



**Husseini & Husseini**

Attorneys and Counselors at Law

## **This Week in Palestine**

### **THE RULE OF LAW A PALESTINIAN PERSPECTIVE**

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## THE RULE OF LAW: A PALESTINIAN PERSPECTIVE

Throughout the rise and fall of civilizations, each has contributed certain characteristics that have molded the historic development of the present. History can be a learning tool, educating us not only of our achievements but also of our shortcomings and mistakes. More recently, human history has been affected by a rapid evolution of science and technology on the one hand, and rules on the other that have shaped politics, economies, and societies. Humanity has witnessed the transition and transformation of regimes, empires, monarchies, and governments and experienced the effects on the political, economic and legal systems and throughout society as a whole. Regardless of specific systems and leadership, what they share in common is the requirement of a foundation of rules and a particular method for applying them. How the leadership, government and even public choose to implement and follow them is the determining factor and a measure for the existence of a rule of law.

The importance of having a durable rule of law is a subject that has been debated for centuries.

History records that Plato pontificated and debated this idea. It has been further finessed, interpreted and influenced by religious leaders, philosophers, royalty, and governments alike. To over simplify the topic, a rule of law is an established system of laws and procedures that protects people from governmental abuses or overreaching. It encourages due process and equality, and enables the creation and implementation of laws that all people, regardless of their status, must be held accountable to and also understand that their actions will have consequences. A rule of law is the established and recognized framework that guarantees individual rights and makes them possible.

A solid rule of law stems from a holistic approach. This foundation must incorporate a well-defined system of law and rule-making and proper interpretation and implementation by qualified individuals. In the development of an appropriate rule of law for a society, this must be accompanied by a governmental body or leadership willing to construct a constitutional base that safeguards privacy and freedoms; equality and civil liberty; freedom from oppression and undue interference by government. Rule of law, through a system of well-defined laws and rules, establishes a balance between individual, societal and government rights and obligations. Rule of law is static thus predictable; yet dynamic thus changing.

Narrowing the historical outlook to the last one hundred years, and even simply the last 50 years, the last decade of the 20<sup>th</sup> century and the beginning of this 21<sup>st</sup> century have given rise to changes that are affecting politics and government, economies, religions, and society en masse. Democracy, reform and rule of law are the coin-words for development these days. If democracy is the end goal, the development of a rule of law is essential in aiding and guiding the further development of:



- A functioning economy;
- A free and fair political system;
- A flourishing civil society; and
- Public confidence in law enforcement and the courts.

Actually working to reform and develop a rule of law is not as simple as plugging in a formula that can be applied in the same ways for every situation and every place. Mature states, with well functioning government structures and a system of laws, have to continuously assess, reform and often redirect. Thus, nations strive towards rule of law at a different pace and with varying degrees.

Without a doubt, the context of Palestine with its quasi-government in the form of the Palestinian National Authority ("PNA"), whose status remains affected by unresolved Palestinian-Israeli conflict and regional tensions, poses a tremendous challenge to the development of a rule of law based Palestinian system of governance. Careful consideration is therefore required in the process of designing a system that not only reflects democratic principles coupled with sound implementation procedures, but also respects the history and local traditions that have sustained a society exposed to seas of change imposed by multiple occupiers.

The development of the rule of law, one that fits the complexities of Palestinian society and statehood, is again multifaceted. Residues of occupying powers have yet to be effaced. Those who have occupied Palestine left behind a convoluted legal system and ineffective government structure/institutions. With each shift in powers, came a new legal system that affected the social, financial, economic and political systems. The systems varied from ones that were heavily based on religion to those that mixed western thought into the basis for constructing laws and approaching judicial review. Each change influenced the development of laws and rules that served specific policies and systems. In the end, a dysfunctional conglomeration emerged marred with chips and heavy knots.

The creation of the PNA in the mid Nineties began the process of developing a government with three separate branches, clear laws and rules, and means of a checks and balances system. This evolution, which is ongoing today, takes place all the while continuing to live under military occupation and having to experience the resulting restrictions and ensuing harsh measures. Yet, *ad hoc* planning and lack of consensus characterized the early stages of PNA development. Slowly, a Palestinian vision for developing and constructing systems of governance and accountability is emerging and intensified in 2001. The PNA is engaged in system-wide reform and is working to establish solid grounding in nation building. It has enacted a Basic Law and is preparing a constitution, defining and forming a rule of law system that will work for the future of Palestinians at the social, financial, economic and political levels. As stated in Article Six of the Basic Law enacted in 2002: “[t]he principle of the rule of law shall be the



*basis of government in Palestine. All authorities, powers, agencies, institutions, and individuals shall be subject to the law.”*

The rule of law needs, however, a base that includes designated roles and responsibilities that go beyond articulated notions of a Basic Law. Palestinians must reconstruct and follow the laws and rules of their society and keep them evolving. On one hand, it must be recognized that with a functioning rule of law there are limitations to power. On the other, the public must also be mindful that there are rules and regulators that must be trusted and respected. This balance will only occur once a system is in place where the voice of the citizenry can be heard and the public becomes more participatory in the process.

Obtaining national independence and a legitimate expression of Palestinian statehood, can facilitate Palestinians’ exercise of their intrinsic and unalienable rights to self-determination, ultimately resulting in the State of Palestine, i.e., construct their own models of government and society that best meet their specific needs. However, it takes international recognition and support of these steps. Israel, who has been calling for reform of the PA and setting conditions for dealing with the PA, has dealt a blow to rule of law principles by its repeated attempts to siphon away Palestinian inherent rights. The international community, who calls for reform and the rule of law, must be reminded that for Palestine, rule of law begins with adherence and implementation of UN Security Council Resolutions 242, 338 and 1397 because the freedoms that are sacred and guaranteed to all other nations must apply with equal measure to the Palestinians.