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JUSTICE AND ENFORCEMENT PROGRAM
IN WEST BANK AND GAZA
NETHAM PROJECT

TASK ORDER # DFD-I-01-04-00173-00
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REPORT ON STATUS OF PALESTINIAN JUDICIARY

APRIL 2007

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Chapter 1. INTRODUCTION

NETHAM's report on the Status of the Palestinian Judiciary was proposed to USAID in order to produce a comprehensive overview on the Judiciary that can be used as a reference for USAID, future NETHAM consultants, as well as other individuals and institutions interested in the Judiciary. This report intends to provide historical and legal background on the Judiciary as well as judicial institutions—particularly the Supreme Judicial Council (SJC) and the Public Prosecution (PP) as well as information and analysis on the structure, objectives, challenges, and procedures practiced in these judicial institutions. A description of the court system in Palestine, inter-institutional cooperation, the reality of independence of Judiciary, information technology and the Judiciary and the public are also elements of this report.

In analyzing the judicial system in Palestine, it is clear that the various laws and legal documents sometimes do not reflect the reality on the ground and the actual methods of operation. In other cases, the laws are vague, leaving wide room for interpretation. Our report will address these findings and the fine line between legal authorities and reality.

Since the establishment of the Judicial Authority in 1995, this branch of government has gone through numerous challenges, and turf wars have between waged between the Judicial, Executive, and Legislative branches of government. While autonomy of the Judiciary should be a given in a democratic state, in Palestine, the loose lines of authority between the Judiciary on the one hand and the Ministry of Justice (MOJ) and the Presidency on the other (particularly early in the Palestinian Authority's history) led to conflict and ambiguity. While this has caused frustration within these institutions, to a certain extent this is a natural outcome of a new authority coming to power with limited experience in governance.

In the era of former President Yasser Arafat, initial steps were taken to enforce independence of the Judiciary, including the establishment of the SJC and authorizing court administration to the Judiciary but at the same time the Judicial Branch was kept under check by the Executive and powers granted to the Judiciary under the law were not exercised. However now, under the current President Mahmoud Abbas, independence of the Judiciary has been sought, encouraged, and authorities and legislation passed to guarantee this right. While the situation may not be ideal, the President has strongly supported the reform agenda and transparency of the Judiciary. To find a resolution to the long-standing conflict in the judicial sector, the President established the Steering Committee on the Judiciary and Justice in 2005 consisting of key players in the SJC, Ministry of Justice (MOJ), Ministry of Finance, Ministry of Planning, BAR Association, and the Palestinian Independent Commission on Citizens Rights (PICCR), and gave this committee the authority to draft a Judiciary law. The Committee drafted and sent the proposed 2005 Judicial Authority Law to the Palestinian Legislative Council (PLC) which was passed with significant changes from the Steering Committee's version. These unilateral changes from the PLC without reverting back to the Judiciary as mandated by law were viewed as gross interference in judicial affairs. However, a Constitutional Court decision later that year stuck down this law as unconstitutional and reverted to the 2002 Judicial Authority Law. This decision was hailed as a positive development in supporting independence of the Judiciary and further testament that no branch of government has control over the other.

The PLC elections held in January 2006 brought additional developments not only to the general political situation in Palestine but also to the Judiciary-- and some setbacks. Hamas winning power in the elections, which soon thereafter led to the boycott of the Palestinian Authority (PA) by the international community as well as international donors, had a marked effect on the Judiciary. The PA employee strike that also included Judiciary staff had a further adverse impact by eventually leading to hundreds of staff to participate in the strike and hence empty courthouses and thousands of cases including serious criminal cases were left unprocessed. While the strike ended after several months of observance, to this day the Judiciary is struggling to deal with the backlog of court work created by the strike. Furthermore, the security situation, which was chaotic even before the elections, worsened as legal action against individuals on the wrong side of the law – either by courts or law enforcement

officials including the police became impossible. This period jarred the credibility and public confidence in the Judiciary as the public has continued to call for ending the state of security chaos and enforcing rule of law.

While there have been setbacks, there has also been some positive developments on the judicial scene. The recent appointments of a new Chief Justice and Attorney General brought two leaders that have a strong commitment to institutional development and reform of the Judiciary. While time will test their real success in implementing change, they are at least setting the wheels in motion. As the report will discuss in further detail, they have taken some concrete steps in reform – despite the fact that they have not yet developed a reform document or a written vision of their plans. In any case, their efforts have been somewhat overshadowed by the current crisis that left few judicial staff on the job to help implement reform plans. Currently with the strike over and employees back to work, developments should begin to take place although the parties recognize that rebuilding the institutional capacity of these institutions and handling the backlog of work caused by the strike will take time and all human resources.

Despite all the challenges and flaws in the judicial system in Palestine, there is clear political will on the part of most of the key judicial stakeholders including the President, Chief Justice, and Attorney General to positively reform the justice sector, the only hope is for the political climate to create an atmosphere where reform can take place.

In preparing this report, NETHAM used several resources including interviews with the Chief Justice, Attorney General and key staff assigned by these leaders as counterparts in the Supreme Judicial Council and Public Prosecution as well as laws, legal documents, and data and reports prepared by these institutions and civil society organizations.

NETHAM extends its appreciation and thanks the Chief Justice and Attorney General for taking time out of their busy schedules to meet with our staff and facilitate preparation of material for the project so that the report can portray an accurate picture of the Status of the Palestinian Judiciary.

Chapter 2. EXECUTIVE SUMMARY

NETHAM's report on the Status of the Palestinian Judiciary takes a close look at various aspects of the Palestinian judicial system. The report starts by reviewing the historical background of the Judiciary, followed by reflecting on independence of the Palestinian Judiciary to reviewing the inter-institutional framework and the institutions in the formal justice sector. The report also closely highlights the structure and processes and procedures in the Supreme Judicial Council, the courts, as well as the Public Prosecution. Other elements of the report include the automation and information technology systems in the Judiciary as well as the Judiciary and the public.

After a brief introduction, **Chapter three** of the report begins with providing the ***historical background*** on the evolvement and development of the Palestinian Judiciary in different eras prior to the Oslo agreements and after these agreements. It explains that until the establishment of the Palestinian Authority, the legal system in Palestine was based primarily on Common Law practices and Islamic legal principles; therefore, making one of the most vital obligations of the PA after coming to power the unification of the judicial system and the laws in the West Bank and Gaza Strip through forming one independent Judicial Authority that is governed by a Palestinian Judicial Authority Law.

In May 1994, Chairman Arafat promulgated Decision No. (21) of 1994 appointing the head of the Supreme Court and naming a Chief Justice. Then in 1995, Decision No (287) was issued to organize the Public Prosecution so it consists of the Attorney General, a number of assistants, Public Prosecutors, and Assistant Public Prosecutors. The Decree ordered that all Palestinian districts be considered within the jurisdiction of the Head of the Supreme Court.

New courts were also established in a number of Palestinian governorates. However, the regulation of courts remained as they were during previous periods. With respect to regular courts in the West Bank governorates, the Courts of Appeals, which were established on a provisional basis in Ramallah, were deemed to be the highest regular court and its decisions were ethically binding to lower courts until the Gaza Supreme Court's jurisdiction was extended to cover the rest of West Bank towns that were brought, by subsequent Israeli-Palestinian agreements, under PA rule.

The structure of regular courts, and the procedures followed in each court differed significantly in the West Bank from those in Gaza, until the Palestinian Legislative Council issued a package of four Judiciary-related laws in 2001, these laws were: the Civil and Commercial Procedures Law No. 2 of 2001, the Criminal Procedures Law No. 3 of 2001, the Civil and Commercial Evidences Law No. 4 of 2001, and the Formation of Regular Courts Law No. 5 of 2001.

In May 2002 the Basic Law, a provisional constitution, was issued. The Basic Law provided for an independent Judiciary, to be subject only to the law. It also provided for the establishment of a Supreme Judicial Council, presided over by the Chief Justice, to serve as the administrative authority of the Judiciary. The Basic Law of 2002 stated that the Attorney General will be appointed by a decision of the Palestinian President, based upon a nomination of the Supreme Judicial Council.

The Amended Basic Law of 2003 also emphasized the independence of Judiciary, and judges. This law was a major step towards enforcing the independence of Judiciary and empowerment of courts, but the law raised some ambiguities and consequently disputes arose between the Executive (Ministry of Justice) and both the Supreme Judicial Council and the Attorney General. In order to address these issues that caused frustration to all parties, in 2005 President Abbass formed the Committee on the Judiciary and Justice consisting of key players in the judicial sector. The Committee prepared a list of the needed by-laws for activating the Judicial Authority Law, and also worked closely with various counterparts, and drafted an amendment to Judicial Authority Law, which was submitted to the PLC. In turn, the PLC recommended major amendments to the draft law and passed the Judicial Authority Law 2005 accordingly without consultation with the Steering Committee or the SJC. As a result, the 2005 Law gave the Minister of Justice administrative supervision over the Public Prosecution, the courts, and its administrative employees, as well as the authority to establish an Inspection

Department to inspect and monitor the work of the courts. The law also identified the powers and authorities of the Ministry of Justice, considering it the link between the Executive and Judicial Branch, and the responsible body for helping the public access the Judiciary. Article 50 in this law stated clearly that the head of each court exercises administrative control over the judges and administrative employees working there. Viewing the changes in the law as an infringement on the independence of the Judiciary, a Constitutional Court ruled on the unconstitutionality of the Judicial Authority Law and considered it null and void. Therefore, the Judicial Authority reverted to the Judicial Authority Law No. 1 of 2002.

After the Constitutional Court decision, there was movement by the PLC to review the Judicial Authority Law in order re-draft the law taking into consideration objections and amendments recommended by various judicial stakeholders and institutions. Consequently, on February 5 2006, President Mahmoud Abbas issued Decree-law No. (2) Of 2006 Concerning the Amendment of the Law of the Judicial Authority. The Decree clearly transferred authorities previously granted to the Minister and Deputy Minister of Justice to the SJC and the Chief Justice and establishes a Judicial Inspection Department, which will be part of the SJC and chaired by a Supreme Court judge, and Technical and Judicial Inspection Departments within the AG's Office to supervise the performance of the AG and Public Prosecution. However, when this decree was put to the PLC for a vote according to the law, it was struck down.

Chapter four further elaborates on the issue of ***independence of the Palestinian Judiciary*** and takes a look at provisions of the Palestinian Basic Law and other related laws and how they influence judicial independence and separation of branches.

Theoretically, the Executive, Legislature, and Judiciary have all supported independence of the Judicial Branch and the principle of separation of authorities and branches; however, in reality the situation on the ground is somewhat different. This can be attributed to several factors. The most prominent of these factors include the contradictions and lack of clarity in various Palestinian laws; competition within justice sector institutions for power; and finally the recent developments with the legislative elections that brought for the first time in Palestinian history two strong political parties to power that support two distinct political agendas and priorities, with both parties lacking strong legislative experience.

In examining the issue of independence of the Judiciary, one must make a distinction between events in the early years of the establishment of the PA and the current situation. We note that while the present situation is not ideal, we have at least seen positive movement and concrete steps on the ground, particularly taken by the President's Office to guarantee independence of the Judiciary and better communication between the Office of the Presidency and the Judiciary.

In studying the laws and legal framework governing the Judicial Authority, it is easy where problems can rise from—as well as the contradictions. The Judicial Authority Law (JAL) for 2002, the law that is currently in effect governing judicial operations has very clear articles stipulating independence of the Judiciary yet at the same time there are articles that question this right to independence. For example, on the one hand, Articles 1 and 2 of the JAL state that:

Article 1: "*The Judicial Authority is independent. No other authority shall interfere with the Judiciary or with the affairs of justice*."

Article 2 further solidifies this right and states: "Judges are independent and shall not be subject, in the exercise of their judicial function, to any authority other than the authority of the law."

While on the other hand Article 47 of the JAL shows the contradiction stating that: "*The Minister of Justice shall have administrative supervision over all courts. The presiding judge of each court shall supervise the work of the judges and the progress of the work carried out therein.*" This can be interpreted as an obvious sign of interference from the Executive Branch in judicial affairs. Article 47 of the JAL has been highly debated and seen as blatant contradiction to the earlier articles enforcing independence and separation of branches.

The Ministry of Justice and the Supreme Judicial Council have each interpreted this article differently. The SJC views this article as not giving the MOJ actual supervision but rather limited supervision related to collecting administrative data from courts, noting that Article 47 also gives the presiding judge in each court supervising authority. At the same time, the MOJ believes that their authorities are clearly spelled out and point to other articles giving the Minister authority in initiating disciplinary claims against judges, calling SJC meetings and accepting resignations of judges, among other duties.

The Amended Palestinian Basic Law also caused ambiguity as it presented contradictions with other laws. We note that this law was not approved for a several years which began the tension between the authorities as each branch tried to vie for power and jurisdiction. Even after the law was approved in 2002 and amended in 2003, there proved to be discrepancies between the Basic Law and Judiciary Law i.e. Article 98 of the Basic Law states that:

"Judges shall be independent and shall not be subject to any authority other than the authority of the law while exercising their duties. No other authority may interfere in the Judiciary or in judicial affairs." Yet at the same time administrative control of the courts was handed to the Ministry of Justice in the Judiciary Law—at least prior to the Constitutional Court decision.

There are also contradictions between the Basic Law and JAL related to the Public Prosecution. Article 107 of the Basic Law states: *The Attorney General shall be appointed pursuant to a decision issued by the President of the National Authority, based upon a nomination submitted by the Supreme Judicial Council.* Yet the JAL gave a clear role to the Minister of Justice in appointment of the Attorney General, as well as designation of place of work, and transfer of Public Prosecution Members. In addition, PP staff is asked to take the oath of office before the Minister of Justice, a symbol of his jurisdiction.

If true independence of the Judiciary and respect of authorities among the three branches of government is going to be achieved then serious efforts should be undertaken to examine the entire political system and the current package of legislation that stipulates authorities of the Legislative, Judicial, and Executive Authorities so as not to remedy problems on a piece meal basis. There also needs to be more coordination, cooperation, and communication with the three branches of government in order to adequately support independence of the Judiciary and the system of checks and balances. There is also a dire need to form a Constitutional Court that can take effective decisions on issues related to governance-- this is particularly important at the current time as numerous issues have been raised on the constitutionality of decisions, most recently, the President's call for elections. While these issues have caused frustration, in the end, these challenges are to a certain extent a natural outcome of a new authority coming to power, with internal and external obstacles to governance. However, with a strong commitment from the President, judicial leaders, and the legislature these challenges can be overcome.

Chapter five touches upon the ***inter-institutional cooperation*** among various bodies-- mainly the President's Office, Ministry of Justice, Ministry of Interior, the Bar Association, and other related bodies. According to the Basic Law and the Judiciary Law, the President has a key role to play in judicial affairs even though his office is not officially a constituent institution in the formal justice sector. He is responsible for issuing a Presidential Decree appointing the Chief Justice of the Supreme Court who is by default the President of the SJC. This decree shall be issued after a recommendation of SJC Members to select the judge among the Supreme Court judges to be appointed as Chief Justice. The President has pushed for judicial reform and encouraged and supported independence of the Judiciary.

Recently, and for more focus on the independence of the Judiciary, the President's office and the SJC agreed on major principles that organize the relationship between these two main bodies, these principles rely on the separation of powers and stressing the importance of independence of the Judicial Branch as a fundamental requirement for developing a democratic state.

The MOJ is a key stakeholder of the formal justice sector. Prior to the establishment of the SJC, the MOJ was responsible for supervision of all the courts and the Public Prosecution. After the establishment of the SJC, the MOJ and the SJC began to differ in opinion over the role of

administrative control of the courts and the Public Prosecution including the Attorney General's Office. The difference in opinion between the SJC and the MOJ over judicial issues have usually been referred to the PA President to issue Presidential Decrees since the law, in some cases does not clearly define each player's responsibilities. In addition, the Ministry of Interior is a key member in the justice sector. The Ministry of Interior plays a significant role in achieving and prevailing justice in society. In such a capacity, the Ministry is seen to be vital in terms of assisting other justice stakeholders, mainly represented in the SJC and the Public Prosecution in achieving justice. In assisting both entities, the Ministry calls upon the services of the police, in terms of implementing judicial decisions and assisting the Public Prosecution in investigations and any other cases where the police force is needed.

It is worth mentioning that there are various obstacles facing the performance of the police. Despite the fact that the police force should work to assist the Judiciary, on the ground there is somewhat a lack of cooperation between the police and the Judiciary. On the other hand, the level of cooperation with the Public Prosecution is relatively higher and occupies a bigger priority for the police; this is due to the fact that the Public Prosecution deals mainly with crime- related cases, which is considered an urgent priority.

Chapter six looks at the ***formation, structure, and responsibilities of the Supreme Judicial Council***, which is currently the highest judicial authority. Palestinian laws mandated the formation of a Judicial Council to assure the principle of judicial independence and to be responsible for managing all judicial aspects for this branch of government. Article 37 of the Judiciary Authority Law Number 1 for the Year 2002 and Article 100 of the Amended Basic Law declared forming this Council which shall be comprised of: the Chief Justice of the Supreme Court as President, the most senior deputy of the Chief Justice of the Supreme Court as Vice President, two most senior judges of the Supreme Court selected by the Supreme Court Commission, Presiding Judges of Appellate Courts in Jerusalem, Gaza, and Ramallah, the Public Prosecutor, and finally the Deputy Minister of Justice.

The Basic Law and the Judiciary Law were endorsed in the year 2002, however; the first Supreme Judicial Council was established in the year 2000 by former PA President by a Presidential Decree Number 29 for the Year 2000.

The Supreme Judicial Council's tasks are diverse and tackle several vital aspects of organizing and improving judicial work. These tasks include functional and administrative services provided to the courts. Furthermore, Palestinian legislation has organized the structure of the regular courts such as the Supreme Court, the Courts of Appeal, First Instance Court, and the Conciliation Court.

There are three major departments in the technical component of the SJC; these include the Technical Office, the Judicial Training, and the Judicial Inspection Departments. The Judiciary Law declares clearly that the Council should form these departments to provide technical support to the judicial system along with the tasks of monitoring and inspection of judicial work and decisions at the various courts. The final component includes the regular courts as declared by the Judiciary Law and the Courts Formation Law, these laws defined four levels of regular courts to be functioning, which include the Supreme Court, the Appellate Court, the First Instance Courts, and Conciliation Courts.

The SJC Executive Body employs 62 staff members, with 42 of these members based in Gaza and 20 in the West Bank. The Executive body includes the secretariat, office of the Chief Justice, the Technical Office, the Judicial Training Department, and the Judicial Inspection Department.

Within this chapter, a section is designated to describe the structure and function of regular courts since the Palestinian court system is an essential part of the justice sector in the West Bank and Gaza along with other key players such as the SJC, the MOJ, the Public Prosecution, the Judicial Police and other stakeholders. The court system and the PP were established under the Jordanian and Egyptian laws in the West Bank and Gaza respectively.

All the courts are headed by the presiding Judge, where he/she is at the top of the hierarchy, and is directly responsible for managing the court operations and following-up the implementation of courts decisions, as well as human resource management-- either in coordination with the Chief Justice for judicial issues or other directorates for the administrative and financial issues at the Council.

A total of 32 regular courts are functioning in the West Bank and Gaza at the four structural levels. These courts are run with a total of 143 judges distributed over the four court levels.

Chapter seven examines ***regular court services*** beginning with judicial case management. Some Palestinian laws have clearly defined case management and processing at courts, including the Civil and Commercial Procedures Law of 2001, the Amended Civil and Commercial Procedures Law No.5 of 2005, and the decree-in-law amending the Civil and Commercial Law. In response to the need for having control over case processing and hearing sessions in the Palestinian courts, Judge Zuheir Sourani, the former Chief Justice issued a decision in 2003 regarding the establishment of a National Case Flow Management Committee. The Committee was headed by Justice Sourani and included five First Instance and Conciliation Court judges from West Bank and Gaza which aimed at facilitating structural and procedural processing of court cases. The Committee is now inactive and no systematic monitoring of long case delays in taking place.

Currently, the majority of Palestinian courts suffer from a large caseload in terms of the number of pending cases. This caseload varies from one court to another, based on the court's jurisdiction, number of employees and judges in the court, as well as other factors. The establishment of a specified time standard for a certain case type for all the courts provides a consistent tool for measuring improvement achieved concerning case disposition and time standard in the courts. In reality, the current Palestinian courts do not have a system of categorizing case tracks and time standards for each case based upon its complexity. Long delays in litigation have affected public confidence in the Judiciary and addressing this issue should be a priority for the Judiciary.

Serving judicial notifications is also among the key court services. Delivering notifications is the legal means used by courts to provide any information related to a court case before the courts or Public Prosecution. The court processor is the court employee in charge of handing the judicial paperwork so that the court can process the claim in accordance to the law. This includes handling notifications, responses, counter-claims, date of session, procedural papers, subpoenas, court decisions in abstentia, in addition to notifications issued by the Public Prosecution Offices, other court units, or papers referred from courts in other districts.

However, Court processors are often times constrained by their inability to move freely within the Palestinian territories affecting their ability to serve notices and court orders. Another related issue is the lack of respect by some members of the public for judicial orders, and inadequate number of court processors. Most judicial parties agree that there is a need for additional court processors to be instated in various courts as well as a need to address the issues that hamper their work.

This chapter also highlights the enforcement of laws and judicial decisions as this remains one of the most challenging processes in the judicial system. Respect for court decisions stems from the credibility of the courts and the belief that no one is above the law. The promulgation of the Enforcement Law of 2005 assisted in the unification of the law and procedures of enforcement in both the West Bank and Gaza. Prior to this law, Gaza enforced the Ottoman Enforcement Law of 1332 Hijri, 1914 AD, while the West Bank enforced the Jordanian Enforcement Law No. 31 of 1952.

Enforcement of laws and judicial decisions still remains one of the most challenging, and often uncertain, processes in the judicial system due to the inadequate number of enforcement personnel, workload of cases, and lack of respect for court decisions.

Moreover, this chapter describes the work and reality of the Notary Public Departments the Notary Public (NP) Officers who is a court employee appointed to carry out notary public services including documenting civil deeds, and papers in order to make them official documents. Notary Public Officers work under the supervision of the Chief Judge of the court at which the department is established, usually the First Instance Court, or at the Conciliation Court in locations where the First Instance Court does not exist. This goes in compliance with the Jordanian Notary Public Law of 1952 operating in the Palestinian Authority territories. Most Notary Public Departments suffer from a shortage of employees, and legal training.

Chapter eight is dedicated for other ***special courts*** which exist within the Palestinian Judiciary, such as the Municipal Courts which are considered specialized regular courts, and are established to

provide better litigation, and reduce the burden in regular courts. Until the issuance of the Palestinian Local Authorities Law No. 1 of 1997, the legal framework of the Municipal Courts in the West Bank differed from that in force in the Gaza Strip. In the Gaza Strip, the Municipal Courts were organized by the Municipal Courts Ordinance, 1928.

At present, the Municipal Courts are held in the municipalities in the West bank governorates. In each central court, one of its Conciliation judges is appointed as a Municipal Judge. The fines imposed by decisions taken in municipality cases supply the municipality budget, not the Supreme Judicial Council budget. The fines –as the case in the West Bank- supply the municipality budget, not the Supreme Judicial Council budget

Other special courts are the Shari'a Courts which currently govern personal status for Muslims in the West Bank and Gaza the Shari'a court is considered part of the Judicial Branch in Palestine. The Palestinian Basic Law provided for the establishment of the Shari’a Court and regulated its jurisdiction according to the law. Article 101 of the Amended Palestinian Basic Law 2003 states that "Shari’a and personal status issues are the responsibility of Shari’a and religious courts according to the law."

Regarding Shari’a Courts jurisdiction there is a difference between the laws governing Shari’a between the West Bank and Gaza. In accordance with the Palestinian law, Shari’a Courts have the following jurisdictions: Muslims personal status issues, donations and legacies cases, guardianship and legal capacity cases, among other issues.The Shari’a Supreme Judicial Council is the highest body in the Chief Justice’s Department.

Other special courts include religious Christian Communities' Council, the Orthodox Church Court, Military Courts, Elections Court, Income Tax Court of Appeal, Customs First Instance Court, and Major Felonies Court, that are further discussed in the content of this report.

Chapter nine describes the ***legal framework, structure, and jurisdictions of the Public Prosecution*** as organized by the Judicial Authority law No.1 of 2002. Article 60 of the Judicial Authority Law Number 1 for the Year 2002 states that the Public Prosecution shall consist of the following: the Attorney General, one or more Assistants of the Attorney General, Chief Public Prosecutors, Deputy Public Prosecutors, and finally Assistant Public Prosecutors.

According to the Criminal Procedures Law, the PP is responsible for enforcing court decisions in criminal cases. The Public Prosecution's main duty is the initiation of criminal actions before all courts, and enforcement of final court decisions in criminal cases according to the Criminal Procedures Law. The PP consists of the Attorney general's office, Criminal Enforcement Department, Inspection Department and Finance and Administrative Department.

Article 395 of the Law clearly states that the General Prosecution is responsible for the enforcement of criminal judgments, while the court Enforcement Units are responsible for enforcement of all other court decisions.

Although the enforcement of criminal judgments fell under the jurisdiction of Public Prosecution according to the Palestinian Criminal Procedures Law, in practice the procedures still differ between the West Bank and the Gaza Strip. In the West Bank, the Public Prosecution was already responsible for enforcing criminal judgments, therefore, little changed after the law. Despite of the new law which gave jurisdiction over enforcement of criminal judgments to the Public Prosecution, and further supported by Decree No. 10/2006, the enforcement of criminal court decisions is still under the authority of Civil Enforcement Units in Gaza since the Criminal Judgments Enforcement Administration has not began to function in Gaza due to lack of logistics and human resources.

Meanwhile **chapter ten** provides an assessment of the ***Public Prosecution Services and criminal case management.*** The initiation of a criminal case begins by submitting a complaint to the police, or to the Prosecution, both entities are considered to be key players in regards to effective and timely criminal case management. Major pre- trail procedures include the collection of evidence, arrest of defendants, carrying out the needed inspection, and finally concluding the investigation. The pre-trail procedures are followed by the case initiation.

One aspect of effective criminal case management lies in speedily and timely implementation of these pre- trial procedures, which are critical in terms of a reliable case monitoring and follow-up. After the case is submitted and reviewed by the jurisdictional court, the court and the panel review the case which leads to another important element in effective case management. **S**imilar to the obstacles facing the entire judicial system, the Public Prosecution comes across difficulty in terms of speedy case processing and proceeding, in addition to the significant amount of backlog in the workload of the PP. There are various factors resulting in the inadequate performance and weakness at the PP. One of the major obstacles facing the PP in carrying out effective case processing is the insufficient cooperation with police. This is mainly represented in the lack of cooperation with the police in terms of enforcing various arrests and bringing notifications issued by the Prosecution. Another obstacle is the inability of the police to monitor judicial and administrative responsibilities, which clearly affects the case initiation process.

There is a dire need for Forensic Lab that can support the performance of the police and PP Members and the investigation process. The Lab that was based in Gaza has been destroyed by the Israelis, and the PP is currently making use of the labs available at the universities—which are not well equipped. In addition, the use of such labs costs additional funds and burdens the PP budget.

The current unstable political environment in the West Bank and Gaza and state of security chaos has had a marked effect on the justice sector. Various courthouses, PP offices, and judicial members were threatened and exposed to danger at their offices and even homes, which clearly affected the performance of the Prosecution and the Judiciary as a whole. Accompanied with the 2006 salary crisis, the PA employee strike jeopardized the work of the courts and PP. The strike resulted in a significant backlog in the caseload in the courts and PP offices.

Chapter eleven sheds light on the status of ***IT systems*** at the SJC, courts and the AG Office, examining software applications, hardware and IT infrastructure, as well as human resources, in terms of availability and levels of proficiency. This report may also serve as a primer for a fully-fledged needs assessment study and a systems analysis study.

The **final chapter** reports on the relationship between the ***judiciary and the public***, since the Judiciary has numerous public information and public relations functions that they should ideally exercise in order to inform the public of judicial accomplishments and developments. Recently, the public and civil society organizations have called for more transparency and information on achievements in judicial reform, status or rulings in key court cases, as well as more regular updates on cases related to corruption and misuse of public funds in the Attorney General's portfolio. The report sheds light on what the public is guaranteed under the law, while addressing why the Judiciary has not done a better a job of informing the public of their work and accomplishments.

Chapter 3. HISTORICAL BACKGROUND

When comparing to other countries around the world, the legal status of the Judiciary in Palestine is at once complicated and unique. This is due to several factors including the fact that a number of authorities have ruled over Palestine throughout history and therefore, various legal systems have etched their mark on the judicial system. The partition of Palestine has also led to the emergence of complex and varying legal systems in the West Bank, Gaza Strip and Jerusalem as well as within parts of Palestinian territories occupied in 1948.

Until the end of the Ottoman rule in 1917, the legal system in Palestine was based primarily on principles of the Islamic Law, but it was also influenced by the Latin system in Europe. In 1917, the Ottoman rule was terminated by the establishment of the British Mandate, which re-formed the legal system in Palestine. The British added to the Ottoman legislation principles of the Anglo-Saxon system (the Common Law) which is based on judicial precedents.

In 1948, the Hashemite Kingdom of Jordan ruled over the West Bank, including East Jerusalem. The West Bank submitted then to the Jordanian legal system that is influenced by the Latin system. On the other hand, the Egyptian Administration controlled the Gaza Strip. The Common Law established during the British Mandate period remained effective in the Gaza Strip. Then following the 1967 War, the Israeli occupation seized control of the Palestinian legal system by imposing the Military Law (Military Orders) in the West Bank and Gaza Strip. After annexing it in 1980[1], the Israeli occupation submitted East Jerusalem to the Israeli Domestic Law.

STATUS OF THE JUDICIAL AUTHORITY POST-OSLO AGREEMENTS

The Palestinian Authority (PA) was established according to the Declaration of Principles on Interim Self-Government Arrangements of 1993 (Oslo Agreement I). Afterwards, several agreements were signed between the Palestinians and Israelis, aiming to transfer a number of powers from the Administration of Israeli Occupation to the Palestinian Authority (PA) and in particular parts of the occupied West Bank and Gaza Strip. Most significantly, Palestinians and Israelis signed the Gaza-Jericho Agreement in Cairo in 1994 as well as the Oslo II Interim Agreement in Washington on September 28, 1995.

Since the summer of 1994, the PA Council (the Executive Authority was established on July 5, 1994 and the Palestinian Legislative Council on March 7, 1996) has assumed the power to promulgate legislation to regulate the public life of the Palestinians. New legislation aimed to regulate Palestinian life and establish a consolidation of laws between the West Bank and Gaza Strip. Palestinian legislation began to be routinely published in the Palestinian Official Gazette “Al Waqae’.

JUDICIAL AUTHORITY FROM 1994- 2001

Until the establishment of the Palestinian Authority, the legal system of Palestine was based primarily on Common Law practices and Islamic legal principles. There was considerable overlap of diverse legal institutions in the Palestinian territories. Some of these include Israeli military and civilian law, Jordanian laws, acts, ordinances, and orders-in-council that remained in effect from the time of the British Mandate. In May 1994, Chairman Arafat and the PLO Executive Committee promulgated Resolution No. 1 of 1994 that stipulated that all laws, regulations, and orders in force prior to the start of Israeli occupation, in June 1967, would continue to operate.

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[1] Basic law, Jerusalem capital of Israel. Passed by the Knesset on July 30, 1980, which declared the unity of Jerusalem as Israel's capital, but did not declare its borders

It is obvious that one of the most vital obligations that the Palestinian Authority was responsible for, since it received its authority, was the unification of the judicial system and the laws in the West Bank and Gaza Strip through forming one independent Judicial Authority that is governed by a Palestinian Judicial Authority Law. Therefore, the PA issued Law No. 2 of 1994, which extended the jurisdiction of the Gaza Supreme Court to cover the Jericho area, the only part of the West Bank under PA rule at the time.

In May 1994, Chairman Arafat promulgated Decision No. (21) of 1994, appointing the head of the Supreme Court and naming a Chief Justice. Then in 1995, Decision No (287) of 1995 was issued to organize the Public Prosecution. According to this decision, the Public Prosecution should consist of the Attorney General, a number of assistants, Public Prosecutors, and Assistant Public Prosecutors that report to the Attorney General.

In September 1999, Chairman Yasser Arafat issued Decree No. (26) of 1999 which stipulated the formation of the Ramallah Court of Appeal and all its departments, and all the courts in the West Bank and the organization of matters of the judicial system, including the leave of judges and administrative employees. The Decree ordered that all Palestinian districts be considered within the jurisdiction of the Head of the Supreme Court, the Chief Judge. According to the constitutional and legal principles, no person, committee, or authority shall interfere in the matters of the Judiciary and justice.

New courts were also established in a number of Palestinian governorates. However, the regulation of courts remained as it was during previous periods, with respect to regular courts in the West Bank governorates, the Courts of Appeals, which were established on a provisional basis in Ramallah, deemed to be the highest regular court and its decisions were ethically binding to lower courts until the Gaza Supreme Court's jurisdiction was extended to cover the rest of West Bank towns that were brought, by subsequent Israeli-Palestinian agreements, under PA rule.

JUDICIAL AUTHORITY AFTER 2001

The structure of regular courts, and the procedures followed in each court differed significantly in the West Bank from those in Gaza, until the PLC issued a package of four Judiciary-related laws in 2001 that unified and organized the courts and the procedures in the West Bank and Gaza Strip. These laws included: the Civil and Commercial Procedures Law No. 2 of 2001; the Criminal Procedures Law No. 3 of 2001; the Civil and Commercial Evidences Law No. 4 of 2001; and the Formation of Regular Courts Law No 5, 2001.

In May 2002 the Basic Law, a provisional constitution, was issued. The Basic Law provided for an independent Judiciary that is subject only to the law. It also provided for the establishment of a Supreme Judicial Council, presided over by the Chief Justice, to serve as the administrative authority of the Judiciary. The Basic Law also stated that the Attorney General shall be appointed by a decision of the Palestinian President, based upon a nomination from the Supreme Judicial Council.

The Amended Basic Law of 2003 also emphasized the independence of Judiciary, and judges. It stated clearly that judges shall not be subject to any authority other than the authority of the law while exercising their duties. Article 100 provided for the creation of a Supreme Judicial Council, whose constitution, responsibilities and operating rules shall be specified by the law. Meanwhile Article 107 provided for the Attorney General’s appointment which should be pursuant to a decision issued by the President of the National Authority, based upon a nomination submitted by the Supreme Judicial Council.

Another important step was the issuance of the Judicial Authority Law of 2002. This law was viewed as a major step towards supporting independence of Judiciary and empowerment of courts, but the law had some ambiguities that raised disputes between the Executive (Ministry of Justice) and both the SJC and the Attorney General. As a result of these ambiguities, Chairman Mahmoud Abbas appointed an advisory committee in March 2005, responsible for judicial reform and recommending a Judiciary Law that would enjoy the consensus of all judicial stakeholders.

The Committee which was created from key players in judicial reform, prepared a list of the needed by-laws for activating the Judicial Authority Law, and began a needs assessment of the courts and Public Prosecution, and organized a workshop for the Judicial Authority and the security services to solicit feedback. The committee also worked closely with various counterparts, including Ministry of Justice, Supreme Judicial Council, Public Prosecution, and drafted an amendment to Judicial Authority Law, which was submitted to the PLC. The PLC recommended major amendments to the draft law and passed the Judicial Authority Law 2005 accordingly without consultation with the Steering Committee or the SJC. As a result, the new law gave wide authorities to the Ministry of Justice and neglected the articles that empower the independence of Judiciary, which led the Secretary General of the Committee to resign and the Committee later became inactive. The 2005 Law also gave the Minister of Justice administrative supervision over the Public Prosecution and its administrative employees, as well as the authority to establish an Inspection Department to inspect and monitor the work of the courts. This Inspection Department would report to the Minister of Justice.

The law also identified the powers and authorities of the Ministry of Justice, considering it the link between the Executive and Judicial Branch, and the responsible body for helping the public access the Judiciary. Article 50 in this law stated clearly that the head of each court exercises administrative control over the judges and administrative employees working there. This law also raised numerous questions on authorities leading to legal and political disputes that are still prevalent today.

As the Judicial Steering Committee declared that this law was irrelevant to the draft they submitted, the MOJ declared the law as an achievement and the Minister of Justice proclaimed many decisions designating the place of work for members of the Public Prosecutors in Gaza and calling that all employees in the Public Prosecution report to the Ministry of Justice administratively and financially. Judges were not satisfied with this law; and considered it against the principle of separation of powers, as it permits the Minister of Justice to interfere judicial affairs.

The Law was appealed to the Constitutional Court by a private association by the name of the Arab Lawyers Association for Human Rights in Gaza. As a result, the court ruled on the unconstitutionality of the Judicial Authority Law and considered it null and void. Therefore, the Judicial Authority remained under the safeguard of the Amended Basic Law of 2003 and reverted to the Judicial Authority Law No. 1 of 2002.

After this ruling, there were obviously different opinions with and against this decision. However, President Abbas considered this decision binding, and stated that court decisions should be respected. After the Constitutional Court decision, there was movement by the PLC to review the Judicial Authority Law in order re-draft the law taking into consideration objections and amendments recommended by various judicial stakeholders and institutions. All parties agreed that the 2002 Judiciary needs modification.

Consequently, on February 5 2006, President Mahmoud Abbas issued Decree-law No. (2) of 2006 Concerning the Amendment of the Law of the Judicial Authority No. (1) of 2002. This Presidential Decree solidified the SJC's control over the courts, further marginalizing the MOJ. In its 27 articles the Decree reiterates the independence of the SJC and Attorney General's (AG) offices and solidified the SJC's and AG's jurisdiction over court administration issues.

The Decree clearly transfers authorities previously granted to the Minister and Deputy Minister of Justice to the SJC and the Chief Justice and establishes a Judicial Inspection Department, which will be part of the SJC and chaired by a Supreme Court judge, and Technical and Judicial Inspection Departments within the AG's Office to supervise the performance of the AG and Public Prosecution. However, article (25) stated that this decree- in law shall be submitted in the form of law before the Legislative Council for approval in its first convened session while the decree was submitted to the PLC, it was stuck down.

On the other hand, new courts continued to be established. Naming judges for special cases took place, i.e. expedited cases, labor cases, juvenile's cases, and municipal cases, all viewed as an important step towards specialization of courts. In 2005, and for the first time since 1994, a judicial

contest was held to appoint Conciliation Court judges. A committee consisting of three judges was formed to supervise the contest, and written exams.

In April 2006, new First Instance Court judges were appointed, in execution of the judicial reform plan, which includes providing the Judiciary with qualified professionals to help develop the judicial system and improve its performance, in a way that enforces trust in the Judiciary's competence and neutrality. During this same period, several decisions to re-structure the First Instance and Conciliation Courts in the West Bank were announced, the new structures re- deployed all working judges in the First Instance and Conciliation Courts so that they do not work in their areas of residence, a move that is expected to reduce corruption as judges might have limited contacts in the new district. This change can be primarily attributed to the need to reform the courts and reduce judicial corruption. While many judges have expressed criticism of this decision particularly at a time when travel across the Israeli checkpoints is a time consuming and burdensome process others believe that this can be hailed as a positive step towards judicial reform.

OTHER KEY JUDICIAL LEGISLATION

By December 2005, the enforcement law was issued; this law is considered one of the most important laws that will empower the Judiciary[2].

On March 2006, the Constitutional Court Law was issued. However, to date, the Constitutional Court is not yet formed due to the lack of the human, financial and administrative resources. The MOJ, SJC, and President's Office have called on expediting the formation of the Supreme Constitutional Court, so it can settle disputes that arise between the three branches of government.

Formation of this court has become a necessity, particularly at the current time which has witnessed numerous disputes among parliamentary blocs. Meanwhile the High Court has been performing all the tasks entrusted to the Supreme Constitutional Court until it is established by law according to article 37 of the Formation of Regular Courts Law No 5. 2001

[2] For more details please go to Chapter 5 – Regular Court Services.

Chapter 4. INDEPENDENCE OF JUDICIARY

An Independent Judiciary is considered one of the most important guarantees of rule of law, and respect for the rights and liberties of the people as warranted by the national constitutions and legislation. An independent Judiciary is also considered a measure of good governance of the state; this principle has been strongly considered in Palestinian legislation. The Basic law provided for the independence of the Judiciary, and judges, a step that goes beyond rights set out in constitutions of many other Arab countries. It even prohibited providing immunity to any administrative decision or action against judicial review as well as prohibiting any authority to interfere in the Judiciary or in the justice affairs. This makes it clear that the Palestinian legislature is concerned with rule of law, and gives the courts wide authorities regarding the checks and balances with the Executive Authority.

The Basic Law however did not prescribe for the appointment, transfer, secondment, delegation, promotion, and questioning of judges and left these issues to the Judicial Authority Law but did forbid the dismissal of judges except in the cases allowed in the Judicial Authority Law. The Basic law called for the creation of a Supreme Judicial Council as well as the establishment of a Supreme Constitutional Court, important steps in safeguarding judicial independence.

One key measure in securing an independent and unbiased Judiciary is the publicity of court hearings as stated in Article 105 of the Basic Law. This article states that unless a court decides to make them *in camera* due to considerations related to public order or public morals, hearings should be public. In all cases, the sentence shall be pronounced in a public hearing.

Furthermore, Article 106 of the Basic Law states that *"judicial rulings shall be implemented."* Refraining from or obstructing the implementation of a judicial ruling in any manner whatsoever shall be considered a crime carrying a penalty of imprisonment or dismissal from position if the accused individual is a public official or assigned to public service. The aggrieved party may file a case directly to the competent court and the National Authority shall guarantee a fair remedy." These articles can be considered important measures of guaranteeing independence of the Judiciary, separation of branches, and providing checks and balances within the three authorities.

Other legislation provided for the independence of the Judiciary, particularly the Judicial Authority Law 2002. This law emphasized the independence of the Judiciary through providing for measures of independence, such as financial and administrative independence. The Judicial Authority Law declared the financial independence of the Judiciary, whereby it considered its budget independent from that of the Ministry of Justice regarding the preparation, supervision, and implementation.

This financial independence has been confirmed through the submission of the SJC budget to Ministry of Finance according to the Public Budget Law No. 7 of 1998. This issue was also addressed by separating judges' salaries from the rest of the executive employees, where the Judicial Authority Law of 2002 was supplemented with a table regarding specification of the judges' salaries and compensation according to seniority, degree, and position. These tables are inter-related with the cost of living level, promotions, and other allowances that are declared by the Civil Service Law.

The administrative independence of the Judicial Authority, represented by the SJC as declared by the Amended Basic Law of 2003 and the Judicial Authority Law No. 1 of 2002, faced paradoxes regarding the authority of court supervision, transfer of employees and judges, and secondment and resignation of judges. Questions raised include: is the SJC responsible for the administrative supervision of the judicial system? Or is the Ministry of Justice responsible? Or are both institutions responsible? The answers have remained somewhat unclear in the Judicial Authority Law No. 1 of 2002. Furthermore, some articles referred to the Minister of Justice as being responsible for the administrative supervision of the courts and accepting the judges' resignations as declared by Article 33 section 1, and Article 47 section 1.

INDEPENDENCE OF THE JUDICIARY: THE REALITY ON THE GROUND

Theoretically, the Executive, Legislature, and Judiciary have all supported independence of the Judicial Branch and the principle of separation of authorities and branches; however, in reality the situation on the ground is somewhat different. This can be attributed to several factors. The most prominent of these factors include the contradictions and lack of clarity in various Palestinian laws; competition within justice sector institutions for power; and finally the recent developments with the legislative elections that brought for the first time in Palestinian history two strong political parties to power that support two distinct political agendas and priorities, with both parties lacking strong legislative experience.

In examining the issue of independence of the Judiciary, one must make a distinction between events in the early years of the establishment of the PA and the current situation. We note that while the present situation is not ideal, we have at least seen positive movement and concrete steps on the ground, particularly taken by the President's Office to guarantee independence of the Judiciary and better communication between the Office of the Presidency and the Judiciary.

The Palestinian Independent Commission on Citizens Rights (PICCR) noted in their annual report that "the implementation of constitutional principles related to the Judiciary, the separation of powers in practice, and the prevention of others from meddling in the Judiciary's affairs, all require more understanding and deeper awareness, especially on the part of the officials in charge of the various institutions."

Likewise, AMAN a Palestinian NGO dedicated to transparency noted in a recent report on the "Judiciary and Separation of Branches in the Palestinian Political System" that the government has suffered from obstacles related to the separation of branches between the three authorities and the lack of clarity on specific roles and lines of authority. They also claim that the Executive has interfered in the authorities of the two other branches. As a report finding, AMAN attributes all these problems to laws that are vague as well as the lack of transparency in the government's work.

In studying the laws and legal framework governing the Judicial Authority, it is easy where problems can rise from—as well as the contradictions. The Judicial Authority Law (JAL) for 2002, the law that is currently in effect governing judicial operations has very clear articles stipulating independence of the Judiciary yet at the same time there are articles that question this right to independence. For example, on the one hand, Articles 1 and 2 of the JAL state that:

Article 1:

- *"The Judicial Authority is independent. No other authority shall interfere with the Judiciary or with the affairs of justice."*

Article 2 further solidifies this right and states:

- *"Judges are independent and shall not be subject, in the exercise of their judicial function, to any authority other than the authority of the law."*

While on the other hand Article 47 of the JAL shows the contradiction stating that: "The Minister of Justice shall have administrative supervision over all courts. The presiding judge of each court shall supervise the work of the judges and the progress of the work carried out therein." This can be interpreted as an obvious sign of interference from the Executive Branch in judicial affairs. Article 47 of the JAL has been highly debated and seen as blatant contradiction to the earlier articles enforcing independence and separation of branches.

The Ministry of Justice and the Supreme Judicial Council have each interpreted this article differently. The SJC views this article as not giving the MOJ actual supervision but rather limited supervision related to collecting administrative data from courts, noting that Article 47 also gives the presiding judge in each court supervising authority. At the same time, the MOJ believes that their authorities are clearly spelled out and point to other articles giving the Minister authority in initiating disciplinary claims against judges, calling SJC meetings and accepting resignations of judges, among other duties.

Also interpreting this article as skewing the autonomy of the Judiciary, President Abbas issued a Presidential Decree in February of 2006 that amended various articles of this law including Article 47. His amendment read that:

- *"Article 47 of the law will be canceled and replaced with: The Chief Justice has the power over the administrative supervision over all judges, this shall apply to the Chief Judges each in his court, for this purpose, the Conciliation Judges working in the First Instance Courts shall be considered to be members of the these courts.*
- *The Chief Justice by himself or through a nomination of the Chief Judge of a court may warn a judge of any act that constitutes a violation of duties or the requirements of position, the warning shall be filed in the confidential file of the judge."*

This decree while obviously in favor of judicial independence was later struck down by the PLC.

In any case, due to the problems faced by the Hamas led-government, their appointed Minister of Justice has not challenged this decision. Instead, they have chosen to relinquish most control to the SJC. Time will tell if this dynamics will change with the recent of formation of the National Unity Government. However, even prior to the current situation, the Ministry of Justice was generally viewed as a body struggling to find its place in the Judiciary. It has also been riddled with a series of ineffective Ministers-- even in the Fateh era. However, had the Hamas government not battled with the issue of the boycott by the international community, it would have been unlikely for them to relinquish control so easily. However, due to the Israeli arrest of many Hamas Ministers and the PA employee strike, the MOJ turned into a non-player in the judicial field during this period.

- *Despite all these developments, final consensus on the Judiciary Law has still not been reached and the debate clearly highlights some of the key issues in the battle for power. While the 2002 law is currently in effect, there is agreement among all parties that once government operations resume, changes still need to take place to this law or a new law should be proposed. In early January the PLC began holding a series of hearings to solicit justice sector feedback on the law but political events eventually led this effort to falter.*

The President has taken other decisions to show his respect for independence of Judiciary and drawing clear lines of authority. Based on criticism that his office and particularly his Legal Advisor was meddling in the judicial affairs, independent judicial experts were summoned to help draft a document on the rules organizing the relationship between the President's Office and the SJC. Among the most notable points in this document are:

- *"The relationship between the President and the Council shall be established according to the principle of separation of authorities and is a direct relationship of mutual respect. This does not mean in any way that the Supreme Judicial Council is subordinate to the President or any other authority."*

Another key point of agreement states that: "The President shall not interfere in the works of the Judicial Authority or the power of evaluation the Judicial Council possesses, and in the event that the President has a solid reason to believe that legal violations have been committed, he has the right to return the file or the issue of controversy to the Supreme Judicial Council so as to put it in its legal context."

Based on this agreement, the SJC and Office of the President now appear content that this agreement has resolved any issues interference or miscommunication. In this same regard, it would be constructive for similar agreements to be reached with the Judiciary represented by the SJC and the MOJ as well as the SJC and the PLC. This step would go a long way in facilitating communication between the powers, particularly at this current time when legislation is lacking.

Returning to the legislative context, the Amended Palestinian Basic Law also caused ambiguity as it presented contradictions with other laws. We note that this law was not approved for a several years which began the tension between the authorities as each branch tried to vie for power and jurisdiction. Even after the law was approved in 2002 and amended in 2003, there proved to be discrepancies between the Basic Law and Judiciary Law i.e. Article 98 of the Basic Law states that:

"Judges shall be independent and shall not be subject to any authority other than the authority of the law while exercising their duties. No other authority may interfere in the Judiciary or in judicial affairs." Yet at the same time administrative control of the courts was handed to the Ministry of Justice in the Judiciary Law—at least prior to the Constitutional Court decision.

There are also contradictions between the Basic Law and JAL related to the Public Prosecution. Article 107 of the Basic Law states:

1. *The Attorney General shall be appointed pursuant to a decision issued by the President of the National Authority, based upon a nomination submitted by the Supreme Judicial Council.*

Yet the JAL gave a clear role to the Minister of Justice in appointment of the Attorney General, as well as designation of place of work, and transfer of Public Prosecution Members. In addition, PP staff is asked to take the oath of office before the Minister of Justice, a symbol of his jurisdiction.

However, the Constitutional Court ruled that the Judiciary Law is null and void based on these contradictions. They write that the law "contains several unconstitutional provisions such as Article (65) concerning the appointment of the Attorney General. The Article's first paragraph states that *"The Attorney General shall be appointed by a decision from the President of the Palestinian National Authority upon recommendation of the Minister of Justice and approval of the Legislative Council. The Jurisdictions of the Attorney General shall be designated by the Law"*, meanwhile, Article (107) of the Basic Law stipulates that *"The Attorney General shall be appointed by a decision from the President of the Palestinian National Authority upon the recommendation of the Supreme Judicial Council*". Therefore, by requesting the approval of the Legislative Council as a condition, this article becomes unconstitutional since it violates provisions of the Basic Law."

Just as there are discrepancies in the law on the process of nomination of the Chief Justice and the Attorney General, the law does not clearly stipulate the process of removal of these two high ranking positions. Therefore, according to the law the process currently would be same as that applied for the removal of other judges and members of the Public Prosecution, respectively—which according to the law gives the Minister of Justice a role in initiating claims and disciplinary inquiries in both cases. Future versions of a Judiciary Law should clarify and adequately address this serious issue. Clear provisions should also be outlined for the process of nominating as well as removing the Chief Justice and Attorney General from office.

Finally, the PP and SJC have taken some steps in implementing a reform plan; however, additional transparency is needed so a clear message on the importance of judicial independence and separation of authorities is relayed not only within the justice sector but to the public as well. Institutions monitoring and studying the Judiciary including PICCR and AMAN note that while the SJC was established in 2000 it was not until Oct. 19, 2006 that by-laws regulating work of the SJC were published in the Official Gazette—six years after it was established. They also call for additional transparency in the judicial and PP appointment process and call for movement from the Attorney General on the corruption files in his portfolio.

If true independence of the Judiciary and respect of authorities among the three branches of government is going to be achieved then serious efforts should be undertaken to examine the entire political system and the current package of legislation that stipulates authorities of the Legislative, Judicial, and Executive Authorities so as not to remedy problems on a piece meal basis.

The lack of legislative experience in both the former but particularly the current PLC is a serious impediment. The PLC has not demonstrated knowledge and skill in legislative drafting, as well as ensuring harmony within current laws and proposed legislation. Contradictions between laws should not exist as legislation should promote clarity not further ambiguity. In addition, no room should be left for legislative interpretation. Future judicial legislation should specify beyond a doubt all issues related to authorities of the Judiciary but particular questions on court administration, responsibility of the judicial budget, process of appointment and dismissal of Judiciary staff including the Attorney General and Chief Justice, and judicial oversight are key issues. The laws in effect today are far from achieving this goal and there is sometimes confusion between individual laws and decrees issued by

the President which leads each competing institutions to abide by whatever law or decision is in their favor.

In summary, there needs to be more coordination, cooperation, and communication with the three branches of government in order to adequately support independence of the Judiciary and the system of checks and balances. There is also a dire need to form a Constitutional Court that can take effective decisions on issues related to governance-- this is particularly important at the current time as numerous issues have been raised on the constitutionality of decisions, most recently, the President's call for elections. While these issues have caused frustration, in the end, these challenges are to a certain extent a natural outcome of a new authority coming to power, with internal and external obstacles to governance. However, with a strong commitment from the President, judicial leaders, and the legislature these challenges can be overcome.

ATTACKS ON JUDICIARY: AN IMPEDIMENT TO JUSTICE

There are also some external factors that affect the independence, objectivity, and transparency of the Judiciary.

With the state of security chaos, judges, prosecutors, as well as ordinary court staff have been attacked and intimidated by individuals with power that have at times taken matters into their own hands, in order to affect the outcome of a court case or at least cause inaction. These recent attacks on judges impair independence and, as a result, sometimes decisions on important criminal cases are not taken for fear of repercussions, leaving the status of rule of law and judicial independence questionable to the Palestinian public.

The year 2006 has witnessed a series of assaults on symbols of the Judicial Authority, whether by threats to shut down courts, shootings, kidnappings, invading offices, attacking residences of judges, public prosecutors, and lawyers, vandalizing correctional facilities, issuing threat letters and phone threats to judges, all in an attempt to influence their ruling in cases.

Several incidents were recorded, some of which included the abduction of the Head of the Jenin First Instance Court, the judge was abduction for several hours and later released. This incident took place in March 2006. As a result of this case, the SJC and PP observed a week-long strike calling for the PA and security services to take strong measures to end the state of security chaos. Other incidents included the wounding of Judge Mohammad Omar, of Jenin's First Instance Court, Judge Shaher Nazzal of the Conciliation Court, and Public Prosecutor Tha'er Khalil. They were all attacked by three unknown persons in Beer Al Basha village, south of Jenin in May 2006. According to press reports, local sources mentioned that the three perpetrators were accused of murder cases considered by the Court of Jenin. In other incidents the Bureau of the Religious Chief Judge and the Religious Court in Al-Ezareyyeh were also attacked; the Religious Chief Judge in Hebron was assaulted, and a bomb exploded in front of the home of Judge Fayez Zeyarah in Tell al-Hawa west of Gaza city in June 2006. These are just a few of the dozens of incidents.

The attacks increased concern even more, when judicial personnel began getting caught amid the escalating familial and inter-factional tension, especially in Gaza Strip, where the Head of Familial Counseling Section at the Shari'a Courts in southern Gaza and recently appointed Judge at Khanyounis Shari'a Court, Bassam Al-Farra was forced to his knees and fatally shot outside the courthouse where he worked, in December 2006.

In response, the Palestinian Bar Association and several civil society organizations have made urgent appeals to Palestinian Authority's Executive Branch to take immediate action to end the state of security chaos, due to the failure of the security apparatuses and forces to provide protection and tight security measures for judicial personnel. They have also called upon the Public Prosecution to carry out immediate and serious investigations into all the assaults and harassment of judicial personnel.

In this current era which has been characterized by security chaos and lack of order with the law often times being taken in the hands of powerful and influential individuals and clans who have at times intimidated and attacked judges, courts, and even police stations. This chaos has been further exacerbated by the year-long salary crisis and five-month employee strike that has impacted PA

employees (including judges, prosecution, and court staff), leaving most employees without salaries for this entire period. This crisis temporarily paralyzed key sectors including the Judiciary, as well as the health and education sectors. As a result of this situation, many courts closed or operated with minimal operations, and in the process thousands of civil and criminal cases were unprocessed. The Chief Justice had repeatedly warned that a prolonged crisis could lead to the closure of many courts, and as a result no legal repercussion for those committing crimes—threatening the legal system with collapse. With the strike officially over in mid-December, it will now take the courts several months to deal with the backlog of work generated by this situation.

The Judiciary has also complained of inadequate cooperation by the Ministry of Interior regarding the Judicial Police, which is entitled to provide security and protection to the judges and courthouses. This seriously questions the poor security measures taken inside and outside courthouses.

Chapter 5. INTER-INSTITUTIONAL FRAMEWORK

The Palestinian formal justice sector is comprised of the Judiciary, the Public Prosecution, and the Ministry of Justice. These institutions have suffered to varying degrees from the continual scarcity of resources, under-skilled personnel, and poor infrastructure. Almost immediately after the Judicial Branch was established, conflict arose between these major stakeholders on the decision making process in the Judiciary, appropriate roles and responsibilities of each institution, as well as the mandate of each the SJC and the MOJ.

Many of the key actors and institutions in rule of law lie beyond the formal justice sector. There are a number of strong NGOs that focus on human rights and advocacy, and fewer focused particularly on legal issues. The Palestinian BAR Association is also a viable institution that has the potential to contribute in the reform process.

PRESIDENT'S OFFICE

The Office of the President of the PA is not officially a constituent institution in the formal justice sector; however, the presidential elections in January 2005 transformed this body into a key player in the justice sector since judicial reform was one of the major pillars of President Mahmoud Abbas' electoral campaign. As a result, the first intervention of the newly elected President was the formation of the Steering Committee for Judicial Reform and Development. The main purpose for forming this committee was to maintain momentum and political will for judicial reform and to serve as a means to promote inter-institutional planning and coordination, such coordination that will eliminate the conflict among the justice sector institutions.

According to the Basic Law and the Judiciary Law, the President has a key role to play in judicial affairs. He is responsible for issuing a Presidential Decree appointing the Chief Justice of the Supreme Court who is by default the President of the SJC. This decree shall be issued after a recommendation of SJC Members to select the judge among the Supreme Court judges to be appointed as Chief Justice. The law highlighted the means of appointing the Chief Justice after the recommendation of the SJC. In December 2005, the Chief Justice retired after reaching the legal retirement age, President Abbas then issued a Presidential Decree appointing Member of the Supreme Court, Judge Issa Abu Sharrar as the new Chief Justice.

Shortly after the legislative elections, some members of the Government and civil society institutions began to make claims that the Judiciary is not independent and is closely affiliated to the President's Office due to the President's legal advisor meddling in the judicial affairs. The SJC and the President's Office agreed on forming an independent committee to develop a position paper organizing the relationship between the Judiciary and the President's Office as well as identifying the roles of each institution. The document stressed the independence of the Judiciary according to provisions of the Palestinian laws especially the Judiciary Law and the Basic Law. The following principles were concluded by the committee to be the basis for organizing the relationship between the Judiciary and the President's Office:

"The Independence of Judiciary has become an established and firm principle in the conscience of the world prior to its endorsement in the constitutions of various countries. It is an important principle by which a legal state can not be recognized without.

The relationship between the President and the SJC shall be established according to the principle of separation of authorities and is a direct relationship of mutual respect. This does not mean in any way that the SJC is subordinate to the President or any other authority.

The SJC possesses the authority, jurisdiction, and competence to recommend, transfer, and promote judges, and it enjoys the power of evaluation in practicing its responsibilities according stipulations of the Basic Law and other valid Palestinian laws.

The President shall not interfere in the works of the Judicial Authority or the power of evaluation that the Judicial Council possesses, and in the event that the President has a solid reason to believe that

legal violations have been committed, he has the right to return the file or the issue of controversy to the SJC so as to put it in its legal context".

MINISTRY OF JUSTICE

The MOJ is a key stakeholder of the formal justice sector. Prior to the establishment of the SJC, the MOJ was responsible for supervision of all the courts and Public Prosecution. After the establishment of the SJC, the MOJ and the SJC began to differ in opinion over the role of administrative control of the courts and the Public Prosecution including the Attorney General's Office. The PA President, at that time supported the SJC and transferred all the responsibilities and administrative control over the courts to the SJC to ensure the independence of the Judiciary.

The administrative independence of the Judicial Authority, represented by the SJC as declared by the Amended Basic Law for the Year 2003 and the Judiciary Law Number 1 for the Year 2002, faced paradoxes regarding the authority over court supervision, court employees, transfer, secondment, and retirement of judges. Furthermore, other articles in the law referred to the Minister of Justice as being responsible for the administrative supervision of the courts and accepting the judges' resignations as declared by Article 33 section 1, and Article 47 section 1 of the Judiciary Law.

The difference in opinion between the SJC and the MOJ over the abovementioned issues usually was referred to the PA President to issue Presidential Decrees since the law did not clearly define each player's responsibilities. Sometimes, court decisions have solved the conflict in particular issues such as the decision of the Chief Justice to promote administrative employees at the SJC, which was put on hold by the PA Public Personnel Bureau referring to the Article 47 of the Judiciary Law which gave the MOJ the control over administrative staff. The court decision was clear and gave the Chief Justice the right to promote employees which was considered at that time a judicial precedent that can be used as a standard in subsequent cases.

It is obvious that there is some overlap regarding the authorities given to the SJC and the Minister of Justice. Article 47 of the law gives the authority to the Minister for the administrative supervision, at the same time and in the same article states that the presiding judge supervises the progress of work of judges. This article does not distinguish between administrative supervision and progress of work in clear terms. This statement is characterized by having more than one reference to authority, since the presiding judge is considered part of the SJC according to the law, and declared that the reference of authority for the administrative supervision is the Minister of Justice

It is noted that the role that given to the MOJ in the Judiciary Law of 2005 is huge, particularly when taking into account the capacity and ability of the MOJ to handle these responsibilities. Additionally, there was strong opposition to this role within the justice sector since this role will affect the principle of independence of the Judiciary.

This situation has affected the membership of the Deputy Minister of the MOJ in the SJC as declared by the Judiciary Law. The SJC considers this membership as another jab at independence of Judiciary since the Executive Authority should not be represented in the Judicial Authority in any form.

MINISTRY OF INTERIOR

In his decree dated March 2003, President Abbas reiterated that the Ministry of Interior is a key member in the justice sector. The Ministry of Interior plays a significant role in achieving and prevailing justice in society. In such a capacity, the Ministry is seen to be vital in terms of assisting other justice stakeholders, mainly represented in the SJC and the Public Prosecution in achieving justice. In assisting both entities, the Ministry calls upon the services of the police, in terms of implementing judicial decisions and assisting the Public Prosecution in investigations and any other cases where the police force is needed.

In a reaffirmation of the relationship between the police and other justice sector members, a workshop was held in Jericho in 2005, organized by the Steering Committee for the Development of Judiciary and Justice. During the workshop various decisions were taken in order to strengthen the relationship

between the police and justice sector. The establishment of the Judicial Police was one of the recommendations resulting from the workshop. This recommendation was implemented during the initial months of the USAID- funded Rule of Law Program, Justice and Enforcement Program that was implemented by NETHAM. The initial steps in the establishment of this Force was based on a set of recommendations from the workshop that called for the importance of such an apparatus to help enforce court decisions and protect court property.

It is worth mentioning that there are various obstacles facing the performance of the police. Despite the fact that the police force should work to assist the Judiciary, on the ground there is somewhat a lack of cooperation between the police and the Judiciary. One example is the current inability of the police to escort Enforcement Officers or Court Processors in implementing court decisions. This is due to various reasons, including the shortage in the number of staff; the lack of the financial resources needed for the police, including a budget for gasoline in certain cases, in addition to the fact that the police officers receive low salaries which consequently affect their moral and work performance.

On the other hand, the level of cooperation with the Public Prosecution is relatively higher and occupies a bigger priority for the police; this is due to the fact that the Public Prosecution deals mainly with crime- related cases, which is considered an urgent priority.

Another difficulty that the Ministry faces with the courts and prosecution system is in terms of receiving data needed on certain persons regarding the delivery of court notifications and obtaining a full addresses of persons required to be notified or reached.

BAR ASSOCIATION

The Palestinian Authority inherited a divided legal profession along geographical and political lines with three key players. These include Members of the Jordanian Bar Association who announced a strike in protest over Israeli annexation of Jerusalem and control over courts, Members of the Arab Lawyers Committee (formed by the Palestinian lawyers who broke the strike), and Members of the Lawyers Union in Gaza.

In July 1997, President Arafat issued decree No. 78, 1997 appointing three members from each body to serve as an interim board. The Ministry of Justice recommended the members. The newly unified board was authorized for one year to assume all the authority of the previous bodies and draft a law for the legal profession. In January 1999, the interim board had not completed its task, which led President Arafat to issue decree No. 2, 1999 extending the board's life until a law was passed and elections for the Bar Association completed.

In June, the Law No. 3, 1999 on Regulating Legal Practice was signed by President Arafat. It went into effect in November 1999. The law established a framework for an autonomous body to represent and govern the legal profession. The Bar Association issued the rules that would govern its elections in September 2000, and it was scheduled to be held in March 2001.

The Bar Association issued the Barristers Association By - laws, 2000, but it has still not issued all the necessary regulations that should organize the work of the lawyers; i.e. code of conduct, training regulation that will all play an essential role in developing the legal profession, enhancing the skills of lawyers, and expanding their understanding of the profession's ethics and conduct.

The lawyers in the West Bank and Gaza are considered associates of Judiciary; they have numerous responsibilities towards their profession and the rule of law in the country. They should be able to serve as the key resources for the protection of the rights and freedoms of criminal defendants and civil litigants, their skills should be upgraded, they should maintain the honor and dignity of their profession as essential agents of the administration of justice.

Lawyers in the West bank and Gaza are currently not playing their role in enhancing the rule of law and empowering the judicial system as should be. Many court cases are pending due to the delays caused by the litigants' lawyers. The Bar Association, together with the court judges should compel the lawyers to enhance litigation instead adding a burden. The Bar Association should also take

immediate step to draft the needed regulations to enhance the skills of lawyers and expand their understanding of the profession's ethics and conduct.

Chapter 6. SUPREME JUDICIAL COUNCIL

FORMATION OF THE SJC

Formation of the Supreme Judicial Council came as an important step in securing independence of the Judiciary as clearly stated in the Basic Law for the Year 2002 through clear provisions on independence of the Judicial Authority and the independence of judges in their rulings. The formation of the SJC as a body representing the Judicial Authority came as a result of three different stages, that began with a Presidential Decree in 1999 which gave the Supreme Court in Gaza all the authorities to manage and supervise the Judiciary; then, came the establishment of the first SJC as an interim council according to Judiciary Law provisions; and finally, the transformation of the interim body into a permanent body that can carry out all duties and responsibilities to develop, manage and run the Judiciary.

LEGAL FRAMEWORK

Palestinian laws mandated the formation of a Judicial Council to assure the principle of judicial independence and to be responsible for managing all judicial aspects for this branch of government. Article 37 of the Judiciary Authority Law Number 1 for the Year 2002 and Article 100 of the Amended Basic Law declared forming this Council which shall be comprised of the Chief Justice of the Supreme Court as President, the most senior deputy of the Chief Justice of the Supreme Court as Vice President, the two most senior judges of the Supreme Court selected by the Supreme Court Commission, Presiding Judges of Appellate Courts in Jerusalem, Gaza, and Ramallah, the Public Prosecutor, and finally the Deputy Minister of Justice.

The Basic Law and the Judiciary Law were endorsed in the year 2002, however; the first Supreme Judicial Council was established in the year 2000 by former PA President through Presidential Decree Number 29 for the Year 2000. The authorities of the supervision over the Judiciary were given to the Supreme Court of Gaza, since the Supreme Court at that time was only existent in Gaza according to the Egyptian laws. In the West Bank, all cases of the Supreme Court were presented before the Amman Supreme Court.

The Judiciary Law Number 1 for the Year 2002 stated the establishment of an interim Judicial Council for one year according to Article Number 81 of the mentioned law to assume the responsibilities of the SJC. The Council established in 2000 was deemed an interim Supreme Judicial Council for a transitional period of a maximum of one year, considering this council permanently in session, and exercising authorities stipulated in the law. On May 2003, the permanent SJC was established by another presidential decree according to the law in order to exercise the authorities stipulated in this law and continue the development activities initiated by the former council.

By the end of the year 2005, the Chief Justice retired according to the provisions of law. A new presidential decree was then issued appointing the current Chief Justice, Issa Abu Sharar. The new Chief Justice was a member of the previous permanent council over the last three years.

STRATEGIC FRAMEWORK

Since the establishment of the SJC, the Council has paid special attention to the development of the Judiciary and the representative body of the Judiciary through several programs and activities. The availability of assistance from the international donor community was considered a great opportunity for the Council to employ this funding in building a strong and capable institution to drive the Judiciary and develop this branch.

As mentioned earlier, all the authorities of the Judiciary were given to the Supreme Court of Gaza since it was established at that time; this accelerated the establishment of the SJC institution in Gaza, while the establishment of the SJC in the West Bank took a longer time to function. This created a situation of inequality in terms of the judicial capacity between West Bank and Gaza and is clearly illustrated in the discrepancy of the large number of pending cases in West Bank courthouses.

According to the point of view of the new Chief Justice, the efforts of the previous Councils to develop the Judiciary were fragmented, with no clear strategy. Therefore, the efforts of the SJC towards development and reform of the Judiciary were not of great impact and much remains to be accomplished to develop the Judicial Authority.[3]

However, the previous SJC Councils tried in different ways to develop the Judiciary; many achievements took place during the previous Council era in terms of developing the judicial system such as creation of new courts in different areas of the West Bank and Gaza, initiation of case management, and automation of case management in many courts. These are big achievements considering the short age of the SJC and the experience of the selected members in the institutional development process.

The newly appointed Chief Justice Issa Abu Sharar has a sound vision concerning the development of the Judicial Branch; this can be only measured through his discussions and speeches despite the lack of documented strategy. The new Council is following, to a large extent, previous approaches in developing the Judiciary, in other words thus far no documented strategic plan or operational plans has been developed—even after more than a year of this new Council era.

The new SJC has verbally defined the areas where it is important to intervene to develop the Judiciary. They can be summarized as follows:

1. Institutionalize the SJC and the Judiciary through developing an organizational structure and job descriptions for the SJC and the courts as well as creating the SJC General Secretariat to assist the council in its functions.
2. Develop the technical functions of the SJC including the Judicial Inspection, Judicial Training, and the Technical Office.
3. Concentrate on reducing the backlog of cases before the courts especially in the West Bank by hiring new judges.
4. Develop the court administration concept within the SJC through establishing a new department for court administration to provide oversight and improve the SJC services.
5. Develop the court facilities through raising funds to construct new courthouses that meet professional standards.
6. Develop by-laws and internal regulations for the SJC and the Judiciary functions.
7. Upgrade the skills of court administrators and processors to support the judges in achieving their function.
8. Improve the enforcement function by developing the Enforcement Units and cooperate with the PP for the enforcement of criminal judgments.
9. Develop the notification process at courts to ensure on-time processing of cases.

While these points on key areas of improvement of the Judiciary and its performance are important, these issues need quantitative and value chain analysis to put the development efforts on the right track.

SJC STRUCTURE

The Supreme Judicial Council's tasks are diverse and tackle several vital aspects of organizing and improving judicial work. These tasks include functional and administrative services provided to the courts. A portion of these responsibilities are managed by the Executive Body of the SJC. The other portion deals with technical judicial services, which are the main responsibility of SJC Members, or delegated specialized committees formed by the Council from its Members or Technical Departments.

[3] SJC Annual Report 2005, Pg. 26

The SJC operates according to an organizational structure, where the Chief Justice is at the top of the hierarchy according to the law. He in turn promotes the principle of judicial independence and ensures the SJC's pivotal role in the judicial development process. This structure has never been developed into a document that reflects the needs of the Judiciary, but there have been steps taken on the ground. Furthermore, Palestinian legislation has organized the structure of the regular courts such as the Supreme Court, the Courts of Appeal, First Instance Court, and the Conciliation Court.

After the appointment of the new Chief Justice, he expressed his priorities in a letter sent to the NETHAM Project. One of his priorities was the development of a comprehensive organizational structure including organizational charts and position descriptions for the Executive Body of the SJC and its functional departments. As the NETHAM Project was put "on-hold" awaiting a presidential waiver after the Palestinian elections, the SJC has recently, in cooperation with a reform project implemented by the Center for Continuing Education at Birzeit University, developed an organizational structure for the Judiciary including the SJC technical and administrative bodies, as well as the regular courts. The newly developed organizational structure is still under discussion and will be sent to the President of the PA for approval and endorsement before it becomes final. The current organizational structure of the SJC comprises of three components including the technical, financial and administrative functions and the regular courts.

There are three major departments in the technical component; these include the Technical Office, the Judicial Training, and the Judicial Inspection Departments. The Judiciary Law declares clearly that the Council should form these departments to provide technical support to the judicial system along with the tasks of monitoring and inspection of judicial work and decisions at the various courts. Following sections will elaborate more on these departments. The second component comprises the organizational structure of the Executive Body and the various departments and units, that have the responsibility of accomplishing administrative and financial services for improving and organizing the work of the Council, regular courts, operations management, and human resources according to the laws and regulations. The final component includes the regular courts as declared by the Judiciary Law and the Courts Formation Law, these laws defined four levels of regular courts to be functioning, which include the Supreme Court, the Appellate Court, the First Instance Courts, and Conciliation Courts.

The following chart (figure 1) represents the main organizational structure of the Judicial Branch which is headed by the SJC.

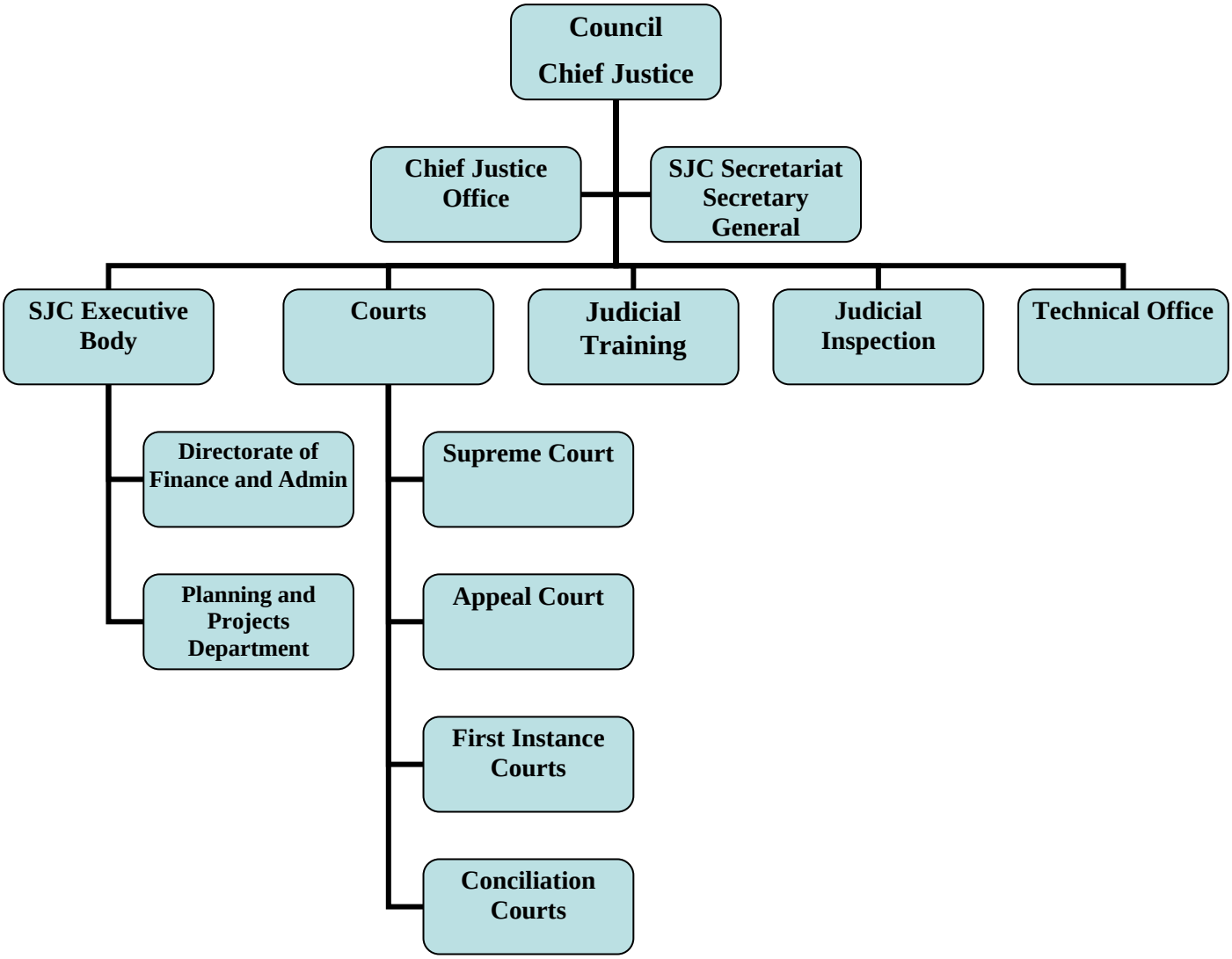

Figure 1: Main Organizational Structure of the Judicial Branch, Headed by the SJC

THE SJC EXECUTIVE BODY

There are currently two main offices for the SJC Executive Body, one is based in the West Bank (Ramallah) and the other is based in Gaza. It is important to note that the power and clout of each respective office has varied according to the residence of origin of the Chief Justice. Prior to December 2005 when the Chief Justice was from Gaza, the main SJC offices were also in Gaza and most senior staff was therefore located there. During that period, the West Bank office was a small branch with very limited authorities. On the other hand, after the appointment of the new Chief Justice, the equation was reversed and the West Bank office became the main office of the SJC and the Gaza office turned into an operating branch with limited authorities. Moreover, the most two senior staff in Gaza were transferred by a decision of the new Chief Justice to the General Personnel Bureau of the PA and out of the justice sector entirely.

Since his appointment in late 2005, the Chief Justice has concentrated on reform of the judicial system, as well as particularly focusing on the Executive Body of the SJC as it is considered the primary service provider to the Judiciary and the courts. These services are considered very important to the sustainability of judicial independence and development and reform of the judicial system in Palestine.

Key services of the SJC's Executive Body include:

1. **Financial Services**: such services include budgeting, expenses, monthly salary sheets, management of revenues, procurement, managing trust funds resulting from court rulings, as well as follow-up with the Ministry of Finance on all related financial issues.
2. **Administrative Services**: follow-up with courts on their daily needs for stationary, maintenance of buildings and equipment, cleaning needs, and other administrative issues.
3. **Human Resource Management**: follow-up on the Council's decisions concerning recruitment of new staff, promotion of existing staff, vacations, retirement, and communicates all these issues to the PA's Central Personnel Bureau.
4. **IT Support**: provides technical assistance to the SJC departments and courts on all IT issues such as network administration, electronic communication, maintenance of hardware and software, and finally providing technical assistance to run the available automated programs.

There is a particular need to institutionalize the provided services and develop the processes and procedures of these services. As mentioned earlier, the Council is finalizing a new structure for the SJC including the Executive Body. This is considered a positive first step towards the institutionalizing process; however, more needs to be done including re-engineering of these services according to the needs of the courts and the judicial system in general, as well as training staff in order to more adequately provide and manage these services.

The SJC Executive Body employs 62 staff members, with 42 of these members based in Gaza and 20 in the West Bank. The new Chief Justice is concentrating on development of the SJC in the West Bank. The current organizational chart of the SJC Executive Body includes the secretariat, chief justice's office, directorate of finance and administration, and the planning and projects department.

THE SJC SECRETARIAT

The Secretariat is a newly established body headed by the Secretary General in addition to an Assistant Secretary General. The Secretary General was seconded by the Chief Justice from the court where she served as a judge. The Assistant Secretary General position is still vacant due to the shortage of judges in the courts at the current time. As stated in the SJC by-law, the General Secretariat shall prepare the records and files necessary for organizing the Council's work,

The Secretary General acts as the Secretary of the Council in organizing and facilitating its meetings, following-up on Council decisions with related parties for proper implementation, keeping records of every aspect related to Council's tasks, and keeping and managing an updated database for judges at

different courts in the West Bank and Gaza. This newly established body needs more development and capacity building efforts in order to handle its responsibilities and tasks efficiently, as currently only one staff member (judge) is responsible for all its functions with some assistance provided by the Chief Justice's Office staff.

OFFICE OF THE CHIEF JUSTICE

The Office of the Chief Justice is currently staffed by six employees, three in the West Bank and three in Gaza. This Office provides legal and management assistance to the Chief Justice in accomplishing his tasks in terms of correspondences, organizing his meetings and schedule, and other administrative issues. The office staff consists of two legal assistants who serve as junior lawyers providing the Chief Justice with technical assistance in terms of reviewing legal documents, and preparing legal positions on any requested issue by the Chief Justice. The other four staff members are administrative staff dealing with administrative services to the Chief Justice.

DIRECTORATE OF FINANCE AND ADMINISTRATION

The Directorate of Finance and Administration includes six primary departments, with each comprising different divisions and units. The Directorate carries out all administrative and financial tasks for the Judicial Branch. This section employs 61 employees of which 19 are based in the West Bank and 42 in the Gaza Strip. The six departments are the Expenditure Department, Revenues Department, Human Resource Department, Trust Fund Department, Warehouse Department, and the IT Department

Although those departments within the Directorate of Finance and Administration do exist, their capacity and competency still needs to be developed, most of the employees are not fully competent and need to be equipped with the necessary skills to organize and run these departments efficiently.

THE PLANNING AND PROJECTS DEPARTMENT

The Planning and Project Management Department was recently established in order to strengthen, enhance, and accelerate the development and reform process of the Judiciary. The main function of this department is to assist the Chief Justice in forming the development strategy of the Judiciary, as well as conducting operational plans in order to achieve goals. This department is also mandated to follow-up on the implementation of activities with international funded projects working with the Judiciary, as well coordinate with these projects to address the SJC's actual needs. The department is headed and managed by a Public Prosecutor that was seconded from the PP. This department is in the process of being established and is not yet functioning.

TECHNICAL OFFICE

Article 9 of the Judicial Authority Law Number 1 for the Year 2002 stipulates forming a Technical Office in the Supreme Court. This office should be headed by one of the Supreme Court judges with the assistance of a group of judges, retired judges, or qualified lawyers chosen by the SJC for a period of two years that could be extended. The office also hires an adequate number of employees to be able to accomplish the tasks declared by the Judiciary Law.

The SJC is responsible for developing the Technical Office's by-laws according to valid legislation, which was never previously developed. Instead the few articles in the Judiciary Law and the Courts Formation Law were used as a reference to organize aspects of this office. This office is also not active since its establishment due to the shortage in the number of judges appointed or seconded to practice the Technical Office tasks and responsibilities, as well as the shortage of employees available at the SJC or the Supreme Court to handle the office management.

In May 2006, the first by-law for the office was developed and published in the Official Gazette[4]. The new by-law consists of 12 articles related to formation of the Technical Office, the chair and membership of the office, tasks and responsibilities, cases and reports presented to the office, and other legal and management issues. Issuance of such a by-law can be considered the first step towards developing and improving the performance of the Technical Office so it can carry out its responsibilities and duties according to the needs of the Judicial System.

According to the new by-law of the Technical Office, this office is chaired by a judge of the Supreme Court. The by-law also introduced the Deputy Office Head, in addition to a sufficient number of court judges working in this office as members. Before the publication of this by-law only one judge was working in this office as Chair. The by-law declared clearly that a sufficient number of employees shall be staffed at the office in order to assist the judges in achieving their tasks. Currently only one staff member is working in this office. The Chief Justice has stated that he requested financial approval to appoint dozens of new employees not only in the Technical Office but also in other SJC departments and courts to cover the shortage of human resources in the Judicial Branch in general.

JUDICIAL TRAINING

The Judiciary Law defines the tasks and responsibilities of the SJC, giving training and empowering judges a key component of these tasks in order to enhance and develop the Palestinian Judicial System. Hence, the Judicial Training Department was established with assistance from the previous USAID Rule of Law project implemented by DPK Consulting, which aimed at training judges and public prosecutors to improve their judicial capabilities. Article 17 of the 2002 Judiciary Law declared that the SJC should prepare a plan for training and guiding newly hired judges before they start their duties.

The Judicial Training Department is headed now by a Supreme Court judge and two administrative staffers in the West Bank. The department and in cooperation with some international funded projects including USAID projects has implemented training courses for judges and public prosecutors in the West Bank and Gaza during the past few years. Currently, the Council is implementing a training program to qualify the newly appointed Conciliation and First Instance Court judges as more than twenty judges have been appointed in the past few months.

The new Council is interested in developing the judicial training concept by improving the performance and capacity of the existing Judicial Training Department to play a major role in the development of Judiciary through equipping the judges with key skills and strengthening their capacities to improve judicial performance. The Chief Justice summarized the Council's vision toward the development of the training concept through the following steps:

1. Institutionalizing judicial training through drafting a by-law to organize the judicial training concept and restructuring of the Judicial Training Department to be an effective and efficient player in the development process and most importantly to serve as a basis for the establishment for the Judicial Institute in the future.
2. Develop a new vision and strategy for the Training Department to help in the development of the skills of judges on the one hand and to contribute to the success of transforming the Judicial Training Department into a permanent training institute on the other.

As for the operations and vision for this new Training Department, serious financial and human resources will be needed to develop and implement the start up training programs for newly appointed judges as well as the continuing education program for senior and new judges. The Council is likely to totally depend upon international donors to help raise funds for the upcoming training programs and to finance the operations of this department in terms of planning and implementation.

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[4] Please find the By-law as a reference at the end of the Report. Translated by NETHAM *(Unofficial translation).*

JUDICIAL INSPECTION

The basis of forming the Judicial Inspection Department and its tasks are outlined in Articles 42[5] and 43[6] of the Judiciary Law. This department is managed by a Technical Officer/Judge with the assistance of a number of judges from the Court of Appeal. This department shall inspect judges' work and examine all the decisions that are taken by the courts. This Department also promotes suggestions as to canceling, voiding, or modifying proclaimed decisions, as long as they present reasons for such suggestions. The SJC also needs to develop by-laws and regulations for this department in order to identify its specialization and tasks according to the law.

Currently, the department is headed by a judge from the Court of Appeals. The Chief Justice recently seconded another two judges to work in this department. He also employed two administrative employees in the West Bank. The main duties of this department according to the law and regulations are as follows:

1. Periodically inspecting the work of the court judges and the enforcement judges except for Supreme Court Judges.
2. Evaluating the judges' functions as to compliance with the law and completion of litigation procedures, evidence, grounds for postponement, the period of case settlement and completion of decisions and rulings and their substantiating ground, and the soundness of results, in addition to defining the judge's percent of annual case settlement.
3. Inspecting the Enforcement Departments, Notary Public Department, and the courts' staff.

As stated in laws, the reports generated by the Inspection Department would be critical to take into consideration when it comes to issues such the promotion of judges. Unfortunately, this has not been done so far. Instead, the Inspection Department for the past few years only been involved in dealing with the public complaints against judges or courts staff, and following-up on these complaints and reporting the results to the SJC for action and decisions. While this is an important function, the Department certainly has a broader scope to fill. The SJC has recently developed the related by-law to organize and activate the inspection function and is still in the development stages[7].

REGULAR COURTS

The Palestinian court system is an essential part of the justice sector in the West Bank and Gaza along with other key players such as the SJC, the MOJ, the Public Prosecution, the Judicial Police and other stakeholders. The court system and the PP were established under Jordanian and Egyptian laws in the

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[5] Article 42 of the 2002 Judiciary Law states:

1. *A Department to inspect judges shall be established, and attached to the Supreme Judicial Council. It shall consist of the Chief of the Technical Office, and a sufficient number of judges of the Appellate Courts, or members of the Public Prosecutor's Office at their rank.*
2. *The Supreme Judicial Council shall set forth regulations for the Inspection Department, indicating its areas of jurisdiction, the rules and procedures needed to perform its work, and the elements of the efficiency "competence" assessment, including the results of training courses, reasons for reversing, canceling, or amending the judge's rulings.*
3. Efficiency "competence" shall be evaluated at one of the following grades: *(Excellent – Very Good - Good – Average – Below Average).*

[6] Article 43 of the 2002 Judiciary Law further states: "Except for Supreme Court Justice, judges shall be inspected at least once every two years. The inspection report shall be filed at the Supreme Judicial Council, within a maximum of one month of its completion. Judges shall be notified of all comments or other papers placed in their service files."

[7] Please find the by-law in the reference at the end of the report. Translated by NETHAM *(Unofficial Translation)*

West Bank and Gaza respectively. Few years after the establishment of the PA, several laws were endorsed replacing the older laws that were valid in the last few decades in an attempt to develop the Judiciary and strengthen the court system to serve the public.

COURTS STRUCTURE

According to provisions of the Judiciary Law Number 1 for the Year 2002 and the Courts Formation Law for the Year 2001, the Palestinian court system consists of four different levels of courts, as follows:

1. Supreme Court which is the highest level and includes two courts, namely the Court of Cassation and the Supreme Court of Justice.
2. Court of Appeal: this includes one Court of Appeal in the West Bank and another in Gaza.
3. First Instance Court: these courts are usually located in the main cities and towns in the West Bank and Gaza.
4. Conciliation Courts are the most widely spread, every First Instance Court is accompanied with Conciliation Court. Other Conciliation Courts are found separately in some town where the First Instance Court does not exist.

To a large extent, the organizational structure of all the regular courts is similar to one another despite the differences in the tasks. All the courts are headed by a presiding Judge, where he/she is at the top of the hierarchy, and is directly responsible for managing the court operations and following-up the implementation of courts decisions, as well as human resource management-- either in coordination with the Chief Justice for judicial issues or other directorates for the administrative and financial issues at the Council. The following table illustrates the number of courts at each level of the court system in the West Bank and Gaza:

Court	**West Bank**	**Gaza**	**Total**
Supreme Court including the Cassation and the Supreme Court of Justice	1	1	2
Appeal Courts	1	1	2
First Instance Courts	8	3	11
Conciliation Courts	12	5	17

Table 1: Number of Courts in the West Bank and Gaza

The following chart represents the organizational structure of the court system in the West Bank and Gaza:

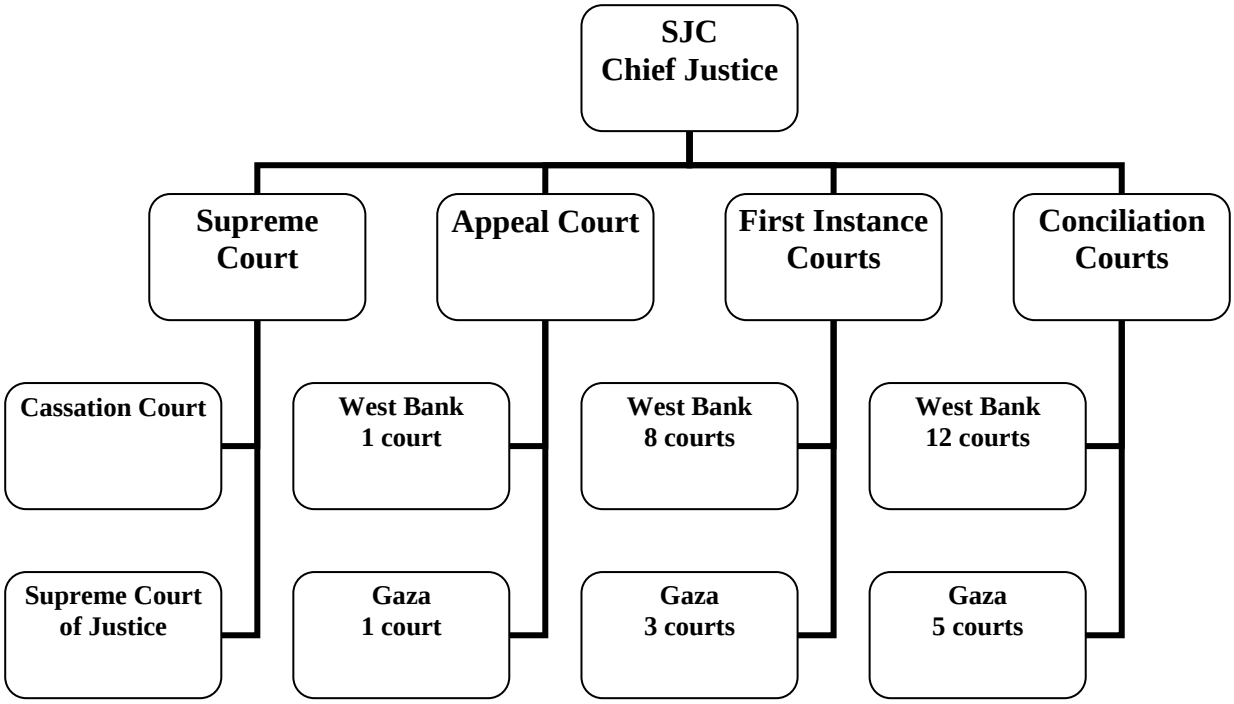

Figure 2: Organizational Structure of the Court System in the West Bank and Gaza

A total of 32 regular courts are functioning in the West Bank and Gaza at the four structural levels. These courts are run with a total of 143 judges distributed over the four court levels as shown in the table below:

Court	**West Bank**	**Gaza**	**Total**
Supreme Court	10	13	**24**
Appeal Court	8	8	**15**
First Instance Court	36	20	**58**
Conciliation Court	39	9	**50**
Total	**93**	**50**	**143**

Table 2: Number of Judges Working in the Regular Courts in the West Bank and Gaza

From tables 1 and 2, we can work out the ratios between the number of judges and courts, by court type, per region. This can be depicted in the table below:

Court	**West Bank**	**Gaza**	**Average**
Supreme Court	10.0	13.0	**12.0**
Appeal Court	8.0	8.0	**7.5**
First Instance Courts	4.5	6.7	**5.3**
Conciliation Courts	3.3	1.8	**2.9**
Average	**4.2**	**5.0**	**4.5**

Table 3: Judges to Courts Ratio, West Bank and Gaza

About 18 of the 40 Conciliation Court judges were recently appointed in the West Bank. Prior to being sworn in, these judges took part in training course in Jordan and returned back to duty where they took the oath of office on January 30, 2007 and are awaiting a decision to be taken by the SJC to distribute these judges to different Conciliation Courts in the West Bank. At the First Instance Courts, 11 judges out of the 37 shown in the table above were appointed during the year 2006 and they began

their duties in various First Instance Courts in the West Bank. It is noted that all the newly appointed judges are stationed in the West Bank courts, due to the focus of the previous Councils on furnishing the Gaza courts with sufficient number of judges starting from 2001 through 2005. It is also noted that from the SJC statistics, the case backlog in the West Bank is much greater than in Gaza. The total number of pending cases in the West Bank reached 48,298 by the end of July 2006, of which 31,059 are criminal cases and the rest are civil cases. In Gaza less than one third of this number is still pending with a total of 15,160, approximately 4,751 are criminal cases.

Comparing these numbers to the number of judges, the chart above also shows that the average number of pending cases per judge is higher in the West Bank than it is in Gaza; even after hiring additional judges during the year 2006, the average number of pending cases per judge in the West Bank was 519, while in Gaza it was 303, which illustrates the need for additional focus on the West Bank to increase the disposal rate and thus reduce the pending cases.

In regards to the recruitment criteria for judges, the SJC has followed two main guidelines for appointing judges in the year 2006. The first criterion is applied for appointing Conciliation Court judges and it relies on open competition, and the second was followed for other senior judges at First Instance Courts, the Appeals Court and the Supreme Court and it followed the head hunting approach from the practicing private advocates according to the personal knowledge of the Chief Justice and SJC members based on the qualifications of those private advocates.

Hiring additional judges may contribute to increasing the disposal rate and reduce the number of pending cases; however, under the current conditions, that can be a sword of two edges, since the appointment of new judges requires providing technical and logistical support to facilitate the work of judicial panels at the various courts. There are also many other related elements leading to increased backlog of cases presented before the courts, including:

1. The underdeveloped and poorly equipped buildings designated as courthouses.
2. The weak performance of the judicial notification and courts processors.
3. The lawyers' failure to attend the sessions, and their repeated requests for postponement.
4. The inefficiency of the courts' administrative staff (Judges' Auxiliaries) in accurately preparing the files.
5. The inadequate judicial inspection by the Supreme Judicial Council on judges and courts.
6. The weak intervention of the Ministry of Interior through the Judicial Police under its role in summoning the accused persons from and to the jails.

Another issue also related to the appointment of new judges, is the judicial training that aims at building the capacity of judges, and improving their performance. The training currently conducted for the newly appointed judges is limited to no more than a two week training course, after which a judge fully assumes the judicial position.

COURTS' DIWAN / CLERK

As for the organizational chart of each court level, as mentioned earlier, there has never been an officially documented organizational chart and job description for each of the four levels courts. The current structure of these courts in terms of positions and responsibilities was defined during the Jordanian and Egyptian eras in the West Bank and Gaza respectively. Currently, the new SJC is developing a new structure including organizational charts, department responsibilities, and position description not only in the courts but also in the SJC headquarters and related departments. The new structure is being finalized and it will be endorsed by the Council first and then by the PA President.

The Courts' Diwan is the administrative body of the court, its employees are considered as judges' auxiliaries providing support in case management and litigation process. The administrative body of all four court levels is headed by the Chief Clerk who is directly responsible in front of the presiding judge to manage the court team and assist the Chief Judge in all administrative issues at the court; usually there is a Deputy Chief Clerk assists the chief clerk in managing the court. The other staff of

the executive body is officially titled clerks or typists. At the level of the First Instance Courts, there is another senior level existing at the Court Diwan, this level is parallel to the Chief Clerk, the first position of which is the enforcement officer who is responsible in following up the enforcement of courts judgments, the second level is the notary public who is responsible for documentary services provided to the public by the court. These two positions are also available at the Conciliation Court level only when the Conciliation Court is not accompanied within the First Instance Court circuit, in other words, in those towns where the First Instance Court does not exist and only Conciliation Court is functioning there.

The administrative staff and court clerks or the judges' auxiliaries working at the courts and the SJC are 533 in total, 472 of which are court staff, with 273 employees in the West Bank and 199 in Gaza. The following chart indicates the number of employees as well as the average number of support staff per judge.

No	Job Title	West Bank	Gaza
1	Clerks (including chief clerks)[8]	157	139
2	Enforcement Officers	11	7
3	Notary Public	7	4
4	Processors (notification)	54	26
5	Cashiers	10	3
6	Messengers	23	18
7	Cleaners	8	2
8	Guards	3	0
	Total	**273**	**199**

[8] *Usually one chief clerk in every court.*

Table 4: Numbers of Courts' Staff in the West Bank and Gaza

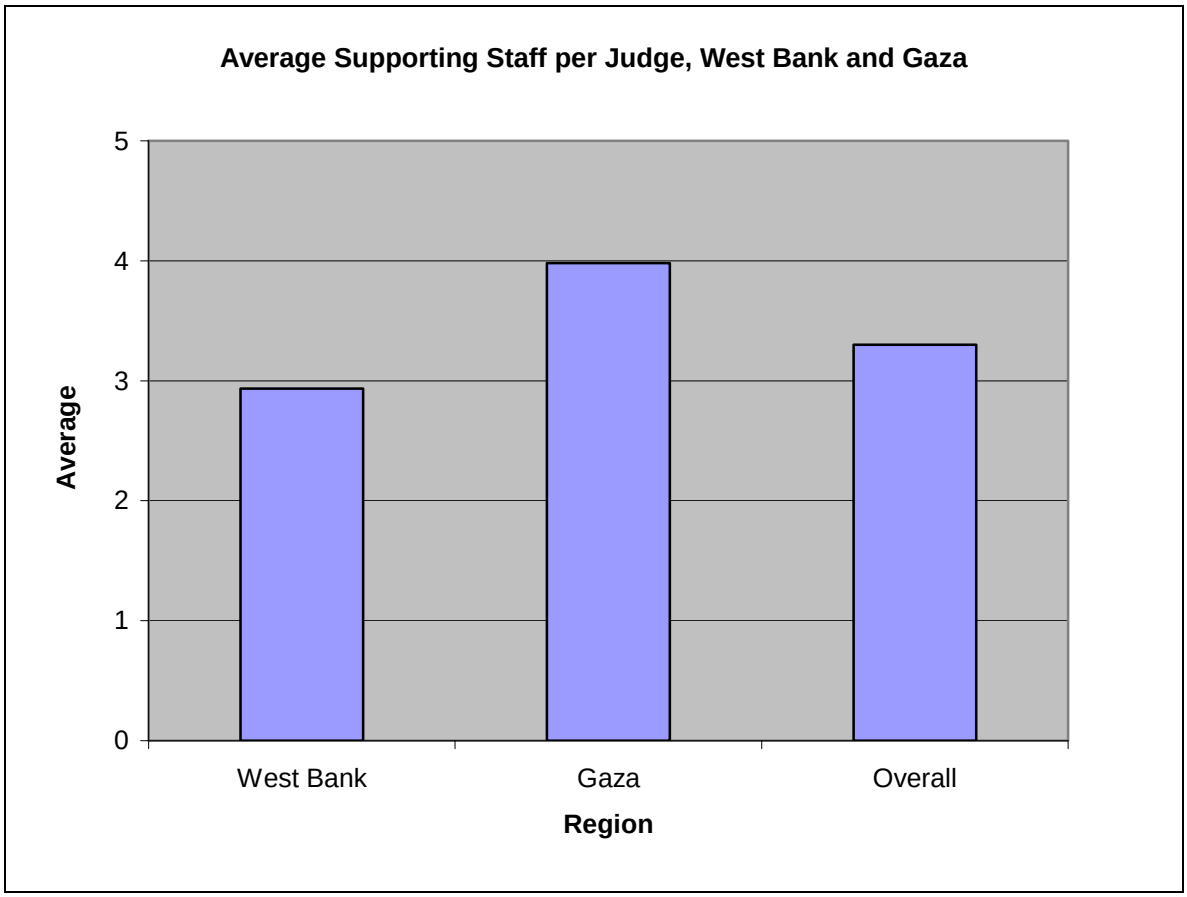

Figure 3: supporting Staff per Judge, West Bank, Gaza and Overall

It is important to note that the administrative support staff of the courts and the SJC took part in the governmental employee's public strike that began on September 2, 2006. The strike was called due to the fact that most PA employees failed to receive their salaries soon after the Hamas government took office; the government was not able to pay salaries as a result of the international boycott of the government and donor funding. This strike negatively affected the performance of the judicial authority during this period. The strike ended on December 12, 2006 after an agreement between the public union of employees and the Ministry of Finance to start paying part of the pending salaries.

Most Judiciary staff took part in the strike with few exceptions that included senior employees working at the SJC headquarters in Ramallah, Chief Justice staff, and some judges. Their work however was of little benefit with the absence of support staff. Even prior to the official strike in September, the courts began to suffer soon after the new government took office in March 2006 as salaries stopped being regularly paid and as a result employee attendance in the courts began to drop and a backlog of work was slowly being generated. The implications of the strike on the Judiciary were remarkable, as most incoming cases were put on hold and the number of pending cases increased. SJC statistics on the number of pending cases for the year 2006 is not yet available.

Chapter 7. REGULAR COURT SERVICES

JUDICIAL CASE MANAGEMENT

"The delay in concluding cases is equal to denying citizens' access to justice.[9] The accumulation of cases and the delay in concluding them, leads to the inappropriate use of the court's time and efforts, and additional cost of litigation. For most of the public, delay is seen as an indication of the justice system's failure to use its time and resources. The result is a loss of faith in the system and community criticism of the courts and the justice system. From the time of filing a case to the time of its conclusion, dead time must be reduced or eliminated.

Case Management is the concept of the judges taking charge of cases in order to render quality justice in a timely manner without delays for the litigants. It mainly aims at creating practical and structural steps that will assist the Palestinian Conciliation and First Instance Courts in implementing the case management procedures to reduce delay, deal with the backlog in an efficient manner, and finally, manage all the cases in a fair, effective and stable manner. The main objective of effective case management is equal access to court processes for all litigants, timely disposition consistent with the circumstances of the individual case, enhancement of the quality of the litigation process, and enhancement of public confidence in the court as an institution.

Some Palestinian laws have clearly defined case management and processing, including the Civil and Commercial Procedures Law of 2001, the Amended Civil and Commercial Procedures Law No.5 of 2005, and the decree-in-law amending the Civil and Commercial Law. In response to the need for having control over case processing and hearing sessions in the Palestinian courts, Judge Zuheir Sourani, the former Chief Justice issued a decision in 2003 regarding the establishment of a National Case Flow Management Committee. The Committee was headed by Justice Sourani and included five First Instance and Conciliation Court judges from West Bank and Gaza. The Committee was formulated in order to study the current court systems, develop recommendations and suggestions for an efficient court system, and develop the National Case Flow Management Plan, which aimed at creating structural and procedural processing in order to assist the Palestinian courts in carrying out the litigation process effectively and in a timely matter, in addition to exposing the cause of delays in case disposal.

WHAT IS THE CURRENT SITUATION OF THE CASE MANAGEMENT SYSTEM?

Case Management aims at rendering quality justice in a timely manner without delays for litigants. The case management concept is significant because litigants often have negative perceptions of case management. These litigants face frustration at frequent court delays that cost money and prevent the litigants from resolving disputes. Justice for litigants not only means a sense of fairness and equality before the law, but rendering justice within a reasonable time and for at an affordable cost.

There is a clear conflict in point of view among judicial stakeholders as to whether there is a significant workload in the Palestinian courts. Some of the stakeholders agree that there is a serious workload in the courts, whereas, there is another group who considers the current workload of the Palestinian courts to be relatively normal. On the other hand, there is unanimous consensus among all stakeholders that there is a significant delay in concluding cases, which lengthens the pace of the litigation for cases. In addition to the large caseload in the courts, there is a very low percentage of case disposals by the courts on the other hand. The poor disposal of cases has various factors including the type of cases, number of cases at the court, and the number of available judges/ panels in the court.

Reports submitted by the courts regarding the caseload of the courts reflect only the figures of caseload without offering any clear detailed description and classification of the civil and criminal

[9] This slogan was adapted by the first Palestinian National Case Flow Management Committee

case types. The following chart provides an illustration on the percentage of cases disposed versus the newly filed cases, in addition to the percentage of cases disposed versus the total number of pending cases in the court. Yet, they don't provide a clear identification of the case types disposed in each level of court, they only show civil and criminal case types in both First Instance and Conciliation Courts without offering any clear detailed description and classification of the civil and criminal cases types.

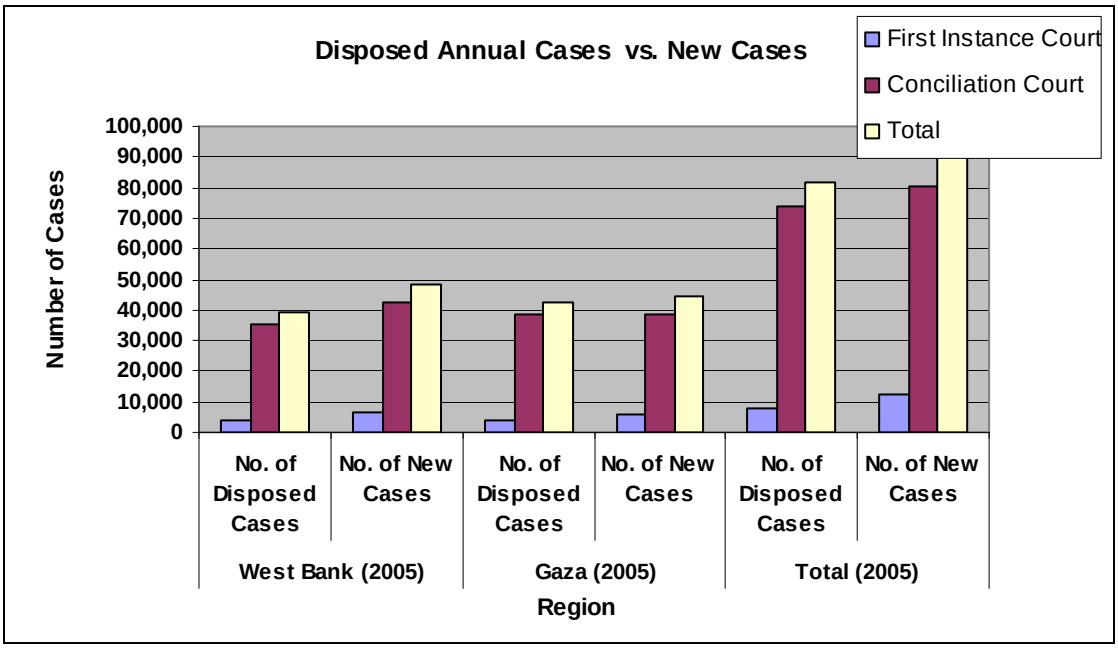

Figure 4: Annual Case Disposal vs. New Cases, First Instance and Conciliation Courts, West Bank and Gaza

Courts	Governerate	City/ Town	Court	No. Of New Cases 2005	No. OF Pending Cases 2005	No. Of Pending Cases For 2006	Total (No. Of Pending Cases 2005+No. Of New Cases 2005)	No. Of Disposed Cases 2005	No. Of Disposed Cases/NO. Of New Cases 2005	No. Of Disposed Cases/Total (No. Of Pending Cases 2005+No. Of New Cases 2005)
Appelate Courts	WestBank	Ramallah	Appelate Court	1179	4146	315	5325	1358	115.18%	25.50%
	Gaza Strip	Gaza	Appelate Court	957	6855	618	7812	829	86.62%	10.61%
First instance courts	WestBank	Nablus	Nablus First instance court	1205	20430	1967	21635	749	62.16%	3.46%
		Qalailia	Qalailia First instance court	790	4159	592	4949	198	25.06%	4.00%
		Tulkarem	Tulkarem First instance court	596	13418	919	14014	1067	179.03%	7.61%
		Ramallah	Ramallah First instance court	1064	20488	2057	21552	566	53.20%	2.63%
		Hibron	Hibron First instance court	1140	14411	1550	15551	552	48.42%	3.55%
		Jenin	Jenin First instance court	632	6584	781	7216	306	48.42%	4.24%
		Baitlahem	Baitlahem First instance court	597	7483	859	8080	241	40.37%	2.98%
		Jericho	Jericho First instance court	217	1651	165	1868	143	65.90%	7.66%
		Total	8	6241	88624	8890	94865	3822	61.24%	4.03%
	Gaza Strip	Gaza	Gaza First instance court	3253	42639	4025	45892	2174	66.83%	4.74%
		Dair AlBalah	Dair Al-Balah First instance court	627	5097	625	5724	308	49.12%	5.38%
		Khan Yunes	Khan Yunes First instance court	2007	21364	1885	23371	1674	83.41%	7.16%
		Total	3	5887	69100	6535	74987	4156	70.60%	5.54%
Conciliatoin Courts	WestBank	Nablus	Nablus Conciliatoin Court	5829	119972	11792	125801	3772	64.71%	3.00%
		Qalailia	Qalailia Conciliatoin Court	2868	23215	2604	26083	1853	64.61%	7.10%
		Tulkarem	Tulkarem Conciliatoin Court	2403	21044	2015	23447	2236	93.05%	9.54%
		Tubas	Tubas Conciliatoin Court	1658	6540	984	8198	674	40.65%	8.22%
		Salfeet	Salfeet Conciliatoin Court	1511	7634	1084	9145	984	65.12%	10.76%
		Ramallah	Ramallah Conciliatoin Court	6160	43638	3924	49798	5520	89.61%	11.08%
		Hibron	Hibron Conciliatoin Court	4954	35239	2326	40193	5725	115.56%	14.24%
		Halhol	Halhol Conciliatoin Court	1089	1732	883	2821	206	18.92%	7.30%
		Dora	Dora Conciliatoin Court	2293	23188	2372	25481	1458	63.58%	5.72%
		Jenin	Jenin Conciliatoin Court	5460	111344	8873	116804	6090	111.54%	5.21%
		Baitlahem	Baitlahem Conciliatoin Court	5601	49932	4720	55533	4303	76.83%	7.75%
		Jericho	Jericho Conciliatoin Court	2576	5479	421	8055	2522	97.90%	31.31%
		Total	12	42402	448957	41998	491359	35343	83.35%	7.19%
	Gaza Strip	Gaza	Gaza Conciliatoin Court	10898	18862	1347	29760	11025	101.17%	37.05%
		Rafah	Rafah Conciliatoin Court	2836	7155	528	9991	2827	99.68%	28.30%
		Dair AlBalah	Dair Al-Balah Conciliatoin Court	6047	8506	821	14553	5855	96.82%	40.23%
		Khan Yunes	Khan Yunes Conciliatoin Court	3655	9920	753	13575	3835	104.92%	28.25%
		Jabalia	Jabalia Conciliatoin Court	14809	9119	759	23928	14782	99.82%	61.78%
		Total	5	38245	53562	4208	91807	38324	100.21%	41.74%

Table 5: Annual Workload in Palestinian Courts

A case inventory and closed case survey is the most effective documented tool that can scientifically used to identify the current situation of the Palestinian courts, in terms of workload, reasons of delay in litigation, and other various related- case management issues. Below is a brief description on the current situation in Palestinian courts in terms of effective case management, which can help provide a better understanding of the current circumstances:

I. Workload in the courts

The majority of Palestinian courts suffer from a large caseload in terms of the number of pending cases. This caseload varies from one court to another, based on the court's jurisdiction, number of employees and judges in the court, as well as other factors. Some of these factors are:

- **The absence of case tracking and time standards system:** The time-based standard against which to measure progress in a certain field is one of the key elements of a modern case flow management system. The establishment of a specified time standard for a certain case type for all the courts provides a consistent tool for measuring improvement that was achieved concerning cases disposition and time standard in the courts. Furthermore, the Commercial and Civil Trial Law for 2001 is based on a collection of rules that aim at speeding up the case disposition without any kind of extension for the period of litigation. In reality, the current Palestinian courts do not have a system of categorizing case tracks and time standards for each case based upon its complexity.
- **Inactive early case screening and settling:** In spite of the fact that the Civil and Commercial Procedures Law of 2001 in Article 68 takes into consideration the judicial settlement and early intervention, Palestinian courts still do not have judges who are dedicated to case screening, exploring the case with the parties, and discussing the option of settlement before moving ahead with case litigation.
- **Postponements and delay in concluding cases:** Delays in case conclusion has various reasons represented in the lack of a dedicated administration (administration judges) responsible for case management and processing, this is due to the fact that most of the judges carry out additional tasks on top of their judicial function, such as managing the cases on one hand, and being responsible for other portfolios on the other hand, which consequently affects the judge's time and dedication in terms of case review, and sentencing. The continuous postponement of cases is another factor that affects the pace of litigation and case judgment, which also affects the public's confidence in the court system. Article 121 of the Civil and Commercial Procedures Law of 2001 states the impossibility of postponing the session to another date for the same reason more than once, with the exception of when the court is convinced of its necessity, in addition to the continuous directives that the judges receive in this regard from the Chief Justice. Palestinian courts do not have a documented unified trial postponement policy that sets timelines for requesting a trial postponement and criteria for what constitutes a "good cause" trial postponement.

Another factor of trial postponement is the lack of certainty in scheduling session dates, which consequently affects the case processing. The courts still do not have a developed trial calendaring system that takes into consideration the case type, its estimated timeline, and the expectations of the next session. On the other hand, the present Chief Justice has recently issued a directive decision clearly stating that the courts and judges shall be very cautious while scheduling a trial date in order to maintain credibility of courts. The closed case survey in the pilot courts in 2000 that was prepared by DPK indicates that 8.2% of the cases in the pilot courts were postponed because the judge was not available on the hearing date, whereas1.8% of the cases in the pilot courts were postponed because the scheduled hearing date was a holiday, and 1.4% of the cases hearing were postponed because the judge could not hear the case because there were too many cases to hear on the scheduled date. In addition, the closure and checkpoints that are imposed by the Israeli military over Palestinian villages and cities has had a very serious impact on the performance of the courts with the main reasons for extension of cases as a result of postponements, being due to the inability to hold scheduled hearing sessions due to these factors.

- **The implementation of the Palestinian Civil and Commercial Law**. The implementation of this law had an effect on the performance of the courts in regard to various aspects. It has also had an impact on the workload of the judges, panels, and the performance of the courts. The most important areas of concern are:

a. A decrease in the number of the pending civil cases at the First Instance Courts (in West Bank), and an increase in the number of these cases in the Conciliation Courts, this is due to transferring a huge number of First Instance cases into Conciliation cases as an implementation of the new law, which raised the value of jurisdiction for the Conciliation Court on the account of the First Instance Court, taking into consideration that the current Conciliation Courts value jurisdiction is 20,000 JDs, after it was raised from 300 JDs.

b. Due to the amendments on the formulation of the court panels, which state that the panel must include three judges; as a result, a shortage in the number of panels in the First Instance Court occurred.

II. The inactivation of the Case Management Committee: It is difficult to have control on the hearing sessions and case processing without having an organized case flow plan and managing committee. Despite the fact that this committee was established to monitor and evaluate the efficiency of case management systems in the courts, in reality, this Committee has been inactive for the last two years. Therefore, there is no Committee that can take the responsibility for supervising and monitoring the efficiency of case management in the courts.

III. Insufficient Human Resources: There is a need for additional human resources to serve the courts. The total number of administrative personnel in the courts is currently 211 employee serving in 22 courts (including First Instance, Conciliation, Supreme and Appellate Courts) in the West Bank and 165 administrative employees distributed over 10 courts (including First Instance, Conciliation, Supreme and Appellate Courts) in the Gaza strip. In addition to staff, there is a shortage in the number of judges serving in the courts. The insufficient human resources in courts is one of the top priorities on the agenda of the Chief Justice, and is clearly illustrated in his appointment of three Supreme Court, 18 Conciliation, and 11 First Instance Judges during the year of 2006. These new appointments raised the total number of judges that was around 62 in 2000 up to 143 judges on 2006 distributed over West Bank and Gaza various levels of courts.

IV. Bar ASSOCIATION

It is often necessary for the courts to consult with the Bar Association for the sake of effective case flow management. However, on the ground, there is insufficient coordination taking place between the courts, judges, and Bar Association in terms of case management. Closed cases surveys that were carried out in some of the courts by the former USAID- Funded DPK Project shows that 42.2 % of the cases were postponed based on the request of one of the parties. Therefore, it is clearly seen that a higher level of coordination with the Bar Association would be a great asset in terms of encouraging the Bar to create a system of monitoring the conduct of the lawyers for the sake of efficient and timely case processing.

V. Delays in Delivering Notifications

Delays in delivering notifications are an obstacle facing case processing and management. Delivering notifications requires a number of processors to deliver the needed judicial documents. Despite the recent establishment of three Central Notification Units in Ramallah, Nablus, and Gaza Courthouses to facilitate the notification processing, notifications remains one of the difficulties affecting case processing. Notification difficulties are represented in **1)** the restricted movement which affects the court processors ability to move freely within the Palestinian territories and consequently affects their ability to serve notices and court orders, **2)** the fear of facing powerful individuals while delivering notifications, **3)** the lack of proper addresses for parties required to be notified, **4)** the lack of respect

by some members of the public for judicial orders. These individuals either refuse to accept the notifications, neglect the notifications, or claim that they have not been received, **5)** the insufficient number of processors in the Palestinian courts in comparison to the workload, **6)** The lack in the needed equipment and tools that enable the processors to carry out their duties more effectively and in a timely manner, **7)** The low salaries of the court processors according to the applicable laws.

JUDICIAL NOTIFICATIONS

Serving notifications is the legal means used by courts to provide any information related to a court case before the courts or Public Prosecution. Successful case initiation, holding session hearings, and effective case processing all depend upon the appropriate notification of the parties involved in given litigation. There are various types of notifications that are usually prepared by the relevant office of the court/ Public Prosecution and directed to one or more of the case parties (plaintiff, defendant, or witness) in order to inform them of information related to a case in which they are a party. For example, the hearing to resolve a case requires that all parties be properly notified of the hearing date in order to appear before the court and proceed with the litigation process.

The court processor is the court employee in charge of handing the judicial paperwork so that the court can process the claim in accordance to the law. This includes handling notifications, responses, counter-claims, date of session, procedural papers, subpoenas, court decisions in abstentia, in addition to notifications issued by the Public Prosecution Offices, other court units, or papers referred from courts in other districts. How effectively these employees carry out their duties has a direct impact on the fate of judicial process. Therefore, fair judicial process often lies in the hands of these employees who face various challenges in conducting their duties. These challenges range from navigating travel restrictions, dealing with individuals with little regard for judicial process, handling a heavy workload, in addition to other difficulties.

PROCEDURES OF NOTIFICATION

Notifications are carried out from either the court or its relevant departments, such as Enforcement and Notary Public, or from the Public Prosecution Offices. In the case of issuing the notification by the Public Prosecution, the Diwan of the PP is responsible for the preparations of the notification and after getting the approval of the prosecution member; the police force is the entity that carries out the notification after receiving it from the Chief Clerk of the processors at the PP.

On the other hand, notifications issued by the court are usually delivered by the court processor. Preparation of the notification is usually conducted by the Court Clerks (Diwan), the Notary Public Office, or the Enforcement Office. Some courts adopted the system of categorizing the internal notifications based upon geographical divisions that identify each processor and the geographic area that he is responsible for carrying out the notifications in. The geographical (territorial) jurisdiction of the processors is a procedure that is taking place in some of the courts by the Chief Clerk and this new practice is considered to be an effective measure in terms of pinpointing error and negligence.

WHAT ARE THE CHALLENGES FACING COURT PROCESSORS IN DELIVERING NOTIFICATIONS?

While court processors carry out one the most important judicial tasks by delivering summons, court orders, and notices. These employees whose numbers range from 37 processors in the West Bank and 10 in Gaza -- are the most ignored sector of employees in the Palestinian judicial system in terms of resources, training opportunities, and capacity building.

Court processors are entrusted with the delivery of all notices ranging from minor court cases to important cases with stakes worth hundreds of thousand of dollars, at times. The processing and status of these cases depend upon the effective execution of notifications by the court processors whereby cases have been dropped, put on hold, or even never brought to justice because of poor notification processing.

Why Notices Are Sometimes Not Delivered or Indefinitely Stalled?

There are various factors that often hamper the court processors work and cause notifications to not be delivered, thereby negatively swaying justice and the judicial process.

- **Restriction of Movement.** Court processors are often times constrained by their inability to move freely within the Palestinian territories affecting their ability to serve notices and court orders. Closures and inability to move freely among cities and villages is another impediment, taking into consideration the fact that some of the geographical areas where the notifications need to be delivered fall under Israeli jurisdiction, which prevents the processors from delivering the notifications to the required person.
- **Intimidation and Fear of Facing Powerful Individuals.** In carrying out notices, court processors are often asked to deliver notices to powerful and well connected individuals. As a result of intimidation, processors might in certain cases choose not to deliver notices. Instead these notices are returned to the courthouse and marked "not present/unable to reach" in their log books. These notices can linger for months or years, slowing down cases and creating a major backlog. Delivering notifications to persons who are powerful, involved in a crime, or drug-related deal have at times led the processors to receive threats causing them to be concerned for their personal safety. As a recommendation, the SJC should assist the processors by providing them with security when delivering notifications related to crimes / drug deal cases or cases involving powerful individuals who may be at the wrong side of the law.
- **Insufficient Addresses.** The lack of proper addresses for parties in notification cases is one of the most common obstacles facing the processors while delivering notifications. Before the appointment of the new Chief Justice, the SJC was negotiating with the former Ministry of Interior on the possibility of connecting the databases of both the SJC and the Ministry in certain common used fields, such as the addresses of citizens and available contact information in order to assist the processors in defining sufficient addresses. The SJC however reported that there was a lack of responsiveness from the Ministry in this regard, and due to the current situation, these negotiations were suspended. Unlike the postal system in Western countries, in the West Bank and Gaza, clear street names and numbers are not available in all cases, particularly in the villages.
- **Public Compliance with Judicial Orders.** Another related issue is the lack of respect by some members of the public for judicial orders. These individuals either refuse to accept the notifications, neglect the notifications, or claim that they have not been received.
- **Human Resources and Capacity Building.** There is a significant deficiency in the number of processors in the Palestinian courts when examining the monthly workload and number of notifications that need to be served. The monthly average caseload varies from one court to another based on the geographical jurisdiction of the court i.e. the courts located in the major cities obviously have a larger load of cases, and subsequently a larger number of notifications.
- Information provided by the SJC, shows a variation of the caseload based on the court's work load, which varies from 150 notifications served by two processors in the Supreme Court, to anywhere from 4000 to 5000 notifications served by 7 processors in the Hebron Court which is considered a major court in a big industrial and business city where cases and litigation is naturally expected to be higher.
- **Inadequate Number of Court Processors.** Most judicial parties agree that there is a need for additional court processors to be instated in various courts. Due to the current shortage in human resources, some courts have at times called upon the office boys (cleaning employees) to deliver notifications in order to overcome the issue of shortage of employees, keeping in mind that these employees are obviously not trained to conduct this task.
- **Need for Equipment and Training.** There is a serious need for equipment to facilitate the work of the processors. This equipment includes computers, printers, and faxes that can be used in producing the notifications. There is also a need to provide the processors with some legal

training sessions on certain issues in order to assist them in understanding the legal importance of notification deliveries in terms of case processing. The SJC has stated the need to provide the processor's with legal training on the penalty of accepting bribes and its legal consequences on the career of the processor.

- **Salary/Compensation.** Article 9 of the Civil Service Law No.4 of 1998 categorized the processors within the fifth class of PA employees which would put them at the same level as cleaners and general assistant personnel, who receive the lowest salaries according to the law. According to SJC, this clearly affects the moral of the processors and makes them more prone to accept bribes. The SJC has recommended an amendment on this classification but to date no response has been received from the parties in this regard. In addition, processors (prior to Hamas winning elections) were only receiving minimal transportation fees to cover the cost of delivering notices. These fees were based on a transportation scale prepared prior to establishment of the hundreds of Israeli checkpoints that complicated travel within each district—and ultimately raised the cost of public transportation. After Hamas took control of the Government and due to the boycott, transportation fees were not covered at all—even the personal transportation fees that PA employees were allocated for costs of travel to and from work were dropped. As a result, processors delivering notices would have to cover money out of their own pocket to deliver expenses and as a result, few notices were delivered during this period.

DEVELOPMENT EFFORTS

In order to help facilitate and strengthen the notification process, the SJC issued a decision authorizing the establishment of Central Notification Units in Ramallah, Nablus, and Gaza Courthouse Complexes that serve a central hub for organizing and distributing notifications to courts. This step is seen of great significance in terms of delivering judicial notifications and overcoming obstacles related to the execution of the judicial notifications, which is seen to be one of the obstacles of a fair trial, and the increase in the duration of the litigation. With the establishment of this Central Unit, a new process was set in motion for notifications whereby each court or unit would prepare its various notifications and hand them over to the Chief Clerk (who supervisors the work of the processors). The Chief Clerk in turns distributes the notifications among the processors based on adopted procedures. This has helped lead to more organization as well as monitoring of the notification process. It has also contributed to better coordination between courts.

In Conclusion, despite the fact that Article 2 of the Amended Civil and Commercial Procedures Law No.9 of 2006 provided an amended, updated, and more flexible method of delivering notifications through adding the option of privatizing the notification process whereby delivery of notifications would take place through a private company, this option hasn't been used or adopted by the courts, primarily due to financial issues. As a preliminary step towards a better delivery of notifications, the SJC and Palestinian courts are currently making use of the governmental post offices to deliver the needed judicial notifications.

CIVIL ENFORCEMENT OF COURTS DECISIONS IN WEST BANK AND GAZA

The enforcement of laws and judicial decisions remains one of the most challenging processes in the judicial system. The weakness in judicial enforcement jeopardizes the legal/ judicial system, as there is no value in judgments to the plaintiff if these judgments are not enforced. While external factors such as curfews, the occupation, and closures play a role in the creation of some enforcement problems, the lack of adherence and respect for court judgments is another factor. Respect for court decisions stems from the credibility of the courts and the belief that no one is above the law. These factors create an environment for citizens to abide by the law, the current lack of enforcement mechanisms affects the credibility of the judicial process and contributes to disregard for the law. Effective law enforcement depends upon a culture of lawfulness and voluntary compliance by the vast majority of the population, as well as by private and public sector institutions, such as the Palestinian Authority (PA). Citizens, public officials, businesses, and institutions will generally make rational

choices based on the likelihood of being compelled by judicial process to comply with the law and court judgments, and based on repercussions of non-compliance. Article 106 of the Amended Basic Law of 2003 and Article 82 of the Judiciary Law of 2002 strictly affirms that judicial rulings shall be implemented and any obstruction in implementing these rulings is considered a crime to which its offender shall be punished through imprisonment or dismissal in cases where the accused is a public official or an assigned public servant.

The function of the Enforcement Unit witnessed many legal developments. The first development was the passage of the Enforcement Law for 2005 that was approved and ratified by President Abbas on December 22, 2005. The President's decision was followed by an administrative decision from the Chief justice, activating Article 395 of the Criminal Procedures Law that indicates the jurisdiction of the Public Prosecution in regards to the execution of criminal judgments. In addition, the Attorney General issued a decision in which he also emphasized the role of the Public Prosecution through the establishment of a Criminal Enforcement Unit that is annexed directly to the office of the Attorney General and has jurisdiction over the Palestinian territories in terms of enforcement of criminal judgments[10]. The promulgation of the Enforcement Law of 2005 assisted in the unification of the law and procedures of enforcement in both the West Bank and Gaza. Prior to this law, Gaza enforced the Ottoman Enforcement Law of 1332 Hijri, 1914 AD, while the West Bank enforced the Jordanian Enforcement Law No. 31 of 1952.

The Enforcement Law of 2005 outlined the jurisdiction and responsibilities of the Enforcement Department. According to the law, this department is established in relation to the First Instance Court in its area of jurisdiction and is headed by a judge and assisted by an Enforcement Officer and an adequate number of clerks. In case there is more than one judge, then, the department is headed by the judge delegated for this purpose. Each department also has an Enforcement Officer whose main responsibility is implementing judicial judgments issued in civil and religious cases. The Enforcement Officer falls under the supervision of the Enforcement judge who is usually the Chief Judge of the First Instance Court. However, the Enforcement Officer reports administratively to the Chief Clerk of the court.

The Enforcement Judge specializes in settling all enforcement disputes and complications, issuing enforcement-related orders and decisions, lifting attachments on debtor's properties, and sale of seized properties. The judge also specializes in rendering restraining orders and arrest of the seized debtor according to provisions stipulated in the law. These responsibilities are outlined in Article 3 of the Enforcement Law of 2005. In addition, Article 8 of the Enforcement Law of 2005 provides additional clarification on the jurisdiction of the Civil Enforcement Unit, which specifies the enforcement writs that the Civil Enforcement Unit is responsible for implementing. The article states that the enforcement writs (instruments) are the judicial, regular, legal judgments, decisions, orders, and accords of judicial compromises and conciliation records endorsed and approved by the regular and religious courts, in addition to enforceable arbitrators' judgments, formal and martial writs, and any other writs that are entitled by the law as an official instrument or writ[11].

DESCRIPTION OF THE CURRENT STATUS OF ENFORCEMENT UNITS

Enforcement of laws and judicial decisions is one of the most challenging, and often uncertain, processes in the judicial system. The weakness of enforcement is considered to be one of the most serious problems jeopardizing the Palestinian legal/judicial system. There are also external reasons

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[10] Attached the decisions issued by the Chief Justice and Attorney General in this regard

[11] Article No. 8 of the Enforcement Law of 2005 " *enforcement instruments are judicial, regular, and legal judgments, decisions, orders, and accords of judicial compromises and conciliation records endorsed by regular and religious courts, in addition to enforceable arbitrators' judgments, formal and martial writs, and other instruments designated in the Law as such"*.

such as the Israeli military occupation, curfews, and closures that play a role in the creation of many enforcement problems.

- **Inadequate Number of Enforcement Personnel**. There are 11 Enforcement Units in West Bank (Hebron, Jenin, Qalqilia, Ramallah, Tulkarem, Bethlehem, Jericho, Nablus, Halhoul, Dura, and Tubas). Whereas, there are four units in Gaza strip (Deir Al - Balah, Khan Yunis, Gaza, and Rafah). These units generally suffer from a shortage of enforcement personnel where usually each Enforcement Unit staffs one Enforcement Officer. The exception to this rule is in Ramallah, Jenin, and Nablus First Instance Court in West Bank, and the Gaza First Instance and Rafah Conciliation Courts in the Gaza Strip where each unit has two personnel. Ideally, there should be a minimum of three employees in each unit which includes an Enforcement Officer with proper legal background, an Accountant to follow-up on the financial issues related to enforcement cases, and an Administrative Assistant to provide office support. Obviously the work load of cases varies based on the geographical location of the court, with the largest number of enforcement cases found in the courts of the major cities. There are a total of 21 enforcement employees in the West Bank and Gaza with 15 employees based in the West Bank, and six in Gaza. At the end of 2006 there were 75901 pending enforcement cases before the enforcement units in the West Bank—with only 781 cases being disposed over the course of the year. Whereas in Gaza Enforcement Units, there are 8557 enforcement cases, of which a mere 230 cases were disposed in that same period. This is represented in the charts below.

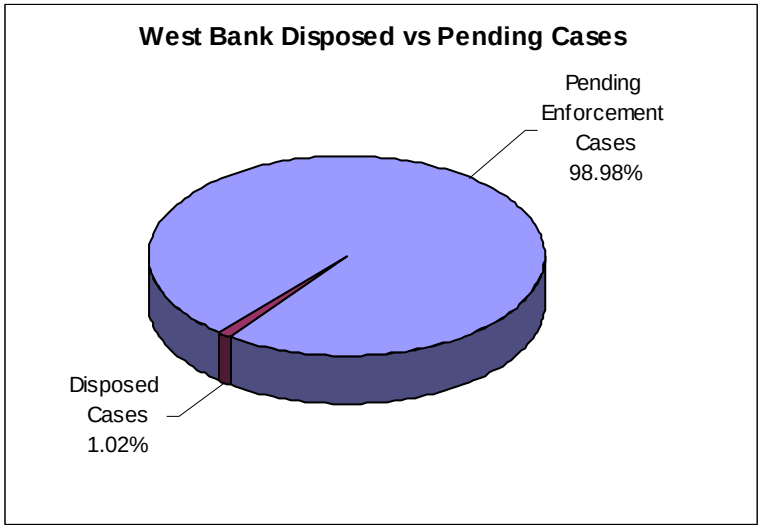

Figure 5:

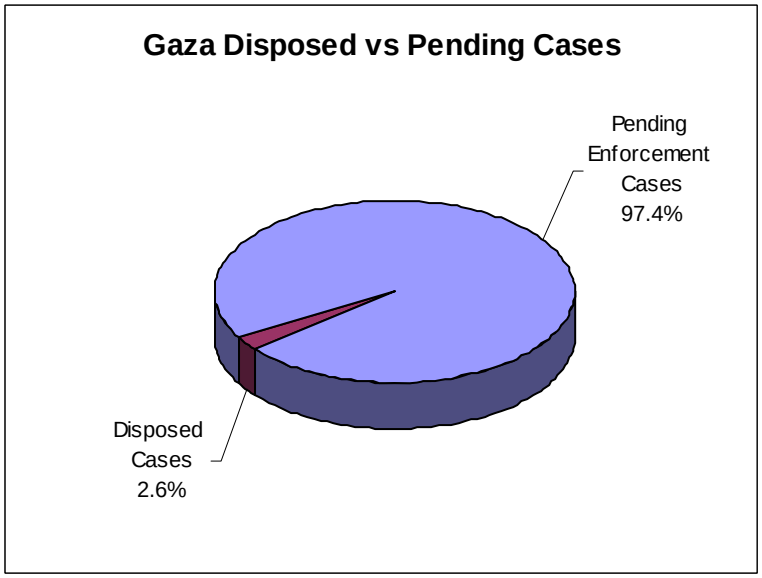

Figure 6:

Enforcement Judges are not 100% dedicated to the Department. In spite of the fact that the new Enforcement Law of 2005 clearly states that Enforcement Judges shall be appointed and totally dedicated to enforcement cases, the Palestinian courts are not implementing this rule on the ground. The Chief Justice also issued a decision nominating judges in each court to serve as Enforcement Judges in addition to their daily work; however, the Palestinian courts have not implemented this decision. It is worth mentioning that the SJC does plan to appoint dedicated Enforcement Judges who will serve only on enforcement cases, in addition to dedicated specialized judges for municipal and other cases.

- **Lack of Cooperation with Police Force**. Enforcement Units note that particularly after the latest salary crisis, the police force is expressing less cooperation in escorting Enforcement Officers, when they are called upon. The Police Department has also complained of lack of fuel in their vehicles that prevent them from escorting officers. However, it is generally noted that there is more cooperation on serious cases-- but to a certain degree less than what was previously taking place. In spite of the fact that Article 212 of the Enforcement Law of 2005 clearly states that the Enforcement Officer can request the assistance of police, and they shall cooperate with the Enforcement Officer when requested, there is an absence of clearly documented guidelines to regulate the relationship between Enforcement Units and the police. This consequently affects the commitment of the police in assisting the Enforcement Officers in carrying out the court decision.
- **Geographical/Travel Restrictions.** Enforcement Officers also face various geographical/travel restrictions due to the hundreds of Israeli checkpoints that have been placed around Palestinian towns and villages. Officers also sometimes have to travel to Area C (areas that fall under Israeli jurisdiction), which sometimes they are prevented from entering; in addition, the police has no jurisdiction over these areas and have no permission to enter such areas, which makes it difficult to carry out the enforcement task.
- **Lack of Public Respect for Court Decisions.** To some extent there is carelessness and disrespect for the enforcement of the court decisions particularly by powerful and well-connected members of the public.
- **Financial Challenges.** As a result of the current PA financial crisis, Enforcement Officers are not being paid a transportation allowance when they travel to carry out enforcement duties. Even when these officers were paid, it was based on an old transportation scale that did not take into account checkpoints and alternate routes of travel. Due to these factors, Enforcement Offices are sometimes reluctant to travel to carry out enforcements since they would have to pay for the transportation out of their own pocket. Often times, the party interested in carrying out the enforcement has to pay a driver or secure the transportation for the Enforcement Officer in order to travel to the given destination and carry out the court judgment.
- **Lack of Equipment and Tools.** Most Enforcement Units are in dire need of computers, fax machines, and printers in order to help facilitate their work. The SJC reported that there is a need to install the automation system in the units that don't yet have it due to the system's importance to the Enforcement Officers in terms of case filing and smooth data retrieval. However, this obviously cannot be accomplished without computer equipment.

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[12] This article states: "*The officer in-charge of enforcement shall take all preventive measures, and may request police assistance after consulting with the Enforcement Judge.*" In addition, "*Anyone who objects against the enforcement process, in resistance or assault, including Police Officers who do not fulfill their duty when requested, shall be punished according to provisions stipulated in the Penal Laws.*"

NOTARY PUBLIC SERVICES

The Notary Public (NP) Officer is a court employee appointed to carry out notary public services including documenting civil deeds, and papers in order to make them official documents. Due to historical and legal issues related to land settlement and a wide range of unsettled or unregistered lands throughout the West Bank and Gaza, the NP Officers certify and process tens of thousands of documents related to land transactions every year. Consequently, the Notary Public Officer has become a de facto land registration officer, in addition to the other various deeds signed before and certified by the NP such as sale and mortgage of vehicles, general power of attorney, loan agreements, and providing notices to non-compliant debtors.

Notary Public Officers work under the supervision of the Chief Judge of the court at which the department is established, usually the First Instance Court, or at the Conciliation Court in locations where the First Instance Court does not exist. In the event of the absence of the Notary Public Officer, or if no one is assigned the position, the Chief Clerk of the First Instance Court, or the Chief Clerk of the Conciliation Court shall assume this position. This goes in compliance with the Jordanian Notary Public Law of 1952 operating in the Palestinian Authority territories.

CURRENT STATUS OF NOTARY PUBLIC DEPARTMENTS

Notary Public Offices suffer from lack of adequate human as well as physical resources including staff, training sessions, sufficient waiting areas for the public, and other regulatory technical procedures that can greatly enhance the efficiency and effectiveness of the notary public service in Palestinian courthouses. We will take a look at some of these needs.

- **Number of employees and workload**. Most Notary Public Departments suffer from a shortage of employees. Most departments currently only staff one NP officer with an exceptional in the Ramallah NP office which staffs an NP Officer, a NP assistant, and an administrative assistant. The other exceptional case in terms of the number of NP employees is in the Nablus Courthouse, which has two employees at the NP office who serve as an NP Officer and NP Assistant. Due to the current staffing level, most NP Officers have a heavy workload and cannot easily accommodate the public demand for notarizations.
- **Insufficient Space.** Notary Public Offices also suffer from the lack of adequate office space, where the NP Officer is usually stationed in a small room in the courthouse consisting of a few square meters. This space cannot easily or comfortably accommodate the crowd of public clients that seek services from this office. Generally speaking, most of the NP Offices lack sufficient space for the employees to be comfortably seated, let alone accommodate the public queues. The exception is in the newly- established courts in Nablus, Hebron, and Ramallah, where there is sufficient space.
- **Lack of Proper Filling Space.** The NP Departments also lack proper filling space, or archiving rooms that can fully accommodate the NP documents. In most of the NP Offices, there is a difficulty represented in the lack of archiving rooms with the exception being in the newly-established courts where the notaries were given sufficient space for office and archiving purposes. In other courts where there is lack of space allocated for the NP, the files are archived within the same archiving rooms used for the court archives.
- **Need for Equipment.** The NP departments also suffer from a lack of proper equipment needed to assist the officers in carrying out their duties. Several NP Offices lack computers and scanners which if an automation system was installed would be of great help and save time for the NP in terms of archiving and retrieving information related to the deeds he/she has processed.
- **Legal Training.** NP Officers also need proper training, particularly legal training for some of the NP Officers in terms of legal procedures, and consequences of any procedural breach in certifying a document. NP Officers need to be legally educated and aware of his/her work in legal procedures and implications, as any error in his/her work may cause serious problems in the credibility of the certified document.

In conclusion, in addition to addressing the staffing, training, equipment, and space needs, systems should be established to inform the public of the documents needed to certify certain deeds. This will help address some of the public's confusion regarding required documents and process of notarization. Unification of procedures should also take place. Currently, the process varies from one NP Officer to another, and also varies among the NP Offices in each court. Some public clients have to make numerous repeat visits to the courthouse before certifying a document due to unclear procedures. Efforts should also be made to organize public queues. Once these issues are addressed, a marked improvement should be noted in the current notary public services.

Chapter 8. SPECIAL COURTS

MUNICIPAL COURTS

Municipal Courts are considered specialized regular courts, and they are established to provide better litigation, and reduce the burden in regular courts. The Municipal Court's jurisdiction is territorial or within the borders of the municipality, but may be extended to the borders of more than one municipality. Until the issuance of the Palestinian Local Authorities Law No. 1 of 1997, the legal framework of the Municipal Courts in the West Bank differed from that in force in the Gaza Strip. In the West Bank, the Municipal Corporations Law No.29 of 1955, Israeli Military order No.631 of 1976 concerning Establishment of Municipal Courts, the Order Concerning Establishment of a Municipal Court in the Boundaries of Bethlehem, Bet-Jala and Bet-Sahoor Municipalities in 1976, the Order Concerning Establishment of Municipal Courts No. 713 of 1977, and the Order Concerning Establishment Of Municipal Courts No. 1186 of 1987 were all in force. In the Gaza Strip, the Municipal Courts were organized by the Municipal Courts Ordinance, 1928.

At present, the Municipal Courts are held in the municipalities in the West bank governorates. In each central court, one of its conciliation judges is appointed as a Municipal Judge. In addition to his work in the Conciliation Court, the judge sits one day a week in the municipality as a municipal judge. The fines imposed by decisions taken in municipality cases supply the municipality budget, not the Supreme Judicial Council budget. In Gaza Strip, there is a specialized court which has only one judge, and an administrative team of nine employees who work under the administration of the municipality of Gaza, and under the technical supervision of the head of the court. The fines –as the case in the West Bank- supply the municipality budget, not the Supreme Judicial Council budget (*Attached – 2005-2006 case statistic of Gaza municipal court and a list of the names and titles of court employees.)*. Recently, there has been a trend in appointing judges in special cases; the Chief Justice appointed a municipal judge for three governorates who sit one day a week in each governorate, in addition to their work in the Conciliation Court on traffic offenses.

OBSTACLES OF THE MUNICIPAL COURTS:

The Municipal Court suffers as the other courts from the lack of human and financial resources and the absence of completely dedicated judges, and as a result there are often delays in cases. The judges and employees also need training on legal and procedural issues.

FAMILY COURTS

Currently, Jordanian Law governs personal status for Muslims in the West Bank. In East Jerusalem, Muslims have recourse either to the Jordanian Law or to the law applied in the Israeli *shari`a* system, which comprises the Ottoman Law of Family Rights as amended by Israeli legislation in 1948. In Gaza, Muslims are governed by the personal status law issued during the Egyptian administration of the Gaza Strip. Christians living in Palestine apply to the personal status laws recognized in their church.

SHARI'A JURISDICTION

The Shari'a court is considered part of the judicial branch in Palestine. While the regular Judiciary is responsible for civil, criminal and administrative cases, the Shari'a court's jurisdiction regulates the life of Muslims in issues related to marriage, divorce, child and spousal support, inheritance, among other personal status issues. The Palestinian Basic Law provided for the establishment of the Shari'a court and regulated its jurisdiction according to the law. Article 101 of the Amended Palestinian Basic Law 2003 states that "Shari'a and personal status issues are the responsibility of Shari'a and religious courts according to the law."

Due to historical and political factors, there is a variation in laws adopted in Palestine in general. Regarding Shari'a Courts jurisdiction there is a difference between the laws governing Shari'a

between the West Bank and Gaza. In accordance with the Palestinian law, Shari'a Courts have the following jurisdiction:

1. Muslims Personal status issues.
2. Distribution of inheritance, legacy registrations, and all inheritance procedures.
3. Blood money cases if the parties were Muslims or if one of them was non- Muslim and agreed on the Shari'a jurisdiction.
4. All cases related to Islamic *waqf*.
5. Registration of Shari'a attorney -ships.
6. Donations and legacies cases.
7. Guardianship and legal capacity cases.
8. Cases regarding missing and absent persons.

In general, the court is responsible for regulating the lives of Muslims starting before birth, and ending after death with inheritance issues. The regional jurisdiction of Shari'a First Instance Courts includes all the Palestinian territories according to each court's territorial jurisdiction. Regarding the Court of Appeal, the regional jurisdiction of the Jerusalem Court of Appeal includes governorates of the southern West Bank, while northern governorates of the West Bank appeal to the Nablus Court of Appeal. In the Gaza Strip, the regional jurisdiction of Gaza Court of Appeal includes the northern governorates of Gaza, the southern governorates of Gaza appeal to the Khan Yunis Court of Appeal. The regional jurisdiction of the Shari'a Supreme Court includes all the Palestinian territories.

CLASSIFICATION OF SHARI'A COURTS

Litigation according to Shari'a jurisdiction has three stages (First Instance, Appeal, and Cassation); therefore, the Shari'a Courts are classified into three types as following:

1. **First Instance Courts:** this is the first class of courts, and they have a very important role in taking care of the individual starting before birth (ordering medical check-ups before marriage) and continue in all life stages and even after death by distributing inheritance among heirs. There are 31 First Instance Courts in Palestine distributed in all the governorates in the Palestinian territories.
2. **Court of Appeal:** these courts are considered the second level of litigation. The Courts of Appeal review decisions of the First Instance Court.
3. **Shari'a Supreme Court**: there is only one Shari'a Supreme Court in Palestine. It was established by a Presidential Decree issued by President Yasser Arafat on 19/9/2003 along with a resolution establishing the Shari'a Supreme Council. It is considered the peak of the Shari'a pyramid. It is similar to the Court of Cassation in the regular Judiciary. The Shari'a Supreme Court has two bodies, one sits in Jerusalem and the other in Gaza and is headed by the Chief Judge.

CHIEF JUSTICE DEPARTMENT:

The Chief Justice's Department is a Palestinian governmental institution attached directly to the President's Office. This department was established in accordance with Presidential Decree No. 18, 1993 which unified the Shari'a Courts system in the West Bank and Gaza Strip. According to this decree, the head of the Shari'a Supreme Judicial Council is responsible for administration of the Shari'a jurisdiction in Palestine. This department like others in the PA institutions enjoys a legal personality and has administrative and financial independence. The Chief Justice has the rank of a PA Minister and is responsible for the Shari'a Courts and their administration. He is also responsible for the administration and development of minors and orphans' property, in addition to the *Islamic Waqf.*

SHARI'A SUPREME JUDICIAL COUNCIL:

The Shari'a Supreme Judicial Council is the highest body in the Chief Justice's Department. This Council was established by a Presidential Decree on 25/6/2003 followed by another Presidential Decree issued on 19/9/2003 deciding its formation and duties which include: **1)** Appointing Shari'a judges, their transfer and promotions, **2)** Transferring judges and changing work location, **3)** Accepting the resignation of judges, **4)**Referring judges to retirement, **5)**Dismissal of judges or considering their incompetence, **6)**Delegation of judges if the delegation period exceeds three months, **7)**Supporting the affairs of Muslims in the world. The Council performs its duties according to the laws and regulations and it has a General Secretary that is responsible for preparing its meeting schedule, decisions and enforcing them and following up recommendations in cooperation with the Chief Justice and under his supervision.

RELIGIOUS CHRISTIAN COMMUNITY COUNCILS, AND THE ORTHODOX CHURCH COURT:

In the West Bank, the religious Christian Communities' Councils in accordance with the Councils of Non - Muslim Religious Communities (Application to the West Bank Law No.9, 1958) are specialized to handle the personal status cases for Christian Palestinians, and in matters relating to the establishment and management of moratorium (Waqf) for the benefit of those communities. The law has empowered every community of the religious communities mentioned in it, the right to appoint the chairman and members of its community council in order to serve as a religious court. There is also a special system to appeal the decisions of the religious Christian Communities' Councils. There are three community councils in the West Bank: the Greek Orthodox Community Council, the Latin Community Council, and the Council of Evangelical Episcopal Arab Community. All these Councils are based in Jerusalem.

OTHER COURTS

MILITARY JUDICIAL SYSTEM

The Palestinian military judicial system is a result of the revolutionary Judiciary created in 1973, as the Palestinian revolution started to form different kinds of revolutionary courts in the Diaspora to handle the cases resulting from infringing criminal laws enacted by the Palestinian Liberation Organization.

LEGAL FRAMEWORK OF MILITARY COURTS

The Military Courts work in accordance with the Palestinian Revolutionary Procedural Law of 1979. When the PA was established, the President issued Decree No.19 dated 10/11/1994 forming the Military Judicial System and the jurisdiction of the criminal laws of the Palestinian Liberation Organization of 1979 over all the employees working in the military institution. Article 101/2 of the Palestinian Basic law stated that "*the military courts are formed by special laws, and those courts have no jurisdiction outside the military matters."*

JURISDICTION AND CATAGORIES OF MILITARY COURTS

The Military Courts' jurisdiction is over crimes and disciplinary actions, committed by Palestinian security force personnel. They work as criminal and disciplinary courts for the military, and they investigate crimes committed by civilians towards the military, and in crimes committed by the military and civilians jointly. Similar to the judicial civil system, the Judicial Military System is divided into three parts: the military prosecution, the military courts, and the administration.

PROBLEMS IN THE MILITARY JUDICIAL SYSTEM:

- Lack of human resources of administrative employees, judges, and public prosecutors. The number of employees in the Military Judicial System is 92 employees of the administrative employees and law field employees in the West Bank and Gaza, and most of the law field employees are judges, public prosecutors, and public prosecutors' assistants.
- Lack of financial resources including office equipment, vehicles, buildings, and court rooms.

- Lack of cooperation between security agencies with the Military Judicial System—including not sending the files of military personnel of the security agencies who infringe upon the laws.
- The absence of military prisons.
- Low rate of salaries of judges and public prosecutors compared to their counterparts in the civil judicial system.
- Lack of cooperation between the military judicial system and civil judicial system concerning crimes committed by military personnel, and absence of mechanizes of enforcing decisions issued by military courts.
- Working with old laws which did not exist in the Palestinian legal system such as the criminal and procedural revolutionary law, and not issuing new laws.

REGULAR SPECIALIZED COURTS:

1. Election Court

In 2005, the General Elections Law No 9, 2005 was issued. This law provided for the establishment of the Court of Election Cases. The court is formed of eight judges in addition to the head of the court. The judges should be recommended by the SJC and declared with a Presidential Decree. In October 2005, a Presidential Decree on the formation of the court was issued and another decree appointing a new head of the court was issued in December 2005. This court has played a significant role during the legislative elections in January 2006.

2. Income Tax Court of Appeal

In 2004, the Law of Income Tax No. 17, 2004 was issued. The law provided for establishment of a Court of Appeal for income tax cases. This court is considered part of the Judicial Authority. The court's jurisdiction includes all the Palestinian territories; now, there are two Courts of Appeal for income tax cases-- one in Ramallah, and the other in Gaza city.

3. Customs First Instance Court

In 2004, Decision No. 45, 2005 concerning the formation of a Customs Court was issued. The court is established in the northern governorates, based in Ramallah. However, until now, the court is not officially formed.

4. Major Felonies Court

In 2006, the Supreme Criminal Court was established by the Decree Law No. 7, 2006. The court is an ordinary court that should be within the formation of ordinary courts. It has a permanent base is in Jerusalem. The court may sit in Jericho and in Gaza, if necessary. This court has not yet been formed.

Chapter 9. PUBLIC PROSECUTION

FORMATION OF THE PUBLIC PROSECUTION

Since the establishment of the Palestinian Authority, one of its priorities has been the creation of a unified, developed, and independent judicial system, with the Public Prosecution (PP) serving as a major part of this system. Addressing the development of the judicial system must include the PP for the complementary harmonization of efforts. Presidential Decree Number 287 for the Year 1995 was the first step towards the unification of the PP in the West Bank and Gaza, until proclaiming of the Criminal Procedures Law Number 3 for the Year 2001, which was the corner stone of the development process of the PP in Palestine in terms of determination of the PP's authorities and the procedures in order to guarantee legal rights of citizens in defending themselves and protecting their humanity.

LEGAL FRAMEWORK

The Judicial Authority Law Number 1 for the Year 2002 organized most aspects of the PP's function, particularly the organizational structure, duties and jurisdictions. Additionally, it organized other administrative issues such as the appointment of PP Members including the Attorney General, their salaries, responsibilities, promotion, performance evaluation and other aspects related to the PP and its work.

The Palestinian Judicial Authority Law determined the structure of the PP, article 60 of the Law states that the Public Prosecution shall consist of: the Attorney General, one or more Assistants of the Attorney General, Chief Public Prosecutors, Deputy Public Prosecutors, and finally Assistant Public Prosecutors.

STRATEGIC FRAMEWORK

Like many other official Palestinian institutions, the PP has been plagued by a scarcity of resources, under-skilled human resources, and poor infrastructure. All these elements in addition to the conflict among the justice sector institutions hampered strategic development including restructuring the PP systems and building its capacity towards realizing a modern and efficient investigative and prosecutorial body.

In late 2005 a new Attorney General (AG) was sworn into office, and this new AG has subsequently demonstrated political will for reform. The appointment of a new AG presents an opportunity to modernize the PP in order to develop the agency towards handling its functions and duties professionally. Through several NETHAM meetings with the AG and in his public speeches, his vision towards the development of the PP institution can be summarized as following:

1. Institutionalizing the PP in terms of restructuring, developing by-laws and internal regulations, development of processes and work procedures, and finally improving the infrastructure of the institution including the development of the administrative support functions at the PP.
2. Strengthening the skills of the prosecutors and administrative support staff through initiation of capacity building and judicial training programs.
3. Developing the criminal enforcement function of the PP, according to the Criminal Procedures Law. The PP is responsible for enforcing court decisions in criminal cases.
4. Finding new administrations within the AG office such as the Technical Office and the Inspection Department in order to provide technical assistance to the prosecutors and ensure proper implementation and commitment to laws and regulations; moreover, develop recommendations for the continuous development process.
5. Establishing specialized prosecutions such as the anti-corruption prosecution, international crimes prosecution, and economic crimes prosecution.

The PP has recently defined its mission statement and objectives, which can be considered as the first step towards the development of comprehensive strategic planning. The mission statement and objectives are defined as follows:

"Public Prosecution is a judicial procedural institution that is independent from both the executive and legislative authorities; it mainly presents the society in terms of the proper implementation of the law and rules. In such a capacity, it has the right to initiate and process the criminal cases before the courts, it clearly has no personal interest or other rationales beyond its existence but maintaining the stability and development of the society, without any affects reflected on its attitude while implementing its mission."

PUBLIC PROSECUTION TASKS

Since the establishment of the PA and the issuance of Presidential Decree Number 287 for Year 1995, followed by the Judiciary Law, the PP powers and jurisdictions have been determined and solidified in chapter two of title five of the Judicial Authority Law. Additionally, the Criminal Procedures Law Number 3 for the Year 2001 also defined the tasks of the PP. The PP is a de facto independent agency of the Palestinian Authority, and is the prime body of investigation and prosecution of criminal offenses. The Attorney General's Office leads the PP and has jurisdiction over initiating and handling criminal cases, and supervising and directing law enforcement officials in gathering evidence and investigating crimes. The following points summarize the powers and jurisdictions of the PP:

1. The PP only has the right to follow criminal procedures, by which it has the right to initiate the penal action, file it and start the inquiries and investigation by the PP Members or by the judicial investigation officers.
2. Initiation of criminal actions before all courts. The PP has the power of investigation and indictment at the same time.
3. The PP is exclusively specialized in investigating crimes, and hence, initiate actions, either through its members and/or through specific delegation of authorities to a judicial investigator.
4. The PP is the legally authorized party for releasing orders/warrants related to their jurisdictions and powers, such as memorandum of summons and subpoena and search warrants,
5. Enforcement of Court Decisions: the PP has the jurisdiction of enforcing final court decisions in criminal cases according to the Criminal Procedures Law. The PP can ask for the intervention of the Judicial Police if needed as stated in Article 395 of the Criminal Procedures law.

ATTORNEY GENERAL OFFICE

The 2002 Judiciary Law reorganized the PP structure, but it does not refer to the PP's administrative support staff and left this issue to the AG and prosecutors to organize the PP bureau/clerk and create its positions in regards to the needed support to the judicial functions through internal regulations or by-laws.

The AG is appointed by a decision of the PA President after being nominated by the SJC, and he shall take the oath of office in front of the President. In case of the absence of the AG for any reason, one of his assistants shall replace him for a period not exceeding three months then a new nomination by the SJC to the PA President must take place. The AG assistants are also appointed by a decision of the PA President according to the nomination of the AG.

The AG office manages, supervises, and inspects all the PP functions in the West Bank and Gaza. There are a total of 111 Public Prosecutors currently working at the PP in the West Bank and Gaza, as well as the AG offices and PP district departments. These prosecutors are assisted by an administrative support staff consisting of 157 employees, 114 of which are in Gaza and 43 in the West Bank. In order to facilitate and empower the AG office in achieving its duties, the AG has developed an organizational structure for the office, this structure was developed in late 2005 and it comprises of the AG Assistants, Technical Office, Criminal Enforcement Department, Inspection Department, Financial and Administrative Department, and Chasing of International Crimes Department.

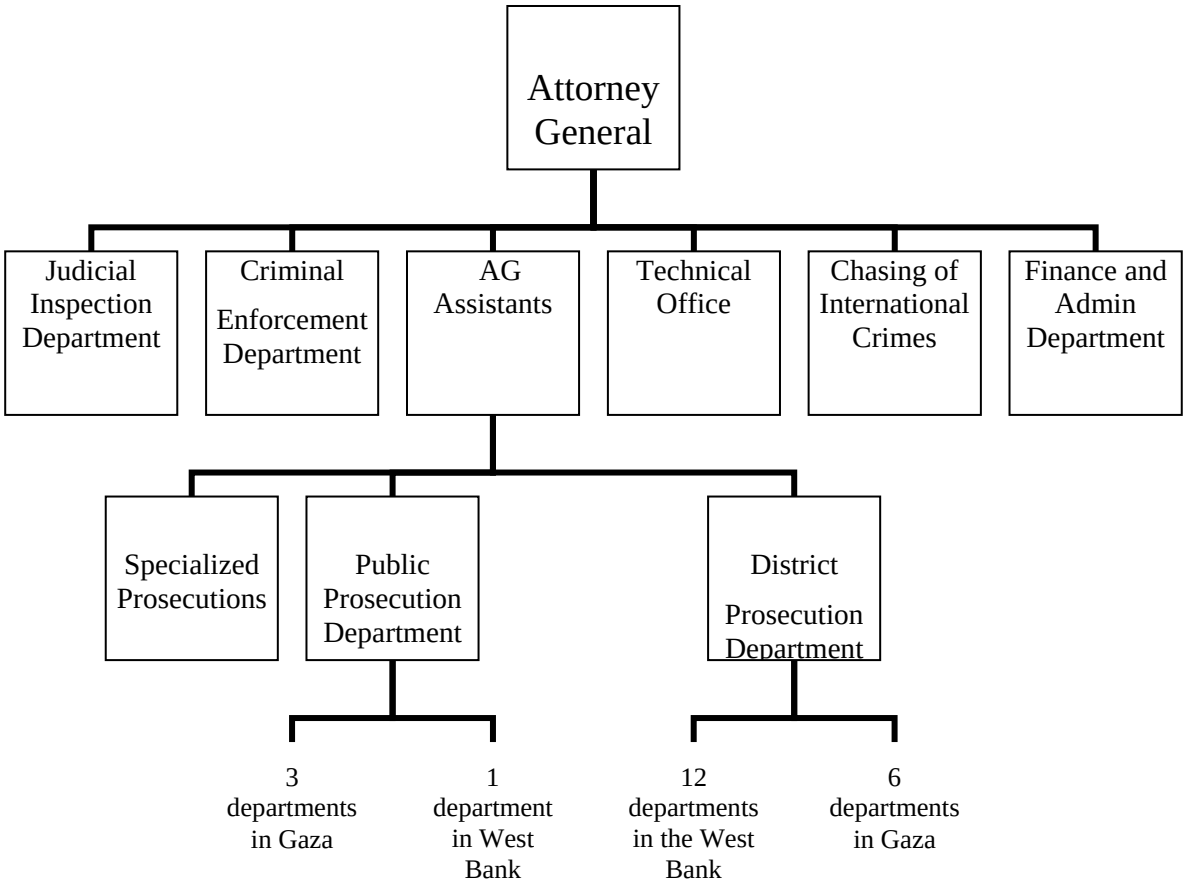

Figure 7: The Attorney General Office Organizational Chart

AG ASSISTANTS

There are three AG Assistants currently serving in the Public Prosecution, with two based in Gaza and one in the West Bank. These AG Assistants according to the Judiciary Law are nominated by the AG and appointed by the PA president. Their duties are delegated by the AG as he sees appropriate for each assistant. The AG has determined in an official decision (issued August 2006) the jurisdictions and duties of each of his assistants.

The AG Assistants are primarily responsible for the supervision of the districts PP departments, according to the new AG's decision of forming specialized prosecutions. The AG Assistants also supervise these specialized prosecutions. The AG has recently decided to initiate these prosecutions in his office to follow-up cases related to specialization, such as the anti-corruption prosecution, appeal and cassation prosecution, governmental cases prosecution, traffic prosecution, and finally economic crimes prosecution. The AG Assistants are also responsible for managing these prosecutions and supervising the Chief Prosecutors who are in-charge of running them. These prosecutions were recently established and need additional resources and efforts to function efficiently.

THE TECHNICAL OFFICE

The Technical Office of the Attorney General was established in December 2005 and is headed by a judge seconded from the SJC to supervise its functions. The existence of this department is very important for the development of judicial work at the PP. The Technical Office during the last year has contributed to several achievements such as the development of the organizational structure of the PP, activation of other departments, defining jurisdictions and function of the district and public prosecutions, and finally proposing several development projects and ideas. The AG has determined the function of this office that includes:

1. Reviewing all cases punished by death penalty or life imprisonment and all cases of murder, rape, kidnapping, and robbery or attempts to commit those crimes after concluding the investigation and before referring them to the courts.
2. Approving the permanent preservation memorandums in all kinds of cases and reviewing memorandums of lack of jurisdiction.
3. Reviewing claims against legal personnel, politicians, diplomats, Members of the Legislative Council, Ministers, and police officers.
4. Organizing training sessions, conferences, and workshops.
5. Giving consultations and review draft laws related to Public Prosecution affairs.
6. Preparing draft instructions and decisions to be issued by the Attorney General.
7. Publishing the Public Prosecution magazine.
8. Preparing memorandums and legal research on issues requested by the Attorney General or one of his assistance.
9. Following-up on issues related to international cooperation with other similar institutions.
10. Supervising and managing media activities related to PP functions.
11. Preparing and organizing Public Prosecution statistics of criminal cases.
12. Submitting any suggestions and recommendations on any matter related to the Public Prosecution.

CRIMINAL ENFORCEMENT DEPARTMENT

The Criminal Procedures Law, in Article 395 stated that the PP is responsible for criminal enforcement; the AG in turn in coordination with the SJC established the Criminal Enforcement Department in mid-2006 to carry out the enforcement of all courts decisions on criminal cases. The enforcement of criminal case judgments is carried out by the district prosecution under the supervision and full cooperation of the newly established Criminal Enforcement Department. This department can also ask for the intervention of the police to support the enforcement officers in their duties when the force is needed. The head of the Technical Office acts as the head of the Criminal Enforcement Department at the AG Office, due to the shortage in the number of prosecution members that forced the AG to delegate the responsibilities of more than one position to one Chief Prosecutor or Deputy Prosecutor. The administrative support staff of the department is limited to one staff member in the West Bank and Gaza.

INSPECTION DEPARTMENT

In late 2005 a committee was formed at the AG office in order to create the Judicial Inspection Department in the Public Prosecution. The committee began preparing regulations, and files needed for the Inspection Department in cooperation with the Technical Office.

Shortly thereafter, the AG issued an official decision initiating the Judicial Inspection Department under his supervision aiming at organizing the PP and ensuring accuracy and commitment for the overall purpose of achieving justice.

The Inspection Department is supervised by two AG Assistants, one in the West Bank and the other in Gaza. The head of the Technical Office acts as the general coordinator for Judicial Inspection at the PP, in addition to a Chief Prosecutor in the West Bank and another in Gaza to carry out the inspection activities besides their original function in prosecution. Only one administrative support staff member is working in this department in both the West Bank and Gaza, this employee is based in the Gaza AG office.

FINANCE AND ADMINISTRATIVE DEPARTMENT

This department does not exist on ground; however, it is proposed to be established by new employees that can carry out the administrative and financial functions. Currently, the administrative duties such as the filing, correspondence, reception, etc. are conducted by the clerks available at the AG office. The financial duties are supervised mainly by an accountant who conducts his work in cooperation with the Financial Department of the SJC since the PP budget is part of the Judiciary budget and is prepared by the SJC Financial Department.

CHASING OF INTERNATIONAL CRIMES DEPARTMENT

This department was established in July 2006 and is just beginning its duties and functions. The department's function is managed by a committee consisting of nine Prosecutors and is headed by the head of the Technical Office of the AG office. This department specializes in following up the military actions of the Israeli soldiers against the Palestinian civilians in response to the Geneva Agreement for the Year 1949. This department is still inactive despite the decision of the AG to form this department.

In conclusion, it is noted that the AG is trying to establish many departments at a time when his office has a severe shortage of prosecutors and administrative support staff, in addition to under-skilled personnel, poor infrastructure in terms of buildings, equipment, technology and means of internal communication. This expansion of the structure of the AG office by establishing new departments, units and prosecutions, without developing the elements related to the performance of these departments, can create many bottlenecks and affect the performance of the available prosecutors because of the fragmentation of work and delegation of several and different functions and responsibilities to one individual.

PUBLIC PROSECUTION DEPARTMENTS

The Public Prosecution, in general, relies on the geographical distribution, as there are PP departments at the center of every main city in Palestine. The representative members working in these departments get assigned tasks according to the types of courts in the given cities.

The PP Members acquire their authorities from the Attorney General who is responsible for filing and initiating criminal cases before the various courts. The Chief Prosecutors and Deputy Prosecutors are given authorities to release the indictment in criminal cases before the Conciliation Courts while the statement of indictment should be issued directly by the Attorney General in the criminal cases before the First Instance Court.

The PP departments are divided into two main types of prosecution, the District Prosecution and the Public Prosecution. There are four Public Prosecution Departments in the West Bank and Gaza, three of which are in Gaza and one is in the West Bank, whereas there are 18 District Prosecutions in total, 12 in the West Bank and 6 in Gaza. A Chief Prosecutor heads each of the District Prosecution Departments, where one or more Deputy Prosecutor is assisting the Chief Prosecutor depending on the case load of the department and the size of the district.

Each PP District Department comprises of a clerk where a number of administrative support staff is employed to assist the PPs in case management. Administrative support is usually supervised by a Chief Clerk with a limited number of clerks due to the shortage of the number of employees at the PP in general that amount to a total of 157 employees in all the PP including the AG office in the West Bank and Gaza.

Chapter 10. PUBLIC PROSECUTION SERVICES

CRIMINAL CASE MANAGEMENT

The initiation of a criminal case begins by submitting a complaint to the police, or to the Prosecution, both entities are considered to be key players in regards to effective and timely criminal case management. Major pre- trail procedures include the collection of evidence, arrest of defendants, carrying out the needed inspection, and finally concluding the investigation. The pre-trail procedures are followed by the case initiation.

One aspect of effective criminal case management lies in speedily and timely implementation of these pre- trial procedures, which are critical in terms of a reliable case monitoring and follow-up. After the case is submitted and reviewed by the jurisdictional court, the court and the panel review the case which leads to another important element in effective case management.

What are the challenges facing effective criminal case management?

Similar to the obstacles facing the entire judicial system, the Public Prosecution comes across difficulty in terms of speedy case processing and proceeding, in addition to the significant amount of backlog in the workload of the PP. There are various factors resulting in the inadequate performance and weakness at the PP. One of the major obstacles facing the PP in carrying out effective case processing is the insufficient cooperation with police. This is mainly represented in the lack of cooperation with the police in terms of enforcing various arrests and bringing notifications issued by the Prosecution. Another obstacle is the inability of the police to monitor judicial and administrative responsibilities, which clearly affects the case initiation process.

Another obstacle is the closure and checkpoints around cities and villages in the West Bank and Gaza which has a direct impact on the movement of lawyers, judges, court personnel, and PP members and consequently affects the case proceeding and processing of the procedures. In addition, the insufficient number of human resources available in the PP including Assistant Public Prosecutors and Administrative employees is seen as another difficulty facing the effective case processing and management. It is worth mentioning that the total number of PP Members is 111 in West Bank and Gaza, whereas, the total number of administrative employees reaches up 157, with 114 based in Gaza, and 43 in the West Bank. The numbers in the West Bank are particularly low given the wide range of districts and geographical jurisdiction that the PP covers.

There is also a need for more adequate office space at the PP, in addition to proper equipment and tools that can help facilitate proceeding with PP work. Currently, most of the PP offices are rented, and the rest are within the court buildings where one small room is typically occupied by 3 to 4 staff members. This affects the investigation process in some cases and work proceeding is often difficult in the chaotic work atmosphere.

There is a dire need for Forensic Lab that can support the performance of the police and PP Members and the investigation process. The Lab that was based in Gaza has been destroyed by the Israelis, and the PP is currently making use of the labs available at the universities—which are not well equipped. In addition, the use of such labs costs additional funds and burdens the PP budget.

The current unstable political environment in the West Bank and Gaza and state of security chaos has had a marked effect on the justice sector. Various courthouses, PP offices, and judicial members were threatened and exposed to danger at their offices and even homes, which clearly affected the performance of the Prosecution and the Judiciary as a whole. Accompanied with the 2006 salary crisis, the PA employee strike jeopardized the work of the courts and PP. The strike resulted in a significant backlog in the caseload in the courts and PP offices.

ENFORCEMENT OF CRIMINAL COURT DECISIONS

Until the Criminal Procedures Law No 3, 2001 was issued the enforcement of criminal court decisions was within the mandate of Civil Enforcement Units in the Gaza Strip. In the West Bank, the Public Prosecution was responsible for enforcing criminal court decisions in accordance with Jordanian law which was in force prior to 2001.

Legal Framework of the Enforcement of Criminal Court Decisions

The Criminal Procedures Law of 2001 incorporated a full chapter setting rules and procedures on the enforcement of judgments. Article 395 of the Law clearly states that the General Prosecution is responsible for the enforcement of criminal judgments, while the court Enforcement Units are responsible for enforcement of all other court decisions. The law stated that judgments will not be executed unless the decisions become final. The law also gave the Public Prosecution the authority to execute judgments rendered on penal actions and permits the direct demand for the police force when necessary.

A directive memo issued the Chief Justice and dated on February 20, 2006 declared that Article 395 of the Criminal Procedures' Law No. has given the Public Prosecution the jurisdiction to enforce criminal judgments. In light of this, the Chief Justice decided that:

1. Courts shall issue notifications of the abstract of criminal judgments.
2. After notification, the court shall send documents to the Public Prosecution.
3. The Public Prosecution shall enforce the judgments duly according to the law.
4. The Public Prosecution shall inform the courts of the enforced judgments so as to update its records.

Accordingly, the Attorney General issued decree No. 10/2006 establishing a Criminal Judgments' Enforcement Administration that is part of the Attorney General's Office, and operates under his supervision with its jurisdiction covering all parts of Palestine. According to this decree, the Criminal Judgments' Enforcement Administration shall consist of:

a) One of the Attorney General's Assistants as Chair.

b) Two Deputy Judgments' Enforcement Administration at the level of Head of Prosecution., one for the northern district and another for the southern districts.

c) A sufficient number of competent and experienced Heads of Prosecution and Public Prosecutors.

<u>The Criminal Judgments Enforcement Administration specializes in the following:</u>

a. Supervises the Prosecutions' full and partial functions related to the enforcement of criminal judgments rendered by Palestinian Courts.
b. Supervises the enforcement of the death penalty and attends the enforcement proceedings, according to provisions of the law.
c. Enforces the judgments issued against Members of the Legislative Council, Ministers and their Deputies and Assistant Deputies, PA General Directors and Members of the Judicial Authority.
d. Supervises all matters related to the criminal record issued by the specialized authorities, and follows -up on its enforcement.
e. Supervises the judgments subject to enforcement against the Security Forces and Apparatuses.
f. Supervises the rehabilitation and correctional facilities and regularly inspects them according to provisions of the law.
g. Supervise applications for rehabilitation.

Although the enforcement of criminal judgments fell under the jurisdiction of Public Prosecution according to the Palestinian Criminal Procedures Law, in practice the procedures still differ between

the West Bank and the Gaza Strip. In the West Bank, the Public Prosecution was already responsible for enforcing criminal judgments, therefore, little changed after the law. In the Gaza Strip, the situation is somewhat different. Despite the new law which gave jurisdiction over enforcement of criminal judgments to the Public Prosecution, and further supported by Decree No. 10/2006, the enforcement of criminal court decisions is still under the authority of Civil Enforcement Units in Gaza since the Criminal Judgments Enforcement Administration has not began to function in Gaza due to lack of logistics and human resources[13].

Mechanisms of Enforcing Criminal Court Decisions:

As the procedures for enforcing criminal court decisions differ between the West Bank and Gaza Strip, below is a brief description on the processing of the enforcement in the two geographic areas:

In Gaza Strip: As the criminal judgments are still enforced in the Civil Enforcement Units in Gaza, a list of final decisions subject to enforcement is sent to the Attorney General who submits it to the Enforcement Unit in the court. These decisions are presented by the enforcement officer before the Enforcement Judge for signature in order to be executed. Decisions might involve either imprisonment or payment of fines. If the decision involves imprisonment, the convict is transferred to the state jail; however, if the decision relates to a fine payment, the funds are paid to the court cashier.

In the West Bank: A list of final decisions subject to enforcement is sent to the Public Prosecution Enforcement Unit which implements the enforcement of the final criminal court decisions in accordance with provisions of the law mentioned in the Criminal Procedures Law 2001, through the following steps:

1. Registering the enforceable file: the Public Prosecution opens a file for each decision and keeps the documents of the case in this file. The enforceable file is registered in a special registration file, and given a serial number.
2. Pursuing the file: the Public Prosecution pursues the enforcement of decisions. The procedures may vary according to the sentence and may involve various types of cases.

Contestation of Enforcement

Every contestation of enforcement by the convicted party is raised to the court which rendered judgment against him/her. The contestation is expeditiously presented to the court by the Public Prosecution, and the concerned parties are notified of the date scheduled to look into this matter.

The court rules on the contestation after hearing from the Public Prosecution and the concerned parties. It is entitled to conduct the necessary investigations and may order a stay of enforcement until the dispute is adjudicated. The Public Prosecution may, when necessary, and before presenting the dispute to the court, stay enforcement of the judgment temporarily for health reasons.

[13] as justified by the Attorney General's office

Chapter 11. AUTOMATION AND INFORMATION TECHNOLOGY

INTRODUCTION

This chapter will shed light on the status of IT systems at the SJC, courts and the AG Office, examining software applications, hardware and IT infrastructure, as well as human resources, in terms of availability and levels of proficiency. This report may also serve as a primer for a fully-fledged needs assessment study and a systems analysis study.

STATUS OF EXISTING AUTOMATION AND IT SYSTEMS AT THE SJC

AL MEZAN SOFTWARE

ALMEZAN program (technically called "Courts' Automation System") aimed at capturing the behavior and process of managing the civil cases registration as presented by the registration book. It initially aimed at providing an electronic solution to the clerk's job to manage the cases through the registration book. After considerable modifications, the system was expanded to cover all functional activities in the First Instance Courts including interfaces for: civil cases records, criminal cases records, notary public records and enforcement records.

Features of the system include:

- Assisting the clerks and judges in scheduling hearing sessions
- Providing an automatic generation of all the forms pertaining to court processes
- Providing an intensive search facility throughout the courts' databases
- Retaining minutes- recording capability of all courts proceedings
- Retaining an archiving capability by using scanned images of documents and saving them into the database
- Assisting the clerks and judges in better case management

Currently, Al-Mezan is implemented in 15 courts across the West Bank and Gaza and is underway in two courts in the West Bank. In each First Instance Court there are four different interfaces of the program depending on the function of each department, i.e. civil case records, criminal case records, notary public records, and enforcement records.

According to IT personnel at the SJC, almost over 95% of the cases have been entered into AL-Mezan software, although short delays occurred in the process due to the recent strike by government employees including SJC and courts staff in those courts where the software has been implemented, especially in the West Bank. This indicates a high utilization level, implying the shear success of this application.

In near future plans, seven servers will be installed in seven courthouses across the West Bank where Al-Mezan is not yet utilized, so that data entry operators will enter all the cases pertaining to each of those courts. Other donors such as the European Union (EU) and United Nations Development Program (UNDP) will help implant these efforts. EU, UNDP and the Italian Aid have supplied these servers and others to various courts, and plans are underway for Gaza courts as well.

The figure below indicates the utilization levels of Al-Mezan software across the West Bank and Gaza courts based on the assumption that the average utilization level per court is 95%.

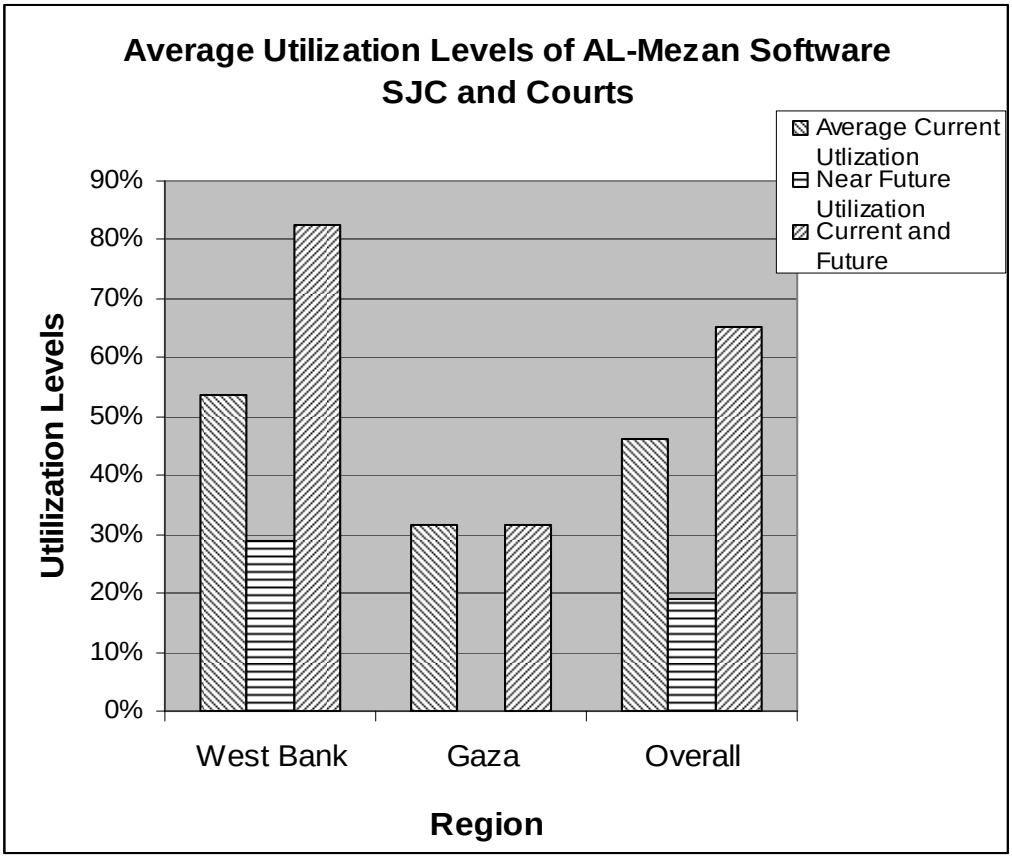

Figure: Al Mezan Utilization Levels

As indicated above, utilization levels are relatively high in the West Bank as compared to Gaza. However, the EU and other donors have near-future plans to better utilize the system in Gaza, but more efforts are needed in order to implement Al Mezan in all locations.

For the West Bank, there are plans to raise the utilization level from almost 53% to almost 83%, which is considered high by all means. In the future, utilization of Al-Mezan must home towards 100%, eliminating the dependency on manual data retention and extraction.

AL SHAM FINANCIAL PACKAGE

This is the main financial and accounting application used by the SJC stores' management, supplied by a local software company called BabilSoft. The system offers inventory management and fixed assets management modules.

JUDGES PERSONNEL PROGRAM

This program was internally developed by the SJC with support from UNDP, and is concerned with all information pertaining to judges. The program retains the following features:

- A judge's position information such as the job description, station of duty, and special missions
- A judge's personal information
- A judge's logistics and movement (travel, for example)
- Complaints against a judge
- Grievances made by a judge
- Training courses taken by a judge
- Results of judicial inspection

EXISTING SERVER HARDWARE

In reference to table (a) in the appendix, there is only one server at the SJC in Ramallah, in addition to seven servers in the stores that are intended to be distributed soon to seven courts in the West Bank for the purpose of implementing Al-Mezan software. While there are no servers at the SJC in Gaza, table (b) in the appendix indicates that there are 14 servers available in the West Bank and four available in Gaza. Although Al-Mezan software requires having a server, in some cases, the number of servers is slightly less than the number of courts using the software, due the fact that there are two courts in the same building using the same server. Generally, all servers are in good working condition.

EXISTING PC HARDWARE

The figures in tables (a) and (b) in the appendix clearly indicate that the SJC headquarters in the West Bank (Ramallah) has a better average of PC coverage than the SJC headquarters in Gaza Strip (Gaza City) (100% for the West Bank vs. 30% only for Gaza) so that the overall average is just below 60%. With good support to Gaza SJC, this average can be easily increased to 100%.

Also from table (c) for courts it can be seen that the West Bank has about 70% PC coverage while Gaza has 20% coverage only, but the average for the whole country is about 50%. The two new courts in Ramallah (Appellate and Supreme Court) need more improvement, while in Gaza courts in most regions would need larger efforts for improvement. According to IT employees and SJC management personnel, the SJC plans to connect more users in Gaza to PC's through the EU assistance and other donor projects, since the situation in Gaza was completely neglected in the past, and clearly needs further attention.

PERIPHERAL HARDWARE STATUS

As noted from table (a) in the appendix, a more efficient use of printers would require installing larger and more powerful network printers, and reducing the number of personal printers to a minimum. This large number of printers incurs higher cost of ownership due to higher rates of failure, slower performance and slower maintenance turn around time. In Gaza, there are fewer printers to PC's with no network printers at all.

The table indicates that there are also few scanners at the Financial Affairs and Administrative Affairs Departments in SJC Ramallah that are probably utilized to aid in accessing financial data such as invoices[14]. Meanwhile, there are no scanners in SJC Gaza.

Moreover, there are five LCD projectors available in Ramallah that are used in in-house training sessions (there are training rooms at the SJC buildings). However, it is not clear if spare lamps are being stored for those projectors. Yet, in Gaza, there are no LCD projectors whatsoever, although they are abundant in the SJC stores.

In courts, there is a realistic distribution of printers in the West Bank but in Gaza, network printers are needed.

NETWORK STATUS (LAN AND WAN)

Table (a) in the appendix indicates that in the Gaza SJC, there are 48 network points with 33 personnel. This structure may need further expansion.

As for the SJC in Gaza, no network infrastructure is in place except for direct mini-switch connection with the two existing servers. For the courts in the West Bank, all courts are networked.

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[14] There is no clear evidence that the Financial Affairs are entering the invoice data or other data using the scanners available to them

In regard to internet connectivity, only the SJC building in Ramallah and SJC building in Gaza are connected to the Internet via one 1MBPS ADSL connection each. Only small office routers are used with little setup for a strong firewall. These routers, if the whole WAN was implemented in the future, cannot be used in multi-link high traffic environments where data between remotely placed servers are to be synchronized.

IT HUMAN RESOURCES STATUS

The SJC building in Ramallah has an IT and Maintenance Department. The SJC building consists of two IT personnel, and the SJC in Gaza also has another IT Department that consists of two employees. These staff are hard working and have some basic IT skills, while some of them are trained on entry-level courses in networking and support such as MCSE and A+ but lack experience in software maintenance, IT procurement and tendering, IT systems analysis and design, Cisco-based training and other high level skills. Future plans should consider providing the IT employees with better training, and recruiting an IT Manager for each department.

It can be shown that for the SJC in Gaza, all employees (39 only) received training in basic IT skills, simply because their number is small and because there are no judges at the SJC in Gaza. Future opportunities will occur in case new judges were employed in Gaza SJC.

For the courts (figure 11 above), more training for both the West Bank and Gaza employees in basic IT training is still needed.

SUSTAINABILITY ISSUES

When asked about maintenance contract with vendors, the SJC had no clear answer about that issue. After some research, it was found out that there are four areas in terms of sustainability at the SJC and courts:

- New hardware items that were supplied recently by donors (or purchased by the SJC) are still under warranty. This would comprise 30%-40% of existing IT items. This raises questions of whether the IT Department will be able to sustain their equipment in good working order, with continuously decreasing percentage.
- The rest of the hardware is either maintained by the SJC IT and Maintenance Departments who have only 4 employees in Ramallah and Gaza and are overwhelmed with requests of maintenance, or else the hardware will be left unused for long periods of time, especially that the IT staff face travel difficulties through the West Bank, and can not easily travel cannot travel easily carrying out maintenance activities as needed.
- For the software applications, especially Al-Mezan, the UNDP assigned a software programmer (one of the original developers of Al-Mezan) at the SJC in Ramallah to support all software maintenance and upgrade issues pertaining to Al-Mezan (and to give additional IT support to the General Secretariat), while Gaza has no such an assignee.
- For electrical maintenance, the assigned technicians do provide some kind of support in one way or another, in addition to an in-house electrician who is responsible for day-to-day support in the SJC building in Ramallah. There is no such assigned electrician for this task in Gaza.

STATUS OF EXISTING AUTOMATION AND IT SYSTEMS AT THE PUBLIC PROSECUTION

RULE OF LAW PROGRAM (SEYADAT AL-QANOON)

Sayadat Al- Qanoon is a judicial software that serves AG and PP offices in recording all data pertaining to their judicial-related activities. This program was developed by the same company that developed Al-Mezan (Jaffa.Net) using the same engine of Al- Mezan but with different interfaces and reports; in other words it is Al-Mezan derivative.

The program serves records for two main branches: AGO (Attorney General Office) and PPO's (Public Prosecution Office). In every branch, the program was called by its name. So for the AGO, the program is called Seyadat Al Qanoon – Na'eb Aam (Attorney General), and for the PP, the program is called Seyadat Al Qanon – Wakeel (Public Prosecutor).

For both cases, the program serves two components: one is the criminal case records component and the other is record keeping component (archiving component). Currently, Seyadat Al-Qanoon is implemented in 10 AG and PP Offices across the West Bank and Gaza.

The following describes the situation of the program in both branches:

A – At the AGO – Ramallah

This program is installed and activated on the main central server at the AG Office in Ramallah, AGO Assistant's Office server, and on 8 PC's. According to the completed research forms, the program is being used and data (case records) are being entered in all these machines as needed. No further information has been supplied about the status of application on the PC's and servers in these two offices. The anti-corruption office has neither any software nor any type of hardware available (see table (d) in the appendix).

B – At the AGO – Gaza

This program is installed and activated on the main central server at the AG Office in Gaza and a backup copy is also available on another server to guarantee redundancy.

- **The Criminal Cases Section at the AGO**: The program is working relatively smoothly in terms of data entry and data retention. In terms of interfacing, there are still some bugs in the application represented in the lack of a comprehensive error messaging structure that would guide the user to carry out the correct action so as to avoid/overcome those errors. For example, while entering or retrieving data, the program suddenly pops up with a general error message (which contains no information about the error itself), and would not allow the user to continue work until the error message dialogue box is closed. Upon closing the dialogue box, the program exits.
- **The Archiving Section (incoming and outgoing documents) at the AGO**: Some modifications were carried out by the vendor in the reporting structure, since the reporting capabilities used to lack critical information, but following the modification by the vendor and upon request of the AGO, data-saving became erroneous and non-usable. Since May 2004, the program was not used any more for the purpose of archiving.

For the rest of the departments/components, the program is not installed due to the lack of PC's and personnel who would use the application.

C – At the PPO's

Despite the fact that the program was installed in the PPO's, it was partially used by those PPO's. Figures in table (d) in the appendix show that the program is less than 25% in both West Bank and Gaza due to lack of hardware and training.

EXISTING SERVER HARDWARE

From table (d) in the appendix, we can see that there are 7 servers in the West Bank and 4 servers in Gaza. These servers are installed for the purpose of using the legal records organizing (Seyadat Al Qanoon – Almezan) software. Still, there is a serious deficiency of servers in the West Bank and a more serious deficiency in Gaza, but once the software is in- use again, more servers will be needed in these offices., noting that all the currently available servers are in acceptable conditions with a need to boost their performance in terms of operating systems and backup requirements.

EXISTING PC HARDWARE

Figures in table (d) in the appendix indicate that there are no operational PCs in many areas of the West Bank including Hebron district and Nablus, while no data was provided except that of the number of Gaza administrative employees. With an average PC coverage of about 55%, the percentage in the West Bank is considered to be low by all means. Yet, In some PPO's, the coverage is either low or non-existent, due to the lack of equipment and properly trained personnel on the use of these equipment.

According to the latest study carried out by the AGO for the year 2006, no PC's are available for the Public Prosecutors, neither in the West Bank nor in Gaza, and all the PCs in the West Bank are administrative employees PCs

PERIPHERAL HARDWARE STATUS

Table (d) in the appendix indicates that there are 10 printers in the West Bank (five of them in Ramallah) vs. 36 PCs and five network printers at an estimated ratio of one printer per 3 PC's for personal printers. This ratio is considered typical, due to the existence of network printers reasonably distributed around the offices. In the offices where no PCs are available, there are no printers, except in Hebron Prosecution Office where there is one printer without PCs. The printer was probably previously used by a PC that is currently not operating.

In Gaza, there are 14 printers vs. 43 PC's creating a ratio of almost 1 to 3, which are also considered typical. Still, this can not be not due to the existence of network printers.

NETWORK STATUS (LAN AND WAN)

From Table (d) in the appendix, we can see that the number of switches at the AGO and PPO's in the West Bank is 8, distributed in offices where servers are available. There are no switches (hence no LAN's) in 6 PPO's in the West Bank, For the WAN, only 5 out of 36 PCs are capable of accessing the internet, all of them are in Ramallah, since they are using the WAN router at the SJC.

In Gaza, no LAN's or WAN's are in place and it seems that there are no means to access the Internet[15].

IT HUMAN RESOURCES STATUS

No IT personnel are hired at the AGO or PPO's at all. This explains the inadequacy, inaccuracy, and ambiguity of information received from other administrative employees.

There are at least 50% of personnel who were not trained on basic IT skills in the West Bank, many of whom are in Hebron District.

No data was supplied for the Gaza AGO and PPO's regarding basic IT training.

SUSTAINABILITY ISSUES

When asked about maintenance contract with vendors, the AGO stated that no maintenance contracts whatsoever were signed with any vendor, and that most equipment are out of their warranty periods.

- The New hardware items recently supplied by donors (or purchased by the SJC) are still under warranty, comprising 30%-40% of the existing IT items. With this continuously decreasing percentage, will the IT department be able to sustain their equipment in good working order?
- The remaining hardware is either maintained by the SJC IT and Maintenance Departments whose four employees in Ramallah and Gaza are overwhelmed with requests of maintenance,

[15] Information about this were not completed by AGO personnel in Gaza

or left unused for long periods of time, especially that it is difficult for the IT staff to reach courts with no IT department due to travel restrictions in the West Bank, making it hard for the staff to travel around in order to carry out maintenance activities as needed.

- For the software applications, especially Al- Mezan, the UNDP assigned a software programmer (one of the original developers of Al- Mezan) to support all software maintenance and upgrade issues pertaining to Al- Mezan (and to give additional IT support to the General Secretariat) and this programmer is located at the SJC building in Ramallah. In Gaza, no programmer is assigned for that purpose.
- For electrical maintenance, the appointed technicians do provide some kind of support in one way or another, in addition to an in-house electrician who is responsible for day-to-day support in the SJC building in Ramallah. There is no such an electrician appointed in Gaza.

Chapter 12. JUDICIARY AND THE PUBLIC

The Judiciary has numerous public information and public relations functions that they should ideally exercise in order to inform the public of judicial accomplishments and developments. This includes holding press briefings or conferences, issuing press releases, posting information on Judiciary websites and conducting regular press interviews. The Judiciary in Palestine has only recently begun to take on part of these responsibilities, after the appointment of the new Chief Justice and Attorney General.

The Judicial Branch has long been criticized for keeping information that clearly should be public knowledge, private. Recently, the public and civil society organizations have called for more transparency and information on achievements in judicial reform, status or rulings in key court cases, as well as more regular updates on cases related to corruption and misuse of public funds in the Attorney General's portfolio.

While the SJC and PP have taken some small initial steps in efforts to provide the public with information on the Judiciary, more clearly needs to done. The Judiciary is lacking in terms of both allowing the public to access information on the Judiciary as well providing adequate information to the public through publications, websites, and other public relations tools.

Regarding the public's right to access information, the Judiciary has been criticized for not allowing the public to easily access information related to judicial rulings, attend open court sessions, receive copies of court rulings against minimal fees, or obtain legal principles issued by the Supreme Court through its dissemination in the Official Gazette. Giving the public access to such information is a right guaranteed to the public by the Basic Law, Judiciary Law, and the Code of Civil and Commercial Procedures.

The SJC has indicated that it intends in the future to concentrate more on public relations and media work including establishment of a Media and Public Relations Department that can be fully dedicated to this effort and will have a direct impact on gaining the public's lost confidence in the Judiciary. However, these shortcomings have currently been attributed to the lack of adequate resources in the Judicial Branch that can be devoted for this purpose.

In the Palestinian Independent Commission for Citizens Rights (PICCR) annual report for the year 2005 they noted that, "the judicial reform movement became prominent, and witnessed modest improvements in legislation, structure, and performance of the Judiciary and justice agencies. However, these improvements did not match the actual requirements of upgrading the human and physical resources of the justice institutions so that they become champions of legal values and real protectors of citizens' rights and freedoms."

THE JUDICIARY AND PUBLIC—WHAT INFORMATION CAN THE PUBLIC LEGALLY ACCESS?

Although a number of articles of the Amended Basic Law guarantee the freedom of expression, no explicit provisions exist to organize the public right to access various information concerning the Judiciary, reference may be only made to Articles 19 and 27 of the Amended Basic Law, guaranteeing the freedom of expression and freedom of the press. Within this context, Article 27 may be interpreted to include the right to access public information that enforce and apply the freedom of expression. If the public is to exercise its right guaranteed under the law, then they have the right to obtain information concerning judicial process, although, currently, there are no clear mechanisms for the public to access information, and the system may vary from court to court.

Recently, The Coalition for Integrity and Accountability (AMAN) and the Palestinian Institute for the Study of Democracy (Muwatin) published a report on the "Public's Right to Access Information on the Judiciary." This report claimed that *"there is a lack of candid texts that guarantee this right of access to information. This leaves its implementation dependent on the temperament, explanation, and will of officials in the Judicial Authority, in the absence of texts that specify means by which the public can get information it is interested in through specialized units and tools of dissemination, as well as*

lack of texts that compel the Judicial Authority to disseminate and enable the public to access the financial and administrative information related to the work of the Judicial Authority institutes." In AMAN's Report, they allude that a certain level of secrecy surrounds information on the Judiciary and that independence of the Judiciary is understood by some in the Judiciary as their work being beyond public questioning or inquiry.

Although the legal texts are not candid about the public right to access judicial information, several provisions imply this right through different means. For example, according to Article 105 of the Amended Basic Law of 2003, the public has the right to attend court hearings, as it states that "*Court hearings shall be public, unless a court decides to make them in camera due to considerations related to public order or public morals. In all cases, the sentence shall be pronounced in a public hearing."*

Article 115 of the Code of Civil and Commercial Procedures also states that: *"The trial sessions shall be public. However, the courts may, either sua sponte or at the request of one of the parties, conduct them in camera for considerations of public policy, morality or sanctity of the family." Furthermore, Article 171 stipulates that "the judge shall pronounce judgment, either by reading out only the ruling or by reading out the ruling and the reasons. The pronouncement of judgment shall be public on pain of nullity."*

Still, this right to attend court hearing is not properly pursued according to the SJC mainly because of the poor court facilities that can not accommodate a large number of the public in the hearing rooms.

Another aspect of the public right to access judicial information is stipulated in Articles 173 of the Code of Civil and Commercial Procedures: "*The parties are entitled to see a copy of the judgment ruling but no copies shall be given out until the original text is complete."* and Article 177 of the same Code states: "*A copy of the original judgment may be given to any person who requests it, even if such person is not connected to the case, after payment of the due fees."*

Yet, practically, there are is no written and declared process or procedures specified in the courts that enables the public and concerned authorities to access judicial information. When in-formal procedures do exist, they may differ from one court to the other. This is not to say that the public is never allowed to access information; however, there is no systematic basis applied by the SJC for accessing this information. Court employees themselves might even be confused as to the proper procedures.

Another right of the public is stipulated in paragraph one of Article 10 of the Judicial Authority Law of 2002 stating that:

"The Technical Office shall be responsible for the following:

1. *Draw the legal principles adopted by the Supreme Court from the judgments it renders, classify them and monitor their publication, after presenting them to the President of the Supreme Court."*

While Palestinian laws have to a certain extent provided the public with the right to obtain information on the Judiciary, the reality on the ground is somewhat different. As the SJC has stated, this is primarily due to the lack of human and financial resources that can be dedicated to serve this purpose. However, establishing clear procedures regarding public access should be a priority. According to one of the recommendations of the AMAN report, the Judicial Authority should *"establish an internal by-law that organizes the citizen's right to access judicial information, so that it sets forth what information is disclosed and what other is classified, the authorities responsible for implementing this right, how the judicial system employees handle the citizens' requests for receiving information, and the established processes and procedures to provide this information to the public within the available resources."*

Due to these obstacles, the process of establishing a strong Judiciary that can serve the public and easily circulate and preserve information on the Judiciary is severely lacking. Creating a modern and efficient information system is one the priorities of the Judiciary; however, concrete steps must be taken to make this vision a reality. This should include the creation of a Public Relations and Media Department that can disseminate information through websites, written publications, press

conferences and other media outreach efforts regarding judicial rulings, the Judicial Authority's budget, and Judicial Authority laws and by-laws, as well as any other information of public interest.

HOW THE SJC DEALS WITH THE MEDIA?

A key element to improving the perception of the justice sector is to create better understanding of the various processes and the roles and rights of citizens. Better understanding of these processes is particularly important for the media which presents information on the justice sector to the public and can influence the public's respect for judicial decisions and enforcement.

In Palestine, a judicial press corp. does not exist. Therefore, journalists asked to cover the Judiciary and judicial process often do not have the proper background or adequate knowledge of the Judiciary to serve the topic justice.

At the present time, all contact between the SJC and the press is conducted through the Chief Justice. According to the Chief Justice, he is the official spokesperson of the SJC and no other judge or SJC employee is authorized to officially meet with the press or give press statements. When the staffing capacity changes at the SJC, they plan to establish and Media and Public Relations Department to take on more of these responsibilities, at which time appointing a spokesperson for the SJC might take place.

PUBLIC PERCEPTIONS OF JUDICIARY

The state of security chaos impacts overall the performance of the Judiciary. The last year witnessed a high in security chaos and lack of order where judges and attorneys were attacked, court property vandalized, and citizens as well as foreign national kidnapped and abducted without any legal recourse which under minded the public's perceptions of the Judiciary.

The increased public dissatisfaction due to the delay of settlement and weakness in enforcement of judicial rulings have prejudiced the public attitude towards mostly relying on alternative tribal, factional, or sectarian Judiciary that sometimes proved to offer better compromises, and swift settlements.

It is noteworthy that many polls that have been conducted recently to gauge public opinion of the PA have not included perceptions of the Judiciary. One however taken by Birzeit's Development Studies Program (poll #21) measured public perceptions of the Judiciary with only 16.5% of respondents giving a good rating of the Judiciary while 42.2% of respondents said that it is weak. There have been consistently high numbers of respondents calling for the end of the security chaos with poll (#25) showing that 89% of respondents said that ending the security chaos was a top priority.

The PICCR report for 2005 stated that "citizens' confidence in the system must be strengthened: it must become more easily accessible, its independence respected, its judgments executed, and fair trials must be provided away from any personal, official, party, sectarian, or popular influences."

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MEETINGS WITH CHIEF JUSTICE, ADMINISTRATIVE AND FINANCIAL DIRECTOR OF SJC, AND DIRECTOR OF PLANNING SJC (YUSEF NASRALLAH)

SJC IT-Related Information Sources

a. Meetings

- Eissa Abu Sharar (Ramallah) – Chief Justice
- Yousif Nasrallah (Ramallah) – Planning and Projects Manager
- Fahed Qawasmeh (Ramallah) – Admin and Financial Manager
- Samer Hamdan (Ramallah) – SJC IT Personnel
- Murah Rumman (Ramallah) – UNDP-Assigned Consultant for the SJC IT Activities

b. Reports

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AG IT-Related Information Sources

a. Meetings

- Ahmad Mughanni (Gaza) – Attorney General
- Abdul Qader Jaradeh (Gaza) – Assistant Attorney General
- Imad Abu El-Hajj (Ramallah) – Chief Clerk

b. Reports

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- Imad Abu El-Hajj (Ramallah), Building Status, Netham's Form

Chapter 14. GLOSSARY

ABBREVIATIONS

AG	Attorney General
AGO	Attorney General's Office
AMAN	The Coalition for Accountability and Integrity
Chief Justice	President of the Supreme Judicial Council
JAL	Judicial Authority law
JD	Jordanian Dinars
MOJ	Ministry of Justice
NP	Notary Public
OPT	Occupied Palestinian Territories
PA	Palestinian Authority
PICCR	Palestinian Independant Commssion for Citizens' Rights
PLC	Palestinian Legislative Council
PLO	Palestine Liberation Organization
PP	Public Prosecution
PPO	Public Prosecution Office
SJC	Supreme Judicial Council
UNDP	United Nations Development Program

GLOSSARY OF TECHNICAL TERMS

IT	Information Technology
ICT	Information and Communications Technology
PC	Personal Computer
Utilization	The use of an application/hardware as a percentage of its availability during official office hours, or the use of it in terms of its expected input/output levels (needs coverage)
PC Connectivity Ratio	The number of available and functional PC's as a percentage of the number of personnel in an entity
LAN	Local Area Network
WAN	Wide Area Network
UPS	Uninterruptible Power Supply
SNMP	Simple Network Management Protocol
MBPS	Mega Bits Per Second (bandwidth measurement unit)
ADSL	Asymmetric Digital Subscriber Line
KVA	Kilo-Volt Ampere (a measure of generator or UPS power output)
ICDL	International Computer Driving License
MCSE	Microsoft Certified Systems Engineer
RAM	Random Access Memory
CD	Compact Disk
VPN	Virtual Private Network (a seemingly private LAN running in reality over a WAN)
LCD	Liquid Crystal Display