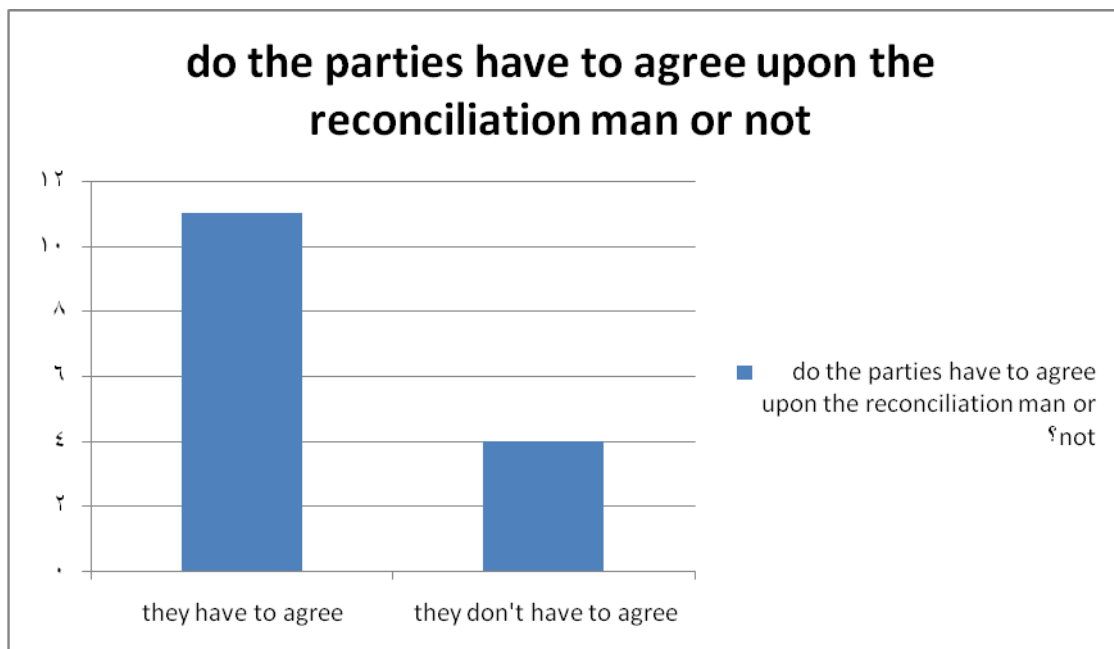


Figure 8.5 Do Parties have to Agree on the Reconciliation Man or not?

Mazen Dweikat: “It never happened that we got involved in a conflict and got booted out or told not to get involved.”

Othman Dweikat: “I request parties to sign a commitment paper stating that I am a member of the governorate's Clan Reconciliation Committee and that all parties must commit to my decision.”

Nafe' kelani: “The parties' agreement is critical. If I have the impression that one of the parties does not want me, I withdraw immediately.”

Hussein Elnajada: “The parties' agreement on my intervention is critical. I never impose myself.”

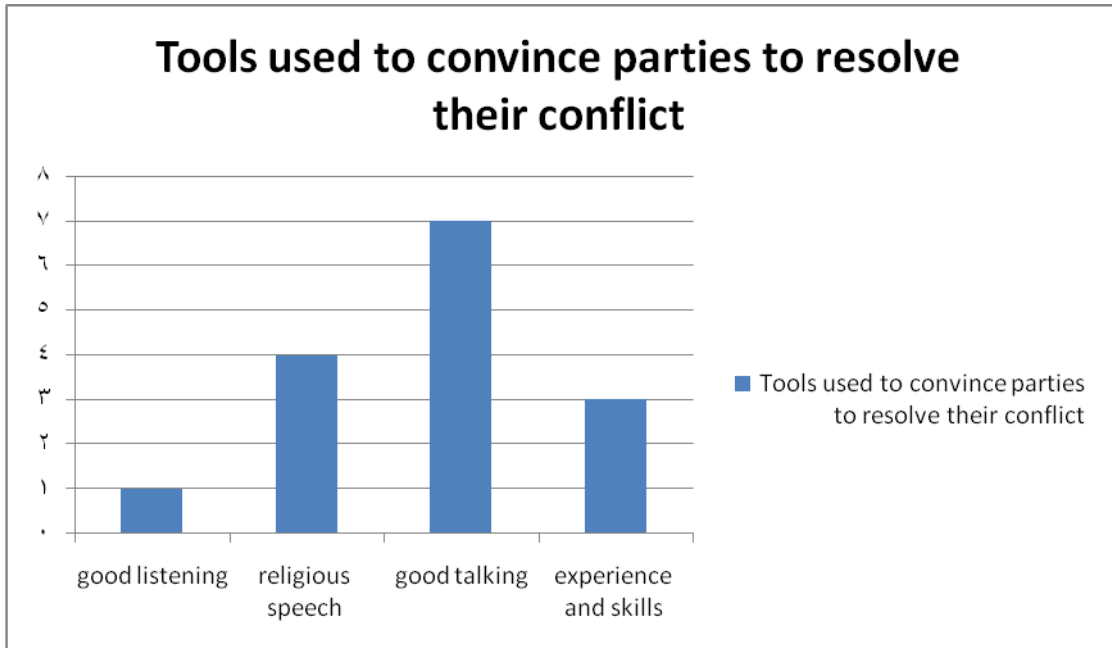


Figure 9.5 Tools Used to Convince Parties to Resolve their Conflict

Jaber Ishtayeh: “A good-listening Reconciliation Man may immediately find ways that can be used to persuade the party to resolve the conflict.”

Nafe' kelani: “Religion is the most powerful tool for convincing parties to find a solution to their issue.”

Mohammad Gharaba: “I use my tongue as a key instrument to persuade people to sit down and work out a solution.”

Saleh Taqateq: “Religion is the most important instrument as Allah said:

(فَاتَّقُوا اللَّهَ وَأَصْلِحُوا ذَاتَ بَيْنِكُمْ)

which means: (So fear Allah and amend that which is between you)

<https://quranenc.com/ar/home>

(الأنفال آية رقم (1))

Mohammad Hadieh: “I persuade the parties to accept me as a mediator by describing my talents, experiences, and achievements in the field.”

Ismael Elkharabsheh: “I persuade the parties by warning them about the repercussions of failing to resolve the issue.”

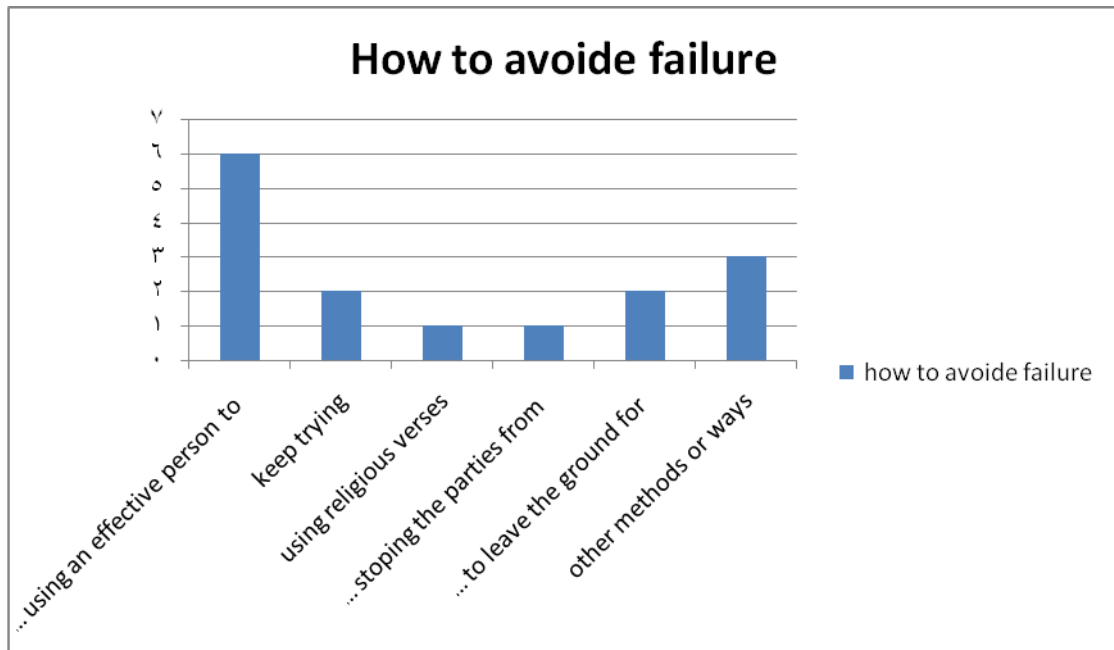


Figure 10.5 How to Avoid Failure

Mazen Dweika: “I keep trying till I succeed in resolving the conflict.”

Nafe' Kelani: “If I fail, another Reconciliation Man will succeed.”

Saleem Abdulrahman: “I avoid failure by looking for alternatives and by finding a person who can affect the party to get him/her agree to resolve.”

Hussein Elnajada: “If I felt that I was going to fail, I would leave the ground for other Reconciliation Men to intervene.”

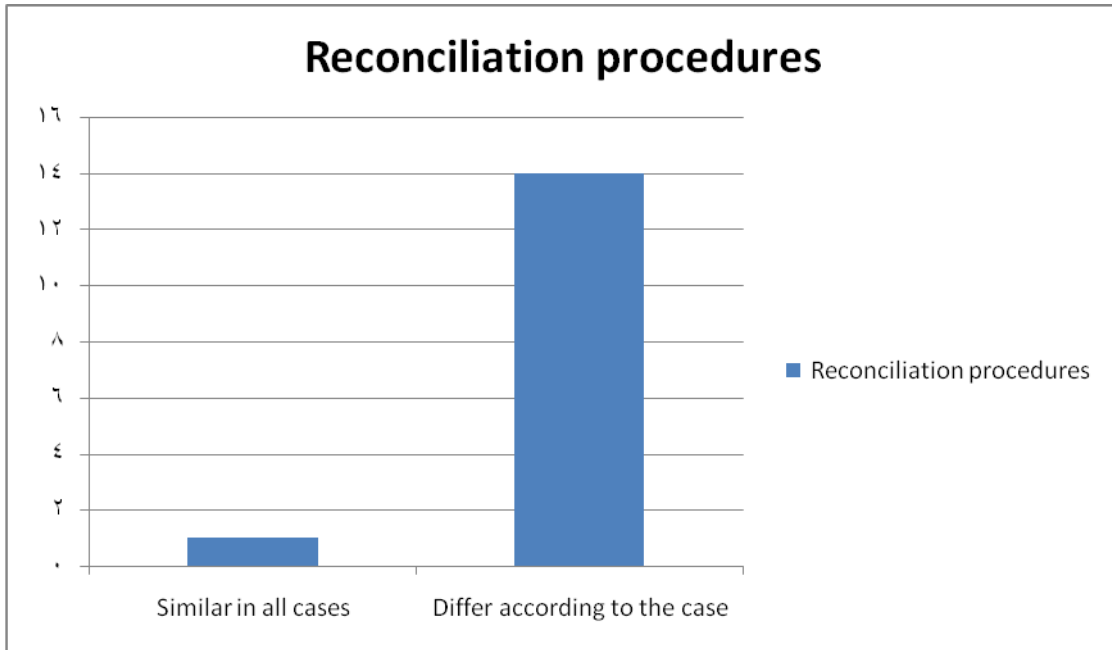


Figure 11.5 Reconciliation Procedures

Mazen Dweikat: “The procedure depends upon the case.”

Mohammad Gharaba: “The aim of the procedures of all cases is to reconcile parties and resolve the dispute.”

Hussein Elnajada: “The most important procedure is to stop the conflict by appointing a reconciler and take Atwa.”

Nawwaf Elzagharnah: “The most crucial procedure is to interfere during the fighting and put an end to it by taking Atwa.”

Jamal Dar’awi: “Clans have their procedures to maintain civil peace, social stability, and good relationships between people in the society. Nevertheless, the procedures depend on the nature of the conflict.”

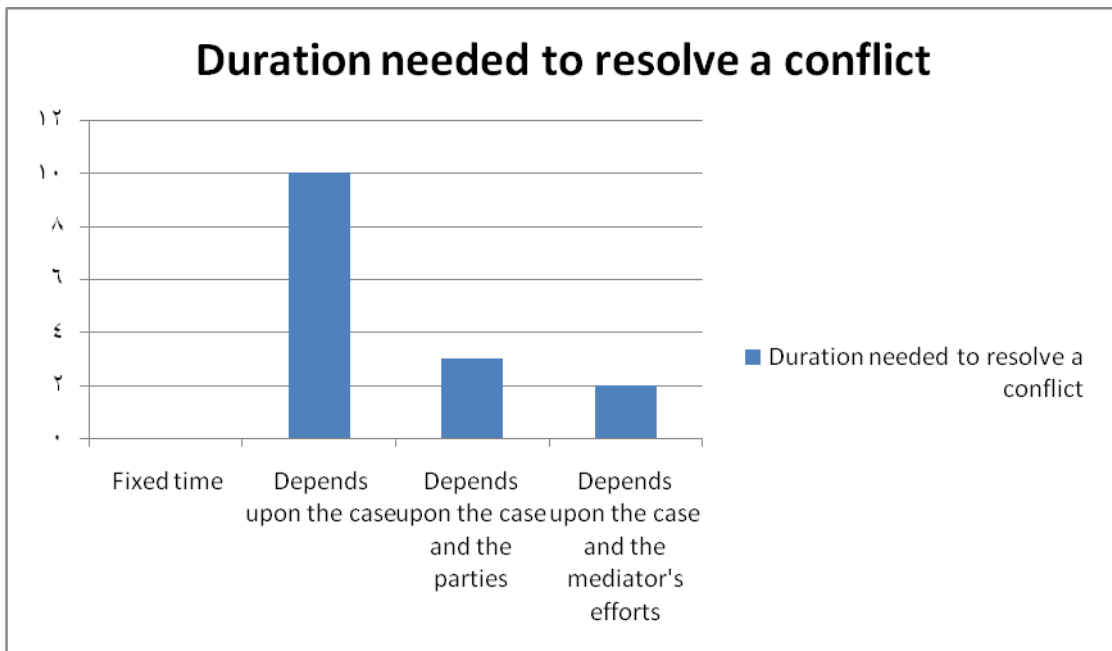


Figure 12.5 Needed Duration to Resolve a Conflict

Mousa Ka'abna: “If there are wounded people as a result of the combat, the duration will be determined by how long it takes them to recover.”

Talal Elhureini: “The duration needed to find a solution depends upon the case and the parties. If the parties were respectful and regretted their actions, the conflict will be resolved in few days.”

Saleh Taqateq: “This may take six months, a year, or two years. The farther I delve into the case, the more details I uncover.”

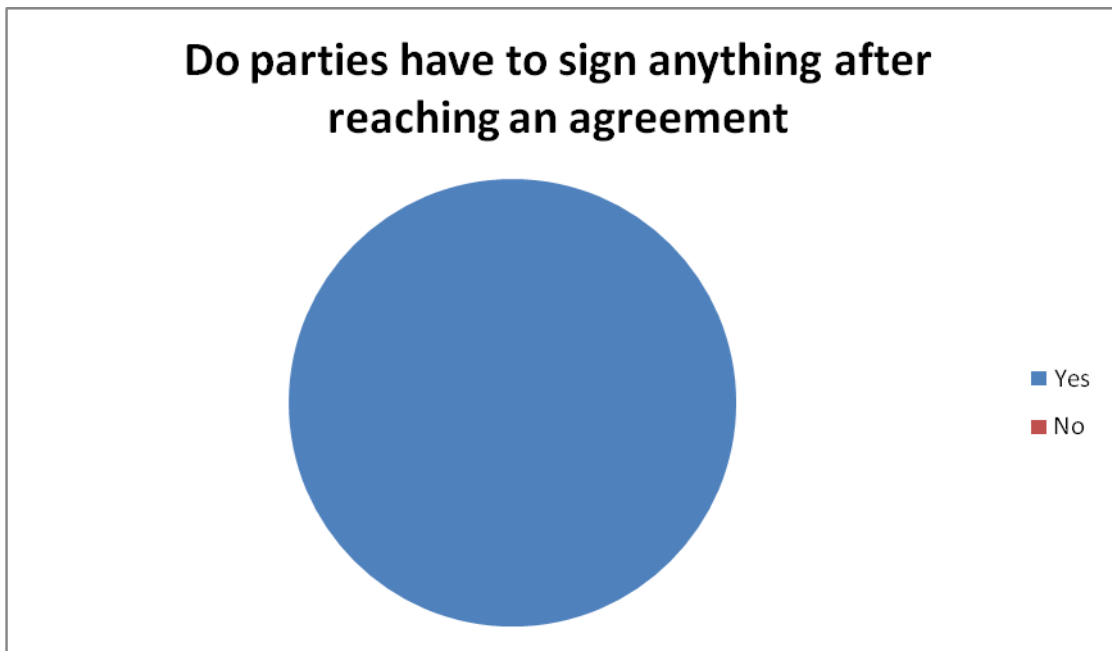


Figure 13.5 Do Parties have to Sign Anything after Reaching an Agreement?

Jaber Ishtayeh: “The document that parties have to sign is called Reconciliation Document.”

Mohammad Hadih: “Parties who come to Mediation sign a Mediation Contract.”

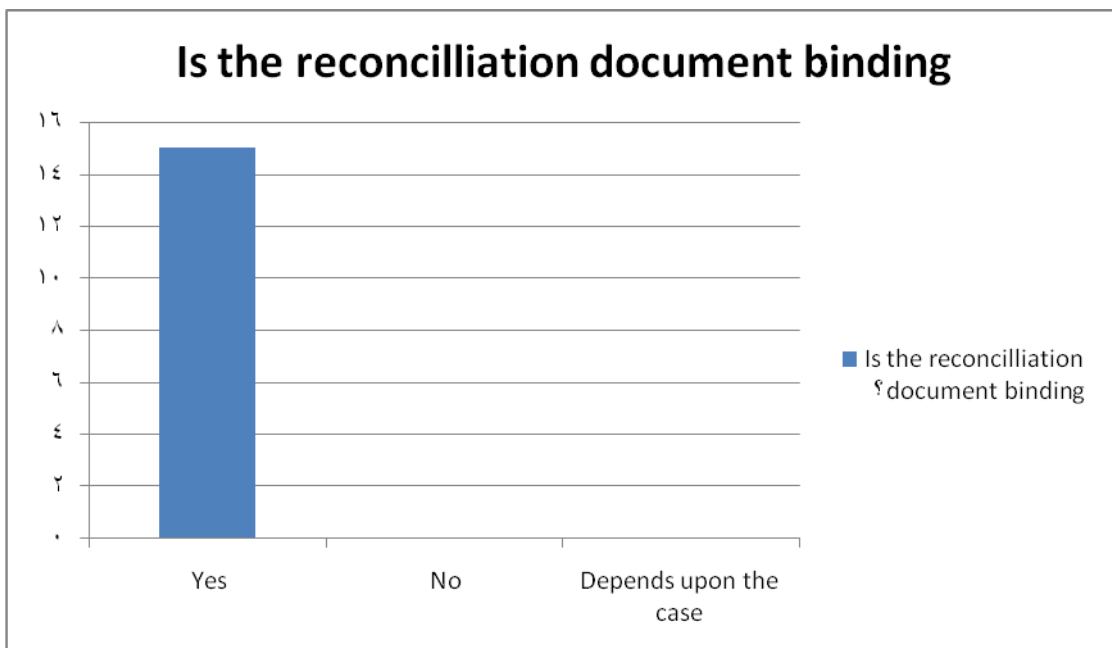


Figure 14.5 Is the Reconciliation Document Binding?

Jaber Ishtayeh: “The Reconciliation Document was created via discussion and agreement. As a result, the parties agree to carry it out.”

Mazen Dweikat: “The distinction between civil courts and clan methods of reconciliation is that the court is legally binding, whereas the clan method is stronger because it is based on agreement. Parties agree to adhere to their agreements and fulfill their needs and interests.”

Mohammad Gharaba: “Since the parties agreed on all aspects of this agreement, they would be bound by it.”

Saleh Taqateq: “Courts rely heavily on reconciliation documents to commute a sentence.”

Hussein Elnajada: “There are Reconciliation Men who will ensure that this deal is carried out. They compel parties to follow through on the agreement they signed.”

Nayef Elbasaytahh: “It is binding since it is guaranteed by the Reconciliation Men and kafeel.”

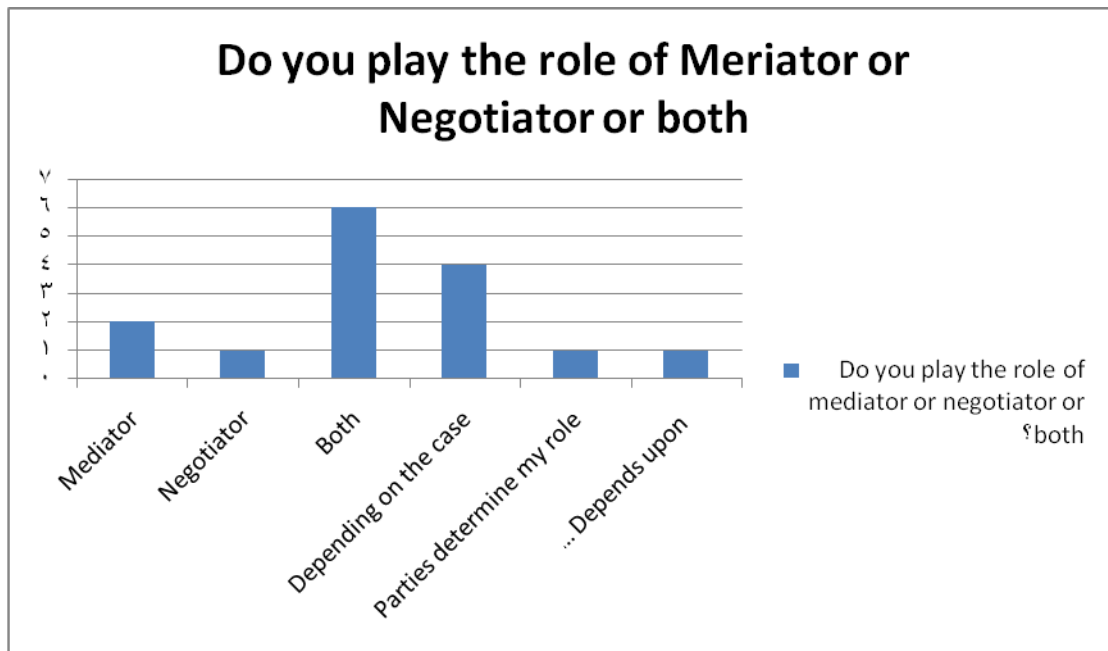


Figure 15.5 Do You Play the Role of a Mediator or Negotiator or Both?

Jaber Ishtayeh: “If the conflict is between parties that have a vision of a solution, I play the role of a mediator. If it is between parties who do not have a solution, I negotiate with them to reach a solution.”

Mazen Dweikat: “I alternate between the two roles. In a murder case, for example, I mediate between the two families, but I negotiate on behalf of the victim's family.”

Nafe' Kelani: “We begin as mediators, but once they accept us, we become negotiators.”

Saleh Taqateq: “Sometimes I intervene as a mediator, sometimes as a negotiator, and sometimes both.”

Mohammad Hadih: “Negotiation is a skill that the mediator should have.”

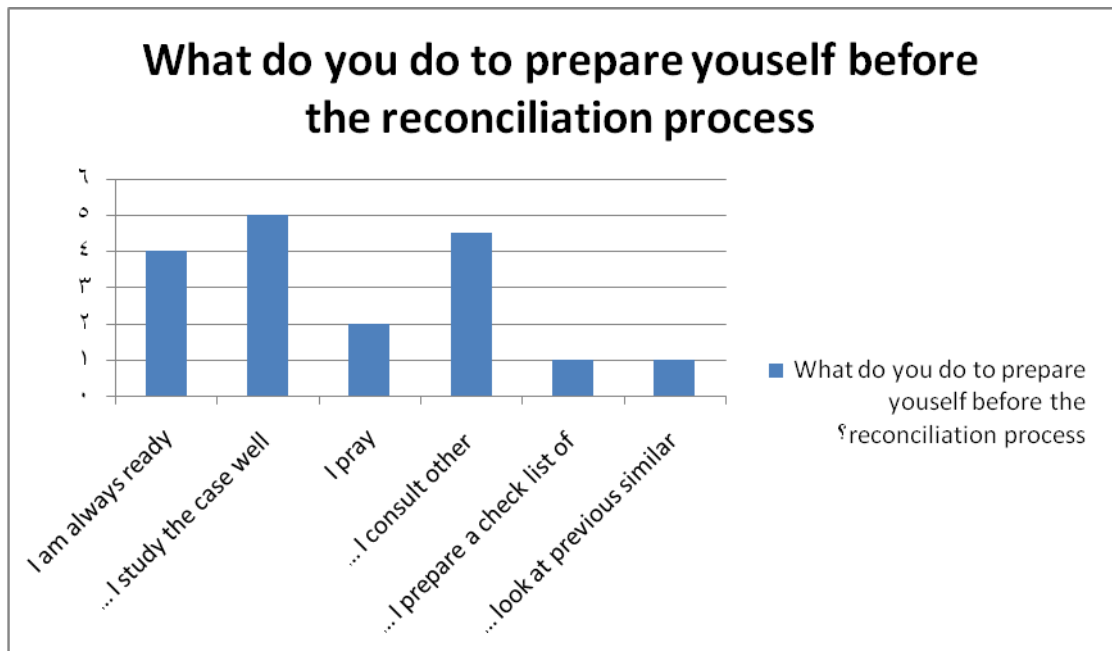


Figure 16.5 What Do You Do to Prepare Yourself Before the Reconciliation Process?

Mazen Dweikat: “I am always ready, but before any conflict I pray to Allah to inspire me ways that enables me to resolve the conflict.”

Othman Dweikat: “If the case is not clear, I get prepared by searching for the truths and asking witnesses.”

Saleh Taqateq: “I get prepared by studying the case very well.”

Mohammad Hadieh: “I prepare myself by preparing a check list that contains what the mediator will do starting from contacting with the parties to arrange an appropriate appointment, in an appropriate place, arranging the schedule, determining the number of sessions, determining the number of private sessions, preparing the opening speech and arranging all levels of Mediation. Moreover, thinking of open and effective questions that serve the Mediation process.”

Talal Elhuraini: “I am always ready. Reconciliation between people has become a way of life.”

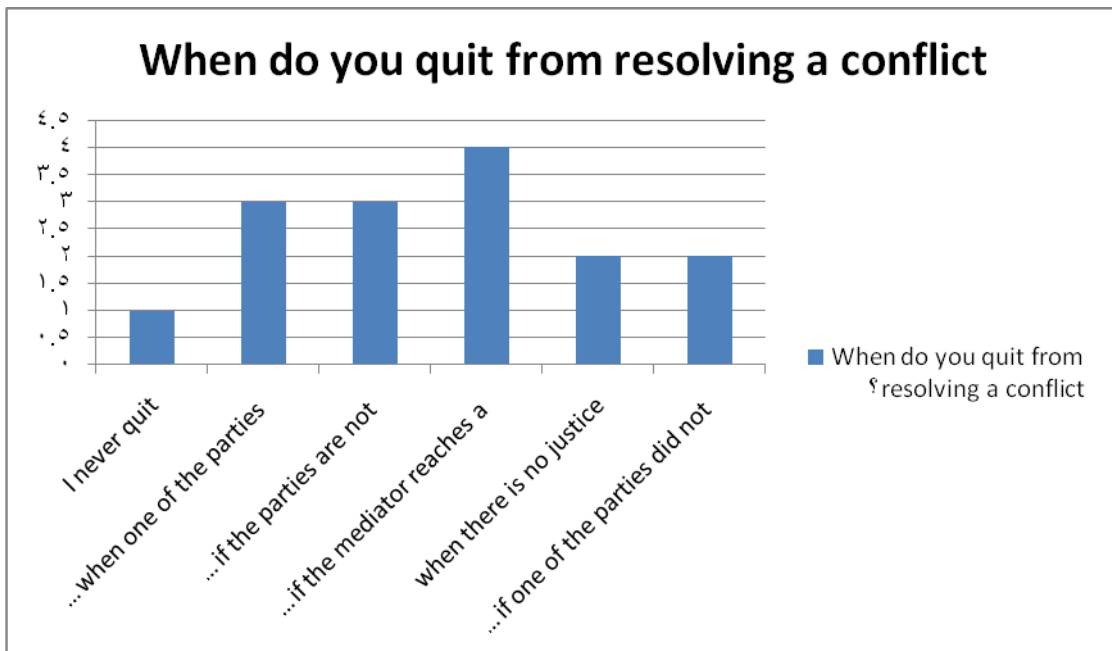


Figure 17.5 When Do You Quit From Resolving a Conflict

Jaber Ishtayeh: “I never felt that I have to withdraw unless one of the parties does not want me to intervene in their conflict.”

Mazen Dweikat: “I never quit a case because if I quit, things will get worse.”

Othman Dweikat: “When I reach a dead end, and there is no correspondence from the parties, I withdraw.”

Nafe' Kelani: “If there is no justice or if Allah's sanctities are violated, I withdraw.”

Saleh Taqateq: “I never withdraw since I do Arbitration and Arbitration is binding.”

Nawwaf Elzagharnah: “I do not withdraw easily from a conflict unless I reach a dead end.”

Jamal Dar'awi: “I withdraw if one of the parties did not commit to agreements, condition, habits, and customs.”

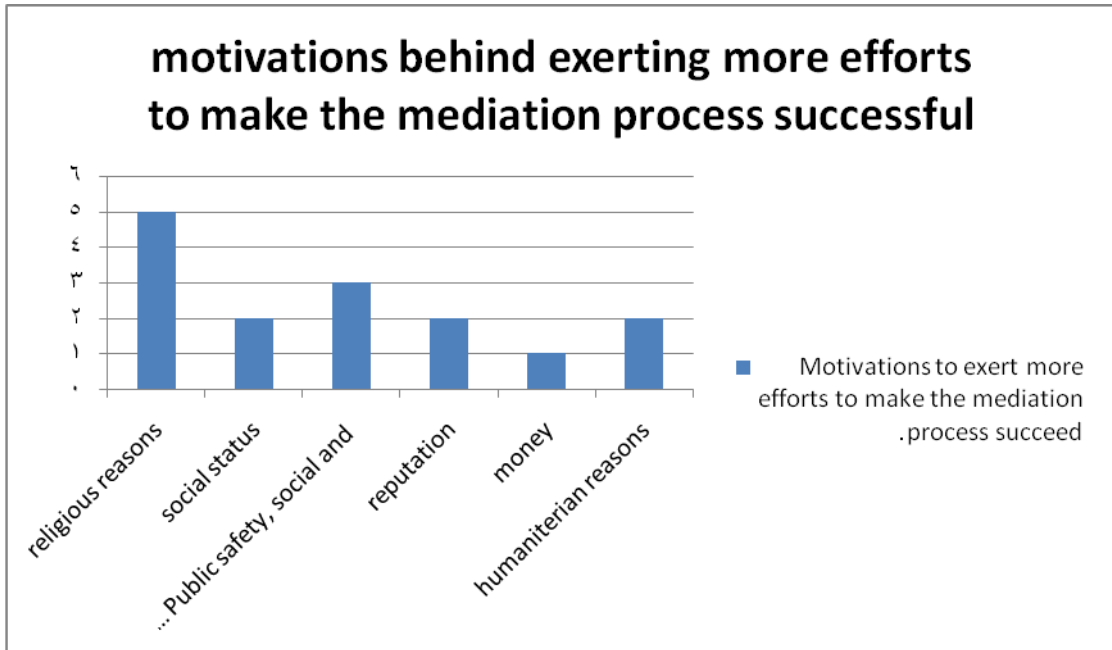


Figure 18.5 Motivations Behind Exerting More Efforts to Make the Mediation Process Successful

Mazen Dweikat: This Prophetic Hadith is what encourages me to exert more efforts:

(إِنَّ اللَّهَ تَعَالَى عِبَادًا أَحْتَصَّهُمْ بِحَوَائِجِ النَّاسِ، يَفْزَعُ النَّاسُ إِلَيْهِمْ فِي حَوَائِجِهِمْ، أَوْلَئِكَ الْأَمْنُونَ مِنْ عَذَابِ اللَّهِ يَوْمَ الْقِيَامَةِ.)

It means (*God Almighty has servants that He singles out for people's needs; people seek them for their needs; those are the ones who are safe from God's punishment on the Day of Resurrection.*)

Nafe' Kelani: "What motivates me to exert more efforts is success and social status."

Saleem Abdulrahman: "My motivations are civil peace, moral obligation, and national duty."

Mohammad Hadieh: "My motivations are humanitarian, good profile, reputation, and of course to make money."

Talal Elhureini: “My motivation is to maintain the reputation of the house that my forefathers left to me.”



Figure 19.5 Skills and Characteristics of a Good Mediator and Negotiator

Jaber Ishtayeh: “To avoid being lured by money, the mediator should be in solid financial standing. If he was destitute and unable to provide for his family's fundamental necessities, he might be tempted to be unjust or unfair.”

Mazen Dweikat: “The hands of the mediator should be clean. It means not accepting money from anyone in order for his or her judgment to stay impartial.”



Figure 20.5 Learned Lessons from Conflicts they Participated in Resolving

Mazen Dweikat: “Every day, humans learn something new from diverse cases, places, and individuals.”

Othman Dweikat: “Palestinians are so kind-hearted that kind words easily satisfy them.”

Mohammad Gharaba: “The cultural and environmental diversions in Palestinian society cause many disputes, making the Reconciliation Man's mission more challenging.”

Ismael Elkharabsheh: The importance of Mediation comes from religion. Prophet Mohammad (PBUH) said to his companions:

(ألا أخبركم بأفضل من درجة الصيام والصلاة والصدقة، قالوا: بلى يا رسول الله، قال: إصلاح ذات البين،

(...

(Would you like me to inform you of something better than fasting, prayer, and almsgiving? They said: Yes, O Messenger of Allah. He said: Reconciling differences between people...)

Nawwaf Elzagharneh: “People's satisfaction is an unrealizable goal.”

Talal Elhureini: “People prevent tragedies by exercising patience when they are angry.”

Jamal Dar'awi: Among other things, I have learned to maintain proper manners. As poet Abu Elaswad Eldu'ali puts it:

(لا تنه عن خلقٍ وتأتي مثله عارٌ عليك إذا فعلت عظيم.)

(Do not ask someone to stop a bad habit, and then you engage in it yourself. If you do so, you should be ashamed of yourself.)

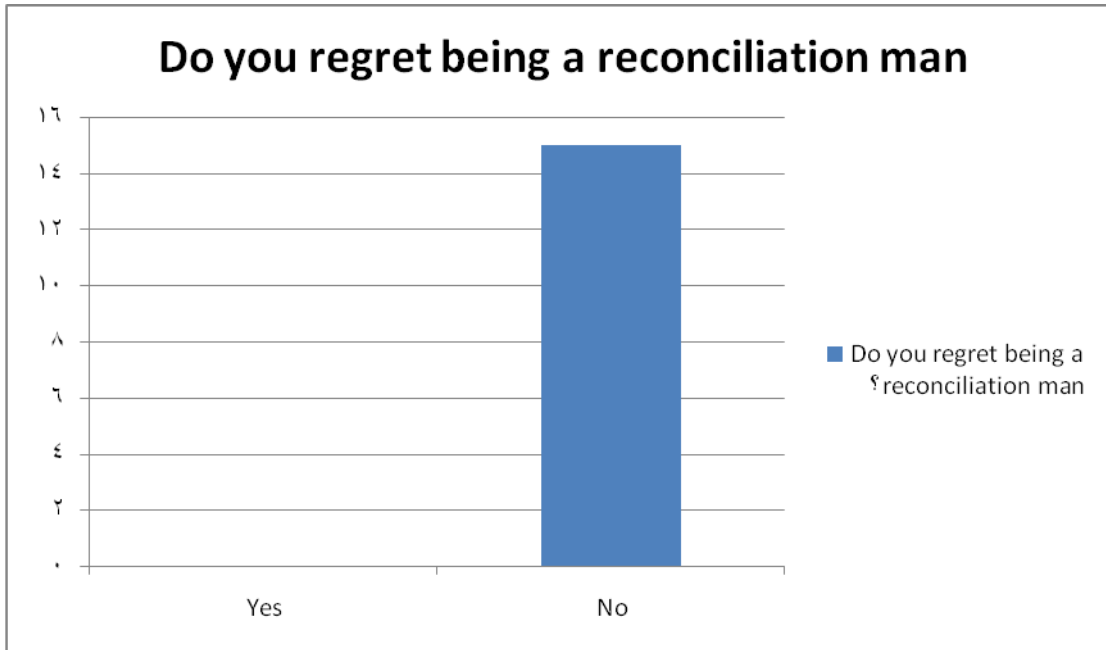


Figure 21.5 Do You Regret being a Reconciliation Man

Jaber Ishatyeh: “I regard my role as a Reconciliation Man as a form of worship, thus I have no regrets about working in this field.”

Mazen Dweikat: “I do not regret becoming a Reconciliation Man, despite the fact that it is stressful, expensive, and time consuming.”

Mohammad Gharaba: “I do not regret being a Reconciliation Man because when I intervene in a conflict and resolve it, I feel so happy.”

Saleem Abdulrahman: “I do not regret being a Reconciliation Man because my father was a Reconciliation Man, and he taught me to be socially responsible toward my society.”

Mohammad Hadieh: “I do not regret involving in this field, especially in Jerusalem.”

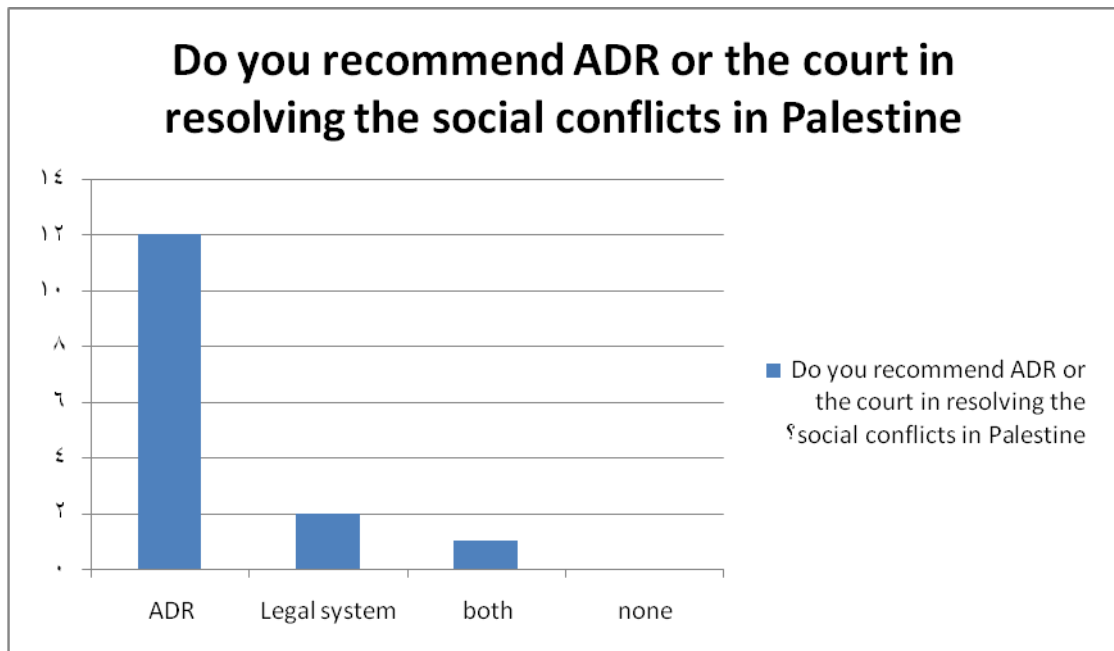


Figure 22.5 Do You Recommend ADR or the Court in Resolving the Social Conflicts in Palestine?

Jaber Ishtayeh: “Despite the fact that our society is clan-based, the legal route is more equitable and fairer in restoring rights.”

Mazen Dweikat: Omar Bin Elkhattab (One of the four Muslim rightly guided Caliphs) said:

(أحيلوا الخصوم إلى الإصلاح ولا تحيلوهم إلى القضاء فان القضاء يورث البغضاء.)

(Refer opponents to reconciliation, for judgment breeds hatred.)

Othman Dweikat: “The clan system is the shortest and fastest way of resolving conflicts and restitution of rights to the victims of the conflict.”

Nafe' Kelani: “I recommend the law and the court. The legal system should be overhauled. “

Saleh Taqateq: “The police and the court transfer cases to the clan system. It is a prove that the clan system is very important in Palestine.”

Mohammad Hadieh: “I prefer Mediation over law, especially in Jerusalem since it is subjected to the Israeli law.”

Jamal Dar’awi: “Because we are under occupation, and the Palestinian Authority does not have control over all areas, an alternative method should be adopted to resolve conflicts, and this method is the clan system.”

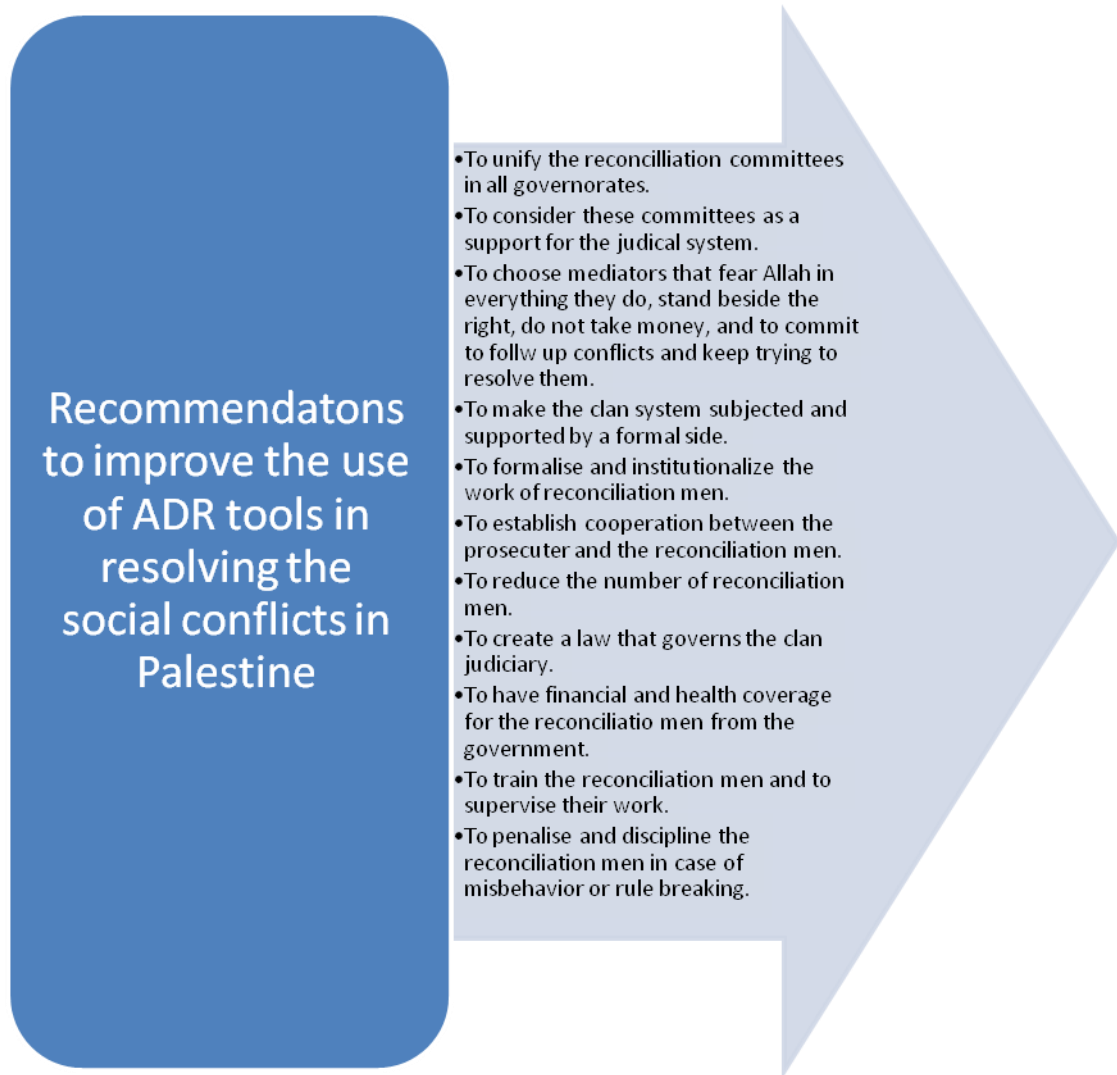


Figure 23.5 Recommendations to Improve the Use of ADR Tools in Resolving Social Conflicts in Palestine

Chapter Six: Data Analysis, Conclusion & Recommendations:

The collected data was analyzed by the researcher according to the research questions. In this chapter, the research questions serve as subtitles.

1) What are the reasons behind using ADR tools (Mediation and Negotiation) in resolving social conflicts in Palestine?

The major reason is that the Palestinian legal system is insufficient. The large number of cases and the small number of judges might be a challenge in the way of resolving cases by the court. Moreover, the laws that are used in courts are very old. In addition to the fact that cases take years in courts without being resolved and the high costs of lawyers might also be a challenge. People have looked for an alternative to the legal system and still can give them their rights or even parts of their rights in less time, less cost, and less effort. Since the Palestinian society is a clan society, and since clans had their law in ancient times, Palestinian people decided to resort to the clan system and clan law as an alternative to the legal system. Saleem Abdulrahman who endorses the clan system for several reasons, including the following: 1. It is faster. 2. It concludes with the parties reconciling. 3. The mediator has direct communication with the parties, whereas in court, contact is made through a representative, the lawyer. 4. The mediator is chosen by the parties, while the judge is imposed by the court.

2) What are the steps/approaches used in implementing Mediation and Negotiation in resolving social conflicts in Palestine?

The procedures vary depending on the type and location of the conflict. Furthermore, it is dependent on the parties involved in the conflict. Regardless of the

nature of the conflict, the following procedures must be taken: 1. To put an end to the conflict by going to the location and requesting a Reconciliation Man to handle the dispute. 2. To accept Atwa as a temporary truce between the parties. 3. To Negotiate with both parties in an attempt to persuade them of the clan settlement, bring justice to the victim, and achieve reconciliation. 4. To send Jaha to acknowledge justice for the victim and express willingness to ensure justice for them. 5. To restitute the right. 6. To sign a reconciliation contract or document 7. To send Jaha that guarantees the reconciliation between the conflicting parties.

3) What are the challenges encountered in using Mediation and Negotiation in resolving social conflicts in Palestine?

One of the major challenges is the Palestinian people's mentality and culture. According to **Mohammad Hadieh**, is that the Palestinian people's attitude is still not open enough to engage in dialogue and choose the resolution themselves. They want a judge to make the decision for themselves. Furthermore, they are unaware of the significance of a win-win situation. They are entirely concerned with their own needs and interests, regardless of the needs and interests of the other party. This mindset poses a significant barrier to ADR in Palestine.

Another challenge is that Mediation and Negotiation processes are not codified, institutionalized or backed by the authority.

4) How success is measured in using Mediation and Negotiation in resolving social conflicts in Palestine?

There are various levels of success. The first level is when a conflict is stopped in a specific location between certain parties, preventing it from developing.

Another achievement is persuading parties to sit down and negotiate in order to resolve their disagreement. Additionally, success occurs when the mediator recommends suitable conflict resolutions, one of which is convincing and satisfying to all parties; another success occurs when parties reach an agreement and sign a reconciliation document. Finally, the ultimate success occurs when the parties reconcile with one another.

5) What are the similarities and the differences between ADR theory (Mediation and Negotiation) and its practice in the Palestinian social context?

Mediation theory and practice are similar in that the mediator is an impartial, neutral third party. The difference is in the number of mediators involved in a given conflict. According to the theory, there are one or two mediators. In practice, though, it is possible to have a hundred mediators in one conflict.

The fact that the Mediation process is voluntary is theoretically applicable at any stage of Mediation. However, it is voluntary at first, but once the parties agree on the mediator and begin the Mediation process, they cannot withdraw, and if they do, they must bear the consequences. Nonetheless, parties are aware of this reality before even beginning the Mediation process.

In theory, the mediator's role is to approximate points of view, identify common interests, and direct and moderate the operation to avoid conflict between parties. Moreover, the mediator has no authority to recommend solutions or even intervene in the parties' Negotiations. In practice, however, this is not the case. In addition to the aforementioned missions, the mediator/mediators sometimes identify a viable solution/solution to the issue, begins negotiating with parties over this

solution/solution, and sometimes imposes this solution/solution on the conflicting parties.

In theory, the mediator leaves the decision to parties, does not decide what is right or wrong, and does not blame or assess either party or the conflict. In practice, however, the mediator/mediators might decide for the parties, might also blame parties for things they did, and could decide what is just and right or wrong.

In theory, either party may seek the services of a mediator to mediate their dispute, or the case may be assigned to a mediator by the court or a governmental institution. In practice, in addition to the methods listed above, when a conflict occurs, mediators intervene to bring the conflict to a halt on the ground without being requested.

In theory, Mediation procedures begin with examining the conflict and understanding it from both parties. In practice, if the conflict continues, the mediators (known as Reconciliation Men in the Palestinian culture) arrive at the site to put a stop to it. Following that, they examine the dispute and gain an understanding of its history, parties, and actors. The second theoretical procedure is mutual between theory and practice, and it involves determining the proper role and strategy for the dispute. The third procedure is to assess the maturity of the conflict and the parties' willingness to reach a peaceful settlement. In practice, if they identify parties who are not ready for an agreement, they give them *Atwa* for a few months or even a year in order to allow them to think of a suitable solution. This *Atwa* allows them to organize their issues, but at the same time no party can assault the other or his/her property in any way. If either party initiates an assault, they will pay the repercussions. The fourth procedure is to facilitate parties' Negotiations in order for them to reach an agreement. In practice, the mediator negotiates with the parties, provides solutions, and persuades

them of these solutions. The final procedure is to negotiate a peace agreement between the conflicting parties. This procedure is reciprocal between theory and practice.

In theory and practice, the Mediation procedures are mutual. Both Mediation theory and practice include an opening statement, joint sessions, private sessions, and a final solution. However, they differ in terms of what is and what occurs throughout the sessions. The mediator in the sessions should, in theory, listen to the parties, take notes, ask questions, paraphrase, and summarize. In practice, the mediator may explain consequences, suggest alternatives, negotiate with parties, and persuade parties to accept solutions.

The following table summarizes similarities and differences between the theory of ADR and its practice.

Table 6.1 Similarities and Differences between ADR Theory and its Practice

| NO. | | Mediation | Negotiation | Medigotiation |
|-----|---|---|---|---|
| 1) | the mediator, negotiator, or Medigotiator | Neutral, impartial third party | Neutral, impartial third party | Neutral, impartial third party |
| 2) | Number of mediators | One or two | One | It might reach to hundreds |
| 3) | Obligatory or voluntary | Voluntary | Voluntary | Voluntary at the beginning then it turns to be obligatory |
| 4) | Withdrawal | Can withdraw at any level | Can withdraw at any level | Cannot withdraw |
| 5) | Mission | Approximate perspectives, find mutual interests | Try to achieve his/her interests, minimize losses | Approximate perspectives, find mutual interests, find suitable solution of the conflict |

| | | | | |
|----|-----------------------|---|--|---|
| 6) | Who decides | Parties | Parties | Parties and sometimes the Mediator |
| | How they are involved | Assigned by parties or cases referred to him/her from a governmental side | Assigned by parties or by a governmental side | Assigned by parties or by a governmental side or they intervene by themselves |
| 7) | Procedures | <ol style="list-style-type: none"> 1. Understanding conflicts from all its sides 2. Determine the appropriate role and strategy for resolving the conflict 3. Check the readiness of the parties to resolve the conflict 4. Facilitate Negotiation between parties 5. Construct a peaceful agreement | <ol style="list-style-type: none"> 1. Understanding conflicts from all its sides 2. Determine the appropriate role and strategy for resolving the conflict 3. Check the readiness of the parties to resolve the conflict 4. Construct a peaceful agreement | <ol style="list-style-type: none"> 1. Understanding conflicts from all its sides but if the conflict is still ongoing he/she intervenes to stop it 2. Determine the appropriate role and strategy for resolving the conflict 3. Check the readiness of the parties to resolve the conflict 4. Facilitate Negotiation between parties and negotiate with parties for a solution 5. Construct a peaceful agreement |
| 8) | Steps | <ol style="list-style-type: none"> 1. Opening statement, joint sessions, private sessions, final solution. 2. The mediator listens, write notes, ask questions, paraphrase, and | <ol style="list-style-type: none"> 1. Opening statement, joint sessions, private sessions, final solution. 2. The negotiator listens, write notes, ask questions, paraphrase, and summarize | <ol style="list-style-type: none"> 1. Opening statement, joint sessions, private sessions, final solution. 2. The Mediator explains consequences, suggests solutions, and negotiate with |

| | | | | |
|--|--|-----------|--|---------|
| | | summarize | | parties |
|--|--|-----------|--|---------|

6) How can we draw the lines between Mediation and Negotiation procedures in the process of resolving social conflicts?

Despite the notion that Mediation and Negotiation are distinct methods of ADR science, they are heavily intertwined in practice. Negotiation is a fundamental level in the Mediation process. Furthermore, it is a crucial skill for the mediator to have in order to be a good and successful mediator. Mediation and Negotiation cannot be separated in the Palestinian social conflict reality since the mediator negotiates with parties at various levels. He/she negotiates with them to persuade them to accept the clan reconciliation instead of going to court by explaining the benefits and drawbacks of both options. Then they negotiate with them in order to persuade them to find a solution to the conflict. If they are unable to reach an agreement, the mediator proposes a solution and negotiates it with the parties. As a result, in the clan reconciliation, those two instruments become one.

The researcher argues that what happens in the Palestinian social conflict is neither Mediation (the theoretical framework of Mediation) nor Negotiation. As a result, a need emerged to create a new ADR tool that combines Mediation and Negotiation together in order to fill this gap in the social science and in ADR science in specific. The researcher prefers to call the process of reconciliation in the Palestinian social conflicts *Medigotiation*. This can be a new ADR technique or tool that is applicable to the Palestinian culture and society. Moreover, this new tool can also be applicable for similar cases in Arab societies that are similar to the Palestinian one. The researcher defines *Medigotiation* as *a process that combines Mediation and Negotiation together in the sense that a third party intervene to stop an ongoing*

conflict voluntarily or even upon the request of the parties. This third party who is neutral and impartial examines the conflict from all its sides and negotiates with disputing parties until they reach a suitable solution or agreement.

Many questions must be raised in relation to this new tool. One of these is, what if one or all of the parties refused this interference? There are two levels to the answer of this question. The first level is that if all parties refuse this Medigotiator, they either refuse to settle their conflict through ADR or accept ADR but with a different tool or Medigotiator. The second level is reached when one party accepts but the other or others decline. Everything in this scenario is related to the Medigotiator's power to convince other parties to accept him as a Medigotiator.

What are the characteristics of this Medigotiator? The Medigotiator has to have many characteristics. He should be socially accepted, experienced, wise, sensible, trustworthy, knowledgeable, cultured, unbiased, objective, and neutral. Moreover, he should have the following skills: confidence, tactfulness, good communication skills, active listening, convincing skills, leadership characteristics, the ability to chime well with a team, patience, the ability to ask questions and answer them, assertiveness, emotional intelligence, and empathy. Moreover, he has to have the mediator's and the negotiator's skills and characteristics.

What is the Medigotiator's main goal? In any Medigotiation process, the Medigotiator has many goals. The first is to resolve the conflict between the parties, to restore and maintain relationships between conflicting parties, and to reduce the number of losses and concessions each party makes. If such goals are not met, the Medigotiator should at the very least try to keep the situation from worsening.

What is the outcome of this process? It's a win-win situation. Mediation may not result in a win-win situation, but Negotiation should. In terms of Medigotiation, it should be a win-win situation.

What might push the third party to intervene voluntarily? Many motives can push a Medigotiator to intervene voluntarily such as social commitment, Safety and security motives, religious reasons, human and national motives, and many others.

What is the nature of the resolution that will result from the Medigotiation process? It is a resolution that is accepted and satisfactory for all parties involved in the conflict. As a result, all parties adhere to it.

Should the resolution be written in a form of an agreement? Mostly yes. But it depends upon the situation. If the conflict were between a husband and a wife and a Medigotiator intervened to reconcile them, they might not write an agreement.

What makes the Medigotiation different from and similar to Mediation and Negotiation as two isolated tools of ADR? I will start differentiating with Mediation. It is similar to it in the sense that it is a third-party intervention, but different in the mutual acceptance over this third party and in the number of the mediators. Mediation and Medigotiation are similar in the sense of characteristics and skills. Mediation also might gather the conflicting parties together to discuss their issues and establish a dialogue between them. But in Medigotiation it is not necessary to gather them in all cases. It depends upon the case to decide whether it is necessary to gather them or not.

However, Medigotiation is different from Negotiation in the sense that it has a third-party intervention but the Negotiation does not. It also differs in the sense that in Negotiation, conflicting parties have to gather around one table to negotiate. In Medigotiation, however, the third-party negotiates with each party separately. Nevertheless, Medigotiation is similar to Negotiation in its skills and characteristics.

The processes of Medigotiation are similar to those of Negotiations. Firstly, the Medigotiator should come to the Medigotiation event well-armed by knowledge about the subject he is going to talk about. He should know in detail all aspects of the conflict, what he wants from this Medigotiation, and what concessions can or cannot be made in this Medigotiation based on his knowledge of the parties. Secondly, he should know well the parties of the conflict, their strengths and weaknesses, their aims and fears, what they want and what they cannot accept. Thirdly, he should know how to neutralize his feelings. He/she should remain neutral even if he/she sympathizes more with one party or more. Moreover, he should not show those feelings to the parties. Fourthly, he should be trained on how to use the language and body language properly, how to hide the reactions, and how to not send messages through facial and body language.

Nevertheless, a Medigotiator should be trained in the skills of Medigotiation in order to achieve success. However, Medigotiation happens every day in our lives without us even noticing or even being trained. For example, if a husband and a wife had a conflict over something, and their voices were overheard by neighbors, then the husband's parents would intervene as a Medigotiator to resolve the issue. Moreover, if two kids are conflicted in the school, the teacher will play the Medigotiator to resolve the conflict. The list of examples of Medigotiation events happening in everyday life is very long.

The Palestinian authority passed the Palestinian Judicial Mediation Law. Article 5 of this law says that “The mediator shall determine the time of each session and notify the conflicting parties or their representatives of the time and place of the session. The mediator shall gather with the conflicting parties or their representatives and discuss with them the issue, their demands, and their requests. He/she can sit

alone with each party. The mediator shall do what he sees possible to approximate points of view to reach the aim of resolving the conflict peacefully. He/she is allowed to express their opinions, showing evidence and the legal documents, showing the previous similar cases and any other procedures that might facilitate the Mediation process.”

7) What motivates Reconciliation Men to play the role of Mediation and Negotiation at the same time in a certain situation?

Motivations differ from person to person. However, they all share the same goal: to resolve the conflict and reconcile the parties. Some are motivated religiously in order to seek Allah's pleasure and blessing. Others are motivated by their reputation, achievement, and money. Others are driven by a sense of social, national, and moral obligation. Regardless of their motivation, they all have the same goal in mind: to resolve the conflict and reconcile the parties.

Conclusion

To conclude, the culture of any society shapes the types of its social conflicts and the way they are resolved. Regarding Palestine, the Palestinian social fabric is characterized by the peculiarity of family closeness. As a result, the reconciliation system is bonded to notable men from large and well-known families who contribute to civil peace and societal safety. Those notable men are called Reconciliation Men. The majority of Reconciliation Men work on all forms of conflicts in groups. Moreover, the majority of them gained their skills in this profession by practice or inherited it from their ancestors, rather than through schooling or education. Additionally, all of the Reconciliation people are males. They are good listeners,

courageous, honest and reliable men. They also employ convincing skills, customs and religion, and diplomatic language, which are powerful means, to resolve conflicts. Nevertheless, the time needed to investigate conflicts and achieve reconciliation varies depending on the case type. It is worth mentioning that most Reconciliation Men continue their mission for religious, social, peace, and security reasons. Nevertheless, they would never abandon a case unless they were rejected by either of the parties, felt there was injustice in the case, or were unable to find a solution. Some Reconciliation Men advocate for the use of ADR to resolve Palestinian social conflicts. Others support resolving them through legal channels. Others choose to combine the two methods. Nonetheless, the majority of them emphasized the significance of the Reconciliation Men's role and advocated for the Reconciliation Men's work to be institutionalized.

In practice, the Reconciliation Men merge the processes of Mediation and Negotiation in order to resolve Palestinian social conflicts. As a result, in order to achieve compatibility between the theoretical framework of ADR and the practice of its tools or techniques in the field, the present study devised another tool called "Medigotiation," which combines Mediation and Negotiation. The study defines Medigotiation as *a process that combines the use of Mediation and Negotiation in resolving social conflicts in the sense that a third party intervenes voluntarily or at the request of the parties to stop an ongoing conflict*. This third party who is neutral and impartial investigates the conflict from all angles and continues to negotiate with the parties until they reach a resolution. This tool incorporates both the characteristics and skills of Mediation and Negotiation. Nevertheless, it differs from both tools in

certain ways but chimes with them in others. Finally, The Reconciliation Men in Palestine unintentionally play the role of Medigotiators.

Recommendations:

1. Considering and implementing all the recommendations proposed by the Reconciliation Men.
2. Adopting the Mediation Law as a mandatory proactive step before resorting to the court.
3. Incorporating the Medigotiation tool into the ADR theory as a new technique that might be appropriate for some societies and cultures similar to the Palestinian one.
4. Conducting further research or studies regarding this new technique, Medigotiation.
5. Paying more attention to the conflicts between palestinians in the eastern jerusalem.
6. Providing Reconciliation Men with more training on how to best make use of this new tool in achieving civil peace.

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Appendix (I)

Task Facilitation Letter

Arab American University
Faculty of Graduate Studies



الجامعة العربية الأمريكية
كلية الدراسات العليا

10\ 8\ 2021

الى من يهمله الامر

تسهيل مهمة بحثية

تحية طيبة وبعد،

تهديكم الجامعة العربية الأمريكية اطيب التحيات، وبالإشارة الى الموضوع أعلاه، تشهد كلية الدراسات العليا في الجامعة أن الطالبة اعتراز محمد ابراهيم ناصر والتي تحمل الرقم الجامعي 201920279 هي طالبة ماجستير في الجامعة العربية الأمريكية تخصص حل صراع، وتعمل دراسة علمية، نأمل من حضرتكم الاعياز لمن يلزم لمساعدتها للحصول على المعلومات اللازمة للدراسة، علماً ان المعلومات ستستخدم لغاية البحث فقط وسيتم التعامل معها بغاية السرية، وقد أعطيت هذه الرسالة بناءً على طلبها.

وتفضلوا بقبول فائق الاحترام

د. شاهيناز نجار

عميد كلية الدراسات العليا



Page 1 of 1

Appendix (II)

Interview Questions

(1) Set One: How many years have you spent as a Reconciliation Man? How many times have you participated in resolving conflicts? What types are those conflicts?

المجموعة الاولى: كم سنة أمضيت كرجل إصلاح؟ كم عدد الصراعات التي شاركت بحلها؟ وما هو نوع هذه الصراعات؟

(2) Set Two: Who requests you to participate in resolving those conflicts (the conflicting parties themselves or a governmental party)? Do you work on those cases alone or as part of a team?

المجموعة الثانية: من يطلب منك الانخراط في حل هذه الصراعات (الأطراف أنفسهم أم جهة حكومية)؟ هل تعمل وحدك على هذه القضايا أم في فريق؟

(3) Set Three: Do all parties have to agree to your participation in resolving their conflict?

المجموعة الثالثة: هل يجب على الأطراف الموافقة على وجودك في حل صراعاتهم؟

(4) Set Four: What tools do you use to convince the parties to come up with a solution? What do you do to avoid failure in resolving conflicts?

المجموعة الرابعة: ما الأدوات التي تستعملها لاقناع الأطراف للجلوس وإيجاد حل؟ وماذا تفعل لتجنب الفشل في حل الصراعات؟

(5) Set Five: What are the procedures followed in most cases? How long does it take to find a solution in most cases? Please provide examples.

المجموعة الخامسة: ما هي الاجراءات المتبعي في معظم الحالات؟ وما هي المدة اللازمة لايجاد حل في معظم الحالات مع أمثلة؟

(6) Set Six: When parties reach an agreement, do they have to sign such an agreement? Is this agreement binding on both parties?

المجموعة السادسة: عندما يصل الأطراف لحل, هل يجب عليهم التوقيع على أي شئ كاتفاقية مثلا؟ وهل تكون هذه الاتفاقية ملزمة للأطراف؟

(7) Set Seven: Do you consider your role with the parties as a negotiator or as a mediator or both? Why?

المجموعة السابعة: هل تعتبر دورك مع الأطراف كوسيط أو كمفاوض أو الاثنين معا ولماذا؟

(8) Set Eight: What do you do to prepare yourself to the Mediation or Negotiation process? When do you quit and withdraw from resolving a conflict? What motivates you to exert more efforts in resolving a conflict?

المجموعة الثامنة: ماذا تفعل لتجهز نفسك قبل عملية الوساطة أو التفاوض؟ متى تتسحب من حل

أي صراع؟ وماذا يدفعك ليزل جهد أكبر في الصراع؟

(9) Set Nine: What are the skills and characteristics required to be a good mediator or negotiator in the social conflicts?

المجموعة التاسعة: ما هي المهارات والصفات اللازم توافرها ليكون المفاوض أو الوسيط في

الصراعات الاجتماعية جيدا؟

(10) Set Ten: What did you learn from these experiences? Do you regret engaging in resolving Palestinian social conflicts?

المجموعة العاشرة: ماذا تعلمت من هذه التجارب؟ هل تندم على انخراطك في مجال حل

الصراعات الاجتماعية الفلسطينية؟

(11) Set Eleven: Do you recommend using Alternative Dispute Resolution in resolving the social conflicts in Palestine (the tribal/clan way), or do you recommend leaving that to the court and the legal system? Why?

المجموعة الحادية عشر: هل توصي باستخدام وسائل حل النزاع البديل في حل الصراعات

الاجتماعية في فلسطين (الطريقة القبلية). أم توصي بترك ذلك للقضاء أو النظام القانوني ولماذا؟

(12) What are your recommendations to improve the use of Alternative Dispute Resolution tools in resolving the social conflicts in Palestine?

ما هي توصياتك لتحسين استخدام وسائل حل النزاع البديل في حل الصراعات الاجتماعية في

فلسطين؟

Appendix (III)**ADR Timeline**

- 1800 B.C.: Mary Kingdom (in Modern Syria) used Mediation in disputes with other kingdoms.
- 1400 B.C.: The ancient Egyptian Amarna system of international relations used diplomacy.
- 1200-900 B.C.: Phoenicians (in the Eastern Mediterranean) practiced entrepreneurship and Negotiations.
- 960 B.C.: Israel's King Solomon arbitrated a dispute over baby and ordered that the baby be split in two, with one-half of the baby going to each mother.
- 700 B.C.: The Rhodian Sea Law codified traditional regulations to determine liability for the cost of lost or damaged cargo.
- 500 B.C.: Mediation through Panchayat, used in India.
- 400 B.C.: Greeks used public arbitrator in city states arbitration, and decisions between city-state were published on temple columns.
- 300 B.C.: Aristotle praises arbitration over courts.
- 100 B.C.: Western Zhou Dynasty established pose of mediator.
- 452 A.D.: As Attila the Hun destroyed city after city in his sweep across Europe, Pope Leo the Great successfully negotiated to spare the city of Ravenna, Rome's western capital.
- 1000: European Merchant Law was used in the marketplace.
- 1263: King Alfonso X the wise, king of Spain ordered the use of arbitration and published a codification, called the Siete Partidas.
- 1400: Venice established first overseas diplomatic office.
- 1632: The Irish Arbitration Law provided a statutory basis for arbitration.

- 1648: Count Maximilian mediated an end to the Thirty Year War for the Holy Roman Empire, establishing contours of Europe for a century.
- 1624-1664: During Dutch Colonial Period, commercial arbitration used in New York city.
- 1664-1776: In British Colonial Period, commercial arbitration use continued.
- 1750s: Benjamin Franklin, as Pennsylvania's Indian commissioner, reported learning persuasion, compromise, and consensus building from Native Americans. He also printed some of their peace documents.
- 1700: George Washington placed arbitration clause in his will.
- 1776-1785: Benjamin Franklin, John Adams and Thomas Jefferson negotiated in Europe on behalf of the weak United States, establishing a diplomatic history for the young nation.
- 1775-1860: From the Continental Congress to Lincoln's inaugural, repeated Negotiations and compromises reached temporary solutions to the slavery issue.
- 1790: Thomas Jefferson mediated between Treasury Secretary Alexander Hamilton and Congressman James Madison, establishing the U.S. capital at Washington D.C. and creating the national debt.
- 1865: General Lee and Grant negotiated the terms of the South's surrender, ending the Civil War.
- 1866: General Howard institutes arbitration in employment agreements between former slaves and former owners.
- 1983: Federal aviation administration becomes first federal agency to use Negotiations to establish rules (RegNeg).

- 1984: Hewlett Foundation begins measure major funding for ADR. National Institute of Dispute Resolution funds pilot programs to encourage state governments to use ADR.
- 1985: National Institute of Dispute Resolution funds pilot programs to encourage state government to use ADR.
- 1987: Administrative conference of the United States sponsors the colloquium on improving Dispute Resolution: options for the federal government, and issues the Sourcebook: Federal Agency use of Alternative Means of Dispute Resolution.
- 1989: Public conversation project begins followed shortly by the consensus councils which use comprehensive consensus processes to address public issues.
- 1990: Negotiated rule-making act directs Federal regulatory agencies to use consensus building and Negotiation to create administrative rules.
- 1990: Administrative dispute resolution act directs federal agencies to expand use of ADR.
- 1990: Civil justice reform act initiates experiments to reform the federal courts with focus on ADR use.
- 1993: President Clinton issues executive order 12871 promoting partnership between federal agencies and their unionized employees and the use of internet-based Negotiations between them.
- 1995: Martindale-Hubble publishes the Dispute Resolution Directory, a comprehensive directory on ADR.
- 2000-2001: U.s. v. Microsoft antitrust case Mediation effort.

Appendix (IV)

Interviewees' information

- My name is Jaber Ishtayeh from Azmout village. I was born at 1964. During the first intifada, and because of the chaos that hit the Palestinian society, many conflicts occurred in the society. As a result, some men and I formed a committee of Reconciliation Men to resolve people's conflicts. This committee was formed of men from Nablus city, its villages, and its refugee camps. People were welcoming us in their houses to resolve their conflicts and everything was fine. At 1994 with the formation of the Palestinian national authority, I was recruited in the preventive security. But deep inside, I was not concerned with security issues but with social issues and resolving conflicts between people. At 2007, I moved to the governorate to work there. I talked to the governor and suggested to establish a department for clan affairs And we did. We faced some interference from people of national authority sometimes but at each time we were clarifying that we are so beneficial to people and that we support the law and not altering it. Our concern was the law governance and justice. Many cases were transformed to us by the governor.

- My name is Mazen Dweikat from balata village. I studied Islamic Sharia at Hebron University. I took my experience from big names of reconciliation in Jordan and here. Our first role in reconciling people started in the first intifada since it was the climax of conflicts.

- My name is Othman Dweikat from Beita village. I worked as teacher in schools for 37 years. I work in the field of reconciliation and a member in the reconciliation committee in Nablus governorate from 1987. I am also a

member of the supreme body of the tribal council of the Northern governorates.

- My name is Nafe' Zeid Kelani from Jenin. I am an imam in mosques. I also work in resolving conflicts between people hoping that we can achieve local peace and security.
- My name is DR. Mohammad Gharaba from Qalqilya. I have taught in the Palestinian universities for 23 years. I also worked at Palestine television. I have a PHD in Arabic literature
- My name is Saleh Yousef Taqateq. From Askar camp/ Nablus. I have worked for 35 years as a teacher in UNRWA and now I am retired. I have been working in the field of clan reconciliation since the first intifada of 1987. I have a master degree in Arabic language and public relations from An-Najah National University. I was a member in the high national committee of the North areas, as a result, any problem occurred or any conflict happened was send to us as a committee. After that the committee members meet to study the case and decide the suitable solution.
- My name is Saleem Abdulrahman from Salfit governorate. I have worked as a director of local peace and security department in Salfit governorate for 10 years. And now I work in the supreme body of the tribal council. I carry a master degree of planning and political development.
- My name is Mohammad Hadieh, The establisher and the executive director of ACT institution for conflict resolution. This institution is located in Jerusalem. I used to be a legal consultant in the department of Negotiation affairs. I spent five years as a consultant of the security and the rule of law files regarding Jerusalem in the Palestinian liberation organization. I spent another five years

as a consultant in the Palestinian ministry of justice regarding the judicial application of annex IV of the Palestinian-Israeli judicial cooperation. All these years gave me an experience in Negotiation and Alternative Dispute Resolution. My academic background is legal; I have BA in law from Jordan. MA in general law from Alquds University. At 2017-2018, the idea was that we need a body or a frame that alter the Israeli courts in resolving civil and commercial conflicts. Since I believe in community work I chose to be a nonprofit institution. The idea of this institution was new in Jerusalem and it is new in Palestine. When we started to work we focused more on Arbitration because it is an ADR tool that is more obligatory than the other tools. By time we found out that in spite of the fact that the Israeli courts are really dangerous but the most dangerous is clan system in Palestine. This motivated us to pay more attention to Mediation. My background on Mediation is not academic but I took a 60 hours training regarding Mediation for the first time with the Israeli lawyers syndicate at Jerusalem. 10 hours of this course were about Negotiation and 50 were about Mediation. Moreover, we were able to host an Irish expert in Mediation who came and gave us an intensive course in Mediation for three days. I was really concerned with this issue and the last few years I focused in my institution over Mediation. Today I give trainings in Mediation and Arbitration. I want also to tell you that I am a member of the committee that is working upon the Palestinian Mediation law. We are in our final steps regarding this issue and we hope that this law will be approved and passed. Nevertheless, most issues that we work on need Arbitration since people do not understand the philosophy of conversation and contact well. Moreover, they do not realize the importance of win-win outcome. They want

what they want only without thinking of the other party or parties. Most issues that we work on using Mediation are issues that referred to us from the court. But in spite of all of that, and since Mediation is voluntary, any party can withdraw from any Mediation process at any time they want even if they signed over a Mediation agreement. Regarding commercial issues, and since that there is an Arbitration commercial chamber, most of commercial issues are referred to it to be resolved by Arbitration. Nevertheless, since the Israeli laws contain Mediation law, courts transfer some commercial issues to Mediation in a certain stage. Those issues go to a Mediation judge that offers a settlement without going through evidences and evidence. Moreover, personal status issues are also transferred to Mediation as an obligatory step before going to the court. So most of the issues that we work on are civil, commercial and personal status issues. Moreover, it is worthy to tell you that we work over the law project of Mediation in Palestine. I am one of the members of the committee that works upon writing this law project and we are in our final levels of preparing it. It is really good to know that in the following few months we will have a Mediation law in Palestine. This committee was formed since almost two years, in the first year we conducted five or six meetings but because of covid-19, the committee stopped its work for almost 11 months. After that, another small committee was formed (which I am a member in) another two meetings were conducted in the last two months and we are now in our final levels toward the final draft. The first draft was made in the Palestinian ministry of justice in 2012 but they did not work well upon it. They reworked over it now because of its importance in the current circumstances because of many reasons like: the increasing attention towards

Alternative Dispute Resolution, the heavy burdens over the court's shoulders, the long time the cases take in courts, the increase of the tribal judiciary role which needs a legal frame that organize its works specially that we have a law regarding Arbitration since 2000 but of course it is different from Mediation and Negotiation. I think that if we keep working upon the law project of Mediation, in two months it will be presented for the first reading in the cabinet council.

- My name is Ismael Sleiman Elkharabsha. We are originally from Alrashaida clan from Jericho. I studied engineering in Jordan and I worked at the local government for 23 years. I have an experience in lands, building license, and measuring areas so I have experience in resolving conflicts specially those regarding lands ownership, boarders, and streets.
- My name is Hussein Alnajada from Al ka'abna clan. I am from Jericho. I am a clan judge that I inherited this job from my father and ancestors. I am a "Sahib beit" and "manqa' dam" that is very famous in Palestine.
- My name is Nawwaf Sarhan Zagharneh from Hebron. My scientific qualification is education and psychology. I am a retired school director in UNRWA. My tribal experience started from the beginnings of 1980s. my father was a "Sheikh" so after I finish my work I used to sit with my father at diwan and I learn a lot from him. These kind of things are learnt by practice and experience. I inherited this gift from my father and my grandfather.
- My name is Talal Ibrahim Elhureini from yatta/ Hebron. I inherited this job from my father and ancestors. We are known as "blood finishers" (منهى دم) in Hebron mountain. I mean by "manha dam" that it is a high just court to

resolve conflicts that related to murder and blood. My scientific qualification is the seventh grade.

- My name is Nayef Abdullah Elbasaytah. I am a civil engineer and I have a master degree in development and city planning. My father was the dean of reconciliation in South areas and I inherited this experience from him. My father was famous in the South in clan judgment so I took the chance in writing documents, arguments, and agreements for my father. After I graduated, I bought a car that allowed me to accompany my father in his movements. This also gave me a chance to dive deep in this field.
- My name is Mousa Ka'abna, married to two wives. I am a Bedouin and the Bedouins are known for having many wives. I studied for the seventh grade. I became a Reconciliation Man by inheritance from my father and grandfather.
- My name is Jamal Dar'awi from Bethlehem from Ta'amra clan. I am 54 years old. I have a master degree in crime science and criminal justice. I work as the general director of political direction in Bethlehem and the head of the joint services council of the east of Bethlehem which is formed of twelve local bodies.

الملخص

تهدف هذه الأطروحة الى دراسة الصراعات الاجتماعية التي تتطلب استخدام وسائل حل النزاع البديل خصوصا الوساطة والتفاوض. تبحث هذه الأطروحة أيضا التحديات التي تواجهها هذه الوسائل في الواقع الاجتماعي الفلسطيني. كما تهدف هذه الأطروحة أيضا الى قياس مدى التشابه والاختلاف ما بين الاطار النظري لوسائل حل النزاع البديل وتطبيقه الواقع الاجتماعي الفلسطيني وذلك لفحص مدى مناسبه للثقافة الفلسطينية. كما تهدف أيضا الى دراسة وسائل حل النزاع البديل كخطوة اجبارية قبل اللجوء الى المحاكم والقضاء.

مجتمع الدراسة في هذه الأطروحة هو رجال الاصلاح الذين يعملون تحت مظلة أقسام السلم الأهلي التابعة للمحافظات. اشتملت العينة خمسة عشر رجلا من رجال الاصلاح المعروفين من محافظات مختلفة من الضفة الغربية.

المنهج المستخدم في هذه الأطروحة هو المنهج النوعي الوصفي كما أن الأداة المستخدمة لجمع المعلومات هي المقابلات الروائية.

توصلت الباحثة في هذه الأطروحة الى العديد من النتائج، أبرزها أن الثقافة الفلسطينية تتطلب ابتكار أداة جديدة من وسائل حل النزاع البديل عبر دمج الوساطة والتفاوض معا وذلك للتمكن من حل النزاعات الاجتماعية الفلسطينية بطبيعة أكثر نجاعة وفعالية. هذا الدمج يسهل التوافق ما بين الاطار النظري لوسائل حل النزاع البديل وتطبيقهم في الواقع الاجتماعي الفلسطيني. أطلقت الباحثة اسم وساطة تفاوضية على هذه الأداة الجديدة. تعرف الباحثة هذه الأداة الجديدة على أنها وسيلة تجمع الوساطة والتفاوض معا حيث أن طرف/أطراف ثلاثة تتدخل لايقاف صراع قائم اما بشكل طوعي أو بناءا على طلب أحد أطراف النزاع. هذا الطرف الثالث الذي يجب أن يكون محايد وغير متحيز لأحد الأطراف يدرس الصراع من جميع جوانبه ثم يتفاوض مع الأطراف لإيجاد حل مناسب للصراع حتى يتم التوصل الى اتفاق بين الأطراف المتنازعة. السمات والمهارات التي يجب أن يمتلكها الوسيط المفاوض هي سمات ومهارات الوساطة والتفاوض معا. تتشابه هذه الأداة الجديدة من أدوات حل النزاع البديل مع الوساطة والتفاوض في بعض النقاط وتختلف معها في نقاط أخرى.

قدمت الباحثة العديد من التوصيات أهمها: 1. أخذ توصيات رجال الاصلاح بعين الاعتبار وتطبيقها. 2. اقرار وتبني قانون الوساطة في جميع نواحي الحياة كخطوة استباقية اجبارية قبل اللجوء للقضاء. 3. اضافة الوساطة التفاوضية للاطار النظري لوسائل حل النزاع البديل كأداة جديدة ملائمة لبعض المجتمعات والثقافات للثقافة الفلسطينية. 4. اجراء أبحاث ودراسات

اضافية بخصوص هذه الأداة الجديدة وهي الوساطة التفاوضية. 5. تدريب رجال الاصلاح على هذه الوساطة التفاوضية بشكل أكبر وتعليمهم كيفية استخدامها لتحقيق السلم الأهلي.