

# ATTACKS ON JUSTICE - PALESTINE

## *Highlights*

The Basic Law was enacted in May 2002 and amended in March 2003 to ensure separation of powers and judicial independence. The Formulation of the Regular Courts Law was adopted in May 2001 and the Judicial Authority Law in May 2002. This unified the judicial structure, including prosecution, in both the West Bank and the Gaza Strip after more than 50 years of separation. In May 2003, the judicial administration was re-organized by redefining the constitution of the High Judicial Council. The first council of the unified Palestinian Bar Association was elected in July 2003. Elections for a second mandate were held in April 2005. Yet the judiciary faces fundamental problems, including conflict among judicial actors, slow court proceedings, executive interferences and failure in executing court decisions. Attacks on judges and prosecutors are frequent. There is as yet no mechanism to monitor judges. Appointments are often based on nepotism. Despite new judicial appointments in July 2002 and August 2003, there is still an acute shortage of judges and an increasing caseload. Salaries of judges and prosecutors were increased in 2003. State Security Courts were finally abolished in July 2003. The Israeli closure of Palestinian areas since September 2000 has negatively affected the performance of the Palestinian judiciary.

## BACKGROUND

The legal and judicial systems of the **Occupied Palestinian Territory (OPT)** derive from the laws enforced by the different powers that controlled this territory throughout history. The OPT has been subject to the Ottoman State, the British mandate, the Jordanian rule in the West Bank, the Egyptian administration in the Gaza Strip, the Israeli occupation and the Palestinian Authority (PA). Hence, present day OPT law is a mixture of Ottoman, British mandate, Jordanian, Egyptian administration, Israeli and PA laws.

As part of the Ottoman State (1516-1917), Palestine was subject to the **Ottoman law**. The Ottoman legal system was a compilation of **Islamic Law** and **Continental Law** (notably French law). The British occupation, then mandate, over Palestine (1917-1948) maintained the Ottoman laws, but added a new set of legislation based on the **Common Law** system (mainly English Law). At the end of the British mandate in 1948, the legal system of Palestine became a mixture of the Islamic Law, the Continental Law and the Common Law systems.

In 1948, **Palestine** was divided into three parts: the **State of Israel**, the **West Bank** and the **Gaza Strip**. The West Bank fell under **Jordanian** control and was annexed to Jordan, while the Gaza Strip fell under the administration of **Egypt**. Jordan extended its laws, which were a mixture of Ottoman and Continental laws, to the West Bank. Egypt kept the original legal system in the Gaza Strip as it was under the British

mandate, with minor modifications. When Israel occupied the West Bank, including East Jerusalem, and the Gaza Strip (OPT) in **1967**, it maintained the previous laws with some changes made in the form of military orders. Israel, however, extended its laws to **East Jerusalem**.

Based on the *Oslo Accords* concluded between Israel and the Palestinian Liberation Organization (PLO) from 1993 to 1995, the **Palestinian Authority (PA)** was created in parts of the West Bank and the Gaza Strip in **1994**. The PA decided to maintain the previous laws of the OPT and started a process to unify and modernize the legal system. Since its election in **January 1996**, the **Palestinian Legislative Council (PLC)** adopted a set of laws, including judiciary laws (see below, Judiciary). The Palestinian authority created the position of **Prime Minister** in early 2003 through the amendment of the basic law in **March 2003**. **Mahmoud Abbas** was the first to be appointed to the post of Prime Minister but he resigned four months later on **6 September** because of tensions with then **President Arafat** over security issues. **Ahmed Qurei** was appointed as his successor the next day.

After being besieged by the Israeli Army for more than three years at his compound in the West Bank city of Ramallah, Palestinian **President Yasser Arafat** died on **11 November 2004**. By virtue of Article 37 of the *Palestinian Basic Law* of **2003**, a new president should be elected within 60 days from the date on which the presidential position becomes vacant. Accordingly, a new President, **Mahmoud Abbas**, was elected as the second Palestinian President on **9 January 2005**. According to a number of Palestinian and international sources ([http://www.accessdemocracy.org/library/1819\\_wegz\\_finalreport\\_041505.pdf](http://www.accessdemocracy.org/library/1819_wegz_finalreport_041505.pdf)), the presidential election was held openly and fairly and in accordance with the *Palestinian Basic Law*. Shortly after the presidential elections, a new Cabinet, headed by Prime Minister **Ahmed Qurei**, was installed in **February 2005**.

A working group continues to work on a draft Constitution for statehood and a final draft was expected for the first half of **2004** ([www.pcpsr.org/domestic/2003/nbrowne.pdf](http://www.pcpsr.org/domestic/2003/nbrowne.pdf)). To date, there is no official progress in this respect.

The **Al Aqsa intifada** and ensuing reprisals continued. For five months in **2002**, Israeli troops surrounded the then President of the Palestinian Authority, Yassir Arafat, at his headquarters in Ramallah. Israeli **Prime Minister Sharon** blamed Arafat directly for inciting terror and called for his expulsion from the territories. In **June 2002** Israel started building its separation wall on security grounds. In **December 2003**, the **UN General Assembly** requested an Advisory Opinion on the legal consequences of the construction of a wall in the OPT from the **International Court of Justice**. Hearings took place in The Hague in **February 2004** ([http://www.icj.org/news.php3?id\\_article=3261&lang=en](http://www.icj.org/news.php3?id_article=3261&lang=en); [http://www.icj.org/news.php3?id\\_article=3410&lang=en](http://www.icj.org/news.php3?id_article=3410&lang=en); [http://www.icj.org/news.php3?id\\_article=3411&lang=en](http://www.icj.org/news.php3?id_article=3411&lang=en)). In **July 2004** the **International Court of Justice** found that Israel's construction of a wall in the OPT and its associated regime were contrary to international law. It stressed Israel's duty to cease construction of the barrier, to dismantle those parts already built, to restitute land confiscated for its construction to the owners and to compensate those who suffered damages. Israel was also under an obligation to repeal all regulations

connected to the barrier, including its discriminatory movement regime (<http://www.icj-cij.org/docket/files/131/1671.pdf>; [http://www.icj.org/news.php?id\\_article=3414&lang=en](http://www.icj.org/news.php?id_article=3414&lang=en)).

## JUDICIARY

### **Unification of the Palestinian judiciary**

A set of laws related to the judiciary was adopted in **2002**. The *Basic Law*, enacted in **May 2002**, provided for the separation of powers and independence of the judiciary. Four other significant laws have been passed by the **Palestinian Legislative Council** (PLC). The enactment of the *Formulation of the Regular Courts Law* in **May 2001** and *Judicial Authority Law* in **May 2002** unified the judiciary laws in both the West Bank and the Gaza Strip. Before these laws were adopted, West Bank courts were operating according to the Jordanian laws of pre-1967, while Gaza Strip courts were operating according to the British mandate laws enacted in Palestine before 1948. The **2002 Judicial Authority Law** placed all courts under a single administrative body, the **High Judicial Council**. Simultaneously, the judicial procedures were specified and unified by the adoption of the *Civil and Commercial Procedures Law* and the *Criminal Procedures Law* in **May 2002**.

Upon enactment of the *Judicial Authority Law*, the **Supreme Court** was reorganized in **June 2002** to include both the **High Court of Justice**, which adjudicates cases against the government, and the **Court of Cassation**. The latter court is new in the judicial system and specializes in reviewing the legal aspects of cases, independently of the facts of the matter.

Another new court, the **Constitutional Court**, was also to be created to oversee the consistency of the new laws and regulations according to Article 94 of the **2002 Basic Law**, which provided for its establishment. However, this Court has not yet been established, and the **High Court of Justice** is taking on its functions in the interim.

The **2002 Judicial Authority Law** does not mention **State Security Courts** (SSC). On **14 April 2003** the Minister of Interior declared that the PA had *ipso facto* abolished the security courts after ratification of the Basic Law. Subsequently, on **27 July 2003**, the Minister of Justice issued an order confirming that declaration. During **2003** there were reports of two cases transferred to the SSC (<http://www.piccr.org/index.php>). Since **September 2003**, no case was referred to the security courts. However, the final abolition should be formalized by a presidential decree, thus following the same procedure which created the Security Courts.

### **The High Judicial Council**

The High Judicial Council is responsible for court administration. Article 91 of the **2002 Palestinian Basic Law** provides for its establishment, while Articles 37-59 of the *Judicial Authority Law* regulate the structure and functions of this Council.

Article 81 of the **2002 Judicial Authority Law** provides that a transitional Council is to be formed by presidential decree based on recommendation of the Minister of Justice. Accordingly, a **Transitional Council** was set up in **2002** by *Decree No.11*. The establishment of the Council contravened the **2002 Judicial Authority Law** and its

legality was therefore questionable. Its creation did not take into account the fact that the **Minister of Justice** was to select the members of the Council. Also, 11 members were appointed instead of the prescribed nine. Its members were judges from Appeal Courts, First Instance Courts and the Income Tax Appeal Court, instead of the President of the Supreme Court, four Supreme Court judges, the heads of the Appeal Courts and the Deputy Minister of Justice as prescribed by the law. Some judges were over 70 years of age.

On **14 May 2003**, former **President Arafat** issued a **Decree** purportedly remedying this shortcoming by ordering the formation of a **Higher Judiciary Council** composed of nine members. Appointment of members was based on their positions of employment and they were all less than 70 years of age in compliance with Article 34 of the **2002 Judicial Authority Law** (<http://www.piccr.org/index.php>).

Headed by the **President of the Supreme Court**, the **High Judicial Council** is responsible for nominating and inspecting judges, court formulation, establishing new courts, mandating judges from one court to another and training, promoting, prosecuting and dismissing judges. In addition to the Judicial Council, the **Ministry of Justice** retained some authority in court administration such as responsibility over court personnel. On **14 September 2002** the **President of the High Judicial Council** issued *Decision N° 62*, granting judges in **Magistrate Courts** authority to exercise administrative supervision over the magistrate court. If there is more than one magistrate judge in the magistrate court, the most senior judge will handle court administration. Training for judges and court officials is conducted locally and internationally by governments and international organizations, as there are no permanent judicial training programmes nor institutions to deal with these in the Palestinian Territories.

### **Independence of the Judiciary**

The judicial system faces fundamental problems that undermine its independence. There are ongoing conflicts between the judicial actors (the High Judicial Council, the Attorney General's Office, the Ministry of Justice and the Bar Association) over the distribution of functions and powers. There have been reports of direct and indirect government influence over judges' decisions, especially from the executive branch.

The general public and political factions have occasionally organized demonstrations and strikes intended to influence judges' decisions. Judges have reportedly received phone calls from concerned parties - including both the general public and government representatives - to tell them how to rule on a case. Lawyers often claim that judges' decisions have been influenced. Petitioners also offer judges economic rewards for speedy conclusion of their cases. There are reports of judges receiving promotions without due process being followed.

### **Appointment of Judges**

As of **December 2004**, there were 122 judges in all Palestinian courts. Some 36 new judges were appointed in **July 2002** and 20 others in **August 2003**. Despite these new appointments, the number of judges is still inadequate today compared with the actual needs and an ever-increasing caseload.

Conditions for appointment of judges in the Palestinian judiciary are barely respected. Judges are typically newly graduated lawyers who lack experience and tend to have been appointed through nepotism ([http://www.nesl.edu/intljournal/vol7/vol72001\\_pg115.pdf](http://www.nesl.edu/intljournal/vol7/vol72001_pg115.pdf)). By law, the **Higher Judicial Council** is the body responsible for pre-selection of judges, followed by endorsement from the **Head of the Executive branch**. In reality, many of the appointments during the period were not based on the qualifications of the candidates concerned, but on their political affiliations, paternalism, authoritarian allocation of rewards to "clients", punishment of opponents or whatever other considerations that the executive branch might have taken into account.

On some occasions, judges have been subject to internal pressure coming from the **Judicial Authority**. Judges have reportedly been asked to take certain decisions in return for a promotion. If this is refused, a judge may be threatened with relocation to a less convenient district.

It is impossible to tell if these pressures hinder judges' impartial decisions, as there is neither any judicial inspection nor an established mechanism for putting in place such inspection. As of early **2004**, the **Higher Judicial Council** had yet to render any decision to remove a judge from office.

Before 2003, judges did not receive adequate remuneration. Newly appointed administrators in the various government ministries received higher salaries than senior judges. Judicial salaries were increased in **May 2003** according to the financial section (chart of positions, salaries, and allowances) of the **2002 Judicial Authority Law** (<http://www.piccr.org/index.php>). According to law, the basic salary ranges from US\$3,050 for the President of the High Court to US\$1,708 for magistrate court judges, which is higher than other public employees' basic salaries (e.g. public teachers' salaries are around US\$400). Judges are granted salaries, allowances and incentives that today put them in a favourable position compared with other government employees.

### **Non-execution of judicial decisions**

The **Executive** does not respect some court rulings and refrains from their execution. Article 97 of the **2002 Palestinian Basic Law** provides that "Judicial sentences shall be implemented. Abstention or suspension of implementation in any manner shall be considered a crime [...]." Article 82 of the **2002 Judicial Authority Law** also makes the refusal to enforce judicial decisions a criminal offence. Reportedly, the general practice is that security agencies and certain ministries frequently fail to implement certain court decisions, including decisions of the **High Court of Justice**, related to orders to release illegally-detained persons or to return employees to office.

### **Cases**

#### **Court security**

During the period, a number of cases concerning the security of judges and parties have been reported. Kidnappings of judges and judicial actors have occurred often, with law enforcement officials failing to grant them the necessary protection.

On **5 February 2002**, the **State Security Court** held a session to consider the murder of **Ussama 'Omar Kumail**, 31 in Jenin. The court sentenced the three defendants, **Mahmoud Mohammed Huneiti**, 39, **Khaled Rajeh Nasser**, 21, and **Jihad**

**Mohammed Abu Khamira**, 18, to prison terms after they were convicted of the murder. All three suspects had confessed the killing to an officer of the **Preventive Security Service**. After the court had handed down sentences to the three, several gunmen broke into the session and shot dead the three suspects while in the lavatories. According to eyewitnesses, policemen who were guarding the court did not make any efforts to stop the gunmen. (<http://www.pchrgaza.org/files/PressR/English/2002/13-2002.htm>).

On **3 July 2003**, unknown armed men entered Ramallah Court and killed **Kayed Shilbawi** on grounds of his alleged collaboration with the Israeli Authorities. Shilbawi was awaiting trial on the same grounds at the court. The court police failed to prevent the armed men from killing him.

In **early 2004**, armed men, reportedly from **Al-Aqsa Martyrs Brigades**, entered the magistrate court in Jenin and demanded that the sitting judge **Kifah Al-Sholi** allow them to enter the court with their guns. When the judge requested the men to disarm in the court, they kidnapped him and took him to their leader, who demanded an apology from the judge. The judge was shortly released after apologizing to the gunmen. No follow-up action was taken, as the militants were individually unknown.

#### **Non-execution of judicial decisions**

In **2002** the **High Court of Justice** did issue decisions nullifying practices of the executive branch that contravened the law. However, the **executive** disregarded those decisions, diminishing the High Court of Justice's effectiveness and credibility (<http://www.piccr.org/index.php>).

On **25 April 2002**, the **High Court of Justice** in Gaza issued a decision requiring that the Palestinian police immediately re-open the headquarters of the "Al-Risala" newspaper in Gaza. This was based on a request presented to the court by the **Palestinian Centre for Human Rights** on behalf of the newspaper. The newspaper had been closed without previous investigation by the **Attorney General's office** and without a judicial decision mandating its closure according to the **1995 Press and Publication Law**. The High Court of Justice's decision is similar to that issued by the same court in **1997**. At that time, the court regarded the closure of the newspaper as an arbitrary use of authority and a violation of constitutional and legal provisions. The **Palestinian police** did not enforce the court decision, and the newspaper remains closed ([http://www.pchrgaza.org/files/Reports/English/pdf\\_annual/ann\\_rep\\_02.pdf](http://www.pchrgaza.org/files/Reports/English/pdf_annual/ann_rep_02.pdf)).

On **16 May 2002**, the **High Court of Justice** in Gaza issued a decision demanding the release of **Saher Salameh Abdullah Khattab**, who was held by the **Military Intelligence** in Gaza on suspicion of collaboration with the Israeli occupation authorities. The court decision was not enforced ([http://www.pchrgaza.org/files/Reports/English/pdf\\_annual/ann\\_rep\\_02.pdf](http://www.pchrgaza.org/files/Reports/English/pdf_annual/ann_rep_02.pdf)).

On **3 June 2002**, the **High Court of Justice** in Gaza issued a decision demanding the release of the Popular Front Secretary-General, **Ahmad Sa'adat**, who was held in Jericho prison. The **Palestinian Authority** reportedly refused to carry out the decision on the pretext of Israeli threats to detain or assassinate him ([http://www.pchrgaza.org/files/Reports/English/pdf\\_annual/ann\\_rep\\_02.pdf](http://www.pchrgaza.org/files/Reports/English/pdf_annual/ann_rep_02.pdf)). Ahmad Sa'adat is still imprisoned to date.

On **24 November 2002**, the **High Court of Justice** in Gaza issued a decision demanding the release of **Eid Atiya Abu Nseir**, who was held by the **Military Intelligence** service in Gaza on suspicion of collaboration with the Israeli occupation authorities. The court decision was not implemented ([http://www.pchrgaza.org/files/Reports/English/pdf\\_annual/ann\\_rep\\_02.pdf](http://www.pchrgaza.org/files/Reports/English/pdf_annual/ann_rep_02.pdf)).

On **11 December 2002**, the **High Court of Justice** in Ramallah issued a decision demanding the release of **Fouad Al-Shobaki**, who had been held in Jericho prison since **24 April 2002** on accusations connected with the “Karin A” weapons ship affair. The court regarded Al-Shobaki’s detention without charge to be in contravention of the **2001 Criminal Procedures Law No. 3**, as well as the *Palestinian Basic Law* ([http://www.pchrgaza.org/files/Reports/English/pdf\\_annual/ann\\_rep\\_02.pdf](http://www.pchrgaza.org/files/Reports/English/pdf_annual/ann_rep_02.pdf)). Fouad Al-Shobaki is still imprisoned to date.

On **21 March 2004**, the **Palestinian High Court** issued a judgment declaring that the order by the **Palestinian Monetary Authority (PMA)** of **August 2003** to freeze 39 bank accounts of nine Islamic charities was illegal. In response, the **Palestinian Monetary Authority** declared on **27 March 2004** that it would maintain the freeze on the funds in question.

## LEGAL PROFESSION

### **The Palestinian Bar Association**

The legal profession is regulated by the *Legal Profession Law N°3* of **June 1999**. On **9 July 1997** the three lawyers associations (one in Gaza and two in the West Bank) unified and formed the **Palestinian Bar Association** ([http://www.nesl.edu/intljournal/vol7/vol72001\\_pg115.pdf](http://www.nesl.edu/intljournal/vol7/vol72001_pg115.pdf)). Since its election in **July 2003**, the new **Council of the Palestinian Bar Association** has been organizing and improving the status of the legal profession. Elections for a second mandate of the Bar Council were held in **April 2005**. **Ahmad Al-Sayyad** was elected the new **President of the Bar**.

The Bar created 12 sub-committees to undertake various activities. These committees relate to, *inter alia*, human rights, women, training and cultural affairs. In addition, the Bar continued to defend lawyers’ interests vis-à-vis the government and the judicial authority, registering them, organizing training courses on civil, criminal and procedural matters and expressing opinions on legal and political issues. However, members of the Council of the Bar Association from the West Bank and the Gaza Strip were unable to meet due to the **Israeli military closure** and separation between the West Bank and the Gaza Strip. As an alternative, meetings have been conducted through videoconference.

The Bar Council’s achievements started to become apparent only a short time after the election, mostly in strengthening the relationship with the **Arab Bar Association** and Palestinian legal institutions.

The relationship between the Bar Association and the judiciary is governed by the *Legal Profession Law* of **June 1999** and the *2002 Judicial Authority Law*. Upon election of the **Council of the Bar Association** in **July 2003**, this relationship has been marked by ongoing tensions due to disagreements in the way the **High Judicial Council** handled the administration of justice. Issues include slow court proceedings, absence of judicial inspection and protest against the appointment and promotion of certain judges. The **Bar Association** issued a press release on **30 June 2004** to protest against the inappropriate treatment of lawyers during the court's hearings and the selection criteria for new judges. It condemned the **High Judicial Council's** failure in preparing judicial training programmes, establishing a judicial institute and appointing sufficient judges to meet actual needs. Such tensions have confirmed the **Bar Association's** independence as a body in charge of defending the lawyers' interests.

As of **April 2005**, there are some attempts from the **Palestinian President**, supported by the **UNDP**, to clarify the relationship between the Ministry of Justice, the High Judicial Council and the Attorney General's Office.

In **October 2004**, the **Bar Association** launched a compulsory legal training programme for trainee lawyers.

Less than 10% of lawyers are women and there are no female lawyer representatives in the Bar Council.

### **Independence**

Some lawyers have reportedly been harassed and interrogated by members of the security forces about their clients. In other cases, lawyers have had their offices searched.

A lawyer is by law granted access to his client at any time following arrest and leading to trial. In practice however there have been several cases where enforcement officials have impeded lawyers' access to their clients. This has particularly been the case of those detained by the security services (intelligence, preventive security), although refusal of access is not authorized by law. Lawyers are thus often denied access to their clients in prison by the Palestinian security forces.

There were instances where lawyers suffered professional restriction due to their membership in local or national organizations. The former **Bar Council** issued a decision (see "Attacks on Justice 2002", [http://www.icj.org/news.php3?id\\_article=2696&lang=en](http://www.icj.org/news.php3?id_article=2696&lang=en)) attempting to suspend the membership of all practising lawyers with affiliations to local, national or international organizations, particularly those working in human rights organizations. There were efforts during **2004** to challenge this ongoing decision, and finally, the Bar decided that these lawyers should continue as practising members with the Bar. It is worth noting that the newly elected **President of the Bar Association** is a human rights lawyer with an NGO background and is the **Head of the Mandela Centre for Political Prisoners and Human Rights**, as well as being a **co-founder of Al-Haq**.

## **PROSECUTORS**



Prosecutors are considered to be part of the executive branch. The **2002 Basic Law**, the **2002 Judicial Authority Law** and the **2001 Criminal Procedures Law** regulate this profession.

Headed by the **Attorney General**, prosecutors have sole jurisdiction in initiating and handling criminal proceedings. In addition, prosecutors assume responsibility over law enforcement and supervise law enforcement officials. The Attorney General's Office is primarily responsible for administering prosecutor affairs. The **President of the Palestinian Authority (PA)** appoints the Attorney General, upon the **High Judicial Council's** recommendation. At the **end of 2004**, there were reportedly 100 members of the Attorney General's Office, including prosecutors and associate prosecutors.

The **Ministry of Justice** has limited authority in administering prosecutor affairs. In various aspects, prosecutors are treated as judges, including qualifications for appointment, salaries, promotions, suspension and removal. A number of the current judges have been former prosecutors. Since **2004**, a number of prosecutors within the Attorney General's Office have been assigned to pursue claims against the government.

The remuneration prosecutors receive is reportedly adequate. As with judges, prosecutors' salaries were increased in **May 2003** by enforcing the financial section of the **2002 Judicial Authority Law**.

### **Independence**

Prosecutors are generally able to perform their professional functions free from intimidation. Nevertheless, there are reported instances in which the **Attorney General's Office** did not carry out its assigned role in investigating a large number of murder cases. These include the killing of individuals suspected of collaboration with the Israeli occupation authorities and killings due to security lapses or arms chaos. Similarly, the prosecutors have failed to perform their function in prison inspection to ensure prisoner rights, especially those of prisoners detained without charge or in pre-trial detention. In addition, the Israeli military's destruction of prisons and detention centres has complicated the prosecutors' tasks. They were unable to investigate certain crimes due to the inability of the police to provide them with security and support. In some instances, prosecutors have been attacked.

On **27 December 2002**, the then **President Yasser Arafat** issued a Decree to the effect that the **Security Prosecution Office** be merged with the **Attorney General's Office**, abolishing the **State Security Prosecution Office**. By the same decree, **Khlid Al-Qudwah**, former State Security Prosecutor, was appointed new **Attorney General** for the PA. On **29 December 2002**, the **Bar Association** issued a statement that the appointment of an Attorney General for the SSC as Attorney General of the Palestinian National Authority (PNA) contravened the *Basic Law* and that it reserved the right to bring a case before the **High Constitutional Court** appealing against the decrees (<http://www.piccr.org/index.php>). The concern of the Bar Association and some NGOs was that the appointment of the Attorney General (by the PA President alone) was contrary to Article 98 of the *Basic Law* and Article 63 of the *Judiciary Law*. Both articles require that the Attorney General's appointment be upon recommendation from the **High Judicial Council**, which the PA President did not

respect. Also, the fact that the new Attorney General was a former Security Prosecutor raised concern regarding his independence and character.

The SSC were definitely abolished in **2003** (see above, Judiciary).

### **Training**

There is no system of initial training for appointed prosecutors nor are training courses conducted on a regular basis, although there have been some developments in this regard. In **2002** all prosecuting attorneys of the Attorney General's office in Gaza and some in the West Bank received training on the *New Palestinian Penal Code*, Legal Counsel and courtroom skills, handling crimes of the occupation, and narcotic crimes. In addition, a "Guidebook of Professional Ethics" was issued in **2002** that contained guidelines for the **Attorney General's office**. Among these is the duty to disclose financial debt liability and assets upon appointment or after subsequent change, or upon request by the Attorney General (<http://www.piccr.org/index.php>). Civil society and international organizations provide training courses from time to time on an *ad hoc* basis.

### **Cases**

The car of the Head Prosecutor in Ramallah was set on fire in front of his house in **December 2003** reportedly as a consequence of his investigations in corruption cases. The perpetrators are unknown and the investigation was ongoing as of **April 2005**.

## **ACCESS TO JUSTICE**

Access to courts is guaranteed by law. The **2002 Basic Law** prevents discrimination before the courts on any ground such as race, sex, religion, language, political opinion or disability. It provides for fair trial guarantees together with the *Civil and Commercial Procedures Law* and the *Criminal Procedures Law*.

In practice, however, as a result of the **Israeli closure** of the Palestinian areas, judges and individuals were often unable to reach courts. Access to justice was subsequently restricted. During the reporting period, Palestinian civilians were placed under siege and curfew, restricting judges and individuals from reaching the courts. Courts were unable to hold sessions, resulting in a backlog of cases. Especially after the Israeli invasion in **2001** and **2002**, Palestinian security forces have become unable to enforce the court decisions to date, as they have no longer an effective presence in the West Bank. The destruction of police and prison headquarters throughout the reporting period has complicated the judicial process further.

The right to appeal to a higher court is respected in all cases, although the siege imposed by Israeli authorities has seriously hampered the court of appeals in convening. There is no report of violating these rights before the regular courts.

A number of these rights were violated before the **State Security Courts**, which were definitely abolished in **2003** (see above, Judiciary). Reportedly, trials were rushed and lacked the guarantees necessary for them to be conducted fairly. Defendants' right to legal assistance was denied. Defendants were assigned lawyers without being consulted and the lawyers assigned were mostly legal officers in the security or police

forces. Furthermore, these lawyers were neither given sufficient time to prepare the defence nor permitted access to the necessary documentation (<http://www.piccr.org/index.php>). Verdicts issued by military courts were not subject to appeal, contrary to Article 14 of the *International Covenant on Civil and Political Rights*.

Responding to the increasing need of individuals to resort to courts to settle their disputes, several new court buildings were opened or renovated during the reporting period. Computerized filing and archiving systems were also integrated.

The *Criminal Procedures Law* and the *Legal Profession Law* generally guarantee legal aid. In practice, various civil society organizations currently provide free legal representation or counselling.

## LEGAL REFORMS DURING THE PERIOD

- 14 May 2002:** *Judicial Authority Law, No. 1*  
**29 May 2002:** and its amendment of **18 March 2003:** *Basic Law*  
**5 August 2003:** *Judicial Fees Law, No. 1*

## General Country Information

### a. Legal System Overview

#### 1. Rule of Law and Independence of Judiciary

The **Palestinian Authority** consists of **three branches**. The **Executive Branch** is composed of an elected **President**, an appointed **Prime Minister** and a **Cabinet of Ministers**. It has limited legislative power, including ratifying draft laws and issuing regulations to implement the laws. The **Legislative Branch** is the **PLC**, which is the elected legislator. It is the principal body responsible for preparing and adopting the PA laws. The **Judicial Branch** is composed of the various levels of the regular courts administrated by the **High Judicial Council**. There are also a number of **special courts**, notably the **religious and military courts**. The prosecutors operate under the administration of the **Attorney General's Office**, which is an independent body in charge of criminal proceedings. Lawyers function under the *Legal Profession Law* and are represented by the **Bar Association**.

The rule of law and the independence of judiciary are guaranteed by the **2002 Basic Law**, the Palestinian Authority's transitional constitution. As a fundamental principle, Article 6 states: "The rule of law is the basis of governance in Palestine; all authorities, organs and individuals shall be subject to the law." Similarly, Article 88 provides: "The Judicial Authority shall be independent ... The law shall determine the structure and jurisdiction of the courts." Finally, Article 89 reads: "Judges are independent, and shall not be subject to any authority except to the law. No other authority may intervene in the judiciary or in the judicial affairs."

The judiciary's independence is stipulated in and regulated by other laws. The **2002 Judicial Authority Law**, in Articles 1 and 2, provide that the judiciary and judges are independent and subject solely to the law. In addition, four vital laws related to the judiciary were adopted in 2001. These were the *Formulation of the Regular Courts Law*, *Civil and Commercial Procedures Law*, *Criminal Procedures Law* and *Evidence in Civil and Commercial Matters Law*. These laws resolved the duplication of the court system in the West Bank and the Gaza Strip and unified the applicable laws before the courts.

## **2. Sources of Law**

As a result of historical developments, the current applicable laws are derived from the Ottoman Law, English Law (from the British mandate period), Jordanian law in the West Bank, some Egyptian laws in the Gaza Strip, Israeli military orders, and the PA laws. The substance of these laws is a mixture of Islamic Law, Common Law and Continental Law.

The main source of law under the PA is the **legislation**. In the legislative drafting, the Palestinian legislator relies on a variety of sources. These include previous laws enforced in Palestine, the laws of Arab and other states and international conventions. Egyptian and Jordanian laws are often consulted. The hierarchy of legislation ranges from the "*Basic Law*" (the constitution), "law" (of the PLC) and "secondary legislation" of the Executive (by-laws, regulations, instructions).

Other sources of law also exist. "The principles of Islamic Law are a major source of legislation", according to Article 4 of the *Basic Law*. Custom may be considered as a source of law and is relied upon before courts in civil and commercial cases, according to various applicable laws, notably the *Ottoman Civil Code*. Traditions of various religious groups are taken into consideration by the religious courts in personal status matters. Where all these sources are absent, a court should not refrain from rendering the decision, according to Article 164 of the *Law of Civil and Commercial Procedures*. This gives courts a freedom of discretion. Judicial precedents of higher courts are not binding upon lower courts. Thus, the current judicial system is much closer to *Continental Law* than to other systems.

## **3. Legal Publicity and Judicial Transparency**

The PA legislation has been published in the "Palestine Gazette" (the Official Journal of the PA) since **1994**. The **Consultative and Legislative Department** of the Ministry of Justice is in charge of publishing the Gazette. Laws are not considered applicable until published. Judges, lawyers and the public can obtain copies of the laws and secondary legislation easily. Legislation is also published informally at various Internet sites (e.g. by the Institute of Law of Birzeit University), and often reprinted and distributed by the PLC, PICCR and human rights NGOs.

Court hearings are public, according to Article 15 of the **2002 Judicial Authority Law** and Article 3 of the *Formulation the Regular Courts Law*. Exceptions have been made for certain cases, in order to respect the privacy of parties or to maintain public order. Court decisions are generally available to lawyers, parties and the general public. However, there is no official publication of court decisions. They have been compiled and published informally by the **Bar Association** and through individual efforts of judges and lawyers. According to Article 10 of the **2002 Judicial Authority Law**, the

**Technical Unit of the Supreme Court** is in charge of compiling and publishing court decisions, but this has not yet become operative.

## **b. The Judiciary**

The Palestinian courts comprise **regular** and **special courts**. The structure of the **regular courts**, civil and criminal, is composed of **magistrate courts**, **courts of first instance** and **appeal courts**. The **special courts** include **religious**, **security**, **military** and other courts.

### **1. Judicial Structure**

**Regular courts** have overall jurisdiction in civil and criminal matters. They are constituted according to the **2002 Judicial Authority Law** and the *Formulation of the Regular Courts Law*. The formation of the regular courts is organized at four levels: the **Magistrate Courts**, **Courts of the First Instance**, **Courts of Appeal** and the **Supreme Court**.

#### **Magistrate Courts**

The magistrate courts are the lowest level of the judicial hierarchy. They have jurisdiction in minor cases. At the end of **2004**, there were 17 magistrate courts in the West Bank and the Gaza Strip. Each magistrate court has a single judge. In civil matters, these courts have jurisdiction over two types of cases. The first are cases whose monetary value does not exceed 20,000 Jordanian dinars (approximately US\$30,000). The second are thematic and related to certain cases, regardless of their value, such as division of property and usage of real estate. Magistrate courts also have jurisdiction over certain offences. Decisions of magistrate courts may be appealed against to courts of the first instance.

#### **Courts of First Instance**

The courts of first instance have general jurisdiction over all civil and penal cases falling outside the jurisdiction of magistrate courts. They review, as appeal courts, judgments of magistrate courts. These courts are established in the district centres. Courts of first instance convene in panels consisting of three judges. They may be constituted by one judge only in urgent matters. At the end of **2004**, there were 11 first instance courts in the West Bank and the Gaza Strip. Decisions of these courts may be appealed against to the courts of appeal.

#### **Courts of Appeal**

The courts of appeal are courts of second instance. Their competence is to review judgments of the first instance courts. Currently, there are two courts of appeal, one in the West Bank and another in the Gaza Strip. They convene in panels of three judges. Their decisions are final, except in aspects of law that might be reviewed by the **Court of Cassation**.

#### **The Supreme Court**

The Supreme Court is the highest court in the judicial structure. It has two jurisdictions as the **High Court of Justice** and as the **Court of Cassation**. In addition, temporarily and until the establishment of a Constitutional Court, it also exercises the jurisdiction of the **Constitutional Court**.

The **High Court of Justice** has jurisdiction to review the decisions of the public administration. These include abolishing regulations and decisions issued by the government affecting individuals or property and reviewing prison sentences and release orders. It is made up of the **Supreme Court president and at least two judges**.

Established in **2002**, the **Court of Cassation** is made up of the **Supreme Court president and four other judges from the High Court**. It has jurisdiction over appeals in civil and criminal cases decided by the courts of appeal, appeals in personal status matters of non-Muslims (decided by religious courts), and challenges raised to it from courts of first instance in its appellate capacity (article 30, *Law of Judicial Organisation*). It also adjudicates in any conflict of jurisdiction among various courts.

Article 94 of the **2002 Basic Law** provides for the creation of a **Constitutional Court** to review the constitutionality of laws and regulations, the interpretation of the *Basic Law* and legislative texts, and to settle jurisdictional disputes that arise between judicial and administrative entities that have judicial jurisdiction. The Supreme Court assumes the role of the Constitutional Court temporarily until that is formally established (see above).

## **2. Special Courts**

Special courts have jurisdiction over specific categories of persons or types of issues.

### **Religious Courts**

The religious courts comprise the **Islamic** (*Shari'a*) courts and **Christian** councils. The **Shari'a courts** comprise **courts of first instance** and **two courts of appeal**. A **High Court**, which supervises the lower courts, was created in **2003**. The Shari'a courts have jurisdiction over the personal status of Muslims, cases involving indemnity for bodily injury and over the establishment and administration of endowments. Currently, there are 35 courts of first instance. The **High Shari'a Council** was created in **2003** as an administration of the Shari'a courts and headed by the **Chief Justice**. With the formation of the High Court and the establishment of the High Council, the administration of the Shari'a judiciary was unified between the West Bank and the Gaza Strip.

The **Christians** have their own **religious councils** (or courts). These councils have jurisdiction over personal status and matters of religious endowments. There are three denominational councils in the West Bank: **Roman Orthodox**, **Latin** and **Arab Episcopal Evangelical**. The Christian court in the Gaza Strip is known as the **Ecclesiastical Court of the Orthodox Church**. It consists of the spiritual leader of the Orthodox Church as president and four lay members. There is a special way to appeal against the councils' rulings.

### **State Security Courts**

The **State Security Courts** were formed by presidential decree in **1995**, based on the British mandate's *Emergency Regulations* of **1945**. The courts adjudicated security cases regardless of whether the defendants were civilian or military persons. Their judges were mainly military personnel. Defendants had no right of appeal against the decisions of these courts. The courts' decisions were subject to review by the

President of the Palestinian Authority (PA) who reserved the right to approve, cancel or mitigate the courts' decisions.

Palestinian and international human rights organizations have repeatedly criticised the security courts, as they violated basic requirements of fair trial. In **March 2003** the **Minister of Interior** declared that the PA had *ipso facto* abolished the security courts after ratification of the *Basic Law*. Subsequently, in **July 2003**, the **Minister of Justice** issued an order confirming that declaration. After **September 2003**, no case was referred to the security courts. However, their final abolition should be formalized by a presidential decree, thus following the same procedure as that which created the Security Courts.

### **Municipality Courts**

These courts have jurisdiction over cases related to the *Local Government Law 1997*. They operate within the scope of municipalities and conduct their sessions on the municipality premises. They are constituted by one magistrate judge.

### **Election Appeal Court**

This court was created according to the *Palestinian Election Law 1995*. Its jurisdiction is limited to claims against decisions of the **Election Commission** and matters related to presidential, legislative and local government elections. The Court operates on an *ad hoc* basis during election seasons. For example, during the presidential elections of **9 January 2005**, the PA established an election court. The Court received and decided upon claims brought before it.

### **Income Tax Appeal Court**

This court operates only in the West Bank and derives its jurisdiction from the *Income Tax Law 1964*. It was re-established by a presidential decision in **1997**. It is composed of three judges, with an appeal judge as president. The **High Judicial Council** decided to abolish the court in **2002**. In **2004**, however, the **PA President** issued a new decision to re-establish this court.

## **3. Military Tribunals**

These courts have jurisdiction over offences committed by members of the **Palestinian security forces**. They apply the *Military Revolutionary Penal Code* and the *Revolutionary Criminal Procedures Laws*, both issued by the **Palestinian Liberation Organization (PLO)** in **1979**. Article 92 of the **2002 Basic Law** authorizes the establishment of military courts but does not grant them jurisdiction beyond military affairs. Having their own administration, military courts are distinct from regular courts, and employ judges and prosecutors who are drawn from military personnel.

The **military courts** are divided into **district**, **permanent**, and **special courts**. Each district court is composed of a single judge and has jurisdiction over offences for which punishment does not exceed one year's imprisonment. Each permanent military court is composed of three judges. A special military court is formed for a specific case and has jurisdiction over offences committed by officers ranking as major or higher. Decisions of the military courts concerning punishments of less than three years imprisonment must be approved by the **Director-General of the Police and Public Security Judiciary**. Similarly, the **PA President** retains the power to approve

decisions with punishment exceeding three years imprisonment, to grant amnesty, and to reduce or annul the decision or to order a re-trial.

#### **4. Judicial Council**

Article 91 of the *Basic Law* provides for the creation of the **High Judicial Council**. Accordingly, Articles 37-59 and 81 of the 2002 *Judicial Authority Law* regulate the structure and functions of this Council.

The first nine-member Council was formed in **2003** by a presidential decree. Headed by the **President of the Supreme Court**, the Council is composed of **three Supreme Court judges, three Heads of Appeal Courts, the Attorney General and the Deputy Minister of Justice**. According to the 2002 *Judicial Authority Law*, the High Judicial Council has wide powers in the judicial administration. These include nominating persons to be appointed as judges by the PA President and to conduct inspection over courts. The Council decides upon the composition of the courts and on the transfer of judges from one court to another. It is in charge of training, promoting, prosecuting and dismissing judges. The Council derives its authority independently from the Executive. However, in practice, relations between the **Judicial Council** and the **Ministry of Justice** are yet to be settled. Conflict between the two sides over the distribution of functions, such as overseeing the court personnel, is ongoing.

#### **5. Court Administration**

The **Ministry of Justice** also has some authority in court administration. It has, according to the 2002 *Judiciary Authority Law*, a mandate to determine sites and geographical jurisdiction of magistrate courts and to accept judges' resignations after they have been submitted to the **Judicial Council**. The Ministry also exercises administrative and financial jurisdiction over court personnel according to the *Civil Service Law 1998*. The jurisdiction includes appointing, promoting and dismissing employees, constructing or renting court buildings and fixing court holidays.

#### **6. Budget and Autonomy**

Article 3 of the 2002 *Judicial Authority Law* provides that the **Judicial Authority** shall have a separate budget, which appears as a chapter in the General Budget. The **High Judicial Council** determines the judiciary's budget and supervises its implementation. The institution formally responsible for setting up the budget devoted to courts is the **Ministry of Justice**, which determines it independently from the executive and legislative branches. The *Judicial Authority Law* allocates a special budget to the judicial branch and entrusts the High Judicial Council with implementing it. The **High Judicial Council** is thus responsible for preparing the budget that is to be submitted to the **Ministry of Justice** for formal approval in accordance with the *Law Regulating Public Budgets*. It is also the council's responsibility to oversee how the budget is spent.

Funds are not distributed equally among the courts as needs vary from one court level to the other. However they are not used to punish or reward courts for the behaviour of particular judges.

#### **7. Enforcement of decisions**



Implementing court decisions is an absolute obligation. Article 97 of the *Basic Law* considers the abstention or suspension of such implementation as a crime. According to the *Criminal Procedures Law*, the enforcement of judicial decisions is the responsibility of the police in accordance with the stipulated procedures. In each court, there is an enforcement section in charge of executing the court's rulings. In practice, however, the security agencies and certain ministries fail to implement some court decisions, including decisions of the High Court of Justice related to orders to release illegally detained persons. The Israeli Army's destruction of police headquarters and preventing mobility of police officers made the execution of court decisions sometimes impossible.

### c. Judicial Actors

#### c.1. Judges

##### 1. Independence and Impartiality

(see "Attacks on Justice 2004")

Article 2 of the **2002 Judicial Authority Law** provides that judges are independent and are under no authority other than that of the law. Judges have the freedom to make their decisions impartially in accordance with the law. There is no law giving immunity from being sued in the courts to government officials. The **High Court of Justice** has taken decisions against the government in cases such as land confiscation and political detention. In such cases, no reprisals were taken against judges. Nonetheless, in practice, several forces threaten judges' independence. There have been reports of government influence over judges' decisions. In certain instances, judges receive phone calls from individuals and officials telling them how to rule. Judges often receive promotions without due process.

##### 2. Qualifications, Appointment and Training

To qualify for the position of judge, a person must fulfil a number of basic requirements. According to Article 16 of the **2002 Judicial Authority Law**, to be a candidate for a judge's position, the person should be a Palestinian citizen, hold a university degree in law, not have been convicted of professional misconduct, be fluent in Arabic and must put an end to any membership in a political party. In addition, according to Article 19, such a person must fall under one of the following categories: former judge, prosecutor, lawyer, or professor of law. However, in practice, these requirements were not always respected. New judges were often selected from newly graduated lawyers who lacked experience. Some appointments were based on personal relations, such as being affiliated to the government's party, or being a relative or friend of a high-ranking official.

The appointment of judges is reserved, according to Article 18 of the **2002 Judicial Authority Law**, to the PA President upon nomination from the High Judicial Council. Article 18 of the same law specifies the procedure to be followed in making such appointments; by initial appointment (as specified above), by promotion on the basis of seniority and by selection from amongst the prosecutors. Article 19 stipulates that the **president of the Court of Appeal** must have served in that same Court for at least five years before being qualified to be president. Article 20 adds that a **Supreme Court judge** must have served at least three years as a judge in the appeal court, or

served the equivalent length of time as a prosecutor or worked as a lawyer for at least ten years.

Article 17 of the **2002 Judicial Authority Law** requests the **High Judicial Council** to formulate regulations on training before appointing persons as judges. However there is as yet no permanent judicial training programme or institution. New judges start work as soon as they are appointed, without training. Nonetheless, ongoing training programmes are often organized, in coordination with the High Judicial Council, by the United Nations, NGOs and academic institutions.

### **3. Security of Tenure**

Security of tenure is guaranteed by law. Article 90 of the **2002 Basic Law** and Article 27 of the **2002 Judicial Authority Law** provide that judges cannot be dismissed and their services cannot be terminated otherwise than as stipulated in the law. Under Article 34, the mandatory retirement age for judges is 70. Upon retirement, judges receive a pension.

### **4. Freedom of Expression and Association**

According to Article 28 of the **2002 Judicial Authority Law**, a judge may not be involved in any activity that may undermine his impartiality and independence. The **High Judicial Council** could prevent a judge from taking part in activities that went against the requirements of his office. Article 29 prevents judges from being involved in politics. Otherwise, there is nothing in the law preventing judges from expressing their opinion, constituting professional associations or participating as members in other associations, and this is left to the Higher Judicial Council to decide.

### **5. Professional Secrecy and Immunity**

Articles 28-30 of the **2002 Judicial Authority Law** highlight the professional limitations that judges must respect. These include preventing judges from taking part in commercial activities and from being involved in cases where their relatives are parties. Judges are obliged to abstain from releasing any confidential information. According to Article 30 of the *Basic Law*, judicial mistakes shall result in compensation by the PA. In 2003, the application of the schedule of positions, salaries, and allowances attached to the **2002 Judicial Authority Law** was initiated. This granted judges salaries, allowances and incentives that put them in a favourable position compared with other government employees.

### **6. Discipline, Suspension and Removal**

This matter is regulated in detail in Articles 48-59 of the **2002 Judicial Authority Law**. A judge may be warned, reprimanded or removed from office for misconduct. A committee of three senior judges from the **Supreme Court** must be formed to examine and decide such cases. Proceedings against a judge may be initiated by the **Attorney General** upon request from the Minister of Justice, the President of the Supreme Court or the President of the Court in which the accused judge is serving. All the committee proceedings must be confidential unless the accused judge requests otherwise. The decision to remove becomes final once a presidential decree is issued to this effect. In the case of criminal proceedings, the proceedings may be initiated only after obtaining the permission of the **High Judicial Council**, which also determines which court may decide on the matter.

## **7. Accountability and Corruption**

The *Judicial Authority Law* of **2002** provides strict rules against corruption among judges. Article 28 stipulates that every judge must, upon appointment, disclose his assets and those of his immediate family members, including property, shares and debts. In practice, cases of corruption among judges are rare.

### **c.2. The Legal Profession**

#### **1. Independence**

Lawyers are free and independent, according to Article 2 of the *Law N°3* of **June 1999** *Organising the Legal Profession (Legal Profession Law* hereafter). The same article provided that lawyers are under no authority save that of the law. No legal provisions undermine the ability of a lawyer to meet with his/her client upon arrest. It is a right of the suspect to request the presence of a lawyer before being interrogated, one of the requirements for fair trial. Furthermore a lawyer is granted access to his client at any time following his arrest and leading to trial. Should the lawyer fail to attend the interrogation sessions, he is entitled to have access to the statements made by the accused person. These rights, *inter alia*, are guaranteed by Article 12 of the **2002 Basic Law** and Articles 97, 98, 102, 103, 124 of the **2001 Criminal Procedures Law**.

Lawyer/client confidentiality is provided for by Article 211 of the **2001 Criminal Procedures Law** that prohibits reliance on any information obtained from letters or conversations between a lawyer and his clients.

Generally, lawyers are respected by all official institutions (government, public institutions and public administration). As a direct consequence of the election of the **Council of the Bar Association** in **July 2003**, tensions between the Bar Association and the High Judicial Council were ongoing **throughout 2004**. This was due to disagreements in the way that the High Judicial Council handled the administration of justice (e.g. slow court proceedings, absence of judicial inspection and protests against the appointment and promotion of certain judges). Such tensions, in fact, confirm the Bar Association's independence as a body in charge of defending lawyers' interests. In practice, however, there have been several cases where law enforcement officials have impeded the access of lawyers to their clients. This has particularly been the case of clients detained by the security service (e.g. intelligence, preventive security), although such practices are contrary to the law.

#### **2. Qualifications and Training**

Article 3 of the **1999 Legal Profession Law** **requires** any person who wants to qualify as a practising lawyer to fulfil a number of criteria. To qualify as a lawyer, according to Articles 3 to 6 of this law, the person should be a Palestinian citizen, with a first university degree in law, and should have completed legal training. A would-be lawyer must therefore have obtained a university degree in law, including Islamic law. In cases where the degree was obtained at a foreign university, the **Palestinian Ministry of Higher Education** must have recognized the credentials. Lawyers must also undergo an apprenticeship for a period of two years. The apprenticeship includes working in a law office and attending court hearings. Informal training courses on legal issues, including human rights, humanitarian law and civil and criminal

procedures are organized on an *ad hoc* basis by the United Nations, the Bar Association, PICCR, NGOs and academic institutions. In **October 2004**, the **Bar Association** launched a compulsory legal training programme for trainee lawyers. Only a small percentage of lawyers (less than 10%) are women and there are no female lawyer representatives in the Bar Council.

### **3. Duties and Responsibilities**

Lawyers should refrain from certain actions that may contradict their credibility and independence. According to Articles 7 to 9 of the **1999 Legal Profession Law**, lawyers should not be employed in private or public service or hold official positions. Article 9 prevents any lawyer from acting as an agent for a public institution in which he is currently working and during one year after leaving such an institution. The sanction for such actions is removal from the Bar Association, which means that the lawyer cannot practise law, according to Article 8 of this law.

Lawyers are subject to professional obligations according to Articles 26 to 39 of the *Legal Profession Law*. The lawyer should act in good faith in accordance with the law. He may not act as an agent for the plaintiff and the defendant in the same case. A lawyer may not make commercial publicity. He must keep client information confidential.

### **4. Freedom of Expression and Association**

Articles 20 to 25 of the **1999 Legal Profession Law** guarantee the lawyer's freedom of expression. A lawyer may choose the way that he wishes to defend his client. He should not be responsible for the consequences of his consultations. A lawyer may not be punished for any action undertaken as part of his professional functions. Official institutions are obliged to cooperate with lawyers and to treat them respectfully. No police research can be undertaken by a law office without the **Bar Association's** approval. Nothing in the law prevents lawyers from being engaged in politics or from expressing their opinion. The **Bar**, on various occasions during the reporting period, has protested against behaviour of the public authorities that it considers inappropriate or illegal, including behaviour of the **High Judicial Council** and of the **Ministry of Justice**.

Lawyers are permitted to take part in public discussion of legal matters, although generally speaking they are not extensively involved in such discussions.

### **5. Professional associations**

The **Bar Association** is the formal body representing lawyers and administering the legal profession in accordance with the **1999 Legal Profession Law**. On **9 July 1997** the three lawyers associations (one in Gaza and two in the West Bank) unified and formed the **Palestinian Bar Association**, created by a Presidential Decree. The first freely elected **Council of the Bar** was created on **11 July 2003**. The second elections were held in **April 2005**. The Council is composed of 15 representatives. (see "Attacks on Justice 2004").

According to Article 12 of the *Legal Profession Law*, the **Bar Association** has the following functions: to defend the interests and freedoms of lawyers; to promote the rule of law and human rights; to develop legal education programs; to facilitate the work of the judiciary; to encourage legal research; to support lawyers socially and

economically, including questions of health insurance and pensions; to establish a cooperation fund for lawyers. Article 42 stipulates that the elected **Council of the Bar** shall represent the lawyers, enact regulations to implement the *Legal Profession Law*, register lawyers, settle disputes related to the legal profession and establish a secretariat to administer legal profession affairs.

Any Palestinian lawyer has the right to be member of the **Bar Association**, according to Article 13 of the **1999 Legal Profession Law**. According to Articles 6 and 18 of the **1999 Legal Profession Law**, it is compulsory to be a member in the Bar to practise law. All lawyers have the right to be elected and to elect the **Bar Council**. In accordance with Article 40, to be elected as a member of the Council, a lawyer should have practised law at least for 5 years. The elections, according to Article 37, should be organized every two years.

## **6. Disciplinary Proceedings**

Lawyers are subject to disciplinary jurisdiction. For misconduct, according to Article 29 of the *Legal Profession Law*, a lawyer may be warned, reprimanded, suspended from practising law or removed from the profession. A three-member committee composed of lawyers each having practised law for at least 10 years should be formed by the **Bar Association** to investigate alleged claims in each case against a lawyer. Claims may be brought against a lawyer by the Attorney General, other lawyers or by the parties of a case in which he acted as an agent. The complaint must then be forwarded to the lawyer, who has 15 days in which to respond to the allegations. At the end of this period, the **Bar Council** reserves the right to lodge the complaint with the disciplinary council. Proceedings must respect the guidelines and guarantees provided for by the *Law on Criminal Adjudication*. The committee's decisions may be appealed to the **High Court of Justice** within 30 days.

### **c.3. Prosecutors**

#### **1. Independence**

According to Articles 2 and 71 of the **2002 Judicial Authority Law**, the independence of prosecutors is guaranteed in the same terms as those set out for the independence of judges. However, there is no legal guarantee preventing the **Executive** from dismissing the **Attorney General** at will, which makes him likely to be vulnerable to pressure from the Executive. In practice, prosecutors are generally able to perform their professional functions free from intimidation. Nevertheless, prosecutors have failed to investigate some murder cases, such as those aimed at alleged collaborators with the Israeli occupation authorities.

#### **2. Qualifications, Selection and Training**

The qualifications of prosecutors are the same as those for judges according to Articles 16 and 61 of the **2002 Judicial Authority Law**. These are: to be a Palestinian citizen, hold a university degree in law, not have been convicted of professional misconduct and be fluent in Arabic. Also, a candidate must resign his membership in any political party. In addition, according to Article 19, a candidate must fall into one of following categories: former judge, lawyer or professor of law. According to Article 47 of the **2002 Basic Law**, the **Attorney General** is appointed by the **president of the PA**, upon recommendation from the **High Judicial Council**, and

approval of the **PLC**. However, in practice PLC approval has not been obtained in the appointment of the Attorney General so far. There is no definite legislative provision specifying the responsible body for the appointment of prosecutors. In practice, the **Attorney General** nominates persons for the position of prosecutor to the **High Judicial Council**. Upon the Council's recommendation, the **PA President** formally appoints the prosecutors. As of **April 2005**, there are some attempts from the **Palestinian President**, supported by the **UNDP**, to clarify the relationship between the Ministry of Justice, the High Judicial Council and the Attorney General's Office.

As with judges, there is no official training programme for prosecutors. Many newly graduated lawyers have been selected as prosecutors. Nonetheless, ongoing training programmes are organized on an *ad hoc* basis by the Attorney General's Office, the United Nations, NGOs and academic institutions. Prosecutors have often been included in training programmes for judges.

### **3. Status and Conditions of Service**

The **2002 Judicial Authority Law** regulates the composition and jurisdiction of the **office of the Attorney General**, the appointment, duties and responsibilities, immunities, disciplinary questioning and salaries of members of the office of the Attorney General.

Prosecutors are considered part of the executive branch. Article 98 of the **2002 Basic Law for the Palestinian National Authority** provides that "The Attorney General shall be appointed through a decision issued by the President of the National Authority, based on recommendations submitted by the Supreme Judicial Council and endorsed by the Legislative Council." The **Minister of Justice** appoints Members of the **Prosecutor's Office** based on recommendations of the **Attorney General**.

The remuneration received by prosecutors is adequate. They are entitled to a pension upon retirement. As with judges, prosecutors' salaries were increased by enforcing the financial section of the **2002 Judicial Authority Law** in **2003** (see above).

### **4. Role in Criminal Proceedings**

According to Article 13 of the *Law of the Principles governing Adjudication*, the prosecutor is charged with the task of detaining the suspect and supervising the investigation.

According to Article 98 of the **2002 Basic Law** and Article 67 of the **2002 Judicial Authority Law**, prosecutors have the authority to initiate and investigate criminal cases. The **2001 Criminal Procedures Law** regulates the detailed procedures that prosecutors should follow in investigating crimes. Courts have the final decision over claims brought by prosecutors.

Article 349 of the *Law on Criminal Adjudication* stipulates that the prosecutor has the right to appeal to higher judicial authorities against court decisions. Article 239 of the same Law stipulates that the appeal must take place within 30 days of the decision.

### **5. Disciplinary Proceedings**

Every prosecutor is supervised by and is accountable to his superior. According to Article 72 of the **2002 Judicial Authority Law**, disciplinary proceedings applicable to

judges apply also to prosecutors. According to Articles 48 to 59 of the **2002 Judicial Authority Law**, a prosecutor may be warned, reprimanded or removed from office for misconduct. A committee of three senior judges from the **Supreme Court** must be formed to examine and decide such cases. The proceedings may be initiated against a prosecutor by the **Attorney General** upon the request of the Minister of Justice, the President of the Supreme Court or the President of the Court in which the accused prosecutor is serving. All the committee proceedings must be confidential unless the accused prosecutor requests otherwise. The decision to remove becomes final once a presidential decree is issued to this effect. In the case of criminal proceedings, the proceeding may be entered into only with the permission of the **High Judicial Council**, which also determines which court may decide on the matter.

#### **d. Access to Justice**

##### **1. Access to Justice**

Nothing in the law deprives persons from bringing their claims to courts. According to Article 9 of the **2002 Basic Law**, no discrimination based on race, sex, religion, language, political opinion or disability is permitted before the courts. However, as a result of the Israeli closure of the Palestinian areas since the outbreak of the uprising in September 2000, judges and individuals were unable to reach courts on many occasions. Access to justice was restricted as a result. In consequence, the judicial process became slow and executing court decisions was difficult. Criminal cases may be brought before courts free of charge according to the **2003 Judicial Fees Law**. In civil cases, courts should not refuse a case if the person is financially unable to pay the fees, according to Article 14 of the same law.

##### **2. Fair Trial**

Fair trial is guaranteed by law. As fundamental rights, Articles 11 to 15 of the **2002 Basic Law** provide a number of guarantees of fair trial. These include the prohibition of detention without a judicial warrant, the obligation to inform detainees of the reasons for their detention, the right of the detainee to see a lawyer, the right of referral to a court without delay and the presumption of innocence. Furthermore, only the accused can be punished: punishment may not be extended to include his relatives nor is the seeking of revenge permitted. Collective punishment is prohibited as is the punishment of someone for a crime not recognized by the law or with a penalty not existing in the law.

Similarly, a number of articles of the *Civil and Commercial Procedures Law* and many articles of the **2001 Criminal Procedures Law** recognize such guarantees of fair trial as the right for non-Arabic speakers to have an interpreter, the right to stay silent, the right to communicate with a lawyer and family members. Other guarantees include a limited period of detention before referring to the court, separation of convicted prisoners from prisoners in pre-trial detention and the right of a deaf person, who is unable to write, to be assisted by a person who understands him/her. The right of appeal to a higher court is guaranteed in all cases.

##### **3. Legal Aid**

Legal aid is guaranteed by law. Article 244 of the *Criminal Procedure Law* obliges the courts to provide the accused with a lawyer if he/she is unable to hire one owing to

a lack of financial resources. The court pays such a lawyer according to article 245 of the *Criminal Procedure Law*.

Article 44 of the **1999** *Legal Profession Law* entitles the **Bar Association** to commission any lawyer to provide free legal representation once a year for poor persons. Some NGOs provide individuals with *pro-bono* legal representation or counselling and women with legal advice, and represent them in personal status cases. Some NGOs also assist victims before Israeli courts with regard to political prisoners, land confiscation and home demolitions.

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