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**Background Paper
Roundtable (9)**

**Landlord–Tenant Law 1953: Gaps and Possible
Solutions in 2017 Bill**

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¹ The views expressed herein are those of the author and do not necessarily reflect the position of MAS.

Background

Property rental legislation in the Palestinian territories lacks effective laws and is bounded by legislative divide between the West Bank and Gaza.² In the West Bank, property leases are subject to two different legal systems:³

1. The Legal Gazette regulates all types of real estate leases outside the boundaries of municipal and local councils, non-commercial real estate and residential houses within the boundaries of municipalities and local councils (e.g. farmland) and the first contractual year of leasing commercial and residential properties within municipal boundaries and local councils.⁴
2. The Landlord-tenant Law No. 62 of 1953 applies to contracts of renting commercial and residential properties located within the boundaries of municipalities and local councils after the first contractual year. In the exercise of good judgment, the courts have made the leases of all real estate (except agricultural ones) which are located within the boundaries of the local councils' subject to the Landlord-tenant Law even though the residential or commercial purpose is irrelevant (such as the leases of associations, trade unions, lawyers' offices, private clinics, engineers' offices, etc.).

How the two systems differ

- The contracts concluded under the Legal Gazette are terminated by the expiry of the agreed period at the time of signing the contract (no extension by law, but in cases of extreme necessity the lease may remain at the tenant's disposal after the expiry of the period provided that the tenants pay for the rent according to the market value, not the value specified in the contract). The duration of the contract is extended by law after the expiration of the contract in contracts subject to the Landlord-tenant Law, including the rate of the rent, with the possibility of increasing it by military order, but only until the end of 1975. Thereafter, there is no provision to calculate the increase. Even if an increase becomes due by virtue of the contract, the amount of such increase may be reconsidered by the competent court. If found to be excessive, it is nullified by the court on the grounds that the inclusion of such a term in the contract implies that the landlord had at the time of concluding the contract the intention of pressuring the tenant to vacate the lease and circumvent the extension provisions.
- In the contracts subject to the Legal Gazette, the margin of the contractors in choosing the terms and conditions of the contract remains wider than in the contracts governed by the Landlord-tenant Law since most of the provisions of the latter are peremptory from which no derogation is permitted.

² In the Gaza Strip, the Rent Restrictions Law No. 44 of 1940 (and its amendments) regulates rent of houses within the boundaries of municipalities and local councils, while the Commercial Property Restriction Law No. 6 of 1941 (and its amendments) regulates commercial property leases within the boundaries of municipalities and local councils. The lessee enjoys legal protection under automatic contract extension; so that the landlord may not require the lessee to evacuate after the expiry of the contract, save for the cases set forth in Article 4 thereto. The cases are similar to those specified in Article 4 in the Landlord-tenant Law of 1953 and its amendments in force in the West Bank. The civil law No. 4 of 2012 issued by the deposed Government regulates real estate and movables not covered by Law No. 44 of 1940, in particular the second part therein, which makes contracts subject to the freedom of contract, where the contract expires at the date set forth in the contract. The Rent Restrictions Law No. 44 of 1940 determines the principle of automatic contract extension, so does the Landlord-tenant Law in force in the West Bank. In accordance, the landlord may not require the tenant, his widow or his family members who were living with the tenant at the time of his death to evacuate the lease save for the cases set forth in Article 8 thereto. The cases are similar to those specified in Article 4 in the Landlord-tenant Law of 1953. The law provides for the formation of special courts to deal with rent disputes, estimate rent and determine the standard rent rate. The Law linked increases in rent to refurbishments or changes made to the lease, provided the annual increases do not exceed 15 percent of refurbishment cost. If the contractors agree to increase the rent after the law comes into force, the lessee does not have to pay the increase if it is unreasonable and violates the principle of protection for the lessee.

³ For more information, see Mahmoud Dodeen, Legal Framework for Housing in Occupied Palestine: An Analytical Study, MAS, Ramallah, 2014.

⁴ The first contractual year is the duration of the contract regardless of its term. It might be months, a year or more. During this period, the landlord has the right to request the rescission of the contract when the tenant fails to comply with the terms of the contract, in which case the issue becomes subject to the provisions of the Legal Gazette and is filed to the court of law in accordance with the rules of competence (magistrate or first instance). Upon expiry of the term set forth in the contract, the period shall be extended by virtue of the law. Herein the Landlord-tenant Law shall take effect.

- The cases of termination of the contract in the Legal Gazette are broader than in the Landlord-tenant Law, under which the tenant cannot be evicted unless in the cases stipulated in Article 4 thereof.
- In the contracts subject to the Legal Gazette, a lease on a settlement property shall be officially registered if it is more than one year in accordance with Military Order No. 232 of 1968. In contrast, registration, regardless of the duration of the contract, is not required under the Landlord-tenant Law.

Second: Problems arising from the operation of Landlord-tenant Law of 1953

1. Law geographic reach: It is true that the law restricts its scope to commercial real estate and residential houses located within the boundaries of municipalities and local councils; however, the facts indicate otherwise. The majority of leases remain subject to the provisions of this law for two reasons. First, most territories under the sovereignty of the Palestinian Authority have local government councils as defined by the Local Authorities Law No. 1 of 1997 (Local councils include municipal councils, village councils, administrative committees, development committees or any other council formed in accordance with the provisions of the law). Second, the judiciary has extended this scope to other contracts as mentioned above. This means that the Legal Gazette provisions apply only to the leases of farmland and movables.
2. The term of the contract is extended by law to an indefinite period and to the members of tenant's family who lived with him at the time of his death, and his heirs in the case of the commercial property, so long as the tenant does not violate the provisions of Article 4 of the law, including the terms of the original contract, but without prejudice of the right of the landlord to increase the rent at certain rates as shown below.
3. With regard to rental costs, the Israeli Military Order No. 1271 of 1989, which came into effect on April 1 of that year, gave the landlord the right to request the increase of the rent for the contracts concluded before December 31, 1975 and continued to this date at various rates according to the purpose of the contract (commercial, residential, public benefit) and date of contract.⁵ This military order is no longer applicable to landlords who rented their properties within the time period covered by the order and did not exercise their right to request an increase at that time because of the elapse of more than fifteen years after the order entered into force. The lessee may refuse the landlord's claim of increase if the landlord's claim comes after the elapse of the aforementioned period; i.e. by limitation of action by virtue of Article 1660 of the Legal Gazette.

On the other hand, there is no law in force giving the landlord the right to increase the rent for contracts concluded after 1975, which may make debatable the right of the landlord to request an increase in the rent, especially if we consider Paragraph 3 Article 4 of the law⁶ and the philosophy of protecting the tenants, which is enshrined in the Basic Law. Since this Article linked the applicability of the terms of the contract, including the rent, to the legal extension to the extent permitted by the contract, this restriction may be understood as protection to the tenant or a tool to strike a contractual balance, albeit minimal, between the contracting parties. The Palestinian judiciary has in principle respected the requirement of increase. It, thus, deemed the condition valid and required the tenant to fulfill such condition as long as it is fair and reasonable. However, if the increase is excessive, it is not counted.

⁵ At the rate of 30% of the rent for each lease year or part thereof for the contracts concluded before January first, 1955; 20% for each year or part thereof for the period from February 1, 1955 to December 31, 1955; 10% for the period from January 1, 1965 to December 13, 1957 for the commercial property. The annual percentage increase of the residential property is half the increase in commercial property (15%, 10% and 5% for the periods mentioned, respectively) and 75% of the increase in the commercial property when the property is leased for the public benefits (public authority or non-profit organizations). See Article 3 of Order No. 1271 on Amending the Landlord-tenant Law of 1989.

⁶ The Paragraph provides that if a tenant under this Article continues to occupy any property after the end of his lease, the provisions of the contract and its terms shall be deemed to apply to such occupancy as long as they apply to the lease. However, if the manner of paying the rent is not specified in the contract, the rent is paid at the end of each month.

Although Article 5 (Paragraph D) of the amended Landlord-tenant Law gave the Prime Minister the powers to increase the rent in whole or in part as long as it serves the public interest,⁷ these powers have yet to be exercised by Palestinian governments at a time when these increases are very much needed, at least in urban downtowns.

By and large, the existing system is prejudicial to landlords. The currency purchasing power is constantly declining. The landlords will continue to endure losses as long as rents in old contracts are not linked to reasonable benchmarks for increasing rates, such as the cost of living or the index for rental prices. Under the existing legal system, landlords are not allowed to raise rents, while they continue to pay property tax and income tax, let alone maintenance costs and depreciation, forcing businessmen to avoid investing in rents and seek house sales instead, thus renewing the investment cycle and stimulating capital. The landlords will also continue to sustain losses so long as the law protects tenants of properties located in the city centers and the boundaries of municipalities and local councils, except for agricultural land and the leases of associations, trade unions, lawyers' offices, private clinics, engineers' offices, etc.).

Third: How effective is the Landlord-tenants Law of 2017 in addressing current problems?

Summary of the most relevant provisions

1. The Bill covers leasing houses for dwelling, commercial and industrial purposes regardless of their location (inside or outside municipalities). This has restricted the judiciary's tendency to extending the reach of the law.
2. The draft law's exclusion of certain contracts has no meaning because such exceptions are already specified in the existing legal system.
3. The draft law has specified the landlord's obligations, but in an unsuccessful manner (confusion and omission of main obligations: maintenance, types and provisions; guarantee of exposure, fair entitlement guarantee, guarantee of hidden defects, and non-referral to civil law provisions).
4. The draft law has expressly specified tenant duties, but detailed matters remained unclear and were not referred to the provisions of the Civil Law.
5. The draft law has restricted the transfer of rented property after the death of the lessee within the remaining period to completing the term of the contract (reneging on the legal extension of the contract to family members and heirs).
6. The Bill deems the terms of the contract binding (automatic extension) as long as the tenant is alive. It also restricts evacuation to specific cases that are similar to those currently existing, with some modifications being introduced (Art. 14).
7. The Bill included special provisions for the evacuation of property for the purposes of change, refurbishment and substantive reconstruction, but it did not distinguish between dilapidated buildings, reconstruction and refurbishment (Article 15).
8. The Bill made eviction cases instantaneous. However, setting a limit of one year from the date of filing the case, rather than the notification of the case, remains in question. In many cases, proceedings are delayed due to procedural reasons, such as notification.
9. The draft law does not make any distinction in the rate of the rent increase based on the purpose of the contract (commercial, residential, industrial) up to 1994. Although all the contracts in force are concluded in accordance with the laws currently in force (the Legal Gazette and the Landlord-tenant Law of 1953), the Bill does not distinguish between contracts under the Legal Gazette and those under the Landlord-tenant Law. As the Bill does not distinguish between contracts based on the location, the increase rates are not very much different in terms of their economic weight from the Military Order of 1989. In addition, the Bill does not regulate agreements between landlords and lessees from January 1, 1995 onwards, including future contracts.

⁷ Added by Military Order 1271 of 1989, this Article states that the head of the Israeli Civil Administration may, for the sake of the public interest, order a reduction or increase of rental fees for all tenants or for some of them. Such authorities were transferred to the Palestinian Cabinet which has responsibilities similar to those of the Israeli Civil Administration. The relevant decisions are issued by the Cabinet and approved by the Prime Minister because there is no specialized ministry for real estate affairs, which means the management of the sector remains, as per law, the responsibility of the Cabinet.

10. There are no provisions that abolish the legal extension of contracts, at least those taking place after the law enters into force. This issue will not be controversial, as it addresses potential contractors. In legal orthodoxies, such issues are based on freedom of contract and volition.
11. The Bill does not explicitly elucidate the relationship between this law and the Legal Gazette. The Bill drew on the Gazette in its preamble. In Article 22, the Bill stipulated the abolishment of all regulations that conflict with the new law. In real world, this is, of course, impossible.
12. Many provisions need to be technically reviewed, as there are conflicts between some provisions on the one hand, and confusion in the legal concepts and general rules, on the other (e.g. Articles 3-7). The implementation has created many unresolved legal problems.

Conclusion

The draft law has not created fundamental changes in the regulation of leases. We believe that the housing crisis has been solved largely at the expense of landlords. The draft law did not clearly define the role of the state in a manner that realizes economic balance of the contract between the landlord and the tenant. It is not clear to what extent the Bill, if passed, will contribute to addressing distortions and structural imbalances in the real estate market (sale and rent).

The aspects in the draft law that sought development in the lease market are very limited: the increase in rent until 1994; excluding some activities from the reach of the law; and allowing landlords to add floors or extensions to the existing lease at the time of conclusion of the contract. These issues are of little importance because they can be applied under the current law. As we saw earlier, Article 5 (Paragraph D) of the amended Landlord-tenant Law (which came into force on April 1, 1989) gave the Prime Minister the powers to increase or lower the rent in whole or in part as long as it serves the public interest. As for the exceptions in the draft law, some are currently regulated by a special law (such as the Legal Gazette, the Waqf Property Landlord-tenant Law of 1964), while others (such as renting hotel rooms, halls, theaters and cinemas) have never led to serious disputes.

Finally, the existing Landlord-tenant Law does not deny landlords the right to building in the leased property as long as the landlord does not request the tenant's vacancy and provided that the construction activities do not physically disrupt the tenant's business

Questions for discussion

1. Can the new draft law realize justice and civil peace?
2. Can the new draft law encourage investment in the construction sector?
3. Will the new bill increase resilience (more options) of low-income earners and poor segments? Will it improve their livelihood?