

Conference: “Pillars of Legislative Reform: Transformations and Challenges”

Final Statement & Recommendations

The Institute of Law in partnership with the Konrad Adenauer Stiftung, Ramallah, organized a conference titled “Legislative Reform: Transformations and Challenges”, from 1-2 November at the Institute of Law, Birzeit University.

One of the most considerable processes in the Palestinian Authority is the effort that has been made and still undergoing to reform laws and legal institutions. This process is of concern due to the impact it has on the progress and development of the emerging Palestinian state. The Palestinian Authority has undergone social, political, legal, cultural and economical changes under the banner of legal reforms during the last two decades. The conference aimed at instigating discussion regarding the nature and the development of legal reforms. The conference outlined the major developments in law reforms during the previous years and contemporary times while putting the whole process in its perspective.

Conference participants discussed the legislative process in Palestine over the last years. It was apparent that albeit the progress achieved in the area of legislation, the Palestinian legislative process still suffers some lacuna that undermine its effectiveness and the effect it is supposed to serve. It is not clear to agree on a consolidate vision toward the modernization and development of this process. The society and public opinion consider the legislative process confused and unclear being sometimes considered ineffective in achieving the desired change and development.

It could be possible to sum up the failings of this process in one phrase (lack of legislative process), which is visible in the Palestinian legislative process in a number of issues:

1. Legislation is enacted in a non-orderly manner
2. Lack of application of a legislative system policy, henceforth Palestinian legislators omitted working on pertaining laws simultaneously or consecutively. As a result, up till now, we are unable to complete any legislative package in major fields (e.g. administrative law, civil law, criminal law, etc.).
3. Absence of a preparatory policy to organize matters that a legislator must consider in the legislative process prior to working on any piece of legislation; this policy includes a number of aspects, including financial preparedness, material readiness in all structural, human and legislative areas that are necessary for good enforcement of the law once issued and applied.

With an analytic view of the reasons causing this pitfall in the legislative process in Palestine, we can summarize them as follows:

I. Weak empirical research:

Any legislative reform process requires first an assessment of the current legislative path to measure the ability of existing legal mechanisms and their extent of success in accomplishing the goals they were devised for. It also necessitates a scrutiny of the laws in force and their amendments, in addition to being updated with the social phenomena addressed by legislator. Moreover, it is important to review the changes at local and international levels, which requires research centers to carry out such studies in order to demise the legislative reform on appropriate pillars that stem from the Palestinian reality and enable legislators devise and develop the legislative policy. The role of research centers (think tanks) in the making of the law cannot be ignored in case we wish to achieve legal rules that respond to the life evolution and people's needs. Research centers can also find realistic solutions to help legislators in the reform and development process.

II. Lack of legislative policy

Devising legislation to govern different aspects requires a general regulatory framework to ensure their synergy and specify features of reform targeted. Therefore, prior to reviewing laws, a document must be prepared to give clear specification of the schools on which the political, economic and social methods are devised for the sake of regulation and legal protection. Any legislation requires a pre-definition of its philosophy and an assessment of its effectiveness in controlling the domain being regulated and protected thereby.

III. Inadequate regulatory framework of the legislative process:

Notwithstanding some legal texts that specify legislative mandates, they do not describe the process clearly nor do they draw its features to identify the 'who, when and how' we legislate.

IV. Un-matching legislation to the Palestinian reality (legitimacy and effectiveness)

The problem suffered in the Palestinian legislative reality in Palestine is the lack of synergy, at times, between legitimacy and effectiveness. The equation for any effective legislative system should be two folds: legitimacy and effectiveness. However, in Palestine, we find the legitimacy without any effectiveness as is visible in a number of un-enforceable laws. In analyzing this point, we discover a number of factors that can be identified as internal impediments to the legislative process, including the afore-stated points and others that will be presented later. We cannot ignore the external factors that caused such disruption; they include the nature of legislative assistance mainly the form of assistance implemented in cooperation with donors with attempts to impose certain kinds legislation without any consideration of Palestinian reality and particularity.

V. Limited capacity of the institutions working in the area of legislation:

Some of the criteria and mechanism introduced by comparative legal systems in the framework of legislative development, including – for example but not limited to – the Regulatory Impact Assessment (RIA) document, is difficult to introduce into the Palestinian system. Preparation of such documents requires developed performance, which is unavailable in our existing Palestinian institutions. Moreover, many of the human resources working in the public institutions concerned with the legislative process lack knowledge of the subject and technical bases of this process.

VI. Noncompliance with the unified guidelines and rules of drafting:

In spite of the existence of the legislative drafting manual, with the minimum requirements to realize a harmonious drafting process among Palestinian laws, the non-adoption of the manual by different governmental institutions causes confusion in enacting the Palestinian laws on the one hand. On the other hand, up till now, the Palestinian legal system did not consider a clear mechanism to review the laws enacted (post-assessment).

VII. Legislation under exceptional circumstances (State of Emergency):

After the second legislative elections in the year 2006 and the political division between Fatah and Hamas, the President of the Palestinian Authority started issuing legislation based on Article 43 of the Palestinian Basic Law. The usage of Article 43, result in issuing many pieces of legislation, mostly uninformed, unjustifiable, and in certain cases unconstitutional and in contradiction to basic human rights.

Recommendations

The conference concluded a number of practical recommendations for competent agencies in the Palestinian Authority, which we present here-below:

1. Establish a partnership-based relation between think tanks working in the area of legislation comprising Palestinian Authority's institutions concerned with the legislative process in order to devise a methodological action plan for legislative reform and put forth criteria and requirements of such reform, taking in account local needs and priorities.
2. Establish a central agency entrusted with the making of the legislative policy to be formed in cooperation between the executive and legislative authorities.
3. The government should present its legislative program at the inception of the parliamentary term, explicating its policy and legislative priorities.
4. It is necessary to promulgate a law to detail the different phases of the legislative process and identify the roles accurately to enshrine the principles governing the law-making

process (laws and regulations) and control the distribution of functions (roles) among the organizations working in the area of legislation. The principles of the legislative process should be based on a balance between individual liberties and public interests on the basis of a logical relations between the means used in legislation and serving the purposes it seeks to realize.

5. Amend the laws regulating the legislative process in Palestine so that every entity wishing to propose a draft law shall abide by submitting it to the different ministries for comments, which will prevent contradictions in the laws. It is also important to present draft laws to the Ministry of Finance for opinion on the cost on the public budget, taking into consideration the introduction of public consultation to the extent possible as a basic step for the enactment of legislation.
6. Compel any agency proposing a law to submit to explanatory memos, one of which explicates the needs and goals of the law, while the second details its economic cost.
7. Revise the legislative drafting manuals with a true will by decision-makers to adopt the manuals as compulsory documents and guidelines to help achieving legislative synergy between Palestinian laws.
8. In tandem with government effort to create an e-government, we recommend to dedicate special attention to IT tools in the legislative process, mainly assistance to legal databanks and effort to computerize the legislative process.
9. Develop human resources capacities in formal institutions concerned with the legislative process by providing them with training programs in the area of legislation in general and in legislative drafting in particular, with a special focus on the use of IT in drafting.
10. Regarding the legislative process under the current circumstances, we recommend to devise a number of criteria to regulate the exploitation of Article (43) of the Basic Law and limit the recourse thereto while activating oversight authorities, mainly the judiciary, to control the legislation issued in accordance with this article.