

First Interim Technical Report

Between State and Tribe: The Rule of Law and Dispute Resolution in Post-Oslo Palestine

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Synthesis

The overall aim of this project is to produce policy recommendations on the role of customary law in the present and future Palestinian justice system. While there currently exists a degree of coexistence between the formal and the informal justice systems in the West Bank and Gaza, there remain questions as to the extent and the type of interaction between the two, and the degree to which this duality ultimately hinders the rule of law. The plurality of the Palestinian legal culture, encompassing the laws of myriad political regimes, religious authorities and the various methods of informal dispute resolution, has resulted in a fluidity of authorities wherein responsibilities are blurred and due process and justice are not always respected.

This research therefore aspires to propose ways to strengthen the rule of law by ascertaining the present relationship between the formal and informal justice systems in the field of criminal law, and by then formulating policy recommendations, based on the findings of the research, on how these two potentially conflicting systems can be reconciled in a future Palestinian judiciary, whether by integrating the two, or encouraging the reform of one or both systems. It will attempt to highlight both the positive and negative aspects of the two systems by revealing the social dynamics involved and the legal issues that arise from this interaction.

While the end objective of this research project is to contribute to efforts to reform the judiciary by recommending ways to approach the plurality of the Palestinian justice system, the means to achieving this end are equally important. The primary and secondary research that is being undertaken and the publications that will result are also an end in themselves, and will hopefully provide new insight into the growing field of informal justice. The intention is also to learn from the experiences of other countries in dealing with more than one system of resolving disputes. The project therefore aims to reach not only a Palestinian audience of policy makers and people with a stake in the two systems. It also aspires to gain the insight of international academics and civil society. Dissemination efforts will thus be geared towards reaching a wide audience, through publications, online internet accessibility and public conferences and workshops.

The Research Problem

The system of justice in Palestine has a checkered and irregular history. Over the last century, Palestinians have experienced several changes in political and military regimes, and consequent transformations in the legal system. The Palestinian legal system, under the control of the Palestinian Authority, has not developed significantly with regard to the independence of the judiciary and the rule of law. It is in this context that the Institute of Law chose to undertake this project to discover the extent to which and the reasons why informal methods of dispute resolution, outside of the formal justice system, are resorted to by Palestinians. The existence of this informal system of justice raises serious questions as to the effectiveness of the formal justice system in promoting and implementing the rule of law, given that there is effectively a plurality of legal loci that has played a part in hindering the development and implementation of a Palestinian law. The role of the executive in advancing the informal system and attempting to shape it has contributed to undermining of the

independence of the judiciary and minimizing its role in resolving disputes is a key issue here, and is a point of focus for the present research.

The importance of the project lies in the absence of accurate and up to date information on the scope of informal justice practices and the extent of their relationship to the formal judicial system. Moreover, this study is an essential foundation for any future attempts at judicial reform. Not only will it serve to inform policy makers of the current status of both the formal and informal justice systems. It will also provide insight into how the judiciary can be tailored to take into account the Palestinian legal tradition, both formal and informal, and thereby make any proposed reforms more relevant to the Palestinian reality, and in turn, more likely to succeed. It is evident thus far that informal, socially-sanctioned methods of resolving disputes are integral to Palestinian notions of justice, and play a vital role in easing societal tensions resulting from disputes between individuals.

While the rationale for the project is based on the need to reform the ailing Palestinian judiciary, its approach is innovative in its incorporation of both legal and sociological perspectives to study the phenomenon of informal justice as a significant part of the Palestinian legal field as a whole, formal and informal. The questions that arise when approaching the law from a sociological perspective give voice to the whys, hows and whos that are often undervalued or overlooked altogether by purely legal-minded reformers. While it is generally assumed that there is a correlation between the weakness of the judiciary and the preponderance of the informal justice system, the initial research has shown that the reality is much more nuanced. The factors that influence peoples' choice to resort to informal methods of resolving disputes go beyond the formal judiciary's inefficiency and enter into the realm of religious, political and societal issues. Indeed, many actors in both systems perceive the two systems as complementary rather than conflicting, as is evidenced by a significant degree of cooperation between the two, whether formally recognized or not. The informal system itself has in fact been weakened in many ways, in part for the same reasons that the formal system has struggled. The executive's tendency to involve multiple executive organs in the resolution of disputes without a clear distinction of authorities, and the efforts of other groups to gain some influence over the informal justice system has in effect fragmented the system more than in previous historical periods.

The research therefore aims to answer a range of questions regarding the nature and expanse of the informal justice system and its relationship with the formal system. The objective of these questions is as much to understand the various societal factors at work and the way different sectors of society are affected as it is to gain a technical and procedural understanding of the systems of justice at work in Palestine. In particular, a major concern of the study is to reveal the differences in the way social distinctions including gender, age, financial and social status, location (village, city or refugee camp), political affiliations, affect the how justice is delivered on the part of the two systems. The policy recommendations that will evolve from the current research will depend on a comprehensive treatment of both the legal and sociological issues involved in this research.

Research Findings

The work conducted thus far has involved both primary and secondary research. As originally planned in the project proposal, the first six-month phase of the project has consisted of preparatory and planning activities, as well as preliminary background research in the form of a literature review. The collection of primary data was also begun. The results of the research to date therefore contribute both synthesized knowledge of secondary data already available and new knowledge in the form of primary data collected during the fieldwork. The work undertaken thus far has illuminated several important issues that will help to guide the remaining research and constitute the knowledge on which the policy recommendations that this project aims to produce will be based.

An important aspect of the project has been the preliminary research conducted on the experiences of other countries in confronting systems of justice outside of the official state law. The subject of informal justice is evidently of growing interest to the legal and sociological/ anthropological academic communities, as well as to policy makers. The collection of materials on informal justice in different regions of the world has provided much insight into the ways different countries have approached the issue of having more than one system of justice at work. The literature review was necessary to provide an idea of the volume of materials available, to review some theoretical perspectives on the issue of informal justice and to identify some important examples of countries dealing with systems of justice outside the state law, to inform the present study.

Although the discipline of anthropology has been the most attentive to the way societies organize themselves, the newer field of legal anthropology is particularly important to our study, given its contribution to conceiving of the law as inextricably linked with its surrounding environment and constituting an intricate system of social control that is not necessarily limited to the realm of state law. In particular, the concept of legal pluralism adds an important dimension to the debate on the role of informal justice in the state system. The traditional conception that “law” refers inherently to centralized state law is challenged by the notion of legal pluralism, which contends that systems of justice outside the state law should be considered “law” as well, and not merely a set of archaic customs that have no place in a modern state system. This combination of anthropological and sociological approaches with legal knowledge is the aim of this research, in order to arrive at a multi-layered understanding of the current status of informal justice in Palestine, with due regard to the societal factors involved, and make recommendations for the future.

Such an interdisciplinary approach is evident in many countries where the reality of informal justice systems operating outside of the state justice system has encouraged new ways of thinking about the issue. Of particular interest are the cases of Canada, Australia and New Zealand, South Africa, and various other Asian and South East Asian countries. These provide interesting examples of a trend in some cases towards increased sensitivity on the part of centralized and often westernized governments to the rights of indigenous or aboriginal communities, and in other cases a tendency often among formerly colonized countries to encourage the incorporation of traditional elements into inherited structures and methods of governance. These trends have permeated the legal realm, wherein debates about the possibility of maintaining

and recognizing customary systems of justice that are resorted to by parts or all of the population alongside or within the formal justice systems abound. Independent law commissions in some of these countries have assessed the viability of such a dual system of justice and made recommendations as to how aboriginal or indigenous justice systems should be approached, whether by integrating aspects of it into the formal justice system or otherwise. Such studies can prove to be useful examples for the policy recommendations that will eventually result from this research.

Also of interest to the present study are the experiences of several Middle Eastern countries, including Jordan, Lebanon and Israel both because of the historical affiliations of Palestinians with these countries and because of their familiarity with a common system of informal justice, as well as other social and historical factors. The relationship between the informal and formal systems of justice in several Middle Eastern countries and one or two other countries will be the subjects of a set of background papers currently being prepared by researchers from those respective countries, as discussed below.

With regard to primary knowledge gained, the first phase of fieldwork has contributed much new information about the nature of the informal system of justice and its relationship with the formal system in Palestine, the people who are involved in it, its scope and magnitude, and the inconsistencies that have developed, from the actors most involved in the two systems. The over 40 interviews that were conducted have revealed both consensus and disagreement among those involved in both the informal and formal systems. The regional variations are also coming to light. It is worth mentioning several research results that confirm and/or clarify some basic assumptions of the research team.

The research has shown that informal justice in Palestine is prevalent in all areas, and it deals with all kinds of cases, from criminal to land to commercial and even personal status. Within the category of criminal cases, which is the focus of the project, the research found that all types of criminal cases, including murder, injury, theft, honor crimes, etc. go through informal processes of mediation, or *sulh*. While there exist procedures for resolving disputes that are common to all regions, the main aim of mediation is to end the dispute and prevent what is referred to as a *fitna*, or civil strife. There is therefore much inconsistency in the results as well. This point is important for the purposes of the study. The fact that mediation processes leave room for flexibility and are responsive to the social positions of the parties to the conflict raises questions as to the beneficiaries of such a system. Indeed, some of the mediators that were interviewed admitted that in order to resolve the disputes, they often had to give in to the demands of the stronger party and encourage the weaker party to yield. Given that the system caters to the social structure of clans and big families, it is expected that such deference to stronger and well-known families would be the norm. Other mediators interviewed, however, denied any bias towards stronger parties, and emphasized that everybody had an equal bargaining position. Their words were nevertheless often contradicted by the cases that they described, which showed that the background of a certain individual or family did indeed play a role in the mediation process.

Another development that was confirmed during the first phase of the fieldwork is the increased involvement of the Palestinian Authority in the informal system of dispute

resolution. The executive branch has managed to engage itself on several levels, through the police, the various security services, the governorate and the president's office itself. This has in effect reduced the authority and jurisdiction of the courts. Nevertheless, some formal court judges that were interviewed regarded processes of mediation in a positive light. They pointed to the necessity of addressing societal tensions resulting from interfamilial disputes, a role which the courts do not play. Most mediators and formal judges therefore view the informal system as complementary to the court system, especially in the present circumstances where the inefficiency and lack of enforcement power on the part of the courts has weakened them to the point of virtual inefficacy.

The role of religion in the informal system is another interesting issue that was addressed in the first phase of interviews. The results express an increase in the role of religious principles in resolving disputes. Several respondents indicated that the informal system of mediation was in fact an expression of religious principles, and their hope was that this system would eventually become formalized, and thus give religion a greater role in the state judicial system. Given that the only domain where religion remains the basis for the official law is in personal status issues such as marriage, divorce, inheritance, etc., the idea that informal justice provides a venue for the manifestation of religious principles in other legal spheres is an important phenomenon to monitor, especially since the role of the Islamic Shari'a in a Palestinian law has been and continues to be a point of great debate over the last decade. On the other hand, it was generally agreed that Christians and Muslims resorted to the same informal methods to resolve their disputes and followed the same procedures.

The fieldwork thus far has also confirmed the absence of a role for women in the resolution of disputes through mediation. The relatively weak status of female victims is also a point of interest to the study. Cases of rape, abuse, and alleged adultery often have alarming consequences, wherein the voice of the female victim is usually denied, whether by disregarding it or by silencing it altogether, through murder. The complicity of the informal and formal systems in keeping such cases under wrap to avoid public exposure is also increasingly evident from the research.

All of the findings described above will be explored further in the next two phases of fieldwork, through in depth case studies and more interviews with different sectors of society. The project is on track thus far, and the objectives of the first phase of the project have been achieved, with some modifications, as indicated in the section below. The research conducted thus far has provided much material to analyze in order to achieve the general objective of formulating policy recommendations. This objective is behind all of the activities implemented thus far, and the activities planned for the coming phase.

Project Implementation and Management

Activities during the reporting period

The first phase of the project has achieved most of the objectives stated in the Grant Conditions for the reporting period, while others have been slightly modified with the development of the project idea and the formulation of the research methodology.

The following activities have been supported during the reporting period.

1. *Recruiting of the project team*

The project team now includes a program coordinator, a senior research director, social science consultants, 8 fieldworkers, a junior researcher (who is also a fieldworker), two part-time administrative assistants, and a part-time IT programmer. The recruiting process began with the employment of a project coordinator and the assignment of a senior research director from the Institute of Law, and two sociologists, one from Birzeit University and the other an independent researcher.

The fieldworkers were recruited after the design of the fieldwork, based on recommendations from various sources in the four different regions where the fieldwork is taking place. After reviewing resumes and conducting telephone interviews, two candidates were called in from each area and interviewed in person. One of the fieldworkers in the Ramallah area was hired with the intention of retaining him as junior researchers for the remainder of the project and possibly beyond. Several of the other fieldworkers will also be retained to participate in later phases of the project.

2. *Development of a database of sources and a project webpage*

The collection of sources on informal justice began in the early stages of the project. Although most materials were collected via internet databases and in local libraries, a trip to Egypt was also planned to obtain materials not available in Palestine and to meet with a research organization involved in a project on customary law. A database was developed with the help of IT personnel to organize the materials collected and facilitate access to files available electronically. This involved much data entry and scanning of some materials not available electronically. The database was initially transferred onto CDs for the use of the project team. A web page is in the process of being developed in order to make the database available online to allow a wider audience to access the materials and to make project documents accessible to project members. This activity is an important step towards the objective of disseminating information to interested parties.

3. *Compilation of a bibliography and literature review*

An expanded literature review was prepared, based on the materials collected, to provide an overview of the theoretical and practical approaches to informal justice in different regions of the world.

4. *Focus groups with informed persons to provide a preliminary understanding of the informal justice system and to help establish assumptions.*

Several meetings were conducted with individuals who represent the various stakeholders in the informal and formal justice systems, including a official court judge, an official in the governorate, and a women's organization. A trial case study was also undertaken, involving the attendance of a reconciliation

ceremony by several project members, interviews with the mediator in the case, the victim, and a lawyer representing the defense. The purpose of these meetings was to get an idea of how the two systems interact and how different actors perceive the relationship between the two. These meetings helped to provide the necessary background to establish initial assumptions and formulate a research plan.

5. *Preparation of a Research Plan, including the fieldwork design*

The research plan reiterated the objectives of the project and outlined the steps to achieve these objectives. It also laid out the design for the fieldwork. The fieldwork methodology is described below.

6. *Preparation of questionnaires for fieldwork and guidelines for the first and second phases of fieldwork*

With the fieldwork design in place, the research team developed a set of guidelines for the fieldworkers for the first phase of the fieldwork, and provided a set of open-ended questions to guide the interviews. Another set of guidelines and questions was prepared for the second phase.

7. *Preparation and implementation of a training for the fieldworkers*

The initial training for the fieldworkers had the objective of introducing them to the project idea and methodology, providing background materials to familiarize them with the subject, reviewing important fieldwork techniques, introducing them to a sample case researched by a junior researcher, facilitating a discussion with a mediator involved in resolving disputes, and providing the necessary materials to begin the research.

8. *Recruiting researchers to prepare background papers*

As discussed below, the research team decided that it would be most beneficial to have a set of papers discussing in detail the experience of a few chosen countries with informal justice systems. Finding suitable people has proved a lengthy process. The project team is still in consultation with the IDRC project manager and other Canadian academics to find a suitable researcher to write a paper on the status of informal or aboriginal justice in Canada. The researchers commissioned thus far have legal backgrounds and at least some experience or knowledge of informal justice systems in their respective countries.

These studies will be valuable for comparative purposes in later stages of the project. It is also anticipated that these research papers will encourage continued collaboration with researchers from different countries, including Lebanon, Jordan, and Canada. A publication is projected, depending on the quality of the papers produced.

9. *Completion of first phase of fieldwork and preparation of reports*

The first month of fieldwork took place in May, 2004. Each team conducted at least 10 interviews with different actors in the formal and informal systems. Each fieldwork team then prepared a report summarizing and analyzing its findings, based on the interviews conducted. The fieldwork design and methodology is explained in detail below.

10. Review of first Phase of fieldwork

The results of the first phase of fieldwork were assessed, based on the reports submitted by each fieldwork team. Suggestions made by the fieldworkers regarding the second phase of fieldwork were incorporated into the guidelines for the second phase and the second phase of fieldwork is currently underway.

It is planned that the reports prepared by each fieldwork team will be presented to 2-3 respondents from each area to obtain preliminary feedback and to verify the results. This will be a lead-up to a workshop to discuss the results upon the completion of the fieldwork.

Research Methodology

The fieldwork methodology is described here in detail, reflecting the points of focus of the research and the ways in which decisions are being made by the research team.

Fieldworkers:

The fieldwork design is meant to ensure that four regions of Palestine are covered, in order to ascertain any regional differences in the informal system of dispute resolution. These regions include the Ramallah area and Jerusalem, the northern Nablus Area, the southern Hebron area and the Gaza Strip. As projected in the project proposal, there are four teams of two fieldworkers each, one male and one female. In addition, a condition was placed that one of the fieldworkers have a legal background and the other a sociological background. These two conditions have proved useful for the fieldwork teams, both in assuring a sensitivity to gender issues and in encouraging the fieldworkers to go beyond their respective disciplines in conducting the interviews and analyzing the data. It was evident from the beginning that those with sociological backgrounds encouraged their legal-minded partners to be more flexible in posing questions and to widen the scope of the questions to deal with social issues as much as legal ones.

Phases:

The fieldwork was divided into three phases based on the nature of the fieldwork involved and to allow for intervals between the phases to assess the data collected and reflect on the fieldwork strategy. The first phase, lasting one month, was recently completed. It consisted of a set interviews with informal judges or mediators, official court judges, district officials and general prosecutors. Prior to the start of the fieldwork, each team was responsible for writing up a list of people from the four categories above. Based on this preliminary list, ten individuals were chosen to interview, representing a range in age, place of origin and residence, duration of involvement in the field, and any known association with the Palestinian Authority and/or other political factions. The few females that work in the field, mostly as formal judges, were selected to garner a female perspective. The objective was to determine the scope of the informal system and its procedures, the kinds of cases it deals with, and its relationship with the formal system, both historically and presently, as well as to determine the discrepancies in information among the different

respondents. All of the interviewees were also asked to describe several cases they were involved in. These provided a range of cases to choose from to study in depth in the second phase.

The second phase consists of a number of in depth case studies from each region, representing the range of criminal cases dealt with by the informal justice system, including murder, injury, rape or other so-called honor crimes, and less serious offenses such as theft. In the span of one and a half months, three to four cases are to be studied. Cases are chosen by the supervisors based on the recommendations of the fieldwork team as to which cases they feel would be easiest to research, without aggravating any tensions between the conflicting parties and the society in general. The cases selected from each region are also chosen to represent the range of cases, so as to allow a comparison of how similar cases are dealt with in different regions, and to reflect differences between villages, cities and refugee camps, and between male and female victims. They are also selected to show the range of involvement on the part of the executive, the police and security services, and the formal justice system, as well as to reflect differences in time periods.

The case studies will be researched in depth by, where possible, obtaining court and police records on the case, getting detailed accounts of the case from judges (formal or informal) who presided over the case, lawyers representing the parties to the case, policemen involved, and the parties to the conflict themselves. They also involve revealing any public reactions to the case, in the media or from witnesses, relatives of the parties, etc. The case studies are important to get a detailed picture of how cases are dealt with, the variances in the relationship with the formal justice system, the way that societal issues play into the resolution of disputes, especially with regard to the socio-economic and gender status of the conflicting parties, as well as to gain insight into the way informal dispute resolution is perceived by those participating in it at all levels.

The third and last phase of the fieldwork, lasting one and a half months, will consist of a second set of interviews with different sectors of society in each region, including lawyers, NGOs (especially human rights and women's organizations), academics, political parties, parties to conflicts, etc. These will attempt to obtain various opinions from these different sectors of society about the judicial system and the role of informal justice in Palestine, the benefits and the problems with it, and how it affects different people. These opinions, along with the data collected in the first two phases, will help to inform the policy recommendations that will be developed after careful analysis of the data gathered during the fieldwork.

Documentation:

The above phases of fieldwork require thorough documentation. The process of documentation requires that every interview is recorded, with the permission of the interviewee. In the case that tape recording is not possible, one member of the team is responsible for taking notes while the other conducts the interview. Each team is provided with a tape recorder and its accessories to record the interviews. The fieldworkers are also required to fill out a unified form for each interview to ensure that the needed personal information is obtained and details about the time and place of the interview are recorded. Following each interview, the team transcribes the

interview verbatim and adds their comments about the general atmosphere of the interview, the attitude of the interviewee, and any additional observations that are not apparent to the reader. These reports are then sent to the supervisor for comments and follow-up questions. All case records and other documents obtained in the course of the fieldwork are duplicated and sent to the supervisor and to the project coordinator, who keeps a central file to ensure proper filing and facilitate later analysis of the data. At the end of each phase, each team of fieldworkers is responsible for writing a report on the fieldwork carried out during that phase, following a specific format determined by the project team. The report for the third phase will be a comprehensive report dealing with all three phases of the fieldwork, the contents of which will be determined by the project team at a later date.

Supervision:

Prior to the start of the fieldwork, each fieldwork team was assigned a supervisor from the project team. All fieldwork reports are sent to the supervisor and the project coordinator via email. The supervisor is responsible for reading and commenting on the reports and sending them back for clarification when necessary. The supervisor is responsible for following-up with the team as frequently as necessary, by email or by phone, to check-up on the progress of the fieldwork. The project coordinator made one field visit to the Hebron and Nablus teams. Field visits are also planned for the second and third phases to check up on the progress of the teams and discuss in person any difficulties arising. Unfortunately, a field visit to the Gaza team could not be arranged given the present political and security circumstances. There has nevertheless been frequent follow-up via telephone and email.

Refinement of fieldwork strategy:

Between each phase of the fieldwork, the results of the fieldwork are assessed by the supervisors, and the fieldworkers are consulted about any changes that need to be made to the fieldwork strategy, depending on the problems and difficulties they come across in their work. The supervisors are in constant consultation with each other and the fieldwork teams about the progress of the fieldwork and any problems that arise.

Dissemination:

In order to facilitate access to the data gathered during the fieldwork, initially for the project team and eventually for other researchers interested in the subject, a database will be developed compiling available data. Documents attained during the fieldwork and the interviews conducted will also be placed onto the project web page, along with the database of sources and other project documents.

Problems that Arose

While the project has proceeded relatively smoothly thus far, some problems have been encountered. The recruiting process was somewhat prolonged. The team had some difficulty finding suitable researchers to work on the project from among those that applied. This contributed to the decision to outsource the background papers to more experienced researchers and to retain some of the fieldworkers as junior

researchers after the completion of the fieldwork. This will ultimately be a more beneficial arrangement, given the experience and knowledge the fieldworkers will have and their familiarity with the goals of the project. Finding researchers to prepare the background papers has also been a long process, given the difficulties in communicating with people in different countries. It is hoped, however, that the background papers produced will be of a high enough quality to be published.

With regard to the fieldwork, it is worth mentioning that the situation throughout the Palestinian territories has been extremely unpredictable and volatile throughout the reporting period. Frequent closures, incursions into cities and villages and other activities on the part of the Israeli army all affect the schedule of work. Nevertheless, the first phase of fieldwork progressed relatively smoothly. Two of the four fieldwork teams got off to a slow start. The Gaza team in particular was faced with the challenge of working during the extremely tense conditions in May, 2004, when the Rafah refugee camp was under sustained attack. Their movement was severely limited, and prolonged electricity outages disrupted all computer and email work. Despite these severe conditions, they managed to regain momentum and completed the required number of interviews by the end of the first month.

The Hebron team initially showed little imagination in conducting the interviews. Constant follow-up by the supervisor and a field visit by the project coordinator made a difference. All of the fieldwork teams showed improvement in conducting the interviews, and following-up issues that needed further explanation and clarification.

Changes in Orientation

In the course of initiating the project, the team reviewed the project proposal and the grant conditions and discussed the general aims of the project. While the team agreed to the basic structure of the project, there were several areas where some changes were deemed necessary. These are outlined here.

1. Project title

The project team's first meeting revealed dissatisfaction with the project title. There was discussion regarding the appropriateness of using the term "tribal law," given the absence of a real tribal element in Palestinian society at present. It was agreed that using the term "informal justice" would be more relevant to the current situation, and more appropriate to the hybrid system of resolving disputes that has evolved among Palestinians. It has thus been decided to slightly modify the title to *Informal Justice: The Rule of Law and Dispute Resolution in Palestine*.

2. Background Papers

As mentioned previously, the initial proposal envisioned a set of background papers to inform the direction of the fieldwork. It was assumed that the junior researchers would be assigned this task. In discussing the purpose of the background papers, however, the team decided that it would be more beneficial to have a set of quality analytical papers prepared that would serve to provide a comparative perspective of the informal justice systems in other

Arab and non-Arab states that have some experience with a duality of informal customary systems and formal state justice systems.

These papers will initially be used for the benefit of the team's researchers in the analytical writing phase of the project to compare with the findings of the fieldwork carried out in Palestine. The possibility of publishing the papers will then remain, if they are deemed suitable for publication. The team questioned the ability of junior researchers to write such papers, and eventually decided that it would be best to outsource 4-5 papers to experienced researchers who have some background in the subject and who are resident in or are familiar with the country of study. Some difficulties were encountered in finding suitable researchers. It is estimated that the completion of all four papers will coincide with the completion of the fieldwork being conducted in Palestine, rather than with the end of the first phase and the submission of the first technical report, as envisioned in the Schedule of Project Milestones. The following papers are currently being prepared, and the possibility of commissioning other papers remains open:

- a) The relationship between customary law and state law in Israel
- b) The relationship between customary law and state law in Jordan
- c) The relationship between customary law and state law in Lebanon (with a focus on the civil war period and on the experiences of different religious, ethnic and nationalist sects)
- d) The relationship between customary law and state law in Canada (a researcher is currently being recruited)
- e) The treatment of customary law in the draft Penal Law and other legislation of the Palestinian National Authority.

3. Survey

The initial proposal and the grant conditions assumed that the fieldwork would include a survey, along with interviews. The project team decided that a survey would be superfluous and cumbersome. Rather, the fieldwork will consist of in depth, open-ended interviews with people involved in the informal and formal justice systems, as well as individuals and organizations that have a stake in either of the two systems, and several in-depth case studies in the different regions of Palestine. This has allowed more flexibility in gathering information and modifying the questions as the research progresses. The data collection phase of the project is divided into three phases, as described above.

4. Budgetary modifications

As a result of the above mentioned modifications to the original research plan, some budgetary adjustments will be necessary, although the total amount will remain the same. The modifications consist mostly of exchange of monies between line items.

These include:

- a) The amount originally allocated for a survey and a statistical expert will contribute to the funds needed to outsource the background papers, and for their possible publication in the last phase.
- b) The amount originally allocated for the fieldworkers exceeds the amount being spent, given that the qualifications of the fieldworkers hired are less than was anticipated. Monies saved from the fieldworkers line item will be used to support an IT programmer to work on the project to help in creating and maintaining databases, a webpage, and to provide any other technical support. This work is essential to the project's implementation, given the importance of building the web page and databases for the dissemination aspect of the project.
- c) Given that the junior researchers will not be fulfilling the main task envisioned for them in this first phase of the project, namely the background papers, one of the fieldworkers for the Ramallah area was hired as a junior researcher with the intent of retaining him for later phases of the project, and to continue at the Institute after the project is completed. The units originally designed for the junior researchers will be used in the third and fourth phases of the project. The number of researchers will be up to four at a given time. The idea is to retain several of the 8 fieldworkers as junior researchers so as to maintain continuity and to have researchers who are familiar with the project in general and the fieldwork in particular, involved in the descriptive and normative writing and participating in the workshops and conferences.
- d) The Institute's office in Gaza has been made available to the fieldworkers there. The office running costs were an unforeseen expense, but the office has proven to be necessary to support the Gaza fieldwork team. These costs will be covered from the money saved from the travel for training budget line item, given that the training was not held outside of Palestine as originally planned. Part of the fees for the IT programmer will also be covered by the travel for training funds. All of the above budgetary modifications are indicated in the financial report.

5. Timetable

Given the changes detailed above, the timetable for the project as stated in the proposal and in the grant conditions will be slightly altered. First, as noted above, it is estimated that the background papers will be completed up to three months into the second phase, given that they have been contracted out to individuals outside of the project team and will serve a different purpose than originally expected. Secondly, because the fieldwork is no longer conditioned upon the completion of the background papers, the actual fieldwork was initiated prior to the official start of the second phase, that is, in May rather than July 2004. The rest of the timetable remains much as originally planned. With continued planning for the coming phases, it is expected that some slight variations will be necessary.

Administration and Human Resources

The Institute of Law has provided the technical and administrative support necessary to ensure the smooth running of the project both within the Institute and for the fieldworkers in the various regions. The process of staffing the project progressed with few difficulties and the project team has experienced stability thus far. No problems are projected in the coming phases of the project.

Forecasted Expenditures for the next reporting period

The activities planned for the next reporting period and until the the end of the project do not vary greatly from the original plan. The main expenditures for the second phase of the project will include the payment of wages for the social scientist consultants, the fieldworkers, the researchers commissioned to write the background papers, and the junior researchers, once the fieldwork is completed. The purchase of the remaining laptops will also take place in the second phase. The third phase will include most of the expenses related to training and workshops. Expenses related to editing and publishing will be part of the fourth phase.

Project Schedule

Please see the attached project schedule (Appendix), which is a revised version of the workplan submitted in the original proposal, indicating the modifications discussed above. Please note that the first phase of data gathering was kept as part of Phase 2 of the project, although it was in fact completed within the first reporting period. This is to maintain a consistency with phase distinctions in the original project plan.

Project Outputs and Dissemination

The following is a list of project outputs to date, followed by a list of planned outputs in the coming phases of the project.

1. *Bibliographical database of secondary sources relating to informal justice in various regions*

This database is being constantly updated as new information is obtained. All available articles have been entered into the database for easy access.

2. *Project web page*

The beginnings of a web page are currently in evidence. It is being developed to house the bibliographical database mentioned above. It will also contain documents, such as fieldwork data, fieldwork reports, and other project documents. The objective of the web page is to facilitate dissemination of project results to interested parties, including the funding body, various stakeholders, and researchers.

3. *Literature Review*

This document provides an overview of literature available to the project team on informal justice in different parts of the world...

4. *Fieldwork Training*

The research team conducted a one-day training session with the fieldworkers from four different areas, including Gaza via video-

conferencing. This training familiarized the fieldworkers with the project objectives, reviewed the fieldwork methodology, and introduced them to the subject through a case study conducted by one of the fieldworkers and through directed discussions with a personality involved in resolving the same case...

5. *Data collection*

The first phase of the fieldwork has been completed, and the second is currently underway. The first phase produced transcribed interviews with over 40 individuals from 4 different regions. These interviews contain a wealth of primary source information on the scope, the nature and the role of informal justice in Palestine, and its relationship with the formal justice system from individuals directly involved in both systems.

The current phase will produce at least 12 original case studies from the 4 regions, to illustrate how different types of cases are dealt with and to determine the extent of regional differences in their resolution.

It is planned that the fieldwork data will be compiled in a database and presented on the project web page to facilitate access to the information by the project team, IDRC, and other interested researchers.

6. *Phase I Fieldwork Reports*

A report has been prepared by each fieldwork team summarizing and analyzing the data gathered during the first phase. They are in the process of being revised. These reports will help the project team in reviewing the results of the fieldwork and preparing the descriptive and normative reports planned in the second and third phases of the project that will in turn be the basis of the policy recommendations to be formulated as the end result.

Planned Outputs:

7. *Participation by Project team members in an International Workshop*

Two project team members have been invited to participate in an international conference entitled the *Summer Academy on formal and informal means to conflict prevention and resolution in the Middle East* in September, 2004. Although not financed by the project, this activity will give project members a chance to share the project results and learn about the work of other researchers in the field. This activity could prove valuable in making contacts with researchers involved in related fields and getting feedback on the methodology and results of the current project.

8. *Background Papers*

As explained above, the purpose of the background papers has been modified since the initiation of the project. Rather than providing a basis on which to establish assumptions, they will be proper studies

on the interaction between the informal and the official legal systems in several countries, including Israel, Lebanon, Jordan and Canada. Their purpose will be to provide insight into the way other countries with comparable backgrounds have dealt with the issue, both legally and practically. A paper will also be prepared dealing with the current situation in Palestine and with how draft Palestinian legislation such as the Penal Code has addressed, or failed to address these issues. It is expected that these papers will be published, if they are deemed suitable. Discussions with IDRC's representative during her field visit confirmed IDRC's interest in participating in such publication efforts and raised the issue of translating the papers to make them accessible to a wider non-Arab audience.

9. Descriptive Reports

Upon the completion of the fieldwork, the project team, along with several of the fieldworkers (who will be employed as junior researchers) will prepare a set of descriptive reports that detail the results of the fieldwork and provide a mapping out of the current state of informal methods of dispute resolution in Palestine. These will provide the basis for a State of Affairs document to be prepared for publication alongside the policy recommendations.

10. Normative Reports

After presentation of the descriptive reports to various stakeholders to get feedback and verify the fieldwork results, the project team will proceed to the normative writing phase of the project. This will consist of a set of analytical papers discussing the social and legal implications of the research. In particular, they will deal with the distributive impact of the informal and formal justice system in Palestine on different sectors of the population. These papers will also incorporate the information gained from the background papers to provide a comparative study of the current situation in different countries and to gain insight as to how other countries are approaching the issue of informal justice in a centralized state system. These reports will be the basis for the policy recommendations that will constitute the main outcome of the project.

11. Focus Groups, Workshops and Conferences

Several sets of workshops and a conference are envisioned in the coming phases of the project. The first workshop will take place upon the completion of the fieldwork and the preparation of the descriptive reports to obtain feedback from various stakeholders and respondents on the data gathered and to verify the results. A conference will be held upon the preparation of the normative reports to discuss the analysis of the research results. A final set of workshops will be held upon the preparation of a final publication to present the policy recommendations to the stakeholders, who will be identified in more detail at a later date. The nature of these workshops will be determined in more detail at a later date.

12. Final Publication

A final publication will consist of a set of policy recommendations on the nature of the future Palestinian judiciary, based on the results of the research. The publication will also include a State-of-Affairs document detailing the current state of the informal justice system in Palestine, and its relationship to the formal system.

Capacity-building

The first phase of the project alone has witnessed significant capacity building at the Institute of Law. In terms of personnel, the entire project team was newly recruited, including the senior project director, two social scientists, a project coordinator, 8 fieldworkers and one junior researcher (working initially as a fieldworker). Several of these fieldworkers will be retained after the completion of the fieldwork as junior researchers to work on the descriptive and analytical writing and to participate in the workshops and conferences to present the research results, and at least one will be retained beyond the completion of the project as a junior researcher at the Institute of Law. This will have a positive impact on the institutional reinforcement of the Institute of Law by giving employees practical experience in conducting primary and secondary research, preparing reports, presenting results, and working in a group.

The project has proved valuable in training young researchers to conduct fieldwork, a skill which is in great need of advancement in the Palestinian Territories in general. Despite the difficulty in finding qualified fieldworkers in different areas of the Palestinian Territories and supervising their work under the present circumstances, the first phase of the fieldwork has revealed important developments in the quality of the fieldwork and in the fieldworkers' general understanding of the project objectives, which has reflected in their ability to extract the needed information from their respondents. The research team's decision to hire a male and a female to work together as a team in each area, and for one of them to have a legal background and the other a sociological background, has had a positive impact on the quality of the fieldwork by encouraging an interdisciplinary approach to the subject, and by ensuring that due attention is paid to the status of females in the judicial system, both formal and informal.

The administrative experience has also been positive. The size and nature of the project requires constant follow-up and coordination. It has also provided the opportunity to collaborate with researchers outside of the Institute and outside of Palestine, which is important to continuing the tradition of academic exchange at Birzeit University in general and the Institute of Law in particular.

Impact

At the current stage of the project, it is difficult to assess a direct development impact. There are indications of an indirect development impact, however. Raising questions about the role of informal justice in Palestinian society and in the Palestinian legal

system in general opens the way for the discussion of such ideas among involved and interested parties.

The development impact that the project is expected to have will build upon this initial opening of the subject. The objective of judicial reform is not an easy one. There are many aspects of the judicial system that are in need of reform, and there are many external and internal factors that affect the system. Approaching the issue of judicial reform from the angle of the judiciary's relationship with a widespread and much resorted to system of informal mediation introduces new ways of conceiving the justice system as a whole and involves a much wider range of individuals in the process of formulating such a system. The project is dependent on the willing cooperation of individuals from both the formal and informal justice systems, and aims to facilitate the beginnings of a collaboration between the two in order to reconcile the two systems in a future Palestinian state. Through workshops and conferences and continued consultation with involved individuals, the project aspires to create serious and productive dialogue about the future of the Palestinian judiciary and the role that informal methods of dispute resolution can play in ameliorating the judicial system in general. Such dialogue and interaction is necessary for any attempts at development and reform.

As many respondents have confirmed, the informal system of justice is deeply entrenched in the society, and likely has wider popular support than the official justice system, given the latter's tendency to prolong cases and exacerbated societal tensions. Any attempt to do away with such a system would come up against much opposition.

Recommendations

According to the modifications mentioned, the following recommendations are presented:

1. Access to databases through IDRC has been helpful, given the difficulty in accessing resources from the Palestinian Territories. Any additional support in accessing resources would be useful.
2. Some clarification regarding the necessary procedures for modifying the budget would be helpful. This report details the proposed modifications.

APPENDIX

Project Timetable

	Week	Task	Human Recourses other than management and admin support	Time frame
Phase I	Weeks 1 – 8	Initiation of project Preliminary meetings with informed people to determine scope and variety of informal justice	Senior legal researcher, social scientists, project coordinator	8 weeks
	Weeks 5-14	Compilation of bibliography and literature review; Creation of database for circulation and dissemination of information	Project coordinator, senior researcher	10 weeks (+ ongoing updating)
	Weeks 9-10	Preparation of Research Plan, and fieldwork design	Senior researcher + social scientists	2 weeks
	Weeks 9-12	Recruiting field workers (8 people)	Senior researcher + social scientists	4 weeks
	Weeks 10-13	Setting terms of reference for background papers and recruiting researchers	Senior researcher + social scientists	4 weeks
	12-13	Preparation of guidelines for fieldworkers and questionnaires	Senior researcher + social scientists	2 weeks
	Weeks 12-16	Preparation of training materials and initial training of field workers (project objectives and methodology)	Senior researcher + social scientists	5 weeks
	Weeks 17-28	Preparation of background papers to inform descriptive and analytical writing...	Outsourced to 3 researchers + 1 junior researcher	12 weeks
Phase II	Weeks 17-20	Data gathering (Phase I)- Interviews	Senior researcher + 8 field workers + social scientists	4 weeks
	Week 21	Review of results from Phase I, refining fieldwork strategy	Senior researcher + 8 field workers + social scientists	1 week
	Weeks 22-27	Data gathering (Phase II)- Case Studies	Senior researcher + 8 field workers+ social scientists	6 weeks
	Week 28	Review of results from Phase II, refining fieldwork strategy	Senior researcher + 8 field workers+ social scientists	1 week
	Weeks 29-34	Data gathering (Phase III) – Interviews	Senior researcher + 8 field workers+ social scientists	6 weeks
	Weeks 35-36	Review of Final Reports	Senior researcher + social scientists+ 4 junior researchers	2 weeks
	Weeks 37-40	Data entry and verification	Senior researcher + 4 data entry persons + 4 junior researchers	4 weeks
	Weeks 41-44	Descriptive writing (mapping)	Senior researcher + social scientists + 4 junior researchers	4 weeks
Phase III	Weeks 45-46	2 Focus groups for presentation and discussion of findings with surveyed representatives	Senior researcher + social scientists + 4 junior researchers	2 weeks
	Weeks 47-52	Normative writing	Senior researcher + social scientists + 4 junior researchers	6 weeks
	Weeks 53-54	1 day conference for presentation and discussion of initial research results	Senior researcher + 4 junior researchers	2 weeks

Phase IV	Weeks 55-62	Preparation of final texts and publication	Senior researcher + Editor + Copy editor / Proofreader + 4 junior researchers	8 weeks
	Weeks 63-64	2 Workshops with stake holders	Senior researcher + 4 junior researchers	2 weeks
	Weeks 65-68	Report writing and finalization of work	Senior researcher + social scientists + 2 junior researchers	4 weeks
	Weeks 69-78	Reserve time		10 weeks