

# Rule of Law Assistance to the Palestinian Authority: Challenges Ahead

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In the Palestinian context, rule of law is severely hindered by the Israeli occupation, the internal Palestinian division and the lack of a democratic process. Thus, rule of law programs should address internal and external factors, e.g., through assisting in conducting free and fair elections, empowering citizens and strengthening civil society organisations which educate the public about their rights.

Since the birth of the Palestinian Authority (PA), the international community has pledged and delivered substantial amounts of foreign aid to the Occupied Palestinian Territory (OPT). In fact, the amount of aid the OPT received over the past 25 years has been [unprecedented](#) compared to other countries. The broad objectives of foreign aid to the PA aimed to support the peace process and to assist in building institutions for a future democratic State of Palestine. A considerable portion of foreign aid was allocated to supporting and developing the rule of law in the OPT.

## Germany Is One of the Largest Bilateral Donors

Overall, [Germany](#) is one of the largest bilateral donors, having, to date, committed more than [1.1 billion euros](#) for bilateral projects. Additionally, Germany's contributions to the OPT extend to, among others, funding [United Nations'](#) agencies and programs for the benefit of the PA and around [20 percent](#) of the European Union's donor aid to the OPT. In terms of providing assistance for the rule of law, Germany's [main area](#) of focus is supporting the Palestinian police force through equipment and training.

Furthermore, the current strategy for the [German Federal Foreign Office](#) (GFFO) rests on the presumption that the promotion of the rule of law leads to peace and development. As such, in order to resolve conflicts of interest and disputes by peaceful means, the GFFO argues that there must be mechanisms such as a well-trained police force, an impartial and independent judiciary and enforceable rights. Furthermore, the [European Union](#) supported various programs geared towards various components of the justice sector. Such assistance includes the fields of legal aid, juvenile justice, legal training, and judicial review.

## The Micro-Aid Approach is a Problem

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However, the main problem resulting from donor assistance towards the PA generally, and the rule of law, specifically, is the micro-aid approach it has taken. [According](#) to development experts and economists, micro-interventions tend to ignore the broader macroeconomic, political and institutional drivers of impoverishment and underdevelopment. While aid projects may yield satisfying micro-results, they generally do little to change the systems that produce problems in the first place. As such, one must tackle the real causes of the issue which initiated donor aid in the first place.

In the Palestinian context, the Israeli occupation and consequently the lack of a sovereign Palestinian state with full jurisdiction over its internationally recognised territories is an important external factor severely hindering the proper function of the rule of law. Indeed, the lack of a democratic process in the PA's system has resulted in:

- The solidifying of the Palestinian division leading to the formation of two separate authorities in the West Bank and Gaza Strip;
- The absence of a functioning and democratically elected Palestinian legislative council which exercises oversight on the executive authority;
- The concentration of power in the hands of the executive; and
- The [use](#) of the security sector and the judiciary as tools to protect and legitimize the executive's power.

Accordingly, a macro-aid rule of law strategy geared towards the OPT has to combat the above-mentioned obstacles with the aim of establishing a democratic and sovereign State of Palestine. As such, whilst combating internal factors is essential, it must also address external factors (i.e., the occupation). In the interim-period, this could include cooperation with the Israeli Authorities to expand the PA's jurisdiction to Area C in the West Bank. In the long-term, this would include playing an active role in assisting the Israelis and Palestinians in achieving a just and lasting peace with a sovereign State of Palestine.

A future rule of law assistance strategy for the OPT would focus on the above-mentioned obstacles first, before proceeding to assist in building and creating rule of law institutions. This requires the contribution of the international community as a whole. By devising a common international strategy, donor countries would be able to assist the rule of law – separately as well as jointly.

## Neither Political Will nor an Incentive for Change

Training and equipping the Palestinian security forces in the absence of democratic accountability have only assisted in creating tools of oppression.

One of the main [reasons](#) for the failure of rule of law promotion in developing countries is the sole focus on its institutions such as rewriting laws, training the judiciary and the security sector. This approach is based on the [conception](#) that once the “right” institutions are created, the rule of law will simply emerge. However, training the judiciary and rewriting laws are pointless if laws are not enforced or easily circumvented by those in power. Furthermore, although this [approach](#) may create efficient institutions, it fails to create legitimate ones. For example, training and equipping the [Palestinian security forces](#) in the absence of democratic accountability have only assisted in creating tools of oppression.

Moreover, this approach tends to [ignore](#) the cultural or political aspect of the rule of law which forms the relationship that citizens and the political elite have with their legal institutions and with each other. Accordingly, there must be a political will and an incentive to make a change. The status quo in the OPT does not assist in neither creating political will nor an incentive for change. By way of example, the absence of a legislative council has only further entrenched the culture of corruption and allowed both executive authorities in the Gaza Strip and the West Bank to issue [legislation](#) to consolidate their power.

## **Create a Will to Reform, Empower Citizens and Strengthen Civil Society**

[Thomas Carothers](#) argues that addressing the cultural or political element of the rule of law necessitates promoting the will to reform by the government and political elite. In the Palestinian context, the international donor community, specifically Germany, must take firmer steps that would create such a will to reform. This is specifically the case if assistance to developing the rule of law has a general aim of creating a democratic State of Palestine. Such steps could include assisting the PA in conducting free and fair presidential and legislative elections within a specified time period.

Moreover, Germany must coordinate with Israeli Authorities to allow elections to take place in East Jerusalem. In doing so, Germany could utilise its position as a member of both the European Union and the [Office of the Quartet](#) to coordinate with Israel, as it did coordinate to [expand](#) the PA’s security forces’ jurisdiction in the West Bank. The German government must [couple](#) such steps with a process of empowering citizens and strengthening civil society organisations in order to foster a rule of law culture. This could be done by assisting e.g., human rights organisations and law faculties at universities in organising programs which educate the public about their legal and human rights.

Civil society organisations must actively and genuinely take part in devising national priority plans and legislative reforms geared towards the rule of law. Otherwise, all attempts to reform the rule of law in the OPT will not produce any long-term results due to the absence of legitimacy of the executive and [judicial authority](#). Thus, by taking a culturally and politically sensitive macro-aid approach, Germany’s rule of law assistance strategy will be able to produce better long-term effects.

Within a context marked by exhausted institutions, a traumatised population, and a lack of peace, security, territorial sovereignty, and the right to self-determination, planning for a future state based on the rule of law and strong institutions is daunting and demoralising. Nonetheless, it is essential to address the grave injustices through legitimate and planned ways and to provide rule of law assistance that is appropriate to the real needs of the Palestinian population.

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