

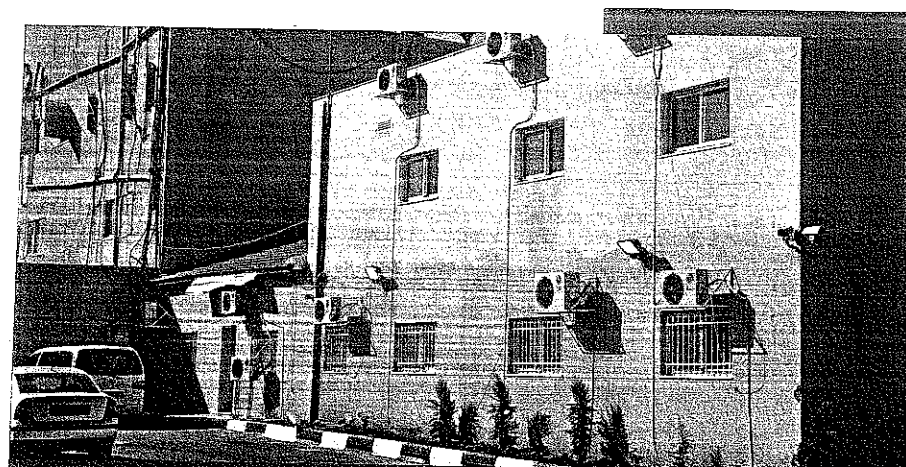
Mustafa Abdelbaqi
**The Administration
of Criminal Justice
in Palestine**

Development, Reform and Challenges

Schriftenreihe des Max-Planck-Instituts
für ausländisches und internationales
Strafrecht

Kriminologische Forschungsberichte
Herausgegeben von Hans-Jörg Albrecht
und Günther Kaiser

Band K 153



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Duncker & Humblot • Berlin

Bibliografische Information der Deutschen Nationalbibliothek

Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über <http://dnb.d-nb.de> abrufbar.

To the Memory of
Abdelbaqi Hussein Abdelbaqi
Who has gone to a better place

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c/o Max-Planck-Institut für ausländisches und internationales Strafrecht
Günterstalstraße 73, 79100 Freiburg i.Br.

<http://www.mpicc.de>

Vertrieb in Gemeinschaft mit Duncker & Humblot GmbH, Berlin

<http://www.duncker-humblot.de>

Umschlaggestaltung: Ramallah, Mukata, ID 617375, SZ-Photo

Druck: Stückle Druck und Verlag, Stückle-Straße 1, 77955 Eettenheim
Printed in Germany

ISSN 1861-5937

ISBN 978-3-86113-105-2 (Max-Planck-Institut)

ISBN 978-3-428-13453-3 (Duncker & Humblot)

Gedruckt auf alterungsbeständigem (säurefreiem) Papier
entsprechend ISO 9706

Preface

The Palestinian criminal justice system faces serious challenges. The challenges arise out of the process of establishing rule of law and criminal justice agencies amid continuing conflicts and violence, limited resources and social conditions that are – to say the least – not favorable to the implementation of internationally accepted criminal justice standards. The study presented by Dr. Abdel Baqi deals with these challenges; the study contributes to the growing body of research on transitional criminal justice. He describes the historical roots of the Palestinian criminal law and its current state, deals with ongoing law reforms and the particular problems faced in the process of building and reforming the Palestinian criminal justice system, and analyzes data he collected through interviews and questionnaires in various criminal justice institutions. In fact, the systematic collection of data on actors in the Palestinian criminal justice system and the careful analysis makes the study of Dr. Abdel Baqi a particularly valuable piece of research. The data open a clear view on attitudes and perceptions of various criminal justice actors and identify those areas and issues which present core problems in the transition to well-functioning and rule of law based criminal justice operations. Dr. Abdel Baqi widens the perspective by integrating informal elements of traditional Palestinian approaches to mediation and restorative justice. The Sulh, as it is called in Palestine, provides for a still widely accepted process of restoring peace and order in a society where – due also to problems of corruption and mismanagement – mistrust towards agents of formal social control persists and results in one of the most pressing challenges today, that is the creation of trust. Without trust in impartiality, neutrality and, ultimately, the rule of law the legitimacy of criminal justice institutions remains weak. The work of Dr. Abdel Baqi certainly will contribute significantly to laying a firm foundation for a Palestinian criminal justice system which is headed towards effective protection of citizens' rights, respect for international human rights standards and the efficient containment of serious crime.

Professor Dr. Hans-Jörg Albrecht

Acknowledgement

Over the last thirteen years, I had a unique opportunity to work and to be a fellow researcher in two high ranking research institutes in both Palestine and Germany. During the period 1999-2001, I participated in implementing a training project for the benefit of the Palestinian judges, prosecutors and judicial support staff. A few months later I was indulged in coordinating and co-authoring a series of socio-legal studies on the main Palestinian criminal justice organizations. I am indebted to Birzeit University for such a chance, and would like to extend my heartfelt thanks to all friends and colleagues there, especially Dr. Mudar Kassis, the former director of the Institute of Law, for his extended support, and Dr. Ghassan Faramand, the present director of the Institute.

Such a valuable experience in the Institute of Law made me enthusiastic to deepen my knowledge in criminal justice through a comparative study with the German criminal justice system. The different phases of the judicial process were studied comparatively through monitoring what happens to the accused from the time of his/her arrest to the disposal of the case. The dissertation, however, was the final product of a three year continuous study and work at both Albert Ludwig University- Freiburg and the Max Planck Institute for Foreign and International Criminal Law- Freiburg, Germany. This book would not have taken the shape it has without the wide experience and foresight of Prof. Dr. Hans Jörg Albrecht, the director of the Max Planck Institute in Freiburg. I, hereby, extend my gratitude to him for his assistance, support and encouragement. Many thanks are extended also to his secretary Ms. Gabi Scherer for her assistance in communication with the Max Planck Institute during my stay in Ramallah. I would like to thank Dr. Volker Grundies for his valuable efforts in analyzing the questionnaire using the SPSS program. I am also grateful to Mr. Michael Knecht for his assistance in publishing this book.

The writing of the eighth part of this book "the empirical study" was greatly enriched by numerous people who merit special recognition. I would like to thank everybody who contributed to the field research, namely: Prof. Dr. Ali Jarbawi, the Minister of Planning and the former Dean of the Faculty of Law and Public Administration at Birzeit University; Dr. Ali Khashan, the Minister of Justice; Justice Farid Jallad, the head of the High Court and the head of the High Judicial Council; Justice Isa Abu Sharar, the former head of the High Court and the former head of the High Judicial Council; Justice Abdullah Ghozlan, the head of the Judges' Association and member of the High Court; Justice Ahmed Al Moghni, the Attorney General; Justice Abdul Ghani Al Owiwi, the assistant of the Attorney General; Advocate Ali Muhana, the head of the Bar Association; Brigadier Adnan Dhmeiri, the Speaker of the Police; Prof. Dr. Camille Mansour, the former Secretary of the Judicial Steering Committee. I am also grateful to all the people who filled in the questionnaire among the judiciary, public prosecution offices, and the police.

I am also proud of the friendly relationship I have with all the nice people of the Catholic Academic Exchange Service (KAAD) in Bonn, Germany and would like to thank each of them for the generous financial support through granting me a scholarship over the last three and a half years. Special thanks goes to Prof. Dr. Josef Reiter, the President of KAAD; Dr. Hermann Weber, the Secretary General; Dr. Carsten Walbiner, the former head of the Near and Middle East Department at KAAD; Dr. Christina Pfestroff, the present head of the Department; and to my friend Mr. Hans-Wilhelm Landsberg for his valuable assistance.

Finally, I extend my deepest thanks to my mother, my brother Muhammad, my wife Eman, my sisters Ameerah and Amal, and to my lovely daughters Layan and Merah to whom I have often turned for support and assistance. Their sacrifices during the three years that I was working on this book were remarkable.

Mustafa Abdelbaqi

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INTRODUCTION

Historical Background

By the end of the First World War, the allied powers selected Britain as the mandatory of Palestine. On June 24, 1922 the League of Nations agreed upon a document called the Palestine Mandate, article 2 of which stated that the administration would "secure the establishment of the Jewish national home", while "safeguarding the civil and religious rights of all the inhabitants of Palestine."¹

On 29 November 1947 the United Nations Partition Plan for Palestine or United Nations General Assembly Resolution 181, a plan to resolve the Arab-Jewish conflict in the British Mandate of Palestine, was approved by the United Nations General Assembly. The plan partitioned the territory into Jewish and Arab states, with the Greater Jerusalem area, encompassing Bethlehem, coming under international control. The Jewish state was to receive 55% of Mandatory Palestine, whereas the Arab state was to receive the remaining 45 % of Mandatory Palestine. The failure of this plan led to the 1948 Arab-Israeli War. The result of the war was a catastrophe for the Palestinians who lost more than half of the territories assigned to them according to the UN General Assembly Resolution 181. However, Israel was established in 1948 on about 78% of historical Palestine, meanwhile the so-called now West Bank and Gaza Strip, the both of which constitute about 22% of the historical Palestine, came under the Jordanian and Egyptian rules respectively. This situation lasted till 1967 when the Palestinians lost the whole of Palestine after the so-called the six-day war of 1967. The Palestinians who stayed in their homeland, and were not obliged to emigrate, fell under the direct occupation of the Israeli military forces.

Since then, the UN Security Council has adopted several resolutions emphasizing the inadmissibility "of acquisition of territory by war," and condemning Israel for attempting to annex parts of East Jerusalem.² They affirmed also on the necessity for achieving a just settlement of the refugees' problem. However, neither the armistice agreement nor the 1994 peace treaty between Israel and Jordan or the 1993 Declaration of Principles signed between Israel and the Palestine Liberation Organization has pre-

¹ http://www.palestinefacts.org/pf_mandate.php

² Emma Playfair (edt.), *International Law and the Administration of Occupied Territories*, Oxford, 1992.