



An-Najah National University
Faculty of Graduate Studies

**TRANSITIONAL JUSTICE IN PALESTINE:
BETWEEN IMPLEMENTATION AND
CHALLENGES**

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I declare that the work provided in this thesis, unless otherwise referenced, is the researcher's own work, and has not been submitted elsewhere for any other degree or qualification.

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ACHIEVING TRANSITIONAL JUSTICE IN PALESTINE: BETWEEN IMPLEMENTATION AND CHALLENGES

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Abstract

The purpose of this research was to shed light on how transitional justice works and can develop within the context of the Palestinian situation, given that Palestine continues to be politically divided, subject to occupation and facing ongoing colonial settlement policies, and how a Palestinian model for transitional justice can be developed to lessen the impact of the divisions that exist within Palestinian society as well as the loss of political and institutional unity.

The study defined and clarified key concepts and then focused on the Palestinian context in particular, paying particular attention to the role of civil society, civil society institutions and Palestinian citizens' levels of legal awareness and the contribution of regional and international actors to the transitional justice process in Palestine. The researcher identified many of the key barriers to implementing transitional justice in Palestine, among these were external interference, continuing Israeli occupation and political division within Palestinian society, which has led to numerous narratives among Palestinians. A preliminary model of transitional justice that combines aspects of both retributive and restorative justice was developed and presented as being unique to the Palestinian context in order to promote national cohesion and unity, to end the existing divided state of affairs, to establish a full and comprehensive truth, establish gulf legacy and promote a heightened sense of national unity.

The results of this study are that the implementation of transitional justice in Palestine is a complicated process as a result of a lack of consensus on which entity is the legitimate governing authority over the Palestinian government due to the politicization of the judiciary as a direct result of the political divide between Fatah and Hamas. This has also contributed to the weakening of public institutions and the erosion of civil liberties afforded to Palestinian citizens under the Basic Law and has led to widespread political

arrests and torture of Palestinians by both parties, even though the Palestinian narratives are varied.

The researcher provided proposal for action, the primary of which is the need to establish a national dialogue that is inclusive of all segments of Palestinian society, especially Fatah and Hamas, and that emphasises collective rather than individual or partisan interests. This would help to promote the achievement of justice for all Palestinians as a matter of national concern. Transitioning from a state of conflict to a state of justice and equality will require a commitment to transitional justice. Transitioning toward a society that promotes equality, justice, and non-discrimination will also require political unity among all Palestinians.

Keywords: Transitional Justice, Restorative Justice, Political Division in Palestine.

Chapter One

Background and Theoretical Framework of Transitional Justice

1.1 Background to the Division in “Internal Palestinian Affairs” Between the “Major Political Factions”

The longest-lasting and most notable internal “Palestinian political” division that arose within the context of the Palestinian national movement is not accidental. This division has altered the modes of governance, strategies for “national action”, and “institutional arrangements” in both the “West Bank” and “Gaza Strip”. Additionally, the larger political and social framework of Palestinian politics has been shaped by the conditions created by settler-colonialism, the existence of fragmented internal political organization, and weak governance institutions. There are additional divisions between Palestinians that result from political disputes about strategy or different visions of national liberation.

The situation at hand refers to a chaos of external pressures as well as internal contests. These contests are over legitimacy, governance and access to resources as well as power.

In January 2006 elections were held for the “Palestinian Legislative Council” elections for the “Palestinian Legislative Council” were clasp by the Authority. “ Hamas” won an unexpected electoral victory when it won 74 out of 132 seats in the PLC elections. “Fatah” won 45 seats. The anti-incumbent campaign was spurred by dissatisfaction with the ruling regime along with disillusionment in “Northeast Turkey” (Newman, 2010). After the polls, the US, EU, Israel and other international players announced their unwillingness to recognize the “ Hamas” government unless it agreed to “certain political conditions” most notably “the renunciation of violence”, “recognition of Israel” and “acceptance of past agreements”.

After elections, Mahmoud Abbas remained President of “Fatah” while “ Hamas” created its tenth government. Both “parties” created a divided system with two major sources of authority (presidential and parliamentary). The continuation of an international boycott (which the U.S. sponsored) and the ongoing competition between the “parties” for internal security has led to increasing tensions between them (Milton-Edwards & Farrell, 2010). From late 2006 to mid-2007, confrontations became increasingly violent until “ Hamas” gained control of Gaza in June 2007. Following this, there are two separate

parallel governmental authorities and two completely different “Criminal Justice” systems; one in the “Gaza Strip” under “ Hamas” authority and one in the “West Bank” under Fatah’s “Palestinian Authority”. The result has been a fragmented Palestinian judicial system where there are two separate ministries of justice, two separate internal affairs and security services, and two separate quasi-judicial institutions which do not recognize each other. In addition to this fragmentation, both the courts in the “West Bank” and Gaza have issued conflicting rulings between one another. Security services have also arrested and detained some individuals based upon perceived political affiliation (or perceived political affiliation) and not in accordance with one single authority or by following the same set of laws. As a result, the “Palestinian Authority” no longer has any constitutional integrity. For this reason, the truth, accountability and reparations processes have been politically motivated to some extent. Throughout the last several years, Palestinians living in the “West Bank” and those living in the “Gaza Strip” have been subject to the different forms of authority being enforced in these territories, disrupting the possibility of collective, national justice efforts. This fragmentation has also led to a disruption in the integrity of the Palestinian legal system.

The application of the law has been inconsistent, undermining the ability of Palestinian citizens to secure their right to a fair trial, and contributing to a culture of impunity for abuses committed by both sides of the “internal Palestinian divide”, which has created a great deal of cynicism within Palestinian society about all aspects of the political and judicial systems. The reconciliation processes that have taken place as 2007 “Mecca Agreement”, “The Doha and Cairo understandings” and “The Gaza Beach Agreement” have not led to any significant reconciliation; therefore, they have been unsuccessful. This implies that “the Palestinian internal division” is not only “political issue”, but “institutional and legal” also, which directly reflected the prospects of “Transitional Justice” in Palestine.

The impact of multidisciplinary, dual leadership, and victim narratives is preventing the truth, accountability, and reparations. If structural challenges are not addressed in terms of keeping “Transitional Justice” challenges on its feet, it can create more divisions.

1.2 “Transitional Justice” and its Definition and Dimensions

“Transitional justice” refers to a series of measures and methods used to aid a transition from a period of violence or repression to a period of peace, stability and democratic governance. To achieve this goal, “transitional justice” is comprised of three major components: a) rehabilitation of “victims”; b) providing accountability for perpetrators; and c) restoring trust in government institutions through truth-seeking. “Transitional justice” encompasses a wide range of activities including, but not limited to: truth commissions, reparations for “victims”, prosecutions of war criminals and establishment of commissions to provide recommendations for the creation of new governing institutions. Overall, “transitional justice” encompasses the entire array of actions and processes used to address the aftermath of repression, conflict and other systematic human rights violations. “Transitional justice” originated in the 1980s and 1990s as a response to military rules transitioning to democracies in some Latin American countries, but has since been used as a means of coping with the past in a number of post-conflict regions in Africa, Eastern Europe and Asia, as well as to help societies regain democratic legitimacy. The OHCHR believes that Transitional Justice is made up of comprehensive law-abiding acts such as telling the truth, holding criminals accountable, making amends and changing how laws operate in society through judicial reform (United Nations Office of the High Commissioner for Human Rights, 2009). Each of these acts serves an independent function on its own. However, they are related by virtue of their effects and ultimate goal of reforming the judicial branch so that judicial services can prevent future human rights violations. The truth-telling pillar provides a collective right to know “what happened and why it occurred”. Truth commissions (“fact finding bodies”) regularly monitor incidents of violence or political repression for trends. In doing so, they take note of the testimony of those who have been negatively affected and report on the root causes of the violence or political repression. Without holding those responsible for the crimes accountable (i.e. punishing them) through actual, meaningful enforcement of laws, though, any act of confessing to those responsible for committing crimes will only serve the purpose of showing remorse.

The aim of criminal accountability, whether it be through the “National Courts” or in other mechanisms, is to codify the “moral condemnation” of such violations into “precise responsibilities”. It prosecutes people responsible for war crimes, torture or political

repression. This is strengthening the rule of law and state institutions. Concentrating on accountability can result in undermining the concept of justice especially when one does not make an effort to understand the victim's position. The term reparation has a range of meanings and it refers to the act of acknowledging the grievances of the victim. When it comes to reparation, it could be in the form of compensation, rehabilitation, restitution, and other similar actions. Reparation rights denote the fact that "victims" have rights to expect reparations for the grievances incurred on them. Besides, it considers the victim not only as a passive victim but an active right holder who must have their recognition and protection restored. We should remove the systems allowing the violations to take place or go on. In this case, it can be suggested that judicial reforms, police and security services restructuring, "constitutional guarantees", inclusion of "human rights" standards in the functioning of "government institutions" etc.

The primary purpose of institutional reform is to change the architecture of a public organization. It is also aimed at re-establishing the power-society interface, based on the idea of legitimacy, accountability and respect for each other's rights. These four pillars can be connected to each other. For instance, the truth without any accountability may lead to the triumph of impunity; prosecutions without any reparations can isolate "victims"; reparations can positive impact on institutional reform so that abuses are not repeated; while reform without any truth can undermine the moral and history basis of the violations to be abused. Therefore, "transitional justice" cannot be considered as a separate process. Transitional justice implies the concept of rules that are to be applied through the process of political transition. According to De Greiff (2012), the effectiveness of "transitional justice" depends on the historical and cultural features of each particular society. This is especially relevant in the case of Palestine. This is due to the fact that in this country there are two overlapping processes taking place at the same time. On the one hand, the colonially caring out the process of resettlement, and on the other hand, the split of the "Palestinian political" movement in 2007.

The issue of "Palestinian people" is simultaneous in terms of two different injustices: the first one starts from the injustices of the occupation of Israel and the second one comes from the internal injustices provoked by certain divisions in the political system. It is possible for the four components of "Transitional Justice" to be implemented while taking into account these distinctions. What is of great importance is the need to substantiate the

facts regarding acts of arbitrary detention, political prosecution and limitations to freedom of speech. The process of investigation of torture and other crimes committed against the “Palestinian people” and Palestine, which takes place in the context of “Transitional Justice”, should be considered as one of the initiatives helping the “Palestinian people” to get justice.

In Palestine, “Transitional Justice” represents more than a technical or legal question. The aim of this process is to restore the legitimacy of the State’s governance, reinforce the public confidence of and the agents of law enforcement, and transform competitors into a national system based on accountability and human rights. As a result, internal Palestinian reconciliation cannot be sustainable without addressing the violations that have occurred as a result of political and institutional division, and without re-establishing a single “legal framework” guaranteeing justice, equality and non-repetition.

1.3 The Significance of the Study in Palestine

Internal “Palestinian political split” is complex, entrenched, and problematic. This has a huge impact on the governance structure and legitimization of institutions. The ongoing split between the major factions of “Palestinian politics” has led to the need for initiatives aimed at making reconciliation possible through the creation of accountability and a longer lasting institutional political unity. The persistency of the gulf has led to ongoing fragmentation because the legitimacy of institutions is reduced and there is not sufficient process made with respect to democracy shown in such situations. Thus, the Palestinian condition cannot be regarded as an ordinary one and should, therefore, not be understood through the conventional prism of “transitional justice”, which is a term that is generally used in relationship to the situations dealing with breaking down of political regimes or the completion of civil wars. It defines the situation characterized with weak sovereignty in the country which is under the external influence of colonial domination as well as internal disintegration of the “Palestinian political system”. The authors Scharf & Williams (2010) emphasize that the divisions within the “parties” at the national level cannot only be treated from the political point of view but represent the issue related to the provision of basic services and implementation of legal and constitutional norms. Even though a number of initiatives concerning reconciliation between “parties” have taken place, nothing has been done with regards to the addressing of the violations of human rights and tortures.

In a great number of cases where “violence and internal violations” are initiated and sustained, the “victims” have remained beyond the political and legal grey areas of mainstream suspicion. Political speech still invokes binaries like loyalty and betrayal and similar notions. These counter-forces may block the emergence of a justice path that is truly transformative or restorative. Fixing these problems is not just about fairness to “victims”. Rather, it is a condition precedent to rebuilding a shared political identity and counteracting the dwindling public confidence in the governance of the country. In this perspective, “Transitional Justice” is not thought of as a tool to punish either side or regenerate divisions. According to various other people, this way re-organizes our understanding of truth, accountability, reparations and institutional reform. Through this assessment, we are making a contribution to theoretical and policy debates around “Transitional Justice” by asking whether its implementation is feasible in a context that does not entirely fit the mold for traditional models. The aim is to identify the similarities between the ethical ideas of justice and reconciliation and the “Palestinian political” reality with its multiple centers of power and low quality of institutional unity.

The study has shown that focus should be from within the Palestinian, not externally from ready-made order of other “parties”. The aim is to offer mechanisms that not only articulate the legal but also seek to constructively develop a politically relevant, socially responsive and culturally appropriate framework of justice for the Palestinian reality. This study aims to open the door to critical reflection that will provide proposals for the restoration of the Palestinian unity not through the elimination of political difference but rather through the management thereof through just fair transparent processes that can recreate trust between society and the various institutions.

1.4 Research Questions

This researcher tried to answer the following questions through the study:

- First: What are the main obstacles facing the implementation of transitional justice between Fatah and Hamas?
- Second: Can transitional justice be adapted to the Palestinian context?
- Third: What mechanisms are most appropriate to achieve transitional justice in the Palestinian situation?
- Fourth: How can justice be integrated into national reconciliation efforts?

1.5 Research Problem and Core Issues of Inquiry

The Palestinians' political split since 2007 has fragmented the Palestinian system of authority, creating a parallel "Palestinian political" and law enforcement and judicial system. The institutions' double functions thwarted national reconciliation, undermined the rule of law, and curtailed the space for accountability in the "West Bank" and "Gaza Strip". "Transitional Justice" becomes complex due to many potential "parties" that could be implicated. The issue isn't just that there are grievances or violations that are intercommunal. The absence of some form of agreed legal and political framework that could deal with these things fairly and selectively also plays a part. While its goal is to uncover truth, make reparations and reform institutions, the Palestinian case has likely been impeded more by political polarisation, weak institutions, and competing narratives of victimisation than by anything else.

This research focuses on the question: How can a Palestinian "Transitional Justice" model be structured to avert the fallout of internal political and institutional splits? So, how do we reframe reconciliation from a political settlement between adversaries to a process founded on truth, accountability, reparations and institutional reform?

In this study, it is assumed that there will be no viable Palestinian reconciliation if it does not go beyond power-sharing or the rearrangements of the relationship between leaders that caused the violence, not acknowledging the rights of the "victims" and do not reconstruct the justice institutions on a shared basis. The study examines the opportunities and threats for the achievement of "Transitional Justice" in the Palestinian context, considering it a process for the rehabilitation of institutional legitimacy and national reconciliation. The research will examine to what extent the "Transitional Justice" principles, especially that of truth, reparations and institutional reform, feature in the official discourse, agreements and statements of both sides.

1.6 Objectives of the Study

1. The aim is to provide both theoretical and practical contributions for the better understanding of transitional justice in the context of the complex political, social, and economic situation in Palestine.

2. This entails looking into the possibility of employing transitional justice in the situation with such a complicated political reality which is characterized by the existence of internal divisions, as well as being under the pressure of Israeli settler colonization, unlike traditional settings which involve armed or civil conflicts.
3. In addition, it includes finding out the reasons for the emergence of the political division in Palestine, which will allow determining the opportunities for applying transitional justice (truth, accountability, reparations, and reform) in order to attain reconciliation between different Palestinian factions.
4. More importantly, the research analyzes how political forces and institutions deal with reconciliation, accountability, violations, and reforms which would enable the development of an innovative model of the transitional justice system in Palestine based on the recommendations obtained.
5. Evaluation of the theoretical framework and concepts of transitional justice.
6. Studying the history of the Palestinian political division.
7. Examination of the available opportunities for implementing transitional justice.
8. Determination of the structural, political, and legal barriers for transitioning to justice.

1.7 Study Methodology

The actual method used in this research is descriptive-analytical method as this is the best way for the study of this topic and texts because this topic requires the use of texts, their dismantling and analysis of meanings and implications from them as well as legal research because the descriptive-analytical method is the best as well as effective method in legal research because it allows to make precise analysis of the text according to its main parts and discovering its purposes and getting legal decisions from it.

The application of the descriptive-analytical method in this research was done through several steps:

The first step was the gathering of relevant scientific and legal materials and information on the given topic though it is scarce and hard to find.

The second step was the analysis of texts and interviews in their main component parts as well as in the connection with the history and the social background of its creation.

The third step was studying how the different texts relate to each other and how they are consistent or contradictory.

The fourth step, the researcher made conclusions and recommendations on the basis of the analysis carried out previously, using legal and logical arguments. Furthermore, the research was based on the use of primary sources such as books and journal articles on the topic, Reports of the United Nations, international law sources, documents on reconciliation and political documents, and previous international practice. The secondary sources applied for the purpose include university theses, academic articles, international resolutions and agreements, and reports on human rights released in specialized journals.

The research was conducted with the help of descriptive-analytical method and based on the objective principles.

1.8 “Transitional Justice” is not a New Concept

“Transitional justice” refers to a set of mechanisms (legal, political, moral) used to address the “legacy of systematic victimization” in societies transitioning from conflict, authoritarian regimes, or colonial rule. “Transitional justice” attempts to balance justice and accountability with peace and political order; and it encompasses various means through which societies may bridge the gap between war or violence and democracy and peaceful coexistence. “Transitional justice” may include legal processes, but it encompasses much more than just one legal process. “victims” may be recognized and rehabilitated, truth may be established and the possibility of violence and conflict re-emerging will be prevented. The sanctioning system is not intended solely to punish criminal conduct, but also to respond to the legal, institutional, and social consequences of violations. As of the late twentieth century, “transitional justice” has become its own field of study and practice, primarily in Latin American countries (such as Argentina and Chile), post-apartheid South Africa, and Eastern European countries following the collapse of their communist government. One topic that we repeatedly talked about was

how to create an authentic political and social order while not disregarding and poisoning the just results of previous violations of human rights.

“Transitional justice” has developed into a tool or proactive response to the issue of how we will handle our individual and collective wrongdoings; that is, through the mix of truth, accountability, reparation and institutional reform (Teitel, 2000). International organizations, most notably the United Nations, have assisted with avenues to create post-conflict societies through a tool called “transitional justice”. “Transitional justice” is an eclectic set of processes and systems associated with society’s efforts to come to terms with expressions of grief and sorrow, which we can never have again. “Transitional justice” encompasses all processes and systems we put in place when there are gross violations of society’s civil rights. In other words, there are many ways to articulate this. As stated previously, this definition provides direct correlation between reconciliation and justice.

In demonstrating that “Transitional Justice” addresses the grievances of individuals and attempts to restore social harmony and rule of law, past infringing acts will be analysed within the context of the crisis/issue created by those events and how such acts have impacted society’s and the institutions’ relationship, memory and public trust. “Transitional Justice” is not applicable in all instances to every situation; however, De Greiff (2006) states that the strength and successful implementation of “Transitional Justice” is based on the flexibility that allows different societies to develop and execute their own unique systems of justice based on their respective cultural, political, and historical realities. Thus, it gives each society the opportunity to arrive at its own balance of truth vs. stability, justice vs. peace, and memory vs. reform. Flexibility in the implementation or application of “Transitional Justice” is particularly important in prolonged and complex conflicts where there is not always a defined point at which a society can declare that a post-conflict phase has begun (as is the case with Palestine).

The Palestinian land does not fit into any typical structure. There is overlapping settler-colonial rule, there are two factions of a dispute within the political infrastructure, the potential for having no actual statehood or sovereignty, and many different centres of legitimacy, etc. Scholars such as Gready & Robbins (2014), who have helped shape the discourse around “Transitional Justice”, have introduced the idea of “transformation”al

justice. Gready & Robbins propose that any framework for “Transitional Justice” should consider the structural inequality and the social and economic exclusion that lead to violence and the injustices that are created or contribute to the structural inequalities, exclusions and violence (Gready & Robbins, 2014, p. 340).

In turn, “Transitional Justice” is intended to go well beyond the courtroom, to respond to the continuous social inequalities, economic poverty and marginalisation that Gready & Robbins believe generate and sustain conflicts (Gready & Robbins, 2014, p. 345). The significance of “transformation” in the matter of Palestinian is specific because a regime whose elements are of colonial domination, internal division and economic dependence generates structural injustice in a complex fashion. In light of the need for unity among those who would seek to push a common representative demand, it may be worth suggesting a fairly detailed public law reform agenda which would probably enjoy generally acceptability, such as a change to the first past the post electoral system. “Transitional Justice” has a law-based design although it draws on tools and analysis from other disciplines. The area has origins in different fields on criminal law & human rights law. Its mechanism is almost identical to that of the traditional legal model but broader in its goal; it is to rebuild trust, restore injured societies and create necessary conditions for democratization. In Palestine, analysing accountability amongst the “parties” to the divide may be viewed through the lens of transformative justice. This means that a parallel political order must be reconstructed that is just, inclusive, and able to deal with injustices. “Transitional Justice” has the potential to present an avenue for reconceptualizing Palestinian reconciliation and not merely an interim political arrangement but a deep process that addresses truth, equity, reform and reconstructing legitimacy to a more just inclusive basis.

The fundamental processes of “Transitional Justice”. It ought to be more straightforward and lucid. “Transitional Justice” mechanisms deal with the injury to a people caused by years of violence and repression or authoritarianism. These mechanisms differ depending on context. However, these functions are often based on a connected set of four pillars: truth, criminal accountability, reparations and institutional reform. The UN OHCHR 2009 publication said that the resourcing mechanisms must create a contribution specifically to rebuilding of justice and reconciliation, which will have success but that will depend on how coherently integrated in the broader social and institutional “transformation”. All the

pillars according to the UN OHCHR; 2009 create a contribution to rebuilding of justice and reconciliation the success will great depend on how coherently integrated in the broader social and institutional “transformation”.

First: “Truth-telling mechanisms” are anything but new:

“Truth-telling mechanisms” have a long history. The Truth and Reconciliation Commission has tried to help South Africa discover what the moral and factual truths of their past are. There are a variety of ways that have been launched to facilitate truth-telling such as truth commissions, documentation centres and independent investigators who can collect evidence, hear from “victims” and compile a common story of what happened. By finding out the truth will allow us to give “victims” back their voice and create a record of history, while also reducing the potential for denial, distortion or selective rewriting of history. As far as Palestine is concerned, due to internal “Palestinian political” and institutional fragmentation, establishing truth in Palestine would mean creating an independent body to find and assess fact-finding about politically motivated imprisonment, torture, targeted violence which has occurred since the split in the “Palestinian Authority” in 2007.

Second: Criminal Accountability:

The purpose of “criminal liability” is to hold accountable those who bear the greatest blame for serious violations of human rights and to avoid selectivity or politicization of justice. Trials can be international, hybrid or national it does the same thing two ways. The functions are punitive in nature as they hold people guilty and punish them. Bolster deterrent, enhance “legal framework” and debar impunity. A thorough and neutral investigation into the unlawful arrest, detention, and outside the provisions of the “judicial protection”, as well as the abuses attributed to the two security services, in the Palestinian internal context is essential. The establishment of impartial judicial organs or joint courts will reduce the degree of politicisation of justice and promote the idea that no one is above the law.

Third, damages reparations can give “victims” monetary compensation for any injury to them (both physical and symbolic) and acknowledges that “victims” are persons with a right to recognition, reparation, and rehabilitation. Damages compensations can take many forms, such as financial compensation, rehabilitation programmes, restitution for

“victims” rights or property, and symbolic measures, such as a public apology, restoring the memory of the victim, or establishing a complete and non-selective memorial or commemorative ceremony for the “victims”. Specifically, in relation to Palestine, damages reparations may be made to “victims” families of intra-Palestinian violence, political persecution, and to the “victims” of the violence and effects of division of the two separate Palestinian entities.

Collective acts of providing formal apologies and collective memorialising are also very important in that they assist with forming a culture of mutual recognition and shared moral responsibility.

Fourth: Change in institution Reforms must focus on the frameworks and structures that create, commission and facilitate violations. Three priorities were achieved after the crisis: reform of the security services; enhancing the independence of the judiciary; and the embedding of human rights in governance and public administration. The institutions of governance, which today are instruments of domination or repression, must be reformed, or better still, replaced.

We must replace them with institutions governed by accountability, oversight and respect for rights so that we do not see a repeat. In the case of Palestine, the objective of institutional reform should be to unify the security and “legal frameworks” as well as professional and legal reflection on the structure of security services, enhancing the independence of the judiciary and restoring civilian oversight of the institutions of government. Human rights principles and the separation of powers must be integrated into existing administrative regimes in the “West Bank” and “Gaza Strip” prior to the restoration of national confidence. All four mechanisms taken together, consist of a structure of justice that is complete and integrates both a restorative and punitive legal dimension.

The concept’s success depends not only on a theoretical presence but also on a local configuration with readiness of necessary political will and assurance that it will not be a victim of partisan and institutional polarization. Given the settler-colonial domination and fragmentation reality of Palestine, with its intra-state plurality of centers of power, “Transitional Justice” cannot simply mimic externally – ready-made models. At present, it adopts a one-sided manner of settling cases of injustice involving individuals. It also

seeks to remedy violence to individuals. Hopefully, it should head onto a transformative model. Above all, structures that create and perpetuate injustice. The law must also deal with division then.

1.9 Differences Between “Transitional Justice” and “Criminal Justice”

There may be elements of criminal law which “Transitional Justice” may borrow or there may be certain legal principles from criminal law whose application would be advantageous for “Transitional Justice”; However, “Transitional Justice”, in any event, should not be confused “Criminal Justice” in terms of objectives and means.

It is important to distinguish between models for deeply divided societies or post long dessert societies as in the internal Palestinian case, the recognition of the nature of each model will be needed for the development of a justice framework appropriate to the existing political and institutional realities.

First: In regard to goals and objectives, plainly put, this sentence conveys that the “Criminal Justice” system in a legitimate state society, represented through application of the rule of law, functions well. Law’s principal goal is to provide a just procedure for everyone. Punishment serves two purposes in this context: first, as accountability for each person's wrongdoing; and, second, to deter others from committing similar acts. “Transitional Justice” deals with “exceptional circumstances,” e.g., post-civil war (after war) or end of authoritarian regimes, or cases of “massive atrocities,” where the legal and political system are not functioning in accordance with or have recently transitioned from a period of egregious wrongdoing. Consequently, the goals of “Transitional Justice” do not terminate with punishment or holding individuals accountable; they also include truth-telling, promoting reconciliation, being memorialized to “victims”, clarifying the historic record, and reinstating the social fabric. Teitel (2003) further states that “Transitional Justice” emphasizes future achievements by not only repairing the past, but by creating an improved society that is not as damaging as it previously was (Teitel, 2003).

Thus, it does not interfere with Sudha's aims for sustainable peace - ethical, legal and political.

Second: In relation to range and versatility. The framework for classical criminal law is restrictive, which can ultimately limit “Criminal Justice” from responding to the needs of society following a time of cultural or political rifts. In addition due to the number of “victims” who may be affected, the type of crime committed, and the intricate responsibilities in terms of both institutions and the politics surrounding them, and/or who have experienced systemic violations, are not likely to be capable of being handled by ordinary Courts of law. The “Transitional Justice” concept oftentimes employs a wider array of mechanisms in order to provide a higher level of justice; examples of these include the ability to establish truth commissions in addition to ordinary trials; alternative methods of achieving justice, such as in some instances using coercive and symbolic means instead of incarceration; and/or methods of achieving social reconciliation to a greater extent than could be done through ordinary Courts of law.

This flexibility is important during an unstable political context when mass prosecution and punishment are not an option or would otherwise aggravate the fragility of the reconciliation process’ (Skaar, 2011).

Third: A judge will ensure that a person’s trial is conducted fairly and within the standards of the democratic process. In practice, the historical conception of the “Criminal Justice” system is based on an assumption that the system operates in a politically neutral manner. This assumption is incorrect. The application of the provisions shall be made solely on the basis of concrete facts and evidence and only to the degree necessary as authorized by law; therefore, the application of the provisions shall occur without regard to any political considerations. “Transitional Justice,” on the other hand, will inherently take place in a political environment and therefore it arises when a system of governance is experiencing a change or when the legitimacy of a system of governance is in question or is challenged.

In many situations, the mechanisms for “Transitional Justice” will be subject to a continuing tension between the goal of achieving peace with the goal of achieving justice and, therefore, the ultimate resolution may be conditional in nature and not imply that the issues of accountability will be resolved, but rather that the issues of accountability will be addressed in a larger context of reconciliation and prevention of similar occurrences from happening in the future. Conditional amnesty is a type of conditional resolution

often granted to an actor as part of a negotiated settlement whereby a partial amnesty or reduction of the actor's level of culpability is granted to the actor, in exchange for the actor's agreement to fully disclose and/or fully cooperate in the reconciliation and/or reparations process. The provisions of the UN mandate forbid states from granting amnesty for any serious crime such as genocide or war crimes or crimes against humanity (United Nations Secretary-General, 2004).

Conditional amnesty, when applied narrowly and judiciously, can uncover the truth and assist in reintegration rather than entrenching impunity. Conditional pardons could in theory, in the Palestinian context, apply in a limited manner to certain political detention cases or less serious internal abuses, which happened in the context of the division. Under this concept, pardon or commutation of sentence can only take place when the truth is revealed in all its dimensions, the "victims" are recognized and reparations or measures of reconciliation are present. By taking such an approach, which we will explain further, it will be possible to reconcile the accountability needs and the reconciliation needs. Moreover, it could comply with international law that forbids granting amnesty for grave crimes.

Fourth: Emphasis was on victim not State in the approach taken. Both "Criminal Justice" and "Transitional Justice" focus on the latter distinction. The traditional criminal law systems are those state-centric organisations that focus on the state's ability to impose and enforce legal sanctions while providing legitimacy through the punishing of proscribed conduct. On the contrary, "Transitional Justice" is regarded as victim-centric. The focus of this method is to recognize the harm, dignity, and victim participation. Early detection and response require constant monitoring. Inherent accountability is an important foundation for institutional abuse practices.

This recognition is vital in a period of alleged abuse. Robins (2011) explains it as a moral obligation, which is also a precondition for the purpose of trust, legitimacy and social cohesion, to put "victims" at the heart of justice process. Robins (2011) goes on to say that the victim-centred approach defines justice not only legally but also as recognition by society as moral vindication. As illustrated in the example of the Palestinians, shared understandings in divided societies allow for justice to be seen as a starting point for reconciliation and restoration of human dignity rather than a tool for divisive influence.

Establishing legal responsibilities is not the only meaning of “Transitional Justice”. Instead, the aim is to establish a national process of victim recognition and countering division, as well as restoring confidence in law and institutions.

1.10 “Transitional Justice” Issues Handbook - Key Cases

To summaries, every society employs different types of “Transitional Justice” measures cut out a cultural and/or political reality basis of their own, based on how ‘abuse’ has been experienced within that society as well. Overall, one of the aims of “Transitional Justice” is to help societies and the state commune with their past, and to re-establish a sense of public trust in the social contract with states and state institutions. As outlined in this article, the processes of truth-telling, accountability, reparation and reconciliation are process-specific; hence there will be variation amongst every situation with respect to how “Transitional Justice” occurs in a specific context. Understanding the Palestinian experiences is therefore essential, as the Palestinian context will not fit into a predestined model of “Transitional Justice” which exists throughout the world today. The situation on the ground in Palestine does not represent either a typical post-regime transition or an outright civil war; it is better described as a highly complex situation arising from the complex interaction between settler-colonial dynamics, divisive internal politics and institutions, multiple centres of power, and absence of a strong national consensus on accountability and reform mechanisms, resulting in limited potential or opportunity for change at this time.

To illustrate the diversity of transitional justice approaches, and in order to clarify the diversity in the implementation the system of transitional justice, three international models were used for discussion (Colombia; Rwanda; and South Africa). The three selected models are recognized as mature and effective models of transitional justice. Even though none of the chosen models fully implemented all procedures and mechanisms of transitional justice, each still managed to achieve stability and peace. These experiences demonstrate that there are no definitive models for “Transitional Justice”; rather, they should be considered as potential sources for learning practical lessons about designing and limiting “Transitional Justice”, as well as assessing the success or failure of such methods in societies that are divided. “South Africa – Truth and Collective Acknowledgement” One of the most notable examples of “Transitional Justice” in the world is South Africa; particularly in terms of an emphasis on a process of

reconciliation through public acknowledgment of truth vs. mass criminal prosecutions. In South Africa, at the end of apartheid, the country chose to pursue national reconciliation through the Truth and Reconciliation Commission, which was established in 1995 to: a) Document the human rights violations committed in – between 1960 and 1994; b) Receive testimony from “victims” of those violations and c) Provide conditional amnesty to specified perpetrators of violations who presented full and complete disclosures of the truth regarding those violations. This process allowed “victims” of past violations to share their experiences in a safe setting and to participate in the creation of a national memory regarding those violations.

Everyone was afforded the right to a legal personality, but this right does not translate automatically into an ability to exercise one's rights or to enjoy them, as there may be individual limitations on the exercise of one's competence. Accordingly, while some commentators have been critical about South Africa's ability to redress the legacy of apartheid through reparations (which some may consider to be a form of compensation), it has also been widely viewed as inadequate in its ability to resolve long-standing structural disparities in land, wealth and economic opportunity. In fact, some academics suggest that reconciliation could serve, at best, as a temporary cooling agent for the political climate, without addressing longer-term structural and institutional inequities that create the conditions for injustice (Gready & Robins, 2014).

In addition to South Africa, similar issues have arisen, both historically and contemporaneously, in Palestine. Just as in South Africa, internal reconciliation in Palestine should involve more than political agreement among leaders or reconfiguring governance institutions. There also should be a clear mandate to uncover the truth of the past, to acknowledge the “victims” of such divisions and to address the social and institutional consequences that result from division. In contemplating a permanent mechanism to facilitate this process in Palestine, we may want to consider establishing a “Palestinian Truth Forum” or independent “National Documentation Agency in Palestine” that would gather witness testimonies of political detainees, “victims” of internal violence and violations that took place during periods of division. The South African model of reconciliation via Truth and Reconciliation Commissions that emerged out of apartheid in South Africa cannot be translated directly into the Palestinian/Israeli context for several reasons: First, both sides still hold power and can, to some degree,

affect the process of reconciliation. Second, both “parties” MAY be reluctant to divulge abuses publicly. A credible process for creating a “record” of wrongs committed against Palestinians would require creating a mechanism that is largely independent (i.e., has no connection to the governing bodies of either party), includes civil society organizations and independent figures in order to help maintain the credibility of the process and to reduce the possible political exploitation of the process.

Second: Turning to another example of transitional justice, the country of Rwanda has had its own unique history with regard to “Transitional Justice”. The Gacaca courts were reactivated after the events of 1994, and Rwanda has a unique problem in developing “Transitional Justice”: the extraordinary number of “victims”, the extraordinary number of detainees (as of 2003, more than 800,000), and the concurrent collapse of the traditional courts in Rwanda. To address this situation, the Government decided to use an existing mechanism, from traditional Rwandan society, to provide for the rapid processing (by using existing community-based resources) of these cases, facilitate the admission of guilt, and to facilitate re-integration into Rwandan society. The Gacaca courts have stimulated widespread community support for the operation of these courts, and they have allowed for thousands of cases to be disposed of within a short period of time. The Gacaca courts mixed various forms of restorative and punitive justice as a mechanism to promote recognition and reconciliation and reintegration of persons into Rwandan society.

Nonetheless, this experience has revealed true dangers. According to critics, gacaca courts fall short on fair trial guarantees, do not afford defendants adequate legal protection and experience political power interference in selected cases. Official narratives do take a hammering on selective differentials for instance, certain abuses are conveniently linked with politically vanquished or marginal forces (Clark, 2010). Both aspects aid the Palestinian cause in this experience. On the one hand, tribal reconciliation and lateral mediation as local community mechanisms can play an important role in restoring social relations disrupted by divisive situations that do not warrant heavy criminal prosecution. Social and political damages can also often be remedied by healing remedies. By contrast, the Rwandan experience evidences that, in the absence of independent verification and human rights-based norms, a social justice can become a tool for political selectivity and manipulation.

Therefore, the Palestinians' recourse to community mechanisms may not supplant a recourse to law, nor may it be used to shield serious violations. The monitoring of implementation should be by an independent body like Independent Commission for Human Rights or credible human rights groups. In addition, the guarantees of impartiality must be respected, "victims" must be protected, and must not be put under pressure to accept settlements that do not respect their rights and dignity.

Third: The equipment model for reconciliation is phased and hybrid. The third of Colombia stands as one of the most progressive recent experiments in hybrid form of "Transitional Justice". The peace deal between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC) in 2016 after decades of armed conflict was a broad-based agreement that links truth telling with accountability, reparations and participation of "victims". The model included the most important aspect of the Special Jurisdiction for Peace. It is essentially a hybrid judicial body that looks into serious infractions of law committed by the various "parties" to the conflict.

Also, the leniency gives the ones who plead guilty or make restitution mitigated or alternative sentences. The model provides for a truth commission and a tracing unit for the recognition that justice does not end at trial. The Colombian model centers on the victim, seeks to incorporate a gender perspective, analysis on the treatment of the disappeared and aims to understand the structural causes of the conflict. There have been many challenges, such as political opposition and violent attacks on a few activists. Moreover, several critiques of late suggest that the "Transitional Justice" could cease to be substantive but rather become a ritual for the slow implementation of a range of reforms with no political will and institutional protection. What the Palestinians should learn from Colombia is that they could have a gradual, phased process, something of that sort. There is no need for such a process to start with global trials. It is equally possible to launch the national registry of "victims" and reparation programs through truth documentation. Eventually, these measures would become more formal, assuming the political and legal conditions permit.

Nonetheless, always bear in mind the contextual difference of the two. The Colombian case is similar to the Palestinian case because of national peace agreement, unification of the laws of the government, the legal and constitutional arrangement of the law, and the

civilian law-making of reason under Colombian law. Colombia does not face institutional and legal duality concerning the “West Bank” and the “Gaza Strip”. Thus, any Palestinian model drawing on the Colombian experience should be cautious and incremental by starting with what can actually be done. We need documentation, memory protection, identification of “victims”, and building of trust before advancing towards wider judicial accountability. At a later stage, consideration can be given to the establishment of a special commission of independent or joint nature to investigate the division violations with guarantees of civil and human rights, independence and transparency. The purpose of this body should not be transformed in a political attack weapon, but rather an architectural discipline they must evolve, one oriented towards truth, accountability, reconciliation and non-repetition. In analyzing the comparative experiences, we find that none offer up a comprehensive model that may be directly transferable to the Palestinian case as-is, for example, South Africa regarding truth and recognition

However, it also shows that the limits of reconciliation do not come with a basic economic and institutional shift. Rwanda teaches us that social justice can help in important community reparation, but that it should not be politicized and cannot guarantee anything. The gradual and hybrid model proposed by Colombia recognizes the importance of truth, accountability, and reparations and shows that the success or failure of “Transitional Justice” depends on political will, guarantees of victim protection and the presence of an institutional structure capable of implementing it. The point for the Palestinians is that it is essential to create a gradual and flexible but specific model, which first moves from truth and documentation, then reparations and symbolic recognition, and finally a disciplined legal accountability which may only take place if the required political and institutional conditions allow for it. It cannot be unduly delayed nor used as a bargaining counter by rival political groups. The Palestinian situation allows for an understanding of “Transitional Justice” as not merely a footnote of the political reconciliation accord but rather a means that would lead to rectification of social and institutional trust. The process must always be victim-centric. It must do so in a way that recognizes the victim’s suffering; protects the victim; and does not use justice to target and exclude the victim. In this context, “Transitional Justice” can foster political reconciliation among Palestinians on the basis of truth, justice, accountability and dignity.

Due to the occupation and settler colonialism, implementing “Transitional Justice” in Palestine is difficult. In a “Transitional Justice” context, we are typically referring to post-conflict or post-authoritarian contexts, where new institutions have acquired some legitimacy and have the powers to punish injustices, deal with the legacies of earlier harms, and restore public confidence. It is worth noting that the case of Palestine stands in stark contrast with instances that have made use of “Transitional Justice”. The struggle is also against infighting and fragmentation of institutions. Moreover, it deals with extension of Israeli occupation and the establishment of settler colonies. The incapacity of any “Transitional Justice” initiative limits its feasibility, effectiveness and credibility. UN defines “Transitional Justice” as processes and mechanisms whose purposes are accountability, justice and reconciliation, which implies a minimal institutional and political capacity that will enable to implementation of this mechanism (United Nations Secretary-General, 2004, p. 8).

First: One of the principal barriers to “Transitional Justice” in Palestine is the absence of full sovereignty. Neither the “West Bank” authorities nor the de facto administration in the “Gaza Strip” controls borders and natural resources and security sphere in full. According to the doctrine of “Transitional Justice”, for truth commissions, courts or reparation programs from civil society or other social groups to succeed, an institutional body must be present which is capable of operating in a stable regional scope and has sufficient executive power to protect “victims” and witnesses, guarantee the execution of decisions taken, and grant the required resources To compensate for the mentioned damage. In the case of Palestine, this stipulation continues to be inherently deficient due to the ongoing occupation, restrictions on movement, and external control of crossings and resources.

As a result, even minor interventions if any, in the matter of justice, are still too dependent on external factors, and can very easily get suspended due to military incursions, blockades, and administrative-political constraints. The International Court of Justice (ICJ) issued its 2024 Advisory Opinion on Israeli Policies and Practices in the Occupied Palestinian Territory and determined that the ongoing Israeli presence in the oPt, and associated policies have important legal implications for the right of the “Palestinian people” to self-determination. That is to say, a lack of sovereignty is not merely a

administrative issue, but a structural obstacle to the construction of independent and effective national justice institutions (ICJ, 2024).

Second: Since the fall in 2007, the Palestinian system has remained institutionally fragmented, namely two authorities, two legal systems and two security apparatus. Due to the two tier systems of law, the legal system has fragmented and faith in government institutions was lost. Difficulty has occurred with regard to the framing of a coordinated and neutral accountability framework.

Under these circumstances, either party will consider any “Transitional Justice” initiative as a partisan initiative unless it is meant to ensure the independence, equal participation, and monitoring of the human rights community and society at large. According to the above-mentioned reasons, the problem is all the more serious since “Transitional Justice” presumes upon the existence of a political and “legal framework” capable of selectively dealing with past violations. The Palestinian context shows that increasing fragmentation leads “parties” increasingly to regard the enemy as largely responsible for the other’s wrongs, rather than coming together around a comprehensive national framework based on “victims” rights rather than political loyalty. In a direct sense, the legitimacy crisis interferes with the truth, accountability, reparation and reform processes.

Third: “An external occupation and structural power asymmetry”. The ongoing occupation by Israel has severely hindered any possibilities of a “Transitional Justice” process in Palestine. There are serious violations of the rights of Palestinians regarding infrastructure, which includes homes, schools, hospitals, cemeteries, and places of worship, throughout the occupied Palestinian territory. If “Transitional Justice” processes or concepts can be ignored by or have no relationship to either the internal divisions of Palestinian society or to the reality of occupation, the legitimacy of that process may be lost for both “victims” and society.

This is not to imply that there should be any delay in addressing internal violations of human rights due to the occupation. “Transitional Justice” in Palestine needs to take place at two overlapping levels of operation, structural and internal; the internal level considers the impacts of political and institutional fragmentation.

At the structural level, the occupation is preventing Palestinians from establishing their own independent and effective justice systems. The International Court of Justice stated in its 2004 Advisory Opinion on the Wall that the occupation gives rise to international legal obligations as a result of the status of Occupied Palestinian Territory, as well as to the duties and obligations of the “parties” to the conflict towards civilians (ICJ, 2004). In its Advisory Opinion, in 2024, the Court reiterated the legal implications of Israeli actions and policies in the Occupied Palestinian Territories, and their relationship with self-determination. As stated by the International Court of Justice (ICJ) (2024), “victims” of the occupation cannot “implement transitional justice”, if the process does not account for the structural power imbalance between an Occupier and an Occupied person. The violation of an occupied person's right to internal determination does not create any obligation to provide “transitional justice” or any other measures to disregard the prohibition of such acts of transitional justice.

A collective approach should be developed to recognize the existence of internal accountability as well as to ascertain the internal accountability in the context of external control and sovereign limitations.

Fourth: Minimizing Effect The Judicial, Legislative, and Political institutions within both The “West Bank” and The “Gaza Strip” do not function freely from political authority interference, nor do they maintain public confidence. When the Justice System is viewed as a part of Local Authorities or simply a method of being an agency to resolve any dispute or hold Violators accountable, then fragmentation occurs within Judiciary's jurisdiction. Therefore, as a result, it seems virtually impossible for “victims” to have faith or confidence in systems of record, that may actually add to the problem as opposed to enabling “Transitional Justice” systems that efficiently operate. Without the Judicial system supporting “victims”, Witnesses, and Whistle Blows, providing adequate protections, and Investigators working independently, the potential for “Transitional Justice” to work strictly as such is unrealistic. "Transitional Justice" will be used only as a vehicle for Political purposes, and not as an Accountable method of obtaining reconciliation.

Reform of the institutions is not an end stage but a condition for the success of other “Transitional Justice” mechanisms like truth, reparations and accountability. The human

rights report observed the need for sufficient accountability and justice for violations in the occupied Palestinian territory, according to recent reports by the UN. This suggestion.

Fifth: The current context and dynamics severely restrict the realization of “Transitional Justice” because of the humanitarian priorities and constraints. The “Palestinian people” are facing overlapping crises from blockades, unemployment, crumbling infrastructure, violent cycles, and weakening capacity of institutions to provide basic services. In such situations, especially in light of large classes, a demand for justice may itself appear as a postponed demand for survival, security, housing, health employment and so on. “Transitional Justice” must not be viewed as a political or legal luxury. The design of the system must take into account the economic and social realities of the country. Rehabilitation, psychosocial support, and reparations schemes may, for instance, be linked. Writing a report on the facts could assist in documenting the patterns of harm and enabling us to identify who is harm. The Economic Monitor Report for “West Bank” and Gaza by the World Bank states that movement and access restrictions notably curtail economic potential and living conditions.

Any pathway of “Transitional Justice” must incorporate developmental and humanitarian consideration into their design (world bank, 2025). “Transitional Justice” in Palestine should be contextualized in a comprehensive vision so as not to forego humanitarian priorities. The likelihood of justice being accepted increases if it caters to the genuine needs of “victims” for compensation, rehabilitation, and restoration of dignity. According to the statement, the Geneva Declaration of Justice 2021 was based on the 8ThR.

Sixth: The absence of a national reconciliation agreement presents a severe limitation in developing a "Transitional Justice" framework. The lack of a broad-based agreement at the national level between the principal “parties” to the division creates profound obstacles to implementing "Transitional Justice". The absence of a common understanding of the nature of governance, the manner in which institutions are integrated, and what the future of the “Palestinian political” regime will look like would merely serve to perpetuate competing claims to stakeholder reparative justice rather than achieving it. Therefore, we believe that the framework for "Transitional Justice" should be built incrementally, with the understanding that the framework for "Transitional

Justice" should facilitate political dialogue instead of impeding it, while simultaneously linking political reconciliation with accountability for human rights violations.

Gradualism in this case does not refer to the perpetual delay of justice, but rather indicates that certain activities should be prioritized over others. In that regard, the first step in identifying those responsible for past acts of abuse should take place. Additionally, a national registry of "victims" should also be established. Mechanisms for providing assurance regarding non-retaliation should be adequately put in place. Additional steps include the provision of reparation and institutional reform; and potentially leading to criminal prosecution for the most egregious acts of abuse. "Transitional Justice" is to be constructed as a merging of the accountability and servicing of justice with the process of reconciliation, while taking into consideration the uniqueness of the political and institutional context in the country, based upon the Extracts from the 2004 Report of the United Nations Secretary-General (p.8). The process of "Transitional Justice" in Palestine must contend with internal division on the one hand and occupation and settler colonialism on the other hand. Go to the website above to read more. If we want the framework to be more enduring than temporary or flimsy, then we must try for a normative balance of truth and accountability with limited non-sovereignty, institutional fragility, political fragmentation, and human difficulties.

The structural challenges need to be sorted out for "Transitional Justice" to open a pathway to national reconciliation, renew institutions and restore collective dignity. Addressing previous wrongdoings takes consistent and inclusive response that focuses on the victim. Through this project "Transitional Justice" in Palestine will be not only an instrumental legal scheme to deal with the past but also a prime national project to recreate trust and memory; restore legitimacy; link reconciliation to justice. In order for reconciliation to lead to more than a transitory political settlement, or elite deal but rather a societal pathway of truth, reparation, reform and non-repetition it is necessary.

1.11 Formation and Planning Procedures

A Gradual Model of "Transitional Justice" for Palestine the case studies of South Africa, Rwanda, Colombia, Lebanon and Tunisia show that "Transitional Justice" cannot be applied or built according to a model or template. All the contexts show that this process must be linked to the specificities of local realities, sequential and based on community

participation and not on imposition from above. In Palestine, the interactive effects of occupation, political fragmentation and dual-admin-istration continue to undermining institutions' authority. Consequently, "Transitional Justice" must be conceived as a slow and layered process that engages the exercise of justice, on the one hand, and the goals of political stability and reconciliation on the other. The first and the most important stage is truth-telling and collective acknowledgment. The South Africa and Tunisia experience have shown that public recognition of grievances can enhance the lives of "victims" having voice.

In the Palestinian context, a forum on truth and accountability, which may be led by a coalition of civil society coalitions but not political leadership, such as the Independent Commission for Human Rights, Al Mezan Center for Human Rights, Al-Haq and the Palestinian Bar Association, could achieve this. Testimonies and documents submitted to this forum regarding politically-motivated detentions and assaults within the framework of the internal fracture will be organized under public or confidential hearing if necessary for the protection of "victims" and witnesses. During this phase, it can rehabilitate "victims", confront denial and instil a basic foundation for reconciliation focused on truth rather than punishment. Community reconciliation and restorative justice is the next steps.

Using the experience of the Rwanda gachaka set up and the limitations and critiques thereof, it should be possible for the Palestinians to adapt certain local restorative norms to better conform with current human rights norms. This includes practices aimed at reconciliation, community mediation, neighbourhood dialogues and some religious or community adaptations. Putting these techniques to use can solve personal and community problems, rebuild the self-confidence of people and communities, and repair damage to groups in conflict or groups with polarized political opinions. To avoid politicization or control by interested "parties", nevertheless, monitoring by neutral institutions is essential. This may include universities, local councils and human rights institutions, in order to ensure neutrality and respect for the guarantees of fair process. The third phase relates to reparations and victim-centred justice, based on the experiences of Tunisia and Colombia. The act of providing reparations denotes a moral and material acknowledgement of the harm done to "victims" and with respect to the Palestinians reparations ought to enjoy both symbolic and material meaning. A Palestinian reparations

fund could be created, with independent national and international monitoring and oversight, to allow “victims” of internal political repression and violations resulting from the Israeli aggression to receive fair compensation and rehabilitation. And an official acknowledgment of their discomfort. The fund should be inclusive and non selective, with specific attention paid to women, children and “victims” of torture or detention. As a result, “Transitional Justice” is an actual experience of the “victims” – not a political slogan. Phase 4 deals with the reform of institutions and laws so that violation is not repeated. The Palestinian model must be aimed at the unification of security and judiciary systems, strengthening of judiciary independence, harmonization of the conflicting laws between the “West Bank” and the “Gaza Strip”; based on lessons from the Truth and Dignity Commission in Tunisia and the institutional “transformation” of post-apartheid South Africa.

A National Commission for Institutional Reform could be established; a Commission composed of lawyers, academics, independent judges a representative of civil society which advises this process on a professional and human rights basis. The reform of these institutions will restore the rule of law, trust in them, and collective legitimacy for the justice system in the Palestinian territories . Once these baseline measures are put in place, the fifth phase may allow for conditional accountability and hybrid judicial mechanisms based on the Colombian experience, namely the special jurisdiction for peace. In the context of the Palestinian case, a special body for national reconciliation is possible that is made through the national consensus of the two parties to the divide, and under the supervision of representatives of civil society and independent human rights institutions. This body deals with serious violations, such as torture, extrajudicial killings, and disappearances espoused coercive, with the possibility of pardon or commutation of sentences conditional in cases of less serious, provided truth is told completely, acknowledges damage and acts reparatory.

This method meets international standards set by the UN Secretary-General in his 2004 report on the rule of law and transitional justice in conflict and post-conflict societies, which allows for the granting of limited forms of amnesty, except for serious crimes like war crimes, crimes against humanity or genocide (UN Doc S/2004/616). It helps in striking a balance between peace and justice objectives in a fragmented political environment without allowing amnesty to become a tool of impunity. The last and sixth

phase pertains to Regional and International Partnership. Given the limitations imposed by occupation and sovereignty, the Palestinians will likely need external assistance for the technical support, funding and monitoring of transitional justice initiatives.

The regional actors, such as Egypt, Qatar and the Arab League and international organizations like the UN and the ICC could provide support, expertise and technical guarantees. Partnership should remain supportive rather than directive so as to ensure a Palestinian-owned process based on national legitimacy rather than an external one. Overall, what lessons can be drawn from history's experience of transitional justice in comparative contexts? When it comes to the transitional justice in Palestine, probably the most sensible thing to do would be to start with truth and community reconciliation and then proceed on reparations and institutional reform and finally legal accountability when political and legal conditions lend themselves to the same. Victims, communities, and civil society institutions must participate in a bottom-up process for the successful development of these initiatives. Most significantly, Palestinian transitional justice must not be viewed as an elite agreement but rather as a social project of moral recovery that aims to recover trust and recover dignity, while developing a vision of a shared justice that can reunite a divided society in a new legal and national memory.

Chapter Two

Political Division, Failed Reconciliation, and Transitional Justice in Palestine (“2006”–2025)

2.1 The “Palestinian Internal Division”: Origins and Main Features

The “Palestinian internal division” does not only end as simply a rivalry of opposing political parties and factions but rather a division of institutions and ideologies that have changed the landscape of Palestine's laws and governance. Each of these divisions is due to a fundamental crisis in structures; therefore, this division has resulted from the Oslo I (1993) and the subsequent gradual development of duality in governance and legitimacy. The Oslo Accords created a basis for establishing limited self-rule through the establishment of the “Palestinian Authority”. However, the “Palestinian Authority” came under the political control of “Fatah” (the political wing of PLO), while “ Hamas” rejected the Oslo Accords on the basis that the agreement represented a concession by the “ Hamas” movement of political legitimacy for the “Israeli occupation” and, therefore, as representing a violation of many basic inalienable rights, including the right of return (the right to return to your homeland). Further fragmentation developed as differing ideologies regarding how to build a state on the basis of negotiation and diplomacy against armed struggle and social self-reliance (Ghanem, 2010; Sayigh, 2007).

“The legislative elections” of “2006” demonstrated the disconnection between two levels of institution. While “ Hamas” realised its victory via an election at the time and created a constitutional problem for Palestine in that there were now two competing claims to legitimacy. The first of these claims was comprised of “ Hamas” and its claim of electoral mandate. The second was represented by the executive and institutional continuity of “Fatah” leadership and the office of the presidency. Following the establishment of the tenth government of “ Hamas”, the institutional duality increased in size when President Abbas continued to hold on to both the office of president and the “Palestinian Security Services”. By the time of the June “2007” confrontation between “Fatah”-aligned forces and the military wing of “ Hamas”, “ Hamas” had taken complete control of the “Gaza Strip”. Subsequently, the divisions that arose from the divide in the political system also resulted in the emergence of divisions along territorial and “judicial” lines, and thus the emergence of two de facto governments that are separated in all aspects of governance

(territorially, in powers and functions, as well as by legislative, executive and “judicial” powers). As a direct consequence of these developments, two parallel “judicial” systems now exist: one in the “West Bank” with respect to the legal regime of the “Palestinian Authority”, and the other in the courts operated by “ Hamas” in the “Gaza Strip”.

Fragmentation of jurisdiction leads to weakening guarantees of fair trials, compromising the independence of the judiciary, and mismatch between enforcement of criminal and civil law. The judiciary is unified and equality in front of the law shall be guaranteed in the 2003 Palestinian “Basic Law”. The Palestinian “Basic Law” does not recognize this institutional division. The game of parallelism between the law-making and the law-enforcing institutions have distanced ourselves from the constitutional scheme of things. The politicization of “judicial” appointments and the selective accountability by the state not ruled by law but party affiliation demonstrates the extent of the constitutional breakdown. Thus, the division among Palestinians is not limited to or political, but also ideological. The crisis remains legal and constitutional.

Detracts from any real possibility of transitional justice. In order to deal with that fragmentation, there is a need for not just reconciliation but a reconstitution of the unity of the judiciary, harmony of the laws and neutral accountability framework able to deal with internal Palestinian violations in a one coherent framework. Through the “Palestinian Authority” or Security Council, the ICC may be able to effectively play a part in investigations and prosecutions under the complementarity approach per article 17(1)(d) of the Rome Statute.

2.2 The “2006” Legislative Elections and the Beginning of the Political Crisis

In “2006”, Palestine experienced a major change in the way its political and legal systems operated. “ Hamas” won the parliamentary elections that took place in January of that year, giving them enough power to disrupt the balance of power within the “Palestinian Authority” and create a legitimacy crisis between their president and the government elected under him. Following the legal conduct of a democratic election was the creation of institutional paralysis between the president and the government, which led to an eventual open confrontation (Brown, 2010; Jamal, 2008). The constitutional dispute between “President Mahmoud Abbas” and “Prime Minister Ismail Haniyeh” was most pronounced in the areas of security and justice.

Additionally, a secondary security apparatus, one that answered to “Abbas”, was developed alongside one that answered to “ Hamas”. This caused a divide in both administration and institution. In addition, armed confrontations began taking place in “2007” and ultimately resulted in the physical and institutional separation of the “West Bank” and “Gaza Strip” from each other. From a legal perspective, fragmentation is counter to the principle of the separation of powers, the independence of the judiciary and equal protection under the law. Overlapping jurisdiction of PA courts in the “West Bank” and “ Hamas” courts in the “Gaza Strip” has occurred, creating legal uncertainty and reducing confidence in the legal system, while also limiting accountability for violations by both sides. Additionally, these political divisions have produced a number of features associated with post-conflict societies, including a demand for “transitional justice”. Many human rights violations have taken place in this context, including arbitrary detention, torture, and suppression of freedom of expression.

In its “2006” report on “Palestinian Authority” and organization, Amnesty International claims that the judiciary and law enforcement agencies have become politicized to such an extent that their institutional legitimacy has been negatively impacted and there is now a growing popular demand for accountability, reform, and the pursuit of truth (Al-Haq, 2006). These developments have resulted in what can be characterized as a transitional climate in the absence of complete sovereignty; therefore, the absence of cooperative governance has transformed the pursuit of justice into more of a political pursuit than that of a legal nature.

“Transitional Justice in Palestine”: Official documentation “2006”, as Palestinian politics were divided further in “2006”, two significant actions were taken to lay the groundwork for “transitional justice” in Palestine in what could be considered the first building blocks to “transitional justice”. The national accord document is what we call the document of the prisoners and the community reconciliation law. Involves in certain things in general that might be close to the word’s transitional justice such as political and institutional change, “victim”restitution and guaranteeing non recurrence (Arafat, 2007; International Crisis Group, 2006)

First: The National Accord Document “The Prisoners’ Document”:

This document was drafted at Hadarim Prison in Israel between 11-14 May “2006”, by the largest five Palestinian factions: “Fatah”, “ Hamas”, Front Popular for the Liberation of Palestine, Democratic Front for the Liberation of Palestine and Islamic Jihad. The language of the document contained many references to transitional justice principles. The call for reforming and reconstructing the Palestinian Liberation Organization on a democratic basis and including groups such as “ Hamas” and Islamic Jihad that are not fully part of the PLO, in order to reflect a broader representation of all sectors of Palestinian population is done within the overall context of achieving a national Palestinian identity (International Crisis Group, 2006). The document emphasizes the need to place the Palestinian security services under the authority of government, and that they not be used for political or internal conflicts; thus, recognizing early on the politicization of the security establishment, linking its reform to any substantive reconciliation and/or building of trust initiatives. Finally, the document states that terror organizations shall not use firearms in Palestine.

Furthermore, weapon use must be confined to a limited amount. There should be restrictions on the activities of the terrorists against the Israeli settlers and people who occupy the land of Palestine. There needs to be a creation of some form of national resistance. There was a declaration against the use of weapons as a means of solving problems between Palestinians which correlates with the prohibition against reoccurrence and the protection of civil peace. The Human Rights Organization and the Cultural and Artistic Forum signed the declaration. The “Palestinian Authority” was requested by the document to conduct elections in an inclusive, transparent and regular manner through the “Legislative Council”. This will lead to a smooth transfer of power and the restoration of legitimacy. This section signifies that the process of reconciliation is now related to rebuilding representative legitimacy and not just to rebuilding factions.

The draft document says that a unity government will be created based on a standard; a national program will be agreed upon and all of the political parties will be involved in the management of government services; and it will prevent the monopolization of power in the political arena and prevent political disagreements from becoming institutional divisions. “President Mahmoud Abbas” publicly accepted the document in June “2006”, however, his official stated that acceptance was dependent on “ Hamas’s” clear and

complete commitment to implementing its contents and making it a practical framework for political reality.

The document's development is an early example of Palestinians attempting to develop something resembling within their "national movement" an internally responsive solution. The evolution of the "national movement", at a certain point in time, had been quickly taken over and contained key components concerning institutional reform, expanding representation and how to use force beyond culturing it. Although it provided no immediate implementation blueprint, it at least enabled the conceptual development of some form of transitional justice within the Palestinian movement (Jamal, 2008).

Second: The Community Reconciliation Law Will be the Second Subject to be Examined:

On March 21, "2006", the law was passed by the "Palestinian Legislative Council" based in Gaza through a vote. As tensions between "Fatah" and "Hamass" increase and as early warning signals of an eruption of internal "violence" between Palestinians make further warning bells are sounding, the timing of the law's passage was sensitive. In view of this delicate situation, the legislator sought to orderly deal with the consequences of internal "violence" in accordance with the Palestinian social and cultural environment through the law. The legislation denotes the first official effort by Palestinians to establish a "quasi-judicial" framework which, in its spirit and aim, a reference to some ideas of transitional justice- mainly recognition, reparations and address the harm from internal "violence"- tries to combine law and reconciliation within the community (Arafat, 2007). One of the hallmark features of this law was the establishment of a Community Reconciliation Committee. The target is to identify "victim" of internal political "violence" and assess the damage suffered by "victims".

The committee is competent not only for the recognition of "victims"; they also have the role of proposing just reparations that are appropriate for the specificity, circumstances and needs of each case. The diversity of Palestinian society and its structural differences always complied with, at least partly, the law of the members' claim formulation in various ways. Families of the "victims" may have the option for one of several available modes of redress: Sharia-sourced blood money; civil compensation as per serious legal rules in force; and tribal settlement taking into account established norms and community-

based dispute resolution. Because of this flexibility, law was able to penetrate many aspects of Palestinian society, especially those of religious, civil and tribal reference, but also targeted at achieving justice and reconciliation (Jamal, 2008).

This law conferred extensive executive powers on the competent authorities. These involved receiving and processing complaints, instigating inquiries into deaths or serious injuries, collecting testimonies of “victim” and witnesses and allocating reparations. Although the proposals were ambitious, they nevertheless showed a political willingness to create the institutional capacity to deliver reparations, even when not integrated in a “transitional justice framework”. The encouragement from the politicians makes the law more purposeful. Various Palestinian parties except “Fatah” and “ Hamas” representatives have remarked on this issue supporting it as a positive measure towards national reconciliation and relief from the psychological and material sufferings of internal clashes.

The cross-divisional backing granted the law a national character that aimed to align it with other interests at the time it was born. Nonetheless, there were huge problems that came to the fore with implementation of the law. Political instability, failure to monitor, financing etc. In any case, this was already an important first step. It recognised the existence of “victims” of internal “violence”. Furthermore, it stated that the national plan would serve to redress the impacts of the “violence”. This would happen through justice and reparation. This hybridisation of the law to include religious, civil and customary elements is comparable to the flexible models that have characterised the transitional justice experience in different parts of the world (Amnesty International, 2006). This bears the closest resemblance to models in stratified and culturally heterogeneous societies.

2.3 Arab Mediation Efforts and Early Reconciliation Attempts (“2007”–2010)

Arab countries, such as Saudi Arabia, “Egypt”, and Yemen, have initiated various measures to facilitate reconciliation between the two Palestinian factions - “Fatah” and “ Hamas” - following “ Hamas’s” takeover of the “Gaza Strip” (June “2007”). The takeover represented an unprecedented division in both the political and regional aspect of the Palestinian “national movement”. At the time of the takeover, “ Hamas” would govern the “Gaza Strip” with the consent of both Saudi Arabia and “Egypt”, while “Fatah”

would continue governing the “Palestinian Authority” in the “West Bank” with the support of both the US and Israel (Rubin, 2010).

However, the various limited successes associated with Arab initiatives and measures aimed at encouraging reconciliation have generally been due to at least three factors: 1) the weak political and administrative agreements that have been achieved, 2) the continuing mutual distrust between the two factions and 3) the lack of a more comprehensive framework in which accountability issues can be addressed. In particular, the bulk of the initiatives have focused on resolving political issues, without addressing the structural issues associated with transitional justice. The “Mecca Accord”, brokered by “Saudi King Abdullah bin Abdulaziz Al Saud” represented the first major Arab effort to reconcile the two parties after the “2006” election (Sayigh, 2007). The unity government of Palestine that will result from this agreement (the “Mecca Accord”) led by “Ismail Haniyeh” will help bring an end to the civil war between “Fatah” and “ Hamas” and allow for an overall restructuring of the security sector. The “Mecca Accord” was abandoned due to ongoing political conflicts, increased “violence” and the ongoing blockade of the “Gaza Strip” (Roy, 2011).

The mechanisms of the “Mecca Accord” do not include any clearly defined provisions for Truth, accountability, remedies, and significant Legal and Institutional Reform from a Transitional Justice perspective. The focus of the “Mecca Accord” was more on cohabitation and sharing of power than on establishing the social and legal foundations that led to the division of the two parties. There was progress in de-escalation through the “Mecca Accord”, but it does not include a Transitional Justice framework to resolve the past abuses committed by both parties, nor does it create any mechanisms to prevent future abuses. In March “2008”, Yemen attempted to restore Palestinian Unity under the leadership of President Ali Abdullah Saleh. Yemen's goal was to return Gaza to the “Palestinian Authority” (PA), establish a direct dialogue between “Fatah” and “ Hamas”, and create a path to early elections and political reforms (Brown, 2010).

The initiative was accepted by both sides, but soon it would have different interpretations and sequencing of steps was contested. On one hand, “ Hamas” would not relinquish control of the “Gaza Strip” on any conditions and with any guarantees. Meanwhile, “Fatah” wished for the authority of the “Palestinian Authority” in Gaza to be restored

first; hence, the Yemeni initiative bore no fruit. The initiative also analytically points to the limits of reconciliation, which is not justice, per se.

The roadmap sketched the political landscape, but with regard to establishing tools for accountability, reparations, or restoring the truth, it failed. Consequently, it reproduced the logic of a political settlement rather than establishing a genuinely available space for transitional justice. There was a spurt of mediation by “Egypt” in 2009 when it called up a meeting in Cairo and presented a reconciliation plan on the formation of a national unity government, internationally supervised elections, and incorporation of “ Hamas”-linked security services into a PA structure (International Crisis Group, 2009). A series of negotiations, including dialogues, were marred by deep internal divisions, external pressures, and discord about the military wing of “ Hamas”, election arrangements, and security institution control (Shikaki, 2009). “Egypt”ian mediation to achieve political stability in the region has aimed to establish voids between the two sides. In addition, there has not been any transitional justice mechanism put in place to identify and address the previous abuses of the “victims”, while creating measures of truth regarding the division under three major headings (i.e., institutional reforms). Consequently, the efforts by the “Egypt”ians are closer to being long-term political reconciliation efforts, which do not address the legal and institutional bases of the division by failing to provide a comprehensive methodology for dealing with internal “violence” and the institutions created, which led to the division being deepened, than it is about dealing with how to restore political stability. An analysis of Arab mediation from “2007”-2010 indicates that the mediation efforts during this time period were informal rather than formal and limited in scope; however, the offence committed against the division was treated by both sides as a political crisis to be controlled through the establishment of a unity government and/or election demand or the reorganization of the security mechanism, as opposed to being treated as a much more serious legal, institutional and human rights, type of crisis. The role of “Transitional Justice” in fostering reconciliation has not been successful because it has not met the requisites for sustainable reconciliation (including truth-telling, accountability, reparations, reforms to institutions, and non-repeating the past).

In turn, the reconciliation created through an agreement between politicians is not a true national process intended to address the effects of divisions among victimized parties on “victims”, institutions and the rule of law. Failure of the reconciliation process further

establishes that reconciliation among Palestinians cannot occur if reconciliation is to be organized on the basis of shared power and political divisions. Additionally, none of these mediation processes have proposed “transitional justice” initiatives that [1] Address the root causes of the divisions; [2] Restore trust; and [3] Focus the reformation process on the “victims” themselves and the legal institutions.

2.4 Reconciliation Agreements Without Implementation (2011–2017)

The implementation of reconciliation agreements signed in 2011 to 2017 was not done. General context between 2011 and 2017. Between 2011 and 2017, various attempts were made to restore Palestinian national unity. Nevertheless, although more than one reconciliation agreement has been signed, none have been effective enough for the successful political or institutional integration. The endeavors occurred in a very tumultuous regional context as a result of the Arab Spring, shifting Arab alliances and the split between Hamas-led administration in the Gaza Strip and the Fatah-led Palestinian Authority in the West Bank. As time went on, internal division escalated, and distinct security apparatuses, bureaucratic structures, and administrative systems emerged, further fragmenting Palestinian governance. This duality has made things more complicated.

Reconciliation now signifies more than a mere rearrangement of the political relationship between the two parties to the division. Apart from that, it also requires a profound institutional and legal addressing of the consequences of the administrative and security separation. Cairo Agreement in 2011, Doha Declaration in 2012 and the Beach Camp Agreement in 2014 are some of the reconciliation efforts in which Egypt and Qatar played a leading role. The initiatives include political cooperation, election organization, and reunification of national institutions. Both sides’ mistrust, diverging political objectives, and external factors especially Israeli restrictions and donor pressure have impeded implementation of these plans (International Crisis Group, 2027; Sayigh, 2012).

As time passed by, failures repeated and public faith in the idea of reconciliation as a plausible option waned. Palestinian civil society, along with several local observers, is starting now to associate the repeated failure of political agreements with the absence of truth-telling, accountability and institutional reform as a necessary condition for meaningful and sustainable national reconciliation and not just a legal formality. On May 4, 2011, Fatah and Hamas signed the Cairo Agreement under Egyptian auspices to end

the political division and to form a technocratic government that would supervise elections and unify institutions (International Crisis Group, 2011). The agreement sought national unity and plan to re-structure Palestine Liberation Organization (PLO) whereby various Palestinian forces would take part in it because of the Arab Spring. However, soon after the agreement was made differences erupted (Sayigh, 2012). The elections, the reform of the PLO, and the integration of the security services have not seen any real progress. Despite the fact that the agreement contemplated national unity, it did not provide clear mechanisms for transitional justice, including the truth-telling, accountability, reparations or reform of institutions on human rights grounds. As a result, its ultimate focus was on power-sharing and political arrangements with no successful building of social reconciliation or effective restoration of public trust (Brown, 2003).

The Cairo Framework was reaffirmed in 2012 Doha Declaration, with a hope for a revival of reconciliation process and a formation of a national consensus government with Mahmoud Abbas as the head (International Crisis Group, 2012). He also called for elections and reform to the Palestine Liberation Organization (PLO) to allow the inclusion of Hamas and other forces within its representative framework. The internal opposition from Hamas to the merger of the PA and the head of government has impeded the implementation of the declaration. Furthermore, external factors, especially by both Israel and the U.S., have resulted in further delays (Shikaki, 2012). With this, the Doha Declaration came to represent just yet another instance of the elite reconciliation scripted by political elites, and which failed to tackle issues of truth-telling, accountability and reparation that are crucial for solid national unity. 2014 Coastal Accord. Through the 2014 Beach Agreement signed in the Gaza Strip, the parties attempted to reconcile for the last time during the period. A deal reached in direct talks between the two parties to the division, aimed at forming a technocratic consensus government and preparing for elections (International Crisis Group, 2014).

The agreement was first seen as a means of overcoming the division and restoring Political and Institutional Unity. After the signing of the agreement, it was not long before it stalled as a result of contention over control of the institutions, the Gaza file for personnel as well as security-related measures by Israel. The 2014 Gaza war also damaged the chances of moving forward with the implementation of the agreement. Similar to previous agreements, the Beach Agreement was absent of mechanisms of

justice, accountability and the promotion of societal reconciliation. Instead, it emphasised the theme of political and administrative unity without dealing with the actual causes of internal discord. Another limitation that this agreement has not only not implemented but also has not linked political reconciliation to an institutional path to prevent and punish abuses, recognize victims and reform the security and judicial structures that contributed to embedding the division. Assessment Analysis The years of 2011 until 2017, stresses on the unbroken continuity of political efforts aimed at the achievement of Palestinian reconciliation but the same period also fails to realize one such effort in a comprehensive framework of transitional justice. When they spoke about “national unity”, and other things, they omitted truth-telling, accountability, reparations and institutional reform that were necessary to remedy injustices.

Reconciliation has often become about the tug of war over power-sharing and governance arrangements instead of addressing collective grievances, restoring social trust or rebuilding institutional legitimacy. The recurrence of signing symbolic accords without implementation has enhanced erosion of the people's confidence. We have seen the normalization of divisiveness in our politics. The serious path to Palestinian unity cannot limit itself to a political settlement between elites or an administrative agreement between the two parties of the division. It has to be the process of justice. One such process could help confront the legacy of internal violence and contribute to the reconstruction of social trust and legitimacy. From a transitional justice perspective, the failure of these arrangements means that a reconciliation that is not accompanied by a full architecture of truth, accountability, reparations and reform is no more than a formality which in times of political or security crisis can easily collapse.

2.5 The 2017 Cairo Agreement and the Failure to Restore Institutional Unity

The implications of the Cairo Agreement of 2017. The Cairo Agreement signed on 12 October 2017 under Egyptian mediation was originally articulated as a serious attempt to put an end to an entire decade of internal Palestinian division. The accord has been reached amid the grave humanitarian situation in the Gaza Strip following the 2014 war and was described as a last chance to restore institutional unity with the West Bank. The PA shall exercise full administrative authority in the Gaza Strip and hold general elections and reunite the divided institutions. In this context, Hamas accepted to dissolve the Gaza Administrative Committee to allow the PA government to exercise its authorities, whereas

Fatah and the Palestinian Authority agreed to take measures to soften the procedures imposed on the Gaza Strip and allow studying the file of the civil servants who were appointed in Gaza since 2007. A time frame of few days was also set to complement the arrangements, including the most sensitive issues, such as security control and crossings management (Egyptian Intelligence, 2017).

However, the contract soon started to fail. The PA and Hamas disagreed on the implications of Gaza employees' legal status. PA would not automatically recognize the appointments without a legal and administrative check, whereas Hamas wants firm guarantees on job security before an actual transfer of management. At the same time, disputes occurred over security control. The PA insisted on a single command being under the Ministry of Interior whereas, Hamas refused to disband or take out its military wing into the Security arrangements under the oversight of PA. As a result of the impasse in negotiations, the use of unilateral measures was revived. Ongoing financial and administrative restrictions on the Gaza Strip, including the continued delay of salary payments and cuts in funding related to electricity and basic services, further increased popular anger within the Strip.

Egyptian mediation has lost its influence in recent years. At first, the competent Egyptian authorities put clear pressure on the two sides, but Egyptian considerations for security, especially in Sinai, rearranged Cairo's priorities and reduced its impetus for Palestinian reconciliation. The weakening of the agreement was further aggravated by the absence of a binding executive body or follow-up mechanism, which permitted each party to implement what it wanted or disregard what was against its own interests. The return of heated political rhetoric once again turns the language of reconciliation into the language of accusation. The leadership of Fatah has reiterated its refusal of any formula which might produce a "state within a state," with reference to the continuity of the separation between Gaza's security and administrative structure.

Hamas has countered that the PA is using reconciliation to control Gaza but without fulfilling its obligations towards Gaza's personnel and with respect to administrative and humanitarian needs. By early 2018, the implementation of the agreement has in effect stalled, and each party again administered its own area. Consequently, the 2017 Cairo Agreement, which hailed as a potentially historic development, joined a long line of

agreements for reconciliation, which have not been implemented since 2007. The failure to implement agreements fostered popular skepticism in the seriousness of the reconciliation process. Moreover, it entrenched the view that without verification, implementation and accountability mechanisms, any political agreement will collapse on the first practical disagreement. The 2017 Cairo Agreement has a transitional justice problem – it was only about the arrangement of power and administration, but not about creating a vision for – dealing with the legacy of past abuses, acknowledging victims, building an independent truth-finding mechanism, reforming security and judicial institutions on a human rights basis. As a result, the agreement was more of an administrative settlement and a political than a national path of justice. The period of 2017 to 2020 witnessed the implementation of coercive measures against the Gaza Strip by the Palestinian Authority. After the Cairo Agreement met with failure, the presidency and Palestinian Authority took harsh financial, and administrative measures on Gaza. These measures were officially justified as a means of pressuring Hamas to relinquish administrative control and enable the PA to regain control in the strip. Many human rights organizations and civil society organizations have criticized the measures, which they have described as collective punishment on the civilian population rather than the current authority in Gaza (Al-Haq, 2019).

Procedures relating to finances and administration. It should be noted that the Palestinian Authority has adopted one of the most prominent measures to reduce or suspend the salaries of a large number of its employees in the Gaza Strip, including employees who have been affiliated with the PA's institutions since before the partition. According to Palestinian human rights reports, some employees had significant sums deducted from their salaries, while others were taken off the payroll without any legal process and without sufficient guarantees of being able to challenge or review (Palestinian Centre for Human Rights, 2018). The early retirement of several civil and military personnel was also decided by issuing decisions. This policy is affecting the living conditions of the affected families and weakening the ability of the public sector in Gaza to deliver services and carry out administrative work. In addition, it is worsening the economic and social crisis in the Gaza Strip.

The measures also involved limiting or disrupting medical transfers either from Gaza to the West Bank, East Jerusalem and overseas, which has affected the ability of a number

of patients to access specialised health services, particularly treatments not available in the Strip. Delays or cuts to fuel and electricity financing, at the same time, have contributed to the Gaza energy crisis over which UNRWA has no control and which is affecting hospitals, water networks, and basic public services. The allocations for reconstruction that followed the 2014 war also did not work out, making it difficult to rehabilitate damaged houses and infrastructure. The accumulation of humanitarian and economic impacts and the isolation of the Strip from the larger Palestinian leadership and finances have resulted. Political justifications and reactions. The Palestinian leadership explains these tools as temporary measures meant to exert pressure to end the division and allow the PA to return to assume its responsibilities in the Strip, according to Wafa (2018).

In this sense, they viewed those acts as efforts to re-establish authentic authority, rather than attacking the civilian population. In opposition, Hamas refutes the justification offered by other human rights organisations and civil society organisations that these measures resulted in widening humanitarian and social crisis and rather opening ways for reconciliation. According to reports gathered from human rights experts, it seems that in practice, measures pertaining to wages, medical care, electricity and other basic services are forcing the civilian population to bear suffering due to a political disagreement, against the backdrop of the injustice and non-discrimination of the groups affected. These measures can influence the transitional justice and reconciliation process of the country. Between 2017 and 2020, these policies, considering a transitional justice approach, substituted dialogue for coercive pressure whereby the process of reconciliation became a means of reoccupation instead of national reconstruction.

Rather than promoting the spirit of truth-telling, nation-building, or confronting the cause of division, have further entrenched a collective feeling and deepened the sense of discrimination between residents of the West Bank and those of the Gaza Strip. It is a bigger thing than politicians that also affects a large chunk of the common man. Using rehabilitation instead of replicating exclusionary and punitive forms of action. The objectives of transitional justice are contradicted by it. Consequently, the policies decreased possibilities for national and social reconciliation. The relationship and coexistence between Gaza and West Bank became worse because of this, the reports said. Not having transitional justice mechanisms like equity, participation, and reparation will

change public discontent. It will further complicate the reconciliation process adding to the non-resolution of conflict. This will force a transformation of social reality in the direction of a new internal pressure that destroys the necessary public trust. This will limit the establishment of sustainable national cohesion.

2.6 Deepening Distrust and Institutional Fragmentation (2018–2022)

With mutual division and distrust that lasted from 2018 to 2022. The Palestinian internal division is taking a new and more entrenched phase since the beginning of 2018 until 2022. The phase that followed was no longer defined by negotiations and the optimistic signing of deals but rather the entrenchment of rivalry, establishment of separate bureaucratic structures and public fatigue from reconciliation. The reconciliation process has been alternating between hope and deadlock since 2007. Consequently, it has effectively created two parallel systems one is government system and the other is aspirant government system very frustrated cooperation between these two systems. On the contrary, the two systems frequently compete with each other openly. Even after the consolidation of the West Bank by Fatah and the Palestinian Authority, Hamas continued to govern the Gaza Strip using its own security and administrative arrangements (International Crisis Group, 2022).

The 2017 Cairo Agreement was largely viewed as the last credible attempt to close the gap between the two sides on the divide before its failure. That failure was an important event on the reconciliation path. The public's confidence in the ability of the two parties to end the division diminished, and Palestinian Opinion Polls through this phase evidenced a general trend of pessimism about reconciliation prospects, as well as a fall in confidence in the leadership of the two parties in the division (Shikaki, 2022). The popular discontent over political disagreement, at its level is a sign of the fracture of the institutions and society. As a result, they became political tools to divide the two communities. Both nations endeavored to drive a wedge between each other for their advantage. The reconciliation initiatives seem to be only initiatives; they are no more than mere words as they lack identifiable mechanism or implementation indicator. What the political elites say is more accusatory than conciliatory. According to Hamas, the PA imposes sanctions and administrative measures which are collective punishment. On another level, Fatah considered the Hamas authority in Gaza as parallel authority which contradicts recognized PA which further jeopardizes independent Palestinian state.

The political and media rhetoric during this phase reveals a gradual emergence of mutually accusatory and delegitimising vocabulary rather than of recognition or shared responsibility. There is a pervasive sense in society that there is no longer a political division that could be quickly bridged in the respiratory framework. As noted, the intensity is no longer a feeling that is political. Instead, it is a social reality that has regressed from Palestinian political culture. At present, the scope of transitional justice based on truth, accountability and institutional reform implementation is very constrained. Discussions on re-establishing harmony and accountability for the past were replaced with debates on survival. Secession 2022 deals not only with the political disaffiliation but also disaffiliations whose social, economic and institutional dimension.

Each authority functions as a semi-independent system. Each of these authorities has its own bureaucracy and legal and administrative system. The danger at this time, from 2018–2022, is not that a new reconciliation agreement will not be achieved, but rather that the division will evolve and become a known administrative and social fact. The progress severely impacts any system that would be proposed when signing a political agreement in the context of transitional justice. In order to do justice, it is imperative to dismantle what is built on mistrust and construct the public sphere on truth, accountability, reparation and institutional reform.

2.7 The Failed 2021 Elections and the Crisis of Political Legitimacy

In January 2021, a presidential decree issued by Palestinian President Mahmud Abbas for the first national elections in fifteen years, generated a momentary wave of optimism. However, Sirte proved to be a mirage as failure overtook the Palestinian election attempt in 2021. According to the decree, legislative elections, followed by presidential elections, and Palestinian National Council elections, will take place between May and August 2021. It is hoped that the announcement will provide an opportunity to break the political stalemate and division which has existed for more than a decade. The announcement of elections is seen as a potential opening for many Palestinians to restore domestic legitimacy, reconfigure malfunctioning institutions and renew political accountability in a governance structure split between the West Bank and Gaza. Interaction between the public and civil society of Palestine is exceptional. The registration of dozens of electoral lists to participate shows important political pluralism and a desire for change. The lists

presented by the civil actors are similar to the ones produced by the youth-backed lists. The lists go like: “Our Choice for Renewal” (Shikaki, 2021).

This is the clearest expression of my generation for the renewal of Palestinian political life. But before long this got slow. At the end of April 2021, election process collapsed before going to ground. On April 29th 2021, President Mahmoud Abbas announced the suspension of all electoral processes. East Jerusalem won't receive Israel's voting approval. A difficult problem for Israel. While the rationalisation - which was totally at odds with the spirit of the proposed document - had a veneer of truth. The resolution has been described as a defense of Jerusalemites' right of political participation and rejection of the isolation of Jerusalem from National electoral process.

Nevertheless, certain Palestinian and international actors as well as lawyers and observers say that the question of Jerusalem is seemingly more a political excuse than an existential procedural impediment. The dialogue on Jerusalem's voting arrangements was not exhausted, it was commented, and cancellation of election was not the only alternative from the options given. Fatah experienced a grave internal crisis regarding the incident. The fractures in the movement led to the emergence of rival lists from the Fatah milieu or the extra-Fatah environment. The divisions jeopardized the movement's electoral unity and enhanced the possibility of losing its historical existence within the Palestinian political system. In comparison, Hamas seemed more organized and politically prepared to take part in the elections, causing concern among the Palestinian leadership about a repeat of the situation in 2006, meaning Hamas's victory led to international sanctions and became enshrined in internal tensions due to geographical and political fracture. As a result, several people believed that the delay of the elections was a politically motivated one which could avoid uncertain results and not a technical one over Jerusalem. The ruling made a huge segment of the Palestinian population, especially youth and first-time voters, to feel that the rationality of control and survival still governs the political system and not that of democratic renewal and public accountability. According to transitional justice perspective, the 2021 elections did not succeed, because of not having enough institutional accountability and public participation in the Palestinian political arena. Amid years of disintegration, the elections would offer the citizens an opportunity to put forth their demands and renew institutions, thus, projecting a practical symbol of entry-point legitimacy.

The halting of its implementation has indicated a form of governance which is proactive in a political loss not in a renewal of democracy. Based on the events of 2021, it will make capable of its immunity to disruption by structural reform of democratic renewal. Had elections taken place, a functional constellation could have been formed. This would assist the political process through the incorporation of transitional justice through participation, institutional reform and accountability. Yet these delays lengthened the cycle of mistrust and political disaffection. And they left the Palestinians again facing a reality of rule that was without representative renewal and a reconciliation that was without reality.

2.8 Humanitarian Consequences of the Division and Civil Society Responses (2020–2022)

First: The Humanitarian Impact of Extended Measures:

The humanitarian impacts and civil society responses from 2020 to 2022. The humanitarian impact of extended measures. The combined result of many years of financial and administrative measures, internal division, and military offensives by 2020 had brought the Gaza Strip to one of the worst humanitarian crises in its recent history. According to estimates by World Bank in 2021, a huge number of people in Gaza would be living below the national poverty line, and the unemployment rate, especially youth unemployment, was very high. World Bank 2021. The ongoing withholding or reduction of PA employees' salaries, as well as the limitation of reconstruction assistance and fuel supplies, have contributed to the weakening of important services. The hospitals have faced power outages and resource shortages and relied on international aid for the continuity of some essential medical services. The WHO observed that access to essential medicines is shrinking, and that many patients face challenges in obtaining medical transfers to the West Bank, East Jerusalem, and overseas. The constraints of bureaucracies and politics (WHO, 2021).

In public infrastructure, the desalination plants were affected, sewage treatment was disrupted intermittently, and the continued chronic electricity crisis was disrupting daily life and public service. The funding and financial sustenance of educational institutions especially public schools, universities, and in particular the impact on the pay cut, payment suspension of education workers. These effects indicated that the measures were

not mere temporary measures anymore, and were a serious state of institutional paralysis for an extended duration that affecting Economic and social rights already. The humanitarian impacts affected even the mental and social sphere. Research and medical institutions like the Palestinian Center for Policy and Survey Research and MSF (Doctors Without Borders), registered an increase in indicators of mental disorders, including depression, anxiety and trauma impact. These were especially noticeable among the youth and the women (MSF, 2022; Shaban, 2021). Long exposure to deprivation and isolation has caused some sort of social fatigue so that many people think reconciliation or justice are too distant a concern from daily survival.

Second: Civil Society Responses and Calls for Accountability:

Engagement of society to hold accountable. Although the political fragmentation was continued, the civil society organizations working in the Gaza Strip and the West Bank intensified their efforts from 2020 to 2022 to document violations and call for accountability. Institute Al-Haq, the Palestinian Center for Human Rights and the Independent Commission for Human Rights (ICHR) have issued reports and positions condemning the ongoing punitive or restrictive measures being enforced against the Gaza Strip and illustrating its contradiction with domestic law and international human rights standards (PCHR, 2022; Al-Haq, 2021). According to these reports, the measures imposed on Gaza were ineffective in political terms but had social and moral consequences in that they held civilians responsible for political divergences they could not control.

The group also pointed out that reconciliation without justice, or restoration of the right, would serve to continue institutional oppression rather than addressing the effects of division. As part of these efforts, a number of civil society organizations presented their own visions inspired by the principles of transitional justice which include the establishment of a national mechanism to compensate employees in the public sector whose salaries have been arbitrarily suspended or reduced and the establishment of an independent truth and accountability commission to probe into internal violations charged against the PA and the Gaza administration as well as the establishment of a joint humanitarian oversight body to monitor the fair distribution of aid and reconstruction money. The Palestinian discourse moved from factional blames to demands for accountability based on rights, even though these proposals received no adequate

response from the political leadership. Consequently, the idea of transitional justice started to take shape not only as a political principle but also as a public necessity to re-establish trust among people.

Third: Popular Activity and Public Mood:

Third Activity and public mood At the local level, initiatives by young people and feminists have begun to fill some of the political lag. Asking for sanctions to be lifted and for permission to live are campaigns that are repeated. Demands for economic and human rights such as these have continued. We must also not ignore the digital public sphere. As the digital public sphere emerged, it became a space for demands to lessen the burden of living and to raise an accountability in politics. Some protests have been repressed in Gaza and West Bank, but this has successfully managed to return more intense social debates surrounding internal justice and authority being accountable for its citizens. The newly commenced mobilizations show that there are parts of society, chiefly the youth, that no longer view the reconciliation as simply a pact among their politicians. They interpret it as something that is embedded in ordinary rights, dignity, services and participation in public life. During this period, an opinion poll conducted by a group of social scientists showed a gradual shift of priorities with a close view an end to internal procedures and damage by security force, restoration of civil rights and guarantee of justice as major elements commitment to any agreement. According to Shikaki (2021), this suggests that people tend to interpret national unity not only as a power-sharing arrangement but also as a means of restoring dignity, justice, and trust in institutions.

Fourth: Analytical Ramifications of Transitional Justice:

The situation between 2020 and 2022 has shown that suffering in the Gaza Strip was not just an outcome of the schism but it itself was an outcome that showed failure of reconciliation and absence of transitional justice. Due to the absence of any measure that is based on the truth and reparation and, thus, accountability, we have seen the reform and dialogue give way to more and more pressure and coercive management tools, as has social fragmentation and a moral exhaustion. Instead, there has been a historical precedence of popular accountability and redress demands from civil society being the foremost transitional justice instrument “from below”; that is, justice brought by affected groups and citizens, and not just political elites.

The significance of this dimension is crucial for transitional justice of Palestine to not merely remain a political matter of agreement of the other side of the divide but must both not necessarily be a function of the needs of society and victims. In practice, this phase showed that it is not possible to reconcile without true social repair. In the Palestinian context, transitional justice ought not to be viewed as a post-conflict phenomenon but rather as something that animates governing in its everyday provision of humanitarian protection, public participation and institutional transparency. Gaza's humanitarian disaster teaches us a moral lesson and a practical deduction, namely that reconciliation entails justice (at least, on an intra-Palestinian level), but it can also mean justice to the extent that it is a formula reproducing marginalization/deprivation rather than remedying them.

2.9 The Beijing 2024 Initiative and the Absence of a Transitional Justice Agenda

First: Context and Importance:

In relation to cellular activities, disease processes and properties of biological molecules are advised to select the method of analysis.

"From April to July 2024, the People's Republic of China organized the Beijing Dialogue, which brought together Fatah drivers and a number of other Palestinian factions and Hamas." This process culminated in the signing of the Beijing Declaration which on 23 July 2024 is the most comprehensive attempt at reconciliation since the 2011 Cairo Agreement. Compared to the previous attempts led by Arab actors, Egypt, Qatar, Saudi Arabia, China presented itself as a mediator who has not been deeply involved in this file and an international power that does not have a direct history of managing the internal Palestinian division. The engagement sought to create a forum for discussion that would not be unduly affected by the usual regional calculations, but one which was focused on balance and mutual respect on both sides. After almost two decades of attempts where nothing of substance has been accomplished and a widening political and institutional separation of the Gaza Strip from the West Bank, and amid popular discontent owing to the political stalemate and increasing humanitarian degradation, talks tend to take place. In this sense, the Beijing dialogue developed symbolic potential and political substance, as opposed to containing an answer to division, on account of the idea of reconciliation suggested by a new international framework.

Second: The Main Contents of the Beijing Declaration:

The Principal Elements of the Beijing Declaration. The Beijing Declaration claimed PLO is the legitimate representative of the Palestinian people and calls for the reconstruction of the PLO on a democratic basis to enable participation by all Palestinian forces, including Hamas and Islamic Jihad. The establishment of a transitional national unity government was also proposed, to arrange elections, reconstruction work in the Gaza Strip and restore the functioning of public institutions. The statement further highlighted the Palestinian people's right to use the means sanctioned by international law to resist the Israeli occupation and settler colonialism. This language is sufficiently vague to allow for various interpretations of the term "resistance" within the Palestinian political sphere, including those that endorse military options and those that favour political, popular and diplomatic options. The pledge further contained an undertaking to resolve internal differences through political means, to reject internal violence and to maintain the impartiality of the security services. In that respect, the need for general elections, judicial reform and a joint follow-up mechanism was observed and China offered support in this regard on technical issues. Nonetheless, these undertakings have remained in large part on the level of the General Political Declaration. The Declaration did not contain specific implementation mechanisms, binding deadlines or legal guarantees.

The aforementioned resistance is not something new as these have been on the table before such as 2007 Mecca Agreement and the 2011 Cairo Agreement that had included important unitary language yet failed to transform into a sustainable track (International Crisis Group, 2022) .

Third: China's Role and the Motives of Mediation:

The third point is about China and Mediation Motive. China's mediation exhibited a mix of relative diplomatic neutrality and geopolitical ambition. According to the Ministry of Foreign Affairs, PRC (2024), Beijing framed its engagement as support for the Palestinian people's right to self-determination in the 1967 borders – and part of its vision of a more balanced and just international order. The manner in which China has tried to get the parties together has been to give them space to talk rather than impose terms and conditions on the parties. This tactic has caused relatively fewer issues among the factions, particularly unlike some earlier mediation efforts with political conditions or

regional and international pressure linked to them. Different regions have different views about it. Egypt was cautious as it wanted to keep its traditional role in the Palestinian reconciliation file. Furthermore, Iran considered this a balance with U.S. influence in the region. Amid shifting regional diplomacy, Saudi Arabia, on the one hand, has not adopted a position far from neutrality. Certain analysts have pointed out that China is trying to highlight its increasing capability to act as an international mediator apart from supporting Palestinian unity. Particularly concerning the issues pertinent to the Global South (Al Jazeera, 2024).

Fourth: Reactions and Criticisms:

Internal sentiment towards the Beijing dialogue is one of optimism. Some Palestinians thought that the initiative was more expansive than previous ones, because the involvement of a wider number of factions and due to the international character of the mediation. The renewed focus on PLO reform saw welcome voices from certain quarters of civil society, as a measure long overdue for rebuilding national representation on more democratic lines. Nonetheless, there have been some substantial critiques by human rights organizations of the declaration. According to Palestinian human rights groups, unless human rights violations, including arbitrary detention, torture, and political violations, are addressed, “real reconciliation” will not be possible in the Gaza Strip and the West Bank.. The groups demand a truth and accountability commission, as well as mechanisms to enable compensations of victims of violence and internal violations (Al-Haq, 2024); ICHR, 2024). Studies conducted by international human rights organizations have criticized the silence of the announcement of justice cases. Moreover, Dits is not about issuing a clear text about truth-telling, institutional reform or guarantees of non-repetition (Amnesty International, 2024; Human Rights Watch, 2024). Furthermore, some women’s and youth organizations raised concerns about the absence of community representation in the process as well as about the lack of clear language that incorporates the engagement of women and youth in decision-making.

Fifth: Transitional justice between political evolution and the nonexistence of rights:

From a transitional justice perspective it was a positive political step; however, it also exposes a serious flaw. The door has been reopened to national dialogue more broadly, with the reaffirmation of PLO reform and the need for institutional consolidation. It also

didn't tackle key structural problems that caused division of the country such as accountability impunity; political abuses; dysfunctionality of legal and administrative institutions. Reconciliation processes involving Palestinians have consistently been characterized by weak truth and reparation mechanisms.. The elites reconcile with each other politically, not in a social process that manages the consequences of division for victims and institutions.

The declaration is insufficient from perspective of transitional justice as there is no reference to victims, internal violations since 2007 and the need for reparations Some civil society circles argue that not responding could really be a conscious choice, as a practically manageable option to sustain a minimum level of consensus amongst various factions. It is observed that this option may lead to a political conceptualization, nevertheless, it would call to question the legitimacy of the process from the moral / human rights standpoint because reconciliation that avoids the question of justice may thrive on a political declaration but not subsequently the sources of the loss of trust. Despite the contradictions in its text, the focus on PLO reform, institution reconstruction and judicial reform in the Beijing Declaration may help in bringing transitional justice in the future. It could halt the match. When implemented effectively, these provisions will assist in setting up truth commissions and accountability mechanisms within institutions and procedures that will help restore public trust in institutions. The Beijing dialogue can be an important diplomatic development in view of inclusiveness and international mediation from an analytical perspective.

It remains a good political move and constrained legally. Recent happenings may generate some optimism towards national unity, but they do not really engage with the more difficult issues of justice, responsibility and reparations. It can create such a divide without anyone responsible when one attempts to reconcile between two. The implementation of the Beijing Declaration necessitates institutional actions. Such institutional actions must include binding legislation, independent follow-up, civil society participation as well as transitional justice principles which will inform the implementation process. Otherwise, it would just be mere rhetoric. The Beijing Dialogue should not end up like many of the other initiatives, which became important but failed to become a real catalyst for national reconciliation based on truth, justice, trust and confidence building

2.10 The War on Gaza (2023–2025) and the Transformation of Palestinian Priorities

Since October 2023, Israeli aggression and destruction of the Gaza Strip was a decisive plot along Palestinian reconciliation and transitional justice. The conflict has evoked the most serious humanitarian disaster in history but also marked a political and legal inflection point by reviving debates over legitimacy and accountability and governing as well as national representation in the Palestinian polity. According to Palestinian and international human rights organizations, this aggression is a war of genocide due to “the scale of the mass killing, widespread destruction, targeting of civilian structures, and the imposition of conditions of harsh living conditions on the civilian population in the Gaza Strip” (Al-Haq, 2024; Human Rights Watch, 2024).

The extermination war in Gaza has affected the humanitarian and political realities internal to the Palestinians, according to the chapter’s premise. The Palestinian leadership as a whole and the Palestinian public in general are now being pushed toward confronting questions which cannot be delayed any longer: who has legitimacy? Who bears the blame? How to manage institutions in disaster situation What will become the status of victims during any possible reconciliation? The war showed that lack of institutional mechanisms to pursue and obtain justice was not merely a technical or administrative problem. Political fragmentation has deepened and public distrust increased. Because there is no national truth and accountability mechanism in place, the suffering of civilians is limited to destructive external aggression and internal division and cannot elicit a national movement that will ultimately check these aggressions and divisions. We reconsider the definitions of resistance, governance, and representation in a war of extermination.

The main Palestinian armed groups, especially Hamas and Fatah, have been forced to adapt their politics and civilian responsibilities. The renewal of Israeli violence has once again imbued the Palestinian consciousness with the need to resist Israeli occupation. The devastating impact on displacements and services proved that the significant role of legitimacy of resistance cannot be divorced from the positive role of governing, protection of civilians and managing of society in disaster in decision making. The conflict, at the same time, has highlighted the extent of the institutional collapse in the Gaza Strip, especially in the area of civil administration and basic services, which makes the

immediate implementation of transitional justice mechanisms very difficult. It is essential for Truth Accountability Repair and Institutional reform to be workable in a democracy.

The humanitarian disaster has not placed justice in quarantine, rather it has increased the need for justice. Public opinion and human rights discourse that are more victim-centered are demanding, first, that the occupation be held accountable for crimes, and, second, that performance internal to Palestine be reviewed in terms of failures of an administrative and political nature, lack of protection and poor representation, and marginalization of victim voices. The conflict between the demand for justice against Israeli occupation and the demand for responsible internal accountability creates a core paradox in internal inhouse reconciliation. On the one hand, there can be no real national unity that does not account for the Israeli aggression, and on the other hand, there can be no restoration of Palestinian home which does not undergo an internal reform based on truth and accountability. The Gaza war in the year 2023 proved to be a new turning point in the experience of Palestinian justice.

This chapter illustrates. Reconciliation must be more than just political statement between conflicting groups but must be towards truth, institutional reform, civil accountability, and reparations. The next sections seek to respond to these developments in terms of four related dimensions. These are the transformation of the vision and politics of Palestinian forces. The institutional collapse and governance crisis in Gaza. The dimensions of civil suffering and justice demands. Lastly, the role of Israeli aggression in the reconfiguration of priorities relating to transitional justice in Palestine.

Since 2023 there has been a significant change in Palestinian internal politics due to the extermination war in Gaza Strip. The deadly storm has taken thousands of lives, caused unprecedented damage to infrastructure, and caused major sectors of civilian life to break down. The Palestinian political pathologies are no longer an unlimited resource for the much-calculated “new” leadership, an entity depleted by the strategic correctness of the recent past. Consequently, it was not only a military event or humanitarian event. Instead, all Palestinian organisations were made to politically and morally test themselves. In the early months of the war, Hamas was able to showcase itself as the major force against Israel. This perspective was reinforced by regional discourses that characterized the confrontation with Israel as a historic act of defiance that would bear punishment.

Notwithstanding the extensive use of mass civilian murder, the demolition of neighborhoods, total depopulation of areas in which they have been engaged and destruction of services, the scale of crimes nevertheless provoke a more nuanced internal debate concerning the linkage between resistance and governance. Due to the continuous bombardment, displacement and insecurity, sections of the Palestinians in Gaza commenced to vent their anger against not being able to protect its members effectively, the weak capacity to attend to the humanitarian catastrophe; and the existing institutions' inability to put in place a minimum civilian response in the central and southern areas.

This criticism did not dispute the right to resist the occupation. Rather, it indicates a growing understanding that political legitimacy must be built not only on an armed confrontation, but also on the ability to protect society and to manage resources and reduce civilian suffering. By the middle of 2024, influential figures among intellectuals, the youth and politicians began to ask inconvenient questions regarding the strategy of open escalation in the absence of a political horizon. Organizational data have led to a number of Hamas people taking a more realistic attitude, notably a willingness to enter into transitional governance arrangements, support PLO reform and prepare for new elections (Reuters, CEIAS 2024). This rhetorical shift indicates a partial movement away from a legitimacy essentially based on armed resistance and an attempt to link this legitimacy to political participation and institutional renewal. Fatah and the PA have uncovered the magnitude of their credibility crisis on a political front. The PA was not a military actor in the war, nor was it the case that it was weak or ineffective in the West Bank in the face of aggression.

Many people saw the PA as not being able to protect the Palestinians politically or diplomatically, or to produce a national position commensurate with the Gaza disaster. With respect to political paralysis and failure to project ultimate national consensus at a crucial moment. There are calls for reform and renewal of leadership. There have been growing demands for Fatah as a party to adopt increased transparency and restore the electoral process as well as rebuilding legitimacy on recognised democratic grounds. The ruling party attempts to regain its political relevance with the Beijing Declaration. It rehashes the old rhetoric of national unity. Internal disagreements do still arise as there are mounting pressures to reform the court system, update the governance institution, and do away the deadlock on decades-long politics. In contrast, leftists and smaller political

forces (like the PFLP or the DFLP) treated it as a call for national reconciliation, although one based on justice and not on power-sharing. To read the original, [click here](#).

Following the tragedy, the subsequent powers interpreted the disaster as an unveiling, an event with a moral and political message. As a result, they warned about the necessity of the incorporation of transitional justice principles into any process that will follow it in the country - truth, reparations, institutional reform and non-repetition. In this context, reconciliation cannot entail an administrative understanding between the Gaza Strip and the West Bank. No individual or organisation can do it alone. It must, instead, be a national process that rebuilds trust between citizen and institution, between victim and political system. The war altered the meaning of legitimacy in the Palestinian arena. In governing Gaza, Hamas struggled to practice what it preached with respect to resistance. Fatah is under increasing pressure to regain its political and institutional legitimacy.

Factions and civil society are finding in the scale of the disaster an entry point to justice as a condition of national unity rather than a consequence. The ongoing Gaza conflict does not merely test Palestinian people's capability to absorb violence from Israel. Importantly, this tested the Palestinian political system itself. For this reason, then, reconciliation became a reference to something much broader than merely the agreement to end violent conflict between two opposing parties. A social demand for truth, reform and accountability is also included. If these things are missing from any future reconciliation, then division will be reproduced even if a political declaration or consensual power-sharing government is managed for now.

2.11 Institutional Collapse and the Governance Crisis in the Gaza Strip

Governance Crisis and Institutional Collapse in Gaza Strip before and after 2006. Israeli attacks and the ongoing war for extermination on Gaza Strip since 2023 not only resulted in one of the deadliest humanitarian catastrophes in contemporary Palestinian history but also a near-total collapse of the civilian governance and institutional capacity structure within the Strip. Gaza has been without the administrative capacity to undertake any essential civilian functions due to the years of siege and fragmentation and because authorities, courts, police forces, municipal institutions were targeted and destroyed (Al-Haq, 2024; Amnesty International, 2024).

The effects of war on the governmental apparatus can hardly be overstated. This was not merely a result of war but built on a sustained rhetoric and action targeting the government's functional aspects of Palestinian civilian life. The dissolution of private and public institutions poses a grave threat to the prospects of Palestinian reconciliation and transitional justice as any serious endeavor towards truth, reparation, accountability or reform necessitates at the very least a minimum level of legitimate functioning public institutions. Gaza's government system was very pressured before the aggression. Since 2007, Hamas has been in charge of the Gaza Strip and has established a parallel mechanism to the Palestinian Authority in the. The Gaza Strip's bureaucracy, internal police, educational and basic health services have at least been sustained following allegations of political persecution and arbitrary arrest (Palestinian Centre for Human Rights, 2023).

The continuous assault that took place between 2023 and 2025 broke this balance. The heads, archives and a number of personnel of courts have been lost by judicial institutions. Medical institutions carrying out essential medical and administrative functions have been hit. Electricity and other supplies have been cut off. The police seem unfit to act because of human casualties and dislocation as well as their incapacity to coordinate when the attack is on. Human Rights Watch, 2024; United Nations Commission of Inquiry UNCOI (2024) due to the death, displacement or Thousands of employees were unable to reach their workplaces of the Ministry of Interior, the Ministry of Health and Civil Registry Offices. By the middle of 2024, the Gaza Strip was in a state of administrative paralysis. No district authority was available to provide basic services like keeping public order, registration of births and deaths, etc. After the government deserted the flood-affected area, informal community networks, local elders and civil society organizations filled the vacuum. However, they didn't have the ability or power to change the situation. This was due to a breakdown of the system which was informally and poorly coordinated with multiple authorities and not accountable enough. Due to the absence of any legal or documentary structure, important records of the crime, forensic evidence, judicial archives, and other materials were lost or beyond reach, resulting in the initial cause of malfunctioning. Secondly, the inability to enforce decisions, implement reforms or secure the rights of the citizens through a court or the central government.

Transitional justice should ultimately be more than simply principled; it must also be institutionally credible and procedurally sustained. In post-conflict Gaza, it has seen an alarming plunge in the condition. The collapse of governance has changed the public view of legitimacy and accountability” (International Crisis Group, 2022). Many Palestinians continue to regard Hamas as a symbol of resilience. Yet others believe that because the regime failed to ensure security for the people and manage the disaster, it denotes unilateral rule under siege and war is unsustainable. Calls to reform the political-administrative system with a necessary clear separation of civil administration and military setup including the integration of Gaza within national institutions and the setting up of a transitional civilian authority capable of rebuilding governance on a democratic and transparent basis include the above sentiments (Reuters, 2024; CEIP, 2024). Apart from the demands that were posed in 2025, there were many civic and academic initiatives that came up in 2024-25 and then demanded a transitional civil administration which would restore essential services, regenerate legal institutions, start early truth finding and accountability (Al-Haq, 2025).

Regardless of how you view transitional justice on inquiries, the official failure that led to the disaster should not be forgotten. In addition, there should be moves toward more humane and better governance under a new dispensation. Nonetheless, these perceptions experiences a great challenge. Multilateral, regulatory, governance, financing, and security structures established in a conflict environment with objectives are called safe zones. As a result of the lack of a legitimate local judiciary, and of an effective and accountable judiciary, attempts at accountability is high-risk, as evidence cannot reliably be gathered and justice cannot be delivered as part of a coherent legal framework. In other words, if the institutions are not well-prepared on the basis of legitimacy, capacity and public trust (Amnesty International, 2024; Human Rights Watch, 2024), then the transitional justice will only become an abstract and ethical discourse, divorced from everyday life in Gaza. The institutional collapse in Gaza is a crisis as well as an opportunity, in the final analysis On the one hand, where there are institutions that do not operate, judicial outcomes will not be legitimate. In this regard, the dismantling of old bureaucratic models could carve out space for new and more inclusive forms of governance based on transparency, community participation and accountability. The lack

of institutions will continue to exist in any conflict resolution, agreement or treaty on the war.

If this lack receives sufficient political and human rights support then it can become the basis of a just-oriented reconstruction and not merely a physical one for infrastructure. Unless political buy-in and security stability are secured as well as serious international engagement takes place in the post-war scenario, Gaza will likely descend into a permanent state of legal and administrative chaos as transitional justice ideas are mere lip-service. As such, the resumption of civil rule in Gaza must not be regarded as merely administrative, but also required for any serious Palestinian reconciliation and for any transitional justice process that would afford victims protection, provide for truth documentation and build trust in institutions.

2.12 Civilian Suffering and the Growing Demand for Justice

Since 2023, Israeli aggression and the perpetual war of genocide on the Gaza Strip Palestinians causes material damage there, but also creates a long-lasting humanitarian disaster and a moral crisis that has altered the meaning of “justice” for the Palestinians. Thousands upon thousands of individuals are dead, injured tens of thousands, displaced hundreds of thousands, entire families erased from the civil register and not just that the social register, so is it a condition for recognition and accountability of the dead, the injured and the displaced. Human Rights Report 2024 The plight of the ordinary man has transformed justice from a technical legal concept into a social necessity. In a bid to prosecute crimes committed against civilians instead of reducing them to political censure or symbolic solidarity; petitioning and public testimony alongside a people’s tribunal and various digital campaigns have been staged by victims families. This call has been included in the rhetoric exploring the deficiencies of Palestinian governmental structures which have failed to protect or respond to disasters yet (PCHR, 2025). Most victims in these crimes were women and children.

Hospitals have fallen apart, schools that became shelters bombed, and many children born without basic medical care. When political elites have a shared understanding about the processes involved in an event, it’s sometimes not in the victims’ favour. In this context, civil society networks are playing an important role in the documentation of survivors’ testimonies and in saving memory as well as lobbying for reparations. Throughout 2024,

efforts by human rights organizations and civil society groups consist of gathering testimonies and community sessions within Palestinian transitional justice frameworks that were, or became, active for the purpose of safeguarding truth from denial or manipulation, and for recognition, reparation and reform (Amnesty International, 2024).

The development of future Palestinian reconciliation processes should not be limited to and merely be a political agreement. These processes must be combined with the pursuit of truth, accountability, reparation and institutional reform. Gaza Strip residents in demand for psychological support as a result of the violence would need assistance to repair their home, property and belongings. The victims are also entitled to compensation and to society's legal and moral endorsement of what was done to them. We also need to ensure that there is a guarantee of non-repeat of such failing institutions and lack of protection. There is a substantial change in discussion of the Palestinian polity. Like international justice, Palestinians also demand accountability, transparency and ethical exercise of power with respect to internal questions in Palestine. The immense scale of the destruction in Gaza has changed the collective mood from one of emotional grief to a political and moral force which means that, without justice for the victims, there can be no authentic national unity. The perspective of transitional justice helps in designing the identity of post-war Gaza. The start of a meaningful path cannot be simply PA arrangements where the first step starts with the suffering of civilians. It should also include the participation of those who suffered the experience in order to create ways of achieving truth, reparations and reform. A reconciliation that excludes the victims, ignores their suffering and denies them a role in building the future is an incomplete reconciliation and is likely to reproduce injustice. 2024).

2.13 Israel's Conduct and the Centrality of Accountability

Since 2023, Israel's ongoing genocide of the Gaza Strip has challenged and influenced the Palestinian mindset regarding justice, accountability and reconciliation.. Human rights groups hold the view that the widespread assault on civilians, including hospitals and public infrastructure, along with the use of starvation and mass displacement and indiscriminate or disproportionate shelling, constitutes serious violations of international humanitarian law most likely amounting to serious international crimes including genocide (Al-Haq, 2024; Human Rights Watch, 2024; NUCOI, 2024). The question of international criminal responsibility has been brought to the forefront of Palestinian and

international discourse as a result of the cited crimes. For international mechanisms, especially the ICC, a significant call was made. The victims of Israeli state violence do not believe that justice is restricted to the domestic-national space but rather constitutes a piece of a more extensive system of impunity that flows from the lack of effective accountability for the violations in question against the Palestinian people. However, when we think about transitional justice, this outside violence give rise to a real paradox. On the one hand, Israel as crimes create more calls for prosecution and recognition of the Palestinian victim by the international community.

On the contrary, if we focus exclusively on external crimes, we risk undermining the internal accountability debate. We will also have to tackle the abuses that Palestinian actors perpetrated throughout the years of internal division, for instance. 2024). A report prepared by human rights watch contends that while accountability of the external actor is central and priority, it does not mean that justice is confined to that. In the Palestinian society itself, justice must also be followed and accompanied by internal review and institutional reform (Amnesty International, 2024). The occupation and genocide cannot be counteracted through delegitimization, lack of transparency and violations of rights for Palestinian institutions that are continuously being built. The impact on judicial and civilian infrastructure in the Gaza Strip has complicated justice efforts as well. Assaults on courts, lawyers' offices, police facilities, and civil and administrative records have destroyed the institutions needed to document, investigate and prosecute violations (UNDP, 2023). The damage caused has severely affected everyday life. Moreover, it has hampered efforts to collect evidence, document victims, and create coherent files for national or international mechanisms in the future. The shrinking justice system in Gaza is part of a broader scheme to incapacitate Palestinian capacity to govern, document, and make rights claims. The destruction of courts, records, and civil institutions indicates not only a legal truth in the present but also a ruling out of future possibility.

In any case, the conduct of the Israelis has clearly rejuvenated Palestinian legal awareness. The language of international humanitarian law, the Convention on the Prevention of the Crime of Genocide, and international criminal responsibility have firmly entered the vocabulary of lawyers, human rights organizations, and community documenters' initiatives (PCHR, 2025). As a result, transitional justice is not only considered an instrument of internal reconciliation but also a right of the nation. In addition, transitional

justice serves as a means of surviving extermination, displacement and destruction. Nonetheless, this legal battle will be insufficient unless accountability is ensured within as well as regeneration of the institution. It is necessary and indispensable to pay attention to Israeli impunity, but it is not sufficient on its own for a coherent Palestinian transitional justice. Palestine needs an external framework to hold the occupation and genocide criminals accountable.

To that end, an internal framework to rebuild governance, reform institutions and restore citizen trust in the legal and political system must take forward. In the final analysis, Israel is responsible for its own actions and has made the demand for justice inevitable but it has equally made the demand more difficult. Due to the war of extermination, the Palestinians are likely on a priority to prosecute Israeli crimes in the international arena. In addition, there can be no transitional justice in Palestine without a restoration of the Palestinian interior itself. To achieve transitional justice, it is necessary to hold accountable the crimes of occupation and reform the internal Palestinian structure, in order to achieve truth, accountability, reparations and the restoration of institutional legitimacy (Al-Haq, 2024; Amnesty International, 2024).

2.14 From Political Reconciliation to Justice-Based National Reconstruction

The Gaza War is compelling the Palestinians' quest for transitional justice to undergo a fundamental shift from a political objective to a moral and existential necessity beginning in 2023. The understanding of justice has also changed for the Palestinians due to the unprecedented magnitude of the destruction, including massacres of civilians, destruction of institutions and mass displacement. It is no longer conceived of as a mechanism that gets postponed until after the end of the conflict. Justice has become a basis for survival, ensures the resurfacing of legitimacy, and is contributing to reconstructing the political social system (Al-Haq, 2023; Human Rights Watch, 2023). According to a researcher at the Institute for Palestine Studies, the author of the report has issued a wake-up call regarding the weakening of social trust in political leadership due to the conflict. Further a reveal structural weaknesses in the governance system and show the lack of credibility of accountability. The absence of a believable accountability mechanism in the Palestinian political system of Gaza Strip and West Bank has been also laid bare in the latest report. At the same time, she stated that while holding Israel accountable internationally for their crimes is central and necessary, it cannot substitute for internal

reform, social reconciliation and a new basis for rebuilding institutions more transparency and justly. In this context, the devastation of Gaza has reopened the question of a Palestinian regeneration in a painful way. As stated by the UN Commission of Inquiry on the Occupied Palestinian Territory (2025), civil society organizations, human rights defenders and humanitarian actors increasingly view transitional justice not as a political luxury available only in the shadow of a settled state, but as an urgent need. In order to reconstruct political institutions, restore public trust and create an inclusive moral and national system. The war represented a watershed turning point; justice in the Palestinian case would become a condition and a necessary outcome of national reconstruction.

A physical reconstruction of Gaza is not enough; we must also rebuild confidence among its divided populace. The truth must be revealed to restore national unity. Without accountability, institutional reforms and reparations; political legitimacy will not be restored. This (Fifty-five) words long the debate of transitional justice in Palestine has shifted from the level of general principles to the level of possible application as the war comes to an end. The next chapter therefore assesses emerging opportunities for transitional justice by way of institutional, legal and civil processes for the convergence of reconciliation and accountability that has the potential to transition justice from a moral call to national project

Chapter Three

Opportunities for Transitional Justice

3.1 Internal Factors: Public Demand, Civil Society, Law Awareness

Internal Palestinian actors are pursuing transitional justice despite the ongoing internal rifts. A framework for accountability must increasingly rely on three pillars: civil society organisations and popular movements as well as greater consciousness of legal and human rights norms gives us the required tools. These actors help to facilitate elite reconciliation processes that silence the voices of victims, while foregrounding power and political arrangements (Brown, 2003; Hammami, 2012).

For more than two decades now, Palestinian civil society has transformed itself from a service delivery sector into a human rights and political force calling for justice and systemic change. The monitoring of violations that emanate not only from the Israeli Occupation but also within the Palestinian systems of governance has been done by institutional actors. For example, the Al-Haq (2020) as well as the Independent Commission for Human Rights (ICHR, 2022) and Addameer locations of Palestinian transitional justice have done such reports. Through reports and campaigns, institutions mobilized resources and legal training to support the understanding of justice as not just a political slogan but a national demand linked with rights, dignity and accountability. According to Mustafa (2024), civil society stressed the 2024 Beijing dialogue where voices for human rights and civil rights raised questions on the future framework of national unification and collectively urged the incorporation accountability, human rights, etc. Grassroots movements and victims' groups also found a powerful ally in public debate. Families of political prisoners and torture survivors, along with those affected by the fake separation of Gaza and the West Bank, run public campaigns.

After the killing of Nizar Banat in 2021, the movement started to become quite active. According to (Amnesty International, 2021; Human Rights Watch, 2022), different actors confronted some peculiar misuse of powers, issues of independence of the judiciary and weak safeguards of human rights. Feminist organizations have also made the connection between gender and transitional justice in a similar vein. The investigation of cases of political exclusion and economic injustice through gender violence in times of fragmentation and conflict is particularly stressed (Moghadam, 2020). Transitional

Justice is Not a Question of Political Violations. It refers to the re-structuring of economic and social relations which create and re-create marginalisation. Through the appropriation of legal culture and the demand for institutional reform, lawyers in universities and university programs support these projects. Students with no background of International Law, Human Rights or Constitution Law are finding the course increasing difficult as the content continue to get tougher (An-Najah National University, 2023; Birzeit University, 2023). As the number of Palestinian lawyers involved in strategic litigation on unlawful arrest, unfair trial, and restrictions on freedom of expression through available domestic bodies and international mechanisms increases. One way to achieve that would be to prepare a new generation of jurists and rights defenders who would be able to restore the rule of law and justice system. Greater legal consciousness will make it more difficult for political elites to limit the reconciliation to private arrangements. On the other hand, the demand for transitional justice will likely take a different form.

Earlier, the discussion on justice was merely cultural. Now, it has become social. Justice was once confined to a niche group-the political elites, the intellectuals, the human rights defender people. But it's the youth who are demanding justice now. Youth are talking about justice in protests, student council elections, social media campaigns and other such public debates. There is a paradigm shift in Palestinian political culture that is bringing about change. Their demands have gone beyond just national unity and resisting the occupation. Demands for accountability have now become part of calls for respect for human dignity and right. Because of this, the social movements, popular demand and legal awareness create a real space for a Palestinian path to transitional justice. Whether or not they will be successful, of course, will depend on the capacity of these actors to use moral pressure and human rights pressure, so as to create concrete functioning mechanisms that will protect victims, document the truth, and help bring about real reform not bogged down on elite consensus.

3.2 Political transitions and the emergence of new leaders

Leadership Changes and Regime Changes Encountered in New Countries For a long time, the Palestinian political system has witnessed structural stagnation, but a decline in popular faith and a generational shift within political forces, have opened up new avenues to think about transitional justice (Brown, 2024). Fatah and Hamas have deepened their legitimacy crises significantly as they have not held any elections for years and people

are increasingly losing hope in their political elites. Certain official discourses have begun to evoke concepts similar to reform, and reconciliation. Terms such as “recovery of the country” and “changing of law” have been used as fundamental ingredients for reconstitution of unity. The references from the leaders of Hamas to “restorative unity” could further suggest a possibly tentative receptivity to such more expansive discourses (Hamas Political Bureau, 2024; Abbas, 2023). China’s 2024 declaration represented a common rhetorical recognition of the need for restructuring, elections and renewal of popular legitimacy, although it is unclear how this will be realized in practice (Xinhua News, 2024). Along with these changes, new political actors also emerged who do not belong to the political framework of the two.

Fatah reformist movements, notably the Democratic Reform Movement, advocate for institutional transparency and renewal (Mustafa, 2024). The levels of independent technocrats and civil society individuals are also increasing in municipal and student elections, through discourse linking reform, accountability, and justice (Shein & Emmons, 2023). According to Leech (2023), the community leaders of certain localities especially those of the affected camps and communities in the northern WB are trying to incite bottomup accountability based on local representation and community engagement. The new voices emerging on the subject would have us treat justice, not merely as a political slogan, but as the bedrock for restoring social legitimacy and trust among citizens. As several observers have noted, the Palestinian political system cannot be revived just by changing people and redistributing positions; it requires a change in the very rules of government themselves.

The most important of these are efficiency, transparency, accountability, institutional independence and rights. Because both the regional environment and the international environment benefiting the need for a credible Palestinian leadership, the matter of Palestinian unity has also made the news. The Arab League, in a recent meeting in Cairo to set up new Palestinian elections, issued a solemn appeal to the Palestinian leadership to organize new elections, according to the Egyptian Foreign Minister (League of Arab States, 2025). According to UNDP 2024; European Union 2024, the EU and UNDP have also tied post-war reconstruction to transparency and inclusive governance. After the Xinhua (2024) reported that China also made institutional reform and law-based

governance the conditions to rebuild trust. All in all, these changes suggest a growing connection between justice and legitimacy in domestic and international discourse.

The concept of reconciliation is not simply understood as a political agreement between the two sides anymore. The process must be endowed with reformable leadership, restructuring-marked institutions and a public-participation-endowed path in the rebuilding of the political system. With new leadership, a wide spectrum of reform discourse, and growing international pressure for transparency, there are significant opportunities to move transitional justice from the idea place to the practical place.

3.3 National institutions and the absence of a legal architecture

Setting up credible transitional justice mechanisms is complex in Palestine due to the fragmentation and ineffectiveness of their national institutions. Since the split in 2007, the PA has undergone a number of changes due to events. The PA's institutional design remained frozen, particularly after the presidential decree in 2018 liquefied of the PLC the PLC. The Gaza Strip's administration continues to implement its own administration and judicial system. Consequently, two legal systems exist which do not recognize each other nor do both effectively co-operate institutionally. The duality of institutions and laws mentioned above has caused a decline in public confidence and severely limited the possibility of national implementation of transitional justice mechanisms. Political will as well as the existence of institutions is what the transitional justice institutions require so that they can take decisions and implement them. In addition, it is necessary to have an independent judiciary and legislative framework, which does not allow the selective application of the principles of truth, accountability, reparation and reform (Lahlouh, 2025). To alleviate the crisis which is ongoing in Gaza, institutional reforms at national level are underway as the war conflict has taken on genocidal proportions since 2023. Restoration of the legislative and judicial structures is now seen as a national as well as a moral obligation with linkages to dignity, justice and the restoration of public trust (Al-Haq, 2024). There is no existing legislative institution that could produce favourable legislation. There is a split judiciary. The other two branches weakly monitor the executive branch. So, any discussion on transitional justice is pointless if there is no reform of institutions.

Civil society organizations as well as several Palestinian legal centres propose transitional measures until the holding of elections in this context. The formation of a temporary legal consensual framework or a national body with limited powers can be proposed for framing the fundamental principles of transitional justice and harmonisation of human rights standards, strengthening of judicial independence, and establishing a truth/accountability commission for the state. It will be administered under an independent civilian authority, not controlled by any political party or faction. It is observed that there are serious public confidence problems with institutions (Birzeit University Institute of Law, 2023; ICHR, 2024).

Public trust in Palestinian executive and judicial institutions is declining according to recent surveys. In contrast, there is considerable support for either reactivation of the Palestinian Legislative Council or a new representative body that could scrutinise legislation. It means that everyone agrees that there must be an institutional reform to deliver justice and not something which happens. The effective execution of any of the transitional justice mechanisms in the whole state of Palestine would depend on three critical conditions. To reconstruct such institutions on broadly inclusive national bases, now and again, not to allow sustained civil society pressure reconciliation to be reduced to elitist understandings again, and regional support for reform without any externally imposed agenda on the one hand and other no less important. Without a wide-ranging legal framework and functioning national institutions, transitional justice can be nothing more than an important moral idea, not a course of action.

3.4 The involvement of regional and international actors

The transitional justice process in Palestine has been significantly influenced by the behaviour of regional and international actors, who have either favoured certain reform paths or entrenched patterns of dependency and impunity. In the past, Egyptian, Jordanian, Qatari and other Arab states have acted as mediators of Palestinian power struggles themselves an intermediary actor including the 2011 Cairo Agreement and 2017 Fatah-Hamas Agreement. The real issues of security can't be attained without politicization of the system, or accountability and human rights which are all secondary needs. The results of the elections and their after effects have made that clear. A few initiatives that have emerged from the Arab States with Qatari and Saudi Arabia spearheading these were of a humanitarian-relief-reconstruction nature which did not

deeply engage with structural justice or mechanisms of institutional accountability (International Crisis Group, 2022).

The 2024 Beijing Dialogue indicated a relative shift in mediation, with the file being removed from the traditional Arab notch which has over the decades been damaging. The move into an international track where the Chinese were presenting themselves as a neutral mediator looking to support through tools not stress regionally. (Xinhua, 2024). Funding from the European Union, the United Nations and a number of donor states has gone on the implementation of law reform and institution-building programs in Palestine. Among them are the European Police Mission in Support of the Palestinian Police, UNDP projects in the field of the rule of law, and training activities organized by the Office of the High Commissioner for Human Rights, which aimed to develop the capacities and professionalization of the judiciary and security services (OHCHR, 2023; UNDP, 2023).

These technical interventions have faced stiff opposition and scorn. Some researchers and practitioners agree. At the same time, some human rights agencies also believe that the focus on building technical and administrative capacities could end up emptying justice of its political and moral dimension, as it would be reduced to institutional training (or even bureaucratic reform), without engaging with the structural violence of the occupation or internal violations of the division (Al-Mezan Center, 2024; (Shikaki, 2024). By making justice an administrative matter, the truth, accountability, reparation and reform are not fully available. Since 2023, U.S. military and diplomatic support for Israel in the ongoing war of annihilation on the Gaza Strip has badly undermined the credibility of Western claims about human rights and justice in the eyes of large segments of Palestinians (Human Rights Watch, 2024; ICC Monitor, 2024). As Israel is being provided political and military support at a time when calls for accountability for serious international crimes is growing, it becomes selective and imbalanced for many. Nonetheless, international legal networks and human rights advocacy opportunities have mushroomed that provide opportunities for accountability.

The ICC is tardy regarding the investigation concerning the crimes which are taking place in Palestine as it acts for political reason. Nonetheless, the inquiry is an important acknowledgment of the Palestinian legal agency and the victims' right to justice. Despite opposition from Chinese administration, reports from eminent international organisations

such as UN Human Rights Council, special rapporteurs, Amnesty International, Human Rights Watch and more continue to take stock of abuses and further mount pressure on political actors to adhere to standards of justice. Converting these international legal gains into domestic reforms may remain the biggest challenge. As long as Palestinian institutional frameworks are fragmented and incapable to fulfil the demands of truth, accountability and reform, then the accountability at the level of international criminal justice for the crimes of the occupation would not be sufficient for building transitional justice. An independent Palestinian process that links reconstruction, institutional reform and accountability with victims' rights protection must be built upon, not replaced, by this involvement of regional and international players..

3.5 The Language of Justice Law Progression of Exchanges and Permanency of Contradictions

Hamas and Fatah justice discourse are different; they are also politically selective in their exploitation. For the Fatah movement, state-building, legal reform and international diplomacy through the PA and the PLO are gradually displacing calls for justice that were formerly framed in terms of national liberation and self-determination. The Palestinian leadership has always viewed international laws and the International Criminal Court (ICC) as part of confirming the legitimacy of the Palestinian state and the legitimacy of the occupation through access and membership. Nevertheless, a flagrant internal contradiction exists in this external speech of international law. Throughout the year, West Bank political and civil society governance practices have seen restrictions on freedoms and politically-motivated detentions at various points in the situation. The local actors' engaged in practices of repression against those protesting the killing of activist Nizar Banat (Amnesty International, 2024; Al-Haq, 2021).

Due to these developments, there have been internal and external calls within Fatah for truth commissions and transitional justice to be included in any effort to restore the legitimacy of the PA. Formal political structures have a limited impact from the proposals. Hamas, in contrast, often articulates justice within the framework of resisting Zionist settler colonialism. The occupation stresses the themes of sacrifice, endurance, class struggle and ethical commitment. Regardless, it ignores the issue of internal accountability. Since 2007, when Hamas won power in elections, it effectively controls the Gaza Strip, which has been criticized arbitrary arrests, use of military courts against

civilians and restrictions on civil society and freedom of expression. According to a report by Amnesty International and Al-Mezan Center, the leadership of Hamas has recently made statements emphasizing the need for elections and reforms which are more flexible than previous positions, but we have not yet seen any clear moves in implementation.

There is a contestation between a way of speaking which offers itself Unity; and a reality of institutions, still without internal independent mechanism which could hold to account or oversee acts of commission and omission. As per the specialist, Fatah and Hamas have the same structural deficiency despite political disagreements. Neither group has strong accountability mechanisms in place. Further, neither civil group would advocate for civilian oversight where the centers of influence are affected. Both groups use justice as an instrument against the other, rather than out of a commitment to victims and citizens at large. All proof and disproof, including the fake news they keep producing prevent any serious path of truth and reconciliation in the conflict. It is not a typical national framework to assign justice to one side and reject the other one. According to the statement, the chances of reconciliation failing are high because it will seek to manage, injustice and division, political competition. The sentiments of youth particularly students activists former detainees and civil society actors are gathering force for the conviction of the guilty in the riot case. Justice is not regarded as a win-win for either side of the issue. A novel social contract for Palestinians is in the making that can become a shared moral and institutional covenant of dignity, accountability, transparency and rule of law. Thus, it unveils a notable paradox surrounding justice's language evolution in Palestine.

On the one hand, political forces use justice to bolster legitimacy or persecute their adversaries. Nonetheless, society, especially the youth, is anticipating justice that is far-reaching than that. They want a justice that is more independent, which rebuilds trust between the citizen, and the institution. The consideration of altering compensation from an act of justice to something more essentially meaningful as opposed to simply a mere political slogan. Palestine today finds itself at a crucial point marred by institutional paralysis and trust deficit. Palestinian transitional justice may begin to be rethought from within the Palestinian context itself, no matter how unplanned, due to the overwhelming destruction caused by the war of annihilation on Gaza since 2023, as well as growing public pressure and political reflections. In our world today, something which was first

introduced a long time ago and is usually referenced in the international diplomacy language or post-war scenarios, has become a national urgent imperative.

There is a concern that the transitional justice in its relationship with the collective survival, re-establishing trust and the restoration of moral and political order in Palestinian society. Following the past two reconciliation initiatives, which heavily relied on “Arab” or “international” mediation or on an “understanding” of the political elites at the top, the dynamic internal situation may be giving way to a possible Palestinian model of transitional justice on the bottom-up. The collapse of traditional institutions is bringing about a humanitarian and administrative tragedy. Nevertheless, it has demonstrated the limitations of bureaucratic structures that thrive on impunity and resist reform efforts. The absence of institution allows giving rise to a possibility of building governance on new footing not on the basis of factional power or power-sharing but on the basis of truth and accountability and citizen participation (Lahlouh, 2025). An increasing number of civil society organizations, human rights defenders and independent legal researchers are rallying around the basic premise that justice must come before, not after, political unity. The concept of transitional justice in Palestine may develop based on the hybrid model with local legitimacy on the one hand and international norms on the other hand. The actions in this model connect on three different levels. One of the initiatives is launching community-based initiatives that document the testimonies of victims. This includes testimonials of Israeli crimes or internal Palestinian violations. Through this initiative the intention is data collection, but also creation of common national narrative, counter denial, protect memory and restore victimhood, dignity (ICHR, 2024).

Reforms relating to courts, security services and public administration constitute the second-level reforms. The discretion regimes or class power are not permitted for any such assurance. The law must contain a mechanism for accountability that makes them part of the institutional framework, not a temporary political promise (Birzeit University Institute of Law, 2023). We put forward the third level suggestion that is unification of the Law of Gaza Strip and West Bank. The existing divide in the law is hindering progress on prosecution, reparation and truth. Consequently, it is essential to align laws as well as restore the national unity of the Palestinian legal system in order to establish a single national transitional justice track able to address violations and victims in a comprehensive manner. Yet, it is essential that the public shall legitimately participate.

The demands made by victims' families, youth movements and women's organisations should not be marginalised to institutions or the periphery of political discourse. The proposal suggests that those communities which were the least affected should have institutional recognition and effective participation in transitional justice structures (either in the form of a national consultative forum or a national transitional justice commission) to which civil society, lawyers, victim associations and other relevant political representatives have access. Moving to a participatory methodology would be an important change.

Palestinian politics involving secret agreements and closed-door negotiations have experienced since 2007. Thus, all transitional justice mechanisms must be open and transparent. It cannot also become an agreement of the leaders because it loses its sense if the victims or the citizens feel that it does not speak in their name and does not give them a place in the re-building of the future. Nevertheless, this possible moment is extremely fragile. When political elites focus on control rather than reform, the rhetoric of justice may simply function as a smokescreen for some outsiders and not a genuine commitment to victims' rights. The recent assault on Palestine by Zionist forces indicates that the Israeli government is not only insatiable in its blood lust, but is also implementing a much tried and tested formula of murder in the first degree in Gaza. It serves as a reminder of the perspective that looks forward to a future, which is freed from the hindrance of ideas and outdated modes of existence. Once legitimacy and authority cease to matter to both the Palestinian and Israeli parties, a new Palestinian social contract based on justice, accountability (rather than factional loyalty) and on truth, reparations (rather than denial and stopgap) can start to be conceived. Currently, if capitalised well, transitional justice could move to the ground from a theory for the renewal of Palestinian political life and for a more truthful and robust national unity (Browne, 2023; Bahdi & Kassis, 2020).

3.6 Conclusion: Justice as The Basis for National Reconstruing

The occupation, internal division, and humanitarian catastrophe currently faced by the Palestinians point to the fact that transitional justice can no longer be viewed as something optional, something to take care of later – it is an immediate necessity. Justice is not merely a matter of morality. The aim of creating national unity, restoring legitimacy, and regaining the country's political-institutional ability to function is to build confidence

between the government and the citizens. Reconciliation that does not require truth and accountability will reproduce the impunity that have already prevailed since 2007 (Brown, 2024; Teitel, 2000). The Gaza Strip experienced a war that left a wasteland behind. It shows the depth of institutional decay and the reach of political elites' mediations. This situation has also led to a new social awareness in which justice is linked to dignity, life and sovereignty.

It is the civil society organizations, the victims' movements and the new generation of activists and professionals who are redefining justice in Palestine. To analyze Hansen's act, the author refers Stephen Castles' concept of an "ethnic strategy" by which migrants and minorities are conceptually linked to "the problem." To realise that aspiration, the vision and design for transitional justice must be law-based, inclusive and people-owned. Restoring an independent judiciary, achieving unity of the judicial system between Gaza Strip and West Bank, establishing truth and reconciliation mechanism must be inclusive of all Palestinians, including women, refugees, and survivors of political persecution. International partners can offer technical and legal advice on reform options.

Yet the design and implementation of the process must essentially be Palestinian and Palestinian-owned (OHCHR, 2023; UNDP, 2024). Transitional justice: The space between resistance and reconstruction. The purpose of the course was not only to recreate the institutions but to also recreate the trust between the citizens and the leadership, the political formations, Palestine, and the world. In the years to come, it will be clear – the above will happen, or this word will become a national project of change. If they were to take transitional justice seriously and bravely, the Palestinians could make of it the cornerstone for the building of their state and their moral universe at the same time: a state made more legitimate, a society more able to overcome the consequences of occupation and division, a national project based on truth, accountability, dignity and non-repetition (Al-Haq, 2025; Human Rights Watch, 2025).

Chapter Four

Transitional Justice in Palestine: Structural Obstacles, Conclusions, and Recommendations

4.1 Structural and Political Factors Hindering Transitional Justice

At present, the absence of political will or desire on the part of Palestine's main political forces, especially Fatah and Hamas, is one of the most serious obstacles to the establishment of a transitional justice system in Palestine. Both sides have repeatedly promised to promote national reconciliation and institutional reforms over the years but practice otherwise. Some people are against transition justice mechanisms as they fear the transition justice strategy will diminish their power, expose factional wrongdoings and derail patronage practices. Sayigh (2020) notes that this happened. Political elites do not view transitional justice as a mechanism for rebuilding public confidence and legitimacy. They prefer to use it as a negotiating tool in intergroup discussions. The language of justice, reform, and inclusiveness used in the 2024 Cairo agreement and other reconciliation endeavours are meant to mask their real character. The conflicts about whether and how to implement the new policies have starkly exemplified the deep mutual distrust that separates the two sides and each side's fear for its security and political standing. According to Brown (2024), this incapacitating of justice issues is actually part of a larger pattern and politics of resistance from the political elite with respect to systemic structural reforms. The Palestinian Legislative Council has not functioned for the last 13 years, leaving a vacuum in the territory due to lack of oversight instruments. In the absence of checks and balances, and without courts that have the capacity to investigate abuses by all sides, the political leaders have little incentive to engage in a just process. Furthermore, members of the internal security services in the West Bank and Gaza usually were not held accountable or faced little consequences. As per Amnesty International, public ridicule escalated and perception became entrenched that party control is more important than justice. Transitional justice in Palestine will need more than technical or external assistance. Usually, justice is analysed in terms of political practice; in other words, it is a source of power and legitimacy, not a threat to power and legitimacy. Should this transformation fail to materialize, transitional justice shall remain as mere rhetoric and declarations that shall never lead to real accountability or real institutional change.

4.2 External Intervention and Its Impact on Transitional Justice

Geopolitical Divisions affecting NGOs and their restricting donor policies. The timing of the transitional justice process in Palestine is shaped by both internal Palestinian dynamics and external interveners. Often it has a negative impacts. In the past 20 years, Egypt, Qatar, Iran, Turkey, and Saudi Arabia have intervened in the Palestinian affair, complicating the conflict of.... Reconstruction and reunification of the Palestinian political system becomes much more difficult. The funding, political backing or military support offered by these states at various times to various Palestinian groups, has split them up rather than strengthen them. Sayigh (2010) Egypt in addition to Saudi Arabia Fatah-backers traditional are Qatar plus Turkey Hamas by close ties with and its leaders have already.

The regional imbalance triggers competition among the parties and hampers the Palestinians' ability to undertake mutually-reinforcing and independent courses of action. As per Favilli, if mediation talks are held in Cairo or Beijing, the political interests of the host nations get joined to the Palestinian needs. Consequently, short-term political arrangements that either preserve external alliances or manage crises, as opposed to transitional justice that addresses structural grievance issues and real deep questions of accountability (Hroub, 2016). Regulation and requirement of foreign donors and donor community has become a big hurdle. International donors, eyeing stability, support governance, security coordination and economic management in the region. As Challand (2009) points out, this strategy procrastinates on politically-sensitive issues of transitional justice, accountability for abuses in Palestinian society, and judicial restructuring. In certain instances, the requirements imposed by the donors have obstructed or limited the opportunities for this to happen as there is always the risk that some event may act in a way that will disrupt the already fragile security system or will exclude important political actors.

Palestinian civil society and governance institutions are failing to formulate independent transitional justice agendas due to overwhelming dependence on funding and approval. So it is believed that international aid comes with too many strings attached which suffocates grassroots initiatives or deny to make political demands for justice. Tackling corruption, making bureaucracy work better etc. could hide deeper causes. In other words, an issue of democratic legitimacy, historical grievances and collective trauma. The

external environment surrounding Palestinian politics poses a challenge for holding people accountable. Often, it is the very content of justice which may be adjusted according to regional or international objectives. To be successful, transitional justice cannot be dictated by geopolitical orientation but, rather, on objectives Palestinians define for themselves.

4.3 The Impact of Israeli Settler Colonialism on Transitional Justice

Israeli settler colonialism is a widespread structural barrier to transitional justice in Palestine. Most post-conflict, post-authoritarian situations deal with the violation of state and internal governance institutions. The Israeli military presence and external colonial control in Palestine complicate the picture through the various effects resulting from fragmentation of institutions, disruption of political processes, and the generation of many layers of direct and indirect sufferings. Israel's settler colonialism interferes with the mobility of Palestinians. It affects border control and is accompanied by the arrest of political and civil activists especially in Area C, East Jerusalem and the areas referred to as seam zones. The function of Palestinian social, political, and legal institutions stay far from independent. This often prevent the victim and lawyers from opening or completing lawsuit files and/or investigating earlier violations due to an ineffective jurisdiction, or restrictions on movement and access. This makes coherent frameworks for truth-telling or reparations harder (B'Tselem, 2021).

Since there is no community prevention and law enforcement, and because of the growing criminal activity, calls for a return to order have increased. The difficulty is complicated by the permit system and military courts, along with the overwhelming number of legal situations. Consequently, justice is more localized and connected to the political and legal spheres. Israel's non-compliance with international humanitarian law and international human rights law has been effective by the country on repeated occasions with no effective international accountability. The culture of impunity surfaces as a by-product of accountability deficit. If discussions concerning transitional justice do not engage with the external dimension of occupation and settler colonialism, they will not be credible. The national liberation struggle for justice within itself complicates the scenario.

A large-scale resistance to Israeli settler colonialism is hampered by structural violence taking place in Palestinian society in response to human rights violations. Within all of

the stakeholders, there is a desire for accountability and change. Yet wishes for autonomy were shadowed by a colonial substrate that regulated political, legal and economic life. As such, transitional justice in Palestine should be understood not just as a specific measure in its own right, but as part of an overall set of objectives of de-colonization, international accountability, and resumption of Palestinian capacity to build independent and effective institutions.

4.4 Institutional Fragmentation and Legal Normative Inconsistency

The uncoordinated nature of the justice institutions and the absence of an integrated legal framework are among the most significant obstacles to transitional justice in Palestine. The long-standing internal political divide on the one hand, and structural pressures emanating from Israeli settler colonialism on the other two inter-related factors. The Fatah & Hamas split that arose in 2007 in the West Bank and Gaza Strip gave birth to separate entities each with their own security, judicial and administrative organs. The division has created an alternate system of laws which do not match with the formal laws, judicial systems are poorly coordinated and the enforcement of the laws differs. Consequently, in the absence of harmonized laws Al-Haq (2022), the full deployment of integrated truth commissions, inclusive reparation schemes, or accountability processes in the various Palestinian territories is extremely difficult to achieve. The interruption of legislative work in particular the Palestinian Legislative Council that is authorized to enact legislation since the political schism in 2007 has created a gap that has influenced the rule of law and unified transitional justice law. The discipline of Shahid Sadullah Khan on cytological criteria of malignancy and aggressiveness in breast cancer has been seen by the hospital for two years without interruption.

The 29th of June saw the hospital agreed to undertake the development across the province of the guideline on the appointment of PCOs by the optometrists. The judiciary in the West Bank and Gaza is not especially independent, and local political interests hurt both judiciaries. Occasionally, appointments to the judiciary are determined or affected directly by factoral or political reasons, which have caused a loss of faith in the judiciary. The increased resort to military courts, particularly in Gaza, poses difficulties for victims of political repression to secure a fair trial and effective remedy (HRW, 2012). Various inconsistencies and legal frameworks found in institutions falsify citizen's trust in governance; making accessibility to justice increasingly complex. To overcome

fragmentation, sustainable transitional justice must be based on institutional integration, harmonisation of legislation and the strengthening of judicial independence through structural reform.

Serious political will and broad structural reform may not be forthcoming but it is practically impossible for the same.

4.5 Community Fragmentation and the Multiplicity of Victim Narratives

Two major obstacles to the building of a cohesive Palestinian transitional justice framework are the fragmentation of the society and the multiple victim narratives. The injustices and violations that climate the Palestinian society do not amount to one common experience, but rather, the sorts of injustices and violations that its people suffer are distributed between the occupation, siege, internal division, political repression, displacement, detention, internal political violence, socio-economic discrimination, etc. Any form of transitional justice that does not consider this pluralism runs the risk of producing a selective narrative on victims which exalts some and marginalizes others (ICHR, 2024; Al-Haq, 2022). The complexities of Palestinian realities give rise to this issue. The political and legal conditions of the West Bank, Gaza Strip, East Jerusalem, and refugee communities are not the same. In the West Bank, victimization narratives are, in general, associated with Israeli measures, which include restrictions, settlements, arrests, security coordination, and abuses related to public freedoms and political persecution. The victim narrative surrounding Gaza has to do with the siege, the repeated military operations and humanitarian collapse.

It covers other restrictions not just the political opposition, and also the restriction of expression within the strip. In East Jerusalem, discriminatory residence policies lead to demolitions, displacements as well as administrative and legal discrimination. The discrepancy brings the very concept of ‘victim’ into contestation, and has an impact on the order of priorities of justice – will it start with accountability against the occupation? Or through evaluation of internal violations? Or by reimbursing for the expenses of political and social nature? Or all those pathways as a whole? The Palestinian violence that has affected factions since 2007, including political arrest and torture as well as attacks on the freedom of expression and more generally, has been attributed to the security services or other actors affiliated with the two sides of the divide. It creates

victims that are not reckoned in official reconciliation narratives for the reason that ruling political establishments usually don't deal with internal violations; they rather treat such violations as sensitive files which must be got rid of to safeguard 'unity', and not as individual and collective rights which must be recognised and accounted for. Many victims feel twice a victim; once, for what happened to them and once, because they are not included in the reconciliation process (Amnesty International, 2023; Human Rights Watch, 2022).

Agreements among elites that ignore victims will alleviate the conflict at the elite level, but will not cure the social or psychological effects which abuses inflict. The victims require not only the cessation of hostilities among political forces; they need a recognition that what happened to them happened, guarantees of non-repetition, and physical and symbolic reparations mechanisms. The survivor's voice must always be present for any reconciliation to be meaningful, for otherwise, it becomes a super-compromise which leaves the social wounds festering, disillusioned community angry and a continuing feeling of mistrust. The intergenerational disjunction within Palestinian society contributes the spread of victimhood narratives. The generations who lived in the pre-partition era may understand reconciliation better. Examples include restoring the unity of the political system, rebuilding the PLO, or coming to an agreement on the administrative division between Gaza and the West Bank. The concern among youth about formal reconciliation focuses only on power sharing or redistribution of positions; it shall not entails real reform, popular participation, and accountability for past abuse (PCHR, 2023).

The disparity between generations suggests that transitional justice in Palestine must not be limited to the past but must include reconstruction of the political future as well. The youth, students, activists, former detainees, women and marginally victimized do not ask for a deal between Fatah and Hamas. In fact, they want a more transparent political system, an independent judiciary, the guaranteeing of freedoms and real participation. Failure to comply with such demands will mean any settlement is likely to fall apart since it will be a copy of the old regime with New tools. Multi-vocal narratives of victimhood will involve women as central participants. Palestinian women not only suffer from the consequences of occupation, fragmentation and political violence, but also endure double and multiple community and economic repercussions, whether being mothers, widows,

or heads of afflicted families, or being unable to achieve different forms of violent and marginalization. The role of women has typically been relegated to the margins of reconciliation processes, seeing them as a victim and not an actor in making justice.

The act mentioned within this paper contradicts the principle of transitional justice which presumes that victims (including women) are to be involved not merely the objects of truth-telling, reparations and reparation (Moghadam, 2020). It is important to listen to refugees, political prisoners and survivors of internal violence. The aforementioned groups have different experiences of injustice and deprivation. Moreover, they have different ideas as to what is fair. For refugees, justice could mean a right to return and recognition of what happened to them. Political prisoners associate it with expressions of regret, reparations, and responsibility for all involved. Justice may mean truth and the end of impunity for the families of victims of internal violence.

One potential human rights defense may focus on the reform of security services and the independence of the judiciary as guaranteed non-recurrence. Consequently, the concept of transitional justice in Palestine should concern itself with acknowledging multiple experiences, rather than fusing the experiences into one. This diversity, in practice, must be addressed through the establishment of mechanisms of participation that include victims, territories and social groups. This may involve local hearing committees in the West Bank, Gaza Strip, Jerusalem and refugee camps, a national registry of victims, secure mechanisms for receiving testimony, reparation programmes that take account of differences in type of violation. Transitional justice does not seek to produce a new official narrative; rather, it aims to open up a national space for many alternative stories within a framework of inclusive human rights. Everything that should matter is what should always matter, which bridges the gap (ICHR, 2024). We mean not only discovering truth and naming responsible parties, but public acknowledgment that different groups suffered different kinds of harm. The acknowledgment of crime assists in the dismantling of denial logic as well as opening up an ethical and legal space for victims. The effects of the confession may be translated into material reparation, through measures of a practical and symbolic nature that will facilitate compensation, rehabilitation, official apology, memory, and immortalizing of victims Non-selectively (United Nations Secretary-General, 2004; Teitel, Transitional justice, 2000).

The conflicting narratives of the victim is not the problem. It is the lack of a framework that arranges for their multiplicity to be a source of justice rather than division. When a competing logic is applied to these narratives, both will seek to show that they are the victim and the other is the victimiser. A comprehensive national framework can manage narratives to ensure these become the basis for a shared memory, wider accountability and more honest reconciliation. Essentially, there is no possible way for transitional justice in Palestine to work under a single victim, single narrative or single path. The Palestinian reality is home to many victims. This type of transgression happens at the level of the occupation division, at the level of the institutions, armed actors and social, economic level. Thus, a serious transitional justice model should be pluralistic, participatory and contextual. It must recognize all victims, grant them the right to be heard, and turn their conflicting memories into a foundation for establishing trust and legitimacy. Neglecting these realities will make an even greater gulf and make more narrow two sections of our society, thereby shutting the door on reconciliation. A selective discourse on justice would undo justice and would not prevent functionality.

4.6 The Persistence of Obstacles and the Limits of Transitional Justice in the Palestinian Context

In the Palestinian context, it is necessary to disassociate it from the Transitional Justice, and begin the process that assists to the building the national model that responds to the specificity of the Palestinian experience. The Palestinian situation couldn't be considered a conventional case or post-conflict case of any kind. Occupation, settler colonialism, an internal divide, multiple centres of power, a pile-up of breaches, erosion of trust in national institutions, and their consequences. As per the UN, in addition to a sound international legal framework, if the international community is seeking a sustained peace between the actors then it must ensure national legitimacy through transitional justice. The objective of this chapter is to work towards the development of a Palestinian model of transitional justice able to reflect the local context, and relevant to international standards.

This demonstrates that in order to strengthen the social consensus on other guarantees and rights, it is essential to pay attention to internal clash scenarios, guarantee the rights of victims, reform the institutions and an inclusive national process, which is done by political forces national action factions and civil society institutions. The suggestion of

transitional justice is not seen as an abstract legal mechanism, rather as a way to re-build the Palestinian project to be more transparent, accountable and unified.

For the inception of an original Palestinian structure for transitional justice, there would need to be the idea of a direct transmission of experiences from comparative examples. For this reason, the Palestinian case does not fit the classic model of emergence from conflict. In fact, the same was true for those leaving authoritarian rule for democracy. The features that characterize the Palestinian context are unique yet complex. Israel has been continuing its Zionist settler colonialism, which is ongoing. Moreover, there is a lack of full sovereignty. Furthermore, there is a fragmentation of the political and legal system. Finally, there is ongoing fragmentation of the West Bank and Gaza Strip. Accordingly, Palestine's transitional justice project is more than a political reconciliation or compromise between factions; it is more than a rebuilding of national legitimacy; restoring societal social trust; holding violators accountable and confronting structures which are institutionalising impunity. The Palestinian context is continuously exposed to colonial rule with restrictions on jurisdiction and national institutions. Consequently, transitional justice suggests that one must not deal with a past that can be closed off through processes of truth-telling and reparation. Thus, internal violations are linked to settler colonialism and so undermine accountability, fairness and institutional building. The Palestinian model should be rooted in two concepts of justice.

The first element is internal justice which speaks to the negative impact of the political divide and all other related abuses. The second dimension is structural justice, which opposes the colonial situation constraining the ability of Palestinians to self-determine and to enjoy their rights fully. The Palestinians' fragmentation has given rise to an unequal political and legal regime in the West Bank and the Gaza Strip, causing various forms of suffering and abuse. The blockade experiences, as well as repeated wars and destruction of institutional and social structures and effects of internal divisions, have particularly been associated with blockade experiences. The limitation on freedoms, political arrest, backtracking of independence of institutions and further erosion of public confidence in the governance system has generated problems in the West Bank. A Palestinian transitional justice model should take the multiplicity of the victim experience into account. This narrows down damage on one stereotype or a narrow factional outlook. If

transitional justice is to succeed, it must place victims at its centre instead of elites repositioning the political balance of power.

The Palestinian model must be hybridised but most importantly contextualised. This particular method of transitional justice has two distinct aspects: it is contextual because it comes from the specific Palestinian reality and not a pre-packaged model; and it is hybrid because it contains a smorgasbord of different measures. Models of transitional justice are likely to perform fairly more successfully when adapted to local context than when legal institutions and/ or formalized committees that do not have Social Acceptance and True Executive Capacity are executed (Hayner, 2011; Teitel, 2000). The participation of marginalized groups in any reconciliation and decision-making is needed by this model. In particular, emphasis is given to the participation of women and youth, prisoners, refugees, victims of political detention, and residents of the most deprived areas of the wall and war. The Constitution needs to be genuinely implemented without losing too much time. The inclusion of these constituencies must not be merely representative.

It should rather be the sine qua non for just and legitimate processes. When engineered from on high, reconciliation produces a political agreement, but will not yield social justice and public trust without absorbing the voices and sufferings of victims. The Palestinians' ideal scenario must require a measure of justice that is not equivalent to revenge or liquidation of the opposite party. On the contrary, reconciliation should not become a global amnesty that conceals the truth while excluding the victims concerned with the case. A slow process involving recognition, accountability, reparations and institutional reform is necessary in order to move from a logic of managing division to one of reconstructing the political system. The ultimate aim is to do this on the basis of legitimacy, dignity and the rule of law. Transitional justice for Palestine is, precisely, that not merely a remedy for the past but rather an opening for the re-establishment of the national future on the bases of truth and accountability and a democratic unity.

4.7 Developing a Context-Specific Palestinian Model of Transitional Justice

One of the essential issues in the development of a plausible Palestinian model of transitional justice is the issue of restorative and punitive justice. The specifics Palestinian context and the distinctiveness of transitional justice require a dialectical conception of justice. The Palestinian political and institutional divide between Fatah and Hamas is

framed by a wider environment of political factors we associate with Zionist settler colonialism, the limitation of sovereignty, jurisdictional fragmentation and multiplicity of power centres. The notion of wrongs not being only punishable; the idea that they must not be dealt with in the realm of Public Politics; reconciliation or amnesty must not be tokenistic. A dual approach should be set up that combines, on the one hand, the restoration of the national and social fabric and, on the other hand, the affirmative principle of accountability and non-impunity.

The restorative justice strategy recognizes harm and truth, permits victimization, and raises the chance of repairing and re-inclusion in society dialogue. The demands for these changes in the Palestinian case spring from the trickle-down social need to work towards the restoration of a loss of confidence as a result of the division. In wake of arrests on political motives, restrictions of freedoms as well as firings and disruptions of representative institutions, the mutual exchange of accusations along with general weakening of sense of unity of political and legal system. Upon considering all that has been discussed above, *Restorative Justice* should be an appropriate solution for such wrongdoings which is mendable, i.e. socially reconcile, apologize, repair, rehab, guarantees non-repetition etc. The question of restorative justice does not imply overlooking responsibility nor does it overlook the reconstruction turns into an elite agreement of political forces. The Palestinian experience teaches us that reconciliations reproduce the crisis unless based on truth and harm. The mechanisms should be designed with the victims as the primary focus rather than a group of people. The victims' families, former political prisoners, women, youth, worker, participant in the division, released prisoners, refugees, and civil society should be included. This will take transitional justice away from a narrow political understanding to a broad societal process. In contrast, punitive justice is vital as serious crimes must not go unpunished. Furthermore, the very respect for law and order implies that all those involved, without exception, must play by one standard of law. Criminal law offenses that can be attributed to organs or authorities related to Fatah and the Palestinian Authority in the West Bank, and to Hamas and the de facto authorities in the Gaza Strip, as well as any serious violation of any third party or group in the Palestinian arena. The objective of accountability is not against any one group, nor does it envisage a restructuring of the power arrangement between different groups.

This does not imply that fundamental norms are in the process of being established: the legitimacy of the national action does not entail immunity from legal responsibility, and resistance to colonialism may not justify the violation of the rights of the Palestinians themselves. In relation to the factions of the Palestinian National Action, to wit: Fatah; Hamas; Popular Front for the Liberation of Palestine; Democratic Front for the Liberation of Palestine; Islamic Jihad Movement; Palestinian People's Party; Palestinian National Initiative; Popular Struggle Front; Palestinian Arab Front; Popular Front General Command; other independent forces and civil society organisations, it will even be more necessary to ensure that balance continues. To reduce the Fatah/Hamas relationship to a transitional justice process is to deprive it of its national character and give it more a quality of internal factional settlement. Having a common vision for the National Action Plan will add more legitimacy to the various wings. Moreover, these elements demonstrate that transitional justice is not about the prosecution of one or the exoneration of another. Rather, it refers to the national audit of the division, its impact and outcomes. Ultimately, it will examine how this impacted rights, freedoms and institutions.

There are nascent difficulties as well as legal challenges that obstruct putting a compensatory justice in practice in this Palestinian case. Due to the lack of judicial unity, multiple references of the law in the West Bank and the Gaza Strip, weak independence of institutions and external pressure, a wide or a speedy trial would be quite risky option. When the judicial process is not one that is resorted to, then the process can also amount to political liquidation, either in favour of the faction or against it, doing ill than good. Responsibility must be specific, and not general in legal framing. There must be concentration on the serious violations that must be based on the severally declared standards, processes, juristic guarantees, whose independent organizations insulate the process from the party infiltration. The combination of restorative and punitive justice approach may offer the best solution for the Palestinian issue. Separate truth and reconciliation commissions can be set up to document violations arising from the division, to listen to victims of such violations, to identify patterns of political and institutional responsibility, and to propose reparations and reforms. Cases involving torture, enforced disappearance, extrajudicial killing, and serious violations of fundamental freedoms should be presented before independent judicial mechanisms that ensure at least rudimentary fair trial safeguards.

The Transitional Justice literatures crystalize that, when combined, truth-telling, accountability, reparations and institutional reforms are far more likely to yield sustainable reconciliation than just relying on just one of these. The viability of this model relies on being built on a broad national base beyond the logic of factional dominance (Hayner, 2011; Teitel, 2000). If this is not achieved, collapse or irrelevance will ensue. Palestinian identity should characterize transitional justice. It should also realize and become a Palestinian national project. All representatives of political forces should engage in this project. This would include factions of national action, and the business sector. Furthermore, representatives of human rights institutions, and women and youth's organizations should also participate. In addition, representatives of victims must engage in it.

Transitional justice must not become a negotiations file of two political leaderships. It must also not become an excuse to delay the achievement of justice. Furthermore, transitional justice must not become an excuse for delay the application of punishment for crimes against humanity. For transitional justice to occur in Palestine, it must be based on a reconciliation equation or a reconciliation that does not eliminate truth. Impunity should not metamorphose into revenge; reparations should not be made with no victims in mind; reforms must not take political exclusion as a means. Nevertheless, these remedial measures must not be misunderstood. It should not be assumed that the goal is to punish a group or to defend a group. It is about reconstituting the national life on the basis that rights do not fall by political lapse. Indeed, national unity will not be truly complete until it was on the basis of truth, justice, rule of law and respect for the dignity of the Palestinian person.

4.8 Restorative and Punitive Justice in the Palestinian Context

Sustainable Palestinian reconciliation cannot be achieved through political agreements that are limited to the distribution of powers or the restructuring of the relationship between two rival powers. The experience of the Palestinians reveals that initiatives which devote themselves to power-sharing, consensual government or controlling the tensions between Fatah and Hamas have not really managed to get at the core of the issue – which is the fading of truth, the accretion of grievances and the diminishing confidence in the institutions. Meaningful reconciliations must not only occur between the leaderships but also it must be recognized that a separation has taken place which has left

victims behind, has weakened the political system and has affected the idea of citizenship and the rule of law directly. If the locus of our social fabric's reconciliation shifts from factional reconciliation to communal national reconciliation, wellness will be ensured.

On the contrary, the public hatred is rising between them. The latter is a far bigger threat to our democracy, although the former may not be too harmful. While the resulting animus that has developed between the two political parties must come to an end, hopefully, the bond or ties between citizen and institution, victim and authority, society and whole political system will be repaired. The key to making the truth not a file that is postponed is placing justice away from the reconciliation process. Reparations must not be treated as a secondary issue and accountability is not an obstacle to togetherness. Reconciliation is not at odds with justice indeed, justice is the condition of the morality of reconciliation. It is necessary, through this dialogue, to redefine the role of the cadres and institutions of Fatah, Hamas and the other factions within the framework of government institutions as well as the Palestinian National Council and other national institutions to reinforce the national role, and to enhance the performance of political parties. Confining reconciliation to a negotiated political framework reproduces the same exclusions that deepen the crisis. Reconciliation that is just takes harm from a variety of perspectives into account. Political institutions are not the only ones divided Judges and police forces have not been the only ones who suffered; as civil liberties, public rights, the right to political participation, and social life too have suffered. As a consequence, reconciliation needs not just a clear mechanism to record the abuses, rehabilitate victims, compensate the dead and those who were deprived of jobs, freedom or rights for being a political affiliate or suspected political affiliate but also to review the laws, decisions and procedures that sustain institutional divide.

The process would not suffice unless the recurrence of the crisis occurs. If there is to be any hope of success, the agreement must be accompanied by institutional reform. The effects of powerlessness on the Palestinian people, which impact their political and legal systems, should lead to the re-establishment of pillars of independence and integrity, the unification of the legal system between the West Bank and Gaza, the subjection of the security services to civil and legal oversight, and the guarantee freedom of political action for all powers, including small and independent powers and not only the large powers. Palestinian reconciliation must be on the backdrop of Zionist settler colonialism in the

meantime. To manage internal violations does not mean to displace oneself from the reality of codified external control. Most significantly, transitional justice must not become an inward-looking discussion unrelated to the Palestinian people's right to self-determination. The Palestinian model likewise needs to link the end of internal division with the strengthening of national capacity to fight the colonial structure. When a society is fractured and its institutions weak, it cannot be relied upon to protect rights, prosecute abusers, better represent victims or defend the national project. In Palestine, the three intertwining pillars of just reconciliation are truth, reparations, and institutional reform. Acceptance of the truth will stop modification of collective memory, reparations assist to restore victims' dignity, modification of institutions helps guarantee reconciliation does not become either a mere instance or political solution. Thus reconciliation becomes a process which restores the truth and legitimacy of the state. Essentially, it means doing away with the mind-set of sectional management and constructing a political system that is more representative, just and law-abiding.

4.9 Truth Disclosure Mechanisms and Independent Commissions

Identifying truth-finding mechanisms is one of the pillars of any serious Palestinian model of transitional justice. The pursuit of truth shifts the discourse from political mutual accusation to systematic documentation, official recognition, and creating a public memory. Reconciliation should not be based exclusively on forgetting or an official overcoming. Reconciliation cannot mean just forgetting or overcoming the past. Truth Commission in Palestine Context Essay A truth commission in the context of Palestine cannot serve as an alternative to the judiciary, and not as a mechanism to grant unconditional amnesties, but rather as an independent mechanism to document the violations, hear the victims and analyze the structures that allow for their reoccurrence. In light of the multiple centers of power, between the West Bank and the Strip, as well as the covers of powers between governments, security services, factions and institutions, official and informal, the importance of these Commissions is easily detectable. They thus not only correspond to a collocation of testimonials, but evidence how the schism has progressively become an abuse of freely exercising public office, the right to participation, personal security and trust in the law. In order for these mechanisms to be effective, they must have a clear legal basis, and a real independence from all political forces including Fatah, Hamas and national action factions plural. Factions within a body

inhibit its ability to deliberate and present problems for reflection. Thus, a committee which is balance in terms of factions or set up on the basis of quota cannot produce credible truth.

The team should involve independent legal and human rights professionals, former judges of integrity, victims' representatives, documentation specialists, and actors from civil society, with adequate representation of women, youth, and refugees and from the worst hit areas of the division. The primary objective of these committees is the establishment of a documented national record of the Division offences, including Offences connected with political detention, torture or other ill treatment, dismissal, discriminated on the ground of political allegiance, attack on freedom of expression and assembly, closure of institution and internal clash related violations. Simply documenting this description is not enough: the connection of the pattern with policy, decision or practice and the relevance for the institution must also be analysed so that the blame does not become attached to individuals – who are divorced from the context giving rise to the breach.

The committees shall also assure a safe environment for the victim to depose either in the public eye or otherwise in private as per the circumstance of the case and require protection. These witnesses give an opportunity not just to tell but also to re-invigorate or redefine the dignity of the victim. All investigating mechanisms must respect the privacy of women, children, persons with disabilities, victims of torture and families of loss of livelihood and political exclusion. The act of telling the truth, which invariably unveils the record of hurts, also provides some form of symbolic and social reparations. It appears truth commissions are only effective when they make a connection to enforcement. (25 words) To document an act that does not result in restitution or reparations or institutional changes will have only an 'archival' effect. Hence, the Commission must possess the authority to make recommendations on compensation, rehabilitation, arbitrarily dismissed, reform of the security establishment, and the power to review acts and laws that have entrenched the division. It should likewise refer the most serious cases to independent judicial bodies, particularly when deeply founded violations cannot be resolved merely by way of apology or merely by payment of compensation.

Commencing gradually within the establishments. During the first phase, a national autonomous body for documentation and certification may be created in collaboration

with the national human rights institutions, the universities and the trade unions. Besides being reliable witnesses and disallowing political interference in the taking of testimony, truth commissions must also respect professional standards regarding the preservation of documents, guarantee of the protection of witnesses, and verification of information. Being credible is essential, as any defect – whether in impartiality or methodology – will lead to a loss in public confidence in the system as such. Where necessary, we need to have regular and public reports on the truth. The public must not be a victim of circumstantial evidence and they must have a real opportunity to know the truth. Consequently, mechanisms for telling the truth in Palestine should be created in the interest of rebuilding the national trust and not merely as a past recording committee. Documentation and acknowledgement; protection of victims and accountability of institutions; public memory and practical reform must come together. The truth commission is not just a symbol; it is a beginning that is required to make reconciliation operational so that it does not remain mere political discourse, but can actually be used at Society level in legal terms. Furthermore, it is a Process which can remedy the consequences of division, check its recurrence, and develop a greater transparency in national life.

4.10 A Strategic Framework for Building a Palestinian Transitional Justice System

To establish an efficient Palestinian transitional justice system, we must establish a phasing strategic based approach which is more than only enjoining principles on reconciliation but also seeks to translate such principles into binding institutions and procedures and legal guarantees. As Jamil Tarhini stated, the Palestinian project is not just about dealing with the consequences of division at the level of state and society. Rather, it seeks to re-establish the relationship of trust and confidence between society and the political system as well as unifying legal references, strengthening of rights and freedoms, and linking accountability to the rebuilding of the Palestinian national project on a more legitimate and representative basis. The framework should be based on an inclusive national dialogue that should not just be limited to understandings between political leaders but understanding between political leaders and national action factions, civil society institutions, trade unions, universities, human rights organizations, victims' representatives, women, the youth, prisoners and refugees.

The likelihood of transitional justice acquiring social and political legitimacy increases with more inclusive participation. Israel's military operation and attempts to derail Palestinian coordination are both being stalled by the hostage crisis. The second rule is to use a victim-centric approach. The effectiveness of transitional justice should not be judged by its ability to placate conflicting groups. Successful intervention should also be measured by justice for those adversely affected by political division, security, and socio-economic abuses. Concerning the victims, it is intended that the mechanisms of truth, accountability, and their reparations be designed by the victims, and not a pre-investigation or decision pre-preparation imposed on the victims. Disabled persons include those arrested or otherwise tortured on account of their political views, those forced to leave employment because of political discrimination, those who suffer loss of livelihood; and those whose freedom of public demonstration is attacked. In accordance with the proposal, the new mechanism should be shaped by an independent national transitional justice body, established by law or by national consensus with mandatory force at the institutional level, with a clear power to document, hear victims, propose reparation, refer serious cases to the judiciary and monitor the implementation of the recommendations. The representative of the organization should not be aligned with the state or the perpetrators of the unlawful act. It ought to have knowledge in law, human rights, social and psychological. Furthermore, there is a necessity for real inclusion of women, youth and affected communities. "Independence here is not merely a formality; it is established as a real condition in order to prevent the politicisation of justice." The strategic framework requires the pursuit of two channels of accountability and reconciliation. Agreement, apology, compensation, rehabilitation, and reintegration may solve violations of a less severe nature. Severe infringement of human rights including extrajudicial killing, torture, enforced disappearance and gross violation of fundamental freedom must never be subjected to the logic of amnesty or political compromise. Essentially, sentences for these crimes must include independent judicial mechanisms taking into account fair trial guarantees.

In this way, balance is established between the need of a country to recover and the need of fighting impunity. The economic system must be inclusive of payments that involve reparations. Victims of violations should not feel the effects of these violations for something to be true. To this end, there should be a national reparation programme that

includes, where applicable, financial compensation; arbitrary repatriation or regularisation; public acknowledgment; psychosocial support; rehabilitation; and guarantees of non-discrimination in the future. There should be transparency in the criteria adopted with a view to ensuring these do not become privileges of certain sections or selective aid. Simultaneously, we cannot seriously talk about serious transitional justice without serious institutional reform. In the absence of restoring the institutions, reconciliation will face failure. The process of unifying the legal system within the West Bank and Gaza, restoring the independence of the judiciary, reorganizing the security services on a professional and legal basis to make them subject to civil oversight, and reviewing the legislations and decisions that were passed during the phase of division and which have consolidated the duplications on the administrative and legal level. It is insufficient to rely solely on the criminal law for this. Transitional justice would also need to be neutralised of the political use to be successful in that context.

We must ensure that accountability does not become a tool to weaken dissenting forces, nor a shield for members of the abuses to the reconciliation discourse. The objective-based criteria must be settled for selecting files; placing levels of responsibility; guaranteeing the right to a defence; witness protection; and preventing interference of the factions in the work of the competent bodies. The system begins to feel just when there is a belief that punishment is being meted out to the adversary and he is receiving justice. When this happens, the system will start getting credited. Palestine may use international expertise in the area of transitional justice from within, but it must not rely upon it. International assistance whether technical or supportive should never replace national will and effort. The UN and international human rights agencies as well as comparative experience in documentation, witness protection, reparation and judicial reform have the expertise to ensure the Palestinian character of the process and its link to the right to self-determination. The implementation, interpretation, and operationalization of transitional justice in Palestine should not be an externally funded project or administratively controlled project. It should rather form a part of a national construction process.

Transitional justice can and must be incorporated within this vision. In summary, the independence measuring the recombinational body; a national programme to document violations and hear victims; clear mechanisms for reparations and rehabilitation; the assurance that serious violations are referred to independent judiciary; reform of judicial,

security and administrative institution; the participation of fractions and civil society in the national action without factional domination and public oversight in an effective implementation of these recommendations. The movement should not take place in haste and must take place gradually through documentation as well as building trust. The next step is reform, accountability and enforcement.

4.11 Future Elections, and the Role of Civil Society in Promoting Transitional Justice

The manner in which elections are conducted, both in their integrity and in being fair and free, is one of the main pillars of any serious Palestinian pathway towards transitional justice. As such, the elections are not just about renewing political legitimacy but has a direct relation to rebuilding trust between citizen and citizen as well as citizen and institution. The lack of national elections since 2006 has heightened the legitimacy crisis. The divide is entrenched whereas the political allocation of power has become a bargaining chip of administration and security rather than a fresh democratic mandate. The return of electoral business is a lot more than a regular political exercise. It paves the way for the re-establishment of public life on the basis of participation. It is based on accountability and peaceful transfer of power. Election processes and transitions in the Palestinian context are inherently linked. TAF has made it clear that the formulation of a new electoral vote that is not preceded and/or supported by genuine guarantees of freedom of political action, neutrality of the security services, independence of the judiciary and protection of candidates and voters as well as respect for the results of the elections cannot divide it or unite it. When elections are conducted under fear, intimidation, non-competitiveness or media monopoly, great legitimacy cannot be expected to follow.

The crisis will happen again but in another way. No matter how reformed the political and institutional framework may have become, it does not have replacement. Given the nature of the relationship between Fatah and Hamas, the disruption of representative institutions, the absence of a Legislative Council, and the multiplicity of legal and administrative references between the West Bank and the Gaza Strip, this is a very significant problem. To conduct national elections in this context means understanding rules of political game clearly and guarantees that judiciary, security services or public resources will hardly mobilised in favour of a party. The above engagements underline the importance of not all the powers disrespecting outcomes with one resignation regarding the violence not to be exercised and also the political exclusion when the

representation balance tips. The aim seems to limit the upcoming elections to only Fatah and Hamas. One important subject is the broadening public space for small and independent forces for the Palestinian nation-action and the shrinking role of the other faction. Particularly the Popular Front for the Liberation of Palestine, the Democratic Front for the Liberation of Palestine, the Islamic Jihad Movement, the Palestinian People's Party, the Palestinian National Initiative, the Popular Struggle Front, the Palestinian Arab Front, independent lists youth and trade union movements.

The decline of the other faction for the Palestinian National Movement is well known in the legal system of Palestine. Expanding the political involvement of these forces does not damage national unity nor does it protect it from bilateral monopoly; it also equips the political system better to represent Palestinian diversity. Political pluralism strengthens the potency of transitional justice. A society is not only divided in the sense of stopping the confrontation between great powers, however. It must further be a society which enables political space for things which represent the women, the youth, the independents, the refugees, the diaspora and the marginalised sector. The introduction of special measures for the participation of women and youth in elected institutions will not only re-engineer the electoral system but also guarantee adequate and fair representation and safeguards against political exclusion. Accordingly, pluralism is not a democratic luxury, but: 'is set up to guarantee us against a return to monopoly and monopolies'.

The participation of the Palestinians in Diaspora and East Jerusalem should be resolved in the Palestinian issue. The limits which the occupation imposes on the elections, particularly those which have to do with Jerusalem, distorts the essence of political representation and changes the elections into a test of national sovereignty and collective rights. The non-participation of Jerusalem in any electoral process undermines its legitimacy or at least, whatever participations it executes, are no more than a technical matter. The Palestinians, too, are Diaspora Palestinians, numbering in the millions. Thus, national institutions, especially the PLO, should not marginalise them in the conversations about their rebuilding. The participation of civil society is beneficial to the process. It acts as a connection between the citizen and authority, victim and institution and faction and society. Institutions dealing with human rights, women's bodies, trade unions, universities, youth initiative documentation centres, etc. can play an important role in monitoring elections, generating awareness about citizenship, asserting right to dissent,

documenting violations and making demands for guaranteeing integrity and transparency. They are also able to act as go-betweens among political groups and with the victim, so that the transitional justice not get reduced Closed arrangement within the elites. The capability of civil society to act relies on state protection. Interfering with civil institutions through limitations, conditions funded by the state or political fractures of factions can endanger their supervisory and mediating exercise. The framework of Palestinian transitional justice must therefore guarantee freedom of association; freedom of expression; the right of peaceful assembly; protection of human rights defenders; and the prevention in law that limits civic action. If the power imposes pressure on the civil society for civil society cannot monitor the authority will become an extension of a faction or his donor he/she cannot represent the victim.

The Palestinian political process also has a regional and global dimension. At different moments in time and with different offers of assistance, and to varying degrees, certain actors external a national institutions helped to bring about polarization, supported certain actors, and favoured the logic of stability against that of democracy. Consequently, it is essential that the international assistance for national decision immunity building must result in capacity building, integrity enhancement and rights protection rather than outcome engineering and balance reproduction. Thus, we have the interest of protecting elections and transitional justice. The process of executing elections should be prepared and designed within the Palestinian context as an overarching transitional process and not a mere procedural stage in an authority replication process. Unless instrumental in revealing the truths, reparation, transformation of institutions, guarantee of pluralism and protection of public freedom, they do not take on their full meaning. Elections become a mechanism to restore the legitimacy of the State, opportunity for society to exercise control over its representatives and pathway to a more open, representative and lawful political regime.

Palestinians will not achieve transitional justice without a genuine democratic process that conveys the people's right to choice and right to accountability. Elections, political pluralism, independent civil society, etc. Good governance. Self-explanatory. On the contrary, they hold key instruments to transform reconciliation from a political accord into a new national contract. For legitimacy and unity to function effectively, the whole

set of social factors must be present. The principles of participation, dignity and the rule of law are paramount.

4.12 Palestinian Transitional Justice as a Foundation for National Unity and Legitimacy

This chapter concludes that reliance on either a narrow procedural approach or a political solution by the conflicting parties will make it impossible to develop a Palestinian model of transitional justice. It necessitates a vision that counters the effects of division, a victim rehabilitation programme and improved political and legal legitimacy. In the case of Palestine, transitional justice is not so much a mechanism to deal with the past as it is about building relationships. This case covers the relationship of society/institutions, political forces/citizens, and national unity/imperatives of accountability. The condition of the Palestinians is so unique that it calls for a model different from the usual ones.

The conflict in Palestine is not moving towards the forms of stable peace typically seen in societies, but rather continues to be an ongoing struggle against the settler colonialism of Zionism, the maintenance of non-sovereignty, and the institutional- and political-division of the West Bank and the Gaza Strip. You cannot separate Palestinian transitional justice from the Palestinian people's right to self-determination or the need to restructure the internal political system based on participation, the rule of law & respect for human rights and fundamental freedoms. Reconciliation must not be confined to understandings between Hamas and Fatah nor can it simply revolve around power-sharing arrangement for the reallocation of institutional positions. When reconciliations are reduced in this case, it reproduces divisions that culminate in the fate of marginalisation of the victim and civil society, besides rest of the national action factions. All serious processes must infiltrate the entire fabric of the national arena through the involvement of Palestinian national action factions, independent forces, trade Unions, human right bodies, women and youth unions and representations of victims, prisoners and refugees.

If reconciliation does not include society, it is an incomplete political settlement, reconciliation around truth and equity gets transformed into a national project for trust-building. Justifying tolerance or amnesty cannot fulfill the requirements set forth by transitional justice. It is essential to support each other in the area of truth, reparations, accountability and institutional reform. Without such an integration, reconciliation is

reversible and returns full circle whereas nation unity is likely to rupture with every new political crisis. This chapter also stressed on ensuring a balance between restorative and punitive justice in the Palestinian context. Restorative justice allows lesser offences to be dealt with through recognition, apology, reparation and reintegration. On the contrary, punitive justice still has a role to play when faced with damaging transgressions that can't be left to political negotiation logic. We must ensure that the conduct of the leadership of the country is independent and impartial. This accountability is essential for the rule of law and the proper functioning of democracy. It is also essential for putting the wrongs right. We believe that there needs to be protocols for disclosure of truth and an independent commission to practically govern that. Such briefs could turn contradictory memories into a national registry that recognizes and reparates victims and reveal the institutional and political mechanisms and conditions that allow the repetition of such violation phenomena.

On the contrary, thesis activities will have more potency if they are separated, have transparency, and create a credible link between documents and recommendations of reparations, institutional reform and, where appropriate, referral. Criticism of All Transitions by Civil Society: Politics, Pluralism and Elections in Palestine Do not think of free elections merely as a way to change leaders. It also entails rebuilding legitimacy, expanding participation, and breaking the institutional impasse. A democracy that can truthfully point to guarantees that political action is free, that the courts operate independently, that the security services are neutral, that civil rights do not have to be defended, and that the ballot outcome is respected, will have little to fear from an autocracy. Consequently, democracy is a part of transitional justice, not a road. distracted by that Thus, it follows from the foregoing statement that a Palestinian transitional justice model is being proposed. This transitional justice model is threaded on a basic equation. Hence, there will be no national unity without truth. Furthermore, there will be no reconciliation without justice. Moreover, there will be no legitimacy without participation. Also, there will be no stable political future without accountability and institutional transformation. It is easy to put out a wish to bridge the divide; the real test will be building an effective system to address its causes and consequences – and preventing recurrence. Transitional justice can help to relaunch Palestinian national life on a more transparent and equitable basis, allowing the national project to lead the

struggle against Zionist settler colonialism, restoring the confidence of the popular classes, and the establishment of good institutions, respecting the rule of law, and being democratically representative.

4.13 Conclusion

This chapter summarizes the findings of the study. They pertain to possible transitional justice mechanisms in the Palestinian context. This will occur with the political and institutional configurations of our times. This chapter will study the Palestinian national action factions. The examination of the theory of transitional justice, the specificity of the Palestinian case, the political, legal and institutional obstacles to establishing a serious trajectory of accountability and reconciliation, this chapter takes us from the stage of analysis to that of extraction and evaluation. The idea of transitional justice is not limited to judicial measures, for they indeed differ from political reality. Transitional justice may be seen as a starting point for regaining national confidence, reconciliation with the past after the division, recognition of victims' rights and reform of public institutions. Further, it starts from the understanding that any Palestinian reading of transitional justice will work only if it is not merely reduced to factional reconciliation or a political settlement of convenience between Fatah-Hamas but is located within truth, accountability, reparations and guarantees of non-repetition. The most significant findings in the following sections of the chapter, while the questions are answered. Then some recommendations are proposed in order to contribute to achieving a more realistic and just Palestinian model. Furthermore, the article concludes with a number of future tracks for research that may help deepen the academic and practical debate on transitional justice in Palestine, particularly in the context of ongoing occupation, multiple centre of power, declining trust in national institutions, as well as the importance of an inclusive national approach which helps transcend the logic of division and resting off public interest.

- **Results**

The consequence of this study is that the utilization of transitional justice in the context of the Palestinian political division between Fatah and Hamas suffers from a complex of deep difficulties that go beyond a narrow legal or institutional dimension, as this file is linked to the very structure of the division itself, the nature of the struggle for legitimacy and power, in addition to the absence of a comprehensive national consensus over the

concept of justice, its limits and mechanisms. The findings indicate that the Palestinian division has both a political background for the research and most importantly, is also a hindrance to any serious prospect for transitional justice in view of the parallel institutions that were already created. Conflicting Legal Regimes Distort Concepts of Victimhood, Guilt and Grievance The disputes between Fatah and Hamas result in the politicization of the judiciary, the weakening of public institutions, the restriction of political freedoms, and a mutual exchange of accusations of abuses, according to experts from the Doha Institute for Graduate Studies. Moreover, in the context of the conflict, accountability is often used as a political weapon, rather than as an entry point for comprehensive national reform to deal with the conflict. The two actors have been having reservations about the possibility that can disrupt the existing centres of gravity or can open the door to serious accountability of the behaviours that were exercised during as well as very immediate after the partition (International Crisis Group, 2024; Khalil & Alsarghali, 2020).

The study further demonstrated that the Palestinian context cannot be conceived of as separate from the existing Zionist settler colonialism and the structural constraints this imposes on sovereignty, institutions and the political process. Elections, institutions, and movement are violently restricted, but above all the Palestinians can't have their own effective forms of justice and accountability, nor be really independent, because of foreign occupation continuing to dominate. As a result, outer conditions do not free up inner culpabilities. The aforementioned bolsters what is already a weak political-legal apparatus. Transitional justice measures are also obstructed by these additional challenges (Human Rights Watch, 2023). One important finding from the research is the layer upon layer complexity of Palestinian victimization narratives. By doing so, they illustrate how these stories along with individual experiences, political affiliations and geographical experiences are interwoven to portray the different types of violence that Palestinians are subjected to. External and internal violence, both have victims. Has someone actually been a victim as a result of political detention, torture and exclusion? Victims of internal violence, particularly those harmed by the state's security services or factional fighting, continue to remain outside the official framework of justice and reconciliation.

Consequently, social and public confidence in any political proposition not specifically concerning them has declined. These challenges are significant, but that is not the end of the analysis with a no. A Palestinian transitional justice mechanism is possible with the

support of political will. Additionally, integrating the actors that can play a role on the ground, including victims, civil society, legal actors and youth, would make the process much more legitimate. The involvement of civil society organisations, human rights defenders and youth in the public discussions on truth, accountability and institutional reform shows the potential for a new national narrative that centres the victim and does not allow justice to be held hostage to elite understandings. In conclusion, a hybrid model consisting of different restorative justice mechanisms (truth-telling, reparation, institutional reform, etc.) and more selective and restrictive criminal accountability in the case of serious violations seems to be most appropriate model for the Palestinian case. The use of just the restorative model would lead us towards impunity and only the punitive model would generate a greater political polarization. Having, as noted in the last chapter, arrived at a perception of reconciliation which entails the successful management of conflicts, we broadly support the argument of a compromise which, while not expunging the victims' rights or allowing impunity for violators, will lead to national reconciliation (ICTJ, 2017).

True transitional justice between Fatah and Hamas cannot be achieved through mere slogans and agreements. In order to achieve meaningful reforms serious institutional reform, clear recognition of the victims and linking justice to an overarching national project of rebuilding legitimacy, trust and good governance is important. A focus on tackling the internal division without at the same time, structural constraints on the Palestinian people will still make it difficult to carve out a sustainable pathway to reconciliation and stability.

- **Scientific Contribution to the Study**

The study does not consider transitional justice in the Palestinian context as a ready-made model that can be imported from post-conflict experiences or that can be applied automatically to the Palestinian context in a non-creative and unqualified manner. Instead, the research moves forward from the specificity of Palestinian realities and the complicated layering that this involves, including the internal political divide, the continuation of Zionist settler colonialism, the absence of full sovereignty and the multiplicity of sources of violation and harm. The significance of this work is to emphasize that transitional justice in Palestine is not merely a political deal between Fatah and Hamas; nor is it a limited criminal approach focused on punishment only. Instead, it

wishes to be a complex national project aimed at rebuilding of trust, more suitable restoration of legitimacy and dealing with the consequences of division for society, the institutions and victims. The article contributes to the academic debate on transitional justice, linking it to the reality of an ongoing colonial structure. This links the Palestinian instance with a plethora of standard models which emerge from changes from conflict to peace or from authoritarianism to democratization. It would be incorrect to assert that the Palestinian issue has reached post-conflict status.

In the case of Palestine, the continuing external control, internal division and institutional fragility calls for a more flexible, nuanced and sensitive approach in local context. The importance of this study is that it returns to the debate of justice and reconciliation, victims of internal violence and political division. The notion of being a victim does not end at external harm. This does not mean a decentralization of the violations of the Zionist settler colonialism, but in order for the construction of the Palestinian democratic and cohesive national project to rest on the recognition of all levels of violation, which also takes place in the context of infighting, political detention, torture, exclusion, restriction of public freedoms, and so forth. This study proposes a Palestinian vision of transitional justice that intertwines truth-telling, reparations, reform guaranteeing non-recurrence and particular accountability for serious violations in the context of transitional justice. In this respect, transitional justice is not that much a law tool as it is a possible entryway for reconstructing the Palestinian political system in a more legitimate, broader and just way.

• **Answering the Study Questions**

The study is based upon a set of questions that will be used to analyze the feasibility of applying transitional justice for the sake of the Palestinian division between Fatah and Hamas, the obstacles for it, and the model that fits best with the Palestinian condition. The results of the study can be expressed as follows.

First: What are the main obstacles facing the implementation of transitional justice between Fatah and Hamas?

The most serious impediment to de-escalation of hostilities between Fatah and Hamas, according to the study, is the lack of serious political will on either side of the divide. Although justice and reconciliation are part of political discourse, yet we find that these mostly remain public discourses that do not translate into practical commitments,

especially where justice touches the structure of power or threatens powerful interests. The political split has thus resulted in the establishment, admittedly, of an institutional and legal divide – more specifically parallel judicial and administrative authorities in the West Bank and the Gaza Strip – which undermines the possibility of building a unified accountability system. Moreover, the rise of social divisions, the marginalisation of certain categories of victims and the continuity in the practice of Zionist settler colonialism has impacted the developing of transitional justice.

Second: Can transitional justice be adapted to the Palestinian context?

It is certainly possible but not through the application of traditional transitional justice models in post-conflicts. Depending on your reference, the situation of the Palestinian people may be described in language that marks a clear distinction. This difference can be attributed to the ongoing colonial domination over Palestine, the lack of full sovereignty over Palestine, the ongoing internal division, and the multiplicity of violators and sources of harm. As a result, the authors believe that an effective Palestinian transitional justice model will necessarily be a context-specific model capable of taking on the complex Palestinian reality. Moreover, they expect this model to cater for the multiplicity of victims and recreate homegrown reconciliation, human rights accountability and institutional reform addresses (Khalil & Alsarghali, 2020; ICTJ, 2017)

Third: What mechanisms are most appropriate to achieve transitional justice in the Palestinian situation?

According to the research, the most adequate dimension mechanisms for a restorative justice are the restorative and accountability dimension mechanisms. This entails establishing mechanisms that may help discover the truth; making reparations to victims; reforming security and judicial institutions; providing guarantees of non-repetition of violations; and the adoption of a specific provision on criminal accountability for serious violations. The recovery of victims and processes should not solely be a political or factional elite affair but should derive from effective victim, women, youth, civil society and marginalized groups participation. Judiciary must ensure legislative freedom. Recruitment of judges should not happen on political or factional grounds so that transitional justice does not get a new tool for reproducing division (Al-Haq, 2022; Teitel, 2000).

Fourth: How can justice be integrated into national reconciliation efforts?

According to the study's conclusion, justice should not be understood to be a post-reconciliation phase or a reconciliation condition external to the process but rather a phase of the reconciliation process itself. A reconciliation process that does not have truth, accountability and reparations is bound to be weak and vulnerable. It fails to address the deep-rooted causes of division and does not restore trust between society and institutions. This is how reforming the political system, unifying the legal framework, rebuilding institutions, free and fair election, and insulating judiciary from political interference should the path of transitional justice become. A clear connection between the goals of rival factions, including external backers, and the broader national interest will be vital in achieving national reconciliation.

4.14 Concluding Reflections and Future Prospects

The findings of this study indicate that to achieve transitional justice between Fatah and Hamas is a crucial political and moral challenge in addition to being a legal and procedural one. The lack of a shared national vision and ongoing factional interests has created the impression that leaders use the language of justice as a political instrument of competition to undermine confidence in the possibility of serious accountability and reconciliation process building. Justice has been repeatedly deferred because of conditions related to power politics for survival and internal balances management (International Crisis Group, 2024). The complexities surrounding Palestine does not mean that transitional justice is impossible, rather it requires a creative and locally relevant approach. Transitional justice for Palestine should not be a set of unreplicated experiences.

It should not merely be limited to formal committees or political agreements. A solution must emanate from the Palestinian society itself – with partnership with victims, human rights organizations, community actors and those who have experienced internal political violence. Justice in Palestine encompasses national liberation, self-determination and state-building, as a totality. No matter how many internal aberrations are corrected, that is still insufficient as long as the structural violence from the Zionist settler colonialism is not taken on head-on. Two successive levels should thus be involved in Palestinian transitional justice (Human Rights Watch, 2023). A collection of philosophies to govern

and reform everything made according to the UN charter and principles. The future possibility of transitional justice in Palestine is contingent upon three conditions, namely, the presence of sincere political will in the Palestinian leadership, the reconstruction of public institutions, and restoring the trust of the citizens in the political system. It should, therefore, not be seen as an extravaganza slogan or a matter of mere administration. Justice must be viewed as something that is necessary morally and politically. Justice must be achieved too to ensure a true national reconciliation effort will bear fruit.

- **Results Summary**

During its analysis, the study arrived at several key conclusions, chief among which was that in Palestine transitional justice faces great difficulties due to weak institutions and the loss of freedoms:

1. A major impediment is the absence of real political will on both sides to ensure the transitional justice process is implemented.
2. While the transitional justice model can be applied, it is not particularly suited for the traditional model used in post-conflict times. The hybrid model is more suitable in Palestine as it is based on the confluence of restorative justice (truth, compensation, and restitution) and selective prosecution of serious crimes.
3. Justice should not be viewed as a post-reconciliation process or as a condition for reconciliation. It acts as a part of the reconciliation process as it deals with the causes of conflict and helps restore trust.
4. The existence of multiple victims: All violations (internal and external) should be acknowledged, and internal violence victims should not be marginalized.
5. Democracy forms part of transitional justice: The implementation of free elections, political pluralism, and independent civil society is crucial for the establishment of any meaningful path.
6. Justice is needed for national unity: A true national unity cannot be achieved without healing the past and involving the victims.

4.15 Recommendations

It is essential to provide an effective and thorough legal framework. This legal and political analysis highlights several obstacles and challenges and makes the following suggestions:

First: General Recommendations

1. Genuine political will should be built by creating an open national dialogue.
2. The framework of the legal and institutional process should be united.
3. The transitional justice model should be a mixed model.
4. It is necessary to strengthen the civil society role and the role of marginalized groups.
5. There is a need for a mechanism to overcome external obstacles while keeping the sovereignty.
6. The reform of the electoral and judicial systems should be implemented.
7. Transitional justice should be incorporated into the state-building process and into the process of political and institutional reforms.

Second: National Recommendations:

1. A fact-finding body should be created in order to investigate the violations of the division period.
2. The reform of the security force should be carried out and be under civilian supervision.
3. The independence of the judiciary should be ensured, and the use of military courts for civilians should be stopped.
4. A national database of victims and compensation programs should be created and improved.

Third: At the political level:

1. Conduct free and fair elections on a national level.
2. Reform the PLO to ensure inclusive representation.

3. End the practices of collective punishment as well as coercive measures.
4. Ensure that women, youth, and marginalized communities participate in the political process.

Fourth: At the societal level:

1. Support civil society in its role as a monitor and mediator.
2. Ensure the protection of human rights defenders.
3. Implement processes of community reconciliation under the aegis of human rights.
4. Document victims' testimonies as well as protect collective memory.

Fifth: Future Studies

1. Conduct field studies in the area of transitional justice in Palestine.
2. Explain the role of the judicial system and its importance for transitional justice.
3. Carry out studies that evaluate transitional justice in Palestine.
4. Work on defining the role of regional and international actors in transitional justice.
5. Analyze transitional justice in colonial contexts.
6. Research the role of civil society in documenting issues of violations during the time of institutional collapse.
7. Analyze the feasibility of the establishment of a hybrid court to deal with internal problems.

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جامعة النجاح الوطنية
كلية الدراسات العليا

العدالة الانتقالية في فلسطين بين التطبيق والتحديات

إعداد
رئبال موسى الكردي

إشراف
د. أحمد بشتاوي

قدمت هذه الرسالة استكمالاً لمتطلبات الحصول على درجة الماجستير في القانون الدولي وحقوق الإنسان بكلية الدراسات العليا في جامعة النجاح الوطنية في نابلس، فلسطين.

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العدالة الانتقالية في فلسطين بين التطبيق والتحديات

إعداد

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الملخص

هدفت هذه الدراسة إلى بيان ماهية العدالة الانتقالية وإمكاناتها في السياق الفلسطيني، وذلك مع الإشارة إلى حالة الانقسام السياسي الفلسطيني، مع عدم إغفال الواقع الفلسطيني الذي لا زال يعاني من سطوة الاحتلال وأدواته الاستيطانية الاستعمارية. وهو ما انبثق عنه تساؤل الدراسة الرئيس (المشكلة البحثية): كيف يمكن بناء نموذج للعدالة الانتقالية الفلسطينية لتجنب تداعيات الانقسامات السياسية والمؤسسية الداخلية؟

وحاول الباحث من خلال الدراسة الاجابة عن تساؤل الدراسة إضافة إلى تحقيق أهدافها، فقام بتوضيح مفاهيم الدراسة ودراسة الحالة الفلسطينية من دور المجتمع المدني بمؤسساته في تطبيق العدالة الانتقالية، إضافة إلى الوعي القانوني لدى المواطنين، ومساهمة الأطراف الإقليمية والدولية. كما أشار الباحث أيضاً إلى معيقات تطبيق العدالة الانتقالية وأهمها التدخلات الخارجية ووجود الاحتلال الصهيوني، والانقسامات في الشارع الفلسطيني والذي نجم عنه تعدد في الروايات الفلسطينية للذين عانوا بسبب مواقفهم السياسية وعدم تماشيها مع الحكومة سواء في الضفة الغربية أو قطاع غزة.

وقدمت الدراسة نموذجاً أولياً للعدالة الانتقالية يتماشى مع الحالة الفلسطينية، بحيث يجمع ما بين العدالة العقابية والعدالة التصالحية لتعزيز التماسك والتلاحم الوطني وانهاء الانقسام وكشف الحقيقة ويرسخ الشرعية والوحدة الوطنية، وهذا النموذج يمكن أن يفيد أصحاب القرار في إعادة الشارع الفلسطيني مساره الطبيعي قبل الانقسام وبناء الحوكمة في فلسطين.

وخلص الباحث إلى مجموع من النتائج، تمثل أهمها في أن تطبيق العدالة الانتقالية في الحالة الفلسطينية في ظل الانقسام السياسي يعاني من حالة تعقيد وذلك لأن هناك عدم اتفاق على السلطة الشرعية التي يجب أن تدير الحكومة الفلسطينية، لاسيما وأن القضاء أيضاً قد تسببه بناءً على الصراع السياسي بين حركتي فتح وحماس، وبالتالي تم إضعاف المؤسسات العامة وسقوط الحريات التي منحها القانون الأساسي للمواطنين الفلسطينيين، فقد وقع العديد من الفلسطينيين في الأسر لدى كلا الطرفين وعانوا من الاعتداءات الجسدية واللفظية نتيجة للاعتقال السياسي، بالرغم من تباين الروايات في هذا الجانب.

وفي النهاية قدم الباحث مجموعة من التوصيات أهمها ضرورة تبني حوار وطني شفاف بين جميع أطراف الشعب الفلسطيني ولاسيما حركتي فتح وحماس وذلك لتغليب مصلحة الجماعة على المصالح الفردية والحزبية مما يمهد الطريق أمام تحقيق العدالة كمصلحة وطنية تخدم المجتمع الفلسطيني.

الكلمات المفتاحية: العدالة الانتقالية، العدالة التصالحية، الانقسام الفلسطيني.