

The Social Security Law in Palestine: A Seek for Justice

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Worldwide, social security is an economic and social right, an achievement of the struggle of people, social movements and workers. It serves to protect workers in cases of illness, injury, disability and old age and also seeks to provide a dignified and decent life for workers before and after retirement. It aims to guarantee social rights that are enshrined in the Article 22 of the Universal Declaration of Human Rights: "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."¹ In other words, there is a legal and social heritage to this effect.

Protection and social security systems have been in place long before the Universal Declaration of Human Rights, as for example in Germany, beginning with the construction of social security systems at the end of the nineteenth century. The regulations came as a result of the destruction of social support networks such as family and charities, and of the need to create institutions operate between the state and the individual directly. In Arab states, charities, family and religious institutions have been playing the major role in delivering social security. However, modern development concepts and the desire to reduce influence and power of traditional social structures and to prevent migration from rural areas to the cities have contributed to the development of protection and social security systems. Hence, Arab states began issuing social security laws in the latter stages of colonialism or after the founding of the modern state: Morocco adopted a Social Security Act in 1959, Lebanon in 1963 and Iraq in 1964, followed by other countries in the region to pass similar laws under various names.

Palestinian social security stages

The version of constitutions and laws in Arab countries has accorded with the withdrawal of the respective colonialist power. Yet, this cannot be applied to the case of Palestine as it fell under Israeli occupation right after the end of the British Mandate. Instead of passing such constitutions or laws, a mixture of British Mandate, Jordanian and Egyptian laws has been in place. In 1993, the Palestinian National Authority (PA) was founded as a result of the Oslo I Accord. As part of the political system of the PA, the Palestinian Legislative Council (PLC) started drafting various laws including social insurance laws that were issued only in 2003 due to many delays. Despite their issuance and publication in official newspapers, the social security law did not come into effect until four years later. The World Bank then recommended stopping its enforcement due to high financial cost and its lack of sustainability. As the validity

of arguments given by the World Bank is not disputed, the law has thus not been executed. This clearly indicated the immense influence of international organizations and their ability to exert power on the PA and its policies even if it conflicted with the interests of the majority of citizens.

It remains important to differentiate between (1) social services based on care for vulnerable and marginalized groups such as children, elderly and unemployed people, and people with disabilities under the framework of the state's responsibility, and (2) social security based on the idea of subscriptions from workers to secure pensions for themselves and their families, i.e. providing social security ensuring that people are able to cope with emergency conditions such as disability, old age, disease and birthⁱⁱ. The Palestinian Ministry of Social Development (formerly Social Affairs) manages social assistance programs funded by both the World Bank and the European Union, while the International Labor Organisation (ILO) sponsored a social security project. Yet, this does not necessarily produce social equality and justice or even partially contribute to alleviating poverty.

The Paris Protocol signed in 1994 as part of the Oslo Accords, formally regulates economic relations between Israel and Palestine. Article 7 of the Protocol determines the status of Palestinians employed in Israel or Israeli settlements whose social insurance contributions are deducted monthly and transferred to the Israeli National Insurance Institute. This then required the creation of a Palestinian parallel institution that does not have governmental control. Palestinian officials have always viewed the huge amounts of money accumulated in the accounts of the National Insurance Institute, as an important financial resource. Of course, without having any clue about the ultimate fate of these funds.

After the Social Insurance Law was canceled in 2007, PA policymakers started working on an optional non-governmental retirement scheme. Mainly, employees of private sector organizations were supposed to be covered by the insurance law. More importantly, private companies were granted great power to manage

the investment system. Hence, banks have played a central role in preparing its details. Hashim Shawa, the chairman of the board and general director of Bank of Palestine stressed in his remarks to the media "the importance of the role of banks, banking institutions, and private sector companies to adopt the final version of the system."ⁱⁱⁱ Legal academic Issam Abdeen sees the non-governmental pension system designed in a way that particularly gives the private sector a major financial boost, which exceeds the provisions of the Palestinian Basic Law.

In 2012, the cabinet decided to form a National Social Security Committee headed by Ahmed Majdalani, former Minister of Labor and Member of the Executive Committee of the PLO, with the task to draft a law in consultation with national stakeholders and parties, benefiting from regional and international experiences offered by the ILO. The National Committee continued drafting a social security law under Majdalani's leadership until after he left his ministerial position. In February 2016, the National Committee finished its work presenting draft decree No. (6) for 2016 on social security. The decree was quickly approved by the cabinet, signed by President Mahmoud Abbas and published in official newspapers during the following month despite immense opposition from civil society organizations and trade unions.

All in all, several actors played a 'historic' role in the issue of social security in Palestine: First, the occupying power intervened by withholding funds and entitlements of Palestinian workers that work inside of the Green Line. Moreover, the design of the Paris Protocol perpetuated the subordination of power to the Israeli economy that also included the issue of social security. Second, international institutions, especially the World Bank, interfered by canceling the first attempt to issue a social insurance law in Palestine in 2007, and by designing social assistance programs in a way that rather maintain poverty in the Palestinian community. Later, the ILO contributed towards formulating a social security law that is considered biased and unfair. Also, the elites within the PA and other institutions in power were mainly following their primary ambition of being able

to manage the workers' funds. Therein, their interests overlapped with the interests of banks and other senior private sector organizations that recognized the opportunity of injecting substantial funds and generating profit without having to pay investment risk or to obey any legal framework. Finally, some trade unions such as the Palestinian General Federation of Trade Unions (PGFTU) acted in a complicit manner and barely advocated for the workers' cause.

Absence of equality, justice and participation

Civil society organizations voiced criticism regarding the lack of transparency in the decision-making process of the law, as it did not take basic principles like justice, fairness and equality into consideration. The notes on the decree law were sufficient to reveal the desire to pass a law with the aim of simply putting hand on the workers' funds. The main criticism of the National Committee has been its lack of representation. A long list consisting of representatives from the government, private sector, trade unions and civil society organizations, merely remained a formality. The actual discussions on the draft were held exclusively by a small group of committee members. Moreover, within this group only a few individuals were familiar with all details of the planned social security system.

The National Committee held only four meetings during the four-year drafting period. On top, not all members reviewed the drafts of the decree law thoroughly. Later, duties were transferred from the wider National Committee to a Steering Team. This team only signed on the rates for workers and employers, while the complete law remained confidential stamped with the words "prevent the distribution and publication under legal responsibility". This points towards a lack of transparency and participation in the work of the Steering Team and the National Committee, and towards an unwillingness to enter community partnership and dialogue. Members of the Steering Team even expressed concerns about the ability of

non-governmental organizations and trade unions to contribute to the debate due to lacking expertise.

An actuarial study, which provided the basis of the law, was supposed to be conducted to determine minimum percentages in order to ensure the program's financial stability. While experts from the ILO supervised the study, they failed to account for even the most basic statistical scenarios. Then, members of the Steering Team waited an entire year to get the Arabic translation of the study's abstract.

The Steering Team's work procedures were not transparent as it was chosen to work behind the scenes, away from control and participation of the civil society and media. When this controversy began to emerge, policy-makers dismissed criticism, either willfully or neglectfully, and refused to listen to the civil society and trade unions that demanded to postpone the passing of the social security law despite a broad civil discourse that reflected the interests of workers. When the head of the National Committee was asked about the need of educating workers on social security hence its complexity and importance, he replied that this was the task of trade unions that have been failing to fulfill this role on their own.

Absence of participation and social awareness has become a key feature of the PA where policy-making only takes into account the interests of a small elitist group. Moreover, international institutions are in line with this prevailing style of policy-making that just includes names of civil society organizations and trade unions on paper to meet formal requirements.

Broad community alliance

All these fundamental problems resulted in the creation of a large national coalition. Worker unions, trade unions, women's organizations, youth associations, external experts and NGO networks were brought together to meet at the Red Crescent Society in April 2016, which resulted in the launch of a national protest campaign called National Campaign for Social Security. This meeting was important in the

history of social movement because of its size and the collective expertise. The size of the interaction indicated the awareness of the workers towards their rights and their desire to stop exploitation. During the meeting, features of an action plan including components of its leadership were developed. Apart from the immense value of intellectual, theoretical and political interactions, the way in which the sensitivity of the issue was handled, contributed to its decisive difference from the National Committee. The National Campaign on Social Security agreed to suspend the law, return to community dialogue and work on modifying the law in a way that ensures a decent life for workers and employees.

During this period, National Committee members who were supposed to end their duties by signing and publishing the law, attacked members of the Social Security Campaign. Several media briefings were held in order to express doubts about the understanding and the ability of the members of the campaign.

The secretaries of the Social Security Campaign worked on raising awareness about employees' and workers' problems, pointing out shortcomings of the law and suggesting necessary amendments. Through a large number of workshops and meetings in various parts of the West Bank and the Gaza Strip, the Palestinian and Arabic media dealt with it as an important issue and published several interviews and reports on the campaign's events and activities. In addition, social media was used extensively in order to reach a wide range of groups of workers and employees.

An increasing number of activities and protests led to the decision to announce a large sit-in strike that eventually took place on 19 April 2016. The attendance was no less than 10,000 workers and employees. The size of the demonstration revealed the potential of the Palestinian society to move and initiate change. Leaders and activists of political parties also participated in the demonstration but as supporters, not as leaders or spokespeople.

In response, the government declared the formation of a Ministerial Committee for Dialogue, which meant an implicit

disqualification of the former National Team. As the Ministerial Committee procrastinated with its work, a second strike was declared in May 2016 calling for cancelling the law and revising it in national consultations.

During the preparation of the second strike, it became clear that hidden attacks happened on the campaign. There was a list of specific names of people that were prevented from being hosted by the media. Warnings and threats of punishment and even dismissal kept employees of certain companies and banks from participating in the campaign's activities and eventually achieved to prevent various private business sectors from joining the second protest.

Privatization of social security

The National Campaign for Social Security based itself on a policy paper prepared by the Al-Marsad Social and Economic Policies Monitor that included comments and a critique of the law^{iv}. The paper was the result of a comprehensive research process including a study visit to social security institutions in Jordan. Those remarks quickly became the basic demands of the National Campaign for Social Security. It developed further in various discussion sessions and new demands of more societal sectors, such as those of people with disabilities and municipality workers were included. All in all, one of the campaign's main critiques of the intended social security scheme was that it included a complementary insurance system that was not under the responsibility of the newly created social security institution but would have been managed by a person or private company. Even worse, the law required the transfer of employees' savings, including all allocations of workers inside the 1948 areas, into this complementary system. This meant that one person could eventually control, invest or keep huge amounts of money while state control would have been entirely absent.

Demands of the National Campaign for Social Security

The demands of the Social Security Campaign with regard to amending the Presidential Decree on Social Security were to suspend the law and bring it back on the table for comprehensive national dialogue. A representative, who was in charge of facilitating dialogue with the national campaign, was delegated to the PLC and the Ministerial Committee. The PLC played a pivotal role in managing the dialogue. Yet irregularly, the PLC worked with the campaign's legal department on preparing a new draft law on social security that included the following demands of the campaign:

- To guarantee the state of law,
- To guarantee the fund's safety and stability,
- To fairly amend the ratios of workers' and employers' contributions,
- To calculate and integrate the salary of natural death,
- To raise the pension coefficient,
- To change maternity leave regulations towards immediate benefits provision to mothers,
- To pay pension entitlement to the spouse in case of death,
- To convert the supplementary system into an optional system in order to not compromise employees' savings,
- To reconsider the role of the Ministry of Labor in the application of the law and bring it into line with Palestinian legislation and international conventions,
- To separate between the establishment and the implementation phase in order to ensure impartiality and to avoid conflicts of interest,
- To bring the terms of pension entitlement in line with the law of retirement,
- To ensure the provision of income in the case of a layoff,

- To sustain equity in the end of service payments,
- To include people with disabilities in the social security system,
- To establish specialized courts with a clear mandate,
- To formulate and implement a clear strategy for the enforcement of the rest of the benefits contained in the law,
- To cancel the minimum for pension calculations, and
- To include the optional right of association without governmental contributions.

However, the draft law prepared by the Social Security Campaign and the PLC was countered by a draft from the Ministry of Labor. This negatively affected the views of some experts and representatives of the ILO: They saw the campaign's demands overrunning their former draft law despite the fact that the Social Security Campaign has held several extensive meetings with not only the PLC that in turn consulted with the Ministerial Committee headed by the Minister of Labor, but also with private sector representatives.

Unfair contribution rates remained the most pressing point of discussion, which were set at 7.5 per cent for workers in comparison to 8.5 per cent for employers in the Decree law. Hence, the Social Security Campaign held a meeting with the PLC in order to reach an agreement on the required amendments before resorting to public protests for the third time. The meeting resulted in approving most of the campaign's demands, while the Palestinian prime minister put pressure on the private sector representatives to amend the contribution percentages to 7 per cent for workers and 9 per cent for employers. The decree law was finally approved by the cabinet and signed by president Abbas.

The far-reaching experience of the National Campaign for Social Security constitutes rich ground for future community campaigns that aim at influencing policy-making. Organizing a national campaign that represents workers and formulates demands based on human

rights and the needs of the community was a notable success. Direct field interaction and the extensive use of traditional and social media led to halt the decision on the draft law and to finally integrate substantial amendments. It is important to note that the National Campaign for Social Security will continue its efforts to monitor the law's enforcement and possible issuance of further rules and regulations in order to ensure the presence of basic principles such as justice, equality and inclusion.

Any analysis of the status of social security in Palestine precisely indicates the deep crisis of its political economy. The Palestinian economy is dominated by Israel's economy and by neoliberal policies promoted by international institutions. This clearly generated a beneficial relationship between the powerful political class and the capitalist class at the expense of social and economic determinants of the Palestinian society's steadfastness, and will only lead to failing the Palestinian society, further rising unemployment rates and especially harming the youth. Applying free-market policies under occupation does not only mean to marginalize most layers of society but also to spread injustice and inequality, which hence triggers the emergence of undesirable and unfavorable social phenomena.

This has all given to a decline of the ability and strength of political parties and traditional unions due to their shortcomings that affect their relationship with the grassroots and their ability of initiating positive change. Hence, initiating social change relies on social movements and their explicit demands. Working through trade unions seems to be the most appropriate method to put halt to the deteriorating situation and to seek for ways producing a society of justice, equality, and freedom.

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NOTES

- i. United Nations. *Universal Declaration of Human Rights*. Retrieved from: <http://www.un.org/en/universal-declaration-human-rights/> [last accessed: 12/17/16].
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- iv. Social and Economic Policies Monitor – Al Marsad (2016). The absence of justice in the social security law. Al Marsad's notes on the law. Retrieved from: <http://www.almarsad.ps/archives/193> [last accessed: 12/17/16].

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