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West Bank and Gaza Rule of Law Program  
Justice and Enforcement

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## West Bank and Gaza

# NETHAM

## Rule of Law Program

### Justice and Enforcement

DFD-I-01-04-00173-00

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Sixth Quarterly Report  
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## 1. EXECUTIVE SUMMARY

This quarter, NETHAM submitted to USAID a draft report on the “Status of the Palestinian Judiciary.” This comprehensive report is intended serve as a resource guide for consultants, USAID, and individuals interested in learning more about the Palestinian Judiciary. The report examines various aspects of the Judiciary and judicial institutions including: Legal framework of Judicial Authority—pre and post Oslo Agreement; laws regulating the Judicial Authority; independence of the Judiciary; the Supreme Judicial Council (SJC)—its formation, structure, court structure, administration and information management; the Attorney General (AG) and Public Prosecution (PP)—function, organizational framework, administrative and financial management; automation systems at the SJC and AG; regular court services; and the Judiciary and the Public. At the end of the quarter, NETHAM received USAID feedback on the report and comments will be incorporated into the final version.

In the process of preparing this report, NETHAM staff conducted several meetings with the Chief Justice and Attorney General in order to brief them on the report and request their feedback and cooperation in gathering information and documents relevant to the report. Both leaders and their respective staff fully cooperated with the project and facilitated the information gathering process.

Regarding the project’s official status, NETHAM activities remained “on hold” again this quarter. At the end of the quarter, NETHAM sent USAID a request for a meeting to discuss potential activities that NETHAM can implement without violating the “no contact policy.” These suggestions include conducting public awareness campaigns, monitoring the Judiciary, producing a follow-up report with recommendations to the report on the Status of the Palestinian Judiciary, in addition to monthly status reports and analysis on developments in the Judiciary. NETHAM is also exploring other potential activities.

In other project news, NETHAM received the preliminary project findings report from the auditing firm of Pricewaterhouse Coopers regarding the project’s audit. After a meeting with the auditing firm to discuss these findings, NETHAM was sent the final “management letter” and in response, NETHAM sent the official NETHAM/DPK Management Response to issues concerning the Immaterial and Material Audit Findings.

The project continued to monitor the three main Palestinian newspapers for Judiciary news and this news was translated and sent to USAID on the date of publication.

On the political front, efforts to forge a National Unity Government were successful after Hamas and Fatah leaders signed an agreement in Mecca, Saudi Arabia following a political crisis which degenerated into deadly clashes between the two groups particularly in the Gaza Strip. On March 17, the Unity Government headed by Prime Minister Ismail Haniyeh, passed a vote of confidence in the Palestinian Legislative Council (PLC) as 83 out of 132 Members supported the new government, most of them from the Hamas and Fatah blocs. Legislative Members voted after they discussed Haniyeh’s ministerial speech, which outlined the new government’s agenda. Among



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other issues, the government's program called for supporting an independent Judiciary, enforcing rule of law, and ending the state of security chaos.

Under the power-sharing agreement, Hamas nominated 12 cabinet ministers, including three independents, while Fatah proposed eight, including two independents. Haniyeh will also have a Fatah member serve as his Deputy Prime Minister. Among the new Ministers sworn-in is Minister of Justice Ali Sartawi. Sartawi was formerly the Dean of the Law School at Al-Najah University. He takes office from his predecessor Ahmad Al-Khalidi.

Prior to the Unity Government announcement, President Abbas had been traveling throughout Europe and the Middle East seeking support for the coalition, in hope of ending the international boycott and freeze on aid that has paralyzed the Palestinian government since Hamas took office last March. Similarly, President Abbas met with the Israeli Prime Minister Ehud Olmert two times in less than a month, as they agreed to have further discussions on a regular basis. Israel has urged the international community to continue to boycott the government saying it fails to meet international demands of renouncing violence, recognizing Israel, and honoring past peace deals. At the close of the quarter, Norway was the only Western country that officially recognized the government.

The judiciary continues to be impacted by the chaotic security situation. On March 18, Judge Bassam Al-Hijjawi, Chief Judge of the Jenin First Instance Court was abducted and released after several hours. The judge was abducted by unknown militants in Jenin. In speaking to the press, Al-Hajjawi explained that after finishing his work at the court, and while driving his car with several colleagues to Nablus where he resides, militants driving a car with local license plates intercepted his vehicle, and "two militants came out of the car and forced me to accompany them to their car, and drove me to an unknown destination." The Judge explained that this incident took place due to a case that is being considered by the court. As a result of this incident and several other attacks on court buildings, property and judicial staff, the Chief Justice suspended the Supreme Judicial Council's (SJC) work in protest of the Judge's abduction. The Chief Justice said: "the Judiciary will not resume work unless protection is provided, and those who assault the rule of law and violate the sanctity of courts and prestige of judiciary are punished."

In other news, the Palestinian Legislative Council's (PLC) Legal Committee met to discuss several laws related to the Judiciary including a law amending the Penal Procedures Law, a law amending some provisions of the Law of Formation of Regular Courts, and a law amending the Civil and Commercial Procedures Law. The PLC has recommended the annulment of three Presidential Decrees and four Presidential Decree-laws issued by President Mahmoud Abbas. One of the Decree-laws that the PLC wants annulled was issued by the President in February to solidify powers and the independence of the SJC, while limiting authorities of the Minister of Justice.

The Palestinian press also covered various issues concerning the Judiciary disputes in March. This included the relationship between the Attorney General and the former-Minister of Interior that has witnessed a lapse after the Attorney General, Councilor Ahmad Al-Mghani accused the Minister of Interior, Sa'eed Siam, of issuing an order to release one of the suspects accused of killing Brigadier Jad Tayih, only hours after being captured by Public Prosecution officials to investigate with him and identify his motives for the crime. As a result, the Ministry of Interior

demanded President Mahmoud Abbas and the Prime Minister Ismail Haniya dismiss Al –Mghani from service.

Additionally, the Chief Justice refuted claims made by the head of the Hamas Parliamentary Bloc in the PLC that he allegedly thanked the President for appointing ten new judges that are believed to be sympathetic to Hamas. After meeting with the President, the Chief Justice told the press that the President supports the independence of the Judiciary and does not interfere in judicial appointments which take place according to judicial competitions and other procedures outlined in Judiciary laws.

## 2. ACTIVITIES AND RESULTS

### 2.1 OVERALL PROJECT SUPPORT

**Report on Status of Palestinian Judiciary Submitted to USAID.** In mid-February, NETHAM submitted a draft report to USAID on the Status of the Palestinian Judiciary. This 120-page report includes detailed information, charts and graphics on various aspects of the Judiciary including:

- Legal framework of Judicial Authority—pre and post Oslo Agreement.
- Laws Regulating the Judicial Authority—2002 and 2005 Judicial Authority Laws, Constitutional Court rulings, Presidential Decrees.
- Independence of Judiciary—provisions guaranteeing independence in Basic Law, other laws, as well as the reality on the ground.
- Supreme Judicial Council (SJC)—formation, structure, court structure, administration and information management.
- Attorney General (AG) and Public Prosecution (PP)—function, organizational framework, administrative and financial management.
- Automation systems at the SJC and AG.
- Regular Court services—litigation, and notification services, enforcement of court decisions, notary public and documentary services.
- Judiciary and the Public— what are the public services that the judiciary conducts?

NETHAM is awaiting USAID feedback on this draft report before it is finalized and prepared for distribution. The Chief Justice and Attorney General and their institutions fully cooperated with the project in providing information and material to prepare this report. In the process of preparing this report, NETHAM staff conducted several meetings with the Chief Justice and Attorney General in order to brief them on the report and ask for their feedback and cooperation in gathering information and documents for the report.

Project staff translated several documents for this report, including judicial by-laws and other relevant documents. These include:

- Supreme Judicial Council's Authority over the Employees of Regular Courts at the High Court in Gaza, Request No.147/2002 High Court
- Supreme Judicial Council generalization regarding Enforcement of Criminal Judgments
- Decision of the Supreme Judicial Council No. 3 Of 2006
- Judicial Code of Conduct

- Decision of the Supreme Judicial Council No. (4) Of 2006 Concerning the Judicial Inspection By-Law
- Decision of the Supreme Judicial Council No. 2 of 2006 Concerning the Rules of the Commencement of Jurisdictions by the Supreme Judicial Council
- Decision of the Supreme Judicial Council No. (1) Of 2006 Concerning the Technical Office By-Law
- Rules Organizing the Relationship between the President of the Palestinian National Authority and the Supreme Judicial Council
- Notary Public Law No. (11) of 1952
- Constitutional Appeal No. 5 of 2005. Subject: Appeal Against the Constitutionality of the Judicial Authority Law No. (15) of 2005
- Presidential Decision No (26) of 1999

**Project Audit.** NETHAM received the preliminary project findings report from the auditing firm of Pricewaterhouse Coopers regarding the project’s audit. A meeting was held with the firm to discuss these preliminary findings and as follow-up the project was sent the final “management letter.” In response, NETHAM sent the official NETHAM/DPK Management Response to issues concerning the Immaterial Audit Findings as well as the Material Audit Findings.

**Translation of Judiciary News in Palestinian Press.** NETHAM staff monitored daily judiciary news coverage from the three major Palestinian newspapers. This news was translated and sent to USAID for review (see attachment for details on complete coverage during the quarter).

**Project Administration.** NETHAM submitted monthly financial invoices to USAID.

**Meetings/Events.** The project attended all meetings organized by the Overseas Security Advisory Committee (OSAC). In addition, NETHAM took part in the final conference of the Civil Society and Democracy Strengthening (CSDS) project held on March 21 as well as a USAID’s Geographical Information System (GIS) Data Quality Assessment workshop held on March 22.

### 3. SUMMARY OF PLANNED ACTIVITIES NEXT QUARTER

Per USAID feedback, NETHAM will finalize the report on the Status of the Palestinian Judiciary. NETHAM has also proposed to USAID a series of potential activities that can be conducted without violating the “no contact policy.” These activities could include:

- Conducting public awareness campaigns on judicial themes
- Monitoring the Judiciary
- Producing a recommendations report as follow-up to the report on the Status of the Palestinian Judiciary
- Monthly status reports and analysis on developments in the Judiciary
- Providing capacity building and technical assistance to the Judge’s Society, an independent judicial organization



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NETHAM is in the process of outlining a proposal for these suggested activities and we hope to discuss with USAID early next quarter.

### 4. PROBLEMS AND REMEDIAL ACTIONS

The project passed another quarter “on-hold” status and uncertainty as to the future. With a new Palestinian National Unity Government sworn into office this quarter, the Government, as well as the public has made calls to support the independence of the Judiciary and working to end the state of security chaos. As mentioned earlier, this quarter witnessed several serious attacks on the Judiciary including court complexes as well as judges and judicial staff. In protest, the SJC and Public Prosecution observed a week-long strike in all work calling for court staff and property to be properly protected. Regaining public confidence in the Judiciary remains a priority and NETHAM is hopeful that at least some public awareness activities can take place next quarter to remedy this serious problem.