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Faculty of Graduate Studies

**The Intervention of the Reconciliation Committee's
(The Tribal Judiciary) and its Impact on Civil Peace
and the Official Judiciary in Palestine.**

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**This thesis was submitted in fulfilment of the
requirement for the master's degree in conflict
resolution**

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Declaration

I, the undersigned, the author of the master thesis entitled “**The Intervention of the Reconciliation Committee’s (The Tribal Judiciary) and its Impact on Civil Peace and the Official Judiciary in Palestine ”**.”

Where I submitted to the Arab American University a Master’s degree and that it is the result of my own research, except as indicated, of which none has been offered for a higher degree to any university or other educational institution.

Name:

Signature.....

Date.....

Dedication

To the spirit of my deceased father, God rest his soul The moralist of teaching and education and to my mother, the owner of the land, the soul and the heart; May god bless her. To my life's companion, my wife, my son and my sweet daughters. To my dear brothers and sisters. Everyone else who deserves thanks. Thank you.

Acknowledgment

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I also thank the faculty members of the Arab American University, as well as the judges, prosecutors and lawyers.

Abstract

This study aimed to identify the role of tribal custom and reform committees and their impact on the official judiciary in Palestine. This study includes all segments of Palestinian society in addition to all workers in the official and tribal judiciary, in addition to a group of lawyers specialized in civil and penal law. In order to reach a clear view on this topic, I also chose some pending cases and cases that have been settled in courts, which have been directly influenced by customary and tribal judiciary. The research also involved the conducting of interviews with a specialized segment of the formal judiciary and the statutory laws dealing with the reform and clan societies in Palestine, which were later, analysed in order to reach the result of the study.

This study proved that the reform committees directly interfere in the job of the regular judiciary in Palestine by interfering in the conflict resolving the existing conflict, and closing the file in the regular courts or at the Public Prosecution stage. The study also demonstrated that Palestinian citizens trust the reform committees more than the official judiciary to solve their disputes. Additionally, the study showed that the various issues that citizens address to the reform committees in order to solve them are issues or problems that are criminal nature involving, honour violations and other issues. Because of the sensitive nature of the Palestinian society, it is difficult for the formal judiciary to solve these kind of disputes or the same matter before the formal judiciary would require a long time to issue a decision in these types of disputes, not to mention preserving civil peace between the litigants themselves during this time. The study also demonstrates the

success of the reform and tribal judiciary committees in resolving disputes between citizens very quickly in a way that preserves civil peace and security among citizens at the lowest financial costs.

Based on the results of the study, the researcher made several recommendations. First, the legislature, when he put a legislation related to the judiciary system, should be aware of and knowledgeable in the informal judiciary and its procedures, in order to avoid a violation of the law or interference with its powers.

The study clearly shows that the representatives of the informal judiciary issued verdicts and made decisions that contradict with the basic law, legal principals, and the rules of justice. Some of which included collective punishment, such as deportation, or financial compensation, all in violation of the Personal punishment principles. Therefore, it is important to recommend an end to issuing such decisions, whoever issues it must be held legally accountable.

Second, the study shows that the Provincial offices have decided on many cases and disputes in terms of keeping civil peace, whereas this action is not within the Governor's jurisdiction. From this point, the legislature should legislate a law to specify the powers of the governor in a way that does not contradict with the independence of the judiciary and the principal of sovereignty of law.

Also the researcher conclude from the study that the informal judiciary verdicts, are not allowed to be implemented by the enforcement courts. While this characteristic is enough to destroy the informal judiciary system. Accordingly, the legislature should

legislate a law that allows the implementation of the informal judiciary decisions in the regular courts.

In the same matter the study also notes that all the presidential resolutions that have been issued in order to organize and form the system of the reform committees in Palestine have been cancelled. Accordingly, the legislature must issue a decree or a law to regulate the work of the reform committees in Palestine.

Additionally, one of the reasons the conflicting parties choose the reform committees to resolve their disputes is the lack of confidence in the judicial system, and the lack of practical experience of the judges due to their young age. Accordingly, the Supreme Judicial Council must develop the expertise of the regular judges through relevant courses in the customs law and legal laws that are used by the informal judiciary.

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I. Chapter One

Problem of the study and its significance

- **Introduction**
- **Research problem**
- **Objectives**
- **The important of the study and the justifications**
- **Study question**
- **Study methodology**

1.1 Study background: -

Reconciliation committees (tribal judiciary) have a long history in Palestine. However, I believe that the geographical area of this model of judiciary is concentrated mainly in southern Palestine, representing one of the most organized and effective social organs in Palestinian society; especially in resolving disputes and reducing their exacerbation, without the absence of this regrettably. The young factions, however, are mostly unaware of the origins of this judiciary.

Since the Palestinian authority entered the picture and extended a form of limited control over the Palestinian territories, it has imposed the rule of law and started a process of institution building. Soon after the people began to view the reconciliation committee system as a backward traditional system, seeing the official judicial system as the proper mechanism to meet the needs of modern society, taking into consideration the whole kind of classes and levels to reach a just solution to the differences and disputes between people.

Prior to the arrival of the Palestinian Authority, the reform committees were part of the social system in Palestine derived from customs and laws, based on the belonging of individuals to control behaviour and prevents the occurrence of the dispute. This system ensures that rights of communities and individuals are defined by a broader definition of rights that are lacking in the present judiciary. By weighing collective rights over material rights, and several other important considerations that are not explained by

“modern” laws, the system considers the concepts of dignity and rehabilitation away from material punishment (such as imprisonment and a fine).

The most important characteristic features of the reconciliation committees are the fact that it seeks reconciliation, after punishing convicted of opposing parties, in order to remove all dispute causes between the groups to ensure social cohesion. This consideration for social cohesion seems missing in the modern formal justice system in favour of what it calls the state security and sovereignty.

Also, the existence of reform committees in Palestine is very old and can be traced back to the beginning of the Bedouin tribes before the emergence of Islam and has a strong foundation which continues into the present. The customary judiciary provide a high level of protection and security for dispute resolution through the issuance of a warranty from the tribe, and allowing the disputing parties to choose their own judges, because of his quick way of resolving the conflict. This all happens far away from the formal judiciary, which's save time and effort

While the reform committee's job is considered as customary judiciary, which has been handled and transported through the mind, and the friction of the son with his parents and also inherited from grandparents, unlike positive law codified in the French and British rule periods.

Also, the most important features of the reform committees (customary judiciary) in Palestine is that they issue verdicts on the conflict cases after hearing all the involved

parties and understand the whole problem, they make sure that justice circulate among the disputing parties so they do not oppress one of the parties.

On the ground, the reform committees seem totally incompatible with the formal judiciary, because of the shortage and imbalance in the way the formal judiciary deals with disputes or by the inability of the law to resolve some of them. However, many disputing parties resort to resolve disputes within the reform committees, because of the speedy resolution of conflict through customary judiciary, especially in cases known as ‘blood cases’ involving murder and other social problems reaching a satisfactory solution to the parties. Unlike the formal judiciary, which is characterized by multiple to resolve a case in Palestinian courts, which may take many years.

In the same matter, Palestinian society is a tribal society and has its own customs, traditions and behaviours, which are passed down through generations and spread within the community to meet their needs and ambitions.

Even though the most important features of the reform committee’s job (the tribal judiciary) is that the conflicted parties eventually come out satisfied; the tribal judge must be in accordance with the provisions of Sharia and does not harm the Palestinian judiciary, while resolving disputes between the adversaries. This complex balancing of factors is only achieved because of the qualities and expertise of the tribal judges and the confidence of the adversaries as well as the people in general.

However, we must be aware of one thing that the reform committee’s job is not a replacement of the official judiciary. It is kind of a top-up and playing supplementary

role to come out with a safe society where integrated parties are governed by law, through the transfer of the Palestinian court where necessary. Some of the complicated cases which are rooted in tradition begin with the reconciliation committee's in order to resolve these cases following the customary reconciliation within the community. Whereas sometimes the conflicted parties individually transfer the case from the regular courts to the reform committees in order to resolve the dispute, each according to the jurisdiction of the reconciliation.

1.2 Literature review:

In this literature review, I believe this study is very important because the Palestinian community is more likely to head for reform committees to resolve **its** conflicts rather than to choose the formal judiciary. There are two main reason behind this belief. First, is the long occupation that the Palestinian people have endured, which has led to a lack of trust for the judiciary which is seen as being administered by the occupation. The other reason is the fact that the reform committees deal with some cases or in some types of conflict in Palestine that present challenges to the formal judiciary.

The reform committees (tribal judiciary) in Palestine have been inherited from one generation to another and the secret behind their prosperity as the traditional way of resolving the conflict during the political and social fluctuations that Palestine has gone through. It is present in force and is often able to resolve many disputes, although sometimes there is a need the intervention

of the formal judiciary, if there is a refusal to voluntarily submit to the obligations of the reform committee's judgment¹.

Sometimes, conflicted parties go to the reform committees (tribal judiciary) to resolve disputes because of efficiency. While many formal judges lack experience, the cost of the proceedings would be unbearable for the conflicted parties,² whether the lawyer fees or courts fees throughout the long duration of litigation that lasts for several years, and sometimes the political affiliation of one of the parties to the conflict also affects the formal judiciary judgment.

On the other hand, no one can deny that the official judiciary in Palestine is the sole basis of justice and cannot be affected by external factors or to rely on a specific person that will impact the judgment, whereas the problems which are raised by the reform committees (tribal judiciary) is not affected by external factors, because of its consistency with the principles of justice and human rights. Which requires it to be complementary with the official justice system.³ Even though it is a demand of some conflict parties as an alternative means of resolving some disputes is to resort to reform committees (tribal judiciary) as an alternative to the Palestinian judiciary, as a way to resolve family problems among people in a friendly way within the Palestinian community⁴.

¹ Judicial and tribal reconciliation and their impact on the regular judiciary in Palestine, by Nadera Shalhoub and Mustafa Abdel Baqi, pp22-29

² Palestinian Center for the Independence of Law and Justice "Musawah" The implementation of judicial decisions and guarantees of the proper administration of justice.

³ The Palestinian Centre for the Independence of Law and Justice "Musawah" protecting the rights and freedoms of individuals

⁴ Article Does the tribal judiciary conflict with the Palestinian regular judiciary, Faris Abu Shiha No Post

In Hussam Zakarneh thesis ‘‘ The Role of Clan Reformists in Resolving Local Conflicts between citizens in the northern West Bank governorates’.’ Hussam negotiates the importance of the role performed by the tribal reform committees in resolving local conflicts between citizens in the governorates of the northern West Bank in a quantitative study where the researcher relies on a random sample of citizens to define the impact of tribal reform committees on resolving local disputes.⁵

And here I should mention that the current thesis ‘‘ The Intervention Effect of the Reform Committees on Civil Peace and the Official Judiciary in Palestine’’ differs from Hussam Zakarneh’s thesis and other similar studies in which it’s a qualitative study that relies on primary data, structural interview, status laws, presidential decisions and case studies.⁶

While most of the previous studies on this topic come out with the development of social, political and economic, especially the educational and cultural development, did not stop the Palestinian Orientation to resort tribal justice, in order to solve their life problems. Resorting to tribal justice is generally considered the first step in finding a solution, before resorting to the official authorities’ laws, regulations and courts. The presence of the Zionist occupation and its results such as manifestations of sedition and a security coup helped this tendency. In addition, the weakness of law and its institutions, and corrosion of its roles, led many Palestinians to return to their traditions, and resort to

⁵ Zakarnh hussam, thesis ‘‘ the role of clan reformists in resolving local conflicts between citizens in the northern West Bank governorates ’’ Arab American University- January- 2018

⁶ Presidential decree issued by President Yasser Arafat regarding the formation of tribal committees in Palestine-9\11\1994

their source of morals, values, customs and traditions, which are represented by the tribal judiciary.⁷

Despite the fact that Sharia courts examine indecent assault and murder cases, Palestinians prefer at first to resort to the tribal judiciary. This because they believe it is the easiest and closest method to reach a solution that bridges the gap between litigants, based on inheritances, customs and original Arab customs, which includes healing wounds, evacuating hatred from souls, as well as the return of friendliness and cohesion between litigants.⁸ The tribal judiciary over many years, has remained and will remain the first alternative to judiciary in eastern societies, especially the Palestinian society, which is governed by a set of customs and traditions. The Palestinian community is rich in institutions that root tribal judiciary emanating from reform committees, which contribute to solving many problems and ending many disputes.⁹

Abu Nabil Shaat, director of tribal affairs in Rafah governorate in the southern Gaza Strip, emphasized that Palestinian people frequently resort to tribal rule; tribal judiciary cannot be a substitute for the legal judiciary. He also indicates that Palestinians resorted to him in the past when the judicial authority was absent, and the Palestinian lands were under the Zionist occupation authority. They continue to resort to him due to the absence of a strong executive authority on the ground. In addition, he stressed that the tribal Judiciary and reform committees' decisions are prevalent in solving problems among Palestinian society's members, and he added, if there were no reform committees

⁷ Tribal Reform Committee Jenen Tribal justice is the first rule of conciliation in Palestine "2"

⁸ Same previous study

⁹ Same previous study

or tribal leaders' efforts (Makhateer) , the Palestinian society's situation would be worse than it is now.¹⁰

Another study, "Historically, Reformists and tribal judiciary", notes that along with the Palestinian national movement, the tribal judiciary played an important role in preserving civil peace, societal fabric and social stability, as well as their role in settling disputes between citizens, after the occupation of the West Bank and Gaza Strip in 1967. This was reflected positively by not resorting to the courts and police of the occupation. Moreover, this may be the same reason that pushed the Palestinian community living under occupation to produce its own national judicial system.¹¹

However, despite the methods in which Palestine has passed in order to establish an independent Palestinian state, its accession to dozens of international conventions and treaties related to human rights, and official Palestinian efforts to strengthen and enhance justice sector institutions in particular, and especially judiciary, as well as Supremacy of law; and, despite the strong presence of Palestinian civil community institutions, there is still a remarkable presence with these contradictions of reformers in Palestinian society, which raises more questions about roles, power relations, and the conflicts of interest among e authorities.

At the top of these questions, is it possible to abolish the reformers' role and permanently remove them from the scene? The answer is simply no, why? Because there is an official and social recognition of tribal judiciary and reform. In addition, Palestinian

¹⁰ Same previous study

¹¹ Tribal Reformers' role in maintaining civil peace from a human rights perspective. Dr. Omar Rahal Professor of political science at Birzeit University

society, with its culture and collective identity, is a family and tribal based society. Despite the applied Penalty law in Palestine No. 16 of 1960, it does not stipulate, for example, about deporting the murderer, the rapist, or the aggressor. Therefore, in reality, it is not possible to have an end to the bloodshed and acts of vengeance without the intervention of clansmen (Reformists), because this is related to custom and traditions.¹²

Civil peace means that societies and their individuals have the ability to live their lives (free from fear) and (free from need). In addition, every member in community shall feel safe from material and psychological threats; they also shall enjoy a decent standard of living. The concept of human security is located at the core of civil peace, which considers the individual's needs as a reference in dealing with, and treating, security instability.¹³

On the same matter deals with that as well. Civil peace can be understood as an approach that focuses on individuals, and it responds to the security instability at local level. Achieving civil peace begins by collecting a wide range of actors in the country and civil society, in order to determine the main causes behind security instability. In addition, a set of coordinated response formats can be prepared, after hearing views expressed by all individuals in the community. One of the main pillars in this regard is building the capabilities of communities, local authorities, and those who provide security services and reinforcing their will, in order to deal with security instability in an effective and efficient manner.¹⁴

¹² Same previous study

¹³ Same previous study

¹⁴ The tribal jalwa and its effects on human rights and civil peace in Palestine, research presented to the Palestinian Foundation for Empowerment and Local Development Dr. Omar Rahal

In the same matter, The Palestinian National Authority found that it is not possible to dispense with the tribal judiciary, as the tribal judiciary and the official judiciary both aim to support the rule of law, access to justice and bring about social peace. With the establishment of the Palestinian National Authority, specifically on 14/9/1994, the administration of tribal affairs was reconstituted by presidential decree NO 4557 and published in the official Palestinian Gazette. On November 9, 1994, President Yasser Arafat issued a decree to establish the administration of tribal affairs. On February 16, 1997, Muhammad Fahad Al-Araj from Al-Sawahra was appointed as an advisor for tribal affairs under the name of the General Administration of Tribal Affairs and Reform to be affiliated with the President's office . Later, the administration of tribal affairs was attached to the Council of the Ministers. On 15/3/2005, the Department of Tribal Affairs and Reform was attached to the Ministry of Interior.¹⁵

There is a Department of Tribal Affairs and civil peace in the various governorates. On the organizational level, the Fatah movement established the Palestine Tribes' Committee for mobilization and organization. The Hamas movement established the Association of Palestinian Scholars, and there are independent reformers.¹⁶

Reformists and the tribal judiciary played an important role after the occupation of the West Bank and Gaza Strip in 1967 in establishing civil peace and preserving the social fabric. As reform has become of great importance in people's lives due to the refusal of many Palestinians to resort to the occupation's courts and police. Citizens used to solve their disputes by resorting to reformers and customary judges. The reformists and

¹⁵ Civil peace plan for Bethlehem Governorate" human right and democracy media centre", "shams", Dr Omar Rahal

¹⁶ Same previous study

tribal judiciary were also active in all cities, villages and camps of the homeland during the First Intifada of 1987.¹⁷

1.3 Research problems:

Most of the problems in Palestine are solved through tribal committees that take place to adjudge in these cases and resolve them. Whether it was a financial case or social case, this responsibility did not prevent the formal judiciary from intervening in these cases, (General right), or issuing judgments. In contrast, the judiciary has a major role to implementation of the tribal decisions issued by reform committees, through the implementation the official judiciary court which is the only legal means that turns decisions into a physical reality. The enforcement court, however, does not implement all rulings issued by the tribal judiciary for two reasons. The first is the absence of a law or system that regulates the implementation of judgments issued by the tribal judiciary. And the second reason, is that sometimes the nature of the judgments issued by the tribal judiciary is inconsistent with the applicable positive laws and international treaties that the Palestinian National Authority has joined.

1.4 Research questions:

¹⁷ Same previous study

If we have a deep look on the research subject, there are several questions that come to mind, which we must find answers through this research.

- Are the reform committees in Palestine considered an official judiciary body in Palestine and did the reform committees take the place of the official judiciary?
- What is the relationship between the reform committees and the official judiciary?
- Which parties are authorized to appoint reform committees and whether there are certain considerations in the selection of these committees?
- Who regulates the reform committee's work, and if it's been provided in one of the positive laws
- What or how do the reform committees deal with the members of the conflict and is the judgment issued by the reform committees binding on the parties and does the regular judiciary recognize the reform committee's judgment?
- Who is responsible for the reform committees and who does it belong to?

1.5 The research objectives is accumulated in the following point

This study aims to achieve the following:

- Identify the tribal judiciary and reform committees in Palestine, describe and diagnose

- Identify the relationship between the reform committee's job in Palestine and the official judiciary
- Develop recommendations on the duties of reform committee's job and tribal justice within the current and future Palestinian justice system
- Identify the factors and causes that are directly associated and give the strengthening to the duties of the tribal judiciary in Palestine

1.6 The importance of the study:

Palestine is considered to be one of the countries that carries the traditional tribal characteristics as a legacy and dressed up the regime and progress through time, while trying to keep up with the global development and integration with foreign cultures, customs and civilizations. At this part, we can touch the duplication between the inherited system and the followed system as they are currently applied.

The significance of the study and its justification can be summarized in the following:

1. The intervention effect of the reform committees on civil peace and the official judiciary in Palestine.
2. Inconsistency of the jurisdiction between the work of the reform committees in Palestine and the official judiciary.
3. The Difficulties of implementation the reform decisions.
4. Mandatory decision of the reform committees on the official judges.

1.7 Research methodology:

Research methods can be defined as an organized process of gathering, analysing and interpreting information before reaching to the final results and recommendations. Consequently, the methodology of this study is qualitative and quantitative at the same time, because the researcher will gather the preliminary information from the sources and then analyse them to understand and achieve the ability to predict the possible scenarios for introducing to reach his objective of the study, by analysing research questions and linking those to the disputes that are separated or referred by the individuals of the conflict to the reform committees in Palestine, especially the murders on the basis of revenge originally considered in the Palestinian courts by the official judiciary.

Chapter two:

- Civil peace, the rule of law, and alternative methods of conflict resolution.

- **Reformation**
- **Civil peace**
- **The rule of law**
- **Alternative methods of conflict resolution.**
- **The civil peace and the official judiciary**

2.1 Preview: -

Civil peace represents the concept of national societal interdependence based on accepting diversity, rejection of violence and coercion, and civilizational and peaceful interaction with all persons involved in citizenship, regardless of their differences. Also civil peace reflects the level of development of societies and the level of stability and prosperity. While the underdeveloped societies go to sectarian, doctrine and class fighting, and this is what drives the wheel of their development further back. While you see the developed societies are racing to light up on the common factors among its citizens in a national high mood and a desire to achieve further progress and prosperity.

In the same matter civil peace is tightly linked to the rule of law, which guarantees equal protection of human rights for individuals and groups, as well as equality of punishment between them under the law, and ensure that all citizens are treated equally and subject to the law and not to the whims of the powerful. Also the law should also provide protection to the most vulnerable and impoverished groups from exploitation, injustice and abuse. Therefore, governments must create the institutions and frameworks necessary to maintain law and order, and put these laws into Implementation, also find a way to implement them, and resolved differences by binding decisions of the parties issued by an independent and trustworthy judicial authority.

Whereas the transformations that the Palestinian society that gone through in the past years exacerbated the violent tendencies within the society, and the reinforced of the power tyranny of the relations between the different components. Which manifests itself in the transition from the collective national identity to the sub-identities and factional

fanatics (family, clan, tribe, sect, organization, and faction). In addition, the tribal law prevails over regular law.

Whereas in recent years, has emerged a phenomenon that approaching to the tribal judiciary by large sectors of citizens, especially in areas B and C, while the police had directed the parties of the conflict or the complaint to the reconciliation between them to end the issue or the police will arrest the parties to the conflict if they rejected the settle, especially in fight. This procedure was followed in order to reduce the time and effort that would have taken in case the parties of the conflict resorted to the regular courts, without the complainant gaining his right from the defendant, consequently, the weaker party give up to punish the perpetrator, which may encourage others to commit more crimes, and nurtures a spirit of hatred and, so how if the aggressor is from the families who have interest and money, Which is easily extraction reconcile from the other parties (the complainant) not to mention that the hatred a and revenge remain in The mentality of the oppressed.

As a result of this role and its importance, it has been noted in many contentious issues, disputes and problems dealing with law enforcement agencies, devoting the clan power into the regular authority, by referring those cases for adjudication through the tribe, and keeping them outside the legal framework to hold the perpetrator accountable and achieve the right and redress of the oppressed. While leaving the cases unresolved, and returning them to the influential people in the clan Lead to weaken the rule of law, and keeps the case without separation and thus the general feeling remains at the weak or

the oppressed not to reassurance, and his motive for revenge remains unless the case is resolved.

2.2 Civil peace, the rule of law, and alternative methods of conflict resolution

2.3 The concept of civil peace: -

Civil peace means that a person lives his life, and performs his business freely and responsibly, and that he gets the requirements for his living and rights easily and without fear of attacking his right or his money or his personal security or the security of his family, and that he settles his differences and disputes with others by understanding means based to the law and traditions that are applied effectively and fairly, whereas if an individual or group about to make an misdemeanours By violating this system he will face the official legal authority that deters it according to a law that is applied fairly to all, including those responsible for implementing it¹⁸

It also means rejecting all forms of fighting and killing, or merely calling for, inciting or justifying it, or spreading hate and violence speeches due to religious or partisan beliefs, and converting the concept of the right to difference into an ideology of difference, and theorizing it and disseminating it. Also civil peace works to prevent civil war and violence in society.

¹⁸ Farid Omar, the concept and requirements of the civil peace. <https://www.marsad.ps/ar/2012/12/03/concept-and-requirements-civil-peace/>

Also, promoting a culture of civil social peace within society and joint work to consolidate sound concepts that enhance the language of dialogue between young people and enhance their role in spreading concepts that accept others away from violence, Focusing on a culture of tolerance among members of society that is consistent with common sense and the nature of human formation, as well as with the spirit of divine teachings and divine laws, and human rights covenants that affirm that the origin in life and in the treatment of a person with his human brother, is the principle of peace, forgiveness and tolerance. But the lack of law and fair accountability among members of society promotes the exacerbation of violence, fighting, internal armed conflict, chaos and security chaos, which threatens the cohesion of society and directly affects society's stability at all social, cultural, political and economic levels, which's lead to a massive damage affecting the components of the social fabric; As example for fighting and tribal revenge and armed wings of clans and political forces.¹⁹

2.4 The concept of the sovereignty of law: -

The comprehensiveness of subjecting to the formal and declared law that constitutes the source of all official authority and which determines the rights of citizens and their duties, and issued by the legislative authority or the bodies authorized by the legislation in accordance with specific procedures, that is, "everyone is under the law" or subject to the law.

¹⁹ Salah Abdel Ati, the Role of Education in Promoting Civil Peace.
<http://www.ahewar.org/debat/show.art.asp?aid=234239>

The rule of law is one of the solutions that can be included in addressing the challenge of establishing a legal system that provides confidence and safety by practicing rights and freedoms, Only the rule of law can ensure adequate and harmonious social coexistence, mature national development, freedom for every individual and society as a whole, the development of practical potential to its fullest extent, and the creation and maintenance of democratic rule, all that required the existence of the rule of law. And this principle is embodied by providing basic foundations:

1. The people are the source of powers: The principle of the rule of law can only be embodied in a government that has a representative capacity through free and fair elections. And this government is responsible in front of the people as they are the source of its powers.
2. Publicity of the law: In order for people to behave in accordance with the law, it is necessary to be aware of its provisions, by publishing it in the Official Gazette coupled with its effective date.
3. The existence of an effective independent and impartial system of judiciary: who settles disputes and keep an eye on the work of the executive and legislative branches.
4. Publicity trial: It is not permissible to punish a person or deprive him of his liberty or restrict him or harm his property without a proper and fair legal procedure that takes place in front of a court who been established by law where its independent and its sessions are public.

5. Non law retroactively implemented: and this mean that people should not be charge for actions they have made in the past and this action was did not constitute a violation of the law at the time.
6. Persons equality in front of law: That is, the equality stipulated by the law itself, and that all people are equal in front of law and have the right for equal protection without any discrimination. Whether by race, religion or gender.

The lack of application of the sovereignty of law lead the laws to become texts that do not apply to Influential category and the executive branch, also the sovereignty of law means ensuring equal protection of human rights for individuals and groups equally, As well as equality between them in punishment according to the law, whereas the sovereignty of law prevails over the authority of governments. Where she protects citizens from any arbitrary measures that the state may take against them. Which is guarantees that all citizens are treated equally and subject to the law and not to the whims of the powerful.²⁰

Also the law must protect the most vulnerable and poor from exploitation, injustice and abuse. Which is obliges governments to create an impartial institutions and frameworks to maintain law and order, and this effective and fair legal framework requires that laws be publicly and known to citizens in advance, and these laws are put under Implementation, and also be able To ensure its implementation, and resolved the dispute by issued a binding decisions for parties by an independent and trustworthy

²⁰ Salah Abdel-Ati, Civil Peace and Non-violence in the Basic Law and International Human Rights Treaties. <http://www.ahewar.org/debat/show.art.asp?aid=57839>

judicial authority, and provide an that available procedure to change laws when they stop the performance of the purpose which it was intended for .

The principle of the law sovereignty considers as an element of the state of law, and it is a basic manifestation of the main modern state. It is embodied by the subjection of every state authority (legislative, executive and judicial) to the principles of law, as well as the commitment of the individuals to the limits of legal rules, which is not allowed to practises any work except in according to the rule of law, and this obligation lead the individual in the society to observe the rights of others.

However, the close connection between human rights and this principle assumes that the principle itself aims to respect, protect and ensure their implementation of these rights, in other words, the rule of law principle has no practical value if the law itself does not respect human rights, in order to guarantee this principle and do its role effectively in guaranteeing human rights, the following must be taken into consideration:-²¹

- Every restriction on the rights of law must be based on a law, and the law must be based on a constitution and this is what must apply to the regulations and instructions that must be based to a law.

- The sovereignty of law does not mean the existence of a law only, that is, just its existence as general rules, regardless of its content. It is not correct to speak on the rule of law without legal content guaranteeing human rights.

²¹ The Rule of Law Principle, University of Babylon
<http://www.uobabylon.edu.iq/uobColeges/lecture.aspx?fid=8&lcid=64238>

- It must be guarantees that ensure the principle of the sovereignty of law and commitment to it, and the most important the most important guarantees are the independence and protection of the judiciary.

- The application of equality in all its forms requires a degree of awareness and intellectual maturity, so what is important when stipulating the principle of equality is the content of this equality and how it can be achieved in practice.

Whereas the other guarantee that ensures the rights and freedoms of individuals is the principle of separation of the authorities, also the principle of separation between the authorities consider as one of the leading theories and important for the constitutional law, The importance of this principle is due to its being the guarantor to prevent the concentration of the authority, that concept on the prevailed throughout the period of antiquity, and because this principle is linked to other constitutional principles that constitute the mainstay of the legal state, just as the principle of the Sovereignty of law, which is come out with the idea of breaking up power into multiple bodies, as a way to define the relationship between the aforementioned bodies, then ensure of the rights and freedoms of individuals through this selection.²²

2.5 The objectives of law enforcement institutions and its functions: -

Achieving and maintaining the rule of law requires developing law enforcement institutions that are able to carry out this task while respecting the rights guaranteed to individuals, and These institutions that are responsible for implementing the law must

²² The Rule of Law Principle, University of Babylon
<http://www.uobabylon.edu.iq/uobColeges/lecture.aspx?fid=8&lcid=64238>

become an genuine guardian of the legality of prosecution of abuses and carry out their work based on the proper performance of the duties incumbent on them by the legal system.²³

Maintaining law and internal security consider, protecting individuals and their property from aggressors, and supporting public authority and state security are among the basic tasks and functions of any political system, in the end the police who are responsible for applying these values, the reputation of law enforcement agencies depends on what they are expected to actually do and how they do it. It is expected that these institutions will do not provide protection for those who break the laws, also these institutions can be entrusted with multiple administrative duties that include social control, such as the granting of licenses and inspections aimed at strengthening the provisions and laws of the system.²⁴

The military and police institutions of any political entity have a duty to maintain national security and internal calmness, and its important and vital function who must not affect his performance to the interests of the ruling party. Usually, the role of law job implementation is to support the authority of the political system and provide protection for the lives and property of citizens. Whereas The Basic Law defines the functions and Duties of the police and security forces. According to Article 84 of it, "The security forces and the police are a regular force, which is the only armed force in the country."²⁵ And its duties restricted in defend the country, serve the people, protect society, and

²³ Brigadier Ziyad Areef \ Palestinian Police-Tasks-Duties-Powers \ Working Paper submitted by the Palestinian Police Command \ The Independent Palestinian Authority for Citizen Rights

²⁴ Refer to the previous source

²⁵ Amended Basic Law \ Chapter Five Executive Authority \ Article (84)

ensure the maintenance of security, public order, and public morals and perform its duty within the limits set by law in full respect of rights and freedoms. "And regulate of security and police forces by law."²⁶

2.6 Alternative methods of conflict resolution: -

The alternative ways of settling disputes in deferent various mechanisms or means that the parties of the conflict is go through in order to reach a solution to their disputes without going through the original means, which is the lawsuit. Whereas the parties of the conflict is more interesting on the alternative means because of its advantages of resolving the conflict in quick way, and maintain a consensual climate and a positive result of the intervention of the parties in finding solutions and dispute settlement thing that motivates to keep a relationship of affection between the parties to ensure the continuation of the sustainable business relationships in addition to their flexibility in terms of dispute resolution procedures and rules applicable to it.²⁷

It also helps to develop the performance of the judiciary to respond to the requirements of achieving justice, as it is not a substitute for it because it takes place under his supervision and control, but rather is a substitute for some complex judicial rules and procedures, as well as the difficulties and obstacles that the judicial system

²⁶ Brigadier Ziyad Areef \ Palestinian Police-Tasks-Duties-Powers \ Working Paper submitted by the Palestinian Police Command \ The Independent Palestinian Authority for Citizen Rights

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https://mawdoo3.com/%D8%A7%D9%84%D9%88%D8%B3%D8%A7%D8%A6%D9%84_%D8%A7%D9%84%D8%A8%D8%AF%D9%8A%D9%84%D8%A9_%D9%84%D8%AD%D9%84_%D8%A7%D9%84%D9%85%D9%86%D8%A7%D8%B2%D8%B9%D8%A7%D8%AA

suffers from, such as the large number of cases presented and accumulated by the courts, the lack of human and material resources and the Slow judgment, right, etc.

In the same matter on 11/11/1985, the United Nations General Assembly issued its resolution No. 34/40, which stated in its seventh article that "informal mechanisms should be used to resolve disputes, including mediation, arbitration, and occasional means of administering justice or using local practices when necessary to satisfy and provide justice to victims." . This is to reduce the backlog of formal cases and the proper discharge of justice requirements. Whereas there is many Alternative methods of dispute settlement include reconciliation, arbitration and mediation, and others; but the most important and which I will touch upon are: reconciliation, arbitration and mediation.²⁸

1. **reconciliation** (reconciliation or Compatibility): Conciliation or Compatibility (also called conciliation), as an alternative legal mechanism is considered as one of the oldest methods of settling disputes in the history of mankind, since people resorted to reconciliation to resolve all their disputes before the emergence of the formal judiciary.
2. **Arbitration**: Arbitration is considered as an alternative way of resolving disputes between individuals and groups and it's often used by

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https://mawdoo3.com/%D8%A7%D9%84%D9%88%D8%B3%D8%A7%D8%A6%D9%84_%D8%A7%D9%84%D8%A8%D8%AF%D9%8A%D9%84%D8%A9_%D9%84%D8%AD%D9%84_%D8%A7%D9%84%D9%85%D9%86%D8%A7%D8%B2%D8%B9%D8%A7%D8%AA

commercial dealers and others as an alternative way to the formal judiciary.²⁹

3. **Mediation** is considered as one of the most important methods of settling disputes, and it is an optional way, non-binding method whereby the parties resort to a neutral third party who plays the role of mediator in trying to resolving the dispute, by checking the requests and parties' claims, and helps them in negotiating to settle the dispute. Mediation can be classified according to the person of the mediating and the method of his appointment to two types, which is the judicial mediation and agreement mediation.³⁰

- **Judicial mediation:** Judicial mediation is that kind of mediation is carried out through specialized judges appointed by the President of the Court, and they duties are mandatory for the parties and their management through direct negotiation between litigants, and the judge assigned to this job is called the mediation judge.³¹
- **Compatibility Mediation:** It is work through appointing a mediator based on the Compatibility of the parties, they are

²⁹ Mohamed Karoui, head of a chamber in the Court of Cassation (Morocco), the mediating role in settling disputes through Moroccan legislation. https://carjj.org/sites/default/files/.../wrq_ml_.lkrwy_-lmgrb.docx

³⁰ Re See: Mohamed Karoui, head of a chamber in the Court of Cassation (Morocco), the mediating role in settling disputes through Moroccan legislation. https://carjj.org/sites/default/files/.../wrq_ml_.lkrwy_-lmgrb.docxfer to the previous source

³¹ Refer to the previous source

assigned to facilitating access to an amicable settlement that ends the dispute between the two parties away from the courts.³²

2.7 The legal basis for clan reconciliation in the Palestinian legislation: -

The Palestinian enactment adopted the reconciliation as one of the alternative means of resolving disputes between litigants in civil cases, and considered it a judicial litigation. Whereas in the tribal conciliation in criminal cases, the Palestinian judiciary considered it as one of the reasons for reducing the penalty.

2.8 Tribal reconciliation in civil disputes: -

The Palestinian legislator has realized the importance of resolving civil disputes by alternative way of regular judiciary and the ability to solve the disputes, because of its speed and confidentiality in the procedures. Whereas the Arbitration Law No. 3 of 2000, which gives the parties to the litigation the right to refer their dispute, who is Present front of the court, to arbitration, which is been clarified by the principles of law the followed in it, and how to implement the decisions issued by arbitration bodies, the conditions that must be met by the arbitrator, and the guarantees of the litigants against the arbitrator. It also specified the special rules in the litigation for the arbitrators. And

³² Refer to the previous source

how to appeal the arbitration award. And the restrictions on the arbitrator's during the arbitration.³³

Also it should be noted that there is no restriction that responds to the freedom of parties to the litigation, in civil disputes, by choice to resort to conciliation or tribal jurisdiction, as long as they choice. As the courts address the consideration of civil cases and disputes based on an allegation brought before it by the stakeholder. And he have the right to bring him down whenever he desires. In addition to the fact that the parties of the dispute have the right to decide before the court that hears a dispute, that if the reconciliation occurs, and it issues its decision based on the content of the reconciliation agreed upon by the two parties. And the decision who come out is obligation Implementation.³⁴

2.9 Tribal reconciliation in the criminal facts: -

There was no provision authorizing the reconciliation between the victim and the perpetrator to take it as a reason for preservation and failure to follow the criminal procedures against the accused in front the competent judicial authority. Whereas given up the personal right represented by the victim's relinquishment of his civil rights, due to the reconciliation between him and the perpetrator, does not negate the general right

³³ Nadira Shalhoub, Mustafa Abdel-Baqi; Fayez Bakirat, the Judiciary and Tribal Reconciliation and Their Impact on the Regular Judiciary in Palestine, Birzeit: Institute of Law, Birzeit University, 2013, p. 44.

³⁴ Nadira Shalhoub, Mustafa Abdel-Baqi; Fayez Bakirat, The Judiciary and Tribal Reconciliation and Their Impact on the Regular Judiciary in Palestine, Birzeit: Institute of Law, Birzeit University, 2013, p. 45.

represented by the state's right to punish and pursue criminal litigation procedures in front the competent courts.³⁵

But the public prosecutor used to issue decisions to preserve in criminal cases due to not criminally important also to the reconciliation between the conflict parties, in order to ensure that the public prosecution limits the aggravation of disputes if the accused is brought to trial. The Public Prosecution believes that in some minor crimes and in the criminal facts that related with the family, preserving these issues after a reconciliation happen it's an interest for the conflict parties, whereas the interest for all parties is to maintain the confidentiality of family relations and reduce the aggravation of differences, which helps to maintain family bonding.

whereas the Judicial precedents issued by the Supreme Court of Appeal in Gaza mention that the indicated that "the court has the right to reduce the penalty, given that judicial precedents issued by the Supreme Court are legal rules that must be followed, by all courts, whatever their degrees, to apply these precedents and introduce reconciliation as one of the reasons for reducing the punishment."

And this is the content of the verdict stipulated in the. No. (49/1950) SA, No. 22/1951 SA, No. 130/1953 SA, and No. 50/1960 SA.³⁶ Reducing the penalty is either for a reason stipulated by the law. This is considered a reduced legal excuse, or for a reason the law has left its discretion to the judge and is called a reduced circumstance or judicial reason. The legislator did not specify in the text of articles (99 and 100) of the Jordanian

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³⁶ Nadira Shalhoub, Mustafa Abdel-Baqi; Fayez Bakirat, The Judiciary and Tribal Reconciliation and Their Impact on the Regular Judiciary in Palestine, Birzeit: Institute of Law, Birzeit University, 2013, p. 45.

Penal Code No. (16) Of 1960 in force in the West Bank. The discretionary reasons were mitigated, and he did not put controls to help the court extract them, as this was left to the judge's discretion. The existence of mitigating discretionary reasons gave the judge wide latitude in reconciling the abstract rules of law with various realistic and social circumstances.³⁷

2.10 Jordanian Penal Code No. (16) Of 1960: -

Refer to Jordanian Penal Code No. (16) Of 1960 we will find that the Penal Code No. (16) Of 1960 did not explicitly provide in clear way of judicial rulings or clan reconciliation. But, on the other hand, he left the door open to adopting the non-formal judicial rulings or clan reconciliation. The Article (52) of the Penal Code stipulated that “the forgiveness of the victim’s will stops the case and do not executes the penalties that have been imposed, that if the case did not gain the final degree, that if the establishment of the lawsuit was linked to the claim for personal right “. Also as stated in Article (53) the following, “first. Forgiveness do not Overrule or attach to a condition. Second. Forgiveness for one of the convicts it includes others. Third. Do not considered Forgiveness, if there are multiple claimants of personal rights unless all of them are issued by them.”³⁸

and implementation to this text, in the Jordanian Court of Cassation ruled in its decision No. 87/77 that: “In addition to this, the High Criminal Court found as a fact that the brothers of the victim, the deceased, they reconciled with the accused (M), and they

³⁷ Nadira Shalhoub, Mustafa Abdel-Baqi; Fayez Bakirat, The Judiciary and Tribal Reconciliation and Their Impact on the Regular Judiciary in Palestine, Birzeit: Institute of Law, Birzeit University, 2013, p. 46.

³⁸ Article (52) (53) Jordanian Penal Code No. (16) Of 1960

went with him to his parents' house and drank coffee on the same day of the quarrel, and as such, they are not entitled to veto this conciliation pursuant to Article (53) of the Penal Code, which stipulates that forgiveness does not invalidate or attach on a condition, and forgiveness for one of the convicts includes the others. For this reason, the judgment on those who are accused of harm is not based on a clear legal complaint, and they have the right to Overrule. "³⁹

whereas the law considered (forgiveness) as one of the reasons for the expiration of the criminal case or for some crimes case that are dominated by individual harm, whereas the law stipulated that these crimes should not be pursued except with a personal claim, and it was considered that if the claimant's given up of his personal right to his personal to claim it will lead to the fall of the criminal case. These crimes are few in the penal code, it is confined to some crimes as defamation, contempt and insult.⁴⁰

Also Article (99) of the Penal Code also gave an outlet for the adoption of clan reconciliation according to the reduced reasons, as it stipulated that if the court finds reduced reasons, the court ruled with the following: first. Instead of being executed with life imprisonment, it become temporary hard labour from ten years to twenty years. Second. Instead of life imprisonment with hard labour for a period of no less than eight years, and instead of life, it's become imprisonment with temporary detention for a period of no less than eight years. Third. It may reduce every other criminal penalty in

³⁹ Criminal Procedure Law No. 3 of 2001 <https://www.bal.ps/pdf/3.pdf>

⁴⁰ The Institute of Law, The Informal Judiciary: Rule of Law and Conflict Resolution in Palestine: The National Report on Field Research Results, pp-61

half. Fourth. It may also, except in the case of repetition, reduce any penalty of a minimum term of no more than three years to imprisonment for at least one year.⁴¹

While Article (100) of it stipulates the following: first. If the court adopts the mitigating reasons in the interest of the perpetrator of a misdemeanour, it may reduce the punishment to the minimum level that was set forth in Articles (21 and 22) at least. Second. It may convert imprisonment to a fine or convert - except in the case of repetition - the misdemeanour penalty to a different Infraction. Third. The decision granting the mitigating reasons must be a sufficient explanation, whether in felonies or misdemeanours.⁴²

2.11 Judicial applications of the provisions of Articles (99 and 100) of the Penal Code: -

in the same matter The Court of Cassation has settled that whenever a court of Jurisdiction decides that there is a mitigating reason, then it is incumbent upon to the text of Article (100/3) and to explain the decision granting the mitigated cause adequately, because the purpose of this text is to make these reasons subject to the supervision of the Court of Cassation to decide Whether it's a valid reasons justify mitigation or not. However, the Court of Cassation has settled on a number of reasons that are considered

⁴¹ The same previous source

⁴² The same previous source

mitigating discretionary reasons in application of the text of Article (99). However the most important and clearest of these reasons is "reconciliation or conciliation."⁴³

2.12 The institutional framework of the tribal reform committees: -

2.13 General Administration of Clans:

The Palestinian President Yasser Arafat was issued Presidential Decree No. 161 of 1994 establishing the Department of Tribal Affairs in the President's office.⁴⁴ Whereas this department took charge of setting the internal instructions that organize its work, it set up internal structures that determine the administrative status of its workers, and sets many conditions and requirements for reformers and tribal judges working in various governorates. This department worked as an administrative centre for the work of all those in charge of the informal judiciary in the governorates of the West Bank and Gaza Strip. While the decisions of the committees are considered compulsory only after they are approved by the Clan Affairs Department, where the legal advisor reviews and adapts them legally.⁴⁵

And they restructured the reform committees and re-linked with the Clan Affairs Department, which in turn activates the reform committees. In each governorate, a supreme coordination committee for reform was formed, followed by a "central committee for reform" in each governorate followed by sub-committees. And the total

⁴³ Nadira Shalhoub, Mustafa Abdel-Baqi; Fayez Bakirat, the Judicial and Tribal Reconciliation and Their Impact on the Regular Judiciary in Palestine, Birzeit: Institute of Law, Birzeit University, 2013, pp. 48-49.

⁴⁴ See: Presidential Resolution No. 161 of 1994. <http://muqtafi.birzeit.edu/pg/getleg.asp?id=11253>

⁴⁵ See the website of the Ministry of Interior <http://www.moi.pna.ps/Departments/tribal-affairs>

number of repairmen accredited at that time is estimated at more than 650 Reformers, most of them where volunteers.⁴⁶

In the year 2005 the General Administration of Tribal Affairs and Reform was attached to the Ministry of Interior based on President Mahmoud Abbas's decision to transfer a number of institutions to the Council of Ministers. The Council of Ministers held in Ramallah on 15/3/2005 decided to attach the Tribal Affairs and Reform Department to the Ministry of Interior and is now considered one of the departments General approved in the structure of the Ministry of Interior.⁴⁷

2.14 What are the Services that provided by the General Department of Clan Affairs and Reform:

- Receive complaints from citizens about matters troubles and tribal problems in ordered to resolve all their dispute's and direct citizens to the competent authorities to contribute to resolving any tribal or legal dispute.

⁴⁶ Idris Muhammad Jaradat, Tribal Reconciliation and Conflict Resolution, Nablus: Al-Najah National University, 2014, pp. 23-26.

⁴⁷ Raja Zaatreh, Al-Salaha Al-Arabiya: Al-Salaha, Al-Salhia, and Al-Haj for Reform and Development, p. 43.

- The department works to monitor and follow up on all reform committees and clansmen to make sure that they work within the framework of tribal law and custom.
- Issuing an Identification card for clansmen and reformers to facilitate their work in front of all official and unofficial parties.
- The administration has the right to directly interfere with the work of any committee or Reformers in the event of any affect or infringe of the right and law.
- The administration is working on developing the tribal law in a way that is compatible with Sharia and law.
- The General Department of Tribal Affairs and Reform works to form reform committees in all governorates of the country and does everything that would bring civil peace and twins between all members of society and interfere in all tribal issues and differences, whether personal or social or any dispute or problem, in line with the law and tribal norms.
- The department is concerned with the appointment and approval on the mayors according to the law and works on issuing Identification cards to clansmen and reformers to facilitate their work in front of all concerned authorities.⁴⁸

But President Mahmoud Abbas issued 5/8/2012 a decision to establish and form the Supreme Commission for Tribal Affairs for the Southern Governorates, "Gaza Strip",

⁴⁸ Idris Muhammad Jaradat, Tribal Reconciliation and Conflict Resolution, Nablus: An-Najah National University, 2014, pp. 23-26.

to be directly affiliated with the President of the Palestinian Authority. And in the same decision select the names of members of the Commission and its President, and granting it the authority to set up sub-committees in the governorates to follow the affairs of clans, which's created a body without a clear relationship with the General Administration of Tribes in the Ministry of Interior. At the same time, no similar object was found in the West Bank.

2.15 The relationship between the governorate and the tribal reconciliation and reform committees.

The governor has wide authorises and wide discretionary authority, and this authority based on the Jordanian administrative formations system No. 1 of 1965, and the Jordanian Crime Prevention Law No. 7 of 1954, and the Crime Prevention Law No. 7 of 1954,⁴⁹ in addition to Presidential Resolution No. 74 of 2003 which related to the subordination of governors, and their departments to the presidency and they transferred Their department from the Ministry of Interior with their employees in their governorates and their department to the presidential headquarters.

The administrative formations system and the conservative crime prevention law give the governor administrative authorise and Regulatory authority with the aim of ensuring the maintenance of public order as this is one of the primary governor's responsibility. Whereas the central role of the governor is to achieving social peace, and that through achieving the elements of the public order. However, the system of

⁴⁹ See Presidential Decree No. 74 of 2003 in the Palestinian Fact Sheet
https://www.lab.pna.ps/cached_uploads/download/2018/01/28/46-1517150631.pdf

administrative formations prohibits the exercise of any act that would diminish the independence of the judiciary. Whereas Paragraph B of Article 12 stipulates in its statement the tasks of the governors to "preserve public morals, public security and public health within the limits of the independence of the judiciary."⁵⁰

in the same path and in the frame of achieving civil peace and crime prevention, it appears that the relationship between the governorates and the informal judiciary represents the broadest area in the informal judiciary relationship with the Palestinian Authority's executive institutions, where the governors from the beginning of the establishment of the Palestinian Authority they formed the reform committees affiliated to their governorates, with the aim of these committees intervening to resolve disputes Among citizens through the governorate and under its supervision. However, the reform committees resolve disputes and issues based on their experience and knowledge. Whereas for the Hebron Governorate, no higher committee has been formed, due to the presence of a very large number of reformists in the governorate. And the inability to accommodate them within one reform committee.⁵¹

Immediately and Strat off after the establishment of the Palestinian Authority and the establishment of the governorates, they been invite the reform committees that were present during the first intifada to meeting. And these committees became operating under the umbrella, guidance and care of the governorates. Also, the reformists who were present were not enough, so they add a new name, and they established a central reform

⁵⁰ Institute of Law, the Informal Judiciary: Rule of Law and Conflict Resolution in Palestine: The National Report on Field Research Results, Previous Source, pp. 109-110.

⁵¹ See previous reference

committee affiliated with the governorate. In addition to sub-reform committees. Also they established a technique and programs for coordination and cooperation with these committees, such as the establishment of specialized departments in the governorates to monitor of the reformers job, and holding qualifying sessions for them with a view to informing them and teaching them the means of arbitration. On the other hand the relationship between representatives of the informal judiciary and the governorates takes a somehow organizational form, and this organizational form is concentrated through the following technique:- ⁵²

- The majority of the Forming a reform committee in the vast of governorates in the West Bank and Gaza Strip. Usually these committees carry a designation that indicating that they are official committees and following the governorate. These designations shall be along the lines of "the Central Reform Committee - the Higher Committee for Reform, etc." with this indicating that these committees follow the governorates in their regions.

- Some committees use papers and stamp issued in the name of the governorate, in addition to signify the name of these committees.

also they have certain departments within the governorates that monitor and supervise the work of the reform committees, the most important department is the legal department, while The Civil Peace Department or the Tribal Affairs Department in the governorates is the mainly body who concerned with the activity of the informal judiciary and dealing with them. It also supervises other

⁵² See previous reference

departments within the governorate with regard to the reform committees, which's is mean that the main department that follows the reformer in the governorates is the Civil Peace Department or the Tribal Affairs Department.

- Also the governor or his deputy personally sometimes intervenes and participates with representatives of the informal judiciary in their job, and participates in resolving disputes and issues between citizens.
- Also sometimes the governor mandates the reformers to interfere in disputes and issues in order to solve them, and this mandate may be written or verbally.
- Also sometimes the governorate interferes in drafting and laying down the decisions and rulings of the informal judiciary through the legal department to amend these decisions to ensure their consistency with the law and not violating it.

However, there is no clear and specific statistic in the different governorates that clarifies the number of approved or supervised instruments for each governorate, and there are also no data and classification of reconciliation instruments and the extent of cooperation with different parties, which loses the ability to know the workload of these departments in the governorates and their effectiveness, and obscures the possibility of in-depth study of the peace Tribes in the country, especially since many of the peace

instruments are not documented or are being done outside the framework of any official Palestinian institution.⁵³

2.16 Tribal reconciliation and its influence on the sovereignty of law: -

One of the methods that used to solve conflicts between people is conciliation, according to the prevailing norms. This phenomenon is referred to in other terms, such as customary courts, tribal jurisdiction,⁵⁴ tribal reconciliation, and reform among people. This judiciary derives its principles from more than one source; such as the Arab historical, social and cultural heritage in general, and the Palestinian one in particular.⁵⁵

Whereas the Tribal reconciliation or tribal jurisdiction is a traditional, historical mechanism that its origin dates back thousands of years, and Arabs knew it before ignorance era and continued to work with it after Islam. And in Palestine, this mechanism was used in the Ottoman period and the British colonial era, as well as in the period of Jordanian and Egyptian rule in the West Bank and Gaza Strip, and after the Israeli occupation. Their use was accompanied and weak or decentralized rule, and with the refusal of the Palestinian people to resort to the ruling authority after the 1967 occupation.⁵⁶

Tribal reconciliation refers to informal justice as a social phenomenon represented in resolving disputes between citizens outside the framework of the regular courts.

⁵³ See previous reference 110-112

⁵⁴ The Rule of Law and Conflict Resolution in Palestine: The National Report on the Results of Field Research, pp. 97-102.

⁵⁵ See previous reference, p 19

⁵⁶ Raja Zaatreh, Al-Salaha Al-Arabiya: Al-Salaha, Al-Salhia, and Al-Haja for Reform and Development, Haifa: Equality Center, 2010, p. 11.

Whereas the Informal jurisdiction includes tribal conciliation and tribal jurisdiction. Tribal reconciliation is a mechanism for resolving internal conflicts, preventing violence from worsening and preserving civil and social peace through a settlement based on the harmony between Habits, customs and religion and tribal traditions, which's role is cantered in dealing with the consequences of the conflict and not its roots, and it is not a substitute for taking the law as an alternative for The punishment. In the same matter Tribal reconciliation does not in any way Exemption the state and its organs be exempted from their primary responsibilities for enforcing the law and maintaining security and safety. Also, conciliation does not replace the protective role and the promotion of societal immunity and other matters entrusted to other parts of society.⁵⁷ Whereas the tribal judiciary derives they rulings from the prevailing tribal traditions in the region in which it is practiced.⁵⁸

The controversial things that The relationship between the formal judiciary and the informal judiciary raises the issue of mutual influence or the stage of the influence between them, where it can be said that the relationship between the two systems is represented by three possibilities: (first) The lack of the influence of the regular judiciary on the decisions issued by the reform committees, as well as the absence of the reformists on the decisions of the judiciary. And (second) decisions made by the statutory judiciary are affected by the procedures of the non-statutory judiciary by reducing the penalty or keeping the case. (Third) **Lack of consideration of the case before the regular judiciary, and the initiation of criminal prosecution by the Public Prosecution due to**

⁵⁷ Raja Zaatreh, Al-Salaha Al-Arabiya: Al-Salaha, Al-Salhia, and the Need for Reform and Development, Previous Source, pp. 11-12.

⁵⁸ Law Institute, previous source, p. 19.

the tribal resolution of the case by writing a final instrument of reconciliation between the parties.⁵⁹

whereas the Practical experience shows that the peace instruments supervised by the Palestinian governorates, which they adopt without responsibility for the obligations of rights, are taken before the judiciary and law enforcement agencies in connection with the personal right, where the signing of the guardians for the assignment "right holders" as a required. For example, the judiciary takes into account the peace instruments Tribal in 26 cases related to "blood" killing in the Jerusalem governorate when examining them, where the judiciary took mitigating reasons.⁶⁰

The police departments indicates the existence of a decision by the police director general to prevent the police apparatus from dealing with the instruments of conciliation or waiving complaints submitted to it, but in practice the police in the governorates accept the abdication of the complaint by the complainant, which is often based on the intervention of different parties, or by taken action from the police by arrest the litigants, especially in the event of quarrels, to compel the family to conclude a peace deed that will be presented to the court, then the two cases will be released. Although the Palestinian police accounted these issues as completed cases in the annual report, whereas the completed cases are not separate in referring to the prosecution completed cases or its completion based on the complainants 'waiver. Which was not possible to

⁵⁹ An interview with Mr. Abdullah Siyam, Deputy Governor of Jerusalem Governorate, on 3/2/2019.

⁶⁰ Colonel Nael Atallah, Deputy Director of the Planning Department in the Police 6/2/2019.

obtain information linked to the waiver as one of the tools. Indicate the presence of a tribal reconciliation or interference reform committees.⁶¹

But it's different for the Public Prosecution, whereas according to the Law of Criminal Procedures, the Public Prosecutor has the right to recommend that the case be preserved and not be pursued in front of the competent court, due to the lack of importance or its regard a matter to the maintenance of family bonding, but also in cases of peace to preserve civil peace, especially in cases where the filing is related to the personal right. However, we were unable to obtain specific statistics in this regard from the Public Prosecution.⁶²

2.17 Slowness in the regular courts encourages orientation to tribal jurisdiction: -

Whereas the delay in the regular courts in settling disputes and the cases before them for many years did not leave room for the impact of the informal judiciary on the rulings issued by the regular judiciary, due to the advantage of the informal judiciary in the speed of resolving disputes versus the very slow consideration of regular judiciary system. Whereas a large majority of the Palestinian public believes that the poor

⁶¹ Nafez Al-Jabari, speech of the President of the Civil Peace Council in the Hebron Governorate, the eighth annual conference of the Public Prosecution 2018, Bethlehem, 22-24 March 2018. See: <http://www.pgp.ps/ar/ConfDetailsTopics/%D8%AF%D9%88%D8%B1%20%D8%B1%D8%AC%D8%A7%D9%84%20%D8%A7%D9%84%D8%A7%D8%B5%D9%84%D8%A7%D8%AD%20%D8%A7%D9%84%D8%B9%D8%B4%D8%A7%D8%A6%D8%B1%D9%8A.pdf>

⁶² See previous reference

functioning of the regular judiciary and the length of its procedures make the public resort to the informal judiciary to take over their disputes quickly and effectively.⁶³

Chapter Three

The establishment of reform committees in Palestine

⁶³ Alaa Lahlouh, Walid Ladadoua, the Arab Security Sector Scale and Citizens' Attitudes: The Palestine Report (Second Read 2016), Ramallah: The Palestinian Center for Policy and Survey Research, 2016, pp. 60-64.

- The establishment of reform committees in Palesti

3.1 Introduction- :

People who strive to communicate between their successive generations, and keep their memories vigilant continuously present, are worthy of elevating the ranks of glory, reaching their hopes and achieving their goals, whereas the Palestinian society is coherent in its various aspects, so when a dispute occurs between two or more individuals, other related parties come to interfering support for mediation to resolve the dispute.

so This chapter of the thesis come to shed light on conflict resolution method through the reform committees, and how to put forward alternatives to the problems inherited from the predecessor especially with regard to prevailing customs, traditions, values and norms, which are based on customary bridges and built on unwritten constitutions

inherited between the Palestinian tribes and families, especially issues of honour, and indecency, which are considered one of the biggest problems in Palestinian society and are related to the highest tribal authority, the vocalist, the father of girls, the patron of adornments, or the father of masters, and this procedure based on a customary rule, then followed by A guy called 'blood stain' who specializes in cases of intentional and semi-intentional murdered, wounds, and loss of body parts. Whereas, individual and family attacks and traffic accident cases, their value is assessed financially under retribution by a clan reformer. Also land issues, real estate, crops, animals, cars, factories, companies, movable and immovable funds, and cases of fraud, and theft, they are decided by assigned to a experts Competent for each problematic under the heading of appraisers.

3.2 The historical roots of clan conciliation, the Arab Judiciary Its Origin and Development.

3.3In the Hebrew era: -

which is back to the Old Testament, they use to punished the thief's by fining him four time worth of the stolen thing⁶⁴, and the only one who specializes in judiciary at that time is the Prophet Deborah⁶⁵, and she took place on Ephraim mounting between Ramah and Beit El, and people of Israel where go to her on behalf of resolving they issues. In the

⁶⁴ See Ihsan al-Nimr, History of Mount Nablus and Balqa, Part Two, Nablus, Al-Nasr Press 1961, p. 494.

⁶⁵ Judges, Chapter Four, page 5-6.

same matter on the Roman law the judge is a general person who been hair by the Legitimate authority to govern justly between people.

3.4Pre-Islamic era: -

Their sophistication in resolving and issuing judgments especially in intractable disputes.⁶⁶ Also everyone remember the story of arbitration in placing the Black Stone during the construction of the ancient house and the consent of the tribes to the honest Secretary Muhammad bin Abdullah as an arbitrator in that case⁶⁷. Whereas at that time the tribal judiciary is considered as the first law to which the Arabs were subjected, and everyone who rebels against the tribe's customs escapes or resort to another tribe and belongs to the loyalty and forced him to undergo they traditions.

3.5In the Islamic era: -

Islam abolished all tribal customs and subjected situation and his followers from the Arabs and others to the divine legislation and companions of the Prophet and Affiliates they were governed the Book of Allah and the Sunnah of the Holy Prophet. And if people encounter problems in which they ruled with the text of the Book of God, and if they found its solution in the Qur'an, they would take it, and if they did not find it, they would turn to the Sunnah books, and if they did not find solution for this problem in the Sunnah books, they would strive to solve it according to the content of the Qur'an and Sunnah.

⁶⁶ Jamil al-Salhut, Al-Kateb Magazine, January, 1983 AD, No. 33, Jerusalem.

⁶⁷ Jamil al-Salhut, Tribal Judiciary, [Heritage and Society Review, Issue 17, 1985, p. 59].

Whereas, the Qur'an contains verses that urge the rule of virtue while adopting custom and habits, as god say;

- "خُذِ الْعَفْوَ وَأْمُرْ بِالْعُرْفِ وَأَعْرِضْ عَنِ الْجَاهِلِينَ" آية 199 سورة الأعراف⁶⁸.
- {فَمَنِ اتَّقَى وَأَصْلَحَ فَلَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ} آية 35 سورة الأعراف⁶⁹.
- {وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ} آية 179 سورة البقرة⁷⁰.
- { وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ } آية 126 سورة النحل⁷¹.

Also what mention in the noble hadiths;

- "يوم من إمام عادل أفضل من عبادة ستين سنة".
- "إن المقسطين عند الله على منابر من نور على يمين الرحمن".
- "الصلح جائز بين المسلمين، إلا صلحاً حرم حلالاً أو أحل حراماً".
- ومن أقوال عمر بن الخطاب رضي الله عنه وأرضاه- "أحيلوا الخصوم إلى الإصلاح، فإن القضاء يرق البغضاء"⁷².

⁶⁸ Verse 199 Surah Al-A'raf

⁶⁹ Verse 35 Surah Al-A'raf

⁷⁰ Verse 179 Surah Al-Baqara

⁷¹ Verse 126 Surah Al-Nahl

⁷² Sahih Muslim - For Imam Abu Al-Hussein Muslim Bin Al-Hajjaj - 206-261 Hea Al-Iman Library in Mansoura - pp. 7-15

3.6 In the Turks era: -

during the era of the Turks, especially in the area of Beersheba, they formed the Board of Tribal Affairs includes a team of staff and elders of the Ottoman government adopted, and they use the decentralization of some families and the powerful clans in terms of the numbers and wealth of those who contributed to the revival of the decile infrastructure in the Arab countries⁷³, also we may observe that people seek to assemble and converge under the umbrella of a clan or a family gathering without a real blood bond, in order to appear in the appearance of strength and the promotion of self-security, whereas who has no attribution in the absence of official authority is an violable and disputed person. Also customs and traditions have taken a basis for issuing judgments and ensuring speedy implementation, and in the absence of official authority tribal judiciary control was achieved in settling disputes between people⁷⁴.

This period was a period of repeated defeats of the Ottoman Empire at the level of its external wars with Russia and Austria, and Egypt and Iraq separated from the Ottoman authority, and Napoleon occupied Egypt and a part of Palestine, which strengthened the weakness factors of the centralization of the state, and led to the rise of local powers, which increased the influence of feudal families in Northern Palestine - Nablus - and its south, - Hebron - to protect the population. Also the influence of the Bedouin tribal

⁷³ Heritage and Society Magazine, Tribal Courts in the Beersheba District, Aref Al-Aref, No. 17, They were Second 1985, p. 53.

⁷⁴ Muhammad Abu Hammad Hassan Ghaith, [Clans Judiciary in the Light of Islamic Sharia, 1st Floor, Al-Amal Press, Jerusalem, 1987, (pp. 7-8).

increased, and their invasions were repeated in the agricultural areas, especially in the plains, and their military role in protecting the rural areas⁷⁵.

And that followed with the role of the elders tax system emerged in the Ottoman-Muslim authority, the elders of the districts, the elders of the villages, and the appointment of the elders of the districts was carried out by inheritance in the sense of appointing one of the same family of the deposed or deceased sheikh. So that any attempt to change this framework was confronted with violence and causing the outbreak of the civil war, such as those which occurred during the period (1841-1858) between the fiefdoms and led to the families of Toukan and Abdul Hadi al-emergence in Nablus, and Barghouti in Ramallah and the adoption of families from cities to extend its influence over the peasants⁷⁶.

3.7In the era of the British Mandate: -

"Use violence and intensity to liquidate the invasion and disorder in clan areas" Britain worked on forming a bloodletting council in the year 1919-1920 in Beersheba, to solve intractable issues, and hearings were held under the chairmanship of the judiciary and allocated a lump sum amount of three pounds per case. And work continued with this system until 1922 AD.

⁷⁵ Samir Othman Halila, Movement for Development and Conflict within the Palestinian Family, Courts in the Palestinian Country, Al-Kateb Magazine, Issue (43), November 1983 AD / Al-Quds (pp. 54-61).

⁷⁶ Samir Othman Halila, Movement for Development and Conflict within the Palestinian Family, Courts in the Palestinian Country, Al-Kateb Magazine, Issue (43), November 1983 AD / Al-Quds (pp. 54-61).

When the Tribal courts were formed, and the council of blood was composed of the elders of the powerful tribes⁷⁷.

Articles of the tribal judiciary in the constitution at the time of the British mandate for Palestine:

Article 45 of the Constitution of Palestine published on September 1, 1922 AD stipulated that "the High Commissioner may establish by order of him separate courts for Beersheba and for any tribal area, as he deems appropriate. These courts may apply tribal customs if they are not contrary to natural justice or literature."

Article (11), paragraph 4 of the Courts Law of 1924 AD published in the Official Gazette on June 15, 1924 CE, provides for the formation of tribal courts in Beersheba: [Tribal courts may be established in the district of Beersheba according to Article 45 of the Constitution of Palestine, and the High Commissioner may at any time Ordering him to suspend or cancel such courts].

3.8 Custom and habit courts under the Mandate:

- Tribal courts were Abide of the task to treat cases that are transferred by the president of the central court or the governor.
- The tribal courts stick with the experts in terms of what provided in the laws of the regular courts, also solve problems within the habit of the Arabians.
- Customary court's jurisdiction was looking into cases of beating, wounding, insulting, blackening, aggression, stripping hands, assaulting borders, changing markings, thefts, adultery, kidnapping, mediation, murder, blood money⁷⁸.

⁷⁷ Aref Al-Aref, Tribal Courts in the District of Beersheba, Heritage and Society Magazine, Seventeenth Issue, January 1985, pp. 59-60

⁷⁸ See previous reference

This court system provide that to submission request on behalf of the military governor name and is turning to the jurisdiction authority, whereas the Commission have the right to set the time and place to resolve claims by members of knowledge and reference military ruler and the government endorses the Commission's decision⁷⁹.

3.9 Security and Reform Committee in 1948:

In the absence of official authority, the attacks spread out between persons and their property, and digesting rights and increases of some feudal families of influence and tribal and Bedouin conflict of interests between in villages, towns and camps and cities, then they governed by economic links and personal interests and the dominance of certain parties on the other, and prevail temptations abound problems and insecurity.

For more information and clarification, refer to the following documents in the Nablus Municipality Library archives on the Tribal Reform Commission⁸⁰.

- File 659, Document No. 9 dated 4/19/1948.

- File 659, document No. 10 of 4/21/1948.

Document No. 12 dated 4/24/1948.

Document No. 16 dated 4/26/1948.

Document No. 1 without date.

- File No. 655, Document No. 5 of 7/7/1948.

- File No. 656, document No. 13 of 2/12/1948.

⁷⁹ See previous reference

⁸⁰ Archive of the Nablus Municipality Library about the Tenantial Reform Commission

- File No. 665, Document on 2/7/1948, Document No. 32 on 2/21/1948, and Document No. 86/38 without Date, and refer to File 665 on 19/1/1948 and 2/5/1984.

The content of the cases was about (theft of money, livestock, merchandise, cars, killing, conflicts, and land disputes).

3.10 In the Jordanian era

The committee formed since the time of the British Mandate to resolve cases according to custom and habit remained in effect, but the Jordanian government expanded the committee by appointing judges in each village to solve dispute, and among them were those who specialize in blood issues or display cases or land issues each according to his experience and a few of those issues was reached to the main courts⁸¹.

In Jordan, the authority of tribal courts governing acquittal or conviction in accordance with the text of Article (17) of the Tribal Courts Law. As for the imposition of the penalty, it is up to the administrator or the governor, who determines the amount and in the case of non-compliance, an Atwa is taken by the governor from the family of the victim and is called a security Atwa⁸².

In the same matter the tribes in Jordan were subject to the authority of the administrator, the director of public security, or the commander of the area. Also they use to transfers many cases and discounts relating to intractable blood, symptoms, and lands

⁸¹ Abdul Rahim Dana, previous reference, page 6.

⁸² Muhammad Shihadeh Abu Aram, previous reference, pp. 84-85.

to tribal judges. And after a final judgment has been issued, it is the responsibility of the administrator to implement the judgment⁸³.

3.11 In the era of the Israeli occupation:

As a result of the refusal to deal with the Israeli occupation and its arbitrary apparatus, people were solving their problems by resorting to reformist men and tribal judges, according to custom and habits⁸⁴.

Also despite that influence of the Israeli police and courts on the Palestinians, but the humorous of this matter is a Jew guy who preferred to custom tribal to resolve a dispute happened between him and a young Palestinian⁸⁵.

The story happens in the 1998 when a young man called Ismail from the villages of the Hebron has been working in the city of Ramla (Palestinian) since his early childhood, taking work to harvest agricultural crops in the city, and he is still until now. In 1998, on his way back from work, encountered in the way an orchard for a Jewish settler named Al-Abed Al-Farsi, a resident of Ramla (Palestinian). This settler was not giving the workers anything from the land's production. So this young man and those with him went down to the orchard, and each took their share of the apples. And on the way out of the orchard, the neighbour of the Al-Abed Al-Farsi he meets them on the way out of the orchard, so this neighbour called Al-Abed Al-Farsi, and the other come and arrested them. And her Al-Abed Al-Farsi Said to Ismael I swear of the god that I won't let you enter the city of Ramla until you bring a reform committee to my house this evening and

⁸³ Muhammad Hassan Abu Hammad Ghaith, previous reference, p. 274.

⁸⁴ Al-Fajr newspaper, forming a committee to set a special system for tribal customs in accordance with Islamic law on 14/1/1985, p. 5.

⁸⁵ Al-Sanabel, May 2000, No. 12, page 35.

take Atwa from me, and Immediately, Ismail collected the elders of the tribes in his village and went to the city of Ramla to take the truce from the settler, at that time the settler had imposed on the youth a sum of money, amounting of five thousand shekels to be paid in cash. At that time the elders of reform committee's intervened, and the settler said I will discount 1,000 shekels for God's sake, and another 1,000 shekels for the Messenger sake, and another 1,000 shekels to the reform committee's sake, and another 1000 shekels dinner for the reform committees, and the rest of the amount was 1,000 shekels. Its t gifts from me to your village mosque. Thus the whole amount was distributed without any shekels reaching to the settler. And according to the proverb, "Whoever mixes with people for more than forty days becomes a part of them (a true and realistic story)⁸⁶.

3.12 The period of the first intifada 1987-1993:-

A call were issued to the continuation of solving the problems of self-reform, and issued national leadership consolidated statements issued in the uprising, calling for the formation of committees of reform and problem-solving in the villages and towns in the West Bank and Gaza Strip to resolve problems and conflicts without resorting to the courts (see statement No. (1) of the Unified Command Data)⁸⁷.

then a decision were issued by the Palestinian National Council in Amman in one of the special meeting to form a reforms committees from the National Council and they

⁸⁶ Al-Sanabel, May 2000, No. 12, page 35.

⁸⁷ Al-Bayariq newspaper, Reform Committees in the Gaza Strip, No. 29 dated 18/9/1992.

are Messrs Yasser Amr, Mohamed Youssef currency and Moussa Abu Ghaith, In preparation to formed sub-committees for reform in the West Bank and Gaza Strip⁸⁸.

These committees are an alternative device to serve as the general and binding law for all groups of Palestinian society, and the committees have, with its wall, been able to substitute for the occupation courts and its police. And this is a practical step to consolidate the authority of the people and in a manner consistent with the directions of the blessed intifada in the face of the occupation authority by creating a national popular apparatus to preserve the unity and balance of the social structure according to the available capabilities. Also Palestinian academics from the University of London called for the necessity of introducing a tribal arbitration system in the absence of the national authority, to solve problems and curb discounts and attacks on rights and urged national institutions and bodies to adopt this idea and rely on the role of reformers, tribal judges and national committees⁸⁹.

3.13 After Oslo agreement and through the Palestinian authority period: -

In 14.05.1994 with the entry of the Palestinian National Authority and received its functions after the Oslo agreement. And soon they established an office to manage the tribal affairs, and this office considered as one of the national authority's bodies, and its job to take cares of the tribal affairs in said Palestine and abroad⁹⁰. Whereas this

⁸⁸ Dr. Muhammad Al-Abadi, Introducing a Tribal Arbitration System, Al-Quds Newspaper, Issue 8276, on 9/15/1992, p. 81.

⁸⁹ Dr. Muhammad al-Abadi, previous reference, p. 81.

⁹⁰ . Al-Quds Newspaper, No. (8918) dated 9/28/1994, p. 5, column (1).

department is directly affiliated to the president, then a number of official offices of the Tribal Affairs Department it's been opened in many Palestinian cities and governorates⁹¹.

In 1997, the judiciary conference decile held under the Palestinian National Authority and under the auspices of President Yasser Arafat in the city of Hebron⁹².

The conferees came out with recommendations including:

- Formation of decile Council in the West Bank and another in the Gaza Strip and they abide by the rules and regulations and following, to the Presidency directly.
- reconsider the provisions and issues and the abolition of customary the gift that been given as gift to the reform judge.
- Limiting evacuation - deportation - to the perpetrator, because criminal responsibility is individual and on behalf of that it's been issuing a presidential decree in this matter. And has been effectively applied on the ground.
- Submitting a memorandum to the Legislative Council on behalf of the custom judiciary, as a support tributary, in addition to the laws in force in the West Bank and Gaza⁹³.

⁹¹ Dr. Ghaith Abu Ghaith, Presidential Adviser on Tribal Affairs, in an interview with Al-Quds Newspaper on 6/9/1995, p. 12

⁹² See: Al-Hayat Al-Jadida newspaper, 5/11/1995, p. 2, No. 87, preparing to form a tribal council in Hebron.

⁹³ The Tribal Judiciary Conference in the Shadow of the Palestinian National Authority, Al-Sanabel Magazine, First Issue, June 1997, pp. 6-8.

Chapter four

Interview & Research Sstudies

- **Case study**
- **Interview**
- **Research studies**

4.1 Who is responsible for the reform committees in Palestine, and from where it derived its legitimacy.

Through the Palestinian National Authority period, that the Palestinian National Authority found that there is no way to Dispensing of the tribal justice, as long the informal judiciary and the formal judiciary is in the same path, to support the sovereignty of law, and achieving justice, and social peace. And Since September 14, 1994, with the advent of the Palestinian National Authority, the "Tribal Affairs Department" was reconstituted by a presidential decree, published in the official Palestinian Factsheet, where on 9/11/1994 a decision was issued by President Yasser Arafat, to establish the Tribal Affairs Department, so that it is affiliated with the President's Office.⁹⁴

While in 15/03/2005, the Council of Ministers At his regular meeting in Ramallah, issued Resolution No (28) (2005). (1/4/9/MW/AQ). That According to Article 1, Paragraph 5. Reshaping and appending the reform committees in Palestine, to the Ministry of Interior and National Security, and define its functions." In ordered cancel all contradict decisions." And provide the following services: -

- Receiving complaints from citizens about any problems or tribal issues, in ordered to resolve all the disputes, and directing citizens to the competent authorities, in order to contribute of resolving any tribal or legal disputes.
- The Tribal Affairs and Reform Department of the Ministry of Interior works to monitor and follow up the work of the reform committees and clansmen to work in the legal framework and tribal custom only.

⁹⁴ President Yasser Arafat "Tribal Affairs Department" decision.9/11/1994

- The Department of Tribal Affairs and Reform in the Ministry of Interior has the right to directly interfere in the work of any reform committee in the event of a violation of rights.
- Issuing special cards for reformers and clans to facilitate their work in front of official authorities.
- One of the tasks of the administration is also to develop tribal law in a way that suits Sharia and law.
- Also, the "General Administration for Tribal Affairs and Reform" is working to form reform committees in all governorates of the country, and it does everything possible in order to achieve the civil peace.⁹⁵

While in 5/8/2012 The President of the State of Palestine issued Resolution No. (89) (2012). Regarding to the establishment and formation of the Supreme Commission for Tribal Affairs for the southern governorates, which's following directly to the president of the state of Palestine." In ordered cancel all contradict decisions."⁹⁶

In the same matter and in 18/4/2019 The President of the State of Palestine issued Resolution No. (33) (2019). Regarding to the establishment and formation of the Supreme Commission for Tribal Affairs for the northern governorates, which's following directly to the president of the state of Palestine." In ordered cancel all contradict decisions⁹⁷."

Whereas in 30/5/2019 The President of the State of Palestine issued Resolution No. (45) (2019). Regarding to cancel the establishment decision and formation of the

⁹⁵ Council of Ministers-Ramallah, issued Resolution No (28) (2005). (1/4/9/MW/AQ) 15/03/2005.

⁹⁶ President of the State of Palestine issued Resolution No. (89) (2012).5/8/2012.

⁹⁷ President of the State of Palestine issued Resolution No. (33) (2019). 18/4/2019.

Supreme Commission for Tribal Affairs for the northern governorates, whereas the decision stated that the previous presidential decree No. (33) Of 2019 should be cancelled and suspended. " In ordered cancel all contradict decisions." ⁹⁸

Also in 29/7/2019 The President of the State of Palestine issued Resolution No. (69) (2019). Regarding to cancel the establishment decision and formation of the Supreme Commission for Tribal Affairs for the southern governorates, whereas the decision stated that the previous presidential decree No. (89) Of 2012 should be cancelled and suspended. " In ordered cancel all contradict decisions." ⁹⁹

4.2 The relationship between the official judiciary and the non-formal judiciary: -

We can find out on how far that relationship is linked between the official judiciary and the non- formal judiciary through testing the impact of the official judiciary of the non-formal judiciary representatives decision, also in the way round of how impact the non- formal judiciary of the official judiciary decision, This is known by measuring the overlap of the representatives of both systems in the work of the other (for example the interfere of the lawyer and the official judge in the reconciliation committee, on the other hand the interfere of the non-formal judges in the official courts work. ¹⁰⁰

Whereas we can say that this relationship between the two systems can be limited into three possibilities: **first one** is the non- direct relationship between the official judiciary and the non-formal judiciary; which is mean that the official judiciary had not

⁹⁸ President of the State of Palestine issued Resolution No. (45) (2019).30/5/2019.

⁹⁹ President of the State of Palestine issued Resolution No. (69) (2019).29/7/2019.

¹⁰⁰ Birzeit university/Institute of law/non-formal judiciary/sovereignty of law & conflict resolution in Palestine/2006/pp 97.

effected of the tribal judiciary or the reform committees decision, also the non-effected of the formal judiciary of the official court's decision. The second possibility, the decisions that issued by the official judiciary affected with the non-formal judiciary Procedures, through Reducing the punishment or conservation the lawsuit, whereas in this possibility the official judiciary is supporting the official judiciary job. Whereas the **third possibility**, considered in keeping and finishing the complaint in the Public Prosecution department because the parties they resolving the dispute through Tribal reconciliation by showing the reconciliation deed, while in this case they conservation the complaint in the public prosecution department without referred it to the official courts.¹⁰¹

But and before switching to study those aspects, we should mention several legal constants that governing the relationship between the official judiciary and the non-formal judiciary, and we can gather these legal constant on the follow:

According to the Penal Code No. 16 of 1960 who applied in the West Bank, the jurisdiction judge (the specialist official judge according to the dispute type which deal with in the official courts) have a Discretionary power to reduce the punishments that legally prescribed in the article (99-100 of the mentioned penal code). And this also what article 46 of the penal code no 74 of 1936 include, utilized in Gaza strip. So according to this there's the official judge has a discretionary power of reducing the punishment that legally prescribed, according to the circumstances and state of the crime, and the social reality that prevails in the society in which the official judge considered as part of it. It also approved by the articles 52, 53 of the penal code no 16 of 1960, that considered the

¹⁰¹ same previous source, pp 97

victim forgiveness it's a reason for stop looking the complaint, also pause Implementation the punishment Sentenced Unless it acquires the deterministic point.

In the same matter and according customary judiciary the Palestinian courts use in a sequence way in reducing the punishment legally prescribed to the minimum limit as result for the tribal reconciliation procedure (A.S. a regular judge in the Magistrate's Court of Ramallah)¹⁰²

Also some regular judges seen that it might reduce the punishment below the minimum limit that legally prescribed (A.A. a regular judge in the Magistrate's Court of Ramallah).¹⁰³

Whereas it should note for important truth that the tribal reconciliation it considered as waiver of the personal right in the regular courts, so at this point the reconciliation deed and after been approved by the jurisdiction judge become as an official documents attached to the case file (M.H. general prosecutor attorney at the Ramallah and Al-Bireh Prosecution office).¹⁰⁴

In the same matter and before we going through the cases study and the interviews we should mention that while we been looking on the relationship that linked the official judiciary with the non-formal judiciary on the cases study we can see the clear effected for the tribal reconciliation procedures on release the accused by warranty. But

¹⁰² Interview on 10/3/2020 A.S. a regular judge in the Magistrate's Court of Ramallah

¹⁰³ Interview on 10/3/2020 A.A. a regular judge in the Magistrate's Court of Ramallah

¹⁰⁴ Interview on 10/3/2020 M.H. general prosecutor attorney at the Ramallah and Al-Bireh Prosecution office.

first I will touch on the relationship between the informal judiciary with the official justice representatives.

4.3 The relationship between the informal judiciary and the general prosecutor, lawyers: -

There is nothing to prevent the job of the reform committees from being complementary to the judiciary and the public prosecution, provided that they have a system that clarifies their job and defines their powers, in addition to defining the system and specifications of the men of the reform committees, provided that their work is limited to the civil aspect, in calming the minds of the victims. (Dr. Ahmed Barak, head of the resistance Corruption Commission).¹⁰⁵

One of the mitigating reasons for punishment in crimes that are not pending on a complaint is that the complainant has forfeited her personal right whenever the court has confirmed the integrity of its issuance in terms of its source and its right to do so, and in terms of the circumstances surrounding this conciliation, meaning that it is free from any defects or coercion, and not be excluded by reason from the court either In the crimes that are pending on a complaint and are forfeited by dropping the personal right, so when the composition is valid, it leads to dropping the public right claim.(Dr. A.D Judge of the Ramallah Criminal Court).¹⁰⁶

I believe that the instruments that are formulated with the intervention of the reform committees have an impact on the cases in the courts, whether in the investigation

¹⁰⁵ Interview on 6/5/2020 Dr. Ahmed Barak, head of the resistance Corruption Commission

¹⁰⁶ Interview on 5/5/2020 Judge Dr. A.D Judge of the Ramallah Criminal Court.

stage or the extension of the detention period during the investigation period, since the existence of such instruments facilitates the release with bail, because its presence reassures the court towards the maintenance of civil peace, and also affects these deed and reconciliations on the final judgment as one of the discretionary mitigating reasons according to the Penal Code, where the judiciary has settled on considering reconciliation as one of the mitigating reasons that reduce the amount of punishment according to the Penal Code.(F.H Judge of the Ramallah Criminal Court).¹⁰⁷

The Penal Procedures Law reduce the jurisdiction of the general prosecutor for the benefit of the judiciary, whereas this limit the effects of the tribal reconciliation with the general prosecutor, where the judge makes the majority dealing, but this did not cancel the truth that the judge taken of the general prosecutor Recommendations as reference for his Decisions, without being obligated to the recommendations. In the same matter there's no any legal document that allow the general prosecutor dealing with the reconciliation deed, and the only legal document that allowing to deal with the reconciliation deed is just in the general courts. And if this happen and a reconciliation deed been provided the general prosecutor recommend to release the accused by warranty. (M.H. general prosecutor attorney at the Ramallah and al-Bireh prosecution office)¹⁰⁸

On the other hand, sometimes the Reformers committees interfere in the general prosecutor job and they cruse over they limitation through direct intervention in the work of the Public Prosecution and that by Inconsistent of the informal judiciary decision with

¹⁰⁷ Interview on 5/5/2020 Judge F.H Judge of the Ramallah Criminal Court.

¹⁰⁸ Interview on 5/3/2020 M.H. general prosecutor attorney at the Ramallah and Al-Bireh Prosecution office.

the public prosecutor decision sometime. (A.K. general prosecutor attorney at the Ramallah and al-Bireh prosecution office).¹⁰⁹

Whereas the tribal reconciliation procedure works to speed up the procedures for hearing the case that sat on the regular courts, and that through creating the appropriate security environment for the general prosecutor and the judges while they dealing with a case. (R.O. general prosecutor attorney at Nablus prosecution office).¹¹⁰

The above indicates that the relationship between the representative of the informal judiciary and the general prosecutor is limited in certain thing, but they recommend constantly this relationship and the general image for the Reformers committees from the general prosecutor is a positive view.

As lawyer work and spatialized in the Criminal field, when we had an authorized from an offender in a criminal case, the first thing we ask for is a reconciliation deed, initially, In order to release the offender from the prison, until a final decision is issued in the case, and that because the criminal cases take long time at courts until they finish it whereas sometimes it take more than 15 years, so that why we ask for the reconciliation deed at the beginning to make sure that the offenders is out of the prison then we continues with the legal procedures at courts. While I believe that the informal judiciary is help us with our job whether its archives justice or not (M.A. spatialized lawyer in the Criminal field- Ramallah).¹¹¹

¹⁰⁹ Interview on 5/3/2020 A.K. general prosecutor attorney at the Ramallah and Al-Bireh Prosecution office.

¹¹⁰ interview on 8/3/2020 R.O. general prosecutor attorney at Nablus prosecution office

¹¹¹ Interview on 29/03/2020 M.A. spatialized lawyer in the Criminal field- Ramallah.

In the same matter lawyer (I.M) from Ramallah also spatialized in the criminal field, the reconciliation deed is very important for us when we deal with a criminal case, and that because the general prosecutor and the regulars courts in Palestine, consider the reconciliation deed as one of the reducing the penalty elements, and an options for releasing the offender until the judgment procedures is finish, so as a lawyer always when we deal with a criminals cases we ask or we tell our client to go for reform committees in ordered to get reconciliation deed, whereas at the end me as lawyer my client intrust it's the important for me whether the reform committees achieves justice or not. (I.M. spatialized lawyer in the Criminal field- Ramallah).¹¹²

In the same matter the tribal judiciary, or the tribal custom in the judiciary and reform, occupied a basic space at the centre of the discussion of the cultural and social heritage of the Arabs in the Negev, and with the increase in violence and crime in Arab society, including murders against revenge, especially in the Negev in recent years, a question arose about whether the system is still The tribal judiciary is a tool for resolving bloody conflicts in the Negev, and does it meet the needs of the Arab Bedouin community, in the south of the country, in light of the interference of the authorities and the changes of the times.(Reformer Sayyah al-Turi, head of Arab tribes and sheikhs, in the Negev).¹¹³

While lawyer (I.N) spatialized lawyer in the Criminal field- Ramallah, he have a deferent prospective of view then the others, he believes that the reform committees, as a part of the judiciary system of achieving justice in Palestine, and its complementary for

¹¹² Interview on 29/03/2020 I.M. spatialized lawyer in the Criminal field- Ramallah.

¹¹³ Interview on 6/03/2020 Reformer Sayyah al-Turi, head of Arab tribes and sheikhs, in the Negev

the lawyers job, by achieving civil and social peace, before they achieving justice, and that true the first we ask for when we deal with a criminal case is the reconversion deed, but that because the slowness of the courts procedures in dealing with cases in general, so as long the lawyer get a reconciliation deed he can release his client from prison that the client can practises his normal life until the court issued the decision, which s might take some times more than 10 years, that why the first thing we do is release our client. (I.M. spatialized lawyer in the Criminal field- Ramallah).¹¹⁴

4.4 The relationship between the informal judiciary and the formal judiciary: -

In Palestine There is no suspicion that the formal judiciary and the informal judiciary is agreed in many aspects, and differ in other things, and in the same matter supplement each other, and cannot be separated from each other in terms of role and function that they do. whereas Both regimes seek to resolve issue and conflicts between the parties to ensure the realization of the personal right and to punish the offenders so that a state of safety and security prevails between the members of society, the organization of social life and the promotion of the civil peace.¹¹⁵

The agreement between the informal and formal judiciary is due to the role and function of both systems in achieving safety and society, so that it is a deterrent to anyone who thinks to attack the right of others, whether its material right or moral, and in various

¹¹⁴ Interview on 29/03/2020 I.N. spatialized lawyer in the Criminal field- Ramallah.

¹¹⁵ Previous reference- Zakarnh hussam, thesis ‘ ‘ the role of clan reformists in resolving local conflicts between citizens in the northern West Bank governorates ’ ’ Arab American University- January- 2018-pp

aspects of life both systems informal and formal agree on the main objective they seek to achieve, the maintenance of security and civil peace, through the resolution of issues and disputes between the people and the organization of the population. while This can only be achieved through the existence of an objective deterrent, which is the force that holds charged anyone who thinks to violate the right of others, materially right or morally right, without a right. Otherwise, society becomes out of law or jungle in which the strong will prevail over the weak.¹¹⁶

in the same matter There are similarities between the two systems in terms of the technique and procedures of litigation, so that Decisions are issued based on the rules, criteria and sources on which the judge is based, and not just a methods subject to the whims and mood of the judge who authorized to resolve the conflict brought to him. In both systems, the judge is honest, transparency and professional. He is an experts to settle issues and disputes in a professional manner. The regular courts require a university degree that the judge obtain to practice the profession, knowing the rules of law and regulations from which the sentencing is derived. As well as informal judiciary and the reform committees requires the judge to be fully familiar with the customs and traditions he inherited from the predecessor, in addition to his intelligence and his experience in resolving conflict and disputes, through follow-up the proceeding through his experience with former judge, and therefore we see that the ruling always supported by a previous case to mention the incident and the name of the judge who issued the judgment, in order

¹¹⁶ Previous reference above pp-49

to enhance the confidence of the adversaries in his judgment, since his judgment was based on sources, not just jurisprudence.¹¹⁷

Whereas In this side of the study I will Touch, the frame that connect the formal judiciary and the informal judiciary, and this proven by Interviews with regular judges and informal judges research in a number of criminal cases that been seen from the informal judiciary, which's Through the result of this research, it became clear to us the nature of the relationship between both the official and informal judiciary in Palestine.

4.5 Case study: -

The first case: - it was a fight on a car parking, between Cousins In a one of the northern west bank village and that was in the end of the 1999, while occurred the fight the parties used Knives and guns, whereas the second party been injured by gun bullet shot from the first party in addition the second party shot the victim who been trine to resolve the dispute by a bullet in the low of his back left him with quadriplegic. As result of this the two parties been arrested and both been transferred to the general prosecutor and both parties been charged off caused a seriously injured. Whereas the jurisdiction courts kept on them arrested for moorhen three month until the reform committees interfere to solved the problem and issued its decision which's a reconciliation between the two parties and the parties should pay 20 thousand Jordanian dinars as a compensation to the victim in addition they Abide by a monthly salary of 200 Jordanian dinars for life. However on the next day of the reconciliation the regular judge released

¹¹⁷ Previous reference- Zakarnh hussam, thesis ‘‘ the role of clan reformists in resolving local conflicts between citizens in the northern West Bank governorates’’ Arab American University- January- 2018-pp-50

the both parties from the prison as long as the Parties and the victim waived their personal right of the claim.¹¹⁸

The jurisdiction judge (A.SH) point of view, this dispute had been solved In order to maintain social peace, but far away from the achieving justice, whereas if this dispute resolved by the jurisdiction courts, the decision where completely different, This is because these types of crimes have different elements, conditions, procedures, and penalties. First this kinds of crimes must been seen by two courts, the Criminal Court as the representative of the public right, and the Magistrate's Court as the personal right representative, also as long the element of the crime where completed, the punishment is determined according to the Jordanian penal code who Applicable in the Palestinian courts, while this kind of crime sentence is a temporary hard labour for one year.¹¹⁹ Then the criminal court transfer the case to the magistrate court in order to consider compensation for the victim, these are the procedure that must be taken in such cases, in order that the tribal reconciliation is not interfered.¹²⁰

The second case: - it was a car accident in 2003, between two cars the first driver was alone and the second driver He was carrying eight girls to the university, as a result of the accident two girls was died and the rest of passenger was injured. While the police report come out with full responsible of the accident is because of the over speed limit from the first driver. At that time and while the driver was arrested and detained under the Public Prosecution the reform committees interfere to solved the dispute with the

¹¹⁸Previous reference/ Birzeit university/Institute of law/non-formal judiciary/pp192

¹¹⁹ Article (344) Unintended harm/Jordanian Penal Code No. (16) Of 1960

¹²⁰ Interview on 8/3/2020 Judge A.Sh Judge of the Ramallah Criminal Court.

families of the two victims in ordered to gain a reconciliation from them, but the first victim families refuse to deal with reform committees, on the other hand the second victim families They responded to the reform committees and considered the accident as a destiny and they forgive the driver, and they waived their personal right to complain. At this point and without having a reconciliation from the first victim, the reform committees produce a reconciliation deed to the jurisdiction judge who looking the case and Accordingly, to that the judge release of the offender (driver) without having a reconciliation deed from the first victim in the same case.¹²¹

The jurisdiction judge (R.G) point of view, this case had been solved but not In order to maintain social peace, and resolved was far away from the achieving justice whither we meant a justice has been achieved, whether by judicial or tribal justice, while this kind of solution that happened is contrary to all laws and norms whither the heavenly or the normative one. Whereas if this case resolved by the jurisdiction courts, the decision where completely different, this is because these types of crimes have different elements, conditions, procedures, and penalties. First this kinds of crimes must been seen by two courts, the Criminal Court as the representative of the public right, and the Magistrate's Court as the personal right representative, also as long the element of the crime where completed, the punishment is determined according to the Jordanian penal code who Applicable in the Palestinian courts, while this kind of crime sentence is a temporary hard labour for five years as minimum,¹²². Then the criminal court transfer the case to the

¹²¹ Previous reference/ Birzeit university/Institute of law/non-formal judiciary/pp-194-195

¹²² Article (330) Unintended harm/Jordanian Penal Code No. (16) Of 1960

magistrate court in order to consider compensation for the victim, these are the procedure that must be taken in such cases, in order that the tribal reconciliation is not interfered.¹²³

The third case: - it was a run over accident in one of the west bank city it caused a serious injured for a mother and her daughter, As a result of the accident, the injured were taken to hospital for treatment, whereas The driver was arrested by the police and transferred to the Public Prosecution to proceed with the case's procedures, at that time the reform committees interfere to resolve the problem and singe reconciliation deed between the both parties, but at the start the injured families they refuse to deal with the reform committees, but they come back and After being pressured on the injured families by the reform committees, the accept the conciliation, and the driver should bear the costs of the treatment, and they accept and make reconciliation deed so according to that the judge release the driver.¹²⁴

The jurisdiction judge (R.G) point of view, this case had been solved In order to maintain social peace, and resolved was nearby from the achieving justice, while this kind of solution that happened is close to law solution. Whereas if this case resolved by the jurisdiction courts, the decision where completely different, this is because these types of crimes has a dual nature side, because the parties of the conflict have committed similar crimes. First the driver who run over the victim and the victim family they kidnap the driver brother which's this kind of crime is worse than the driver crime, whereas the victim family crime considered as fulfilment of the right using violence, while this kind

¹²³ Interview on 8/3/2020 Judge R.G Judge of the Ramallah Criminal Court.

¹²⁴ Previous reference/ Birzeit university/Institute of law/non-formal judiciary/pp-196

of crime the offender will be sentence with a six month in jail, ¹²⁵ in the same matter this kinds of crimes must been seen by two courts, the Criminal Court as the representative of the public right, and the Magistrate's Court as the personal right representative, also as long the element of the crime where completed, the punishment is determined according to the Jordanian penal code who Applicable in the Palestinian courts, while the run over crime sentence is jailed from one month to one year, ¹²⁶. Then the criminal court transfer the case to the magistrate court in order to consider compensation for the victim, these are the procedure that must be taken in such cases, in order that the tribal reconciliation is not interfered. ¹²⁷

The forth case: - it was a Murder in a village in the northern of the west bank in 1999, when they Found a dead body for a shepherd in one of the village fields, While the intervention of the General Intelligence and after investigation with the people of the village they identified the criminal, and after the criminal been arrested and transfer to the public prosecutor the reform committees interfere to achieve a conciliation, but because of the type of the crime the reconciliation procedure it should take some time which's include 4 to 5 step until they finish the reconciliation procedures, at the end they make the conciliation and sign the reconciliation deed after they payed 41 thousand JD to the victim family, whereas the reform committees they provide the reconciliation deed to the judge and the other release the criminal after he sign a warranty of 20 thousand JD, and

¹²⁵ Article (233) Unintended harm/Jordanian Penal Code No. (16) Of 1960

¹²⁶ Article (330) Unintended harm/Jordanian Penal Code No. (16) Of 1960

¹²⁷ Interview on 8/3/2020 Judge R.G Judge of the Ramallah Criminal Court.

the judge kept the indictment against the criminal because of the political situation with Israel.¹²⁸

The jurisdiction judge (Dr.A.A) point of view, this case had been solved In order to maintain social peace, and the resolved was far away from the achieving justice. Whereas if this case resolved by the jurisdiction courts, the decision where completely different, this is because The seriousness of this type of crime on the civil and social peace, while this kind of crime the murder will be Punishable by death for intentional murder,¹²⁹ in the same matter this kinds of crimes must been seen by the high grade courts, the Grand Criminal Court as the representative of the public right, also the Magistrate's Court as the personal right representative, also as long the element of the crime where completed, the punishment is determined according to the Jordanian penal code who Applicable in the Palestinian courts. Then the grand criminal court transfer the case to the magistrate court in order to consider compensation for the family victim, these are the procedure that must be taken in such cases, whether the tribal reconciliation is interfered or not.¹³⁰

The fifth case: - it was a Manslaughter crime in the city of Ramallah west bank in 1999, while the Offender was playing with unlicensed gun, accidentally a bullet come from the gun and killed a person and injured his son. At that time the offender surrendered his self to the police and the other transferred him to the general prosecutor and then to the jurisdiction court which find him guilty with Manslaughter and be

¹²⁸ Previous reference/ Birzeit university/Institute of law/non-formal judiciary/pp-198-199

¹²⁹ Article (328) Unintended harm/Jordanian Penal Code No. (16) Of 1960

¹³⁰ Judge Dr.A.A Judge of the Ramallah Criminal Court.

sentenced for 15 years in prison. At that time the reform committees interfere to achieve a conciliation from the murdered family, and as mention earlier the murder cases have to go through long procedures to achieves a conciliation, whereas and after three years the victim family they accept the conciliation and the other they payed 35 thousand JD, after that the reform committees they send the reconciliation deed to the judge whereas the other reduce the sentenced from 15 years to 12 years and again the judge reduce the sentenced again to 6 years and in the end the judge Sufficiency with the spent period, which is three years so he Release him. In the same matter and after 10 years of the accident the son of the victim He met, coincidentally, with the man who killed his father, and immediately shot him and killed him.¹³¹

The jurisdiction judge (Dr.A.A) point of view, this case had been solved In order to maintain social peace, and the resolved was nearby from the achieving justice. Whereas if this case resolved by the jurisdiction courts, the decision will be fifteen years in jail, and this what the murder been sentence, ¹³² in the same matter the murder Benefited from the commutation condition (reduce the sentence) when the victim family gave up for they personal right, while this kinds of crimes must been seen by the high grade courts, the Grand Criminal Court as the representative of the public right, also the Magistrate's Court as the personal right representative, also as long the element of the crime where completed, the punishment is determined according to the Jordanian penal code who Applicable in the Palestinian courts. Then the grand criminal court transfer the case to the magistrate court in order to consider compensation for the family victim, these

¹³¹ Previous reference/ Birzeit university/Institute of law/non-formal judiciary/pp-199-200

¹³² Article (330) Unintended harm/Jordanian Penal Code No. (16) Of 1960

are the procedure that must be taken in such cases, whether the tribal reconciliation is interfered or not.¹³³ But I believe in this the social peace was far away from achieving justice.

The sixth case: - it was a premeditated murder crime, in city of Hebron, while the criminal with a help from his mother and his young brother to suffocated his wife to death and then set fire to the house In order to erase the traces of the crime, and it show that the crime is accidently happened, but it didn't last long until the Until the forensic report is issued, and shows that the reason of the death is made up by a someone, and not accidently, whereas the police arrested her husband and he admit of his crime and then the police he transferee the murder to the general prosecutor, at that time the reform committees interfere to achieve a conciliation from the victim family and they sign a reconciliation, and after six month the court released the offender from the prison, and that because **The availability conditions for the reduction of sentence**, whereas after 11 years members from the victim family they went to the place where the offender stay and killed him as revenge for their cousin.¹³⁴

The jurisdiction judge (R.G) point of view, this case had been solved In order to maintain social peace, and the resolved was nearby from the achieving justice. Whereas if this case resolved by the jurisdiction courts, the decision will be fifteen years in jail, and this what the murder been sentence, ¹³⁵ in the same matter the murder Benefited from the commutation condition (reduce the sentence) when the victim family gave up for they

¹³³ Interview on 8/3/2020 Judge Dr.A.A Judge of the Ramallah Criminal Court.

¹³⁴ Previous reference/ Birzeit university/Institute of law/non-formal judiciary/pp-199-200

¹³⁵ Article (330) Unintended harm/Jordanian Penal Code No. (16) Of 1960

personal right, while this kinds of crimes must been seen by the high grade courts, the Grand Criminal Court as the representative of the public right, also the Magistrate's Court as the personal right representative, also as long the element of the crime where completed, the punishment is determined according to the Jordanian penal code who Applicable in the Palestinian courts. Then the grand criminal court transfer the case to the magistrate court in order to consider compensation for the family victim, these are the procedure that must be taken in such cases, whether the tribal reconciliation is interfered or not.¹³⁶ But I believe in this the social peace was far away from achieving justice.

The seventh case: - it was a fight between two guys, as result of the fight one had a serious injured in the head, at this time a reform committees interfere to resolve the issue between the parties of the fight but the injured guy family refuse to conciliation until they revenge, whereas the reform committees Pressed on them until they accept the conciliation for 40 day which's the period for the parties prepared for reconciliation, but the injured guy cousins didn't committed to the reconciliation period and they went to the shop where is the guy work and they Beat him up and burn his shop, whereas this acts make the issue get worst and more people interfere in the fight for the revenge reason, at that time the police engage with the reform committees to resolve the issue and the parties agreed to reconciliation with some condition, so after that the police kept the case and did not transferee it to the general prosecutor, whereas and alter on none of the condition they agreed on was fulfil.¹³⁷

¹³⁶ Interview on 8/3/2020 Judge Dr.A.A Judge of the Ramallah Criminal Court.

¹³⁷ Previous reference/ Birzeit university/Institute of law/non-formal judiciary/pp-205-206

The jurisdiction judge (A.A) point of view, this case had been solved In order to maintain social peace, and the way where this case been resolved was far away from the achieving justice, while this kind of crime the parties of the case will jailed from one month to one years,¹³⁸ but because of the reconciliation deed the law will reduce the sentence in the same matter this kinds of crimes must been seen by the Criminal Court as the representative of the public right, also the Magistrate's Court as the personal right representative, also as long the element of the crime where completed, the punishment is determined according to the Jordanian penal code who Applicable in the Palestinian courts. Then the criminal court transfer the case to the magistrate court in order to consider compensation for the family victim, but because the both parties were given up of the personal right the case will be saved.¹³⁹

The eighth case:- it was a Manslaughter crime in the end of 2003 in one of the Jerusalem refugees camp, while the victim been shot dead by A stray bullet while he been walked through next to a fight between the offender and others, after that the victim family went and burning a shop belong to the offender cousin, which's make the offender family to involve a reform committees in order to resolve the issue, whereas the reform committees hold a truce from the victim family in order to resolve the issue and maintain social peace, and after the truce time finish the reform committees didn't continued with the conciliation so the president Yasser Arafat interfere at that time and he Mandate the governor of Jerusalem to interfere in the conflict to resolve the issue, at that time the reform committees went and make conciliation with the victim family and payed 30

¹³⁸ Article (333-344) Unintended harm/Jordanian Penal Code No. (16) Of 1960

¹³⁹ Interview on 8/3/2020 Judge A.A Judge of the Ramallah Criminal Court.

thousand JD and they sign a reconciliation deed between the parties and they put a condition that the offender is forbidden to return to the camp for life, whereas the offender handed himself over to the Palestinian police and the other and because of the Insufficient evidence they Released him.¹⁴⁰

The jurisdiction judge (A.A) point of view, this case had been solved In order to maintain social peace, and the resolved was nearby from the achieving justice. Whereas if this case resolved by the jurisdiction courts, the decision will be fifteen years in jail,¹⁴¹ but because the situation for the offender that he hold an Jerusalem ID and because the Palestinian authority don't have sovereignty on who have Israeli ID and also because the lack of evidence, they Released him in ordered that the conflict parties they resolved the issue and sign a reconciliation deed, this Benefited the offender from the commutation condition (reduce the sentence) when the victim family gave up for they personal right, while this kinds of crimes must been seen by the high grade courts, the Grand Criminal Court as the representative of the public right, also the Magistrate's Court as the personal right representative, also as long the element of the crime where completed, the punishment is determined according to the Jordanian penal code who Applicable in the Palestinian courts. Then the grand criminal court transfer the case to the magistrate court in order to consider compensation for the family victim, these are the procedure that must be taken in such cases, whether the tribal reconciliation is interfered or not.¹⁴²

¹⁴⁰ Previous reference/ Birzeit university/Institute of law/non-formal judiciary/pp-200-201

¹⁴¹ Article (330) Unintended harm/Jordanian Penal Code No. (16) Of 1960

¹⁴² Interview on 8/3/2020 Judge Dr.A.A Judge of the Ramallah Criminal Court.

The ninth case: - it was Attempted rape a girl in a village in the south west bank in 2002, when a girl claimed that the owner of the shop try to rape her when she was shopping from his shop, and after the girl claimed a number from her family with most of the village people they went to the guy and his family property and they burned them, at that time the police interfere and save the offender and his family by taken them outside the village to the police station, at that time the reform committees interfere in order to resolve the conflict, and they hold truce from the village people for a year, and they sign a reconciliation deed with a condition that the guy and his parents not allowed to inter the village for life and they not allowed to ask for compensation of they burned property and that how its end without transfer the case to court or to the general prosecutor.¹⁴³

The jurisdiction judge (A.A) point of view, this case had been solved In order to maintain social peace, and the resolved was far away from the achieving justice. Because of the harm of the claimed girl family and the village people did for the shop owner and his family property, which's this act is considered as crime punishable by law, Whereas if this case resolved by the jurisdiction courts it well take deferent shape of dealing with this case, and the offender will be the claimed girl family and the village people not the shop owner, because The legal rule stipulates that the accused is innocent until proven guilty, while the village people they committed an act that punishable by the Jordanian Penal Code for damaging and harm property for others.¹⁴⁴ Whereas the punishable for this crime will be jailed and fine, ¹⁴⁵ But because of the specificity of the problem the offender and his family they gave up of they right, while this kinds of crimes must been

¹⁴³ Previous reference/ Birzeit university/Institute of law/non-formal judiciary/pp-203-204

¹⁴⁴ Article (330) Unintended harm/Jordanian Penal Code No. (16) Of 1960

¹⁴⁵ Article (371-233) unintended harm/Jordanian Penal Code No. (16) Of 1960

seen by the Criminal Court as the representative of the public right, also the Magistrate's Court as the personal right representative, also as long the element of the crime where completed for side and not for the other, the punishment is determined according to the Jordanian penal code who Applicable in the Palestinian courts. Then the criminal court transfer the case to the magistrate court in order to consider compensation for the offender family, these are the procedure that must be taken in such cases, whether the tribal reconciliation is interfered or not.¹⁴⁶

The tenth case:- it was a fight between two families in Gaza strip in 2001, it start with Shouting on each other than its developed to attack on each other which s lead to injured one of the conflict parties in his head, at that time the reform committees interfere to resolve the conflict and they hold a truce, but in the next day they resume the fight, and its include weapon and guns and property burning which's end up with killing a chilled was in one of the burned houses, at that time the police try to stop the violence but the fight was so dangers so the police ask for help from the District Commander, that he send ordered to put all the conflict parties in prison, then he send a high reform committees to interfere and resolve the conflict, indeed the high reform committees make the conciliation between the conflict parties, and the informal judiciary verdict was that the offender of killing the chilled should pay 30 thousand JD, and also they should pay 50 thousand \$ as compensation for the harm that follow the property that they burned, while in this basis they sign a reconciliation deed.¹⁴⁷

¹⁴⁶ Interview on 8/3/2020 Judge A.A Judge of the Ramallah Criminal Court.

¹⁴⁷ Previous reference/ Birzeit university/Institute of law/non-formal judiciary/pp-206-207

The jurisdiction judge (A.A) point of view, this case had been solved In order to maintain social peace, and the way where this case been resolved was far away from the achieving justice, while this kind of crime the parties of the conflict will jailed from one month to one years,¹⁴⁸ For committing two crimes the first one is Serious injured crime, and the other crime is Assault others property, but because of the reconciliation deed the law will reduce the sentence, but without effected the Financial rights that been arranged on the conflict parties in ordered pending the dispute, while this kinds of crimes must been seen by the Criminal Court as the representative of the public right, also the Magistrate's Court as the personal right representative, also as long the element of the crime where completed, the punishment is determined according to the Jordanian penal code who Applicable in the Palestinian courts. Then the criminal court transfer the case to the magistrate court in order to consider compensation for the family victim, but because the both parties were given up of the personal right the case will be saved.¹⁴⁹

The eleventh case: - is bet deferent and complicated because one of the reason behind the dispute is the Israeli side, the case is about a fight happen in 2004 in Gaza strip between to family and the fight start when the Israeli army attack member of Hamas movement house and they drop the house down by air craft, while the next house and from the bombing force is also dropped dawn, at this time start a fight between the Neighbour and they used guns and the next house owner shot the member of Hamas movement in his legs which is died later on in the hospital, at that time the reform committees interfere to resolve the issue but the victim family refuse and they ask for law

¹⁴⁸ Article (333-344) Unintended harm/Jordanian Penal Code No. (16) Of 1960

¹⁴⁹ Interview on 8/3/2020 Judge A.A Judge of the Ramallah Criminal Court.

enforcement, at that time the reform committees make the murders and they were three members how involved in the crime, and They surrendered them self to the police station which the other transfer them to the general prosecutor, And based on the confessions of the offenders, the Public Prosecution charged them with intentional murder crime. At that time the offenders family ask for reconciliation with the victim family but they refuse and they say let the law say his world at that time the offenders family resume the fight and at that time the victim family shot dead an old man from the offenders family, while this case still at court and didn't resolved and it been divided into three cases. The first one is intentional murdered crime on the Hamas member, and the second case also intentional murdered crime on the old man and the third case is attacking crime.¹⁵⁰

The jurisdiction judge (R.G) point of view, this case did not solved In order to maintain social peace, and the way how been deal with this case was far away from the achieving justice. Whereas this kind of cases its jurisdiction for the high criminal courts, and the decision will be fifteen years in jail for intentional murdered crime,¹⁵¹ in the same matter there's no commutation condition (reduce the sentence) as long none of the victims family gave up for they personal right, while as I mention earlier this kinds of crimes must been seen by the high grade courts, the Grand Criminal Court as the representative of the public right, also the Magistrate's Court as the personal right representative, also as long the element of the crime where completed, the punishment is determined according to the Jordanian penal code who Applicable in the Palestinian courts. Then the grand criminal court transfer the case to the magistrate court in order to

¹⁵⁰ Previous reference/ Birzeit university/Institute of law/non-formal judiciary/pp-207-208

¹⁵¹ Article (326) Unintended harm/Jordanian Penal Code No. (16) Of 1960

consider compensation for the family victim, these are the procedure that must be taken in such cases, whether the tribal reconciliation is interfered or not.¹⁵² On the other hand I believe in this case the social peace was far away from achieving justice.

The twelfth case: - it was Assaulting a person in Gaza strip in 2004, and that was when the victim walk crows the offender land, after that the victim and his brother they spotted the person who assaulted their brother and beat him, then the beating guy call his brothers and they spotted one of the other parties member where he was setting on a shop for his relative they drag him outside the shop and they beat him up and when the shop owner try to stop them they shot him in his stomach, at that time they realize that they make a big mistake and they ask the reform committees to interfere to resolve the issue. But in the same night and before the reform committees interfere the victim family they went to the offended side the one they shot the shop owner and they burned down they houses and six of the cars. At this time the reform committees interfere and they agreed the conflict parties to Appeal to customary jurisdiction, whereas the verdict was: - they should pay 20 thousand JD for the shop owner the injured guy, and another 20 thousand JD for the kidnap guy, and after that they sign a reconciliation deed between the conflict parties and its end up her without transfer the case to the courts. ¹⁵³

The jurisdiction judge (A.A) point of view, this case had been solved In order to maintain social peace, and the way where this case been resolved was far away from the achieving justice, while this kind of crime the parties of the conflict will jailed from one

¹⁵² Interview on 8/3/2020 Judge R.G Judge of the Ramallah Criminal Court.

¹⁵³ Previous reference/ Birzeit university/Institute of law/non-formal judiciary/pp-208-209

month to one years,¹⁵⁴ For committing two crimes the first one is Serious injured crime, and the other crime is Assault others property, but because of the reconciliation deed the law will reduce the sentence, but without effected the Financial rights that been arranged on the conflict parties in ordered pending the dispute, while this kinds of crimes must been seen by the Criminal Court as the representative of the public right, also the Magistrate's Court as the personal right representative, also as long the element of the crime where completed, the punishment is determined according to the Jordanian penal code who Applicable in the Palestinian courts. Then the criminal court transfer the case to the magistrate court in order to consider compensation for the family victim, but because the both parties were given up of the personal right, and because the parties agreed on the customary jurisdiction they formal judiciary has no jurisdiction at this case.¹⁵⁵

The Thirteen case: - it was a fight in the city south Jerusalem in the 2002, it was a fight between two guys on a Commercial deal and one of the conflict parties hit the other guy with stick in his head left him with injured, while the injured guy went to his car and come back with gun and start shooting to the guy who hit him and he, and left him with series injured in the head and the back and the foots, then people who were there they interfere and take them both to the hospital in Jerusalem, at that time the reform committees interfere in ordered to resolve the conflict and, at the hospital they managed to hold a truce between the conflict parties until the injured person's condition stabilized because the bullets had penetrated the spine, whereas After his health condition

¹⁵⁴ Article (333-344-337-338) unintended harm/Jordanian Penal Code No. (16) Of 1960

¹⁵⁵ Interview on 8/3/2020 Judge A.A Judge of the Ramallah Criminal Court.

stabilized, it became clear that the injury led to quadriplegia, at that time the reform committees suggested for the parties to go to the customary judiciary as part of the formal judiciary, as long as the Palestinian authority don't have any sovereignty at this area and in order to maintain the Civil peace. At that time the both parties they agreed on the customary judiciary, whereas the customary judiciary verdict was as the follow: - the offender should pay to the victim 70 thousand JD Divided in batches, 30 thousand JD when they sign the reconciliation deed, and after six month another 15 thousand JD until full payment. While the offender pay his first payment and they signed the verdict and the case saved without transferred to the general prosecutor. But the second payment, which was due after six months, was not paid.¹⁵⁶

The lawyer (A.Q) point of view, this case had been solved In order to maintain civil peace, and the way where this case been resolved was far away from the achieving justice, while this kind of crime the offender will jailed With temporary hard labour for a maximum ten years in prison.,¹⁵⁷ but because there was no option and in order to maintain the civil peace and to stop the Violence, the victim family choice the customary judiciary to deal with the conflict, However, the offender was not obligated to implement the judges 'decision, and as lawyer a took the verdict and I went to the jurisdiction court in the city of Ramallah in order to implement the customary judiciary verdict, But I was surprised by the specialist judge answer, that there is no law regulating the implementation of the verdict who been issued by the customary judiciary.¹⁵⁸

¹⁵⁶ Legal advisory council law office/ Ramallah Rass Altahona street/ owner Bassam Khalayleh

¹⁵⁷ Article (335) unintended harm/Jordanian Penal Code No. (16) Of 1960

¹⁵⁸ Interview on 29/03/2020 I.Q. specialized lawyer in the Criminal field- Ramallah.LAC.office

4.6 Interview result: -

Whereas this above cases give an image of the Practical reality between the two judiciary, the formal and the informal, although the judicial representatives who were interviewed gave a description and definition of the relationship between the two judiciary as an integral relationship, based on the integration between them, however we cannot take this description as truth. Because that we cannot give an one describe for this relationship because the total of the criminal cases that been examined above it showed that the relationship between the two judiciary took two major shape, **the first shape:** when the informal judiciary job be integral for the formal judiciary job, and that happen when the representative of the informal judiciary interfere in a Penal dispute, and they try to resolve the dispute and try to calm the conflict parties, by issuing verdicts, whereas It should be noted that most of the regular judges that been interviewed mentioned that the reform committees job is integral and helping them in the penal and criminal cases and reduce the heavy load of the penal cases.

While the second shape: when the informal judiciary become an alternative option for the formal judiciary, and this happen when the representative of the informal judiciary interferes in a penal dispute through issued verdict and decisions deals with the result of the crime, and put punishment on the offender and his family, like Fines and deportation from their homes, etc. And forcing them to give up of the personal right in the formal judiciary, also we should mention that some reconciliation deed put condition on the victim and his family to give up on all their legal right, whereas these kind of reconciliation deed is legally invalid. Also issuing the verdicts and decisions from the

informal judiciary that include sanctions on the offender, and that mean that he will get punishment twice, once from the informal judiciary and the other from the formal judiciary. And this Inconsistent with the Non duplication penalty principal of punishment. And because the unofficial judiciary practises a job inside the society through a set of rules and procedures, at this point it is necessary to know the extent of compatibility or contradiction between the unofficial judiciary and the principle of law sovereignty.

4.6 The range of the contradictions of the unofficial judiciary rules with the principle of law sovereignty: -

Through the research text we spot the way of the reform committees how they interfere to resolve conflicts, and what the procedure and the elements that they use since they involved in the conciliation until they resolve it. And we can see that the ways they interfere in the conflict and the way the collect they evidence, and Issuance the verdict and the punishment, and the way the implantation all this, Are subject to a set of criterion and basic of rules, and if we compare this rules with the principle of the sovereignty of law, we will come out with the follow: -

- Criminalization and punishment rule in the informal judiciary it derives its legitimacy from custom, and this rule is completely contrary with the sovereignty of law principle, while Under the criminal legislation rule, there's no crime or punish without a legal text written and issue by a specialized authority Determined by the basic law. And because of that custom cannot make a rules for

Criminalization and punishment. In the same matter the punishment that been put on the Convicted offender under the law it's a personal punishment, and commensurate with the crime he made, whereas in the informal judiciary the verdict and the decision Imposed on the offender and his family, Such as deportation outside the city or village. While this kind of punishments it carries collective punishment, and it is against the principle of personal punishment.

- The informal judiciary interfere to end the dispute through a settlement between the conflict parties, and the final text for the reconciliation deed were affected by several factors, such as the size of the family and the large number of them, whether they are refugees or original, the financial status for the conflict parties, and the strength and influence of the reform committees, all these factor are effect the finial reconciliation text, which is don't required to achieve justice. While this is indeed contrary with one of the basic criteria for the principle of law sovereignty. This procedure is contrary to what is stipulated in the Palestinian Basic Law, that all citizens are equal in law and do not distinguish between them whether by race, religion, gender, or political opinion.
- In in the same matter when the informal judiciary convicted an offender of a crime that required a punishment, while the offender use all kind of evidence to prove that he not guilty, such as witnesses, take an oath, and more of the illegally way of prof, whereas most of this kind of prof is Illegal and unscientific. And this contrary with the principal of law sovereignty that guarantees the right of legitimate defines of the accused until proven guilty. And how this impact the Palestinian society, whereas it's a tribal society and his its own customs and

traditions behaviour, which is inherited by their parents and grandparents, and spread within the community and meet their needs and ambitions.

Chapter five: - Conclusion

- **The results of the study**
- **Recommendation**

Preface: -

This survey study is examined the intervention effect of the reform committees on civil peace and the official judiciary in Palestine, also we mentioned the most important features of the reform committees (customary judiciary) in Palestine and how they interfere so fast in the conflict in order to stop any quick reaction, also the way they issue a fast verdicts on the conflict cases after hearing all the involved parties and understand the whole problem, they make sure that justice circulate among the disputing parties so they do not oppress one of the parties. All that in ordered to achieve the civil and social peace. on the other hand, and after the completion of the research study, we clarify how the reform committees verdicts and they actions is differ from the official judiciary, at that through the collect data from the respondents, and through the interviews, and previous research, articles and case study, while all that helped me to come out with the results, and the recommendation in this chapter.

❖ The results of the study: -

As we confirmed in many side in this study, that the most important achievement of the informal judiciary, is achieving the civil peace, and social peace, and maintain security and stability in the society. And this was admitted from most of the judiciary representative, whether from reform committees, or official judges, or general prosecutors, or lawyers.

Whereas we can conclude from this study that all presidential resolution that issued in ordered to organize and form the system of the reform committees in Palestine have been cancelled, and that mean that all the reconciliation that been made since 2019 the cancelation date is void and invalid and the reconciliation deed that been sign from the conflicts parties in ordered to be used in the courts for the releases resound is Illegal.

In the same matter we conclude also that the verdict of the informal judiciary and the reform committees of a holistic nature, meaning that the punishment is collective, involving all the family and not only the person who commits the crime. This is against the principle of personal punishment, as well as violating the Basic Law and international norms.

Also we conclude from this study that there's no system regulate the verdict of the reform committees in Palestine, while we can see that some verdict It cannot be applied or difficult to implement form the offenders, such as Compensate the victim with a large sum of money, or demolition of homes or deported from their homes, All these unjust decisions are far away from achieving justice.

On the other hand, we also conclude from this study that the reconciliations deed is Accredited with the regular courts in criminal cases, so that the judge takes it as a reason to reduce the sentence or release the arrested person.

Whereas the informal judiciary verdicts are not implemented by the enforcement courts, and This is illogical.

❖ **Recommendation: -**

This study has shed on the light on the informal judiciary shape, in the criminal field, whereas this study is reached the recommendation from analysing the real case study, and the verdicts, and the Decisions also the interviews with the judiciary Representatives. While this recommendation Correspond with what People's demands, which's call for the Reforming the formal judicial system, and restructured and organize it, and strengthening the Police Service, for the need of achieving the principal of law sovereignty.

While these recommendations can be included as follows:

1. It is necessary to 'the legislature when he put a legislation related to the judiciary system, he should be aware of and knowledgeable in the informal judiciary and its procedures. And that because do not violate the law or interfere within its powers.
2. It's clearly showed this study that the Representatives of the informal judiciary issued and a verdict and decisions that contradict with the basic law, and the legal principal, and the Justice rules. Like those who decide a collective punishment, such as deportation, or the money compensation, all that is Violates the personal punch principal. So it is important to recommend for stopping issued such this decision, whoever issues it must be legally asked.
3. Also the study shows that the Provincial offices have decided on many cases and dispute in terms of keeping civil peace, whereas this actions is Overflow the governor power, and

from this point the legislature should legislate an law to Specifies the powers of the governor in exclusively way, in a way that did not contradicts with independent of judiciary and the principal of sovereignty of law.

4. Also we conclude from the study that the informal judiciary verdicts, not allows to implemented by the enforcement courts, while This characteristic enough to destroys the informal judiciary system, Accordingly, the legislature should legislate an law Allows the implementation of the informal judiciary decisions in the regular courts.
5. In the same matter we touch from the study that all the all presidential resolution that issued in ordered to organize and form the system of the reform committees in Palestine have been cancelled, also accordingly, the legislature must issue a decree or a law regulate the work of the reform committees in Palestine.
6. Also one of the reasons the conflicts parties choice the reform committees to resolve their disputes is the lack of confidence in the judicial system, and that because the Lack of practical experience of the systematic judges due to their young age. So accordingly, the Supreme Judicial Council must develop the expertise of the regular judges through relevant courses in the customs law and legal laws that used by the informal judiciary.
7. Also the long period of the judgmental in the regular courts bush the conflicts parties to go to the informal judiciary, in ordered to save time and expenses and also to preserve the rights from loss through the issuance of quick decisions that preserve the rights from loss in the event of a long time litigation, especially since some cases in the regular courts take sometimes ten to fifteen years until a final decision is issued.

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قرار مجلس الوزراء رقم (٢٨) لسنة ٢٠٠٥ م بالمصادقة على توصيات اللجنة الوزارية الخاصة بالتعامل مع المؤسسات الحكومية غير الوزارية التابعة لأمانة الرئاسة

مجلس الوزراء

بعد الاطلاع على القانون الأساسي المعدل،
وعلى قرار سيادة الرئيس بتحويل عدد من المؤسسات لمجلس الوزراء لتحديد مرجعيتها،
وعلى ما عرضه وزير التخطيط،
وبناء على ما أقره مجلس الوزراء في جلسته المنعقدة بمدينة رام الله بتاريخ: (١٥/٣/٢٠٠٥ م)
تحت رقم (١/٤/٩٠ م.و.أ.ق)،
قرر ما يلي:

مادة (١)

تحديد مرجعية المؤسسات الآتية والتي كانت تابعة لأمانة الرئاسة على النحو الآتي :

- ١- تحول مؤسسة فلسطين المستقبل إلى منظمة أهلية وفقاً للقانون.
- ٢- يلحق بيت الشعر بوزارة الثقافة.
- ٣- يلحق مكتب مستشار الرئيس لحقوق الإنسان بوزارة العدل ويلغى المسمى.
- ٤- تلحق مؤسسة دار الكرامة بوزارة الشؤون الاجتماعية والعمل.
- ٥- تلحق دائرة شؤون العشائر بوزارة الداخلية والأمن الوطني.
- ٦- تلحق دار الكتب الوطنية بوزارة الثقافة.
- ٧- يلحق نادي الفروسية بوزارة الشباب والرياضة.
- ٨- يلحق الموظفون الموزعون لمحافظة جنين وحركة الشبيبة بملاك المحافظة.
- ٩- يلحق مركز الأبحاث بوزارة التخطيط.

قرار رقم (89) لسنة 2012م بشأن إنشاء وتشكيل الهيئة العليا لشؤون العشائر للمحافظات الجنوبية

رئيس دول فلسطين
رئيس اللجنة التنفيذية لمنظمة التحرير الفلسطينية
رئيس السلطة الوطنية الفلسطينية
استناداً لأحكام القانون الأساسي لمنظمة التحرير الفلسطينية،
وبعد الاطلاع على النظام الأساسي المعدل لسنة 2003م وتعديلاته،
وبناءً على الصلاحيات المخولة لنا،
وتحقيقاً للمصلحة العامة،

قررنا ما يلي:

مادة (1)

تتشأ بموجب أحكام هذا القرار هيئة تسمى "الهيئة العليا لشؤون العشائر للمحافظات الجنوبية"، تتبع لرئيس السلطة الوطنية.

مادة (2)

تشكل على النحو التالي:

1. السيد/ حسني سلمان المغني.
2. السيد/ عيد محمد أبو حصيرة.
3. السيد/ سيف الدين عبد اللطيف أبو رمضان.
4. السيد/ عطا محمد ماضي.
5. السيد/ تيسير يوسف عبد النبي أبو عيدة.
6. السيد/ أيوب عبد ربه الكفارنة.
7. السيد/ درعان برجس الوحيدي.
8. السيد/ العيد أحمد محمد السلطان.
9. السيد/ مصطفى محمد إبراهيم سلمان.
10. السيد/ حسين عبد الحميد شحادة حسين.
11. السيد/ إبراهيم خليل سلمان.
12. السيد/ عبد الحي محمد مطلق عبد الجواد مغاري.
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قرار رقم (33) لسنة 2019م بشأن إنشاء وتشكيل الهيئة العليا لشؤون العشائر للمحافظات الشمالية

رئيس دولة فلسطين
رئيس اللجنة التنفيذية لمنظمة التحرير الفلسطينية
استناداً لأحكام النظام الأساسي لمنظمة التحرير الفلسطينية،
ولأحكام القانون الأساسي المعدل لسنة 2003م وتعديلاته،
وبناءً على الصلاحيات المخولة لنا،
وتحقيقاً للمصلحة العامة،

قررنا ما يلي:

مادة (1)

تنشأ بموجب أحكام هذا القرار هيئة تسمى "الهيئة العليا لشؤون العشائر للمحافظات الشمالية" تتبع لرئيس دولة فلسطين.

مادة (2)

تشكل الهيئة على النحو الآتي:

1. السيد/ نواف سرحان سليمان الزغارنة
 2. السيد/ ابراهيم خليل ابراهيم الفواغرة
 3. السيد/ نافذ محمد حيدر الجعبري
 4. السيد/ عبد الرزاق مرعي حسن ابو الهيجا
 5. السيد/ عثمان رشيد سلامة دويكات
 6. السيد/ اسماعيل سليمان سليم أبو الرشيدة
 7. السيد/ عامر علي محمد علي
 8. السيد/ يوسف مصطفى أحمد مخمير
 9. السيد/ جبريل مصطفى عبد الهادي السراحنة
- عضواً
عضواً
عضواً
عضواً
عضواً
عضواً
عضواً
عضواً
عضواً

مادة (3)

يكلف السيد/ اياد عيسى عبد السلام العملة بمهام المنسق العام للهيئة.

مادة (4)

يكون للهيئة صلاحية تشكيل لجان فرعية في المحافظات لمتابعة شؤون العشائر.

قرار رقم (33) لسنة 2019م بشأن إنشاء وتشكيل الهيئة العليا لشؤون العشائر للمحافظات الشمالية

رئيس دولة فلسطين
رئيس اللجنة التنفيذية لمنظمة التحرير الفلسطينية
استناداً لأحكام النظام الأساسي لمنظمة التحرير الفلسطينية،
ولأحكام القانون الأساسي المعدل لسنة 2003م وتعديلاته،
وبناءً على الصلاحيات المخولة لنا،
وتحقيقاً للمصلحة العامة،

قررنا ما يلي:

مادة (1)

تنشأ بموجب أحكام هذا القرار هيئة تسمى "الهيئة العليا لشؤون العشائر للمحافظات الشمالية" تتبع لرئيس دولة فلسطين.

مادة (2)

تشكل الهيئة على النحو الآتي:

1. السيد/ نواف سرحان سليمان الزغارنة
 2. السيد/ ابراهيم خليل ابراهيم الفواغرة
 3. السيد/ نافذ محمد حيدر الجعبري
 4. السيد/ عبد الرزاق مرعي حسن ابو الهيجا
 5. السيد/ عثمان رشيد سلامة دويكات
 6. السيد/ اسماعيل سليمان سليم أبو الرشادة
 7. السيد/ عامر علي محمد علي
 8. السيد/ يوسف مصطفى أحمد مخيمر
 9. السيد/ جبريل مصطفى عبد الهادي السراحنة
- عضواً
عضواً
عضواً
عضواً
عضواً
عضواً
عضواً
عضواً
عضواً

مادة (3)

يكلف السيد/ اياد عيسى عبد السلام العملة بمهام المنسق العام للهيئة.

مادة (4)

يكون للهيئة صلاحية تشكيل لجان فرعية في المحافظات لمتابعة شؤون العشائر.

قرار رقم (45) لسنة 2019م بإلغاء القرار الرئاسي بشأن إنشاء وتشكيل الهيئة العليا لشؤون العشائر للمحافظات الشمالية

رئيس دولة فلسطين
رئيس اللجنة التنفيذية لمنظمة التحرير الفلسطينية
استناداً لأحكام النظام الأساسي لمنظمة التحرير الفلسطينية،
ولأحكام القانون الأساسي المعدل لسنة 2003م وتعديلاته،
وبعد الاطلاع على القرار الرئاسي رقم (33) لسنة 2019م، بشأن إنشاء وتشكيل الهيئة العليا لشؤون
العشائر للمحافظات الشمالية،
وبناءً على الصلاحيات المخولة لنا،
وتحقيقاً للمصلحة العامة،

قررنا ما يلي:

مادة (1)
إلغاء ووقف نفاذ القرار الرئاسي رقم (33) لسنة 2019م، بشأن إنشاء وتشكيل الهيئة العليا لشؤون
العشائر للمحافظات الشمالية.

مادة (2)
يلغى كل ما يتعارض مع أحكام هذا القرار.

مادة (3)
على الجهات المختصة كافة، كل فيما يخصه، تنفيذ أحكام هذا القرار، ويعمل به من تاريخ صدوره،
وينشر في الجريدة الرسمية.

صدر في مدينة رام الله بتاريخ: 2019/05/30 ميلادية
الموافق: 25/رمضان/1440 هجرية

محمود عباس
رئيس دولة فلسطين
رئيس اللجنة التنفيذية لمنظمة التحرير الفلسطينية

قرار رقم (69) لسنة 2019م بشأن بإلغاء القرار الرئاسي رقم (89) لسنة 2012م

رئيس دولة فلسطين
رئيس اللجنة التنفيذية لمنظمة التحرير الفلسطينية

استناداً لأحكام النظام الأساسي لمنظمة التحرير الفلسطينية،

ولأحكام القانون الأساسي المعدل لسنة 2003م وتعديلاته،

وبعد الاطلاع على القرار الرئاسي رقم (89) لسنة 2012م، بشأن إنشاء وتشكيل الهيئة العليا لشؤون

العشائر للمحافظات الجنوبية،

وبناءً على الصلاحيات المخولة لنا،

وتحقيقاً للمصلحة العامة،

قررنا ما يلي:

مادة (1)

إلغاء القرار الرئاسي رقم (89) لسنة 2012م، بشأن إنشاء وتشكيل الهيئة العليا لشؤون العشائر للمحافظات الجنوبية.

مادة (2)

على الجهات المختصة كافة، كل فيما يخصه، تنفيذ أحكام هذا القرار، ويعمل به من تاريخ صدوره، وينشر في الجريدة الرسمية.

صدر في مدينة رام الله بتاريخ: 2019/07/29 ميلادية

الموافق: 26/ ذو القعدة/ 1440 هجرية

محمود عباس

رئيس دولة فلسطين
رئيس اللجنة التنفيذية لمنظمة التحرير الفلسطينية

الملخص

هدفت هذه الدراسة الى التعرف الى دور العرف العشائري ورجال الاصلاح وتأثيره على القضاء الرسمي في فلسطين واجريت هذه الدراسة على جميع فئات المجتمع الفلسطيني بالاضافة الى جميع العاملين في السلك القضائي النظامي والعشائري بالاضافة الى مجموعة من المحامين المختصين في القانون المدني والجزائي ومن اجل الوصول الى نتيجة واضحة اخترت قضايا منظورة وقضايا قيد النظر في المحاكم النظامية كان القضاء العرفي والعشائري مؤثر بها بشكل مباشر بالاضافة الى اجراء مقابلات مع شريحة مختصة في القضاء الرسمي والوانين الوضعية التي تتعامل مع لجان الاصلاح والعرف العشائري في فلسطين ومن ثم تحليل هذه المقابلات من اجل الوصول الى نتيجة الدراسة وبالفعل اثبتت هذه الدراسة تدخل لجان الاصلاح بشكل مباشر في عمل القضاء النظامي في فلسطين من خلال التدخل في النزاع ومن ثم حل النزاع القائم واغلاق الملف في المحاكم النظامية او عند النيابة العامة اي كان المرحلة الاجرائية للقضية, ايضا اثبتت الدراسة ان المواطنين يثقون في لجان الاصلاح اكثر مما يثقون في القضاء الرسمي في حل خلافاتهم , كما بينت الدراسة ان انواع القضايا التي يتوجه بها المواطنين الى للجان الاصلاح من اجل حلها هي القضايا او المشكلات ذات الطابع الجنائي هناك العرض والشرف وغيرها من القضايا ذات الطابع الحساس في المجتمع الفلسطيني التي يصعب على القضاء الرسمي حلها او ممكن يتطلب القضاء الرسمي وقت طويل لاصدار قرار في هذا النوع من القضايا بعيدا عن حفظ السلم الاهلي بين المتخاصمين انفسهم, ايضا اثبتت الدراسة نجاح لجان الاصلاح والقضاء العشائري في حل النزاعات بين المواطنين بسرعة كبيرة وبشكل يحفظ السلم والامن الاهلي بين المواطنين وبأقل التكاليف المادية,

وبناء على نتائج الدراسة, قدم الباحث عدة توصيات, منها:

1. من الضروري على لا بل من الواجب على المشرع الفلسطيني قبل ان يضع تشريعاً يتعلق بالقضاء ، يجب أن يكون على دراية تامة ومعرفة بالقضاء غير الرسمي وإجراءاته". وذلك لكي لا ينتهك القانون أو يتدخل في صلاحياته.

2. لقد أظهرت هذه الدراسة بوضوح أن ممثلي القضاء غير الرسمي أصدروا قرارات تتعارض مع القانون الأساسي وقواعد العدالة. مثل أولئك الذين يقررون العقاب الجماعي ، مثل الترحيل ، أو تعويض المال ، منهكا جميع القوانين الوضعية والعرفية لحقوق الإنسان. لذا من المهم التوصية بالتوقف عن إصدار مثل هذا القرار ، بغض النظر عن إصدار عنه يجب أن يُسأل قانونًا.

3. كما توضح الدراسة أن مكاتب المحافظات قد اتخذت قرارًا في العديد من القضايا والنزاعات من حيث الحفاظ على السلم الأهلي ، في حين أن هذه الإجراءات هي تجاوز لسلطة الحاكم ، ومن هذا المنطلق يجب على السلطة التشريعية سن قانون لتحديد سلطات الحاكم بشكل حصري وبطريقة لا تتعارض مع السلطة القضائية المستقلة ومبدأ سيادة القانون.

4. كما نستنتج من الدراسة أن الأحكام القضائية غير الرسمية ، لا تسمح بتنفيذها محاكم التنفيذ الفلسطينية ، في حين أن هذه الخاصية تكفي لتدمير النظام القضائي غير الرسمي ، وبناء على ذلك ، يجب على السلطة التشريعية سن قانون يسمح بتنفيذ القرارات القضائية غير الرسمية في المحاكم العادية.

5. في نفس الموضوع نتطرق إلى الدراسة التي تم فيها إلغاء جميع القرارات الرئاسية التي صدرت لتنظيم وتشكيل نظام لجان الإصلاح في فلسطين ، وبناء على ذلك ، يجب على السلطة التشريعية إصدار مرسوم أو قانون ينظم عمل لجان الإصلاح في فلسطين على الفور دون تأخير.

6. كما أن أحد أسباب اختيار أطراف النزاع للجان الإصلاحية لحل منازعاتها هو انعدام الثقة في النظام القضائي ، وذلك بسبب قلة الخبرة العملية للقضاة النظاميين بسبب صغر سنهم. وبناءً على ذلك ، يجب على مجلس القضاء الأعلى تطوير خبرة القضاة النظاميين من خلال الدورات ذات الصلة في القانون العرفي والقوانين التي يستخدمها القضاء غير الرسمي.