

LAWYERS, CONFLICT AND TRANSITION

RESEARCH INSTRUMENT: PALESTINE

BACKGROUND

This is a comparative project looking at the role of lawyers in conflict and transition in Chile, Cambodia, South Africa, Israel, Palestine, and Tunisia. We are interested in the role that lawyers play during conflict and authoritarian regimes, as well as transitional periods, in defending and promoting human rights, engaging with civil society, litigation strategies as well as conversely using law to inhibit transformation. Themes include:

- The meaning of the **rule of law in Palestine**
- **Palestinian legal culture** over time
- The role of legal collectives e.g. **Bar Association**
- **Public perceptions** of law and lawyers
- **Cause lawyering and social movements**
- Legal pluralism in Palestine (e.g. **international human rights law** or **religious law**)

Project is **independent academic research** funded by ESRC involving QUB Law and TJL.

INFORMED CONSENT, DIGITAL RECORDING AND ANONYMITY

Explain anonymity and consent, and digital recording.

INTERVIEWEE'S PERSONAL BACKGROUND

- (For Lawyers) What motivated you to become a lawyer?

RULE OF LAW AND POLITICS

- What does the phrase '**rule of law**' mean for Palestinians?
- Are international law and human rights seen as delivering justice or injustice?
- How is the term '**human rights**' understood in Palestine? When people use the term do they usually mean it in relation to the conflict with Israel or does it have a broader meaning? What is included or excluded (e.g. socio-economic, gender, LGBT rights)?
- From the outside it looks like the Israeli Occupation could be characterised as a **rifle in one hand and the law in the other**. Why have the Israelis spent so much time and energy on developing a huge legal framework and what are its consequences? Are the military courts '**legal facts on the ground**'? And what are the consequences?
- What are the implications of the **Israeli Supreme Court deciding to exercise jurisdiction** over the Occupied Palestinian Territories and to frame the questions of occupation as legal rather than political questions?
- What role do Palestinian lawyers play in encouraging the Israeli Supreme Court to hear judicial review petitions relating to the Occupied Palestinian Territories?
- How **receptive are the Israeli Supreme Court and Military Court judges** to arguments based on international human rights law? Why?
- How much of an element of **justice** that is based on judiciary/legal standards is present in the **military legal system**? (e.g. Court of Appeal established in 1989)

LEGAL CULTURE AND GENDER

- How would you describe the **legal culture** in Palestine?
- What has shaped the legal culture (e.g. legal education, political history, the powers of the Palestinian Authority, religious interpretations of law)?

- More generally, what influence has **relations with the international community** had on the development of Palestinian legal culture? For example lawyers, being educated in the US, UK or elsewhere?
- What about Palestinian lawyers with international contacts and networks? Are lawyers '**brokers**' (maybe channels?) between the local and the international?
- Does **international funding** of human rights work affect local legitimacy?
- **Gender** in the Palestinian legal community - Is law (and are lawyers) responsive to issues of gender? Is there sexism in the Palestinian legal community? How is it manifested? Is it a macho legal culture?

LEGAL COLLECTIVES

- How would you describe the role of the **Palestinian Bar Association**? Has it been a force for good in this society? Is it **independent**? (2,429 practicing members and trainees in the West Bank. The PBA estimates that about 200-250 persons graduate each year from law schools)
- Does the Bar **stand up for lawyers** doing human rights work?
- How effective has it been in promoting principles of the rule of law and human rights?
- Does it **speak (or maintain silence) with one voice**? Is it a player in the independence movement?
- What would be the benefits of developing a new **Honour Code** or Code of Ethics?

ROLE AND RESPONSIBILITY OF LAWYERS IN PALESTINIAN SOCIETY

- (For Lawyers) What are the characteristics of a typical Palestinian lawyer?
- **How are lawyers seen by the Palestinian people?** Are lawyers ever seen as arrogant? Greedy?
- **Cultural Capital:** Do lawyers **have power or influence** on local debates? Does the Palestinian public care about what lawyers say publicly? Do lawyers use their power wisely?
- **Do lawyers ever oversell the product of law in general or international law in particular and what it can achieve?**
- What is the relationship between **lawyers and (a) the Israeli military legal system; and (b) the Israeli government**? How do lawyers get access to prisoners in Israeli or Palestinian run prisons? Are the lawyers treated respectfully on such visits?
- Does the Palestinian political leadership or the Israeli state **try to intimidate Palestinian lawyers**?
- What influence does the **relatively small size** of Palestine have on its legal culture? e.g. lawyers or judges with very different political perspectives knowing each other on a personal basis, having been educated together etc
- Is it possible to have a legal system that delivers justice with an occupation?

CAUSE LAWYERING AND SOCIAL MOVEMENTS

We are particularly interested in lawyers who work for or with civil society groups, or victims, or social movements – lawyers who litigate on behalf of these groups or help them with strategy – sometimes called '**cause lawyers**'.

- (For Lawyers) Do you see yourself as such a lawyer? If so, **why** did you become a cause lawyer or human rights lawyer? How would you define your 'cause(s)'?
- What other types of cause lawyers are there in Palestine (e.g. women's rights, LGBT rights...)?
- Doing such work, how does one maintain **professional 'neutrality'**? **Does professionalism mean neutrality?**

- Does engagement in other forms of struggle make it easier for the Israelis to harass human rights lawyers?
- When was the **most difficult period** to be cause lawyer on Palestinian rights?
- (For lawyers in private practice) What are the strengths and limitations of this approach?
- (For lawyers in human rights organisations, e.g. Prisoners' Club) What is the place of lawyers within the organisation?
- Do you work in **cooperation with Israeli human rights lawyers and activists**? Are there any **power imbalances** in such relationships? Do you trust them? Which ones and why? Can you give any examples of good or bad forms of cooperation?
- Do you work in **cooperation with Palestinian human rights activists** within Israel or across the region (e.g. refugee communities in Jordan, Lebanon, Syria)? What advantages can such cooperations bring? What challenges arise?
- Do lawyers tend to **dominate civil society organisations** – have the loudest voices with the most technical information? Or are they more likely to be **assistants** to civil society leaders?
- Within social movements, do lawyers '**professionalise**' activism? Are they viewed as **conservative, legalistic**?

LITIGATION STRATEGIES

- **How effective is litigation** as a tactic compared to other strategies (e.g. political lobbying, demonstrations)? Give one or two examples where you can say yes, good lawyering, good litigation made a real difference to these people? Explain how this made a difference?
- Is litigation **expensive**? If not, what are the consequences for strategic choices?
- Has human rights litigation had a **significant positive impact on events outside of the courtroom**? Are there instances when litigation **distracted** people or resources? Cases that have provoked a **backlash**? Failed triumphs?
- What is **the relationship between lawyers and clients**? Who controls the relationship and the approach taken in cases? Has this dynamic changed over time?
- (For Lawyers) Are there clients you would not represent and, if so, why not? Has this changed over time?
- Where is it appropriate or inappropriate to reach **out of court settlements**? **Why do lawyers make deals with military prosecutors? Why should they not?** (eg Ad Dameer Strategic Call by Palestinian Lawyers to the Palestinian Leadership)
- In the first intifada, some Palestinian lawyers **boycotted** the military legal system. What were the consequences of this? Why are boycotts **difficult to maintain**?
- Are there any **legal settings or issues in Palestine that lawyers should boycott** today (e.g. use of **secret evidence** in administrative detention)? Where? Where should lawyers **draw the line**?
- Do you see a contradiction between defending activists and human rights defenders who are working against the public order (i.e. the occupation) and doing so within a legal system that is part of that public order of the occupation (that is oppressing them)?
- What role does the media play in your work?
- What role do international organisations/international representatives (i.e. diplomats) play in your work?

LAWYERS AND THE PALESTINIAN POLITICAL LEADERSHIP

- What is the relationship between **lawyers and the Palestinian leadership**? **Are there differences in the relationship between Gaza and the West Bank**?
- Is there a respect for the rule of law in the PNA?

- How receptive have the PNA been to criticisms (e.g. by al-Haq) on human rights abuses against Palestinian civilians by the security agencies or trying Palestinian civilians by the Palestinian military courts?
- Israeli human rights organisations are sometimes referred to as 'snitches' by the Israeli government when they criticise the state to the international community. Do Palestinian human rights defenders get the same criticisms? How do they respond? How does a Palestinian human rights activist who supports the struggle for independence justify criticising human rights abuses 'of your side' given the huge power of the Israelis? Do such criticisms undermine the struggle?

'STATE' LAWYERS

- What is your view of lawyers within the Palestinian Authority? Can a **lawyer who works for the government** (e.g. Ministry for Prisoner Affairs) advance the cause of justice and equality? Would you work as a government lawyer? If not, why not?
- Are there **cause lawyers** within Israeli government departments or the military? What is their role?

RIGHT-WING ISRAELI ORGANISATIONS

- We are interested in the **adoption of human rights rhetoric and strategies by settlers or more right-leaning Israeli organisations**. What impact do you think this has had? Is this a good thing in terms of **mainstreaming human rights**?

LAWYERS AND POLITICAL NEGOTIATIONS

- What role did lawyers play in **political negotiations** either with Israeli or between Palestinian organisations? Do lawyers **help** or **hinder**?
- Human rights NGOs have called for **mainstreaming human rights in negotiations** with Israelis. How important have human rights concerns been in previous negotiations? What are the benefits for Palestinian about using **human rights as a key template for negotiations**? Do the Palestinian political leaders care about what lawyers say publicly?
- Are many of the political leaders lawyers, and was their training as lawyers relevant to the pace and outcome of agreements?

LEGAL PLURALISM / ROLE OF INTERNATIONAL LAW

- To what extent do Ottoman, British, and Arabic tradition and religious law form part of the Palestinian legal system? Give us an example.
- Are there tensions between the secular and religious influences in Palestinian law?
- How has **international humanitarian law** shaped understandings of the occupation?
- Why is your opinion of the Palestinian efforts to accede to **international treaties**?
- To what extent do complaints to the **International Criminal Court** have the potential to create pressure/bring justice?

ETHICS QUESTIONS

- Explain ethical commitment to put something back – two reports for local community – ask if they have any ideas?
- Have you had any previous experiences (good or bad) with international researchers? What made them good or bad in your view? Does international research actually help the people of Israel? Why did you agree to take part in this research?