

ARDD-Legal Aid Paper on Tribal law in Karak

“The recent decision in Muta, Karak, to evacuate/deport five generations of paternal relations of a man suspected of killing Turki Al Sarairah last week is an attempt at redistributive justice equivalent to unjustified forced displacement, goes against Islamic ethics, constitutes a direct and explicit violation of human rights, and undermines Jordanian rule of law” says ARDD-Legal Aid.

Such practices have a long history in Jordan; known as “jalwa.” Jalwa is derived from Jordanian tribal law and praxis that predates the modern Jordanian nation-state. Historically it is applied in instances of premeditated murder and rape when both parties are neighbors and live in the same community. Jalwa, long understood and utilized to de-escalate further conflict and friction between tribes, derives from a confession/agreement between both parties brokered by tribal, religious and neutral communal leaders, otherwise known as atwa.

As decisions regarding jalwa are made between the two affected parties, it is difficult to determine the number of cases that have occurred. According to official statistics there are 20 ongoing cases of jalwa in Karak. Country wide, in 2011 there was as many as 16 jalwa’s decreed and in one case in 2012, 700 people were affected by the decree. In the most recent case in Karak it is estimated that between 350-400 people will be affected.

The Jalwa decreed in this instance was only one part of the atwa made between the two parties. The terms of the atwa include death penalty without fair trial and absolute restriction of involvement of the appropriate authorities including the restriction from hiring a lawyer. While these tribal decisions serve to erode faith in the normal justice system in Jordan it is the forced

displacement of the jalwa which is under contention here because of the specific human rights abuses it poses and its incompatibility with Islamic ethos.

ARDD-Legal Aid unequivocally condemns this decision and the use of jawla in general. Such practice has profound impacts on people's lives as they are forced to leave their homes, place of work, study, and community, in addition to the feeling of vulnerability, injustice, and the shame stigma.

During an era in which formalized nation-state formation and national boundaries were not part of the societal infrastructure or enshrined regionally, tribal laws and customs worked to facilitate and govern order in an otherwise fluid and transient community and space. Therefore , they no longer have a place in the modern governance of Jordan.

Informed by Islamic Shari'a law, one must not conflate or confuse Tribal law and praxis to be equivalent to Islamic law. A core tenet of Islamic ethics is that individuals should carry the burden of their deeds; not others. In Surat Al-An'am 6:164 it is stated that: 'No soul earns anything except it is upon itself, and none shall bear the burdens of another.' This is a clear argument against collective punishment such as the jalwa. Abdullah ibn Mas'ud, a dear companion of the prophet Muhammad peace be upon him, indicated that the prophet Muhammad said: 'Do not return to unbelief after me by striking the necks of each other. No man is to be punished for the crimes of his father or his brother.' One can interpret this to understand that collective punishment contradicts Islamic ethos and principles of justice. As stated by the prophet Mohammad, mercifulness, reasonableness, and justice are central tenets to Islam, especially as it pertains to innocent civilians.

The use of collective punishment vis-a-vis tribal practices also contravenes international humanitarian customary law and the rule of law within Jordan. These unjustified acts akin to vigilante justice, replace the role of the state as the guarantor for the safety of its citizens. By accepting and condoning, the forced evacuation of civilians, the state relinquishes its duty as guarantor, which directly erodes its legitimacy among citizens. Civilians not involved in the conflict must not be forced to evacuate their homes and livelihoods. As it pertains to the suspect, such instances require a fair and systematic hearing and ruling: that an individual who is suspected of committing a crime may be held accountable in a court of law under the auspices of the constituted court imbued by the constitution, parliament, and its laws.

Further, the method of forced removal of hundreds of intergenerational family members for the actions of an individual without the use of the court of law amounts to human rights violations of various levels: economic, social, and civil rights violations. Some suggest that this act should be seen as a protection mechanism against potential acts of violence perpetrated by the family of the victim, however what it is in practice is as an act equivalent to unjustified 'forced displacement', which constitutes a grave violation of human rights.

During an era of transient and fluid borders and a way of life that was in-tune with the surrounding environment, the practice of atwa and jawla were mechanisms for a reasonable sense of justice and order in a largely communal society prior to the modern state formation. In fact, as substantial number of tribes currently residing in present day Jordan originate from other existing areas regionally due to jawla-type verdicts.

In order for Jordan to continue to develop as a modern, stable, leading nation in a region of immense turmoil and unrest, it must abide by and honor Islamic values, international human rights

and humanitarian customary law, and the rule of law as decreed by the constitution.