

Editorial

Maximum ceiling for salaries of workers in civil society organizations must be established

The Financial and Administrative Control Office announced that it has submitted 11 files related to charges of corruption against civil society organizations. These charges include items of official expenses, fake salaries, abuse of position for personal benefit, embezzlement, the forging of financial statements and disbursement of funds for purposes other than those specified. The charges also include the inflation of administrative expenses in the budgets of some organizations, up to 75% of the overall budget in some cases, and high salaries for staff in senior posts. There are 2750 NGOs operating in the northern districts, in addition to 190 foreign NGOs. This case has provoked a storm of debate and anger.

We at the Palestinian Center for the Independence of the Judiciary and the Legal Profession – Musawa believe that this announcement is an appropriate opportunity to implement the following steps:

1. The Anti-Corruption Commission needs to announce the results of its investigations on the files submitted to it by the Financial and Administrative Control Office and the prompt transfer of those alleged to be guilty to the public prosecution and the Corruption Crimes Court for trial under normal legal procedures.
2. To promote the role of the Financial and Administrative Control Office, the Anti-Corruption Commission and other relevant official bodies in monitoring the performance of civil society organizations as this is a legal and essential requirement.
3. To reach an agreement between civil society organizations as soon as possible on setting a maximum ceiling for the salaries of workers and declare this as part of the ethical code of conduct for all civil society organizations.
4. To call upon all civil society organizations to publish their audited financial reports and make them accessible to the general public; the funds administered and spent by these organizations represent public funds and must be subjected to legal and social overview.
5. To review the Law of Charitable Associations and Community Organizations and its regulations in order to end all conflict of interests, including membership in the board of directors and employment criteria.

We believe that prompt action to establish these mechanisms and procedures and implement them as soon as possible will reinforce the confidence and trust of the general public in civil society organizations and their role in community development and fighting corruption.

Page - 2

Page - 5

Page - 7

Page - 11

Page - 13

Page - 15

Strip searches violate authorized jurisdictions

The public prosecution has the authority to inspect and search in the context of its legal jurisdiction to represent society and defend it from crimes. It has every authority to conduct search operations for evidence and the tools used in crime. However, this authority has certain limitations that forbid strip searches of individuals since this is a violation of human dignity as guaranteed under the constitution.

However, no individual is immune from investigation if there are legal grounds and no individual may cite his professional position to prevent the public prosecution from performing its duties and legal authorities; no individual is above the law.

The problems of the Sharia judiciary must be resolved

The Sharia judiciary has special significance in relation to the family and its powers affect all components of the Palestinian family. The Sharia judiciary is the basic pillar of Palestinian society and protects its rights according to constitutional values.

Due to its importance, it is now time to review the problems facing the Sharia judiciary. Legislative and administrative intervention and political will must be translated into practical measures in a radical process of reform. Musawa has sent several memos to this effect to the President and his legal advisor. There are also shortcomings and violations within this sector, as exposed in the media.

An interim High Judicial Council is required to reform and restructure the judiciary

There are growing calls for serious reform of the judiciary; the circle of individuals and organizations calling for reform has expanded to include judges themselves, the Palestinian Judges' Association and the Judges' Club. The judicial authorities are also increasingly mobilized, along with a growing number of civil society organizations calling for the formation of an interim High Judicial Council and an independent and neutral national committee to examine the status of the judiciary and its shortcomings, assess the performance of those in charge and those working in the public prosecution, and propose means of reform.

Musawa is one of the leading legal institutions that have recognized the need for reform. Amidst growing demand, the time has come to take the political, administrative and legal decisions to embark on a real reform process in the judicial authority as an urgent social and legal step.

Problems of Sharia judiciary still unresolved

The Palestinian Sharia judiciary is still beset by problems and requires political and legal intervention in relation to its structure, laws and regulations. The main problems include the combining of the posts of head of the Sharia High Court and Head of the High Council for Sharia Judiciary and the post of Chief Justice. This is in violation of the law.

There is also the problem of the formation of the Sharia Appeals Court on the basis of administrative decisions that violate the law. Another problem concerns the fact that the Sharia High Court is still in operation despite being declared unconstitutional because the High Court assumes this authority pending the formation of the constitutional court.

Circulars issued by the Head of the Sharia High Court are unconstitutional and violate the Basic Law. The Sharia judiciary lacks an electronic archive system so many crimes are not recorded, although they have considerable impact on religious and social values.

The records of the Sharia courts are in a poor condition and risk being destroyed during serious efforts to organize and maintain them in line with standard international practice. In recent months, initiatives have been taken to resolve these problems, but the initiatives themselves are illegal.

These problems have been the subject of several memos sent

by Musawa to the President and his legal advisor and we are still waiting for appropriate legal, political and administrative measures to be introduced to resolve the problematic issues and find legal solutions.

Musawa notes that the Council of Ministers is not authorized to issue regulations that cover the formation of a High Judicial Council and/or the formation of the Sharia High Court or other courts. The authorities of the Council of Ministers do not relate in any way to the jurisdiction of the courts, procedures for taking decisions, or membership criteria.

Musawa received a memo that was submitted to the former PM Dr. Salam Fayyad and his cabinet signed by members of the Sharia High Judicial Council, judges in the Sharia High Court, the Head of the Sharia Appeals Court, the Inspector of the Sharia Courts and the General Director of Financial and Administrative Affairs in the Sharia High Judicial Council.

Musawa hopes that political, legislative and administrative decision makers, each in their own capacities, will examine the status of the Sharia judiciary and the memos submitted to that effect and will work to resolve the problems in accordance with the law.

Musawa also appeals to civil society organizations and social and legal organizations to provide every support to this process.



The Fatwa and Legislation Office... will it be dissolved?

Musawa has found out that a draft legal decision to dissolve the Fatwa and Legislation Office was submitted to the President. The decision stipulates that the tasks, jurisdictions, employees, funds, rights and assets are to be transferred to the Justice Ministry, which is considered to be the legal and statutory successor to assume the powers of the Office. The information center at the Justice Ministry will publish the Official Gazette according to the text of Article 2 in the proposed draft decision, while the cabinet will issue the regulations necessary to implement the provisions of the decision on the basis of a nomination by the Justice Minister. All provisions that contradict the terms of this decision shall be annulled. The draft legal decision will be presented to the Legislative Council in its first session. The relevant parties will implement the provisions of this decision and it will be published in the Official Gazette.

Following the debate on this issue, the PM Dr. Rami al-Hamdallah issued a decision to form a special committee to discuss the financial and administrative status of the Fatwa and Legislation Office. The general secretariat of the cabinet contacted all official parties asking them to name their representatives to the special committee. The office of the legal advisor to the President appointed Mr. Amer Shahin as its committee member, while the Fatwa and Legislation Office named Ms. Iman Abdul Hameed as its member.

Musawa was told that the Justice Ministry did not appoint a representative and declared that the committee does not have any jurisdiction; the Ministry maintained its decision to dissolve the Fatwa and Legislation Office. As a result, the committee did not convene a meeting.

In a later development on August 27, 2013, the head of the committee, Fawwaz Abu Zir, told Eye on Justice that the committee would start work as soon as possible, especially after it had received clear support from the President's office to proceed with its work. He added that the recommendations of the committee would be submitted to the President's office.

The Palestinian Bar Association and Musawa sent a joint memo on March 19, 2013, to the legal advisor to the President calling for the Fatwa and Legislative Office to be retained due to the importance of its role, especially in relation to previous overview of legislation and decisions issued by the executive authority and in light of the absence of the Legislative Council. Musawa affirms its respect and support for all who assume posts in the Palestinian justice system and rejects any accusations that it is siding with one party against the other. Musawa hopes that the President will not issue any legal decision to dissolve the Fatwa and Legislation Office, which requires support and qualified human resources to strengthen its supervisory and professional role.

A success story

Court of Cassation establishes a new judicial principle regarding judicial mandates

In its general assembly, the Court of Cassation established a special judicial principle regarding judicial mandates: the participation of more than one mandated member in the court panel or a court panel consisting of mandated judges does not infringe court procedures or annul its formation provided that the provisions of the mandate have been complied with i.e., the time period, methods and conditions in accordance with Article 35 of the Law for the Formation of Regular Courts No. 2 of 2005, which is an amendment to the Law for the Formation of Regular Courts No. 5 of 2001, and Article 22 of the Judicial Authority Law No. 1 of 2000.

The court ruling stated that the safeguards stipulated in these articles relate to the terms for mandating a judge and the period of the mandate.

On May 20, 2013, Musawa sent a memo to the High Judicial Council regarding legal violations of the period of mandating several judges.

Musawa did not receive a response, but considers that the court decision issued three weeks after the memo is a positive step. Musawa hopes that the High Judicial Council will abide by the ruling of the Court of Cassation in its deliberations to establish new judicial panels for the forthcoming year.

Controversy over written exam for trainee attorneys

The written exam for trainee attorneys conducted on May 2 spurred controversy about whether it adhered to the regulations for conducting the exam. Musawa sent a written memo to the Bar Association on May 5, 2013.

Four members of the committee responsible for setting exam questions also sent a memo to the head of the Bar Association.

Following the controversy, the Bar Association called for a meeting with the exam committee, several exam observers and members of the general assembly. The meeting resulted in a decision to form a committee to investigate the exam and other administrative decisions against those proven guilty of violations.

Musawa stresses the need to formalize the work of the training committee and define its tasks in relation to exam procedures, which should be taken over by specialized independent committees.

No one is above the law provided there is fair trial and the defendant is innocent until proven guilty

On May 5, 2013, Musawa sent a written memo to the head of the Anti-Corruption Commission regarding the investigation of employees in the High Judicial Council accused of corruption.

The following day, Musawa received a phone call from the head of the Anti-Corruption Commission thanking Musawa for its professional and supervisory role and for its cooperation with the Commission in implementing the national anti-corruption strategy. Musawa later discovered that the prosecution office of the Commission transferred the cases of the employees to the Corruption Crimes Court for investigation.

Musawa has heard that the Anti-Corruption Commission sent a request to the head of the High Judicial Council calling for the defendants to be suspended pending a verdict on the case. However, the High Judicial Council did not suspend the defendants and their trial is ongoing while they are free and working in their jobs.

Musawa believes that the Anti-Corruption Law and relevant legislation require review to guarantee prompt action in cases, provided that the defendants receive a fair trial and are treated as innocent until proven guilty. This ensures public confidence in the existence of a real and serious political will in government institutions to work effectively to fight corruption.

Right to defense a basic component of trial

On April 11, 2013, Musawa received a complaint from an attorney who alleged that he had been expelled from the magistrate's court by a judge because the attorney objected to the distortion of a statement given by a witness during the recording of the statements in court. The attorney stated that the judge continued the court proceedings without the presence of any attorney to represent his client or his rights.

On April 14, 2013, Musawa sent a written memo to the High Judicial Council regarding the attorney's complaint. A written response was received on April 25, 2013, from the general secretary of the High Judicial Council stating that the complaint had included the phrase, "I think that the judge has a psychological problem" and this is a personal insult to the judge and to the reputation of the judicial system. As a result, the High Judicial Council decided to reject the complaint in its current wording.

Musawa believes that the reputation of the judiciary must be preserved, but the defendant also has a right to be represented and this should be a basic component ensured by the judge. The incident requires investigation because this is a violation of a public right, regardless of who submitted the complaint.

Limitations on use of vehicles belonging to the judicial authority

Musawa sent a written memo on April 3, 2013, to the High Judicial Council regarding the use of vehicles belonging to the judicial authority for purposes other than those pertaining to work. Musawa has not received a response and sent another memo on May 5, 2013, requesting a reply.

Although the High Judicial Council has responded to several memos sent by Musawa, it has failed to respond to others, including the memo on the use of vehicles.

BA in law required for registration of trainee attorneys

On April 1, 2013, Musawa sent a memo to the head of the Bar Association and members of the board requesting that a circular be sent to all attorneys who were registered on the basis of their Master's or PhD degrees to provide the Association with their first university degree in law. If the registered attorney does not have a BA degree certified by the Ministry for Higher Education, the training should be

stopped and the attorney's name removed from the register of attorneys.

Musawa has not received a written response, but in a verbal response the Bar Association stated that it complies with the principles stated in the Musawa memo and will take measures to guarantee that attorneys abide by the provisions of the law regulating the legal profession, including Article 3 and its amendments.

Transfer or dismissal of employees or violation of their rights due to membership in an illegal union must be stopped

Musawa sent a written memo on April 1, 2013, to the High Judicial Council demanding immediate annulment of a decision to transfer administrative judicial employees because they attempted to form an association. The Council decision is a violation of constitutional rights. Musawa did not receive a response to its memo.

Musawa has heard that the transfers did not prevent the employees from continuing to form an association to protect their rights and improve their performance.

Chief Justice illegally terminated the post of a marriage official

Musawa received a written complaint on March 31, 2013, stating that the complainant had worked as marriage official since 1998, but his work had been terminated on September 26, 2011, without any prior notice.

Musawa sent a written memo on April 1, 2013, to Mr. Hasan Al-Ouri, the legal advisor to the President, requesting that he investigate the complaint and take necessary action.

Musawa has not received any response to its memo and hopes that the complaint has been dealt with according to the law.

When will attacks against attorneys cease?

On January 2, 2013, Musawa sent a memo to the High Judicial Council following a declaration by the Bar Association that it would suspend work before all courts following complaints by 30 attorneys from Tulkarem that a policeman at the court of first instance in the town had attacked an attorney.

Musawa did not receive a response, but the head of the High Judicial Council told al-Quds newspaper on April 3, 2013, that according to a report by the director general of police, the policeman had not committed any wrongdoing and had not

assaulted the attorney. This statement sparked a strenuous response from the Bar Association, which sent a written memo to the High Judicial Council on April 10, 2013.

In a later development, Musawa was told that the Bar Association and High Judicial Council had agreed to form a joint committee to look into the demands of the Bar Association and to resolve any problems that arise between attorneys and the court police and/or judges.

Shouting at litigators violates the judicial code of conduct

On March 31, 2013, Musawa sent a written memo to the High Judicial Council calling for an investigation into a complaint by a member of the public who was shouted at by a magistrate's court judge and threatened to be kicked out of court.

On June 12, 2013, Musawa received a written response from the general secretary of the High Judicial Council stating that the subject of the complaint had been resolved and legal and administrative measures had been taken, although the nature of the measures was not clarified.

Once again, judges must not be honored while still in office

On March 3, 2013, Musawa sent a memo to the High Judicial Council about the conditions and methods by which judges may be honored. The memo was sent following a report published on the website of the High Judicial Council about the honoring of two magistrate's court judges while they are still in office.

Musawa previously sent a memo on October 22, 2012, to the High Judicial Council expressing its concern about the honoring of judges by non-judicial parties.

Musawa expresses its respect and appreciation for the noble goal of the head of the High Judicial Council, who intended to honor and show appreciation to the judges, but the step had a negative impact on the other judges who were not honored.

Musawa stresses that judges should not be honored by any official or private party while still in office since this can affect the judge's impartiality.

Musawa hopes that the High Judicial Council will take appropriate administrative measures to stop such incidents as soon as possible.

Expediency in resolving cases must not be at the expense of litigators' rights

Musawa sent a memo to the High Judicial Council about a magistrate's court judge who prevented a litigant from speaking in order to close the case in a speedy manner. This constitutes an infringement of the principles of a fair trial.

On June 12, 2013, Musawa received a written response from the general secretary of the High Judicial Council stating that the complaint was unclear as it did not specify the case number, the date, or the court that heard the case.

Another example of fragile relations between judges and attorneys

On February 25, 2013, Musawa received a written complaint from a female attorney stating that the execution judge had spoken to her in a harsh tone and insulted her and that the court police officer had expelled her from the execution department. As a result of this complaint, Musawa sent a written memo to the High Judicial Council on March 28, 2013, and received a written response on April 16, 2013.

Musawa was not given an explanation of the nature of the decision issued by the judicial inspection department regarding the complaint or the nature of the legal measures taken with regard to this case.

Success story

Non-practitioner attorney membership card

On March 12, 2013, Musawa sent a written memo to the Bar Association calling for the Association to issue a special membership card for attorneys who do not practise their profession.

The Bar Association responded to the memo on March 11, 2013, and announced on its website that non-practising attorneys may obtain a special membership card for a fee of 50 Jordanian dinars. Musawa then sent a memo asking the Bar Association to reduce the fee to 10 Jordanian dinars and received a response on March 21 reducing the fee to 20 Jordanian dinars.

Musawa extends its gratitude to the Palestinian Bar Association for its response and looks forward to further cooperation that serves the rule of the law and preserves the dignity and rights of attorneys.

Judicial deliberations must not be disclosed

Musawa sent a memo on February 19, 2013, to the High Judicial Council about legal violations. The case deals with the head of the higher court who transferred a case mandating a judge to the Court of Cassation without waiting for a decision from the commission responsible in accordance with the law. The second violation dealt with the disclosure of judicial deliberations in violation of the law since the judge acted on the basis of leaked information and did not wait for the relevant party to announce its decision.

Musawa received a written response from the general secretary of the High Judicial Council stating that the complaint had been investigated and praising Musawa for drawing attention to these matters. Until the time of writing this report, Musawa had not received any explanation as to how the case had been dealt with or investigated.

Right to self defense is basic component of a fair trial

Musawa received a written complaint on February 6, 2013, from a member of the public who stated that a magistrate's court had prevented him from defending himself and threatened him with imprisonment if insisted on speaking in his defense. On February 20, 2013, Musawa sent a written memo to the High Judicial Council requesting that it investigate the case and take legal measures as the complaint relates to the basic right of the defendant to a fair trial.

On June 10, 2013, Musawa received a written response from the general secretary of the Council stating that the judge had prevented the complainant from speaking because the case had been deferred, but the complaint is being investigated by the court of first instance in its appeals capacity.

Musawa believes that a judge hearing a case must be patient and hopes that the judicial inspection department will deal with the complaint and take appropriate legal measures.

When will the mentally disabled be enabled to integrate into society?

Musawa and the Voices Society, which supports individuals with mental disabilities, sent a memo on March 2, 2013, to President Mahmoud Abbas.

The memo was signed by 126 community figures representing organizations, commissions, civil servants and legal employees who participated in the first conference organized jointly by Musawa and Voices under the patronage of the President in Ramallah on February 28, 2013, under the title "The rights of people with mental disabilities and legal guarantees". The memo called on the President to take decisions and issue instructions to all ministries and executive administrations to work immediately on the protection of the rights of people

with special needs, especially those with mental disabilities, to enable their integration in the community and ensure their rights to education, health care, psychological support and preserve their dignity. The memo called for medical equipment and special government care centers to be provided, in addition to specific social welfare and funds for their families to care for them and to facilitate their integration in the community.

Following the memo, Musawa discovered that the Ministry of Transportation has started special transportation for people with special needs and Musawa hopes that other ministries and official departments will follow this example.

40 judges demand judicial reform

Eye on Justice obtained a copy of a memo submitted by 40 judges, including nine judges from the higher court and 31 judges from the magistrate's courts, appeals courts and courts of first instance. The memo was submitted to the President demanding the formation of an interim High Judicial Council responsible for the administration of the judiciary. It also called for an independent, qualified national committee to examine the judicial system, diagnose its shortcomings and propose solutions to the problems facing it.

Following a decision by the administrative board of the Judges' Club, members carried out a series of protests, including the suspension of work. The Club issued a press statement stating that the administrative board was concerned by the conditions prevailing in the judicial system and had investigated concerns raised by judges that identified shortcomings in the work of the High Judicial Council; the protests by judges related to the activities of the High Judicial Council.

The statement continued: "We tried to communicate with the High Judicial Council to convey our concerns, but were met with stalling, evasion and failure to show any commitment to resolve any of the problems. This has had a negative impact on the reputation and accomplishments of the judiciary."

The statement outlined the main shortcomings which prompted the protest by the judges:

1. The Judicial Council is not established according to the Law on Judicial Authority.
2. There is abuse of authority in mandating judges and in the formation of the courts, which jeopardizes the work of judges.
3. The working procedures of the Judicial Council are based on personal preferences and not on sound legal standards and the provisions of the Law on Judicial Authority.
4. There is no uniform system for dealing with judges and this gives rise to friction in relations between judges.
5. Administrative problems affect the legal status of judges and force them to bring cases to protect their rights.
6. The methods by which members of committees and administrative parties that assist the Council are selected create obstacles to the work of the judge.
7. Lack of trust between the Judicial Council and judges.

According to the statement, the Judicial Council in its current form has failed to administer the judicial authority and has caused a deterioration in conditions that now requires serious work to be resolved and to implement the recommendations put forward in numerous judicial conferences.

Musawa hopes that political and legal decision makers will review the status of the judicial authority, assess the performance of all employees in the judiciary and public prosecution and work promptly to form an interim High Judicial Council and a national committee consisting of independent legal and community figures of integrity and competence to commence immediate work on reform of the judiciary to preserve its reputation, independence and integrity.

Best international standards for higher media councils

The Geneva Center for the Democratic Control of Armed Forces (DCAF) issued a special publication on the higher media councils in accordance with best international standards. The publication discussed the legal rights of the media and listed the following rights:

Diversity in freedom of speech and expression.

Absence of censorship prior to broadcasting.

Guarantee of personal freedom of journalists and reporters.

Absence of licensing or any registration system for the printed media.

Fair licensing and organization of transmission and frequencies for media outlets.

Independence of all administrative commissions, including the higher media councils.

Guarding against monopoly of the media.

The right of journalists to protect their sources of information.

The right of journalists to join professional unions that they select.

The publication described the goals of the media and the higher media councils:

To protect pluralism, neutrality, diversity and accuracy in reporting opinions.

To guarantee diversity of broadcasting commissions.

To avoid government control of frequencies and content.

To strengthen broadcasting independence.

To allocate broadcasting frequencies and licenses in a transparent manner.

To develop and implement the code of conduct for public broadcasting.

The publication also defined the principles governing the media and higher media councils:

Total independence guaranteed by law and the constitution.

An independent board of directors to be appointed by the Legislative Council.

Accountability to the general public through the parliament.

Total financial independence.

The publication described the main principles that must be included in the code of conduct for the internal management of broadcasting content:

Accuracy

Privacy

Tackling sensitive issues, such as violence, conflicts, gender

Balanced coverage of elections

Code of ethics and conduct of the profession

Mechanisms to organize media policies.

Legal training for judiciary in Gaza on Musawa's agenda

Musawa received a written request from the dean of the Higher Judicial Institute in Gaza requesting cooperation to implement training courses for attorneys and judges in Gaza. Musawa welcomes cooperation with all legal professionals in a manner that serves the rule of the law and enhances the competence of people working in the legal profession. Musawa will exert all possible efforts to organize more legal courses for attorneys and judges in Gaza.

Refer to the competent parties

Musawa has discovered that the director of property tax refused to execute a decision issued by a court of first instance on March 27, 2013, to correct the name under which a plot of land had been registered. The land is the subject of a civil dispute due to claims that the decision had been sent to the tax department from the head of the archives section, while it should come from the head of the clerk's office in the court.

The attorney representing the party that won the court decision informed Musawa that he had submitted a request to the clerk's office in the court to provide him with a letter for the property tax department and had been given a letter signed by the head of the archives department, who is responsible for rulings on cases.

Musawa stresses the importance of referring to the competent party and its authorities, while also avoiding any bureaucratic obstructions that may affect the rights of litigators.

An attorney may pursue a complaint

Musawa received a complaint from a member of the public stating that his nephew, Mohammed Ibrahim Suleiman, 22, had been arrested on April 22, 2013, by the General Intelligence Apparatus. The complaint requested that Musawa intervene to secure the release of Mohammed, who is responsible for a large family of 11 members as his father has been in administrative detention in an occupation prison since January 7, 2013.

Musawa advised the family to appoint an attorney to deal with the complaint in accordance with standard procedures. If there are violations of the right to a fair trial or if a decision by the court is not executed, the attorney then can approach Musawa to pursue the case.

Musawa received a written complaint from a Sharia lawyer saying that the head of the Sharia Higher Court had issued a decision to delete his name from the register of Sharia attorneys. Musawa informed the attorney that he can appeal against the decision at the Supreme Justice Court as this is an administrative decision that is subject to judicial review.

Debate on new draft civil service law postponed

Musawa received a written memo from the head of the cabinet, Mr. Salah Eleyyan, on March 20, 2013, requesting that Musawa provide feedback on the first draft of a new civil service law.

After studying the draft law, Musawa sent a written memo to the Cabinet outlining its comments and has since found out that the Cabinet has postponed discussion of the new draft law.



Corruption Crimes Court starts hearing of corruption case in which head of public prosecution and employees in the High Judicial Council are defendants

Musawa can report that the prosecution office of the Anti-corruption Commission has submitted a list of charges to the Corruption Crimes Court. The charges are made against the head of the public prosecution office, an attorney who holds an Israeli identity card and two settlers who are accused of forging official papers and abuse of power. The Corruption Crimes Court started proceedings on June 5, 2013. Three employees of the High Judicial Council were also charged with criminal embezzlement and illegal profit.

Musawa reiterates that a defendant is innocent until proven guilty and that such cases must be dealt with promptly as they have important legal and social ramifications.

A simple mistake or a grave mistake?

Musawa received a copy of a court case which stated "and since the defendant referred by the public prosecution is a five-year old child, he is not criminally responsible so the court has decided not to charge him."

Court language and relations between judicial bodies

Musawa received a copy of a trial that included a court order from a magistrate's court judge. The order included the following statement: "The court is shocked and denounces the inappropriate and impolite terminology and expressions used by the court of first instance in its appeal capacity; the court must select appropriate terminology when addressing another court".

Musawa obtained a copy of the order from the court of first instance and did not find any language outside the judicial linguistic lexicon; the terms used in the order are standard agreed legal terminology. The judicial inspection department was dealing with this case but the High Judicial Council did not announce the nature of measures taken relating to it.

A fundamental legal error

Musawa obtained a copy of a court order regarding a defendant remanded to the court of first instance that ordered the release of the defendant because the public prosecution had not complied with investigation procedures.

The public prosecution appealed against this ruling but made a basic legal error by submitting its appeal to the court of first instance in its appeal capacity, forgetting or trying to ignore the fact that the sentence under appeal had been issued by the court of first instance and any appeal falls under the jurisdiction of the court of appeals. Due to this error, the court of first instance decided to reject the appeal. Musawa hopes that the public prosecution will monitor the performance of public prosecutors to avoid repetition of such errors.

Controversial request and sentence

Musawa found out that the brother of an appellant requested that the court reduce a prison sentence against the defendant, who was convicted of attacking the appellant, to a fine. The court replaced the prison sentence with a fine as a result of the request, which stated that the defendant was responsible for a large family, had no criminal record and had never previously appeared before any court.

Complaint by attorney requires clarification

On February 12, 2013, Musawa received a written complaint from an attorney claiming that the public prosecution had rejected a case filed by him on behalf of a client against a minister and a director of a reform and rehabilitation center who had refused to execute a judicial order.

Musawa sent a memo to the Attorney General on February 21, 2013, requesting that he investigate the legal requirement that obliges the public prosecution to receive and record all complaints and handle them according to defined procedures.

Constructive cooperation

Following publication of the draft judicial administration law proposed by Musawa, a memo was sent to the assistant of the chief of the cabinet for legal affairs and general coordinator of the legislative plan of the government, Mr. Fawwaz Abu Zir, requesting the organization of a joint workshop to explain Musawa's proposals. The draft law is intended to provide the Palestinian legislative system with a modern law organizing the administrative judiciary, which plays an important role in monitoring the performance and decisions of the administration.

The cabinet chief Mr. Salah Abu Eleyyan responded positively and gave instructions to Mr. Abu Zir to organize the joint workshop.

The higher national group of the government legislative plan invited all relevant parties to the workshop, which was held on March 25, 2013, in Ramallah. Over 80 participants attended, including representatives from the Ministry of Justice and relevant ministries, the Anti-corruption Commission, the Bar Association, civil society organizations, academics and attorneys.

Musawa looks forward to further cooperation with official and private bodies to achieve its goal of modernizing Palestinian legislation in harmony with the requirements of a modern legal state.

Urgent need to accelerate work into cases of corruption

The length of time required to investigate and conclude cases of corruption has provoked a widespread legal and public debate, including voices demanding legislative amendments and administrative measures to accelerate the process and guarantee a fair trial and right of defense for defendants.

On February 24, 2013, Musawa sent a written memo to the High Judicial Council requesting consideration of the legal time frame stipulated in Article 16, clause 3, of the Anti-corruption Law that states that the court must investigate a case of corruption within a maximum period of ten days from the date the case is filed. The memo reminded the Council of additional articles and clauses in the Anti-corruption Law stipulating timely action. Musawa also called on the Council to force judicial commissions to abide by the articles of the Law.

On March 3, 2013, Musawa received a written response from the general secretariat of the High Judicial Council, along with a circular issued by the Head of the Higher Court and Head of the High Judicial Council to the head of the appeals court in Ramallah requesting that the relevant parties abide by the provisions of Article 16.

The cabinet sent a draft law amending the Law of Criminal Procedures and approved by the High Judicial Council to the President. Due to the importance of accelerating the process of investigating cases of corruption, Musawa sent a memo on March 7, 2013, to the legal department of the cabinet proposing the addition of a new article to the draft law on compliance with the time frames stipulated in the Illegal Profit Law No. 1 of 2005 and the Anti-corruption Law.

What is the problem??

A memo sent by Musawa on May 27, 2013, to the High Judicial Council and the Attorney General spurred debate. The memo concerned an investigative journalistic report on begging and a judicial ruling issued by a magistrate's court judge that was referred to the High Judicial Council because the police failed to execute a ruling to bring a female reporter to give evidence. On May 29, 2013, Musawa received a written response from the general secretary of the High Judicial Council pointing out that the reporter attended court on May 28 and gave evidence as she was unable to attend on May 27, 2013.

Also on May 29, Musawa received a lengthy written response from the Attorney General who stated that the decision of the magistrate's court to call the reporter to appear before the court was a violation of the law since the reporter had not been mentioned in the investigative report.

On May 30, 2013, the media published a police statement that denied the accuracy of the memo sent by Musawa and claimed that the reporter had given evidence, proving that the police had performed their duty in that respect. The police called on Musawa to act with extreme caution and accuracy in dealing with cases.

Musawa trusts the judgment of the reader and affirms that its memo was based on an official judicial order and did not target any specific party.

Law school students object to decision by Bar Association requiring a written and an oral exam for registration on the trainee attorneys register

Law school graduates sent a memo to the Bar Association demanding the annulment of several decisions taken by the general assembly of the Association. The students also organized a sit-in at the Bar Association headquarters. The head of the Bar Association met with the protestors and informed them that they could file a legal appeal against the decisions in court. Musawa agrees with the head of the Bar Association that appeals against decisions taken by the Bar Association should be presented to a higher court.

Efforts to hold Palestinian Bar Association elections must be unified

In its capacity as a supreme court of justice, the higher court in Gaza issued a decision to stop the Palestinian Bar Association elections in Gaza that were due to take place on August 17, 2013. Bar Association elections in Gaza have been halted several times since the internal division. Musawa believes that the members of the general assembly in Gaza need to resolve any problems preventing elections in an important body like the Bar Association.

You are entitled to appoint an attorney

Musawa received a complaint from a member of the public who alleged that the rights of his 14-year old son had been violated as he had not been treated as a juvenile by the police and had been handcuffed and kept in solitary confinement in a location not suitable for juveniles.

Musawa believes that the complainant has the right to appoint an attorney who can pursue legal action against this violation.

An accomplishment

A team of students from the law school at Al-Azhar University in Gaza participated in presenting a case in front of the International Criminal Court at The Hague on April 22, 2013. Student Enas Bahjat Safadi presented the argument of the Palestinian team while competing with teams from North Korea and Poland. The defense argument lasted for three hours. The performance of Enas was praised by the judges in the court. The participation of the Palestinian team was part of a symbolic contest before the court at The Hague with the participation of 200 contestants from 39 countries throughout the world.

Bar Association in Gaza signs memo of understanding with judicial police

On March 18, 2013, the Bar Association in Gaza signed a memo of understanding with the judicial police to exchange legal expertise and information and promote the participation of judicial police officers in the legal activities of the Association. The memo also stipulated that attorneys should abide by the rules and regulations when visiting prison facilities.

Assaults against attorneys also take place in Gaza

Musawa issued a statement on March 28, 2013, condemning an assault by the judicial authorities in Gaza against an attorney inside the court compound and demanding that the perpetrators be brought to justice. This was the second attack within one month.

Civil society organizations demand halt to legislation issued during internal split

Civil society organizations in Gaza issued a statement calling for a halt to legislation from the Legislative Council in Gaza during the internal division and a halt to legal decisions by the President in order to maintain Palestinian legal and legislative unity.

The Rights of Inmates are Violated

By attorney Ala Skafi – Gaza

In every country individuals are arrested if suspected of committing a crime. In most cases, people are detained for several weeks or months until a court of law issues a sentence. Very often, the conditions of detention are harrowing and inmates suffer tremendous personal pressure, in addition to economic losses and separation from their families and local community.

The inmate or detainee has the right to decent and humane treatment to safeguard his dignity, physical and mental health. It is the duty of the government to provide such security to all those who are deprived of their freedom as stipulated in Article 10 of the International Covenant on Civil and Political Rights.

Looking closely at conditions in Palestinian reform and rehabilitation centers, it is evident that these are official centers established according to the law. Detention centers belong to the security services of the two governments in Gaza and the West Bank; many of these detention centers lack the minimum requirements stipulated in Palestinian law and international treaties and agreements.

Despite positive developments and steps taken by the administration of reform and rehabilitation centers to improve the conditions for inmates, several problems remain and affect

living and health issues and the services offered to inmates. Legal services are poor because inmates are unaware of the importance of obtaining legal counsel. Inmates lack educational services to enable them to continue their studies at all levels. The health services in most of these centers are poor and there is a shortage of qualified physicians or medical equipment for examining and diagnosing patients. Many inmates complain of poor medical treatment in the clinics. A shortage of water for taking showers and cleaning leads to odors and drinking water is limited. Ventilation is restricted and inmates can be deprived of the daily outdoor break as a punishment. The quality and quantity of food offered to inmates is a complaint, as well as the lack of sports facilities and programs, which are non-existent in some centers. Inmates are not properly classified as some of them are in detention awaiting trial while others have been convicted. Another major problem is that inmates or detainees are not brought before a judge on the dates specified. Violations in these centers continue despite monitoring and oversight by the competent parties.

I strongly believe that those responsible for these violations must be held accountable. There must be judicial oversight, including inspection visits, and human rights organizations must be permitted to visit the centers, propose solutions and raise public awareness about these issues.

A report on courts in Gaza

By attorney Mu'men Khattab

There is chaos and overcrowding in the facilities and courtrooms of the Justice Ministry in Gaza. Conditions in courts in Gaza are not a pleasant experience for anyone who has dealings with the court compound. There are no facilities for the convenience of litigators or attorneys. People typing out petitions line the sides of the streets near the compound.

As you enter the halls, there is no place even to stand and people awaiting hearings sit on the floor for hours before meeting a judge or a clerk. Even attorneys do not have a dedicated room available to them. People attending the courts do not find any chairs or other facilities.

In a meeting with the general director of financial and administrative affairs for the judiciary in Gaza, Mr. Amir Abul Al-Omren, he admitted that there is a problem with overcrowding and a lack of facilities, with chaos in the halls and corridors. He explained that the Israeli siege and restrictions imposed on the entry of construction materials had prevented development of the court compound.

He added that large numbers of the public come to the compound on a daily basis and the courts have been computerized. Several tasks to develop the buildings and facilities remain at the planning stage. Judicial police have been introduced and work has taken place on developing the magistrate's court in Gaza and Khan Yunis and several branches for courts have been opened.

Head of prosecution under administrative investigation

Musawa has found out that on April 11, 2013, the head of the higher court and the High Judicial Council, judge Fareed Jallad, placed the head of prosecution under administrative investigation. The reasons for the decision included sending copies of correspondence with his direct superior to parties outside the judicial apparatus.

Musawa asks for answers from Ghallab:

Strip search is illegal and violates human dignity

Musawa can report that a dispute erupted between the Bar Association, the police and the prosecution following the search of an attorney on suspicion of possession of drugs. The attorney described the strip search as degrading. Following the incident, attorneys organized a strike on court appearances and a sit-in in front of the police and public prosecution headquarters. A judge is looking into the case.

Musawa approached Egyptian criminal legal expert Dr. Saber Ghallab, head of the Cairo Court of Appeals, since most of the provisions of Palestinian criminal procedures law were taken from

Egyptian law, and asked him whether it is admissible to conduct a strip search of an individual suspected of possessing drugs. Ghallab stated that if there are reasonable grounds the public prosecution has the right to conduct a search by criminal investigators in the presence of the public prosecution. He stressed that a strip search is illegal and a violation of human dignity and could be described as a crime against honor in certain cases.

Musawa hopes that the judge appointed to examine this case will issue a sentence and end this dispute in a manner that serves the rule of the law.

High Judicial Council grants books for al-Najah University

On June 4, 2013, the judicial media center announced the signing of a memo of understanding between the High Judicial Council and al-Najah University during a ceremony attended by the head of the High Judicial Council, judge Fareed Jallad, and the President of al-Najah University, Dr. Rami al-Hamdallah. The memo of understanding aims to support both judicial and academic learning by providing al-Najah University with English and Ottoman reference books located at Nablus court headquarters. The memo provoked controversy as there was some opposition to giving these books to the University on the grounds that they have legal and historical value and should have been kept at the Council with university students and scholars granted access to make use of them.

A courageous position

The media spokesperson of the judicial authority, judge Ra'ed Assaf, stated that on May 30, 2013, members of the investigation department and the public prosecution arrested an individual who was in the process of bribing an employee in the Nablus court of first instance. The operation had been set up in advance with the employee and the employee's conduct demonstrates courage and deserves appreciation.

Musawa organizes three training courses in Ramallah and Gaza

Musawa organized three training courses in cooperation with the UNDP. The first course targeted 21 trainee attorneys and new attorneys who recently commenced practice in Ramallah, Jenin, Nablus, Jericho and Bethlehem. The second course targeted 26 attorneys of the same status in the same districts. The third course targeted 25 attorneys in Gaza. There were 33 female attorneys in the three courses out of 72 participants.

When will civil society organizations be held accountable for corruption charges made against them?

Participants in a workshop organized by the Anti-corruption Commission in partnership with the Interior Ministry and the NGO Network in Ramallah on August 27, 2013, recommended amendments to legislation to prevent those convicted of corruption from receiving a special pardon. This recommendation was made after participants raised the issue of a special pardon that was issued to an individual convicted of corruption. This action has negative ramifications on efforts to fight corruption.

A paper presented by the Financial and Administrative Control Office in the workshop revealed that during the period 2011-2013 there were 11,000 cases of corruption committed by civil society organizations, including fake expenses, abuse of position for personal benefit, embezzlement, false financial statements, conflict of interests and disbursement of funds for purposes other than those specified. The paper pointed out that the administrative expenses in the budgets of some organizations ranged between 47 and 75 percent of the general budget. The paper also stated that the relevant ministries had granted licenses and registered more than 2750 NGOs and 190 foreign NGOs.

Musawa expresses its concern regarding the content of the paper by the Financial and Administrative Control Office and hopes that the Anti-corruption Commission will act speedily in relation to these cases in the public interest. When will any civil society organizations be held accountable for the corruption charges filed against them? The role of civil society organizations in fighting corruption demands that they start by cleaning up their own backyard to win public confidence.

No comment

The judicial inspection department has started an investigation into a complaint received from the head of the High Judicial Council relating to a written memo from the Attorney General about violations in the release of two women. The media reported the death of one of these women and the injury of the other after they were attacked following their release.

Is It True?

Is it true that Foreign Ministry employees organized a sit-in for a few days in front of the Ministry to demand respect for the Law on Diplomatic Corps and respect for their employment rights?

Is it true that students at Birzeit University protested against the University fixing the exchange rate of the Jordanian dinar at a higher rate than that prevailing in the market and that this measure has been imposed on all existing and new students?

Is it true that the head of the judicial inspection department decided to stop investigation into a heated argument and physical assault between a member of the High Judicial Council and a judge mandated to the Court of Appeals after the two individuals involved denied that the event took place?

The head of the judicial inspection department, Judge Fathi Abu Sorour: I was commissioned to investigate the incident but when the two individuals involved in the case denied that the event had taken place, I stopped the investigation and transferred the matter to the head of the High Judicial Council.

Is it true that a senior employee in one of the ministries was transferred to the personnel office after being accused of sexual harassment and corruption?

Is it true that there has been no announcement about the formation of the higher court despite the end of the judicial holiday and the start of the new judicial year?

Is it true that judges still use the job title they held as attorneys and that the High Judicial Council has not yet taken any decision to remove these titles despite repeated calls and demands to that effect?

Is it true that a dispute has arisen between magistrate's court judges regarding the allocation of rooms for them at Ramallah magistrate's court?

Head of Ramallah Court of First Instance: The dispute started when one of the judges protested against the adoption of a lottery system to distribute rooms and insisted on using the criteria of seniority and the dispute was settled.

Is it true that the head of the High Judicial Council appointed judge Ra'ed Assaf as media spokesperson for the High Judicial Council in addition to his job as a judge at a court of first instance and an execution judge?

Judge Ra'ed Assaf: Yes, this is true.

Is it true that a donor country offered \$25 million to the justice sector between 2005 and 2012 and that people in the legal profession have questioned the impact of these funds on the sector?

Is it true that the criminal investigation department prevented an attorney from attending an investigation with his client, and that the client was told by the officer that he was the sole person authorized to listen to the statement without the presence of his attorney?

Attorney Ibrahim Far'on: Yes, it is true.

Is it true that several members of the public organized a sit-in before the High Judicial Council on May 26, 2013, claiming that 15 individuals accused of fraud are still free and have not been investigated or arrested despite accusations against them?

Is it true that a judge filed a case before a higher court to oppose his transfer to the judicial inspection department after he was seconded to the higher court and that the case included a demand for compensation of 100,000 Jordanian dinars?

Judge Izzat al-Ramini: Yes, the case was filed.

Is it true that heads of departments in the High Judicial Council still use Council vehicles for personal purposes outside working hours and that the Council has not responded to two memos sent by Musawa on that issue?

Is it true that the public prosecution was able to annul a ministerial decision to include the budget of the public prosecution with that of the Justice Ministry?

An informed source in the public prosecution: True.

Is it true that a judge presented a research paper at a conference that included citations without any references to the researchers who wrote the paper?

Dr. Taleb Awad: He quoted from my research without any consideration for the principles of citation.

Is it true that the Anti-corruption Commission demanded a legislative amendment to force management to suspend employees accused of corruption until a verdict on the cases filed against them by the competent courts and that the current law permits this if the head of the legal departments allows it?

An informed source in the Anti-corruption Commission: It is true.

Is it true that the Bar Association does not have a financial system or a personnel department?

An informed source in the Bar Association: It is true and the Bar Association is currently working on setting up a financial system based on modern accounting methods and a human resources department.

Is it true that mandating by the judiciary was bypassed by the issuing of presidential decrees promoting eight heads of court of first instance to the appeals courts and two heads of the appeals court to the higher court?

An informed source in the High Judicial Council: The general assembly of the Court of Cassation established a judicial principle regarding seconding and this is binding on all courts.

Is it true that the State of Palestine has not yet signed the international agreement against corruption and that it still working on the basis of an order issued by former PM Mr. Ahmad Qurei', who announced then that the PA is committed to the agreement on a unilateral basis but this commitment does mean ratification of the agreement?

A source in the Anti-corruption Commission: It is true and we hope that ratification will take place as soon as possible.

Is it true that the sixth judicial conference has been canceled after invitations were distributed and that it was set to be held on July 4, 2013, at the Movenpick Hotel in Ramallah?

Judges from the higher court who received the written invitation: True

Musawa obtained a copy of the conference invitation, which was due to be held under the title "An Independent Judiciary as part of an Integrated Justice System".

Is it true that a court placed a counter at the entrance to the judges' offices run by the judicial police?

Attorneys appearing before that court: Yes it is true.

Is it true that the legal department at the President's office demanded that the Justice Ministry, Birzeit University and the technical office at the High Judicial Council present a legal

reading on the Sharia higher court system which was considered unconstitutional in the memo sent by Musawa to the President? Is it true that around 400 employees at the High Judicial Council held a meeting on April 6, 2013, to establish and elect a board for an association that protects their rights?

Is it true that participants in a workshop organized by the Anti-corruption Commission demanded that a maximum ceiling be established for the salaries of people working in civil society organizations?

An informed source in the Anti-corruption Commission: It is true.

Is it true that an attorney filed a complaint to the High Judicial Council claiming that his client was attacked by a policeman in court and that the head of the court who witnessed the attack, which occurred on March 27, 2013, did not take any action?

The attorney who filed the complaint: Yes.

Is it true that a magistrate's court issued a one-year prison sentence against an individual who insulted the President and that the legal advisor to the President stated that the President will issue a special pardon for the convicted person once the decision becomes final because the sentence was issued at a magistrate's court and can be appealed?

Is it true that an attorney was arrested on charges of committing a murder?

A source in the Bar Association: It is true.

Is it true that an attorney complained that the Preventive Security Apparatus searched his office, but the Preventive Security Apparatus denied the incident?

A source in the Bar Association: It is true.

Is it true that 15 graduates from the judicial training institute are unable to find a judicial post and are classified as unemployed?

Is it true that the judicial inspection department is looking into a complaint filed by an attorney on behalf of a defendant who appealed against a sentence, but was surprised that the court of first instance in its appeals capacity rejected the appeal and increased the sentence?

A source in the judicial inspection department: It is true.

During Printing

Eye on Justice discovered that following the failure of the Higher Court General Assembly to select a member to the High Judicial Council to succeed the late Judge Mohammed Seder, the High Judicial Council issued a decision on January 23, 2013 stipulating that Judge As'ad Mubarak should attend the Council meetings.

This decision was justified on the grounds that the Council had been forced to invite Judge As'ad Mubarak to attend the Council meetings after the Higher Court had called for a meeting three times in a row but there was no quorum.

MUSAWA in Brief

An independent and non-government civil association established on 18/3/2002 under an initiative by former lawyers, judges and social personalities undertaking the responsibility for dedicating efforts to enhance guarantees for the independence of the judiciary and legal profession from the legislative, methodological and behavioral point of view by monitoring, documenting and addressing all social, cultural, political, economic and legislative obstacles that may prevent proper

Invitation

Musawa calls upon all those working in the legal profession to contribute their legal opinions and express their viewpoints freely in writing to us. Musawa will publish all your input in Eye on Justice and Justice and Law Magazine.



MUSAWA

**Palestinian Center for the Independence
of the Judiciary & the Legal Profession**

Notice from the Programs Department

Dear members of the public,

In order to guarantee the rights of the Palestinian public and ensure a reputable judiciary that promotes and protects justice and equality, the programs department at Musawa will continue to publish Eye on Justice and Justice and Law Magazine to draw attention to all issues related to the justice system.

Musawa is always ready to receive any ideas, news items, articles, research studies or comments related to the independence, integrity and professional performance of the justice system.

MUSAWA

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