Arab American University
Faculty of Graduate Studies

Harmonizing Palestine's National Legislation with Its Human Rights International Obligations.

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This thesis was submitted in partial fulfillment of the requirements for the Master`s degree in International Law and Diplomacy

July/ 2023

Thesis Approval

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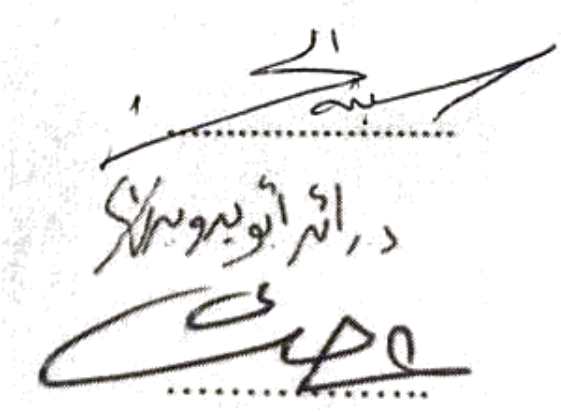

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Dedication

This thesis is dedicated to my esteemed thesis supervisor, Dr. Sania Faisal El-Husseini, whose invaluable guidance, scholarly expertise, and unwavering commitment have played a pivotal role in shaping the course of my academic pursuit.

Dr. Sania mentorship has been a source of inspiration, providing me with the necessary tools and insights to navigate the complexities of rigorous research. Her discerning feedback, constructive criticism, and dedication to fostering a culture of academic excellence have been instrumental throughout the entire research process.

I express my deepest gratitude for her unwavering support, encouragement, and for sharing her profound knowledge in the field. This thesis stands as a testament to your commitment to scholarly advancement and your belief in my capabilities.

Acknowledgement

To my parents, whose unwavering support, boundless love, and invaluable guidance have been the pillars of my journey through academia.

To Mama and Baba, Mahmoud Mubarak and Ana'am Nakhleh, your sacrifices, encouragement, and belief in my potential have fuelled my aspirations and propelled me towards achieving this milestone. Your resilience, patience, and dedication to my education have been a constant source of inspiration, shaping not only my academic pursuits but also the person I have become.

Through the challenges and triumphs, you have been my steadfast advocates, offering a foundation of strength during moments of doubt and celebration. This work stands as a testament to the values you instilled in me – perseverance, curiosity, and a relentless pursuit of knowledge.

Abstract

The concept of harmonizing national legislations with international law, particularly Human Rights Law (nationalization), emerged as a response to the on-going debate surrounding the relationship between national and international legal frameworks. Initially driven by jurists engaged in this discourse, the process of harmonization and codification aimed to bridge the gap between these two legal spheres.

In the case of Palestine, the harmonisation of national legislations assumes a multifaceted significance due to the prolonged occupation that began in 1948, resulting in the infringement of Palestinian human rights and impeding diplomatic efforts. The Oslo Accords of 1991 marked a turning point, establishing a new legal framework with the creation of the Palestinian National Authority (PNA) and the introduction of the Palestinian Amended Basic Law, which granted constitutional status to human rights.

However, with Palestine's diplomatic representation in 2012, the challenge of aligning its complex legal system with its recent international obligations surfaced. This exposed the state to various complexities, particularly as Palestine's accession to international treaties without reservations was driven more by political objectives rather than a purely human rights-oriented approach.

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Introduction

In 2012, Palestine experienced a pivotal year marked by significant developments when it was granted the status of a "non-member observer State" in the United Nations General Assembly. As a result, Palestine became a party to various international conventions and treaties. Consequently, it bears the responsibility to harmonize its national legislations with the provisions of these conventions and treaties, in accordance with principles of international law.

However, Palestine faces numerous political and diplomatic obstacles that hinder the process of harmonization with international conventions. The foremost obstacle is the Israeli occupation that dates back to 1948, which continues to impede Palestinian sovereignty and self-governance. Additionally, the absence of a clear legislative hierarchy within the Palestinian Amended Basic Law poses a challenge to harmonization efforts. Furthermore, the political division that emerged after 2007 and the subsequent dissolution of the Legislative Council present another obstacle.

It is important to note that Palestine has made significant progress in terms of statehood and international recognition. However, the aforementioned obstacles and limitations have undermined this progress, leading to diplomatic problems and crises that have affected the legitimacy and legal position of the Palestinian state. This is particularly evident in bilateral agreements and the confidence bestowed upon the state.

Despite the challenges Palestine faces in harmonizing its legislation with international obligations, particularly in the field of human rights, these obstacles should not serve as reasons to evade international and national responsibilities for harmonization. Palestine possesses various national avenues through which it can achieve harmonization. Thus,

this study aims to explore the means and strategies that Palestine can employ to attain the highest levels of harmonization.

Harmonization of national legislation with international obligations can be achieved through a range of approaches, including constitutional amendments and compliance with international enforcement mechanisms, as well as beneficiating from ratified law and other states experiences. It is crucial to consider the universality of human rights while accounting for the specificities of the Palestinian context, such as religious and political factors that shape the reality of Palestine.

For the purpose of this study, both Fatah and Hamas will be regarded as governing actors, and both are expected to uphold human rights principles. This study does not differentiate between the two political parties, especially considering the existence of a national reconciliation government operating in both the West Bank and the Gaza Strip, despite their de facto separation.

A. Research questions and hypothesis

The Israeli occupation and the political division have contributed to Palestine's inability to harmonise its international treaty obligations with the Palestinian law, however the Israeli occupation is not the problem. This study proposes that the legal weakness limited Palestine's political and diplomatic representation capacity, and therefore raises the question of why Palestine has not been able to harmonise its treaty obligations with Palestinian law, and what are the available options to achieve the best results to harmonisation, linking the discussion to the questions related to the “Universality” of human rights?

A. Literature Review

1- Hammash, A. (2011). Study of the Notion of 'Internationalization' and its Applications in International Law.

the origins of the term ‘internationalisation’ goes back to the 19th century, as its emergence conceded with two main developments in the international society, which are the emergence of international organisations as a new international factor , and the necessity of states to relinquish part of its sovereignty, and the tendency of nations towards nationalism, and their refusal to submit to any external authority. Those developments accompanied many other events, including globalisation, industrial revolution, high seas control, the exploitation of national wealth and others.

It was agreed to define Internationalisation as “taking a legal fact out of the norms of the national law…and subjecting it to the norms of international law”. It aims to regulate the relation between international actors. The concept of internationalisation overlaps with the concepts of state and sovereignty, as it is not only limited on the traditional practice of accession to international treaties, but it extends also to include other international practices, such as the issuance of a binding or non-binding decision by an international organisation, norms , and the decisions of international courts, hence, a national judge becomes obligated to resort to international law when a dispute arises, particularly, those related to international community developments.

The researcher points out that there are two applicable law types, which are the traditional international law that has well-known sources, and was found in order to avoid conflicts between states, and the modern international law which was found mainly in order to fill gaps, created by globalisation, in the traditional international law.

From one hand, the researcher addresses the idea of the internationalisation of the

sovereign authority over a geographical region, according to which, a state waives its sovereignty over a defined territory, usually this territory has something that refers to the heritage of human history. From the other hand, he approaches the subject of internationalisation of political power for the inhabited territories, which deals with resolving internal disputes in newly independent states through the intervention of international community actors, such as the international organisations and other actors.

Despite the many forms and types of internationalisation, it remains a vague term, and it cannot be linked to a single and specific idea, it does not contain a single legal system, nor can it be a substitute for a state. However, sovereign states renounce part of its sovereignty in order to apply the idea of internationalisation which remains as an ambiguous and immature idea to nations.[1]

This research goes closely into the notion of "internationalization" and its applications in international law. Understanding this topic is critical for your research on national legislation harmonization since it provides vital insights into the process of aligning domestic laws with international standards, norms, and duties.

In the context of national legislation, harmonization entails the coordination and synchronization of legal frameworks across different countries or regions. It tries to decrease inconsistencies, conflicts, and impediments caused by legal system differences, hence improving collaboration, trade, and global governance. It is critical to comprehend the concept of "internationalization" as studied in Hammash's thesis in order to properly harmonize national laws.

This investigation delves deeply into the concept of "internationalization" and its applications in international law. Understanding this issue is essential for your research

[1] Hammash, A. (2011). Study of the Notion of 'Internationalization' and its Applications in International Law, 38(2). https://platform.almanhal.com/Files/2/34578

on national legislation harmonization since it provides important insights into the process of aligning domestic laws with international standards, norms, and duties.

Harmonization in the context of national legislation refers to the coordination and synchronization of legal frameworks across different countries or areas. It aims to reduce inconsistencies, conflicts, and barriers created by variations among legal systems, thereby increasing collaboration, trade, and global governance. To effectively harmonize national laws, it is important to understand the concept of "internationalization" as studied in Hammash's thesis.

2- **Vereshchet, V (1996). New Constitutions and the Old Problem of the Relationship between International Law and National Law.**

The article clarifies the idea of constitution internationalisation, and argues that the harmonisation of national laws with the international conventions stemmed from the devastating war outcomes, as nations needed a certain commitment and promise from states (particularly authoritarian regimes) in order to prevent the outbreak of new wars. Thus, this internationalisation of national constitutions represents a commitment from these regimes to peace and democracy. Moreover, the former judge argues that human rights emerged as a relation that extends further than the individual relation with the state, as the state became more committed to humanitarian right law. In addition, he employs some examples of articles of certain previous authoritarian regimes, such as the German regime which internationalised many of its constitution articles in order to harmonise its legislation with international law standards. The writer also analyses the reason for the failure of internationalisation of the constitution in states such as Russia where there appears a certain conflict between political power and juridical power. Furthermore, Vereshchet explains that the internationalisation of the constitution is not

only limited to international treaties; it extends to include international organisations such as the United Nations which explicitly was mentioned through many eastern European states legislations.

In order to give the constitution an international character, it is important first to understand how international treaties are engaging with national legislations.[2]

This study have enormous significance, particularly in light of the call for constitutional revisions. Although I do not have access to the study's specifics, I can offer some ideas into how it might be useful to your research.

The study will most likely investigate the link between international and national law in the context of new constitutions. Understanding this link is essential when considering constitutional modifications including the incorporation or alignment of national legal frameworks with international law principles, standards, or duties. The research could shed light on the problems, considerations, and legal ramifications of such constitutional revisions.

The research could look on the hierarchical relationship between international and national law. The position and enforcement of international legal principles inside the domestic legal system is frequently addressed in constitutional changes. The research can provide light on various methods or theories on the hierarchy of international law and its relationship with national constitutions, as well as provide guidance for constitutional design and reform processes.

The study could provide a comparative analysis of different countries' constitutional amendment experiences and their link to international law. It can provide significant insights into the challenges, approaches, and consequences of constitutional changes

[2] Vereshchet, V (1996). New Constitutions and the Old Problem of the Relationship between International Law and National Law. European Journal of International Law, 7(1), 29-41. http://www.ejil.org/pdfs/7/1/1354.pdf

aiming at aligning national legal systems with international law principles by reviewing case studies or examples. This type of study can help to educate decision-making and identify best practices for calling and implementing constitutional amendments.

3- **Persson, V. (2016). Palestine's ratification to international treaties – a backdoor to independence.**

The article addresses the political and legal history of Palestine, and in order to clarify the layers of the foreign legislations in Palestine, he divides it into two main legal eras, which are, the pre-Oslo era and the post-Oslo era.

During the period extending from 1958-1991, Palestine was controlled by many Ottoman laws, including land and civil codes. However, following World War 1, some of these laws were replaced due to the mandatory system, while others remained the same. After World War11, the United Nations voted for the partition plan announcing the establishment of a Jewish state over half of the Palestinian territories, the thing which ignited the Arab-Israeli war after the announcement of the Israeli's independence. As a result, the West Bank was annexed to the Jordanian administration, while the Egyptian administration gained control over Gaza Strip. However the war of 1967 helped Israel to take control over West Bank and Gaza, adding yet another layer of foreign legislations, especially after issuing many military orders to tighten its grip over the region. In 1988, the Palestinian Declaration of Independence was proclaimed. Later, the negotiations, which were conducted secretly in Oslo, resulted in the "Declaration of Principles on Interim Self-Government Arrangement" in 19991.

As a result of Oslo, the Palestinian National Authority (PNA) was created in 1994, also was the legislature later, the PNA since then and until 2002 adopted about 80 legislations, and ratified the amended basic law. However, the political and legal

stability did not last due to the elections of 2006 that ended with the winning of Hamas with a majority of votes, a political division between West Bank and Gaza Strip, and detention of members of the PLC. All laws since then have been passed as decrees or bylaws.

The researcher applies the criteria of Montevideo on statehood on the Palestinian case, and discusses many of these criteria, including permanent population, defined territory, government and the most important is the capacity to enter into relations with other states. Palestine, he argues, despite its capacity to enter into relations with other states, it is difficult to suggest that it is an independent state, pointing out that the number of Palestinian diplomatic missions in states that have not yet recognized Palestine proves that Palestine is indeed capable of entering and maintaining relations with other States.

Persson addresses the methods of implementing the international law into the national law, and explains the main two methods, which are the monist theory and dualist theory in international law. Further, he suggests, according to a discussion conducted with the Palestinian Ministry of Foreign Affairs and Expatriates, that Palestine should follow "gradualism" through its process of implementation. Thus, it should start by employing the dualist theory in order to guarantee legal balance, until it arrives at the capacity of employing monist theory. Accordingly, the researcher addresses the subject of the legislative hierarchy of the Palestinian system, clarifying its absence in the amended basic law and thus, the status of the international treaties and even International Law were not clarified. He concludes by illustrating six brief examples on how some States harmonise their national legislation with international law, namely, the USA, the UK,

Netherlands, Germany, France and Russia.[3]

The research will most likely look at the relationship between Palestine's quest for statehood and its acceptance of international accords. Ratifying international treaties can be viewed as a strategy for Palestine to express its international legal personality and strengthen its statehood claims. The research could look into the legal implications and effects of such treaty ratifications, as well as their impact on Palestine's journey to independence.

The study could examine the legal ramifications of Palestine's treaty ratifications, such as the influence on the country's rights, obligations, and responsibilities under international law. It could look at how treaty ratifications affect Palestine's legal status in areas like human rights, humanitarian law, and diplomatic relations. Understanding these legal repercussions will help you understand the potential benefits and drawbacks of using treaty ratifications as a means to advance independence goals.

By referencing Persson's paper, one might include its findings, arguments, and analyses into their own research on the subject of Palestine's acceptance of international treaties and its potential link to independence. It can provide vital insights into the issue's legal, political, and diplomatic implications. However, it is critical to review the study's unique contents in order to properly understand its relation to your research aims.

4- **Palestinian Center for the Independence of Judiciary and The Legal Profession "MUSAWA", (2014). International treaties and national law: a comparative study of the relationship between international treaties and national law and the mechanisms of their localization.**

The publication clarifies the difference between ratification and signing the treaty. That

[3] Persson, V. (2016). Palestine’s ratification to international treaties – a backdoor to independence? [Master’s Thesis, University of Lund]. Lund University. https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=8873670&fileOId=8879741:

is, states sign the treaty, but they are given time to study in depth the articles and provisions of the treaty, and then make a decision based on its national policy, after which the state can exchange official papers for ratification and accession. Accordingly, certain obligations are imposed on states under International Law. The integration and the clarification of the status of International Law in its national law is one of which.

Further, the study highlights the concept of "state consent" through the ratification process, as there are three main ways of expressing state consent. From one hand, ratification is done through the executive authority only. This type of ratification coincided with the recent emergence of dictatorial regimes such as Nazism and Fascism, where the head of the executive authority is the only responsible for the ratification of treaties. Those who support this system in ratifying treaties argue that the participation of the legislature weakens the power of the executive authority and delays the necessary procedures. On the other hand, the ratification through the legislative Council only is followed by the one-party system of governance, such as the Turkish Constitution of 1924, and the Interim Federal Constitution of the United Arab Emirates 1972. Finally, the system of allocation the legislative power between the legislative authority and the executive authority, where it falls on the head of the executive (president of the state) the responsibility to ratify international treaties, with the exception of those that are not specified by the national constitution, such as those related to the state budget, the security of citizens and political relations…, which need the approval of all parties and representatives, therefore the head of the executive authority resorts to the Legislature, such as the Belgian Constitution of 1831 and Tunisian Constitution of 2014. Furthermore, some constitutions require the participation of the legislative council in the ratifying process such as the US constitution of 1787, as well as the Switzerland

constitution of 1999. In this context, there are separate responsibilities and competences allocated for each power.

The ratification process is considered an actual representation of the legal Latin rule ‘pacta sunt servanda’ (agreements must be kept). Hence, international treaties impose legal obligations on states, as well as, it requires states to act within the framework of these treaties and the framework of international law principles such as good faith and the inadmissibility of invoking domestic law to justify non-implementation of the treaty. Treaties also require states to take all necessary measures to emerge the treaty through its national law. This emergence should be effective and applied on the ground. However, this latter imposes many forms of complexities, as each state has its own way of harmonising its national law with international law, but the most common methods remain the Dualist and the Monist.

The Palestinian amended Basic Law did not clarify any mechanisms relating to the harmonisation of international law with national law, nor did it clarify the relationship between the national laws with international law.

This is not the only problem, there is yet a controversy over the legal and political status of the Palestinian National Authority, consequently, instability has arisen in the Palestinian system, as some international treaties have been implemented by a decree from the president of the Palestinian National Authority, others by a decree law; neither methods of implementation was done based on a legal bases. In addition, Palestine has not applied treaties provision in its national law, the thing which makes harmonising and enforcement mechanism unclear. Hence, this controversial issue could be solved through several proposals, such as, the application of the Jordanian Constitution mechanisms. It can also be argued that Palestine is employing the Monist rule of

international law due to the absence of a legal rule that stipulates the contrary. Thus the enforcement of international law and harmonising it with international legislations is automatic.[4]

The research could take a comparative approach, examining different nations' procedures for incorporating international treaties into their national legal frameworks. The research can discover commonalities, divergences, and best practices in adopting international treaty provisions into national laws by evaluating the experiences of diverse jurisdictions. This comparative analysis can provide useful insights into the challenges and strategies for aligning national laws with international treaties.

The study will most likely investigate the procedures used by countries to incorporate international accords into their national legal systems. It may investigate alternative approaches to treaty incorporation, such as monism, dualism, or specific legislative procedures. Understanding these methods will help you in your research on national legislation harmonization by providing insights into various approaches to harmonizing domestic laws with international commitments.

The study may analyse the difficulties that countries have when localizing international treaties, as well as suggest solutions or ideas to solve those difficulties. It could address issues such as conflicts between treaty terms and national legislation, domestic interpretation of treaty provisions, or coordination of obligations emanating from various treaties. Examining these obstacles and potential solutions will help you with your research on effective national legislative harmonization efforts.

One may incorporate MUSAWA's comparative analysis, observations, and

[4] Palestinian Center for The Independence of Judiciary And The Legal Profession "MUSAWA", (2014). International treaties and national law: a comparative study of the relationship between international treaties and national law and the mechanisms of their localization. https://musawa.ps/uploads/868f95c93ea8855830e36c45f41b379d.pdf

recommendations into your research on the harmonization of national legislation with international treaties by referring to their paper. It can provide useful information on the relationship between international and national law, treaty localization processes, and the issues and solutions involved in aligning domestic laws with international responsibilities. However, it is critical to analyse the study's precise contents to determine its exact relation to this research aims.

5- [Twam, Rashad & Khalil, Asem], [Enforcing International Treaties in Palestine: Legal Obstacles and Constitutional Solutions].

Both researchers begin by limiting the scope of the subject, explaining that Customary International Law does not represent a problematic issue to the Palestinian situation, considering that the Palestinian legal problem is confined to bilateral and multilateral treaties[5]. Moreover, they consider that Palestine after 2012 acceded to several international treaties, and used this accession as a tool to fight against occupation. In addition, they point out that Palestine did not use its right of reservation to any of the treaties, the thing which represents a winning point, despite the fact that it is considered an ill-thought-out decision. Furthermore, they add that Palestine's accession to such treaties through the Executive Authority aggravated the problem, expressing that the lack of legislative hierarchy added another dimension to the problem of harmonising Palestinian legislation.

Based on previous problems, the researchers address the subject of the article by posing many questions; the first one is related to the possibility of invoking an international rule before a national court. They consider that the answer to such a question is related

[5] Bilateral and multilateral agreement refers to those conventions which include legal rules that can be integrated into national law, as they establish obligation on states towards citizens, this type raises problems in Palestinian law.
The original text used the term اتفاقيات شارعة قاعدية

to the nature of the legal system. As Palestine is adopting the Latin system, the application of international legal rules in national courts depends on the situation, Thus, if the legal rule does not conflict with national law, it is then applicable before the national courts, however, if this legal rule does contradict with a principle in the national legal system, then the answer becomes related to the legislative hierarchy. This latter leads to the second question relating to the position of international treaties on the Palestinian legal hierarchy, as the Constitutional Court has approved, in two separate controversial decisions, the supremacy of international legislations over domestic legislations.

The researcher's consider this decision is not wrong despite the court's overstepping its powers. In this context, the research presents two solutions for these problems. The first is amending the national law in a way that suits international conventions, while the second is withdrawing from international conventions in order to re-accede to what is suitable with national legislations. However, this latter solution is not encouraged because of its negative political and diplomatic impact on Palestine, particularly when talking about the withdrawal from human rights treaties, those which their constitutional power is questioned by the researchers, as they occupy a very particular rank, as some states consider these treaties at the same importance level of state's constitution, or even more, as the importance of such conventions stems from its provision.

As for Palestine, based on article 10 of the Palestinian amended basic law, the content of human rights conventions have a constitutional power even before Palestine joins the conventions, as the Declaration of Independence itself admitted the importance of the commitment to human rights as they represent part of international law norms and not only conventions.

In the light of the fact that human rights conventions are considered to be at the same level as the Declaration of Independence (the Declaration is superior to the Constitution in the legislative hierarchy), human rights treaties become directly part of national law without the need for special procedures.[6]

The article analyses the legal and practical challenges that Palestine has in adopting and enforcing international accords. By exploring these issues, you can obtain a better understanding of the intricacies inherent in reconciling international commitments with national legal frameworks. It provides ideas and advice for overcoming the difficulties encountered in enforcing international treaties. These offered ideas may be useful in achieving harmony between international commitments and domestic laws in Palestine. The study investigates the status of international treaties within the Palestinian legal system's legislative hierarchy. This analysis can help you better understand how international treaties are implemented into domestic law and what this means for harmonization efforts.

This paper investigates whether the rights and liberties enshrined in international treaties have constitutional standing. If you are investigating the constitutional framework for balancing international duties in Palestine, this component may be relevant to your research. Overall, this paper can give a thorough overview of the legal challenges surrounding the implementation of international treaties in Palestine, as well as insights and recommendations that can help you with your research on harmonization in the context of Palestinian law.

[6] [Twam, Rashad & Khalil, Asem], [Enforcing International Treaties in Palestine: Legal Obstacles and Constitutional Solutions], Birzeit's Working Papers in Legal Studies, [1/2019] Constitutional Law Unit, Faculty of Law and Public Administration: Birzeit University [2019].

B. Description of Methodology

The research methodology employed in this study focuses on the applicability and necessary application of Palestinian law from a human rights perspective, considering the prevailing state of lawlessness.

An analytical approach is utilized to examine internal political events in Palestine, which have posed challenges to achieving harmonization between international law and national law. This approach aims to identify and highlight legal problems arising from the political division and constitutional issues that emerged after 2006.

Additionally, a comparative methodology is employed to explore the national dilemma of harmonizing national legislations with international obligations, drawing upon experiences from different countries. This comparison enables the identification of effective measures to address the research problem.

Furthermore, the research utilizes another analytical approach to address internal disputes within Palestine, seeking to propose feasible mechanisms for implementation in order to safeguard the legitimacy of the state.

Overall, this methodology encompasses a blend of analytical and comparative approaches, providing a comprehensive framework to investigate the challenges of harmonizing national legislations with international obligations in Palestine.

C. Importance of the study

The inability of Palestine to align its national laws with its international treaty obligations has garnered significant attention from both national and international actors, raising numerous questions. This study aims to address this critical issue by identifying the underlying reasons that have hindered harmonization and exploring its political and diplomatic implications.

Among the key obstacles to harmonization is the hierarchy of the legal system, which has impeded the alignment of Palestinian national legislation with international obligations. Additionally, the Israeli Occupation, along with the dissolution of the Legislative Council and the political division, has further complicated the issue, adding additional dimensions to the problem.

By focusing on these challenges, the study seeks to provide insights into the barriers that have prevented harmonization and to shed light on the broader implications of this issue in the Palestinian context.

D. Research Plan

This study is structured into four major chapters, each of which delves into a critical component of the subject at hand. These four chapters provide a thorough examination of the research issue, bringing the reader from theoretical underpinnings to empirical investigation and, finally, to relevant conclusions.

Chapter 1: international law and municipal law

This chapter investigates the relationship between international law and municipal law in the context of Palestinian legislation. Theories of enforcement are explored, with a particular emphasis on monism and dualism/pluralism. The chapter analyses state practices regarding monism and dualism and discusses the various forms of consent to be bound by international treaties, including ratification, signature, and exchange of instruments, accession, acceptance, and approval.

Chapter 2: What has Palestine achieved?

This chapter focuses on Palestine's human rights accomplishments. The legal framework and Palestinian constitutional realities in relation to human rights rules are investigated. The chapter investigates the state of human rights as customary practice, as

well as the impact of the 1988 Declaration of Human Rights and the Palestinian legal hierarchy. Furthermore, it examines the compatibility of Palestinian legislation with international human rights treaties.

Going from theoretical frameworks to empirical investigation in Chapter 3, reach a watershed moment. It highlights the approach used to gather and analyse data in this chapter, explaining the research strategy, data collection methodologies, and data analysis methods used. This section describes the study procedure in detail, ensuring the reliability and validity of our findings.

Chapter 3: The Way to Harmonization/ Possible Options and Available Solutions

The third chapter investigates potential approaches and solutions for aligning Palestinian legislation with international human rights norms. It analyses international enforcement mechanisms and discusses the viability of constitutional reforms as a way of harmonization. The chapter investigates existing legal frameworks as well as future advancements in this area.

Chapter 4: States Particularities and Human Rights

This chapter investigates the connection between religious identity and human rights. It investigates the impact of the Palestinian Supreme Court on the Palestinian people's national, religious, and cultural identities. It also examines the topic of political fragmentation and its influence on Palestinian human rights.

E. Introductory Chapter

Due to the 1948 war Palestinians found themselves -as a result of their exile by Israelis- facing a new status as refugees who suffered daily problems of survival, food and shelter, which has given the theme of national identity a domination in their everyday life.

Palestinians had a unique experience in exile, they lived among each other's, remembered their homeland through their personal experiences or their anecdotes and introduces themselves as "Palestinians with a common historical and contemporary experience and with a deep attachment to their land"[7] which was reflected through their active political work, hence, the right of return was a unified political aspiration that earned universal support.

The UNRWA in this context, affirmed many times on the right to return for those refugees and the failure of the international society to implement reaffirmed resolutions[8] additionally, it affirmed that Palestinians are "a nation that has been obliterated and a population deprived of its birth right"[9]

E.1 The evolution of the Palestinian legislation

Palestine was an undivided part of the Ottoman Empire at the end of the nineteenth century, with no separate status. There are laws in the areas of civil law, land ownership, and personal status that date back to the Ottoman Empire. These laws include the Ottoman Land Code of 1858, which still applies to the main structure of

[7] Hamid, Rashid. 1975. "What Is The PLO?". Journal Of Palestine Studies 4 (4): 90-109. doi:10.1525/jps.1975.4.4.00p0348t. https://www.paljourneys.org/sites/default/files/What_is_the_PLO-Rashid_Hamid.pdf

[8] Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 1 July 1963 -- 30 June 1964 https://digitallibrary.un.org/record/720331?ln=en

[9] Work of UNRWA – Report of the Special Political Committee (4th Cttee)to GA, draft resolutions, Report of the Special Political Committee, 1965. A/6115. https://www.un.org/unispal/document/auto-insert-210506/

land law, though it has been supplemented by later legislation.[10] This has resulted to some extent in the leakage of the Palestinian territories to Israeli occupants. Following World War I and the fall of the Ottoman Empire, the League of Nations imposed a British mandate on the Palestinian territory. In its turn, the British Mandatory issued laws, governmental regulations, and ordinances that governed the majority of Palestine's inhabitants, all of which were published in an official gazette. These publications constitute the vast majority of the law still in effect in the Gaza Strip, as well as some of the law still in effect in the West Bank; this remained the case until the end of WWII and the issuance of the partition plan in 1947 and the Israel state declaration.[11]

Due to the constant fluctuations in its political context, Palestinian social and political identities have shifted numerous times over the last 200 years. This has resulted in a multi-layered legal context that cannot be understood apart from the region's political history. Since 1990 Palestine was divided into three main sections resulting in the emergence of three main legislative systems, the Israeli occupation, the Jordanian and Egyptian administrations, leaving aside the Ottoman as well as the mandatory rules, producing a complex legal structure for Palestinians to live with.

E.2 Pre-Oslo Palestinian Cause

The Palestinian dispersal restricted their political work, states where refugees has resettled had no interest in supporting the separation of a national political organisation[12] due to refugee distribution, and prior to the 1948 war and its failure to achieve the right of self-determination, the West bank was annexed to Jordanian administration in 1967 and maintained it relation with it until 1988, while the Gaza Strip

[10] Persson, V. (2016). Palestine's ratification to international treaties – a backdoor to independence? [Master's Thesis, University of Lund]. Lund University. https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=8873670&fileOId=8879741

[11] Ibid

[12] Hamid, Rashid. (1975)

was annexed to Egypt[13] which produced a different levels of nationalist activity, where the Hashmit regime suppressed any pan-Arab serious opposition due to their territorial interests in West Bank that oppose the Palestinian recovery and state independence, in contrast, under the Egyptian administration, Palestinian national movements flourished and witnessed the rise of many Palestinian political activists such as (Al-Fatah) who cooperated with pan-Arab parties committed to the Palestinian cause[14]

The 1960s was a rich period for nationalism that became evident after the Sinai and the Gaza Strip occupation, at this specific period, Al-Fatah was established and the Palestinian cause converted into an issue of inter-Arab politics, yet, the major shift for the Palestinian political activity in the 60s was caused by the dissociation of the United Arab Republic that represented the climax for Arab nationalism which shock the belief of Arab unity as an essential tool for liberation, and in turn, oriented the emphasis on self-reliance.[15]

The first step towards the establishment of the Palestinian Liberation Organization emerged within the first Arab Summit conference 1964 after the transfer of the Jordanian River to Israel, however after many discussions and conferences, the representative of Palestine at the Arab League requested a summit from state members at the Arab league, accordingly the PLO was announced during that particular meeting, to such end, the PLO prepared for its establishment as an official body that represents the Palestinian people and carries their right as an official organisational body.

The first objective in Preparing National Council was to select representatives of the Palestinian community, accordingly, elected members were Palestinian public officials,

[13] أبو بدوية, رائد. 2019. اللاجئون الفلسطينيون وعملية السلام في الشرق الأوسط في ميزان القانون الدولي1st ed .. رام الله: الرعاة للدراسة والنشر.

[14] Hamid, Rashid. (1975)

[15] ibid

including business men, parliament members, bankers, industrialists…., which allowed the 422 members to reflect the geographical distribution of Palestinian refugees, in turn, and as the PLO sovereign body, the PNA adapted many resolutions relating to many fields, including the administrative field, military field, political field, the PNA acknowledge and asserted on Palestinian right to resistance in all available means, and financially, the Palestinian national fund was created [16]

The PLO issued the Palestinian Declaration of Independence in 1988. The declaration was supplemented by a document to the UN Secretary-General announcing the PLO's provisional government: The Executive Committee (EC). Because the PLO had no control over any territory at the time, the government was one in exile.[17] Following multiple complications, the organisation was exiled from Lebanon to Tunisia and lost its geographical contact in Palestine, thus, the PLO turned towards the OSLO accord to enhance its legitimacy and establish a Palestinian state, which produced many complicated political structures that reflected its consequence on the Palestinian international status.

E.3 Post-Oslo Palestinian cause

In 1991, the United States and the Soviet Union initiated a dialogue between Israel and the PLO with the goal of establishing a Palestinian self-government administration in Gaza and the West Bank for a period of no more than five years, leading to a permanent settlement of the dispute based on UN Security Council resolutions.[18] this in turn

[16] "تقرير عن المؤتمر الفلسطيني الأول لمنظمة التحرير الفلسطينية المنعقد في القدس 1964/6/2-5/28 | الأرشيف الرقمي الفلسطيني". 2022. http://awraq.birzeit.edu/ar/node/657 .

[17] Persson, V. (2016). Palestine's ratification to international treaties – a backdoor to independence? [Master's Thesis, University of Lund]. Lund University. https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=8873670&fileOId=8879741:

[18] Oslo Accord (1991), art.1

resulted in the establishment of the Palestinian Authority and the Palestinian Legislative Council.

In this context, article 5 of the Oslo accord (1991) establishes that the LC jurisdiction does not include "Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis" as well as "powers and responsibilities not transferred to the Council."[19] Further, Oslo II limited the actual jurisdiction of the PA in the Occupied Palestinian Territories by dividing the West Bank into three zones, A, B and C

The PA has exclusive jurisdiction over all civil and security matters in Area A, which covers 17.2% of the West Bank, but Israel retains complete control over entry and exit. In Area B, 23.8% of the West Bank, the PA has civil jurisdiction and responsibility for public order, while Israel maintains a security presence and a "overriding security responsibility". Area C, which accounts for the remaining 59% of the territory, is where the PA has the least authority, allowing it to control only certain public services such as education and medical care, while Israel controls all infrastructure, land allocation, planning, and construction.[20]

According to legislation No.5 (1995) stipulating in its article 1 that existing laws, regulations and military orders shall remain in force[21] as a result, the laws remained out-dated, were of Israeli origin, or were based on common law (in Gaza) and civil law, depending on where the conflict occurred, hence, on the period extending between 1996 and 2002, the PLC passed more than 80 new laws, including commercial, civil, and criminal law, to harmonise the laws of the Gaza Strip and the West Bank and modernise

[19] Ibid, Art. 5
[20] Persson, V. (2016).
[21] Muqtafi. (1995). Legislation No.5 on the transfer of powers and authorities. Retrieved from https://tinyurl.com/rdjh8z74

Palestinian legislation.[22] This process culminated in the ratification of the 2002 Basic Law and the subsequent Amended Basic Law of 2003, which focused on the political process of independence and state-building. The concept of separation of powers, political pluralism, and the rule of law is expressed in the Amended Basic Law according to both articles. 2 and 6.[23] This Amended Basic Law was perceived to be applicable for an interim period of 5 years and may be extended until the new State of Palestine Constitution enters into force.

As a result of the political fragmentation that occurred in 2006 due to the outputs of the elections in its relation to Oslo Accord, The Gaza Strip and the West Bank were divided into two administrations, with Hamas ruling the Gaza Strip and the Palestinian Authority ruling the West Bank.[24] this was accompanied with strong international opposition resulting in the detention of dozens of PLC members, the majority of whom were Hamas supporters[25]. As a result of the fragmentation following the elections, as well as the detention of PLC members, the PLC's work has been hampered, and it has not met since 2007.[26]

To such an end, until the PLC reconvenes, the PLO has delegated its responsibilities to the Palestinian Central Council, another political body nominated by the Executive Committee (PLO government) and elected by the Palestinian National Council (PLO parliament). The PCC has legislative authority but has never exercised it.

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[22] Persson, V. (2016)

[23] Palestinian amended Basic Law. (2003). Art. 2, 6

[24] Al-Haq. (2011).Legal and Administrative Measures Impacting Residency Rights and Freedom of Movement Fragmentation of the Palestinian Population to Prevent Their Development. [abstract]. https://www.alhaq.org/cached_uploads/download/alhaq_files/images/stories/PDF/Testimony-Abstract.pdf

[25] Addameer: Prisoners Support and Human Rights Association. (2017). Detained Palestinian Legislative Council Members. https://www.addameer.org/publications/detained-palestinian-legislative-council-members-0

[26] Levitt, M., & Zilber, N. (2014, May 28). Palestinian reconciliation: Devil in the details?. The Washington Institute. Retrieved April 5, 2023, from https://www.washingtoninstitute.org/policy-analysis/palestinian-reconciliation-devil-details

Article 43 of the Amended Basic Law states that the President has "the right, in cases of necessity that cannot be delayed, and when the Legislative Council is not in session, to issue decrees with the force of law." Since 2008, all laws have been passed as decrees or bylaws.[27]

[27] Amended Basic Law. (2003)

Chapter One

International Law and Municipal Law

Human Rights instruments most important requirement is to give the treaty a domestic character, as implementing the treaty on a national level enforce it into its laws[28]. However, Human rights treaties and provisions are sometimes perceived as foreign concepts, as values underlying human rights treaties do not fit with states values, whereas a "universal" approach to human rights seems to be underlying cultural differences, however, states may still be able to express its reservation before signing a treaty, as the enforcement of human rights treaties after ratification require specific constitutional amendments, which may be perceived as an unwanted intervention into states sovereignty, which explains the existence of a dualist approach to enforcement, in this context, ratification should be seen as an opportunity to effect change.

To distinguish, law has two main sources, which are customary practices and codified treaties. Customary law developed through the evolution of state practice, international conventions are in the form of contracts binding upon signatories, as states involved in a treaty may create a new law that would be binding upon them irrespectively of previous practice or contemporary practice.

"Pacta Sunt Servanda". The first customary practice in relation with international treaty law, it reflects the obligation of the state to respect treaty provisions, this customary practice was codified in many international law instruments, the most prominent of which is the Vienna Convention to the Law of Treaties.

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28 Baird, N. (2011). To ratify or not ratify? an assessment for the case for ratification of International Human rights treaties in the pacific. Melbourne Journal of International Law, 12. https://doi.org/https://law.unimelb.edu.au/__data/assets/pdf_file/0004/1687162/Baird.pdf

A treaty entry into force produces a mutual respect among treaty parties, where they are required to take all available means to implement the provisions of a treaty on a national level. The VCLT 1969 in this context highlights in both articles 26 and 27 two main principles of international treaty law.

Article 26 of the VCLT emphasises that every treaty entry into force is binding upon the parties to it and must be performed with respect to the principle of **good faith**[29], which is understood as a commitment to one's own words without taking any actions that could obstacles the achievement of the subject matter of the treaty[30], it also signifies that a state may not justify its non-compliance by the existence of difficulties in the relationship among parties, which in turn, highlights the second principle of the law of treaties and the VCLT.

Article 27 of the VCLT stresses that "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."[31] Accordingly, a state is bound to enforce the international treaty provision on its national legislations and implement them on a national level. Treaty enforcement represents the states **action** to fulfil its international obligations, which requires the executive, legislature and judicial bodies to function in parallel, where a legislative action such as cancelling a specific law or modifying certain legislation could be essential for treaty enforcement, as some treaties -Human Rights instruments in particular- grants certain rights to states individuals and bind the judiciary to implement the principles of of the treaty when settling disputes before it, which has produced many problem in relation with both

[29] Vienna Convention for the Law of Treaties. (1969). Art.26
[30] Uçaryılmaz, T. (2020). The principle of good faith in public international law. Estudios De Deusto, 68(1), 43–59. https://doi.org/10.18543/ed-68(1)-2020pp43-59
[31] Vienna Convention for the Law of Treaties. (1969). Art. 27

national and international laws, those problems where decoded by two main theories of implementation, Monism and Dualism theories.

With regard to the state and intrastate relations, there appears two main theories for the international law and municipal law relations, which are the monist and dualist theories of international law.

1.1 International Law and National Law: Theories of Enforcement

On the counterpart, naturalists such as Lautherpacht consider that the primary function of all laws are concerned with the well-being of individuals, and advocate the supremacy of international law as the best method of attaining this. Naturalists are illuminated by the faith in the capacity of international law to imbue that international order with a sense of moral purpose and justice founded upon respect for human rights and welfare of individuals.[32] accordingly there is no conflict between international law and municipal law.

1.1.1 Monism

Based on a Kantanian philosophy, positivists such as Kelsen consider that law constitute an order which lays down patterns of behaviour that ought to be followed, coupled with provisions for sanctions which are employed once an illegal act or course of conduct has occurred or been embarked upon, and since such definition appertains with both national and international spheres, a logical unity is forged. and since they owe their relationship with one another to the international law rules, and since states cannot be equal before the law without a role that affects, it follows that international law is

32 Ibid

superior to or more basic than municipal law, to this end the Monist theory of international law reflects the unity of municipal and international law.[33]

The monist approach in the application of international law entails the direct consideration of international law as part of national law, which means that domestication is not required to enforce the provisions of an international treaty into national legislations.[34] The monist approach consists of two main schools, normative and sociological schools.

Normative school:

Normative school emphasises on the unity of legal order, accordingly, international law applies directly upon states legal order, as the relations are interpenetration and are possible because of the affiliation to a unique system that is based on the identity of law subjects in law sources.[35]

The monad theory consists of two main interpretations to international law relation with national law, from the one hand, they consider that national law is **subordinate** to international law, which means that international law is observed as a juridical order delegated by states' legal system, accordingly integrated into it, in contrary, international law is a total juridical order that delegates the states juridical orders, it is **superordinate** to them and includes the partial juridical order.[36]

Both interpretations have a monad structure, whereas one has the primacy to international order, while the other has the primacy to state judicial order, both prompts

33 Shaw, M. N. (2008)

34 Brindusa Marian, 2007. "The Dualist and Monist Theories. International Law's Comprehension of these Theories," Curentul Juridic, The Juridical Current, Le Courant Juridique, Petru Maior University, Faculty of Economics Law and Administrative Sciences and Pro Iure Foundation, vol. 1, pages 16-27, June. https://revcurentjur.ro/old/arhiva/attachments_200712/recjurid071_22F.pdf

35 Ibid

36 Ibid

the immediate application of international law into national law without "nationalisation".

Sociological school:

Sociological school considers that social acts produce an ethic that is represented by juridical rules, accordingly, inter-social collectivises create their own legal principles in order to maintain and develop the solidarity that guarantee their continuity and existence, hence, they take actions over any internal precept, and if they are in conflict, they modify or repeal laws accordingly.[37] however, realising that inter-social structure lacks its own organs, functional-duality law seems to be the least damaging option, thus, the only remedy for such situation is 'the super-state institutionalisation which develops in federalism'[38]

The alternative monist conception promotes the superiority of domestic law on international law, based on this perception, partisans believe that because of the states' independence and full sovereignty, the relationships formed between them are primarily based on force, which generates and maintains a state of war, accordingly, international law is regarded as a projection of rules that belongs to domestic law, hence national law defines the was a state acts within international arena.

1.1.2 Dualism/Pluralism

In contradiction with Monist theory, the Dualist approach to international law considers that there is no conflict between international and national law since both of their subjects, sources, and mandatory force are different.[39]

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[37] Ibid
[38] Ibid
[39] Mutubwa, W. (2019). Monism or Dualism: The Dilemma in The Application of International Agreements Under the South African Constitution. Journalofcmsd, 3(1). Retrieved from https://journalofcmsd.net/wp-content/uploads/2019/06/international-law-article-MUTUBWA-May-2019.pdf

Dualists argue that subjects of both laws are different, where one corresponds to relationships between states, while the other to interpersonal relationships, accordingly, internal and international law are two distinct legal systems that share international responsibility. To extend, both systems are different in terms of sources, as the origins of national law is the individual will of the state, while the origins of international law is the commit will of contracting states.[40]

The foundation of mandatory force of national law is the state's constitution, while the basis for international law is represented by the principle pacta sunt servanda, accordingly, only at their appropriate level can legal measures in both systems be validated, yet, provisions of both systems cannot be concurrent, where international law provision can't influence the internal provisions validity and vice versa.[41]

Based on the pluralist analysis, the incorporation of an international treaty within a national legislation requires legal measures or a legal plan that facilitates this admission.[42] As the incorporation of an international norm into domestic law alters its nature and recipient. Internal law refers to international law through a system of references and borrowings, with the norm being nationalised and applied as an internal legal provision.

This debate between Dualists and Monists, on the one hand, comforts defenders of sovereignty, particularly those of parliamentary sovereignty, because dualism implies acceptance of international law primarily through the use of law, whereas on the other hand, defenders of internationalism favourable to individuals because international law implies direct application without the need for the existence of a legal filter. However, in practice, the debate is somewhat limited, and as a result, pure monism or perfect

[40] Ibid
[41] Ibid
[42] Brindusa Marian. (2007).

dualism are extremely rare in real life, as practice, there is a whole set of intermediary situations that combine elements from both theories.

1.1.3 Monism & Dualism: State Practice

The majority of constitutions, including Syrian, Moroccan and Palestinian constitutions did not clarify the position of international treaties within their national legislations, in contrast, some states granted international treaties a supra-national status, while others granted them an infra-national status.

With reference to the Moroccan and Syrian constitutions, each of which specified the representative authority to sign a specific treaty, the Moroccan constitution stresses that the "King" is the authorised party to sign and ratify all international treaties except the ones that creating financial obligations on the state[43], which confuses the position of international law within national legislations when conflict arises, in parallel, the Syrian constitution provided the people's assembly with the authority to ratify treaties related to states safety and territorial integrity[44] which creates a conflict regarding other types of treaties and who is the representative authority to ratify such treaties.

The Amended Basic Law did not regulate international treaties entry into force; however, acknowledging the state theory and approach to international law facilitates a treaty entry into force and enforcement into national legislations. States that adapts a dualist approach, are usually characterised by the lack of direct rules identifying the required measures to be taken to implement international treaties within their laws, such as: The UK and the USA as well as all Anglo-Saxon states, meanwhile, Monist states integrate international treaties within their national legislations as a direct compulsory action, such as: Germany and Latin state.

[43] The Moroccan Constitution (1996). Art.31
[44] The Syrian Constitution (1973). Art. 71 (5)

The British and American dualist approach

> "The general rule is that the power to make or unmake treaties is exercisable without legislative authority and that the exercise of that power is not reviewable by the courts"[45]

The United Kingdom holds a fundamentally dualist view of international law, this was affirmed through Miller v Secretary of State for Exiting the European Union. In other words, it considers domestic and international law as operating on distinct levels. The power to make treaties is based on two related propositions, the first is that treaties between sovereign states have international law effect and are not governed by any state's domestic law, the second is that, while treaties are binding on the United Kingdom in international law, they are not part of UK law and give rise to no legal rights or obligations in domestic law.[46] The common law has been influenced by international law as many domestic laws are based on the UK's international commitments. However, the incorporation of international law into domestic law is contingent on its acceptance in one of two ways: by Parliament through legislation or by judges through common law.[47]

Various theories have been advanced to explain how international law rules apply within the British jurisdiction. The doctrine of transformation is one manifestation of the positivist-dualist position. This is based on the perception of two distinct legal systems operating independently, and it maintains that before any rule or principle of international law can have any effect within domestic jurisdiction, it must be expressly

[45] Miller v Secretary of State for Exiting the European Union, at 55 https://www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf
[46] Ibid
[47] International law in the UK Supreme Court. (n.d.). Retrieved April 6, 2023, from https://www.supremecourt.uk/docs/speech-170213.pdf

and specifically 'transformed' into municipal law through the use of appropriate constitutional machinery, such as an Act of Parliament.[48]

Another approach, known as the doctrine of incorporation, holds that international law automatically becomes part of municipal law without the need for a constitutional ratification procedure.[49]

Aside from the need to consider the Constitution, the American position on the relationship between municipal law and customary international law appears to be very similar to British practice. In Boos v. Barry, the US Supreme Court stated, "As a general proposition, it is of course correct that the United States has a vital national interest in complying with international law."[50] However, international law rules were subject to the Constitution.

As in the UK, an early acceptance of the incorporation doctrine was later modified. In the Paquete Habana case, it was stated that international law is part of our law and must be ascertained and administered by courts of justice of appropriate jurisdiction whenever questions of right based on it are duly presented for determination. The current accepted position in the United States is that customary international law is federal law and that its determination by federal courts is binding on state courts. The doctrine of precedent and the requirement to proceed in accordance with previously decided cases bind US courts, and they, too, must apply statute as opposed to any rules of customary international law that contradict it.[51]

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[48] Ibid

[49] https://researchbriefings.files.parliament.uk/documents/CBP-9010/CBP-9010.pdf

[50] BOOS ET AL. v. BARRY, MAYOR OF THE DISTRICT OF COLUMBIA, ET AL (CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT 1988) pp.323. https://tile.loc.gov/storage-services/service/ll/usrep/usrep485/usrep485312/usrep485312.pdf

[51] Ahmed, M. (n.d.). International law and municipal law. Retrieved April 8, 2023, from https://eprints.lancs.ac.uk/id/eprint/158065/1/4._Int_Law_Municipal_Law.pdf

Germany Monist Approach

Despite being the birthplace of the doctrine of "Dualism," Germany is classified as a state with a monistic system. However, current German doctrine holds that the law does not convert the treaty into domestic law, but rather empowers courts to apply the treaty as international law.

In terms of customary international law, rules of international law that have received the assent of the majority of states, including the leading powers, and that have been recognized by Germany, either explicitly or implicitly, are applied in German courts and have the character and force of federal laws. Statutes are constructed with the assumption that they contain an implied reservation to the effect that their provisions will not be applied when they conflict with generally recognized rules of international law.

Statutes will be declared unconstitutional if they are in conflict with such generally recognized rules of international law as have previously been accepted by Germany and applied in the courts; however, if these statutes are enacted in accordance with the provisions of article 76 of the constitution, which regulates the passage of amendments to the constitution, they must be applied in the courts, generally.[52]

The president signs all bilateral and multilateral treaties. Treaties that refer to matters that are otherwise dealt with by federal legislation require the consent of the Reichstag to be internationally valid and to have legal force in the courts after publication in the official Legal Gazette. This publication must occur within one month of ratification in

[52] Ruth D. Masters (1930). The Relation of International Law to the Law of Germany. Political Science Quarterly, 45(3), 359–394. doi:10.2307/2143193

order for the treaties to be considered as a federal law, and as such, they can be superseded by a later statute.[53]

In the absence of unmistakable evidence to the contrary, statutes are construed with the implicit reservation that they shall not be applied whenever their provisions conflict with obligations under an internationally valid treaty that has been published in the Legal Gazette. If a valid treaty published in the Legal Gazette is suspended or abrogated by the contracting state or states, the treaty retains its character and force as a federal law until expressly repealed by the German government.[54]

Monist/Dualist in Palestine

International customary practice and international treaties are the main resources of Law, the main difference is that International treaties are only binding upon their state parties, in contrast, customary practices are binding upon all states and it can, in fact, be invoked before national courts

The Palestinian legal system follows the Latin approach to national law; additionally, the Amended Basic Law and Palestinian legislation did not address the Palestinian approach to harmonisation; in light of the aforementioned, the Palestinian Constitutional Court decision No. 4 (2017) of 19 November 2017, confirmed that the international law and the national legal system are one and the same, which is relevant to the Palestinian constitutional situation given the Palestinian Basic Law's failure to define these mechanisms.[55] which indicates that Palestine is adopting the Monist approach to international law. As a result, once ratified, a treaty becomes part of national legislation,

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[53] Ibid

[54] Ibid

[55] تؤكد أن النظام القانوني الدولي والنظام القانوني الداخلي هما وحدة واحدة، وهذا ما ينسحب على الحالة الدستورية الفلسطينية في ظل عدم تحديد القانون الأساسي الفلسطيني لهذه الآليات.

https://maqam.najah.edu/media/uploads/2019/06/4-2017_%D8%B7%D8%B9%D9%86_%D8%AF%D8%B3%D8%AA%D9%88%D8%B1%D9%8A.pdf

and harmonisation of national legislations becomes a procedural action taken by states to ensure the coherence of both laws. In this context, decision No. 5 (2017) of 12 March 2018, stipulated that the treaty or international agreement be issued in the form of a law, go through the same procedures as a law, and be published in the Official Gazette.

Despite the complications imposed by the Constitutional Court's decision, passing an international agreement through the legislative council and its enforcement as a national law strengthens the Legislative Council's surveillance/monitoring over the agreements signed by the executive authority from one hand, while facilitating law applicability when dispute arises without colliding with the conflict of national law with international conventions and treaties from the other hand.

It is worth noting that if the legal rule stipulated in an international treaty does not conflict with state national legislation, it can be brought before national courts; however, if the legal rule creates a conflict with national legislation, the question of legal hierarchy should be brought up. Furthermore, it should be noted that an international treaty in a monolithic state becomes binding once ratified, and its publication in the official Gazette serves only to inform Palestinian nationals of the treaty's provisions and obligations.[56]

Article 10 (2) of the Palestinian Amended Basic Law emphasised that “The Palestinian National Authority works, without delay, to ratify regional and international declarations and covenants protecting human rights.”

In terms of judicial practice, the Supreme Constitutional Court determined that legislative incorporation of the international convention is the best practice regulating the mutual relations of states parties. Harmonisation in this sense aims at connecting the

[56] [Twam, Rashad & Khalil, Asem], [Enforcing International Treaties in Palestine: Legal Obstacles and Constitutional Solutions], Birzeit’s Working Papers in Legal Studies, [1/2019] Constitutional Law Unit, Faculty of Law and Public Administration: Birzeit University [2019].

measures taken to achieve harmonisation between policy, national law, and the contents of ratified international legislation, and to make national legislation keep up with developments in global transformations in the field of fundamental rights and freedoms on the one hand, while amending and repealing laws, as well as prohibiting customs and practices that are not in accordance with internationally recognized human rights standards on the other hand.

The harmonisation of national legislations with international law obligations is one of Palestine's obligations that is being brought up by human rights committees once a treaty is ratified, harmonisation entails more than just amending legislation; it also entails amending the law in its broadest sense. In a monist state, harmonisation of national legislations only reveals legislative rule instead of creating them, as the international treaty enters into force once the national procedures are completed, which means that the international legal rule becomes binding in national courts as they are granted a supra-national status[57]

However, for an international treaty to be binding a state is required to express its consent through all possible means, this expression of consent includes reservation, signatory, exchange of instruments, ratification, approval accession and all other agreed means.

1.2 Consent to be Bound: (Ratification, Signatory, Exchange of Instruments, Accession…)

As consent reflect the autonomy of the will and states sovereignty which are the main basis to international treaties, the Vienna Convention on the Law of Treaties frames

[57] عاصم خليل، مدى الحاجة للمواءمة التشريعية في فلسطين، مدونة، 22/8/2018

that a state may express its consent through various methods, including signature, ratification and accession, however, bilateral treaties consent is expressed through the exchange of instruments of ratification while in multilateral treaties, consent is expressed through the deposit of an instrument of ratification or accession with an agreed institution (usually the UN)

Internationally, there are constitutional and legal requirements to express consent to be bound, consent to be bound by a treaty is an international act where a state expresses it final consent to be bound by the provisions of a treaty, accordingly, consent to be bound is not a constitutional act even if it require internal and constitutional acts.[58]

Article 11-17 of the VCLT constitutes a legal base to consent expression that clarify when a treaty becomes bound by a state[59], according to which there appears to be many classical methods of consent expression including signature

Mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.

1.2.1 Consent to be Bound Expressed by Signature

According to article 12 of the VCLT, a state may express its consent through signature when a treaty provides that this method is acceptable, when negotiated states provided that signature have such effect, and if a state expresses its intention to give effect to signature through its representative.

A party who signed a treaty is usually described as" signatory", however this term confuse between simple and definitive types of signatures, which are the main two types of consent to be bound expressed by signature.[60]

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[58]Aust, A. (2013). Modern Treaty Law and Practice (3rd ed.). Cambridge: Cambridge University Press. doi:10.1017/CBO9781139152341

[59] Bolintineanu, A. (1974). Expression of Consent to be Bound by a Treaty in the Light of the 1969 Vienna Convention. The American Journal of International Law, 68(4), 672. doi:10.2307/2199829

Simple signature as states preferred option, does not obligate the state to ratify the treaty, nor to compel to its provisions, however, it creates certain obligations and benefits from a treaty. This type of signature first emerged within the ruling of the monarchies where agents were conferred with the authority to engage the state with specific negotiations or obligations, accordingly, the process of ratification used to be the confirmation of the monarch on the agent's authority, however, this practice became more complicated after the French and the American revolutions, as both regimes provided their agents with full powers to sign treaty,[61] yet this signature does not represent a promise of ratification, where the power division between the legislative and the executive distinguished between signature and ratification, thus, in some cases, domestic law may prevent a states to express consent to be bound by a treaty through signature, consequently, signing treaty creates an obligation on a signing state to act with good faith and to refrain from taking any action that could affect the subject matter of the treaty.

1.2.2 Consent to be Bound Expressed by Exchange of Instruments

A treaty is commonly formed through the exchange of instruments, as article 13 of the VCLT specifies that the instruments stipulate that their exchange has that effect, or it has been established that those states agreed that the exchange of instruments would have that effect.[62]

Frequently, the notes will state that the agreement formed by the exchange of notes will not enter into force until each party has informed the other that its constitutional

60 Bradley, C. A. (2012, January 1). Treaty signature. CORE. Retrieved April 7, 2023, from https://core.ac.uk/display/62565315?utm_source=pdf&utm_medium=banner&utm_campaign=pdf-decoration-v1

[61] Ibid

[62] Vienna Convention on the Law of Treaties. (1969). Art 13

formalities have been completed[63], where the exchange of notes originated to become an informal means of concluding a treaty, and they are signed by ambassadors, ministers, heads of governments or any other official representative.[64]

Notes are typically used to amend bilateral treaties; however, it can be practised in multilateral treaties, which can cause technical issues that may outweigh the benefits, unless there are compelling political reasons.

1.2.3 Consent to be Bound Expressed by Ratification

As provided by the VCLT, ratification, acceptance, approval or accession is an act where a state declare its consent to be bound by a treaty[65] it creates an international obligation a state cannot avoid without a sufficient excuse, all of which have the same legal effect, however, ratification process is done before a treaty entry into force, accession is when a state is invited to join to a treaty after its entry into force, acceptance and approval occurs when "at national level, constitutional law does not require the treaty to be ratified" by the executive. Regarding the number of parties to a treaty, bilateral treaties ratification is accomplished by the exchange of instruments, while multilateral treaties, and in accordance with the VCLT article 16 distinguishes, ratification is accomplished through the exchange or deposit of instruments of ratification, acceptance, approval or accession -unless otherwise provided-.[66]

Ratification is a two-step process, as states are required to start to give a domestic effect to international treaty through enacting domestic legislations, it is then required to submit a formal letter to the UNSC stating its consent to be bound by a treaty, this last is

[63] Austin, A. (2013)
[64] Ibid
[65] Vienna convention the law of treaties. (1969)
[66] Ibid

regarded as the process of ratification.[67] Since ratification require states to ensure their domestic states are consistent with the provisions of the treaty, particularly in its relation with human rights whereas states become bound to provide the UN bodies with regular reports on human rights, and any breach to human rights provisions is considered as a breach to international law[68]

Following adoption and signature, states needs time to ratify, as treaties may require specific legislations, or parliamentary approval, additionally, sometimes states need time to consider the implication of the treaty[69] .

1.2.4 Consent to be Bound Expressed by Acceptance or Approval

The terms for expressing consent to be bound by acceptance or approval are similar to those for ratification, as there is not much difference between a signature subject to acceptance or approval, and a signature subject to ratification.

Acceptance of approval was developed to allow some states to avoid constitutional requirements to obtain parliamentary authority to ratify treaties, especially when parliamentary process was described as "ratification" where there is no clear distinction between the process of acceptance or approval and the process of ratification.[70]

Acceptance or approval has the same legal effect as ratification unless the treaty states otherwise; however, acceptance or approval without signature is more akin to accession.

1.2.5 Consent to be Bound Expressed by Accession or Any other Agreed Means

Accession is primarily a method for a state to become a party to a treaty if it is unable to sign the treaty for any reason specified, this can happen when a treaty -in accordance to

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[67] Assistance Association for Political Prisoners (Burma). (2019). Ratification of international treaties. Retrieved April 6, 2023, from https://aappb.org/wp-content/uploads/2019/07/ratification-eng_2.pdf
[68] Shaw, M. N. (2008).
[69] Ibid
[70] Anthony Aust.(2013). p 88

article 81- prohibits certain states from signing or when a deadline for signature has passed.

In practice, accession is relevant to multilateral treaties, where those subject to ratification include an accession clause that makes this right exercisable even before entry into force, this is accomplished by making entry into force contingent on the deposit of a certain number of ratification (or acceptance or approval) or accession instruments.

The right to sign may limit the right to accede to a specific category or categories of states, and may be subject to conditions or consent depending on the treaty provisions.

The law of treaties is adaptable, especially in terms of express consent to be bound. According to article 11 of the VCLT, consent to be bound by a treaty may be expressed by any other agreed means (implicit or explicit), thus, a treaty can be adopted without signatures or other procedures and enter into force immediately for all adopting states.

Since consent to be bound imposes the duty to perform over states, article 26 of the VCLT highlights the fundamental principle of the law, which is “Pacta Sunt servanda”, followed by article 27, the VCLT affirms that a state may not provoke its national law to justify its failure to perform the treaty, thus, if a new law or modification to existing law is needed in order to carry out the obligations upon the state, negotiating state is bound to ensure that this is done at least by the time, furthermore, a state may not plead breach to provisions of the treaty for its parliament to legislate, however, if a treaty provides right or obligations to be conferred on persons, they can be given effect only if they are made part of domestic law of the parties and with provisions in that law for enforcement, accordingly, the relation between domestic and international law has been

discussed many times in terms of who has the authority to ratify, and what theories on enforcement.

1.2.6 Ratification Authority

1.2.6.1 Ratification by the Executive Authority

An ancient form of ratification that emerged during the ancient period of monarchies and imperials, in which the emperor/ruler makes the final decision; the French constitution of 1852 and the Japanese constitutions of 1889 and 1949 are notable examples of this type of ratification.

This method of ratification reappeared in modern international practice with the rise of dictatorial regimes such as Nazism and Fascism (1933-1945). Following WWII, the interim Iraqi constitution of 1970 used this method of ratification, which gave the Revolutionary Council ratification authority after the president's approval, moreover, the Greek constitution of 1975 provided the head of state the authority to ratify treaties signed with foreign states[71].

Supporters of this method of ratification argue that the Legislature's participation in ratification slows the process of foreign policy decision making, and limits the Executive's authority; however, this method of ratification is a result of exceptional circumstances, imposed by certain historical contexts or tyrannical political regimes that do not wish to involve the people in their actions.

Ratification by the Legislature:

Some constitutions delegate the authority of ratification to the Legislature, this method is followed by the One or Single party governments/states. This method of ratification was followed by the Turkish constitution of 1924, articles 4, 6 and 7 which accorded

[71] Loewenstein, K. (1938). The Balance between Legislative and Executive Power: A Study in Comparative Constitutional Law. The University of Chicago Law Review, 5(4), 566–608. https://doi.org/10.2307/1596786

this authority to the Grand National Assembly[72], the Soviet constitution of 1977 article 121(6) that granted this authority to the Presidium Supreme Soviet (Parliament)[73].

To extend, some constitutions, such as the Interim Federal Constitution of the United Arab Emirates of 1972, delegated ratification authority to the Federal Supreme Council through article 47(4); however, this delegation is conditional on a presidential decree, and even in the absence of the Supreme Council, the President of the Union and the Council of Ministers lack the authority to ratify international treaties under Article 115.[74]

Distribution of Competence to Ratify between the Legislature and the Executive (the Democratic Practice)

This approach is divided into three ratification methods, all of which produce the same result. In this context, some constitutions define the types of treaties that require the approval of the legislature, other constitutions define treaties that do not require the approval of the legislature, the third type of constitution requires the approval of the legislature to all types of treaties, and the final type is separating both powers completely.

Except for international treaties relating to political and financial obligations, as well as treaties relating to state sovereignty and territorial integrity, the most common method of ratification delegated the head of the state to ratify international treaties, known as

[72] Constitution of the Republic of Turkey. (1924). Art, 4 ,6, 7. https://www.worldstatesmen.org/Turkeyconstitution1924.pdf

[73] Constitution (Fundamental Law) Of The Union Of Soviet Socialist Republic, art. 121. https://www.marxists.org/history/ussr/government/constitution/1977/constitution-ussr-1977.pdf

[74] Interim Federal Constitution of the United Arab Emirates of 1972, art. 47, 115. https://raalc.ae/wp-content/uploads/2020/09/The-Constitution-of-the-United-Arab-Emirates-of-1971-1.pdf

executive international treaties.[75] The Legislature's role in this context is to approve the Executive to ratify specific international treaties.[76]

The first to ever adopt such an approach to ratification was the Belgium constitution of 1831, article 68 which emphasises that the King shall "declare war, make treaties of peace, of alliance and of commerce…"[77], however, "Treaties of commerce and those which might seriously burden the State, or individually bind the Belgians shall go into effect only after having received the assent of the houses."[78] This approach was also adopted by many Arab constitutions including the Tunisian constitution of 2014, articles 65 and 66[79], the Jordanian constitution of 1952, article 33(1).

In this context, the South African constitution of 1997[80] defined treaties that do not require legislative approval as technical, executive, or administrative treaties in article 231(2, 3); however, the executive is required to project ratified treaties to the National Assembly and the parliament within a specific period of time[81]

The US constitution of 1787, article 2(2) delegates the full authority to the legislature to ratify all types of treaties, where it affirmed that the president "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur.."[82]

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[75] Loewenstein, K. (1938).
[76] Ibid
[77] Belgium's Constitution. (1831). https://www.constituteproject.org/constitution/Belgium_1831.pdf?lang=en
[78] Ibid
[79] Tunisian Constitution. (2014). https://www.constituteproject.org/constitution/Tunisia_2014.pdf?lang=ar
[80] Brown, N. J. (2003, October). The third draft constitution for a Palestinian state: Translation and Commentary. Palestinian Center for Policy and Survey Research . Retrieved April 8, 2023, from https://landwise-production.s3.amazonaws.com/2022/03/Palestine_Basic_Law_2003-1.pdf
[81] South African Constitution.(1996) and its amendments (2012). https://www.constituteproject.org/constitution/South_Africa_2012.pdf?lang=ar
[82] The Constitution of the United States. (1787). https://constitutioncenter.org/media/files/constitution.pdf

Lastly, Constitution of the Swiss Confederation of 1999 separates between both powers, where each of which has its own specific powers, as article 166 clarifies that the Federal Assembly (Leges) "shall approve international treaties, with the exception of those that are concluded by the Federal Council under a statutory provision or an international treaty."[83], additionally, the Swiss constitution provides its citizens with the authority to via popular referendum, that could be optional or mandatory based on the type of the treaty.[84]

[83] Federal Constitution of the Swiss Confederation. (1999).https://fedlex.data.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/1999/404/20210101/en/pdf-a/fedlex-data-admin-ch-eli-cc-1999-404-20210101-en-pdf-a.pdf

[84] Ibid, art.140 and 141

Chapter Two

What has Palestine Achieved?

Historically, the adoption of the Universal Declaration of Human Rights under the United Nations Charter had marked the internationalisation of human rights and the humanisation of international law[85] This began by the end of WWII where states seeked to build cooperation by adopting common ideals and the emergence of regional organisations, which in turn, was reflected on the importance of human rights, as regional jurisdictions echoed human rights law rules. It is only natural that human rights and freedoms, as well as their protection, take centre stage in all new constitutions. Many of them make reference to international human rights law, and some even assert that it takes precedence over national laws.

The VCLT addresses treaties concluded by states; accordingly the OSLO accord is not included under the provisions on international law as the treaty was concluded between an organisation and a state, which left the OSLO to fall within the provisions of customary international law. This means that the question of representation is no longer an obstacle facing Palestine. As a state party to the VCLT, the provision of any treaty becomes binding upon Palestine, this includes the enforcement process.

Prior to Palestinian diplomatic practices of 2012, the question of enforcing international treaties into Palestinian national law was provoked, as the Amended Basic Law did not cover the relation between both laws. It has produced various suggestion on the best method to harmonised national law with international law, as it is providing the judicial system with proper support in order to execute the provisions of international treaties,

[85] Buergenthal, T. (1997). The Normative and Institutional Evolution of International Human Rights. Human Rights Quarterly, 19(4), 703–723. http://www.jstor.org/stable/762684

and including new articles within the draft constitution in order to determine the status of international treaties, as well as investing in the existing Palestinian legal structure were the most debated approaches to harmonisation.

The Palestinian legislation did not define "international treaty", and left the definition to international jurisprudence, therefore, according to legal jurisprudence, and article 2 (1/a) of the VCLT, a treaty means: "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation"[86] and since international treaties are considered as a source of public international law, which is regarded as a legal source in and of itself, the ICJ statute extend in article 38 (a) to identify that a treaty includes "general or particular, establishing rules expressly recognized by the contesting states"[87] This means that Palestine is under the obligation of adopting such a definition.

With reference to the ratifications process, Palestine is capable to express its consent through all the aforementioned means identified in article 15 of the VCLT, Palestine, following 2012, has chosen to ratify international treaties through accession, which means that international treaties are binding upon Palestine without the need for ratification process.

When considering the Harmonisation option, the main complication arising from the last suggestion is that when conflict arises, international treaties will be excluded from the domestic legal system, as there are no proper references, yet still, based on article 27 of the VCLT a state may not provoke its national legislations to justify breaching its international obligations, such situation provokes many complications related to the

[86] Vienna Convention on the Law of Treaties, 1969, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

[87] Statute of the International Court of Justice. https://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf

Palestinian context, the most prominent of which is the absence of the Palestinian Legislative Council, that left the responsibility for issuing laws to remain with the Palestinian President, those laws must be publicised in the official Gazette, which is in the case of Palestine, inactive.

2.1 Human Rights in Palestine

WWII led to major legal shifts in codifying the law of war, giving a particular focus to people living under occupation, where the International Humanitarian rights law granted them the rights to the same extent as the nationals of the State concerned, this codification process was influenced by human rights violations that took place in Germany during the Nazism ruling influenced codification process, and led to the codification of 30 different provision that represents the minimum rights granted to civilians living under occupation.[88]

Human rights conventions indirectly influenced policy makers, and allowed them implicitly to enforce human rights treaties within the states constitution. Post WWII codification included new definition to rights and freedoms, whereas the definition shifted from "measures" into "Binding" on the state, as a matter of fact, WWII codification allowed human rights to become a system for change, such as the Indian constitution of 1950, the Brazilian constitution 1988 and the South African constitution of 1996 that portrayed the liberalism human rights.

The codification of human rights within a constitutional form, led to the activation of constitutional courts, which ensures the implementation of constitutional provisions, however, such provisions are interpreted in a way reflecting that states remain the only

88 Keep in mind that Humanitarian Rights Law implies in cases of conflict (occupation) while human rights law implies in all cases.

power protecting and granting these rights. Constitutional courts are considered to be the most criticised courts around the world, however, they played a central role in adjudicating disputes, thus, these courts represent a new wave of implementing constitutional provisions, particularly, human rights provisions codified in the states' constitution as well as human rights conventions.

What's interesting about the Palestinian experience comparing with other constitutional courts, is its modern understanding to basic freedoms, as there are many indicators referring to the Palestinian philosophy on human rights, as Palestine worked towards creating an appropriate constitution that simulates the ideal form of constitutions in 2003, where article 10 of the amended basic law require Palestine, without delay to join international human rights treaties.

Since its 2012 status at the United Nations, Palestine seeks to join international treaties as a backdoor to independence. The Declaration of Independence of 1988 and the Basic Law consider fundamental human rights and freedoms as binding and deserving of respect. The State of Palestine is committed to the United Nations' principles and goals, as well as the Universal Declaration of Human Rights; it is working quickly to join international conventions that protect human rights.

For international conventions to acquire legal force and take precedence over national laws[89], Palestinian law requires that they go through the formal stages of fulfilment by a specific domestic law for enforcement, which includes its publication in the Palestinian Official Gazette, however, based on an interview with Asem Kahlil, harmonisation of international treaties is not an essential component for a treaty to enter into force, as

[89] In this context, the Palestinian law means the Declaratory Judgment of the Supreme Constitutional Court (SCC) on the Request for Interpretation submitted by the Minister of Justice No. 05/2017, dated 12 March 20218, and published in the Palestinian Official Gazette, Issue 141, 25 March 2018, p. 87. The Palestinian law also means the SCC Judgment on the Constitutional Appeal No. 04/2017, dated 19 November 2017, and published in the Palestinian Official Gazette, Issue 138, 29 November 2017, p. 84.

harmonisation main goal is to maintain a coherent legal system, further, an international treaty enters into force and becomes binding upon a state once signed, and all other national procedures are only for the state to harmonise and ensure the coherence of its national legislations with its new international obligations[90].

With reference to the Supreme Constitutional Court decision, the Amended Basic Law of 2003 and SCC Law No. 3 of 2006 as amended, the SCC does not have the competence to establish reservations to an international treaty, in this context, Asem Khalil emphasised that nationally, the decision of the SCC in binding upon local courts, while internationally, the Court decision does not fall within any of the competences established in article 24 and 25 of the court statute[91] Against this backdrop, the dispute between national law and international law in Palestine can be overcome through multiple legal approaches, including as introducing constitutional amendments, issuing decree-laws providing for harmonisation and empowering judges, or through the mechanism for appointing judges, which will be discussed later.

As an internal political status, promulgated laws by the PNA are not applicable in the Gaza Strip falling under the authority of Hamas Movement prior to the Palestinian fragmentation occurred in 2007, in parallel, the laws passed by Change and Reform Bloc in Gaza are not enforced on the West Bank population. This institutionalised discrimination against Palestinian citizens, who are subject to different legal systems for no substantive or reasonable reason.

In 2019 and by virtue of the PMO decision No.4 (2019), Palestine established the harmonisation committee with the participation of 14 official institutions, to review

[90] Asem Khalil, interview at Birzeit University
[91] Ibid

laws and ensure its compliance with international law obligations.[92] However, the committee functions and powers are limited, as it only reviews limited set of laws and legislations; moreover, the technical work methodology in the committee suffers from many difficulties and problems, the most prominent of which is the voting system on law revision, that in turn, hinders the work of the Harmonization Committee.

2.2 The Legal Framework and the Palestinian Constitutional Reality in Relation to the Rules of Human Rights

2.2.1 HR as Customary Practice

Among all international law treaties, human rights treaties enjoys a special legal position in national legislations, many states, including Brazil, Nicaragua and Mexico gave human rights a supra-national status, that is almost equivalent to the constitution position, this is referred to the content of human rights rather than its form as a "treaty", most of the content human rights treaties are customary practices that enjoys a **supra-sovereignty** status, and the codification of customary practises does not reduce its value or position.

The relationship between the Palestinian government and Palestinian people starting from the Oslo Accord and extended to 2014 was governed by Customary human rights law, the Oslo Accords principles, and the Palestinian Amended Basic Law, the Palestinian political fragmentation played a key role in the deterioration in the legal context of Human Rights, as the quandary in terms of human rights implementation, is referred to the political situation trumping legal obligations and the rule of law.

92 Decisions of the Council of Ministers Session No. (02) on 04/22/2019. http://www.palestinecabinet.gov.ps/portal/Decree/Details/6010f30d-788a-4666-8d4b-5d59110adc9f

The Universal Declaration of Human Rights has been widely accepted as a fundamental human rights instrument that all states are obligated to respect and protect, in fact, it represents the "centrepiece of the modern international law of human rights….and is more than an affirmation of moral principles"[93] A state is not required to explicitly accept a customary principle in order to be bound by it, because once this principle is recognized as customary law, all states must follow it, and since the Universal Declaration of Human Rights has been described as a human rights instrument that is an important part of customary international law that was developed by legal experts and accepted by states, it has become a mandatory part of human rights customary law. To put it another way, it has become a standard that all states must follow.[94]

Notably, many of the principles found in the Universal Declaration of Human Rights and then replicated in the Civil and Political Covenant now constitute part of customary international law binding on all states. Simply put, the UDHR is the foundation upon which human rights conventions are built.[95] Compliance with the provisions of international law not only relies on the "enforcement mechanisms available at the international level, but rather on the resolve of domestic legal operators… to ensure compliance with international norms"[96]

In this context, article 10 (1) of the Amended Basic Law emphasises that "Human rights and fundamental freedoms are legally binding and must be upheld."[97] Which can be considered as a reference to the constitutional position of human rights, this also was

[93] Final Act of Tehran Conference on Human Rights https://legal.un.org/avl/pdf/ha/fatchr/Final_Act_of_TehranConf.pdf
[94] Ibid
[95] Öberg, M. D. (2005). The legal effects of resolutions of the UN Security Council and General Assembly in the jurisprudence of the ICJ. European Journal of International Law, 16(5), 879–906. https://doi.org/10.1093/ejil/chi151
[96] Conforti, B. (1993, June 1). International Law and the Role of Domestic Legal Systems. https://doi.org/10.1604/9780792323198
[97] Palestinian Amended Basic Law. Art.10 (1)

emphasised within the 1988 state declaration, referring to human rights obligations and UN resolution and emphasising on the Palestinian commitment to them.

2.2.2 1988 Declaration and Palestinian Legal Hierarchy

The Palestinian Amended Basic Law of 2003 does not tackle the topic of the Palestinian constitutional hierarchy and the position of international treaties (including human rights treaties). Only Article 10 (2) refers to international human rights treaties when it calls on the Palestinian Authority to accede to international declarations and covenants that protect human rights as soon as possible.

Article 30 (2) of the Palestinian Amended Basic Law prohibits the immunisation of any decision or administrative action from judicial censorship, this censorship does not include immune international organisations such as the UN, against this backdrop, the SCC in its decision No. 4 of 2017, highlighted article 27 of the VCLT stating that state are prohibited from invoking its national legislations to uphold international treaties, the Court extended to emphasise that international law has primacy over national law even if not publicised on the official Gazette, unless it is incompatible with Palestinian religious, political, and cultural identity, however, it granted an immunity to the UN agency based on an international agreement.

With its relation to the 1988 state declaration, the Palestinian Amended Basic Law is the cornerstone for a state's legal structure, and comes on the top of the state legal hierarchy, based on its position; the idea of legality extends to all legal rules in the state. Meanwhile, the 1988 Declaration is the state founding declaration that acquires a superior constitutional value that regulates the process of preparing, drafting, and reviewing all legislation, including the Palestinian Basic Law.

In this context, the SCC on its interpretation No. 5 of 2017 concluded that the Declaration of Independence issued by the Palestinian National Council in 1988 is the supreme constitutional document, particularly since the Basic Law issued by the Palestinian Legislative Council was established accordingly for a transitional period for the Palestinian Authority.[98]

Considering the Palestinian identity based and emphasised on "persistence struggle", the Declaration of Independence defined the identity of the Palestinian people, and the state commitment to international principles, including the commitment to human rights and basic freedoms that were later recognized in 2012, thus, 1988 state declaration as well as human rights are considered on the top of the Palestinian legal hierarchy, followed by the Palestinian Amended Basic Law.

Within this frame of reference, the 1988 state declaration highlights Palestine's commitment "to the principles and objectives of the United Nations and to the Universal Declaration of Human Rights, as well as its commitment to the principles and policy of non-alignment."[99] Against this backdrop and within the Palestinian Legal hierarchy the UDHR and 1988 declaration are on the top of the legal hierarchy, followed by the Amended Basic Law. To this end, the SCC concluded that a treaty or international agreement does not by itself disregard a Palestinian law, but it must gain strength by passing through the formal stages required for the issuance of a specific internal law to enforce it.[100]

Law can be enacted through three distinct processes outlined in articles 70, 41 and 42 of the Palestinian Amended Basic Law. Article 70 of the Amended Basic Law establishes

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[98] Request for Interpretation submitted by the Minister of Justice No. 05/2017, dated 12 March 20218, and published in the Palestinian Official Gazette, Issue 141, 25 March 2018, p. 87.

[99] وثيقة إعلان الاستقلال الفلسطيني. (n.d.). وكالة الأنباء والمعلومات الفلسطينية - وفا. https://ar_pages.aspx?id=4938

[100] Ibid.

that the Prime Minister Office has the authority to submit draft laws to the Legislative Council, issue regulations, and implement laws, however, law issuance should go through the official legislative process indicated in article 41.

Article 41 of the Amended Basic Law states that if the PNA president does not provide any objections or opinions within 30 days of the Legislative Council referral, the law is considered promulgated and published immediately in the Official Gazette.[101] Of note, article 42 states that the President of the National Authority, in cases of necessity that does not tolerate delay, and in periods other than Legislative Council periodic sessions, have the authority of issuing decisions that have the force of law, these decisions are presented to the Legislative Council in the first session it convenes after issuance, otherwise their force of law is lost, but if they are presented to the Legislative Council according to article 41 and not approved by it, they cease to have the force of law.

Against this backdrop, the multi-layered issue seems to have multilayers, as the SCC decision is bound and in force nationally, while it is violative to article 27 of VCLT, as the SCC is not authoritative to establish any reservation on an international treaty, especially after its ratification, leaving the harmonisation of national legislations to mitigate such risk throughout law by decree or judicial empowerment, keeping in mind that all human right conventions are an extension and clarification to the provisions of the UDHR that enjoys a supra-constitutional status.

Whether or not nations have reached an agreement on human rights content, the gap between codification and effective protection has yet to be bridged. Violations occur when nations are unable or unwilling to respect international law norms and lack institutions that protect human rights, in both cases, both sources of law -customary

[101] Palestinian Amended Basic Law, art. 41

international law norms and international treaties- recognizes the universality of human rights, even when it is difficult to ensure their respect due to each state's sovereignty principle and noted peculiarities.

Because institutional inefficiency and "general situations" pose the greatest challenges to human rights, International Organizations and Non-Governmental Organisations work to monitor, denounce, and assist countries in human rights realisation, while Human Rights Committees monitor and evaluate human rights status based on state periodic reports and shadow reports submitted by citizens and civil society organisations.

2.2.3 The Palestinian Legislation and Acceded Human Rights Treaties

Palestine first joined the Convention on the Elimination of all Forms of Discrimination against Women (hereinafter CEDAW) in April 2014 and entered it into force on July from the same year, in fact, since its entry into force, Palestine took many steps forward to address International human Rights instruments, as it joined many Human Rights treaties and conventions, including, the International Covenant on Economic, Social and Cultural Rights, in International Covenant on Civil and Political Rights, Convention on the Rights of the Child, and its Optional Protocol on the involvement of children in armed conflict, International Convention on the Elimination of All Forms of Racial Discrimination, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of Persons with Disabilities, United Nations Convention against Transnational Organized Crime, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in Protocol to Prevent,

Suppress and Punish Trafficking in Persons, Especially Women and Children, and supplementing the United Nations Convention against Transnational Organized Crime.

2.2.3.1 International Covenant on Civil and Political Rights (ICCPR)

The ideal of free human beings enjoying civil and political freedom as well as freedom from fear and want can only be realised if conditions are created in which everyone can enjoy his civil and political rights, as well as his economic, social, and cultural rights, Considering the obligation of States under the United Nations Charter to promote universal respect for and observance of human rights.[102] the International Covenant on Civil and Political Rights was adopted and opened for signature, ratification, and accession on December 16, 1966, and it entered into force on March 23, 1976.

The International Covenant on Civil and Political Rights (ICCPR) of the United Nations aims to ensure the protection of civil and political rights are protected. On December 19, 1966, the General Assembly of the United Nations approved it, and on March 23, 1976, it went into effect. The International Bill of Rights is made up of the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights (ICCPR), and its two Optional Protocols.

The ICCPR affirms the inherent worth of every person and commits to fostering the conditions necessary for the exercise of civil and political rights within each state. As stated in the Covenant, nations that have ratified it are required to defend and preserve basic human rights and compelled to take administrative, judicial, and legislative measures in order to protect the rights embodied in the treaty and to provide an adequate remedy. The ICCPR currently has 168 parties and 74 signatures.

[102] International Covenant on Civil and Political Rights, 1966.

The ICCPR's basic concepts and ideals, which are based on the idea of non-discrimination, are found in Articles 2 and 3. Article 2 guarantees that everyone living on the soil of the states that have ratified the Covenant will have access to and be able to exercise the rights set forth in the ICCPR (State Party). The equal right of men and women to exercise all civil and political rights outlined in the ICCPR is guaranteed by Article 3.

The ICCPR was first acceded by Palestine in the 2nd of April 2014 with no reservation on any provision on the treaty; nevertheless, Palestine has not followed due process in implementing the ICCPR provisions within the national legal system, including publishing the Covenant in the official Gazette.

The 1988 Declaration of Independence and Basic Law view fundamental human rights and freedoms as binding and duly respectable. The State of Palestine is committed to the United Nations' principles and goals, as well as the Universal Declaration of Human Rights.[103]

The State of Palestine works, without delay, to accede to international convention, which provides protection to human rights.[104]

With the dissolvent of the Palestinian Legislative Council in 2018, and with the outbreak of COVID-19, the state of emergency has been in effect continuously across the Palestinian territory and renewed every month by decisions issued forth by the President, which violates Chapter 7 of the Amended basic law prohibiting the extension of the state of emergency for over than 60 days, without the approval of the Legislative Council, placing constraints on individual rights and freedoms, particularly the right to freedom of movement. Meanwhile, regulations have been enacted that make certain

[103] وثيقة إعلان الاستقلال الفلسطيني. (بدون تاريخ). وكالة الأنباء والمعلومات الفلسطينية - وفا. https://ar_pages.aspx?id=4938

[104] Palestinian Amended Basic Law 2006, art.10

behaviours associated with the state of emergency illegal, while other regulations have aggravated penalties against the perpetration of particular offences during the state of emergency, such as Decree-Law 20 (2020)[105] incriminates acts and prescribes heavier penalties for others, using vague and loosely defined terms and expressions.

In regards to the Palestinians right to life and the right to physical integrity, under the Palestinian legal system, the lack of political will, plays a major role in violating the right to life, as death penalty in Gaza Strip is still a legit act under the ruling of Hamas and it is, in fact, legalised and practised, while in the West Bank, the Head of the state issued Decree law 39 (2020) where new amendments to Palestinian legislation are being introduced to regulate, rather than completely abolish, the death penalty.[106] Further, many Palestinian laws and regulations prohibits torture and violating the right to life, yet, in practice, such rights are violated by preventive security forces, leaving Palestine to implement its own national legislations.[107]

Considering the right to privacy, Palestinian law prohibits random surveillance and establishes specific conditions for conducting electronic surveillance in the context of a criminal investigation, in this context, Decree-Law No 10 (2018) on cyber criminality, established substantive and procedural rules for combating cybercrime, including searches of electronic devices and communications surveillance.[108] However, this law violates the legal guarantees that individuals have when the government intrudes on their privacy, notably, the power to violate privacy, including electronic search and wiretapping, will be delegated to the Attorney General rather than competent courts,

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[105] https://maqam.najah.edu/media/uploads/2020/07/legislations/%D9%88%D9%82%D9%81_%D9%86%D9%81%D8%A7%D8%B0.pdf

[106] http://176.119.250.243/en/pg/getleg.asp?id=17400

[107] ICHR and Al-Haq (2022). Joint fact finding report on the killing of activist Nizar Banat (in Arabic).

[108] Muqtafi. (2018). Decree-Law No. (10) on cybercrimes. Retrieved from: https://tinyurl.com/4hcpx8v3

which does not only violates individuals human rights, but also violates the constitutional procedures restricting liberty.

Of note, Decree-Law No 10 (2018) provide the courts with the authority -at the request of the Attorney General- to block electronic websites located within or outside the state if they publish material that may endanger national security, public order, or public morals, this provision does not require a specific offence or the notification of website representatives in order for them to submit their challenge and defence.[109] To extend, the Code of Judicial Conduct 2022[110] prohibits and violates judges freedom of expression as they are prohibited from blogging or sharing any personal information or photos on social media platforms, in the same context, the Council of Ministers made a decision, repealing Article 22 of the Council of Ministers' Decision No. 4 of 2020 on Approval of the Code of Conduct and Ethical Standards for Civil Service, which eliminates all guarantee to the right to freedom of expression for civil servants.

The right to freedom of association and right to form or join a trade union is also included in the legal violations to human rights, as the Decree-Law No. 1 (2000) (CSO Law), allows government interference with the internal financial and functions of associations and civil society groups. It vests the government with the power to impose conditions on the financing sources of associations. In this context, Decree-Law No. 11 (2017) prohibited certain civil society groups from exercising their right to strike in the Civil Services; this law includes health workers, with the exception of administrative staff; President's Office staff; Council of Ministers staff; Foreign Service officers; Palestine Public Broadcasting Corporation staff; and prosecutors.

[109] Ibid, art 39
[110] Code of judicial conduct 2022, art.3. https://tinyurl.com/2u3pxkj4

2.2.3.2 The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) aims to realise that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the ideal of free human beings enjoying freedom from fear and want, which can only be achieved if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as civil and political rights. The ICESCR was adopted and opened for signature, ratification and accession by the General Assembly of 16 December 1966 and entered into force 3 January 1976.[111]

The Covenant's Preamble acknowledges, among other things, that economic, social, and cultural rights spring from the "inherent dignity of the human person" and that "the ideal of free human beings enjoying freedom from fear and want can be achieved only if conditions are created so that everyone may enjoy his economic, social, and cultural rights, as well as civil and political rights." Moreover, the fundamental tenets of the Covenant are: (1) equality and non-discrimination in the exercise of all of the rights guaranteed by the agreement; and (2) the responsibility of States Parties to respect, preserve, and realise economic, social, and cultural rights.

After its accession in 2nd of April 2014, Palestine neither provided a time frame and strategic plan to enforce the provision of the Conventions nor published it in the official Gazette in order for it to enter into force.

The provisions of this Convention include various range of rights and freedoms, including equality and non-discrimination, the right to work, the right to social security,

[111] International Covenant on Economic, Social and Cultural Rights, 1976.

children and working mother rights, the right to diversity (elderly and persons with disability), right to health, and the right to education.[112]

The right to non-discrimination in the Palestinian legal system was portrayed through article 9 of the Palestinian amended basic law, nonetheless, the Palestinian regulations and legislations lack a specific and clear definition of non-discrimination. Internally, there are still various enacted legislations that violate the principle on non-discrimination, such as the personal status law that still enforce guardianship, family responsibility and the absence of sharing common marital funds principle, which in turn links women's economic and social rights with the patriarchy.

The principle of non-discrimination is also considered as vague concerning the rights of persons with disabilities, as Law No.4 (1999) on the rights of persons with disabilities, does not set clear regulations on the possibility of enforcing such law, along with a lack of a timeframe and a budget plan that commensurate with the financial capabilities of the PNA.[113]

With regards to the right to work, Labor law No.7 (2000) is enforced in Palestine, however, the MoL lacks the constant follow up on the implementation of this law, which leads to breach employers basic rights granted in the Palestinian legislations, furthermore, with the high rate of unemployment Palestine is facing, there is no clear measures take to reduce unemployment rates, leaving Palestine with a limited small

[112] OHCHR, Background to the Covenant: Committee on Economic, Social and Cultural Rights. https://www.ohchr.org/en/treaty-bodies/cescr/background-covenant

[113] The Independent Commission for Human Rights. (2021). Parallel report submitted to the United Nations Committee on Economic, Social and Cultural Rights on the first report of the State of Palestine on the implementation of the International Covenant on Economic, Social and Cultural Rights. Retrieved from: https://tinyurl.com/mrxsa2xu

labour market that does not satisfy the needs of freshly graduated students and citizens.[114]

The right to work is usually linked to the right to associate, as article 9 of the CESCR specifies that "The right to strike, provided that it is exercised in conformity with the laws of the particular country"[115], nevertheless, Decree-Law No.11 (2017) regulating the exercise of the right to strike in the public office[116], prohibiting the right of associations to strike, which led many strikes such as the Bar strike to come to an end.

With reference to the general comments of the CESCR No. 19 on social security, Palestine does not seem to have any structural system on social security, additionally, the law regulating retirement as a social security law, only includes governmental employees who are considered elderly, persons with disabilities and incapacitated persons.

Children are also suffering from legal human rights violations in Palestine, as the MoSD did not provide any clear budget for children, further, Palestine lacks a statistical study on children labour as well as number of infant deaths resulting from failure to follow safety standards, this was accompanied with a wide range of lawsuits concerning violating children rights to education, health, and dignity[117].

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[114] صندوق الأمم المتحدة للسكان. (2020). مؤشرات المستقبل
https://palestine.unfpa.org/ar/publications/%D9%85%D8%A4%D8%B4%D8%B1%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D8%B3%D8%AA%D9%82%D8%A8%D9%84

[115] CESCR. Art.9

[116] Muqtafi. (2017). Decree-Law No. (11) regulating the exercise of the right to strike in the public office. Retrieved from: https://tinyurl.com/y62puz47

[117] ICHR. (2021), Parallel report on the State of Palestine's first report on the implementation of the International Covenant on Economic, Social, and Cultural Rights submitted to the United Nations Committee on Economic, Social, and Cultural Rights.. Available at:https://cdn1.ichr.ps/cached_uploads/view/2021/10/21/%D8%A7%D9%84%D8%AA%D9%82%D8%B1%D9%8A%D8%B1-%D8%A7%D9%84%D9%85%D9%88%D8%A7%D8%B2%D9%8A-%D9%84%D9%84%D8%B9%D9%87%D8%AF-%D8%A7%D9%84%D8%AF%D9%88%D9%84%D9%8A-%D8%A7%D9%84%D8%AE%D8%A7%D8%B5-%D8%A8%D8%A7%D9%84%D8%AD%D9%82%D9%88%D9%82-

With reference to the essentiality of diversity, there is no clear data on the number of people with disabilities who benefit from social services, as well as the number of people who benefit from emergency aid and supporting tools, or how to gain access to stakeholders who provide such services. In addition to the lack of data on the percentage of schools that meet the needs of people with disabilities, their participation in the labour market, and the absence of data on the terms and conditions of work for them, there is a lack of data on awareness programs about the rights of this group in order to contribute to changing the prevailing culture toward them.

The lack of sufficient data also includes elderlies in Palestine, which is reflected on the possibility of forming strategic plans aiming at protecting the elderly's rights in Palestine, taking into consideration that there is neither regulations that includes the elderly, nor a supporting budget to CBOs supporting such social class.

The Governmental Health Insurance System Regulation No.113 (2004) completely ignored the needs of overage people to access health services without being linked to a breadwinner or poverty, as the health insurance system only covers cases of poverty and overage persons who are included in their offspring social security.[118]

The collective right to health is not a constitutionally protected right; despite the decree-law on medical security and protection, granting the right to health faces many obstacles due to a lack of executive regulations; as a result, health is regarded as a service rather than a right. In addition, with regard to the right to education, Decree-Law No.8 (2017) does not grant free secondary education, and Decree-Law No.6 (2018) does not explicitly state that higher education is free, nor does it grant freedom to research and

%D8%A7%D9%84%D8%A7%D9%82%D8%AA%D8%B5%D8%A7%D8%AF%D9%8A%D8%A9-%D9%88%D8%A7%D9%84%D8%A7%D8%AC%D8%AA%D9%85%D8%A7%D8%B9%D9%8A%D8%A9-1634815026.pdf

[118] The Governmental Health Insurance System Regulation No.113 (2004), art.1

education institutions, to extend, both laws does not guarantee freedom to research, the protection of human dignity, respecting diversity and equality and the protection of copyrights.[119]

2.2.3.3 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

The body of impartial specialists known as the Committee on the Elimination of Discrimination Against Women (CEDAW) oversees the application of the Convention on the Elimination of All Forms of Discrimination Against Women. 23 international specialists on women's rights make up the CEDAW Committee. Women all over the world can use the CEDAW treaty as a tool to alter their daily lives. CEDAW has proven incredibly effective in preventing the negative repercussions of discrimination, such as violence, poverty, a lack of legal protections, the denial of inheritance, property rights, and credit access.[120]

The Convention on the Elimination of all forms Discrimination Against Women was adopted and opened for signature, ratification and accession by General Assembly resolution of 18 December 1979 entry into force 3 September 1981, and it was first acceded by Palestine on April 1st, 2014.

Based on the statement by the Committee on its relationship with parliamentarians, adopted at the forty-fifth session, in 2010, the implementation of the convention requires incorporating its principles within states party national legislations, including the constitutions of the state, this incorporation, entails the state party to adopt policies

[119] ICHR (2021)

[120] OHCHR, Committee on the Elimination of Discrimination against Women. Available at:https://www.ohchr.org/en/treaty-bodies/cedaw#:~:text=The%20Committee%20on%20the%20Elimination,rights%20from%20around%20the%20world.

and establish mechanisms targeted towards promoting gender equality[121] This requires the reunification of the Palestinian Legislative Council, and ensures that the Council takes appropriate measures to enforce the convention within Palestinian national legislations.

With regards to the definitions falling within the scope of CEDAW, under article 9 of the Palestinian Amended Basic Law, All Palestinians are equal before law and the judiciary without discrimination based on race, sex, colour or gender[122] Likewise, the Palestine in draft proposed penal code of 2011, tries to provide a definition to discriminations, yet still, there is no clear and comprehensive definition to discrimination that comes in line with CEDAWs' definition, under Palestinian national laws and legislations.

Palestine's legal system still implements various out-dated laws that violate girls and women rights in terms of marriage, divorce as well as child custody and inheritance, such as the Egyptian Family Rights Law of 1954 and the Jordanian Personal Status Law of 1976, that are applicable in both locations.

With regards to the right to access to justices, and under article 30 of the amended Basic Law, Palestine has established the Legal Fund Commission in 2016[123] however, there is a lack of information on the progress made towards activating the role of the Commission, to extend, the Committee on the Elimination of all Forms of Discrimination against Women (hereinafter committee on CEDAW) in its concluding

[121] OHCHR, Results of the forty-fourth and forty-fifth sessions of the Committee on the Elimination of Discrimination against Women, 54th session, adopted 12 February, 2010, E/CN.6/2010/CRP.2. Available at: https://www2.ohchr.org/english/bodies/cedaw/docs/E-CN6-2010-CRP-2.pdf

[122] Palestinian Amended Basic Law. https://www.bal.ps/law/basic_law.pdf

[123] إطلاق لجنة المساعدة القانونية الوطنية. (16 نوفمبر 2026). وكالة الأنباء والمعلومات الفلسطينية وفا. https://www-wafa-ps.translate.goog/ar_page.aspx?id=DCQrq6a727932102249aDCQrq6&_x_tr_sl=ar&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc

remarks on the initial report of the State of Palestine noted that “the provision of legal aid services for women has been largely delegated to civil society organisations”.

Nationally, Palestine has adopted its cross-sectorial National Gender Strategy for the period 2021-2023[124] that aligns with the UN 2030 goals; however, there seems no progress made towards increasing the resources of the Ministry of Women’s affairs which represents the national machinery for the advancement of women, further, the ministry suffers a lack of financial and human resources, which obstructs the implementation of gender policies and strategies[125]

The Committee on CEDAW noticed that Palestine lacks a comprehensive strategy targeted towards eliminating discriminatory stereotypes[126], which in turn, plays a role in insistence of f discriminatory stereotypes on gender roles and responsibilities within family and society, further, this has produced a high prevalence of GBV, particularly "honour killings" and domestic and sexual violence, which is socially acceptable but underreported due to victim stigma. In this context, Palestine has taken wide measures to combat against GBV, including adopting a strategic plan for combating violence against women (2011-2019), and the establishment of a national observatory to study violence against women, in 2016. This was accompanied with legislative measure, represented in the adoption of Decree Law No. 5 in March 2018 repealing article 308[127]

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124 https://www.palgov.ps/files/server/%D8%A7%D9%84%D9%86%D9%88%D8%B9%20%D8%A7%D9%84%D8%A7%D8%AC%D8%AA%D9%85%D8%A7%D8%B9%D9%8A.pdf

125 Committee on the Elimination of Discrimination against Women, Concluding observations on the initial report of the State of Palestine, 70th session adopted on 2-20 July 2018, CEDAW/C/PSE/CO/1. https://www.un.org/unispal/document/women-convention-concluding-observations-on-the-initial-report-of-the-state-of-palestine-to-cedaw/

126 Ibed

127 This article exonerated perpetrators of the crime of rape if they married the victim

of the Penal Code of 1960, which is applicable in the West Bank, as well as the repeal of article 340 of the Penal Code, and the revisions to articles 98 and 99 thereof[128].

With reference to Child's Marriage, and due to the fragmentation in Palestine, article 5 of the Personal Status Law[129] Applicable in the West Bank sets the legal age for marriage at 16 years for boys and 15 years for girls, while article 5 of the Family Rights Law applicable in the Gaza Strip sets the legal age for marriage at 17 years for girls and 18 years for men.

2.2.3.4 Convention on the Rights of the Child (CRC)

As the most ratified human rights treaty in history, the United Nations Convention on the Rights of the Child (UNCRC) is a legally binding international agreement that outlines every child's civil, political, economic, social, and cultural rights, regardless of race, religion, or abilities. Governments are required by the convention to meet the basic needs of children and to assist them in reaching their full potential. The recognition that every child has basic fundamental rights is central to this convention, the CRC was adopted and opened for signature, ratification and accession by General Assembly resolution of November 1989, and entered into force 2 September 1990.

The Convention on the Right of the Child was first joined by Palestine in April 2014 and entered into force in May from the same year based on the MoFAE database, this Convention is considered applicable on all territories falling within the state party authority in spite of all restrictions produced by the existence of Israeli Occupation.

The execution of this Convention, according to the CRC committee concluding observations, must be achieved in accordance with the Optional Protocol on the

[128] Which provided for mitigating factors in cases of homicide of women or so-called “honour killings”.

[129] يشترط في أهلية الزواج أن يكون الخاطب والمخطوبة عاقلين وان يتم الخاطب السنة السادسة عشرة وأن تتم المخطوبة الخامسة عشرة من العمر

Palestinian Family Law (1976). https://learningpartnership.org/sites/default/files/resources/pdfs/Palestine-Family%20Law-West%20Bank-1976-Arabic.pdf

involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography, and throughout the process of implementing the 2030 Agenda for Sustainable Development.[130]

With reference to the Palestinian Constitutional Court decision No. 4 (2017) of 19 November 2017 and No. 5 (2017) of 12 March 2018, this Convention is as all other human rights instruments, however, this decision provokes the problem of Palestinian society correspondence, which requires Palestine to ensure the full enjoyment of the treaty provisions, even while facing political fragmentation.

Legally, Decree-Laws issued by the president are neither recognized, nor applied in Gaza Strip, especially with the fragmentation occurring in 2006 followed by the dissolution of the Legislative Council by the virtue of decision No. 10 (2018) of the Constitutional Court.[131] This decision, in parallel with the Palestinian fragmentation, caused a variation in rights enjoyment between children living in the West Bank and Gaza Strip. Further, in the light of the establishment of the harmonisation committee, the committee only reviewed selected legislations, and provided no timeline to review or adopt multiple draft laws, including the Decree-Law on family protection and the Decree-Law on the rights of persons with disabilities.[132]

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[130] Committee on Rights of the Child, Concluding Observations on the Initial Report of the State of Palestine, 83rd session, adopted (20 January- 7 Febrary 2020, CRC/C/PSE/CO/1. https://www.un.org/unispal/document/committee-on-rights-of-the-child-concluding-observations-on-the-initial-report-of-the-state-of-palestine-advance-unedited-version-crc-c-pse-co-1/

[131] https://maqam.najah.edu/media/uploads/2019/06/10-2018_%D8%AA%D9%81%D8%B3%D9%8A%D8%B1_%D8%AF%D8%B3%D8%AA%D9%88%D8%B1%D9%8A.pdf

[132] Committee on Rights of the Child, Concluding Observations on the Initial Report of the State of Palestine, 83rd session, adopted (6 March 2020). https://www.un.org/unispal/document/committee-on-rights-of-the-child-concluding-observations-on-the-initial-report-of-the-state-of-palestine-advance-unedited-version-crc-c-pse-co-1/

In regards of definition and the criteria of the Child, Personal Status Law, amended on 2019, identified girls and boys legal age as 18 years[133]However, article 5 of the amended Law stipulates that sharia courts and other religious authorities may allow exceptions to the minimum age of marriage. In fact, child definition is also reflected through The Decree-Law on the protection of Palestinian juveniles which is not into force in the West Bank while fully implemented in Gaza Strip, to emphasise more on the dilemma of the definition of children and the legal age of the child, The Palestinian Children's Act as well as the Decree-Law on the protection of Palestinian juveniles set the minimum age of criminal responsibility at 12 years, while the Juvenile Offenders' Law No. 2 of 1937, applicable in the Gaza Strip, sets it at 9 years.

Concerning children in Palestine and their protection from violence, Palestinian Penal Code No. 16 of 1960[134], in force in the West Bank, as well as the Law on Education (2017), does not explicitly prohibit corporal punishment, to extend, amended article 62 of the Palestinian Penal Code 1960 prohibited corporal punishment, further, and in the light of maintaining child best interest, Palestinian fragmentation played a major role in protecting child's best interest, as he Jordanian Personal Status Law (1976) and the Egyptian Family Rights Law (1954) allocates guardianship rights to fathers and specify the guardian in the case of parental divorce.

One of the main issues in Palestine is the lack of a time frame or review of law-decrees, which has a negative impact on children's access to their rights and state protection for them.

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[133] http://muqtafi.birzeit.edu/pg/getleg.asp?id=17237#:~:text=%D9%8A%D8%B3%D9%85%D9%89%20%D9%87%D8%B0%D8%A7%20%D8%A7%D9%84%D9%82%D8%B1%D8%A7%D8%B1%20%D8%A8%D9%82%D8%A7%D9%86%D9%88%D9%86%20%22%20%D9%82%D8%B1%D8%A7%D8%B1,%D8%B9%D8%B4%D8%B1%20%D8%B3%D9%86%D8%A9%20%D8%B4%D9%85%D8%B3%D9%8A%D8%A9%20%D9%85%D9%86%20%D8%B9%D9%85%D8%B1%D9%87.

[134] "أ- ضروب التأديب التي ينزلها بالأولاد آباؤهم على نحو ما يبيحه العرف العام " المادة 62 من قانون العقوبات الفلسطيني تنص على

It appears that national definitions and legislation are being manipulated in such a way that judges can cancel the term "child" for some children before the judiciary. This can be referred to Palestine's failure to adopt a clear definition of the child that is consistent with the Convention on the Rights of the Child and all other relevant human rights conventions, which was reflected in children's rights in marriage, education, judicial protection, violence protection, and even guardianship in the cases of parental divorce.

2.2.3.5 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The Convention's objective is to forestall and eliminate the use of torture and other cruel, inhuman, or degrading treatment or punishment, as well as to ensure accountability for torture acts. There are currently 165 States Parties and six signatories to the Convention. The Convention is the most comprehensive international codification of standards and practices concerning the prohibition of torture.[135] It establishes the most widely accepted international definition of torture, requires states to take all necessary legislative, administrative, judicial, and other appropriate measures to prevent acts of torture, and specifies a number of additional steps that states must take to adequately prevent, prohibit, and redress torture and ensure non-recurrence.[136]

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted and opened for signature, ratification and accession by General Assembly resolution of 10 December 1984 and entered into force 26 June 1987.[137]

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[135] Redress. (2018). The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: A Guide to Reporting to the Committee against Torture. https://redress.org/wp-content/uploads/2018/10/REDRESS-Guide-to-UNCAT-2018.pdf

[136] Ibed

[137] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984. https://www.ohchr.org/sites/default/files/cat.pdf

Palestine first joined the convention in December 2017, according to Palestinian Ministry of Foreign Affairs and Expatriates (hereinafter MoFA), this convention entered into force in December 2018[138]. This convention is applicable in the entire Palestinian territories, as Palestine did not express any reservations on the provisions[139]

Article 13.1 of the Palestinian Basic Law 2003 prohibits torture[140], such prohibition is emphasized in a number of existing laws, including the Penal Procedures Law (3) of 2001, the General Intelligence Law (17) of 2005, the Law Relating to Reformatory and Rehabilitation Centres ("Prisons"), No. 6 of 1998, the Law of the Palestinian Child, No. 7 of 2004 and Decree-Law No. (4) of 2016 on the protection of juveniles, to extend, an inclusive definition of torture is included in Decree-Law No. 25 on the National Commission against Torture, which was published in the Official Gazette on 25 May 2022[141]

Still, the convention is facing many obstacles in terms of execution, as the political fragmentation and the definition of torture, and the Supreme Constitutional Court decisions No. 4 (2017) of 19 November 2017 and No. 5 (2018) of 12 March 2018, portrays the problem statement to the CAT execution.

Based on article 2 and article 4 of the CAT, Palestine is under the obligation of taking "effective legislative, administrative, judicial or other measure"[142] to prevent acts of torture in its territories, as well as ensuring that all acts of torture are included in the state's criminal law and to make such offences "punishable by appropriate penalties".[143]

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[138] MoFA
[139] https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=_en
[140] Palestinian Basic Law 2003, art.13.1
[141] https://maqam.najah.edu/legislation/1314/
[142] CAT, Art.2
[143] Ibid, art.4

With reference to the Cairo declaration 2017[144] Palestine has made a limited progress in resolving the political division that stretches back to 2006, which has affected citizens' enjoyment of their rights granted under the convention provisions, as well as contributing to the geographical fragmentation of the Palestinian territories. Geographical fragmentation and colonial history, submitted the state to multiple legal systems, preventing Palestinians from realising their full rights. Furthermore, since 2006, Palestine was legislated by decree law, which is neither implemented nor enforced in Gaza strip, leading to further fragmentation and causing a variation of protection against torture.

The multiple legal systems produced an internal issue relating to the definition and understanding of torture, as torture is a misdemeanour which its punishments are not proportionate to the gravity of the acts, and are subject to amnesty and statutes of limitations granted in article 1 and 4 of the Convention.

Despite the emphasis on torture prohibition, the definition of torture in Palestinian national laws and legislations does not clarify that prohibition against torture is absolute and non-derogable in the Jordanian Penal Code of 1960 and the British Mandate Penal Code of 1936 and the Palestinian Revolutionary Penal Code of 1979 justifying that an accused is exempt from criminal liability if committed while obeying an order issued by a competent authority, unless the order is illegal.

Despite the fact that the Palestinian legislation prohibits torture and ill treatment, in practice, Palestine lacks accountability and protection mechanisms, in this regard, the committee against torture, highlighted arbitrary detention, and expressed its concern about reports of people detained in the West Bank by the Joint Operations Committee

[144] وثائق المصالحة الفلسطينية وكالة الأنباء والمعلومات الفلسطينية - وفا
https://info.wafa.ps/ar_page.aspx?id=20135

who have been kept in detention despite court orders to release them, furthermore, it was deeply concerned by the State party's continued use of administrative detention under the Jordanian Crimes Prevention Act of 1954, which applies in the West Bank and allows for detention without charge, and this raises concerns about the separation of powers between the executive and judicial branches, the committee also was particularly concerned about the growing number of people held in administrative detention for extended periods of time, during which detainees are denied procedural rights. It is also concerned that administrative detention is being used to protect women and girls who have been victims of violence.[145]

The Committee is concerned about reports that Palestinian armed groups, including the military wing of the Hamas Al Qassam brigades and the Islamic Jihad military wing Saraya Al Quds, are holding individuals in unlawful and incommunicado detention for "collaboration with the enemy" and criticising armed groups. It is also concerned about allegations of torture and ill-treatment in such unofficial detention facilities, this is accompanied by consistent reports indicating that people detained, including in facilities run by security forces and intelligence services in both the West Bank and the Gaza Strip, are tortured or ill-treated, particularly during the investigation stage of proceedings, it was noted that the mechanisms established by the State party to receive and investigate complaints of torture and ill treatment by officials are not confidential and do not protect complainants and witnesses, while only a few complaints of torture

[145] Committee against Torture, Concluding Observations on the Initial Report of the State of Palestine, 74th session, adopted 23 August 2022 CAT/C/PSE/CO/1. https://www.un.org/unispal/document/committee-against-torture-concluding-observations-on-the-initial-report-of-the-state-of-palestine/

and ill-treatment have resulted in prosecution and almost no convictions of perpetrators, contributing to an atmosphere of impunity[146]

Regarding the confessions obtained through torture and ill-treatment, coerced confessions are reportedly admitted as evidence in court, and allegations of forced confessions or ill-treatment made before a trial or appeal judge are frequently ignored and not thoroughly pursued, and serious deficiencies in documenting signs of physical and psychological torture are frequently caused by the lapse of time between the alleged event and its belated investigation.

Palestine is also suffering from the violation of the right to demonstrate and the right to express the opinion, where Palestinian witnessed an excessive use of force by the Palestinian security forces, including the use of tear gas and sound bombs, in Palestinian refugee camps. This excessive use of force included lethal weapons, including those used on children, arbitrary arrests, incommunicado detention, torture, and ill treatment of peaceful protesters by security forces and unidentified armed elements, and was carried out during the peaceful demonstrations that followed the Nizar Banat's death in custody in June 2021.[147]

2.2.3.6. Convention on the Rights of Persons with Disabilities

The purpose of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) is to promote, protect, and ensure all persons with disabilities' full and equal enjoyment of all human rights and fundamental freedoms, as well as to promote respect for their inherent dignity. It consists of two documents: The Convention on the Rights of Persons with Disabilities, which contains the major human

[146] Ibid
[147] Ibid

rights provisions expressed as a series of Articles, and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

The UN Convention on the Rights of Persons with Disabilities (UNCRPD) was adopted on 13 December 2006 and came into force on 3 May 2008.[148] In ratifying the Convention on the Rights of Persons with Disabilities in 2014, Palestine pledged to promote and protect the human rights of all people with disabilities, including their right to work, vote, education, and development. Implementing these rights necessitates long-term political commitment, inclusive national legislation and policies, and adequate social protection services, and also encourages people with disabilities to actively participate in decision-making processes in their full diversity.[149]

Over the years, the State of Palestine has enacted various pieces of legislation to promote and protect the political rights of all citizens, including those with disabilities. Thus, article 9 of the amended Basic Law states that Palestinians are equal before the law and the courts, and that there shall be no discrimination between them on the basis of race, sex, colour, religion, political views, or disability, while Act No. 4 (1999), on the rights of persons with disabilities, and the implementing regulation thereof (2004), state that persons with disabilities have the right to a free and dignified life, as well as a range of services, the law also states that the Palestinian Authority is responsible for ensuring the rights of people with disabilities and facilitating access to their legally guaranteed rights[150] However, Palestine is still in need to provide persons with

[148] Convention on the Rights of Persons with Disabilities, 2006. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities#:~:text=Persons%20with%20disabilities%20have%20the,an%20equal%20basis%20with%20others.

[149] United Nations in Palestine marks International Day of Persons with Disabilities. (n.d.). Palestine. https://palestine.un.org/en/210016-united-nations-palestine-marks-international-day-persons-disabilities

[150] Initial report submitted by the State of Palestine under article 35 of the Convention of persons with disabilities.

disabilities with many of their deprived rights, including their right to work and their full rights to health.

In terms of definitions, Palestine lacks an appropriate definition to disability, as persons with disabilities are defined using a medical approach in the Labour Law No. 7 (2000), where persons with disabilities are defined as " A person who suffers from a disability in some of their physical, sensory, or mental abilities, as a result of a disease, accident, congenital cause, or hereditary factor, which has led to the inability to work or weakened the ability to perform one of the other basic functions in life, and who needs care and rehabilitation in order to be integrated in society"[151] in this context, the Palestinian Law of the Disabled Persons No.4 (1999) creates a link between the work or persons with disabilities and rehabilitation, as rehabilitation is considered as a gateway to labour market, to extend, the aforementioned law, using a discriminative discretion represents a cornerstone to a wide set of discriminatory practices and laws against persons with disabilities[152].

Moreover, in terms of decision-making positions, Decree-Law No 40, 2020 on the legislative authority emphasises in article 5 that the appointed by the judiciary must meet the health conditions for the appointment, which deprive persons with disabilities from participating in the judiciary and decision making positions[153].

With regard to right to health, along with the handicap Law No.4 (1999) that grants the right to health insurance to persons with disabilities[154], article 22 of the amended basic law, highlights that the government is responsible at organising health and social

[151]Maqam. (2000). Palestinian Labor Law No. (7). Retrieved from: https://maqam.najah.edu/legislation/1/

[152] يستخدم القانون مصطلحان وصيغة تمييزية تعبر على تعريف الأشخاص ذوي الاعاقة من منظور طبي بدلا من منظور حقوقي، تتجلى تلك المصطلحات باسم القانون بحد ذاته (حقوق المعوقين)، وتستمر لتستخدم نهج كلمات مثل (استعاب) المؤسسات الحكومية لل(معوقين) و(تناسب) الاعاقة مع (طبيعة العمل).

[153] Muqtafi. (2020). Decree-Law No. (40) amending the Judicial Authority Law No. (1) of 2002. Retrieved from: https://tinyurl.com/e5sjweee

[154] Handicap Law No. 4 (1999). https://www.bal.ps/law/handicap_law.pdf

insurance services, nevertheless, article 5(1) of the Handicap Law, provides that a person with disability should cover 25% of their health insurance[155], which is consistent with PMO decision No.113 (2004) on governmental health insurance system that exempt various types of medicines, surgeries and services from health insurance[156][157].

Health insurance system in Palestine is implemented through double canals, whereas if the disability exceeded 60%, it is grated via the Palestinian General Union of People with Disability, in the meanwhile, the MoSD manages and organises the health insurance services as humanitarian situation linked mainly to poverty, this system came to an end, with the enacting of health insurance law to persons with disabilities No. 2 (2002) published in the Official Gazette. This last, left the legislature to deal with two health insurance systems, one is related to persons with no disabilities, while the other is concerned with persons with disabilities[158], which obligates the government to provide its quarterly report on the measures taken to guarantee the right to health insurance by the end of May 2021 which was not submitted insofar.

Although persons with disabilities are considered one of the constitutionally protected categories, the lack of clear definitions, that is built up on the human rights approach to persons with disabilities linked persons with disabilities rights, to work for exemple, to the medically adopted definition, which linked the right to work with the rehabilitation of persons with disability, this has also negatively reflected in people with disabilities assuming official positions in the country, as their physical safety was stipulated in order to reach decision-making positions.

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[155] Ibid. Art 5(1)

[156] The Palestinian Health Insurance system was not originally designed to satisfy the needs of persons with disabilities, however it, ipso facto, included persons with disabilities.

[157] Muqtafi. (2004). Prime Minister Office Decision No. (113) on the government health insurance system. Retrieved from: https://tinyurl.com/2t9r79my

[158] Abdeen, Issam. (2021). Enforcing social and economic rights of the CRPD in the Palestinian Legislation. Al-Haq.

People with disabilities are separated from people without disabilities in various aspects of life. In this context, Nizar Basalat[159] commented that persons with disabilities are dealt with on many grounds related to stigma and stereotypes related to considering people with disabilities as an entity that needs to be reformed, and rehabilitated in order to meet the "healthy" person conditions, which explains the poor integration of children with disabilities for example, in public schools, and their need for specialised schools instead of rehabilitating all teachers to deal with the presence of children with disabilities.

And finally, Palestine adapts guardianship systems and does not recognize supported decision making approaches to mental disability, also this is referred to as the adoption of medical approach for persons with disabilities instead of human rights approach, especially in the context of intellectual disability.

2.2.3.7 International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

The CERD is one of the oldest conventions in the arsenal of the UN Human Rights Office to combat oppression and discrimination. The Convention was adopted 50 years ago in 2015. It was forged during a period of widespread civil unrest around the world. The drafting took place during the civil rights movement in the United States, which had just passed the Civil Rights Act just prior to its adoption. Apartheid was at its peak in South Africa, with the Sharpeville Massacre bringing the regime's cruelty to international attention. And many African countries were rejecting colonialism in order to gain independence.

[159] The head of Strategic Planning at the Higher Council for Youth and Sport: person with disability and a former activist

Despite these achievements, racism continues to plague societies. To combat it, the ICERD's committee continues to investigate the situation in each country that has ratified the Convention. In fact, the 177 states that have ratified the Convention are required to report to and appear before the committee in Geneva on a regular basis. In turn, the committee makes concrete recommendations on how to effectively eliminate the various forms of racism that exist in each country.[160]

The CERD was adopted and opened for signature and ratification by General Assembly resolution of 21 December 1965 and came into force 4 January 1969.

The State of Palestine acceded to the International Convention on the Elimination of All Forms of Racial Discrimination on 1 April 2014, with no reservations on any provision on the Convention, Palestine neither ratified the treaty, nor published it on the Official Gazette.

As article 1 of the Convention specifies, racial discrimination is defined by “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”, the Palestinian Amended Basic Law defines discrimination in article 9 based on colour and race, this definition is portrayed in article 546 of the proposed draft penal code of 2011, however, this definition remains incomprehensive with the Convention definition to racial discrimination.

[160] International Convention on the Elimination of All Forms of Racial Discrimination: 50 years of fighting racism. OHCHR. (n.d.). Retrieved April 4, 2023, from https://www.ohchr.org/en/treaty-bodies/cerd/international-convention-elimination-all-forms-racial-discrimination-50-years-fighting-racism

Within the national legislations, some in force laws are inconsistent with the principles and the articles of the Convention, including the Civil Service Code, the Decree Law on General Elections and the Law for the Lease and Sale of Immovable Property to Foreigners, this is accompanied with the lack of time frame for the review and adoption of draft laws, such as the draft penal code, the draft personal status code and the draft family protection law. To extend, and in parallel with the Independent Commission for Human Rights granting "A" status in 2015 for the fourth time, Palestine has not yet formalised the establishment of the Commission, which is reflected on their financial resources as well as their capacity to function.

Considering the complex legal status in Palestine, Nationality law faces such complexity, as Palestine a comprehensive law aiming at reducing statelessness, especially in the light of the Civil Status Code of 1999, the Palestinian nationality decrees issued in 1925 under the British Mandate, and the amended Jordanian Nationality Act of 1954.[161]

2.2.4 The Reality of human Rights in Palestine

Many fundamental issues have been raised by the Human Rights Specialised Committees, including the issue of definitions related to the categories protected by human rights treaties, the main of which are the issue legal hierarchy in Palestine that lacks clarity on the position of Human Rights, the publication of agreements in the Official Gazette, and the political fragmentation, which resulted in the dissolution of the Legislative Council and the establishment of two separate regimes in the West Bank and

[161] Committee on the Elimination of Racial Discrimination Concluding Observations on the Combined Initial and Second Period Reports of the State of Palestine (CERD/C/PSE/CO/1-2) https://www.un.org/unispal/document/committee-on-the-elimination-of-racial-discrimination-concluding-observations-on-the-combined-initial-and-second-period-reports-of-the-state-of-palestine-cerd-c-pse-co-1-2/

Gaza Strip. Analysing the human rights status, human rights in Palestine can be divided into two categories, legal level category, and policy level category.

Policy level related issues vary to include government strategies, financial allocation, statistics, data and timeframes, while legal and human rights issues include lack of clarity, inclusivity, basic rights and freedoms.

The right to life in Palestine is violated on a daily basis due to the constant presence of the Israeli occupation, nevertheless, the fundamental right of all rights is violated even within the Palestinian legal system, this violation to some extent is linked to the political fragmentation is the Palestinian territories, where death penalty is legit and legal in Gaza Strip, while regulated rather that abolished in the West Bank, furthermore, the right to life is mainly violated on a regular basis through honour killings built and justified socially, while the Palestinian government seems to provide no timeframe to review core draft laws related to human rights, such as the penal code and the personal status law.

Palestinian legal system consider the right to health insurance as a service rather than a right, the insurance system in Palestine lacks inclusivity and respect of diversity, in this context, the PCBS lacks an inclusive statistical study indicating the number of persons with disabilities who benefit from social security services as well as elderlies, further, Palestine has a double policy in terms of health insurance system, where the Palestinian General Union for People with Disabilities (PGUPD) regulate health insurance services for Palestinians with over that 60% of disability, while the MoSD regulates the same right for the rest of Palestinians, yet linking it to humanitarian situation related to poverty and maintaining elderlies right to insurance linked to their capacity to work or their children adaptability to them.

The right to free education also suffers from polygonal issues, as the right to free secondary and high education is not granted by law, further, Palestine lacks a statistical study highlighting the percentage of schools meeting the needs of persons with disabilities, obscuring not only the right to education but also the right to inclusive education, to extend, the MoSD does not provide clear budget for children to ensure their basic rights and their life quality.

Children right to education is also infringement through social -legal- practices related to child marriage and integration within labour market, of note, Personal status law and Palestinian legal system lacks a clear definition for the child's criteria, which resulted in the justification of child marriage and their integration in labour market, surprisingly, the Palestinian Bureau of Statics does not provide any studies on the number of infant deaths resulting from failure to follow safety measures, this also includes persons with disabilities and their participation in labour market.

As human dignity is linked to the right to the prohibition of torture degrading treatment and cruel inhuman treatment, the Palestinian legal system violates such law through the lack of prohibition to corporal punishment, in fact, the Palestinian legal definition to torture does not match human rights definition, furthermore, Palestinian legal system also violates the right to justice, as there is no clear data on the progress made towards the enforcement of the right to justice and fair trial guarantees, this is accompanied with racial discriminatory system, where the Palestinian government does not adapt a human rights approach defining racial or gender discrimination, further, it lacks policy aimed at eliminating discriminatory stereotypes, especially against women.

Chapter Three

The Way to Harmonisation/Possible Options and Available Solutions

The status of international treaties within a state's domestic system is a domestic concern, at the same time, states cannot provoke its domestic law as a justification for failing to meet their international obligations, which is why Palestine cannot justify, at least, its incapacity to enforce legal amendments and enact new laws that are consistent with Human Rights obligations.

Based on the Constitutional Court decision of 2017, international treaties are supranational but infra-constitutional, this is consistent with the majority of legal systems worldwide, and it does not preclude the SCC from interpreting the relevant provisions of the Declaration of Independence and the Basic Law to grant human rights treaties constitutional status, still, any interpretation done by the Court could be rejected due to the complex political status and the fragmentation that took place at the legislative council and extended to include a sharp geographical division that produced two separate legal system and even legal practices.

The fragmentation in the Palestinian system subjected women, girls, Persons with disabilities, juveniles, political activists, journalists, and all other citizens in the West Bank and Gaza Strip to different legal systems which caused a variation in protection levels, this fragmentation accompanied with perpetuation of customary practices in certain laws, is inconsistent with all the Conventions provisions and protected rights.

3.1 Possible Approaches and Solutions to Harmonisation

If we were to investigate how international human rights treaties could be given constitutional status in Palestine, we could look to the 1952 Jordanian constitution,

which was enforced in the West Bank under Jordanian rule, the same applies for the Egyptian constitution in Gaza Strip. It could be argued that the Jordanian constitution of 1952 still applies in areas not covered by the Palestinian Basic Law because it was never explicitly superseded. The problem is that neither the Jordanian nor Egyptian constitutions establish a specific hierarchical status for international treaties in general, so they cannot be relied on. This leaves the researcher to address tangible solutions that do not contradict the SCC decision; these solutions include harmonisation through constitutional amendments, through International Enforcement Mechanism: De Lege Ferenda and through International Enforcement Mechanisms: Lex Lata.

3.1.1 Harmonisation Through Constitutional Amendments

By the virtue of The Declaration of Principles on Interim Self-Government Arrangements (Oslo I) of 1993 and the Interim Arrangement on the West Bank and Gaza Strip (Oslo II) of 1995, Israel transferred to the Palestinian Authority, in some areas, the power of its military and civil administration, in which Palestinians democratically practice self-governance.

The interim period specified in the Declaration of Principles should not exceed five years, after which both parties are released from their obligations. Indeed, after this transition period, Palestinian political reform may occur outside of the context of relations with Israel. Although the Oslo Accords' time limit expired a long time ago, both signing parties are still implementing them de facto.

The establishment of the Palestinian Authority (PA) resulted in the formation of three main bodies: legislative, executive, and judicial authorities. The Legislative Council, police, ministries, and courts are among these bodies. As the PA's legislative body, the

Legislative Council enacted a number of laws, including the Palestinian Basic Law of 2003, which guaranteed certain fundamental human rights.

With the complexity of the Palestinian political status, Palestinian fragmentation occurred also within the Legislative council, leading to its dissolvent and the paralysis of the Legislation enactment via the Palestinian LC, this in turn has affected the Human Right status and the harmonisation process in Palestine, as the linkage between the LC and legislation process is rigid and highlighted in the Amended Basic Law, this leaves the harmonisation process more complicated and less effective.

This section aims at highlighting possible options and legal solutions to harmonise national legislations with international law obligations, keeping in mind that these solutions do not constitute an alternative to the Legislative Council and holding a democratic election to reform the LC, yet it proposes possible solutions in the light of the status quo of Palestinian legal system.

3.1.1.1 Introduction to Constitutional Amendments

The constitutional and legal system in Palestine was characterised by its ambiguity, diversity, and constant change. This situation was linked to the confused political situation in general, and because many important topics, such as the borders of the Palestinian state and the holder of the right to the Palestinian nationality, depend on the fate of the Palestinian-Israeli negotiations, and the framework of the permanent solution.

The Palestinian reality is very special in terms of the process of writing the constitution, as it simply cannot ignore the laws in force on the ground; But what really distinguishes it, is that it necessarily deals with a constitutional authority that is determined by

declarations and documents issued by the traditional representatives of the Palestinian people, agreements with Israel and international law.

The 1988 declaration did not produce a centralised authority with sovereign rights on residents and territory, thus, the Palestinian National Council envisioned that the recently established state, because it inherits a complex legal situation, requires a constitution. This led to the preparation of the first drafts of the Palestinian constitution in 1993; this was followed by the Oslo accord II, where the National Authority had begun to become in power. This in turn necessitated the amendment of the Palestinian Constitution four times.

The third draft of the Palestinian constitution was drafted in 1997, and it entered into force after amending and publishing it in the official Gazette in 2002[162], identifying that the Palestinian constitution is built on three cornerstones**, firstly, the basic law is time bound to the interim governments transitional period, secondly, it is bound on the residents of the West Bank and Gaza Strip, and thirdly, amending the constitution requires the vote of two thirds of the elected Legislature**.

Article 185 of the third draft of the Palestinian constitution clarifies that the constitution is based on the "will of the people", and that it must be submitted to a popular referendum in order to adopt it. However, the constitution is not a "suicide contract"[163] for the constitutional authority per se, because as its core value is to maintain social peace, and thus it is changeable if it loses its raison d'être; that is, if the constitution becomes an impediment to coexistence between individuals and groups. This was witnessed throughout the French and German radical constitutional amendments, the

[162]Palestinian AMended Basic Law, 2003-Official Gazzette.https://maqam.najah.edu/media/uploads/offizial_gazette/blaw-pdf-1517216838.pdf

[163] Khaleel, A. (2005). Constitutional authority issues in the context of Palestinian reality. Institute for Palestine Studies, 16(63), p.31. https://www.palestine-studies.org/sites/default/files/mdf-articles/6590.pdf

Georgian amendments 2003, the Ukrainian amendments 2004 and even the Lebanese amendments that followed the assassination of Al-Hariri in 2005.

3.1.1.2 Case law (France and Germany on Maastricht convention, Ukraine)

Each state has its specific status and regulation when it comes to constitutional amendments, however, to a certain extent, all states agree that political shifts on national and international levels require the adaption to such change, as well as the flexibility addressing the change and tackling the issues arising. Considering that law should be reflective of peoples' well and democratic status in each state.

Each of the chosen cases can be linked to the Palestinian status. History cannot and does not repeat itself, yet, political catastrophes are repetitive based on humans behavioural patterns , where history seems to repeat the same actions rather than the same results.

Germany and France on the Maastricht treaty:[164]

Both Germany and France witnessed various constitutional amendments during the formation of the European Union; those amendments aimed at better integrating both states into the international community and governance.

Defining the Problem

In the previous decades Germany's membership in the EU was constitutionally based on Art. 24, a clause authorising the 'transfer of sovereign powers' (Übertragung von Hoheitsrechten) to international institutions by means of an ordinary statute of Parliament. Despite referring to international institutions in general, Art. 24 had in fact been drafted in 1948/49 with a view to a (future) process of European cooperation. Although still in force as such, since 1992, Art. 24 no longer apply to EU affairs.

[164] Burgorgue-Larsen, L., Astresses, P.-V., & Bruck, V. (2019). The constitution of France in the context of Eu and transnational law: An ongoing adjustment and dialogue to be improved. National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law, 1181–1223. https://doi.org/10.1007/978-94-6265-273-6_25

Constitutional provisions specifically addressing Germany's membership in the EU (EU-related constitutional law) were introduced for the first time in December 1992 with regard to the Treaty of Maastricht.

The key provision addressing Germany's membership in the EU today is the so-called integration clause (Integrationsklausel), laid down in Art. 23 of the German Basic Law passed in 1992 and was subsequently amended in 2006 with regard to the participation of the federal states (Länder) in EU affairs and extended in 2009 with a view to the subsidiarity control by national parliaments.

The French constitution in its position has witnessed multiple constitutional amendments, seven of which constitutional amendments associated with the development of the European Union, the most notable of which are those associated with the Treaty of Maastricht; these amendments are typically based on Article 89 of the French constitution. The Constitutional Law of June 25, 1992, created a new title "On the European Communities and the European Union ", specified in articles 88-1 to 88-4 to the Constitution.

Both the French and German constitution managed to enforce and integrate constitutional amendments that are consistent with the changes that occurred and the establishment of the European Union, where both states aimed at maintaining their position within a competitive international community.

How were the constitutions amended?

Germany on the one hand, was one of the first countries to enact EU-related constitutional provisions as it is a founding member of the European Communities. Its determination, based on promoting peace and equal partnerships is mainly portrayed in the preamble of the Basic Law ever since its entry into force in 1949:

"Inspired by the determination to promote world peace as an equal partner in a united Europe, the German people, in the exercise of their constituent power, have adopted this Basic Law."

The German Basic law and its amendments are considered as one of the most successful European constitutions, especially after the reunification of Germany in 1990, putting a new constitutional order, and activating the role of the BVerfG Court.

In comparison to other constitutional systems, the German constitutional system is distinguished by the prominent role of the German Federal Constitutional Court (Bundesverfassungsgericht hereinafter BVerfG).

The BVerfG is a court designed to adjudicate individual complaints about violations of fundamental rights as well as disputes about inter-institutional and competence issues. It makes regular decisions on key issues in German politics and has a good reputation among the German people. This integration of human rights occurred as part of Germany's membership in the EU and its constitutional amendments.

Alongside the stipulations expressly referring to EU affairs, several general articles play a key role for the constitutional foundations of Germany's membership in the EU. These provisions address key constitutional principles and have been part of the German Basic Law since 1949 these fundamental rights include the right to health and the right to education.

Along with these constitutional provisions expressly referring to EU matters, several general articles play an important role in the constitutional foundations of Germany's membership in the EU. These provisions, which address key constitutional principles, have been included in the German Basic Law since 1949. Among these fundamental rights are the right to human dignity and the right to vote and most importantly, Article

79 (3) emphasising "Amendments to this Basic Law affecting the division of the Federation into Länder, their participation on principle in the legislative process, or the principles laid down in Articles 1 and 20 shall be inadmissible" and article Art. 146 regarding the duration of the basic law[165] stipulating "This Basic Law, which since the achievement of the unity and freedom of Germany applies to the entire German people, shall cease to apply on the day on which a constitution freely adopted by the German people takes effect".

The French Constitution's Preamble on the other hand declares recognition of the rights enumerated in the Declaration of the Rights of Man and Citizen of 1789, the Preamble of the 1946 Constitution, and the 2004 Charter for the Environment. These rights have constitutional standing despite the fact that they are not formally enshrined in the Constitution.

There must be a distinction made between the normal constitutional amendment procedures provided by Art. 89 of the Constitution and a procedure developed on the basis of Art. 11 that is not expressly stated in the text of the Constitution.

According to Art. 89, the right of initiative is shared and belongs to both The Prime Minister (hereinafter Government Draft), as well as to parliamentarians (hereinafter MP Draft). An initiative requires a vote in both the National Assembly and the Senate, followed by an approval stage.

In practical terms, the controversial use of Art. 11 of the Constitution are noteworthy in this respect. The latter allows the President of the Republic to put a bill to a referendum on a variety of issues. This procedure gives the President of the Republic the benefit of avoiding potential parliamentary opposition. Despite the fact that General De Gaulle

[165] This article was amended following German Unification in 1990

used it twice, in 1962 and 1969, Art. 11 should not be regarded as an appropriate procedure for amending the Constitution. In the case of an MP Draft, a referendum is required. In the case of a Government Draft, where the President of the Republic has a choice, the situation is different. He can choose to adopt a constitutional amendment through a referendum or by submitting it to Congress, i.e. a joint session of both Houses of Parliament. In this case, the bill is approved if it receives a three-fifths majority of the votes cast.

Ukraine 2004 constitutional amendments

As a political contract between the governing and the governed, an amended constitution, or even a new version, should establish a legal framework that will be respected by all parties and withstand political crises in the future, regardless of who holds power. Since 2004, the political system in Ukraine has changed twice, from one in which the president has broad powers to one in which the president and prime minister must work together. These changes have resulted in on-going constitutional and political instability and a major shift in core values.

Problem Statement

Following the Orange Revolution, Ukraine implemented constitutional reforms transforming the political system from presidentialism into semi-presidentialism, bringing it to a system closer to the European democratic standards.

The 2004 amendments were designed to avert a potential presidential election crisis. It was quickly signed in the parliamentary chamber and promulgated the same day. These amendments weakened the Ukrainian Presidential power, as he lost the ability to nominate the Prime Minister of Ukraine, which became solely the responsibility of the parliament.

Only the Ministers of Defence and Foreign Affairs could be appointed by the President. The President also lost the ability to dismiss members of Ukraine's Cabinet, but gained the ability to dissolve Parliament. If no coalition could be formed in parliament to appoint a Prime Minister, the President would be forced to call new parliamentary elections.

How was the Constitution Amended?

Between 2005 and 2010, there was never-ending rivalry between political parties, particularly power struggles between then-President Victor Yushchenko (2005-2010) and then-Prime Minister Yulia Tymoshenko (2005, 2007-2010).[166]

However, after Yanukovych was elected president in 2010, he pressed the constitutional court to declare the 2004 amendments unconstitutional. As a result, the president gained significant powers, including the ability to dismiss the government without parliamentary approval and nominate candidates for prime minister and gained control of the judiciary, causing a coup against the government and the ousting of Yanukovych in February 2014, the parliament passed a law reinstating the constitutional version of December 2004, restricting presidential powers once again.[167]

3.1.1.3 Palestine

The Palestinian National Council's Declaration of Independence expresses the Arab Palestinian people's continued attachment to the land of their fathers and forefathers, on which this people has historically lived. The strength of this attachment is confirmed by its consistency over time and space, by remaining faithful to and holding onto national identity, and by the realisation of wondrous struggles and achievements. The Palestinian

[166] The constitutional process in Ukraine. United States Institute of Peace. (2016, October 11). Retrieved April 4, 2023, from https://www.usip.org/publications/2014/05/constitutional-process-ukraine

[167] EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) OPINION ON THE AMENDMENTS TO THE CONSTITUTION OF UKRAINE ADOPTED ON 8.12.2004. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)015-e

people's organic relationship with their history and land has been confirmed by their never-ending effort to persuade the world to recognize the rights of the Arab Palestinian people and their national entity on par with other nations.

The establishment of the Palestinian National Authority, with its three pillars - the legislative, executive, and judicial branches - became one of the most pressing national missions within the framework of the interim period, resulting in the Declaration of Principles Agreement. The establishment of the Palestinian Legislative Council through free and direct general elections made the adoption of an interim Basic Law a necessary foundation for organising the mutual relationship between the government and the people. It is a first step toward identifying the distinguishing features of a civil society capable of achieving independence. At the same time, it serves as a fundamental foundation for enacting unifying legislation and law for the Palestinian national homeland.

The Nature of The Palestinian Constitution

This Palestinian Amended Basic Law has laid a solid foundation, representing its people's collective conscience, including its spiritual components, national faith, and nationalist loyalty. The Basic Law's titles refer to a set of modern constitutional rules and principles that address public and personal rights and liberties in a way that achieves justice and equality for all, without discrimination. Furthermore, they uphold the rule of law, strike a balance between the executive, legislative, and judicial branches, and draw lines between their respective jurisdictions in a way that ensures independence for each while coordinating their roles to achieve a high national interest that will serve as a guide for all.

A constitution may remain unchanged for approximately 15-20 years, implying that there may be a need to review the constitution in accordance with different generations without causing the constitution to reach its natural end.[168]

Amendments can take two main forms, official and customary amendment, from the one hand, official amendments represents the constitutional procedure of amending the constitution, this approach to amendment highlights the type of rigid constitutions[169], based on this approach is emphasised in article 120 of the Palestinian amended basic law, any constitutional amendments requires the approval of two thirds of the PLC.[170] In contrast, fixable constitutions are usually non-codified constitutions i.e English constitution.

In this context, two main considerations are taken, the first, legal necessity for amendment considering that constitution is a law, and all laws are subject to amendment based on the right of each generation to adopt the constitutional provisions that satisfy their life conditions and aspirations, the second consideration is based on the political, social and economic status at the time of its promulgation, hence, it is necessary to accept change in order for it to be achieved in a peaceful manner (and to prevent violent change imposed by coups and revolutions).

Examples on constitutional amendments:

The Palestinian Basic Law was amended twice, once in 2003 and once in 2005. The Prime Minister position was first introduced to the Palestinian system through the First

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[168] Khaleel, A & Phillipe, X. (2021). Constituent authority, Arab Companion for Constitutional Law (pp.31-44). Arab Association of Constitutional Law. https://asemkhalil.files.wordpress.com/2021/06/chapter-3-arab-companion-for-constitutional-law-ar-v0.5.pdf

[169] Khalil, A. (5th lecture). Flexible constitutions and rigid constitutions, Blog. http://aspu.edu.sy/laravel-filemanager/files/18/%D8%AA%D8%B9%D8%AF%D9%8A%D9%84%20%D8%A7%D9%84%D8%AF%D8%B3%D8%A7%D8%AA%D9%8A%D8%B1%D8%A7%D9%84%D9%85%D8%AD%D8%A7%D8%B6%D8%B1%D8%A9%20%D8%A7%D9%84%D8%AE%D8%A7%D9%85%D8%B3%D8%A9.pdf

[170] Palestinian Amended Basic Law. (2003)

Amendment occurred in 2003. While Article 45 requires the President of the National Authority to appoint the Prime Minister, who is then required to form the government, Article 68 defines the Prime Minister's powers. The new election law and presidential regulations were confirmed by the Second Amendment in 2005. Article 36, for example, changed the presidency's term from an interim phase to a four-year term for no more than two consecutive terms. In other words, the two amendments were political in nature and had no effect on the human rights provisions.

The Basic Law's chapters include modern constitutional rules to achieve justice and equality and to ensure the rule of law. The Palestinian political democratic system is based on the separation of powers. The Palestinian judicial bodies, courts, executive authorities, and Legislative Council are required to uphold the Basic Law's articles and principles. These bodies must, without exception, uphold human rights provisions. The Basic Law governs the Judicial Authority and the judicial system.

As the Palestinian Amended Basic Law preamble emphasises:

> "This provisional Amended Basic Law has been enacted for a temporary interim period" [171]

> "This provisional basic law derives its constitutional powers from the will of the Palestinian people and their inalienable rights and persistent struggle….. and who exercised their democratic right to elect the President of the Palestinian National Authority and the members of the Palestinian Legislative Council"[172]

This links the discussion topic with three main components reflected within any constitution, which are; identity and state nature, democracy and human rights and religion.

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[171] كون هذا القانون الأساسي المؤقت قد شرع لفترة انتقالية مؤقتة

[172] إن هذا القانون الأساسي المؤقت يستمد قوته من إرادة الشعب الفلسطيني وحقوقه الثابتة .....والذي مارس حقه الديمقراطي في انتخاب رئيس السلطة الوطنية الفلسطينية وأعضاء المجلس التشريعي الفلسطيني

Identity in its understanding is a flexible concept, as it represents the daily narrative of the common Palestinian history, and the Palestinian people's vision of its unified future. Thus, identity adapts according to internal and international circumstances, as it reflects the priorities of a human group that lives within a specific date and place, accordingly, the Palestinian Amended Basic Law is based on the identity of "persistent struggle" of the Palestinian people. Identity in a legal context is linked to the state nature; the Amended Basic Law did not consider state nature, due to the fact that it was an interim law and the state nature was far from clear.

Democracy in its most basic concept means popular sovereignty where citizens practise it within a constitutional framework. In its social and political frame, democracy reflects citizens enjoyment of freedoms, and in its legal frame, democracy represents the right to citizenship, that could be enjoyed directly (referendums) of indirectly (the right to vote), all these democratic rights are granted by the virtue of the Palestinian constitution, however; in practice, Palestine does practise neither direct nor indirect types of democracy due to the issue of political fragmentation and the lack of political will to end such fragmentation via democratic, transparent elections.[173]

One of the main aspects of the political fragmentation is their approach to religion, in this context, article 4 (1) of the amended basic law constitutes that Islam is the official religion in Palestine and all other monotheistic religions are respected and sanctified, further, Art.4 (2) distinguishes that the principles of Islamic law (sharia) are a major source of legislation[174] which brings us back to one of the main issues highlighted with the concluding observation regarding definitions, and religion.

[173] Khaleel, A. (2005). Constitutional authority issues in the context of Palestinian reality. Institute for Palestine Studies, 16(63), p.31. https://www.palestine-studies.org/sites/default/files/mdf-articles/6590.pdf
[174] Amended Basic Law, 2003

Article 1 of the Oslo accord I identifies that the transitional period does not exceed 5 years "leading to a permanent settlement based on Security Council Resolutions 242 and 338."[175] Further, article III of emphasised that self-governing is based on democratic principles, direct, free and general political elections, accordingly, Palestinians held their democratic elections and established the provisions of the Amended Basic Law. Many issues in this contexts arises, politically, over the course of the Past 20 years after the enactment of the Amended Basic Law, there was an integral shift of generations, values and ideology, political and economic status within the Palestinian society, while legally, considering that any constitution as a law reflecting the well of its people who exercised their democratic right to elect the President of the Palestinian National Authority and the members of the Palestinian Legislative Council, it is essential to amend the basic law to be more coherent with the Palestinians aspirations, new international status and democratic practices. These amendments must include a clear hierarchy within the Palestinian legal system, a clear definition to human rights and their position within national legislations and a reflective position towards Palestinian persistent struggle and recent aspirations.

In this context, according to article 120 of the Palestinian Amended Basic Law, the provisions of the Amended Basic Law shall not be amended except with the approval of a two-thirds majority of the members of the Palestinian Legislative Council, this type of amendment is related to the rigid type of constitutions, however, with the satisfaction of the political, social, economic legal and most importantly temporal considerations, there is an integral need to amend the basic law.

[175] Declaration of Principles on Interim Self-Government Arrangements. (September 13, 1993) https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/oslo_09131993.pdf

In customary constitutional law, there are two methods to the amendment of rigid constitutions, where it is possible for the constituent authority to amend the basic law[176] or employs the method of popular referendums. Since the original constituent authority first drafted the basic law 20 years ago, which leaves the option of amending the Basic Law through the constituent authority as an unattainable option, keeping the second option (referendum), the only possible one? This radical method of amendment is common in Switzerland and the US legal systems, though this method, amendments are exposed to citizens, and then based on the result of the amendment the authorities legislative power starts the amendment process. Both methods pose two main questions: who the constituent authority is and what are the required amendments, and to what extent Palestinians are aware of the importance of human rights in their life?

To conclude, based on a discussion with Ammar Jamoos[177] The existence of a Legislative Council doesn't always serve human rights, taking for example the Jordanian parliament members, who has spent years debating how to end the death penalty for honour killings, this in turn violates many human rights, thus, the executive authority is, in some cases, more capable of making decisions, this was clear through the PNA prohibition on marriage under the age of 18. The Legislature must respect the constitution, the principles of the constitution, and the rule of law in order to ensure that legislation and decisions are compatible with international agreements; however, the dissolvent of the LC reflects a lack of respect to the principle of the rule of law.

The existence of parliament or the Legislative council is important to the principle of separation of powers, and the latter is linked to the rule of law, hence, the absence of the

[176] Khaleel, A & Phillipe, X. (2021). Constituent authority, Arab Companion for Constitutional Law (pp.31-44). ArabAssociation of Constitutional Law. https://asemkhalil.files.wordpress.com/2021/06/chapter-3-arab-companion-for-constitutional-law-ar-v0.5.pdf

[177] Ammar Jamoos, Legal Researcher (ICHR)

rule of law is due to the absence of the principle of separation of powers, while the absence of separation of powers is reflected in the rule of law.[178]

Compared to the European Cases, in France and Germanys situations, Human Rights protection is not limited to the rights contained in the aforementioned instruments which receive constitutional position by virtue of the recognition of their particular importance by the judge.

Other general principles, such as proportionality, are elements of the judicial review performed by the constitutional judges. In both cases, amendments were enforced in order for both states to integrate within the international community coherently, both states considers that their preambles are the cornerstone to their constitutional laws, where both states affirms on their commitment to peace and security, which has in turn led them to amend their laws, in this context, Palestinian amended basic law confirms that the constitution represents the well of the Palestinian people who decided to enact their constitution to represent an interim period of only 5 years, which highlights and emphasises on the importance of enforcing constitutional reform in the Palestinian case.

Compared to the Ukrainian situation and the political rivalry, the Palestinian fragmentation caused a multidimensional issue, leading Palestinians to face the option of political coup/revolution in order to enforce democratic elections aiming at not only constitutional amendments but also a judicial reform, however, with the persistent existence of the Israeli occupation makes it more complicated for Palestinians to revolt against the functioning government.

Tolerance for opposing political views will not emerge overnight; a new constitution may establish an institutional framework that assists in the maturation of the political

[178] Ibid

culture. A successful constitutional process would result in a compromise constitution reflecting long-term societal consensus. The constitution should ensure that all constituencies are fairly represented, as well as a balanced separation of powers among the executive, legislature, and judiciary.

To this end, constitutional amendment are enacted only in one method, which is holding a democratic elections that aims at reforming the Legislative Council to include all Palestinian parties, to guarantee the separation of the three powers and the independence of the Palestinian judiciary, which should establish a legal framework that is respected by all parties and capable of withstanding future political crises, regardless of who is in power.

Hypothetically, the Palestinian constitution amendment is expected to include one main and prominent component, which is the legal hierarchy that includes international law and Human Rights position within it, this amended provision shall read as follows;

Chapter 1: article (6) amended:

(1) Human Rights law shall take precedence over National law.

(2) The general rules of Human Rights law shall be an integral part of national law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the Palestinian territory.

Chapter 2: Rights and Freedoms, Article (10) amended:

(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.

3.1.2 International Enforcement Mechanisms: Lex Lata and de Lege Ferenda

Domestic remedies for victims of human rights violations' first line of defence. They serve as the foundation for promoting and preventing human rights violations. Most

international human rights treaties require state parties to incorporate human rights principles into their domestic laws in order to provide various mechanisms for recovering damages caused by human rights violations. To some extent, Palestinian national laws protect fundamental human rights and freedoms, however; domestic remedies mechanisms can be employed as a harmonisation mechanism, especially when a state invests in its ratified law.

3.1.2.1 Enforcement Mechanism: Lex Lata

Lex Lata, or ratified law, reflects the current positive law, with no changes to account for any rules subjectively preferred by the interpreter.[179]

In this context, constitutional protection and the judiciary are two Lex Lata mechanisms for enforcing human rights at the national level. As a result, as part of the enforcement mechanisms, the Palestinian legislative and judicial entities must adhere to the principles of international human rights law, keeping in mind that the Palestinian Authority's violations of human rights against Palestinians fall under the jurisdiction of the Palestinian judiciary.

The Palestinian High Court of Justice

Palestinians can invest in the Court to challenge the actions of the Palestinian Authority's executive and administrative bodies. The Palestinian High Court of Justice has been established to assume all administrative court duties and to serve as the interim constitutional court.[180]

The Palestinian High Court of Justice has delivered few constitutional judgments, but it has ruled in a large number of administrative cases. Against this backdrop, it is

[179] Burgorgue-Larsen, L., Astresses, P.-V., & Bruck, V. (2019). The constitution of France in the context of Eu and transnational law: An ongoing adjustment and dialogue to be improved. National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law, 1181–1223. https://doi.org/10.1007/978-94-6265-273-6_25

[180] The Palestinian Amended Basic Law. (2003). Article 98

important to note that the High Court of Justice's decisions are not appealable, however; the questions remains linked to the argument whether the Court of Justice plays an effective role and functions properly in enforcing human rights and redressing violations.

Despite the fact that, according to article 97 of the Amended Basic Law, the judiciary system must be independent and only constituted by law, it continues to suffer from the on-going political interference of the various Palestinian political parties. Generally, the Palestinian judiciary has deteriorated over time, particularly with the violent and aggressive executive police forces and preventive security forces, as well as the executive authority, constantly interfering with the work of the judiciary.

The political situation in Palestine has an impact on the judiciary's performance, as Fatah and Hamas have fought for control of the judiciary. Since Hamas took over the Gaza judiciary and Fatah dominated the West Bank judiciary, the Palestinian judiciaries have operated independently.[181] The political conflict and separation of the judiciary in Occupied Palestine have harmed the justice system and distorted court decisions. Furthermore, the practical situation within the Palestinian Council is not encouraging, as the council even refused to provide the Court's rulings, which are publicly accessible under Palestinian law, which is very discouraging for researchers.[182] This, combined with the judicial council's prohibition on judges expressing their opinions, amounts to a violation of the judges' independence as well as their right to freedom of expression. In

[181] MUSAWA- The Palestinian Center for the Independence of the Judiciary and the Legal Profession. (2020). Strategic Plan 2020-2023. Retrieved from: https://musawa.ps/uploads/16af1928da854f2c22555b6b240b1206.pdf

[182] ibed

addition, the combination of the appointment of unqualified, young, and inexperienced judges and thousands of accumulated cases and their adjudication is slow-moving.[183]

Implementation of the Court's decisions constitutes another challenge to human rights petitioners, as article 106 of the Amended Basic Law emphasises: "Judicial rulings shall be implemented, refraining from or obstructing the implementation of a judicial ruling in any manner whatsoever shall be considered a crime carrying a penalty of imprisonment or dismissal"[184], in clearer words, The Court's decisions must be respected in all circumstances and implemented as soon as possible, however, it is essential to notice that the Palestinian executive department of the judiciary has thousands of accumulated files, and implementing the Court's ruling takes time, possibly longer than the litigation process[185]

To conclude, based on the aforementioned facts related to the Palestinian High Court of Justice, indeed, improvements and developments in the Palestinian justice sector are linked to the rule of law, social justice, fundamental freedoms, and basic human rights. Multiple solutions could be used to improve the Palestinian judiciary, particularly the High Court of Justice, this includes enhancing Palestinian trust in the judiciary and to develop its effectiveness, this could be achieved by appointing highly qualified judges while avoiding cronyism, nepotism, and political allegiance; ensure judges' and the judiciary's independence through financial and administrative autonomy; appoint judges through the Judicial Council rather than the Palestinian Authority's executive branch,

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[183] Alpha International for Research, Informatics & Polling .(2012). MUSAWA- The Palestinian Center for the Independence of the Judiciary and the Legal Profession Annual Report 2011. https://musawa.ps/uploads/915117254f6a68861c99ab6756c186d4.pdf

[184] Amended Basic Law

[185] AMAN- Coalition for Accountability and Integrity. (2007). Problems of separation of powers in the Palestinian political system. Retrieved from: https://www.aman-palestine.org/cached_uploads/download/migrated-files/itemfiles/3fbda76e5ba4514d312abcb06ac8352a.pdf

particularly its President, guarantee a minimum period to rule in cases and implement Court decisions without delay, and treat all people equally, transparently, and non-discriminatorily.

Most importantly, according to Ammar Jamoos, it is critical to ensure the independence of the judiciary from the Palestinian Authority's executive branch. The judiciary must work hard to improve and develop its performance. Independent, highly qualified, and trained judges are required for acceptable performance by the Courts[186]. This burden is the responsibility of the Palestinian Judicial Council as it should work to improve the judicial system as a whole. The Council must establish minimum standards that all judges must follow in their rulings. It should hasten the litigation process and the execution of judgments.[187] The Judiciary Council must establish a time limit for ruling on petitions and enforcing Court decisions so that it does not take months or even years, and lastly, a professional national strategy for the Palestinian judiciary system and the rule of law should be developed and implemented.

The critical point is that in order to issue proper rulings, Palestinian courts, particularly the High Court of Justice, must work on development. It is also important to establish a unit to monitor the implementation of Court decisions.

In constitutional law, the Palestinian judiciary should have significant predictive power, as well as significant normative implications in international human rights law. Certainly, it is critical to have a thorough understanding of the judiciary's powers and the changes that it can effect in order to gradually improve the way it functions, enforce human rights, and uphold the rule of law, thus, it is also critical to empower the

[186] Interview with Ammar Jamoos, the ICHR
[187] Ibid

Constitutional Court to enforce internationally protected human rights at the constitutional level.

The Palestinian Constitutional Court

On April 3, 2016, the President of the Palestinian Authority's issued a decree establishing the first Palestinian Constitutional Court, appointing nine Judges from the President's political party, "Fatah",[188] this has resulted in widespread criticism of the Court's independence, with opponents of the establishment emphasising that the Court was established in favour of the president and concentrated more power in his hands, especially given that the nine appointed judges are Fatah affiliated, putting the Court's independence and neutrality at risk.[189]

The Palestinian political situation undoubtedly affects the Court's function, but the danger lies in the Court's formation as an extension of the Palestinian Authority's executive branch under the control of the President.[190] In other words, the Court would lack independence and would almost certainly benefit the President. Of note, The Court ruled that the President of the Palestinian Authority has the authority to revoke the parliamentary immunity of members of the Legislative Council at any time. This means that the Constitutional Court has already begun to serve the President's interests by granting him the authority to infringe on the independence of the Parliament.[191]

The Constitutional Court should be established by law to consider "the constitutionality of laws, regulations, and other enacted rules, the interpretation of the Basic Law and

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[188] Isaac, T. (2016, April 11). Palestine president establishes controversial Constitutional Court. Jurist. Retrieved April 9, 2023, from https://www.jurist.org/news/2016/04/palestine-president-establishes-controversial-constitutional-court/

[189] ibid

[190] Demanding withdrawal of the Constitutional Court Formation. MUSAWA- The Palestinian Center for the Independence of the Judiciary and the Legal Profession. (2016). Retrieved April 9, 2023, from https://musawa.ps/post/demanding-withdrawal-of-the-constitutional-court-formation.html

[191] Melhem, A. (2016). Is Abbas revoking Palestinian mps' immunity legal? Al-Monitor. Retrieved April 9, 2023, from https://www.al-monitor.com/originals/2016/12/palestine-abbas-lifts-immunity-five-mps-dahlan-motives.html

legislation, and the settlement of jurisdictional disputes that may arise between judicial entities and administrative entities having judicial jurisdiction," according to Article 103 of the Palestinian Basic Law.[192]

There is nothing in the Palestinian Basic Law that grants the Constitutional Court jurisdiction to investigate human rights violations, with more emphasis, none of the articles in the Supreme Constitutional Court law No. (3) 2006, indicate explicitly that the Constitutional Court has the authority to review human rights violations, where the Court's main functions and responsibilities highlighted in Article 25 includes any article or provision included in the Palestinian Constitution, this in fact, reference implicitly that The Court may have jurisdiction over human rights violations even if they are not explicitly included in the Supreme Constitutional Court law, as Human Rights and Freedoms are granted by the virtue of the Amended Basic Law.

This means that the first function implies that the Constitutional Court has jurisdiction to review the constitutionality of laws or acts that violate the Basic Law's protected fundamental rights and freedoms, that is, any laws, legislations, regulations, rules, or practices that contradict constitutionally protected fundamental rights and freedoms must be reviewed by the Court. According to article 25, the Supreme Constitutional Court will have the authority to investigate human rights violations committed by the Palestinian Authority and its personnel.[193]

In terms of individual petitions, nothing prevents individuals from petitioning the Court. Articles 27-37 of the Law on the Palestinian Constitutional Court examine access to and proceedings before the Constitutional Court. Notably, on October 2, 2017, the President

[192] Amended Basic Law

[193] Keep in mind that neither article is explicit in granting victims of human rights violations the right to justice and the right to seek redress.

of the Palestinian Authority issued Decree No. 19 (2017) amending the Constitutional Court Law, including the procedure-related articles.[194]

The proceedings before the Palestinian Constitutional Court are prescribed in the Law of Civil and Commercial Procedure No. (2) of 2001[195], according to Article 26 of the Supreme Constitutional Court Law, this means that the concerned parties may file transfer decisions, legal actions, requests, petitions, and applications with the Court. The Constitutional Court examines the manner without pleading procedures after receiving the requests or legal actions, unless the Court deems oral hearings necessary (Article 36 of the Supreme Constitutional Court Law).

Nothing in the two aforementioned Palestinian laws mentions a time limit for the proceedings, implying that the Court could take years to rule on the constitutional petitions. In addition, the provisions of the Supreme Constitutional Court's Law provide no practical guidance for publishing the Court's decisions.

The Palestinian High Court of Justice and the Constitutional Court have not incorporated the scope of international human rights norms into their work frames, and they continue to operate in accordance with the provisions of the Basic Law. There is a high risk that the Court will be politically motivated and not independent, especially that the Court was formed and the judges were appointed by the Palestinian Authority's President on a political basis.

It is important to note that, while the Constitutional Court may be viewed as a political tool in the Palestinian context, the Court's independence, neutrality, and transparency must take precedence over any political interests. As a result, it is essential to separate

[194] Muqtafi. (2017). Decree-Law No. 19 amending the Supreme Constitutional Court Law No. 3 of 2006. Retrieved from: http://muqtafi.birzeit.edu/pg/getleg.asp?id=16969#:~:text=3

[195] Muqtafi. (2001). The Code of Civil and Commercial Procedure Promulgated by Law No. 2. Retrieved from: https://tinyurl.com/2p88ua5d

powers within the state legal system, in accordance with its provisions that guarantee the independence of the judiciary.

3.1.2.2 Enforcement Mechanisms: De Lege Ferenda

Due to the lack of international actors and an international judiciary body to serve Palestinians, the international legal situation in Palestine is unclear. The domestic judiciary's questionable performance has also jeopardised the protection of basic human rights. Existing international and Israeli solutions to the Palestinian problem have flaws and weaknesses. They are, in fact, unfit to protect Palestinians' human rights. The United Nations system and human rights institutions are not well equipped to deal with human rights violations, nor are they designed to provide victims with redress.

As a result, new remedies are proposed and described in order to find a reasonable method of enforcing international law principles and holding Palestinian authorities accountable for violations of these principles. These solutions aim to empower victims and enable them to seek remedies and justice in response to the Human Rights violations.

Improvements and developments in the judiciary system mark a watershed moment in the protection of Palestinians and their human rights. Dissemination of human rights principles to government personnel and civil society in the Palestinian Territory is also a watershed moment for change toward a better future for Palestinians.

The Palestinian Legislation

A set of laws must be enacted in accordance with international human rights law in terms of legislation. First, serious penalties and punishments should be introduced and imposed on those who violate fundamental human rights internationally and constitutionally protected. Second, new laws should aim to reform the procedures for

enforcing Palestinian Court decisions, particularly those of the High Court of Justice and the Supreme Constitutional Court.

The Israeli occupation is one of the main issues obstructing human rights enforcement, however, and by virtue of the SDGs, which are a key component in Palestinian strategies and policies, the Palestinian Authority is obligated to build institutions, maintain law enforcement, and respect the human rights of Palestinians in territory under its control, as many countries face dchallanging issues in times of crisis, yet, is critical to uphold the rule of law and protect fundamental human rights.

From a comparative perspective, despite the Russian partial occupation of Ukraine, Ukraine still has passed new legislation to ensure that the Court's decisions are followed. On July 2, 2016, Ukraine formally adopted the Law of Ukraine on Enforcement Proceedings[196] as well as the Law of Ukraine on Authorities and Individuals Carrying Compulsory Enforcement of Court Decisions and Other Authorities[197]. Both laws have introduced new initiatives to ensure the enforcement and implementation of Court decisions in order to establish a solid legal foundation for effective enforcement mechanisms.

Both laws managed to create and establish two main approaches to harmonisation, which are more familiar to both French and German approaches, and are applicable to the Palestinian situation.

The Ukrainian government established an Institute of Private Enforcement Officers, who have the same authority as government officers to enforce Court decisions and decisions of other competent authorities relating to civil and commercial disputes.

[196]Kravtsov, I. (2019, April 25). Enforcement proceedings - court procedure - Ukraine. Enforcement Proceedings - Court Procedure - Ukraine. Retrieved April 9, 2023, from https://www.mondaq.com/court-procedure/801464/enforcement-proceedings

[197] LAW OF UKRAINE on the Judiciary and the Status of Judges (Parliament), 2016, № 31, p.545). https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2021)080-e

Moreover, it established an introduction of the Electronic System of Enforcement Proceedings, in which all documents in the proceedings will be drafted, registered, and stored electronically by enforcement officers to ensure impartial allocation of enforcement[198]

In other words, it is critical to develop a system that represents the legal database for all citizens. This means that the benefits of a system in which individuals are provided with sustainable norms and practices that result in a rigid legal paradigm are legal stability and predictability.

An Institute to Monitor the Implementation of Human Rights Decisions

The establishment of democratic structures based on the rule of law, as well as the associated political culture, is a time-consuming and patient process. It often takes more than one generation to thoroughly familiarise people with the values underlying these structures and the behavioural patterns that sustain them, this is where the role of intergovernmental as well as governmental organisations occurs, especially with reference to human rights. A similar institution was established with the rise of the European Union, which is the Council of Europe that plays the role of monitoring human rights status. A similar institution can be found within the Palestinian context, which is the Palestinian ICHR.

The Council of Europe and Human Rights protection

The Council of Europe, headquartered in Strasbourg, is not only Europe's largest but also its oldest intergovernmental organisation. It was founded in 1949, has its headquarters in Strasbourg, France, and works in English and French. Human rights, democracy, and the rule of law are three core values that the Council of Europe defends

[198] Ukraine: Enforcement proceedings – system reboot. NOW. (2016). Retrieved April 9, 2023, from https://cms-lawnow.com/en/ealerts/2016/07/ukraine-enforcement-proceedings-system-reboot

and promotes. As a result, it is frequently referred to as the "human rights watchdog" of Europe.

One of the main members of the Council of Europe[199] is the commissioner for human rights, which is an independent body that works towards protecting human rights and raising public awareness in regard to them, in the 46 Council of Europe member states, the Commissioner, in its role, travels to the Council of Europe's member states to gather information from political stakeholders, non-governmental organisations, and civil society members on the ground. He meets with top politicians and takes part in round-table discussions.[200]

In order to promote and protect Human Rights, The Council of Europe enacted The European Convention on Human Rights (ECHR) which came into force in 1953. The convention protects every person's human rights and fundamental freedoms in every Council of Europe member state[201] The ECHR is a one-of-a-kind legal instrument. In terms of civilization, it is regarded as one of Europe's most significant achievements following WWII.[202]

To ensure that any violation of the demands specified in the European Convention of Human Rights (ECHR) could be brought before a court, The Council of Europe established a unique instrument in 1959 which is the European Court of Human Rights

[199] Aside from the Committee of Ministers (the decision making body), the Council of Europe has several consultative bodies at its disposal: The Parliamentary Assembly is regarded as the "engine" of the organisation. Its delegates are elected members of parliament in their respective countries and come from all member countries. Delegates to the Congress of Local and Regional Authorities are elected members of local or regional political bodies from all member states. The Conference of International Non-Governmental Organisations unites more than 400 internationally operating non-governmental organisations from all areas of civil society. The Commissioner for Human Rights works independently in all member states to protect human rights and raise public awareness about them. A Secretariat of specialists from all member states, coordinates all activities of the organisation.

[200] Council of Europe: Human rights commissioner. Europe's Human Rights Watchdog. (2022, March 26). Retrieved April 9, 2023, from https://www.europewatchdog.info/en/structure/human-rights-commissioner/

[201] All member states of the European Union have ratified the ECHR, thus, this convention is binding all over Europe.

[202] Ibid

(ECtHR), where every human being within the jurisdiction of the Council of Europe member state after exhausting all domestic remedies can bring a case of violation in front of ECtHR.[203]

European Court of Human Rights

The European Court of Human Rights (ECtHR) is a regional human rights judicial body established under the auspices of the Council of Europe in Strasbourg, France. Since its inception in 1959, the Court has issued over 10,000 judgments concerning alleged violations of the European Convention on Human Rights.[204] The European Court, also known as the "Strasbourg Court," supplements the work of the European Committee of Social Rights, which monitors European countries' adherence to social and economic rights.[205]

The Court has jurisdiction to hear complaints ("applications") from individuals and states alleging violations of the Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the "European Convention on Human Rights"), which primarily concerns civil and political rights. It is unable to take up a case on its own. Notably, the individual, group, or non-governmental organisation submitting the complaint ("the applicant") is not required to be a citizen of a State party.[206]

Complaints submitted to the Court, must allege violations of the Convention committed by a State party to the Convention that have a direct and significant impact on the applicant. The Convention had 47 signatories as of November 2018, including members

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[203] Council of Europe. (n.d.). Council of Europe Independent Human Rights Mechanisms and Institutions. Council of Europe. Retrieved April 9, 2023, from https://www.un.org/esa/socdev/enable/rights/ahc7docs/ahc7councileu1.pdf

[204] European Court of Human Rights. https://echr.coe.int/Pages/home.aspx?p=home

[205] ibid

[206] The European Court of Human Rights Questions & answers for Lawyers. The European Court for human Rights. (2020). Retrieved April 9, 2023, from https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/PD_STRAS/PDS_Guides___recommendations/EN_PDS_2020_guide-CEDH.pdf

of the Council of Europe and the European Union. Some of these countries have also ratified one or more of the Additional Protocols to the Convention, which protect additional rights.

To handle multiple cases at once, the ECtHR is divided into five sections, or administrative entities, each with its own judicial chamber. Each section is led by a President, a Vice President, and a panel of judges. The Court's 47 judges are chosen by the Council of Europe's Parliamentary Assembly from a list of applicants proposed by the Member States.[207] The judges work in four different types of groups, or "judicial formations," within the Court. The Court will assign applications to one of the following formations: single judge, committee, chamber, and grand chamber.[208]

Even Though the Council of Europe is an intergovernmental institution, it still can be simulated on a national level to assist Palestine to enforce human rights within its national practice. This in turn (taking in consideration the dilapidated political status and legislation enactment) would assist Palestine in enforcing human right obligation using international approaches.

The Palestinian Independent Commission for Human Rights as a National Mechanism of Harmonisation

According to the Paris Principles on the Status of National Institutions, “a national institution shall be vested with competence to promote and protect human rights.”[209] The Palestinian Amended Basic Law and/or other legislative texts must empower this national institution. In Palestine, a comparable Palestinian institution exists and operates: The Independent Commission for Human Rights. Its authority, however, does

[207] ibid
[208] ibid
[209] Principles relating to the status of National Institutions (the Paris principles). OHCHR. (n.d.). Retrieved April 9, 2023, from https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris

not extend to supervising or monitoring the implementation of Court decisions. As a result, the Palestinian Authority has the opportunity and capability of establishing an institute for enforcing Court decisions concerning human rights in areas where it has officers; these officers may be referred to as human rights enforcement officers because they only work on the procedures for implementing Court decisions. These officers must be highly trained, qualified, and legally empowered.

To respect and promote human rights, they must have extraordinary values. The benefits of such an institution would include increased accountability within the law, objective commitment to human rights lawsuits, accreditation of law enforcement and the rule of law, and clear guidance on litigants' expectations. This proposed institution would also be included in the evaluation of the effectiveness of national human rights institutions.[210] Such a step would be very significant for the Palestinian judiciary to build a strong and dependable legal and judicial system; law enforcement and human rights must be upheld in order to increase Palestinian disputants' trust in the judiciary.

After the necessary laws are passed, this monitoring institute is expected to be able to scrutinise the work of the executive branch of the judiciary and enforce the decisions of the Palestinian Courts, this institute could effectively deal with delayed and unimplemented Court decisions concerning human rights and compel the judiciary executive institutions, bodies, and departments to immediately implement these decisions.

Notably, the Palestinian National Development Plan 2014-2016 and 2021-2023 adopted the vision of good governance and institutional building[211] as well as excellent public

[210] Ibid

[211] National Development Plan. UNESCWA (2014-16).https://andp.unescwa.org/sites/default/files/2020-10/National%20Development%20Plan%202014-2016-State%20Building%20to%20Sovereignty.pdf

service provisions and sustainable development[212]; thus, the proposed institute would be a component of this implementation, as it is affirmed that governance institutions consolidate the rule of law, human rights and freedoms, safeguard citizens' rights equally to build bridges of mutual trust and cooperation.

Palestine has a long way to go before it can implement such a strategy. Nonetheless, this implementation would eventually improve its adherence to international human rights standards. One of these steps towards human rights enforcement, is to establish a human rights tribunal that is similar to the ECtHR, this court is envisioned to be consisted with a specific number of human rights officers, who are delegated by Human Rights and civil society organisations such as Al-Haq, PCHRS and others, all of these officers should work independently, and provide transparent, concrete and direct judgement.

Palestinian Human Rights Court

In accordance with international standards, there must be a remedy available to everyone who witnesses a violation to their human rights and fundamental freedom, without distinction or discrimination. The right to redress is universally recognized and is determined by competent judicial, administrative, or legislative authorities. The right to seek an effective remedy in cases of human rights violations has been protected by the Universal Declaration of Human Rights in Article 8, the International Convention on the Elimination of All Forms of Racial Discrimination in Article 6, and the International Covenant on Civil and Political Rights in Article 2(3).[213] Thus, Palestinians have the right and need for a remedy to redress human rights violations and to seek protection before a judicial body.

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[212] Prime Minister Office (2021-2023). National Development Plan. https://andp.unescwa.org/sites/default/files/2021-06/National%20Development%20Plan%202021-2023_English.pdf

[213] Universal Declaration on Human Rights. (1948). Art 8

Based on the Vienna Declaration and Programme of Action 1993, It is fundamental to create "an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments that are essential to the full and non-discriminatory realisation of human rights and indispensable to the processes of democracy and sustainable development."[214] For Palestinians, judicial enforcement is without a doubt the most important, powerful, and effective remedy. As a result, a Palestinian tribunal could formally establish a legal basis and an enforcement mechanism.

The main distinction is that the judiciary is authorised to issue mandatory judgments. In most cases, these judgments are enforced by executive powers such as the police. Nonetheless, a mechanism should be in place to allow Palestinians who have been victims of human rights violations to seek a just, reasonable, and enforceable remedy. A national Human Rights Court for Palestine is one possible solution.

The national human rights court for Palestine would be a judicial body that is independent, non-political, neutral, and impartial. A truly independent judiciary is one that is not subject to the control or influence of another. The tribunal's decision will be binding and must be implemented as soon as possible. The mechanisms for enforcing the courts' decisions must be authorised by the courts' statute.

Judges and prosecution are essential components of a well-functioning system that ensures the rule of law and the protection of human rights. The independence and impartiality of the judiciary and prosecutors, as well as the independence of lawyers, are critical pillars for the effective implementation of constitutional and international human

[214] Vienna Declaration and Programme of Action. (1993) https://www.ohchr.org/sites/default/files/vienna.pdf

rights standards.[215] Most importantly, the tribunal must be composed of judges who are autonomous, self-directed, and non-political[216]; they must also have high qualifications and recognized competence in international law, and they must meet moral and professional qualifications to ensure independence.[217]

Domestic remedies available to Palestinians are neither efficient nor equitable. On the one hand, the Palestinian judiciary is dysfunctional, lacks independence, and is dominated by the Fatah-led Palestinian Authority and Hamas in the West Bank and Gaza Strip. Notably, the two political parties that violate the independence of the judiciary violate the Palestinian people's human rights in Palestine.

[215] Office of the High commissioner for Human Rights in cooperation with the International Bar Association. Professional Training Series No. 9, Human Rights in the Administration of Judges: A Manual on Human Rights for Judges, prosecutors and Lawyers. https://www.ohchr.org/sites/default/files/Documents/Publications/training9Titleen.pdf

[216] the Statute of the International Court of Justice, Article 2

[217] Ferejohn, J. (2002). Independent Judges, Dependent Judiciary: Institunalizing Judicial Restraint. New York University Law Review, 77(962). https://doi.org/https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-77-4-Ferejohn-Kramer.pdf

Chapter Four

States Particularities and Human Rights

Identity is a central theme in contemporary politics, but there is a lack of rigorous analysis of this concept in legal academia, as romanticising the universal at the expense of local, subjective truth fails to account for how we arrive at global rights in the first place. Sceptics argue that because human rights are now so widely shared, they cannot help maintain the mutual trust required for a legitimate political order.[218]

Because identity is closely related to human rights, some rights may conflict with cultural, political, and social identities in countries; here the cultural differences and the concept of universality of dental rights developed by international human rights conventions are highlighted.

4.1 Religious identity and Human Rights

To be universally valid, human rights must be perceived as such by the entire community of states. The majority of states, including several Muslim-majority countries, have signed the most important human-rights charts and conventions, in this regard, Saudi Arabia assert that "cross-cultural differences might need to be taken into account in fine-tuning human rights standards and their implementation"[219] Accordingly, The Vienna Declaration and programme of action is defined by an appropriate foundation for positive and practical international cooperation, which would flow into the mainstream of universal support for human rights and freedoms, as an

[218] FØLLESDAL, A. (2009). UNIVERSAL HUMAN RIGHTS AS A SHARED POLITICAL IDENTITY: IMPOSSIBLE? NECESSARY? SUFFICIENT? Metaphilosophy, 40(1), 77–91. http://www.jstor.org/stable/24439861

[219] Ann E. Mayer, Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?, 15 MICH. J. INT'L L. 307 (1994). Available at: https://repository.law.umich.edu/mjil/vol15/iss2/

expression of the will of over one billion people, giving it a truly universal character by any standard. While the principles and objectives that underpin human rights are universal in nature, their application necessitates consideration for the diversity of societies, taking into account their various historical, cultural, and religious backgrounds, as well as their legal systems.[220]

As a result, many countries do not regard human rights values as universally valid, justifying deviations from international law and human rights on the basis of cultural relativism. According to pure cultural relativists, no moral judgement is universally valid, meaning valid for all cultures. Every moral judgement, on the other hand, is culturally relative. The debate over the universality of human rights continues. The Vienna Declaration and Action Programme, as well as other international conventions and documents, did not adequately address this specific issue.

Every local tradition is attempting to respond to the increasing pressure on human rights protection. In doing so, countries must consider the religious and cultural spheres. Many Muslim countries have attempted and continue to respond to human rights in accordance with Islamic law, although human rights are jus cogens of international law and thus should be applied in all countries, many scholars consider Sharia, which governs the law of many countries with an Islamic majority, to be incompatible with universally recognized human rights.[221]

Several Islamic scholars, including Khaled Abou El Fadl, believe that Sharia should take into account contemporary historical circumstances and modern definitions of human rights in order to reform Islamic law, as it appears impossible to justify human rights violations under the pretext of Islamic law, as a result, the interpretive component

[220] Ibid

[221] An, A. A. (1990, May 1). Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law. https://doi.org/10.2307/j.ctvj7wn6k

in Islamic theological and legal traditions provided a means for Muslims to transition from pre-modern views that favoured God's rights to a modern paradigm that favoured human rights.[222] to this end, Human Rights are defined as the secular interpretation of the Judeo-Christian tradition that renders compliance with Islamic law impossible.[223] Most Muslim-majority countries, including Egypt, Iran, and Pakistan, signed the UDHR in 1948, but Saudi Arabia refused to sign it, claiming that it violated Islamic law and criticising it for failing to take into account the cultural and religious context of non-Western countries.

The state official religion of most Arab countries is Islam, according to their constitutions. The Egyptian constitution of 1971 Article 2 emphasises that Islam is the state religion, Arabic is the official language, and Sharia'a principles are the primary source of legislation. Article 2 of Jordanian 1952 constitution, which applied to the West Bank, also states that Islam is the state religion and Arabic is the official language, the same article is applicable within the Palestinian context, yet, the one Arab state that is familiar in its position to the Palestinian approach is Saudi Arabia, that refused to sign human rights treaties considering them as incompatible with the Islamic Sharia'a. Thus, because all citizens must be Muslims, Saudi Arabian law is incompatible with the UDHR[224].

[222] Emon, A. M., & Ahmed, R. (Eds.). (2018, November 14). The Oxford Handbook of Islamic Law.
[223] Human Rights: The Universal Declaration vs The Cairo Declaration. (2012, December 10). Middle East Centre. https://blogs.lse.ac.uk/mec/2012/12/10/1569/
[224] Ibid

4.2 Palestinian Supreme Court: The National, Religious and Cultural Identity of the Palestinian People.

The Palestinian Constitutional Court's judgement of 2017 confirms Article 4 (2) of the amended Palestinian Basic Law, which states that Islamic Sharia is the primary source of Palestinian law. In this regard, Mahmoud Al-Habbash, President of the Sharia Court, reaffirmed Palestine's commitment to Islamic Sharia principles, even when dealing with human rights conventions (especially CEDAW)[225]

Against this backdrop, the presence of religion has multiple aspects related to the Palestine-human rights relation; these aspects include the difference in strategic approaches to Palestine political parties and the long history of legislation in Palestine.

The Islamization of the state was not an aspect of Palestinian culture, as it was not mentioned in the National Charter of 1968[226], the Declaration of Independence of 1988, or even the first draft of the Basic Law, however, according to the Amended Basic Law (2003), which was passed by the Legislative Council in its third reading (the official Amended Basic Law), Islam and religion has become part of the Palestinian legal, constitutional identity.

Non-Muslims in Palestine have the same rights and freedoms as Muslims. They are citizens with rights and responsibilities who participate in social, political, and economic life. The religion of the head of state, prime minister, ministers, and parliamentarians is not specified. In theory, it could be anyone as long as they were Palestinian.

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[225] United States Department of State, Bureau of Democracy, Human Rights and Labor. (2020). Country Reports on Human Rights Practices for 2020. https://il.usembassy.gov/wp-content/uploads/sites/33/WEST-BANK-AND-GAZA-2020-HRR-ARA-FINAL.pdf

[226] The Palestinian National Covenant. (1964) https://info.wafa.ps/ar_page.aspx?id=4921

During the 1996 legislative elections, President Arafat signed a decree establishing a minimum quota for non-Muslims. Christians, for example, had at least 6 seats out of a total of 88 seats[227], which is significantly more than the percentage of Christians in the total population. Usually, the paragraph stating that Islam is the state religion is usually followed by another paragraph stating that monotheistic religions are to be respected. However, the meaning of "respect" is unclear, and even in its clearest understanding, it is insufficient for a state to treat its citizens equally, without discrimination based on religion or gender, furthermore, this respect is limited to monotheistic religions - Christianity and Judaism - at the expense of other non-monotheistic religions.

Article 4, paragraph 18 of the Basic Law guarantees religious freedom, while Article 44 of the draft constitution guarantees everyone the right to practise their religion, the latter is more applicable to Palestinian and Arab realities in general, as Islam forbids changing religions (or rather, it does not allow apostasy from the Islamic religion). Religion is not chosen in Arab society; rather, it is passed down from father to son along with the name. Due to the presence of holy places, religious freedom has a special mission in Palestine. Above all, it entails unrestricted access to places of worship. It also includes the right to worship and to express it publicly, either individually or collectively. However, the constitutional documents ignored the issue of holy places in all of the PLO's agreements related to this regard, such as the agreement with the Vatican in 2000. Private universities and schools (for example, Christian schools) are protected by the constitution, as long as public order and customs are not disrupted.

The declaration of Islam as the state religion does not produce many conflicts and should not instil unfounded fear. What is important here is that this paragraph is not

[227] Electoral system for general elections. Central Elections Commission-Palestine . (n.d.). Retrieved April 9, 2023, from https://www.elections.ps/tabid/670/language/ar-PS/Default.aspx

made a reality by laws or governmental practices that restrict personal and collective religious freedoms and discriminate against citizens based on religion. It is therefore critical to consider the implications of this legal provision for non-Muslims. Any generalisation on this subject is doomed to error, as the proportion of the "Islamization" of the state differs from one Arab country to another, even though most of their constitutions contain the same article stating that "Islam is the religion of the state."

Article 63 of the first draft of the Palestinian constitution, prepared by a special committee commissioned by the PLO, emphasises with controversy that "women are the sisters of men, with rights and duties guaranteed by Sharia and determined by law." This means that when there is a conflict between the constitution and Sharia principles, at least in the case of women, the Palestinian legislative prioritises Sharia, thus, in practice, Sharia becomes more important than the constitution, and the latter loses its basic meaning as the supreme law of the state[228]

4.2.1 Palestinian Political Status: Political Fragmentation

The mid-1960s witnessed the beginnings of the construction of a Palestinian political field after it collapsed in 1948, when the Palestinian national movement was crushed with the British government's support of the Zionist movement, which succeeded in establishing the state of Israel.

The needed balance is not between the three branches of government, but rather between the legislative body and the role of the President alone, as both claim legitimacy through the justification of popular election, each with their own government, security forces, and portions of land under their control.

[228] Highlighting the right to equality granted by the constitution

Each claims to have the final say in Palestinian disputes, accusing the other of misinterpreting and misusing the Basic Law while offering a completely different interpretation of the same provisions.

4.2.2 Internal Political Fragmentation

The exacerbation of differences between the Hamas and Fatah movements, following Hamas's victory in legislative elections in early 2006, resulted in the outbreak of an internal armed conflict between the two movements in the Gaza Strip, which Hamas settled by force on June 14, 2007, to take control of Gaza and impose itself as a de facto authority.[229]

The events of the internal fighting, as well as the consequences of the on-going conflict, contributed to the perpetuation of the state of division between the West Bank and the Gaza Strip. The practices of the conflict's two parties also revealed the fragility and weakness of their convictions in the principles of the rule of law, human rights and freedoms, democracy, political, intellectual, and cultural pluralism, and the principle of peaceful transfer of power.

Political fragmentation exacerbated the situation of human rights, as violations of rights and freedoms were institutionalised on both sides, and it became clear that the violations committed are not merely the result of a state of chaos, ignorance of the law, incompetence, or isolated individual violations, but rather a policy carried out under cover or condoned by decision makers on both sides.

Due to the dominance of the security mentality, the violations that occurred, which are related to the process of discrimination based on political affiliation with the Hamas movement in the West Bank, have begun to be reflected in the fabric of Palestinian

[229] د. ياسر أبو عجوة، محمد عسلية. مجلة جامعة الأقصى، المجلد السابع عشر، العدد الثاني، يونيو 2013
https://www.alaqsa.edu.ps/site_resources/aqsa_magazine/files/740.pdf

society, and thus the suppression of freedoms and violation of rights has reached the prejudice of all Palestinian spectrum.

This was mainly reflected on multiple civil and political rights including; the right to national peace and security, the right to safety of persons, the right to freedom of expression and the right to vote. Moreover, the political fragmentation was reflected on economic, social and cultural rights, inter alia, including the right to movement, the right to education and the right to work.

4.2.2.1 Political Fragmentation: The Right to Civil Peace and Security

As a result of judicial and legislative weakness, an emergence of tribalism occurred, which threatens security and civil peace, as tribal solutions are viewed in the collective consciousness through the lens of a stereotyped image of the ease of solution when committed, as it is unfair and exploits the weakest. As a result, crime is settled in exchange for money. Given that crime rates have risen as a result of the Palestinian division.[230]

During the year 2021, (66) murder crimes occurred in the West Bank, including Jerusalem, and the Gaza Strip, as they were distributed as follows: In the West Bank and Jerusalem (44) crimes of intentional homicide, 38 of which were males, and 6 females, furthermore, Palestine witnessed during that year 4 unintentional killings including one female and 3 males, meanwhile, all murdered cases in Gaza Strip were intentional, 18 cases of intentional killing, disaggregated into 14 males and 4 females.[231] This in return, endangers the state of civil peace, individuals' right to safety and security, and their right to life and physical integrity.

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[230] Human Rights and Democracy Media Center. (2021). Annual Civil Peace Observatory 2021. https://www.shams-pal.org/wp-content/uploads/2021/reports/annual-civil-peace-observatory-2021.pdf

[231] ibid

4.2.2.2 Political Fragmentation: The Right to Physical Integrity

Despite Palestine's 2014 and 2017 accession to a number of international treaties and agreements, including the Convention against Torture and Cruel, Inhuman, and Degrading Treatment, and the Optional Protocol to the Convention, It did not take serious legislative and realistic measures reflecting the desire to adhere to and implement the treaty's provisions.

The security forces in the West Bank and Gaza Strip extended its policy of arresting, summoning, and detaining citizens arbitrarily without following legal procedures, in violation of the provisions of the Basic Law and the Criminal Procedures Law, as well as Palestine's contractual obligations, including the International Covenant on Civil and Political Rights and the Convention Against Torture.

The Palestinian Center for Human Rights documented testimonies confirming that the security services used various methods that constitute torture and cruel treatment in 2021, where it noted that 4 criminal detainees died inside the detention centers due to the deterioration of their health conditions (2 in the West Bank and 2 in Gaza Strip)[232]

In this context, Political polarisation has increased as a result of arbitrary arrests in both the West Bank and Gaza Strip, at the expense of respecting the rights, freedom, and dignity of the Palestinian citizen, as enshrined in the Basic Law and human rights principles. The continued arrests and summons cast doubt on the seriousness of the two sides of the divide in achieving a true reconciliation capable of respecting the principle of the rule of law, the independence of the judiciary, and the requirements of good governance.

[232] ICHR. (2021). Human Rights Status in Palestine (January, 2022-December, 2023). Human Rights status in Palestine, Annual re. 2021

This necessitates that the political parties in the West Bank and the Gaza Strip must implement the entitlement to reconciliation and their repeated pledges to release all those arrested arbitrarily or for political background.

4.2.2.3 Political Fragmentation: The Right to Expression of Opinion (Including the Rights to Vote)

Palestine witnessed a degradation to the end of the right in public freedoms including freedom of opinion, and the freedom of the peaceful assembly; these violations were a translation of the state of division between the West Bank and Gaza, this was accompanied with a wide set of decisions restricting the exercise of the right to peaceful assembly in order for each party to maintain its sovereignty and authority of the location it dominates.

In light of recent developments relating to the right of freedom of expression, Palestinian authorities in the Gaza Strip and the West Bank are increasing violations of freedom of opinion and expression in various forms. Prosecution of citizens for their social media expression was common, including the trial of journalists, summoning and interrogating them, and even arresting identities on the basis of their opinions.[233]

Political Fragmentation: the Right to Vote

The Palestinian political parties' interests played a crucial role in facilitating conducting democratic elections, according to a defined timetable, despite the challenges imposed by the Israeli occupation to obscure holding the elections. Since 2006, the election process and the democratic right to practise citizenship was an absent right form the Palestinian arena, which deprived generations of Palestinian youth from participating in the decision-making process or any of the Palestinian democratic processes.

[233]Al Mezan Center for Human Rights. (2017). Position Paper: Freedom of opinion and expression, freedom of peaceful assembly, and journalistic work in the occupied Palestinian territories. [position paper]. Acceded on April 9, 2023 https://www.mezan.org/ar/post/23528

After 2021 presidential decree on holding the elections[234]The process was postponed under the pretext that the Israeli forces do not allow Palestinians residing in Jerusalem to participate. The presidential elections were postponed to an uncertain time, while other types of elections continued in the West Bank only, this includes local bodies elections, which highlights the gravity of the fragmentations on a national level and on the level of Israeli occupation policy.

4.2.2.4 Political Fragmentation: The Right to Freedom of Movement and The Right to Education

The restrictions on movement have a negative impact on Palestinians' ability to work and maintain a decent standard of living. The situation of human rights in the occupied Palestinian territory remained difficult and was marked by violations of a number of rights, as the Israeli occupation's long-standing restrictions on freedom of movement between Gaza and the West Bank and within the West Bank exacerbated the situation.

Furthermore, the division hampered freedom of movement, such as the issuance of passports for Gaza Strip residents, which costs 300 shekels from Ramallah, and the delay caused by the transfer of documents from Gaza to the West Bank. As well as the repeated closure of the Rafah irrigation crossing due to the lack of a unified authority to manage it during the years of division.

Political division and ideological contradictions had a significant impact on the educational system, with potentially dangerous consequences for universities such as a decline in university independence, a decline in academic activity due to provocative partisan activities, a decline in the quality of staff and academic qualifications, and a decline in educational outcomes.

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[234] https://n9.cl/go9ys

The continued violations of the right to education are the result of insufficient government spending on education development, violations of the principle of free education, and schools' inability to meet the needs of children and people with disabilities, in addition to a set of serious violations academic freedoms, the spread of violence within universities and educational institutions, disruption of studies, and attacks on students throughout 2021-2022.

Political internal fragmentation has had serious consequences for public rights and freedoms, and eliminating it has become a goal worthy of relentless pursuit and unwavering efforts to unite Palestinians across the state. That the continuation of Palestinian internal division poses a threat to Palestinian society's public rights and freedoms. As well as the continuation of the two authorities' political, administrative, economic, and security steps in the West Bank and Gaza Strip to tighten control over the areas under their respective control. Administrative decisions and legislation are examples of these measures.

Conclusion

There is still much for Palestine to do in order to achieve harmony, especially given the country's complex and exceedingly complex political position. However, as a starter, Palestine can start its harmonisation process from the provisions of the Universal Declaration of Human Rights, and then move forward to investing in the ratified law and enhancing the role of law and the transparency of governmental institutions.

The UDHR as the customary binding international treaty and practice should be implemented and enforced within all states legal systems, the UDHR main and most important rights is article 1 emphasising on human rights to freedom and to ownership on their rights without discrimination, this specific right is farmed in the convention against discrimination and in CEDAW, however, this right is violated in Palestine via multiple practices, Palestine lacks a clear definition of discrimination, as previously stated, a comprehensive and clear definition based on a human rights dimension is also lacking in this context.

Furthermore, in the frame of all human rights treaties, particularly CEDAW, Laws are closely linked to the religious dimension of legislation, so that the law of marriage, divorce, inheritance, and other issues is closely linked to the religious identity of the state, negatively affecting the reality of women's rights in Palestine, this is in fact acceptable and proven in the light of article 4 (2) of the Amended Basic Law stating that the Sharia' is the source of legislation. Despite the adoption of numerous strategies in Palestine, the women's sector, like other sectors, faces the challenge of follow-up and implementation. Furthermore, the strategies adopted are not considered comprehensive strategies aimed at eliminating gender discrimination, which has played a significant

role in the widespread propagation of gender-based violence (including girls' child), particularly "honour killings," domestic and sexual violence, and other socially acceptable practices.

The propagation of honour killing as well as the tribal system and the normalization of torture violates articles 3, 4, 5 and 6 of the UDHR, relating to the right to life and protection against torture, in this context, and in light of the legal system, and the master of rights (the right to life), it appears that Palestine follows the approach of mitigating the sentence, avoiding its abolition, and adhering to the ICCPR principles. Furthermore, the violation of the right to privacy is considered one of the constitutional violations, and the legal violations include interfering in internal affairs in order to establish CBOs, as well as denying employees of some government agencies the right to object or strike, among other things, which constitutes a gross violation of human rights in Palestine.

To extend, Torture in Palestine is more linked to practice than to the legislative and judicial system, this has been proven by the constant aggression on Palestinian citizens for multiple reasons. The major aggression against political activists, journalists and human rights activists is justified in the pretext of protecting the state security and stability, which also violates all human rights related to security of person and freedom to expression (art.19) and freedom of citizenship and political participation (Article. 21).

The wide range of terminology and their lack of definition and clarity even when they are mentioned in constitutional provisions sum up the most significant issues with the Palestinian legal system, Palestine lacks a clear definition to all protected categories as well as rights, in the context of CEDAW, there are numerous issues associated with ending gender-based discrimination in Palestine. Palestine, as in all human rights

treaties, lacks a clear definition of discrimination, as previously stated, a comprehensive and clear definition based on a human rights dimension is also lacking in this context.

Even in the Convention on the Rights of the Child, which is the most ratified international human rights treaty, it appears that national definitions and legislation are being manipulated in such a way that judges can cancel the term "child" for some children before the judiciary. This can be referred to Palestine's failure to adopt a clear definition of the child that is consistent with the Convention on the Rights of the Child and all other relevant human rights conventions, which was reflected in children's rights in marriage, education, judicial protection, violence protection, and even guardianship in the cases of parental divorce.

Regarding policies, Palestine lacks on-going oversight to uphold economic rights, particularly the right to employment, and there are no obvious steps taken to lower unemployment rates. The problem extends to include the right to social security, such that Palestine does not seem to have any institutional structure for social security, in addition to that the social security statute that governs retirement. As Palestine lacks current data showing the number of people with disabilities and the percentage of schools that meet their needs to ensure an inclusive education policy, the policy conundrum also includes the lack of survey data and research related to diversity in society and generational solidarity. The elderly are not adequately represented in statistics and information, which negatively affects the inclusivity of national strategic plans.

Harmonisation of national legislations with international human rights obligations in Palestine can take many forms, one of the main forms of harmonisation is through constitutional amendments, such a suggestion is unattainable in the light of political

fragmentation and the lack of political will to end such fragmentation and hold democratic elections. Constitutional amendments can be achieved via multiple channels, however, the most suitable proposed way is the popular referendum, and however, this proposed solution poses many questions related to what are the needed amendments? Who has the authority to amend the constitution and to what extent Palestinians are aware of their rights and freedoms? Furthermore, such an option poses questions related to Palestinians interest in human rights? This last has led the researcher to tackle new solutions aiming at achieving the best measure of harmonisation in Palestine, these solutions includes beneficiation from ratified law as well as establishing new mechanisms using the already existing methods, this includes investing in the Palestinian Constitutional and Supreme Courts, this can be followed by establishing a national mechanism to monitor human rights violations committed by the PNA, this national mechanism (institution) should be empowered with qualified monitors and protected from violation and fraud, which in turn, would lead to the establishment of a human rights court that functions in a familiar way to the EU Human Rights Court.

Human Rights in Palestine is not a single layer issue, even though there are possible proposed measures in order to enforce human rights provisions within the Palestinian legislations, yet there are multiple factors obscuring this process, this includes the status of prolonged occupation in the Palestine territories, imposing restrictions on Palestinians right to freedom of movement, freedom of expression, the right to safety of person, the right to fair trial guarantees and most importantly the right to life, all of these violations are accompanied with a major restriction over the PLO and the PNA sovereignty and capability to function properly.

Human Rights, as a concept poses various challenges in terms of adoption, as they are perceived as western concepts imposed on the eastern world as part of an indirect policy of colonisation, thus, states consider human rights organisations with high sensitivity, as they have the right to create reservations on any treaty before its entry into force, provided that this reservation does not conflict with the basis of the treaty.

In the case of Palestine, joining all international treaties and agreements served political goals, and therefore Palestine did not create any reservations commensurate with its cultural, national and political identity, which placed Palestine in a critical position, especially when dealing with the harmonisation of national legislation with international obligations. Against this backdrop, and given that it is not possible to create reservations after ratification, Palestine can resort to the option of withdrawing from its international obligations in the field of human rights, and joining again with the aim of making reservations, but this option may lead to weakening its position on the international arena, leaving Palestine in a critical position that requires an immediate action.

In the case of Palestine, the presence of a corrupt, illegal government can stymie the process of harmonization. Corruption undermines the legitimacy and efficacy of governing structures, making substantive reforms that adhere to international human rights norms difficult to implement. Combating corruption and establishing openness and accountability among government institutions are critical to ensuring successful harmonization.

Another critical issue is the peaceful transfer of authority. Harmonization demands a suitable climate in which power transitions take place peacefully while honouring the will of the people. Political stability and the implementation of democratic mechanisms such as fair elections and inclusive decision-making can help to align national laws with

international human rights responsibilities. Democracy contributes significantly to the harmonization process by facilitating open debate, participation, and representation. It enables the voices of various stakeholders, especially marginalized communities, to be heard and taken into account during the legislative process. Individual and community rights and perspectives can be integrated into national legislation through democratic procedures, harmonizing with international human rights principles.

The rule of law must be enforced to ensure compliance with international human rights responsibilities. It is critical to establish an independent and impartial judiciary, enhance legal frameworks, and promote access to justice. Human rights violations can be addressed, legal remedies sought, and accountability ensured through preserving the rule of law.

Finally, in order to harmonize national legislation with international human rights commitments in Palestine, it is necessary to confront the obstacles created by a corrupt government, promote a peaceful exchange of authority, embrace democratic ideals, and enforce the rule of law. These initiatives can help to create an environment in which national laws reflect the rights and safeguards enshrined in international human rights treaties. By following these steps, Palestine can move toward harmonization and the development of a society that promotes and respects the human rights of all its residents.

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مقالات اخبارية

إطلاق لجنة المساعدة القانونية الوطنية. (16 نوفمبر 2026). وكالة الأنباء والمعلومات الفلسطينية وفا.

Appendices

Appendix 1: Interview with Ammar Jamoos

مقابلة مع عمار جاموس، باحث قانوني- الهيئة المستقلة لحقوق الانسان

التاريخ: 2023/1/8

1- برايك، فلسطين في قانون حقوق الانسان، الى اين تذهب؟ ما هي الخطوة القادمة؟

فلسطين منذ اعلان الاستقلال وصياغة القانون الساسي المعدل 2003، توجد هناك وثائق تحترم حقوق الانسان وتوفر حماية قانونية لها، المادة 10 من القانون الاساسي المعدل ومادة 32 من اهم المواد التي تتحدث عن حقوق الانسان هذه المواد الدستورية توفر حماية لحقوق الانسان، القوانين والتشريعات بما انها موروثة فهاي القوانين بالرغم مع تعارضها مع القانون الاساسي ووثيقة اعلان الاستقلال لا زالت سارية، وتشمل قانون العقوبات 66، وقانون منع الجرائم الاردني، جميعها قوانين سارية وتفتقر مع الموائمة ومع متطلبات حقوق الانسان الواردة في اعلان الاستقلال والدستور.

الممارسة ايضا المستندة الى القوانين وبدون استناد تفتقر لحقوق الانسان، ولم تكن صديقة لحقوق الانسان ولتاسيس نظام سياسي ديموقراطي يحترم التعددية والتداول السلمي للسلطة2012 بعد حصول فلسطين على عضو غير مراقب في الامم المتحدة، بعد سنتين بدات بالانضمام الى اتفاقيات الامم المتحدة الرئيسية لحقوق الانسان بدون تحفظات، من ضمنها سيداو وسيرد والكات وغيرهم

فرضت تلك الاتفاقيات على فلسطين التزام موائمة التشريعات الوطنية والتشريعات، ولكن يجب التطرق الى الممارسات التنفيذية والقضائية بالرغم من انضمام فلسطين لاتفاقيات حقوق الا انه حالة حقوق الانسان لم تتحسن على ارض الواقع

2- ما هي الثغرات القانونية في التشريعات الوطنية لتي تؤدي الى اضعاف عملية موائمة التشريعات الوطنية الفلسطينية؟

قانون الاحوال الشخصية مثلا انو يفتقر الى موائمة مع اتفاقيات حقوق الانسان الرئيسية والعهد الدولي الخاص بالحقوق المدنية والسياسية هناك فجوة اساسية بين قانون الاحوال الشخصية وسيداو.

كمان مثال قانون العقوبات، يتضمن تجريم لسلوكيات يجب ان تكون مباحة، لاتصالها بحرية التعبير وحرية التجمع السلمي، جريمة ذم السلطة العامة، اطالة اللسان على الرئيس ما زالت موجودة، وهاي قوانين يجب الا تكون مجرمة بل مباحة، لانها متصلة جدا بحرية التعبير (مادة 19)

قانون منع الجرائم، يسمح للسلطة التنفيذية (المحافظ) باحتجاز الناس لاسباب غير محددة وبعيدة عن رقابة المحاكم مما يؤدي الى انتهاك الحرية الشخصية والحق في المحاكمة العادل، هذا القانون من 1954 ولا زال يطبق، مثال اخر مهم، وهو قانون الجرائم الالكترونية 2018 الذي يتيح للسلطة الدخول الى وسائل تكنولوجيا المعلومات بدون رقابة كافية من القضاء، ويسمح هذا القانون لاسباب غامضة وغير محددة بحجب المواقع الالكترونية دون اشتراط حضور الجهة المتهمة

قانون السلطة القضائية، القانون يجب ان يضمن استقلال المحاكم، كيف يضمن القانون استقلال المحاكم؟ من خلال عدم قابلية القضاة للعزل والطرد بدون محكمة وبدون اتاحة حق الدفاع عن النفس.

الذي يحصل بالقانون الحالي، بالتعديل 2020 انه اصبح بامكان رئيس القضاة المعين من رئيس السلطة بامكانه بدون اجراءات كافية، ولاسباب غامضة وغير معلنة التخلص من القضاة

3- هل تكمل اتفاقيات حقوق الانسان الثغرات القانونية ام تعظمها؟ ولماذا؟

لا تعظم اتفاقيات حقوق الانسان الثغرات القانونية بل تعمل على سد الثغرات القانونية اذا تم الاخذ بها الثغرات القانونية مسدودة من قبل، خاصة في القانون الاساسي المعدل

4- ما هو دور المعاهدات الدولية لحقوق الانسان في تفعيل منظومة حقوق الانسان في فلسطين؟

لم يجب، بسبب اتصال الاجابة فيما ذكره سابقا.

5- هل الموائمة هددف يمكن تحقيقه والوصول له من خلال المنظومة التشريعية الفلسطينية؟ كيف يمكن تحقيق الموائمة والوصول لها؟

البرلمان الاردني، امضى سنوات يناقش كيفية الغاء العقوبة على القاتل على خلفية الشرف، احيانا النصوص السيئة بتكون منبعها البرلمان

الهيئة التنفيذية في بعض الاحيان تكون اكثر قدرة على اخذ قرار، مثلا قيام الرئيس الفلسطيني بالغاء ومنع الزواج ما دون ال18 عاما.

البرلمان لا يكفي ان يكون منتخب شرعي، ويجب ان يحترم الدستور ومباديء الدستور وسيادة القانون، وهاد الاشي كفيل لجعل التشريعات والقرارات موائمة للاتفاقيات الدولية، ولكن ليس هناك احترام لمبدا سيادة القانون.

وجود البرلمان مهم لمبدأ الفصل بين السلطات، ومبدا سيادة القانون مرتبط في فصل السلطات، ومبدا فصل السلطات مرتبط في سيادة القانون

وبالتالي عدم وجود سيادة للقانون تعود الى عدم انعداام مبدا الفصل بين السلطات، بينما، انعكس انعدام الفصل بين السلطات على سيادة القانون.

6- ما هي السبل الانسب للخروج من العقبات القانونية الضخمة التي تواجه منظومة حقوق الانسان في فلسطين؟

7- ما مدى فاعلية لجنة موائمة التشريعات الوطنية المشكلة بموجب قرار مجلس الوزراء رقم (02) بتاريخ 22/04/2019؟

منهجية عمل اللجنة الفنية والتقنية، لا يوجد تصويت مثلا على القرارات.

8- ما هي دسترة القوانين الدولية وخاصة القوانين الدولية لحقوق الانسان؟ وهل يمكن ان تكون المخرج للمشاكل القانونية التي تواجهها فلسطين؟

مادة 10 من القانون الاساسي ووثيقة اعلان الستقلال تضمن تطبيق حقوق الانسان وحرياته الاساسية بالاستتناد الى المادة 10 من القانون الاساسي المعدل، فان اتفاقيات حقوق الانسان يجب ان تكون نافذة ضمن التشريع الفلسطيني.

9- ما هي الحقوق والحريات الاساسية الاكثر انتهاكا في القانون الفلسطيني؟ وما هي الية ادماجهم في النظام القضائي الفلسطيني؟

في حالة تطبيق القانون الاساسي المعدل، نصل الى اهمية الموائمة

يمتلك القاضي من الوسائل القانونية الي تمكنه من الرجوع الى حقوق الانسان.

وفقا لهرمية التشريعات، فلا يجوز للنص الادنى ان يخالف النص الاعلى وبالتالي فلا يجوز تنفيذ اي احكام متعلقة تنتهك القانون الاعلى وهو اتفاقيات حقوق الانسان في هذه الحالة.

القانون ينظم ممارسة الحقوق ولا يعطلها، عدم وجود المجلس التشريعي لايعني عدم ممارسة الحقوق والحريات، بحيث بامكان الموظف ايجاد تفسير معين للقانون يجعل منه متوائم

10- ما هي القضايا الضرورية، من وجهة نظركم، التي تعتقدون أن ستطور التشريع الفلسطيني في حال مواءمته مع المعاهدات الموقعة في مجال حقوق الانسان؟

تمكين القضاة من الرجوع للنص الدستوري، بالاعتماد على الهرمية التشريعية الدستورية الي توضح سمو الحقوق.

11- ما هي القضايا التي تناولتها المعاهدات الدولية الخاصة بحقوق الانسان ووقعت عليها فلسطين، وتتناقض مع بنية المجتمع الفلسطيني أو نظامه السياسي؟

لا يوجد

12- هل جرت محاولات خلال السنوات الماضية للمواءمة بين التشريع الفلسطيني والمعاهدات الدولية التي وقعت عليها فلسطين؟

نعم، الاجابة متصلة فيما قبلها

Appendix 2: Interview with Rashad Twam

مقابلة مع رشاد توام- باحث واستاذ القانون العام، جامعة بيرزيت

التاريخ: 2023/2/10

1- ماذا تعني الموائمة من خلال التوثيق؟ وكيف يمكن تحقيقها؟

2- ما هي المواد والمعلومات االهم التي يمكن تدريب القضاة عليها من اجل تمكينهم من تحقيق الموائمة؟

3- كيف يمكن لفلسطين تحقيق الموائمة في مجال حقوق الانسان؟

4- في رأيك القانوني، كيف تتصور الهرمية التشريعية الفلسطينية؟ واين تندرج اتفاقيات حقوق الانسان فيها؟

تصوري أن يكون القانون الأساسي هو الأسمى، تدنوه الاتفاقيات الدولية، تدنوها التشريعات من درجة القانون، ثم التشريعات الثانوية (الانظمة واللوائح)، ثم التشريعات التنفيذية (مراسيم ، قرارات، تعليمات)

من جهة يبدو هذا التصور متفقا مع ما قدمته المحكمة الدستورية في قرارها التفسيري رقم 2017/5، ولكن من جهة اخرى، ولما كان قرارها هذا ينطوي على تناقض داخلي، فإني أختلف معها من حيث :

أولا- عدم وجوب تعليق نفاذ الاتفاقيات الدولية على صدور قانون؛ فطالما أن الاتفاقيات بنظرها أسمى من القانون، فكيف للادنى ان يقرر وجود الأعلى.

ثانيا- مكانة إعلان الاستقلال؛ اذ جعلته فوق القانون الأساسي، ولا أفضل التعليق على هذه المسألة حاليا، كونها موضع بحث في دراسة ما زلت اعمل عليها.

5- في ظل غياب نشر اتفاقيات حقوق االنسان في الجريدة الرسمية، هل تعتبر اتفاقيات حقوق الانسان نافذة في فلسطين؟

نعم ؛ فالتزام الدول بالاتفاقيات الدولية يجب الا يعلق على إجراءات داخلية، لا يضر النشر، ولكنه ليس هو المعيار الأساسي للالتزام بإنفاذ الاتفاقية. وقد جرى فعلا نشر بعض الاتفاقيات في الجريدة الرسمية.

6- في ظل تفسير المحكمة الدستورية المبني على التحفظ على اتفاقيات حقوق االنسان، كيف يمكن التعامل مع البنود القانونية الخاصة بالاتفاقيات، وكيف يمكن تحقيق الموائمة؟

توضيح الحق من الباحثة : "قامت المحكمة الدستورية بتفسير دستوري يفيد سمو التشريعات الدولية على التشريعات الوطنية، شريطة أن تكون متناسبة مع الهوية الوطنية والدينية والثقافية للشعب الفلسطيني، مجرية تحفظ على الاتفاقيات الدولية الأمر الذي لا يعتبر من اختصاص المحكمة، في الوقت ذاته تلتزم فلسطين بمواءمة جميع بنود اتفاقيات حقوق الإنسان بحيث انها لم تقم بالتحفظ على أي من مواده، وبموجب القانون الدولي، وتحديدا اتفاقية فيينا لقانون المعاهدات، يمنع على الدولة الاحتجاج في قانونها الوطني لتبرير انتهاكاتها الدولية وعدم التزامها في نصوص الاتفاقيات. كيف يمكن تخطي الاشكالية والتضارب الوطني والدولي الذي نتج؟"

مسلك المحكمة هذا كان في قرارها التفسيري رقم 2017/4، وباعتقادي أنها تراجعت ضمنيا عنه بموجب قرارها اللاحق له، رقم 2017/5، وإن حاولت المحكمة الموقرة المراوغة، لتأسيس الثاني على الأول.

7- برأيك، ما هي اهم القضايا في التشريع الفلسطيني التي يصعب موائمتها مع التزامات فلسطين في مجال حقوق الانسان؟

ما يتصل بقانون الاحوال الشخصية والميراث، أو حقل قانون العائلة بشكل عام.

Appendix 3: Interview with Asem Khalil

مقابلة مع عاصم خليل- محاضر في القانون الدستوري، جامعة بيرزيت

التاريخ: 2023/1/16

1- ما هو منظورك لموضوع موائمة فلسطين لتشريعاتها الدولية مع التزاماتها الدولية في مجال حقوق الانسان، وهل تعتقد ان التشر في الجريدة الرسمية هي الخطوة الاولى والاساسية؟

الموائمة غير ضرورية وليست شرط اساسي لانفاذ المعاهدة، انما هي ضرورية من اجل خلق توازن وترتيب في النظام الوطني الفلسطيني، من هذا المنظور فان مشروع الموائمة هو مشروع تام بقيادة وزارة الخارجية والمغتربين وليس وزارة العدل.

تدخل الاتفاقية حيز التنفيذ بمجرد توقيعها، وتعطى الدولة مساحة من الوقت من اجل اقرارها وليس من اجل انفاذها.

2- ما هو تعليقك على قرارات المحكمة الدستورية المتعلقة في علاقة الاتفاقيات الدولية ومركزيتها الهرمية؟

دوليا، لا يجوز للمحكمة الدستورية التحفظ على المعاهدات، ولا يمكن الاعتداد بقرارها لانه ينتهك اتفاقية فيينا لقانون المعاهدات.

وطنيا، القرار الصادرعن المحكمة هو ملزم وواجب التطبيق ويمكن الخروج من مأزق قرار المحكمة من خلال العديد من الطرق:

- استصدار قرار رئاسي (قرار بقانون او غيره) لتعديل مادة دستورية: تم ذكر مثال استحداث مادة دستورية في المانيا وفرنسا لتتناسب مع اتفاقية ماسترخت

- اجتهاد المحكمة من خلال التعامل مع تفسيرات المحكمة والهرمية الدستورية وبالتالي يعتمد القضاة على التحليل القانوني بدلا من تفسير المحكمة.

- الية تعيين القضاة، يمكن استحداث نظام التصويت بين القضاة، واعتماد نظام مشابه للنظام الأمريكي، وبالتالي قاضي جمهوري يعين قضاة جمهوريين للتصويت على قرار او قانون معين.

3- ما هي دسترة حقوق الانسان؟

تعني دستور حقوق الانسان وجود قواعد خاصة في حقوق الانسان ضمن القواعد الدستورية في الدولة، مثل المادة 10 (1)، وتم اعتماد هذا النظام في معظم الدساتير التي تم صياغتها بعد الحرب العالمية الثانية، وتم ادماج حقوق مثل الحق في الصحة في معظم الدساتير في العالم، وتمتد بعض الدساتير لتشمل الحق في المشاركة السياسية. وتعتبر هذه الحقوق ملزمة للدولة وقابلة للانفاذ في المحاكم الدستورية.

4- ما الحل؟

- يمكن تحقيق الموائمة من خلال تمكين القضاة والعمل معهم من اجل تطبيق حقوق الانسان بدون مخالفة الاتفاقيات من خلال اجتهاد القضاة.

- الموائمة من خلال السلطة التنفيذية من خلال عمل codification للاتفاقيات والمعاهدات الدولية، بالاضافة الى التشريعات.

ملخص الرسالة

كان عام 2012 عاماً مفصلياً تميزت به فلسطين، حيث حصلت على صفة "دولة مراقب غير عضو" في الجمعية العامة للأمم المتحدة. نتيجة لذلك، أصبحت فلسطين طرفا في الاتفاقيات والمعاهدات الدولية المختلفة. وعليه، فإنها تتحمل مسؤولية مواءمة تشريعاتها الوطنية مع أحكام هذه الاتفاقيات والمعاهدات، وفقا لمبادئ القانون الدولي.

إلا أن فلسطين تواجه العديد من العقبات السياسية والدبلوماسية التي تعيق عملية الموائمة مع الاتفاقيات الدولية. والعائق الرئيسي هو الاحتلال الإسرائيلي الذي يعود تاريخه إلى عام 1948، والذي لا يزال يعيق السيادة الفلسطينية والحكم الذاتي. بالإضافة إلى ذلك، فإن غياب التسلسل التشريعي الواضح في القانون الأساسي الفلسطيني المعدل يشكل تحديًا لجهود المواءمة، زيادة عن ذلك، فإن الانقسام السياسي الذي ظهر بعد عام 2007 وما تلاه من حل المجلس التشريعي يشكل عقبة أخرى.

ومن المهم أن نلاحظ أن فلسطين حققت تقدما كبيرا من حيث الدولة والاعتراف الدولي. لكن العوائق والقيود المذكورة أعلاه قوضت هذا التقدم، مما أدى إلى مشاكل وأزمات دبلوماسية أثرت على شرعية الدولة الفلسطينية وموقفها القانوني. ويتجلى هذا بشكل خاص في الاتفاقيات الثنائية والثقة الممنوحة للدولة.

وعلى الرغم من التحديات التي تواجهها فلسطين في مواءمة تشريعاتها مع الالتزامات الدولية، وخاصة في مجال حقوق الإنسان، إلا أن هذه العقبات لا ينبغي أن تكون سببا للتهرب من المسؤوليات الدولية والوطنية للمواءمة. تمتلك فلسطين وسائل وطنية متعددة يمكنها من خلالها تحقيق الانسجام. ومن ثم، تهدف هذه الدراسة إلى استكشاف الوسائل والاستراتيجيات التي يمكن لفلسطين توظيفها لتحقيق أعلى مستويات المواءمة.

ويمكن تحقيق مواءمة التشريعات الوطنية مع الالتزامات الدولية من خلال مجموعة من الأساليب، بما في ذلك التعديلات الدستورية والامتثال لآليات الإنفاذ الدولية، فضلا عن الاستفادة من القوانين المصادق عليها وتجارب الدول الأخرى. ومن المهم النظر في هذا السياق في عالمية حقوق

الإنسان مع مراعاة خصوصيات السياق الفلسطيني، مثل العوامل الدينية والسياسية التي تشكل واقع فلسطين.

لأغراض هذه الدراسة، سيتم اعتبار كل من فتح وحماس جهات فاعلة حاكمة، ومن المتوقع أن تتمسك كل منهما بمبادئ حقوق الإنسان. ولا تفرق هذه الدراسة بين الحزبين السياسيين، خاصة في ظل وجود حكومة مصالحة وطنية تعمل في كل من الضفة الغربية وقطاع غزة، على الرغم من انفصالهما فعليا.